









Appellate...: A

Case No....: 003047

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Volume.....: 011

1-3047-0972

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION - MIDDLESEX COUNTY
INDICTMENT NO. 07-10-1579
APP. DIV. DOCKET NO. A-3047-09-T2

STATE OF NEW JERSEY,

Complainant,

vs.

Transcript of Proceedings (Motion)

PABLO MACHADO,

Defendant.

(With An Interpreter)

DIVISION Place:

Middlesex County Courthouse

56 Paterson Street

New Brunswick, N.J. 08903

WCT 5 9 5010

Date:

DECEMBER 16, 2008

BEFORE:

THE HONORABLE BARBARA STOLTE, J.S.C.

TRANSCRIPT ORDERED BY: STEPHEN KIRSCH, ESQ., A.D.P.D. (Designated Counsel Section)

APPEARANCES:

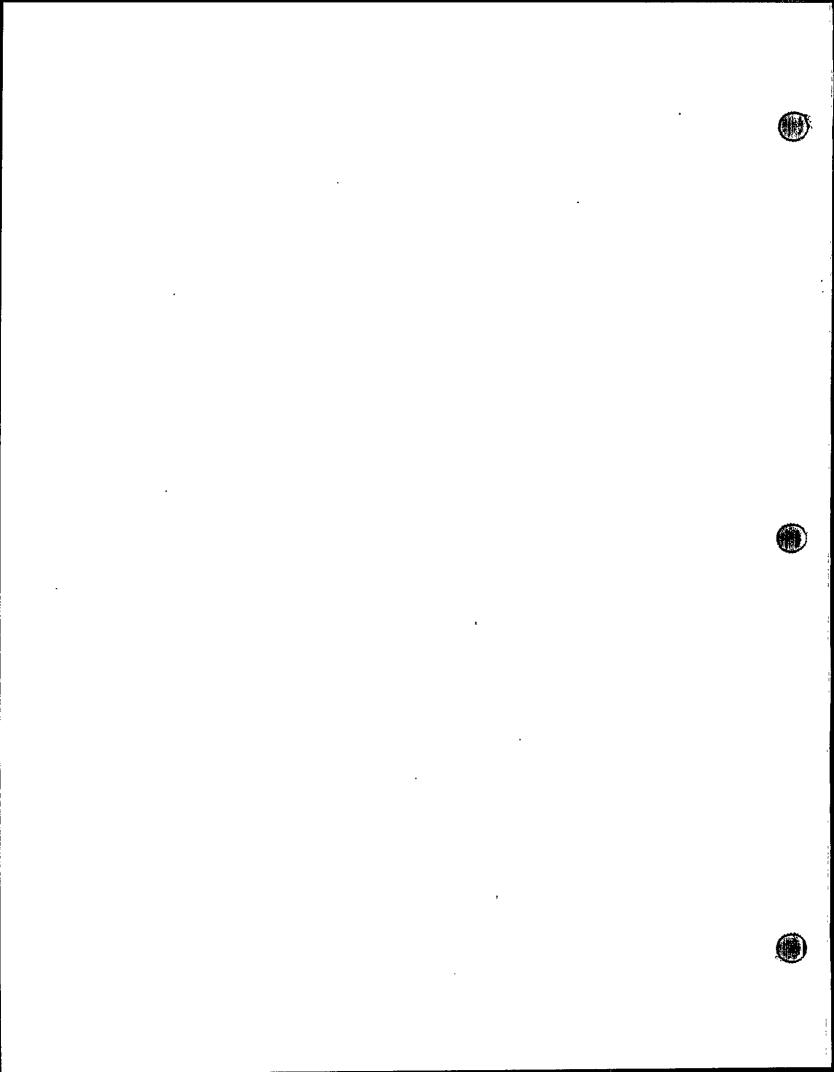
MANUEL SAMEIRO, ESQ. Middlesex County Assistant Prosecutor Attorney for the State

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

RECEIVED APPELLATE DIVISION

OCT 29 2010

SUPERIOR COURT OF NEW JERSEY Georgeann Crowell, C.C.R. Official Court Reporter Middlesex County Courthouse P.O. Box 964 New Brunswick, New Jersey



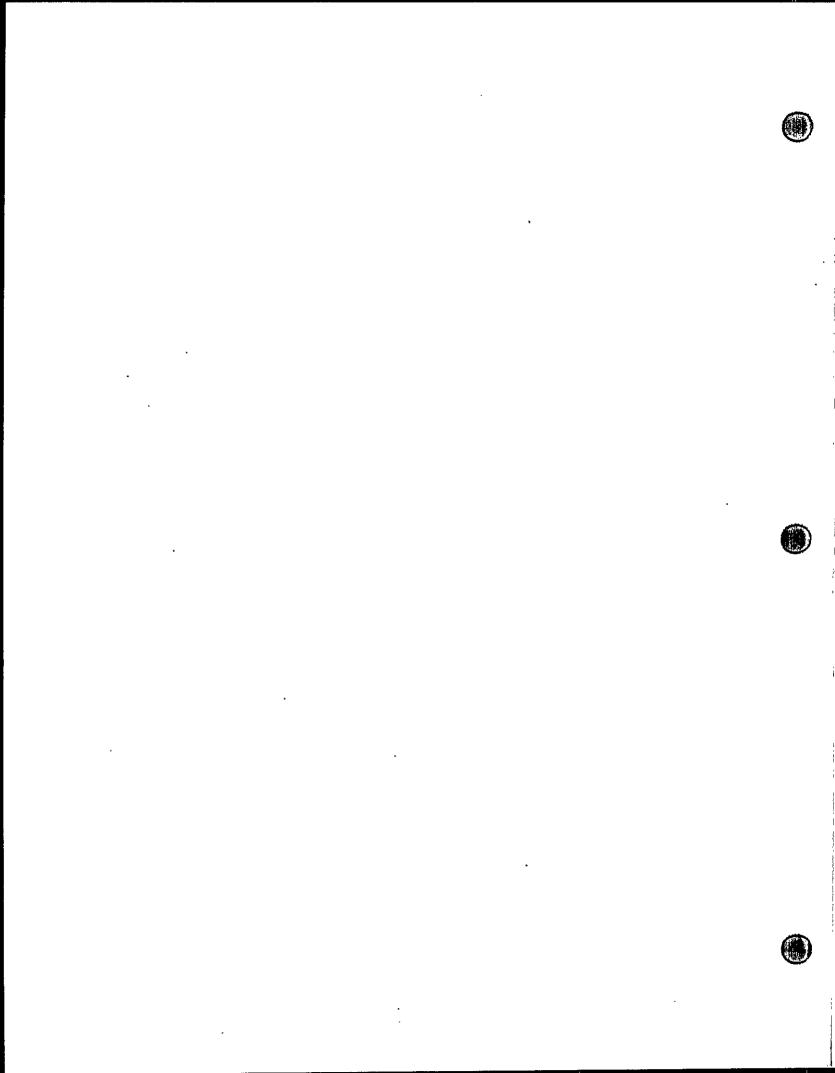
(Motion - Colloguy) 2 (Whereupon, the following hearing took place 1 with the use of a Spanish Interpreter.) 2 (Whereupon, the following discussion occurred 3 4 outside the presence of the jury.) 5 THE COURT: Thank you, folks. Please have a 6 seat. All right. I wanted to come out, because I 7 know we had that issue before we left last evening, 8 regarding the phone number and the information coming 9 out before the jury. 10 I know we talked about some of the possible 11 I wanted to hear Counsel regarding their 12 issues. 13 positions. MR. SAMEIRO: I think I made my position 14 I know that the defendant's phone clear yesterday. 15 number was captured by the dispatcher. This was 16 17 presented to the police in a very, very reliable You know, doing a little research, as to the 18 comments to the hearsay rule. And, frankly, the 19 catch-all exception that applies to any situation, it 20 would be that, unfortunately, the New Jersey Rules 21 don't adopt that because --22 Right --23 THE COURT: 24 MR. SAMEIRO: Because they do follow the Federal counterpart, which is the basis for the rules 25 (Motion - Colloquy) in the first place. You'll recall, back in the day, 1 when you talked about Rule 55 and Rule 63. I remember,

in those days, there is the switch to the Federal Rules. But the Court, I quess, the Legislature, specifically, those who take out the catch-all -- this 5 is what I think is interesting -- the catch-all deals with scenarios like this. When you have the inherent 7 reliability, and I hate to say this, if it fit under 8 one of the other exceptions, and I think that is the 9 I can make it fit. 10 case.

But it is obvious that, when the dispatcher 11 conveyed the information to the victim, he read it from 12 the actual caller ID. Let's start with the 13 14 proposition, that the caller ID technology is one hundred percent reliable. I don't think anyone here is 15 going to dispute that. I'm not going to tell Counsel 16 17 or tell you, that any number, trapped in that caller 18 ID, doesn't one hundred percent, at all times, reflect 19 the actual number on the actual phone. Again, we have 20 to start with the premise that the evidence in the actual electronic recordation from the phone, is from 21 22 the origin to this point, is one hundred percent 23 reliable.

24 So, with that, you have a dispatcher, looking 25 at his caller ID screen, and recording that

3



(Motion - Colloquy)

information, and giving it to the victim in this case. I want to correct what I said a little bit yesterday. I didn't have the benefit of my notes. We dealt with this late in the afternoon. I want to tell you that, the victim will say, that he was told, directly by the dispatcher, what the number was. He was the one who wrote it down on the piece of paper.

THE COURT: Okay. All right.

MR. SAMEIRO: And then gave that information to Officer Bobadilla. There is absolutely nothing to suggest that the number is not reliable. When you look at the totality of the circumstances in this case, we have a number given to the police, on the date of the incident. And it matches the defendant's phone number, which he, himself, provided two months later, when he is arrested on the subsequent matter, not related.

It turns out that when the defendant was arrested two months later, he gave the police the address of 400 Lee Avenue, which is a unique address. It is the same location where the victim was told to drive to in this case. The victim, at four something in the morning, got a call to pick somebody up at 58 Lee Avenue, to drive them to 400 Lee Avenue. 400 Lee Avenue happens to be the defendant's address. How much more reliable being that information be? We know that

(Motion - Colloquy)

the defendant gave us this same phone number when he was arrested in June.

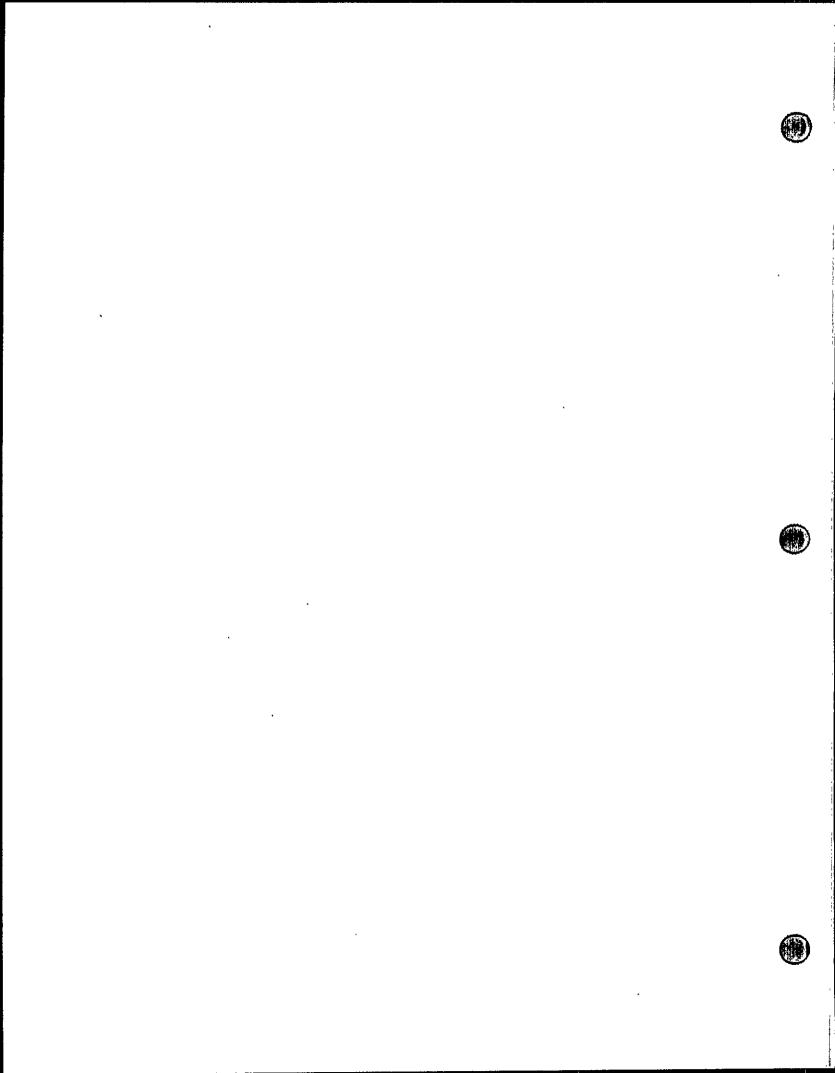
We know that he reported to the police, as part of the pedigree information, contained in the arrest report, that he lived at 400 Lee Avenue. So, therefore, you'd have to think that the odds of the victim, who doesn't know the defendant, getting the defendant's very same phone number, would be one in a million to get that right. And, frankly, it's the way that they solved the case. I think that the jury needs to know that. Now, let me say that, the fact that the number was used doesn't eliminate the defenses that Mr. Gonzalez can raise, regarding the number. He might say that someone else had used the phone.

THE COURT: Right.

