









Appellate...:

Case No....: 003047

Year.....: 09

Type.....: TRANSCRIPT

Volume.....: 004

-3047-097

SUPERIOR COURT OF NEW JERSEY CRIMINAL DIVISION - MIDDLESEX COUNTY INDICTMENT NO. 07-10-1579APP. DIV. DOCKET NO. A- 003047-09-12

STATE OF NEW JERSEY,

Complainant,

vs.

Transcript of Proceeding (Trial - Vol. III)

PABLO MACHADO,

Defendant.

(With an Interpreter)

Place: Middlesex County Courthouse

56 Paterson Street

New Brunswick, N.J. 08903

Date: DECEMBER 18, 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

RECEIVED APPELLATE DIVISION

DANIEL GONZALEZ, ESQ.

(Perez & Gonzalez)

Attorney for the Defendant

APR 1 5 2010

SMPERIOR COURT OF NEW JERSEY

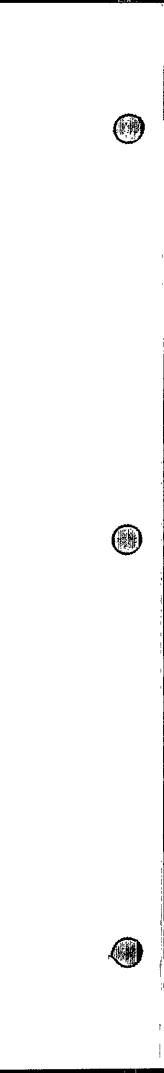
Georgeann Crowell, C.C.R. Official Court Reporter Middlesex County Courthouse P.O. Box 964

New Brunswick, New Jersey

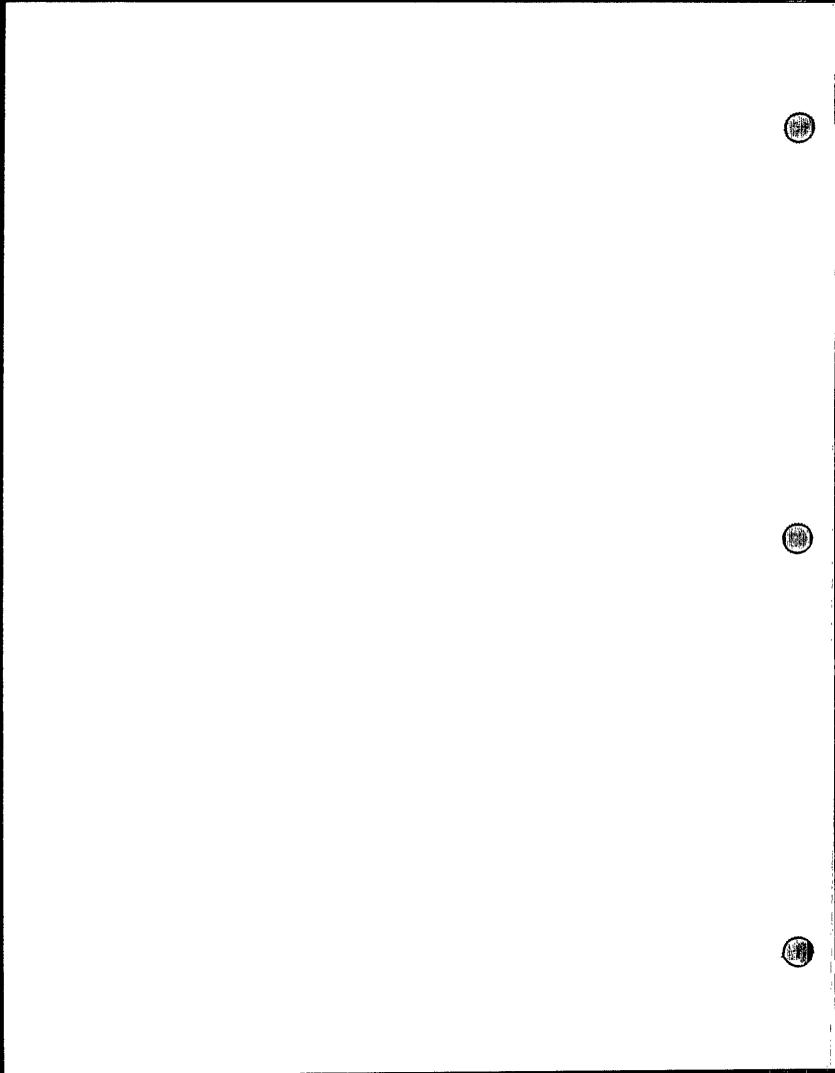
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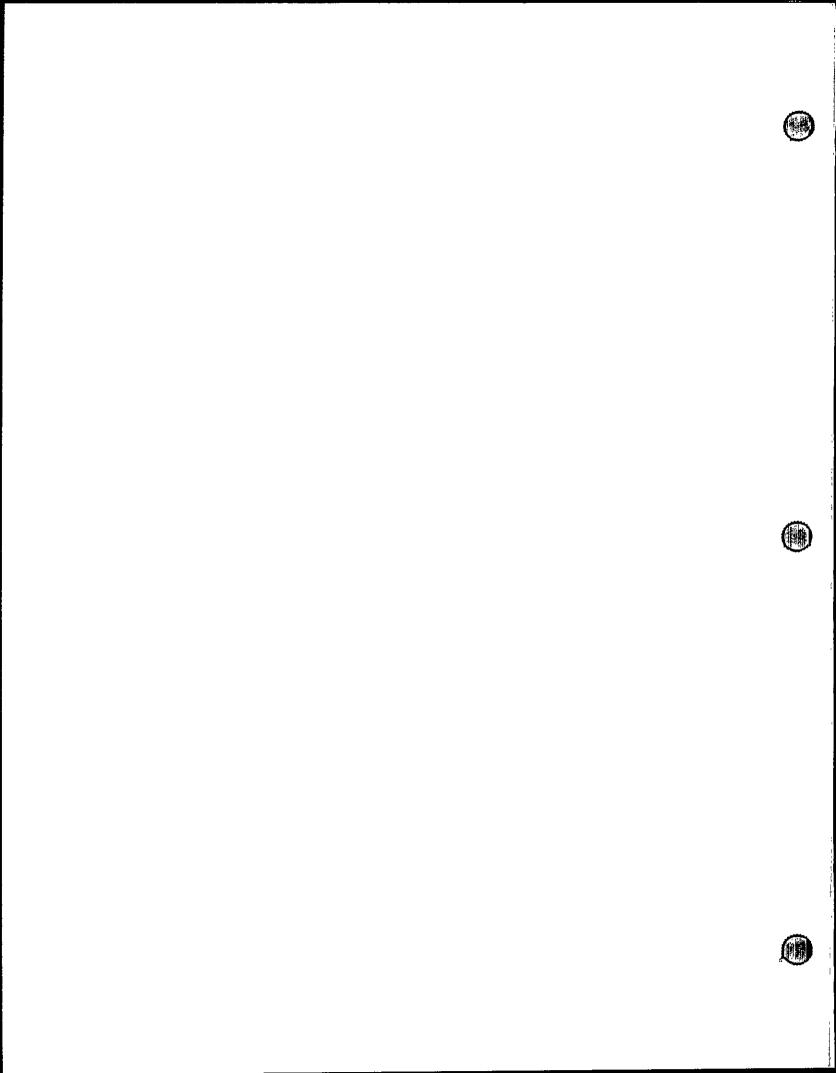
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3					
4			_		
5	State Witness	<u>Direct</u>	Cross	<u>Redirect</u>	Recross
6	AGENT JOHN SELESK	X			
7	By Mr. Sameir	0 12			
8	By Mr. Gonzal		49		
9	·· -				
10					
11	Defense Witness	Direct	Cross	Redirect	Recross
12					
13	PATROLMAN EDWARD BOBADILLA				
14	By Mr. Gonzal	ez 103		144	
15	By Mr. Sameir	0	122		
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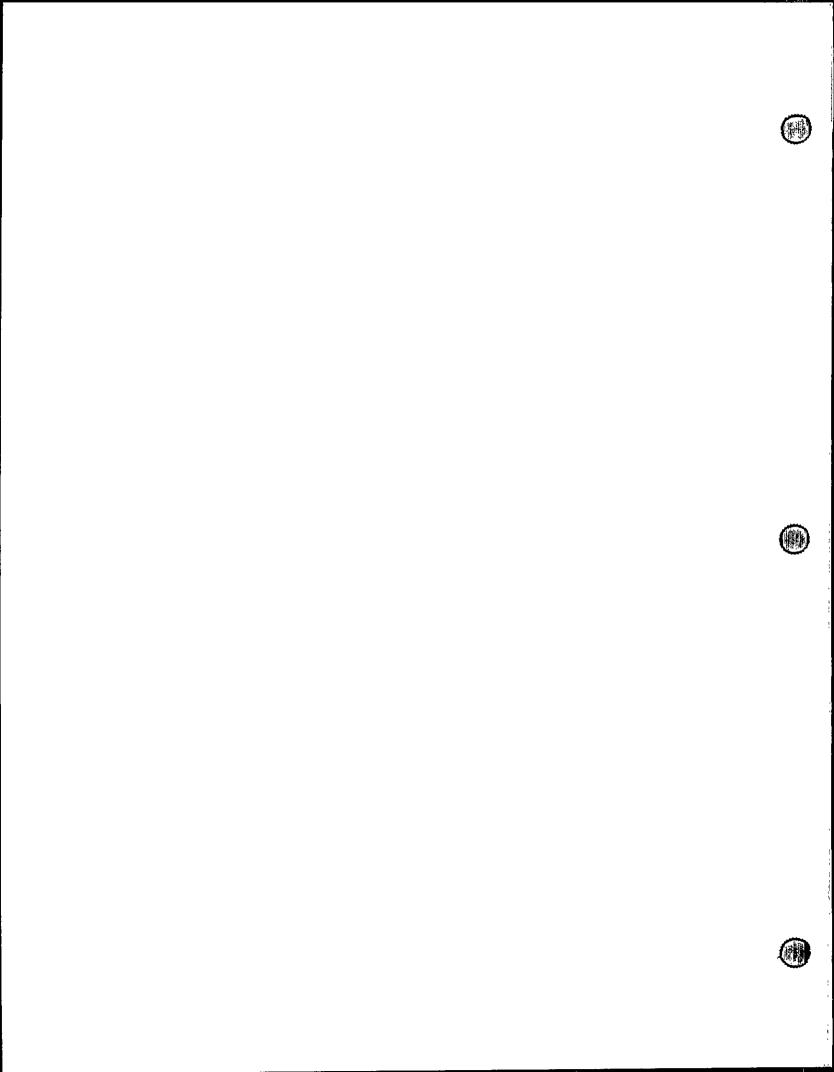
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(Colloguy)
            (Whereupon, the following discussion occurred
 1
 2
   outside the presence of the jury.)
 3
            THE COURT: Let's bring up the defendant.
   think that we are ready to go on the trial.
            Thank you, folks. Please have a seat.
 5
 6
           All right. Did somebody have something?
 7
           MR. SAMEIRO: Yes, Judge. Before we begin
   today, my witness is outside ready to go. I just
 8
 9
   wanted to bring up one issue.
                                  There was a statement
   taken from the defendant in this case.
10
                                            It was
              I'm going to ask that the defense attorney
11
   not be allowed to say whether any statements were taken
12
13
   from his client.
            It will only lead to speculation on the
14
   jury's part. It's not relevant.
                                     The fact that the
15
16 statement was given -- was taken was not relevant.
   don't intend to offer it. It's self-serving.
17
18
   clearly hearsay, if the defendant were to try to get it
   in himself. So, since he can't offer it, since I'm not
19
   offering it, I don't think the jury should speculate,
20
   as to what the defendant said to the police.
21
22
            THE COURT: Okay. All right.
                          It would clearly be confusing.
23
           MR. SAMEIRO:
   I don't need to argue 403.
24
           So, I'm saying the fact that the statement
25
                                                            5
                           (Colloquy)
  was taken of the defendant is not relevant to the
 1
   proceedings.
            THE COURT: Okay.
                              Mr. Gonzalez?
 3
                           I don't think I need to get
           MR. GONZALEZ:
 4
   into the statement, quite frankly. It is not an issue
 5
   for us. I don't need to ask the question. Although I
 7
           I think I could.
                            But I'm not going to.
   could.
 8
           THE COURT: Okay.
           MR. GONZALEZ: I don't think I'm going to,
 9
10
   legally speaking, ask the question to Detective
   Selesky. "You had an opportunity to speak to Mr.
11
12
   Machado; correct?
                      And he denied committing any
13
                      Yes."
   robbery; correct?
            THE COURT:
                       Well, that is clearly
14
                   That's the problem. It's a hearsay
15
   objectionable.
   statement, because it certainly doesn't fit an
16
17
   exception. It is not an admission, in the sense of,
   him saying, he did something wrong. It doesn't come in
18
19
   under that. I was just wondering what exception that
20
   it was coming in under.
21
           MR. SAMEIRO: There is none.
                                          The case law is
22
   precisely on point. The defendant cannot bring forth
23
   his own self-serving denial.
24
           THE COURT: My understanding, just looking at
25
   it, without knowing this particular case, looking at it
```



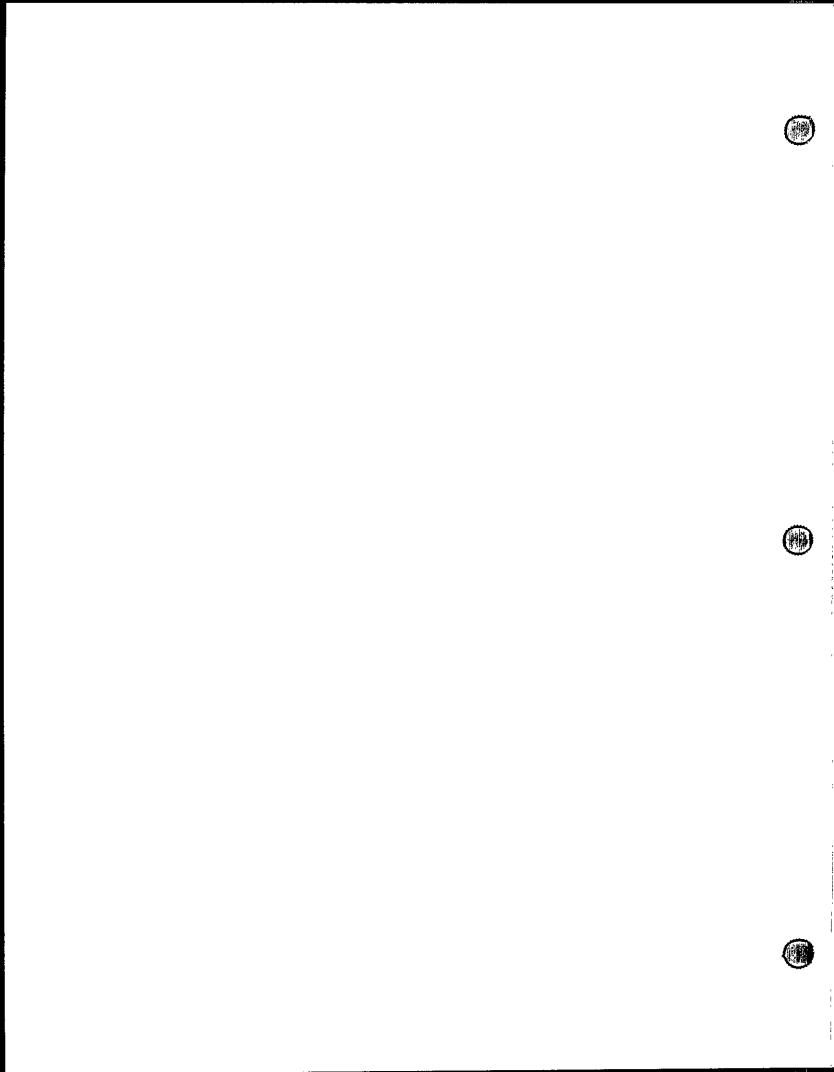
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(Colloguy)
                                                              6
   objectively, with an out-of-court statement, being
 1
   offered for the truth, there is no exception.
 2
 3
            MR. SAMEIRO: It normally comes in under an
               It is usually inculpatory, if it comes in.
   admission.
 5
            THE COURT: Exactly. In this case, it's
 6
   opposite.
 7
            MR. SAMEIRO: It's the admissibility part.
 8
   Let's not forget that.
 9
            THE COURT:
                        Okav.
                          Only I can bring that in as
10
            MR. SAMEIRO:
11
   Mr. Machado's opponent.
12
            MR. GONZALEZ: I didn't need nothing there,
13
   Judge.
            MR. SAMEIRO: I'm asking to bar any questions
14
15
   whatsoever concerning any statement taken, any
   interview, regardless of what the answer is. Because
16
17
   if he asks the question, "did you speak to my client,"
   that fact is irrelevant. It only leads the jury to
18
19
   speculate.
20
            MR. GONZALEZ: I am not asking it. I won't
21
   be asking it.
22
            THE COURT: If it becomes an issue, we'll go
23
   to sidebar.
24
            MR. SAMEIRO: Okay.
            THE COURT:
                       It shouldn't be asked.
25
                            (Colloguy)
            MR. GONZALEZ:
                           I would like you also, at this
 1
 2
   time, to instruct the State, to instruct Detective
   Selesky, that there should be no mention of subsequent
 4
   arrests.
 5
            MR. SAMEIRO: It's been done.
            MR. GONZALEZ: I want it to be clear, so,
 6
 7
   that he doesn't slip.
                           I want him to be told that.
            THE COURT: Okay.
 8
            MR. GONZALEZ: That there is no question
 9
10
   concerning how they got that pedigree information.
            THE COURT: Right. They got the information.
11
12
   It existed there.
13
            MR. GONZALEZ:
                           That no arrest had been made.
            MR. SAMEIRO: Judge, if you allow me to lead
14
15
   a little bit, if we are afraid of a problem.
16
            THE COURT: I think that's a good idea.
17
            MR. SAMEIRO:
                          I'll ask the question.
   the police department had an interaction with the
18
   defendant on June, " whatever date it was.
19
                                               There was a
20
   conversation between the defendant and Officer Chang
21
   noted in the regular report. I'm not going into the
22
   arrest report.
23
                           I don't even think that needs
            MR. GONZALEZ:
24
   to be done.
                The information was gathered from Mr.
25
   Machado. His address was 400 Lee Avenue.
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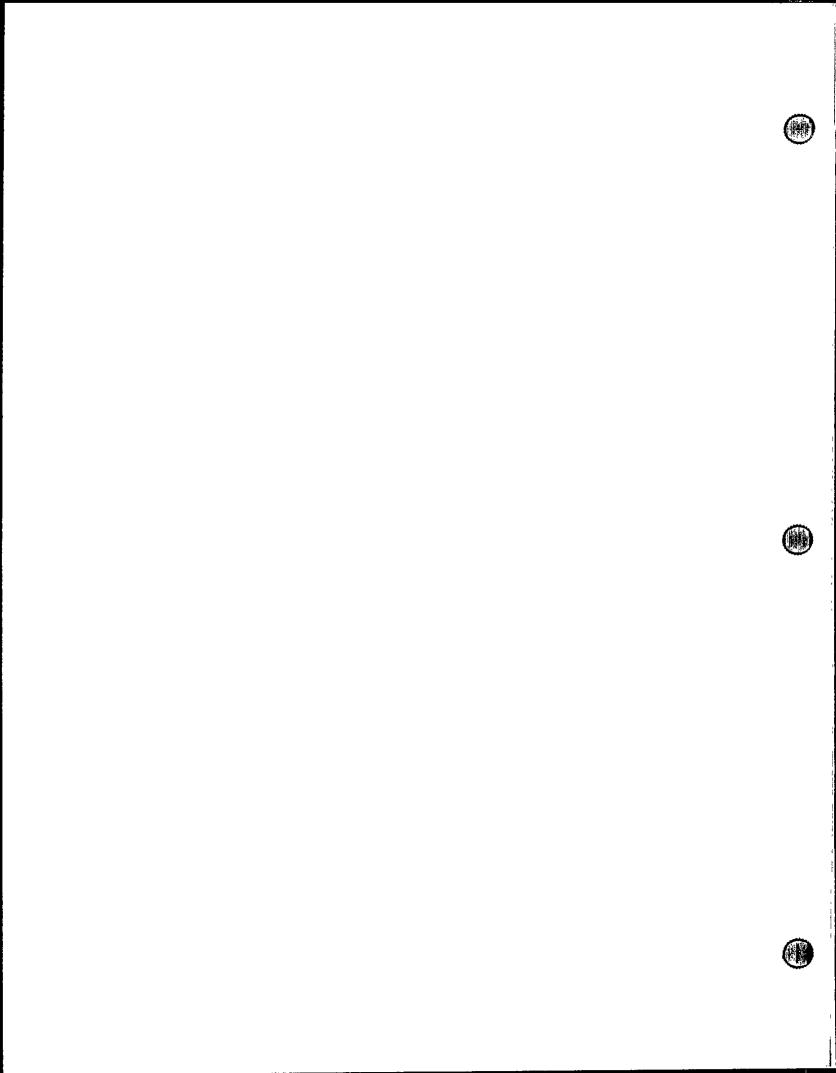
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(Colloguy)
            THE COURT: I think that's fine.
 1
            MR. SAMEIRO: But it came from his own lips,
 2
   your Honor. That's how they got the information.
 3
            THE COURT:
                        Right.
 4
                          I told Counsel what I intended
            MR. SAMEIRO:
 5
           If he didn't care about how I would prove it,
 6
   that's why you have all these officers on the witness
 7
 8
   list.
            MR. GONZALEZ: He can't prove it anyway,
 9
           It would be prejudicial.
10
   Judge.
            MR. SAMEIRO: You're missing the point. Your
11
   client told the police, through his own lips, what the
12
   phone number was, and where he lived. I don't want the
13
   jury to speculate as to how the police obtained the
14
15
   information.
16
            THE COURT:
                       Okay.
            MR. SAMEIRO: They got it through their
17
                   That argument might be correct in a
18
   investigation.
19 certain sense. I don't know if it is going to be or
         Because it's an arrest report. But Officer Chang
20 not.
21
   went through it, because I spoke to him for trial prep.
   I know this defendant told the police officers what
22
   information to put in, in the pedigree portion of the
23
24
  arrest report.
           MR. GONZALEZ: At some point, Officer Chang
25
                            (Colloguy)
                                                             9
  had an interaction with --
 1
 2
            THE COURT: Wouldn't that be hearsay?
  we don't have Chang as to the pedigree?
            MR. SAMEIRO: That is why I suggested, early
 4
   on, you can tell this jury, that, you know, police
 5
   comes into contact --
            THE COURT: I intend to tell them that, for a
 7
   variety of reasons. They could be witnesses to a
 8
   crime. They could be victims. They could be anything
 9
   else that you can think of, that's not a defendant.
10
   There is a whole list of things.
11
12
            Just like you would do with a mug shot
13
            I mean, we went over --
   charge.
            MR. SAMEIRO: I don't know why it's now an
14
15
   issue for Mr. Gonzalez. I don't intend to poison the
   case, and re-try it, you know, because there is a slip.
16
17
   I just don't want any slips.
           MR. GONZALEZ: I'm just cautioning the State
18
19
   not to go into it.
            THE COURT: He already indicated that he
20
21 wouldn't.
22
           MR. GONZALEZ:
                           I just want the officers to be
23 cautioned as well.
24
           MR. SAMEIRO: He's been.
25
           MR. GONZALEZ: Your Honor, we can bring him
```



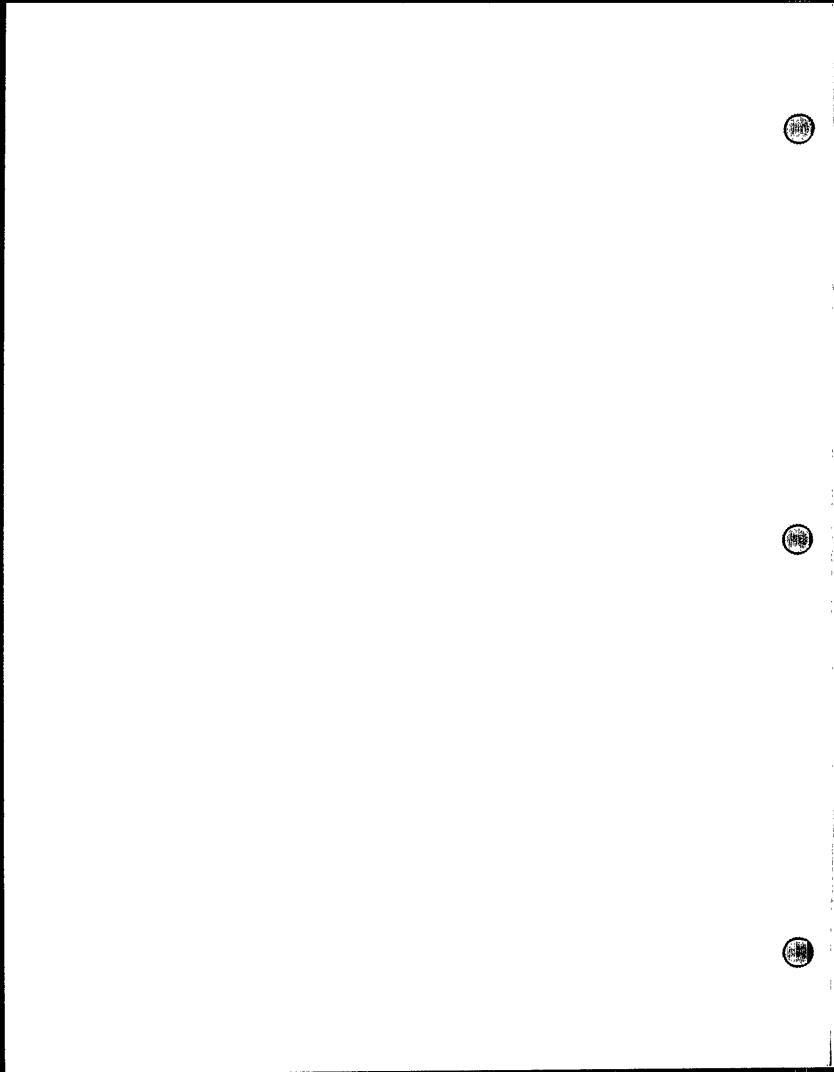
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10
                            (Colloquy)
   in now and put it on the record.
                                     I know he's here.
 1
 2
            THE COURT:
                       That's fine.
 3
            MR. GONZALEZ:
                           Thank you.
                        Can you bring in Officer Selesky?
 4
            THE COURT:
                          You never know.
 5
            MR. GONZALEZ:
 6
            MR. SAMEIRO: I don't have a problem with
 7
   that.
            THE COURT:
 8
                        Okay.
 9
            (Whereupon, Officer Selesky enters the
10
   courtroom.)
            MR. SAMEIRO: It's Agent Selesky?
11
            THE WITNESS:
                          Yes.
12
            MR. SAMEIRO: Since 2007?
13
            THE WITNESS: Yes.
14
            MR. SAMEIRO: State your name for the record,
15
16
   sir.
17
            THE WITNESS: John Selesky.
18
            MR. SAMEIRO: In a moment, the Judge is going
19
   to instruct you on something.
                        Agent Selesky, I think that Mr.
            THE COURT:
20
   Sameiro already spoke to you regarding this. But there
21
   is the subsequent arrest of Mr. Machado.
22
23
            THE WITNESS:
                          Yes.
            THE COURT: I think what we're going to do, I
24
   think he already told you, he didn't want you to get
25
                                                             11
                            (Colloguy)
   into the facts of the arrest, and anything along those
 1
 2
   lines.
 3
            THE WITNESS:
                          Absolutely.
            THE COURT: I think what is going to happen
 4
   is, the Prosecutor will probably lead you through that
 5
          I just want to kind of underscore, that nothing
   part.
 7
   be mentioned regarding that arrest.
            THE WITNESS: Oh, absolutely, yes.
 8
            THE COURT: I wanted to put that on the
 9
             I think he was also concerned, to make sure
10
11
   that nothing will come out about the arrest.
   will be leading through the area.
                                       To the extent that
12
   S-8 has previously been marked, it will be shown to the
13
14
   witness.
15
            MR. SAMEIRO:
                          But neither one of us will
   define it, or describe it as an arrest report.
16
17
   just kept on file with the police.
18
            THE COURT: All right.
19
            Anything else, Mr. Gonzalez, for you?
20
            MR. GONZALEZ:
                           No.
21
            THE COURT: Okay.
                               Is the jury on the floor?
22
            He can sit right there.
            MR. SAMEIRO: I don't need an entrance.
23
24
   can sit right there.
25
            THE COURT: Okay. Let's bring the jury in.
```



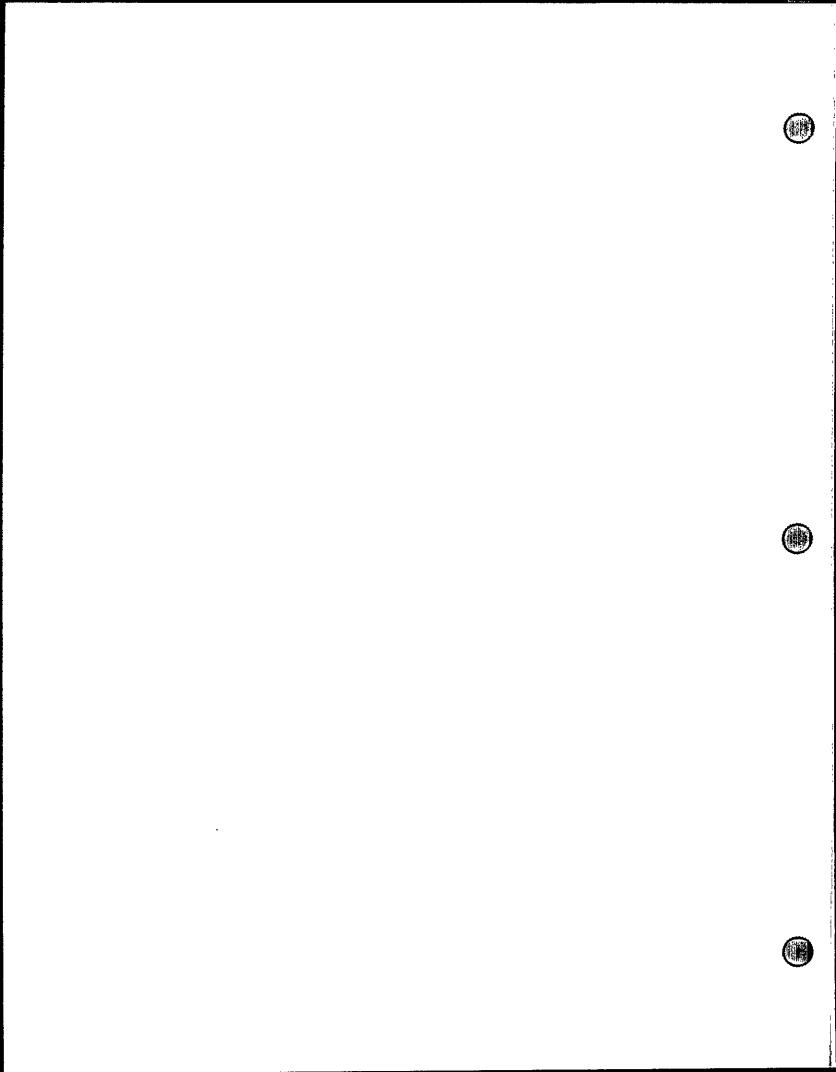
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J. Selesky - direct
                                                           12
 1
            (Whereupon, the jury enters the courtroom.)
            THE COURT: Good morning, everyone.
 2
 3
           THE JURY: Good morning.
 4
           THE COURT:
                       State?
           MR. SAMEIRO: Thank you, your Honor.
 5
   State would like to call Agent John Selesky to the
 7
   stand.
 8
 9
        AGENT
                     JOHN
                                SELESKY, called as
10 a witness on behalf of the State, being duly sworn,
   testifies as follows:
11
   DIRECT EXAMINATION BY MR. SAMEIRO:
12
13
       Q.
           Agent, I stand here, so, everybody can hear
   you. I don't know if the mike is on. But you have got
14
   a loud enough voice to project. Please do. Okay?
15
16
       Yes.
17
           Now, can you first tell the members of this
   jury where you are employed?
18
       I am employed by the Middlesex County Prosecutor's
19
20
   Office.
            In what capacity?
21
       I'm an Agent with the Office.
22 A
23
           How long have you been with the Office?
       Since April of '08.
24 A
25
            Prior to being hired by the Prosecutor's
                      J. Selesky - direct
                                                           13
 1 Office, did you have another job?
             I worked with the New Brunswick Police
       Yes.
   Department.
           What did you do for them?
 4
       When I retired I was a Detective in the Major
   Crimes Unit.
           How long were you a police officer with New
 7
       Q
 8 Brunswick?
 9
       I was a police officer 28 and a half years.
           Did you work with any other law enforcement
10
11 agencies?
12
       No, just those two.
13
           How long were you a Detective in Major
14
  Crimes?
       Since 1989. So, 18 yeas.
15
           18 of your 28 years, as a Major Crimes
16
   Detective?
17
18
       Yes.
19
           Explain to the members of the Grand Jury,
20 what is a Major Crimes Detective?
       A Major Crimes Detective is assigned to follow-up
21 A
22
  investigations. Patrol officers go out and take
23
   reports. People report things. We follow-up on these
24
   investigations. We also do our own investigations if
25
   something happens that we need to look into.
```



J. Selesky - direct Basically, we, ultimately, may get the case. If there is a complaint or something, it will go to trial. 2 3 Have you received any specialized training to do that kind of work? Α Yes. 6 What type of training? 0 7 I received extensive training in homicide 8 investigations, criminal investigations, all sorts of different classes run by the State Police, FBI, private 9 institutions. 10 Take any kinds of courses that deal with 11 12 interrogations or witness interviews? I never had a specific course on how to do 13 interrogations or interviews. Although there are 14 courses that contain that curriculum. 15 What about anything on photo arrays? Did you 16 ever take any instructions as to that? 17 Yes, I did. 18 What's the most recent instructions that you 19 received in that field? 20 21 I received instructions through the Middlesex County Prosecutor's Office a few years ago, when the 22 State -- the Attorney General's Office came out with 23 the guidelines as to how to conduct the photo array 24 25 investigation. 15 J. Selesky - direct Now, referred to as the AG guidelines? 1 Q. 2 Α Yes. These guidelines, these AG guidelines, really 3 have to do with, when it comes to the photo array procedures? 5 They're a couple years old. 7 What are those guidelines? How do you understand them? What do they mean? 8 Initially, quidelines, that you were to have an 9 independent person, who has nothing to do with the 10 case, show a victim, a witness, photographs, if you 11 have developed a defendant or a suspect. That person 12 -- initially, it was done, or the initial process was 13 that the person would read them instructions, and 14 present the pictures one at a time, to see if there is 15 an identification made based on the -- If there is an 16 17 identification made, the officer, who is showing the pictures, was supposed to write down comments made by 18 19 the person, who was shown the pictures. 20 We then have to have the person sign it, to memorialize which picture was picked out. And, you 21 22 know, basically after -- First, he would read him the 23 There is a form they read. Then they would all 24 be included on the form. Then he would let the 25 Investigator know. Initially, this was not videotaped.



```
16
                       J. Selesky - direct
   The Attorney General didn't require it until, not too
 2
   long ago. Now, we have started videotaping it.
 3
            What is the purpose of the videotape?
        The videotape is to, basically, capture the
   procedures, the reaction of the victim, you know, the
   actions of the officers, et cetera.
            When you say the reaction of the victim or
 7
   the witness, are you talking about the body language or
 8
 9
   the demeanor that may be shown?
        Plus what they say when an ID is made.
10
            Excuse me?
11
        0
        Plus what they say. Many times when photo arrays
12
13
   are done, no identification is made. That is the end
   of it. But plenty of times there is an identification
14
15
   made.
            Before we even get to the instructions and a
16
        Q
   videotape, an actual photo array has to be put
17
   together?
18
19
   Α
       Correct.
            How is it done? Explain the methodology.
20
21
        Well, once we develop a person of interest, I'll
    say, that's the term I'll use.
22
23
            You can say suspect.
        Q
                  What we will do is, first, we have a
24
        Suspect.
   photograph of that person. The New Brunswick Police
25
                                                            17
                       J. Selesky - direct
   Department has a computer system. It has actually
 1
   changed over since then to a new system, a better
 2
 3 system, where you would put that person into the
 4 system, and then it would, based on height, weight,
   physical characteristics, age, et cetera, it would
 5
   develop a pool of pictures that you can go through.
            These photographs can come from such sources
 7
   like passport photos, driver's license photographs;
 8
 9
   right?
10
   Α
        Yeah.
               Right.
11
            In fact, if you wanted to, you could access
   the New Jersey DL database, and get photos?
12
13
        Yes.
            From people like me?
14
        0
15
              Yes.
            So, getting a photo of a suspect is not very
16
17
   difficult?
18
       No.
19
           And you would, of course, start with that;
        Q
20
   right?
21
       Right.
22
            Then what would you want to do with the other
23
   photographs?
24
       Well, the way it works -- I've been doing photo
25
   arrays for a long time. I am very particular in what
```



```
J. Selesky - direct
   they are going to look like. I want to get five other
 1
   persons that are similar to the person whom I'm
   showing, in regards to age, height, weight, hair,
   facial hair sometimes is a little difficult, depending
                     I want to make sure that they're all
   on the picture.
   similar backgrounds. It's hard sometimes, because,
   depending on who takes the pictures, what color the
   background is. We try to mix up various backgrounds.
   All the same background, a couple of each.
 9
                  Then what we do, after we put the photos
10
   mix that up.
   together, we have it printed out. And then, basically,
11
   we call an Assistant Prosecutor, who we use as our
12
13
   advisor, to get approval for the photos.
            You have to do it now pursuant to the
14
   quidelines?
15
16
   Α
       Yes.
17
            Both you and the Prosecutor are really
   looking into really just one aspect with respect to the
18
19
   photos?
20
        That is, what's the closest. That there is
   nothing suggestive. Now, we don't want to -- We don't
21
   want the person, that we're looking at, to stand out in
22
23
   the pictures.
            So, that's why, just to use an example, if
24
   you had an Asian American, who was your target or your
25
                                                           19
                       J. Selesky - direct
   suspect, you wouldn't put that photograph with five
 1
 2
   other Caucasians?
 3
   Α
       Correct.
            Because that Asian American would stick out?
 4
                We have other sources to get photographs
       Correct.
           You know, agencies, other agencies, that we can
 7
   get photos from.
 8
            Right.
                  So, you've had training with respect
   to the photo array procedures, and the new AG
 9
10
   quidelines; correct?
11
   Α
       Yes.
            How many photo array identification
12
13
   procedures, actual ones, would you say you were
   involved with over your history as a career Detective
14
15
   of Major Crimes?
16
       Oh, hundreds.
17
            You take statements from people, too; right?
       Yes.
18
   Α
19
           How many times have you taken statements from
20
   people? I'm talking about witnesses.
21
   Α
       Thousands.
22
           Victims?
23
       Thousands of statements.
24
       Q
           Are they are always memorialized in audio or
25
   video?
```



Were most of those officers out on patrol?

It was probably close to fifty, if you look at the

1

4

5

8

9

10

11

12

13

14 15

16

17

18 19

20

21

22

23

24

25

1

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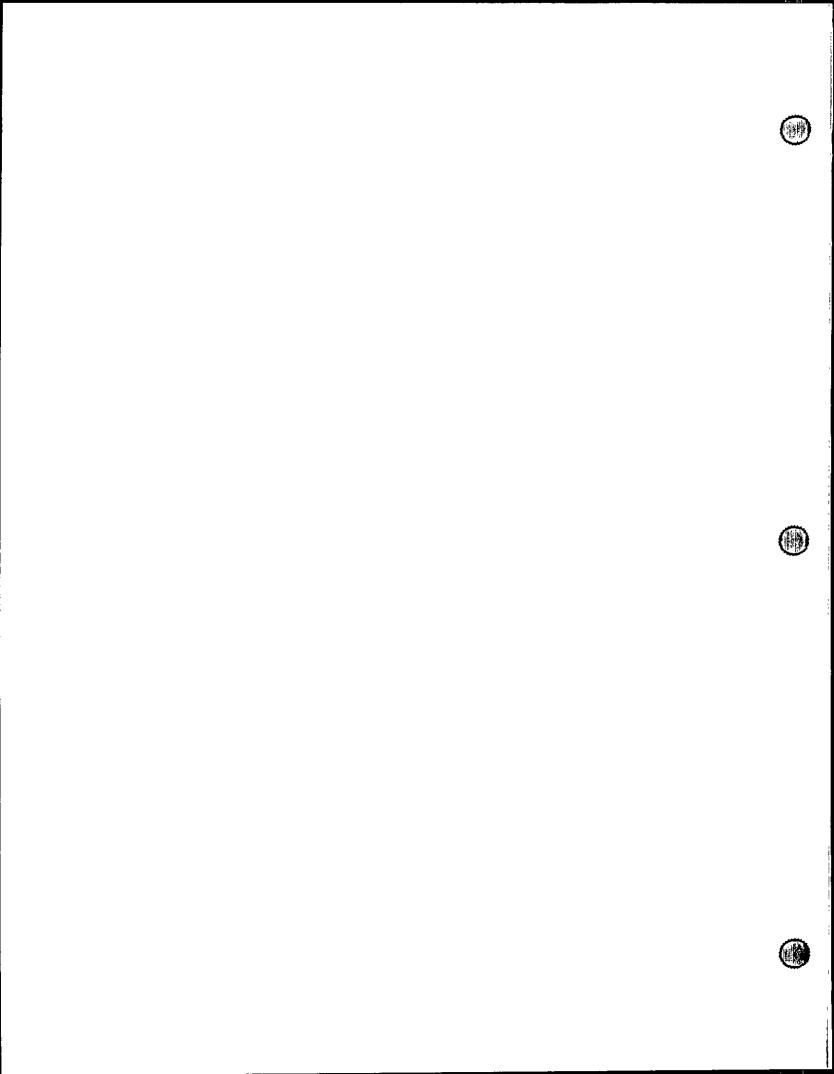
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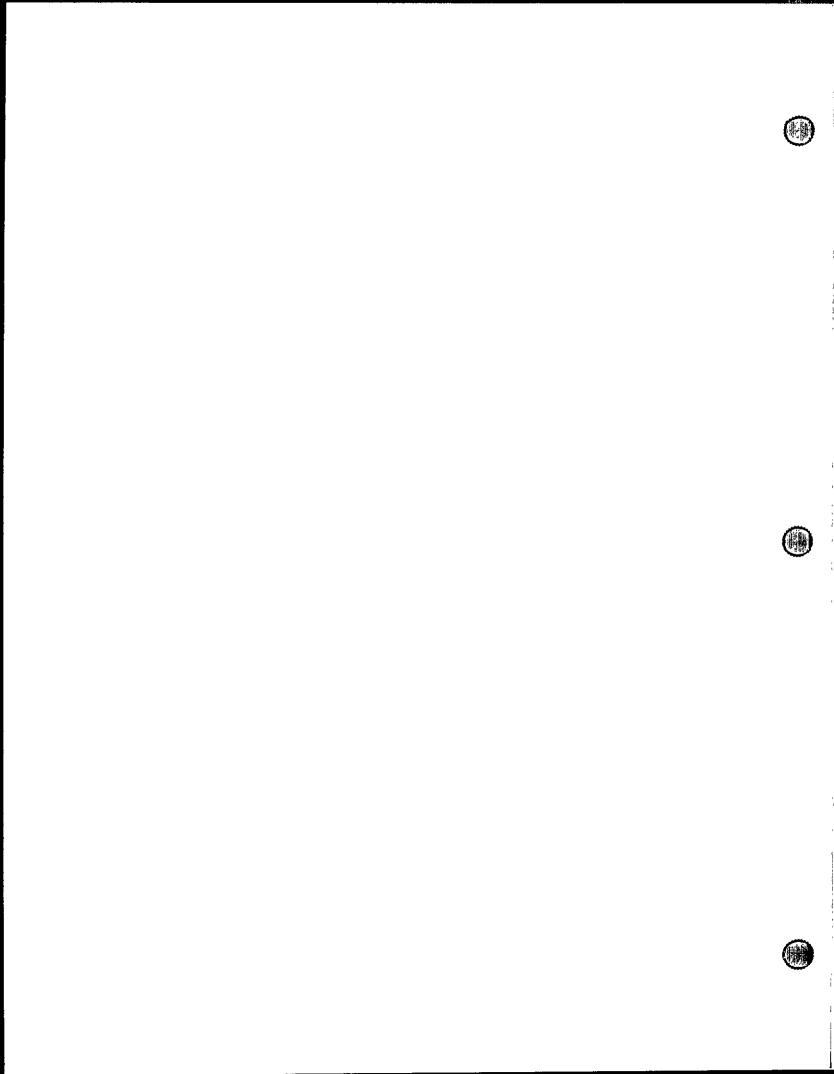
Patrolmen.

Α

Α



```
J. Selesky - direct
                                                            22
   numbers.
 1
            So, the other half are Investigators?
 2
        0
       Between Investigators, Sergeants, Lieutenants,
   Captains, yeah.
            Sergeants and Captains?
 5
        Q.
       Right. They patrol as well.
 6
            All right. So, New Brunswick is a busy city?
 7
   A lot of police officers. Fifty or sixty thousand
   cases came in roughly in 2007; right?
 9
       Yes.
10
           And is it common for people, in this city, to
11
   walk in and report an incident as a victim?
12
13
       Yes.
14
            What would be the procedure, if a person came
   in and reported an incident, and didn't speak English?
15
   Let's say a Spanish-speaking person?
16
       Well, the Sergeant on the desk -- If you walked in
17
   the front door of the building, there is a Desk
18
   Sergeant there, behind a glass window. He, basically,
19
   runs the shift. And if somebody would walk in, to
20
   report a crime, if he didn't speak English, he would
21
   call an Officer who knows Spanish, to come in and speak
22
23
   to them.
           Do you have a lot of Spanish-speaking
24
        Q
   Officers as members of the New Brunswick PD?
25
                                                            23
                       J. Selesky - direct
                        I'm not sure of the number; but
       We have a few.
 1
 2
   there is a few.
            Do you know if that was done on a case
 3
   involving an armed robbery, by a person named Wilmer
   Cedillo, who actually reported the crime on April 24,
   2007?
 7
        Officer Edward Bobadilla took the report.
   sure how he was contacted. However, he does speak
   Spanish, and was the person who took the report from
 9
10
   the victim.
11
            So, you knew about that?
        Q.
12
       Yes.
   Α
13
            You weren't there at the time, I take it?
        Q
14
   Α
       No.
            How did you find out about the initial
15
16
   reports?
17
       At the time I came in. I'm not sure of the shift
18
   that day. I know I flip-flopped my shifts a lot.
19
   know that -- I believe I was on the morning shift that
20
   day. And what we usually tend to do is, you know, in
21
   the Detective Bureau, we would get the reports that
22
   happened the previous day. If something happened at
23
   two o'clock, the Detective would usually follow it up.
   Detectives usually work until twelve or one o'clock in
24
25
   the morning, depending on the shift. Usually
```



J. Selesky - direct everything would be covered between then. 2 What I do, we get all the reports from the 3 previous day, up until the start of the next shift. Review those reports, see what type of incident happened in the city. If something happened that needed to be followed up, a Detective would pick up the report, and do what they had to do to follow it up. So, say you're sitting at your desk -- right 8 -- it's April 24th or April 25th -- and that crossed 9 your desk. It's been marked S-5? 10 11 Yes. You recognize what that is? 12 O. 13 Yes. 14 What is that? Q. It's an initial report, done by Officer Edward 15 Bobadilla, an investigation report, dated 4/24/2007, 16 17 with the victim's name, Wilmer Cedillo. 18 Not the first time you've seen the report; 19 correct? 20 No. A 21 So, back in April, that report crossed your You read it. You knew that an armed robbery 22 desk. took place. It was up to you to try to figure this one 23 24 out? 25 Α Yes.

J. Selesky - direct

1 Q Having read Officer Bobadilla's report, you 2 knew that you couldn't, per se, identify the suspect 3 by name with that; correct?

4 A Correct.

18

19

20

21

22

23

24

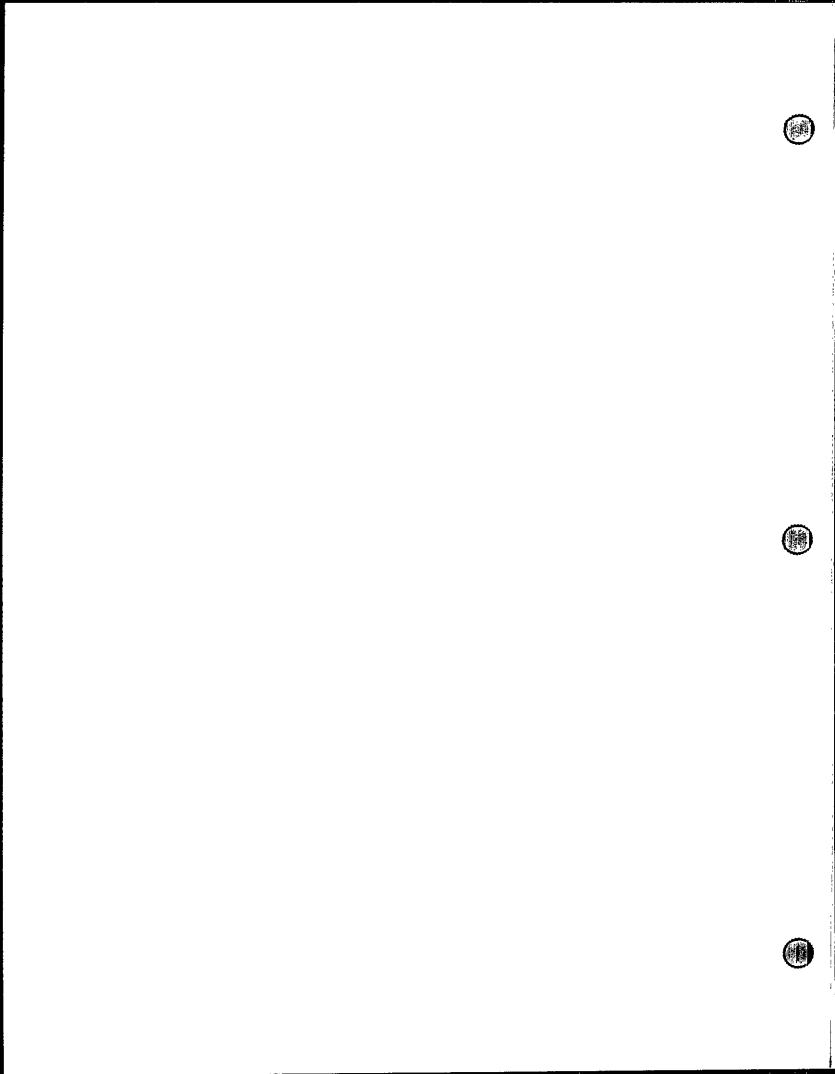
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Α

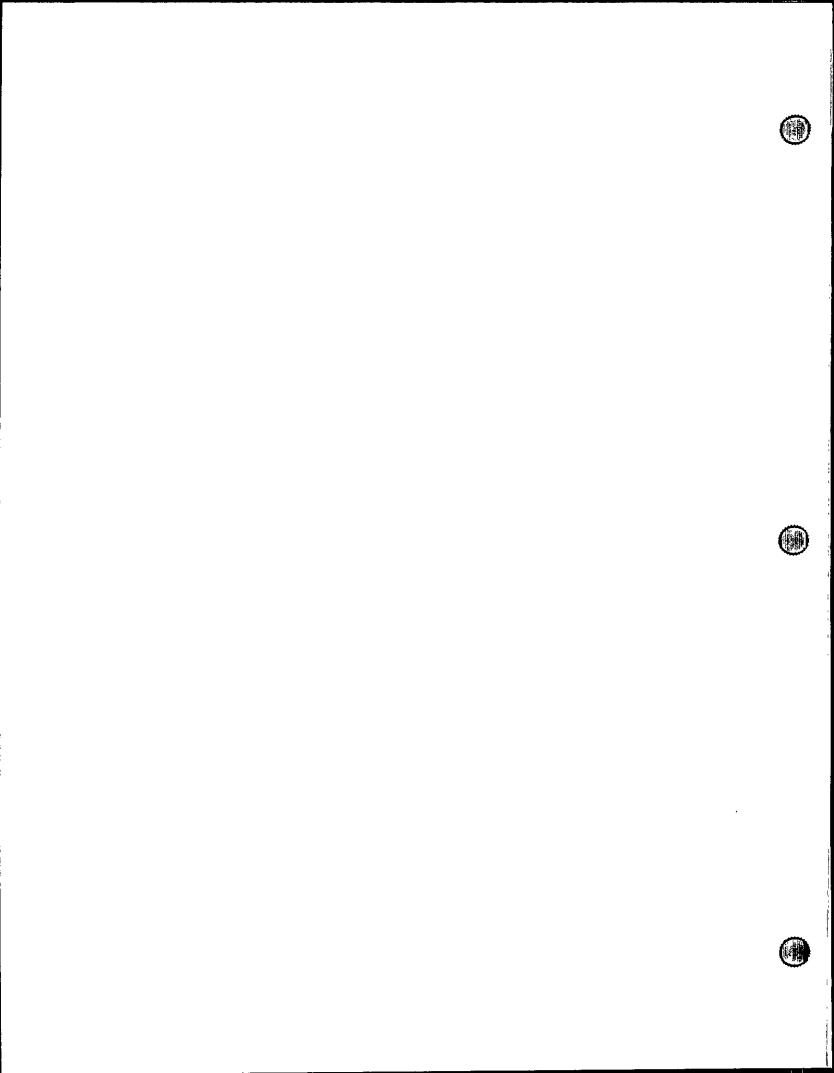
You remember what you did after you got that 5 report in an effort to find out who robbed Mr. Cedillo? 7 Well, I read over the report. In the report, there is a phone number that Officer Bobadilla wrote in 8 the report, concerning a cab driver's phone call. 9 looked it up. The New Brunswick Police Department has 10 11 an in-house computer system, if anybody on the jury, or anybody here reports a crime, an incident, an accident, 12 a lost cat, things like that. If there is a report 13 14 done, or this dispatcher takes your information over the phone, it's put in the CAD System or the computer 15 16 system, where --17

Q CAD stands for Computer Automated Database? Yes.

