









Appellate...: A

Case No....: 003047

Year.....: 09

Type.....: TRANSCRIPT

Volume.....: 008

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

STATE OF NEW JERSEY,

Complainant,

vs.

Transcript of Proceeding (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

BEFORE:

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

TRANSCRIPT ORDERED BY: DANIEL GONZALEZ, ESQ.

(Perez & Gonzalez)

APPEARANCES:

MANUEL SAMEIRO, ESQ.
Middlesex County Assistant

Middlesex County Assistant Prosecutor

Attorney for the State

RECEIVED

APPRILATE DIVISION

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

APR 1 5 2010

SUPPRIOR COURT

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



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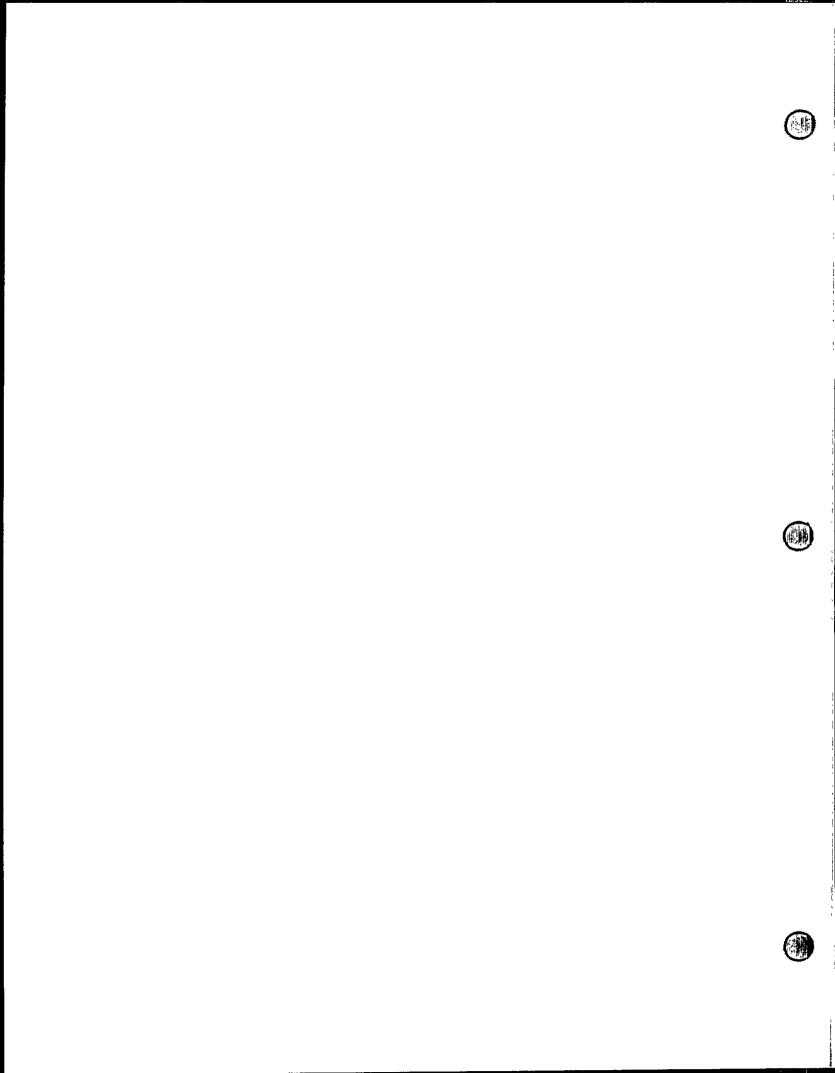
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 1.
 2
 3
                                            Redirect
 4
    State Witnesses
                            Direct
                                     Cross
 5
    WILMER CEDILLO
 6
                                                           61
                                       22
        By Mr. Gonzalez
 7
        By Mr. Sameiro
                                                43
 8
 9
    SERGIO MATIAS
10
        By Mr. Sameiro
                               68
                                                95
11
                                       81.
                                                           106
        By Mr. Gonzalez
12
13
7.4
15
16
17
1.8
19
20
21
22
23
24
25
                                                               3
                             (Colloguy)
            (Whereupon, the hearing continued outside the
 1
 2
   presence of the jury.)
            THE COURT: All right. Are we all ready for
 3
 4
    the jury?
 5
            MR. SAMEIRO:
                           Yes.
            MR. GONZALEZ:
 6
                            Yes.
 7
            THE COURT: All right. Let's bring the jury
 8
    in.
 9
            MR. SAMEIRO: Also, Judge, before the jury
    comes in, I have something to raise for you.
10
11
    apologize for not doing it sooner.
            Yesterday, I explained that I didn't want to
12
    go into the subsequent contact between the defendant
13
                     I didn't really get into any reason
14
    and the victim.
   why, because I didn't think this information was in the
15
16
   police reports, or in the DVD. My mistake.
                                                   I thought
17
    there was an issue that the victim recently told me
            The problem we have, you prepare for trial in
18
    about.
19
                Then you get a cancellation for several
    September.
20
   months later.
                   You forget some things.
                                              I didn't want
21
   to surprise Counsel with it. But, clearly, it is on
   the tape, as I looked at it last night. It's in the
22
23
            And I missed it.
   report.
24
            THE COURT:
                         Okay.
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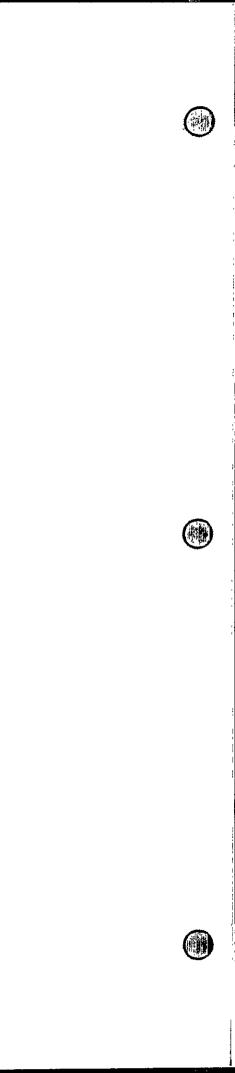
What we have is an episode,

25

MR. SAMEIRO:



```
(Colloguy)
   where the victim got into contact with the defendant.
 1
   He actually says in the tape, it's coincidental, that
   they saw each other. And that the defendant threatened
         Said, if you go to the police, and file a report,
   I've got friends who can take care of you, words to
   that effect. Obviously, that bolsters his
   identification.
 7
            It shows how sure he is. He has seen the guy
 8
 9
   afterwards. And the defendant's statement is, in
   effect, an admission of guilt. Which I want the jury
10
             There is no reason why it couldn't come in.
11
   Only because of my mistaken belief that Defense Counsel
12
13
   wasn't on notice of it, that I chose not to go with it.
   I heard it recently from the victim, before we started
14
   this case. I just didn't connect it to anything that I
15
   had in my file. I apologize for that.
16
17
            THE COURT:
                       When did that encounter occur?
18
            MR. SAMEIRO: Several days before the photo
   array procedure.
19
20
            THE COURT: Before the photos.
21
            MR. SAMEIRO: Clearly, it is the subject of
   the interview, that Counsel doesn't want to get into
22
23
   today.
24
            THE COURT:
                        Okay.
                          He knows about it.
25
            MR. SAMEIRO:
                                              He
                                                             5
                            (Colloquy)
   instructed me that he didn't want to replay the whole
 1
   interview of the victim. But he didn't want this
   portion. I said to him, well, Counsel, I had an
   opportunity to think about that last night. I'm going
 4
   to offer it.
 5
            THE COURT:
 6
                        Okay.
 7
            MR. SAMEIRO: I think he wants to raise a
   Rule 403 objection. Let him do it. It's relevant and
 8
 9
   the defendant is on notice as to it. So, there is no
              And, clearly, I think it supports the
10
   surprise.
11
   identification. Because Counsel has made an issue of
   the height, weight descriptions, or, excuse me, the
12
   clothing descriptions. And this is what was said to
13
   Bobadilla, that the victim couldn't recall.
14
   that Officer Bobadilla will be called by the defense,
15
16
   and that's fine. He has a right to do that, as to
   challenge the victim's inconsistencies, to present that
17
18
   to the jury.
19
            THE COURT:
                        Okav.
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
```



(Colloguy)

prejudicial. That outweighs its probative value 1 this particular case. There is no question. Because he wants to get the statement in. Essentially, he

wants to get the statement in. Essentially, he says 5 that he threatened him.

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Judge, it wasn't in this trial. reason I say that is, it's an unsubstantiated allegation, so to speak, that was never reported to the police, when it actually occurred. It really is something that doesn't exist, as far as the evidence is concerned. Because this is a pretrial motion that should be dealt with prior to the trial -- to starting the trial. The State should have been prepared to go forward and make that application. If that had been

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

Now, it dawned upon him, after reviewing the

(Colloquy)

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

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

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

MR. SAMEIRO: We're off track.

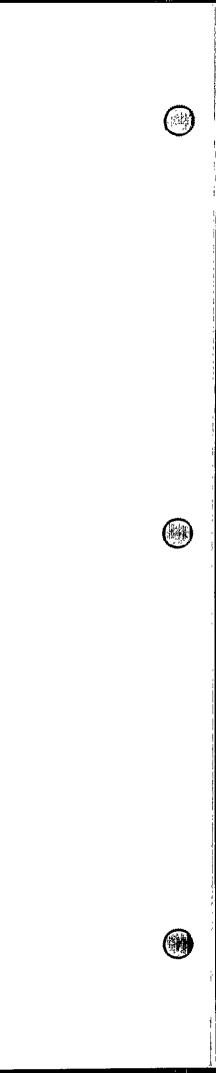
I mean it is really just an issue as to a statement by a defendant.

THE COURT: Right.

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

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

7



(Colloguy) doesn't stop somebody from requesting it, as it 1 wouldn't stop the defense, if the request was made to the Court, for a consideration, as to a change in strategy, for an additional piece of evidence or information. It is simply the statement of the defendant. You are absolutely right, in the sense that it is an issue that you can cross-examine him on, 7 regarding why he didn't go to the police. 8 probably a myriad of questions that you can ask 9 regarding that statement. 10 11 MR. GONZALEZ: Right. THE COURT: You're allowed to. And, simply 12 put, this is a statement made by the defendant. You 13 get to cross-examine the alleged victim on every aspect 14And my biggest concern would be, you have 15 certainly been on notice of the statement. You're 16 aware of it. You're on notice about it. Obviously, it 17 would have been, potentially, a problem, if you weren't 18 aware that he was going to be offering it. 19 20

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

(Colloguy)

9

I made that mistake. I'm human. 1 I should have went with that in my opening. 2 It's in the tape. It is in Selesky's report as well. And I glossed over that fact, as I prepared for this I don't know what Counsel is talking about. 5 being here at the last trial, I don't know what he meant when he said that. First of all, there was no 7 last trial. This case was called in, in September, to 8 go to trial. Counsel asked for an adjournment, because 9 he didn't have an Officer available to him. 10 MR. GONZALEZ: What I meant is the trial as 11 to the terroristic threats. 12

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

> THE COURT: Okav.

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22 23

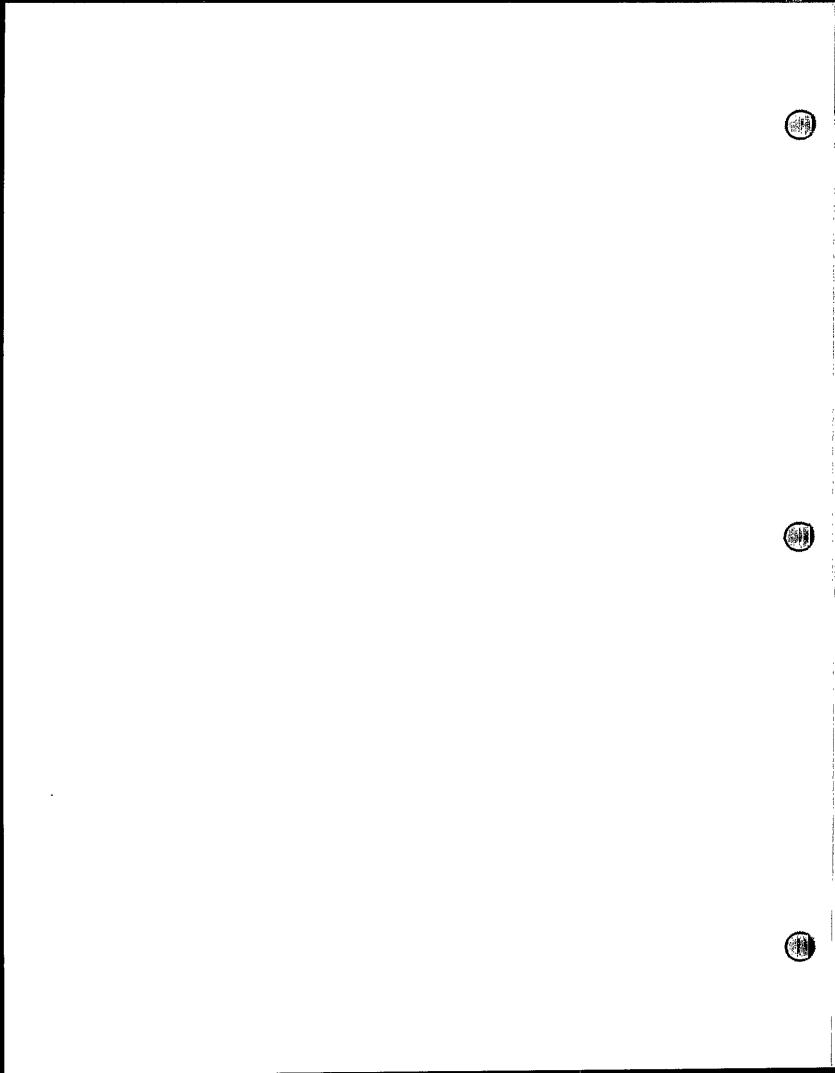
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25

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



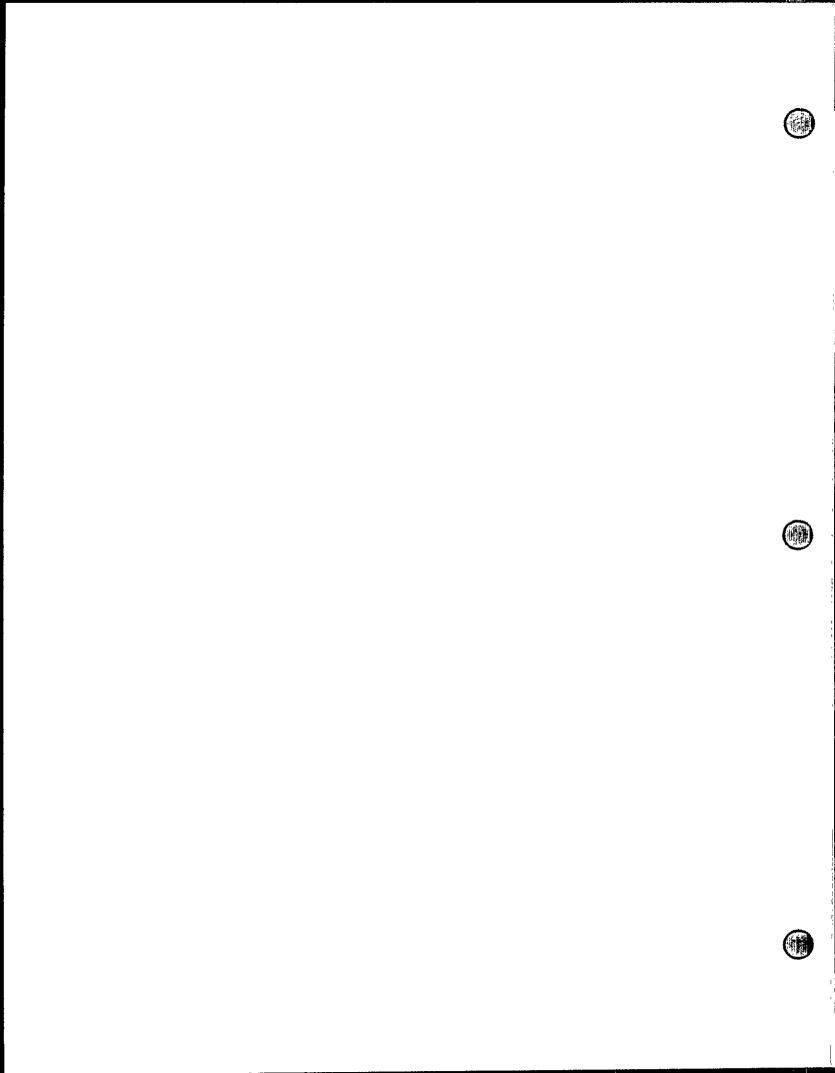
(Colloguy) THE COURT: Well, any statement made against 1 interest is clearly going to be prejudicial, no matter 2 3 what you do. MR. GONZALEZ: But a statement against interest has nothing to do with the robbery that 6 7 MR. SAMEIRO: It has everything to do with the robbery. 8 THE COURT: It sounds like that would happen, 9 as to April 24th, as to his observations. 10 MR. GONZALEZ: What he said to him, on this 11 particular day, dealt with April 24th, a subsequent 12 13 communication, if there even was one. THE COURT: That's right. You get to 14 question him regarding that. I thought the 15 communication had something to do with the incident of 16 17 April 24th. 18 MR. SAMEIRO: Absolutely. In other words, what he says to him is connected to this incident, in 19 some way, as to filing a police report. I'm going to 20 21 get even with you, in so many words. 22 MR. GONZALEZ: Even if he said it, even if I 23 agree with you --THE COURT: You can certainly cross-examine 24 him as to this. As to my understanding, that it was 25 11 (Colloquy) just a general comment. It didn't allegedly occur on 1 April 24th. It's a statement against interest, as any 3 statement would be prejudicial. The question is whether its probative value is outweighed -- excuse me -- whether its prejudice is outweighed by its probative 5 Quite frankly, what I'm hearing is, its value. probative value outweighs any prejudice. 7 MR. GONZALEZ: That your Honor sustained my 8 objection yesterday with regard to Mr. Cedillo getting 9 10 into it. THE COURT: But I think he testified -- It 11 was on direct examination. 12 13 MR. SAMEIRO: There was no objection. I was wanting to put it in. Initially, I said I didn't want 14 15 it to go in. But I thought about it. 16 THE COURT: You know, that is why yesterday I thought you were on the same page with it not coming 17 in. I didn't know. 18 MR. SAMEIRO: 19 I wanted to stop him. I heard 20 him say something. 21 THE COURT: Frankly, I didn't know anything about it, other than what Counsel told me later. 22 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



