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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
MIDDLESEX COUNTY
IND. NO. 06-09-1414
IND. NO. 07-10-1579
A.D.# 003047-09-T2

STATE OF NEW JERSEY)
)
 Plaintiff,)
)
 vs.)
)
 PABLO S. MACHADO)
)
 Defendant.)

TRANSCRIPT
OF
PLEA HEARING

FILED
APPELLATE DIVISION

APR 15 2010

Place: Middlesex County Courthouse
56 Paterson Street
New Brunswick, N.J. 08903

Date: November 2, 2006

BEFORE:

HON. FREDERICK P. DeVESA, J.S.C.,

TRANSCRIPT ORDERED BY:

HELEN C. GODBY, ESQ. (Assistant Deputy Public Defender)

APPEARANCES:

NICHOLAS SEWITCH, ESQ., (Assistant Prosecutor)
Attorney for the State

GEORGE NASSIF, ESQ., (Assistant Deputy Public Defender)
Attorney for the Defendant

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Witnesses Direct Cross Redirect Recross

FOR THE DEFENDANT

Pablo Machado
Voir Dire 4

Factual Basis 8 11

PLEA AGREEMENT:

BY: Mr. Nassif 3

THE COURT

Decision 12



1 THE COURT: All right, this is the matter of
2 State v. Pablo Machado. Can I have your appearances,
3 please?

4 MR. SEWITCH: Nick Sewitch, Assistant
5 Prosecutor, on behalf of the State.

6 MR. NASSIF: George Nassif on behalf of Pablo
7 Machado.

8 THE COURT: All right, counsel, please keep in
9 mind that the defendant is being assisted by one of our
10 court interpreters. So, we need to speak not only
11 clearly, but slowly.

12 Mr. Machado is here on an indictment that
13 charges him with one count of witness tampering and one
14 count of terroristic threats.

15 I see that a plea agreement has been reached,
16 so I'd like to have the defendant sworn.

17 CLERK: Please raise your right hand.

18 State your name for the record.

19 MR. MACHADO: (Through the interpreter) Pablo
20 Machado.

21 P A B L O M A C H A D O, DEFENDANT'S WITNESS, SWORN

22 THE COURT: Mr. Nassif, can you slowly go over
23 the plea agreement that's been reached for the benefit of
24 the Court and Mr. Machado?

25 MR. NASSIF: Yes. In exchange for my client's



1 guilty plea, through an amended count five, witness
2 tampering, the Prosecutor's Office is recommending a
3 probationary sentence with time served at the date of
4 sentencing.

5 In addition, my client agrees to give a
6 truthful recorded statement regarding Kelvin Nunez's
7 (phonetic) involvement in the May 29th, 2006 shooting.
8 He also agrees to give truthful testimony at the trial of
9 Kelvin Nunez. Count six would be dismissed.

10 And additionally, Judge, my client advises me
11 that he was more than likely still on juvenile probation
12 when the offense occurred, and the prosecutor states that
13 he will not be seeking any incarceration for that
14 offense.

15 Additionally, Judge, this has not been included
16 in the agreement, but my client agrees not to have any
17 contact with the victim in this case.

18 THE COURT: You mean the victim M.G. M.G. M as
19 in Michael, G as in George?

20 THE INTERPRETER: Yes.

21 THE COURT: All right, thank you.

22 VOIR DIRE EXAMINATION BY THE COURT:

23 Q. Mr. Machado, did you hear everything that Mr.
24 Nasif just reported to the Court?

25 A. (Through the interpreter) Yes.



1 Q. Is it true that you intend to plead guilty to
2 tampering with a witness?

3 A. Yes.

4 Q. Do you understand that by pleading guilty you
5 are giving up your right to a jury trial?

6 A. Yes.

7 Q. Do you understand that you will have a criminal
8 conviction for this crime of tampering with a witness?

9 A. Yes.

10 Q. Do you understand that in exchange for your
11 plea of guilty and your truthful testimony, the
12 prosecutor is going to recommend that when you come back
13 to Court to be sentenced you will be placed on probation
14 and you will not have to serve any additional time in
15 jail or in prison; do you understand that?