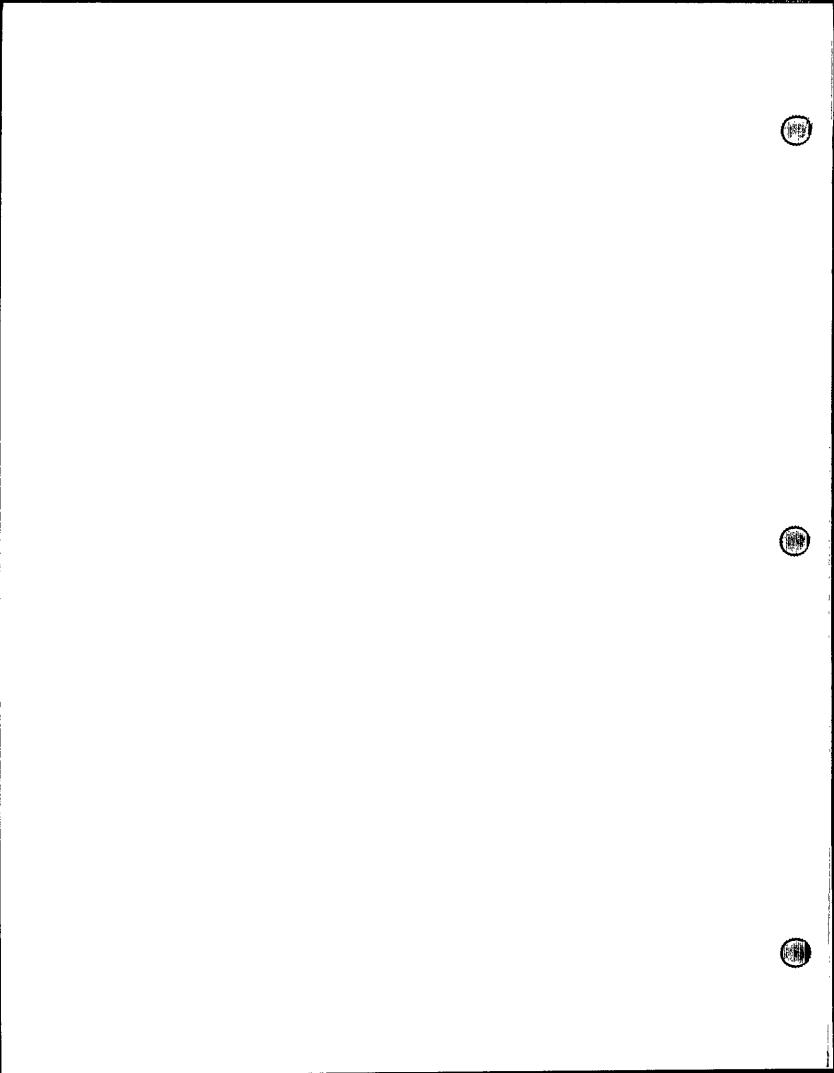
Q And officers use that system to look up information? Any time that a police report is done, this information is saved in the computer system. So, all this information is in the database? That goes back, initially, to 1986? So, one gets that phone number. If anybody has contact with the New Brunswick Police Department, their phone number gets put into the



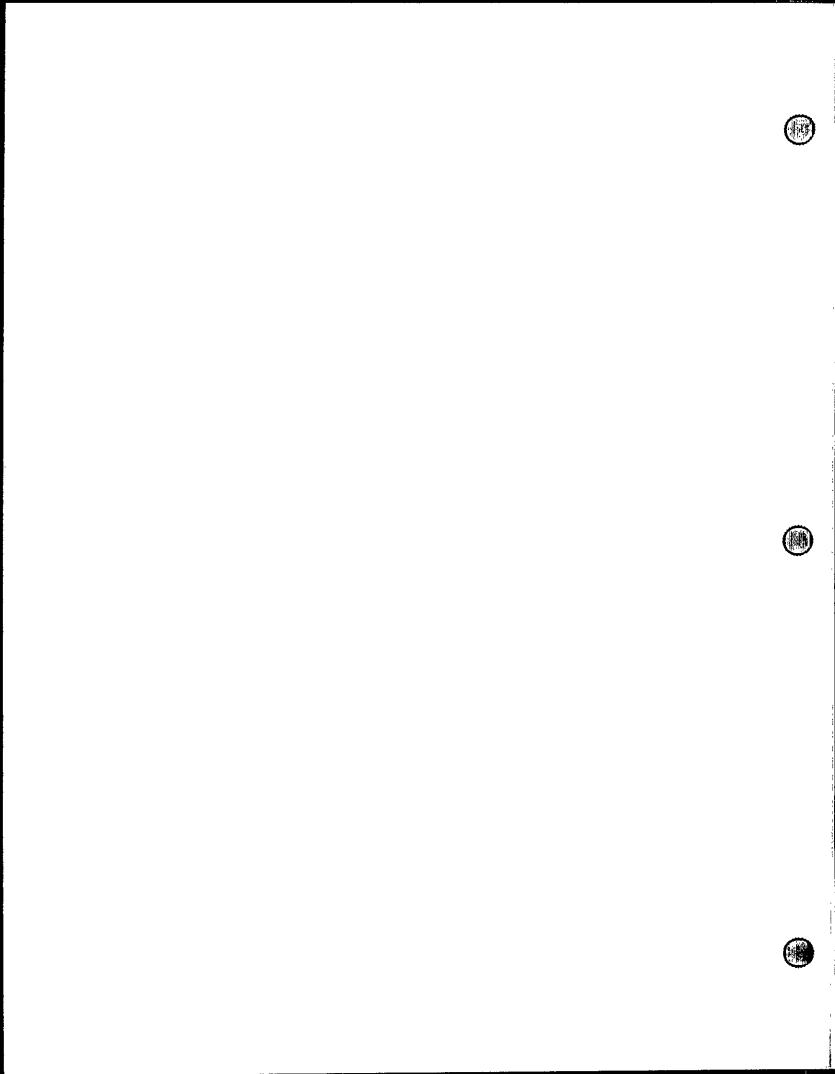
```
J. Selesky - direct
                                                           26
 1
   computer?
       That phone number is contained in the computer
   Α
   system. What I did, I took the phone number on the
   report, I put it into the system, and that came back to
   the phone number.
           Because that number was significant to you;
 6
       Q
 7
   right?
 8
   Α
       Yes.
           What's the number that you looked into?
 9
       The number that is in the report, that I looked
10
   Α
   into, was 732-801-5418.
11
            This report also briefly describes the
12
   episode, the account of the episode; correct?
13
14
       Yes.
           Anything indicated in the report that led you
15
   to identify the person by name, other than the actual
16
   phone number?
17
18
   Α
       No.
19
            You just had a general description of the
       Q
   people who were involved in the robbery; correct?
20
21
            That's not enough to put a photo array
22
       Q
23
   together?
24
   Α
       No.
25
           At least, not in this case?
       Q
                                                           27
                       J. Selesky - direct
       No, we didn't know anything about who did it.
   Α
 1
           All right. So, initially, your results, from
 2
   your own internal database, came back negative?
       Negative.
 4
           What, if anything else, did you do with the
 5
   information in order to solve the crime?
       One of the tools we use is a Grand Jury subpoena.
 7
   I filled out a form, contacted a Sergeant from the
   Prosecutor's Office, got approval from our local
   Prosecutor, to subpoena this number, gave it to the
10
   Agent. Actually, the Agent got the approval. I should
11
   say the Agent got the approval. She filled out a
12
              That goes to the phone carrier.
13
   subpoena.
                                                There are
   tools that you can use on the internet to figure out
14
   what phone carrier it is.
15
        A lot of these companies, they'll say if it's
16
   Sprint or Nextel. There are a number of other
17
18
   companies. What you do, through the subpoena process,
   you pretty much eliminate the companies that it isn't.
19
20
   Then you pretty much come down to the company that it
21
        In this case, it was Movida, I believe. It was a
22
   small phone company. I'm not sure even where they're
23
        We send the subpoena to the company, to see who
24
   the subscriber was for the phone number.
25
           It's not necessarily to trace a phone number
```



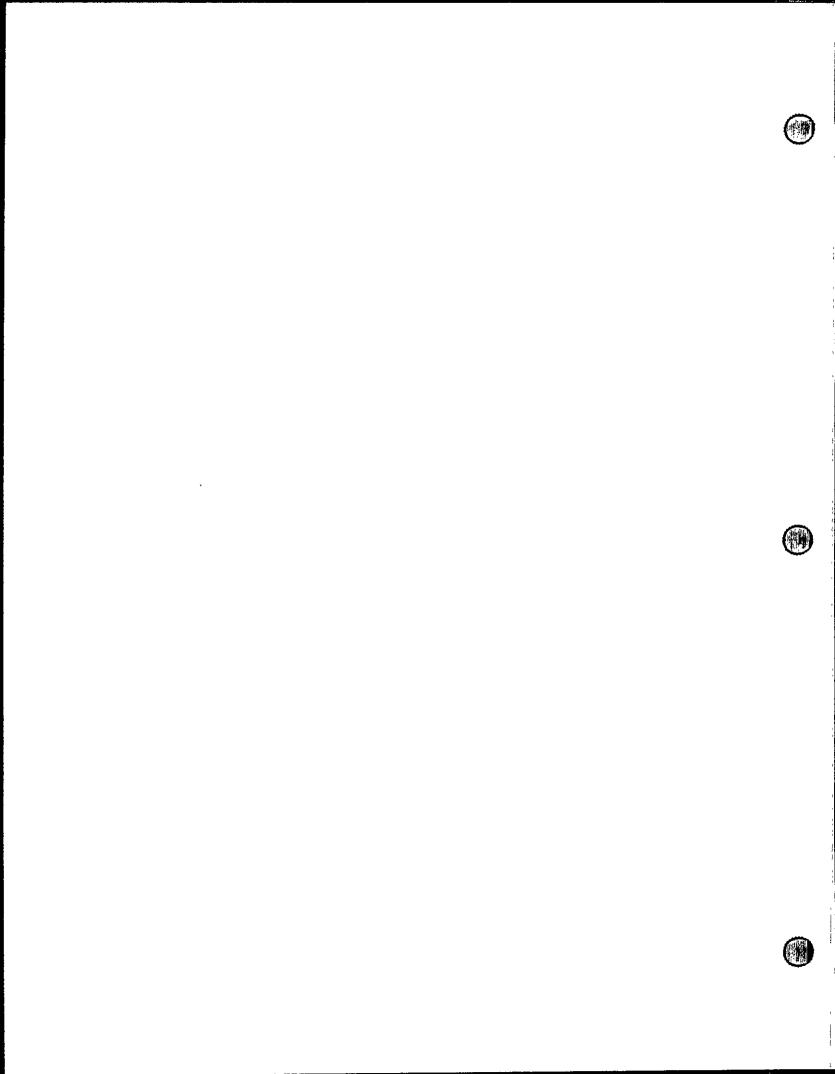
```
J. Selesky - direct
                                                            28
   on that initial date; correct?
 2
        No.
   Α
 3
           But it can be done?
        Q
       Yes.
 5
            So, you were diligent in looking for the
 6
   subscriber information as to the phone?
 7
        Yes.
            By that we mean, the name and the person who
 8
   might be on the account?
 9
10
   Α
        Yes.
            The name and address of the person who might
11
        Q
12
   be on the account?
13
        Correct.
14
           Did you determine what kind of telephone
15 account that was, ultimately?
        It's a pay per account. It's where you buy the
16 A
   phone, and you get a certain number of minutes.
17
            Anybody can go out and get a phone like that?
18
19 A
        You can get them anywhere. I'm sure like Radio
   Shack, K-Mart, Wal-Mart, everybody sells them.
20
            It's not like calling up Sprint for a land
21
22 line phone? Either Sprint or Verizon?
       All the major companies have the pay per phones.
23
   Anybody can go out and buy one.
24
            They can go out and buy one, and they give
25
                                                            29
                       J. Selesky - direct
   them whatever name they choose at the time?
 1
 2
        Yes.
             Yes.
            Did you get the information on this phone
 3
        0
 4
  number?
       Yes, I did.
 5
   Α
            What did you do?
 6
 7
        They FAX'd me, back in July, the subscriber
  Α
   information.
 9
            What day of July?
        Q
10
        25th.
   Α
           July 25th, it turns out?
11
12
  Α
       Yes.
13
            You got the information on the subscriber
14 account. And what did you get?
15
   A . It came back to a person named Mendosa.
16
            Is that a first name or last name?
17
        Last name. Like you tell them what your password
   Α
18
   is or a keyword is. And that says -- And that was
19 Honduras on there.
            And that's it?
20
       Q.
                   No address, just a phone number.
21 A
       That's it.
22
            So, you have Mendosa and Honduras?
       Q
23
  the password?
24
   Α
       That's it.
25
           And no address even?
```



```
J. Selesky - direct
 1
   Α
       No.
 2
            Now, you waited a long time to get the
        Q
   information; right?
        Yes.
 5
            It's unusual to get that kind of subscriber
        Q.
   information several months after the subpoena is
   tendered; right?
        Sometimes it takes that long. Depending on the
 8
   Α
 9
   carrier.
           So, there are a lot of Mendosa's out there;
10
        Q
   right?
11
12
        Probably, yes.
   Α
13
           No first name is not going to help you?
14
       No.
            What, if anything, else did you do July 25th,
15
16 to ascertain who had that phone?
17
        Well, once I got that report back, I then
   re-entered the phone number into the New Brunswick
18
   database, because between April and July, there is a
19
   lot of police calls, a lot of people talking to the
20
   police. So, I just double-checked this number, again,
21
22 to see if it was in the system, and it came back with
23
   the information.
            So, now, you got a hit?
24
        Q
25
        Yes.
  Α
                                                            31
                       J. Selesky - direct
            And what kind of a hit, did you get?
 1
        The phone number, the 801 phone number I put in
 2
   Α
   first, came back associated with the individual I had.
            Who was that individual? What was his name?
        Pablo Machado.
 5
   Α
            Now, you were able to figure this out on July
 7
   25th?
 8
   Α
       Yes.
 9
            You got lucky?
                Like I said, I was waiting for the
10
   subscriber to come back, to see who it might come back
11
12
   to.
            Now, the information that was collected in
13
   the database, I'm sure pointed to a specific time and
14
15
   date; right?
16
   Α
        Yes.
17
            All of that information was kept on file in a
18
   specific report; right?
19
       Yes.
20
            Now, you looked for that report, after your
21
   computer said, hey, we have got a hit, Pablo Machado?
22
        Yes.
23
           Now, I'll show you what's been marked S-8.
24
   Is this a copy of that very report, that indicates
25
   Pablo Machado is associated with that phone number?
```



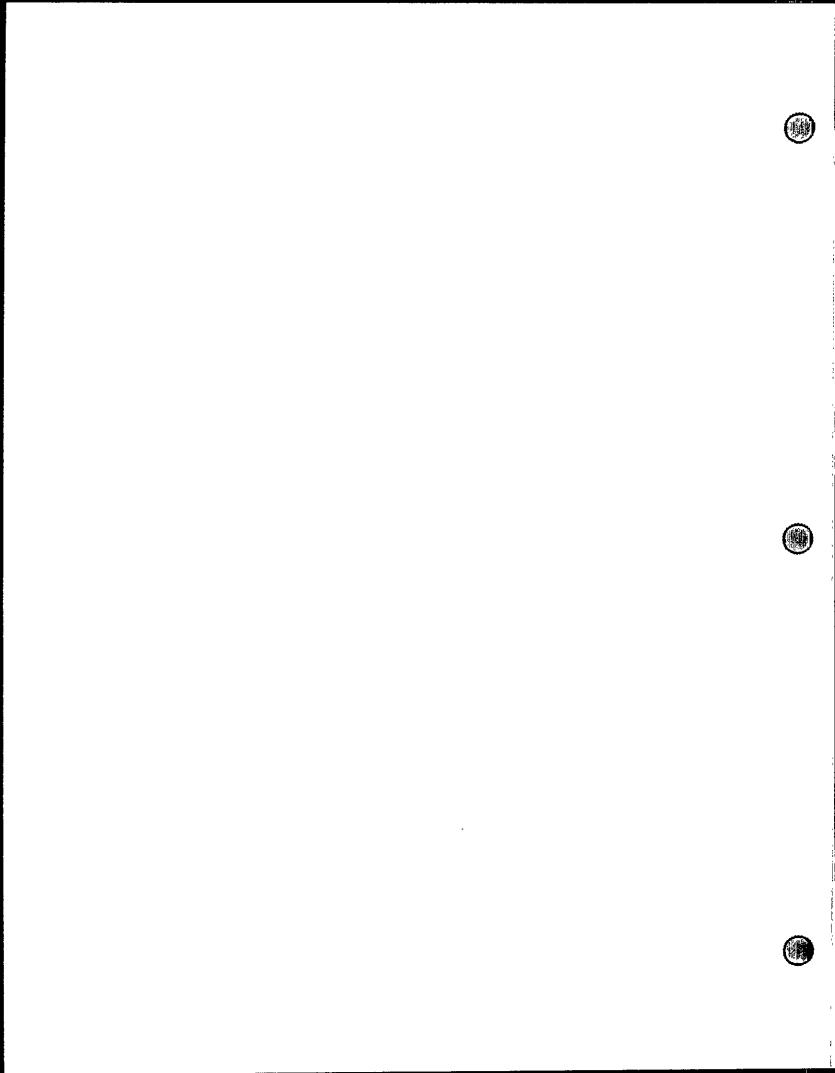
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32
                       J. Selesky - direct
        Yes.
 1
   Α
 2
        Q
            Now, the information that's contained on that
   report, in terms of Pablo Machado, we'll call that
   pedigree information, you know was provided by the
   defendant himself; right?
        Yes.
 7
           And, so, the defendant, and I haven't asked
        Q
   you yet, Pablo Machado, who is referenced in the
 9
   report, is here in the courtroom?
       No.
10
   Α
            Is he?
11
        Q
12
       Yes.
   Α
13
           Do you know where he is?
       He is seated next to Defense Counsel (indicating).
14 A
            You know if that is the same person that had
15
16 the interaction with the police, relevant to this S-8
17
   report; right?
                    Correct?
18
              Yes.
        Yes.
            Now, this report is dated June 16, 2007;
19
20
   right?
21
   Α
        Yes.
           Mr. Cedillo reports a crime in April; right?
22
23 A
       Yes.
           Of 2007?
24
        Q
25 A
       Yes.
                                                            33
                       J. Selesky - direct
            Unbeknownst to you, Mr. Machado gave
 1
   information to the police on June 16, 2007; right?
        Correct.
   Α
            You figured that out on July 25th; right?
 4
        Q
 5
   Α
        Right.
            Now, among the things that Mr. Machado
   himself told members of your department, is not just
 7
   his phone number; right?
 8
 9
   Α
        Correct.
            But his address and place of birth?
10
11 A
       Date of birth.
            Date of birth, height; right?
12
13
       Yes.
            Let's start with the address information.
14
15
  A
       Okay.
            What is Mr. Machado's address, according to
16
17
   that report?
        It says, box ten, address is, 400 Lee Avenue, New
18
19
   Brunswick, New Jersey, 08901. Apartment 304.
20
            You don't have to name the boxes by number.
21
  Just -- you know -- Okay. Let's go through the
22
   relevant details. So, he told the police, on June
23
   16th, that he lived at 400 Lee Avenue, specifically
24
   Apartment 304?
25
       Yes.
```



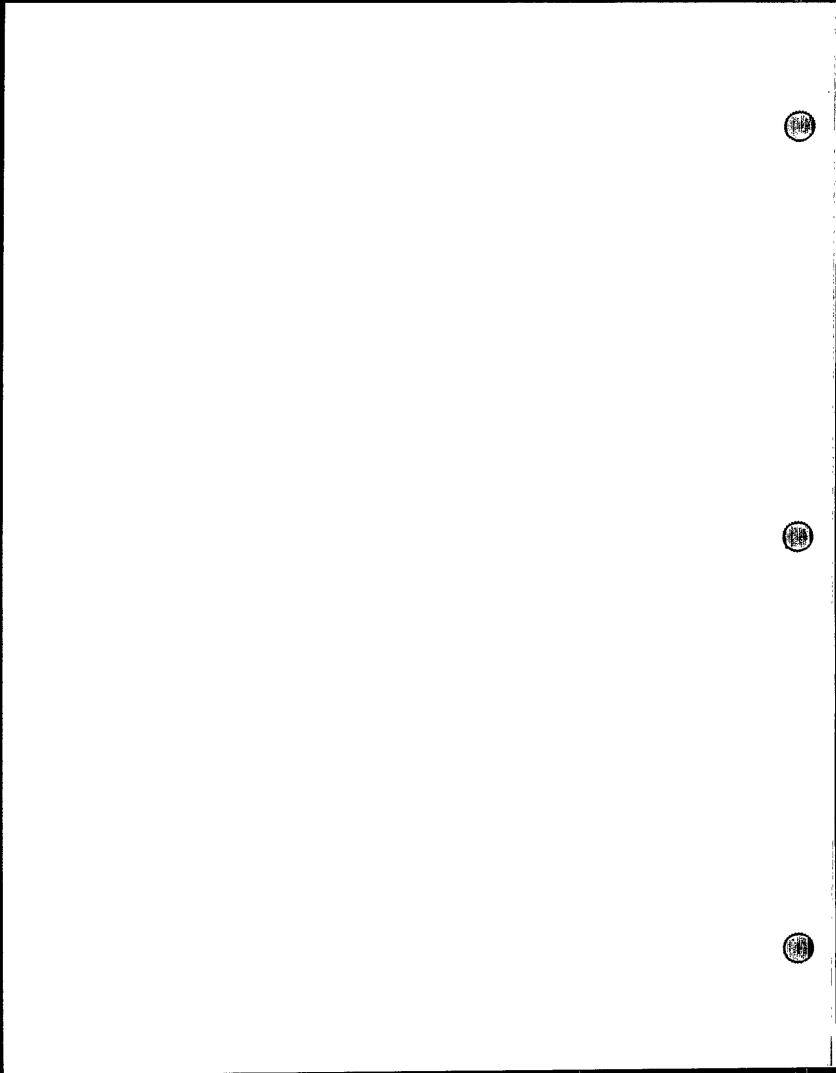
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J. Selesky - direct
           Now, before I go any further, have you ever
 1
   been to that location?
       Yes.
           Where is it?
 4
       Q.
       Lee Avenue -- I don't know if anybody is familiar
   Α
   with New Brunswick. Lee Avenue in New Brunswick --
   The streets go in all different directions. Livingston
   Avenue is a main street in New Brunswick. It runs
 9 between New Brunswick and North Brunswick. And Lee
   Avenue runs parallel to that, as well as Joyce Kilmer
10
11 Avenue, on the other side. Lee Avenue, basically, is a
12 neighborhood street. That has lots of intersecting,
  cross streets. 400 Lee Avenue, specifically, is at the
13
   very end. The very end of Lee Avenue, ends in New
14
   Brunswick. It is, basically, a cul-de-sac, a circle.
15
           Now, what's at 400 Lee Avenue?
16
       It's an apartment building.
17
            How many apartments -- apartment units -- are
18
  associated with 400 Lee Avenue?
19
20
       There is two.
            Now, when you're looking at the building,
21
   it's one of many in a garden apartment complex, if you
22
23
   will?
24
   Α
       Yes.
       Q Now, what would be the address to the
25
                                                            35
                       J. Selesky - direct
 1 apartments next to 400 Lee?
       The complex is old and it's big. It's not like
   the huge garden complex you have now; but, for its
   time, it was a pretty big complex. It has three
   different addresses. It has a Livingston Avenue
 5
 6 address for the houses in the front, on the Livingston
 7 Avenue side. The center of it is a court. It's called
   Woodnor Court. A lot of apartments in that complex use
 8
 9 Woodnor Court as their addresses. Also, some of the
10 buildings use Lee Avenue as their addresses.
           So, you have, basically, three different
11
   streets recognized by the City of New Brunswick in this
12
13
   complex; right?
14
       Right.
           Focusing on Lee Avenue, 400 Lee, you have
15
16
   told us, it covers two particular units; right?
17
       Yes.
           The building that we're talking about, has
18
19
   how many apartments?
20
       Four.
   Α
21
           What would be the address for the other two?
22
       398, I believe, is the other side of the building.
23
   398 and 400.
24
           Four apartments. Like most of the streets,
```

you have the even numbers on one side, and then on the

25



```
J. Selesky - direct
 1
   opposite side, you have the odd numbers?
 2
   Α
       Yes.
 3
           So, 398 Lee Avenue?
       Q
       Yes.
 5
           And 400 Lee Avenue?
       0
 6
       Yes.
 7
           What about across the street? Do you
       Q
   remember?
 8
 9
        401 is across the street. Another building
   exactly like it. Like side by side. The number -- I
10
11 don't know -- on the other side, I'm not sure if it is
                But there is a 401.
12
   399 or 403.
            So, getting back to the June 16, 2007 report,
13
14 Mr. Machado told the police, he lived at 400 Lee
15
   Avenue, Apartment 304; right?
16
       Yes.
17
            Where did he say he was born?
18
       According to the report, he told the Officer he
   Α
19
   was born in Honduras.
20
            Did he give information concerning his
       Q
21
  height?
       Yes, he did.
22
23
           What would that be?
       505, which would be five feet, five inches.
24 A
            What about his date of birth?
25
                       J. Selesky - direct
                                                            37
       Date of birth is November 14th of 1986.
  Α
 1
            All right. He also gave a weight
   description; right?
        Yes. Weight was 130 pounds.
            This is all computer-generated? You put in
 5
   the particulars and the computer prints out what it is?
 7
   Well, the Officer that prepared that?
 8
       Puts that in.
            He didn't necessarily dream up the
 9
10
   information? He got it from the defendant himself --
       Yes.
11
            -- I take it?
12
       Q
13
       Yes.
   A
14
           Now, was any of this information relevant to
   you when you learned about it on June -- excuse me --
15
16
   July 25th?
17
       Yes.
   Α
18
           What, in particular?
       Well, what, in particular, is the phone number was
19
20
   the same that the victim provided to the police.
21
           What did you understand that phone number,
22 provided by the victim to be?
                                  What was the
23
   significance of that number?
24
       Well, that's the number that called the cab
25
   company for the ride from 58 Lee Avenue to 400 Lee
```



```
J. Selesky - direct
                                                            38
           And Mr. Machado's ten digit phone number is
   the same as the one that the victim gave?
           Now, based upon that information, did you
   attempt to identify Mr. Machado by other means?
            Identify him in a sense, that he might have
   been involved in the robbery that Cedillo reported?
           How did you do that? What did you do?
       Well, like I said earlier, we put a photographic
   line-up together. Got approval by Assistant Prosecutor
   Kuberiet. I had Officer Chang, I believe, contact Mr.
   Cedillo. We had a change of number. We ended up
  finally getting ahold of him. Mr. Cedillo agreed to
   come to New Brunswick Police Department. At that time,
   we began the investigation with Mr. Cedillo.
           So, you put a photographic array together.
   You did so with the assistance of the ID Unit?
            I'm going to show you what's marked S-2-A and
                Do you recognize what's S-2-A?
            This is a --
           S-2-A you are looking at?
                                                           39
                       J. Selesky - direct
       These are the photographs that I put together for
           How many are there?
       There is one, two, three, four, five, six.
           Now, in order to keep those photographs in
  some type of order, to be able to identify them later,
   you come up with a key? Some type of a listing?
       Well, you print it out. A sheet prints out, with
                      The newer system does it
                With the older system, it prints out the
11 name of the person who is the main photo, that we
   looked at, with the date and the time that the photo
   array is put together.
                          In New Brunswick -- every
   department -- police department -- they identify
   themselves by a jacket number, the computer-generated
            When you have the picture taken, it puts a
   jacket number attached to the name and the date of
   birth of the person.
           You do this in no particular order, with
   respect to the listing; right?
```

21 No. 22 In fact, you know that the guidelines 23 actually require the shuffling of the pictures? 24 may not be shown in the order depicted in S-2-B; right? 25 Correct.

1

2

5

6

7

8

9 10

11

12

13

14

15

16

17

18

19

20 21

22

23

24

25

1 2

3

5

7

10

12

13 14

15

16

17 18

19

20

Α

Avenue.

Q

Yes.

Yes.

Yes.

Yes.

also S-2-B.

Yes.

this photo array.

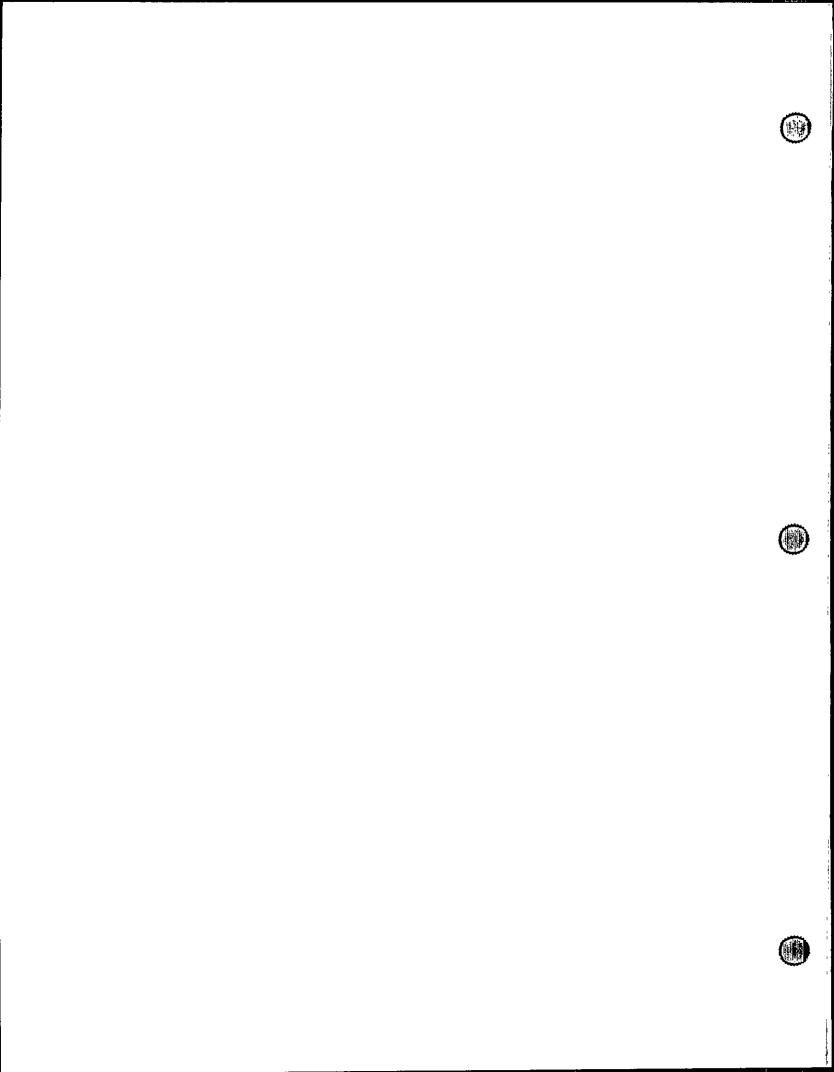
the older system.

differently.

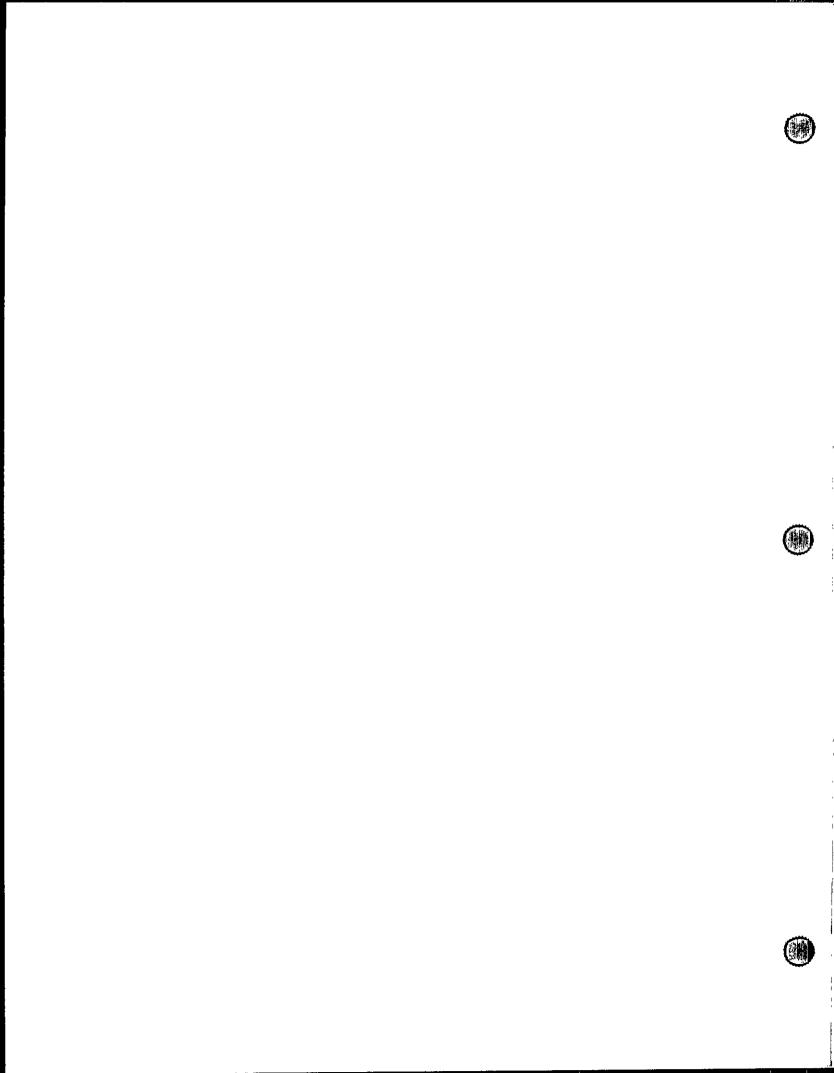
Q

Q.

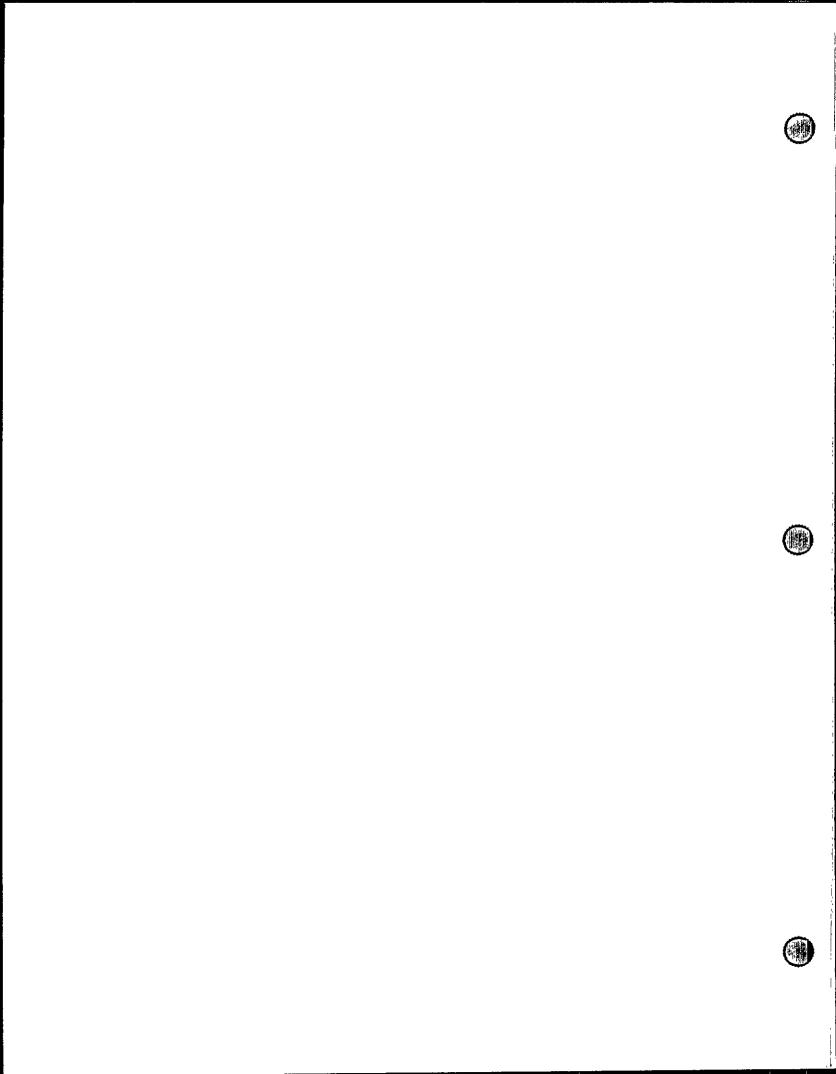
Q.



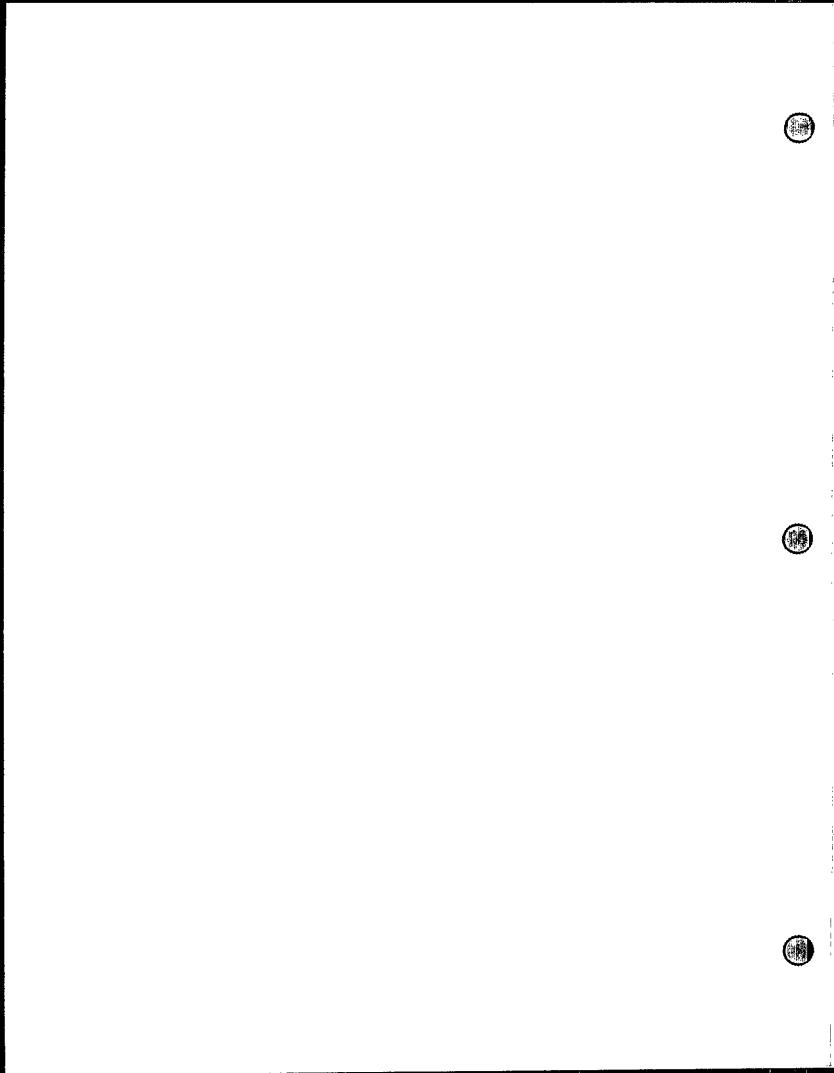
```
J. Selesky - direct
            MR. SAMEIRO: Your Honor, I'd like to offer
 1
   into evidence S-2-A, so, that I can publish them to the
   jury.
          I'm talking about all six photographs.
   show them on the projector.
                           I have no objection to these
            MR. GONZALEZ:
   going into Evidence.
            THE COURT: Okay. S-2-A is in Evidence.
 7
            (Exhibit No. S-2-A, six photos, are received
 8
   and marked in Evidence.)
 9
           Now, these are the six photographs; right?
10
11
   Α
       Yes.
            They're in color. But the projector is
12
13
   taking out the color?
14
       Yes.
            Where is the defendant's picture?
15
       0
       He is the far top right.
16 A
            That would be the one with the last several
17
18 numbers of 33223A?
       Yeah. It's blurry from here.
19 A
            But you know from the key?
20
21
       Yes.
  Α
22
            Okay.
                  These photographs were done in an
       Q
23 effort to insure that Mr. Machado's picture didn't
24 stick out amongst the others?
25
  Α
       Correct.
                       J. Selesky - direct
                                                           41
            The other five people are generally --
 1
 2
       Fillers.
   Α
            You call them fillers; right?
 3
       Yes.
  Α
            In your opinion, they're similar in nature
 5
   with respect to the defendant's picture?
             That is why we had the Prosecutor -- We get
 7
   a Prosecutor to approve it as well.
 8
                   How were these pictures shown to Mr.
 9
            Right.
10 Cedillo? You had mentioned earlier that Officer Chang
11 was asked to call him, not to bring him to
  headquarters?
12
13
       Yes.
             Because Officer Chang was familiar with the
             When he is shown the pictures in this line-up
14
   here, Officer Matias comes in and shows the photographs
15
16
   to Mr. Cedillo.
17
            So, you wanted to rule out any kind of
       0
   personal bias or influence, by calling Sergio Matias to
18
19
   do the photo array?
20
   Α
       Correct.
21
            He did that where?
       He did that in our interview room at the New
22
23
   Brunswick Police Department, which is located on the
24
   second floor in our Major Crimes Office.
           Was it videotaped?
25
```



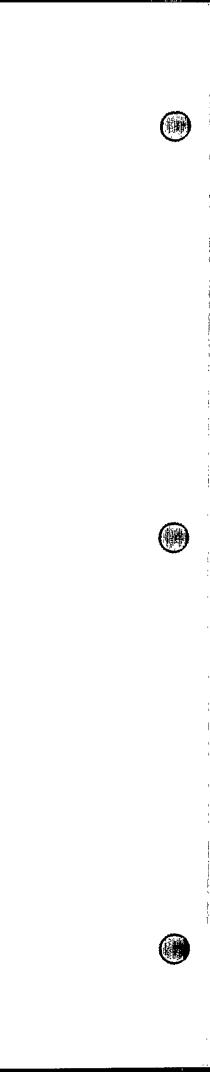
```
J. Selesky - direct
 1
   Α
       Yes.
 2
            I'm going to tell you that the jury has seen
              Where were you when the photo array
  that tape.
  procedure was taking place?
       Across the hall from the room where the person is
   there looking at the photographs, and being
   interviewed. There is a monitoring room, where we do
  all the recordings.
                        The DVD player, the digital audio
 9 recorder, the TV monitor, to watch what's going on.
           Did you witness the entire photo array
10
   procedure, from beginning to end?
11
       Yes, I did.
12
13
           Why did you ask -- Was there any other reason
   why you asked Sergio Matias to do that?
14
       Because I don't speak Spanish as well as -- I
15
16 don't speak Spanish. So, Sergio Matias did that.
17
   knew that Wilmer Cedillo spoke Spanish. So, I had him
18
   do it.
           Now, there came a point in time, when you
19
       Q
20 were watching this video, when Officer Matias left the
21
   room with the photographs?
22
       Yes.
           Right after the identification was made?
23
       Q
24
       Yes.
           Anything you told Officer Matias to do at
25
                      J. Selesky - direct
                                                           43
  that time?
 1
       Yes. Officer Matias -- This was the first time he
 2
   ever did a photo line-up. So, he didn't really
  understand what else had to be done. So, he came out.
   I told him, he needed the victim to sign the back of
 5
   the photograph, that he had chosen. So, we would know
 7
   which one it was.
           Did he show you the picture first?
 8
       Q
 9
   A
       Yes.
           What picture was this?
10
       The picture of Mr. Machado.
11
  Α
           Did Officer Matias then go back in the room
12
13
   to get the victim to sign it?
14
   Α
       Yes.
15
           Now, after the identification was made, you
   took steps to have a complaint drafted, and have the
16
17
   defendant arrested?
18
   Α
       Yes.
19
           Do you know when he was arrested?
20
       I believe it was the following day.
21
           I'm going to show you what's marked S-7.
22
       Yes.
23
           You recognize that?
       Q
24
       Yes.
   Α
25
           What is that?
```



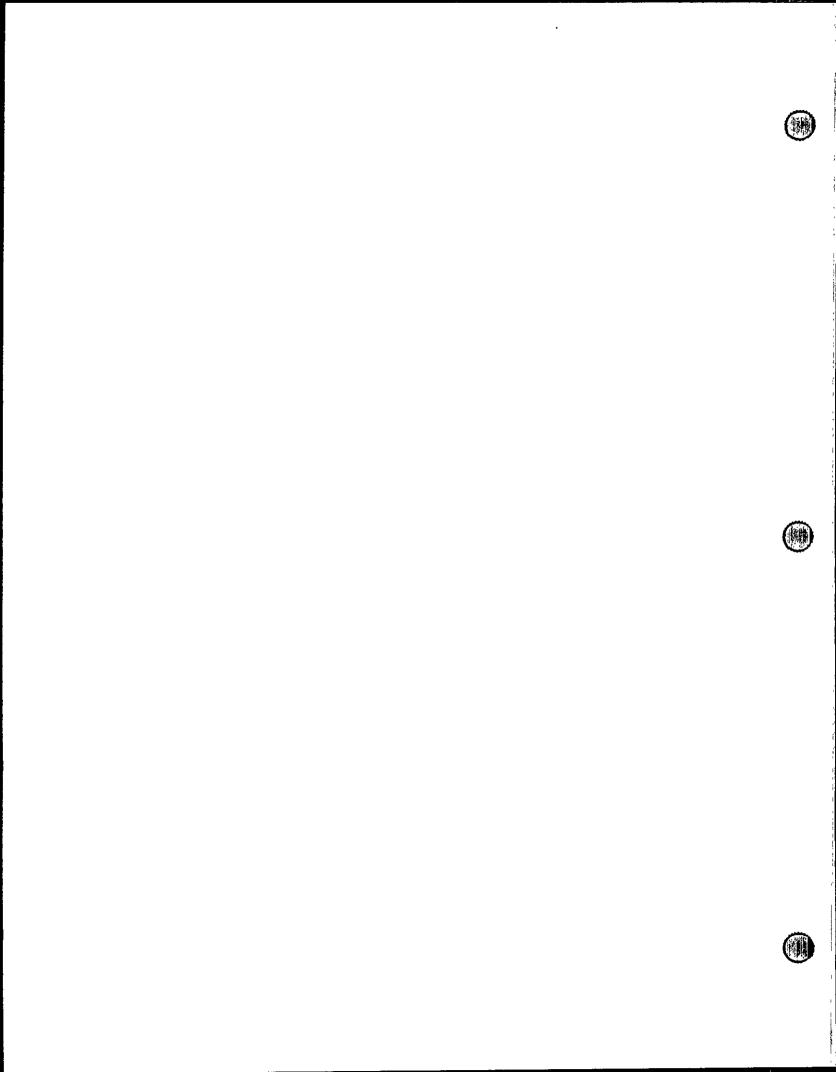
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J. Selesky - direct
                                                           44
       It's a report prepared by Officer Donald Taylor,
   of the New Brunswick Police Department, with Pablo
   Machado's information on it.
           The defendant himself was arrested the
   following day?
 6
       Yes.
 7
           Pursuant to --
       Q
           MR. GONZALEZ: Objection. Can we go to
 8
 9
   sidebar?
           THE COURT: Sidebar.
10
            (Whereupon, the following discussion occurred
11
   at sidebar.)
12
           MR. GONZALEZ: There is a mistake that
13
   shouldn't be on there. Looking at the second page of
14
15
   that exhibit, Judge.
           MR. SAMEIRO: That is mistakenly Selesky's
16
17
            It is affixed to the second page of the arrest
   report.
   report. It is a single page document.
18
           MR. GONZALEZ: Okay. I just wanted to -- I
19
   hadn't seen it. I just wanted to inspect it.
20
21
           MR. SAMEIRO: I'm sorry, Counsel.
            MR. GONZALEZ:
                           I hadn't seen it.
                                              I wanted to
22
   look at it. The name of Donald Taylor didn't ring a
23
          I don't know what the witness has.
   bell.
24
            THE COURT:
                        I don't know.
25
                                                           45
                       J. Selesky - direct
           MR. GONZALEZ: His name was not listed.
 1
 2
   just don't remember it. That's why I wanted to come
   over to sidebar.
            THE COURT: Obviously, Counsel has a copy of
   the arrest report.
 5
 6
           MR. GONZALEZ: I do. I just wanted to look
 7
           Can I see it?
   at it.
 8
            THE COURT: Okay.
           MR. SAMEIRO:
                          I intend -- while we are here
 9
   -- We intend to establish, when the defendant was
10
   arrested, he provided the same address information, the
11
   same place of birth, a different height. I'm going to
12
13
   point out the different telephone number there.
            THE COURT: Okay.
                              All right.
14
15
            (Whereupon, the sidebar discussion
16 concluded.)
17
            (Whereupon, the hearing continued in the
   presence of the jury.)
18
           Now, S-7 is the arrest report for the
19
20
   defendant?
21
       Yes.
22
           Which was put together on July 26, 2007;
23
   right?
       Yes.
24
25
          And pursuant to the arrest procedure, the
```



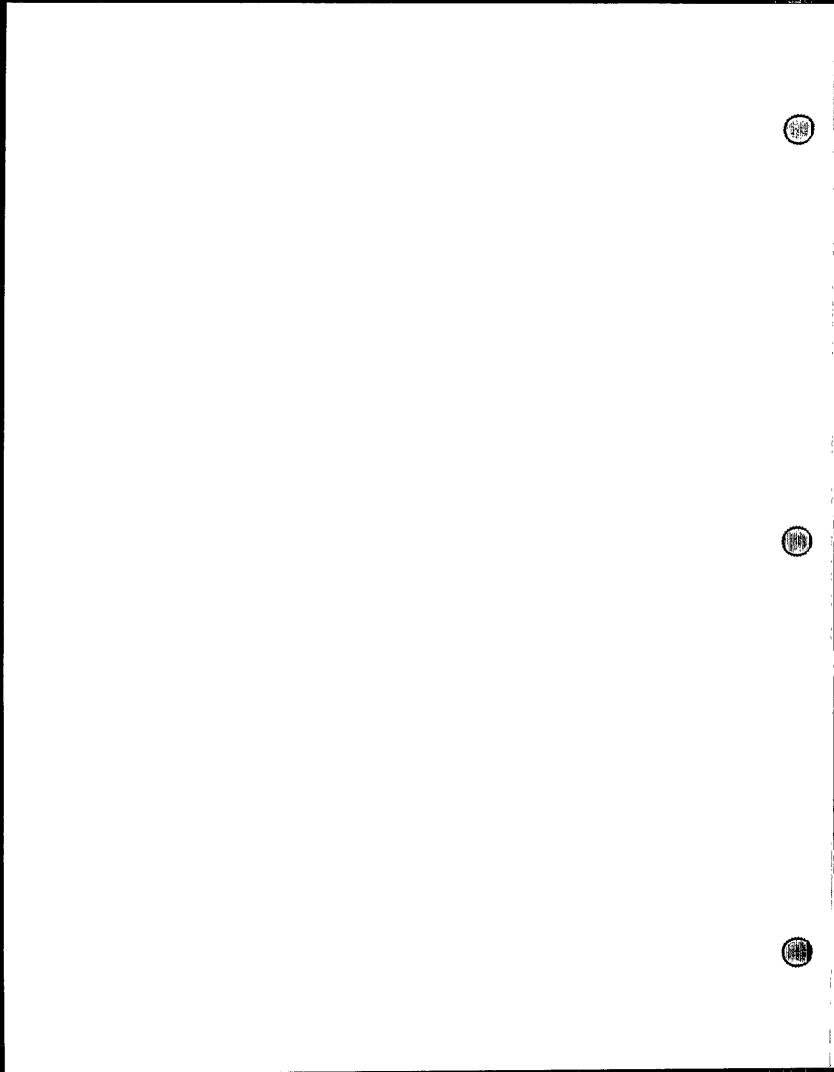
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J. Selesky - direct
  defendant provided his name, address, place of birth,
   date of birth, and so on and so forth; right?
       Yes. Correct.
           Let's start with the address. What address
       Q
  did he provide?
       400 Lee Avenue, New Brunswick, New Jersey, 08901,
 7
   Apartment 304.
 8
            That is the same information you previously
   collected on June 16th?
 9
       Yes.
10
            I'm going to show you S-8, if you need that
11
12 to refresh your memory.
                            That's the report that deals
   with the June 16th interaction; right?
13
       Sure.
14
   Α
           What about on the arrest, did the defendant
15
       Q
16 give a place of birth?
17
      Yes. Honduras.
          Same as before; right?
18
       0
19 A
       Yes.
          Now, he gave a different phone number this
20
21 time, did he not?
22 A
       Yes.
           What is the number?
23
       732-538-5157.
24 A
           What's the height description? What do you
25
                      J. Selesky - direct
                                                           47
  have there?
 1
 2
       He has 502. That is five foot two.
           Before, on the earlier report, there is a
   505, five foot five reference?
       Yes.
 5
   Α
 6
           Is the date of birth the same as before?
       Q
       Yes, it is.
 7
   Α
          November 14, 1986; right?
 8
 9 A
       Yup.
10
       Q
           And then you have the same weight, it would
11 appear; right?
   A Yes. 130.
12
13
           A hundred thirty pounds?
14
   Α
       Yup.
15
           MR. SAMEIRO: I have nothing else. Thank
16
  you.
17
           THE COURT: Thank you. Mr. Gonzalez?
           MR. GONZALEZ: Judge, can we break for a
18
19 moment, just so I can gather my notes up?
20
           THE COURT: Okay. All right. Then what I'll
21 do is, I'll just put them in the room up here.
22
           MR. GONZALEZ: If we can have the morning
23 break?
24
           THE COURT:
                       Ten minutes?
25
           MR. GONZALEZ: That is fine.
```