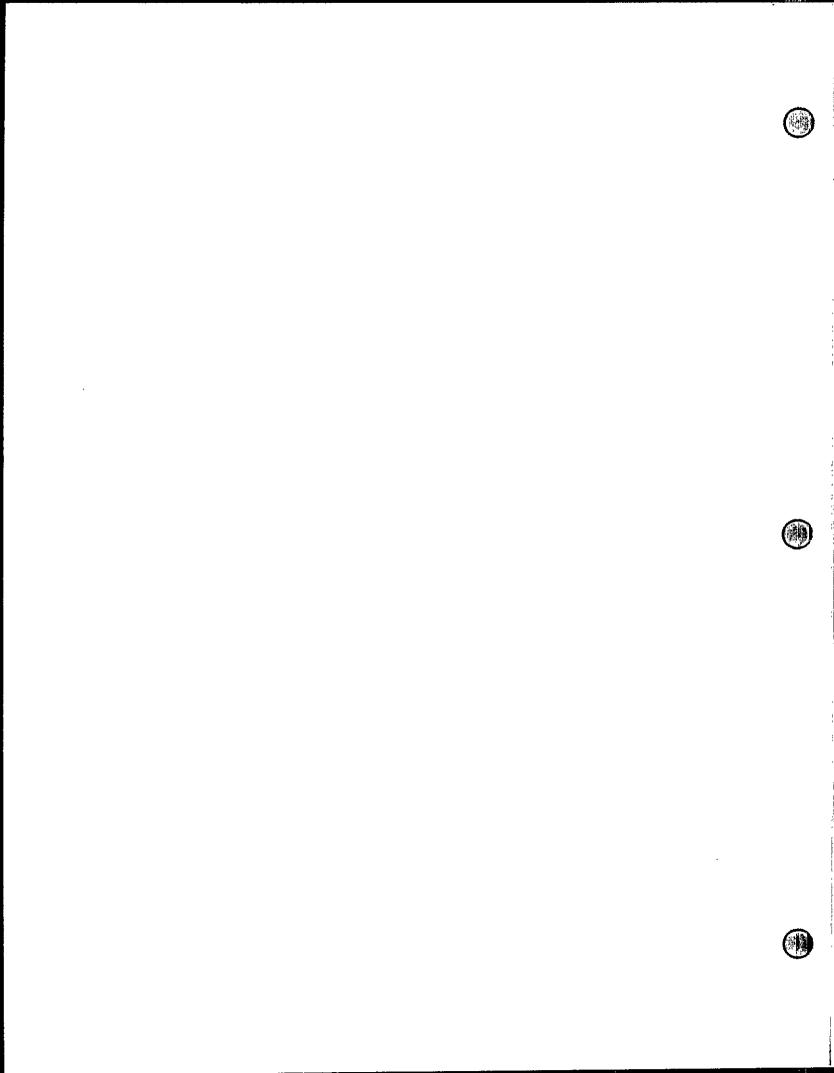
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12
                            (Colloguy)
   it yesterday. Now, what the State is asking is to
   allow them to get into it, because there was no notice
   issue. He was mistaken that there would be. And,
   simply put, it's a statement really against interest.
            MR. SAMEIRO: And an observation, as well, of
 5
   the defendant, which helps to support the
   identification which was made.
 7
            THE COURT:
                        Okay.
 8
                         Judge, I'm prepared to do it on
 9
            MR. SAMEIRO:
   redirect, unless Counsel wants to get into it on cross.
10
   It's got no context of any cross. I'm just alerting
11
12
   the Court how I would be prepared to proceed with that.
            MR. GONZALEZ: I haven't touched it.
13
            THE COURT: That is right. Nobody really
14
15
   has.
           MR. GONZALEZ: I haven't touched on it in the
16
17
   cross.
18
            THE COURT: Right.
            MR. SAMEIRO: Of course.
19
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.
            MR. SAMEIRO: Exactly. To get into the area
23
24
   of the encounter.
                       That's what he's asking.
            THE COURT:
25
                                                            13
                            (Colloguy)
                           He already finished direct.
            MR. GONZALEZ:
 1
 2
            THE COURT:
                       You're right.
 3
                           There was nothing on it.
            MR. GONZALEZ:
            THE COURT: You're on cross.
 4
            His request was to get back into it. Asking
 5
   the Court to allow him to open up his redirect, to
   allow him to go into that area, to question him about
 7
 8
                           Well, from my purview of the
 9
            MR. GONZALEZ:
   rules, redirect is aimed at what I got into on cross.
10
            THE COURT: As I understand it, that's what
11
12
   he is asking for.
13
            MR. GONZALEZ:
                           He should have done it, when
   he entered his case in originally, Judge.
14
                                               It now
   dawned upon him. Now, he's going to redirect on that
15
           He can't redirect on that issue because he is
16
   done with his direct already.
17
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
   the morning, to go to a crime scene in the rain, to
21
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
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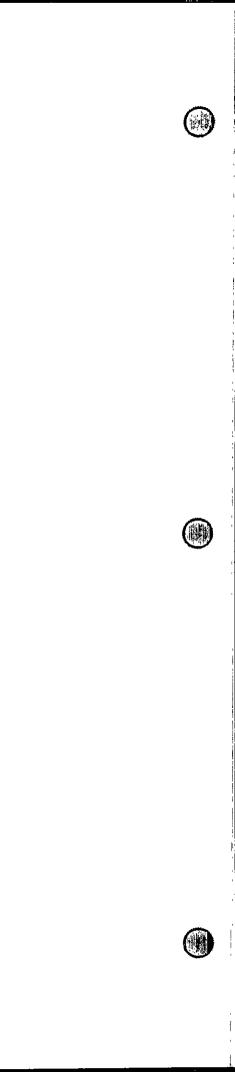
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(Colloguy)
   defense attorneys pull these BS tactics. It's because
 1
   they want to keep us off our stride. But, you know
 2
   what, I got a good night's sleep last night. I had a
   chance to look at the statement and the report. Wait a
            I missed this, Judge. That's the reality
   minute.
   here.
 7
           MR. GONZALEZ:
                          Judge --
 8
           MR. SAMEIRO: In the rain yesterday --
                           I'd just like to note, the
 9
           MR. GONZALEZ:
   State said, we're here to protect the defendant.
10
   not here to protect the defendant. The State lists all
11
   these rules. All these rules that we develop as far as
12
   the criminal laws.
13
            THE COURT: Mr. Gonzalez, now, in fairness,
14
   we have our rules. But there is discretion given to
15
   the Court regarding, perhaps, this first area, that
16
   Counsel just inadvertently missed -- had requested the
17
   Court -- to allow the Court to come back -- to allow
18
   him to open back up his direct, to go into this area.
19
           MR. GONZALEZ: Judge, in this case, all
20
   right, after hearing these things, and investigating --
21
22
   Well, strike that. The phone number today, that we
   used yesterday, has a new person -- okay -- attached to
23
   the phone. I did a reverse phone look-up.
                                                And I
24
                           Is your Honor going to strap me
   intend to offer that.
25
                                                           15
                           (Colloquy)
   -- Are you going to say, no, you can't do that?
 1
            THE COURT:
                       No.
 2
 3
            MR. SAMEIRO:
                          This is new information.
            THE COURT: Let's stay with one issue at a
 4
   time.
 5
            I mean, my feeling is --
 6
           MR. GONZALEZ: We're opening up a whole other
 7
   can of worms, essentially. It's the State's case.
 8
   had a chance to do all that stuff. If the Court is
 9
   allowing him, on redirect, to get into the area, to
10
11
   open up his direct, for the reasons set forth --
            THE COURT: I'm looking at the rules
12
13
   regarding statements against interest.
                                            I don't know
   anything about it. In other words, if he wanted to get
14
   into it on direct, and we already did his direct, there
15
   would be nothing stopping him from doing that.
16
            It clearly appears to be a statement against
17
18
   interest.
              A hearsay statement.
19
           MR. SAMEIRO:
                          It's an admission by a party
             Frankly, non-hearsay.
20
                                      If he said it, he
   opponent.
21
             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
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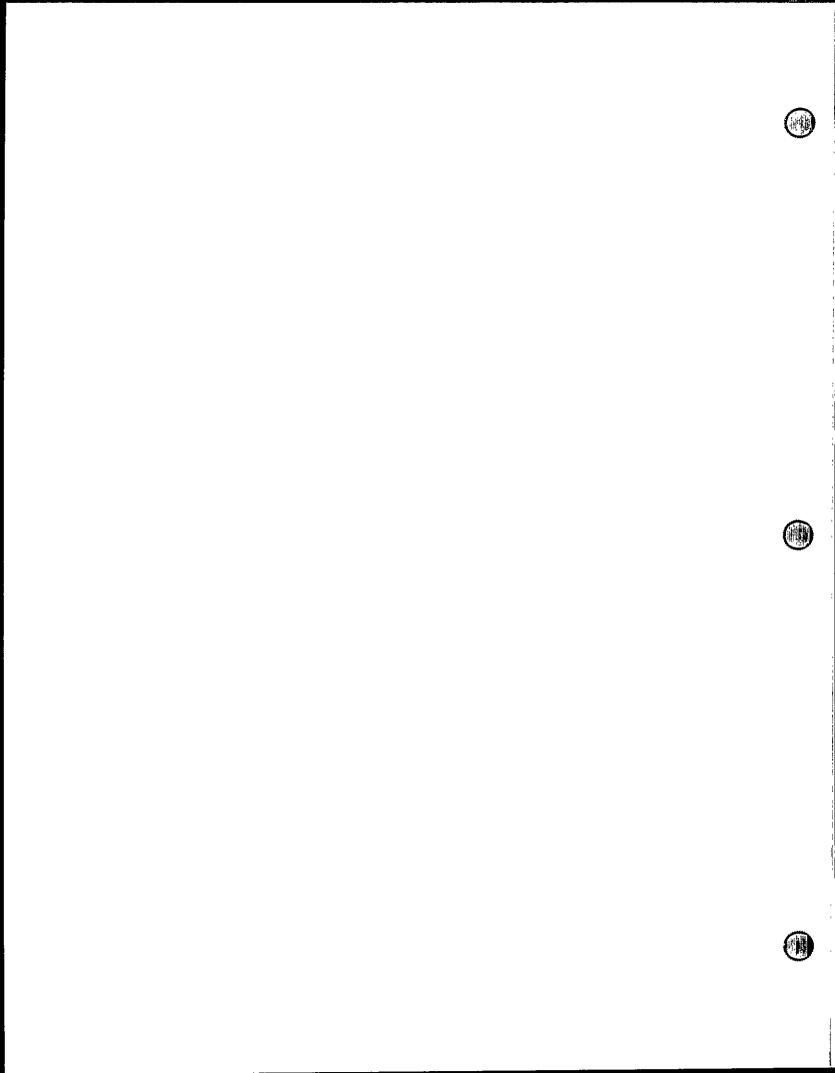
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(Colloguy)
                                                            16
   now is, does the Court allow the State to come back,
 1
   and get into the area, when they didn't get into it on
   direct. Quite frankly, a trial is a search for the
   truth. As I indicated, I would, most likely, allow it.
   In any event, maybe he, inadvertently, did not get into
   that area. He wishes to go back into that area,
   whatever issues that you need to get into, you might
   get into on cross. I certainly would allow you to go
 8
   into it, regarding that additional information.
 9
            And, you're right, to me, a trial is not
10
   always perfect. If there are issues that you have,
11
   like your photographs, yes, they were late.
12
   probably going to allow them in. It is not that kind
13
   of issue. We're here for a search for the truth.
14
                                 They should be followed.
   that's why there are rules.
15
   There are times, with the discretion of the Court, to
16
   allow some leeway. So, I would allow the State to get
17
   into the area, when we go back on redirect.
18
   again, I will allow you enough time to cross on
19
   anything. To cross on anything new, based on that.
20
            MR. GONZALEZ:
                           If I can make my argument, you
21
   look at the rules, because it's now just been offered,
22
   and, now, you're allowing it. I want to make the
23
   record clear, as to my objection to that coming in.
24
   also want to review the video. I had it set up, so, it
25
                                                            17
                            (Colloquy)
   would end at this particular time.
 1
            THE COURT:
                       Okay.
 2
                           Now, I'd like to review it.
 3
            MR. GONZALEZ:
  May I check on the video?
 4
            THE COURT: Okay. That is fine.
 5
                                              I'll give
   you a moment. Not a moment. You take how much time
 7
              Take a look at it.
            MR. GONZALEZ: I don't mean to obstruct the
 8
   nature of the proceedings. I know that we have a jury
 9
10
   waiting.
11
            THE COURT: No, that's all right.
            MR. GONZALEZ: I've got to get into these
12
            I have to create a record.
13
   issues.
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
           The jury is still up here. I can send them
17
   ready.
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
                  I wish I could.
   number on it.
24
            THE COURT: Then we'll let them go
25
   downstairs. I don't want to hold them upstairs.
                                                      That
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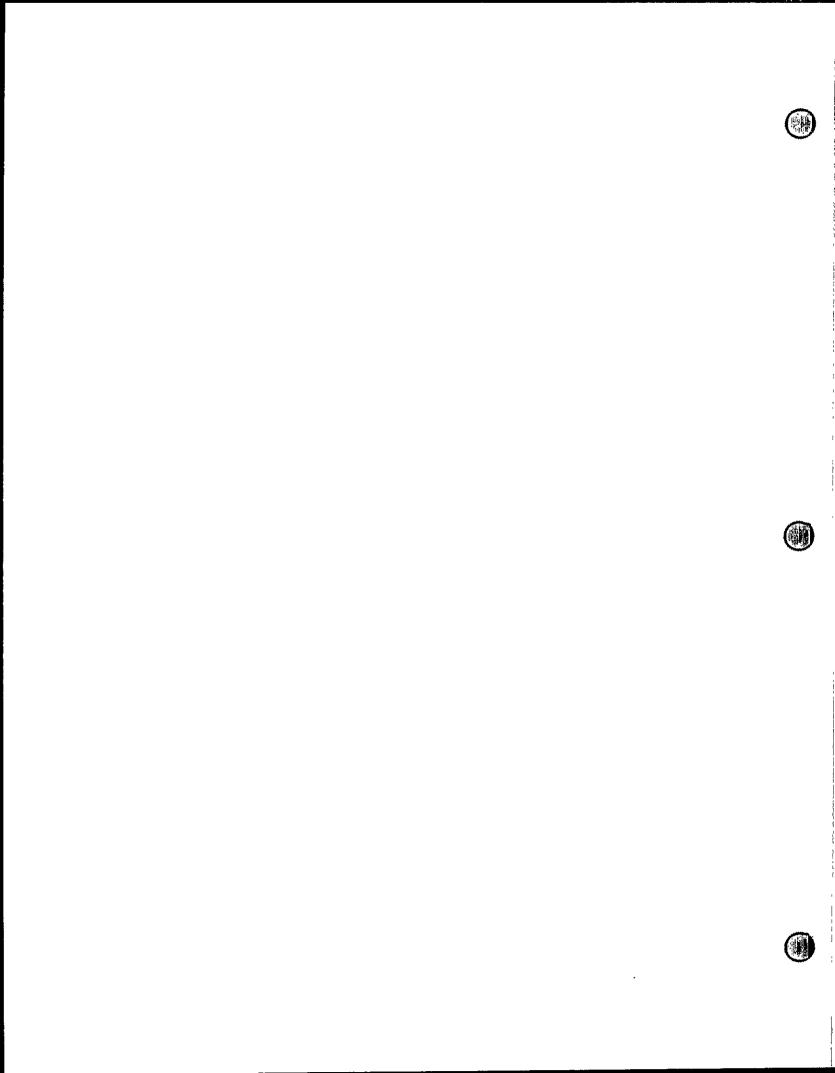
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(Colloguy)
                                                            18
   is probably better. They can get some coffee. We have
 1
   some things to do. Just let me know when you are
 2
 3
   ready.
            MR. SAMEIRO:
                         Can I make a suggestion?
 4
            THE COURT: That is fine.
 5
            MR. SAMEIRO: I heard what Counsel said, in
 6
 7
   terms of wanting to cross him on the video or not.
   I don't intend to get into that on redirect.
 8
   some lengthy cross, we could pause, and then we could
 9
   get in the redirect. Give the jury a break. But it is
10
   his call. I understand that the things he has to think
11
   about, with respect to the video, are not -- Is it all
12
13
   right Counsel if we finish your cross, on the direct,
   and then maybe bring the jury back?
14
            MR. GONZALEZ: Most respectfully, Judge, I'd
15
   rather have all my viewing, and then cross.
16
            THE COURT: Okay. Fine. Let me know when
17
18
   you are ready.
            MR. GONZALEZ: I appreciate that, Judge.
19
20
   Thank you.
                         Thank you.
21
            MR. SAMEIRO:
                       Thank you.
22
            THE COURT:
                           I apologize to the staff for
23
            MR. GONZALEZ:
24
   prolonging things.
            (Whereupon, a short recess was taken.)
25
                                                            19
                            (Colloguy)
            (Whereupon, the hearing continued outside the
 1
 2
   presence of the jury.)
            MR. GONZALEZ: Just for the record, my
 3
   objection is standing. I'll rely on the arguments set
 4
           Your Honor has made the ruling. I'll rely on
 5
   my arguments set forth. I looked at the tape.
   decided I'm going to play it up until this point.
 7
 8
            THE COURT:
                       Okay.
            MR. SAMEIRO:
                          I would like to go past this
 9
            I intend to play it -- I mean that's up to him
10
   -- on redirect -- whatever else he wants to do.
11
12
            MR. GONZALEZ: I may make the gametime
13
   decision and play it all the way through.
                                               I'm not sure
   -- either way.
14
15
            THE COURT: Okay.
                               That's fine.
                                             I do note
16
   your objection.
            MR. GONZALEZ: For the purposes of displaying
17
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.
                                                         Ι
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
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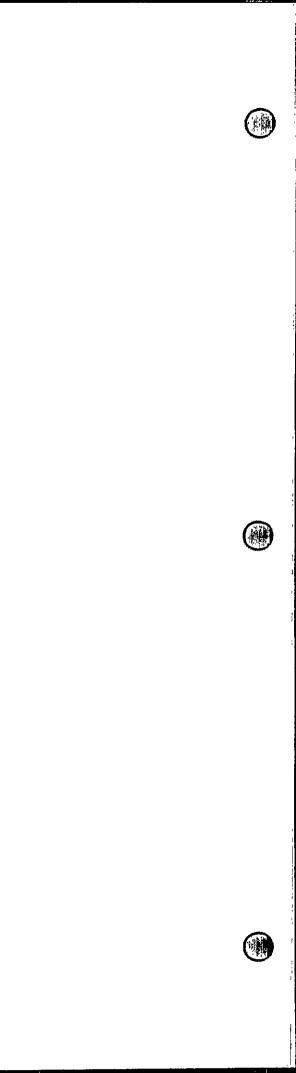
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20
                           (Colloguy)
 1
   here not for just my use.
                               It is our equipment.
            MR. GONZALEZ: I don't know how to work this.
 2
            MR. SAMEIRO: I'm not making criticisms.
 3
   said to him, if he said something to me at hine
   o'clock, perhaps, I could have helped him more.
 5
   don't have enough time really to get this going for
          I said to him, to do it the old-fashioned way.
 7
   So, he can definitely show the documents to the
 8
 9
   witness, like any other documents.
            It doesn't have to be displayed. Frankly, I
10
   would prefer that, in this case, because I don't know
11
   if I'm going to roll over on the admissibility of these
12
13
   documents, I don't know what the questions are going to
14
   be.
            THE COURT: Okay. So, I wouldn't necessarily
15
   allow the display. Or you might object. If the Court
16
   allows it, you might object.
17
18
            MR. SAMEIRO:
                          I might object to it.
   think it's not -- I think it's not prejudicial to the
19
   defendant anyway, if the jury gets the documents at the
20
   end of the case.
21
22
            THE COURT:
                        If they get the documents at the
23
   end of the case that --
            MR. GONZALEZ: Normally, it would be
24
25
   demonstrative.
                                                           21
                            (Colloguy)
                       Do you think, in the interim,
            THE COURT:
 1
   we'll probably have time at lunch.
 2
 3
            MR. SAMEIRO:
                          I'll try to get help to do
 4
   this.
            MR. GONZALEZ: If I can use them with
 5
   Detective Selesky.
 7
            MR. SAMEIRO:
                          I'll work with him on it.
   call for the Elmo. It's not here.
                                        I'll get it hooked
 8
   up to the projector, and have the laptop hooked up to
 9
10
   the projector.
11
            THE COURT: As you said, we can always do it
   the old-fashioned way until we have it all set up.
12
                          Yes, Judge.
13
            MR. SAMEIRO:
                           Yes, Judge.
14
            MR. GONZALEZ:
15
            THE COURT: Anyway, are we ready for the
16
   jury?
17
           MR. SAMEIRO:
                          I'm ready.
18
            MR. GONZALEZ:
                           I'm ready.
            THE COURT: Let's get the jury in.
19
20
            (Whereupon, the jury enters the courtroom.)
21
            THE COURT: Good morning, folks.
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.
```



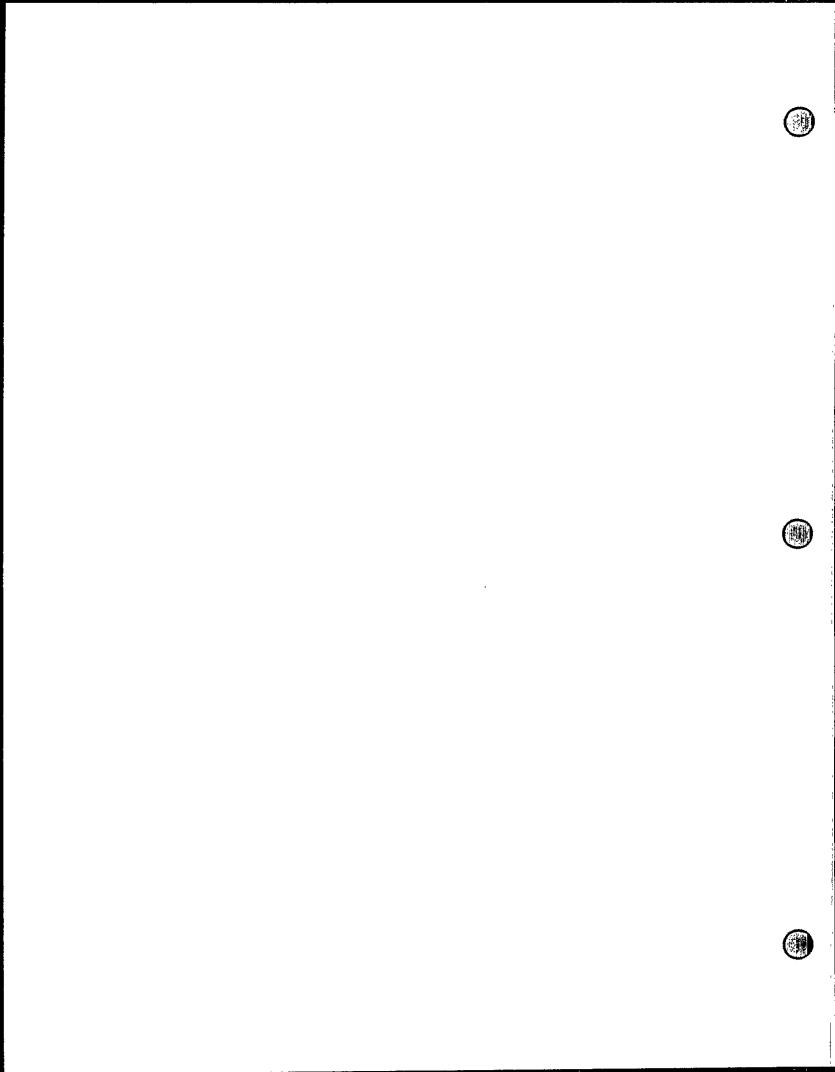
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22
                   W. Cedillo - cross (cont.)
            (Whereupon, the witness complies.)
 1
 2
                  C E D I L L O , called as a witness on
   WILMER
   behalf of the State, being duly sworn, testifies, with
   the use of a Spanish Interpreter, as follows:
   CROSS-EXAMINATION BY MR. GONZALEZ: (CONT.)
 7
            THE COURT: Okay. Is the microphone on?
   It's on. It sounds like it is. Thank you.
 8
 9
            Okay, Mr. Gonzalez.
            MR. GONZALEZ: Thank you, Judge.
10
            Mr. Cedillo, we're going to go over some of
11
   the things we talked about yesterday, today.
12
13
   okav?
14
   Α
       Okav.
            We talked previously about the money
15
16 situation at your job; correct?
17
       Yes.
            You indicated that the account, which is the
18
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.
           Now, when, at the end of the day, or when you
23
24 actually meet up with Juan, who you give the money to,
25 do you give him cash?
                                                           23
                   W. Cedillo - cross (cont.)
   \mathbf{A}
       Yes.
 1
           You give him half the cash, and you keep half
 2
       0
 3 the cash; right?
        Yes.
           You don't get paid via, by way of a check at
 5
        Q.
 6 your job; correct?
 7
   Α
       No.
            The identification that you indicated, that
 8
 9 was lost that particular date, or that was stolen from
   you, is your work identification; correct?
10
11
  Α
       Yes.
12
            What it includes on it, is a Social Security
   Number, that you work under; correct?
13
14
       Yes.
15
            And that number is used, so, that you can pay
   taxes here in the United States of America; correct?
16
17
       Yes.
18
           While you're working in the taxi company, you
19
   didn't file any tax returns, did you?
              Because at the end of the year, he does
20
21
   them, based on what we earned.
22
       Q
            So, Juan does them?
23
   Α
       Yes.
24
            And what you earned, he just, I guess, he
25
   estimates the cash, because he destroys the records,
```



```
W. Cedillo - cross (cont.)
   doesn't he?
 1
 2
           MR. SAMEIRO: I object to this. There is no
   foundation for this, first of all. Second of all, it's
   an improper line of questioning. I don't know what
   records he's referring to, that the records have been
   destroyed. He testified to, in this case, to telephone
           It is just an improper line of questioning.
 7
   calls.
            THE COURT: I'm not certain how much
 8
   information he can give us. He's not the individual
 9
   that keeps that information. I'm going to sustain the
10
   objection regarding that last question. But I don't
11
   know how he could know that information.
12
13
           MR. GONZALEZ: I'll ask him if he knows how
14
   Juan does the books.
                        Judge, that is not relevant to
15
           MR. SAMEIRO:
               I object to this on that basis.
16
   this case.
           MR. GONZALEZ:
                          There is --
17
            THE COURT:
                       Well, I understand the line of
18
19 questioning. Here's what I'll do. Overrule the
   objection to that question. Allow you to ask another
20
              But there may be another objection coming.
21
   question.
   We'll see.
22
23
           MR. GONZALEZ:
                           Okay.
24
            Do you know how Juan does the books at your
       Q
   job?
25
                                                           25
                   W. Cedillo - cross (cont.)
       He has his accountant.
 1
   Α
            Okay.
                  So, you're not aware of how you get
  paid, because you never get paid via check? You only
   get cash each day; correct?
 5
   Α
       Yes.
           You receive a W-2?
 6
       Q
 7
       Yes.
   Α
 8
           Do you know what a W-2 is?
       It is about income taxes.
 9
           Now, you've been driving in New Brunswick for
10
11
   three years; correct?
12
   Α
       Yes.
13
           And you live in the area; right?
       0
14
   Α
15
           So, basically, you know this area very, very
16
   well; correct?
17
       Yes.
   Α
18
           How many times do you think you ever went to
   400 Lee Avenue?
19
20
       I couldn't tell you. A lot. A lot. I have taken
21
   a lot of customers over there.
22
           You have taken a lot of customers there,
   because, at that circle, as you described it yesterday,
23
   there is an apartment complex, isn't there?
24
25
       Yes.
```



```
26
                   W. Cedillo - cross (cont.)
            The name of that complex is Livingston
 1
   Terrace, isn't it?
 2
        Yes.
           Do you have any idea of how many apartments
        Q
   are in that complex?
       No.
 7
            It runs from Livingston Avenue, right to Lee
        Q
   Avenue; correct?
 9
       Yes.
            Also, a portion of that --
10
        Q
11
            THE INTERPRETER:
                              Excuse me?
            A portion of that is also associated with
12
        Q
13 Woodnor Court --
            THE INTERPRETER:
                              The Interpreter did not
14
15 hear the name of the street.
           MR. GONZALEZ: Woodnor Court.
16
           -- correct?
17
        0
18
       Yes.
   Α
            It's a big place; right?
19
20 A
       Yes.
            When someone gets in your taxicab, they say,
21
22 "bring me to 400 Lee Avenue," you know it's the circle;
23
   right?
24
   Α
       Yes.
              Yes.
           Many, many patrons, that get in your taxicab,
25
                                                            27
                   W. Cedillo - cross (cont.)
  say, "take me to 400 Lee Avenue"; right?
 1
       Yes.
 2
   Α
            That's the address that everybody uses, when
   they're going there; correct?
        Yes. They call it the circle.
 5
            The circle of 400 Lee Avenue; right?
 6
        Q.
 7
        Yes.
   Α
           Then, you may imagine, that the people get
        0
 9 out, and they usually go towards the apartments;
10
   correct?
11 A
        Yes.
            Now, when you get to the end of that circle,
12
13 there is a bunch of cars in that area, that are usually
14 parked there?
        Yes.
15
   Α
           There is also buildings surrounding the
16
        Q
17 circle?
18
        Yes.
19
           Naturally, people live in those buildings;
20
   right?
21 A
       Yes.
22
           Originally, when you went to the police,
   didn't you say you were robbed on Woodnor Court?
23
24
       No.
25
           Now, yesterday, you testified that there was
       Q
```



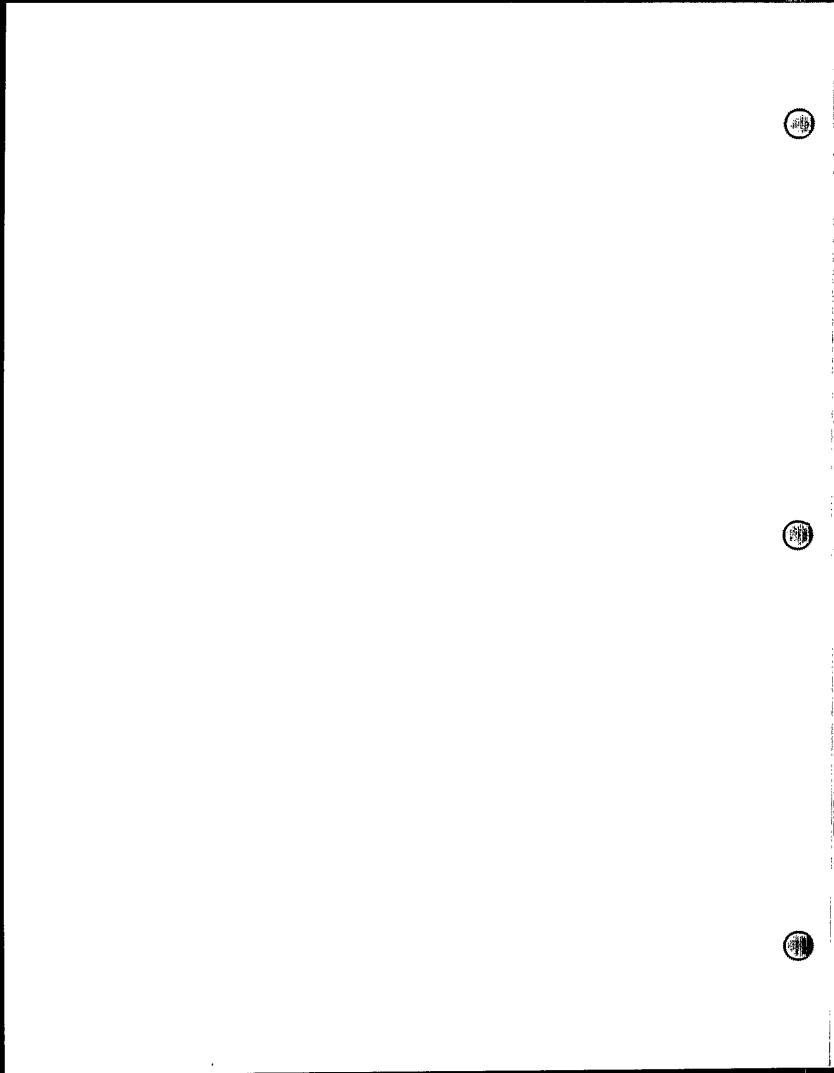
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W. Cedillo - cross (cont.)
 1
   one punch. And that Pablo Machado was the person that
   punched you; correct?
 2
       Yes.
           You never punched back, did you?
       Q
 5
       No.
   Α
 6
           You gave up; right?
 7
       Yes.
   Α
           Naturally, you saw the gun, and you got
 8
 9
   afraid; right?
       Yes.
10
   Α
            Didn't you tell Officer Bobadilla, that you
11
   swung back at the people in the car?
12
13
       No.
14
       Q
           You never said that; right?
15
       No.
   Α
16
           You never told Officer Bobadilla, that the
   people outside of the car, threw you to the ground and
17
18
   struck you; correct?
19 A
       Could you repeat the question?
            You never told Officer Bobadilla, that the
20
21 suspects, that came from -- the suspects that came from
22 behind the cars, threw you on the ground, and struck
   you, while you were on the ground?
23
              I wanted to try to get out. But they only
24
       Yes.
   let me get my feet out. But I always stayed in the
25
                   W. Cedillo - cross (cont.)
                                                            29
 1
   car.
 2
            So, you were never on the ground?
       Q
       No.
            No.
   Α
           You never told Officer Bobadilla, that you
   went to the ground; correct?
 5
            No. Afterwards. Afterwards, I was on the
   Α
       No.
 7
   ground because of the blood. I was on the ground
   because of the blood.
 8
            So, then, you never got out of the car?
 9
   Then, after you were bleeding, after you got robbed,
10
11
   and the guys ran away, you then got out of the car?
       Yes. Yes. When they ran away, then I got out of
12
   Α
13
   the car.
14
            So, you stayed there after they robbed you?
       Q
15
            THE INTERPRETER: The Interpreter needs to
16
   request repetition.
       I got back in the car. I got back in the car
17
   afterwards, to go over to 153 Joyce Kilmer, where my
18
19
   boss lives.
20
           You told Officer Bobadilla that; right?
       Q
21
   A
       Yes. Yes.
           Do you remember telling Officer Bobadilla
22
   that the suspects punched and kicked you one last time,
23
24
   and then ran away?
25
       Yes.
              They went through my pockets again, to see
```



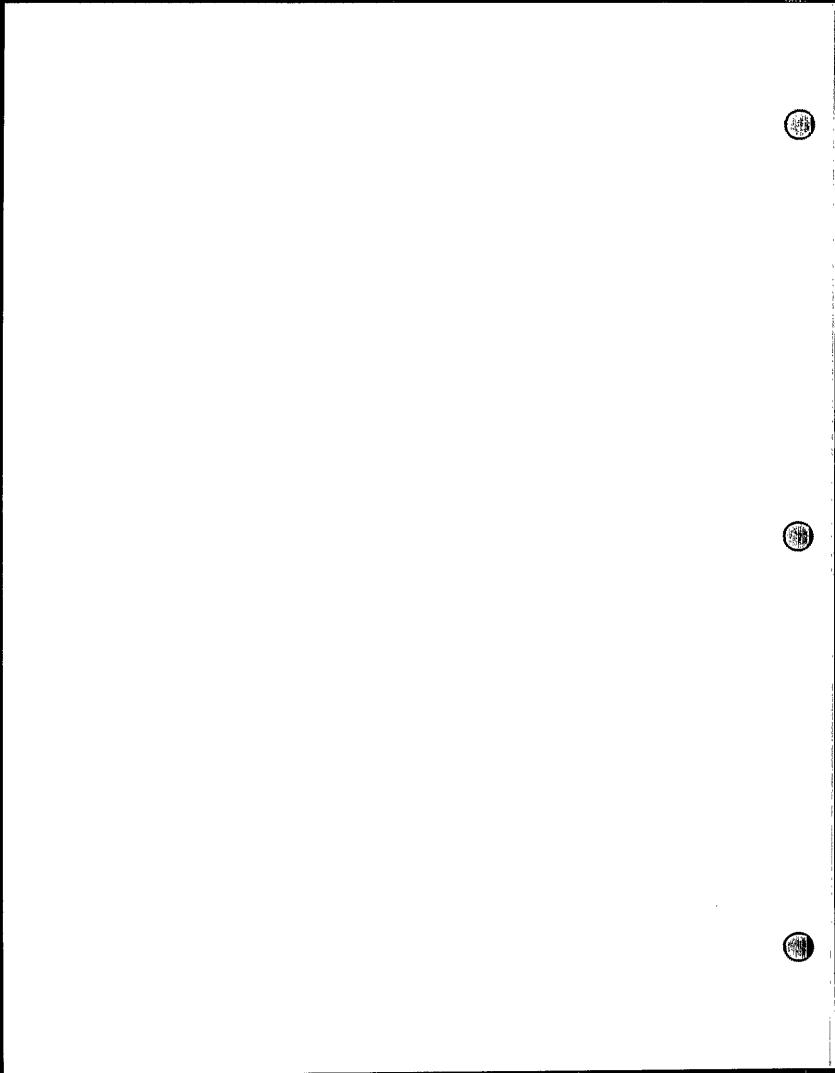
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W. Cedillo - cross (cont.)
   if I had any more money, and then they kicked me. They
   wanted to be sure they were taking everything.
           That's when you were outside of the car;
   right?
       No. I just had my feet out.
           So, yesterday, you told us, that they had
   punched you one time? Today, you're telling us that
   they kicked you?
 9
       Yes. Because yesterday -- I wasn't asked that
   question yesterday.
10
           You were never asked yesterday, if this was a
11
   one-punch event yesterday?
12
13
       Yes. What was said to me was about the punch.
           You also told Detective Selesky, through
14
15
   Officer Matias, this same story on July 25th; right?
16
       Yes.
           You told them that, you went to 153 Kilmer
17
       0
   Avenue?
18
       Yes. Yes. Yes, I did.
19
           You also told them who Juan was; right?
20
              I did tell him.
21
   Α
           You told them it was Juan Perez?
22
       Yes. He asked me. He asked me who my boss was.
23 A
           You told them you spoke to him, and he lived
24
25 at 153 Joyce Kilmer; right?
                   W. Cedillo - cross (cont.)
                                                           31
              I didn't tell him the number. He just said
 1
   to me, who is your boss. And I said to him, Juan
   Perez.
           When you talked to Officer Bobadilla the
   first time, on April 24th, you told Officer Bobadilla,
   that you got up, and then called your job; correct?
       Yes. I called. I went to 153 Joyce Kilmer.
 7
   I tried to call. And then I thought it would be better
   to knock on the door. And he was the one who got in
   touch with the base.
10
           But you told Officer Bobadilla, that you
11
   called your job, and that you got the number from the
12
13
   base; correct?
14
       Yes, that's how I told him.
           That's not how it happened though; right?
15
       Yes. Because the boss gave it to me. I tried to
16
   call. He gave me the phone number. And he said, make
17
18
   the report from this phone number, because that's where
   they called from.
19
20
           A lot of people call the base from 400 Lee
       Q
21
   Avenue; right?
                   That's right.
22
       Yes.
             Yes.
23
           There could be, on an average day, that you
   go there ten times?
24
25
       Yes. Yes.
                   Yes.
```



