









Appellate...:

Case No....: 003047

Year.....: 09

Type.....: TRANSCRIPT

Volume.....: 003

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION - MIDDLESEX COUNTY
INDICTMENT NO. 07-10-1579
APP. DIV. DOCKET NO. A- 0030+7-09-72

STATE OF NEW JERSEY,

Complainant,

vs.

Transcript of Proceeding R 15 2010

(Trial - Vol. V)

PABLO MACHADO,

Defendant.

(With An Interpreter)

Place: Middlesex County Courthouse

56 Paterson Street

New Brunswick, N.J. 08903

Date: DECEMBER 23, 2008

BEFORE:

THE HONORABLE BARBARA STOLTE, J.S.C., and a Jury

TRANSCRIPT ORDERED BY: DANIEL GONZALEZ, ESQ.

(Perez & Gonzalez)

APPEARANCES:

MANUEL SAMEIRO, ESQ.

Middlesex County Assistant Prosecutor

Attorney for the State

DANIEL GONZALEZ, ESQ.

(Perez & Gonzalez)

Attorney for the Defendant

APR 1 5 2010

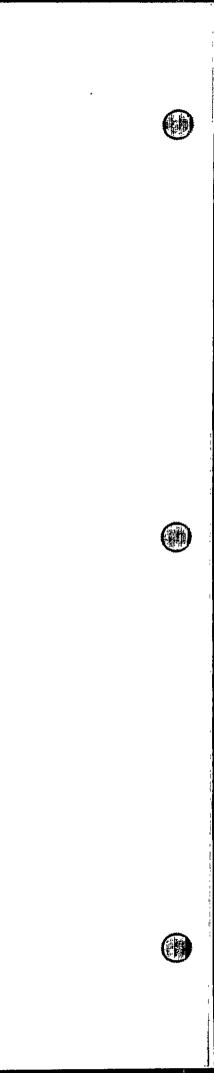
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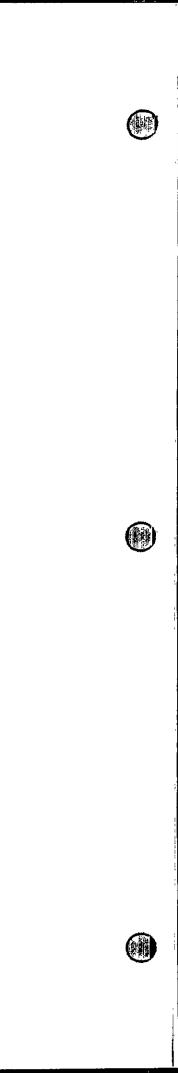
Georgeann Crowell, C.C.R.
Official Court Reporter
Middlesex County Courthouse
P.O. Box 964
New Brunswick, New Jersey



