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Case No.....:	003047
Year.....:	09
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A-3047-09T2

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION - MIDDLESEX COUNTY
INDICTMENT NO. 07-10-1579
APP. DIV. DOCKET NO. A- 003047-09T2

STATE OF NEW JERSEY,

Complainant,

vs.

Transcript of Proceedings
(Trial - Vol. V)

PABLO MACHADO,

Defendant.

(With An Interpreter)

FILED
APPELLATE DIVISION

APR 15 2010

CLERK

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

Date: DECEMBER 23, 2008

B E F O R E:

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

TRANSCRIPT ORDERED BY: DANIEL GONZALEZ, ESQ.
(Perez & Gonzalez)

A P P E A R A N C E S:

MANUEL SAMEIRO, ESQ.
Middlesex County Assistant Prosecutor
Attorney for the State

DANIEL GONZALEZ, ESQ.
(Perez & Gonzalez)
Attorney for the Defendant

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APPELLATE DIVISION

APR 15 2010

SUPERIOR COURT
OF NEW JERSEY

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



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<u>Number</u>		<u>Ident.</u>	<u>Evid.</u>
C-2	Jury Note	4	
C-4	Jury Note	12	



(Colloquy)

4

1 (Whereupon, the following discussion occurred
2 outside the presence of the jury.)

3 THE COURT: Thank you, folks. Please have a
4 seat.

5 All right. The jury has submitted a note. I
6 think you both have copies; right?

7 MR. SAMEIRO: Yes.

8 MR. GONZALEZ: Yes.

9 THE COURT: It's been marked C-2.

10 (Exhibit No. C-2, jury note, is received and
11 marked for Identification.)

12 THE COURT: "Can we have a copy of
13 Bobadilla's testimony. And a copy of the testimony
14 related to the Movida phone record" -- excuse me --
15 "report."

16 Well, the answer to the question is, no.
17 They can't have a copy of it. But, certainly, they can
18 hear it. So, I'll let them know that. And, Counsel,
19 how do you interpret the second question? "Copy of
20 testimony related to Movida phone report."

21 Which witness testified to the Movida phone
22 report?

23 MR. SAMEIRO: Detective Selesky.

24 THE COURT: Detective Selesky.

25 MR. SAMEIRO: Both on direct and

(Colloquy)

5

1 cross-examination, there were questions regarding that.

2 MR. GONZALEZ: It was just on cross and
3 direct of Selesky.

4 THE COURT: There was no testimony of Officer
5 Bobadilla regarding Movida?

6 MR. GONZALEZ: No.

7 MR. SAMEIRO: No.

8 THE COURT: Okay. So, that, I think is not
9 too difficult. Then you agree that they would want the
10 testimony of both direct and cross of Selesky,
11 regarding the Movida?

12 MR. SAMEIRO: Sure.

13 MR. GONZALEZ: Sure. Judge, if you could
14 just instruct them, the way they can hear it -- that
15 Georgeann -- Miss Crowell -- goes through her notes,
16 and then she reads it. Just like they're asking for --

17 THE COURT: I told them that yesterday. But
18 I have to really tell them. Again, they're asking for
19 a copy. 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



1 give that readback? Because we should tell them that.
2 I agree, you can't get a written copy. But
3 Miss Crowell can read that to you. And she will be
4 able to do that. And then ask Miss Crowell -- so, we
5 can plan accordingly -- ask her right now -- so, there
6 is no pressure -- that you tell them -- let them know.
7 And have them deliberate while we are getting it.

8 MR. SAMEIRO: For the record, we just heard
9 from Miss Crowell. She explained to the Court -- She
10 has explained, that she prepared the direct and the
11 cross of Bobadilla last evening. She can read that
12 now. Then you can tell the jury what that readback is.
13 She also told you that there are excerpts of Detective
14 Selesky's testimony, that she would be compelled to
15 deal with, seeing the question.

16 That we will not necessarily see those
17 excerpts in written form, to pass on the accuracy. But
18 I trust Miss Crowell, to get it right. She told us
19 that, she believes the entire portion of it, this is
20 something that she didn't say to Counsel, and I may
21 have recollected it. Then, perhaps, we can address
22 that. At this time, I don't expect that that's going
23 to happen.

24 THE COURT: I feel that you're about to say,
25 thank goodness she is prepared to read back Bobadilla's

1 testimony.

2 MR. SAMEIRO: Let's not have the jury wait
3 for it. In other words, Georgeann is able to do part
4 of it now.

5 MR. GONZALEZ: I was going to suggest that
6 we do both at the same time. I think that would be
7 more prudent in my view.

8 THE COURT: Mr. Gonzalez, I think we might as
9 well do what we have now.

10 MR. GONZALEZ: It's not that I don't trust
11 Georgeann. Believe me, I do. You have indicated
12 Bobadilla?

13 THE COURT: All of Bobadilla's testimony.

14 MR. GONZALEZ: All of Bobadilla's testimony
15 is coming in. And then there is the excerpts of
16 Selesky. I know we were all over the place with
17 Detective Selesky.

