



Appellate...:	A
Case No.....:	003047
Year.....:	09
Type.....:	TRANSCRIPT
Volume.....:	006

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
(Trial - Vol. I)

PABLO MACHADO,
Defendant.

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

Date: DECEMBER 16, 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

FILED
APPELLATE DIVISION

APR 15 2010

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



I N D E X

1					
2					
3	<u>Openings</u>				<u>Page</u>
4					
5	By Mr. Sameiro				15
6	By Mr. Gonzalez				30
7					
8	<u>State Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
9					
10	WILMER CEDILLO				
11	By Mr. Sameiro	38			
12	By Mr. Gonzalez		71		
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

(Colloquy)

1 THE COURT: Okay. Let's bring the jury in.
2 (Whereupon, the jury enters the courtroom.)
3 THE COURT: All right, ladies and gentlemen.
4 I do apologize for the delay. Let me let you know the
5 time schedule. Give you an idea of what is going to be
6 happening right now.
7 I have some instructions I have to give you.
8 They will take about 15, 20 minutes. I'll give you
9 those instructions. Then instead of breaking up the
10 openings, I will let you go to lunch. I will let you
11 go to lunch at probably five after twelve, or so. I
12 want you back at one. One o'clock, instead of 1:30.
13 We normally break an hour for lunch.
14 Then after lunch we will have the opening
15 statements of both Counsel, and the witnesses are here.
16 We're ready to provide. We're just moving our time
17 frame up a little bit regarding lunch.
18 Now, ladies and gentlemen of the jury, you
19 have been selected as the jury in this case. As you
20 know, this is a criminal case. To assist you in
21 better understanding your function and your duties, I
22 will tell you how the case will proceed.
23 You are the sole judges of the facts. Your
24 determination of the facts is to be based solely upon
25 the evidence submitted during the course of the trial.



(Colloquy)

4

1 Now, when I use the term evidence, I mean the testimony
2 of the witnesses, who will testify, and any exhibits
3 that may be marked into evidence, and which will be
4 taken into the jury room, for your review at the end of
5 the case.

6 The first order of business will be the
7 Prosecutor's opening statement. In the opening
8 statement, the Prosecutor will present the State's
9 contentions and will outline what he expects to prove.
10 Following that, the defense will make an opening
11 statement. What is said in opening statements is not
12 evidence. Evidence will come from the witnesses who
13 will testify, and from whatever documents or tangible
14 items, that are received in Evidence.

15 During the trial, the attorneys may make
16 objections as evidence is offered, or they may address
17 motions to me. They have a right, indeed, a duty, to
18 make objections and motions, when it seems to them to
19 be proper to do so. And I have a duty to rule on those
20 objections and motions based upon the law.

21 Anything that may be excluded by me is not
22 evidence, and must not be considered by you in your
23 deliberations. Sometimes these evidence questions, or
24 legal questions, will be heard in your presence, in
25 open court. At other times, at sidebar. Or you may be

(Colloquy)

5

1 excused to go to a jury room, so, we can discuss the
2 issue in open court.

3 As I say that to you, that's one of those
4 things that we did this morning. Discussing an issue
5 in open court. Therefore, we did not bring you up.
6 Now, I realize when this occurs during the trial, you
7 may have to go to the jury deliberation room for a
8 short period of time. I realize that being confined
9 in the jury room, for any length of time, is not very
10 pleasant. I do ask your indulgence and your patience.
11 I'm sure you realize, these legal arguments must be
12 heard outside your presence.

13 You should not conclude, because I rule one
14 way or another, that I have any feelings about the
15 outcome of this case. I do not. But even if I did,
16 you would have to disregard them. Since you will be
17 the sole judges of the facts in this case.

18 Now, during the trial, from time to time,
19 there shall be recesses. And during any of those
20 recesses, I direct that you not discuss the case among
21 yourselves. And when I recess you overnight, you must
22 not discuss the case, or the testimony, with any
23 members of your family, or any other persons. The
24 reason, of course, is that you should not begin any
25 deliberations until the entire case has been concluded.



1 Meaning until you've heard all of the
2 witnesses, until you've heard the final arguments of
3 Counsel, and you've had my instructions as to the law.
4 It would be improper for any outside influence to
5 intrude upon your thinking.

6 If anyone should attempt to discuss the case
7 with you, you should report that fact to me, or my
8 staff, immediately. During the trial, you are not to
9 speak or to attempt to, with any of the attorneys, the
10 witnesses, or the defendant. Nor are they permitted or
11 able to speak to you or associate with you. This
12 separation should not be regarded as rudeness; but
13 rather as a proper precaution, to insure fairness to
14 both sides.

15 If anyone connected with this case, or any
16 other person, approaches you, or attempts to influence
17 you, in any way, do not discuss it with the other
18 jurors. Simply tell the Sheriff's Officers, and I will
19 be notified immediately.

20 Now, your deliberations should be based on
21 the testimony in the case, without any outside
22 influence or opinions, of relatives or friends.
23 Additionally, I must instruct you not to read any
24 newspaper article that may pertain to this case. I do
25 not know if there will be any newspaper or other media

1 coverage of the trial.

2 But you are instructed to completely avoid
3 reading or listening to any newspaper or media account,
4 or listening to anybody else discuss them. I am sure
5 that you can understand why this instruction is so
6 important. Newspaper and media accounts are not
7 evidence. They are often based upon second or third
8 hand information, purely hearsay, not always accurate,
9 and not subject to examination by the attorneys.

10 Now, I have no way to monitor you in this
11 area. But I must rely upon your good faith, and the
12 fact that you have been sworn to comply with the
13 instructions of the Court, so, that both sides may
14 receive a fair trial. Because this instruction is so
15 important, it is my duty to remind you of it at the end
16 of each day's proceedings. Since you are the sole
17 judges of the facts, you must pay careful and close
18 attention to the testimony. It is important that you
19 carry with you to the jury room, not only a clear
20 recollection of what the testimony was, but also a
21 recollection of the manner in which it was given.

22 It will be your duty to pay careful attention
23 to all of the testimony. If you are unable to hear any
24 witness, I ask that you indicate that to me by raising
25 your hand, so, I may instruct the witness to speak



1 louder and/or more clearly. As jurors, you will be
2 required to pass upon all questions of fact, including
3 the credibility or the believability of the witnesses.
4 Now, you will not be permitted to visit the scene of
5 the alleged incident, do your own research, or
6 otherwise conduct your own investigation. Your verdict
7 must be based solely on the evidence that is introduced
8 in this courtroom.

9 Now, in this case, jurors will not be taking
10 notes. Experience has shown that note-taking can be
11 distracting. It is better to depend upon the combined
12 recollection of the jurors than upon notes taken by one
13 or more of them.

14 At the conclusion of the testimony, the
15 attorneys will speak to you, once again, in summation.
16 At that time, they will present to you their final
17 arguments, based upon their respective recollection of
18 the evidence. Again, the summations are not evidence.
19 But it is each attorney's recollection as to the
20 evidence. But it is your recollection, as to the
21 evidence presented, that is controlling.

22 Following the summations, you will receive
23 your final instructions on the law from me. Then you
24 will retire to consider your verdict. You are not to
25 form or express an opinion on this case; but are to

1 keep an open mind, until you have heard all of the
2 testimony, have heard the summations, and have had the
3 benefit of my instructions as to the applicable law,
4 and have been told to begin your deliberations. It is
5 your duty to weigh the evidence calmly, without bias,
6 passion, prejudice, or sympathy. And to decide the
7 issues upon the merits.

8 You, as jurors, should find your facts from
9 the evidence educed during the trial. Now, evidence
10 can be either direct or circumstantial. Direct
11 evidence means evidence that directly proves a fact,
12 without an inference, and which, if it is true,
13 conclusively establishes that fact.

14 On the other hand, circumstantial evidence
15 means evidence that proves a fact, from which an
16 inference of the existence of the another fact may be
17 drawn,. An inference is a deduction of fact that may
18 logically and reasonably be drawn from another fact, or
19 group of facts, that are established by the evidence.

20 It is not necessary that facts be proven by
21 direct evidence. They may be proven by circumstantial
22 evidence, or by a combination of direct evidence and
23 circumstantial evidence. Both direct and
24 circumstantial evidence are acceptable as a means of
25 proof. Indeed, in many cases, circumstantial evidence



1 may be more satisfying, certain, and persuasive than
2 direct evidence.

3 In any event, both circumstantial and direct
4 evidence should be scrutinized and evaluated
5 carefully. A conviction may be based on circumstantial
6 evidence alone, or in combination with direct evidence,
7 provided, of course, that it convinces you of the
8 defendant's guilt, beyond a reasonable doubt.
9 Conversely, if circumstantial evidence gives rise to a
10 reasonable doubt, in your minds, as to the defendant's
11 guilt, then the defendant must be found not guilty.

12 I am just going to give you a simple
13 illustration regarding circumstantial and direct
14 evidence. The problem is proving that it snowed during
15 the night. Direct evidence is testimony indicating
16 that the witness observed snow falling during the
17 night. That is an example of direct evidence.

18 And here's one of circumstantial evidence.
19 Testimony indicating there was no snow on the ground
20 before the witness went to sleep. And that when he
21 arose in the morning, it was not snowing; but the
22 ground was snow covered. The former directly goes to
23 prove the fact that snow fell during the night, while
24 the latter establishes facts from which the inference,
25 that it snowed during the night can be drawn.

1 Now, the judges of the facts, you are also
2 going to be determining the credibility of the
3 witnesses. And in determining whether a witness is
4 worthy of belief, and, therefore, credible, you may
5 take into consideration the following: The appearance
6 and the demeanor of a witness; the manner in which he
7 or she may testify; the witness' interest in the
8 outcome of the trial, if any; his or her means of
9 obtaining knowledge of the facts; the witness' power of
10 discernment, meaning their judgment, their
11 understanding; his or her ability to reason, observe,
12 recollect, and relate; the possible bias, if any, in
13 favor of the side for whom the witness testifies; the
14 extent to which, if at all, each witness is either
15 corroborated or contradicted, supported or discredited,
16 by other evidence; whether the witness testified with
17 an intent to deceive you; the reasonableness or
18 unreasonableness of the witness' testimony; and any and
19 all other matters in the evidence which serve to
20 support or discredit his or her testimony.

21 During your deliberations, you may ask, what
22 is the more reasonable, the more probable, or the more
23 logical version. Now, inconsistencies or
24 discrepancies, in the testimony of a witness, or
25 between the testimony of different witnesses, may or



1 may not cause you to discredit such testimony. Two or
2 more persons, witnessing an incident, may see or hear
3 it differently. An innocent misrecollection, like a
4 failure to recollect, is not an uncommon experience.
5 In weighing the effect of any discrepancies, consider
6 whether it pertains to a matter of importance, or an
7 unimportant detail. And whether the discrepancy
8 results from an innocent error, or from a willful
9 falsehood.

10 Now, you will note that a jury of 14 has been
11 drawn in this case. At the conclusion of all of the
12 evidence, and the charge of the Court, there will be a
13 random selection in which two jurors will be selected
14 to act as alternates. The 12 remaining jurors will
15 then deliberate and return a verdict. At this point,
16 we do not know who the alternates will be. Whether or
17 not their services will be needed. Therefore, I direct
18 that all jurors pay equal attention to the evidence, as
19 presented, and to the Court's rulings, which are
20 applicable in this case.

21 Okay. Now, that just takes us -- It is just
22 about five of twelve. Counsel, can I just see you at
23 sidebar?

24 (Whereupon, the following discussion occurred
25 at sidebar.)

1 THE COURT: Do you want to do the openings
2 now? Do we have enough time? We can go a little
3 longer.

4 MR. SAMEIRO: I would prefer to do it at one.

5 THE COURT: Okay.

6 MR. GONZALEZ: I have no objection.

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: Okay. So, let me let you break
13 for lunch now. I would ask you to be back -- If you
14 can be back at five of one, I really intend to bring
15 you up at one. I promise. And we'll start right up
16 with the trial. So, five of one. Enjoy your lunch.
17 Again, do not discuss the case. You haven't heard
18 anything in the case.

