



Appellate...:	<b>A</b>
Case No.....:	<b>003047</b>
Year.....:	<b>09</b>
Type.....:	<b>TRANSCRIPT</b>
Volume.....:	<b>005</b>

-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.

Transcript of Proceedings APR 15 2010  
(Trial - Vol. IV)

PABLO MACHADO,

Defendant.

(With an Interpreter)

FILED  
APPELLATE DIVISION

APR 15 2010

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

Date: DECEMBER 22, 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

RECEIVED  
APPELLATE DIVISION

APR 15 2010

SUPERIOR COURT  
OF NEW JERSEY

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



11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

I N D E X

1		
2		
3		<u>Page</u>
4	<u>Summations</u>	
5	By Mr. Gonzalez	17
6	By Mr. Sameiro	53
7		
8	<u>Jury Charge</u>	101
9		
10	<u>Jury Question</u>	170
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

E X H I B I T S

1			
2			
3	<u>Number</u>		<u>Ident.</u> <u>Evid.</u>
4			
5	C-1	Jury Note	170
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			



(Colloquy)

4

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

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

5 Okay. We're on the record in our trial. And  
6 I note two things that I want to address. Certainly  
7 the one was the one we discussed last week. The  
8 request for a reconsideration of the statement,  
9 regarding the phone number. And then the second one is  
10 the juror issues that we have. I just wanted to put it  
11 out to both of you. Juror Number Three, I believe, let  
12 the Jury Commissioner know, I believe it is a male.  
13 Mr. Colon has a flight out on Wednesday morning.

14 Now, I don't anticipate that being a problem.  
15 But just think about, if you want to go with him as the  
16 alternate. I don't know if you want to do that or not.  
17 The only thing is, if it went that long, we would have  
18 to have an alternate put in, and they'd have to start  
19 from scratch. That's the only thing. If you want to  
20 just go with him as the alternate, if you want to have  
21 him designated as the alternate.

22 MR. GONZALEZ: I would just go with choosing  
23 whoever we get. And, hopefully, we don't get there.  
24 We should have the charge and closings today. Worse  
25 case scenario, if it went that long, we would still

(Colloquy)

5

1 have two alternates. He may be chosen as the  
2 alternate.

3 THE COURT: He could be. That's true.

4 Then let me address, once again, that issue  
5 of the statement. Anything additional that I need to  
6 hear?

7 MR. SAMEIRO: No, I just wanted to ask you --

8 MR. GONZALEZ: I think it was put all out  
9 there.

10 THE COURT: Mr. Sameiro, anything additional?

11 MR. SAMEIRO: No. Not regarding the  
12 statement. You are talking about the phone number?

13 THE COURT: The phone number, that is right.

14 I have given -- I read over my notes. I have  
15 given a great deal of consideration to Mr. Gonzalez's  
16 request. I don't think any of us were aware of Mr.  
17 Juan -- I can't think of his last name. The employer,  
18 so to speak, who took this phone number and wrote it  
19 down in front of the alleged victim in the case. I  
20 have considered my notes. I put on the record, as to  
21 regarding -- allowing the statement in.

22 Really the only additional thing was Mr.  
23 Perez writing it down in front of Cedillo. But there  
24 really was another additional thing. That is, Mr.  
25 Cedillo confirming the number, again, with the



1 dispatcher. When I was looking through my notes, I saw  
2 that. I thought he had said that. I wanted to make  
3 certain. But he did. So, therefore, based on really  
4 there being only two additional pieces of information,  
5 I'm going to abide by the ruling of the Court, placed  
6 on the record earlier, for those reasons.

7 Then, as I said, additionally, even though it  
8 came into being, there was one piece of information, it  
9 appears as though, how it happened was, Mr. Cedillo was  
10 standing right there. The dispatcher gave it to Mr.  
11 Perez, who wrote it down, right in the presence of Mr.  
12 Cedillo. Then, again, as I said, Mr. Cedillo confirmed  
13 that the dispatcher had that number, and as to the  
14 reliability of that statement. So, therefore, I will  
15 deny that motion at this point, for the reasons that I  
16 already put on the record, and those additional.

17 Okay. Having said that, anything additional  
18 before we have the closings?

19 MR. GONZALEZ: Judge, just with regard to the  
20 charges. I ask that false in one, false in all be  
21 included.

22 THE COURT: It's there.

23 MR. GONZALEZ: Also, with the prior -- There  
24 is a particular charge as to prior inconsistent  
25 statements. I can't remember -- I just asked for

1 copies of the charge. There was an additional charge,  
2 where we can highlight one particular inconsistent  
3 statement. It's included in our model jury charges,  
4 when we have one, that we can set it forth to the jury,  
5 in saying that, all right, here's the prior  
6 inconsistent statement, as to an important issue. We  
7 ask that you consider it. It's also dealt with in the  
8 regular jury charges. But a defense attorney can ask  
9 for you to repeat it, using prior contradictory or  
10 prior inconsistent statement. I have it.

11 THE COURT: The model charge you mean?

12 MR. GONZALEZ: The model charge. But it's  
13 more than just the model charge. There is a model  
14 charge as to prior contradictory statements of  
15 witnesses, not the defendant. That is prior  
16 inconsistent statements.

17 THE COURT: That I'm pretty familiar with.

18 MR. GONZALEZ: Now, as to the specific area,  
19 I think I'd like it to be read in its entirety.

20 THE COURT: There is a whole charge as to  
21 prior contradictory statements. That's no problem for  
22 me. I mean, I think, in this particular charge, you  
23 could even highlight one area, if there is one. If  
24 there are three or four areas, it doesn't make sense.  
25 There is too many here. Again, I will think about





1 that. But, to be honest with you, based on your  
2 cross-examination of Mr. Cedillo. And that's who  
3 you're referring to; correct?

4 MR. GONZALEZ: Right. I'm talking about Mr.  
5 Cedillo.

6 THE COURT: So, you want me to charge prior  
7 contradictory statements of a witness, not the  
8 defendant?

9 MR. GONZALEZ: Right.

10 THE COURT: And I think that's how it is set  
11 up in the model charge.

12 MR. GONZALEZ: Yes.

13 MR. SAMEIRO: Yes.

14 THE COURT: All right. Anything additional  
15 then?

16 MR. GONZALEZ: I think that's it. I do want  
17 to make some comments with regard to some of the events  
18 that happened in the afternoon yesterday. I mean --  
19 excuse me -- afternoon on Thursday. Because I think  
20 they should be on the record. And I think that they  
21 should be considered by the Court. Because, when I  
22 walked out of here, on Thursday, there is no question  
23 that I was cursed at. That I was, basically,  
24 threatened. Something that necessarily could be  
25 considered harassment, in the nature and in the

1 language that it was said. I don't know that your  
2 Honor heard it.

3 THE COURT: Mr. Gonzalez, I didn't hear it.  
4 I said that there was a little bit of an exchange  
5 between you and Mr. Sameiro. I saw my Officers go over  
6 to you. To be honest with you, I had somebody in the  
7 box. And I honestly didn't know what was happening. I  
8 didn't necessarily want to get involved in that issue.  
9 That's really it. I can't even tell you what both of  
10 you said. So, I can say, that I didn't say anything.  
11 I can't say what anybody said. I really didn't hear  
12 it.

13 MR. SAMEIRO: I'm going to raise these issues  
14 at the end of the case. Why don't we bring the jury up  
15 now.

16 MR. GONZALEZ: I'm not finished.

17 MR. SAMEIRO: This is not relevant to the  
18 jury charge or the summations. It's quarter to ten in  
19 the morning. The jury was told, we were beginning at  
20 nine o'clock. I think Counsel wants to delay these  
21 proceedings even more than they have been delayed.

22 THE COURT: Mr. Gonzalez?

23 MR. GONZALEZ: Judge, I don't want to delay  
24 anything. I just want to make it clear as to what went  
25 down on Thursday. Judge, we can do it at another time.



1 It is not relevant to these proceedings, the  
2 summations.

3 If you give me a moment, before I go into the  
4 summations, I would feel more comfortable. If the  
5 Court would oblige me, I would feel more comfortable,  
6 to get that off my chest. Because I think that's an  
7 issue that should be dealt with. I don't know how  
8 we're going to deal with the issue. I guess Mr.  
9 Sameiro may have apologized. Mr. Sameiro can  
10 acknowledge that he called me an ass. Excuse my  
11 language. I've never said that in court. I respect  
12 you. I respect the people in the back. Georgeann, the  
13 Sheriff's Officers. I respect everyone here, to the  
14 utmost. And I could never comport myself in such an  
15 unprofessional and undignified manner.

16 Mr. Sameiro said to me, and, once again,  
17 excuse me, "you know what, you're a fucking asshole.  
18 You're a fucking asshole." He said, "if you ever say  
19 that" -- something to the effect of -- "if you ever say  
20 that, I'm going to tamper with evidence, you have  
21 something coming to you." He made the comment  
22 specifically. He said, "I'm going to make you lose  
23 more hair." That is something that he said, probably  
24 referring to the back of my head.

25 These are things that should not be tolerated

1 in the Middlesex County Courthouse, in the State of New  
2 Jersey, in any courtroom, anywhere. It is, quite  
3 frankly, a disgusting display of what a person -- how a  
4 representative of the State comports themselves.

5 I merely said, if the evidence was going to  
6 be changed, I have to watch it. It's my job to watch  
7 it. It's not an intimation of anything. It's what I  
8 have to do. Now, the response was incredible. And I  
9 think that, it's important to note all of that. And  
10 not just for me, because, any threats, or silly  
11 comments made by Mr. Sameiro, I wipe them right off my  
12 back. It doesn't affect me.

13 But it is not the way we comport ourselves in  
14 the Middlesex County Courthouse as professionals. How  
15 these young people, or defendants, should be treated.  
16 I've seen it more than once by Mr. Sameiro. Many  
17 times, sitting here in court. It shouldn't be  
18 tolerated. I ask your Honor that you never allow  
19 something, or, at least, address something like that,  
20 if it ever happens again. Because it's just  
21 disgusting.

22 THE COURT: Well, you know what, Mr.  
23 Gonzalez, I have a courtroom to run. And I have to  
24 deal with children at home. I don't want to deal with  
25 it here. I had a man sitting in the box that day,



1 ready to go on to the next proceeding. It's not my  
2 job, quite frankly, it shouldn't be my job to referee,  
3 once a trial is finished. We finished our matter.  
4 There was a colloquy back and forth regarding this DVD.  
5 You're absolutely right, you have to make sure if  
6 something has to be changed or deleted.

7 MR. GONZALEZ: But Mr. Sameiro took offense  
8 in the way that I commented on it.

9 THE COURT: I then shut down this matter and  
10 I went on to the next case that I had to handle. So  
11 long as it gets done, I didn't care how it was done. I  
12 didn't care if you wanted to bring in an extra copy, or  
13 what the case may be. A lot of things Counsel can  
14 resolve without the Court having to get involved. This  
15 would be one of them. And I, frankly, don't have the  
16 time to stop what I'm doing, and referee an argument.  
17 That I didn't have to do.

18 So, I agree, that there has to be decorum in  
19 court. That there has to be a certain way that things  
20 are run. Not just for the attorneys, but for the  
21 public. Certainly for any parties that are here. But,  
22 no, it isn't my job, as I say, to necessarily get  
23 involved in the arguments that somebody has off the  
24 record. Because that was off the record. I mean, we  
25 were done with our matter on the record.

1 And then, quite frankly, I turned my head  
2 right over to the individual, who was sitting here in  
3 the box. The last thing I saw was my Sheriff's Officer  
4 come over. And, honestly, I don't even know what she  
5 said. I didn't listen. There was a plea. I was  
6 looking at the plea form. So, from there on, I don't  
7 know what was said.

8 I have no problem addressing this, in a  
9 larger sense, at the end of the case. I just do want  
10 to move the case along. I do note your concerns. And  
11 I will address them at the end of the case.

12 Okay.

13 MR. SAMEIRO: Judge, I have two things  
14 regarding the armed robbery model charge. I assumed,  
15 last week, that your Honor would cover that area, where  
16 it's charged that, a deadly weapon need not be proven,  
17 if there is something in the defendant's hand, that  
18 could be believed to be such a weapon. In other words,  
19 you don't have a real weapon. I didn't think that was  
20 an issue here. The State didn't recover a firearm.

21 THE COURT: Right.

22 MR. SAMEIRO: For all we know, the victim  
23 could have had a toy gun pointed at him. That, of  
24 course, would fulfill the State's burden with respect  
25 to the armed robbery.



1 THE COURT: Okay. I think the Court -- In  
2 other words, to address that -- I apologize for not  
3 making that clearer last week.

4 MR. SAMEIRO: There were things that did get  
5 underneath my skin. And it wasn't just the last  
6 complaint, by the way. So, I apologize for not  
7 focusing in on this. I thought the Court was going to  
8 cover that. Your Honor had a list that day. There  
9 were a lot of things happening. I would have covered  
10 that. That really, to me, as far as the simulated --

11 THE COURT: I can see where you think it may  
12 be important.

13 MR. SAMEIRO: What if the jury believes that  
14 there is no firearm in this case.

15 THE COURT: No. I would agree with you.

16 MR. SAMEIRO: If he thought that the guy had  
17 a toy or something simulated, if the victim believed it  
18 was a handgun --

19 THE COURT: Right. I think it should be  
20 covered. I have no problem putting it in there. I'll  
21 let you know, that the copies are already done. I  
22 crossed that off. The wording is right in there. I  
23 will put the wording in.

24 MR. SAMEIRO: Judge, the second point I want  
25 to make is, and I just want to address the last attack,

1 what Counsel said to me, it was this: I asked if we  
2 could make a duplicate CD or DVD. Last week I was  
3 having a hard time finding a copy.

4 THE COURT: Right.

5 MR. SAMEIRO: Counsel said to me, "well, I  
6 would need to look at this," or something. I turned to  
7 him. I said, "what, are you suggesting that I would  
8 tamper with the evidence?" And, in the presence of  
9 attorneys, who I don't even know, who were sitting back  
10 here (indicating), he said, "Well, you've done that  
11 before." And that's what set me off. I just want that  
12 to be clear.

13 You know, it's interesting because I know  
14 that Counsel went to Georgeann Crowell, later in the  
15 day, to see if it was on the record. I found out that  
16 it wasn't. Okay. So, whatever he wants to do today,  
17 knowing full well, that it wasn't captured, knowing  
18 full well that it wasn't captured, we'll deal with his  
19 credibility at the end of this case.

20 THE COURT: All right, Counsel. What this  
21 is, what I'm going to do, as to the prior inconsistent  
22 statement, if I didn't already, I know it was printed  
23 out. I do think it is an appropriate charge here.  
24 Then I will go over my robbery charge. I'll go over  
25 the armed robbery charge, once again, and include that





1 aspect. And then if I have a chance, which I should,  
2 I'll just make another copy, for you both, of the  
3 charge, where it's not crossed off.

4 MR. SAMEIRO: Thank you.

5 MR. GONZALEZ: Thank you.

6 THE COURT: Now, Counsel, are you both ready  
7 to sum up?

8 MR. SAMEIRO: I am.

9 MR. GONZALEZ: Do you have a copy of the  
10 model charges, that you're going to give to the jury?

11 THE COURT: Yes. What I just said, I think  
12 Barb is doing the copies. I think they're still coming  
13 out. I think she should have them. I'll add the prior  
14 inconsistent statement. Also, Mr. Gonzalez, I crossed  
15 off the simulated aspect. I will make copies for you,  
16 where it's not crossed off.

17 So, right before I start, I should have a  
18 good copy for you.

19 MR. GONZALEZ: Okay.

20 MR. SAMEIRO: Okay.

21 THE COURT: I have to get these charges  
22 copied. Give me like five minutes. We can bring the  
23 jury up, and then we'll get started.

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. Good morning, everyone.

4 THE JURY: Good morning.

5 THE COURT: All right. We are about to begin  
6 the summations. When we begin the summations, we  
7 reverse the order of the openings. We will hear first  
8 from Mr. Gonzalez.

9 Mr. Gonzalez?

10 MR. GONZALEZ: Thank you.

11 May it please the Court, Mr. Sameiro, Mr.  
12 Machado, ladies and gentlemen of the jury, these are  
13 the closing arguments in the case. At the conclusion  
14 of each case, the Defense Counsel comes before you all,  
15 and highlights the points, points out things that you  
16 should consider, when you go back and deliberate. This  
17 is the portion where I speak, and then the State  
18 speaks.

19 This is the last time you're going to hear  
20 from me. I want you to pay attention to the things  
21 that I ask you to consider during my closing. I'm  
22 going to point out a lot of things. I might get a  
23 little long; but please stay with me. Very simply, you  
24 guys have all stayed with us from the beginning. I  
25 have to thank you. The Court has to thank you. We all



1 have to thank you for being here. It was a rough week  
2 last week, and today is the coldest day ever. I know  
3 we all felt that chill.

4 But you all took time out of your schedules,  
5 time from Christmas shopping, time from doing things  
6 that probably, are more important to you than this  
7 particular case. But what I'd like to advance to you  
8 all is, this might be one of the most important things  
9 that you do in your lives. And the reason I say that  
10 is because, there is a young gentleman sitting there  
11 named Pablo Machado, whose liberty and life is  
12 depending on what you all decide.

13 Remember, I told you about, we are a country  
14 of the people, by the people, and for the people. This  
15 is your chance to be the people. The people who, at  
16 the end of the day, will decide innocence or guilt.  
17 When you all come out with your verdict, it's going to  
18 be the law. It's going to be the law. We'll have to  
19 comport ourselves accordingly.

20 So, the importance of your duty here is  
21 immense. So, I'd like you to treat it so. In treating  
22 it so, I'd like you to consider that, if one of your  
23 loved ones, someone you know --

24 MR. SAMEIRO: I'm going to object. This  
25 whole line of argument is improper.

1 THE COURT: Would you like to be heard at  
2 sidebar? I'll sustain the objection.

3 MR. GONZALEZ: I'll move on, Judge.

4 Very simply, treat it as if it's important.  
5 I'm sure you will. A lot of times people zone out. We  
6 have sleepers as jurors. I'm sure there were no  
7 sleepers here. Everyone was attentive. I want you to  
8 know that Mr. Machado was charged in this Indictment  
9 with seven counts. Only six of those counts have made  
10 it to this stage. He is only being charged on six  
11 counts. The original charge was seven. You're only  
12 going to have to consider six.

13 Those are the conspiracy -- the Judge will  
14 instruct you on the conspiracy. Conspiracy with, as  
15 you may recall, five, maybe six people. None of whom  
16 are here. Mr. Machado is here. None of the people  
17 that conspired to commit this robbery are in this room.  
18 He is charged with armed robbery. With possession of a  
19 weapon for an unlawful purpose. Theft, two forms of  
20 terroristic threats. Threat to kill and threat to  
21 cause bodily injury to another.

22 In order for the State to have proven Mr.  
23 Machado guilty of all of these charges, Mr. Sameiro,  
24 through the testimony from that box, that witness seat,  
25 had to prove each and every element of each charge,



1 beyond a reasonable doubt. A reasonable doubt is  
2 defined as an honest -- Well, the Judge is going to  
3 tell you what it is. A reasonable doubt is defined as  
4 an honest and reasonable uncertainty, in your minds,  
5 about the guilt of the defendant, after you have given  
6 full and impartial consideration to all of the  
7 evidence.

8 A reasonable doubt may arise from the  
9 evidence itself, or from a lack of evidence. It is a  
10 doubt that a reasonable person, hearing the same  
11 evidence, would have. Proof, beyond a reasonable  
12 doubt, is proof that leaves you firmly convinced of the  
13 defendant's guilt. Firmly convinced. Reasonable  
14 uncertainty. Please listen to all these things. And  
15 before I even go into all of the things that I'm going  
16 to highlight, right now, in each of these seats, all 14  
17 of them, reasonable doubt exists. I would submit to  
18 you all, that Mr. Sameiro has not met his burden.

19 And for the reason I'll set forth, when we're  
20 all done, and we conclude arguing this case, when we  
21 conclude our closings, you will only have one choice,  
22 to find Pablo Machado not guilty of all the charges  
23 that are alleged.

24 I told you, at the beginning of the trial,  
25 that, in my opening, that the testimony would not come

1 out, as Mr. Sameiro said it would. He left out a lot  
2 of things. He's going to address you all after I'm  
3 done. He's going to say, he met his burden, that Mr.  
4 Cedillo's positive identification, along with the  
5 telephone number, that came from the reliable source,  
6 that we don't know about, or whom we are not able to  
7 hear from, are all proof that Mr. Machado was the one  
8 who committed the crime, this robbery.

9 He is going to tell you, forget about the  
10 other guys. They had masks. Even though the number,  
11 when it came back, said Mendosa, it had to be Mr.  
12 Machado's telephone, because it fits, like a puzzle.  
13 Because all of it fits together, if you view the  
14 evidence that way. He is going to come before you. He  
15 is going to tell you that Officer Bobadilla doesn't  
16 know Spanish. That the reason why there was  
17 inconsistencies was because Officer Bobadilla messed it  
18 all up. He is going to take out the measuring tape.  
19 He is going to try to explain how Pablo Machado could  
20 be mistaken for 5'8". If you can stand for a second.

21 (Whereupon, the defendant complies.)

22 MR. GONZALEZ: I'm 5'8". Mr. Machado is not  
23 even close (indicating). Another note. I'm Puerto  
24 Rican. Mr. Machado is Honduran. I could very well be  
25 sitting there, folks, if I took off my glasses, and I



1 put on different clothes. I could be sitting in that  
2 seat (indicating). Maybe you can (indicating). Maybe  
3 you can (indicating). Maybe you can (indicating).

4 MR. SAMEIRO: I'm going to object. The jury  
5 is being singled out. This is totally improper for him  
6 to point out each and every one in the jury box.

7 THE COURT: Based on the same objection --  
8 similar objection as before -- I will sustain that  
9 objection.

10 MR. GONZALEZ: I'm sorry?

11 THE COURT: I will sustain the objection.

12 MR. GONZALEZ: My point is that, everybody  
13 could be sitting there, if Wilmer Cedillo just picked  
14 him out of some pictures. Maybe that looked like me or  
15 him. Me or him could be there.

16 Mr. Sameiro is going to tell you that the  
17 photo display was done properly (indicating). That the  
18 photo display was done properly. That it couldn't have  
19 been suggestive. That Detective Selesky was in his  
20 rights, to pencil in on this photo -- excuse me -- this  
21 photo display result form, that Detective Selesky is  
22 allowed to fill that in, which really doesn't make  
23 sense.

24 He is also going to tell you that Detective  
25 Selesky did an excellent investigation. What do you

1 all think? To put it simply, in order for you to  
2 convict Mr. Machado, you're going to have to believe  
3 what Wilmer Cedillo testified to. The problem is,  
4 Wilmer Cedillo's testimony. We're not even sure what  
5 it is. It changed from day-to-day. It changed from  
6 April 24th, to July 25th, to December 16th of this  
7 year, to December 17th of this year. It changed. If  
8 Mr. Cedillo got back on that witness stand again, he  
9 probably wouldn't tell us the same story.

10 I would submit to you, that all of Mr.  
11 Cedillo's testimony is not something you should feel  
12 comfortable with. It's clear that his memory is poor.  
13 From moment to moment, his story could change.  
14 Honestly, and quite frankly, I don't think Mr. Cedillo  
15 could have made a positive identification on April 24th  
16 of 2007.

17 And, remember, that he made this  
18 identification on July 25th, not April 24th, April  
19 25th, April 26th, or any day close to the event. It  
20 was three months later. The guy didn't even remember  
21 how tall he was from moment to moment. With regard to  
22 his address, it was 41 South Talmadge Road. He wrote  
23 it on a piece of paper. All of a sudden, you can see  
24 the video. He says, I live at 663 Hermann Road, in  
25 North Brunswick. I just moved there 30 days ago.





1 Coincidentally, he had just applied for a new license,  
2 that you guys all had a chance to see. It went hand to  
3 hand, all the way to the end (indicating). He said 41  
4 Talmadge Road. What are we to believe from this guy?

5 In addition to Wilmer Cedillo's testimony,  
6 you also have to believe that Detective Selesky did  
7 everything that he could to solve this robbery. And he  
8 did everything he could to find the five, possibly six  
9 people, who committed this robbery. We know that his  
10 investigation was shabby. Just look at the CD of the  
11 interview with Wilmer Cedillo, in the room when Officer  
12 Matias was there. They're talking to Wilmer.

