

1 In order for you to find Mr. Dellos Santos guilty of
2 murder in the second-degree the prosecution is required to
3 prove from all the evidence in this case beyond a
4 reasonable doubt:

5 One, that on October 8, 1999 in New York Mr. Dellos
6 Santos acting in concert with others committed a
7 kidnapping.

8 And, two, that in the course of and in furtherance of
9 the commission of that kidnapping Mr. Dellos Santos or
10 another participant in the kidnapping caused the death of
11 Manuel Gonzalez and Mr. Gonzalez was not a participant in
12 the crime.

13 If you find that the prosecution has proven beyond a
14 reasonable doubt both of these elements then you must find
15 him guilty of murder in the second-degree as charged in
16 this count.

17 On the other hand, if you find that the prosecution has
18 not proven one or both of those elements beyond a
19 reasonable doubt then you must find him not guilty.

20 I hope that helped you.

21 So bring the jury in to deliberate.

22 COURT OFFICER: Jurors.

23 THE COURT: Please, I want them to stay.

24 COURT OFFICERS: Yes.

25 (Jurors exit the courtroom).

 Lourdes Torres-Fuster, Senior Court Reporter

PROCEEDING

1 Restrain means to restrict a person's movements
2 intentionally and unlawfully in such a manner as to
3 interfere substantially with his liberty by moving him from
4 one place to another or by confining him either in a place
5 where the restriction began or in a place to which he has
6 been moved without consent and with knowledge that the
7 restriction is unlawful.

8 A person restricts another's movements intentionally
9 when his goal, his conscious objective is to restrict that
10 person's movement.

11 A person restricts another's movement unlawfully when
12 he is not authorized by law to do so and when he is aware
13 that the restriction is not authorized by law.

14 A person is moved or confined without consent when such
15 is accomplished by physical force, intimidation or
16 deception.

17 Intent means conscious objective or purpose.

18 Thus, a person acts with intent to prevent another's
19 liberation either by secreting or holding him in a place
20 where he is not likely to be found or by using or
21 threatening to use deadly physical force when that person's
22 goal or purpose is to do so.

23 Deadly physical force means physical force which under
24 the circumstances in which it is used is readily capable of
25 causing death or other serious physical injury.

Lourdes Torres-Fuster, Senior Court Reporter

PROCEEDING

1 comes in.

2 *** (DELIBERATIONS) ***

3 THE COURT: We have a note. I'm going to read to them
4 the charge on murder in the second-degree and kidnapping.

5 MR. DRUCKER: Yes, your Honor.

6 COURT OFFICER: Jury entering.

7 MR. WILLIAMS: Your Honor, may we approach briefly?

8 THE COURT: Yes.

9 (Discussion at the bench was held off the record).

10 THE COURT: Okay. So you asked me for the instructions
11 on the law regarding felony murder. Regarding the
12 kidnapping. And I will do that.

13 The penal law states a person is guilty of murder in
14 the second-degree when acting either alone or with one or
15 more other persons he commits or attempts to commit a
16 kidnapping and in the course of and in furtherance of the
17 crime or of the immediate flight from the crime he or
18 another participant causes the death of a person other than
19 one of the participants.

20 Under our law a person is guilty of kidnapping in the
21 second-degree when he abducts another person. To abduct
22 means to restrain a person with the intent to prevent the
23 person's liberation either by secreting or holding him in a
24 place where he is not likely to be found or by using or
25 threatening to use deadly physical force.

Lourdes Torres-Fuster, Senior Court Reporter

1 MR. DRUCKER: At one point you said used or threatened
2 the use of.

3 THE COURT: That's what the statute says.

4 MR. DRUCKER: No. The statute says armed with a deadly
5 weapon. And when you gave the element you did it
6 correctly.

7 Again, I think in this case it is not a real
8 distinction, but just to be consistent just armed with a
9 deadly weapon, not anything else.

10 And I would ask if they asked again for the drug sale,
11 drug conspiracy if the Court just use the phrase on/or
12 about the various dates.

13 THE COURT: Okay.

14 MR. WILLIAMS: No, your Honor, I don't have no objection
15 to the charge.

16 MR. DRUCKER: And just one thing, and the Court charged
17 it correctly, I'm not saying in anyway the court didn't--

18 THE COURT: That's okay.

19 MR. DRUCKER: I can see the jury being confused and
20 thinking we had to prove every one of the overt acts.

21 You charged it properly. My fear is the jury may have
22 lost that and so if they ask it again just to make that
23 clear.

24 THE COURT: Of course. Of course. Of course.

25 Okay. We'll sit here for a bit and see, if anything,

Lourdes Torres-Fuster, Senior Court Reporter

*Working together
Judge and
against me
lawyers*

JURY CHARGE

1 cocaine.

2 A person unlawfully sells cocaine when he has no legal
3 right to do it.

4 And under our law with certain exceptions that are not
5 applicable here no one has the legal right to sell
6 cocaine.

7 Aggregate weight refers to the weight of the substance
8 which contains the cocaine irrespective of the amount of
9 the cocaine actually in the substance.

