

APPENDIX A

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1913-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

AGUSTIN GARCIA,

Defendant-Appellant.

Argued May 13, 2024 – Decided May 23, 2024

Before Judges Gilson and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Indictment No. 00-06-1368.

Agustin Garcia, appellant, argued the cause pro se.

William P. Miller, Assistant Prosecutor, argued the
cause for respondent (Mark Musella, Bergen County
Prosecutor, attorney; William P. Miller, of counsel and
on the brief).

PER CURIAM

Appendix A

Defendant Agustin Garcia appeals from the December 21, 2021 order of the Law Division denying his fifth petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

I.

In 1999, defendant murdered his former girlfriend on the day she was to marry another man. Defendant shot her at close range in her home just before the wedding ceremony. The shooting was witnessed by several guests and family members and recorded by a videographer who was filming the events of the day.

In 2001, a jury convicted defendant of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2); second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a); third-degree possession of a handgun without a permit, N.J.S.A. 2C:39-5(b); and four counts of third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). Following the merger of certain convictions, the trial court sentenced defendant to an aggregate term of life in prison with a thirty-year period of parole ineligibility.

On direct appeal, defendant challenged, among other things, the admission of the video recording of the murder into evidence at trial. In Point I of his self-represented brief, defendant argued:

THE COURT IMPROPERLY ADMITTED THE WEDDING VIDEOTAPE THAT DID NOT ESTABLISH DEFENDANT'S GUILT IN ANY WAY AND WAS CLEARLY PREJUDICIAL AND INFLAMMATORY.

In support of this point, defendant advanced two arguments. First, he argued that the trial court erred when it admitted the video because it was unduly prejudicial, given the dramatic nature of the recording, that defendant's identity as the shooter was not contested, and there was sufficient eyewitness testimony regarding the shooting available to the State. Second, defendant argued that the jury was not properly advised that certain parts of the video had no sound and that the video had been modified from its original form.

We affirmed defendant's convictions of murder and the weapons offenses, but reversed his endangering convictions. State v. Garcia, No. A-3939-01 (App. Div. May 11, 2004). With respect to defendant's first argument, we affirmed the trial court's admission of the video recording based on its determination that "the tape was admissible because it was relevant on the issue of who caused the victim's death and to show the facts and circumstances immediately prior to the shooting." Id. (slip op. at 26). We noted that the State had "carefully redacted to limit, wherever possible, [the recording's] inevitable dramatic effect." Id. (slip op. at 30). We also rejected defendant's second argument as factually

inaccurate because "the trial judge apprised the jury of the limited audio" and the testifying officer had informed the jury that "he had edited the tape as per the court's direction and had also reproduced certain sections in slow motion and as still frames." Id. (slip op. at 26). The Supreme Court denied defendant's petition for certification. State v. Garcia, 181 N.J. 545 (2004).

In 2007, defendant filed his first PCR petition. In his self-represented submissions, defendant again challenged the admission of the video recording as evidence at trial. He argued that his trial counsel was ineffective for failing to "file a motion to suppress the wedding tape on tampering" State v. Garcia, No. A-5437-06 (App. Div. Nov. 6, 2009) (slip op. at 3). The trial court denied the first petition, holding that "there was no indication the video had been tampered with and no evidence at all the video had been manipulated in any way other than the way it was done in open court with defendant and his three attorneys present, which included freezing frames and excluding the portions that did not pertain to the shooting." Id. (slip op. at 4).

On appeal from the denial of his first petition, defendant, in a self-represented submission raised the following argument:

TRIAL COUNSELS WERE INEFFECTIVE FOR NOT
CONSULTING OR HIRING AN EXPERT TO
EXAMINE THE WEDDING VIDEOTAPE FOR
EVIDENCE OF AN ALTERCATION CAPTURED

ON THE AUDIO OF THE VIDEOTAPE AND FOR
FAILING TO HAVE AN EXPERT TESTIFY AT
TRIAL.

We affirmed denial of the first petition, holding that defendant's arguments that his trial counsel was ineffective with respect to the video recording were "completely without merit." Id. (slip op. at 12). The Supreme Court denied defendant's petition for certification. State v. Garcia, 202 N.J. 348 (2010).

In 2008, defendant filed a second PCR petition. He again argued that his trial counsel was ineffective for not consulting or hiring an expert to examine the video recording. The trial court dismissed the second petition, concluding that it was "little more than a resubmission of his prior petition." State v. Garcia, A-3198-09 (App. Div. Aug. 12, 2011) (slip op. at 3). We affirmed, concluding defendant's claims were time barred under Rule 3:22-12(a) and the ineffective assistance claims were substantively barred under Rule 3:22-5 because they had already been raised by defendant and rejected by the court. Id. (slip op. at 5-6). Despite the bars, we addressed defendant's claims and concluded that "[t]he broad proposition offered that counsel failed to hire experts to review, and presumably challenge as authentic, videotapes and audiotapes introduced at trial by the State, or otherwise present defense witnesses, lacks merit." Id. at (slip

op. at 7). The Supreme Court denied defendant's petition for certification. State v. Garcia, 209 N.J. 596 (2012).

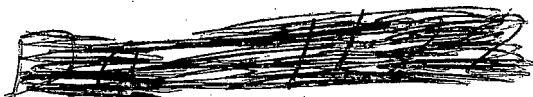
Defendant filed his third PCR petition while the appeal from the dismissal of his second petition was pending. He alleged, among other things, ineffective assistance of PRC counsel with respect to his argument concerning admission of the video recording of the murder. The trial court denied the petition.

On appeal, defendant argued

POST-CONVICTION COUNSEL . . . FAILED TO INVESTIGATE AND PROPERLY PUT FORTH APPELLANT'S CLAIMS OF PROSECUTORIAL MISCONDUCT AND PRIOR COUNSELS' INEFFECTIVE ASSISTANCE DUE TO A FRAUDULENTLY ALTER[ED] WEDDING VIDEOTAPE


TRIAL COUNSEL[] W[AS] INEFFECTIVE FOR NOT CONSULTING OR HIRING AN EXPERT TO EXAMINE THE WEDDING VIDEOTAPE FOR EVIDENCE OF AN ALTERCATION CAPTURED ON THE AUDIO OF THE VIDEOTAPE.

We affirmed, concluding that "[t]he third petition does not raise any of the issues allowed by Rule 3:22-4(b)(2)(A)-(C)." State v. Garcia, No. A-2764-10 (App. Div. May 16, 2013) (slip op. at 7). The Supreme Court denied defendant's petition for certification. State v. Garcia, 217 N.J. 284 (2014).



Defendant thereafter filed his fourth PCR petition, requesting a new trial based on what he alleged to be newly discovered evidence concerning the video recording. In 2016, the trial court denied the fourth petition concluding that defendant's claim was meritless because the allegedly newly discovered evidence had been produced during discovery prior to his trial. In addition, the trial court found that defendant's other claims had been previously adjudicated in his prior PCR petitions.

Defendant subsequently filed a motion to compel production of the entire video recording and the portion admitted as evidence at trial. The trial court denied defendant's application, concluding that "all arguments about the video . . . had been addressed and resolved in [defendant's] prior direct appeal and orders and appeals concerning his PCR petitions." State v. Garcia, A-3575-18 (App. Div. Oct. 13, 2021) (slip op. at 2). We affirmed, concluding that production of the video recording could not support any new argument that would not be procedurally barred because it was available to defendant and his counsel before the trial and during his direct appeal and all of defendant's arguments concerning the video recording had been raised and adjudicated in his direct appeal and PCR petitions. Id. (slip op. at 5-6). The Supreme Court



denied defendant's petition for certification. State v. Garcia, 250 N.J. 352 (2022).¹

On November 9, 2021, defendant filed his fifth PCR petition, which is the subject of this appeal. In his fifth petition, defendant alleged he was entitled to a new trial because the video recording was fraudulently altered.

On December 21, 2021, the trial court issued an order denying the fifth petition because defendant raised "no cognizable basis to grant relief." In an accompanying statement of reasons, the trial court concluded that defendant's claims were barred by Rule 3:22-5 because they had been adjudicated in defendant's direct appeal or in his prior PCR petitions.

This appeal follows. Defendant raises the following arguments.

POINT I

[THE] JUDGE['S]. DEC. 21, 2021 "NO
COGNIZABLE" DENIAL RELYING SOLELY ON
[ANOTHER] JUDGE['S] MARCH 28, 2017 RULING
(Da: 1033-1-36), ARBITRARILY ENTERED

¹ Separately, defendant filed requests under the Open Public Records Act, N.J.S.A. 47:1A-1 to -13, and the common law with the Bergen County Prosecutor's Office (BCPO) seeking to compel production of the unedited, original version of the video recording. The BCPO denied his requests. The Assignment Judge affirmed the denial, concluding that defendant had been in possession of the video recording for sixteen years. We affirmed. Garcia v. Bergen Cnty. Prosecutor's Off., A-3085-16, A-4501-16 (App. Div. May 17, 2019). The Supreme Court denied defendant's petition for certification. Garcia v. Bergen Cnty. Prosecutor's Off., 241 N.J. 154 (2020).

WITHOUT ANY PARTICIPATION BY ALREADY ASSIGNED COUNSEL (Jan. 25, 2019 Trans. 62:3-19; Da:257-259), I.E., FAILING TO RULE ON MERIT OF APPELLANT'S JULY 25, 2019, LAST AMENDED ON 11-05-21 PROPERTY AND TIMELY FILED INSTANT SUBSEQUENT PCR PETITION (Da: 400-401; 488-491; 594-635; 1033-1036), RAISING INEFFECTIVE ASSISTANCE BY ASSIGNED COUNSELS . . . ON MATTER LITIGATED BY NEW JERSEY PUBLIC DEFENDER UNTIL RECENT SUPREME COURT OF NEW JERSEY'S APRIL 5, 2022 DENIAL OF DOCKET NO. 086339 (Da: 1093-1096), "IS WHOLLY UNSUPPORTED BY THE EVIDENCE.' UNITED STATES V. HOFFECKER, 530 F.3d 137, 183 (3d Cir. 2008)", DEPRIVING APPELLANT OF HIS CONSTITUTIONALLY PROTECTED RIGHT TO THE ASSISTANCE OF COUNSEL AND DUE PROCESS OF LAW, GUARANTEED BY THE 6TH AND 14TH AMEND U.S. CONST. AND ART. I, PAR. 1 OF N.J. CONST, WARRANTING REVERSAL AND REMAND FOR FURTHER PROCEEDINGS TO CORRECT RESULTING FUNDAMENTAL UNFAIRNESS AND/OR MISCARRIAGE OF JUSTICE.

A. ASSIGNED COUNSEL, ASSISTANT DEPUTY PUBLIC DEFENDER[S] EGREGIOUSLY INEFFECTIVE ASSISTANCE OF COUNSEL, I.E., FAILING TO EVEN ENTER APPEARANCE ADHERING TO N.J.C.R. 3:8-3, 3:22-6A, ABANDONED APPELLANT, ALLOWING [THE] JUDGE . . . TO ENTER ORDERS DATED AUGUST 25, 2016, MARCH 3, 2017 AND MARCH 28, 2017 (DA:361-364; 388; 550-552), AND APPELLATE DIVISION'S AUG. 31, 2007, JAN. 26, 2018, APR. 6, 2018, DEC. 7, 2018 (DA:420; 459; 476; 478); AND SUPREME COURT'S JAN. 23, 2018 (DA:458) ORDERS WITHOUT ANY PARTICIPATION OF

ALREADY ASSIGNED COUNSEL (JAN. 25, 2019 TRANS. 62:3-19; DA;257). THEREBY DEPRIVING APPELLANT OF RIGHT TO COUNSEL AND DUE PROCESS OF LAW, GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENT OF U.S. CONSTITUTION.

B. ASSIGNED COUNSEL, ASSISTANT DEPUTY PUBLIC DEFENDER . . . RENDERED INEFFECTIVE ASSISTANCE TO PETITIONER, I.E., FAILING TO PERFORM REQUIRED INVESTIGATION TO ACQUIRING (SIC) THE MOST BASIC UNDERSTANDING OF THE CASE, AND FAILING TO AMEND NOTICE OF APPEAL, ERRONEOUSLY FILE[D] BY HER AS FROM FINAL ORDER, INSTEAD AS INTERLOCUTORY....

POINT II

IN THE ALTERNATIVE, BECAUSE THERE ARE GENUINE ISSUES OF MATERIAL FACT IN DISPUTE, THE PCR COURT ERRED IN DENYING AN EVIDENTIARY HEARING.

In his reply brief, defendant raised the following argument

CONTRARY TO RESPONDENT'S ALLEGATION (RESP.'S BR. 10-11 (NOV. 9, 2023)), INSTANT MATTER IS NOT PROCEDURALLY BARRED UNDER N.J.C.R. 3:22-5, DUE TO COURTS' FAILURE TO ASSESS "WITHIN THE CONTEXT OF EVIDENTIARY HEARING [2013 N.J. LEXIS 79 (JAN. 22, 2013)]" THE VIDEOTAPE FORENSIC EVIDENCE (APLT.'S DA: 1-16 (MAY 26, 2022)), FILED IN SUPPORT OF APPELLANT'S MAY 8, 2007 MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE,

"SUPPLEMENTING THE FIRST PCR RECORD["]
PURSUANT TO N.J.C.R. 1:7-4(b). (MAY 4, 2207
(SIC) TRANS. 43:18-21; APLT.'S DA: 249-256; 799-
1032 (MAY 26, 2022)).

II.

Petitions for PCR are not vehicles to repeatedly raise claims that have previously been adjudicated. Rule 3:22-5 provides:

[a] prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in any post-conviction proceeding brought pursuant to this rule . . . or in any appeal taken from such proceedings.

As the Supreme Court explained,

[p]reclusion of consideration of an argument presented in post-conviction relief proceedings should be effected only if the issue raised is identical or substantially equivalent to that adjudicated previously on direct appeal.

[State v. Marshall, 148 N.J. 89, 150 (1997) (quoting State v. Bontempo, 170 N.J. Super. 220, 234 (Law Div. 1979)).]

Having reviewed defendant's arguments in light of the record and applicable legal principles, we affirm the December 21, 2021 order of the trial court. Defendant's fifth PCR petition alleges the same claims regarding the video recording of the murder that he raised in his direct appeal and in his first four PCR petitions. Those claims were repeatedly determined to be meritless.

We see no legal basis which would permit defendant to raise these previously rejected claims in a fifth PCR petition.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

APPENDIX B

SUPREME COURT OF NEW JERSEY
C-446 September Term 2024
089560

State of New Jersey,

Plaintiff-Respondent,

v.

ORDER

Agustin Garcia,

Defendant-Petitioner.

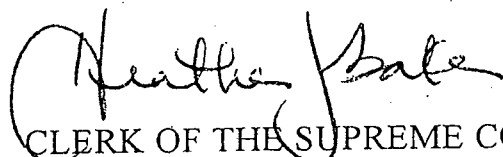
A petition for certification of the judgment in A-001913-21
having been submitted to this Court, and the Court having considered the
same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
6th day of May, 2025.

APPENDIX

B


CLERK OF THE SUPREME COURT

APPENDIX C

STATE OF NEW JERSEY

FILED

DEC 21 2021

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL
BERGEN COUNTY

SUPERIOR COURT OF NEW JERSEY
GARY WILCOX, J.S.C.

INDICTMENT #: BER-00-06-01368

CASE OR PROMIS #: BER-99-002293

AGUSTIN GARCIA

Defendant

ORDER ON POST-CONVICTION APPLICATIONS
ON INDICTABLE OFFENSES

This matter being opened on the application of defendant, AGUSTIN GARCIA, by:

☒ Petition for Post-Conviction Relief determined to be defendant's

_____ first petition

☒ second or subsequent petition

☐ Motion for Change or Reduction of Sentence pursuant to Rule 3:21-10

☐ Motion for _____ and the defendant having been represented by:

_____, Assistant Deputy Public Defender

_____, Retained or Designated Counsel (circle one) or

☒ The court having concluded that there was no good cause entitling the assignment of counsel on the application, and the State having been represented by:

N/A, Assistant Prosecutor, and

☐ There having been proceedings conducted on the record on _____, 201____ of

☒ The matter having been disposed of on the papers:

It is on this 21 day of December, 2021, ORDERED THAT DEFENDANT'S APPLICATION IS HEREBY:

☒ Granted
☐ Denied b/c has no cognizable basis to grant relief.
☐ Other _____

For the reasons:

☒ Expressed in the court's written opinion of December 21, 2021

☐ Expressed orally on the record on _____

GARY N. WILCOX, J.S.C.

ORIGINAL:

Office of the Public Defender
Judge Gary N. Wilcox
Criminal Division Manager's Office
Prosecutor's Office
Defendant

Appendix C

APPENDIX D

STATE OF NEW JERSEY,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
COUNTY OF BERGEN

INDICTMENT NO.: 13-12-01883-I

v.

OPINION ON DEFENDANT'S MOTION
FOR POST-CONVICTION RELIEF

AGUSTIN GARCIA

Defendant.

BEFORE:

The Honorable Gary N. Wilcox, J.S.C.

DECIDED:

December 21, 2021

PARITES:

Defendant Garcia representing himself,
pro se

Gary N. Wilcox, J.S.C.

CONCLUSION

This matter comes before the court on defendant Agustin Garcia's motion for post-conviction relief filed November 9, 2021 pursuant to Rule 3:22.

Rule 3:22-5 states in full: "A prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in any post-conviction proceeding brought pursuant to this rule or prior to the adoption thereof, or in any appeal taken from such proceedings."

Regarding the video evidence, as Judge Guida had originally found on the record on January 25, 2019, any facet or issue concerning the video is not newly discovered evidence, and therefore, the defendant cannot re-litigate this issue. Because

APPENDIX D-1

APPENDIX D

STATE OF NEW JERSEY,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
COUNTY OF BERGEN

INDICTMENT NO.: 13-12-01883-I

v.

OPINION ON DEFENDANT'S MOTION
FOR POST-CONVICTION RELIEF

AGUSTIN GARCIA

Defendant.

BEFORE:

The Honorable Gary N. Wilcox, J.S.C.

DECIDED:

December 21, 2021

PARITES:

Defendant Garcia representing himself,
pro se

Gary N. Wilcox, J.S.C.

CONCLUSION

This matter comes before the court on defendant Agustin Garcia's motion for post-conviction relief filed November 9, 2021 pursuant to Rule 3:22.

Rule 3:22-5 states in full: "A prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in any post-conviction proceeding brought pursuant to this rule or prior to the adoption thereof, or in any appeal taken from such proceedings."

Regarding the video evidence, as Judge Guida had originally found on the record on January 25, 2019, any facet or issue concerning the video is not newly discovered evidence, and therefore, the defendant cannot re-litigate this issue. Because

Appendix D-2

Appendix D

this issue is moot, the defendant has no claim to ineffective assistance of counsel, as the issue in and of itself would have had no impact on the final decision. The defendant's remaining arguments have no merit and will not be addressed.

For the above reasons, defendant's motion to reduce sentence is hereby DENIED.

Appendix D-3

APPENDIX E

ORDER ON MOTION

STATE OF NEW JERSEY
V.
AGUSTIN GARCIA

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001913-21T4
MOTION NO. M-003624-21
BEFORE PART E
JUDGE(S): CARMEN MESSANO

MOTION FILED: 02/24/2022

BY: AGUSTIN GARCIA

ANSWER(S)
FILED:

SUBMITTED TO COURT: April 07, 2022

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
8th day of April, 2022, HEREBY ORDERED AS FOLLOWS:


MOTION BY APPELLANT

MOTION TO FILE NOTICE OF APPEAL AS
WITHIN TIME

GRANTED

SUPPLEMENTAL:

FOR THE COURT:


CARMEN MESSANO, P.J.A.D.

APPENDIX F

ORDER ON MOTION

STATE OF NEW JERSEY
V.
AGUSTIN GARCIA

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001913-21T4
MOTION NO. M-003625-21
BEFORE PART E
JUDGE(S): CARMEN MESSANO

MOTION FILED:

BY: AGUSTIN GARCIA

ANSWER(S)

FILED:

SUBMITTED TO COURT: April 07, 2022

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
8th day of April, 2022, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION TO PROCEED AS AN INDIGENT	GRANTED
MOTION FOR ASSIGNMENT OF COUNSEL	DENIED

SUPPLEMENTAL:

The motion for leave to proceed as indigent is granted subject to N.J.S.A. 30:4-16.3. The calculation required by said statute shall be made by the Department of Corrections, which shall then, on notice to the appellant of the amount of the calculation, transfer the partial filing fee as calculated from the appellant's institutional account to the Clerk of the Superior Court. The fulfillment of this condition shall not stay the processing, perfection or determination of this appeal.

FOR THE COURT:


CARMEN MESSANO, P.J.A.D.

Appendix F

APPENDIX G

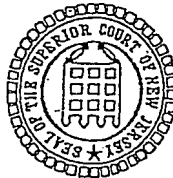
SUPERIOR COURT OF NEW JERSEY

BERGEN VICINAGE
Bergen County Justice Center
10 Main Street
Room 124
Hackensack, New Jersey 07601-7699
(201) 527-2400
Fax (201) 371-1122
(201) 371-1123

Laura A. Simoldoni
Trial Court Administrator

Leslie Darcy
Criminal Division Manager

Lucie R. Ostapeck
Asst Crim Div Manager



Agustin Garcia
822642-B/438336
New Jersey State Prison
Third and Federal Streets
P.O. Box 861
Trenton, N. J. 08625

June 1, 2016

State vs. Agustin Garcia Ind. 00-06-1368-I
Notice of Motion for Order Reactivating and/or
Calendaring New Trial Motion

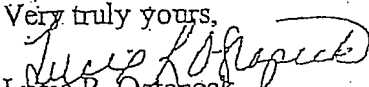
Dear Mr. Garcia:

I am in receipt of your above captioned Motion and am forwarding same to the Office of the Public Defender for their review and consideration. If you have any questions regarding the filing of this motion, please contact the Public Defender's office at 60 State Street, Hackensack, N. J. 07061.

APPENDIX G

Thank you for your attention in this matter.

Very truly yours,


Lucie R. Ostapeck
Asst. Criminal Div. Mgr.

APPENDIX G

APPENDIX H

SUPERIOR COURT OF NEW JERSEY

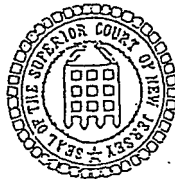
BERGEN VICINAGE
Bergen County Justice Center
10 Main Street
Room 124
Hackensack, New Jersey 07601-7699
(201) 527-2400
Fax (201) 371-1122
(201) 371-1123

Laura A. Simoldoni
Trial Court Administrator

Leslie E. Darcy
Criminal Division Manager

Charlette Phipps
Asst Crim Div Manager

Robert B. Sozio, Esq.
Asst Crim Div Mgr/Pretial Services



March 20, 2017

Agustin Garcia
East Jersey State Prison
P#428336 / SBI#822642B
1100 Woodbridge Road
Rahway, NJ 07065

Re: Motion for Reconsideration of Court's 8/25/16 and 3/3/17 Orders

Dear Mr. Garcia:

We are in receipt of your request to file Motion for Reconsideration of Court Orders to Criminal Case Management on March 17, 2017. Your motion will be forwarded to the Public Defender's Office for review and consideration for representation of this matter. If you have any questions in regards to this matter, please contact the Bergen County Public Defender's Office at 60 State Street, Hackensack, NJ 07601.

Thank you for your cooperation.

Sincerely,

Charlette Phipps
Asst. Crim. Div. Manager

APPENDIX H

APPENDIX H

APP.

H

APPENDIX I



State of New Jersey
Office of the Public Defender

Bergen Trial Region
LOUIS ACEVEDO, Deputy Public Defender
60 State Street, 3rd Floor
Hackensack, New Jersey 07601
201-996-8030 • Fax 201-996-8034
E-Mail: TheDefenders@OPD.STATE.NJ.US

JOSEPH E. KRAKORA
Public Defender

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

March 22, 2017

Augustine Garcia
SBI# 822642B
East State Prison
1100 Woodbridge Rd
Rahway, NJ 07065

RE: State v. Augustine Garcia
R.O. No.: 1005265465

Dear Mr. Garcia:

I am the attorney who will be representing you on your pending criminal charges in Bergen County. Please call me at the above telephone number to schedule an appointment to meet with me. I can usually be reached between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

In the meantime, you should be aware of the following:

Contrary to what you may have heard, the services of the Office of the Public Defender are not free. By law, you are required to pay for all legal, investigative and expert services. The cost to you will depend on the charges and disposition of your case. At our initial interview, I will explain the fee schedule and methods of payment. You will be required to sign a reimbursement agreement, which will contain the fee schedule and by which you acknowledge that you are obligated to pay the costs for our services. Before your case is closed, you will be given an opportunity to pay your bill within 60 days of the case's disposition. If you are unable to pay the entire debt within 60 days from the disposition of your case, an AUTOMATIC JUDGMENT (LIEN) may be filed against you for the amount owed and will be held against you for a period of up to ten years or until the lien is satisfied.

If you have any questions between now and the time of our initial interview, you can reach me at the above address and/or telephone number.

Very truly yours,

Emile Lisboa 602/142

EMILE LISBOA, ESQ.
Assistant Deputy Public Defender

APPENDIX 1

APPENDIX J

STATE OF NEW JERSEY **FILED**

v.

AGUSTIN GARCIA
Defendant

AUG 25 2016

JAMES J. GUIDA, J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL
BERGEN COUNTY

INDICTMENT #: 00-06-01368-1
CASE OR PROMIS #:

ORDER ON POST-CONVICTION APPLICATIONS
ON INDICTABLE OFFENSES

This matter being opened on the pro se application of defendant, Agustin Garcia:

☐ Petition for Post-Conviction Relief determined to be defendant's

☐ first petition

☐ second or subsequent petition

☐ Motion for Change or Reduction of Sentence pursuant to Rule 3:21-10

☒ Motion for New Trial Based on Newly Discovered Evidence pursuant to Rule 3:20 and the
defendant having been represented by:

_____, Assistant Deputy Public Defender

_____, Retained or Designated Counsel (circle one) or

☐ The court having concluded that there was no good cause entitling the assignment of counsel
on the application, and the State having been represented by:

_____, Assistant Prosecutor, and

☒ The matter having been disposed of on the papers:

It is on this 25th day of August, 2016 ORDERED THAT DEFENDANT'S APPLICATION IS HEREBY:

☒ Denied

For the reasons: The defendant's assertion that a April 4, 2007 Forensic Examination of Recorded
Videotape Evidence is newly discovered evidence is meritless, as the report had been presented in
discovery during defendant's prior post conviction relief petitions and defendant's claims relating to
the aforementioned forensic examination ruled meritless. Defendant's other claims relating to
the assistance of counsel do not constitute newly discovered evidence, and these claims
indicated in defendant's prior three post-conviction relief

Appendix J

Appendix J

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The trial judge sentenced defendant to life in prison, with thirty years of parole ineligibility, for murder; a consecutive four-year term for third-degree unlawful possession of a weapon; and two concurrent four-year terms for endangering the welfare of a child. We affirmed defendant's convictions and sentences for murder and the weapons offenses, but reversed the convictions on the two counts of endangering the welfare of a child. *State v. Garcia*, No. A-3939-01T2 (App. Div. May 11, 2004). The Supreme Court denied defendant's petition for certification on September 10, 2004. *State v. Garcia*, 181 N.J. 545, (2004).

Defendant's PCR petition, rejected by the Appellate Division, set forth:

[a] litany of defendant's claims of ineffectiveness of trial counsel included failing to: properly advise defendant regarding the pre-sentence report process, subpoena and investigate certain witnesses, provide him with the right to a fair trial via a series of omissions and derelictions, conduct a reasonable pre-trial investigation into evidence seized and file a motion to suppress the wedding tape based on tampering, secure his right to be present at critical stages of the proceeding, and advocate mitigating factors and downplay the aggravating factors. Defendant claimed appellate counsel failed to raise and argue pertinent legal and factual issues. Defendant further contended he was deprived of a fair trial as a result of prejudicial errors committed by the trial court, prosecutorial misconduct and alleged tampering with the tape, and jury prejudice as a result of the media; to name a few. *Id.* at 3-4.

The Supreme Court denied defendant's petition for certification on March 9, 2012. *State v. Garcia*, 209 N.J. 596 (2012).

Defendant filed his second PCR/new trial application on May 27, 2016. In that filing, defendant put forth a myriad of arguments, including newly discovered evidence and ineffective assistance of counsel of the first PCR attorney. Specifically, defendant posited that counsel (1) failed to contact forensic experts to examine the videotape evidence presented at trial; and (2) "deliberately concealed his own failure to deliver to the court [petitioner's] Reply brief pro-se to him."

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Defendant's PCR petition, rejected by the Appellate Division, set aside (2004).

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The Supreme Court denied defendant's petition for a writ of habeas corpus. Y. Garcia, 209 N.J. 596 (2012).

Defendant filed his second PCR/new trial application on May 27, 2016. In that filing, defendant put forth a myriad of arguments, including newly discovered evidence and ineffective assistance of counsel of the first PCR attorney. Specifically, defendant posited that counsel (1) failed to contact forensic experts to examine the videotape evidence presented at trial; and (2) failed to deliver to the court [petitioner's] Reply brief pro-se.

A second or subsequent PCR is procedurally barred unless they are timely filed no more than one year following the latest of (a) a newly recognized Constitutional right, or (b) discovery of new facts, or (c) alleging ineffective assistance of prior PCR counsel). R. 3:22-4(b) and R. 3:22-12(a)(2).

Defendant's certification in support of the filing of the May 27, 2016 failed to establish the existence of any newly discovered evidence that would warrant the grant of a new trial. Moreover, the court found no basis for the allegation of ineffective counsel of his first PCR attorney.

On August 25, 2016, this court entered an order denying defendant's second PCR application/request for a new trial.

Subsequently, defendant filed another motion for a new trial, alleging newly discovered evidence. On March 3, 2017, the court denied defendant's motion, essentially for the reasons set forth in prior court orders.

In Fusco v. Board of Education, City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002), we held that the power to reconsider an earlier order rests with the trial judge's discretion, which should be limited to only two "very narrow circumstances[.]" We defined those circumstances as follows: Reconsideration should be used only for those cases which fall into that narrow corridor in which either (1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis; or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence. [*Id.* (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).]

In this instance, defendant failed to demonstrate the court acted in an arbitrary, capricious, or unreasonable manner or failed to consider the probative value of evidence presented. Further, notwithstanding defendant's claims, there is no new or additional information provided that would have changed the court's opinion on the prior applications. Defendant seeks review of identical information for a second and third time, merely because of dissatisfaction with the court's prior rulings. Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010).

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DISTRICT OF NEW JERSEY
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APPENDIX K

STAT OF NEW JERSEY

v.

AGUSTIN GARCIA
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CRIMINAL
BERGEN COUNTY

INDICTMENT #: 00-06-01368-I
CASE OR PROMIS #:

ORDER ON POST-CONVICTION APPLICATIONS
ON INDICTABLE OFFENSES

FILED

MAR 03 2017

This matter being opened on the pro se application of defendant, Agustin Garcia, **JAMES J. GUIDA, J.S.C.**

☐ Petition for Post-Conviction Relief determined to be defendant's

☐ first petition

☐ second or subsequent petition

☐ Motion for Change or Reduction of Sentence pursuant to *Rule 3:21-10*,

☒ Motion for a New Trial based on Newly Discovered Evidence, pursuant to *Rule 3:20* and the defendant having been represented by:

_____, Assistant Deputy Public Defender

_____, Retained or Designated Counsel (*circle one*) or

☐ The court having concluded that there was no good cause entitling the assignment of counsel on the application, and the State having been represented by:

_____, Assistant Prosecutor; and

☒ The matter having been disposed of on the papers;

It is on this 3rd day of March, 2017 ORDERED THAT DEFENDANT'S APPLICATION IS HEREBY:

☐ Granted

☒ Denied

For the reasons: Set forth in this Court's August 25, 2017 Order. Defendant's supplemental petition provides no reason to order a new hearing. There is no merit to defendant's assertions.

APPENDIX K


James J. Guida, J.S.C.

APPENDIX K

APPENDIX L

Order Prepared by the Court

STATE OF NEW JERSEY

VS.

AGUSTIN GARCIA

Defendant

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION - CRIMINAL

INDICTMENT NO. 00-06-01368-I

ORDER DENYING MOTION FOR
RECONSIDERATION

THIS MATTER having come before the court by defendant Agustin Garcia, pro se, on Notice of Motion to Gurbir Grewal, Bergen County Prosecutor, for an Order reconsidering the Court's denial of defendant's request for a PCR hearing, or for new trial, in the orders entered by the court on August 25, 2016 and March 3, 2017, and the court having considered the certifications and brief submitted, for the reasons set forth herein, and for good cause shown,

It is on this 28th day of March 2017

ORDERED that defendant's motion for reconsideration shall be and is hereby DENIED.

James J. Guida
JAMES J. GUIDA, J.S.C.

REASONS FOR DECISION

Defendant seeks reconsideration of the court's orders entered on August 25, 2016 and March 3, 2016, denying his petition for Post Conviction Relief (PCR), or in the alternative, a new trial based upon newly discovered evidence. In sum, defendant argues that the court failed to consider the significance of newly discovered evidence which defendant presented in his prior applications to the court.

The following factual summary is taken from the unreported Appellate Division opinion denying defendant's first PCR application. State v. Garcia, 2009 N.J. Super. Unpub. LEXIS 2782 (App. Div. August 12, 2011).

Following a lengthy jury trial, defendant was convicted of purposely and knowingly causing his ex-girlfriend's death, two weapons offenses, and two counts of endangering the

APPENDIX L

welfare of a child. The convictions arose out of an incident in which defendant appeared at his former girlfriend's wedding as an uninvited guest and shot and killed her at close range in the presence of witnesses, including children. The shooting was captured by the wedding videographer on high resolution video tape, which was copied exactly by Ridgefield Police Lieutenant David Cassirer to a VHS tape for viewing in court. Contrary to what the tape revealed, defendant testified that after he entered the bride's house where the wedding was being held, her brother and others attacked him, he reached for his gun to protect himself, and at some point during the struggle he blacked out and learned that the bride had been killed. Defendant also claimed that upon learning of the bride's death, he stated he wanted to kill himself. After the final shot, defendant was restrained when he attempted to reload the gun.

The trial judge sentenced defendant to life in prison, with thirty years of parole ineligibility, for murder; a consecutive four-year term for third-degree unlawful possession of a weapon; and two concurrent four-year terms for endangering the welfare of a child. We affirmed defendant's convictions and sentences for murder and the weapons offenses, but reversed the convictions on the two counts of endangering the welfare of a child. *State v. Garcia*, No. A-3939-01T2 (App. Div. May 11, 2004). The Supreme Court denied defendant's petition for certification on September 10, 2004. *State v. Garcia*, 181 N.J. 545, (2004).

Defendant's PCR petition, rejected by the Appellate Division, set forth:

[a] litany of defendant's claims of ineffectiveness of trial counsel included failing to: properly advise defendant regarding the pre-sentence report process, subpoena and investigate certain witnesses, provide him with the right to a fair trial via a series of omissions and derelictions, conduct a reasonable pre-trial investigation into evidence seized and file a motion to suppress the wedding tape based on tampering, secure his right to be present at critical stages of the proceeding, and advocate mitigating factors and downplay the aggravating factors. Defendant claimed appellate counsel failed to raise and argue pertinent legal and factual issues. Defendant further contended he was deprived of a fair trial as a result of prejudicial errors committed by the trial court, prosecutorial misconduct and alleged tampering with the tape, and jury prejudice as a result of the media, to name a few. *Id.* at 3-4.

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A second or subsequent PCR is procedurally barred unless they are timely filed no more than one year following the latest of (a) a newly recognized Constitutional right, or (b) discovery of new facts, or (c) alleging ineffective assistance of prior PCR counsel). R. 3:22-4(b) and R. 3:22-12(a)(2).

Defendant's certification in support of the filing of the May 27, 2016 failed to establish the existence of any newly discovered evidence that would warrant the grant of a new trial. Moreover, the court found no basis for the allegation of ineffective counsel of his first PCR attorney. AAA

On August 25, 2016, this court entered an order denying defendant's second PCR application/request for a new trial.

Subsequently, defendant filed another motion for a new trial, alleging newly discovered evidence. On March 3, 2017, the court denied defendant's motion, essentially for the reasons set forth in prior court orders.

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In this instance, defendant failed to demonstrate the court acted in an arbitrary, capricious, or unreasonable manner or failed to consider the probative value of evidence presented. Further, notwithstanding defendant's claims, there is no new or additional information provided that would have changed the court's opinion on the prior applications. Defendant seeks review of identical information for a second and third time, merely because of dissatisfaction with the court's prior rulings. Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010).

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APPENDIX M

FILED, Clerk of the Appellate Division, January 26, 2018, A-004280-16

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004280-16T3

ORDER DISMISSING APPEAL

STATE OF NEW JERSEY
V
AGUSTIN GARCIA

This matter being opened to the court on its own motion and
it appearing that appellant has failed to prosecute the appeal;

IT IS HEREBY ORDERED that the above appeal is dismissed.

WITNESS, the Honorable Carmen Messano, Presiding Judge for
Administration, at Trenton, this 26th day of January, 2018.

S/JOSEPH H. ORLANDO
JOSEPH H. ORLANDO
CLERK OF THE APPELLATE DIVISION

BERGEN 00-06-01368-I

APPENDIX M

APPENDIX N

ED, Clerk of the Appellate Division, April 09, 2018; A-004280-16

ORDER ON MOTION

STATE OF NEW JERSEY
v
AGUSTIN GARCIA

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004280-16T3
MOTION NO. M-004825-17
BEFORE PART E
JUDGE(S): CARMEN MESSANO

MOTION FILED: 02/28/2018

BY: AUGUSTIN GARCIA

ANSWER(S)
FILED:

SUBMITTED TO COURT: April 05, 2018

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
6th day of April, 2018, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

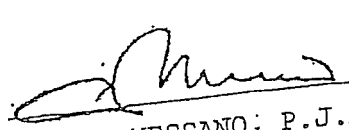
MOTION FOR RECONSIDERATION OF THIS
COURT'S JAN. 26, 2018 ORDER
DISMISSING APPEAL

DENIED

SUPPLEMENTAL: The appellant has not filed a deposit for the transcripts.
The appeal was dismissed for failure to file the required transcripts.

FOR THE COURT:

Appendix N


CARMEN MESSANO, P.J.A.D.

APPENDIX O

FILED, Clerk of the Appellate Division, December 07, 2018, A-004280-16, M-002281-18

ORDER ON MOTION

STATE OF NEW JERSEY
V
AGUSTIN GARCIA

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004280-16T4
MOTION NO. M-002281-18
BEFORE PART E
JUDGE(S): CARMEN MESSANO

MOTION FILED: 11/07/2018

BY: AUGUSTIN GARCIA

ANSWER(S)
FILED:

SUBMITTED TO COURT: December 06, 2018

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
7th day of December, 2018, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR RELIEF FROM 05-18-18

DENIED

ORDER

MOTION FOR RULING ON APPELLANT'S

MOTION FOR RECONSIDERATION OF 01-
26-18 ORDER

DENIED

MOTION FOR LEAVE TO PROCEED AS
WITHIN TIME

DENIED

MOTION FOR REMAND TO LAW DIVISION

DENIED

SUPPLEMENTAL:

The Clerk's Office shall not file any further motions in this appeal
unless permitted by the Appellate Division Presiding Judge for
administration. See Rosenblum v. Borough of Closter, 333 N.J. Super. 385,
395-97 (App. Div. 2000).

Appendix 0

FOR THE COURT:



APPENDIX P

Order prepared by the court

STATE OF NEW JERSEY,

Plaintiff,

v.

AGUSTIN GARCIA,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
BERGEN COUNTY

IND. No : 00-06-01368-I

Criminal Action

ORDER

THIS MATTER, having been opened to the Court by S. EMILL LISBOA IV, ADPD Attorney for Defendant, AGUSTIN GARCIA, for an Order compelling production of: (1) an original copy of the entire wedding video; (2) an original copy of the portion of the wedding video presented at trial; and on notice to DEMETRA MAURICE, AP on behalf of the State of New Jersey, and the court having reviewed the certification and documents submitted, having heard argument of counsel, for the reasons set forth on the record, and for good cause having been shown;

IT IS ON THIS 25th DAY OF JANUARY 2019;

ORDERED, that the Motion to compel production of the videos shall be and is hereby DENIED.

APPENDIX

P

James J. Guida
JAMES J. GUIDA, J.S.C.

APPENDIX P

APPENDIX Q

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3575-18

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

AGUSTIN GARCIA,
a/k/a AUGUSTIN GARCIA,
and AUGUSTINE GARCIA,

Defendant-Appellant.

Submitted September 16, 2021 – Decided October 13, 2021

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law
Division; Bergen County, Indictment No. 00-06-1368.

Joseph E. Krakora, Public Defender, attorney for
appellant (Monique Moyse, Designated Counsel, on the
brief).

Mark Musella, Bergen County Prosecutor, attorney for
respondent (William P. Miller, Assistant Prosecutor, of
counsel; Catherine A. Foddai, Legal Assistant, on the
brief).

Appendix Q

~~ATTACHMENT~~

Appendix

Q

Appellant filed a pro se supplemental brief.

PER CURIAM

Twenty years ago, in 2001, a jury convicted defendant of murdering his former girlfriend on the day she was to marry another man. Defendant shot her at close range in her home just before the wedding ceremony. The shooting was witnessed by several guests and family members and recorded by a videographer who was filming the events of the day. Following the rejection of his arguments on direct appeal and the rejections of extensive arguments made in four petitions for post-conviction relief (PCR), defendant moved to compel production of the entire video of the wedding day and the portion of the video presented at his trial. He asserted that new technology might allow him to enhance the video and the video might support his contention that he acted in self-defense. The motion court denied that motion, reasoning that all arguments about the video and defendant's related self-defense claim had been addressed and resolved in his prior direct appeal and the orders and appeals concerning his PCR petitions. Defendant now appeals from a January 25, 2019 order denying his motion to compel. We affirm.

A jury convicted defendant of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2); second-degree possession of a firearm for an unlawful purpose, N.J.S.A.

Appellant filed a pro se supplemental brief.

PER CURIAM

Twenty years ago, in 2001, a jury convicted defendant of murdering his former girlfriend on the day she was to marry another man. Defendant shot her at close range in her home just before the wedding ceremony. The shooting was witnessed by several guests and family members and recorded by a videographer who was filming the events of the day. Following the rejection of his arguments on direct appeal and the rejections of extensive arguments made in four petitions for post-conviction relief (PCR), defendant moved to compel production of the entire video of the wedding day and the portion of the video presented at his trial. He asserted that new technology might allow him to enhance the video and the video might support his contention that he acted in self-defense. The motion court denied that motion, reasoning that all arguments about the video and defendant's related self-defense claim had been addressed and resolved in his prior direct appeal and the orders and appeals concerning his PCR petitions. Defendant now appeals from a January 25, 2019 order denying his motion to compel. We affirm.

A jury convicted defendant of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2); second-degree possession of a firearm for an unlawful purpose, N.J.S.A.

2C:39-4(a); third-degree possession of a handgun without the required permit, N.J.S.A. 2C:39-5(b); and four counts of third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). Following the merger of certain convictions, defendant was sentenced to life in prison with a mandatory thirty years of parole ineligibility.

In 2004, we affirmed defendant's convictions for murder and unlawful possession of a firearm but vacated his convictions for endangering the welfare of a child. State v. Garcia, No. A-3939-01 (App. Div. May 11, 2004). The Supreme Court denied certification. 181 N.J. 545 (2004).

Thereafter, defendant filed four petitions for PCR. All those petitions were denied, and we affirmed the denial of the first three PCR petitions. State v. Garcia, No. A-5437-06 (App. Div. Nov. 6, 2009); State v. Garcia, No. A-3198-09 (App. Div. Aug. 12, 2011); State v. Garcia, No. A-2764-10 (App. Div. May 16, 2013).

Separately, defendant filed requests under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law seeking to compel the production of the video and other documents. The denial of the request under OPRA and the common law was upheld by the trial court, and we affirmed that

2C:39-4(a); third-degree possession of a handgun without the required permit, N.J.S.A. 2C:39-5(b); and four counts of third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). Following the merger of certain convictions, defendant was sentenced to life in prison with a mandatory thirty years of parole ineligibility.

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Separately, defendant filed requests under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law seeking to compel the production of the video and other documents. The denial of the request under OPRA and the common law was upheld by the trial court, and we affirmed that

decision. Garcia v. Bergen Cnty. Prosecutor's Off., Nos. A-3085-16, A-4501-16 (App. Div. May 17, 2019).

In his direct appeal, defendant made several arguments about the admissibility of the wedding video and the playing of portions of that video at his trial. In his four petitions for PCR, defendant repeatedly argued that his trial counsel had been ineffective in not challenging the admission of the wedding video based on tampering and in failing to retain an expert to examine and challenge the video.

On this appeal, defendant claims that he is entitled to discovery because an examination of the videotape might support his argument that he was attacked and acted in self-defense. His current counsel submitted a brief making one argument:

The trial court erred in denying Mr. Garcia's motion to compel production of discovery.

Defendant submitted his own brief in which he argued:

A. [The] January 25, [2019] adverse order flagrantly violate[s] appellant['s] constitutional rights to due process of law, because it is capricious, unreasonable and unsupported by sufficient competent evidence in the record, warranting reversal and remand in best interest of justice.

B. [The] judge [] entered orders dated August 25, 2016, March 3, 2017, and March 28, 2017, without any

decision. Garcia v. Bergen Cnty. Prosecutor's Off., Nos. A-3085-16, A-4501-16 (App. Div. May 17, 2019).

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B. [The] judge [] entered orders dated August 25, 2016, March 3, 2017, and March 28, 2017, without any

participation of already assigned counsel, subjecting appellant to fundamental [State v. Cerbo, 78 N.J. 595, 605, 607 (1979)] injustice, violating his right to counsel guaranteed by the Sixth and Fourteenth Amendments [to the] U.S. Constitution.

The records on the prior proceedings establish that defendant was provided with a copy of the video before his trial in 2001. His arguments that the video was tampered with or altered have been repeatedly rejected. Nevertheless, defendant contends without any support that technological enhancements may reveal something in the video that would support his self-defense argument. That contention is undercut by the evidence at trial, which included testimony from eyewitnesses who testified that there was no struggle and that defendant pulled out a gun and shot the victim multiple times at close range.

We agree with the motion judge that reproducing the video could not support any new argument that would not be procedurally barred and that any issue concerning the video could not constitute newly discovered evidence. The entire videotape was available to defendant and his counsel before trial and was also available during defendant's direct appeal and his first PCR petition.

Furthermore, as already pointed out, defendant's arguments about altering or tampering with the wedding video were raised and rejected in his prior direct

participation of already assigned counsel, subjecting appellant to fundamental [State v. Cerbo, 78 N.J. 595, 605, 607 (1979)] injustice, violating his right to counsel guaranteed by the Sixth and Fourteenth Amendments [to the] U.S. Constitution.

The records on the prior proceedings establish that defendant was provided with a copy of the video before his trial in 2001. His arguments that the video was tampered with or altered have been repeatedly rejected. Nevertheless, defendant contends without any support that technological enhancements may reveal something in the video that would support his self-defense argument. That contention is undercut by the evidence at trial, which included testimony from eyewitnesses who testified that there was no struggle and that defendant pulled out a gun and shot the victim multiple times at close range.

We agree with the motion judge that reproducing the video could not support any new argument that would not be procedurally barred and that any issue concerning the video could not constitute newly discovered evidence. The entire videotape was available to defendant and his counsel before trial and was also available during defendant's direct appeal and his first PCR petition.

Furthermore, as already pointed out, defendant's arguments about altering or tampering with the wedding video were raised and rejected in his prior direct

appeal and in his four prior PCR petitions. While New Jersey courts have the inherent power to order discovery when justice requires it, See State v. Marshall, 148 N.J. 89, 270 (1997), defendant's motion did not support an invocation of that extraordinary remedy.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

APPENDIX R

SUPREME COURT OF NEW JERSEY
C-492 September Term 2021
086339

State of New Jersey,

Plaintiff-Respondent,

v.

ORDER

Agustin Garcia,
a/k/a Augustin Garcia,
and Augustine Garcia,

Defendant-Petitioner.

A petition for certification of the judgment in A-003575-18
having been submitted to this Court, and the Court having considered the
same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
5th day of April, 2022.

Heather J. Bate

CLERK OF THE SUPREME COURT

APPENDIX R

APPENDIX R

APPENDIX S

ORDER
5/4/07

FILED

MAY 04 2007

Michael G. Paul
Attorney for Defendant
280 Amboy Avenue
Metuchen, New Jersey 08840
(732)549-6543

WILLIAM C. MEEHAN, P.J.S.C.

STATE of NEW JERSEY,

Plaintiff(s),

v.

AGUSTIN GARCIA,

Defendant(s).

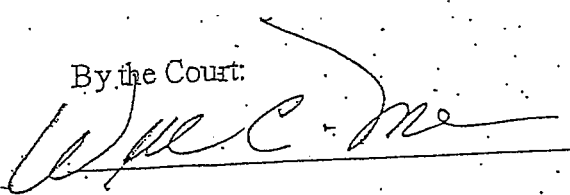
SUPERIOR COURT of NEW JERSEY
LAW DIVISION- CRIMINAL ACTION
BERGEN COUNTY.

IND. NO. 00-06-1368-I

CRIMINAL ACTION
ORDER

On May 4, 2007, a Motion for Post Conviction Relief was argued before the Court with Michael G. Paul, ESQ. appearing on the behalf of AGUSTIN GARCIA and Fred Schwanwede of the Bergen County Prosecutor's Office appearing on behalf of the State, and it is hereby ORDERED that Defendant, Agustin Garcia's Motion for Post Conviction Relief is hereby DENIED for reasons stated on the record.

By the Court:


HON. WILLIAM C. MEEHAN, P.J.S.C.

APPENDIX 5

APPENDIX T

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5437-06T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

AGUSTIN GARCIA,

Defendant-Appellant.

Submitted: October 21, 2009 - Decided: November 6, 2009

Before Judges Axelrad and Sapp-Peterson.

On appeal from the Superior Court of New
Jersey, Law Division, Bergen County,
Indictment No: 00-06-1368.

Yvonne Smith Segars, Public Defender,
attorney for appellant (Philip Lago,
Designated Counsel, of counsel and on the
brief).

John L. Molinelli, Bergen County Prosecutor,
attorney for respondent (Charles Cho,
Assistant Prosecutor, of counsel and on the
brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Augustin Garcia appeals from the May 4, 2007
order denying his petition for post-conviction relief (PCR), in
which he alleges ineffective assistance of trial, appellate and

APPENDIX I

PER counsel, as well as prosecutorial misconduct and jury prejudice. We affirm.

Following a lengthy jury trial, defendant was convicted of purposely and knowingly causing his ex-girlfriend's death, two weapons offenses, and two counts of endangering the welfare of a

child. The convictions arose out of an incident in which

defendant appeared at his former girlfriend's wedding as an

uninvited guest and shot and killed her at close range in the

presence of witnesses, including children. The shooting was

captured by the wedding videographer on high resolution video

tape, which was copied exactly by Ridgefield Police Lieutenant

David Cassirer to a VHS tape for viewing in court. Contrary to

what the tape revealed, defendant testified that after he

entered the bride's house where the wedding was being held, her

brother and others attacked him, he reached for his gun to

protect himself, and at some point during the struggle he

blacked out and learned that the bride had been killed.

Defendant also claimed that upon learning of the bride's death,

he stated he wanted to kill himself. After the final shot,

defendant was restrained when he attempted to reload the gun.

The trial judge sentenced defendant to life in prison, with thirty years of parole ineligibility, for murder; a consecutive four-year term for third-degree unlawful possession of a weapon; and two concurrent four-year terms for endangering the welfare

of a child. We affirmed defendant's convictions and sentences for murder and the weapons offenses, but reversed the convictions on the two counts of endangering the welfare of a child. State v. Garcia, No. A-3939-01T2 (App. Div. May 11, 2004). The Supreme Court denied defendant's petition for certification on September 10, 2004. State v. Garcia, 181 N.J. 545 (2004).

This PCR petition ensued and was denied by Judge William Meehan on May 4, 2007, following oral argument with defendant present, but without an evidentiary hearing. Defendant sought relief from the judgment on approximately fifty grounds asserted in pro se submissions and those of PCR counsel, claiming ineffective assistance of trial and appellate counsel. Some of the litany of defendant's claims of ineffectiveness of trial counsel included failing to: properly advise defendant regarding the pre-sentence report process, subpoena and investigate certain witnesses, provide him with the right to a fair trial via a series of omissions and derelictions, conduct a reasonable pre-trial investigation into evidence seized and file a motion ~~to suppress the wedding tape based on tampering, secure his~~ right to be present at critical stages of the proceeding, and advocate mitigating factors and downplay the aggravating factors. Defendant claimed appellate counsel failed to raise and argue pertinent legal and factual issues. Defendant further

court stopped. The court concluded the media matter was not "a great live issue" during the trial, and voir dire had established which jurors could remain impartial. The court further responded to defendant's claims that it was biased or prejudiced against defendant and denied defendant's motion to disqualify itself and the prosecutor from the case. This appeal ensued.

On appeal, defendant asserts the following arguments through counsel:

POINT I

THE LOWER COURT ORDER MUST BE REVERSED SINCE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

A. TRIAL COUNSEL FAILED TO INVESTIGATE AND CALL ESSENTIAL WITNESSES TO TRIAL.

B. TRIAL COUNSEL FAILED TO OBJECT OR MOVE FOR A MISTRIAL BASED ON THE PROSECUTOR'S USE OF PERJURED TESTIMONY.

C. TRIAL COUNSEL FAILED TO OBJECT TO THE JURY CHARGE.

D. TRIAL COUNSEL FAILED TO MOVE FOR THE DISMISSAL OF JURORS AND FAILED TO INSIST UPON ADDITIONAL VOIR DIRE.

E. TRIAL COUNSEL FAILED TO OBJECT TO THE EXCLUSION OF DEFENDANT AND THE PUBLIC FROM CRITICAL STAGES OF THE TRIAL.

F. TRIAL COUNSEL'S STRATEGY WAS DEFICIENT AND AMOUNTED TO INEFFECTIVE ASSISTANCE OF COUNSEL.

A. DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSELS FOR THEIR FAILURE TO PROPERLY CONDUCT A PRETRIAL INVESTIGATION AND THE LOWER COURT'S ORDER DENYING THE DEFENDANT POST-CONVICTION RELIEF MUST BE REVERSED.

1. TRIAL COUNSELS WERE INEFFECTIVE FOR NOT CONSULTING OR HIRING AN EXPERT TO EXAMINE THE WEDDING VIDEOTAPE FOR EVIDENCE OF AN ALTERCATION CAPTURED ON THE AUDIO OF THE VIDEOTAPE AND FOR FAILING TO HAVE EXPERT TESTIFY AT TRIAL.

2. TRIAL COUNSELS WERE INEFFECTIVE FOR FAILING TO INTERVIEW WITNESSES AND SECURE THEIR ATTENDANCE AT TRIAL.

B. THE DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF POST-CONVICTION RELIEF COUNSEL (Not Raised Below).

1. PCR COUNSEL, MICHAEL PAUL, WAS INEFFECTIVE FOR FAILING TO PROPERLY REVIEW DEFENDANT'S FILE, FAILING TO AMEND DEFENDANT'S PETITION, AND FAILING TO PROPERLY RAISE DEFENDANT'S ISSUES.

2. MICHAEL PAUL WAS INEFFECTIVE FOR FAILING TO MOTION COURT FOR A CHANGE OF VENUE.

3. MICHAEL PAUL WAS INEFFECTIVE FOR FAILING TO ADVOCATE FOR DEFENDANT.

POINT II

THE PCR COURT IDENTIFIED THE WRONG UNITED STATES SUPREME COURT PRECEDENT AND APPLIED AN INCORRECT LEGAL STANDARD TO DENY DEFENDANT'S INEFFECTIVE ASSISTANCE OF

G. TRIAL COUNSEL FAILED TO OBJECT TO EVIDENCE WHICH WAS INADMISSIBLE AS HEARSAY AND AS OTHER CRIME EVIDENCE.

G1. THE EVIDENCE WAS INADMISSIBLE HEARSAY.

G2. THE EVIDENCE WAS INADMISSIBLE OTHER CRIMES EVIDENCE.

POINT II

THE LOWER COURT ORDER MUST BE REVERSED IN LIGHT OF NUMEROUS ADDITIONAL ERRORS.

POINT III

THE LOWER COURT ORDER DENYING THE PETITION MUST BE REVERSED SINCE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

POINT IV

THE LOWER COURT ORDER DENYING THE PETITION MUST BE REVERSED SINCE CUMULATIVE ERRORS BY COUNSEL AMOUNTED TO INEFFECTIVE ASSISTANCE OF COUNSEL.

POINT V

THE LOWER COURT ORDER DENYING THE PETITION MUST BE REVERSED SINCE THE PROSECUTOR TAMPERED WITH AND WITHHELD EVIDENCE.

POINT VI

THE LOWER COURT ERRED IN NOT GRANTING DEFENDANT'S REQUEST FOR AN EVIDENTIARY HEARING AND THE LOWER COURT ORDER MUST THEREFORE BE REVERSED.

Defendant asserts the following arguments in a pro se

brief:

POINT I

DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSELS CONSTITUTIONALLY GUARANTEED TO HIM BY THE UNITED STATES CONSTITUTION, AMENDMENTS VI & XIV; AND THE NEW JERSEY CONSTITUTION, ARTICLE I, PARAPAGRAPH 10.

COUNSEL CLAIM (Not Raised Below)

POINT III

THE PCR COURT ERRED IN RULING THAT THE DEFENDANT HAD FAILED TO PROVIDE A FACTUAL BASIS FOR INEFFECTIVE ASSISTANCE OF COUNSEL WITHOUT AFFORDING DEFENDANT AN EVIDENTIARY HEARING - THEREFORE THE PCR COURT ORDER DENYING DEFENDANT RELIEF SHOULD BE REVERSED (Not Raised Below).

POINT IV

THE CUMULATIVE ERRORS COMMITTED BY TRIAL COUNSELS AMOUNTED TO INEFFECTIVE ASSISTANCE OF COUNSEL AND THE DENIAL OF A FAIR TRIAL THAT RESULTED IN MANIFEST INJUSTICE.

We consider defendant's claims in light of well-settled principles. The standard for determining whether counsel's performance was ineffective for purposes of the Sixth Amendment was formulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d. 674 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42 (1987). In order to prevail on a claim of ineffective assistance of counsel, defendant must meet the two-prong test of establishing both that: (1) counsel's performance was deficient and he or she made errors that were so serious that counsel was not functioning effectively as guaranteed by the Sixth Amendment to the United States Constitution; and (2) the defect in performance prejudiced defendant's rights to a fair trial such that there exists a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different." Strickland, supra, 466 U.S. at 687, 694, 104 S. Ct. at 2064, 2068, 80 L. Ed. 2d at 693, 698.

We are satisfied from our review of the record that defendant failed to make a prima facie showing of ineffectiveness of trial or appellate counsel within the Strickland/Fritz test. Thus, an evidentiary hearing was not warranted. See State v. Preciose, 129 N.J. 451, 462-63 (1992). We echo the comments made by Judge Meehan that the bulk of defendant's contentions on PCR were re-arguments of the facts of the case, focusing on inconsequential evidence that did not affect the outcome, and involved blanket claims of ineffective assistance without identification of the deficiencies or the resulting prejudice.

We will address a few of defendant's arguments. Defendant claims his trial counsel failed to call several witnesses who could have introduced exculpatory evidence and refute the State's witnesses. Defendant offered a list of witnesses counsel could have called to refute the State's theory that the victim wanted nothing to do with him, provide a counter to State's witnesses attacking defendant's character, and challenge the State's theory that defendant had no prior knowledge of the wedding's existence. Defendant also suggested his trial counsel should have called one witness who had previously given a

statement regarding the existence of a struggle before the shooting.

Despite defendant's list of witnesses, many of whom defendant admits were investigated by his counsel though not subsequently called to testify, defendant fails to meet either prong of the Strickland/Fritz standard. It is insufficient to allege generically that the failure of trial counsel to call these people as a witness at trial constituted ineffective assistance without a showing that had they been presented at trial, they would have offered information of material exculpatory worth. See State v. Cummings, 321 N.J. Super. 154, 170-71 (App. Div.), certif. denied, 162 N.J. 199 (1999). Particularly since many of these witnesses were considered and rejected by defense counsel, we can presume that defendant's experienced criminal defense trial team's decision not to call any of these people as a witness at trial was strategic. Strickland, supra, 466 U.S. at 690, 104 S. Ct. at 2066, 80 L. Ed. 2d at 695 (recognizing that in our analysis of attorney performance, we must indulge a strong presumption that counsel made all significant decisions in the exercise of his or her reasonable professional judgment and sound trial strategy).

We are also satisfied that neither the record nor the case law supports defendant's claim that his attorneys' decisions to exclude him from the courtroom during the public viewing of the

tape, certain sidebar conferences with the court during jury selection, and during the playback of his own recorded statements on the tape to the jurors during deliberations, amounted to ineffective assistance of counsel. As the record demonstrates, due to its highly emotional nature, the court made the discretionary decision to present the wedding video twice, including the press and public during one viewing without defendant present by consent of his counsel, and a second time in which defendant was present for the portion shown to the jury. As such, defendant's counsel would have no basis to object to the court's reasonable exercise of discretion, as defendant's rights were not being violated: See N.J.R.E. 611 (trial courts have broad discretion to control the scope and mode of the presentation of evidence and over-control of the courtroom); see also State v. Cusumano, 369 N.J. Super. 305, 311 (App. Div.), certif. denied, 181 N.J. 546 (2004). Moreover, while a defendant and the public have a constitutionally-guaranteed right to access criminal trials, this right is not absolute, and a trial judge may make reasonable limitations "in order to prevent situations which might impede the progress or fairness of the trial, as long as basic rights involved are not unduly infringed." State v. Cuccio, 350 N.J. Super. 248, 266 (App. Div.), certif. denied, 174 N.J. 43 (2002).

contended he was deprived of a fair trial as a result of prejudicial errors committed by the trial court, prosecutorial misconduct and alleged tampering with the tape, and jury prejudice as a result of the media, to name a few.

Defendant's claims were rejected by the PCR court. The court noted that defendant had the benefit of three experienced trial attorneys who "spent a great amount of time [with him] deciding which arguments to put forward and the theory of the case." The court found that defendant only made blanket claims of ineffective assistance of counsel, failed to identify what evidence the additional investigation would have supplied, and failed to establish how his various trial counsel were deficient. The court also determined that defendant's ineffective appellate counsel claim - that he failed to raise winning issues on appeal - was similarly without basis.

As to the claim of prosecutorial misconduct, the court held there was no indication the video had been tampered with and no evidence at all the video had been manipulated in any way other than the way it was done in open court with defendant and his three attorneys present, which included freezing frames and excluding the portions that did not pertain to the shooting.

As to the claim of jury impartiality, the court pointed out that media coverage was first started by defendant's trial counsel in press conferences on the courthouse steps, which the

As this trial took place prior to State v. W.A., 184 N.J. 45 (2005), trial attorneys' failure to object to defendant's exclusion at sidebar was not so unreasonable as to label their performance deficient. Defendant still had the opportunity to participate using the lawyer-shuttle system and was thus not denied his constitutional right to participate voir dire. See State v. Colbert, 190 N.J. 14 (2007). Moreover, even if counsel did not communicate with defendant regarding every potential juror, defendant fails to demonstrate a reasonable probability that the error contributed to the verdict so as to warrant reversal of his conviction. See State v. W.A., supra, 184 N.J. at 64; State v. Macon, 57 N.J. 325, 338 (1971).

Defendant's argument regarding trial attorneys' failure to object to defendant's exclusion during the jury's review of the wedding tape during deliberation is completely without merit. The court rules allow the jury to review exhibits admitted into evidence in the jury room. R. 1:8-8. The wedding video was admitted into evidence, allowing the jury to review it outside of defendant's presence. Defense counsel thus had no cause to object.

As with trial counsel, the effectiveness of appellate counsel is evaluated under the Strickland/Fritz standard. State v. Morrison, 215 N.J. Super. 540, 546 (App. Div.), certif. denied, 107 N.J. 642 (1987). Although appellate counsel must be

an active advocate in providing assistance on direct appeal, he or she is not required to advance every argument, regardless of merit, urged by the appellant. Evitts v. Lucey, 469 U.S. 387, 394, 105 S. Ct. 830, 835, 83 L. Ed. 2d 821, 828 (1985). Furthermore, counsel's raising unsuccessful legal claims does not constitute ineffective assistance of counsel. State v. Worlock, 117 N.J. 596, 625 (1990). We are not persuaded by any of defendant's arguments regarding ineffective assistance of appellate counsel.

We further conclude that defendant failed to demonstrate that PCR counsel's performance was deficient under the ~~xxx~~ { Strickland/Fritz standard. In State v. Rue, 175 N.J. 1, 18 (2002), the Supreme Court noted that PCR counsel is required to communicate with his or her client and investigate the claims and then "'fashion the most effective arguments possible.'" (quoting State v. Velez, 329 N.J. Super. 128, 133 (App. Div. 2002)). Where communication and investigation produce little or nothing,

counsel must advance the claims the client desires to put forward in a petition and brief and make the best available arguments in support of them. — Thereafter, as in any case in which a brief is filed, counsel may chose to stand on it at the hearing, and is not required to further engage in expository argument.

[State v. Rue, supra, 175 at 19.]

Defendant's PCR counsel submitted a seventy-six page brief on behalf of defendant, laying out eight arguments supporting defendant's ineffective assistance claims, most of which are renewed on appeal. Defense counsel's PCR brief provided a detailed recitation of the law and quoted the trial record repeatedly during his analysis. PCR counsel also submitted a supplemental brief. While the court ultimately denied defendant's petition for PCR relief, it is clear from the record that defense counsel made "the best available arguments in support of" defendant's petition. Ibid.

We perceive of no reason to address each and every claim raised by defendant of ineffective assistance of trial, appellate and PCR counsel, and other challenges to his judgment as they are either wholly without merit to warrant further discussion, R. 2:11-3(e)(2); could have been raised on direct appeal, R. 3:22-4; or have previously been adjudicated on direct appeal, R. 3:22-5.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION

25

APPENDIX U

SUPREME COURT OF NEW JERSEY

C-995 September Term 2009

RECEIVED
BERGEN COUNTY 065822

JUN 23 2010

PROSECUTORS OFFICE
APPELLATE SECTION

STATE OF NEW JERSEY,

PLAINTIFF-RESPONDENT,

V.

ON PETITION FOR CERTIFICATION

AUGUSTIN GARCIA,

DEFENDANT-PETITIONER.

FILED

JUN 21 2010

[Signature]
CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-005437-06
having been submitted to this Court, and the Court having
considered the same;

It is ORDERED that the petition for certification is
denied.

Appendix U

WITNESS, the Honorable Stuart Rabner, Chief Justice, at
Trenton, this 18th day of June, 2010.

[Signature]

CLERK OF THE SUPREME COURT

The foregoing is a true copy
of the original on file in my office.

[Signature]

APPENDIX V

SUPREME COURT OF NEW JERSEY
Docket No. _____
APP. DIV. NO. A-001913-21T4

Criminal Action

STATE OF NEW JERSEY

Respondent,

vs.

AGUSTIN GARCIA,

Petitioner.

Enclosed Excerpts of Transcripts Reference Cited

Feb. 1, 2002 Trans. 38:9-18;

Feb. 14, 2001 Trans. 24:18-20; 30:3-4; 31:8-12; 31-25 to 32-1;

Oct. 02, 2001 Trans. 139:10-13;

Oct. 03, 2001 Trans. 201:3-5; 205:8-13;

October 17, 2001 Trans. 55-25 to 56-7; 67-23 to 68-2; 68:17-25;
70-17 to 71-1; 81-15 to 81-16; 133:10-18; 152-14 to 152-15;
154:5-6;

May 4, 2007 Trans. 43:18-21; 56-6; 56-8 to 58-10;

Jan. 25, 2019 Trans. 16:23-24; 38:1-4; 61-5 to 63-3; 62:3-19

APPENDIX V

VS.

Defendant (s)

TRANSCRIPT OF
SENTENCE

Place: Bergen County Courthouse
10 Main Street
Hackensack, N.J. 07601

Date: February 1, 2002

BEFORE:

THE HONORABLE WILLIAM C. MEEHAN, P.J.S.C.

TRANSCRIPT ORDERED BY:

THERESA YVETTE KYLES, ESQ.
 Assistant Deputy Public Defender

APPEARANCES:

FRED SCHWANWEDE, ESQ.
Assistant Prosecutor
Attorney for the State,

EDWARD A. JEREJIAN, ESQ. (Jerejian & Jerejian)
FERNANDO J. OLIVER, ESQ. (Fernando J. Oliver, Esq.)
RAYMOND L. COLON, ESQ. (Raymond L. Colon, Esq.)
Attorneys for the Defendant.

HOLLY E. SCHULZ, C.S.R.
Official Court Reporter
Bergen County Courthouse
10 Main Street
Hackensack, NJ 07601

colloquy

1 The Court recognizes he has been a leader of
2 the Dominican community for many years. He has done
3 many good things. He's certainly advanced himself,
4 been a success story. However, we sentence crimes and
5 not all the previous events of one's life and he has
6 been involved in very serious crimes. In regard
7 thereto the Court has the obligation to go through
8 aggravating and mitigating circumstances.

9 As an aggravating factor the nature and
10 circumstances of the offense and the role of the actor
11 therein, including whether or not it was committed in
12 an especially heinous, cruel or depraved manner. I
13 find it hard to believe of anything more heinous and
14 cruel to a family than to see their loved one killed in
15 front of them in her wedding dress. Those of us
16 involved in this trial saw joy and happiness in the
17 videotape prior to Mr. Ricart entering the screen. And
18 all of that is destroyed by his conduct.

19 In regard to that number nine also applies,
20 the need to deter defendant and others who mistake
21 obsession with love, think if they can't have the
22 person they have the right to kill that person.

23 There are certain mitigating factors. Number
24 seven, defendant has no history of prior crime or
25 delinquency, has led a law-abiding life and done well

colloquy

1 for himself. Of course that is lessened by the
2 testimony that he's always been carrying a gun, he's
3 possessed guns illegally, he buys them illegally, he
4 carries them illegally and that that has been going on
5 for many years.

6 The Court also finds imprisonment of
7 defendant would entail excessive hardship to himself
8 and his dependents. He has two children, twenty-two
9 and seventeen, who could use his love and guidance.
10 But his conduct, of course, makes it at least at this
11 time not something that will take place at least for a
12 long period of time.

13 First count in this matter is the sentencing
14 of the crime of murder, a crime of the first degree.
15 The Court has considered the various aggravating and
16 mitigating factors. I do find the aggravating outweigh
17 the mitigating. He's taken someone's life in the prime
18 of her life, a crime that has such an impact upon
19 anyone who has seen that tape. The Court will sentence
20 the defendant to life imprisonment with thirty year
21 period of parole ineligibility.

22 The Court also imposes a one hundred dollar
23 Violent Crimes Compensation Board penalty, seventy-five
24 dollars Safe Streets and thirty dollars LEO.

25 In regard to count two, that will be merged

colloquy

1 believe it's eight hundred sixty days.

2 THE COURT: He gets credit from date of
3 arrest, eight hundred sixty days credit for time served
4 from the date of arrest.

5 But you understand that about the appeal?

6 MR. GARCIA: Yes, sir.

7 THE COURT: Okay. All right. Thank you,
8 gentlemen.

(Proceedings concluded.)
* * *

C E R T I F I C A T I O N

12 I, HOLLY E. SCHULZ, C.S.R., License Number XI00676, an
13 Official Court Reporter in and for the State of New Jersey, do
14 hereby certify the foregoing to be prepared in full compliance
15 with the current Transcript Format for Judicial Proceedings and
16 is a true and accurate compressed transcript to the best of my
17 knowledge and ability.

19
20 Holly E. Schulz C.S.R.
21 Official Court Reporter
22 Bergen County Courthouse
23
24
25

6/12/02
Date

2/14/01

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION CRIMINAL PART
INDICTMENT NO. 00-06-1366
A. D. 3839-01

STATE OF NEW JERSEY
-vs-
AUGUSTIN GARCIA
Defendant.

T R A N S C R I P T
O F
M O T I O N

Place: Bergen County Courthouse
Justice Center
Hudson and Main Streets
Hackensack, New Jersey 07601

Date: February 14, 2001

BEFORE: HON. WILLIAM C. MEEHAN, P.J.C.P.

ORDERED BY: THERESA YVETTE KYLES, ESQ., (Deborah C. Collins,
Deputy Public Defender, Office of the Public Defender,
Appellate Section)

APPEARANCES:

FRED SCHWANWEDE, ESQ., (Assistant Prosecutor, Attorney
for the State of New Jersey)

EDWARD JEREJIAN, ESQ., (Edward Jerejian, Esq., Attorney
for the Defendant)

RAYMOND COLON, ESQ., (Raymond Colon, Esq., Attorney for
the Defendant)

FERNANDO OLIVER, ESQ., (Fernando Oliver, Esq., Attorney
for the Defendant)

PETER J. RIZZA, C.S.R.
OFFICIAL COURT REPORTER
BERGEN COUNTY COURTHOUSE
HACKENSACK, NEW JERSEY 076

- 1 A Yes, sir.
- 2 Q And did you have the equipment necessary to play the
- 3 Super VHS tape?
- 4 A Definitely, yes.
- 5 Q And I believe somewhere in front of you is S-1 for
- 6 identification, which has been identified as the -- if you
- 7 could find S-1 --
- 8 A Yes, sir.
- 9 Q Okay. Could you tell us what that is?
- 10 A This is the original which was shot on Super VHS.
- 11 Q And did certain members of the Bergen County
- 12 Prosecutor's office come to you to ask you to play that tape
- 13 for them?
- 14 A Yes.
- 15 Q Where did you do that?
- 16 A I did that at my office in Elmwood Park, New Jersey.
- 17 Q And did they also request that you make some copies?
- 18 A Yes, sir.
- 19 Q And did you make copies?
- 20 A Yes.
- 21 Q And were you able to make more than one copy at the
- 22 same time?
- 23 A Yes, sir.
- 24 Q Now, the copies that you made, were some of the
- 25 copies of the standard VHS format and one of the copies in

- 1 the Super VHS format?
- 2 A Yes, sir.
- 3 Q And referring to the item that's been marked S-1A
- 4 for identification, is that the Super VHS copy that you made?
- 5 A Yes, sir.
- 6 Q And referring to the other item that is in front of
- 7 you that's S-1B for identification, is that a copy that was
- 8 made of S-1 in the standard VHS format?
- 9 A Yes, sir.
- 10 Q Now, could you explain for the Court how you went
- 11 about making those copies?
- 12 A I took the Super VHS original, I put it in my
- 13 professional deck, which is a Super VHS player, and from that
- 14 I ran a line to a copy deck, a copy stand of which I have
- 15 approximately nine or ten decks. I can make nine or ten
- 16 copies at a time. I played the Super VHS and also made a
- 17 copy on Super and also a number on VHS.
- 18 Q Now, were the end product copy tapes exactly the
- 19 same as the original tape?
- 20 A Yes, they were. Also with some slow motion that we had
- 21 added in.
- 22 Q Okay. Could you describe how you went about that?
- 23 In other words, is it correct to say that the copy tape
- 24 contains the whole content of the original tape?
- 25 A Exactly. Yes.