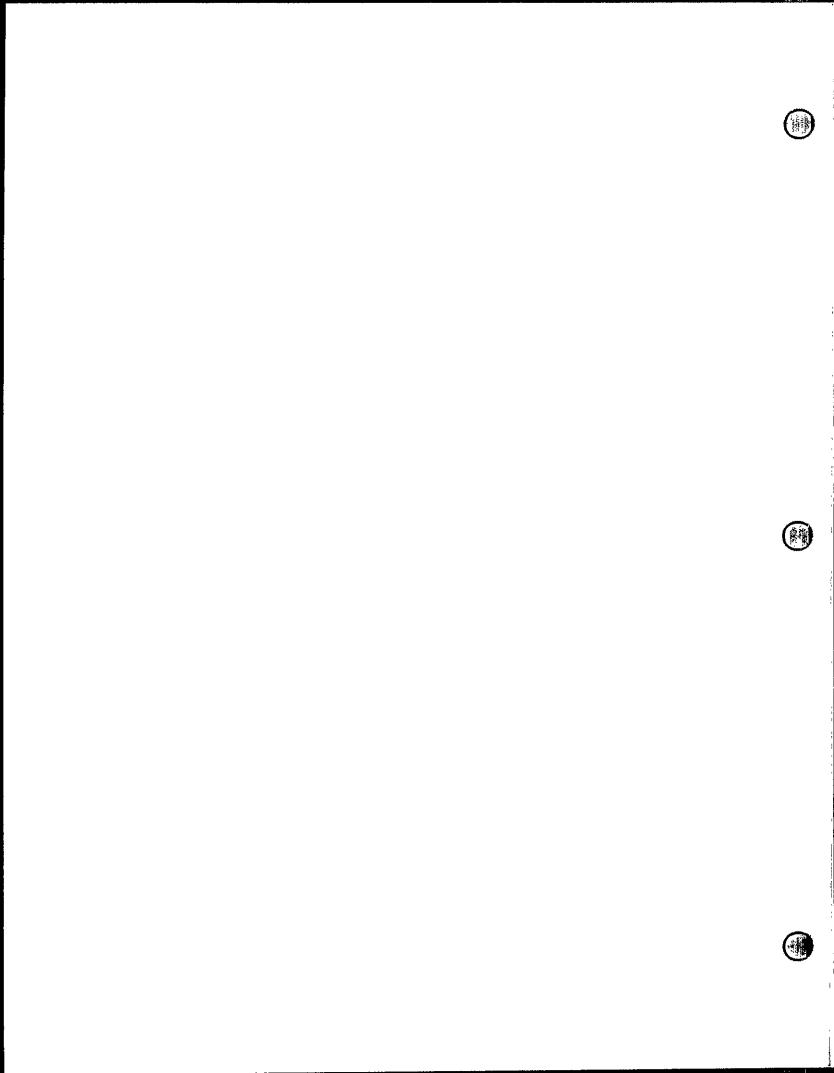
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32
                   W. Cedillo - cross (cont.)
            Other cab drivers also go there; correct?
 1
       Yes. Of course. Of course. There are different
   Α
   companies. And every company has their own customers.
            It's safe to say, that there is an ingress
  and an egress, inside 400 Lee Avenue, on a constant
   basis with taxi cabs?
       I couldn't tell you that. Sometimes they call,
   sometimes they don't.
           You only know about the calls that you get;
 9
10
   right?
       Yes.
             The ones I receive.
11
           Doesn't the dispatcher say an address over
12
   the air, and see who can go there?
13
       Yes. He says, whoever is closest to the address
14
   should go, to be able to answer that call the quickest.
15
           You've been inside of the dispatcher's office
16
   before?
17
18
   Α
       Yes.
           Calls are coming in constantly; correct?
19
       Yes. Yes.
20 A
            Things are dispatched constantly; correct?
21
22 A
       Yes.
23
           When you went to the police station, and
24 talked to Officer Bobadilla, you had a piece of paper
25 in your hand; right?
                                                           33
                   W. Cedillo - cross (cont.)
   Α
       Yes.
             Yes.
 1
 2
           You gave it to Officer Bobadilla; right?
        Yes. He noted the number. I don't know if he
   Α
   kept the paper.
           A year and a half passed since then; right?
 5
       0
       Yes.
   Α
           You don't know the number by heart; right?
 7
       No. When I look at the report, I remembered.
 8
            So, any number you would have saw on that
 9
10 report, you would have said it was the right number;
11
   right?
            Because when I was told that four months
12
   after, from April to July, I still remembered the
13
   number really, really well.
14
            You remember the number that was written on
15
16
   the paper; right?
             Yes. Yes. I still even know it by memory.
17
       Yes.
18
            You never ever spoke to "el flaco"; right?
19
       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
            So, Juan talked to "flaco"; right?
23
             Yes.
       Yes.
                   Yes.
24
           If that never happened, you would have never
25
   known of his number, that was used to call in this
```



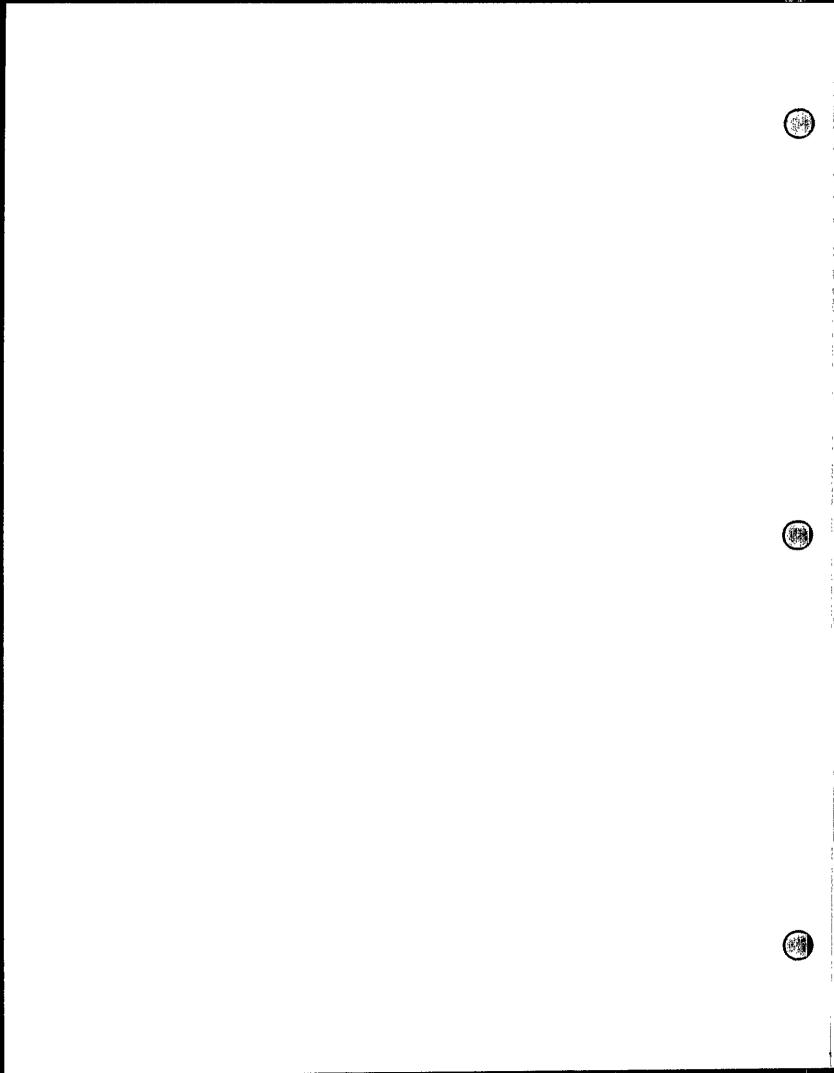
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34
                   W. Cedillo - cross (cont.)
   particular case; correct?
        Yes, I would have checked it out. I would have
 2
   checked it out.
            You never followed up, to check it out, did
   you?
              I did talk to "el flaco." And he told me,
   Α
       Yes.
   later, yes, that was the number that they call from.
 8
            MR. GONZALEZ: If you can just give me a
             Excuse me.
 9
   moment?
            So, July 25th, you remembered making that
10
   statement naturally; right?
11
12
        Yes.
13
        Q.
            Everything you testified to yesterday and
   today, is the same that you swore to, and told
14
   Detective Selesky, and Officer Matias at that time;
15
16
   correct?
17
        Yes.
   Α
            MR. GONZALEZ: I'm waiting for the projector
18
19
   to warm up.
            That's you in the picture; correct?
20
        Q
21
        Yes.
22
           You grew your hair out since then; right?
23
   Α
        Yes.
            Now, that's Officer Matias to your right;
24
        Q
25 correct?
                                                            35
                   W. Cedillo - cross (cont.)
 1
   Α
        Yes.
            That's Detective Selesky across from you;
 2
        Q
 3
   correct?
 4
        Yes.
   Α
            MR. GONZALEZ: Judge, for the record, it's
 5
 6 S-2, I think.
 7
            MR. SAMEIRO: No.
                               S-1.
 8
            MR. GONZALEZ: For the record, I'm going to
   play S-1, from 22:12:55. The date that's on this
 9
   particular exhibit is July 25, 2007. It is a
10
   recordation of the statement made by Wilmer Cedillo, on
11
12
   July 25th.
            (Whereupon, the videotape is played for the
13
14
   jury.)
            MR. GONZALEZ: There are some technical
15
   difficulties.
                   I'm trying to figure it out. The tape
16
17
   played to 17:16.
18
            (Whereupon, the videotape is stopped.)
                          Judge, if I can, I have my own
19
            MR. GONZALEZ:
20
             I have my own laptop. I can insert that same
21
   disk inside my laptop to make sure it's operating
22
                I think that mine plays straight through.
   correctly.
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.
```



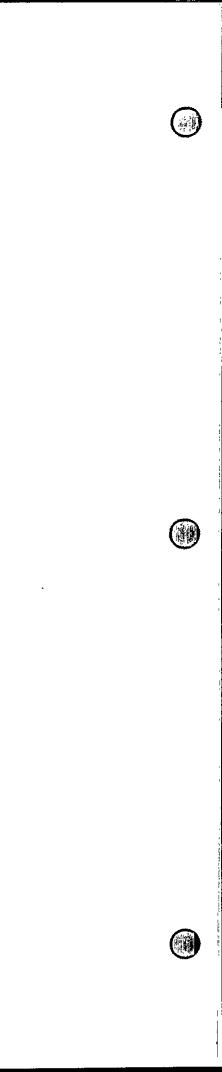
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36
                   W. Cedillo - cross (cont.)
            THE COURT: We can try that.
 1
            MR. SAMEIRO: I'm only suggesting that to
 2
 3
   Counsel.
            MR. GONZALEZ: I am not necessarily a techie.
   But I will do exactly what Mr. Sameiro suggests.
 5
   is a lot of stuff on it.
 6
 7
            THE COURT:
                        I know that's what we do at home.
            MR. SAMEIRO:
                          The disk is removed from the
 8
             It should cue up to where you left off. But
 9
   laptop.
10
   we'll see.
                           17:16.
                                   There is dirt and
            MR. GONZALEZ:
11
                                     I have a copy that we
12
               I have my own copy.
   scratches.
13
   can mark. It is the same as the one that the State
14
   gave us.
                          That smudge and dirt is a
15
            MR. SAMEIRO:
   little trick on my part.
16
17
            (Whereupon, the videotape is continued to be
18
   played for the jury.)
            MR. SAMEIRO: Judge, Counsel stopped it at
19
20
   22:25:55.
21
            As far as the time stamp.
            MR. GONZALEZ: Actually let the record
22
23
   reflect that, Judge.
                       Okay.
24
            THE COURT:
            Now, Mr. Cedillo, on July 25th, you weren't
25
        Q
                                                            37
                   W. Cedillo - cross (cont.)
   able to give a description of those people that robbed
   you on that date; is that correct?
       No. But I was shown photographs, and I know it's
   Α
   him.
            Also, you said you got -- You said you got
 5
        Q
   hit in the face?
        Yes. Yes. After so many questions I've been
 7
   asked in this case, now, I see the video, and I
 8
   remember well. And everything that is there is true.
 9
            Everything that's on the video is true?
10
11
       Yes. Yes. Yes.
12
            So, your story that you told us yesterday and
13
   today is not true?
            MR. SAMEIRO: I'm going to object to that.
14
15
            MR. GONZALEZ: It's a valid question.
16
            THE COURT: No. I'm going to sustain the
   objection. I ask you to rephrase the question.
17
18
            So, the entire story, that you have told,
   yesterday and today, is that more true, or is this
19
20
   version more true?
        It's the same. It's all the same.
21
                                            It's almost
22
   exactly all the same.
                          There were a few things you
   don't remember after a year and a half.
23
24
            When the event happened, on April 24th, you
25
   went to Juan Perez's house. You came out of Juan
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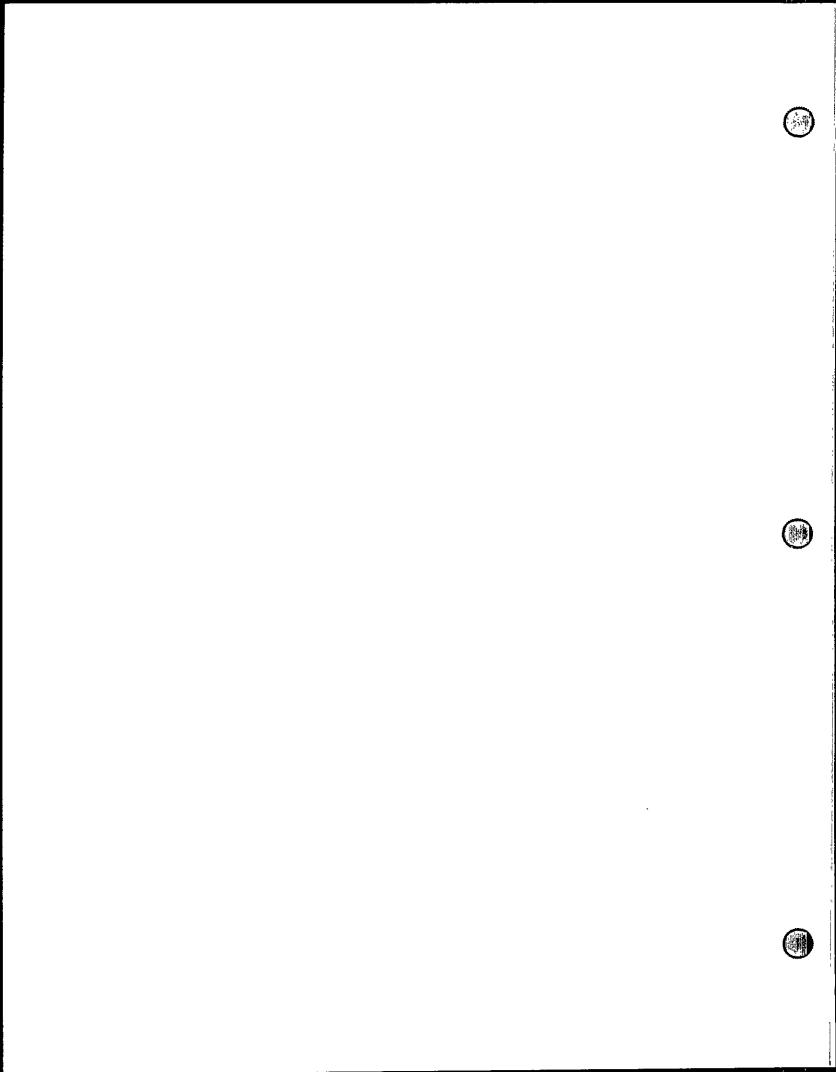
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W. Cedillo - cross (cont.)
                                                           38
   Perez's house, and you went to the police; right?
 2
                  In April.
       Yes.
             Yes.
 3
           In April.
       Q
       He is saying July.
   Α
            I'm sorry. I apologize. April 24th, right
   after this happened.
             Yes.
       Yes.
   Α
            You went directly to the police, and you told
 8
   them a recounting of the events that occurred on April
 9
   24th; right?
10
       First, I went to my bosses, and then I was over
11
           I was waiting for someone to translate for me
12
   into Spanish. I was waiting for awhile for Officer
13
14
   Bobadilla.
15
           You waited awhile for Officer Bobadilla;
       0
16 right?
17
       Yes. Yes.
           Officer Bobadilla speaks Spanish; right?
18
19 A
       Yes. Yes.
20
           And you told him the story about what
       Q.
21 happened?
22
  Α
       Yes. Yes.
           And it's the same story that you told us
23
24 yesterday and today; right?
25
       Yes.
   Α
                   W. Cedillo - cross (cont.)
                                                           39
            The same story that you told the police on
 1
 2
   July 25th; right?
 3
   Α
       Yes.
           And -- Okay. Excuse me. Strike that.
  Mr. -- excuse me -- Detective Selesky asked you if they
 5
   punched you. Well, he asked you, where the people were
 7 in the car; right?
           MR. SAMEIRO: Judge, I'm going to object to
 8
 9 that because the DVD flatly contradicts that question.
   He never asked that question.
10
11
           THE COURT: Mr. Gonzalez?
           MR. GONZALEZ:
                           I'll rephrase.
12
13
           THE COURT:
                      Thank you.
            Sustained.
14
15
           When Detective Selesky told you, that the
16
  people in the back hit you, you agreed; right?
17
       Yes.
             Yes.
18
           And at no moment, during this statement, did
   you say that anyone was sitting in the passenger seat;
19
20
   right?
21
       No. No. No.
22
           You told us that yesterday; right?
23 A
       Yes. Yes.
24
           And you told Officer Bobadilla, that the
25
   person was sitting in the back; right?
```



```
W. Cedillo - cross (cont.)
             Everything I remembered just now, what's
 1
   Α
   there, it's all exact. It's about five times.
 2
   it once. And then you called me. And it's all
   questions and questions. And it confuses you. But
   what's on the video is exact.
           That means the guy was sitting behind you?
 6
             I really remember everything. I really
 7
       Yes.
   Α
   remember everything well. Because I was shown the
 8
9
   video.
           It's been a year and a half.
           You changed your story when you came in here
10
       0
11
   yesterday; right?
       It had been a year and a half. But the story has
12
13
   not changed. Almost everything is -- almost exactly
   everything is almost exactly the same.
                                            All of it.
14
           You said in the tape, in this video
15
  statement, that, coincidentally, you saw Pablo Machado
16
   the day before; right?
17
             The day before.
                              But that was in July.
18
       Yes.
            THE COURT: Mr. Gonzalez, might this be a
19
   good time to break for lunch?
20
                           Sure, Judge. Have lunch.
21
           MR. GONZALEZ:
            THE COURT: All right. That's what we're
22
   going to do. We'll break for lunch right now.
23
   you to be back downstairs at 1:30. We'll bring you up
24
   and resume the testimony in the trial.
                                            Please
25
                   W. Cedillo - cross (cont.)
                                                           41
  remember, do not discuss the testimony among yourselves
 1
   or with anyone else. If there is anything in the
 2
  newspapers, please do not read it, or listen to anyone
  else discuss it. See you back downstairs at 1:30.
   Have a nice lunch.
 5
            (Whereupon, the jury leaves the courtroom for
 6
 7
   lunch.)
            (Whereupon, a luncheon recess was taken.)
 8
            (Whereupon, the hearing continued after
 9
10
   lunch.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
```



```
W. Cedillo - cross (cont.)
            A F T E R N O O N S E S S I O N
 1
 2
            THE COURT: Thank you. Please have a seat.
 3
   Are we all ready?
 4
           MR. GONZALEZ: Yes.
            MR. SAMEIRO: Yes, I am ready.
 5
 6
            THE COURT: Come up, Mr. Cedillo.
           (Whereupon, the witness complies.)
 7
            (Whereupon, the jury enters the courtroom.)
 8
            THE COURT: Okay, folks. We're ready to
 9
10
  continue.
11
           Mr. Gonzalez?
            Mr. Cedillo, I remind you that you're still
12
13
  under oath.
            THE WITNESS: Okay.
14
            THE COURT: Thank you.
15
           Mr. Cedillo, yesterday you said, the guy was
16
   sitting next to you; right?
17
18
       Yes.
           Today you're saying, the guy who robbed you
19
       Q
20 was sitting behind you; right?
       Yes. But since I remember, because of the video,
21
22 well, you know, you are not going to remember from a
23
   year and a half.
            So, yesterday, you stated you had, when Mr.
24
   Sameiro asked you, on direct examination, that you had
25
                     W. Cedillo - redirect
                                                           43
   the ability to see the man's face?
 1
 2
       Yes.
           Now, since he was sitting behind you, that
   story is changed, too, now; right?
       Yes. But then he moved next to me, to take
 5
   everything from me.
 7
           MR. GONZALEZ:
                           I have no further questions.
            THE COURT: Thank you.
 8
                                   State?
 9 REDIRECT EXAMINATION BY MR. SAMEIRO:
           Mr. Cedillo, have you ever testified in a
10
   courtroom before?
11
            This is the first time.
12
       No.
13
           Are you comfortable, nervous, scared, happy?
  What would be the best word, out of that group, to
14
15
   describe how you are feeling?
        I'm nervous. This is the first time.
16
17
            Okay. How about when you spoke to the police
18
   officers on the date that you were robbed, how were you
   feeling that day?
19
       Nervous also. It was the first time I made that
20
   Α
   report. The first time something like this happens in
21
22
   my entire life.
23
           Are you nervous being in the room with the
24
   man who robbed you at gunpoint?
25
       Of course, I am.
```



```
W. Cedillo - redirect
            Since the event, that took place on April 24,
   2007, was there a time where you saw him, and he made a
   threatening gesture to you?
       Yes.
             Instead of it being, I was the one who was
   angry, it was him who was threatening me.
           Did that take place before you went to the
   police, and looked at the pictures that we have talked
   about, on that July 25th date?
 9
       Yes.
           Do you remember how many days before you had
       0
10
11
   that encounter with him?
       One day before.
12
           Where did you see him?
13
14 A
       On Remsen.
            In New Brunswick?
15
       In New Brunswick.
16 A
          Remsen is Remsen Avenue?
17
18
       Yes.
   Α
           You remember where on Remsen Avenue?
19
                    There was a restaurant that used to
20 A
       164 Remsen.
21 be called the --
22
            THE INTERPRETER: The Interpreter didn't get
23 the name, your Honor.
       "Catracho."
24 A
           Was there a restaurant there at the time, at
25
       Q
                     W. Cedillo - redirect
                                                           45
   164, where you saw the defendant?
 2
       No.
             It's "a la barra." It's next to 164.
            Did you say "a bar"?
 3
            THE INTERPRETER:
                             The Interpreter wants to
   clarify the expression.
 5
        "A la par." Nearby. It is nearby 164.
   Α
           You were nearby the restaurant when you saw
 7
 8
   the defendant?
 9
       Yes. Yes. Yes, I did.
10
           Was he outside of the restaurant?
       Q
       Yes. Yes.
11 A
           Where was he?
12
       He was sitting there at the limit of the other
13 A
14 house next door.
15
           By the sidewalk?
       Q
16
       On the sidewalk.
  Α
           What were you doing in that area?
17
18
       I was just going by because I was working. He was
   the one who made the signs to me. He did this.
19
20
           What kind of signs did he make?
21 A
       He did this (indicating).
22
           Indicating with your left index finger in the
23
  air?
24 A
       Yes. Yes.
                   Yes.
25
           Did he say anything to you?
```



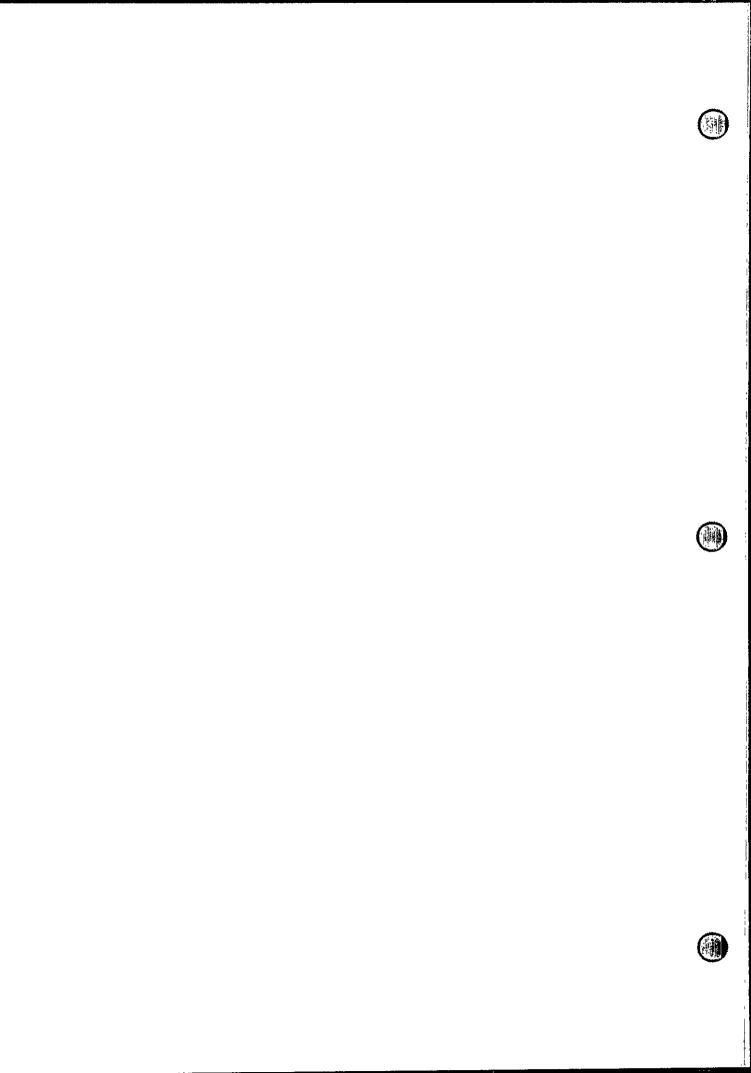




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W. Cedillo - redirect
                                                            46
       No. No. I went -- I just went by. And then
 1
   Α
   I turned around, just to recognize him properly.
 3
           You were driving by when you saw him?
 4
       Yes.
             Yes.
   Α
 5
            And you interpreted that gesture as
   threatening?
             Like he is the person who stole from me.
       Yes.
   Since he is the person who stole from me.
            Did you report that to the police when you
 9
   spoke to them on this video that we just saw?
10
              I told them I had seen him a day before.
11
            MR. SAMEIRO: Judge, I'd like to play that
12
13
   portion of the tape.
            THE COURT: Any objection to that portion?
14
15
            MR. GONZALEZ:
                           No.
16
            MR. SAMEIRO: Your Honor, I believe this is
17 exactly where Counsel left off. Where he stopped it
   was at 22:25:55.
18
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.)
            MR. SAMEIRO: Judge, for the record, I just
24
25 now stopped the tape. The occupants are out of the
                      W. Cedillo - redirect
                                                            47
          And the time stamp is 22:26:40.
 1
  room.
                       Okay.
 2
            THE COURT:
            Mr. Cedillo, did you just see that?
 3
 4
   Α
       Yes.
            I heard you say on the video, that the
 5
   defendant actually said to you, that he had some
   friends that would get you?
 7
 8
       Yes. Yes.
           Do you remember him saying that?
 9
                   I remember.
10
       Yes. Yes.
   Α
11
           Have you and I gone over this video recently,
12
   in preparation for trial?
13
       Yes.
           We have? Recently? Within the last couple
14
       0
15
   of days?
16
   Α
       No. No. Oh, no. No.
17
            Do you remember us going over the video?
18
            THE INTERPRETER: I am sorry?
19
            Do you remember us going over this video?
20 A
       Yes.
             Yes. But it was a while ago.
            Summer? In the summer?
21
       Q
22 A
       Yes.
23
           You weren't asked to memorize any of this,
24 were you?
25
       No.
            No.
```



```
W. Cedillo - redirect
                                                             48
            In fact, you weren't --
 1
        Q
 2
            MR. GONZALEZ:
                           Judge, just to note that the
 3
   questions are leading.
            MR. SAMEIRO: I'll withdraw that.
                           The leading nature of the
 5
            MR. GONZALEZ:
 6
   questions.
 7
                        Okay.
            THE COURT:
 8
            I'm going to show you what's been marked S-5,
   Officer Bobadilla's report. Can you just look at this?
 9
   Both pages?
10
11
        (Witness complies.)
12
            Do you know what that is?
        Q
13
   Α
       Yes.
            What is it?
14
        Q.
        It's the report, and the telephone number is
15
   Α
16
   there.
17
            You recognize the number; right?
        Q
18
   Α
       Yes.
           Because that's in the same language as you
19
  would have, in Spanish, that number?
20
        Yes.
21
22
            That's Officer Bobadilla's report, written
        Q
  totally in English, isn't it?
23
24
        Yes.
            Outside of that number, do you understand
25
        0
                      W. Cedillo - redirect
                                                             49
  anything on that report?
 1
 2
       No.
                  It is in English.
            No.
            Because it is in English?
 3
       Yes. Yes. Yes.
   A
           Did you go over this report in preparation
 5
        Q
   for trial today?
 7
   Α
       Yes. Yes.
 8
           How did you go over it?
       No. In Spanish, I read it on this day.
10
   everything, so, I could sign it.
           Are you, perhaps, confused with what you read
11
   on July 25th, with respect to the photo array?
12
13
        No.
             No.
                  No.
14
        Q
            You've been asked a lot of questions
   concerning what you allegedly said to Officer
15
   Bobadilla by Mr. Gonzalez; right?
16
17
   Α
       Yes. Yes.
            And you got to understand, that a lot of
18
19
   those questions, that were asked by Counsel, came from
20
   Bobadilla's report? You understand that?
21 A
       Yes.
             Yes.
22
            So, you had a conversation with him about the
23
   event, within an hour after being robbed; right?
24
              Yes.
       Yes.
25
            We have established you were nervous that
```