10 So, in order for you to find Mr. Dellos Santos guilty
11 of this count the prosecution is required to prove from all
12 the evidence in the case beyond a reasonable doubt:

13 One, that on September 20, 1999 in New York Mr. Dellos
14 Santos acting in concert with others sold one or more
15 mixtures or substances containing cocaine.

16 Two, that he knew he was selling cocaine.

17 And, three, that he did so unlawfully.

18 And, four, that it weighed two ounces or more.

19 If you find that the prosecution has proven all of
20 these elements beyond a reasonable doubt then you must find
21 Mr. Dellos Santos guilty of criminal sale of a controlled
22 substance.

23 On the other hand, if you find that the prosecution has
24 failed to prove one or more of these elements then you must
25 find him not guilty.

Lourdes Torres-Fuster, Senior Court Reporter

JURY CHARGE

1 purchased for Mr. Dellos Santos.

2 If you find that the prosecution has proven each of
3 these elements beyond a reasonable doubt then you must find
4 Mr. Dellos Santos guilty of this count of kidnapping.

5 On the other hand, if you find that the prosecution has
6 failed to prove one or more of these elements then you must
7 find him not guilty.

8 Count 4, unlawful imprisonment in the first-degree.

9 This is regarding Angelly Ortiz.

10 Count 4 charges Mr. Dellos Santos with unlawful
11 imprisonment in the first-degree on the theory that acting
12 in concert with others he unlawfully imprisoned Angelly
13 Ortiz.

14 Under our law a person is guilty of unlawful
15 imprisonment in the first-degree when he restrains another
16 person under circumstances which exposed that other person
17 to a risk of serious physical injury.

18 I remind you that restrain means to restrict a person's
19 movements intentionally and unlawfully in such a manner to
20 interfere substantially with her liberty by moving her from
21 one place to another or by confining her either to the
22 place where the restriction commenced or in a place to
23 which she had been moved without her consent and without
24 knowledge that the restriction is unlawful.

25 In order for you to find Mr. Dellos Santos guilty of
Lourdes Torres-Fuster, Senior Court Reporter

JURY CHARGE

1 Gonzalez but that he did so with the intent to compel a
2 third person to engage in certain conduct in this case in
3 order to compel Wilson Gonzalez to pay them.

4 In order for you to find Mr. Dellos Santos guilty of
5 kidnapping in the first-degree the prosecution is required
6 to prove from all the evidence in the case beyond a
7 reasonable doubt:

8 One, that on October 8, 1999 in New York Mr. Dellos
9 Santos acting in concert with others restricted the
10 movements of Manuel Gonzalez in such a manner as to
11 interfere substantially with his liberty by moving him from
12 one place to another or by confining him in the place where
13 the restriction began or to a place to which he had been
14 moved.

15 Two, that he did so without the consent of Mr.
16 Gonzalez.

17 Three, that he intended to do so.

18 Four, that the restriction of Mr. Gonzalez movements
19 were unlawful. And Mr. Dellos Santos knew that it was
20 unlawful.

21 Five, that Mr. Dellos Santos restrained Mr. Gonzalez
22 with the intent to prevent his liberation by using or
23 threatening to use deadly physical force. And that Mr.
24 Dellos Santos abducted Manuel Gonzalez with the intent to
25 compel Wilson Gonzalez to pay for drugs that were allegedly

Lourdes Torres-Fuster, Senior Court Reporter

JURY CHARGE

1 concert with other persons to commit the crime charged.

2 If you are satisfied that Mr. Dellos Santos with the
3 intent to commit the crime in question intentionally aided
4 others in the commission of the crime then he is
5 responsible for the acts of those other people in carrying
6 out that crime. As well as for his own acts.

7 It is for you to say whether he participated in the
8 alleged crime acting in concert with the others.

9 If you are satisfied beyond a reasonable doubt that Mr.
10 Dellos Santos acted in concert with other persons. You
11 must nevertheless still find that the prosecution has
12 proven all of the necessary elements of the crimes, I will
13 lay them out for you, the prosecution must establish that
14 Mr. Dellos Santos either personally or by acting in concert
15 with others committed each of the elements of the crime you
16 are considering.

17 So, now we'll talk about each crime that you will be
18 considering.

19 The first count charges Mr. Dellos Santos with murder
20 in the second-degree.

21 The penal law states that a person is guilty of murder
22 in the second-degree when acting either alone or with one
23 or more persons he commits or attempts to commit a
24 burglary. And in the course of and in furtherance of the
25 crime or of the immediate flight from the crime he or

Lourdes Torres-Fuster, Senior Court Reporter

JURY CHARGE

1 What is a reasonable doubt?

2 Well, the word suggest their meaning. A reasonable
3 doubt is a doubt based upon a reason and it is a doubt for
4 which a juror could give a reason if he or she wanted to.

5 You are under no obligation to tell me or anyone else
6 why you have a doubt if you have a doubt. But you should
7 be able to tell yourself why you have a doubt.

