



Appellate...:	<b>A</b>
Case No.....:	<b>003047</b>
Year.....:	<b>09</b>
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A-3047-09T2

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

STATE OF NEW JERSEY,

Complainant,

vs.

PABLO MACHADO,

Defendant.

Transcript of Proceedings  
(Trial - Vol. III)

(With an Interpreter)

FILED  
APPELLATE DIVISION  
APR 15 2010

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

Date: DECEMBER 18, 2008

**B E F O R E:**

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

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

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

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

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

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**SUPERIOR COURT**  
OF NEW JERSEY

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



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I N D E X

State Witness                      Direct    Cross    Redirect    Recross

AGENT JOHN SELESKY

By Mr. Sameiro                      12  
By Mr. Gonzalez                      49

Defense Witness                      Direct    Cross    Redirect    Recross

PATROLMAN EDWARD BOBADILLA

By Mr. Gonzalez                      103                      144  
By Mr. Sameiro                      122

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E X H I B I T S

<u>Number</u>		<u>Ident.</u>	<u>Evid.</u>
S-2-A	Six Photos		40
D-16	Grand Jury Transcript	73	
S-2-B	Photo Line-Up Names		149
S-3	Spanish Photo Display Instructions		150
S-4	English Photo Display Instructions		150



(Colloquy)

4

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

3 THE COURT: Let's bring up the defendant. I  
4 think that we are ready to go on the trial.

5 Thank you, folks. Please have a seat.

6 All right. Did somebody have something?

7 MR. SAMEIRO: Yes, Judge. Before we begin  
8 today, my witness is outside ready to go. I just  
9 wanted to bring up one issue. There was a statement  
10 taken from the defendant in this case. It was  
11 recorded. I'm going to ask that the defense attorney  
12 not be allowed to say whether any statements were taken  
13 from his client.

14 It will only lead to speculation on the  
15 jury's part. It's not relevant. The fact that the  
16 statement was given -- was taken was not relevant. I  
17 don't intend to offer it. It's self-serving. It's  
18 clearly hearsay, if the defendant were to try to get it  
19 in himself. So, since he can't offer it, since I'm not  
20 offering it, I don't think the jury should speculate,  
21 as to what the defendant said to the police.

22 THE COURT: Okay. All right.

23 MR. SAMEIRO: It would clearly be confusing.  
24 I don't need to argue 403.

25 So, I'm saying the fact that the statement

(Colloquy)

5

1 was taken of the defendant is not relevant to the  
2 proceedings.

3 THE COURT: Okay. Mr. Gonzalez?

4 MR. GONZALEZ: I don't think I need to get  
5 into the statement, quite frankly. It is not an issue  
6 for us. I don't need to ask the question. Although I  
7 could. I think I could. But I'm not going to.

8 THE COURT: Okay.

9 MR. GONZALEZ: I don't think I'm going to,  
10 legally speaking, ask the question to Detective  
11 Selesky. "You had an opportunity to speak to Mr.  
12 Machado; correct? And he denied committing any  
13 robbery; correct? Yes."

14 THE COURT: Well, that is clearly  
15 objectionable. That's the problem. It's a hearsay  
16 statement, because it certainly doesn't fit an  
17 exception. It is not an admission, in the sense of,  
18 him saying, he did something wrong. It doesn't come in  
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



1 objectively, with an out-of-court statement, being  
2 offered for the truth, there is no exception.

3 MR. SAMEIRO: It normally comes in under an  
4 admission. It is usually inculpatory, if it comes in.

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: Okay.

10 MR. SAMEIRO: Only I can bring that in as  
11 Mr. Machado's opponent.

12 MR. GONZALEZ: I didn't need nothing there,  
13 Judge.

14 MR. SAMEIRO: I'm asking to bar any questions  
15 whatsoever concerning any statement taken, any  
16 interview, regardless of what the answer is. Because  
17 if he asks the question, "did you speak to my client,"  
18 that fact is irrelevant. It only leads the jury to  
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.

25 THE COURT: It shouldn't be asked.

1 MR. GONZALEZ: I would like you also, at this  
2 time, to instruct the State, to instruct Detective  
3 Selesky, that there should be no mention of subsequent  
4 arrests.

5 MR. SAMEIRO: It's been done.

6 MR. GONZALEZ: I want it to be clear, so,  
7 that he doesn't slip. I want him to be told that.

8 THE COURT: Okay.

9 MR. GONZALEZ: That there is no question  
10 concerning how they got that pedigree information.

11 THE COURT: Right. They got the information.  
12 It existed there.

13 MR. GONZALEZ: That no arrest had been made.

14 MR. SAMEIRO: Judge, if you allow me to lead  
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. "And  
18 the police department had an interaction with the  
19 defendant on June," whatever date it was. 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 MR. GONZALEZ: I don't even think that needs  
24 to be done. The information was gathered from Mr.  
25 Machado. His address was 400 Lee Avenue.





(Colloquy)

8

1 THE COURT: I think that's fine.

2 MR. SAMEIRO: But it came from his own lips,  
3 your Honor. That's how they got the information.

4 THE COURT: Right.

5 MR. SAMEIRO: I told Counsel what I intended  
6 to do. If he didn't care about how I would prove it,  
7 that's why you have all these officers on the witness  
8 list.

9 MR. GONZALEZ: He can't prove it anyway,  
10 Judge. It would be prejudicial.

11 MR. SAMEIRO: You're missing the point. Your  
12 client told the police, through his own lips, what the  
13 phone number was, and where he lived. I don't want the  
14 jury to speculate as to how the police obtained the  
15 information.

16 THE COURT: Okay.

17 MR. SAMEIRO: They got it through their  
18 investigation. That argument might be correct in a  
19 certain sense. I don't know if it is going to be or  
20 not. Because it's an arrest report. But Officer Chang  
21 went through it, because I spoke to him for trial prep.  
22 I know this defendant told the police officers what  
23 information to put in, in the pedigree portion of the  
24 arrest report.

25 MR. GONZALEZ: At some point, Officer Chang

(Colloquy)

9

1 had an interaction with --

2 THE COURT: Wouldn't that be hearsay? Since  
3 we don't have Chang as to the pedigree?

4 MR. SAMEIRO: That is why I suggested, early  
5 on, you can tell this jury, that, you know, police  
6 comes into contact --

7 THE COURT: I intend to tell them that, for a  
8 variety of reasons. They could be witnesses to a  
9 crime. They could be victims. They could be anything  
10 else that you can think of, that's not a defendant.  
11 There is a whole list of things.

12 Just like you would do with a mug shot  
13 charge. I mean, we went over --

14 MR. SAMEIRO: I don't know why it's now an  
15 issue for Mr. Gonzalez. I don't intend to poison the  
16 case, and re-try it, you know, because there is a slip.  
17 I just don't want any slips.

18 MR. GONZALEZ: I'm just cautioning the State  
19 not to go into it.

20 THE COURT: He already indicated that he  
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



1 in now and put it on the record. I know he's here.  
2 THE COURT: That's fine.  
3 MR. GONZALEZ: Thank you.  
4 THE COURT: Can you bring in Officer Selesky?  
5 MR. GONZALEZ: You never know.  
6 MR. SAMEIRO: I don't have a problem with  
7 that.  
8 THE COURT: Okay.  
9 (Whereupon, Officer Selesky enters the  
10 courtroom.)  
11 MR. SAMEIRO: It's Agent Selesky?  
12 THE WITNESS: Yes.  
13 MR. SAMEIRO: Since 2007?  
14 THE WITNESS: Yes.  
15 MR. SAMEIRO: State your name for the record,  
16 sir.  
17 THE WITNESS: John Selesky.  
18 MR. SAMEIRO: In a moment, the Judge is going  
19 to instruct you on something.  
20 THE COURT: Agent Selesky, I think that Mr.  
21 Sameiro already spoke to you regarding this. But there  
22 is the subsequent arrest of Mr. Machado.  
23 THE WITNESS: Yes.  
24 THE COURT: I think what we're going to do, I  
25 think he already told you, he didn't want you to get

1 into the facts of the arrest, and anything along those  
2 lines.  
3 THE WITNESS: Absolutely.  
4 THE COURT: I think what is going to happen  
5 is, the Prosecutor will probably lead you through that  
6 part. I just want to kind of underscore, that nothing  
7 be mentioned regarding that arrest.  
8 THE WITNESS: Oh, absolutely, yes.  
9 THE COURT: I wanted to put that on the  
10 record. I think he was also concerned, to make sure  
11 that nothing will come out about the arrest. And you  
12 will be leading through the area. To the extent that  
13 S-8 has previously been marked, it will be shown to the  
14 witness.  
15 MR. SAMEIRO: But neither one of us will  
16 define it, or describe it as an arrest report. It's  
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.  
23 MR. SAMEIRO: I don't need an entrance. He  
24 can sit right there.  
25 THE COURT: Okay. Let's bring the jury in.



1 (Whereupon, the jury enters the courtroom.)

2 THE COURT: Good morning, everyone.

3 THE JURY: Good morning.

4 THE COURT: State?

5 MR. SAMEIRO: Thank you, your Honor. The

6 State would like to call Agent John Selesky to the  
7 stand.

8

9 A G E N T J O H N S E L E S K Y , called as  
10 a witness on behalf of the State, being duly sworn,  
11 testifies as follows:

12 DIRECT EXAMINATION BY MR. SAMEIRO:

13 Q Agent, I stand here, so, everybody can hear  
14 you. I don't know if the mike is on. But you have got  
15 a loud enough voice to project. Please do. Okay?

16 A Yes.

17 Q Now, can you first tell the members of this  
18 jury where you are employed?

19 A I am employed by the Middlesex County Prosecutor's  
20 Office.

21 Q In what capacity?

22 A I'm an Agent with the Office.

23 Q How long have you been with the Office?

24 A Since April of '08.

25 Q Prior to being hired by the Prosecutor's

1 Office, did you have another job?

2 A Yes. I worked with the New Brunswick Police  
3 Department.

4 Q What did you do for them?

5 A When I retired I was a Detective in the Major  
6 Crimes Unit.

7 Q How long were you a police officer with New  
8 Brunswick?

9 A I was a police officer 28 and a half years.

10 Q Did you work with any other law enforcement  
11 agencies?

12 A No, just those two.

13 Q How long were you a Detective in Major  
14 Crimes?

15 A Since 1989. So, 18 yeas.

16 Q 18 of your 28 years, as a Major Crimes  
17 Detective?

18 A Yes.

19 Q Explain to the members of the Grand Jury,  
20 what is a Major Crimes Detective?

21 A A Major Crimes Detective is assigned to follow-up  
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.



1 Basically, we, ultimately, may get the case. If there  
2 is a complaint or something, it will go to trial.

3 Q Have you received any specialized training to  
4 do that kind of work?

5 A Yes.

6 Q What type of training?

7 A I received extensive training in homicide  
8 investigations, criminal investigations, all sorts of  
9 different classes run by the State Police, FBI, private  
10 institutions.

11 Q Take any kinds of courses that deal with  
12 interrogations or witness interviews?

13 A I never had a specific course on how to do  
14 interrogations or interviews. Although there are  
15 courses that contain that curriculum.

16 Q What about anything on photo arrays? Did you  
17 ever take any instructions as to that?

18 A Yes, I did.

19 Q What's the most recent instructions that you  
20 received in that field?

21 A I received instructions through the Middlesex  
22 County Prosecutor's Office a few years ago, when the  
23 State -- the Attorney General's Office came out with  
24 the guidelines as to how to conduct the photo array  
25 investigation.

1 Q Now, referred to as the AG guidelines?

2 A Yes.

3 Q These guidelines, these AG guidelines, really  
4 have to do with, when it comes to the photo array  
5 procedures?

6 A Yes. They're a couple years old.

7 Q What are those guidelines? How do you  
8 understand them? What do they mean?

9 A Initially, guidelines, that you were to have an  
10 independent person, who has nothing to do with the  
11 case, show a victim, a witness, photographs, if you  
12 have developed a defendant or a suspect. That person  
13 -- initially, it was done, or the initial process was  
14 that the person would read them instructions, and  
15 present the pictures one at a time, to see if there is  
16 an identification made based on the -- If there is an  
17 identification made, the officer, who is showing the  
18 pictures, was supposed to write down comments made by  
19 the person, who was shown the pictures.

20 We then have to have the person sign it, to  
21 memorialize which picture was picked out. And, you  
22 know, basically after -- First, he would read him the  
23 form. 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.





1 The Attorney General didn't require it until, not too  
2 long ago. Now, we have started videotaping it.

3 Q What is the purpose of the videotape?

4 A The videotape is to, basically, capture the  
5 procedures, the reaction of the victim, you know, the  
6 actions of the officers, et cetera.

7 Q When you say the reaction of the victim or  
8 the witness, are you talking about the body language or  
9 the demeanor that may be shown?

10 A Plus what they say when an ID is made.

11 Q Excuse me?

12 A Plus what they say. Many times when photo arrays  
13 are done, no identification is made. That is the end  
14 of it. But plenty of times there is an identification  
15 made.

16 Q Before we even get to the instructions and a  
17 videotape, an actual photo array has to be put  
18 together?

19 A Correct.

20 Q How is it done? Explain the methodology.

21 A Well, once we develop a person of interest, I'll  
22 say, that's the term I'll use.

23 Q You can say suspect.

24 A Suspect. What we will do is, first, we have a  
25 photograph of that person. The New Brunswick Police

1 Department has a computer system. It has actually  
2 changed over since then to a new system, a better  
3 system, where you would put that person into the  
4 system, and then it would, based on height, weight,  
5 physical characteristics, age, et cetera, it would  
6 develop a pool of pictures that you can go through.

7 Q These photographs can come from such sources  
8 like passport photos, driver's license photographs;  
9 right?

10 A Yeah. Right.

11 Q In fact, if you wanted to, you could access  
12 the New Jersey DL database, and get photos?

13 A Yes.

14 Q From people like me?

15 A Yes. Yes.

16 Q So, getting a photo of a suspect is not very  
17 difficult?

18 A No.

19 Q And you would, of course, start with that;  
20 right?

21 A Right.

22 Q Then what would you want to do with the other  
23 photographs?

24 A Well, the way it works -- I've been doing photo  
25 arrays for a long time. I am very particular in what



1 they are going to look like. I want to get five other  
2 persons that are similar to the person whom I'm  
3 showing, in regards to age, height, weight, hair,  
4 facial hair sometimes is a little difficult, depending  
5 on the picture. I want to make sure that they're all  
6 similar backgrounds. It's hard sometimes, because,  
7 depending on who takes the pictures, what color the  
8 background is. We try to mix up various backgrounds.  
9 All the same background, a couple of each. We try to  
10 mix that up. Then what we do, after we put the photos  
11 together, we have it printed out. And then, basically,  
12 we call an Assistant Prosecutor, who we use as our  
13 advisor, to get approval for the photos.

14 Q You have to do it now pursuant to the  
15 guidelines?

16 A Yes.

17 Q Both you and the Prosecutor are really  
18 looking into really just one aspect with respect to the  
19 photos?

20 A That is, what's the closest. That there is  
21 nothing suggestive. Now, we don't want to -- We don't  
22 want the person, that we're looking at, to stand out in  
23 the pictures.

24 Q So, that's why, just to use an example, if  
25 you had an Asian American, who was your target or your

1 suspect, you wouldn't put that photograph with five  
2 other Caucasians?

3 A Correct.

4 Q Because that Asian American would stick out?

5 A Correct. We have other sources to get photographs  
6 from. You know, agencies, other agencies, that we can  
7 get photos from.

8 Q Right. So, you've had training with respect  
9 to the photo array procedures, and the new AG  
10 guidelines; correct?

11 A Yes.

12 Q How many photo array identification  
13 procedures, actual ones, would you say you were  
14 involved with over your history as a career Detective  
15 of Major Crimes?

16 A Oh, hundreds.

17 Q You take statements from people, too; right?

18 A Yes.

19 Q How many times have you taken statements from  
20 people? I'm talking about witnesses.

21 A Thousands.

22 Q Victims?

23 A Thousands of statements.

24 Q Are they are always memorialized in audio or  
25 video?



1 A Yeah. You can do it also -- We used to -- We  
2 still do with the victims or witnesses. We use a  
3 cassette player. We memorialize it using cassettes as  
4 well.

5 Q What about with walk-in's? People who come  
6 to the police station, and want to tell the police  
7 something happened, are those statements, if you will,  
8 recorded?

9 A No.

10 Q Why not?

11 A Well, because the initial officers, basically,  
12 will talk to the person, to see what's going on. He  
13 will, basically, write down what the person told him in  
14 a report, which would then be forwarded to the  
15 Investigation Division, to follow up on.

16 Q That is your job?

17 A We would follow up on the investigations.

18 Q So, what's the purpose of the initial report  
19 then?

20 A To memorialize what the victim or witness said  
21 happened, basically.

22 Q Intended to be a brief summary?

23 A Yes.

24 Q Were you employed by the New Brunswick PD in  
25 April of 2007?

1 A Yes.

2 Q At around this time, let's say about the year  
3 2007, how many cases would you say New Brunswick  
4 averaged? How many kinds of calls? We're not talking  
5 just major crimes. We're talking about, you know,  
6 reports of cats up a tree, and things like that. How  
7 many times would members of the New Brunswick Police  
8 Department be called out to do anything?

9 A Well over fifty thousand, I would say, at the low  
10 end. I'm not sure exactly. I know the years I worked  
11 in the police department, there was in excess of  
12 seventy thousand police calls per year. It is  
13 computer-generated now. It's broken up; but in the  
14 scheme of things, New Brunswick Police Department  
15 probably handles like fifty thousand calls minimum.

16 Q So, it's a busy department?

17 A Yes.

18 Q How many people are employed, let's say, were  
19 employed, back in 2007 as officers, just on average?

20 A I'd say -- I'd say in 2007, probably a hundred  
21 thirty-five, a hundred thirty-six officers employed.  
22 That includes Sergeants, Lieutenants, Captains,  
23 Patrolmen.

24 Q Were most of those officers out on patrol?

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



1 numbers.

2 Q So, the other half are Investigators?

3 A Between Investigators, Sergeants, Lieutenants,  
4 Captains, yeah.

5 Q Sergeants and Captains?

6 A Right. They patrol as well.

7 Q All right. So, New Brunswick is a busy city?

8 A lot of police officers. Fifty or sixty thousand  
9 cases came in roughly in 2007; right?

10 A Yes.

11 Q And is it common for people, in this city, to  
12 walk in and report an incident as a victim?

13 A Yes.

14 Q What would be the procedure, if a person came  
15 in and reported an incident, and didn't speak English?  
16 Let's say a Spanish-speaking person?

17 A Well, the Sergeant on the desk -- If you walked in  
18 the front door of the building, there is a Desk  
19 Sergeant there, behind a glass window. He, basically,  
20 runs the shift. And if somebody would walk in, to  
21 report a crime, if he didn't speak English, he would  
22 call an Officer who knows Spanish, to come in and speak  
23 to them.

24 Q Do you have a lot of Spanish-speaking  
25 Officers as members of the New Brunswick PD?

1 A We have a few. I'm not sure of the number; but  
2 there is a few.

3 Q Do you know if that was done on a case  
4 involving an armed robbery, by a person named Wilmer  
5 Cedillo, who actually reported the crime on April 24,  
6 2007?

7 A Officer Edward Bobadilla took the report. I'm not  
8 sure how he was contacted. However, he does speak  
9 Spanish, and was the person who took the report from  
10 the victim.

11 Q So, you knew about that?

12 A Yes.

13 Q You weren't there at the time, I take it?

14 A No.

15 Q How did you find out about the initial  
16 reports?

17 A 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. I  
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.  
24 Detectives usually work until twelve or one o'clock in  
25 the morning, depending on the shift. Usually





1 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.  
4 Review those reports, see what type of incident  
5 happened in the city. If something happened that  
6 needed to be followed up, a Detective would pick up the  
7 report, and do what they had to do to follow it up.

8 Q So, say you're sitting at your desk -- right  
9 -- it's April 24th or April 25th -- and that crossed  
10 your desk. It's been marked S-5?

11 A Yes.

12 Q You recognize what that is?

13 A Yes.

14 Q What is that?

15 A It's an initial report, done by Officer Edward  
16 Bobadilla, an investigation report, dated 4/24/2007,  
17 with the victim's name, Wilmer Cedillo.

18 Q Not the first time you've seen the report;  
19 correct?

20 A No.

21 Q So, back in April, that report crossed your  
22 desk. You read it. You knew that an armed robbery  
23 took place. It was up to you to try to figure this one  
24 out?

25 A Yes.

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.