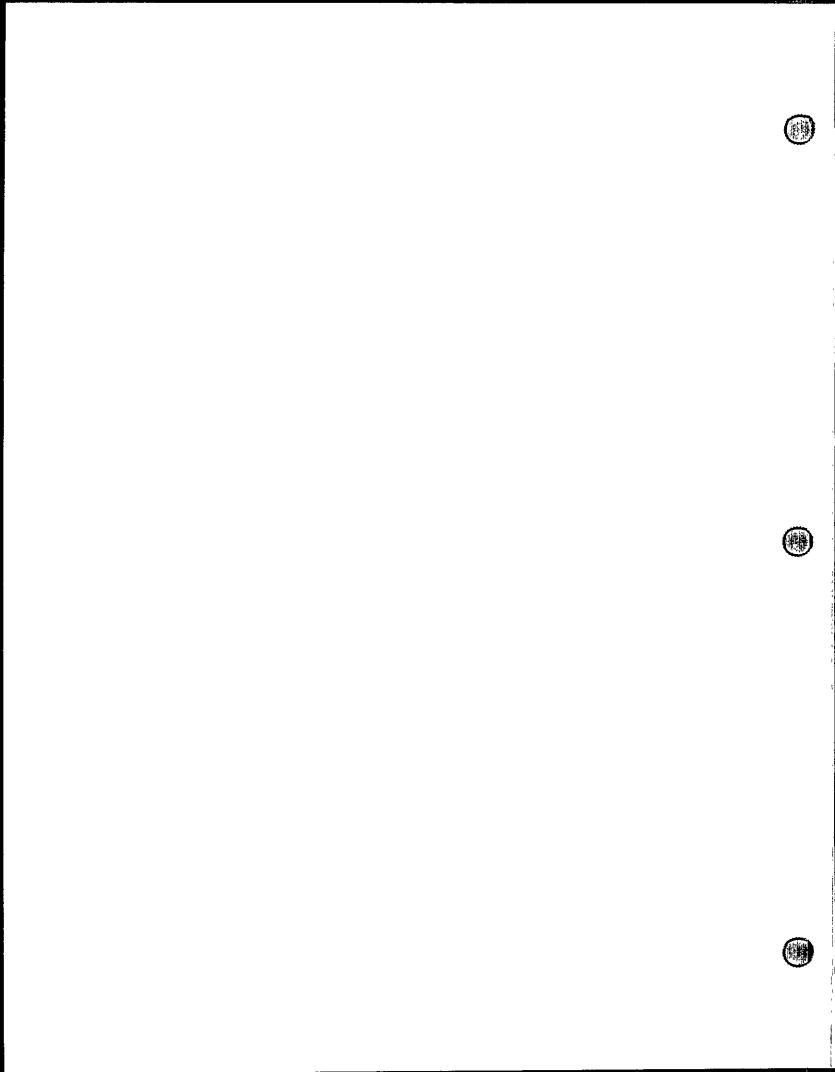
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J. Selesky - direct
                                                             48
            THE COURT: So, let's take ten minutes folks.
 1
   I will keep you right on the floor. So, we can bring
 2
   you back pretty quickly.
 3
           MR. GONZALEZ: Instead of having to break in
   the middle of my cross-examination.
           THE COURT: I wouldn't do that to you, Mr.
 6
 7
  Gonzalez.
 8
            Let's do that. Let's take our morning break
   right now. We'll put you right here on the floor.
 9
   me remind you, not to discuss the case among yourselves
10
   or with anybody else. I'd like to keep your break to
11
12
   ten minutes. Then we'll bring you back to continue the
13
   trial.
           Okav.
            (Whereupon, the jury leaves the courtroom.)
14
            (Whereupon, the hearing continued outside the
15
16 presence of the jury.)
17
            THE COURT: All right, folks. Let's keep our
18 break relatively short. Then we'll come back and we'll
19
   continue.
           MR. GONZALEZ: Thank you, Judge.
                                             That's
20
21 fine.
           MR. SAMEIRO: Thank you, Judge.
22
23
            THE COURT: Thank you.
            (Whereupon, a short recess was taken.)
24
            (Whereupon, the hearing continued.)
25
                        J. Selesky - cross
                                                             49
            (Whereupon, the jury enters the courtroom.)
 1
 2
            THE COURT: Thank you, folks. Please have a
 3 seat.
 4
           All right, Mr. Gonzalez.
           MR. GONZALEZ:
                           Thank you, Judge.
 5
 6 CROSS-EXAMINATION BY MR. GONZALEZ:
           Detective -- It is Agent Selesky now?
 7
       0
 8 A
       Yes.
 9
            I'm going to ask you some follow-up
10
   questions, to what you just testified to. Is that all
11
   right?
12 A
       Sure.
           You were the lead detective in the case;
13
14 correct?
15 A
       Yes. Correct.
           You got the information from Wilmer Cedillo
16
17 on July -- excuse me -- on April 24th or the following
18 day? Do you remember whether it was April 24th or
19 April 25th?
20 A
       The 24th.
21
           The 24th?
                      The same day?
       Q.
22 A
       Yes.
23
       Q It's hot at this point? Meaning it's a brand
24 new case? You looked at the report from it; right?
25 A Yes.
```



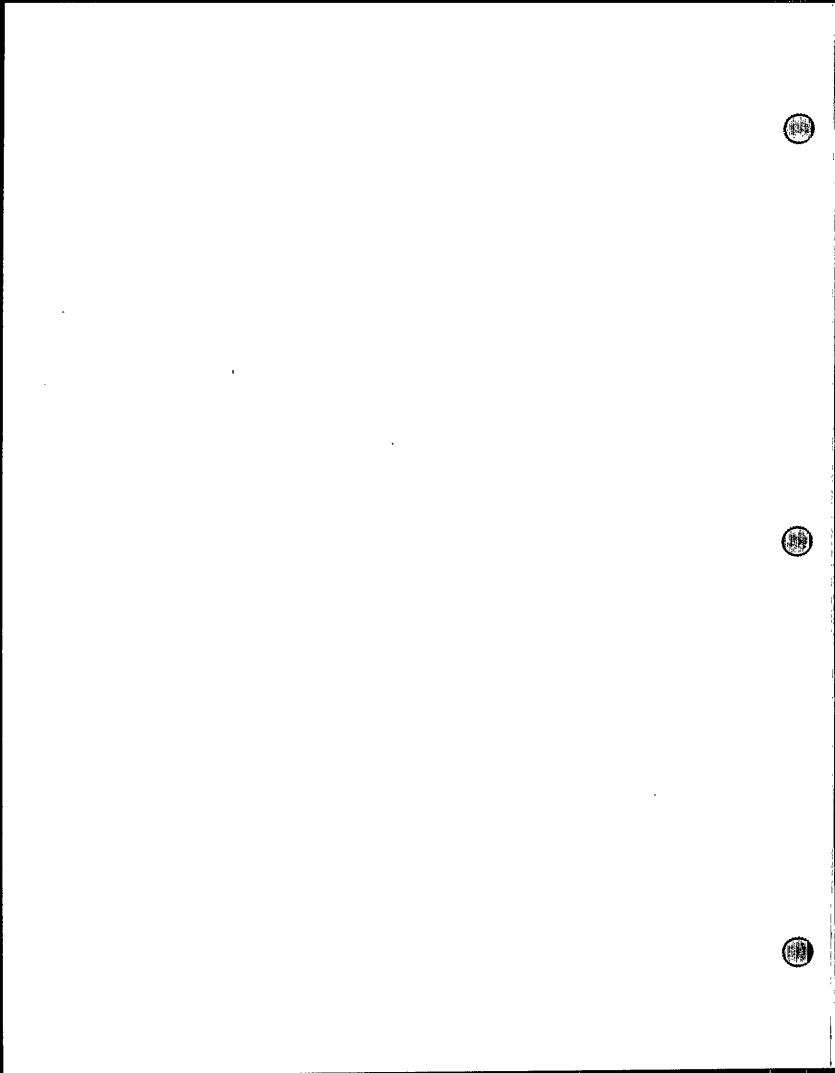
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Selesky - cross
                                                              50
            The first thing you did, you went and got the
 1
   subscriber information?
        Correct.
            Or requested a Grand Jury subpoena, to the
   Prosecutor's Office, so, they can write it up, and get
   it to Movida? That was the name of the phone company?
 7
        Yes.
   Α
            Movida is a prepaid-type telephone; right?
 8
        Q
 9
        Yes.
   Α
            You've indicated earlier, on direct
10
   examination, you've been an Officer for 29 years;
11
12
   right?
13
        28 and a half.
   Α
            28 and a half?
14
        Q
        Yes.
15
   Α
           Close to 29. We'll round it up?
16
17
       Yes.
  Α
18
            And during that time, you were a Detective
19
   for 18 of those; right?
20 A
        Yes.
21
            You have indicated, that you've done a
22 hundred photo arrays?
23
   Α
        Hundreds.
24
        Q
            Or more?
       Hundreds, right.
25
   Α
                                                              51
                        J. Selesky - cross
            You have also indicated, you've done
 1
   thousands of interviews, investigations, things of that
   nature; correct?
        Correct.
            You also trained on how to do investigations?
 5
   You indicated earlier that you have trained on --
   You've been to various training, both private and
 7
   public, as a part of, I quess, sharpening your skills
   in those 28 years; correct?
 9
10
        Yes.
   Α
            A lot of it, or most of the police work,
11
12
   focuses on collecting evidence; correct?
13
        Yes.
            So, your job, as a lead detective in the
14
15
   case, is to collect evidence; right?
        Part of it, yes.
16
17
            And you're collecting that evidence, so some
   time in the future, if you ever have to go to trial, if
18
19
   the case is ever tried, that you're, in fact, going to
20
   -- the Prosecutor is going to present the evidence,
21
   that you were able to gather; correct?
22
       Correct.
23
            Now, you wrote a report in the case; right?
        Q
24
       Yes.
   Α
25
            And a report is, basically, a detailed
```



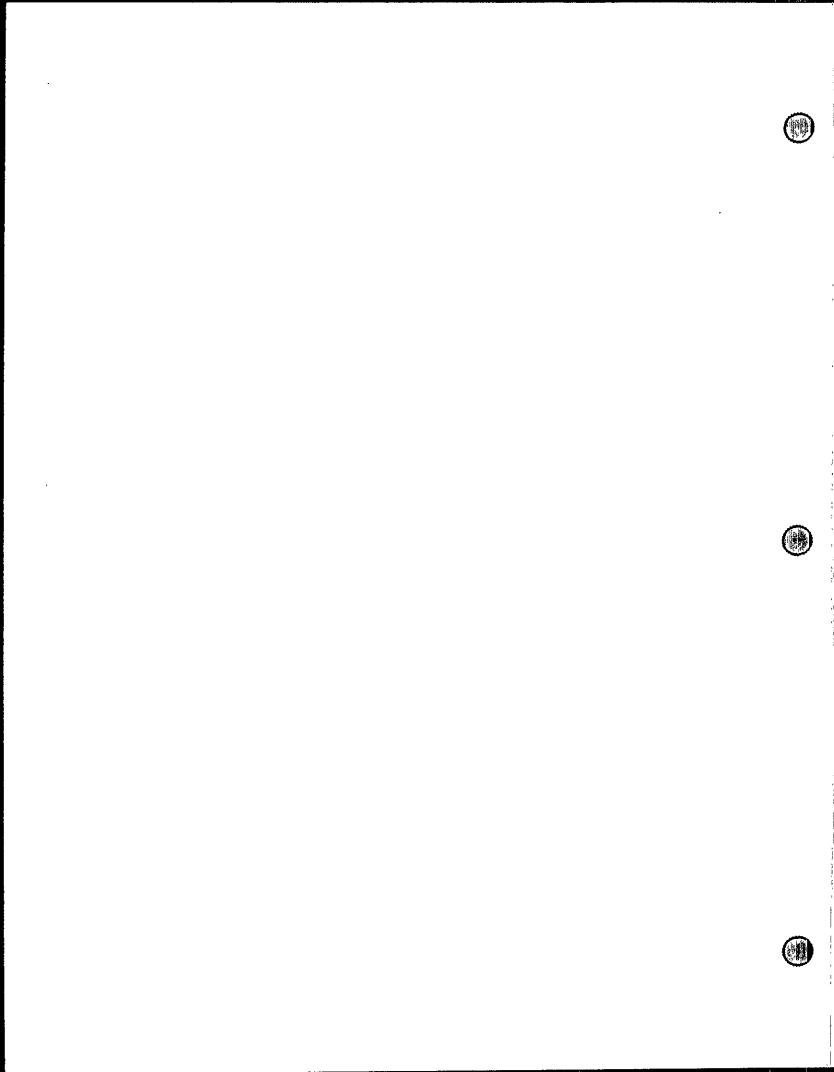
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J. Selesky - cross
   accounting of what it is, what type of investigation
   you did, in any particular case; correct?
       Correct.
            In this particular case, you wrote a detailed
   report; right?
       Yes.
 7
           And, in writing that report, you go, I guess,
       Q
   on each date, that you do something, you write it in
 9
   there; correct?
                     Usually, I write it down in my notes,
       Yes. Yeah.
10
   and then I end up putting it in the report, yes.
11
                  So, on July 25th -- excuse me -- I
            Okay.
12
   keep on messing up -- that's my fault -- April 25th?
13
14
       24th.
                   There you go. On April 24th, you
15
            24th.
   begin your investigation. You do one thing; correct?
16
17
       Yes.
            Do you remember when you made your second?
18
       I'm sorry?
19
   Α
            Do you remember when you made your second
20
21 entry in this particular case?
       What do you mean second entry?
22
            Well, the next date that you did something.
23
        I mean, the 24th entailed, you know, getting the
24
   subpoena prepared with the Prosecutor's Office, looking
25
                                                            53
                       J. Selesky - cross
 1 over the report, things like that. And I, basically,
   had to sit on it until I got the results back from the
   phone company.
            So, you had to sit on it?
 4
              Usually the phone records are faster than
       Yeah.
   this company provided it to us. Usually a couple weeks
                  This company, in particular, was months.
 7
   at the most.
            So, you had to sit on the investigation
 8
   altogether, because you had nothing; right?
 9
10
       No.
           Right?
11
       Q
       Plus I have other investigations that come in.
12
13
   You just don't investigate this case and wait.
   other cases that happen. That I had to follow-up on.
14
            A robbery allegedly happens on April 24th --
15
       Q
16
17
            -- right? An armed robbery, at a familiar
   place to you, 400 Lee Avenue?
18
19
       Yes.
20
            Some place you know pretty well?
       It's an apartment complex I've been to.
21
  \mathbf{A}
22
           You know it pretty well? Lots of crimes
23
   happen in the 400 Lee Avenue area in the past year?
24
       No. Not specifically. It's a big complex.
   mean, I'm sure, just like any other apartment complex.
25
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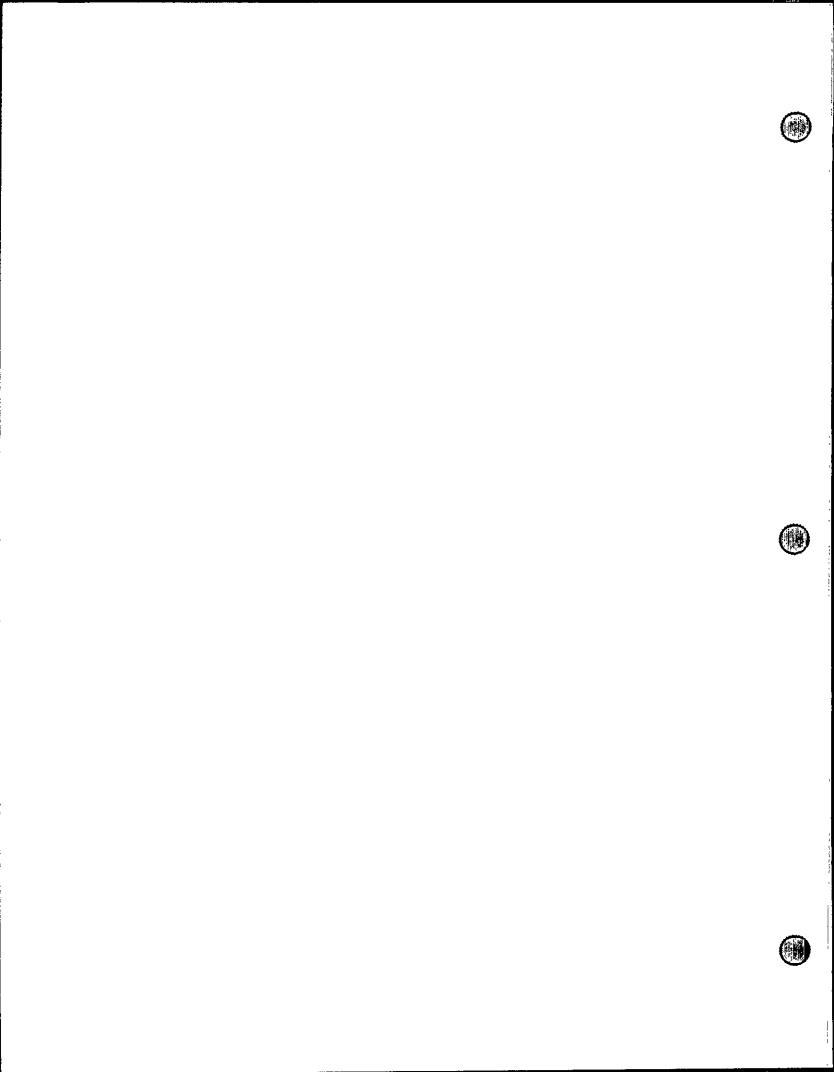
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J. Selesky - cross
 1
   But nothing out of the ordinary.
            Okay. So, you've been trained you told us.
 2
   Now, did they train you on canvassing? Can you explain
   to us what canvassing means?
       Knocking on doors.
   Α
            Right. And you knock on doors to develop
 6
   whether or not there were any eye witnesses to the
   actual event; correct?
 9
        Correct.
            Now, we have indicated, at the end of the
10
   cul-de-sac, 400 Lee Avenue, there is buildings that are
11
   directly adjacent to this cul-de-sac; correct?
12
        There is buildings around the cul-de-sac, yes.
13
            There is a variety of buildings; correct?
14
15
       Yes.
   Α
            There is also other buildings? It is a
16
17
   pretty big complex; right?
18
        Yeah.
               It is.
            If I told you there were a hundred
19
  twenty-four units there, would you agree?
20
        If that's what you know from the area.
21
   that there is -- I would say, if that's what you know
22
   from there -- Yeah, I'd say.
23
            Now, I'm just going to show you what's marked
24
25
   as Defense Exhibit Three. Do you recognize what that
                        J. Selesky - cross
                                                             55
   is?
 1
 2
       Well, it's -- Going by the words on here, it's a
   picture of the Livingston Avenue, Woodnor Court, Lee
   Avenue area. It looks like it's a google picture.
            It's a google earth picture?
 5
 6
   Α
       Yes. Google maps.
 7
             You're familiar with that; right?
       Q
 8
   Α
       Yes.
 9
           You've used it in investigations before?
10
   Α
       Yes.
11
            Would you say that it accurately depicts the
   way 400 Lee Avenue and Livingston Avenue look in New
12
13
   Brunswick?
14
             Livingston Avenue in New Brunswick.
   Α
       Yes.
            MR. GONZALEZ: Judge, if I may publish this
15
16
   to the jury?
17
            THE COURT: Any objection?
18
            MR. SAMEIRO:
                          Let me see it.
19
            THE COURT:
                       All right. You may.
20
            MR. SAMEIRO:
                          No objection.
21
            THE COURT:
                        Thank you.
22
            MR. GONZALEZ:
                           Thank you.
23
            THE COURT: There is probably a better way.
24
           MR. GONZALEZ:
                           If you have a pointer, that
25 would be better.
```



```
J. Selesky - cross
                                                           56
           This is a map of 400 Lee Avenue; correct?
       Yes. It's a picture. You're looking at like a
   Α
  satellite picture.
           All right. Can you point to the circle of
  where Lee Avenue actually ends? First, can you
   identify where Lee Avenue is?
       I'll have to stand up.
           You can come over here. So, you don't block
 8
 9
   the view.
        (Witness complies.) This is the circle, at the
10
   Α
   end of Lee Avenue (indicating).
                                    That is Lee Avenue,
11
   coming up that way (indicating).
12
13
           You have pointed to this portion
14
   (indicating); right?
       That's the circle, correct. Yes.
15
           These things (indicating), that surround
16
   that, they're the buildings; correct?
17
18
       Correct.
           Then you'll have a direct view of that
19
20 circle; right?
       Direct and indirect, depending on where their
21
22 windows are. Some of them face out. Some are on the
23 side.
           It doesn't appear any trees around here;
24
25 right?
                                                           57
                       J. Selesky - cross
            In front of the buildings, I know there is
 1
   tall shrubs in front of some of the buildings.
           But the windows on the buildings, they're
 4 higher than the shrubs; correct?
       I would not know if they were higher or lower.
                                                        Ιt
   depends on the building.
 7
           Now, you never went to this area on April
   24th, did you?
 8
       Oh, I had ridden there, yes. I had gone up there.
 9
10
           That particular date, did you go there?
11
  Α
       Yeah.
              Yeah.
           That's not in your report, is it?
12
            I definitely went up there. Because I always
13
14 go back to see what the crime scene looked like.
          But that wasn't in your report; right?
15
       No. It's not in my report.
16 A
           Did you canvass the area? Speak to people?
17
       Q
18
  Α
       No.
           Since you're the lead detective of the case,
19
20 did you then assign anyone else to go and canvass the
21
   area, since you didn't have time?
22
       No.
            No.
           Now, an additional thing, that you could have
23
24
   done on this date, you could have spoke to Wilmer
25
   Cedillo; correct? Right?
```



```
58
                       J. Selesky - cross
 1
   Α
       Correct.
 2
            You also could have went to view Mr.
   Cedillo's car; correct?
       What is that again?
            You could have went to view the taxicab, that
 5
   was alleged where this crime started and occurred;
 7
   correct?
        I mean, I could have; but I didn't.
 8
           You have the phone number of Mr. Cedillo;
 9
   correct? Right?
10
                 But his phone was stolen.
11
       Correct.
           He gave you a phone number when he went to
12
13
   the police station; right?
14
       Correct.
           With Officer Bobadilla?
15
       0
       Yes.
16 A
          He gave you a phone number. Can you tell us
17
18 what the phone number was?
       514-1521. 732 area code.
19 A
           He also gave you an address; right?
20
       Yes. It looks like -- It's hard to tell. This
21 A
22 one says South Talmadge Road.
23
           You later found out 41 South Talmadge Road,
   is that the address given; correct?
24
       Yes. Yes. It is hard to tell on the copy.
25
                                                           59
                       J. Selesky - cross
            For the record, I've just showed him what was
 1
  previously marked D-1.
           MR. SAMEIRO: You said D-1?
            MR. GONZALEZ: D-1, yes.
 4
            Now, you didn't contact him that day; right?
 5
   You said that?
 7
       No.
   Α
           Additionally, you didn't go -- There is a
 8
 9 couple -- Well, there is two -- There is a bunch of
   places that you didn't investigate; correct?
10
11
       Like what?
            The car. There could have been physical
12
  evidence inside the car, that you could have gathered;
13
14 correct?
        If I'm not mistaken, it happened outside the car.
15
16 The crime started with a pick-up, and then it happened
   outside the vehicle.
17
18
            Okay. So, what you learned, from your
   investigation, is that the robbery, assault, happened
19
   outside of the car; correct?
20
21 A
       Yes.
22
           But you also know that there were patrons
       Q
23 inside the car; true?
24 A
       Correct.
25
           Because he picked them up?
```



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61
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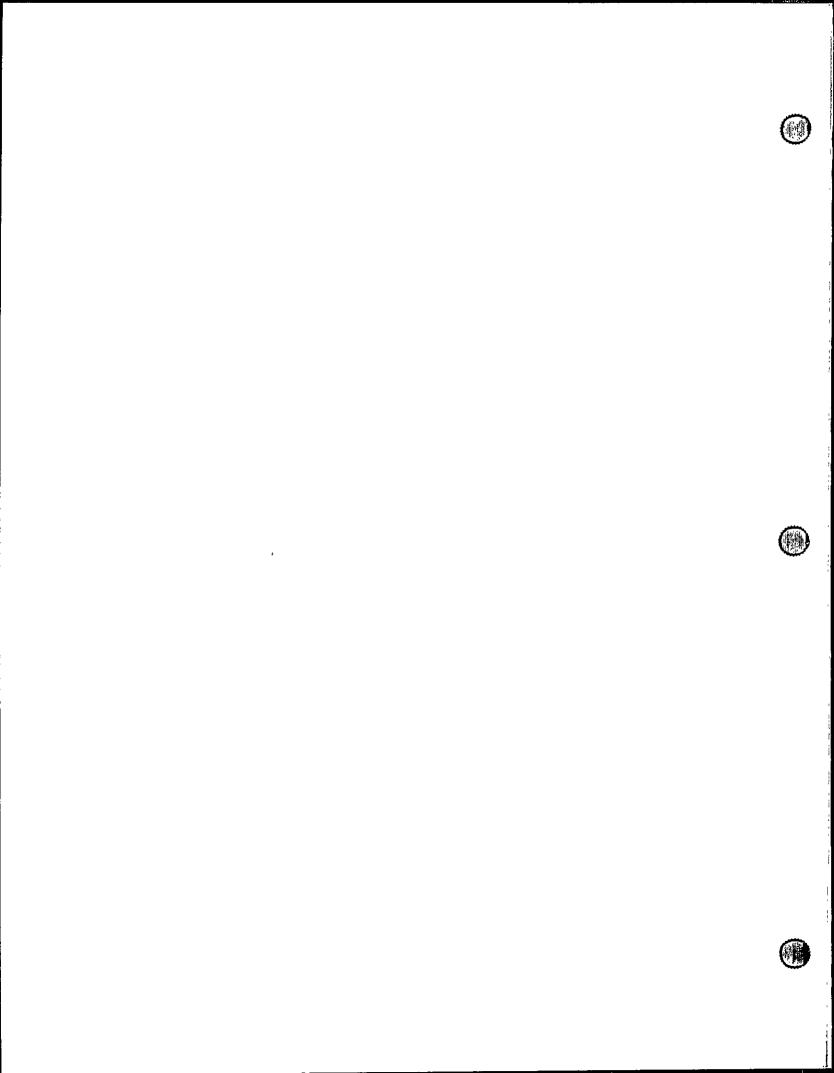
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J. Selesky - cross
 1
   Α
       Yes.
            There is a variety of things, if you went
 2
   there, that you may have gathered, if you had went to
   this cab; correct?
       Not necessarily. I mean, you got a cab used for
   Α
   probably 24 hours. 24 hours in a day. There are lots
   of people in there. These cabs pick-up and drop-off
   people, you know.
 8
           You could have gone to the cab, and checked
 9
   if there was anything there; right?
10
11
        Sure.
           Now, oftentimes, when incidents occur in
12
        Q
   bulk, be it a robbery, a burglary, there are bulks of
13
   people present -- many people. But sometimes the
14
   assailant, we'll call him, in this particular case,
15
16 could have left something there, an item, an article;
17
   is that correct?
18
       Could be, yeah.
19
            Could have left fingerprints there; right?
       It's possible.
20 A
21
           Could have left a DNA sample; correct?
22 a piece of hair, be it a piece of clothing? Could have
   left something at that location; correct?
23
       It's possible, yes.
24
            But you didn't go to the car to try to
25
       Q
                       J. Selesky - cross
   collect any of that information; correct?
 1
 2
       No.
            It was indicated that, or you knew -- what
 3
        Q
  you knew, at this point, after you read the report,
   that possibly there was a radio inside of the car that
   was taken; correct?
        I'd have to see the report again. I'm not sure
 7
   exactly what I said.
 8
 9
            Needless to say, these gentlemen were inside
10
   of that car?
                  The gentlemen that robbed him; correct?
11
       Correct.
           Wilmer Cedillo?
12
       Q
13
       Yes.
           Also, you found out from Wilmer Cedillo,
14
   there were numerous people that were involved in this
15
   robbery; correct?
16
17
       Yes.
   Α
18
            There were five; right?
19
       Around five, he said, yes.
20
           Around five?
                          Maybe six? Maybe four?
21 A
       He said there was a group.
22
           There is nothing -- So, the other thing you
23
   could have done, you could have went to the dispatcher
   -- right -- the dispatcher of the cab company, where
24
```

the phone call was made? You could have done that --

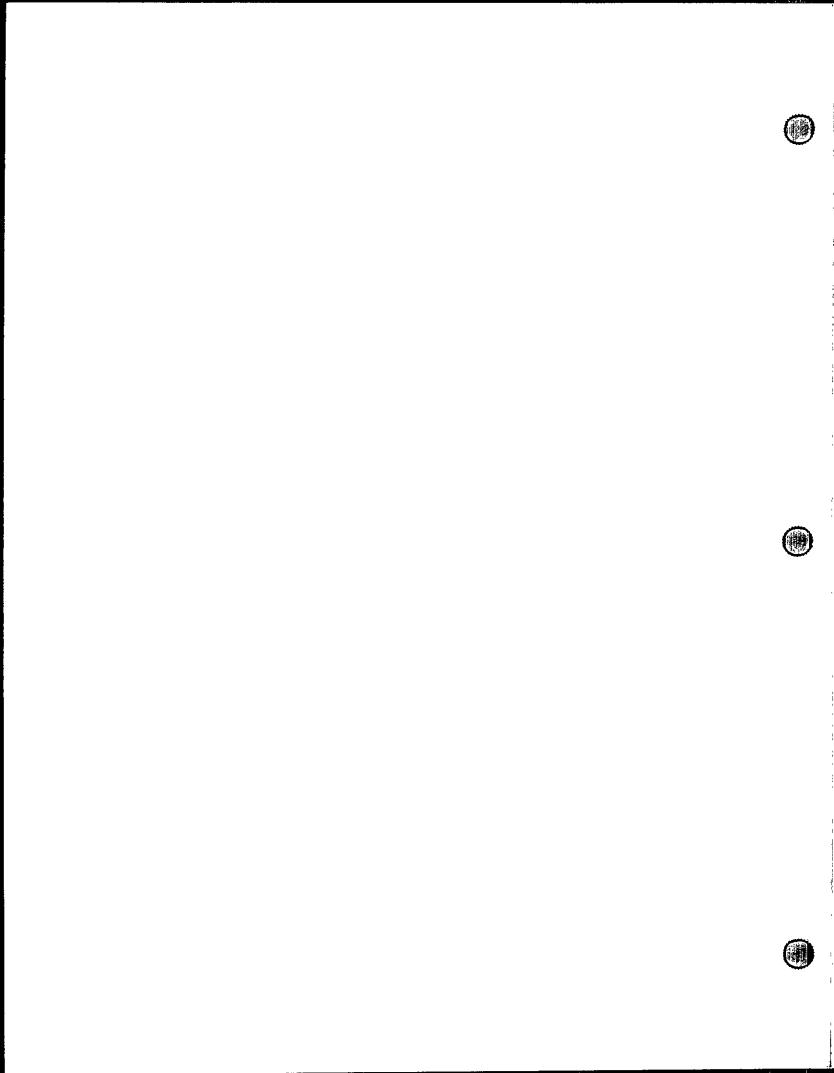
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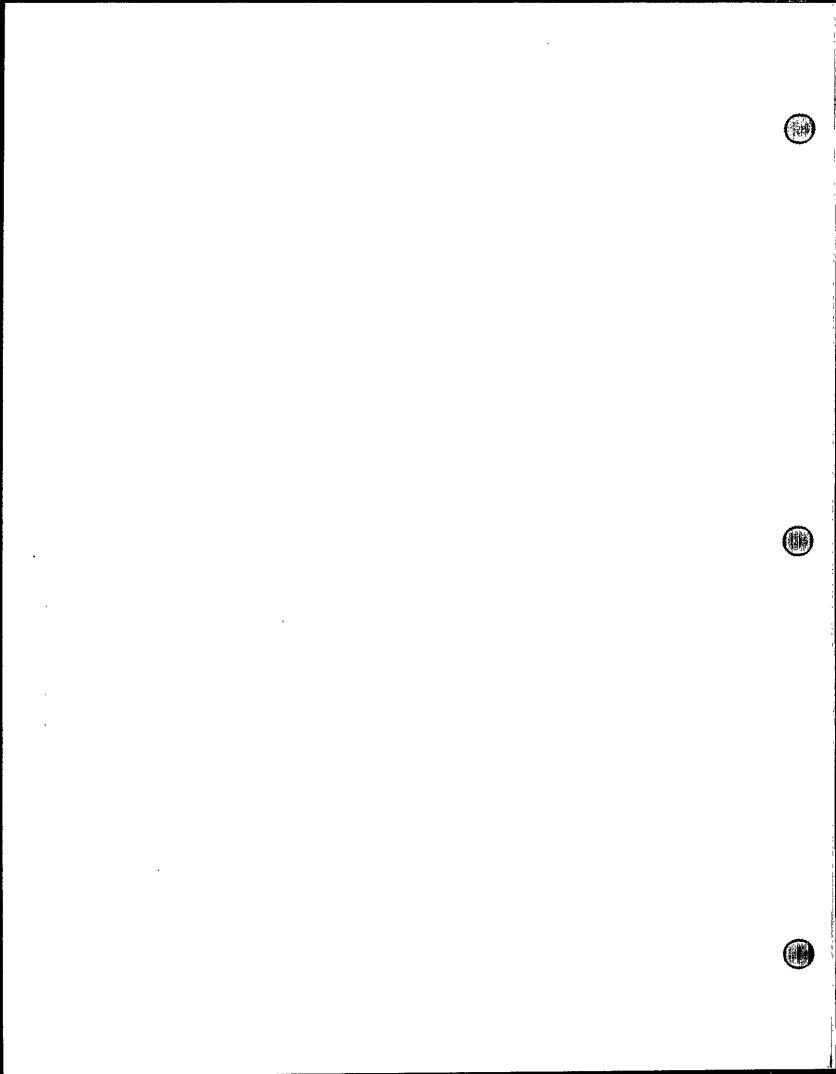
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J. Selesky - cross
                                                             62
   right -- as part of your investigation?
       Well, we had the number for the victim.
            You didn't want to verify whether or not the
  victim was -- whether or not the number was from the
   victim; correct?
       Why? I trust the victim's word.
 7
           You trusted the victim's word?
                   He is a victim of a crime.
        Yes, sir.
   think he would lie to me about something like that.
 9
            You knew there was a piece of paper with that
10
11
   number?
        From what I was told, yes.
12
13
            That piece of paper doesn't exist anymore?
14
       No.
15
            You never entered it into evidence; correct?
        I never even saw the piece of paper. I trusted
16
   the victim's word.
17
            So, you never observed, with your own eyes,
18
   what that telephone number was?
19
       No, I did, in Officer Bobadilla's report.
20
            You never observed, with your own eyes, what
21
22 was on that piece of paper?
23
   Α
       No.
            No.
24
            So, you didn't?
        Q
25
  Α
       No.
                                                             63
                        J. Selesky - cross
            You didn't attempt to go to the dispatcher
 1
   to verify whether or not this number was, in fact, the
   proper number?
   Α
       No.
            You could have; right?
 5
        Q.
        I could have. Like I said, I trusted the victim.
   He was a victim of a crime. Why would he lie about
 7
   that? Excuse me. I've got a cold.
            Really what you did, with regard to this
 9
   investigation, was do a phone look-up; right?
10
11
       Yes.
12
            And you found out that it was a prepaid
13
   phone card?
14
   Α
       Yes.
15
            And prepaid phone cards, they're recycled a
       Q
16
   lot, aren't they?
17
        Phone companies do farm them out, yes.
18
            So, if you have a prepaid phone card, for a
19
   month, and your minutes run out, the next month you may
20
   be given a new number, a prepaid number?
21
        If you give that number up, yeah.
22
            In this particular case, you requested some
23
   information from Movida Phone Company; right?
24
   Α
       Correct.
25
           It merely said Mendosa on it; correct?
```



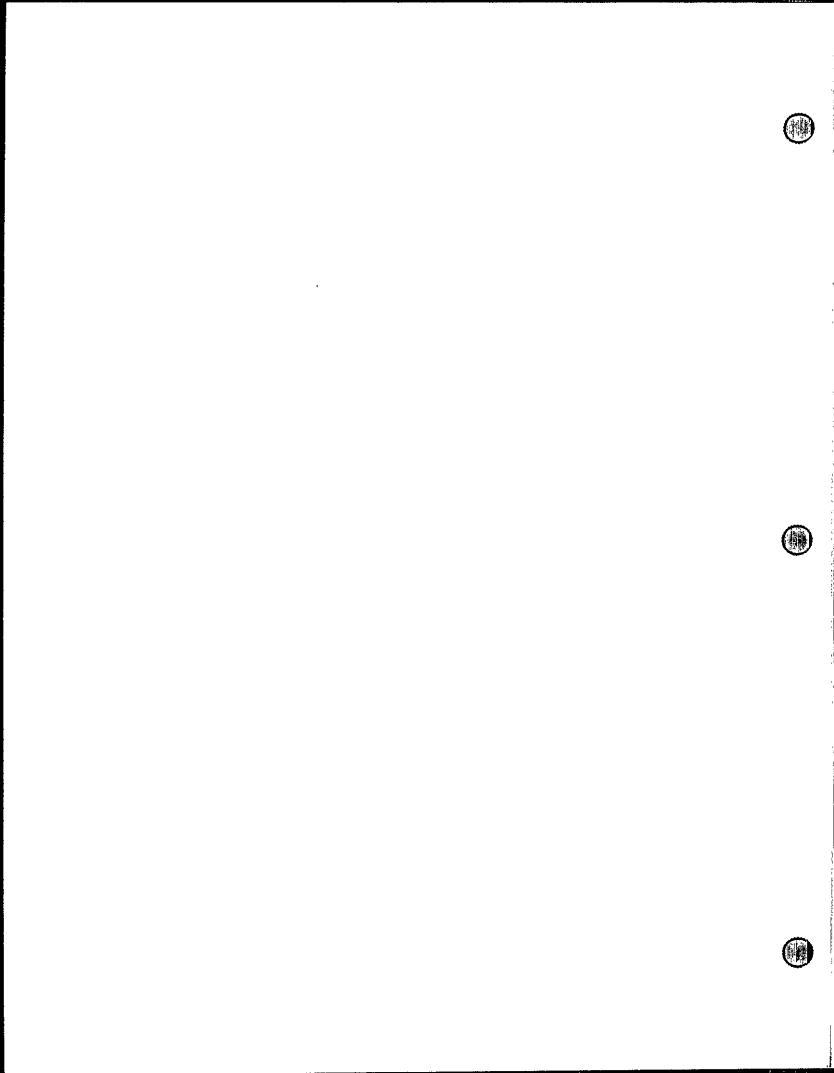
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J. Selesky - cross
                                                            64
 1
   Α
       Yes.
 2
            Do you remember -- Well, you testified
   earlier, I know you said the password was Honduras?
        There is like, you know, like I call -- There is
   like a keyword or a password, whatever you call it.
                                                          It
   was Honduras. It said like, what's your mother's
   maiden name. What's your father's maiden name.
 7
   Honduras was the word for that, whatever that was.
            I'm looking for an exhibit.
 9
                                         Excuse me a
   second. Needless to say, the only thing -- the only
10
   thing that was on it was simply the last name Mendosa;
11
12
    right?
13
   Α
       Right.
14
            New Brunswick, New Jersey?
        Q.
15
   Α
       Right.
            MR. SAMEIRO: Judge, I think Counsel needs to
16
   identify the document before he --
17
            MR. GONZALEZ: Sorry. Let the record reflect
18
19
  that it's D-18.
                        D-18.
            THE COURT:
20
            D-18, that's what you got from Movida, when
21
   it was returned, that subpoena; correct?
22
23
   Α
        Sure.
            And the security question was, "what is your
24
  place of birth"?
25
                                                            65
                       J. Selesky - cross
   Α
        Right.
 1
            It says "Honduras"; correct?
 2
 3
        Correct.
   Α
            Then the time that this particular phone
 4
   number was put into service was April 18, 2007?
 5
        Yes, sir.
   Α
 7
        0
            11:42 a.m.
            MR. GONZALEZ: Judge, may I publish it to the
 8
 9
   jury as well?
10
            THE COURT: Any objection?
            MR. SAMEIRO: No.
11
            So, this is it; right?
12
13
        Yes, sir.
            You still have nothing; right?
14
                                    That's it.
                      I have that.
15
   Α
        I have that.
            You testified earlier that, on July -- excuse
16
   me -- April 24th, you requested information from the
17
18
   Prosecutor's Office; correct?
19
        The Grand Jury subpoena, yes.
20
            I'm showing the witness what's been
   previously marked as D-7 -- I'm sorry -- D-17.
21
22
       Right.
23
        Q
            That's the subpoena; correct?
24
   Α
       Correct.
25
            The subpoena is addressed to the Movida Phone
```



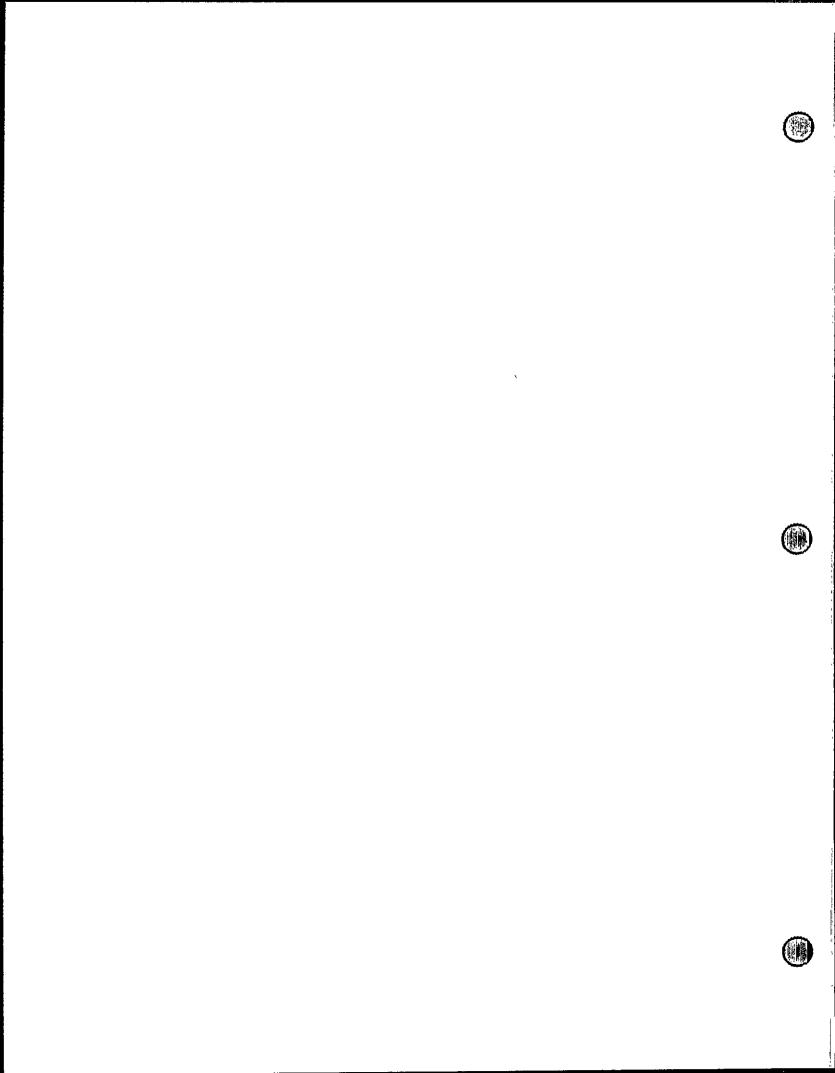
```
J. Selesky - cross
   Company, Biscayne Boulevard, in Miami, Florida; right?
 1
 2
   Α
       Correct.
            And the date that the subpoena is actually
   requested is May 9th, 2007; correct?
        Yes.
   Α
            And the day it's supposed to be returned is
 6
 7
   May 15th, 2007?
        That's the Grand Jury date that was put on this.
 8
            This wasn't done by you; right?
 9
       No.
10
   Α
            It was done by Agent Sessa, I believe?
11
        Q
       Yes.
12
   Α
13
       0
           Jennifer Sessa?
14
   Α
       Yes.
            Now, you get that back -- You say you get it
15
  back on July 25th; correct?
16
17
   Α
        Yes.
18
            And you run a check in-house, in New
   Brunswick, and you come up with a name; correct?
19
                 Right.
20
        Correct.
            Wa-la, the case is solved; right?
21
22
       No.
  A
            You have to set up a photo array; correct?
23
       Q
24 A
       Yes.
            Because Mr. Cedillo had to come in and
25
        Q.
                                                            67
                       J. Selesky - cross
  identify somebody; correct?
 1
 2
   A
        Correct.
            In order to make an arrest, and you had some
   information, because you wanted to go with; that right?
 4
 5
        Yes.
            Now, from April 24th to July 25th, you never
 7
   had contact with Mr. Cedillo; correct?
 8
       No.
 9
            So, you never wanted to go and actually speak
10
   to him yourself, to get his version of the facts;
11
   correct?
       Correct. I was waiting for the results to come
12
   Α
13
   back.
14
            Officer Bobadilla got some information.
   could have followed up with more information; correct?
15
16
        Correct.
17
            Now, you didn't work that hard on this case,
        Q
18
   did you?
19
       My work on this case was hard, because, like I
20
   said, I was relying on the phone carrier to get me the
21
   information, so, I can go forward with the case.
            If you have that limited information,
22
   wouldn't it behoove you -- you've been trained in all
23
24
   these different classes, investigations -- to dig a
25
   little further; correct?
```