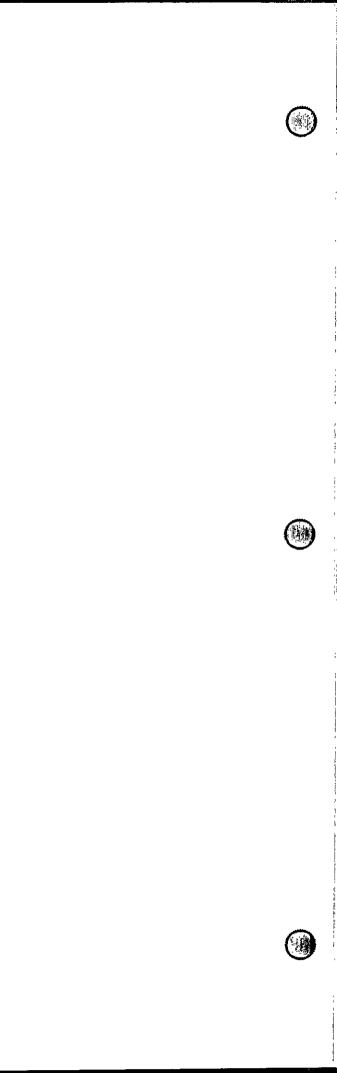
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W. Cedillo - redirect
                                                            50
 1
   day?
 2
        Yes. Yes.
   Α
 3
           We're relying on Bobadilla's translation?
        Q
       Yes.
   Α
 5
            With respect to the questions that Mr.
   Gonzalez has asked you?
 7
        Yes.
 8
            Now, one of the things that you were asked,
        O.
   based upon this initial interview, was how you
 9
   described the defendant's height. You remember that
10
   question by Mr. Gonzalez? How tall was the guy who
11
12
   robbed you?
13
       Yes.
              Yes.
           You remember what your answer was to Mr.
14
15
   Gonzalez?
                    I told him 5'8".
16
   Α
       Yes. Yes.
            Did you say that the guy was as big as you?
17
   You remember saying that to him yesterday?
18
19
        Yes.
20
            Now, we have established then, perhaps, that
21
   you are five foot eight; right?
             5'6".
22
        No.
23
            That's how tall you are?
        Q
                   It is on my driver's license. I just
24
        Yes.
              Yes.
  checked it outside.
25
                      W. Cedillo - redirect
                                                            51
            You know what this is?
 1
        Q
 2
       Yes.
   Α
            What is it?
 3
        Q
        It's a measuring tape.
 4
 5
            Since height is going to be an issue in the
 6
   case --
            MR. SAMEIRO: Counsel, would you help me?
 7
            MR. GONZALEZ: Not a problem.
 8
            So, you think you might be 5'6"?
 9
10
       Yes.
              Yes.
                    Yes.
   Α
11
            MR. GONZALEZ: Let me know when you need me.
12
            Come over here, please, Mr. Cedillo.
13
         I'm going to ask you to draw a line to mark Mr.
   Cedillo's height on this sheet of paper on the easel.
14
15
            MR. GONZALEZ: It doesn't reach. It's higher
16
   than the paper.
            MR. SAMEIRO: What would you say it is up to?
17
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
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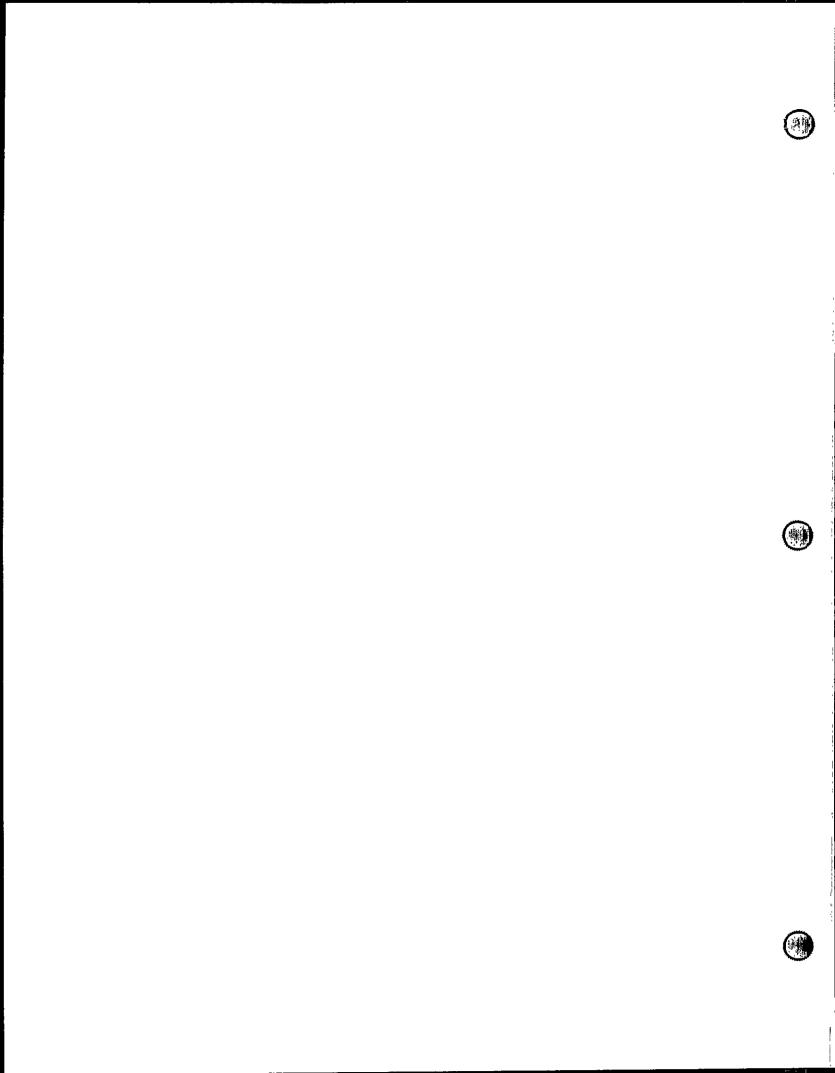
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52
                      W. Cedillo - redirect
   my hand (indicating)? A tape measure?
 1
           MR. GONZALEZ: You can ask him.
 2
 3
           MR. SAMEIRO: A tape measure (indicating).
 4
           MR. GONZALEZ: I'd rather not testify.
           MR. SAMEIRO: Would you say, Counsel, that is
 5
  about 68 inches on that tape measure?
 6
 7
           MR. GONZALEZ: You can ask him.
           How many inches?
 8
       Q.
 9
       68.
   Α
           That translates to what? Five foot eight?
10
       Q
11 A Yes. Yes.
           MR. SAMEIRO: Judge, I'd ask you to direct
12
13 the defendant to stand here. I want to measure him now
14 myself.
            THE COURT: Ask Mr. Machado?
15
           MR. SAMEIRO: I'm asking that the defendant
16
17 stand right here. Come over here so, I can measure his
18
  height.
           THE COURT: Okay. Mr. Machado?
19
            (Whereupon, the defendant complies.)
20
           MR. SAMEIRO: Perhaps, you can assist me.
21
22
           MR. GONZALEZ: Sure.
           MR. SAMEIRO: Why don't you draw a level
23
24 line?
           MR. GONZALEZ: Sure. That would be about
25
                      W. Cedillo - redirect
                                                           53
 1 here (indicating)?
 2
           MR. SAMEIRO: A little bit lower. A little
   lower. You can mark it. You're sure that's level,
 3
             I know you wouldn't want to cheat, would you?
 4
   Counsel?
            THE COURT: All right, Mr. Machado, you can
 5
   have a seat.
                 Thank you, sir.
 7
            (Whereupon, the defendant complies.)
            MR. SAMEIRO: Mr. Cedillo, you can come over
 8
 9
   here.
           (Whereupon, the witness complies.)
10
            I'm going to put this ruler where that mark
11
   was made. Now, look at the number. This top mark here
12
   (indicating). What you got?
13
14
   Α
       64.
15
       Q
           64 inches; right?
16
       64 inches.
  A
17
           That's five foot four; right?
       5'4", yes.
18
  Α
           Did you see the defendant walk by?
19
20 A
       Yes.
21
           You saw him standing there next to you?
22 A
       Yes.
23
           You still think he's about your height?
       0
       No. Because he is a bit smaller.
24 A
25
           You mentioned that your card has five foot
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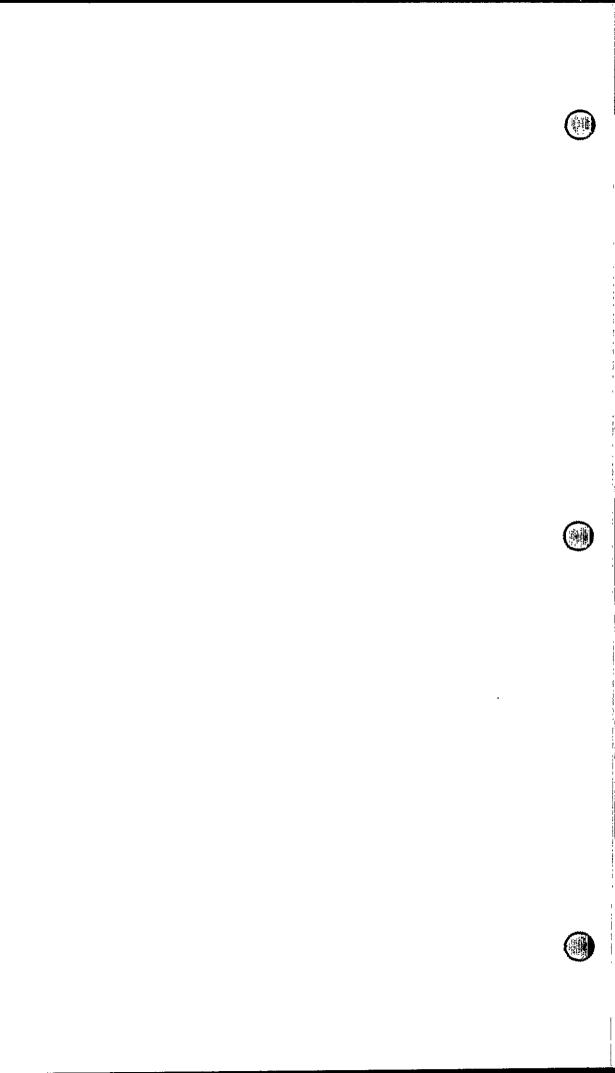
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W. Cedillo - redirect
                                                           54
 1
   six?
       Yes. Yes.
 2
   Α
           Is that your worker's permit?
       No. I'm saying my driver's license. With me, it
   says 5'6".
           Let's get off the subject of the height. Do
  you have your worker's permit?
 7
       Only my license.
 8
           What license is that? Issued by what agency?
 9
       New Jersey. Because of the work permit, you can
10
   Α
11 have it here.
           Do you have your work permit with you?
12
       Q
       No. No. No, I don't.
13
           Let me see the driver's license.
14
       (Witness complies.)
15
           MR. SAMEIRO: Judge, I'd like the jury to see
16
17 this.
           THE COURT: Any objection?
18
           MR. GONZALEZ: I have no objection.
19
           MR. SAMEIRO:
                          I don't want to mark it as an
20
             Then I can't return it to him.
   exhibit.
21
22
            THE COURT: Well, we'll just need something
23
   to identify it.
           MR. SAMEIRO: It's the license. I can mark
24
25
   it; but --
                     W. Cedillo - redirect
                                                           55
           MR. GONZALEZ: I wouldn't object if he marks
 1
   it per se. We can make a photocopy.
 2
           MR. SAMEIRO: That's fine. I'd like to mark
 3
   it as an exhibit, Judge. But just for the sake of
 4
   time, we can do it later. I'd like to just pass it
 5
   among the jury, so, they can see it, look at all the
 7
   authentication markings on it.
            THE COURT: That's fine. It's his New Jersey
 8
   driver's license?
 9
           MR. SAMEIRO: Yes.
10
            THE COURT: Counsel, you want to look at it?
11
           MR. GONZALEZ: I trust that it came from his
12
            I will look at it as it comes back.
13
   pocket.
           THE COURT: All right.
14
15
            (Whereupon, the driver's license is passed
16
   through the jury.)
           THE COURT: Mr. Cedillo can have a seat;
17
18
   right?
           MR. SAMEIRO: Yes.
19
20
            (Whereupon, the witness complies.)
           MR. GONZALEZ: If you don't mind, I will look
21
22
  at it after the last juror.
           MR. SAMEIRO:
23
                          Sure.
           THE COURT: Thank you.
24
25
           Can you say how tall I am, sir?
```



```
W. Cedillo - redirect
                                                           56
 1
   Α
       No. No.
 2
        Q
            You don't even want to guess?
 3
       No.
            But, at the time, when you spoke to Officer
 4
   Bobadilla, you thought the man that robbed you was
   about your height? Was that your testimony?
 7
             Yes.
       Yes.
            Counsel has asked you, maybe a dozen times or
 8
   more, whether your so-called story is the same today as
 9
   it was before. Do you recall all those questions, and
10
   the variations of the same questions?
11
       Yes.
              Yes.
                    Yes.
12
            With those questions in mind, would you say
13
        Q
   your different accounts are word for word the same?
14
        Would you please repeat the question?
15
            You spoke to Officer Bobadilla about what
16
   happened on April 24th; correct?
17
18
        Yes.
19
        Q
            Then you gave another statement that was
   videotaped in July of '07; correct?
20
21
        Yes.
             Yes.
22
            But you got to see today -- In which you got
        Q
   to see today in court; right?
23
24
       Yes.
            And you've been here testifying about the
25
       Q
                      W. Cedillo - redirect
                                                           57
   same event yesterday and today; correct?
 1
 2
       Yes.
            Would you say all three versions are word for
   word the same?
       What I said is on the video, and it is true what I
 5
   have said. But, yes, the gentleman has been asking me
   questions, trying to confuse me. I don't know why.
 7
            I'll ask you the question differently.
   the essential facts of this case the same, in terms of
10
   your different accounts?
       Yes. Yes.
11
                    Yes.
            All right. Now, just a few other points.
12
   I'm going to move on. You didn't recall the day that
13
   this happened; right?
14
        (No verbal response.)
15
            You did not recall the day of the incident
16
   that took place? What day of the week April 24th was;
17
18
   right?
19
              I remember. Well, first, I forgot.
       Yes.
20
            I think something got lose in translation.
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
       No. No. No. I don't.
25
            So, when you told Mr. Gonzalez yesterday, you
```



```
58
                     W. Cedillo - redirect
   didn't know what day it was, if I told you it was a
 1
   Tuesday, would that jar your memory?
            No.
                 No. All I know, it was April 24th.
       No.
           Let's assume it was a Tuesday. Would you be
   getting a whole bunch of telephone calls for taxi rides
 5
   on a Tuesday morning at 4:40 a.m.?
 7
           MR. GONZALEZ: Objection, Judge. He doesn't
   receive the calls.
 8
 9
           MR. SAMEIRO: You asked him how many calls
10
   the cab company gets. You made it sound like they get
   calls every two seconds.
11
           MR. GONZALEZ: I don't think he knows how
12
   many calls came in.
13
14
           MR. SAMEIRO: You raised the question.
           THE COURT: Okay.
                               Let's see if he knows, one
15
16 way or the other. If he knows, it is okay for you to
17
   ask.
18
           Can you answer my question?
       Q
19
       No. No. They confused me.
           How busy is the Victoria or Acapulco Cab
20
   Company, at around 4:40 a.m.? How many calls would you
21
   say you would get for cab fares?
22
23
       I cannot tell you, because the one who receives
   all the calls is the dispatcher. And he also sends
24
   them to all of the cars.
25
                     W. Cedillo - redirect
                                                           59
           Are you busy on a Tuesday, at 4:30 in the
 1
   morning? Generally, on a Tuesday, at 4:30 in the
   morning?
 4
       No.
           No. No.
                       It is the time when people are
   going to work. From four on.
 5
            Did you not say yesterday, your busy days
 7
   were Friday, Saturday, Sunday and Monday?
 8
       Yes.
   Α
            So, Tuesday is not in that listing; right?
 9
       Q
10
       No.
            No.
   Α
11
           And, on this point, if Friday, Saturday,
   Sunday, and Monday are your best days, you would then
12
   collect the most fares, the most money, on those days?
13
           MR. GONZALEZ: Objection to the leading
14
15
   question.
16
            THE COURT: Sustained. I just ask you to
17
   open it up.
18
           During what days of the week do you collect
19
   the most fare money on average?
       Well, I used to give him the money whenever I saw
20
   him. Because he trusted me.
21
22
           Are you still nervous, sir?
       Q.
23
       Yes.
   Α
24
           With all due respect, did you understand my
25
   last question?
```



```
W. Cedillo - redirect
       Yes. Yes. You said -- If you would please repeat
   Α
 2
   it?
           I'll ask it differently. At the end of your
   shift, when you collect all the money, what days of the
   week do you have the most money?
       No, I can't -- No, I cannot tell you.
   sometimes I have had quite a bit of money.
            It is just when you saw the boss?
 8
       When I see the boss.
 9
            Let me move on. On this particular day, that
10
   you were robbed, did you tell us that you had two days'
11
   worth of monies in your possession?
12
           MR. GONZALEZ: Objection. Because it's
13
14
   leading.
15
            THE COURT: All right.
            MR. SAMEIRO: He could say "yes" or "no."
16
17
           THE COURT: It doesn't really suggest the
18
             It's got a lot of information in it.
   really doesn't suggest the answer. It is open to a
19
   "yes" or "no."
20
21
            MR. GONZALEZ: The question could be so not
   leading. "What did you tell us."
22
            THE COURT: Well, a leading question is one
23
   that suggests the answer. If it doesn't suggest the
24
   answer, it is still an okay question. I'll overrule
25
                      W. Cedillo - recross
                                                           61
   the objection.
 1
            Do you remember the question?
 2
        Q
 3
   A
       Yes.
           Can you answer it, please?
 4
        Yes. Yeah. You asked me if the money was for two
 5
   Α
          Yes, it was. That was his money.
   days.
           MR. SAMEIRO: Your Honor, I have nothing
 7
 8
           Thank you.
   else.
 9
            THE COURT: Anything else, Mr. Gonzalez?
10
            MR. GONZALEZ: Very, very quickly.
11 RECROSS EXAMINATION BY MR. GONZALEZ:
           Now, on the date that you were driving the
12
   taxi, on April 24, 2007, were you carrying a wallet?
13
14
       Yes.
            In your wallet, you keep your driver's
15
       \circ
16
   license?
17
   Α
       Yes.
           Your identification card?
18
19
   A
       Yes. Yes.
20
            Credit cards maybe, if you have some?
       Q
21
  Α
       Yes. The banks.
22
           Probably your own money; right?
23 A
       Yes.
             Yes.
                   Yes.
24
           And the other money is probably kept in your
25
   pocket or hidden somewhere in the car; correct?
```







```
W. Cedillo - recross
                 I don't hide it. I always have it in my
 1
   Α
       No.
            No.
 2
   pocket.
            So, it is always in your pocket. The five
   hundred dollars, that you say was stolen from you, was
   in your pocket; right?
       Well, no. One part in my pocket, another part in
 7
   my wallet.
            So, your wallet. Where do you usually keep
 8
 9
           In your pockets, in the car somewhere? Where do
   you usually keep it?
10
       No. In my pocket (indicating).
11
            Okay. You testified earlier that they took
12
13
   the identification card from you only; right?
1.4
       Yes.
            So, during the robbery, they took out of your
15
   wallet -- They took only your identification card?
16
17
             And the money. They took the money that was
       Yes.
           And my ID card went with it.
18
   there.
            They gave you back your wallet?
19
       They threw it. They threw it there.
20
            You picked it up?
21
       Yes. I picked it up.
22
  \mathbf{A}
23
           You still had your license; right?
             Yes.
24
       Yes.
            Could you read for the jury what was the date
25
                                                           63
                      W. Cedillo - recross
   that that license was issued?
 1
       7/25/2007.
 2
 3
           "Viente cinco"?
       Q
            MR. GONZALEZ: I apologize. Sometimes you
   think in Spanish. I apologize.
 5
            July 25, 2007?
 6
       Yes. Yes. I have the old one here.
 8
   is a renewal.
            Okay. Is that a coincidence, too?
 9
       Yes. Yes. Because of the work permit, we have to
10
   renew it every 18 months. The immigration sends us to
11
   renew it, and the driver's license as well.
12
            So, you testified, just a minute ago, they
13
   gave you -- they took out your ID card, and they threw
14
   your wallet on the floor; right?
15
16
       Yes.
   Α
            This detail, you remember that today?
17
       Q
18
       Yes. Yes.
            You never told anyone that before; right?
19
       Q
            No.
20
   Α
       No.
                No.
21
            Now, you testified earlier, that you saw that
22
   gentleman the day before you spoke to the police;
23
   right?
24
       Yes.
              Yes.
25
           And you testified that you were inside of a
```



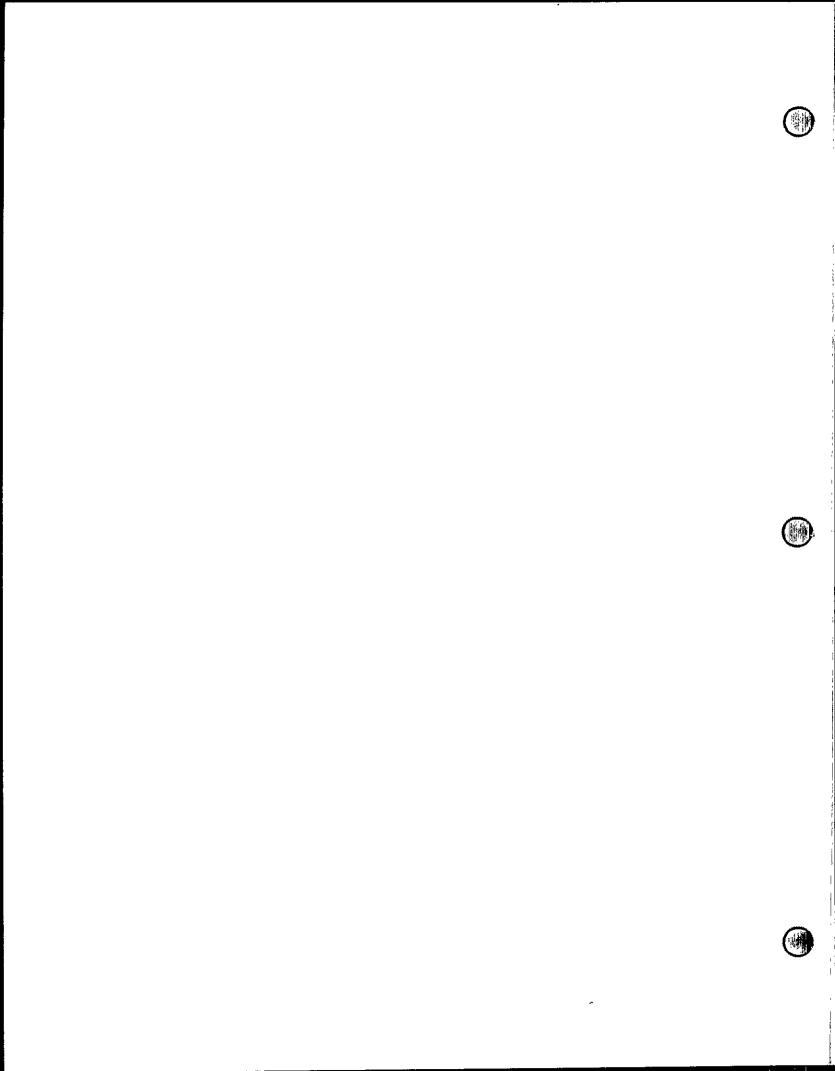




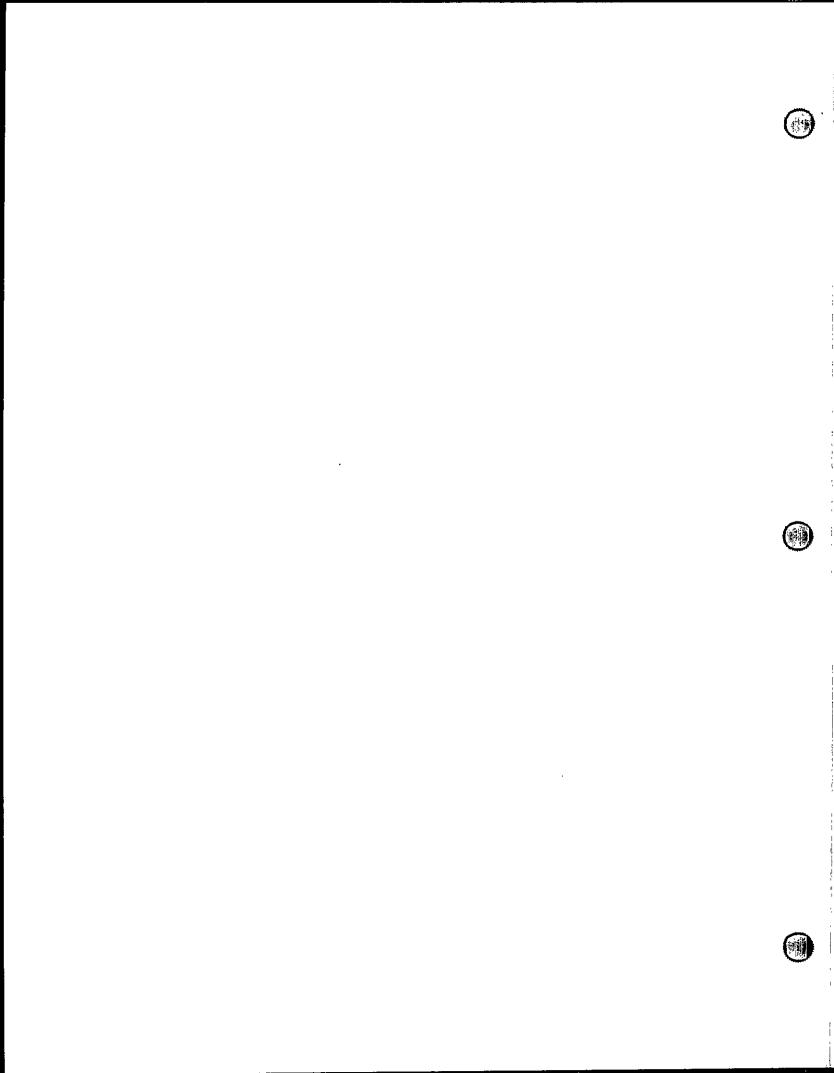
```
W. Cedillo - recross
                                                            64
 1
   car; right?
 2
   Α
        Yes.
            You never spoke to him; right?
 3
        Q
             He only said, how much I owe you. And I told
   him, only four dollars for the ride. Because it is
   nearby. And he said, "this is a hold-up."
                                     I think you're a
 7
            I'm going to step back.
        Q
    little bit confused.
 8
 9
            MR. SAMEIRO: I object to the commentary.
            THE COURT: I don't know if he is confused or
10
11
   not.
            I don't know if it is a misunderstanding of
12
   the question. Whatever it was, I withdraw the comment.
13
            THE COURT: All right.
14
            The day before you went to the police --
15
        Q
       Yes. That they called me. It was in July.
16
   Α
            THE COURT:
                       July.
                               Okay.
17
            So, July. July 24th, the day before you
18
   spoke to the police, you said that you saw Pablo
19
   Machado, or the person that robbed you; right?
20
21
              Yes.
        Yes.
            You were in a car, when you saw him on that
22
        Q
23
   date; right?
24
   Α
        Yes.
25
            You never spoke to him that day; right?
                                                            65
                      W. Cedillo - recross
   Α
        No.
 1
            So, he did not threaten you with words that
 2
   day; correct?
       No. No. He only made the signs (indicating), the
 4
 5
   gesture.
            But you told the police the following day,
   that he could get a lot of people -- I'm sorry -- That
   he told you, that he could get a lot of people to get
   you, if a police report was made; right?
 9
                    When I made the report, I told them.
10
        Yes.
              Yes.
11
    I told Bobadilla.
            So, you told Bobadilla, on April 24th, that
12
   the day that it happened, that the person who robbed
13
   you, said that they would, if you made a police report,
14
15
   he could get a lot of people to get you?
                    I said that, yeah. In the report, and
16
              Yes.
        Yes.
17
    I also said that in July.
18
            Now, do you remember which person told you
        Q
19
   that?
       Yes.
20
   Α
21
           Who was it?
       Q
22
   Α
       He was.
23
            THE COURT:
                        I'm sorry.
                                    I missed that.
24
                                          He said that.
            THE WITNESS: Him. Machado.
25
            So, he told you that on that date.
```



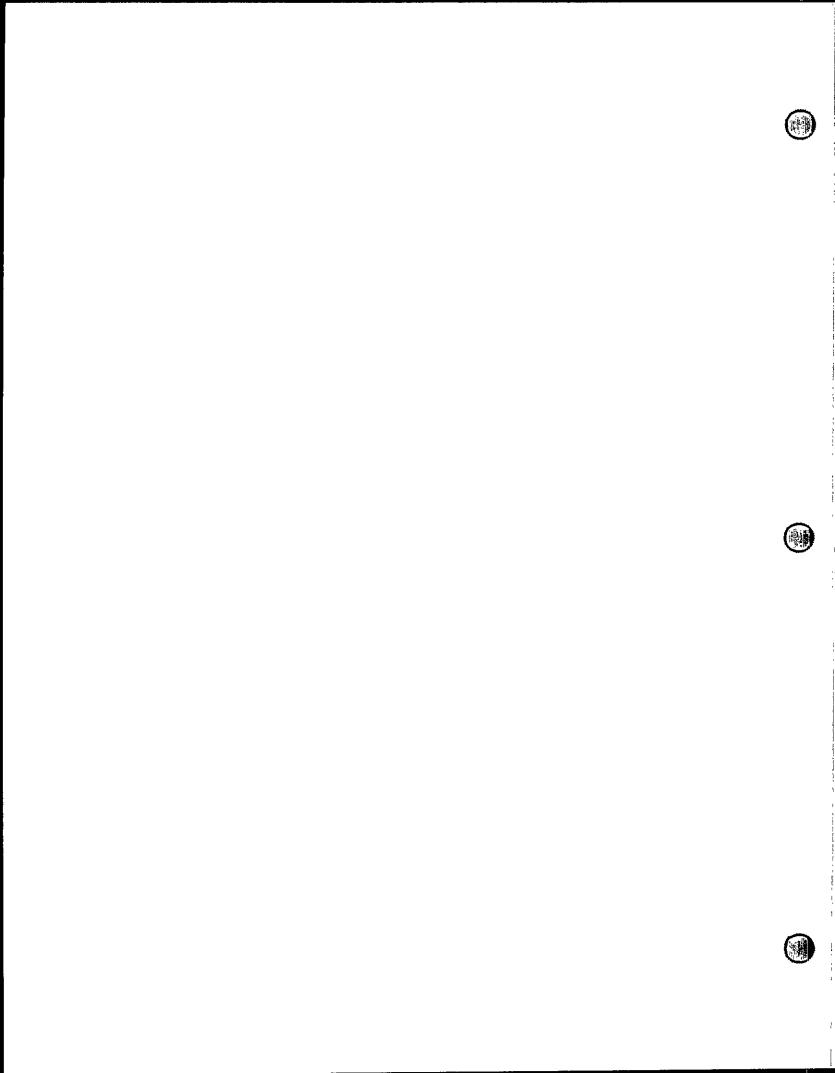
```
(Colloguy)
                                                            66
   you're sure you told Officer Bobadilla about this?
 1
       Yes. Yes. He said that to me, and I told him.
 2
   And I told him in the video. When I saw the video, I
   remembered.
 5
            It's busy on Tuesday mornings at about that
   time; right?
 6
 7
             Yes.
       Yes.
            MR. GONZALEZ: No further questions.
 8
 9
            THE COURT: Anything further?
            MR. SAMEIRO: No, your Honor.
10
                       All right, Mr. Cedillo. You are
11
            THE COURT:
              Thank you very much. You are excused.
12
   finished.
13
            (Whereupon, the witness is excused.)
            MR. SAMEIRO: I need about two minutes -- not
14
   even -- to get the DVD cued up for the photo array
15
   procedure. I want to call Sergio Matias next.
16
                        Okay. I'll tell you what we'll
17
            THE COURT:
        Let the jury go right here on the floor.
18
   take a short break. If you need to use the bathroom,
19
   and then we'll come right back in. Then we'll go right
20
   into the videotape. I sound like Warner Wolfe.
21
           MR. SAMEIRO: I need to get a copy of the
22
23
          I can't do both things at the same time.
24
            THE COURT: Let me excuse the jury to a room
   right here on the floor. That way you can set the tape
25
                            (Colloguy)
                                                            67
   up, and we can get a copy of the card.
 1
            Remember, folks, not to discuss the case
 2
   amongst yourselves or anybody else. We will bring you
 3
   back in just a few minutes.
 4
 5
            (Whereupon, the jury leaves the courtroom.)
            (Whereupon, a short recess was taken.)
 6
 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.
            MR. SAMEIRO: S-1 has been shown, in large
12
   part, to the jury. It hasn't been moved into Evidence.
13
   Let me formally -- I want to now put the actual photo
14
   array in this case -- I marked it originally as an "S"
15
             We'll alter the exhibit list later on.
16
   exhibit.
17
   S-1 contains more than just the photo array procedure.
18
   And I'd like that in Evidence, to be technically
   correct, because I want to show it to the jury.
19
            THE COURT:
20
                       Any objection?
           MR. GONZALEZ: I don't object to displaying
21
                   That's where we're starting it from.
22
   it to the jury.
23
            MR. SAMEIRO: Well, Judge, I'm going to put
   the photo array procedures in before the jury now and
24
25
   have Sergio Matias authenticate the DVD.
                                              It is at
```



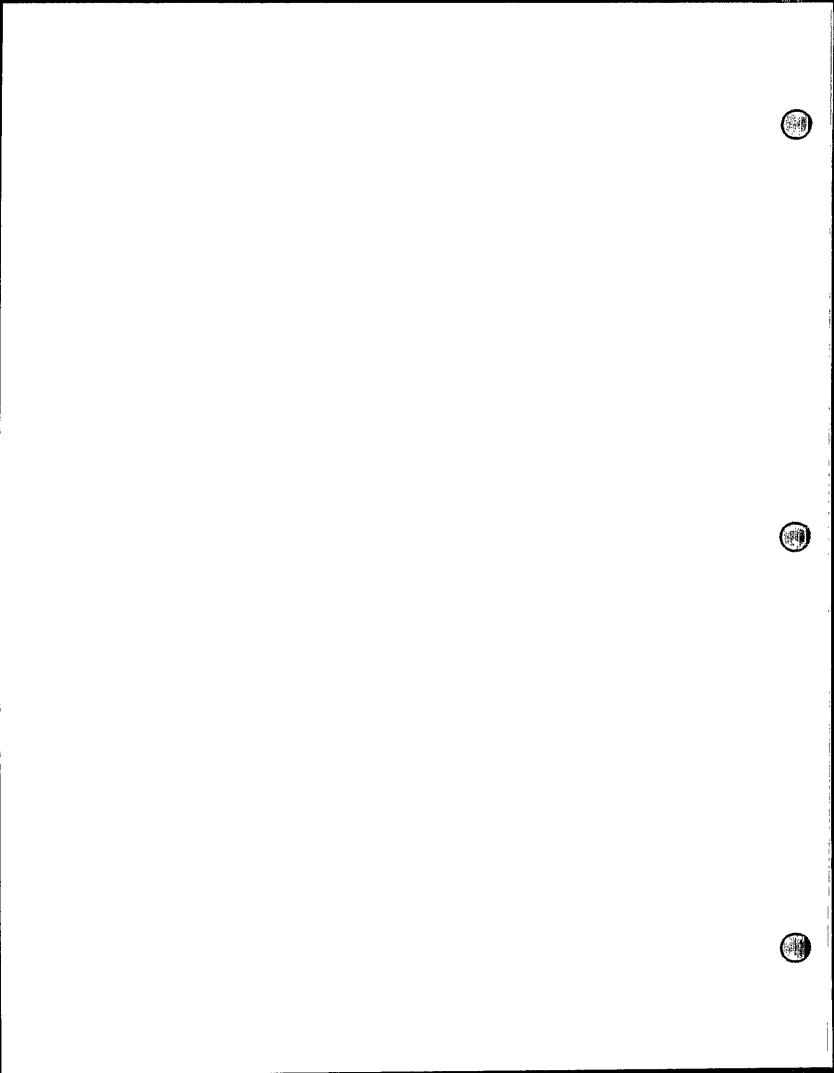
```
S. Matias - direct
   22:04:06 on the DVD.
                          The DVD is cued up. The preamble
 2
   is not here.
 3
            THE COURT: All right.
 4
            MR. GONZALEZ:
                           No objection.
 5
            THE COURT: That will be marked in Evidence
            The video is cued up at 22:04:06.
 6
 7
            Okay. Let's bring the jury in.
 8
            (Whereupon, the jury enters the courtroom.)
            THE COURT:
                       State?
 9
            MR. SAMEIRO: Your Honor, the State would
10
   like to next call Officer Sergio Matias to the stand.
11
12
13
        OFFICER
                          SERGIO
                                         MATIAS,
14 called as a witness on behalf of the State, being duly
   sworn, testifies as follows:
15
16 DIRECT EXAMINATION BY MR. SAMEIRO:
17
            Officer, are you a New Brunswick policeman?
        Q
        Yes.
18
           How long have you been a patrolman?
19
       Five years.
20 A
21
            Where were you born?
22 A
       Guatemala.
           You speak Spanish?
23
        Q
24 A
       Yes.
            Is that your primary language or your
25
        Q
                       S. Matias - direct
                                                            69
  secondary language?
 1
 2
        Secondary.
   Α
            How long have you lived in the United States?
 3
        I don't know. A long time.
            I'm trying to establish that you're
 5
   bilingual?
 7
   Α
        Yes.
           As a police officer, what do you do?
 8
        Patrolman, respond to numerous calls throughout
   the City of New Brunswick, community policing, whatever
10
11
  else it takes.
            Do you work the night shift?
12
        Q.
13
       Afternoons.
            When do you start? When do you finish?
14
        1615, which is 4:15 in the afternoon, until 0230
15
   \mathbf{A}
16
   in the morning.
17
            That's not the night shift?
        Q
       No. It's afternoons. We call it the afternoon
18
   Α
19
   shift.
20
           You go through midnight; right?
21 A
       Yes.
22
           You worked this shift last night, from 4:15
23
   to 2:30 in the morning?
24
   Α
       Yes.
25
           What about the night before?
```