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1		EXHIBITS		3
1 2		EXHIBITS		
2	<u>Number</u>	EXHIBITS	Ident.	Evid.
2 3 4	Number ' C-2	E X H I B I T S	Ident. 4	
2 3 4 5	C-2	Jury Note	4	
2 3 4	1			
2 3 4 5 6 7	C-2	Jury Note	4	
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2 3 4 5 6 7 89 0 11	C-2	Jury Note	4	
2345678901234	C-2	Jury Note	4	
2 3 4 5 6 7 89 0 1 2 3 4 5 1 1 1 1 1 1 5	C-2	Jury Note	4	
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2345678901234567	C-2	Jury Note	4	
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2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	C-2	Jury Note	4	
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2345678901234567890123	C-2	Jury Note	4	
23456789012345678901234	C-2	Jury Note	4	
2345678901234567890123	C-2	Jury Note	4	



```
(Colloguy)
            (Whereupon, the following discussion occurred
 1
   outside the presence of the jury.)
 2
 3
            THE COURT: Thank you, folks. Please have a
 4
   seat.
 5
            All right. The jury has submitted a note.
 6
   think you both have copies; right?
 7
            MR. SAMEIRO:
                          Yes.
 8
            MR. GONZALEZ:
                           Yes.
            THE COURT: It's been marked C-2.
 9
            (Exhibit No. C-2, jury note, is received and
10
   marked for Identification.)
11
                        "Can we have a copy of
            THE COURT:
12
13
   Bobadilla's testimony. And a copy of the testimony
   related to the Movida phone record" -- excuse me --
14
   "report."
15
16
            Well, the answer to the question is, no.
   They can't have a copy of it. But, certainly, they can
17
   hear it. So, I'll let them know that. And, Counsel,
18
   how do you interpret the second question?
                                               "Copy of
19
   testimony related to Movida phone report."
20
            Which witness testified to the Movida phone
21
22
   report?
            MR. SAMEIRO: Detective Selesky.
23
            THE COURT: Detective Selesky.
24
            MR. SAMEIRO: Both on direct and
25
                                                             5
                            (Colloguy)
  cross-examination, there were questions regarding that.
 1
            MR. GONZALEZ: It was just on cross and
 2
 3
   direct of Selesky.
                       There was no testimony of Officer
            THE COURT:
 4
   Bobadilla regarding Movida?
 5
 6
            MR. GONZALEZ:
 7
                          No.
            MR. SAMEIRO:
 8
            THE COURT: Okay. So, that, I think is not
   too difficult. Then you agree that they would want the
 9
   testimony of both direct and cross of Selesky,
10
   regarding the Movida?
11
12
            MR. SAMEIRO:
                          Sure.
                           Sure. Judge, if you could
13
            MR. GONZALEZ:
   just instruct them, the way they can hear it -- that
14
   Georgeann -- Miss Crowell -- goes through her notes,
15
   and then she reads it. Just like they're asking for --
16
17
            THE COURT:
                        I told them that yesterday.
   I have to really tell them. Again, they're asking for
18
19
            I will let them know, there is no copy of
20
   anyone's transcript.
21
            Again, what happens, I told you yesterday,
22
   the Court Reporter has to interpret it, and then print
23
   it out. She'll read it back to you.
24
            MR. SAMEIRO: Judge, can we cut to the quick?
25
   And now ask Miss Crowell when she will be prepared to
```



(Colloguy) 6 give that readback? Because we should tell them that. 1 I agree, you can't get a written copy. 2 Miss Crowell can read that to you. And she will be able to do that. And then ask Miss Crowell -- so, we can plan accordingly -- ask her right now -- so, there is no pressure -- that you tell them -- let them know. And have them deliberate while we are getting it. MR. SAMEIRO: For the record, we just heard 8 from Miss Crowell. She explained to the Court -- She 9 has explained, that she prepared the direct and the 10 cross of Bobadilla last evening. She can read that 11 12 Then you can tell the jury what that readback is. She also told you that there are excerpts of Detective 13 Selesky's testimony, that she would be compelled to 14 deal with, seeing the question. 15 That we will not necessarily see those 16 17 excerpts in written form, to pass on the accuracy. I trust Miss Crowell, to get it right. She told us 18 that, she believes the entire portion of it, this is 19 something that she didn't say to Counsel, and I may 20 21 have recollected it. Then, perhaps, we can address that. At this time, I don't expect that that's going 22 23 to happen. THE COURT: I feel that you're about to say, 24 thank goodness she is prepared to read back Bobadilla's 25 7 (Colloguy) testimony. 1 MR. SAMEIRO: Let's not have the jury wait for it. In other words, Georgeann is able to do part of it now. MR. GONZALEZ: I was going to suggest that 5 we do both at the same time. I think that would be 7 more prudent in my view. THE COURT: Mr. Gonzalez, I think we might as 8 well do what we have now. 9 10 MR. GONZALEZ: It's not that I don't trust Believe me, I do. You have indicated 11 Georgeann. 12 Bobadilla? 13 THE COURT: All of Bobadilla's testimony. MR. GONZALEZ: All of Bobadilla's testimony 14 15 is coming in. And then there is the excerpts of Selesky. I know we were all over the place with 16 17 Detective Selesky. 18 THE COURT: Right. I don't know. 19 MR. GONZALEZ: I'm not saying that Georgeann