13 Second, check to see whether Detective  
14 Selesky really probes the facts and circumstances of  
15 how the robbery occurred. Watch and see whether he  
16 even tries to determine whether there are  
17 inconsistencies between the report and what Wilmer is  
18 actually saying. Does he even take the time to look at  
19 Officer Bobadilla's report? And to figure out, you  
20 know, why is he saying this then, and why is he saying  
21 this now? Maybe he could have the wrong guy. Three  
22 months later, he is sure that this identification, that  
23 Wilmer was positive, that it was Pablo Machado.

24 But think about it. He wasn't positive about  
25 much. I'll get into Wilmer Cedillo's testimony a

1 little bit later. And I'll point out to you what he  
2 was positive about, and then how much it changed  
3 through the course of the trial. I have asked you all,  
4 to ask yourself, do you even believe a robbery was  
5 committed there? I have thought about it.

6 Maybe Wilmer Cedillo stole the money from his  
7 boss. Five hundred dollars, he didn't want to split it  
8 in half. Maybe he took the money from his boss  
9 himself, and had to report it, when he went back,  
10 because he told him to. He said, all right. You have  
11 to report it to the police. Maybe he took the money  
12 himself. The only reason I put that forth, he may be a  
13 robbery victim. And if it happened, you know, that's a  
14 bad thing. It's a violent offense. Something people  
15 shouldn't have to go through in our society. But think  
16 about it. His story just didn't make any sense.

17 Now, before getting into all of Mr. Cedillo's  
18 inconsistencies, his positive identification, I'm going  
19 to highlight some of the other things we heard at the  
20 trial, that could also draw doubt, reasonable doubt, in  
21 your mind. First, the last person we heard from was  
22 Officer Bobadilla. I want you all to first notice,  
23 that the State didn't call him as a witness. Officer  
24 Bobadilla was not in the State's portion of the case.  
25 I called him, on behalf of him (indicating). You know



1 why? Because I wanted you all to hear the story that  
2 Officer Bobadilla heard. Mr. Sameiro didn't want you  
3 to hear that.

4 MR. SAMEIRO: I object. That is misleading.  
5 Counsel knows that I can't bring in hearsay evidence  
6 through an Officer like that. That is misleading. I  
7 object. No way could I have called him to the stand,  
8 under the Rules of Evidence.

9 THE COURT: Well, he is right to a certain  
10 aspect. He could testify certainly as to whatever the  
11 victim told him.

12 MR. SAMEIRO: I would object to the whole  
13 colloquy that we're having.

14 THE COURT: Let's go to sidebar.

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

17 MR. SAMEIRO: There is absolutely no  
18 reason --

19 MR. GONZALEZ: Lower your voice.

20 MR. SAMEIRO: -- to say that I kept that from  
21 the jury. Absolutely no way I could have brought that  
22 in.

23 MR. GONZALEZ: The Prosecutor brought in the  
24 statements from the victim to the Officers in his  
25 direct case. I can tell them that, and I can draw

1 whatever conclusions, and make any arguments that I  
2 want to make.

3 MR. SAMEIRO: No. Only ethical, proper, and  
4 legal ones, Judge.

5 THE COURT: The issue is -- Certainly I have  
6 no problem with you saying that you brought in  
7 Bobadilla. That's fine. But to insinuate that the  
8 State could have asked -- brought him in --

9 MR. GONZALEZ: They could have. That's fine.

10 THE COURT: But to insinuate that they could  
11 have brought him in for that purpose, that is hearsay.

12 MR. SAMEIRO: There is no exception.

13 THE COURT: I note the objection. I agree.  
14 I just ask that you couch it in those terms.

15 MR. GONZALEZ: I'll move on.

16 MR. SAMEIRO: I think the jury needs to be  
17 instructed that there is no way that I could have  
18 covered that in my case. The jury should not be left  
19 with a false impression.

20 THE COURT: Okay. I have no problem telling  
21 them that. I'm just wondering if it is best to be  
22 cleared up by you. In other words, you can indicate  
23 that the State could have brought him in. Certainly  
24 the State can't bring in adverse statements.

25 MR. SAMEIRO: I would ask for a ruling. I



1 think that Counsel should correct his mistakes.

2 THE COURT: I will sustain the objection.

3 MR. GONZALEZ: And I'll move on.

4 MR. SAMEIRO: I think it has to be dealt  
5 with.

6 THE COURT: I'll sustain the objection.

7 I think that is the most innocuous way to  
8 handle it without highlighting it.

9 MR. SAMEIRO: I don't understand certain  
10 aspects.

11 THE COURT: Some of the arguments are very  
12 valid.

13 MR. SAMEIRO: I think it needs to be  
14 explained, because of the hearsay.

15 MR. GONZALEZ: I don't understand the  
16 hearsay.

17 MR. SAMEIRO: Judge, I think the jury needs  
18 to be told by your Honor, there is no way that I could  
19 have ever called this witness in to testify, based upon  
20 what the victim told him.

21 THE COURT: All right. I will.

22 MR. SAMEIRO: Judge, just for the record, I  
23 think an unethical comment was made to the jury, first,  
24 as it dealt with the loved ones. And, second, when it  
25 dealt with the pointing to the Hispanics, singling them

1 out with his index finger, saying to each and every  
2 Hispanic, that they could be sitting in his seat.

3 THE COURT: Right. I sustained both those  
4 objections.

5 MR. SAMEIRO: The fact pattern is -- It is  
6 unethical commentary.

7 THE COURT: Okay.

8 (Whereupon, the sidebar discussion  
9 concluded.)

10 (Whereupon, the hearing continued in the  
11 presence of the jury.)

12 THE COURT: I sustained the objection.

13 I just want the jury to understand that  
14 witnesses can certainly testify. They can be brought  
15 in by parties. But there are certain requirements that  
16 have to be determined before certain witnesses can  
17 comment on what other witnesses have said. Because it  
18 may be hearsay.

19 So, I'm asking you, in a sense, certainly you  
20 can consider those arguments of Counsel. But,  
21 understand, that some witnesses cannot testify as to  
22 certain events, because there are certain Rules of  
23 Evidence. Thank you.

24 Mr. Gonzalez?

25 MR. GONZALEZ: Thank you.



1 Officer Bobadilla wrote, in his report, and  
2 he testified before you all, he said that Mr. Cedillo  
3 told him that he recognized one of the gentlemen from  
4 the photo before, that had robbed him. He told you  
5 that one Hispanic man was wearing blue jeans and a  
6 white bandanna. He was in his early twenties, skinny  
7 build, approximately five feet eight inches tall.

8 He told you that that's what Mr. Wilmer  
9 Cedillo told him. Wilmer Cedillo also told him the  
10 other Hispanic male was wearing a white sweater, blue  
11 jeans, a hat, was in his early twenties, skinny build,  
12 and approximately five feet tall.

13 He told you that Wilmer Cedillo said to him,  
14 when he arrived at 400 Lee Avenue, both suspects in the  
15 back seat began to punch him. That Wilmer Cedillo  
16 swung back, and then he exited the taxicab. Wilmer  
17 went on and said, when he exited his cab, three  
18 Hispanic males came running from behind several cars.  
19 They were carrying handguns. That they struck the  
20 victim and threw him to the ground.

21 That one of the suspects pointed the handgun  
22 to the left side of his head, and told him not to move.  
23 That person then told him to give them all his money,  
24 or he will shoot and kill him. Wilmer goes on to say,  
25 he took out all of his money out of his pockets, and he

1 gave it to them, and that one of the suspects then  
2 yelled, "take all his communications and break them,  
3 so, he can't call the police."

4 The suspects then took a total of five  
5 hundred dollars, his cell phone, and the worker ID  
6 card. The suspects then punched and kicked the victim  
7 one last time, and then ran back to Woodnor Court.  
8 Officer Bobadilla said that the victim, Mr. Cedillo,  
9 then got up and called his job. He asked for the phone  
10 number that he called from. And then that's  
11 supposedly where they get the phone number from.

12 Now, I asked Mr. Cedillo, on direct  
13 examination, whether or not -- whether Officer  
14 Bobadilla spoke Spanish, and he said, yes. He didn't  
15 say Officer Bobadilla spoke a little Spanish. He said,  
16 he spoke Spanish. That they communicated. That he  
17 communicated with him. Officer Bobadilla, he came  
18 before you, and he told you, he had been working for  
19 New Brunswick Police Department, for six and a half  
20 years, as a bilingual Officer, a Spanish-speaking  
21 officer. That he was a bilingual Officer with those  
22 who speak Spanish.

23 But all of a sudden, on cross-examination, he  
24 doesn't know Spanish that well. That all of a sudden,  
25 Mr. Sameiro would like you to think that everything in





1 the report was lost in translation except for that  
2 number. Why do we remember that number? There are  
3 other numbers in the case. Right. 153 Kilmer. Right.  
4 We heard that that wasn't in the report.

5 And, in fact, as I go forward, Wilmer Cedillo  
6 told us, that he told Officer Bobadilla, things that  
7 were exactly right in Bobadilla's report. I want you  
8 to recall Officer Bobadilla's body language. The whole  
9 interaction, in my view, was really, really weird. The  
10 way he admitted not knowing certain words. The words  
11 included in the report are simple, black and white.  
12 Black and white.

13 Remember when Wilmer Cedillo says, oh, the  
14 bandanna -- the mask -- was black. It was black. I'm  
15 sure of it. Officer Bobadilla wrote in the report,  
16 that the bandanna was white. Very easy words in  
17 Spanish, many colors, left and right. Easy words in  
18 Spanish. Easy for some. But I would submit that, most  
19 of you probably know the word for shirt, the word for  
20 pistol or gun. All these different things are simple.  
21 You can't mess that up. You simply can't. However,  
22 Bobadilla came in here and acted like he didn't speak  
23 Spanish.

24 But, in order for the State to prove their  
25 case, they have to discredit their own Officer, to

1 remove all of the inconsistencies, or attempt to remove  
2 all of the inconsistencies. You heard him. The truth  
3 is, Bobadilla did not make up the words in his report.  
4 He knows Spanish. And he wrote an accurate report of  
5 what Wilmer Cedillo told him on April 24, 2007. Mr.  
6 Cedillo's vocabulary is not all that sophisticated. We  
7 saw it. And, furthermore, when I asked him, whether he  
8 said those certain things, he said, yes, to most of it.  
9 Not all of it.

10 Now, we have also heard from Detective  
11 Selesky. And he told us about what he did after  
12 hearing about the robbery. What kind of investigation  
13 he did. He told you he was a Detective for 18 years, a  
14 police officer for 29. 28 and some change. That he  
15 had lots of experience in investigating major crimes.

16 Ladies and gentlemen, armed robbery is a  
17 major crime, and has major consequences. You all have  
18 to evaluate his detective work. Did he go to the  
19 scene? No. He didn't even bother to go canvass the  
20 area, to see if anyone saw a robbery actually occur.  
21 Did he do that? No. Did he go to the car, which is  
22 someplace? That there may be evidence? Did he go  
23 there and check it out? Did he go and see whether it  
24 was a Lincoln or a Honda? Or what kind of car it was?  
25 No, he relied on Wilmer Cedillo, who he already had the



1 report, and saw the inconsistencies in it. Yet he did  
2 not go and verify any information. Did he follow-up  
3 with Wilmer Cedillo? To see if he could find out more  
4 information that may help in the investigation? Nope.  
5 Nope.

6 Officer Bobadilla supposedly got the number,  
7 right, and the case is all about that number. Did  
8 Detective Selesky go back to Juan Perez and try and  
9 find out where that piece of paper disappeared to? No.  
10 He didn't go back to the evidence that supposedly links  
11 Mr. Machado to this robbery. He didn't go back to it.  
12 He knew it was a prepaid phone call -- a prepaid phone  
13 that was used. Prepaid phones change numbers  
14 frequently. But he didn't go that step further.

15 Did he go and get the dispatch records? It's  
16 funny how the dispatch records are destroyed. They're  
17 written in pencil, whatever was testified to, but  
18 they're destroyed every two weeks. We just get rid of  
19 them. They're not important. And we have talked a  
20 little bit about the tax issues and all that stuff.  
21 And the money and all that stuff. Why they're  
22 destroyed, I don't know.

23 Did he submit -- Did he subpoena -- Did  
24 Detective Selesky subpoena the in-coming phone calls of  
25 the taxi company? Did he go that far? He didn't. Did

1 he get the call records from Movida? Well, you heard  
2 that the phone came back with Mendosa. That was it.  
3 Maybe he could have got the Movida phone numbers, and  
4 linked them up to the taxi station. And the reason I  
5 say that is, I think that's important. Wilmer Cedillo  
6 himself said, we get lots of calls from 400 Lee Avenue.  
7 400 Lee Avenue is a very busy place. As it was  
8 described to you, it's all in a circle, in a  
9 cul-de-sac. It has a hundred twenty-four apartments.  
10 It's a huge complex. That's the address that everybody  
11 gives, when they're going to go to that apartment  
12 complex. 400 Lee Avenue.

13 Now, next we heard from Officer Matias. He's  
14 the one that did the photo display with Wilmer  
15 originally. And you all can recall that. I want you  
16 all to remember that photo ID. And that it was done  
17 three months after the alleged robbery. And I think  
18 that is important. Officer Matias was honest. He  
19 said, it's my first photo display. He acknowledged he  
20 made some mistakes. A major crime like this, there is  
21 no room for errors. There is no room for errors.

22 Unlike Selesky, he was honest in saying that  
23 Spanish forms should have been used. Think to  
24 yourself, he said he didn't know whether the Spanish  
25 form existed. But then Selesky came afterwards, and



1 said the Spanish form does exist. He just said, he  
2 didn't have time to get that form. The guy was coming.  
3 He didn't have time to cover that crucial fact, where a  
4 person acknowledges that they were not suggested to  
5 pick any of the photos. You guys are going to have the  
6 back of it. Read it. Look who supposedly signed it.

7 It says, the undersigned, and all these other  
8 things, including the fact that the New Brunswick  
9 Police Department has not suggested anything to him.  
10 Mr. Cedillo didn't sign it. And he didn't put that  
11 picture, the fifth picture, and these numbers. He  
12 didn't put them in there. It's him that has to do it.  
13 So, if you feel comfortable with that identification  
14 process, I would submit that you shouldn't. You  
15 definitely shouldn't. It should have been in Spanish.  
16 And he should have filled in those blanks.

17 Another thing about the photo display. And,  
18 again, Officer Matias acknowledged it. He said, he  
19 came back in the room. This was the photograph. Look  
20 at it. Please look at it. And, in consideration of  
21 that, see whether or not he put all of the pictures  
22 back in the envelope. He doesn't, at least, the way I  
23 see it. You guys may see it differently. But then he  
24 comes back out. He said he signs it. He says Selesky  
25 signs it, and Wilmer Cedillo signs it. It was never

1 re-shown to him. You should all have a problem with  
2 that.

3 That, alone, coupled with the fact that the  
4 Spanish form wasn't given, should leave you to negate  
5 that identification all together. It was improper. It  
6 just wasn't done right. I think that, the point of me  
7 saying this all, is that Selesky filled the forms out,  
8 and he put Pablo's photo, as Wilmer chose it.

9 We have no way of knowing the order by which  
10 they were given. Remember, Officer Matias didn't write  
11 a report. It wasn't memorialized on that video. They  
12 could have just switched positions. It's that simple.  
13 If he would have switched positions, and showed the  
14 photos in front of the video, it would have made all of  
15 our lives a lot easier. Maybe if he would have signed  
16 it and identified it.

17 The most important thing -- Well, the most  
18 important thing that I want you all to consider, you're  
19 going to be given instructions by the Judge. The most  
20 important ones, that I want you to consider, are those  
21 on the identification, and those on the credibility.

22 All right. There is various factors that we  
23 have to consider, when doing those things. And on the  
24 identification portion of it, I want you all to think  
25 about the witness' opportunity to view the person who



1 committed the offense, at the time of the offense. The  
2 simple fact is, we don't know what he viewed. First,  
3 he is in the front seat, sitting right next to him. A  
4 foot away. A foot away.

5 You all remember that, on direct examination.  
6 He explained to Mr. Sameiro that, the person who robbed  
7 him, was about a foot away, sitting in the passenger  
8 seat. Later on, after that, he changed it, and he  
9 said, no, they were in the back. Both of them were in  
10 the back. I want you to recall the way he talked about  
11 the person in the back. The person in the back, he  
12 didn't see him at all. He didn't see him at all. He  
13 could give no description whatsoever on that stand, of  
14 what the person in the back was wearing, what they  
15 looked like, anything. And he said, he couldn't see  
16 him. He was driving.

17 Now, think about it. Both people are in the  
18 back. How could he see him? He told you that both  
19 people were in the back. The State can't get around  
20 that. It's very different (indicating). Think about  
21 when you're sitting in your car. How close the  
22 passenger is to you. Your ability to view their face.  
23 Think about all of those things.

24 Now, it's even closer than where the Judge is  
25 sitting (indicating). That is what he told you. That

1 was his ability to view the person that robbed him.  
2 All of a sudden, the guy is in the back. Come on.  
3 That, alone, the State cannot get around. And think  
4 about when you go back and deliberate. Because that's  
5 important. The opportunity to view a person's face.  
6 Let's say it took a minute, two minutes, the whole  
7 drive. The guy is sitting in the back. You don't  
8 think you're going to get robbed. What reason do you  
9 have to look back? Right?

10 All of a sudden, when he comes before the  
11 Court, the guy has got a receding hairline  
12 (indicating). He never told anyone about that before.  
13 About the receding hairline. Right? One guy had a  
14 bandanna. Whether it was black, we don't know. One  
15 guy had a hat. We don't know nothing about the  
16 receding hairline. What's curious to me simply is,  
17 originally, there is a description given, on April 24,  
18 2007. There is a description given to Officer  
19 Bobadilla that is just thrown out of the door on July  
20 25th.

21 Watch the tape. He says, he can't give you a  
22 description of the person. All he does is, he goes in  
23 there and picks a person. He picks a person. He  
24 couldn't give a description of the person. Nothing  
25 with regard to his hair. Nothing with regard to his





1 clothes. Nothing at all. And then Detective Selesky  
2 adds in everything, in the way he conducts that  
3 interview with him. I guess, Wilmer, to make himself  
4 seem more credible, says this, "oh, yes, I saw him  
5 yesterday." Come on.

6 Now, I mentioned the witness' opportunity to  
7 view the person who committed the offense, at the time  
8 of the offense. Another thing you should consider, the  
9 witness' degree of attention to the perpetrator at the  
10 time of the offense. He is sitting next to him, maybe  
11 he paid attention to him. If he is sitting behind him,  
12 he certainly was not.

13 The accuracy. You also have to consider the  
14 accuracy of any description that the witness gave prior  
15 to identifying the perpetrator. Prior to identifying  
16 the perpetrator, you only got one shot at it.  
17 Bobadilla's report, we don't know about any other  
18 description. Because he wasn't asked beforehand. How  
19 simple is that, ladies and gentlemen? To make sure  
20 that the right person is in here (indicating)? To make  
21 sure that the right person is there (indicating)?

22 Wouldn't you ask, can you describe the guy  
23 for me again? Remember, he said it was dark. It's  
24 dark at five o'clock in the morning. How could you  
25 tell what his clothes were? But what he said was white

1 and black, black and white, jeans and shirts, sweater,  
2 hat and bandanna. That was all in Officer Bobadilla's  
3 original report. You think he made that up? Bandanna,  
4 white and black bandanna. Ludicrous. Do you think he  
5 would make that up? His report, his description.  
6 It's the description, the original one, that's five  
7 eight. You have to consider the degree of certainty  
8 expressed by the witness, in making the identification.  
9 He smiles when he looks at the photo. "This is the  
10 one." He smiles. He got it right.

11 On cross-examination, it's very specific.  
12 You can ask for a readback. He said, he went in there,  
13 to go pick the right one. "I went in there to go pick  
14 the right one." The one that he previously knew; but  
15 the right one? Think about that. I would go through  
16 all of this; but I'm taking a long time. I don't want  
17 to. I may get back to it, if I feel that I haven't  
18 covered something (indicating).

19 You have to consider the length of time  
20 between the witness' observation of the offense, and  
21 the first identification. The length of time between  
22 the witness' observation of the offense, three months'  
23 time, and the first identification. You have to  
24 consider the discrepancies or inconsistencies between  
25 the identification and, if any, description, or not a



1 description. And then after the fact, there is some  
2 description. It's really limited. "That's him.  
3 That's him. That's him" (indicating). You also have  
4 to consider -- I think that's important -- in deciding  
5 whether the right person is sitting over there  
6 (indicating).

7 You have to consider the circumstances under  
8 which any out-of-court identification was made. And  
9 whether or not it was the product of a suggestive  
10 procedure, including everything done or said by law  
11 enforcement to the witness, before, during, or after  
12 the identification process. It goes on, and the Judge  
13 is going to highlight more circumstances that you may  
14 consider. These are the ones that I'm highlighting for  
15 you all to really, really consider. Whether the  
16 witness' identification was made spontaneously, and  
17 whether it remained consistent thereafter. Has it  
18 remained consistent? I don't think so.

19 You're also going to learn from the Judge,  
20 the Judge is going to instruct you on the credibility  
21 of the witnesses. And what you should consider in  
22 determining whether a person is credible or not. The  
23 Judge is going to read you lots of things. I want you  
24 to remember those things because they're important.  
25 One is the appearance and the demeanor of the witness.

1 The manner in which he or she may have testified. The  
2 witness' interest in the outcome of the trial, if any.  
3 His or her means of obtaining knowledge of the facts.  
4 An important one. The witness' power of discernment.  
5 Meaning, their judgment and understanding.

6 If you recall, in the second day, Mr. Sameiro  
7 gave up on the witness, didn't he? He was jumbling  
8 everything. He was confused. He didn't know what to  
9 say. He was confused about his address, about his  
10 weight. He was confused about lots of different  
11 things. When I asked him certain questions, he would  
12 go somewhere else. Maybe back to the rehearsed one.  
13 The one that he practiced. He told you he went over  
14 the statement with the police officers, before coming  
15 in here to testify? Maybe he is going back to that  
16 one.

17 Another thing, you should consider his or her  
18 ability to reason, observe, recollect, and relate. His  
19 ability to reason, I submit, isn't that good. His  
20 ability to observe, I would submit, wasn't that great.  
21 His ability to recollect, obviously, wasn't that great.  
22 Because, from one day to the next, the guy was sitting  
23 right next to him. And all of a sudden, he's in the  
24 back. He wasn't able to recollect what he told Officer  
25 Bobadilla way back on April 24th.



1 In fact, the subsequent interview, he wasn't  
2 able to recollect the things that he spoke about on  
3 July 25th. His own words. Whatever is on the video is  
4 what it is. That's what he said, whatever is on the  
5 video is right, indicating his uncertainty in what he  
6 was saying to you all here in this courtroom.  
7 Indicating that, I don't know, you asked me a bunch of  
8 questions. Since I'm lying, I'm confused now. You're  
9 the one that confused me. Referring to me. You will  
10 recall, he wasn't only confused by me, he was confused  
11 by the Prosecutor as well. I asked clear questions. I  
12 was asking for clear answers. And it all got jumbled  
13 up into this mess. That's what I'll simply call it.

14 Now, another thing, that I want you all to  
15 consider, is the reasonableness or unreasonableness of  
16 the testimony the witness has given. The  
17 reasonableness or unreasonableness of the testimony  
18 that the witness has given. Unreasonable. Was there  
19 some things in that testimony that were unreasonable?  
20 Think about it.

21 You should consider whether the witness made  
22 any inconsistent or contradictory statements. Did he?  
23 I could continue. But each and every one of you has  
24 seen this case transpire right in front of your eyes.  
25 Each and every one of us has seen the prior

1 inconsistent statements and contradictory ones. You  
2 all have your own recollection of them. I'd ask -- I  
3 defer to you all. And the discussion that you have  
4 amongst yourselves, when you're deliberating. I can  
5 keep pointing out contradictions and inconsistencies.  
6 I could keep going. This is just the tip of the  
7 iceberg. Now, review the testimony. Which you are  
8 able to do. You can see various, numerous, a whole  
9 bunch of inconsistencies and contradictory statements.