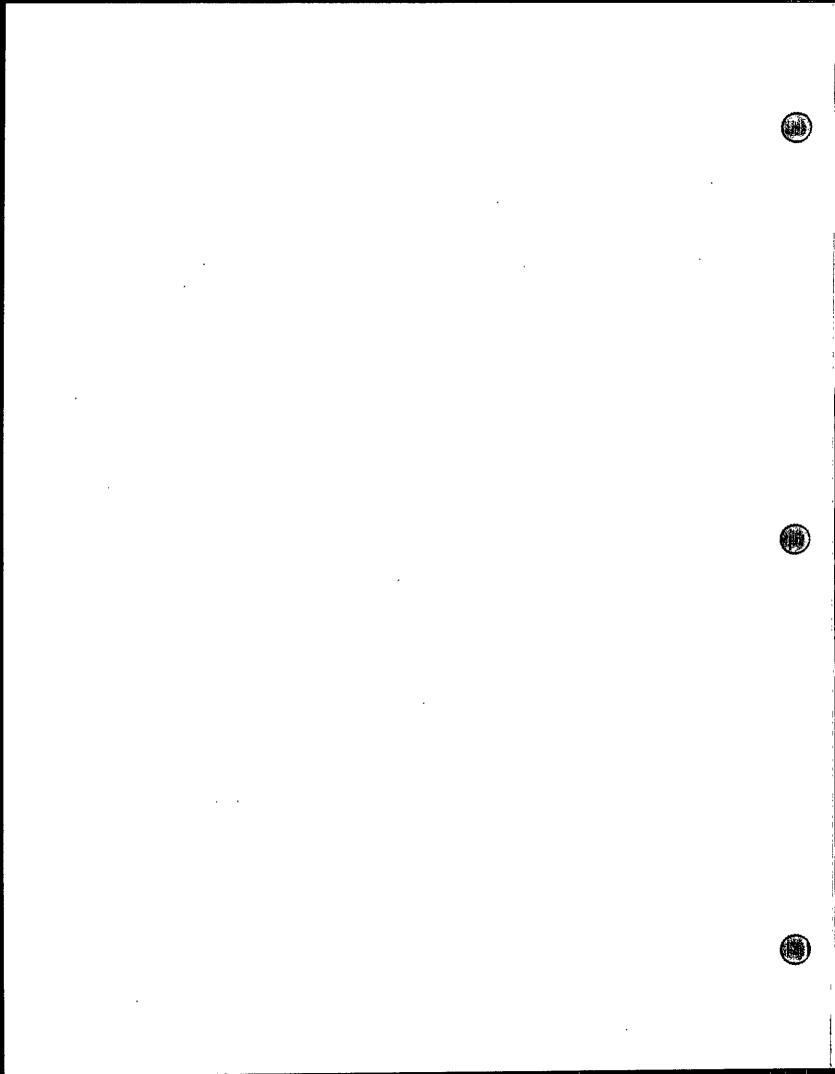
MR. SAMEIRO: That they responded to the subpoena, and this is the information we got, the very phone number. It doesn't have the defendant's name. You see, the fact that I can admit that information, doesn't deprive him of his right to argue, that it's not the defendant's phone number.

THE COURT: Right.

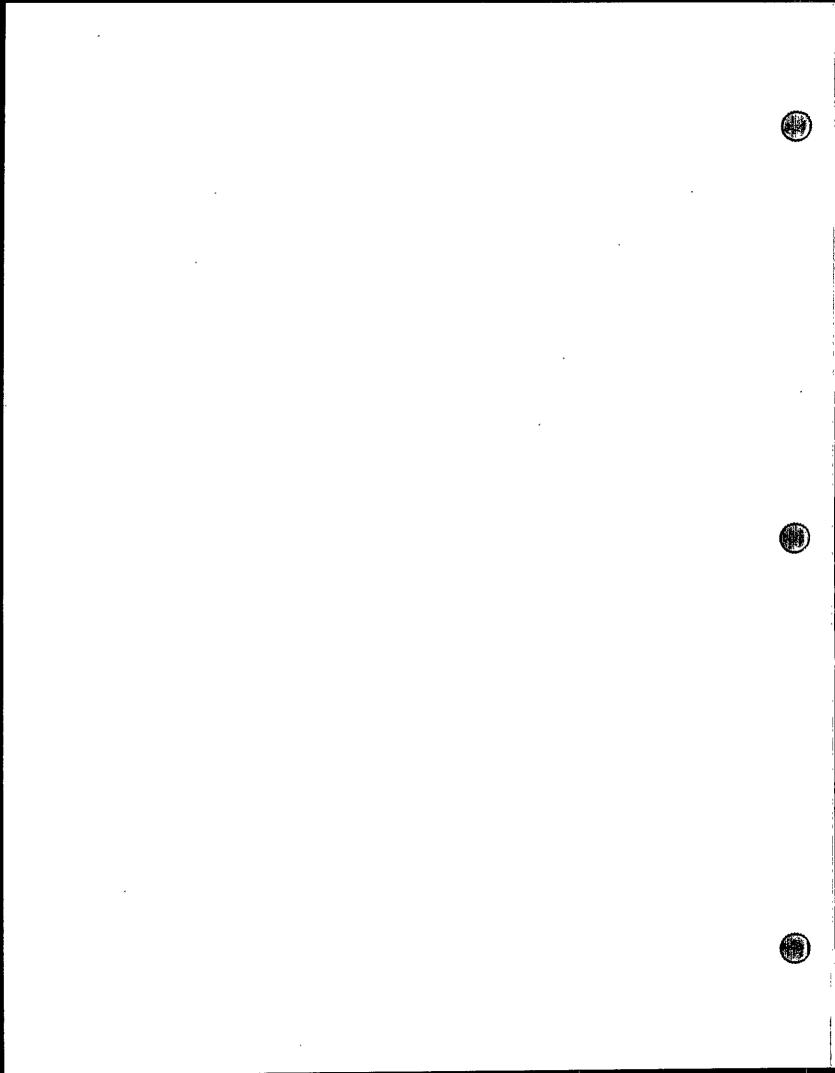
MR. SAMEIRO: Based upon the other extrinsic information, Judge, I don't know how else to say this, to respond to that. I mean, it's that obvious, that



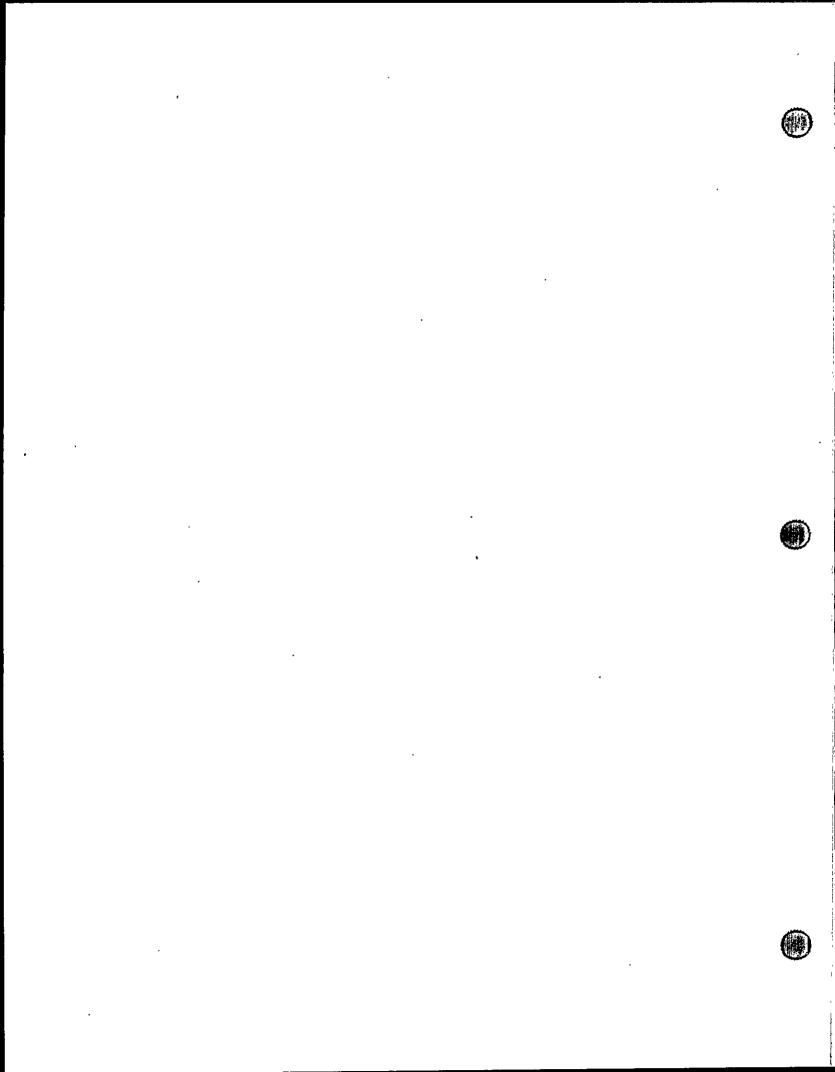
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(Motion - Colloguy)
 1
   it's reliable.
 2
            THE COURT: Let me ask you this: This is
   what I've been kind of wrestling with. If you had to
   put it into an exception, what exception would you put
   it into?
                          Arguably, if somebody came in,
 6
           MR. SAMEIRO:
 7
   I think it could come in under a business record
 8
   potentially.
            THE COURT: Then you need somebody just to
 9
   testify --
10
            MR. SAMEIRO: We don't have the dispatcher.
11
   It is unfortunate. And I was told by the victim, that
12
   it is their normal practice. This, perhaps, adds to
13
   the reliability. I shouldn't forget this part.
14
   it was the dispatcher's normal practice to record every
15
   call that came in, and keep this information for two
16
17
   weeks.
18
            THE COURT:
                       Okay.
                          They recorded it in a log book.
19
           MR. SAMEIRO:
20
            THE COURT: I kind of assumed that they did.
21
            MR. SAMEIRO: They did. But then, after two
22
  weeks --
23
           MR. GONZALEZ: We don't know if that is a
24
   fact though.
25
           MR. SAMEIRO: That is what they're saying,
                       (Motion - Colloquy)
                                                             7
   what the victim is saying.
 1
 2
            THE COURT:
                       Okay.
            MR. SAMEIRO: That is what was received by
 3
   Victoria Taxicab Company. That the dispatcher keeps
 4
   that information in a book.
 5
                       Okay.
 6
            THE COURT:
 7
            MR. SAMEIRO: After a while, they tape over
   the surveillance tape, and they dispose of those
 8
   records. They keep them for two weeks, if any problems
 9
                 That's what I learned about afterwards.
   may develop.
10
   Then they have some sort of identifying information.
11
12
   mean, they do keep these records, but not forever.
13
   There is some reliability as to their record-keeping,
14
   or their note-taking.
            THE COURT: What would be the defense to that
15
16
   claim, that they got it wrong?
17
            MR. SAMEIRO: Well, the defendant can simply
   say, there is a mistake in the transcription. Hearsay
18
19
   is prohibited, ostensibly. You don't have someone to
20
   cross-examine on the stand.
21
            THE COURT: What would change in the case, if
22 Counsel were to simply argue, that you got it wrong,
23
   that they made a mistake? It is easy to transpose a
   digit. Because, after all, if the dispatcher is going
24
25
   to say, this is the number I recorded, and I wrote it,
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(Motion - Colloquy)
   he could challenge him. You'd go back and forth.
 1
 2
   would say, no, that is what I wrote.
           MR. SAMEIRO: The victim is going to say,
   this is what I gave the police. Officer Bobadilla is
   going to say, this is what I recorded. By the way, the
   entry of that information, in the police report is a
   government record. The fact that we maintain that
 7
   information, and utilize it in the photo array process,
   as a function of the Court -- government records or
 9
   business records exception. But this number was taken
10
   down. It's not just that the victim reported the
11
   number to the police. It's the best method, by which
12
13
   the defendant was identified by the victim. The photo
   array was put together. It is an important piece of
14
15
   the puzzle.
16
            THE COURT: Right.
           MR. SAMEIRO: Everything that I'm saying to
17
                            It has to be reliable.
18
   the Court is reliable.
19
            THE COURT: Your argument is that, there is
   an exception, as to the business records. That is your
20
   argument. That then it shouldn't be hearsay.
21
22
           MR. SAMEIRO: I think we all agree that it's
   hearsay. I would like to offer it for the truth of its
23
             That's what I would like to do. But, as
24
   content.
   Counsel alluded to yesterday, I could offer the
25
                       (Motion - Colloquy)
   information, for a different reason, to explain why the
 1
   defendant's photograph appeared in the photo array.
            THE COURT: Right.
 3
           MR. SAMEIRO: I'm entitled to do that, I
 4
  would argue.
 5
 6
            THE COURT: Okay.
           MR. SAMEIRO: You could then give a limiting
 7
   instruction on the nature and utilization of that phone
 8
   number.
 9
                       That's right.
10
            THE COURT:
           MR. SAMEIRO: But that's not my first
11
   argument. I want it to come in substantively, as
12
13
   identifiable and reliable. This case is all about
14
   identification.
15
            THE COURT:
                       My question is: It doesn't fit
   into one of the exceptions.
                                But it is reliable.
16
   hearsay, it's reliable. How does it come in?
1,7
           MR. SAMEIRO: Well, I would say that, it
18
19
   couldn't, because we're stuck with the exceptions as
20
   the mechanism.
21
           THE COURT: Okay.
22
           MR. SAMEIRO: Because I will argue to the
23
   Court, this is a present sense impression.
                                                Because
24
   that's the only way the witness, slash, declarant -- he
   is not really a witness -- it is a declarant -- that
25
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(Motion - Colloguy)
                                                           10
   the taxi dispatcher would be able to convey the
 1
 2
   information. It is not as if he memorize that, and
   then convey it at a different time. That is not what
   the taxicab driver, the victim, that is why I say
   present sense impression.
                               I think, also, this is not
   unlike a surveillance tape:
 7
            I think, if you give me a minute -- I am not
   done -- if I can add --
 8
 9
           MR. GONZALEZ: I would argue 803(c)(1),
   present sense impression --
10
           MR. SAMEIRO: I am not done with my argument,
11
12
   Counsel.
            THE COURT: Hold that thought.
13
                                            I'm reviewing
   803(c)(5), to see if recorded recollection fits.
14
15
            Okay.
16
            MR. SAMEIRO: I don't know if that would
   necessarily apply. Because I'm talking about a
17
   witness, who, I guess, is unable to testify, fully,
18
19
   accurately about the information. But, I think,
   reading between the lines, the drafters of that
20
   section, were trying to get at this notion. When you
21
22
   put something in writing, it takes on value. And, in
   this case, the number was recorded multiple times.
23
            First of all, it was recorded by the
24
   electronic instrument on the phone, of the taxicab
25
                       (Motion - Colloquy)
                                                           11
                      Then they related the information,
   company's phone.
 1
   and it was recorded on a piece of paper. Then it was
 2
   given to the police officer at headquarters, who put it
   in his report. I guess the trend of this case would be
 5
   present sense impression.
 .6
            Thank you, Judge.
 7
            THE COURT: All right. Thank you.
 8
            Mr. Gonzalez?
 9
            MR. GONZALEZ: First and foremost, Mr.
10
   Sameiro had to search for an exception, in thinking
   that there is an exception that existed in this
11
12
   particular case. An exception does not exist. With
13
   regard to the present sense impression, a present sense
   impression is when a declarant says something directly
14
15
   to the police. That is what the case law, that we have
   looked at, says. And the key is, it doesn't have to be
16
17
   a declarant, the police, to someone.
18
            THE COURT: No, that's not true. You can
19
   have hearsay that doesn't involve the police to
20
   someone.
21
           MR. GONZALEZ:
                           To someone.
22
            THE COURT:
                        It just says --
23
           MR. GONZALEZ:
                           That is the way I looked at
24
   it, Judge. First and foremost, Crawford is the key
25
          What we should be focusing on period is the
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(Motion - Colloquy) reliability of that number. It cannot be challenged by 1 me, because I do not have the opportunity to cross-examine that person. THE COURT: The dispatcher. MR. GONZALEZ: The dispatcher. The person 5 who actually saw what the number was on the phone. 6 Very simply, Mr. Sameiro said in his own argument, it 7 went from the phone to the person. To who? We don't 8 9 know who it was. Who was it? Then it went to Mr. Then it went to the report. Cedillo. Far removed 10 hearsay, as far as Crawford is concerned. 11 It's cited in the -- at the end of the notes 12 13 Crawford is right across the board. hearsay issues in Crawford, I would say, doesn't apply. 14 This is not testimonial in nature. I don't believe the 15 dispatcher offered the information. What he was 16 thinking, he would have to testify about this, or in 17 any manner, shape, or form, did it come to the police 18 by way of any formal statement. 19 THE COURT: It doesn't have to -- Crawford 20 doesn't have to be a formal statement. 21 MR. GONZALEZ: But I'm arguing, as I 22 understand the citation, whether it is testimonial or 23 This is not testimonial in nature. 24 isn't. THE COURT: Okay: 25 13 (Motion - Colloquy) MR. GONZALEZ: Well, first and foremost, 1 Crawford applies in this particular case. I think it's 2 clear. We don't have the opportunity -- He has the right of confrontation, Sixth Amendment. We know --You know Crawford. I'm not going to get into it. 5 really test the reliability of that phone number, we would have to be able to speak to the person who saw 7 that phone number in the caller ID, if it, in fact, 9 happened. We don't know even know if he called the 10 number on the caller ID. We don't know if the caller 11 ID is there. We don't know all these different things. 12 The only person that could testify to that is the 13 14 person who, allegedly, told Mr. Cedillo about that number. About the present sense impression, the guy 15 writes it down on a piece of paper. The alleged 16 17 victim, Wilmer Cedillo, writes it down on a piece of That piece of paper doesn't exist. 18 paper. 19 THE COURT: Maybe you can make that argument, 20 if that piece of paper existed. But it doesn't. 21 MR. GONZALEZ: Now, it's to the next level. 22 The only recordation of that number is now Officer Bobadilla's recordation of that number, which is two 23