8 It is defined as an actual doubt. A doubt that you
9 realize you have after you consider the whole case and all
10 the evidence.

11 if you then feel unsure, not fully convinced that Mr.
12 Dellos Santos is guilty and if you believe that a
13 reasonable person sitting where you're sitting, hearing
14 what you heard would also have that hesitation that's a
15 reasonable doubt and Mr. Dellos Santos would be entitled to
16 a verdict of not guilty.

17 Now, a reasonable doubt cannot be based on a guess or a
18 speculation. Nor, is it a wall behind which a juror may
19 hide to avoid a painful or a disagreeable duty.

20 And I charge you that the prosecution does not have to
21 convince you beyond all doubt or to a mathematical or
22 scientific certainty. That's impossible.

23 But, proof beyond a reasonable doubt is the highest
24 standard of proof we have in our whole system of jurist
25 prudence and it is not satisfied by a possibility or a

Judge JURY CHARGE

1 value. And standing alone it may never be the basis for a
2 finding of guilt.

3 Now, Mr. Dellos Santos has pleaded not guilty to each
4 accusation against him. And by pleading not guilty he has
5 denied everything about those charges. And you, the jury,
6 must accept that denial as true unless and until you all
7 unanimously agree that the credible evidence proves his
8 guilt beyond a reasonable doubt.

9 In other words, Mr. Dellos Santos is presumed
10 innocent. The fact that he's been accused, arrested and
11 indicted is no evidence of his guilt. Like each of us
12 sitting in this room today Mr. Dellos Santos is innocent in
13 the eyes of the law.

14 And this phrase the presumption of innocence is not
15 just a pretty phrase. The presumption of innocence is the
16 backbone of our country, our Constitution and our
17 democracy. And it is only when and if you, the jury, after
18 carefully considering the credible evidence finds that the
19 credible evidence proves his guilt beyond a reasonable
20 doubt then and only then can he be found guilty.

21 Because of this presumption of innocence the burden of
22 proof is never on the accused to prove his innocence. The
23 burden of proof remains solely and squarely on the
24 shoulders of the government.

25 And this brings us to the phrase reasonable doubt.

JURY CHARGE

there was any prove to connect with any testimony not physical evidence

1 defendant with the commission of the crime charged it
2 nonetheless so harmonizes with the narrative of the
3 accomplice as to satisfy you that the accomplice is telling
4 the truth about Mr. Dellos Santos participation in the
5 crime and in that way tends to connect him to the
6 commission of the crime.

7 Please be aware that the testimony of one accomplice
8 cannot be used to corroborate the testimony of another
9 accomplice.

10 In this case the People contend that Mr. Dellos Santos
11 disappeared sometime after the alleged shooting and that
12 such conduct demonstrates a consciousness of guilt. You
13 must decide first whether you believe that such conduct
14 took place. And, second, if it did take place whether it
15 demonstrates a consciousness of guilt on the part of Mr.
16 Dellos Santos.

17 In determining whether conduct demonstrates a
18 consciousness of guilt you must consider whether the
19 conduct has an innocent explanation.

20 Common experience teaches us that even an innocent
21 person who finds himself or herself under suspicion may
22 regard to conduct which gives the appearance of guilt.

23 The weight and importance you give to the evidence here
24 offered to show consciousness of guilt depends on the facts
25 of the case. Sometimes this evidence is only of a slight

JURY CHARGE

1 Santos of the counts charging him with sale of narcotics or
 2 with conspiring to sell narcotics solely upon that
 3 testimony unless you also find that it was corroborated by
 4 other evidence which tended to connect him to the
 5 commission of that crime.

6 Similarly, even if you find the testimony of Mr. Brito
 7 to be believable you may not convict Mr. Dellos Santos of
 8 the crimes in which Mr. Brito was his accomplice unless you
 9 also find that it was corroborated by other evidence
 10 tending to connect him to the commission of those crimes.

11 The corroborative evidence need not by itself proof
 12 that a crime was committed or that Mr. Dellos Santos is
 13 guilty. What the law does require is that there be
 14 evidence that tends to connect him with the commission of
 15 the crime charged in such a way as may reasonably satisfy
 16 you that the accomplice is telling the truth about Mr.
 17 Dellos Santos participation in that crime.

18 In determining whether there is that kind of
 19 corroboration you may consider whether there is material
 20 believable evidence apart from the accomplice's testimony
 21 which itself tends to connect Mr. Dellos Santos with the
 22 commission of the crime you are considering.

23 You may also consider whether there is material
 24 believable evidence apart from the accomplice's testimony
 25 which while it does not itself tend to connect the

Mr. Brito was contradicted by Carlos and Angelly Ortiz
Ms. Muleiro said she was waiting in the car never inside the apartment she can't say nothing happened inside

JURY CHARGE

1 An expert's testimony is given to assist you to reach a
 2 proper conclusion and is entitled to such weight as you
 3 find the expert's qualifications in his field warrants. An
 4 expert opinion must be considered by you but it is not
 5 controlling. You still make the final decision.