1 MR. SCHWANWEDE: Not on the motions?

2 THE COURT: Not on the motions itself.

3 MR. COLON: That's fine, Judge.

4 THE COURT: Okay. What we're going to do then is
5 just finish off playing of this tape. Can I make a
6 suggestion though, perhaps for my benefit and others, just
7 back it up a little bit, because with the commotion that took
8 place --

9 MR. SCHWANWEDE: Yes, Judge.

10 THE COURT: If anybody is going to be upset, please
11 leave now.

12 We'll finish our business -- I know it's -- I know
13 it's an upsetting.

14 MR. SCHWANWEDE: I backed it about a minute, Judge.

15 THE COURT: Okay. Fine.

16 (Tape resumes play at 3:59 p.m.)

17 (By Mr. Schwanwede)

18 Q - Okay. Referring, Lieutenant, to tape counter 1930,
19 does this begin the slow motion portion?

20 A Yes, sir.

21 Q And you recorded that using the special equipment
22 that you have?

23 A Yes, sir.

24 Q Now, this does not have a audio portion?

25 A Yes, sir. Slow motion does not have audio.

1 Q Now, is this -- what we're looking at now, referring
2 to 1954 on the tape, this almost a still?

3 A Yes, it's a frame, and there are 30 frames in one second
4 of video.

5 Q Now, during your process of making this copy, were
6 you going back and forth on the tape?

7 A Yes, I could shuttle back and forth to the scenes.

8 Q To locate images?

9 A Yes, and any scene I could take and slow it down or do
10 frame by frame or any variable slow motion to it.

11 Q Now, does this, referring to 2042 on the counter,
12 does this begin a slow motion version of the incident from
13 the time they're shown in the living room?

14 A Yes, sir.

15 Q This slow motion portion, Lieutenant, approximately
16 how much time would you say this slow motion encompasses?

17 A It's variable. Like I said, I could record -- I could
18 play it back in a variable slow motion. This section here,
19 I'm not sure. This probably was in 1/8th speed.

20 Q Referring to the portion at around 2250.

21 Now, beginning at 2340, approximately that portion, is
22 this now going into even slower?

23 A Yes, I recorded one frame for some time.

24 Q So this is a frame by frame?

25 A This is one frame now, yes.

2/14/01

D. Cassirer/Direct/Schwanwede

31

- 1 Q Is this, again, at about what speed?
2 A This is real slow. I would say this is maybe 1/16th,
3 1/24th.
4 We just speed up a little bit there.
5 MR. SCHWANWEDE: Your Honor, let the record reflect
6 the tape has stopped. It's concluded
7 (By Mr. Schwanwede)
8 Q Lieutenant, was the original S-VHS tape that you
9 received from Investigator -- Detective Dombrowski and
10 Barbados, was that original tape the source for all of the
11 images shown on this tape that we just played?
12 A Yes, it was the source.
13 Q And was there any outside source of images placed on
14 that tape?
15 A No other image, no other signal. No.
16 Q And with the exception of the work that you did in
17 creating the slow motion portions of that tape, were there
18 any other additions, changes, editing whatsoever in any way
19 done?
20 A No, sir. Just the slow motion.
21 Q And is this tape as you viewed it today, in the same
22 condition -- does it show the same things that it showed when
23 you originally made that tape?
24 A Yes, sir.
25 Q No changes, additions, deletions from it?

D. Cassirer/Cross/Jerejian

32

- 1 A None.
2 MR. SCHWANWEDE: Nothing further for the lieutenant,
3 Judge.
4 MR. JEREJIAN: I just have a few questions.
5 CROSS EXAMINATION BY MR. JEREJIAN:
6 Q Good afternoon, Lieutenant.
7 A Good afternoon.
8 Q Can you tell us again which department that you work
9 for?
10 A Richfield Police Department.
11 Q And your involvement in this case, was that limited
12 to working on this tape or you had other involvement?
13 A I was on road patrol at the time.
14 Q And as a result you responded to the scene?
15 A No, I was working a midnight shift, and approximately 3
16 o'clock a.m. in the morning I was approached by members of
17 the Bergen County Prosecutor's office, and they had asked me
18 about the tape because they could not view it on a regular
19 VHS recorder.
20 THE COURT: I think the question is you were not
21 involved with answering of the calls or being at the scene?
22 THE WITNESS: No, sir.
23 (By Mr. Jerejian)
24 Q You weren't the officer that arrived at the scene or
25 spoke to witnesses?


17

2/14/01

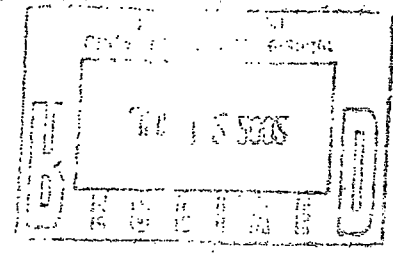
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C E R T I F I C A T E

I, Peter J. Rizza, C.S.R., License number XI00744, an
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do hereby certify the foregoing to be prepared in full
compliance with the current Transcript Format for Judicial
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Peter J. Rizza, C.S.R.
Bergen County Courthouse

DATE: June 20, 2002



101-51-1

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CRIMINAL PART
BERGEN COUNTY
INDICTMENT NO. 00-06-1368-I
APPELLATE NO. _____

STATE OF NEW JERSEY,

vs.

AGUSTIN GARCIA,

Defendant(s)

)
)
) TRANSCRIPT OF
) TRIAL
)
)
)

Place: Bergen County Courthouse
10 Main Street
Hackensack, N.J. 07601

Date: October 2, 2001

BEFORE:

THE HONORABLE WILLIAM C. MEEHAN, A.J.S.C. AND JURY

APPEARANCES:

FRED SCHWANWEDE, ESQ.
Assistant Prosecutor
Attorney for the State,

EDWARD A. JEREJIAN, ESQ.
(Edward A. Jerejian, Esq.)
FERNANDO J. OLIVER, ESQ.
(Fernando J. Oliver, Esq.)
RAYMOND L. COLON, ESQ.
(Raymond L. Colon, Esq.)
Attorneys for Defendant.

HOLLY E. SCHULZ, C.S.R.
Official Court Reporter
Bergen County Courthouse
10 Main Street
Hackensack, NJ 07601

Juan Ricart - cross - Jerejian

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- 1 Q Did Davis Ricart try to keep him out of the
2 house?
3 A No.
4 Q Did Davis Ricart try to lock the door?
5 A No.
6 Q Davis Ricart, isn't hit a fact, confronted
7 Mr. Garcia, isn't that true?
8 A He didn't.
9 Q Davis Ricart struck Mr. Garcia, didn't he?
10 A No, he didn't.
11 Q You gave testimony that you never struck Mr.
12 Garcia, is that true?
13 A Never what?
14 Q Never hit him.
15 A Never.
16 Q Did you ever in any way strike or hit or
17 touch Mr. Garcia in the area of his left eye, yes or
18 no?
19 A No place.
20 Q On the side of his place?
21 A In no place.
22 Q On his leg?
23 A In no place, sir.
24 Q Did you ever see if he was wounded or
25 bleeding?

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Juan Ricart - cross - Jerejian

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- 1 A It was not my business.
2 Q And although you said that it seemed like for
3 years, this incident, in reality everything happened
4 very quickly, didn't it?
5 A It happened very quickly.
6 Q From the time he got there until the time you
7 were laying on top of him, it was very quick, wasn't
8 it?
9 A It was quick.
10 Q From the time that the door opened to the
11 time that the shots rang out it was very quick, wasn't
12 it?
13 A Could be about a minute.
14 Q And there was a lot of people there?
15 A There was a lot of people inside the house.
16 Q And you're certain that Davis was right there?
17 A I saw Davis walking out when we get in.
18 Q Are you saying, sir, that Davis, when Mr.
19 Garcia came into the house, that Davis Ricart left the
20 house?
21 A He walk with my other niece out, away. He walk --
22 THE COURT: Did he walk outside the door or
23 out of the room?
24 THE WITNESS: Outside the door. He went
25 outside the door. When he opened the door he left the

C E R T I F I C A T I O N

I, HOLLY E. SCHULZ, C.S.R., License Number XI00676, an
Official Court Reporter in and for the State of New Jersey, do
hereby certify the foregoing to be prepared in full compliance
with the current Transcript Format for Judicial Proceedings and
is a true and accurate compressed transcript to the best of my
knowledge and ability.

Holly E. Schulz, C.S.R.
Official Court Reporter
Bergen County Courthouse

6/12/02
Date

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CRIMINAL PART
BERGEN COUNTY
INDICTMENT NO. 00-06-1368-I
APPELLATE DOCKET NO.

STATE OF NEW JERSEY,

VS.

AGUSTIN GARCIA,

Defendant (s)

TRANSCRIPT OF
TRIAL

Place: Bergen County Courthouse
10 Main Street
Hackensack, N.J. 07601

Date: October 3, 2001

BEFORE:

THE HONORABLE WILLIAM C. MEEHAN, P.J.S.C. AND JURY

TRANSCRIPT ORDERED BY:

THERESA YVETTE KYLES
Assistant Deputy Public Defender

APPEARANCES:

FRED SCHWANWEDE, ESQ.
Assistant Prosecutor
Attorney for the State,

EDWARD A. JEREJIAN, ESQ. (Jerejian & Jerejian)
FERNANDO J. OLIVER, ESQ. (Fernando J. Oliver, Esq.)
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Attorneys for the Defendant.

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Official Court Reporter
Bergen County Courthouse
10 Main Street
Hackensack, NJ 07601

Ramone Nunez - direct - Schwanwede

- 1 Q And do you recognize which room you went in
2 to do the bridesmaids?
3 A I think it was here.
4 Q Okay. Indicating the living room area of the
5 diagram. Where did you set up your camera?
6 A Right here next to the door.
7 Q Near the door?
8 A Yeah.
9 Q Now, were you holding your camera or was it
10 on a tripod like this one?
11 A It was on a tripod like that.
12 Q And where was the camera pointed?
13 A This way.
14 Q This way across here?
15 A Diagonal to the --
16 Q And what instructions did you give to the
17 bridesmaids and the bride? What was supposed to happen?
18 A The last thing she supposed to give the flower to
19 the bridesmaid and the kids, the little kids.
20 Q The little ones?
21 A The little ones.
22 Q Were any of the children in the room at the
23 time?
24 A I think two or three.
25 Q And were the bridesmaids all in the room?

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Ramone Nunez - direct - Schwanwede

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- 1 A Yes.
2 Q And as you were filming did something happen?
3 A Yes. The lights go off in the house. About a
4 minute after that I hear some explosion and people
5 start running to me and screaming. I run with the
6 people too.
7 Q Now, did you see what happened, where those
8 explosions came from or anything that happened?
9 A Not really. I was thinking it's electric shock or
10 it's a fire in the house.
11 Q I'd like to show you what's been marked
12 S-289A for identification. Does that show the view
13 that you had, what you were taking a picture of?
14 A Yes.
15 Q And why is it blue? Did something happen to
16 the light?
17 A Well, when you change the light, when you take a
18 video and the light change you have to do like white
19 balance. Maybe after the light go off I go closer to
20 the dress and do another white balance. I use the
21 light on top of the cover.
22 Q Okay. Now in this particular photograph the
23 light is not on, right?
24 A Yeah. It was off.
25 Q In this photograph 288A for identification,

Ramone Nunez - direct - Schwanwede

- 1 the light is still on, is that correct?
 2 A Yes.
 3 Q And the color looks normal?
 4 A Yes.
 5 Q And is this where she was when you were
 6 shooting the video?
 7 A Yes.
 8 Q And this was where the flowers were located?
 9 A I think they have more on the other side too.
 10 Q Okay. And when all this -- I think you
 11 indicated people started running. Could you hear
 12 anything? Could you hear people?
 13 A I hear people crying, screaming and I hear some
 14 bang bangs too.
 15 Q You heard some bang bangs?
 16 A Yes.
 17 Q You didn't see who that was or see where that
 18 came from?
 19 A No.
 20 Q Right after that, after the people start
 21 running at you, what did you do?
 22 A I go outside with the people and some woman tell
 23 me to get her little daughter that was inside and she
 24 cry and then I go inside to get her little daughter but
 25 I no see her.

Ramone Nunez - direct - Schwanwede

- 1 Q You went in to look for the little child?
 2 A Yes.
 3 Q Did you go back into that area where you were
 4 filming?
 5 A I don't get far from the door. I just get to
 6 where my camera was. I looking all around. I don't
 7 see nobody. It was so quiet, everything.
 8 Q And did you do anything with respect to your
 9 camera at that point?
 10 A Yeah.
 11 A I pull my camera off. I pull my camera, take it
 12 off from the tripod.
 13 Q Did you take the camera with you when you
 14 left?
 15 A Yes.
 16 Q And was the camera still running?
 17 A After like three minute I find out the camera was
 18 running. I don't know it was running.
 19 Q So when you slid it off of its mounts and you
 20 walked out, you left, the camera was still going?
 21 A Still going.
 22 Q It wasn't until a couple minutes later you
 23 realized it was still going?
 24 A I think a little more, maybe five more minutes the
 25 camera was still running. I don't know it was running.

Ramone Nunez - cross - Oliver

1 Q I'd like to show you what was marked S-1 for
2 identification. Do you recognize that?

3 A Yeah. This is my handwriting.

4 Q And was that the tape that was -- is that a
5 super VHS tape?

6 A Yes.

7 Q And was that the tape that was in your camera
8 on the day when this happened?

9 A Yes.

10 Q Now, after you went outside did there come a
11 time sometime thereafter when someone approached you
12 and asked you for that tape?

13 A Yes.

14 Q And was that a police officer?

15 A Police officer.

16 Q And did you turn that over to that police
17 officer?

18 A Yes.

19 MR. SCHWANWEDE: Nothing further, Judge.

20 THE COURT: Cross.

21 CROSS EXAMINATION BY MR. OLIVER:

22 Q Good afternoon.

23 A Good afternoon.

24 Q You testified that at one point you went back
25 inside after the incident and when you went back you

Ramone Nunez - cross - Oliver

1 went to look for one of the children. And is it your
2 testimony that there were no children there at that
3 time?

4 A I no see nobody in the living room.

5 Q You did not observe any children in either
6 room?

7 A No, sir.

8 Q You also testified that approximately sixty
9 seconds, if we can characterize it, or one minute, I
10 believe you said, before the -- before you became aware
11 of the shooting incident the lights in the house went
12 off, is that correct?

13 A Yes.

14 Q Was your camera still running?

15 A Yes.

16 Q Did you see or observe anybody turn the
17 lights off?

18 A No.

19 Q Were you -- when they came off sixty seconds
20 before the incident, did you make any attempt to get
21 someone to turn them back on?

22 A Yes.

23 Q And who did you tell to turn the lights back
24 on?

25 A My girlfriend.

colloquy

1 MS. GONZALEZ: Liz Gonzalez from Channel 47.
2 THE COURT: You wanted to ask me --
3 MS. GONZALEZ: We weren't happy with
4 yesterday's videotaping but today was wonderful. No
5 problem. Yesterday we had a focus problems. We had a
6 lot of problems.

THE COURT: We're getting more experience.

MS. GONZALEZ: This young man is
experienced. As long as he's here we're happy.

(Proceedings concluded for the day.)

* * *

C E R T I F I C A T I O N

2
3 I, HOLLY E. SCHULZ, C.S.R., License Number XI00676, an
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21 Holly E. Schulz, CSR
22 Official Court Reporter
23 Bergen County Courthouse
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6/12/02
Date

STATE OF NEW JERSEY,

VS.

AGUSTIN GARCIA,
Defendant.

TRANSCRIPT
OF TRIAL

Place: Bergen County

Courthouse

10 Main Street
Hackensack, NJ 07601

Date: October 17, 2001

BEFORE:

THE HONORABLE WILLIAM C. MEEHAN, P.J.S.C. AND JURY

TRANSCRIPT ORDERED BY:

THERESA YVETTE KYLES, ESQ.
Assistant Deputy Public Defender

APPEARANCES:

FRED SCHWANWEDE, ESQ.
Assistant Prosecutor
Attorney for the State,

EDWARD A. JEREJIAN, ESQ. (Jerejian & Jerejian)
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RAYMOND L. COLON, ESQ. (Raymond L. Colon, Esq.)
Attorneys for the Defendant.

HOLLY E. SCHULZ, C.S.R.
Official Court Reporter
Bergen County Courthouse
Hackensack, N.J. 07601

1 had a lot of arguments because she at times became very
2 argumentative. She at times used foul language.
3 She'll curse, which he did not like, but, to use his
4 vocabulary, on the outside she was rough. Inside she
5 was a diamond.

6 I asked him if there came a time that they
7 separated and he said sometime in '98, the beginning of
8 '99 they were separated because -- I don't know if
9 because or at that time he has another relationship
10 with another woman and the victim was very upset about
11 that.

12 Subsequently, March of '99, they got together
13 and approximately one month before September 26 they
14 were separated. He did not want to see her at that
15 point for whatever reasons. At that time he had gone
16 to Florida, I believe to pick up his fourteen year old
17 daughter who was visiting there with his family. He
18 came back from Florida, went to California, San Diego
19 if I recall, came back and the week prior to September
20 26 he told me that he saw the victim on a daily basis.

21 Then we come specifically to what had
22 occurred on September 26. What he described is that he
23 had to go to Manhattan, 50th Street. He had a lecture
24 to give but he made a strong detour to pass in front of
25 her house to see if her car was at home, as was his

1 usual habit. He saw some commotion in front of the
2 house. He thought there was a party for her mother or
3 something, some kind of party for her mother's
4 birthday.

5 I ask him, "Did you see anything else?" He
6 said, "Well, there were couple of limousines and people
7 around but," he said, the limousines was a normal
8 event, because she got the limousines through the
9 business, through a friend, don't pay for them.

10 Subsequently he walked into the house. He
11 remembered as he walked into the house that her
12 brother, I believe, got hold of him in the arm. This
13 after somebody hit him on the head. He lost
14 consciousness. While he was falling he saw the victim,
15 the white dress. A struggle developed and somehow the
16 gun fired. The gun was in his attache case but somehow
17 it fired. Thereafter he was hit one more time. He
18 blacked out, lost consciousness. The struggle was
19 going on and then he heard somebody screaming, "You
20 killed her. You killed her." And that's the point
21 that he knew he wanted to kill himself. Subsequently
22 he was held on the ground until the police came and he
23 was arrested.

24 The description that he gave was coherent,
25 relevant. There's a few things I could not follow but

10117101

1 A That's correct, sir.
2 Q And if you could just assume, and I'll tell
3 you that it's been stipulated that this photograph is a
4 photograph in a Pathmark supermarket in North Bergen
5 New Jersey, on September the 26th at about one --
6 between 1:00 and 1:30 AM the same day of this incident,
7 okay?
8 A Correct.
9 Q And again Mr. Garcia told you that he saw her
10 the night before the incident, did he not?
11 A That's correct.
12 Q Does this picture indicate that he was with
13 her the night before the incident?
14 A Yes. I have no doubt that that was the truth,
15 what he told me.
16 Q You did not doubt?
17 A No.
18 Q Okay.
19 A He described to you how they were planning to
20 go to Atlantic City, that's correct?
21 A That's correct.
22 Q But they did not go?
23 A That's correct. She change her mind.
24 Q And that she slept at his house and left
25 sometime about four o'clock in the morning, is that

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Eshkenazi - cross - Jerejian

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1 true?
2 A That is true, sir.
3 Q You gave testimony on direct that when he,
4 the next day, goes by the house, he sees limousines and
5 people outside and he thinks that the limousines are
6 normal because she gets them for free. Do you recall
7 saying that?
8 A Yes, I do.
9 Q You did mention that he told you that when he
10 drove by the house he observed a social gathering. You
11 asked him what kind of social gathering he thought she
12 was having and he replied "Like her mother's birthday"?
13 A Correct.
14 Q You didn't mention that on direct, did you?
15 A Yes, I did.
16 Q Did you?
17 A You did not listen.
18 Q And he told you that?
19 A That's correct.
20 Q And he told you that when you did your
21 evaluation?
22 A Sir?
23 Q And he told you that -- let me ask you this.
24 When you met him twice how did you conduct your
25 examination? Did you do different -- perform different

10/17/01

1 functions on each occasion or you just continued where
2 you left off?
3 A I just continue. I always remind him what my
4 function is, that I have been retained by the State.
5 He was very polite, very cooperative, answered all of
6 my questions to the best of his ability.
7 Q Sir, you testified that in your opinion an
8 example of an acute adjustment disorder type diagnosis,
9 as Mr. Schwanwede put the question to you, might equate
10 more in a situation where somebody loses his job?
11 A I gave an example.
12 Q Okay. So you're telling the jury that you
13 may bestow such a diagnosis on an individual who loses
14 his job but you cannot fathom a situation of bestowing
15 such a diagnosis on a person who is in an emotional
16 relationship, up and down, long-term, which resulted in
17 the factual situation as presented itself in this
18 case. Is that what you're telling us?
19 A I'll tell you exactly what I am saying, sir. If
20 you told me that they broke the relationship and Mr.
21 Garcia was very upset with her and went along, okay, he
22 had adjustment reaction to the separation. I can
23 accept that. But if you're telling me that's what I
24 was hearing, that the moment he walked into the house
25 he saw something white in front of him, he had such an

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Eshkenazi - cross - Jerejian

1 acute adjustment reaction that he had to shoot it, I
2 cannot accept it, if that's what you're trying to tell
3 me.
4 If you're telling me it was because they
5 separated because he had no other relationship, not
6 because he was seeing another woman at that time, then
7 I can accept it but don't make it as an acute reaction
8 in thirty seconds period when you kill somebody.
9 Please.
10 Q So Mr. -- or Dr. Eshkenazi --
11 A He was.
12 Q -- you are telling us that a man who is in a
13 relationship with a woman such as the one that you
14 discovered in this particular case where they break up,
15 there's jealousy involved, would you agree with that?
16 A Unless you are looking forward breaking up the
17 relationship, yeah, there can be jealousy. If one
18 party wants the separation, the other party might very
19 well be jealous.
20 Q And the relationship, assume, continues in
21 some form where on September the 26th the individual is
22 with the person he's telling you he loves -- did he
23 tell you he loved her?
24 A Yes, he did. He told me that she love him too.
25 Q And whatever the problem was, whatever the

1 factories and then over several years later --
2 the first, the way he described it, position in
3 business, corporate and public service work he
4 described it I believe, tax auditing for New York
5 State. In any case this was in the late '70s, sometime
6 between '77 and '80.

7 In 1980 which he described as an important
8 year for him, he obtained his position with the
9 Dominican association which was an association of
10 Dominican business persons. And he has been doing that
11 work, had been doing that work from 1980 until the time
12 of the incident.

13 He also described that he started two other
14 businesses of his own. One was in travel and the other
15 was in tax services in conjunction with two of his
16 older brothers.

17 He described that his marriage to Lourdes at
18 the beginning was good but that his involvement with
19 other women, his business, a number of things combined
20 to break up the relationship. They separated in 1990.
21 They divorced in 1991.

22 He described having met Ms. Ricart, the
23 victim in this matter, in the subway, in 1991 and that
24 was the beginning of their relationship.

25 I think he denied any formal psychiatric

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Greenfield - direct - Jerejian
1 history or treatment with the exception of seeing a
2 counselor of some sort and I'm not sure what sort it
3 was in 1991, give or take, in connection with his
4 divorce from his wife. So I guess in summary an
5 individual who came from Dominican Republic, relocated
6 to Puerto Rico, came from a large family, worked in
7 business for a number of years and had a first failed
8 marriage, two children by it, and then subsequently has
9 been on his own and working.

10 Q Doctor, can you briefly tell us what any of
11 your conclusions were from testing?

12 A The conclusions from the testing were all
13 unremarkable.

14 He had given me a history of no drug or
15 alcohol use of significance and the testing, his
16 completion of the inventories in that area bore that
17 out so those were consistent.

18 his responses to the two standardized
19 psychological tests were also not revealing; basically
20 showed an individual who did not have serious
21 psychiatric -- a serious diagnosable psychiatric
22 disorder, like I was talking about before, bipolar
23 disorder, depressive disorder, anxiety disorder.
24 Basically in that respect nothing to write home about.

25 His responses to the two standardized

1 cognitive screening tests were also unremarkable. He
 2 got on these particular tests perfect scores on both of
 3 them, which led me to believe he certainly was playing
 4 with a full deck when he was speaking -- when we were
 5 speaking, and also that this was consistent with his,
 6 what I understood to be his level of education, his
 7 life experience.

8 The last test was the past medical history,
 9 so-called. Again basically a healthy man without
 10 serious medical problems, past or present.

11 So as sort of adjunctive, as supplementary
 12 sources of information the testing basically didn't
 13 show anything particularly remarkable one way or
 14 another.

15 Q Again the testing is giving you a snapshot as
 16 to the date you're giving the test, which is in January
 17 29 of 2001?

18 A Yes, that's correct with the exception of the past
 19 medical history which obviously is history but yes,
 20 that's correct.

21 Q Now, in the next part of your examination can
 22 you just tell us if you ascertained information from
 23 him relative to an incident which occurred on September
 24 26, 1999?

25 A I did. And as a practical matter that was the

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Greenfield - direct - Jerejian

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1 fourth part of the four parts of the evaluation. That
 2 was when we got toward the end.

3 He told me in some detail, I'm again looking
 4 at the quote, that I wrote down, that he gave me, on
 5 pages eight and nine in my report, to paraphrase that,
 6 he said that he and Ms. Ricart had sex on Thursday -
 7 before the Sunday of the incident in question. They
 8 were in the Pathmark before that. The incident was on
 9 a Sunday. From eleven to noon that day, he talked
 10 with, he gave the name of an attorney, about a landlord
 11 tenant case. "I was worried about the case and I
 12 thought the attorney was exaggerating. I wanted a
 13 second opinion. I called my beauty salon to get the
 14 Long Island phone number for" gave the name of another
 15 attorney. Gave him a lengthy phone message. He said,
 16 "I was concerned about the outcome of the five o'clock
 17 painting exhibition."

18 He told me that he was to be speaking that
 19 night at that particular exhibition.

20 He continued on. "I drove past her"
 21 referring to Miss Ricart's "house in Ridgewood." I
 22 mistakenly have Ridgewood written down here. "...and
 23 tried to go around the house." This was en route to
 24 New York to the exhibition, to the meeting. "I went
 25 back on the road to New York, thought about it, changed

1 They're out there. They're doing okay. They're
2 working. They don't need to be in an inpatient setting
3 but they're obviously troubled enough to need to see a
4 psychiatrist. Forty to fifty, fifty to sixty, in that
5 range.

6 In Mr. Garcia's range I felt a fifty to sixty
7 range which, using the words in DSM, moderate to
8 serious symptomatology, I thought was the case with
9 him.

10 So the final rating is fifty to sixty on that
11 GAF scale score.

12 Q Doctor, on the Axis I, look at the bottom of
13 page ten on your report, did you note a professional
14 psychiatric opinion with respect to Mr. Garcia?

15 A I offered the opinion that at the time of the
16 incident in question I was distinguishing between the
17 time that I saw him in January of this year and the
18 time of the incident, which was many months before
19 that, at the time of that incident I felt that he was
20 agitated, he was confused. He felt betrayed and in a
21 practical sense, was not behaving in a knowing and
22 purposeful way in terms of the incident itself.

23 Q Now, in your summary and opinions which I
24 know begin on page eleven, continue through twelve, can
25 you tell us what you concluded and what your ultimate

PAGE 67

Greenfield - direct - Jerejian

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1 finding was as it relates to the concept of diminished
2 mental capacity?

3 A Yes, I can. And again going back to what the
4 original assessment was for, mental state then, mental
5 state now. Mental state now in terms of competency to
6 stand trial, no problem. Dealt with that relatively
7 quickly.

8 Mental state then, during the period of time
9 surrounding the incident in question, what I basically
10 wrote, and I'm looking again at page thirteen of the
11 report to recollect, that I felt that his mental state,
12 his psychiatric condition during the period of time, he
13 was so surprised -- and I use these words. I think
14 they're true. -- so surprised, so enraged, so fatigued,
15 so insulted in terms of his Hispanic background and his
16 strong belief that he and Miss Ricart were, for all
17 intents and purposes, a married couple at the time she
18 was preparing to marry another man, he was betrayed,
19 confused, agitated and embroiled in physical restraint
20 and fight with others, putting all of that stuff
21 together I felt it was it is my professional opinion he
22 was not thinking clearly in terms of the alleged
23 shooting of her at the time. He was not acting in a
24 knowing and purposeful way. And putting all that
25 together his mental state in my opinion would support a

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1 legal determination, a court determination that
2 diminished capacity applied to him at the time.
3 And the reason I say it that way, of course,
4 is that psychiatrists don't make determinations of
5 diminished capacity. The Court makes those
6 determinations. Psychiatrists offer information,
7 opinion and what not that will or will not support the
8 courts deciding that. In my opinion the opinion would
9 support that.

10 Q Is there a more simplistic way perhaps as a
11 lay person as to what his mental capacity was at the
12 time of the incident?

13 A Sure. Using the phrase, it's a phrase I like to
14 use, playing with a full deck, for various context
15 during my testimony he wasn't playing with a full deck
16 in my opinion. I suppose another way of characterizing
17 it is he wasn't in his right mind. He did not have the
18 intention to kill her. He was certainly confused at
19 best about that. Whatever you're going to call it,
20 whether from a legal perspective you're going to call
21 it diminished capacity, from a psychiatric perspective
22 you're going to call it acute adjustment disorder or
23 something like that, whatever you're going to call it,
24 he wasn't in his right mind. He wasn't playing with a
25 full deck, and I hope that's a simpler and more

PAGE 69

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Greenfield - direct - Jerejian

1 understandable way of putting it.

2 Q Did you discuss with me and also in the
3 process of doing this examination did you discuss with
4 him the fact of Miss Ricart marrying as to whether that
5 impassioned him in a sense?

6 A Whether that -- I'm sorry, the idea of his
7 marrying someone else or her marrying someone else,
8 rather?

9 Q As to when he entered that premises, as to
10 whether the facts as they unfolded had a capacity to
11 impassion him?

12 A Yeah. I didn't use the word "impassioned". I
13 used the word "enraged". I think that they're similar
14 enough. As I said before, my understanding of what
15 happened from a combination of everything I'm aware of
16 was that when he saw the limousines there and when he
17 saw the setup, he at first thought that there was a
18 party for her mother, for Miss Ricart's mother, that to
19 his knowledge he's used limousines before and he
20 began -- as he was approaching the house he began to
21 formulate the idea that something from his perspective
22 bad is going on and when he finally did realize it
23 sometime after that, when he saw the wedding dresses
24 and all the finery and what not, when he finally
25 realized that he became enraged. He went nuts. He was

1 attacked or at least held back by these other
2 individuals. All hell broke loose at that particular
3 point and he was impassioned and enraged, yes.
4 Q You mentioned that you concluded this concept
5 which you said is really a concept for the courts, not
6 of medicine, so to speak, of diminished capacity, you
7 concluded that he at that time was not acting knowing
8 and purposeful, correct?

9 A Correct.

10 Q Now, to describe all these adjectives you've
11 used, surprised, enraged, all the ones you've told us
12 here today and everything that you read from the case,
13 that you garnered from your examination of him, can you
14 tell us in medical terms how you would describe in
15 medical terms how would you describe -- is there -- in
16 terms of the DSM?

17 A If I were pressed to develop a diagnosis along the
18 lines of the DSM of Mr. Garcia's mental state at the
19 time of the incident, the diagnosis would be adjustment
20 disorder with mixed features, I'm not sure I'll get
21 these words right, mixed features of anxiety and
22 depression, acute. I think I alluded to that a few
23 minutes ago but as I say if pressed to develop a formal
24 diagnostic statement about his mental state at the time
25 that's what it would be, acute adjustment disorder with

PAGE 71

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Greenfield - direct - Jerejian

1 mixed anxiety and depression.

2 Q Doctor, before I conclude is there any and
3 again -- strike that. These conclusions that you've
4 reached, are these based on a reasonable level of
5 medical certainty?

6 A Yes, they are. They definitely are. That's a
7 point that I've made in the report in various places.
8 All of the opinions that I offer for any forensic
9 purposes or opinions I offer with a degree of
10 reasonable medical probability or certainty, yes.

11 Q From the work you did in this case is there
12 any question in your mind that on September the 26th,
13 1999 that Agustin Garcia, after walking into that
14 house, suffered from a diminished mental capacity, and
15 did not act knowingly and purposely?

16 A This is -- it is my opinion that he was not acting
17 knowingly and purposely. Again I hate to quibble about
18 it but I don't offer opinions about diminished mental
19 capacity. Certainly the way he was at the time,
20 whatever you want to call it, would support his having
21 had diminished mental capacity. He certainly was not
22 acting knowingly or purposely.

23 Q Thank you.

24 THE COURT: Cross-examination.

25 MR. SCHWANWEDE: Judge, can we break now?

1 medical experts, oncologists, cardiologists, other
2 specialists in other fields, have the benefit of test
3 results from blood tests, CAT scans, all manner of
4 testing that can be done on the person's body, on the
5 physical reality of an individual?

6 A Yes. Those things can be done, sure.
7 Q And you administered certain tests, certain
8 questionnaires with regard to Mr. Garcia, is that
9 correct?

10 A Yes, I did.

11 Q And those are standardized questionnaires?

12 A All but two of them. Two were surveys. The
13 addiction assessment is not standardized. It's a
14 systematic way of asking a history and the past medical
15 history is also a systematic way of asking about
16 medical history. But the others are standardized.

17 Q Those standardized questionnaires, those
18 tests that you administer require the input of the
19 individual, is that correct?

20 A Sure. Yes.

21 Q And if the input is not accurate then the
22 result of the test is not accurate, correct?

23 A To some extent it depends on the test. Most of
24 them are subjective. Two of them -- the cognitive
25 capacity require right or wrong answers. Those simple

Greenfield - cross - Schwanwede

1 IQ like tests that I mentioned. If I could just
2 finish. The MMPI is interesting in that respect. It's
3 a very long test. And there are a number of repeated
4 questions or items of one sort or another so that one
5 can get a sense, people like me can get a sense about
6 whether an individual is responding consistently to
7 questions within the test. What that means in terms of
8 responses is whether a person is exaggerating, whether
9 a person is minimizing or whether a person is answering
10 these questions in a consistent, straightway.

11 Psychologists refer to that as faking to look
12 good, faking to look bad or not faking. It's kind of
13 ability to cross-check with the MMPI. That makes it a
14 bit different from the way you were characterizing the
15 other tests. In Mr. Garcia's test he presented a valid
16 test. He wasn't faking up or down.

17 Q There are tests set up to detect a person who
18 is trying to get over?

19 A That's a fair way to put it.

20 Q Internationally it will show up an
21 inconsistency that you would notice?

22 A Right. That's fair.

23 Q Now, Mr. Garcia certainly did not indicate to
24 you that he had ever suffered previously from any form
25 of mental illness, is that correct?

10/17/01

- 1 That's what I was consulting.
 2 THE COURT: No. There was some other
 3 testimony.
 4 MR. OLIVER: There was testimony, and the
 5 Court can check the transcript. I have clearly in my
 6 notes there was testimony from Juan Ricart that there
 7 was one child in the room and there's testimony from
 8 Josephine Formato that at some point there was another
 9 child and it's not clear whether that child is inside
 10 or outside the home when the picture is taken, and I
 11 have that clearly in my notes, Judge. That's why we
 12 would move to dismiss two of the counts. If the Court
 13 wishes to consider the other two --
 14 THE COURT: Right now it's three. I'm
 15 dismissing one as to the boy which Mr. Schwanwede said
 16 it was not testified to. The three young ladies or
 17 girls --
 18 MR. SCHWANWEDE: It wasn't that he wasn't in
 19 the room. It's that he wasn't named.
 20 THE COURT: No one testified to his name.
 21 MR. JEREJIAN: Whoever was in the room or
 22 not we still have this concept of --
 23 THE COURT: The field of danger.
 24 MR. JEREJIAN: Right.
 25 (Proceedings concluded for the day.)

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C E R T I F I C A T I O N

- 1 I, HOLLY E. SCHULZ, C.S.R., License Number XI00676, an
 2 Official Court Reporter in and for the State of New Jersey, do
 3 hereby certify the foregoing to be prepared in full compliance
 4 with the current Transcript Format for Judicial Proceedings and
 5 is a true and accurate compressed transcript to the best of my
 6 knowledge and ability.
 7

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 9 Holly E. Schulz C.S.R.
 10 Official Court Reporter
 11 Bergen County Courthouse
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6/12/02
 Date

A.5437.0674

STATE OF NEW JERSEY,

Plaintiff,

-VS-

AUGUSTIN GARCIA,

Defendant.

TRANSCRIPT OF
POST CONVICTION RELIEF
HEARING

Place: Bergen County Courthouse
10 Main Street.
Hackensack, NJ 07601

Date: May 4, 2007

BEFORE:

HONORABLE WILLIAM C. MEEHAN, J.S.C.

TRANSCRIPT ORDERED BY:

HELEN C. GODBY, ESQ.

(Office of the Public Defender - Appellate Section)

APPEARANCES:

FRED L. SCHWANWEDE, ESQ.
Assistant Prosecutor For Bergen County
Attorney For The State.

MICHAEL G. PAUL, ESQ.
(Michael G. Paul, Esq.)
Attorney For The Defendant.

Barry Gold, C.C.R.
Official Court Reporter
Bergen County Courthouse
10 Main Street
Hackensack, NJ 07601

APPENDIX M

1 to. to go together with the video, you will see that
2 they didn't match, and that that is why I show you the
3 two comparative statements.

4 The minute of the, prepared by the International
5 Service totally contradicts the minute heard in Court.
6 Meaning they were looking at two different items.

7 Now, when the expert is analyzing, he's analyzing
8 the Appellate Division, which is the same item that was
9 given to the defense counsel. But it's not, and I
10 demonstrated that, based again on the fact that if you
11 look at the item on the record, and that I made part of
12 the, I made the actual minute that was given to the
13 jury, part of the appendix, and I made reference to
14 that, that that minute totally contradicts the minute
15 prepared by International Service.

16 International Service saw they were looking at the
17 original.

18 After that I sent follow-up information, which is
19 now made part of the newly trial motion that we will be
20 filing within next week by your permission, and there
21 it clearly shows that fact. The fact that that.

22 I lost my. My thoughts now.

23 THE COURT: All right. Then take a seat.

24 And we will be finished.

25 This is the return date of, for a motion for post.

05/04/07

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MAY, 4, 2001

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Colloquy

1 Bang. Bang. Five shots, and she's dead. That's what
2 this case is all about.

3 Everything else is total nonsense, and that's what
4 he's raising.

5 The motion is denied.

6 MR. PAUL: I have a proposed order.

7 THE COURT: Okay.

8 MR. GARCIA: May I make a statement?

9 THE COURT: Sure.

10 One minute.

11 MR. PAUL: You have the right to appeal.

12 Anything will be transcribed.

13 Over my advice.

14 THE COURT: Go ahead.

15 MR. GARCIA: I did file a motion for
16 discovery specifically requesting that a copy of the
17 original videotape that was described by the Detective
18 Dembowski.

19 THE COURT: I don't have the papers on that.

20 MR. GARCIA: I sent it twice to this Court.

21 I, and --

22 THE COURT: You make sure we get a copy.

23 MR. GARCIA: I sent copies to the prosecutor

24 and to my counsel

25 I also sent a motion for discovery of the original

videotape as described.

THE COURT: It's a super something. Super anything.

MR. SCHWANWEDE: Super VHS.

MR. GARCIA: Which according to the law I'm entitled to in order to be able to determine the accuracy.

THE COURT: Make sure you get a copy to me. It may be filed downstairs and never got up to me.

MR. GARCIA: Also there was a motion for the correction of the trial court record, which --

THE COURT: I am not changing the trial court record after you went to the Supreme Court.

Whatever is in the record, if you want to argue it's wrong, you argue that.

I will not change the court record at this time.

MR. GARCIA: If there was a motion you are ruling that because an --

THE COURT: I will deny that motion. I'm not changing the trial court transcript after it went to the Appellate Division and the Supreme

Court.

MR. GARCIA: There was a motion to recuse you

from the case.

THE COURT: I'm not recusing myself.

65/04/07

you will go before another
better break. That's here.

MR. GARCIA: There was a motion to recuse the
prosecutor also from the case.

THE COURT: The prosecutor or the attorney
general will decide that.

There's no reason to remove the Prosecutor's

Office.

MR. GARCIA: Thank you.

THE COURT: They're all denied.

MR. GARCIA: Thank you, your Honor.

THE COURT: All right.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CRIMINAL PART
BERGEN COUNTY
INDICTMENT NO: 00-06-1368
A.D. #: A-003575-18-T7

STATE OF NEW JERSEY,

VS.

AUGUSTIN GARCIA,

Defendant.

TRANSCRIPT
OF
MOTION

Place: Bergen County Justice Center
10 Main Street
Hackensack, New Jersey 07601

Date: January 25, 2019

BEFORE:

HONORABLE JAMES J. GUIDA, J.S.C.

TRANSCRIPT ORDERED BY:

FRANK PUGLIESE, ESQ., (Office of the Public
Defender-Appellate Division)

APPEARANCES:

DEMETRA A. MAURICE, ESQ., (Acting Assistant
Prosecutor)
Attorney for State

S. EMILE LISBOA, ESQ., (Assigned Counsel)
Attorney for Defendant

Transcriber: Maria Scicutella
Phoenix Transcription, LLC
796 Macopin Rd.
West Milford, NJ 07480
(862)248-0670

Audio Recorded
Recording Opr: Dana Accardo

1 Garcia, you know what, we've submitted to a new expert,
2 okay, I've reviewed it, we have no issue, okay. But
3 what happens in the case where I get the video, I get
4 an expert, and now we do have new evidence based upon
5 enhancement --

6 THE COURT: But that's not new --

7 MR. LISBOA: -- okay.

8 THE COURT: -- evidence, and I already ruled.

9 MR. LISBOA: I -- Judge, I disagree with you.

10 THE COURT: But I already made that ruling
11 specifically in an opinion that if there was a
12 discrepancy between the prior and this, it's not new
13 evidence because it was discoverable before trial. The
14 fact that someone didn't do it would be a PCR, but not
15 a motion for a new trial.

16 MR. LISBOA: Well, but then that's -- that's
17 a separate --

18 THE COURT: And then I --

19 MR. LISBOA: -- a separate issue.

20 THE COURT: -- did hear the PCR on that
21 issue, and I denied that.

22 MR. LISBOA: The problem with the PCR that
23 Your Honor heard, okay, because it's our position that
24 the PCR attorney was ineffective in the way he
25 presented this, okay, but I --

1 the concern that -- that -- powers that be in my office
2 who assigned me this task after reviewing much of this,
3 is that it does appear to have been a struggle prior to
4 the shots going off, okay. The -- the understanding
5 may be that if that can be enhanced, okay, that if some
6 of the background noise can be taken out, some of the
7 voices can be enhanced, it may as well just
8 corroborate, okay, the defense originally at the trial
9 which was that Mr. Garcia hit first before this whole
10 thing went down, okay. So again, this was back in the
11 day, 2007 technology, we're now in 2019, Judge, we can
12 do so much more with enhancements and -- and --

13 THE COURT: Okay.

14 MR. LISBOA: -- you know, digitized. So
15 again, Judge, this may be completely, you know, non-
16 fruitful once we get it. It could be completely
17 exculpatory and gray material in the -- in the same
18 vein, but I can't do anything. I can't do anything
19 with it at all if I don't have a copy of --

20 THE COURT: And --

21 MR. LISBOA: -- of the video --

22 THE COURT: -- and I don't know --

23 MR. LISBOA: -- which, again, I don't think
24 is too onerous to the pros -- how much could it cost to
25 -- to burn me a copy.

11/25/19

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THE COURT: -- and I'm saying --

MR. GARCIA: -- let me explain something --

THE COURT: -- if that's -- no, if that's
true --

MR. GARCIA: -- else. On June 1st -- I'm
sorry to interrupt you. On June 1st, 2016, this Court
refer the case, following the court rule, after finding
that there was a prime facie, they refer the case to
the public defender --

THE COURT: I didn't re --

MR. GARCIA: -- to -- to represent me on this
May 8th, 2007 motion to --

THE COURT: No, no. In 2016?

MR. GARCIA: I have the record here to show
it to you if you want --

THE COURT: No, that --

MR. GARCIA: -- to see it.

THE COURT: -- I know the record. It was --

MR. GARCIA: And if you see --

THE COURT: -- this was a second PCR. It was
not revitalized. This Court doesn't have the authority
to revitalize.

MR. GARCIA: It was reactivated --

THE COURT: No -- okay.

MR. GARCIA: -- because the -- the file --

1/25/19

1 THE COURT: I'm not going to hear anymore on
2 that on the procedure.

3 MR. GARCIA: The -- I was assigned counsel
4 when you deny -- when you denied the motion, I had
5 already been assigned counsel on June 1. I had already
6 Mr. Emile Lisboa representing me --

7 THE COURT: Then maybe you have an issue --
8 I'm not going to hear anything from you. If you're
9 telling me that there's an open issue that was not
10 decided, again, when I denied it, you should have
11 appealed it. If you want to re-file an appeal at a
12 time --

13 MR. LISBOA: But, Judge --

14 THE COURT: -- do it.

15 MR. LISBOA: -- what he's saying is that you
16 denied it, okay, after I was assigned, but before I
17 could even --

18 MR. GARCIA: Without counsel.

19 MR. LISBOA: Without counsel.

20 THE COURT: Then that's appealable, period.

21 You can't reopen it now because then afterwards you
22 requested me to reopen it, I denied that. That was in
23 2017, so again, if you're saying I did something I
24 shouldn't have because you had an attorney, that would
25 have been appealable. You can't -- I'm not reopening

01/27/17

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1 that. That's not the request today.

2 MR. GARCIA: If I may say something.

3 THE COURT: No, you may not. That's it.

4 Anything else from the State?

5 MS. MAURICE: No, Your Honor.

6 THE COURT: This is the defendant's motion
7 today, not for PCR, but to order -- for the Court to
8 order the State to turn over a copy or a copy of the
9 full video that was in its possession of only which a
10 snippet or a portion, thereof, was played at -- at the
11 trial, and the State denied -- or objects to the
12 request.

13 This Court, again, just by way of procedure,
14 notes that there was a lengthy trial which occurred and
15 is unreported in State versus Garcia 2009, N.J. Super.
16 Unpublished, Lexis, 2782 in 2011 where the facts are as
17 follows, we're just going to read from: Following a
18 lengthy trial defendant was convicted of purposely and
19 knowingly causing his ex-girlfriend's death, two
20 weapons offenses, and two counts of endangering the
21 welfare of a child. The convictions arose out of an
22 incident in which defendant appeared at his former
23 girlfriend's wedding as uninvited guest, and shot and
24 killed her at close range in the presence of witnesses
25 including children.

CERTIFICATION

1/25/19

I, Maria Scicutella, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 11:43:11 to 12:38:30, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings, as recorded.

/s/ Maria ScicutellaAD/T 662

Maria Scicutella

AD/T Number

Phoenix Transcription LLC05/21/2019

Agency Name

Date

APPENDIX W

Proof of Altered Videotape and Videotape Transcript

The following is a side by side comparison of the unaltered videotape audio portion against the fraudulent copy prepared by the prosecutor, which was shown to the jury.

Comparative Analysis of Forensic Expert's Transcrip against Transcrip prepared and Shown to Grand Jury and Court by Prosecutor

Transcript of Wedding Videotape	:	Transcript of Wedding Videotape
Prepared By Forensic Expert	:	Prepared By Sergeant Suarez
Eva Berry For The Defense	:	From Wedding Video
On Post-Conviction Relief	:	Shown to Jury
(Da1 to 16; Dec. 9, 2005 Trans.)	:	(Da72 to 73).

Start of Time Study

00:00.00

Colloquy

Male Voice 1: One more, one more.

(female voices chatting
in background)

Male Voice 1: One more.

Female Voice: Ok. One More.

Voice 1: Ok. They can come in
now. Ok.

Female Voice: (in English) Now
we're going back.

Female Voice 2: Yeah, now that
the what?

Male Voice 1: No, Gracy??

APPENDIX W

Female Voice 2: No, but. :

Female Voice 1: No ... :

00:18.19 :

(Sound of a thud. Sound of door :
being opened) :

Male Voice: No, little girl, put :
it ... :

Male Voice 1: Ohh, hold it, hold :
it ... :

(cross talk) :

Male Voice 2: (a deeper voice) :
(unintelligible) going to :
give my greetings. :

(cross talk) :

Male Voice 1: Ok, you finished. :
Don't worry. Go ahead. :

Female Voice: I have no light :
here. This one...turn it on. :

Male Voice 1: Turn it on. :

Female Voice: Turn it on. :

Male Voice 1: No, that's not :
possible, don't worry. :

Female Voice: This one? this one :
on? :

Male Voice 1: If that's possible. :

Female Voice: Yeah. :

Male Voice 1: Yes, Ok. Don't :
worry. Go ahead. Go girl. :
Go ahead. :

(female singing in background) :

Male Voice 1: Ok, ahead. :

Female Voice 2: What do you need?:

Male Voice 1: A smile. :

Female Voice: Smiling. :

Male Voice 1: Next one. Next. :

Female Voice: Ok. :

Male Voice 1: Next, don't work too hard, ok. :

Female Voice: Ma, ma, ma... What?:

(cross talk) :

Male Voice 1: Go next to her, to her. No, not there. :

Female Voice: More, more there, that's it. Right. :

00:60.06 :

(sound of door opening) :

Male Voice 1: Let's go. :

(cross talk of females chatting) ... dance. :

Male Voice 1: No, no. Ok. :

(sound of door opening again) :

Female Voice: Always smiling. :

Male Voice 1: The flower. :

(cross talk) :

Appellant: (slurry) :

(unintelligible) come here	:	
... (unintelligible) more	:	
	:	
J. Ricart: (interrupting)... What:	:	
are you doing?	:	
	:	
J. Ricart: ... hand it over ...	:	
	:	
Appellant: No.	:	
	:	
Male Voice 1: Next. Go, go.	:	
	:	
(clapping hands)	:	
	:	
Female Voice: (surprised) It's	:	
(unintelligible)	:	
	:	
Female Voice: (in fear) Aaah	:	
	:	
01:24.14	:	
	:	
(sound of 1st shot)	:	
(sound of 2nd shot)	:	(Two gunshots)
(screams)	:	J. Ricart: Ay, ay
	:	
01:27.05	:	
	:	
(sound of 3rd shot)	:	
(sound of 4th shot)	:	
(sound of 5th shot)	:	
(screams)	:	(Three gunshots)
	:	
Appellant: Ay, ay, ay. (screams)	:	J. Ricart: Ay, ay, ay....
ay, ay. <u>My love</u> . Ay, ay,	:	Agustin, how could you
aaaaay. Ay, ay, ay. I had	:	do this? Ay. ay, Agustin,
toay, ay....	:	my God!
	:	
J. Ricart: What have you done??	:	Ay, ay, ay....
	:	
Appellant: Ay, ay, ay	:	Ay, Agustin, how could
	:	you have done this?
J. Ricart: (unintelligible)	:	My God!
	:	
Appellant: No, (screaming), No.	:	
No.	:	Appellant: I have to kill
	:	myself now! (IA).
J. Ricart: My God, I will	:	

Appellant: No. No.

J. Ricart: I will kill you ...
(unintelligible)

Appellant: No. No. No. Lilly?
(phonetic) No. No. (sounds
of pushing person on floor)

J. Ricart: Fuck, I will.
(unintelligible)

Appellant: Lilly (phonetic) No.
No. Lilly!! (phonetic) No.
No.

(sound of Appellant being
being taken out)

J. Ricart: No, Agust....

Appellant: Let my hands go.
Hurry! Hurry!

J. Ricart: Ay!

Appellant: Let me go, because
I have to kill myself!

J. Ricart: No.

Appellant: Let me go, because
I have to kill myself!

J. Ricart: No.

Appellant: For God's sake,
let me go!

J. Ricart: No.

Appellant: I have to kill
myself!

J. Ricart: No.

Appellant: Let me go!

J. Ricart: No, no Agustin!

Appellant: I have to kill
myself!

J. Ricart: No.

Appellant: Damn it! Let me
kill myself!

J. Ricart: Agustin! Ay no!
Agustin! Agustin! Agustin!
I need (in English) help!

Appellant: Help me. No. No. Help : Oh Agustin! Agustin! Ay!
me. Ay. Ay, ay, ay. :
(screaming) Ay, no. : (They appear to be moving
: from the living room area
: of the residence. Sounds
: that resemble bullets jinglin
: (in Agustin's pocket) can
: be heard.)

Female Voice: Ay, no. Ay, no. :
:

Appellant: Ay, ay no. :
:

U/F: (Scream.) :
:

Male Voice 5: Oh shit. : U/M: Oh shit! (In English.)
:

Appellant: Ay. I love you, Lilly :
(phonic) Aaaaah. :
:

(Whereupon, the aural record was :
concluded.) :
(Whereupon, the tape recording : Tape Recording Ends. ended.)

Based on foregoing, newly hired competent forensic expert, aided with ever advancing technology, adopting and deepening on this scientific summary as starting point for forensic re-testing of wedding videotape, must be able to categorically find at a minimum, that Bergen County prosecutor, acting under color of law with corrupt intent, fabricated and presented to the Grand Jury and trial court "[VHS copy,] 'S-1B' [June 22, 2000 Grand Jury Trans. 97:3-16; Feb. 14, 2001 Trans. 6-22 to 7-10; Oct. 03, 2001 Trans. 11-16]]", which provided a completely tampered version of original wedding videotape content¹⁰:

¹⁰ United States v. Linda Agurs, 427 U.S. 97, 49 L Ed 2d 342, 96 S Ct 2392 (No. 75-491) (Jun. 24, 1976) " ... [U]nder the due process clause of the Fourteenth Amendment [U.S. Constitution] for state criminal trial, a prosecutor had the

APPENDIX X

SUMMARY OF RECEIPTS OF PAYMENTS DELIVERED BY AGUSTIN GARCIA'S FAMILY TO
DEFENSE COUNSELS: EDWARD JEREJIAN, FERNANDO OLIVER AND RAYMOND COLON, FOR
THE DEFENSE OF AGUSTIN GARCIA...

1.	October 9, 1999,	\$25,000.00
2.	April 3, 2000, check # 86.....	20,000.00
0.	July 10, 2000, check # 87.....	1,224.92
2.	July 28, 2000, check # 88.....	1,500.00
2.	August 4, 2000, check # 89.....	500.00
3.	November 4, 2000, check # 90.....	3,500.00
0.	Nov. 4, 2000, check # 91.....	500.00
0.	December 8, 2000, check # 92.....	6,000.00
4.	December 19, 2000, check # 93.....	398.50
0.	April 2, 2001, check # 94.....	500.00
0.	May 16, 2001, check # 95.....	1,000.00
0.	May 30, 2001, check # 96.....	2,000.00
0.	May 30, 2001, check # 97.....	2,000.00
0.	May 30, 2001, check # 98.....	2,000.00
5.	August 25, 2001, check # 99.....	3,500.00
0.	September 11, 2001, check # 100.....	15,000.00
0.	October 5, 2001, check # 2178.....	3,000.00
0.	October 9, 2001, check # 2179.....	5,000.00

\$92,623.42

Translation of hand-written receipt issues on October 9, 1999

MEMBER NEW YORK AND NEW JERSEY BARS

RAYMOND L. COLON
ATTORNEY AND COUNSELOR AT LAW

OCT. 9, 1999

299 BROADWAY
SUITE 1300
NEW YORK, NY 10007-190

TEL. (212) 964-8029
(212) 964-8030

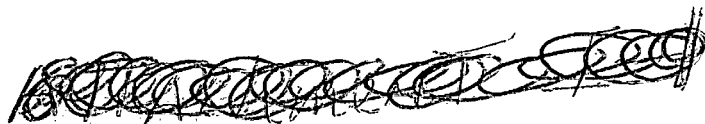
Received from Garcia Family for the defense of Agustin Garcia \$20, 000.00
dollars

APPENDIX

X

Signatures

Raymond Colon
Fernando Oliver



PAY TO THE ORDER OF Dr. Edward Teruya DATE 7/10/00

one thousand two hundred twenty four 92 100 DOLLARS

CHASE The Chase Manhattan Bank
Dyckman Street & Sherman Avenue
New York, NY 10040

FOR Edwards

⑈000087⑈ ⑆021000021⑆ 1490500460465⑈ ⑆0000122492⑈

PAY TO THE ORDER OF Fernando Oliver DATE 9/11/01

Fifteen thousand 00 100 DOLLARS

CHASE The Chase Manhattan Bank
Dyckman Street & Sherman Avenue
New York, NY 10040

FOR Edwards

⑈000100⑈ ⑆021000021⑆ 1490500460465⑈ ⑆0001500000⑈

PAY TO THE ORDER OF Raymond Colon DATE 5/30/01

Two thousand and 00 100 DOLLARS

CHASE The Chase Manhattan Bank
Dyckman Street & Sherman Avenue
New York, NY 10040

OR Edwards

⑈000097⑈ ⑆021000021⑆ 1490500460465⑈ ⑆0000200000⑈

PAY TO THE ORDER OF Fernando Oliver DATE 5/30/01

Two thousand and 00 100 DOLLARS

CHASE The Chase Manhattan Bank
Dyckman Street & Sherman Avenue
New York, NY 10040

FOR Edwards

⑈000098⑈ ⑆021000021⑆ 1490500460465⑈ ⑆0000200000⑈

~~⑈000000000000⑈~~

89
1-2490
210

PAY TO THE ORDER OF Edward Teriyan DATE 8/04/00

Five hundred \$ 500.
00/100 DOLLARS

CHASE The Chase Manhattan Bank
Dyckman Street & Sherman Avenue
New York, NY 10040

FOR Edmund Gama

⑈000089⑈ ⑆021000021⑆ 1490500460465⑈ ⑆0000050000⑈

90
1-2490
210

PAY TO THE ORDER OF Edward Teriyan DATE 11/02/00

Three Thousand Five hundred \$ 3500.
00/100 DOLLARS

CHASE The Chase Manhattan Bank
Dyckman Street & Sherman Avenue
New York, NY 10040

FOR Psychiatry Evaluation

⑈000090⑈ ⑆021000021⑆ 1490500460465⑈ ⑆0000350000⑈

93
1-2490
210

PAY TO THE ORDER OF Edward Teriyan DATE 12/19/00

Three hundred Ninety Eight \$ 398.00
00/100 DOLLARS

CHASE The Chase Manhattan Bank
Dyckman Street & Sherman Avenue
New York, NY 10040

FOR Edmund Gama

⑈000093⑈ ⑆021000021⑆ 1490500460465⑈ ⑆000039850⑈

88
1-2490
210

PAY TO THE ORDER OF Edward Teriyan DATE 7/28/00

one Thousand And Five hundred \$ 1500.
00/100 DOLLARS

CHASE The Chase Manhattan Bank
Dyckman Street & Sherman Avenue
New York, NY 10040

FOR Edmund Gama

⑈000088⑈ ⑆021000021⑆ 1490500460465⑈ ⑆0000150000⑈

APPENDIX Y

SUPREME COURT OF NEW JERSEY

Criminal Action

DOCKET NO. 089560

App. Div. No. A-001913-21T4

STATE OF NEW JERSEY, :

Respondent, :

vs. :

AGUSTIN GARCIA, :

Petitioner. :

Sat Below: Judges Gilson and DeAlmeida

AMENDED PETITION FOR CERTIFICATION

Agustin Garcia/SBI # 822642-B/ 428336
East Jersey State Prison
Lock Bag R, Rahway, N.J. 07065
Petitioner/*pro se*

Appendix ~~XXXX~~
Y

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14th Amend. U.S. Const	7,16,19
Art. I, Par. 1 Of N.J. Const	8,16,19

**CONSOLIDATED PROCEDURAL HISTORY AND STATEMENT OF
FACTS¹**

For the sake of brevity and convenience to all parties and this Court, Petitioner only states herein the facts from this case that are relevant to this Petition for Certification.

Petitioner was indicted on June 29, 2000 by a Bergen County Grand Jury, under Ind. No. 00-06-1368-I, with the following counts. Murder, First Degree; Unlawful Possession of Weapon for Unlawful Purpose, Second Degree; Unlawful Possession of Weapon without a permit, Third Degree; and four counts of Endangering the Welfare of a Child (Counts 4-7), Third Degree.

Petitioner was subsequently tried before a jury, from October 2, 2001 through October 22, 2001. During trial, on October 18, the trial Court dismissed Counts Four and Seven of the indictment based on the defendant's motion for acquittal. On October 22, 2001, the jury found the defendant guilty of all remaining counts of the indictment; And, on February 1, 2002, Petitioner was sentenced to life with 30

¹ "Aplt.'s" = Appellant

"Br." = Appellant's May 26, 2022 Brief

"Da:" = Defendant's appendix

"Petr.'s" = Petitioner

"Fn." = Footnote

years of mandatory minimum, and 4 consecutive years for an aggregated sentence of Life with 34 years. Petitioner was also sentenced to fines and penalties.

Petitioner appealed his convictions and sentences, and on On May 11, 2004, Appellate Division affirmed the defendant's convictions for murder (Count 1) and unlawful possession of a weapon (Count 2) and the sentences, but reversed the convictions for endangering to welfare of child (Count 5 and 6) and remanded for entry of acquittals in the judgment of conviction along with corrections to VCCB and SNSF penalties imposed on Count Two. [State v. Garcia, No. A-3939-01T2 (App. Div. (May 11, 2004)

On May 13, 2005 Petitioner timely and properly filed his first petition for Post-Conviction Relief ("PCR"), and attorney Michael G. Paul – who has a documented history of incompetency and drug use and have been suspended by this Court - was appointed to represent the Petitioner. Thereafter, on January 25, 2019, Assistant Deputy Public Defender reported to PCR court: "[[I]t is our position that the first PCR attorney [we appointed, Michael Paul] was ineffective." (Jan. 25, 2019 Trans. 16:23-24);

On May 4, 2007, the first PCR court gave permission to Petitioner to file a motion to supplement the first PCR Petition. (May 4, 2007 Trans. 43:18-21) Yet, right there and then, The first PCR court denied the first PCR petition. (May 4, 2007 Trans. 56-6). On May 8, 2007 and on August 1, 2007. Petitioner mailed the

motion to supplement the first PCR Petition. (Da: 249-253; 799-1032). The first PCR court's record reveals this motion was received **twice** by PCR court, on May 25, 2007 and August 7, 2007 respectively. (USPS tracking # 10070029, Da: 249-253; USPS tracking # 7001-1940-0001-2013-6225, Da: 254-256).

Alas, neither of these court filings appear on the first PCR court's logs (Da: 323-324, 456-457, 1037, 1057-1058), causing the May 4, 2007 first PCR ruling to remain non-final pursuant to N.J.C.R. 2:2-3 as to Petitioner's supplemental arguments that were received but not filed nor adjudicated, thereby preventing transfer of jurisdiction to Appellate Division as to those supplemental issues (Da: 406-7), i.e., assessment "within the context of evidentiary hearing (State v Nash, 212 N.J. 518, 535 (Jan. 13, 2013); State v Hannah, 2021 N.J. LEXIS 798 (Aug. 18, 2021))" of International Service, Inc.'s April 4, 2007 forensic expert report (Da: 1-16), first presented before PCR court in support of Petitioner's May 8, 2007 motion supplementing first PCR petition, and assessment of merit of Petitioner's discovery request for copy of original wedding videotape. (Da: 799-1032)

From 2007 through 2016, Petitioner filed various motions for reactivation of pending May 8, 2007 motion to supplement his first PCR petition, the last of these motions was filed on May 27, 2016 (Da: 325-360), triggering Criminal Division Manager, Lucie R. Ostapeck's June 1, 2016 response: "the petition is cognizable under N.J.C.R. 2:22-2," and further stated that:

I am in receipt of your above captioned "State v. Agustin Garcia, Ind. 00-06-1368-I [May 27, 2016] Motion [Da: 325-360], for Order Reactivating and/or Calendaring [Your pending May 8, 2007] New Trial Motion [Da: 249-256; 799-1032], and am forwarding same to the Office of the Public Defender for their review and consideration. (Da-257)]

On or around July 1, 2016, Assistant Public Defender, Louis Acevedo contacted Petitioner through videoconference to inform him that his Public Defender's Office was undertaking his representation on the pending May 8, 2007 motion. Thereafter, He wrote to Petitioner: "Rest assured that the Office of the Public Defender will do everything it can to protect your rights and advance all legal arguments available to you in this appeal and the underlying [May 8, 2007 motion]." (Da: 393; 399);

Eleventh, on March 20, 2017, Assistant Criminal Division Manager, Charlotte Phipp referred reconsideration motion of same matter for assignment of counsel, again, after finding prima facie pursuant to N.J.C.R. 3:22-6(b);

Twelve, on March 22, 2017, Assistant Deputy Public Defender, Emile Lisboa wrote to me: "I AM THE ATTORNEY WHO WILL BE REPRESENTING YOU ON YOUR PENDING CRIMINAL CHARGES IN BERGEN COUNTY" (Da-259);

Thirteenth, on August 25, 2016, March 3, 2017 and March 28, 2017, without already assigned counsel being present, and without any participation by already assigned counsel (Jan. 25, 2019 Trans. 61-5 to 63-3; Da: 257-259). PCR court issued advance orders (Da: 261-263; 280-281). Sanchez, Appellate 12

Jan. 26, 2018 Order (Da: 389; 459), dismissing timely and properly filed appeal, docket # A-004280-16T3 (Da: 408-478), was also issued without already assigned counsel, Emile Lisboa being present and without any participation as already assigned counsel:

Fourteenth, on January 25, 2019 hearing, PCR court denied INTERLOCUTORY discovery-motion filed by assigned counsel, Emile Lisboa (Da: 553-564), erroneously giving deference to ruling in civil OPRA proceedings: "'Judge Mizdol denied' ... 'Judge Mizdol denied it' ... 'But isn't this decided, that's my point. Judge Mizdol decide it on that particular [discovery] issue' [Jan. 25, 2019 Trans. 13-23 to 14-3; 14-16; 15:9-11]", despite issuing OPRA judge's remark: "THIS IS NOT A CRIMINAL PROCEEDING WHERE THERE ARE CONSTITUTIONAL [RIGHTS] [Nov. 30, 2016 Trans. 32:19-21]"; while at same time disregarding existence of timely and properly filed pro-se appeal docket # A-004280-16T3, as revealed by PCR court's record:

"Petitioner: 'I was assigned counsel when you deny [sic] -- when you the motion, I has already been assigned counsel on June 1. I had already Mr. Emile Lisboa representing me' -- "The Court: 'Then you might have an issue...' -- "Assigned Counsel: 'What [Petitioner] is saying is that you denied it, okay, after I was already assigned, but before I could even [file appearancel' -- "The Court: 'If you're saying I did something I shouldn't have because you had an attorney, that would have been appealable'" (Jan. 25, 2019 Trans. 62-1 to 63-3);

Fifteenth, on May 8, 2019, assigned counsel, William Fikar, filed motion to appeal

appeal to interlocutory discovery-motion (A-004280-16T3)

Sixteenth, on July 19, 2019, within the one year from January 5, 2019 provided by N.J.C.R. 3:22-12(a)(2)(C) for filing of "second or subsequent Petition for Post-Conviction Relief", Appellant timely filed instant subsequent PCR challenging ineffective assistance of assigned counsels (Da: 400-401), including but not limited to Emile Lisboa, who was indeed Appellant's first PCR counsel, in as much as, he had been assigned to represent Appellant on his pending May 8, 2007 motion supplementing the first PCR record pursuant to N.J.C.R. 1:7-4(b), and for new trial based on newly discovered evidence, (May 4, 2007 Trans. 43:18-21; Da: 249-256; 799-1032), whereby, Point I presented: "The Initial collateral proceeding raising ineffective assistance (466 U.S. 668) of counsel [which] is equivalent to direct appeal [545 U.S. 617]";

Seventeenth, on September 20, 2019, PCR court issued order: "DISMISSED WITHOUT PREJUDICE PURSUANT TO N.J.C.R. 3:22-12(a)(3) SINCE THE MATTER IS PRESENTLY ON DIRECT APPEAL IN APPELLATE DOCKET A-3575-18 (Da: 400-401);

Eighteenth, on October 13, 2021, Appellate Division affirmed matter docket # A-3575-18 (2021 WL 3771304);

Nineteenth, on January 5, 2021, within 90 day period from October 13, 2021 provided by N.J.C.R. 3:22-12(a)(3). Appellant filed motion to reactivate and

calendar his "DISMISSED WITHOUT PREJUDICE July 19, 2019 (Da: 400-401); Resp.'s Pa066-Pa-107 (Nov. 9, 2023));

Twentieth, on December 21, 2021, PCR court issued order denying Appellant's subsequent PCR (Da: 1033-1035; 1063).

QUESTIONS PRESENTED

1. Did Already Assigned Counsel's Absence And Failure To Participate In Critical Stages And/or Proceedings Deprived Petitioner Of His Constitutionally Guaranteed Right To Due Process And The Assistance Of Counsel?

2. Did Courts Issuance of Orders Without Already Assigned Counsel Presence And Without Any Participation By Already Assigned Counsel Deprived Petitioner Of His Constitutionally Guaranteed Right To Due Process And The Assistance Of Counsel?

LEGAL ARGUMENT

POINT 1: SUPERIOR COURT OF NEW JERSEY/ APPELLATE DIVISION'S MAY 23, 2024 ORDER ERRED, FAILING TO ASSESS MERIT OF PETITIONER'S CONSTITUTIONAL VIOLATION ISSUE, I.E., PCR COURT'S DEC. 21, 2021 ORDER, RUBBER-STAMPING ITS OWN AUGUST 25, 2016, MARCH 3, 2017 AND MARCH 28, 2017 ORDERS, ISSUED WITHOUT ALREADY ASSIGNED COUNSEL BEING PRESENT AND WITHOUT ANY PARTICIPATION FROM HIS PART, DEPRIVED PETITIONER OF THE RIGHT TO DUE PROCESS OF LAW AND THE ASSISTANCE OF COUNSEL GUARANTEED BY 6TH AND 14TH AMEND. U.S. CONST., WARRANTING GRANTING OF CERTIFICATION AS OF RIGHT PURSUANT TO N.J.C.R. 2:2-1(a)(1)&(4); 2:12-4, OR OTHERWISE, IN BEST INTEREST OF JUSTICE.

(A) PCR court's Dec. 21, 2021 "No Cognizable" Denial, Relying Solely on Same court's Aug. 25, 2016, March. 3, 2017, and March. 28, 2017 orders (Da: 361-364; 550-2), Issued Without Already Assigned Counsel Being Present and Without Any Participation By Already Assigned Counsel, Emile Lisboa (Jan. 25, 2019 Trans. 62:3-19; Da-257), Deprived Petitioner of His Constitutionally Guaranteed Right To The Assistance of Counsel And Due Process Of Law, Guaranteed by the 6th and 14th Amend. U.S. Const., And Art. I, Par. 1 Of N.J. Const., Warranting Granting Of Certification And Requested Relief, In Best Interest of Justice.

First, Petitioner does hereby repeats and reasserts points headings and related argument raised through his appellate-Brief (Aplt. s Br. Pp. 1-62; Da: 1-1117 (May 26, 2022); and Reply-Brief (Aplt. s Reply-Cert. pp. 1-15; Attach. A-C (Dec. 8, 2023), as if raised herein at length);

Second, Contrary to PCR court's Dec. 21, 2021 conclusion and order:

"as Judge Guida had originally found on the record on January 25, 2019, any facet or issue concerning the video is not newly discovered, and therefore, the defendant cannot re-litigate this issue. Because this issue is moot, the defendant has no claim to ineffective assistance of counsel, as the issue in and of itself would have had no impact on the final decision ... [Da: 1033-35]".

This conclusion and Order constitutes rubber-stamping contrary to Towsend v. Stain, 372 U.S. 314, 320. Accord. e.g., Purkett v. Elem, 514 U.S. 765, 769 (1995): "[N]o deference due to state court conclusion if state court failed to make finding on determinative issue", i.e., assessment on merit of May 8, 2007 motion supplementing the first PCR Petition pursuant to N.J.C.R. 1:7-4(b), and for new trial based on newly discovered evidence pursuant to N.J.C.R. 3:20-2 (Da: 249-253). Ford v. Wainwright, 477 U.S. 399, 411 (1986); Cabana v. Bullock, 474 U.S.

376, 388 n.5 (1986), whereas, PCR court's August 25, 2016, March 3, 2017, and March 28, 2017 orders (Da: 361-364, 550-2, 1036); and, Appellate Division's Jan. 26, 2018 Order (Da-459), dismissing timely and properly filed appeal (Da: 408-478), were all arbitrarily issued without already assigned counsel being present and without any participation by already assigned counsel, Emile Lisboa² (Jan. 25, 2019 Trans. 61-5 to 63-3; Da: 257-259), violated N.J.C.R. 3:4-2(2.1).

Additionally, Appellate Division's repeated rubber-stamping of PCR court's unreasonable ruling on ineffective assistance of trial counsel issue raised on first PCR petition, without ever assessing merit "within the context of evidentiary hearing (State v Nash, 212 N.J. 518, 535 (Jan. 13, 2013); State v Hannah, 2021 N.J. LEXIS 798 (Aug. 18, 2021)", of forensic expert's analysis (Aplt.'s Da: 1-16 (May 26, 2022)), timely filed in supplementation of first PCR record, thereby, failing to develop adequate record required for meaningful appellate review, consequently, deciding first PCR contrary to long established federal law in

² N.J.C.R. 3:4-2(2.1): "[O]nce the right to counsel has attached, it is clear that the right to counsel requires the presence of counsel at every critical stage of the proceedings; including motions, summations, charge, and sentencing, and denial of that right will ordinarily nullify a consequent conviction without defendant's need to demonstrate specific resultant prejudice." State v. Deluzio, 274 N.J. Super. 101, 118-121 (App. Div. 1993), aff'd o.b. 136 N.J. 363 (1994).

Strickland, without ever performing the "[Strickland two prong testing [which] is in fact been squarely established by U.S. Supreme Court for review of ineffective assistance of counsel claim]' See, Harrington v. Richter, 131 S. Ct. 770; 178 L. Ed. 2d 624 (Jan. 19, 2011)", instead, relying only on judge's bias opinion: ["attorneys were well known...[27T 48-23 to 49-1; 53-19 to 54-4; Aplt.'s Da 516-7 (May 26, 2022)"]]. This constituted objectively unreasonable [Locker v. Andrade, 538 U.S. 6, 75-76 (2000)] application of long establish federal law, Strickland & Cronin, supra., thereby, subjecting appellant to "fundamental miscarriage of justice, supra fn. 3, [498 U.S. 927; Black Law Dict. at 697]".