times removed now. Arguably, three. Because the first

time is on the phone. So, the only recordation,

24

25



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(Motion - Colloquy)
   there is a recordation, there may have been a different
1
            There may have been something else.
2
   number.
           Now, it's nice for Mr. Sameiro to tell me how
  to argue my case. If the phone number comes in, oh,
   Mr. Gonzalez can then say, oh, it wasn't his phone.
   wasn't his phone number. Now, it is just 400 Lee
   Avenue. So, you know, it is not a single address.
7
   400 Lee Avenue is an address for a 124-unit apartment
8
9
   complex.
           So, although it is a coincidence, that we're
10
   saying is reliable, it is not that reliable a
11
                 They're bringing in facts and other
12
   coincidence.
13
   inconsistencies, that I am not going to get into. But
   the reliable information can only be gleaned from,
14
   again, the person who observed it. And it's not as
15
   reliable as we think. Because many people live at 400
16
17
   Lee Avenue.
18
           MR. SAMEIRO: Judge, that's simply not true.
19 There will be no one here to testify as to that fact,
   that 400 Lee Avenue is an address that applies to a
20
21
   hundred different units. That is simply not true. And
                                                 I would
22 no one will be here to testify to that fact.
   invite Counsel to add a witness today from the
23
   apartment complex, to say that. I would invite him.
24
           MR. GONZALEZ: I will go at lunch time and
25
                                                          15
                      (Motion - Colloquy)
  grab a person.
1
           MR. SAMEIRO: That would be fine with me.
2
3
           MR. GONZALEZ:
                          If you allowed me to, I would.
           MR. SAMEIRO: 400 Lee Avenue is written in
4
5
  the police report.
           MR. GONZALEZ: Just so you know, what he's
   saying is entirely not true. In their own police
7
   report, the address that was given by him -- I've been
   to the complex. 400 Lee Avenue does not exist. The
9
   building starts at 401. And the third building starts
10
11
   at 301. The second building starts at 201. 400 Lee
12
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Avenue is a house, not even a house. 400 Lee Avenue, it's an entire complex. And, chances are, I won't get into that.

THE COURT: All right.

13 14

15

16

17

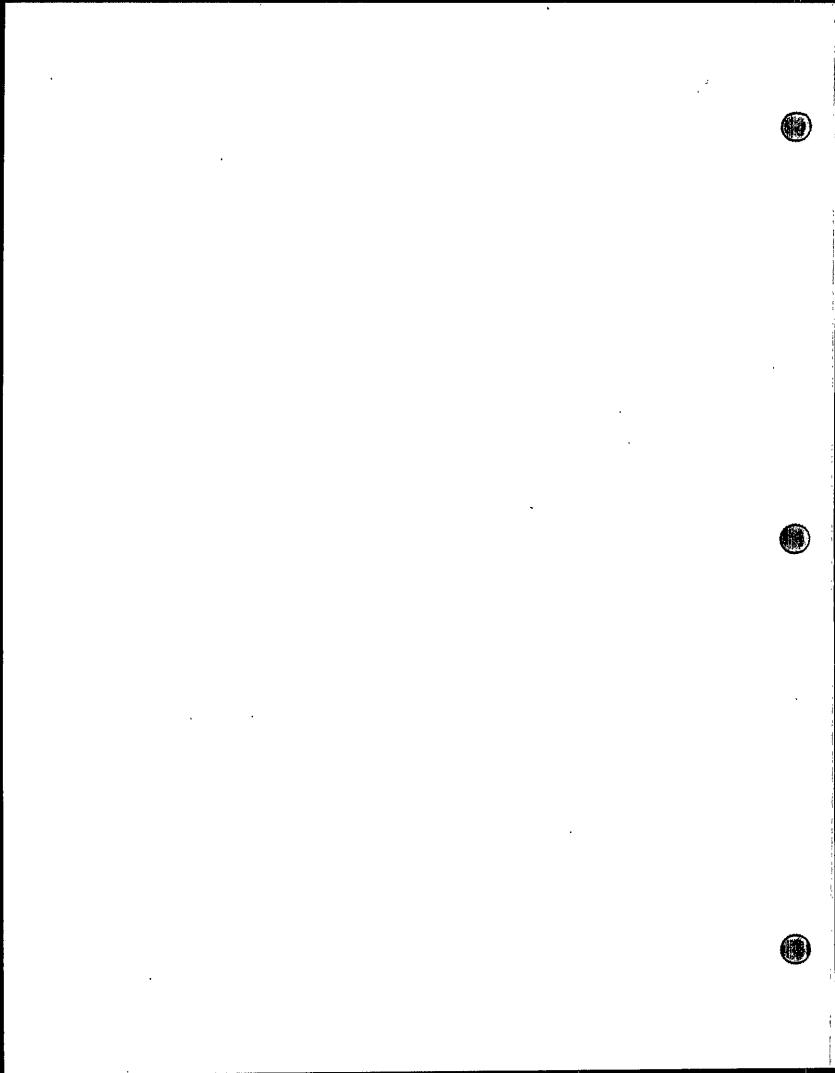
18 19

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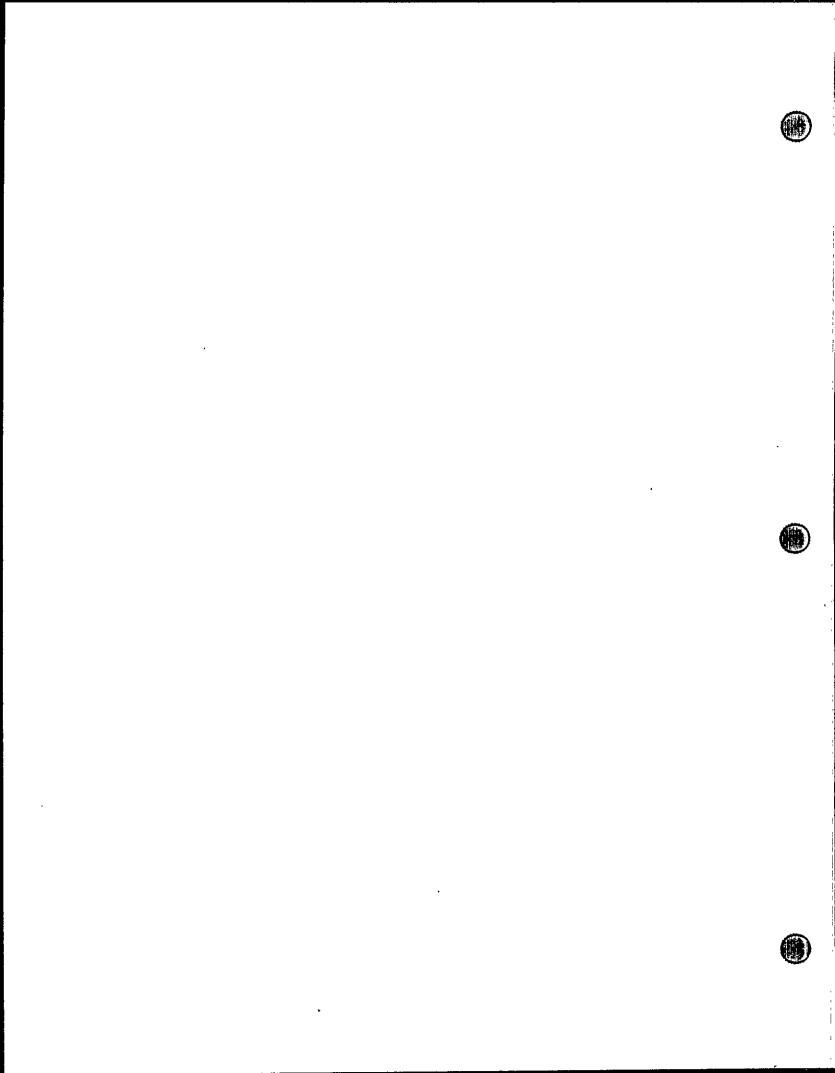
MR. GONZALEZ: But that's what it is. not a 124-unit apartment complex. It's a huge place. I don't know how that is; but I'll get into it in other ways.

Now, with regard to 803(c).

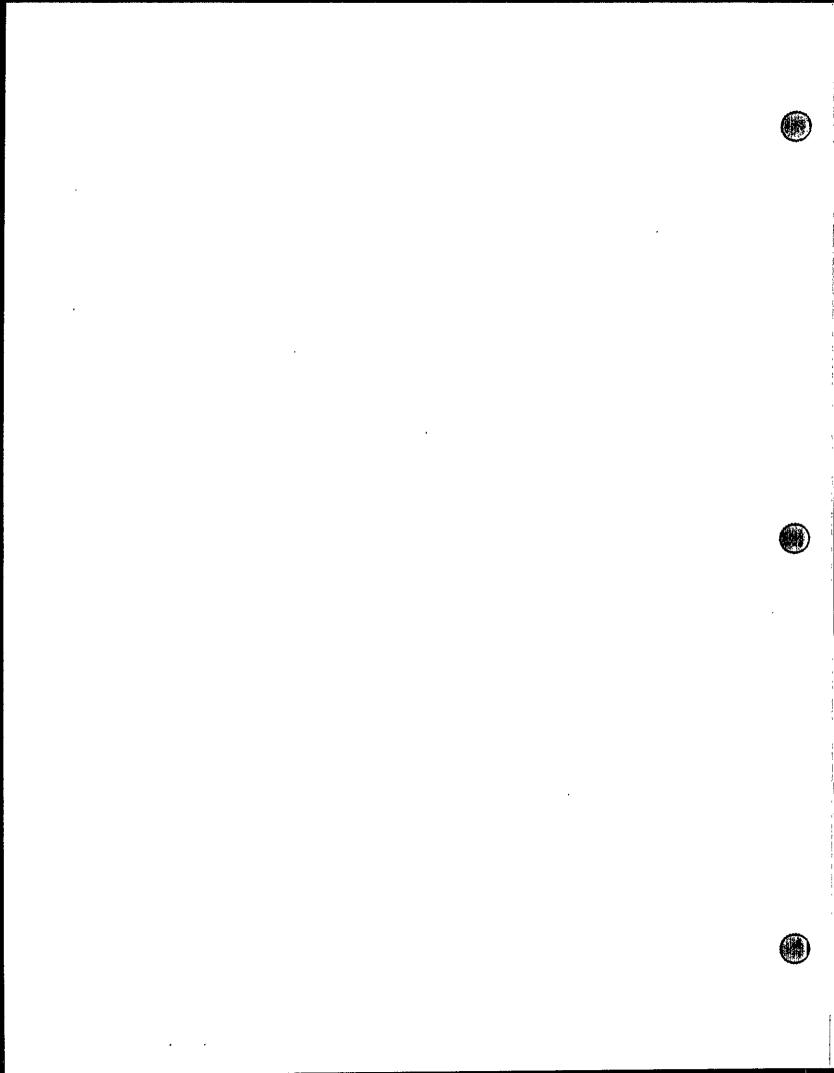
21 MR. SAMEIRO: Judge, I was there this 22 morning, and I told Counsel he would not be able to get 23 his information in. I photographed the scene. 24 have my own independent pictures that prove otherwise. 25 You may see those in rebuttal.