*Mr. Brito was
 contradicted by
 Carlos and
 Angelly Ortiz*

6 Now, under our law Luz Mulero was an accomplice of Mr.
 7 Dellos Santos in the narcotics transaction at issue in this
 8 case because there is evidence that she participated in and
 9 pleaded guilty to a crime related to the narcotics charges
 10 that the prosecution has brought against Mr. Dellos Santos.

11 Similarly, if you credit the testimony in this case,
 12 Mr. Brito was an accomplice of Mr. Dellos Santos in regard
 13 to the crimes that allegedly occurred inside 478 West 145th
 14 Street.

15 Our law is especially concerned about the testimony of
 16 an accomplice who implicates another in the commission of a
 17 crime. Particularly when the accomplice has received,
 18 expects or hopes for a benefit in return for his or her
 19 testimony.

20 Therefore, our law provides that a defendant may not be
 21 convicted of any crime upon the testimony of an accomplice
 22 unless it is supported by corroborative evidence tending to
 23 connect the defendant with the commission of that crime.

24 In other words, even if you find the testimony of Ms.
 25 Mulero to be believable you may not convict Mr. Dellos

JURY CHARGE

1 Mr. Dellos Santos is entitled to every inference in his
2 favor which can reasonably be drawn from the evidence and
3 where two inferences may fairly be drawn from the same
4 evidence one consistent with guilt and one consistent with
5 lack of guilt he's entitled to the inference of lack of
6 guilt.

7 Now, a number of police officers and ex-police officers
8 testified. You promised and you must consider the
9 testimony of a police officer in the same way that you
10 would any other person's testimony.

11 The fact that a person is or was a police officer does
12 not make his testimony any more or less true, any more or
13 less reliable than anyone else's.

14 You will recall that we had a Doctor, a pathologist, a
15 forensic pathologist from the Medical Examiner's office who
16 I called an expert.

17 When a case involves a matter of science requiring
18 special knowledge or skill not ordinarily possessed by us
19 lay people, average people, an expert is permitted to state
20 his opinion for the information of the court and the
21 jury. You are not required to accept an expert's opinion
22 to the exclusion of other facts and circumstances disclosed
23 by the testimony in this case.

24 An expert's testimony is subject to the same rules
25 concerning reliability as anybody else.

Lourdes Torres-Fuster, Senior Court Reporter

JURY CHARGE

1 It's the question and the answer that becomes the
 2 evidence. The evidence that you are to consider is the
 3 testimony of the witnesses and any physical evidence that's
 4 been admitted. And there were photographs. There are
 5 records. Whatever has been placed in evidence you can look
 6 at. There is a stipulation which means the parties
 7 agreed. Again, you can look at that too.

8 Anything that was just marked for identification but
 9 was not placed in evidence is not for your consideration.

10 Now, in this case as in almost every criminal case your
 11 ultimate decision on whether Mr. Dellos Santos has been
 12 proven guilty by the government beyond a reasonable doubt
 13 will rest on your assessment of the credibility, the
 14 believability, the reliability of the witnesses, the
 15 strangers who came in here the last several days.

16 You have to determine is the witness truthful or not.
 17 Is the witness accurate or exaggerated. Is the witness
 18 reliable or unreliable.

19 I told you back when we were choosing you that I had no
 20 golden rule to give you as to how to do that. No judge
 21 does. But I can say that you have all lived and worked
 22 and socialized on this planet for varying numbers of years
 23 and in your daily lives you size up people. You size up
 24 people that you know and you size up people that you meet
 25 for the first time. I'm going to ask you to use the same

Lourdes Torres-Fuster, Senior Court Reporter

Nothing was placed
 as evidence to the jury
 considered.
 I do not understand
 how they could
 find me guilty
 all witnesses were
 contradicted by
 each others and
 the polices were
 not truthful

JURY CHARGE

1 accusations in this criminal case.

2 Now, as jurors you have three major duties.

3 One, you have to decide what did or did not happen in
4 this case. You decide the facts, not me, not the
5 lawyers.

6 Two, you must listen to the law as I give it to you now
7 and accept it without hesitation, without reservation, even
8 if you privately disagree with it. You promised and I
9 hold you to that promise.

10 And, three, you should find Mr. Dellos Santos guilty or
11 not guilty by applying the law that I give you to the facts
12 as you find them. And in deciding what the facts are you
13 are not to speculate or guess. You must make your
14 decisions only on what you heard or saw in this courtroom.
15 And you are not to consider sympathy or bias. You are not
16 to consider or speculate on sentence or punishment. And
17 it's your memory of the evidence that counts. Not what
18 the lawyers said in their summations or even what I might
19 say. It is your memory that counts and you decide this
20 case on the evidence.

21 So we're going to talk about evidence. Let me tell
22 you what evidence of guilt is not.

23 The fact that Mr. Dellos Santos was accused and
24 arrested and indicted for various crimes is absolutely no
25 evidence of his guilt. Questions alone are not evidence.

