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ATTORNEY KELLEY: No objection to either.

THE COURT: You can be excused or remain in the courtroom. Let's take a 15 minute recess.

(Whereupon, the jury left the courtroom.)

(Whereupon a recess was taken.)

(Whereupon the jury returned to the courtroom.)

THE COURT: Next witness, Attorney Kelley?

ATTORNEY KELLEY: Thank you, Your Honor. Your Honor, the Commonwealth calls Lisa Daniels to the stand.

* * *

OFFICER LISA DANIELS

called as a witness, being duly sworn, testified as follows:

* * *

DIRECT EXAMINATION

BY ATTORNEY KELLEY:

Q Ms. Daniels, could you state your full name for the record?

A Lisa Daniels.

Q And what is your present occupation, ma'am?

A Police officer for the city of York.

Q And how long have you been a police officer for the city of York?

A Since 1988.

1 Q Which is approximately 15 years?

2 A Yes.

3 Q And were you indeed in that capacity on April
4 19, 1998?

5 A I was.

6 Q And what's your shift on April 19, 1998?

7 A Day work, 7 in the morning until 3 in the
8 afternoon.

9 Q I believe during the course of your shift you
10 were called to a possible person sleeping in a kitchen on
11 Philadelphia Street?

12 A Yes.

13 Q What time did you receive that phone call?

14 A County Control dispatched myself and Officer
15 Good to 233 East Philadelphia Street at 12:25.

16 Q What is Officer Good's first name?

17 A Allen.

18 Q And what time did you arrive at that address?

19 A I arrived at 12:28.

20 Q And specifically where was the address that you
21 arrived at?

22 A 233 East Philadelphia Street.

23 Q And can you tell the jurors and the Court what
24 exactly you did upon arrival at that address at that
25 time?

1 A I was advised that the complainant and this --
2 in that call were the second floor front tenants Mr. and
3 Mrs. Rice. Mr. Rice met me at the front door. This was
4 an apartment building. He came down, let me in and as we
5 walked up the steps told me he was the one in fact who
6 called 911.

7 Q And what did he relate to you, if anything, at
8 that point concerning what precipitated the call?

9 A We walked through his apartment. He told me
10 there was a man that he did not know who appeared to be
11 sleeping inside the second floor rear apartment.

12 Q Did you follow him out to an area were you could
13 access that apartment?

14 A Yes, he advised me that I had his permission to
15 walk through his apartment which would take me to the
16 exterior of the building and they had a shared balcony
17 from the first floor front to the second floor rear
18 apartment. I walked out his apartment door towards the
19 rear apartment on the second floor.

20 Q What, if anything, did you notice unusual
21 outside the apartment door next to the Rices'?

22 A There was broken glass on the floor of the
23 balcony.

24 Q And what do you do upon seeing this broken
25 glass?

1 A As I approached the door I looked and saw the
2 glass. I looked back and Mr. Rice said that's the door.
3 As I walked close to the door I could see that the
4 exterior window of the door was broken out and I pushed
5 and inside the door there's an ivy miniblind inside the
6 door. I pushed that aside and I saw there who I knew as
7 Nelson Lugo on the floor.

8 Q And what, if anything, did you do after seeing
9 Mr. Lugo on the floor?

10 A I saw that there was a red what believed to be
11 blood on the glass. There's like shards pieces of glass
12 still in the frame itself, noticed that it looked like
13 bloody there and droplets of blood on the blind itself.
14 I reached inside the door, pushed the blinds aside, saw
15 him and then unlocked the dead bolt from the inside and
16 entered the apartment.

17 Q And what did you witness upon entering the
18 apartment?

19 A The male subject was on the floor of like a
20 kitchen area. He was on his back. He had blood all over
21 his chest and his hands -- on his hands and as I got
22 closer to him I could tell that he wasn't responsive and
23 later determined he was deceased and he had something
24 stuck in his mouth. I don't know what that was.

25 Q And did you take a pulse or anything along those

1 lines?