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(Motion - Colloquy)
                                                           16
            THE COURT: Okay. If we get that far.
 1
 2
           MR. SAMEIRO:
                          If we get that far.
 3
            THE COURT: Okay.
                         Now, I'm saying that, because I
           MR. SAMEIRO:
 4
   told Counsel, that I was there this morning, that I
 5
   took some pictures. I wasn't going to use them,
   because he could never prove his allegations. We'll
 7
   deal with the other discovery violations in a minute.
 8
   We're touching on that. I got more information today
 9
   from the defense.
10
            THE COURT: All right.
11
                            I just want to get into the
             MR. GONZALEZ:
12
  certain cases, where in State vs. Marsh, in the notes
13
   section of 803(c)(1), on a telephone statement from, I
14
   believe, a police informant, someone who then tells the
15
   police officer what's going on; but they want to remain
16
17
   anonymous.
18
            THE COURT:
                       That's Marsh.
                           Right. That is Marsh. They
19
           MR. GONZALEZ:
20 want to remain anonymous. That statement can be deemed
   reliable. A 911 call could be deemed reliable, if it
21
22 comes in. If it's an informant, there is inherent
   reliability. The case law says, 911 calls are
23
    inherently reliable.
24
           Now, the present sense impression speaks to
25
                                                           17
                       (Motion - Colloquy)
                   The declarant, in this particular case,
   the declarant.
 1
   is not the person who made the observation, when we
   look at this.
            THE COURT: It says a statement of
   observation, description or explanation of the event or
 5
   condition, made while, or immediately after, the
   declarant was perceiving the event. It wasn't the
 7
   declarant, it was the dispatcher.
 8
            MR. GONZALEZ: Exactly. That would be the
 9
   declarant.
10
11
            THE COURT: Right.
           MR. GONZALEZ: So, we need the dispatcher.
12
    Then you could use the present sense impression.
13
14
            THE COURT: If the dispatcher was here.
            MR. GONZALEZ: Wilmer Cedillo is not the
15
16
   declarant.
            THE COURT: He's the one who heard it.
17
18
           MR. GONZALEZ: But he's not the declarant,
19
   who saw something.
20
            THE COURT:
                      No, you are right.
21
           MR. GONZALEZ: I think he perceived --
22
            THE COURT: You are right. The dispatcher is
23 that individual.
24
           MR. GONZALEZ: Any declarant. We're talking
   about the declarant, your Honor. He came in and
25
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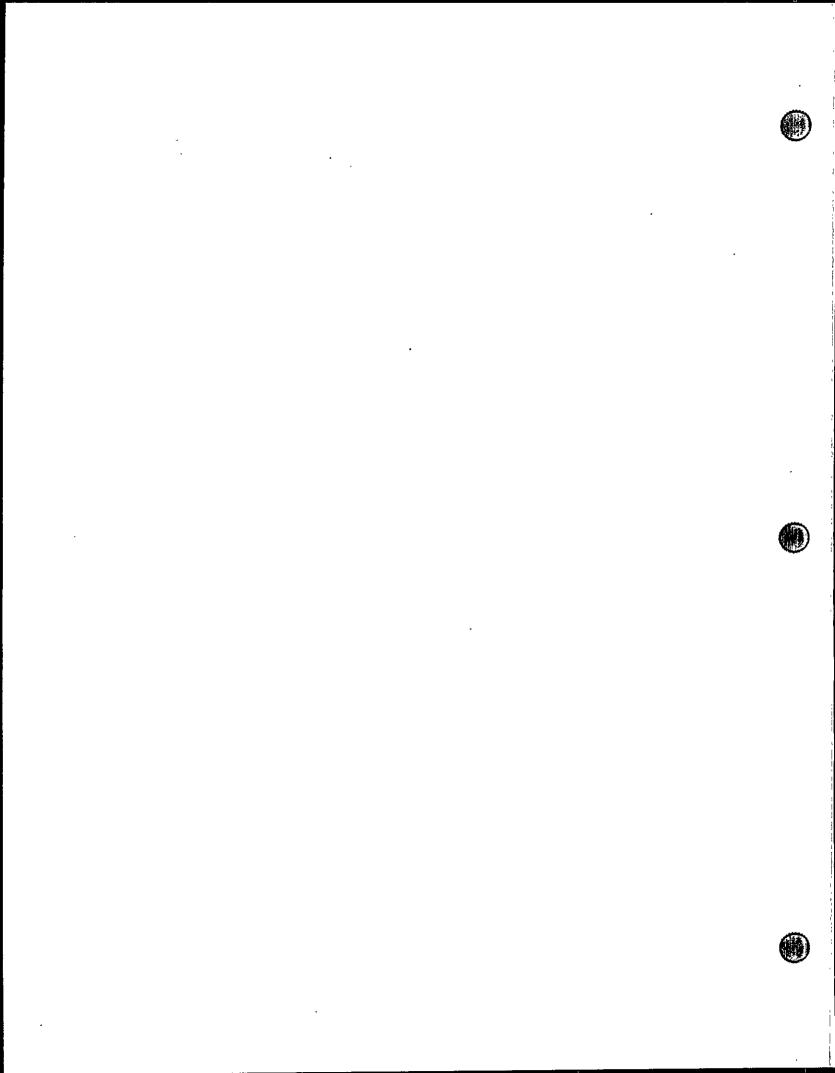


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18
                       (Motion - Colloguy)
   perceived that, and wrote it down.
 1
 2
            THE COURT: That would be different
                  If we didn't have the records.
   information.
                          Right. Then he'd say, oh, I
            MR. GONZALEZ:
   wrote it down.
                   This is what it is. The declarant is
 5
 6
   the one who perceived the events. That is what is
   included in 803(c)(1). In this case, Mr. Cedillo would
 7
   be the declarant.
 8
 9
            MR. SAMEIRO: No.
            MR. GONZALEZ: Yes.
10
                                 In this case, what the
   State is trying to say, he would be the declarant. We
11
   know he did not perceive the event, the phone call
12
13
   coming in.
14
            THE COURT: This is where I think -- Because
   if you compare it to Marsh, the telephone statement
15
   that comes into the police by the informant, who
16
   insisted upon remaining anonymous. Now, witnessing an
17
18
   event, that would be, for our purposes, as to the
   informant, that would be the dispatcher. Made, while
19
   witnessing an event, described in the statement, may be
20
   inherently reliable, as to be admissible at trial.
21
   It's an exception to the hearsay rule, under present
22
23
           So, I'm comparing the confidential informant to
   sense.
   the dispatcher.
24
           MR. GONZALEZ: That is an absolutely right
25
                                                            19
                       (Motion - Colloguy)
                That is who they're talking about.
   comparison.
 1
   is being given straight to the police. This is being
 2
   given straight to Wilmer Cedillo, and then to the
 3
 4
   police.
            THE COURT: Well, he's going to bring it in
 5
   through Mr. Cedillo.
 7
            MR. GONZALEZ: He can't. What I'm saying is,
   he can't, because he is not a police officer.
 8
            MR. SAMEIRO: It is not a requirement.
 9
            MR. GONZALEZ: But Crawford vs. Washington
10
   says, I have the right to cross-examine any person that
11
   sits there in that seat. And this is testimonial.
12
            THE COURT:
13
                       Okay.
            MR. GONZALEZ: He tried to argue that it
14
15
   wasn't testimonial.
            THE COURT: That's the next step. You are
16
17
           That is how the rules are. They refer to --
   They talk about the exception. But then it says, the
18
19
   rule is subject to Crawford vs. Washington.
            MR. SAMEIRO: This is not testimonial.
20
21
            THE COURT: It could be, it could not be.
   It's not the same.
22
23
           MR. SAMEIRO: The declarant would never
24
   expect to testify to this event.
25
           MR. GONZALEZ:
                           That's one of the factors
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20
21
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(Motion - Colloquy)
 1
   certainly.
 2
            THE COURT: It doesn't matter. He's not
 3
   going to call him. If he had gotten that particular
   person, we wouldn't even be here arguing this.
            MR. GONZALEZ: Well, my understanding is, he
 5
 6
   is not.
            THE COURT: He is not available?
 7
            MR. SAMEIRO: No. He's long since left his
 8
   job. Frankly, the police officers worked with the
 9
   inherently reliable information that they received, and
10
   caught this man. They didn't bother to find out who
11
   the dispatcher was. They looked at the caller ID.
12
13
   They didn't have to produce him, because it was that
   reliable. The nature of the business, being what it
14
                             I don't know where he is.
15
   is, the dispatcher left.
   Trust me, we have tried to find him. I asked Mr.
16
17
   Cedillo, who knew who he was, where can we find him.
   He is unavailable. Not that that matters for the
18
   exception, the unavailability. That is not a
19
20
   requirement.
21
            MR. GONZALEZ: Judge, I think State vs. King
22 indicated that the statement was admissible, only if
23
   the declarant actually perceived the event or the
   condition, which is the statement, narrowly described,
24
   the statement at the time of the perception. So, the
25
                        (Motion - Colloquy)
  person perceiving the number is the declarant.
 1
            THE COURT: Right. Right. But the
 2
   declarant, that would come to court, would be the
 3
 4
   declarant.
 5
            THE COURT: No, he's Wilmer Cedillo, who
 6
   never --
 7
            MR. GONZALEZ: But that's not what they're
   asking. They're asking Mr. Cedillo -- They are asking
 8
   about the hearsay statement of the dispatcher to come
 9
   in through Cedillo. Normally, it would be -- not
10
   normally -- in some cases, it would be a police
11
   officer, who would be saying it. The declarant would
12
                      The declarant, in this case, would
13
   be the informant.
   be the dispatcher, if he called the police. But he
14
   called Mr. Cedillo. So, what the State is saying, they
15
   want that out-of-court statement, that was made to Mr.
16
17
   Cedillo, to come in, under a present sense impression.
18
            Now, if we take a step forward, even if you
19
   believe that, Judge --
20
            THE COURT: Okay.
21
            MR. GONZALEZ: -- then I still have Crawford.
22
   We still have Crawford to deal with. The
23
   unavailability of that particular witness has not been
24
   stated before the Court. We know about the
25
   unavailability and availability of witnesses.
                                                  What the
```