5 Q You remember what you did after you got that  
6 report in an effort to find out who robbed Mr. Cedillo?

7 A Well, I read over the report. In the report,  
8 there is a phone number that Officer Bobadilla wrote in  
9 the report, concerning a cab driver's phone call. I  
10 looked it up. The New Brunswick Police Department has  
11 an in-house computer system, if anybody on the jury, or  
12 anybody here reports a crime, an incident, an accident,  
13 a lost cat, things like that. If there is a report  
14 done, or this dispatcher takes your information over  
15 the phone, it's put in the CAD System or the computer  
16 system, where --

17 Q CAD stands for Computer Automated Database?

18 A Yes.

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



1 computer?

2 A That phone number is contained in the computer  
3 system. What I did, I took the phone number on the  
4 report, I put it into the system, and that came back to  
5 the phone number.

6 Q Because that number was significant to you;  
7 right?

8 A Yes.

9 Q What's the number that you looked into?

10 A The number that is in the report, that I looked  
11 into, was 732-801-5418.

12 Q This report also briefly describes the  
13 episode, the account of the episode; correct?

14 A Yes.

15 Q Anything indicated in the report that led you  
16 to identify the person by name, other than the actual  
17 phone number?

18 A No.

19 Q You just had a general description of the  
20 people who were involved in the robbery; correct?

21 A Yes.

22 Q That's not enough to put a photo array  
23 together?

24 A No.

25 Q At least, not in this case?

1 A No, we didn't know anything about who did it.

2 Q All right. So, initially, your results, from  
3 your own internal database, came back negative?

4 A Negative.

5 Q What, if anything else, did you do with the  
6 information in order to solve the crime?

7 A One of the tools we use is a Grand Jury subpoena.  
8 I filled out a form, contacted a Sergeant from the  
9 Prosecutor's Office, got approval from our local  
10 Prosecutor, to subpoena this number, gave it to the  
11 Agent. Actually, the Agent got the approval. I should  
12 say the Agent got the approval. She filled out a  
13 subpoena. That goes to the phone carrier. There are  
14 tools that you can use on the internet to figure out  
15 what phone carrier it is.

16 A lot of these companies, they'll say if it's  
17 Sprint or Nextel. There are a number of other  
18 companies. What you do, through the subpoena process,  
19 you pretty much eliminate the companies that it isn't.  
20 Then you pretty much come down to the company that it  
21 is. In this case, it was Movida, I believe. It was a  
22 small phone company. I'm not sure even where they're  
23 at. We send the subpoena to the company, to see who  
24 the subscriber was for the phone number.

25 Q It's not necessarily to trace a phone number



1 on that initial date; correct?

2 A No.

3 Q But it can be done?

4 A Yes.

5 Q So, you were diligent in looking for the  
6 subscriber information as to the phone?

7 A Yes.

8 Q By that we mean, the name and the person who  
9 might be on the account?

10 A Yes.

11 Q The name and address of the person who might  
12 be on the account?

13 A Correct.

14 Q Did you determine what kind of telephone  
15 account that was, ultimately?

16 A It's a pay per account. It's where you buy the  
17 phone, and you get a certain number of minutes.

18 Q Anybody can go out and get a phone like that?

19 A You can get them anywhere. I'm sure like Radio  
20 Shack, K-Mart, Wal-Mart, everybody sells them.

21 Q It's not like calling up Sprint for a land  
22 line phone? Either Sprint or Verizon?

23 A All the major companies have the pay per phones.  
24 Anybody can go out and buy one.

25 Q They can go out and buy one, and they give

1 them whatever name they choose at the time?

2 A Yes. Yes.

3 Q Did you get the information on this phone  
4 number?

5 A Yes, I did.

6 Q What did you do?

7 A They FAX'd me, back in July, the subscriber  
8 information.

9 Q What day of July?

10 A 25th.

11 Q July 25th, it turns out?

12 A Yes.

13 Q 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 Q Is that a first name or last name?

17 A Last name. Like you tell them what your password  
18 is or a keyword is. And that says -- And that was  
19 Honduras on there.

20 Q And that's it?

21 A That's it. No address, just a phone number.

22 Q So, you have Mendosa and Honduras? That's  
23 the password?

24 A That's it.

25 Q And no address even?



1 A No.

2 Q Now, you waited a long time to get the  
3 information; right?

4 A Yes.

5 Q It's unusual to get that kind of subscriber  
6 information several months after the subpoena is  
7 tendered; right?

8 A Sometimes it takes that long. Depending on the  
9 carrier.

10 Q So, there are a lot of Mendosa's out there;  
11 right?

12 A Probably, yes.

13 Q No first name is not going to help you?

14 A No.

15 Q What, if anything, else did you do July 25th,  
16 to ascertain who had that phone?

17 A Well, once I got that report back, I then  
18 re-entered the phone number into the New Brunswick  
19 database, because between April and July, there is a  
20 lot of police calls, a lot of people talking to the  
21 police. So, I just double-checked this number, again,  
22 to see if it was in the system, and it came back with  
23 the information.

24 Q So, now, you got a hit?

25 A Yes.

1 Q And what kind of a hit, did you get?

2 A The phone number, the 801 phone number I put in  
3 first, came back associated with the individual I had.

4 Q Who was that individual? What was his name?

5 A Pablo Machado.

6 Q Now, you were able to figure this out on July  
7 25th?

8 A Yes.

9 Q You got lucky?

10 A Right. Like I said, I was waiting for the  
11 subscriber to come back, to see who it might come back  
12 to.

13 Q Now, the information that was collected in  
14 the database, I'm sure pointed to a specific time and  
15 date; right?

16 A Yes.

17 Q All of that information was kept on file in a  
18 specific report; right?

19 A Yes.

20 Q Now, you looked for that report, after your  
21 computer said, hey, we have got a hit, Pablo Machado?

22 A Yes.

23 Q 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?





1 A Yes.

2 Q Now, the information that's contained on that  
3 report, in terms of Pablo Machado, we'll call that  
4 pedigree information, you know was provided by the  
5 defendant himself; right?

6 A Yes.

7 Q And, so, the defendant, and I haven't asked  
8 you yet, Pablo Machado, who is referenced in the  
9 report, is here in the courtroom?

10 A No.

11 Q Is he?

12 A Yes.

13 Q Do you know where he is?

14 A He is seated next to Defense Counsel (indicating).

15 Q You know if that is the same person that had  
16 the interaction with the police, relevant to this S-8  
17 report; right? Correct?

18 A Yes. Yes.

19 Q Now, this report is dated June 16, 2007;  
20 right?

21 A Yes.

22 Q Mr. Cedillo reports a crime in April; right?

23 A Yes.

24 Q Of 2007?

25 A Yes.

1 Q Unbeknownst to you, Mr. Machado gave  
2 information to the police on June 16, 2007; right?

3 A Correct.

4 Q You figured that out on July 25th; right?

5 A Right.

6 Q Now, among the things that Mr. Machado  
7 himself told members of your department, is not just  
8 his phone number; right?

9 A Correct.

10 Q But his address and place of birth?

11 A Date of birth.

12 Q Date of birth, height; right?

13 A Yes.

14 Q Let's start with the address information.

15 A Okay.

16 Q What is Mr. Machado's address, according to  
17 that report?

18 A It says, box ten, address is, 400 Lee Avenue, New  
19 Brunswick, New Jersey, 08901. Apartment 304.

20 Q 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 A Yes.



1 Q Now, before I go any further, have you ever  
2 been to that location?

3 A Yes.

4 Q Where is it?

5 A Lee Avenue -- I don't know if anybody is familiar  
6 with New Brunswick. Lee Avenue in New Brunswick --  
7 The streets go in all different directions. Livingston  
8 Avenue is a main street in New Brunswick. It runs  
9 between New Brunswick and North Brunswick. And Lee  
10 Avenue runs parallel to that, as well as Joyce Kilmer  
11 Avenue, on the other side. Lee Avenue, basically, is a  
12 neighborhood street. That has lots of intersecting,  
13 cross streets. 400 Lee Avenue, specifically, is at the  
14 very end. The very end of Lee Avenue, ends in New  
15 Brunswick. It is, basically, a cul-de-sac, a circle.

16 Q Now, what's at 400 Lee Avenue?

17 A It's an apartment building.

18 Q How many apartments -- apartment units -- are  
19 associated with 400 Lee Avenue?

20 A There is two.

21 Q Now, when you're looking at the building,  
22 it's one of many in a garden apartment complex, if you  
23 will?

24 A Yes.

25 Q Now, what would be the address to the

1 apartments next to 400 Lee?

2 A The complex is old and it's big. It's not like  
3 the huge garden complex you have now; but, for its  
4 time, it was a pretty big complex. It has three  
5 different addresses. It has a Livingston Avenue  
6 address for the houses in the front, on the Livingston  
7 Avenue side. The center of it is a court. It's called  
8 Woodnor Court. A lot of apartments in that complex use  
9 Woodnor Court as their addresses. Also, some of the  
10 buildings use Lee Avenue as their addresses.

11 Q So, you have, basically, three different  
12 streets recognized by the City of New Brunswick in this  
13 complex; right?

14 A Right.

15 Q Focusing on Lee Avenue, 400 Lee, you have  
16 told us, it covers two particular units; right?

17 A Yes.

18 Q The building that we're talking about, has  
19 how many apartments?

20 A Four.

21 Q What would be the address for the other two?

22 A 398, I believe, is the other side of the building.  
23 398 and 400.

24 Q Four apartments. Like most of the streets,  
25 you have the even numbers on one side, and then on the



1 opposite side, you have the odd numbers?  
2 A Yes.  
3 Q So, 398 Lee Avenue?  
4 A Yes.  
5 Q And 400 Lee Avenue?  
6 A Yes.  
7 Q What about across the street? Do you  
8 remember?  
9 A 401 is across the street. Another building  
10 exactly like it. Like side by side. The number -- I  
11 don't know -- on the other side, I'm not sure if it is  
12 399 or 403. But there is a 401.  
13 Q So, getting back to the June 16, 2007 report,  
14 Mr. Machado told the police, he lived at 400 Lee  
15 Avenue, Apartment 304; right?  
16 A Yes.  
17 Q Where did he say he was born?  
18 A According to the report, he told the Officer he  
19 was born in Honduras.  
20 Q Did he give information concerning his  
21 height?  
22 A Yes, he did.  
23 Q What would that be?  
24 A 505, which would be five feet, five inches.  
25 Q What about his date of birth?

1 A Date of birth is November 14th of 1986.  
2 Q All right. He also gave a weight  
3 description; right?  
4 A Yes. Weight was 130 pounds.  
5 Q This is all computer-generated? You put in  
6 the particulars and the computer prints out what it is?  
7 Well, the Officer that prepared that?  
8 A Puts that in.  
9 Q He didn't necessarily dream up the  
10 information? He got it from the defendant himself --  
11 A Yes.  
12 Q -- I take it?  
13 A Yes.  
14 Q Now, was any of this information relevant to  
15 you when you learned about it on June -- excuse me --  
16 July 25th?  
17 A Yes.  
18 Q What, in particular?  
19 A Well, what, in particular, is the phone number was  
20 the same that the victim provided to the police.  
21 Q What did you understand that phone number,  
22 provided by the victim to be? What was the  
23 significance of that number?  
24 A Well, that's the number that called the cab  
25 company for the ride from 58 Lee Avenue to 400 Lee



1 Avenue.

2 Q And Mr. Machado's ten digit phone number is  
3 the same as the one that the victim gave?

4 A Yes.

5 Q Now, based upon that information, did you  
6 attempt to identify Mr. Machado by other means?

7 A Yes.

8 Q Identify him in a sense, that he might have  
9 been involved in the robbery that Cedillo reported?

10 A Yes.

11 Q How did you do that? What did you do?

12 A Well, like I said earlier, we put a photographic  
13 line-up together. Got approval by Assistant Prosecutor  
14 Kuberiet. I had Officer Chang, I believe, contact Mr.  
15 Cedillo. We had a change of number. We ended up  
16 finally getting ahold of him. Mr. Cedillo agreed to  
17 come to New Brunswick Police Department. At that time,  
18 we began the investigation with Mr. Cedillo.

19 Q So, you put a photographic array together.  
20 You did so with the assistance of the ID Unit?

21 A Yes.

22 Q I'm going to show you what's marked S-2-A and  
23 also S-2-B. Do you recognize what's S-2-A?

24 A Yes. This is a --

25 Q S-2-A you are looking at?

1 A These are the photographs that I put together for  
2 this photo array.

3 Q How many are there?

4 A There is one, two, three, four, five, six.

5 Q Now, in order to keep those photographs in  
6 some type of order, to be able to identify them later,  
7 you come up with a key? Some type of a listing?

8 A Well, you print it out. A sheet prints out, with  
9 the older system. The newer system does it  
10 differently. With the older system, it prints out the  
11 name of the person who is the main photo, that we  
12 looked at, with the date and the time that the photo  
13 array is put together. In New Brunswick -- every  
14 department -- police department -- they identify  
15 themselves by a jacket number, the computer-generated  
16 number. When you have the picture taken, it puts a  
17 jacket number attached to the name and the date of  
18 birth of the person.

19 Q You do this in no particular order, with  
20 respect to the listing; right?

21 A No.

22 Q In fact, you know that the guidelines  
23 actually require the shuffling of the pictures? They  
24 may not be shown in the order depicted in S-2-B; right?

25 A Correct.





1 MR. SAMEIRO: Your Honor, I'd like to offer  
2 into evidence S-2-A, so, that I can publish them to the  
3 jury. I'm talking about all six photographs. I'll  
4 show them on the projector.

5 MR. GONZALEZ: I have no objection to these  
6 going into Evidence.

7 THE COURT: Okay. S-2-A is in Evidence.

8 (Exhibit No. S-2-A, six photos, are received  
9 and marked in Evidence.)

10 Q Now, these are the six photographs; right?

11 A Yes.

12 Q They're in color. But the projector is  
13 taking out the color?

14 A Yes.

15 Q Where is the defendant's picture?

16 A He is the far top right.

17 Q That would be the one with the last several  
18 numbers of 33223A?

19 A Yeah. It's blurry from here.

20 Q But you know from the key?

21 A Yes.

22 Q Okay. These photographs were done in an  
23 effort to insure that Mr. Machado's picture didn't  
24 stick out amongst the others?

25 A Correct.

1 Q The other five people are generally --

2 A Fillers.

3 Q You call them fillers; right?

4 A Yes.

5 Q In your opinion, they're similar in nature  
6 with respect to the defendant's picture?

7 A Yes. That is why we had the Prosecutor -- We get  
8 a Prosecutor to approve it as well.

9 Q Right. How were these pictures shown to Mr.  
10 Cedillo? You had mentioned earlier that Officer Chang  
11 was asked to call him, not to bring him to  
12 headquarters?

13 A Yes. Because Officer Chang was familiar with the  
14 person. When he is shown the pictures in this line-up  
15 here, Officer Matias comes in and shows the photographs  
16 to Mr. Cedillo.

17 Q So, you wanted to rule out any kind of  
18 personal bias or influence, by calling Sergio Matias to  
19 do the photo array?

20 A Correct.

21 Q He did that where?

22 A He did that in our interview room at the New  
23 Brunswick Police Department, which is located on the  
24 second floor in our Major Crimes Office.

25 Q Was it videotaped?



1 A Yes.

2 Q I'm going to tell you that the jury has seen  
3 that tape. Where were you when the photo array  
4 procedure was taking place?

5 A Across the hall from the room where the person is  
6 there looking at the photographs, and being  
7 interviewed. There is a monitoring room, where we do  
8 all the recordings. The DVD player, the digital audio  
9 recorder, the TV monitor, to watch what's going on.

10 Q Did you witness the entire photo array  
11 procedure, from beginning to end?

12 A Yes, I did.

13 Q Why did you ask -- Was there any other reason  
14 why you asked Sergio Matias to do that?

15 A Because I don't speak Spanish as well as -- I  
16 don't speak Spanish. So, Sergio Matias did that. I  
17 knew that Wilmer Cedillo spoke Spanish. So, I had him  
18 do it.

19 Q Now, there came a point in time, when you  
20 were watching this video, when Officer Matias left the  
21 room with the photographs?

22 A Yes.

23 Q Right after the identification was made?

24 A Yes.

25 Q Anything you told Officer Matias to do at

1 that time?

2 A Yes. Officer Matias -- This was the first time he  
3 ever did a photo line-up. So, he didn't really  
4 understand what else had to be done. So, he came out.  
5 I told him, he needed the victim to sign the back of  
6 the photograph, that he had chosen. So, we would know  
7 which one it was.

8 Q Did he show you the picture first?

9 A Yes.

10 Q What picture was this?

11 A The picture of Mr. Machado.

12 Q Did Officer Matias then go back in the room  
13 to get the victim to sign it?

14 A Yes.

15 Q Now, after the identification was made, you  
16 took steps to have a complaint drafted, and have the  
17 defendant arrested?

18 A Yes.

19 Q Do you know when he was arrested?

20 A I believe it was the following day.

21 Q I'm going to show you what's marked S-7.

22 A Yes.

23 Q You recognize that?

24 A Yes.

25 Q What is that?



1 A It's a report prepared by Officer Donald Taylor,  
2 of the New Brunswick Police Department, with Pablo  
3 Machado's information on it.

4 Q The defendant himself was arrested the  
5 following day?

6 A Yes.

7 Q Pursuant to --

8 MR. GONZALEZ: Objection. Can we go to  
9 sidebar?

10 THE COURT: Sidebar.

11 (Whereupon, the following discussion occurred  
12 at sidebar.)

13 MR. GONZALEZ: There is a mistake that  
14 shouldn't be on there. Looking at the second page of  
15 that exhibit, Judge.

16 MR. SAMEIRO: That is mistakenly Selesky's  
17 report. It is affixed to the second page of the arrest  
18 report. It is a single page document.

19 MR. GONZALEZ: Okay. I just wanted to -- I  
20 hadn't seen it. I just wanted to inspect it.

21 MR. SAMEIRO: I'm sorry, Counsel.

22 MR. GONZALEZ: I hadn't seen it. I wanted to  
23 look at it. The name of Donald Taylor didn't ring a  
24 bell. I don't know what the witness has.

25 THE COURT: I don't know.

1 MR. GONZALEZ: His name was not listed. I  
2 just don't remember it. That's why I wanted to come  
3 over to sidebar.

4 THE COURT: Obviously, Counsel has a copy of  
5 the arrest report.

6 MR. GONZALEZ: I do. I just wanted to look  
7 at it. Can I see it?

8 THE COURT: Okay.

9 MR. SAMEIRO: I intend -- while we are here  
10 -- We intend to establish, when the defendant was  
11 arrested, he provided the same address information, the  
12 same place of birth, a different height. I'm going to  
13 point out the different telephone number there.

14 THE COURT: Okay. All right.

15 (Whereupon, the sidebar discussion  
16 concluded.)

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

19 Q Now, S-7 is the arrest report for the  
20 defendant?

21 A Yes.

22 Q Which was put together on July 26, 2007;  
23 right?

24 A Yes.

25 Q And pursuant to the arrest procedure, the



1 defendant provided his name, address, place of birth,  
2 date of birth, and so on and so forth; right?

3 A Yes. Correct.

4 Q Let's start with the address. What address  
5 did he provide?

6 A 400 Lee Avenue, New Brunswick, New Jersey, 08901,  
7 Apartment 304.

8 Q That is the same information you previously  
9 collected on June 16th?

10 A Yes.

11 Q I'm going to show you S-8, if you need that  
12 to refresh your memory. That's the report that deals  
13 with the June 16th interaction; right?

14 A Sure.

15 Q What about on the arrest, did the defendant  
16 give a place of birth?

17 A Yes. Honduras.

18 Q Same as before; right?

19 A Yes.

20 Q Now, he gave a different phone number this  
21 time, did he not?

22 A Yes.

23 Q What is the number?

24 A 732-538-5157.

25 Q What's the height description? What do you

1 have there?

2 A He has 502. That is five foot two.

3 Q Before, on the earlier report, there is a  
4 505, five foot five reference?

5 A Yes.

6 Q Is the date of birth the same as before?

7 A Yes, it is.

8 Q November 14, 1986; right?

9 A Yup.

10 Q And then you have the same weight, it would  
11 appear; right?

12 A Yes. 130.

13 Q A hundred thirty pounds?

14 A Yup.

15 MR. SAMEIRO: I have nothing else. Thank  
16 you.

17 THE COURT: Thank you. Mr. Gonzalez?

18 MR. GONZALEZ: Judge, can we break for a  
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.





1 THE COURT: So, let's take ten minutes folks.  
2 I will keep you right on the floor. So, we can bring  
3 you back pretty quickly.

4 MR. GONZALEZ: Instead of having to break in  
5 the middle of my cross-examination.

6 THE COURT: I wouldn't do that to you, Mr.  
7 Gonzalez.

8 Let's do that. Let's take our morning break  
9 right now. We'll put you right here on the floor. Let  
10 me remind you, not to discuss the case among yourselves  
11 or with anybody else. I'd like to keep your break to  
12 ten minutes. Then we'll bring you back to continue the  
13 trial. Okay.