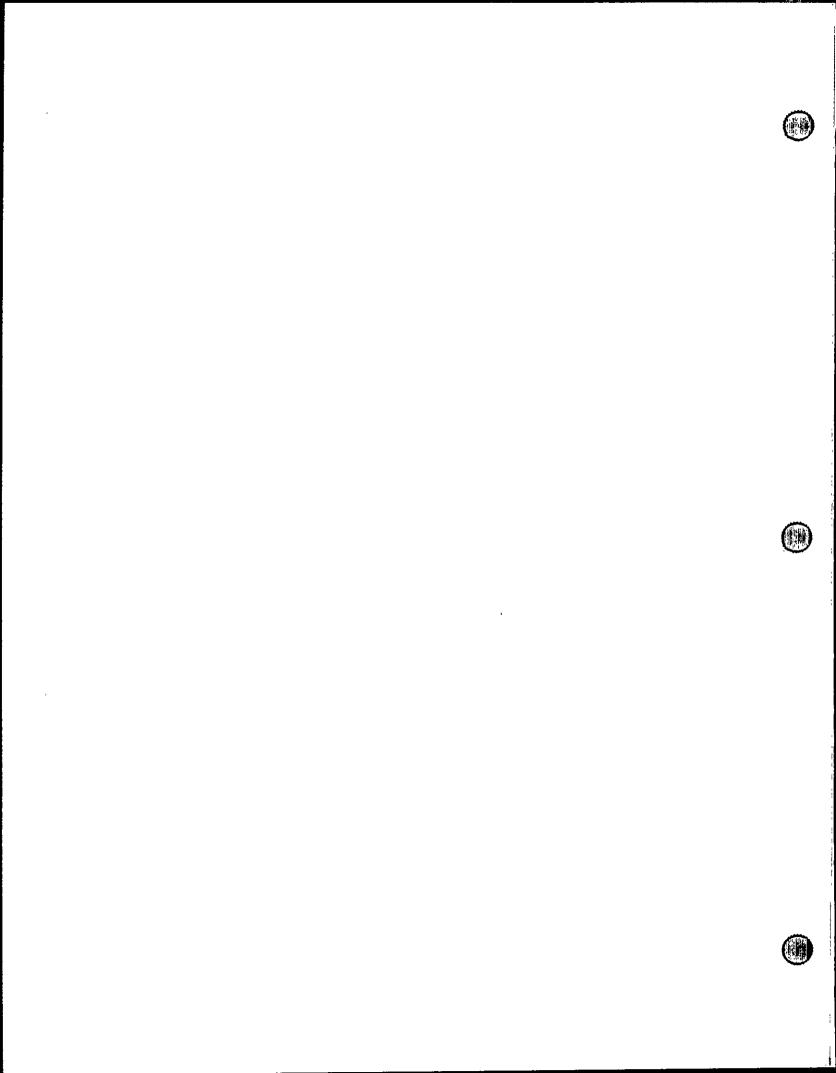
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J. Selesky - cross
                                                           68
       What do you mean by digging further?
 1
   Α
            To find evidence, which is your job; correct?
 2
 3
   Α
       Correct.
            You could have done a lot more in this
   particular case?
       You tell me what I could have done.
                                             I don't know
   what you're talking about. There is things that I did,
   as there is things that you mentioned before, that
   probably could have been done.
                                    This is what we've
 9
   learned from the phone records.
10
            You said you went to the scene. That is not
11
12
   in your report; right?
        I think that I rode around the town, to go to that
13
   area, Counsel.
14
            You never went to the car?
15
        0
       Excuse me?
16
  Α
17
           You never went to the car?
18
       No.
           You never spoke to Mr. Cedillo; correct?
19
       No. Actually, I did.
                               July 25th.
20
  Α
21
            From April 24th to July 24th, you never spoke
  to Mr. Cedillo; correct?
22
23
   Α
       No.
            You never talked to the dispatcher; right?
24
        Q
25
  Α
       No.
                       J. Selesky - cross
                                                            69
            You never went to go see whether or not there
 1
   were phone logs or anything else at the dispatcher,
 2
   that could have memorialized the phone number; correct?
             I got it from the victim, through the report.
 4
        No.
            That's fine. Like I said, you didn't speak
   to the person who observed the phone number pop up?
   quess, it was on a caller ID, which is what was
 7
   testified to. But that person wasn't here.
                                                 You never
   spoke to that particular person; correct?
 9
10
        No.
            You never spoke to the owner of Victory
11
        Q
12
   Taxicab; correct?
13
            Not then, no.
14
            So, again, I'll ask you, you could have done
   a variety of other things in this investigation;
15
16
   correct?
17
            MR. SAMEIRO: I'm going to object. Again,
   I'll ask -- It's 11:15. I think the case needs to move
18
                   This was asked and answered.
19
   along quickly.
20
            MR. GONZALEZ:
                           I will withdraw the question.
21
            THE COURT:
                        Thank you.
22
            Being that you didn't have that piece of
23
   paper, which would be an important piece of evidence,
   did you then ask Officer Bobadilla where it went?
24
25
           MR. SAMEIRO: I'm going to object to the form
```



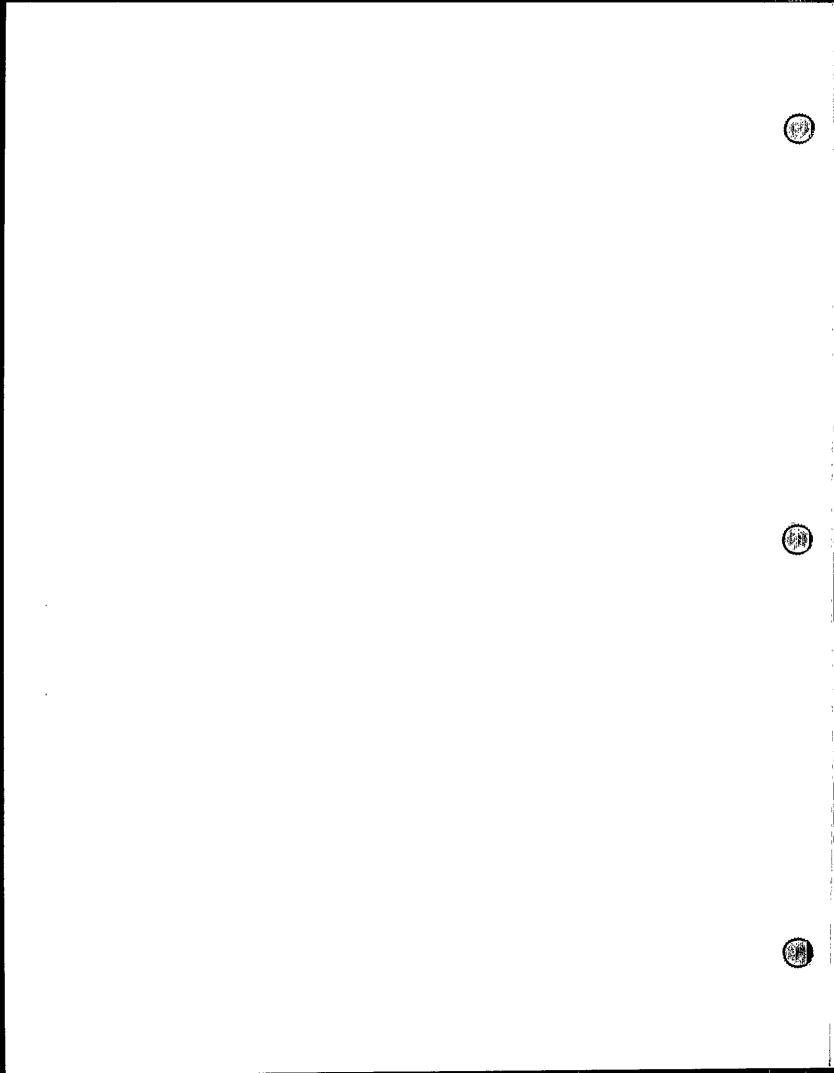
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J. Selesky - cross
   of the question, as to an important piece of evidence.
 1
 2
            THE COURT: I will sustain the objection and
   ask you to rephrase the question regarding that aspect.
            The phone number on that particular piece of
   paper is the most important piece of evidence in this
 5
   case, or the only piece of evidence in this case;
 7
   right?
 8
   Α
        Yes.
 9
           Right?
        0
       Sure.
10
   Α
            Now, to verify whether or not that is, in
11
   fact, the proper number, or where it came from, did you
12
   ask Officer Bobadilla where the piece of paper went?
13
14
        To tell you the truth, I don't remember way back
   then if I ever asked him that or not.
                                           I know I had
15
   spoken to him the next night about the case. I don't
16
   remember ever asking him about that, no.
17
            Now, we know that the original report taken
18
   by Officer Bobadilla, or the initial interaction
19
   between Officer Bobadilla and Wilmer Cedillo, it wasn't
20
   videotaped; correct?
21
22
       No.
   Α
            And then, you ask Officer Chang, on July
23
   25th, to go and find Mr. Cedillo; correct?
24
25
        Correct.
                       J. Selesky - cross
                                                            71
            So, the first time you actually speak to Mr.
 1
   Cedillo is after an identification is made; correct?
 2
        Well, when he came to headquarters, I introduced
 3
   myself, and explained to him what was going on, what
   was going to be done. Then we proceeded with that,
 5
 6
   yes.
 7
            Did you ask him for a description of the
   person that robbed him on that date, prior to going on
 8
 9
   the videotape?
             Because I was relying on the report of
10
11
   Officer Bobadilla for a description at this time.
            Safe to say, that a long time passed;
12
        \circ
13
   correct?
14
       Yes.
              Three months.
15
            A long time is a couple months; right?
16
        Three months.
            And you didn't want to review, and see
17
   whether or not Mr. Cedillo's recollection of what
18
19
   happened, on April 24th, was as good, or he could even
20
   make an identification; right?
       Well, I asked him prior, if he remembered, and he
21
               Then we followed through is what we did,
22
   said, yes.
23
   yes.
24
            In fact, in Officer Bobadilla's initial
25
   report, it indicated that Mr. Cedillo recognized this
```



```
J. Selesky - cross
                                                            72
   person from before; correct?
 2
   Α
       Yes.
           Do you remember you testified before the
   Grand Jury in this particular case; right?
 5
   Α
        Sure.
 6
       0
           And when asked by Mr. Kuberiet, at the Grand
 7
   Jury, whether Mr. --
            MR. SAMEIRO: I'm going to object to the line
 8
  of questioning. It's hearsay. It's concerning
 9
10
   statements made by the victim to Mr. Bobadilla, which
11
   really are not --
            MR. GONZALEZ: I haven't asked the question
12
13
   yet.
14
            MR. SAMEIRO: Judge, I know where it's going.
            THE COURT: You testified before the Grand
15
16
   Jury?
17
            MR. GONZALEZ:
                           Right.
18
            THE COURT: I will let him put the question
19
  out there.
20
            Okay.
                   Go ahead.
            The first thing is, do you remember
21
   testifying before the Grand Jury?
22
23
       Yeah.
            You remember answering "yes" to a question
24
   by Officer Kuberiet -- excuse me -- Christopher
25
                       J. Selesky - cross
                                                            73
   Kuberiet, the Prosecutor?
 1
 2
        (No verbal response.)
 3
            Do you remember answering a question -- The
  question being, that Mr. Cedillo knew one of the
   individuals that he picked up previously?
 5
        I don't know which context that's in. I'd have to
   Α
 7
   see the paper.
            If I showed you your Grand Jury -- a copy of
   your Grand Jury -- would that refresh your
10
   recollection?
11
       Let me see what the question before and after are,
   so, I know where it's coming from.
12
13
        Q
            Sure.
            THE COURT: Is that marked already?
14
15
            MR. GONZALEZ:
                           I can get it marked.
                       D-16.
16
            THE CLERK:
17
            (Exhibit No. D-16, Grand Jury transcript, is
18
   received and marked for Identification.)
            I'm pointing particularly -- You can read
19
20
   where we're at here.
21
           MR. SAMEIRO: Page and line, Counselor.
22
       Page five.
23
           MR. GONZALEZ: Page five. The particular
24
   question I'm referring to is on line 22.
25
           MR. SAMEIRO:
                         Judge, I object. It starts off
```



```
J. Selesky - cross
   by saying, "and I indicated" -- "And he indicated to
 1
   Officer Bobadilla," which is hearsay.
            MR. GONZALEZ: The answer to the question, he
   can testify to, Judge, if he answered the question in
   the affirmative. It's a "yes" or "no," or he doesn't
 5
   remember it.
 7
            THE COURT: I don't know that the Grand
 8
   Jury --
 9
            MR. SAMEIRO: I think the jury needs to
  understand that hearsay is allowed in front of the
10
   Grand Jury. That is a big distinction.
                                            So, I object.
11
            MR. GONZALEZ: It's not hearsay.
12
13
            THE COURT: Why don't you come to sidebar.
            (Whereupon, the following discussion occurred
14
   at sidebar.)
15
           MR. SAMEIRO: My objection is that any
16
   question that's based upon line 22, on page five,
17
18
   should not be allowed, since it's referencing to what
   the victim said to the Officer. It starts off by
19
   saying, quote, "and he indicated to Officer Bobadilla,"
20
   close quote. That's just the introductory portion of
21
   the question. It's hearsay.
22
23
            MR. GONZALEZ:
                          He was at the Grand Jury.
            THE COURT: Right. And he answered
24
25
   questions.
                                                            75
                       J. Selesky - cross
           MR. GONZALEZ:
                          Yes. If he remembers the
 1
  question from the Grand Jury.
 2
            THE COURT: Okay. But at the Grand Jury,
 4 Counsel, hearsay is admissible. So, he can testify as
   to the hearsay. He can't here.
 5
            MR. GONZALEZ: He testified under oath
   previously. He answered the question, "yes." The
 7
   question that was posed, it's not hearsay. Because
   it's a sworn statement. He said -- He actually
10
   answered that question.
           MR. SAMEIRO:
                         It's true that he was asked
11
   that particular question. He doesn't dispute that the
12
   question was posed to him in the Grand Jury.
13
14
            THE COURT: I agree as to the contents of it.
   But you are right, you can cross-examine him on an
15
16
   inconsistent statement. But the problem is, that the
   statement is a hearsay statement. So, I think, you're
17
   trying to go into an inconsistent statement that is a
18
19
   hearsay statement at the Grand Jury.
20
                          It's an inconsistent statement
           MR. GONZALEZ:
21 by the victim, witness. That's an inconsistent
   statement. If he gave an inconsistent statement, then
22
23
   I think it's allowable. There is something in here
24
   that he's testifying to.
25
           MR. SAMEIRO: My understanding is, he is
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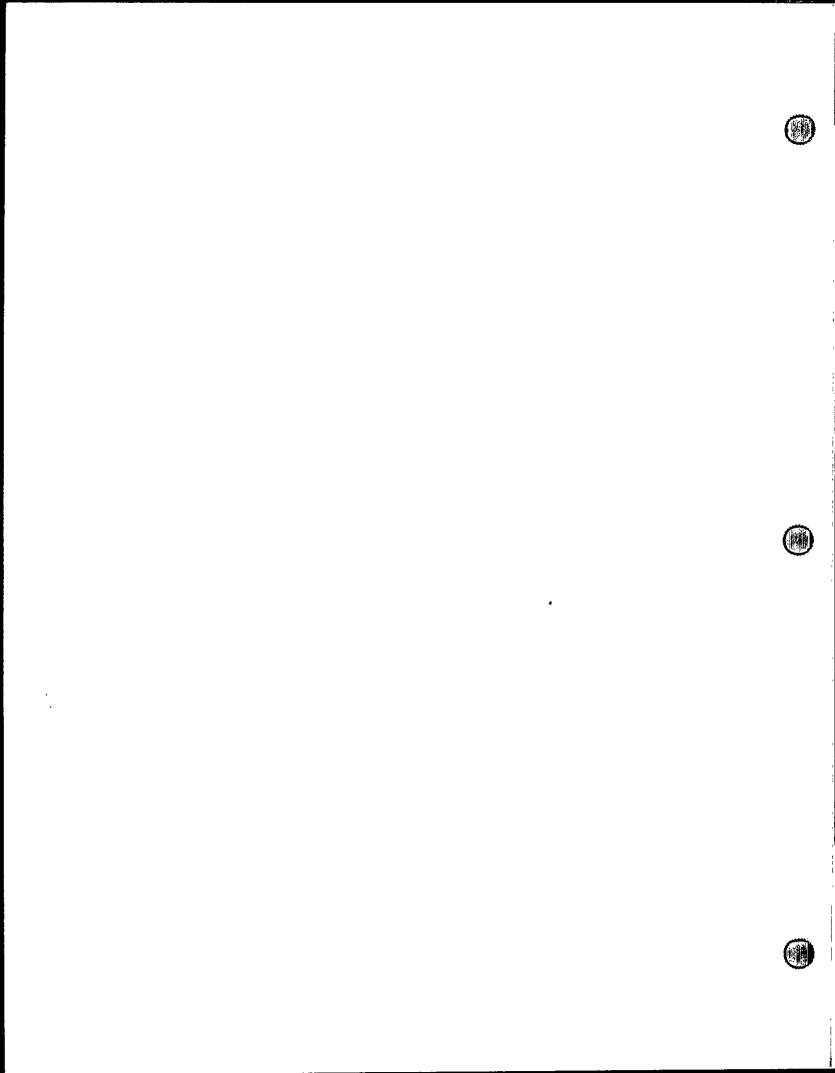


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J. Selesky - cross
   going to call Officer Bobadilla to get into whatever
   inconsistencies there are between Officer Bobadilla and
  what the victim said. I think this should wait for
   that.
           THE COURT: It shouldn't come in like this,
  from a question before the Grand Jury.
 7
           MR. GONZALEZ: I think it can. He knows
  whether or not he answered that particular question.
 8
   The question was posed. It's a "yes" or "no" answer.
 9
   It's a previously sworn statement. It's a question
10
   asked by Kuberiet. And it's merely a "yes" or "no"
11
12
   answer. He's not testifying to what the guy said.
           THE COURT: Well, he's saying what he said.
13
           MR. GONZALEZ: He's saying that he remembers
14
   being asked that. I'm reading what he was asked.
15
           MR. SAMEIRO: It's still hearsay, no matter
16
   how you try to spin it.
17
           THE COURT: You can ask him what he was
18
           That's fine. What the response is, as he says,
19 asked.
   he's giving a hearsay statement to the Grand Jury,
20
21
   which he can do. He's speaking on behalf of the
   alleged victim, it sounds like to me.
22
           MR. SAMEIRO: Of course.
23
           THE COURT: But here it brings in the
24
25 statement, a hearsay statement. Actually, that is
                                                          77
                       J. Selesky - cross
  hearsay.
 1
 2
           MR. GONZALEZ: I could ask the question, do
 3 you remember being asked, before the Grand Jury, that
 4 Mr. Cedillo knew one of the individuals that he picked
   up previously.
 5
           MR. SAMEIRO: That's not the question posed
            Let's be fair to the witness, Judge.
 7
   to him.
           MR. GONZALEZ: Judge, this is much to do
 8
   about nothing. Officer Bobadilla will be here to get
 9
10
   into this.
           MR. SAMEIRO: But, Counsel, you need to
11
   follow the Rules of Evidence.
12
13
           THE COURT: He can't bring in the statements,
   as to the inconsistencies.
14
           MR. SAMEIRO: This is cross-examination.
15
           MR. GONZALEZ: I can bring in the
16
   inconsistent statements that he makes.
17
           THE COURT: But not as to the hearsay
18
19 statements through Officer Selesky.
20
           MR. SAMEIRO: That's right, Judge.
           MR. GONZALEZ: You guys only ask "yes" or
21
  "no" questions to the Grand Jury. That's the trouble
22
23
   with that.
```

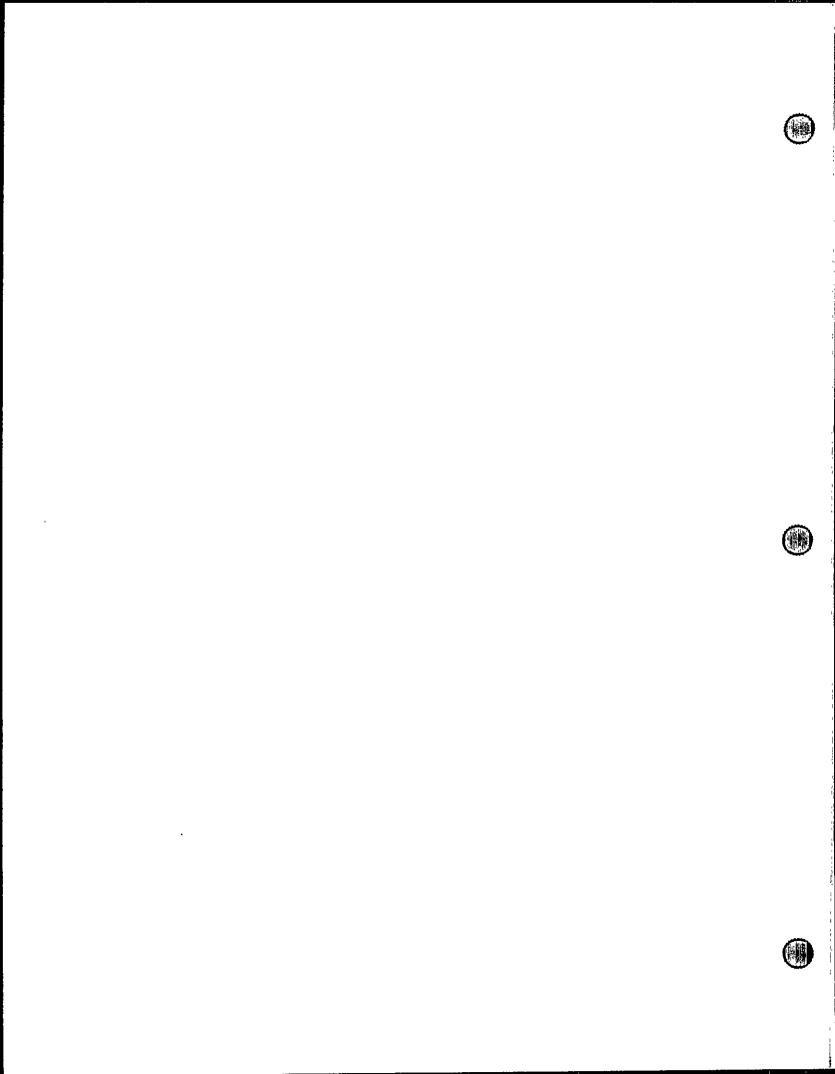
THE COURT: He can be cross-examined, if

something he says in the Grand Jury is inconsistent.

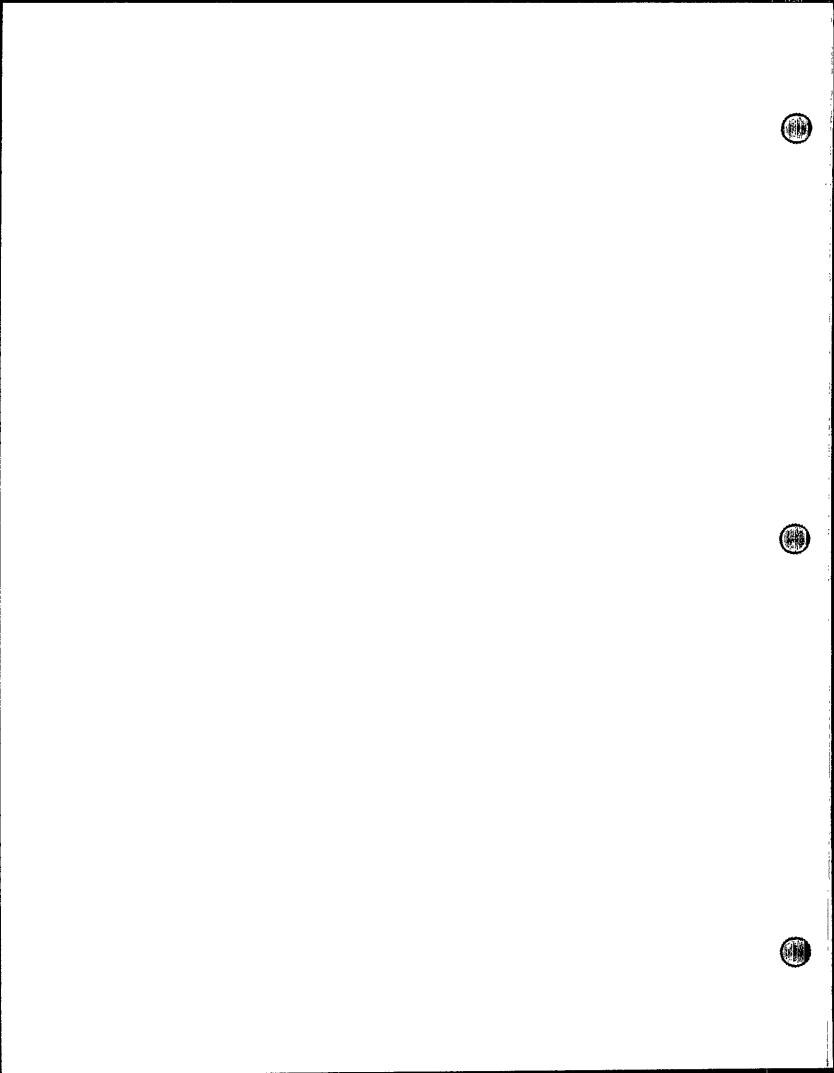
24



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J. Selesky - cross
   But not if it's hearsay.
 2
            MR. SAMEIRO: He can remember what he was
  asked at the Grand Jury. You asked whether or not --
            THE COURT:
                        Yeah.
 4
 5
            MR. SAMEIRO: For what purpose? To have his
                    This is strictly hearsay.
 6
   memory tested.
 7
                          It's not. It's a "yes" or
            MR. GONZALEZ:
 8
    "no" with regard to what he said at the Grand Jury.
            MR. SAMEIRO: "Yes" or "no." It's hearsay.
 9
10
            THE COURT: Based on hearsay. It's based on
   hearsay. Let's proceed.
11
            MR. GONZALEZ: So, I won't go into that.
12
            THE COURT:
                       Okay.
13
14
            (Whereupon, the sidebar discussion
15 concluded.)
            (Whereupon, the hearing continued in the
16
17
   presence of the jury.)
            Now, before you did this interview on July
18
   25th, did you have a preinterview type of period?
19
       Just for a few moments.
20
            Did you ever write what happened in that
21
22 preinterview in any report?
             I knew I was going to go right into any type
23
   of an interview, after I was done with the line-up.
24
            You mentioned, you've done numerous line-ups;
25
                                                           79
                       J. Selesky - cross
           Hundreds; correct?
   right?
 1
 2
   Α
       Yes.
           And you know that the Attorney General
 3
   requires all these line-ups to be videotaped; right?
 5
       Yes.
            And that requirement is because they are
 7
   trying to eliminate suggestibility, with regards to
   those line-ups; correct?
 8
 9
       Correct.
   Α
10
            And you fully are aware of what the Attorney
  General guidelines are; correct?
11
       Yes.
12
   \mathbf{A}
           And, in this particular video, you're dealing
13
14 with Officer Matias? Officer Matias' body is covering
15
   the photographs; correct?
16
       Yeah. Because he is in a position where he's got
17
   a table there.
                  Unfortunately, the room is very tiny.
18
   Not very big. So, I mean he has to sit where he sits.
   Where the victim sits -- We try and put the victim or
19
20
   the defendant where the camera can actually see them,
21
   front on. Unfortunately, that's just the way the room
22
23
           Okay. But the videotaping is memorializing
24
   what's happening with those photos; right?
25
       Right.
```



```
J. Selesky - cross
                                                             80
            That's the purpose of it?
 1
       Q
 2
   Α
       Yes.
            But in the video, you were observing in the
 3
   other room, Officer Matias was blocking?
       No, he's not blocking the whole thing.
            There is a portion with regard to the
 6
   Attorney General guidelines, that a person must fill
   out an individual himself, as to the photograph that he
 9
   identified; correct?
        You are talking about the victim filling it out?
10
11
        0
            Yes.
        It's filled out by whoever.
                                     I mean, the Officer
12
   Α
   fills it out or the victim. Usually the Officer fills
13
14
   it out.
15
            There is a photo display result form;
        Q
16
   correct?
17
       Correct.
18
            Now, it's safe to say, that before Officer
   Matias went into this room, you didn't know the
19
   sequence in which the photographs were going to be
20
21
   displayed; correct?
        Correct.
22
            They were going to be displayed in a random
23
   manner; correct?
24
       Correct.
25
   Α
                                                             81
                        J. Selesky - cross
            Now, there is a portion, when explaining the
 1
   instructions, on how you're going to do the photo
   display, there is directions, instructions, that are
   given to the witness; correct?
 5
   Α
        Yes.
            In this particular case, in New Brunswick, in
 7
   the police station, they have those forms in Spanish;
   correct?
 8
 9
        Correct.
            Do they have the photo display result form
10
   in Spanish and English?
11
        They do; but I could not locate that one that day.
12
   Sometimes they run out, nobody makes copies.
13
   why I made a copy of the English one on the other side
14
15
   of the form, so, we could use it.
            But the victim, in this particular case, was
16
17
   Spanish; right?
18
   A
       Correct.
19
            So, probably, if you were following the
   Attorney General guidelines, in making sure that the
20
21
   person knew what he was signing or instructed on, it
22
   would probably have been better to use the Spanish
23
   form; correct?
24
       Yeah.
              But, like I said, it wasn't available.
                                                        Ιf
25
   it had, it would have been used.
                                      Trust me.
```



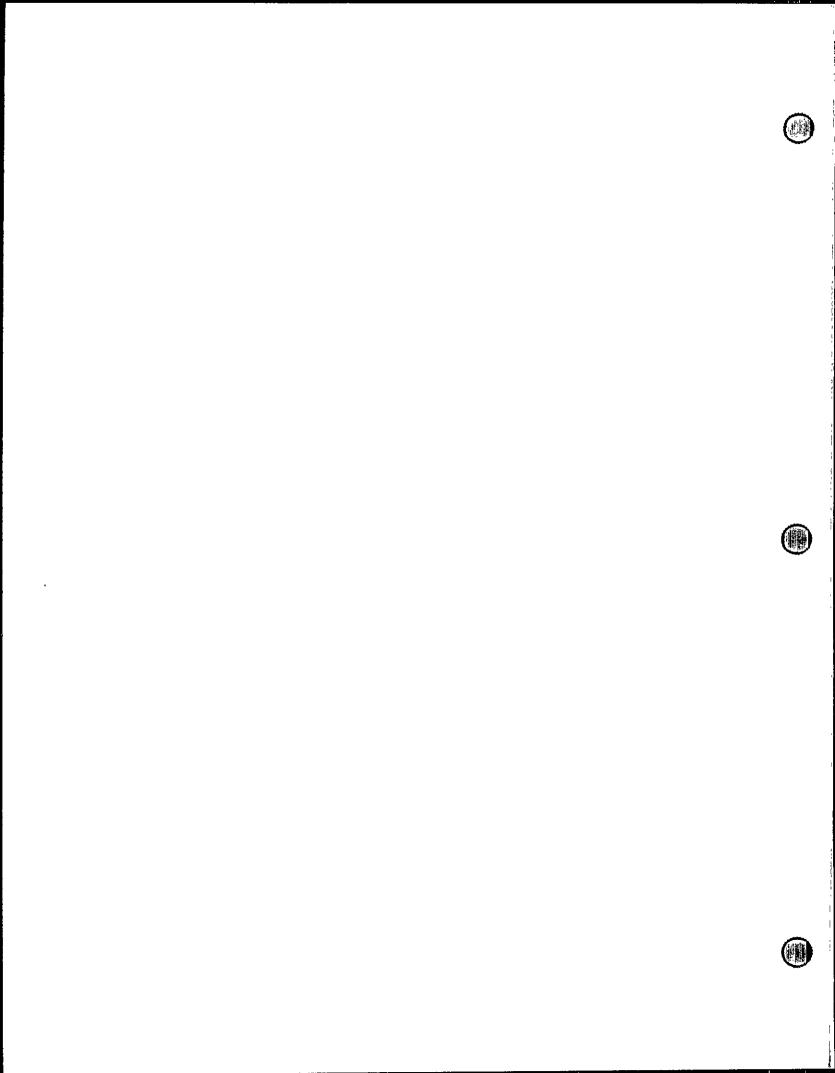
- J. Selesky cross
- 1 Q You could have waited -- You could have went
- 2 on the computer -- You could have printed it out?
- A It is not on the computer like that. We don't
- keep them. I don't know who supplies them. I think
- 5 one of the secretaries does it. I'm not sure where 6 they were. I wish I did.
 - Q You didn't in this case; correct?
- 8 A Right. No. That's why I made sure that something
- 9 was available that was comparable to it in English.
- 10 Q You could have not done that photo display 11 on that date; right?
- 12 A I mean, I could have put it off; but I didn't. I
- 13 got my information. I went with it. Like I didn't
- 14 want to drag this on any further, as you had said
- 15 earlier.

7

- 16 Q But you knew that you were going to do a
- 17 Spanish photo array?
- 18 A Correct.
- 19 Q You should have all your tools prior to doing
- 20 so; correct?
- 21 A Yes.
- 22 Q But you didn't?
- 23 A I did. I had Officer Matias as my translator.
- 24 Q Did Officer Matias translate this to Wilmer
- 25 Cedillo?

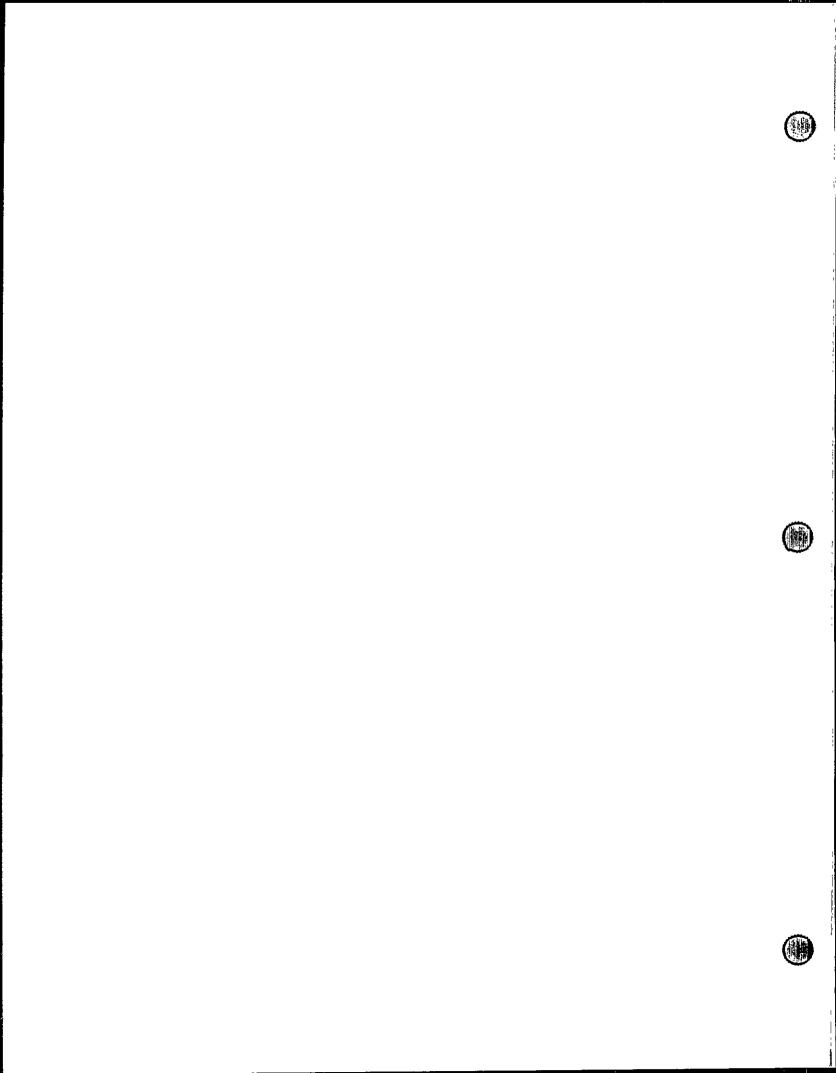
J. Selesky - cross

- 1...
- 1 A As far as I know. Like I said, I don't speak
- 2 Spanish. I'm not sure what he said. If he read that
- 3 whole page to him. I couldn't tell what he said. I
- 4 could read the English; but --
- 5 Q If he didn't read it to this person, or if
- 6 the person actually read it themselves, it would be a 7 mistake; correct?
- 8 A I'm not sure what he did with that. Like I said,
- 9 I don't understand Spanish. That's why he's there, for 10 translating.
- 11 Q Did you write on the photo display result
- 12 form?
- 13 A Yes.
- 14 Q In fact -- Well, strike that. The order, in
- 15 which a photo display is done, I know it initially
- 16 starts as random; correct?
- 17 A Well, let me -- Can I explain to the jury what we
- 18 did? How I do it? Maybe it would be a little clearer
- 19 than answering the questions. I can tell you exactly
- 20 how we do it.
- 21 O Please do.
- 22 A Okay. Since this was Officer Matias' first time
- 23 he ever did it, I explain to him how to do it. I gave
- 24 him what he needed to read, what he needed to do, I
- 25 believe, as to the shuffling. The shuffling makes it



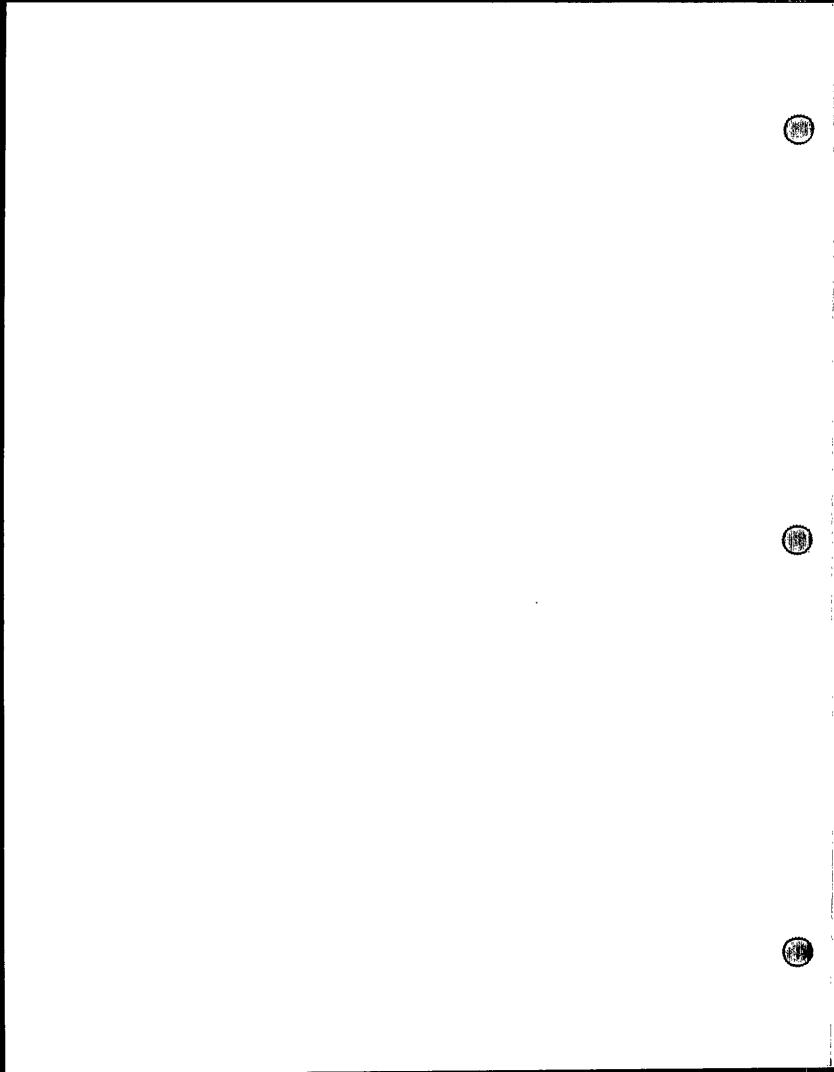
```
J. Selesky - cross
   more random. To put it in the third or fourth or sixth
 1
   position. I want the Officer to shuffle them up.
   it is very random. If it is the first person -- no
  matter what the outcome of this is -- they're seeing
   all six pictures. They see every single one.
   matter if they pick the first one, they see everybody,
   no matter what it is.
           You have no memorialization of the order in
 8
 9
   question, that the photo array was done, in this
   particular case; correct?
10
11
       As to which picture was shown in what order?
12
           Right.
13
       No. Only the one that he picked out.
           And you wrote down, on your photo result
14
   form, which one he picked out; right?
15
16
       Correct.
17
           You're not supposed to do that, are you?
       No. There is no reason for not doing it.
18
   it's right in the guidelines. Anybody can show a
19
20
   line-up. Even the officer that is investigating the
21
   case. I tend to use somebody else. Like in this case,
22 Officer Matias. And, like I said, it was his first
   time. I'm guiding him through this process.
23
           Okay. So, you have done this numerous times.
24
   It's your understanding, that the guidelines require
25
                       J. Selesky - cross
                                                           85
  you to fill out all this information, including the one
   that the person picks, and the number of photographs
 3 shown; correct? Then the signature on the bottom;
   correct?
 5
       Correct.
   Α
           Any officer can do that; right?
 7
       Yes. Except for the signature at the bottom
   Α
   should be the officer that was actually in the room.
   And the victim, I believe, who saw it, or the witness
 9
10
   who saw it. In this case here, Officer Matias didn't
  know what to do. I put in -- I wrote it in his spot.
11
12
   I actually witnessed it.
           Okay. You don't know the order; right?
13
14
            I mean the pictures were shown. It's on the
   video, obviously. But you can't see from the video the
15
16
   exact face being shown. I'm not sure what the order
17
   was.
18
       Q
           Okay. Can you read -- I'm showing -- I'm
19
   sorry. I'm showing you what's been previously marked
         The photo display result form?
20
21
       Correct.
22
           And the photo display result form is, I
23
   guess, it has a certification; correct? Something like
24
   a certification?
```

Well, it's just a document, which is filled out,



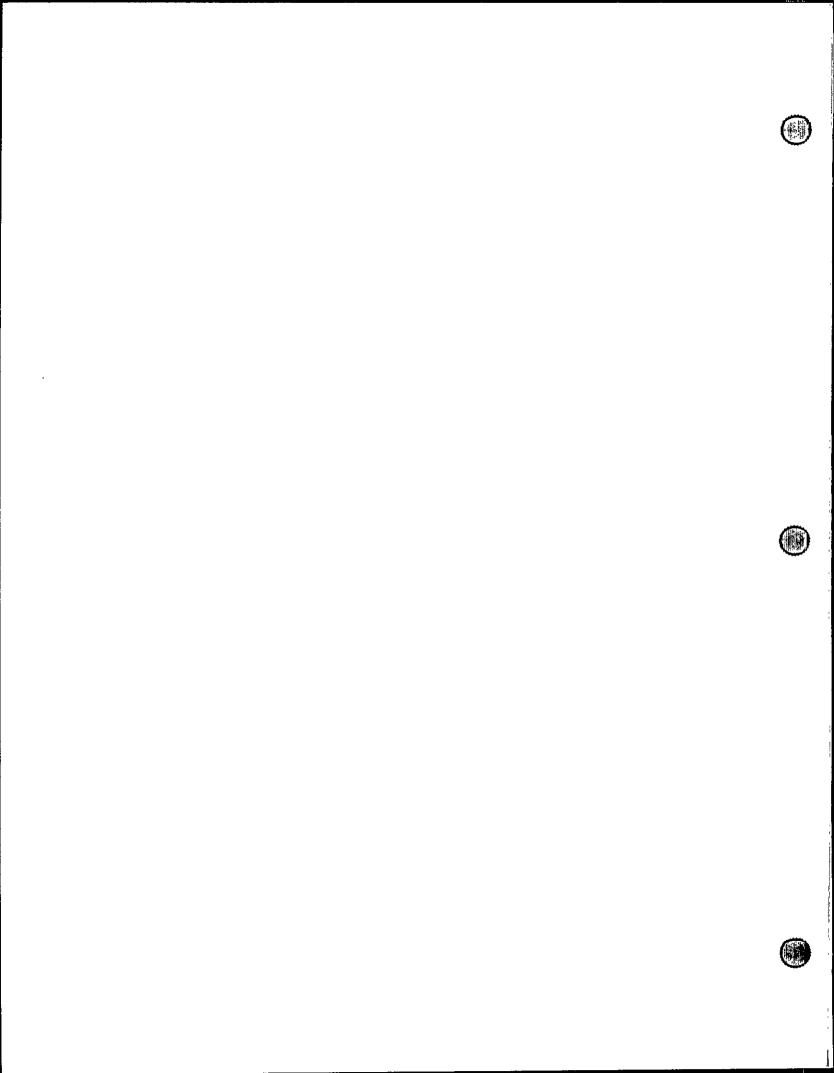
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J. Selesky - cross
   when this is done.
 1
 2
       0
            It's not an important document, it's just a
   document?
             It's an important document. I'm saying it's
       No.
                 I am just saying, it's a document that's
   a document.
 5
 6
   filled out.
 7
            MR. GONZALEZ:
                           Judge, may I publish this to
 8
   the jury?
 9
            THE COURT: Any objection?
                          No.
10
            MR. SAMEIRO:
            THE COURT: Go ahead.
11
            MR. SAMEIRO: Judge, for record sake, I'll
12
   move it into evidence now. It is my exhibit.
                                                  So, the
13
   jury can then have it. This is S-3.
14
                        Obviously, no objection?
15
            THE COURT:
            MR. GONZALEZ: Obviously, no objection as to
16
   the publishing, Judge. I want them to see it, Judge.
17
            (Whereupon, S-3 is published to the jury.)
18
            Well, actually, let's do this (indicating).
19
   Can you do me a favor?
20
21
       Sure.
            MR. SAMEIRO: Judge, the record should
22
   reflect that Counsel is showing the English side of
23
   this document. This is a two-sided, single-page
24
25
   document.
                                                           87
                       J. Selesky - cross
                        Thank you.
            THE COURT:
 1
            MR. SAMEIRO: So, before the jury is the
 2
 3
   English side.
            MR. GONZALEZ: Judge, excuse me.
 4
            Officer Selesky, I'd like you to start with,
 5
    "I," under all of the pedigree information, and read
 7
    all the way to the end.
        "I, the undersigned viewed a total of six
 8
   photographs, one at a time. After looking at each
 9
   photograph, I selected photograph numbered 33223A, the
10
   fifth shown, and signed the photograph." And I think
11
   that is the picture here. "Check if no identification
12
   was made. No member of the New Brunswick Police
13
   Department, or anyone else suggested that I select any
14
   particular photograph, or that I select any photograph
15
             The identification was my own choice.
16
   not told by anyone whether others had selected any
17
18
   particular photograph or had failed to select anyone.
19
   I was not told by anyone the status or identity of any
20
   of the individuals in the photographs."
21
            That's you who put the number of photographs
22
   shown, and those two blanks are what Wilmer Cedillo put
23
   in; right?
24
   A
       No. No.
```

It says, "I," meaning the person that signed

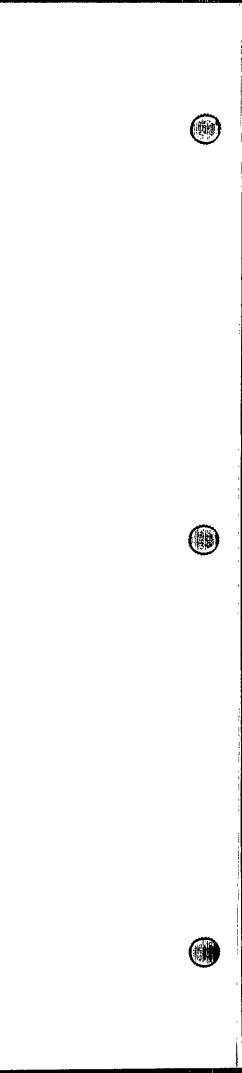


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88
89
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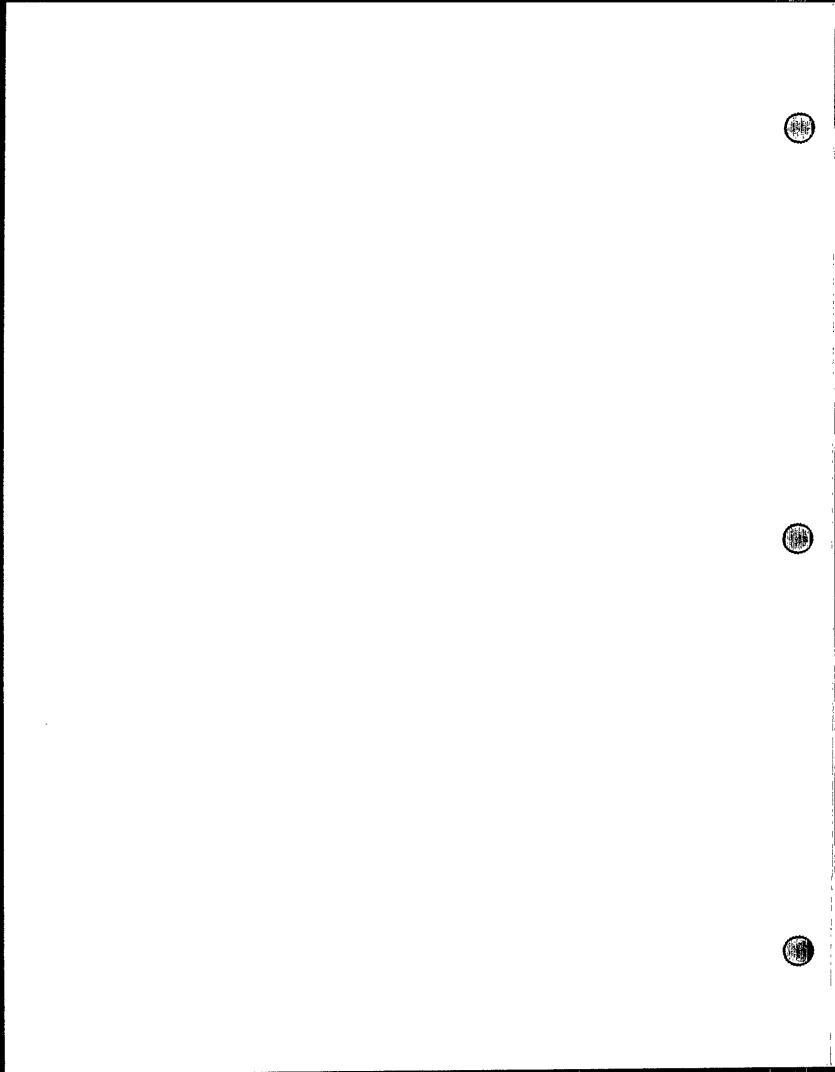
```
J. Selesky - cross
 1
   on the bottom; right?
       Right. The officers can assist the person filling
 2
   Α
   out these forms.
            Did you assist them?
       Yes. I fill it out. I explain it to him.
   Α
   my handwriting, meaning the case number on the top.
   put the case number in.
            Did you assist Wilmer Cedillo in picking that
 9
   photo?
       No, I wasn't in the room.
10
            It's your testimony, right now, that's for
11
   anyone to fill out, not a certification, that the
12
   person on the bottom, who signs it, should be the
13
14 person that puts those numbers on there?
            MR. SAMEIRO: I'll object to the question.
15
  First of all, the signature line is not being shown.
16
   Clearly, it's not a certification. A certification is
17
   a legal term. And I'll object to the misleading nature
18
   of the question, and the use of the word,
19
20
   "certification."
21
                        I'll sustain it, regarding the
            THE COURT:
  issue of the certification. Just as to the document
22
23
   itself.
            MR. GONZALEZ: That is as clear as possible.
24
            MR. SAMEIRO: We still don't have the bottom
25
                       J. Selesky - cross
                          There we go.
  half of the document.
 2
            MR. GONZALEZ:
                          Okay. All right.
            You didn't sign this piece of paper, did you?
 3
        Q
       No.
   Α
            But you interjected these two portions;
 5
       Q
   correct?
       The number of six, I didn't put that in.
 7
   number, the case number, which is the number on the
   top, I put that in. Officer Matias does not know the
10
   case number. He has no documentation in the room to
11 fill that out. Because he's not supposed to know
  anything about the case. And, again, like I said, this
12
13
   was his first time using the procedure.
                                             That's why I
14
   filled that out for him.
15
            You're not the person that observed it?
       I did observe it. I was in the other room,
16
   watching the video.
17
18
            When he picked the photo?
19
        I saw it.
                  I was watching in the monitor room,
20
   which is across the hall.
21
           Your testimony today is, you're supposed to
  be the person that fills that in?
22
23
            Anybody can fill it in, that's involved in
24
   the investigation. Officer Matias was not familiar
25
   with the procedure at the time. This was his first
```



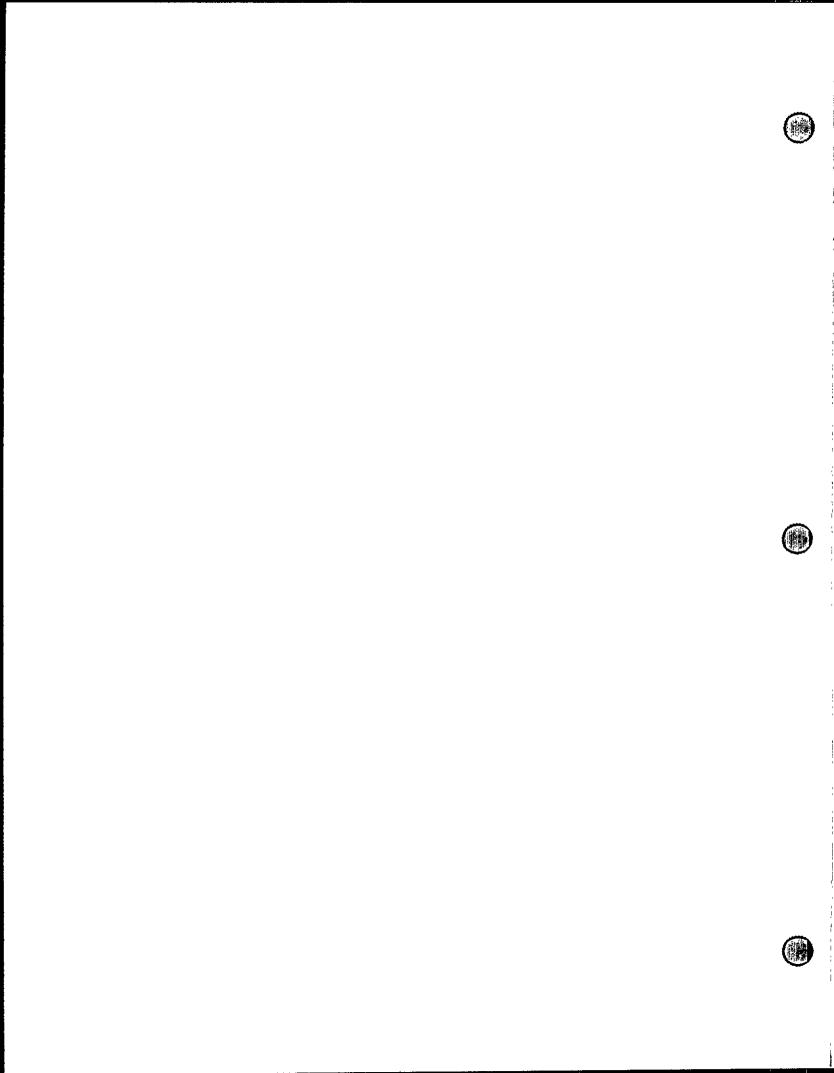
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J. Selesky - cross
                                                           90
   time. I helped him in filling it out.
                                            The victim
   doesn't have to fill it out. We assist the victim in
   filling it out. As long as they understand what's
   going on.
       Q
            The pictures, do you have them in front of
   you?
       You never gave me the pictures.
 8
           Mr. Sameiro gave you the pictures.
           MR. SAMEIRO: They are in Evidence,
 9
               The Clerk has them.
10
   Counselor.
                           Thank you.
11
           MR. GONZALEZ:
           Mr. Cedillo was shown six photographs; right?
12
       Q
13 A
       Correct.
            In random order; right?
14
15 A
       Correct.
           MR. GONZALEZ: I will get the pictures.
16
17
            These are the six photos that were shown to
  him; right?
18
19
       Correct.
20
           But you don't know in what order?
       No. As I said, we shuffle them up randomly.
21
   Α
22
            You have a key; right?
23
  Α
       Yes.
24
           The randomness of them was never documented;
       Q
25 correct?
                                                           91
                       J. Selesky - cross
             Because I am in the room watching.
                                                 I don't
 1
   know what's being shown.
                             That's the randomness of it.
 2
   Officer Matias had shown him the six photographs.
            There is a video in the room. Officer Matias
 4
   could have been instructed to show the picture to the
   video; correct?
       That's not part of what the guidelines say.
   That's not what they ask. But that's your
 8
 9
   interpretation of what we should do.
10
            Since no one wrote a report on this
  identification procedure, the report is the video;
11
12
   right?
13
       Exactly.
   Α
14
           Again, the only thing that would memorialize
15
   the sequence in which each one of these things was
16
   shown; right?
17
       What's memorialized -- Like I said, the room is
   small. That is what was provided to us by Middlesex
18
19
            That's the way it's been done since we started
   County.
20
   doing it.
21
           You should change the position of the camera
   or change the position of where the people sit.
22
23
       That's your opinion.
24
                          Judge, I'll object to that.
           MR. SAMEIRO:
25
           THE COURT: Sustained.
```