19 In any event, please do not discuss the case,
20 in any way do your own research, look at anything in
21 the paper, if there is anything in the paper, or listen
22 to anybody else discuss it. But please have a nice
23 lunch. See you back at five of one. We will bring you
24 right back. Okay. Thank you.

25 (Whereupon, the jury leaves the courtroom for



1 lunch.)

2 (Whereupon, the hearing continued outside the
3 presence of the jury.)

4 THE COURT: Okay. Be back at one o'clock.
5 Thank you.

6 MR. SAMEIRO: Thank you.

7 MR. GONZALEZ: Thank you.

8 (Whereupon, a luncheon recess was taken.)

9 (Whereupon, the hearing continued after
10 lunch.)

11
12
13
14
15
16
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 (Whereupon, the jury enters the courtroom.)

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

5 All right, folks. Are we ready?

6 MR. SAMEIRO: Yes, Judge.

7 MR. GONZALEZ: Yes, Judge.

8 THE COURT: As I had indicated, the first
9 order of business this afternoon would be the opening
10 statements. And when we do the opening statements,
11 the State starts first.

12 Mr. Sameiro?

13 MR. SAMEIRO: Thank you, your Honor.

14 May it please the Court, Counsel, and ladies
15 and gentlemen of the jury. Thank you for your
16 patience. I know you've been waiting all day to hear
17 us start. It's now 1:30. I'm ready to begin.

18 I want to begin my opening by first telling
19 you, there is an expression out there I think applies
20 to the case. You should think about it throughout the
21 proceedings. Have you ever heard, that a picture is
22 worth a thousand words? I see that some of you are
23 shaking your heads yes. That expression really
24 embraces the notion that language is imperfect. We, as
25 human beings, try to express ideas, concepts, try to



1 describe facts. We have to use words in a language
2 system, and use words --

3 MR. GONZALEZ: Judge, I object. Can we go to
4 sidebar?

5 THE COURT: All right. Sidebar.

6 (Whereupon, the following discussion occurred
7 at sidebar.)

8 MR. GONZALEZ: Judge, it sounds more like a
9 closing than an opening statement.

10 THE COURT: Okay.

11 MR. GONZALEZ: He is supposed to be giving a
12 basic recitation of the facts, what he intends to
13 prove. And an opening statement is not a, I guess, I'd
14 say, a play on words, so to speak. It's
15 straightforward.

16 MR. SAMEIRO: Openings are supposed to be
17 what I intend to prove.

18 MR. GONZALEZ: It sounds like -- more like --
19 closing arguments. Which is what I was saying. I
20 wouldn't object at the time of closing argument.

21 During openings, it is pretty
22 straightforward, what the State intends to prove.
23 We're not making arguments at this point. Merely
24 presenting what it is that he's going to prove.

25 THE COURT: Okay.

1 MR. SAMEIRO: Judge, I haven't argued
2 anything yet.

3 MR. GONZALEZ: Judge, I would ask that Mr.
4 Sameiro please be told to preempt. Your Honor noticed
5 the comments made by Mr. Sameiro. Now, I did make an
6 objection already. And this type of thing, I'd ask
7 that that be kept out of the trial. All the antics, so
8 to speak, be kept out of the trial. And that he be so
9 instructed --

10 MR. SAMEIRO: The only antics demonstrated so
11 far --

12 THE COURT: One at a time. Don't interrupt
13 each other.

14 MR. GONZALEZ: This is not an opening.

15 MR. SAMEIRO: I think Counsel should be
16 admonished at this point as to his frivolous
17 objections. I'd ask the Court to allow me to get back
18 to my opening. There is nothing else that he needs to
19 say.

20 MR. GONZALEZ: Also, Judge, sidebars, the
21 reason for sidebars, is to keep our voices low. Not to
22 speak loudly. It is obvious that Mr. Sameiro wants to
23 put on a show, so to speak. And I just want to
24 circumvent all of that. I want to have some niceties.
25 I want to play nice is what I'm saying.



1 THE COURT: Well, here's the thing regarding
2 any comments. I always tell them, that the comments by
3 Counsel are not controlling. They shouldn't be
4 considered. I would agree, there shouldn't be comments
5 on anybody's part. There is really no need. That is
6 the first issue.

7 I'm still not sure what your objection is.
8 He has only been talking for 30 seconds. I mean, maybe
9 the next sentence was something about words, getting
10 what people say.

11 MR. SAMEIRO: Right. Who the potential
12 witnesses are, how the pictures in the case are
13 important.

14 THE COURT: I can't see any objection at this
15 point. I will overrule your objection.

16 MR. GONZALEZ: Okay.

17 MR. SAMEIRO: I really haven't gotten a
18 chance to start yet. I'd like you to overrule it in
19 the presence of the jury. So, the jury knows that I
20 did not start off doing anything wrong.

21 MR. GONZALEZ: I don't think you need to
22 overrule it in the presence of the jury. What happens
23 on the record at sidebar, things are overruled and
24 things are granted. And I think with that in mind, you
25 don't need to do it in front of the jury. Again, he

1 wants to put on a show. I don't think it is necessary.

2 MR. SAMEIRO: I do think it is necessary.

3 THE COURT: I think for 30 seconds of an
4 opening, I don't think -- There is absolutely nothing
5 yet about the case. It's only been 30 seconds. There
6 is really no objection, and no need to come to sidebar.

7 I will overrule your objection.

8 MR. SAMEIRO: Thank you, your Honor.

9 MR. GONZALEZ: Thank you.

10 (Whereupon, the sidebar discussion
11 concluded.)

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

14 THE COURT: For the record, the objection is
15 overruled. You may continue.

16 MR. SAMEIRO: As I was saying, words are an
17 imperfect medium, in which you convey an item, an idea,
18 sometimes even interruptions. It is a good way of
19 expressing a thought. It is part of the process of
20 indicating something. We say that a picture is worth a
21 thousand words. We're also saying that a photograph
22 says it all. We don't really need to describe it in
23 detail. But it is what it is.

24 Now, you are going to see photographs in this
25 case. There are some here to prove this point. You



1 are going to see the photographs that were shown to Mr.
2 Wilmer Cedillo, the victim of the armed robbery. And
3 in the package was the picture of the defendant
4 (indicating). Which I'm showing to you here in my left
5 hand (indicating), and five other pictures of a similar
6 nature. Like this one, which, for the record, has a
7 number on it. I'll go with the last four or five
8 digits 7531A. A guy who bears a very striking
9 resemblance to Mr. Machado, the defendant who is seated
10 behind me (indicating).

11 Why am I telling you this? Because I would
12 be spending a lot of time here today, trying to
13 describe for you what these two men look like
14 (indicating). In fact, I will prove that point, by
15 asking you all, to try to describe me, and then compare
16 your description amongst one another. Would all 14 of
17 you have the same description? No. Why? Because
18 words are an imperfect medium to describe facts and
19 circumstances, or things that can be better said with
20 photographs.

21 I'm sure many of you would get my height
22 wrong. I'm sure many of you would get my weight wrong.
23 Who would be paying attention to the color of my eyes?
24 How many of would have said brown versus hazel. These
25 are things that human beings do in error, when they are

1 asked to give descriptions. Sometimes they get it
2 wrong.

3 That is, when they're asked to describe in
4 words. But, you know what, when you ask the person to
5 look at some photographs, and say, do you recognize the
6 guy who robbed you in these pictures? He picks out Mr.
7 Machado. You're going to have to ask yourself, well,
8 was that a reliable identification. Ladies and
9 gentlemen, that is an issue in this case.

10 I submit, after you hear all the evidence,
11 you won't dispute that there was an armed robbery that
12 took place on April 24, 2007 of Mr. Cedillo, who was a
13 taxicab driver that day, who was called by someone to
14 drive him from 58 Lee Avenue to 400 Lee Avenue here in
15 the City of New Brunswick, where he was robbed at the
16 end of this short cab ride. He was robbed at gunpoint.

17 He's going to tell you what happened. He is
18 going to tell you, he had about five hundred dollars
19 taken from him, and some other items. I believe,
20 jewelry, a cell phone, other items he may have had.
21 You're not going to have any doubt about that. But
22 you're going -- What you're going to have to focus on
23 is whether or not he properly identified Mr. Machado as
24 his assailant. So, you see, Mr. Cedillo was robbed by
25 several people. And he couldn't identify them all.



1 Because some of them were wearing masks.

2 You see, he was set up. He made his pick-up
3 at 58 Lee Avenue. Two people got in the car.
4 Unfortunately, Mr. Machado, he got in the front seat.
5 And the victim could look at him, could identify him.
6 He wasn't wearing a mask. When the cab fare was over,
7 when the ride ended at 400 Lee Avenue, there was other
8 people waiting there. This group of people robbed Mr.
9 Cedillo. They used guns. They used handguns. They
10 were visible, of course, to the victim. Obviously, the
11 armed robber wants to brandish the gun to instill fear,
12 to overcome his victim, so, he could take money from
13 him.

14 And the only person, frankly, that got
15 identified was Mr. Machado. Now, how did that happen?
16 Well, after the victim got robbed, he collected
17 himself. He was punched. I believe, he bled a little.
18 Of course, he was traumatized by the robbery. So,
19 after he shook that off, after a little bit, he went to
20 the police, about an hour later. He walked into police
21 headquarters. By the way, this happened around 4:40 in
22 the morning, 4:30 in the morning. So, when the victim
23 goes to the police station, he describes what happens.
24 What happened to him. He used words.

25 Okay. Remember that. No pictures at the

1 time. Nobody to say to him, is this the guy.
2 Fortunately, for Mr. Cedillo, our victim, he knew that
3 his cab company traps the numbers from the people who
4 call for a fare. You see, this isn't the kind of a
5 taxi service you see in New York City, where you can
6 flag people down. The way the Victoria Taxicab Company
7 works is that you call the company. The cab goes to
8 make the pick-up. Then he drives the person to
9 wherever they want to go.

10 Now, knowing that the company routinely traps
11 these numbers on the caller ID, Mr. Cedillo knew that,
12 hey, that is important information. Let me find out
13 what that number is. He took that number to the
14 police. And they noted it in their report, among other
15 things. A specific ten digit number. The specific ten
16 digit number was 732-801-5418.

17 Now, how that works, everybody has a cell
18 phone. You get the call, the number is trapped. So,
19 you can never miss a call. You know who called you.
20 It is very reliable. The caller ID was very reliable.
21 The dispatcher who saw it, went and looked at the
22 phone, and wrote it down. And actually told Mr.
23 Cedillo what the number was. He wrote it down, he then
24 gave that number, that information, to the police. And
25 they put it in their report.



1 All right. Well, since Mr. Cedillo didn't
2 know who Mr. Machado was at the time, that the police
3 had to do an investigation to find out who the person
4 was, as well as find out who the others were. Now, the
5 police, they did have that phone number. And they
6 tried to do a look-up on the subscriber information.
7 It came back to somebody named Mendosa, who said he was
8 born in Honduras. That's information that the company
9 kept for this phone that you buy, this pre-paid phone.
10 And, on the day that the information came back,
11 Detective John Selesky did a records check within his
12 own police database.

13 And, guess what? It turns out, that
14 Detective Selesky discovered that Mr. Machado had an
15 interaction with a police officer in June of the same
16 year, about a month earlier. Remember, the incident
17 took place in July -- excuse me -- in April. The
18 records check came back in July. And when they had
19 this information from Sprint or the Nextel Company,
20 whatever it was, Selesky runs a check through the
21 internal database, and comes up with Mr. Machado's
22 name. Pablo Machado. With the same phone number in
23 the database. And guess what his address was? Because
24 that was also kept in the police database. How about
25 400 Lee Avenue?

1 Now, knowing that this case was open, Selesky
2 says -- wait a minute -- we have an active
3 investigation about someone who called, using this
4 phone number, taking this victim to 400 Lee Avenue.
5 Here's Pablo Machado coming up, as the person who gave
6 this address and phone number to the police a month
7 earlier. It didn't take long for Detective Selesky to
8 find a photograph of the defendant. You can get these
9 pictures from driver's license information, passports.
10 You really shouldn't infer anything from the photo.
11 So, the police got the information.