18 THE COURT: Right. I don't know.

19 MR. GONZALEZ: I'm not saying that Georgeann
20 missed anything, because she is great. But I'd like to
21 look at it. I have copious notes with regard to each
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



1 shot.

2 THE COURT: Okay. If you'd like to do the
3 whole thing, Georgeann can print out the Movida aspects
4 of Selesky. Have you take a look at it. And then we
5 can bring them in.

6 MR. GONZALEZ: I remember something. I just
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.
11 I don't want to waste time here. Let's hear
12 Bobadilla's testimony. That will take some time. I
13 think the jury should, at least, get that. You can
14 tell the jury then, that she is going to work on the
15 second question. Because Counsel and I can get into a
16 war, as to what's in or not in.

17 The jury shouldn't be waiting on us for that.
18 Let them, at least, hear Bobadilla. And then we can
19 get back to the issue of Selesky. A half a loaf is
20 better than none.

21 THE COURT: I mean, as far as the jury's
22 request --

23 MR. SAMEIRO: They are here, ready to work.
24 They're working. It's a couple days before Christmas.
25 They came in early. And, frankly, I don't want them to

1 be waiting for us any more, especially since the
2 Reporter is ready to go on Bobadilla's testimony.

3 THE COURT: Okay. I would like them to get
4 started on it, too. I just think it makes sense, since
5 Georgeann does have that all done. To, at least, give
6 them that information. I don't think it will really
7 take all that long to look at the Movida stuff, and
8 then take a break. They can continue deliberating, and
9 then come in, when we have it ready for them.

10 MR. SAMEIRO: I agree, Judge.

11 MR. GONZALEZ: Judge, that's fine.

12 THE COURT: The issue, of course, for the
13 record, is, you are okay with that?

14 Let me just ask, before we even begin the
15 testimony, about how long this is going to take.

16 Okay. The readback will be about 20 to 30
17 minutes. So, if I can ask the individuals here, who
18 are in the back, just to give us about 20, 30 minutes,
19 to read that to the jury. Then we'll come back. Then
20 our Court Reporter will have to go. But we'll probably
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.



1 (Whereupon, the jury enters the courtroom at
2 9:45 a.m., to hear the readback of Officer Bobadilla's
3 testimony.)

4 THE COURT: Good morning, everyone.

5 THE JURY: Good morning.

6 THE COURT: We received a copy of your note.
7 It's been marked C-2 for Identification.

8 The first question is: "Can we have a copy
9 of Bobadilla's testimony." The short answer is, no,
10 you can't have a copy. We don't have a copy to give to
11 you. But we can read it back to you.

12 And the next question is: "Copy of testimony
13 related to Movida phone report." Again, you can't have
14 a copy. We can read it back to you.

15 The very lucky thing for us is that my Court
16 Reporter received this note last evening, and was able
17 to work all last night on getting this for you. So,
18 she is ready. Thank you very much, Georgeann.

19 She is ready to read Officer Bobadilla's
20 testimony to you. The other testimony, as to the
21 Movida, is just about ready. So, when she finishes
22 with Bobadilla's testimony, I'll let you go back and
23 continue to deliberate. Then we'll bring you back out
24 in just a short period of time, to give you the second
25 portion.

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

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

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

18 (Whereupon, the jury leaves the courtroom at
19 10:30 a.m. to continue their deliberations.)

20 (Whereupon, a short recess was taken.)

21 (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.



1 All right, ladies and gentlemen, we received
2 your note. We marked it as C-4.

3 (Exhibit No. C-4, jury note, is received and
4 marked for Identification.)

5 THE COURT: It states, "we are ready to
6 deliver the verdict."

7 THE CLERK: Members of the jury, as your name
8 is called, please answer "here." Thereafter, I will
9 direct my questions to the Foreman.

10 (Whereupon, a roll call was taken of the
11 jury, and all the members of the jury were present, as
12 well as the two alternates.)

13 THE COURT: Mr. Foreman, would you please
14 stand?

15 (Whereupon, the Foreman complies.)

16 THE CLERK: Have the members of the jury
17 arrived upon a verdict?

18 THE FOREMAN: Yes.

19 THE CLERK: Is the verdict returned a
20 unanimous verdict of all 12 jurors?

21 THE FOREMAN: Yes, it is.

22 THE CLERK: How do you find the defendant,
23 Pablo Machado, as to count one, conspiracy? Not guilty
24 or guilty?

25 THE FOREMAN: Guilty.

1 THE CLERK: Count two, armed robbery. Not
2 guilty or guilty?

3 THE FOREMAN: Guilty.

4 THE CLERK: Count four, possession of a
5 weapon for unlawful purposes? Not guilty or guilty?

6 THE FOREMAN: Not guilty.

7 THE CLERK: Count five, theft. Not guilty or
8 guilty?

9 THE FOREMAN: Guilty.

10 THE CLERK: And did you find that the theft
11 was less than two hundred dollars? At least two
12 hundred, but did not exceed five hundred dollars? Or
13 it did exceed five hundred dollars but less than
14 seventy-five thousand?