```
22
                        (Motion - Colloguy)
   next step is, did the State make an effort to find this
 1
 2
   person.
            THE COURT: It sounds like they did.
 3
                          Absolutely.
            MR. SAMEIRO:
                           It sounds like that. That's
            MR. GONZALEZ:
 5
 6
   what I just heard him say.
            THE COURT:
                        It sounds to me as if, he just
 7
   put on the record, the individual is gone from their
 8
   employment. And the Investigator tried to determine
 9
10
   where he is.
            MR. SAMEIRO: Right.
                                  The recording does not
11
   go back beyond two weeks. It wouldn't have been kept
12
   with the number. Remember, I mentioned that before.
13
                        You did.
14
            THE COURT:
15
            MR. GONZALEZ: Mr. Sameiro is making stuff
16
   up.
            THE COURT:
                        I'm sorry?
17
                           The State is clearly making
18
            MR. GONZALEZ:
   things up on the record. Nobody went there and checked
19
   for the 104 Hearing.
20
            MR. SAMEIRO: It was stipulated. I told you
21
22
   that.
            MR. GONZALEZ: With regard --
23
            MR. SAMEIRO: Selesky did go out. He did
24
25
  make a report.
                        (Motion - Colloquy)
                                                             23
                           This is the Investigator that
            MR. GONZALEZ:
 1
   actually did what Mr. Sameiro says. But wouldn't it be
   in a report, if it actually happened? He is coming
   before the Court saying this. This is unfounded in any
   report. I would have them.
 5
            I would say that, whether or not Mr. Sameiro
 7
   is telling the truth about the unavailability of this
   particular witness --
 8
            MR. SAMEIRO: If you want to call John
 9
   Selesky, he's in the back. He would know. We can do
10
   that right now.
11
12
            MR. GONZALEZ: Let's see whether or not --
13
   Did he write a report? This is not about John Selesky.
14
   He's going to say exactly what Mr. Sameiro said.
15
            THE COURT: Certainly you can question him.
16
   If he says, whatever he says, you can cross-examine him
17
   regarding that.
18
            MR. SAMEIRO:
                          Ask him right now.
                                              Because he
19
             That would be fine. He did, in fact.
20
   think he kind of understood it. Everybody knew the
```

So, you're not necessarily in

MR. GONZALEZ: So, if he did it yesterday,

when he determined that this person was unavailable --

21

22

23

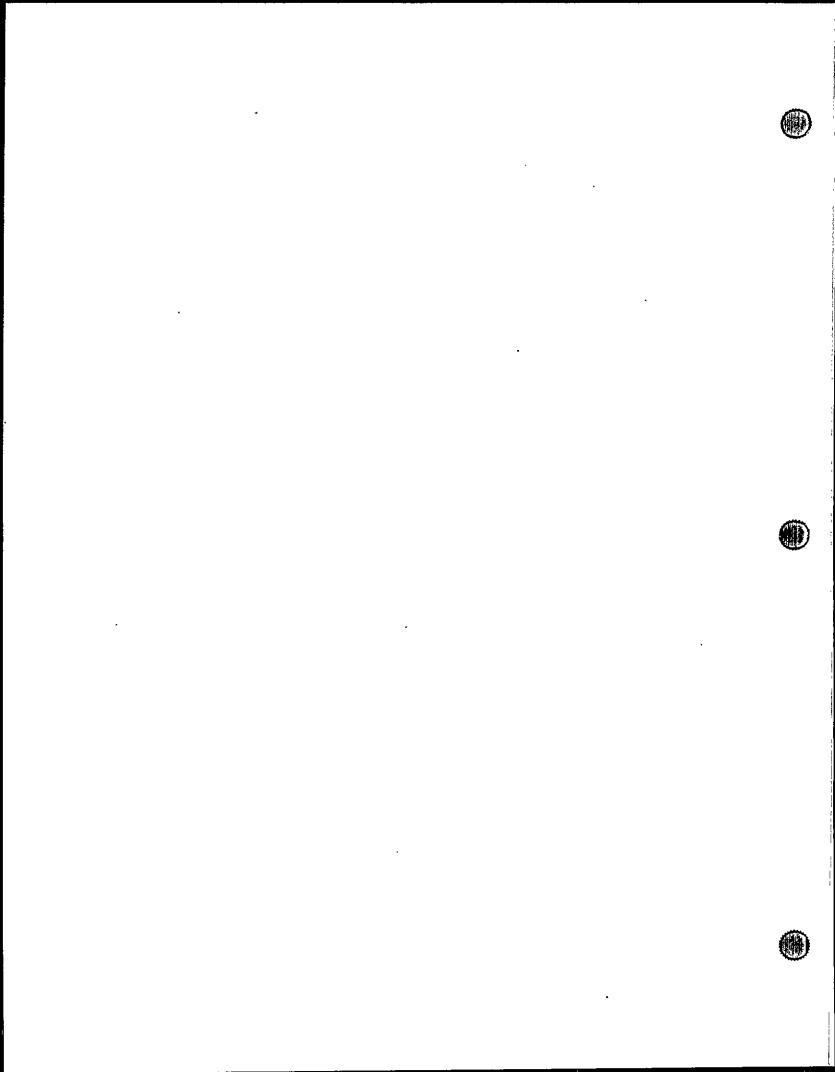
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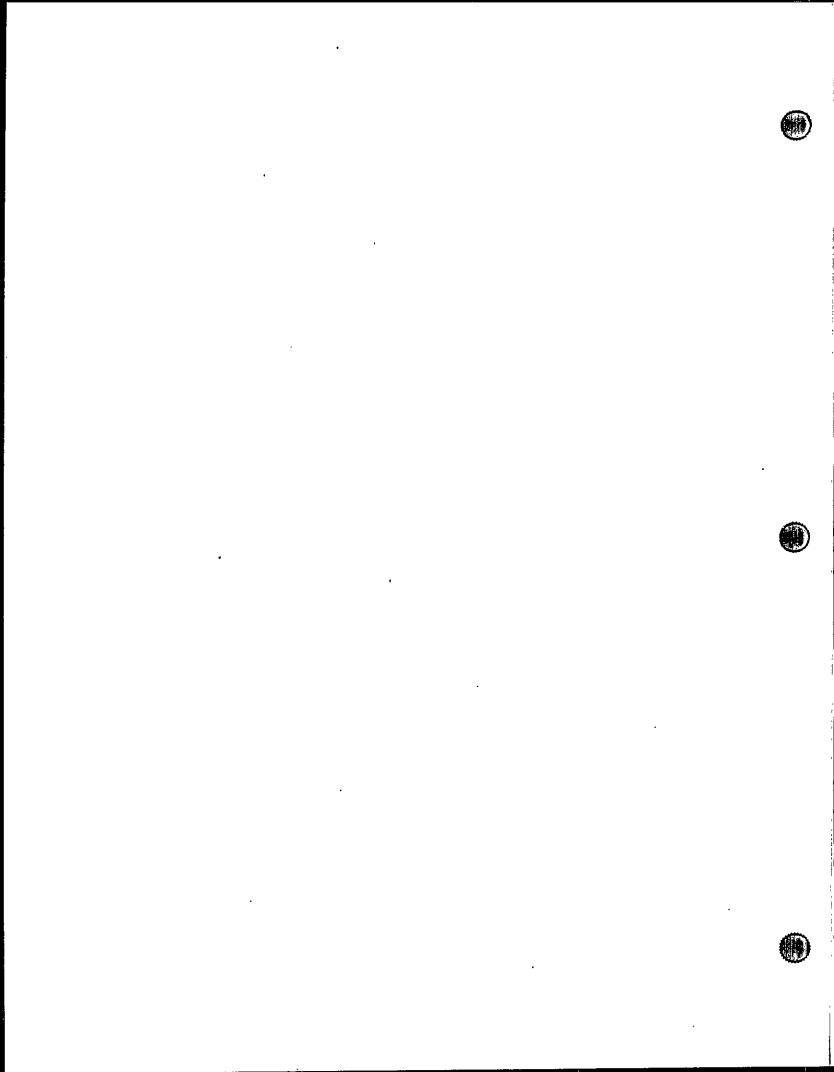
dispatcher was not available.

THE COURT:

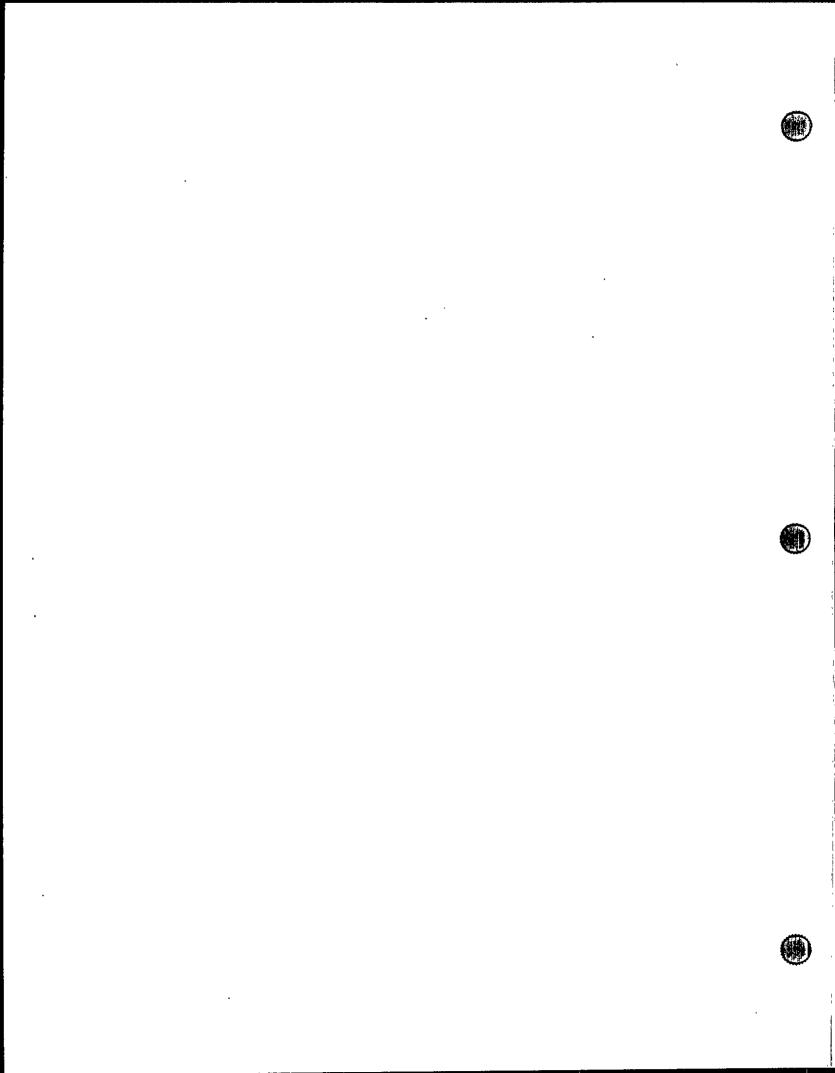
agreement with that.



(Motion - Colloguy) 24 THE COURT: Well, I haven't heard anything 1 I don't know if it was yesterday, three months 2 yet. I don't know what exactly was done, if anything, ago. to even determine the availability, until I just found out now, that they did it. I didn't know all the aspects of the case. I certainly assumed that the dispatcher was not available. And I didn't know that there was a contention that he might be available, or 8 I don't know if it is a "he" or a "she. 9 MR. GONZALEZ: We have a person we can go 10 into a whole other issue, in determining the 11 unavailability of someone, whether or not there was 12 13 real efforts to find the person. 14 THE COURT: Oh, I agree. 15 In all honestly, I didn't know it was an issue, I guess, that is the best way to put it, between 16 17 anybody. MR. SAMEIRO: It's not. 18 THE COURT: You are thinking about bringing 19 in some hearsay. 20 MR. GONZALEZ: That shouldn't be entered in 21 22 through Crawford, through any of the rules. Now, that takes us to the next step, if your 23 Honor even thought about it, we'd have to think about 24 the unavailability. If your Honor rules that the 25 (Motion - Colloquy) 25 number can't come in, then we don't have to think about 1 the unavailability. If your Honor thinks, under the rules, that the number can come in, then we have to think about the availability. And what the serious, serious burden, that the State must prove, in order to 5 find that particular individual. 7 THE COURT: I think that is part and parcel to making a decision. I don't think I can rule one way 8 or the other until I know that. 9 10 MR. GONZALEZ: And regarding the unavailability, or lack thereof, does your Honor intend 11 -- based on what we have now -- does your Honor intend 12 on allowing the hearsay statement in? Saying that it's 13 14 an exception, through present sense impression? 15 THE COURT: Well, not just the present sense If it is present sense impression, then is 16 17 it testimonial or non-testimonial. That is the next 18 That's what the Court has got to determine. issue. 19 MR. GONZALEZ: I mean, I don't think --20 But you know what, it's THE COURT: interesting that you should say that. But, in all of 21 the courses, that I have gone to, for this, one would 22 23 think it was testimonial. It's not as simple as that 24 by any means. You can have a very similar set of facts, where the Courts have ruled it is testimonial on 25



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(Motion - Colloquy)
                                                            26
   one, and non-testimonial on another. Not because it's
   a verbal statement. That doesn't mean it is
 2
   testimonial. That is one of the factors, when somebody
   says, it is used in a criminal matter or investigation,
   which arguably --
           MR. SAMEIRO: By that person.
 7
            THE COURT: By that person.
 8
           MR. GONZALEZ: Yes, Judge.
                                        That is an
 9
   example.
           THE COURT: There are many examples. Courts
10
   have gone all different ways with that.
11
           MR. GONZALEZ: I want to present an example,
12
   just because, how about a person who witnesses a
13
14
   murder?
15
            THE COURT: All right.
           MR. GONZALEZ: Person A -- No one ever points
16
17
   to Person A. Person A calls Person B on the phone.
   Person B says, oh, he told me this.
18
19
           THE COURT: Right.
           MR. GONZALEZ:
                          What he saw, whatever.
20
  Person B says, that is not what he says to the police.
21
22 He comes into court. In other words, forget this.
   That person is not deemed to be reliable. Any defense
23
   attorney would stand on their head, saying that the
24
25 most important person that is testifying in this, that
                                                            27
                       (Motion - Colloquy)
  can tell us what happened is Person A.
 1
            THE COURT:
                       Okay.
 2
           MR. GONZALEZ: That is the most reliable
 3
  information, Person A.
                       Okay.
            THE COURT:
 5
           MR. GONZALEZ: If we are not allowed the
 6
   opportunity to cross-examine that person, then it can't
 7
 8
   come in.
           THE COURT:
 9
                       Okay.
10
           MR. GONZALEZ:
                          This is the same thing.
           THE COURT: That is Crawford.
11
                          This is an exact example of
12
           MR. GONZALEZ:
          That is what I'm talking about here. The person
13
   doesn't witness a murder. He witnesses a phone number.
14
15
                       Right.
            THE COURT:
16
           MR. GONZALEZ: Now, he then reports that to
17
   Person B.
              Then it gets to the police over here. But
   it's a description, any description, given --
18
19
           THE COURT:
                       Right.
20
           MR. GONZALEZ: -- wouldn't be allowed in.
21 And I'm standing on my head, saying that there's an
22