Case in point, had PCR judge secured participation by already assigned counsel at August 25, 2016, March 3, 2017, and March 28, 2017 hearings as required pursuant to N.J.C.R. 3:4-2(2.1), defendant would have been able to demonstrate following before PCR court:

(1) that PCR Judge was erroneously ruling on Petitioner's 2016 motion to reactivate, as if it were, the actual May 8, 2007 motion (Aplt. s Br. pp. 37-42; 52-54 (May 26, 2022)), causing this motion to be timely filed within 20 days of May 4, 2007 first PCR denial;

(2) that Petitioner May 8, 2007 motion, supplementing first PCR record pursuant to N.J.C.R. 1:7-4(b) with "April 4, 2007 Forensic Report" issued by International Media Service, Inc. (Da 1-16), presented to court for the first time in support of

May 8, 2007 motion (Da: 257-259; 799-1032), **required** PCR court's filing and ruling on merit, but PCR court's failure to comply with N.J.C.R. 3:22-7, prevented transferring of jurisdiction to Appellate Division pursuant to N.J.C.R. 2:2-3 (Da: 406-7), upon receipt of **Notice of Appeal dated June 6, 2007, stamped FILED by Appellate Division on June 18, 2007** (Da-405), for matter docket # A-5437-06 (Nov. 6, 2009), causing this Court's ruling to be **JURISDICTIONALLY DEFECTIVE**; and,

(3) that assessment of wedding video evidence "within the context of evidentiary hearing (State v Nash, 212 N.J. 518, 535 (Jan. 13, 2013); State v Hannah, 2021 N.J. LEXIS 798 (Aug. 18, 2021)", would have uncovered the existence of a second wedding videotape never discussed in court nor offered to defense (Da-1109), which would have produce material and relevant newly discovered evidence concealed by prosecutor, including but not limited to Public Defender's finding: "it does appears to have been struggle prior to the shots going off[!] [[Jan. 25, 2019 Trans. 38:1-4]".

Significantly, Appellate Division assessed wedding videotape as: "[O]bjective evidence of the timing and sequence of what occurred [State v. Garcia, No. A-3939-01T2 (App. Div. (May 11, 2004); Aplt.'s Br. p. 2; Fn. 2 (May 26, 2022); Reply p. 1, Fn. 1 (Dec. 8, 2023)". Pertaining to this wedding videotape, the record reflect, that Res Gestae: "MY LOVE [and] I LOVE YOU LILLY" (Aplt.'s Br. pp. 24-

25 (May 26, 2022); Da: 13-14; 870; 891-2)", detected by forensic expert at very instant of shots firing, but maliciously concealed by prosecutor out of fraudulent transcript presented to Jury (Da: 72-73), deprived Jury of responsive answer to their critical inquiry: **"HE NEVER ONCE SAID 'SHE WAS THE LOVE OF MY LIFE. I SAW HER IN THE DRESS AND SNAPPED'"** (Da-75-b), flagrantly violating NJRPC 3.8(d).

Moreover, as documented through May 26, 2022 appellate brief with supporting appendix, and December 8, 2023 Reply letter-brief with attachments, on May 8, 2007, four days after PCR court's denial of first PCR (May 4, 2007 Trans. 56-8 to 58-10), Petitioner hand-delivered to prison officer for mailing to court legal mail package (Da: 249-256; 799-1032), **"held filed ... at moment of delivery [prison mail-box rule. 487 U.S. 266]"**, containing his motion supplementing first PCR record pursuant to N.J.C.R. 1:7-4(b) (Da: 807; 1013-29) with International Media Service, Inc.'s **April 4, 2007 Forensic Expert Analysis of Wedding Videotape** (Da: 1-16), unveiling finding # 7: "[T]he shooting is observed approximately 26 seconds after a sound is heard consistent with that of a door opening. **Sound consistent with a struggle is heard at the time of entry**" (Reply-Cert. p. 7; Da: 2; 4; 12; 869-870):

Clearly, as reported by Juror to Record Newspaper: **"JURY SEARCHED THE VIDEO FOR FOR SIGN OF SELF-DEFENSE [finding only 'FOUR**

SECONDS [pre-shooting recording period," (Aplt.'s Br. p. 36, Fn. 16 (May 26, 2022); Reply-Cert. p. 6 (Dec. 8, 2023); Da-74), drastically contrasting with **"ABOUT A MINUTE"** consistently reported under oath by four eye-witnesses: Juan Ricart, Ramon and Ana Nunez, and Toorialai Mahboobi" (Oct. 02, 2001 Trans. 139:10-13; Oct. 03, 2001 Trans. 201:3-5; 205:8-13; Da: 77-81); and, also contrasting with trial Judge finding: "At [serial number] 1336, shots were fired [1336/30 "30 frames in one second of video " (Feb. 14, 2001 Trans. 30:3-4), evidencing 45 seconds of pre-shooting recording, all, hidden from Jury, because as evidenced by comparative analysis of transcripts (Aplt.'s Br. pp. 21-25 (May 26, 2022); Da: 869-870; 888-9), prosecutor had fraudulently concealed sound on over sixty seconds of filming immediately preceding first shots firing, thereby, hiding from Jury time-frame "00:00:59:06 'The inside door is forced open and the shooter enters and a struggle can be heard. " (Da: 2; 4; 12; 869-870; 888-9) This struggle was confirmed through Public Defender's assessment: "it does appears to have been struggle prior to the shots going off!! [[Jan. 25, 2019 Trans. 38:1-4]".

Undeniably, "[P]rosecution present[ed] a witness, David Cassirer, who testifies falsely [866 F.3d 139 (3d Cir. 2017)]", i.e., telling the court: "[1] 'Original S-VHS tape was the source of all the images shown on this tape we just played [Feb. 14, 2001 Trans. 31:8-12]"; and, [2] 'The end product copy tapes were exactly the same as the original ... [I] made no changes, addition, deletion from

[videotape] [Feb. 14, 2001 Trans. 24:18-20; 31-25 to 32-1]". Jones v. Bagley, 696 F.3d 475, 486 (6th Circ. 2012): "[T]he prosecution's suppression of information material to the defense is a claim that is not time barred and not procedurally barred" (Aplt.'s Br. pp. 20-25 (May 26, 2022)). As direct causation of above documented prosecutor's fraud, murder conviction was void of required Mens Rea element, i.e., Prior to State psychiatrist, and in his presence, **Renowned Psychiatrist, Dr. Daniel Greenfield** had already testified:

"[1] 'acknowledged that Garcia passed a battery of standardized psychological tests'; [2] 'He was not acting in a knowing and purposeful way'; [3] '"In Mr. Garcia's test he presented a valid test. He wasn't faking up or down'; [4] 'in my opinion would support a legal determination, a court determination that diminished capacity applied to him at the time'; [5] 'if pressed to develop a formal diagnosis statement about his mental state at the time that's what it would be, acute adjustment disorder with mixed anxiety and depression'; [6] 'he wasn't in his right mind. He did not have the intention to kill her ...' [Oct. 17, 2001 Trans. 55-25 to 56-7; 67-23 to 68-2; 68:17-25; 70-17 to 71-1; 81-15 to 81-16]"

This testimony was supported by State's psychiatrist, Dr. Eshkenazi, who assessed defendant's responses as follows:

"Yes. I have no doubt that that was the truth, what he told me. 'That [on 09-25-99] [Gladys Ricart] slept at his house and left sometime about four o'clock in the morning.'... 'He remembered as he walked into the house that her brother, I believe, got hold of him in the arm. This after somebody hit him in the head. He lost consciousness. While he was falling he saw the victim, the white dress. A struggle developed and somehow the gun fired. The gun was in his attach case but somehow it fired. Thereafter, he was hit one more time. He blacked out, lost consciousness ... He was very polite, very cooperative, answered all of my questions to the best of his ability. [October 17, 2001 Trans. 152-14 to 152-15; 133:10-18; 154:5-6]"

Because Petitioner's May 8, 2007 timely filed motion, supplemented the first PCR record with consent of court (May 4, 2007 Trans. 43:18-21; Da: 807; 1013-29), it involves the constitutional question of ineffective assistance of trial and direct appeal counsels, i.e., failing to seek forensic testing of wedding videotape (104 S.Ct. 2052, 2066 (1984)), state-evidence-in-chief (Aplt.'s Br. p. 2; 20-25 (May 26, 2022); Da: 1-16; 72-73; 864-897); and the first PCR assigned counsel, Michael Paul, who after violating attorney-client privilege, i.e., attaching to his September 30 2006 brief an unsigned draft of forensic expert's analysis (Aplt.'s Br. p. 33 (May 26, 2022); Da: 169 (a & b), and without ever providing court with final forensic expert's report signed by International Media Service, Inc. on **April 4, 2007** (Da: 1-16), violating N.J.C.R. 3:22-6[2]; State v. Rue, 175 N.J. 1, 16-17 (2002), He advocated against Petitioner and in support of State, i.e., telling the court: "[the video] wasn't tainted at all ... It is nothing in there relative to disparity of the language that was transcribed between the actual transcript of the tape ... and what my client's expert's is". (May 4, 2007 Trans. 4:2-3; 20-34; Jan. 25, 2019 Trans. 5:15; 16:23-24; Aplt.'s Da:1-16; 72-73; 867-971; 887-889 (May 26, 2022), (Reply-Cert. pp. 10-11 (Dec. 8, 2023)). No court has ever ruled on this constitutional issue adhering to Strickland, i.e., performing two prongs testing (Aplt.'s Reply-Cert. p. 5-8 (Dec. 8, 2023)).

Moreover, as evidence by PCR court's log (Da: 323-324; 456-457; 1037; 1057-1058), Petitioner's May 8, 2007 motion was never filed by Criminal Division manager adhering to N.J.C.R. 3:22-7 (Aplt.'s Reply-Cert, p. 3), which is a fundamental injustice that prevented assessment of wedding videotape, State's evidence-in-chief "within the context of evidentiary hearing (State v Nash, 212 N.J. 518, 535 (Jan. 13, 2013); State v Hannah, 2021 N.J. LEXIS 798 (Aug. 18, 2021)", causing my May 8, 2007 motion to remain pending before PCR court pursuant to N.J.C.R. 2:2-3, preventing transferring of jurisdiction to Appellate Division upon receipt of **Notice of Appeal dated June 6, 2007, stamped filed by Appellate Division on June 18, 2007** (Da-405), for matter docket # A-5437-06 (Nov. 6, 2009), causing this Court's ruling to be **JURISDICTIONALLY DEFECTIVE**, warranting reversal and remand to correct resulting miscarriage of justice.

Clearly, PCR court's failure to comply with N.J.C.R. 3:22-7, i.e., filing and ruling on merit of my May 8, 2007 motion, supplementing first PCR record pursuant to N.J.C.R. 1:7-4(b) (May 4, 2007 Trans. 43:18-21; (Aplt.'s Br. pp. 31-32; Da: 807; 1013-29 (May 26, 2022))), caused May 4, 2007 first PCR denial to be **Non-Final** pursuant to N.J.C.R. 2:2-3[3:3] (Da: 406-7), rendering May 8, 2007 motion into an extension of pending first PCR, consequently, assigned counsels, Emile

Lisboa and Jillian Elko are indeed Petitioner's first PCR counsels (Da: 259;

393; 399), whose representation is governed under N.J.C.R. 3:8-3 & 3:4-2(2.1);

(B) Assigned Counsel, Assistant Deputy Public Defender, Emile Lisboa's Egregiously Ineffective Assistance, Failing to Even Enter Timely Appearance Adhering To N.J.C.R. 3:8-3; 3:22-6A, "**Abandon[ing] Appellant**"³, i.e., Allowing PCR Judge To Enter Orders Dated August 25, 2016, March 3, 2017, And March 28, 2017 (Da: 361-364; 550-2), And Appellate Division's Aug. 31, 2017, Jan. 26, 2018, Apr. 6, 2018, Dec. 7, 2018 (Da: 420; 459; 476; 478); And Supreme Court of New Jersey's Jan. 23, 2018 (Da-458). All these Orders Entered Without Already Assigned Counsel Being Present And Without Any Participation Of Already Assigned Counsel, Emile Lisboa. (Jan. 25, 2019 Trans. 62:3-19; Da-257) Thereby, Depriving Appellant Of Right To Counsel And Due Process Of Law, Guaranteed By The Sixth And Fourteenth Amendments Of U.S. Constitution, And Art. I, Par. 1 Of N.J. Constitution..

Petitioner humbly repeats and reasserts above Point I(A) and related argument, as if raised herein at length). Additionally, Petitioner humbly submit that his first PCR assigned counsel, Emile Lisboa "[A]bandoned him (Aplt.'s Br.pp. 37-46), e.g., allowing PCR court's August 25, 2016, March 3, 2017, and March 28, 2017 orders

³ Gilberto Garza v. Idaho, 586 U.S. 139 S.Ct. ___, 203 L. Ed. 77, 2019 LEXIS 1596 (Feb. 27, 2010): "Flores-Ortega's reasoning shows why an appeal waiver does not complicate this straightforward application. That case, like this case, involves a lawyer who forfeited an appellate proceeding by failing to file a Notice of Appeal. Id. at 473-475, 120 S.Ct. 1029, 145 L.Ed. 2d at 985. As the Court explained, [13] given that past precedents call for a presumption of prejudice whenever the accused is denied counsel at a critical stage. It makes even greater sense to presume prejudice when counsel's deficiency forfeits an appellate proceeding all together," Id. at 483 120 S.Ct. 1029, 145 L.Ed. 985. After proceedings that never took place." Id. (quoting Smith v. Robinson, 528 U.S. 259, 286, 120 S.Ct. 746, 145 L.Ed. 2d. 756 (2000))."

(Da: 361-364, 550-2), and this Court's Jan. 26, 2018 Order (Da-459), dismissing timely and properly filed appeal (Da: 408-478), all these orders were arbitrarily issued without assigned counsel being present and without any participation by already assigned counsel, Emile Lisboa (Jan. 25, 2019 Trans. 61-5 to 63-3; Da: 257-259), flagrantly violating N.J.C.R. 3:4-2(2.1).

It should be underscored, that despite assigned counsel's filing of sworn certification before PCR court attesting: "As the Court is aware, in 2017 the Office of the Public Defender reviewed Mr. Garcia's requests and Pro-Se Motions concerning certain video evidence utilized at his trial AND AGREED THAT SAID MOTIONS HAVE MERIT." (Da-225) Also after reporting to the PCR court: "[[I]t is our position that the first PCR attorney [we appointed] was ineffective." (Jan. 25, 2019 Trans. 16:23-24) Even after identifying ten OPD's key findings (Aplt.'s Br. pp. 35-37 (May 26, 2022); Reply-Cert. pp. 10-11 (Dec. 9, 2023)), assigned counsel, Emile Lisboa rendered "Inadequate [466 U.S. 668 (1984)] representation." (Aplt.'s pp. 37-46 (May 26, 2022)). Similarly, Jillian Elko provided me with ineffective assistance of counsel (Aplt.'s Br. 46-50 (May 26, 2022)), warranting granting of certification, assessment on the merits and relief in best interest of justice.

Petitioner relies upon the briefs (Petr.'s Br. pp. 1-62; Da: 1-1117 (May 26, 2022); and, Reply pp. 1-15; Attach. A-C (Dec. 8, 2023), submitted to the Appellate

Division (copy enclosed) for further explication of the issues involved, and respectfully requests permission to file a supplemental brief on these issues, should this Court grant his petition for certification.

Date: August 21, 2024

Respectfully submitted,


Defendant-Petitioner, pro se

CERTIFICATION

I certify that this petition presents a substantial question and it is being filed in good faith and not for purposes of delay.

Date: August 21, 2024

Respectfully submitted,


Defendant-Petitioner, pro-se

REASONS WHY CERTIFICATION SHOULD BE GRANTED

Certification should be granted in the interest of justice because petitioner's pro-se appeal raised constitutional issue decided by Appellate Court contrary to Stare Decisis in light of mandatory authorities cited above...

COMMENTS ON THE APPELLATE DIVISION OPINION

The May 23, 2024 ruling of the Appellate Division failing to assess merit of Petitioner's question of constitutional dimension, i.e., his ABANDONMENT by his already assigned counsel, Emily Lisboa, who allowed courts's entering of orders

without him being present and without any participation from his part (Appl.'s Br. pp. 26-50 (May 26, 2022); Reply-Cert. pp. 1-15 (Dec. 8, 2023)), together with courts' issuance of such unrepresented orders, despite Petitioner repeatedly notifying them that he was being represented by Public Defender (Jan. 25, 2019 Trans. 62:3-19; Da-257), deprived Petitioner of due process of law and right to the assistance of counsel guaranteed by 6th and 14th Amend. U.S. Const., warranting granting of certification in best interest of justice.

CONCLUSION

For the reasons set forth herein, it is humbly submitted that this Petition for Certification should be granted.

Respectfully submitted,


AGUSTIN GARCIA

Dated: August 21, 2024

APPENDIX Z-1

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

AGUSTIN GARCIA - PETITIONER

(Your Name)

VS.

STATE OF NEW JERSEY - RESPONDENT

TABLE OF APPENDIX (VOLUME ~~2 OF 3~~ ^{2-1 OF 2})

Item No.	Ref. No.
1. International Media Service, Inc.'s April 4, 2007 forensic expert report and certified transcript.....	Da: 1-16
2. Fraudulent wedding videotape transcript prepared and introduce to court by prosecutor and hand-delivery to Jury....	Da: 72-73
3. Juror's statement to Record Newspaper...	Da: 74-75
4. Seizure of Evidence Report (video cassette tape).....	Da: 99-100
5. Assigned counsel, Emile Lisboa's Oct. 15, 2018 Sworn Certification filed before Superior Court of New Jersey/ Law Div...	Da: 225-7
6. N.J.D.O.C.'s record, evidencing delivery of Petitioner's May 8, 2007 motion supplementing first PCR record....	Da: 249-253
7. U.S.P.S.'s record of Petitioner's Aug. 1, 2007 duplicate filing of Petitioner's May 8, 2007 motion...	Da: 254-5
8. Superior Court of New Jersey/	

- Law Div.'s Apr. 16, 2014 docket.... Da: 323-4
9. Superior Court of New Jersey/
Law Div.'s Sept. 24, 2019 order..... Da: 400-1
10. Petitioner's June 6, 2007 Notice of
appeal, stamped "RECEIVED APPELLATE
DIVISION 2007 JUNE 18 P 12:21"..... Da: 405
11. Superior Court of New Jersey/
Appellate Div.'s Aug. 31, 2017 Order.. Da: 420
12. Superior Court of New Jersey/
Law Div.'s Apr. 15, 2014 docket..... Da: 456-7
13. Supreme Court of New Jersey's
Jan. 23, 2018 Order..... Da: 458
14. Superior Court of New Jersey/
Appellate Div.'s Jan. 26, 2018 Order.. Da: 459
15. Superior Court of New Jersey/
Appellate Div.'s Apr. 6, 2018 Order... Da: 476
16. Superior Court of New Jersey/
Appellate Div.'s Dec. 7, 2018 Order... Da: 478
17. Superior Court of New Jersey/
Law Div.'s Sept. 20, 2019 order..... Da: 488-9
18. Superior Court of New Jersey/
Law Div.'s Sept. 20, 2019 order..... Da: 490
19. Petitioner's May 8, 2007 Brief and
Certification in support of motion
supplementing first PCR record.... Da: 799-908

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2 806-1705bus/646 645-9118cel

E: Forensic Examination of Recorded Videotape Evidence
UB: New Jersey vs. Augustin Garcia

FORENSIC REPORT

We received Federal Express shipment #851119144304 containing two (2) videocassette copies, one labeled 09/26/99 Wedding with Sound (LSG ID: Q-1 Exhibit A) and the other labeled States Exhibit 306 App. Div. No. 393901T2 (LSG ID: Q-2 Exhibit B) for forensic examination.

The videocassettes were wrapped in foil but were placed loose in the box without any padded (bubble wrap) protection as previously instructed. The videocassette dated 09/26/99 sustained minor damage and required repair before it could be played in a VCR.

1 Direct Forensic Copies were made and one (1) set was provided to the client.

THE ANALYSIS

The focus of the forensic examination was to determine the following:

Were any alterations performed on Q-1 and Q-2?

Is there any recorded evidence to support claims made that an altercation had occurred prior to the event?

Provide a forensic time study showing the events leading up to the shooting.

Provide a forensic translation and transcription of the events leading up to the shooting.

Da-1

Da-1

Da-1338

Da-1

FINDINGS

- Q-1 is a multi-generation copy and is a composite videotape of the events taking place at a wedding on 9/26/99.
- Q-2 is a multi-generation copy and is a composite videotape of the selected events taking place at a wedding on 9/26/99.
- Q-1 and Q-2 by virtue of the fact that they are composite videotapes of the events taking place at a wedding on 9/26/99 have been edited.
1. Q-2 has been further edited for the purposes of a jury presentation of the events taking place at a wedding on 9/26/99.
 5. The contents of the individual scenes of the events taking place at a wedding on 9/26/99 contained in Q-1 and Q-2 appear to be identical and have not been altered.
 6. There is no evidence observed or heard to support the contention that a protracted altercation or struggle ensued prior to the shooting.
 7. The shooting is observed approximately 26 seconds after a sound is heard consistent with that of a door opening. Sounds consistent with a struggle is heard at the time of entry.
 8. There was a struggle for control of the weapon after the first two shots were fired.
 9. The shooter can be heard yelling and his speech was abnormal and slurred.
 10. The events taking place at the time of the shooting in Q-1 and Q-2 appear to be identical. For the purpose of the forensic examination our firm relied on Q-2, which was the videotape that was shown to the jury.

Respectfully submitted,

The LEGAL SERVICES GROUP
@ International Media Services, Inc.

Stuart Allen

Stuart Allen, ACFE, ABRE, SMPTE, IEEE, President

SEAL

State of New Jersey
Vendor Id: 222-125-765/000
www.intlmediasvcs.com

Da-2

~~Da-2~~

member:
American College of Forensic Examiners
American Board of Recorded Evidence
Society of Motion Picture and Television Engineers
Institute for Electrical and Electronic Engineers

Da-1339

Da-2

Da-1-2

EXHIBITS

EXHIBIT A:

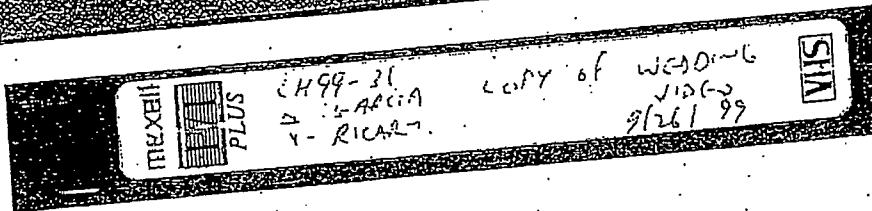
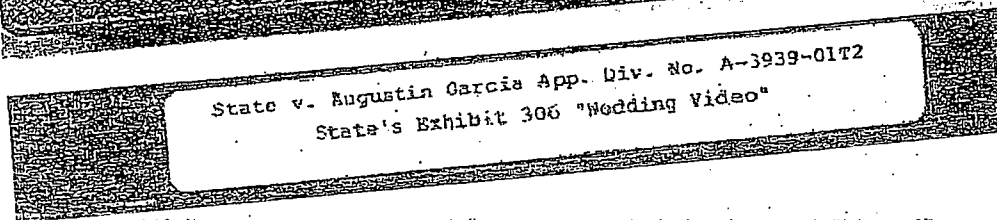
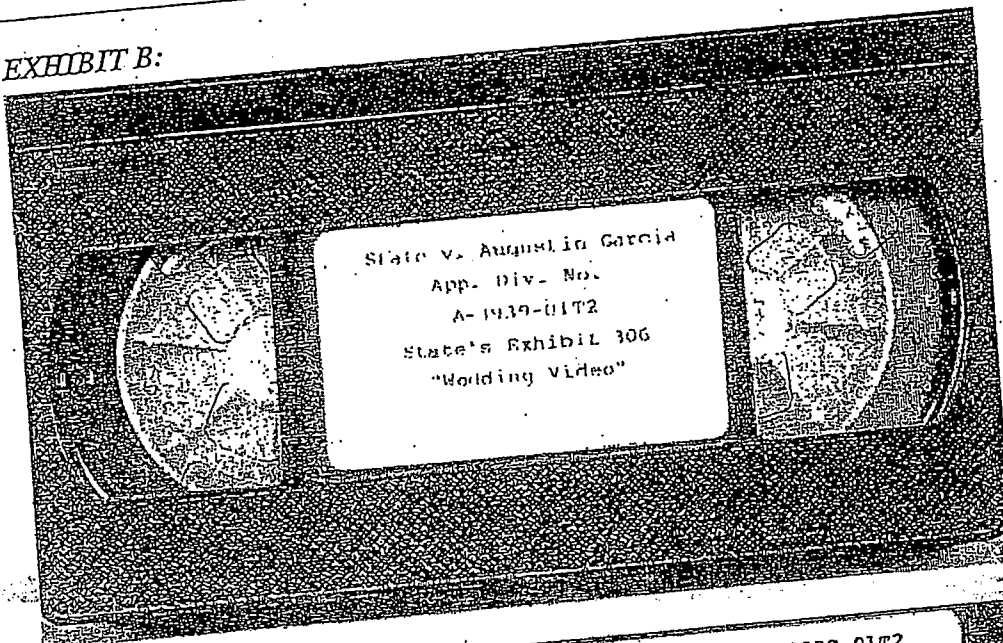


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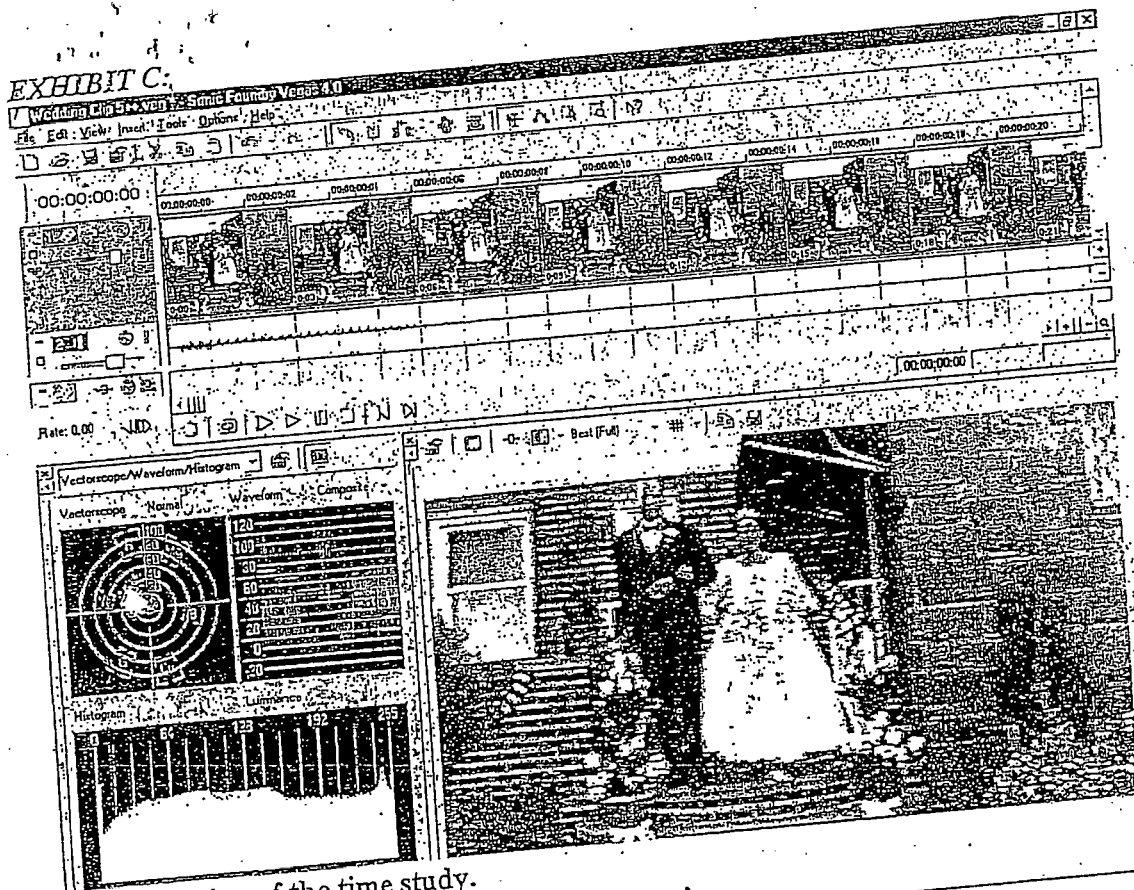
Da-3

~~Da-340~~

~~Da-3~~

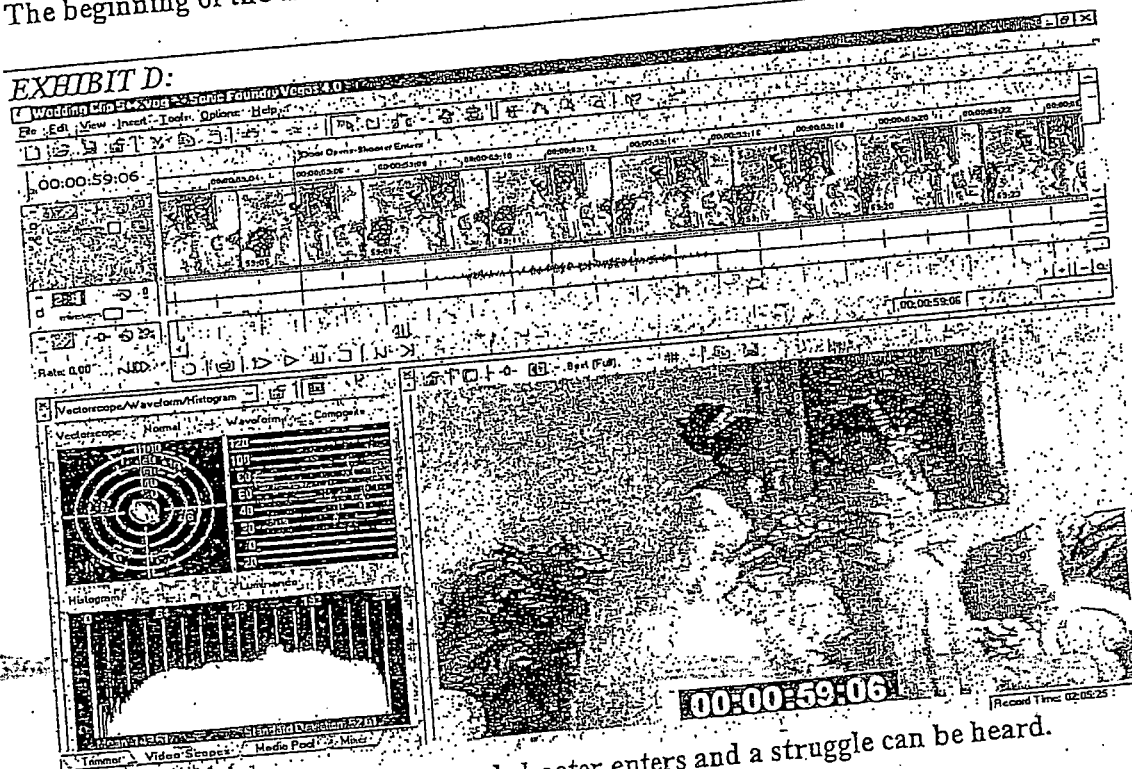
Da-3

EXHIBIT C:



The beginning of the time study.

EXHIBIT D:



The inside door is forced open and shooter enters and a struggle can be heard.

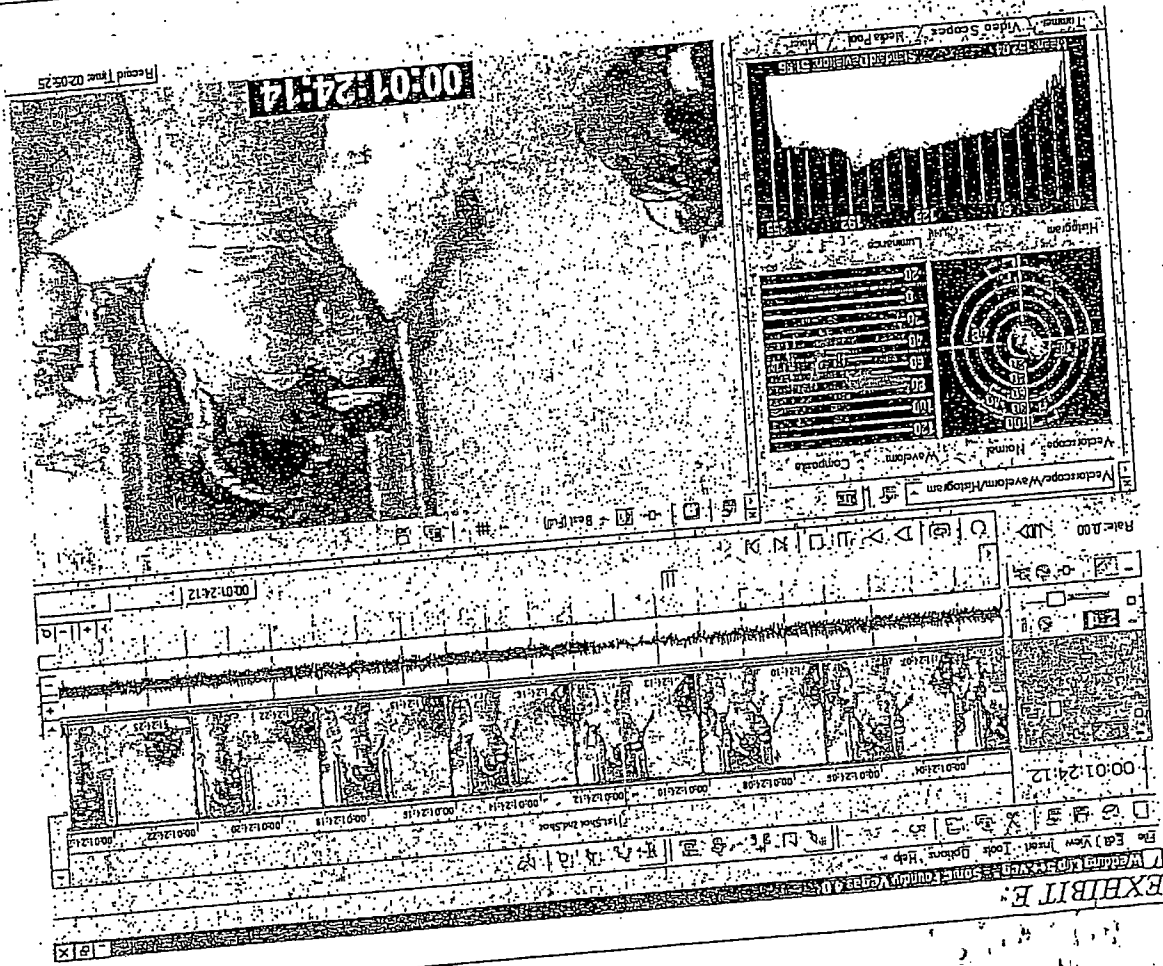
Da-4

Da-1-341

Da-4 Da 4



Second shot occurs immediately after.



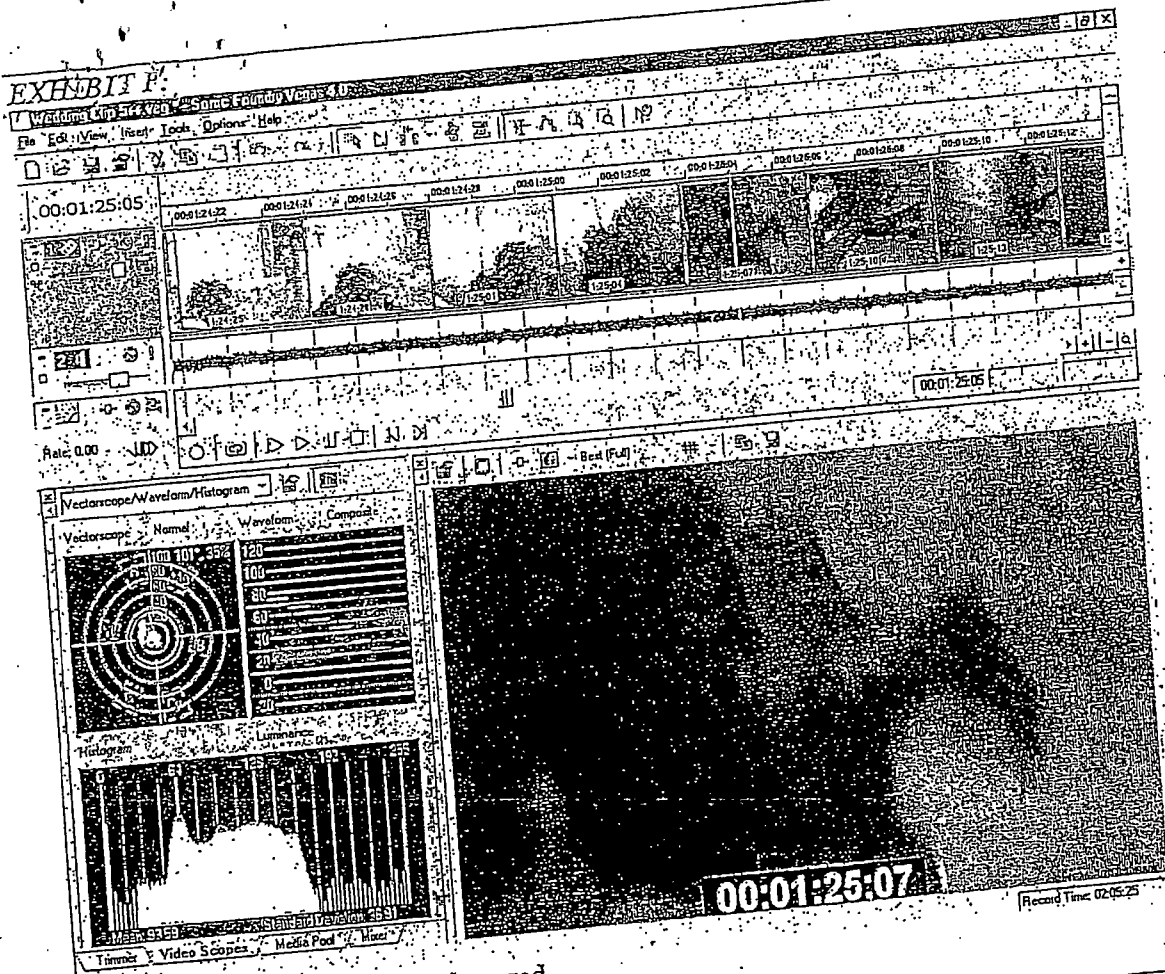
First shot is fired.

02-05-11

BCC 1342

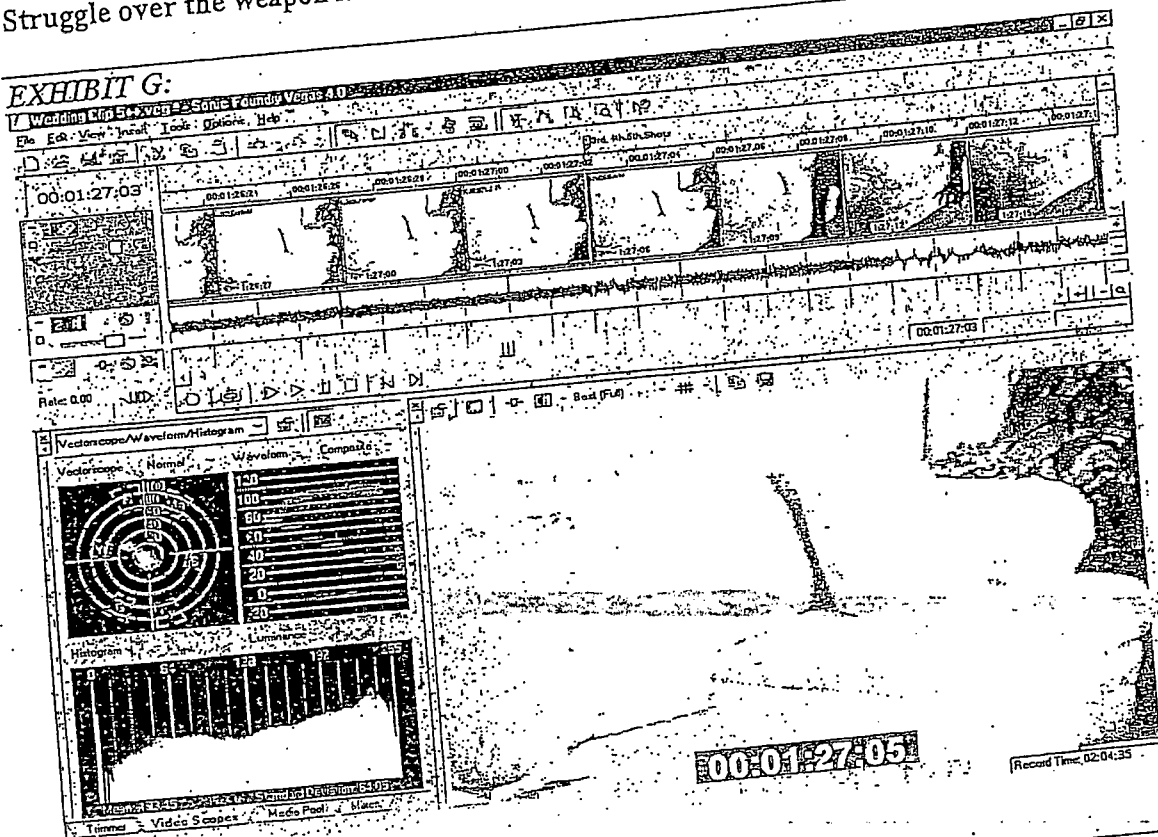
DA-5

EXHIBIT F:



Struggle over the weapon is observed.

EXHIBIT G:



Three more shots are fired.

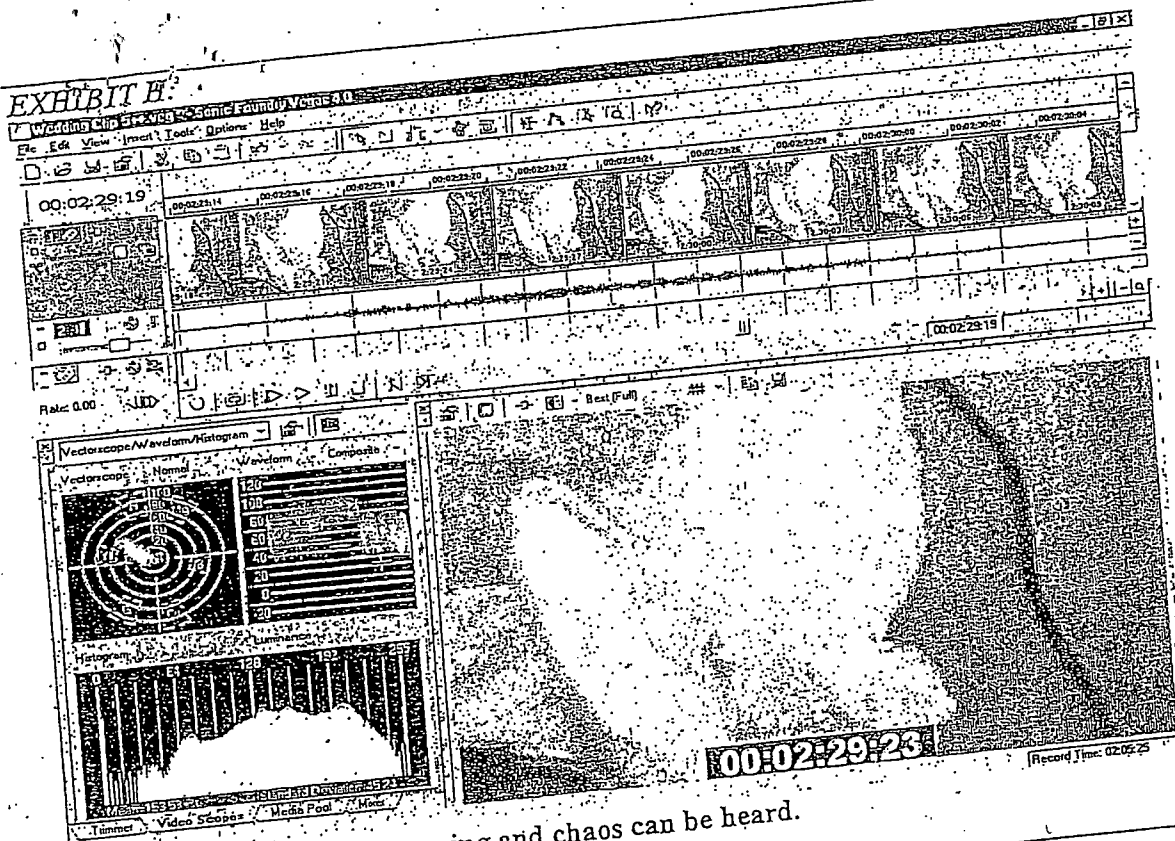
Da-6

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Da-6

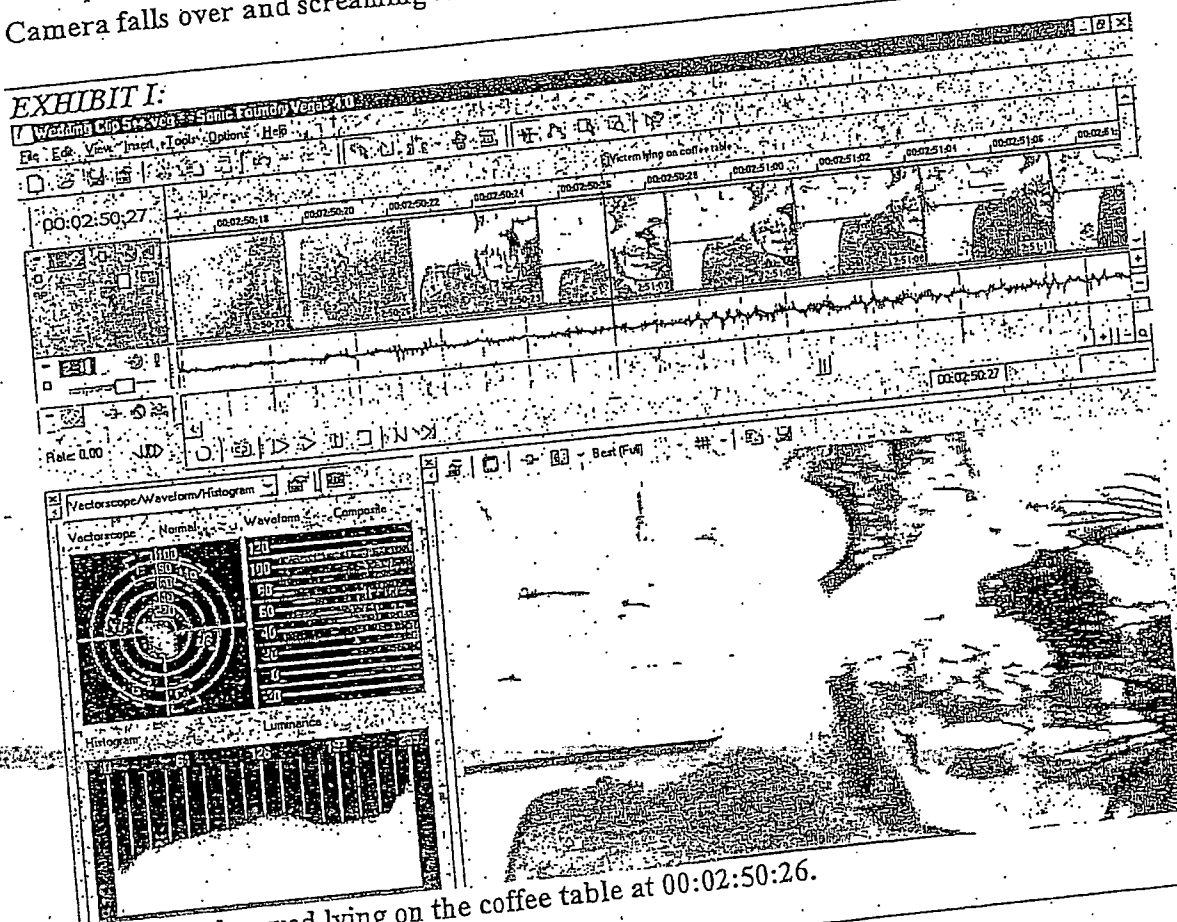
Da-5-2

EXHIBIT H



Camera falls over and screaming and chaos can be heard.

EXHIBIT I:



Victim is observed lying on the coffee table at 00:02:50:26.

Da-7

~~Da-7~~
~~Da-7~~

fe. 2-6

STATE OF NEW JERSEY
COUNTY OF UNION

STATE of NEW JERSEY

VS.

AUGUSTINE GARCIA
Appellant

TRANSCRIPT
OF
RECORDED AUDIO
ON CD

TRANSCRIPT and ENGLISH TRANSLATION:
HACKENSACK WEDDING VIDEO- EXHIBIT 306

TRANSCRIPTION DATE: DECEMBER 9, 2005

Da-8

~~Da-8~~

The LEGAL SERVICES GROUP
at INTERNATIONAL MEDIA SERVICES, INC
718 Sherman Avenue
Plainfield, New Jersey 07060-2232

Da-1345

Da-8

~~Da-a-7~~

I N D E X

908 756-4060

MALE VOICE 1
FEMALE VOICE 1
FEMALE VOICE 2
MALE VOICE 2
MALE VOICE 3
MALE VOICE 4
MALE VOICE 5

Da-9

~~Da-9~~~~Da-1346~~

Da 9

El-a-8-

START OF TIME STUDY

00:00.00

COLLOQUY

MALE VOICE 1: One more, one more.

[female voices chatting in background]

MALE VOICE 1: One more.

FEMALE VOICE: Ok. One more.

VOICE 1: Ok. They can come in now. OK.

FEMALE VOICE: [in English] Now we're going

back.

FEMALE VOICE 2: Yeah, now that the.....what??

MALE VOICE 1: Mo, Gracy??

FEMALE VOICE 2: No, but..

FEMALE VOICE 1: No...

00:18.19

[sound of a thud. Sound of door being opened]

MALE VOICE 1: Now what is this?? You

finished??

FEMALE VOICE: No, little girl, put it...

MALE VOICE 1: Ohh, hold it, hold it.

[cross-talk]

MALE VOICE 2: (a deeper

voice) [unintelligible] going in to give my greetings.

Da-10

Da-1-47

~~Da-1-47~~

Da-1-47

Colloquy

[cross-talk]

MALE VOICE 1: Ok, you finished. Don't worry.

Go ahead.

FEMALE VOICE: I have no light here. This one... turn it on.

MALE VOICE 1: Turn it on.

FEMALE VOICE: Turn it on.

MALE VOICE 1: no, that's is not possible, don't worry.

FEMALE VOICE: This one?? This one on??

MALE VOICE 1: If that's possible.

FEMALE: Yeah.

MALE VOICE 1: Yes, Ok. Don't worry. Go ahead.

Go girl. Go ahead.

[female singing in background]

MALE VOICE 1: Ok, go ahead.

FEMALE VOICE 2: What do you need?

MALE VOICE 1: A smile.

FEMALE VOICE: Smiling.

MALE VOICE 1: Next one. Next.

FEMALE VOICE: Ok.

MALE VOICE 1: Next, don't work too hard, Ok.

FEMALE: Ma, ma ,ma... what?

[cross-talk]

MALE VOICE 1: Go next to her, to her. No, not

Da-11

Da-1348

Da-11

Colloquy

5

1 there.

FEMALE VOICE: More, more there, that's it.

2
3 Right.

4 00:59.06

5 [sound of door opening]

6 MALE VOICE 1: Let's go.

7 [cross-talk of females chatting]..dance.

8 MALE VOICE 1: No, no. OK.

9 [sound of door opening again]

10 FEMALE VOICE: Always smiling.

11 MALE VOICE 1: The flower.

12 [cross-talk]

13 MALE VOICE 3: [slurry] [unintelligible] come

14 here....unintelligible] more

15 MALE VOICE 4: [interrupting]... what you

16 doing?

17 MALE VOICE 4: ...hand it over...

18 MALE VOICE 3: No.

19 MALE VOICE 1: Next. Go, go. [clapping hands]

20 FEMALE VOICE: [surprised] It's

21 [unintelligible]

22 FEMALE VOICE: [in fear] Aaah.

23 01:24.14

24 [sound of 1st. shot]

25 [sound of 2nd. shot]

Da-12

Da 1349

Da 12

Colloquy

[screams]

01:27.05

[sound of 3rd. shot]

[sound of 4th. shot]

[sound of 5th. shot]

[screams]

MALE VOICE 3: Ay, ay, ay. [screams] Ay, ay,

ay. My love. Ay, ay, aaaaay. Ay, ay, ay. I had to.....

ay, ay....

MALE VOICE 4: What have you done??

MALE VOICE 3: Ay, ay, ay

MALE VOICE 4: [unintelligible]

MALE VOICE 3: No, [screaming], No. No.

MALE VOICE 4: By God, I will

MALE VOICE 3: No. No.

MALE VOICE 4: I will kill you...

[unintelligible]

MALE VOICE 3: No. No. No. Lilly?? [phonetic]

No. No. [sounds of pushing person on floor]

MALE VOICE 4: fuck, I will. [unintelligible]

MALE VOICE 3: Lilly [phonetic]. No. No.

Lilly!! [phonetic]. No. No.

[sound of male 3 being taken out]

MALE VOICE 3: Help me. No. No. Help me. Ay.

DA-13

DA 1350

Colloquy

7

1 Ay. Ay, ay, ay. [screaming] Ay, no.

2 FEMALE VOICE: Ay, no. Ay no.

3 MALE VOICE 3: Ay, ay no.

4 MALE VOICE 5: Oh shit.

5 MALE VOICE 3: Ay. I love you, Lilly

6 [phonetic] Aaaaah.

7 (Whereupon, the aural record was concluded.)

8 (Whereupon, the tape recording ended.)

9 * * * * *

10
11
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17 Da-14

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19 ~~Da-14~~

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21
22 ~~Da-1351~~

23 ~~Da-111~~

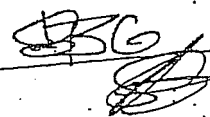
24 ~~Da-13~~

25

1
2
3 STATE OF NEW JERSEY }

4 COUNTY OF UNION }

5
6 I, Eva Berry, assigned transcriber and translator,
7 do hereby affirm and certify that the foregoing is a
8 true and accurate transcript of the audio tape in the
9 matter of State vs: Augustine Garcia, appellant
10

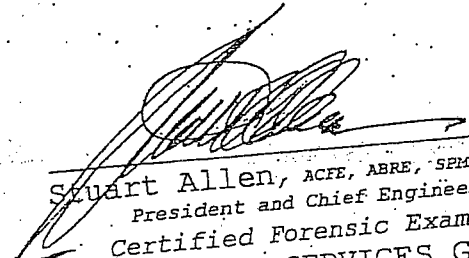
11 

12
13 DATE:

14 12/9/2005

15
16 Da-15

17 ~~Da-15~~

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20

Stuart Allen, ACFE, ABRE, SEMTE, JEEF
President and Chief Engineer
Certified Forensic Examiner
THE LEGAL SERVICES GROUP
at INTERNATIONAL MEDIA SERVICES, INC.

~~Da-15~~

SEAL

Da-135

Da-14

TRANSCRIBED BY

EBG ASSOCIATES
347 Fifth Avenue, PH
New York, New York 10016
212-685-3475

28 Quick Silver Court
Lakewood, New Jersey 08701
732 255-4071

AS A PROFESSIONAL SERVICE TO:
THE LEGAL SERVICES GROUP
at INTERNATIONAL MEDIA SERVICES, INC.
718 SHERMAN AVENUE, PLAINFIELD, NJ 07060
908 756-4060

PLEASE DIRECT ALL INQUIRIES WITH REGARD TO THIS MATTER
TO
THE LEGAL SERVICES GROUP

Da-16 ~~Da-16~~

~~Da-16~~

Da-153

~~Da-15~~

CH99-31, Homicide Investigation of GLADYS RICART (V)
Transcript of Wedding Video Tape
JUAN RICART and AGUSTIN GARCIA

JR = JUAN RICART
AG = AGUSTIN GARCIA
U/M = Unknown male
U/F = Unknown female
IA = Inaudible

Transcribed by: Detective DENNIS SUAREZ

(Two gunshots)

JR: Ay, ay.

(Three gunshots)

JR: Ay, ay, ay....

AGUSTIN, how could you do this?

Ay, AGUSTIN, my God!

Ay, ay, ay....

Ay, AGUSTIN, how could you have done this? My God!

AG: I have to kill myself now! (IA)

JR: No, AGUSTIN....

AG: Let my hands go. Hurry! Hurry!

JR: Ay!

AG: Let my hands go, now!

JR: Ay!

AG: Let me go, because I have to kill myself!

JR: No!

Da-72

~~Da-72~~
~~Assess~~

Let me go, because I have to kill myself!

R: No!

AG: I have to kill myself! Let me go!

JR: No!

AG: For God's sake, let me go!

JR: No!

AG: I have to kill myself!

JR: No!

AG: Let me go!

JR: No, no AGUSTIN!

AG: I have to kill myself!

JR: No!

AG: Damn it! But, let me kill myself!

JR: AGUSTIN! Ay no! AGUSTIN! AGUSTIN! AGUSTIN! I need (in English) help! Oh
AGUSTIN! AGUSTIN! Ay!

(They appear to be moving from the living room area to the kitchen area of the residence.
Sounds that resemble bullets jingling (in AGUSTIN's pocket) can be heard.)

AG: Let me go. (Stated while in the kitchen area.)

JR: Ay, ay, ay, ay....

U/F: (Scream.)

U/M: Oh shit! (In English.)

Tape Recording Ends

Da-73

~~Da-73~~

~~Fe-8-2~~

Da-74

PLAINTIFFS
EXHIBIT
NO. 3

THE RECORD A-3

NORTH JERSEY



DANIELLE P. RICHARDS/STAFF PHOTOGRAPHER
Garcia guilty of murder in her death

and Yolanda Ricart, brother and sister of Gladys Ricart, listening to verdict pronouncing Agustin Garcia guilty of murder in her death.

By last Friday afternoon, she said, members of the panel had gone around the room, with each judging Garcia guilty of murder. The only sticking point came for one juror on a child endangerment charge, but the question was resolved on Monday with a rereading of the law, she said.

Defense attorneys said they had not yet discussed an appeal with Garcia, who will remain in the Bergen County Jail until sentencing.

One possible argument, they said, could be in Superior Court Judge William C. Meehan's ruling that Garcia was fully aware of his rights when he spoke to detectives after the shooting.

They may also appeal Meehan's

decision not to allow defense arguments that Garcia was attacked by his 22-year-old son Davis and Ricart's 22-year-old son Davis, and Juan Ricart, when he showed up, prompting him to pull the gun from his briefcase.

We felt the struggle enhanced his emotional response, said defense attorney Edward Jersejan.

The jury searched the videotape for signs of self-defense, replaying it several times, at least once in slow motion, said the juror who was interviewed. Using a watch and counting down, one Mississippi juror said they timed the interval between Garcia's knocks at the door and the first shot, four seconds, she said.

There just wasn't enough time for him to be attacked and respond

said the juror. "We tried to hear for ourselves — something getting hit — and didn't hear [any] of that."

Several domestic violence intervention group members who attended the news conference touted the verdict as a "clear message."

Schwannwede, in addition, said Ricart was too kind-hearted, refusing to sign a domestic violence complaint after Garcia harassed her in the past.

There is a lesson in all of this, he said. "I am convinced if Gladys Ricart sought a domestic-violence restraining order, she would be alive today."

Staff Writer Nicola Gaudiano's e-mail address is gaudiano@northjersey.com. Staff Writer Leslie Koren's e-mail address is karen@northjersey.com.

Da-74

Da-74

Da-74

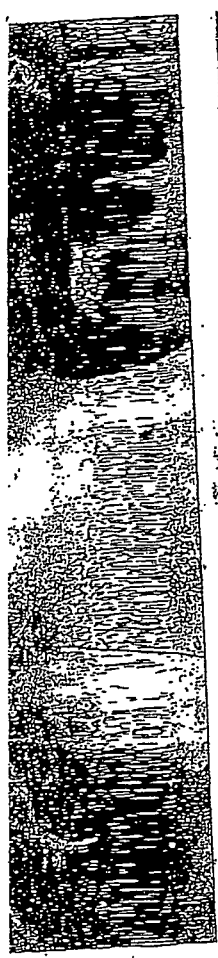
Da-74

Da-75-a

APPENDIX NO. III-3

fine-tuned

Ricart's killing ruled murder



DANIELLE P. RICHARDS/STAFF PHOTOGRAPHER

adys Ricart in wedding gown. Right, her sister Yolanda hugging a member of prosecution team after jury convicted killer.

Jury rejects contention of uncontrollable passion

GLE GALDIANO
SLIE KO REN

...ing claims that he acted in uncontrollable fit of passion, jury Monday convicted Agustin Garcia of murder in the slaying of Gladys Ricart. Garcia, 49, of North Bergen, did much as the jury forewoman in a packed courtroom delivered the verdict — guilty of murder, possession of a weapon for unlawful purpose and two counts of child endangerment — following a little more than a day of deliberations. Manhattan businessman and

Dominican advocate faces a mandatory life term, 30 years of which he must serve before becoming eligible for parole, when he is sentenced Feb. 1.

"We were all pretty convinced that he walked in there and had the gun in his hand ready," explained one juror, rejecting the defense argument that Garcia snapped when he found Ricart at her Ridgefield home preparing to marry another man on Sept. 26, 1999. "The evidence just all pointed to murder."

Bergen County First Assistant

See MURDER Page A-3



Agustin Garcia, right, hearing the jury's verdict Monday that he was found guilty of murdering Gladys Ricart.

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Womrath's closing to end

Da-75-a

INSIDE

Justices set deadline for preschool programs

By LORI HINNANT

TRENTON — The state Supreme Court imposed strict deadlines Monday for the Department of Education to review and approve preschool plans in New Jersey's largest and poorest school districts.

The court said school districts under order to provide preschool education to their 3- and 4-year-olds have until Nov. 15 to submit budget and program proposals.

Local officials had complained that the Department of Education stalled on preschool proposals until well past the time when they could be implemented for the coming school year.

The court ruled against a request by the Education Law Center to appoint a special "master" to monitor state compliance with earlier mandates in the 18-year-old legal case.

The justices also ordered the Department of Education to help the districts after that date and gave both local and state education officials a strict timeline to provide preschools.

Elizabeth schools Superintendent Tom Dunn, whose district has 1,000 children on a waiting list for preschools, praised the order.

"The districts have had timelines on them, but the department has basically had a blank check," Dunn said. "Now there are deadlines they have to live with as well."

If districts have a dispute with the state over plans, they will now have a shortened appeals process.

"We now have a process that's set up in which the districts can get judicial review by March 30, which is well enough before the start of the school year to make enough of a difference," said David Sciarra of the Education Law Center.

A spokesman for the department said state officials had already established similar timelines.

The court made its first ruling in the Abbott string of opinions in 1990 on a case filed in 1981. It has handed down several more rulings over the past decade, striking down various laws as unconstitutional because they did not create "parity" in funding between poor and wealthy districts.

In 1998, Supreme Court justices said the state must provide complete preschool programs for 3- and 4-year-olds in 30 of the state's poorest districts — including Paterson, Passaic, and Garfield.

MURDER

From Page A-1

Prosecutor Fred Schwanwede urged members of the Dominican community to reject the lies told by a gunman, Garcia, who claimed he was romantically involved with Ricart when he killed her.

"We cannot restore Gladys Ricart's life, but we can restore her reputation — a reputation cruelly attacked for the past two years," said Schwanwede, flanked by Ricart's family members during a news conference following the verdict. Gladys Ricart did not lead any secret life.

Holding their own news conference, Garcia's lawyers began discussing a possible appeal.

"In your view, if ever there was a case where you had heat of passion, this was the case," said defense attorney Fernando Oliver.

Ricart's family members, who sat in the second row of the courtroom during the trial, held hands tightly and burst into tears as the verdict was read. Moments later, the slain woman's slater had to be carried down a staircase.

"She was like a daughter to me," the woman, Yolanda Ricart, said later. "I don't know how to live without her."

"Finally, justice came," said her brother, Juan. "I was sure it would come."

Ricart had been dressed in her wedding gown, handing out flowers to bridesmaids in her living room, when Garcia burst in and shot her — a killing captured by a wedding videographer in a tape that one juror said made a "major difference" in deliberations.

The defense lawyers had argued that Garcia didn't know of Ricart's wedding, and that the sudden shock prompted him to draw a gun from his suitcase and fire after family members attacked him. If jurors accepted the "passion-provocation" defense, the lesser charge of manslaughter, which is punishable by a maximum of 10 years in prison.

They also could have found that he acted with a diminished mental capacity, allowing them to convict him of manslaughter or aggravated manslaughter. Aggravated manslaughter carries a sentence of 10 to 30 years.

In the end, the passion-provocation defense proved confusing, said the juror who was interviewed.

For one thing, she said, Garcia drove around for an hour after he first went past Ricart's house, enough time to cool off. She also said Garcia himself didn't seem to support his lawyers' claims.

"When Garcia came on the stand, he never mentioned anything about

Juan and Yolanda Ricart, brother and sister of Gladys Ricart, listed "passion," the juror said. "He never once said 'She was the love of my life. I saw her in the dress and snapped.'"

During the three-week trial, Garcia's lawyers portrayed Ricart as a jealous woman who kept coming back, even on the eve of her marriage to James Preston. On a videotape shown to jurors, Garcia and Ricart are seen together at a North Bergen supermarket less than 15 hours before her death.

The jurors instead accepted prosecutors' argument that Garcia knew beforehand of Ricart's plans — and killed her because he couldn't let go. "We thought he might have found out the night before, and that's why he was hanging on her, begging her

not to do it," the juror said. By last Friday afternoon, she said, members of the panel had gathered around the room, with each judge sticking point came for one juror's child endangerment charge, but question was resolved on Monday with a rereading of the law, she said.

Defense attorneys said they not yet discussed an appeal with Ricart, who will remain in the Bergen County Jail until sentencing.

One possible argument, they said, could lie in Superior Court Judge William C. Meehan's ruling that Ricart was fully aware of his rights. She spoke to detectives after the shooting.

They may also appeal Meehan's ruling.

Your Old Jewelry May Be Worth More Than You Think.

Da-75-b

ROMA 75-200

Da-12-b

BERGEN COUNTY PROSECUTOR'S OFFICE

MEMORANDUM

TO: Lieutenant Brian Callanan
 FROM: Senior Investigator Thomas Dombroski
 DATE: October 1, 1999
 SUBJECT: CH99-31 Seizure of evidence report (video cassette tape)

On Sunday, September 26, 1999, members of the Bergen County Prosecutor's Office Homicide Squad responded to 825 Elizabeth Street, Ridgefield, New Jersey, to assist in the investigation into a reported homicide. The victim, Gladys Ricart, was apparently shot several times and subsequently died in the livingroom of her residence located at 825 Elizabeth Street, Ridgefield, New Jersey. Further investigation revealed that the victim (Gladys Ricart), along with her bridal party were in the process of being photographed and videotape recorded when she was shot and killed. Detective Sergeant Al Schettino of the Ridgefield Police Department, informed Detective Lieutenant Brian Callanan that Investigator Thomas Neary of the Ridgefield Police Department, was in possession of a video cassette tape recording taken by Ramon Nunez, the videographer hired by Gladys Ricart and the intended groom James Preston Jr. According to Investigator Neary, the video cassette tape may have contained video footage of the incident.

At approximately 8:45 p.m., I responded to the Ridgefield Volunteer Ambulance Corps located at 403 Shaler Boulevard, Ridgefield, New Jersey, and met with Investigator Thomas Neary. At this time, Investigator Neary turned over to me one (1) Fuji brand video cassette tape. According to Investigator Neary, he received the video cassette tape from Ramon Nunez, the videographer at the scene. The video cassette tape displayed the number 3119C1WA ST120 on the heel of the cassette. Also located on the heel of the video cassette was an identification label. Printed on one end of the label was the word FUJI, along with the following letters and numerals, H471S and ST120. Printed on the other end of the label are the letters SVHS. Hand written on the label is

DA-99

~~DA-99~~ ~~DA-99~~ ~~DA-99~~
 DA-99 DA-219

the symbol "H" with a number "1" written next to it. The number "1" is
JANCE 9-26-99" is hand written across the label. Also observed written on the label were the letters
T.N. Investigator Neary informed me that after taking possession of the video cassette tape from
Ramon Nunez, he placed his initials T.N. on the label of the video cassette tape. Upon receiving the
video cassette tape from Investigator Neary, I placed my initials, TD, along with the date 9/26/99 and
time 8:45 pm on the label of the video cassette tape. The video cassette tape was then properly
secured in the Bergen County Prosecutor's Office Homicide Squad evidence room. (For complete
details refer to the evidence log which is contained in the case file.)

Respectfully Submitted

Sen. Inv. Thomas Dombroski
Senior Investigator Thomas Dombroski

Da-100

~~Da-220~~ ~~Da-100~~ ~~Da-220~~
Da-220

OFFICE OF THE PUBLIC DEFENDER
Bergen Region, 60 State Street, 3rd Floor
Hackensack, New Jersey 07601
(201) 996-8030/FAX (201) 996-8034
S. Emile Lisboa IV, ADPD #019352002
Attorney for Agustin Garcia

STATE OF NEW JERSEY,

Plaintiff,

v.

AGUSTIN GARCIA

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

INDICTMENT NO.: 00-06-01368
PG No. 99 002293

CRIMINAL ACTION

CERTIFICATION

I, S. EMILE LISBOA, IV, of full age, hereby certify and state:

1. I am an Attorney at Law of the State of New Jersey and a Certified Criminal Trial and Municipal Court Trial attorney as designated by the Supreme Court of the State of New Jersey. I am the attorney of record in the above captioned case and am familiar with the facts and circumstances thereof.

2. The charges and general factual circumstances of this matter are known to the Court and counsel, as such they will not be repeated herein.

3. This certification is in support of defendants' Motion to Compel production of: (1) an original copy of an alleged wedding reception video obtained by the state of New Jersey and (2) a copy of the portion of the video which was used and translated into English at time of trial (hereinafter referred to as "video evidence.")

4. As the Court may be aware, in 2017 the Office of the Public Defender reviewed Mr. Garcia's requests and pro-se motions concerning certain video evidence utilized at his trial and has agreed that said motions have merit.

~~ATTACHMENT B-4~~

Da-225

~~215~~

Aa-349

Da-225

5. The Office of the Public Defender was not the original counsel of record, as such our ability to conduct a complete investigation of the issues surrounding the video evidence are limited and thus require the prosecution to provide our office with original copies of the videos to complete an investigation and otherwise afford Mr. Garcia effective representation.

6. Prior counsel and/or Mr. Garcia previously obtained an analysis of the wedding video by a Stuart Allen of the Legal Services Group / International Media Services, Inc.

7. The Office of the Public Defender tried to no avail to obtain a copy of the video from Mr. Allen.

8. Mr. Allen's wife contacted the Office of the Public Defender last year and advised that Mr. Allen has died and that she does not have a copy of the video(s).

9. Given that Mr. Allen is deceased, neither Mr. Garcia nor the prosecution would be able to produce him for a testimonial hearing.

10. Notwithstanding, the report rendered by Mr. Allen was issued on April 4, 2007.

11. As the Court is aware, both technology and recent case law has advanced significantly with regard to video recording evidence.

12. The undersigned has requested a copy of the video evidence from the Bergen County Prosecutor's Office on December 18, 2017, February 15, 2017 and on July 19, 2018. (Exhibit A).

13. To date, the Bergen County Prosecutor's Office has not provided counsel with a copy of the video evidence or provided a date certain on which the production of said video will be made.

14. While clips of the video are available on the internet, based upon conversations with video enhancement experts, an original copy of the entire video is needed for analysis.

15. Counsel has no other means of obtaining an original copy of this video and thus is unable to conduct an effective investigation or representation of Mr. Garcia without same.

16. As such, it is respectfully requested that this Court enter an order requiring the

DA-226

AA 350

AA 366

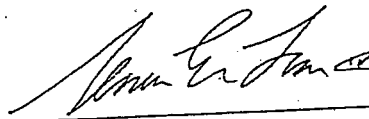
ATTACHMENT B-5

DA-226

prosecution to provide the Office of the Public Defender with original copies of the video(s) by a date certain to allow the Office of the Public Defender to conduct an investigation and provide Mr. Garcia with effective representation.

17. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Office of the Public Defender



S. EMILE LISBOA, IV
Attorney for Defendant
019352002

DATED: October 15, 2018

~~AA-351~~ DA-227

~~ATTACHMENT B-6~~

~~AA-367~~³

DA-249

DA-5050 ATTACHMENT-1

PLEASE SUBMIT THIS FORM INTO THE INMATE REQUEST/REMEDY BOX ONLY TO BE PROCESSED
(SÍRVASE PRESENTAR ESTE FORMULARIO EN LA CAJA DE PETICIÓN DEL CONFINADO/INTERVENCIÓN SOLAMENTE PARA SER TRAMITADO)

Form: IRSF 101
N.J.A.C. 10A:1-4

NEW JERSEY DEPARTMENT OF CORRECTIONS

(DEPARTAMENTO DE CORRECCIONES DE NUEVA JERSEY)

REQUEST SYSTEM & REMEDY FORM

(FORMULARIO DEL SISTEMA DE PETICIÓN A DE INTERVENCIÓN)

Revised 1/2005

PLAINTIFF'S
EXHIBIT

NO: P-11

PART [PARTE] 1

INMATE'S REQUEST OR COMPLAINT AREA:

(ÁREA DE PETICIÓN O QUEJA DEL CONFINADO)

TYPE OF REQUEST (Only Check one box)
(TIPO DE PETICIÓN)

☒ ROUTINE INMATE REQUEST
(PETICIÓN RUTINARIA DEL CONFINADO)

☐ INTERVIEW REQUEST
(PETICIÓN PARA UNA ENTREVISTA)

☐ ADMINISTRATIVE REMEDY
(INTERVENCIÓN ADMINISTRATIVA)

INMATE'S NAME:
(NOMBRE DEL CONFINADO)

AGUSTIN GARCIA

SBI NUMBER: 822642-B

INSTITUTION:
(INSTITUCIÓN)

N.J. 151P

HOUSING UNIT: 2-R

DATE: 8/03/07

Package Id No:

00756566, US tracking number 100A020

is is to the where about of legal package delivered by me to the 2 right wing officer on May 8, 2007 for mailing the Superior Court of New Jersey, County of Bergen, at Justice Center Room 134, 10 Main Street, Hackensack, NJ 07601-0760. Thereafter, about a month later, I was called by the officer 1276 to the mail room, and he informed that because he was away on vacation the package was still sitting there. He also told me that package could be sent certified receipt requested as originally mailed, indicating that either I approve for package to be mailed through UPS or he'll return the package to me. Therefore, I approved his request. I received no reply from the Court which may imply that they never received the legal mail package. I urgently need from the tracking information concerning processing and actual delivery of above mentioned legal mail.