```
92
                       J. Selesky - cross
           Wouldn't it be fairer if the people saw what
 1
   photograph was being displayed?
 3
           MR. SAMEIRO: Objection.
            THE COURT: Sustained.
 4
       That's the procedure. You have each picture in
 5
   Α
               You see the pictures. Those are the
 7
   pictures shown.
            So, in this photo identification, no mistakes
 8
 9
   were made; right?
       Not that I'm aware of. I mean, it was all
10
   memorialized in the video.
11
            The person was supposed to sign this piece of
12
13 paper, when they're actually viewed? They're supposed
   to sign the photo, when they pick it; right?
14
       They're supposed to sign it when they pick it,
15
   yes. Okay.
16
17
            They're supposed to sign it. They're
       O.
                                They're not supposed to be
   supposed to be shuffled up.
18
   taken out of the room and then signed?
19
       Like I said, on direct, Officer Matias was not
20
   familiar with doing this.
                              That's why I sent him back
21
   in the room, to have him do it.
22
            So, he left the room, and came back with a
23
       Q
24
   photo; right?
       I'd have to see the video again. But I know he
25
                       J. Selesky - cross
                                                           93
  did, yes.
 1
           Okay.
                  Then both he and Mr. Cedillo signed
       Q
  it; right?
       I'd have to see the back of it. I know Mr.
   Cedillo signed it, yes.
 5
           Do you want to see the back of it?
       Sure. Okay. That's his initials and my initials
 7
   Α
   as well.
 8
 9
           Your initials are on the bottom, too; right?
       0
10
       Yes.
           Mr. Cedillo was shown the picture, again,
11
  before he signed it; right? I mean by Officer Matias?
12
             Like I said, I'd like to see the video.
13
14
   haven't seen it in a couple days.
           So, you don't know?
15
       Q
16 A
       Excuse me?
17
           You don't know?
       0
       No, I don't remember. He actually left him.
18
                                                      Then
19
  he went back in the room. He showed it to him.
20
   down with him.
                   I'm not sure what actually transpired.
21
       Q
           You indicated that it's not easy to get phone
22
   records?
23
       No.
24
           You didn't tell Mr. Sameiro that when he
25
   asked you that question?
```



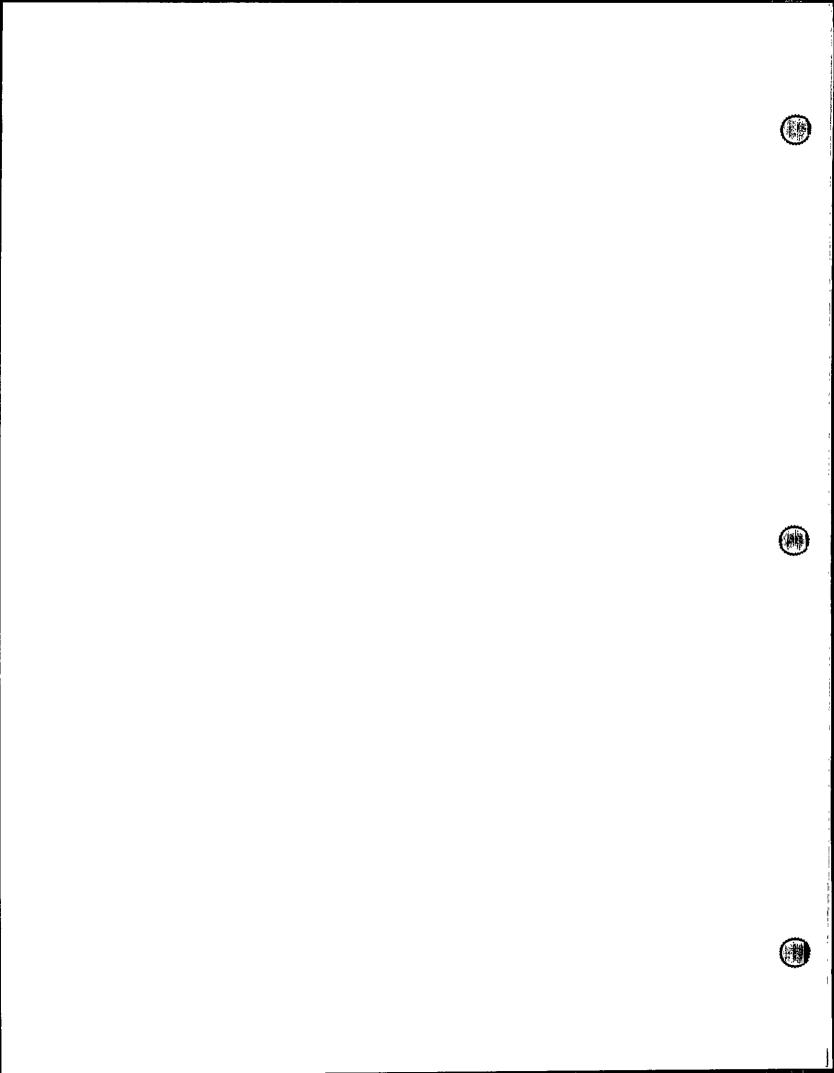
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J. Selesky - cross
 1
   Α
        I said it was not easy.
 2
        Q
            To get phone records; correct?
 3
   A
        Correct.
            Would you agree with that?
 5
        Yes.
   Α
            It is not easy to get phone records?
 6
        Q
 7
   Α
       No.
            It is not easy to get phone records on a
 8
 9
   prepaid mobile phone; correct?
10
        Correct.
            Neither is it easy to get phone numbers of a
11
   land line? It is not easy to get phone numbers of a
12
13
   land line, connected to a taxicab company; correct?
            MR. SAMEIRO: I'm going to object.
14
   talking about general phone records. We all know that
15
   search warrants are needed for some records, and
16
   subpoenas work for others.
                                This is misleading.
17
18
            THE COURT:
                        Okay.
19
            MR. SAMEIRO:
                          As to the general issue of
   phone records, I will object to the question.
20
            MR. GONZALEZ: I'm laying a foundation.
21
   think it is appropriate, Judge.
22
23
            THE COURT:
                        Okay.
            Victoria Taxicab has their own phone line;
24
25
   correct?
                                                             95
                        J. Selesky - cross
        Actually, when I was talking to the dispatcher,
 1
   he said they have several phone numbers, not just one.
            Okay. Now, those phone records, if you do a
 3
   Grand Jury subpoena for them, they can be obtained;
 4
 5
   correct?
        Not through a subpoena. We have to do a Court
   Α
   Order to get the records.
 7
            You can do that in the investigation process?
   If you were looking for a number, you would be able to
10
   obtain it; correct?
        Yes.
11
   Α
            You've done that before; right?
12
13
        Correct.
            So, you didn't do that in this particular
14
   case, to match up whether or not that any phone number
15
16
   actually did call the Victoria Taxicab Company; right?
17
        Correct.
18
            You could have done that; right?
19
        I could have done a lot of things.
                                            But that's
   something -- In the end, you have to trust the victim.
20
21
   Once the victim of a crime gives me the number, that's
22
   what I would go with.
23
            Identifications aren't always reliable;
        Q
24
   correct?
25
            MR. SAMEIRO:
                          Objection.
```



```
96
                       J. Selesky - cross
           MR. GONZALEZ: In his training, I'm sure he
 1
   knows whether or not identifications are reliable.
 2
 3
           MR. SAMEIRO: I object.
                      As to?
 4
           THE COURT:
            MR. SAMEIRO: Well, it's an argumentative
 5
             And, frankly, "reliable" is a loaded term.
 6
   question.
 7
                       Is what?
            THE COURT:
            MR. SAMEIRO: A loaded term.
 8
 9
            THE COURT: A loaded term. All right.
            Well, I'll ask you -- I will sustain the
10
11 objection. I just ask you to rephrase it, Mr.
12
   Gonzalez.
13
           MR. GONZALEZ:
                          Sure.
           You mentioned you've been trained in
14
   identifications, photo arrays, all these different
15
   things; correct?
16
17
       Yes.
   Α
18
           The reason you do all that is because the
   reliability of an identification is important; correct?
19
20
       Correct.
21
           And reliability depends on the various
22 different ways to identify someone; correct?
23
   Observation; right?
  Α
24
       Yes.
25
           You know, whether someone is near or far to
       Q.
                                                           97
                       J. Selesky - cross
 1 you; correct?
              There is a lot of variables and factors
       Sure.
   involved.
           Whether the lighting conditions are good or
       Q
  bad; correct?
 5
   Α
       Correct.
 7
          Whether the person is next to you, behind
   you, in front of you? That would be a variable;
   correct?
 9
10
       Correct.
11
           The amount of time you're able to actually
  view a person would be important; correct?
12
13
       Correct.
           Now, there is various variables, that go into
14
   the reliability of an identification; correct?
15
16
       Yes.
17
            So, it's safe to say that, based on this, a
18 conclusion can be drawn, that they can either be -- the
   identifications can either be reliable or not reliable;
19
20
   correct?
21 A
       From case to case, yes.
           Okay. Now, the original identification --
22
23 Well, excuse me. The original report in this
24
   identification --
25
           MR. SAMEIRO: Judge, I'm going to object to
```



```
98
                       J. Selesky - cross
 1
   that question.
            THE COURT: I'm not sure.
                                       It sounded like it
 2
   was going into a different area.
 3
            MR. GONZALEZ: I haven't asked the question.
            MR. SAMEIRO: Judge, he is trying to ask this
 5
   officer questions, trying to make him an expert in
 6
   identification procedures? Questions as to this being
 7
   outside of the actual photo array process used in this
 8
 9
   case.
            THE COURT: Mr. Gonzalez?
10
            MR. GONZALEZ: Judge, I'm not trying to make
11
   anyone an expert. I'm merely trying to ask a question.
12
   I haven't even asked it yet. If I can have an
13
   opportunity to ask it.
14
            THE COURT: Let's have him ask the question
15
16
   first.
            MR. SAMEIRO: All right.
17
            Now, I'll rephrase it. Because, after that,
18
   I forgot it. Now, there is an initial description;
19
20
   correct?
21
   Α
       Yes.
           And that was different from the actual
22
        0
23 make-up or description of Mr. Machado; correct?
            MR. SAMEIRO: I object to the question.
24
            THE COURT: The basis of your objection?
25
                        J. Selesky - cross
                                                            99
            MR. SAMEIRO: Because there has been no
 1
 2
   foundation made for it. Let me withdraw the objection.
 3
            THE COURT: All right.
            MR. SAMEIRO: I'll wait for the answer.
 4
            You read Officer Bobadilla's report; right?
 5
       You want to give it to me? I can read it again,
   while I'm here.
 7
 8
       Q.
            Sure.
       I can refresh my memory with it.
 9
   Α
10
            Sure.
       (Witness complies.)
11
  Α
            MR. GONZALEZ: The record should note that
12
13
   D-1 is being shown to Sergeant Selesky.
                                             The actual
   body of the report.
14
15
       What part are you talking about?
            If you would like to read the entire body of
16
17
   the report.
       Sure. (Witness complies.)
18
19
            Just look up when you're ready.
20
        (Witness complies.) Okay.
                   The description there is different
21
           Okay.
22
   than Mr. Machado's description; correct?
23
       The only difference in the description is the
24
   height that was given that's in the report. I mean,
25
   Hispanic male. The only difference as to Mr. Machado,
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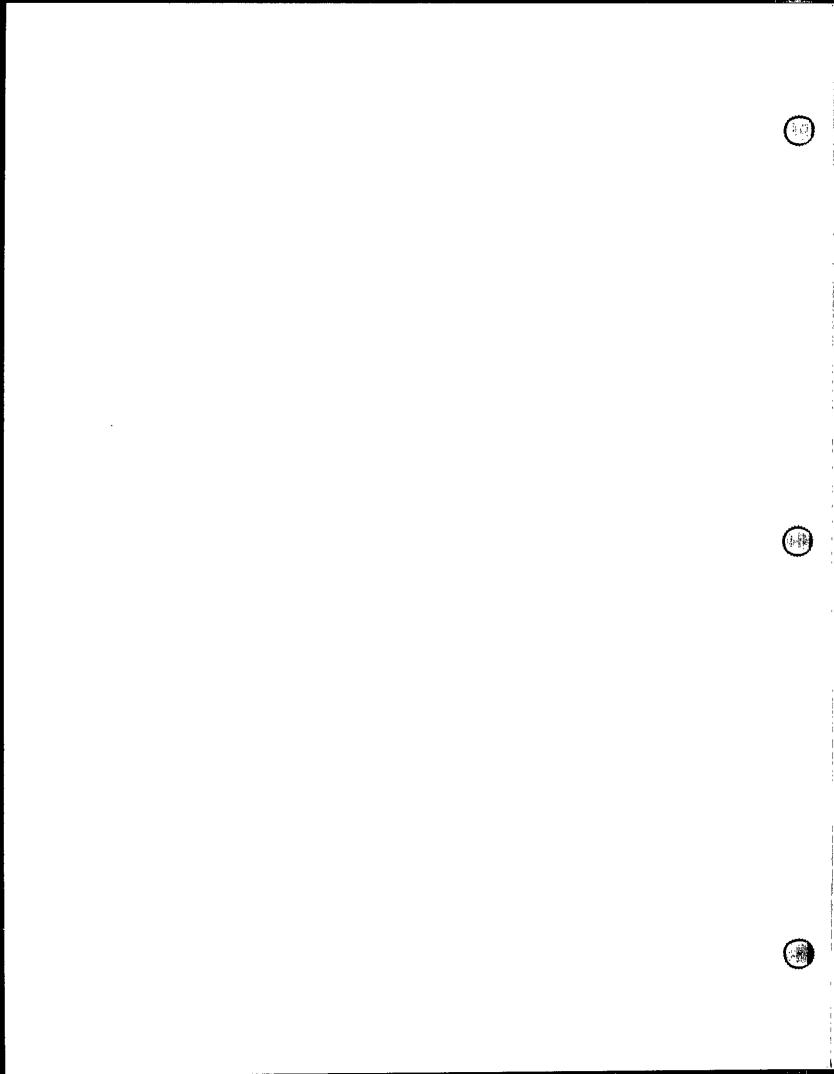


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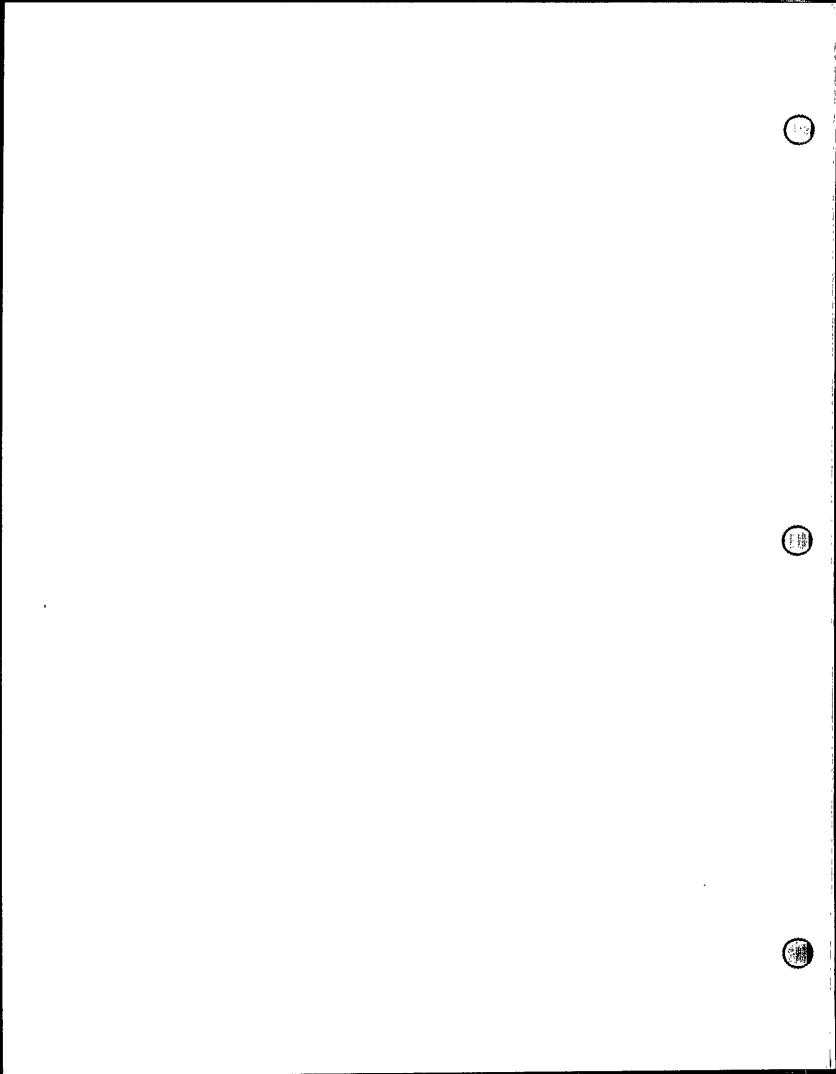
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J. Selesky - cross
   it says five foot eight.
 1
                   Initially, you asked, at the time, you
 2
        Q
            Okay.
  asked Wilmer Cedillo, after he made the identification,
   to give you the description of the people. "Tell me
   how he looked"?
       Right.
               Right.
           And he wasn't able to tell you as to what
 7
   they were wearing, or any of those things; correct?
       I'd have to see the video again, because I don't
 9
10
   recall.
           If you give me a moment.
11
       Q
12
   Α
        Sure.
13
            In doing so, in doing a photo array, being
   that there's a passage of three months in this
   particular case; right?
15
16
       Right.
   Α
17
            You should have asked for a description
18
   before doing a photo array; correct?
        I told you, I spoke generally. I didn't ask him
19 A
20 for the description. Because I was relying on the
21 report from Officer Bobadilla. And I wanted to go
22 right into it with him, rather than do a preinterview.
   I know sometimes -- strike that -- not sometimes -- but
23
   I want the victim to tell me what happens, when I start
24
25 asking him, during the interview, to the end, and
                       J. Selesky - cross
  that's why.
 1
           You can do it in reverse order? You can do
 2
 3 the actual interview, prior to the identification, to
  capture a description; correct?
       You could do it in any order we want.
 5
   generally do the identification first.
            Don't you usually have a preinterview?
 7
        Yes. But I knew that it was going to be
 8
   videotaped. I'd rather go right into the meat of what
 9
   happened, as opposed to doing a preinterview.
10
            You said you were going to go into the meat
11
   of what happened. You'd rather go into the meat of
12
   what happened after the identification is made?
13
14
   Α
       Sure.
15
            You don't want to check the reliability of
   the previous identification before going into the
16
17
   photo display?
       What do you mean by the reliability of the
18
19
   previous identification?
20
            To see if he tells you the same story as
21
   before?
22
       I asked him -- Like I said before, I told you
   earlier, that I said to him, "you remember what
```

happened." He says, "yeah." Then I explained to him

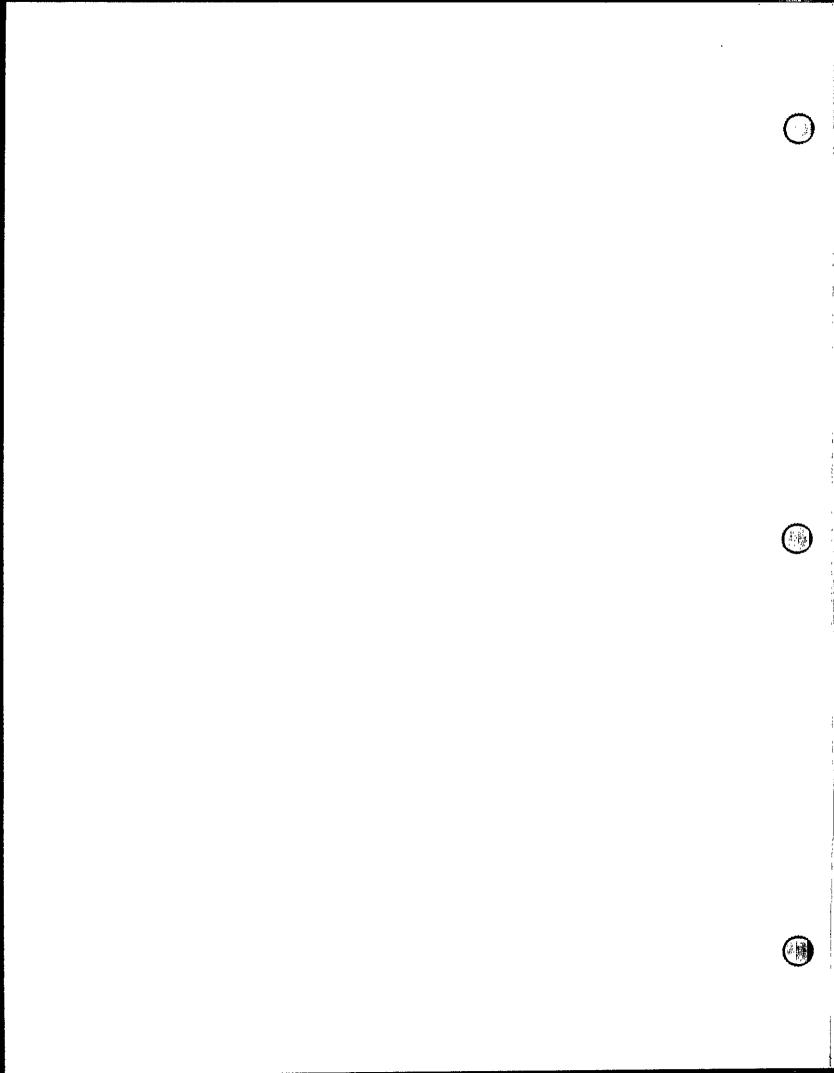
what's going on. That is when we went right into the



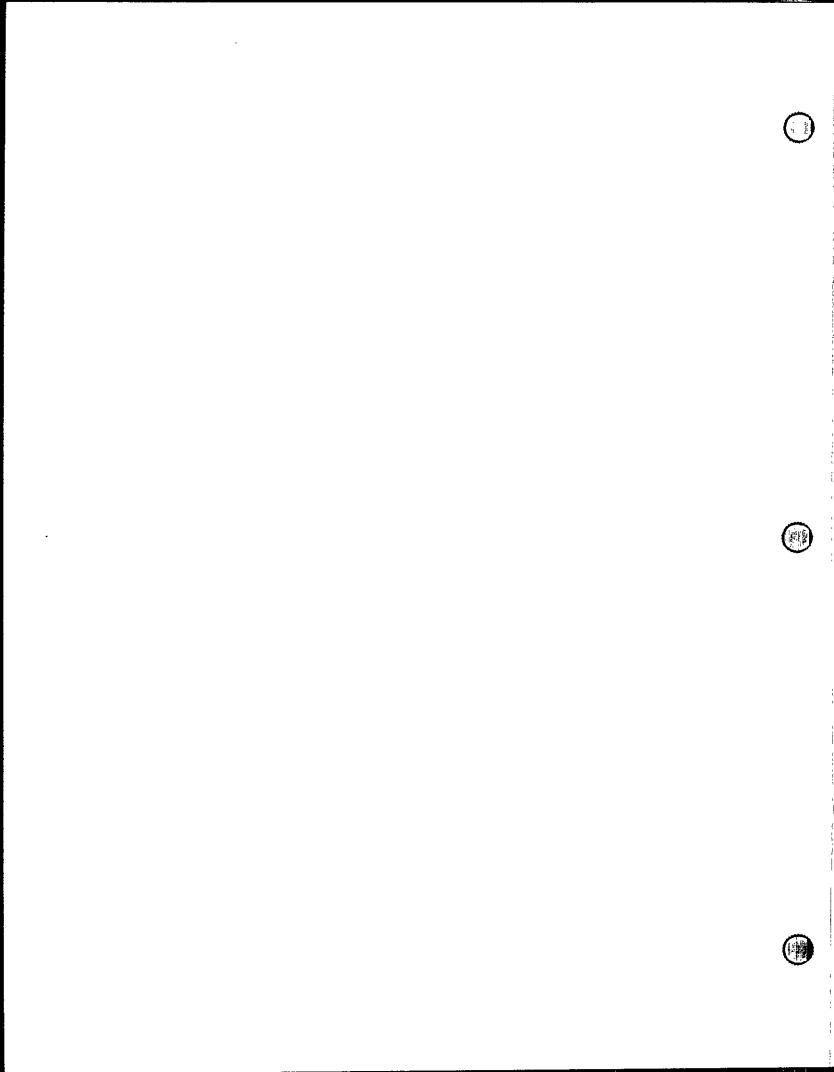
```
J. Selesky - cross
                                                          102
   photo ID. From there, we went right into the
 1
 2
   statement.
 3
           Did you ask him if he remembered the person?
       That's why he was there.
           Did you ask him, before he went into the
 5
   photo array, to see whether or not he was going to make
   this identification?
 8
              He didn't come down -- He wasn't coming
       Sure.
   down for nothing. He knew he was coming down to look
 9
   at pictures.
10
           What I'm saying is: Did you ask him, did he
11
   remember what the person looked like, before he went
12
13
       Do you remember the incident, do you remember what
14
   happened, do you remember the person. He was willing
15
   to do it.
16
17
           MR. GONZALEZ: I don't have any other
18
   questions.
19
           THE COURT: Thank you, Mr. Gonzalez.
20
           Anything further?
21
           MR. SAMEIRO:
                         No.
                        Thank you very much. You are
22
           THE COURT:
23
  excused, Detective Selesky.
            (Whereupon, the witness is excused.)
24
           THE COURT: Could I just see Counsel at
25
                                                          103
                       J. Selesky - cross
  sidebar with regard to scheduling?
 1
 2
            (Whereupon, a discussion was held off the
 3 record at sidebar.)
            (Whereupon, the hearing continued in the
 4
 5 presence of the jury.)
           THE COURT: State?
 6
           MR. SAMEIRO: Your Honor, that concludes the
 7
   State's evidence in this case. We rest at this time.
 8
   That's, of course, subject to the introduction of
 9
10
   certain exhibits, that have not yet been moved into
11
   evidence.
           THE COURT:
                      All right.
12
13
           Mr. Gonzalez?
14
           MR. GONZALEZ: Judge, at this time, the
15
  defense would like to call Officer Bobadilla.
16
           THE COURT: Officer Bobadilla.
17
                                       BOBADILLA,
18
   PATROLMAN
                       EDWARD
19
   called as a witness on behalf of the Defendant, being
20
   duly sworn, testifies as follows:
   DIRECT EXAMINATION BY MR. GONZALEZ:
21
22
           Good morning, almost afternoon. Officer
23
   Bobadilla, how are you today?
24
   Α
       Good.
25
           Can you tell the jury where you're employed?
```



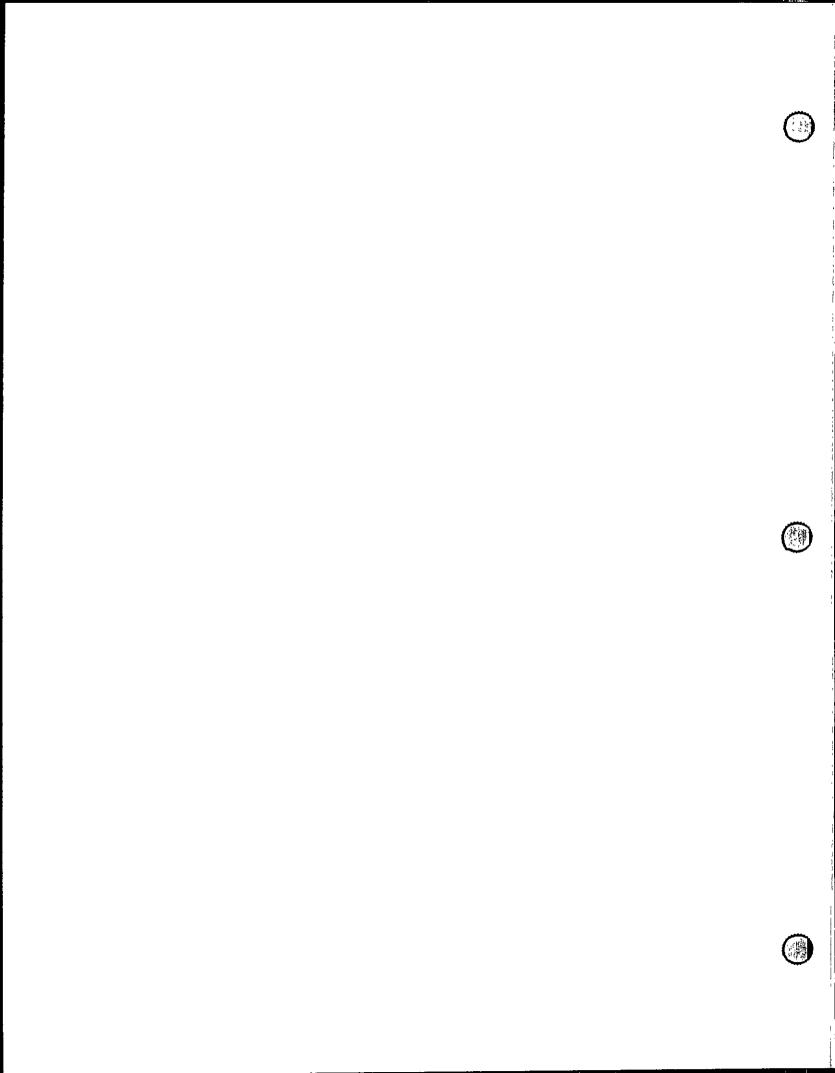
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104
                     E. Bobadilla - direct
       City of New Brunswick.
 1
   Α
            You are employed there to do what?
 2
 3
       Police Officer.
   A
            How long have you been employed by the City
   of New Brunswick as a police officer?
        Six and a half years.
 6
 7
            What are your duties there?
       Patrol and take reports.
 8
   Α
            If you can do me a favor, raise your voice.
 9
        Sorry. I'm a little bit sick.
1.0
            I have some cough drops if you need them.
11
       No. No.
                  I'm okay.
12
   A
13
            You've been there for six years; right?
       That's correct.
14 A
            And part of what you do there is you take
15
16 reports; right?
       That's correct.
17
            Were you working back on April 24th of 2007?
18
       That's correct.
19 A
            You were?
20
       O
21
       Yeah.
           Do you remember taking any witness -- Well,
22
23 first, what is your training with regard to report
24
   writing?
        If he comes in, I ask him questions.
                                               I do a
25
   Α
                     E. Bobadilla - direct
                                                          105
   report on what occurred that day as someone comes in.
 1
            Were you born in this country?
 2
        Yes, I was.
 3
   Α
            Do you speak Spanish?
 4
 5
   Α
        Yeah.
 6
           How did you learn Spanish?
 7
       By listening to my parents and in school.
   Α
            So, you're bilingual?
 8
 9 A
       Uh-hum.
10
            You're fluent in both English and Spanish?
11 A
       Better in English. So-so in Spanish.
            You're a bilingual officer, so to speak?
12
13 A
        That's correct.
            You've taken the test to qualify yourself as
14
   someone who is bilingual?
15
       What do you mean by the test?
16
17
            For the bilingual officer.
                                        In order to
   determine whether or not you are a bilingual officer?
18
   You never had to take a test?
19
20
       No.
   Α
            You're considered a bilingual officer?
21
       Q
22
   speak Spanish?
23
       That's correct.
24
            Your Spanish is pretty good?
25
       It's good enough to get by, yes.
```



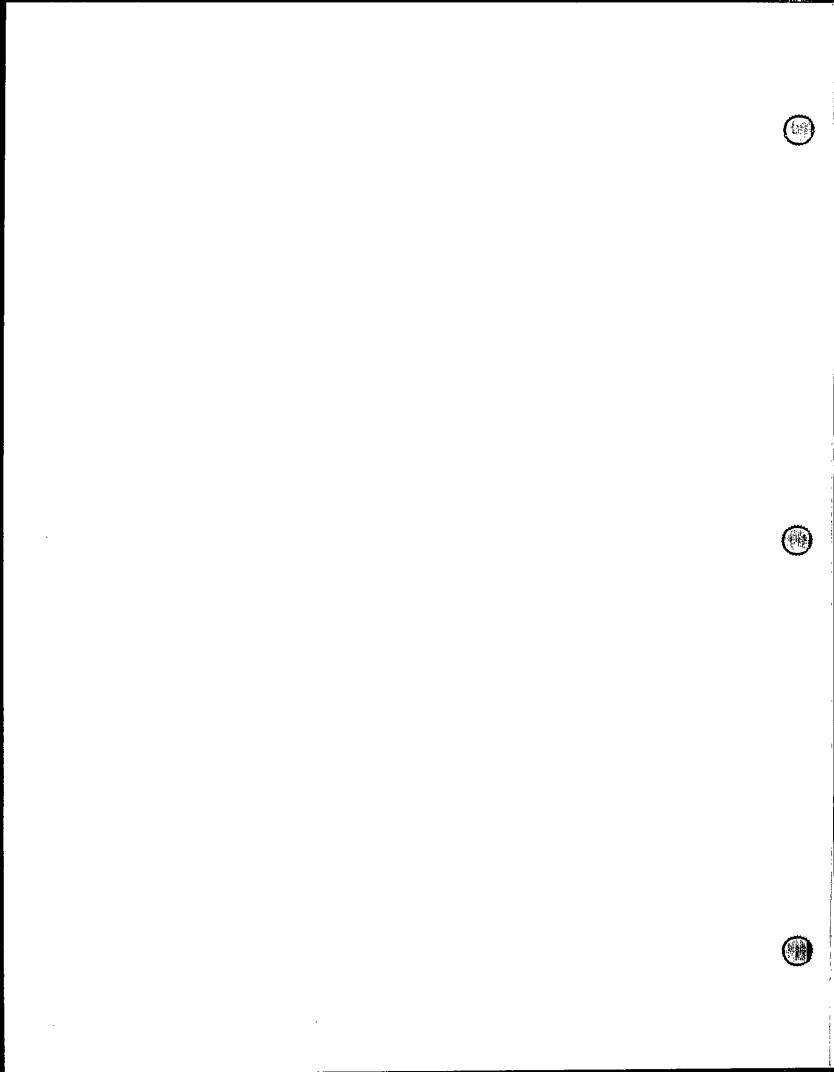
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106
                     E. Bobadilla - direct
       Q You know numbers; right --
 1
 2
   Α
       Yeah.
 3
           -- in Spanish and English? You know colors
  in Spanish and English; right?
       Most colors, yeah.
 5
   Α
            You also know various other things, like
 7
   "gun"?
 8
   Α
       Yeah.
           MR. SAMEIRO: I'll object to the leading
 9
10 nature of the questions.
            THE COURT: I will sustain the objection.
11
            MR. SAMEIRO: I think Counsel tends to
12
13 forget, that this is your witness.
                           I'll move on.
14
            MR. GONZALEZ:
            THE COURT:
15
                       Okay.
            Anyway, you wrote a report on this?
                                                You were
16
   related some information on April 24, 2007?
17
                      I did do a report, yeah.
18
       Yeah.
               Yeah.
            Did you meet with a gentleman by the name of
19
        Q
20 Wilmer Cedillo?
21
       That's correct.
22
           When did he come in?
       In the morning.
23 A
            He came in, and he had what type of report?
24
25 What type of report was given to you?
                     E. Bobadilla - direct
                                                          107
       Robbery report.
 1
   Α
 2
            You wrote a report; correct?
       That's correct.
 3 A
            And you wrote a detailed report; right?
 4
 5
  \mathbf{A}
       Uh-hum.
            You learn how to write detailed reports at
   the Academy? You learn how to write reports; is that
 7
 8
   right?
 9 A
       That's correct.
            I'm showing you what's marked S-5 for
10
11 Identification purposes. Can you tell us what that is?
       That's the report that I did that day.
12
13
            Have you reviewed that report before coming
14
   in here today?
       Yes, I have.
15
16
            You reviewed it numerous times; correct?
17
       Yeah.
               I looked over it.
18
            So, on this date, what did you write in the
   report about the events that transpired, in your own
19
20
   words?
21
           MR. SAMEIRO: I object to the nature of the
22
  question.
23
            THE COURT: Mr. Gonzalez?
                          The report is hearsay.
24
           MR. SAMEIRO:
25
   doesn't he ask him what Wilmer Cedillo told him?
                                                      If he
```



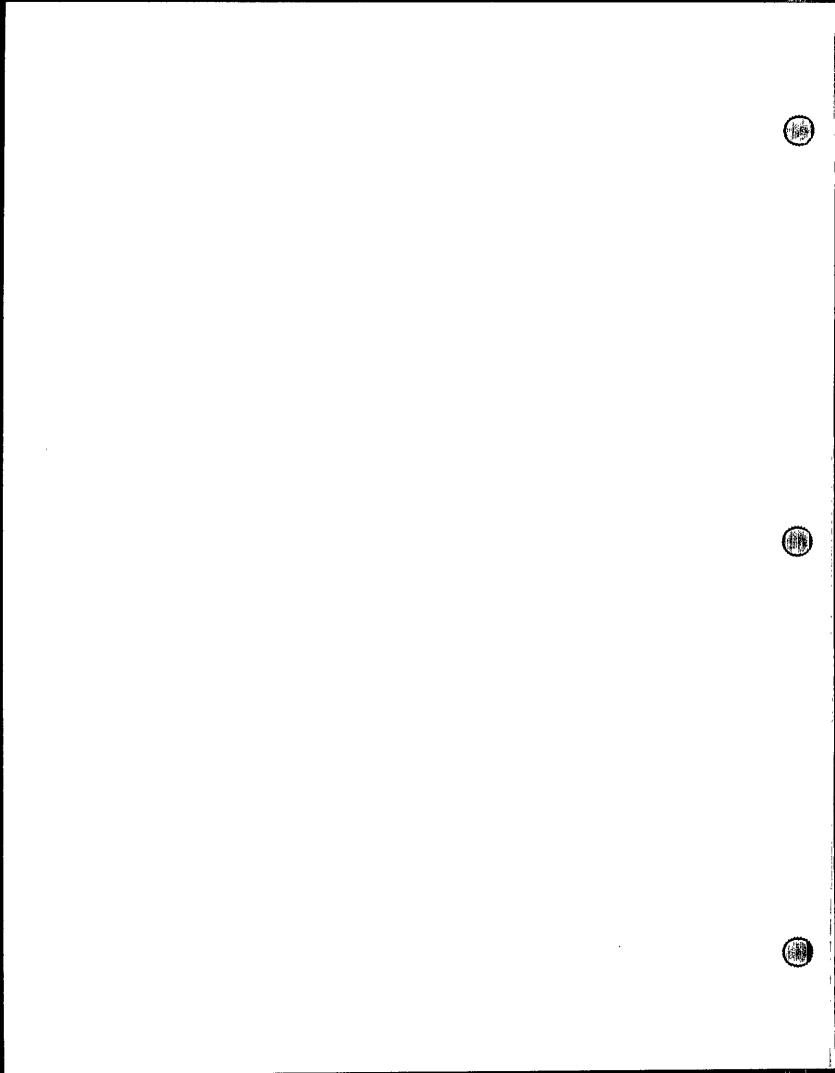
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E. Bobadilla - direct
                                                          108
   doesn't remember, then maybe he can refer to the
 1
 2
   report.
            THE COURT:
                        That's correct.
 3
            MR. SAMEIRO: He can't just testify from his
 5
   report.
 6
           MR. GONZALEZ: Okay.
 7
            What did Wilmer Cedillo report to you on this
 8
   date, April 24th?
       That he got robbed.
 9
                       There was some details; right?
10
           What else?
   What are those things?
11
                              That he was hit numerous
12
       That a gun was shown.
13
   times.
            Were there any other things? If you can
14
   refer to your report? Review it before answering, so
15
   you can.
16
17
        (Witness complies.) Pretty much that he got
   dispatched to pick up individuals, and take them to
18
   another location, because he's a taxi driver.
19
            Did he give you a description?
20
21
       Yes, he did.
   A
            Did you write down that description?
22
23
  A
       That's correct.
            What was that description?
24
       One was a Hispanic male, wearing a black sweater,
25 A
                     E. Bobadilla - direct
                                                          109
  blue jeans, white bandanna. He was in his early
 1
   twenties, skinny build, and about five foot eight.
            There's another person that he described to
 3
 4 you; right?
       That's correct.
 5
   Α
            What did he describe about the other person?
 6
 7
       Hispanic male, wearing a white sweater, blue
   jeans, hat, in his early twenties, with a skinny build,
   was approximately five foot eight.
 9
            Did he ever state to you that he recognized
10
       Q
11
  someone?
12
       I don't recall.
13
            I'm sorry. If you can refer to this portion
14 (indicating).
15
       Oh, yes. He said, he recognized one of them
16
   before.
            He also told you some other things about --
17
       Q
18
   some other things about what happened?
19
       That's correct.
20
            Some other things about what happened?
       That's correct.
21 A
           Did he ever -- Well, can you tell the jury
22
23 what he told you about the robbery, and what happened
24
   when he arrived at 400 Lee Avenue?
25
       He said -- Can I refer back to my notes?
```



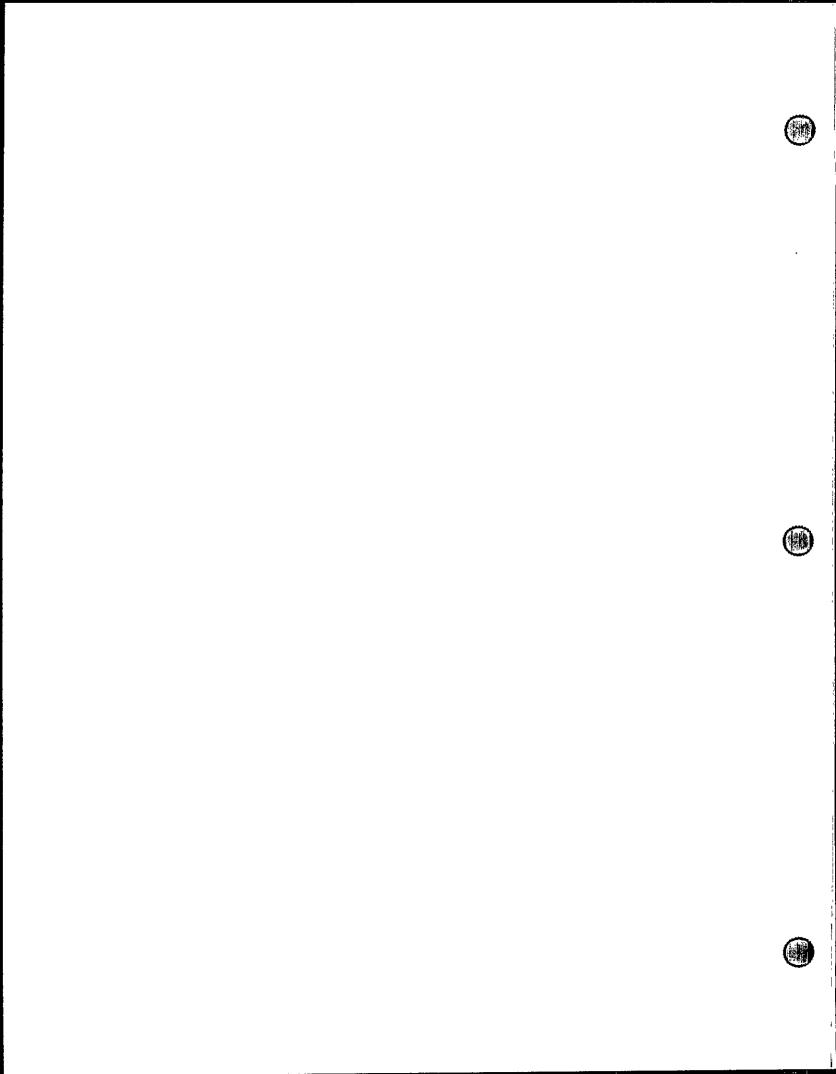
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E. Bobadilla - direct
                                                          110
 1
   report?
           Please. You can refer to it. Please refer
 2
       0
   to it, if you don't remember.
        (Witness complies.) He said, both individuals
   began to punch him in the back, when he was in the back
   seat.
 7
            So, he said that both individuals, that were
       0
   in the car, were in the back seat?
       That's correct.
 9
           And that they both began to punch him?
10
       That's correct.
11
           And what did he do? What did he tell you he
12
13
   did, after those two individuals began punching?
       He said, he swung back and exited the cab.
14
           He told you that he swung back, and then he
15
16 got out of the taxicab?
17
       That's correct.
            Then he went on. What did he tell you about
18
19 when he exited the taxicab?
       Three Hispanic males came running from behind
20
   several cars.
21
22
            THE COURT: I'm sorry? I missed that. What
23 did you say again?
           THE WITNESS: Three Hispanic males ran from
24
25 behind several other vehicles.
                     E. Bobadilla - direct
                                                          111
            Did he tell you whether or not the people
 1
   that ran -- Well, first of all, that any of the guys in
   the car, did he tell you whether or not any of them had
   a qun?
 5
       I don't recall.
   Α
 6
            Please check your report.
 7
        (Witness complies.) I don't believe so.
   Α
           Right after, "behind several cars." Can you
 8
  read that sentence, if that reflects your recollection?
 9
       He said, "all three were carrying black handguns."
10
            So, the people outside the car had the
11
   handguns; right?
12
13
       I believe so.
14
           That's what he told you; right?
15
   Α
       Yeah.
           Now, then, what happened after the people
16
17
   with the handquns approached him? What did he tell
        What happened after the people with the handguns
18
19
   approached him?
       He said that, he was struck, and he was thrown to
20
  the ground, and somebody pointed a handgun to his head.
21
22
           Did he ever tell you that he was punched and
23
   kicked while he was on the ground?
24
       Yeah.
              Afterwards. Like further on, later on.
25
       Q Did he ever tell you where the gun was
```



```
112
                     E. Bobadilla - direct
   pointed particularly?
 1
 2
       To the side of his head.
            Did he specify what side of his head it was
  pointed to?
       The left side of his head.
 5
   Α
           What did he report to you after he was
   punched and kicked?
 7
       That they asked for all his stuff, and for his
 8
   money and everything.
 9
            So, then, did he tell you what he did after
10
  the robbery occurred?
11
12
       He called dispatch.
            That he got up and he called dispatch, is
13
14 that what he told you?
       I believe so. He got back in the car and he
15
16 called dispatch.
            He didn't tell you, at any time, that he went
17
   anywhere else? He told you that he called the
18
19 dispatch? That's what's in your report?
                That's correct.
       Uh-hum.
20
21
            And then did he tell you how he got the phone
22 number?
       He said he called at work, they told him what
23
   number they called up from, from the caller ID.
24
            Did he present to you any information with
25
                      E. Bobadilla - direct
                                                          113
   regard to the number?
 1
       Yeah. A piece of paper, which he had the number
 2
   written down on.
            Do you remember what you did with that piece
       Q.
 5
   of paper?
       I believe I gave it back to him.
            So, you wrote it down, and you gave it back
 7
       Q
   to him?
 8
       (Witness shakes his head.)
 9
            Would you agree that piece of paper --
10
            MR. SAMEIRO: Again, I'm going to object to
11
   the leading.
12
            THE COURT: I'll sustain the objection and
13
14 ask you to rephrase the question.
15
            MR. GONZALEZ:
                          Okay.
16
            That piece of paper, in your training and
17
   experience, could that be evidence?
18
       Yeah.
              Possibly.
19
            Possibly or yes?
                    It could be used.
20
              Yeah.
   Α
       Yeah.
21
           When you asked -- When someone comes in to
22
  make a report, you ask them their name and address;
23
   right?
24
       That's correct.
25
           You ask them their telephone number? You ask
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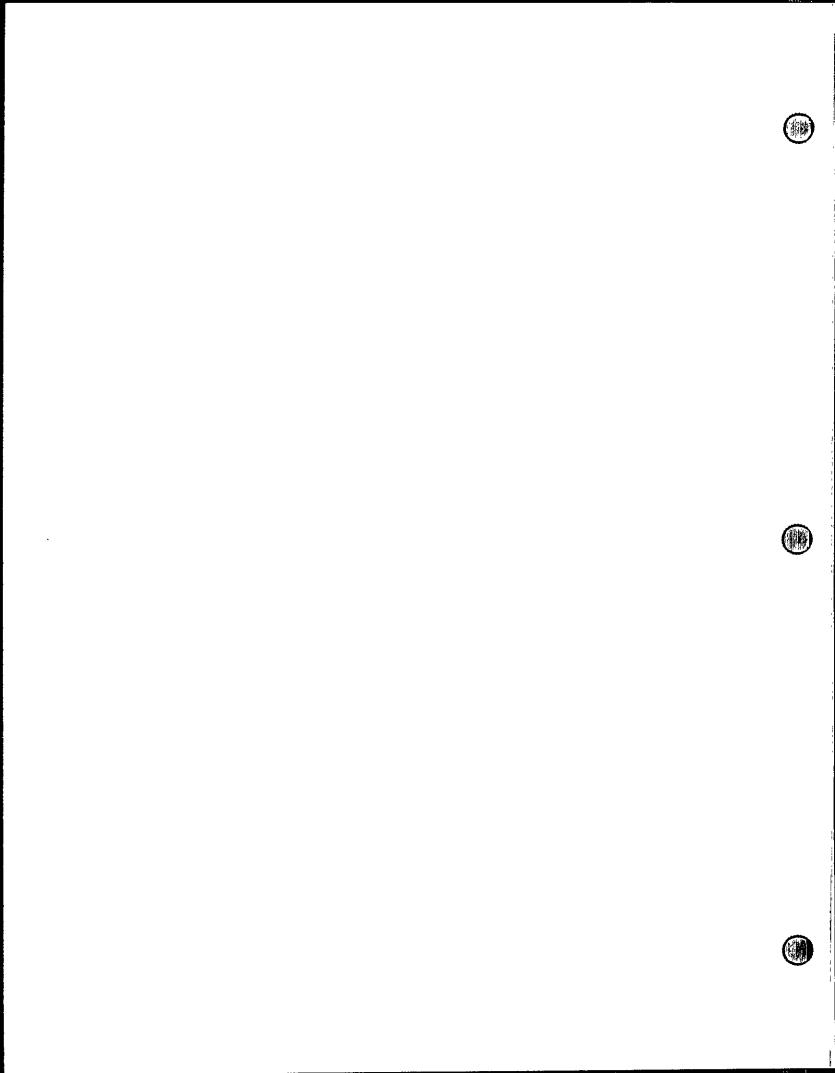
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E. Bobadilla - direct
   them for their telephone number, so, that they can be
 1
 2
   reached?
       That's correct.
           You ask them about their height and their
   weight?
       Generally, no.
   Α
 7
           No?
       Q
        (Witness shakes his head.)
 8
   Α
            So, in your report, you didn't know anything
 9
   about Mr. Cedillo's height and weight?
10
11
           You didn't write anything about it; right?
12
       Q.
13
  Α
       No.
           Mr. Cedillo spoke to you in Spanish?
14
15
  Α
       That's correct.
16
           You spoke to him back in Spanish?
17 A
       Uh-hum.
18
            And all of the words that you put in your
19 report, the translations, are what he told you?
       To the best that I could, yeah.
20
            You took that report on April 24th; right?
21
       I believe so. Yeah. On the 24th.
22 A
23
            The date is on the bottom of your report?
24 A
       Uh-hum.
25
            On the second page, what's the date?
                                                          115
                     E. Bobadilla - direct
 1
   Α
        The 23rd.
            So, did you take the report on the 24th or
 2
   the 23rd?
             I believe I took it on the 24th.
                                               The 23rd is
       No.
   when I started work. I had that date in my head. I
   put down the 23rd.
            Did you notice any injuries on Mr. Cedillo
       Q
 8
   when he came in?
       Not that I recall.
 9
            Did he appear to be nervous?
10
11 A
       Yeah.
            Now, when you wrote your report, or when you
12
   entered it into the computer, did he say it happened at
13
14
   400 Lee Avenue? Do you remember?
        I believe so. Yeah.
15
                              400 Lee Avenue.
16
            I'd like the record to reflect that I'm
17
   showing the Officer what has been previously marked as
18
   D-15.
          Do you know what that is?
19
       Incident report.
20
            And did you enter the incident into the
21
   computer?
22
       No.
            The dispatcher enters it in.
23
            This is a record that goes into the computer;
24
   is that right?
25
       That's correct.
```