16 A. Yes.

17 Q. But you will be required as a condition of
18 probation to provide truthful testimony at the trial of
19 Kelvin Nunez; understood?

20 A. Yes.

21 Q. The prosecutor is also going to drop the more
22 serious charges against you, and the prosecutor has
23 promised not to seek any jail term for violating juvenile
24 probation, okay?

25 A. Yes, sir.



1 Q. Now, are you a citizen of the United States?

2 A. I am a resident and I have a Green Card. That was
3 given to me in January of 2001. It was my mother who
4 brought me to this country to study.

5 THE INTERPRETER: The Interpreter is asking for
6 a clarification, Judge?

7 THE COURT: Okay.

8 BY THE COURT:

9 A. And because of the life study that I came for that I
10 couldn't take advantage of, for that reason I'm going
11 through these problems, and now that all of these
12 problems have happened to me, I realize that, you know,
13 it could have helped me with all of these problems.

14 MR. NASSIF: The Judge's question was are you a
15 U.S. citizen or national?

16 THE WITNESS: Nationalized.

17 MR. NASSIF: Okay. You're telling the Court
18 today that you have a Green Card?

19 THE WITNESS: Yes.

20 MR. NASSIF: Do you have a U.S. Passport?

21 THE WITNESS: No.

22 MR. NASSIF: Okay. And you understand that if
23 you are not a U.S. citizen or national, you could be
24 deported by virtue of your guilty plea today?

25 THE WITNESS: Yes.



1 BY THE COURT:

2 Q. Mr. Machado, this court has nothing to do with
3 importation. That would be handled in the federal
4 courts. But it's my job just to let you know that when
5 you plead guilty, it is possible that the federal
6 authorities will seek to deport you.

7 You would be entitled to a hearing in another
8 court if that should occur. Do you understand all of
9 that?

10 A. Yes, sir.

11 Q. All right. Now, are you pleading guilty today
12 freely and voluntarily?

13 A. Yes.

14 Q. Did Mr. Nassif explain to you all of the rights
15 that you're giving up and all the consequences of your
16 plea?

17 A. Yes, sir.

18 Q. Did Mr. Nassif go over this plea form with you?

19 A. Yes, sir.

20 Q. And did you have the assistance of an
21 interpreter when he did that?

22 A. Yes, sir.

23 Q. Now, are you pleading guilty today because you
24 are guilty?

25 A. Yes.



1 THE COURT: All right, Mr. Nassif, can you talk
2 to Mr. Machado and address the factual basis?

3 MR. NASSIF: Yes.

4 DIRECT EXAMINATION BY MR. NASSIF:

5 Q. Pablo, do you live in New Brunswick, New
6 Jersey?

7 A. Yes.

8 Q. Were you in New Brunswick on May 29th, 2006?

9 A. Yes.

10 Q. Were you walking over to 215 Rutgers Street?

11 A. Yes, sir.

12 Q. Were you alone or with other people?

13 A. I was with other people.

14 Q. What were their names?

15 A. One of them, his name was Cali (phonetic), and the
16 other one was named as "The Dominican."

17 Q. You know what Dominican looks like, right?

18 A. Yes.

19 Q. And did you turn yourself in in July or June of
20 2006 to the police?

21 A. Yes, I made a call from a pay phone in order to
22 resolve the problem.

23 Q. Okay. And when you were talking to the police,
24 were you shown five photographs?

25 A. Yes.



1 Q. Okay. And of those five photographs, did you
2 point out a person who you know as "Dominican"?

3 A. Yes.

4 Q. Okay. And now do you know what Dominican's
5 real name is?

6 A. Yes.

7 Q. What's his name?

8 A. Kelvin Nunez.

9 Q. Okay. Now, when you pointed out the picture of
10 Kelvin Nunez, that's the person that was with you on May
11 19th -- I'm sorry; May 29th, 2006?