Note: Together with the legal mail addressed to the Court, I delivery three other package which were assigned by you the following tracking numbers: 10070055, 10070047, and 10070056, please confirm delivery of this items also.

No action taken on this form. DOC Corrective Action form issued with paragraph(s) # marked. (Indicado(s))

PART [PARTE] 2 THE ABOVE INMATE INFORMATION WAS DETERMINED BY THE COORDINATOR AS ONE OF THE FOLLOWING:

(EL COORDINADOR DETERMINÓ QUE LA INFORMACIÓN ANTERIOR DEL CONFINADO ES UNO DE LOS SIGUIENTES)

☒ ROUTINE INMATE REQUEST
(PETICIÓN RUTINARIA DEL CONFINADO)

☐ INTERVIEW REQUEST
(PETICIÓN PARA UNA ENTREVISTA)

☐ ADMINISTRATIVE REMEDY
(INTERVENCIÓN ADMINISTRATIVA)

Coordinator's reason for disagreement of inmate's classification of form:
If this form is determined to be an Administrative Remedy, the Coordinator must complete Part 2, sign in the "Received By" area and return the pink copy to the inmate as his/her receipt.

RECEIVED BY: (Coordinator's signature if Administrative Remedy)
(RECIBIDO POR: (Firma del Coordinador si es Intervención Administrativa))

OB

ROUTINE OR URGENT
(RUTINARIO O URGENTE)

SUBJECT OF REQUEST:
(TEMA DE LA PETICIÓN)

Forwarding of legal mail - inquiry

DATE FORWARDED TO DEPARTMENT:
(FECHA EN QUE SE ENVÍO AL DEPARTAMENTO)

8-6-07

DATE RESPONSE RETURNED TO IM:
(FECHA EN QUE SE DEVOLVIÓ AL CONFINADO)

07-08

DEPARTMENT RESPONSIBLE:
(DEPARTAMENTO RESPONSABLE)

MANAGEMENT - DEVS

CASE NUMBER:
(NÚMERO DEL CASO)

YEAR
(AÑO)

MONTH
(MES)

EXCEL LINE
(LÍNEA DE CELDA)

210

PART [PARTE] 3 STAFF RESPONSE AREA (ÁREA DE RESPUESTA DEL PERSONAL)

The tracking number is provided on the copy of the 30A Postage Receipt. on 5/24/07 you sent a package out to JUDGE MEEHAN Tracking # - 10070029 (Delivered 5/25/07 @ 1144 AM) # 10070056 (Delivered 5/25/07 @ 1114 AM) # 10070038 (Delivered 5/25/07 @ 1138 AM) # 10070047 Returned on 5/30/07 to NISP as you have been advised.

STAFF SIGNATURE (FIRMA DEL PERSONAL)

DATE (FECHA)

8/23/07

Attachments: From Inmate

(DOCUMENTOS ADJUNTOS: DEL CONFINADO)

From Staff

(DEL PERSONAL)

DOC Staff Response forms:

(Formularios de Respuesta del Personal del DOC)

ATTACHMENT NO. 10

30.1

NEW JERSEY STATE PRISON
POSTAGE REMIT

67

DATE: 5/11/07 LOCATION: WC-2R
INMATE NAME: A. GARCIA SB # 8226421
INMATE SIGNATURE: X

TO: BUSINESS MANAGER

DATE MAILED: _____

05-25-07

TOTAL SHIPPING CHARGES

CARRIER: Priority Mail
PICKUP RECORD:

PIECES: 1

TRACKING#

NEW TRIAL

PACKAGE ID# 000756566b

MOTION

CUSTOMER# 0

ACCOUNT# 000822642B

ZIP/ZONE: 076/1

WT: 5 LBS

0.9 OZS

BASE RATE: 6.85

CERTIFIED: 2.65

RETURN RCT: 2.15

TOT CHGS: 11.65

DA 3031
~~2655~~

WITNESS: M. NARAYAN

PRINT

SIGNATURE

CHECK#

DATE: 6/23/07

DA-250

AA-153

DA 3031

ATTACHMENT NO. 78

CO-30	NEW JERSEY STATE PRISON	Rev. 3/16/00
BUSINESS REMIT		
(use for all disbursements except postage & store orders)		
DATE:	8 MAY 2007	LOCATION: 2R-WC
INMATE SBI #	822413	
INMATE NAME:	AGUSTIN GARCIA	
INMATE SIGNATURE:	<i>[Signature]</i>	
TO: BUSINESS MANAGER	\$1.50	
\$ ONE DOLLAR AND 50 CENTS		
PAY TO THE ORDER OF:	NJS D	
ADDRESS:	10 LAS	
	COMM BRO	5.33
	ZONE 2	10070047
PURPOSE:	PACK/HAND COURT FILING	
WITNESS:	APPROVED BY:	
Signature: S. LATIN	<i>[Signature]</i>	
CHECK #	DATE:	

DA-251

ACC-185
2007
~~DA 251~~

DA-3033

ATTACHMENT NO. 6

CO-24

OUT GOING PACKAGE INVOICE

Rev. 3/16/00

INMATE NAME ARISTO GARCIA SBI # 022642B

HOUSING UNIT W-2R DATE 8 MAY 07

CONTENTS OF PACKAGE

Appliances to include model and serial number

Legal filing

PACKAGE HANDLING

SELECT ONE ONLY

☒ MAIL ☐ VISIT PICK-UP ☐ DONATION ☐ DESTROY

VISITOR NAME OR ADDRESS FOR MAIL OUT

AKWISSA A. COCHRAN, DPP, ASST SEC
1541 S Clinton ST, 9th Floor, POB
4605, NEWARK NJ 07101

INMATE:

[Signature] ARISTO GARCIA
Sign Print

HOUSING OFFICER:

[Signature] [Signature]
Sign Print

MAILROOM OPERATOR:

[Signature] [Signature]
Sign Print

PROPERTY OFFICER: ☐

(Please check one box)

VISITOR: ☐

DATE OF DISPOSITION:

AA-186

Golden Rod = Inmate copy • Pink = Housing Officer copy • Yellow = Mailroom Sgt. • White = Property/N.C. Mailroom file •

Da-252

Da-252 ~~Da-2688~~
~~Da-3034~~

ATTACHMENT NO. 10

CO-24 OUT GOING PACKAGE INVOICE Rev. 9/16/00
INMATE NAME Antonio Garcia S.B.I. # 20613
HOUSING UNIT UE 2A DATE May 07

CONTENTS OF PACKAGE
Appliances to include model and serial number

Legal Court Filing

PACKAGE HANDLING

SELECT ONE ONLY

☒ MAIL ☐ VISIT PICK-UP ☐ DONATION ☐ DESTROY

VISITOR NAME OR ADDRESS FOR MAIL OUT

Errol L. Schumacher, FAP
DET CTN. 10 MAIN ST. HUK.
105 071-01-0781

INMATE:

[Signature] Sign Antonio Garcia Print

HOUSING OFFICER:

[Signature] Sign M. [Signature] Print

MAILROOM OPERATOR:

[Signature] Sign [Signature] Print

PROPERTY OFFICER: ☐ (Please check one box)

[Signature] Sign [Signature] Print

VISITOR: ☐

DATE OF DISPOSITION:

• Golden Rod = Inmate copy • Pink = Housing Officer copy • Yellow = Mailroom Sgt. • White = Property/N.C. Mailroom file

Da-253

Da-253

~~Da-253~~
~~2601~~

DA 3035
AA-187

Da-254-a

AGUSTIN GARCIA
Mailstop: SBI No. 822642B
West Compound, Two Right
New Jersey State Prison
Third & Federal Streets, P.O. Box 861
Trenton, N.J. 08625-0861

1 August 2007

Certified Mail, R.R.R.
Article No. 7001-1940-0001-2013-6225

DEPUTY CLERK OF THE COURT
Bergen County Clerk's Office
Justice Center, Room 134
10 Main Street
Hackensack, N.J. 07601-0769

Re: State of N.J. v. Agustin Garcia,
Bergen Co. Ind. No. 00-06-1368-I.
Before: Hon. William C. Meehan, P.J.S.C.
Notice of Motion inter alia To Supplement The
Moving Papers With a Notice of Motion For A New Trial.
Other: Oral Argument Requested.
An Evidentiary Hearing Requested.
MOVANT IS CONFINED.

Dear Deputy Clerk of the Court:

Enclosed, please find copy of duplicate copy of accompanying
cover letter for Newly Trial Motion previously sent to you.

I hand delivered the legal package to my wing officer for certify
receip mailing purpose, but infering from receipts returned to me by
prison mailing room, it appears that mailing was actually sent to you
through UPS, and assigned package Id. No. 00075666-b/ tracking number
10070029.

I have not received from you the requested stamped copy,
confirming receipt of above mentioned motion. Consequently, this

Da-254-a


Da-5422

AA-188

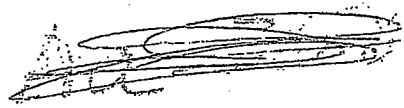
attachment E-1 Da-254-a

should serve to humbly request from you written confirmation of receipt
of my motion at your earliest convenience.

Very sincerely,


AGUSTIN GARCIA

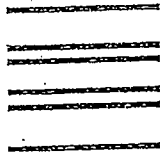
DA-254-b


AA-360

ATTACHMENT F-2

DA-254-23 AA-189

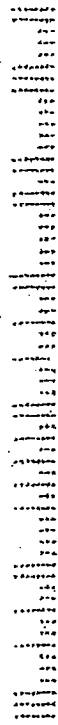
UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

AGUSTIN GARCIA
MAILSTOP: SBI #822642-B/428336
WEST CONGROUND TWO RIGHT
NEW JERSEY STATE PRISON
THIRD & FEDERAL STS, P.O. BOX 861
TRENTON, N.J. 08625-0861
ATTACHMENT E-5 AA-361



UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

AGUSTIN GARCIA
MAILSTOP: SBI #822642-B/428336
WEST CONGROUND TWO RIGHT
NEW JERSEY STATE PRISON
THIRD & FEDERAL STS, AA-361
P.O. BOX 861
TRENTON, N.J. 08625

AA-190
DA-255

Da-255

Da-256

Da-256

AA-191

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
YVONNE SMITH SEGARS
AND LINDA BIANCARELLI
PUBLIC DEFENDER
STATE OF NEW JERSEY
APPELLATE SECTION
31 CLINTON ST, 9TH FLOOR
P.O. BOX 46003, NEWARK, N.J.
07101

2. Article Number
(Transfer from service label)
7001-1940-0001-2013-6249

PS Form 3811, August 2001 Domestic Return Receipt
Attached ~~E-2~~ AA-361

102593-01-M-2509

COMPLETE THIS SECTION ON DELIVERY

A. Signature
☒ Agent
☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
~~RECEIVED~~
DA-54424

3. Service Type
☒ Certified Mail ☐ Express Mail
☒ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
DEPUTY CLERK OF THE COURT
BERGEN COUNTY CLERK'S
OFFICE, JUSTICE CENTER
ROOM 134
10 MAIN ST. HACKENSACK,
N.J. 07601-0769

DA-54423

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
RECEIVED 8/7/57

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RE: 05-08-07 MOTION
FOR NEW TRIAL 3:20 ET SEQ.

3. Service Type
☒ Certified Mail ☐ Express Mail
☒ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

SUPERIOR COURT OF NEW JERSEY

BERGEN VICINAGE
Bergen County Justice Center
10 Main Street
Room 124

Hackensack, New Jersey 07601-7699
(201) 527-2400
Fax (201) 371-1122

201-
527-2446

NANCY

Allen J. Quintavella
Criminal Division Manager

Lucie R. Ostapeck
Asst Crim Div Manager



Laura A. Simoldoni
Trial Court Administrator

April 16, 2014

Augustine Garcia/822642-B/428336
Third & Federal Streets/WC/2 right
P O Box 861
Trenton, N.J. 08625-0861

Dear Mr. Garcia:

In response to your letter which we received on April 8, 2014, I am enclosing a copy of our log showing the entries for the three (3) PCR petition filings that we received.

As you can see, the first filing we show received in our office is on 5/13/2005.

Regards,
Bergen County Criminal Division, PCR Unit

enclosure

Da-323

~~AA-264~~

~~AA-264~~

na-323

Last	First	Mi.	Indolment Number	Prisills Number	PCR Judge	Ini. Judge Assigned Date	Date Request for Atty Sent to PCR Unit	Date PCR Mgmt Conf Scheduled	Notice to Change Mgmt Conf Date Received	Date Atty Appearance Filed	Attorney Name	Attorney Type	First Hearing Date	Next Sched. Date	Disposillon Date	Disposillon of Disposillon	SBI	Complet Field/Case Notes
007	Garcia	Augustin	00-06-01300-1	00-002710-001	Washburn	5/13/2003	5/20/2003	9/26/2003		5/3/2005	Washburn	PG	5/4/2007		5/4/2007		0220430	Washburn
103	Garcia	Augustin	00-06-01300-1	00-002710-001	Carroll	5/13/2003		30/7/2005							7/17/2010	DN	0220420	Washburn
007	Garcia	Augustin	00-06-01300-1	00-002710-001	Washburn	11/20/2010									11/25/2010	DN	0220430	Washburn

~~DA-324~~
DA-324

~~DA-265~~
DA-265

SUPERIOR COURT OF NEW JERSEY



JAMES J. GUIDA, J.S.C.

BERGEN COUNTY JUSTICE CENTER
HACKENSACK, NJ 07601
(201) 527-2465

Tuesday, September 24, 2019

Augustin Garcia
#428336/ SBI# 822642-B
South Woods State Prison
215 S. Burlington Road, 32R
Bridgeton, New Jersey 08302

Re: State v. Augustin Garcia
Indictment#: 00-06-01368-I

Dear Mr. Garcia,

Enclosed, please find a copy of the filed order in connection with the above captioned matter.

Sincerely,

/s/Shannon Lacey

Shannon Lacey, Law Clerk to the
Hon. James J. Guida, J.S.C.

Da-400

~~Da-400~~

STATE OF NEW JERSEY

v.

AUGUSTIN GARCIA
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL
BERGEN COUNTY

INDICTMENT #: 00-06-01368-1

AMENDED ORDER ON POST-CONVICTION APPLICATIONS
ON INDICTABLE OFFENSES

This matter being opened on the application of defendant, Augustin Garcia and appearing pro se

☒ Petition for Post-Conviction Relief determined to be defendant's

☐ first petition

☒ second or subsequent petition

☐ Motion for Change or Reduction of Sentence pursuant to Rule 3:21-10

☐ Motion for _____ and the defendant having been represented by:

PRO SE, Assistant Deputy Public Defender

Retained or Designated Counsel (circle one) or

☐ The court having concluded that there was no good cause entitling the assignment of counsel on the application, and the State having been represented by

_____, Assistant Prosecutor, and

There having been proceedings conducted on the record on, or

☐ The matter having been disposed of on the papers;

It is on this 20th day of September, 2019 ORDERED THAT DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF IS HEREBY:

☐ Granted

☐ Denied

☒ Other: THIS PCR IS DISMISSED WITHOUT PREJUDICE PURSUANT TO R. 3:22-12(a)93) SINCE THE MATTER IS PRESENTLY ON DIRECT APPEAL IN APPELLATE DOCKET A 3575-16.

FILED

James J. Guida
James J. Guida, J.S.C.

Da-401

Da-401

DA-405

5437-0675

1) A GUSTIN GARCIA
THIRD & FEDERAL STREET
P.O. BOX 861
TRENTON, N.J. 08625

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
RECEIVED
DOCKET NO. (2)
2007 JUN 18 P 12:21
SUPERIOR COURT
OF NEW JERSEY

M-6221-06

3) STATE OF NEW JERSEY
v.

A GUSTIN GARCIA

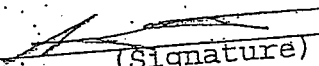
TO: (5) FRED SCHWANWEDER
10 MAIN STREET
HACKENSACK, N.J.
07601

NOTICE OF MOTION FOR (4)
FULL REMAND OF PCR,
ORDERING EVIDENCIARY
HEARING (FULL), ORDERING
RULING ON MERIT OF
MOTIONS: RECUSAL, DISQUALIFICATION ON SCHWANWEDER,

PLEASE TAKE NOTICE that the undersigned hereby moves before the Superior Court of New Jersey Appellate Division, for an Order (6)
FULL REMAND OF PCR, ORDERING FULL EVIDENCIARY
HEARING, ORDERING RULING ON MERIT OF ALL MOTIONS.

In support of this motion, I shall rely on the accompanying brief. (7)

(8) 6/6/07
(Date)

(9) 
(Signature)

(10) A GUSTIN GARCIA

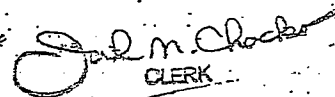
DA-405

I hereby certify that I am mailing or delivering the original and four copies of this notice of motion and accompanying brief to the Clerk of the Appellate Division and mailing or delivering two copies of same to the following:


(11) FRED SCHWANWEDER
10 MAIN STREET
HACKENSACK, N.J.
07601

FILED
APPELLATE DIVISION

JUN 18 2007


CLERK

(12) 6/6/07
(Date)

(13) 
(Signature)

A GUSTIN GARCIA

DA-405

DA-405

FILED, Clerk of the Appellate Division, September 01, 2017, A-004280-16

ORDER ON MOTION

STATE OF NEW JERSEY
v
AGUSTIN GARCIA

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004280-16T3
MOTION NO. M-008279-16
BEFORE PART R
JUDGE(S): CARMEN MESSANO

MOTION FILED:

07/20/2017

BY: AGUSTIN GARCIA

ANSWER(S) FILED:

SUBMITTED TO COURT: August 31, 2017

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
31st day of August, 2017, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR TRANSCRIPTS
AT PUBLIC EXPENSE

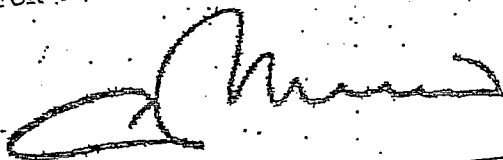
DENIED

SUPPLEMENTAL:

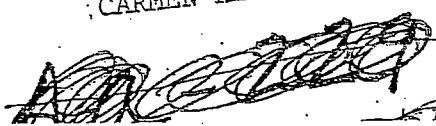
Da-420

~~Da-420~~

FOR THE COURT:



CARMEN MESSANO, P.J.A.D.



SUPERIOR COURT OF NEW JERSEY

BERGEN VICINAGE
Bergen County Justice Center
10 Main Street
Room 124
Hackensack, New Jersey 07601-7699
(201) 527-2400
Fax (201) 371-1122

201-
527-2446 NANCY

Allen J. Quintavella
Criminal Division Manager

Lucie R. Ostapeck
Asst Crim Div Manager

Laura A. Simoldoni
Trial Court Administrator



April 16, 2014

Augustine Garcia/822642-B/428336
Third & Federal Streets/WC/2 right
P O.Box 861
Trenton, N.J. 08625-0861

Dear Mr. Garcia:

In response to your letter which we received on April 8, 2014, I am enclosing a copy of our log showing the entries for the three (3) PCR petition filings that we received.

As you can see, the first filing we show received in our office is on 5/13/2005.

Regards,
Bergen County Criminal Division, PCR Unit

enclosure

Da-456

SUPREME COURT OF NEW JERSEY
M-638/639 September Term 2017
080103

STATE OF NEW JERSEY,
PLAINTIFF,

V.

AGUSTIN GARCIA,
DEFENDANT-MOVANT.

FILED

JAN 26 2018

Maureen
CLERK

ORDER

It is ORDERED that the motions for leave to appeal (M-638)
and for a stay (M-639) are denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at
Trenton, this 23rd day of January, 2018.

Maureen
CLERK OF THE SUPREME COURT

Da-458

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004280-16T3

ORDER DISMISSING APPEAL

STATE OF NEW JERSEY
V
AGUSTIN GARCIA

This matter being opened to the court on its own motion and
it appearing that appellant has failed to prosecute the appeal;

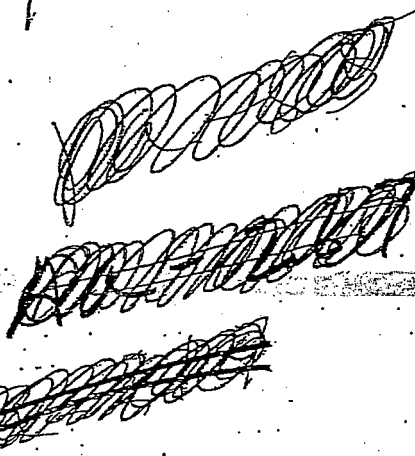
IT IS HEREBY ORDERED that the above appeal is dismissed.

WITNESS, the Honorable Carmen Messano, Presiding Judge for
Administration, at Trenton, this 26th day of January, 2018.

s/JOSEPH H. ORLANDO
JOSEPH H. ORLANDO
CLERK OF THE APPELLATE DIVISION

BERGEN 00-06-01368-I

Da-459



ORDER ON MOTION

STATE OF NEW JERSEY
V
AGUSTIN GARCIA

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004280-16T3
MOTION NO. M-004825-17
BEFORE PART E
JUDGE(S): CARMEN MESSANO

MOTION FILED: 02/28/2018

ANSWER(S)
FILED:

BY: AUGUSTIN GARCIA

SUBMITTED TO COURT: April 05, 2018

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
6th day of April, 2018, HEREBY ORDERED AS FOLLOWS:


MOTION BY APPELLANT

MOTION FOR RECONSIDERATION OF THIS
COURT'S JAN. 26, 2018 ORDER
DISMISSING APPEAL

DENIED

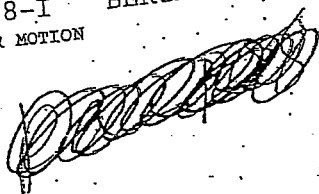
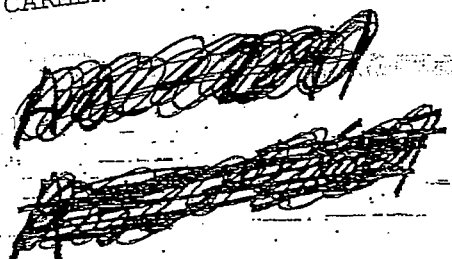
SUPPLEMENTAL: The appellant has not filed a deposit for the transcripts.
The appeal was dismissed for failure to file the required transcripts.

FOR THE COURT:


CARMEN MESSANO, P.J.A.D.

Da-476

00-06-01368-I BERGEN
ORDER - REGULAR MOTION
CLD

ORDER ON MOTION

STATE OF NEW JERSEY
V
AGUSTIN GARCIA

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004280-16T4
MOTION NO. M-002281-18
BEFORE PART E
JUDGE(S): CARMEN MESSANO

MOTION FILED: 11/07/2018

BY: AUGUSTIN GARCIA

ANSWER(S)
FILED:

SUBMITTED TO COURT: December 06, 2018

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 7th day of December, 2018, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR RELIEF FROM 05-18-18

ORDER

DENIED

MOTION FOR RULING ON APPELLANT'S

MOTION FOR RECONSIDERATION OF 01-

26-18 ORDER

DENIED

MOTION FOR LEAVE TO PROCEED AS

WITHIN TIME

DENIED

MOTION FOR REMAND TO LAW DIVISION

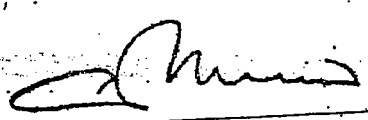
DENIED

SUPPLEMENTAL:

The Clerk's Office shall not file any further motions in this appeal unless permitted by the Appellate Division Presiding Judge for administration. See Rosenblum v. Borough of Closter, 333 N.J. Super. 385, 395-97 (App. Div. 2000).

FOR THE COURT:

Da-478


CARMEN MESSANO, P.J.A.D.



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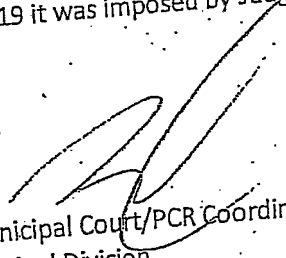
10 Main Street Room 124
Hackensack, New Jersey 07601-7699

12/18/20

Agustin Garcia/SBI 822642-B/428336
South Woods State Prison
215 S. Burlington Road, 31L-1013b
Bridgeton, New Jersey 08302

RE: Agustin Garcia

The Bergen County Criminal Division received your Motion for Reconsideration on 12/14/20. It was advised that App. Div. Docket# A-3575-18T2 is still active. Please see enclosed Dismissal Order 9/20/2019 it was imposed by Judge Guida for your records. Thank you.


Municipal Court/PCR Coordinator
Criminal Division
Bergen Vicinage

DA-488
~~DA-488~~

INSURING



STATE OF NEW JERSEY

v.

AUGUSTIN GARCIA
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL
BERGEN COUNTY

INDICTMENT #: 00-06-01368-I

ORDER ON POST-CONVICTION APPLICATIONS
ON INDICTABLE OFFENSES

This matter being opened on the application of defendant, John Minervini and being represented by counsel, Brian J. Neary, Esq.:

☒ Petition for Post-Conviction Relief determined to be defendant's

☐ first petition

☒ second or subsequent petition

☐ Motion for Change or Reduction of Sentence pursuant to Rule 3:21-10

☐ Motion for _____ and the defendant having been represented by:

PRO SE, Assistant Deputy Public Defender

Retained or Designated Counsel (*circle one*) or

☐ The court having concluded that there was no good cause entitling the assignment of counsel on the application, and the State having been represented by:

_____ Assistant Prosecutor; and

There having been proceedings conducted on the record on or

☐ The matter having been disposed of on the papers;

It is on this 20th day of September, 2019 ORDERED THAT DEFENDANT'S MOTION FOR POST CONVICTION RELIEF IS HEREBY:

☐ Granted

☐ Denied

☒ Other: THIS PCR IS DISMISSED WITHOUT PREJUDICE PURSUANT TO R. 3:22-12(a)93) SINCE

THE MATTER IS PRESENTLY ON DIRECT APPEAL IN APPELLATE DOCKET A 3575-18.

Da-489

~~Da-489~~

James J. Guida
James J. Guida, J.S.C.

STATE OF NEW JERSEY

v.

AUGUSTIN GARCIA
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL
BERGEN COUNTY

INDICTMENT #: 00-06-01368-I

AMENDED ORDER ON POST-CONVICTION APPLICATIONS
ON INDICTABLE OFFENSES

This matter being opened on the application of defendant, Augustin Garcia and appearing pro se

☒ Petition for Post-Conviction Relief determined to be defendant's

☐ first petition

☒ second or subsequent petition

☐ Motion for Change or Reduction of Sentence pursuant to Rule 3:21-10

☐ Motion for _____ and the defendant having been represented by:

PRO SE, Assistant Deputy Public Defender

Retained or Designated Counsel (circle one) or

☐ The court having concluded that there was no good cause entitling the assignment of counsel on the application, and the State having been represented by:

_____ Assistant Prosecutor; and

There having been proceedings conducted on the record on or

☐ The matter having been disposed of on the papers;

It is on this 20th day of September, 2019 ORDERED THAT DEFENDANT'S MOTION FOR POST CONVICTION RELIEF IS HEREBY:

☐ Granted

☐ Denied

☒ Other: THIS PCR IS DISMISSED WITHOUT PREJUDICE PURSUANT TO R. 3:22-12(a)93) SINCE THE MATTER IS PRESENTLY ON DIRECT APPEAL IN APPELLATE DOCKET A 3575-18.

Da-490

James J. Guida
James J. Guida, J.S.C.

~~Da-490~~

Hon. William C. Meehan, P.J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
BERGEN COUNTY INDICTMENT NO. 00-06-1368-I

STATE OF NEW JERSEY,
Plaintiff-Respondent,
V.
AGUSTIN GARCIA,
Defendant-Movant.

Criminal Action

OPENING BRIEF IN SUPPORT OF A MOTION FOR A NEW TRIAL
BY DEFENDANT-MOVANT AGUSTIN GARCIA

AGUSTIN GARCIA
Mailstop: SBI No. 822642B
West Compound, Two Right
New Jersey State Prison
Third & Federal Streets
P.O. Box 861
Trenton, N.J. 08625-0861
Defendant-Movant, Pro se

MOVANT IS CONFINED

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~~DA-3036~~

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BECAUSE THE NEW EVIDENCE BEING OFFERED IS MATERIAL,
NOT MERELY IMPEACHING OR CUMULATIVE, WAS DISCOVERED
AS A RESULT OF DEFENDANT'S DUE DILIGENCE AND WOULD
PROBABLY CHANGE THE RESULT IF A NEW TRIAL WAS GRANTED.

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- "1GJT" denotes grand jury transcript dated 22 June 2000
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"13T" denotes transcript of trial (jury selection) dated 26 September 2001
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"22T" denotes transcript of trial dated 17 October 2001
"23T" denotes transcript of trial (summations/jury charge/deliberations) dated 18 October 2001
"24T" denotes transcript of trial (deliberations) dated 19 October 2001
"25T" denotes transcript of trial (jury verdict) dated 22 October 2001
"26T" denotes transcript of sentencing hearing dated 1 February 2002

Da-806

Hon. William C. Meehan, P.J.S.C.

PREFATORY STATEMENT

Pursuant to N.J.Ct.R., Rules 1:4-7 and 3:20, et seq., the undersigned Movant, Agustin Garcia, the named defendant in the above-captioned matter, hereby moves this Court, by way of a verified motion for a new trial based upon newly discovered evidence, seeking an Order vacating his judgment of conviction(s) and/or sentence(s) and for the scheduling a new trial, as well as for further relief.

Movant incorporates the facts and claims of his initial petition and verified first-amended petition-brief, for post-conviction relief as if same were more fully set forth herein at length.

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~~DA 82~~

~~DA 2701~~

PROCEDURAL HISTORY

On 29 June 2000, a Bergen County grand jury returned a 7-Count indictment, number 00-06-1368-I against Agustin Garcia ("Movant"), charging:

Count One: first-degree murder, contrary to N.J.S.A. 2C:11-3a(1)(2), and subject to the provisions of the No Early Release Act, N.J.S.A. 2C:43-7.2 and N.J.S.A. 30:4-123.51b [Vol. I/Da 1];

Count Two: second-degree possession of a weapon for unlawful purposes, contrary to N.J.S.A. 2C:39-4a [Vol. I/Da 1-2];

Count Three: third-degree unlawful possession of weapon without first obtaining a permit in compliance with N.J.S.A. 2C:58-4, contrary to N.J.S.A. 2C:39-5b [Vol. I/Da 2]; and

Counts Four through Seven: third-degree endangering welfare of children, contrary to N.J.S.A. 2C:24-4(a). Vol. I/Da 2-4.

The charges arose out of the 26 September 1999 shooting death of one Ms. Gladys Ricart, at her home and during a pre-wedding ceremony, in the Borough of Ridgely, County of Bergen. Vol. I/Da 1.

Movant was represented by privately retained counsels, Edward Jerejian, Esquire, Ramond Colon, Esquire and Fernando Oliver, Esquire [1T], who did file several pretrial motions. 1T-8T. Included in those were motions:

- * To suppress custodial oral statements by Movant.
- * to exclude from evidence a certain audio answering machine tape, a 911 audiotape and a wedding videotape (including it's authentication).

1"vol. ___/Da ___" refers to Movant's separately bound appendices (the volume and appendix number), same having already been previously filed in support of his verified first-amended petition-brief for post-conviction relief.

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~~2A 217~~

Hon. William C. Meehan, P.J.S.C.

- * To admit into evidence a security videotape of Movant and the victim made at PathMark Supermarket.
- * To dismiss Count's Four through Seven (endangering the welfare of a child) from the indictment.
- * To suppress physical evidence seized under search warrants, from the Oldsmobile Bravada operated by Movant, and that from his residence at 8410 Newkirk Road, North Bergen.

Vol. I/Da 5-6.

The State cross-moved for an order precluding Movant from requesting a passion/provocation manslaughter charge and allowing the State to introduce other crimes/civil wrongs evidence in order to demonstrate motive for the homicide. Vol. I/Da 7-8. Many of these motions were denied by the Hon. William C. Meehan, P.J.S.C. as follows:

- * The motion seeking to exclude the wedding videotape was denied on 22 March 2001 [3T:2-16 to 6-3] and an Order was filed 30 March [Vol. I/Da 9-12].
- * The motions to dismiss the child endangerment counts and preclusion of the passion/provocation charge, were denied on 19 April and an Order was filed 11 May [Vol. I/Da 13-14].
- * The motions to suppress the oral statement and physical evidence seized were denied on 30-31 May and an Order was filed on 5 June. Vol. I/Da 15.
- * No formal action was then taken on the N.J.R.E. 404(b) evidence that the State sought admissibility.

After the completion of jury selection, trial commenced before Judge Meehan on 2 October 2001 and continued through 22 October.

On 18 October Judge Meehan dismissed Counts Four and Seven on Movant's motion for judgment of acquittal. 23T:4-24 to 3-30. The

jury found Movant guilty on the remaining counts of the indictment.

Vol. I/Da 16.

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[Handwritten signatures and initials]

Hon. William C. Meehan, P.J.S.C.

Appearing for sentencing on 1 February 2002, Judge Meehan merged the weapons offenses with the conviction for murder [Vol. I/Da 16] and sentenced Movant to a term of Life imprisonment with thirty-years of parole ineligibility; and also assessed a \$300 total VCCB penalty, a \$375 total SNSF penalty and a \$30 LEO penalty. Vol. I/Da 16-17. Judge Meehan also sentenced Movant to a consecutive term of four years on the unlawful possession of a weapon conviction; and to a term of four years on each of the two endangering the welfare of children counts and ordered that these endangering sentences be served concurrently with the murder conviction. Vol. I/Da 16-17. Finally, the Court awarded Movant with eight-hundred-sixty [860] days of custodial credit. A judgment of conviction was dated 1 February 2002. Vol. I/Da 17.

Movant then filed a timely notice of appeal. Vol. I/Da 18-19. On 11 May 2004, the Appellate Division affirmed the convictions for knowing and purposeful murder and the unlawful possession of a weapon, and reversed the convictions for endangering the welfare of child (two counts) and remanded for entry of acquittals in the judgment of conviction along with corrections to the VCCB and SNSF penalties imposed on Count Two. Vol. I/Da 20-65; 65.

Movant's counsel had argued the following reasons for reversal:

POINT I: THE TRIAL COURT'S CHARGE ON PASSION/PROVOCATION MANSLAUGHTER WAS ERRONEOUS. [Vol. I/Da 88-97];

POINT II: THE TRIAL COURT DENIED DEFENDANT DUE PROCESS OF LAW AND A FAIR TRIAL BY RESTRICTING HIS COUNSEL'S SUMMATION. [Vol. I/Da 98-100];

POINT III: THE TRIAL COURT ERRED BY RULING THAT THE "WEDDING

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DO-1-810

training, and day care to needy Dominicans living in the New York area.

According to [D]efendant, after three months of dating, he and Gladys realized that they "belonged to each other." In the summer of 1993, Gladys and Davis moved into the North Bergen home where the [D]efendant resided with his two children. They both continued working at their respective jobs, [yet] pooled their money and held themselves out as husband and wife. Gladys also worked extra hours at [D]efendant's travel agency.

In 1995, Gladys moved out of [D]efendant's home and into a house in Ridgefield, located less than two miles away. According to [D]efendant, Gladys left because of tensions between her and [D]efendant's two children, as well as between [D]efendant and Davis. He maintained that the problem was not between them and that, after a month, they resumed their relationship from two separate residences.

[Vol. I/Da 23]

According to Gladys' elder sister Norma (Yolanda) Rosario, [D]efendant and Gladys broke up and got back together many times over the next three years. Yolanda recalled that

.....continued.

by the Council on his 10 years of service, (4) recognition for outstanding contribution toward community development by New York City Mayor David Dinkins, (5) recognized for his outstanding contribution to the New York City business community by New York City Mayor Rudolph Guliani, (6) Licensed as Business School Director by the New York State Department of Education, (7) recognition by Secretary of State of the Dominican Republic, (8) Board Member of the Dominican Republic Council of the Private Enterprise (CONEP), (9) elected to preside the Quisqueya Lions Club for seven consecutive years, (10) elected to preside the Dominican Chamber of Commerce for 10 consecutive years, (11) elected to preside the Federation of Dominico-Hispano Chambers of Commerce for 5 consecutive years, numerous recognition from the academia at the international level, including but not limited to: (12) Doctor of Science/Business Administration (Excellencia Plena Digna Summa Laude) by American University of Asturia, (13) Doctor of Philosophy with Honor, International Law, (Excellencia Plena Digna Summa Laude) American by University of Spain, (14) Universidad Autonoma de Santo Domingo. See, Vol. VI/Da 1194 to Vol. VII/Da 1217, details inserted verbatim. Finally, after the incident that brough him to prison, defendant has maintained a free charge record, dedicating his life to work of spirituality within the Catholic Dominican Religious Order to which after two years of postulancy work he was unanimously accepted as member of the Third Order Chapter "Our Lady of Mercy."

DA-813

W.C. Meehan

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CLAUSE OF THE UNITED STATES CONSTITUTION. [Vol. I/Da 161-162].
Vol. I/Da 132-162.

On the direct appeal, the Appellate Division made a determination of relevant facts, here taken from the per curiam Opinion and set forth below:

"Defendant shot and killed Gladys Ricart in her residence on her wedding day, dressed in her wedding dress, and flanked by her bridesmaids who along with others, witnessed the murder. The actual killing was captured by the wedding videographer who was filming the event of the day. The background leading up to this homicide may be summarized as follows.

Gladys Ricart, a native of the Dominican Republic, came to America in 1983, earned a college degree and became an American citizen. She met [D]efendant on the New York City subway in 1992 when she was thirty-one, and he was forty years old. At the time of their meeting, [D]efendant was separated from his soon-to-be-divorced wife, Lourdes, with whom he had two children, Agustin, jr., and Natisa. Gladys was single, with one child, Davis, from a prior relationship. The pair immediately began dating.

Defendant, who was also from the Dominican Republic, had emigrated to the United States in 1977 after obtaining both a [Vol. I/Da 22] bachelor's degree and a masters degree in business administration in Puerto Rico. Defendant also obtained a doctoral degree in international law via correspondence school after coming to the States. [Fn 2]. He operated a business called "Unique Travel and Tax Service" (later known as Illusion), and served as the executive director of Asociaciones Dominicanas, a nonprofit organization dedicated to providing educational services, business

² Appellate Court's summary omitted the fact that defendant had lived an exemplary life, rated by the New York Time as "the american dream", selected twice as honorary New York City Police Commissioner, selected by New York Gov. Mario Cuomo as Commissioner for Dominican Affairs, inducted as Melvin Jones Fellow by the International Lions Club Association, his life outstanding accomplishments had been recognized by all level of Government, including but not limited to: (1) Member of U.S. President Bill Clinton's commission for celebrating diversity, (2) Board member of New York City Business Mentorship Council for Mayor Ed. Kosh, (3) Board member of New York City Day Care Council, recognized

Continued....

DA-812

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VIDEOTAPE⁰⁰ WAS ADMISSIBLE. [Vol. I/Da 101-106];

POINT IV: THE TRIAL COURT ERRED BY FAILING TO SUPPRESS DEFENDANT'S ORAL STATEMENT. [Vol. I/Da 107-112];

POINT V: THE TRIAL COURT ERRED BY FAILING TO DISMISS COUNTS FOUR THROUGH SEVEN ALLEGING THAT DEFENDANT ENDANGERED THE WELFARE OF A CHILD. [Vol. I/Da 113-115];

And,

POINT VI: DEFENDANT'S SENTENCE WAS EXCESSIVE. [Vol. I/Da 116-120].

Vol. I/Da 66-131.

Movant additionally filed a Supplemental Appellate Brief, arguing the following reasons for reversal:

POINT I: THE COURT IMPROPERLY ADMITTED THE WEDDING VIDEOTAPE THAT DID NOT ESTABLISH THE DEFENDANT'S GUILT IN ANY WAY AND WAS CLEARLY PREJUDICIAL AND INFLAMMATORY. (Supplement to Appellate Counsel['s] Point III) [Vol. I/Da 138-146];

POINT II: THE TRIAL COURT ERRED WHEN IT DENIED DEFENDANT HIS RIGHT AGAINST SELF-INCRIMINATION IN VIOLATION OF THE FIFTH AMENDMENT, WHEN THE COURT PERMITTED TESTIMONY FROM ROBERT ANZILOTTI, A BERGEN COUNTY HOMICIDE DETECTIVE, DESPITE DEFENDANT'S PREVIOUSLY INVOKED MIRANDA SAFEGUARDS. (Supplement to Appellate Counsel['s] Point IV) [Vol. I/Da 146-150];

POINT III: THE VERDICTS AS TO ENDANGERING THE WELFARE OF A CHILD, CONTRARY TO COUNTS FOUR THROUGH SEVEN WAS AGAINST THE WEIGHT OF THE EVIDENCE AND DENIED DEFENDANT A FAIR TRIAL ON ALL OTHER COUNTS. (Supplement to Appellate Counsel['s] Point V) [Vol. I/Da 151-153];

POINT IV: THE COURT ERRED IN FAILING TO MERGE THE UNLAWFUL PURPOSE CHARGE INTO THE MURDER CHARGE AND IMPOSING AN UNDULY PUNITIVE AND MANIFESTLY EXCESSIVE SENTENCE. (Supplement to Appellate Counsel['s] Point VI) [Vol. I/Da 154-159];

POINT V: THE JURY WAS NEVER TOLD, AS THEY MUST BE UNDER STATE V. HARMON, THAT A SELF-PROTECTIVE PURPOSE IS NOT AN UNLAWFUL PURPOSE UNDER [N.J.S.A.] 2C:39-4. (Not Raised Below)[.] [Vol. I/Da 160];

And,

POINT VI: THE CUMULATIVE EFFECT OF THE TRIAL COURT'S ERROR VIOLATED THE COMMON LAW OF NEW JERSEY AND THE DUE PROCESS

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exclaimed without thinking, "Gladys getting married?" Yolanda immediately glanced at [D]efendant whom she was certain had overheard her remark. Defendant, however, looked quiet and gave no overt reaction. [Fn 7].

In early August, Gladys told Formato that she and Preston were to be married and asked her to be her maid of honor. Therefore, Formato and Gladys set about preparing for the wedding, which was scheduled for September 26, 1999, less than two months away. [Fn 8].

⁷See, Vol. II/Da 376 to 383, demonstrating Norma lack of credibility, details inserted verbatim.

⁸Notwithstanding her plans, Gladys continued to have on-going normal husband-wife relationship with [D]efendant as evidenced by the following:

SUMMARY SAMPLE QUOTES

May 11, 1999, she (Gladys) said to Rochelli's parent's "we are together" (Vol. IV/Da 759, detail inserted verbatim)

June 18, 1999, Gladys Ricart and Agustin Garcia are observed happily dancing throughout the night at the Federation's event by Sukwant Walia, Nereyda Plaza, Mercedes Rodrigues, (Vol. IV/Da 750 to 754)

July 1999, Agustin Garcia accompanied by Gladys Ricart and her mother Ana Rosario attended the ceremony of the New Jersey Dominican Business Association. (See, Vol VII/Da 1394, details inserted verbatim)

July 1999, they met Garcia accompanied by Gladys met Mario Ciria in New York City. (See, Vol. IV/Da 746, details inserted verbatim)

August 1999 "Ms. Ramos stated that Ms. Ricart always referred to Agustin as her husband. "Gladys told Rochelle as far as August 1999, that she was not going to let her have her husband." (Vol. IV/Da 759, detail inserted verbatim)

August 19, 1999, Gladys called Fran Quiñones who was in the Dominican Republic and after informing him that she had slept over at Garcia's house the night before and prepared Gacia's travel September 1999, Gladys is heard on audio tape retrieved from her telephone answering machine saying to defendant: "for the sake of the relationship, if you are interested in keeping it? if you still don't want it then there is no relationship." (Vol. V/Da 975, detail inserted verbatim)

"You are going to des...to destroy the relationship Agustin,continued"

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At roughly 10:30 p.m. on August 12, 1999, Gladys dialed 911 and advised the dispatcher that her ex[-]boyfriend, with whom she had "finish[ed] about three months ago," was trying to break her window because she would not open her door to him. Sergeant William Pych of the Ridgefield Police Department responded to the call and, upon arrival, observed [Vol. I/Da 25] [D]efendant seated on the ground in front of his car, rocking back and forth in a fetal position.

Pych approached [D]efendant and asked what was going on. Defendant responded that he wanted to speak to his girlfriend who was in the house with another man. Defendant

.....continued.

because if you don't tell me the relationship will end" (Vol. V/Da 975, detail inserted verbatim)

3rd week of September, 1999, Gladys and Agustin shared dinner with Angel Caso and his wife Alina Ondarza, who even drove them to Gladys's home, they (Angel and Alina) saw Gladys and Agustin as the normal, happy couple they were (See, 19T 111-11 to 112-1; 19T 86-10; 19T 86-17; 19T 106-16 to 106-18)

Question: "At the time when Mr. Garcia and Gladys were still couple?"

Answer: I don't remember any time that they weren't still a couple. (19T 106-18)

September 23, 1999, Natisa Garcia heard Gladys and defendant having sexual intercourse. (20T 18-5 to 18-8)

September 25, 1999 Agustin Garcia Jr, saw Gladys Ricart and Agustin Garcia returning arriving at defendant's house at around 1:30 A.M. and going into defendant's bedroom. (Vol IV/Da 736, detail inserted verbatim)

September 26, 1999, while at the beauty salon "Gladys started to cry and could not control herself. The crying continued on and off for about two hours." "She had been crying for two day because she "still loved Agustin Garcia" (Vol. IV/Da 763)

Consistent with above revealed facts defendant testified as follow:

"Defendant testified that prior to his departure for San Diego, on September 15, 1999, defendant gave Gladys the last \$500.00 to be deposited in the fund account for her wedding with Garcia." (21T 71-2 to 71-3)

"He (defendant denied knowing that Ms. Ricart was engaged to be married or that the wedding was scheduled for Sunday, September 26, 1999." 21T 170-3 to 170-5

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DA-816 775
10

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That night, around 9:00 p.m., Formato arrived at Gladys' house. When Gladys arrived shortly after 10:00 p.m., she and [Vol. I/Da 26] Formato decorated the inside of the house in preparation for the wedding and arranged the bridesmaids' dresses. At approximately midnight, Formato discovered that she needed sanitary napkins and Gladys agreed to run out to the store. Formato subsequently dozed off, [yet] woke up some hours later when Gladys finally returned. Formato asked what had taken so long. Gladys replied that she had bumped into an old friend and then quickly went to bed.

The next morning, Formato and Gladys woke early, to have their hair done. They did not return to the house until sometime between 2:00 and 3:00 p.m.

Sometime after 3:00 p.m., Searfoss, Sacin, and two of the groomsmen, Antonio Caban and Raymundo Fabin, all of whom were standing outside of Gladys' house, saw [D]efendant drive by and then return and park. Searfoss' house[-]mate, Pat Pollio, went inside to warn the family members that

....continued.

1249 Saint Nicholas Avenue, NYC 10032 to the house of Fernando de la Rosa's mother located on 175th street, NYC, about three blocks away from the Ilusion business location. The purpose of the visit was because Garcia wanted to give instructions to Fernando's brother Franklyn, for the opening and cleaning of Asociaciones's headquarters, for an event scheduled for next day Sunday 26 of September, 1999. We waited in Fernando's mother home for a period of about two hours trying to locate Franklyn, and returned to Ilusion business shortly before 9:00 P.M.

2. That on the night of Saturday 25th of September, 1999, around 9:00 P.M. I saw Gladys Ricart picking up Agustin Garcia from his business located at 1249 Saint Nicholas Avenue, between 172nd and 173rd St. in Manhattan. (Vol. IV/Da 735, detail inserted verbatim)

I saw her arriving and she did speak to me saying she was there to pick up Agustin Garcia. While I was talking to her, Agustin came out of his office and they, Agustin and Gladys, walked together to her Toyota Camry that was stationed in front of 1251 Saint Nicholas Avenue, next to Garcia's office. I also, accompanied them as they approached the car, while Gladys continued engaged in friendly conversation with Gladys.

3- Following alibi for defendant placed defendant in New York City at the same time Davis falsely alleged seen him around Gladys's house: (1) Ana valdez, (2) Mercedes Bautista, (3) Jacqueline Valdez are alibies confirming the fact that defendant was in his New York City (Washington Heigh) Office at the same time Davis falsely alleged having seen defendant around his Ridgfield home:

continued....

was sweaty, angry, and verbally combative. Pych subsequently spoke with Gladys, who refused to sign a complaint against [D]efendant, explaining that she did not want to cause him a problem [yet] simply wanted him to get on with his life. Pych then instructed [D]efendant to leave the area. Although [D]efendant initially refused, stating that Pych would have to arrest him, he eventually calmed down and left peacefully.

On September 25, 1999, the day before the wedding, [D]efendant stopped by Gladys' house in the mid-afternoon. Gladys reluctantly agreed to allow [D]efendant into the house. According to Davis, [D]efendant repeatedly apologized for some unidentified transgression and ultimately began to cry and shake. Gladys finally interrupted him and told him that he had to leave because she was going out. Although he agreed to leave, Davis later saw [D]efendant driving up to the house and parking between 6:00 and 7:00 p.m. [Fn 9].

⁹ However, Davis' statement is in absolute contrast with the statement made by the following individuals:

1- Evelyn Lopez: (20T 32-3 to 33-3; 21T 94-19 to 94-19)
"That I remember seeing her after that was the Saturday which was September be the 25...I was going--it was around 6:00 P.M., 6:30 P.M. in the afternoon. I was going out. I was waiting for them to pick me up and she came in a little station wagon and she rang the doorbell. Mr. Garcia went outside. They left in the car. And then I left also. When I got back at night around ten o'clock at night they got back at the same time I got home. (Vol. IV/Da 735, detail inserted verbatim; 21T 92-11; 94-19 to 94-19)

Question: So you're saying your testimony is that you saw Miss Ricart come to the house of Mr. Garcia, pick him up at 6:00 P.M., you left with your friends to go to Holahan's and when you came back at 10:00 you ran into them again?
Answer: Yes.

2- Jose Valverdes: (see as confirmation of Lopez's testimony, the following affidavit of Jose Valverdes, confirming that he saw Gladys picking up defendant around 9:00 P.M. on Saturday, September 26, 1999, the night before the incident) (21T 94-19 to 94-19; Vol. IV/Da 711; 735, detail inserted verbatim)

Certification

I the undersigners certify the following under oath as per R.1.4.4(B) and 28 U.S.C. § 1746:

1. That on the night of Saturday 25th of September, 1999, around 7:00 P.M., I accompanied Agustin Garcia from Ilusion business at
Continued....

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[Handwritten signatures and initials]
-12- DA-818

[D]efendant was there. [Fn 10].

Gladys' brother Juan immediately went outside and approached [D]efendant's car. Juan asked [D]efendant what he was looking for and [D]efendant responded that he was invited and began to walk quickly toward the house. Aware that [D]efendant had not been invited to the wedding, Juan followed him up to Gladys' front door, which was closed and locked. Defendant did [Vol. I/Da 27] not say a word. Juan noticed that [D]efendant had a brown briefcase hanging on his shoulder and, concerned that [D]efendant might be carrying a gun as he usually did, tried to touch the case, [yet]

.....continued.

Certification

"That on the night of Saturday 25th of September, 1999, around between 7:00 P.M. and 8:30 P.M. we were together with Agustin Garcia at 590 West 174th Street Apt 56, New York 10032.(...) that Garcia was accompanied by Jose Valverde."

Name: Ana valdez, 590 West 174th Street Apt 56, New York.10032.

Name: Mercedes Bautista, 590 West 174th Street Apt 56, New York 10032.

Name: Jacqueline Valdez, 590 West 174th Street Apt 56, New York 10032. (Vol. IV/Da 720)

In short, the above testimonies and statements by Evelyn Lopez, Jose Valverdes, Ana Valvez, Mercedes Bautista and Jacqueline Valdez confirm the perjury nature of Davis' testimony.

¹⁰ However, the prosecutor conveniently choose to ignore the following testimonies of his own witnesses indicating that defendant first passing by Gladys's house did in fact occurred around a quarter to 4:00 p.m., instead of around 3:00 p.m.:

1- Brigitte Saccin's testimony:

"Question: When was the first time you saw him?

Answer: The first time I saw him when he passed the whole wedding area. (17T 162-16 to 162-17)

Question: What time was that if you know?

Answer: it was maybe quarter to four. (17T 162-19)

Q: quarter to four? A. Yes. (17T 162-24)

Question:-- What was the second time you saw him?
A: The second time I saw him when he came back, parked the car and went into the house. (17T 163-1 to 163-2)

Q: What time was that about?

A: That was a couple of minutes to four. (17T 163-4)

Continued....

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[D]efendant pushed him away with his elbow. Juan denied that he therefore struck or punched [D]efendant. [Fn 11]. Davis, who had been watching [D]efendant's progress toward the house from the foyer, opened the door in response to [D]efendant's repeated knocking. [Fn 12]. Then the door opened and they went inside [Fn 13] and [D]efendant walked in followed closely by Juan. Juan recalled that Davis made no attempt to keep [D]efendant out or to hit him once he was inside and that no one threatened [D]efendant, [See. Vol. II/Da 356 to 375, for crystal clear demonstration of Juan absolute lack of credibility? details inserted verbatim] Davis confirmed that he never hit or otherwise confronted [D]efendant. According to Davis, as [D]efendant walked in, he "moved" Davis over to the side, [yet] there was no physical scuffle between the two of them. He insisted that Juan, likewise, did not grab [D]efendant as he followed [D]efendant into the house. [Fn 14].

....continued.

"Q: How soon after you saw the gentlemen get in his car and make the turn as you indicated on the diagram, how soon after that did Gladys and Davis come out of the house?

Caban: Like about five minutes." (18T 75-7 to 75-11)

Sandra Ricart's statement:

"Question. Approximately what time was that you observed him pass by?

A. "Approximately ten minutes to 4:00. I entered the house and told my husband that I had seen Agustin Garcia. I stayed basically in the door way in front of the house. After that I did not see him (Vol. III/Da. 594 to 595)"

¹¹ See. Vol. II/Da 356 to 375, for crystal clear demonstration of Juan absolute lack of credibility? details inserted verbatim

¹² In absolute contrast, demonstrating Davis' false statement Timothy Evans, reported: "The brother knocked on the door, and the door kind of cracked and the brother said something to whoever was standing behind the door (Davis).

¹³ See, Vol. IV/Da 706, details inserted verbatim

¹⁴ However, following defendant's statements are in absolute contrast with Juan's and Davis's false statements:

"Defendant: I went something like, "what's going on?" something like that. Immediately, I got hit." 21T 122-8 to 122-9; "Defendant: Davis, because he's the one that was there." 21T 122-11; "Defendant: He landed me against the wall." 21T 122-13; "Defendant: I landed against the wall. They came over to me." 21T 125-12 to 126-24; "Defendant: the minute I bumped into Davis my foot goes this way. he

....continued.

Da-820

22714

22714

22720

Da-820

Defendant immediately stepped into the living room where there were several children present, including Juan's five-year-old daughter Melina, and his five-year-old niece Alexandra, and approached Gladys, who was distributing flowers to her bridesmaids. [Fn 15].

Suddenly [D]efendant pulled a gun out of his brown briefcase and started shooting a Gladys, firing the gun twice. Juan tried to grab [D]efendant [yet] [D]efendant pushed him, [Vol. I/Da 28] brandished the gun at the room, and then shot at Gladys two more times, causing her to fall down over the sofa. Defendant then shot Gladys one final time, at very

.....continued.

landed me against the wall. Then, I see all this bright lights. I'm like passing out, at the same time I'm blacking out, all these people are coming over me at the same time. We begin wrestling for the weapon right there." 21T 125-12 to 125-19; "Defendant: When I went like that, right there I saw her. Boom, land against the wall. Then, I'm struggling I see. like I see her a second time and that's when I kind of pass out and after that I remember falling." 21T 129-20 to 129-23; "Defendant: I saw her in a flash again. I'm wrestling at that time." 21T 136-4; "Defendant: Yes I saw her" 21T 136-7; "Defendant: At the point when, the minute I get to see Gladys; at that point Davis hit me on my head, and I hit the wall." 21T 218-11 to 218-13; "Defendant: This is in a flash when I see her, I see all the betrayal and I'm confused but right away I'm hit." 21T 230-19 to 230-20.

Moreover, statement by, Ana Nunez, the assistant videographer who was standing inside the house next to the entrance door fully support defendant's version:

"A. No, no, no. Gladys's brother was struggling with another man over a bag. (VOL. IV/Da 675)

Q. After Gladys's brother was struggling with this man with the bag, what were they to each other? (VOL. IV/Da 675)

Q. After that, was there a problem with the lighting?

Answer. Yeah, there was a problem with the lighting." (Vol. IV/Da 676)

Furthermore, defendant's version is supported by evidence of defendant's head injury. (See, Vol. V/Da 1000; Vol. VI/Da 1001 to 1004, details inserted verbatim) MRI testing further confirmed head injury.

15 However, appellate court correctly concluded that the children whereabouts was never established. Thus, acquitting defendant of related charges.

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through her lower right arm, which presumably was flung up in a defensive manner, and then broke the main bone of her upper right arm. Another of the bullets which was fired from only inches away, struck Gladys in the back and passed through both of her lungs before lodging in the muscle below her left breastbone. The third bullet, which was fired from no more than eighteen inches away, entered her skull from just behind her right ear. Although Gladys died from the combination of gunshot wounds, [Vol. I/Da 31] either the shot to her back or the shot to her head alone could have killed her. [Fn 18].

At trial, a portion of the wedding videographer's tape, which showed the actual shooting, was played for the jury.

Defendant testified in his own defense. He recounted the various highs and lows throughout their relationship, including the incident of August 12, 1999 where the police were summoned.

He also ran an Internet search on one of the car owners on September 3, 1999. [See, Vol. VII/Da 1380, details inserted verbatim]. Defendant explained that he was trying to identify the person who had been at the house on August 12.

With respect to the events of September 26, 1999, [D]efendant described what took place after he awakened at noon. Defendant left for Manhattan at 3:30 p.m. He decided to drive by Gladys house as he often did to see whether she was home and whether he could call her without Ana picking up the phone.

Defendant acknowledged that he had placed an illegally purchased gun in his briefcase before leaving home. He never admitted having actually purchased the illegal gun himself.

18 Contrasting Appellate Court's version, State's forensic expert testified as follows: "That wound, because of the presence of the stippling, is what we refer to as an intermediate range wound. Now, it would not be as close as the wound that we saw on the back of her wedding dress because there was soot deposited there. The definition of soot is the closeness type wound, that would be a close shot, within inches as I described earlier. This wound, wound A behind the right ear does not show any soot, meaning that the gun was held a little bit further away so that only those flakes of burning gunpowder are making their way to the skin and the skin and the smoke that's coming out of the end of the barrel is actually being defused into the air." (19T 27-18 to 28-5)

close range, behind her right ear. In all, five shots were fired. [Fn 16].

After this final shot, [D]efendant paused and began reloading the gun. Juan seized this opportunity to grab [D]efendant from behind in an attempt to prevent him from reloading the gun. As they wrestled, they moved from the living room into the kitchen where they fell to the floor. According to Juan, throughout this struggle, [D]efendant said nothing. Finally, Juan heard the police calling from outside the house, and he yelled out for help.

Lieutenant Alfred Schettino and Sergeant Vincent Berta of Ridgefield Police [D]epartment, as well as Investigator Jose Brito, rushed in to the kitchen where Juan was leaning over [D]efendant's back and using his hands to restrain [D]efendant's hands on the gun. Defendant and Juan fell on the ground and then Schettino pried the gun, which was empty, out of [D]efendant's hands, while the other officers pulled Juan off of [D]efendant's back. Brito handcuffed [D]efendant and Schettino read him his rights. The officers discovered some live bullets in [D]efendant's pocket which were the same caliber as the gun, a silver five-shot revolver.

[Vol. I/Da 29]

Brito subsequently transported [D]efendant down to the police station and placed him in a cell. While at the station, he re[-]advised [D]efendant of his rights in both English and Spanish. Defendant acknowledge that he understood his rights, [yet] refused to sign a waiver and speak with police.

16 Drastically contrasting Juan's perjury testimony, State's forensic expert testified as follows: "That wound, because of the presence of the stippling, is what we refer to as an intermediate range wound. Now, it would not be as close as the wound that we saw on the back of her wedding dress because there was soot deposited there. The definition of soot is the closeness type wound, that would be a close shot, within inches as I described earlier. This wound, wound A behind the right ear does not show any soot, meaning that the gun was held a little bit further away so that only those flakes of burning gunpowder are making their way to the skin and the skin and the smoke that's coming out of the end of the barrel is actually being defused into the air." (19T 27-18 to 28-5)

In short, on the basis of the Forensic Doctor "the most scientific valid opinion" presented by the prosecution. The last shot was the one to the body, demonstrating Juan Ricart's perjury whereas Juan falsely placed defendant pointing to victim's head (execution style).

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According to Brito, [D]efendant did not request an attorney at that time.

Detective Robert Anzilotti of the Bergen County Prosecutor's Office subsequently arrived at the station and learned that [D]efendant had been advised of his rights in both English and Spanish and that he had refused to answer any questions. Anzilotti then headed to [D]efendant's cell so that he could collect evidentiary samples. Upon arrival, [D]efendant asked Anzilotti who he was and if he could tell him what was going on. Anzilotti advised [D]efendant that if he wanted to talk, they would have to go to a nearby room where they could sit down. Defendant responded [] that would be fine and that he wanted some answers.

In a large conference room, Anzilotti readvised [D]efendant of his constitutional rights using his office's Miranda form. Although [D]efendant once again refused to sign a waiver, he confirmed that he understood his rights and told Anzilotti that he was willing to talk to him and gave an oral statement.

[Vol. I/Da 30]

At 9:55 p.m. after [D]efendant had repeated his story several times, Anzilotti asked [D]efendant if he would give a formal statement. Defendant, however, refused. [Fn 17].

Detective Mark Bendul of the Bergen County Prosecutor's Office secured a surveillance tape from a Pathmark store [D]efendant claimed to have visited with Gladys, and determined that the pair had been in the store at 1:20 a.m. that morning.

Following an autopsy, it was determined that Gladys had been struck by three of the five bullets fired at her by [D]efendant. Specifically, one of the bullets, which the medical examiner believed had been the second fired, passed

17 In contrast with Detective Anzilotti's testimony, defendant vehemently denied ever inviting any questioning nor giving statement instead he simply corrected some inaccuracy statements obtained by Detective Anzilotti's from Detective Suarez concerning statements made previously made by Juan Ricart, Ana Rosario and Davis Ricart. Defendant's version is totally supported by comprehensive analysis of the trial transcripts and discovery revealing the flagrant perjury of Detective Anzilotti. (See, Vol. II/Da 330 to 342, details inserted verbatim) Also see following segment for Det. Anzilotti's comparative analysis.

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He explained that, ever since he opened the travel agency and began handling large sums of money, he kept a gun with him at all times. [Fn 19].

[Vol. I/Da 32]

Defendant drove by Gladys' house and noticed limousines parked out front and formally attired people milling about. He drove by again and concluded that Gladys was hosting a party for her mother, similar to the one organized by Gladys and him for Gladys's mother Ana during her prior trip whereas catering service, musical group and DJ had been hired. He started to drive away, [yet] then, annoyed that Gladys had lied to and excluded him, turned around and returned to the house to confront her. Defendant maintained that he had no idea that Gladys was getting married. As [D]efendant got out of his car, Juan came up to him and asked whether he was invited and he responded that he was "always invited to [his] House." Juan followed him as he walked up to the front door [yet] did not touch him. After Davis opened the door, however, and he entered the house, Juan pulled his left arm, and he fell forward and hit Davis.

Defendant claimed that Davis then pushed him and he ended up in the living room where he spotted Gladys. He was totally confused and asked what was going on. Davis then hit him hard on the right side of his forehead and he fell into a wall. Believing that many people, including Juan, were attacking him, he reached for his gun to protect himself. Juan then grabbed him and they started wrestling. Defendant recalled that he was blacking out and falling when he saw a white cloud over him and then a flash of light. Juan then yelled, "you killed my sister" three times and he replied, "I want to kill myself." Defendant [Vol. I/Da 33] claimed that he tried to reload the gun so that he could shoot himself.

Defendant insisted that, at the jail, he asked for an attorney, [yet] that Brito did not honor his request. He further claimed that he told the officers that he had been punched hard on his head and that he was sleepy, [yet] that Anzilotti insisted on speaking with him. He denied that he ever gave Anzilotti a statement, maintaining that he merely corrected mistakes in the story Anzilotti was telling him. In particular, [D]efendant insisted that he never told Anzilotti that his infidelity caused the breakup with Gladys.

19 Defendant carry gun permit had expired due to his voluntary failure to renew on July 1, 1999 after voluntarily surrendering to New York City Police his legally purchased 357 Magnum and 380 Sig-Saver weapons.

or that he knew of her impending marriage. Defendant denied that he ever had any intention of killing Gladys.

Dr. Daniel Greenfield, a psychiatrist, examined [D]efendant on January 29, 2001. He concluded that, while [D]efendant was not suffering from any serious diagnosable psychiatric disorder at the time of the exam, he had been suffering from a diagnoseable psychiatric disorder at the time of the shooting. He explained that, because the wedding was a total surprise to him, [D]efendant felt betrayed and became agitated, confused and enraged, and, consequently, did not behave in a knowing and purposeful manner. Dr. Greenfield was satisfied that [D]efendant was suffering from an acute adjustment disorder at the time of the shooting, with [Vol. I/Da 34] mixed feelings of anxiety and depression. Defendant did not tell Dr. Greenfield that his relationship with Gladys had ended several months before. [Fn 20].

Dr. Azariah Eshkenazi, a psychiatrist, testified as a rebuttal witness for the State. Based upon his examination of [D]efendant, he concluded that he did not suffer from any psychiatric disorder at the time of the evaluation or at the time of the crime. According to Dr. Eshkenazi, Dr. Greenfield's description of [D]efendant's mental state at the time of the shooting would not be considered a "medically recognized illness or defect." [Fn 21].

Vol. I/Da 22-35, Per Curiam Opinion, Appellate Division, 11 May 2004, pgs. 3-16.

Because the Appellate Division affirmed as to the other convictions raised on direct appeal; as to these, Movant filed a Petition for Certification with the New Jersey Supreme Court, which was denied by the September Term on 10 September 2004. State

²⁰ However, Appellate Court's summary omitted the following: The doctor also acknowledged that Garcia passed a battery of standardized psychological tests. (22T 55-25 to 56-7).

²¹ However, Appellate Court's summary omitted the following: Dr. Eshkenazi stated that he did not perform any standardized psychological testing, instead contrasting with Dr. Greenfield comprehensive objective evaluation, Dr. Eshkenazi subjective conclusion was based on his brief (less than three hours total) interviews of movant whereas he mainly collected some biographical data.

Da-826

Da-826

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V. Garcia, 181 N.J. 545 (2004); Vol. I/Da 163-164.

Movant then mailed on 22 January 2005, by way certified mail [Vol. I/Da 165-166], for filing with the Clerk and which is presently pending before this Court, a notice of motions [Vol. I/Da 167] and an initial verified petition[-brief with appendix] for post-conviction relief. Vol. I/Da 171-200; Vol. II/Da 201. Included among these are motions were the following:

- * To proceed as an indigent.
- * For permission to file a first-amended verified petition-brief.
- * To compel the prosecutor to turn over or make available the original wedding videotape and Pathmark surveillance tape for examination by a defense audibility expert.
- * To compel the Public Defender to compensate the services of an audibility and DNA expert and the testing in connection thereto.
- * To stay the post-conviction relief proceedings.
- * To compel Prosecutor Fred Schwanwede to disqualify himself.
- * For recusal of the Hon. William C. Meehan, P.J.S.C.

This motion inter alia to supplement the moving papers with a motion for a new trial based upon newly discovered evidence and requesting other motion relief follows.

Comparative Analysis of Det. Anzilotti's Testimony

Anzilotti's testimony
--(5T-136-25 to 137-5)

(1-a) "Defense: Question.
And that report was based
solely on your knowledge

: (1-a) "Defendant's testimony
: "Everything else he obtained
: from the victim's family
: and acquaintances, as well
: as from the police." (21T
: 148-3 to 148-8; 165-17 to

DA-827

or was it based on a
compilation of many sources?

(1-a) A. No, this was my
knowledge from the interview.

(1-a) Question: So your
testimony is that you created
that document, and didn't
get any help in creating
that document? A: Correct.

(See, Vol. VI/Da 1031)
"I asked Agustin Garcia
to provide us with background
information regarding his
relationship with the victim,
Gladys Ricart, Mr. Garcia
looked down into his lap
and stated "she was my life,
the only woman for me."
He then provided the
following information:
(1-b) "He began dating
Gladys Ricart approximately
seven (7) years ago." (Vol.
III/Da 512) Garcia described
the first few years of the
relationship as, "things
were wonderful, she was
an angel sent to me from
heaven." Mr. Garcia explained
that shortly after the two
began dating, Gladys Ricart
and her son Davis Ricart
moved in with him at his
residence of 8410 Newkirk
Avenue, North Bergen, New
Jersey. During this time,
Agustin Garcia's two children
were also living with him.
Mr. detailed that while
living together, he and
Gladys Ricart had difficulty
dealing with the other's
children. He seemed upset
as he spoke about their
problems, saying that "

(2-a): "Anzilotti: going
to defendant's cell to
examine defendant searching

165-24; 216-3 to 216-7)

(1-a) "He took statements
from other people, assembled
it and created this report"
(21T 16725 to 168-2)
(1-a,b) "Anzilotti's
affidavit: "Subsequently,
Juan Ricart was interviewed
by Det. Dennis Suarez, Bergen
County Prosecutor's Office
Homicide Squad, and Detective
Richard Besser, Ridgefield
Police Department. Detective
Suarez informed me of the
following regarding the
interview of Juan Ricart...
(1-a) Mr. Ricart informed
Det. Suarez that Gladys
Ricart had previously had
a dating relationship with
Agustin Garcia. (1-b) The
relationship lasted six
or seven years and terminated
approximately 8 to 12 months
ago. (1-a) Gladys Ricart
had since met James Preston,
Jr., to whom she was engaged
to be married. (1-a)
Mr. Ricart detailed the
fact that on August 12,
1999... (Vol. VI/Da 1178
to 1179), details are
inserted verbatim)
(1a & b) "Det. Rich Besser's
report dated 9-28-99: "At
approximately 1815 hours,
Det. Dennis Suarez of the
Bergen County Prosecutor's
office Homicide squad and
I began interviewing
witnesses. Interviews
conducted included the
victim's brother, Juan
Ricart. The victim's son,
Davis Ricart, the victim's
mother, Ana Rosario." (Vol.
VI/Da 1143, details inserted)
(2-a) But he neglected
to see the obvious head
(face) injuries that were
even measured and

for the presence of any
evidence; any obvious
injuries, wounds, anything
that needed to be collected
immediately from defendant's
body, person, clothing, that
type of thing" (5T 91-12
to 91-16; Vol. III/Da 509)

(2-c) "by that point he
had stood up and come to
cell door, and although
the cell door was still
closed, he was now speaking
to me while standing in
front of me in the cell."

(2-d) Answer: Correct,
after agreeing to be
interviewed, and he said
that would be fine, meaning
taking me out of the cell
because I'd like some
answers. (5T 128-9 to
128-13)

photographed by the police.
(21T 127-10 to 128-20)
However, during his
testimonies he said that
he took no notes because
there was nothing to remark
about. (See, Vol. V/Da
1000 to Vol. VI/Da 1004,
details inserted verbatim)

(2-c) "cell log referred
to on page 2 of Detective
Rich Besser's report will
uncover the fact that at
all time while in the cell
I was restrained; handcuffed
and shackled to the bed.
"Yes, I am chained to the
bed" (21T 142-13) (Vol.
V/Da 965 to 969)

(2-d) "defendant: "You ask me about a statement taken in violation of my constitutional rights." (21T 169-3 to 169-4)

(2-d) Mr. Garcia appeared to be more annoyed by the fact that he was being questioned about his version of the events than anything else. (Vol. III/Da 524)

(2-e) In contrast to Anzilotti's, P.O. Sheridan stated in his report dated 9-26-99: "I continued to watch the suspect the entire time he was in the cell." (Vol. VI/Da 1141)

Det. Anzolotti's testimony:

(3-a) "Question: So he poses a question to you that he wanted some answers right?"

(3-a) Answer: Correct, after agreeing to be interviewed, and he said that would be fine, meaning taking me out of the cell because I'd like some answers. (5T 128-9 to 128-13)

(5T 136-11 to 136-13)

(3-b) "Answer: After I type my report, the notes are discarded.

Question: Destroyed them?

(3-b) Answer: Yes, throw them in the garbage.

Anzilotti's testimony:

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: was no conversation, and
: once in the interview room
: the" "No. The only
: conversation that took place
: was in that cell, which
: he initiated in the transport
: or the walk from the cell
: to the council chamber that
: became our interview room."
: (5T 153-24 to 154-2

: (3-a-2) He (Anzilotti)
: acknowledged that he learned
: from Brito that defendant
: didn't wish to be questioned.
: (5T 51-7 to 51-10)

: (3-a-3) "defendant was
: read the Miranda warning
: at least 6 times within
: a period of six hours, and
: without exception, he
: rejected the invitations
: to be questioned without
: the presence of his
: attorney." (5T 51-1 to
: 51-10; 23-1 to 25-25)

: (3-a-4) "defendant: I
: requested numerous times
: the presence of an attorney."
: (21T 168-25)

: (3-a-5) "defendant: "You
: ask me about a statement
: taken in violation of my
: constitutional rights."
: (21T 169-3 to 169-4)

: After hiding the
: interrogation recording
: tape and Det. Falotico's
: report for the purpose of
: concealing the exculpatory
: evidence, Anzilotti throws
: into the garbage his only
: source document??????????

: Anzilotti's testimony:

(4-a) "Question: So he poses a question to you that he wanted some answers right?"

(4-a) Answer: Correct, after agreeing to be interviewed, and he said that would be fine, meaning taking me out of the cell because I'd like some answers. (5T 128-9 to 128-13)

(5T 136-11 to 136-13)

(4-b) "Answer: After I type my report, the notes are discarded.

Question: Destroyed them?

Answer: Yes, throw them in the garbage."

(5T 143-7 to 144-5)

(4-a) "Anzilloti: He declined twice"

(4-a) "Anzilloti: That's three time"

Q. So, there are three instances which Mr. Garcia declined to sign the waiver form, correct, in your presence?

(4-a) Anzelloti: Right. But they were not three instances where I'm asking him will you sign it. he is—he's volunteering those I'm not signing it. I asked him why, then he said I'm not signing, that type of thing. (5T 143-16 to 143-19)

(4-a) After the interview process began, how many times did he declined to sign waivers?

(4-a) Answer. None. The only time we discussed the waiver is when the form was presented to him at the beginning of the interview."

(5T 144-1 to 144-5)

If he (Anzilotti) was not asking the defendant to sign, how come he is asking him why is it that he is not signing? and if defendant is volunteering the I'm not signing as Anzilloti said, how did defendant get the Miranda forms to begin with? and how did Defendant managed to force Anzilloti to sign, date and time those forms? Can perjury be more obvious?