15 THE FOREMAN: At least two hundred; but does
16 not exceed five hundred dollars.

17 THE CLERK: Count six, terroristic threats.
18 Threaten to commit serious bodily injury. Not guilty
19 or guilty?

20 THE FOREMAN: Guilty.

21 THE CLERK: Count seven, terroristic threats.
22 Threaten to kill. Not guilty or guilty?

23 THE FOREMAN: Not guilty.

24 THE COURT: Counsel, did you wish the jurors
25 polled?



(Colloquy)

14

1 MR. SAMEIRO: I don't, your Honor.

2 THE COURT: Mr. Gonzalez?

3 MR. GONZALEZ: No, Judge.

4 THE COURT: All right. Members of the jury,
5 with the rendition of your jury verdict, your jury
6 service here is complete. On behalf of the State and
7 the County, I thank you very much for your service. If
8 you just have a minute, I'd like to come back and thank
9 you personally. It is my practice to do that. I'll be
10 back there in just a moment. Thank you.

11 (Whereupon, the jury leaves the courtroom.)

12 (Whereupon, the hearing continued outside the
13 presence of the jury.)

14 THE COURT: All right. Mr. Machado, you've
15 heard the verdict of the jury. They have found you
16 guilty as to count one, conspiracy. Guilty as to count
17 two, armed robbery. Not guilty on count four, which is
18 possession of a weapon for unlawful purposes. Guilty
19 of theft, count five. Guilty, as to count six,
20 terroristic threats. Not guilty, as to count seven,
21 terroristic threats.

22 Is there anything from the State at this
23 time?

24 MR. SAMEIRO: Yes, at this time, your Honor,
25 I would ask that you revoke the defendant's bail. I

(Bail Motion)

15

1 don't know what his bail is currently.

2 MR. GONZALEZ: A hundred fifty.

3 THE COURT: A hundred fifty thousand. You're
4 moving to revoke it?

5 MR. SAMEIRO: Absolutely.

6 MR. GONZALEZ: I would ask for bail pending
7 appeal. There being a variety of issues within the
8 case. Most importantly, the hearsay, as to how the
9 phone number came in. As your Honor will recall, with
10 regard to the present sense impression.

11 Additionally, the comments made by the State,
12 with regard to my client's election not to take the
13 stand. The adverse inferences that can be drawn from
14 the State's comments. And the way that the Appellate
15 Division usually treats those sorts of comments. Many
16 of those comments -- the case law is clear, that we
17 can't make a comment as to the defendant's election not
18 to testify during the trial. And the comments
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



1 granted. That he, essentially, suffered from the
2 rulings.

3 I think it's very, very, very likely that, on
4 appeal, as to the hearsay issue, in and of itself, and
5 as to Mr. Sameiro's unwarranted prosecutorial
6 misconduct, that this gentleman is going to be back
7 before this Court, and I'm going to be trying this case
8 again.

9 THE COURT: All right. Well, he has bail, at
10 this point, of a hundred fifty thousand, no ten
11 percent. I note that he has not made that bail. I
12 think the request of the State is a valid request, now,
13 he has been convicted. There are issues for appeal.
14 You certainly may appeal, as you very well indicated
15 that you will. But, at this point, I'm revoking Mr.
16 Machado's bail. And we'll have a sentencing date of
17 March 20th. March 20th, 9:00 a.m., that will be your
18 sentencing date.

19 Thank you.

20 MR. SAMEIRO: Thank you.

21 MR. GONZALEZ: Thank you.

22 (Whereupon, the exhibits are returned to
23 Counsel.)

24 (Whereupon, a short recess was taken.)

25 (Whereupon, the hearing continued outside the

1 presence of the jury.)

2 THE COURT: I wanted to address something on
3 the record.

4 Just, as is my normal procedure, I go to
5 speak to the jurors. I just wanted to let you know,
6 that it clearly went a little longer. I wanted to
7 thank them for their service. But before I went into
8 the jury room, the Interpreter let me know -- and I
9 didn't address this once before. I may have addressed
10 it briefly. I wanted to place it on the record.

11 That Mr. Machado chose to take his headphones
12 off, at one point, during the rendition of the verdict.
13 And, basically, asked the Interpreter to stop
14 interpreting, by motioning to her that she didn't have
15 to interpret any longer, and she did not interpret any
16 longer. I just wanted to place that on the record. I
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. I am not
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



1 shut off the receiver, and made the gesture.

2 THE COURT: I just wanted to place that on
3 the record.

4 MR. SAMEIRO: And, Judge, for whatever it's
5 worth, from what's been explained to me, I believe that
6 the defendant understands English.

7 MR. GONZALEZ: Judge, his native language is
8 Spanish. He understands some English.

9 THE COURT: It might have been that he was
10 probably understanding guilty or not guilty.

11 But I just wanted to place that on the
12 record, in case there is any issue later on.

13 Thank you, folks.

14 MR. SAMEIRO: Thank you.

15 MR. GONZALEZ: Thank you.

16 (Whereupon, the hearing concluded.)
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C E R T I F I C A T I O N

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.

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Official Court Reporter
Middlesex County Courthouse
P.O. Box 964
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Date: FEBRUARY 5, 2010