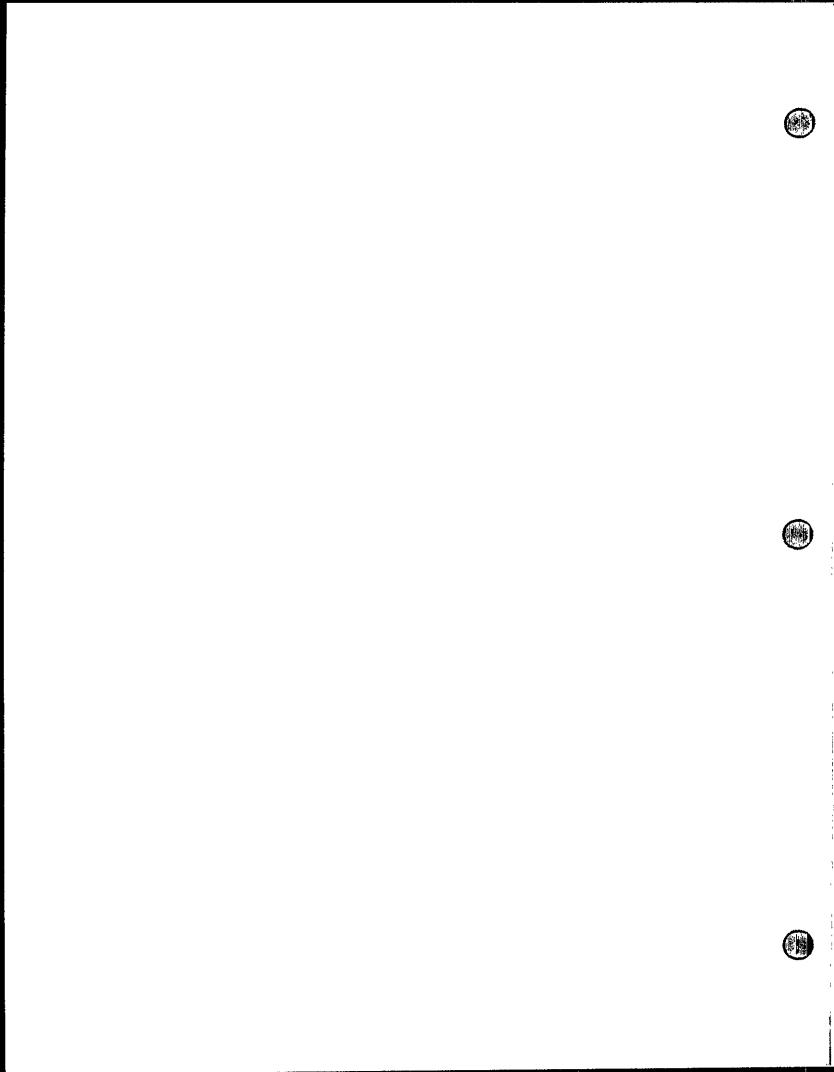
22 and every thing.
23 THE COURT: Then here's my suggestion -24 MR. GONZALEZ: Judge, what I would suggest -25 I suggest we print them out, and then do it in one

missed anything, because she is great. But I'd like to

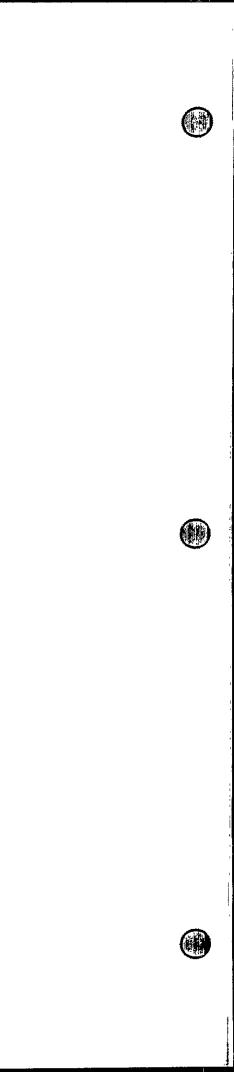
look at it. I have copious notes with regard to each