Lourdes Torres-Fuster, Senior Court Reporter

JURY CHARGE

1 THE COURT: Jury in.

2 COURT OFFICER: Jury entering.

3 COURT CLERK: Would the parties stipulate the jury is
4 present and properly seated?

5 MR. WILLIAMS: Yes.

6 MR. DRUCKER: Yes.

7 THE COURT: All right. Good morning. It's my turn
8 to talk. First I want to thank you. This trial was not
9 that long. But it's very important. You were here every
10 day. You were listening. You were concentrating. You
11 were doing your duties as citizens and I thank you for
12 that.

13 Trial by jury in criminal cases forms the very basis of
14 justice in our system. You as jurors have been selected
15 for one of the most important duties of citizenship and
16 that is to determine the guilt or the non-guilt of another
17 individual. In this case Miguel Dellos Santos. It is a
18 duty requiring you to use the same care, the same
19 consideration, the same integrity that you would use in
20 making the most important decisions in your own lives.

21 Now, I know this case will not affect your lives
22 directly but I instruct you to consider it as if it would.

23 You will find my charge divided into two parts. The
24 first part will discuss the law as it applies to this
25 criminal case and the second part will focus on the

Lourdes Torres-Fuster, Senior Court Reporter

Proceeding

1 CONTINUED BY

2 MR. DRUCKER:

3 Which I believe we've fully proven.

4 But, the Count 2, the felony murder kidnapping would
5 not require.

6 THE COURT: I know.

7 MR. DRUCKER: Kidnapping first-degree.

8 THE COURT: We handled that.

9 MR. DRUCKER: Okay. Then I'll shut up.

10 THE COURT: Thank you.

11 Anything else anybody wants to tell me that's obvious?

12 MR. WILLIAMS: No, your Honor.

13 THE COURT: Thank you.

14 *****

15 (Proceedings were concluded until July 10, 2014)

16

17

18

19

20

21

22

23

24

25

Proceeding

1 CONTINUED BY

2 MR. DRUCKER:

3 Which I believe we've fully proven.

4 But, the Count 2, the felony murder kidnapping would
5 not require.

6 THE COURT: I know.

7 MR. DRUCKER: Kidnapping first-degree.

8 THE COURT: We handled that.

9 MR. DRUCKER: Okay. Then I'll shut up.

10 THE COURT: Thank you.

11 Anything else anybody wants to tell me that's obvious?

12 MR. WILLIAMS: No, your Honor.

13 THE COURT: Thank you.

14 *****

15 (Proceedings were concluded until July 10, 2014)

16

17

18

19

20

21

22

23

24

25

SUMMATION/DRUCKER

1 (The jury was excused and exits the courtroom.)

2 MR. DRUCKER: One legal point on your charge.

3 THE COURT: Of course.

4 MR. DRUCKER: The first count is Kidnapping in
5 the First Degree. The second count is the Felony Murder for
6 Kidnapping. Kidnapping first degree involves abduction with
7 other elements.

8 (Continued on next page.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SUMMATION/DRUCKER

1 guy, he's a street guy, he's a get your hands kind of dirty
2 guy, you can't believe him.

3 Kind of ironic. You use the man when he serves your
4 purposes, when you don't need him anymore discard him, bad
5 mouth him. It's an expression in our business that's true.
6 We don't choose the witnesses. More often than not the
7 defendant chooses the witnesses. So true here.

8 Who chose the witnesses in this case? Who chose Lucy
9 Mulero, his girlfriend? Who chose Wilson? The guy he was
10 friends with who he used to make the five kilogram cocaine
11 deal. Who chose Brito? He called Brito to help him. Did I
12 call him? He called him. Time and time again he got them
13 involved in the case.

14 He's why they are the witnesses in the case. He's
15 the gentleman drug dealer. He has a problem he calls the dirty
16 work guys. But you shouldn't believe them. Brito, Chacal,
17 were involved in this case for exactly that reason and he knew
18 who he was calling everytime he called for them.

19 Any way, it's October 7th and now it's -- he's
20 getting desperate, very little options how to get his hundred
21 thousand dollars. So it's time for action. Time to bring the
22 crew out. Time to call Rafael, get your guys, we're going to
23 Manuel's, we're going to that cousin's house, we're going to
24 make things happen now.

25 Are they going to kill anybody? Of course not. They

Proceeding

1 forced to do this. He went on the floor. He was being
 2 threatened. He was being forced. That's exactly pretty
 3 much what Angelly Ortiz told you. She didn't see him on
 4 the floor. She got into the living room a few minutes
 5 after it happened but she also said he was pretending,
 6 acting as if he was being forced and she wasn't buying it.

7 Brito just made that up out of thin air? Of course
 8 not.

9 And think about when questioning Brito. When he was
 10 cross-examined by Mr. Williams, an experienced lawyer, a
 11 lot of questions about him selling drugs. Questions about
 12 what he did when he was 10-years-old and 12-years-old and
 13 14-years-old in the Dominican Republic. And a lot of
 14 questions about this thing with this Corrections officer
 15 who got a little business smuggling cigarettes.