10 The State is going to come before you, and  
11 say, the only thing that is not contradicted --  
12 uncontradicted -- in this case is the identification,  
13 and that phone number. They're going to say everything  
14 else that is inconsistent or contradicted or  
15 unreasonable about this case, we can't -- Probably what  
16 it will be is, we can't all remember something, our  
17 stories can change. If he's being truthful, it's  
18 reasonable to make those types of mistakes.

19 Don't just leave it at that. It's not  
20 reasonable just to decide that, now, people are now  
21 sitting in the back of the car. That it is not  
22 reasonable to just decide, when you are on the stand,  
23 on direct examination, on the first day, to tell them  
24 that the hair of the assailant was receding. No. All  
25 he referred to was the guy was young. Young. That's



1 it.

2           There is something that the Judge is also  
3 going to instruct you on, it's called false in one,  
4 false in all. It reads: If you believe that any  
5 witness, or party, willfully or knowingly testified  
6 falsely, to any material facts in the case, with the  
7 intent to deceive you, you may give such weight to his  
8 or her testimony, as you may deem it is entitled. You  
9 may believe some of it, or you may, in your discretion,  
10 disregard all of it.

11           Did he attempt to deceive you all by saying  
12 that the person was sitting next to him? And going  
13 down that road with the Prosecutor, to show you that,  
14 yeah, he had an opportunity to view that guy's face. I  
15 know he took the bandanna off. The black bandanna. Or  
16 was it a white bandanna? He went through my pockets,  
17 and only took out the identification, the immigration  
18 identification card.

19           He didn't take his license, he didn't take  
20 the wallet, the credit cards, things like that. That  
21 these guys stopped, these five guys, that they stopped  
22 and picked out the items. That Mr. Machado stopped,  
23 took off the white or black bandanna, and looked at  
24 him. Does that make any sense to you? Did he intend  
25 to deceive you, while he was testifying? Yes. Yes.

1 Yes. He did.

2           It's kind of like, if you go to the store,  
3 and you get a sandwich. You go to the store and you  
4 get some soup. You think there is a bug in it. Do you  
5 take the bug out, and then do you eat it? Or do you  
6 throw the whole sandwich out? I would submit, you  
7 would throw the whole sandwich out. Throw the entire  
8 testimony out. If he's a liar, throw it out. If he's  
9 not a liar, he's just making stuff up. Don't accept  
10 it. It would be a shame, if you all accept that.

11           Let's see, I have some other inconsistencies  
12 that I'd like to just point out. Just to add to the  
13 conversation, when you guys go back. He didn't  
14 remember what day of the week it was -- right --  
15 Monday, Tuesday, Thursday, Friday, who knows -- April  
16 23rd, April 24th -- when it went down. He didn't  
17 remember -- right -- he didn't remember the car he was  
18 in. I said Lincoln. He said Honda. Was it a Lincoln  
19 or a Honda? He couldn't describe what it was. Do  
20 Lincolns come in vans? Did you ever see a Lincoln van?

21           Let's see. He remembers one punch, a bloody  
22 nose. He couldn't see any more. That would go to his  
23 ability to see the person that hit him. The person was  
24 sitting in the back. He hit him once. He got all  
25 bloodied. He said that the people told him to close





1 his eyes. That he complied and closed his eyes. So,  
2 he wouldn't see anything. And he gave up.

3 Now, that's what's funny. Even in the  
4 videotape, he acknowledges that he was punched more  
5 than once, and he was kicked. Remember that? He said  
6 that only his foot came out of the car. That he is  
7 never thrown to the ground. That he was never kicked  
8 while he was on the ground or punched while he was on  
9 the ground. He was never on the ground. He only came  
10 out of the car afterwards, because of the blood or  
11 something like that. There is no blood in Officer  
12 Bobadilla's report -- just so you know -- on his shirt  
13 or anything like that.

14 He told you that, he told Bobadilla about 153  
15 Kilmer. He didn't. It wasn't in the report. Mr.  
16 Sameiro is going to talk about those numbers. 153  
17 isn't in it. 153 is not in the videotape, from July  
18 25th, with the ID, when the identification takes place.

19 There is a certain portion, where he says,  
20 that, you guys can remember, he says that, with the  
21 numbers, that he called the dispatcher himself, and he  
22 got the number from him. And he said that is how he  
23 told Bobadilla. After I asked him, on  
24 cross-examination, I asked him something to the effect  
25 of, didn't you tell Bobadilla that, and he said, yeah.

1 That's how I told him. So, what was in Bobadilla's  
2 report is what's accurate, not about Juan and the  
3 number.

4 Now, let me also talk about the number and  
5 the sheet of paper, and I have all of those things  
6 associated with that piece of paper. That is an  
7 important piece to this puzzle. But it's missing.  
8 Nobody knows what was written on that piece of paper.  
9 Wilmer Cedillo said, oh, I gave it to the police  
10 officer. The police officer says, I gave it back.  
11 Isn't that an important piece of information that you  
12 would like to know about? Whether there is or is not  
13 any relation to that particular case?

14 I just want to point out, so, you guys can  
15 understand, and I circled it, on this piece of paper,  
16 as page 18. And I just want to note it. Because it  
17 must have been important, when I was reviewing my  
18 notes. I'd just like to say it as well. I asked  
19 Wilmer, Officer Bobadilla speaks Spanish; right? Yes.  
20 Yes. And you told him the story about what happened?  
21 Yes. Yes.

22 And it's the same story that you told us  
23 yesterday and today; right? Yes. And, at no moment,  
24 during the statement, did you say that anyone was  
25 sitting in the passenger seat; right? No. No. No.



1 You told us that yesterday; right? Yes. Yes. And you  
2 told Officer Bobadilla, that the person was sitting in  
3 the back; right? Yes. Everything I remembered just  
4 now, what's there, it's all exact.

5 If you refer back to Wilmer Cedillo, he's  
6 going to tell you that the story is exactly the same.  
7 I keep pounding to that point. Because it's exactly as  
8 he said. I don't think the State can get around that,  
9 with regard to this identification. They're going to  
10 try. Mr. Sameiro is a very good lawyer. He is going  
11 to come before you all, and he's going to go to all  
12 this reasonable doubt, that you have a reasonable doubt  
13 right now. You're going to hear from him. He's going  
14 to attempt to sway you back to that side.

15 Remember how you feel right now. Remember  
16 how you feel right now. Remember all those things that  
17 I pointed out. Remember how important each and every  
18 one of these little things are. Because if you can't  
19 remember all of those little things, how can you  
20 remember this man's face in the dark, at the end of  
21 your shift, at four or five o'clock in the morning?  
22 Whenever it happened. How could you remember that? He  
23 said he recognized the guy from before. 5'8", Puerto  
24 Rican. It is just ironic. I happen to be 5'8" and  
25 Puerto Rican. But, like I said, think about it.

1 Mr. Cedillo, at best, is 5'4". He's wearing  
2 some shoes that have a little heel on them. So,  
3 probably, without those shoes, about 5'2 and a half.  
4 He's not close to 5'8". There can be no mistake. He's  
5 not close to 5'8". Look at me and look at him  
6 (indicating).

7 His life right now rests on your shoulders.

8 MR. SAMEIRO: I'm going to object again to  
9 this.

10 THE COURT: I will sustain the objection.

11 MR. GONZALEZ: I'll move on.

12 Grab a seat. I'll move on.

13 The outcome of this case rests on your  
14 shoulders. You were chosen to be here, because both of  
15 us thought that you could reason, you could put your  
16 potential biases away. We all felt that you would make  
17 great jurors. I think you did. I think you guys all  
18 did a wonderful job. Because you listened, looked at  
19 us, considered the evidence.

20 The Judge is going to instruct you on each  
21 and every aspect of the law. On the conspiracy, the  
22 robbery, the possession of a weapon for an unlawful  
23 purpose. I'd just like to know, where is the weapon?  
24 Where is the weapon? Where is the gun that was  
25 supposedly used? You think if Detective Selesky went



1 back to find the weapon, he may have found it? That's  
2 important. There is no weapon here for you. Also, the  
3 Judge is going to tell you about the terroristic  
4 threats and the theft.

5 He doesn't even really remember what  
6 happened. I think there is no question, in my mind,  
7 that reasonable doubt exists. I can go through each  
8 and every element. But I'm not even going to bother.  
9 Because I know you all are smarter than that. That you  
10 will, in and of itself, have a problem with the  
11 identification. Have a problem with the way the  
12 Officer neglected to do his job, to his fullest  
13 potential, to follow all this training and expertise,  
14 and all this stuff. Hundreds of photo arrays.  
15 Hundreds of them. He came before you all, and told you  
16 that the paper doesn't mean anything. I can fill it  
17 out. Arrogance.

18 And that alone should have dumbfounded you.  
19 You should say to yourself, oh, my goodness. This is  
20 an armed robbery, and you minimize it. Don't you all  
21 minimize it. Very simply stated, 14 jurors, sitting in  
22 this box, have reasonable doubt on their minds right  
23 now. When you all go deliberate and come back, we pray  
24 that you find Mr. Machado not guilty of all the  
25 charges, on all the counts, because the State didn't

1 prove that story.

2 Thank you very much for being so attentive.  
3 I realize that I spoke for quite some time. Probably  
4 more than an hour. If I didn't, I wouldn't feel  
5 comfortable that I have explained and rehashed and  
6 covered everything. It's my job to do so. It's your  
7 job to be jurors. Please do that job. Thank you.

8 THE COURT: Thank you, Mr. Gonzalez.  
9 Prosecutor?

10 MR. SAMEIRO: Judge, do you want to ask the  
11 jury if they want five minutes? I'm ready to go.

12 THE COURT: I think we're okay. Everybody  
13 okay?

14 I can see a resounding, yes. I didn't  
15 realize the time, to be honest with you. Everybody  
16 okay? Yes?

17 Prosecutor?

18 MR. SAMEIRO: Thank you, your Honor.

19 May it please the Court, Counsel, ladies and  
20 gentlemen of the jury, years ago when I went to  
21 college, I took economics and finance as my major. And  
22 I never thought I would be relying on something I  
23 learned in statistics in court as an attorney. But in  
24 the law of probabilities, there is a way to compute how  
25 a number can be selected randomly.



1 For those of you who play Pick-3, you  
2 probably know that you've got a one in a thousand  
3 chance of picking that three digit number. There is a  
4 formula by which that's derived. You see every digit  
5 in the Pick-3 can be one out of ten. So, I have three  
6 through nine. And when you compute the odds for any  
7 one of those digits, it's a one in ten. So, I have a  
8 quarter. A quarter has two sides. That would be a one  
9 in two. 50/50 odds. Right?

10 So, it's the same with playing the Pick-3.  
11 You take the number of the combinations, and you  
12 multiply it by those three digits. And you get the  
13 statistical probability that anybody is going to hit  
14 that specific number. One in ten times. One in ten  
15 times. If you multiply the fractions, that becomes one  
16 in a thousand. Now, with a ten digit phone number, you  
17 keep multiplying it times ten to figure out the odds  
18 that someone would need to have to come up with that  
19 ten digit number. That's, obviously, the important one  
20 in this case is the defendant's phone number.

21 My question to you is, what are the odds that  
22 Wilmer Cedillo would correctly pick the defendant's  
23 phone number, when he went to speak with Officer  
24 Bobadilla on April 24th? It's in the millions.  
25 Millions. I went a little overboard. I didn't have

1 enough space on my calculator.

2 That, ladies and gentlemen, is really the  
3 crux of the case. You have that corroboration, that  
4 level of certainty, to support the identification. You  
5 have got to observe. Wilmer Cedillo turned to the  
6 defendant over there, and said, that's the guy that  
7 robbed me.

8 Ladies and gentlemen, I told you in the  
9 beginning of the case, there were two expressions that  
10 I wanted you to think about throughout the trial.  
11 First, a picture is worth a thousand words. And,  
12 secondly, that language has its flaws in communicating  
13 ideas. Particularly, when there is a translation gap.

14 Like I said, in this case, Wilmer Cedillo is  
15 an honest, decent kid, who is trying to make a living  
16 here in this country, doing the best that he can, to  
17 make ends meet. Certainly, he had no reason to make up  
18 anything when he went to Officer Bobadilla on the 24th,  
19 to report this robbery. He had no axe to grind  
20 against Machado, if he didn't know him. If he did, he  
21 would tell the cops by name who did this.

22 This young man is out there working hard. He  
23 had his hard-earned cash taken from him. Some jewelry,  
24 and a phone, and a worker's permit. He went to the  
25 police that day. Really early that morning. And did





1 the best that he could to describe the men who  
2 assaulted him and who robbed him.

3 Now, he wasn't able to identify the other  
4 assailants, because they were wearing masks. But the  
5 guys that got in the car, in the van, weren't, because,  
6 frankly, that would be suspicious; right? Would the  
7 cab driver let two masked men get inside his van? Of  
8 course, not. And there is really no discrepancy here  
9 with respect to the back seat versus the front seat.  
10 Somebody might have gotten in through the back seat or  
11 have gotten in through the front; but throughout the  
12 trip, here, clearly, for the victim to have seen what  
13 happened, he had to look at the guy right in the face,  
14 as he's being robbed, as he's being punched  
15 (indicating). How do you get punched square in the  
16 face from somebody in the back seat, when the back of  
17 your head would be towards that person? It can't  
18 happen that way; right?

19 When Cedillo was accosted by this defendant,  
20 he could see him. He could get a good look at him.  
21 And he could make an identification of him, like he  
22 did, only a few months later. Wilmer Cedillo is an  
23 honest, credible person, who was not coached to  
24 testify, who was not told what to say, who was not told  
25 what to do. He was not given the transcripts or the

1 statements in advance, and told to lie. Nobody said,  
2 let's get it right. You see these inconsistencies.  
3 You heard some evidence about, if they exist, and we'll  
4 talk about Officer Bobadilla in a few minutes. If they  
5 do exist, they're nothing more than patches of the  
6 truth.

7 Now, if you had any witness come before you,  
8 and take the witness stand, and tell you the same thing  
9 that he told the officer a year and a half ago, and  
10 then told another Detective several months afterwards,  
11 or a year and a half ago, you'd have to say to  
12 yourself, wait a minute. There is something suspicious  
13 about that. You would expect people, any person, not  
14 just Wilmer, to recall things a little bit differently,  
15 through the passage of time.

16 Now, some facts are important, and some  
17 aren't. If, for example, the victim said, yeah, I  
18 remember the socks that he was wearing were blue. Then  
19 later on, a year later, I saw these socks, they were  
20 purple. But does that matter to you? No. Because the  
21 color of the defendant's socks wouldn't be the issue in  
22 the case.

23 Now, I'm using that example to show you that  
24 some inconsistencies really don't matter. But, in this  
25 case, we are left with the proposition, as to whether



1 or not the inconsistencies really exist. Because what  
2 you saw evolve in the case, involved the  
3 cross-examination of Mr. Cedillo, based upon a report  
4 that Officer Bobadilla generated. That is where the  
5 translation issue becomes critical.

6 We have had the benefit of the Court  
7 Interpreters to interpret for us. Right now they're  
8 doing it, and muffling their voice, so, the defendant  
9 has the benefit of the translation. But when Mr.  
10 Cedillo was on the stand, we could hear Wilmer talk,  
11 and then we could hear the translators translate. And  
12 these young ladies, that are here in the courtroom'  
13 (indicating), are pros. They're certified. They have  
14 been trained for this.

15 And I would submit, despite all this  
16 training, despite all this expertise, that on a few  
17 occasions, not many, they have made some mistakes. The  
18 one that really sticks out to me, was the question  
19 concerning what the term "atracó" meant. Now, I'm not  
20 sure I'm getting the pronunciation correctly in  
21 Spanish. Atraco. But the one translator who was up  
22 there, tried to delve into this. I believe Miss  
23 Crowell believes, because she wrote it down here in  
24 this courtroom. She heard it. I hope all of you heard  
25 this translator first define the word as strawberry.

1 Strawberry.

2 Now, does that make any sense? That Wilmer  
3 Cedillo would be saying that the man who robbed him  
4 said, "this is a strawberry"? But this one translator  
5 said, that's accurate. We also got into the  
6 translators use of the word, las cuentas, which, if you  
7 look at the Spanish/English Dictionary, could stand  
8 for accounts. But is that what he meant? Because,  
9 frankly, what the witness means, when he uses that  
10 word, and after some probing, we got it out, that Mr.  
11 Cedillo meant currency, money, not accounts. He's not  
12 an accountant. He doesn't have a ledger in his pocket  
13 that was taken. He had cold cash taken from him.

14 So, you see, in this very courtroom, I say  
15 this with all due respect to our Interpreters, but  
16 there are translation errors that occurred. Now, can  
17 you imagine what happened with Officer Bobadilla? He  
18 was a nice guy. A patrolman, who is out there, risking  
19 himself, in the line of duty. He came in, and was  
20 testifying in pain, because he had a torn ligament that  
21 he suffered, that was caused while on the job.

22 Here's a guy who is out there. Not primarily  
23 as a Spanish translator or interpreter. He is out  
24 there on the streets, in order to make sure that New  
25 Brunswick is protected and safe. So, of course,



1 because he learned Spanish in his home, when he grew  
2 up, he is going to be tapped, from time to time, to do  
3 translation. Do you honestly believe he did the best  
4 translation that we could have gotten in this case?  
5 No. No. I would have much preferred these two ladies,  
6 our Court Interpreters, to be there actually. It would  
7 have been best if we got a video of what the witness  
8 had to say. Because then there would be no doubt.

9 But, as you heard, with the 50 or 60 thousand  
10 cases, that come up in New Brunswick, during the course  
11 of a year, it's not practical. It's not the procedure.  
12 It's not the procedure to get recorded statements of  
13 all the walk-ins. It just doesn't happen that way.  
14 The purpose of Officer Bobadilla's report was to,  
15 essentially, give a very short summary. A short  
16 summary. That report didn't extend to two pages. The  
17 first page is boilerplate. A short summary of the  
18 essential facts. So, that the Detectives can then  
19 follow through. So, on the basis of this so-called  
20 translation, Counsel attempted to show you all these  
21 inconsistencies, to impugn the credibility of Mr.  
22 Cedillo.

23 I submit to you, that he failed. Why?  
24 Because you got to see Mr. Cedillo yourself, when he  
25 came here, when he testified. Subject to your

1 observations, and subject to your own gut feelings. Is  
2 there anybody here who thought he was trying to mislead  
3 you? Counsel called him a liar. A liar. That is a  
4 strong word. That's a very strong accusation to make.  
5 Does anybody here believe that he was purposely trying  
6 to deceive you, in order to falsely convict a man that  
7 he didn't know? Well, that's absurd.

8 So, then the next question is, was he  
9 mistaken? He could be mistaken about his ID. Well,  
10 that's something that you have to think about. And  
11 that's why you look at all the corroborating  
12 circumstances in this case to decide whether he is  
13 mistaken or not. See, I didn't hear Mr. Gonzalez say  
14 one word about, how it was that we have, in this case,  
15 evidence that, in June of 2007, the defendant, himself,  
16 reported that same ten digit number to authorities,  
17 that's in the report.

18 It came from his own lips, in the interaction  
19 that he had with the police in June of '07. Not only  
20 at that time did he give him that same ten digit phone  
21 number, he gave him the place of birth, which is  
22 Honduras. He gave him his address, which is 400 Lee  
23 Avenue, and a particular apartment number. A date of  
24 birth, and some other details.

25 Now, how is it that Wilmer could come up with



1 the same ten digit number several months before. You  
2 want to play those odds? Wilmer should just run to the  
3 lottery store right now and try the Mega Millions and  
4 pick another number, because he's got that much luck.  
5 Wilmer honestly and credibly gave you his account of  
6 what occurred. He was robbed. There is no doubt about  
7 it. He was robbed at gunpoint. There is no doubt  
8 about it. Pablo Machado was the man involved. The  
9 fact there may be other people who got away shouldn't  
10 factor into your deliberations whatsoever. The fact  
11 that this defendant was dumb enough to call it in, to  
12 set up the robbery, with his own phone, and have the  
13 victim drive him to his own address, is what matters.

14 Hey, who watches TV? Who sees that show,  
15 from time to time, World's Dumbest Criminals? You  
16 know, there is a show out there, that is entitled like  
17 that. Where you see people on surveillance, committing  
18 crimes, looking at the cameras. You might as well  
19 leave their picture there. Or how about the criminals  
20 who drop their wallets at the crime scene? Look,  
21 could John Selesky have done more investigation? Could  
22 he have gone to that van and dusted for prints or  
23 looked for hairs or whatever? Perhaps.

24 But this guy got caught because he was stupid  
25 enough to use a phone that he had purchased, and drive

1 the people with him, one with him, and others waiting  
2 for the victim, right in front of his own house. Is  
3 there any dispute that this defendant lives at 400 Lee  
4 Avenue? Because if there is, I didn't hear it from Mr.  
5 Gonzalez.

6 Is there any dispute that the phone number  
7 that was used is the same one that the defendant gave  
8 to the authorities in June? No. Those are uncontested  
9 facts. Add that to Mr. Cedillo's very credible and  
10 believable identification, and you get guilt. You have  
11 this defendant's guilt, in the crimes that are charged.  
12 You see, in this case, the victim, he was just simply  
13 believable. And you're going to have the benefit, with  
14 that monitor and DVD player, in your deliberations  
15 room, to go over the evidence that's been captured by  
16 videotape.

17 Look to see how easy it was for Mr. Cedillo  
18 to pick out this picture of the defendant here. And  
19 you know much was argued about the order. You don't  
20 know what order it is. Well, does it matter, since he  
21 saw them all? Does it really matter? You know, I can  
22 tit for tat respond to all the little things that you  
23 have heard Counsel say, that really don't make sense.  
24 But, then, perhaps, I'll be here speaking until 12:30,  
25 and I don't want to do that.





1 You've all been very patient with the court  
2 system. I truly appreciate that. We've been here  
3 ready to prosecute this case from the beginning. I  
4 know that there were days, that you were waiting for  
5 hours, and pent up in the room, wondering what the heck  
6 is going on. I want to thank you for your patience,  
7 especially during this busy season. Because I'm  
8 mindful of that, I'm going to try to move along a  
9 little faster. And you can get to the real business of  
10 deciding this case, based upon the evidence.

11 But when you look at these pictures  
12 (indicating), and you see that you have got two like  
13 this (indicating). One of the defendant, in my left  
14 hand (indicating), and one with the last few numbers,  
15 7531, in my right hand (indicating). And these guys  
16 look very close (indicating). Very, very close. Isn't  
17 it interesting, that it's the defendant that was picked  
18 and not this other guy? The reason why it's  
19 interesting was because the defendant was easily  
20 identifiable by the victim. He had an opportunity to  
21 look at him inside the cabin of his van. And he  
22 remembered him. He hadn't seen him before, he hadn't  
23 seen him since. He can make the ID here in court, as  
24 well as on the tape.

25 Ladies and gentlemen, Counsel said a lot to

1 you in this case. And I do want to cover a couple  
2 things that he said. But before I do that, I want to  
3 make reference to an exhibit that's marked S-9. This  
4 was the piece of paper that was utilized in order to  
5 attempt to measure Mr. Machado. These markings here  
6 (indicating) were put on the paper by Mr. Gonzalez.  
7 And you'll see, you'll recall, that last week, when  
8 this happened, I asked Mr. Gonzalez to draw a straight  
9 line.

10 So, he can make the measurements from the  
11 edge. The first line that was drawn was this one down  
12 below (indicating). And some of you may have picked up  
13 on the fact that it was not a level line. It wasn't a  
14 straight line. I recall asking Mr. Gonzalez, hey,  
15 you're cheating. Is that a straight line (indicating)?  
16 Then all of a sudden, the line jumped up an inch.

17 MR. GONZALEZ: Objection, Judge. Sidebar. I  
18 have a matter to place on the record.

19 THE COURT: Sidebar.

20 (Whereupon, the following discussion occurred  
21 at sidebar.)

22 THE INTERPRETER: Judge, we have to change  
23 the batteries.

24 THE COURT: The Interpreters just have to  
25 change their batteries.



1 MR. GONZALEZ: Judge, Mr. Sameiro said that,  
2 "are you cheating," or something to that effect.

3 MR. SAMEIRO: Right. I will acknowledge  
4 that.

5 THE COURT: It's a matter of record.

6 MR. GONZALEZ: Because as a matter of fact,  
7 he deliberately injected it into the record, and he's  
8 highlighting it now. And there is no question, that  
9 this is prosecutorial misconduct to state something  
10 like that before the jury. He's highlighting it again,  
11 which, to his detriment, is, indeed, prosecutorial  
12 misconduct, by even making that comment, even to bring  
13 it up. Because the objection was a valid one. He's  
14 not commenting on evidence, he's commenting on what he  
15 said, that was improper in the first place.