"Anzilotti's affidavit: (5-a)
"Subsequently, Juan Ricart
was interviewed by Det.
Dennis Suarez, Bergen County
Prosecutor's Office Homicide
Squad, and Detective Richard
Besser, Ridgefield Police
Department. Detective Suarez
informed me of the following
regarding the interview
of Juan Ricart... (5-b)
Mr. Ricart informed Det.
Suarez that Gladys Ricart
had previously had a dating
relationship with Agustin
Garcia. (5-c) The
relationship lasted six
or seven years and terminated
approximately 8 to 12 months
ago. (5-d) Gladys Ricart
had since met James Preston,
Jr., to whom she was engaged
to be married. (5-e)
Mr. Ricart detailed the
fact that on August 12,
1999... (Vol. VI/Da 1178
to 1179), details are
inserted verbatim)
(5-f) "Det. Rich Besser's
report dated 9-28-99: "At
approximately 1815 hours,
Det. Dennis Suarez of the
Bergen County Prosecutor's
office Homicide squad and
I began interviewing
witnesses. Interviews
conducted included the
victim's brother, Juan
Ricart. The victim's son,
Davis Ricart, the victim's
mother, Ana Rosario." (Vol.
VI/Da 1143, details inserted)

: Contrasting Anzilotti's
: Juan Ricart testified that:

: (5-d) "Q. Did you meet him?
: A. No" (14T 126-16-17)
: But you never met him.
: A. No. (14T 126-22-23)

: (5-d) "I knew the name.
: I have not met the person."
: (14T 127-11)

: (5-d) When he was asked
: about the groom on the
: evening of the incident
: 9-26-99, he did not even
: knew the person last name,
: and was only able to provide
: the first name "James".

: (5-d) "Ricart: "It was not
: my worry because when I
: first met him I knew him
: by his name not by the last
: name." (14T 129-4 to 129-21)

: Mr. Ricart informed Det.
: Suarez: (5-c) The
: relationship lasted six
: or seven years and terminated
: approximately 8 to 12 months
: ago. (5-d) "Gladys Ricart
: had since met James Preston,
: Jr." (See, Vol. VI/Da 1178
: to 1179)

: In absolute contrast with
: his testimony, that he used
: no other sources, however,
: here Anzilotti depended
: on other sources to obtain
: the "Preston" last name
: and to obtain the "Jr."
: surname. It is also obvious
: that (5-c) Ricart's statement
: is the source for the
: relationship period, and
: that (5-e) Bergen County's
: police was the source for
: the August 12 incident which
: was filed on 9-26-99 month

Anzilotti's testimony:

(5T 136-25 to 137-5)

(6-a) "Defense: Question.
And that report was based
solely on your knowledge
or was it based on a
compilation of many sources?

(6-a) Answer: No, this
was my knowledge from the
interview.

(6-b) Question: So your
testimony is that you created
that document, and didn't
get any help in creating
that document?

Answer: Correct."

(6-c) Anzilotti's report
"He began dating Gladys
Ricart approximately seven
(7) years ago. (Vol. III/Da
512)

(6-d) "Gladys Ricart had
since met James Preston,
Jr." (See, Vol. VI/Da 1178
to 1179)

: and half after incident.
: (Vol. VI/Da 1144, details
: inserted verbatim)

: Contrasting Anzilotti's
: Juan Ricart was asked if
: he ever met Preston:

: (6-d) "Q. Did you meet
: him? Answer. No"
: (14T 126-16-17)

: But you never met him.
: (6-d) Answer. No.
: (14T 126-22-23)

: (6-d) "I knew the name.
: I have not met the person."
: (14T 127-11)

: When he was asked about
: the groom on the evening
: of the incident 9-26-99,
: he did not even knew the
: person last name, and was
: only able to provide the
: first name "James".

: (6-d) "Ricart: "It was
: not my worry because when
: I first met him I knew him
: by his name not by the last
: name." (14T 129-4 to 129-21)

: (6-) Mr. Ricart informed
: Det. Suarez:
: "The relationship lasted
: six or seven years and
: terminated approximately
: 8 to 12 months ago.
: Consequently, Juan is
: Anzilotti's source for
: relationship period.

: (6-d) "Gladys Ricart had
: since met James Preston, Jr."
: (Vol. VI/Da 1178 to 1179)

: Given above Ricart's
: testimony, "Preston" last
: name and the "Jr." surname
: must come from other
: sources, and that Bergen

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(7-a) "Detective Anzillotti: My understanding as explained to me (by Officer Brito) was that there's an additional question on the Spanish form asking "Are you willing to speak?" Or something of that nature." (16T 72-25 to 73-1)

(7-a) "Detective Anzillotti: I believe he had told me that Mr. Garcia signed the forms in the English language. However, the Spanish form had an added sentence to it which asked if he was willing to answer any questions, and Mr. Garcia checked off the No box or line." (5T 91-4 to 91-7)

(7-a) "Detective Anzillotti: Simply told me that he had gone over his rights with him, and he told me that on the Spanish form they have a (b) or they have a sentence that says, do you wish to speak to us, and that he checked No" (5T 122-5 to 122-8)

(7-b) "Question: So he poses a question to you that he wanted some answers right?

(7-b) Answer: Correct, after agreeing to be interviewed, and he said that would be fine, meaning taking me out of the cell because I'd like some answers. (5T 128-9 to

: County's police was the
: source for the August 12
: incident which was filed
: on 9-26-99 month and half
: after incident. (Vol. VI/Da
: 1144, details inserted
: verbatim)

: (7-a) He (Anzilotti)
: acknowledged that he learned
: from Brito that defendant
: didn't wish to be questioned.
: (5T 51-7 to 51-10)

: (7-b) "Anzilotti: There
: was no conversation, and
: once in the interview room
: the "No. The only
: conversation that took place
: was in that cell, which
: he initiated in the transport
: or the walk from the cell
: to the council chamber that
: became our interview room."
: (5T 153-24 to 154-2

: (7-b) Mr. Garcia appeared
: to be more annoyed by the
: fact that he was being
: questioned about his version
: of the events than anything
: else." (Vol. III/Da 524).

: (7-b) "defendant was read
: the Miranda warning at
: least 6 times within a period
: of six hours, and without
: exception, he rejected the
: invitations to be questioned
: without the presence of
: his attorney." (5T 51-1
: to 51-10; 23-1 to 25-25)

: (7-b) "defendant: I
: requested numerous times
: the presence of an attorney."
: (21T 168-25)
: (7-b) "defendant: "You ask
: me about a statement taken
: in violation of my
: constitutional rights."
: (21T 169-3 to 169-4)

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128-13)

(5T 136-11 to 136-13)
(7-c) "Answer: After I type my report, the notes are discarded.

Question: Destroyed them?
Answer: Yes, throw them in the garbage."

(7-d) "Anzilotti: It should be noted that throughout the interview,

(7-e) Agustin Garcia never appeared to be remorseful regarding the murder of Gladys Ricart. His demeanor was predominantly one of arrogance and contempt. As Agustin Garcia described the incident, specifically, the fact that he shot Gladys Ricart to death in her wedding dress, Agustin Garcia never became upset or emotional.

(7-f) Mr. Garcia appeared to be more annoyed by the fact that he was being questioned about his version of the events than anything else." (Vol. III/Da 524)

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:(7-b) "Anzilloti: He declined twice"
:(7-b) "Anzilloti: That's three time"
: Q. So, there are three instances which Mr. Garcia declined to sign the waiver form, correct, in your presence? (5T 143-7 to 144-5)

:(7-b) Anzelloti: Right. But they were not three instances where I'm asking him will you sign it. he is—he's volunteering those I'm not signing it. I asked him why, then he said I'm not signing, that type of thing. (5T 143-16 to 143-19)

:(7-b) After the interview process began, how many times did he declined to sign waivers? Answer.
: None. The only time we discussed the waiver is when the form was presented to him at the beginning of the interview." (5T 144-1 to 144-5)

:(7a & e) "I asked Agustin Garcia to provide us with background information regarding his relationship with the victim, Gladys Ricart. Mr. Garcia looked down into his lap and stated
:(7a & e) "She was my life, the only woman for me."
: "thing were wonderful, she was an angel sent from heaven." (Vol. III/Da 512 to 513)

:(7-b) "Anzilotti: While previously discussing his prior relationship with Gladys Ricart, Agustin Garcia's words flowed quickly

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(7-d) "Anzilotti: It should be noted that throughout the interview,

(7-e) Agustin Garcia never appeared to be remorseful regarding the murder of Gladys Ricart. His demeanor was predominantly one of arrogance and contempt. As Agustin Garcia described the incident, specifically, the fact that he shot Gladys Ricart to death in her wedding dress, Agustin Garcia never became upset or emotional.

(7-f) Mr. Garcia appeared to be more annoyed by the fact that he was being questioned about his version of the events than anything else." (Vol. III/Da 524)

(5T 136-11 to 136-13)

(7-c) "Answer: After I type my report, the notes are discarded.

Question: Destroyed them?
Answer: Yes, throw them in the garbage."

without forethought and
(7a & e) he seemed to display
appropriate emotions, even
at times swelling with
tears." (Vol. III/Da 518
to 519)

(7-b) State's psychiatrist,
Dr. Eshkenazi's testimony:
"Yes. I have no doubt that
that was the truth, what
he told me." "He was very
polite, very cooperative,
answered all of my questions
to the best of his ability."
(22T 152-14 to 152-15; 154-5
to 154-6)

(7-c) Defense psychiatrist,
Dr. Greenfield's testimony:
"In Mr. Garcia's test he
presented a valid test.
He wasn't faking up or down."
(22T 81-15 to 81-16)

(7-b) "defendant was read
the Miranda warning at
least 6 times within a period
of six hours, and without
exception, he rejected the
invitations to be questioned
without the presence of
his attorney." (5T 51-1
to 51-10; 23-1 to 25-25)

(7-b) "defendant: I
requested numerous times
the presence of an attorney."
(21T 168-25)

(7-b) "defendant: "You ask
me about a statement taken
in violation of my
constitutional rights."
(21T 169-3 to 169-4)

Above parallel comparison
demonstrate beyond any doubt
that defendant's Fifth
Amendment rights were
flagrantly violated by the
in custody-interrogation.

Hon. William C. Meehan, P.J.S.C.

(2-e) "Anzilotti: 'nobody
was in defendant's cell
when he saw him.'" (5T 141-24)

: without the presence of
: his attorney, particularly,
: after invoking his Miranda
: Rights to remain silent,
: that Court erroneously
: admitted the fabricated
: confession, and that defense
: failed to appeal judge's
: erroneous and bias decision.

:
: (2-e). In contrast to
: Anzilotti's, P.O. Sheridan
: stated in his report dated
: 9-26-99: "I continued to
: watch the suspect the entire
: time he was in the cell."
: (Vol. VI/Da 1141)

:
: (2-e) Also contrasting
: Anzilotti's perjury is the
: report of Detective Rich
: Besser: "At approximately
: 1713 hours, Detective Robert
: Anzilotti, and Detective
: Thomas Falotico, of the
: homicide squad arrived.
: I briefed them as to the
: incident. Together we talked
: to Inv. Jose Brito, who
: reported he read the suspect
: his Miranda warnings in
: English and Spanish. We
: also spoke to Ridgefield
: P.O. Ken Sheridan who was
: detailed to watch the suspect
: in cell No. 2. Detectives
: Anzilotti and Falotico
: requested to talk with the
: suspect. The suspect and
: the detectives were taken
: to the council chambers
: of the municipal building."
: (Vol. VI/Da 1143)

: Clearly the obvious
: contradictions of Anzilotti's
: testimony when compared
: with his own statement and
: also when compared with
: the statement of others
: as previously underlined
: demonstrate beyond any doubt

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DA-537

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Movant then met Gladys Ricart in the Summer of 1992. 21T:19-16 to 20. Ms. Ricart had come to the United States from the Dominican Republic in 1983 and became a naturalized citizen in 1989. 14T:93-25 to 9-6.

Movant and Ms. Ricart started dating and "soon it was kind of obvious to us that" they "kind of belonged to each other." 21T:20-11 to 13. Ms. Ricart introduced Movant to her sister, Yolanda Rosario [18T:5-4 to 13] and her brother Juan Ricart, because she "wanted [her brother's] approval. 14T:94-19 to 95-9.

By 1993, Ms. Ricart and Movant started to "perceive each other like a couple like husband and wife." 21T:21-10 to 11. When Movant was selected as Grand Marshal of the well known Dominican parade in New York City, it was Ms. Ricart as his escort that accompanied him. 21T:21-11 to 16. During this time, Ms. Ricart and Movant "decided to move into the same household." 21T:22-20 to 2. Ms. Ricart and her son Davis had moved from the Bronx into Movant's home located at 8410 Newkirk Avenue in North Bergen, New Jersey a residence where he was already living with his son and daughter. 20T:8-25 to 9-10; 21T:19-24 to 20-1; 22-14 to 23-12.

Ms. Ricart and Movant lived together for approximately two years and from 1993 through 1995. 14T:123-19 to 124-1. During that time, they did "everything together from shopping to going to church to [even] the finances." 21T:24-5 to 6. It was also in 1995 that Ms. Ricart and Movant were having difficulties disciplining each others children. 21T:27-17 to 15. Ms. Ricart and Davis Ricart then moved to a house located at 825 Elizabeth Avenue in Ridgefield,

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New Jersey. 21T:29-3. Throughout this time, Ms. Ricart and Movant continued their relationship. 21T:29-14 to 15.

However, during this time, from 1995 until 1999, Ms. Ricart and Movant would break-up several times and then resume their relationship. 17T:5-21 to 6-4. When one Angel Caso, a business associate of Movant and fellow member of the Chamber of Commerce, met Ms. Ricart around this time, Movant introduced Ms. Ricart to Mr. Caso as his wife. 19T:72-16 to 21. In July of 1998, Movant also paid Mr. Caso to perform repairs on the basement of the Ridgefield house Ms. Ricart was living in. 19T:78-5 to 17; 81-8 to 24. Ms. Ricart was also assisting Movant with his business. 21T:36-18 to 24.

Ms. Ricart and Movant decided to get married on 15 March 1999. 21T:39-21 to 40-3. Sometime in November or December of 1998, Ms. Ricart had informed Movant that she had contacted his exwife to arrange for Movant's children to live with Lordes after they were married. 21T:40-11 to 25. Movant was very angry about that and ended their relationship. 21T:41-12 to 23. Ms. Ricart informed her sister Ms. Rosario that Movant and she had broke up at approximately the same time. 17T:6-5 to 14.

Movant then began a romantic relationship with Rochelli Ramos who was also trying to buy the Illusions business. 21T:38-6 to 39-12. In February or March of 1999, Movant ended the relationship with Ms. Ramos because Ms. Ricart had "came back" to him and Movant was known to refer to themselves again as "husband and wife." 21T:42-19 to 21. From March of 1999 until 26 September 1999, Ms.

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: that Anzilotti's report
: was a complete fabrication
: created and used to produce
: the erroneous guilty verdict.
: Consequently, defendant
: humbly ask this Court for
: a judgment of acquittal
: or in the alternative a
: New Trial preceded by full
: evidenciary hearing.
:

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STATEMENT OF FACTS

On 26 September 1999, on the day that Gladys Ricart was to be married to one James Preston, defendant Agustin Garcia (hereinafter sometimes referred to as, "Movant"), Ms. Ricart's boyfriend and common-law husband of seven plus years, shot and killed her in the living room of her home in Ridgefield, New Jersey.

Movant, Agustin Garcia, was born in 1952, in the Dominican Republic. 21T:4-7 to 9. Arriving in the United States in 1977, from October 1979 on, he was employed as the Executive Director of the Asociaciones Domnicanas. 21T:7-24 to 8-1; 9-3 to 9-9.

Movant and his two brothers also operated a business in the Washington Heights area of New York City, originally doing business as Unique Travel and Tax Service Corporation, later known as Illusion. 21T:11-11 to 23. As apart of Movant's duties being responsible for handling cash as part of the business activities, he was also "deeply concerned" about the rash shootings of local merchants. 21T:16-3 to 10; 17-20 to 23. And it was specifically for those reasons that he applied for and received a weapons permit in New York city. Movant then obtained two handguns. 21T:16-21 to 17-1.

It was while living in Puerto Rico that Movant engaged and then married Ms. Lordes Lantugua. 21T:7-10 to 18. The married couple had two children, naming Agustin Junior and Natisa. 21T:10-18; 18-24 to 19-1. However, in the United States and by the Summer of 1992, Movant and Mrs. Lordes were separated and in the process of receiving a divorce. 21T:19-7 to 14.

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Ricart and Movant saw each other four or five times a week. 21T:43-15 to 22; 17T:12-5 to 14-11. Natisa, Movant's daughter, also slept over at the Ridgefield house twice when Ms. Ricart's son Davis was away at college. 20T:11-16 to 12-1.

Ms. Ricart and Movant also continued to have a turbulent relationship. In March of 1999, Movant demanded that Ms. Ricart return the keys to the North Bergen house when he found out that a man was visiting her in the Ridgefield house. 21T:44-21 to 54-24. Ms. Ricart also continued to be jealous about Ms. Ramos. 21T:46-17 to 23. Ignoring the truth of the matter, Ms. Ricart had said to her co-worker Josephine Formato, in April or May of 1999, that she had ended her relationship with Movant because it was Movant that was unfaithful to her. 22T:23-3 to 11. Nevertheless, in June of 1999, Ms. Ricart accompanied Movant to a graduation ceremony and a party; and in July of 1999, had again accompanied Movant and her mother to an event at the Dominican Chamber of Commerce. 19T:41-15 to 42-18; 21T:51-9 to 52-22.

It was around this time in June or July of 1999, that Ms. Ricart met and started a romantic relationship with another co-worker, James Preston. 17T:97-7 to 12; 98-4 to 5. This time Ms. Ricart did not introduce Mr. Preston to her brother Juan [14T:126-22 to 33]; her sister Ms. Rosario, did not meet Mr. Preston

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until the end of July. 17T:30-1 to 3. At the end of July or the beginning of August, Ms. Ricart had told Ms. Formato that Mr. Preston and she were going to marry on 26 September and asked her to be the Maid of Honor. 18T:120-25 to 121-11. At about the same time, Ms. Ricart also told Juan and Davis of the upcoming marriage date and also asked them to participate in the wedding ceremony. 14T:98-13 to 99-15; 18T:8-2 to 15.

Ms. Ricart, however, did not tell Movant that she had met and was planning to marry Mr. Preston. Ms. Rosario testified that Movant had come over to her house at the beginning of July and said to Ms. Rosario and her mother, that Mr. Preston "was not a good man for Gladys." 17T:23-21 to 29-10. At that moment, Ms. Rosario testified that her sister Ana had called and that in response to the telephone conversation, Ms. Rosario exclaimed to Ana, that "Gladys is getting married?" 17T:10-23 to 25; 15-4 to 18. Ms. Rosario also did not tell the police about this comment when she gave them a statement on 9 December. 17T:35-14 to 15; 39-11 to 12. Just then, according to Ms. Rosario, Ms. Ricart arrived at house and was angry when she found Movant there. 17T:17-2 to 18-24.

Movant testified that he had indeed saw Ms. Rosario and her mother after 12 August, however, they did not mention a Mr. Preston, nor did he overhear a conversation between Ms. Rosario and her sister, Gladys. 21T:62-20 to 63-5. Movant did admit that he had engaged the services of a private detective to follow Ms. Ricart. 17T:9-11 to 16.

On 12 August, Movant went to the Ridgefield house at about 9:00 p.m. to spend the night there. 21T:56-21 to 25. However, he saw a light and "a male silhouette" and when he knocked on the door there was no answer. 21T:57-3 to 14. Movant then knocked on the back window of the home without breaking it. 21T:57-15 to 24. Ms. Ricart called 911 and reported that her Sergeant William Pych and Officer Rich Neary of the Ridgefield Police Department responded to a call apparently made by Ms. Ricart, and when confronted by the police, Movant said that Gladys was his girlfriend and she was in her house with another man. 17T:67-10 to 72-12. Ms. Ricart refused to file a complaint against Movant and said she just wanted to get on with her life and wished Mr. Garcia would do the same. 17T:72-23 to 73-14.

Responding Police did not find any windows broken and Mr. Garcia agreed to leave the premises. 17T:68-1 to 75-5. However, Movant drove past Ms. Ricart's house a few minutes later, and several more times later that evening. 17T:97-17 to 100-1; 135-2 to 8.

In August and September, Movant traveled to the Dominican Republic and San Diego for business purposes. 21T:65-12 to 66-9; 69-11 to 70-3. During this time, Ms. Ricart and Movant continued their relationship. Ms. Ricart had also helped Movant pack for the trip to Santo Domingo; Ms. Ricart and Movant also met Mr. Caso

and his wife at a restaurant and ate dinner with them. 21T:65-25 to 66-3; 20T:94-20 to 95-21. Natasa, Movant's daughter had seen Ms. Ricart at the North Bergen house about "two or three days a week." 20T:15-16 to 20. Meanwhile, Ms. Ricart continued to make arrangements for her wedding to Mr. Preston.

According to Movant, he and Ms. Ricart continued their personal and sexual relationship right up to the early morning before the wedding day. 21T:72-4 to 74-1. Both also made tentative plans to go to Atlantic City on Friday the 24th of September and along with Ms. Ricart's mother; primarily because Movant's relationship with Ms. Ricart's mother was tumultuous, where Mr. Garcia when routinely stopping by Ms. Ricart's house, had to do so first before calling to see if Ms. Ricart was home. 21T:74-14 to 75-18.

On Saturday, the 25th of September, Movant went to Home Depot to have an extra set of keys to his North Bergen house made for Ms. Ricart. 21T:82-1 to 83-1. In the early afternoon, Movant stopped by Ms. Ricart's house; Ms. Ricart, Davis and Ms. Ricart's mother were there. 21T:85-13. Davis testified that Movant cried and repeated that he was sorry. 18T:14-2 to 15-1. Davis also admitted that nobody mentioned the fact that Ms. Ricart's wedding was scheduled for the next day. 18T:47-3 to 20. Later that day, Ms. Ricart went to New York City in order to pick up the dresses and accessories for the bridesmaids. 18T:122-16 to 124-11.

At about six that evening Movant's neighbor Evelyn Lopez, saw Ms. Ricart and Movant leave in a car and then return to the

Ricart had told Movant that she was going shopping on Sunday. 21T:106-8 to 9. When Ms. Ricart entered her home, she found Ms. Formato asleep and when she awoke after hearing her [18T:128-18 to 129-4], Ms. Formato had inquired as to "what took her so long;" when Ms. Ricart had "said she bumped into a friend." 18T:128-24 to 129-12.

Movant returned to his house and went to sleep and awoke around noon Sunday. 21T:107-25 to 108-1; 108-13 to 18. That day at 6:00 p.m., Movant was scheduled to participate in the opening of the Hispanic Parade and Painters and Sculptors Exhibition in New York City. 19T:59-3 to 60-15.

On the morning of the wedding, Ms. Ricart and Ms. Formato awoke at 6:00 a.m. and decorated the outside of the house. 18T:129-13 to 130-15. At 9:00 a.m., they both left to go to a beauty parlor in New York City where Ms. Ricart's bridesmaids were also having their hair done. 18T:130-17 to 131-12.

Around 2:00 p.m., Juan Ricart had then brought all eight bridesmaids from the beauty parlor to Ms. Ricart's house to get dressed for the wedding. 14T:100-16 to 101-15; 15T:24-3 to 27-24. And by that time, several friends and family members had gathered at the house, as well as the still photographer, videographer and the three limousines that were hired by Ms. Ricart. 14T:101-16 to 102-25; 15T:27-25 to 28-3.

At around 3:30 p.m., Movant started his drive into New York City for the event when he then remembered that he had to pick up his telephone organizer at his private office located at 1249

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St. Nicholas Avenue, some seven blocks away from the George Washington Bridge. 21T:112-8 to 24. To get to his office Movant had to pass by the neighborhood of Ms. Ricart. Because Movant as having some tension between himself and Ms. Ricart's mother, it is recalled that it was always agreed that Movant would first pass by Ms. Ricart's house first to see if she was there, and then call the home so as to avoid having the mother having to answer the phone. Passing by the Ricart house at around 3:30 p.m., Movant had observed numerous people "all dressed up like for a celebration" and that there were "limousines there." 21T:114-11 to 24. After taking notice of the happenings at the Ricart house Movant continued driving to the private office with the intention of calling at the office. Movant then "decided to go back because [he] wanted to find out why she had lied because she did not mention anything about having an event at the house." 21T:115-16 to 19. Without suspecting Ms. Ricart of being the primary subject of the event, Movant had thought that the people and limousines indicated that there was a party for Ms. Ricart's mother. 21T:115-25.

Returning to the Ricart house, Movant parked his car in front of the house on the other side of the street. 21T:116-19; 18T:117-25. He left the Bravado when Juan Ricart approached him as Movant started to walk across the street. 21T:117-9 to 15. Juan had asked Movant, "Are you invited?" and Movant replied "I'm always invited to my house." 21T:118-5 to 9. Movant then walked to the front door with Juan following behind him. 21T:118-24 to 119-2. Ms. Ricart was in the living room handing out flowers to her

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bridesmaids. 15T:35-20 to 38-20; 83-5 to 85-7; 18T:135-7 to 136-4.

Movant stopped at the front door and Juan knocked. 21T:120-11 to 12. It was Davis Ricart that opened the door and let them both in the house. 18T:120-14 to 21. As Movant entered the house, Juan then pulled his arm [21T:125-11] which caused Mr. Garcia to lean backwards into Davis. 21T:125-11 to 12. It was at that moment that Movant then saw Ms. Ricart in her wedding dress. 21T:121-22 to 122-1. Movant testified that after seeing Ms. Ricart in the wedding dress he was "totally confused," "upset," "angry," "confused" and "humiliated." 21T:122-2 to 5; 230-23 to 25. What happened next was that Davis hit Movant on the right side of his head where Movant fell against the wall. 21T:126-21 to 24. Despite the head injuries Movant had sustained to his head, Davis Ricart testified that Movant simply walked past him and that he was not struck by him. 18T:35-23 to 36-21. Mr. Garcia reached for his gun to protect himself. 21T:129-3 to 6. Juan then joined in and jumped on Movant's back and they began struggling. 21T:130-1 to 2; 20 to 22. Movant then entered into the living room firing wildly with his .38 caliber Smith & Wesson five-shot revolver and fired two shots, one shot in Ms. Ricart's direction, hitting her with that second shot. 14T:110-11 to 111-15; 15T:38-21 to 41-4; 133-12 to 24; 16T:145-9 to 16; 149-2 to 150-19; 158-4 to 161-5; 18T:32-11 to 34-17. Juan Ricart then grabbed at Movant to stop him, however, Movant pushed him away and waved his gun at the crowd in the living room. 14T:111-16 to 21; 15T:41-4 to 43-8; 18T:34-18 to 35-5. According to the testimonies of Juan Ricart and Detective Bendul, Movant

then approached Ms. Ricart who had fallen and laid over a sofa and fired three more times at close range, emptying his revolver.²² Two of those shots hit Ms. Ricart in the back and in the back of the head, which according to the Bergen County forensic pathologist, the shots entering and exiting through the left and right lungs, as well as the head shot, both had ultimately caused Ms. Ricart's death. 14T:111-25 to 112-17; 16T:161-6 to 162-9; 19T:13-14 to 28-13; 19T:3-13 to 19; 26-13 to 27-5.

Movant said that he saw a flash" and after that he saw himself "falling later on." 21T:131-22 to 24. Movant testified that he had blacked out [18T:229-18] and recovered only to here Juan yelling, "You killed my sister" and Movant saying repeatedly, while being held by Davis "I want to kill myself." 21T:133-21 to 23.

At about 4:00 p.m., the Ridgfield Park Police Department received a 911 call. 15T:122-8 to 13. Lieutenant Schettino arrived at 825 Elizabeth Street and found Movant and Davis "struggling" for possession of a gun. 15T:130-20 to 23; 132-3 to 9. Movant was placed under hand-cuffs and Lieutenant Schettino orally advised Movant of his rights under Miranda. 15T:139-24 to 25; 140-10 to 142-4. Movant did not make a statement. Sergeant Nicolas Corbiscello

²²Both prosecutor and defense counsels in their summations, rejected this version as testified too by Juan Ricart and Detective Bendul; rather counsels adopted the version of events depicted in the wedding videotape in that, Juan Ricart had continued to struggle with Movant, with Juan having a firm hold onto Mr. Garcia's wrist while trying to take the weapon away from him, all when the last three shots were fired during the time of the second shooting volley. 23T:43-18 to 21; 45-20 to 47-13; 48:18 to 21; 49:6 to 9; 85-15 to 23; 86-3 to 16. And see generally, the wedding videotape.

and Investigator Brito then transported Movant to the Ridgefield Park Police Station. 15T:152-20 to 153-3.

At the Ridgefield Park Police Station, Investigator Brito took Movant to the cell block area. 15T:162-22 to 163-8. The Investigator searched Movant and found a receipt from the North Bergen PathMark. 15T:165-18 to 19. The Investigator testified that he had advised Movant of his rights both in English and in Spanish. 15T:166-23 to 170-3. The Investigator also testified that he did not question Movant any further. 15T:170-6 to 9. Mr. Garcia testified that he "asked them specifically....to call my attorney and they told....[him] that "I could do that later." 21T:141-5 to 7. Movant also told the Investigator that he "was punched really hard and....felt like passing out." 21T:143-3 to 5.

Detective Robert Anzilotti of the Bergen County Prosecutor's Homicide Squad, was asked by the Ridgefield Park Police Department to assist in the investigation. 16T:9-1 to 8; 120-14 to 15. The Detective arrived at the Station at about 5:30 p.m. that evening. 16T:10-18 to 20. The Detective testified that Movant immediately asked him "what's going on," and that the Detective replied that he would have to remove Movant from his cell to talk with him. 16T:13-1 to 14-2. The Detective testified that he removed Mr. Garcia's hand-cuffs, poured him a glass of water and advised him of his Miranda rights [16T:15-10 to 22], however, Movant refused to sign the waiver portion of the form, yet agreed to and gave an oral statement to the Detective. 16T:18-16 to 19-15; 20-16 to 41-6.

Movant testified that he repeatedly "kept demanding that I needed my attorney present....and they kept saying that I was going to have that opportunity later [yet] that now they wanted to speak to me." 21T:1-23 to 15-1. Movant also told the Detective that "he had been punched hard on my head;" when the Detective responded that it would be taken care of "later." 21T:145-21 to 23. Movant did not make a written statement to the Detective. The Detective said Movant "told him the story the way he perceived things had taken place." 21T:16-4 to 12. Mr. Garcia was then taken back to the cell block. 21T:152-5 to 8.

The results of the investigation by the Bergen County Prosecutor's Office yielded a videotape showing the wedding preparations and the shooting of Ms. Ricart. The Prosecutor's Office could not play the videotape because of the professional format in which it was recorded. 16T:173-23 to 174-1. The videotape was then brought to Lieutenant David Cassirer because he had owned his own video production company and when asked by the Bergen County Prosecutor's Office, agreed to make copies of the tape on consumer-regular VHS format. 16T:173-17 to 22; 174-22. The copies that Lieutenant Cassirer made "reproduced some of the images on the tape in slow motion speed; and reproduced some images from the tape individually" as holding still pictures in the running videotape. 16T:175-8 to 14. Detective Anzilotti told Officer Bendel that Movant had told him that Ms. Ricart and he were at the PathMark the night before Ms. Ricart was shot. 18T:98-8 to 14. Officer Bendel went to the North Bergen PathMark and recovered a security videotape

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which indeed showed Ms. Ricart and Movant shopping together. 18T:99-1 to 11; 102-11 to 17. After Ms. Ricart's death, Ms. Rosario had went through Ms. Ricart's possessions [14T:19-7 to 11] and discovered a microcassete tape belonging to some kind of portable recording device, a recorded conversation between Ms. Ricart and Movant which she had turned over to the Bergen County Prosecutor's Office on or about 9 December 1999 or 16 December 1999. 1T:11-15 to 23; 14T:19-7 to 14; 20-1 to 17; Vol. IV/Da 789 to 790. On the face of the cassalette, Ms. Ricart had written her initials along with the date of 26 September 1999. 1T:11-3 to 6.

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LEGAL ARGUMENT

POINT I

MOVANT'S MOTION FOR A NEW TRIAL BASED UPON NEWLY DISCOVERED EVIDENCE SHOULD BE GRANTED IN ALL RESPECTS; BECAUSE THE NEW EVIDENCE BEING OFFERED IS MATERIAL, NOT MERELY IMPEACHING OR CUMULATIVE, WAS DISCOVERED AS A RESULT OF DEFENDANT'S DUE DILIGENCE AND WOULD PROBABLY CHANGE THE RESULT IF A NEW TRIAL WAS GRANTED.

The New Jersey Rules of Court, 3:20-1 provides that:

"The trial judge on defendant's motion may grant the defendant a new trial if required in the interest of justice. If trial was by the judge without a jury, the judge may, on defendant's motion for a new trial, vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. The trial judge shall not, however, set aside the verdict of the jury as against the weight of the evidence unless, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a manifest denial of justice under the law."

A defendant's motion for a new trial may be granted if the interests of justice requires such relief. N.J.Ct.R. 3:20-1. The federal Courts have interpreted the "interest of justice" standard as requiring a new trial were the substantial rights of the defendant have been jeopardized by errors or omissions during trial. U.S. v. Gambone, 167 F.Supp.2d 803 (E.D. Pa. 2001), decision supplemented, 180 F.Supp.2d 660 (E.D. Pa. 2001) and aff'd, 314 F.3d 163 (3rd Cir. 2003); U.S. v. Kuzniar, 881 F.2d 466 (7th Cir. 1989). Or, where there has been a deprivation of constitutional right affecting the trial. U.S. v. Arango, 670 F.Supp. 1558 (S.D. Fla. 1987), judgment aff'd, 853 F.2d 818 (11th Cir. 1988) (government misconduct may be so egregious as to violate a defendant's Fifth Amendment due process rights). Any error that would require reversal

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discovered evidence, it is regarded with favor and is granted only with great caution. U.S. v. Adi, 759 F.2d 404 (5th Cir. 1985); U.S. v. Seago, 930 F.2d 482, 32 Fed. R. Evid. Serv. 957 (6th Cir. 1991); U.S. v. Sutton, 767 F.2d (10th Cir. 1985); U.S. v. Wilson, 894 F.2d 1245 (11th Cir. 1990). The newly discovered evidence needed to support the grant of a new trial must be material and go directly to the issue of guilt or innocence. U.S. v. Dukes, 727 F.2d 34 (2d Cir. 1984); U.S. v. Ugalde, 861 F.2d 802 (5th Cir. 1988); U.S. v. Cherek, 734 F.2d 1248 (7th Cir. 1984); Lewis v. U.S., 771 F.2d 454 (10th Cir. 1985). Under prevailing federal standards, in order to overcome on a motion for a new trial based upon the ground of newly discovered evidence, four factors must be taken into account as follows:

- (1) It must appear from the motion that the evidence relied on is, in fact, newly discovered; that is, discovered after trial.
- (2) The motion must allege facts from which the court may infer that the failure to learn of the evidence was not due to a lack of diligence on the part of the defendant.
- (3) The evidence must be material to the issues involved, not merely cumulative or impeaching.
- (4) The evidence must be of such a nature that, on a new trial an acquittal would probably result [Fn 23], that

²³ U.S. v. Uribe, 890 F.2d 554 (1st Cir. 1989); U.S. v. Diaz, 922 F.2d 998 (2d Cir. 1990); U.S. v. Chavis, 880 F.2d 788 (4th Cir. 1989); U.S. v. MMR Corp., 954 F.2d 1040 (5th Cir. 1992); U.S. v. Seago, 930 F.2d 482, 32 Fed. R. Evid. Serv. 957 (6th Cir. 1991); U.S. v. Mazzanti, 925 F.2d 1026 (7th Cir. 1991); U.S. v. Daniele, 931 F.2d 486 (8th Cir. 1991); U.S. v. Kulczyk, 931 F.2d 542 (9th Cir. 1991); U.S. v. Page, 828 F.2d 1476 (10th Cir. 1987); U.S. v. Espinosa-Hernandez, 918 F.2d 911 (11th Cir. 1990); U.S. v. Reese, 561 F.2d 894, 2 Fed. R. Evid. Serv. 82 (D.C. Cir. 1977).

continued....

is, the defendant must demonstrate that the newly discovered evidence would or likely than not lead to a different outcome, were the case to be retried. [Fn 24]. An exception to this stringent standard of review exists, however, where the defendant demonstrates that the government's case included false testimony and the prosecution knew or should have known of the falsehood. [Fn 25].

The prosecution's failure to disclose evidence both favorable to the accused and material to either guilt or punishment, including impeachment evidence, violates due process and thus requires that a new trial be granted. United States v. O'Dell, 805 F.2d 637 (5th Cir. 1986); United States v. Douglas, 874 F.2d 1145 (7th Cir. 1989); U.S. v. Peltier, 800 F.2d 772, 21 Fed. R. Evid. Serv. 1017 (8th Cir. 1986); U.S. v. Endicott, 869 F.2d 452 (9th Cir. 1989); U.S. v. Shaffer, 789 F.2d 682 (9th Cir. 1986); U.S. v. Sutton, 767 F.2d 726 (10th Cir. 1985). In deciding a motion for a new trial arising from this situation, the court must consider the adverse effect of the nondisclosure, making this assessment in light of the totality of the circumstances and keeping in mind the difficulty of reconstructing how the defense may have been conducted and what outcomes may have occurred had the information in question been disclosed. U.S. v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481, 105 (1985); and see, U.S. v. Geders, 625 F.2d 31 (5th Cir.

....continued.

²⁴ Boyle v. California, 494 U.S. 370, 110 S.Ct. 1190, 108 L.Ed.2d 316 (1990); and see gen'ly, What Constitutes "Newly Discovered Evidence" Within Meaning of Rule 33 of Federal Rules of Criminal Procedure Relating to Motions for New Trial, 44 A.L.R. Fed. 13.

²⁵ U.S. v. Stoddard, 875 F.2d 1233 (6th Cir. 1989); U.S. v. Nero, 733 F.2d 1197 (7th Cir. 1984).

1980); U.S. v. Bonilla, 503 F.Supp. 626 (D.P.R. 1980).

These requirements presuppose that the new evidence would be admissible at the new trial. U.S. v. MacDonald, 779 F.2d 962, 19 Fed. R. Evid. Serv. 1151 (4th Cir. 1985) (hearsay statements); U.S. v. Parker, 903 F.2d 91 (2d Cir. 1990). The failure to satisfy any part of the test would result in the denial of a motion. U.S. v. Reed, 887 F.2d 1398, 28 Fed. R. Evid. Serv. 987 (11th Cir. 1989).

The defendant has the burden of proof on a motion regarding newly discovered evidence, U.S. v. Trainor, 423 F.2d 263 (1st Cir. 1970); U.S. v. Dukes, supra; U.S. v. McCurry, 248 F.2d 116 (3d Cir. 1957); Reno v. U.S., 340 F.2d 307 (5th Cir. 1965); Ferina v. U.S., 302 F.2d 95 (8th Cir. 1962). Newly discovered evidence that is cumulative or goes to impeach the credibility of a witness does not ordinarily warrant the grant of a new trial. Mesarosh, v. U.S., 352 U.S. 1, 77 S.Ct. 1, 1 L.Ed.2d 1 (1956). In accord with the newly discovered evidence standard, courts have denied motions for a new trial where the defendant has failed to demonstrate unavailability or inability to discover the evidence prior to trial. U.S. v. McKinney, 952 F.2d 333 (9th Cir. 1991); U.S. v. Lema, 909 F.2d 561 (1st Cir. 1990); U.S. v. Ward, 182 F.Supp. 53 (D. D.C. 1960), judgment aff'd, 281 F.2d 917 (D.C. Cir. 1960). Likewise, courts have denied new trial motions based on the defendant's inability to demonstrate the exercise of due diligence in an effort to discover the purported new evidence.

U.S. v. Lema, supra; U.S. v. Roberts, 388 F.2d 646 (2d Cir. 1968); U.S. v. Crane, 445 F.2d 509 (5th Cir. 1971); Lewis v. U.S., 771

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F.2d 454 (10th Cir. 1985). Courts routinely deny motions seeking a new trial based on newly discovered evidence where it is clear that the defendant must have known about that evidence at the time of the trial. U.S. v. Slutsky, 514 F.2d 1222 (2d Cir. 1975) (defendant's own business); U.S. v. Capaldo, 276 F.Supp. 986 (D. Conn. 1967), judgment aff'd, 402 F.2d 821 (2d Cir. 1968) (existence of false testimony); Saunders v. U.S., 197 F.2d 685 (D.C. Cir. 1952) (defendant's own mental condition).

In Napue v. Illinois, 360 U.S. 264 (1959), the Supreme Court held "in no uncertain terms" that due process is violated when the prosecutor obtains a conviction with the aid of false evidence which it knows to be false and allows to go uncorrected. United States v. Barham, 595 F.2d 231, 241 (5th Cir. 1979). It is immaterial whether or not the prosecution consciously solicited the false information. Id. at 241. And, similarly, it is immaterial whether the false testimony directly concerns an essential element of the Government's proof or whether it bears only upon the credibility of the witness. Id. at 241-42. As the Court explained in Napue:

"[T]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."

Napue v. Illinois, 360 U.S. 264, 269 (1959).

This rule, that a conviction standing upon false testimony violates due process, was affirmed by the Supreme Court in Giglio v. United States, 405 U.S. 150 (1972). There, the High Court ordered

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a new trial because the United States Attorney failed to disclose to defense counsel an immunity agreement which had been entered into by the prosecution with a critical government witness. After citing Brady v. Maryland, 373 U.S. 83 (1973), for the proposition that irrespective of the prosecutor's good faith, the suppression of material evidence by the prosecution justifies a new trial, the High Court stated:

"When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within [the general rule of Brady]."

Id. at 154 (citations omitted).

The High Court noted:

"Here the Government's case depended almost entirely on Taliento's testimony; without it there could have been no indictment and no evidence to carry the case to the jury. Taliento's credibility as a witness was therefore an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it."

Id. at 154-55.

In United States v. Bagley, supra, the Supreme Court reaffirmed that "a conviction obtained by the knowing use of perjured testimony must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's verdict. ..." Id. at 679 n. 9. Due process is violated not only when the prosecutor actively solicits false testimony, yet also when he fails to correct false testimony. Alcorta v. Texas, 355 U.S. 28 (1957).

In Alcorta v. Texas, supra, defendant claimed he killed his

wife in the heat of passion because of her infidelity. The wife's alleged lover testified for the government and denied the defendant's claim. Before trial, however, the alleged lover told the prosecutor that he had sexual relations with defendant's wife on numerous occasions. The prosecutor failed to correct his witness's testimony and, in so doing, was held to have violated defendant's due process rights. See also Napue v. Illinois, 360 U.S. 264 (1959) (due process violated by prosecutor's failure to correct false testimony relating solely to credibility of witness and not to substantive issue in case). Courts have not hesitated to order new trials where false testimony was used by the prosecution to obtain a conviction. See e.g., United States v. Bigeleisen, 625 F.2d 203 (8th Cir. 1980) (false denial by witness of agreement to testify for prosecution); United States v. Barham, 595 F.2d 231 (5th Cir. 1979) (false denial by witness of promise of leniency); United States v. SanFilippo, 564 F.2d 176 (5th Cir. 1977) (false testimony regarding promise of immunity); United States ex rel. Annunziato v. Manson, 425 F.Supp. 1272 (D. Conn.), aff'd, 566 F.2d 410 (2d Cir. 1977) (false denial by witness of promises made in exchange for testimony); Sanders v. United States, 541 F.2d 190 (8th Cir. 1976), 429 U.S. 1066 (1977) (false denial by witness of receipt of compensation).

New Jersey's analogous federal counterpart is the legal test governing motions for a new trial on the ground of newly discovered evidence set forth in State v. Carter [Rubin, Carter II], 85 N.J. 300, 314 (1981), which the high court requires that a defendant

North Bergen home four hours later or at about ten that evening. 20T:32-9 to 33-10. That Saturday night Ms. Ricart's bridesmaid, Ms. Formato, had come to the Ricart house in Ridgefield to help Ms. Ricart prepare for the wedding [18T:122-4 to 12], however, Ms. Ricart was not there when she arrived between 9:00 to 9:30 p.m.. Ms. Ricart did return to the Ridgefield home sometime after 10:00 p.m.. 18T:122-18 to 25; 123-12 to 17. While Ms. Formato and Ms. Ricart were decorating the house for the wedding ceremony, Ms. Formato discovered that she needed sanitary napkins [18T:123-21 to 125-15], when Ms. Ricart offered to get them for her from the store; Ms. Ricart left sometime after midnight. 18T:126-18 to 127-11.

Ms. Ricart did not go directly to the store for the purchase, instead she drove directly to Movant's house. 21T:97-8 to 9. After spending an hour together, Ms. Ricart and Movant then went to the PathMark supermarket since Ms. Ricart had told Mr. Garcia that a "visiting friend" needed a "feminine product." 21T:98-14 to 22; 99-1 to 7. Ms. Ricart and Movant made the purchase at about 1:30 in the morning and then went back to Mr. Garcia's house. 21T:10310 to 105-16. A surveillance tape from the North Bergen PathMark showed Movant accompanying Ms. Ricart and buying the napkins shortly after 1:00 a.m. on 26 September 1999. After purchasing of the napkins they both returned together to Movant's home and went to bed. At about three o'clock in the morning Ms. Ricart then decided that she should go home when Movant followed her to her house to make sure she arrived safely. 21T:107-5 to 108-1. Before departing Ms.

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to show that the newly discovered evidence:

- (1) was discovered after the trial and was not discoverable by reasonable diligence at the time of trial;
- (2) is material to the issue and not merely cumulative, impeaching or contradictory; and
- (3) would probably change the jury's verdict (if a new trial were granted).

See also, State v. Carter [Rubin, Carter IV], 91 N.J. 86, 121 (1982); State v. Bey, 161 N.J. 233, 287 (1999), cert. den. 530 U.S. 1245, 120 S.Ct. 2693, 147 L.Ed.2d 964 (2000).

The evidence necessary to support a new trial is that the newly discovered evidence must be material, must be discovered after the trial and not reasonably discoverable prior thereto, and must be of a nature as to probably change the jury's verdict. State v. Carter [Rubin, Carter II], 85 N.J. at 314. Accord, State v. Casey, 157 N.J. Super. 311 (App. Div. 1978), certif. den. 79 N.J. 490 (1979) (reiterating that such evidence must be material, must not have been reasonably discoverable before the trial and must also have a capacity to have affected the result). See also, State v. Sanduci, 167 N.J. Super. 503 (App. Div. 1979), certif. den. 82 N.J. 263 (1979); State v. Conway, 193 N.J. Super. 133 (App. Div. 1984), certif. den. 97 N.J. 650 (1984); State v. Coburn, 221 N.J. Super. 586 (App. Div. 1987), certif. den. 110 N.J. 300 (1988); State v. Engel, 249 N.J. Super. 336 (App. Div. 1991), certif. den. 130 N.J. 393 (1992); State v. Robinson, 253 N.J. Super. 346 (App. Div.), certif. den. 130 N.J. 6 (1992).

If the proffered evidence is hearsay inadmissible under the rules of evidence yet defendant asserts that its admission is

constitutionally required under Chambers v. Mississippi, 410 U.S. 284 (1973), a showing of a particularized guarantee of its reliability must be made before it will constitute the basis of a new trial.²⁶ State v. Bunyan, 154 N.J. 261 (1998).

Where ineffective assistance of counsel is argued as one of several grounds for a new trial, that issue should be severed for disposition on post-conviction proceedings.²⁷ See, State v. Wiggins, 291 N.J. Super. 441 (App. Div.), certif. den. 146 N.J. 568 (1996).

There is no time limit for making such motions. N.J.Ct.R. 3:20-2 provides that:

"A motion for a new trial based on the ground of newly discovered evidence may be made at any time, [yet] if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on a claim that the defendant did not waive his or her appearance for trial shall be made prior to sentencing. A motion for a new trial based on any other ground shall be made within 10 days after the verdict or finding of guilty, or within such further time as the court fixes during the 10-day period."

In addressing the first requirement, Movant has submitted a lengthy 101 page certification along with a separately bound appendix, concerning the repeated efforts made by him to cause the Office of the Public Defender to compensate and provide the services of an audibility expert. The certification stated in

²⁶ Should this court determine that the translation and report amounts to hearsay evidence, Movant requests an evidentiary hearing to adduce testimony in demonstration of reliability in order to protect his constitutional rights. Chambers v. Mississippi, 410 U.S. 284 (1973); State v. Bunyan, 154 N.J. 261 (1998).

²⁷ Should this court determine that the claim of newly discovered evidence should be more appropriately be one of ineffective assistance of counsel, Movant requests that this motion be construed as a second-amended petition for post-conviction leave freely granted to amend the initial and first-amended petition-brief now pending disposition before the court. State v. Wiggins, 291 N.J. Super. 441 (App. Div.), certif. den. 146 N.J. 568 (1996).

part: 28

AGUSTIN GARCIA, Defendant-Movant (hereinafter, "Movant"), of full age, in lieu of oath, affidavit or verification, says:

1. I am the Movant in the above captioned matter and fully familiar with the facts contained therein.
2. I am presently committed to the care and custody of the Commissioner of the New Jersey Department of Corrections, and assigned to the New Jersey State Prison, West Compound, Two Right, Third & Federal Streets, Trenton, Mercer County, New Jersey.

I.

3. I had been charged in this case on 29 June 2000, when a Bergen County grand jury returned a 7-Count indictment, number 00-06-1368-I against Agustin Garcia, charging: Count One: first-degree murder, contrary to N.J.S.A. 2C:11-3a(1)(2), and subject to the provisions of the No Early Release Act, N.J.S.A. 2C:43-7.2 and N.J.S.A. 30:4-123.51b; Count Two: second-degree possession of a weapon for unlawful purposes, contrary to N.J.S.A. 2C:39-4a; Count Three: third-degree unlawful possession of weapon without first obtaining a permit in compliance with N.J.S.A. 2C:58-4, contrary to N.J.S.A. 2C:39-5b; Counts Four through Seven: third-degree endangering welfare of children, contrary to N.J.S.A. 2C:24-4(a).

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II.

16. The essence of the State's case against the Movant, was that Movant shot and killed his paramour, one Gladys Ricart in her residence on her wedding day, dressed in her wedding dress, and flanked by her bridesmaids who along with others, witnessed the killing. The actual killing was captured by the wedding videographer who was filming the event of the day.

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51. At trial, a portion of the videographer's wedding videotape, which showed the actual shooting, was admitted into evidence, played for the jury and also admitted into the jury room.

52. A transcript of the audio portions of the wedding

28 The court is urged to read the certification of Agustin Garcia at length for given its volume it would be inappropriate to make the whole of the certification to be included herein.

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videotape was also produced by Detective Dennis Suarez, admitted into evidence and also admitted into the jury room. The audio transcription prepared by Det. Suarez follows in full:

(Two gunshots)
J.RICART: Ay, ay
(Three gunshots)
J.RICART: Ay, ay, ay....AGUSTIN, how could you do this? Ay, Ay, AGUSTIN, my God! Ay, ay, ay.... Ay, AGUSTIN, how could you have done this? My God!
A.GARCIA: I have to kill myself now! (IA).
J.RICART: No, AGUST....
A.GARCIA: Let my hands go. Hurry! Hurry!
J.RICART: Ay!
A.GARCIA: Let me go, because I have to kill myself!
J.RICART: No!
A.GARCIA: Let me go, because I have to kill myself!
J.RICART: No!
A.GARCIA: For God's sake, let me go!
J.RICART: No!
A.GARCIA: I have to kill myself!
J.RICART: No!
A.GARCIA: Let me go!
J.RICART: No, no Agustín!
A.GARCIA: I have to kill myself!
J.RICART: No!
A.GARCIA: Damn it! Let me kill myself!
J.RICART: AGUSTIN! Ay no! AGUSTIN! AGUSTIN! AGUSTIN! I need (in English) help! Oh AGUSTIN! AGUSTIN! Ay! (They appear to be moving from the living room area to the kitchen area of the residence. Sounds that resemble bullets jingling (in AGUSTIN's pocket) can be heard.)
U/M: Oh shit! (In English.)
Tape Recording Ends

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V.

62. The State, its is summation maintained that there was not enough time, as the wedding videotape demonstrated, for Movant to have struggled with Juan Ricart prior to the shooting and urged the jurors to consider that J. Ricart may have very well saved Movant's life; for the State urged the jurors to find that Movant had lied in his testimony concerning the struggle and after the shooting had attempted to take his own life as well as that of others present. In summation, the Prosecutor said:

"If you watch the tape and you think about what Garcia says happened and you count the seconds it can't

happen the way he said it did. There isn't enough time for it to have happened the way he say it did, for him to be accosted at the door, for him to get clocked by Davis, bounced up against the wall, get back up again and go through, through this area, through here, all the way through here to where Juan finally jumps on him, after the first two shots, all the way over here by the couch.

+ + + +

[The] Defense attorney points to various photographs of Mr. Garcia, scrapes and bruises and whatever, this cut, and tries to suggest to you that this is evidence of his having been attacked by the people in that house. We've got broken -- a broken glass top back here. We've got flower pots all over the place. We've got all kinds of stuff. They're struggling. Two grown men desperately struggling over a gun. [Mr. Garcia] is trying to reload. Juan doesn't want him to reload.

Oddly enough Juan may have saved his life [yet]

+ + + +

he certainly saved -- may have saved others."

VI.

63. At the conclusion of the trial and whenafter the jury had returned its guilty verdicts and I had been sentenced, a family member provided me with a newspaper article concerning some interview statements that some jurors had made to a newspaper reporter. In an interview published in The Record Newspaper, a juror related the following:

"The jury searched the video tape for signs of selfdefense, replaying it several times, at least once in slow motion, said the juror who was interviewed. Using a watch and counting 'one Mississippi, two Mississippi,' they timed the interval between Garcia's knock at the door and the first shot: 'four second' she said. 'There just wasn't enough time for him to be attacked and respond' said the juror, 'we tried to hear and didn't hear (any) of that.'"

64. It was based upon the prosecutor's summation and the comment of a juror to the Record, that I suspected that the copy of the wedding videotape given to the jury for use during their deliberations, had been further tampered with in such a way as to result in the deletion of numerous seconds prior to the shooting. I suspected this deletion was done so as to effect the credibility of my trial testimony

concerning the assault and battery upon myself by Davis and Juan; and further, to effect the credibility of the videographer Anna Nunez whose trial testimony had also corroborated that of mine concerning the altercation. I then began writing a series of letters to various defense attorneys requesting that the wedding videotape be examined for tampering as follows.

+ + + +

97. Nearly four years later and in lieu of my avalanche of letters repeatedly requesting defense counsel make arrangements for the provision of expert services and at the very least, for the examination of the subject wedding videotape described in this certification; my family informed me in January-February 2006 that they were finally able to secure funds necessary for the payment of a forensic expert.

99. In February-March of 2006, I learned of several experts qualified to perform the examination of the wedding videotape and made arrangements for one Stuart Allen, President of International Media Services, Inc., 718 Sherman Avenue, Plainfield, New Jersey, 07060-2232, to perform an examination of the wedding videotape. I informed Mr. Allen that I believed several seconds involving a struggle between Davis and Juan against myself may have been deleted from the videotape for which my resulting examination of the trial transcripts and review of juror comments to the Record newspaper had led me to almost certain suspect.

100. I provided two wedding VCR videocassettes to Mr. Allen. These two VCR videocassettes were copies of two VCR version composite videocassettes produced by the State, provided to defense counsel and maintained by prosecutor Schwanwede and his key witnesses to have been directly made from the source original professional formatted videotape. Mr. Allen then caused to have been made Forensic copies and one VCR set was provided for my family's retention.

101. As a result of Mr. Allen's team examination of the forensic VCR videotape, a translation and transcription of the aural portion was produced sometime in March-April 2006. For the Court's convenience, I set forth below a side-by-side comparative of the aural portion of the wedding videotape's translation and transcription. In comparison, I have used the above transcript produced by Det. Suarez. These two comparative transcriptions follow:

WEDDING VIDEOTAPE COMPARATIVE TRANSLATIONS

A parallel comparison of the two transcripts of the same segment of the wedding video tape as represented by the prosecutor to the trial court, defense counsels and the jury.

The left column is an unedited word for word translation by the Forensic Expert,

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of the wedding video tape delivered to the defense by the prosecutor. The Forensic Expert's designations for Agustin Garcia, Male voice 3 have been changed to A.Garcia; designations for Juan Ricart, Male voice 4 have been changed to J.Ricart.

The column to the right is an unedited word for word transcript by Det. Dennis Suarez, of the transcript of the video tape delivered by the prosecutor to defense counsels. Designations for Agustin Garcia, AG have been changed to A.Garcia; designations JR have been changed to J.Ricart.

Forensic Expert's Translation
International Media Service. Dated
4-12-06.

Transcript of wedding video tape,
prepared by The State, and presented
to jury at trial.

START OF TIME STUDY

00:00.00

COLLOQUY

MALE VOICE 1: One more, one more.
[female voices chatting in
background

MALE VOICE 1: One more.

FEMALE VOICE: Ok. One more.

VOICE 1: Ok. They can come in now.

Ok.

FEMALE VOICE: [in English] now
we're going back.

FEMALE VOICE 2: Yeah, now that the
.....what??

MALE VOICE 1: No, Gracy??

FEMALE VOICE 2: No, but..

FEMALE VOICE 1: No...

00:18.19

[sound of a thud. Sound of door
being opened]

MALE VOICE: No, little girl, put
it...

MALE VOICE 1: Ohh, hold it, hold
it...

[cross-talk]

MALE VOICE 2: (a deeper voice)
[unintelligible] going in to give my
greetings.

[cross-talk]

MALE VOICE 1: Ok, you finished.
Don't worry. Go ahead.

FEMALE VOICE: I have no light here.

This one... turn it on.

MALE VOICE 1: Turn it on.

FEMALE VOICE: Turn it on.

MALE VOICE 1: no, that's is not

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possible, don't worry.

FEMALE VOICE: This one?? This one on??

MALE VOICE 1: If that's possible.

FEMALE: Yeah.

MALE VOICE 1: Yes, Ok. Don't worry. Go ahead. Go girl. Go ahead.

[female singing in background]

MALE VOICE 1: Ok, go ahead.

FEMALE VOICE 2: What do you need?

MALE VOICE 1: A smile.

FEMALE VOICE: Smiling.

MALE VOICE 1: Next one. Next.

FEMALE VOICE: Ok.

MALE VOICE 1: Next, don't work too hard, ok.

FEMALE: Ma, ma, ma... what?

[cross-talk]

MALE VOICE 1: Go next to her, to her. No, not there.

FEMALE VOICE: More, more there, that's it. Right

00:59.06

[sound of door opening]

MALE VOICE 1: Let's go.

[cross-talk of females chatting]

...dance.

MALE VOICE 1: No, no. OK.

[sound of door opening again]

FEMALE VOICE: Always smiling.

MALE VOICE 1: The flower.

[cross-talk]

A.GARCIA: [slurry] [unintelligible] come here.... [unintelligible] more

J.RICART: [interrupting]... what you doing?

J.RICART: ...hand it over...

A.GARCIA: No.

MALE VOICE 1: Next. Go, go.

[clapping hands]

FEMALE VOICE: [surprised] It's [unintelligible]

FEMALE VOICE: [in fear] Aaah

01:24.14

[sound of 1st. shot]

[sound of 2nd. shot]

[screams]

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(Two gunshots)
J.RICART: Ay, ay

01:27.05

[sound of 3rd. shot]
[sound of 4th. shot]
[sound of 5th. shot]
[screams]

A.GARCIA: Ay, ay, ay. [screams] Ay,
ay, ay. My love. Ay, ay, aaaaay. Ay,
ay, ay. I had to.....ay, ay....

J.RICART: What have you done??

A.GARCIA: Ay, ay, ay

J.RICART: [unintelligible]

A.GARCIA: No, [screaming], No.

No.

J.RICART: By God, I will

A.GARCIA: No. No.

J.RICART: I will kill you...

[unintelligible]

A.GARCIA: No. No. No. Lilly??

[phonetic] No. No. [sounds of pushing
person on floor]

J.RICART: fuck, I will.

[unintelligible]

A.GARCIA: Lilly [phonetic] No. No.

Lilly!! [phonetic]. No. No.

[sound of A.GARCIA being taken out]:

A.GARCIA: Help me. No. No. Help me.

Ay. Ay, ay, ay. [screaming] Ay, no.

FEMALE VOICE: Ay, no. Ay, no.

A.GARCIA: Ay, ay no.

U/F: (Scream.)

MALE VOICE 5: Oh shit.

A.GARCIA: Ay...I love you, Lilly

(Three gunshots)

J.RICART: Ay, ay, ay....

AGUSTIN, how could you do this? Ay,

Ay, AGUSTIN, my God!

Ay, ay, ay....

Ay, AGUSTIN, how could you have done
this? My God!

A.GARCIA: I have to kill myself
now! (IA).

J.RICART: No, AGUST....

A.GARCIA: Let my hands go. Hurry!
Hurry!

J.RICART: Ay!

A.GARCIA: Let me go, because I
have to kill myself!

J.RICART: No!

A.GARCIA: Let me go, because I
have to kill myself!

J.RICART: No!

A.GARCIA: For God's sake, let
me go!

J.RICART: No!

A.GARCIA: I have to kill myself!

J.RICART: No!

A.GARCIA: Let me go!

J.RICART: No, no Agustín!

A.GARCIA: I have to kill myself!

J.RICART: No!

A.GARCIA: Damn it! Let me kill

myself!

J.RICART: AGUSTIN! Ay no! AGUSTIN!

AGUSTIN! AGUSTIN! I need (in English)
help! Oh AGUSTIN! AGUSTIN! Ay!

(They appear to be moving from the
living room area to the kitchen area
of the residence. Sounds that resemble
bullets jingling (in AGUSTIN's pocket)
can be heard.)

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U/M: Oh shit! (In English.)

[phonetic] Aaaaah.

[Whereupon, the aural record was concluded.]

[Whereupon, the tape recording ended.]

Tape Recording Ends

+ + + +

VII.

121. The prosecutor in this matter, had adduced testimony from well over 25 witnesses. The record in this case is extraordinarily voluminous. The State's discovery alone consisted of nearly 2000 pages. Pretrial counsel filed numerous pretrial motions. Not counting jury section, the pretrial and trial proceedings covered more than 4,500 transcribed pages, or nine times the size of an average criminal case. The case was subjected to higher review and certification requiring review of counsel briefs as well as pro se briefs. The matter is presently pending disposition of two petitions for post-conviction relief along with their attendant motions. The later first-amended petition brief being of well over 200 pages and submitted along with an eight volume appendix consisting of nearly 1600 pages. Combined with Movant's voluminous correspondences and his 20 page plus analysis, there are well over 10,000 documents consisting of the matter styled, "State v. Agustin Garcia."

122. The translated and transcribed information given to me on or about 12 April 2006, by Stuart Allen of International Media Services, Inc., directly contradicts and repudiates the evidence given at trial by Lt. Cassieri, Det. Mark Bendul, Det. Dennis Suarez, Norma [Yolanda] Rosario and the proffers and comments made by First Assistant Prosecutor Fred Schwanwede. The new information satisfies the new trial standard with respect to Det. Dennis Suarez and Norma [Yolanda] Rosario, Juan Ricart and the proffers and comments made by First Assistant Prosecutor Fred Schwanwede. This information is not merely cumulative or impeaching, yet is material and relevant to the major issue in this case, namely, whether Mr. Garcia intended to commit knowing and purposeful murder in the shooting death of his paramour Gladys Ricart. The new evidence strongly suggests that the Det. Dennis Suarez, who translated and transcribed the audible portions of the wedding videotape had slanted its contents thereto, and in so doing toward a conviction of Mr. Garcia for the crime of knowing and purposeful murder. Collateral, the translation and transcription seems to indicate that in so doing, had been to additionally support the perjurious trial testimony of Norma Rosario and Juan Ricart.

123. Stuart Allen of International Media Services, Inc. has informed me that in the event of a new trial, he and members of his team would be willing to testify as to the new information and will be supplying a resulting final report of their examination of the wedding videotape along with documentary evidence in support of such testimony; and, look forward to their expert examinations of the copy of the wedding videotape submitted to the jury, as well as, the original wedding videotape that was initially recorded in professional format by the videographers. This expectation is based upon the Court granting several of the pending motions for ancillary services, a stay and compulsion and production of physical evidence.

124. In light of the above information, I believe that it is extremely likely that, in the event of a new trial, it will be possible to obtain evidence and testimony of other witnesses corroborating the information given me by Stuart Allen conclusively repudiating the translated evidence Det. Suarez and the testimony of Noram Rosairo and Juan Ricart, thus proving that in light of the new evidence, that these to key witnesses had perjured themselves, and that Det. Suarez had in fact produced false evidence with regard to the translation of the wedding videotape evidence, such false evidence presented to the jury and made apart of their deliberations.

125. The newly discovered evidence referred to in this motion is of such a character that I strongly believe it would result in the acquittal of myself of first-degree knowing and purposeful murder.

126. Prior to the trial of this case, I spent hours actively involved in this case, researching the facts consisting of the State's discovery, and I obtained the services of three attorneys then presumed to be of competence in the legal profession for purposes of investigating the factual aspects of this case. I spent numerous hours attempting not only to corroborate my assertions of innocence, yet also investigating the possibility that government witnesses might have some personal bias against me or some other reason to willfully perjure themselves. Our investigation in that regard produced no indication whatsoever of any such bias nor expected willful perjury at trial. It was beyond any suspicion that would lead me to suspect that the government's witnesses had indeed perjured themselves, many to the extent of actually tampering with physical evidence in order to suppress favorable evidence in order to ensure that I would be convicted of the most severe charge contained in the indictment. This belief is based on the Government's actions taken pretrial in attempting to deprive my attorney's of pressing a defense of passion provocation manslaughter. In addition, while the witnesses and prosecutor mentioned above, were mistaken in their assumed belief that an assault upon myself by Davis

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and Juan might allow me to press a passion provocation manslaughter defense under the law and nevertheless support as credible my trial testimony, or at the very least elicit some passion from the jury in that I had tried to protect my own life from being taken by a raging and vengeful Juan Ricart during the post-shooting struggle -- it is absolutely clear from the new evidence that in deleting the audible portions of the pre-shooting struggle and producing a false translation and transcription, the Government and some of the witnesses mentioned above, surely had this strategy in mind in order to press a conviction for the highest crime in the indictment.

127. I exercised due diligence. In my wildest imagination I would not think possible that one of the Government's witnesses could have produced false physical evidence. And for reason that given modern science with respect to videotapes and audible recordings, it would be all too obvious for the government to risk resting its case on false physical evidence. And yet, this is precisely what had occurred in my case. I would not have reasonably thought to have investigated such perjury or tampering had it not been for the fact brought to my attention as a result of a newspaper article read by me shortly after my trial and indicating that the jurors had only counted four seconds after I entered the door and the shooting began. Had it not been for that article and my subsequent investigation of the missing seconds, I would not have discovered that not only was the videotape tampered with, yet the translation and transcript was so far from the truth of the matter that it must have been specifically designed to urge the jury to convict of the most severe charge, cast me as a man who intended to commit that most severe charge and as a person whom may have attempted to discharge his weapon at other attendees of the wedding ceremony; while as suppressing against Juan Ricart's assault, his vengeful rage after the shooting to obtain the weapon and carry out his threats to kill me by shooting me with that weapon. The result of the tampering had cast me as an intending killer and attempted serial killer intent upon committing a massacre and Juan -- as the un-vengeful man whom sought to protect the lives of other attendees and that of myself in what can only be purposefully designed as a premeditated intention to commit murder-suicide.

128. As the above facts and correspondences disclose, once I received the newspaper article, I pressed the Office of the Public Defender to assign counsel and provide an audibility expert for the purpose of examining the wedding videotape. While this request was met with silence, I pressed the issue with OPD assigned appellate counsel. I provided counsel my analysis of the transcripts in order to demonstrate a need for this audibility expert. While this effort was met with silence, I then retained one of the

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private attorneys that represented me at trial and pressed the issue with counsel supporting my request with my analysis of the transcripts. I also formally repeated my request to the OPD which now included my analysis with transcript support. While the request was met with silence, I filed a petition for post-conviction relief and pressed the issue with PCR counsel. Frustrated with my efforts to obtain publicly provided expert services during these times, I remained in constant communication with my family informing them of my efforts for which a family member notified me that after a great effort on their part the necessary funds were raised by them and I could devote those funds to retaining the audibility expert mentioned above.

Certification of Agustin Garcia, pp. 1; 4-5; 19-20; 24; 47-52; 95-100.

In addition, Movant wrote numerous letters attempting to discover how the jury received a copy of the wedding videotape by alerting the Office of the Public Defender of the "missing seconds" issue. First, the prosecutor in his summation commented that "If you watch the tape....and you count the seconds.... [t]here isn't enough time for it to have happened [the pre-shooting struggle with Juan Ricart the way he sa[id] it did[.]" At the conclusion of the trial, Movant was provided with an article published in The Record Newspaper containing the substance of an interview with a juror. The juror related:

"The jury searched the video tape for signs of self[-]defense, replaying it several times, at least once in slow motion, said the juror who was interviewed. using a watch and counting 'one Mississippi, two Mississippi, they timed the interval between Garcia's knock at the door and the first shot: 'four second[s]' she said. "there just wasn't enough time for him to be attacked and respond" said the juror, 'we tried to hear and didn't hear (any) of that."

It was based upon the prosecutor's comments during his summation and primarily the newspaper's interview of a juror, that Movant began his investigation to determine how the "missing

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seconds" were in fact missing from the juror's copy of the wedding videotape for the copy Movant was given by the prosecutor, had in fact contained the sufficient amount of "time for him to be attacked and respond". Cert. at p.23-24.

Movant began his investigation by first writing to Yvette Kyles, Assistant Deputy Public Defender of the Appellate Section on 17 April 2002 and made the allegation that "It should be indicated that given the fact that the prosecutor's office went out of boundaries fabricating testimony and tampering with evidence" that "drastic steps" needed to be taken in order to preserve the wedding videotape evidence. Cert. at p.25. On 11 May 2002, Movant followed that letter by writing Ms. Kyles posing relevant questions as to "[w]as the tape handled correctly by [the] Prosecutor" pointing out that:

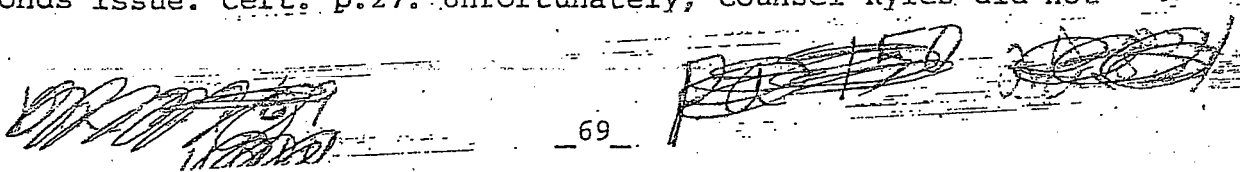
"any accurate tape should have revealed the struggle that took place upon me entering the house, if such evidence was not in the tape it will be a clear indication that the Prosecutor tampered with the evidence, and [it] should be challenged accordingly."

Cert. at p.26.

Unfortunately, Counsel Kyles did not respond to Movant's correspondence.

On 20 August 2002, Movant then received a letter from the Intake Unit informing him that the office was currently awaiting the trial transcripts. Cert. at p.26. Movant then on 8 October 2002 advised Counsel Kyles that he wanted to be provided with a copy of the trial transcripts in order to develop the missing seconds issue. Cert. p.27. Unfortunately, Counsel Kyles did not

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respond to Movant's correspondence.

On 11 October 2002, Movant was informed by the Intake Unit that the office would not provide copies of the transcripts to him and that he could only obtain a copy from the soon to be assigned attorney that would be designated to represent him. Cert. at p.27. On or about 6 November 2002, Movant was informed that one Evelyn F. Garcia, Esquire was assigned to represent him on the direct appeal and that the requested transcripts would be forwarded to him along with counsel's brief. Cert. at p.27-28.

On 28 November 2002, Movant wrote to Counsel Garcia requesting copies of the transcripts and on 23 November 2002, Counsel Garcia wrote Movant puzzling as to whether she was "permitted to provide them to [Movant]." Nevertheless, in an 8 January 2003 letter to Counsel Garcia, Movant confirmed his receipt of the transcripts and began a lengthy correspondence period consisting of seven letters outlining the relevant transcript citations concerning the "missing seconds" issue for Counsel's review. Cert. at p.28-32.

The last letter Movant wrote to Counsel Garcia was on 4 March 2003 [Cert. at p.31], when on or about 6 August 2003, Movant retained the services of one his trial counsels, one Edward A. Jerejian, Esquire, in order to pursue the appeal. Beginning 6 August 2003, Movant began a lengthy period of correspondence to Counsel Jerejian, in part, outlining investigation of the "missing seconds" issue, which including Movant's offer and desire to testify as an expert with regard to his knowledge of the missing

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seconds and his investigation in the use of the transcripts Cert. at p.32-34.

On 11 May 2004, the Appellate Division denied Movant's appeal. In a post-appeal letter to Helen Godby, Assistant Public Defender, Appellate Section, Movant apprised counsel of the "missing seconds" issue and attributed the failure to raise the issue at trial as one of ineffective assistance of counsel. Cert. at p.34-35. On 23 August 2004, Movant requested of Counsel Jerejian to forward to him, his case files including the transcripts. Cert. at p.36. Movant mailed to the Public Defender his initial petition for post-conviction relief, which receipt was acknowledged by Ingrid Yurcheno, Deputy Public Defender, Post-Conviction Relief Unit in a letter dated 9 June 2005, to John Byra, Assistant Division Manager at the Bergen County Courthouse. Cert. at p.37. On or about 9 May 2005, Movant also filed with the court a motion for expert ancillary services and providing Denise Cobham, Deputy Public Defender with a copy. On or about 5 August 2005, Counsel Yurchenco advised Movant that Jeffery Jablonski, Esquire was assigned to present him the PCR proceedings. Cert. at p.38.

Beginning 14 June 2005, Movant appraised Counsel Jablonski, in part, of the "missing seconds" issue [Cert. at p.39-41], and in a letter dated 15 November 2005, further advised that the motion for ancillary expert services was pending in the trial court. Cert. at p.41. However, on 1 December 2005, Movant was informed that Counsel Jablonski could no longer provide legal representation on his behalf. Cert. at p.41. On or about 4 January 2006, Counsel

Yurchenco advised Movant that one Michael Paul, Esquire was assigned to represent him in the PCR proceedings and Movant responded on 13 January 2006 with a letter outlining the "missing seconds" issue and advising that Counsel Jablonski was provided with many of Movant's documents. Cert. at p.42-45.

On 30 January 2006, Movant responded to Counsel Paul's request for specific reasons as to why Movant needed certain documents and the need for an expert analysis of a tape recording and of at least two videotapes. Cert. at p.46-47.