```
70
                        S. Matias - direct
 1
       Yes.
   Α
 2
        Q
            Were you here yesterday during the day
   waiting to testify?
   A
        Yes.
 5
            I'm asking you these questions, to see if
   you're feeling a bit tired right now?
 7
        Oh, yes.
            During the lunch break, did you have to go
 8
   home for a particular reason?
 9
        Yes.
             That's correct.
10
            For what?
11
        Q
            MR. GONZALEZ: Objection.
                                       None of this is
12
13
   relevant.
            MR. SAMEIRO: I want to establish that the
14
   witness is tired. And I think the jury needs to know
15
   that to assess his credibility.
16
17
            THE COURT:
                        All right. It could be relevant.
18
   I'll allow it.
        Child care issues.
19
20
            You've been running back and forth with that?
21
        Yes.
   Α
            Throughout the trial prep?
22
23
        That's correct.
   Α
            Are you going to start the 4:00 o'clock shift
24
   when you are done today?
25
                        S. Matias - direct
                                                             71
        Yes.
 1
   Α
            You couldn't get time off for the trial?
 2
        Q
 3
   Α
        No.
 4
            You asked for it?
        I tried, yes.
 5
   Α
            Now, were you asked to put a photo array, or
 6
 7
   conduct a photo array procedure, back in July 2007 by
   Detective Selesky?
 8
        That's correct.
 9
   Α
10
            You remember what date you were asked to do
11
   that?
12
   Α
       No.
13
            Turn around and look at the screen.
       (Witness complies.)
14
15
            Can you see that screen?
        Q
16
   Α
       Yes.
            Does that refresh your memory of the day?
17
        Q
18
   Α
       Yes.
19
            What day?
        7/25/07.
20
  Α
            July 25th; right?
21
       Q
22 A
       Yes.
23
            And this was concerning a case that Detective
24
   Selesky was investigating himself?
25
       Yes. That's correct.
```

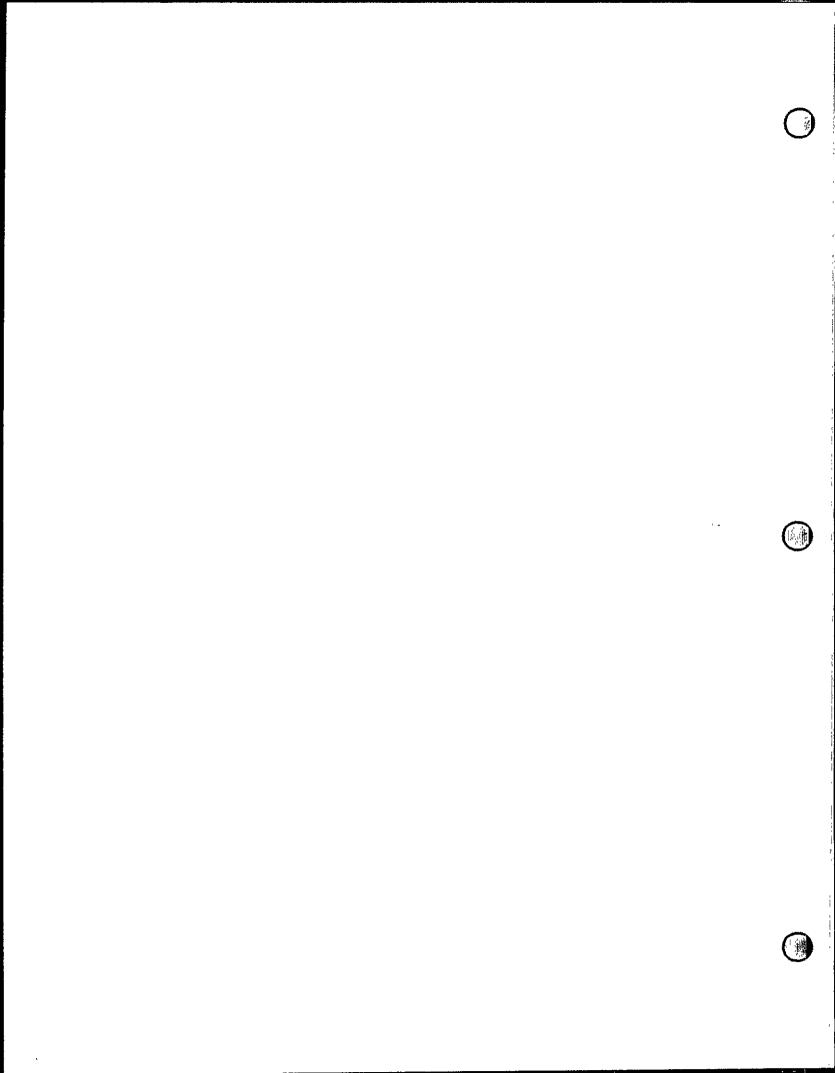


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72
                       S. Matias - direct
            Were you connected to the investigation in
 1
 2
   any way?
 3
   \mathbf{A}
       No.
            Why were you asked specifically to do that
        Q
   photo array?
        To translate. The victim spoke Spanish.
   got called up to help Detective Selesky on that.
            Because you speak Spanish?
 9
        That's correct.
            Now, did you read certain instructions to the
10
   witness in Spanish during this process?
11
12
       Yes.
13
       0
            Do you remember the victim's name?
       Wilmer something.
14 A
            I'm going to show you what's marked S-3.
15
16 you recognize that document?
17
       Yes. Yes.
                    That's correct.
18
            What is that?
        It's the instructions of the photos I was going to
19
20 show him in Spanish.
21
           Do you see Wilmer something's full name
22
   there?
23
   Α
       Yes.
              Cedillo.
            I want to show you what's been marked S-1.
24
   We are going to start at 22:04:06. I ask you to look
25
                                                            73
                       S. Matias - direct
              Then I will have some questions for you when
   at this.
 1
 2
   we're done.
            MR. SAMEIRO: Judge, this has been moved into
 4
  Evidence.
            THE COURT: Yes. S-1 in Evidence.
 5
            (Whereupon, S-1 in Evidence is played for the
 6
   jury, starting at 22:04:06.)
 7
            MR. SAMEIRO: Your Honor, I stopped it at
 8
 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
            Now, Sergio, you saw the tape that we all saw
   just minutes ago; correct?
14
15
   Α
       Yes.
           Are you aware of the fact that there is an
16
   English translation of the photo display instructions
17
18
   you read to the victim on that day?
19
       Yes, I am.
20
            I'm going to show you what's marked S-4.
                                                       Do
21
  you recognize that, sir?
22
   Α
       Yes.
23
           What is that?
24
       It's the photo display instructions.
  Α
25
           In what language?
```

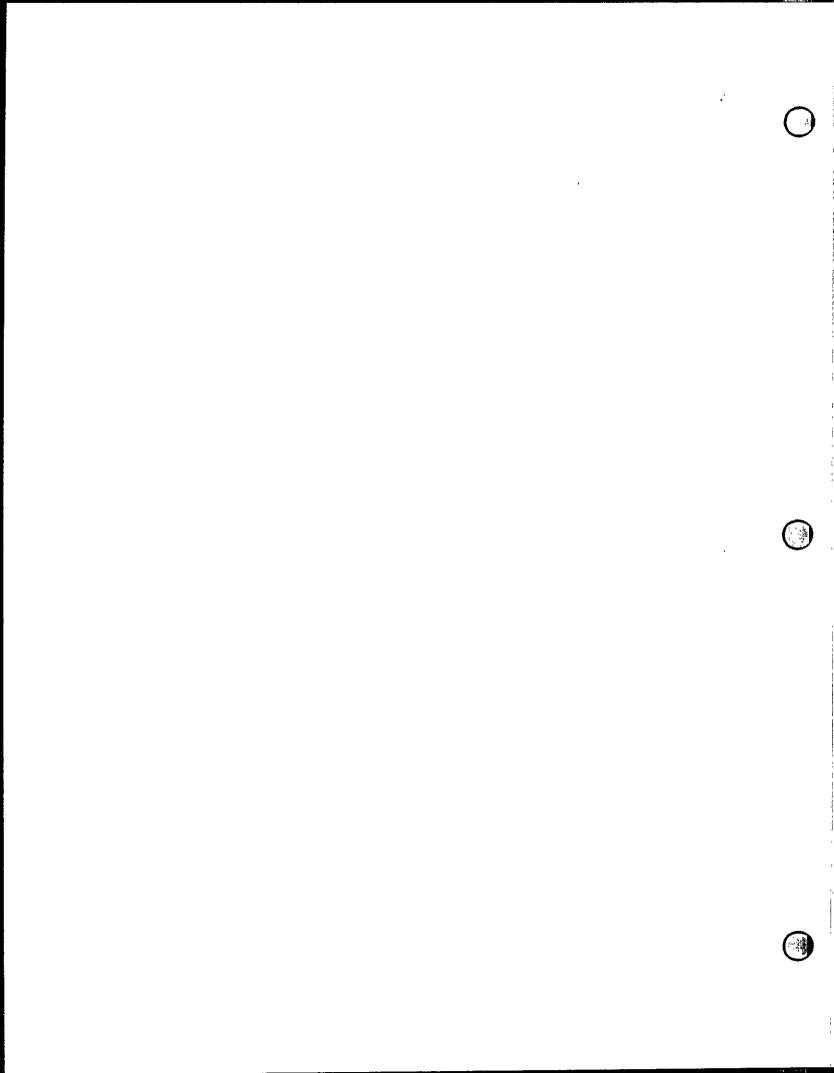


```
1
   Α
        English.
 2
            Have you looked at that before at my request?
 3
        Yes.
   Α
 4
            Have you compared that to S-3?
        0
 5
        That's correct.
   Α
 6
            The Spanish version which you read to the
 7
   victim, which is seen on this tape?
 8
   Α
        Yes.
 9
           And given your knowledge of both Spanish and
   English, can you tell us if that's an exact
10
   translation?
11
              That's correct.
12
        Yes.
13
        Q
           S-4 is?
14
   Α
        Yes.
            So, now, for the benefit of the jurors, who
15
   don't know Spanish, can you read to us, from S-4, the
16
   English version of the photo display instructions, that
17
18
   you told Mr. Cedillo?
19
   Α
        Yes.
20
            Please do that slowly. And articulate.
        Q
               "In a moment, I will show you a number of
21
   Α
   photographs one at a time. You may take as much time
22
23
   as you need to look at each of them. You should not
   conclude that the person who committed the crime is in
24
   the group merely because a group of photos is being
25
                       S. Matias - direct
                                                            75
                   The person who committed the crime may
   shown to you.
 1
   or may not be in the group, and the mere display of the
 2
   photographs is not meant to suggest that our office
   believes the person who committed the crime is in one
   of the photographs. You are absolutely not required to
 5
   choose any of the photographs, and you should not feel
 7
   obligated to choose anyone."
         "The photographs will be shown to you in random
 8
            I am not in any way trying to influence your
 9
   decision by the order of the pictures presented.
10
11
   me immediately if you recognize a person that committed
   the crime in one of the photographs. All of the
12
   photographs will be shown to you even if you select a
13
   photograph."
14
15
         "Please keep in mind that hairstyles, beards, and
16
   moustaches are easily changed. People gain and lost
   weight. Also, photographs do not always show the true
17
18
   complexion of a person. It may be lighter or darker
19
   than shown in the photograph. If you select a
   photograph, please do not ask whether I agree with or
20
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
   look at the photographs."
24
25
         "I have read the above instructions and understand
```

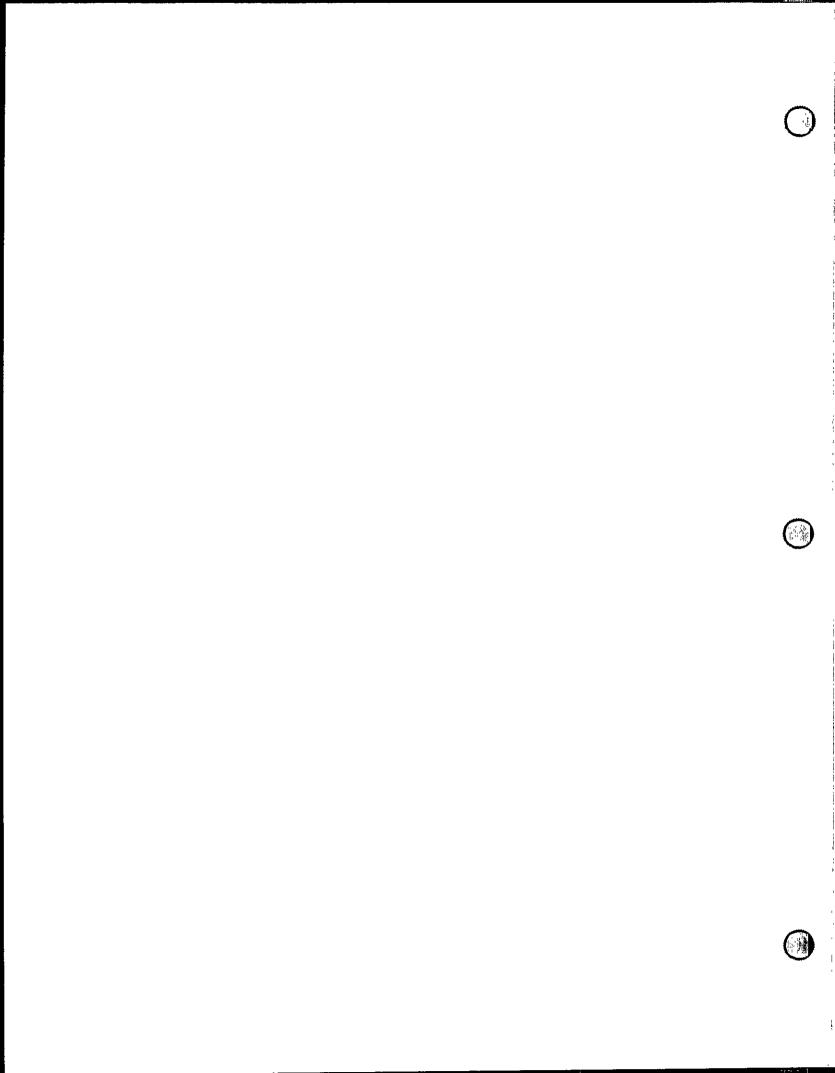
S. Matias - direct



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S. Matias - direct
                                                            76
   them. No other instructions were given to me by the
 2
   Investigator."
            That last portion is the signature line for
  the witness; right?
   Α
        Yes.
           Now, in this particular case, you, of course,
   utilized the Spanish version, S-3; right?
        Yes.
 8
   Α
            On the back -- what I'll call the back side
 9
        0
   -- that does not have the red sticker -- that's
10
   entitled the "photo display result form"; right?
11
        That is correct.
12
            When was that filled out in this case?
13
        At the end, after showing him the pictures.
   victim the pictures.
15
16
        Q
            After the victim made the ID?
17
        That's correct.
            That happens to be in English?
18
19 A
       Yes, that is.
           Now, did you fill that side out?
20
21 A
       Yes.
            There is a section called "comments"? You
22
23 see that at the bottom?
24 A
       Yes.
25
            With something that's written after the word,
        Q
                                                            77
                       S. Matias - direct
   "comments"; right?
 1
 2
        Yes.
   Α
            Is that your writing?
 3
        Yes. That's correct.
  A
           You filled out this section?
 5
  \mathbf{A}
        Yes.
 7
            What did you put in that section?
        "This is the one."
 8
            And what did you mean by that when you put
 9
10 that in the form?
        That's what the victim stated to me, when I showed
11 A
   him -- when he identified that picture. He said, "this
12
13
   is the one."
           You recorded that for us in English?
14
        O.
        Yes.
15
   Α
16
           Does the victim also sign the back of this
        Q
17
  document?
18
       Yes.
19
           And give us his telephone number and such?
20
       That's correct.
  Α
21
            I think we saw a portion of the tape, where
   you asked him for the phone number, and he wrote it
22
23
   down?
24
       Yes.
   Α
25
            Would that be here on the piece of paper that
```

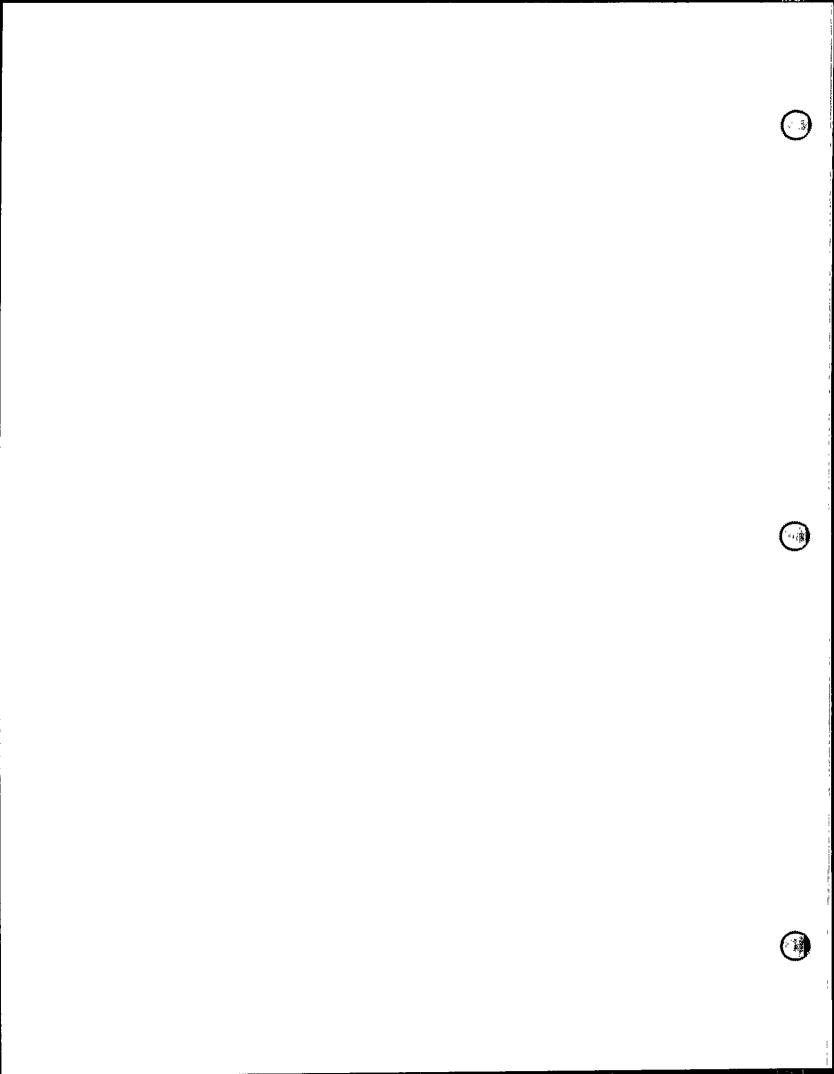


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78
                        S. Matias - direct
   we have?
 1
 2
   Α
        Yes.
            And you also recorded the actual photograph,
   by its stamp number; right?
 5
   Α
        Yes.
 6
        0
            The one that he saw?
 7
   Α
        Yes.
            Now, I'm going to show you what's been marked
 8
   S-2-A, which is a collection of six different
 9
                 I ask that you pay particular attention
10
   photographs.
   to the photograph that has the following last several
11
   digits, 33223A. That's the one; right?
12
13
        Yes.
            On the back of that photograph, we have some
14
        0
15
   writing; is that correct?
        That's correct.
16
17
            What is that writing?
        Mr. Cedillo's name, and my initials.
18
   Α
            Is that the photograph that Mr. Cedillo
19
   identified for you on July 25th?
20
21
            Now, we have five other pictures here; right?
22
        Q
        That's correct.
23
24
            Would you be able to say whether those were
   the ones that you used in conjunction with the
25
                                                            79
                        S. Matias - direct
   defendant's picture?
        I wouldn't be able to recall every single one of
   them.
            Not without the key; right? There is a key
 4
   that goes with that?
 5
              That is correct.
   Α
        Yes.
 7
            The key is a separate piece of paper that
   records all the other pictures used in this array;
 8
 9
   correct?
10
        Yes.
   Α
11
            Did you prepare that key?
        Q
12
        No.
            Did you put these pictures together?
13
        Q
14
       No.
   Α
15
            Who did that?
        I believe, Detective Selesky did.
16
17
            Do you know there are Attorney General
18
   quidelines that govern how a photo array is put
19
   together?
20
   Α
        Yes.
21
            Your role in the case, I don't mean to
   minimize it, was to simply show the victim the
22
23
   pictures?
24
        That's correct.
25
            You didn't put the pictures together?
```