20

21



```
(Colloquy)
                                                             8
 1
   shot.
                       Okay. If you'd like to do the
 2
            THE COURT:
   whole thing, Georgeann can print out the Movida aspects
 3
   of Selesky. Have you take a look at it. And then we
   can bring them in.
                           I remember something.
 6
            MR. GONZALEZ:
 7
   want the opportunity just to --
 8
            THE COURT: You want to take a look at it
 9
   first.
10
            MR. SAMEIRO: I have an alternate suggestion.
   I don't want to waste time here. Let's hear
11
   Bobadilla's testimony.
12
                           That will take some time.
   think the jury should, at least, get that.
13
   tell the jury then, that she is going to work on the
14
   second question. Because Counsel and I can get into a
15
   war, as to what's in or not in.
16
            The jury shouldn't be waiting on us for that.
17
   Let them, at least, hear Bobadilla. And then we can
18
   get back to the issue of Selesky. A half a loaf is
19
20
   better than none.
21
            THE COURT: I mean, as far as the jury's
22
   request --
            MR. SAMEIRO: They are here, ready to work.
23
                     It's a couple days before Christmas.
   They're working.
24
25
   They came in early. And, frankly, I don't want them to
                            (Colloguy)
                                                              9
   be waiting for us any more, especially since the
 1
   Reporter is ready to go on Bobadilla's testimony.
            THE COURT: Okay. I would like them to get
 3
                         I just think it makes sense, since
  started on it, too.
   Georgeann does have that all done. To, at least, give
 5
   them that information. I don't think it will really
   take all that long to look at the Movida stuff, and
 7
   then take a break. They can continue deliberating, and
 8
   then come in, when we have it ready for them.
 9
10
            MR. SAMEIRO:
                          I agree, Judge.
                           Judge, that's fine.
11
            MR. GONZALEZ:
12
            THE COURT:
                       The issue, of course, for the
   record, is, you are okay with that?
13
            Let me just ask, before we even begin the
14
   testimony, about how long this is going to take.
15
16
                   The readback will be about 20 to 30
            Okay.
17
             So, if I can ask the individuals here, who
   minutes.
18
   are in the back, just to give us about 20, 30 minutes,
   to read that to the jury. Then we'll come back.
19
   our Court Reporter will have to go. But we'll probably
20
21
   go on tape in the meantime.
22
            All right, folks.
23
            (Whereupon, a short recess was taken.)
24
            (Whereupon, the hearing continued.)
25
            THE COURT: Let's bring the jury in.
```



```
(Jury Question)
                                                            10
            (Whereupon, the jury enters the courtroom at
 1
   9:45 a.m., to hear the readback of Officer Bobadilla's
 2
 3
   testimony.)
 4
            THE COURT: Good morning, everyone.
 5
            THE JURY: Good morning.
            THE COURT: We received a copy of your note.
 6
 7
   It's been marked C-2 for Identification.
8
            The first question is: "Can we have a copy
   of Bobadilla's testimony." The short answer is, no,
9
   you can't have a copy. We don't have a copy to give to
10
         But we can read it back to you.
11
            And the next question is: "Copy of testimony
12
   related to Movida phone report." Again, you can't have
13
   a copy. We can read it back to you.
14
            The very lucky thing for us is that my Court
15
   Reporter received this note last evening, and was able
16
   to work all last night on getting this for you.
17
                  Thank you very much, Georgeann.
18
   she is ready.
            She is ready to read Officer Bobadilla's
19
                      The other testimony, as to the
20
   testimony to you.
21
   Movida, is just about ready. So, when she finishes
  with Bobadilla's testimony, I'll let you go back and
22
   continue to deliberate. Then we'll bring you back out
23
   in just a short period of time, to give you the second
24
25
   portion.
                         (Jury Question)
                                                            11
```

Okay. But we can thank her, because she did this last night. I didn't even receive the note until this morning. So, we are ready to go. But let me just let you know, before we go on, because she got this note last night, and she was able to do this last night, that is why we are ready. Any other readback -just remember -- you have to be a little patient. does take a little time to get it prepared to read it back to you.

