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

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

FILED
APPELATE DIVISION

APR 15 2010

STATE OF NEW JERSEY,

Complainant,

vs.

Transcript of Proceedings
(Trial - Vol. II)

PABLO MACHADO,

Defendant.

(With an Interpreter)

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

Date: DECEMBER 17, 2008

B E F O R E:

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

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

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

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

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

RECEIVED
APPELATE DIVISION

APR 15 2010

SUPERIOR COURT
OF NEW JERSEY

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



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<u>State Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
WILMER CEDILLO				
By Mr. Gonzalez		22		61
By Mr. Sameiro			43	
SERGIO MATIAS				
By Mr. Sameiro	68		95	
By Mr. Gonzalez		81		106

(Colloquy)

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

THE COURT: All right. Are we all ready for the jury?

MR. SAMEIRO: Yes.

MR. GONZALEZ: Yes.

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

MR. SAMEIRO: Also, Judge, before the jury comes in, I have something to raise for you. I apologize for not doing it sooner.

Yesterday, I explained that I didn't want to go into the subsequent contact between the defendant and the victim. I didn't really get into any reason why, because I didn't think this information was in the police reports, or in the DVD. My mistake. I thought there was an issue that the victim recently told me about. The problem we have, you prepare for trial in September. Then you get a cancellation for several months later. You forget some things. I didn't want to surprise Counsel with it. But, clearly, it is on the tape, as I looked at it last night. It's in the report. And I missed it.

THE COURT: Okay.

MR. SAMEIRO: What we have is an episode,



(Colloquy)

4

1 where the victim got into contact with the defendant.
2 He actually says in the tape, it's coincidental, that
3 they saw each other. And that the defendant threatened
4 him. Said, if you go to the police, and file a report,
5 I've got friends who can take care of you, words to
6 that effect. Obviously, that bolsters his
7 identification.

8 It shows how sure he is. He has seen the guy
9 afterwards. And the defendant's statement is, in
10 effect, an admission of guilt. Which I want the jury
11 to hear. There is no reason why it couldn't come in.
12 Only because of my mistaken belief that Defense Counsel
13 wasn't on notice of it, that I chose not to go with it.
14 I heard it recently from the victim, before we started
15 this case. I just didn't connect it to anything that I
16 had in my file. I apologize for that.

17 THE COURT: When did that encounter occur?

18 MR. SAMEIRO: Several days before the photo
19 array procedure.

20 THE COURT: Before the photos.

21 MR. SAMEIRO: Clearly, it is the subject of
22 the interview, that Counsel doesn't want to get into
23 today.

24 THE COURT: Okay.

25 MR. SAMEIRO: He knows about it. He

(Colloquy)

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1 instructed me that he didn't want to replay the whole
2 interview of the victim. But he didn't want this
3 portion. I said to him, well, Counsel, I had an
4 opportunity to think about that last night. I'm going
5 to offer it.

6 THE COURT: Okay.

7 MR. SAMEIRO: I think he wants to raise a
8 Rule 403 objection. Let him do it. It's relevant and
9 the defendant is on notice as to it. So, there is no
10 surprise. And, clearly, I think it supports the
11 identification. Because Counsel has made an issue of
12 the height, weight descriptions, or, excuse me, the
13 clothing descriptions. And this is what was said to
14 Bobadilla, that the victim couldn't recall. I know
15 that Officer Bobadilla will be called by the defense,
16 and that's fine. He has a right to do that, as to
17 challenge the victim's inconsistencies, to present that
18 to the jury.

19 THE COURT: Okay.

20 MR. SAMEIRO: To show that the identification
21 is, perhaps, a mistaken one. So, it's important that
22 this information get in.

23 THE COURT: All right.

24 Mr. Gonzalez?

25 MR. GONZALEZ: Judge, actually it is



1 prejudicial. That outweighs its probative value in
2 this particular case. There is no question. Because
3 he wants to get the statement in. Essentially, he
4 wants to get the statement in. Essentially, he says
5 that he threatened him.

6 Judge, it wasn't in this trial. And the
7 reason I say that is, it's an unsubstantiated
8 allegation, so to speak, that was never reported to the
9 police, when it actually occurred. It really is
10 something that doesn't exist, as far as the evidence
11 is concerned. Because this is a pretrial motion that
12 should be dealt with prior to the trial -- to starting
13 the trial. The State should have been prepared to go
14 forward and make that application. If that had been
15 granted, then we'd be in a different situation.

16 As you notice, Judge, I addressed the issue
17 of the phone number before we started the trial,
18 because I knew that was an evidentiary issue that
19 could, potentially, affect this case. No question in
20 my mind that, if this, we'd be stopping while Mr.
21 Cedillo has been on the stand. We all agreed yesterday
22 -- Mr. Sameiro, out of his own words, said, you know
23 what, we can't get into this. Judge, we can't get into
24 this, out of his own words.

25 Now, it dawned upon him, after reviewing the

1 case, that he wants to get into this. That's not how
2 we try cases, Judge. Where, there is an attempt, after
3 the fact, to try to get something in. There was a
4 representation by Mr. Sameiro, that Mr. Cedillo called
5 the dispatcher. That is where we got the present sense
6 impression. Juan Perez is the guy who wrote down the
7 phone number, Judge.

8 MR. SAMEIRO: We're going off track. We're
9 going off track now.

10 MR. GONZALEZ: The reason I'm going there is
11 because we're suspecting something to happen. As far
12 as evidentiary, how is it going to get in? There was
13 an argument made as to the present sense impression.

14 MR. SAMEIRO: We're off track.

15 I mean it is really just an issue as to a
16 statement by a defendant.

17 THE COURT: Right.

18 MR. SAMEIRO: Judge, and, again, the only
19 reason why I didn't present it, I mistakenly believed
20 that Counsel wasn't put on notice; but he was. So,
21 therefore, we are -- I am entitled to make mistakes and
22 correct them during the trial. It's that simple.

23 THE COURT: I understand the issue. It's
24 just clearly -- It wasn't going to be something that
25 was going to be brought up during the trial. But that



1 doesn't stop somebody from requesting it, as it
2 wouldn't stop the defense, if the request was made to
3 the Court, for a consideration, as to a change in
4 strategy, for an additional piece of evidence or
5 information. It is simply the statement of the
6 defendant. You are absolutely right, in the sense that
7 it is an issue that you can cross-examine him on,
8 regarding why he didn't go to the police. There is
9 probably a myriad of questions that you can ask
10 regarding that statement.

11 MR. GONZALEZ: Right.

12 THE COURT: You're allowed to. And, simply
13 put, this is a statement made by the defendant. You
14 get to cross-examine the alleged victim on every aspect
15 of it. And my biggest concern would be, you have
16 certainly been on notice of the statement. You're
17 aware of it. You're on notice about it. Obviously, it
18 would have been, potentially, a problem, if you weren't
19 aware that he was going to be offering it.

20 MR. SAMEIRO: I never said that I wasn't. He
21 had every reason to think or to expect that I would
22 offer it. It was the kind of information that I would
23 offer to the jury. And, perhaps, I would think so.
24 And with the little sleep that I'm getting these days,
25 sometimes I make mistakes in putting cases together.

1 I'm human. I made that mistake.

2 I should have went with that in my opening.
3 It's in the tape. It is in Selesky's report as well.
4 And I glossed over that fact, as I prepared for this
5 case. I don't know what Counsel is talking about. Not
6 being here at the last trial, I don't know what he
7 meant when he said that. First of all, there was no
8 last trial. This case was called in, in September, to
9 go to trial. Counsel asked for an adjournment, because
10 he didn't have an Officer available to him.

11 MR. GONZALEZ: What I meant is the trial as
12 to the terroristic threats.

13 MR. SAMEIRO: That was not the subject of the
14 motion in limine. Counsel thought it would be.

15 THE COURT: Okay.

16 MR. GONZALEZ: Judge, it's a stretch. It's a
17 stretch. Things did not go his way with regard to the
18 cross-examination of that witness on that stand. It's
19 an attempt to subvert what's be entered into Evidence,
20 as of yesterday. And if we don't see that, Judge, the
21 offering of it, now, I think, we'd be turning a blind
22 eye to the prosecutorial tactics that are now trying to
23 be employed. And I don't, clearly, if we look to 403,
24 there is a probative value to this. There's no
25 question that it is.



1 THE COURT: Well, any statement made against
2 interest is clearly going to be prejudicial, no matter
3 what you do.

4 MR. GONZALEZ: But a statement against
5 interest has nothing to do with the robbery that
6 occurred.

7 MR. SAMEIRO: It has everything to do with
8 the robbery.

9 THE COURT: It sounds like that would happen,
10 as to April 24th, as to his observations.

11 MR. GONZALEZ: What he said to him, on this
12 particular day, dealt with April 24th, a subsequent
13 communication, if there even was one.

14 THE COURT: That's right. You get to
15 question him regarding that. I thought the
16 communication had something to do with the incident of
17 April 24th.

18 MR. SAMEIRO: Absolutely. In other words,
19 what he says to him is connected to this incident, in
20 some way, as to filing a police report. I'm going to
21 get even with you, in so many words.

22 MR. GONZALEZ: Even if he said it, even if I
23 agree with you --

24 THE COURT: You can certainly cross-examine
25 him as to this. As to my understanding, that it was

1 just a general comment. It didn't allegedly occur on
2 April 24th. It's a statement against interest, as any
3 statement would be prejudicial. The question is
4 whether its probative value is outweighed -- excuse me
5 -- whether its prejudice is outweighed by its probative
6 value. Quite frankly, what I'm hearing is, its
7 probative value outweighs any prejudice.

8 MR. GONZALEZ: That your Honor sustained my
9 objection yesterday with regard to Mr. Cedillo getting
10 into it.

11 THE COURT: But I think he testified -- It
12 was on direct examination.

13 MR. SAMEIRO: There was no objection. I was
14 wanting to put it in. Initially, I said I didn't want
15 it to go in. But I thought about it.

16 THE COURT: You know, that is why yesterday I
17 thought you were on the same page with it not coming
18 in. I didn't know.

19 MR. SAMEIRO: I wanted to stop him. I heard
20 him say something.

21 THE COURT: Frankly, I didn't know anything
22 about it, other than what Counsel told me later.

23 MR. SAMEIRO: Right.

24 THE COURT: But then, my understanding, you
25 both agreed, it wasn't coming in. That's where we left



1 it yesterday. Now, what the State is asking is to
2 allow them to get into it, because there was no notice
3 issue. He was mistaken that there would be. And,
4 simply put, it's a statement really against interest.

5 MR. SAMEIRO: And an observation, as well, of
6 the defendant, which helps to support the
7 identification which was made.

8 THE COURT: Okay.

9 MR. SAMEIRO: Judge, I'm prepared to do it on
10 redirect, unless Counsel wants to get into it on cross.
11 It's got no context of any cross. I'm just alerting
12 the Court how I would be prepared to proceed with that.

13 MR. GONZALEZ: I haven't touched it.

14 THE COURT: That is right. Nobody really
15 has.

16 MR. GONZALEZ: I haven't touched on it in the
17 cross.

18 THE COURT: Right.

19 MR. SAMEIRO: Of course.

20 MR. GONZALEZ: So, on redirect --

21 THE COURT: On redirect. He's asking to
22 re-open his direct, so, that he can bring that out.

23 MR. SAMEIRO: Exactly. To get into the area
24 of the encounter.

25 THE COURT: That's what he's asking.

1 MR. GONZALEZ: He already finished direct.

2 THE COURT: You're right.

3 MR. GONZALEZ: There was nothing on it.

4 THE COURT: You're on cross.

5 His request was to get back into it. Asking
6 the Court to allow him to open up his redirect, to
7 allow him to go into that area, to question him about
8 it.

9 MR. GONZALEZ: Well, from my purview of the
10 rules, redirect is aimed at what I got into on cross.

11 THE COURT: As I understand it, that's what
12 he is asking for.

13 MR. GONZALEZ: He should have done it, when
14 he entered his case in originally, Judge. It now
15 dawned upon him. Now, he's going to redirect on that
16 issue. He can't redirect on that issue because he is
17 done with his direct already.

18 MR. SAMEIRO: You know what, let's call a
19 spade, a spade. When I get stuck with some photographs
20 before jury selection, and I have to get up at four in
21 the morning, to go to a crime scene in the rain, to
22 look at it, because the Court let's evidence come in,
23 to protect the defendant's constitutional rights, and
24 this is the consequence.

25 I can only keep so much in my brain, when



1 defense attorneys pull these BS tactics. It's because
2 they want to keep us off our stride. But, you know
3 what, I got a good night's sleep last night. I had a
4 chance to look at the statement and the report. Wait a
5 minute. I missed this, Judge. That's the reality
6 here.

7 MR. GONZALEZ: Judge --

8 MR. SAMEIRO: In the rain yesterday --

9 MR. GONZALEZ: I'd just like to note, the
10 State said, we're here to protect the defendant. We're
11 not here to protect the defendant. The State lists all
12 these rules. All these rules that we develop as far as
13 the criminal laws.

14 THE COURT: Mr. Gonzalez, now, in fairness,
15 we have our rules. But there is discretion given to
16 the Court regarding, perhaps, this first area, that
17 Counsel just inadvertently missed -- had requested the
18 Court -- to allow the Court to come back -- to allow
19 him to open back up his direct, to go into this area.

20 MR. GONZALEZ: Judge, in this case, all
21 right, after hearing these things, and investigating --
22 Well, strike that. The phone number today, that we
23 used yesterday, has a new person -- okay -- attached to
24 the phone. I did a reverse phone look-up. And I
25 intend to offer that. Is your Honor going to strap me

1 -- Are you going to say, no, you can't do that?

2 THE COURT: No.

3 MR. SAMEIRO: This is new information.

4 THE COURT: Let's stay with one issue at a
5 time.

6 I mean, my feeling is --

7 MR. GONZALEZ: We're opening up a whole other
8 can of worms, essentially. It's the State's case. He
9 had a chance to do all that stuff. If the Court is
10 allowing him, on redirect, to get into the area, to
11 open up his direct, for the reasons set forth --

12 THE COURT: I'm looking at the rules
13 regarding statements against interest. I don't know
14 anything about it. In other words, if he wanted to get
15 into it on direct, and we already did his direct, there
16 would be nothing stopping him from doing that.

17 It clearly appears to be a statement against
18 interest. A hearsay statement.

19 MR. SAMEIRO: It's an admission by a party
20 opponent. Frankly, non-hearsay. If he said it, he
21 said it. I don't need a motion. I probably don't.

22 THE COURT: Even if you did, it comes in as
23 an admission.

24 MR. SAMEIRO: Right.

25 THE COURT: It would come in. The question



1 now is, does the Court allow the State to come back,
2 and get into the area, when they didn't get into it on
3 direct. Quite frankly, a trial is a search for the
4 truth. As I indicated, I would, most likely, allow it.
5 In any event, maybe he, inadvertently, did not get into
6 that area. He wishes to go back into that area,
7 whatever issues that you need to get into, you might
8 get into on cross. I certainly would allow you to go
9 into it, regarding that additional information.