Then, when after four years of endeavoring to urge the Public Defender, the assigned attorneys and the privately retained counsel on direct, supported by numerous correspondence and has own analysis of the transcripts, all towards having the subject wedding videotapes expertly analyzed; between January-February of 2006, Movant had been advised that his family had "finally" raised sufficient funds in order to retain an audibility expert. Cert. at p. 47-48. And, it was sometime between February-March 2006, that Movant retained the services of the aforementioned expert who went on to analyze the only wedding videotape that Movant had in his possession -- the copy provided to defense counsel's at trial and from which a draft report and translation-transcript was produced. Cert. at p.48.

Upon finding confirmation from the expert that there were not any "missing seconds" from the defense copy as against the Prosecutor's comments in summation and at least one juror's admitted finding, Movant learned that the "missing seconds" issue

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was not the only issue arising from the investigation; for as the translation-transcript had revealed, Det. Dennis Suarez had produced a Spanish to English transcript for the predominantly English speaking jurors to follow along in their understanding of what the aural and oral content of the wedding videotape revealed. That transcript, as will be more fully argued supra, slanted its translation towards a conviction of knowing and purposeful murder. Suffice it to say, that Movant then began writing Counsel Paul as to the discovered content of the wedding videotape.

In a series of letters between Counsel Paul and Movant beginning 4 May 2006, Movant set out to describe for Counsel how the so-called missing seconds were contained in his copy of the wedding videotape and given the comments of the Prosecutor and the juror, the wedding videotape given to the jury for their review was further tampered with in order to deprive the jurors of knowledge of the struggle with Juan Ricart and further suggesting in essence that Movant had tried to pull a fast one with the jury when in his testimony he tried to convince the juror that he had in fact had a struggle with Juan. Movant also related that further testing needed to be performed on the original wedding videotape and that copy of the jury's wedding videotape towards proving conclusively that all tape copies had been tampered and re-tampered with. Cert. at p.52-65.

Thereafter, on or about 28 August 2006, Movant rejoined his request with the Office of the Public Defender to provide

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payment for needed and further ancillary services. Cert. at p.65-68. Movant had submitted a detailed application to the Public Defender for these necessary services.

And it was against that backdrop that Counsel Paul became unclear as to the use of the new translation and required further information before pursuing the claim whether on a petition for post-conviction relief or on a motion for a new trial. Movant then began a series of correspondence to both Counsel Paul and the audibility expert in an effort to make clear the significance of the new evidence and towards assisting in the compilation of the final report, requesting the need for further funds for payment of a final draft of the expert's report. Cert. at p.68-77; 84-95. Counsel Paul simply attached a copy of the new transcript to the appendix of his PCR brief [Cert. at p.77-78], despite Movant's repeated urgings for more argument, further expert testing and requests for payment of these ancillary services, or which his concern was even brought to the attention of this Court in a series of correspondence to Your Honor. Cert. at p.79-84.

Given all of Movant's efforts summarized above and more fully set forth in his Certification, the question to be resolved now is namely -- was the Movant diligent? Whether due diligence was exercised in the efforts to obtain an expert in this case under the time constraints imposed at the time of the prosecutor's closing statement to the jury and whether that statement alone would have alerted Movant for the need of court intervention and an adjournment and extension of the trial and admission of new

evidence? Here, Movant submits that the prosecutor's isolated comment alone was insufficient to alert him towards the need of having to adduce additional evidence. Prosecutors are allowed wide inferences in their closing statements to a jury. That permissible comment was recognized by no less than three defense counsel's in their decision not to object to those comments. Moreover, one would be hard pressed to argue with the prosecutor's interpretation of the wedding videotape without say the newspaper article of the jurors who listened to the tape and confirmed that their copy indeed had contained "missing seconds" of the struggle, a fact not fully realized until well after the trial had been concluded whereas the audibility expert had reported that there were no missing seconds on the defense copy. Nevertheless, this Court can not ignore that the new trial motion test requires the exercise of "reasonable diligence," not totally exhaustive or superhuman effort. If believed, Mr. Garcia's certification would suggest to satisfy the standard.

Moreover, there is a more fundamental reason why a reasonable diligence determination should stand. There is no doubt that the information at issue, the results of the videotape's examination was newly discovered since it was not developed until well after Movant's trial. This due primarily to the belief that officers in this media saturated high profile murder trial would not even remotely think of tampering with such evidence that could later easily be tested and proved tampered. Unfortunately, that is precisely what had occurred in this case.

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Under the circumstances above, Movant has respectfully satisfied the first prong of the Carter analysis. Indeed under these circumstances the first prong should be determined inapplicable. And at the very least an evidentiary hearing should be held to further explore the issue of reasonable diligence.

Movant now turns to an assessment of the impact of the new translation-transcription on the outcome of Movant's trial. The second prong of the Carter test is whether the evidence is "material to the issue and not merely cumulative, impeaching or contradictory." State v. Carter, supra, 85 N.J. at 314. At the outset, there is little doubt as to the materiality of the new evidence. "Material facts are those that have some bearing on the claims being advanced." State v. Henries, 306 N.J. Super. 512, 531 (App. Div. 1997) (quoting Korostynski v. Div. of Gaming Enforcement, 266 N.J. Super. 549, 555, (App. Div. 1993)). The conduct of and the oral statements of, Mr. Garcia and Juan Ricart, as contained in the new evidence, was a "focal issue of the trial and must be considered material?" Ibid. The new evidence, if available in Movant's trial, would certainly have been admissible. "There is no reason to consider such evidence as any less relevant and material in the context of a newly discovered evidence motion simply because it may be cast in terms of impeachment evidence." Ibid.

The more important question is whether the new evidence is "merely" cumulative or impeaching. Movant submits that the new evidence is clearly not cumulative since no comparable evidence

was offered at trial. It positively is impeaching, yet the question is it "merely" impeaching? Evidence that is "merely impeaching," as used in the context of newly discovered evidence applications, or cumulative, is evidence of a "quality [that] would not ordinarily make a difference in the jury's verdict." State v. Henries, supra, 306 N.J. Super. at 531 (citing State v. Carter, supra, 91 N.J. at 114). The proper test of what is "merely impeaching" has been held analogous to the test concerning materiality of non-disclosed exculpatory evidence established in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); State v. Henries, supra, 306 N.J. Super. at 533. Under the Brady standard, "withheld evidence that is material may be that which impeaches a witness where the issue of the witnesses' reliability and credibility is crucial." Id. at 534. As a result, the Henries court concluded that the critical issue is "whether the additional [newly discovered] evidence probably would have affected the outcome, regardless of whether it is characterized as impeachment evidence." Id. at 535. This approach to understanding the meaning as to what does or does not constitute "merely impeaching" evidence was expressly adopted by the high court in State v. Ways, 180 N.J. 171, 188-92 (2004). As the court recognized, this analysis of newly discovered evidence essentially merges the first and third prongs of the Carter test.

Determining whether evidence is "merely cumulative" or impeaching, or contradictory," and, therefore, insufficient to justify the grant of a new trial requires an evaluation of the probable impact such evidence would have on a jury verdict. There,

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that was produced by Det. Suarez.²⁹ And it was this transcript that was given to the jury for their use during deliberations. During the trial, once the videotape was played or the jury, the Court informed the petit members that they would be given a transcript for their use.³⁰ Specifically, the following exchange occurred:

"MR. SCHWANWEDE: At this time, [Y]our Honor, I'd like to play the tape.

THE COURT: The only thing I want to tell the jury is there will be certain portions of it has audio, certain words which are in Spanish and English. At the end of the tape we'll give you a transcript counsel agree[s] is what words were being stated. That's after you view the video. This video will be with you in the jury room. If at any time in the deliberation you want to check out the audio and the video you can do so.

+ + + +

(Video played.)

THE COURT: Ladies and gentlemen of the jury, we'll take a short recess. You can take those transcripts in. Read them

²⁹ Detective Dennis Suarez was not called to testify in this trial. Rather, Defense counsel stipulated to the contents of the translation-transcript produced by Det. Suarez.

³⁰ During a pretrial (Driver) hearing, when inquired by the court as to whether the Court Reporter should transcribe the audio portions of the wedding videotape, the Prosecutor declined, as follows:

"MR. SCHWANWEDE: Your Honor, let the record reflect that I'm playing the tape at the double zero counter.

THE COURT: There is audio on this tape?
Are we going to have the court reporter take down the audio?

MR. SCHWANWEDE: I'm sorry?

THE COURT: The court reporter, do you want him to take the audio or not?

MR. SCHWANWEDE: No, Judge.

THE COURT: Okay. Peter --
(video tape begun play at 3:18 p.m.)"

1T:26-23 to 27-8.

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the focus properly turns to prong three of the Carter test, whether the evidence is "of the sort that would probably change the jury's verdict, if a new trial were granted." State v. Carter, supra, 85 N.J. at 314; see also State v. Henries, supra, 306 N.J. Super. at 535. The characterization of evidence as "merely cumulative, or impeaching, or contradictory" is a judgment that such evidence is not of great significance and would probably not alter the outcome of a verdict. However, evidence that would have the probable effect of raising a reasonable doubt as to the defendant's guilt would not be considered merely cumulative, impeaching, or contradictory. See State v. Henries, supra, 306 N.J. Super. at 535. [State v. Ways, supra, 180 N.J. at 188-89].

"The power of the newly discovered evidence to alter the verdict is the critical issue, not the label to be placed on that evidence." Id. at 191-92.

In discussing the impact of the new evidence, it is recalled that Det. Dennis Suarez produced a translation-transcript of the audio portion of the wedding videotape. In so doing, Det. Suarez falsely attributed many inferences drawing upon inculpatory and bad character statements to Movant and falsely characterized Juan Ricart as some type of hero in this fictional drama.

Initially, the jury that sat in this in this matter consisted primarily of Caucasian non-Spanish speaking petit members. The only source of information as to what oral content was contained on the wedding videotape had come from the translation-transcription

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in the jury room. You'll have them at the end [of closing arguments]. They're part of the case and the evidence. Leave them inside. If someone loses one we'll give you copies.

16T:180-6 to -10.

In turning to the content of the translations-transcripts produced by Mr. Allen as against that of Det. Suarez, Movant shall deal with their contents in two parts. The first part deals with the statements and evidence of the struggle being omitted from the jury copy. The latter part deals with the oral statements made by Mr. Juan Ricart and Movant.

I.

To begin, it is recalled below that the transcript produced by Mr. Allen contains nearly one minute and twenty-four seconds [1:24.14] of content prior to the sounds of gunfire that Det. Suarez had speciously omitted from his translation. That period, contained in the forensic transcript follows:

START OF TIME STUDY

00:00.00

COLLOQUY

MALE VOICE 1: One more, one more.
[female voices chatting in background

MALE VOICE 1: One more.

FEMALE VOICE: Ok. One more.

VOICE 1: Ok. They can come in now.

Ok.
FEMALE VOICE: [in English] now we're going back.

FEMALE VOICE 2: Yeah, now that the

....what??

MALE VOICE 1: Mo, Gracy??

FEMALE VOICE 2: No, but..

FEMALE VOICE 1: No...

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if you wish to. We'll give a short recess, rearrange everything. It will just be a few minutes though.

16T:176-18 to 177-2; 177-11 to -15:

When after the videotape was played or the jury, jurors then retired to the jury room and the court and defense counsel engaged in the following colloquy:

"THE COURT: We're going to call the jury out, adjourn or the day. Mr. Jerejian, you had a short conference inside. You're not going to cross-examine the lieutenant?

MR. JEREJIAN: No. Just so the record is clear, I know the lieutenant edited this tape. I will certainly make extensive use of it during summation. I want to point out things. I want to run things two or three times. I want to certainly play the portion where you see the shoe and the Spanish dialogue, with the transcript.

I know the lieutenant certainly didn't prepare the transcript and the tape speaks for itself. I think everything I want to do with it will be done on summation."

16T:177-24 to 178-24.

When the jury was called back to be adjourned or the day, the Court instructed the members that, with respect to the video transcript, that this document should be left in the jury room. That instruction was given before the summations and allowed for the jury to review the content of the transcript so as they would have wrongly committed its content to memory and be prepared for defense counsel's summation. This was particularly troubling for defense counsel's summation would further reaffirm the wrongful audio content as transcribed by Det. Suarez separate and apart from the jury version, the tape having been further edited to remove a time period sufficient to evidence a struggle as testified to by Movant. The Court instructed as follows:

"THE COURT: **** Please don't discuss the case with anyone, [or] watch anything about it. Leave [the transcripts]."

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~~177-24 to 178-24~~

00:18.19

[sound of a thud. Sound of door
being opened]

MALE VOICE: No, little girl, put
it...

MALE VOICE 1: Ohh, hold it, hold
it...

[cross-talk]

MALE VOICE 2: (a deeper voice)
[unintelligible] going in to give my
greetings.

[cross-talk]

MALE VOICE 1: Ok, you finished.
Don't worry. Go ahead.

FEMALE VOICE: I have no light here.
This one... turn it on.

MALE VOICE 1: Turn it on.

FEMALE VOICE: Turn it on.

MALE VOICE 1: no, that's is not
possible, don't worry.

FEMALE VOICE: This one?? This one
on??

MALE VOICE 1: If that's possible.

FEMALE: Yeah.

MALE VOICE 1: Yes, Ok. Don't worry.
Go ahead. Go girl. Go ahead.

[female singing in background]

MALE VOICE 1: Ok, go ahead.

FEMALE VOICE 2: What do you need?

MALE VOICE 1: A smile.

FEMALE VOICE: Smiling.

MALE VOICE 1: Next one. Next.

FEMALE VOICE: Ok.

MALE VOICE 1: Next, don't work too
hard, ok.

FEMALE: Ma, ma ,ma... what?

[cross-talk]

MALE VOICE 1: Go next to her, to
her. No, not there.

FEMALE VOICE: More, more there,
that's it. Right

00:59.06

[sound of door opening]

MALE VOICE 1: Let's go.

[cross-talk of females chatting]

...dance.

MALE VOICE 1: No, no. OK.

[sound of door opening again]

FEMALE VOICE: Always smiling.

MALE VOICE 1: The flower.

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[cross-talk]

A.GARCIA: [slurry] [unintelligible]:
come here.... [unintelligible] more

J.RICART: [interrupting]... what
you doing?

J.RICART: ...hand it over...

A.GARCIA: No.

MALE VOICE 1: Next. Go, go.

[clapping hands]

FEMALE VOICE: [surprised] It's
[unintelligible]

FEMALE VOICE: [in fear] Aaah

01:24.14

Cert. at p.49-51 (emphasis added).

Discussing the above translated portion generally, it is clear that none of the oral statements contained in Mr. Allen's translation appears in that of Det. Suarez's translation. More specifically, it is recalled that Movant had testified that he was punched in the face by Davis Ricart and as a consequence was slammed into a wall. Here, Mr. Allen reveals that there actually was a "[sound of a thud. Sound of door being opened]" when thereafter the door was being opened and Movant is heard saying that he was "going in to give his greeting" when an unknown male confronts him by saying, "Ok, you finished", suggesting that had presumably been Davis. Here, the door opening at the time of the "thud" occurred at 00:18.19. Shortly thereafter, Movant is heard speaking in an unintelligible tone that Mr. Allen has construed as slurred speech. The obvious conclusion to be drawn is that the sound of the thud and the slurred speech was audio consistent with Movant's trial testimony that he was actually punched in the face,

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slammed against a wall and as a result, his speech suggesting difficulty speaking, that he was dazed as a result of the punch to his face.

Moreover, as indicated above, the Prosecutor maintained that there was not enough time for it to happen the way Movant said it did; the jury seemingly agreeing with that comment, at least with respect to the juror whom said as much in an interview with the newspaper reporter. Had the jury known the truth of the matter being disclosed to the jury -- that there was enough time for the alteration, and there is some exchanges between Movant and Juan to have occurred, Movant's credibility would not have been impeached by the content of Det. Suarez's translation, whereas unfortunately the jury may have rightly rejected apart or all of Movant's trial testimony.

As Mr. Allen has evidenced, there were approximately more than 41 seconds from the sound of the thud, to the door being opened, then being opened two more times before the beginning exchanges between Movant and Juan occurred. Here, when after the door is heard opening for the second time at 00:59.06, the door opened for a third time soon thereafter. And it is here that Juan confronted an injured and dazed Movant and ordered him to hand over, presumably his briefcase containing the firearm, over to him, as follows:

A.GARCIA: [slurry] [unintelligible] come here....
[unintelligible] more
J.RICART: [interrupting]... what you doing?
J.RICART: ...hand it over...
A.GARCIA: No.

+ + + +

FEMALE VOICE: [surprised] It's
[unintelligible]
FEMALE VOICE: [in fear] Aaah

01:24.14

Clearly, there was sufficient time for the altercation between Juan and Movant to have occurred. From the time the door opened the second time [approximately [00:59.06] and the first shots were fired [01:27.05], there existed nearly 25 seconds un-accounted for Det. Suarez's translation and the videotape copy given to deliberating jurors -- more than a sufficient amount of time for Juan to go for at least a half-round with Movant.

II.

This discussion now turns to the actual events in connection with the shooting. In doing so, Movant turns to Part II of Mr. Allen's translation in comparison to that of Det. Suarez, as follows:

[sound of 1st. shot]
[sound of 2nd. shot]
[screams]

01:27.05

[sound of 3rd. shot]
[sound of 4th. shot]
[sound of 5th. shot]
[screams]

A.GARCIA: Ay, ay, ay. [screams] Ay,
ay, ay. My love. Ay, ay, aaaaay. Ay,
ay. I had to.....ay, ay....

J.RICART: What have you done??

A.GARCIA: Ay, ay, ay
J.RICART: [unintelligible]

(Two gunshots)
J.RICART: Ay, ay

(Three gunshots)

J.RICART: Ay, ay, ay....
AGUSTIN, how could you do this? Ay,
Ay, AGUSTIN, my God!
Ay, ay, ay....
Ay, AGUSTIN, how could you have done
this? My God!

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A.GARCIA: No, [screaming], No.
No.
J.RICART: By God, I will
A.GARCIA: No. No.
J.RICART: I will kill you...
[unintelligible]
A.GARCIA: No. No. No. Lilly??
[phonetic] No. No. [sounds of pushing
person on floor]
J.RICART: fuck, I will.
[unintelligible]
A.GARCIA: Lilly [phonetic] No. No.
Lilly!! [phonetic]. No. No.

[sound of A.GARCIA being taken out]:
A.GARCIA: Help me. No. No. Help me.
Ay. Ay, ay, ay. [screaming] Ay, no.

FEMALE VOICE: Ay, no. Ay, no.
A.GARCIA: Ay, ay no.
U/F: (Scream.)
MALE VOICE 5: Oh shit.
A.GARCIA: Ay. I love you, Lilly
[phonetic] Aaaaah.
[Whereupon, the aural record was
concluded.]
[Whereupon, the tape recording
ended.]

Cert. at p.63-65.

A.GARCIA: I have to kill myself
now! (IA).
J.RICART: No, AGUST....
A.GARCIA: Let my hands go. Hurry!
Hurry!
J.RICART: Ay!
A.GARCIA: Let me go, because I
have to kill myself!
J.RICART: No!
A.GARCIA: Let me go, because I
have to kill myself!
J.RICART: No!
A.GARCIA: For God's sake, let
me go!
J.RICART: No!
A.GARCIA: I have to kill myself!
J.RICART: No!
A.GARCIA: Let me go!
J.RICART: No, no Agustin!
A.GARCIA: I have to kill myself!
J.RICART: No!
A.GARCIA: Damn it! Let me kill
myself!
J.RICART: AGUSTIN! Ay no! AGUSTIN!
AGUSTIN! AGUSTIN! I need (in English)
help! Oh AGUSTIN! AGUSTIN! Ay!
(They appear to be moving from the
living room area to the kitchen area
of the residence. Sounds that resemble
bullets jingling (in AGUSTIN's pocket)
can be heard.)

U/M: Oh shit! (In English.)

Tape Recording Ends

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When reviewing the two transcripts side-by-side, at first blush one can not escape an observation that both transcripts are diametrically opposed to each other in the content of what had been said by the people on the tape. Moreover, the context in which Mr. Allen's transcript is read reveals an impassioned Movant, acting out of love for the woman that he had just shot. When reading the version by Det. Suarez, one can not help yet not think that the shooter was a cold hearted actor, bent on revenge and intent upon committing the often quoted crime of murder-suicide. Not once in Det. Suarez's translation was Movant attributed with saying that he even loved Ms. Ricart. Compared against the Allen transcript, the evidence of "No, [screaming], No" and admissions of love for Ms. Ricart are evidenced in numerous phrases of "No. No. No. Lilly" and specifically, the phrase "Ay. I love you, Lilly Aaaaah."

Allen's interview with the newspaper reporter, it is Garcia for any

and specifically, the phrase "Ay. I love you,"

In one juror's interview with the newspaper reporter, it was reported that jurors were looking towards Mr. Garcia for any expression of love for Ms. Ricart during his testimony in presumably their consideration of voluntary (passion-provocation) manslaughter, as follows:

On the stand, he never mentioned

He never once said,

lows:

"When Garcia came on the stand, he never mentioned anything about passion," the juror said. "He never once said, 'She was the love of my life. I saw her in the dress and snapped.'"

See, PCR Appendix, Vol. IV, Da 787.

See, PCR Appendix, Vol. IV, Da 787.

Given Movant's and the jury's interest in evidence of passion, they may not have needed to hear Movant express his passion for Ms. Ricart from the stand and in connection with a crime that happened over a year ago. What better evidence for an argument

~~Da 787~~ ~~Da 787~~

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could not and should not be given any credibility whatsoever. The alleged sounds could not have been heard because the video camera was in the far corner of the living room and the videotape and evidence adduced trial have both Movant and Juan struggling in the kitchen at this time. It is not possible to hear bullets jingling in a pocket two rooms over from the video camera. This fiction can only be attributed to more of Det. Suarez's wishful thinking.

In sum, the evidence of Movant's passion towards Ms. Ricart, his prevention of letting Juan exact his revenge by gaining control of the firearm; the Saurez translation of statements that did not occur and old not amount to a murder-suicide being played out, deprived Movant of evidence tending to support a conviction for passion-provocation manslaughter. This new evidence would probably have affected the jury's verdict. This is especially true, since the jurors were looking for evidence of passion from Movant. The new evidence would have effectively neutralized the testimony of Juan Ricart, Davis Ricart, Norma Rosario and may have precluded the Prosecutor from relying upon an un-sworn hearsay translation of Det. Saurez; and is of such caliber, in the context of this trial, that it possessed, to a probability -- not a certainty, State v. Ways, supra, 180 N.J. at 197, the capacity to change the jury's verdict. While the State's case in utilizing the Suarez translation in connection with the videotape, although circumstantial, was strong, it was far from overwhelming, "id." at 195, when all the proofs are to be taken into account, including

the defense witnesses and lay experts. It is not without significance that the Assistant Prosecutor went over Det. Suarez's translation in connection with his showing pictures of portions of the videotape to the jury as one of the final items in his summation, arguing that the pictures and Suarez translation depicted and was evidence of Movant as a man bent on intending to first-degree knowing and purposeful murder, and suggesting from the pictures themselves the likelihood that the jury should return a verdict of guilty to murder. The State should not now be permitted to "walk away" from its evidence and demean its importance.

Movant respectfully submits that he has met the Carter test for newly discovered evidence. As Judge Baime said in a somewhat related context (concerning DNA evidence):

"We recognize the importance of finality. However, the objectives of the criminal justice system is the fair conviction of the guilty and the protection of the innocent. The system fails if an innocent person is convicted. We offer no view on that subject. We merely note that post-conviction relief remedies were designed to provide one last avenue of review to assure that no mistake was made. Our decision does no more than seek to implement that mandate."

State v. Behn, 375 N.J. Super. 409, 426 (App. Div. 2005) (citing,

State v. Velez, 329 N.J. Super. 128, 137 (App. Div. 2000)).

Last, the court in State v. Behn, supra, 375 N.J. Super. at 409, wrote in recognizing the pronouncement in State v. Velez, 329 N.J. Super. at 137, as follows:

"In addition, we note that the integrity of the criminal justice system is ill-served by allowing a conviction based on evidence of this quality, whether described as false, unproven or unreliable, to stand. Cf. State v. Gookins, 135 N.J. 42, 48-51, 637 A.2d 1255 (1994).

Given the nature of the newly discovered evidence set forth

Hon. William C. Meenan, U.S.C.

herein above, should the Court require more information than what has been set forth, that the request for an evidentiary hearing should be granted and Movant permitted to subpoena witnesses.

In the alternative, this Court should grant Mr. Garcia a new trial based on newly discovered evidence.

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POINT II

MOVANT'S MOTIONS TO COMPEL THE OFFICE OF THE PUBLIC DEFENDER TO MAKE PAYMENT OF ANCILLARY SERVICES, AN AUDIBILITY EXPERT; TO COMPEL PRODUCTION OF THE ORIGINAL WEDDING VIDEOTAPE AND THAT VCR COPY THAT WAS SENT INTO THE JURY ROOM AT TRIAL; AND FOR A STAY, SHOULD BE GRANTED IN ALL RESPECTS.

Movant motions this Court for several Orders. Movant seeks an Order compelling the Office of the Public Defender ("OPD") to provide for the payment of necessary audibility expert services in order to demonstrate and adduce the newly discovered evidence. Movant incorporates the facts and allegations of Point I supra,

as if same were more fully set forth herein at length.

With regard to audibility expert, Movant's family had caused to retain the services of the audibility expert already mentioned in Point I and Movant's Certification at p. 47-48. Movant's family however is no longer able to provide additional funds to continue with the audibility expert's services. cert. at p. 96, 100. Movant therefore seeks an Order compelling the OPD to make payment for additional and necessary services required of the audibility expert. It is now necessary that the audibility expert be compensated for his anticipated testimony with regard to his work in translating the copy of the wedding ceremony video tape turned over to Defense Counsels prior to trial. In addition, as more fully discussed below, Movant has filed a motion to compel the State to turn over for the expert's examination the original wedding videotape that was produced in professional format and that copy of the same which was submitted to the jury in standard consumer VCR-format.

Should this Court grant the following motions to compel the original wedding ceremony video tape and jury copy now in the custody of the State, it would then be necessary for the audibility expert to examine those video tapes, produce a report and appear in this Court for testimony.

Movant has reasons that there exists good cause for granting this motion to compel payment of the OPD.

As Point I adequately demonstrates, Movant has alleged and proven through the audibility expert's services performed to date, that the copy of the wedding ceremony video tape turned over to the Defense, had been illegally tampered with, as well as, having the oral portions of the content of that video tape, produced in such a manner as to slant the evidence towards a conviction of knowing and purposeful murder; while at the same time, suppressing evidence favorable to Movant's defense of passion/provocation manslaughter.

Equally, as the tampering and suppression of favorable evidence had occurred with regard to the defense and jury copies of the wedding ceremony video tape, Movant asserts that additional evidence may be discovered of tampering and suppression with regard to a comparison of the original professionally formatted wedding videotape as against the copies produced for the defense and jury. Here, while the State maintained that the wedding video tapes contained no oral content with regard to the struggle with Juan and Davis, Movant believes this to be more probably true and seeks to require the OPD to provide payment to his audibility expert.

for the purpose of examining the video tapes in the State's possession for tampering and/or suppression of video and/or sound recording evidence. Movant also seeks to require that the State produce the original professionally formatted wedding videotape for his expert's examination.

The Law On An Indigent's Application To The Public
Defender For Payment Of Expert Services

New Jersey's State Office of the Public Defender is required to provide ancillary services for indigent defendants, and for those of whom it does not represent. N.J.S.A. 2A:158A-2 and 2A:158A-5. The New Jersey Legislature intended that the OPD assume the costs of providing ancillary services to all indigent defendants. When the Legislature adopted the Public Defenders Act of July 1967 ("OPD Act"), it had adopted a comprehensive and unified scheme now codified in N.J.S.A. 2A:158A-1 to -25, which had been set forth and implemented in a Report of the New Jersey Commission on the Defense of Indigent Persons Accused of Crime ("Defense Commission Report"). P.L.1967, c.43, § 24. That Defense Commission Report, in deciding whether the costs should be borne by the county(s) or the State concluded that, "the cost of providing the service of the (Public) Defender Office should be borne entirely by the State without any provision for apportionment either of the entire costs or of any part thereof among the counties." Defense Commission Report at p.2... (emphasis added). Under one centralized system, the State created the Office of the Public Defender where the State "assumed all costs for attorneys and for ancillary

services. Matter of Cannady, 126 N.J. at 491.

Pursuant to the OPD Act, section 1 proscribes that it is the policy of New Jersey to provide "for realization of the constitutional guarantees of counsel in criminal cases for indigent defendants by means of the system and program established and authorized by this act +++++." N.J.S.A. 2A:158A-1. The OPD Act defines an indigent person as a "defendant +++++ who is formally charged with the commission of an indictable offense and who does not have the present financial ability to secure competent legal representation +++++ and to provide all other necessary expenses of representation." (emphasis added). As to the services to be provided indigent defendants, section 5 proscribes that:

"All necessary services and facilities of representation (including investigation and other preparation) shall be provided in every case. The factors of need and real value to a defense may be weighed against the financial constraints of the Public Defender's Office in determining what are the necessary services and facilities of representation."

Matter of Cannady, 126 N.J. 492; quoting N.J.S.A. 2A:158A-5; (emphasis added).

Given the above, the policy of New Jersey is to provide counsel for all indigent defendants and not only for indigents represented by the OPD. The OPD Act's proscriptions provide for eligibility and includes not just a defendant's inability to hire private counsel, yet also includes a defendant's ability to pay for all other necessary expenses of representation, and, it is irrelevant that an indigent defendant first obtain the legal services of the OPD prior to qualifying for ancillary services

Hon. William C. Meehan, P.J.S.C.

from that office. That policy is weighed against the factors of need and real value to the defense against the financial constraints inherent in the OPD's budget. Matter of Cannady, 126 N.J. at 493; N.J.S.A. 2A:158-5.

When outside counsel applies for payment of expert services, the OPD has the right to determine what expenditures are necessary and how much money should be spent when outside counsel applies for services at the OPD's expense. Matter of Cannady, 126 N.J. 493. The New Jersey Supreme Court in Cannady recommended the following procedure:

"First, any defendant charged with an indictable offense who has been determined to be indigent under the factors listed in N.J.S.A. 2A:158A-14 may apply to the OPD for funds.

+ + + +

Once the court, with the OPD's assistance, determines that a defendant is indigent, such defendant may apply to the OPD for funds. Defendant should support that application with all pertinent discovery, and should also include a copy of the written retainer agreement. If the retainer agreement has not been reduced to writing, counsel should certify the amount of the retainer.

In certain cases, the OPD may require the applicant to set forth the defense theory, including statements made to defense counsel as well as statements made by potential defense witnesses.

+ + + +

Pursuant to N.J.S.A. 2A:158A-12 and 2A:84-20, information supplied in support of an application shall be protected by the attorney-client privilege.

If the defendant has sufficiently documented the application, the OPD should then determine whether the facts of the case warrant the need for ancillary services. To help in its determination, the OPD should ask these questions:

2A-902

2A-902

[Handwritten signature and initials]

den., 117 N.J. 657 (1989). Should after the application be made to the OPD, then reviewed and be denied by that office, "the reasons for doing so must be reduced to writing and a copy of that statement sent to defendant." Matter of Cannady, 126 N.J. 497. A written denial is necessary in order to preserve further review of the OPD's decision denying ancillary services." N.J.S.A. 2A:158A-15.1, proscribes that, "(a) determination to grant or deny the services of the Public Defender shall be subject to final review by the Assignment Judge or his designated judge," ++++ "the OPD's decision to grant or deny its service also shall be subject to review by the trial court, or if the case has not yet been assigned to a specific trial court, to the assignment judge or his designee. The applicant may move for a protective order to ensure that any privileged information contained in the record remains confidential." Matter of Cannady, 126 N.J. at 486.

Given the prevailing factors, the requests for payment are well reasonably related to issues in contention; that the evidence that would be adduced through the audibility expert would go directly towards refuting the State's proofs, no less the State's overall theory of the case; that the needed and real value to the Defense essentially falls on the difference of Movant being falsely convicted of knowing and purposeful murder and having to serve no less than twenty additional years in prison for a crime that he did not commit which out weights the constraints of the OPD whom regularly provide audibility expert services as a matter of course to defendants similarly situated to Movant's needs.

1. Is the service requested reasonably related to the issue in contention?
2. Is the service requested reasonably related to the applicants method of refuting the State's proofs?
3. Is the service requested needed and of real value to the defense when weighed against the financial constraints of the OPD?
4. Is the requested service one that is generally available to defendants represented by the OPD?

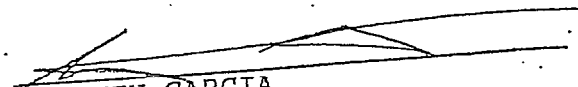
Matter of Cannady, 126 N.J. at 493-95. In that the services requested are not disproportionate to the services ordinarily provided to indigents for whom the OPD represented, the OPD "has the right to learn the details of the private attorney's fee agreement. The OPD may deny a defendant's request if the private attorney's fees are disproportionate to the services required, taking into account all the relevant circumstances. The result of that denial may make it necessary for the attorney to reallocate a portion of his or her fee to over the cost of some, or all, of the requested services." Matter of Cannady, 126 N.J. at 496.

The ultimate decision to grant an indigent defendant the ancillary services of experts necessary for a defense is discretionary and limited, and weighed against the OPD's budgetary limits to provide resources. Matter of Cannady, 126 N.J. 493; State v. Cantalupo, 187 N.J. Super. 113, 121 (App. Div. 1982). N.J.S.A. 2A:158A-14 vests that discretion in the OPD and "does not require that it write a blank check for privately-represented defendants". State v. Manning, 234 N.J. Super. 147, 163, n.8 (App. Div.), certif.

the ineffective assistance of counsel.

DATED: 23 April 2007

Respectfully submitted,


AGUSTIN GARCIA
Defendant-Movant, Pro se

PC: The Clerk of the Court
The Prosecutor
The Public Defender
The Assigned Counsel

DA-908
~~PA-184~~

APPENDIX Z-2

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

AGUSTIN GARCIA - PETITIONER

(Your Name)

VS.

STATE OF NEW JERSEY - RESPONDENT

TABLE OF APPENDIX (VOLUME ~~3 OF 3~~)

Z-2 OF 2

Item No.	Ref. No.
20. Petitioner's May 8, 2007 Certification and Notice of Motion supplementing first PCR motion.....	Da: 910-1032
21. Superior Court of New Jersey/ Law Div.'s Dec. 28, 2021 docket.....	Da: 1057-8
22. Team Audio, Inc.'s Oct. 21, 2020 videotape forensic expert draft....	1097; 1109

Agustin Garcia, pro-se
SBI # 822642-B/ # 428336
East Jersey State Prison
Lock Bag R, Rahway, N.J. 07065

APPENDIX - VOLUME 3 OF 3 - Da: 910-1128

- 49. Petitioner's May 8, 2007 Brief and Certification in support of same day motion supplementing first PCR record.... Da: 910-1032
- 50. N.J. Superior Court/ Law Division's Dec. 21, 2021 order denying PCR..... Da: 1033-1036
- 51. N.J. Superior Court/ Law Division's log... Da-1037
- 52. N.J. Superior Court/ Law Division's log... Da: 1057-1058
- 53. Correspondence between Petitioner and and Dave Mariasy, Team Audio, Inc., pertaining to forensic retesting of wedding videotape..... Da: 1097-1117
- 54. Superior Court of New Jersey/ Appellate Division's May 23, 2024 Opinion..... Da: 1118-1128

~~ATTACHMENT D-501~~
Hon. William C. Hoehan, P.J.S.C.

~~NTMC Da-119~~

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
BERGEN COUNTY INDICTMENT NO. 06-06-1368-1

Criminal Action

STATE OF NEW JERSEY,
Plaintiff-Respondent,

v.

AGUSTIN GARCIA,
Defendant-Movant.

CERTIFICATION OF AGUSTIN GARCIA IN
SUPPORT OF A MOTION FOR A NEW TRIAL
(Appendix separately bound).

AGUSTIN GARCIA
Mailstop: SBI No. 822642B
West Compound, Two Right
New Jersey State Prison
3rd & Federal Streets
P.O. Box 861
Trenton, N.J. 08625-0861
Defendant-Movant, Pro se

MOVANT IS CONFINED

Da-910
~~Pa-185~~

~~RECEIVED~~

Hon. William C. Meehan, F.J.S.C.

CERTIFICATION OF AGUSTIN GARCIA

AGUSTIN GARCIA, Defendant-Movant (hereinafter, "Movant"), of full age, in lieu of oath, affidavit or verification, says:

1. I am the Movant in the above captioned matter and fully familiar with the facts contained therein.

2. I am presently committed to the care and custody of the Commissioner of the New Jersey Department of Corrections, and assigned to the New Jersey State Prison, West Compound, Two Right, Third & Federal Streets, Trenton, Mercer County, New Jersey.

I.

3. I had been charged in this case on 29 June 2000, when a Bergen County grand jury returned a 7-Count indictment, number 00-06-1368-I against Agustin Garcia, charging: Count One: first-degree murder, contrary to N.J.S.A. 2C:11-3a(1)(2), and subject to the provisions of the No Early Release Act, N.J.S.A.

2C:43-7.2 and N.J.S.A. 30:4-123.51b; Count Two: second-degree possession of a weapon for unlawful purposes, contrary to N.J.S.A. 2C:39-4a; Count Three: third-degree unlawful possession of weapon without first obtaining a permit in compliance with N.J.S.A. 2C:58-4, contrary to N.J.S.A. 2C:39-5b; Counts Four through Seven: third-degree endangering welfare of children, contrary to N.J.S.A. 2C:24-4(a).

4. The charges arose out of the 26 September 1999 shooting death of one Ms. Gladys Ricart, at her home and during a pre-wedding ceremony, in the Borough of Ridgefield, County of

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Bergen.

5. Movant was represented by privately retained counsels, Edward Jerejian, Esquire, Raymond Colon, Esquire and Fernando Oliver, Esquire, who did file several pretrial motions. Included in those were motions: 1) to suppress custodial oral statements by Movant, 2) to exclude from evidence a certain audio answering machine tape, a 911 audiotape and a wedding videotape (including it's authentication), 3) to admit into evidence a security videotape of Movant and the victim made at PathMark Supermarket, 4) to dismiss Count's Four through Seven (endangering the welfare of a child) from the indictment, and, 5) to suppress physical evidence seized under search warrants, from the Oldsmobile Bravada operated by Movant, and that from his residence at 8410 Newkirk Road, North Bergen.

6. The State cross-moved for an order precluding Movant from requesting a passion/provocation manslaughter charge and allowing the State to introduce other crimes/civil wrongs evidence in order to demonstrate motive for the homicide.

7. Many of these motions were denied by the Hon. William C. Meehan, P.J.S.C. as follows: the motion seeking to exclude the wedding videotape was denied on 22 March 2001 and an Order was filed 30 March, the motions to dismiss the child endangerment counts and preclusion of the passion/ provocation charge, were denied on 19 April and an Order was filed 11 May, the motions to the suppress the oral statement and physical evidence seized were denied on 30-31 May and an Order was filed on 5 June. No

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DA-912

formal action was then taken on the N.J.R.E. 404(b) evidence that State sought admissibility.

8. After the completion of jury selection, trial commenced before Judge Meehan on 2 October 2001 and continued through 22 October.

9. On 18 October 2001 Judge Meehan dismissed Counts Four and Seven on Movant's motion for judgment of acquittal.

10. The jury found Movant guilty on the remaining counts of the indictment.

11. Appearing for sentencing on 1 February 2002, Judge Meehan merged the weapons offenses with the conviction for murder and sentenced Movant to a term of life imprisonment with thirty-years of parole ineligibility; and also assessed a \$300 total VCCB penalty, a \$375 total SMSF penalty and a \$30 LEO penalty. Judge Meehan also sentenced Movant to a consecutive term of four years on the unlawful possession of a weapon conviction; and to a term of four years on each of the two endangering the welfare of children counts and ordered that these endangering sentences be served concurrently with the murder conviction. Finally, the Court awarded Movant with eight-hundred-sixty [860] days of custodial credit. A judgment of conviction was dated 1 February 2002.

12. Movant then filed a timely notice of appeal. On 11 May 2004, the Appellate Division affirmed the convictions for knowing and purposeful murder and the unlawful possession of a weapon, and reversed the convictions for endangering the welfare of child (two counts) and remanded for entry of acquittals in the judgment.

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of conviction along with corrections to the VCCB and SNSF penalties imposed on Count Two.

13. Because the Appellate Division affirmed as to the other convictions raised on direct appeal; as to these, Movant filed a Petition for Certification with the New Jersey Supreme Court, which was denied by the September Term on 10 September 2004. State v. Garcia, 181 N.J. 545 (2004).

14. Movant then mailed on 22 January 2005, by way certified mail, for filing with the Clerk and which is presently pending before this Court, a notice of motions and an initial verified petition[-]brief with appendix for post-conviction relief. Included among these are motions to proceed as an indigent, for permission to file a first-amended verified petition-brief, to compel the prosecutor to turn over or make available the original wedding videotape and Pathmark surveillance tape for examination by a defense audibility expert, to compel the Public Defender to compensate the services of an audibility and DNA expert and the testing in connection thereto, to stay the PCR proceedings, to compel Prosecutor Fred Schwanwede to disqualify himself and for recusal of the Hon. William C. Meehan, P.J.S.C.

15. This motion to supplement the moving papers with a motion for a new trial based upon newly discovered evidence and requesting other relief comes now.

II.

16. The essence of the State's case against the Movant, was that Movant shot and killed his paramour, one Gladys Ricart

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Hon. William C. Meehan, P.J.S.C.

in her residence on her wedding day, dressed in her wedding dress, and flanked by her bridesmaids who along with others, witnessed the killing. The actual killing was captured by the wedding videographer who was filming the event of the day.

17. The background leading up to this homicide may be summarized as follows:

18. Movant, Agustin Garcia, was born in 1952, in the Dominican Republic. Arriving in the United States in 1977, from October 1979 on, he was employed as the Executive Director of the Asociaciones Dominicanas.

19. Movant and his two brothers also operated a business in the Washington Heights area of New York City, originally doing business as Unique Travel and Tax Service Corporation, later known as Illusion. As apart of Movant's duties being responsible for handling cash as part of the business activities, he was also "deeply concerned" about the rash shootings of local merchants. And it was specifically for these reasons that he applied for and received a weapons permit in New York city. Movant then obtained two handguns.

20. It was while living in Puerto Rico that Movant engaged and then married Ms. Lordes Lantigua. The married couple had two children, naming Agustin Junior and Natisa. However, in the United States and by the Summer of 1992, Movant and Mrs. Lordes were separated and in the process of receiving a divorce.

21. Movant then met Gladys Ricart in the Summer of 1992. Ms. Ricart had come to the United States from the Dominican

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Republic in 1983 and became a naturalized citizen in 1989.

22. Movant and Ms. Ricart started dating and "soon it was kind of obvious to us that" they "kind of belonged to each other." Ms. Ricart introduced Movant to her sister, Norma [Yolanda] Rosario and her brother Juan Ricart, because she "wanted [her brother's] approval."

23. By 1993, Ms. Ricart and Movant started to "perceive" each other like a couple like husband and wife." When Movant was selected as Grand Marshal of the well known Dominican parade in New York City, it was Ms. Ricart as his escort that accompanied him. During this time, Ms. Ricart and Movant "decided to move into the same household." Ms. Ricart and her son Davis had moved from the Bronx into Movant's home located at 8410 Newkirk Avenue in North Bergen, New Jersey a residence where he was already living with his son and daughter.

24. Ms. Ricart and Movant lived together for approximately two years and from 1993 through 1995. During that time, they did "everything together from shopping to going to church to [even] the finances." It was also in 1995 that Ms. Ricart and Movant were having difficulties disciplining each others children. Ms. Ricart and Davis Ricart then moved to a house located at 825 Elizabeth Avenue in Ridgefield, New Jersey. Throughout this time, Ms. Ricart and Movant continued their relationship.

25. However, during this time, from 1995 until 1999, Ms. Ricart and Movant would break-up several times and then resume their relationship. When one Angel Case, a business associate

of Movant and fellow member of the Chamber of Commerce, met Ms. Ricart around this time, Movant introduced Ms. Ricart to Mr. Caso as his wife. In July of 1998, Movant also paid Mr. Caso to perform repairs on the basement of the Ridgefield house Ms. Ricart was living in. Ms. Ricart was also assisting Movant with his business.

26. Ms. Ricart and Movant decided to get married on 15 March 1999. Sometime in November or December of 1998, Ms. Ricart had informed Movant that she had contacted his ex-wife to arrange for Movant's children to live with Lordes after they were married. Movant was very angry about that and ended their relationship. Ms. Ricart informed her sister, Ms. Rosario that Movant and she had broke up at approximately the same time.

27. Movant then began a romantic relationship with Rochelli Ramos who was also trying to buy the Illusions business. In February or March of 1999, Movant ended the relationship with Ms. Ramos because Ms. Ricart had "came back" to him and Movant was known to refer to themselves again as "husband and wife." From March of 1999 until 26 September 1999, Ms. Ricart and Movant saw each other four or five times a week. Natisa, Movant's daughter, also slept over at the Ridgefield house twice when Ms. Ricart's son Davis was away at college.

28. Ms. Ricart and Movant also continued to have a turbulent relationship. In March of 1999, Movant demanded that Ms. Ricart return the keys to the North Bergen house when he found out that a man was visiting her in the Ridgefield house.

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[Handwritten signatures and initials]

Ms. Ricart also continued to be jealous about Ms. Ramos. Ignoring the truth of the matter, Ms. Ricart had said to her co-worker Josephine Formato, in April or May of 1999, that she had ended her relationship with Movant because it was Movant that was unfaithful to her. Nevertheless, in June of 1999, Ms. Ricart accompanied Movant to a graduation ceremony and a party; and in July of 1999, had again accompanied Movant and her mother to an event at the Dominican Chamber of Commerce.

29. It was around this time in June or July of 1999, that Ms. Ricart met and started a romantic relationship with another coworker, James Preston. This time Ms. Ricart did not introduce Mr. Preston to her brother Juan; her sister Ms. Rosario, did not meet Mr. Preston until the end of July. At the end of July or the beginning of August, Ms. Ricart had told Ms. Formato that Mr. Preston and she were going to marry on 26 September and asked her to be the Maid of Honor. At about the same time, Ms. Ricart also told Juan and Davis of the upcoming marriage date and also asked them to participate in the wedding ceremony.

30. Ms. Ricart, however, did not tell Movant that she had met and was planning to marry Mr. Preston. Ms. Rosario testified that Movant had come over to her house at the beginning of July and said to Ms. Rosario and her mother, that Mr. Preston "was not a good man for Gladys."

31. Ms. Rosario related that, in July of 1999, while their

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mother Ana, was staying with her at her apartment on Fort Washington Avenue in New York City. Movant stopped by and asked to speak with Ana. Yolanda subsequently overheard Movant warn Ana to be wary of Preston, noting that he had seen Preston driving an old car and that he was likely after Gladys because she had a good job and a home. Movant also said that he had hired a private detective to follow Preston. However, Ms. Rosario's testimony was contradicted by the bride-groom, James Preston, who indicated that at the time of the alleged conversation, he had not even met Gladys for the first time. Mr. Preston testified that he first met Ms. Ricart "[a]pproximately July 13, 1999. Thereafter, it took maybe a week and a half for us to actually sit down and have lunch, and then we continued to have lunch as it grew from there."

32. Nevertheless, according to Ms. Rosario, while Movant was still present in the apartment, the phone rang and, during the call, she exclaimed without thinking, "Gladys getting married?" Ms. Rosario said she immediately glanced at Movant whom she was certain had overheard her remark, however, looked quiet and gave no overt reaction. Expanding, Ms. Rosario testified that her sister Ana had called and that in response to the telephone conversation, Ms. Rosario exclaimed to Ana, that "Gladys is getting married?" Ms. Rosario also did not tell the police about this comment when she gave them a statement on 9 December. Just then, according to Ms. Rosario, Ms. Ricart arrived at house and was angry when she found Movant there.

33. Movant testified that he had indeed saw Ms. Rosario

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and her mother after 12 August, however, they did not mention a Mr. Preston, nor did he overhear a conversation between Ms. Rosario and her sister, Gladys. Movant did admit that he had engaged the services of a private detective to follow Ms. Ricart.

34. In early August, Ms. Ricart told her coworker, one Josephine Formato that she and Preston were to be married and asked her to be her maid of honor. Thereafter, Formato and Gladys set about preparing for the wedding, which was scheduled for September 26, 1999 -- less than two months away.¹

35. On 12 August, Movant went to the Ridgefield house at about 9:00 p.m. to spend the night there. However, he saw a light and "a male silhouette" and when he knocked on the door there was no answer. Movant then knocked on the back window of the home without breaking it. Ms. Ricart called 911 and reported that her Sergeant William Pych and Officer Rich Neary of the Ridgefield Police Department responded to a call apparently made by Ms. Ricart, and when confronted by the police, Movant said that Gladys was his girlfriend and she was in her house with another man. Ms. Ricart refused to file a complaint against Movant and said

¹ Josephine Formato's testimony confirms that Ms. Rosario committed perjury at trial in that her telephone conversation with Movant present was a complete fabrication. According to Ms. Formato, "I asked her if he knew she was getting married that day and she said no." For other perjury see also, the first-amended petition-brief for PCR; Volume II/Da 376 to 383; Volume III/Da 471 to 473; and the Traverse brief.

² "Vol. ___/Da ___" denotes the appendix to the first-amended petition-brief for post-conviction relief--the volume number and the Defendant's Appendix page number.

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Dated

she just wanted to get on with her life and wished Movant would do the same.

36. Responding Police did not find any windows broken and Movant agreed to leave the premises. However, Movant drove past Ms. Ricart's house a few minutes later, and several more times later that evening.

37. In August and September, Movant traveled to the Dominican Republic and San Diego for business purposes. During this time, Ms. Ricart and Movant continued their relationship. Ms. Ricart had also helped Movant pack for the trip to Santo Domingo; Ms. Ricart and Movant also met Mr. Caso and his wife at a restaurant and ate dinner with them. Natisa, Movant's daughter had seen Ms. Ricart at the North Bergen house about "two or three days a week." Meanwhile, Ms. Ricart continued to make arrangements for her wedding to Mr. Preston.

38. According to Movant, he and Ms. Ricart continued their personal and sexual relationship right up to the early morning before the wedding day. Both also made tentative plans to go to Atlantic City on Friday the 24th of September and along with Ms. Ricart's mother; primarily because Movant's relationship with Ms. Ricart's mother was tumultuous, where Movant when routinely stopping by Ms. Ricart's house, had to do so first before calling to see if Ms. Ricart was home.

39. On Saturday, the 25th of September, Movant went to home

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[Signature]

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Depot to have an extra set of keys to his North Bergen house made for Ms. Ricart. In the early afternoon, Movant stopped by Ms. Ricart's house;³ Ms. Ricart, Davis and Ms. Ricart's mother were there. Davis testified that Movant cried and repeated that he was sorry. Davis also admitted that nobody mentioned the fact that Ms. Ricart's wedding was scheduled for the next day. Later that day, Ms. Ricart went to New York City in order to pick up the dresses and accessories for the bridesmaids.

40: At about six that evening Movant's neighbor Evelyn Lopez, saw Ms. Ricart and Movant leave in a car and then return to the North Bergen home four hours later or at about ten that evening. That Saturday night Ms. Ricart's bridesmaid, Ms. Formato, had

³ Under cross-examination, Davis was forced to admit that:

"Question: Okay, Mr. Garcia is in your house the day before this wedding. Your grandmother is there and he has this conversation with you and it's never mentioned once that your mother is getting married the next day, was it?
Answer: No.

"Question: And at no point in time do you ever mention to anyone, investigator or not, or on the stand here today, that Mr. Garcia mentioned anything about a wedding, isn't that true?
Answer: No.

"Question: He never said, "Please, stop the wedding."
He never said that, did he?
Answer: No.

"Question: He never said, "Don't let her marry James Preston. He is not good enough for her." He never said that, did he?
Answer: No.

"Question: Okay. And while he stood up, never once out his mouth the day before this wedding did he mention or acknowledge anything about a wedding?
Answer: No."

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come to the Ricart house in Ridgefield to help Ms. Ricart prepare for the wedding; however, Ms. Ricart was not there when she arrived between 9:00 p.m. to 9:30 p.m.. Ms. Ricart did return to the Ridgefield home sometime after 10:00 p.m.. While Ms. Formato and Ms. Ricart were decorating the house for the wedding ceremony, Ms. Formato discovered that she needed sanitary napkins; when Ms. Ricart offered to get them for her from the store; Ms. Ricart left sometime after midnight.⁴

41. That night, around 9:00 p.m., Formato arrived at Gladys' house. When Gladys arrived shortly after 10:00 p.m., she and Formato decorated the inside of the house in preparation for the

⁴According to Davis, he later saw Movant driving up to the house and parking between 6:00 to 7:00 p.m.. This portion of his perjurious testimony is refuted by the petition-brief's claim involving ineffective assistance of trial counsel, for Evelyn Lopez trial witnesses testified to the contrary and Movant post-trial had obtained the affidavits of several witnesses who placed Movant in New York at these times. Davis' testimony is in direct contrast with the statements made by the following individuals; Evelyn Lopez testified that:

"Question: How about after August, did you ever see her again?

Answer: Yes, I did.

Question: Could you tell us when if you recall?

Answer: That I remember seeing her after that was the Saturday which was September the 25.

Question: That would be the 25th?

Answer: Yes.

Question: And what did you observe that day if anything?

Answer: I was going--it was around 6:00 P.M., 6:30 P.M. in the afternoon. I was going out. I was waiting for them to pick me up and she came in a little station wagon and she rang the doorbell. Movant went outside. They left in the car. And then I left also. When I got back at night around ten o'clock at night they got back at the same time I got home.

Continued...

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wedding and arranged the bridesmaids' dresses. At approximately midnight, Formato discovered that she needed sanitary napkins and Gladys agreed to run out to the store. Formato subsequently dozed off, yet woke up some hours later when Gladys finally returned. Formato asked what had taken so long. Gladys replied that she had bumped into an old friend and then quickly went to bed.

42. Ms. Ricart did not go directly to the store for the purchase, instead she drove directly to Movant's house. After spending an hour together, Ms. Ricart and Movant then went to

.....continued

Question: So you're saying your testimony is that you saw Miss Ricart come to the house of Movant, pick him up at 6:00 P.M., you left with your friends to go to Holahan's and when you came back at 10:00 you ran into them again?

Answer: Yes."

20T 32-3 to 33-3; 21T 92-11; 21T 94-19; Vol. IV/Da 735.

Further, is as confirmation of Lopez testimony, the affidavit of Jose Valverdes, confirming that he saw Gladys picking up defendant around 9:00 P.M. on Saturday, September 26, 1999, the night before the incident. See DPa-II-1; DPa-III-1:10; 21T 94-19; Vol. IV/Da 711; 735. The Valerdes affidavit relates:

"1. That on the night of Saturday 25th of September, 1999, around 7:00 P.M., I accompanied Agustin Garcia from Ilusion business at 1249 Saint Nicholas Avenue, NYC 10032 to the house of Fernando de la Rosa's mother located on 175th street, NYC, about three blocks away from the Ilusion business location. The purpose of the visit was because Garcia wanted to give instructions to Fernando's brother Franklyn, for the opening and cleaning of Asociaciones's headquarters, for an event scheduled for next day Sunday 26 of September, 1999. We waited in Fernando's mother home for a period of about two hours trying to locate Franklyn, and returned to Ilusion business shortly before 9:00 P.M."

continued....

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found Ms. Formato asleep and when she awoke after hearing her, Ms. Formato had inquired as to "what took her so long;" when Ms. Ricart had "said she bumped into a friend."

43. Movant returned to his house and went to sleep and awoke around noon Sunday. That day at 6:00 p.m., Movant was scheduled to participate in the opening of the Hispanic Parade and Painters and Sculptors Exhibition in New York.

44. The next morning, Formato and Gladys awoke early, to have their hair done. They did not return to the house until sometime between 2:00 and 3:00 p.m.

45. Sometime between 3:45 to 4:00 p.m.⁶, Searfoss, Sacin, and two of the groomsmen, Antonio Caban and Raymundo Fabin, all of whom were standing outside of Gladys' house, saw Movant drive by and then return and park. Searfoss' housemate, Pat Pollio, went inside to warn the family members that Movant was there.

46. Gladys' brother Juan Ricart immediately went outside and approached Movant's car. Juan asked Movant what he was looking for and Movant responded that he was invited and began to walk quickly toward the house. Aware that Movant had not been invited to the wedding, Juan followed him up to Gladys' front door, which was closed and locked. Movant did not say a word. Juan noticed

⁶The prosecutor wrongly told the jury in summation that these witnesses claimed to have seen Movant observing the goings on outside for nearly a full hour before the shooting. "He's seen around three o'clock, if my recollection is accurate. +++ No, it's incredible. When he sees those people outside at 3:00 p.m., an hour before the shooting, and he knows exactly what's going on."

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that Movant had a brown briefcase hanging on his shoulder and, concerned that Movant might be carrying a gun as he usually did, tried to touch the case, yet Movant pushed him away with his elbow. Juan denied that he therefore struck or punched Movant.

47. Gladys' son Davis, who had been watching Movant's progress toward the house from the foyer, opened the door in response to a knocking, and Movant walked in followed closely by Juan. Juan recalled that Davis made no attempt to keep Movant out or to hit him once he was inside, and that no one threatened Movant. Davis confirmed that he never hit or otherwise confronted Movant. According to Davis, as Movant walked in, he "moved" Davis over to the side, yet there was no physical scuffle between the two of them. He insisted that Juan, likewise, did not grab Movant as he followed Movant into the house.⁷

48. Movant immediately stepped into the living room where there were several children present, including Juan's five-year-old daughter Melina, and his five-year-old niece Alexandra, (however, appellate court correctly conclude that the children whereabouts was never established. Thus, acquitting defendant of related charges) and approached Gladys, who was distributing flowers to her bridesmaids. Suddenly Movant pulled a gun out of his brown briefcase and started shooting at Gladys, firing the gun twice. Juan tried to grab Movant yet Movant pushed him, brandished the

⁷ The perjurious testimony of both Juan and Davis denying they assaulted Movant have been addressed in the petition-brief for post-conviction relief at P. 133-153 and the Traverse brief.

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gun at the room, and then shot at Gladys two more times, causing her to fall down over the sofa. Movant then shot Gladys one final time, "because of the presence of the stippling, is what we refer to as an intermediate range wound" behind her right ear.⁸

49. After this final shot, Movant paused and began reloading the gun. Juan seized this opportunity to grab Movant from behind in an attempt to prevent him from reloading the gun. As they wrestled, they moved from the living room into the kitchen where they fell to the floor. According to Juan, throughout this struggle, Movant said nothing. Finally, Juan heard the police calling from outside the house, and he yelled out for help.

50. Lieutenant Alfred Schettino and Sergeant Vincent Berta of Ridgefield Police Department, as well as Investigator Jose Brito, rushed in to the kitchen where Juan was leaning over Movant's back and using his hands to restrain Movant's hands on the gun. Movant and Juan fell on the ground and then Schettino pried the gun, which was empty, out of Movant's hands, while the

⁸Repudiating Juan's perjurious testimony, the State's Forensic Medical Examiner opined:

"That wound, because of the presence of the stippling, is what we refer to as an intermediate range wound. Now, it would not be as close as the wound that we saw on the back of her wedding dress because there was soot deposited there. The definition of soot is the closeness type wound, that would be a close shot, within inches as I described earlier. This wound, wound A behind the right ear does not show any soot, meaning that the gun was held a little bit further away so that only those flakes of burning gunpowder are making their way to the skin and the skin and the smoke that's coming out of the end of the barrel is actually being defused into the air."

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other officers pulled Juan off of Movant's back. Brito handcuffed Movant and Schettino read him his rights. The officers discovered some live bullets in Movant's pocket which were the same caliber as the gun, a silver five-shot revolver.

51. At trial, a portion of the videographer's wedding videotape, which showed the actual shooting, was admitted into evidence, played for the jury and also admitted into the jury room.

52. A transcript of the audio portions of the wedding videotape was also produced by Detective Dennis Suarez, admitted into evidence and also admitted into the jury room. The audio transcription prepared by Det. Suarez follows in full:

(Two gunshots)

J.RICART: Ay, ay

(Three gunshots)

J.RICART: Ay, ay, ay....

AGUSTIN, how could you do this? Ay, Ay, AGUSTIN, my God! Ay, ay, ay.... Ay, AGUSTIN, how could you have done this? My God!

A.GARCIA: I have to kill myself now! (IA)

J.RICART: No, AGUSTIN....

A.GARCIA: Let my hands go. Hurry! Hurry!

J.RICART: Ay!

A.GARCIA: Let me go, because I have to kill myself!

J.RICART: No!

A.GARCIA: Let me go, because I have to kill myself!

J.RICART: No!

A.GARCIA: For God's sake, let me go!

J.RICART: No!

A.GARCIA: I have to kill myself!

J.RICART: No!

A.GARCIA: Let me go!

J.RICART: No, no Agustín!

A.GARCIA: I have to kill myself!

J.RICART: No!

A.GARCIA: Damn it! Let me kill myself!

J.RICART: AGUSTIN! Ay no! AGUSTIN! AGUSTIN! AGUSTIN!

I need (in English) help! Oh AGUSTIN! AGUSTIN! Ay! (They appear to be moving from the living room area to the kitchen area of the residence. Sounds that resemble bullets jingling

(in AGUSTIN's pocket) can be heard.)
U/M: Oh shit! (In English.)
Tape Recording Ends

53. The State relied heavily on the testimony of Yolanda (summarized above), the testimony of Detective Mark Bendul and Lieutenant Cassirer, who testified as to their edification and format conversion of the wedding videotape into standard VCR format, the wedding videotape itself and its associated audio transcript; as its primary proofs that Movant intended to commit first degree knowing and purposeful murder in the killing of Gladys Ricart.⁹

III.

54. The Movant had at all times maintained his innocence with respect to those charges not consistent with the trial defense of passion provocation manslaughter. At trial, the essence of the defense evidence was that the killing was committed in the heat passion and thus, Movant should have been found guilty of passion provocation manslaughter. The substance of the defense evidence may be summarized as follows:

55. Movant testified at his trial, which testimony may be further summarized as follows:

56. With respect to the events of September 26, 1999, Movant described what took place after he awakened at noon. Movant left for Manhattan at 3:30 p.m. He decided to drive by Gladys house

⁹ The perjurious testimony of both Bendul and Cassieri with regard to the wedding videotape having been edited and portions concerning the struggle suppressed, have been addressed in the petition-brief for PCR at p. 81-132 and the Traverse brief.

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as he often did to see whether she was home and whether he could call her without Ana picking up the phone.

57. Movant acknowledged that he had placed his firearm in his briefcase before leaving home. He explained that, ever since he opened the travel agency and began handling large sums of money, he kept a firearm with him at all times. Movant admitted that he did not currently have a valid permit for the gun.¹⁰

58. Movant drove by Gladys' house and noticed limousines parked out front and formally attired people milling about. He drove by again and concluded that Gladys was hosting a party for her mother. He started to drive away, yet then, annoyed that Gladys had lied to and excluded him, turned around and returned to the house to confront her. Movant maintained that he had no idea that Gladys was getting married. As Movant got out of his car, Juan came up to him and asked whether he was invited and he responded that he was "always invited to [his] House." Juan followed him as he walked up to the front door yet did not touch him. After Davis opened the door, however, and he entered the house, Juan pulled his left arm, and he fell forward and hit Davis.

59. Movant claimed that Davis then pushed him and he ended up in the living room where he spotted Gladys. He was totally confused and asked what was going on. Davis then hit him hard on the right side of his forehead and he fell into a wall.

¹⁰ Movant's weapon carry license was valid between 16 February 1983 up until July 1999, whereupon three months before the shooting, the firearm was voluntarily surrendered without a weapon's carry license renewal.

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Believing that many people, including Juan, were attacking him, he reached for his gun to protect himself. Juan then grabbed him and they started wrestling. Movant recalled that he was blacking out and falling when he saw a white cloud over him and then a flash of light. Juan then yelled, "you killed my sister" three times and he replied, "I want to kill myself." Movant claimed that he tried to reload the gun so that he could shoot himself.

60. In support of the passion provocation defense and the alternate diminished capacity defense, Movant produced and adduced the evidence of Dr. Daniel Greenfield, a psychiatrist, who examined Movant on January 29, 2001. The Doctor concluded that, while Movant was not suffering from any serious diagnoseable psychiatric disorder at the time of the exam, he had been suffering from a diagnoseable psychiatric disorder at the time of the shooting. The Doctor explained that, because the wedding was a total surprise to him, Movant felt betrayed and became agitated, confused and enraged, and, consequently, did not behave in a knowing and purposeful manner. Dr. Greenfield was satisfied that Movant was suffering from an acute adjustment disorder at the time of the shooting, with mixed feelings of anxiety and depression.

IV.

61. In rebuttal, the State produced and adduced the testimony of one Dr. Azariah Eshkenazi, a psychiatrist, who testified as a rebuttal witness for the State. Based upon the Doctor's examination of Movant, the Doctor concluded that Movant did not suffer from any psychiatric disorder at the time of the evaluation

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or at the time of the crime. According to Dr. Eshkenazi, Dr. Greenfield's description of Movant's mental state at the time of the shooting would not be considered a "medically recognized illness or defect."

V.

62. The State, its is summation maintained that there was not enough time, as the wedding videotape demonstrated, for Movant to have struggled with Juan Ricart prior to the shooting and urged the jurors to consider that J. Ricart may have very well saved Movant's life; for the State urged the jurors to find that Movant had lied in his testimony concerning the struggle and after the shooting had attempted to take his own life as well as that of others present. In summation, the Prosecutor said:

"If you watch the tape and you think about what Garcia says happened and you count the seconds it can't happen the way he said it did. There isn't enough time for it to have happened the way he say it did, for him to be accosted at the door, for him to get clocked by Davis, bounced up against the wall, get back up again and go through, through this area, through here, all the way through here to where Juan finally jumps on him, after the first two shots, all the way over here by the couch.

+ + + +

[The] Defense attorney points to various photographs of Mr. Garcia, scrapes and bruises and whatever, this cut, and tries to suggest to you that this is evidence of his having been attacked by the people in that house. We've got broken -- a broken glass top back here. We've got flower pots all over the place. We've got all kinds of stuff. They're struggling. Two grown men desperately struggling over a gun. [Mr. Garcia] is trying to reload. Juan doesn't want him to reload.

Oddly enough Juan may have saved his life [yet]

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he certainly saved -- may have saved others."

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VI.

63. At the conclusion of the trial and whenafter the jury had returned its guilty verdicts and I had been sentenced, a family member provided me with a newspaper article concerning some interview statements that some jurors had made to a newspaper reporter. In an interview published in The Record Newspaper, a juror related the following:

"The jury searched the video tape for signs of selfdefense, replaying it several times, at least once in slow motion," said the juror who was interviewed. Using a watch and counting 'one Mississippi, two Mississippi, they timed the interval between Garcia's knock at the door and the first shot: 'four second' she said. 'There just wasn't enough time for him to be attacked and respond' said the juror, 'we tried to hear and didn't hear (any) of that.'"

64. It was based upon the prosecutor's summation and the comment of a juror to the Record, that I suspected that the copy of the wedding videotape given to the jury for use during their deliberations, had been further tampered with in such a way as to result in the deletion of numerous seconds prior to the shooting. I suspected this deletion was done so as to effect the credibility of my trial testimony concerning the assault and battery upon myself by Davis and Juan; and further, to effect the credibility of the videographer Anna Nunez whose trial testimony had also corroborated that of mine concerning the altercation. I then began writing a series of letters to various defense attorneys requesting that the wedding videotape be examined for tampering as follows.

65. In a letter before trial from Fred L. Schwanwede, First Assistant Prosecutor to the Hon. William C. Meehan, P.J.S.C.,

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and a copy sent to defense counsel Edward A. Jerejian, Esquire,
dated 13 February 2001, contained the following correspondence

[Ca 1-3¹¹]:

"(1) A composite video tape copied from an original "wedding video tape" taken by Ramon Nunez on September 26, 1999 at the home of Gladys Ricart. This composite video tape shows the incident in three speeds -- normal time, slow motion and ultra-slow motion (frame by frame). It contains an audio track, which was translated and transcribed in part.

+ + + +

(1) Videographer Ramon Nunez created the original wedding video on September 26, 1999 at the home of Gladys Ricart using his professional video equipment. There have been no changes, additions of deletions to this original video tape, which was turned over to Investigator Thomas Neary of the Ridgefield Police Department by Mr. Nunez. The tape was then turned over to Detective Dombrowski of the Bergen County Prosecutor's Office, who secured it in the Bergen County Prosecutor's Office homicide evidence locker.

+ + + +

Transcripts of the recorded voices on the tapes have been supplied to Mr. Jerejian. Thus far, there do not appear to be any translation issues, but if any such questions do arise these issues can be resolved at the time of trial or shortly before trial."

66. In a post-trial letter from Agustin Garcia to Theresa Yvette Kyles, Assistant Deputy Public Defender, Appellate Section, dated 17 April 2002, I advised the following:

"....It should be indicated that given the fact that the prosecutors' office went out of boundaries fabricating testimony and tampering with evidence as demonstrated by their own records.

+ + + +

2- We need to take drastic steps aimed preventing any tampering with the wedding video and the path-mark video.

11 "Ca ____" denotes Certification appendix in respect to the separately bound appendix to this certification.

It should be noted that even though it appears as if my private attorneys stipulated to accepting a video that was prepared by the prosecutor's office without any supervision from my attorneys. Thereby, allowing the prosecutor's office to delete the struggle portion from the tape with the criminal intent to then allege that struggle never took place.

+ + + +

.....Consequently, both original tapes need to be re-edited in order to unveil before the court and the world the truth concealed therein.

Ca 4-5.

67. In a post-trial letter from Agustin Garcia to Theresa Yvette Kyles, Assistant Deputy Public Defender, Appellate Section, dated 11 May 2002, I advised the following:

"Third, I believe it is critical to take a close look at the weeding tape to determine:

a) Is it admissible evidence?

b) Was the tape handled correctly by Prosecutor, by simply giving the tape to an officer who without supervision took the tape away from the control of the police department to produce the Prosecutor's version? Specifically, any accurate tape should have revealed the struggle that took place upon me entering the house; if such evidence is not in the tape it will be a clear indication that the Prosecutor tampered with the evidence, and should be challenged accordingly."

Ca 6-7.

68. In a post-trial letter from Edward K. Germañig, Attorney Assistant, Intake Unit, Appellate Section to Agustin Garcia, dated 20 August 2002, I was advised that "[c]urrently we are waiting for several of your transcripts which were ordered from the court reporter." Ca 8.

69. In a post-trial letter from Agustin Garcia to Theresa Yvette Kyles, Assistant Deputy Public Defender, Appellate Section,

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ed 8 October 2002, I advised Counsel Kyles, that:
"Also, this should serve to request copy ++++ of my case transcripts, in order to fact litate the preparation of the "points heading draft document".

+ + + +

Consequently, I request that above mentioned copy of transcripts be sent to me at your earliest convenience."

Ca 9-11.

70. In a post-trial letter from Edward K. Germaadnig, Attorney Assistant, Intake Unit, Appellate Section to Agustin Garcia, dated 11 October 2002, I was informed:

"This is to inform you that your appeal file is now complete and awaiting assignment to an attorney. Due to the large backlog of cases, it could take several months before your case is actually assigned, however, once it is assigned that attorney will contact you to discuss the case and provide you with any information you may need to help you assist in preparing your appeal.

I am sorry to inform you that, due to the large volume of transcripts, briefs, and moving papers our office receives, the Intake Unit does not provide transcript copies to the clients. Your assigned attorney will provide those when your brief is filed.

Ca 12.

71. In a post-trial letter from J. Michael Blake, Assistant Deputy Public Defender, Appellate Section to Agustin Garcia, dated 6 November 2002, I was informed:

"1. Your appeal has been forwarded to the designated counsel section of the office of the Public Defender, Appellate Section. In turn, it has been processed and an attorney in private practice has been assigned to your case. The name, address and telephone number of the attorney is:

Evelyn F. Garcia, Esq.

+ + + +

6. Both your brief and transcripts along with the

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State's response brief will be forwarded to you, as will any other papers."

Ca 13-14.

72. In a post-trial letter from Agustin Garcia to Evelyn F. Garcia, Esquire, dated 28 November 2002, I advised Counsel Garcia that: "...I am eagerly awaiting to receive from you copy of my transcripts, in order in order to improve the points heading draft document, ...[:]" Ca 15-16.

73. In a post-trial letter from Evelyn F. Garcia, Esquire to Agustin Garcia, dated 23 December 2002, I was informed:

"There are numerous transcripts in your case. I have not completed my review.

+ + + +

The transcripts are voluminous. I have to find out from the Public Defender supervisor if I am permitted to provide them to you."

Ca 17-18.

74. In a post-trial letter from Agustin Garcia to Evelyn F. Garcia, Esquire, dated 8 January 2003, I advised Counsel Garcia:

"Please be advised of the fact that today at 7:30 p.m. I received the copy of the transcripts.

+ + + +

1- That according to page 37, line 17 through 19 " the state has given a least a portion of the tape as to what was shouted out after the shots were fired.

+ + + +

The above information is quite significant, when taking into account statement made by a juror to the record newspaper dated 10-23-2001, page A-3 "the decision had a lot to do with the fact that we heard again and again the tape trying to detect any signs of struggle and did not heard any.

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+++
The interest of justice will only be served after the following is done among other!

3- Introduction of non-tainted wedding tape[.]"
Ca 19-22.

75. In a post-trial letter from Agustin Garcia to Evelyn F. Garcia, Esquire, dated 9 January 2003, I advised Counsel Garcia that:

"...as an indigent inmate according to court Rule 2, I am entitled to be provided by the public defender with the expert services necessary for my appeal, such as:

3- quality and/or professional preparation of wedding video and path-mark video, among other.
+++

Let me remind you that with yeaterday correspondence I clearly demonstrated based on jurior's report to the record newspaper dated 10-23-2001, page A-3 that the erroneous conviction was the result of the jury search for sound where sound had been taken off, ...[.]"
+++

Ca 23-28.

76. In a post-trial letter from Agustin Garcia to Evelyn F. Garcia, Esquire, dated 12 January 2003, I advised Counsel Garcia that:

"Second, the wedding video tape was taken by the police, and given to the prosecutor, prosecutor in term as a friend to cassirer's private business and without any supervision and/or participation from the part of the defendant nor any agency or official authorized for such processing. The paly with the original for more than 3 hours as testified on page 32, line 15-19. Therefore, the tape labeled as original was tampered with and by their own testimony should have never been allowed into evidence.

Needless to remind you that it is from that so called
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"original" that copies were made including but not limited to the copy presented to the juror with sounds only after the actual shooting."

Ca 29-33.

77. In a post-trial letter from Agustin Garcia to Evelyn F. Garcia, Esquire, dated 23 January 2003, I advised Counsel Garcia that:

"The judge failed to inform the jury that on certain parts of the video, the audio had been turned off. Therefore, when searching for sound of struggle they found none, and erroneously concluded that if there was no noise and or sound of struggle, the struggle never took place. (see the record newspaper dated 10/23/01, page A-3)."