14 (Whereupon, the jury leaves the courtroom.)

15 (Whereupon, the hearing continued outside the  
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.

20 MR. GONZALEZ: Thank you, Judge. That's  
21 fine.

22 MR. SAMEIRO: Thank you, Judge.

23 THE COURT: Thank you.

24 (Whereupon, a short recess was taken.)

25 (Whereupon, the hearing continued.)

1 (Whereupon, the jury enters the courtroom.)

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

4 All right, Mr. Gonzalez.

5 MR. GONZALEZ: Thank you, Judge.

6 CROSS-EXAMINATION BY MR. GONZALEZ:

7 Q Detective -- It is Agent Selesky now?

8 A Yes.

9 Q 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.

13 Q You were the lead detective in the case;  
14 correct?

15 A Yes. Correct.

16 Q You got the information from Wilmer Cedillo  
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 Q The 24th? The same day?

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.



1 Q The first thing you did, you went and got the  
2 subscriber information?

3 A Correct.

4 Q Or requested a Grand Jury subpoena, to the  
5 Prosecutor's Office, so, they can write it up, and get  
6 it to Movida? That was the name of the phone company?

7 A Yes.

8 Q Movida is a prepaid-type telephone; right?

9 A Yes.

10 Q You've indicated earlier, on direct  
11 examination, you've been an Officer for 29 years;  
12 right?

13 A 28 and a half.

14 Q 28 and a half?

15 A Yes.

16 Q Close to 29. We'll round it up?

17 A Yes.

18 Q And during that time, you were a Detective  
19 for 18 of those; right?

20 A Yes.

21 Q You have indicated, that you've done a  
22 hundred photo arrays?

23 A Hundreds.

24 Q Or more?

25 A Hundreds, right.

1 Q You have also indicated, you've done  
2 thousands of interviews, investigations, things of that  
3 nature; correct?

4 A Correct.

5 Q You also trained on how to do investigations?  
6 You indicated earlier that you have trained on --  
7 You've been to various training, both private and  
8 public, as a part of, I guess, sharpening your skills  
9 in those 28 years; correct?

10 A Yes.

11 Q A lot of it, or most of the police work,  
12 focuses on collecting evidence; correct?

13 A Yes.

14 Q So, your job, as a lead detective in the  
15 case, is to collect evidence; right?

16 A Part of it, yes.

17 Q And you're collecting that evidence, so some  
18 time in the future, if you ever have to go to trial, if  
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 A Correct.

23 Q Now, you wrote a report in the case; right?

24 A Yes.

25 Q And a report is, basically, a detailed



1 accounting of what it is, what type of investigation  
2 you did, in any particular case; correct?

3 A Correct.

4 Q In this particular case, you wrote a detailed  
5 report; right?

6 A Yes.

7 Q And, in writing that report, you go, I guess,  
8 on each date, that you do something, you write it in  
9 there; correct?

10 A Yes. Yeah. Usually, I write it down in my notes,  
11 and then I end up putting it in the report, yes.

12 Q Okay. So, on July 25th -- excuse me -- I  
13 keep on messing up -- that's my fault -- April 25th?

14 A 24th.

15 Q 24th. There you go. On April 24th, you  
16 begin your investigation. You do one thing; correct?

17 A Yes.

18 Q Do you remember when you made your second?

19 A I'm sorry?

20 Q Do you remember when you made your second  
21 entry in this particular case?

22 A What do you mean second entry?

23 Q Well, the next date that you did something.

24 A I mean, the 24th entailed, you know, getting the  
25 subpoena prepared with the Prosecutor's Office, looking

1 over the report, things like that. And I, basically,  
2 had to sit on it until I got the results back from the  
3 phone company.

4 Q So, you had to sit on it?

5 A Yeah. Usually the phone records are faster than  
6 this company provided it to us. Usually a couple weeks  
7 at the most. This company, in particular, was months.

8 Q So, you had to sit on the investigation  
9 altogether, because you had nothing; right?

10 A No.

11 Q Right?

12 A Plus I have other investigations that come in.  
13 You just don't investigate this case and wait. I have  
14 other cases that happen. That I had to follow-up on.

15 Q A robbery allegedly happens on April 24th --

16 A Yes.

17 Q -- right? An armed robbery, at a familiar  
18 place to you, 400 Lee Avenue?

19 A Yes.

20 Q Some place you know pretty well?

21 A It's an apartment complex I've been to.

22 Q You know it pretty well? Lots of crimes  
23 happen in the 400 Lee Avenue area in the past year?

24 A No. Not specifically. It's a big complex. I

25 mean, I'm sure, just like any other apartment complex.



1 But nothing out of the ordinary.

2 Q Okay. So, you've been trained you told us.

3 Now, did they train you on canvassing? Can you explain  
4 to us what canvassing means?

5 A Knocking on doors.

6 Q Right. And you knock on doors to develop  
7 whether or not there were any eye witnesses to the  
8 actual event; correct?

9 A Correct.

10 Q Now, we have indicated, at the end of the  
11 cul-de-sac, 400 Lee Avenue, there is buildings that are  
12 directly adjacent to this cul-de-sac; correct?

13 A There is buildings around the cul-de-sac, yes.

14 Q There is a variety of buildings; correct?

15 A Yes.

16 Q There is also other buildings? It is a  
17 pretty big complex; right?

18 A Yeah. It is.

19 Q If I told you there were a hundred  
20 twenty-four units there, would you agree?

21 A If that's what you know from the area. I know  
22 that there is -- I would say, if that's what you know  
23 from there -- Yeah, I'd say.

24 Q Now, I'm just going to show you what's marked  
25 as Defense Exhibit Three. Do you recognize what that

1 is?

2 A Well, it's -- Going by the words on here, it's a  
3 picture of the Livingston Avenue, Woodnor Court, Lee  
4 Avenue area. It looks like it's a google picture.

5 Q It's a google earth picture?

6 A Yes. Google maps.

7 Q You're familiar with that; right?

8 A Yes.

9 Q You've used it in investigations before?

10 A Yes.

11 Q Would you say that it accurately depicts the  
12 way 400 Lee Avenue and Livingston Avenue look in New  
13 Brunswick?

14 A Yes. Livingston Avenue in New Brunswick.

15 MR. GONZALEZ: Judge, if I may publish this  
16 to the jury?

17 THE COURT: Any objection?

18 MR. SAMEIRO: Let me see it. No.

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.





1 Q This is a map of 400 Lee Avenue; correct?

2 A Yes. It's a picture. You're looking at like a  
3 satellite picture.

4 Q All right. Can you point to the circle of  
5 where Lee Avenue actually ends? First, can you  
6 identify where Lee Avenue is?

7 A I'll have to stand up.

8 Q You can come over here. So, you don't block  
9 the view.

10 A (Witness complies.) This is the circle, at the  
11 end of Lee Avenue (indicating). That is Lee Avenue,  
12 coming up that way (indicating).

13 Q You have pointed to this portion  
14 (indicating); right?

15 A That's the circle, correct. Yes.

16 Q These things (indicating), that surround  
17 that, they're the buildings; correct?

18 A Correct.

19 Q Then you'll have a direct view of that  
20 circle; right?

21 A Direct and indirect, depending on where their  
22 windows are. Some of them face out. Some are on the  
23 side.

24 Q It doesn't appear any trees around here;  
25 right?

1 A No. In front of the buildings, I know there is  
2 tall shrubs in front of some of the buildings.

3 Q But the windows on the buildings, they're  
4 higher than the shrubs; correct?

5 A I would not know if they were higher or lower. It  
6 depends on the building.

7 Q Now, you never went to this area on April  
8 24th, did you?

9 A Oh, I had ridden there, yes. I had gone up there.

10 Q That particular date, did you go there?

11 A Yeah. Yeah.

12 Q That's not in your report, is it?

13 A No. I definitely went up there. Because I always  
14 go back to see what the crime scene looked like.

15 Q But that wasn't in your report; right?

16 A No. It's not in my report.

17 Q Did you canvass the area? Speak to people?

18 A No.

19 Q Since you're the lead detective of the case,  
20 did you then assign anyone else to go and canvass the  
21 area, since you didn't have time?

22 A No. No.

23 Q Now, an additional thing, that you could have  
24 done on this date, you could have spoke to Wilmer  
25 Cedillo; correct? Right?



1 A Correct.

2 Q You also could have went to view Mr.  
3 Cedillo's car; correct?

4 A What is that again?

5 Q You could have went to view the taxicab, that  
6 was alleged where this crime started and occurred;  
7 correct?

8 A I mean, I could have; but I didn't.

9 Q You have the phone number of Mr. Cedillo;  
10 correct? Right?

11 A Correct. But his phone was stolen.

12 Q He gave you a phone number when he went to  
13 the police station; right?

14 A Correct.

15 Q With Officer Bobadilla?

16 A Yes.

17 Q He gave you a phone number. Can you tell us  
18 what the phone number was?

19 A 514-1521. 732 area code.

20 Q He also gave you an address; right?

21 A Yes. It looks like -- It's hard to tell. This  
22 one says South Talmadge Road.

23 Q You later found out 41 South Talmadge Road,  
24 is that the address given; correct?

25 A Yes. Yes. It is hard to tell on the copy.

1 Q For the record, I've just showed him what was  
2 previously marked D-1.

3 MR. SAMEIRO: You said D-1?

4 MR. GONZALEZ: D-1, yes.

5 Q Now, you didn't contact him that day; right?  
6 You said that?

7 A No.

8 Q Additionally, you didn't go -- There is a  
9 couple -- Well, there is two -- There is a bunch of  
10 places that you didn't investigate; correct?

11 A Like what?

12 Q The car. There could have been physical  
13 evidence inside the car, that you could have gathered;  
14 correct?

15 A If I'm not mistaken, it happened outside the car.  
16 The crime started with a pick-up, and then it happened  
17 outside the vehicle.

18 Q Okay. So, what you learned, from your  
19 investigation, is that the robbery, assault, happened  
20 outside of the car; correct?

21 A Yes.

22 Q But you also know that there were patrons  
23 inside the car; true?

24 A Correct.

25 Q Because he picked them up?



1 A Yes.

2 Q There is a variety of things, if you went  
3 there, that you may have gathered, if you had went to  
4 this cab; correct?

5 A Not necessarily. I mean, you got a cab used for  
6 probably 24 hours. 24 hours in a day. There are lots  
7 of people in there. These cabs pick-up and drop-off  
8 people, you know.

9 Q You could have gone to the cab, and checked  
10 if there was anything there; right?

11 A Sure.

12 Q Now, oftentimes, when incidents occur in  
13 bulk, be it a robbery, a burglary, there are bulks of  
14 people present -- many people. But sometimes the  
15 assailant, we'll call him, in this particular case,  
16 could have left something there, an item, an article;  
17 is that correct?

18 A Could be, yeah.

19 Q Could have left fingerprints there; right?

20 A It's possible.

21 Q Could have left a DNA sample; correct? Be it  
22 a piece of hair, be it a piece of clothing? Could have  
23 left something at that location; correct?

24 A It's possible, yes.

25 Q But you didn't go to the car to try to

1 collect any of that information; correct?

2 A No.

3 Q It was indicated that, or you knew -- what  
4 you knew, at this point, after you read the report,  
5 that possibly there was a radio inside of the car that  
6 was taken; correct?

7 A I'd have to see the report again. I'm not sure  
8 exactly what I said.

9 Q Needless to say, these gentlemen were inside  
10 of that car? The gentlemen that robbed him; correct?

11 A Correct.

12 Q Wilmer Cedillo?

13 A Yes.

14 Q Also, you found out from Wilmer Cedillo,  
15 there were numerous people that were involved in this  
16 robbery; correct?

17 A Yes.

18 Q There were five; right?

19 A Around five, he said, yes.

20 Q Around five? Maybe six? Maybe four?

21 A He said there was a group.

22 Q There is nothing -- So, the other thing you  
23 could have done, you could have went to the dispatcher  
24 -- right -- the dispatcher of the cab company, where  
25 the phone call was made? You could have done that --



1 right -- as part of your investigation?

2 A Well, we had the number for the victim.

3 Q You didn't want to verify whether or not the  
4 victim was -- whether or not the number was from the  
5 victim; correct?

6 A Why? I trust the victim's word.

7 Q You trusted the victim's word?

8 A Yes, sir. He is a victim of a crime. I don't  
9 think he would lie to me about something like that.

10 Q You knew there was a piece of paper with that  
11 number?

12 A From what I was told, yes.

13 Q That piece of paper doesn't exist anymore?

14 A No.

15 Q You never entered it into evidence; correct?

16 A I never even saw the piece of paper. I trusted  
17 the victim's word.

18 Q So, you never observed, with your own eyes,  
19 what that telephone number was?

20 A No, I did, in Officer Bobadilla's report.

21 Q You never observed, with your own eyes, what  
22 was on that piece of paper?

23 A No. No.

24 Q So, you didn't?

25 A No.

1 Q You didn't attempt to go to the dispatcher  
2 to verify whether or not this number was, in fact, the  
3 proper number?

4 A No.

5 Q You could have; right?

6 A I could have. Like I said, I trusted the victim.  
7 He was a victim of a crime. Why would he lie about  
8 that? Excuse me. I've got a cold.

9 Q Really what you did, with regard to this  
10 investigation, was do a phone look-up; right?

11 A Yes.

12 Q And you found out that it was a prepaid  
13 phone card?

14 A Yes.

15 Q And prepaid phone cards, they're recycled a  
16 lot, aren't they?

17 A Phone companies do farm them out, yes.

18 Q 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 A If you give that number up, yeah.

22 Q In this particular case, you requested some  
23 information from Movida Phone Company; right?

24 A Correct.

25 Q It merely said Mendosa on it; correct?





1 A Yes.

2 Q Do you remember -- Well, you testified  
3 earlier, I know you said the password was Honduras?

4 A There is like, you know, like I call -- There is  
5 like a keyword or a password, whatever you call it. It  
6 was Honduras. It said like, what's your mother's  
7 maiden name. What's your father's maiden name.  
8 Honduras was the word for that, whatever that was.

9 Q I'm looking for an exhibit. Excuse me a  
10 second. Needless to say, the only thing -- the only  
11 thing that was on it was simply the last name Mendosa;  
12 right?

13 A Right.

14 Q New Brunswick, New Jersey?

15 A Right.

16 MR. SAMEIRO: Judge, I think Counsel needs to  
17 identify the document before he --

18 MR. GONZALEZ: Sorry. Let the record reflect  
19 that it's D-18.

20 THE COURT: D-18.

21 Q D-18, that's what you got from Movida, when  
22 it was returned, that subpoena; correct?

23 A Sure.

24 Q And the security question was, "what is your  
25 place of birth"?

1 A Right.

2 Q It says "Honduras"; correct?

3 A Correct.

4 Q Then the time that this particular phone  
5 number was put into service was April 18, 2007?

6 A Yes, sir.

7 Q 11:42 a.m.

8 MR. GONZALEZ: Judge, may I publish it to the  
9 jury as well?

10 THE COURT: Any objection?

11 MR. SAMEIRO: No.

12 Q So, this is it; right?

13 A Yes, sir.

14 Q You still have nothing; right?

15 A I have that. I have that. That's it.

16 Q You testified earlier that, on July -- excuse  
17 me -- April 24th, you requested information from the  
18 Prosecutor's Office; correct?

19 A The Grand Jury subpoena, yes.

20 Q I'm showing the witness what's been  
21 previously marked as D-7 -- I'm sorry -- D-17.

22 A Right.

23 Q That's the subpoena; correct?

24 A Correct.

25 Q The subpoena is addressed to the Movida Phone



- 1 Company, Biscayne Boulevard, in Miami, Florida; right?  
2 A Correct.  
3 Q And the date that the subpoena is actually  
4 requested is May 9th, 2007; correct?  
5 A Yes.  
6 Q And the day it's supposed to be returned is  
7 May 15th, 2007?  
8 A That's the Grand Jury date that was put on this.  
9 Q This wasn't done by you; right?  
10 A No.  
11 Q It was done by Agent Sessa, I believe?  
12 A Yes.  
13 Q Jennifer Sessa?  
14 A Yes.  
15 Q Now, you get that back -- You say you get it  
16 back on July 25th; correct?  
17 A Yes.  
18 Q And you run a check in-house, in New  
19 Brunswick, and you come up with a name; correct?  
20 A Correct. Right.  
21 Q Wa-la, the case is solved; right?  
22 A No.  
23 Q You have to set up a photo array; correct?  
24 A Yes.  
25 Q Because Mr. Cedillo had to come in and

- 1 identify somebody; correct?  
2 A Correct.  
3 Q In order to make an arrest, and you had some  
4 information, because you wanted to go with; that right?  
5 A Yes.  
6 Q Now, from April 24th to July 25th, you never  
7 had contact with Mr. Cedillo; correct?  
8 A No.  
9 Q So, you never wanted to go and actually speak  
10 to him yourself, to get his version of the facts;  
11 correct?  
12 A Correct. I was waiting for the results to come  
13 back.  
14 Q Officer Bobadilla got some information. You  
15 could have followed up with more information; correct?  
16 A Correct.  
17 Q Now, you didn't work that hard on this case,  
18 did you?  
19 A 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.  
22 Q If you have that limited information,  
23 wouldn't it behoove you -- you've been trained in all  
24 these different classes, investigations -- to dig a  
25 little further; correct?



- 1 A What do you mean by digging further?  
2 Q To find evidence, which is your job; correct?  
3 A Correct.  
4 Q You could have done a lot more in this  
5 particular case?  
6 A You tell me what I could have done. I don't know  
7 what you're talking about. There is things that I did,  
8 as there is things that you mentioned before, that  
9 probably could have been done. This is what we've  
10 learned from the phone records.  
11 Q You said you went to the scene. That is not  
12 in your report; right?  
13 A I think that I rode around the town, to go to that  
14 area, Counsel.  
15 Q You never went to the car?  
16 A Excuse me?  
17 Q You never went to the car?  
18 A No.  
19 Q You never spoke to Mr. Cedillo; correct?  
20 A No. Actually, I did. July 25th.  
21 Q From April 24th to July 24th, you never spoke  
22 to Mr. Cedillo; correct?  
23 A No.  
24 Q You never talked to the dispatcher; right?  
25 A No.

- 1 Q You never went to go see whether or not there  
2 were phone logs or anything else at the dispatcher,  
3 that could have memorialized the phone number; correct?  
4 A No. I got it from the victim, through the report.  
5 Q That's fine. Like I said, you didn't speak  
6 to the person who observed the phone number pop up? I  
7 guess, it was on a caller ID, which is what was  
8 testified to. But that person wasn't here. You never  
9 spoke to that particular person; correct?  
10 A No.  
11 Q You never spoke to the owner of Victory  
12 Taxicab; correct?  
13 A No. Not then, no.  
14 Q So, again, I'll ask you, you could have done  
15 a variety of other things in this investigation;  
16 correct?  
17 MR. SAMEIRO: I'm going to object. Again,  
18 I'll ask -- It's 11:15. I think the case needs to move  
19 along quickly. This was asked and answered.  
20 MR. GONZALEZ: I will withdraw the question.  
21 THE COURT: Thank you.  
22 Q Being that you didn't have that piece of  
23 paper, which would be an important piece of evidence,  
24 did you then ask Officer Bobadilla where it went?  
25 MR. SAMEIRO: I'm going to object to the form



1 of the question, as to an important piece of evidence.

2 THE COURT: I will sustain the objection and  
3 ask you to rephrase the question regarding that aspect.

4 Q The phone number on that particular piece of  
5 paper is the most important piece of evidence in this  
6 case, or the only piece of evidence in this case;  
7 right?

8 A Yes.

9 Q Right?

10 A Sure.

11 Q Now, to verify whether or not that is, in  
12 fact, the proper number, or where it came from, did you  
13 ask Officer Bobadilla where the piece of paper went?

14 A To tell you the truth, I don't remember way back  
15 then if I ever asked him that or not. I know I had  
16 spoken to him the next night about the case. I don't  
17 remember ever asking him about that, no.

18 Q Now, we know that the original report taken  
19 by Officer Bobadilla, or the initial interaction  
20 between Officer Bobadilla and Wilmer Cedillo, it wasn't  
21 videotaped; correct?

22 A No.

23 Q And then, you ask Officer Chang, on July  
24 25th, to go and find Mr. Cedillo; correct?

25 A Correct.

1 Q So, the first time you actually speak to Mr.  
2 Cedillo is after an identification is made; correct?

3 A Well, when he came to headquarters, I introduced  
4 myself, and explained to him what was going on, what  
5 was going to be done. Then we proceeded with that,  
6 yes.

7 Q Did you ask him for a description of the  
8 person that robbed him on that date, prior to going on  
9 the videotape?