12 And, frankly, with this information, they
13 selected, the police put six pictures together. I've
14 got two (indicating). I'm only going to pick up two of
15 a similar nature (indicating). With the defendant as
16 their suspect, of course, and five others, to see if
17 Mr. Machado -- excuse me -- Mr. Cedillo could make an
18 identification. And they do that in a very unique way.

19 You see, the Attorney General of New Jersey
20 has these guidelines that the police follow. These
21 guidelines are intended to insure fairness and
22 objectivity, when it comes to a photo array procedure.
23 The first thing that is done is that the police use an
24 officer who is not connected with the case at all. So,
25 that someone couldn't give a non-verbal clue, for



1 example, when the right picture was picked.

2 So, you have someone who doesn't know who the
3 target is. Someone not involved in the investigation.
4 Someone simply putting photographs in front of the
5 witness, to see if an ID could be made. That's done
6 after instructions are read to the witness. In this
7 case, the instructions were done in Spanish. Because
8 Mr. Cedillo speaks Spanish. He understood the
9 instructions. And then was shown the photographs.

10 Now, I'm not going to have to describe for
11 you, nor will Sergeant -- excuse me -- Sergio Matias
12 have to describe how this photo array procedure took
13 place. Remember, a picture is worth a thousand words.
14 In this case, I have got a motion picture, a video, of
15 that photo array procedure for you all to see. They
16 have this equipment here (indicating). I have the
17 laptop connected to the projector. There is the
18 screen. This is the laptop, there is the DVD.

19 The whole procedure is videotaped. Right now
20 the video is frozen at 22:04:04, which is, I think,
21 using military time, 10:04 p.m. The date stamp is 7 --
22 July 25, 2007. You see that on the laptop and on the
23 screen. It is going to be a lot easier to display,
24 once I get the tape going. That is an empty room. You
25 saw that there is a chair there. That's the police

1 station.

2 As soon as I hit play, you are going to see
3 Mr. Cedillo come in. Actually, he's not the first to
4 come in. Officer Matias comes in. You can't miss him.
5 He is a bald-headed guy. I think he still has a shaved
6 head. He is out there. He's identified. The guy in
7 uniform. By the way, he'll come in and read the
8 instructions to the victim. Then he'll show the
9 pictures one at a time. You're going to see how
10 reliable it is, because you're going to see for
11 yourselves, without my describing it, how Mr. Cedillo
12 says, "that's him. That's him. That's him."

13 Now, I just said "that's him" three times.
14 Georgeann Crowell really couldn't take down any of the
15 gestures. It's those gestures that matter. It's his
16 body language that matters. It's the level of
17 certainty described for you, with these physical
18 gestures, that matter.

19 Ladies and gentlemen, if all we had was the
20 photographs, a photographic identification, you could
21 convict Mr. Machado for the crimes charged in the
22 Indictment, if you believed it to be reliable. And you
23 should, because you'll hear from Mr. Cedillo. You will
24 see, he is a likeable guy, kind of like the kid next
25 door. He works hard, trying to make ends meet.



1 When he loses this money, obviously, the cab
2 company could lose a chunk of their profits. But he
3 lost his valuables and such. It was a real loss to
4 him. You know, you'll see that. He's a credible guy.
5 You'll get that from the tape. But you'll first have
6 an opportunity to meet him, if you will, when he comes
7 in and answers questions. He'll tell you what
8 happened. Whether he can make an in-court ID. We'll
9 see that he is not prompted by anyone to make an
10 in-court ID. He is not shown pictures in advance. The
11 passage of time may affect his ability to identify the
12 guy in court. He may very well say, "yeah, that's him.
13 That's the guy I remember." We'll find out.

14 Now, ladies and gentlemen, in a nutshell
15 that's my case. You have the photographic ID, which is
16 reliable, and the corroborating evidence, of the
17 defendant's own cell phone, used to make the call,
18 which took the victim right to where the defendant
19 lives. That is proof, beyond any doubt, that these
20 crimes happened.

21 The defendant is charged with conspiracy to
22 commit the robbery with others. The armed robbery,
23 some terroristic threats, possession of a handgun for
24 an unlawful purpose, to use it for a robbery. Having
25 the gun without a permit. Yes, the police checked.

1 Pablo Machado doesn't have a permit to carry a gun.
2 You'll hear that. And some terroristic threats.

3 Ladies and gentlemen, you may be wondering
4 why Counsel and I get up, when you walk in, and we also
5 get up when you leave. You might think that's reserved
6 for her Honor, who has a robe, who is the Judge of this
7 trial. Well, you have that same cloak. Instead of
8 being judges of the law, you're judges of the facts.
9 And you might as well all be wearing that robe.

10 As judges of the facts, you're important to
11 this process. Mr. Gonzalez and I respect that. We
12 know that your job is a crucial one in this justice
13 system that we try to perfect, that we try to present
14 to you. We try to present to you evidence that's
15 reliable. We try to give you positions that you will
16 listen to. And, in the end, we trust in your judgment.
17 We know that, as the finders of fact, you're going to
18 pay attention to the witnesses, judge their
19 credibility, and use your collective, hundreds of years
20 of common sense, among yourselves. Don't leave that
21 outside.

22 You know, the Judge mentioned the snowflake
23 example in her circumstantial evidence and direct
24 evidence instruction. Well, it's snowing out today. I
25 don't know the last time that I heard the example



1 given, when it wasn't snowing and then it snowed later.
2 It's warm inside. It's better to be inside than out.
3 We don't have the sun to distract us. We don't have
4 the nice weather. I know it is the holiday season. In
5 this holiday season, you are all anxious to get on with
6 your affairs.

7 I want to tell you, on behalf of the State, I
8 appreciate your service, and that you didn't just say
9 anything to get out of your jury duty, like some people
10 did. When I get up, when Mr. Gonzalez gets up, it's
11 because we respect your role in the case. All I ask
12 that you be objective and fair to both sides. Listen
13 to the evidence. And at the end, after you hear the
14 Judge instruct you on the legal principles, just do the
15 right thing. Thank you.

16 THE COURT: Thank you, Mr. Sameiro.

17 Mr. Gonzalez?

18 MR. GONZALEZ: May it please the Court,
19 Judge, Mr. Sameiro, ladies and gentlemen of the jury,
20 Mr. Machado, first and foremost, I'd just like to thank
21 you all for being here. I realize that we have got
22 some Christmas shopping, that we'd rather be in many
23 other places, working. We have lots of other things to
24 do in our lives. You guys are all here willingly.
25 Some of us more willing than others. However, we're

1 here, nonetheless.

2 We're here to serve a purpose, in this great
3 country of ours. All of you remember the old adage, we
4 are a society of the people, by the people, and for the
5 people. You remember that from history. This is where
6 you guys get to be the people that make the decision.
7 At the end of the day, when this case is all over, you
8 guys are going to go back and deliberate. And when you
9 deliberate, you're going to have to use your common
10 sense.

11 You're going to make inferences, draw some
12 conclusions. You are going to use each other and
13 discuss things. You're going to draw on your own
14 personal experiences. You're going to figure things
15 out. At the end of the case, you're going to have a
16 verdict. That verdict is going to be a collective
17 verdict. And it's also going to be a singular verdict.
18 Meaning each and every one of you sees something
19 different, in all 14 of these chairs. We all have our
20 own experiences. I want you all to use those things.

21 Mr. Sameiro and I decided that you are a good
22 jury. I think when we say that we're satisfied with
23 the jury as constituted, it's because we think that
24 each and every person in this group will sit, put all
25 their biases aside, be fair and impartial.



1 Now, very frankly, I don't have to do
2 anything. Nor does Mr. Machado. We can sit here
3 quietly, and never say anything. It is the State's
4 burden to prove each and every element of the offenses
5 charged in this case, all seven, beyond a reasonable
6 doubt. Pretty simple. You'll have that charge. And
7 then there is the particular elements that the State
8 must prove, in order for you to find guilt on each
9 particular charge. We'll go through that at the end of
10 this trial, when we do our closing arguments.

11 Now, it's not that difficult. But what I
12 want you to know is that, it's the State's burden. We
13 don't have to come in here and disprove anything. They
14 have to prove it. Now, Mr. Sameiro came before you,
15 and said, this is the way it happened. I believe, he
16 started with, April 23rd, April 24th, Mr. Cedillo was
17 driving for a taxicab company -- excuse me -- from 58
18 Lee Avenue to 400 Lee Avenue. When he arrives at 400
19 Lee Avenue, he gets robbed by five people.

20 All right. Now, you're going to find out,
21 with the investigation that the police officers do,
22 with regard to trying to ascertain, to find out who
23 those five people are. Now, if the police officers did
24 beyond what they should have done, you'll hear from
25 Detective Selesky. He investigated this. He was the

1 lead detective. You'll hear from Detective Bobadilla,
2 who is one of the New Brunswick police officers, that
3 takes the initial report from Wilmer Cedillo. You're
4 going to hear from all of these people. You're going
5 to hear what the State did, what the police officers
6 did. Upon finding the information, where did the
7 investigation go?

8 I want you all to -- this is most important
9 -- I want you all to scrutinize these things. I want
10 you to look at it. What could they have done to make
11 sure, not that there was one person there, that there
12 were five people there? The first charge in this
13 particular Indictment is conspiracy. Conspiracy
14 requires how many people? Right? More than one.
15 Sitting at the table is one person. And I'd like you
16 to know, very simply -- simply said -- that Mr.
17 Machado, as he sits in this seat right now, is not
18 guilty.

19 I want you to erase from your mind, if a
20 person sits in the chair, he is presumed guilty, as
21 some people say. We're talking about the judiciary
22 system. He is presumed not guilty. He's not guilty
23 until Mr. Sameiro, through that witness box, proves to
24 you all, each and every element of the offenses
25 charged. It's important. I'm going to advance to you



1 all, that Mr. Machado is going to sit in this chair,
2 and when the conclusion of this trial happens, he's
3 going to still be not guilty. Because the State is not
4 going to meet their burden.

5 Now, Mr. Sameiro went to the facts, and said
6 something about Mr. Machado sitting in the front seat
7 of the taxicab. I'm not going to get into the facts.
8 It's his job to bring the facts to you. He got into
9 his computer, and the identification procedures, and
10 the good things about the computer identification
11 procedure is it also captures Mr. Cedillo's statement
12 to the police on, I believe, it's July 25th, when he
13 actually makes that statement.

14 Listen to what he says, what he forgets, what
15 he doesn't forget. Listen to what he says when he
16 comes in here today, what he forgets, what he doesn't
17 forget. Consider also his initial statement to the
18 police, to Detective Bobadilla -- right -- what is his
19 description of the perpetrators in this particular
20 case. That is the paramount issue, that you all have
21 to deal with for this case.

22 If I walk out of this room, I've just been
23 talking for about 15, 20 minutes in front of you. Now,
24 if I walk out of this room, three months down the line,
25 you will probably remember what? Remember who I was?

1 The identification procedure in this particular case
2 happens three months down the line.

3 All right. An initial description is given.
4 You'll hear the initial description. It's not him. A
5 subsequent description is given. And these photos are
6 brought before the gentleman, and he says pick one.
7 You're going to take into account the fact it was
8 nighttime when this alleged robbery occurred, the
9 ability of the person to view the alleged assailants.
10 The changing of the stories, means the person is
11 unsure, doesn't really know.

12 I don't know if you have all been victims of
13 a crime. If someone comes up to you, and says, hey,
14 aren't you so and so. You say, I'm not so and so.
15 They made a mistake. It happens all the time, in very
16 simple interactions between people. Aren't you so and
17 so? How do I know you? You don't remember that
18 person. You may have had a conversation with them. He
19 may be related to you.

20 But what I'm saying to you is very simply,
21 identifications, in and of themselves, are difficult
22 things to do. Misidentifications are not as difficult.
23 If you all are following me there? As I said, it's the
24 State's burden to prove that. It wouldn't be any fun
25 if the defense attorney in a particular case didn't ask



1 questions, didn't draw conclusions, didn't make
2 arguments. It wouldn't be any fun, this process. The
3 concept of a trial wouldn't be that much fun.