10 And, you're right, to me, a trial is not
11 always perfect. If there are issues that you have,
12 like your photographs, yes, they were late. I'm
13 probably going to allow them in. It is not that kind
14 of issue. We're here for a search for the truth. And
15 that's why there are rules. They should be followed.
16 There are times, with the discretion of the Court, to
17 allow some leeway. So, I would allow the State to get
18 into the area, when we go back on redirect. And,
19 again, I will allow you enough time to cross on
20 anything. To cross on anything new, based on that.

21 MR. GONZALEZ: If I can make my argument, you
22 look at the rules, because it's now just been offered,
23 and, now, you're allowing it. I want to make the
24 record clear, as to my objection to that coming in. I
25 also want to review the video. I had it set up, so, it

1 would end at this particular time.

2 THE COURT: Okay.

3 MR. GONZALEZ: Now, I'd like to review it.
4 May I check on the video?

5 THE COURT: Okay. That is fine. I'll give
6 you a moment. Not a moment. You take how much time
7 you want. Take a look at it.

8 MR. GONZALEZ: I don't mean to obstruct the
9 nature of the proceedings. I know that we have a jury
10 waiting.

11 THE COURT: No, that's all right.

12 MR. GONZALEZ: I've got to get into these
13 issues. I have to create a record.

14 THE COURT: I have no problem with that.

15 MR. GONZALEZ: I appreciate that, Judge.

16 THE COURT: So, you let me know when you're
17 ready. The jury is still up here. I can send them
18 downstairs.

19 Mr. Gonzalez, I'll just ask you -- just tell
20 me -- I don't want to rush you -- I have the jury up
21 here -- 15, 20 minutes?

22 MR. GONZALEZ: Yes, Judge. I can't put a
23 number on it. I wish I could.

24 THE COURT: Then we'll let them go
25 downstairs. I don't want to hold them upstairs. That



1 is probably better. They can get some coffee. We have
2 some things to do. Just let me know when you are
3 ready.

4 MR. SAMEIRO: Can I make a suggestion?

5 THE COURT: That is fine.

6 MR. SAMEIRO: I heard what Counsel said, in
7 terms of wanting to cross him on the video or not. But
8 I don't intend to get into that on redirect. If he had
9 some lengthy cross, we could pause, and then we could
10 get in the redirect. Give the jury a break. But it is
11 his call. I understand that the things he has to think
12 about, with respect to the video, are not -- Is it all
13 right Counsel if we finish your cross, on the direct,
14 and then maybe bring the jury back?

15 MR. GONZALEZ: Most respectfully, Judge, I'd
16 rather have all my viewing, and then cross.

17 THE COURT: Okay. Fine. Let me know when
18 you are ready.

19 MR. GONZALEZ: I appreciate that, Judge.
20 Thank you.

21 MR. SAMEIRO: Thank you.

22 THE COURT: Thank you.

23 MR. GONZALEZ: I apologize to the staff for
24 prolonging things.

25 (Whereupon, a short recess was taken.)

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

3 MR. GONZALEZ: Just for the record, my
4 objection is standing. I'll rely on the arguments set
5 forth. Your Honor has made the ruling. I'll rely on
6 my arguments set forth. I looked at the tape. I have
7 decided I'm going to play it up until this point.

8 THE COURT: Okay.

9 MR. SAMEIRO: I would like to go past this
10 point. I intend to play it -- I mean that's up to him
11 -- on redirect -- whatever else he wants to do.

12 MR. GONZALEZ: I may make the gametime
13 decision and play it all the way through. I'm not sure
14 -- either way.

15 THE COURT: Okay. That's fine. I do note
16 your objection.

17 MR. GONZALEZ: For the purposes of displaying
18 the google search map to the jury, I attempted to use
19 the overhead projector.

20 THE COURT: How did it work? I mean, I'm not
21 good with that kind of stuff.

22 MR. GONZALEZ: Judge, I've done it before. I
23 just haven't been able to use --

24 MR. SAMEIRO: If Counsel asked me for some
25 technical assistance in the courtroom, that was brought



1 here not for just my use. It is our equipment.

2 MR. GONZALEZ: I don't know how to work this.

3 MR. SAMEIRO: I'm not making criticisms. I
4 said to him, if he said something to me at nine
5 o'clock, perhaps, I could have helped him more. I
6 don't have enough time really to get this going for
7 him. I said to him, to do it the old-fashioned way.
8 So, he can definitely show the documents to the
9 witness, like any other documents.

10 It doesn't have to be displayed. Frankly, I
11 would prefer that, in this case, because I don't know
12 if I'm going to roll over on the admissibility of these
13 documents, I don't know what the questions are going to
14 be.

15 THE COURT: Okay. So, I wouldn't necessarily
16 allow the display. Or you might object. If the Court
17 allows it, you might object.

18 MR. SAMEIRO: I might object to it. So, I
19 think it's not -- I think it's not prejudicial to the
20 defendant anyway, if the jury gets the documents at the
21 end of the case.

22 THE COURT: If they get the documents at the
23 end of the case that --

24 MR. GONZALEZ: Normally, it would be
25 demonstrative.

1 THE COURT: Do you think, in the interim,
2 we'll probably have time at lunch.

3 MR. SAMEIRO: I'll try to get help to do
4 this.

5 MR. GONZALEZ: If I can use them with
6 Detective Selesky.

7 MR. SAMEIRO: I'll work with him on it. I'll
8 call for the Elmo. It's not here. I'll get it hooked
9 up to the projector, and have the laptop hooked up to
10 the projector.

11 THE COURT: As you said, we can always do it
12 the old-fashioned way until we have it all set up.

13 MR. SAMEIRO: Yes, Judge.

14 MR. GONZALEZ: Yes, Judge.

15 THE COURT: Anyway, are we ready for the
16 jury?

17 MR. SAMEIRO: I'm ready.

18 MR. GONZALEZ: I'm ready.

19 THE COURT: Let's get the jury in.

20 (Whereupon, the jury enters the courtroom.)

21 THE COURT: Good morning, folks. I do
22 apologize for the delay. We are ready to proceed on
23 the matter.

24 We have our witness here. I'd ask Mr.
25 Cedillo to come up.



1 (Whereupon, the witness complies.)

2

3 **WILMER CEDILLO**, called as a witness on
4 behalf of the State, being duly sworn, testifies, with
5 the use of a Spanish Interpreter, as follows:

6 CROSS-EXAMINATION BY MR. GONZALEZ: (CONT.)

7 THE COURT: Okay. Is the microphone on?

8 It's on. It sounds like it is. Thank you.

9 Okay, Mr. Gonzalez.

10 MR. GONZALEZ: Thank you, Judge.

11 Q Mr. Cedillo, we're going to go over some of
12 the things we talked about yesterday, today. Is that
13 okay?

14 A Okay.

15 Q We talked previously about the money
16 situation at your job; correct?

17 A Yes.

18 Q You indicated that the account, which is the
19 counting of the money, which is in your hand, is what
20 you go by in determining how much you make that day;
21 correct?

22 A Yes. Yes.

23 Q Now, when, at the end of the day, or when you
24 actually meet up with Juan, who you give the money to,
25 do you give him cash?

1 A Yes.

2 Q You give him half the cash, and you keep half
3 the cash; right?

4 A Yes.

5 Q You don't get paid via, by way of a check at
6 your job; correct?

7 A No.

8 Q The identification that you indicated, that
9 was lost that particular date, or that was stolen from
10 you, is your work identification; correct?

11 A Yes.

12 Q What it includes on it, is a Social Security
13 Number, that you work under; correct?

14 A Yes.

15 Q And that number is used, so, that you can pay
16 taxes here in the United States of America; correct?

17 A Yes.

18 Q While you're working in the taxi company, you
19 didn't file any tax returns, did you?

20 A Yes. Because at the end of the year, he does
21 them, based on what we earned.

22 Q So, Juan does them?

23 A Yes.

24 Q And what you earned, he just, I guess, he
25 estimates the cash, because he destroys the records,



1 doesn't he?

2 MR. SAMEIRO: I object to this. There is no
3 foundation for this, first of all. Second of all, it's
4 an improper line of questioning. I don't know what
5 records he's referring to, that the records have been
6 destroyed. He testified to, in this case, to telephone
7 calls. It is just an improper line of questioning.

8 THE COURT: I'm not certain how much
9 information he can give us. He's not the individual
10 that keeps that information. I'm going to sustain the
11 objection regarding that last question. But I don't
12 know how he could know that information.

13 MR. GONZALEZ: I'll ask him if he knows how
14 Juan does the books.

15 MR. SAMEIRO: Judge, that is not relevant to
16 this case. I object to this on that basis.

17 MR. GONZALEZ: There is --

18 THE COURT: Well, I understand the line of
19 questioning. Here's what I'll do. Overrule the
20 objection to that question. Allow you to ask another
21 question. But there may be another objection coming.
22 We'll see.

23 MR. GONZALEZ: Okay.

24 Q Do you know how Juan does the books at your
25 job?

1 A He has his accountant.

2 Q Okay. So, you're not aware of how you get
3 paid, because you never get paid via check? You only
4 get cash each day; correct?

5 A Yes.

6 Q You receive a W-2?

7 A Yes.

8 Q Do you know what a W-2 is?

9 A It is about income taxes.

10 Q Now, you've been driving in New Brunswick for
11 three years; correct?

12 A Yes.

13 Q And you live in the area; right?

14 A Yes.

15 Q So, basically, you know this area very, very
16 well; correct?

17 A Yes.

18 Q How many times do you think you ever went to
19 400 Lee Avenue?

20 A I couldn't tell you. A lot. A lot. I have taken
21 a lot of customers over there.

22 Q You have taken a lot of customers there,
23 because, at that circle, as you described it yesterday,
24 there is an apartment complex, isn't there?

25 A Yes.



1 Q The name of that complex is Livingston
2 Terrace, isn't it?
3 A Yes.
4 Q Do you have any idea of how many apartments
5 are in that complex?
6 A No.
7 Q It runs from Livingston Avenue, right to Lee
8 Avenue; correct?
9 A Yes.
10 Q Also, a portion of that --
11 THE INTERPRETER: Excuse me?
12 Q A portion of that is also associated with
13 Woodnor Court --
14 THE INTERPRETER: The Interpreter did not
15 hear the name of the street.
16 MR. GONZALEZ: Woodnor Court.
17 Q -- correct?
18 A Yes.
19 Q It's a big place; right?
20 A Yes.
21 Q When someone gets in your taxicab, they say,
22 "bring me to 400 Lee Avenue," you know it's the circle;
23 right?
24 A Yes. Yes.
25 Q Many, many patrons, that get in your taxicab,

1 say, "take me to 400 Lee Avenue"; right?
2 A Yes.
3 Q That's the address that everybody uses, when
4 they're going there; correct?
5 A Yes. They call it the circle.
6 Q The circle of 400 Lee Avenue; right?
7 A Yes.
8 Q Then, you may imagine, that the people get
9 out, and they usually go towards the apartments;
10 correct?
11 A Yes.
12 Q Now, when you get to the end of that circle,
13 there is a bunch of cars in that area, that are usually
14 parked there?
15 A Yes.
16 Q There is also buildings surrounding the
17 circle?
18 A Yes.
19 Q Naturally, people live in those buildings;
20 right?
21 A Yes.
22 Q Originally, when you went to the police,
23 didn't you say you were robbed on Woodnor Court?
24 A No.
25 Q Now, yesterday, you testified that there was



1 one punch. And that Pablo Machado was the person that
2 punched you; correct?

3 A Yes.

4 Q You never punched back, did you?

5 A No.

6 Q You gave up; right?

7 A Yes.

8 Q Naturally, you saw the gun, and you got
9 afraid; right?

10 A Yes.

11 Q Didn't you tell Officer Bobadilla, that you
12 swung back at the people in the car?

13 A No.

14 Q You never said that; right?

15 A No.

16 Q You never told Officer Bobadilla, that the
17 people outside of the car, threw you to the ground and
18 struck you; correct?

19 A Could you repeat the question?

20 Q You never told Officer Bobadilla, that the
21 suspects, that came from -- the suspects that came from
22 behind the cars, threw you on the ground, and struck
23 you, while you were on the ground?

24 A Yes. I wanted to try to get out. But they only
25 let me get my feet out. But I always stayed in the

1 car.

2 Q So, you were never on the ground?

3 A No. No.

4 Q You never told Officer Bobadilla, that you
5 went to the ground; correct?

6 A No. No. Afterwards. Afterwards, I was on the
7 ground because of the blood. I was on the ground
8 because of the blood.

9 Q So, then, you never got out of the car?
10 Then, after you were bleeding, after you got robbed,
11 and the guys ran away, you then got out of the car?

12 A Yes. Yes. When they ran away, then I got out of
13 the car.

14 Q So, you stayed there after they robbed you?

15 THE INTERPRETER: The Interpreter needs to
16 request repetition.

17 A I got back in the car. I got back in the car
18 afterwards, to go over to 153 Joyce Kilmer, where my
19 boss lives.

20 Q You told Officer Bobadilla that; right?

21 A Yes. Yes.

22 Q Do you remember telling Officer Bobadilla
23 that the suspects punched and kicked you one last time,
24 and then ran away?

25 A Yes. They went through my pockets again, to see



1 if I had any more money, and then they kicked me. They
2 wanted to be sure they were taking everything.

3 Q That's when you were outside of the car;
4 right?

5 A No. I just had my feet out.

6 Q So, yesterday, you told us, that they had
7 punched you one time? Today, you're telling us that
8 they kicked you?

9 A Yes. Because yesterday -- I wasn't asked that
10 question yesterday.

11 Q You were never asked yesterday, if this was a
12 one-punch event yesterday?

13 A Yes. What was said to me was about the punch.

14 Q You also told Detective Selesky, through
15 Officer Matias, this same story on July 25th; right?

16 A Yes.

17 Q You told them that, you went to 153 Kilmer
18 Avenue?

19 A Yes. Yes. Yes, I did.

20 Q You also told them who Juan was; right?

21 A Yes. I did tell him.

22 Q You told them it was Juan Perez?

23 A Yes. He asked me. He asked me who my boss was.

24 Q You told them you spoke to him, and he lived
25 at 153 Joyce Kilmer; right?

1 A Yes. I didn't tell him the number. He just said
2 to me, who is your boss. And I said to him, Juan
3 Perez.

4 Q When you talked to Officer Bobadilla the
5 first time, on April 24th, you told Officer Bobadilla,
6 that you got up, and then called your job; correct?

7 A Yes. I called. I went to 153 Joyce Kilmer. Then
8 I tried to call. And then I thought it would be better
9 to knock on the door. And he was the one who got in
10 touch with the base.