10 A No. Because I was relying on the report of  
11 Officer Bobadilla for a description at this time.

12 Q Safe to say, that a long time passed;  
13 correct?

14 A Yes. Three months.

15 Q A long time is a couple months; right?

16 A Three months.

17 Q And you didn't want to review, and see  
18 whether or not Mr. Cedillo's recollection of what  
19 happened, on April 24th, was as good, or he could even  
20 make an identification; right?

21 A Well, I asked him prior, if he remembered, and he  
22 said, yes. Then we followed through is what we did,  
23 yes.

24 Q In fact, in Officer Bobadilla's initial  
25 report, it indicated that Mr. Cedillo recognized this





1 person from before; correct?

2 A Yes.

3 Q Do you remember you testified before the  
4 Grand Jury in this particular case; right?

5 A Sure.

6 Q And when asked by Mr. Kuberiet, at the Grand  
7 Jury, whether Mr. --

8 MR. SAMEIRO: I'm going to object to the line  
9 of questioning. It's hearsay. It's concerning  
10 statements made by the victim to Mr. Bobadilla, which  
11 really are not --

12 MR. GONZALEZ: I haven't asked the question  
13 yet.

14 MR. SAMEIRO: Judge, I know where it's going.

15 THE COURT: You testified before the Grand  
16 Jury?

17 MR. GONZALEZ: Right.

18 THE COURT: I will let him put the question  
19 out there.

20 Okay. Go ahead.

21 Q The first thing is, do you remember  
22 testifying before the Grand Jury?

23 A Yeah.

24 Q You remember answering "yes" to a question  
25 by Officer Kuberiet -- excuse me -- Christopher

1 Kuberiet, the Prosecutor?

2 A (No verbal response.)

3 Q Do you remember answering a question -- The  
4 question being, that Mr. Cedillo knew one of the  
5 individuals that he picked up previously?

6 A I don't know which context that's in. I'd have to  
7 see the paper.

8 Q If I showed you your Grand Jury -- a copy of  
9 your Grand Jury -- would that refresh your  
10 recollection?

11 A Let me see what the question before and after are,  
12 so, I know where it's coming from.

13 Q Sure.

14 THE COURT: Is that marked already?

15 MR. GONZALEZ: I can get it marked.

16 THE CLERK: D-16.

17 (Exhibit No. D-16, Grand Jury transcript, is  
18 received and marked for Identification.)

19 Q I'm pointing particularly -- You can read  
20 where we're at here.

21 MR. SAMEIRO: Page and line, Counselor.

22 A 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



1 by saying, "and I indicated" -- "And he indicated to  
2 Officer Bobadilla," which is hearsay.

3 MR. GONZALEZ: The answer to the question, he  
4 can testify to, Judge, if he answered the question in  
5 the affirmative. It's a "yes" or "no," or he doesn't  
6 remember it.

7 THE COURT: I don't know that the Grand  
8 Jury --

9 MR. SAMEIRO: I think the jury needs to  
10 understand that hearsay is allowed in front of the  
11 Grand Jury. That is a big distinction. So, I object.

12 MR. GONZALEZ: It's not hearsay.

13 THE COURT: Why don't you come to sidebar.

14 (Whereupon, the following discussion occurred  
15 at sidebar.)

16 MR. SAMEIRO: My objection is that any  
17 question that's based upon line 22, on page five,  
18 should not be allowed, since it's referencing to what  
19 the victim said to the Officer. It starts off by  
20 saying, quote, "and he indicated to Officer Bobadilla,"  
21 close quote. That's just the introductory portion of  
22 the question. It's hearsay.

23 MR. GONZALEZ: He was at the Grand Jury.

24 THE COURT: Right. And he answered  
25 questions.

1 MR. GONZALEZ: Yes. If he remembers the  
2 question from the Grand Jury.

3 THE COURT: Okay. But at the Grand Jury,  
4 Counsel, hearsay is admissible. So, he can testify as  
5 to the hearsay. He can't here.

6 MR. GONZALEZ: He testified under oath  
7 previously. He answered the question, "yes." The  
8 question that was posed, it's not hearsay. Because  
9 it's a sworn statement. He said -- He actually  
10 answered that question.

11 MR. SAMEIRO: It's true that he was asked  
12 that particular question. He doesn't dispute that the  
13 question was posed to him in the Grand Jury.

14 THE COURT: I agree as to the contents of it.  
15 But you are right, you can cross-examine him on an  
16 inconsistent statement. But the problem is, that the  
17 statement is a hearsay statement. So, I think, you're  
18 trying to go into an inconsistent statement that is a  
19 hearsay statement at the Grand Jury.

20 MR. GONZALEZ: It's an inconsistent statement  
21 by the victim, witness. That's an inconsistent  
22 statement. If he gave an inconsistent statement, then  
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



1 going to call Officer Bobadilla to get into whatever  
2 inconsistencies there are between Officer Bobadilla and  
3 what the victim said. I think this should wait for  
4 that.

5 THE COURT: It shouldn't come in like this,  
6 from a question before the Grand Jury.

7 MR. GONZALEZ: I think it can. He knows  
8 whether or not he answered that particular question.  
9 The question was posed. It's a "yes" or "no" answer.  
10 It's a previously sworn statement. It's a question  
11 asked by Kuberiet. And it's merely a "yes" or "no"  
12 answer. He's not testifying to what the guy said.

13 THE COURT: Well, he's saying what he said.

14 MR. GONZALEZ: He's saying that he remembers  
15 being asked that. I'm reading what he was asked.

16 MR. SAMEIRO: It's still hearsay, no matter  
17 how you try to spin it.

18 THE COURT: You can ask him what he was  
19 asked. That's fine. What the response is, as he says,  
20 he's giving a hearsay statement to the Grand Jury,  
21 which he can do. He's speaking on behalf of the  
22 alleged victim, it sounds like to me.

23 MR. SAMEIRO: Of course.

24 THE COURT: But here it brings in the  
25 statement, a hearsay statement. Actually, that is

1 hearsay.

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  
5 up previously.

6 MR. SAMEIRO: That's not the question posed  
7 to him. Let's be fair to the witness, Judge.

8 MR. GONZALEZ: Judge, this is much to do  
9 about nothing. Officer Bobadilla will be here to get  
10 into this.

11 MR. SAMEIRO: But, Counsel, you need to  
12 follow the Rules of Evidence.

13 THE COURT: He can't bring in the statements,  
14 as to the inconsistencies.

15 MR. SAMEIRO: This is cross-examination.

16 MR. GONZALEZ: I can bring in the  
17 inconsistent statements that he makes.

18 THE COURT: But not as to the hearsay  
19 statements through Officer Selesky.

20 MR. SAMEIRO: That's right, Judge.

21 MR. GONZALEZ: You guys only ask "yes" or  
22 "no" questions to the Grand Jury. That's the trouble  
23 with that.

24 THE COURT: He can be cross-examined, if  
25 something he says in the Grand Jury is inconsistent.



1 But not if it's hearsay.

2 MR. SAMEIRO: He can remember what he was  
3 asked at the Grand Jury. You asked whether or not --

4 THE COURT: Yeah.

5 MR. SAMEIRO: For what purpose? To have his  
6 memory tested. This is strictly hearsay.

7 MR. GONZALEZ: It's not. It's a "yes" or  
8 "no" with regard to what he said at the Grand Jury.

9 MR. SAMEIRO: "Yes" or "no." It's hearsay.

10 THE COURT: Based on hearsay. It's based on  
11 hearsay. Let's proceed.

12 MR. GONZALEZ: So, I won't go into that.

13 THE COURT: Okay.

14 (Whereupon, the sidebar discussion  
15 concluded.)

16 (Whereupon, the hearing continued in the  
17 presence of the jury.)

18 Q Now, before you did this interview on July  
19 25th, did you have a preinterview type of period?

20 A Just for a few moments.

21 Q Did you ever write what happened in that  
22 preinterview in any report?

23 A No. I knew I was going to go right into any type  
24 of an interview, after I was done with the line-up.

25 Q You mentioned, you've done numerous line-ups;

1 right? Hundreds; correct?

2 A Yes.

3 Q And you know that the Attorney General  
4 requires all these line-ups to be videotaped; right?

5 A Yes.

6 Q And that requirement is because they are  
7 trying to eliminate suggestibility, with regards to  
8 those line-ups; correct?

9 A Correct.

10 Q And you fully are aware of what the Attorney  
11 General guidelines are; correct?

12 A Yes.

13 Q And, in this particular video, you're dealing  
14 with Officer Matias? Officer Matias' body is covering  
15 the photographs; correct?

16 A 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.  
19 Where the victim sits -- We try and put the victim or  
20 the defendant where the camera can actually see them,  
21 front on. Unfortunately, that's just the way the room  
22 is.

23 Q Okay. But the videotaping is memorializing  
24 what's happening with those photos; right?

25 A Right.





1 Q That's the purpose of it?

2 A Yes.

3 Q But in the video, you were observing in the  
4 other room, Officer Matias was blocking?

5 A No, he's not blocking the whole thing.

6 Q There is a portion with regard to the  
7 Attorney General guidelines, that a person must fill  
8 out an individual himself, as to the photograph that he  
9 identified; correct?

10 A You are talking about the victim filling it out?

11 Q Yes.

12 A It's filled out by whoever. I mean, the Officer  
13 fills it out or the victim. Usually the Officer fills  
14 it out.

15 Q There is a photo display result form;  
16 correct?

17 A Correct.

18 Q Now, it's safe to say, that before Officer  
19 Matias went into this room, you didn't know the  
20 sequence in which the photographs were going to be  
21 displayed; correct?

22 A Correct.

23 Q They were going to be displayed in a random  
24 manner; correct?

25 A Correct.

1 Q Now, there is a portion, when explaining the  
2 instructions, on how you're going to do the photo  
3 display, there is directions, instructions, that are  
4 given to the witness; correct?

5 A Yes.

6 Q In this particular case, in New Brunswick, in  
7 the police station, they have those forms in Spanish;  
8 correct?

9 A Correct.

10 Q Do they have the photo display result form  
11 in Spanish and English?

12 A They do; but I could not locate that one that day.  
13 Sometimes they run out, nobody makes copies. That's  
14 why I made a copy of the English one on the other side  
15 of the form, so, we could use it.

16 Q But the victim, in this particular case, was  
17 Spanish; right?

18 A Correct.

19 Q So, probably, if you were following the  
20 Attorney General guidelines, in making sure that the  
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 A Yeah. But, like I said, it wasn't available. If  
25 it had, it would have been used. Trust me.



1 Q You could have waited -- You could have went  
2 on the computer -- You could have printed it out?

3 A It is not on the computer like that. We don't  
4 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.

7 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.

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?

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 Q 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



1 more random. To put it in the third or fourth or sixth  
2 position. I want the Officer to shuffle them up. So,  
3 it is very random. If it is the first person -- no  
4 matter what the outcome of this is -- they're seeing  
5 all six pictures. They see every single one. No  
6 matter if they pick the first one, they see everybody,  
7 no matter what it is.

8 Q You have no memorialization of the order in  
9 question, that the photo array was done, in this  
10 particular case; correct?

11 A As to which picture was shown in what order?

12 Q Right.

13 A No. Only the one that he picked out.

14 Q And you wrote down, on your photo result  
15 form, which one he picked out; right?

16 A Correct.

17 Q You're not supposed to do that, are you?

18 A No. There is no reason for not doing it. I mean,  
19 it's right in the guidelines. Anybody can show a  
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  
23 time. I'm guiding him through this process.

24 Q Okay. So, you have done this numerous times.  
25 It's your understanding, that the guidelines require

1 you to fill out all this information, including the one  
2 that the person picks, and the number of photographs  
3 shown; correct? Then the signature on the bottom;  
4 correct?

5 A Correct.

6 Q Any officer can do that; right?

7 A Yes. Except for the signature at the bottom  
8 should be the officer that was actually in the room.  
9 And the victim, I believe, who saw it, or the witness  
10 who saw it. In this case here, Officer Matias didn't  
11 know what to do. I put in -- I wrote it in his spot.  
12 I actually witnessed it.

13 Q Okay. You don't know the order; right?

14 A No. I mean the pictures were shown. It's on the  
15 video, obviously. But you can't see from the video the  
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  
20 S-3. The photo display result form?

21 A Correct.

22 Q And the photo display result form is, I  
23 guess, it has a certification; correct? Something like  
24 a certification?

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



1 when this is done.

2 Q It's not an important document, it's just a  
3 document?

4 A No. It's an important document. I'm saying it's  
5 a document. I am just saying, it's a document that's  
6 filled out.

7 MR. GONZALEZ: Judge, may I publish this to  
8 the jury?

9 THE COURT: Any objection?

10 MR. SAMEIRO: No.

11 THE COURT: Go ahead.

12 MR. SAMEIRO: Judge, for record sake, I'll  
13 move it into evidence now. It is my exhibit. So, the  
14 jury can then have it. This is S-3.

15 THE COURT: Obviously, no objection?

16 MR. GONZALEZ: Obviously, no objection as to  
17 the publishing, Judge. I want them to see it, Judge.

18 (Whereupon, S-3 is published to the jury.)

19 Q Well, actually, let's do this (indicating).  
20 Can you do me a favor?

21 A Sure.

22 MR. SAMEIRO: Judge, the record should  
23 reflect that Counsel is showing the English side of  
24 this document. This is a two-sided, single-page  
25 document.

1 THE COURT: Thank you.

2 MR. SAMEIRO: So, before the jury is the  
3 English side.

4 MR. GONZALEZ: Judge, excuse me.

5 Q Officer Selesky, I'd like you to start with,  
6 "I," under all of the pedigree information, and read  
7 all the way to the end.

8 A "I, the undersigned viewed a total of six  
9 photographs, one at a time. After looking at each  
10 photograph, I selected photograph numbered 33223A, the  
11 fifth shown, and signed the photograph." And I think  
12 that is the picture here. "Check if no identification  
13 was made. No member of the New Brunswick Police  
14 Department, or anyone else suggested that I select any  
15 particular photograph, or that I select any photograph  
16 at all. The identification was my own choice. I was  
17 not told by anyone whether others had selected any  
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 Q 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.

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





1 on the bottom; right?

2 A Right. The officers can assist the person filling  
3 out these forms.

4 Q Did you assist them?

5 A Yes. I fill it out. I explain it to him. That's  
6 my handwriting, meaning the case number on the top. I  
7 put the case number in.

8 Q Did you assist Wilmer Cedillo in picking that  
9 photo?

10 A No, I wasn't in the room.

11 Q It's your testimony, right now, that's for  
12 anyone to fill out, not a certification, that the  
13 person on the bottom, who signs it, should be the  
14 person that puts those numbers on there?

15 MR. SAMEIRO: I'll object to the question.  
16 First of all, the signature line is not being shown.  
17 Clearly, it's not a certification. A certification is  
18 a legal term. And I'll object to the misleading nature  
19 of the question, and the use of the word,  
20 "certification."

21 THE COURT: I'll sustain it, regarding the  
22 issue of the certification. Just as to the document  
23 itself.

24 MR. GONZALEZ: That is as clear as possible.

25 MR. SAMEIRO: We still don't have the bottom

1 half of the document. There we go.

2 MR. GONZALEZ: Okay. All right.

3 Q You didn't sign this piece of paper, did you?

4 A No.

5 Q But you interjected these two portions;  
6 correct?

7 A The number of six, I didn't put that in. This  
8 number, the case number, which is the number on the  
9 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  
12 anything about the case. And, again, like I said, this  
13 was his first time using the procedure. That's why I  
14 filled that out for him.

15 Q You're not the person that observed it?

16 A I did observe it. I was in the other room,  
17 watching the video.

18 Q When he picked the photo?

19 A I saw it. I was watching in the monitor room,  
20 which is across the hall.

21 Q Your testimony today is, you're supposed to  
22 be the person that fills that in?

23 A No. 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



1 time. I helped him in filling it out. The victim  
2 doesn't have to fill it out. We assist the victim in  
3 filling it out. As long as they understand what's  
4 going on.

5 Q The pictures, do you have them in front of  
6 you?

7 A You never gave me the pictures.

8 Q Mr. Sameiro gave you the pictures.

9 MR. SAMEIRO: They are in Evidence,  
10 Counselor. The Clerk has them.

11 MR. GONZALEZ: Thank you.

12 Q Mr. Cedillo was shown six photographs; right?

13 A Correct.

14 Q In random order; right?

15 A Correct.

16 MR. GONZALEZ: I will get the pictures.

17 Q These are the six photos that were shown to  
18 him; right?

19 A Correct.

20 Q But you don't know in what order?

21 A No. As I said, we shuffle them up randomly.

22 Q You have a key; right?

23 A Yes.

24 Q The randomness of them was never documented;  
25 correct?

1 A No. Because I am in the room watching. I don't  
2 know what's being shown. That's the randomness of it.  
3 Officer Matias had shown him the six photographs.

4 Q There is a video in the room. Officer Matias  
5 could have been instructed to show the picture to the  
6 video; correct?

7 A That's not part of what the guidelines say.  
8 That's not what they ask. But that's your  
9 interpretation of what we should do.

10 Q Since no one wrote a report on this  
11 identification procedure, the report is the video;  
12 right?

13 A Exactly.

14 Q Again, the only thing that would memorialize  
15 the sequence in which each one of these things was  
16 shown; right?

17 A What's memorialized -- Like I said, the room is  
18 small. That is what was provided to us by Middlesex  
19 County. That's the way it's been done since we started  
20 doing it.

21 Q You should change the position of the camera  
22 or change the position of where the people sit.

23 A That's your opinion.

24 MR. SAMEIRO: Judge, I'll object to that.

25 THE COURT: Sustained.



1 Q Wouldn't it be fairer if the people saw what  
2 photograph was being displayed?

3 MR. SAMEIRO: Objection.

4 THE COURT: Sustained.

5 A That's the procedure. You have each picture in  
6 your hand. You see the pictures. Those are the  
7 pictures shown.

8 Q So, in this photo identification, no mistakes  
9 were made; right?

10 A Not that I'm aware of. I mean, it was all  
11 memorialized in the video.

12 Q The person was supposed to sign this piece of  
13 paper, when they're actually viewed? They're supposed  
14 to sign the photo, when they pick it; right?

15 A They're supposed to sign it when they pick it,  
16 yes. Okay.

17 Q They're supposed to sign it. They're  
18 supposed to be shuffled up. They're not supposed to be  
19 taken out of the room and then signed?

20 A Like I said, on direct, Officer Matias was not  
21 familiar with doing this. That's why I sent him back  
22 in the room, to have him do it.

23 Q So, he left the room, and came back with a  
24 photo; right?

25 A I'd have to see the video again. But I know he

1 did, yes.

2 Q Okay. Then both he and Mr. Cedillo signed  
3 it; right?

4 A I'd have to see the back of it. I know Mr.  
5 Cedillo signed it, yes.

6 Q Do you want to see the back of it?

7 A Sure. Okay. That's his initials and my initials  
8 as well.

9 Q Your initials are on the bottom, too; right?

10 A Yes.

11 Q Mr. Cedillo was shown the picture, again,  
12 before he signed it; right? I mean by Officer Matias?

13 A Yes. Like I said, I'd like to see the video. I  
14 haven't seen it in a couple days.

15 Q So, you don't know?

16 A Excuse me?

17 Q You don't know?

18 A No, I don't remember. He actually left him. Then  
19 he went back in the room. He showed it to him. He sat  
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 A No.

24 Q You didn't tell Mr. Sameiro that when he  
25 asked you that question?



1 A I said it was not easy.  
2 Q To get phone records; correct?  
3 A Correct.  
4 Q Would you agree with that?  
5 A Yes.  
6 Q It is not easy to get phone records?  
7 A No.  
8 Q It is not easy to get phone records on a  
9 prepaid mobile phone; correct?  
10 A Correct.  
11 Q Neither is it easy to get phone numbers of a  
12 land line? It is not easy to get phone numbers of a  
13 land line, connected to a taxicab company; correct?  
14 MR. SAMEIRO: I'm going to object. He's  
15 talking about general phone records. We all know that  
16 search warrants are needed for some records, and  
17 subpoenas work for others. This is misleading.  
18 THE COURT: Okay.  
19 MR. SAMEIRO: As to the general issue of  
20 phone records, I will object to the question.  
21 MR. GONZALEZ: I'm laying a foundation. I  
22 think it is appropriate, Judge.  
23 THE COURT: Okay.  
24 Q Victoria Taxicab has their own phone line;  
25 correct?