16 What was he asked about the incident of this case?

17 MR. WILLIAMS: Objection. Burden shifts.

18 THE COURT: The burden is always on the prosecution to
 19 prove guilt and the defendant has absolutely no burden.

20 *****

21 (Continued on next page)

22
 23
 24
 25

1 money. He can't reach Wilson. Doesn't answer his phone. They
2 go to the bodega to find this guy the bodega was closed.
3 Closed down. The guy's gone.

4 Now he starts to really realize what's going on.
5 Somehow he's able to find this guy. It's not clear how.
6 Uptown Manhattan. Finds him, calls Rafael to get his people,
7 to get the dirty work guys, to get Chacal and Punalata to come
8 met him. The guy gets away.

9 Now, he's kind of running out of options. He can't
10 reach Wilson. This guy is gone. He realizes he knows where
11 Wilson's cousin lives. Maybe the cousin can lead him to
12 Wilson.

13 He goes to the cousins house that first night,
14 October 6th, friendly one-on-one visit, maybe he can do things
15 the easy way. It's much easier to do things the easier way.
16 Nothing comes of that. Now he starts to get pretty upset.
17 He's out a hundred thousand dollars. That's a lot of money.
18 Running out of options.

19 Just as quick aside. Now there's something kind of
20 ironic the way the defense treats Brito in particular.
21 Whenever the defendant has a problem in the case he goes to the
22 bodega, when he sees the guy 132nd Street, he wants to go to
23 the cousin's house, Manuel Gonzalez, he calls the tough guy,
24 the street guy, the guy who's not afraid to get his hands
25 dirty. But now, oh, you can't believe him because he's a tough

Glenn J. Merola, Sr. Court Reporter

1 sense. Didn't happen.

2 Maybe I've gone on for too long. We all come to court
3 with biases with cooperators. If you step back from that
4 little assumption you have or thinking about television
5 analyzing it is a very different situation. And beyond her
6 motives if you analyze other evidence in the case nearly
7 everything she said was corroborated with other witnesses.

8 And one more point on that maybe. You come into the
9 courtroom not like snitches, not like making deals with
10 criminals, but before you're too critical of Luz Mulero's
11 motive you realize without Lucy still nobody gets caught
12 here. Without Lucy Manuel Gonzalez is still dead and
13 nobody has paid the price for it. Without her Rafael never
14 gets caught for his role in this. Punalata, Mr. Brito,
15 never gets caught for this case. Ellerman Valverde, never
16 gets caught and Chacal. Juan Rincon, a man who put the
17 bullet to the back of the head of Manuel Gonzalez. No one
18 ever knows about him. He would be a free man to this
19 day. Who knows who else he might had killed up until
20 today? He didn't. They were all caught because of Lucy
21 Mulero. And I make no apologies here. She got a little
22 bit of a lighter sentence and avoided being deported and
23 raised her own children. I would make the same deal
24 tomorrow. The price I pay anytime for the result that she
25 got.

Lourdes Torres-Fuster, Senior Court Reporter

1 get deported. She was desperate not to lose her children,
2 not to lose her baby. She was so desperate she wouldn't
3 dare not tell the truth. She wouldn't dare risk all that
4 by getting caught in any lie.

5 And remember she told you and it is common sense if you
6 tell the officer the truth that there were four people and
7 lied about the fifth you tell 9/10ths of the truth and
8 you're caught with one deliberate lie. You lose
9 everything. Why would you do that? And no one would
10 doubt for a second she told most of the truth. And this
11 is an important point. She gave lots and lots of
12 information. As you know she told the police about all
13 five people that were involved in this incident.

14 Now, all you care about now is the defendant. That's
15 all you should care about. That's your job is to evaluate
16 evidence against him.

17 Go back to March of 2002. It is not Lucy telling the
18 police about only Miguel Dellos Santos. She's talking
19 about all five people. Miguel Dellos Santos, his brother
20 Rafael, Ellerman, Valverde. "He's in jail. You can talk to
21 him". Two other guys, Punalata, Chacal. No question she
22 was telling the truth about the other four people. No one
23 is for a second suggesting she hasn't. So why would she
24 tell you about them truthfully and then risk everything,
25 risk losing her children by lying about him? It makes no

Lourdes Torres-Fuster, Senior Court Reporter

1 police, they are thinking of trying to spin it in a wrong
2 way. Admit what they can't deny but deny whatever they can
3 and if they have to they are going to lie and make up
4 stuff, whatever they can do to help themselves. But, in
5 this context when you're a cooperator the truth is going to
6 help you no matter where it goes.

7 Okay. If you're a guilty person caught when the police
8 speak to you, yes, the truth may hurt you. But, when
9 you're cooperating, when you're getting something for your
10 information, the truth is what's going to help you.