11 Q But you told Officer Bobadilla, that you
12 called your job, and that you got the number from the
13 base; correct?

14 A Yes, that's how I told him.

15 Q That's not how it happened though; right?

16 A Yes. Because the boss gave it to me. I tried to
17 call. He gave me the phone number. And he said, make
18 the report from this phone number, because that's where
19 they called from.

20 Q A lot of people call the base from 400 Lee
21 Avenue; right?

22 A Yes. Yes. That's right.

23 Q There could be, on an average day, that you
24 go there ten times?

25 A Yes. Yes. Yes.



1 Q Other cab drivers also go there; correct?

2 A Yes. Of course. Of course. There are different
3 companies. And every company has their own customers.

4 Q It's safe to say, that there is an ingress
5 and an egress, inside 400 Lee Avenue, on a constant
6 basis with taxi cabs?

7 A I couldn't tell you that. Sometimes they call,
8 sometimes they don't.

9 Q You only know about the calls that you get;
10 right?

11 A Yes. The ones I receive.

12 Q Doesn't the dispatcher say an address over
13 the air, and see who can go there?

14 A Yes. He says, whoever is closest to the address
15 should go, to be able to answer that call the quickest.

16 Q You've been inside of the dispatcher's office
17 before?

18 A Yes.

19 Q Calls are coming in constantly; correct?

20 A Yes. Yes.

21 Q Things are dispatched constantly; correct?

22 A Yes.

23 Q When you went to the police station, and
24 talked to Officer Bobadilla, you had a piece of paper
25 in your hand; right?

1 A Yes. Yes.

2 Q You gave it to Officer Bobadilla; right?

3 A Yes. He noted the number. I don't know if he
4 kept the paper.

5 Q A year and a half passed since then; right?

6 A Yes.

7 Q You don't know the number by heart; right?

8 A No. When I look at the report, I remembered.

9 Q So, any number you would have saw on that
10 report, you would have said it was the right number;
11 right?

12 A No. Because when I was told that four months
13 after, from April to July, I still remembered the
14 number really, really well.

15 Q You remember the number that was written on
16 the paper; right?

17 A Yes. Yes. Yes. I still even know it by memory.

18 Q You never ever spoke to "el flaco"; right?

19 A He talked to my boss. And he gave him the number,
20 right around that same time. And that's the number
21 that I gave to the police.

22 Q So, Juan talked to "flaco"; right?

23 A Yes. Yes. Yes.

24 Q If that never happened, you would have never
25 known of his number, that was used to call in this



1 particular case; correct?

2 A Yes, I would have checked it out. I would have
3 checked it out.

4 Q You never followed up, to check it out, did
5 you?

6 A Yes. I did talk to "el flaco." And he told me,
7 later, yes, that was the number that they call from.

8 MR. GONZALEZ: If you can just give me a
9 moment? Excuse me.

10 Q So, July 25th, you remembered making that
11 statement naturally; right?

12 A Yes.

13 Q Everything you testified to yesterday and
14 today, is the same that you swore to, and told
15 Detective Selesky, and Officer Matias at that time;
16 correct?

17 A Yes.

18 MR. GONZALEZ: I'm waiting for the projector
19 to warm up.

20 Q That's you in the picture; correct?

21 A Yes.

22 Q You grew your hair out since then; right?

23 A Yes.

24 Q Now, that's Officer Matias to your right;
25 correct?

1 A Yes.

2 Q That's Detective Selesky across from you;
3 correct?

4 A Yes.

5 MR. GONZALEZ: Judge, for the record, it's
6 S-2, I think.

7 MR. SAMEIRO: No. S-1.

8 MR. GONZALEZ: For the record, I'm going to
9 play S-1, from 22:12:55. The date that's on this
10 particular exhibit is July 25, 2007. It is a
11 recordation of the statement made by Wilmer Cedillo, on
12 July 25th.

13 (Whereupon, the videotape is played for the
14 jury.)

15 MR. GONZALEZ: There are some technical
16 difficulties. I'm trying to figure it out. The tape
17 played to 17:16.

18 (Whereupon, the videotape is stopped.)

19 MR. GONZALEZ: Judge, if I can, I have my own
20 laptop. I have my own laptop. I can insert that same
21 disk inside my laptop to make sure it's operating
22 correctly. I think that mine plays straight through.

23 MR. SAMEIRO: Judge, can I make a suggestion?
24 It's possible that the disk -- if we just remove it and
25 wipe it off, you may avoid doing that.



1 THE COURT: We can try that.

2 MR. SAMEIRO: I'm only suggesting that to
3 Counsel.

4 MR. GONZALEZ: I am not necessarily a techie.
5 But I will do exactly what Mr. Sameiro suggests. There
6 is a lot of stuff on it.

7 THE COURT: I know that's what we do at home.

8 MR. SAMEIRO: The disk is removed from the
9 laptop. It should cue up to where you left off. But
10 we'll see.

11 MR. GONZALEZ: 17:16. There is dirt and
12 scratches. I have my own copy. I have a copy that we
13 can mark. It is the same as the one that the State
14 gave us.

15 MR. SAMEIRO: That smudge and dirt is a
16 little trick on my part.

17 (Whereupon, the videotape is continued to be
18 played for the jury.)

19 MR. SAMEIRO: Judge, Counsel stopped it at
20 22:25:55.

21 As far as the time stamp.

22 MR. GONZALEZ: Actually let the record
23 reflect that, Judge.

24 THE COURT: Okay.

25 Q Now, Mr. Cedillo, on July 25th, you weren't

1 able to give a description of those people that robbed
2 you on that date; is that correct?

3 A No. But I was shown photographs, and I know it's
4 him.

5 Q Also, you said you got -- You said you got
6 hit in the face?

7 A Yes. Yes. After so many questions I've been
8 asked in this case, now, I see the video, and I
9 remember well. And everything that is there is true.

10 Q Everything that's on the video is true?

11 A Yes. Yes. Yes.

12 Q So, your story that you told us yesterday and
13 today is not true?

14 MR. SAMEIRO: I'm going to object to that.

15 MR. GONZALEZ: It's a valid question.

16 THE COURT: No. I'm going to sustain the
17 objection. I ask you to rephrase the question.

18 Q So, the entire story, that you have told,
19 yesterday and today, is that more true, or is this
20 version more true?

21 A It's the same. It's all the same. It's almost
22 exactly all the same. There were a few things you
23 don't remember after a year and a half.

24 Q When the event happened, on April 24th, you
25 went to Juan Perez's house. You came out of Juan



1 Perez's house, and you went to the police; right?

2 A Yes. Yes. In April.

3 Q In April.

4 A He is saying July.

5 Q I'm sorry. I apologize. April 24th, right
6 after this happened.

7 A Yes. Yes.

8 Q You went directly to the police, and you told
9 them a recounting of the events that occurred on April
10 24th; right?

11 A First, I went to my bosses, and then I was over
12 there. I was waiting for someone to translate for me
13 into Spanish. I was waiting for awhile for Officer
14 Bobadilla.

15 Q You waited awhile for Officer Bobadilla;
16 right?

17 A Yes. Yes.

18 Q Officer Bobadilla speaks Spanish; right?

19 A Yes. Yes.

20 Q And you told him the story about what
21 happened?

22 A Yes. Yes.

23 Q And it's the same story that you told us
24 yesterday and today; right?

25 A Yes.

1 Q The same story that you told the police on
2 July 25th; right?

3 A Yes.

4 Q And -- Okay. Excuse me. Strike that. Now,
5 Mr. -- excuse me -- Detective Selesky asked you if they
6 punched you. Well, he asked you, where the people were
7 in the car; right?

8 MR. SAMEIRO: Judge, I'm going to object to
9 that because the DVD flatly contradicts that question.
10 He never asked that question.

11 THE COURT: Mr. Gonzalez?

12 MR. GONZALEZ: I'll rephrase.

13 THE COURT: Thank you.

14 Sustained.

15 Q When Detective Selesky told you, that the
16 people in the back hit you, you agreed; right?

17 A Yes. Yes.

18 Q And at no moment, during this statement, did
19 you say that anyone was sitting in the passenger seat;
20 right?

21 A No. No. No.

22 Q You told us that yesterday; right?

23 A Yes. Yes.

24 Q And you told Officer Bobadilla, that the
25 person was sitting in the back; right?



1 A Yes. Everything I remembered just now, what's
2 there, it's all exact. It's about five times. I said
3 it once. And then you called me. And it's all
4 questions and questions. And it confuses you. But
5 what's on the video is exact.

6 Q That means the guy was sitting behind you?

7 A Yes. I really remember everything. I really
8 remember everything well. Because I was shown the
9 video. It's been a year and a half.

10 Q You changed your story when you came in here
11 yesterday; right?

12 A It had been a year and a half. But the story has
13 not changed. Almost everything is -- almost exactly
14 everything is almost exactly the same. All of it.

15 Q You said in the tape, in this video
16 statement, that, coincidentally, you saw Pablo Machado
17 the day before; right?

18 A Yes. The day before. But that was in July.

19 THE COURT: Mr. Gonzalez, might this be a
20 good time to break for lunch?

21 MR. GONZALEZ: Sure, Judge. Have lunch.

22 THE COURT: All right. That's what we're
23 going to do. We'll break for lunch right now. I ask
24 you to be back downstairs at 1:30. We'll bring you up
25 and resume the testimony in the trial. Please

1 remember, do not discuss the testimony among yourselves
2 or with anyone else. If there is anything in the
3 newspapers, please do not read it, or listen to anyone
4 else discuss it. See you back downstairs at 1:30.
5 Have a nice lunch.

6 (Whereupon, the jury leaves the courtroom for
7 lunch.)

8 (Whereupon, a luncheon recess was taken.)

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

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

2 THE COURT: Thank you. Please have a seat.

3 Are we all ready?

4 MR. GONZALEZ: Yes.

5 MR. SAMEIRO: Yes, I am ready.

6 THE COURT: Come up, Mr. Cedillo.

7 (Whereupon, the witness complies.)

8 (Whereupon, the jury enters the courtroom.)

9 THE COURT: Okay, folks. We're ready to
10 continue.

11 Mr. Gonzalez?

12 Mr. Cedillo, I remind you that you're still
13 under oath.

14 THE WITNESS: Okay.

15 THE COURT: Thank you.

16 Q Mr. Cedillo, yesterday you said, the guy was
17 sitting next to you; right?

18 A Yes.

19 Q Today you're saying, the guy who robbed you
20 was sitting behind you; right?

21 A Yes. But since I remember, because of the video,
22 well, you know, you are not going to remember from a
23 year and a half.

24 Q So, yesterday, you stated you had, when Mr.
25 Sameiro asked you, on direct examination, that you had

1 the ability to see the man's face?

2 A Yes.

3 Q Now, since he was sitting behind you, that
4 story is changed, too, now; right?

5 A Yes. But then he moved next to me, to take
6 everything from me.

7 MR. GONZALEZ: I have no further questions.

8 THE COURT: Thank you. State?

9 REDIRECT EXAMINATION BY MR. SAMEIRO:

10 Q Mr. Cedillo, have you ever testified in a
11 courtroom before?

12 A No. This is the first time.

13 Q Are you comfortable, nervous, scared, happy?
14 What would be the best word, out of that group, to
15 describe how you are feeling?

16 A I'm nervous. This is the first time.

17 Q Okay. How about when you spoke to the police
18 officers on the date that you were robbed, how were you
19 feeling that day?

20 A Nervous also. It was the first time I made that
21 report. The first time something like this happens in
22 my entire life.

23 Q Are you nervous being in the room with the
24 man who robbed you at gunpoint?

25 A Of course, I am.



1 Q Since the event, that took place on April 24,
2 2007, was there a time where you saw him, and he made a
3 threatening gesture to you?

4 A Yes. Instead of it being, I was the one who was
5 angry, it was him who was threatening me.

6 Q Did that take place before you went to the
7 police, and looked at the pictures that we have talked
8 about, on that July 25th date?

9 A Yes.

10 Q Do you remember how many days before you had
11 that encounter with him?

12 A One day before.

13 Q Where did you see him?

14 A On Remsen.

15 Q In New Brunswick?

16 A In New Brunswick.

17 Q Remsen is Remsen Avenue?

18 A Yes.

19 Q You remember where on Remsen Avenue?

20 A 164 Remsen. There was a restaurant that used to
21 be called the --

22 THE INTERPRETER: The Interpreter didn't get
23 the name, your Honor.

24 A "Catracho."

25 Q Was there a restaurant there at the time, at

1 164, where you saw the defendant?

2 A No. It's "a la barra." It's next to 164.

3 Q Did you say "a bar"?

4 THE INTERPRETER: The Interpreter wants to
5 clarify the expression.

6 A "A la par." Nearby. It is nearby 164.

7 Q You were nearby the restaurant when you saw
8 the defendant?

9 A Yes. Yes. Yes, I did.

10 Q Was he outside of the restaurant?

11 A Yes. Yes.

12 Q Where was he?

13 A He was sitting there at the limit of the other
14 house next door.

15 Q By the sidewalk?

16 A On the sidewalk.

17 Q What were you doing in that area?

18 A I was just going by because I was working. He was
19 the one who made the signs to me. He did this.

20 Q What kind of signs did he make?

21 A He did this (indicating).

22 Q Indicating with your left index finger in the
23 air?

24 A Yes. Yes. Yes.

25 Q Did he say anything to you?



1 A No. No. No. I went -- I just went by. And then
2 I turned around, just to recognize him properly.

3 Q You were driving by when you saw him?

4 A Yes. Yes.

5 Q And you interpreted that gesture as
6 threatening?

7 A Yes. Like he is the person who stole from me.
8 Since he is the person who stole from me.

9 Q Did you report that to the police when you
10 spoke to them on this video that we just saw?

11 A Yes. I told them I had seen him a day before.

12 MR. SAMEIRO: Judge, I'd like to play that
13 portion of the tape.

14 THE COURT: Any objection to that portion?

15 MR. GONZALEZ: No.

16 MR. SAMEIRO: Your Honor, I believe this is
17 exactly where Counsel left off. Where he stopped it
18 was at 22:25:55.

19 MR. GONZALEZ: I would agree as well.

20 MR. SAMEIRO: I want to now play this to the
21 end.

22 (Whereupon, a portion of the videotape is
23 played for the jury.)

24 MR. SAMEIRO: Judge, for the record, I just
25 now stopped the tape. The occupants are out of the

1 room. And the time stamp is 22:26:40.

2 THE COURT: Okay.

3 Q Mr. Cedillo, did you just see that?

4 A Yes.

5 Q I heard you say on the video, that the
6 defendant actually said to you, that he had some
7 friends that would get you?