1 A Actually, when I was talking to the dispatcher,  
2 he said they have several phone numbers, not just one.  
3 Q Okay. Now, those phone records, if you do a  
4 Grand Jury subpoena for them, they can be obtained;  
5 correct?  
6 A Not through a subpoena. We have to do a Court  
7 Order to get the records.  
8 Q You can do that in the investigation process?  
9 If you were looking for a number, you would be able to  
10 obtain it; correct?  
11 A Yes.  
12 Q You've done that before; right?  
13 A Correct.  
14 Q So, you didn't do that in this particular  
15 case, to match up whether or not that any phone number  
16 actually did call the Victoria Taxicab Company; right?  
17 A Correct.  
18 Q You could have done that; right?  
19 A I could have done a lot of things. But that's  
20 something -- In the end, you have to trust the victim.  
21 Once the victim of a crime gives me the number, that's  
22 what I would go with.  
23 Q Identifications aren't always reliable;  
24 correct?  
25 MR. SAMEIRO: Objection.





1 MR. GONZALEZ: In his training, I'm sure he  
2 knows whether or not identifications are reliable.

3 MR. SAMEIRO: I object.

4 THE COURT: As to?

5 MR. SAMEIRO: Well, it's an argumentative  
6 question. And, frankly, "reliable" is a loaded term.

7 THE COURT: Is what?

8 MR. SAMEIRO: A loaded term.

9 THE COURT: A loaded term. All right.  
10 Well, I'll ask you -- I will sustain the  
11 objection. I just ask you to rephrase it, Mr.  
12 Gonzalez.

13 MR. GONZALEZ: Sure.

14 Q You mentioned you've been trained in  
15 identifications, photo arrays, all these different  
16 things; correct?

17 A Yes.

18 Q The reason you do all that is because the  
19 reliability of an identification is important; correct?

20 A Correct.

21 Q And reliability depends on the various  
22 different ways to identify someone; correct?

23 Observation; right?

24 A Yes.

25 Q You know, whether someone is near or far to

1 you; correct?

2 A Sure. There is a lot of variables and factors  
3 involved.

4 Q Whether the lighting conditions are good or  
5 bad; correct?

6 A Correct.

7 Q Whether the person is next to you, behind  
8 you, in front of you? That would be a variable;  
9 correct?

10 A Correct.

11 Q The amount of time you're able to actually  
12 view a person would be important; correct?

13 A Correct.

14 Q Now, there is various variables, that go into  
15 the reliability of an identification; correct?

16 A Yes.

17 Q So, it's safe to say that, based on this, a  
18 conclusion can be drawn, that they can either be -- the  
19 identifications can either be reliable or not reliable;  
20 correct?

21 A From case to case, yes.

22 Q Okay. Now, the original identification --  
23 Well, excuse me. The original report in this  
24 identification --

25 MR. SAMEIRO: Judge, I'm going to object to



1 that question.

2 THE COURT: I'm not sure. It sounded like it  
3 was going into a different area.

4 MR. GONZALEZ: I haven't asked the question.

5 MR. SAMEIRO: Judge, he is trying to ask this  
6 officer questions, trying to make him an expert in  
7 identification procedures? Questions as to this being  
8 outside of the actual photo array process used in this  
9 case.

10 THE COURT: Mr. Gonzalez?

11 MR. GONZALEZ: Judge, I'm not trying to make  
12 anyone an expert. I'm merely trying to ask a question.  
13 I haven't even asked it yet. If I can have an  
14 opportunity to ask it.

15 THE COURT: Let's have him ask the question  
16 first.

17 MR. SAMEIRO: All right.

18 Q Now, I'll rephrase it. Because, after that,  
19 I forgot it. Now, there is an initial description;  
20 correct?

21 A Yes.

22 Q And that was different from the actual  
23 make-up or description of Mr. Machado; correct?

24 MR. SAMEIRO: I object to the question.

25 THE COURT: The basis of your objection?

1 MR. SAMEIRO: Because there has been no  
2 foundation made for it. Let me withdraw the objection.

3 THE COURT: All right.

4 MR. SAMEIRO: I'll wait for the answer.

5 Q You read Officer Bobadilla's report; right?

6 A You want to give it to me? I can read it again,  
7 while I'm here.

8 Q Sure.

9 A I can refresh my memory with it.

10 Q Sure.

11 A (Witness complies.)

12 MR. GONZALEZ: The record should note that  
13 D-1 is being shown to Sergeant Selesky. The actual  
14 body of the report.

15 A What part are you talking about?

16 Q If you would like to read the entire body of  
17 the report.

18 A Sure. (Witness complies.)

19 Q Just look up when you're ready.

20 A (Witness complies.) Okay.

21 Q Okay. The description there is different  
22 than Mr. Machado's description; correct?

23 A 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,



1 it says five foot eight.

2 Q Okay. Initially, you asked, at the time, you  
3 asked Wilmer Cedillo, after he made the identification,  
4 to give you the description of the people. "Tell me  
5 how he looked"?

6 A Right. Right.

7 Q And he wasn't able to tell you as to what  
8 they were wearing, or any of those things; correct?

9 A I'd have to see the video again, because I don't  
10 recall.

11 Q If you give me a moment.

12 A Sure.

13 Q In doing so, in doing a photo array, being  
14 that there's a passage of three months in this  
15 particular case; right?

16 A Right.

17 Q You should have asked for a description  
18 before doing a photo array; correct?

19 A I told you, I spoke generally. I didn't ask him  
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.  
23 I know sometimes -- strike that -- not sometimes -- but  
24 I want the victim to tell me what happens, when I start  
25 asking him, during the interview, to the end, and

1 that's why.

2 Q You can do it in reverse order? You can do  
3 the actual interview, prior to the identification, to  
4 capture a description; correct?

5 A You could do it in any order we want. We  
6 generally do the identification first.

7 Q Don't you usually have a preinterview?

8 A Yes. But I knew that it was going to be  
9 videotaped. I'd rather go right into the meat of what  
10 happened, as opposed to doing a preinterview.

11 Q You said you were going to go into the meat  
12 of what happened. You'd rather go into the meat of  
13 what happened after the identification is made?

14 A Sure.

15 Q You don't want to check the reliability of  
16 the previous identification before going into the  
17 photo display?

18 A What do you mean by the reliability of the  
19 previous identification?

20 Q To see if he tells you the same story as  
21 before?

22 A I asked him -- Like I said before, I told you  
23 earlier, that I said to him, "you remember what  
24 happened." He says, "yeah." Then I explained to him  
25 what's going on. That is when we went right into the



1 photo ID. From there, we went right into the  
2 statement.

3 Q Did you ask him if he remembered the person?

4 A That's why he was there.

5 Q Did you ask him, before he went into the  
6 photo array, to see whether or not he was going to make  
7 this identification?

8 A Sure. He didn't come down -- He wasn't coming  
9 down for nothing. He knew he was coming down to look  
10 at pictures.

11 Q What I'm saying is: Did you ask him, did he  
12 remember what the person looked like, before he went  
13 in?

14 A Do you remember the incident, do you remember what  
15 happened, do you remember the person. He was willing  
16 to do it.

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.

22 THE COURT: Thank you very much. You are  
23 excused, Detective Selesky.

24 (Whereupon, the witness is excused.)

25 THE COURT: Could I just see Counsel at

1 sidebar with regard to scheduling?

2 (Whereupon, a discussion was held off the  
3 record at sidebar.)

4 (Whereupon, the hearing continued in the  
5 presence of the jury.)

6 THE COURT: State?

7 MR. SAMEIRO: Your Honor, that concludes the  
8 State's evidence in this case. We rest at this time.  
9 That's, of course, subject to the introduction of  
10 certain exhibits, that have not yet been moved into  
11 evidence.

12 THE COURT: All right.

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

18 **P A T R O L M A N E D W A R D B O B A D I L L A**,  
19 called as a witness on behalf of the Defendant, being  
20 duly sworn, testifies as follows:

21 DIRECT EXAMINATION BY MR. GONZALEZ:

22 Q Good morning, almost afternoon. Officer  
23 Bobadilla, how are you today?

24 A Good.

25 Q Can you tell the jury where you're employed?





- 1 A City of New Brunswick.  
2 Q You are employed there to do what?  
3 A Police Officer.  
4 Q How long have you been employed by the City  
5 of New Brunswick as a police officer?  
6 A Six and a half years.  
7 Q What are your duties there?  
8 A Patrol and take reports.  
9 Q If you can do me a favor, raise your voice.  
10 A Sorry. I'm a little bit sick.  
11 Q I have some cough drops if you need them.  
12 A No. No. I'm okay.  
13 Q You've been there for six years; right?  
14 A That's correct.  
15 Q And part of what you do there is you take  
16 reports; right?  
17 A That's correct.  
18 Q Were you working back on April 24th of 2007?  
19 A That's correct.  
20 Q You were?  
21 A Yeah.  
22 Q Do you remember taking any witness -- Well,  
23 first, what is your training with regard to report  
24 writing?  
25 A If he comes in, I ask him questions. I do a

- 1 report on what occurred that day as someone comes in.  
2 Q Were you born in this country?  
3 A Yes, I was.  
4 Q Do you speak Spanish?  
5 A Yeah.  
6 Q How did you learn Spanish?  
7 A By listening to my parents and in school.  
8 Q So, you're bilingual?  
9 A Uh-hum.  
10 Q You're fluent in both English and Spanish?  
11 A Better in English. So-so in Spanish.  
12 Q You're a bilingual officer, so to speak?  
13 A That's correct.  
14 Q You've taken the test to qualify yourself as  
15 someone who is bilingual?  
16 A What do you mean by the test?  
17 Q For the bilingual officer. In order to  
18 determine whether or not you are a bilingual officer?  
19 You never had to take a test?  
20 A No.  
21 Q You're considered a bilingual officer? You  
22 speak Spanish?  
23 A That's correct.  
24 Q Your Spanish is pretty good?  
25 A It's good enough to get by, yes.



1 Q You know numbers; right --

2 A Yeah.

3 Q -- in Spanish and English? You know colors  
4 in Spanish and English; right?

5 A Most colors, yeah.

6 Q You also know various other things, like  
7 "gun"?

8 A Yeah.

9 MR. SAMEIRO: I'll object to the leading  
10 nature of the questions.

11 THE COURT: I will sustain the objection.

12 MR. SAMEIRO: I think Counsel tends to  
13 forget, that this is your witness.

14 MR. GONZALEZ: I'll move on.

15 THE COURT: Okay.

16 Q Anyway, you wrote a report on this? You were  
17 related some information on April 24, 2007?

18 A Yeah. Yeah. I did do a report, yeah.

19 Q Did you meet with a gentleman by the name of  
20 Wilmer Cedillo?

21 A That's correct.

22 Q When did he come in?

23 A In the morning.

24 Q He came in, and he had what type of report?  
25 What type of report was given to you?

1 A Robbery report.

2 Q You wrote a report; correct?

3 A That's correct.

4 Q And you wrote a detailed report; right?

5 A Uh-hum.

6 Q You learn how to write detailed reports at  
7 the Academy? You learn how to write reports; is that  
8 right?

9 A That's correct.

10 Q I'm showing you what's marked S-5 for  
11 Identification purposes. Can you tell us what that is?

12 A That's the report that I did that day.

13 Q Have you reviewed that report before coming  
14 in here today?

15 A Yes, I have.

16 Q You reviewed it numerous times; correct?

17 A Yeah. I looked over it.

18 Q So, on this date, what did you write in the  
19 report about the events that transpired, in your own  
20 words?

21 MR. SAMEIRO: I object to the nature of the  
22 question.

23 THE COURT: Mr. Gonzalez?

24 MR. SAMEIRO: The report is hearsay. Why  
25 doesn't he ask him what Wilmer Cedillo told him? If he



1 doesn't remember, then maybe he can refer to the  
2 report.

3 THE COURT: That's correct.

4 MR. SAMEIRO: He can't just testify from his  
5 report.

6 MR. GONZALEZ: Okay.

7 Q What did Wilmer Cedillo report to you on this  
8 date, April 24th?

9 A That he got robbed.

10 Q What else? There was some details; right?  
11 What are those things?

12 A That a gun was shown. That he was hit numerous  
13 times.

14 Q Were there any other things? If you can  
15 refer to your report? Review it before answering, so  
16 you can.

17 A (Witness complies.) Pretty much that he got  
18 dispatched to pick up individuals, and take them to  
19 another location, because he's a taxi driver.

20 Q Did he give you a description?

21 A Yes, he did.

22 Q Did you write down that description?

23 A That's correct.

24 Q What was that description?

25 A One was a Hispanic male, wearing a black sweater,

1 blue jeans, white bandanna. He was in his early  
2 twenties, skinny build, and about five foot eight.

3 Q There's another person that he described to  
4 you; right?

5 A That's correct.

6 Q What did he describe about the other person?

7 A Hispanic male, wearing a white sweater, blue  
8 jeans, hat, in his early twenties, with a skinny build,  
9 was approximately five foot eight.

10 Q Did he ever state to you that he recognized  
11 someone?

12 A I don't recall.

13 Q I'm sorry. If you can refer to this portion  
14 (indicating).

15 A Oh, yes. He said, he recognized one of them  
16 before.

17 Q He also told you some other things about --  
18 some other things about what happened?

19 A That's correct.

20 Q Some other things about what happened?

21 A That's correct.

22 Q Did he ever -- Well, can you tell the jury  
23 what he told you about the robbery, and what happened  
24 when he arrived at 400 Lee Avenue?

25 A He said -- Can I refer back to my notes? The



1 report?

2 Q Please. You can refer to it. Please refer  
3 to it, if you don't remember.

4 A (Witness complies.) He said, both individuals  
5 began to punch him in the back, when he was in the back  
6 seat.

7 Q So, he said that both individuals, that were  
8 in the car, were in the back seat?

9 A That's correct.

10 Q And that they both began to punch him?

11 A That's correct.

12 Q And what did he do? What did he tell you he  
13 did, after those two individuals began punching?

14 A He said, he swung back and exited the cab.

15 Q He told you that he swung back, and then he  
16 got out of the taxicab?

17 A That's correct.

18 Q Then he went on. What did he tell you about  
19 when he exited the taxicab?

20 A Three Hispanic males came running from behind  
21 several cars.

22 THE COURT: I'm sorry? I missed that. What  
23 did you say again?

24 THE WITNESS: Three Hispanic males ran from  
25 behind several other vehicles.

1 Q Did he tell you whether or not the people  
2 that ran -- Well, first of all, that any of the guys in  
3 the car, did he tell you whether or not any of them had  
4 a gun?

5 A I don't recall.

6 Q Please check your report.

7 A (Witness complies.) I don't believe so.

8 Q Right after, "behind several cars." Can you  
9 read that sentence, if that reflects your recollection?

10 A He said, "all three were carrying black handguns."

11 Q So, the people outside the car had the  
12 handguns; right?

13 A I believe so.

14 Q That's what he told you; right?

15 A Yeah.

16 Q Now, then, what happened after the people  
17 with the handguns approached him? What did he tell  
18 you? What happened after the people with the handguns  
19 approached him?

20 A He said that, he was struck, and he was thrown to  
21 the ground, and somebody pointed a handgun to his head.

22 Q Did he ever tell you that he was punched and  
23 kicked while he was on the ground?

24 A Yeah. Afterwards. Like further on, later on.

25 Q Did he ever tell you where the gun was





1 pointed particularly?

2 A To the side of his head.

3 Q Did he specify what side of his head it was  
4 pointed to?

5 A The left side of his head.

6 Q What did he report to you after he was  
7 punched and kicked?

8 A That they asked for all his stuff, and for his  
9 money and everything.

10 Q So, then, did he tell you what he did after  
11 the robbery occurred?

12 A He called dispatch.

13 Q That he got up and he called dispatch, is  
14 that what he told you?

15 A I believe so. He got back in the car and he  
16 called dispatch.

17 Q He didn't tell you, at any time, that he went  
18 anywhere else? He told you that he called the  
19 dispatch? That's what's in your report?

20 A Uh-hum. That's correct.

21 Q And then did he tell you how he got the phone  
22 number?

23 A He said he called at work, they told him what  
24 number they called up from, from the caller ID.

25 Q Did he present to you any information with

1 regard to the number?

2 A Yeah. A piece of paper, which he had the number  
3 written down on.

4 Q Do you remember what you did with that piece  
5 of paper?

6 A I believe I gave it back to him.

7 Q So, you wrote it down, and you gave it back  
8 to him?

9 A (Witness shakes his head.)

10 Q Would you agree that piece of paper --

11 MR. SAMEIRO: Again, I'm going to object to  
12 the leading.

13 THE COURT: I'll sustain the objection and  
14 ask you to rephrase the question.

15 MR. GONZALEZ: Okay.

16 Q That piece of paper, in your training and  
17 experience, could that be evidence?

18 A Yeah. Possibly.

19 Q Possibly or yes?

20 A Yeah. Yeah. It could be used.

21 Q When you asked -- When someone comes in to  
22 make a report, you ask them their name and address;  
23 right?

24 A That's correct.

25 Q You ask them their telephone number? You ask



1 them for their telephone number, so, that they can be  
2 reached?  
3 A That's correct.  
4 Q You ask them about their height and their  
5 weight?  
6 A Generally, no.  
7 Q No?  
8 A (Witness shakes his head.)  
9 Q So, in your report, you didn't know anything  
10 about Mr. Cedillo's height and weight?  
11 A No.  
12 Q You didn't write anything about it; right?  
13 A No.  
14 Q Mr. Cedillo spoke to you in Spanish?  
15 A That's correct.  
16 Q You spoke to him back in Spanish?  
17 A Uh-hum.  
18 Q And all of the words that you put in your  
19 report, the translations, are what he told you?  
20 A To the best that I could, yeah.  
21 Q You took that report on April 24th; right?  
22 A I believe so. Yeah. On the 24th.  
23 Q The date is on the bottom of your report?  
24 A Uh-hum.  
25 Q On the second page, what's the date?

1 A The 23rd.  
2 Q So, did you take the report on the 24th or  
3 the 23rd?  
4 A No. I believe I took it on the 24th. The 23rd is  
5 when I started work. I had that date in my head. I  
6 put down the 23rd.  
7 Q Did you notice any injuries on Mr. Cedillo  
8 when he came in?  
9 A Not that I recall.  
10 Q Did he appear to be nervous?  
11 A Yeah.  
12 Q Now, when you wrote your report, or when you  
13 entered it into the computer, did he say it happened at  
14 400 Lee Avenue? Do you remember?  
15 A I believe so. Yeah. 400 Lee Avenue.  
16 Q 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 A Incident report.  
20 Q And did you enter the incident into the  
21 computer?  
22 A No. The dispatcher enters it in.  
23 Q This is a record that goes into the computer;  
24 is that right?  
25 A That's correct.



1 Q So, it's common, when a dispatcher --

2 MR. SAMEIRO: I'm going to object --

3 THE COURT: All right.

4 MR. SAMEIRO: -- as to the nature of the  
5 question.

6 MR. GONZALEZ: Can we go to sidebar?

7 THE COURT: Sidebar.

8 (Whereupon, the following discussion occurred  
9 at sidebar.)

10 MR. SAMEIRO: This document is hearsay.

11 THE COURT: Okay.

12 MR. GONZALEZ: It's a business record, Judge.

13 MR. SAMEIRO: No, it is not. And he'll never  
14 be able to identify who the caller was, that caused  
15 this entry to be made, because what you have here is a  
16 reference to someone making a call, "there was a  
17 robbery at 40 Woodnor Court." And he'll never  
18 establish that the victim made that call. It could  
19 have been someone else. And it comes in through the  
20 police department.

21 MR. GONZALEZ: It's a business record.

22 MR. SAMEIRO: It's a computer printout of an  
23 incident report.

24 MR. GONZALEZ: I can establish what that is  
25 through this witness. It's a business record. We know

1 it's a business record. It was requested in discovery,  
2 and given to us, as a computer automated dispatch, as  
3 Mr. Sameiro referred to earlier. It's something that  
4 is contained in the computer system at the police  
5 station.

6 MR. SAMEIRO: It is merely a printout of the  
7 screen of that particular incident, Judge. Can I go  
8 into it? I guess, it's a business record.

9 THE COURT: Sure. I think that Counsel means  
10 an official record. Not necessarily a business record.

11 MR. SAMEIRO: That means that the document  
12 might come in; but the contents are still hearsay.  
13 There is hearsay within the hearsay, in the official  
14 record. An official record may be an exception. But  
15 we still don't know who that caller was, who gave the  
16 information, as to its reliability. We don't know if  
17 the victim made a call. It could have been somebody  
18 who knows the crime scene. Detective Selesky neglected  
19 to follow-up on it, as to who called it in.

20 THE COURT: It just may be that the exact  
21 location is a little wrong. So, it's hearsay, in terms  
22 of the contents, within the official record.

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



1 little bit more. I would still object at this time.

2 MR. GONZALEZ: It's a walk-in, Judge. It  
3 indicates that it's a walk-in. But the nature of the  
4 robbery, it's a robbery. It's a walk-in.

5 THE COURT: Where do you see that it is a  
6 walk-in? Well, either way, it's important. You don't  
7 know who called this in.