2 A Yes.

3 Q Were you able to determine whether or not he was
4 in fact deceased?

5 A He was deceased. He had no pulse.

6 Q And what, if anything, did you do then?

7 A When I was bent down looking at him I looked to
8 my right and to my immediate right there's a bedroom and
9 as I looked I saw a pair of legs, they were naked and
10 that drew my attention. So I got up and walked towards
11 those legs, looked inside that room and saw a female
12 between the door and the bed laying on her back and she
13 was naked from the waist down.

14 Q Did you notice anything else unusual about her?

15 A As I got closer I had to actually go into the
16 room. She had a pair of panties which they were women's
17 panties partially covering her face and as I got -- bent
18 down to look at her, she had obvious severe trauma to her
19 head and there was a large amount of blood right around
20 her throat area, was all pulled right there.

21 Q What, if anything, did you do next?

22 A Went back out as into the main kitchen area. At
23 that time Officer Good was there. Also we decided to
24 check the rest of the apartment to make sure there was no
25 other victims or no other persons inside of the.

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apartment.

Q Did you do that?

A Yes.

Q Did you find anyone there?

A No, they were the only two people.

Q Having found the two decedents, what did you do next in order to put forward an investigation into how they were killed?

A I requested a supervisor to respond and requested the on-call detectives to respond.

Q Did the supervisor respond?

A Yes, Sergeant Hill.

Q Sergeant Hill?

A Yes.

Q And how about the on-call detective did they respond?

A Yes.

Q Who was that detective?

A Detective Williams, Detective Ward and Detective Hose.

Q Did you -- do you see two of those detectives in court today?

A Detectives Hose and Detective Williams are sitting behind counsel.

Q What, if anything, did you do next after you

1 called them in and they responded?

2 A Myself and Officer Good walked back outside the
3 apartment door and secured the scene.

4 Q And did you secure that with crime scene tape?

5 A Initially just by our presence and Officer Good
6 went to his vehicle and got the crime scene tape.

7 Q After the scene was secured, you had a
8 supervisor on standby there and also the on-call
9 detectives had arrived, what, if anything, did you do
10 next?

11 A I spoke again with the Rices.

12 Q And did you take a police report as to what they
13 related to you that they had heard the previous night?

14 A Yes.

15 Q And did you speak to anyone else in addition to
16 the Rices, Mr. and Mrs. Rice?

17 A Yes, the first floor tenants.

18 Q Who were the first floor tenants?

19 A Ms. Morell.

20 Q Mr. Morell?

21 A Yes.

22 Q Fidelio Morell?

23 A Yes.

24 Q Did he relate to you anything that he had
25 witnessed the night before, not actually going into what

1 he testified, the information he did relate to you?

2 A Yes.

3 Q After speaking with Mr. Morell, did he lead you
4 to any potential other witnesses?

5 A Yes.

6 Q And can you tell the jury who that witness was?

7 A Mr. Rogue.

8 Q Is that Heriberto Rogue?

9 A Yes.

10 Q Did you interview him?

11 A Yes.

12 Q Did he relate to you that he had been actually
13 at Swizzels the night before with the two victims?

14 A Yes.

15 Q All the information that you gathered from these
16 various sources, did you incorporate in a police report?

17 A I did.

18 Q Did you incorporate them that day?

19 A Yes.

20 Q And that police report was made available and
21 given to the detective in charge of this case, Detective
22 Williams, is that correct?

23 A That's correct.

24 Q During the course of your investigation, did you
25 also have occasion to speak to Angel Santos and Patricia

1 Ascencio?

2 A I recall speaking to Mr. Santos.

3 Q If you could, please, could you relate to the
4 jury what Mr. Santos told you when you interviewed him?

5 A That was sometime after that at police
6 headquarters.

7 Q Do you recall what the date was?

8 A The same day I believe.

9 Q The same day?

10 A Right, it wasn't at the scene. It was -- it was
11 at the police station.

12 Q Can you tell the jury what Mr. Santos related to
13 you, do you have your notes with you in front of you?

14 A Yes, he came to the police headquarters
15 inquiring about the death of Miriam. He had heard word
16 on the street that she had been killed. He also advised
17 me that his girlfriend Patricia Ascencio was Mariam's
18 niece.

19 Both he and Patricia were at Noel and
20 Kathy's house on South George Street last night he told
21 me at approximately 12:30 at night and while he was
22 there, sometime after they arrived, Milton Montalvo
23 showed up and that he was visibly upset and agitated. He
24 said that is Milton asked Noel for \$20.00 and Noel
25 refused to give it to him.