8 A Yes. Yes.

9 Q Do you remember him saying that?

10 A Yes. Yes. I remember.

11 Q Have you and I gone over this video recently,
12 in preparation for trial?

13 A Yes.

14 Q We have? Recently? Within the last couple
15 of days?

16 A No. No. Oh, no. No.

17 Q Do you remember us going over the video?

18 THE INTERPRETER: I am sorry?

19 Q Do you remember us going over this video?

20 A Yes. Yes. But it was a while ago.

21 Q Summer? In the summer?

22 A Yes.

23 Q You weren't asked to memorize any of this,
24 were you?

25 A No. No.



1 Q In fact, you weren't --

2 MR. GONZALEZ: Judge, just to note that the
3 questions are leading.

4 MR. SAMEIRO: I'll withdraw that.

5 MR. GONZALEZ: The leading nature of the
6 questions.

7 THE COURT: Okay.

8 Q I'm going to show you what's been marked S-5,
9 Officer Bobadilla's report. Can you just look at this?
10 Both pages?

11 A (Witness complies.)

12 Q Do you know what that is?

13 A Yes.

14 Q What is it?

15 A It's the report, and the telephone number is
16 there.

17 Q You recognize the number; right?

18 A Yes.

19 Q Because that's in the same language as you
20 would have, in Spanish, that number?

21 A Yes.

22 Q That's Officer Bobadilla's report, written
23 totally in English, isn't it?

24 A Yes.

25 Q Outside of that number, do you understand

1 anything on that report?

2 A No. No. It is in English.

3 Q Because it is in English?

4 A Yes. Yes. Yes.

5 Q Did you go over this report in preparation
6 for trial today?

7 A Yes. Yes.

8 Q How did you go over it?

9 A No. In Spanish, I read it on this day. I read
10 everything, so, I could sign it.

11 Q Are you, perhaps, confused with what you read
12 on July 25th, with respect to the photo array?

13 A No. No. No.

14 Q You've been asked a lot of questions
15 concerning what you allegedly said to Officer
16 Bobadilla by Mr. Gonzalez; right?

17 A Yes. Yes.

18 Q And you got to understand, that a lot of
19 those questions, that were asked by Counsel, came from
20 Bobadilla's report? You understand that?

21 A Yes. Yes.

22 Q So, you had a conversation with him about the
23 event, within an hour after being robbed; right?

24 A Yes. Yes.

25 Q We have established you were nervous that



1 day?

2 A Yes. Yes.

3 Q We're relying on Bobadilla's translation?

4 A Yes.

5 Q With respect to the questions that Mr.
6 Gonzalez has asked you?

7 A Yes.

8 Q Now, one of the things that you were asked,
9 based upon this initial interview, was how you
10 described the defendant's height. You remember that
11 question by Mr. Gonzalez? How tall was the guy who
12 robbed you?

13 A Yes. Yes.

14 Q You remember what your answer was to Mr.
15 Gonzalez?

16 A Yes. Yes. I told him 5'8".

17 Q Did you say that the guy was as big as you?
18 You remember saying that to him yesterday?

19 A Yes.

20 Q Now, we have established then, perhaps, that
21 you are five foot eight; right?

22 A No. 5'6".

23 Q That's how tall you are?

24 A Yes. Yes. It is on my driver's license. I just
25 checked it outside.

1 Q You know what this is?

2 A Yes.

3 Q What is it?

4 A It's a measuring tape.

5 Q Since height is going to be an issue in the
6 case --

7 MR. SAMEIRO: Counsel, would you help me?

8 MR. GONZALEZ: Not a problem.

9 Q So, you think you might be 5'6"?

10 A Yes. Yes. Yes.

11 MR. GONZALEZ: Let me know when you need me.

12 Q Come over here, please, Mr. Cedillo. Stand
13 up. I'm going to ask you to draw a line to mark Mr.
14 Cedillo's height on this sheet of paper on the easel.

15 MR. GONZALEZ: It doesn't reach. It's higher
16 than the paper.

17 MR. SAMEIRO: What would you say it is up to?

18 MR. GONZALEZ: Up to right here (indicating).

19 MR. SAMEIRO: So, to the edge? Would you say
20 to the edge?

21 MR. GONZALEZ: A little higher than that edge
22 (indicating).

23 MR. SAMEIRO: About where this black marking
24 is.

25 Counsel, come over here. What do I have in



1 my hand (indicating)? A tape measure?
2 MR. GONZALEZ: You can ask him.
3 MR. SAMEIRO: A tape measure (indicating).
4 MR. GONZALEZ: I'd rather not testify.
5 MR. SAMEIRO: Would you say, Counsel, that is
6 about 68 inches on that tape measure?
7 MR. GONZALEZ: You can ask him.
8 Q How many inches?
9 A 68.
10 Q That translates to what? Five foot eight?
11 A Yes. Yes.
12 MR. SAMEIRO: Judge, I'd ask you to direct
13 the defendant to stand here. I want to measure him now
14 myself.
15 THE COURT: Ask Mr. Machado?
16 MR. SAMEIRO: I'm asking that the defendant
17 stand right here. Come over here so, I can measure his
18 height.
19 THE COURT: Okay. Mr. Machado?
20 (Whereupon, the defendant complies.)
21 MR. SAMEIRO: Perhaps, you can assist me.
22 MR. GONZALEZ: Sure.
23 MR. SAMEIRO: Why don't you draw a level
24 line?
25 MR. GONZALEZ: Sure. That would be about

1 here (indicating)?
2 MR. SAMEIRO: A little bit lower. A little
3 lower. You can mark it. You're sure that's level,
4 Counsel? I know you wouldn't want to cheat, would you?
5 THE COURT: All right, Mr. Machado, you can
6 have a seat. Thank you, sir.
7 (Whereupon, the defendant complies.)
8 MR. SAMEIRO: Mr. Cedillo, you can come over
9 here.
10 (Whereupon, the witness complies.)
11 Q I'm going to put this ruler where that mark
12 was made. Now, look at the number. This top mark here
13 (indicating). What you got?
14 A 64.
15 Q 64 inches; right?
16 A 64 inches.
17 Q That's five foot four; right?
18 A 5'4", yes.
19 Q Did you see the defendant walk by?
20 A Yes.
21 Q You saw him standing there next to you?
22 A Yes.
23 Q You still think he's about your height?
24 A No. Because he is a bit smaller.
25 Q You mentioned that your card has five foot



1 six?

2 A Yes. Yes.

3 Q Is that your worker's permit?

4 A No. I'm saying my driver's license. With me, it
5 says 5'6".

6 Q Let's get off the subject of the height. Do
7 you have your worker's permit?

8 A Only my license.

9 Q What license is that? Issued by what agency?

10 A New Jersey. Because of the work permit, you can
11 have it here.

12 Q Do you have your work permit with you?

13 A No. No. No, I don't.

14 Q Let me see the driver's license.

15 A (Witness complies.)

16 MR. SAMEIRO: Judge, I'd like the jury to see
17 this.

18 THE COURT: Any objection?

19 MR. GONZALEZ: I have no objection.

20 MR. SAMEIRO: I don't want to mark it as an
21 exhibit. Then I can't return it to him.

22 THE COURT: Well, we'll just need something
23 to identify it.

24 MR. SAMEIRO: It's the license. I can mark
25 it; but --

1 MR. GONZALEZ: I wouldn't object if he marks
2 it per se. We can make a photocopy.

3 MR. SAMEIRO: That's fine. I'd like to mark
4 it as an exhibit, Judge. But just for the sake of
5 time, we can do it later. I'd like to just pass it
6 among the jury, so, they can see it, look at all the
7 authentication markings on it.

8 THE COURT: That's fine. It's his New Jersey
9 driver's license?

10 MR. SAMEIRO: Yes.

11 THE COURT: Counsel, you want to look at it?

12 MR. GONZALEZ: I trust that it came from his
13 pocket. I will look at it as it comes back.

14 THE COURT: All right.

15 (Whereupon, the driver's license is passed
16 through the jury.)

17 THE COURT: Mr. Cedillo can have a seat;
18 right?

19 MR. SAMEIRO: Yes.

20 (Whereupon, the witness complies.)

21 MR. GONZALEZ: If you don't mind, I will look
22 at it after the last juror.

23 MR. SAMEIRO: Sure.

24 THE COURT: Thank you.

25 Q Can you say how tall I am, sir?



1 A No. No.

2 Q You don't even want to guess?

3 A No. No.

4 Q But, at the time, when you spoke to Officer
5 Bobadilla, you thought the man that robbed you was
6 about your height? Was that your testimony?

7 A Yes. Yes.

8 Q Counsel has asked you, maybe a dozen times or
9 more, whether your so-called story is the same today as
10 it was before. Do you recall all those questions, and
11 the variations of the same questions?

12 A Yes. Yes. Yes.

13 Q With those questions in mind, would you say
14 your different accounts are word for word the same?

15 A Would you please repeat the question?

16 Q You spoke to Officer Bobadilla about what
17 happened on April 24th; correct?

18 A Yes.

19 Q Then you gave another statement that was
20 videotaped in July of '07; correct?

21 A Yes. Yes.

22 Q But you got to see today -- In which you got
23 to see today in court; right?

24 A Yes.

25 Q And you've been here testifying about the

1 same event yesterday and today; correct?

2 A Yes.

3 Q Would you say all three versions are word for
4 word the same?

5 A What I said is on the video, and it is true what I
6 have said. But, yes, the gentleman has been asking me
7 questions, trying to confuse me. I don't know why.

8 Q I'll ask you the question differently. Are
9 the essential facts of this case the same, in terms of
10 your different accounts?

11 A Yes. Yes. Yes.

12 Q All right. Now, just a few other points.
13 I'm going to move on. You didn't recall the day that
14 this happened; right?

15 A (No verbal response.)

16 Q You did not recall the day of the incident
17 that took place? What day of the week April 24th was;
18 right?

19 A Yes. I remember. Well, first, I forgot.

20 Q I think something got lose in translation. I
21 want to know the date -- Monday, Tuesday, Wednesday --
22 I mean the day. My mistake. The day, Monday, Tuesday,
23 Wednesday, Thursday, Friday.

24 A No. No. No. No, I don't.

25 Q So, when you told Mr. Gonzalez yesterday, you



1 didn't know what day it was, if I told you it was a
2 Tuesday, would that jar your memory?

3 A No. No. No. All I know, it was April 24th.

4 Q Let's assume it was a Tuesday. Would you be
5 getting a whole bunch of telephone calls for taxi rides
6 on a Tuesday morning at 4:40 a.m.?

7 MR. GONZALEZ: Objection, Judge. He doesn't
8 receive the calls.

9 MR. SAMEIRO: You asked him how many calls
10 the cab company gets. You made it sound like they get
11 calls every two seconds.

12 MR. GONZALEZ: I don't think he knows how
13 many calls came in.

14 MR. SAMEIRO: You raised the question.

15 THE COURT: Okay. Let's see if he knows, one
16 way or the other. If he knows, it is okay for you to
17 ask.

18 Q Can you answer my question?

19 A No. No. They confused me.

20 Q How busy is the Victoria or Acapulco Cab
21 Company, at around 4:40 a.m.? How many calls would you
22 say you would get for cab fares?

23 A I cannot tell you, because the one who receives
24 all the calls is the dispatcher. And he also sends
25 them to all of the cars.

1 Q Are you busy on a Tuesday, at 4:30 in the
2 morning? Generally, on a Tuesday, at 4:30 in the
3 morning?

4 A No. No. No. It is the time when people are
5 going to work. From four on.

6 Q Did you not say yesterday, your busy days
7 were Friday, Saturday, Sunday and Monday?

8 A Yes.

9 Q So, Tuesday is not in that listing; right?

10 A No. No.

11 Q And, on this point, if Friday, Saturday,
12 Sunday, and Monday are your best days, you would then
13 collect the most fares, the most money, on those days?

14 MR. GONZALEZ: Objection to the leading
15 question.

16 THE COURT: Sustained. I just ask you to
17 open it up.

18 Q During what days of the week do you collect
19 the most fare money on average?

20 A Well, I used to give him the money whenever I saw
21 him. Because he trusted me.

22 Q Are you still nervous, sir?

23 A Yes.

24 Q With all due respect, did you understand my
25 last question?



1 A Yes. Yes. You said -- If you would please repeat
2 it?

3 Q I'll ask it differently. At the end of your
4 shift, when you collect all the money, what days of the
5 week do you have the most money?

6 A No, I can't -- No, I cannot tell you. Because
7 sometimes I have had quite a bit of money.

8 Q It is just when you saw the boss?

9 A When I see the boss.

10 Q Let me move on. On this particular day, that
11 you were robbed, did you tell us that you had two days'
12 worth of monies in your possession?

13 MR. GONZALEZ: Objection. Because it's
14 leading.

15 THE COURT: All right.

16 MR. SAMEIRO: He could say "yes" or "no."

17 THE COURT: It doesn't really suggest the
18 answer. It's got a lot of information in it. It
19 really doesn't suggest the answer. It is open to a
20 "yes" or "no."

21 MR. GONZALEZ: The question could be so not
22 leading. "What did you tell us."

23 THE COURT: Well, a leading question is one
24 that suggests the answer. If it doesn't suggest the
25 answer, it is still an okay question. I'll overrule

1 the objection.

2 Q Do you remember the question?

3 A Yes.

4 Q Can you answer it, please?

5 A Yes. Yeah. You asked me if the money was for two
6 days. Yes, it was. That was his money.

7 MR. SAMEIRO: Your Honor, I have nothing
8 else. Thank you.

9 THE COURT: Anything else, Mr. Gonzalez?

10 MR. GONZALEZ: Very, very quickly.

11 RECROSS EXAMINATION BY MR. GONZALEZ:

12 Q Now, on the date that you were driving the
13 taxi, on April 24, 2007, were you carrying a wallet?

14 A Yes.

15 Q In your wallet, you keep your driver's
16 license?

17 A Yes.

18 Q Your identification card?

19 A Yes. Yes.

20 Q Credit cards maybe, if you have some?

21 A Yes. The banks.

22 Q Probably your own money; right?

23 A Yes. Yes. Yes.

24 Q And the other money is probably kept in your
25 pocket or hidden somewhere in the car; correct?



1 A No. No. I don't hide it. I always have it in my
2 pocket.

3 Q So, it is always in your pocket. The five
4 hundred dollars, that you say was stolen from you, was
5 in your pocket; right?

6 A Well, no. One part in my pocket, another part in
7 my wallet.

8 Q So, your wallet. Where do you usually keep
9 that? In your pockets, in the car somewhere? Where do
10 you usually keep it?

11 A No. In my pocket (indicating).

12 Q Okay. You testified earlier that they took
13 the identification card from you only; right?

14 A Yes.

15 Q So, during the robbery, they took out of your
16 wallet -- They took only your identification card?

17 A Yes. And the money. They took the money that was
18 there. And my ID card went with it.

19 Q They gave you back your wallet?

20 A They threw it. They threw it there.

21 Q You picked it up?

22 A Yes. I picked it up.

23 Q You still had your license; right?

24 A Yes. Yes.

25 Q Could you read for the jury what was the date

1 that that license was issued?