Ca 34-39.

78. In a post-trial letter from Agustin Garcia to Evelyn F. Garcia, Esquire, dated 24 January 2003, I advised Counsel Garcia that:

"It need be stated at this point that the issue of admissibility of the tape is at the heart of the matter, and then come the issue of the scientific evaluation of the "original tape evidence".

* * * *

This is why unless the issue of the wedding video tape is effectively and aggressively pursued, there will be no case to begin with."

Ca 40-47.

79. In a post-trial letter from Agustin Garcia to Evelyn F. Garcia, Esquire, dated 26 January 2003, I advised Counsel Garcia that:

"Please notice Evelyn is not a one second period as stated by the prosecutor, but enough time to allow Bridgitte to go across and stop in front of her house. This is the struggle period and can only be demonstrated with a scientific analysis of the original wedding tape."

+ + + +

3- The sound on the wedding video tape

+ + + +

Evelyn, if we are ever going to make a serious attempt to have the truth and the fact, and the law prevail, the wedding take need be scientifically/comprehensively analyzed, including but not limited to:

Going back to the struggle period referred to on page 4 of this document, it should be added Nunez's statement on 10/3/01, page 201 lines 3-5 "yes, the lights go off in the house. About a minute after that I hear some explosion and people start running".

+ + + +

Dear Evelyn, the following may be critical to detect if any portion of the tape has been cut off, that could be detected base on statement by Nunez on page 208, line 24-25.

+ + + +

What this statement is saying is that at every second of the tape you can see exactly what time it is on the timer, meaning if you cut 3 seconds or whatever it could be detected. this is what I have been calling scientific analysis.

+ + + +

Dear Evelyn, I would deeply appreciate if you would kindly allow Franklyn to make copy of all the transcripts review notes that I have sent to you, ...[.]"

Ca 48-60.

80. In a post-trial letter from Agustin Garcia to Evelyn F. Garcia, Esquire, dated 4 March 2003, I advised Counsel Garcia that:

"I have been advised by Theresa Yvette Kyles, Assistant Deputy Public Defender, that you as my designated counsel would be the judge to determine the resource needed to objectively, effectively, and substantively represent me on appeal. (see copy of correspondence dated October 3, 2002, only as a sample of such communications).

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~~10/22/03~~

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Consequently, this is to inquire whether or not the resources of the public defender as provided by rules Governing Appellate +++++ practice (rule 2:7 Appeal by indigent person), whether or not such resources are being used to objectively address the following:

+ + + +

Furthermore, "with respect to public financial assistance to criminal defendants represented by private counsel but whose resources cannot cover other necessary litigation expenses, the New Jersey Supreme Court in a trilogy of cases defined both the obligation of the Public Defender to provide such ancillary services...[.]

+ + + +

On the basis of above cited and the representations made by Ms. Theresa Yvette Kyles among other, I strongly believe myself to be entitled to critically needed experts, and again I do hereby inquire whether[.]

+ + + +

2- Wedding video issue (whereby sound was maliciously deleted by the prosecutor office for period of time between door knocking and first shots, as previously described to you).

+ + + +

Please advise at your earliest convenience what specifically is been done in regard to above items 1-9."

Ca 61-68.

81. In a post-trial letter from Agustin Garcia to Edward A. Jerejian, Esquire, dated 6 August 2003, I advised Counsel Jerejian that:

"Needless, to remind you that Lieutenant Cassirer affirmed under oath numerous times that he made no editing, deletion, addition to the tape and that all he did was to slow down certian parts."

Ca 69-70.

82. In a post-trial letter from Agustin Garcia to Edward A. Jerejian, Esquire, dated 24 August 2003, I advised Counsel

Jerejian that: "I strongly believe that the March 22, transcript do provides more than enough substance to further demonstrate the tampering with the wedding video evidence[.]" Ca 71.

83. In a post-trial letter from Agustin Garcia to Edward A. Jerejian, Esquire, dated 23 February 2004, I advised Counsel Jerejian that:

"Having completed my comprehensive scientific review of the trial transcripts and after identifying the many issues shown on, my 60 pages supplementary brief, received the appellate court on 11-13-03, and hand delivered to you by Franklyn.

+ + + +

It is my deep concern, whether or not the court will honor the promise made to me by Denise Koury in reference to the review and ruling over the various issues, including but not limited to the point labeled as "POINT ONE: THE BERGEN COUNTY AUTHORITIES COMPLETELY TAMPERED THE WEDDING VIDEO. THEREBY, MAKING IT A PRODUCT OF THE POISON TREE."

+ + + +

I strongly believe, that I could provide expert testimony to help demonstrate the prosecutor's office frauds.

Particularly, I am overly concerned about the following fact, it appears to me, that short of my expert witness testimony, the fact that the wedding video issue was superficially addressed in the body of the brief and supplemental brief referred to above. Thereby, preventing me from presenting such critical/relevant evidence in the future.

It is my strong believe that the interest of justice will not be served, unless the court be confronted with all relevant substantive issues, and at this point only I could provide that through my expert witness testimony.

Needless to remind you, that as shown by my transcripts analysis,

I am perfectly equipped with scientific evidence to demonstrate the fact that, the prosecutor failed his duties, by concealing the evidence showing the date of the audio cassette tape as September 12, 1999. Also, I can

scientifically prove the acts of perjuries by the state's witnesses. The introduction of my expert witness testimony should automatically force the appellate court to review and rule over the content of my analysis. Thereby, objectively ruling on the issues."

Ca 72-73.

84. In a post-trial letter from Agustin Garcia to Edward A. Jerejian, Esquire, dated 24 March 2004, I advised Counsel Jerejian that:

"In response to your recent correspondence, this is to remind you that my presence at the appellate division during the scheduled oral argument, should be for the specific purpose of testifying as expert witness, on the issues presented in the 60 pages scientific analysis received by the appellate division clerk on 11-13-03 under the label of supplemental brief, including but not limited to, the fact that the wedding video tape was an outright fraud from the part of the prosecutor. Consequently, the motion filed should be very specific about the need for granting the motion in order to serve the best interest of justice."

Ca 74.

85. In a post-direct appeal letter from Agustin Garcia to Hellen Godby, Assistant Public Defender, Appellate Section, dated 30 May 2004, I advised Counsel Godby that:

"First of all, the issue of prosecutor misconduct, whereby the prosecutor; first, tampered with the wedding video and then lied to the court, concealing the exculpatory evidence contained therein (see scientific analysis No. III, V, VI, and VIII); second, the prosecutor and his staff maliciously lied to the court about the exculpatory evidence revealed by the 911 audio cassette (see scientific analysis No. V); third, the prosecutor released to the media information about the case that was contrary to the rules of law; fourth, the prosecutor made numerous malicious and false statements at closing, among others.

Second, the issue of ineffective assistance of counsel as evidenced by the scientific analysis of the transcripts, and even by the appellate court's decision, which blamed him for not arguing the physical assault of the Ricarts against the person of the defendant, in the limited way imposed by the judge, and instead abandoning such a critical

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issue altogether, as he did, and the numerous failures of defense counsels, some of which will be presented next, within the body of this document. In addition, the infinite number of critical failures unveiled by the attached scientific analysis of the trial transcripts.

+ + + +
I am enclosing you herewith copy of the following:

+ + + +
The item number 3 referred to above, scientifically demonstrate, that I was convicted on the basis of fabricated evidence. Consequently, I anticipate that, in the interest of justice, your office will effectively introduce the underlined issues to the appropriate court.

+ + + +
Specifically, it appears to be absolutely necessary, to inspect and make copy of the following original documents: wedding video tape, Path Mark video, audio cassette dated 9-12-99, driver for 911 call, other. Consequently, a prima facie case should be made using the scientific findings of transcripts analysis referred to above as item number 3.

[Redacted]

Let it be underlined, that appellate counsel was provided by defendant, with a copy of the scientific analysis of the trial transcripts very early in the process of preparation of the appellate brief. However, appellate counsel maintained his conduct at trial and throughout appeal of deliberately ignoring client's requests. Consequently, all the critical scientific findings, unveiled by the scientific analysis of the transcripts were never included in appellate brief nor were they effectively presented to the appellate court.

[Redacted]

e-) Defense attorneys failed by accepting a video tape hidden by the prosecutor and tampered with by the family for a period of at least one year. And by never demanding to see and inspect the original cassette, such inspection would have revealed the facts unveiled by scientific analysis number V. Thereby, exposing the prosecutor's misconduct of concealing critical, relevant and substantive exculpatory evidence.

[Redacted]

h) Defense attorney failed by never demanding to see the original wedding video tape and by allowing prosecutor's office to produce a composite of the wedding video, maliciously prepared, eliminating the struggle part, to then argue that there was no struggle, intentionally misleading jury into erroneous guilty verdict (see scientific analysis number VIII). Juror's interviewed by media indicated that they did in fact searched for the clue of struggle in the tape but found none. Obviously, the could not find any, because tape was prepared and/or edited by prosecutor for such purposes and were never questioned by defense attorneys."

Ca 75-77.

85. In a post-direct appeal letter from Agustin Garcia to Edward A. Jerejian, Esquire, dated 23 August 2004, I advised Counsel Jerejian that:

"The purpose of this letter is twofold:

[Redacted]

Second, to request copy of my trial file, including, but not limited to:

+ + + +

3- Indictment or information (whichever the case may be)

4- Docket entry sheet;

5- Proposed Jury Instruction by the defense, (if any);

6- Jury instruction charged;

7- Verdict forms requested and verdict form actually used;

8- Any and all motions for new trial, judgment of acquittal or arrest of judgment;

9- Presentence report and objection to presentence report;

10- Sentencing transcripts and judgment and commitment order;

11- Any and all post-conviction motions which may have been filed;

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12- Affidavit from other attorneys contesting the representation of your trial and sentencing attorney;

13- Affidavit from expert witness that weren't used during my trial, but would have made a difference if they would have testified.

14- Pretrial testimony of all potential witnesses.

15- Any and all other record or evidence that could help prepare PCR.

The above documents are urgently needed in order to properly prepare post-conviction motions contesting the validity of my conviction and sentence."

Ca 78-79.

87. In a post-direct appeal letter from Ingrid Yarchenco, Deputy Public Defender, Post-Conviction Relief Unit to John Byra, Assistant Division Manager, Bergen County Courthouse, dated 9 June 2005, Mr. Byra was informed that: "This will acknowledge receipt by the Post-Conviction Relief Unit of the petition for post-conviction relief in the above matter. Ca 80.

88. In a post-direct appeal letter from Agustin Garcia to Edward A. Jerejian, Esquire, dated 23 July 2005, I advised Counsel Jerejian that:

"This is to acknowledge receipt of your correspondence dated August 5, 2003, together with the copy of trial transcripts for March 22, 2001.

Upon reviewing the March 22 transcripts some major issues emerged that somehow affects my previously transmitted scientific analysis of the transcripts. Therefore, enclosed please find special notes, that should in fact be placed at the end or added to the component labeled as:

Draft No. II

Judicial bias

And

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Judicial misconduct

In addition to the issues raised in enclosed note, please observe page 5, line 8-10 "and the state will be required to authenticate the tape at time of trial before it's admissible." Consequently, a simple comparison between Bendul's testimony (component No. V), with Cassirer's testimony (component No. 8), and also comparing them with issues raised in attached special note. All of which should clearly reveal to you the fact that the entire authentication was a fraud. Therefore, the state failed to satisfy the requirement imposed by the court for any part of the wedding video to be admissible.

Needless, to remind you that Lieutenant Cassirer affirmed under oath numerous times that he made no editing, deletion, addition to the tape and that all he did was to slow down certain parts.

However, from attached special note you can see that events that take place at around quarter to 4:00 P.M. (the arriving of limos do have a serial number of 3003, and that Davis and Gladys stepping out of the house; that according to testimonies did happen after the arrival of the limos (serial number 1154), and the shots that is supposed to be the last of the three events (serial number 1336). Clearly, showing a backward system instead of forward. Further review of the other frames referred to in the March 22, 2001 transcript, pages 30-34 will show you that not only the frames are backward, the fact is that they are all out of sequence, and like the children scenes were placed there by the Prosecutor in the order that he felt would suit his purposes. It should be mentioned that the fabrication was so obvious, that on page 7, line 18 even the Judge said "80- I have different numbers."

Ca 81-82.

89. In a post-direct appeal letter from Ingrid Yarchenco, Deputy Public Defender, Post-Conviction Relief Unit to Agustin Garcia, dated 5 August 2005, I was informed that: "Your PCR file has been assigned to an attorney in private practice. The name, address and telephone number of the attorney is: Jeffery Jablonski, Esquire." Ca 83.

90. In a post-direct appeal letter from Agustin Garcia to

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Jeffery Jablonski, Esquire, dated 14 June 2005, I advised Counsel Jablonski that:

"The scientific analysis's findings constitutes prima facie evidence, sufficient to represent an out cry for a full evidenciary hearing, in the interest of justice.

[Redacted]

However, given the history of the case, and base on the scientific analysis findings, the following expert services are absolutely required for the preparation and filing of a PCR which truly seeks the best interest of justice.

[Redacted]

2- Wedding video tape analysis to demonstrate that approximately one minutes of fighting which preceded the shooting was maliciously deleted from the wedding video tape, by lieutenant Cassirer and Detective Bendul, among others. Thereby, consciously concealing the exculpatory evidence, erroneously keeping away from the jury critical and relevant evidence. (see scientific analysis number VIII)

[Redacted]

Given the facts, that above ancillary expert services constitute the only assurance of effective legal representation, and the that defendant have sent at least 20 correspondences addressed to the public defender's office and/or their assigned counsels. It appears obvious, that to continue to ignore at this stage defendant's request for experts services, despite the evidence revealed by the scientific analysis of the trial transcripts would be tantamount to deliberate denial of defendant's day in court.

It should be noted, that the need for above ancillary services has been repeatedly insisted upon by defendant-petitioner; first, around February 12, 2002, through correspondences to Theresa Yvette Kyles, assistant public defendant, and latter in numerous correspondences sent to assigned appellate counsel, Evelyn Garcia. However, defendant's request have fallen on deaf ears.

[Redacted]

In conclusion, the best interest of justice will not be served, unless and until, the above mentioned expert and/or investigators services are effectively provided and their findings incorporated into the body of an objectively prepared final amended PCR to be prepared by you.

Ca 84-85.

91. In a post-direct appeal letter from Agustin Garcia to Jeffery Jablonski, Esquire, dated 20 October 2005, I advised Counsel Jablonski that:

"Hoping to be of assistance, I am enclosing you herewith copy of the following:

[Redacted]

2- Ancillary service petition sent to Denise Cobham, deputy public defender, dated 9 May, 2005. Please be informed, that a motion for an order granting ancillary service was filed with the court and was left pending the assignment of counsel. The enclosed scientific analysis of the trial transcripts was used as substance for brief in support of motion.

[Redacted]

Given my case's history of neglect, and base on the enclosed scientific analysis findings, the following expert services are absolutely required for the preparation and filing of a PCR which truly seeks the best interest of justice.

[Redacted]

2- Wedding video tape analysis (evidence inventory number 18) to demonstrate that approximately one minute of fighting which preceded the shooting was maliciously deleted from the wedding video tape, by Lieutenant Cassirer and Detective Bendul, among others. Thereby, consciously concealing the exculpatory evidence, erroneously keeping away from the Jury critical and relevant evidence. (See, scientific analysis number VIII)

[Redacted]

Given the facts, that above ancillary expert services constitutes the only assurance of effective legal representation, and that defendant have sent at least 20 correspondences addressed to public defender's office and or their assigned counsels. It appears obvious, that to continue to ignore at this stage defendant's request for experts services, despite the evidence would be tantamount to deliberate denial of defendant's day in court.

It should be noted, that the need for above ancillary

services had been repeatedly insisted upon by defendant-petitioner; first, around February 12, 2002, through correspondences to Theresa Yvette Kyles, assistant public defender, and later in numerous correspondences sent to assigned appellate counsel, Evelyn Garcia. However, defendant's request have fallen on deaf ears.

[Redacted]

Furthermore, please be advised of the fact, that I am in the process of preparing the 3rd Amended PCR, to be sent to you in the near future, together with application for ancillary services.

[Redacted]

In conclusion, the best interest of justice will not be served, unless and until, the above mentioned expert and/or investigators services are effectively provided and their findings incorporated into the body of an objectively prepared final amended PCR to be prepared by you.

Ca. 86-87.

92. In a post-direct appeal letter from Agustin Garcia to Jeffery Jablonski, Esquire, dated 15 November 2005, I advised Counsel Jablonski that:

"Note: Please be reminded, that a motion for ancillary expert services is pending before the court, awaiting for your action. Copy motion was sent to Denise Cobham, deputy public defender date May 9, 2005.

Ca 88

93. In a post-direct appeal letter from Jeffery Jablonski, Esquire to Agustin Garcia, dated 1 December 2005, I was informed that;

"This is to inform you, regrettably, that I must return your file to the Post-Conviction Unit for re-assignment.

The Public Defender has been informed of this development and will assign a new attorney to assist you with your application."

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Ca 89.

94. In a post-direct appeal letter from Ingrid Yurchenco, Deputy Public Defender, Post-Conviction Relief Unit to Agustin Garcia, dated 4 January 2006, I was informed that:

"Your PCR file has been assigned to Michael Paul, an attorney in private practice. The name, address and telephone number of your attorney is:

Michael Paul, Esquire

Ca 90.

95. In a post-direct appeal letter from Agustin Garcia to Ingrid Yurchenco, Deputy Public Defender, Post-Conviction Relief Unit, dated 13 January 2006, I advised Counsel Yurchenco that:

"Hoping to be of some assistance, I am sent to Mr. Jeffrey Jabloski, Esq., copy of the following:

[Redacted]

2- Ancillary service petition sent to Denise Cobham, deputy public defender, dated 9 May, 2005. Also, I informed Mr. Jeffrey Jabloski, Esq., that a motion for an order granting ancillary service was filed with the court and was left pending the assignment of counsel. The enclosed scientific analysis of the trial transcripts was used as substance for brief in support of motion.

3- Copy of initial PCR, copy was sent Ingrid Yurchenco.

Given my case's history of neglect, and base on the enclosed scientific analysis findings, the following expert services are absolutely required for the preparation and filing of a PCR which truly seeks the best interest of justice.

1- [Redacted]

2- Wedding video tape analysis (evidence inventory number 18) to demonstrate that approximately one minutes of fighting which preceded the shooting was maliciously deleted from the wedding video tape, by lieutenant Cassirer and Detective Bendul, among others. Thereby, consciously concealing the exculpatory evidence, erroneously keeping away from the jury critical and relevant evidence. (see scientific analysis number VIII)

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In addition to the crystal clear scientific demonstration of the fraudulent alteration of the wedding video tape made by the prosecutor and his teams as demonstrated throughout the scientific analysis of the trial transcripts, the following was recently uncovered:

First, let's consider the following critical revelation concerning the case manager Detective Bendul:

(18T 103-20 to 104-3)

"Prosecutor: Were you with Lieutenant Cassirer when he prepared what's been referred to as the wedding day composite video?

Bendul: Yes.

Prosecutor: Have you view that video a number of times?

Bendul: yes.

Prosecutor: And did you also have some conversation with Lieutenant Cassirer when he was preparing that?

Bendul: Yes.

Consequently, Bendul was a direct player in the fraud uncovered by the following scientific analysis.

In addition to confirming Bendul's direct involvement in the fraudulent alteration of the wedding video tape. The following statements of Bendul demonstrate the perjury nature of his testimony:

"Question: Now, were you personally involved in the making of those copies?
Answer: No." (1T 5-18 to 5-20)

Second, it should be underlined the following description of the original wedding video tape made by Investigator Thomas Dombroski on his report dated 10-1-99 as follows:

(DPA-VI-8:1 through DPA-VI-8:2)

"(1) Fuji brand video cassette tape. The video cassette tape displayed the number 3119C1WA ST120 on the heel of the cassette. Also located on the heel of the video cassette was an identification label. Printed on one end of the label was the word FIJI, along with the following letters and numerals, H471S and ST 120. Printed on the other end of the label are the letters SVHS. Hand written on the label is the symbol "#" with a number "1" written next to it. The number 1 is circled. The word "GRADYS-JANCE 9-26-99" is hand written across the label."

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Ironically, on February 14, 2001, Bendul provided the following description to the court:

(1T 5-12 to 5-15; 7-2 to 7-6)

"Question: Could you tell us what S-1 for identification is?

Answer: Yes. This is a Fuji S-VHS tape. There is writing on there Gladys, and there is a date September 26th, 1999. It also says original on top of that date."

Question: Okay, So what's been marked S-1 for identification is the original Super VHS tape; what's been marked S-1A is a Super VHS copy; and what's been marked S-1B is the standard VHS copy.

Answer: Yes."

The absolute contrast between the above two quotes by Investigator Thomas Dombroski and Detective Mark Bendul, clearly suggest that the original wedding video tape was never made available to the court, and that the prosecutor consciously and maliciously introduced as original the evidence labeled S-1, which he knew or should have known was in fact an altered copy of the original.

3- [Redacted]

Given the facts, that above ancillary expert services constitutes the only assurance of effective legal representation, and that defendant have sent at least 20 correspondences addressed to the public defender's office and/or their assigned counsels. It appears obvious, that to continue to ignore at this stage defendant's request for experts services, despite the evidence revealed by the scientific analysis of the trial transcripts, would be tantamount to deliberate denial of defendant's day in court, by depriving defendant of due process rights.

It should be noted, that the need for above ancillary services has been repeatedly insisted upon by defendant-petitioner; first, around February 12, 2002, through correspondences to Theresa Yvette Kyles, assistant public defender, and latter in numerous correspondences sent to assigned appellate counsel, Evelyn Garcia. However, defendant's request have fallen on deaf ears.

[Redacted]

Furthermore, please be advised of the fact, that I am in the process of preparing the an Amended PCR, to be sent to you in the near future, together with application for ancillary services.

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In addition, this should serve to underline the need for an investigator on the jury issue. The investigator should also review evidence inventory item number 103, Channel 9 News (enclosed affidavit of defendant-petitioner)

In conclusion, the best interest of justice will not be served, unless and until, the above mentioned expert and/or investigators services are effectively provided and their findings incorporated into the body of an objectively prepared final amended PCR to be prepared by you.

Last but not least, pending your incorporation of the ancillary experts' findings, I urgently need to receive from you the following discovery items for the preparation of my Amended PCR:

1. [Redacted]

2. Copy of evidence inventory item number 103 (1 VHS tape, channel 9 news) dated 1-3-00.

[Redacted]

13. Copy of the unedited original wedding video tape, described by Investigator Thomas Dombroski on his report dated 10-1-99 as follows: "(1) Fuji brand video cassette tape. The video cassette tape displayed the number 3119C1WA ST120 on the heel of the cassette. Also located on the heel of the video cassette was an identification label. Printed on one end of the label was the word FIJI, along with the following letters and numerals, H471S and ST 120. Printed on the other end of the label are the letters SVHS. Hand written on the label is the symbol "#" with a number "1" written next to it. The number 1 is circled. The word "GRADYS-JANCE 9-26-99" is hand written across the label."

14. Copy of evidence discovery item number 101 "1 VHS tape" dated 11-14-99.

[Redacted]

16. Copy of unedited evidence inventory item number 106, "4 original and 1 copy tape" dated 9-30-99.

[Redacted]

I would deeply appreciate receiving from you a written reply, indicating your specific course of action in response to above stated. I would also appreciate if you would kindly return to me copy of this letter stamped and dated by your office.

Da-955

Ca 91-96.

96. In a post-direct appeal letter from Agustin Garcia to Michael G. Paul, Esquire, dated 30 January 2006, I advised Counsel Paul that:

"While I remain deeply concerned about your specific course of action to address the following issues raised by me in the 8 pages letter that you received on January 18, 2006: 1- expert's DNA analysis, 2- expert's analysis of wedding video tape, 3- expert's analysis of Path-Mark video surveillance tapes, including but not limited to evidence inventory number 100, 4- expert's analysis of audio tape found in deceased answering message machine (evidence inventory number 102), 5- expert's Jury pool investigation, 6- other, I will now proceed to provide you on the basis of your request with the specific reasons why I need the items previously requested. Needless to underline that I have never received those items from anybody, including but not limited to Public Defender, trial counsel, and appellate counsels.

I will first copy the exact item previously requested and I will follow the item with specificity as to why I need it.

[Redacted]

13. Copy of the unedited original wedding video tape, described by Investigator Thomas Dombroski on his report dated 10-1-99 as follows: "(1) Fuji brand video cassette tape. The video cassette tape displayed the number 3119C1WA ST120 on the heel of the cassette. Also located on the heel of the video cassette was an identification label. Printed on one end of the label was the word FIJI, along with the following letters and numerals, H471S and ST 120. Printed on the other end of the label are the letters SVHS. Hand written on the label is the symbol "#" with a number "1" written next to it. The number 1 is circled. The word "GRADYS-JANCE 9-26-99" is hand written across the label."

Why do I need this item?

Expert analysis of the original video tape is the only way to demonstrate beyond any doubt that wedding video tape was maliciously altered by the prosecutor. Thus, demonstrating prosecutor concealment of exculpatory evidence and ineffective assistance due to lack of investigation and effective challenge of prosecution evidence.

[Redacted]

I can not go without underlining that for the office of the public defender to continue denying me the right to expert service as provided by Rule 2:7, specifically, following case law: State v Green, 55 N.J. 13 (1969) for handwriting expert; "the New Jersey Supreme court in a trilogy of cases defined both the obligation of the public defender to provide such ancillary services and the procedure and condition governing such defendants' right to obtain those services, see Matter of Cannady, 126 N.J. 486 (1991) (expert to support defense of battered women's syndrome); Matter of Kauffman, 126 N.J. 499 (1991) (expert to challenge Avenel report); State v. Arena, 126 N.J. 504 (1991) (transcripts)" In short, I may not be giving here the best case law, but I am convinced that to continue depriving me of the badly needed expert's services, including investigation of the 7 newly discovered evidences included in section II of appendix to the scientific analysis of the trial transcript is tantamount to a deliberate denial of my due process rights.

[Redacted]

Notes:

[Redacted]

It does appears to me, that you, Mr. Michael Paul, Esq., should immediately file your appearance as assigned counsel, requesting from the court the necessary time for the effective preparation of the PCR, including, but not limited, to the expert services needed for the preparation of an objective and effective PCR. Simply awaiting for the public defender's action could repeat prior experience, whereas after a great deal of time had been wasted, assigned appellate, Evelyn Garcia, found herself at the mercy of a court, that was reluctant to grant, and actually denied her the time needed for preparation of appellate brief.

Ca 97-99.

97. Nearly four years later and in lieu of my avalanche of letters repeatedly requesting defense counsel make arrangements for the provision of expert services and at the very least, for the examination of the subject wedding videotape described in this certification; my family informed me in January-February

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2006 that they were finally able to secure funds necessary for the payment of a forensic expert.

99. In February-March of 2006, I learned of several experts qualified to perform the examination of the wedding videotape and made arrangements for one Stuart Allen, President of International Media Services, Inc., 718 Sherman Avenue, Plainfield, New Jersey, 07060-2232, to perform an examination of the wedding videotape. I informed Mr. Allen that I believed several seconds involving a struggle between Davis and Juan against myself may have been deleted from the videotape for which my resulting examination of the trial transcripts and review of juror comments to the Record newspaper had led me to almost certain suspect.

100. I provided two wedding VCR videocassettes to Mr. Allen. These two VCR videocassettes were copies of two VCR version composite videocassettes produced by the State, provided to defense counsel and maintained by prosecutor Schwanwede and his key witnesses to have been directly made from the source original professional formatted videotape. Mr. Allen then caused to have been made Forensic copies and one VCR set was provided for my family's retention.

101. As a result of Mr. Allen's team examination of the forensic VCR videotape, a translation and transcription of the aural portion was produced sometime in March-April 2006. For the Court's convenience, I set forth below a side-by-side comparative of the aural portion of the wedding videotape's translation and transcription. In comparison, I have used the above transcript

produced by Det. Suarez. These two comparative transcriptions follow:

WEDDING VIDEOTAPE COMPARATIVE TRANSLATIONS

A parallel comparison of the two transcripts of the same segment of the wedding video tape as represented by the prosecutor to the trial court, defense counsels and the jury.

The left column is an unedited word for word translation by the Forensic Expert, of the wedding video tape delivered to the defense by the prosecutor. The Forensic Expert's designations for Agustin Garcia, Male voice 3 have been changed to A.Garcia; designations for Juan Ricart, Male voice 4 have been changed to J.Ricart.

The column to the right is an unedited word for word transcript by Det. Dennis Suarez, of the transcript of the video tape delivered by the prosecutor to defense counsels. Designations for Agustin Garcia, AG have been changed to A.Garcia; designations JR have been changed to J.Ricart.

Forensic Expert's Translation
International Media Service. Dated:
4-12-06.

Transcript of wedding video tape,
prepared by The State, and presented
to jury at trial.

START OF TIME STUDY

00:00.00

COLLOQUY

MALE VOICE 1: One more, one more.

[female voices chatting in background]

MALE VOICE 1: One more.

FEMALE VOICE: Ok. One more.

VOICE 1: Ok. They can come in now.

Ok.

FEMALE VOICE: [in English] now we're going back.

FEMALE VOICE 2: Yeah, now that the

....what??

MALE VOICE 1: Me, Gracy??

FEMALE VOICE 2: No, but..

FEMALE VOICE 1: No...

00:18.19

[sound of a third. Sound of door being opened]

MALE VOICE: No, little girl, put

it..

MALE VOICE 1: Ohh, hold it, hold

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it...

[cross-talk]

MALE VOICE 2: (a deeper voice)
[unintelligible] going in to give my
greetings.

[cross-talk]

MALE VOICE 1: Ok, you finished.

Don't worry. Go ahead.

FEMALE VOICE: I have no light here.

This one... turn it on.

MALE VOICE 1: Turn it on.

FEMALE VOICE: Turn it on.

MALE VOICE 1: no, that's is not
possible, don't worry.

FEMALE VOICE: This one?? This one
on??

MALE VOICE 1: If that's possible.

FEMALE: Yeah.

MALE VOICE 1: Yes, Ok. Don't worry.
Go ahead. Go girl. Go ahead.

[female singing in background]

MALE VOICE 1: Ok, go ahead.

FEMALE VOICE 2: What do you need?

MALE VOICE 1: A smile.

FEMALE VOICE: Smiling.

MALE VOICE 1: Next one. Next.

FEMALE VOICE: Ok.

MALE VOICE 1: Next, don't work too
hard, ok.

FEMALE: Ma, ma, ma... what?

[cross-talk]

MALE VOICE 1: Go next to her, to
her. No, not there.

FEMALE VOICE: More, more there,
that's it. Right

00:59.06

[sound of door opening]

MALE VOICE 1: Let's go.

[cross-talk of females chatting]

...dance.

MALE VOICE 1: No, no. OK.

[sound of door opening again]

FEMALE VOICE: Always smiling.

MALE VOICE 1: The flower.

[cross-talk].

A. GARCIA: [slurry] [unintelligible]:
come here.... [unintelligible] more

J. RICART: [interrupting]... what
you doing?

J.RICART:hand it over...
A.GARCIA: No.
MALE VOICE 1: Next. Go, go.
[clapping hands]
FEMALE VOICE: [surprised] It's
[unintelligible]
FEMALE VOICE: [in fear] Aaah

01:24.14

[sound of 1st. shot]
[sound of 2nd. shot]
[screams]

01:27.05

[sound of 3rd. shot]
[sound of 4th. shot]
[sound of 5th. shot]
[screams]
A.GARCIA: Ay, ay, ay. [screams] Ay,
ay, ay. My love. Ay, ay, aaaaay. Ay,
ay, ay. I had to.....ay, ay....
J.RICART: What have you done??
A.GARCIA: Ay, ay, ay
J.RICART: [unintelligible]
A.GARCIA: No, [screaming], No.

No.

J.RICART: By God, I will
A.GARCIA: No. No.
J.RICART: I will kill you...
[unintelligible]
A.GARCIA: No. No. No. Lilly??
[phonetic] No. No. [sounds of pushing
person on floor]
J.RICART: fuck; I will.
[unintelligible]
A.GARCIA: Lilly [phonetic] No. No.
Lilly!! [phonetic]. No. No.

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~~Pa~~
~~Pa~~
~~Pa~~

(Two gunshots)

J.RICART: Ay, ay

(Three gunshots)

J.RICART: Ay, ay, ay....
AGUSTIN, how could you do this? Ay,
Ay, AGUSTIN, my God!
Ay, ay, ay....
Ay, AGUSTIN, how could you have done
this? My God!

A.GARCIA: I have to kill myself
now! (IA).

J.RICART: No, AGUST....

A.GARCIA: Let my hands go. Hurry!
Hurry!

J.RICART: Ay!

A.GARCIA: Let me go, because I
have to kill myself!
J.RICART: No!
A.GARCIA: Let me go, because I
have to kill myself!
J.RICART: No!
A.GARCIA: For God's sake, let
me go!

J.RICART: No!
A.GARCIA: I have to kill myself!
J.RICART: No!
A.GARCIA: Let me go!
J.RICART: No, no Agustín!
A.GARCIA: I have to kill myself!
J.RICART: No!
A.GARCIA: Damn it! Let me kill
myself!

~~Pa~~
~~Pa~~
~~Pa~~

[sound of A. GARCIA being taken out]:
A. GARCIA: Help me. No. No. Help me.
Y. AY, ay, ay. [screaming] Ay, no.

FEMALE VOICE: Ay, no. Ay, no.
A. GARCIA: Ay, ay no.
U/F: (Scream.)
MALE VOICE 5: Oh shit.
A. GARCIA: Ay. I love you, Lilly
[phonetic] Aaaaah.
[Whereupon, the aural record was
concluded.]
[Whereupon, the tape recording
ended.]

Hon. William C. Meenan,

J. RICART: AGUSTIN! AGUSTIN! Ay no! AGUSTIN!
AGUSTIN! AGUSTIN! I need (in English)
help! Oh AGUSTIN! AGUSTIN! Ay!
(They appear to be moving from the
living room area to the kitchen area
of the residence. Sounds that resemble
bullets jingling (in AGUSTIN's pocket)
can be heard.)

U/M: Oh shit! (In English.)

Tape Recording Ends

102. In a post-direct appeal letter from Agustin Garcia
to Michael G. Paul, Esquire, dated 4 May 2006, I analyzed the
content of the new translation and transcription performed by
Mr. Allen and advised Counsel Paul that:

"Enclosed please find copy of wedding video tape analysis
made by forensic expert, please take note of the fact that
the transcript is totally different from the transcript made
of the tape played in court.

Let's begin by looking at the following quote taken out the
scientific analysis number VIII, whereas, the prosecutor's
witness represented the following to authenticate the evidence
before the court:

(1T 31-8 to 31-25)

"Q. Lieutenant, was the original S-VHS tape that
you received from investigator — Detective Dombrowski
and Barbados, was that original tape the source for
all of the images shown on this tape that we just played?
A. Yes, it is the source.

Q. And was there any outside source of images placed
on that tape?
A. No other image, no other signal. No.

Q. And with the exception of the work that you

did in creating the slow motion portions of that tape, were there any other additions, changes, editing, however in any way done?

...the slow motion. ... you viewed it today? ... in ... same things th

A. No, Sir. Just the slow motion.

Q. And is this tape as you viewed it today, in the same condition -- does it show the same things that it showed when you originally made that tape?

A. Yes, Sir.

(1T 31-21 to 31-24)
 ...ions, deletio

Q. No changes, added
A. None (1T 31-25 to 32-1)
... only demonstrate that ... cross acts

(1T 31-25 to 32-1)

The information that follows clearly demonstrate that above statement made by Lieutenant Cassirer were gross acts of perjury from the part of the state's witness.

The information that [redacted] statement made by Lieutenant Cassin perjury from the part of the state's witness.

Following is unaltered quotes taken out of page 6, lines 8-25 and page 7, lines 1-5 of International Media Service, Inc., forensic expert's analysis capturing the dialog that took place immediately after the shots:

Voice 3: Ay, scream Ay, ay. My love. Ay,
ay, ... done??

"Male voice 3: Ay, scream Ay, ay. My love. Ay,
aaaaay." Ay, I had to... ay, ...
Male voice 4: What have you done??
Male voice 3: Ay, (illegible) No. No.

Male voice 4: Whist
Male voice 3: Ay

Male voice 3: Ay, (unintelligible)
Male voice 4: (screaming)

Male voice 4: What.
Male voice 3: Ay.
Male voice 4: (unintelligible).
Male voice 3: No, (screaming), No. No.
Male voice 3: No, God, I will...

Male voice 4: (screaming)
Male voice 3: No, (screaming)
Male voice 4: BY God, I will...
Male voice 3: No... kill you.
Male voice 3: (screaming)

Male voice 4: No.
Male voice 3: I will kill you...
Male voice 4: Lilly?? (Phonetic)
Male voice 4: floor

Male voice 4: No.
Male voice 3: No.
Male voice 4: I will kill you...
Male voice 4: No. Lilly?? (Phonetic)
Male voice 3: No. person on floor (unintentional)

Male voice 4: I will [unintelligible] (Phone)
Male voice 3: No. Lilly??
Male voice 3: No. person on floor
[unintelligible] pushing person on floor. (unintelligible).
[unintelligible] I will. (unintelligible) No.

No. Male voice 3: (sound of pushing person) No. 4: fuck, I will. No. 5: Lilly (phonetic) No. 6: (phonetic) No. 7: (phonetic) No. 8: (phonetic) No. 9: (phonetic) No. 10: (phonetic) No. 11: (phonetic) No. 12: (phonetic) No. 13: (phonetic) No. 14: (phonetic) No. 15: (phonetic) No. 16: (phonetic) No. 17: (phonetic) No. 18: (phonetic) No. 19: (phonetic) No. 20: (phonetic) No. 21: (phonetic) No. 22: (phonetic) No. 23: (phonetic) No. 24: (phonetic) No. 25: (phonetic) No. 26: (phonetic) No. 27: (phonetic) No. 28: (phonetic) No. 29: (phonetic) No. 30: (phonetic) No. 31: (phonetic) No. 32: (phonetic) No. 33: (phonetic) No. 34: (phonetic) No. 35: (phonetic) No. 36: (phonetic) No. 37: (phonetic) No. 38: (phonetic) No. 39: (phonetic) No. 40: (phonetic) No. 41: (phonetic) No. 42: (phonetic) No. 43: (phonetic) No. 44: (phonetic) No. 45: (phonetic) No. 46: (phonetic) No. 47: (phonetic) No. 48: (phonetic) No. 49: (phonetic) No. 50: (phonetic) No. 51: (phonetic) No. 52: (phonetic) No. 53: (phonetic) No. 54: (phonetic) No. 55: (phonetic) No. 56: (phonetic) No. 57: (phonetic) No. 58: (phonetic) No. 59: (phonetic) No. 60: (phonetic) No. 61: (phonetic) No. 62: (phonetic) No. 63: (phonetic) No. 64: (phonetic) No. 65: (phonetic) No. 66: (phonetic) No. 67: (phonetic) No. 68: (phonetic) No. 69: (phonetic) No. 70: (phonetic) No. 71: (phonetic) No. 72: (phonetic) No. 73: (phonetic) No. 74: (phonetic) No. 75: (phonetic) No. 76: (phonetic) No. 77: (phonetic) No. 78: (phonetic) No. 79: (phonetic) No. 80: (phonetic) No. 81: (phonetic) No. 82: (phonetic) No. 83: (phonetic) No. 84: (phonetic) No. 85: (phonetic) No. 86: (phonetic) No. 87: (phonetic) No. 88: (phonetic) No. 89: (phonetic) No. 90: (phonetic) No. 91: (phonetic) No. 92: (phonetic) No. 93: (phonetic) No. 94: (phonetic) No. 95: (phonetic) No. 96: (phonetic) No. 97: (phonetic) No. 98: (phonetic) No. 99: (phonetic) No. 100: (phonetic)

Male voice 3: Lill
Male voice 3: No.
(phonetic) 3 be

No. Male voice 3: Lilly (phonetic) No. 3 being taken out) Help me. Ay. Ay.
Lilly!! (phonetic) 3 being taken out) Help me. No. Help me. Ay. Ay.
(sound of male 3: Help me. No. Help me. Ay. Ay.

Male voice 3:
(screaming) Ay, no.
Female voice:

Female voice: Ay
Male voice 3: Ay no...
Male voice 5: Oh shit.

Female voice: Ay no...
Male voice 3: Oh shit.
Male voice 5: Ay I l...
voice 3: Ay I l...

Female voice: Ay, no...
Male voice 3: Oh shit.
Male voice 5: Ay- I love you, Lilly
Male voice 3: Aaaaaah.
Male voice 3: A natural record was conc
...ding ended

Male voice 3.
(phonetic) Aaaaah.
(Whereupon, t

male voice 5: Oh shit.
male voice 5: Ay. I love you, [unclear]
male voice 3: [unclear]
male voice 3: Aaaaah.
(Whereupon, the aural record was concluded.)
(Whereupon, the tape recording ended.)
[unclear] and confirming [unclear] the f

(Whereupon, the aural record was ended.)
(Whereupon, the tape recording ended.)

(phonetic) Aaaaaah.
 (Whereupon, the aural [unclear]
 (Whereupon, the tape recording ended.)

In absolute contrast with above quote and confirming the
 fraudulent editing of the wedding video tape is the following,
 unaltered quote of the transcript and wedding video tape
 presented to the jury at trial. (see attached copy of

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original court's transcript)

"(two gunshots)

JR: Ay, ay.

Three gunshots)

JR: Ay, ay, ay....Agustin, how could you do this?
Ay, Agustin, my God! Ay, ay, ay....Ay, Agustin, how
could you have done this? My God!

AG: I have to kill myself now! (IA).

JR: No, Agust....

AG: Let my hands go, Hurry! Hurry!

JR: Ay!

AG: Let my hands go, now!

JR: Ay!

AG: Let me go, because I have to kill myself!

JR: No!

AG: Let me go, because I have to kill myself!

JR: No!

AG: For God's sake, let me go!

JR: No!

AG: I have to kill myself!

JR: No!

AG: Let me go!

JR: No, no Agustin!

AG: I have to kill myself!

JR: No!

AG[!]: Damn it! let me kill myself!
JR: Agustin! Ay no! Agustin! Agustin! Agustin!
I need (in English) help! Oh Agustin! Agustin! Ay!

(They appear to be moving from the living room area
of the residence. Sounds that resemble bullets jingling
(in Agustin's pocket) can be heard.)

AG: Let me go. (Stated while in the kitchen area.)

JR: Ay, ay, ay, ay....

U/F: (Scream.)

U/M: Oh shit! (I English.)

Tape recording ends.

Please observe that from the very first paragraph after the
three gunshots, the prosecutor went about his fraudulent
alteration business by changing statement made by defendant
such as "I love you" and after inserting piece from the dining
area dialog mislead the jury to erroneously believe the
statement belonged to Juan Ricart instead of Agustin Garcia.

How could the camera capture even the sound of bullets inside
defendant's pocket while at the same time missing all the
dialog testified to by Juan and Davis Ricart, (see scientific
analysis number VI) and/or Ramon and Ana Nunez, (see
scientific analysis number VIII) among other?[]

why didn't the camera capture the "leave the bag." dialog

that took place after the entrance as testified to by Ana Nuñez and others, neither did it capture the dialog between the videographer Nuñez and his wife Ana Nuñez pertaining to light replacement, etc.?[]

For easier comparison the first paragraph of the two transcripts follows:

Quote taken out of analysis made by International Media Service, Inc. (see complete transcript above)

... "Male voice 3: Ay, scream Ay, ay. My love. Ay, aaaaay. Ay, I had to.... ay,..."

Quote of transcript presented by the Court to the jury at trial:

"JR: Ay, ay, ay.... Agustin, how could you do this? Ay, Agustin, my God! Ay, ay, ay.... Ay, Agustin, how could you have done this? My God!"

The absolute contrast of these last two quote clearly confirm that statement made by defendant was maliciously first attributed to Juan Ricart in the video tape presented to the jury, and that several significant portions were added by the prosecutor.

Please observe that all the "I kill you" by Juan Ricart as they appear in expert's transcript are deleted out of the prosecutor's transcript. In addition, the expert analysis does not show a single "I have to kill myself now! (IA)" by defendant, despite the fact that prosecutor's transcripts has at least five (5) repetition of said statement, because they were made up out of edited statements made at the dining room area, long after the shots had been fired in the living room area, but were maliciously inserted in the prosecutor's fabrication as happening in living room area immediately after shots.

Furthermore, it should be underlined the fact that using a basis the prosecutor's fabrication the judge allowed into evidence the portion of the video where the defendant is heard saying "I'm going to kill myself" thereby compelling defendant to take the stand as it was correctly argue by defense attorney Oliver on 3-22-01, page 11, lines 18-24:

(3T 11-18 to 11-24)

"Oliver: Judge, if the court decides -- if the court decides that that statement is going to come in, and the jury hears a statement saying I'm going to kill myself on repetitive vocations and they interpret out

of that, totally out of context of his state of mind,
then we are going to be compelled to put defendant on
the stand to explain that state of mind."

Consequently, the violated defendant Fifth Amendment right forcing him to take the stand.

Moreover, see page 43, lines 24-25 and page 44, lines 1-13 of 10-19-01 transcript, for quote taken out of defense counsel Jerejian's summation:

"I have to kill myself now!

"No, Agust...

"Let my hand go. Hurry!

"Ay!

"Let my hand go now!

"Ay!

"Let me go, because I have to kill myself!

"No!

"I have to kill myself! Let me go!

"No!

"For God sake, let me go!

"No.

"I have to kill myself."

First, comparing the above quote taken out of Jerejian's summation, it is obvious that he blindly relied on the prosecutor's transcripts, instead of seeking the expert service required to effectively challenge the prosecutor's fabrication as demonstrated by the previous comparison made after completion of expert's analysis of the wedding video tape delivered by Jerejian to defendant's family.

The above comparison confirm that Lieutenant Cassirer and Detective Bendul perjured themselves when testifying in court that video tape had not been edited as shown on above page one statements.

Moreover, it should be noted the following description of the original wedding video tape made by Investigator Thomas Dombroski on his report dated 10-1-99 as follows:

(DPA-VI-8:1 through DPA-VI-8:2)

"(1) Fuji brand video cassette tape. The video cassette tape displayed the number 3119C1WA ST120 on the heel of the cassette. Also located on the heel of the video cassette was an identification label. Printed on one end of the label was the word FIJI, along with the following letters and numerals, H471S and ST 120. Printed on the other end of the label are the letters SVHS. Hand written on the label is the symbol "#" with

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a number "1" written next to it. The number 1 is circled. The word "GRADYS-JANCE 9-26-99" is hand written across the label."

Ironically, on February 14, 2001, Bendul provided the following description to the court:
(1T 5-12 to 5-15; 7-2 to 7-6)

"Question: Could you tell us what S-1 for identification is?

Answer: Yes. This is a Fuji S-VHS tape. There is writing on there Gladys, and there is a date September 26th, 1999. It also says original on top of that date."

Question: Okay, So what's been marked S-1 for identification is the original Super VHS tape; what's been marked S-1A is a Super VHS copy; and what's been marked S-1B is the standard VHS copy.

Answer: Yes."

The absolute contrast between the above two quotes, clearly suggest that the original wedding video tape was never made available to the court, and that the prosecutor introduced the evidence labeled S-1 which he knew was in fact an altered copy as the original.

It may be meaningful to notes that the wedding video is numbered as 18 on the prosecutor's Property and Evidence Inventory Receipt Form, instead of as S-1.

It should also be noted that had defense counsel scientifically analyzed the video tapes in their possession, comparing the content of the video tape presented to the jury with the content of the video tape released by defense counsel Jerejian to defendant's family and introduced to the Appellate Court, they would have been able to detect and expose the prosecutor's fraud. Particularly, because it was defense counsel Jerejian who introduced the above last quote at summation, meaning he had access to the wedding video tape presented at trial, and it was also Jerejian who provided my family with copy of the wedding video tape analyzed by International Media Service, Inc., which somehow reached the appellate court, even-though according to Jerejian's quote it was not the tape played for the jury. Therefore, defense counsel Jerejian had at least two different video tape and failed to make necessary testing and related challenge.

[Redacted]

Needless to remind you that the fraudulent alteration of the wedding video tape is one of the most critical issues to demonstrate both, ineffective assistance of counsel and

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prosecutorial misconduct. Therefore, you need to insert verbatim as part of the legal argument for this issue the entirety of the attached analysis of transcripts number VIII. Particularly, the eight testimonies that confirm the struggle.

Following copy of small portion of analysis number VIII:

In short, first, the Prosecutor, consciously and maliciously edited the tape, (deleting the struggle period) second, the judge tells the jury to watch the tape as many time as they wish and specifically to study the audio as well as the visual: "If at any time in the deliberation you want to check out the audio and the video you can do so." (16T 177-1 to 177-2)

Finally, the prosecutor give them his pre-cooked erroneous conclusion "There isn't enough time for it to have happened the way he say it did" (23T 84-1 to 84-3)

Consequently, on 10-23-01, the juror that spoke to The Record Newspaper said on page A-3: (DPA-III-I:3(8))

"The jury searched the video tape for signs of self-defense, replaying it several times, at least once in slow motion, said the juror who was interviewed. Using a watch and counting "one Mississippi, two Mississippi, they timed the interval between Garcia's knock at the door and the first shot: "four second" she said. "There just wasn't enough time for him to be attacked and respond" said the juror, "we tried to hear and didn't hear (any) of that." (DPA-III-1:3)

Therefore, by failing to inform the jury about the facts that first, there was no audio in the first part of the tape and second, that they were dealing with an edited out of sequence tape instead of the original tape. Consequently, the Court consciously and maliciously mislead the jury to reach the erroneous guilty verdict.

Third, supporting Ramon Nunez's testimony is the testimony of the assistant videographer, Ana Nunez, given to the Bergen county detectives on September 26, 1999: Page 5:

"Question. In your pre-statement interview you mentioned that Gladys Ricart's brother, Juan Ricart, came into the house with another individual?
Answer. No, no, no. Gladys's brother was struggling with another man over a bag. (DPA-I-16:5-15)

Question. After Gladys's brother was struggling with this man with the bag, what were they to each other?
Answer. The only thing I heard was "leave the bag."

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the bride's brother told the other person to leave the bag.

Question. After that, was there a problem with the lighting?

Answer. Yeah, there was a problem with the lighting. My husband told me to put on another light. I was crouched down to plug it in, and that's when I heard shots. (DPA-I-16:62)

Again, Ana Nunez, the assistant videographer, who was working inside of the house, right next to the entrance door, confirm with her testimony: first, that there was a struggle between defendant and Juan Ricart prior to the video camera lighting popping; second, that it is after she is replacing the second light when she heard shots.

Please note, that in the transcript delivered by Jerejian to defendant's family and scientifically analyzed by International Media Service, Inc., it is somehow describe the door opening and 26 seconds later the first shot is fired, in contrast with the tape played in court whereas the jury heard the door knocking and the first shot 4 seconds later.

Consequently, on 10-23-01, the juror that spoke to The Record Newspaper said on page A-3:

(DPA-III-I:3(8))

"The jury searched the video tape for signs of self-defense, replaying it several times, at least once in slow motion, said the juror who was interviewed. Using a watch and counting "one Mississippi, two Mississippi, they timed the interval between Garcia's knock at the door and the first shot: "four second" she said. "There just wasn't enough time for him to be attacked and respond" said the juror, "we tried to hear and didn't hear (any) of that." (DPA-III-1:3)

It is extremely clear that the wedding video tape given by Jerejian to defendant's family, as well as, the wedding video tape used by the Court of appeal are completely different from the tape presented to the trial jury. Needless to underline, that it also contradict the statements of the eight witnesses summarized in analysis number VIII. Please note, that in the transcript delivered by Jerejian to defendant's family and scientifically analyzed by International Media Service, Inc., it is somehow describe the door opening and 26 seconds later the first shot is fired, in contrast with the tape played in court whereas the jury heard the door knocking and the first shot 4 seconds later.

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The voice analysis reveal that voice number 1 is the videographer, Ramon Nunez giving instructions to his wife, Ana Nunez voice number 2, who is assisting him with the wedding filming job.

Voice number 3 is defendant's voice, whose briefcase Juan is trying to grab away, He said on page 4, lines 15-16: ["]What you doing?["] and on line 17: ["]..Hand it over...["] Defendant responded on line 18: ["]No.["] Here go the deleted struggle period[.] Next we hear the videographer again on line 19, and clapping of hands.

Obviously, the only possible way for clapping of hands to be taking place after defendant's entrance through the door is because while struggle was taking place, the wedding group continued unaware with their business of photo taking at the end of living room, within the area lighted and captured by the camera, while at the same time the 26 second struggle period was concurrently taking place behind camera, at entrance of the living room, outside the camera lighted area. It should be noted that from statement on line 18 of analysis made by International Media Service, Inc., and until the shooting, all statements testified to by Davis and Juan Ricart are missing, (see analysis number VI) and it is also missing everything that took place during the 26 seconds according to this tape between my entering the house and the first shot, including but not limited to the physical attack against me by Davis Ricart. It should be noted that Juan Ricart perjured himself saying that Davis left the house when we entered in an effort to deny the attack. (see analysis number VI)

Moreover, all statements made by me, "my love" on page 6, line 9, and "Ay. I love you" on page 7, line 5, clearly deny any and all indication of a hate and/or premeditated crime.

Again, it should be interesting to review the video tape used by the judge to grant the passion provocation motion, for there indication of the struggle should be found.

[Redacted]

Last but not least the video tape covered events such as photo taking outside the house which took place at least 10 minutes prior to my arrival according to testimonies and statements quoted on analysis number VIII, and it also capture when I am been taken away which happened one hour later. Ironically, the video tape was supposed to be unedited.

In conclusion, the above described evidence: expert analysis by International Media Service, Inc., the transcript of

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video presented to the jury, and the attached scientific analysis of trial transcripts and related evidence number VIII, constitutes prima facie evidence to demand production of the following: original wedding video tape, the video tape presented to the jury, and the video tape used by Judge Meehan to justify granting the passion provocation motion, for and/or at evidentiary hearing. The concealed exculpatory evidence will only fully come to light after expert analysis of these tapes is completed.

In addition, it should be underlined that the judge consciously admitted into evidence a wedding video tape that he knew or should have known was a fabrication as demonstrating by the following:

(3T 15-20 to 15-24)

"The Judge: My other concern with the sound is with these cuts, it makes continuity--that's one of the other factors I have. I'm not sure with checking this with the video on, that each one flows into the others clearly. I mean, as I didn't review it for this.

Consequently, the Judge knew or should have known that the tape had been made up of several portions patched together to the pleasure and purpose of the Prosecutor, and that it was out of sequence. (3T 30-1 to 34-25).

Finally, after forcing defendant to testify by the admission of the fabricated wedding video tape, and despite the fact that defendant's testimony caused the physical assault to be within the four corners of the evidence by all standards. However, the judge check mated defendant with the following master move:

Page 182, lines 16-17: (22T 182-16 to 182-17)

"The Judge: But I'm not going to permit you to argue the fact that I had been physically attacked and punched on the head by Davis."

By above stated, the judge was automatically depriving the jury of the opportunity to consider fully whether or not passion provocation was present, and depriving defendant of his constitutional right to effective assistance of counsel. Consequently, the jury reached the erroneous guilty verdict.

[Redacted]

Note: It should be underlined, that by mean of inference from the above quote out of defense counsel Jerejian's

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summation, defense counsel file delivered to, Michael Paul, through the Public Defender, should include a copy of the video tape presented to the jury at trial. Therefore, it should be tested by expert to confirm above stated. This evidence should be in the hands of defense counsel Michael Paul. Therefore, testing should be done immediately to incorporate results into the motion for production of original video tape and related evidentiary hearing.

[Redacted]

Ca 100-111.

103. In a post-direct appeal letter from Agustin Garcia to Michael G. Paul, Esquire, dated 28 May 2006, I advised Counsel Paul that:

"Thank you so very much for responding to my hoped for discovery requests. I have received your 22 April 2006 letter and I am today awaiting receipt of the material.

Also, as I had already indicated to you in several previous correspondences, I am in the process of preparing a first-amended PCR. I expect that work to be completed in the next two weeks. I am therefore very concerned that you may desire to file the draft PCR you have prepared and that I received two weeks ago, before I have seen to it that my work is completed and filed. As you know, your filing may compel my appearance in court shortly thereafter and before I have had sufficient time to file my pro se amendment. That filing would result in the unfavorable and problematic procedural bars as I would then be required to redraft that first-amended application as a following second PCR under N.J.Ct.R. 3:22-4, -5 and -6(b).

Given my filing concerns, may I kindly request that you hold and delay your PCR filing for at least two weeks, or at a minimum and in the alternative, the delay of the hearing on that PCR, until after you and the Court are in receipt of my first amended PCR. I will promptly notify you when that application has been completed and proceed towards its immediate mailing.

[Redacted]

In turning to another issue and so that you are aware of my thoughts with regard to same, should the discovery and other evidence that I have requested and you are providing, disclose additional or supplementary issues with regard to the claims now being raised, I may also request

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that you provide additional time, or take appropriate steps when to the extent of being compelled by the court for a briefing/hearing schedule, then urging that you seek an extension of time so that I might have sufficient time to complete what would turn out to be a pro se second-amended PCR.

I would appreciate some feedback from you concerning the two above mentioned filing/scheduling issues so as to put my mind at rest.

Last, and as a side issue, I am concerned that you have never met with me, nor at the very least, arrange for a video-conference so as we might discuss the issues. Could this be at all possibly arranged in the near future?"

Cal 112-133.

104. In a post-direct appeal letter from Michael G. Paul, Esquire to Agustin Garcia, dated 20 June 2006, I was informed that:

"Secondly, you refer to the wedding video and I reviewed the interpretation that your brother had transcribed and provided to me. Please help me with this. The Court already determined that the voracity of the video tape came into question and was not reliable. How does a newly accurate video tape help you with your Post Conviction Relief Motion."

Ca 114.

105. In a post-direct appeal letter from Agustin Garcia to Michael G. Paul, Esquire, dated 27 June 2006, I advised Counsel Paul that:

"I have received your 20 June 2006 letter and thank you for the quick response. With regard to para. 1, I have yet to receive your mailing and will immediately make acknowledgment when the package arrives. Thank you again for mailing me this very needed information."

I suspect that the four prison lock-down that recently occurred here in New Jersey has delayed my receipt of the discovery package. For the same reason, I am unable to meet -- my previously proposed two week request to delay your filing until I have mailed you my supplemental PCR-brief and appendices. Accordingly, may I kindly request an additional two week period. I can assure you that the work is furiously being pushed towards completion and an additional two week period would greatly go a long way towards assisting

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me in my efforts to get the work completed.

With regard to para. 2 of your letter requesting more information concerning the wedding videotape and its recent translation. Yes well, I have since learned from paralegal that the evidence would constitute newly discovered evidence and that it could not be incorporated into the PCR proper. I am thinking that a motion for a new trial should be prepared based on the discovered content of the videotape. My reasoning is as follows.

In this case, the prosecutor's theory and evidence surrounded a claim that I was fully aware of the wedding ceremony and intended to shoot and kill the decedant. Based upon that strategy, the prosecutor urged the jury to return a verdict of knowing and purposeful murder and reject our efforts at trial to raise reasonable doubt on this charge and urge the jury to convict on the lesser included offense of passion/provocation manslaughter.

When the State translated the videotape, they simply heard what they wanted to and when they didn't, inserted many very damaging phrases in support of its strategy. The more recent translation of the videotape reveals evidence tending to negate first degree knowing and purposeful murder and support the defense's strategy of passion/provocation manslaughter. It also documents a portion of my speaking having been cut from the tape.

I will try to sum up the material points. To that end, I have attached both the State's and now the defense's expert translations which have been set forth in double column format for ease of comparison. After a brisk read, it becomes all too apparent that there are many problems with the State's version. For instance, there are no less than six statements that have me saying that "I have to kill myself." None of that is true for the defense's version has Juan Ricart saying no less than once that "I will kill you" and no less than twice threatening to do so. Here, the State's strategy concerned a plan to kill Ms. Ricart. The often untrue statements that "I have to kill myself" went on to support that strategy as it wrongly revealed to the jury that there was a plan in action and that plan was coming from the mouth of the defendant himself, i.e., to shoot and kill Ms. Ricart and then to turn the gun on myself.

Additionally, if you recall the testimony of Juan Ricart at trial, he said to the jury that I had been saying that not only did I have to kill myself, yet that I wanted to kill other members of the wedding ceremony. One other member of the ceremony also told the jury that this was my intent as they had heard what I had said. Of course none of that

is on the videotape. Conversely, what had been recorded were the threats of Juan Ricart to kill myself.

Furthermore, the defense expert's translation reveals that the State sought to deprive me of evidence in support of passion/provocation manslaughter. Here, the defense translation reveals several passionate statements, i.e., "My love", "No Lilly", "Lilly No Lilly No" and "I love you Lilly".

When comparing the two versions together, the State's version revealed a plan to kill myself and by inference there was a plan to kill the victim; and the defense translation reveals none of that and rather the passionately painful statements made by me during the second struggle; and that Juan Ricart was threatening to kill me, and what will be revealed hereinafter, that the content of the videotape had been edited by cutting out certain portions of what I had said concerning what was captured on the videotape's sound track.

Last, on page one appears the expert's notation "(sound of male 3 being taken out)". This notation confirms that not only very damaging words and phrases were being attributed to me in support of knowing and purposeful murder; yet the same videotape was indeed being edited for content. This edification should require the court grant a motion to compel the original videotape for an expert's further analysis so as to determine what has been edited out of the tape provided to the defense as a copy and if there may be more content that has been cut from the videotape. Here, there is the initial struggle between myself and Juan Ricart that started with his demand that I turn over my brief case. The demand is on the defense translation. However, this portion of the struggle has without doubt been edited out of the copy provided to us.

I hope the foregoing short summary of the issue may be of some assistance. If you have further questions please do not hesitate to inquire.

Ca 115-117.

106. In two post-direct appeal applications from Agustin Garcia to Denise Cobham, Deputy Public Defender, Post-Conviction Relief Unit, dated 28 August 2006, I made a formal application

for additional expert ancillary services and advised Counsel Cobham

that:

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"Please accept this letter in lieu of a more formal request in my application for the provision of payment for ancillary expert services, in connection with the above-referenced matter and in connection with my pending State petition (first-amended) for post-conviction relief ("PCR"). As a basis for support of the foregoing requests, I have provided below a summary of relevant facts incorporating where appropriate the claims raised by the PCR moving papers including the PCR-brief and its eight volume appendix; and the certification of Agustin Garcia, all submitted along with this application, filed with the court and served upon opposing counsel.

RELEVANT SUMMARY OF SUPPORTING FACTS

A. Introduction.

Applicant Agustin Garcia has simultaneously submitted this application for payment of expert services; and a first-amended petition for PCR for filing in the Bergen County Superior Court, primarily charging ineffective assistance of privately retained counsels with respect to the legal representation provided to him at trial, on direct appeal and on direct petition for certification in the N.J. Supreme Court. An initial State petition for PCR has previously been mailed for filing with the same court. See, Brief's Appendix at Vol. II/Da 165. And, this office has also appointed Michael G. Paul, Esquire to represent Mr. Garcia during these pending PCR proceedings.

While the Applicant has been represented by private counsel during the direct appeal, he was initially represented by the Office of the Public Defender ("OPD"); Appellate Section, who assigned one Evelyn F. Garcia, Esquire, having offices at: 56-64 Broad Street, Suites 204-05, Elizabeth, N.J. 07207, Phone numbers: 908.629.9444, 732.390.7388; FAX number: 908.629.9448. Thereafter, the Applicant's family informed him that they had caused to be retained the services of trial counsel, who then also filed a substitution of attorney in the Appellate Division. It was this attorney that also prosecuted the direct appeal and petition for certification. The Applicant has stated the foregoing merely to indicate that he had been granted leave to proceed as an indigent, albeit sub silentio, during the direct appeal proceedings and had been eligible for the services of the OPD.

Additionally, after having made a request for the assignment of counsel in his moving papers that accompanied the initial State petition mentioned above, this office has appointed a PCR attorney to represent the Applicant, one: Michael G. Paul, Esquire, having offices at: 15 South Main

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Street, Suite 3, Edison, N.J. 08837, Phone number:
732.549.6543; New York Office: 120 North Main Street, Suite
203, New City, N.Y. 10956, Phone number: 845.356.0656.

The Applicant's financial circumstances have not changed
since being allowed to proceed as an indigent on appeal and
the pending PCR proceedings. The request for ancillary
services follows.

[Redacted]

D. Request for video expert; testing and testimony.

Consistent with the above factual scenario, the most
damning item of evidence adduced by the prosecutor was a
video tape made of the paramour's pre-wedding ceremony.
This video tape was made by professional videographer hired
by the paramour to film the wedding ceremony being conducted
at the paramour's residence. That video tape also contained
the actions, conduct and oral statements of the applicant
in the act of entering room and shooting the paramour.
However, this original video tape in a professional recording
format was not made available to the Defense for examination.
What was made available was a converted to VCR format copy
which has been recently discovered not contain several
statements of the applicant and was missing several portions.
The copy had been edited in such a manner as to depict
applicant coolly entering the room and shooting and making
statements to the effect of "I now have to kill myself"
repeatedly. Here, while portions of the video tape were
edited to delete the assault upon applicant
(passion/provocation), the false statements attributed to
applicant through a transcript of the video tape was wrongly
thought to convey to the jury that out of applicant own mouth,
he had planning to shoot the paramour and then kill himself.
(See, 1- forensic expert analysis, Vol. VII/Da 1338; 2-
transcript of video presented to Jury, Vol. VII/Da 1370;
3- Correspondence to defense counsel, Vol. VII/Da 1372; 4-
Parallel comparison, Vol. VIII/Da 1501; 5- scientific analysis
of trial transcripts Vol. II/Da 202 to 400 and Vol. III/Da
1 to 447, details of 1 through 5 inserted verbatim)

Taken as a whole, the prosecutor's case adduced evidence
that the relationship was over for months, that the applicant
then stalked the paramour, learned about the engagement to
another man and tried to discover the wedding day, not
assaulted and coolly entered the room as part of a plan to
shoot and kill both the paramour and himself. As the
PCR-Brief adequately demonstrates, none of this was true
and the evidence designed to convict the applicant of knowing
and purposeful murder while at same time deprive applicant
of evidence supporting a defense of passion/provocation.

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manslaughter. Given all of the evidence tampered with and the perjurious testimonies adduced at trial, one would think that would have been enough; however, the prosecutor went that one step further and filed motion which was denied, to preclude the Court from instructing the jury on the lesser charge of passion/provocation manslaughter.

[Redacted]

It is against this backdrop, that applicant makes this second request for a video expert. A video tape expert would be able to testify as to his examination of work performed on the copy of the wedding ceremony video tape; would be able to examine, report and testify to his findings with regards to tampering of the copy as against the original; would be able to examine, report and testify as to his findings in regard to the PathMark surveillance video tapes in the prosecutor's custody, possession or control, and as to those surveillance tape that applicant seeks by motion for permission to subpoena a PathMark representative and the surveillance tapes made at the supermarket.

[Redacted]

CONCLUSION

For all of above the foregoing reasons, applicant request that all of his requests for payment of expert services be granted in all respects."

Ca 118-126.

107. In a post-direct appeal letter from Michael G. Paul, Esquire to Agustin Garcia, dated 8 September 2006, I was informed that:

"Recently, I received a UPS box containing volumes upon volumes upon volumes of an appendix that appears to be complete review of your discovery and how it connects into your pro se brief. I do not know what you want me to do with it. Do you want me to somehow have it copied and mailed to the Judge? I am unclear as to what I am to do with all of these volumes of appendices."

Please advise."

Ca 127.

108. In a post-direct appeal letter from Agustin Garcia to

Michael G. Paul, Esquire, dated 11 September 2006, I advised that:

"Even though the First Amended PCR was prepared scratching on the surface due to the absence of the critically needed forensic experts reports and discovery materials requested through my pending motions, at the end of which, I expect that you will be fully equipped to prepare and file a scientifically tested NDE motion for a new trial together with your final PCR-Brief and related motions."

Ca 128-129.

109. In a post-direct appeal letter from Agustin Garcia to

Michael G. Paul, Esquire, dated 23 September 2006, I advised that:

"In response to your correspondence dated September 8, 2006, this is to confirm the request made on my correspondence dated August 28, 2006, for your office to kindly make copy and file with the Court the First-Amended PCR, filing with the Public Defender the motion for ancillary services payment, mailing copy of motions to adversary, and any other step necessary to perfect filing of my Pro Se package mailed to you on August 28, 2006."

Ca 130-131.

110. In a post-direct appeal letter from Agustin Garcia to

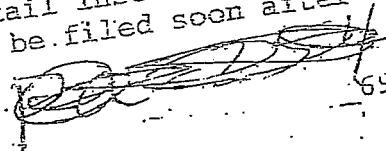
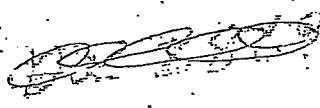
Michael G. Paul, Esquire, dated 24 September 2006, I advised that:

"This should serve to express concern over the fact that video conference scheduled by you for 9-24-06 at 2:30 P.M. was canceled. I had eagerly awaited for said conference, hopeful, that you would bring me confirmation of filing and serving by your office of First-Amended PCR and Motion to OPD for Ancillary Service, mailed to you on August 28, 2006, and the steps taken by you in line with your representation of updating the PCR-Draft prepared by you, of which I anticipate receiving copy from you for my record."

Also, I was hopeful of receiving from you confirmation of Public Defender's authorization for required ancillary services, and the hiring by your office of the above mentioned experts."

Last but not least. I was hopeful of receiving from you confirmation of your preparation of a NTM on the basis of the newly discovered evidence revealed through-out PCR-Appendix, Vol. VII/Da. 1338; 1370; 1372; Vol. VIII/Da. 1501, detail inserted verbatim. It is my understanding that NTM must be filed soon after discovery of the newly discovered

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evidence to avoid being precluded from filing it in the future. It is also my understanding, that said motion can and should be updated with DNA, VIDEO, and AUDIO EXPERT'S FINDINGS once reports are issued."

a 132-133.

111. In a post-direct appeal letter from Agustin Garcia to the Hon. William C. Meehan, P.J.S.C., dated 3 October 2006, I requested of the Court that:

"Defendant Agustin Garcia has previously caused his motions, and a motion for permission to file a first-amended petition for PCR, to be filed with the clerk and served upon the appropriate parties.

At this time, Mr. Garcia requests of this Court, to move for disposition at Court's earliest convenience, his motions to file the first-amended petition and his motions for a stay, to compel, for disqualification, recusal and that motion for OPD ancillary services. All prior to ultimate disposition of the petitions on the merits proper."

Ca 134.

112. In a post-direct appeal letter from Agustin Garcia to Michael G. Paul, Esquire, dated 3 October 2006, I advised Counsel Paul that:

"This is to follow up on the issues discussed during our today video conference.

First, you informed me that tomorrow 10-03-06 you will be filing with the Court, the Public Defender, and the adversary, the complete First Amended PCR and related motions which I mailed to you on August 28, 2006, including but not limited to the eight volumes appendix and trial transcripts.

[Redacted]

Fifth, you left unanswered my question concerning your course of action pertaining to my previous request for filing of NTM on the basis of newly discovered evidence or forensic findings (See First Amended PCR-Appendix, Vol. VII/Da 1338; 1370; 1372; Vol. VIII/Da 1501) to be amended by findings by Forensic Expert which is presently awaiting authorization and payment by the Public Defender. Thus, first, protecting my right and preventing being barred in the future by the

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Rule which requires motion to be filed as soon as newly discovered evidence come to light, thereafter perfected to assure success of NTM, among other.

[Redacted]

Seventh, you told me that together with my first-amended petition you are filing the wedding video tape that was analyzed by forensic expert. (See First Amended PCR-Appendix, Vol. VII/Da 1338; 1370; 1372; Vol. VIII/Da 1501).

[Redacted]

In closing, I can not go without underlining the fact that given the absence of required forensic expert's work, the absence of the 21 key discovery items requested in motion sent to you on August 28, 2006 to be filed together with First Amended PCR and related motions, and my absolute lack of experience in criminal law matters, my First Amended PCR should be used by you to prepare a comprehensive PCR-Brief capable of forcing remand and/or retrial."

Ca 135-136...

113. In a post-direct appeal letter from Agustin Caria To Stuart Allen, President of International Media Services, Inc., dated 8 December 2006 (misdated 8 December 2007), I assisted Mr. Allen in providing a factual analysis for the purpose of drafting of his report, stating that:

"Follow up to correspondence dated 16 October, 2006, concerning forensic Examination of Recorded Video Tape Evidence, dated 12 April 2006."

This is to bring to your attention specific details found within the discovery package previously sent to you for the purpose of aiding the preparation of the amended forensic report.

First, the following description of the video tape provided in above discovery document is drastically contradicted by the description of the video tape presented in Court. Thus, confirming that the original wedding video tape was never presented to the Court. (See, discovery item Vol. VII/Da 1219 to 1220, "218. Report, Seizure of Evidence (video cassette tape), Senior Inv. Thomas Dombroski to Lt. Brian Callanan (dated 1 October 1999)."

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"(1) Fuji brand video cassette tape. The video cassette tape displayed the number 3119C1WA ST120 on the heel of the cassette. Also located on the heel of the video cassette was an identification label. Printed on one end of the label was the word FIJI, along with the following letters and numerals, H471S and ST 120. Printed on the other end of the label are the letters SVHS. Hand written on the label is the symbol "#" with a number "1" written next to it. The number 1 is circled. The word "GRADYS-JANCE 9-26-99" is hand written across the label."

Ironically, on February 14, 2001, Bendul provided the following contrasting description to the court:

(1T 5-12 to 5-15; 7-2 to 7-6)

"Question: Could you tell us what S-1 for identification is?

Answer: Yes. This is a Fuji S-VHS tape. There is writing on there Gladys, and there is a date September 26th, 1999. It also says original on top of that date."

This remark original is not found anywhere on the seizure report quoted above.

Question: Okay, So what's been marked S-1 for identification is the original Super VHS tape; what's been marked S-1A is a Super VHS copy; and what's been marked S-1B is the standard VHS copy.

Answer: Yes."

Please notice that "GRADYS-JANCE 9-26-99" found hand written across the label. is changed to Gladys. Moreover, the date was changed from "9-26-99" to September 26th, 1999. Even more significant the discovery seizure document does not reveal the remark original reported by State's witness, Det. Bendul, in open Court.

The absolute contrast between the above two quotes, particularly, the underlined portions, clearly demonstrate that the original wedding video tape was never made available to the court, and that the prosecutor introduced the evidence labeled S-1, which he knew or should have known it was in fact an altered copy of the original. Moreover, it should be noted that nowhere at Vol. VII/Da 1219 to 1120 do we find the remark original next to the number 1. Also, the writing on the seizure document says "Grady-Jance" instead of witness description in Court "Gladys". Therefore, the videographers, Mr. and Mrs. Nunez, should be asked to verify the writing on the so called original video tape, and if necessary their handwriting may need be analyzed to demonstrate perjury.