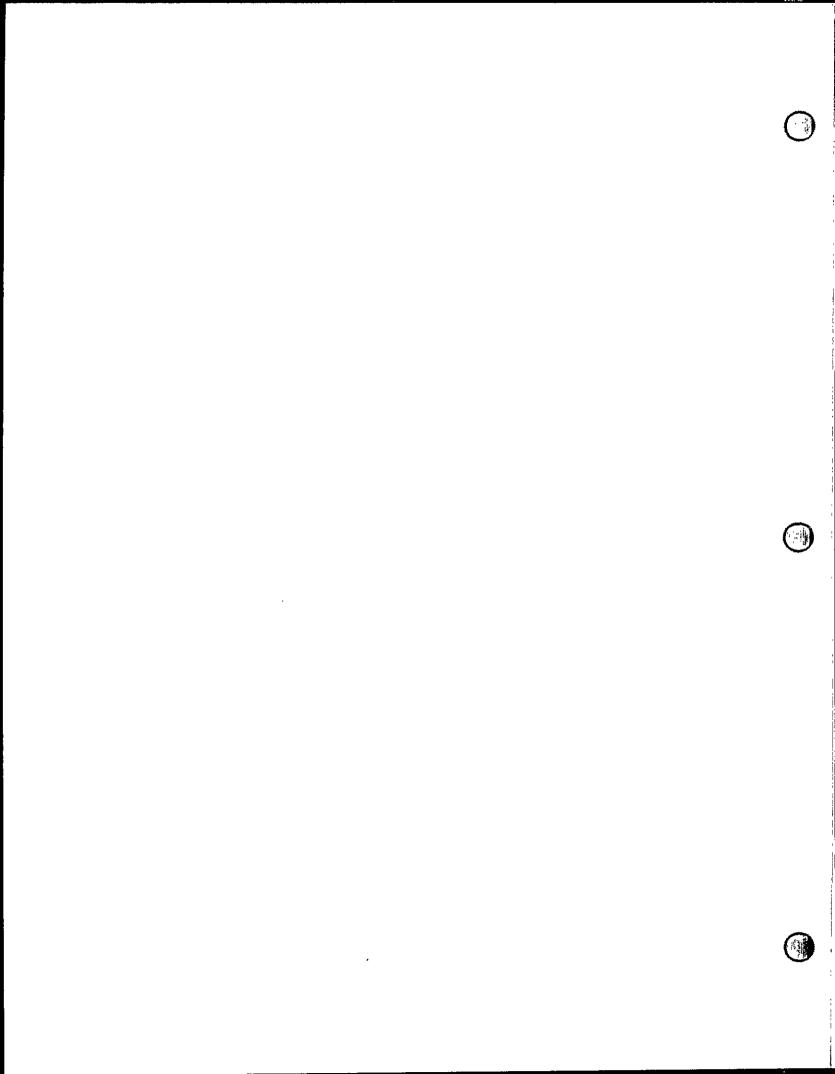


```
S. Matias - direct
                                                            80
 1
   Α
       No.
 2
       0
            You wouldn't remember if these other
  photographs were in the array; right?
       Yes. That's correct.
                       Just a few more questions. As I
 5
            All right.
 6 was listening to the audio portion of that tape, I
   heard you say some things that were not translated to
   English. I'll ask you, for the benefit of the jury, to
   answer these particular questions.
 9
10
       Okav.
            After you read the directions, the
11
        0
   instructions to the victim in Spanish, did you ask him
12
13
   if he understood them?
14
       Yes.
            What was his answer?
15
       0
16 A
       He said, yes.
            Now, there was a point in time, I believe,
17
   after you showed the victim the third picture in the
18
19 series, that you told him something. You remember
20
   that?
21
   Α
       Yes.
           You remember what it was that you said?
22
       I told him to take his time. I seen that he was
23 A
   just going through the pictures kind of quick.
24
            That's recorded in Spanish?
25
                        S. Matias - cross
                                                           81
   Α
       Yes.
 1
            There are probably a few other things that
 2
 3 you said to him in Spanish, that he responded to in
  English -- in Spanish -- as well; correct?
 5
   Α
       Yes.
            MR. SAMEIRO: I have no other questions.
 6
 7
   Thank you.
 8
            THE COURT: Thank you, Mr. Sameiro.
 9
            Mr. Gonzalez?
            MR. GONZALEZ:
10
                           Thank you.
11 CROSS-EXAMINATION BY MR. GONZALEZ:
           How are you, Officer Matias?
12
13
       All right.
            Just a couple follow-up questions.
14
15
   ever write a report concerning the photo array, that
16
   you put before Mr. Cedillo?
17
       For this incident, no.
18
            Normally, when you do something, in the line
   of your duty of your job, you write reports; right?
19
20
       Yes.
21
            In this case, you didn't; correct?
22
  A
       That's correct.
23
            Now, you said, as part of the instructions,
   that you're going to show him at random -- what the
24
```

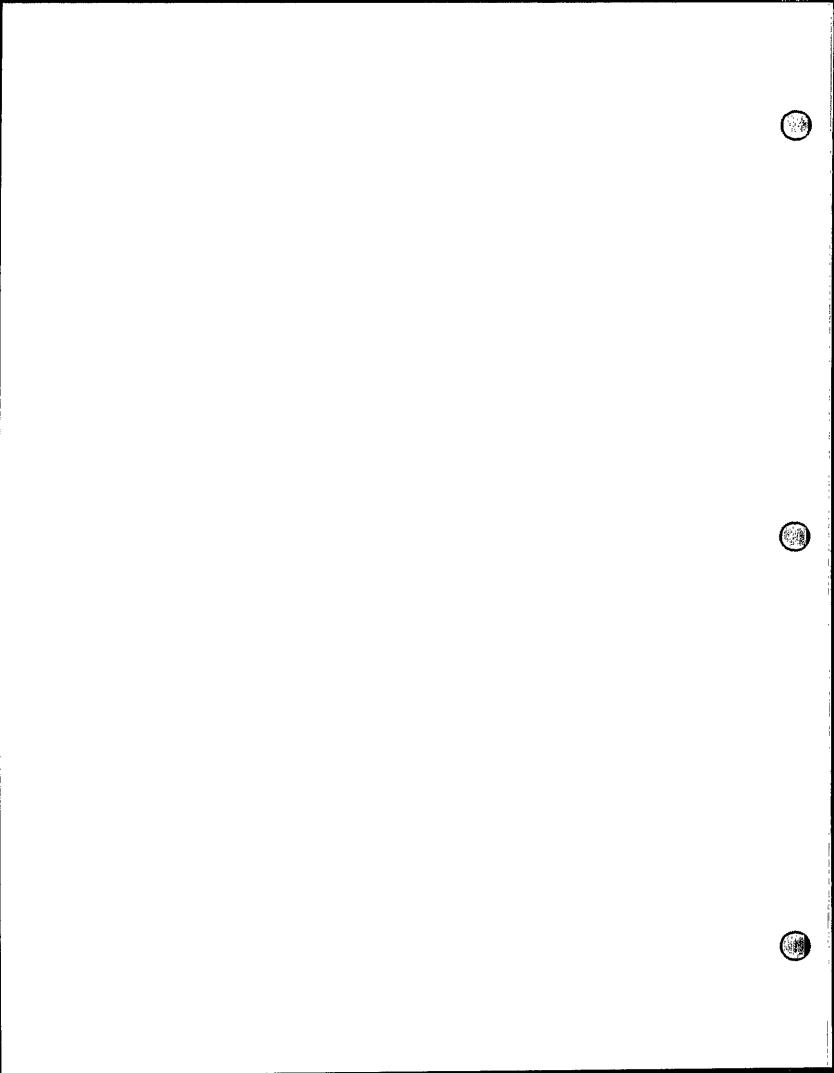
numbers were per se -- excuse me -- the photographs --



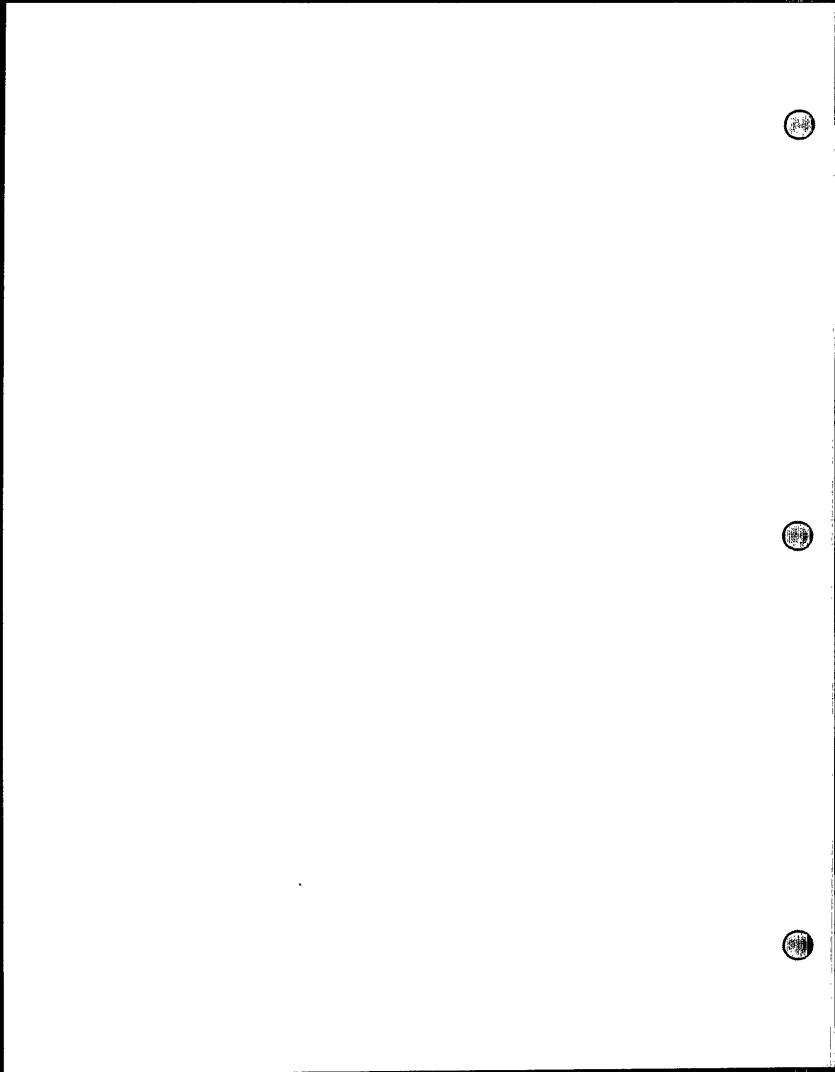
```
S. Matias - cross
   random photographs. Excuse me. You did that right
   there -- it was random -- as part of your instructions?
        Yes.
            Now, the first part, if I can just -- the
        O.
   photo display -- the first part, that you read to him,
   was in Spanish?
 7
        That's correct.
   Α
            I show it to you (indicating).
 8
 9
        Right. Yes.
   Α
            The second part is in English; right?
10
       Yes.
11
   Α
            Did you go word for word with Mr. Cedillo?
12
13
       No. No. This was for me to fill out.
            It's for you to fill out?
14
15
        That's correct.
  Α
            So, you fill out everything but Mr. Cedillo's
16
17
   name?
18
        That's correct.
            Why don't you read it for the benefit of the
19
20
   jury?
21
        What would you like me to read?
   Α
            Start there (indicating).
22
        "I, the undersigned, viewed a total of six
23
   photographs one at a time. After looking at each
24
   photograph, I selected the photograph numbered, which
25
                                                             83
                        S. Matias - cross
   is 33223A, the fifth shown, and signed the photograph.
 1
   Check if no identification was made. No member of the
   New Brunswick Police Department, or anyone else,
   suggested that I select any particular photograph, or
   that I select any photograph at all.
 5
   identification was my own choice. I was not told by
   anyone whether others had selected any particular
 7
   photograph or had failed to select anyone.
   told by anyone the status or identity of any of the
   individuals in the photographs." Then it goes to the
10
11
   comments.
            So, is that for you to fill out or for him to
12
        Q
   fill out?
13
        It was for him to fill out.
14
15
            You skip that part; right?
16
   Α
        Yes.
17
            So, you messed it up; right?
        Q
18
   A
       Yes.
19
            And the portions, you put in the six
20
   photographs, the part where you put that in; right?
       The six photographs and the number of the picture
21
22
   that he chose.
23
            The fifth shown; right?
24
       That's correct.
                         Yeah.
   Α
25
            In that, on the video, you only had him sign
```



```
84
                        S. Matias - cross
   this piece of paper; right?
 1
 2
       On this one, yes.
 3
            Does it exist in Spanish? Do you know?
        Q
 4
        I don't believe so.
   Α
 5
            So, they only have one in English?
 6
       The one side.
   Α
 7
            Only one is English and one is Spanish.
   then the important one, saying that's the one that I
 9
   picked?
   Α
       Yes.
10
            I wasn't coerced. I wasn't told anything?
11
12
        Uh-hum.
   Α
13
            That's not in Spanish; right?
14 A
        I didn't get the form in Spanish.
            Now, this is clearly your handwriting; right?
15
16 A
       Detective Selesky.
17
            That's Detective Selesky's handwriting?
18
        That's correct.
            So, this is your handwriting?
19
        I write bigger. This is my handwriting, my
20 A
   signature at the bottom and the comment (indicating).
21
22
            Now, I note that you say, at random, that's
   how you showed the photos to the person?
23
24
        Yes.
              Yes.
            Shouldn't you write a report about what order
25
        Q
                                                            85
                        S. Matias - cross
   you actually put the photos in front of him?
 1
 2
       No.
   Α
            You may start random. But shouldn't you
 3
   write something down to recollect in what order you
   showed them?
             Then it wouldn't be random.
 7
            You show them to him randomly.
        Q
 8
        Okay.
   Α
 9
            Then you could write a report afterwards,
  right, indicating that it was random, the way you
10
11 picked them, and then you could memorialize it
12
   afterwards; correct?
13
        Okay.
               That's correct.
14
            Now, the key that we're talking about, is the
15
   number; right?
16
        That is the key.
17
            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.
   first piece of paper I showed him was S-3, front and
22
           The second piece of paper is S-2-B, only one
23
   back.
24
   side.
25
            THE COURT:
                        Thank you.
```



```
86
                        S. Matias - cross
            Now, this is the key; right?
 1
        Q
 2
   Α
       Yes.
 3
            And Mr. Machado's name, on this list, is not
   number five, is it?
       No, it's not.
 5
   Α
 6
       Q
            It's number two; right?
 7
       Yes.
   Α
            Now, there is a portion there, that was kind
 8
   of left out. I'm going to press play again. Now, you
 9
   have Mr. Cedillo sign something. It's going to come
10
         I'm going to ask you a question before it comes
11
        You had Mr. Cedillo sign that paperwork after he
12
   selected the photo?
13
14
        Yes.
   Α
            And you didn't have him sign it right at that
15
        Q
   moment, when you finished the photo display; correct?
16
        I believe I did.
17
18
            You had him sign the photo, too; right?
       Not at that time. I stepped out, advised
19
   Detective Selesky which photo he picked.
20
                                              He sent me
   back in, to have him sign it, and for me to initial it.
21
            You were able to, like on the screen, you
22
   were able to view it, that each photo, kind of had a
23
   picture, a face, a dot on it, something like that?
24
   Well, at least, from this far, I know you had the
25
                                                            87
                        S. Matias - cross
   viewing of the actual picture itself?
 1
        Uh-hum.
 2
            But when you were looking at the screen, just
 3
  a second ago -- sorry -- you could see the face from
   where the positioning of the video was in the room;
 5
   correct?
 6
 7
        Yes.
   Α
            Sorry to confuse you. I confused myself.
 8
        Q.
 9
   Α
        Yeah.
            Now, you had him sign something. It was
10
   pre-filled out. The thing that was actually signed, it
11
   was pre-filled out by Detective Selesky; right?
12
        I don't know exactly what portion.
13
            MR. GONZALEZ: I'm just going backwards for
14
15
   the record.
            (Whereupon, a portion of the tape was played
16
17
   again for the jury.)
18
            Just for the record, you're saying, "can you
19
   put your name here"?
               "Sign here." Showing him where to sign.
20
       Yeah.
            So, you showed him where to sign on this
21
22
   "photo display result form"; right?
23
       Yes.
24
            That's the form that you have right in front
25
   of him at this time; right?
```



```
S. Matias - cross
                                                             88
 1
   Α
        Yes.
            That's pre-filled out; right?
 2
        I'm not even sure if it was filled out before.
   Α
            You would agree that Mr. Cedillo is supposed
   to be told -- At least, it should be translated to him?
        What he's signing?
   Α
 7
            Yes.
        Q
 8
        Yes.
              That's correct.
   Α
 9
            You agree to that?
10
        I agree.
  Α
11
            That didn't happen in this case; right?
        Q.
12
        No, it didn't.
   Α
            And you would agree that there doesn't exist
13
   a Spanish form?
14
15
        Not to my knowledge.
            You've done this before, haven't you?
16
17
       Not really a photo array. It would be my first
   Α
18
   time.
19
            First time?
       0
20
       Yes.
   Α
21
            It is likely you can make a mistake, if it's
  your first time; right?
        That's correct.
23
   Α
            Are you ever going to make that mistake
24
25
   again?
                                                             89
                        S. Matias - cross
   A
        No.
 1
 2
            Are you going to go back to the New Brunswick
   Police Department, and are you going to tell them to
   get that in Spanish?
                                 I don't know -- I'm not
        I could make a request.
 5
   sure if they're going to get one or not.
            You think it would be fair to people, who are
 7
   making an identification, from English to Spanish, to
   have that form presented to them in Spanish, so, they
   know what they're signing?
10
               Or explained.
11
        Yeah.
            Being a Spanish speaker yourself?
12
13
        Yes.
14
            In fact, your angle, or something like that?
15
        Yeah.
16
            You would like to have that form translated;
        0
17
   correct?
18
        In Spanish, yes.
19
            (Whereupon, a portion of the tape is played
20
   for the jury again.)
21
            Well, after this, he leaves the room?
22
   Α
        I leave the room.
23
            Who leaves the room?
24
        I leave the room.
   Α
25
            You leave the room.
                                 You report to Detective
```





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90
                    S. Matias - cross
        You indicate that you don't remember any of
the pictures. This was a long time ago. You actually
don't remember what day it was? You don't remember the
         So, if I mixed up those pictures today, you
would only know which one he picked, because that's the
one that he signed on the back; right?
        And you signed it on the back, before you
         It would be when I came back into the room.
Because he could tell me -- Like I said, it's my first
time. He gave me instructions, you know, shuffle the
                                                        91
```

17 pictures before I went in. And when I came out he 18 said, all right. The one he picked, have him sign and initial it, and put the number on the display form. 19 When you walked in, did you re-show him the 20 picture? Mr. Cedillo? 21 22 Α No. You only showed him the back (indicating); 23 Q 24 right? 25 Α Yes. S. Matias - cross So, you walked in, with a piece of paper, 1 that was only the back of the piece of paper, that Mr. Cedillo saw? Yeah. Α Mr. Cedillo didn't re-see the piece of paper, 5 and what was on the other side; correct? From what I recall, I don't know. 7 It was your first time. I don't think we 8 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 14happened. 15 (Whereupon, another portion of the tape is 16 played for the jury again.) (Whereupon, the tape is stopped.) 17 18 Was that the photo display form that he 19 signed? 20 Where he put his telephone number and Yes. 21 address. 22 After he had already previously signed it? 23 That's correct. 24 Now, you are getting his pedigree information after he already signed it? 25

Selesky that he picks number five?

Probably not; right?

1 2

3

8

9

10 11

12

13

14

15

16

Α

Yes.

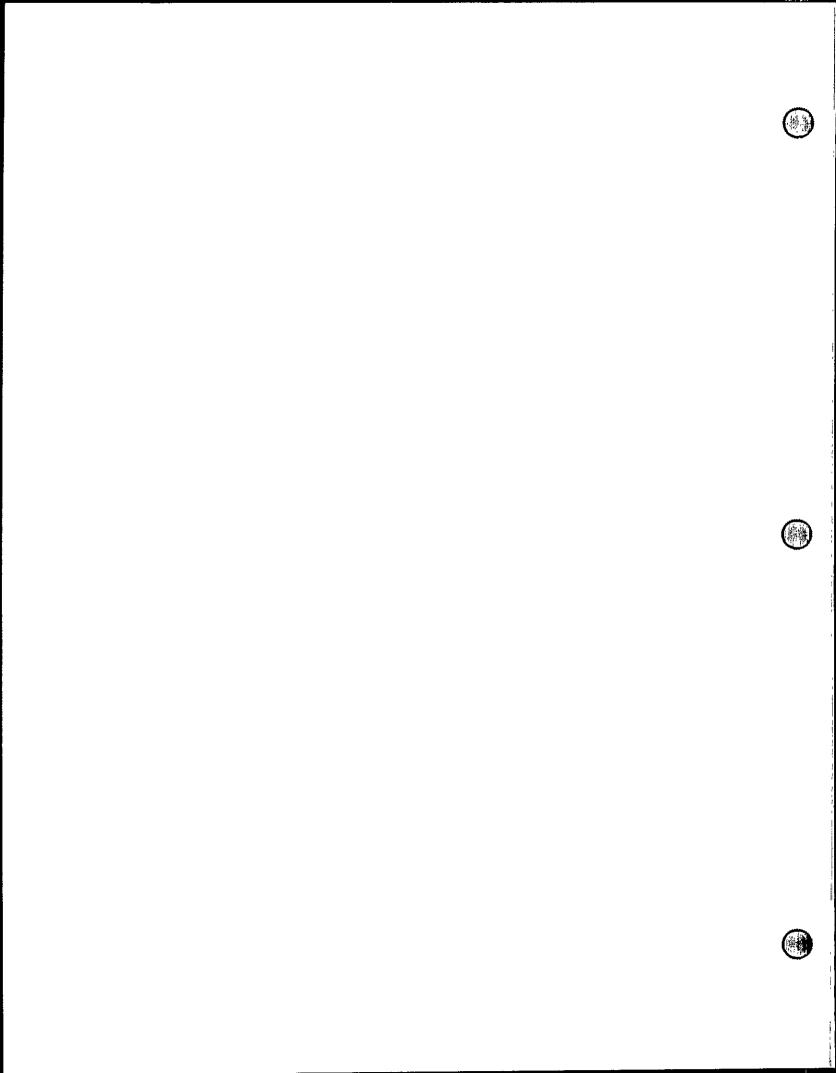
Yeah.

That's correct.

went out of the room?

Q

pictures?



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92
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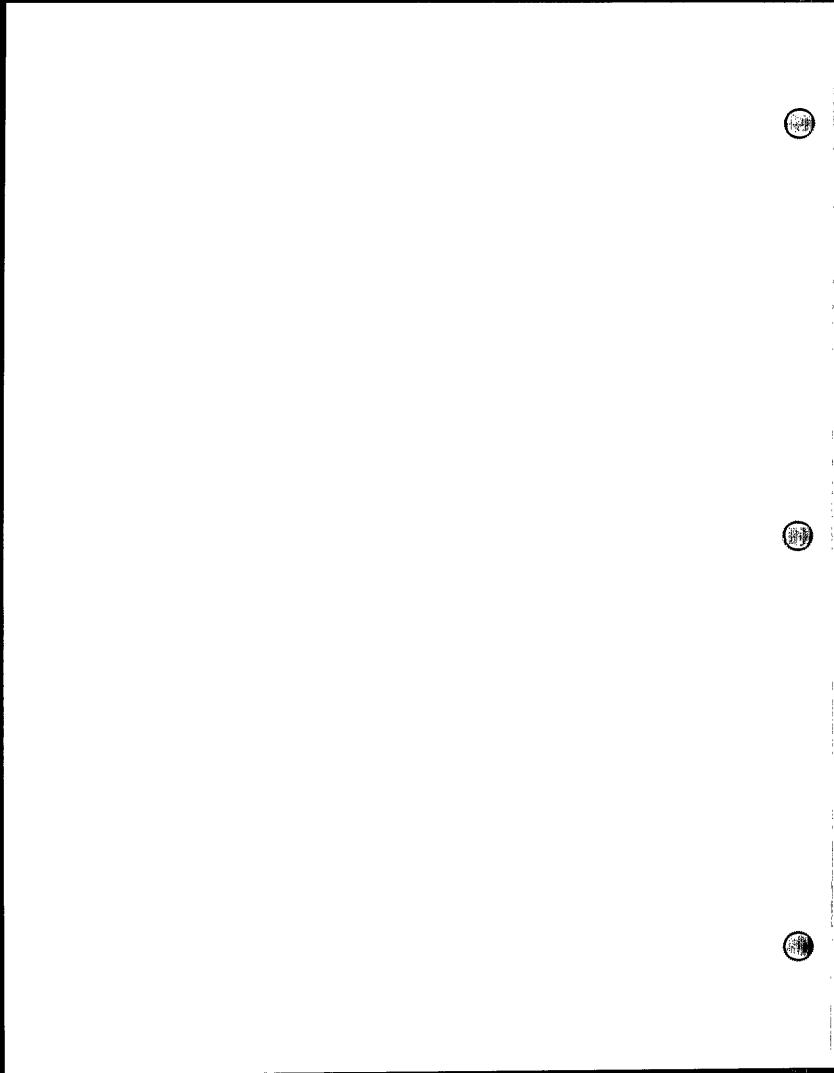
S. Matias - cross

- 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
 - 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.)
- 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.

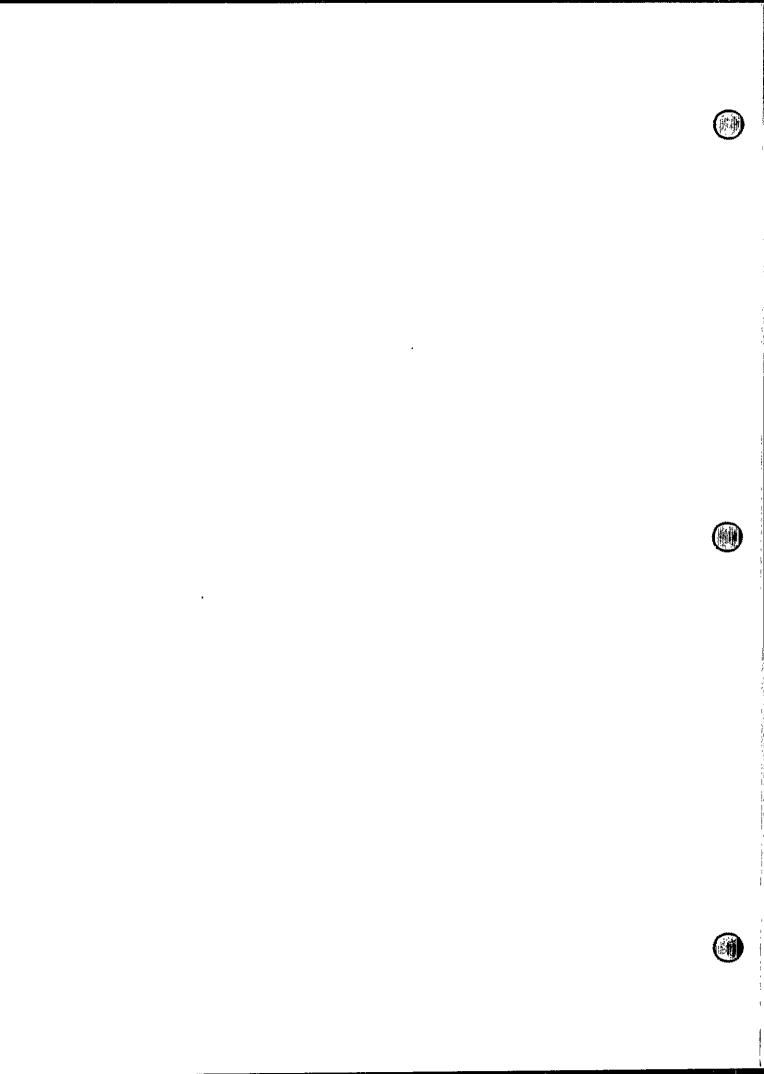
S. Matias - cross

73 C

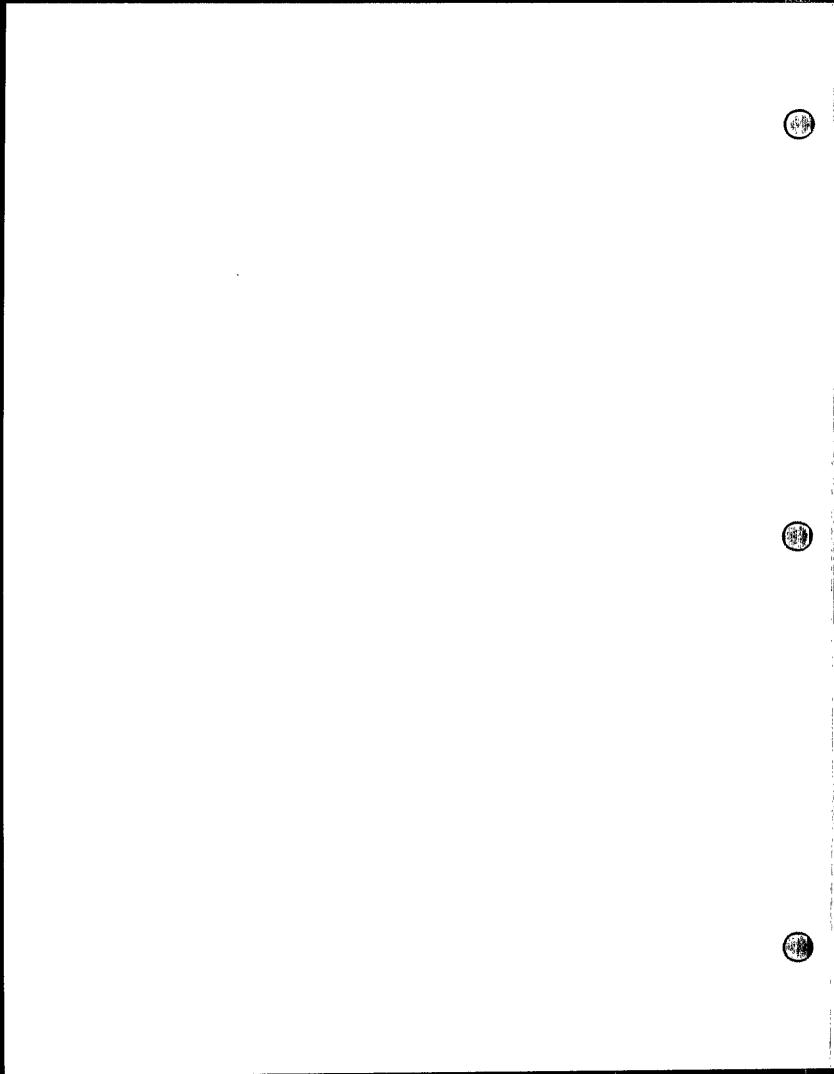
- 1 (Whereupon, another portion of the tape was 2 played for the jury.)
- 3 A That's the last picture, what went in the 4 envelope.
- 5 Q You put all of them inside the envelope?
- 6 A No, you have to rewind it a little more.
- 7 (Whereupon, another portion of the tape is
- 8 played for the jury.)
- 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.



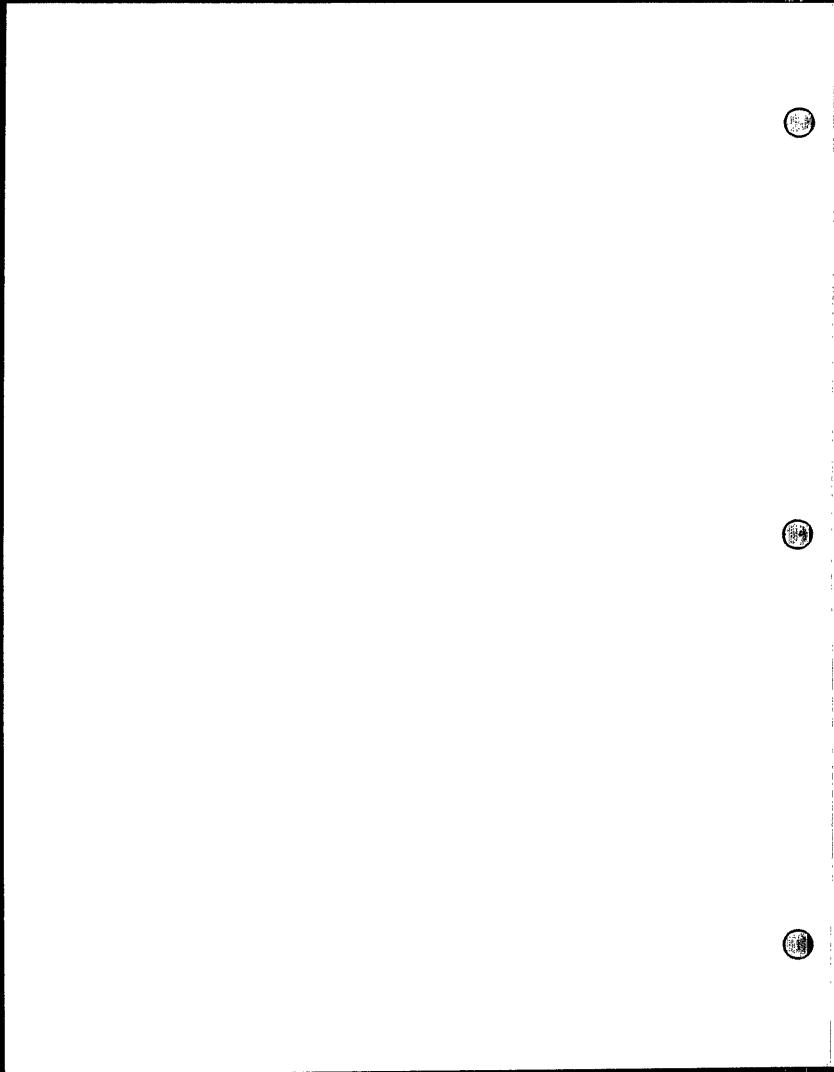
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94
                        S. Matias - cross
            So, he didn't show that form to him; right?
 1
   Detective Selesky?
        I had the form all the time, at all times.
   it to him in Spanish. Then when I finished the photo
   display, I turned it around, and I had to -- I believe,
   I came back in. I had to fill in the back.
            You'd agree it's important to record
 7
   afterwards the series of the photos, and how they're
   displayed to a witness that's identifying someone;
 9
10
   correct?
11
   Α
       Yes.
12
           And, in this case, you don't recall which one
        Q
   you showed first or fifth or sixth?
13
14
       No, I don't.
            You don't recall the order whatsoever?
15
       Q
16
       No.
  Α
                           I have no further questions.
17
            MR. GONZALEZ:
                        Thank you. State?
18
            THE COURT:
19
            MR. SAMEIRO:
                          Leave that, Counsel.
            THE COURT:
20
                        State?
            MR. SAMEIRO: You're not going to play any
21
22 more?
23
           MR. GONZALEZ: No, I'm done. I have no
   further questions.
24
           MR. SAMEIRO:
                          Then you can leave it.
25
                      S. Matias - redirect
                                                            95
            MR. GONZALEZ:
                           I apologize.
 1
  REDIRECT EXAMINATION BY MR. SAMEIRO:
 2
            Sergio, the implication by these questions,
 3
  was that you left and didn't finish with the
 5
   photographs? You understand the implication?
       Yes.
 6
   Α
 7
           Did you do that?
        Q
 8
       No.
 9
            Is the photograph, that bears Pablo Machado's
   face, the one that the victim picked out?
10
11
       That's correct.
            And you didn't put this key together, S-2-B?
12
13
        That's the first time I'm seeing that key.
            It turns out that Pablo Machado's name is
14
15
   listed as number two?
16
        That's correct.
            But then you shuffled these pictures; right?
17
       Before I went -- Before I entered the room, that's
18
19
   correct.
20
            So, you prepared in advance. If you shuffled
       0
   the pictures, it wouldn't necessarily correspond with
21
22
   the fifth photo that was shown to the victim; correct?
23
       That's correct.
            So, whether S-2-B has Pablo Machado as two,
24
25
   three, four, five, six, or one, has nothing to do with
```