2 A 7/25/2007.

3 Q "Viente cinco"?

4 MR. GONZALEZ: I apologize. Sometimes you
5 think in Spanish. I apologize.

6 Q July 25, 2007?

7 A Yes. Yes. Yes. I have the old one here. This
8 is a renewal.

9 Q Okay. Is that a coincidence, too?

10 A Yes. Yes. Because of the work permit, we have to
11 renew it every 18 months. The immigration sends us to
12 renew it, and the driver's license as well.

13 Q So, you testified, just a minute ago, they
14 gave you -- they took out your ID card, and they threw
15 your wallet on the floor; right?

16 A Yes.

17 Q This detail, you remember that today?

18 A Yes. Yes.

19 Q You never told anyone that before; right?

20 A No. No. No.

21 Q Now, you testified earlier, that you saw that
22 gentleman the day before you spoke to the police;
23 right?

24 A Yes. Yes.

25 Q And you testified that you were inside of a



1 car; right?

2 A Yes.

3 Q You never spoke to him; right?

4 A No. He only said, how much I owe you. And I told
5 him, only four dollars for the ride. Because it is
6 nearby. And he said, "this is a hold-up."

7 Q I'm going to step back. I think you're a
8 little bit confused.

9 MR. SAMEIRO: I object to the commentary.

10 THE COURT: I don't know if he is confused or
11 not.

12 Q I don't know if it is a misunderstanding of
13 the question. Whatever it was, I withdraw the comment.

14 THE COURT: All right.

15 Q The day before you went to the police --

16 A Yes. That they called me. It was in July.

17 THE COURT: July. Okay.

18 Q So, July. July 24th, the day before you
19 spoke to the police, you said that you saw Pablo
20 Machado, or the person that robbed you; right?

21 A Yes. Yes.

22 Q You were in a car, when you saw him on that
23 date; right?

24 A Yes.

25 Q You never spoke to him that day; right?

1 A No.

2 Q So, he did not threaten you with words that
3 day; correct?

4 A No. No. He only made the signs (indicating), the
5 gesture.

6 Q But you told the police the following day,
7 that he could get a lot of people -- I'm sorry -- That
8 he told you, that he could get a lot of people to get
9 you, if a police report was made; right?

10 A Yes. Yes. When I made the report, I told them.
11 I told Bobadilla.

12 Q So, you told Bobadilla, on April 24th, that
13 the day that it happened, that the person who robbed
14 you, said that they would, if you made a police report,
15 he could get a lot of people to get you?

16 A Yes. Yes. I said that, yeah. In the report, and
17 I also said that in July.

18 Q Now, do you remember which person told you
19 that?

20 A Yes.

21 Q Who was it?

22 A He was.

23 THE COURT: I'm sorry. I missed that.

24 THE WITNESS: Him. Machado. He said that.

25 Q So, he told you that on that date. And



1 you're sure you told Officer Bobadilla about this?

2 A Yes. Yes. He said that to me, and I told him.

3 And I told him in the video. When I saw the video, I
4 remembered.

5 Q It's busy on Tuesday mornings at about that
6 time; right?

7 A Yes. Yes.

8 MR. GONZALEZ: No further questions.

9 THE COURT: Anything further?

10 MR. SAMEIRO: No, your Honor.

11 THE COURT: All right, Mr. Cedillo. You are
12 finished. Thank you very much. You are excused.

13 (Whereupon, the witness is excused.)

14 MR. SAMEIRO: I need about two minutes -- not
15 even -- to get the DVD cued up for the photo array
16 procedure. I want to call Sergio Matias next.

17 THE COURT: Okay. I'll tell you what we'll
18 do. Let the jury go right here on the floor. We'll
19 take a short break. If you need to use the bathroom,
20 and then we'll come right back in. Then we'll go right
21 into the videotape. I sound like Warner Wolfe.

22 MR. SAMEIRO: I need to get a copy of the
23 card. I can't do both things at the same time.

24 THE COURT: Let me excuse the jury to a room
25 right here on the floor. That way you can set the tape

1 up, and we can get a copy of the card.

2 Remember, folks, not to discuss the case
3 amongst yourselves or anybody else. We will bring you
4 back in just a few minutes.

5 (Whereupon, the jury leaves the courtroom.)

6 (Whereupon, a short recess was taken.)

7 (Whereupon, the hearing continued outside the
8 presence of the jury.)

9 MR. SAMEIRO: If we can go on the record real
10 fast.

11 THE COURT: Real fast.

12 MR. SAMEIRO: S-1 has been shown, in large
13 part, to the jury. It hasn't been moved into Evidence.
14 Let me formally -- I want to now put the actual photo
15 array in this case -- I marked it originally as an "S"
16 exhibit. We'll alter the exhibit list later on. So,
17 S-1 contains more than just the photo array procedure.
18 And I'd like that in Evidence, to be technically
19 correct, because I want to show it to the jury.

20 THE COURT: Any objection?

21 MR. GONZALEZ: I don't object to displaying
22 it to the jury. That's where we're starting it from.

23 MR. SAMEIRO: Well, Judge, I'm going to put
24 the photo array procedures in before the jury now and
25 have Sergio Matias authenticate the DVD. It is at



1 22:04:06 on the DVD. The DVD is cued up. The preamble
2 is not here.

3 THE COURT: All right.

4 MR. GONZALEZ: No objection.

5 THE COURT: That will be marked in Evidence
6 later. The video is cued up at 22:04:06.

7 Okay. Let's bring the jury in.

8 (Whereupon, the jury enters the courtroom.)

9 THE COURT: State?

10 MR. SAMEIRO: Your Honor, the State would
11 like to next call Officer Sergio Matias to the stand.

12

13 **OFFICER SERGIO MATIAS,**
14 called as a witness on behalf of the State, being duly
15 sworn, testifies as follows:

16 DIRECT EXAMINATION BY MR. SAMEIRO:

17 Q Officer, are you a New Brunswick policeman?

18 A Yes.

19 Q How long have you been a patrolman?

20 A Five years.

21 Q Where were you born?

22 A Guatemala.

23 Q You speak Spanish?

24 A Yes.

25 Q Is that your primary language or your

1 secondary language?

2 A Secondary.

3 Q How long have you lived in the United States?

4 A I don't know. A long time.

5 Q I'm trying to establish that you're
6 bilingual?

7 A Yes.

8 Q As a police officer, what do you do?

9 A Patrolman, respond to numerous calls throughout
10 the City of New Brunswick, community policing, whatever
11 else it takes.

12 Q Do you work the night shift?

13 A Afternoons.

14 Q When do you start? When do you finish?

15 A 1615, which is 4:15 in the afternoon, until 0230
16 in the morning.

17 Q That's not the night shift?

18 A No. It's afternoons. We call it the afternoon
19 shift.

20 Q You go through midnight; right?

21 A Yes.

22 Q You worked this shift last night, from 4:15
23 to 2:30 in the morning?

24 A Yes.

25 Q What about the night before?



1 A Yes.
2 Q Were you here yesterday during the day
3 waiting to testify?
4 A Yes.
5 Q I'm asking you these questions, to see if
6 you're feeling a bit tired right now?
7 A Oh, yes.
8 Q During the lunch break, did you have to go
9 home for a particular reason?
10 A Yes. That's correct.
11 Q For what?
12 MR. GONZALEZ: Objection. None of this is
13 relevant.
14 MR. SAMEIRO: I want to establish that the
15 witness is tired. And I think the jury needs to know
16 that to assess his credibility.
17 THE COURT: All right. It could be relevant.
18 I'll allow it.
19 A Child care issues.
20 Q You've been running back and forth with that?
21 A Yes.
22 Q Throughout the trial prep?
23 A That's correct.
24 Q Are you going to start the 4:00 o'clock shift
25 when you are done today?

1 A Yes.
2 Q You couldn't get time off for the trial?
3 A No.
4 Q You asked for it?
5 A I tried, yes.
6 Q Now, were you asked to put a photo array, or
7 conduct a photo array procedure, back in July 2007 by
8 Detective Selesky?
9 A That's correct.
10 Q You remember what date you were asked to do
11 that?
12 A No.
13 Q Turn around and look at the screen.
14 A (Witness complies.)
15 Q Can you see that screen?
16 A Yes.
17 Q Does that refresh your memory of the day?
18 A Yes.
19 Q What day?
20 A 7/25/07.
21 Q July 25th; right?
22 A Yes.
23 Q And this was concerning a case that Detective
24 Selesky was investigating himself?
25 A Yes. That's correct.



1 Q Were you connected to the investigation in
2 any way?

3 A No.

4 Q Why were you asked specifically to do that
5 photo array?

6 A To translate. The victim spoke Spanish. So, I
7 got called up to help Detective Selesky on that.

8 Q Because you speak Spanish?

9 A That's correct.

10 Q Now, did you read certain instructions to the
11 witness in Spanish during this process?

12 A Yes.

13 Q Do you remember the victim's name?

14 A Wilmer something.

15 Q I'm going to show you what's marked S-3. Do
16 you recognize that document?

17 A Yes. Yes. That's correct.

18 Q What is that?

19 A It's the instructions of the photos I was going to
20 show him in Spanish.

21 Q Do you see Wilmer something's full name
22 there?

23 A Yes. Cedillo.

24 Q I want to show you what's been marked S-1.
25 We are going to start at 22:04:06. I ask you to look

1 at this. Then I will have some questions for you when
2 we're done.

3 MR. SAMEIRO: Judge, this has been moved into
4 Evidence.

5 THE COURT: Yes. S-1 in Evidence.

6 (Whereupon, S-1 in Evidence is played for the
7 jury, starting at 22:04:06.)

8 MR. SAMEIRO: Your Honor, I stopped it at
9 22:10:20, using the time stamp.

10 THE COURT: Okay.

11 (Whereupon, S-1 in Evidence is stopped at
12 22:10:20.)

13 Q Now, Sergio, you saw the tape that we all saw
14 just minutes ago; correct?

15 A Yes.

16 Q Are you aware of the fact that there is an
17 English translation of the photo display instructions
18 you read to the victim on that day?

19 A Yes, I am.

20 Q I'm going to show you what's marked S-4. Do
21 you recognize that, sir?

22 A Yes.

23 Q What is that?

24 A It's the photo display instructions.

25 Q In what language?



1 A English.

2 Q Have you looked at that before at my request?

3 A Yes.

4 Q Have you compared that to S-3?

5 A That's correct.

6 Q The Spanish version which you read to the
7 victim, which is seen on this tape?

8 A Yes.

9 Q And given your knowledge of both Spanish and
10 English, can you tell us if that's an exact
11 translation?

12 A Yes. That's correct.

13 Q S-4 is?

14 A Yes.

15 Q So, now, for the benefit of the jurors, who
16 don't know Spanish, can you read to us, from S-4, the
17 English version of the photo display instructions, that
18 you told Mr. Cedillo?

19 A Yes.

20 Q Please do that slowly. And articulate.

21 A Okay. "In a moment, I will show you a number of
22 photographs one at a time. You may take as much time
23 as you need to look at each of them. You should not
24 conclude that the person who committed the crime is in
25 the group merely because a group of photos is being

1 shown to you. The person who committed the crime may
2 or may not be in the group, and the mere display of the
3 photographs is not meant to suggest that our office
4 believes the person who committed the crime is in one
5 of the photographs. You are absolutely not required to
6 choose any of the photographs, and you should not feel
7 obligated to choose anyone."

8 "The photographs will be shown to you in random
9 order. I am not in any way trying to influence your
10 decision by the order of the pictures presented. Tell
11 me immediately if you recognize a person that committed
12 the crime in one of the photographs. All of the
13 photographs will be shown to you even if you select a
14 photograph."

15 "Please keep in mind that hairstyles, beards, and
16 moustaches are easily changed. People gain and lost
17 weight. Also, photographs do not always show the true
18 complexion of a person. It may be lighter or darker
19 than shown in the photograph. If you select a
20 photograph, please do not ask whether I agree with or
21 support your selection. It is your choice alone that
22 counts. Please do not discuss whether you selected a
23 photograph with any other witness who may be asked to
24 look at the photographs."

25 "I have read the above instructions and understand



1 them. No other instructions were given to me by the
2 Investigator."

3 Q That last portion is the signature line for
4 the witness; right?

5 A Yes.

6 Q Now, in this particular case, you, of course,
7 utilized the Spanish version, S-3; right?

8 A Yes.

9 Q On the back -- what I'll call the back side
10 -- that does not have the red sticker -- that's
11 entitled the "photo display result form"; right?

12 A That is correct.

13 Q When was that filled out in this case?

14 A At the end, after showing him the pictures. The
15 victim the pictures.

16 Q After the victim made the ID?

17 A That's correct.

18 Q That happens to be in English?

19 A Yes, that is.

20 Q Now, did you fill that side out?

21 A Yes.

22 Q There is a section called "comments"? You
23 see that at the bottom?

24 A Yes.

25 Q With something that's written after the word,

1 "comments"; right?

2 A Yes.

3 Q Is that your writing?

4 A Yes. That's correct.

5 Q You filled out this section?

6 A Yes.

7 Q What did you put in that section?

8 A "This is the one."

9 Q And what did you mean by that when you put
10 that in the form?

11 A That's what the victim stated to me, when I showed
12 him -- when he identified that picture. He said, "this
13 is the one."

14 Q You recorded that for us in English?

15 A Yes.

16 Q Does the victim also sign the back of this
17 document?

18 A Yes.

19 Q And give us his telephone number and such?

20 A That's correct.

21 Q I think we saw a portion of the tape, where
22 you asked him for the phone number, and he wrote it
23 down?

24 A Yes.

25 Q Would that be here on the piece of paper that



1 we have?

2 A Yes.

3 Q And you also recorded the actual photograph,
4 by its stamp number; right?

5 A Yes.

6 Q The one that he saw?

7 A Yes.

8 Q Now, I'm going to show you what's been marked
9 S-2-A, which is a collection of six different
10 photographs. I ask that you pay particular attention
11 to the photograph that has the following last several
12 digits, 33223A. That's the one; right?

13 A Yes.

14 Q On the back of that photograph, we have some
15 writing; is that correct?

16 A That's correct.

17 Q What is that writing?

18 A Mr. Cedillo's name, and my initials.

19 Q Is that the photograph that Mr. Cedillo
20 identified for you on July 25th?

21 A Yes.

22 Q Now, we have five other pictures here; right?

23 A That's correct.

24 Q Would you be able to say whether those were
25 the ones that you used in conjunction with the

1 defendant's picture?

2 A I wouldn't be able to recall every single one of
3 them.

4 Q Not without the key; right? There is a key
5 that goes with that?

6 A Yes. That is correct.

7 Q The key is a separate piece of paper that
8 records all the other pictures used in this array;
9 correct?

10 A Yes.

11 Q Did you prepare that key?

12 A No.

13 Q Did you put these pictures together?

14 A No.

15 Q Who did that?

16 A I believe, Detective Selesky did.

17 Q Do you know there are Attorney General
18 guidelines that govern how a photo array is put
19 together?

20 A Yes.

21 Q Your role in the case, I don't mean to
22 minimize it, was to simply show the victim the
23 pictures?

24 A That's correct.

25 Q You didn't put the pictures together?



1 A No.

2 Q You wouldn't remember if these other
3 photographs were in the array; right?

4 A Yes. That's correct.

5 Q All right. Just a few more questions. As I
6 was listening to the audio portion of that tape, I
7 heard you say some things that were not translated to
8 English. I'll ask you, for the benefit of the jury, to
9 answer these particular questions.