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~~2-28-99~~

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Second, the presence of the number 3119 identified on evidence seizure document, but never mentioned by the State's witness, become of startling significance when the following data is considered.

"Specially inserted Notes: At the time of preparation of this scientific analysis, we did not have in our possession the transcripts for the day March 22, 2001. Therefore, a follow up review of the March 22, 2001 transcript received by us after completion of report, revealed the fact that the sequence of events shown in the wedding tape that was presented to the jury was totally out of sequence. Consequently, it raised some new issues that confirm the Prosecutor's fraudulent alteration of the wedding video tape, which goes to the heart of the failures in the judge's instructions. Specifically, on page 32, line 12 the Judge referred to frame number 1336 as follows:

"At 1336, shots were fired" (3T 32-12)

But on page 31, line 2, the Judge referred to frame number 3002 as follow:

"The Judge: And then 3002 Rolls arriving" (3T 32-2)

Page 32, line 25

"The Judge: 1623 one Rolls arrived at" (3T 32-25)

On 10-09-01, page 22, lines 16-24 we learn the following from Davis Ricart's statement:

(18T 22-16 to 22-24)

Q. Directing your attention to S-143A for identification, do you recognize those?

A. Yes. Those were the limos that arrived.

Q. These are the limos that arrived?

A. Yeah.

Q. Do you remember what time they got there?

A. Right before we were about to -- they got there, maybe twenty minutes before we were suppose to leave they got there.

On the basis of above statements of The Judge and of Davis, and the testimonies of several state's witnesses, it is clear that the judge knew or should have known that frame number "3002 Rolls arriving" was in fact filmed at least 20 minutes before 4:00 P.M. (3T 32-2) Confirming that Cassirer did a lot more than slowing down which he perjurally testified to.

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On the basis of The Judge's statement on page 27, line 18
"I also took it home and watched it at home also." (3T
27-18) Consequently, The Judge knew or should have known
that frame number 1154 referred to on page 32, line 4 "1154
Bride and her son Davis leaving the house". (3T 32-4) had
been filmed around 20 minutes before 4:00 P.M., on the basis
of several testimonies of state's witnesses,

Therefore, if an event such as the shooting (frame 1336)
which takes place around 4:00, and that according to all
testimonies: The shooting did in fact take place after the
arrival of the limos (frame 3002), and also after Gladys
and Davis coming out of the house (frame 1154).

Moreover, on page 32, lines 13-16:

(3T 32-13 to 32-16)

"The Judge: And now with 1506, I'm not sure what
that marks, the videographer retrieves the camera.
That's when he picked it up and walks outside.

The prosecutor: That's when he picks up the
camera."

In contrast with above remark, forensic analysis show
00:02:29:23 (Camera falls over and screaming and chaos can
be heard) and 00:02:50:26). Again, obvious contrast between
the Court's record which indicated that camera had been pick
up at 1506 and International Media Service's forensic analysis
which show the camera still present in the living room at
00:02:50:26.

It should be underlined that according to the videographer
testimony, he ran outside when he heard the shots and later
returned to pick up his camera, which explain why the victim
is observed on sofa at image 00:02:50:26 of International
Media Service's analysis. (See, testimony by Ramon Nunez
on 9-261999, on 10-03-01, pages 202 and 203.

(15T 201-3 to 201-5)

"Yes. The light go off in the house. About a minute
after that I hear some explosion and people start running
to me and screaming.

I run with the people too."

(15T 202-20 to 203-12)

"Q. Okay after that, after the people start
running at you, what did you do?"

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A. I go outside with the people and some woman tell me to get her little daughter that was inside and she cry and then I go inside to get her little daughter but I no see her.

Q. You went in to look for the little child?

A. Yes.

Q. Did you go back into that area where you were filming?

A. I don't get far from the door. I just get to where the camera was. I looking all around. I don't see nobody. It was so quiet, everything.

Q. And did you do anything with respect to your camera at that point.

A. Yeah.

A. I pull my camera off. I pull my camera, take it off the tripod."

Thereby, confirming the fraudulent alteration of the wedding video tape.

Logic dictates that chronologically the number 1506 precede the number 3002. In addition, how can the judge interpret his own statement on page 34, lines 5-7: (3T 34-5 to 34-7) "And 2401 is a still, which is no different than a photograph taken in real time as the event was taking place. And then, of course, that's the end of the tape."

If 2401 represent the end of the tape, how can the judge explain the presence of image number 3002 assigned to an event that took place at least 15 minutes before the shooting? (15 minutes of film calculated by multiplying 15 X 60 X 60 X 30 = 1,620,000) the minimum number of frames that should have been between the arrival of the limo (frame 3002) and the actual shooting (frame 1336). Needless, to go back to the issue that shooting should have been also a frame number higher than the limos arrivals.

It should be underlined that sequence number according to transcript prepared by International Media Service starting at 00:00:59:06 (The inside door is forced open and a struggle can be heard); (See, Vol. VII/Da 1341), 00:01:24:14 (first and second shots fired), (See, Vol. VII/Da 1342) 00:01:27:05 (three shots are fired). (See, Vol. VII/Da 1343)

In absolute contrast we have the following Court's record.

"At 1336, shots were fired" (3T 32-12)

Clearly, while the forensic analysis placed the shots at 00:01:24:14 (See, Vol. VII/Da 1342) and 00:01:27:05, (See, Vol. VII/Da 1343) the Court's record placed the shots at 1336. Again, revealing discrepancy which support the finding,

that evidence presented to the Jury had been consciously and maliciously altered.

Here, it should be noticed that according to evidence seizure record, the last number found on the wedding video tape is 3119, which according to the videographer he had retrieved from the video recording machine after all shots had been fired. Consequently, the camera had been on during the exact period of 104 seconds (3119 divided by 30 images per second) from the time it was reset after lights went off according to videographers testimonies. Also, "The Judge: And now with 1506, I'm not sure what that marks, the videographer retrieves the camera. That's when he picked it up and walks outside. Consequently, image 3002 supposedly taken outside is definitely imported and confirm the fraudulent alteration of the wedding video tape. It should be kept in mind that "At 1336, shots were fired" inside of the house. Thus, no further outside filming was done after segment 1336. (3T 32-12). Therefore, the 44 seconds between camera resetting and shots is definitely the struggle period confirmed by forensic testing as, 26 seconds between knocking at door and first shots. It should be remember that according to videographer's testimonies, the struggle was already going on at the time camera's light went off and lights were replaced.

(See, VOL. IV/Da 675)

"Question. In your pre-statement interview you mentioned that Gladys Ricart's brother, Juan Ricart, came into the house with another individual?
Answer. No, no, no. Gladys's brother was struggling with another man over a bag. (See, VOL. IV/Da 675)

Question. After Gladys's brother was struggling with this man with the bag, what were they to each other?
(VOL. IV/Da 675)
Answer. The only thing I heard was "leave the bag."

the bride's brother told the other person to leave the bag.
Question. After that, was there a problem with the lighting?
Answer. Yeah, there was a problem with the lighting. My husband told me to put on another light. I was crouched down to plug it in, and that's when I heard shots. (DPA-I-16:62) (Vol. IV/Da 676)

Ana Nunez statement is confirmed by the following testimony of the videographer, Ramon Nunez.

(15T 201-3 to 201-5)

"Yes. The light go off in the house. About a

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minute after that I hear some explosion and people
start running to me and screaming. I run with
the people too."

Ca 137-143.

114. In a post-direct appeal letter from Michael G. Paul, Esquire to Agustin Garcia, dated 10 December 2006, I was informed that:

"I received your recent letter relative to the video tape and the reconstruction of said tape. If you look at the back of the brief that I submitted on your behalf, attached is a copy of the translation, per your expert witness, who helped interpret the tape and reduce it to writing. I believe, and certainly hope, that this addresses your concerns. If not, please write back to me and call me so that we can address this matter and be completely prepared to argue your motion for Post Conviction Relief."

Ca 144.

115. In a post-direct appeal letter from Agustin Garcia to Michael G. Paul, Esquire, dated 16 December 2006, I advised Counsel Paul that:

"In response to your correspondence dated December 10, 2006, this is to express that I am completely astonished at what appears to be the OPD position of bringing my PCR before the Court without first securing the absolutely necessary forensic testing of the original wedding video tape as demonstrated by the sample forensic testing of the altered copy that was hand delivered to Defense Counsel by the Prosecutor as previously discussed with you at length.

After failing to perform the required testing of the wedding video copy which is part of the discovery file, despite repeated affirmation from the part of the Public Defender, indicating that such evidence would be tested by expert when and if recommended by Assigned Counsel, and also despite at least 50 requests made by me for said testing to be done, the Public Defender's attitude remains incomprehensible if I am to believe that they are honestly in the business for which they are publicly funded for."

Ca 145-146.

116. In a post-direct appeal letter from Agustin Garcia to

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Michael G. Paul, Esquire, dated 30 December 2006, I advised Counsel

Paul that:

"Given the significance of requested Orders taking effect prior to ruling on First Amended PCR, particularly taking into consideration that the forensic testing of the original wedding video tape is of the essence to support my claims. Consequently, I respectfully request that you take whatever steps are necessary to cause the ruling on these motions to take effect in such manner as to allowing sufficient time after the receipt of the original wedding video tape for its forensic testing and the resulting 2nd Amended PCR be prepared and filed.

I am absolutely convinced that to allow ruling on my PCR prior to the comprehensive forensic testing of the wedding video tape is tantamount to consciously inviting a denial of claims by the Court. Needless to underline that the forensic testing done by International Media Service of an edited copy of the wedding video tape does constitute an outcry for the comprehensive testing of the original wedding video tape, anything short of comprehensive testing of the original wedding video tape will fall extremely short of effective representation, particularly, given the fact that it was my family who in a desperate attempt to bring the facts to light hired the services of the forensic expert to produce the preliminary report dated April 12, 2006, copy of which was delivered to you together with copy of correspondence to forensic expert requesting correction of report. It is inconceivable that after so much evidence have been serve on silver plate by me, the Public Defendant, still maintains the position of deliberately denying me this critically needed ancillary service.

Therefore, I respectfully ask that you take the appropriate steps necessary to assure that pending motion for ancillary services be ruled upon in manner as to allowing sufficient time for the completion of comprehensive forensic testing of the wedding video tape and the preparation and filing of resulting motions to amend First Amended PCR.

Last but not least, this should serve to formally request from you that an unedited copy of the original wedding video tape be provided to me for my personal file at your earliest convenience. Needless to underline that in case any of the three motions referred to above be denied, I need sufficient time and legal assistance to appeal such decision prior to the ruling on pending PCR.

Also, following is a list of forensic experts whom claims to possess the technology necessary for the needed forensic

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analysis of the video and audio tapes:

- 1- Dr. Bernard L. Krause, Ph.D., Audio Forensic Center, 2631 Clay St., San Francisco, CA 94115, off. tel.: (415) 563-0202.
- 2- Robert B. Chaney Jr., Ph.D., 14 September Dr., Missoula, MT 59801, off. tel.: (406) 243-4131.
- 3- Stanley A. Gelfand, Ph.D., Chief Audiology & Speech Pathology Service, Va Medical Center, Tremont Avenue, E. Orange, N.J. 07019.
- 4- Gustv F. Haas, Ph.D., Dir. Audiology Engrg., 1230 Hopkins Ave., Redwood City, CA 94062, off. tel.: (415) 369-4327.
- 5- Marc B. Kramer, Ph.D., 159 E. 69th St., New York, NY 10021, off. tel.: (212) 734-8900.

Ca 147-148.

117. In a second post-direct appeal letter from Agustin Garcia

to the Hon. William C. Meehan, P.J.S.C., dated 5 January 2007, I advised Court that:

"Defendant Agustin Garcia has previously caused his motions, and a motion for permission to file a first-amended petition for PCR, to be filed with the clerk and served upon the appropriate parties.

At this time, Mr. Garcia requests of this Court, to move for disposition at Court's earliest convenience, his motions to file the first-amended petition and his motions for a stay, to compel, for disqualification, recusal, production of discovery, correction of record and motion for OPD ancillary services. All prior to ultimate disposition of the PCR petitions on the merits proper."

Ca 149.

118. In a third post-direct appeal letter from Agustin Garcia to the Hon. William C. Meehan, P.J.S.C., dated 12 January 2007,

I advised Court concerning my reasons that some of the pending motions be moved and disposed of prior to an ultimate decision on the merits of my PCR petitions, stating that:

"Defendant Agustin Garcia has previously caused his

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motions, and a motion for permission to file a first-amended petition for PCR, to be filed with the clerk and served upon the appropriate parties.

[Redacted]

The first reason for the 90 day stay request pertaining to the PCR proceedings is due to the fact that consistent with evidence detailed on attachment (1, 2, 3, 4, 5, and 6, details inserted verbatim) forensic report is been amended to conclusively demonstrate the following:

(1) that the 5 remarks "I want to kill myself" were never made by defendant during the recording period in question, instead such statement had been imported from another segment. Thus, confirming the act of tampering by prosecutor whose witness, Lieutenant Cassirer falsely testified as follow:

A. "No, Sir. Just the slow motion. (1T 31-20)

Q. And is this tape as you viewed it today, in the same condition -- does it show the same things that it showed when you originally made that tape?

A. Yes, Sir. (1T 31-21 to 31-24)

Q. No changes, additions, deletions from it?

A. None" (1T 31-25 to 32-1)

(See, attached copy of Vol VIII/Da 1501 to 1502; Vol. VII/Da 1338 to 1370; Vol. VII/Da 1370 to 1371, details inserted verbatim)

(2) That Defendant's arrival took place at clock number 00:18:19 (see, Vol. VII/Da 1347) (maliciously relocated by Prosecutor's staff)

"MALE VOICE 2: (deeper voice) (unintelligible) going in to give my greeting." (Vol. VII/Da 1347-23)
"I want to see something." (18T 32-8)

Therefore, logic dictate that statement made by Defendant at trial[:]

"Q. What did you say? Did you say anything when you saw her?

A. I went something like, what's going on? Something like that. Immediately I got hit." (21T 122-6 to 122-9)

It should be underlined that after David locked the door, he stayed next to the door watching through the window located next to door, in a way guarding the door, and that door was not open again until Defendant arrival, knocking at the door and entrance to the house. (18T 26-21 to 26-23)

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Consequently, Defendant arrival took place at clock number 00:18:19 (maliciously relocated by Prosecutor's staff).

In short, above underlined two statements:

(1) "I want to see something." (18T 32-8)

(2) "going in to give my greeting." (Vol. VII/Da 1347-23)

are in fact two different versions of same statement made by Defendant when entering through the door. Thus, placing Defendant at the point of entrance at camera clock number 00:18:19 which is also the struggle starting point. (See, Vol. VII/Da 1347)

Another key element follows:

"MALE VOICE 1: Now what is this?? You finished??"
(Vol. VII/Da 1347-17 to 1347-18)

Defendant testified at trial that upon entering the house and seen Gladys Ricart "I went something like, "What's going on? Something like that. Immediately I got hit." (21T 122-8 to 122-9)

Defendant's question Now what is this?? You finished??" clearly confirmed; first, that he did not know what was going on and second, that as far as he is concerned he is unaware of the fact that she had ended the relationship.

(3) that a 68 second struggle period did actually take place between the time defendant entered the house and the firing of the first shots, that this 68 seconds were in fact maliciously deleted from the video tape that was presented to the Jury, (See, attachments 1 through 6) the fraudulent deletion of this relevant/substantive exculpatory evidence is further confirmed through the following testimonies:

a) Ramon Nunez: "About a minute after that I heard some explosion" (15T 205-8 to 205-12);

b) Ana Nunez:

"Question. In your pre-statement interview you mentioned that Gladys Ricart's brother, Juan Ricart, came into the house with another individual?
Answer. No, no. no. Gladys's brother was struggling with another man over a bag. (See, VOL. IV/Da 675)

Question. After Gladys's brother was struggling with this man with the bag, what were they to each other?

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[Handwritten signatures and initials]

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(See, VOL. IV/Da 675)

Answer. The only thing I heard was "leave the bag."
the bride's brother told the other person to leave the
bag.

Question. After that, was there a problem with
the lighting?

Answer. Yeah, there was a problem with the lighting.
My husband told me to put on another light. I was
crouched down to plug it in, and that's when I heard
shots. (Vol. IV/Da 676)

Again, here Ana confirms that struggle started before the
lights problem, and previously Ramon confirmed that after
"About a minute after that I heard some explosion" (15T
205-8 to 205-12).

c) Juan Ricart: "Could be about a minute." (14T 139-10
to 139-13);

d) Toorialai Mahboobi:

"After this, after minute I heard fire of gun." (Vol.
IV/Da 645), "One minute" (Vol. IV/Da 645)
"About a minute." (Vol. IV/Da 646)
"Could it be less?" (Vol. IV/Da 646)
Answer. "No" (Vol. IV/Da 646).

Consequently, counting from 00:18:19 the point defendant
entered through the door (Vol. VII/Da 1347) to 01:24:14
the time the first shots were fired (Vol. VII/Da 1349)
results in exactly 66 seconds which is totally consistent
with above quoted testimonies of Ramon Nunez, Ana Nunez,
Juan Ricart, and Toorialai Mahboobi.

In addition, the 66 seconds finding is totally consistent
with scientific analysis of trial transcripts at Vol. II/Da
384 to Vol. III/Da 422, details inserted verbatim)

Moreover, it should be underlined that each and everyone
of above testimonies confirmed a period of over one minutes
between the time defendant entered the house and the time
the first shots were fired.

In absolute contrast with above quoted statements, the
Prosecutor after tampering with the wedding video tape
evidence made the following conscious and malicious statement
aimed at concealing the substantive/relevant exculpatory
evidence:

(23T 83-24 to 84-8)

"The Prosecutor: If you watch the tape (23T 83-24)

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and you think about what Garcia says happened and you count the seconds (23T 83-25) it can't happen the way he said it did. There isn't enough time for it to have happened the way he say it did, (23T 84-1 to 84-3) for him to be accosted at the door, for him to get clocked by Davis; bounced up against the wall, get back up again and go through; through this area, through here, all the way through here to where Juan finally jumps on him, after the first two shots, all the way over here by the couch.

First, the Prosecutor, consciously and maliciously edited the tape, (deleting the 68 seconds struggle period);

Second, the Judge and the Prosecutor failed to make the following clarification to the Jury as shown by the following quotes, causing the Jury to believe that they were looking at the original wedding video tape:

(16T 166-10 to 166-16)

"Mr. Shwanwede: I will advise the audience there is no audio in the first part of the tape.
The Court: Also, this is a composite tape which the jury will be told, meaning certain parts in the beginning and end have been taken out and certain part. Other parts. It was originally a little over an hour, it is about twelve minutes now."

(16T 176-20 to 177-2)

"The Court: The only thing I want to tell the jury is there will be certain portions of it has audio, certain words which are in Spanish and English. At the end of the tape we'll give you a transcript counsel agree is what words were being stated. That's after you view the video. This video will be with you in the jury room. If at any time in the deliberation you want to check out the audio and the video you can do so."

Third, the judge tells the jury to watch the tape as many time as they wish and specifically to study the audio as well as the visual: "If at any time in the deliberation you want to check out the audio and the video you can do so." (16T 177-1 to 177-2)

Finally, the prosecutor give Jury his pre-cooked erroneous conclusion "There isn't enough time for it to have happened the way he say it did" (23T 84-1 to 84-3)

The fatal consequence of the Prosecutor's fraud upon the

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Jury's verdict is revealed in the following: on 10-23-01,
the juror that spoke to The Record Newspaper said on page
A-3:

(See, Vol. IV/Da 788)

"The jury searched the video tape for signs of
self-defense, replaying it several times, at least once
in slow motion, said the juror who was interviewed.
Using a watch and counting "one Mississippi, two
Mississippi, they timed the interval between Garcia's
knock at the door and the first shot: "four second"
she said. "There just wasn't enough time for him to
be attacked and respond" said the juror, "we tried to
hear and didn't hear (any) of that." (See, Vol. IV/Da
788)

In short, first, by not making the clarifications to the
jury promised by the Judge and by the Prosecutor, the Court
caused the Jury to be mislead into thinking they were dealing
with the original wedding video tape. Thereafter, they were
mislead by the Prosecutor tampering and false representation
into reaching the erroneous guilty verdict.

The second reason for the 90 day stay request pertaining
to PCR proceedings is due to the fact that after I filed
a 246 pages PCR brief fully supported by 1600 pages appendix,
the State responded with a 112 pages brief full of false
statements and inaccuracy that need to be corrected for the
Court's record in the best interest of justice. Consequently,
my paralegal already started working on the preparation of
a traverse reply which according to him should take him at
least 90 days of uninterrupted work.

Looking forward to your understanding and assistance in the
best interest of justice.

Ca 150-155.

119. In a post-direct appeal letter from Agustin Garcia to
Stuart Allen of International Media Services, Inc., dated 16 January
2007, I contributed my knowledge of the facts to assist Mr. Allen
in the final draft of his report, advising that:

"Follow up to correspondences dated 16 October, 2006 and
8 December 2007, concerning forensic Examination of Recorded
Video Tape Evidence, dated 12 April 2006."

Dear Mr. Allen:

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This is to direct your attention to the following evidence found on page 3 of your forensic report referred to above. (see, Vol. VII/Da 1347)

"00:18:19 (sound of a thud. Sound of door being opened)" (see, Vol. VII/Da 1347)

"FEMALE VOICE: I have no light here. This one turn it on." (see, Vol. VII/Da 1348).

Clearly the following evidence confirm the fact that "sound of a thud" is the physical attack on Defendant by Davis Ricart as testified in Court:

"The minute I bumped into Davis my foot goes this way. I see her. He hit me right away. He land me against the wall. Then I see all bright light. I'm like pasing out. At the same time that I'm blacking out all these people are coming over me at the same time. We begin wrestling because I tried to reach out for the weapon. Then we begin wrestling for the weapon right there." (See, 21T 125-12 to 19).

The following evidence copied from the component number VIII of the scientific analysis of the trial transcripts confirm beyond any doubt that the 00:18:19 as the beginning of the struggle period and the assault on Defendant by Davis Ricart.

(See, Vol. III/Da 408 to 414)

"First, the Court's instructions were for the sound to be turned off up until the first shots.

Obviously, no one expected that Mr. prosecutor was going to place himself in contempt to court by maliciously leaving in the edited tape the knocking at the door part which was on the portion of the video were sound should have been off. Moreover, they eliminated or edited the gap time (78 seconds) between the the time light went off as testified to by Nunez, and the first shots. Thereby, maliciously creating the impression to the jury after the Court had already mislead them to believe that they were watching the original unedited tape, "that it was only 4 seconds from the time defendant walked in, to the time of the first shots. Consequently, the Jury reached the erroneous conclusion that "There just wasn't enough time for him to be attacked and respond" said the juror, "we tried to hear and didn't hear (any) of that." (DPA-III-I:3(8)) or (Vol. IV/Da 788)

The above obvious fraud did work perfect for the prosecutor and the judge. So they obtained their hard worked erroneous guilty verdict, when the jury accepted the following

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pre-cooked erroneous conclusion given by the prosecutor at closing: "we tried to hear and didn't hear (any) of that." (DPA-III-I:3(8)) or (Vol. IV/Da 788).

How do we demonstrate the prosecutor's criminal actions? First, remember Brigitte Sacin's testimony on 10-05-01, page 169, where she stated that after she saw defendant peacefully entering the house, lines 1, 15, 20-22:

(17T 169-1 to 169-22)

"I started walking toward my house. I crossed the street. When I turned back on the scene I started going toward my house across the street. I stood in front of my house. Then, I heard the shots."

On 10-05-01, page 171, Brigitte who is trying desperately to get me convicted said: (see 10-05-01, page 132, lines 23-24) (17T 132-23 to 132-24) "I would said less than half a minute." Obviously, we know is more by looking at 10-05-01, page 152, lines 22-23, (17T 152-22 to 152-23) where we learn that the distance from Gladys' lawn where she was standing to the front of Brigitte's house is over 50 feet as recorded in the court's records. Needless to underline, that such distance can not be traveled carrying dogs in four (4) seconds, not even in 30 seconds. Keep in mind that Brigitte saw the knocking, then saw Garcia entering the house after the knocking, thereafter, she walk over to her house, and when standing in front to her house, then she heard the first shots.

Second, another key element to demonstrating the fact that the wedding video tape was criminally edited is found in Ramon Nunez's testimony (the videographer) on 10-03-01, page 205, lines 8-12:

(15T 205-8 to 205-12)

"Q. You also testified that approximately sixty seconds, if we can characterized it, or one minute, I believe you said, before the -- before you became aware of the shooting incident. The lights in the house went off, is that correct?
A. Yes."

10-03-01, page 201, lines 3-5:

(15T 201-3 to 201-5)

"Yes, the lights go off in the house. About a minute after that I heard some explosion and people start running to me and screaming"

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Third, supporting Ramon Nunez's testimony is the testimony of the assistant videographer, Ana Nunez, given to the Bergen county detectives on September 26, 1999: Page 5:

"Question. In your pre-statement interview you mentioned that Gladys Ricart's brother, Juan Ricart, came into the house with another individual?
Answer. No, no, no. Gladys's brother was struggling with another man over a bag. (DPA-I-16:5-15) or (VOL. IV/Da 675)

Question. After Gladys's brother was struggling with this man with the bag, what were they to each other? (VOL. IV/Da 675)
Answer. The only thing I heard was "leave the bag." the bride's brother told the other person to leave the bag.

Question. After that, was there a problem with the lighting?
Answer. Yeah, there was a problem with the lighting. My husband told me to put on another light. I was crouched down to plug it in, and that's when I heard shots. (DPA-I-16:62) (Vol. IV/Da 676)

Again, Ana Nunez, the assistant videographer, who was working inside of the house, right next to the entrance door, confirm with her testimony: first, that there was a struggle between defendant and Juan Ricart prior to the video camera lighting popping; second, that it is after she is replacing the second light when she heard shots.

Fourth, even Juan Ricart during his testimony answered the following on 10-02-01, page 139, lines 10-13:

(14T 139-10 to 139-13)

"Q. From the time that the door opened to the time that the shots rang out it was very quick, wasn't it?
A. Could be about a minute."

Fifth, on September 30, 1999, the limousine driver, Toorialai Mahboobi gave the following statement to the Bergen County Prosecutor detectives (DPA-I-13:1 to DPA-I-13:19):

Pages 15-16 of report: (DPA-I-13:15-5 to DPA-I-13:15-7)

"Question. From when they both walked to the front door of the house, what happened next?
Answer. After this, after minute I heard fire of gun. (DPA-I-13:15-5 to DPA-I-13:15-7) or (Vol. IV/Da 645)
Question. From the time that the brother of the

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bride and the driver of the jeep got to the front door, to the time that you heard the shots; how much time went by?

Answer. One minute (DPa-I-13:15-18) or (Vol. IV/Da 645)

Question. You're saying about a minute?

Answer. About a minute. (DPa-I-13:16-1) or (Vol. IV/Da 646)

Question. Could it be less? (DPa-I-13:16-2) or (Vol. IV/Da 646)

Answer. No (DPa-I-13:16-3) or (Vol. IV/Da 646)

Please observe that even though Detective attempted to push Mahboobi to say that it was less than one minute, he categorically denied it. Thereby, reaffirming, that it was one minute or longer.

Sixth, another testimony that is very revealing is that of the photographer, Michael Felice, who was standing at the entrance at the time of the incident. The testimony was taken by the Bergen county prosecutor detectives on October 4, 1999:

Question. Did anything happen while you were observing what was going on that drew your attention?

Answer. Okay. I heard a sound that sounded to me like something tripped over something or was falling and then heard a pop which drew my attention for some reason. It sounded like a video light popped so I look at the video man light. then I heard another pop which drew my attention back. (DPa-I-14:8-3 to DPaI-14:8-7) or (Vol. IV/Da 657)

Please observe at this point, that the something tripping over and falling preceeds the video light popping.

Question. Now, you say that when you heard the first pop, you thought it was one of the video lights that had popped?

Answer. that's correct. (DPa-I-14:8-15 to DPaI-14:8-17)

Question. And you heard the second pop?

Answer. Yes, which brought my attention back toward the bride.

Question. What did you see at that point?

Answer. At that point I saw a man that was hunched over with his arm straight out. (DPa-I-14:8-25 to DPaI-14:8-26)

Question. Where was the man positioned in the living room?

Answer. He was like at the far corner of the couch on the west wall. (DPa-I-14:9-4 to DPaI-14:8-5) or (Vol. IV/Da 658)

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Hon. William C. Meehan, P.J.S.C.

Question. You're referring to the couch that was against the west wall of the living room?

Answer. Yes and his arm was extended out."

Comparing Felice's statement with above statement of the videographer Ramon Nunez, it is confirmed, that the first and second pops were in fact the video camera lights.

Even more revealing is the fact, that before Felice heard pop, he heard what he described as: a sound that sounded to me like something tripped over something or was falling and then heard a pop which drew my attention for some reason.

The logical conclusion is that the tripping sound that he heard is the struggle described by defendant. Such conclusion explains why defendant is seen by Felice after the second pop "hunched over with his arm straight out. at the far corner of the couch on the west wall."

Again, logic dictate that he is seen hunched over as a result of the struggle, and that he got to the far west corner during the struggle (had defendant enter the living room through the door located at the south-west corner and headed straight toward deceased, who was positioned at the far east, as described by the prosecutor, then he would have never be seen at the opposite end of the door, which is the north-west part of the living room). Particularly noting that he entered the door at the far south-west corner, and had he been aiming at the deceased as described by perjury testimonies of state witnesses, he would not have ended up in the west-North corner opposite to where the deceased was located at.

Also, it should be noted, that on above quoted statement Ramon Nunez testified to the fact that "Yes, the lights go off in the house. About a minute after that I heard some explosion and people start running to me and screaming" (15T 201-3 to 201-5)

Therefore, it appears obvious that the one minute time for the two light popping and replacement described by the videographers Ramon Nunez and Ana Nunez is also the one minute struggle period described by defendant during his testimony.

Seventh, another testimony that confirm the struggle is the one given by the photographer Drew Super given to the prosecutor detectives on October 1, 1999:

Page 4. "I saw somebody out of the corner of my eye. I saw somebody was running, kneeling down about three feet." (DPA-I-15:4-13 to DPA-I-15:4-16) or (Vol. IV/Da 665)

1000
DPA-15:4-16
274
2589

Obviously, defendant is seen kneeling because he is getting up from the floor as he described in his testimony, and his falling resulted from the assault against him.

Page 8

"SGT. BARBATO: Earlier you stated that the man was crouched down and ran to right and pushed you; is that right?"

Answer. Shoved me, pushed me away, but I didn't fall down."

This statement of page 8 demonstrate that detectives were editing statements for their intended purpose, because the affirmation is nowhere to be found in the written statement prepared by the detective. It also help confirm the struggle.

It should be underlined that the absence from the wedding video of the disturbances described above; the tripping, the popping of lights, etc., does confirm the fraudulent alteration of the wedding video tape, and the related acts of perjury from the part of the Bergen county's authorities.

Eight, on page 5 of Mayelin Ricart testimony, given on Monday, September 27, 1999, there is confirmation of the fact that there was struggle between Garcia and Juan Ricart; the following is a quoted from page 5:

"Q. Was there any type of struggle before he came in?

A. My father was struggling with him (Vol. IV/Da 530)

Q. What did your father do?

A. He was trying to take the gun away from him" (DPA-I-3:5-19 to DPA-I-3:5-20) or (Vol. IV/Da 529)

The defense counsel failed at effectively confronting Mayelin with her own statement.

Ninth, last, but not least, due to its overwhelming and crystal clear revelations, let's revisit the testimony of the assistant videographer, Ana Nunez, given to the Bergen county detectives on September 26, 1999:

Page 5:

"Question. In your pre-statement interview you mentioned that Gladys Ricart's brother, Juan Ricart, came into the house with another individual?

Answer. No, no, no. Gladys's brother was struggling with another man over a bag. (DPA-I-16:5-15) or (Vol. IV/Da 675)

Question. After Gladys's brother was struggling

100-1001

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Hon. William C. Meehan, P.J.S.C.

with this man with the bag, what were they to each other?
Answer. The only thing I heard was "leave the bag." the
bride's brother told the other person to leave the bag.

Question. After that, was there a problem with the
lighting? (DPA-I-16:6-1) or (Vol. IV/Da 676)

Answer. Yeah, there was a problem with the lighting.
My husband told me to put on another light. I was crouched
down to plug it in, and that's when I heard shots.
(DPA-I-16:6-2 to DPA-I-16:6-4) or (Vol. IV/Da 676)

Again, Ana Nunez, the assistant videographer, who was working
right next to the entrance of the house, confirm with her
testimony: first, that there was a struggle between defendant
and Juan Ricart prior to the video camera lighting popping;
second, that it is after she is replacing the second light
when she heard shots."

In conclusion, on the basis of above evidence it is clearly
demonstrated beyond any doubt that the struggle period lasted
at least 68 seconds from 00:18:19 to 01:24:14 (See, Vol. VII/Da
1347 and 1349). Particularly significant is the dialog found
on pages 3 and 4 whereas the videographers are heard fixing
up the light problem which as previously quoted which started
after the struggle had already started as reported by Ana Nunez.
"FEMALE VOICE: I have no light here. This one ... turn it
on." (see, Vol. VII/Da 1348) This conclusion is totally
confirmed by the component number VIII of the scientific
analysis of the trial transcripts. (See Vol. II/Da 384 to Vol.
III/Da 422)

Ca. 156-164.

120. In two post-direct appeal letters from Agustin Garcia
to Stuart Allen, both dated 17 January 2007, I further assisted
Mr. Allen in his draft report by stating that:

First Letter of 17 January 2007

"Follow up to correspondences dated 16 October, 2006, 8 December
2007, and 17 January, 2007, concerning forensic Examination
of Recorded Video Tape Evidence, dated 12 April 2006.

This is to direct your attention to the following evidence
found on page 3 of your forensic report referred to above.
(see, Vol. VII/Da 1347)

"MALE VOICE 1: Now what is this?? You finished??"
Defendant testified at trial that upon entering the house and

Hon. William C. Meehan, P.J.S.C.

seem Gladys Ricart "I went something like, "What's going on?
Something like that. Immediately I got hit." (21T 122-8 to
122-9)

Defendant's question Now what is this?? You finished??" clearly
confirmed; first, that he did not know what was going on and
second, that as far as he is concerned he is unaware of the fact
that she had ended the relationship.

The above is further confirmed by the following statement of
Ana Nunez, the videographer's assistant, who placed the starting
of the struggle and the light problem taking place
simultaneously.

Third, supporting Ramon Nunez's testimony is the testimony
of the assistant videographer, Ana Nunez, given to the Bergen
county detectives on September 26, 1999: Page 5:

"Question. In your pre-statement interview you
mentioned that Gladys Ricart's brother, Juan Ricart, came
into the house with another individual?
Answer. No, no, no. Gladys's brother was struggling
with another man over a bag. (Dpa-I-16:5-15) or (VOL.
IV/Da 675)

Question. After Gladys's brother was struggling
with this man with the bag, what were they to each other?
(VOL. IV/Da 675)

Answer. The only thing I heard was "leave the bag." the
bride's brother told the other person to leave the bag.

Question. After that, was there a problem with the
lighting?

Answer. Yeah, there was a problem with the lighting.
My husband told me to put on another light. I was crouched
down to plug it in, and that's when I heard shots.
(Dpa-I-16:62) (Vol. IV/Da 676)

Again, Ana Nunez, the assistant videographer, who was working
inside of the house, right next to the entrance door, confirm
with her testimony: first, that there was a struggle between
defendant and Juan Ricart prior to the video camera lighting
popping; second, that it is after she is replacing the second
light when she heard shots."

Ca 165-166.

Second Letter of 17 January 2007

"Follow up to correspondences dated 16 October, 2006; 8 December
2006, and 17 January, 2007, concerning forensic Examination
of Recorded Video Tape Evidence, dated 12 April 2006.

This is to direct your attention to the following evidence

Hon. William C. Meehan, P.J.S.C.

found on page 3 of your forensic report referred to above.
(see, Vol. VII/Da 1347)

"MALE VOICE. 2: (deeper voice). (unintelligible) going
in to give my greeting."

Moreover, on 10/9/01, page 26, lines 21-23 Davis stated:

(18T 26-21 to 26-23)

"when he had parked my uncle had came over to me and told
me to go inside the house and not to let my mother know
that he was here"

(18T 55-12 to 55-14)

"Q. Did you lock the door?

A. Like I said when I closed the door it locks by itself
so in a way I guess I did lock the door but---

(18T 28-8 to 28-12)

"Q. And could you indicate how you were looking
out. Which window?

A. In the vestibule out here. This window I looked
outside. I was standing here the whole time when they
were across the street."

(18T 30-18 to 30-20)

"A. He knocked again forcibly like, enough so that people;
you know, could start -- I mean hear the door. So I didn't
want that, so I just opened the door."

Q. You opened the door?

A. Yes.

(18T 32-8)

"I want to see something."

Therefore, logic dictate that statement made by Defendant at
trial

"Q. What did you say? Did you say anything when
you saw her?

A. I went something like, what's going on? Something
like that. Immediately I got hit." (21T 122-6 to 122-9)

It should be underlined that after David locked the door, he
stayed next to the door watching through the window located
next to door, in a way guarding the door, and that door was
not open again until Defendant arrival, knocking at the door

Da-1004

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and entrance to the house. Consequently, Defendant arrival took place at clock number 00:18:19 (maliciously relocated by Prosecutor's staff)

In short, above underlined three statements: (1) what's going on?, (2) "I want to see something.", (3) "going in to give my greeting." are in fact three different version of same statement made by Defendant when entering through the door. Thus, placing Defendant at the point of entrance at camera clock number 00:18:19 which is also the struggle starting point. (See, Vol. VII/Da.1347).

Another key element follows:

"MALE VOICE 1: Now what is this?? You finished??" Defendant testified at trial that upon entering the house and seem Gladys Ricart "I went something like, "What's going on? Something like that. Immediately I got hit." (21T 122-8 to 122-9)

Defendant's question Now what is this?? You finished?? clearly confirmed; first, that he did not know what was going on and second, that as far as he is concerned he is unaware of the fact that she had ended the relationship.

The above is further confirmed by the following statement of Ana Nunez, the videographer's assistant, who placed the starting of the struggle and the light problem taking place simultaneously.

Third, supporting Ramon Nunez's testimony is the testimony of the assistant videographer, Ana Nunez, given to the Bergen county detectives on September 26, 1999: Page 5:

"Question. In your pre-statement interview you mentioned that Gladys Ricart's brother, Juan Ricart, came into the house with another individual?
Answer. No, no, no. Gladys's brother was struggling with another man over a bag. (DPA-I-16:5-15) or. (VOL. IV/Da 675)

Question. After Gladys's brother was struggling with this man with the bag, what were they to each other?
(VOL. IV/Da 675)
Answer. The only thing I heard was "leave the bag." the bride's brother told the other person to leave the bag.

Question. After that, was there a problem with the lighting?
Answer. Yeah, there was a problem with the lighting.
My husband told me to put on another light. I was crouched down to plug it in, and that's when I heard shots.
(DPA-I-16:62) (vol. IV/Da 676)

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Again, Ana Nunez, the assistant videographer, who was working inside of the house, right next to the entrance door, confirm with her testimony: first, that there was a struggle between defendant and Juan Ricart prior to the video camera lighting popping; second, that it is after she is replacing the second light when she head shots."

Ca 167-170.

VII.

121. The prosecutor in this matter, had adduced testimony from well over 25 witnesses. The record in this case is extraordinarily voluminous. The State's discovery alone consisted of nearly 2000 pages. Pretrial counsel filed numerous pretrial motions. Not counting jury section, the pretrial and trial proceedings covered more than 4,500 transcribed pages, or nine times the size of an average criminal case. The case was subjected to higher review and certification requiring review of counsel briefs as well as pro se briefs. The matter is presently pending disposition of two petitions for post-conviction relief along with their attendant motions. The later first-amended petition-brief being of well over 200 pages and submitted along with an eight volume appendix consisting of nearly 1600 pages. Combined with Movant's voluminous correspondences and his 20 page plus analysis, there are well over 10,000 documents consisting of the matter styled, "State v. Agustin Garcia."

122. The translated and transcribed information given to me on or about 12 April 2006, by Stuart Allen of International Media Services, Inc., directly contradicts and repudiates the evidence given at trial by Lt. Cassieri, Det. Mark Bendul, Det. Dennis Suarez, Norma [Yolanda] Rosario and the proffers and comments made by First

Hon. William C. Meenan, P.J.S.C.

Assistant Prosecutor Fred Schwanwede. The new information satisfies the new trial standard with respect to Det. Dennis Suarez and Norma [Yolanda] Rosario, Juan Ricart and the proffers and comments made by First Assistant Prosecutor Fred Schwanwede. This information is not merely cumulative or impeaching, yet is material and relevant to the major issue in this case, namely, whether Mr. Garcia intended to commit knowing and purposeful murder in the shooting death of his paramour Gladys Ricart. The new evidence strongly suggests that the Det. Dennis Suarez, who translated and transcribed the audible portions of the wedding videotape had slanted its contents thereto, and in so doing toward a conviction of Mr. Garcia for the crime of knowing and purposeful murder. Collateral, the translation and transcription seems to indicate that in so doing, had been to additionally support the perjurious trial testimony of Norma Rosario and Juan Ricart.

123. Stuart Allen of International Media Services, Inc. has informed me that in the event of a new trial, he and members of his team would be willing to testify as to the new information and will be supplying a resulting final report of their examination of the wedding videotape along with documentary evidence in support of such testimony; and, look forward to their expert examinations of the copy of the wedding videotape submitted to the jury, as well as, the original wedding videotape that was initially recorded in professional format by the videographers. This expectation is based upon the Court granting several of the pending motions for ancillary services, a stay and compulsion and production of physical evidence.

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124. In light of the above information, I believe that it is extremely likely that, in the event of a new trial, it will be possible to obtain evidence and testimony of other witnesses corroborating the information given me by Stuart Allen conclusively repudiating the translated evidence Det. Suarez and the testimony of Noram Rosairo and Juan Ricart, thus proving that in light of the new evidence, that these two key witnesses had perjured themselves, and that Det. Suarez had in fact produced false evidence with regard to the translation of the wedding videotape evidence, such false evidence presented to the jury and made apart of their deliberations. Uncovered evidence referred to in this motion would result in

125. The newly discovered evidence referred to in this motion is of such a character that I strongly believe it would result in the acquittal of myself of first-degree knowing and purposeful murder. During the trial of this case, I spent hours actively

126. Prior to the trial of this case, I spent
involved in this case, researching the facts consisting of the State's
discovery, and I obtained the services of three attorneys then
presumed to be of competence in the legal profession for purposes
of investigating the factual aspects of this case. I spent numerous
hours attempting not only to corroborate my assertions of innocence
yet also investigating the possibility that government witnesses
might have some personal bias against me or some other reason to
willfully perjure themselves. Our investigation in that regard
produced no indication whatsoever of any such bias nor expected
willful perjury at trial. It was beyond any suspicion that would
lead me to suspect that the government's witnesses had indeed perju
themselves, many to the extent of actually tampering with physical

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evidence in order to suppress favorable evidence in order to ensure that I would be convicted of the most severe charge contained in the indictment. This belief is based on the Government's actions taken pretrial in attempting to deprive my attorney's of pressing a defense of passion provocation manslaughter. In addition, while the witnesses and prosecutor mentioned above, were mistaken in their assumed belief that an assault upon myself by Davis and Juan might allow me to press a passion provocation manslaughter defense under the law and nevertheless support as credible my trial testimony, or at the very least elicit some passion from the jury in that I had tried to protect my own life from being taken by a raging and vengeful Juan Ricart during the post-shooting struggle -- it is absolutely clear from the new evidence that in deleting the audible portions of the pre-shooting struggle and producing a false translation and transcription, the Government and some of the witnesses mentioned above, surely had this strategy in mind in order to press a conviction for the highest crime in the indictment.

127. I exercised due diligence. In my wildest imagination I would not think possible that one of the Government's witnesses could have produced false physical evidence. And for reason that given modern science with respect to videotapes and audible recordings, it would be all too obvious for the government to risk resting its case on false physical evidence. And yet, this is precisely what had occurred in my case. I would not have reasonably thought to have investigated such perjury or tampering had it not been for the fact brought to my attention as

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a result of a newspaper article read by me shortly after my trial and indicating that the jurors had only counted four seconds after I entered the door and the shooting began. Had it not been for that article and my subsequent investigation of the missing seconds, I would not have discovered that not only was the videotape tampered with, yet the translation and transcript was so far from the truth of the matter that it must have been specifically designed to urge the jury to convict of the most severe charge, cast me as a man who intended to commit that most severe charge and as a person whom may have attempted to discharge his weapon at other attendees of the wedding ceremony; while as suppressing against Juan Ricart's assault, his vengeful rage after the shooting to obtain the weapon and carry out his threats to kill me by shooting me with that weapon. The result of the tampering had cast me as an intending killer and attempted serial killer intent upon committing a massacre and Juan --- as the un-vengeful man whom sought to protect the lives of other attendees and that of myself in what can only be purposefully designed as a premeditated intention to commit murder-suicide.

128. As the above facts and correspondences disclose, once I received the newspaper article, I pressed the Office of the Public Defender to assign counsel and provide an audibility expert for the purpose of examining the wedding videotape. While this request was met with silence, I pressed the issue with OPD assigned appellate counsel. I provided counsel my analysis of the transcripts in order to demonstrate a need for this audibility expert. While this effort was met with silence, I then retained one of the private attorneys

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that represented me at trial and pressed the issue with counsel supporting my request with my analysis of the transcripts. I also formally repeated my request to the OPD which now included my analysis with transcript support. While the request was met with silence, I filed a petition for post-conviction relief and pressed the issue with PCR counsel. Frustrated with my efforts to obtain publicly provided expert services during these times, I remained in constant communication with my family informing them of my efforts for which a family member notified me that after a great effort on their part the necessary funds were raised by them and I could devote those funds to retaining the audibility expert mentioned above.

129. Because I may have other documentary evidence to introduce and rely upon, and knowledge to which only I can testify to, I request an evidentiary hearing be conducted, and that I be permitted to attend the hearing to give testimony in support of my allegations.

130. Should this Court determine that the issue raised is not one of newly discovered evidence and one that should have been raised at trial or collateral proceedings, then in that alternative, the issue should be considered a second-amended petition for post-conviction relief and reviewed as a claim of ineffective assistance of defense counsel, where I request the Court to allow me to subpoena privately retained trial and appellate counsels and those counsels of the Appellate Section of the Public Defender, as well as, those publicly assigned counsels mentioned above, to

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appear at the evidentiary hearing, and to afford an opportunity to have counsels testify as to the allegations raised against them.

131. At the very least, an evidentiary hearing should be conducted and Movant given permission to subpoena Stuart Allen of International Media Services and other unidentified members of his team. Mr. Allen would testify as to suppression of exculpatory evidence with regard to the wedding videotapes. A proposed subpoena for Mr. Allen accompanies this submission.

By reason of the above facts, it is in the interest of justice that I be granted a new trial in the premises, at which the newly discovered evidence may be introduced. If the court requires more information before granting the motion, than what has been set forth herein and in the anticipated filing of the expert's final report, an evidentiary hearing be granted and conducted for the purpose of adducing the newly discovered evidence into the record.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: 23 April 2007

BY:

AGUSTIN GARCIA
Defendant-Movant, Pro se

Hon. William C. Meehan, P.J.S.C.

AGUSTIN GARCIA
Mailstop: SBI No. 822642B
West Compound, Two Right
New Jersey State Prison
Third & Federal Streets, P.O. Box 861
Trenton, N.J. 08625-0861

7 May 2007

Certified Mail, R.R.R.
Article No. 7001-0320-0003-5294-3276

DEPUTY CLERK OF THE COURT
Bergen County Clerk's Office
Justice Center, Room 134
10 Main Street
Hackensack, N.J. 07601-0769

Re: State of N.J. v. Agustin Garcia,
Bergen Co. Ind. No. 00-06-1368-I
Before: Hon. William C. Meehan, P.J.S.C.
Notice of Motions, nunc pro tunc, inter alia,
To Supplement The Moving Papers With a
Notice of Motion For A New Trial.
Other: Oral Argument Requested.
An Evidentiary Hearing Requested.
MOVANT IS CONFINED.

Dear Deputy Clerk of the Court:

Enclosed, for filing in the above-referenced matter, please find an original of Movant Agustin Garcia's notice of motions, nunc pro tunc, inter alia, to supplement the moving papers with a notice of motion for a new trial based on newly discovered evidence; a certification of financial condition and a supporting motions certification by Agustin Garcia; a proposed form of order; and a certification of service.

Please mark the "extra" cover-letter "filed" or "received," and return it to me in the enclosed self-addressed, stamped envelope.

Please note that one copy of the above has been sent directly to the Chambers of the Hon. William C. Meehan, P.J.S.C., who will be considering this matter. Service has been effected upon Respondent's attorney, the party-in-interest and publicly assigned counsel, as stated in the accompanying certification of service.

1013 DA 2007
2007

DA-1013
2007


Hon. William C. Meehan, P.J.S.C.

Deputy Clerk of the Court, Bergen County
Re: State of N.J. v. Agustin Garcia,
Bergen Co. Ind. No. 00-06-1368-I

7 May 2007

Page Two of Two

Very sincerely,


AGUSTIN GARCIA

AG/jjbiv/b

Enclosures

PC: Hon. William C. Meehan, P.J.S.C.
Fred Schwanwede, F.A.P./Bergen County
Denise A. Cobham, D.P.D., O.P.D./P.C.R. Unit
Michael G. Paul, Esquire
via United States mail, first-class, postage prepaid

Da-1014

~~Da-1013~~

3010
~~Da-2003~~

~~Da-12~~

~~Da-135~~

Hon. William C. Meehan, P.J.S.C.

AGUSTIN GARCIA
Mailstop: SBI No. 822642B
West Compound, Two Right
New Jersey State Prison
Third & Federal Streets, P.O. Box 861
Trenton, N.J. 08625-0861

7 May 2007

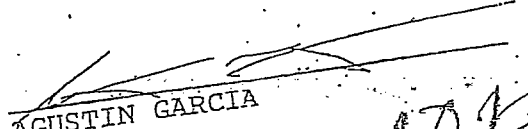
HON. WILLIAM C. MEEHAN, P.J.S.C.
Superior Court of New Jersey
Law Division, Criminal Part
Justice Center
10 Main Street, Chambers 425
Hackensack, N.J. 07601-0769

Re: State of N.J. v. Agustin Garcia,
Bergen Co. Ind. No. 00-06-1368-I
Before: Hon. William C. Meehan, P.J.S.C.
Notice of Motions, nunc pro tunc, inter alia,
To Supplement The Moving Papers With a
Notice of Motion For A New Trial.
Other: Oral Argument Requested.
An Evidentiary Hearing Requested.
MOVANT IS CONFINED.

Dear Judge Meehan:

Enclosed, please find two copies of Movant Agustin Garcia's
notice of motions, nunc pro tunc, inter alia to supplement the
moving papers with a notice of motion for a new trial based on
newly discovered evidence; a certification of financial condition
and a supporting motions certification by Agustin Garcia; a
proposed form of order; and a certification of service.

Very sincerely,


AGUSTIN GARCIA

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~~DA-3011~~

DA-1013

~~DA-1013~~
~~DA-636~~

Hon. William C. Meehan, P.J.S.C.

AG/jjbiv/b
Enclosures

PC: Deputy Clerk of the Court
via United States mail, first-class, Certified Mail,
R.R.R. postage prepaid

Fred L. Schwanwede, F.A.P./Bergen County

Denise A. Cobham, D.P.D., O.P.D./P.C.R. Unit

Michael G. Paul, Esquire

via United States mail, first-class, postage prepaid

Da-1016

~~Da-3012~~

~~Da-11~~

~~20-137~~

Hon. William C. Meehan, P.J.S.C.

AGUSTIN GARCIA
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Post Office Box 861
Trenton, N.J. 08625-0861
Defendant-Movant, Pro se
MOVANT IS CONFINED.

STATE OF NEW JERSEY,
Plaintiff-Respondent,
V.
AGUSTIN GARCIA,
Defendant-Movant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
CRIMINAL PART
IND. NO. 00-06-1368-I

Criminal Action
CERTIFICATION OF SERVICE

AGUSTIN GARCIA, of full age and by way of certification
in lieu of affidavit or verification, says, that on 8th day
OF MAY 2007, I personally hand-delivered to my New
Jersey State Prison, Two Right Wing Officer, for forwarding and
mailing, two copies of the following documents:

1. a certification of financial condition by Agustin Garcia;
2. a notice of motions, nunc pro tunc, inter alia to
supplement the moving papers with a notice of motion
for a new trial based on newly discovered evidence;
3. a certification of Agustin Garcia in support of the
motions;
4. a proposed form of order;

and, this certification of service, for mailing and service upon
the following, to that person's last known address, by way of
the United States mails, first-class, postage prepaid, to:

HON. WILLIAM C. MEEHAN, P.J.S.C.
Superior Court of New Jersey
Law Division, Criminal Part
Justice Center

DA-1017
~~DA-15~~
~~DA-638~~

Hon. William C. Meehan, P.J.S.C.

10 Main Street, Chambers 425
Hackensack, N.J. 07601-0769.

FRED L. SCHWANWEDE, FIRST ASSISTANT PROSECUTOR
Office of the Bergen County Prosecutor
Justice Center
10 Main Street
Hackensack, N.J. 07601-0781

DENISE A. COBHAM, D.P.D.
Office of the Public Defender
Appellate Section - Post Conviction Unit
31 Clinton Street, 9th Floor
Post Office Box 46015
Newark, N.J. 07101

I certify that the foregoing statements made by me are true.
I am aware that if any of the foregoing statements made by me
are willfully false, I am subject to punishment.

DATED: 8th MAY 2007

BY: [Signature]
AGUSTIN GARCIA
Defendant-Movant, Pro se

Da-1018

~~Da-3017~~

~~Da-1018~~
~~Da-1019~~

Hon. William C. Meehan, P.J.S.C.

AGUSTIN GARCIA
Mailstop: SBI No. 822642B
West Compound, Two Right
New Jersey State Prison
Third & Federal Streets
Post Office Box 861
Trenton, N.J. 08625-0861
Defendant-Movant, Pro se
MOVANT IS CONFINED.

STATE OF NEW JERSEY,
Plaintiff-Respondent,

V.

AGUSTIN GARCIA,
Defendant-Movant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
CRIMINAL PART
IND. NO. 00-06-1368-I

Criminal Action

NOTICE OF MOTIONS, NUNC PRO
TUNC, INTER ALIA TO SUPPLEMENT
THE MOVING PAPERS WITH A NOTICE
OF MOTION FOR A NEW TRIAL.

TO: THE CLERK OF THE COURT

FRED L. SCHWANWEDE, FIRST ASSISTANT PROSECUTOR
Office of the Bergen County Prosecutor
Justice Center
10 Main Street
Hackensack, N.J. 07601-0781
Counsel for Plaintiff State of New Jersey.

DENISE A. COBHAM, D.P.D.
Office of the Public Defender
Appellate Section - Post Conviction Unit
31 Clinton Street, 9th Floor
Post Office Box 46015
Newark, N.J. 07101
A Party-In-Interest.

COUNSELS:

PLEASE TAKE NOTICE, that as soon as this matter may be heard,
the undersigned, Agustin Garcia, Defendant-Movant, Pro se
("Movant"), shall move before the Hon. William C. Meehan, P.J.S.C.,
in the Superior Court of New Jersey, Law Division, Criminal Part,

~~DA-1019~~ DA-1019

Hon. William C. Meehan, P.J.S.C.

Bergen County Courthouse, Justice Center, 10 Main Street, City
of Hackensack, County of Bergen, New Jersey 07601-0769, Court's
Phone number: 201.527.2485, for entry of an Order as to the

above-captioned granting supplementation of a notice of motion
for a new trial based on newly discovered evidence as follows:

1. For an Order granting waiver of fees and leave to proceed
as an indigent, pursuant to N.J.Ct.R. 1:13-2(a);
2. An Order permitting the filing of these supplemental motions
nunc pro nunc;
3. An Order assigning counsel;
4. This new trial motion is made on the ground that, subsequent
to the conclusion of the trial, Movant discovered new
evidence, which evidence is not merely cumulative or
impeaching, yet is relevant and material to the issues
involved in this case and is of such a character that it
would probably result in a different verdict at a new trial
and which evidence the Movant could not in the exercise of
due diligence have discovered before the trial. This motion
is brought in conformity with N.J.Ct.R. 3:20, et seq.

This motion is based on all the files and records of
this action, on the certification of Agustin Garcia in support
of a new trial, submitted herewith setting forth the nature
of the newly discovered evidence and the manner of its
discovery, and on any evidence that may be produced at the
requested evidentiary hearing.

This motion also joins the post-conviction relief motions
to compel the Public Defender to compensate the ancillary
services of an audibility expert; and the motion to compel
the State to provide or make available to the defense, the
original wedding videotape in their possession and to Movant's
audibility expert for the expert's examination; and the motion
for a stay of the proceedings until the Public Defender has
compensated the audibility expert and the State has provided
or made available the subject videotape and the expert has
performed to completion his examination of that evidence;

5. An Order scheduling an evidentiary hearing on motion for
a new trial and for Movant's appearance at the hearing;

6. An Order staying the proceedings until the Office of the
Public Defender complies with the anticipated Court Order
to compel payment of ancillary services; and further staying

-11

2

DA-1020

J. Da 641
MAR 18

Hon. William C. Meehan, P.J.S.C.

the proceedings until the Prosecutor's Office turns over or allows access to the subject wedding videotape for examination by an audibility expert for the defense, in compliance with the anticipated Court Order to compel production of this evidence;

7. An Order permitting witness(es) to be subpoenaed, pursuant to N.J.Ct.R. 1:9-1.

PLEASE TAKE FURTHER NOTICE, that Movant requests further relief as the Court deems just, proper and necessary in the premises.

PLEASE TAKE FURTHER NOTICE, that in support of all of the above requested relief, Movant shall also rely upon the grounds set forth and contained in the motion brief for a new trial; the previously filed initial petition for post-conviction relief; the first-amended petition-brief for post-conviction relief; the separately bound appendices; the transcribed record of the proceedings; the certification of financial condition by Agustin Garcia; the certification of Agustin Garcia in support of the motion for a new trial with separately bound appendix; the Application for Ancillary Services; and any submissions filed by appointed defense counsel appearing on the petition for post-conviction relief and upon Movant's behalf.

PLEASE TAKE FURTHER NOTICE, that upon disposal of the above motions, Movant shall move this Court for a new trial, seeking to set aside and vacate his conviction(s) and sentence(s) and the judgment entered and that a new trial be granted and a date be set for the new trial to commence.

PLEASE TAKE FURTHER NOTICE, that a proposed form of order accompanies the motions.

Da-1021

Hon. William C. Meehan, P.J.S.C.

DATED: 7 May 2007

BY: 

AGUSTIN GARCIA

Defendant-Movant, Pro se

PURSUANT TO N.J.Ct.R. 1:6-2(a):

(X) I do request oral argument.

() I do not request oral argument at this time, unless
and until the motion is opposed.

() Other: _____

DA-1022

~~DA-3018~~

~~DA-20~~

~~DA-643~~

Hon. William C. Meahan, P.J.S.C.

AGUSTIN GARCIA
Mailstop: SBI No. 822642B
West Compound, Two Right
New Jersey State Prison
Third & Federal Streets
Post Office Box 861
Trenton, N.J. 08625-0861
Defendant-Movant, Pro se
MOVANT IS CONFINED.

STATE OF NEW JERSEY,
Plaintiff-Respondent,

V.

AGUSTIN GARCIA,
Defendant-Movant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
CRIMINAL PART
IND. NO. 00-06-1368-1

Criminal Action

CERTIFICATION OF FINANCIAL
CONDITION OF AGUSTIN GARCIA

AGUSTIN GARCIA, Movant, of full age, in lieu of oath,
affidavit or verification, says:

1. I am the defendant in the above captioned matter and fully familiar with the facts contained therein.
2. I am presently committed to the care and custody of the Commissioner of the New Jersey Department of Corrections at New Jersey State Prison, Trenton, Mercer County, New Jersey.
3. Following my arrest, I had been determined indigent in the Superior Court of New Jersey, Law Division, Criminal Part, Bergen County, New Jersey.
4. In lieu of having been determined indigent, my family had provided the funds to retain private counsel, and for who I had been represented throughout the proceedings in the Law Division, Appellate Division and Supreme Court.

~~DA 3019~~ DA-1023

~~DA 21~~
~~DA 644~~

Hon. William C. Meehan, P.J.S.C.

5. To date I have been informed that my family is unable at this time to meet any further legal expenses necessitating this instant application in part, for leave to proceed as a indigent, for waiver of fees and costs, to be renewed; and for the private retainment of counsel.

6. I hereby certify that since the original determination of my indigency, my financial circumstances have not changed, nor do I see a change in these circumstances in the near future.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: 7 May 2007

BY: 

AGUSTIN GARCIA

Defendant-Movant, Pro se

Da-1024

~~Da-3020~~

~~Da-32~~

~~Da-645~~

Hon. William C. Meehan, P.J.S.C.

AGUSTIN GARCIA
Mailstop: SBI No. 822642B
West Compound, Two Right
New Jersey State Prison
Third & Federal Streets
Post Office Box 861
Trenton, N.J. 08625-0861
Defendant-Movant, Pro se
MOVANT IS CONFINED.

STATE OF NEW JERSEY,
Plaintiff-Respondent,
V.
AGUSTIN GARCIA,
Defendant-Movant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
CRIMINAL PART
IND. NO. 00-06-1368-I
Criminal Action

ORDER

THIS MATTER, having opened before this Court by Agustín Garcia, Defendant-Movant ("Movant"), Pro se, and on notice to Fred Schwanwede, Assistant Prosecutor, Bergen County and, counsel for Plaintiff State of New Jersey; Denise A. Cobham, Deputy Public Defender, of the New Jersey Office of the Public Defender, an apparent Party-In-Interest and from whom Movant also seeks payment for ancillary services; the Movant seeking an entry of an Order granting the following relief:

1. An Order allowing Movant to proceed as an indigent;
2. An Order permitting Movant to supplement the moving papers with a motion for a new trial;
3. An Order assigning counsel for Movant;
4. An Order scheduling an evidentiary hearing on motion for a new trial and for Movant's appearance at the hearing;
5. An Order staying the proceedings until the Office of the Public Defender complies with the anticipated Court Order

DA-1025
DA 3024

2A 1025
DA 3024

DA-1025

Hon. William C. Meehan, P.J.S.C.

to compel payment of ancillary services; and further staying the proceedings until the Prosecutor's Office turns over or allows access to the subject wedding videotape for examination by an audibility expert for the defense, in compliance with the anticipated Court Order to compel production of this evidence; and

6. An Order permitting witness(es) to be subpoenaed, pursuant to N.J.Ct.R. 1:9-1.

Such motions having been made by Movant, pro se;

AND, the Court having read and considered the motions and the papers submitted in support thereof, and those in opposition, the positions of counsel for the parties appearing, and considered the evidence introduced at the hearing and the arguments of counsel, and for good cause having been shewn:

IT IS, on this _____ day of _____, 2007,

-hereby;

[ORDERED, that the motion to supplement the moving papers with a motion for a new trial is hereby Granted]; and it is further

[ORDERED, that Movant shall be permitted to proceed as an indigent]; and it is further

[ORDERED, that the Office of the Public Defender shall appoint counsel to represent Movant in these proceedings]; and it is further

[ORDERED, that an evidentiary hearing in this matter is to be conducted on the _____ day of _____, 2007 at _____ o'clock at the Bergen County Courthouse]; and it is further

[ORDERED, that the Administrator of the New Jersey State Prison in Trenton, Mercer County New Jersey, shall produce the

Movant for the aforementioned hearing]; and it is further

[ORDERED, that an evidentiary hearing on motion to compel

DA-1026

2007 647

Hon. William C. Meehan, P.J.S.C.

the Bergen County Prosecutor's Office to produce for examination by Movant's Audibility Expert -- the original videotape of the wedding ceremony that was taken by the Videographer hired by Ms. Gladys Ricart to document the wedding, in this matter is hereby granted and is to be conducted on the ____ day of _____, 2007 at ____ o'clock at the Bergen County Courthouse]; and it is further

[ORDERED, that Movant shall be permitted to subpoena witnesses for the evidentiary hearing such subpoenas to be prepared and executed by Movant or his attorney, and upon those witnesses. Counsel for Movant shall ensure that the subpoena(es) are properly served upon those witness(es)], and it is further

[ORDERED, that the motion-compelling the Office of the Public Defender compensate the services of Movant's audibility expert is hereby granted. The Movant's audibility expert shall submit to the Public Defender his reasonable fee for services rendered and the Public Defender shall make prompt payment of those services]; and it is further

[ORDERED, that the motion for a stay of the proceedings in this matter is hereby granted and shall be stayed until the Office of the Public Defender complies with the Court's Order to compel payment of ancillary services and until the Office of the Bergen County Prosecutor produces the original wedding videotape for inspection by Movant's Audibility Expert is hereby granted]; and it is further

[ORDERED, that respondent and the real party-in-interest,

~~MA 3023~~ 33

DA-1027

2006 6/10
JAC 23

Hon. William C. Meehan, P.J.S.C.

shall serve and file any responsive papers, or briefs, no later than the ____ day of _____, 2007, and Movant shall serve and file any reply papers no later than the ____ day of _____]; and it is further

[Appearing to me from all of the above that by reason of newly discovered evidence that the Movant or his trial counsel could not in the exercise of due diligence have discovered prior to trial of this action it is in the interest of justice that a new trial be granted; therefore it is further

ORDERED, that the motion for a new trial of Movant Agustin Garcia is in all respects granted on the ground of newly discovered evidence; and it is further

ORDERED, that the verdicts upon the convictions heretofore returned by the petit jurors in this matter, and the judgment entered are set aside and vacated; and it is further

ORDERED, that a new trial is granted and that said trial be set for ____ day of _____, 2007]; and it is further

ORDERED, that copies of this Order shall be served upon all attorneys of record, and the parties representing themselves Pro se, within _____ (____) days after the date hereof; and it is further

SO ORDERED on this ____ day of _____, 2007.

HON. WILLIAM C. MEEHAN, P.J.S.C.
SUPERIOR COURT OF NEW JERSEY

~~Da-3024~~

Da-1028

~~Da-26~~
~~Da-649~~

Hon. William C. Meehan, P.J.S.C.

In accordance with the required statement of N.J.Ct.R.
1:6-2(a), this motion(s) was _____ opposed / _____ unopposed.¹

Da-1029

¹ This Order can be converted by drawing a line through the [Brackets].

~~Da-1029~~

~~Da-1029~~

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APPENDUM TO ORDER
MOTION TO SUPPLEMENT THE MOVING PAPERS
WITH A NOTICE OF MOTION FOR A NEW TRIAL

State of N.J. v. Agustin Garcia
Bergen County Ind. No. 00-06-1368-I.

DENIED FOR REASONS THAT:

PAPERS RECEIVED FROM MOVANT:

- ☐ Notice of motions
- ☐ Affidavit/certification/verification in support of motions
- ☐ Opening letter/brief
- ☐ Separately bound appendix(es)
- ☐ Proposed form of order
- ☐ Certification of service
- ☐ Proof of service
- ☐ Other:

PAPERS RECEIVED FROM RESPONDENT:

- ☐ Notice of cross-motion
- ☐ Letter/brief in support of cross-motion
- ☐ Affidavit/certification/verification in support of cross-motion
- ☐ Letter/brief in opposition to motion
- ☐ Affidavit/certification/verification in opposition to motion
- ☐ Proposed form of order
- ☐ Certification of service
- ☐ Proof of service
- ☐ Other:

RESPONSIVE PAPERS RECEIVED:

- ☐ Letter/brief in opposition to cross-motion
- ☐ Affidavit/certification/verification in opposition to cross-motion
- ☐ Letter/brief in reply
- ☐ Affidavit/certification/verification in reply
- ☐ Certification of service
- ☐ Proof of service
- ☐ Other:

OTHER:

- ☐
- ☐
- ☐
- ☐
- ☐

100-2026 DA-1030

2/10/01

100

AGUSTIN GARCIA
Mailstop: SBI No: 822642B
West Compound, Two Right
New Jersey State Prison
Third & Federal Streets
Trenton, N.J. 08625-0861
Defendant-Movant, Pro se

STATE OF NEW JERSEY,
Plaintiff-Respondent,
V.
AGUSTIN GARCIA,
Defendant-Movant.

THE STATE OF NEW JERSEY, TO:

Hon. William C. Meehan, P.J.S.C.
MICHAEL G. PAUL, ESQUIRE
Attorney At Law
15 South Main Street
Suite 3
Edison, N.J. 08837
Tel. 732.549.6543

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
CRIMINAL PART
IND. NO. 00-06-1368-I
Criminal Action

SUBPOENA AD TESTIFICANDUM

STUART ALLEN, President
International Media Services, Inc.
718 Sherman Avenue
Plainfield, N.J. 07060-2232

YOU ARE HEREBY COMMANDED to attend and give testimony before
the Honorable William C. Meehan, P.J.S.C., at the Justice Center,
10 Main Street, Hackensack, New Jersey 07601, on _____ day of
_____, 2007, at 9:00 a.m., on the part of Defendant
Agustin Garcia in the above entitled action, and that you have
and bring with you and produce at the same time and place the
following:

Please note that this is an on-call continuing subpoena and
that you should call the above named attorney for the
defendant the day before the date listed above at Tel.
732.549.6543 to conform your appearance and identifying the
additional document's you intend to introduce at the hearing.

Failure to appear according to the command of this Subpoena
will subject you to a penalty, damages and punishment of contempt
of Court.

DATED: _____, 2007.

BY: AGUSTIN GARCIA
Defendant-Movant, Pro se.

BY: MICHAEL G. PAUL, ESQUIRE
Attorney for Petitioner

BY: _____
Clerk

DA-1031

~~2006-652~~

Hon. William C. Meehan, P.J.S.C.

PROOF OF SERVICE

On the on _____ day of _____, 2007, I the undersigned, being over the age of 18, served the within Subpoena (please check):

_____ by delivering a copy thereof to the person named therein, at: _____

_____ by mailing a copy thereof via U.S. Mail, First-Class, Certified Receipt Article No: _____

_____ to the person named therein, at: _____

And, by tendering to such person the attendance fee of \$ _____ and mileage of \$ _____, as allowed by law.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

(Print name) (Sign Name)

DATED: _____ day of _____, 2007

Address for Return Service:

MICHAEL G. PAUL, ESQUIRE
Attorney At Law
15 South Main Street
Suite 3
Edison, N.J. 08837

~~Da-3078~~ Da-1032 ~~Da-653~~

December 28, 2021

AUGUSTIN GARCIA

00-06-01368-1

(DKT NO. 99-2293)

Dear Augustin,

Here are all the court dates you requested for your case.:

September 26, 1999 – ARREST DATE

August 9, 2000 – arraignment date (postponement/adjourned) – Judge Meehan

Sept. 14, 2000 – arraignment date (postponement/adjourned) – Judge Meehan

December 14, 2000 – arraignment – Judge Meehan

February 14, 2001 – status conference (adjourned) – Judge Meehan

March 1, 2001 – status conference (adjourned) – Judge Meehan

March 22, 2001 – status conference (adjourned) – Judge Meehan

April 19, 2001 – status conference (adjourned) – Judge Meehan

May 31, 2001 – status conference (adjourned) – Judge Meehan

July 9, 2001 – status conference (adjourned) – Judge Meehan

July 31, 2001 – status conference (adjourned) – Judge Meehan

October 22, 2001 – trial – Judge Meehan

February 1, 2002 – sentencing – Judge Meehan

~~DA 1031~~

~~Attachment B-1~~
DA-1057

~~DA 1033~~

~~DA 1033~~

May 11, 2004 – Appellate decision – Judge Meehan May 11, 2004- sentencing decision -Judge Meehan

May 11, 2004- sentencing decision -Judge Meehan

November 6, 2009 – Appellate -appeal decision

August 12, 2011 – Appellate decision

May 16, 2013 – Appellate decision

August 25, 2016 – Motion – Judge Guida

March 3, 2017 – Post conviction relief – Judge Guida

January 26, 2018 – Appellate decision

January 25, 2019 – Motion – Judge Guida

April 24, 2019 – Appellate decision – Judge Meehan

September 20, 2019 – Motion – Judge Guida

October 13, 2021 – Appellate decision

December 21, 2021 – Post conviction relief – Judge Wilcox

Da-1058

~~Da-1034~~

~~Da-1035~~

~~ATTACHMENT B-2~~

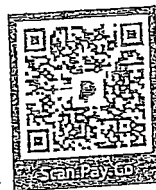


Team Audio Inc.

David Mariasy

151 N Michigan St, Suite 333, Toledo, OH 43604, UNITED STATES

dave@audiorestoration.com



PAID

\$0.00

AMOUNT DUE

Invoice No#: 0095

Invoice Date: Mar 31, 2020

Due Date: Mar 31, 2020

BILL TO

NATISA.GARCIA@YAHOO.COM

ITEMS & DESCRIPTION

1 Retainer Fee

PRICE

AMOUNT(\$)

\$1,000.00

\$1,000.00

Subtotal

\$1,000.00

TOTAL

\$1,000.00 USD

Amount paid

\$1,000.00

AMOUNT DUE

\$0.00 USD

NOTES TO CUSTOMER

This retainer will be applied to the total amount of the project.

Thank you!

Da-1097

10/21/20

Wedding Video Garcia 1

00:00 Color bars

00:23 1st scene outside house with various scenes no persons present

00:42 screen goes black

00:44 outside shots resume

00:47 screen goes black.

00:48 more outside scenes, background voices [IA] some in English which are easy to transcribe

01:17 cut to scene inside house; mostly in Spanish, various cuts of Bride's Maids and Groomsmen

03:27 cut to outside scene of fancy white car arriving has dialog in English easy for me to transcribe

04:43 cut to scene inside house dialog in Spanish and English, again English parts are clear to me, multiple scenes, dialog in English which I can't find much of in the other transcript provided, sequence with Mother included

09:47 scene with Groomsman being pinned with label flower has video cuts

11:00 interesting shot of other cameraman appears here, who is he? Where is this video today?

12:07 cut to scene outside house with I guess flower girls all dressed up, etc. Scene continues with bride coming out of the house, mixed dialog in Spanish and English as before

12:46 cut to scene inside house, various bridesmaids receiving floweres from bride

13:58 1st shot of five shots fired, a general scene of chaos with fixed frame, dialog of Augustin professing his love and wanting to be killed

15:39 cut to scenes outside house, general chaos, much dialog in Spanish

16:43 uniformed police first arrive on scene outside house

17:20 policeman shoves unknown Hispanic male of entrance to house, outside house panic and some guests escorted into neighbor's house

19:52 at this point we go into a repeat of previous video, some in slow motion w/o audio

21:05 Augustin appears in single frames, looks like gun in right hand

21:29 video is stopped and rewound or fast forwarded

25:23 viedo ends

Da - 11/09