8 MR. SAMEIRO: That's the thing. It came in  
9 -- He indicated that it happened about four o'clock.

10 MR. GONZALEZ: There is no other person,  
11 Judge.

12 MR. SAMEIRO: That's not true.

13 I know in the records, it says that this call  
14 was received by the dispatcher. The dispatcher is not  
15 Officer Bobadilla.

16 MR. GONZALEZ: I will ask him if he entered  
17 this into the computer.

18 THE COURT: Okay. Let's go.

19 MR. SAMEIRO: I'm still objecting.

20 THE COURT: All right. He may not be able to  
21 testify as to it.

22 (Whereupon, the sidebar discussion  
23 concluded.)

24 (Whereupon, the hearing continued in the  
25 presence of the jury.)

1 THE WITNESS: I just had surgery. I just  
2 wanted to get up and stretch my legs.

3 MR. GONZALEZ: Okay.

4 THE COURT: Mr. Gonzalez?

5 MR. GONZALEZ: Thank you.

6 Q Officer, are you okay?

7 A Yeah. I'm all right.

8 Q After you do a report, you enter it -- Do you  
9 enter it into the computer?

10 A I type it into the computer, yeah.

11 Q It gives you not only a report; but also an  
12 incident screen; right?

13 A At the beginning, an incident report, yeah.

14 Q So, when you were originally called to this  
15 particular -- to do the report, in this particular  
16 case --

17 A Uh-hum.

18 Q -- you were originally called for a robbery,  
19 that occurred at 40 Woodnor Court?

20 A 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 Q So, this report wasn't a call-in, to your  
25 knowledge?





1 A No.  
2 Q It was a walk-in?  
3 A It's a walk-in report, yeah.  
4 Q The dispatcher would enter into the system  
5 that it was a walk-in; right?  
6 A Yeah. If they were told, yeah, it would be  
7 entered as a walk-in report.  
8 Q You find out where --  
9 MR. SAMEIRO: Judge, I'm going to object.  
10 These are leading questions.  
11 THE COURT: I will sustain the objection as  
12 to leading. It's direct.  
13 MR. GONZALEZ: Okay.  
14 Q Did you find out where the report came from?  
15 MR. SAMEIRO: Objection.  
16 MR. GONZALEZ: I meant what area that the  
17 robbery occurred.  
18 THE WITNESS: You mean if the victim --  
19 Q When you're talking to the victim --  
20 MR. SAMEIRO: I would object to this.  
21 THE COURT: Is that what you're asking him,  
22 Mr. Gonzalez?  
23 MR. GONZALEZ: Well, the person who called it  
24 in.  
25 THE COURT: Is there another person there?

1 Q Dispatch called you; right?  
2 A Dispatch told me to make my 30. Either them or my  
3 Sergeant, yeah.  
4 Q And then I ask you to refresh your  
5 recollection, if you can take a look at this?  
6 A Uh-hum. (Witness complies.)  
7 MR. SAMEIRO: His recollection doesn't need  
8 refreshing at this point.  
9 MR. GONZALEZ: Well, I think -- I just wanted  
10 to take it out. I don't know if it is marked.  
11 THE COURT: Okay.  
12 Q Do you remember the nature of the call?  
13 A No.  
14 MR. SAMEIRO: I object.  
15 THE COURT: Hold on. What is it marked, Mr.  
16 Gonzalez?  
17 MR. GONZALEZ: D-15.  
18 THE WITNESS: Which incident?  
19 THE COURT: He's asking which phone call.  
20 MR. GONZALEZ: There is no phone call,  
21 because he indicated that this is a walk-up.  
22 THE COURT: Okay. Ask your question.  
23 MR. GONZALEZ: Okay.  
24 Q Now, when you were dispatched to go do this  
25 interview, or to take this report, you were told what



1 it was about?

2 A No.

3 Q You were only given a code?

4 A Just come in and do a walk-in report.

5 Q You never remember anything about 40 Woodnor  
6 Court?

7 A No.

8 MR. GONZALEZ: Okay. I don't have any  
9 further questions.

10 THE COURT: Okay. Thank you. State?

11 MR. SAMEIRO: Thank you.

12 CROSS-EXAMINATION BY MR. SAMEIRO:

13 Q Well, we'll get to Woodnor Court in a little  
14 while. You're in a suit because not long ago, you  
15 injured yourself on duty?

16 A That's correct.

17 MR. GONZALEZ: Judge, that's a leading  
18 question.

19 MR. SAMEIRO: I'm cross-examining.

20 THE COURT: This is cross-examination. It's  
21 backwards.

22 MR. GONZALEZ: Okay. Excuse me. It's  
23 cross-examination. Right. I apologize.

24 Q Right?

25 A That's correct.

1 Q As a result of that injury, you tore up some  
2 ligaments in your ACL and NCL? That's why you had to  
3 get up before?

4 A That's correct.

5 Q You told me earlier that you have therapy  
6 scheduled at two o'clock?

7 A That's correct.

8 Q I'll try to make sure you get there. Okay?

9 A Thank you.

10 Q You're a patrolman; right?

11 A That's correct.

12 Q And you're not a bilingual certified officer  
13 at all; correct?

14 A No.

15 Q Emphasis on the certified part?

16 A Yeah.

17 Q It's your job to, basically, arrest criminals  
18 on the street, break up barroom brawls, just to make  
19 sure that law and order is maintained throughout the  
20 City of New Brunswick; right?

21 A That's correct.

22 Q You do that on a regular basis, do you not?

23 A That's correct.

24 Q The report writing is incidental to what you  
25 do; correct?



1 A That's correct.

2 Q What is the shift that you normally work?

3 A 8:30 at night until 6:45 in the morning.

4 Q That's when things get hot around town;  
5 right?

6 A In the beginning of the shift, yeah. That's  
7 correct.

8 Q As a young police officer, you're out and  
9 about in the City of New Brunswick, in a patrol car,  
10 protecting the public; right?

11 A That's correct.

12 Q When you do have some interaction with  
13 people, or you're caused to or asked to write a report,  
14 you do that because that's part of your job; right?

15 A That's correct.

16 Q From time to time, you get tapped to  
17 translate, when people of Spanish speaking origin make  
18 a report; right?

19 A That's correct.

20 Q That's because you know a little bit of  
21 Spanish yourself; right?

22 A That's right.

23 Q I heard you tell Mr. Gonzalez that your  
24 Spanish was so-so?

25 A Uh-hum. That's correct.

1 Q Is that what you said?

2 A That's correct.

3 Q And that you were born here in the United  
4 States?

5 A That's correct.

6 Q That you learned whatever Spanish you learned  
7 from your parents?

8 A Uh-hum. That's correct.

9 Q Also, you went to school to learn Spanish?

10 A In high school.

11 Q Oh, a high school Spanish course?

12 A That's correct.

13 Q You didn't want to take Italian or French?  
14 Something, perhaps, easy?

15 A That's correct.

16 Q So, you took Spanish?

17 A Yeah.

18 Q What kind of grades did you get in your  
19 Spanish classes?

20 A C's.

21 Q I don't want to embarrass you. C's all the  
22 time?

23 A Yeah. C's and B's.

24 Q We know why. Because you probably didn't

25 study. You figured what little you knew would get you



1 through; right?

2 A That's correct.

3 Q So, no A's in your Spanish course. You  
4 weren't born in a Spanish-speaking country. But you  
5 learned what you know from your parents; right?

6 A That's correct.

7 Q Your Spanish is so-so?

8 A That's correct.

9 Q That's nice that you know the colors in  
10 Spanish; right? Amarillo, rojo, verde? You know all  
11 those colors?

12 A Just the main ones.

13 Q Right. Just the main ones?

14 A Yeah.

15 Q It's a lot different from when you are  
16 talking to someone, speaking in Spanish, and then you  
17 have to translate in English, what they're saying;  
18 right?

19 A That's correct.

20 Q That's not so easy, is it?

21 A No.

22 Q You ever hear the expression, "a lot gets  
23 lost in the translation"?

24 A Yeah. I heard that.

25 Q Does that happen a lot when you translate

1 from Spanish to English?

2 A Yes.

3 Q Have you ever been involved in translation,  
4 where you have to, basically, ask somebody to repeat a  
5 question, or to, you know, use another word, because  
6 you don't understand what they're saying? You have a  
7 difficult time putting that into English?

8 A That's correct.

9 Q That's happened. So, in this case, you spoke  
10 to a guy named Wilmer Cedillo?

11 A Right. Uh-hum.

12 Q You did that on April 24, 2007?

13 A That's correct.

14 Q He walked in to the police department to say  
15 that he had been the victim of a robbery; right?

16 A Uh-hum.

17 Q So, you didn't know anything about that;  
18 right?

19 A That's correct.

20 Q Not in advance; right?

21 A No. No.

22 Q 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 A That's correct.





1 Q Probably waiting for you; isn't that so?

2 A Yeah. That's correct.

3 Q So, when you spoke to him, you introduced  
4 yourself; right?

5 A Uh-hum.

6 Q And then you took him into the room. You  
7 started asking him questions; right?

8 A That's correct.

9 Q The first step in the procedure, you have to  
10 ask him questions; right?

11 A Yeah.

12 Q Then you listen to whatever he says; right?

13 A Uh-hum. That's correct.

14 Q He's not just going to give it to you with  
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 A Yeah.

19 Q Fast, too? No tape recorder is on; right?

20 A No.

21 Q You didn't use one in this case; right?

22 A No.

23 Q That's because you are not required to do  
24 that for walk-ins; right?

25 A No.

1 Q If you did that, you'd be taping everybody  
2 you ever see; right?

3 A That's correct.

4 Q This guy -- I'm talking real fast, too,  
5 because it's 12:25, and I'm trying to meet my  
6 commitment. But you're following me?

7 THE COURT: Remember the Court Reporter.

8 MR. SAMEIRO: Miss Crowell, am I going too  
9 fast? I'll slow down.

10 Q He's speaking to you quickly; right?

11 A Yes. That's correct.

12 Q You're going to do like the lawyers do and  
13 like the Judge does throughout the case, like you start  
14 writing notes down; right?

15 A That's correct.

16 Q You're not taking it down verbatim; right?

17 A No.

18 Q You can't. It would be impossible; right?

19 A That's correct.

20 Q So, he's telling you an account, you're  
21 writing down the key words?

22 A That's correct.

23 Q 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"?



- 1 A That's correct.  
2 Q Let's face it, your Spanish is so-so?  
3 A That's correct.  
4 Q You write down these notes; right?  
5 A Uh-hum.  
6 Q How long did this interview process take?  
7 A Maybe 20 minutes, half hour.  
8 Q You have your report in front of you?  
9 A Yeah.  
10 Q Judging by the information you put down, no  
11 more than 20 minutes; right?  
12 A No. Probably not.  
13 Q Quick?  
14 A Yeah.  
15 Q So, then, after you take down your  
16 information, in your notes, on your notepad, you  
17 probably get up, tell Mr. Cedillo, nice meeting him.  
18 Hopefully, you know, he'll get better, because he's  
19 just been robbed; right?  
20 A That's correct.  
21 Q And you escort him probably out of the  
22 building; right?  
23 A Uh-hum. That's correct.  
24 Q Then you go to work typing up the report?  
25 A That's correct.

- 1 Q Are you the two-finger kind of typist?  
2 A It's usually two fingers.  
3 Q That takes a while?  
4 A Yeah.  
5 Q That takes a while, doesn't it?  
6 A Yeah.  
7 Q Do you know any police officers who like to  
8 write reports?  
9 A Not too many.  
10 Q Do you?  
11 A No.  
12 Q You'd rather be out on the road?  
13 A That's correct.  
14 Q Now, you're typing the report at 5:24 in the  
15 morning, I believe; right?  
16 A That's correct.  
17 Q Now, it's the end of your shift; right?  
18 A That's correct.  
19 Q After this, you're going home; right?  
20 A That's correct.  
21 Q This happened to be a Tuesday night; right?  
22 A Tuesday morning?  
23 A Probably. I have to check. Yeah. Tuesday  
24 morning.  
25 Q April 24th, Tuesday morning, you're talking



1 to the victim, and it's the end of your shift; right?

2 A That's correct.

3 Q You're probably not bright eyed and bushy  
4 tailed at that hour? It is not the start of your  
5 shift?

6 A No.

7 Q The end of your shift. You want to go home.  
8 Probably after writing this report?

9 A Yeah. Probably.

10 Q So, you type it up?

11 A That's correct.

12 Q You rely on your notes?

13 A Uh-hum.

14 Q You think that something got lost in the  
15 translation, between what he told you and what you  
16 wrote down?

17 A Possibly. Yeah.

18 Q Possibly. Well, for example, in this case,  
19 you wrote down that, there were two suspects involved.  
20 Do you have a copy of it?

21 A Yes, I do.

22 Q You have the State's exhibit; right?

23 A Yeah.

24 Q Just so we are clear, you're looking at S-5.  
25 After telling us, in your report, that you spoke to the

1 victim, who said he was robbed, you said that he told  
2 you, that he was a taxicab driver. That he was sent to  
3 58 Lee Avenue, to pick up two people; right?

4 A That's correct.

5 Q You wrote that down?

6 A Yeah.

7 Q Then you say, he was then told to drop them  
8 off at 400 Lee Avenue?

9 A Yeah.

10 Q Nothing about Woodnor Court; right?

11 A No.

12 Q 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  
15 Avenue. Both individuals were standing in front of the  
16 residence"?

17 A That's correct.

18 Q That would have been at 58 Lee?

19 A That's 58 Lee.

20 Q So far so good?

21 A Right. Uh-hum.

22 Q Then you say, he recognized one of these  
23 people; right?

24 A That's correct.

25 Q Now, at this point, in your report, is when



1 you start getting into the description that was given  
2 to you?

3 A That's correct.

4 Q Nothing in the report that indicates any kind  
5 of a face description; right?

6 A No.

7 Q Okay. We know that both of the people  
8 involved at 58 Lee were Hispanic males?

9 A That is correct.

10 Q That's it, in terms of any kind of inference,  
11 of what their facial features might look like; right?

12 A That's correct.

13 Q Then the rest gets into the clothing. We  
14 know there is a reference to blue jeans and sweaters,  
15 and so on and so forth?

16 A Right.

17 Q And that he is telling you that they were  
18 approximately five feet eight inches tall?

19 A That's correct.

20 Q Now, if you know that the victim was five  
21 foot eight --

22 A Okay.

23 Q -- and if I said to you, "they're as tall as  
24 me," would you then ask him how tall you were?

25 A Of course. Yeah.

1 Q Then you would discover that he would be  
2 five foot eight, if my hypothesis is correct; right?

3 A That's correct.

4 Q Now, the victim in this case said, he told  
5 you, that the victims -- excuse me -- the defendants  
6 were about his height?

7 A Yeah.

8 Q But you've got him -- he is quoted as saying,  
9 "five foot eight"?

10 A About five foot eight. Approximately five foot  
11 eight.

12 Q Okay. So, then, even though the information  
13 is accurate, it may have been told to you differently,  
14 you may have had to do a little interpretation?

15 A That's correct.

16 Q You're translating now; right?

17 A Yeah.

18 Q You're trying to make this all right, easy to  
19 read for lawyers, like me and Mr. Gonzalez; right?

20 A That's correct.

21 Q You know that it is going to go upstream;  
22 right?

23 A Yeah.

24 Q Okay. So, we then get into the 400 Lee  
25 Avenue scenario; right?





1 A That's correct.

2 Q Now, you say that, when they arrived at 400  
3 Lee Avenue, according to the victim, talking to you  
4 now, on that date, "both suspects in the back seat  
5 began to punch the victim," close quote; right?

6 A That's correct.

7 Q Now, the victim in the case said that the  
8 suspects got in the back seat. Then one of them got in  
9 the front seat and started --

10 MR. GONZALEZ: Judge, objection.

11 MR. SAMEIRO: I want to know if the witness  
12 would recall what the victim told him.

13 MR. GONZALEZ: Judge, it's hearsay.

14 MR. SAMEIRO: Well, you opened the door by  
15 bringing him in, Counselor.

16 That's exactly the point. He got it wrong.  
17 He was mistaken.

18 THE COURT: I will allow the question.

19 Q You understand what I'm trying to ask you  
20 now? I'll do it again. It's in your report here that  
21 the victim told you, that when they all arrived at 400  
22 Lee Avenue, you quote him, "both suspects in the back  
23 seat began to punch the victim," which is a complete  
24 quote?

25 A That's correct.

1 Q The victim in this case maintained that the  
2 people got in the back seat. Then they got into the  
3 front seat, after which the assault occurred?

4 MR. GONZALEZ: Judge, he wasn't here.

5 MR. SAMEIRO: I'm telling him.

6 Is there any doubt about that, Counsel?

7 THE COURT: I'm sorry, Mr. Gonzalez. I  
8 didn't hear your objection.

9 MR. GONZALEZ: Neither of us were there.  
10 It's hearsay as to what the victim said in the  
11 courtroom.

12 THE COURT: You're referring to the  
13 courtroom?

14 MR. SAMEIRO: He wasn't here. So, he  
15 wouldn't know.

16 THE COURT: Okay.

17 MR. SAMEIRO: He's objecting to what I'm  
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.



1 THE COURT: What he said here is not  
2 hearsay.

3 MR. GONZALEZ: It's hearsay.

4 THE COURT: No, it's not. He didn't hear it.  
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 Q For the record, what I said was, isn't it  
10 quite probable, when the victim told you about the  
11 people entered into the back seat of his car, you  
12 missed the point where the one guy got in the front?

13 A It's possible. Yeah.

14 Q You're focusing on the people getting in the  
15 back seat?

16 A Yeah.

17 Q You don't really get into anything else?

18 A Okay. That's correct.

19 Q I mean, think about that. Both suspects in  
20 the back seat began to punch the victim. Have you ever  
21 been in a mini van?

22 A Yeah.

23 Q That doesn't add up, does it? Somebody would  
24 have had to, at least, get in the front, to get ahold  
25 of the victim, in some way?

1 A Yeah.

2 Q If you are going to punch him; right?

3 A Yeah. Usually.

4 Q Then, further on, you make a reference to the  
5 victim saying, "one of the suspects pointed a gun to  
6 the left side of his head, told him not to move";  
7 right?

8 A That's correct.

9 Q You think he could have indicated that with  
10 his fingers to demonstrate that for you? He could  
11 have?

12 A It's a possibility, yeah.

13 Q Like I'm doing?

14 A Uh-hum.

15 Q This is what, 5:30 in the morning?

16 A That's correct.

17 Q And you're tired; right?

18 A Yeah.

19 Q I'm pointing to the right side of my head.  
20 From your point of view, it's the left?

21 A Yeah.

22 Q You see how mistakes can be made, when you  
23 write down translations from your notes, and you don't  
24 record it? I don't mean to pick on you.

25 A I understand what you're saying.



1 Q You could have done that -- if the victim  
2 actually told you he was injured in this case -- if  
3 that gun was pointed to the right side of his head?

4 A Yeah.

5 Q When he was behind the driver's wheel, and  
6 one of the suspects got up into the front; right?

7 A (Witness shakes his head.)

8 Q The only thing you have here in quotes,  
9 because you make an effort to quote?

10 A Yeah.

11 Q Mr. Cedillo is quoted, "that one of the  
12 suspects yelled," quote, "take all of his  
13 communications and break them, so, he can't call the  
14 police," close quote. Do you think these people would  
15 use the word, "communications," as opposed to radio or  
16 cell phone, or something like that?

17 A Yeah. Possible. Yeah.

18 Q So, maybe your interpretations -- Your  
19 judgment is filtering into the translation; right?

20 A (Witness shakes his head.)

21 THE COURT: Was there a response?

22 MR. SAMEIRO: I thought I heard him say, yes.

23 THE WITNESS: I shook my head.

24 Q Did he ever tell you that they took his  
25 cuentas?

1 A His cuentas?

2 Q Cuentas.

3 A What's that? Money?

4 Q I don't know. You are the Spanish-speaking  
5 officer.

6 A I don't know, to be -- I don't know cuentas. He  
7 may have used a different phrase at that point.

8 Q Something like atraco? Did he use that  
9 phrase?

10 A Not that I recall.

11 Q You know what that means?

12 A Truck, right? No. I heard, at one point --  
13 Honestly, no. I'm being honest. Atraco I thought is  
14 truck.

15 Q So, you don't know if he used that word or  
16 not?

17 A No.

18 Q But, I mean, with all due respect, you did  
19 your best to translate?

20 A Like I said, if I don't know the word, I try to  
21 phrase it another way. Ask them to describe it.

22 Q He told you, he was robbed; right?

23 A Yeah.

24 Q If I said to you, in the courtroom, "it's  
25 atraco," or something like that, to define the



1 robbery --  
2 MR. GONZALEZ: Objection, Judge.  
3 THE COURT: I will sustain the objection.  
4 Q You wouldn't have said, "I used the word  
5 "robbery"?"  
6 MR. GONZALEZ: Objection.  
7 THE COURT: That is sustained. Ask another  
8 question.  
9 MR. SAMEIRO: That's fine.  
10 Q Okay. Listen. You did something in this  
11 case, which is, of course, very important; right?  
12 A Yeah.  
13 Q Regarding the phone number?  
14 A That's correct.  
15 Q The victim had a piece of paper. And I asked  
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?  
20 A That's correct.  
21 Q I have a piece of paper right here.  
22 A That's correct.  
23 Q It has a phone number on it; right?  
24 A That's correct.  
25 Q If you would write down that number on the

1 pad. Let's just take a report now.  
2 A (Witness complies.) It is running out of ink.  
3 Q It is running out of ink. We need to get  
4 ink.  
5 A It works. Shake, shake.  
6 Q Hold 'it a second. I want you to take this  
7 piece of paper. Pretend I'm the victim. I come in  
8 with this piece of paper. And there is a phone number  
9 on it.  
10 A (Witness complies.)  
11 Q You did that; right?  
12 A That's correct.  
13 Q Also, in your report, you do make note of the  
14 fact that the victim said, "I was robbed." That there  
15 was monies taken from him, a cell phone and worker's  
16 ID; right?  
17 A That's correct.  
18 Q Total of five hundred dollars; right?  
19 A That's correct.  
20 Q 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 Q That's adjacent to 400 Lee?  
25 A Same area, yeah.