10 A Okay.

11 Q After you read the directions, the
12 instructions to the victim in Spanish, did you ask him
13 if he understood them?

14 A Yes.

15 Q What was his answer?

16 A He said, yes.

17 Q Now, there was a point in time, I believe,
18 after you showed the victim the third picture in the
19 series, that you told him something. You remember
20 that?

21 A Yes.

22 Q You remember what it was that you said?

23 A I told him to take his time. I seen that he was
24 just going through the pictures kind of quick.

25 Q That's recorded in Spanish?

1 A Yes.

2 Q There are probably a few other things that
3 you said to him in Spanish, that he responded to in
4 English -- in Spanish -- as well; correct?

5 A Yes.

6 MR. SAMEIRO: I have no other questions.
7 Thank you.

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

10 MR. GONZALEZ: Thank you.

11 CROSS-EXAMINATION BY MR. GONZALEZ:

12 Q How are you, Officer Matias?

13 A All right.

14 Q Just a couple follow-up questions. Did you
15 ever write a report concerning the photo array, that
16 you put before Mr. Cedillo?

17 A For this incident, no.

18 Q Normally, when you do something, in the line
19 of your duty of your job, you write reports; right?

20 A Yes.

21 Q In this case, you didn't; correct?

22 A That's correct.

23 Q Now, you said, as part of the instructions,
24 that you're going to show him at random -- what the
25 numbers were per se -- excuse me -- the photographs --



1 random photographs. Excuse me. You did that right
2 there -- it was random -- as part of your instructions?

3 A Yes.

4 Q Now, the first part, if I can just -- the
5 photo display -- the first part, that you read to him,
6 was in Spanish?

7 A That's correct.

8 Q I show it to you (indicating).

9 A Right. Yes.

10 Q The second part is in English; right?

11 A Yes.

12 Q Did you go word for word with Mr. Cedillo?

13 A No. No. This was for me to fill out.

14 Q It's for you to fill out?

15 A That's correct.

16 Q So, you fill out everything but Mr. Cedillo's
17 name?

18 A That's correct.

19 Q Why don't you read it for the benefit of the
20 jury?

21 A What would you like me to read?

22 Q Start there (indicating).

23 A "I, the undersigned, viewed a total of six
24 photographs one at a time. After looking at each
25 photograph, I selected the photograph numbered, which

1 is 33223A, the fifth shown, and signed the photograph.
2 Check if no identification was made. No member of the
3 New Brunswick Police Department, or anyone else,
4 suggested that I select any particular photograph, or
5 that I select any photograph at all. The
6 identification was my own choice. I was not told by
7 anyone whether others had selected any particular
8 photograph or had failed to select anyone. I was not
9 told by anyone the status or identity of any of the
10 individuals in the photographs." Then it goes to the
11 comments.

12 Q So, is that for you to fill out or for him to
13 fill out?

14 A It was for him to fill out.

15 Q You skip that part; right?

16 A Yes.

17 Q So, you messed it up; right?

18 A Yes.

19 Q And the portions, you put in the six
20 photographs, the part where you put that in; right?

21 A The six photographs and the number of the picture
22 that he chose.

23 Q The fifth shown; right?

24 A That's correct. Yeah.

25 Q In that, on the video, you only had him sign



1 this piece of paper; right?
2 A On this one, yes.
3 Q Does it exist in Spanish? Do you know?
4 A I don't believe so.
5 Q So, they only have one in English?
6 A The one side.
7 Q Only one is English and one is Spanish. But
8 then the important one, saying that's the one that I
9 picked?
10 A Yes.
11 Q I wasn't coerced. I wasn't told anything?
12 A Uh-hum.
13 Q That's not in Spanish; right?
14 A I didn't get the form in Spanish.
15 Q Now, this is clearly your handwriting; right?
16 A Detective Selesky.
17 Q That's Detective Selesky's handwriting?
18 A That's correct.
19 Q So, this is your handwriting?
20 A I write bigger. This is my handwriting, my
21 signature at the bottom and the comment (indicating).
22 Q Now, I note that you say, at random, that's
23 how you showed the photos to the person?
24 A Yes. Yes.
25 Q Shouldn't you write a report about what order

1 you actually put the photos in front of him?
2 A No.
3 Q You may start random. But shouldn't you
4 write something down to recollect in what order you
5 showed them?
6 A No. Then it wouldn't be random.
7 Q You show them to him randomly.
8 A Okay.
9 Q Then you could write a report afterwards,
10 right, indicating that it was random, the way you
11 picked them, and then you could memorialize it
12 afterwards; correct?
13 A Okay. That's correct.
14 Q Now, the key that we're talking about, is the
15 number; right?
16 A That is the key.
17 Q That Mr. Sameiro asked you about earlier?
18 A Yes.
19 MR. GONZALEZ: For the record -- I'm sorry --
20 I can identify those two documents. I'll go back.
21 Just for the record, so, Georgeann has it all. The
22 first piece of paper I showed him was S-3, front and
23 back. The second piece of paper is S-2-B, only one
24 side.
25 THE COURT: Thank you.



1 Q Now, this is the key; right?

2 A Yes.

3 Q And Mr. Machado's name, on this list, is not
4 number five, is it?

5 A No, it's not.

6 Q It's number two; right?

7 A Yes.

8 Q Now, there is a portion there, that was kind
9 of left out. I'm going to press play again. Now, you
10 have Mr. Cedillo sign something. It's going to come
11 on. I'm going to ask you a question before it comes
12 on. You had Mr. Cedillo sign that paperwork after he
13 selected the photo?

14 A Yes.

15 Q And you didn't have him sign it right at that
16 moment, when you finished the photo display; correct?

17 A I believe I did.

18 Q You had him sign the photo, too; right?

19 A Not at that time. I stepped out, advised
20 Detective Selesky which photo he picked. He sent me
21 back in, to have him sign it, and for me to initial it.

22 Q You were able to, like on the screen, you
23 were able to view it, that each photo, kind of had a
24 picture, a face, a dot on it, something like that?
25 Well, at least, from this far, I know you had the

1 viewing of the actual picture itself?

2 A Uh-hum.

3 Q But when you were looking at the screen, just
4 a second ago -- sorry -- you could see the face from
5 where the positioning of the video was in the room;
6 correct?

7 A Yes.

8 Q Sorry to confuse you. I confused myself.

9 A Yeah.

10 Q Now, you had him sign something. It was
11 pre-filled out. The thing that was actually signed, it
12 was pre-filled out by Detective Selesky; right?

13 A I don't know exactly what portion.

14 MR. GONZALEZ: I'm just going backwards for
15 the record.

16 (Whereupon, a portion of the tape was played
17 again for the jury.)

18 Q Just for the record, you're saying, "can you
19 put your name here"?

20 A Yeah. "Sign here." Showing him where to sign.

21 Q So, you showed him where to sign on this
22 "photo display result form"; right?

23 A Yes.

24 Q That's the form that you have right in front
25 of him at this time; right?



- 1 A Yes.
2 Q That's pre-filled out; right?
3 A I'm not even sure if it was filled out before.
4 Q You would agree that Mr. Cedillo is supposed
5 to be told -- At least, it should be translated to him?
6 A What he's signing?
7 Q Yes.
8 A Yes. That's correct.
9 Q You agree to that?
10 A I agree.
11 Q That didn't happen in this case; right?
12 A No, it didn't.
13 Q And you would agree that there doesn't exist
14 a Spanish form?
15 A Not to my knowledge.
16 Q You've done this before, haven't you?
17 A Not really a photo array. It would be my first
18 time.
19 Q First time?
20 A Yes.
21 Q It is likely you can make a mistake, if it's
22 your first time; right?
23 A That's correct.
24 Q Are you ever going to make that mistake
25 again?

- 1 A No.
2 Q Are you going to go back to the New Brunswick
3 Police Department, and are you going to tell them to
4 get that in Spanish?
5 A I could make a request. I don't know -- I'm not
6 sure if they're going to get one or not.
7 Q You think it would be fair to people, who are
8 making an identification, from English to Spanish, to
9 have that form presented to them in Spanish, so, they
10 know what they're signing?
11 A Yeah. Or explained.
12 Q Being a Spanish speaker yourself?
13 A Yes.
14 Q In fact, your angle, or something like that?
15 A Yeah.
16 Q You would like to have that form translated;
17 correct?
18 A In Spanish, yes.
19 (Whereupon, a portion of the tape is played
20 for the jury again.)
21 Q Well, after this, he leaves the room?
22 A I leave the room.
23 Q Who leaves the room?
24 A I leave the room.
25 Q You leave the room. You report to Detective



1 Selesky that he picks number five?

2 A Yes.

3 Q You indicate that you don't remember any of
4 the pictures. This was a long time ago. You actually
5 don't remember what day it was? You don't remember the
6 pictures? Probably not; right?

7 A Yeah.

8 Q So, if I mixed up those pictures today, you
9 would only know which one he picked, because that's the
10 one that he signed on the back; right?

11 A That's correct.

12 Q And you signed it on the back, before you
13 went out of the room?

14 A No. It would be when I came back into the room.
15 Because he could tell me -- Like I said, it's my first
16 time. He gave me instructions, you know, shuffle the
17 pictures before I went in. And when I came out he
18 said, all right. The one he picked, have him sign and
19 initial it, and put the number on the display form.

20 Q When you walked in, did you re-show him the
21 picture? Mr. Cedillo?

22 A No.

23 Q You only showed him the back (indicating);
24 right?

25 A Yes.

1 Q So, you walked in, with a piece of paper,
2 that was only the back of the piece of paper, that Mr.
3 Cedillo saw?

4 A Yeah.

5 Q Mr. Cedillo didn't re-see the piece of paper,
6 and what was on the other side; correct?

7 A From what I recall, I don't know.

8 Q It was your first time. I don't think we
9 blame you for that.

10 MR. SAMEIRO: I object to that type of
11 comment.

12 THE COURT: It's not necessary.

13 MR. GONZALEZ: I just want to see what
14 happened.

15 (Whereupon, another portion of the tape is
16 played for the jury again.)

17 (Whereupon, the tape is stopped.)

18 Q Was that the photo display form that he
19 signed?

20 A Yes. Where he put his telephone number and
21 address.

22 Q After he had already previously signed it?

23 A That's correct.

24 Q Now, you are getting his pedigree information
25 after he already signed it?



1 A That's correct.

2 Q And he signed the photograph on the back,
3 that you didn't show to him again?

4 A Yeah. Actually, what I meant to say, if you play
5 the tape back, when he chose the photograph, I believe,
6 you do see me putting the photo separate from the other
7 photos, that went into the envelope.

8 Q But you just testified, you didn't show it to
9 him.

10 A If you play it back, this photograph was separated
11 from the other ones. You'll see me put the rest of the
12 photographs in the envelope, and just have this
13 photograph outside of the envelope.

14 Q You're saying that you came back with -- You
15 are saying that you came back with five photographs?

16 A No. I came back with one photograph. I walked
17 out with the four photographs or five photographs,
18 inside the envelope. I walked out with six
19 photographs. There was five photographs in the
20 envelope before I walked out.

21 (Whereupon, another portion of the tape was
22 played for the jury.)

23 MR. GONZALEZ: I'm going to fast-forward it,
24 for the benefit of the time. I'm sorry. I'm going to
25 let it play from this point.

1 (Whereupon, another portion of the tape was
2 played for the jury.)

3 A That's the last picture, what went in the
4 envelope.

5 Q You put all of them inside the envelope?

6 A No, you have to rewind it a little more.

7 (Whereupon, another portion of the tape is
8 played for the jury.)

9 Q You went out in the hallway for a little
10 while; right?

11 A Yes.

12 Q You came back with a picture?

13 A One picture.

14 Q One particular picture?

15 A Yes.

16 Q The picture, that you came back with
17 yourself, you never showed him again, did you?

18 A That's correct. But it was separated from the
19 other ones.

20 Q And, also, the form was pre-filled out;
21 right?

22 A Just my name, my information.

23 Q Detective Selesky filled in the other
24 portions; right?

25 A After I gave him the form.



1 Q So, he didn't show that form to him; right?
2 Detective Selesky?

3 A I had the form all the time, at all times. I read
4 it to him in Spanish. Then when I finished the photo
5 display, I turned it around, and I had to -- I believe,
6 I came back in. I had to fill in the back.

7 Q You'd agree it's important to record
8 afterwards the series of the photos, and how they're
9 displayed to a witness that's identifying someone;
10 correct?

11 A Yes.

12 Q And, in this case, you don't recall which one
13 you showed first or fifth or sixth?

14 A No, I don't.

15 Q You don't recall the order whatsoever?

16 A No.

17 MR. GONZALEZ: I have no further questions.

18 THE COURT: Thank you. State?

19 MR. SAMEIRO: Leave that, Counsel.

20 THE COURT: State?

21 MR. SAMEIRO: You're not going to play any
22 more?

23 MR. GONZALEZ: No, I'm done. I have no
24 further questions.

25 MR. SAMEIRO: Then you can leave it.

1 MR. GONZALEZ: I apologize.

2 REDIRECT EXAMINATION BY MR. SAMEIRO:

3 Q Sergio, the implication by these questions,
4 was that you left and didn't finish with the
5 photographs? You understand the implication?

6 A Yes.

7 Q Did you do that?

8 A No.

9 Q Is the photograph, that bears Pablo Machado's
10 face, the one that the victim picked out?

11 A That's correct.

12 Q And you didn't put this key together, S-2-B?

13 A That's the first time I'm seeing that key.

14 Q It turns out that Pablo Machado's name is
15 listed as number two?

16 A That's correct.

17 Q But then you shuffled these pictures; right?

18 A Before I went -- Before I entered the room, that's
19 correct.

20 Q So, you prepared in advance. If you shuffled
21 the pictures, it wouldn't necessarily correspond with
22 the fifth photo that was shown to the victim; correct?

23 A That's correct.

24 Q So, whether S-2-B has Pablo Machado as two,
25 three, four, five, six, or one, has nothing to do with



1 what happened in the room afterwards; correct?

2 A That's correct.

3 Q And regarding --

4 MR. GONZALEZ: I just ask -- many of the last
5 questions were leading questions. I just ask that they
6 not be leading.

7 THE COURT: I just ask you to open them up a
8 little bit.

9 MR. SAMEIRO: Right.

10 Q Did you suggest anything to the victim, in
11 terms of these pictures?

12 A No. I didn't even speak to him when I was showing
13 him the pictures. I just told him to take his time.

14 Q Did you tell him the status of, or the
15 identify of, any of the individuals in the photographs,
16 before, during, or after this array?