4 Now, it's not like on TV. A lot of you
5 mentioned that you watch Law and Order, CSI, all these
6 different programs, where everything happens in a half
7 hour. You guys have been sitting and waiting for way
8 longer than a half hour; right? So, with that being
9 said -- with that being said -- use your good judgment,
10 use your scrutiny, think about how you, yourself, would
11 judge the effectiveness of the officers, to view a
12 charge, to go about an investigation. You are going to
13 hear about all those things.

14 Once again, I thank you on behalf of Mr.
15 Machado and myself. One, for enduring the lengthy
16 process of jury selection, and then the lengthy process
17 of waiting and waiting. We're going to have some snow
18 tonight. I'm not going to be speaking to you directly.
19 It's snowing outside right now. So, be careful driving
20 home. I realize that can be very difficult. You
21 probably have to go shopping, whatever the case is.
22 I'm happy that you are all here, because our process,
23 and living in this country, is so great. And a person
24 has the opportunity to be brought before a jury, like
25 you all, to make a decision, as the people, so to

1 speak.

2 Thank you.

3 THE COURT: Thank you, Mr. Gonzalez.

4 Excuse me one second.

5 All right, ladies and gentlemen. We're just
6 going to break you for a moment. Put you right on the
7 floor. I need about 10 or 15 minutes. We'll bring you
8 right back in. Please remember, do not discuss the
9 case among yourselves, or with anybody else.

10 (Whereupon, the jury leaves the courtroom.)

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

13 THE COURT: Okay. Let's take a break for a
14 few minutes.

15 MR. GONZALEZ: Thank you.

16 MR. SAMEIRO: Thank you.

17 THE COURT: Thank you.

18 (Whereupon, a short recess was taken.)

19 (Whereupon, the hearing continued.)

20 (Whereupon, the jury enters the courtroom.)

21 THE COURT: Thank you, folks. Please have a
22 seat.

23 All right. State, call your first witness.

24 MR. SAMEIRO: The State would like to call

25 Mr. Wilmer Cedillo, who will require the use of the



1 translator.

2 THE COURT: All right.

3

4 **W I L M E R C E D I L L O**, called as a witness on
5 behalf of the State, being duly sworn, testifies, with
6 the use of a Spanish Interpreter, as follows:

7 DIRECT EXAMINATION BY MR. SAMEIRO:

8 THE COURT: You can have a seat. Thank you.

9 (Whereupon, the witness complies.)

10 Q Mr. Cedillo, and Madam Interpreter, I'm
11 standing here for a reason. When I ask questions,
12 please project your voices, so, everybody can hear you,
13 including Juror Number 14.

14 A (Witness shakes his head.)

15 Q Okay?

16 A Okay.

17 Q Can you tell us what town you live in, sir?

18 A In New Brunswick.

19 Q How long have you lived in New Brunswick?

20 A 12 years.

21 Q How old are you?

22 A 28 years old.

23 Q Where were you born?

24 A Honduras.

25 Q Are you here in this country legally?

1 A Yes. I have a work permit.

2 Q That means you work?

3 A Yeah.

4 Q What do you for a living?

5 A I work in a factory, driving a forklift.

6 Q Now, I can barely hear you. I'll ask you to
7 pick up your voice, even though you are talking to her,
8 the Spanish Interpreter.

9 A Okay.

10 THE COURT: Project. All right?

11 (Whereupon, the witness shakes his head.)

12 Q You have to say "yes" or "no." Don't shake
13 your head.

14 A Yes. Yes.

15 Q That's another rule. Miss Crowell can't
16 write down that you are shaking your head. She needs
17 affirmative responses.

18 THE COURT: What we're going to do is, put
19 the microphone up a little bit for you, and then turn
20 it on. That way you can be a little louder. I
21 appreciate that. That way you can just direct your
22 response right into the microphone.

23 THE WITNESS: Okay.

24 Q You said you worked in a factory?

25 A Yes.



- 1 Q There we go. What do you do in a factory?
2 A I work on a forklift in a company.
3 Q How long have you held that job?
4 A It's been a year.
5 Q Before that, did you ever work for a taxicab
6 company?
7 A Yes.
8 Q Which one?
9 A Acapulco Taxi.
10 Q What did you do for Acapulco?
11 A I worked for the owner. Driver.
12 Q So, you drove a cab?
13 A I drove a cab.
14 Q How long did you do that?
15 A For three years.
16 Q Are you married, single, divorced?
17 A Single.
18 Q Were you working for the cab company on April
19 24, 2007?
20 A Yes.
21 Q Do you remember picking up a fare at 58 Lee
22 Avenue that day?
23 A Yes.
24 Q What do you remember about that fare?
25 A Everything.

- 1 Q What time of the day or night did that
2 happen?
3 A Around 4:40.
4 Q A.m. or p.m.?
5 A A.m.
6 Q So, the sun wasn't up yet?
7 A No.
8 Q Do you remember how you were dispatched to 58
9 Lee Avenue?
10 A Yes. Yes.
11 Q Tell us.
12 A I was told to make a pick up. The base told me,
13 that is the job.
14 Q When you say the base, is there a dispatcher
15 at the headquarters of the cab company?
16 A Yes. Yes.
17 Q How does he communicate with you?
18 A Through the radio.
19 Q So, you got a radio transmission from the
20 dispatcher?
21 A Yes.
22 Q On that day, telling you to go to 58 Lee
23 Avenue to make a pick up?
24 A Yes.
25 Q Is that the way it normally works? You pick



1 up the cab fares through the dispatcher only?

2 A Yes. Yes.

3 Q Do you know if the dispatcher records the
4 telephone numbers of the people who called for the
5 fare?

6 A Yes. Yes.

7 Q Can you explain how he does that?

8 A When the customer calls, he writes it in a
9 notebook with a pencil. And writes down the telephone
10 number, and where the person is, and where they're
11 going.

12 Q Does he do that through a caller ID system on
13 the phone?

14 A Yes.

15 Q That's done with every fare?

16 A Yes.

17 Q So, when you were told by the dispatcher, to
18 go to 58 Lee, I assume you took the trip; right?

19 A Yes.

20 Q Was this the beginning of your shift or at
21 the end of your shift?

22 A Towards the end.

23 Q When would you have ended that night or early
24 morning?

25 A At six.

1 Q When did you start your shift that day?

2 A I started at five p.m.

3 Q That's a long shift then?

4 A Yes. Yes. It is all night.

5 Q Do you have a practice, where you return the
6 receipts to the office periodically throughout the day?
7 I mean, the money that you collect?

8 A That would depend. Because he trusted me. So, I
9 would keep the accounts for up to two days.

10 Q How much would you collect on any given day?

11 A The maximum is two hundred twenty for a night.

12 Q That's your pay?

13 A No. No. It's half and half with the owner.

14 Q How many receipts, or how much money, would
15 you collect on an average night? Is it that two
16 hundred twenty?

17 A It depends. It depends on how the night goes.

18 Q On April 24, 2007, were you collecting all
19 the day's receipts at that time, when you were
20 dispatched to 58 Lee?

21 A Yes. Yes.

22 Q You remember how much money you had before
23 you went to 58 Lee?

24 A \$500.00.

25 Q Was that for one night or two night's travel?



1 A Two nights, yeah.

2 Q That's because the company trusted you with
3 that money?

4 A Yes. Yes. Exactly.

5 Q So, let's get to 58 Lee. What happened when
6 you arrived at that destination to pick up your fare?

7 A I picked up two people there. They told me, they
8 was going to 400 Lee.

9 Q How far is 400 Lee from 58 Lee?

10 A About a mile.

11 Q And I assume that going from 58 to 400 is
12 straight on that street?

13 A Yes.

14 Q This is in the City of New Brunswick;
15 correct?

16 A Yes.

17 Q Do you remember anything about the two people
18 that got in your car at 58 Lee?

19 A Yes. One of them.

20 Q Describe the one that you recall.

21 A I couldn't describe the person; but I know him
22 very well.

23 Q Well enough to tell us if he's in the
24 courtroom or not?

25 A Yes. Yes.

1 Q You see the person?

2 A Yes.

3 Q Can you tell us where he is?

4 A Yes.

5 Q Please do that.

6 A (Witness complies.) (Witness indicating).

7 Q You have pointed in the direction towards
8 your right side of the courtroom. Could you tell us
9 with an article of clothing, that he or she is wearing,
10 who that person is?

11 A Sky blue shirt.

12 THE COURT: All right. For the record, he
13 indicated the defendant.

14 MR. SAMEIRO: That's the defendant. I don't
15 believe Mr. Gonzalez's shirt comes anywhere near that
16 color. Thank you.

17 Q Have you seen this person since having an
18 encounter with him on April 24, 2007?

19 A Yes, I see him.

20 Q Where did you see him?

21 A On Remsen.

22 Q This is before you went to the police station
23 in July to look at some pictures?

24 A Yes. Yes. That's right.

25 Q Since that time, have you ever seen him



1 again?

2 A No. No.

3 Q Now, you remember him as one of the two
4 people that got in your cab on the night or the early
5 morning of April 24, 2007?

6 A Yes.

7 Q Where did he get inside your vehicle?

8 A On this side (indicating). On my side
9 (indicating).

10 Q What kind of car were you driving?

11 A It was like a van. It was the number two.

12 Q So, you were driving a van?

13 A A taxi. A taxi.

14 Q Did it have a front compartment and a back
15 compartment?

16 A Yes. Yes.

17 Q It wasn't a two-door vehicle? It was a four
18 door?

19 A Yes. Yes.

20 Q Did the defendant sit next to you in the
21 front passenger seat then?

22 A Yes. Yes.

23 Q What about the other guy? Where did he go?

24 A The other one was behind me.

25 Q Did you get a good look at him?

1 A The one who was next to me, I did.

2 Q I'm talking about the guy who sat behind you.
3 Did you get a good look at him?

4 A No. No. Because I was driving. So, I couldn't
5 look back.

6 Q What happened when these two men, including
7 the defendant, got in the van? Tell us what happened
8 at 58 Lee, once they get in?

9 A I asked where they were going. They told me to
10 400 Lee.

11 THE INTERPRETER: The Interpreter requests
12 repetition.

13 A I told the dispatcher. Because you have to report
14 in when you pick someone up. He said, to 400 Lee?
15 Yes. That's it. That's the one.

16 Q Was there anything unusual about the
17 defendant -- I'm using unusual -- I'm asking you, was
18 there anything unusual about going to 400 Lee at that
19 time? Was there anything that struck you as being odd
20 at that moment?

21 A No. No. No.

22 Q So, did you take the defendant, and his
23 companion, to 400 Lee?

24 A Yes.

25 Q How long did that take?



1 A It was quick.

2 Q What happened on the trip to 400 Lee?
3 Anything?

4 A They asked me, how much it was. I say, four
5 dollars. They say, no. They point the gun at me, and
6 they say, this is a hold-up. Give the money, all you
7 have on you, and they hit me.

8 Q Now, you used the word, "they." Let's break
9 it down. What about the defendant? What did he
10 specifically do?

11 A He pointed the gun at me, and he hit me. I closed
12 my eyes. You get anxious. I closed my eyes. I said,
13 I'll give you all the money. But don't do anything
14 else to me.

15 MR. SAMEIRO: Your Honor, with all due
16 respect, I heard the witness say something in Spanish.
17 He used his right fist (indicating), in an effort to
18 show that he was being punched in the face. I don't
19 know if the Translator or the Interpreter caught that.
20 If the witness said that he was struck, I'd like to
21 know if that was an accurate perception on my part.
22 For the record, I'm bilingual.