16 I ask that you sustain the objection. I  
17 would ask that you instruct the jury that he is to  
18 comment on the evidence, and not make his own  
19 statements. When he said it at first, I didn't  
20 highlight it, because I didn't think it was a good  
21 thing to do in this case. But I'm objecting now. I  
22 didn't object before. But I'll object now. That it is  
23 a comment that should not have been said in the first  
24 place. Mr. Sameiro knows better.

25 MR. SAMEIRO: Judge, S-9 was utilized in

1 taking a measurement of the defendant. That was made a  
2 part of this record. It's how we know that the  
3 defendant, according to the measurement in this  
4 courtroom, is five foot four. Counsel has made an  
5 issue of the defendant's height. I just thought -- I  
6 just wanted to use that exhibit to show that. This is  
7 going to be part of my theme about the case. I'm going  
8 to make a reference to how the final two points came  
9 out straight. So, the exhibit was a part of the  
10 measuring process. And I'm entitled to rely on it in  
11 my summation.

12 MR. GONZALEZ: I'd also like to make another  
13 comment about that. Mr. Sameiro also committed other  
14 prosecutorial misconduct, because he inferred that  
15 there was never any dispute as to Mr. Machado's  
16 address. Also, there was never a dispute of Mr.  
17 Machado's phone number. Now, it's a reference to  
18 someone's right to remain silent. It's a reference to  
19 someone not contesting the evidence. It's a clear  
20 reference to Mr. Machado's right to remain silent.  
21 There is no question of that. He phrased it as Mr.  
22 Gonzalez did not dispute this. However, we know what  
23 he is referencing, which is another thing for the  
24 record, where it is improper. And Mr. Sameiro knows  
25 better.



1 THE COURT: Okay.

2 MR. SAMEIRO: Judge, there simply has been no  
3 dispute from Mr. Gonzalez's own lips that, in June,  
4 when the defendant had that interaction, which we have  
5 sanitized before this jury, that he gave the address in  
6 this case, and the phone number in this case. It  
7 doesn't -- I'm not commenting on the defendant's  
8 failure to testify. In fact, Counsel presented  
9 evidence, in this case, and I can talk about the  
10 evidence that he presented, and the evidence that he  
11 didn't present, once he puts on a witness.

12 THE COURT: Okay. As to the first issue,  
13 certainly S-9 is in Evidence, it is no problem  
14 commenting on it. There was no objection made when the  
15 comment was made originally during the trial. I do  
16 think we all remember the comment that was made. First  
17 of all, certainly attorneys can comment on the  
18 evidence. Any comment made by Mr. Sameiro, during the  
19 trial, is not evidence. But he can refer back to the  
20 colloquy that went on between Counsel when the witness  
21 was putting S-9 -- identifying S-9.

22 I don't think it's any error to comment on  
23 what was said at that time. I do and I did instruct  
24 them, that comments by Counsel are not evidence, are  
25 not controlling. I think that satisfies that issue,

1 that the defense has, regarding the comment. Again, it  
2 was not objected to during the trial.

3 Secondly, there were comments made in  
4 summation by the Prosecutor regarding undisputed facts  
5 here. Counsel can comment on -- First of all, I would  
6 note, you're right. He did say Mr. Gonzalez, and not  
7 the defendant in general. But Counsel can comment that  
8 there was no questions put to the witness. So, that  
9 the facts remain undisputed. Questions put to them do  
10 not change the facts. Counsel can do that. I agree  
11 with that.

12 He clearly couldn't say, he didn't hear that  
13 from the defendant. But that's not what was said.  
14 What was said was, it was not disputed by Mr. Gonzalez.  
15 And one can see that that was referring to the witness  
16 that took the stand, through the testimony from both  
17 the State and the defense. So, I will overrule the  
18 objection regarding the comments of Counsel, inferring  
19 that your client should have testified, and overrule  
20 the objection that the State, the State can refer to  
21 S-9, not the colloquy between -- but I will instruct  
22 them that the comments of Counsel are not controlling.

23 MR. SAMEIRO: Judge, I would like you to  
24 state your rulings before the jury. Because this is  
25 another attempt, just like in the openings, to make



1 frivolous objections, to try to get me off of my  
2 stride.

3 MR. GONZALEZ: That is going to make it  
4 worse. The reference all together, Judge. I caution  
5 your Honor, that it was a comment about the defendant  
6 not testifying.

7 THE COURT: Well, that is your  
8 interpretation. Your other interpretation, I think, is  
9 a more clearer interpretation, that of the witnesses  
10 that testified. None of that was put to them as  
11 disputed facts. That's how I take it. That's my  
12 ruling.

13 (Whereupon, the sidebar discussion  
14 concluded.)

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

17 THE COURT: The objection is overruled.  
18 Let's continue.

19 MR. SAMEIRO: Thank you.

20 I'm just going to put this over here. Most  
21 of you are not even going to see the markings that I'm  
22 referring to (indicating).

23 In this exhibit, marked S-9, it didn't take  
24 much to get to a level line, to get the defendant's  
25 height, heels or no heels (indicating). I want to use

1 the exhibit to make a point.

2 That the arguments, referring only to the  
3 arguments now, you heard Mr. Gonzalez make to you a few  
4 minutes ago, that they weren't straight, they weren't  
5 straight (indicating) -- all right -- when he told you,  
6 the State didn't want you to hear Officer Bobadilla.  
7 That wasn't a straight comment. Because the State  
8 cannot call a witness to testify about something a  
9 victim says in the situation that Officer Bobadilla was  
10 involved in.

11 You see, there are exceptions to the hearsay  
12 rule. And only Counsel for the defendant could have  
13 called Officer Bobadilla, to bring out the alleged  
14 inconsistencies. Yet you heard the suggestion, that  
15 the State didn't want to offer that to you. That was  
16 not a straight comment. And the Judge corrected  
17 Counsel on that. You see, in this courtroom, we have  
18 to be straight with the law and the facts and the  
19 evidence.

20 There were other things that he said; but I  
21 want to move on to my main points. Because I want to  
22 give you the State's interpretation of the evidence,  
23 and the legal principles here, so, you can render an  
24 honest and just verdict of what was said about what  
25 reasonable doubt is in this case. You have heard the





1 definition from Counsel.

2 The Judge will explain to you what it really  
3 means. Let me suggest something to you. There is no  
4 reasonable doubt here concerning identification. If  
5 you believe you have an honest person on the stand, Mr.  
6 Cedillo. If you believe the tape shows a spontaneous  
7 identification of that photograph, and if you believe  
8 the cops recorded it properly.

9 Okay. Photographs don't show up on the  
10 camera (indicating). Counsel can't have it both ways.  
11 He can't say that, Sergio Matias is honest and made  
12 some mistakes. And then suggest like he did,  
13 throughout the course of the trial, that he did the  
14 bait and switch with the photographs. Let me just say  
15 flat out like this: If you believe that happened,  
16 acquit this man. Acquit this man. Because he  
17 shouldn't be set up by anybody.

18 If you believe there was that kind of  
19 conspiracy between the victim and the cops, falsely  
20 accused, falsely identified Mr. Machado of a robbery  
21 that he didn't commit, then acquit him. The State of  
22 New Jersey doesn't support that kind of a case. That's  
23 not what we're about. We want you to judge this man by  
24 the evidence you have. And you have to first find that  
25 it's credible, in order to convict him. It's that

1 simple.

2 Mr. Gonzalez can't have it both ways. He  
3 likes Sergio. He said, he was honest. Yes, of course,  
4 he was. Of course, he was. He simply forgot to get  
5 the witness to sign off on the photograph in the room.  
6 He went out. The Officer said, I need a signature on  
7 the back there. When you play the tape in your  
8 deliberation room, turn up the volume. You'll hear  
9 that. You'll hear that. Turn up the volume.

10 If you believe Officer Matias did the right  
11 thing, if you believe, more importantly, that the  
12 videotape shows this spontaneous, positive, reliable  
13 ID, then you have to convict this defendant. You know,  
14 there is another thing that Counsel mentioned, that I  
15 need to clear up for you. He didn't get into it; but  
16 he said, you know, we started out with seven counts and  
17 now we have six.

18 Now, that's true. The one that you're not  
19 going to have in front of you, was the one that was  
20 dealing with the firearm with no permit. I simply  
21 forgot to ask Officer Selesky, hey, did you do a permit  
22 check on Machado, and did he have a permit to carry any  
23 firearm. Since I didn't ask it, and there is no  
24 answer, he wins on that point. Okay. Now, you know.  
25 But the other counts, they survive.



1 And getting back to the reasonable doubt.  
2 Since we have to be straight and fair with the  
3 evidence, let me suggest this to you: There is no  
4 reasonable doubt concerning this man's identification,  
5 as to the real crime in this case, the big one, the  
6 armed robbery. Okay. There are related counts in the  
7 Indictment, that the Grand Jury presented, that I'm  
8 obliged to present to you. But I'm going to raise a  
9 question on one that Counsel didn't raise, because we  
10 have to be fair in this case. You see, the Judge is  
11 going to explain to you what armed robbery is. She is  
12 also going to explain to you what possession of a  
13 handgun is, with an unlawful purpose.

14 An armed robbery can take place with a toy  
15 gun, or even with a finger in a pocket (indicating).  
16 That's the law. As long as the victim believes that  
17 the assailant has a deadly weapon -- that's the phrase,  
18 deadly weapon -- the defendant can be convicted of  
19 armed robbery. Even if he used -- not used -- excuse  
20 me -- a toy weapon, a finger. Possession of a handgun  
21 for unlawful purposes is a little different. The  
22 definition, and the statute, that's relevant, is a  
23 firearm.

24 The firearm must be capable of shooting a  
25 projectile. You know, Mr. Gonzalez is right. We don't

1 have the firearm. We didn't find it. And I submit to  
2 you, that when armed robbers use weapons, they use real  
3 ones, and you can draw an inference, without the  
4 physical evidence, that Wilmer Cedillo saw a real  
5 firearm. But what if it wasn't? You know, you have  
6 got a lot of these toy guns out there, they look like  
7 firearms, as the law defines them.

8 Would that be a reasonable doubt, as to the  
9 count dealing with possession of a handgun with an  
10 unlawful purpose? Perhaps. I am not going to say it  
11 is or it isn't. That's for you to decide. You see,  
12 that's something that smells more like a reasonable  
13 doubt than the identification here. Remember, she's  
14 going to tell you that, with respect to an armed  
15 robbery, I don't need to prove that there was a firearm  
16 utilized in this case. But for that other count, yes.

17 See, that's what a reasonable doubt may sound  
18 like or may smell like. Not the identification here.  
19 It was scrutinized by thorough cross-examination.  
20 You'll see it again on the videotape. And, ultimately,  
21 when Officer Bobadilla came in to testify, he didn't  
22 say, what, I guess, Mr. Gonzalez, thought might happen,  
23 or he might say, in terms of his position as a  
24 certified bilingual officer. He started off with that.

25 Well, you're a certified bilingual officer,



1 or words to that effect. Never was. Perhaps, never  
2 will be. He gets C's or B's in Spanish probably in  
3 high school. He probably won't make it. But he's a  
4 nice guy. He did what a lot of people do, and that's,  
5 you know, make some mistakes. Some, not all.  
6 Bobadilla got the basic facts right in his report. I  
7 can tell you one thing though. When you heard  
8 Bobadilla testify as a defense witness, not a State's  
9 witness, you didn't hear Bobadilla say, that man didn't  
10 do it. That man was in California when this took  
11 place. I didn't hear Bobadilla say that.

12 The evidence in this case -- Well, I'm trying  
13 to tell you -- all points to this guy (indicating).

14 MR. GONZALEZ: Judge, can we go to sidebar,  
15 please?

16 THE COURT: Sidebar.

17 (Whereupon, the following discussion occurred  
18 at sidebar.)

19 MR. GONZALEZ: Judge, you heard it. There is  
20 the comment on the alibi. And an alibi, in and of  
21 itself, "we didn't hear that this guy was in California  
22 at the time," is a comment against the defense.

23 THE COURT: He said Bobadilla.

24 MR. SAMEIRO: Right.

25 MR. GONZALEZ: It's another comment about

1 what? About Mr. Machado not testifying. It's another  
2 comment. I'm just pointing out for the record, it's  
3 another issue.

4 MR. SAMEIRO: Judge, aren't we just stating  
5 the obvious? His witness got on the stand and said  
6 nothing about the defendant's innocence, or stating the  
7 obvious.

8 MR. GONZALEZ: I don't think so. It took it  
9 to another level, Judge. It takes it to another level,  
10 Judge. That he wasn't here. He is trying to assert  
11 the alibi, and why isn't there one.

12 I mean the fact that I didn't say anything  
13 about it is fine. The fact that I didn't say, he  
14 wasn't here, he was in another state, something along  
15 those lines, touches, I think, on the issue of the  
16 defendant having to say, he was here or he was not  
17 here. That's what concerns me.

18 MR. SAMEIRO: Well, Judge, I'm clearly  
19 stating the obvious, that the defense witness offered  
20 no exculpatory information concerning --

21 MR. GONZALEZ: He doesn't have to.

22 THE COURT: Well, he's a defense witness.

23 MR. GONZALEZ: He doesn't have to offer  
24 exculpatory information. We don't have to exculpate  
25 anything. That is his burden. I tried to avoid that.



1 I want the record to reflect --

2 THE COURT: What's the purpose? What you did  
3 was --

4 MR. SAMEIRO: I just indicated that all the  
5 evidence -- I looked to all the evidence that shows  
6 what their position is. That's the State's position,  
7 that the State is pursuing.

8 MR. GONZALEZ: I don't have to present any,  
9 Judge, but there is a load of case law on that point,  
10 that the State cannot comment on, in any way, the  
11 defendant's election not to testify. That is  
12 necessarily inferred as a comment on this issue I  
13 think.

14 THE COURT: It is twice removed. But I see  
15 your objection. It's not as if the comment was a  
16 direct comment. "You didn't hear any evidence that he  
17 was in California," which would clearly be irrelevant.  
18 The question was asked of the witness, he didn't say he  
19 was in California.

20 MR. GONZALEZ: I just ask that you sustain  
21 the objection, and let Mr. Sameiro know that I don't  
22 want to -- I don't want to interrupt Mr. Sameiro's  
23 closing.

24 MR. SAMEIRO: I don't have a problem with you  
25 telling the jury, they can disregard it, and I will

1 move along. I don't believe I did anything to violate  
2 the defendant's rights. That was the argument at this  
3 point. But, again, I note, I was simply stating the  
4 obvious. And your Honor can deal with it, and we'll  
5 move on.

6 THE COURT: I'm going to sustain it. I will  
7 ask them to strike it, and to indicate, again, what I  
8 indicated, the election, the defendant's election not  
9 to testify, they can't consider it. And highlight that  
10 there is no burden put upon the defendant in any way.

11 MR. SAMEIRO: Are you going to talk about the  
12 defendant's election not to testify?

13 THE COURT: No. Not now. Not at this point.  
14 But I think --

15 MR. SAMEIRO: I think it was also covered  
16 under that section, and another section of the charge.

17 THE COURT: Okay.

18 (Whereupon, the sidebar discussion  
19 concluded.)

20 (Whereupon, the hearing continued in the  
21 presence of the jury.)

22 THE COURT: All right, ladies and gentlemen,  
23 any comments made during the summations, regarding  
24 testimony that you did not hear, from Officer  
25 Bobadilla, indicating where the defendant might have





1 been, that he was in California, I'm asking you to  
2 disregard the comment.

3 First of all, comments by Counsel, during  
4 summations, as well as openings, are not evidence. I'm  
5 going to ask you to disregard that comment. No burden  
6 is put upon the defendant during a criminal trial. So,  
7 I will sustain the objection.

8 Mr. Sameiro?

9 MR. SAMEIRO: Ladies and gentlemen, the  
10 evidence of guilt in this case is overwhelming. I'm  
11 going to ask you, that you honestly, fairly, go over  
12 the evidence, deliberate amongst yourselves, with a  
13 view toward reaching a verdict. Look at the tape, look  
14 at the pictures. Try to recall your feelings when Mr.  
15 Cedillo was on the stand. Unfortunately, there was a  
16 gap in this case. You didn't get the charge last week.

17 Decide, amongst yourselves, what's  
18 believable. And then find this defendant guilty of the  
19 robbery, the armed robbery, the conspiracy. You have  
20 got the firearms count to consider. The terroristic  
21 threats in this case. Because that is almost like a  
22 sub-set of the actual robbery. The Judge will explain  
23 to you what the law is on that. I'm not going to waste  
24 your time.

25 The theft count, what the defendant took, the

1 money, the jewelry, the cell phone, that is what  
2 supports the robbery charge. That is a separate count,  
3 as well as the actual theft. You can convict him on  
4 that, too. And don't let any passion, prejudice, or  
5 sympathy, influence your vote.

6 Counsel got up before you, and tried and  
7 tried to inject that. I objected at the right time. I  
8 feel strongly enough about that now, to repeat what the  
9 Judge will tell you, what you have all sworn to do.  
10 That is, to eliminate that passion, prejudice,  
11 sympathy. Be honest and be fair to the defendant. But  
12 let's not forget Wilmer Cedillo. He may be a young kid  
13 from Honduras, working here in this country, to make a  
14 living.

15 He was a victim, just like many other  
16 victims, who get press attention, whose cases somehow  
17 make it to the headlines of the newspaper, or  
18 television news. The State of New Jersey, on his  
19 behalf, is saying that these crimes happened against  
20 him. And that he counts. And we ask, on his behalf,  
21 that you do find this defendant guilty of the charges  
22 in this case. Because the evidence would support that  
23 verdict. Thank you.

24 THE COURT: Thank you, Mr. Sameiro.

25 Ladies and gentlemen, what I'm going to do is



1 break you at this point for lunch. Ask you to be back  
2 downstairs at 1:15. The Court will go into its charge  
3 at 1:15. As close thereto as we can. As I said, the  
4 charge is about an hour and fifteen, an hour and a  
5 half. I don't want to go through it now, at this  
6 point. So, we'll break a little early. Come back a  
7 little early. Start a little earlier.

8 Please remember, do not discuss the case  
9 among yourselves or with anybody else. Don't go to the  
10 scene of the alleged incident. Also, ladies and  
11 gentlemen, if there is anything in the newspaper, don't  
12 read anything about it, or listen to anybody else  
13 discuss anything about it. Please have a nice lunch.  
14 Be back downstairs at 1:10, 1:15. And we'll bring you  
15 up. Thank you.

16 (Whereupon, the jury leaves the courtroom for  
17 lunch.)

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

20 THE COURT: Okay, folks. Be back at 1:15, or  
21 somewhere close to that.

22 MR. SAMEIRO: Thank you, Judge.

23 MR. GONZALEZ: Thank you, Judge.

24 THE COURT: Counsel, have had the opportunity  
25 to review what's been marked?

1 MR. SAMEIRO: S-1-A. I had an opportunity to  
2 redact a copy of S-1, which I had in my office.

3 THE COURT: Okay.

4 MR. SAMEIRO: You'll recall last week, I  
5 wasn't sure if I could find a copy in my office. I  
6 did. I knew I would.

7 And the only thing that was edited out from  
8 the original was a preamble of the case by Detective  
9 Selesky. I know Counsel won't object to it.

10 S-1-A starts at the point where the jury saw  
11 the photo array. Then it goes to the end of the tape,  
12 as the original. And, your Honor, this DVD is not  
13 marked. I didn't mark it. I left it blank. I don't  
14 know if Counsel wants that marking on it of any sort.  
15 It doesn't matter to me. I'm talking about a marking  
16 on the outside. There is nothing on the outside.  
17 There is, in fact, no markings.

18 MR. GONZALEZ: There should be a number on  
19 the case, Counsel.

20 THE COURT: On the case?

21 MR. GONZALEZ: On the case.

22 THE COURT: Okay.

23 MR. GONZALEZ: I had the opportunity to watch  
24 it. Judge, I got to see whether or not anything was  
25 changed. Nothing was. I don't object to the entrance



1 of that piece of evidence, having had the opportunity  
2 to view it.

3 THE COURT: Okay.

4 MR. SAMEIRO: Judge, then, I will say that I  
5 did bring a monitor, with two DVD players. One is a  
6 portable that goes with the remote. The other one  
7 doesn't. I will hook up the one with the remote  
8 control. That gives the jury the benefit of the  
9 fast-forward and rewind. We had discussed this last  
10 week. Your Honor was going to allow the jury the use  
11 of the evidence in the deliberations room.

12 THE COURT: All right. Thank you. We'll be  
13 back after lunch.

14 (Whereupon, a luncheon recess was taken.)

15 (Whereupon, the hearing continued after lunch  
16 outside the presence of the jury.)

17  
18  
19  
20  
21  
22  
23  
24  
25

1 A F T E R N O O N S E S S I O N

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

4 So, folks, did you have a chance to look at  
5 the verdict sheet, that I provided to you about two  
6 minutes ago?

7 I'm not sure you heard me during your  
8 summations, but I said that the verdict sheet was here.

9 MR. SAMEIRO: Since you raised the issue,  
10 Judge, I have some comments about it. Just to move it  
11 along, the comments -- I thought the Court was going to  
12 charge the armed robbery first and then the conspiracy.

13 THE COURT: I just didn't want to switch the  
14 counts. I will let them know that. But, otherwise,  
15 count two and count one -- I will clearly go through  
16 the verdict sheet. I think it is a little easier this  
17 way.

18 MR. SAMEIRO: As to the number of counts, you  
19 don't have count three.

20 THE COURT: I don't think the jury verdict  
21 sheet should have a missing count number, because that  
22 will leave the jury to speculate what number is  
23 missing. I will be addressing that. I think it's  
24 already been addressed.

25 MR. SAMEIRO: It's been addressed. My



1 biggest concern is, normally when charges are  
2 dismissed, the verdict sheet is re-numbered.

3 THE COURT: The problem is, it doesn't then  
4 go to the Indictment. I can change that later, if you  
5 would like me to.

6 MR. SAMEIRO: That's fine. Because, again,  
7 that's something that sticks out.

8 THE COURT: I could tell the jury, look, we  
9 didn't forget one.

10 MR. SAMEIRO: Right.

11 THE COURT: And you heard Counsel address it  
12 in summations and move along.

13 What I'm going to tell them, to be honest  
14 with you, I was thinking about this as I was sitting  
15 here. I think we have addressed it. I don't really  
16 need to, other than telling them, it's not a big deal.

17 MR. SAMEIRO: Other than the jury just may  
18 want to -- may wonder. You might want to explain that.

19 THE COURT: That's fine. I'll let them know  
20 that count three is not their concern any longer. That  
21 they would just go to count four.

22 MR. SAMEIRO: I had a chance to think about  
23 the objection that Counsel made in my summation, and I  
24 stand by what I said, in terms of what Officer  
25 Bobadilla didn't say, and what he did say.

1 I think the Court could cure whatever problem  
2 may have arisen from that, with an instruction, that  
3 focuses on what the State's burden is, what the  
4 defendant's burden is not. And you don't have to  
5 highlight it. I don't know if the defense would want a  
6 specific instruction as to the comment.

7 You might say something to the effect, you  
8 heard Mr. Sameiro say something about what Officer  
9 Bobadilla did or did not say. Understanding, the  
10 defense has no burden to come forward with any  
11 evidence. And that will be that.

12 THE COURT: I said that to them.

13 MR. SAMEIRO: I'm not sure if you did, or you  
14 said that you were going to highlight it in your final  
15 charges. And I know that Counsel made his comments,  
16 and I had my response. Again, Judge, I don't know if  
17 you said that already to them.

18 THE COURT: I did. I was sucking on another  
19 cough drop at the time. I'm under the weather a little  
20 bit.

21 MR. SAMEIRO: I may have not heard that, as I  
22 went back to counsel table, and reorganized my notes.

23 THE COURT: Okay.

24 MR. SAMEIRO: So, if you dealt with that  
25 already, then sobeit. I have no other comments.





1 One other thing, Judge, I didn't have the  
2 opportunity to deal with an alternate DVD player.  
3 There is equipment here from my office currently with  
4 that projector, that is set up for the jury there. If  
5 the jury puts the DVD in, attaches the DVD player, they  
6 can play it on the screen.