               There is no exception. And Crawford
23
   negates that exception. But it's going to be
24
   testimonial.
25
           THE COURT: I understand what your argument
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28
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is. I truly do.

. 8

MR. GONZALEZ: 'I think that's the best example. Your Honor would have let in a statement, or wouldn't have let in a statement in a murder case probably.

THE COURT: In every single case ever since. That is one thing, I think, we do learn from <u>Crawford</u>. Every one of them has to be evaluated on their own, as to whether they are testimonial or non-testimonial.

MR. GONZALEZ: The fact that it is offered, 11 to prove the truth of the matter asserted, makes it 12 testimonial.

13 THE COURT: No, it does not. Just simply 14 that --

MR. GONZALEZ: That would mean that every single item is then subject to not coming in, or always testimonial. Sometimes these statements, certain 911 calls, have even been determined to be non-testimonial. Crawford didn't eliminate the exceptions.

THE COURT: They're still there. Certainly 21 not hearsay. Because they have to be evaluated, case 22 by case. That we can do it easier.

MR. GONZALEZ: Another example is a chemist. 24 In his report, or in the lab report, done by the lab 25 technician. That is where Crawford comes from. It

(Motion - Colloquy)

comes from a lab report. Basically, <u>Crawford</u> is all new case law. In New Jersey, with regard to, with regard to <u>Crawford</u>. And <u>Crawford</u> talks about a lab report. That, in order for a person — although we get that lab report in the future — which could have been deemed to be a business record.

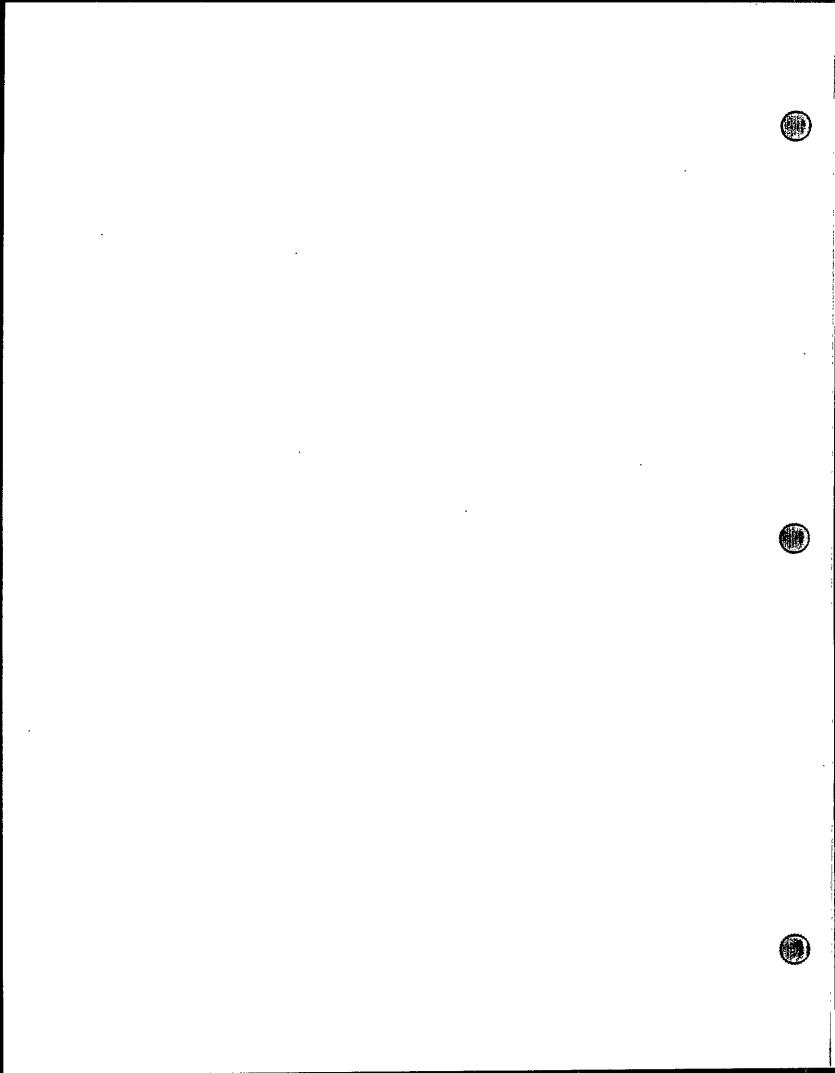
THE COURT: Right.

MR. GONZALEZ: It's actually a lab report that comes in as a business record.

THE COURT: If you have an exception; but the lab report was totally separate.

Okay. Let's get off that subject. There are chemists in the State Police Laboratory. They understand that the lab reports are being used in criminal proceedings. They don't get to be testimonial. In the case of the dispatcher, the dispatcher is trying to help out, by giving the information that is right in front of him, on the caller ID.

I think it's important, in <u>Crawford</u>, it also talks about statements are non-testimonial, when they are made in the course of police interrogation, under circumstances objectively indicating, that the primary purpose of the interrogation is to enable the police and to assist the police in an ongoing emergency. They



are testimonial, when the circumstances objectively indicate, in such an ongoing emergency, that the primary purpose of the investigation is to establish proof of past events, that are potentially relevant to the later prosecution.

So, there is no blanket rule, whether the statement, that anybody obtained, by the police, from witnesses, or victims, are testimonial or not. In this case, we don't have the police. Being the individual, Mr. Cedillo, received this from the person who received the information.

MR. GONZALEZ: Perhaps, the best way to determine that statement, that you were reading from the opinion, is the former is really the fact-gathering, and the latter is the evidence collection. When you are collecting evidence for a prosecution, you're collecting information that you're going to be putting forth.

The police, of course, are the
fact-gatherers. Well, they took the report from the
victim, concerning the event. The victim walked in and
reported what occurred. Officer Bobadilla was there.
He took it down. They didn't make an arrest until the
reliability of that number was proven, when the
defendant, himself, gave the number to them, two months

(Motion - Colloquy)

later, in a subsequent arrest.

Judge, the case of State vs. Boretsky, that was a 911 call. I believe, Judge Mulvihill. It was Joe Benedict. Where that case came from a 911 call. Whether the 911 call was inherently reliable. If the dispatcher had called 911, and said this happened, then, I think, you could let it in. But the dispatcher didn't call 911. In fact, there is no 911 call whatsoever. It's a walk-in.

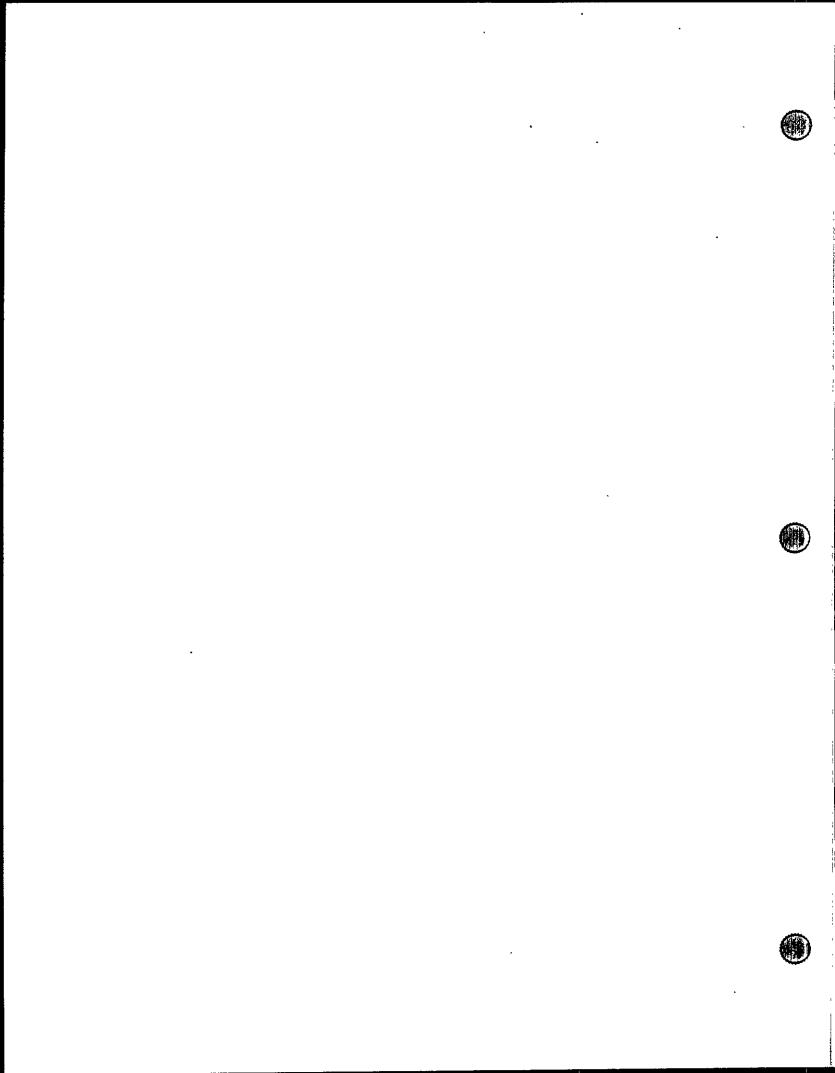
So, you're taking it a step further. If we just go to the statements made to Cedillo, no police involvement. But there doesn't have to be police involvement, when there is a hearsay statement made. And Cedillo is the declarant. And he makes it to Mr. Cedillo.

THE COURT: Okay.

MR. GONZALEZ: I think that is paramount to the case. If your Honor needs a moment, I'm not saying, because it's such a difficult decision. I think this decision will dictate where the case goes. How it's defended. What's going on in the case.

I would like, personally, on behalf of my

I would like, personally, on behalf of my client, on behalf of this Court, so, it won't come back, so, we don't make a mistake. I would ask your Honor to think about it. Maybe speak to other Judges.



(Motion - Colloquy) THE COURT: I think it's right here. I 1 really think it's right here. I think that you just 2 have to look at the facts. You have got to take one step at a time. Does it, in fact, meet the requirements of present sense impression. If it does, does it violate the law from Crawford. That's how it is to me. That's simply how it is. How it plays out. 8 Again, every Court, when they are faced with an issue, has to look at the facts, determine whether 9 it is testimonial or non-testimonial. Therefore, 10 subject to not being let in, because of the inability 11 12 to cross-examine. MR. SAMEIRO: Judge, I would ask that you 13 make this very simple call, without talking to any 14 other Judges. I think it is a very straightforward 15 issue. Notwithstanding, the confusion. 16 The confusion 17 that Crawford, has given to the practitioners out 18 there. 19 One thing that Counsel hasn't talked about is the reliability of the phone number. The reason why 20 21 you should rule in favor of the State. He has not said one iota how this information is not reliable, how it 22 could be mistaken, when it's the same number, that the 23 24 defendant gave to the police when he was arrested. feel like a broken record here. 25 But I have to (Motion - Colloquy) 1

33

emphasize this point.

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2 THE COURT: I'm going to take a few minutes to read through this, and write my position down. 3 4 I'll put it on the record.

MR. GONZALEZ: Testing the reliability, as Mr. Sameiro says can only be done, if we're allowed the opportunity to cross-examine the person who actually witnessed the event.

9 THE COURT: Okay. All right. Give me just a 10 little bit. I'll come out and put my decision on the 11 record.

> MR. SAMEIRO: Thank you.

MR. GONZALEZ: Thank you.

THE COURT: Thank you.

(Whereupon, a short recess was taken.)

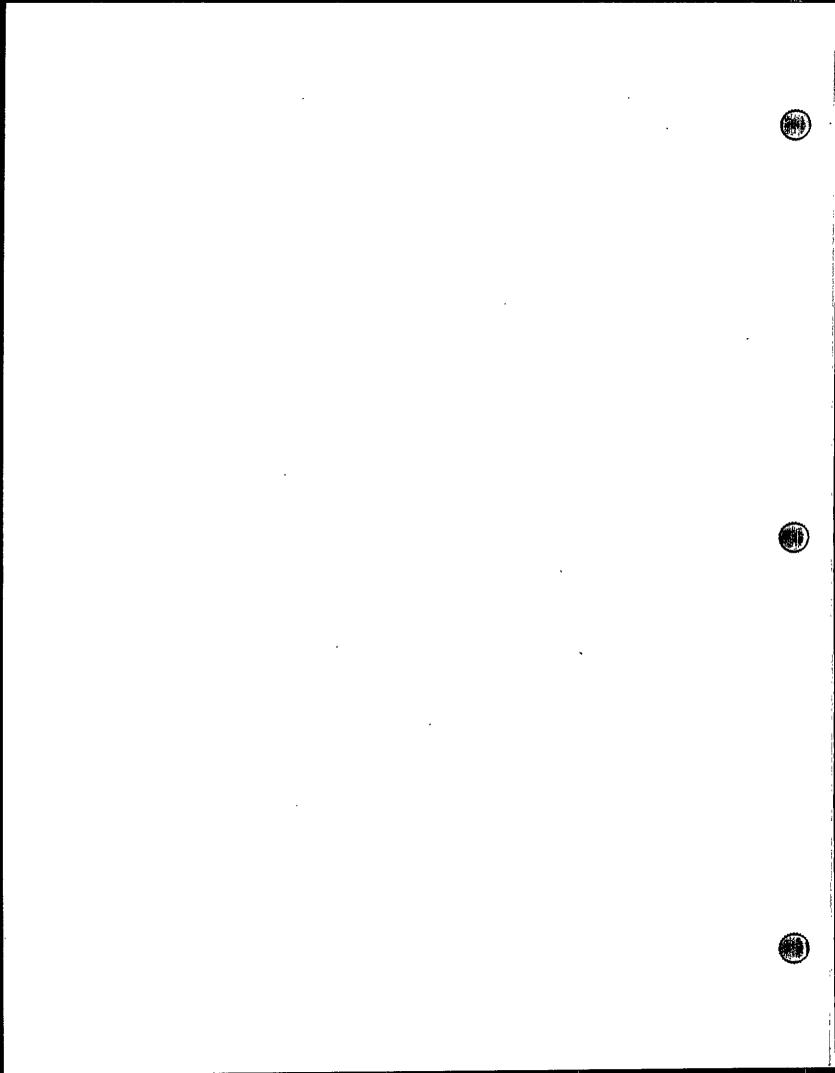
(Whereupon, the hearing continued outside the 17 presence of the jury.)

We're back on the record THE COURT: Okay. with our trial. Okay. There was one thing I was going to get from Mr. Sameiro. You had given my Law Clerk, I think everybody was in agreement regarding the police Is that what you gave Mr. Boda?

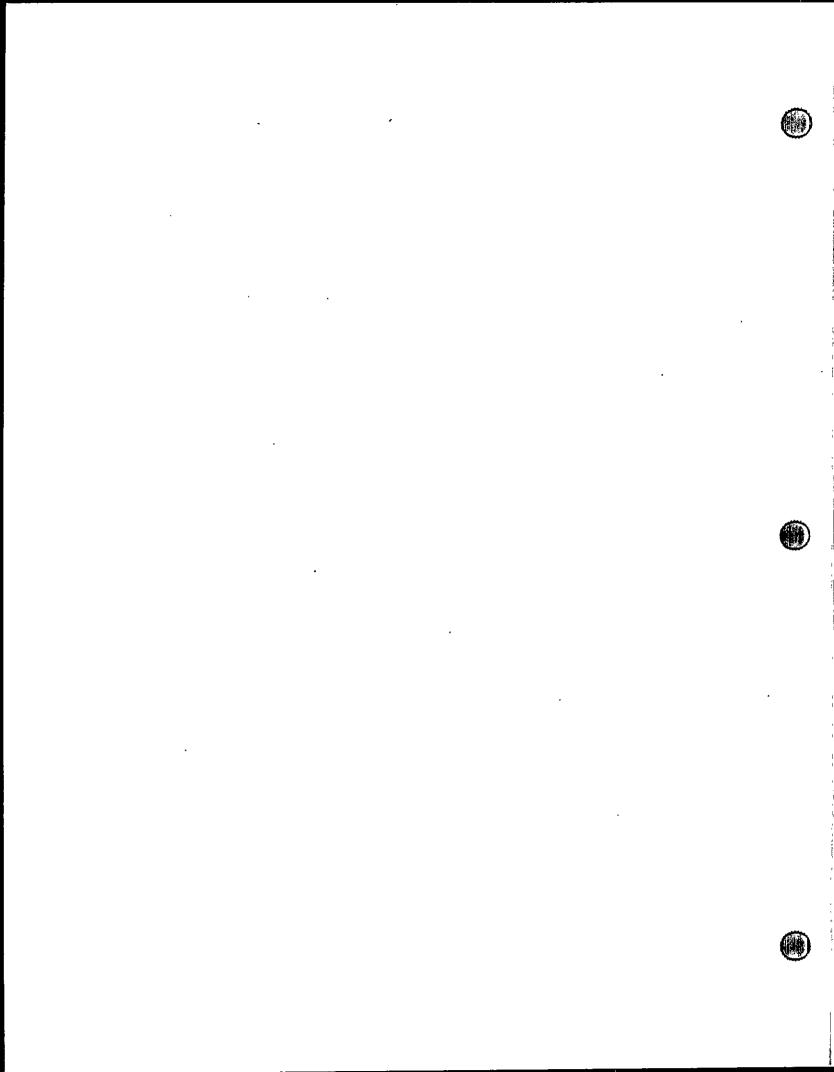
23 MR. SAMEIRO: I think I gave him three

24 reports. The initial report that Officer Bobadilla

25 took. John Selesky's follow-up report.



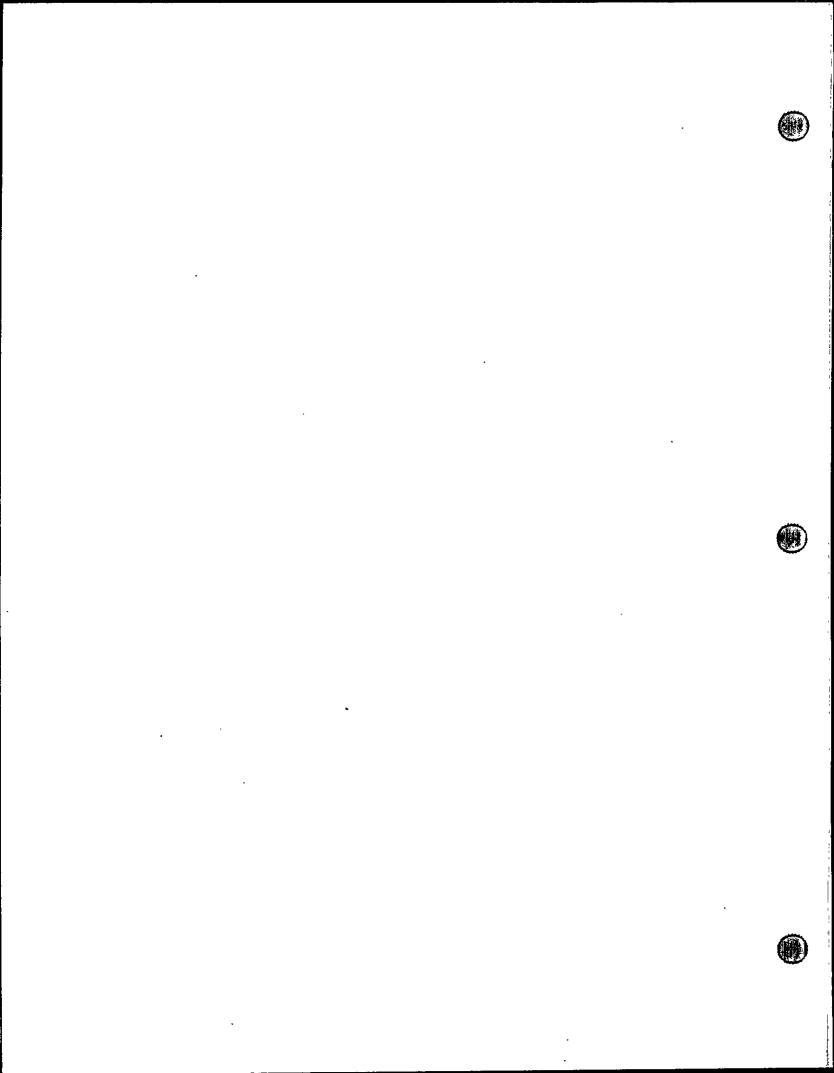
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(Motion - Colloquy)
   supplementary investigation. And then the report from
 1
   Officer Chang, that memorialized the defendant's phone
 2
   number and address, from the subsequent arrest that
   took place sometime in June. This incident taking
   place in April.
           THE COURT: Okay.
           MR. SAMEIRO: Of course, he supplemented his
 7
 8
   report. Some of the representations may not be
   reflected in those reports.
 9
10
           THE COURT: That's what I wanted to