17 A No.

18 Q Did you tell this man whether anyone else had
19 picked out the photograph of Mr. Machado, in any other
20 array?

21 A No.

22 Q As far as you're concerned, Mr. Cedillo
23 doesn't have to tell you any of that, because you never
24 did any of that; is that correct?

25 A That's correct.

1 MR. SAMEIRO: Your Honor, can we go to
2 sidebar?

3 THE COURT: Sidebar.

4 (Whereupon, the following discussion occurred
5 at sidebar.)

6 MR. SAMEIRO: There are more questions that
7 were posed to the victim by Detective Selesky
8 concerning the photo array, which is on this portion of
9 the tape.

10 THE COURT: Okay.

11 MR. SAMEIRO: I need to review that before I
12 display that to the jury. Less they see something that
13 can cause a mistrial. I don't have a transcript of the
14 DVD. I just want to run through it. It will take me
15 like two minutes.

16 THE COURT: Okay.

17 MR. SAMEIRO: Then we can go forward with the
18 witness on the stand. I just need to see it. I don't
19 want to do it in the presence of the jury. If you can
20 just permit me just two minutes to go through it. I
21 will then decide whether I want to use that portion or
22 not.

23 THE COURT: Okay.

24 MR. GONZALEZ: I don't object naturally to
25 that.



1 THE COURT: Okay.

2 MR. SAMEIRO: Thank you.

3 MR. GONZALEZ: Thank you.

4 (Whereupon, the sidebar discussion
5 concluded.)

6 (Whereupon, the hearing continued in the
7 presence of the jury.)

8 THE COURT: Ladies and gentlemen, I'm going
9 to ask you to just go into the jury room for a few
10 minutes. Again, please remember, do not discuss the
11 case amongst yourselves or with anybody else. There is
12 just one matter that we have to do outside your
13 presence. We'll bring you right back in, in a few
14 moments. Do not discuss the case among yourselves or
15 with anyone else. We have some matters to discuss
16 outside of your presence.

17 (Whereupon, the jury leaves the courtroom.)

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

20 MR. SAMEIRO: Judge, I would invite you to
21 look at this, just to see if you think there is an
22 issue as to anything that may come up.

23 MR. GONZALEZ: I'm sorry, Judge. Mr. Sameiro
24 just showed you something. I didn't know. I was just
25 leaving the courtroom, walking out the door.

1 THE COURT: Okay.

2 (Whereupon, another portion of the tape was
3 played for the Court.)

4 MR. SAMEIRO: I just invited her to look at
5 this while I'm doing this, in case you think that there
6 is an issue. I know that you didn't know.

7 MR. GONZALEZ: I didn't know. I just thought
8 it would behoove me to come back.

9 THE COURT: Okay.

10 MR. GONZALEZ: We saw that already.

11 THE COURT: Yes, we did.

12 MR. SAMEIRO: Judge, that was not the portion
13 that I was thinking of.

14 THE COURT: Okay.

15 MR. SAMEIRO: I'll move on. What I'm
16 thinking about may be buried in this interview. I can
17 do that with Selesky on the stand.

18 MR. GONZALEZ: Now, what's very interesting,
19 I missed it, I'd like to ask some follow-up questions.

20 THE COURT: Okay. Let's move along with the
21 witness. I know he wants to go.

22 MR. GONZALEZ: But I need to address that,
23 when he was talking to Detective Selesky. I wanted to
24 address that.

25 MR. SAMEIRO: Can you hold on one second?



1 Judge, for the record, I asked for the time,
2 to go over a portion of the tape. There is a witness
3 on the stand. And Counsel is making an argument to you
4 now. I'm just asking that he hold that.

5 THE COURT: He's just asking to come back, I
6 think, and re-ask the question. Is that what you are
7 asking?

8 MR. SAMEIRO: I'm asking to explain why, in
9 any event, Judge. I'd like to go back with that.

10 THE COURT: That's fine.

11 MR. SAMEIRO: I went to sidebar for a reason.
12 I'm still in the middle of my redirect.

13 Could you please ask him to reply? We don't
14 get to that issue. I wouldn't be raising the issue.

15 THE COURT: Stop for a second.

16 MR. GONZALEZ: I'd like to address the
17 record.

18 MR. SAMEIRO: When the witness is present,
19 that is just totally improper.

20 MR. GONZALEZ: Judge, he said for me not to
21 say anything.

22 THE COURT: Hold on. We'll come back. We'll
23 go back to the redirect. Then if you want to ask
24 additional questions, I'll let you ask the additional
25 questions.

1 MR. SAMEIRO: You don't have to get into any
2 of the specifics. That's what I'm just saying to you.

3 THE COURT: That is an interesting request.

4 MR. SAMEIRO: If you want to bring the jury
5 in, I'm just trying to cue it up to where we stopped
6 it. You can bring them in. It will only take ten more
7 seconds.

8 THE COURT: Okay. Let's bring the jury in.
9 (Whereupon, the jury enters the courtroom.)

10 THE COURT: Okay. State?

11 MR. SAMEIRO: Thank you.

12 Q You were asked questions about writing a
13 police report or not; right?

14 A Yeah. That's correct.

15 Q If you did a report, would your report have
16 captured everything that was on tape? Would it have
17 been better than what is on the actual videotape?

18 A What did you say?

19 Q Could you write a report that was better than
20 the tape?

21 A I thought you meant that the tape was better than
22 the report. That's why I said what I said.

23 Q In fact, the DVD is your report?

24 A Yes. That's correct.

25 Q This was the first time you did a photo



1 array?

2 A Yes.

3 Q Was Detective Selesky outside watching
4 through the monitor during this?

5 A I don't know what he was doing.

6 Q Do you remember talking to him when you
7 walked out of the room?

8 A Yes.

9 Q Counsel stopped the tape just minutes ago at
10 22:10:24?

11 A Yes.

12 Q This is when you went outside with the
13 photographs?

14 A That's correct.

15 Q Do you remember talking to Detective Selesky
16 when you left?

17 A Yes.

18 Q By the door?

19 A That's correct.

20 Q When you left the room, you came back in
21 within seconds really; right?

22 A Yes.

23 MR. SAMEIRO: Judge, if I would just be
24 permitted to play the tape again from that point on?
25 Just for a few seconds, a minute.

1 MR. GONZALEZ: No objection.

2 THE COURT: Sure.

3 (Whereupon, another portion of the tape is
4 played for the jury.)

5 Q So, while the tape is played, I'm going to
6 ask you to pay attention to two things while this
7 rolls. I'm going to ask you, if you hear what
8 Detective Selesky told you to do. Then I'm going to
9 ask you to look at the victim himself. He seems to
10 have two cards in his hands that look similar. I'm
11 going to ask you to look at that.

12 MR. GONZALEZ: I just request -- this is
13 redirect -- It sounds like he's trying to testify for
14 Mr. Bobadilla -- I'm sorry -- Officer Bobadilla.

15 MR. SAMEIRO: There is no question pending.

16 MR. GONZALEZ: I'd like for him to ask him
17 open-ended questions in this matter, as to what it is
18 that he sees.

19 THE COURT: All right.

20 MR. GONZALEZ: It is not what Mr. Sameiro
21 sees.

22 THE COURT: All right. I think he is trying
23 to focus him in on the area that he wants to question
24 him on.

25 MR. SAMEIRO: Yes.



1 THE COURT: Well, keep the questions open,
2 so, the Officer can testify.

3 MR. SAMEIRO: I'm trying to do that.

4 Q I'm going to ask you to look at the tape.
5 Tell us what you hear Detective Selesky saying. And
6 what, if anything, you see the victim pull out of his
7 wallet for identification. All right?

8 A Okay. (Witness complies.)

9 Q I have got the volume up louder than it was
10 before.

11 (Whereupon, the videotape is played again for
12 the jury.)

13 Q You see those two documents that he just
14 pulled out?

15 A Yes. Yes. I said, yes.

16 Q You see those two documents in his hands?

17 A Yes.

18 Q He is pulling papers from his wallet?

19 A Yes.

20 MR. GONZALEZ: Judge, I'd just ask, for the
21 record, that we not have talking while the videotape is
22 playing.

23 THE COURT: I just want Georgeann to be able
24 to hear everything.

25 MR. GONZALEZ: I see that she is struggling.

1 MR. SAMEIRO: Judge, I'm sorry. It is just
2 because the tape is going.

3 Q Does it look like two different driver's
4 licenses?

5 A It looks like they are similar.

6 Q Maybe one was expired, and maybe one wasn't?

7 A Yeah. Maybe.

8 Q Do you remember?

9 A I don't know.

10 Q He was also trying to show you at the time --

11 A Right. Yeah. I just took my information from
12 what he placed on the table. But I really didn't look
13 at it. He was giving me an address, so, I just wrote
14 from what he was giving me.

15 Q Prior to this, did Detective Selesky ask you
16 to do anything with the photo that he identified?

17 A Yes. He asked me to have him sign it, and myself
18 to initial it.

19 Q In fact, it should have been done right on
20 the spot?

21 A Yes.

22 Q Before you left the room?

23 A That's correct.

24 Q So, that's a mistake?

25 A Yes.



1 Q But, under oath, you're telling us that this
2 face, this picture, with Pablo Machado, was the one
3 that the victim picked out; right?

4 A That's correct.

5 Q Again, no bait and switch; right?

6 A No.

7 MR. SAMEIRO: That is all. Thank you.

8 THE COURT: Thank you. Mr. Gonzalez?

9 MR. GONZALEZ: Thank you.

10 RECROSS EXAMINATION BY MR. GONZALEZ:

11 Q You didn't see the two documents? You don't
12 recall the two driver's licenses, or identification
13 cards, or whatever they were?

14 A Two ID's.

15 Q You don't recall what they were?

16 A No.

17 Q You recall --

18 A Unless I'm standing up on it, I might be able to
19 tell better; but not from --

20 Q From your recollection today, you weren't
21 really paying attention? You were writing something
22 down?

23 A Exactly.

24 Q You can't say for sure. Mr. Sameiro said, it
25 could be two driver's licenses; but it may not be;

1 right?

2 A Two things that are similar to each other. That's
3 what it is.

4 Q Now, what we can be sure of is that, I'm
5 showing you -- I keep mixing things up -- Officer
6 Matias -- excuse me -- what has been marked as S-3.
7 That's the address that he gave you? That he wrote
8 down; correct?

9 A That's correct. That he gave me.

10 Q He gave you. You heard him say it?

11 A Yes.

12 Q 41 South Talmadge Road. That phone number is
13 what you wrote down; correct?

14 A That's correct.

15 Q All right. Let's go forward. Just a couple
16 things -- This is the address -- He had you write down
17 this address; right?

18 A Yes.

19 (Whereupon, another portion of the tape is
20 played for the jury.)

21 Q Now, when Detective Selesky comes in the
22 room, asking him for his address, he gives a different
23 address, doesn't he?

24 A Yes.

25 Q Do you remember what it was?



1 A We just heard it. Something Hermann Road in North
2 Brunswick.

3 Q But he stated, that he just moved also? You
4 heard the tape?

5 A Yes.

6 (Whereupon, another portion of the tape is
7 played.)

8 Q Obviously, clearly, he told you a different
9 address; is that right?

10 A Yes. That's correct.

11 Q Now, to your knowledge, Detective Selesky had
12 spoken to Mr. Cedillo prior to him coming in and
13 speaking to you; right?

14 A I don't remember if he did or not.

15 Q Well, you got there. Somehow Detective
16 Selesky brought him there; right?

17 A Yes. I don't remember if we escorted him up or
18 not, to be honest with you.

19 Q So, you don't remember whether you had
20 contact with him prior or after? Do you remember being
21 in his presence with Detective Selesky?

22 A Yes. Before the room, yes.

23 Q Before the room; right?

24 A Yes.

25 Q And it's pretty obvious, that Detective

1 Selesky and him had talked prior to this?

2 MR. SAMEIRO: I'm objecting. It is not
3 obvious at all.

4 MR. GONZALEZ: I will withdraw the question.

5 THE COURT: All right. The question is
6 withdrawn.

7 MR. GONZALEZ: I have no further questions.
8 I know that you have got to go to work.

9 THE COURT: Anything further?

10 MR. SAMEIRO: Well, no. I think he'll stay
11 if you have more questions.

12 THE COURT: Of course.

13 MR. GONZALEZ: I don't have any more
14 questions.

15 THE COURT: State?

16 MR. SAMEIRO: I don't have any more
17 questions.

18 THE COURT: Officer Matias, you're excused.
19 Thank you very much.

20 (Whereupon, the witness is excused.)

21 THE COURT: I just need to see Counsel at
22 sidebar off the record as to scheduling.

23 (Whereupon, a discussion was held off the
24 record at sidebar.)

25 (Whereupon, the hearing continued in the



1 presence of the jury.)

2 THE COURT: All right, ladies and gentlemen.
3 I will let you go for the evening. I will remind you
4 not to discuss the case among yourselves, or with
5 anybody else. Not to go to the scene of the alleged
6 incident. Not to read anything, or listen to anybody
7 else discuss the case.

8 Tomorrow morning we'll bring you up. I know
9 you don't trust me any more. I keep telling you nine.
10 I'm trying to do my best to get you up here by 9:15.
11 Then we will resume back with the trial. I'm trying to
12 keep our plan of attack for our days. We're a little
13 off. I don't think we're too much off.

14 We will get you up as quickly as possible, to
15 move along with the case. What else did I want to tell
16 you? I want to tell you to have a nice evening. And I
17 don't think the weather is going to be inclement early.
18 We shouldn't have any problems. We'll see you tomorrow
19 morning at 8:30. We will bring you up as close to the
20 9:00 o'clock hour as possible. Okay.

21 (Whereupon, the jury leaves the courtroom for
22 the day.)

23 (Whereupon, the hearing continued outside the
24 presence of the jury.)

25 THE COURT: I thought I would just take a

1 moment regarding the defendant testifying. Let me ask
2 you a question. To the State, and certainly the
3 defense. Does Mr. Machado have any prior criminal
4 record?

5 MR. SAMEIRO: Judge, we've been here so many
6 times on status conferences, with his Violation of
7 Probation listed, that it should jar a memory. Yes, he
8 does have a prior.

9 THE COURT: And it's unfortunate that it
10 doesn't. Although you're right, we have been here
11 several times, now that you say that.

12 MR. SAMEIRO: He has a VOP. And the prior
13 comes from this County. And I have a certified
14 judgment of conviction.

15 MR. GONZALEZ: That is a correct
16 representation, Judge.

17 MR. SAMEIRO: The short answer to the
18 question is, yes. He is charged with a third degree,
19 tampering with a witness. He was sentenced by Judge
20 DeVesa in 2006. And Counsel, of course, is aware of
21 it.

22 THE COURT: Okay.

23 Do you wish to be heard, Counsel, regarding
24 any Sands issue? It's 2006 you said?

25 MR. SAMEIRO: Yes. December 22, 2006,



1 sentenced to probation.