11 And, again, Lucy is a perfect example of that. When
12 she goes to the police for the first time she would have no
13 idea what the police know, what they know, what they don't
14 know, who they talked to, wouldn't know what the wife of
15 the victim and the father-in-law said. She wouldn't know
16 what they told the police. She wouldn't know if they
17 talked to Wilson or anything he had said. She wouldn't
18 know who they talked to. She wouldn't know how the actions
19 inside have been described. And, of course, beyond that
20 they would know originally when she tells who else was
21 involved in the crime. She's going to assume sooner or
22 later they are going to find most, if all, of those people
23 and maybe some of them are going to talk and if she's going
24 to lie to them how easy is it to get caught.

25 So, yes, she was desperate. She was desperate not to

Lourdes Torres-Fuster, Senior Court Reporter

1 And like I would say most cooperators, you can call
2 them snitches, call them whatever you want, what they do
3 for the most part they don't say "Aha, I'm going to go and
4 lie to the police. I'm going to go lie to the DA". You
5 don't have to like them or anything about them. You have
6 to understand their motives.

7 When you analyze it logically use your common sense and
8 decide are they going to go and lie to the police? As a
9 cooperator her point is to give the police useful valuable
10 information. That's what you're getting in return for
11 useful information. They don't want to give lies. Don't
12 you think in most cases it's pretty easy to figure out when
13 someone is lying to you? Either at first when they talk to
14 you or certainly when they do some more digging
15 investigating and talk to more witnesses those lies are
16 going to become obvious.

17 Now, a cooperator who has already decided to do that,
18 if they have any brains at all, is tell the truth. It's
19 the only way to make sure you don't get caught in a lie.
20 Because if you get caught in a lie you lose your whole
21 deal. The only way to not get caught in the lie is very
22 simple. You don't tell a lie in the first place. You tell
23 the truth. It is just common sense.

24 You know, in a different context someone gets arrested
25 if they committed a crime, get caught and they speak to the

Lourdes Torres-Fuster, Senior Court Reporter

1 making deals so I don't trust them. I'm not going to
2 believe them. That's just too easy. Analyze it
3 logically.

4 As to Lucy her reasons, her motivations for coming
5 here. She's arrested. This crime happens in October of
6 1999. She's arrested with some other kidnapping in July of
7 2000. She's sitting in jail till March of 2002. At some
8 point she pleads guilty on that case. She realizes she may
9 not have a big role in the kidnapping but she was there.
10 She was in the apartment, in Ellerman's basement apartment
11 with the kidnapping victim when the cops get there. She
12 doesn't want to go to trial. She pleads guilty and is
13 promised a five year jail sentence. Nothing to do with
14 this case. She realizes, well, she realizes the
15 consequences of that. She realizes time in prison then
16 she'll get deported then she's going to lose her children.
17 Doesn't want that to happen.

18 And, she's kind of desperate. No question about it
19 when she realizes she is no longer alone. She has one card
20 to play. She's got information about a murder.
21 Information she knows the police would love to hear. And
22 by this point she realizes what's going to happen to her
23 life. She's desperate. She's so desperate she figures I
24 got to play that card. I got to talk to the police and
25 tell them and so she does.

Lourdes Torres-Fuster, Senior Court Reporter

1 is. Do you have doubt in your mind we have the right
2 guy. That's what a criminal case is about. That's what
3 our burden of proof is about. Proof beyond a reasonable
4 doubt that he, not somebody else, committed this crime.

5 Now, I suggest the facts are pretty clear but let's
6 look at them. That's your job, of course, is to find the
7 facts. And you might think you come into the case, look
8 obviously, one way to do that is by determining the
9 believability what we call the credibility of all the
10 witnesses.

11 And you might think coming into the case, well, you
12 heard there were two witnesses who were cooperating who
13 themselves were criminals who in some way were involved in
14 this who made deals. Judging their credibility is going to
15 be the hardest thing to do in this case.

16 I suggest if once you sort through what the witnesses
17 said when they first said it, what their motivations are,
18 what other witnesses said there's really not a whole lot in
19 there what they said not to believe. Both of them Lucy
20 and Brito through all their flaws. And Brito certainly has
21 those. No one is disputing that. And Lucy also back
22 then. Certainly she was involved in a life of drug dealing
23 and crime too. But, with all their flaws and all their
24 motivations what exactly is it not to believe about what
25 they said. Mr. Brito said, oh, they're cooperating and

Lourdes Torres-Fuster, Senior Court Reporter

1 you what happened.

2 First ask yourself what is the issues in the case.

3 Well, I would suggest the first issue, the number one by
4 far, the number one overriding issue in virtually any
5 criminal case including this one is identification. Was
6 this the person? Is that one of the five guys that came
7 into the apartment? Is that Pedro who knocked on the
8 door? Or, when this crime was happening was he home in
9 North Carolina? Was he at his mother's house in Queens?
10 Was he totally understand involved in this case? Did only
11 four men go into the apartment? Was no one named Pedro in
12 the apartment? Was there some other person named Pedro an
13 not him? That's the question in this case.

14 Now, maybe you think, of course, he was there. The
15 question is other things. The question gets our burden of
16 proof. You have to prove he is the person. It's basic.
17 I'm not saying that's the only thing to prove. I'm not
18 saying once you know it was him that the case ends and zero
19 other lesser issues. But, once you determine, once you're
20 satisfied that he, in fact, was one of those five people
21 you're almost there. So don't think, well, the defense
22 didn't contest it, of course, he was there, so that's not
23 an issue in the case. That's not important.