   specifically look at. I just wanted to ask. I don't
11
12
   see that.
           Here is my question to you: Mr. Cedillo
13
   contacts the dispatcher himself; correct?
14
           MR. SAMEIRO: Right after the crime.
15
           THE COURT: Do you know what he says to him
16
17
   generally?
           MR. SAMEIRO: Well, generally, it's "I've
18
19 been robbed. They took my money." They have a
20 conversation about it. Generally, "I've been robbed of
21
   my money."
            THE COURT: Does he ask him for his phone
22
   number? How does that go?
23
           MR. SAMEIRO: I, frankly, don't know whether
24
   he asked him, or whether the dispatcher told him.
25
                       (Motion - Colloquy)
                                                          35
   it came up in the conversation, you know, of the
 1
   victim, who, obviously, recovered from this traumatic
           And he did the best that he could to report to
   event.
   his employer what happened. And it took time to get
   ready to go to the police.
           He didn't go to the police immediately. He
   did it within an hour, if I'm not mistaken. He went
 7
   home, cleaned up a little bit, because he had been
 8
 9
   struck in the face. And, so, he may have had one more
   conversation with the dispatcher. We'll get that out
10
   from him. I just didn't write it down, as to how it
11
12
   came out.
13
           THE COURT: All right.
           MR. SAMEIRO: But there is conversation.
14
   I'm sure the initial reason, to call the dispatcher,
15
   was to tell him that he had been robbed.
16
17
           THE COURT:
                      Okay.
                              All right.
           MR. GONZALEZ: Judge, if I can maybe
18
19
   supplement with one more thing. I don't mean to beat a
   dead horse. In consideration of this, and then going
20
   to the Crawford issue, and determining the
21
22
   unavailability of someone, of a particular witness,
23
   unavailability is defined in Rule 804.
24
                       Well, that's fine, if it's a
           THE COURT:
25
   testimonial statement.
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(Motion - Colloquy) MR. GONZALEZ: Right. But then I'm not sure 1 -- I, of course, argue that it's testimonial. 2 THE COURT: No. I agree. I know. MR. GONZALEZ: And availability is defined in Unavailability deals with people who are already 5 identified. And then they become unavailable as a 7 result of a death, as a result of a privilege, as a result of various other examples. 8 Now, unavailability of an unknown witness 9 can never be determined, because that witness is 10 unknown. So, we don't then know whether he's available 11 or not. We don't know whether he moved out of state. 12 That, essentially, means that we're dealing with a 13 person, that we don't know who they are. 14 In determining the unavailability of that 15 person themselves, it has to satisfy Rule 804. And the 16 17 State has to make a good faith effort to make that particular person present. But that's an identified 18 person. We're dealing with their unavailability. 19 We're dealing with a non-identified person. 20 Unavailability doesn't apply. So, as far as Crawford, 21 the weighing of the unavailability, the nature of any 22 particular witness, that person needs to have been 23 identified. That's, basically, what I'm saying. 24 THE COURT: Okay. 25 (Motion - Colloquy) 37

Rob, do you have this police report? 1 2 I just asked my Law Clerk to grab the police That's what I wanted to look at. Because, 3 when the Court is looking to the analysis, regarding whether something is testimonial or non-testimonial, 5 the Court has to look at certain factors that are elicited. And I think that both Counsel would agree, 7 there is certainly a number of examples, of what could 8 be testimonial, what may be non-testimonial. 9 10 MR. SAMEIRO: Which report do you need? have copies here. 11 THE COURT: It's not the last one. 12 13 MR. SAMEIRO: It was probably Bobadilla's 14report. 15 THE COURT: Okay. 16 MR. SAMEIRO: Here you go. 17 THE COURT: Thank you. 18 Okay. All right. Really at issue is a 19 statement, in this case, from a dispatcher, where the 20 dispatcher gave a phone number to the alleged victim, 21 Mr. Cedillo. The State wants to put in that 22 information. And they're arguing, I think we all 23 agree, a hearsay statement. Asking for it to come in 24 for the truth of it. So, therefore, it is an

out-of-court statement, being offered for the truth.



The question then becomes, as I have asked the State, what exception are they arguing, that the statement would come in. Their position is, that it is present sense impression. I think I would have marked it. Present sense impression, under 803(c)(1). This is a statement of observations, descriptions or explanations of the events or the condition, made while, or immediately after the declarant was perceiving the event or condition, without an opportunity to deliberate or fabricate.

Now, I note that the defendant objects -- the defense objects -- indicating that this is not -- that that particular exception does not apply to this case. As it applies to this case, I'm looking at it, not as to the police officer; but to the statement made to Mr. Cedillo, from the dispatcher. I find that, under the present sense impression requirements for that, that the statements to Mr. Cedillo, from the dispatcher, it could come in as an exception.

That statement can come in under the present sense impression of the dispatcher. What the police report indicates is, that the victim, through Patrolman Bobadilla's report, goes through information as to the alleged crime. Towards the end, it says, that the victim then got up, called the job. He asked for the

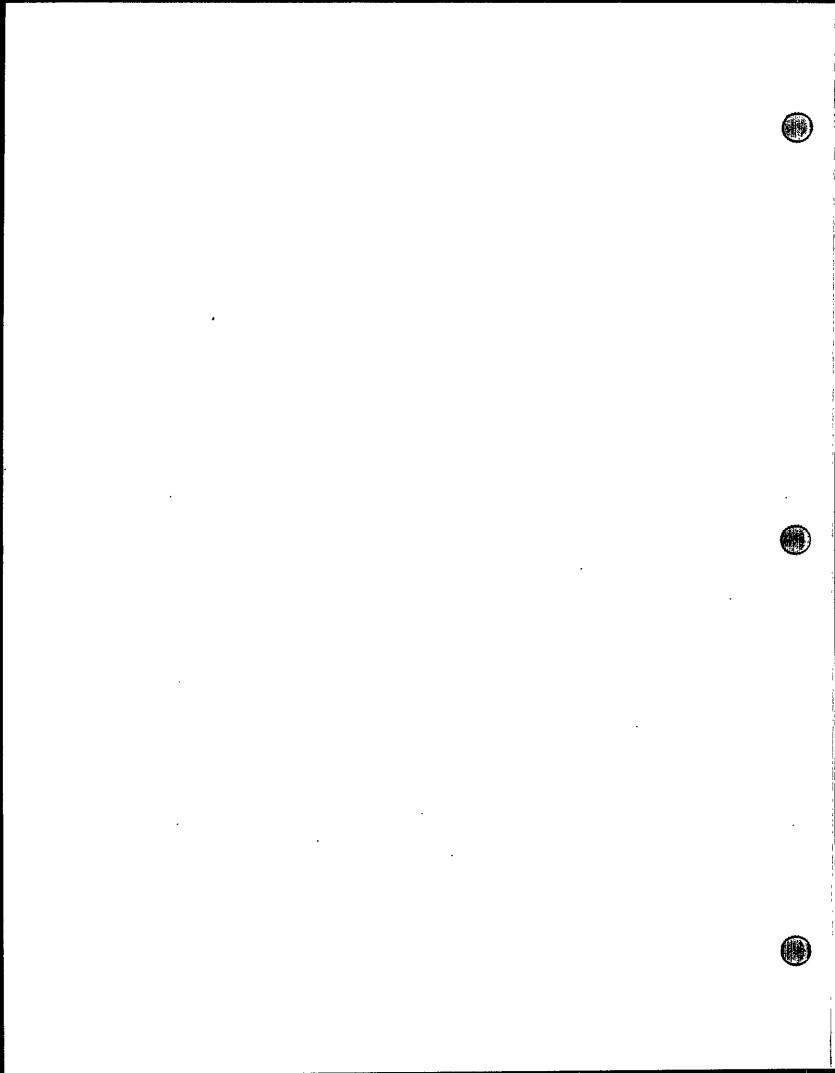
(Motion - Colloquy)

1 phone number. He called the dispatcher. The 2 dispatcher had caller ID. And the number that he had 3 was -- and it's listed.

Therefore, I find that that statement, from the dispatcher, the declarant, is made from his observation of the phone number. Quite candidly, it appears to be not within a long period of time after, and he gave that information to the alleged victim in the case. So, arguably, it meets the requirements of the present sense impression, it can come in under that particular exception.

And I look to that State vs. Marsh case, where it talks about -- Now, this is to the police, by an informant, who insisted on remaining anonymous, made while witnessing the event, described in the statement, that may be inherently reliable. So, that is admissible at trial as an exception to the hearsay rule. It's interesting to note, that this is a telephone statement to the police. But a hearsay statement doesn't have to be to the police to be believed. They found it inherently reliable, arguably. But it was made to the police.

22 But it was made to the police.
23 I think we have something a little different
24 here. I think what makes it also inherently reliable,
25 is that report sometime later, which also has the same



(Motion - Colloguy)

phone number, which is the phone number that our defendant gives in the pedigree information of the arrest report. So, I can see an analogy there. And I find, under a present sense impression, the statement could come in as an exception to hearsay. Now, that doesn't end the inquiry. Because the rule, as to the exceptions, subject to <u>Crawford vs. Washington</u>. And that is 54 -- excuse me -- 541 US, a 2004 case, page 36.

. 9

That held that, where a statement is testimonial, it is subject to the confrontation clause, and may only be admitted if the declarant is unavailable, and the defendant has had a prior opportunity to cross-examine the witness. And that's where a statement is deemed testimonial. So, the question is then, under <u>Crawford</u>, was the statement, given by the dispatcher to Mr. Cedillo, testimonial or non-testimonial. Then we turn to the discussion of that under 802, where that expounds, so to speak, on Crawford.