1 Q So, the victim tells you, face to face, that  
2 the guys ran in that direction?

3 A That's right.

4 Q All right. And you said, he was nervous?

5 A Yeah.

6 Q When you spoke to him?

7 A Yeah.

8 Q Okay. Let's see. That's the number that I  
9 asked you to write. 732-801-5418?

10 A Right.

11 Q Let's see what you wrote down. That is  
12 732-801-5418?

13 A That's correct.

14 MR. SAMEIRO: I will show the jury  
15 (indicating).

16 Q You did that right, didn't you?

17 A Yeah.

18 MR. SAMEIRO: Thank you. Nothing else.

19 THE COURT: Mr. Gonzalez, any additional  
20 questions?

21 MR. GONZALEZ: Yes.

22 REDIRECT EXAMINATION BY MR. GONZALEZ:

23 Q If you don't know Spanish that well, how come  
24 your office uses you in order to translate?

25 A Because there is nobody else on the road at the

1 time that speaks Spanish.

2 Q So, potentially, in any particular case, in  
3 any report, in any investigation, you shouldn't be  
4 considered a bilingual officer? Is that what you're  
5 telling us today?

6 A I do the best I can to get the information, to do  
7 something.

8 Q You're not supposed to be a bilingual  
9 officer; correct?

10 A No.

11 Q You're actually a -- You told your boss that  
12 you understand Spanish; correct?

13 A That's correct. I speak Spanish.

14 Q The reason you're a bilingual officer is  
15 because you think that you can speak Spanish; right?

16 A I believe I can speak Spanish, yes.

17 Q You speak Spanish at home or you did speak  
18 Spanish at home when you were younger?

19 A I did. A little bit. I usually speak English.

20 Q With regard to your job, you speak Spanish a  
21 lot?

22 A Yes, I do.

23 Q You're on the streets in New Brunswick a lot;  
24 right?

25 A Yes. That's correct.



1 Q There's lots of Latinos in New Brunswick; is  
2 that right?

3 A That's correct.

4 Q You talk to them on a daily basis, while you  
5 are out on the streets; right?

6 A That's correct.

7 Q Would you say everyday you probably  
8 encounter somebody that speaks Spanish?

9 A Probably everyday, when I'm at work.

10 Q People asking for directions?

11 A That's correct.

12 Q People asking you for other things; right?

13 A Uh-hum.

14 Q You communicate to the best of your ability  
15 in Spanish or in English?

16 A That's correct.

17 Q You do a pretty good job, don't you?

18 A Yeah. Good enough, yeah.

19 Q And when you were asked to do this report by  
20 your bosses, your Captain or Lieutenant, Sergeant, they  
21 trust that you know enough Spanish?

22 MR. SAMEIRO: I'm going to object. This is  
23 his witness. He is leading the witness. And it's also  
24 quarter to one.

25 THE COURT: The objection is leading. This

1 is your witness. Open up the question. I will sustain  
2 the objection.

3 MR. GONZALEZ: Okay.

4 Q The reason you're asked -- Why are you asked  
5 to do these reports?

6 A Because I speak Spanish.

7 MR. GONZALEZ: I have no further questions.

8 THE COURT: Anything further?

9 MR. SAMEIRO: Nothing further.

10 THE COURT: Okay. Officer, thank you very  
11 much. You are excused.

12 (Whereupon, the witness is excused.)

13 THE COURT: Ladies and gentlemen, we'll break  
14 now for lunch. Be downstairs at quarter of two. We'll  
15 bring you back up as soon as we're ready to resume the  
16 case. Please do not discuss the case among yourselves  
17 or with anybody else. Please do not read anything  
18 about the case or listen to anybody else discuss the  
19 case. 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



1 State which items of Evidence -- items for  
2 Identification, to go into Evidence, that you're  
3 requesting.

4 MR. SAMEIRO: Yes, Judge. I would be gladly  
5 assisted with probably the most updated exhibit list.  
6 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  
8 are two more. S-9, I think, is the chart behind you,  
9 with the markings on it. S-10 is the copy of the DL.

10 THE COURT: Right.

11 MR. SAMEIRO: I don't intend to move either  
12 one of those in Evidence.

13 THE COURT: Okay. Now, regarding S-1,  
14 that's in Evidence. All right.

15 MR. SAMEIRO: Your Honor, that's in Evidence  
16 already.

17 I don't think we need to discuss it at this  
18 point. But I may ask you to have a redacted version of  
19 that DVD ready for the jury. There is only one blurb  
20 on that disk, the officer's preamble, where he  
21 introduces the case, that the jury did not see.

22 If your Honor is inclined to let the jury  
23 take the DVD in the deliberating room, with a play-back  
24 machine. Then I wouldn't, of course, want them to see  
25 anything that they did not get to see here.

1 THE COURT: Okay.

2 MR. SAMEIRO: So, I would like S-1 in  
3 Evidence. Of course, only what they saw here in court.  
4 And it's been moved in. But, again, my comments are  
5 really about the redactions for the jury.

6 THE COURT: Okay.

7 MR. SAMEIRO: S-2-A, the six photos. I  
8 believe they are already in Evidence. Now, S-2-B is  
9 the photo line-up names. I'd like to move into  
10 Evidence.

11 THE COURT: Any objection?

12 MR. SAMEIRO: Nothing on this document would  
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?



1 MR. GONZALEZ: S-3 and S-4, what are they?

2 MR. SAMEIRO: S-3 is the Spanish display  
3 instructions. The reverse side is the English, which  
4 we heard about.

5 MR. GONZALEZ: No objection.

6 THE COURT: I have that as actually S-3 and  
7 S-4. S-3 is the two-sided document.

8 MR. SAMEIRO: It turns out to list the  
9 Spanish photo display instructions right on the back of  
10 the English. The photo display result form. It is one  
11 piece of paper, that document.

12 THE COURT: Okay.

13 MR. SAMEIRO: S-4 is the document that Sergio  
14 Matias testified to. That was already read into the  
15 record, the translation of the Spanish photo display  
16 instructions.

17 THE COURT: The photo display instructions.

18 MR. GONZALEZ: No objection.

19 THE COURT: That will go into Evidence.

20 (Exhibit No. S-3, Spanish photo display  
21 instructions, is received and marked in Evidence.)

22 (Exhibit No. S-4, English photo display  
23 instructions, is received and marked in Evidence.)

24 THE COURT: Okay.

25 MR. SAMEIRO: That's it.

1 THE COURT: All right.

2 I realize that there are motions to be made.  
3 Do you wish to make those now? Do you want to make  
4 them after lunch?

5 MR. GONZALEZ: Judge, I'd like to ask if a  
6 couple of items can be moved as well.

7 Do you want to know if the defendant wants to  
8 testify?

9 THE COURT: I haven't gotten that far.

10 I just wanted any motions to be made at this  
11 point.

12 MR. GONZALEZ: At some point, Judge,  
13 actually, as per State vs. Reyes, there are a couple  
14 issues with regard to certain portions of the  
15 Indictment, that should be addressed right now.

16 I believe, the terroristic threats count, the  
17 threat to kill. There was no testimony put before the  
18 jury, where anyone indicated that they were going to  
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  
24 one points a handgun at another person, that that is a  
25 threat. That can satisfy that statute. I don't think





1 it needs to be verbal. The terroristic threats is a  
2 verbal type of offense, Judge. It is an offense of  
3 words. It's words or actions.

4 THE COURT: Right.

5 MR. SAMEIRO: That's how it's defined. I had  
6 looked into that one. Terroristic threats is usually a  
7 verbal threat, as defined in the model charges, words  
8 or actions.

9 THE COURT: Fine. I'll review it, to see  
10 whether or not -- to see what the case law says.

11 MR. GONZALEZ: Because nothing was testified  
12 to, whether anyone threatened to kill him. The threat  
13 was supposedly that someone was going to hurt him.  
14 But, at no point, was there a threat to actually kill  
15 him specifically. Whether it be through actions.

16 MR. SAMEIRO: There was actions.

17 MR. GONZALEZ: Well, the actions themselves.  
18 The threat to kill would be something like this  
19 (indicating). Something that would indicate that  
20 someone was trying to kill someone. But through any  
21 actions, there was no communication that was testified  
22 to, that he felt was a threat to kill.

23 THE COURT: Well, I think regarding that,  
24 under State vs. Reyes, a jury, giving all reasonable  
25 inferences, at this point, to the State, based on the

1 testimony of Mr. Cedillo, that the gun was put to his  
2 head, any reasonable jury could reasonably infer from  
3 that, a threat to kill, with the gun to the head.

4 So, regarding that, at this point, I think  
5 that the motion should be denied. Those actions can be  
6 considered. A reasonable jury could find, beyond a  
7 reasonable doubt, based on these actions.

8 MR. GONZALEZ: Is your Honor's ruling, Judge,  
9 with regard to the counts in the Indictment, with  
10 regard to the unlawful possession of a weapon?

11 THE COURT: Right.

12 MR. GONZALEZ: Not having a permit to carry  
13 same.

14 MR. SAMEIRO: I forgot to ask the question.  
15 I simply forgot to ask John Selesky, is the defendant,  
16 as a convicted felon, is not entitled to carry a  
17 weapon. There was a records check. Since I didn't  
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.



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

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

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

1 Therefore, it should be dismissed.

2 MR. SAMEIRO: I thought we had discussed this  
3 earlier in the case, the unlawful purpose was the  
4 robbery. You can also make the case with the  
5 terroristic threats. But it is clear that the unlawful  
6 purpose here is the robbery. The case law doesn't  
7 require me to put it in the Indictment. As long as  
8 there are other charges in the Indictment that give  
9 notice. Does anybody think it was a sexual assault?  
10 Does anybody think it was a forgery? No. It's a  
11 robbery. This is an armed robbery case.

12 And I will rely on State vs. Williams, at 168  
13 NJ, 323, and the cases that follow, which allow the  
14 Court to define the purpose in the charge, if it's not  
15 necessarily in the Indictment, in that count.

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

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

25 This is the first time that an objection has



1 been made. Not an objection; but a motion to dismiss  
2 has been made to me. I'll look to the case law as well  
3 on that.

4 MR. GONZALEZ: I would just say, from the  
5 Grand Jury, unless there is one put before the Grand  
6 Jury, with regard to this, that it wasn't included in  
7 the Indictment.

8 MR. SAMEIRO: Well, that defect is waived.  
9 He didn't move to dismiss the Indictment, because the  
10 Grand Jury didn't have it to support the Indictment.  
11 He could have moved to dismiss it.

12 THE COURT: That's kind of late. We're past  
13 that point. I have a motion to dismiss now based on --  
14 a motion to dismiss that count. I understand the  
15 objection. I want to look through the case law. I'll  
16 look into that during the lunch break.

17 All right. Anything else? Any other  
18 requests?

19 MR. GONZALEZ: Not at this point, Judge. I'd  
20 like you to reconsider the Court's position with regard  
21 to the hearsay nature of the telephone number. Only  
22 because your Honor could exclude it, based on hearsay  
23 and present sense impression -- all those things now --  
24 and correct the jury instruction that had been given to  
25 them.

1 THE COURT: You know what, it's five of one.  
2 I know you want to get these issues out.

3 But, quite frankly, I'm hungry. I'm sure  
4 everyone else is, too. I don't want to rush our  
5 discussion here. But we're over the time of where we  
6 need to be. I don't want to indicate to Counsel, in  
7 any way, that we're rushing through this.

8 I think this is a good time to break. Let me  
9 just ask, before we break, was there any other requests  
10 to dismiss any other counts of the Indictment? I mean,  
11 on behalf of the State. I thought the State had  
12 mentioned --

13 MR. SAMEIRO: Judge, I was mulling over  
14 whether to reduce some of the charges.

15 THE COURT: I only ask that because my  
16 secretary is trying to get the verdict sheet together.  
17 Certain things do need to be in there. If you could  
18 let me know --

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

20 THE COURT: All right.

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



1 THE COURT: I didn't really get a response  
2 from the defendant yet. I know we're going to have to  
3 do that.

4 MR. SAMEIRO: Assuming he's not going to  
5 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?  
9 Do we have to argue about the law prior to the  
10 closings?

11 I'm willing to streamline my summation, and  
12 not really get into what the Court is going to charge,  
13 and avoid all kinds of problems, in an effort to get  
14 the jury out of here, and not waiting around, and we  
15 can deal with the charging conference later. But I  
16 would understand and respect Counsel's position, to  
17 know what you're going to charge before he sums up.

18 MR. GONZALEZ: I think we have to know what  
19 you're going to charge before we do the summations.

20 MR. SAMEIRO: Okay.

21 THE COURT: Mr. Machado, can I ask you to  
22 stand, please, for a moment?

23 (Whereupon, the defendant complies.)

24 THE COURT: Have you decided whether or not  
25 you wish to testify or not in this case?

1 THE DEFENDANT: Yes. I don't want to.

2 THE COURT: You do not want to. You've had  
3 enough time to talk to Mr. Gonzalez about that  
4 decision?

5 THE DEFENDANT: Yes. But I made the decision  
6 not to.

7 THE COURT: All right. Thank you, Mr.  
8 Machado.

9 All right. You have no other witnesses;  
10 correct, Mr. Gonzalez?

11 MR. GONZALEZ: Judge, no, I don't. I didn't  
12 rest.

13 THE COURT: No. You have to rest in front of  
14 the jury. I'll make sure you do that.

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





1 A F T E R N O O N S E S S I O N

2 (Whereupon, the jury enters the courtroom.)

3 THE COURT: All right. Mr. Gonzalez, do you  
4 have any additional witnesses?

5 MR. GONZALEZ: No, Judge. At this time, the  
6 defense rests.

7 THE COURT: Any rebuttal?

8 MR. SAMEIRO: No, your Honor. Thank you.

9 THE COURT: All right. Ladies and gentlemen,  
10 the defense has rested. There is no rebuttal.

11 I will tell you that the trial is  
12 progressing. We really only have the summations to do  
13 and the charge of the Court. I sometimes ask the  
14 attorneys how long their summations are going to be. I  
15 usually get an answer and it's twice as long. No  
16 offense.

17 I'm only saying that I'm looking at the time.  
18 And I'd like to do the summations with the charge if I  
19 can. If I can't, that's fine, too. But I, frankly,  
20 don't know if we're even going to be able to finish the  
21 summations today.

22 The next question then is bringing you in  
23 tomorrow. I have a list on tomorrow of over 50 cases,  
24 which doesn't help you. I'll be bringing you in for  
25 nothing. Bringing you in would be just too difficult.

1 There is also issues regarding the weather that I heard  
2 is coming our way. That has me concerned for you, too.

3 This is what I'm going to do. Give you  
4 tomorrow off of this case. You don't have to be here.  
5 I need you here Monday. I'm going to do the trial and  
6 forego my list for Monday.

7 So, we can go right into the summations of  
8 the attorneys. And then my charge is about an hour and  
9 a half. I'll let you know that once the summations are  
10 done, I'll give you a chance to use the bathroom. I'll  
11 bring you back for the charge. And you will then have  
12 the case, be able to deliberate. I just think it makes  
13 more sense than having you get half of it today, and  
14 then maybe end right in the middle of somebody's  
15 summation today.

16 Ladies and gentlemen, like I said, I have 50  
17 cases on, and you just might end up being here on  
18 Monday anyway. Friday you are off as jurors. So, if  
19 you need to go back to work, you can certainly go back  
20 to work, and accomplish what you can accomplish. I do  
21 apologize for the inconvenience. I realize we thought  
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



1 use of the time that we have.

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

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

25 Okay. Please have a safe weekend. We'll see

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.)

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

12 MR. SAMEIRO: Sure.

13 MR. GONZALEZ: No problem, Judge.

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

16 (Whereupon, a short recess was taken.)

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

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



1 Now, we left off -- First of all, I'm getting  
2 ahead of myself. There was actually a motion made  
3 regarding count -- Well, count three is dismissed.  
4 Then there is a motion made regarding the terroristic  
5 threats -- threat to kill -- which is count six. I'm  
6 sorry. That is not right. That is count seven. I  
7 apologize. And I denied the motion to dismiss count  
8 seven. Okay.

9 Now, the next is the motion to dismiss count  
10 four. Because the State did not indicate the unlawful  
11 purpose. That's where we left off.

12 MR. GONZALEZ: You are absolutely correct,  
13 Judge.

14 THE COURT: I indicated that, quite frankly,  
15 I have handled a lot of cases where the unlawful  
16 purpose is not indicated in the Indictment. But I do  
17 have to charge it. I usually ask the State, at this  
18 point, even though it is pretty clear to me, based upon  
19 the charges, what it would be. I ask the State  
20 specifically what they want me to indicate to the jury,  
21 as to the unlawful purpose. So, it is not normally in  
22 the Indictment.

23 I had asked Counsel, over lunch, to take a  
24 look at this. I'm not certain if you had the chance to  
25 look at it.

1 MR. SAMEIRO: That is where we left off,  
2 Judge.

3 THE COURT: I looked at it, too.

4 MR. SAMEIRO: We discussed that earlier in  
5 the case. The unlawful purpose was to commit the  
6 robbery.

7 THE COURT: I know, for one thing, I had  
8 asked about it. If not yesterday, certainly today,  
9 when I was filling out my form. The purpose was the  
10 robbery. I wanted to verify that with the State. That  
11 would be the unlawful purpose, since there is also the  
12 armed robbery charge. I kind of assumed that was the  
13 unlawful purpose. Armed with a gun, not a knife;  
14 right?

15 MR. SAMEIRO: Right, Judge.

16 When you look at the law, I know I am  
17 entitled to different theories as to the unlawful  
18 purpose. I could say, it was to commit the terroristic  
19 threat as well. Then you would have to further explain  
20 to the jury, if they were to convict, they'd have to  
21 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.

24 THE COURT: Okay.

25 MR. SAMEIRO: I'm electing to ask the Court



1 to charge aggravated assault -- excuse me --  
2 terroristic threats as the alternative unlawful  
3 purpose.

4 THE COURT: Okay. All right.  
5 Mr. Gonzalez?

6 MR. GONZALEZ: Judge, I'll rest on the  
7 argument I placed -- put forth before lunch.

8 THE COURT: I probably will supplement the  
9 record regarding that, because, quite frankly, our  
10 lunch was abbreviated, and I didn't get the chance to  
11 really research it.

12 Nine times out of ten, I don't see an  
13 unlawful purpose in the Indictment. I do wait for the  
14 State to indicate that to me. It is an armed robbery  
15 charge, as in the handgun is what's alleged, the  
16 possession of the weapon, for an unlawful purpose. I  
17 think one can assume it to be, based on what has been  
18 presented so far. I will indicate that in the charge.  
19 But, again, I will look to the case law to see whether  
20 or not that is something that is not allowable.

21 Although I do think, if there is something  
22 additional, you will let me certainly know it, probably  
23 as soon as possible. Tomorrow, I'm going to take a  
24 look at it.

25 MR. SAMEIRO: I think the Court can allow

1 them to consider the unlawful purpose as being the  
2 robbery, as it being the only one. I don't know that  
3 there is a notice issue as to the armed robbery charge.

4 THE COURT: So, I will look into that and see  
5 if I can find anything. Certainly, if Counsel finds  
6 anything, that you wish to raise to the Court, please  
7 feel free.

8 Now, any other motions regarding any other  
9 counts?

10 MR. GONZALEZ: Judge, not with regard to any  
11 other counts.

12 THE COURT: Okay.

13 Then turning to the charge, the charge  
14 conference, so to speak, go ahead.

15 MR. GONZALEZ: I'd like to deal with the  
16 evidence. Again, I'd like to deal with the number.  
17 I'd like to deal with the phone number.