23 THE COURT: Can I ask the Interpreter to have
24 him repeat his response?

25 Q What happened with the defendant and the gun?

1 I want to ask you flat out, did he hit you?

2 A He pointed the gun at me with one hand. He hit me
3 with the other one. The other ones took the money off
4 me.

5 Q Did you get hit in the face?

6 A Yes. Yes.

7 Q You made a gesture before towards your nose.
8 Were you hit in the nose (indicating)?

9 A Yes. Yes. That's where I was hit.

10 Q Did this defendant do this to you?

11 A Yes. Yes. Exactly.

12 Q Did that happen inside the van while you were
13 at or near 400 Lee?

14 A 400, yes. Yes, at 400.

15 Q Were you inside or outside the van when that
16 took place?

17 A Inside the van. I wanted to leave but they
18 wouldn't let me.

19 Q When you say, "they," how many people are we
20 talking about?

21 A The two who were there. And the others came out.
22 And I can't describe how many there were. You get
23 scared. And you don't remember any more. You don't
24 remember any more. You just want them to not hurt you.
25 You do what they say.



1 Q This assault, did it take place when the van
2 was stopped at 400 Lee?

3 A Yes.

4 Q Did you see other people outside the van come
5 towards you and participate in this?

6 A Yes. That's right.

7 Q How many other people outside the van were
8 involved in this?

9 A About three. I don't know. About three. I don't
10 know because it was dark. They came out from behind
11 the cars. There were a lot of cars there.

12 Q Were any of these people wearing any kinds of
13 masks?

14 A Yes. The ones who were there.

15 Q Meaning outside the van.

16 A Outside.

17 Q Was the defendant wearing a mask?

18 A No. No. He didn't.

19 Q Is the compartment inside your van lit? Is
20 there an inside light inside your van?

21 A There is; but they didn't let anything be done.

22 Q If the door opens, does the light come on?

23 A Yes. Yes.

24 Q So, when Mr. Machado, the defendant, got
25 inside your van at 58 Lee, you had the light assisting

1 you in looking at him; correct?

2 A Yes.

3 Q Back at 58 Lee, inside the van, how close
4 would you say he was to you when you looked at him for
5 the first time?

6 A No. Because he was talking there next to me.
7 Next to me.

8 Q Let me ask you the question in another way.
9 How close is the driver's seat in the van to the
10 passenger seat?

11 A It's like from here to here (indicating).

12 Q Would you say that's about a foot, a foot and
13 a half?

14 A Yes. About a foot or a foot and a half.

15 Q Do you have any problems with your vision?

16 A No.

17 Q So, you were able to get a clear,
18 unobstructed view of Mr. Machado in the van when he got
19 in?

20 A Yes. Yes.

21 Q Did you get the same kind of view of the
22 people outside the van, at 400 Lee? Those out there in
23 the dark with their masks on?

24 A Yes.

25 Q Now, did you see the kind of gun Mr. Machado



1 had in his hand?
2 A One of those guns like they have over there.
3 Q You said "pistola"?
4 A It was small.
5 Q "Pistola," to me, implies a handgun. Was it
6 a handgun?
7 A Yes. A handgun.
8 Q Was this gun pointed at you?
9 A Yes. Yes.
10 Q Did anybody else have a gun?
11 A Yes. The ones who came from outside.
12 Q Were you, eventually, taken out of the van?
13 Did you get out of the van?
14 A No. They kept me in there and took everything
15 away from me.
16 Q While you were behind the driver's seat,
17 behind the wheel?
18 A Yes. That's where they took everything away from
19 me.
20 Q What was taken from you?
21 A My cell phone first. The very first thing was the
22 cell phone. And from there, I had a chain on.
23 Q What kind of a chain?
24 A Excuse me?
25 Q What kind of a chain?

1 A A silver one.
2 Q You have made reference to a chain being
3 around your neck. It was like a necklace?
4 A Yes. Yes.
5 Q Was it silver?
6 A Yes. Yes, it was.
7 Q What was the chain worth?
8 A My uncle gave it to me as a present when I came
9 here. So, I don't know.
10 Q If you had to approximate, how much would you
11 say it was worth?
12 A Maybe \$30.00 or so.
13 Q What else was taken from you?
14 A The five hundred dollars, my cell phone. That was
15 it. And a work permit.
16 Q Was that a photo ID that you had?
17 A It's an ID. It's a permit that immigration sends
18 me, so, that I can work.
19 Q It's valuable out on the street, is it not?
20 A Yes. But I reported it to immigration. And they
21 changed the number.
22 Q That was in your wallet, I take it?
23 A Yes. Yes. It was mostly because of that, that I
24 made the report.
25 Q Did they take your wallet also?



1 A No. No. Just that. I don't know if it fell out
2 there. Because they went through everything, the
3 wallet.

4 Q Let me ask again. What, if anything, did Mr.
5 Machado do -- the defendant do in this theft? Was he
6 involved in taking the money, the chain, the cell
7 phone, et cetera?

8 A Yes, he was.

9 Q Were there others involved in taking these
10 items?

11 A Yes. Them, too.

12 Q How did they do that physically? Did they
13 ransack your pockets?

14 A No. They asked me, how much is the ride cost.
15 And I said four dollars. And he said, no, this is a
16 hold-up, he said to me.

17 Q They spoke to you in Spanish?

18 A In Spanish.

19 Q Did you give up the money? Did you go in
20 your own pockets and take out the money, and give them
21 that cell phone and such?

22 A I told them, take all the money. Take it all.
23 But don't hit me. Don't do anything to me.

24 Q How many times were you hit during the whole
25 episode?

1 A Only once. So that I would close my eyes.

2 Q Did you suffer any injury from that punch?

3 A Yes. My nose bled.

4 Q How long would you say this whole episode
5 took, specifically, by 400 Lee Avenue?

6 A That was quick. I couldn't tell you.

7 Q Now, did there come a point in time, when all
8 these men left the area?

9 A Yes, there did.

10 Q What did you do after this occurred?

11 A Since they took my cell phone away, I couldn't --
12 And they disconnected me from the dispatcher. I had to
13 go over to where my boss lives, at 153 Joyce Kilmer.
14 And I talked to him over there. And then he said, that
15 I should come over here and make the report.

16 Q Meaning to the police, and make the report?

17 A Yes. I came to the police station to make the
18 report.

19 Q Now, you made reference to there not being
20 any radio communications at the time between you and
21 the dispatch; right?

22 A Yes. Because they disconnected it.

23 Q Is this like a CB-like radio, that you have
24 in the car?

25 A Yes. Yes.



1 Q So, how did they disable the radio?

2 A They pulled the cable out.

3 Q This is a radio you keep by the center
4 console?

5 A Yes. Yes.

6 Q Did they say anything to you, or amongst
7 themselves, about your cell phone and this two-way
8 radio?

9 A No. He said to me, that if I reported it to the
10 police, he had other friends who could hurt me.

11 Q Now, who told you this?

12 A He did.

13 Q Who is he?

14 A The one in the sky blue shirt.

15 Q Are you nervous looking at him today?

16 A Of course, I am.

17 Q Once everyone from his group leaves -- By
18 "his" I'm referring to the defendant. I'm pointing at
19 him. You told us you then went to your dispatcher's
20 office? Is that what you did?

21 A No. No. He told me, they called from this
22 number. And then he gave me that number. And that's
23 why I wrote it down and brought it over here. I
24 brought it over here to give to the police, and I made
25 the report.

1 Q We'll get to that in a few minutes. I just
2 want to know where you went from 400 Lee, after you
3 were robbed.

4 A To 153 Joyce Kilmer.

5 Q What's at 153 Joyce Kilmer?

6 A That's where my boss lives.

7 Q You told him what happened?

8 A Yes. Yes.

9 Q Did he give you the phone number that was
10 utilized to call in the 58 Lee ride?

11 A Yes. The dispatcher called the owner.

12 Q With that information, you, subsequently,
13 went to the police station?

14 A Yes.

15 Q Did you go directly to the police?

16 A No. Because I was talking to the boss for awhile.
17 And then I walked over here.

18 Q Did you clean yourself up in any way before
19 you went to the police?

20 A Yes. I cleaned myself up. The cars' owner was
21 cleaning me up over there.

22 Q How were you cleaned up? What did you have
23 to clean on yourself?

24 A The blood from my nose.

25 Q Did you have any other injuries besides a



1 bloody nose?
2 A No, I didn't.
3 Q Was your nose broken as a result of this?
4 A No. Just bleeding. It was just from being hit.
5 Q Did you see a doctor or go to a hospital over
6 any of this?
7 A No. No.
8 Q Did blood get on your shirt?
9 A Yes, it did.
10 Q Did you change your shirt before you went to
11 the police station?
12 A No. No, I didn't.
13 Q Did a lot of the blood get on the shirt or a
14 little bit?
15 A A little blood.
16 Q Now, when you went to the police station, can
17 you estimate how many minutes or hours it was after the
18 event took place?
19 A I couldn't tell you. But in an hour.
20 Q Within an hour, a half hour?
21 A I couldn't tell you. I couldn't tell you, because
22 that's already a year and a half ago.
23 Q It wasn't the next day or two weeks later,
24 was it, when you went to the police?
25 A Oh, yes.

1 Q Let me rephrase my question. Did you go to
2 the police to make your initial report a day later or a
3 week later?
4 A No. The same day.
5 Q As you said, within an hour; right?
6 A The same night. I was over there waiting there
7 until somebody who spoke Spanish arrived.
8 Q You went to the police station. You did the
9 best you can with your English; correct?
10 A Yes. Yes. But I was told to wait until someone
11 who spoke Spanish got there.
12 Q How much English do you speak or understand?
13 A I can't speak it; but I understand very little.
14 Q Very little. Do you remember the name of the
15 officers you spoke to when you gave your report?
16 A Not that day.
17 Q But later on, you determined or learned what
18 his name was?
19 A Yes. Yes.
20 Q What was his name?
21 A They call him Bobadilla.
22 Q In fact, you saw Officer Bobadilla today
23 outside in the hallway when you were waiting to
24 testify, did you not?
25 A Yes.



1 Q You remember the man in the suit as the
2 person you spoke to, to give this report?

3 A Yes.

4 Q He was wearing a business suit, not a police
5 uniform; right?

6 A Yes.

7 Q You told him what happened?

8 A Yes. Yes.

9 Q Do you remember where you had this
10 conversation with him?

11 A The day that I was robbed, or right now?

12 Q Do you remember where you spoke to Officer
13 Bobadilla at the police station?

14 A Yes. Yes.

15 Q Was it in a room with a big table and chairs,
16 or what? You tell me.

17 A Yes. In a room like that, with a table.

18 Q You were brought inside, and asked by the
19 officers to explain what happened; right?

20 A Yes.

21 Q Do you remember if you were videotaped on
22 that day?

23 A No. Not that day.

24 Q How much time did you spend with Officer
25 Bobadilla giving him your account of what occurred?

1 Could you tell us how long this took?

2 A About a half an hour. A half hour or longer.

3 Q Were you asked to put in your own words what
4 happened?

5 A Yes.

6 Q So, you signed -- You wrote out a statement?

7 A Yes.

8 MR. SAMEIRO: Judge, I don't have that. I'll
9 declare that.

10 Q You gave that to the police?

11 A What?

12 Q A written statement.

13 A No. Not written. They wrote down what I told
14 them. I told them what happened, he wrote it down.

15 Q I want to know if you wrote down something in
16 your own words, which I presume would be in Spanish?

17 A No. No.

18 Q So, you had a conversation with the officer,
19 and he wrote down what you said; right?

20 A Yes. And he told me to sign it.

21 Q Okay. Now, did you give him the phone number
22 that you got from the boss? The phone number that was
23 utilized to place the call, that got you to 58 Lee
24 Avenue?

25 A Yes.



1 Q Was that a ten digit phone number?

2 A I looked at it on the report just now. And I
3 remembered it.

4 Q I showed you the report outside in the
5 hallway, while you were waiting to testify?

6 A Yes. Yes. Yes. And I remember.

7 Q And that refreshed your memory as to the
8 number?

9 A Uh-hum. Yes.

10 Q I'm going to show you what's marked S-5. And
11 I'll focus on the second page, towards the bottom
12 (indicating). Is that the report that I showed you
13 earlier?

14 A Yes.

15 Q Does that have the number that you gave to
16 the officer?

17 A Yes.

18 Q What's that number?

19 A 732-801-5418.

20 Q That's what came from the caller ID at the
21 dispatch?

22 A Yes.

23 Q How are these numbers kept? In any kind of
24 log book by the taxicab company?

25 A Yes. They're kept for a week or two in a

1 notebook. And after that, they're thrown away.