7 THE COURT: Okay.

8 MR. SAMEIRO: We lost the remote control for  
9 that player.

10 THE COURT: Okay.

11 MR. SAMEIRO: Which means we cannot stop it,  
12 have the jury fast-forward or rewind it. That unit  
13 doesn't fast-forward and rewind on the DVD player.

14 THE COURT: Okay. So, the DVD player --

15 MR. SAMEIRO: The mini DVD player has that  
16 capability.

17 THE COURT: Okay.

18 MR. SAMEIRO: You can tell the jury that.  
19 They can play it, without the capability of rewind. If  
20 they want rewind or fast-forward, we can set up the  
21 other one. They can play it on their own. Because  
22 it's mini. It's a portable DVD player. I think  
23 amongst the 14 people here, there will be, at least,  
24 one person who will know how to plug it in. There is a  
25 yellow jack, a white jack, and a red jack for the

1 monitor.

2 THE COURT: Okay.

3 MR. SAMEIRO: It is not a very difficult  
4 thing to do in the deliberation room. But if there is  
5 any need for assistance, you can offer that to them. I  
6 certainly want them to have the ability, with a remote,  
7 or with a unit that, on its own, will have a rewind or  
8 a fast-forward capability. I apologize for bringing in  
9 a unit that didn't have a remote with it.

10 THE COURT: All right. That's fine. I'll  
11 let them know that.

12 MR. SAMEIRO: That way, if they choose, if  
13 they want to use it, they want to stop and start it,  
14 and fast-forward it, they can do it.

15 THE COURT: You're talking to somebody who  
16 cannot hook up the yellow and the white and the red  
17 into the DVD player.

18 MR. SAMEIRO: We have a regular old DVD  
19 player. It just needs to be plugged in. I can't go  
20 into the jury deliberation room, unless someone allows  
21 it.

22 THE COURT: But when there is a mini -- We  
23 have here a portable DVD player.

24 MR. SAMEIRO: You just open it up. You put  
25 the disk in. It goes on the screen. You can hook it



1 up, that unit, with these three plugs, into the  
2 monitor, and have it played on the screen (indicating).  
3 I wanted to get it all together; but there was  
4 something going on in the courtroom, that didn't allow  
5 me to do it.

6 THE COURT: Okay. So, if it is in working  
7 order, we don't have to tell them about two different  
8 things.

9 MR. GONZALEZ: They can use that, and then it  
10 goes right to the screen.

11 THE COURT: That's fine. After we do the  
12 charge, you can hook it up.

13 MR. SAMEIRO: After the charge.

14 THE COURT: I don't want to delay the charge  
15 any longer. It's 2:35.

16 MR. SAMEIRO: Your Honor, I would ask you to  
17 tell the jury, that the delay was not caused by the  
18 defendant or by the State. You told them, in the  
19 morning, precisely at 12:05, it really wasn't the  
20 morning, that they should be re-assembled at 1:15.

21 THE COURT: Right.

22 MR. SAMEIRO: This jury has been waiting for  
23 over an hour.

24 THE COURT: They have been waiting several  
25 times during this trial for all kinds of reasons. I

1 could say, that it is not due to the fault of the State  
2 or the defendant. That is fine. I always say that  
3 there is no need to speculate as to why they have been  
4 waiting. I always tell them -- the Court is obliged to  
5 tell them -- that it was neither the Prosecutor nor the  
6 defense.

7 MR. SAMEIRO: Thank you.

8 MR. GONZALEZ: Thank you. I do have a couple  
9 more things --

10 THE COURT: Mr. Gonzalez?

11 MR. GONZALEZ: -- first, to be included in  
12 the jury instructions.

13 Credibility, prior conviction of the  
14 defendant, it's absolutely in the paperwork. I'd like  
15 to ask your Honor to cross it out because --

16 THE COURT: I know I took it out of mine. I  
17 didn't take it out of here. I was doing this as I was  
18 listening to every word, as the two of you were doing  
19 your summations. I thought I pulled it right out of  
20 that sheet. What I did do, too, I included the prior  
21 contradictory statement, that you asked me about. That  
22 is included in here.

23 MR. GONZALEZ: Thank you, Judge.

24 MR. SAMEIRO: Thank you, Judge.

25 MR. GONZALEZ: Additionally --



1 THE COURT: Anything else?

2 MR. GONZALEZ: -- would your Honor like to  
3 add --

4 THE COURT: The robbery didn't really change  
5 -- the robbery charge -- I just added in -- I took  
6 out --

7 MR. GONZALEZ: Your Honor crossed off the  
8 stuff for the simulation of the weapon.

9 THE COURT: Right.

10 MR. SAMEIRO: Right.

11 MR. GONZALEZ: The other thing that I had  
12 was, in light of the comments that were made during  
13 summation by the State, coupled with the comments made  
14 to me during, I believe it was, redirect of Mr.  
15 Cedillo, I find, it is my duty, in representing Mr.  
16 Machado, to ask for a mistrial in this case, based on  
17 the cumulative, I guess, the cumulative effect of the  
18 negative inferences that could be drawn from what Mr.  
19 Sameiro said. Only because there is something that  
20 could, potentially, affect the outcome of this case.

21 There are things we know should not be said.  
22 There is a memo out there that says, prosecutorial  
23 errors on summation, where there is prosecutorial  
24 misconduct, by way of mention of certain things. Those  
25 things that were said during the course of this trial,

1 especially in summation, were, in fact, an example of  
2 that. I'm putting that on the record. Because, I  
3 believe, it is my duty to do so. So, I can preserve  
4 that for appeal, for Mr. Machado. Again, hopefully, we  
5 won't get there.

6 THE COURT: Okay.

7 MR. GONZALEZ: But I must do this. We are  
8 asking for a mistrial, Judge.

9 THE COURT: All right. State?

10 MR. SAMEIRO: I always find it interesting  
11 when the argument is made, it's made in every case, no  
12 matter who the Prosecutor is. The defense attorney  
13 says, they're preserving it for appeal. Well, does  
14 that mean that they really understand that they're not  
15 going to get the mistrial? Because you wouldn't make  
16 the speech for a mistrial, if you really didn't  
17 believe, if you really didn't think, you were going to  
18 get it.

19 Counsel didn't feel aggrieved by the comments  
20 when he objected. He didn't feel the sting at the  
21 time, because there was no sting. He could have asked  
22 the Court earlier, at sidebar, I want a mistrial now.  
23 But, instead, after, I guess, the benefit of an hour  
24 and a half away from the courtroom, thinking about what  
25 happened, what didn't happen, he says, I need to



1 preserve it for appeal. Let me make that argument.

2 Well, Judge, that's fine. That's his right.

3 He can preserve whatever issue he needs for appeal.

4 But it tells me that, this really is the kind of thing,  
5 if you were sitting in this courtroom, you see, when  
6 the Appellate Court gets this case, if there is a  
7 conviction, they are going to get it on the naked  
8 transcript. They're not going to get the feel of the  
9 case that your Honor has. That's the problem with an  
10 appellate review. Because the Appellate Judges don't  
11 have the same view of the case as the Trial Court does.  
12 That's why it is your discretion that matters in an  
13 application like this.

14 There was nothing said that would cause a  
15 miscarriage of justice in this case. The only comment  
16 that I made, that may have been close to the line,  
17 dealt with what Officer Bobadilla did say or did not  
18 say. That was a defense witness. Because I'm a  
19 cautious person. And, upon reflexion, I figure, well,  
20 what a minute. This was not such a bad thing to say.  
21 The Court can cure it.

22 Jurors are presumed to follow the jury  
23 instructions. That's a doctrine that's spelled out in  
24 State vs. Manley, M-a-n-l-e-y. Don't ask me for the  
25 volume, the citation, I couldn't tell you. But jurors

1 are presumed to follow instructions. If your Honor  
2 does feel that anything that was said, was  
3 inappropriate, you can cure it with an instruction.  
4 That would be the only thing that would even come  
5 close.

6 It's interesting that a defense attorney  
7 would make such an application, after he told the jury,  
8 first, that the defendant's life and liberty was at  
9 stake. After that objection was sustained, he had to  
10 go to it again.

11 I find it interesting that the same defense  
12 attorney accuses me of misconduct, would point to the  
13 four Hispanic people in the box with his index finger.  
14 "Any one of you could be sitting where the defendant  
15 is." That was misconduct. Blatant misconduct.

16 The same defense attorney looked at these,  
17 Well, I don't want to get into it. But it's really  
18 mixing apples and oranges. Nevertheless, this  
19 defendant got the fairest of all trials. It may not be  
20 a perfect one. There is no such thing as a perfect  
21 trial. But when his Counsel gets up there, and can't  
22 draw a straight line, and I make a comment on it,  
23 that's not a problem that I created.

24 Your Honor, I ask that you deny the  
25 application. There certainly is no basis for a





1 mistrial here. S-9 was, in fact, an accurate exhibit  
2 that was presented to the jury in my summation. And if  
3 you think you need to cure that portion of my  
4 summation, that I've already alluded to, you can do  
5 that again. Thank you.

6 THE COURT: Well, the standard for a mistrial  
7 is set out in our Court Rules. It's the same as that  
8 for granting a new trial motion. That's, namely,  
9 whether or not the error is such, that a manifest  
10 injustice would result from the continuance of the  
11 trial, and submission of the case to the jury.

12 However, consideration of the mistrial motion  
13 does have one additional element. That's, namely, the  
14 Court's determination of whether or not the prejudice  
15 resulting from the error is of a nature, which can be  
16 effectively cured by a cautionary instruction or other  
17 curative steps.

18 Now, the issue of the comment in the  
19 summation, regarding Lieutenant -- Officer Bobadilla --  
20 hence the reason I said at the time to the jury -- I  
21 almost used Lieutenant as well. When Officer Bobadilla  
22 was testifying. When the comment was made about  
23 Officer Bobadilla not saying that the defendant was in  
24 California or something. I did actually address that  
25 to the jury already, telling them not to consider it.

1 And also emphasizing that the defendant does not have a  
2 burden of proof in this criminal trial.

3 So, I believe it was cured in that sense  
4 right away. And I asked them to not consider it. I  
5 also told them that, nothing that Counsel says, in  
6 openings or closings, are evidence. The other issue  
7 really was Mr. Gonzalez saying, the cumulative issue,  
8 as to the comment that was made by the Prosecutor in  
9 his summation, that certain facts weren't disputed by  
10 Mr. Gonzalez.

11 I think it is important to note, he said,  
12 disputed by Mr. Gonzalez. He was saying that Mr.  
13 Gonzalez questioned the witnesses. There is no dispute  
14 -- no dispute -- as to any issues as to certain facts.  
15 Therefore, those are the facts we have. That's how I  
16 viewed it. That was why I did not sustain that  
17 objection. I felt as though it was a proper comment.  
18 I did not think it got into the realm of forcing his  
19 client, Mr. Gonzalez's client, to testify, or making  
20 any comment on it.

21 It seems that no comment was simply put. No  
22 question was really put. Whatever questions were put,  
23 were raised in the sense that there was no other issue.  
24 So, Mr. Gonzalez was able to question the witness.  
25 These weren't contested issues. These were facts that



1 weren't really disputed.

2           So, I do not see that as really having a need  
3 to be cured. I don't know an inference that the jury  
4 would take. The final issue that the Court will  
5 consider, regarding the mistrial, is whether or not the  
6 comment was made along the lines of addressing counsel,  
7 and it was one that, in any way, should be addressed,  
8 and would cause a mistrial. I have to note, that was  
9 when the measuring, so to speak, was being done.

10           I really have to say that the line was drawn.  
11 And then I thought the Prosecutor said, in somewhat  
12 honestly, almost like, you're not cheating on me, and  
13 then it was laughed off, because the easel was sort of  
14 on an angle to begin with. I don't think it was the  
15 most accurate drawing. I think everybody agreed it  
16 wasn't an accurate drawing.

17           So, I did not get the impression, in any way,  
18 it was meant to infer that Mr. Gonzalez was cheating or  
19 not being honest, or anything along those lines. It  
20 was almost said tongue in cheek, to be honest. I think  
21 that's how it came across to the Court. I interpreted  
22 it as sarcasm. Everyone was smiling and laughing.  
23 That's how I interpreted this. That Counsel just  
24 simply made a mistake, looking at the level distance  
25 between the first mark and the second mark.

1           MR. SAMEIRO: Then he corrected his mistake.

2           THE COURT: I don't think, in all honesty,  
3 that that comment, in any way, was even cumulative with  
4 other issues, to cause a mistrial. I just don't think  
5 that that was there. I think the comment was made, and  
6 Counsel went right along and continued with what he was  
7 doing.

8           And those, separately, or actually taken  
9 together, I do not find are errors that would result in  
10 a manifest injustice. Those that I did feel were of  
11 concern, which was the comment made regarding Officer  
12 Bobadilla, I did cure immediately, with a curative  
13 instruction. So, I think that that was effectively  
14 cured by that instruction.

15           So, I must deny the motion for a mistrial at  
16 this point. Okay.

17           MR. SAMEIRO: Judge, will you allow the jury  
18 to stay later today?

19           THE COURT: I cannot.

20           MR. SAMEIRO: All right.

21           THE COURT: All right. Let's bring the jury  
22 in.

23           (Whereupon, the jury enters the courtroom.)

24           THE COURT: All right, folks. Thank you,  
25 Counsel. Let me first apologize for the delay, folks.



1 First of all, it is not the fault of the Prosecution or  
2 the defense, that caused the delay. The Court had  
3 another matter. It didn't break for lunch until much  
4 later after you left.

5 So, I think that we're just about ready to  
6 proceed with regard to the charge. The way that the  
7 charge is generally set up, the first portion really is  
8 just the general information. Certainly you should  
9 take that into consideration.

10 And the next portion is the law. And then  
11 the final portion is, again, just some instructions  
12 regarding your deliberations. All right.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 THE COURT: Now, ladies and gentlemen of the  
2 jury, the evidence in this case has been presented, and  
3 the attorneys have completed their summations. And we  
4 now arrive at the time when you, as jurors, are to  
5 perform your final function in this case.

6 At the outset, let me express my thanks and  
7 appreciation to you, for your attention to this case.  
8 And I would like to commend Counsel for the  
9 professional machine in which they have presented their  
10 respective cases and for their courtesy to the Court  
11 and the jury during the course of the trial. Thank  
12 you, Counsel.

13 Now, before you retire to deliberate and  
14 reach your verdict, it is my obligation to instruct you  
15 as to the principles of law that are applicable in this  
16 case. You shall consider my instructions in their  
17 entirety, and not pick out any particular instruction,  
18 and emphasize it.

19 You must accept and apply the law for this  
20 case, as I give it to you in this charge. Any ideas of  
21 what the law is or what the law should be, or any  
22 statements by the attorneys, as to what the law may be,  
23 must be disregarded by you, if they are in conflict  
24 with my charge.

25 Now, during the course of the trial, I was



1 required to make certain rulings on the admissibility  
2 of the evidence, either in or outside of your presence.  
3 And these rulings involved questions of law. The  
4 comments of the attorneys, on these matters, were not  
5 evidence. In ruling, I have decided questions of law,  
6 and whatever the ruling may have been, in any  
7 particular instance, you should understand that it was  
8 not an expression or an opinion by me, as to the merits  
9 of this case. Nor should my other rulings, in any way,  
10 on any other aspect of the trial, be taken as favoring  
11 one side or the other. Each matter was decided on its  
12 own merits.

13 Now, when I use the term, "evidence," I mean  
14 the testimony you have heard and seen from this witness  
15 box, and the exhibits that have been admitted into  
16 evidence. Any testimony, that I may have had the  
17 occasion to strike is not evidence, and shall not  
18 enter into your final deliberations. It must be  
19 disregarded by you. This means, that even though you  
20 may remember the testimony, you are not to use it in  
21 your discussions or your deliberations.

22 Further, if I gave a limiting instruction, as  
23 to how certain evidence may be used, that evidence must  
24 be considered by you for that purpose only. You cannot  
25 use it for any other purpose. Now, as jurors, it is

1 your duty to weigh the evidence calmly, without  
2 passion, prejudice, or sympathy. Any influence, caused  
3 by these emotions, has the potential to deprive, both  
4 the State and the defendant, of what you have promised  
5 them, a fair and impartial trial by fair and impartial  
6 jurors. Also, speculation, conjecture, and other forms  
7 of guessing, play no role in the performance of your  
8 duty.

9 The defendant stands before you on an  
10 Indictment returned by the Grand Jury, charging him  
11 with the following charges: Count one is the  
12 conspiracy. Count two is the armed robbery. Count  
13 three, you might remember -- Count three is no longer  
14 in this case. It is not for you to be concerned about.  
15 You just go to count four, when I give you the law.  
16 Count four is possession of a weapon for unlawful  
17 purposes. Count five is a theft charge. Count six is  
18 a terroristic threat. And count seven is a terroristic  
19 threat. And I will explain the difference between the  
20 two to you, as I go through the law.

21 Now, again, the Indictment is not evidence of  
22 the defendant's guilt on the charges. An Indictment is  
23 a step in the procedure, to bring the matter before the  
24 Court and the jury, for the jury's ultimate  
25 determination, as to whether the defendant is guilty or





1 not guilty of the charges stated in it. Here, the  
2 defendant has pleaded not guilty to the charges.

3 Now, the defendant, on trial, is presumed to  
4 be innocent. Unless each and every essential element  
5 of an offense charged, is proven beyond a reasonable  
6 doubt, the defendant must be found not guilty of that  
7 charge. And the burden of proving each element of a  
8 charge, beyond a reasonable doubt, rests upon the  
9 State. And that burden never shifts to the defendant.  
10 The defendant, in a criminal case, has no obligation,  
11 or duty, to prove his innocence, or to offer any proof  
12 relating to his innocence. The Prosecution must prove  
13 its case by more than a mere preponderance of the  
14 evidence, yet not necessarily to an absolute certainty.

15 The State has the burden of proving the  
16 defendant guilty, beyond a reasonable doubt. Some of  
17 you may have served as jurors in civil cases, where you  
18 were told, that it's necessary to prove only that a  
19 fact is more likely true than not true. In criminal  
20 cases, the State's proof must be more powerful than  
21 that. It must be beyond a reasonable doubt.

22 A reasonable doubt is an honest and  
23 reasonable uncertainty in your minds, about the guilt  
24 of the defendant, after you have given full and  
25 impartial consideration to all of the evidence. A

1 reasonable doubt may arise from the evidence itself, or  
2 from a lack of evidence. It is a doubt that a  
3 reasonable person, hearing the same evidence, would  
4 have.

5 Proof, beyond a reasonable doubt, is proof,  
6 for example, that leaves you firmly convinced of the  
7 defendant's guilt. In this world, we know very few  
8 things with absolute certainty. In criminal cases, the  
9 law does not require proof that overcomes every  
10 possible doubt. If, based on your consideration of the  
11 evidence, you are firmly convinced that the defendant  
12 is guilty of the crime charged, you must find him  
13 guilty. If, on the other hand, you are not firmly  
14 convinced of the defendant's guilt, you must give the  
15 defendant the benefit of the doubt and find him not  
16 guilty.

17 Now, in my preliminary charge, when we  
18 started the case, I explained to you that you are the  
19 judges of the facts. And, as judges of the facts, you  
20 are to determine the credibility of the various  
21 witnesses, as well as the weight to be attached to  
22 their testimony. You, and you alone, are the sole and  
23 exclusive judges of the evidence, of the credibility of  
24 the witnesses, and the weight to be attached to the  
25 testimony of each witness.



1           Regardless of what I have said, or -- excuse  
2 me -- Regardless of what Counsel have said, or I may  
3 have said, in recalling the evidence in the case, it is  
4 your recollection of the evidence that should guide you  
5 as judges of the facts. Arguments, statements,  
6 remarks, openings, and summations of Counsel are not  
7 evidence, and must not be treated as evidence.  
8 Although the attorneys may point out what they think  
9 important in the case, you must rely solely upon your  
10 understanding, and recollection of the evidence that  
11 was admitted during the trial. Whether or not the  
12 defendant has been proven guilty, beyond a reasonable  
13 doubt, is for you to determine, based on all of the  
14 evidence presented during the trial. Any comments by  
15 Counsel are not controlling.

16           It is your sworn duty to arrive at a just  
17 conclusion after consideration of all of the evidence  
18 which was presented during the course of the trial.  
19 Now, the function of the Court is separate and distinct  
20 from the function of the jury. It is my responsibility  
21 to determine all questions of law arising during the  
22 trial, and to instruct the jury as to the law which  
23 applies in this case. You must accept the law, as  
24 given to you by me, and apply it to the facts, as you  
25 find the facts to be.

1           Now, I have sustained objections to some  
2 questions asked by Counsel, which may have contained  
3 certain statements of facts. The mere fact that an  
4 attorney asks a question, and inserts facts or comments  
5 or opinions in that question, in no way, proves the  
6 existence of those facts. You will only consider such  
7 facts which, in your judgment, have been proven by the  
8 testimony of the witnesses, or from the exhibits  
9 admitted into evidence by the Court.

10           Now, the fact that I may asked a question of  
11 a witness in the case must not influence you in any way  
12 during your deliberations. The fact that I asked such  
13 questions does not indicate that I hold any opinion,  
14 one way or the other, as to the testimony given by the  
15 witness. Any remarks made by me to Counsel or by  
16 Counsel to me, or between Counsel, are not evidence,  
17 and should not affect or play any part in your  
18 deliberations.

19           Now, evidence, and I talked to you about this  
20 in my preliminary charge. Evidence may be either  
21 direct or circumstantial. Direct evidence means  
22 evidence that directly proves a fact, without an  
23 inference, and which, in itself, if true, conclusively  
24 establishes that fact. On the other hand,  
25 circumstantial evidence means evidence that proves a



1 fact, from which an inference of the existence of  
2 another fact may be drawn. You may remember my example  
3 of the snow. It's the same example.

4 An inference is a deduction of fact, that may  
5 logically and reasonably be drawn, from another fact or  
6 group of facts, established by the evidence. Whether  
7 or not inferences should be drawn is for you to decide,  
8 using your own common sense, knowledge, and everyday  
9 experience. Ask yourselves, is it probable, logical,  
10 and reasonable. It is not necessary that all the facts  
11 be proven by direct evidence. They may be proven by  
12 direct evidence, circumstantial evidence, or by a  
13 combination of direct and circumstantial evidence. All  
14 are acceptable as a means of proof. In many cases,  
15 circumstantial evidence may be more certain, satisfying  
16 and persuasive than direct evidence.

17 However, direct and circumstantial evidence  
18 should be scrutinized and evaluated carefully. A  
19 verdict of guilty may be based on direct evidence  
20 alone, circumstantial evidence alone, or a combination  
21 of direct and circumstantial evidence, provided, of  
22 course, that it convinces you of the defendant's guilt,  
23 beyond a reasonable doubt.

24 The reverse is also true. A defendant may be  
25 found not guilty, by reason of direct evidence,

1 circumstantial evidence, or a combination of the two,  
2 or a lack of evidence, if it raises, in your mind, a  
3 reasonable doubt, as to the defendant's guilt. Now, as  
4 the judges of the facts, you are to determine the  
5 credibility of the witnesses.

6 And, in determining whether a witness is  
7 worthy of belief, and, therefore, credible, you may  
8 take into consideration the following: The appearance  
9 and the demeanor of the witness; the manner in which he  
10 or she may have testified; the witness' interest in the  
11 outcome of the trial, if any; his or her means of  
12 obtaining knowledge of the facts; the witness' power of  
13 discernment, meaning their judgment, their  
14 understanding; his or her ability to reason, observe,  
15 recollect, and relate.

16 The possible bias, if any, in favor of the  
17 side for whom the witness testified; the extent to  
18 which, if at all, each witness is either corroborated  
19 or contradicted, supported or discredited, by other  
20 evidence; whether the witness testified with an intent  
21 to deceive you; the reasonableness or unreasonableness  
22 of the testimony that the witness has given; whether  
23 the witness has made any inconsistent or contradictory  
24 statements; and any and all matters, in the evidence,  
25 which serve to support, or discredit, his or her



1 testimony. Through this analysis, as judges of the  
2 facts, you weigh the testimony of each witness, and  
3 then determine the weight to give to it. Through that  
4 process, you may accept all of it, a portion of it, or  
5 none of it.