2 MR. GONZALEZ: Yes, Judge. I don't think I
3 have an argument with regard to the Sands. It's not
4 outside the purview of the ten years. I don't think I
5 have an argument. It would only come in if he decided
6 to testify, which I don't anticipate he will be doing.
7 Of course, this is his decision. However, I do not
8 anticipate he will be testifying.

9 THE COURT: Okay.

10 Well, I think, without going through a formal
11 hearing, so to speak, it appears it is within a short
12 period of time, which the Court has to look to. I
13 think Sands allows this conviction to come in. If he
14 testifies, for it to be admitted to impeach the
15 defendant, under the idea that, if someone has violated
16 the rules of society previously, they may not take the
17 oath as seriously, so to speak, as someone who has not
18 violated the law.

19 It is certainly within the period of time,
20 what the case holds, that the Trial Court shall admit
21 evidence of a criminal conviction to affect the
22 credibility of the criminal defendant. Unless, in the
23 Court's discretion, it is found that the probative
24 force, because of its remoteness, we really don't have
25 that.

1 Giving due consideration to the relevant
2 circumstances, such as the relevant nature of the crime
3 and the intervening incarceration is substantially
4 outweighed, and its admission will create undo
5 prejudice. Here we just don't have that. Clearly, it
6 is within a two-year period. Approximately a two and a
7 half year period of time. I have gone over the reasons
8 why the conviction could come in. Credibility, if the
9 defendant testifies. And, also, I would note -- Well,
10 let me ask the State, what are you going to bring in on
11 the conviction specifically?

12 MR. SAMEIRO: Well, it would be everything
13 within the four corners of the document. The charge,
14 the date of sentence.

15 THE COURT: Okay.

16 MR. SAMEIRO: The sentence itself.

17 THE COURT: What's on the judgment,
18 basically?

19 MR. SAMEIRO: Right.

20 THE COURT: I think that's appropriate.

21 So, having said that then, what I really want
22 to let Mr. Machado know, what his rights are. That if,
23 in fact, he was to testify, that would come out. I'll
24 go from there.

25 Let me ask Mr. Machado to stand.



1 (Whereupon, the defendant complies.)

2 THE COURT: First of all, Mr. Machado, I want
3 to let you know what your rights are at this point in
4 time. And I don't need your decision on whether you
5 wish to testify or not today. But I just want you to
6 know what your options are.

7 Okay. Now, you have the right to testify.
8 And if you testify, your attorney will question you.
9 But you're also going to be cross-examined by the
10 State. Meaning, they can ask you questions, too. If
11 you decide to testify, your criminal conviction will
12 come in as well. So, the jury will know about that, if
13 you testify. And if that criminal conviction comes in,
14 they will be told how they can use that criminal
15 conviction. They can only use it in a certain way. I
16 will let you know what that is.

17 They'd be told, you have heard evidence that
18 Pablo Machado has previously been convicted of a crime.
19 This evidence may only be used in determining the
20 credibility or the believability of the defendant's
21 testimony. You may not conclude that the defendant
22 committed the crime charged in this case, or is more
23 likely to have committed the crime charged, simply
24 because he committed a crime on another occasion.

25 A jury has a right to consider whether a

1 person, who has previously failed to comply with
2 society's rules, as demonstrated through this criminal
3 conviction, would be more likely to ignore the oath
4 requiring truthfulness on the witness stand than a
5 person who has never been convicted of any crime.

6 You may consider, in determining this issue,
7 the nature and degree of the prior conviction, when it
8 occurred, and the conviction. Our law permits a
9 conviction to be received in Evidence only for the
10 purpose of affecting the credibility of the defendant,
11 and for no other purpose. You are not, however,
12 obligated to change your opinion, as to the credibility
13 of the defendant, simply because of a prior conviction.
14 You may consider such evidence, along with all the
15 other factors we have previously discussed, in
16 determining the credibility of the defendant.

17 So, if you decide to testify, your criminal
18 conviction comes in. I will read them, the jury, that
19 portion of the charge. So, they know how they can use
20 this evidence. That's if you decide to testify. You
21 also have the option of not testifying at all. And if
22 you do not testify, no one, none of the attorneys, no
23 one can comment on the fact that you didn't testify.
24 And I can charge the jury, that they cannot consider,
25 for any reason, in any manner, the fact that you did



1 not testify. They can't hold that against you in any
2 way. Do you understand that?

3 THE DEFENDANT: Yes. But I want to -- I want
4 to know, if I can think about it before I have to tell
5 you, like, let's say, tomorrow. If I can tell you
6 tomorrow.

7 THE COURT: Oh, absolutely. I'm just giving
8 you the night to think about it. You don't have to
9 tell me right now what you wish to do. I just want you
10 to know, that if you testify, that your criminal
11 conviction will come in. And you'd be cross-examined
12 by the State. And if you say, you do not want to -- If
13 you say you do not want to testify, I will let the jury
14 know that they cannot consider the fact that you chose
15 not to testify in any way, in coming to their verdict.

16 And you don't -- if you want -- I don't even
17 have to tell them that. It's up to you, if you want me
18 to read them that, the defendant elected not to testify
19 at trial. It is his constitutional right to remain
20 silent. You must not consider, for any purpose, or in
21 any manner, in arriving at your verdict, the fact that
22 the defendant did not testify. That fact should not
23 enter into your deliberations or your discussions in
24 any manner, or at any time.

25 The defendant is entitled to have the jury

1 consider all the evidence presented at the trial, and
2 he is presumed innocent, even if he chooses not to
3 testify. So, if you tell me, you do not wish to
4 testify, that's fine. The next question I'm going to
5 ask you, is whether or not you want me to read to the
6 jury, what I just read to you. All right?

7 (Whereupon, the defendant shakes his head.)

8 THE COURT: Let's see. Anything else I need
9 to let you know?

10 MR. GONZALEZ: We'll discuss it. I will
11 instruct him accordingly. I will rehash what your
12 Honor just told him. We'll discuss it.

13 THE COURT: Okay.

14 The bottom line is, why I'm giving you this
15 information now, Mr. Machado, so, you can think about
16 it, talk to your attorney, talk to your family members,
17 whoever you may wish to talk to. Then, tomorrow
18 morning, I'm going to need to know what your decision
19 is, after you have talked to all of those individuals.
20 And, tomorrow morning, when you decide what you're
21 going to do, just remember, ultimately, it's your
22 decision, as to whether or not you wish to testify.
23 Okay.

24 THE DEFENDANT: I have a question.

25 THE COURT: Sure.



1 THE DEFENDANT: Would it be a way, if I could
2 testify, but my record will not show up?

3 THE COURT: No. Because of the timing of
4 your record, the conviction, that will come in, to
5 affect your credibility. I will tell them how they can
6 consider it, only for credibility purposes. But it
7 will come in. All right?

8 THE DEFENDANT: Okay.

9 THE COURT: So, you think about it. You can
10 talk to Mr. Gonzalez. Then I'll get your decision
11 tomorrow. All right?

12 THE DEFENDANT: Of course.

13 THE COURT: Okay. All right. You can have a
14 seat, Mr. Machado.

15 (Whereupon, the defendant complies.)

16 THE COURT: Folks, what I did, regarding the
17 charge, I mean I pulled all of the model charges,
18 except I forgot to pull conspiracy. That I'll have to
19 pull, and false in one, false in all. I also pulled
20 the identification, in-court and out-of-court. I also
21 pulled the charge that we talked a little bit about,
22 regarding how the police get the photographs. So, that
23 the jury knows, it's not just from police-related
24 activities.

25 MR. SAMEIRO: Judge, you would be wise to

1 give a variation on that charge with respect to the
2 defendant's pedigree information, which is going to
3 come out, the subsequent arrest. You will recall, I
4 explained to the Court, we did get the defendant's
5 phone number and address, from an incident that took
6 place in June of '07. I alluded to that in my opening,
7 by telling the jury, that just because the police have
8 it, they shouldn't draw any inference.

9 THE COURT: Right.

10 MR. SAMEIRO: So, it's not just the
11 photographs; but the address information. There is
12 more to it.

13 THE COURT: And let's be very clear about
14 what's in the arrest report.

15 MR. SAMEIRO: That I intend to use the
16 address, place of birth, date of birth, phone number,
17 as well as, I've got to check, I may be using the
18 Social Security Number, too. I'm not sure.

19 THE COURT: What I would do is, just add
20 those items into the charge and indicate there is so
21 many choices there, as to how this information can be
22 obtained.

23 MR. SAMEIRO: That's fine.

24 THE COURT: All right. I will pull that. I
25 pulled the robbery. There is a number of alternative



1 theories though. I pulled the robbery charge.

2 MR. SAMEIRO: Are you talking about count one
3 or count two of the Indictment?

4 THE COURT: Count one.

5 MR. SAMEIRO: Count one is the conspiracy.
6 Count two --

7 THE COURT: I didn't pull conspiracy for some
8 reason. I went right past it.

9 MR. SAMEIRO: This is an armed robbery, as we
10 allege it.

11 THE COURT: Well, the way I set out the
12 robbery, the first degree, as to armed, the way the
13 charge is. I don't believe there is a basis for a
14 lesser-included offense as to the robbery. I don't
15 know the rationale, where the jury could not believe
16 there was no gun involved. I know that the victim said
17 he was struck with a fist. But he also said, he had a
18 gun pointed to him. And, you know, this is an
19 identification case. I don't see the jury ignoring the
20 gun, and believing that a fist was used.

21 MR. GONZALEZ: I haven't thought about it,
22 Judge.

23 THE COURT: So, I think that a gun is
24 included. I think we're just talking about the charge
25 right now, the armed robbery. And I pulled the model

1 jury charge.

2 MR. SAMEIRO: I think your Honor pulled the
3 model jury charge for the armed robbery. There is not
4 an armed robbery jury charge. It is robbery in the
5 first degree.

6 So, it talks about what a robbery is. Then
7 it says, it rises to a first degree, once the weapon
8 is --

9 THE COURT: Right. It's kind of included.
10 It just doesn't say armed robbery.

11 MR. SAMEIRO: All right.

12 THE COURT: Well, take a look at it. I think
13 it is incorporated in your Indictment.

14 MR. SAMEIRO: Your Honor, I'll look at it
15 again.

16 THE COURT: As I recall, all the underlying
17 choices are in there. The "and/or's" are underneath
18 there.

19 MR. GONZALEZ: Right.

20 MR. SAMEIRO: Right.

21 THE COURT: I pulled possession of a weapon
22 for an unlawful purpose. The possession of a weapon
23 here is a handgun. I think that's right from the
24 charge. Then the possession of a weapon for an
25 unlawful purpose. That is right from the charge.



1 Theft. I pulled movable property. Then I pulled the
2 two separate terroristic threats that are alleged here.
3 I haven't pulled anything else. That's all I pulled
4 out. I kind of went through the charge.

5 Just going through, if I see any other ones,
6 that would be here, I mean, other than -- I pulled the
7 election not to testify. I don't know what the
8 decision is. Or the prior conviction. I don't know
9 what the decision is. I pulled them just in case.

10 Anything else that I'm forgetting?

11 MR. SAMEIRO: I can tell you that Cromedy
12 doesn't apply.

13 THE COURT: That's what I wanted to ask you.
14 You have a Honduran victim. I think it was established
15 that the defendant was from Honduras.

16 MR. SAMEIRO: It couldn't get any closer.

17 THE COURT: That was going to be my first
18 question. I went right by the cross-racial
19 identification.

20 MR. SAMEIRO: I'm not asking for it.

21 MR. GONZALEZ: Obviously not.

22 MR. SAMEIRO: Not in this case.

23 MR. GONZALEZ: Obviously not. I don't think
24 your Honor could find that Cromedy applies. I think it
25 is a Honduran to a Honduran.

1 THE COURT: Believe me, I have no problem
2 putting it in, just in case. But if it is a Honduran
3 to a Honduran, it really isn't an issue. So, we don't
4 have to worry about that.

5 Then I'll go through the rest of this
6 identification issue. If there is anything else, that
7 is pretty much what I pulled. I'll go through the
8 specific charges this evening.

9 If we do Selesky the first thing, and then
10 you rest, and then if there are motions after that.
11 And then, depending on what happens, we may get
12 finished with the testimony in the morning.

13 MR. SAMEIRO: I'm hoping, if we really start
14 at nine o'clock.

15 THE COURT: Well, we would have started at
16 nine o'clock; but we had issues both days.

17 MR. SAMEIRO: I am not making any suggestion
18 as to why we're not. But if we can stick to it, I
19 could see Counsel and I closing before lunch. Your
20 Honor could charge after lunch.

21 THE COURT: We have a list tomorrow. We have
22 a half a day tomorrow.

23 MR. SAMEIRO: That is right. 12:30.

24 THE COURT: I have a list for 1:30. That is
25 not to say, that I wouldn't do this. I'd rather, in



1 all honesty, move this along. We told them Thursday.
2 I'd like to give it to them on Thursday, even if it is
3 in the afternoon.

4 MR. SAMEIRO: If you don't stick to the
5 schedule, you are going to have problems charging them
6 on Friday.

7 THE COURT: I have a whole list on Friday.
8 I'd much rather, I think, obviously, my list isn't as
9 bad, because it is only a half day. I can work around
10 it. There might even be some adjournments. I'm
11 willing to do this case.

12 I'd love to be able to keep to this schedule.
13 So, we can do the charge. The charge is probably going
14 to be every bit of an hour.

15 MR. SAMEIRO: Detective Selesky won't take
16 long. I won't ask Detective Bobadilla a lot of
17 questions. We pretty much know what he's going to be
18 asked. All the matters that are in the report, that
19 the victim didn't agree to. Then I'll have some
20 questions about that. That will be it.

21 THE COURT: That will be our plan.

22 MR. GONZALEZ: Selesky might testify a little
23 while on cross, just to alert you.

24 THE COURT: If we start at nine, maybe a half
25 an hour or so. Say you take an hour.

1 MR. GONZALEZ: I'll try my best.

2 THE COURT: I'm not keeping you to that.
3 Don't get me wrong. You take as long as you like.

4 MR. GONZALEZ: Yes, Judge.

5 THE COURT: Then that will be our plan.
6 We'll be back tomorrow again. We'll be ready to go at
7 nine. We did well in the afternoon. We got started
8 right away. We moved through it. I don't think there
9 were any other issues. What I will do at nine, I'll
10 question the defendant, regarding his decision.

11 MR. SAMEIRO: Right.

12 THE COURT: I think I'll wait until after we
13 finish the witnesses. It may make a difference,
14 depending on what he hears.

15 MR. SAMEIRO: All right.

16 MR. GONZALEZ: All right.

17 THE COURT: All right.

18 MR. SAMEIRO: Thank you.

19 MR. GONZALEZ: Thank you.

20 THE COURT: Thank you.

21 (Whereupon, the hearing concluded for the
22 day.)

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.

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Official Court Reporter
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Date: FEBRUARY 5, 2010