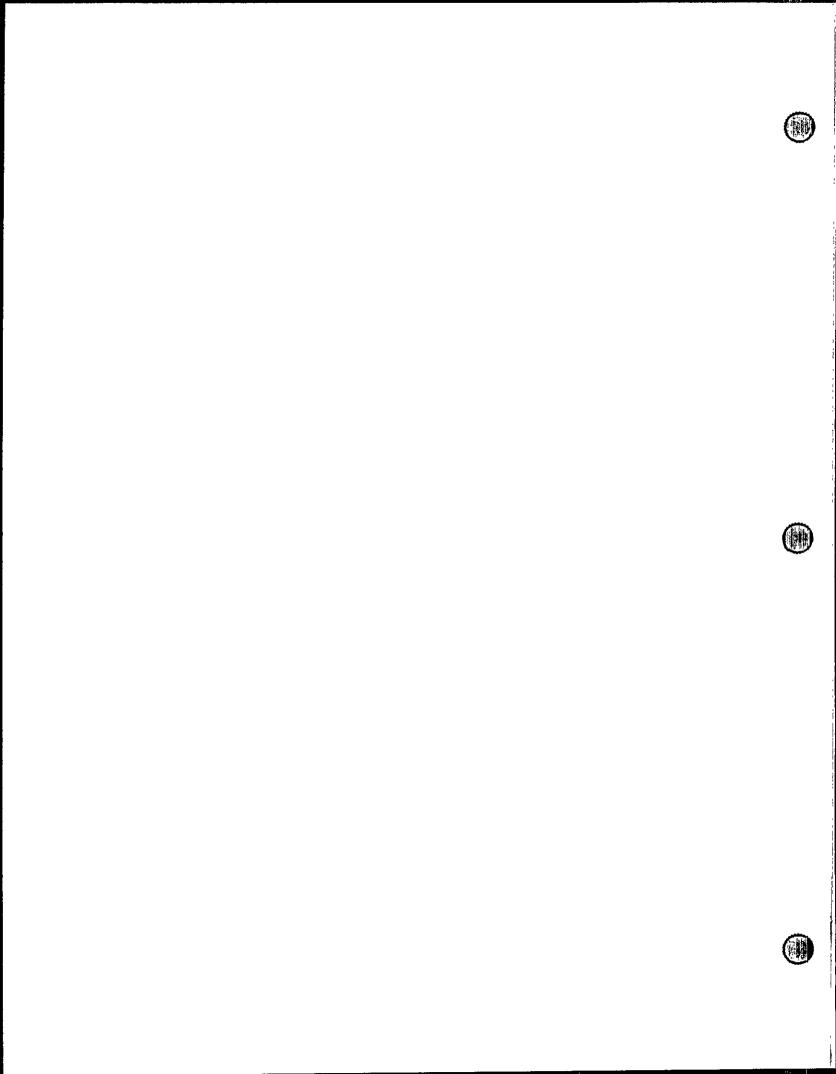
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E. Bobadilla - direct
                                                          116
 1
           So, it's common, when a dispatcher --
       Q
 2
           MR. SAMEIRO: I'm going to object --
 3
           THE COURT: All right.
           MR. SAMEIRO: -- as to the nature of the
 4
 5
   question.
 6
           MR. GONZALEZ: Can we go to sidebar?
 7
            THE COURT: Sidebar.
 8
            (Whereupon, the following discussion occurred
 9
   at sidebar.)
           MR. SAMEIRO: This document is hearsay.
10
           THE COURT: Okay.
11
           MR. GONZALEZ:
                           It's a business record, Judge.
12
           MR. SAMEIRO: No, it is not. And he'll never
13
14 be able to identify who the caller was, that caused
   this entry to be made, because what you have here is a
15
   reference to someone making a call, "there was a
16
17
   robbery at 40 Woodnor Court." And he'll never
18
   establish that the victim made that call.
   have been someone else. And it comes in through the
19
   police department.
20
21
           MR. GONZALEZ: It's a business record.
           MR. SAMEIRO: It's a computer printout of an
22
23
   incident report.
           MR. GONZALEZ: I can establish what that is
24
  through this witness. It's a business record. We know
25
                     E. Bobadilla - direct
                                                          117
   it's a business record. It was requested in discovery,
 1
   and given to us, as a computer automated dispatch, as
 2
   Mr. Sameiro referred to earlier. It's something that
   is contained in the computer system at the police
 5
   station.
           MR. SAMEIRO: It is merely a printout of the
 6
   screen of that particular incident, Judge. Can I go
 7
   into it? I guess, it's a business record.
 8
            THE COURT: Sure.
                              I think that Counsel means
 9
   an official record.
                        Not necessarily a business record.
10
                         That means that the document
11
           MR. SAMEIRO:
   might come in; but the contents are still hearsay.
12
   There is hearsay within the hearsay, in the official
13
14
   record.
            An official record may be an exception.
   we still don't know who that caller was, who gave the
15
   information, as to its reliability. We don't know if
16
17
   the victim made a call. It could have been somebody
   who knows the crime scene. Detective Selesky neglected
18
19
   to follow-up on it, as to who called it in.
            THE COURT: It just may be that the exact
20
21
   location is a little wrong. So, it's hearsay, in terms
   of the contents, within the official record.
22
23
           MR. SAMEIRO: And he certainly didn't prepare
24
   it and put it together. You had a Lead Investigator on
25
   the scene, who could have, perhaps, fleshed that out a
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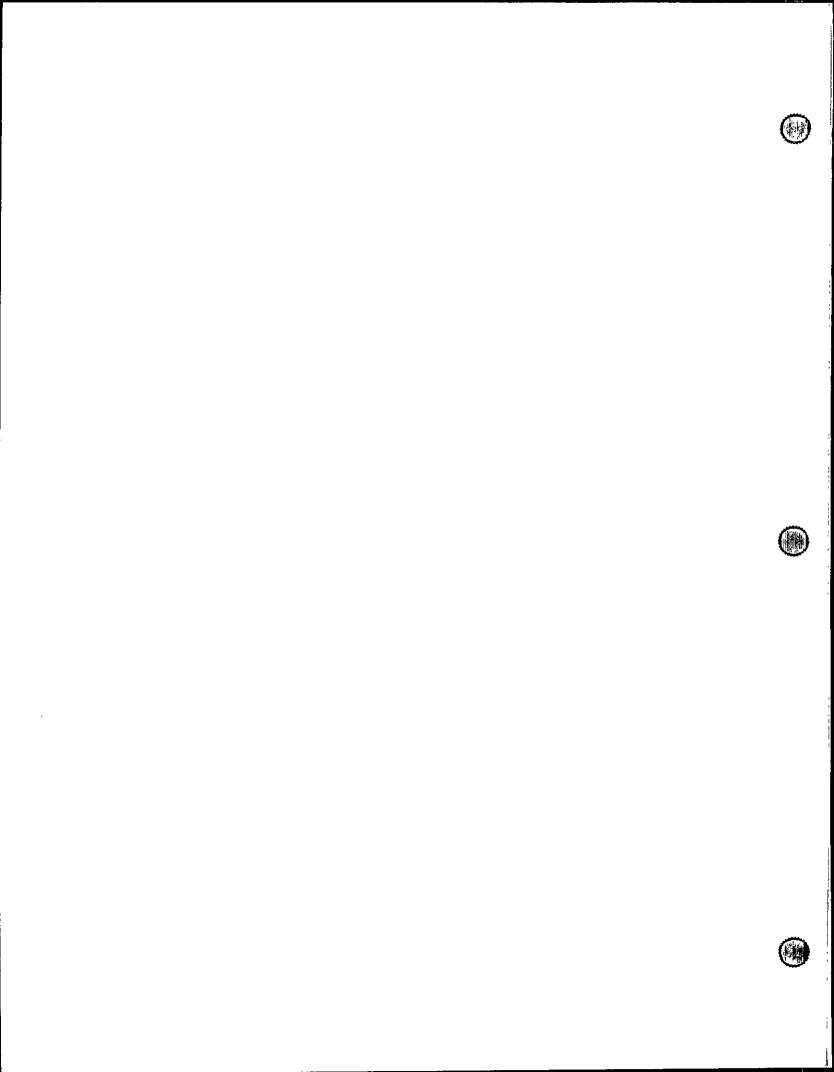
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E. Bobadilla - direct
                                                          118
   little bit more. I would still object at this time.
 1
           MR. GONZALEZ:
                           It's a walk-in, Judge.
 2
  indicates that it's a walk-in. But the nature of the
   robbery, it's a robbery. It's a walk-in.
 5
            THE COURT: Where do you see that it is a
            Well, either way, it's important. You don't
 7
   know who called this in.
           MR. SAMEIRO: That's the thing. It came in
 8
   -- He indicated that it happened about four o'clock.
 9
           MR. GONZALEZ: There is no other person,
10
11
   Judge.
           MR. SAMEIRO: That's not true.
12
13
            I know in the records, it says that this call
   was received by the dispatcher. The dispatcher is not
14
   Officer Bobadilla.
15
           MR. GONZALEZ: I will ask him if he entered
16
17 this into the computer.
                      Okay. Let's go.
18
           THE COURT:
           MR. SAMEIRO: I'm still objecting.
19
           THE COURT: All right. He may not be able to
20
21 testify as to it.
            (Whereupon, the sidebar discussion
22
23 concluded.)
            (Whereupon, the hearing continued in the
24
25
   presence of the jury.)
                     E. Bobadilla - direct
                                                          119
            THE WITNESS: I just had surgery. I just
 1
  wanted to get up and stretch my legs.
 2
 3
           MR. GONZALEZ: Okay.
           THE COURT: Mr. Gonzalez?
 4
           MR. GONZALEZ: Thank you.
 5
 6
           Officer, are you okay?
       Q
 7
       Yeah.
               I'm all right.
   Α
           After you do a report, you enter it -- Do you
 8
   enter it into the computer?
 9
       I type it into the computer, yeah.
10
           It gives you not only a report; but also an
11
   incident screen; right?
12
       At the beginning, an incident report, yeah.
13
            So, when you were originally called to this
14
   particular -- to do the report, in this particular
15
16
   case --
17
      Uh-hum.
   A
          -- you were originally called for a robbery,
18
   that occurred at 40 Woodnor Court?
19
20
       No. It was a -- I was dispatched. I was on the
21
   road. I was told to make a 30, which means to come
22
   into the police station, for a walk-in report. They
23
   didn't give a location.
24
           So, this report wasn't a call-in, to your
       Q
25
   knowledge?
```



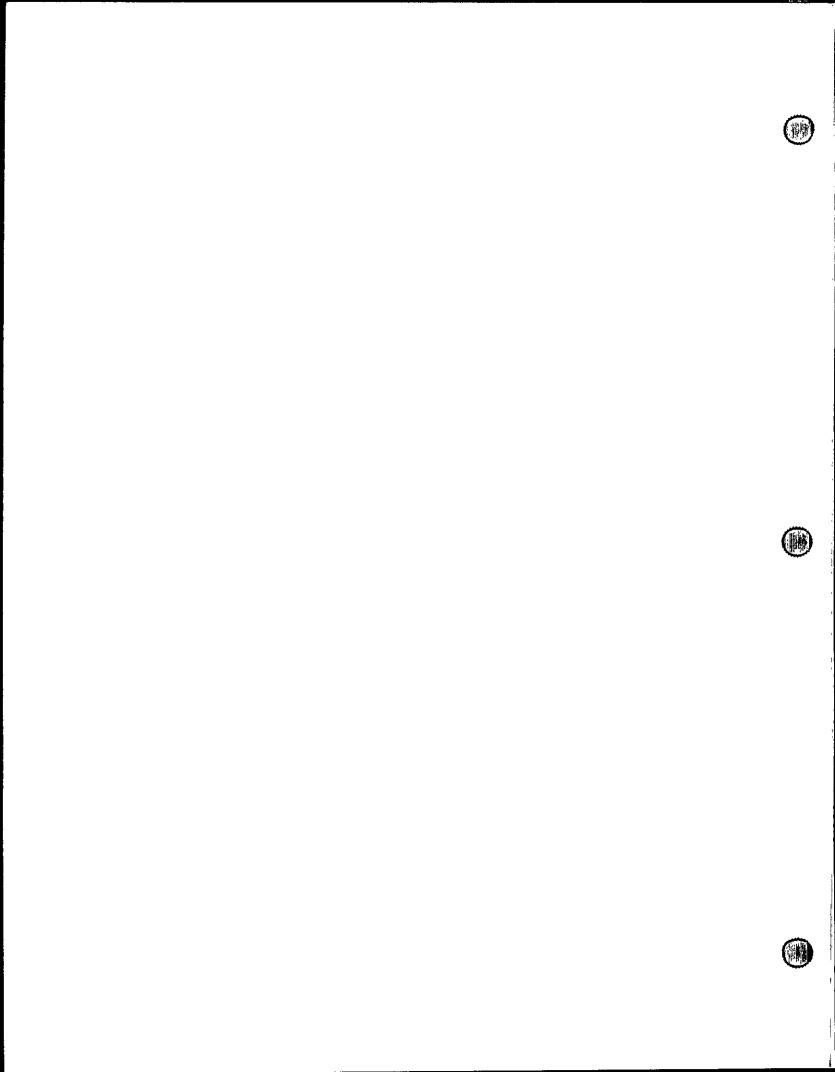
```
E. Bobadilla - direct
                                                           120
 1
   Α
       No.
            It was a walk-in?
 2
        Q.
 3
        It's a walk-in report, yeah.
   Α
           The dispatcher would enter into the system
   that it was a walk-in; right?
        Yeah. If they were told, yeah, it would be
 7
   entered as a walk-in report.
            You find out where --
 8
        Q
 9
            MR. SAMEIRO: Judge, I'm going to object.
   These are leading questions.
10
            THE COURT: I will sustain the objection as
11
   to leading.
                 It's direct.
12
13
            MR. GONZALEZ: Okay.
            Did you find out where the report came from?
14
        Q
                         Objection.
15
            MR. SAMEIRO:
                           I meant what area that the
16
            MR. GONZALEZ:
17
   robbery occurred.
            THE WITNESS: You mean if the victim --
18
            When you're talking to the victim --
19
        Q
            MR. SAMEIRO: I would object to this.
20
            THE COURT: Is that what you're asking him,
21
22 Mr. Gonzalez?
23
            MR. GONZALEZ: Well, the person who called it
24
   in.
            THE COURT: Is there another person there?
25
                      E. Bobadilla - direct
                                                           121
            Dispatch called you; right?
 1
 2
        Dispatch told me to make my 30. Either them or my
   Α
 3
   Sergeant, yeah.
            And then I ask you to refresh your
 4
   recollection, if you can take a look at this?
 5
 6
        Uh-hum. (Witness complies.)
 7
            MR. SAMEIRO:
                         His recollection doesn't need
 8
   refreshing at this point.
            MR. GONZALEZ: Well, I think -- I just wanted
 9
                     I don't know if it is marked.
10
   to take it out.
                       Okay.
11
            THE COURT:
            Do you remember the nature of the call?
12
        Q
13
       No.
   Α
14
            MR. SAMEIRO:
                          I object.
            THE COURT: Hold on. What is it marked, Mr.
15
16
   Gonzalez?
17
           MR. GONZALEZ:
                           D-15.
18
            THE WITNESS: Which incident?
19
            THE COURT: He's asking which phone call.
20
                           There is no phone call,
            MR. GONZALEZ:
21 because he indicated that this is a walk-up.
22
            THE COURT:
                       Okay.
                              Ask your question.
23
            MR. GONZALEZ:
                           Okay.
24
            Now, when you were dispatched to go do this
25
   interview, or to take this report, you were told what
```



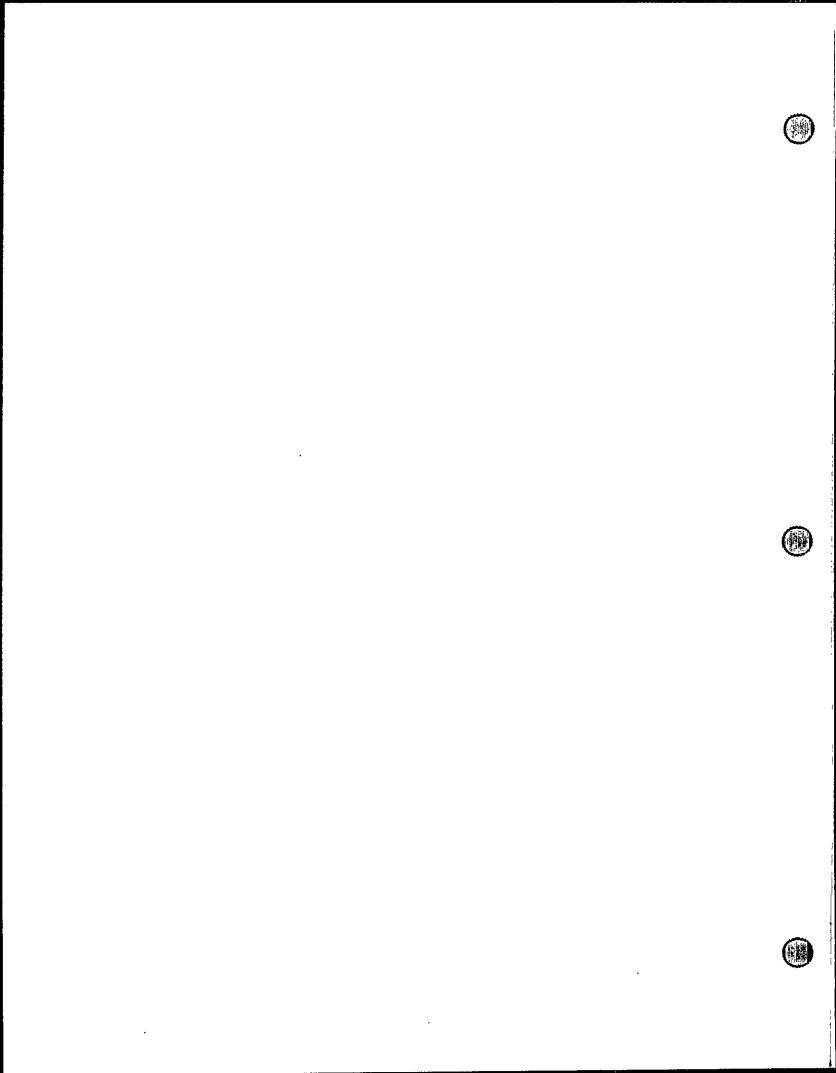
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E. Bobadilla - cross
                                                           122
   it was about?
 1
 2
   А
       No.
 3
           You were only given a code?
       Just come in and do a walk-in report.
           You never remember anything about 40 Woodnor
 5
 6
   Court?
 7
   Α
       No.
 8
           MR. GONZALEZ: Okay. I don't have any
   further questions.
 9
            THE COURT: Okay. Thank you. State?
10
11
           MR. SAMEIRO:
                          Thank you.
   CROSS-EXAMINATION BY MR. SAMEIRO:
12
           Well, we'll get to Woodnor Court in a little
13
           You're in a suit because not long ago, you
14
   injured yourself on duty?
15
       That's correct.
16
           MR. GONZALEZ: Judge, that's a leading
17
18
   question.
           MR. SAMEIRO: I'm cross-examining.
19
            THE COURT: This is cross-examination.
20
21 backwards.
                           Okay.
22
            MR. GONZALEZ:
                                  Excuse me.
                                              It's
23 cross-examination. Right. I apologize.
24
            Right?
25
       That's correct.
  Α
                                                           123
                      E. Bobadilla - cross
           As a result of that injury, you tore up some
 1
   ligaments in your ACL and NCL? That's why you had to
 2
   get up before?
       That's correct.
           You told me earlier that you have therapy
 5
  scheduled at two o'clock?
 7
       That's correct.
   Α
 8
            I'll try to make sure you get there. Okay?
       Thank you.
 9 A
10
            You're a patrolman; right?
11 A
       That's correct.
           And you're not a bilingual certified officer
12
13 at all; correct?
14
   Α
       No.
15
           Emphasis on the certified part?
       \circ
16 A
17
            It's your job to, basically, arrest criminals
  on the street, break up barroom brawls, just to make
18
   sure that law and order is maintained throughout the
19
20
   City of New Brunswick; right?
21
       That's correct.
22
           You do that on a regular basis, do you not?
23
   Α
       That's correct.
24
           The report writing is incidental to what you
25
   do; correct?
```



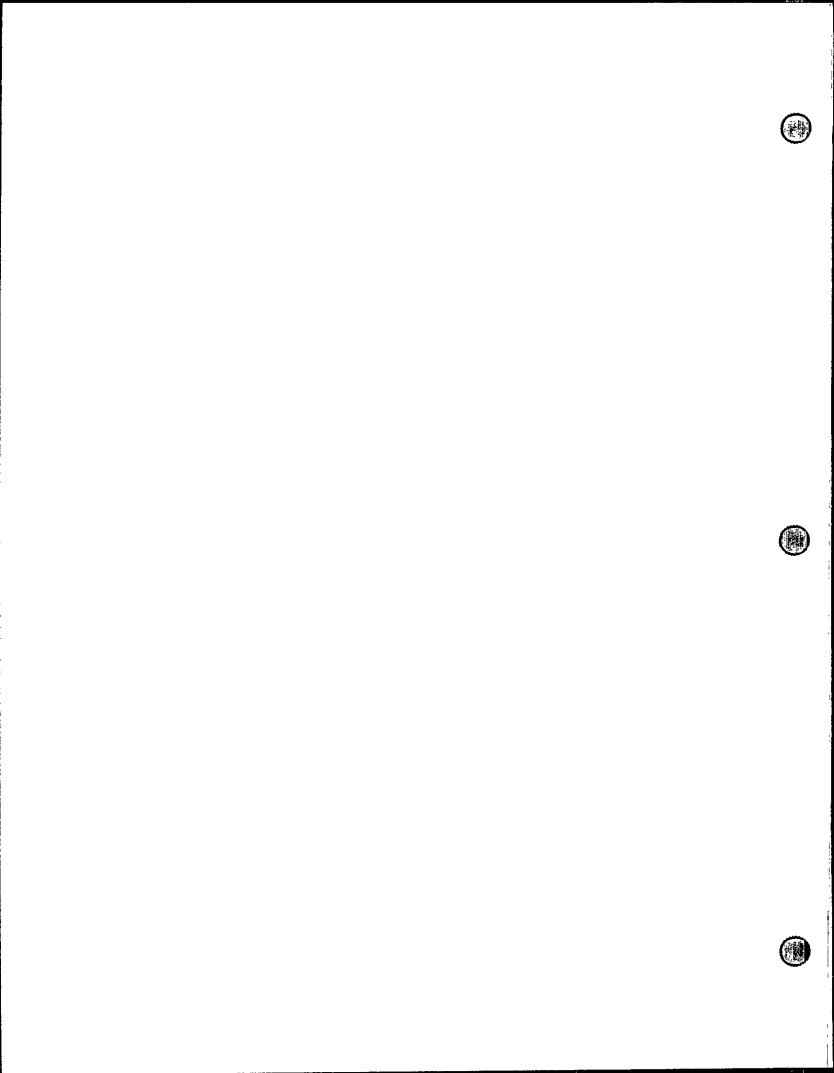
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124
                      E. Bobadilla - cross
 1
   Α
        That's correct.
            What is the shift that you normally work?
 2
 3
        8:30 at night until 6:45 in the morning.
            That's when things get hot around town;
 5
   right?
        In the beginning of the shift, yeah.
 6
 7
   correct.
            As a young police officer, you're out and
 8
   about in the City of New Brunswick, in a patrol car,
 9
   protecting the public; right?
10
        That's correct.
11
   Α
            When you do have some interaction with
12
13 people, or you're caused to or asked to write a report,
   you do that because that's part of your job; right?
14
15
        That's correct.
            From time to time, you get tapped to
16
17 translate, when people of Spanish speaking origin make
   a report; right?
18
19 A
        That's correct.
            That's because you know a little bit of
20
21 Spanish yourself; right?
22 A
        That's right.
23
            I heard you tell Mr. Gonzalez that your
        Q
24 Spanish was so-so?
                 That's correct.
25
       Uh-hum.
  Α
                      E. Bobadilla - cross
                                                           125
            Is that what you said?
 1
 2
        That's correct.
   Α
            And that you were born here in the United
 3
 4 States?
        That's correct.
 5
   Α
            That you learned whatever Spanish you learned
 7
   from your parents?
                That's correct.
        Uh-hum.
 8
            Also, you went to school to learn Spanish?
 9
10
        In high school.
  \boldsymbol{A}
            Oh, a high school Spanish course?
11
12 A
       That's correct.
            You didn't want to take Italian or French?
13
14 Something, perhaps, easy?
       That's correct.
15
16
            So, you took Spanish?
       Q.
17
   Α
       Yeah.
18
           What kind of grades did you get in your
19
   Spanish classes?
20
       C's.
            I don't want to embarrass you. C's all the
21
       Q
22
   time?
23
              C's and B's.
       Yeah.
24
            We know why. Because you probably didn't
25
           You figured what little you knew would get you
   study.
```



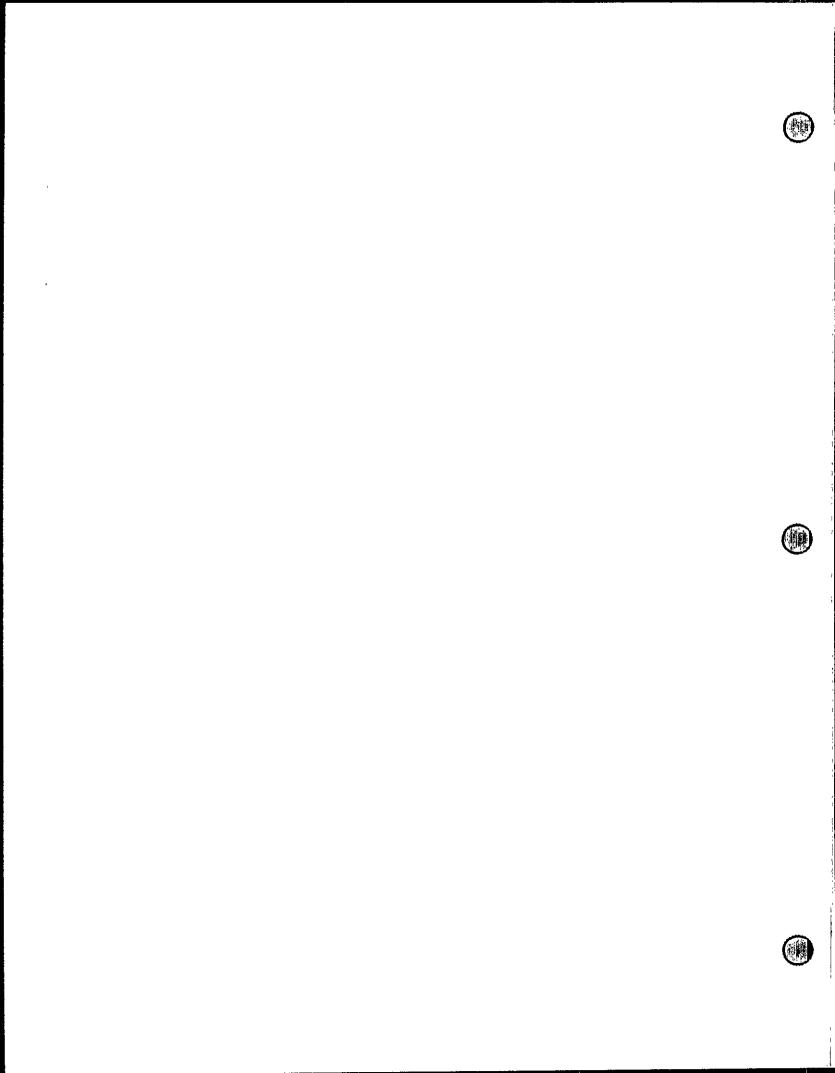
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E. Bobadilla - cross
                                                           126
   through; right?
 1
        That's correct.
           So, no A's in your Spanish course. You
   weren't born in a Spanish-speaking country.
   learned what you know from your parents; right?
        That's correct.
 7
            Your Spanish is so-so?
 8
        That's correct.
   Α
 9
            That's nice that you know the colors in
   Spanish; right? Amarillo, rojo, verde? You know all
10
   those colors?
11
        Just the main ones.
12
13
            Right. Just the main ones?
14
       Yeah.
            It's a lot different from when you are
15
16 talking to someone, speaking in Spanish, and then you
   have to translate in English, what they're saying;
17
18
   right?
19
        That's correct.
20
            That's not so easy, is it?
21
       No.
            You ever hear the expression, "a lot gets
22
        0
23
   lost in the translation"?
24
               I heard that.
       Yeah.
            Does that happen a lot when you translate
25
                                                           127
                      E. Bobadilla - cross
   from Spanish to English?
 1
 2
        Yes.
            Have you ever been involved in translation,
 3
   where you have to, basically, ask somebody to repeat a
   question, or to, you know, use another word, because
   you don't understand what they're saying? You have a
   difficult time putting that into English?
        That's correct.
            That's happened. So, in this case, you spoke
 9
   to a guy named Wilmer Cedillo?
10
11
       Right.
               Uh-hum.
            You did that on April 24, 2007?
12
13
        That's correct.
            He walked in to the police department to say
14
   that he had been the victim of a robbery; right?
15
16
       Uh-hum.
17
            So, you didn't know anything about that;
18
   right?
19
       That's correct.
20
            Not in advance; right?
21
  Α
       No.
22
            You were out on the road. You weren't at
23
   400 Lee. You came to the police station.
                                               Mr. Cedillo
24
   was right there?
25
       That's correct.
```



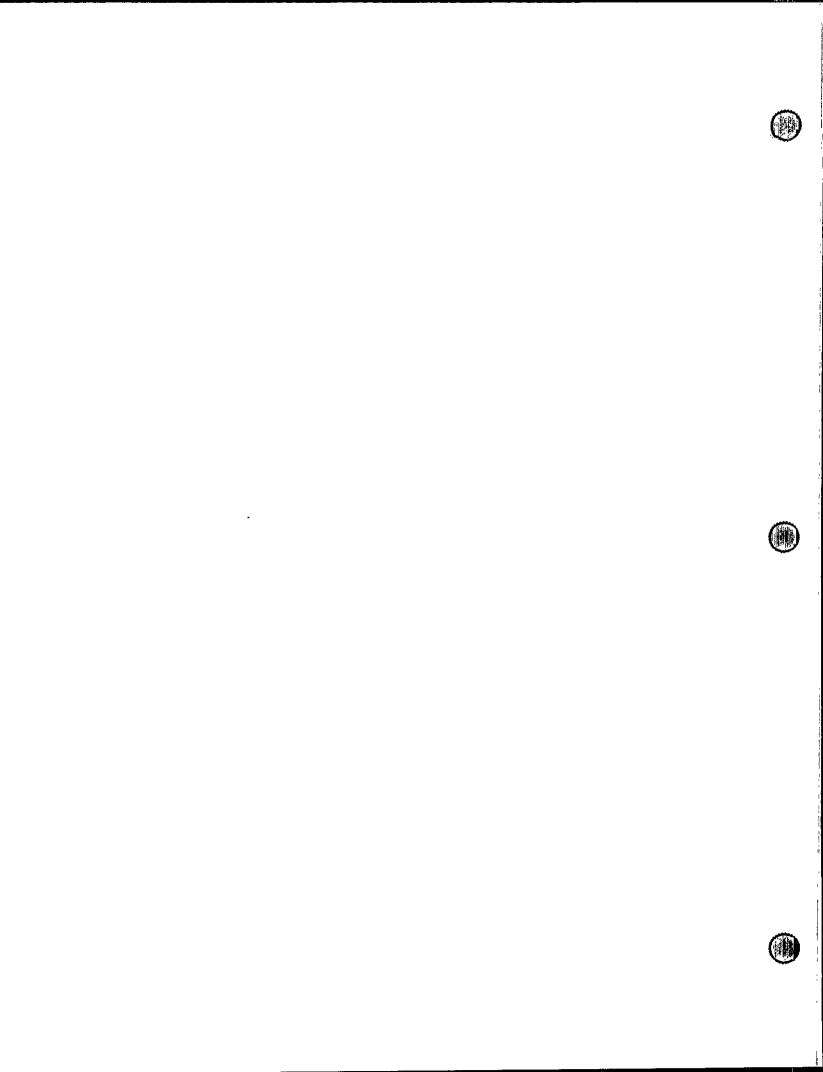
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128
                      E. Bobadilla - cross
            Probably waiting for you; isn't that so?
               That's correct.
 2
   Α
       Yeah.
 3
           So, when you spoke to him, you introduced
   yourself; right?
   Α
       Uh-hum.
            And then you took him into the room. You
   started asking him questions; right?
 8
       That's correct.
   Α
            The first step in the procedure, you have to
 9
   ask him questions; right?
10
       Yeah.
11
            Then you listen to whatever he says; right?
12
       0
13 A
       Uh-hum. That's correct.
            He's not just going to give it to you with
14
15 one word or two words? He's talking in multiple
16 sentences, long paragraphs, as he explains to you his
17
   story; right?
18
   Α
       Yeah.
           Fast, too? No tape recorder is on; right?
19
       Q
       No.
20
   Α
           You didn't use one in this case; right?
21
22 A
       No.
           That's because you are not required to do
23
24 that for walk-ins; right?
25
       No.
  A
                      E. Bobadilla - cross
                                                          129
            If you did that, you'd be taping everybody
 1
   you ever see; right?
       That's correct.
 3 A
            This guy -- I'm talking real fast, too,
  because it's 12:25, and I'm trying to meet my
  commitment. But you're following me?
            THE COURT: Remember the Court Reporter.
 7
            MR. SAMEIRO: Miss Crowell, am I going too
 8
          I'll slow down.
 9
   fast?
           He's speaking to you quickly; right?
10
              That's correct.
11
        Yes.
            You're going to do like the lawyers do and
12
   like the Judge does throughout the case, like you start
13
14
   writing notes down; right?
       That's correct.
15
           You're not taking it down verbatim; right?
16
        Q.
17
       No.
   Α
18
           You can't. It would be impossible; right?
       Q
19
       That's correct.
   Α
20
            So, he's telling you an account, you're
21
  writing down the key words?
       That's correct.
22
23
            If there is some question in your mind, as to
24
   what he might be telling you, you'll then say, "can you
25
   repeat that for me? Please explain it in another way"?
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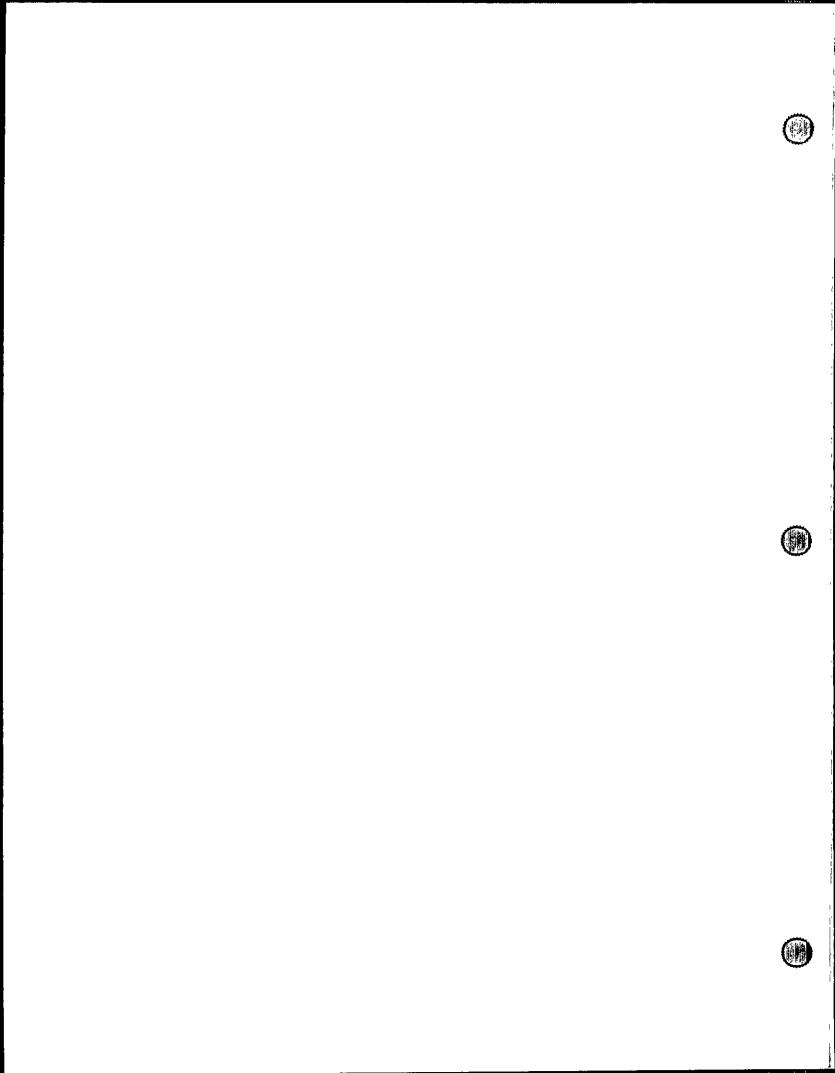
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130
                      E. Bobadilla - cross
        That's correct.
 1
   Α
 2
            Let's face it, your Spanish is so-so?
 3
        That's correct.
   Α
            You write down these notes; right?
 4
 5
        Uh-hum.
   Α
            How long did this interview process take?
 6
 7
       Maybe 20 minutes, half hour.
   Α
            You have your report in front of you?
 8
 9
        Yeah.
   Α
            Judging by the information you put down, no
10
11
   more than 20 minutes; right?
            Probably not.
12
       No.
13
        Q
            Quick?
       Yeah.
14
   Α
            So, then, after you take down your
15
16 information, in your notes, on your notepad, you
   probably get up, tell Mr. Cedillo, nice meeting him.
17
   Hopefully, you know, he'll get better, because he's
18
   just been robbed; right?
19
        That's correct.
20
            And you escort him probably out of the
21
22 building; right?
                 That's correct.
23
       Uh-hum.
            Then you go to work typing up the report?
24
25
        That's correct.
   Α
                      E. Bobadilla - cross
                                                           131
            Are you the two-finger kind of typist?
 1
 2
        It's usually two fingers.
   Α
 3
            That takes a while?
        Q
 4
        Yeah.
   Α
            That takes a while, doesn't it?
 5
        Q
 6
   Α
        Yeah.
 7
            Do you know any police officers who like to
 8
   write reports?
 9
        Not too many.
   Α
10
            Do you?
        Q
11
   Α
       No.
            You'd rather be out on the road?
12
13
        That's correct.
            Now, you're typing the report at 5:24 in the
14
15
   morning, I believe; right?
        That's correct.
16
   Α
17
            Now, it's the end of your shift; right?
        Q
18
   Α
        That's correct.
19
            After this, you're going home; right?
20
        That's correct.
   Α
21
            This happened to be a Tuesday night; right?
   A Tuesday morning?
22
23
        Probably. I have to check. Yeah.
   \mathbf{A}
                                             Tuesday
24
   morning.
            April 24th, Tuesday morning, you're talking
25
```



```
E. Bobadilla - cross
 1
   to the victim, and it's the end of your shift; right?
       That's correct.
           You're probably not bright eyed and bushy
   tailed at that hour? It is not the start of your
   shift?
 6
   Α
       No.
 7
           The end of your shift. You want to go home.
       Q.
   Probably after writing this report?
 9
       Yeah. Probably.
            So, you type it up?
10
       That's correct.
11
   Α
12
            You rely on your notes?
       Uh-hum.
13 A
14
            You think that something got lost in the
15 translation, between what he told you and what you
16 wrote down?
       Possibly. Yeah.
17
18
            Possibly.
                      Well, for example, in this case,
  you wrote down that, there were two suspects involved.
19
   Do you have a copy of it?
20
       Yes, I do.
21
22
            You have the State's exhibit; right?
23
   A
       Yeah.
            Just so we are clear, you're looking at S-5.
24
25 After telling us, in your report, that you spoke to the
                      E. Bobadilla - cross
                                                           133
 1 victim, who said he was robbed, you said that he told
   you, that he was a taxicab driver. That he was sent to
   58 Lee Avenue, to pick up two people; right?
       That's correct.
 4
 5
            You wrote that down?
       Q
       Yeah.
 6
   \mathbf{A}
            Then you say, he was then told to drop them
 7
   off at 400 Lee Avenue?
 9
   Ά
       Yeah.
10
           Nothing about Woodnor Court; right?
       Q
11 A
       No.
12
            Okay. The next thing you write in your
13 report, this is a quote right, this is according to the
14 victim, as you wrote it down, "I arrived at 58 Lee
             Both individuals were standing in front of the
15
   Avenue.
   residence"?
16
17
       That's correct.
18
            That would have been at 58 Lee?
19 A
       That's 58 Lee.
20
            So far so good?
       Q
21 A
       Right. Uh-hum.
22
            Then you say, he recognized one of these
       Q
23 people; right?
24 A
       That's correct.
25
           Now, at this point, in your report, is when
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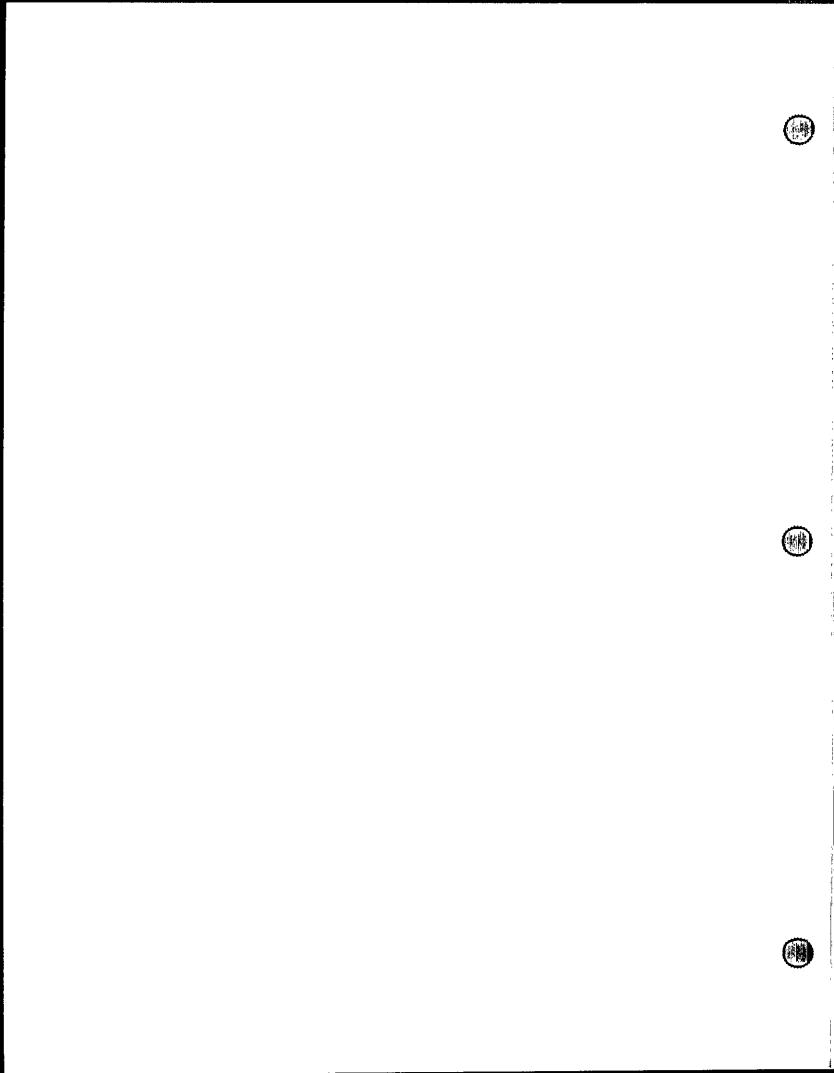
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E. Bobadilla - cross
 1
   you start getting into the description that was given
 2
   to you?
        That's correct.
            Nothing in the report that indicates any kind
   of a face description; right?
 6
   Α
       No.
 7
            Okay. We know that both of the people
        Q.
   involved at 58 Lee were Hispanic males?
        That is correct.
 9
10
        Q
            That's it, in terms of any kind of inference,
   of what their facial features might look like; right?
11
        That's correct.
12
13
            Then the rest gets into the clothing.
        0
14
   know there is a reference to blue jeans and sweaters,
   and so on and so forth?
15
       Right.
16
   Α
            And that he is telling you that they were
17
   approximately five feet eight inches tall?
18
        That's correct.
19
            Now, if you know that the victim was five
20
21
   foot eight --
       Okay.
22
   Α
23
            -- and if I said to you, "they're as tall as
   me," would you then ask him how tall you were?
24
25
       Of course.
                   Yeah.
                      E. Bobadilla - cross
                                                           135
            Then you would discover that he would be
 1
   five foot eight, if my hypothesis is correct; right?
        That's correct.
            Now, the victim in this case said, he told
   you, that the victims -- excuse me -- the defendants
   were about his height?
 7
       Yeah.
   Α
            But you've got him -- he is quoted as saying,
 8
   "five foot eight"?
        About five foot eight. Approximately five foot
10
   Α
11
   eight.
            Okay. So, then, even though the information
12
    is accurate, it may have been told to you differently,
13
   you may have had to do a little interpretation?
14
15
        That's correct.
16
            You're translating now; right?
        Q.
17
   Α
       Yeah.
            You're trying to make this all right, easy to
18
19
   read for lawyers, like me and Mr. Gonzalez; right?
20
        That's correct.
21
       Q
           You know that it is going to go upstream;
22
   right?
23
   Α
       Yeah.
24
            Okay.
                   So, we then get into the 400 Lee
       Q
25
   Avenue scenario; right?
```



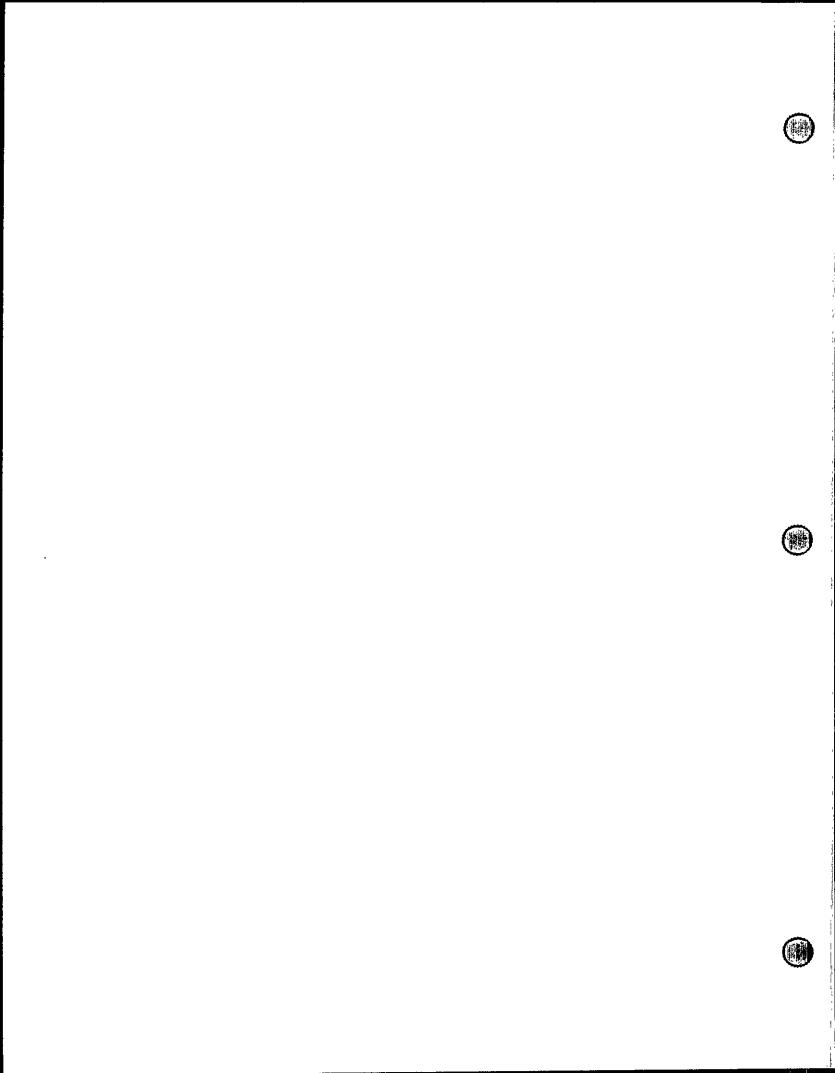
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1
   Α
       That's correct.
 2
            Now, you say that, when they arrived at 400
   Lee Avenue, according to the victim, talking to you
   now, on that date, "both suspects in the back seat
   began to punch the victim, " close quote; right?
 6
         That's correct.
 7
            Now, the victim in the case said that the
   suspects got in the back seat. Then one of them got in
 8
   the front seat and started --
 9
            MR. GONZALEZ:
                           Judge, objection.
10
                          I want to know if the witness
11
            MR. SAMEIRO:
   would recall what the victim told him.
12
                           Judge, it's hearsay.
13
            MR. GONZALEZ:
                          Well, you opened the door by
14
            MR. SAMEIRO:
15
   bringing him in, Counselor.
            That's exactly the point. He got it wrong.
16
   He was mistaken.
17
            THE COURT: I will allow the question.
18
19
            You understand what I'm trying to ask you
   now? I'll do it again. It's in your report here that
20
   the victim told you, that when they all arrived at 400
21
   Lee Avenue, you quote him, "both suspects in the back
22
   seat began to punch the victim," which is a complete
23
24
   quote?
        That's correct.
25
   Α
                                                           137
                      E. Bobadilla - cross
            The victim in this case maintained that the
 1
   people got in the back seat. Then they got into the
 2
   front seat, after which the assault occurred?
 3
            MR. GONZALEZ: Judge, he wasn't here.
 4
            MR. SAMEIRO:
 5
                          I'm telling him.
            Is there any doubt about that, Counsel?
 6
 7
            THE COURT:
                       I'm sorry, Mr. Gonzalez.
   didn't hear your objection.
 8
            MR. GONZALEZ:
                           Neither of us were there.
 9
   It's hearsay as to what the victim said in the
10
11
   courtroom.
            THE COURT: You're referring to the
12
13
   courtroom?
14
            MR. SAMEIRO: He wasn't here. So, he
15
   wouldn't know.
16
            THE COURT:
                        Okay.
                          He's objecting to what I'm
17
            MR. SAMEIRO:
18
   saying.
19
            MR. GONZALEZ:
                           Objection. Hearsay, Judge.
20
            THE COURT: Well, I want to know what the
21
   objection is.
22
            MR. GONZALEZ: What he told him is hearsay.
23
            THE COURT: Hearsay. In other words, what he
24
   said here?
25
           MR. GONZALEZ:
                           Yes.
```

E. Bobadilla - cross

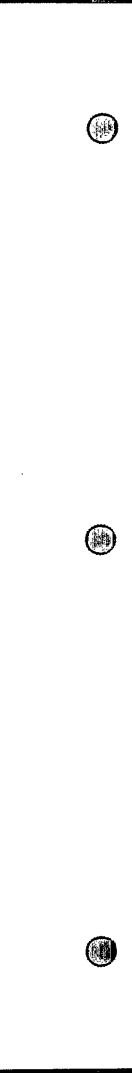
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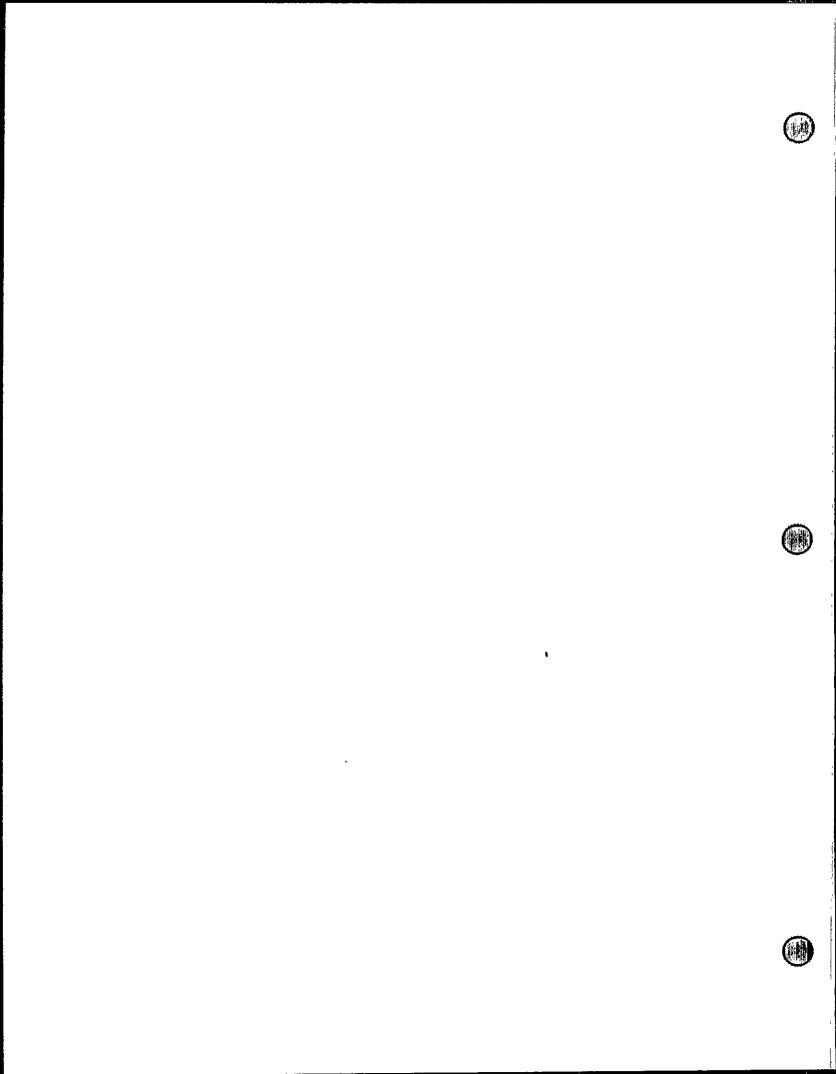
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E. Bobadilla - cross
            THE COURT: What he said here is not
 1
 2
   hearsay.
 3
            MR. GONZALEZ:
                           It's hearsay.
            THE COURT: No, it's not. He didn't hear it.
 4
 5
            You can rephrase the question.
 6
            MR. SAMEIRO: He brought this man in.
 7
            THE COURT: I think you can rephrase the
 8
   question.
 9
            For the record, what I said was, isn't it
  quite probable, when the victim told you about the
10
   people entered into the back seat of his car, you
11
   missed the point where the one guy got in the front?
12
13
       It's possible.
                       Yeah.
            You're focusing on the people getting in the
14
15
   back seat?
16
       Yeah.
           You don't really get into anything else?
17
               That's correct.
18
       Okay.
           I mean, think about that. Both suspects in
19
20 the back seat began to punch the victim. Have you ever
21
   been in a mini van?
22
       Yeah.
  Α
23
            That doesn't add up, does it? Somebody would
       Q
24 have had to, at least, get in the front, to get ahold
25 of the victim, in some way?
                      E. Bobadilla - cross
                                                          139
       Yeah.
 1
  Α
            If you are going to punch him; right?
 2
               Usually.
       Yeah.
  Α
            Then, further on, you make a reference to the
 5 victim saying, "one of the suspects pointed a gun to
   the left side of his head, told him not to move";
 7
   right?
 8
       That's correct.
            You think he could have indicated that with
 9
   his fingers to demonstrate that for you? He could
10
11
   have?
12
       It's a possibility, yeah.
13
            Like I'm doing?
       0
       Uh-hum.
14 A
15
            This is what, 5:30 in the morning?
16 A
       That's correct.
            And you're tired; right?
17
18
       Yeah.
  \mathbf{A}
19
            I'm pointing to the right side of my head.
20 From your point of view, it's the left?
21 A
       Yeah.
22
           You see how mistakes can be made, when you
23 write down translations from your notes, and you don't
   record it? I don't mean to pick on you.
24
25
       I understand what you're saying.
```



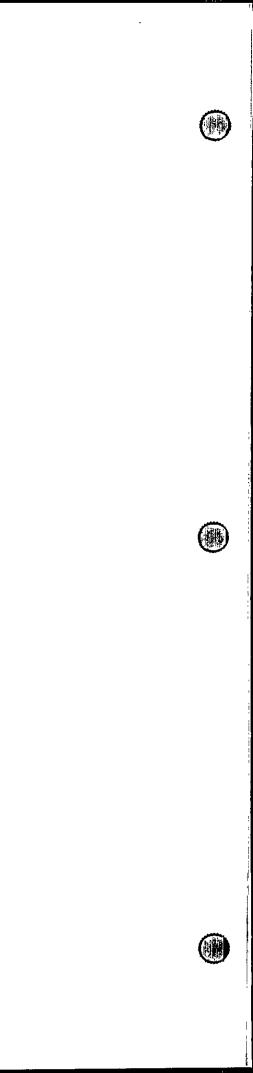
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E. Bobadilla - cross
                                                          140
           You could have done that -- if the victim
 1
  actually told you he was injured in this case -- if
   that gun was pointed to the right side of his head?
       Yeah.
   Α
           When he was behind the driver's wheel, and
 5
   one of the suspects got up into the front; right?
       (Witness shakes his head.)
           The only thing you have here in quotes,
 8
   because you make an effort to quote?
 9
       Yeah.
10
           Mr. Cedillo is quoted, "that one of the
11
12 suspects yelled, "quote, "take all of his
13 communications and break them, so, he can't call the
   police," close quote. Do you think these people would
14
   use the word, "communications," as opposed to radio or
15
16 cell phone, or something like that?
17
       Yeah. Possible.
                         Yeah.
           So, maybe your interpretations -- Your
18
   judgment is filtering into the translation; right?
19
   A (Witness shakes his head.)
20
21
           THE COURT: Was there a response?
22
           MR. SAMEIRO: I thought I heard him say, yes.
           THE WITNESS: I shook my head.
23
           Did he ever tell you that they took his
24
       Q
25 cuentas?
                      E. Bobadilla - cross
                                                          141
       His cuentas?
 1 A
 2
           Cuentas.
       What's that?
                     Money?
           I don't know. You are the Spanish-speaking
 5 officer.
       I don't know, to be -- I don't know cuentas.
  Α
   may have used a different phrase at that point.
 7
           Something like atraco? Did he use that
 8
 9 phrase?
10
       Not that I recall.
           You know what that means?
11
       Truck, right? No. I heard, at one point --
12
13
  Honestly, no. I'm being honest. Atraco I thought is
14 truck.
15
          So, you don't know if he used that word or
       Q
  not?
16
17
       No.
   Α
           But, I mean, with all due respect, you did
18
19
   your best to translate?
20
       Like I said, if I don't know the word, I try to
21
   phrase it another way. Ask them to describe it.
22
           He told you, he was robbed; right?
       Q
23
   Α
       Yeah.
24
           If I said to you, in the courtroom, "it's
25 atraco," or something like that, to define the
```



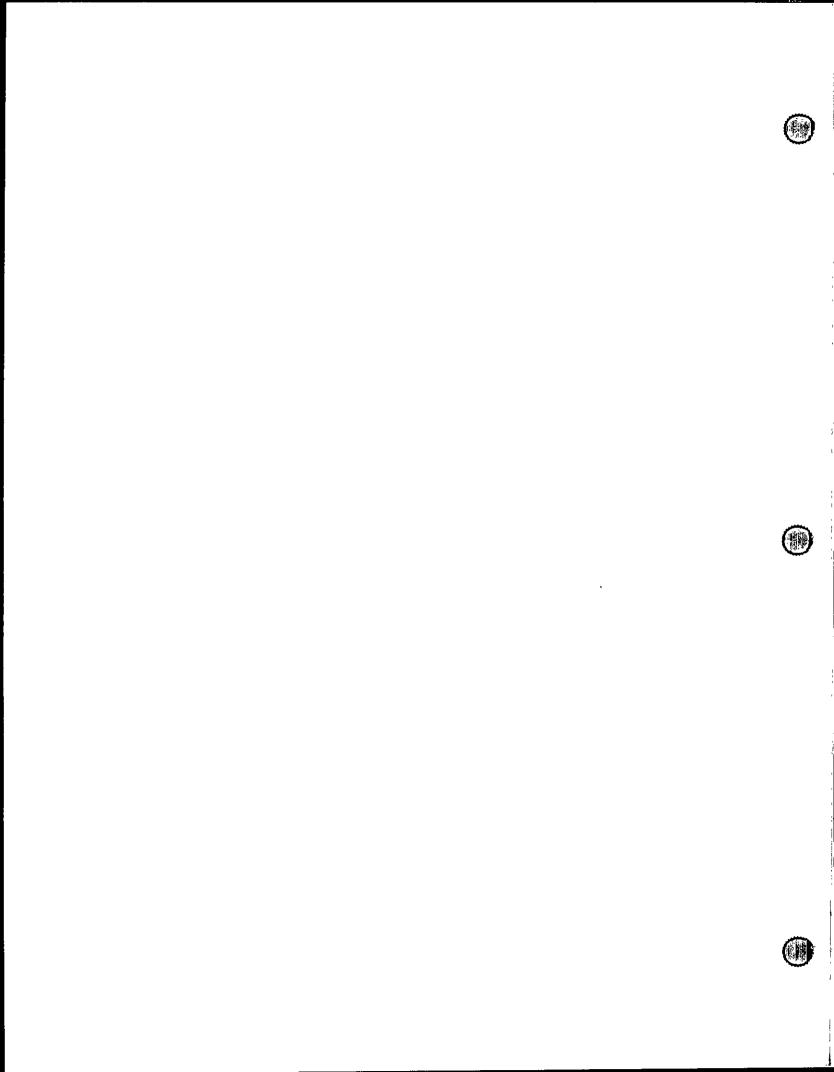
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E. Bobadilla - cross
                                                          142
   robbery --
 1
 2
           MR. GONZALEZ: Objection, Judge.
 3
           THE COURT: I will sustain the objection.
           You wouldn't have said, "I used the word
 4
 5
   "robbery"?
 6
           MR. GONZALEZ: Objection.
           THE COURT: That is sustained. Ask another
 7
 8
   question.
           MR. SAMEIRO: That's fine.
 9
           Okay. Listen. You did something in this
10
   case, which is, of course, very important; right?
11
12
       Yeah.
13
           Regarding the phone number?
       Q
       That's correct.
14 A
           The victim had a piece of paper. And I asked
15
16 you this: He told you that the person that robbed him,
17 he believe, called just moments before. He got this
18 number from the dispatcher, which he presented to you
19 on this piece of paper?
       That's correct.
20 A
21
            I have a piece of paper right here.
       That's correct.
22 A
           It has a phone number on it; right?
23
24 A That's correct.
           If you would write down that number on the
25
                                                          143
                      E. Bobadilla - cross
 1 pad. Let's just take a report now.
       (Witness complies.) It is running out of ink.
            It is running out of ink. We need to get
 3
  ink.
       It works. Shake, shake.
 5
   Α
           Hold it a second. I want you to take this
  piece of paper. Pretend I'm the victim. I come in
 7
   with this piece of paper. And there is a phone number
   on it.
 9
10
       (Witness complies.)
   Α
11
           You did that; right?
       That's correct.
12 A
           Also, in your report, you do make note of the
13
14 fact that the victim said, "I was robbed." That there
   was monies taken from him, a cell phone and worker's
15
16
   ID; right?
17
       That's correct.
           Total of five hundred dollars; right?
18
19 A
       That's correct.
20
           And that he was then punched and kicked, one
21 last time, and the suspects then ran to the back of
22 Woodnor Court?
23 A
       That's correct.
24
           That's adjacent to 400 Lee?
25
       Same area, yeah.
```