1

5

7

8

9 10

11 12

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14

15 16

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18

19

20

21

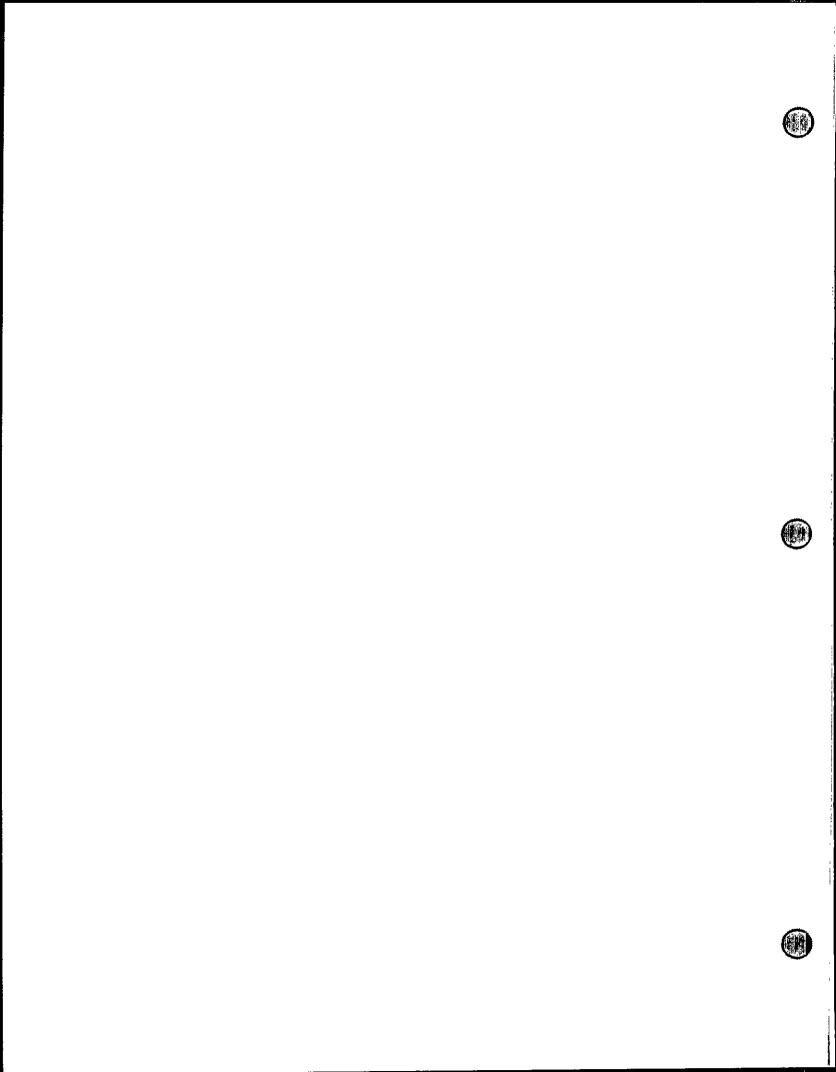
(Whereupon, the entire testimony of Officer Bobadilla, from December 18, 2008, was read back to the jury by the Court Reporter.)

THE COURT: All right, ladies and gentlemen. What I'm going to do is let you go back in and continue your deliberations. In the meantime, we'll work on the second question. As soon as it's ready, we'll bring you out to read it back to you. Thank you.

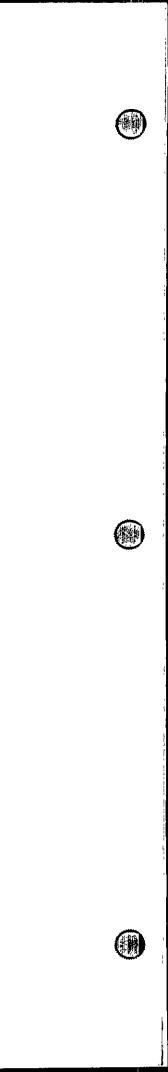
(Whereupon, the jury leaves the courtroom at 10:30 a.m. to continue their deliberations.) (Whereupon, a short recess was taken.) (Whereupon, the hearing continued.)

22 (Whereupon, the jury enters the courtroom at 23 11:30 a.m. with a verdict.)