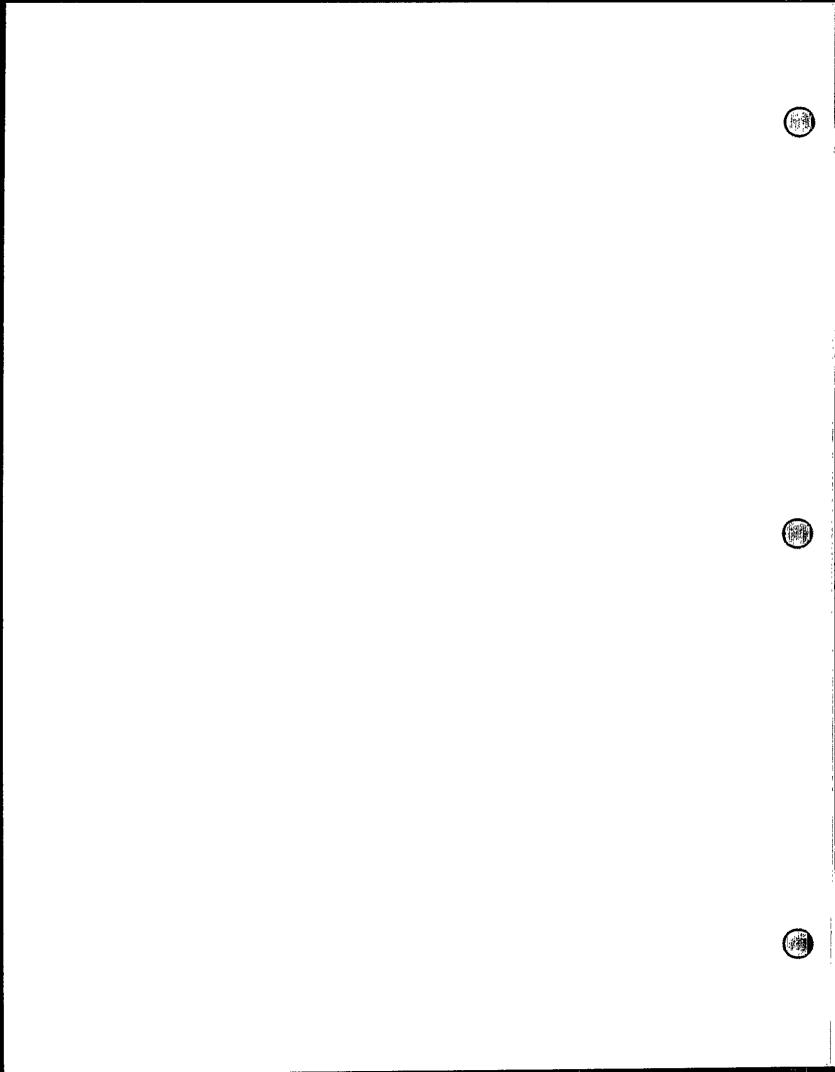
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S. Matias - redirect
                                                           96
   what happened in the room afterwards; correct?
 2
       That's correct.
   Α
 3
           And regarding --
 4
           MR. GONZALEZ: I just ask -- many of the last
   questions were leading questions. I just ask that they
   not be leading.
 7
            THE COURT: I just ask you to open them up a
 8
   little bit.
           MR. SAMEIRO: Right.
 9
            Did you suggest anything to the victim, in
10
   terms of these pictures?
11
             I didn't even speak to him when I was showing
12
   him the pictures. I just told him to take his time.
13
           Did you tell him the status of, or the
14
   identify of, any of the individuals in the photographs,
15
   before, during, or after this array?
16
17
       No.
   Α
            Did you tell this man whether anyone else had
18
19 picked out the photograph of Mr. Machado, in any other
20
   array?
21
   Α
       No.
           As far as you're concerned, Mr. Cedillo
22
23 doesn't have to tell you any of that, because you never
   did any of that; is that correct?
24
25
       That's correct.
   Α
                                                           97
                      S. Matias - redirect
           MR. SAMEIRO: Your Honor, can we go to
 1
 2
   sidebar?
            THE COURT: Sidebar.
 3
            (Whereupon, the following discussion occurred
 4
 5
   at sidebar.)
 6
           MR. SAMEIRO: There are more questions that
   were posed to the victim by Detective Selesky
 7
   concerning the photo array, which is on this portion of
 8
 9
   the tape.
10
            THE COURT:
                        Okay.
           MR. SAMEIRO: I need to review that before I
11
12 display that to the jury. Less they see something that
13
   can cause a mistrial. I don't have a transcript of the
         I just want to run through it. It will take me
14
15
   like two minutes.
           THE COURT: Okay.
16
17
           MR. SAMEIRO: Then we can go forward with the
   witness on the stand. I just need to see it. I don't
18
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.
21
   will then decide whether I want to use that portion or
22
23
           THE COURT:
                       Okay.
24
           MR. GONZALEZ: I don't object naturally to
25
   that.
```



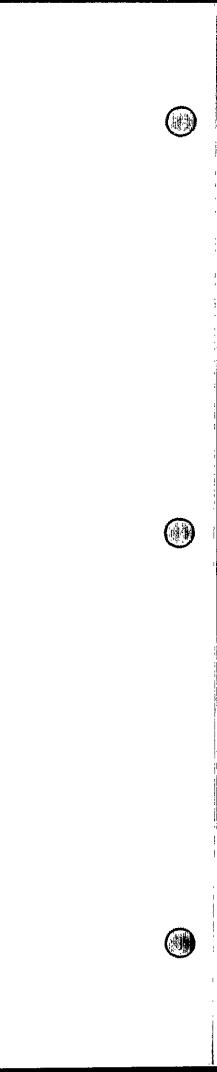
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98
                      S. Matias - redirect
 1
            THE COURT: Okay.
           MR. SAMEIRO: Thank you.
 2
 3
                          Thank you.
           MR. GONZALEZ:
 4
            (Whereupon, the sidebar discussion
 5
   concluded.)
 6
            (Whereupon, the hearing continued in the
 7
  presence of the jury.)
            THE COURT: Ladies and gentlemen, I'm going
 8
   to ask you to just go into the jury room for a few
 9
   minutes. Again, please remember, do not discuss the
10
   case amongst yourselves or with anybody else.
11
   just one matter that we have to do outside your
12
13
   presence. We'll bring you right back in, in a few
   moments. Do not discuss the case among yourselves or
14
   with anyone else. We have some matters to discuss
15
16
   outside of your presence.
17
            (Whereupon, the jury leaves the courtroom.)
            (Whereupon, the hearing continued outside the
18
19
   presence of the jury.)
           MR. SAMEIRO:
                        Judge, I would invite you to
20
   look at this, just to see if you think there is an
21
22
   issue as to anything that may come up.
                          I'm sorry, Judge. Mr. Sameiro
           MR. GONZALEZ:
23
   just showed you something.
                                I didn't know. I was just
24
   leaving the courtroom, walking out the door.
25
                                                           99
                      S. Matias - redirect
            THE COURT: Okay.
 1
            (Whereupon, another portion of the tape was
 2
  played for the Court.)
           MR. SAMEIRO: I just invited her to look at
 4
   this while I'm doing this, in case you think that there
 5
   is an issue. I know that you didn't know.
 7
           MR. GONZALEZ: I didn't know. I just thought
   it would behoove me to come back.
 8
 9
            THE COURT:
                      Okay.
10
           MR. GONZALEZ: We saw that already.
           THE COURT: Yes, we did.
11
                         Judge, that was not the portion
12
           MR. SAMEIRO:
   that I was thinking of.
13
14
           THE COURT: Okay.
           MR. SAMEIRO: I'll move on. What I'm
15
   thinking about may be buried in this interview. I can
16
   do that with Selesky on the stand.
17
           MR. GONZALEZ: Now, what's very interesting,
18
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?
```



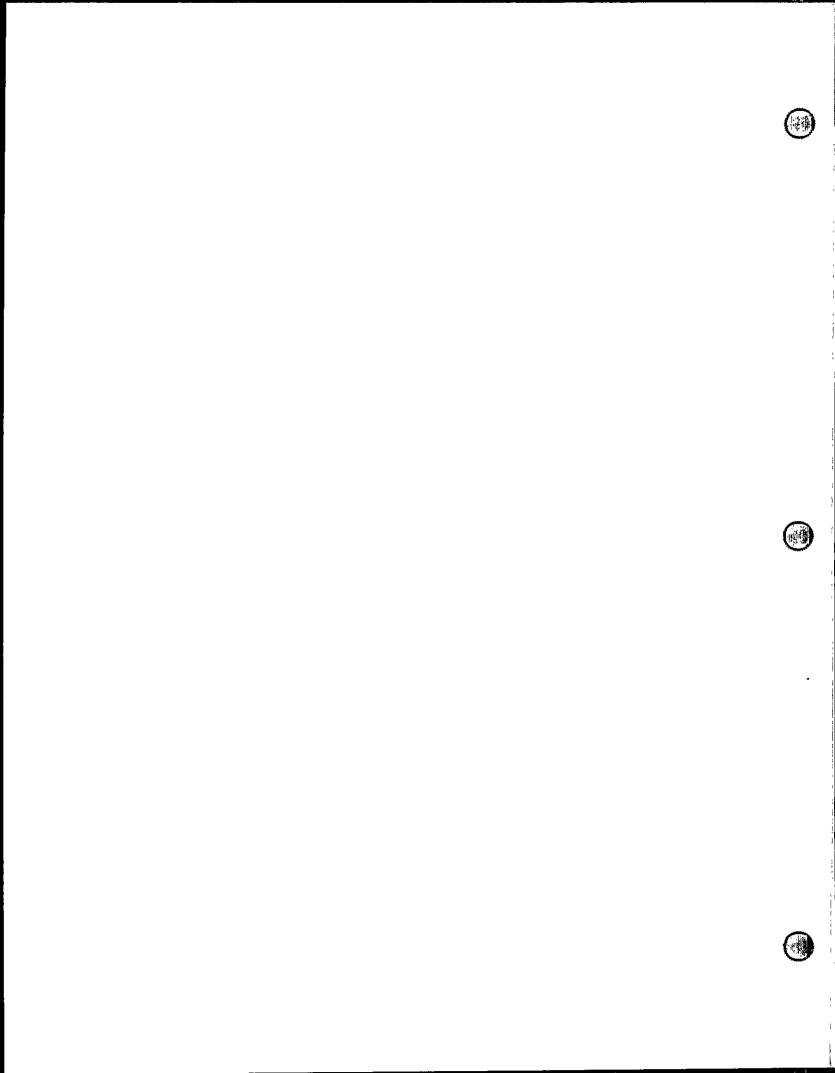
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S. Matias - redirect
                                                           100
            Judge, for the record, I asked for the time,
 1
   to go over a portion of the tape. There is a witness
   on the stand. And Counsel is making an argument to you
         I'm just asking that he hold that.
                       He's just asking to come back, I
            THE COURT:
 5
   think, and re-ask the question. Is that what you are
 6
   asking?
 7
            MR. SAMEIRO: I'm asking to explain why, in
 8
 9
   any event, Judge. I'd like to go back with that.
                       That's fine.
            THE COURT:
10
                          I went to sidebar for a reason.
            MR. SAMEIRO:
11
   I'm still in the middle of my redirect.
12
13
            Could you please ask him to reply? We don't
   get to that issue. I wouldn't be raising the issue.
14
            THE COURT: Stop for a second.
15
16
            MR. GONZALEZ: I'd like to address the
17
   record.
18
           MR. SAMEIRO: When the witness is present,
   that is just totally improper.
19
           MR. GONZALEZ: Judge, he said for me not to
20
   say anything.
21
22
            THE COURT: Hold on. We'll come back. We'll
   go back to the redirect. Then if you want to ask
23
   additional questions, I'll let you ask the additional
24
   questions.
25
                      S. Matias - redirect
                                                           101
           MR. SAMEIRO: You don't have to get into any
 1
  of the specifics. That's what I'm just saying to you.
 2
 3
            THE COURT: That is an interesting request.
           MR. SAMEIRO: If you want to bring the jury
 4
   in, I'm just trying to cue it up to where we stopped
 5
   it. You can bring them in. It will only take ten more
 7
   seconds.
            THE COURT: Okay. Let's bring the jury in.
 8
 9
            (Whereupon, the jury enters the courtroom.)
10
            THE COURT: Okay. State?
11
            MR. SAMEIRO: Thank you.
            You were asked questions about writing a
12
13
   police report or not; right?
14
       Yeah. That's correct.
15
            If you did a report, would your report have
   captured everything that was on tape? Would it have
16
   been better than what is on the actual videotape?
17
18
       What did you say?
19
           Could you write a report that was better than
20
   the tape?
21
       I thought you meant that the tape was better than
22
   the report. That's why I said what I said.
23
            In fact, the DVD is your report?
       Q
             That's correct.
24
       Yes.
25
           This was the first time you did a photo
```



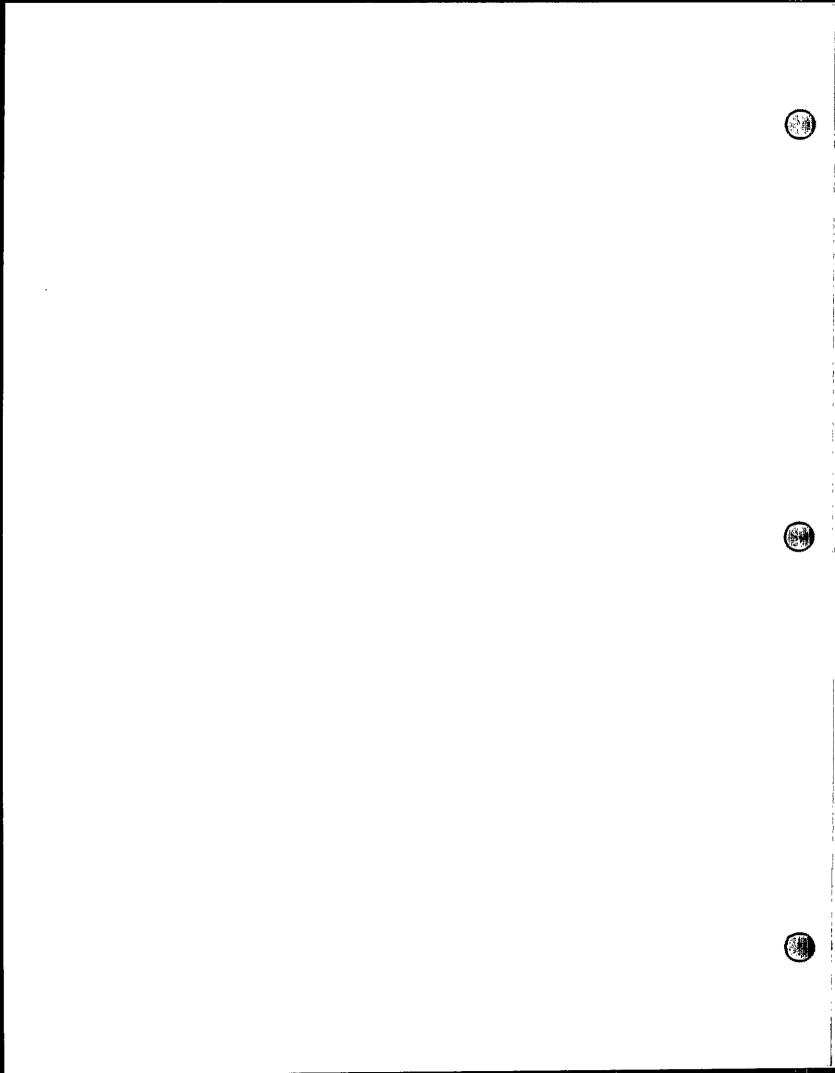
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S. Matias - redirect
                                                          102
 1
   array?
   Α
        Yes.
 3
           Was Detective Selesky outside watching
   through the monitor during this?
 5
        I don't know what he was doing.
   Α
            Do you remember talking to him when you
 7
   walked out of the room?
 8
       Yes.
   Α
            Counsel stopped the tape just minutes ago at
 9
        0
   22:10:24?
10
11
   Α
       Yes.
            This is when you went outside with the
12
        Q
13
   photographs?
14
       That's correct.
            Do you remember talking to Detective Selesky
15
   when you left?
16
17
       Yes.
   Α
18
        Q.
            By the door?
       That's correct.
19
   Α
           When you left the room, you came back in
20
   within seconds really; right?
21
22
   Α
       Yes.
            MR. SAMEIRO: Judge, if I would just be
23
   permitted to play the tape again from that point on?
24
   Just for a few seconds, a minute.
25
                      S. Matias - redirect
                                                          103
            MR. GONZALEZ: No objection.
 1
 2
            THE COURT:
                        Sure.
            (Whereupon, another portion of the tape is
 3
 4 played for the jury.)
            So, while the tape is played, I'm going to
 5
   ask you to pay attention to two things while this
   rolls. I'm going to ask you, if you hear what
 7
   Detective Selesky told you to do. Then I'm going to
   ask you to look at the victim himself. He seems to
   have two cards in his hands that look similar.
10
   going to ask you to look at that.
11
12
            MR. GONZALEZ: I just request -- this is
   redirect -- It sounds like he's trying to testify for
13
   Mr. Bobadilla -- I'm sorry -- Officer Bobadilla.
14
15
            MR. SAMEIRO:
                          There is no question pending.
            MR. GONZALEZ: I'd like for him to ask him
16
   open-ended questions in this matter, as to what it is
17
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.
```



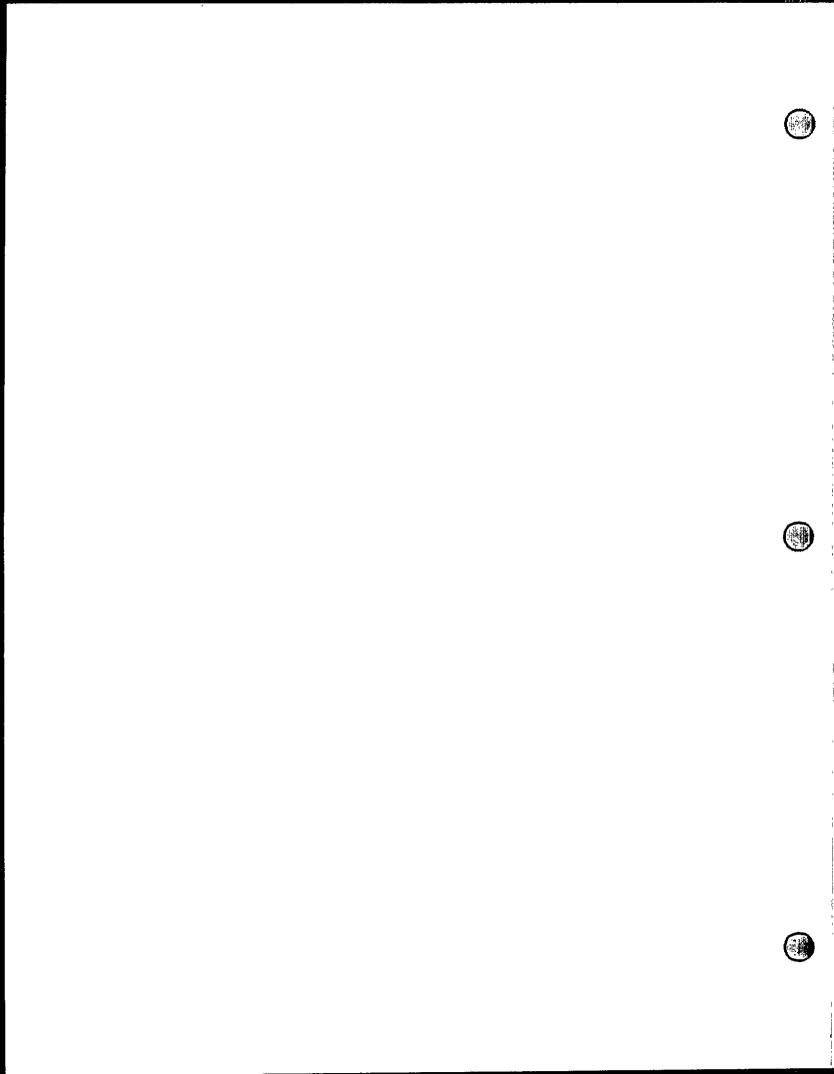
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104
                      S. Matias - redirect
           THE COURT: Well, keep the questions open,
 1
   so, the Officer can testify.
           MR. SAMEIRO: I'm trying to do that.
            I'm going to ask you to look at the tape.
   Tell us what you hear Detective Selesky saying. And
   what, if anything, you see the victim pull out of his
   wallet for identification. All right?
 7
       Okay. (Witness complies.)
 8
           I have got the volume up louder than it was
 9
10
   before.
            (Whereupon, the videotape is played again for
11
12
   the jury.)
13
           You see those two documents that he just
14
   pulled out?
                   I said, yes.
       Yes. Yes.
15
           You see those two documents in his hands?
16
17
       Yes.
           He is pulling papers from his wallet?
18
       Q.
19
       Yes.
           MR. GONZALEZ: Judge, I'd just ask, for the
20
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.
           MR. GONZALEZ: I see that she is struggling.
25
                      S. Matias - redirect
                                                          105
           MR. SAMEIRO: Judge, I'm sorry. It is just
 1
  because the tape is going.
            Does it look like two different driver's
 3
       Q
  licenses?
       It looks like they are similar.
 5
   Α
           Maybe one was expired, and maybe one wasn't?
 6
 7
       Yeah. Maybe.
   Α
 8
           Do you remember?
       Q
       I don't know.
 9 A
           He was also trying to show you at the time --
10
11
       Right. Yeah. I just took my information from
   what he placed on the table. But I really didn't look
12
          He was giving me an address, so, I just wrote
13
   from what he was giving me.
14
15
           Prior to this, did Detective Selesky ask you
16
   to do anything with the photo that he identified?
       Yes. He asked me to have him sign it, and myself
17
18
   to initial it.
19
           In fact, it should have been done right on
       Q
20
   the spot?
       Yes.
21
  Α
22
           Before you left the room?
23 A
       That's correct.
24
           So, that's a mistake?
25
       Yes.
```



```
106
                      S. Matias - recross
           But, under oath, you're telling us that this
 1
  face, this picture, with Pablo Machado, was the one
   that the victim picked out; right?
       That's correct.
 5
           Again, no bait and switch; right?
       Q
 6
   Α
       No.
 7
           MR. SAMEIRO: That is all.
                                        Thank you.
 8
           THE COURT: Thank you. Mr. Gonzalez?
                           Thank you.
 9
           MR. GONZALEZ:
10 RECROSS EXAMINATION BY MR. GONZALEZ:
           You didn't see the two documents? You don't
11
   recall the two driver's licenses, or identification
12
13 cards, or whatever they were?
       Two ID's.
14
           You don't recall what they were?
15
       0
16 A
      No.
           You recall --
17
       0
18
       Unless I'm standing up on it, I might be able to
19 tell better; but not from --
            From your recollection today, you weren't
20
   really paying attention? You were writing something
21
22
   down?
23
       Exactly.
   Α
           You can't say for sure. Mr. Sameiro said, it
24
25 could be two driver's licenses; but it may not be;
                                                          107
                      S. Matias - recross
 1
  right?
       Two things that are similar to each other.
   what it is.
           Now, what we can be sure of is that, I'm
  showing you -- I keep mixing things up -- Officer
 5
 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?
       That's correct. That he gave me.
 9
10
           He gave you. You heard him say it?
       Q
11 A
       Yes.
12
            41 South Talmadge Road. That phone number is
13 what you wrote down; correct?
14
       That's correct.
15
           All right. Let's go forward. Just a couple
16
  things -- This is the address -- He had you write down
   this address; right?
17
18
   Α
       Yes.
19
            (Whereupon, another portion of the tape is
20 played for the jury.)
21
           Now, when Detective Selesky comes in the
22
   room, asking him for his address, he gives a different
23
   address, doesn't he?
24
       Yes.
25
           Do you remember what it was?
```