2 Q I was going to ask you, how long they keep
3 them. You anticipated my next question. All right.
4 So, this report, that you gave to Officer Bobadilla,
5 was on April 24, 2007; right?

6 A Yes.

7 Q So, by May 24, 2007, the number you just
8 reported would not be found on this book?

9 A Not any more.

10 Q It's a good thing you wrote it down; right?

11 A Yes.

12 Q Because you gave that to the police officers,
13 knowing that that would help identify the person who
14 robbed you; correct?

15 A Yes.

16 Q Do you know Pablo Machado?

17 A No. Until that day.

18 Q Right. You had never interacted with him
19 before that day?

20 A No. Never. Never.

21 Q So, it's not like you could go to the police
22 station, and say "Pablo Machado robbed me"; right?

23 A What's that?

24 Q You couldn't name the armed robber for the
25 police, could you?



1 A Yes.

2 Q You didn't know him by name; right?

3 A No.

4 Q All you had was a description that you could
5 provide in words to the police; correct?

6 A Yes. Yes. Because, after that, I would go down
7 Remsen, and instead of getting --

8 MR. SAMEIRO: Judge, I'll --

9 MR. GONZALEZ: Objection.

10 MR. SAMEIRO: I'm not contesting the
11 objection. It's because I know what he said before the
12 translation.

13 THE COURT: So, we'll strike the response.

14 Q Mr. Cedillo, it's important that, from this
15 moment on, you answer my questions directly.

16 A Okay.

17 Q Let's go back. Prior to April 24, 2007, you
18 didn't know Mr. Machado, from anybody else; correct?

19 A No.

20 Q When you spoke to the police, you gave them a
21 verbal description of how he appeared to you on that
22 day; correct?

23 A Yes. Yes.

24 Q As well as everything else that was involved;
25 correct?

1 A Yes. Yes. I couldn't describe the other one.

2 Just him.

3 Q And you remember what you said to the
4 officers about his general description?

5 A Yes.

6 Q What was the description?

7 A That he was like this (indicating). That he had a
8 receding hairline like this (indicating).

9 Q Anything else?

10 A Later, they called me to look at some photographs.
11 And they showed me the photo. And I told them -- I
12 told them that that was the person.

13 Q We're getting ahead now. We'll get into what
14 happened with the photos. But, right now, let's stay
15 focused on your conversation with Officer Bobadilla.

16 THE INTERPRETER: Could the Interpreters
17 switch at this time?

18 THE COURT: Certainly.

19 Q I'm going to stay focused on your
20 conversation with Officer Bobadilla. I'm interested
21 in developing what you told him. In developing what
22 you told him, about what this man looked like. Now,
23 you mentioned, so far, that you said to him, the armed
24 robber had a receding hairline?

25 A Yes. Yes.



1 Q Was there anything else you recall telling
2 him?

3 A I don't remember more.

4 Q Now, did there come a time -- come a point in
5 time -- when you were asked to look at certain
6 photographs?

7 A Yes.

8 Q Do you remember, generally, when that took
9 place?

10 A No. No. Maybe later. Like six months later.

11 Q If I told you, July 25, 2007, would that jar
12 your memory?

13 A Yes. Around July.

14 Q Do you remember coming into the police
15 station, and talking to one of the officers about the
16 case all over again?

17 A Yes.

18 Q Do you remember, specifically, talking to
19 Officer Sergio Matias about photographs?

20 A Yes.

21 Q Did you see him outside in the hallway today
22 as well?

23 A Yes. Yes. Yes.

24 Q He was in uniform; right?

25 A Yes.

1 Q He had long black hair?

2 A No. He has no hair.

3 Q Bald as a cue ball; right?

4 A Yes.

5 Q So, he was the guy you spoke to in July;
6 right?

7 A Yes.

8 Q You recall being brought into a room where
9 these photographs were shown to you?

10 A Yes.

11 Q Do you remember the officers going through
12 certain instructions with you, before the pictures
13 were shown?

14 A Yes.

15 Q Do you know if this was videotaped, this
16 process?

17 A I realized later that it was recorded.

18 Q They didn't tell you upfront?

19 A No.

20 Q Now, I'm going to ask if you recall the kinds
21 of instructions you were given that day, before you
22 were looking at any pictures. Now, do you remember
23 being given a set of instructions?

24 A Yes.

25 Q I'm going to show you what's marked S-3.



1 Look at the bottom of that.
2 A (Witness complies.)
3 Q Is that your signature on that document?
4 A (No verbal response.)
5 Q Maybe I got the wrong side.
6 A Right here (indicating).
7 Q Up top. My mistake. That is Sergio Matias'
8 signature?
9 A Yeah.
10 Q Okay. How about the other side?
11 A Yes. This is mine (indicating).
12 Q Do you remember, ultimately, looking at a
13 particular photograph, and signing the back of that
14 picture?
15 A Yes. Yeah.
16 Q I'm going to show you one of the pictures
17 contained in S-2-A. I'm going to ask you, with respect
18 to the photo, using the last several digits, 33223-A,
19 if this is your signature, your initials, on the back
20 of that (indicating)?
21 A Yes, it is.
22 Q Can I have that?
23 A (Witness complies.)
24 MR. SAMEIRO: Judge, this may be a little out
25 of order. Being that Officer Sergio Matias will

1 authenticate the DVD. Since the witness is here, since
2 I have S-1 cued up, at this appropriate time stamp,
3 22:04:04, I'd like to just play it for a few seconds,
4 if there is no objection by Counsel.
5 THE COURT: Any objection?
6 MR. GONZALEZ: Judge, I don't have an
7 objection.
8 MR. SAMEIRO: I'm going to ask the witness if
9 that's him in the photograph.
10 THE COURT: If there is no objection, I'll
11 allow it.
12 MR. GONZALEZ: I have no objection.
13 Q Look over there, Mr. Cedillo.
14 A (Witness complies.)
15 Q I have stopped it at 22:04:15. Is that you
16 in the picture, sir?
17 A Yes. Yes.
18 Q Remember who that was there in front of you?
19 A Yes. Yes.
20 Q Is that when you were looking at certain
21 photographs?
22 A Yes.
23 Q You picked out this one that you initialed;
24 right? Over here (indicating)?
25 A Yes.



1 Q Now, with respect to the photograph that you
2 identified, in July of '07 -- this way -- forget about
3 that now. How certain are you that that's the man that
4 robbed you at gunpoint, back in April of '07?

5 A I am sure. I am sure that he is the one.

6 MR. GONZALEZ: Objection, Judge.

7 THE COURT: I'm just going to limit his
8 answer to what has already been translated.

9 MR. SAMEIRO: I can explain to the Court
10 later.

11 THE COURT: I'll just ask that you consider
12 just that portion that has been translated.

13 MR. SAMEIRO: I just ask the witness to stop.

14 Q Mr. Cedillo, this guy with sky blue shirt, is
15 he the one that robbed you in April of '07?

16 A Yes. Yes.

17 Q Seeing him here in court today, are you
18 certain that he's the man?

19 A Yes. Yes. Of course. Yes.

20 Q How certain are you?

21 A I am sure. I am sure. I know he is the one.

22 MR. SAMEIRO: Judge, I have no further
23 questions.

24 THE COURT: Thank you.

25 Folks, are we okay to continue on? Does

1 anybody need to take a break? Are we okay?

2 Okay. Mr. Gonzalez?

3 MR. SAMEIRO: Judge, I'm just going to
4 retrieve my exhibit.

5 THE COURT: Thank you.

6 CROSS-EXAMINATION BY MR. GONZALEZ:

7 Q Mr. Cedillo, how are you today?

8 A Fine.

9 Q My name is Daniel Gonzalez. I'm going to ask
10 you some additional questions with regard to what you
11 have testified today. Is that okay?

12 A Okay.

13 Q Everything you testified today, you swore on
14 the Bible, it's the truth; right?

15 A Yes.

16 Q Would you say that your memory is the best
17 today? Would you say that your memory is the best
18 today with regard to the incident?

19 A Yes.

20 Q So, your memory of the events, that
21 transpired on April 24, 2007, your memory of those
22 events are best right now; correct?

23 A Yes.

24 Q And it's better today, because you have gone
25 over things; right?



1 A Yes.

2 Q You went over things with the Prosecutor;
3 correct?

4 A Yes.

5 Q You also went over things with the police
6 officers that are outside in the hallway? Detective
7 Bobadilla -- excuse me -- Officer Bobadilla and
8 Detective -- and Officer Matias? I'm sorry. Strike
9 that. So, I can make it more clear. So, you don't
10 have to answer that. Strike that. You went over
11 things in the hallway with Officer Matias; correct?

12 THE INTERPRETER: Detective?

13 MR. GONZALEZ: Officer.

14 A Yes. Yes.

15 Q You also went over your testimony with
16 Officer Bobadilla; correct?

17 A Yes.

18 Q You also -- although he doesn't speak Spanish
19 -- you spoke with Detective Selesky; correct?

20 A With which Detective?

21 Q Detective Selesky. He's non-Spanish
22 speaking.

23 A No. They translated that.

24 Q But you spoke to him, and then they
25 translated?

1 A Yes.

2 Q So, the reason your memory is so good today,
3 is because you went over these things; correct?

4 A Yes. But I remember well the day that happened to
5 me.

6 Q Now, you remember better on the day that it
7 happened; correct?

8 A Yes, because I am seeing the person today. Today,
9 I'm seeing the person who did that to me.

10 Q The things that you told Officer Bobadilla,
11 on the date that this actually occurred, April 24th, is
12 the same things that you have told the Court today;
13 correct?

14 A Yes.

15 Q They are also the same things that you have
16 related to Detective Selesky and Officer Matias, at the
17 time where you were interviewed at the New Brunswick
18 Police Department, when you made this identification;
19 correct?

20 A Excuse me?

21 THE INTERPRETER: The Interpreter needs that
22 question repeated, please.

23 THE COURT: I ask you to do that, Mr.
24 Gonzalez.

25 Q It may not be word for word. But I'll try.



1 You also told Detective Selesky and Officer Matias, on
2 the date that you made the identification, on July
3 25th, you told them the same story as well; correct?

4 A Yes. Yes.

5 Q Now, by way of background, you said you've
6 been working as a taxi driver for three years; correct?

7 A Yes.

8 Q Today you said you worked for Acapulco Taxi;
9 correct?

10 A Yes. I did work there for three years.

11 Q So, that is the only taxi company that you
12 have worked for?

13 A Yes.

14 Q Do you remember telling Officer Bobadilla,
15 that you worked for Victoria Taxi, on April 24th?

16 A They are the same. Victoria and Acapulco is the
17 same. The same company.

18 Q You have talked about how you get paid with
19 regard to your taxi driving; correct?

20 A They just do half and half. Half and half with
21 the owner.

22 Q Half and half, meaning the taxi driver, or
23 the owner of the taxi, gets 50 percent of the proceeds
24 that you make on any given day?

25 A Yeah. Whatever I make during the day, we share it

1 half and half.

2 Q What's your boss' name?

3 A His name was -- Well, his name is Juan Perez.

4 Q Now, you started -- First, April 24th, what
5 day of the week was it?

6 A I can't tell you what day.

7 Q April 23rd, you probably can't tell me what
8 day of the week that was either?

9 A No. No. No.

10 Q You mentioned earlier, two hundred twenty
11 dollars was probably the maximum you make on any given
12 day; right?

13 A In one day, two hundred twenty. Something like
14 that. In one day. Some days are good. Some days are
15 bad. Some days you get more than that.

16 Q The best days -- Well, the best day of the
17 week, that you normally drive, and make that much
18 money, what days are they?

19 A Friday, Saturday and Sunday, and Monday.

20 Q Friday, Saturday, Sunday, Monday?

21 A (Witness shakes his head.) Yes.

22 Q Do you remember telling Detective -- excuse
23 me -- Officer Bobadilla, that you recognized the person
24 that robbed you from before?