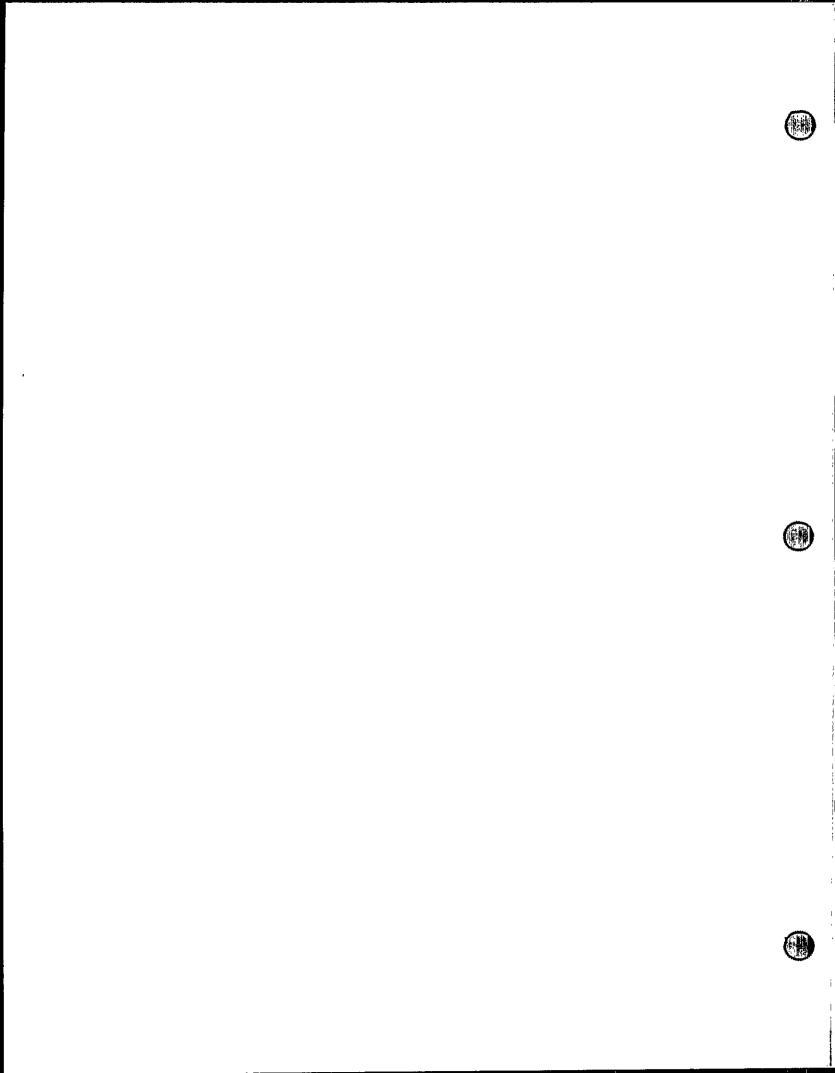
24 THE COURT: Thank you, folks. Please have a 25 seat.