```
S. Matias - recross
       We just heard it.
                           Something Hermann Road in North
 1
 2
   Brunswick.
           But he stated, that he just moved also? You
 3
   heard the tape?
 5
       Yes.
 6
            (Whereupon, another portion of the tape is
 7
   played.)
            Obviously, clearly, he told you a different
 8
 9
   address; is that right?
             That's correct.
       Yes.
10
            Now, to your knowledge, Detective Selesky had
11
   spoken to Mr. Cedillo prior to him coming in and
12
13
   speaking to you; right?
        I don't remember if he did or not.
14
           Well, you got there.
15
                                  Somehow Detective
   Selesky brought him there; right?
16
17
              I don't remember if we escorted him up or
       Yes.
   not, to be honest with you.
18
            So, you don't remember whether you had
19
   contact with him prior or after? Do you remember being
20
   in his presence with Detective Selesky?
21
22
       Yes. Before the room, yes.
           Before the room; right?
23
        Q
24
       Yes.
           And it's pretty obvious, that Detective
25
                       S. Matias - recross
                                                           109
   Selesky and him had talked prior to this?
 1
           MR. SAMEIRO: I'm objecting.
                                          It is not
 2
 3
   obvious at all.
            MR. GONZALEZ: I will withdraw the question.
 4
            THE COURT: All right. The question is
 5
   withdrawn.
 6
 7
            MR. GONZALEZ:
                           I have no further questions.
   I know that you have got to go to work.
 8
            THE COURT: Anything further?
 9
10
            MR. SAMEIRO: Well, no. I think he'll stay
11
   if you have more questions.
12
            THE COURT: Of course.
            MR. GONZALEZ: I don't have any more
13
14
   questions.
15
            THE COURT: State?
16
            MR. SAMEIRO: I don't have any more
17
   questions.
            THE COURT: Officer Matias, you're excused.
18
19
   Thank you very much.
20
            (Whereupon, the witness is excused.)
21
            THE COURT: I just need to see Counsel at
   sidebar off the record as to scheduling.
22
23
            (Whereupon, a discussion was held off the
24
   record at sidebar.)
            (Whereupon, the hearing continued in the
25
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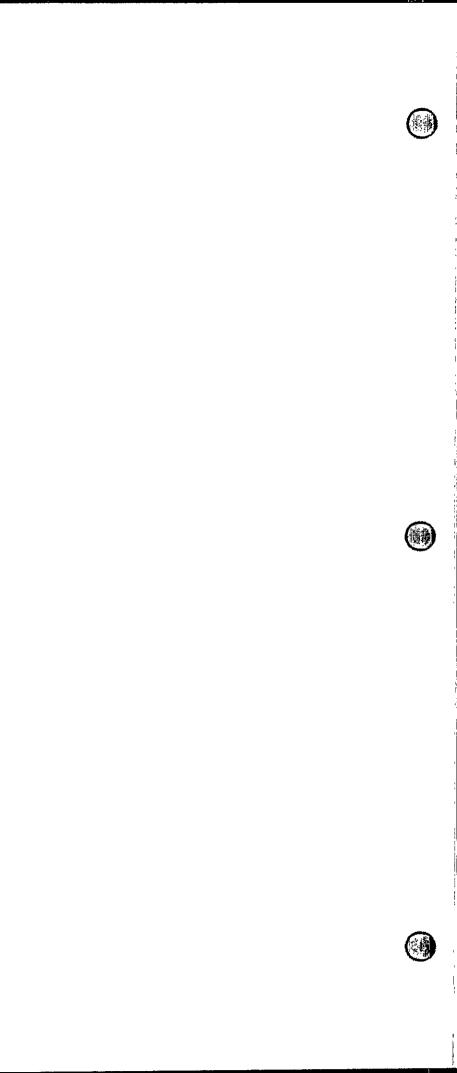
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(Colloguy)
                                                           110
 1
   presence of the jury.)
                       All right, ladies and gentlemen.
 2
            THE COURT:
   I will let you go for the evening. I will remind you
   not to discuss the case among yourselves, or with
   anybody else. Not to go to the scene of the alleged
   incident. Not to read anything, or listen to anybody
 7
   else discuss the case.
            Tomorrow morning we'll bring you up.
 8
   you don't trust me any more. I keep telling you nine.
 9
   I'm trying to do my best to get you up here by 9:15.
10
   Then we will resume back with the trial. I'm trying to
11
   keep our plan of attack for our days. We're a little
12
13
   off.
         I don't think we're too much off.
            We will get you up as quickly as possible, to
14
   move along with the case. What else did I want to tell
15
         I want to tell you to have a nice evening. And I
16
17
   don't think the weather is going to be inclement early.
   We shouldn't have any problems. We'll see you tomorrow
18
                     We will bring you up as close to the
   morning at 8:30.
19
20
   9:00 o'clock hour as possible. Okay.
21
            (Whereupon, the jury leaves the courtroom for
22
   the day.)
            (Whereupon, the hearing continued outside the
23
24
   presence of the jury.)
            THE COURT:
                       I thought I would just take a
25
                            (Colloquy)
                                                           111
  moment regarding the defendant testifying. Let me ask
 1
                     To the State, and certainly the
   you a question.
   defense. Does Mr. Machado have any prior criminal
 4
   record?
            MR. SAMEIRO:
                         Judge, we've been here so many
 5
   times on status conferences, with his Violation of
   Probation listed, that it should jar a memory. Yes, he
 7
   does have a prior.
 8
                        And it's unfortunate that it
 9
            THE COURT:
             Although you're right, we have been here
10
   doesn't.
11
   several times, now that you say that.
12
                          He has a VOP.
            MR. SAMEIRO:
                                         And the prior
13
   comes from this County.
                            And I have a certified
   judgment of conviction.
14
                           That is a correct
15
            MR. GONZALEZ:
   representation, Judge.
16
            MR. SAMEIRO:
                          The short answer to the
17
18
   question is, yes. He is charged with a third degree,
   tampering with a witness.
                              He was sentenced by Judge
19
   DeVesa in 2006. And Counsel, of course, is aware of
20
21
   it.
22
            THE COURT:
                        Okay.
            Do you wish to be heard, Counsel, regarding
23
24
                      It's 2006 you said?
   any Sands issue?
```

25

MR. SAMEIRO:

Yes.

December 22, 2006,



(Colloguy) 112

sentenced to probation.

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

THE COURT: Okay.

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

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

(Colloquy)

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

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

THE COURT: Okay.

MR. SAMEIRO: The sentence itself.

THE COURT: What's on the judgment,

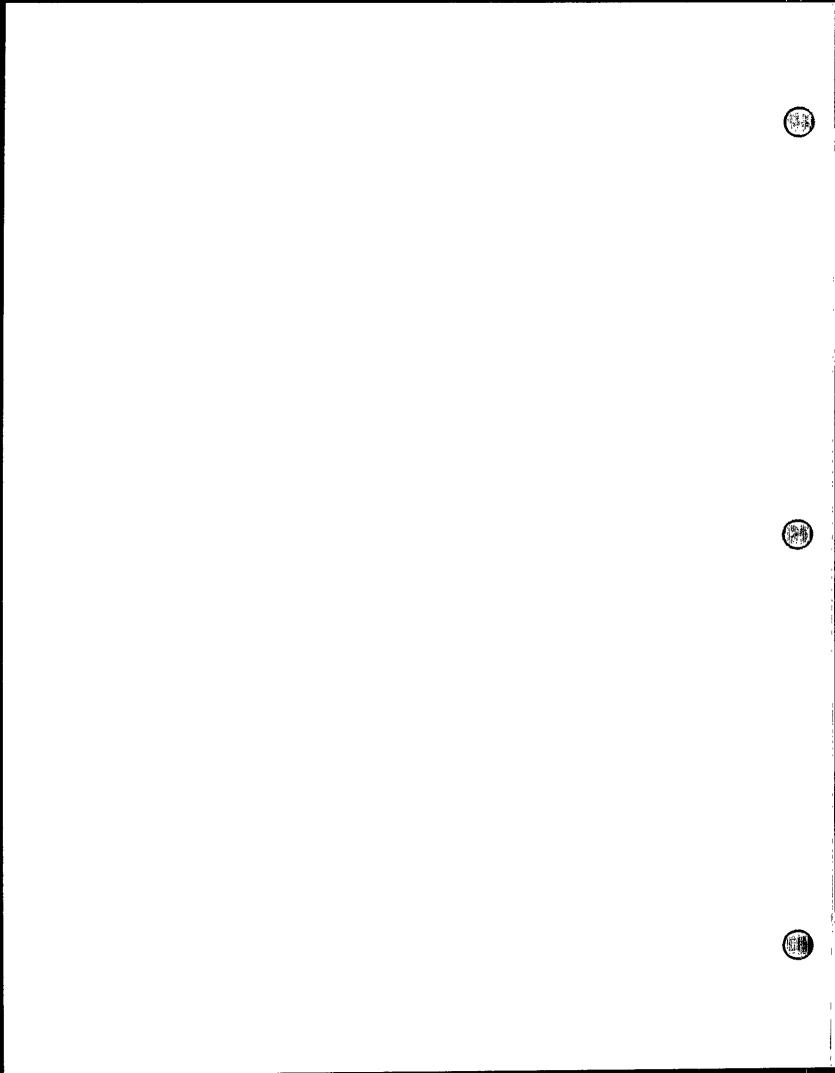
18 basically?

MR. SAMEIRO: Right.

THE COURT: I think that's appropriate.

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

25 Let me ask Mr. Machado to stand.



(Colloquy) 114

(Whereupon, the defendant complies.)

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

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

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

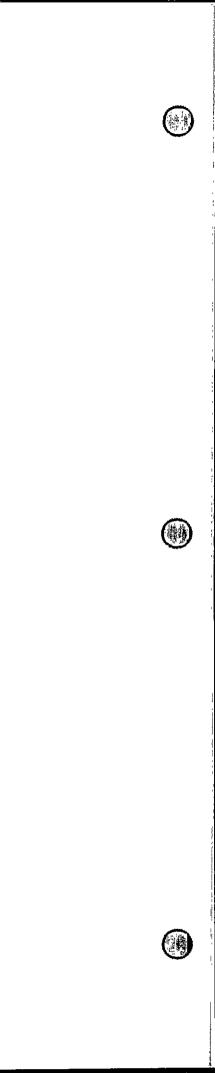
A jury has a right to consider whether a

(Colloquy)

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

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

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



(Colloquy) not testify. They can't hold that against you in any way. Do you understand that? 2 Yes. But I want to -- I want 3 THE DEFENDANT: to know, if I can think about it before I have to tell you, like, let's say, tomorrow. If I can tell you tomorrow. 7 Oh, absolutely. I'm just giving THE COURT: you the night to think about it. You don't have to 8 tell me right now what you wish to do. I just want you 9 to know, that if you testify, that your criminal 10 conviction will come in. And you'd be cross-examined 11 And if you say, you do not want to -- If by the State. 12 you say you do not want to testify, I will let the jury 13 know that they cannot consider the fact that you chose 14not to testify in any way, in coming to their verdict. 15 And you don't -- if you want -- I don't even 16 have to tell them that. It's up to you, if you want me 17 to read them that, the defendant elected not to testify 18 It is his constitutional right to remain 19 at trial. silent. You must not consider, for any purpose, or in 20 21 any manner, in arriving at your verdict, the fact that the defendant did not testify. That fact should not 22 enter into your deliberations or your discussions in 23 24 any manner, or at any time.

117

116

(Colloguy) consider all the evidence presented at the trial, and 1 he is presumed innocent, even if he chooses not to testify. So, if you tell me, you do not wish to 3 testify, that's fine. The next question I'm going to ask you, is whether or not you want me to read to the 5 jury, what I just read to you. All right? (Whereupon, the defendant shakes his head.) 7 THE COURT: Let's see. Anything else I need 8 to let you know? 9 10 MR. GONZALEZ: We'll discuss it. instruct him accordingly. I will rehash what your 11 Honor just told him. We'll discuss it. 12 13 THE COURT: Okay. The bottom line is, why I'm giving you this 14 information now, Mr. Machado, so, you can think about 15 it, talk to your attorney, talk to your family members, 16 17 whoever you may wish to talk to. Then, tomorrow

morning, I'm going to need to know what your decision is, after you have talked to all of those individuals.

And, tomorrow morning, when you decide what you're going to do, just remember, ultimately, it's your

decision, as to whether or not you wish to testify.

25

18

19 20

21 22

23

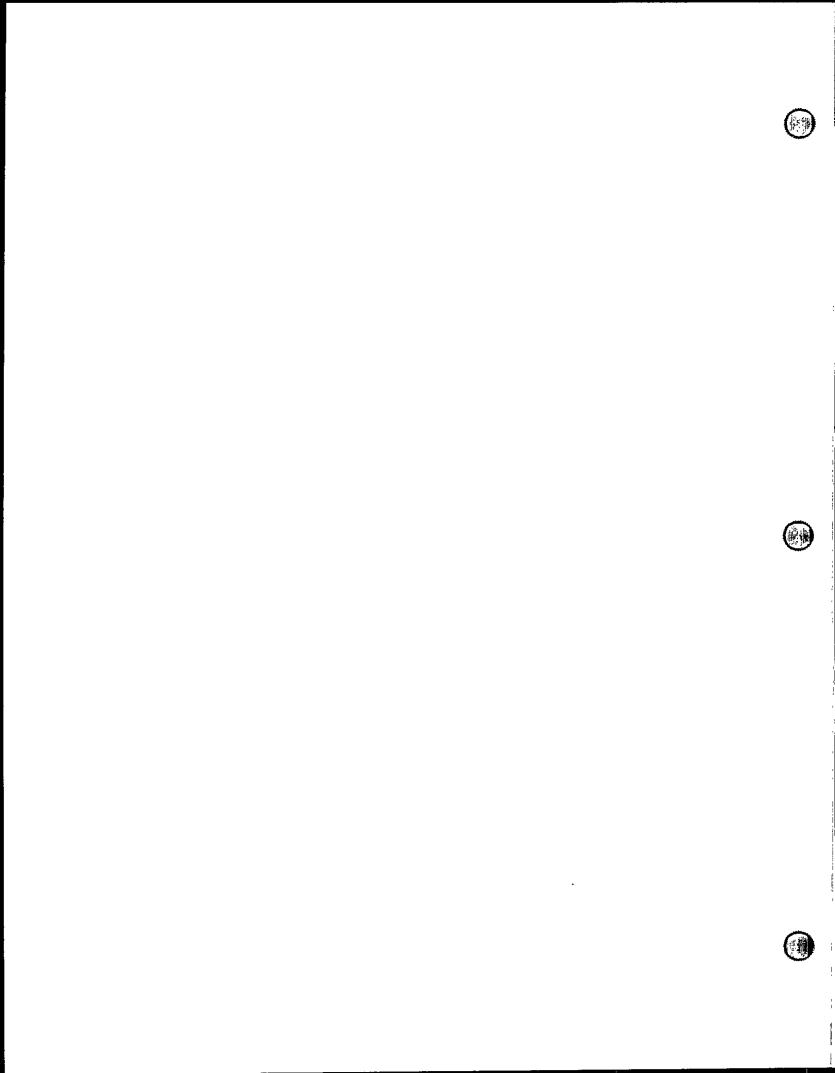
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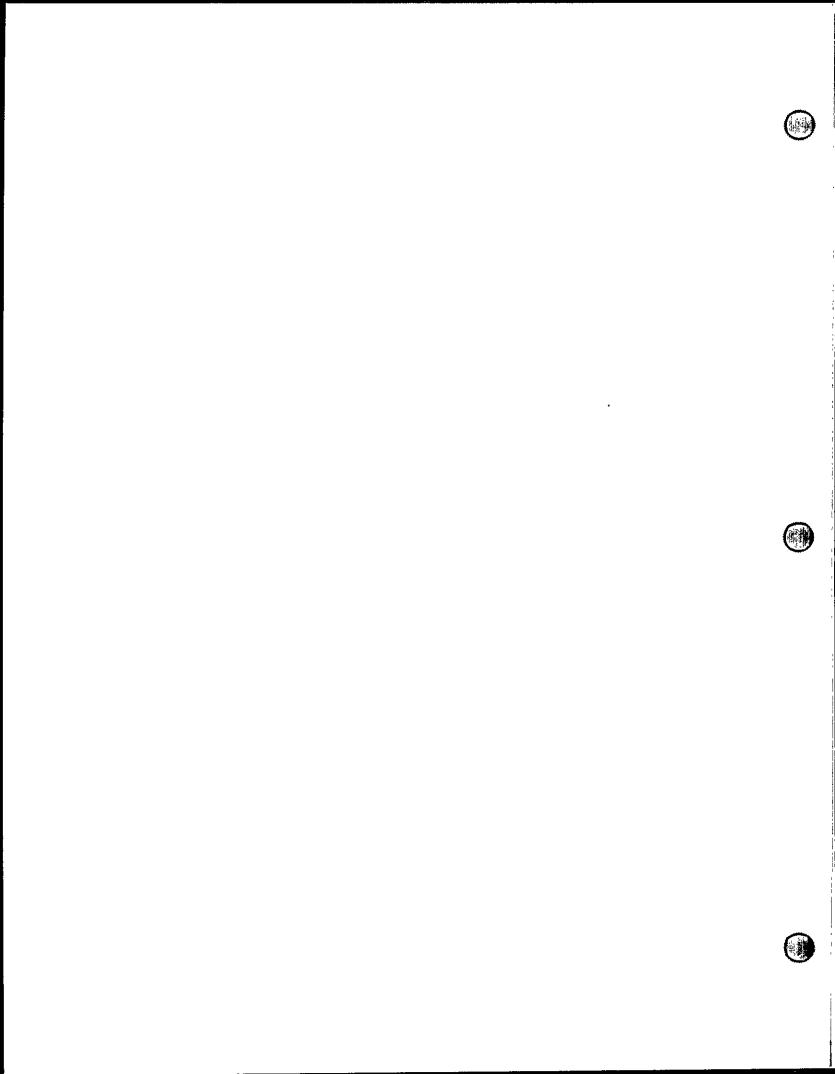
Okay.

The defendant is entitled to have the jury

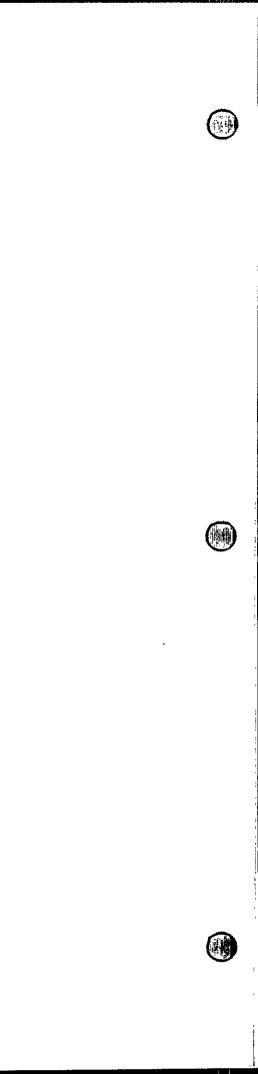
THE DEFENDANT: I have a question. THE COURT: Sure.



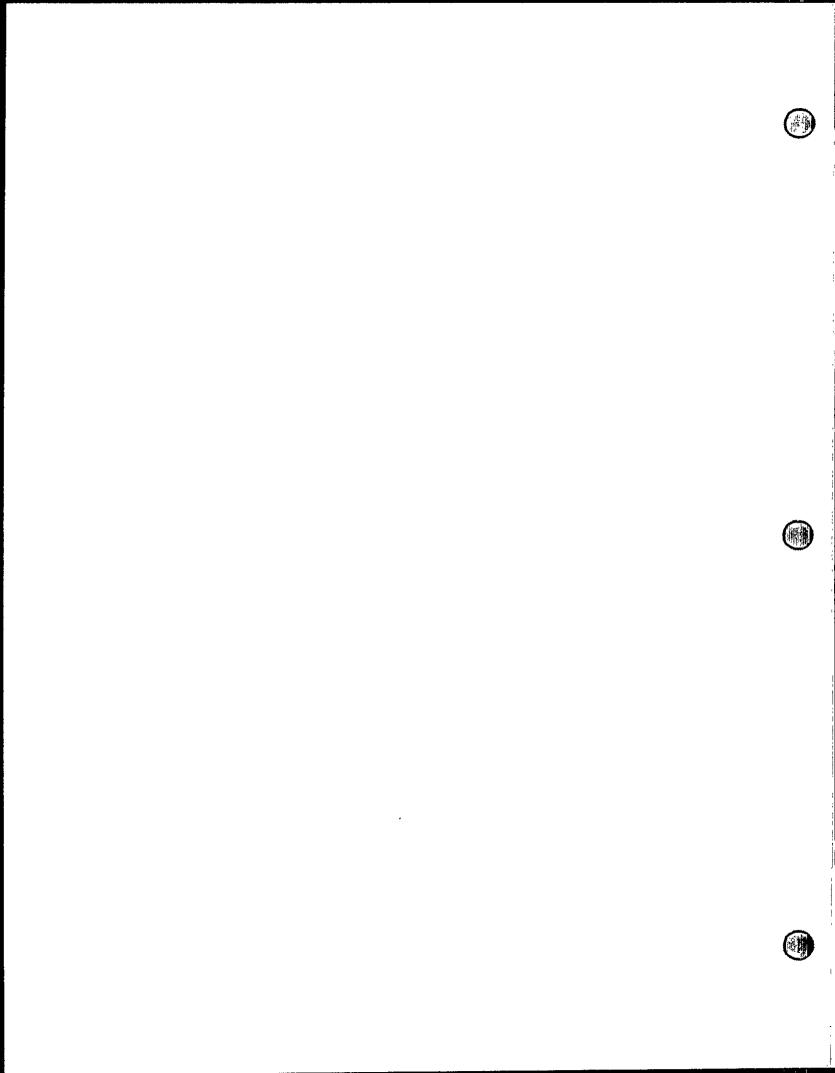
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(Colloguy)
                                                          118
            THE DEFENDANT: Would it be a way, if I could
 1
   testify, but my record will not show up?
 2
            THE COURT: No. Because of the timing of
 3
   your record, the conviction, that will come in, to
   affect your credibility. I will tell them how they can
 5
   consider it, only for credibility purposes. But it
 7
   will come in. All right?
            THE DEFENDANT: Okay.
 8
 9
            THE COURT: So, you think about it. You can
   talk to Mr. Gonzalez. Then I'll get your decision
10
    tomorrow. All right?
11
            THE DEFENDANT: Of course.
12
13
            THE COURT: Okay. All right. You can have a
    seat, Mr. Machado.
14
            (Whereupon, the defendant complies.)
15
16
            THE COURT: Folks, what I did, regarding the
    charge, I mean I pulled all of the model charges,
17
    except I forgot to pull conspiracy. That I'll have to
18
   pull, and false in one, false in all. I also pulled
19
   the identification, in-court and out-of-court. I also
20
   pulled the charge that we talked a little bit about,
21
   regarding how the police get the photographs.
22
   the jury knows, it's not just from police-related
23
24
   activities.
                          Judge, you would be wise to
25
            MR. SAMEIRO:
                           (Colloguy)
                                                          119
   give a variation on that charge with respect to the
 1
   defendant's pedigree information, which is going to
 2
  come out, the subsequent arrest. You will recall, I
   explained to the Court, we did get the defendant's
   phone number and address, from an incident that took
 5
   place in June of '07. I alluded to that in my opening,
 7
   by telling the jury, that just because the police have
   it, they shouldn't draw any inference.
 8
 9
            THE COURT:
                        Right.
            MR. SAMEIRO: So, it's not just the
10
   photographs; but the address information. There is
11
12
   more to it.
13
            THE COURT: And let's be very clear about
   what's in the arrest report.
14
15
            MR. SAMEIRO:
                          That I intend to use the
16
   address, place of birth, date of birth, phone number,
    as well as, I've got to check, I may be using the
17
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
                          That's fine.
           MR. SAMEIRO:
           THE COURT: All right. I will pull that.
24
25
                        There is a number of alternative
   pulled the robbery.
```



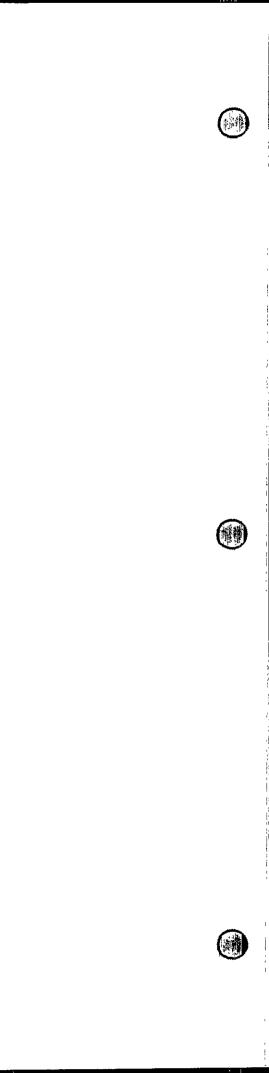
```
(Colloguy)
                                                          120
   theories though. I pulled the robbery charge.
 1
           MR. SAMEIRO: Are you talking about count one
 2
  or count two of the Indictment?
 3
 4
           THE COURT: Count one.
           MR. SAMEIRO: Count one is the conspiracy.
 5
 6
   Count two --
 7
           THE COURT: I didn't pull conspiracy for some
   reason. I went right past it.
 8
           MR. SAMEIRO: This is an armed robbery, as we
 9
10
   allege it.
           THE COURT: Well, the way I set out the
11
   robbery, the first degree, as to armed, the way the
12
  charge is. I don't believe there is a basis for a
13
   lesser-included offense as to the robbery. I don't
14
   know the rationale, where the jury could not believe
15
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
   gun pointed to him. And, you know, this is an
18
   identification case. I don't see the jury ignoring the
19
   gun, and believing that a fist was used.
20
           MR. GONZALEZ: I haven't thought about it,
21
22
   Judge.
23
           THE COURT:
                      So, I think that a gun is
              I think we're just talking about the charge
24
   included.
25 right now, the armed robbery. And I pulled the model
                                                          121
                           (Colloquy)
   jury charge.
 1
           MR. SAMEIRO: I think your Honor pulled the
 2
   model jury charge for the armed robbery. There is not
   an armed robbery jury charge. It is robbery in the
   first degree.
 5
            So, it talks about what a robbery is. Then
 6
 7
   it says, it rises to a first degree, once the weapon
 8
   is --
           THE COURT: Right. It's kind of included.
 9
10
   It just doesn't say armed robbery.
           MR. SAMEIRO: All right.
11
                      Well, take a look at it. I think
12
           THE COURT:
   it is incorporated in your Indictment.
13
           MR. SAMEIRO: Your Honor, I'll look at it
14
15
   again.
           THE COURT: As I recall, all the underlying
16
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
   here is a handgun. I think that's right from the
23
24
            Then the possession of a weapon for an
   charge.
   unlawful purpose. That is right from the charge.
25
```



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122
                            (Colloguy)
           I pulled movable property. Then I pulled the
 1
   two separate terroristic threats that are alleged here.
   I haven't pulled anything else. That's all I pulled
         I kind of went through the charge.
            Just going through, if I see any other ones,
 5
   that would be here, I mean, other than -- I pulled the
   election not to testify. I don't know what the
 7
   decision is. Or the prior conviction. I don't know
 8
   what the decision is. I pulled them just in case.
 9
            Anything else that I'm forgetting?
10
            MR. SAMEIRO: I can tell you that Cromedy
11
12
   doesn't apply.
            THE COURT: That's what I wanted to ask you.
13
   You have a Honduran victim.
                                I think it was established
14
   that the defendant was from Honduras.
15
            MR. SAMEIRO: It couldn't get any closer.
16
            THE COURT: That was going to be my first
17
              I went right by the cross-racial
18
   question.
19
   identification.
            MR. SAMEIRO: I'm not asking for it.
20
            MR. GONZALEZ: Obviously not.
21
           MR. SAMEIRO: Not in this case.
22
            MR. GONZALEZ: Obviously not. I don't think
23
24
   your Honor could find that Cromedy applies. I think it
   is a Honduran to a Honduran.
25
                                                           123
                            (Colloguy)
            THE COURT:
                       Believe me, I have no problem
 1
   putting it in, just in case. But if it is a Honduran
 2
   to a Honduran, it really isn't an issue. So, we don't
   have to worry about that.
            Then I'll go through the rest of this
 5
   identification issue. If there is anything else, that
   is pretty much what I pulled. I'll go through the
 7
   specific charges this evening.
 8
            If we do Selesky the first thing, and then
 9
   you rest, and then if there are motions after that.
10
   And then, depending on what happens, we may get
11
   finished with the testimony in the morning.
12
            MR. SAMEIRO:
                          I'm hoping, if we really start
13
   at nine o'clock.
14
            THE COURT: Well, we would have started at
15
   nine o'clock; but we had issues both days.
16
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
   Honor could charge after lunch.
20
21
            THE COURT:
                       We have a list tomorrow. We have
   a half a day tomorrow.
22
23
           MR. SAMEIRO:
                          That is right.
                                          12:30.
24
           THE COURT: I have a list for 1:30.
25
   not to say, that I wouldn't do this. I'd rather, in
```



```
(Colloguy)
                                                           124
   all honesty, move this along. We told them Thursday.
 1
   I'd like to give it to them on Thursday, even if it is
 2
   in the afternoon.
                          If you don't stick to the
           MR. SAMEIRO:
   schedule, you are going to have problems charging them
   on Friday.
            THE COURT:
                        I have a whole list on Friday.
 7
   I'd much rather, I think, obviously, my list isn't as
   bad, because it is only a half day. I can work around
 9
   it. There might even be some adjournments.
10
   willing to do this case.
11
            I'd love to be able to keep to this schedule.
12
   So, we can do the charge. The charge is probably going
13
   to be every bit of an hour.
14
                         Detective Selesky won't take
15
           MR. SAMEIRO:
          I won't ask Detective Bobadilla a lot of
16
17
   questions. We pretty match know what he's going to be
           All the matters that are in the report, that
18
   the victim didn't agree to. Then I'll have some
19
   questions about that. That will be it.
20
21
            THE COURT:
                       That will be our plan.
                           Selesky might testify a little
22
           MR. GONZALEZ:
   while on cross, just to alert you.
23
            THE COURT:
                       If we start at nine, maybe a half
24
                   Say you take an hour.
25
   an hour or so.
                                                           125
                            (Colloguy)
                           I'll try my best.
            MR. GONZALEZ:
 1
                       I'm not keeping you to that.
 2
            THE COURT:
   Don't get me wrong. You take as long as you like.
 3
            MR. GONZALEZ:
                          Yes, Judge.
 4
                       Then that will be our plan.
 5
            THE COURT:
   We'll be back tomorrow again. We'll be ready to go at
 7
   nine. We did well in the afternoon. We got started
   right away. We moved through it. I don't think there
   were any other issues. What I will do at nine, I'll
 9
10
   question the defendant, regarding his decision.
           MR. SAMEIRO: Right.
11
12
            THE COURT:
                       I think I'll wait until after we
   finish the witnesses.
13
                           It may make a difference,
14
   depending on what he hears.
15
                          All right.
           MR. SAMEIRO:
16
           MR. GONZALEZ:
                          All right.
            THE COURT:
17
                       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
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CERTIFICATION

I, GEORGEANN CROWELL, C.C.R., License Number XI00983, an Official Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of my stenographic notes taken in the above matter to the best of my knowledge and ability.

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

New Brunswick, New Jersey

Date: FEBRUARY 5, 2010