1 Then Milton asked Angel for \$20.00 and
2 Angel told him no. Santos voiced that Milton was
3 sweating profusely and seemed hyped up. He said that
4 Milton and Kathy and Noel were talking about the van that
5 Milton had said it to Kathy and she, no, sold it to Kathy
6 and she no longer wanted it because Milton had some white
7 girl in it and they were selling or using drugs.

8 Q Did he indicate where or how long before he had
9 left that Milton had left Patricia and Noel's apartment?

10 A He specifically said Milton left the apartment
11 about 25 to 20 minutes before he and Patricia did.

12 Q And did he indicate what his recollection as to
13 the time that she had left Noel's apartment was?

14 A He recalled they left at 2:00 in the morning.

15 ATTORNEY CUTRUZZULA: That's all I have of
16 this witness at this time, Your Honor.

17 * * *

18 CROSS EXAMINATION

19 BY ATTORNEY CUTRUZZULA:

20 Q Good afternoon, officer.

21 A Afternoon.

22 Q When did you start working for the York Police
23 Department?

24 A May 18, 1988.

25 Q So this was the first homicide that you took

1 part in an investigation of?

2 A No.

3 Q How many other homicides had you been part of?

4 A Three.

5 Q And as part of this, well, you were the initial
6 officer, patrol officer that was called or responded to
7 the call about somebody sleeping in the apartment,
8 correct?

9 A Correct.

10 Q And when you got there did you go on the front
11 door of 233 East Philadelphia Street or go around the
12 side?

13 A Front door of Philadelphia Street.

14 Q And that's where you met with the Rices?

15 A Correct.

16 Q Was anybody else out in front of the apartment?

17 A Not when I arrived.

18 Q And in fact, once you met with the Rices you
19 ascertained that they had called for police assistance?

20 A Yes.

21 Q And they directed you upstairs to the second
22 floor, correct?

23 A Yes, went to their apartment.

24 Q Then you walked through their apartment and came
25 out their side door onto the balcony?

1 A Correct.

2 Q Walked up approximately 16 to 20 feet to the
3 next door?

4 A Correct.

5 Q Was that a screen door or storm door on the
6 front of the entrance to Mrs. Ascencio's apartment?

7 A I just recall the exterior like a steel door.

8 Q And was that a window in the center of that
9 door?

10 A Yes.

11 Q Was it broken into four different panes, Ms.
12 Daniels or Officer Daniels was or was it just a piece of
13 wood that separated it?

14 A I believe it was panes.

15 Q And could you tell the ladies and gentlemen of
16 the jury what pane was broken?

17 A From my report I recall it being the left and of
18 course that depended how you're looking at the door and I
19 recall it being closer to the doorknob above the lock.

20 Q So the pane that was broken was actually closer
21 to the doorknob and the deadbolt because you let yourself
22 in that way, right?

23 A Correct.

24 Q And you told the ladies and gentlemen of the
25 jury that you actually had to unlock the dead bolt?

1 A Correct.

2 Q So the door was locked when you got there?

3 A Correct.

4 Q So the last person exiting that apartment had to

5 lock the door?

6 A Correct.

7 Q Now, once you saw the -- how much glass was on

8 the balcony, officer?

9 A In an area of maybe 12 by 12 square foot.

10 Q Was there any blood on the glass, on the floor?

11 A I don't recall seeing any.

12 Q Did you before you put your hands through the

13 hole in that pane did you see the blood on the shards of

14 glass that stayed in the frame?

15 A Correct.

16 Q You're able to see the blood that was on the

17 blinds?

18 A Yes.

19 Q At that point in time, did your suspicion arise

20 that now you see blood and a broken window and did you

21 start to think this might be a crime scene?

22 A Yes.

23 Q Did you put any gloves, latex gloves on?

24 A No.

25 Q You pushed the blinds away and put your hands

1 through the hole and unlocked the door?

2 A Yes, it was more than a hole, it was --

3 Q The whole pane?

4 A It was pretty much. I could freely put my hands

5 in.