Now, when I looked to the evidence rules, here, again, it refers to, nevertheless, the hearsay evidence, that falls within an exception to the hearsay rules, may still not be admissible, where hearsay evidence is considered to be testimonial. The Supreme

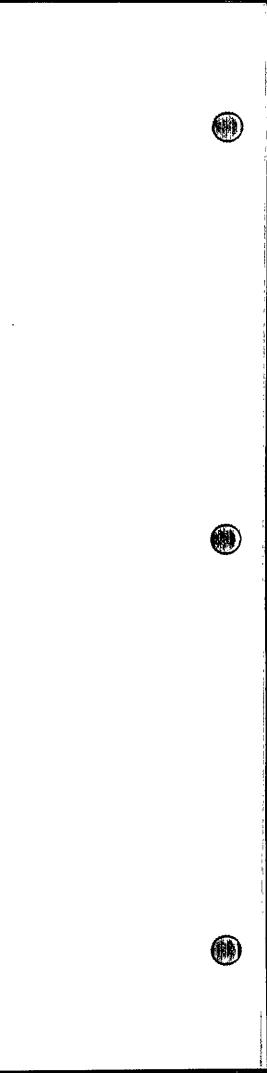
(Motion - Colloquy)

Court of the United States has a limited index of such evidence, regardless of whether it falls under an exception to the hearsay rule or not.

In <u>Crawford</u>, the Court ruled that a testimonial statement of absence, the statement is subject to the confrontation clause, and may not be admitted against an accused in a criminal trial, unless the declarant is unavailable, and the defendant has had a prior opportunity to cross-examine the declarant.

As to the meaning of testimonial, the Court concluded at a minimum, it includes prior testimony, at a preliminary hearing, prior testimony before a Grand Jury, or at an earlier trial, as well as statements made during the police interrogation. All of which has the common nucleus. That is, a declarant would reasonably believe that the statement would be later used at the trial. But the Court didn't give a precise definition to testimonial.

It went on further, in <u>Davis vs. Washington</u>, to go through an analysis, at 547, 813, 2006, discussing testimonial and non-testimonial. It says, statements are non-testimonial when made in the course of a police interrogation, under the circumstances, objectively indicating that the primary purpose of the interrogation, is to enable the police assistance, to



×

meet on ongoing emergency.

They are testimonial when the circumstances objectively indicating that no such ongoing emergency exists, and that the primary purpose of the interrogation is to establish or prove the past events are, potentially, relevant to later prosecution.

The cases further go on, in 2007, which is State vs. JA, 385 New Jersey Super 544. This was an Appellate Division case, 2006. And cert was granted. 191 New Jersey 317, 2007, it held that there is no blanket rule whether a statement obtained by the police, or the victims, are testimonial or not. Rather, each case is fact specific, and must be decided on the totality of the circumstances.

The factors that may be considered include, the type of statement made, the intent of the declarant, and the purpose of the official procedure, by which that statement was obtained. We don't have an official procedure by which the statement was obtained. But I can then consider, when I compare the testimonial versus the non-testimonial, that guidance.

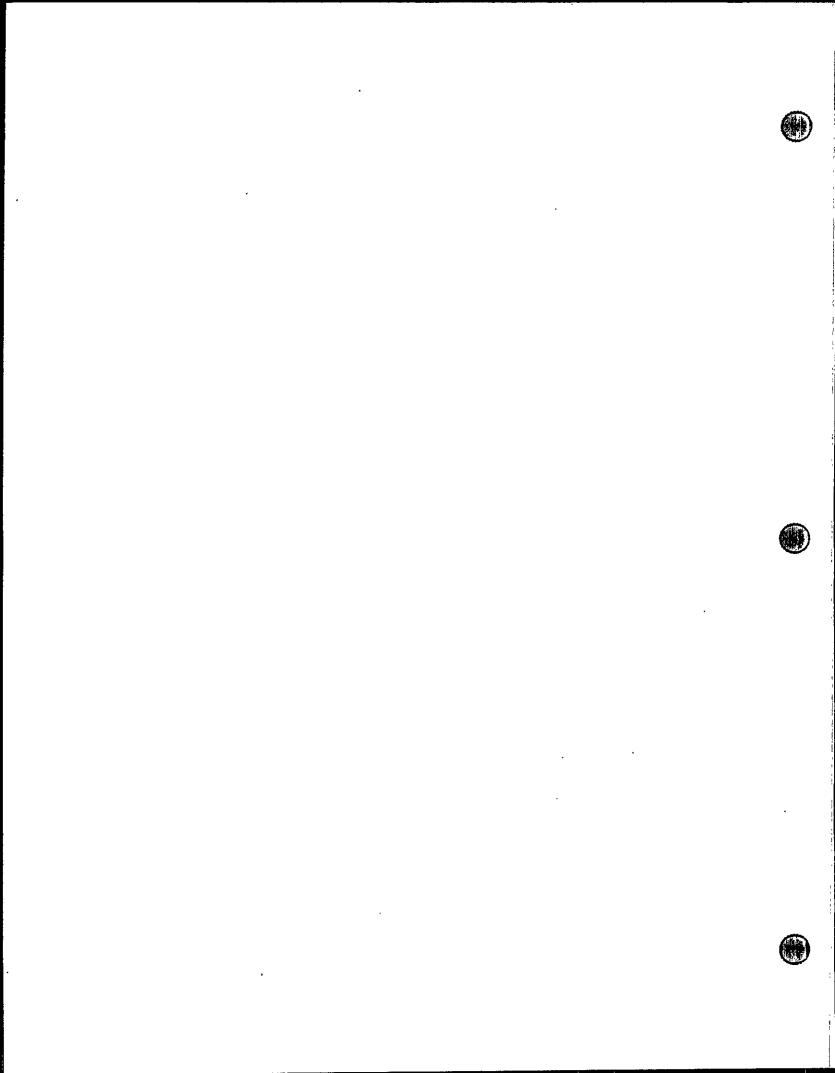
We don't clearly have any prior testimony at 23 a hearing. We don't have a Grand Jury. We don't have 24 testimony regarding a former trial. Or a statement 25 made during a police interrogation. We don't have any

(Motion - Colloquy)

circumstances, that I can see, where this statement was made, in furtherance of a potential trial. Instead, what we have, I'm looking to those factors, as a simple statement made by a dispatcher of what the phone number was, to Mr. Cedillo. The intent of the declarant was just some answer to this question that was given, as to what is the phone number, where did you send me to, or where did that come from.

So, when I look to these factors, of the type of statement made, it was simply that number. The intent of the declarant is just to give the information to the alleged victim. Not for it to be used in a further, later prosecution. Obtained, somewhat objectively, from this dispatcher. So, there is no sharing of a nucleus. There is no information, that the declarant would reasonably believe, that the statement would be later used at the trial.

So, therefore, from the Court's prospective, it looks to this Court, that it's non-testimonial. Then the issue of availability is not an issue here. But if the Court finds it's non-testimonial, the unavailability or availability, is not at issue. It is only at issue if it's testimonial in nature. Since I'm finding that it is non-testimonial, then that issue is not one for this Court to determine.



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(Motion - Colloquy)
            Therefore, I find that the defendant's right
 1
   of confrontation is not violated, despite the lack of .
   opportunity to cross-examine the declarant.
   statement that has been admitted, as a present sense
   impression, because the statement was non-testimonial.
   So, therefore, I do allow that statement in, under that
 7
   reasoning.
            MR. SAMEIRO:
                          Thank you.
 8
            THE COURT: All right.
 9
            Let me give you back your police report.
10
                          Thank you, your Honor.
11
           MR. SAMEIRO:
                           Judge, I'd just like to note,
12
           MR. GONZALEZ:
   for the record, that there is an ongoing objection.
13
            THE COURT: I will note that objection.
14
15
   will incorporate all your arguments into that.
           MR. GONZALEZ:
                          Right.
16
            THE COURT:
                       Okay.
                               Now, it is a little later
17
   than we anticipated. Let me ask you, are we ready, at
18
   least, to bring the jury in, and I can give them their
19
20
   initial instructions? And you think we can open?
21
            It's 20 to 12. My preliminary instructions
   are about 15, 20 minutes. That will probably take us
22
           I do not like to break up the openings.
23
   to 12.
                         If we break at 12:00 and have
            MR. SAMEIRO:
24
   them come back at 1:00, then we don't lose the time.
25
                                                            45
                       (Motion - Colloquy)
   And we can roll along. I have all my witnesses here.
 1
   I'm ready to go forward.
                              So, that would be my
   preference.
 3
                           Just so you know, Judge, I'm
            MR. GONZALEZ:
 4
   not going to be long on my opening.
 5
 6
            THE COURT: Sometimes openings aren't all
7
   that long.
           MR. SAMEIRO: I expect to be, at least, 30
8
   minutes on mine.
9
10
            THE COURT: Then that answers my question.
   Then what I'll do -- Let me just ask my staff first.
11
   Are you okay to break at 12:00, and come back at 1:00?
12
13
                   Then that's what we'll do.
                                               We'll
            Okay.
14
   bring them up. Let them go to lunch. Have them come
   back right at 1:00. Then we'll have the openings at
15
   that time.
16
17
            MR. SAMEIRO:
                          Judge, can you let them know
18
   that both Counsel and I were here. We weren't stuck in
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back right at 1:00. Then we'll have the openings at that time.

MR. SAMEIRO: Judge, can you let them know that both Counsel and I were here. We weren't stuck in traffic. That we had to deal with some issues?

THE COURT: I will never have them hold it against you. No. I will take the responsibility. I will tell them that I had to deal with another matter. I will also tell them, that you were all here promptly.

That we had other matters, as well as issues regarding our case. We were dealing with other things.

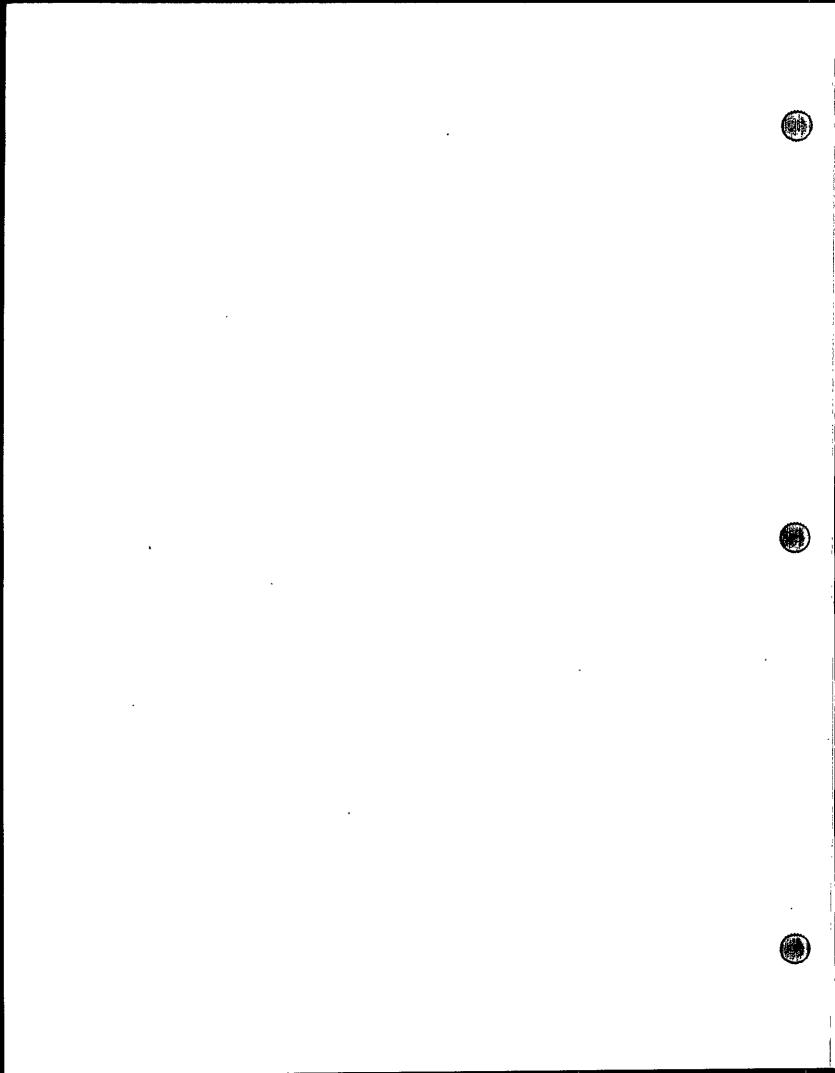
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22 23

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	(Motion - Colloquy)	46
1	We had that sentencing.	
2	MR. SAMEIRO: Okay.	
3	MR. GONZALEZ: Okay.	
4	THE SHERIFF'S OFFICER: They're on the floor.	
5	THE COURT: Okay. The jury is on the floor.	
6	(Whereupon, the motion concluded.)	
7	(Whereupon, the rest of the day's proceedings	
8	was previously transcribed in a separate transcript.)	
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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: OCTOBER 21, 2010