6 Now, as you know, in this case, Mr. Machado  
7 elected not to testify at the trial. It is his  
8 constitutional right to remain silent. You must not  
9 consider, for any purpose, or in any manner, in  
10 arriving at your verdict, the fact that the defendant  
11 did not testify. That fact should not enter into your  
12 deliberations or discussions, in any manner, or at any  
13 time. The defendant is entitled to have the jury  
14 consider all the evidence presented at the trial. He  
15 is presumed to be innocent, even if he chooses not to  
16 testify.

17 Now, if you believe that any witness or  
18 party, willfully or knowingly testified falsely, to any  
19 material facts in the case, with the intent to deceive  
20 you, you may give such weight to his or her testimony,  
21 as you may deem it is entitled. You may believe some  
22 of it, or you may, in your discretion, disregard all of  
23 it.

24 Now, the defendant, as part of his general  
25 denial of guilt, contends that the State has not

1 presented sufficient, reliable evidence to establish,  
2 beyond a reasonable doubt, that he is the person who  
3 committed the alleged offense. Now, the burden of  
4 proving the identify of the person, who committed the  
5 crime, is upon the State. For you to find this  
6 defendant guilty, the State must prove, beyond a  
7 reasonable doubt, that this defendant is the person who  
8 committed the crime.

9 The defendant has neither the burden nor the  
10 duty to show that the crime, if committed, was  
11 committed by someone else, or to prove the identity of  
12 that other person. You must determine, therefore, not  
13 only whether the State has proven each and every  
14 element of the offense charged, beyond a reasonable  
15 doubt, but also whether the State has proved, beyond a  
16 reasonable doubt, that this defendant is the person who  
17 committed it.

18 The State has presented the testimony of  
19 Wilmer Cedillo, who identified the defendant. You will  
20 recall that this witness identified the defendant in  
21 court as the person who committed the offenses in the  
22 Indictment. The State also presented testimony, that  
23 on a prior occasion, before this trial, this witness  
24 identified the defendant as the person who committed  
25 these offenses.





1 According to the witness, his identification  
2 of the defendant was based upon the observations and  
3 perceptions that he made of the perpetrator, at the  
4 time the offense was being committed. It is your  
5 function to determine whether the witness'  
6 identification of the defendant is reliable and  
7 believable, or whether it is based on a mistake, or for  
8 any reason is not worthy of belief. You must decide  
9 whether it is sufficiently reliable evidence upon which  
10 to conclude, that this defendant is the person who  
11 committed the offenses charged. You should consider  
12 the observations and perceptions, on which the  
13 identification was based, and the circumstances under  
14 which the identification was made.

15 Although nothing may appear more convincing  
16 than a witness' categorical identification of a  
17 perpetrator, you must critically analyze such  
18 testimony. Such identification, even if made, in good  
19 faith, may be mistaken. Therefore, when analyzing such  
20 testimony, be advised that a witness' level of  
21 confidence, standing alone, may not be an indication of  
22 the reliability of the identification.

23 In evaluating the identifications, you should  
24 consider the observations and perceptions on which the  
25 identifications were based, and the witness' ability to

1 make those observations and perceptions. If you  
2 determine that the out-of-court identification is not  
3 reliable, you may still consider the witness' in-court  
4 identification of the defendant, if you find it to be  
5 reliable. Unless the in-court identification resulted  
6 from the witness' observations or perceptions of the  
7 perpetrator, during the commission of the offense,  
8 rather than being the product of an impression gained  
9 at the out-of-court identification procedure, it should  
10 be afforded no weight.

11 The ultimate issues of the trustworthiness of  
12 both the in-court and out-of-court identifications are  
13 for you to decide. To decide whether the  
14 identification testimony is sufficiently reliable  
15 evidence, upon which to conclude that this defendant is  
16 the person who committed the offense charged, you  
17 should evaluate the testimony of the witness, in light  
18 of the factors for considering credibility, that I have  
19 already explained to you.

20 In addition, you may consider the following  
21 factors: The witness' opportunity to view the person  
22 who committed the offense, at the time of the offense;  
23 the witness' degree of attention to the perpetrator, at  
24 the time of the offense; the accuracy of any  
25 description the witness gave prior to identifying the



1 perpetrator; the degree of certainty expressed by the  
2 witness in making any identification; the length of  
3 time between the witness' observation of the offense  
4 and the first identification; the discrepancies or  
5 inconsistencies between identifications, if any; the  
6 circumstances under which any out-of-court  
7 identification was made, and whether or not it was the  
8 product of a suggestive procedure, including anything  
9 done or said by law enforcement to the witness, before,  
10 during, or after the identification process.

11 In making this determination, you may  
12 consider the following circumstances: Whether anything  
13 was said to the witness prior to viewing a photo array,  
14 line-up, or show-up; whether a photo array shown to the  
15 witness contained multiple photographs of the  
16 defendant; whether all in the line-up but the defendant  
17 were known to the identifying witness; whether the  
18 other participants in the line-up or photographic  
19 display, were grossly dissimilar in appearance to the  
20 defendant; whether only the defendant was required to  
21 wear distinctive clothing which the culprit allegedly  
22 wore; whether the witness is told by the police that  
23 they have caught the culprit after which the defendant  
24 is brought before the witness alone or they are viewed  
25 in jail; whether the defendant is pointed out before or

1 during a photo display or line-up; whether the witness'  
2 identification was made spontaneously and remained  
3 consistent thereafter; whether the individual  
4 conducting the photo line-up either indicated to the  
5 witness, that a suspect was present, or failed to warn  
6 the witness that the perpetrator may or may not be in  
7 the procedure; whether the witness was exposed to any  
8 opinions, descriptions, or identifications, given by  
9 the other witnesses, to photographs or newspaper  
10 accounts, or to any other information, or influence,  
11 that may have affected the independence of his  
12 identification; and any other factor, based on the  
13 evidence, or the lack of evidence, in the case, which  
14 you consider relevant to your determination of whether  
15 the identification was reliable.

16 Unless the in-court and out-of-court  
17 identifications resulted from the witness' observations  
18 or perceptions of the perpetrator during the commission  
19 of the offense, rather than being the product of an  
20 impression gained at the in-court and/or out-of-court  
21 identification procedures, it should be afforded no  
22 weight. The ultimate issue of the trustworthiness of  
23 the identification is for you to decide.

24 If, after considering all of the evidence,  
25 you determine that the State has not proven, beyond a



1 reasonable doubt, that the defendant was the person who  
2 committed these offenses, then you must find him not  
3 guilty. If, on the other hand, after consideration of  
4 all of the evidence, you are convinced, beyond a  
5 reasonable doubt, that the defendant was correctly  
6 identified, you will then consider whether the State  
7 has proven each and every element of the offenses  
8 charged, beyond a reasonable doubt.

9 Now, during this case, there was evidence, in  
10 the form of photographs that were testified about, the  
11 date of birth of the defendant, the place of birth of  
12 the defendant, the address and phone number of the  
13 defendant. These were used to identify the defendant  
14 in this case. Now, with reference to the photographs,  
15 or any of those items that I just went through, that  
16 were submitted into evidence, you will notice that  
17 many, or all of the photographs, appear to have been  
18 taken by law enforcement agencies or some other  
19 government entity. You are not to consider the fact,  
20 that the agency obtained a photograph, or any of this  
21 information, on the defendant, as prejudicing him in  
22 any way.

23 The photographs, and these other pieces of  
24 information, or evidence, such as the date of birth,  
25 the place of birth, address, and phone number, those

1 types of information come in the hands of law  
2 enforcement from a variety of sources, including, but  
3 not limited to driver's license applications,  
4 passports, ABC identification cards, various forms of  
5 government employment, private employment, that  
6 requires state regulation, including, but not limited  
7 to casino license applications, security guard  
8 applications. There is a variety of sources, that any  
9 one of those pieces of information can come from, that  
10 are totally unconnected with criminal activity.  
11 Therefore, you should not hold any type of prejudice  
12 against that type of information.

13 Now, evidence, including witness' statements  
14 or testimony, prior to the trial, if it is shown that,  
15 at a prior time, a witness has said something, which is  
16 inconsistent with the witness' testimony at the trial,  
17 may be considered by you, for the purposes of using it  
18 with the witness' credibility. It may also be  
19 considered by you as substantive evidence. That is,  
20 proof of the truth of what is stated in the prior  
21 contradictory statement.

22 If evidence has been presented, showing that,  
23 at a prior time, a witness had said something, or  
24 failed to say something, which is inconsistent with the  
25 witness' testimony at the trial. This evidence may be



1 considered by you as substantive evidence, or proof of  
2 the truth of the prior contradictory statement or  
3 omitted statement. However, before deciding whether a  
4 prior inconsistent statement, or omitted statement,  
5 reflects the truth, in all fairness, you will want to  
6 consider all of the circumstances, under which the  
7 statement, or the failure to disclose occurred.

8         You may consider the extent of the  
9 inconsistencies or the omission, or the lack or  
10 importance of that inconsistency or omission, on the  
11 overall testimony of the witness, as bearing on his or  
12 her credibility. You may consider such factors as,  
13 where and when the prior statement or omission  
14 occurred, and the reason, if any, therefor.

15         Now, in regard to the testimony of Wilmer  
16 Cedillo, on cross-examination, inconsistencies may have  
17 been shown between the prior statements and those given  
18 on the stand. The witnesses may have given reasons  
19 therefor, saying that such prior statements or  
20 omissions were untrue. They could also, therefore, if  
21 there is an indication of a poor recollection at the  
22 time, or things recently remembered, and not,  
23 therefore, formerly disclosed, not believing that the  
24 matter was important.

25         The extent, to which, such inconsistencies or

1 omissions reflect the truth is for you to determine.  
2 Consider their materiality and their relationship to  
3 the entire testimony, and all of the evidence in the  
4 case. When and where, and the circumstances under  
5 which this evidence was said or omitted, and whether  
6 the reasons he gave you, therefore, appear to you to be  
7 believable and logical. In short, consider all that I  
8 have told you about the prior inconsistent statement or  
9 omission.

10         Now, you will, of course, consider all other  
11 evidence, and the inferences from the other evidence,  
12 including the statements of other witnesses, or the  
13 arguments of the witnesses and others.

14         Let me repeat it. You will, of course,  
15 consider all other evidence, and the inferences from  
16 the other evidence, including statements of other  
17 witnesses, and/or acts of witnesses and others,  
18 disclosing other motives, that the witness may have had  
19 to testify, as he did. That is a reason, other than  
20 which he may have given to us.

21         I'm just going to give you a hypothetical  
22 here. Because it may help you understand what  
23 constitutes a prior contradictory statement. More  
24 importantly, how it can be used by you. Assume, at the  
25 trial, that the witness testified that the car is red.





1 In the cross-examination of that witness, or at some  
2 other point in the trial, that it is shown that, at the  
3 earlier time, the witness testified, or said, the car  
4 is blue. You may consider the prior contradictory  
5 statement, that the car was blue, as a factor in  
6 deciding whether or not you believe that statement made  
7 at trial, that the car was red. You may also consider  
8 the earlier statement, that the car was blue, as proof  
9 of the fact, or evidence that the car was blue.

10 Now, in this case, there will be six charges,  
11 that I will be reading to you. They are separate  
12 offenses, marked by separate counts in the Indictment.  
13 In your determination of whether the State has proven  
14 the defendant guilty of the crime charged in the  
15 Indictment, beyond a reasonable doubt, the defendant is  
16 entitled to have each count considered separately by  
17 the evidence which is relevant and material to that  
18 particular charge, based on the law as I will give it  
19 to you.

20 Now, folks, what I'm going to do, we have  
21 verdict sheets for you. I'll have you refer to them in  
22 just a few minutes. I read to you the charges on the  
23 Indictment. You'll see, when you get the verdict  
24 sheet, count one is conspiracy. It's conspiracy. It  
25 charges the defendant with conspiracy to commit an

1 armed robbery.

2 So, what I'm going to do for you, instead of  
3 going into the conspiracy charge first, I'll define the  
4 armed robbery for you first. You can't determine the  
5 conspiracy until you find out what armed robbery is  
6 first. First, I'll define -- First, I'm going to  
7 define robbery for you.

8 All right. This is only the second  
9 Indictment that my Court Clerk has handed to me. Now,  
10 the first charge that I'm going to define for you is  
11 the robbery. I will read to you what's in the  
12 Indictment. Then I'm going to give you what the law is  
13 on it.

14 Count two, the armed robbery charge, reads as  
15 follows: The Grand Jurors, of the State of New Jersey,  
16 for the County of Middlesex, upon their oaths, present  
17 that Pablo Machado, on or about the 24th day of April  
18 2007, in New Brunswick, County of Middlesex, in the  
19 course of committing a theft, did use force upon Wilmer  
20 Cedillo, and/or inflict bodily injury upon Wilmer  
21 Cedillo, and/or threaten immediately to commit the  
22 crime of aggravated assault upon Wilmer Cedillo, and/or  
23 threaten immediate bodily injury to Wilmer Cedillo,  
24 and/or did purposely put Wilmer Cedillo in fear of  
25 immediate bodily injury, while armed with and/or



1 threatening the immediate use of a deadly weapon. This  
2 is contrary to 2C:15-1, against the peace of the State,  
3 the Government and dignity of the same.

4 Now, the pertinent part of our statute, on  
5 which the Indictment is based, reads as follows: A  
6 person is guilty of robbery, if, in the course of  
7 committing a theft, they, or the person, knowingly  
8 inflicts bodily injury, or uses force upon another.  
9 That's one choice. Or the defendant threatens another  
10 with, or purposely puts him in fear of immediate bodily  
11 injury. That's the second choice. And your third  
12 choice is: Commits or threatens immediately to commit  
13 any crime of the first or second degree. In this case,  
14 the State is alleging, that the defendant commits or  
15 threatens immediately to commit any crime, which would  
16 be aggravated assault.

17 In order for you to find the defendant  
18 guilty of robbery, the State is required to prove each  
19 of the following elements, beyond a reasonable doubt:  
20 Number one, that the defendant was in the course of  
21 committing a theft. And, number two, that while in the  
22 course of committing a theft, one of the three, the  
23 defendant either knowingly inflicted bodily injury, or  
24 used force upon another, or threatened another with, or  
25 purposely put him in fear of immediate bodily injury,

1 or committed or threatened immediately to commit the  
2 crime of aggravated assault.

3 Now, as I have said, the State must prove,  
4 beyond a reasonable doubt, that the defendant was in  
5 the course of committing a theft. In this connection,  
6 you are advised that an act is considered to be, in the  
7 course of committing a theft, if it occurs in an  
8 attempt to commit the theft, during the commission of  
9 the theft itself, or in immediate flight after the  
10 attempt or the commission.

11 Theft is defined as the unlawful taking, or  
12 exercise of unlawful control, over the property of  
13 another, with the purpose to deprive him thereof. Now,  
14 I have used the phrase, "with purpose." You may hear  
15 me use that phrase or the word "purposely" again. I'm  
16 going to explain to you what it means.

17 A person acts purposely, with respect to the  
18 nature of his conduct, or a result thereof, if it is  
19 his conscious object to engage in conduct of that  
20 nature, or to cause such a result. A person acts  
21 purposely, with respect to the attendant circumstances,  
22 if he is aware of the existence of such circumstances,  
23 or he believes or hopes that they exist.

24 With purpose, design, with design, or the  
25 equivalent terms, they have the same meaning. Purpose



1 is a state of mind that cannot be seen, and can only be  
2 determined by inferences from conduct, words or acts.  
3 Therefore, it is not necessary that the State produce a  
4 witness to testify, that a defendant said he purposely  
5 did something. His purpose may be gathered from his  
6 acts and conduct, from all that he said and did, at the  
7 particular time and place, and from all of the  
8 surrounding circumstances that are reflected in the  
9 testimony.

10 Now, in addition to proving, beyond a  
11 reasonable doubt, that the defendant was in the course  
12 of committing a theft, the State must also prove,  
13 beyond a reasonable doubt, that while in the course of  
14 committing that theft, here's your first alternative.  
15 That the defendant knowingly inflicted bodily injury,  
16 or used force upon another.

17 Now, a person acts knowingly, with respect to  
18 the nature of his conduct, or the attendant  
19 circumstances, if he is aware that his conduct is of  
20 that nature, or that such circumstances exist, or that  
21 he is aware of a high probability of their existence.  
22 A person acts knowingly, with respect to the result of  
23 his conduct, if he is aware that it is practically  
24 certain his conduct will cause such a result.  
25 Knowledge is also a condition of the mind, that cannot

1 be seen, and can be determined only by inferences from  
2 conduct, words, or acts.

3 A state of mind is rarely susceptible of  
4 direct proof; but must ordinarily be inferred from the  
5 facts. Therefore, it is not necessary that the State  
6 produce witnesses to testify that an accused said he  
7 had a certain state of mind, when he engaged in a  
8 particular act. It is within your power to find that  
9 such proof has been furnished, beyond a reasonable  
10 doubt, by inferences, which may arise from the nature  
11 of the defendant's acts and conduct, and from all that  
12 he said and did, at the particular time and place, and  
13 from all of the surrounding circumstances.

14 Now, the phrase, "bodily injury," means  
15 physical pain, illness, or any impairment of the  
16 physical condition. Force means an amount of physical  
17 power or strength used against the victim, and not  
18 simply against the victim's property. The force need  
19 not entail pain or bodily harm, and need not leave any  
20 mark. Nevertheless, the force must be greater than  
21 that necessary merely to snatch the object from the  
22 victim's grasp or the victim's person, and the force  
23 must be directed against the victim, not merely the  
24 victim's property.

25 Now, as I said to you, that's the first



1 alternative. Second alternative is that, in the course  
2 -- that the defendant was in the course of committing a  
3 theft. While in the course of committing the theft,  
4 that the defendant threatened another with, or  
5 purposely put him in fear of immediate bodily injury.  
6 Again, the phrase "bodily injury" is physical pain,  
7 illness, or any impairment of the physical condition.  
8 Although, no bodily injury need have resulted, the  
9 Prosecution must prove that the defendant either  
10 threatened the victim with, or purposely put him in  
11 fear of such bodily injury.

12 Here's the third choice or the third  
13 alternative: That the defendant was in the course of  
14 committing a theft. While in the course of committing  
15 a theft, the defendant committed or threatened  
16 immediately to commit an aggravated assault, while in  
17 the course of committing this theft. I have to define  
18 aggravated assault for you, because it's charged here.  
19 So, let me charge you on that.

20 Now, don't forget that we're in the robbery.  
21 But the third alternative is that, while in the course  
22 of committing a theft, the defendant committed, or  
23 threatened, immediately to commit the crime of  
24 aggravated assault. So, let me read to you that crime.

25 You know what, never mind. I'm not going to

1 read it to you now. I will read it after we are done.  
2 I think it is better to go through right now the  
3 robbery charge with you. I talked to you about the  
4 three different alternatives under the robbery charge.  
5 Let me let you know, that a part of our statute,  
6 provides that robbery is a crimes of a certain degree,  
7 except that it becomes a higher degree of crime, if the  
8 actor is armed with, or uses, or threatens the  
9 immediate use of a deadly weapon.

10 Okay. I just gave you all the definitions  
11 for robbery. It becomes a higher degree, if, in fact,  
12 the defendant is armed with, or uses, or threatens the  
13 immediate use of a deadly weapon. In this case, it is  
14 alleged that the defendant was armed with, or used, or  
15 threatened the immediate use of a deadly weapon, while  
16 in the course of committing the robbery.

17 In order for you to determine the answer to  
18 this question, you must first understand the meaning of  
19 the term deadly weapon. A deadly weapon is a firearm,  
20 or other weapon, device, or instrument, material or  
21 substance, whether animate or inanimate, which in the  
22 manner it is used, or intended to be used, is known to  
23 be capable of producing death, or serious bodily  
24 injury, or which, in the manner it is fashioned, it  
25 would lead the victim reasonably to believe it to be





1 capable of producing death or serious bodily injury.

2 In this case, the State alleges the defendant  
3 was armed with a handgun. You must determine if the  
4 object qualifies as a deadly weapon, and if the State  
5 has proven, beyond a reasonable doubt, that the  
6 defendant used it in the course of committing the  
7 robbery.

8 Now, as indicated, there was no handgun  
9 recovered. It is further alleged that the defendant  
10 did not actually possess a deadly weapon; but instead  
11 may have threatened the immediate use of such a weapon,  
12 and engaged in conduct, or gestures, which may have  
13 simulated possession of a deadly weapon, which would  
14 lead a reasonable person to have believed that the  
15 defendant possessed such a weapon.

16 Again, it has to be a deadly weapon. It's  
17 the same definition. To simulate means to assume the  
18 outward qualities or appearance of, often with the  
19 intent to deceive. It is a feigned, pretended act,  
20 usually to mislead or deceive. The State does not have  
21 to prove that the defendant actually possessed a real  
22 deadly weapon. Rather, the State must prove, beyond a  
23 reasonable doubt, that the defendant led Mr. Cedillo to  
24 a reasonable belief, by words, conduct, or gestures,  
25 that the defendant possessed such a deadly weapon.

1 The State must prove, beyond a reasonable  
2 doubt, that the defendant, not only threatened the  
3 immediate use of a deadly weapon. But it must also  
4 prove, beyond a reasonable doubt, that the defendant  
5 engaged in conduct or gestures, which would lead a  
6 reasonable person to believe the defendant possessed  
7 the deadly weapon.

8 Thus, this element may be proven by evidence  
9 of an unequivocal or unambiguous simulation of the  
10 weapon, or of a concealed weapon, or by an equivocal or  
11 ambiguous gesture coupled with threatening words that  
12 completes the victim's impression of a deadly weapon.

13 In other words, an unequivocal or unambiguous  
14 simulation means the defendant's acts or gestures are  
15 a clear and unmistakable effort to simulate a weapon or  
16 a concealed weapon. In that circumstance, no further  
17 words are needed to prove the element. However, a  
18 gesture is equivocal or ambiguous, if it is unclear or  
19 inconclusive, in and of itself. If the gesture is  
20 unclear or subject to interpretation, then proof of  
21 threatening words are also needed.

22 In this case, as I indicated, the State  
23 alleges that no gun was recovered. You must determine  
24 whether the State has proven, beyond a reasonable  
25 doubt, that the combination of words and conduct, or



1 words and gestures, created a reasonable belief in the  
2 victims, to believe that the defendant possessed a  
3 deadly weapon, which was capable of causing death or  
4 serious bodily injury.

5 Now, serious bodily injury means bodily  
6 injury which creates a substantial risk of death, which  
7 causes serious permanent disfigurement or a protracted  
8 loss or impairment of the function of any bodily  
9 member or organ.

10 Now, to summarize, if you find that the State  
11 has not proven, beyond a reasonable doubt, any one of  
12 the elements of the crime of the robbery, as I have  
13 defined that crime to you, then you must find the  
14 defendant not guilty. If you find that the State has  
15 proven, beyond a reasonable doubt, that the defendant  
16 committed the crime of robbery, as I have defined that  
17 crime to you, but if you find that the State has not  
18 proven, beyond a reasonable doubt, that is, that the  
19 defendant was armed with, or used, or threatened the  
20 immediate use of a deadly weapon, or engaged in conduct  
21 or gestures, which would lead a reasonable person to  
22 believe that the defendant possessed a deadly weapon,  
23 at the time of the commission of the robbery, then you  
24 must find the defendant guilty of the robbery, in the  
25 lower degree.

1 If you find that the State has proven, beyond  
2 a reasonable doubt, that the defendant committed the  
3 crime of robbery, and was armed with a deadly weapon,  
4 or used or threatened the immediate use of a deadly  
5 weapon, or engaged in conduct or gestures, that would  
6 lead a reasonable person to believe, that the defendant  
7 possessed a deadly weapon, at the time of the  
8 commission of the robbery, then you must find the  
9 defendant guilty of the robbery, in the higher degree.

10 So, let me just recap for you, then I'll  
11 define the aggravated assault. A person is guilty of a  
12 robbery, if, in the course of committing a theft, he  
13 either knowingly inflicts bodily injury, or uses force  
14 upon another, or threatens another with, or purposely  
15 puts him in fear of immediate bodily injury, or commits  
16 or threatens immediately to commit any crime, in this  
17 case, an aggravated assault.

18 Now, again, that's robbery. That section of  
19 the statute provides that robbery is a crime of a  
20 certain degree. Except it is raised if the actor is  
21 armed with, or uses, or threatens the immediate use of  
22 a deadly weapon.