6 Q So the majority of the pane was broken?

7 A Correct.

8 Q Could you tell us where the blood was on the

9 pane, was it on the top of the -- were there jagged edges

10 on top of the square or on the bottom.

11 A I recall it on the bottom.

12 Q Would the blood on the blinds be in the same

13 position on the bottom of that square or on the top of

14 that?

15 A It was visible, I can't be sure.

16 Q What about on the dead bolt, was there any blood

17 on there?

18 A I didn't look. I just reached in and unlocked

19 it.

20 Q And you let yourself in?

21 A Correct.

22 Q Did the Rices come into the apartment?

23 A No.

24 Q You kept them outside?

25 A Yes.

1 Q The first person you see is the male victim and
2 he's laying in the kitchen?

3 A It's an open area but it's the kitchen area.

4 Q Was there a table in the kitchen?

5 A Yes.

6 Q Where was his torso in relation to the table,
7 under the table?

8 A No.

9 Q Was he in the middle of the floor?

10 A Towards the back of the back wall.

11 Q And you indicated that you went to check on him
12 and saw a great amount of blood?

13 A Yes.

14 Q Was there blood pooling on the floor?

15 A No.

16 Q Was there -- what color was the blood that you
17 saw when you went to the first victim, the male victim?

18 A It was pretty much saturated in his clothing.
19 It was just dark.

20 Q What about the blood on the floor?

21 A I recall there being blood near a grocery bag.

22 Q Did it start to turn darker and dry and drying
23 up?

24 A I don't recall specifically.

25 Q Had you ever processed a crime scene before?

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A For blood?

Q Yeah.

A No.

Q What kind of things did you process a crime scene for?

A Usually go and secure the scene and wait for the detectives.

Q That's part of their jobs. They ask you not to disturb anything and then they come in and do all their evidence gathering, correct?

A That's right.

Q And that's exactly what happened in this case?

A That's right.

Q Once you realized that the gentleman was dead, were you able to determine from your examination how he died?

A No, he had an injury to his chest, that's where the blood was.

Q All of the blood was soaked into the shirt he was wearing?

A The majority of it, yes.

Q Had any of it pooled out of his body and down his body that covered the back of him?

A I didn't move him so I wouldn't know what was behind him.

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A No.

Q Did you -- did she know or give any idea as to who may have burglarized her apartment?

ATTORNEY KELLEY: I'm going to object on the grounds of relevance, Your Honor.

THE COURT: Come to sidebar to see how that is relevant.

(Whereupon a sidebar was held on the record during which the following occurred:)

ATTORNEY CUTRUZZULA: Judge, it goes to Milton Montalvo and the fact that he had been stealing stuff and selling them from the apartment and the relationship that they had that she kicked him out. I don't know if he broke into the apartment or from the forensic evidence that we have there's a third unidentified individual if they're charging my client with burglary and murder.

If there's a possibility an unidentified person could have been there or done it I think I have the opportunity to get into that. I believe Milton probably broke in and took some stuff because he was stealing from her for a long time and using that stuff to supply drugs.

THE COURT: Is -- how is her idea of how did it relate in contrast to who did it and what the

1 investigation showed?

2 ATTORNEY CUTRUZZULA: I'm trying to say if
3 she is going say it's Milton.

4 THE COURT: How is it relevant?

5 ATTORNEY CUTRUZZULA: The victim.

6 THE COURT: How is her victim the -- the
7 victim's belief feeling as to who did this relevant?

8 ATTORNEY CUTRUZZULA: Because it may have
9 indicated that Milton coincides with both of the State's
10 theory of the cases that they threw Milton out. Milton
11 wasn't privileged or licensed to be there. Milton broke
12 back in. I'm trying to establish that Milton is the
13 perpetrator of this crime.

14 THE COURT: Don't ask for her belief.
15 Objection's sustained.

16 (Whereupon the discussion at sidebar was concluded.)