18 THE COURT: The phone number that I let in  
19 previously?

20 MR. GONZALEZ: 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,





1 there was the present sense impression.

2 THE COURT: That's right.

3 Now, if we are to review what was said prior  
4 to the start of the trial, it was indicated that Mr.  
5 Cedillo spoke directly to the dispatcher.

6 THE COURT: Right.

7 MR. GONZALEZ: That's what I thought was  
8 going to come out at trial. He spoke directly to the  
9 dispatcher. That the dispatcher told him the number.  
10 Your Honor indicated that it was the dispatcher's  
11 present sense impression as to that number. That that  
12 was the reason your Honor would let it in. Also, in  
13 determining if it was non-testimonial in nature.

14 THE COURT: Right. All right.

15 MR. GONZALEZ: Now, after hearing the facts  
16 of the case, and hearing yet another layer of hearsay,  
17 I would ask your Honor to consider, well, now that it  
18 is hearsay. I originally thought it was hearsay from  
19 the beginning. I think Crawford applies. I don't even  
20 think there is an exception. Before it came in, Judge,  
21 I thought it was hearsay. I'm going to rest on that.

22 Now, I think, it is even further hearsay.  
23 And the reason being is because simply what was  
24 testified to before the Court was that, the dispatcher  
25 told Juan Perez. Juan Perez wrote down the number.

1 The number was given to Wilmer Cedillo. Wilmer Cedillo  
2 then communicated this number to Officer Bobadilla.  
3 And the piece of paper, that it was written on, does  
4 not exist and was not taken into evidence. I think  
5 it's clear that there is now another layer of hearsay.

6 Present sense impression, as defined by J.A.,  
7 which is the leading case on present sense impression,  
8 going to Davis, and then there is an additional case  
9 called Hammond, State vs. Hammond, which is also part  
10 of the progeny that covers this issue. Present sense  
11 impression, as defined, non-testimonial, in those  
12 cases, and what I'll do is, I'll supplement and I'll  
13 provide J.A. to the Court. I will highlight for the  
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. Talking  
17 about non-testimonial, is supposed to be when a person  
18 is viewing an event, as it is actually transpiring, as  
19 like in a 911 call.

20 THE COURT: Some 911 calls.

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



1 somebody is watching, some Courts find testimonial, and  
2 some do not. It is such a gray area.

3 THE COURT: So, I mean, I'm willing to see  
4 whatever you have reviewed, whatever you have.

5 MR. GONZALEZ: It is just such a -- It's so  
6 fact-sensitive. Even though I think that you had  
7 similar facts, you could still gets two Courts to  
8 define it differently.

9 Well, I think it is unequivocal in the facts  
10 in this case, that it went through two -- it went  
11 through three different people, before it got to  
12 Officer Bobadilla. I think in any of those cases, that  
13 we referred to, it doesn't go to three different  
14 people.

15 So, you are going to do two thing. First is,  
16 whether it comes in under present sense. And that's  
17 one issue. From what you're saying, you disagree with  
18 that.

19 THE COURT: Right.

20 MR. GONZALEZ: The next issue, even if it  
21 comes in under present sense, it can still be out,  
22 because it's testimonial. So, first, there is a  
23 discussion about of what present sense is.

24 THE COURT: That is right. What I'm going to  
25 go through is present sense. It doesn't even qualify,

1 so to speak. Because it needs to be something that is  
2 being observed at that moment. And I think, in  
3 reviewing the case law, J.A. and Hammond, and those  
4 things, I'll find that it was allowed in, because the  
5 cops were asking what's happening at this time, what is  
6 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  
10 actually occurring. I'm not sure which is which. I'll  
11 state that for the record. However, in both cases, the  
12 person was observing the event at the same exact time,  
13 giving rise to a police interrogation, trying to find  
14 out what's going on. Giving rise to the present sense,  
15 that it would be factual, but no time to stop and think  
16 about it.

17 MR. GONZALEZ: Right. The reliability of it  
18 is very important. It's not no longer objective. That  
19 would be objective. Now, if you have a pause, in one  
20 of the cases, it says ten minutes later after the  
21 person is no longer viewing the event, making the 911  
22 call. 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,  
3 there is no question that there was a lag time of  
4 possibly an hour or so.

5 THE COURT: Okay.

6 MR. GONZALEZ: Or, let's say, twenty minutes.  
7 I don't know. There is no time period. Anyway, there  
8 is a lapse of time between Wilmer Cedillo -- Well,  
9 between the dispatcher observing what he thinks is the  
10 number on the caller ID, and then being addressed by --  
11 Well, not by Wilmer Cedillo, because he didn't call  
12 directly after it happened.

13 I don't know if he ever looked at the number.  
14 I think that is part of the issue. He doesn't even  
15 look at the number. He called originally. His first  
16 time looking at the number, when somebody called to get  
17 the number, that's when he looked at it first. When  
18 the call was put into him, which is something I was  
19 thinking about when I was hearing the testimony, too.  
20 I got the impression that the number may have been  
21 there. The dispatcher gave him the number. They noted  
22 the number maybe; but didn't really look at the number.  
23 The first time he really looked at it was when a call  
24 was given to him to go look for it. That is where the  
25 present sense is, when he goes to look at it.

1 THE COURT: It might have been there before;  
2 but he never really looked at it.

3 MR. GONZALEZ: He never looked at it. That's  
4 the analysis that your Honor is using, as to the  
5 present sense impression. You're of the opinion that  
6 it is present sense.

7 THE COURT: We're going to differ.

8 MR. GONZALEZ: That is fine. So, all I'm  
9 saying is this lapse of time. It wasn't being observed  
10 at the exact moment that it happened.

11 THE COURT: Okay. It's in the report to the  
12 police. Because it's reported to Juan Perez, it  
13 doesn't have to be reported to the police officers.  
14 That is not required. I think that it could be  
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. The  
24 next step is deciding whether it is testimonial or not.  
25 We've got a Crawford analysis, in deciding whether or



1 not it's testimonial.

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

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

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

25 MR. GONZALEZ: Now, Crawford vs. Washington

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

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

19 Then, let's say, it's the number. Crawford  
20 is violated through that, at various levels. And I'll  
21 state very confidently that, if the State wanted that  
22 evidence to come in, Flaco should have been spoken to.  
23 If not, Flaco, Juan Perez should have been spoken to.  
24 Those are the people. I couldn't have made the  
25 argument about Perez before, because I didn't know





1 about it, which is also interesting.

2 But, in any event, Crawford allows me, on  
3 behalf of Mr. Machado, to make those arguments. I  
4 would submit, at this particular point, that Crawford,  
5 essentially, has been violated.

6 THE COURT: So, your position is, it's no  
7 present sense impression. Even if it's a present sense  
8 impression, it's testimonial. Therefore, the witness  
9 should either be unavailable, and it should not be  
10 allowed.

11 MR. GONZALEZ: Then we get to the  
12 unavailability. I've been talking a long time. We  
13 have no definition. I believe it's defined in 803,  
14 somewhere around there. I believe it is defined in 801  
15 or 803.

16 Now, with that being said, Judge, now, we're  
17 going to go before a jury, and we're going to -- Well,  
18 the State is going to argue this number is what it is.  
19 That it's -- There is proof that it was allowed in.  
20 It's proof that that number is the correct number, that  
21 called the cab company. That's what the State is going  
22 to argue.

23 THE COURT: That is right.

24 MR. GONZALEZ: I would argue, very simply,  
25 that the only way to correct it, at this point, is with

1 a curative instruction. If your Honor decides it is --  
2 if it's hearsay; but there is an exception to it, your  
3 Honor can only cure it by an instruction.

4 THE COURT: Okay.

5 MR. GONZALEZ: But I'd ask your Honor, I  
6 think, I'll supplement my argument. I'll point out the  
7 case law that I provided to you, highlighting  
8 everything, and figure it all out, and provide a copy  
9 to Mr. Sameiro.

10 MR. SAMEIRO: By Friday at four o'clock.

11 THE COURT: In this matter, I'm going to  
12 review -- It would have to be tomorrow.

13 MR. GONZALEZ; that is fine. And then I'd  
14 like to have your Honor make your decision. That could  
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 --  
19 I would ask for that, along with the State. I will try  
20 to compile it with the jury instruction, that we'd all  
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



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

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

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

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

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

7 MR. GONZALEZ: I didn't.

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

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



1 None. But I'll look forward to his proposal.

2 Hopefully, I'll get it by tomorrow afternoon.

3 The only other thought, we were discussing  
4 this way back when, was that it could come in, that it  
5 was not being offered for the truth; but for what  
6 happened, what action was taken by the police  
7 afterwards, based on the phone number. Because the  
8 number is out there. It's, obviously, difficult to  
9 say, strike it. And it's one scenario, I suppose. But  
10 my thought was that, where are you going?

11 MR. GONZALEZ: Well, as I noted in the  
12 beginning of the trial, I noted that, I said that, the  
13 objection is ongoing throughout the trial.

14 THE COURT: There is no question you  
15 objected. But what happened, there was new information  
16 that came in, in the trial, regarding another layer, so  
17 to speak.

18 MR. SAMEIRO: Which, by the way, Counsel had  
19 failed to mention, included how the victim went back  
20 and verified it with the actual declarant, that the  
21 number existed. He doesn't want to tell you that  
22 because that weakens his argument. He verified it  
23 also.

24 THE COURT: Right. So, the information is  
25 reliable. It's not fair for me to even suggest that

1 the jury not be allowed to use that for its substance,  
2 to give them any kind of instruction.

3 MR. SAMEIRO: I presented to you -- just to  
4 simply explain how Officer -- excuse me -- Detective  
5 Selesky came up with the information. No, no, that's  
6 not fair. I want to link it to the defendant.

7 THE COURT: I understand that. Okay.

8 MR. SAMEIRO: That's the issue that you're  
9 going to take a look at.

10 THE COURT: I'll have to determine that  
11 certainly prior to the summations.

12 MR. SAMEIRO: Thank you.

13 MR. GONZALEZ: Thank you.

14 MR. SAMEIRO: I'm satisfied with the proposed  
15 charges, and the model jury charge selection. I know  
16 the Court will endeavor to fill in the blanks where  
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  
25 technologically savvy. I don't do it on the computer.



1 I print out the charges. I fill in the blanks. I use  
2 arrows. I think it is pretty clear. Frankly, I have  
3 to read it. So, I have no problem making a copy of  
4 this for both Counsel and Georgeann. So, you can read  
5 along with it. I have crossed out the portions that  
6 aren't important for us.

7 MR. SAMEIRO: That will work for us. This  
8 way we can follow along.

9 THE COURT: I actually did it in my last  
10 trial. That is when we started doing that.

11 MR. SAMEIRO: Simply because you don't want  
12 something coming back later. I'd rather deal with it  
13 now.

14 THE COURT: I can certainly do that for  
15 Counsel. I have no problem with that. I think,  
16 because I thought I might be doing that, I made my  
17 handwriting legible for everybody to read. Just so  
18 you're all, so to speak, on notice. I do have the  
19 identification in and out of court. That I have. I  
20 have the identity, regarding the police photos. But I  
21 have enhanced it. We have issues as to the date of  
22 birth, place of birth, the address and the phone. In  
23 other words, how many innocuous items you can get that  
24 information from. How they're not supposed to consider  
25 that in any way against the defendant.

1 MR. SAMEIRO: Right.

2 THE COURT: I took the robbery in the first  
3 degree. All of the different forms that are alleged in  
4 the Indictment. So, I'll be reading, and/or, any one  
5 of those. Then, arguably, it's sort of a  
6 lesser-included, in itself, as to the robbery. That it  
7 is a crime of the second degree, unless the State  
8 alleges it's an armed robbery. So, you start off by  
9 reading all the elements of robbery. Then letting the  
10 jury know, it's a crime of a certain degree. But it's  
11 raised to a higher degree, if the State proves that the  
12 defendant was armed with a weapon.

13 I'll be reading it right from the charge.  
14 And let me ask, Mr. Gonzalez, because of the way the  
15 charge is, we have to deal with the indictable first.  
16 The jury has to determine whether or not the defendant  
17 is guilty or not guilty of armed robbery. From there,  
18 the lesser-included is the robbery charge. Is that  
19 what you wish the Court to include in there?

20 MR. GONZALEZ: No, Judge.

21 THE COURT: You just want that straight armed  
22 robbery?

23 MR. SAMEIRO: I'm sorry?

24 THE COURT: You wish to include the robbery?

25 MR. GONZALEZ: We can include the robbery.





1 It's kind of assumed.

2 THE COURT: That's how the verdict sheet will  
3 read. If you find not guilty as to the armed robbery,  
4 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  
8 listed in the Indictment.

9 MR. GONZALEZ: Right.

10 THE COURT: I'm starting with the robbery,  
11 simply because -- I'm going to do the robbery first.  
12 Conspiracy is based on the robbery. It makes sense.  
13 Only to have to read it to them again. I've given them  
14 the charge already on the robbery.

15 MR. SAMEIRO: It makes sense.

16 THE COURT: Now, Mr. Sameiro, there is, in  
17 the conspiracy charge, it says, in order for you to  
18 find the defendant guilty of the crime of conspiracy,  
19 the State must prove, beyond a reasonable doubt, there  
20 is two choices on the conspiracy. That the defendant  
21 agreed with another person or persons, that they, or  
22 one or more of them, would engage in conduct which  
23 constitutes a crime, or an attempt or solicitation to  
24 commit such a crime.

25 The second is that the defendant agreed to

1 aid other person or persons in the planning or the  
2 commission of a crime or of an attempt or solicitation  
3 to commit such crime. Do you have any requests on  
4 this?

5 MR. SAMEIRO: Well, the second part doesn't  
6 seem to fit the fact pattern, your Honor, as much as  
7 the first part.

8 THE COURT: I think the first one is the  
9 more appropriate one. He agreed with another person or  
10 persons, that they, or one or more of them would engage  
11 in conduct.

12 MR. GONZALEZ: I agree, Judge.

13 THE COURT: Okay. That's the one I put down.  
14 So, we'll look forward to that section of the  
15 model charge.

16 MR. SAMEIRO: You are looking forward?

17 THE COURT: I'm doing it now.

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. I



1 would have charged them on the possession as to count  
2 three. Now, I don't have to do that.

3 Okay. I took the possession charge from the  
4 model charge. The possession of the gun.

5 MR. GONZALEZ: That's right.

6 MR. SAMEIRO: Right.

7 THE COURT: Then there is the theft. I  
8 crossed off all of the things that don't apply to us.

9 MR. SAMEIRO: Then there is the movable  
10 property.

11 THE COURT: The theft of movable property,  
12 money, and/or other goods. Then I will tell them about  
13 the gradations.

14 It's the cell phone, the money. He said five  
15 hundred dollars.

16 MR. SAMEIRO: Five hundred dollars in cash, a  
17 chain, a cell phone. Valued at about thirty dollars.  
18 The cell phone and the chain and the ID card. The  
19 identification card which probably has an extrinsic  
20 value. It was also taken.

21 THE COURT: Those four things I have listed  
22 as to the theft, in the gradation.

23 Now, the terroristic threats. Count six is  
24 the one I want to look to.

25 Count six, the terroristic threat charge.

1 Did threaten to inflict serious bodily injury. That  
2 being the aggravated assault against Wilmer Cedillo.  
3 Now, the way that it's charged, I really have to read  
4 them the aggravated assault. I pulled the aggravated  
5 assault charge. I will read them the entire  
6 aggravated assault charge. That is really the only way  
7 I can go, based on how it is charged. I don't think  
8 there is anything additional in here.

9 MR. SAMEIRO: I agree with that, Judge.

10 THE COURT: And then the final one is the  
11 terroristic threat, threat to kill.

12 MR. SAMEIRO: Right.

13 THE COURT: Which is, again, I pulled that  
14 right from the model charge. I don't think that  
15 anything additional needs to go in there. On the  
16 verdict sheet, I will just put those two. I will  
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: No. I have a request about the



1 verdict sheet.

2 THE COURT: Sure.

3 MR. SAMEIRO: I've seen a lot of them over  
4 the years. Not guilty versus guilty. I thought if  
5 we'd flip it, from trial to trial. Switch the order.  
6 Being guilty and then not guilty.

7 MR. GONZALEZ: Judge, I would say, do what  
8 you normally do, not guilty and then guilty.

9 THE COURT: I don't have a normal way of  
10 doing it. I think we end up with not guilty, guilty.  
11 I never thought anything of it, one way or the other.  
12 I do know one thing, whatever I do, it's got to be  
13 consistent. I'll take a look at it.

14 MR. SAMEIRO: We can flip a coin.

15 THE COURT: Counsel, the way it is actually  
16 set up is, "not guilty, guilty." I think my secretary  
17 has already done it. I don't think the order is that  
18 important, Mr. Sameiro.

19 MR. SAMEIRO: All right. Not guilty and  
20 guilty is fine.

21 MR. GONZALEZ: I don't see any reason for a  
22 change.

23 THE COURT: I think I already have it as "not  
24 guilty, guilty." I'll take a look at it. I'll keep an  
25 open mind.

1 So, nothing else, other than I'm going to --  
2 I probably -- I don't know if I have them now -- Let me  
3 give you the verdict sheets. Are you going to be here  
4 tomorrow?

5 MR. GONZALEZ: Provided that the weather is  
6 okay, Judge.

7 THE COURT: If not, I can FAX a copy of the  
8 verdict sheet. You can leave us your number.

9 MR. GONZALEZ: Okay, Judge.

10 MR. SAMEIRO: Will you have a decision,  
11 whether you want the DVD to go into the jury with the  
12 one redaction? I ask that we allow that to happen.  
13 The only portion that really they haven't seen is that  
14 preamble by the officers. And Mr. Gonzalez knows what  
15 I'm talking about. I would eliminate that.

16 THE COURT: No problem with that, Mr.  
17 Gonzalez?

18 MR. GONZALEZ: No, Judge.

19 THE COURT: We have copies of the DVD just in  
20 case? I just want to make sure there is copies of the  
21 DVD that exist.

22 MR. SAMEIRO: They do exist. I went to find  
23 mine last night. I would ask the Court Clerk to give  
24 me S-1 back, so, I could make a duplicate. I think  
25 it's in Evidence.



1 THE COURT: You need to take her's?

2 MR. GONZALEZ: It's on my computer; but I  
3 don't have it here. My feeling is, as long as there is  
4 a copy, there is an exact copy --

5 MR. SAMEIRO: I'll deal with it tomorrow. If  
6 I don't get it from the Evidence Unit, then I can come  
7 over here, and just burn a copy real quickly, so, as  
8 not to compromise the evidence.

9 THE COURT: It will be right here.

10 MR. GONZALEZ: I prefer that it stay in  
11 Evidence. And I will give him my copy. You never know  
12 what can happen to the evidence in the interim.

13 THE COURT: That's fine.

14 MR. SAMEIRO: When would you give me your  
15 copy, Counsel?

16 MR. GONZALEZ: I can do it like tomorrow.

17 MR. SAMEIRO: I will be here, Mr. Gonzalez.

18 THE COURT: Mr. Sameiro will be here. Okay.  
19 A copy of the verdict sheet will be here. I will give  
20 it to you.

21 MR. SAMEIRO: Okay. If I don't get his copy  
22 by lunchtime, I will come and get the Clerk's copy. I  
23 can't wait all day for the DVD.

24 MR. GONZALEZ: I don't think you can touch  
25 the evidence without the Court's permission. I think

1 Counsel is involved in gamesmanship.

2 MR. SAMEIRO: Gamesmanship?

3 MR. GONZALEZ: That's true.

4 MR. SAMEIRO: That's an insult --

5 THE COURT: Are you here tomorrow?

6 MR. SAMEIRO: -- from a man who doesn't know  
7 that he gets smacked every time he pulls a stunt with  
8 this jury. We have already seen what his games are  
9 like. And, now, he's trying it again.

10 THE COURT: Here's the thing. I don't want  
11 to compromise any evidence. I certainly don't want the  
12 DVD going in there if we don't have an accurate  
13 back-up, just in case the jurors do something in there  
14 to the DVD. You're here tomorrow?

15 MR. GONZALEZ: I should be, yes. Absent any  
16 weather problems.

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.

21 THE COURT: Then when you come in tomorrow,  
22 bring in a copy. If not, we'll go from there. Now, if  
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





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.)

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C E R T I F I C A T I O N

I, **GEORGEANN CROWELL, C.C.R.**, License Number **XI00983**, an Official Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of my stenographic notes taken in the above matter to the best of my knowledge and ability.

*Georgeann Crowell, C.C.R.*

Georgeann Crowell, C.C.R.  
 Official Court Reporter  
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Date: FEBRUARY 10, 2010