```
E. Bobadilla - cross
                                                           144
            So, the victim tells you, face to face, that
   the guys ran in that direction?
       That's right.
 4
           All right. And you said, he was nervous?
 5
       Yeah.
   Α
 6
           When you spoke to him?
 7
       Yeah.
   Α
 8
            Okay. Let's see. That's the number that I
 9
   asked you to write. 732-801-5418?
10
        Right.
11
            Let's see what you wrote down. That is
        O
   732-801-5418?
12
13
       That's correct.
           MR. SAMEIRO: I will show the jury
14
15
   (indicating).
16
           You did that right, didn't you?
17
       Yeah.
   Α
18
            MR. SAMEIRO: Thank you. Nothing else.
19
            THE COURT: Mr. Gonzalez, any additional
20 questions?
21
            MR. GONZALEZ:
                           Yes.
  REDIRECT EXAMINATION BY MR. GONZALEZ:
22
            If you don't know Spanish that well, how come
23
   your office uses you in order to translate?
24
       Because there is nobody else on the road at the
25
                    E. Bobadilla - redirect
                                                           145
  time that speaks Spanish.
 1
            So, potentially, in any particular case, in
 2
 3 any report, in any investigation, you shouldn't be
 4 considered a bilingual officer? Is that what you're
   telling us today?
 5
        I do the best I can to get the information, to do
   Α
 7
   something.
            You're not supposed to be a bilingual
 8
   officer; correct?
 9
10
   Α
       No.
11
           You're actually a -- You told your boss that
   you understand Spanish; correct?
12
13
       That's correct. I speak Spanish.
            The reason you're a bilingual officer is
14
   because you think that you can speak Spanish; right?
15
16
        I believe I can speak Spanish, yes.
17
            You speak Spanish at home or you did speak
18
   Spanish at home when you were younger?
        I did. A little bit. I usually speak English.
19
20
            With regard to your job, you speak Spanish a.
21
   lot?
22
       Yes, I do.
23
           You're on the streets in New Brunswick a lot;
24
   right?
25
             That's correct.
       Yes.
```

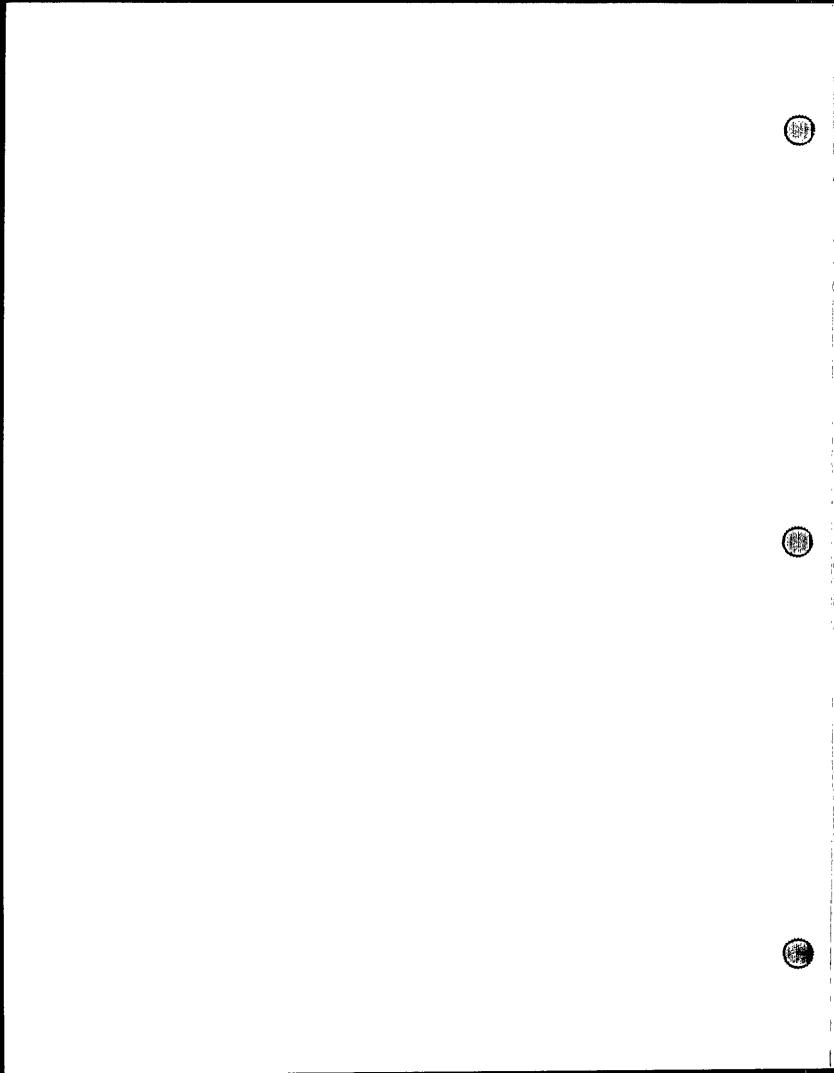


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146
                    E. Bobadilla - redirect
            There's lots of Latinos in New Brunswick; is
 1
 2
   that right?
        That's correct.
            You talk to them on a daily basis, while you
   are out on the streets; right?
        That's correct.
 7
            Would you say everyday you probably
 8
   encounter somebody that speaks Spanish?
        Probably everyday, when I'm at work.
 9
            People asking for directions?
10
11
        That's correct.
12
            People asking you for other things; right?
13
  Α
       Uh-hum.
            You communicate to the best of your ability
14
15
  in Spanish or in English?
16
        That's correct.
17
            You do a pretty good job, don't you?
18
               Good enough, yeah.
        Yeah.
            And when you were asked to do this report by
19
   your bosses, your Captain or Lieutenant, Sergeant, they
20
21
   trust that you know enough Spanish?
                          I'm going to object.
            MR. SAMEIRO:
22
                  He is leading the witness. And it's also
23
  his witness.
24
   quarter to one.
            THE COURT: The objection is leading.
25
                                                   This
                    E. Bobadilla - redirect
                                                           147
   is your witness. Open up the question. I will sustain
 1
 2
   the objection.
 3
            MR. GONZALEZ: Okay.
            The reason you're asked -- Why are you asked
 4
   to do these reports?
 5
 6
       Because I speak Spanish.
            MR. GONZALEZ:
                           I have no further questions.
 7
            THE COURT: Anything further?
 8
            MR. SAMEIRO: Nothing further.
 9
10
            THE COURT:
                        Okay. Officer, thank you very
           You are excused.
11
  much.
            (Whereupon, the witness is excused.)
12
13
            THE COURT: Ladies and gentlemen, we'll break
   now for lunch. Be downstairs at quarter of two.
14
   bring you back up as soon as we're ready to resume the
15
           Please do not discuss the case among yourselves
16
17
   or with anybody else. Please do not read anything
   about the case or listen to anybody else discuss the
18
19
           Be back at quarter of two. We will bring you
20
   upstairs.
21
            (Whereupon, the jury leaves the courtroom for
22
   lunch.)
23
            (Whereupon, the hearing continued outside the
24
   presence of the jury.)
25
            THE COURT: All right. Let me just ask the
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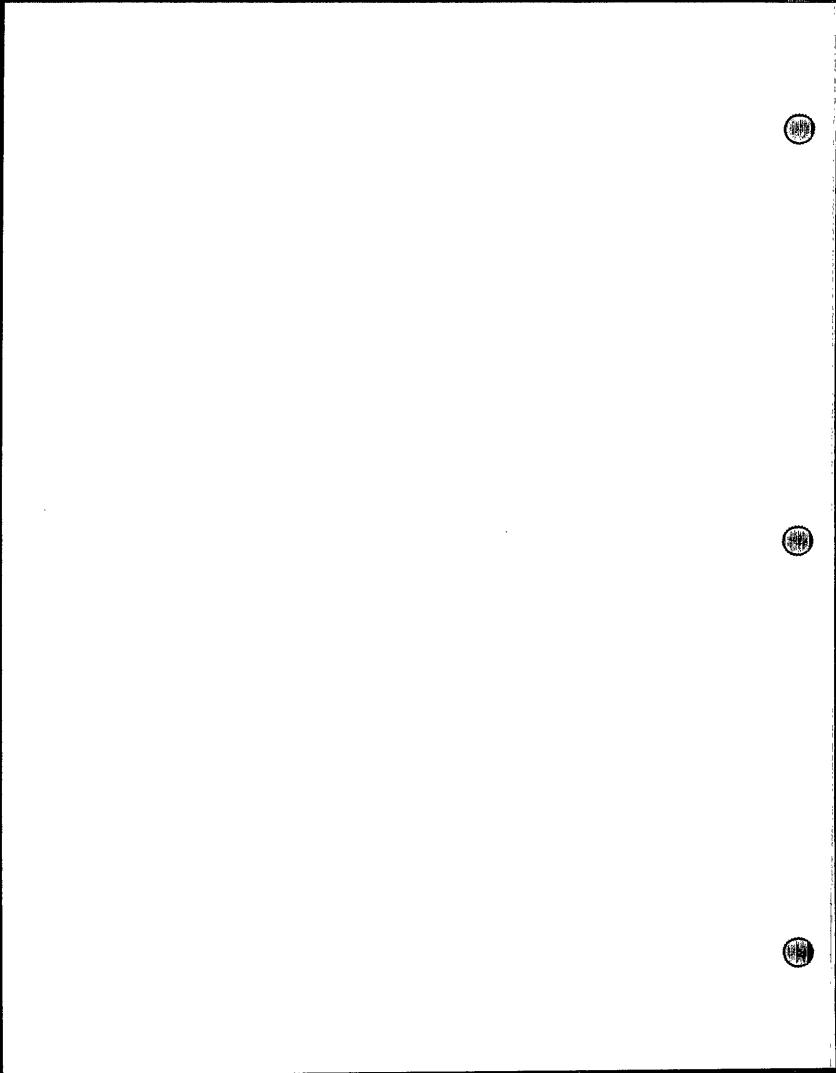


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State which items of Evidence -- items for
 1
   Identification, to go into Evidence, that you're
   requesting.
 4
            MR. SAMEIRO: Yes, Judge. I would be gladly
   assisted with probably the most updated exhibit list.
   But let me work with what I have. It goes up to S-8, I
 7
   think that's what it is. I have S-10. I think there
   are two more. S-9, I think, is the chart behind you,
   with the markings on it. S-10 is the copy of the DL.
 9
            THE COURT: Right.
10
            MR. SAMEIRO:
                         I don't intend to move either
11
   one of those in Evidence.
12
            THE COURT: Okay. Now, regarding S-1,
13
   that's in Evidence. All right.
14
            MR. SAMEIRO: Your Honor, that's in Evidence
15
16
   already.
            I don't think we need to discuss it at this
17
          But I may ask you to have a redacted version of
18
   that DVD ready for the jury. There is only one blurb
19
   on that disk, the officer's preamble, where he
20
   introduces the case, that the jury did not see.
21
            If your Honor is inclined to let the jury
22
   take the DVD in the deliberating room, with a play-back
23
             Then I wouldn't, of course, want them to see
24
   anything that they did not get to see here.
25
                            (Colloquy)
                                                           149
                        Okay.
            THE COURT:
 1
                         So, I would like S-1 in
 2
            MR. SAMEIRO:
   Evidence. Of course, only what they saw here in court.
 3
   And it's been moved in. But, again, my comments are
 4
   really about the redactions for the jury.
 5
 6
            THE COURT:
                        Okay.
 7
            MR. SAMEIRO: S-2-A, the six photos.
   believe they are already in Evidence. Now, S-2-B is
 8
   the photo line-up names. I'd like to move into
 9
10
   Evidence.
11
            THE COURT: Any objection?
                         Nothing on this document would
12
            MR. SAMEIRO:
13
   indicate, in any way, how Mr. Machado's photograph was
14
   obtained.
15
            MR. GONZALEZ: That would be my only concern.
16
            MR. SAMEIRO:
                          There is nothing on there that
17
   says it is a mug shot or whatever.
18
            THE COURT: Any objection, Mr. Gonzalez?
19
           MR. GONZALEZ:
                          None, Judge.
20
            THE COURT: S-2-B will go into Evidence.
21
            (Exhibit No. S-2-B, photo line-up names, is
22
   received and marked in Evidence.)
23
           MR. SAMEIRO: S-3, I think, should go in, as
24
   well as S-4.
25
           THE COURT: Any objection?
```

(Colloguy)



```
(Colloguy)
                                                           150
                           S-3 and S-4, what are they?
 1
            MR. GONZALEZ:
            MR. SAMEIRO: S-3 is the Spanish display
 2
   instructions. The reverse side is the English, which
 3
   we heard about.
                           No objection.
 5
            MR. GONZALEZ:
            THE COURT: I have that as actually S-3 and
 6
         S-3 is the two-sided document.
 7
   S-4.
            MR. SAMEIRO: It turns out to list the
 8
 9
   Spanish photo display instructions right on the back of
   the English. The photo display result form.
                                                  It is one
10
   piece of paper, that document.
11
12
            THE COURT:
                       Okay.
13
            MR. SAMEIRO:
                          S-4 is the document that Sergio
   Matias testified to. That was already read into the
14
   record, the translation of the Spanish photo display
15
   instructions.
16
17
            THE COURT:
                       The photo display instructions.
18
            MR. GONZALEZ:
                           No objection.
            THE COURT: That will go into Evidence.
19
            (Exhibit No. S-3, Spanish photo display
20
   instructions, is received and marked in Evidence.)
21
22
            (Exhibit No. S-4, English photo display
   instructions, is received and marked in Evidence.)
23
            THE COURT:
24
                       Okay.
            MR. SAMEIRO:
                          That's it.
25
                                                           151
                            (Colloquy)
                        All right.
            THE COURT:
 1
            I realize that there are motions to be made.
 2
 3
   Do you wish to make those now? Do you want to make
   them after lunch?
 4
                           Judge, I'd like to ask if a
            MR. GONZALEZ:
 5
   couple of items can be moved as well.
            Do you want to know if the defendant wants to
 7
 8
   testify?
 9
            THE COURT:
                        I haven't gotten that far.
            I just wanted any motions to be made at this
10
11
  point.
                          At some point, Judge,
12
            MR. GONZALEZ:
13
   actually, as per State vs. Reyes, there are a couple
   issues with regard to certain portions of the
14
   Indictment, that should be addressed right now.
15
16
            I believe, the terroristic threats count, the
17
   threat to kill. There was no testimony put before the
   jury, where anyone indicated that they were going to
18
19
   kill Mr. Cedillo, a threat to kill.
20
            MR. SAMEIRO: Can I respond very quickly to
21
   that?
22
            THE COURT: Sure.
23
           MR. SAMEIRO: We take the position, that when
   one points a handgun at another person, that that is a
24
25
   threat. That can satisfy that statute.
                                             I don't think
```



(Colloguy) 152 The terroristic threats is a 1 it needs to be verbal. verbal type of offense, Judge. It is an offense of It's words or actions. words. THE COURT: Right. MR. SAMEIRO: That's how it's defined. 5 looked into that one. Terroristic threats is usually a 6 verbal threat, as defined in the model charges, words 7 8 or actions. I'll review it, to see 9 THE COURT: Fine. whether or not -- to see what the case law says. 10 MR. GONZALEZ: Because nothing was testified 11 to, whether anyone threatened to kill him. 12 13 was supposedly that someone was going to hurt him. But, at no point, was there a threat to actually kill 14 him specifically. Whether it be through actions. 15 MR. SAMEIRO: There was actions. 16 MR. GONZALEZ: Well, the actions themselves. 17 The threat to kill would be something like this 18 (indicating). Something that would indicate that 19 someone was trying to kill someone. But through any 20 actions, there was no communication that was testified 21 to, that he felt was a threat to kill. 22 THE COURT: Well, I think regarding that, 23 under State vs. Reyes, a jury, giving all reasonable 24 inferences, at this point, to the State, based on the 25 153 (Colloguy) testimony of Mr. Cedillo, that the gun was put to his 1 head, any reasonable jury could reasonably infer from that, a threat to kill, with the gun to the head. So, regarding that, at this point, I think 4 that the motion should be denied. Those actions can be 5 considered. A reasonable jury could find, beyond a reasonable doubt, based on these actions. 7 MR. GONZALEZ: Is your Honor's ruling, Judge, 8 with regard to the counts in the Indictment, with 9 10 regard to the unlawful possession of a weapon? THE COURT: Right. 11 MR. GONZALEZ: Not having a permit to carry 12 13 same. 14 MR. SAMEIRO: I forgot to ask the question. I simply forgot to ask John Selesky, is the defendant, 15 as a convicted felon, is not entitled to carry a 16 weapon. There was a records check. Since I didn't 17 18 ask, it should be dismissed, as to count three. That's 19 what we're dealing with. 20 THE COURT: All right. 21 MR. GONZALEZ: With regard to count four, 22 the possession of a weapon for an unlawful purpose, the 23 second degree offense, there is no unlawful purpose 24 stated in the actual Indictment. That should be 25 gleaned or corrected prior to trial.



(Colloquy)

We started with an Indictment, that didn't have what unlawful purpose they were referring to, in the particular Indictment. That needs to be —— That needs to be dismissed as well, based on the fact that the State has not set forth, with regards to this particular Indictment, the unlawful purpose, that it intends to prove. An unlawful purpose, that they intend to prove, is not included in the Indictment.

So, with that being said, that should be dismissed as well. Not only because we weren't on notice of what they intended to prove; but I think Counsel is going to look into the case law on it. I believe, with regard to unlawful purpose, it has to be told what the State intends to prove. It should be dismissed. I think, as part of the charge, they have to indicate the unlawful purpose. And it's never been given in the beginning of the case.

And, therefore, shouldn't be included in the final jury instructions, because of the notice issue, and because the State simply didn't put it in. They can't then say, they're going to prove the aggravated assault, the robbery, or the terroristic threats. They can't just pick one afterwards. You have to indicate one prior. And, in this case, it was not. It should have been corrected before. The State didn't do that.

(Colloquy)

Therefore, it should be dismissed.

MR. SAMEIRO: I thought we had discussed this earlier in the case, the unlawful purpose was the robbery. You can also make the case with the terroristic threats. But it is clear that the unlawful purpose here is the robbery. The case law doesn't require me to put it in the Indictment. As long as there are other charges in the Indictment that give Does anybody think it was a sexual assault? Does anybody think it was a forgery? No. This is an armed robbery case. robbery. And I will rely on State vs. Williams, at 168 NJ, 323, and the cases that follow, which allow the

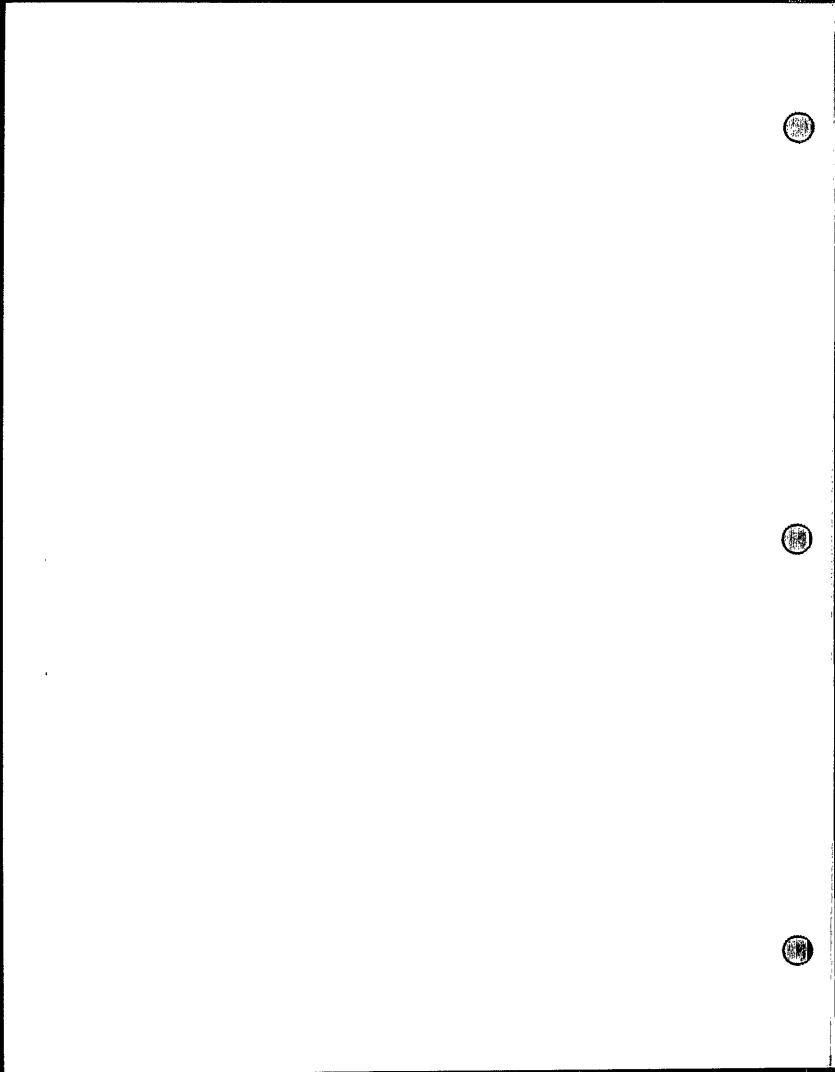
necessarily in the Indictment, in that count.

THE COURT: I have to be honest with you, I don't think any case I've done, that the purpose is necessarily indicated in the Indictment. But I'll look at the case law to see.

Court to define the purpose in the charge, if it's not

Regarding your objection of notice, in a certain sense, it isn't included in the Indictment. You're absolutely right. The reason I recall that is because it is included in the charge. So, I always have to ask what the unlawful purpose is.

This is the first time that an objection has



(Colloguy) been made. Not an objection; but a motion to dismiss 1 has been made to me. I'll look to the case law as well 2 3 on that. 4 MR. GONZALEZ: I would just say, from the Grand Jury, unless there is one put before the Grand Jury, with regard to this, that it wasn't included in 7 the Indictment. 8 MR. SAMEIRO: Well, that defect is waived. He didn't move to dismiss the Indictment, because the 9 Grand Jury didn't have it to support the Indictment. 10 He could have moved to dismiss it. 11 12 THE COURT: That's kind of late. that point. I have a motion to dismiss now based on --13 a motion to dismiss that count. I understand the 14 objection. I want to look through the case law. 15 look into that during the lunch break. 16 17 All right. Anything else? Any other 18 requests? 19 MR. GONZALEZ: Not at this point, Judge. like you to reconsider the Court's position with regard 20 to the hearsay nature of the telephone number. Only 21 because your Honor could exclude it, based on hearsay 22 and present sense impression -- all those things now --23 and correct the jury instruction that had been given to 24 25 them. 157 (Colloguy) You know what, it's five of one. THE COURT: 1 I know you want to get these issues out. 2 But, quite frankly, I'm hungry. I'm sure 3 everyone else is, too. I don't want to rush our 4 discussion here. But we're over the time of where we 5 6 need to be. I don't want to indicate to Counsel, in 7 any way, that we're rushing through this. I think this is a good time to break. Let me 8 just ask, before we break, was there any other requests 9 to dismiss any other counts of the Indictment? 10 on behalf of the State. I thought the State had 11 12 mentioned --13 MR. SAMEIRO: Judge, I was mulling over whether to reduce some of the charges. 14THE COURT: I only ask that because my 15 secretary is trying to get the verdict sheet together. 16 17 Certain things do need to be in there. If you could 18 let me know --

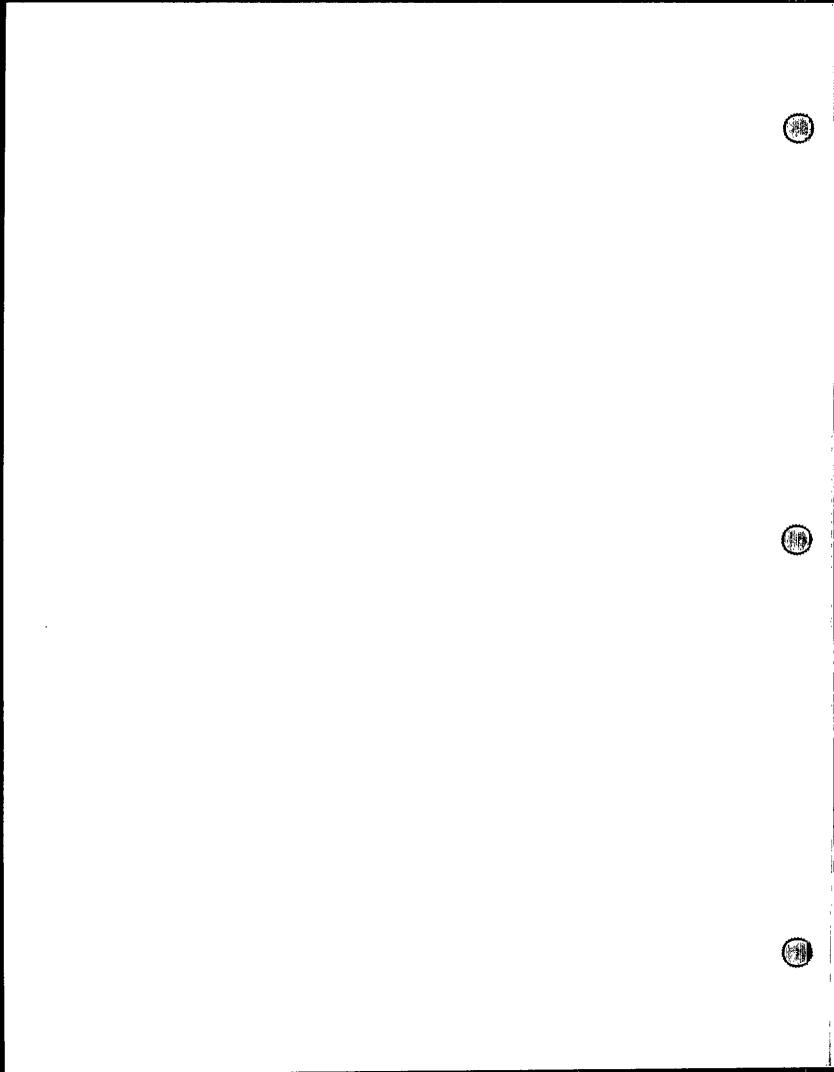
THE COURT: All right.

MR. SAMEIRO: Judge, I have one simple
question, hopefully, we can resolve in 30 seconds. If
Counsel is prepared to go forward with summations at
two, or thereabouts. Notwithstanding, what he might
want to argue, with respect to the charge.