17 THE COURT: I've sustained the objection of
18 the Commonwealth.

19 BY ATTORNEY CUTRUZZULA:

20 Q Officer Daniels, you then went over to the
21 female victim Ms. Ascencio, correct?

22 A Yes.

23 Q You were able to -- able to ascertain she was
24 dead also?

25 A Yes.

1 Q You indicated that there was something in her
2 mouth, correct?

3 A Yes.

4 Q Did you touch that or look at that in anyway?

5 A You said something was in her mouth, no, his
6 mouth.

7 Q I'm sorry, that's right something in the male's
8 mouth, correct?

9 A Correct.

10 Q Did you touch that in any way?

11 A No.

12 Q Did you make any observations as to what that
13 was?

14 A It looked like lipstick liner or some type of
15 makeup.

16 Q Did you remember if it had a metal case or
17 plastic case?

18 A I don't recall.

19 Q Do you remember the brand name, what it was?

20 A No, I don't.

21 Q When you went to the female victim you made
22 certain observations as to her?

23 A Correct.

24 Q She was obviously dead, correct?

25 A Correct.

1 Q And the wounds to her neck were deep and long,
2 correct?

3 A They were long and I don't know how deep they
4 were. I didn't touch her.

5 Q Was there a lot of blood in that area of the
6 house as well?

7 A Mostly on her.

8 Q On her body?

9 A Yeah.

10 Q Did you notice any blood anywhere else in the
11 house?

12 A I just recall blood being in the kitchen area
13 and on their body.

14 Q Did you notice any blood on the doorjamb of the
15 bedroom where you found parts of Ms. Ascencio's body?

16 A No, I don't.

17 Q She was lying between the door of the bedroom
18 and the kitchen, right?

19 A She was lying between the bed itself and the
20 doorway to her bedroom.

21 Q And that would have been off from the kitchen
22 area?

23 A Correct.

24 Q So you don't remember seeing any blood on the
25 doorjamb, do you?

1 A No. I don't.

2 Q At some point in time you've determined that
3 she's deceased, Officer Good arrives at the scene,
4 correct?

5 A Correct.

6 Q And that's when you leave the apartment and
7 notify the detectives about what you found?

8 A I searched the rest of the apartment and then
9 secured it and notified for supervisors and detectives to
10 come.

11 Q I think from your report you indicate you
12 searched for anybody that was there?

13 A Correct.

14 Q You weren't going to gather any physical
15 evidence, were you?

16 A Making sure there was no other victims or
17 suspects.

18 Q And during your search, did you see anymore
19 blood or patterns of blood or anything of that nature
20 representing blood in any of the other rooms?

21 A No.

22 Q After you made your search and found that nobody
23 was there you left the apartment?

24 A Correct.

25 Q And secured it with your presence first?

1 A Correct.

2 Q Who was the first officer or detective to arrive
3 at the scene of that?

4 A I believe Detectives Williams.

5 Q And Good, did he tell you to do anything?

6 A Interview witnesses.

7 Q The first witnesses you interviewed were the
8 Rices, correct?

9 A Yes.

10 Q And you memorialized -- and you memorialize that
11 in your reports, correct?

12 A Yes.

13 Q The first witnesses that you interviewed were
14 the Rices, correct?

15 A Yes.

16 Q And you memorialized what they told you in your
17 report, correct?

18 A Yes.

19 Q And you do have that six page report in front of
20 you, correct?

21 A Yes.

22 Q And they now indicated to you that this incident
23 happened sometime between 11:30 and 5:00 in the morning,
24 correct?

25 A That's right.

1 Q So they weren't sure as to the exact time?

2 A Correct.

3 Q It was early as 11:30 at night but it could have
4 been as early in the morning as 5 a.m., correct?

5 A By their recollection, yes.

6 Q And was that a collective recollection? Did you
7 talk to both of them at the same time or did you talk to
8 them individually?