25 A Yes.



1 Q So that, on April 24, 2007, when you talked
2 to Officer Bobadilla, you told him that you recognized
3 the guy from before; correct?

4 A No. Well, I don't remember. But I do remember
5 that he robbed me.

6 Q Okay. So, before you said, in response to
7 Mr. Sameiro's questions, you said that April 24th, you
8 never knew Pablo Machado; correct?

9 A Yes. Yes. No. No. I hadn't seen him.

10 Q You had never seen him before; right?

11 A No. No.

12 Q So, your testimony today is that, you never
13 knew Pablo before April 24th; correct?

14 MR. SAMEIRO: I'm objecting. Two different
15 concepts in place. Whether he saw him versus whether
16 he knows him. There is a distinction. There is a
17 difference.

18 THE COURT: I'm going to sustain the
19 objection. I just ask you to rephrase the question. I
20 think there could be a little confusion regarding that.

21 MR. GONZALEZ: I'll move on. I think he
22 already said it.

23 Q Now, I'll move on. Do you remember giving a
24 description to Officer Bobadilla?

25 A Yes. Yes. I told him that I knew him on this

1 day, because I saw him during the night.

2 Q Didn't you tell Officer Bobadilla, that one
3 of the gentlemen that assaulted you, was five feet
4 eight inches.

5 A Yes. I told him, more or less, like me, yes.

6 Q You also told Officer Bobadilla, what the
7 people were wearing on that date; correct?

8 A Yes. Yes. Yes.

9 Q You also told Officer Bobadilla, on that
10 date, that one person was wearing a hat; correct?

11 A Yes. Yes. Yes.

12 Q And that the other person wasn't wearing
13 anything; correct?

14 A No. No. No.

15 Q And that he had a receding hairline?

16 A Yes. Yes. I remember him well. Very well.

17 Q Are you sure that you didn't tell Officer
18 Bobadilla that the second person was wearing a bandanna
19 on his head?

20 A Yeah. Yes. Yes. Whatever is in the report,
21 that's what I told him.

22 Q So, whatever is in the report is what you
23 told him; correct?

24 A Yes. Yes. What is in the report -- All of the
25 things that happened on that day is in there.



1 Q Do you remember telling Officer Bobadilla,
2 the two gentlemen that got in the taxicab were in the
3 back seat?

4 A No. No. One was sitting next to me. That is
5 him. The other one was in the back.

6 Q So, that's what you told Officer Bobadilla?
7 That is, one was on the side of you and one was in the
8 back?

9 A Yes. That I remember, yes.

10 Q You testified earlier, that Pablo was sitting
11 next to you, in the passenger seat; correct?

12 A Yes. Yes. Yes.

13 Q So, if you're sitting there. Mr. Machado, as
14 you said earlier, put the gun to the right side of your
15 head; correct?

16 MR. SAMEIRO: Judge, I'm going to object to
17 that. He never said the gun was put to his right side.

18 THE COURT: I'll sustain the objection and
19 ask that you rephrase the question.

20 Q Where was the gun pointed? Where was the gun
21 put?

22 A In here (indicating).

23 Q You're gesturing to what part of your head?

24 A Yes. Yes. Yes. Here (indicating). He was on my
25 -- He was to the side.

1 Q That's the right side of your head?

2 A Yes. Yes. Yes.

3 Q Do you remember telling Officer Bobadilla,
4 that the person that put the pistol to your head, was
5 sitting behind you, and put the gun to the left side of
6 your head?

7 A No. No. No. You are confusing me. Because you
8 are making me -- asking me such questions. I told him
9 what happened. If you can ask him, he knows. He's the
10 one who robbed me. I remember it was him.

11 MR. GONZALEZ: I'd ask that the defendant
12 (sic) answer the question.

13 MR. SAMEIRO: I'm sorry. I should have
14 interjected earlier.

15 MR. GONZALEZ: I'd ask that the -- excuse me
16 -- the witness, Mr. Cedillo, answer only the
17 questions --

18 MR. SAMEIRO: Judge, I think I can assist.
19 I'll ask the Court to instruct the witness not to
20 divulge things that may have happened subsequent to
21 this event. Let's focus on what happened on April
22 24th.

23 THE COURT: All right. Mr. Cedillo, do you
24 understand that? Just listen to the question. Just
25 answer the question that is being asked.



1 THE WITNESS: Okay.

2 THE COURT: All right. Thank you.

3 Q Did you tell Officer Bobadilla, on April
4 24th, what the people in the car were wearing?

5 A The one sitting in the back, no. But he was
6 wearing something like a handkerchief. But then he
7 took it off. It was a black kerchief. Like a
8 kerchief. When they robbed me, he took it off. They
9 took -- When they took everything, they told me to
10 close my eyes. Otherwise, they would continue hitting
11 me, and whatever they said. I did, so, they wouldn't
12 do anything else to me.

13 Q So, you're telling the Court today, your
14 answer to that question, is that Mr. Machado was
15 wearing a black bandanna on that day?

16 A Yes. Yes. Yes.

17 Q You're sure of that?

18 A Yes. Yes. Yes.

19 Q Didn't you tell Officer Bobadilla, that the
20 person was wearing a white bandanna?

21 A Yeah. Well, I remember he was wearing a bandanna.

22 Q Do you remember what color the guys were
23 wearing?

24 A How can I remember that? It was dark.

25 Q So, it was dark. So, you don't know what

1 they were wearing?

2 A Well, yes. But I cannot tell you the color of the
3 clothing. If I had known that something like that was
4 going to happen --

5 MR. GONZALEZ: Judge, I would just ask again,
6 that he just answer the question.

7 MR. SAMEIRO: That answer should have been,
8 and should be translated. Can I ask that the response
9 be translated or repeated?

10 THE COURT: I thought it was translated while
11 the objection was going on.

12 THE WITNESS: Could you repeat it once more?

13 MR. GONZALEZ: I don't recall the exact
14 question.

15 Q The exact question was something to the
16 effect of, that you don't remember what the people on
17 that date were wearing; correct?

18 A But I told you, a bandanna. But I cannot describe
19 the color of the clothing, as that was a year and a
20 half ago, maybe more.

21 Q So, you never saw the color of the peoples'
22 clothing, because it was dark; right?

23 A Yes; but -- Well, the passenger was talking to me.
24 And I recognize him well. I recognize him really well.

25 It was him.



1 Q Didn't you tell Officer Bobadilla, that one
2 of the guys was wearing a white sweater, and the other
3 guy was wearing a black sweater?

4 A No. I didn't tell him anything. I didn't tell
5 him about the clothing.

6 Q Did he ask you?

7 A Yes. Of course, he asked. But I told him, that
8 all I remember was the person who did this to me. And
9 later as I was driving --

10 MR. GONZALEZ: Objection. He is not talking
11 about April 24th.

12 MR. SAMEIRO: He is not talking about the
13 24th.

14 THE COURT: Again, Mr. Cedillo, just focus on
15 the question regarding April 24th. All right?

16 THE WITNESS: Okay.

17 Q You testified earlier, that there was only
18 one punch; right?

19 A Yes.

20 Q So, we have this event. There is only one
21 punch that makes your nose bleed. Then you don't
22 really recall what happened after that; correct?

23 A Yes. Yes. Yes.

24 Q So, you didn't tell Officer Bobadilla that
25 you were punched and kicked at the time of this alleged

1 robbery?

2 A No. No. I mentioned one punch. That they hit me
3 here in my nose (indicating).

4 Q So, it wasn't numerous punches; correct?

5 A No. One. And he told me to close my eyes.

6 Q You told Officer Bobadilla also that the gun
7 came from the person outside of the vehicle, not any of
8 the people inside of the vehicle; correct?

9 A No. I told him, the one inside. But also that
10 the people outside -- Also the ones that came from the
11 other cars.

12 Q Now, you also, thereafter, on July 25th, you
13 go and you make an identification, via these
14 photographs; correct?

15 A Yes.

16 Q You then made a statement?

17 A Yes.

18 Q Concerning what happened on that date;
19 correct?

20 A Yes. Yes. They told me, they were going to show
21 me some photographs.

22 Q Then after they showed you the photographs,
23 they asked you about the events that happened; correct?

24 A Yes. Yes. Yes.

25 Q On that date, you described their clothing,



1 didn't you?

2 A No. They just told me -- They read the paper, and
3 they told me, if the people that they were going to
4 show me, just to select or pick the right person.

5 Q The right person?

6 A The correct person.

7 Q So, they told you who the person -- They told
8 you who the correct person was?

9 A No. No. I told them, and I signed the paper.

10 Q Do you remember telling -- Do you remember
11 telling him what nationality you thought the assailant
12 in that particular case was?

13 A Yes. Because he said -- He said the word,
14 "atraco", and only Puerto Ricans use that word. Which
15 "atraco" means -- The word "atraco" is strawberry
16 (sic). The word "atraco" means robbery.

17 Q You thought the gentlemen that robbed you
18 were Puerto Rican; correct?

19 A Right. Yes. Yes.

20 Q You also thought that the person that robbed
21 you was five feet eight inches?

22 A Yes. Yes. Yes.

23 Q So, at the time that you went, on July 25th,
24 you told Officer Selesky and Officer Matias, that Mr.
25 Machado sat on the right side of you; correct?

1 A Yes. Yes. Yes.

2 Q You remember that clearly; correct?

3 A Yes. Yes. Yes. At that time, yes. When they
4 hit you, and they do this to you, and you have to close
5 your eyes, all you want to do is to save your life.

6 Q Now, you also testified earlier, that you
7 went to 153 Kilmer Avenue, to speak with your boss;
8 correct?

9 A Yes.

10 Q That's Juan Perez; right?

11 A Yes.

12 Q Whose car you were driving? Were you driving
13 Juan Perez's car?

14 A Yes. The company's car. The taxi. The taxi,
15 Acapulco Taxi.

16 Q The car you were driving, was it a Lincoln?

17 A It was a van. I can't tell you. It is used as a
18 taxi.

19 Q You don't know what type of vehicle you've
20 been driving for three years? You don't know what type
21 of vehicle you are driving?

22 A It is number two. And number two, it was a van.

23 Q So, you don't remember what kind of car you
24 were driving?

25 A No. Because there is so many brands. They tell



1 you to get any car. Whatever car is available. And
2 that's the car you go and pick.

3 Q Didn't you tell them, on July 25th, you
4 weren't sure if it was a Honda or a Lincoln? You're
5 not sure?

6 A Yes. Yes.

7 Q Was it a Honda or was it a Lincoln?

8 A I can't tell you, because there is several cars
9 there. There are about 40 cars. The one that I drove
10 is the one that they gave me.

11 Q You got number --

12 A What I know, it was number two.

13 Q When you got the phone number, you got the
14 phone number from the base; right?

15 A The dispatcher. The dispatcher gave it to my
16 boss. And he gave it to me. So, I could come and make
17 the report.

18 Q So, Juan wrote down the number, and he gave
19 it to you?

20 A Yes. Yes. Yes. I brought it here, and gave it
21 to the person who did the report.

22 Q So, you gave that piece of paper, that you
23 wrote the phone number on -- Don't you give the piece
24 of paper to Officer Bobadilla?

25 A Yes.

1 Q You told Officer Bobadilla, you got it from
2 the dispatcher; right?

3 A Yes. Yes. The dispatcher.

4 Q You never mentioned anything to Officer
5 Bobadilla about going to 153 Joyce Kilmer Avenue, did
6 you?

7 A No. I don't remember; but --

8 Q Do you remember telling Officer Bobadilla,
9 that you went to a pay phone to call the dispatcher, to
10 find out what the number was?

11 A Yes. But it didn't work. So, then I went to my
12 boss' house, knocked on the apartment door, and then he
13 called the base, to let them know that I had been
14 robbed.

15 Q Who was the dispatcher that was working that
16 night?

17 A It was a Mexican.

18 Q You don't know who it was?

19 A Yes. He's called "el flaco," meaning skinny.

20 Q You never worked as a dispatcher before;
21 right?

22 A No.

23 Q You never been on the phone before? You
24 never been on the phone dispatching people, to tell
25 them to go where they're going to go; right?