12 A. Yes.

13 Q. What did you see him do on May 29th, 2006?

14 A. He pulled out a pistol and then he shot and then he
15 took off running.

16 Q. And you saw this with your own eyes?

17 A. Yes.

18 Q. Did you leave after you heard the gunshot?

19 A. Yes, everybody ran. Yes, everybody ran because we
20 were afraid.

21 Q. And people saw you there, too, right?

22 A. Yes.

23 Q. Did a female with the initials of M.G. see you
24 there?

25 A. Yes.



1 Q. Okay. And how do you know her?

2 A. She is my girlfriend's cousin. My girlfriend's
3 cousin.

4 Q. By any chance, was she dating the person that
5 got shot?

6 A. I didn't understand that question?

7 Q. Was she dating Mr. Serrano (phonetic)?

8 A. Yeah.

9 Q. Did you have her phone number?

10 A. No.

11 Q. But didn't you call her?

12 A. Yes.

13 Q. Okay. When you called her, did you tell her
14 not to tell anyone that you were there?

15 A. Yes.

16 Q. Did you do it once or more than once?

17 A. I did it like twice, something like that.

18 Q. Okay. And you knew that the police were
19 starting to investigate this shooting?

20 A. Yes, after the second call I realized.

21 Q. One more question. When you saw Nunez shoot
22 the gun, do you know who he was shooting at?

23 A. Directly, no. Because he was behind me.

24 Q. Who did the bullet hit?

25 A. Maria's boyfriend.



1 Q. What's his name?

2 A. Serrano (phonetic), Samano (phonetic).

3 Q. Serrano, right?

4 A. Yes.

5 Q. And who was going to fight Steven Serrano that
6 day?

7 THE INTERPRETER: The Interpreter is asking for
8 a clarification, Judge.

9 A. I was going to fight Serrano's brother.

10 Q. Thank you.

11 MR. SEWITCH: Just one question.

12 CROSS EXAMINATION BY MR. SEWITCH:

13 Q. Mr. Machado, you saw Kelvin Nunez shoot Steven
14 Serrano on May 29th?

15 THE INTERPRETER: What was Serrano's name,
16 please?

17 MR. SEWITCH: Steven Serrano.

18 BY MR. SEWITCH:

19 A. When I heard the shot, I went backwards and he took
20 off running. I saw then that he had shot him and
21 everybody ran.

22 Q. Did you see Kelvin Nunez with a gun in his
23 hands?

24 A. I did see him with a pistol, but I couldn't tell you
25 what pistol it was.

1 Q. Did you see anyone else with a gun in their
2 hand at that time?

3 A. No.

4 Q. And you saw Kelvin Nunez point that gun at
5 Steven Serrano?

6 A. No. It was when I heard the shot that I turned
7 around backwards and I saw him with a pistol and he took
8 off running.

9 Q. And then you saw Steven Serrano had been shot
10 at that time; is that correct?

11 A. Yes.

12 MR. SEWITCH: I have nothing further.

13 THE COURT: All right, the Court is satisfied
14 that there is an adequate factual basis for the plea,
15 satisfied that the defendant is pleading freely and
16 voluntarily and that he understands the consequences of
17 his plea.

18 So, I'm going to order a pre-sentence report.
19 I'd like to schedule sentencing at this time.

20 Counsel, do you have any preferred sentencing
21 date consistent with this plea agreement?

22 MR. NASSIF: Prior to Christmas, Judge.

23 THE COURT: Any objection?

24 THE WITNESS: No.

25 THE COURT: All right, December 22nd will be



1 sentencing date.

2 Okay, Mr. Machado, you will be sentenced on
3 December 22nd.

4 THE WITNESS: Can I say something else? I
5 really am very thankful for the help, and for giving me
6 the chance so that I can put this problem behind me, and
7 to move ahead. And on behalf of my family, thank you.

8 THE COURT: All right, thank you, Mr. Machado.
9 (Proceedings concluded.)

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CERTIFICATION

I, Cindy Millelot, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape number 1, index number from 1520 to 3051, is prepared 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.

Cindy Millelot606

Cindy Millelot

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