9 A I talked to Mr. Rice first.

10 Q And based on his words to you, you got the time
11 frame of 11:30 to 5 a.m.?

12 A Initially I spoke to them, then I spoke to his
13 wife and they both said the same things.

14 Q They agreed to that period of time?

15 A Correct.

16 Q So they couldn't be specific but they gave you
17 this time period?

18 A Right.

19 Q You also interviewed Mr. Morell, correct?

20 A Yes.

21 Q And Mr. Heriberto Rogue?

22 A That's correct.

23 Q And Mr. Angel Santos and Ms. Patricia Ascencio?

24 A I just spoke with Mr. Santos.

25 Q You didn't speak to Miss Ascencio?

1 A I think she was with him but I spoke to him.

2 Q Do you know if he spoke English?

3 A Mr. Santos?

4 Q Yes.

5 A Yes.

6 Q One of the witnesses, I think one of the
7 witnesses did not speak English Mr. Morell?

8 A And Mr. Rogue.

9 Q And needed an interpreter?

10 A Officer Miller interpreted.

11 Q With respect to Mr. Santos and his -- what he
12 told you, he had indicated to you that he and his
13 girlfriend were at the house of my client Mr. Noel
14 Montalvo and Kathy prior to the, I'm sorry, he was at my
15 client's house on April 18th, 1998, correct?

16 A Correct.

17 Q And that he was there until 2 a.m., correct?

18 A That's correct.

19 Q And that he got there at about what time, page
20 six in your report?

21 A 12:30.

22 Q And that he had seen Milton come into that
23 apartment after 12:30?

24 A Correct.

25 Q And that Milton was sweating and hyped up?

1 A Correct.

2 Q And that he left about 15 to 20 minutes before
3 Mr. Santos and Miss Ascencio left?

4 A That's correct.

5 Q And Mr. Santos said to you that he left at 2
6 a.m.

7 A That's right.

8 ATTORNEY CUTRUZZULA: Judge, no further
9 questions of this witness at this time.

10 THE COURT: Redirect?

11 * * *

12 REDIRECT EXAMINATION

13 BY ATTORNEY KELLEY:

14 Q Just briefly, Your Honor, thank you. Officer
15 Daniels, when you come upon a homicide scene it is not
16 your function at that point being the first responder to
17 process the scene for evidence is it?

18 A That's correct.

19 Q And when you first come there and find victims,
20 one of the duties you do have, however, is to verify
21 there is no further victims or suspects in the house, is
22 that correct?

23 A That's correct.

24 Q You didn't go through the apartment building
25 looking to identify items that could be of evidentiary

1 value?

2 A No. I didn't.

3 ATTORNEY KELLEY: Thank you, I have nothing
4 further, Your Honor.

5 ATTORNEY CUTRUZZULA: Judge, can Mr. Kelley
6 and I approach?

7 THE COURT: Sure.

8 (Whereupon a sidebar was held on the record during which
9 the following occurred:)

10 ATTORNEY CUTRUZZULA: I know that Mr.
11 Kelley had indicated -- we indicated after our lunch
12 break that we were going to be able to get out that Mr.
13 Santos said Q, Y and Z.

14 THE COURT: You got it out twice. First it
15 was on direct examination. Then you went over the exact
16 same thing on cross examination. That's why Mr. Kelley
17 brought it out on redirect.

18 ATTORNEY CUTRUZZULA: The thing I wanted to
19 talk to Your Honor about was that it's her testimony of
20 what someone else said. I know that we were talking
21 about a stipulation that if he were to testify consistent
22 with that and I was hoping --

23 ATTORNEY KELLEY: Or we could get it out
24 through a police officer. I think if we enter a
25 stipulation, I've already allowed hearsay in but I think

1 they give too much emphasis to a stipulation and I'm not
2 willing to agree to that.

3 ATTORNEY CUTRUZZULA: Then I'll make my own
4 argument.

5 THE COURT: You'll make your own what?

6 ATTORNEY CUTRUZZULA: I'll make my argument
7 at the time of closing, Your Honor.

8 (Whereupon the discussion at sidebar was concluded.)

9 THE COURT: Are we at redirect, recross?

10 ATTORNEY KELLEY: Recross, Your Honor.

11 ATTORNEY CUTRUZZULA: I have no further
12 questions, Your Honor.

13 THE COURT: You may step down, no, I do
14 have one, Officer Daniels. You said that you responded
15 to 233 East Philadelphia Street at 12 something.

16 THE WITNESS: 12:25.

17 THE COURT: That's in the afternoon, is
18 that correct?

19 THE WITNESS: Yes, that's when I was
20 dispatched. I got there at 12:28.

21 THE COURT: Okay, no further questions. You
22 may step down. May she be excused, remain the courtroom?

23 ATTORNEY KELLEY: She may be excused, Your
24 Honor.

25 THE COURT: Any objection?