23 Now, I have to define aggravated assault for  
24 you. I will do that.

25 A person is guilty of an aggravated assault,



1 if he attempts to cause serious bodily injury to  
2 another, or causes such injury, purposely or knowingly.  
3 Or under circumstances manifesting extreme indifference  
4 to the value of human life, recklessly causes such  
5 injury. Under that statute, the defendant can be found  
6 guilty, if he either caused serious bodily injury to  
7 another, or attempted to cause serious bodily injury to  
8 another.

9 To find the defendant guilty of aggravated  
10 assault, causing serious bodily injury to another, the  
11 State has to prove, beyond a reasonable doubt, each of  
12 the following elements: One, that the defendant caused  
13 serious bodily injury to another. And, two, that the  
14 defendant acted purposely, knowingly, or acted  
15 recklessly, under circumstances manifesting extreme  
16 indifference to the value of human life.

17 Now, the first element, that the State has to  
18 prove, beyond a reasonable doubt, is that the defendant  
19 caused serious bodily injury to another. Serious  
20 bodily injury is defined as simply bodily injury, which  
21 creates a substantial risk of death, or which causes  
22 serious permanent disfigurement, or protracted loss  
23 or impairment of the function of any bodily member or  
24 organ.

25 The second element, that the State has to

1 prove, beyond a reasonable doubt, is that the defendant  
2 acted purposely, or knowingly, or acted recklessly,  
3 under circumstances manifesting extreme indifference  
4 to the value of human life. Now, I have already  
5 defined purposely for you. It's the same definition.  
6 I have already defined for you knowingly. It's the  
7 same definition. Recklessly, I haven't defined. So,  
8 I'll define it now.

9 A person acts recklessly, with respect to the  
10 result of his conduct, if he consciously disregards a  
11 substantial and unjustifiable risk, that the result  
12 will occur from his conduct. The risk must be of such  
13 a nature and degree, that considering the nature and  
14 purpose of the actor's conduct, and of the  
15 circumstances, known to the actor, its disregard  
16 involves a gross deviation from the standard of  
17 conduct, that a reasonable person would observe in the  
18 actor's situation.

19 One is said to act recklessly, if one acts  
20 with recklessness, with scorn for the consequences,  
21 heedlessly, or foolhardily. Now, the phrase, under  
22 circumstances manifesting extreme indifference to the  
23 value of human life, does not focus on the state of  
24 mind of the actor; but rather on the circumstances  
25 under which you find that he acted. If, in light of



1 all the evidence, you find that the conduct of the  
2 defendant resulted in a probability, as opposed to a  
3 mere possibility of serious bodily injury. Then you  
4 may find that he acted under circumstances manifesting  
5 extreme indifference to the value of human life.

6 In determining whether the defendant acted  
7 purposely, or knowingly, or acted recklessly, under  
8 circumstances manifesting extreme indifference to the  
9 value of human life, you may consider the nature of the  
10 acts themselves and the severity of the resulting  
11 injury or injuries.

12 If you find the State has proven each  
13 element, beyond on reasonable doubt, then you must find  
14 the defendant guilty. All jurors do not have to agree  
15 unanimously concerning which form of serious bodily  
16 injury, aggravated assault, is present, so long as all  
17 believe that it is one form of serious bodily injury or  
18 another.

19 However, for a defendant to be guilty of  
20 serious bodily injury, under aggravated assault, all  
21 jurors must agree that the defendant, either knowingly,  
22 or purposely, or recklessly, under circumstances  
23 manifesting extreme indifference to the value of human  
24 life, caused the serious bodily injury.

25 If you find the State has failed to prove

1 any element, beyond a reasonable doubt, then you must  
2 find the defendant not guilty of the charge of  
3 aggravated assault, in that he caused serious bodily  
4 injury to another. Now, as I previously told you, the  
5 defendant can be found guilty of aggravated assault, if  
6 he either caused serious bodily injury to another, or  
7 attempted to cause serious bodily injury to another.

8 That the defendant purposely attempted to  
9 cause serious bodily injury to another. If you find,  
10 beyond a reasonable doubt, that the defendant attempted  
11 to cause serious bodily injury to another, it does not  
12 matter whether the injury actually resulted. The law  
13 provides that a person is guilty of an attempt, if  
14 acting purposefully, he engaged in conduct that would  
15 constitute the offense, if the attendant circumstances  
16 were as a reasonable person would believe them to be.  
17 Or he did, or omitted to do something that, under the  
18 circumstances, as a reasonable person believes them to  
19 be, was an act or omission, that constituted a  
20 substantial step, in the course of conduct, planned to  
21 culminate in the commission of the crime. The step  
22 that he took must be one that is strongly corroborative  
23 of the defendant's criminal purpose. The accused must  
24 be shown to have had a firmness of criminal purpose,  
25 in light of the steps he has already taken. And these





1 preparatory steps must be substantial, and not just  
2 very remote preparatory steps.

3 Serious bodily injury, by definition, is that  
4 a person acts purposely. It is the same definition.  
5 If you find the State has proven, beyond a reasonable  
6 doubt, that the defendant attempted to cause serious  
7 bodily injury to another, then you must find the  
8 defendant guilty.

9 If you find the State has failed to prove,  
10 beyond a reasonable doubt, that the defendant attempted  
11 to cause serious bodily injury to another, then you  
12 must find the defendant not guilty.

13 Now, so, we don't get too lost on this, that  
14 is, that the aggravated assault, that I just read to  
15 you, refers to the third option only. I'm just going  
16 to, once again, talk to you a little bit about the  
17 robbery. That the State has to prove that, in the  
18 course of committing that theft, one of the three  
19 alternatives.

20 The first one was the knowingly inflicts  
21 bodily injury, or uses force upon another. The second  
22 is threatens another with, or purposely puts him in  
23 fear of immediate bodily injury. And the third is  
24 commits or threatens to immediately commit any crime.  
25 In this case, the aggravated assault, which is the one

1 I just read to you.

2 Okay. Do we have the verdict sheets? Yes.  
3 I'm just going to hand out the verdict sheets to you.  
4 So, you can see the robbery charge.

5 Okay. Everybody got a copy of the verdict  
6 sheet? Yes. Take a look at count two. See where it  
7 says, "how do you find the defendant as to count two,  
8 armed robbery"? Remember how we talked about the  
9 elements of robbery, as to a certain degree. Then it's  
10 raised a degree. If, in fact, the State proves that  
11 the defendant was armed with a deadly weapon, first,  
12 you have to determine that. Then it tells you exactly  
13 what to do next, depending on what you do. If not  
14 guilty, go to 2-A, where you would consider, how do you  
15 find the defendant as to the robbery charge. If  
16 guilty, go to count 4. We have made the change, folks.  
17 We go to count 4. You'll see it is count 4. You'll  
18 notice it is not 3. Because 3 is gone now. You go  
19 right to 4.

20 All right. Folks, just flip that over.

21 (Whereupon, the jury complies.)

22 THE COURT: I'll go to the conspiracy, which  
23 is really count one. But it talks about the robbery.  
24 That's why I wanted to define the robbery for you  
25 first. Now, the conspiracy, in the Indictment, is



1 charged as follows: The Grand Jurors, of the State of  
2 New Jersey, for the County of Middlesex, present that  
3 Pablo Machado, on the same day, in New Brunswick, April  
4 24, 2007, did conspire with other unknown and diverse  
5 individuals, to commit the crime of armed robbery, in  
6 the first degree, in violation of 2C:15-1 and 5-2, and  
7 against the peace of the State, the Government and  
8 dignity of the same.

9 All right. Now, under this count, our  
10 statute provides that, a person is guilty of conspiracy  
11 with another person or persons, to commit a crime, if  
12 with the purpose of promoting or facilitating its  
13 commission, he either agrees with another person or  
14 persons, that they, or one or more of them, will engage  
15 in conduct, which constitutes such a crime, or an  
16 attempt, or solicitation, to commit such a crime. Or  
17 they agree to aid such other person or persons, in the  
18 planning or the commission of such a crime, or of an  
19 attempt or solicitation to commit such a crime.

20 A conspiracy to commit a crime of armed  
21 robbery is a crime in itself, separate and distinct  
22 from the crime of armed robbery. It is a whole  
23 separate charge.

24 Okay. In other words, a defendant may be  
25 found guilty of the crime of conspiracy, regardless of

1 whether the defendant is found guilty or not guilty, of  
2 the charge of armed robbery. It is its own charge.

3 In order for you to find the defendant guilty  
4 of the crime of conspiracy, the State must prove,  
5 beyond a reasonable doubt, the following elements:  
6 One, that the defendant agreed with another person or  
7 persons, that they, or one or more of them, would  
8 engage in conduct which constitutes a crime. In this  
9 case, armed robbery, or an attempt or solicitation  
10 to commit that crime. Or that the defendant agreed to  
11 aid another person, or persons, in the planning or the  
12 commission of a crime. In this case, armed robbery.  
13 Or an attempt or solicitation to commit that crime.

14 And the second element is that the  
15 defendant's purpose was to promote or facilitate the  
16 commission of the crime of the armed robbery. So,  
17 first, in order for you to find the defendant guilty of  
18 conspiracy, the State must prove one or the other.

19 As to the first element, that the defendant  
20 agreed with another person, or persons, that they, or  
21 one or more of them, would engage in conduct which  
22 constitutes a crime, or an attempt to commit such a  
23 crime. Or that the defendant agreed to aid another  
24 person, or persons, in the planning or commission of  
25 the crime, or the attempt or solicitation of a crime.



1 And that the defendant's purpose was to promote or  
2 facilitate the commission of the armed robbery.

3 Again, a person acts purposely, with respect  
4 to the nature of his conduct, or as a result thereof,  
5 if it is his conscious object to engage in conduct of  
6 that nature, or to cause such a result. A person acts  
7 purposely, with respect to the attendant circumstances,  
8 if he is aware of the existence of such circumstances,  
9 and believes or hopes that they exist.

10 In order to find the defendant guilty of the  
11 crime of conspiracy, the State does not have to prove  
12 that he actually committed the crime of armed robbery.  
13 However, to decide whether the State has proven the  
14 crime of conspiracy, you must understand what  
15 constitutes that underlying crime of armed robbery,  
16 which I've already defined for you.

17 Now, a conspiracy may be proven by direct or  
18 circumstantial evidence. It is not essential that  
19 there be direct contact amongst all of the  
20 conspirators, or that they enter the agreement at the  
21 same time. If the defendant is aware that any person  
22 he conspired with, also conspired with others, to  
23 commit the same crime, the defendant is guilty of  
24 conspiring with others. He need not be aware of their  
25 identity.

1 Mere association, acquaintance, or family  
2 relationship, with an alleged conspirator, is not  
3 enough to establish a defendant's guilt on conspiracy.  
4 Nor is mere awareness of the conspiracy. Nor would it  
5 be sufficient for the State to prove only that the  
6 defendant met with others. Or that they discussed  
7 names and interests in common. However, any one of  
8 these factors, if present, may be taken into  
9 consideration, along with all of the relevant evidence  
10 in your deliberations.

11 You have to decide whether the defendant's  
12 purpose was that he, or a person with whom he was  
13 conspiring, would commit the crime of armed robbery.  
14 For him to be found guilty of the conspiracy, the State  
15 has to prove, beyond a reasonable doubt, that when he  
16 agreed, it was his conscious object or purpose to  
17 promote, or make it easier to commit the crime of the  
18 armed robbery.

19 Now, the nature of the purpose, with which  
20 the defendant acted, is a question of fact, for you,  
21 the jury, to decide. And, again, purpose is a  
22 condition of the mind, which cannot be seen, and can  
23 only be determined from inferences, from conduct,  
24 words, or acts. It is not necessary for the State to  
25 produce a witness, or witnesses, who can testify that a



1 defendant stated, he acted with a specific purpose. It  
2 is within your power to find that proof of purpose has  
3 been furnished, beyond a reasonable doubt, by  
4 inferences, which may arise from the nature of the acts  
5 and the surrounding circumstances.

6 It also makes no difference what the person  
7 or persons, with whom the defendant actually conspired,  
8 had in mind. So, long as the defendant believed he was  
9 furthering the commission of the crime of an armed  
10 robbery.

11 In order to convict, you have to be  
12 satisfied, beyond a reasonable doubt, that the State --  
13 excuse me -- I skipped a line. If, after  
14 consideration, of all of the evidence, you are  
15 convinced, beyond a reasonable doubt, that the State  
16 has proven all of these elements, then you must find  
17 the defendant guilty of the crime of conspiracy.

18 On the other hand, if you find that the State  
19 has failed to prove, to your satisfaction, beyond a  
20 reasonable doubt, any one or more of these elements,  
21 then you must find the defendant is not guilty of the  
22 crime of conspiracy.

23 Just to recap for you. In order for you to  
24 find the defendant guilty of the crime of conspiracy,  
25 the State has to prove, beyond a reasonable doubt, that

1 the defendant agreed with another person, that they,  
2 one or more of them, would engage in conduct, which  
3 constitutes a crime, or an attempt to commit the crime.  
4 Or that he agreed to aid another person, in the  
5 planning or the commission of the crime, or an attempt  
6 to commit a crime. And that the defendant's purpose  
7 was to promote or facilitate the commission of the  
8 crime of the armed robbery.

9 Now, if you just flip your verdict sheet  
10 over. Just go up to count once, since I did do the  
11 robbery first.

12 (Whereupon, the jury complies.)

13 THE COURT: How do you find the defendant as  
14 to count one, conspiracy to commit armed robbery. Flip  
15 that over again.

16 (Whereupon, the jury complies.)

17 THE COURT: I'll go to the next count for  
18 you. Now, again, we don't have 3. We're going right  
19 to 4. That count, in the Indictment, reads as follows:  
20 The Grand Jurors, of the State of New Jersey, for the  
21 County of Middlesex, upon their oaths, present that  
22 Pablo Machado, on the same date in April, in New  
23 Brunswick, within the jurisdiction of this Court,  
24 knowingly and unlawfully did possess a certain weapon,  
25 to wit, a handgun, with the purpose to use it





1 unlawfully against the person of another. This is  
2 contrary to 2C:39-4a, and against the peace of the  
3 State, the Government and the dignity of the same.

4 Now, count 4, is based, on our statute, which  
5 reads as follows: A person who has, in their  
6 possession, any firearm, with the purpose to use it  
7 unlawfully against the person or property of another,  
8 is guilty of a crime. In order for you to find the  
9 defendant guilty of that charge, the State has the  
10 burden of proving, beyond a reasonable doubt, each of  
11 the following four elements: One, that there was a  
12 firearm, or the simulation. Two, that the defendant  
13 possessed the firearm. Three, that the defendant  
14 possessed the firearm, with the purpose to use it  
15 against the person or property of another. And, four,  
16 that the defendant's purpose was to use the firearm  
17 unlawfully.

18 The first element, that the State must prove,  
19 beyond a reasonable doubt, is that there was a firearm.  
20 The State has to prove that there was a firearm. Let  
21 me step back.

22 The first element, that the State must prove,  
23 beyond a reasonable doubt, is that there was a firearm.  
24 Here's the definition of a firearm. A firearm means  
25 any handgun, rifle, shotgun, machine gun, automatic or

1 semi-automatic rifle, or any gun, device, or  
2 instrument, in the nature of a weapon, from which may  
3 be fired or ejected, any solid, projectable ball, slug,  
4 pellet, missile, or bullet, or any gas, vapor, or other  
5 noxious thing, by means of a cartridge or shell, or by  
6 the action of an explosive, or the igniting of  
7 flammable or explosive substances.

8 It shall also include, without limitation,  
9 any firearm, which is in the nature of an air gun, a  
10 spring gun or pistol, or other weapon of a similar  
11 nature, in which the propelling force is a string, an  
12 elastic band, carbon dioxide, compressed or other gas  
13 or vapor, air or compressed air, or is ignited by  
14 compressed air, and ejecting a bullet or missile,  
15 smaller than three/eighths of an inch in diameter, with  
16 sufficient force to injure a person.

17 That's the definition of a firearm. The  
18 second element, that the State must prove, beyond a  
19 reasonable doubt, is that the defendant possessed the  
20 firearm. Now, the term possession -- in order to  
21 possess the item, one must have a knowing, intentional  
22 control of that item, accompanied by the knowledge of  
23 its character. So, a person, who possessed the item,  
24 must know or be aware, of what he possesses, and he  
25 must know what it is that he possesses or controls.



1 In other words, to possess an item, one must  
2 knowingly procure or receive an item, be aware of his  
3 control thereof, for a sufficient period of time, to be  
4 able to relinquish his control, if he chose to do so.  
5 The State must prove, beyond a reasonable doubt, that  
6 the possessor was acting knowingly, in possessing the  
7 item. The definition of knowing is the same definition  
8 that I have already given you.

9 Now, a person may possess an item, even  
10 though it's not physically on their person at the time  
11 of their arrest, if he had, in fact, at some time prior  
12 to his arrest, had control and dominion over it.

13 Possession, again, means a conscious, knowing  
14 possession. It would be either actual or constructive.

15 Now, an actual possession is where a person  
16 is in actual possession of the item. He knows what it  
17 is. He has knowledge of its character, and knowingly  
18 has it on his person at a given time. Now, here's  
19 constructive possession. A person who, with knowledge  
20 of its character, who knowingly has direct physical  
21 control over an item, at a given time, is in actual  
22 possession. He is actually possessing it.

23 Constructive possession means possession, in  
24 which the possessor does not physically have the item,  
25 on his person, but is aware that the item is present,

1 and is able to exercise an intentional control and  
2 dominion over it. Someone who has knowledge of the  
3 character of it, knowingly has both the power and the  
4 intention, at a given time, to exercise control over  
5 it, either directly or through another person or  
6 persons, is then in constructive possession of the  
7 item.

8 Possession can be either sole or joint. If  
9 one person alone has actual or constructive possession  
10 of an item, possession is sole. If two or more persons  
11 share actual or constructive possession, knowing  
12 possession of an item, possession is joint.

13 So, the second element, that the State has to  
14 prove, beyond a reasonable doubt, is that the defendant  
15 possessed the firearm. The third element, that the  
16 State has to prove, beyond a reasonable doubt, is that  
17 the defendant's purpose, in possessing the firearm, was  
18 to use it against the person or property of another.

19 Purpose is, again, a condition of the mind.  
20 It cannot be seen. It can only be determined by  
21 inferences from conduct, words or acts. In determining  
22 the defendant's purpose, in possessing the firearm, you  
23 may consider that the person acts purposely. And I  
24 previously defined that for you. The defendant's  
25 purpose, or conscious objective, to use the firearm



1 against another person, or the property of another, may  
2 be found to exist at any time, that he is in possession  
3 of the object, and need not have been the defendant's  
4 original intent in possessing the object.

5 The fourth element, that the State has to  
6 prove, beyond a reasonable doubt, is that the  
7 defendant's purpose, to use the firearm, in a manner  
8 that was prohibited by law. I have already defined  
9 purpose for you several times. This element requires  
10 that you find that State has proven, beyond a  
11 reasonable doubt, that the defendant possessed a  
12 firearm with the conscious objective, design, or  
13 specific intent to use it against the person or  
14 property of another, in an unlawful manner, as charged  
15 in this Indictment, and not for some other purpose. In  
16 this case, the State contends that the defendant's  
17 unlawful purpose, in possessing the firearm, was to rob  
18 the defendant.

19 Now, you must not rely upon your own notions  
20 of the unlawfulness of some other undescribed purpose  
21 of the defendant. Rather, you must consider whether  
22 the State has proven the specific unlawful purpose  
23 charged. In fact, the robbery. The unlawful purpose,  
24 alleged by the State, may be inferred by all that is  
25 said and done, and from all of the surrounding

1 circumstances of the case.

2 However, the State need not prove that the  
3 defendant accomplished his unlawful purpose of using a  
4 firearm. Okay. However, the State need not prove that  
5 the defendant accomplished his unlawful purpose of  
6 using the firearm.

7 If you are satisfied, beyond a reasonable  
8 doubt, that the defendant -- excuse me -- beyond a  
9 reasonable doubt, that the State has proven each of the  
10 elements of the offense, as I have defined them, then  
11 you must find the defendant guilty. However, if you  
12 find the State has failed to prove, beyond a reasonable  
13 doubt, any of the elements of this offense, as I have  
14 defined them, then you must find the defendant not  
15 guilty.

16 Now, to recap, for the fourth count. In  
17 order for you to find the defendant guilty of that  
18 charge, the State has the burden of proving, beyond a  
19 reasonable doubt, each of the four elements. One, that  
20 there was a firearm, as I have defined firearm for you.  
21 Two, that the defendant possessed the firearm, as I  
22 have defined possession for you. Three, that the  
23 defendant possessed the firearm, with the purpose to  
24 use it against the person or property of another. And  
25 the fourth and final, that the defendant's purpose was



1 to use the firearm unlawfully, to rob the victim, the  
2 alleged victim.

3 Now, if you would just flip over the verdict  
4 sheet. We'll just go over this one.

5 (Whereupon, the jury complies.)

6 THE COURT: As you can see, we're on count  
7 four. It simply says: How do you find the defendant  
8 as to count four, possession of a weapon for unlawful  
9 purposes. You make your choice. Okay. You can flip  
10 that back.

11 (Whereupon, the jury complies.)

12 THE COURT: We'll go to the theft, which is  
13 count five. The Grand Jurors, of the State of New  
14 Jersey, for the County of Middlesex, upon their oaths  
15 present, that Pablo Machado, on the 24th day of April,  
16 2007, in the City of New Brunswick, County of  
17 Middlesex, within the jurisdiction of this Court, did  
18 unlawfully take, or exercise unlawful control over the  
19 movable property of Wilmer Cedillo, with a value in  
20 excess of five hundred dollars, with the purpose to  
21 deprive him thereof. That is contrary to 2C:20-3,  
22 against the peace of the State, the Government and  
23 dignity of the same.

24 Now, part of our statutes, that that  
25 Indictment is based, reads as follows: A person is

1 guilty of a theft, if he unlawfully takes, or exercises  
2 unlawful control over the movable property of another,  
3 with the purpose to deprive him thereof. The State  
4 must prove each of the following elements, beyond a  
5 reasonable doubt: That the defendant knowingly took or  
6 unlawfully exercised control over movable property.  
7 That the movable property was property of another,  
8 Wilmer Cedillo. That the defendant's purpose was to  
9 deprive the other person of that movable property.

10 The first element, that the State must prove,  
11 beyond a reasonable doubt, is that the defendant  
12 knowingly took, or exercised unlawful control over  
13 movable property. Property means anything of value,  
14 including tangible and intangible personal property.  
15 Movable property means property, the location of which  
16 can be changed.

17 The defendant must knowingly take, or  
18 exercise unlawful control, over movable property. I  
19 think I defined knowingly twice already. I am not  
20 going to read it again. It's the same definition. In  
21 this case, the State alleges that the movable property  
22 taken, or over which control was unlawfully exercised,  
23 as the following: It was the money, the cell phone,  
24 the worker's identification, and a chain.

25 Now, it should be noted, that the definition





1 of movable property is broad. The State need not  
2 prove, that the property was carried out of the place  
3 in which it was. But only that it was moved or taken  
4 from its original location. Or that the defendant  
5 exercised unlawful control over it. Whether or not he  
6 was actually able to move or remove the property.

7 The second element, that the State has to  
8 prove, beyond a reasonable doubt, is that the movable  
9 property was property of another. Property of another  
10 includes property, in which any person, other than the  
11 defendant has an interest, which the defendant is not  
12 privileged to infringe. The term property of another  
13 is broadly defined, so, as to include services and  
14 intangibles, anything of value. Anything of value is  
15 defined as any direct or indirect gain or advantage  
16 to any person.

17 The third element, which the State has to  
18 prove, beyond a reasonable doubt, is that the  
19 defendant's purpose was to deprive the other person, in  
20 this case, Wilmer Cedillo, of the movable property.  
21 For the purposes of this statute, the term deprive  
22 specifically means, to withhold or to cause to be  
23 withheld, property of another permanently, or for so an  
24 extended a period, as to appropriate a substantial  
25 portion of its economic value, or with the purpose to

1 restore, only upon payment of reward or other  
2 compensation, or to dispose or cause the disposal of  
3 the property, so, as to make it unlikely that the owner  
4 will recover it. Again, it is purposeful. That same  
5 definition I have given you two to three times already.

6 If you find the State has proven all three  
7 elements, beyond a reasonable doubt, then you must find  
8 the defendant guilty. If you find that the State has  
9 failed to prove any of the elements, beyond a  
10 reasonable doubt, then you must find the defendant not  
11 guilty.