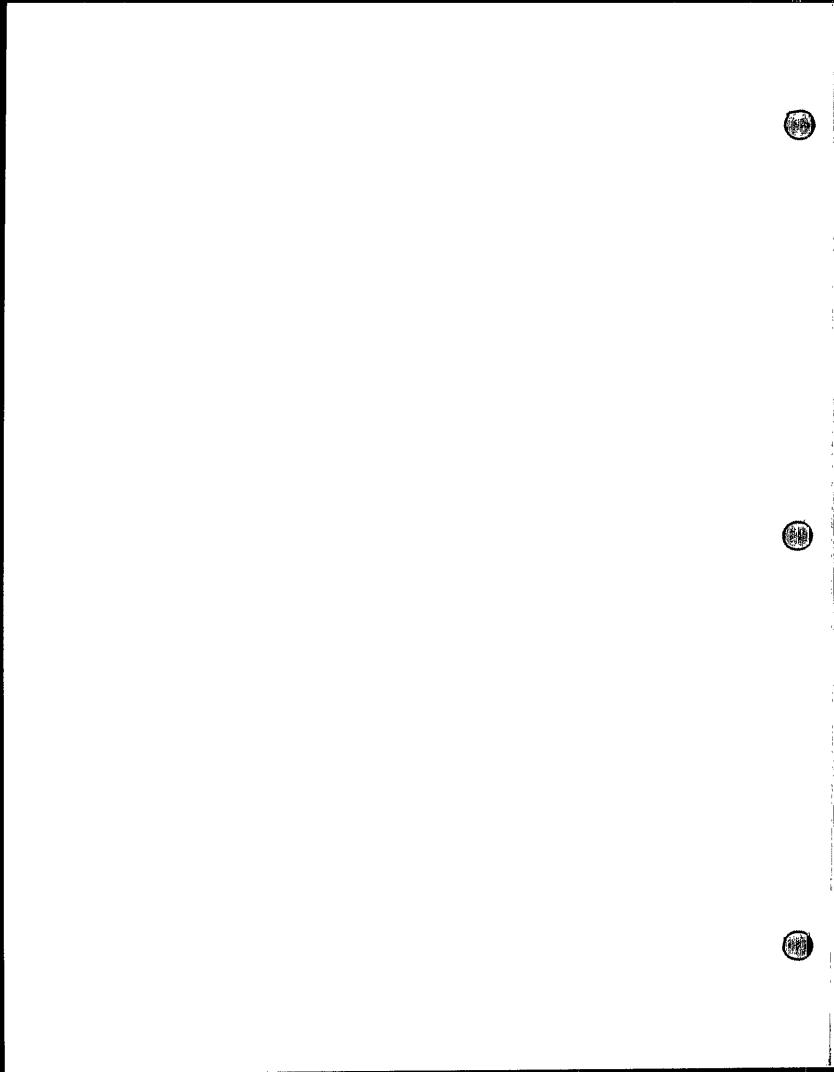
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(Jury Verdict)
                                                            12
            All right, ladies and gentlemen, we received
 1
   your note. We marked it as C-4.
 2
            (Exhibit No. C-4, jury note, is received and
  marked for Identification.)
            THE COURT:
                        It states, "we are ready to
 5
   deliver the verdict."
 7
            THE CLERK: Members of the jury, as your name
 8
   is called, please answer "here." Thereafter, I will
   direct my questions to the Foreman.
 9
            (Whereupon, a roll call was taken of the
10
   jury, and all the members of the jury were present, as
11
12
   well as the two alternates.)
            THE COURT: Mr. Foreman, would you please
13
14
  stand?
            (Whereupon, the Foreman complies.)
15
16
            THE CLERK: Have the members of the jury
17 arrived upon a verdict?
18
            THE FOREMAN: Yes.
            THE CLERK: Is the verdict returned a
19
20 unanimous verdict of all 12 jurors?
21
            THE FOREMAN: Yes, it is.
            THE CLERK: How do you find the defendant,
22
23 Pablo Machado, as to count one, conspiracy? Not guilty
24 or quilty?
            THE FOREMAN: Guilty.
25
                                                            13
                          (Jury Verdict)
            THE CLERK: Count two, armed robbery. Not
 1
 2
   quilty or guilty?
 3
            THE FOREMAN: Guilty.
            THE CLERK: Count four, possession of a
 4
  weapon for unlawful purposes? Not guilty or guilty?
 5
            THE FOREMAN: Not quilty.
 6
            THE CLERK: Count five, theft. Not guilty or
 7
   guilty?
 8
           THE FOREMAN:
                          Guilty.
 9
10
            THE CLERK: And did you find that the theft
11 was less than two hundred dollars? At least two
   hundred, but did not exceed five hundred dollars? Or
12
   it did exceed five hundred dollars but less than
13
   seventy-five thousand?
14
            THE FOREMAN:
15
                         At least two hundred; but does
16 not exceed five hundred dollars.
            THE CLERK: Count six, terroristic threats.
17
18
   Threaten to commit serious bodily injury. Not guilty
19
   or guilty?
20
            THE FOREMAN: Guilty.
21
           THE CLERK: Count seven, terroristic threats.
   Threaten to kill. Not guilty or guilty?
22
23
           THE FOREMAN: Not guilty.
24
           THE COURT: Counsel, did you wish the jurors
25
   polled?
```



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(Colloguy)
            MR. SAMEIRO:
                          I don't, your Honor.
 1
 2
            THE COURT:
                       Mr. Gonzalez?
 3
            MR. GONZALEZ: No, Judge.
                       All right. Members of the jury,
            THE COURT:
 4
   with the rendition of your jury verdict, your jury
 5
   service here is complete. On behalf of the State and
 6
   the County, I thank you very much for your service.
 7
   you just have a minute, I'd like to come back and thank
 8
   you personally. It is my practice to do that.
 9
10
   back there in just a moment. Thank you.
            (Whereupon, the jury leaves the courtroom.)
11
            (Whereupon, the hearing continued outside the
12
13
   presence of the jury.)
14
            THE COURT:
                       All right. Mr. Machado, you've
   heard the verdict of the jury. They have found you
15
   quilty as to count one, conspiracy. Guilty as to count
16
   two, armed robbery. Not guilty on count four, which is
17
   possession of a weapon for unlawful purposes. Guilty
18
19
   of theft, count five. Guilty, as to count six,
20
   terroristic threats. Not guilty, as to count seven,
21
   terroristic threats.
            Is there anything from the State at this
22
23
   time?
24
            MR. SAMEIRO: Yes, at this time, your Honor,
   I would ask that you revoke the defendant's bail.
25
                                                            15
                          (Bail Motion)
   don't know what his bail is currently.
 1
                           A hundred fifty.
 2
            MR. GONZALEZ:
 3
            THE COURT: A hundred fifty thousand. You're
   moving to revoke it?
 4
            MR. SAMEIRO: Absolutely.
 5