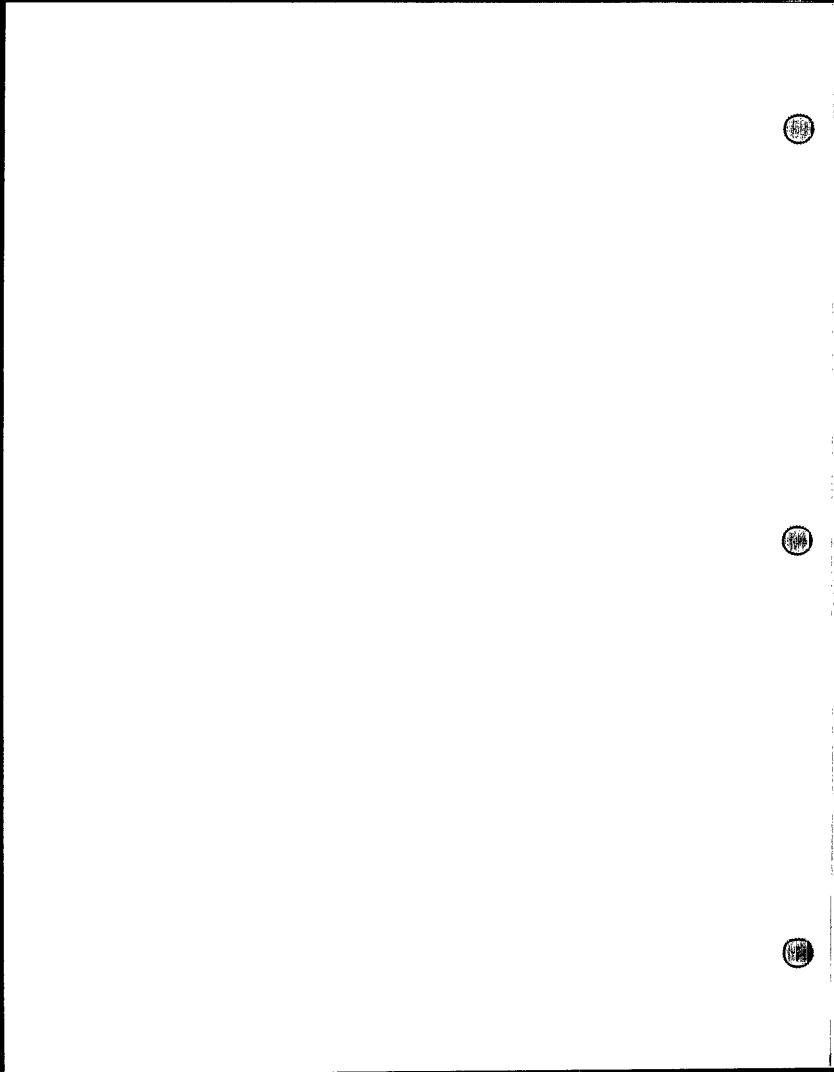
MR. SAMEIRO: I am not going to do that.



```
(Colloguy)
                                                           158
            THE COURT: I didn't really get a response
 1
   from the defendant yet. I know we're going to have to
 2
 3
   do that.
 4
            MR. SAMEIRO: Assuming he's not going to
   testify.
 6
            THE COURT: Okay.
 7
            MR. SAMEIRO: Could we do that, and then deal
 8
   with the instructions later, and let the jury go home?
   Do we have to argue about the law prior to the
 9
   closings?
10
            I'm willing to streamline my summation, and
11
   not really get into what the Court is going to charge,
12
13
   and avoid all kinds of problems, in an effort to get
14
   the jury out of here, and not waiting around, and we
   can deal with the charging conference later.
15
   would understand and respect Counsel's position, to
16
17
   know what you're going to charge before he sums up.
            MR. GONZALEZ: I think we have to know what
18
   you're going to charge before we do the summations.
19
20
            MR. SAMEIRO:
                          Okay.
            THE COURT:
                        Mr. Machado, can I ask you to
21
22
   stand, please, for a moment?
23
            (Whereupon, the defendant complies.)
            THE COURT: Have you decided whether or not
24
   you wish to testify or not in this case?
25
                                                           159
                            (Colloguy)
                            Yes.
                                  I don't want to.
            THE DEFENDANT:
 1
            THE COURT: You do not want to.
 2
                                             You've had
   enough time to talk to Mr. Gonzalez about that
 3
   decision?
 4
            THE DEFENDANT: Yes. But I made the decision
 5
 6
   not to.
 7
            THE COURT: All right.
                                    Thank you, Mr.
 8
   Machado.
 9
            All right.
                        You have no other witnesses;
   correct, Mr. Gonzalez?
10
11
            MR. GONZALEZ: Judge, no, I don't. I didn't
12
   rest.
                       No. You have to rest in front of
13
            THE COURT:
   the jury. I'll make sure you do that.
14
15
            All right. We'll come back at two. See you
16
   at two.
17
            MR. SAMEIRO:
                          Thank you.
18
            MR. GONZALEZ:
                           Thank you.
19
            THE COURT: Thank you.
20
            (Whereupon, a luncheon recess was taken.)
21
            (Whereupon, the hearing continued after
22
   lunch.)
23
24
25
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(Colloguy) 160 AFTERNOON SESSION 1 (Whereupon, the jury enters the courtroom.) 2 THE COURT: All right. Mr. Gonzalez, do you 3 have any additional witnesses? MR. GONZALEZ: No, Judge. At this time, the 5 6 defense rests. 7 Any rebuttal? THE COURT: MR. SAMEIRO: No, your Honor. 8 Thank you. 9 THE COURT: All right. Ladies and gentlemen, There is no rebuttal. the defense has rested. 10 I will tell you that the trial is 11 progressing. We really only have the summations to do 12 13 and the charge of the Court. I sometimes ask the attorneys how long their summations are going to be. 14 usually get an answer and it's twice as long. 15 16 offense. 17 I'm only saying that I'm looking at the time. And I'd like to do the summations with the charge if I 18 can. If I can't, that's fine, too. But I, frankly, 19 don't know if we're even going to be able to finish the 20 21 summations today. The next question then is bringing you in 22 I have a list on tomorrow of over 50 cases, 23 tomorrow. which doesn't help you. I'll be bringing you in for 24 nothing. Bringing you in would be just too difficult. 25 (Colloguy) 161 There is also issues regarding the weather that I heard 1 is coming our way. That has me concerned for you, too. This is what I'm going to do. Give you 3 tomorrow off of this case. You don't have to be here. I need you here Monday. I'm going to do the trial and 5 forego my list for Monday. 7 So, we can go right into the summations of the attorneys. And then my charge is about an hour and 8 a half. I'll let you know that once the summations are 9 done, I'll give you a chance to use the bathroom. 10 bring you back for the charge. And you will then have 11 12 the case, be able to deliberate. I just think it makes more sense than having you get half of it today, and 13 then maybe end right in the middle of somebody's 14 15 summation today. Ladies and gentlemen, like I said, I have 50 16 17 cases on, and you just might end up being here on Monday anyway. Friday you are off as jurors. So, if 18 19 you need to go back to work, you can certainly go back 20 to work, and accomplish what you can accomplish. apologize for the inconvenience. I realize we thought 21 22 that the case would go to you earlier today. Again, I 23 have no control over deliberations. I don't know 24 necessarily when you're going to finish. It just makes 25 sense for all of us. That is really the most efficient



(Colloquy) 162

use of the time that we have.

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All right. So, Monday, 8:30. Just remember something. Someone got in trouble once before. You don't have to be here tomorrow as a juror. But when you get your note, at the end of the case, it says that you're off for tomorrow. I only say that, because it became an issue once, where individuals didn't go to work, thinking they would be listed as a juror for that day. We'll be off for tomorrow. So, certainly, I know all of you have responsibilities, so, you can certainly attend to those.

11 If, at the end of the case, when you get your 12 13 letter, saying the days you were here, tomorrow won't be one of them. All right. I just wanted to let you 14 So, just let me give you your instructions, 15 know that. as I normally would. Please remember, not to discuss 16 the case among yourselves or with anybody else. Not to 17 18 go to the scene of the alleged incident. Not to read anything, if there is anything in the paper, or listen 19 to anybody else discuss it. I haven't seen anybody 20 21 The issue has come up once before. The same 22 thing with television. Anything along those lines. If there is anything in the media, please don't listen to 23 it, or watch it, or listen to anybody else discuss it. 24 Okay. Please have a safe weekend. 25 We'll see

(Colloquy)

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1 you downstairs, on Monday, at 8:30. We will bring you 2 right up for the summations. Thank you, folks.

3 (Whereupon, the jury leaves the courtroom for 4 the day.)

5 (Whereupon, the hearing continued outside the 6 presence of the jury.)

THE COURT: If there is no objection, I have to try to work on my list for a little bit, if that's okay. Perhaps, I will bring you back up, say, in about a half hour or so maybe, so, we can just go through our charge conference?

MR. SAMEIRO: Sure.

MR. GONZALEZ: No problem, Judge.

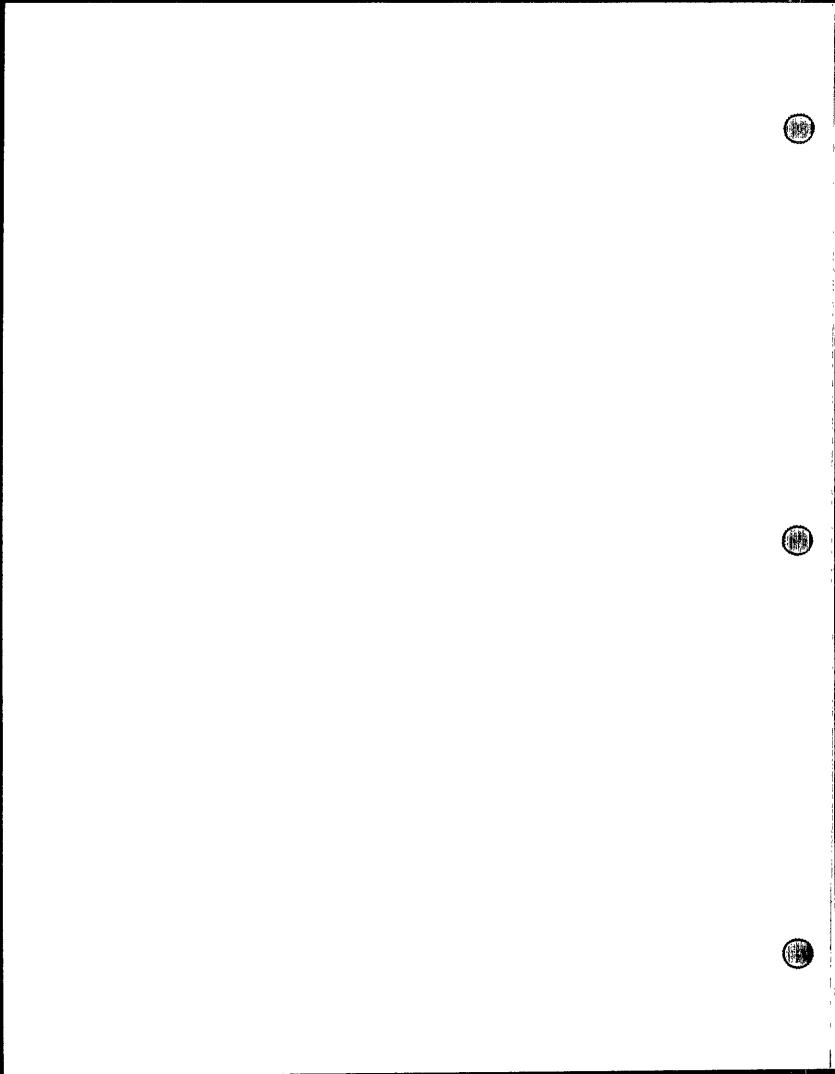
14 THE COURT: That way, I can get through some 15 of those other cases.

(Whereupon, a short recess was taken.)

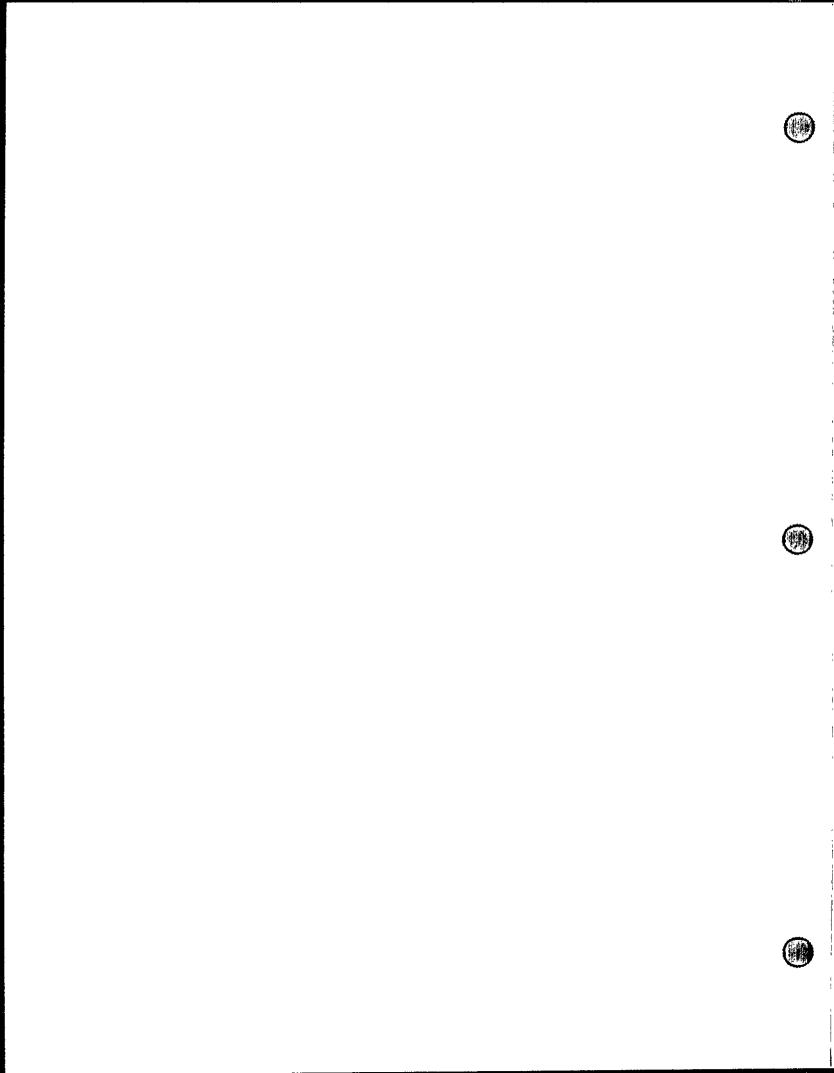
17 (Whereupon, the hearing continued outside the 18 presence of the jury.)

THE COURT: This is State versus Pablo Machado. We're back on the record on the trial. I asked Counsel -- We're sort of in the middle of the charge conference. I wanted to see what issues we have. At this point, we have time to work on them before the summations, which are now scheduled for

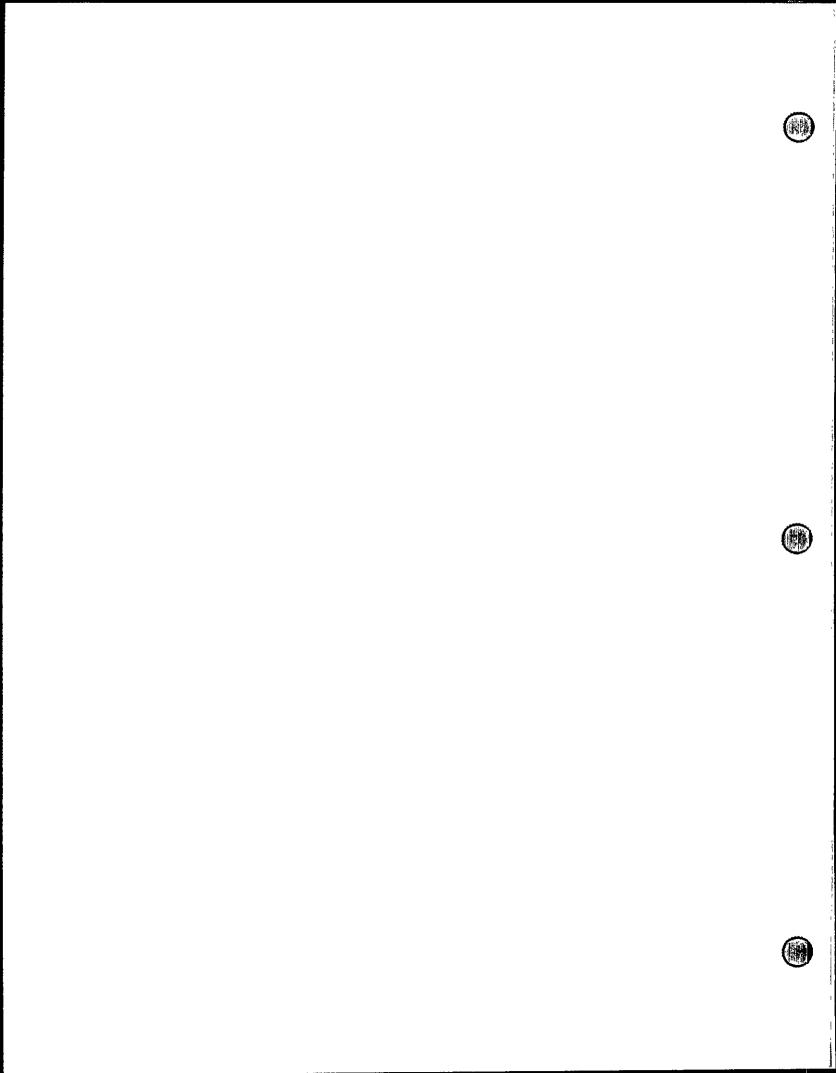
25 Monday.



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(Colloguy)
            Now, we left off -- First of all, I'm getting
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 2
   ahead of myself. There was actually a motion made
   regarding count -- Well, count three is dismissed.
   Then there is a motion made regarding the terroristic
   threats -- threat to kill -- which is count six.
            That is not right.
                                That is count seven.
 7
               And I denied the motion to dismiss count
   apologize.
 8
    seven.
            Okay.
 9
            Now, the next is the motion to dismiss count
           Because the State did not indicate the unlawful
10
   four.
              That's where we left off.
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   purpose.
            MR. GONZALEZ: You are absolutely correct,
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   Judge.
            THE COURT: I indicated that, quite frankly,
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    I have handled a lot of cases where the unlawful
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   purpose is not indicated in the Indictment. But I do
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   have to charge it. I usually ask the State, at this
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   point, even though it is pretty clear to me, based upon
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   the charges, what it would be. I ask the State
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    specifically what they want me to indicate to the jury,
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    as to the unlawful purpose. So, it is not normally in
    the Indictment.
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23
            I had asked Counsel, over lunch, to take a
                   I'm not certain if you had the chance to
24
    look at this.
25
   look at it.
                                                           165
                            (Colloguy)
            MR. SAMEIRO: That is where we left off,
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 2
   Judge.
 3
            THE COURT: I looked at it, too.
            MR. SAMEIRO:
                          We discussed that earlier in
 4
               The unlawful purpose was to commit the
 5
   the case.
   robbery.
 6
                        I know, for one thing, I had
 7
            THE COURT:
   asked about it. If not yesterday, certainly today,
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   when I was filling out my form. The purpose was the
              I wanted to verify that with the State.
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11
   would be the unlawful purpose, since there is also the
   armed robbery charge. I kind of assumed that was the
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13
   unlawful purpose. Armed with a gun, not a knife;
14
   right?
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            MR. SAMEIRO:
                          Right, Judge.
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            When you look at the law, I know I am
   entitled to different theories as to the unlawful
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18
              I could say, it was to commit the terroristic
   purpose.
19
   threat as well. Then you would have to further explain
   to the jury, if they were to convict, they'd have to
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   do the one theory, and not the other. But, as to the
22
   armed robbery case. So, the only purpose, that I want
23
   to go forward on, is the robbery.
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            THE COURT:
                        Okay.
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           MR. SAMEIRO:
                          I'm electing to ask the Court
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166 (Colloguy) to charge aggravated assault -- excuse me --1 2 terroristic threats as the alternative unlawful 3 purpose. THE COURT: Okay. All right. 4 5 Mr. Gonzalez? 6 MR. GONZALEZ: Judge, I'll rest on the 7 argument I placed -- put forth before lunch. THE COURT: I probably will supplement the 8 9 record regarding that, because, guite frankly, our lunch was abbreviated, and I didn't get the chance to 10 really research it. 11 Nine times out of ten, I don't see an 12 unlawful purpose in the Indictment. I do wait for the 13 It is an armed robbery 14 State to indicate that to me. charge, as in the handgun is what's alleged, the 15 possession of the weapon, for an unlawful purpose. 16 think one can assume it to be, based on what has been 17 presented so far. I will indicate that in the charge. 18 But, again, I will look to the case law to see whether 19 or not that is something that is not allowable. 20 21 Although I do think, if there is something 22 additional, you will let me certainly know it, probably as soon as possible. Tomorrow, I'm going to take a 23 24 look at it. MR. SAMEIRO: I think the Court can allow 25 167 (Colloguy) them to consider the unlawful purpose as being the 1 robbery, as it being the only one. I don't know that 2 there is a notice issue as to the armed robbery charge. THE COURT: So, I will look into that and see 4 if I can find anything. Certainly, if Counsel finds 5 anything, that you wish to raise to the Court, please 7 feel free. Now, any other motions regarding any other 8 9 counts? MR. GONZALEZ: Judge, not with regard to any 10 11 other counts. 12 THE COURT: Okay. 13 Then turning to the charge, the charge conference, so to speak, go ahead. 14 MR. GONZALEZ: I'd like to deal with the 15 16 evidence. Again, I'd like to deal with the number. I'd like to deal with the phone number. 17 18 THE COURT: The phone number that I let in 19 previously? MR. GONZALEZ: 20 Right. 21 THE COURT: But your request is for me to 22 reconsider potentially the Court instructing them, not 23 to consider, I suppose, substantively; but just as to 24 what the investigation entailed? 25 MR. GONZALEZ: Correct. Now, your Honor,



(Colloquy) 168 1 there was the present sense impression. THE COURT: That's right. 2 Now, if we are to review what was said prior 3 to the start of the trial, it was indicated that Mr. Cedillo spoke directly to the dispatcher. 5 6 THE COURT: Right. 7 MR. GONZALEZ: That's what I thought was going to come out at trial. He spoke directly to the 8 9 dispatcher. That the dispatcher told him the number. Your Honor indicated that it was the dispatcher's 10 present sense impression as to that number. 11 was the reason your Honor would let it in. Also, in 12 13 determining if it was non-testimonial in nature. 14 THE COURT: Right. All right. MR. GONZALEZ: Now, after hearing the facts 15 16 of the case, and hearing yet another layer of hearsay, 17 I would ask your Honor to consider, well, now that it is hearsay. I originally thought it was hearsay from 18 the beginning. I think Crawford applies. I don't even 19 think there is an exception. Before it came in, Judge, 20 I thought it was hearsay. I'm going to rest on that. 21 Now, I think, it is even further hearsay. 22 And the reason being is because simply what was 23 testified to before the Court was that, the dispatcher 24

(Colloquy)

told Juan Perez. Juan Perez wrote down the number.

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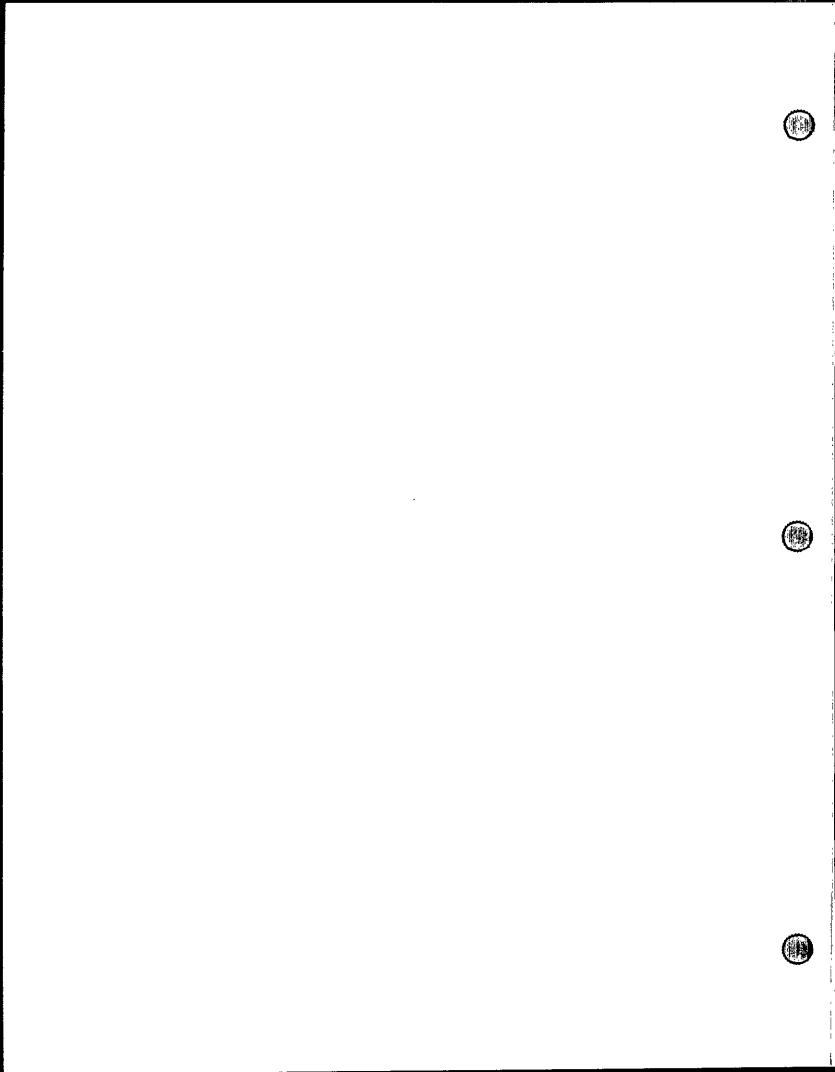
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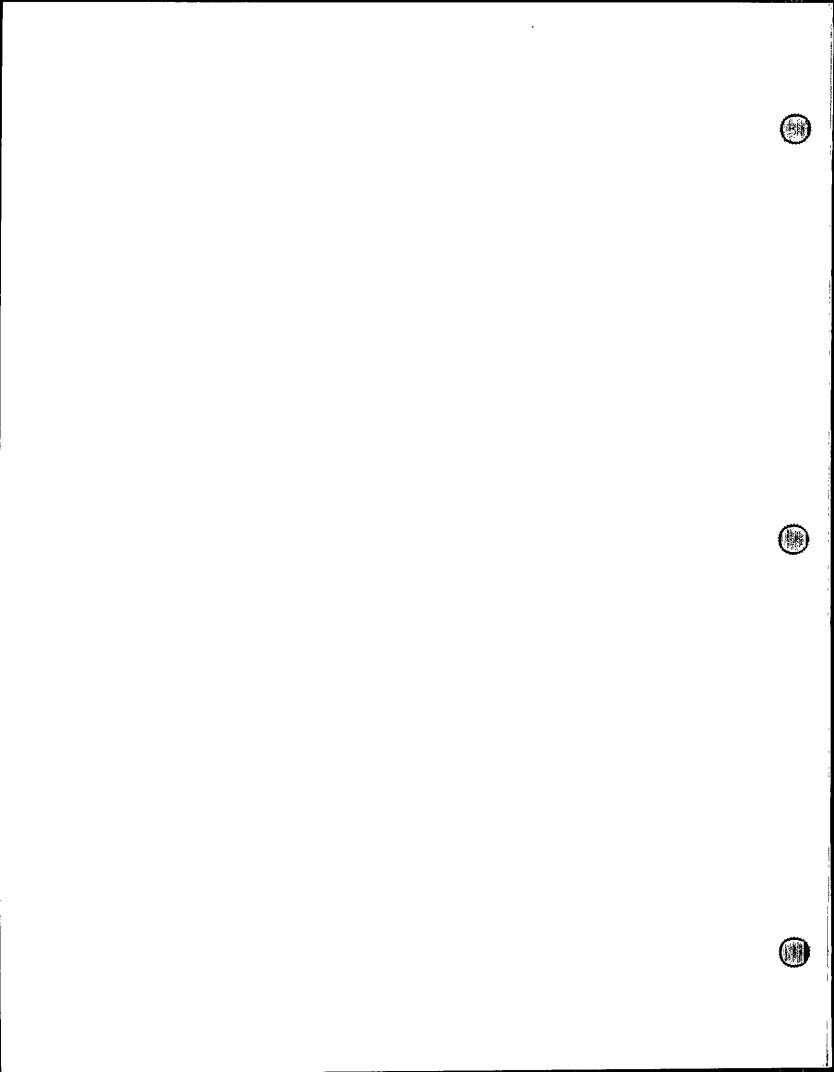
The number was given to Wilmer Cedillo. Wilmer Cedillo 1 then communicated this number to Officer Bobadilla. And the piece of paper, that it was written on, does not exist and was not taken into evidence. I think 4 it's clear that there is now another layer of hearsay. 5 Present sense impression, as defined by J.A., which is the leading case on present sense impression, 7 going to <u>Davis</u>, and then there is an additional case 8 called Hammond, State vs. Hammond, which is also part 9 of the progeny that covers this issue. Present sense 10 11 impression, as defined, non-testimonial, in those cases, and what I'll do is, I'll supplement and I'll 12 provide J.A. to the Court. I will highlight for the 13 14 Court, I think some research needs to be done. 15 I'll highlight for the Court the sections 16 that were non-testimonial and testimonial. 17 about non-testimonial, is supposed to be when a person 18 is viewing an event, as it is actually transpiring, as like in a 911 call. 19 20

THE COURT: Some 911 calls.

MR. GONZALEZ: Some 991 calls. 911 calls where someone is actually viewing, and saying it at the The one thing you're going to find in your same time. research, there is absolutely no black and white on this issue. As I said, some 911 calls, even where



170 (Colloguy) somebody is watching, some Courts find testimonial, and 1 2 some do not. It is such a gray area. 3 THE COURT: So, I mean, I'm willing to see whatever you have reviewed, whatever you have. 5 MR. GONZALEZ: It is just such a -- It's so fact-sensitive. Even though I think that you had 6 7 similar facts, you could still gets two Courts to define it differently. 8 Well, I think it is unequivocal in the facts 9 in this case, that it went through two -- it went 10 through three different people, before it got to 11 Officer Bobadilla. I think in any of those cases, that 12 13 we referred to, it doesn't go to three different 14 people. 15 So, you are going to do two thing. whether it comes in under present sense. And that's 16 one issue. From what you're saying, you disagree with 17 18 that. 19 THE COURT: Right. MR. GONZALEZ: The next issue, even if it 20 comes in under present sense, it can still be out, 21 because it's testimonial. So, first, there is a 22 discussion about of what present sense is. 23 That is right. 24 THE COURT: What I'm going to go through is present sense. It doesn't even qualify, 25 171 (Colloguy) so to speak. Because it needs to be something that is 1 being observed at that moment. And I think, in 2 reviewing the case law, J.A. and Hammond, and those things, I'll find that it was allowed in, because the 4 cops were asking what's happening at this time, what is 5 happening right then and there. Because they were 7 observing it. It came in, in one of the cases with 8 domestic violence. 9 The other was an observation of some crime I'm not sure which is which. 10 actually occurring. 11 state that for the record. However, in both cases, the person was observing the event at the same exact time, 12 giving rise to a police interrogation, trying to find 13 out what's going on. Giving rise to the present sense, 14 that it would be factual, but no time to stop and think 15 16 about it. 17 The reliability of it MR. GONZALEZ: Right. 18 is very important. It's not no longer objective. would be objective. Now, if you have a pause, in one 19 of the cases, it says ten minutes later after the 20 21 person is no longer viewing the event, making the 911 22 That that was not a present sense impression. 23 Even though it came ten minutes later. It was through 24 a 911 call. 25 THE COURT: Okay. That wasn't a present

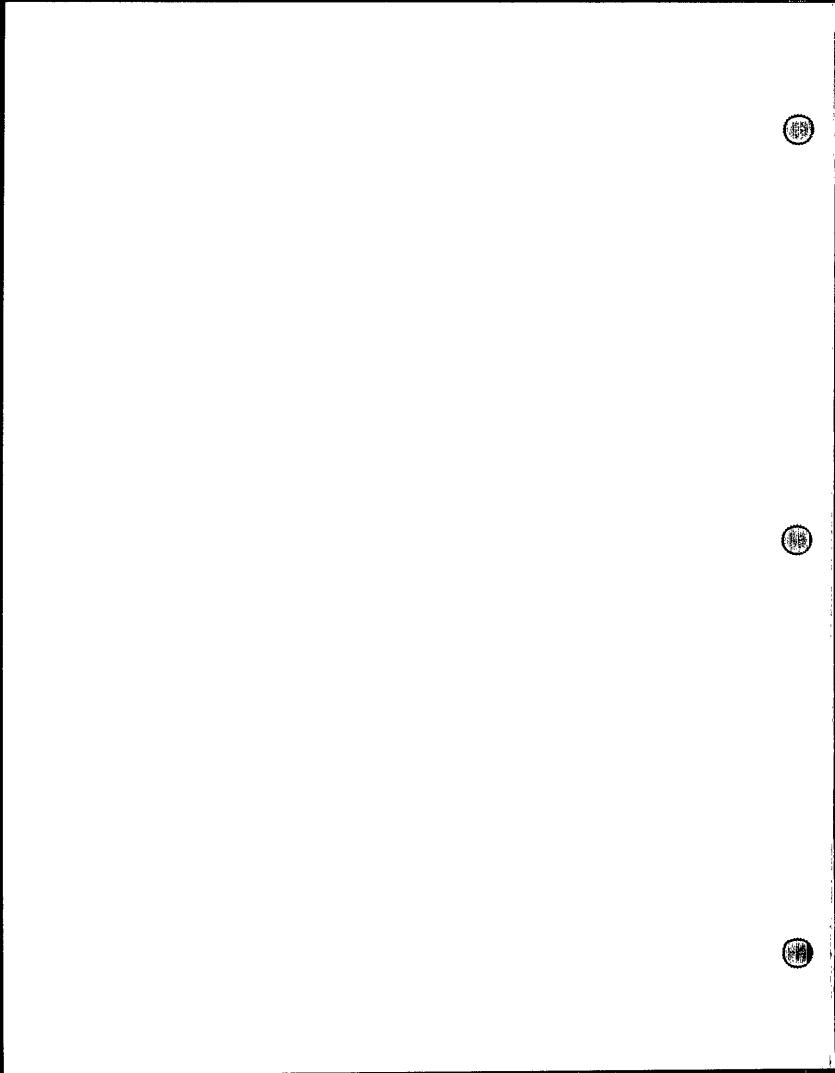


1 sense, according to the case law. 2 MR. GONZALEZ: Now, in this particular case, there is no question that there was a lag time of possibly an hour or so. 5 THE COURT: Okay. 6 MR. GONZALEZ: Or, let's say, twenty minutes. There is no time period. Anyway, there 7 I don't know. is a lapse of time between Wilmer Cedillo -- Well, 8 between the dispatcher observing what he thinks is the 9 number on the caller ID, and then being addressed by --10 Well, not by Wilmer Cedillo, because he didn't call 11 directly after it happened. 12 13 I don't know if he ever looked at the number. I think that is part of the issue. 14 He doesn't even look at the number. He called originally. His first 15 time looking at the number, when somebody called to get 16 the number, that's when he looked at it first. When 17 the call was put into him, which is something I was 18 thinking about when I was hearing the testimony, too. 19 I got the impression that the number may have been 20 The dispatcher gave him the number. They noted 21 the number maybe; but didn't really look at the number. 22 The first time he really looked at it was when a call 23 was given to him to go look for it. That is where the 24 present sense is, when he goes to look at it. 25 173 (Colloguy) It might have been there before; THE COURT: 1 but he never really looked at it. 2 He never looked at it. 3 MR. GONZALEZ: the analysis that your Honor is using, as to the 4 present sense impression. You're of the opinion that 5 it is present sense. 7 THE COURT: We're going to differ. MR. GONZALEZ: That is fine. So, all I'm 8 saying is this lapse of time. It wasn't being observed 9 10 at the exact moment that it happened. THE COURT: Okay. It's in the report to the 11 police. Because it's reported to Juan Perez, it 12 doesn't have to be reported to the police officers. 13 That is not required. I think that it could be 14 15 reported somewhere else. 16 MR. GONZALEZ: It has to be the exact same 17 time. 18 THE COURT: That's right. The whole purpose 19 of it is to avoid the subjectivity. 20 MR. GONZALEZ: Okay. 21 THE COURT: I don't think it has to be the 22 police officers' present sense impression. 23 MR. GONZALEZ: It doesn't have to be. 24 next step is deciding whether it is testimonial or not.

We've got a Crawford analysis, in deciding whether or

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(Colloguy)



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(Colloguy)

not it's testimonial.

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Now, the case law really talks about not testimonial. Again, J.A., and those things. non-testimonial, what I argued before was, as the events are transpiring, it makes it non-testimonial. Testimonial is when you have a chance to think about it, and then tell someone. Now, a chance to think The dispatcher has a chance to think about about it. Juan Perez has a chance to think about it. Wilmer Cedillo has a chance to think about it. And then it's reported. So, the layers of subjectivity are there.

Now, if the phone record existed, where the call comes in, and 400 Lee Avenue -- 58 to 400 Lee Avenue -- It is the dispatcher and it is in the phone That is when he wrote it down. There really is no evidence that he really knew when the event was transpiring. It's a business record. It could possibly be deemed a present sense impression, because it was written down at the moment that it was being observed.

THE COURT: I don't think the argument --21 22 after that -- that's not what happened here. There is no business record. There is nothing. There is just 23 24 layers of hearsay.

MR. GONZALEZ: Now, Crawford vs. Washington

(Colloguy)

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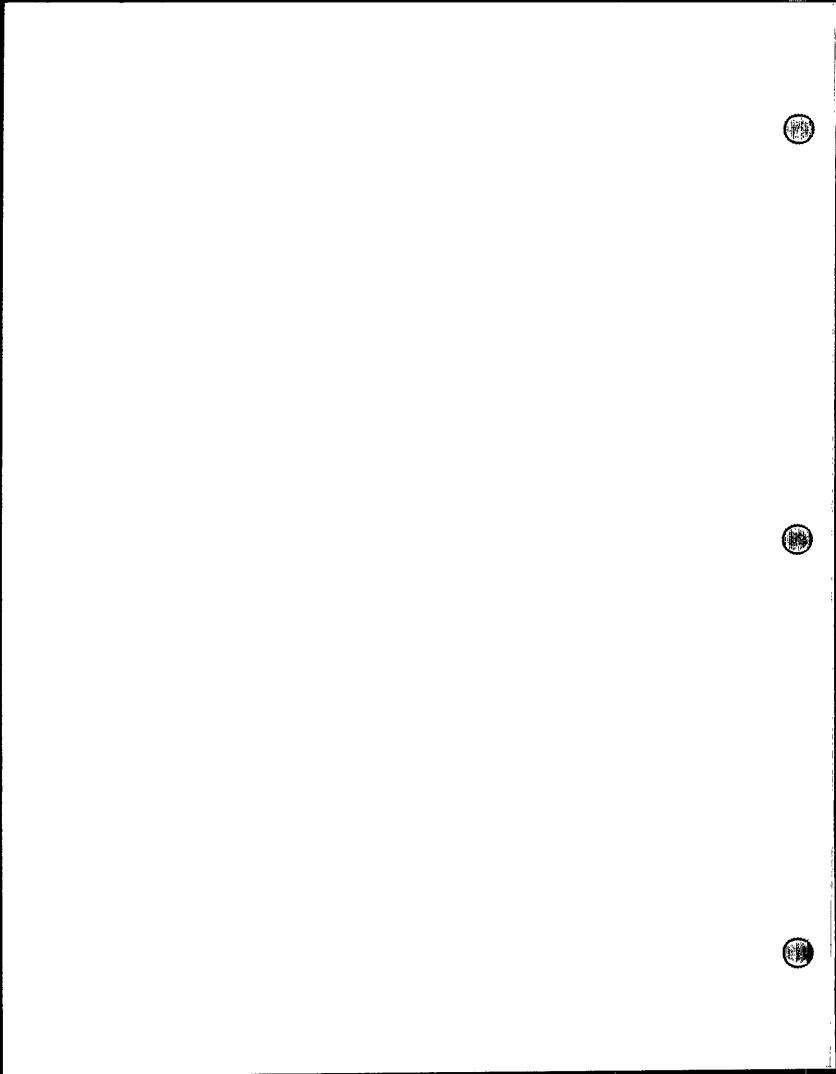
allows us the opportunity to -- allows criminal 1 defendants the opportunity, through the Sixth Amendment, to confront all witnesses that are presented with that information. It allows us the ability to cross-examine. We can confront. That's what it's 5 about. Now, in this particular case, we can't confront the dispatcher, because we don't know who he is. 7 name is Flaco. Or that's what the victim indicated, 8 9 Flaco.

Additionally, we can't cross-examine Juan Perez. Juan Perez was never brought in. That is a witness that could have been brought in. But then we get to Wilber Cedillo. He doesn't really remember. only has the report. Then he remembers. indicated that -- Then we have Officer Bobadilla being given the particular number. And then it comes in court, through, I guess, through that police report, and everybody reviewing it.

Then, let's says, it's the number. Crawford is violated through that, at various levels. And I'll state very confidently that, if the State wanted that evidence to come in, Flaco should have been spoken to. If not, Flaco, Juan Perez should have been spoken to. Those are the people. I couldn't have made the

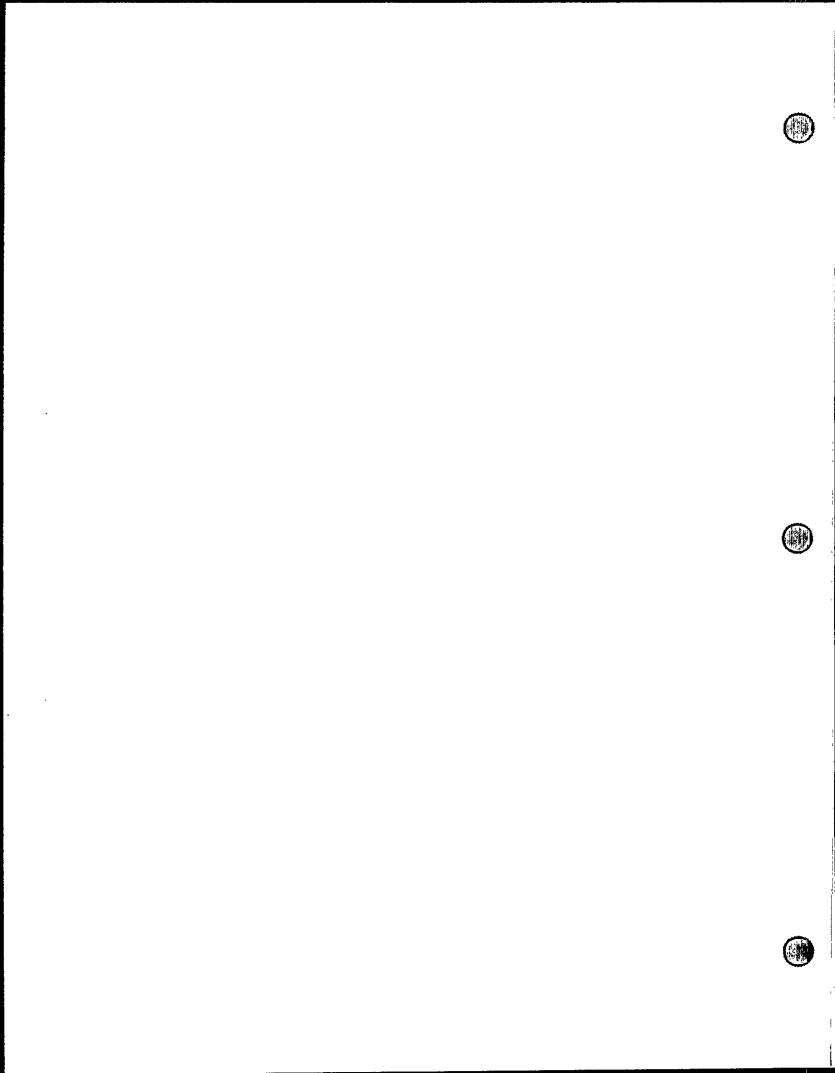
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25 argument about Perez before, because I didn't know



about it, which is also interesting. 1 2 But, in any event, Crawford allows me, on behalf of Mr. Machado, to make those arguments. would submit, at this particular point, that Crawford, essentially, has been violated. 6 THE COURT: So, your position is, it's no present sense impression. Even if it's a present sense 7 impression, it's testimonial. Therefore, the witness 8 should either be unavailable, and it should not be 9 10 allowed. MR. GONZALEZ: Then we get to the 11 unavailability. I've been talking a long time. We 12 13 have no definition. I believe it's defined in 803, somewhere around there. I believe it is defined in 801 14 15 or 803. Now, with that being said, Judge, now, we're 16 going to go before a jury, and we're going to -- Well, 17 the State is going to argue this number is what it is. 18 That it's -- There is proof that it was allowed in. 19 It's proof that that number is the correct number, that 20 21 called the cab company. That's what the State is going 22 to argue. 23 THE COURT: That is right. I would argue, very simply, 24 MR. GONZALEZ: that the only way to correct it, at this point, is with 25 (Colloquy) 177 a curative instruction. If your Honor decides it is --1 if it's hearsay; but there is an exception to it, your Honor can only cure it by an instruction. 4 THE COURT: Okay. MR. GONZALEZ: 5 But I'd ask your Honor, I think, I'll supplement my argument. I'll point out the case law that I provided to you, highlighting 7 everything, and figure it all out, and provide a copy 8 to Mr. Sameiro. 9 10 MR. SAMEIRO: By Friday at four o'clock. THE COURT: In this matter, I'm going to 11 review -- It would have to be tomorrow. 12 MR. GONZALEZ; that is fine. 13 And then I'd like to have your Honor make your decision. 14 15 be part of the charge conference. I think that 16 decision, in and of itself, is paramount in this 17 particular case. 18 THE COURT: That's fine. Then I'd ask for --I would ask for that, along with the State. I will try 19 to compile it with the jury instruction, that we'd all 20 21 have to agree upon, what should be told to the jury. 22 That is the second step. This is the first step. 23 MR. GONZALEZ: That is fine. I just wanted 24 to make that clear. That the original objection, to 25 the number coming in, standing. Now, the additional

(Colloguy)



(Colloquy)

argument, in the way that the testimony came in. That's it, Judge, with regard to that issue.

Now, we can move on to the standing standard. THE COURT: Certainly, I'll deal with any response from the State. I mean, you present whatever information you want. I'm certain the State right now is feeling that it should go in. There is no issue regarding that.

MR. SAMEIRO: I won't take as much time as my adversary, in that there is going to be an issue regarding the admissibility, based upon a change in the testimony, or the proffer, and the objection should have been made on the spot. We should have dealt with it. Now, we're at the point where, the number has been referred to by so many witnesses, including the defense's own witness, who, by the way, can introduce the number as a past recorded recollection.

I was looking at Mr. Rickards. He is in the back there. Because he was talking about all the different means of past recorded recollection, words to that effect, and all the exceptions that apply. And the number has been in front of the jury now. So, I don't really understand the argument about, that it's not hearsay -- excuse me -- that it's not an admissible exception to the hearsay rule, or if it violates

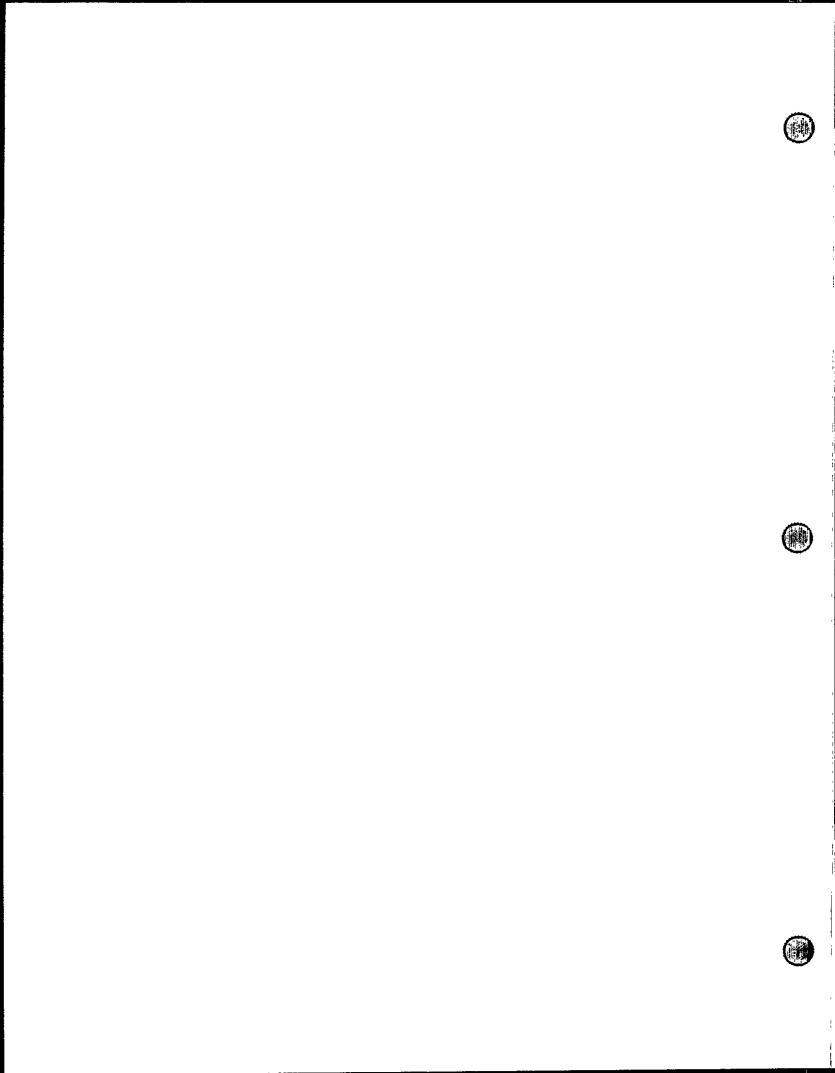
(Colloquy)

1 <u>Crawford</u>. I thought that Counsel would be asking you 2 to strike that case. He didn't do that. That's a 1 ogical remedy to follow. You couldn't do that here, 4 for a variety of reasons. So, since he knows he can't ask for that, based upon how he waived his objection 6 really throughout the case.

MR. GONZALEZ: I didn't.

MR. SAMEIRO: He is trying to ask you now to come up with a limiting instruction. Why he would want to highlight that for the jury, I don't know. But he's trying his case and I'm trying mine. I don't know that there is any reason why that instruction should be given, as to the hearsay exception, because there is a lot of hearsay that came in the case through various exceptions, including the victim's prior statement. I don't think the Court should get into defining why this particular piece of information, as an exception to the hearsay rule, is before them. What are you going to say? That it's not trustworthy? Well, it is. That's why it came in. Counsel hasn't provided a jury charge on that. I would be curious to see how it read.

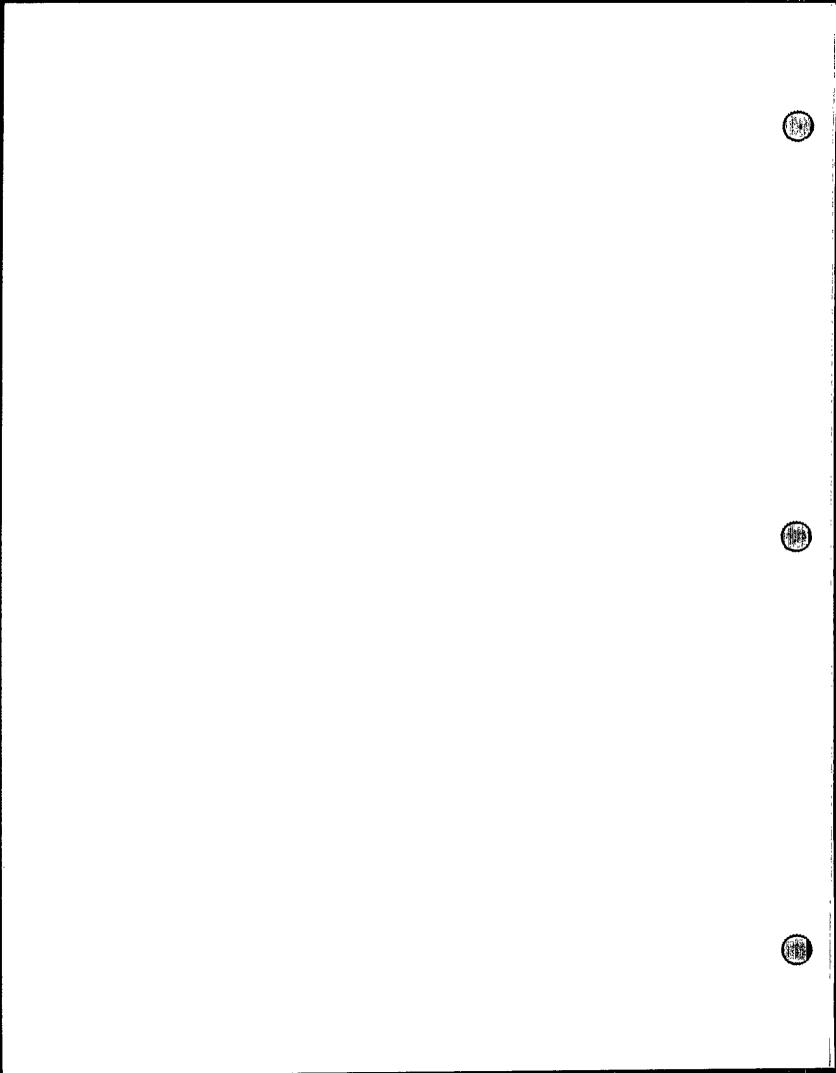
I am telling you that his argument is flawed for two reasons. A, if it's inadmissible, then it should be stricken. He's not asking for that. Now, what instruction could be possibly proffer? None.



But I'll look forward to his proposal. 1 None. Hopefully, I'll get it by tomorrow afternoon. 2 The only other thought, we were discussing 3 this way back when, was that it could come in, that it 4 5 was not being offered for the truth; but for what happened, what action was taken by the police 7 afterwards, based on the phone number. Because the number is out there. It's, obviously, difficult to 8 say, strike it. And it's one scenario, I suppose. 9 my thought was that, where are you going? 10 MR. GONZALEZ: Well, as I noted in the 11 beginning of the trial, I noted that, I said that, the 12 objection is ongoing throughout the trial. 13 There is no question you 14 THE COURT: 15 But what happened, there was new information objected. that came in, in the trial, regarding another layer, so 16 17 to speak. MR. SAMEIRO: Which, by the way, Counsel had 18 failed to mention, included how the victim went back 19 20 and verified it with the actual declarant, that the number existed. He doesn't want to tell you that 21 because that weakens his argument. He verified it 22 23 also. 24 THE COURT: Right. So, the information is It's not fair for me to even suggest that reliable. 25 181 (Colloguy) the jury not be allowed to use that for its substance, 1 to give them any kind of instruction. 2 3 MR. SAMEIRO: I presented to you -- just to simply explain how Officer -- excuse me -- Detective 4 Selesky came up with the information. No, no, that's 5 not fair. I want to link it to the defendant. 7 I understand that. THE COURT: 8 MR. SAMEIRO: That's the issue that you're 9 going to take a look at. THE COURT: I'll have to determine that 10 11 certainly prior to the summations. 12 MR. SAMEIRO: Thank you. 13 MR. GONZALEZ: Thank you. I'm satisfied with the proposed 14MR. SAMEIRO: 15 charges, and the model jury charge selection. the Court will endeavor to fill in the blanks where 16 17 appropriate. If your Honor has an opportunity to 18 reduce these charges to writing, for ease of reading 19 for the jury, then I would appreciate a copy, just to 20 simply read along, and with all due respect, make sure 21 words don't get jumbled, or sometimes inadvertently 22 left out, as sometimes can happen. 23 THE COURT: You know what I'll do, with such 24 a long jury charge, what I can do is this: I am not technologically savvy. I don't do it on the computer. 25

(Colloguy)

180



(Colloguy) I print out the charges. I fill in the blanks. I use 1 arrows. I think it is pretty clear. Frankly, I have to read it. So, I have no problem making a copy of this for both Counsel and Georgeann. So, you can read along with it. I have crossed out the portions that aren't important for us. 7 MR. SAMEIRO: That will work for us. way we can follow along. 8 9 THE COURT: I actually did it in my last That is when we started doing that. 10 trial. MR. SAMEIRO: Simply because you don't want 11 something coming back later. I'd rather deal with it 12 13 I can certainly do that for THE COURT: 14I have no problem with that. 15 Counsel. because I thought I might be doing that, I made my 16 handwriting legible for everybody to read. 17 you're all, so to speak, on notice. 18 I do have the identification in and out of court. 19 That I have. I have the identity, regarding the police photos. But I 20 have enhanced it. We have issues as to the date of 21 birth, place of birth, the address and the phone. 22 other words, how many innocuous items you can get that 23 information from. How they're not supposed to consider 24 that in any way against the defendant. 25 183 (Colloguy) Right. MR. SAMEIRO: 1 2 THE COURT: I took the robbery in the first All of the different forms that are alleged in 3 the Indictment. So, I'll be reading, and/or, any one 4 Then, arguably, it's sort of a 5 of those. lesser-included, in itself, as to the robbery. That it is a crime of the second degree, unless the State 7 alleges it's an armed robbery. So, you start off by 8 reading all the elements of robbery. Then letting the 9 10 jury know, it's a crime of a certain degree. But it's raised to a higher degree, if the State proves that the 11 defendant was armed with a weapon. 12 I'll be reading it right from the charge. 13 And let me ask, Mr. Gonzalez, because of the way the 14 charge is, we have to deal with the indictable first. 15 The jury has to determine whether or not the defendant 16 is guilty or not guilty of armed robbery. From there, 17 18 the lesser-included is the robbery charge. 19 what you wish the Court to include in there?

No, Judge.

I'm sorry?

THE COURT: You just want that straight armed

THE COURT: You wish to include the robbery?

MR. GONZALEZ: We can include the robbery.

MR. GONZALEZ:

MR. SAMEIRO:

20

21

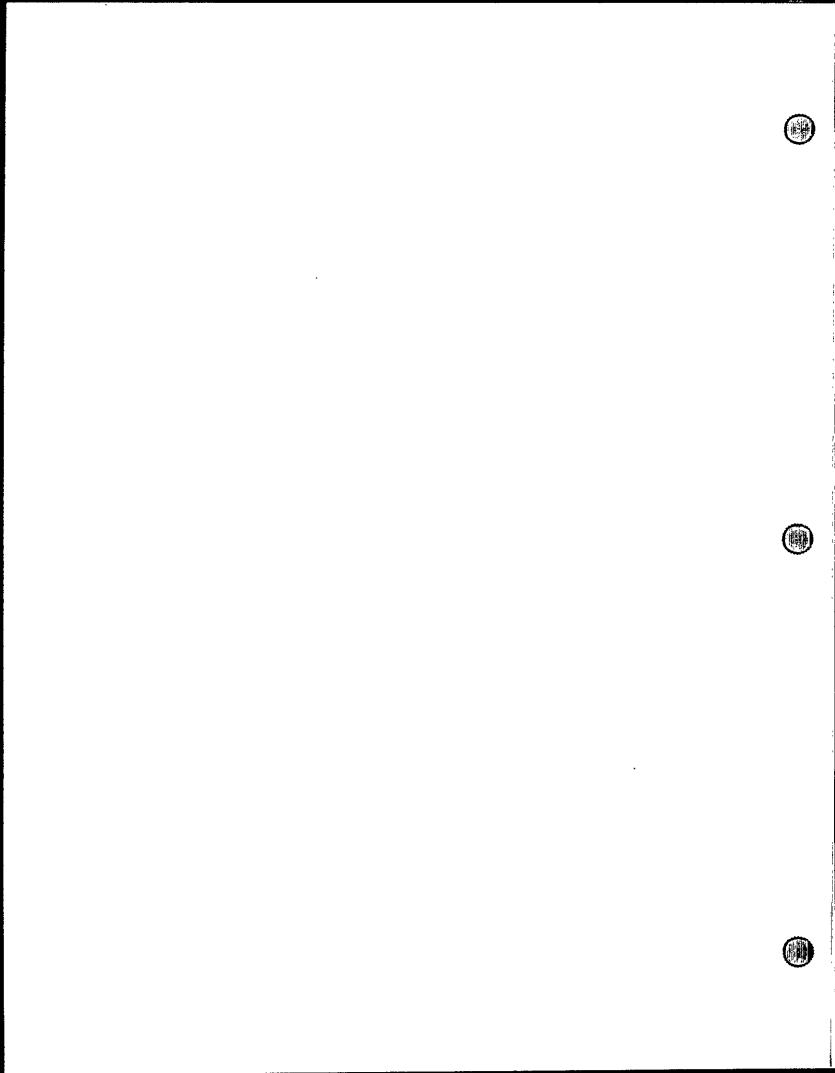
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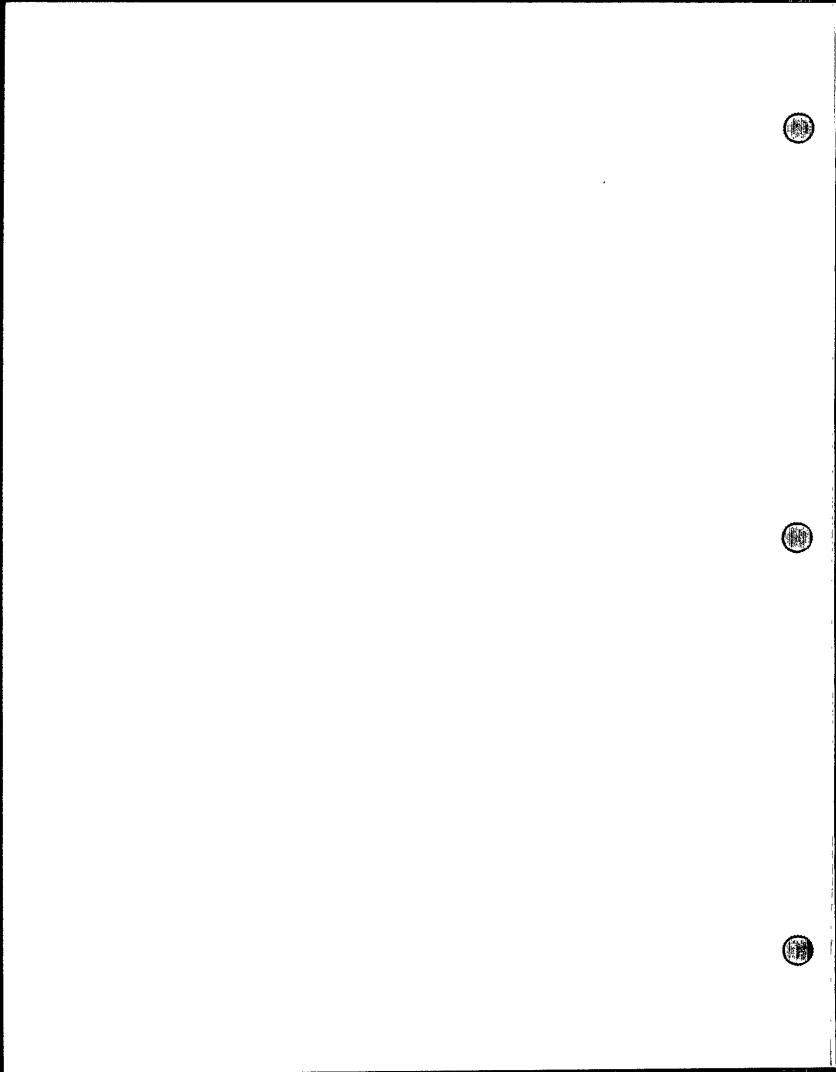
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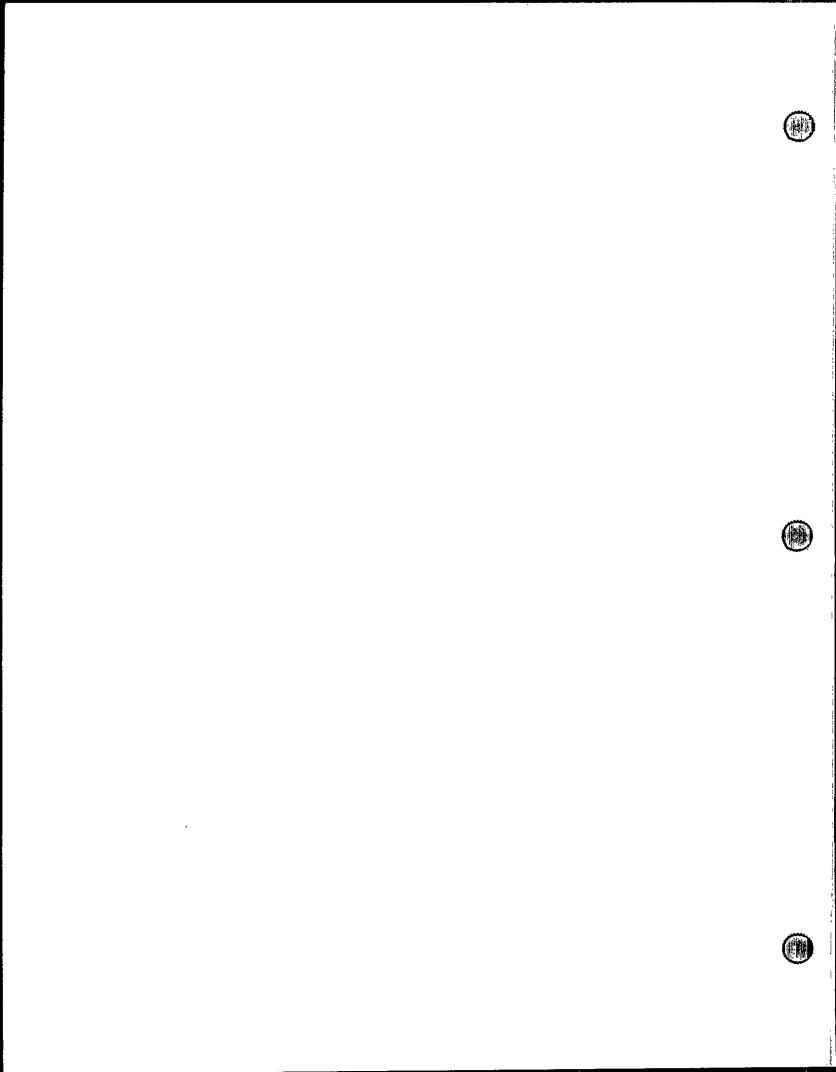
robbery?



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(Colloquy)
                                                           184
   It's kind of assumed.
 1
            THE COURT:
 2
                       That's how the verdict sheet will
          If you find not quilty as to the armed robbery,
   then they would go to the robbery, second degree, and
 5
   consider the robbery.
 6
            MR. SAMEIRO: Right.
 7
            THE COURT: Under the same theory that is
   listed in the Indictment.
 8
 9
            MR. GONZALEZ:
                           Right.
            THE COURT: I'm starting with the robbery,
10
   simply because -- I'm going to do the robbery first.
11
   Conspiracy is based on the robbery. It makes sense.
12
   Only to have to read it to them again. I've given them
13
14
   the charge already on the robbery.
                         It makes sense.
15
            MR. SAMEIRO:
            THE COURT: Now, Mr. Sameiro, there is, in
16
   the conspiracy charge, it says, in order for you to
17
   find the defendant guilty of the crime of conspiracy,
18
   the State must prove, beyond a reasonable doubt, there
19
   is two choices on the conspiracy. That the defendant
20
21
   agreed with another person or persons, that they, or
22 one or more of them, would engage in conduct which
   constitutes a crime, or an attempt or solicitation to
23
   commit such a crime.
24
            The second is that the defendant agreed to
25
                                                           185
                            (Colloquy)
   aid other person or persons in the planning or the
 1
   commission of a crime or of an attempt or solicitation
   to commit such crime. Do you have any requests on
 3
 4
   this?
           MR. SAMEIRO: Well, the second part doesn't
 5
   seem to fit the fact pattern, your Honor, as much as
 7
   the first part.
                        I think the first one is the
 8
            THE COURT:
   more appropriate one. He agreed with another person or
 9
   persons, that they, or one or more of them would engage
10
11
   in conduct.
            MR. GONZALEZ:
12
                           I agree, Judge.
                               That's the one I put down.
13
            THE COURT: Okav.
            So, we'll look forward to that section of the
14
15
   model charge.
16
           MR. SAMEIRO: You are looking forward?
            THE COURT: I'm doing it now.
17
18
           MR. SAMEIRO:
                          Thank you.
19
           MR. GONZALEZ:
                           Thank you.
20
            THE COURT: I'll just put a squiggly line
21 through it. Okay.
                       Let's see. There is nothing else.
22
   Count three is gone. We don't have count three.
23
   Possession of a weapon for an unlawful purpose.
                                                     It
24
   speaks for itself. There is nothing additional. And
25
   I'm inserting the robbery charge on the possession.
```



```
(Colloguy)
                                                           186
   would have charged them on the possession as to count
 1
           Now, I don't have to do that.
 2
   three.
 3
            Okay.
                  I took the possession charge from the
                   The possession of the qun.
   model charge.
 5
            MR. GONZALEZ:
                           That's right.
 6
            MR. SAMEIRO:
                          Right.
 7
                       Then there is the theft.
            THE COURT:
   crossed off all of the things that don't apply to us.
 8
 9
            MR. SAMEIRO: Then there is the movable
10
   property.
            THE COURT:
                        The theft of movable property,
11
   money, and/or other goods. Then I will tell them about
12
   the gradations.
13
14
            It's the cell phone, the money. He said five
   hundred dollars.
15
            MR. SAMEIRO: Five hundred dollars in cash, a
16
   chain, a cell phone. Valued at about thirty dollars.
17
   The cell phone and the chain and the ID card.
18
19
   identification card which probably has an extrinsic
20
            It was also taken.
   value.
21
            THE COURT:
                        Those four things I have listed
   as to the theft, in the gradation.
22
23
            Now, the terroristic threats. Count six is
24
   the one I want to look to.
            Count six, the terroristic threat charge.
25
                                                            187
                            (Colloguy)
   Did threaten to inflict serious bodily injury.
                                                    That
 1
   being the aggravated assault against Wilmer Cedillo.
   Now, the way that it's charged, I really have to read
   them the aggravated assault. I pulled the aggravated
 4
   assault charge. I will read them the entire
 5
   aggravated assault charge. That is really the only way
 7
   I can go, based on how it is charged.
                                           I don't think
   there is anything additional in here.
 8
 9
            MR. SAMEIRO:
                          I agree with that, Judge.
            THE COURT: And then the final one is the
10
   terroristic threat, threat to kill.
11
12
            MR. SAMEIRO:
                         Right.
13
                       Which is, again, I pulled that
            THE COURT:
   right from the model charge. I don't think that
14
15
   anything additional needs to go in there.
                                               On the
16
   verdict sheet, I will just put those two.
17
   distinguish the aspects of the terroristic threats.
18
   Otherwise, they won't know which one is which.
19
            I will put the wording from the Indictment in
20
   there to distinguish them. One will be threat to kill.
21
   The other one, purpose to terrorize. I will put the
22
   words right from the Indictment.
23
            Anything that I missed? That you can think
24
   of right now?
25
            MR. SAMEIRO:
                               I have a request about the
                          No.
```



```
(Colloguy)
                                                      188
        THE COURT: Sure.
        MR. SAMEIRO: I've seen a lot of them over
the years. Not guilty versus guilty. I thought if
we'd flip it, from trial to trial. Switch the order.
Being guilty and then not guilty.
                      Judge, I would say, do what
you normally do, not guilty and then guilty.
        THE COURT: I don't have a normal way of
           I think we end up with not guilty, guilty.
I never thought anything of it, one way or the other.
I do know one thing, whatever I do, it's got to be
consistent. I'll take a look at it.
                      We can flip a coin.
        THE COURT: Counsel, the way it is actually
set up is, "not guilty, guilty." I think my secretary
has already done it. I don't think the order is that
important, Mr. Sameiro.
        MR. SAMEIRO: All right. Not guilty and
        MR. GONZALEZ: I don't see any reason for a
        THE COURT: I think I already have it as "not
guilty, guilty." I'll take a look at it. I'll keep an
                                                      189
                       (Colloguy)
        So, nothing else, other than I'm going to --
I probably -- I don't know if I have them now -- Let me
give you the verdict sheets. Are you going to be here
                       Provided that the weather is
                      Okay, Judge.
```

4 tomorrow? 5 MR. GONZALEZ: okay, Judge. 7 THE COURT: If not, I can FAX a copy of the You can leave us your number. 8 verdict sheet. 9 MR. GONZALEZ: MR. SAMEIRO: Will you have a decision, 10 whether you want the DVD to go into the jury with the 11 one redaction? I ask that we allow that to happen. 12 The only portion that really they haven't seen is that 13 preamble by the officers. And Mr. Gonzalez knows what 14 I'm talking about. I would eliminate that. 15 THE COURT: No problem with that, Mr. 16 17 Gonzalez? 18 MR. GONZALEZ: No, Judge. 19 We have copies of the DVD just in THE COURT: I just want to make sure there is copies of the 20 case? 21 DVD that exist. MR. SAMEIRO: They do exist. I went to find 22 23 mine last night. I would ask the Court Clerk to give

me S-1 back, so, I could make a duplicate. I think

verdict sheet.

doing it.

guilty is fine.

it's in Evidence.

change.

open mind.

MR. GONZALEZ:

MR. SAMEIRO:

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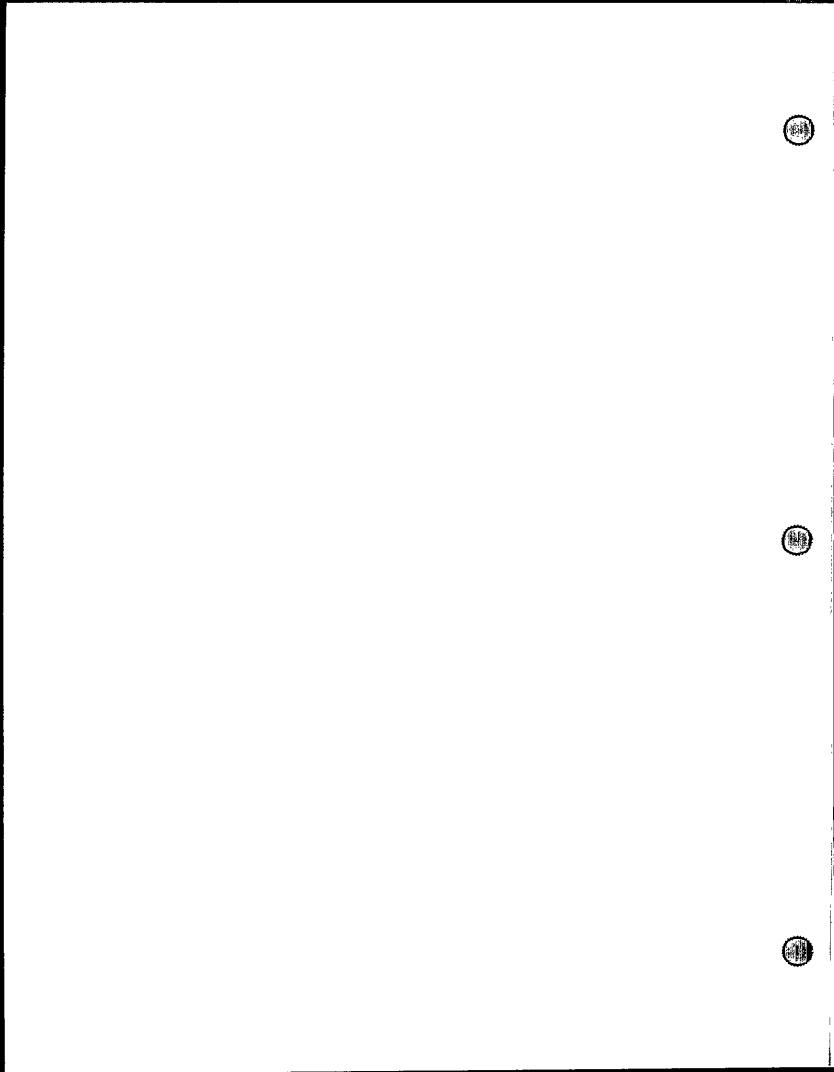
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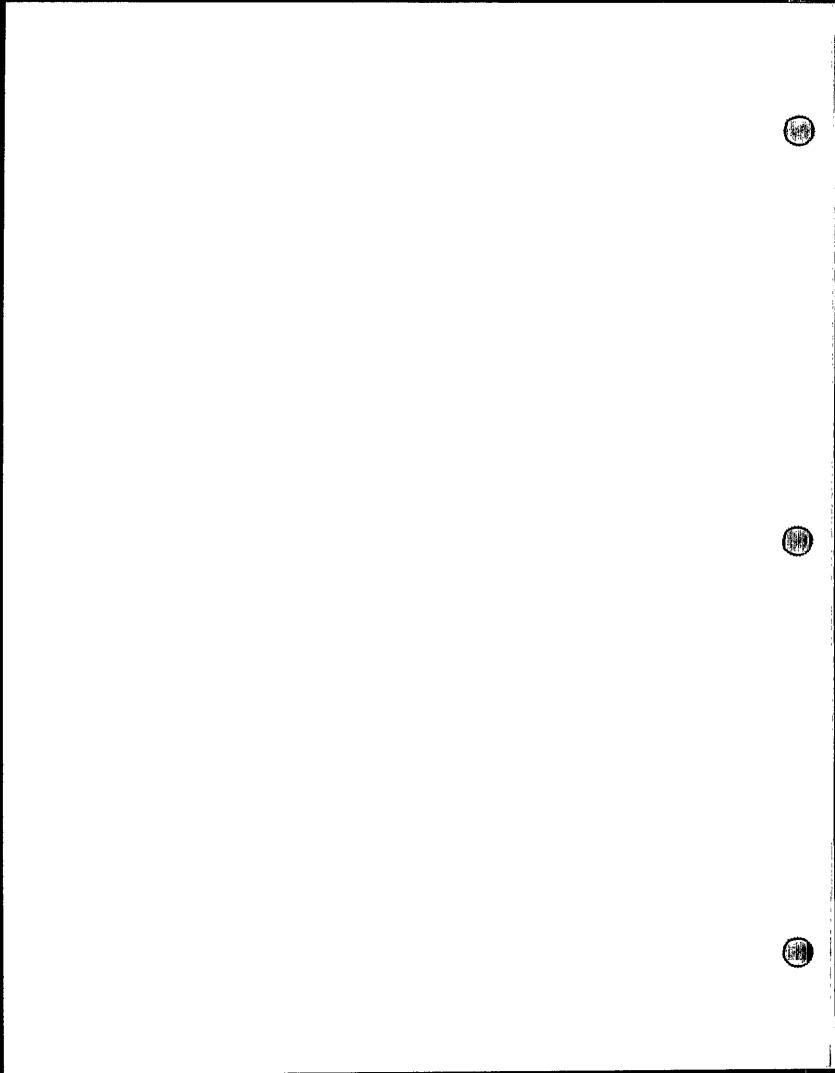
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3

24 25



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190
                           (Colloguy)
           THE COURT: You need to take her's?
 1
           MR. GONZALEZ: It's on my computer; but I
 2
   don't have it here. My feeling is, as long as there is
 3
   a copy, there is an exact copy --
           MR. SAMEIRO:
                         I'll deal with it tomorrow.
 5
   I don't get it from the Evidence Unit, then I can come
   over here, and just burn a copy real quickly, so, as
 7
   not to compromise the evidence.
 8
           THE COURT: It will be right here.
 9
           MR. GONZALEZ: I prefer that it stay in
10
   Evidence. And I will give him my copy. You never know
11
   what can happen to the evidence in the interim.
12
13
           THE COURT: That's fine.
           MR. SAMEIRO: When would you give me your
14
15
   copy, Counsel?
           MR. GONZALEZ: I can do it like tomorrow.
16
17
           MR. SAMEIRO: I will be here, Mr. Gonzalez.
           THE COURT: Mr. Sameiro will be here. Okay.
18
   A copy of the verdict sheet will be here. I will give
19
20
   it to you.
           MR. SAMEIRO: Okay. If I don't get his copy
21
22
  by lunchtime, I will come and get the Clerk's copy. I
   can't wait all day for the DVD.
23
                          I don't think you can touch
           MR. GONZALEZ:
24
  the evidence without the Court's permission.
25
                                                          191
                           (Colloquy)
  Counsel is involved in gamesmanship.
 1
 2
           MR. SAMEIRO: Gamesmanship?
           MR. GONZALEZ:
                          That's true.
 3
           MR. SAMEIRO: That's an insult --
 4
           THE COURT: Are you here tomorrow?
 5
 6
           MR. SAMEIRO: -- from a man who doesn't know
 7
   that he gets smacked every time he pulls a stunt with
   this jury. We have already seen what his games are
 8
          And, now, he's trying it again.
 9
            THE COURT: Here's the thing.
10
                                           I don't want
   to compromise any evidence. I certainly don't want the
11
   DVD going in there if we don't have an accurate
12
   back-up, just in case the jurors do something in there
13
14
   to the DVD. You're here tomorrow?
           MR. GONZALEZ: I should be, yes. Absent any
15
  weather problems.
16
17
           THE COURT: That is probably with all of us.
18
           MR. GONZALEZ: I've got matters.
19
           THE COURT:
                      You have some matters?
20
           MR. GONZALEZ:
                          We have matters scheduled.
           THE COURT: Then when you come in tomorrow,
21
  bring in a copy. If not, we'll go from there.
22
23
   you can bring your copy in, so, we can make certain
24
   that we have the best case scenario. We will certainly
25
   be watching the weather. Hopefully, it won't be an
```



	(Colloquy) 192
1	issue. If you're here tomorrow, we can make a copy of
2	the DVD.
3	MR. GONZALEZ: All right.
4	THE COURT: So, we'll see you tomorrow then.
5	MR. GONZALEZ: Thank you.
6	MR. SAMEIRO: Thank you.
7	THE COURT: Thank you.
8	(Whereupon, the hearing concluded for the
9	day.)
10	
11	
12	
14	
15	
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17	
18	
19	
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21	
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25	

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

Date: FEBRUARY 10, 2010

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