1 A No. No. Because they call you there, and you go
2 there. They call you, whenever there is a mistake.
3 And I go there, and you watch how they receive the
4 calls and all that.

5 Q The people that robbed you that day, they
6 didn't take your receipts that day, did they?

7 A No. No. No. We don't use receipts. We trust
8 people.

9 Q So, you don't keep receipts in the car, as
10 you told Mr. Sameiro earlier; correct?

11 A Would you please repeat the question?

12 Q You told Mr. Sameiro earlier, that you keep
13 the receipts in the car; correct?

14 A The accounts. The accounts.

15 Q Nobody took the accounts from you; correct?

16 MR. SAMEIRO: Judge, I'm going to interject
17 here with respect to the last response. I don't
18 believe that the witness means "accounts" when he uses
19 the words, "las cuentas." I don't think that is what
20 he is referring to.

21 Q You testified earlier, there were receipts
22 in the car; right? You testified earlier you had
23 receipts in the car?

24 A No. No. I didn't say anything about receipts. I
25 said about the accounts, the money, that was stolen

1 from me.

2 MR. SAMEIRO: The "las cuentas," that he's
3 describing, in Spanish, it's a written log of how much
4 money you bring in on any particular day.

5 Can we ask him if that's what he means by
6 that word?

7 THE COURT: What's the word?

8 MR. SAMEIRO: "Las cuentas."

9 THE COURT: What do you mean by that?

10 Q What does "las cuentas" mean?

11 MR. SAMEIRO: "Las cuentas" is money. It's
12 money. It's currency.

13 MR. GONZALEZ: Judge, this is my
14 cross-examination.

15 MR. SAMEIRO: Well, Judge, I think the jury
16 should not be misled by the misinterpretation.

17 THE COURT: I agree.

18 MR. SAMEIRO: And I say that with all due
19 respect to the Interpreters.

20 Judge, I think that you know that we both
21 speak Spanish, too.

22 THE COURT: I just think, the reality is, we
23 have to make certain that the translation is accurate.
24 And if any assistance is needed, sobeit. We are all
25 here just to get a correct translation of what the



1 witness means. He's explained it, by speaking Spanish.
2 Let's have another question.

3 Q So, you write down by the "cuentas," by the
4 account, that --

5 MR. SAMEIRO: I object. I'm going to object
6 to the use of the term "account." Just minutes ago,
7 the witness said, that's not what I mean by that. If I
8 understood his answer, it was currency, money.

9 THE COURT: He can ask the question. He can
10 explain it. I will overrule the objection, and just
11 allow the question.

12 Q Is it just an account, or do you also have a
13 log of how much money you bring in? Is it just the
14 money, the account, or "cuentas"? Or do you also take
15 a log down of how much money you bring in?

16 A No. Just the money. Just what we make on that
17 night.

18 Q Now, you testified earlier, that every two
19 weeks, the taxi company gets rid of the call logs that
20 they have at the taxi company; correct?

21 A Yes. Yes.

22 Q Have you seen them do that before?

23 A Will you please repeat the question?

24 Q Have you seen them do that before?

25 A Do what?

1 Q Get rid of the log books.

2 A Yes. They do that every two weeks. They do that
3 all the time. If there is not a complaint in two weeks
4 from the clients, from the customers, they throw that
5 in the garbage.

6 Q So, you're saying, your boss, or whoever is
7 at the Victoria or Acapulco Taxicab, destroys all of
8 the log books of the calls that come in; correct?

9 A Yes. Yes. Yes.

10 Q Now, on July 25th, when you went to make the
11 identification, you know now it was videotaped;
12 correct?

13 A Yes. Yes.

14 Q On that particular date, you told the
15 officers there what happened on April 24th; right?

16 A Yes.

17 MR. GONZALEZ: Judge, I'd like the
18 opportunity, there is certain points on the video per
19 se -- okay -- that was videotaped. I'd like the
20 opportunity to set it up. I don't know if it is a good
21 time to break. Because I'd like to use the video, for
22 him to refresh his recollection. Also, to show him
23 what he told --

24 THE COURT: Okay.

25 MR. GONZALEZ: What he told the New Brunswick



1 Police Officers on that date. But I'd like to -- But
2 there is certain items in there, that I think are key
3 to my examination of this witness.

4 THE COURT: All right.

5 MR. GONZALEZ: I'm going to need to cue the
6 video to a certain specific spot.

7 MR. SAMEIRO: Judge, I don't think the
8 witness' recollection needs to be refreshed. That's
9 what Counsel said. If there is a question posed and
10 the witness doesn't remember the answer, then I
11 wouldn't object to the statement being used to refresh
12 his memory. But that's not how you do it. You pose
13 the question, and you wait to hear the witness say, "I
14 don't recall." We haven't gotten to that yet.

15 And I certainly don't have an objection if
16 the entire statement is played, beginning to end,
17 because there is a pre-interview on the tape, where the
18 defendant -- excuse me -- the victim was interviewed
19 again.

20 THE COURT: Okay.

21 MR. GONZALEZ: We can discuss that, Judge.
22 But I don't object to the video being played either.

23 THE COURT: All right.

24 MR. GONZALEZ: I think the lion's share of
25 it, I don't object to.

1 THE COURT: We can discuss what portions, or
2 what -- if there is anything there.

3 MR. GONZALEZ: But I don't object to it. We
4 can discuss that.

5 THE COURT: How long is the video?

6 MR. GONZALEZ: You know, as to his statement,
7 I don't recall the actual -- A total of 25 minutes.

8 MR. SAMEIRO: A total of 25 minutes.

9 MR. GONZALEZ: Up until -- I think the
10 identification portion of it is about 13 minutes.

11 THE COURT: Okay. We'll talk about it.

12 MR. SAMEIRO: And then there is John Selesky.
13 And there is an Interpreter.

14 THE COURT: All right.

15 MR. SAMEIRO: I'm not referring to the photo
16 array. There is an interview that occurs afterwards.

17 THE COURT: Oh, afterwards. Then why don't
18 we do it. All right. It is already quarter after
19 four. We can take our break now. We can go back to
20 the playing of the tape, if it is being agreed upon.
21 If there is a portion, that you can have cued up, or
22 if you just want to play the whole tape.

23 Either way, it takes us past 4:30, with the
24 tape. And I assume you will have questions as you go
25 through the tape.



1 MR. GONZALEZ: Yes, Judge,.

2 THE COURT: Then let's break for the day now.
3 And we'll start with however you want to start with
4 tomorrow, either portions or the entire tape.

5 So, ladies and gentlemen, I'm going to break
6 you for the evening and ask you to be back downstairs
7 at 8:30. We will bring you up as close to 9:00 as
8 possible, to continue with the trial. Please remember
9 not to discuss the case among yourselves or with
10 anybody also. Don't go to the scene, or anything along
11 those lines. Don't read anything, if there is
12 anything, in the paper. Don't listen to anybody else
13 discuss anything in the paper. Please have a nice
14 evening. Please be back downstairs at 8:30. We will
15 bring you upstairs as close to 9:00 as possible.

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

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

20 THE COURT: All right. So, I don't know if
21 you just want to play the tape, and then ask him
22 questions regarding that.

23 MR. GONZALEZ: I think we'll cue it up. I'll
24 review it. There is a whole bunch of stuff on it. I
25 think the only portion, for the purposes of an alleged

1 threatening, that happens only on the last part of the
2 tape. That can be cut out.

3 MR. SAMEIRO: You know, Judge, you may be in
4 the dark about this. Because I didn't want to put this
5 in the case. I could have; but I chose not to. It's
6 been reported that, since the event took place, prior
7 to the defendant's arrest, the victim had an encounter
8 with the defendant. He made a threat to him on the
9 street. That's the episode.

10 THE COURT: That the alleged victim made to
11 Mr. Machado?

12 MR. SAMEIRO: No. The other way around.

13 THE COURT: Oh, the other way around. Okay.

14 MR. GONZALEZ: Supposedly they were hanging
15 out.

16 MR. SAMEIRO: The defendant threatened the
17 victim, post the event, and before he was arrested.

18 THE COURT: I see.

19 MR. SAMEIRO: And I didn't want to get into
20 that. And I know he has prior convictions for witness
21 tampering. I just didn't want to get into a whole can
22 of worms, relevant to this case.

23 It assists me on the identification. But I
24 wanted to keep it clean. I'm telling the Court, I
25 purposely avoided that. I didn't really want to get



1 into it either by the objections.

2 THE COURT: Okay.

3 MR. GONZALEZ: Well, Mr. Sameiro did a good
4 job of alerting the jury, even though --

5 THE COURT: I certainly didn't know. I have
6 been listening.

7 MR. SAMEIRO: No. That's not fair. There is
8 another episode. They don't know that from me. It's a
9 threat.

10 THE COURT: Although there may have been some
11 episode between the defendant and the alleged victim,
12 and I've been listening. All I can really glean from
13 it --

14 MR. SAMEIRO: Frankly, the problem, Judge, is
15 that we're both fluent in Spanish. Mr. Gonzalez is ten
16 times better than I am. We start to hear the witness
17 get into it, and, so, we attempted to successfully stop
18 the Interpreter from going into it, having the witness
19 get into it.

20 THE COURT: I thought you did that. You're
21 right, I don't understand Spanish. Okay. So, Counsel,
22 between the two of you, you'll decide what you want to
23 do tomorrow regarding the tape, putting the tape on.

24 MR. SAMEIRO: We'll review it and decide what
25 we're going to do with regard to the video. We'll have

1 it all set up prior. I'll probably use my computer,
2 and just use the jack to go into it.

3 THE COURT: All right. We will see what
4 happens tomorrow. Whatever you decide.

5 MR. SAMEIRO: I have a copy of the DVD.

6 MR. GONZALEZ: I have it, too.

7 THE COURT: Okay. Mr. Cedillo, we will need
8 you back here tomorrow at 9:00 o'clock. We're going to
9 resume your testimony.

10 THE WITNESS: Okay.

11 MR. SAMEIRO: I know he's not happy about
12 that. He has work obligations.

13 THE COURT: If you need a letter for your
14 employer, we'll be happy to give you a letter for your
15 employer, letting them know you were here, and that you
16 are required to be here tomorrow. Okay?

17 THE WITNESS: Okay. But I don't think they
18 will let me come tomorrow, because there is a lot of
19 work. And today he told me that. And I said what I
20 was going to say. And that is true, that he robbed me.
21 I know him.

22 THE COURT: Okay. We're just not done.
23 There is still some questions that have not been put to
24 you. We'll finish up in the morning tomorrow. Okay?

25 THE WITNESS: Okay. Could you give me a



1 letter, so, I can take it to there?

2 THE COURT: Oh, absolutely.

3 MR. SAMEIRO: Absolutely.

4 THE COURT: That we'll get for him before he
5 leaves today.

6 THE COURT: All right.

7 MR. GONZALEZ: Judge, I neglected -- I told
8 Mr. Sameiro, prior to doing our opening statements,
9 that I was going to ask, subsequent to the opening
10 statements, before he called the last witnesses, that I
11 would ask for a sequestration of the witnesses. That
12 they not speak to each other. I think they are
13 actually ordered to do so.

14 THE COURT: That was the first witness.

15 MR. GONZALEZ: I just wanted to address the
16 issue on the record.

17 THE COURT: Why don't we tell him then in
18 Spanish.

19 Mr. Cedillo, there is a request for you not
20 to speak to any of the witnesses regarding your
21 testimony here today. And, so, don't discuss it with
22 any of the police officers, or any of the potential
23 witnesses.

24 THE WITNESS: All right.

25 THE COURT: Thank you. We'll see you here at

1 9:00 o'clock.

2 THE WITNESS: Yes.

3 THE COURT: But we will give you a letter.
4 Just wait for that letter.

5 THE WITNESS: Okay.

6 (Whereupon, the witness is excused for the
7 day.)

8 MR. SAMEIRO: Thank you.

9 MR. GONZALEZ: Thank you.

10 THE COURT: See you tomorrow. Have a nice
11 night. Thank you.

12 (Whereupon, the hearing concluded for the
13 day.)

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 8, 2010