            MR. GONZALEZ: I would ask for bail pending
 6
             There being a variety of issues within the
 7
   case. Most importantly, the hearsay, as to how the
 8
   phone number came in. As your Honor will recall, with
 9
   regard to the present sense impression.
10
11
            Additionally, the comments made by the State,
   with regard to my client's election not to take the
12
           The adverse inferences that can be drawn from
13
   the State's comments. And the way that the Appellate
14
15
   Division usually treats those sorts of comments.
16
   of those comments -- the case law is clear, that we
   can't make a comment as to the defendant's election not
17
   to testify during the trial. And the comments
18
19
   specifically with regard to the alibi, and whether Mr.
20
   Machado was in California.
21
            THE COURT: I note that you put all of your
22
   objections on the record for appeal.
23
           MR. GONZALEZ:
                           I just want to make it clear,
24
   that I think it's sufficient for bail pending appeal.
25
   And based on the fact that the mistrial was not
```



```
(Bail Motion)
                                                             16
 1
   granted. That he, essentially, suffered from the
 2
   rulings.
 3
            I think it's very, very, very likely that, on
   appeal, as to the hearsay issue, in and of itself, and
   as to Mr. Sameiro's unwarranted prosecutorial
   misconduct, that this gentleman is going to be back
 7
   before this Court, and I'm going to be trying this case
 8
   again.
            THE COURT: All right. Well, he has bail, at
 9
   this point, of a hundred fifty thousand, no ten
10
   percent. I note that he has not made that bail.
11
   think the request of the State is a valid request, now,
12
   he has been convicted. There are issues for appeal.
13
   You certainly may appeal, as you very well indicated
14
   that you will. But, at this point, I'm revoking Mr.
15
   Machado's bail. And we'll have a sentencing date of
16
   March 20th. March 20th, 9:00 a.m., that will be your
17
18
   sentencing date.
            Thank you.
19
20
            MR. SAMEIRO:
                          Thank you.
            MR. GONZALEZ:
                           Thank you.
21
22
            (Whereupon, the exhibits are returned to
23
   Counsel.)
            (Whereupon, a short recess was taken.)
24
            (Whereupon, the hearing continued outside the
25
                                                             17
                            (Colloquy)
   presence of the jury.)
 1
 2
            THE COURT:
                       I wanted to address something on
 3
   the record.
            Just, as is my normal procedure, I go to
 4
   speak to the jurors. I just wanted to let you know,
 5
   that it clearly went a little longer. I wanted to
 7
   thank them for their service. But before I went into
   the jury room, the Interpreter let me know -- and I
 8
   didn't address this once before. I may have addressed
 9
                 I wanted to place it on the record.
10
   it briefly.
            That Mr. Machado chose to take his headphones
11
   off, at one point, during the rendition of the verdict.
12
13
   And, basically, asked the Interpreter to stop
   interpreting, by motioning to her that she didn't have
14
   to interpret any longer, and she did not interpret any
15
   longer. I just wanted to place that on the record.
16
17
   noted it several other times, during the trial, that he
18
   did take his headphone off. You know, sometimes I
19
   don't know if it is just for comfort or what.
20
   always aware of it. But I did note that there was an
21
   indication that he didn't want to hear any more.
22
            Let me just ask Miss Grasberg, did you
23
   continue to interpret?
24
            THE INTERPRETER:
                              I continued to interpret,
25
   when he first took the headphones off. And then he
```



19

## CERTIFICATION

I, GEORGEANN CROWELL, C.C.R., License Number XI00983, 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 of my stenographic notes taken in the above matter to the best of my knowledge and ability.

Georgeann Crowell, C.C.R. Official Court Reporter Middlesex County Courthouse P.O. Box 964

New Brunswick, New Jersey

Georgeann Crowd

Date: FEBRUARY 5, 2010