12 Now, the value of the movable property  
13 determines the degree or the severity of the crime.  
14 The State must prove its value, beyond a reasonable  
15 doubt. If you do find the defendant guilty, then you  
16 must indicate the value of the property. That will be  
17 reflected on the jury verdict form. So, if you can  
18 flip your verdict form over.

19 (Whereupon, the jury complies.)

20 THE COURT: Go to count five, and you'll see  
21 it says, how do you find the defendant as to count five  
22 theft. If guilty, please indicate. The choices are  
23 right there -- okay -- if guilty.

24 I'll just go to count six. Now, the State  
25 must prove the value of the property, beyond a



1 reasonable doubt. If you do find the defendant guilty  
2 of this offense, then you must go to the question of  
3 the amount involved. And value simply means the fair  
4 market value of the property, at the time and place of  
5 the alleged theft. The State has the burden of proving  
6 the fair market value of the property involved.  
7 Meaning that the State must prove to you, beyond a  
8 reasonable doubt, that the property is worth what the  
9 State claims or what the victim claims.

10 Okay. Flip your verdict sheets over.

11 (Whereupon, the jury complies.)

12 THE COURT: We are going to go to the last  
13 two counts, the terroristic threats. They're just a  
14 little different. I'm going to read them to you  
15 separately.

16 Count six says, the Grand Jurors, of the  
17 State of New Jersey, for the County of Middlesex, upon  
18 their oaths present, that Pablo Machado, on the same  
19 date, the same location, within the jurisdiction of  
20 this Court, did threaten to inflict serious bodily  
21 injury, aggravated assault. I gave you that definition  
22 earlier of aggravated assault.

23 It says that he did threaten to inflict  
24 serious bodily injury, aggravated assault, against  
25 Wilmer Cedillo, with the purpose to terrorize Wilmer

1 Cedillo, or in reckless disregard of the risk of  
2 causing such terror, contrary to 2C:12-3a, against the  
3 peace of the State, the Government and dignity of the  
4 same.

5 Now, that count or that section of our  
6 statutes reads this way: A person is guilty of the  
7 crime, if he threatens to commit any crime of violence,  
8 with the purpose to terrorize another, or in reckless  
9 disregard of the risk of causing such terror.

10 In order to be convicted of that charge, the  
11 State must prove the following elements, beyond a  
12 reasonable doubt: One, that the defendant threatened  
13 to commit a crime of violence, and aggravated assault  
14 is what the State alleges. And, two, that the threat  
15 was made with the purpose to terrorize another, or in  
16 reckless disregard of the risk of causing such terror.

17 The first element, that the State must prove,  
18 beyond a reasonable doubt, is that the defendant  
19 threatened to commit any crime of violence. The State  
20 alleges here that the defendant threatened to commit  
21 the crime of aggravated assault, as I have defined it  
22 for you already. The words or acts of the defendant  
23 must be of such a nature, as to convey menace or fear  
24 of a crime of violence to the ordinary person. It is  
25 not a violation of this statute if the threat expresses



1 fleeting anger, or was made merely to alarm someone.

2         The second element that the State has to  
3 prove, beyond a reasonable doubt, is that the threat  
4 was made with the purpose to terrorize another or in  
5 reckless disregard of the risk of causing such terror.  
6 In this case, the State alleges that the defendant  
7 intended to terrorize Wilmer Cedillo. The State need  
8 not prove that the victim actually was terrorized.  
9 Again, it's a purposeful requirement. That purposeful  
10 is the same definition. And it's also recklessly,  
11 which has been defined for you once before.

12         Now, remember the terms, purposely and  
13 recklessly are conditions of the mind. Conditions of  
14 the mind cannot be shown. They can only be determined  
15 by inferences from the defendant's conduct, or words or  
16 acts. A state of mind is rarely susceptible of direct  
17 proof. But must ordinarily be inferred from the facts.  
18 Therefore, it is not necessary that the State produce a  
19 witness to testify that an accused said that he had  
20 that certain state of mind, when he did a particular  
21 thing. It is within your power to find that such proof  
22 has been furnished, beyond a reasonable doubt, by  
23 inferences, which may arise from the nature of his acts  
24 and conduct, and from all he said and did, at a  
25 particular time and place, and from all of the

1 surrounding circumstances.

2         If you find the State has proven all of the  
3 elements of the offense, beyond a reasonable doubt, you  
4 must find the defendant guilty. If, however, the State  
5 has failed to prove any of those elements, beyond a  
6 reasonable doubt, then you must find the defendant not  
7 guilty.

8         Just to recap for you this terroristic  
9 threat. It's a threatening to commit serious bodily  
10 injury. In order to convict the defendant of that  
11 charge, the State has to prove, beyond a reasonable  
12 doubt, that the defendant threatened to commit serious  
13 bodily injury or aggravated assault. And, two, that  
14 the threat was made with the purpose to terrorize  
15 Wilmer Cedillo, or in reckless disregard of the risk of  
16 causing such terror.

17         If you just flip over your verdict sheets to  
18 count six, and under terroristic threats, it says, how  
19 do you find the defendant as to this terroristic  
20 threat. As I said, there are two different counts.  
21 This is the one where there is a threat to commit  
22 serious bodily injury. All right. Flip your verdict  
23 sheets over.

24         (Whereupon, the jury complies.)

25         THE COURT: I'm going to go to the last



1 charge, which is also a terroristic threat. It is just  
2 a little bit of a different form.

3 The Indictment charges that the Grand Jurors,  
4 of the State of New Jersey, for the County of  
5 Middlesex, upon their oaths, present that Pablo  
6 Machado, on the same date and location, did threaten to  
7 kill Wilmer Cedillo, with the purpose to put him in  
8 fear of death, under circumstances reasonably causing  
9 Wilmer Cedillo to believe the immediacy of the threat,  
10 and the likelihood it would be carried out. This is  
11 contrary to 2C:12-3b.

12 Now, our statute, on which this Indictment is  
13 based, reads, in pertinent part: A person is guilty of  
14 a crime, if he threatens to kill another, with the  
15 purpose to put him in imminent fear of death, under  
16 circumstances reasonably causing the victim to believe  
17 the immediacy of the threat, and the likelihood it  
18 would be carried out.

19 In order to convict the defendant of that  
20 charge, the State must prove the following elements,  
21 beyond a reasonable doubt: One, that the defendant  
22 threatened to kill Wilmer Cedillo. Two, that the  
23 threat was made with the purpose to put him in imminent  
24 fear of death. And, three, that the threat was made  
25 under circumstances, which reasonably caused the person

1 to believe that the threat was likely to be carried  
2 out.

3 The first element, that the State must prove,  
4 beyond a reasonable doubt, is that the defendant  
5 threatened to kill Wilmer Cedillo. The words or  
6 actions of the defendant must be of such a nature, as  
7 to convey menace or fear of being killed to the  
8 ordinary person. It is not a violation of this  
9 statute, if the threat expresses fleeting anger or was  
10 made merely to alarm.

11 The second element, that the State has to  
12 prove, beyond a reasonable doubt, is that the threat  
13 was made with the purpose to put Wilmer Cedillo in  
14 imminent fear of death. And the third element, that  
15 the State must prove, beyond a reasonable doubt, is  
16 that the threat was made under circumstances, which  
17 made Wilmer Cedillo believe that the threat was likely  
18 to be carried out. The threat must be of such that it  
19 would reasonably convey a fear of death to an ordinary  
20 person.

21 Again, it is a purposeful requirement. It's  
22 the same definition. Again, the term purposely is a  
23 condition of the mind. I have already told you  
24 regarding that. Which means, in effect, if you find  
25 the State has proven all of the elements of the





1 offense, beyond a reasonable doubt, then you must find  
2 the defendant guilty. If, however, you find the State  
3 has failed to prove any one of these elements, beyond a  
4 reasonable doubt, then you must find the defendant not  
5 guilty.

6 And one more time to recap for that last  
7 charge. In order to convict the defendant of this  
8 crime, of terroristic threats, threat to kill, the  
9 State must prove the following elements, beyond a  
10 reasonable doubt: One, that the defendant threatened  
11 to kill another person, Wilmer Cedillo. Two, that the  
12 threat was made with the purpose -- as I have already  
13 defined purpose for you -- to put the person in  
14 imminent fear of death. And, three, that the threat  
15 was made under circumstances that would reasonably  
16 cause the person to believe that the threat was likely  
17 to be carried out.

18 Counsel, did you wish to be heard at sidebar?

19 MR. SAMEIRO: No.

20 MR. GONZALEZ: No, Judge.

21 THE COURT: Okay. That concludes my  
22 definitions on each of the charges. There is nothing  
23 different in the way a jury is to consider proofs, in a  
24 criminal case, from that in which all reasonable  
25 persons treat any questions, depending upon the

1 evidence that is presented to you. You are expected to  
2 use your own good common sense. Consider the evidence  
3 for only those purposes, for which it's been admitted,  
4 give it a reasonable and fair construction, in light of  
5 your knowledge of how people behave. Because it's the  
6 quality of the evidence, not simply the number of  
7 witnesses that control.

8 Now, anything that has not been marked in  
9 Evidence cannot be given to you in the jury room, even  
10 though it may have been marked for Identification  
11 during the trial. Bottom line is, whatever you get  
12 back there, that's all you get. Okay. There may have  
13 been items marked for Identification, and they don't  
14 come in Evidence for a variety of reasons. So, what  
15 you have back there is what's in Evidence.

16 Very shortly, you will go into the jury room  
17 to start your deliberations. I must remind you, that  
18 during your deliberations, in fact, at any time, that  
19 you're in the jury deliberation room, you must keep  
20 your cell phones, pagers, or any other communication  
21 device, that you may possess, turned off.

22 Now, ladies and gentlemen, you are to apply  
23 the law, as I have instructed you, to the facts, as you  
24 find the facts to be, and that will allow you to come  
25 to a fair and correct verdict. Now, the verdict must



1 represent the considered judgment of each juror, and  
2 must be unanimous as to the charge. Meaning, all of  
3 you must agree if the defendant is guilty or not guilty  
4 of each charge.

5 It is your duty, as jurors, to consult with  
6 one another, to deliberate with a view to reaching an  
7 agreement, if you can do so without violence to your  
8 individual judgment. Each of you must decide the case  
9 for yourself. But do so only after an impartial  
10 consideration of the evidence with your fellow jurors.  
11 In the course of your deliberations, do not hesitate to  
12 re-examine your own views, and to change your mind, if  
13 you believe it is erroneous.

14 But do not surrender your honest conviction,  
15 as to the weight or the effect of the evidence, solely  
16 because of the opinion of your fellow jurors, or for  
17 the mere purpose of returning a verdict. You are not  
18 partisans, you are judges. You are judges of the  
19 facts.

20 Now, you may return, on each crime charged, a  
21 verdict of either not guilty or guilty. Your verdict,  
22 whatever it may be, as to each crime charged, must be  
23 unanimous. That simply means that each of the 12  
24 members of the deliberating jury must agree as to the  
25 verdict.

1 Okay. I'm going to give you the verdict form  
2 back there. I'm going to go over the last count with  
3 you. That last count of terroristic threats. If you  
4 want to flip it over. It just asks, how do you find  
5 the defendant as to count seven, terroristic threats.  
6 Then it defines that type of terroristic threats,  
7 threat to kill.

8 Okay. Now, this verdict sheet is just to  
9 assist you in preparing your verdict for the Court.  
10 You'll have it in the jury room. It's not evidence in  
11 any way. It just will assist you, I think, as you go  
12 through your deliberations.

13 Okay. Now, if during your deliberations, you  
14 have a question, or you feel you need further  
15 assistance or instructions from me, write your  
16 questions down on a sheet of paper. And give it to the  
17 Sheriff's Officer, who will be standing outside the  
18 jury room door. Who, in turn, will give it to me. I  
19 will then go over this question with the lawyers, and  
20 we'll try to answer it as quickly as possible for you.  
21 Please be patient.

22 If you do send out a note, please do not  
23 disclose to us where you stand on your deliberations.  
24 Don't tell us, for example, you are ten to two or eight  
25 to four on any given charge. And if you have reached a



1 unanimous verdict on each charge, knock on the door.  
2 Let the Sheriff's Officer know. And we'll bring you in  
3 court to receive your verdict.

4 Now, before I forget, I just want to give you  
5 some information. If you watch TV, or see movies, some  
6 programs where somebody gets a transcript, or  
7 something, or they get information from the Court  
8 Reporter. As you can see our Court Reporter is taking  
9 down everything that is said here in court. But there  
10 is no transcript of it. So, in other words, if you  
11 wanted to have read a portion of the case, I couldn't  
12 just give you a transcript of it. It doesn't exist.

13 Our Court Reporter takes down really like  
14 symbols. So, if you need something to be read back to  
15 you, that's fine. Except it just takes a little time.  
16 Because she has to really search through those symbols,  
17 and put it into words. And then prepare it to be read  
18 back to you. And our Court Reporter reads it back to  
19 you.

20 Okay. So, it does take a little time. And  
21 just then also let me add this for you. If you don't  
22 want to hear all of it; but a portion of the testimony,  
23 if there is an area that you are focused in on, that's  
24 fine. Because if there is a specific area that you  
25 wish to hear, just tailor your question that way. We

1 can ask the Court Reporter to look for that specific  
2 area, and not all of the testimony.

3 Okay. But just know that it does take a  
4 little time. And my Court Reporter will work as hard  
5 as she can, and as fast as she can, to prepare that for  
6 you, if you need it.

7 Okay. I have come to the end of my charge.  
8 I am going to ask Counsel to just take a look at the  
9 Evidence before it goes into the jury room. And the  
10 Court Clerk will now select the alternates.

11 (Whereupon, the two alternates were selected  
12 by the Court Clerk.)

13 THE COURT: Okay. Juror Number One, you are  
14 going to be the Foreperson of the jury. We have a very  
15 complicated way of choosing that. You're sitting in  
16 seat number one.

17 Okay. Now, you will preside over it  
18 deliberations, and tell us what the verdict is when it  
19 is reached. Your vote carries no greater weight than  
20 that of the other deliberating jurors. But it's your  
21 responsibility to lead the deliberations, and it will  
22 be your responsibility to tell us what the verdict is,  
23 whenever the jury has reached the verdict.

24 When you come out with the verdict, please  
25 resume the seats that you now have. We'll make certain



1 that everyone is here. And we will then ask the  
2 Foreperson to answer, to confirm that you have arrived  
3 at a verdict. Then the Court Clerk will read each  
4 charge, and ask the Foreperson what the verdict is as  
5 to each. And then the Foreperson will acknowledge what  
6 the verdict is on each charge. We then may poll each  
7 of the deliberating jurors, to confirm his or her  
8 agreement with the verdict, that was announced by your  
9 Foreperson.

10 As soon as the Sheriff's Officers are sworn,  
11 you'll proceed to the jury room. But please, ladies  
12 and gentlemen, do not begin your deliberations until  
13 the jury verdict form, and all the exhibits have been  
14 given to you in the jury room.

15 Okay. Counsel will check on the Evidence.  
16 And we'll allow you to go into the room. We'll send in  
17 the Evidence, and the jury form right away.

18 Okay. For my two alternates, I will ask you  
19 to remain here. I will address you in just one second.

20 Let's have the Officers sworn. I forgot to  
21 swear in the Officers. Let's do that right now.

22 (Whereupon, the Sheriff's Officers were  
23 sworn.)

24 THE COURT: Thank you. Now, you can go.

25 (Whereupon, the jury leaves the courtroom at

1 4:10 p.m. to begin their deliberations.)

2 (Whereupon, the hearing continued in the  
3 presence of the two alternates.)

4 THE COURT: All right. To my two alternate  
5 jurors. You are not excused as jurors. You will be  
6 kept in a separate location until it becomes necessary  
7 for you to substitute, one or both of you, for another  
8 juror or jurors. It sounds a little sinister. You  
9 will just be asked to wait downstairs. We'll keep you  
10 separate from the other jurors.

11 Now, if it becomes necessary to substitute  
12 one or both of you into the jury deliberations, I will  
13 give you, and the remaining jurors, who are  
14 deliberating, further instructions of law at that time.  
15 If there is a question, a readback, anything, you'll be  
16 brought right back up. So, that you're all kept  
17 completely on the same page as all the other jurors.

18 All right. But because there is a potential  
19 for you to become a juror, if one of the deliberating  
20 jurors cannot continue, I have to ask that you not  
21 discuss the case among yourselves, or with anybody  
22 else. As I say, we will make certain that every time  
23 we're here, you're here. Okay. For now, I'm just  
24 going to ask you to go downstairs. Let's see what  
25 happens with the jurors. We'll let you know what the





1 next step is going to be. Okay. Thank you.

2 (Whereupon, the two alternates leave the  
3 courtroom.)

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

6 MR. SAMEIRO: Real quick, your Honor. It's  
7 4:15. I don't know how long you're going to keep the  
8 jury. The video equipment is here.

9 THE COURT: Okay.

10 MR. SAMEIRO: I'd like the jury to  
11 understand, they have two options. Either to have the  
12 DVD player, that's set up on the big bulky monitor, or  
13 to have a small, portable DVD player, which I have just  
14 hooked up, when the evidence is brought in.

15 THE COURT: Well, I think it's already gone.

16 MR. SAMEIRO: They should be told they can --  
17 I would rely on your Sheriff's Officers to tell the  
18 jury that they have the choice of the portable DVD  
19 player or the big machine. I don't know how long you  
20 are going to keep them here.

21 THE COURT: I want them to get settled. I'll  
22 keep them, at least, 15, 20 minutes. Just to get them  
23 settled. Quite frankly, if they send something out,  
24 asking for a little time, I'll address Counsel with  
25 that. If they say they are ready to go home for the

1 evening, we will do that. I want them just to get  
2 settled for a few minutes in there.

3 MR. SAMEIRO: I need for them to be able to  
4 play that tape.

5 THE COURT: Oh, absolutely.

6 MR. SAMEIRO: It is going to take about two  
7 minutes to bring them in and let them know that.

8 THE COURT: You know, Counsel, I did just  
9 change this verdict form, just to go to four. I saw  
10 that. No problem? I got it done while I was charging.  
11 I just wanted to let you know that.

12 (Whereupon, a short recess was taken.)

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

15 THE COURT: Counsel, we have received a note.  
16 I will make a copy for both of you. They want to see  
17 Officer Bobadilla's report.

18 The next question is, "can we make a few  
19 quick phone calls, so, we can stay, regarding  
20 transportation."

21 I can't keep them today. I just can't stay  
22 here today. They can't see Officer Bobadilla's report.  
23 I just have to bring them back tomorrow. I can't stay  
24 past quarter of five. I can't really stay today.

25 Okay. We'll give them a few moments. We'll



1 bring them in, and let them know that. Okay. I still  
2 want to give them a few moments.

3 MR. SAMEIRO: Fine.

4 MR. GONZALEZ: Fine.

5 THE COURT: I have people coming up now for  
6 other matters. I can't do everything. I'm going to  
7 give them a few moments. Then I will bring them back  
8 in.

9 (Whereupon, a short recess was taken.)

10 (Whereupon, the hearing continued.)

11 THE COURT: Let's bring the jury in.

12 (Whereupon, the jury enters the courtroom at  
13 5:00 p.m.)

14 THE COURT: All right, folks. We did receive  
15 your note. It's been marked C-1.

16 (Exhibit No. C-1, jury note, is received and  
17 marked for Identification.)

18 THE COURT: All right. The first question  
19 is, "can we see Officer Bobadilla's report."

20 That is pretty simple. The answer is, no.  
21 Any evidence that you have is all that you have.  
22 That's all that you have in Evidence. Nothing else  
23 will be going into Evidence. Certainly you can  
24 consider anything you heard throughout the testimony.  
25 That's evidence. But no other items will go into

1 Evidence.

2 Okay. Having said that, then let me go to  
3 the next question, which I realize I brought you in a  
4 little late. It says, "Can we make a few quick phone  
5 calls, so, we can stay?" I can't stay late this  
6 evening. So, as much as I would like to let you stay,  
7 everybody else has schedules, too. I can't do that.

8 What I can do is allow you to leave right  
9 now. Hopefully, it will not cause too much  
10 inconvenience. You can come back. We'll be back  
11 tomorrow. Come in at 8:30. You don't have to come in  
12 here. You can just go straight into the jury  
13 deliberations, as soon as you come in. We'll have the  
14 DVD ready for you as well. You don't have to come in  
15 before me. We'll bring you right up.

16 JUROR NUMBER EIGHT: Is there any evidence on  
17 behalf of the defense?

18 THE COURT: Well, you have all of the  
19 evidence.

20 JUROR NUMBER EIGHT: So, we have everything?

21 THE COURT: You have everything. Everything  
22 will be in there with you when you come back to  
23 deliberate. Actually, you went in the deliberation  
24 room with all the Evidence. You have all there is.

25 No, you don't get Officer Bobadilla's report.



1 You have everything.

2 JUROR NUMBER EIGHT: If we have a question --

3 THE COURT: Tomorrow, if there is a question  
4 from the group, you have to write it out for me. I  
5 have to review it with the attorneys, and then respond  
6 to it. I just wanted to let you know that you have  
7 everything that is in Evidence.

8 MR. GONZALEZ: Judge, can we go to sidebar?

9 THE COURT: Sidebar.

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

12 MR. GONZALEZ: Judge, if you can just advice  
13 them, we said that you have all the evidence. But you  
14 can also consider the evidence that came from the  
15 witness box. If you can say that everything you've  
16 heard is evidence.

17 THE COURT: Yes.

18 MR. GONZALEZ: I want them to understand that  
19 everything that they have heard is Evidence.

20 THE COURT: I said it.

21 MR. SAMEIRO: You did.

22 THE COURT: I just said it.

23 MR. GONZALEZ: I was just concerned about  
24 that. You don't want them to think that it is just  
25 what they have. But anything they heard about

1 Bobadilla's report is evidence.

2 THE COURT: Everything you've heard is  
3 evidence. You just can't have the report.

4 MR. GONZALEZ: Okay.

5 THE COURT: Okay. Thank you.

6 MR. SAMEIRO: Thank you.

7 MR. GONZALEZ: Thank you.

8 (Whereupon, the sidebar discussion  
9 concluded.)

10 (Whereupon, the hearing continued in the  
11 presence of the jury.)

12 THE COURT: All right. So, I'm going to let  
13 you go now for the evening. Remember not to discuss  
14 the case amongst yourselves or with anybody else. Not  
15 to read anything or listen to anybody else discuss the  
16 case. As I said, I need all of you back at 8:30  
17 tomorrow. We will bring you right back up. You don't  
18 have to come in here first tomorrow. You can just go  
19 straight into the room and start your deliberations  
20 again. Thank you, folks. Have a nice evening. When  
21 the Sheriff's Officers see you downstairs, they will  
22 bring you right up.

23 (Whereupon, the jury leaves the courtroom for  
24 the day.)

25 (Whereupon, the hearing continued outside the



1 presence of the jury.)

2 MR. SAMEIRO: Can I get in here at 8:30  
3 tomorrow?

4 THE COURT: Quarter to nine. By the time we  
5 get them up, it won't be any earlier than that. We'll  
6 attempt to bring them up as soon as you get here.

7 MR. SAMEIRO: I want to get that ready for  
8 them.

9 THE COURT: That is fine.

10 MR. SAMEIRO: I can't get in the courtroom  
11 before 8:30.

12 THE COURT: They won't come up before quarter  
13 to nine. They'll be assembled downstairs. They won't  
14 really bring them up.

15 MR. SAMEIRO: Because the other day, it was  
16 8:25, and I knocked on the door, and I wasn't allowed  
17 in.

18 THE COURT: That's fine. They won't be up  
19 here at 8:25. Don't worry about that. They, most  
20 likely, won't get up here -- I have never seen them up  
21 here before quarter of.

22 MR. SAMEIRO: Judge DeVesa gets them up at  
23 8:45.

24 THE COURT: That's the earliest.

25 Okay. All right, folks. See you tomorrow.

1 Thank you. Have a good night.

2 MR. SAMEIRO: Thank you.

3 MR. GONZALEZ: Thank you.

4 (Whereupon, the hearing concluded for the  
5 day.)

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25





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  
Middlesex County Courthouse  
P.O. Box 964  
New Brunswick, New Jersey

Date: FEBRUARY 5, 2010