24 No, actually what that means is it is important. It
25 means it shows you how clear and convincing the evidence

Lourdes Torres-Fuster, Senior Court Reporter

1 make it crystal clear that not paying is just not an
2 option. You do that not by words but by unmistakable
3 actions. You do exactly what these men did. What Rafael
4 and Punalata and Chacal and Ellerman and Cachie, this
5 defendant. They did exactly what they did and what they
6 intended to do on the night of October 7th into October
7 8. "Call Wilson. Produce Wilson. Produce our money or
8 you're coming with us until we get that".

9 Wilson can choose his money or his cousin. Any doubt
10 about that? That's why they went to that apartment. Not
11 just to make a phone call. The plan wasn't "Manuel, please
12 let the five of us into your home. Oh, please make a phone
13 call to Wilson or to Wilson's family. Oh, there is no
14 answer? Okay, we'll come back tomorrow".

15 Does anybody think for a second that was in anybody's
16 mind? That was in the defendant's mind? It is laughable.
17 It is ridiculous. It is not reasonable.

18 Again, use your common sense.

19 Okay. Let's step back a little bit. The question
20 is, the Judge told you before, she'll tell you again, have
21 we proven the case? The evidence proves nothing magical.
22 Does the words you heard in this courtroom satisfy you
23 beyond a reasonable doubt that the defendant committed the
24 crime? That's the fundamental reason for a trial. And did
25 we meet our burden of proof on whatever evidence to show

Lourdes Torres-Fuster, Senior Court Reporter

1 Talking was for day one. October 6, the first visit.
2 One-on-one. Pleasant people. They happened to be
3 pleasant. But, the idea that somehow four of the men on
4 October 7th went there with one violent criminal purpose
5 was but one male, only the boss, the guy this is all
6 about. The man who brought them there. That he alone
7 went for some nonviolent purpose it's just not
8 reasonable. It's not reasonable. It's not the basis for
9 reasonable doubt. Makes no sense. Just didn't happen.

10 Now, October 6 was the talking. This was October
11 7th. This was no more Mr. Nice Guy. No more fooling
12 around. This was to do what drug dealers do when they
13 don't get paid.

14 Now, I don't mean every time you're a little bit late,
15 they can't sell their drugs, few days late getting paid,
16 but I mean when they know they've been cheated and ripped
17 off that is what drug dealers do. They don't sue you.
18 They don't go higher a lawyer and bring you to court. They
19 don't call the police and say "They stole my five key
20 grams. Come help me". No.

21 What you do, you threaten. You bully. You intimidate.
22 You terrorize. You take control over the situation. You
23 take control of the people you kidnapped. You take
24 physical possession to whoever is most likely to lead you
25 to the money or to the people who have the money and you

Lourdes Torres-Fuster, Senior Court Reporter

JAVIER BRITO / CROSS / MR. WILLIAMS

1 stole 200 grams. He told me that he lost those grams.

2 He use to help me and he was good like Rafael. He use
3 to give me drugs. I went, I helped him but I didn't get
4 anything there.

5 Q. So you were never paid?

6 A. No, because I didn't work for pay.

7 Ask Rafael or Cachie if they paid me for going where I
8 went.

9 Q. Unfortunately I get to ask the questions here, sir.

10 A. But I answer them too.

11 Q. Now, you say that you owed him 60 thousand, maybe?

12 THE WITNESS: Forty thousand.

13 A. Forty thousand.

14 Q. And you never paid?

15 A. No.

16 Q. You were never worried about him doing anything to you,
17 right?

18 A. Why would I worry? He took me to kill some people
19 innocently and he had nothing to do with that.

20 Q. Did he tell you that he wanted you to kill somebody?

21 A. No.

22 Q. Was there ever a discussion of killing anyone in
23 connection to this matter?

24 A. No.

25 Q. Now, mainly you dealt with Rafael, correct?

DIRECT/BRITO/PEOPLE

1 Q. And what was Rafael doing?

2 A. Rafael was packing up the telephone and the cable and
3 everything that he could put his hands on.

4 Q. And what was Jermaine doing if you remember?

5 A. He was up in the front with the older plan and with
6 the lady and with Chacal.

7 Q. What happened after Rafael gathered the telephone and
8 other things?

9 A. We decided to take the victim, we were going to
10 kidnap him and take him to 135th.

11 Q. And what was the specific plan about that?

12 A. Rafael and Ellerman went downstairs and then
13 Ellerman -- no. Excuse me. Cachie and I were going to take
14 the victim downstairs. We had already taken the tape from
15 around his hands, we had him sitting in a chair.

16 Q. And was he dressed at that point?

17 A. Yes.

18 Q. And at that time where was Rafael and Ellerman?

19 A. They had already gone downstairs.

20 Q. What happened at that point.

21 A. I was with the elderly man, the woman and the dead
22 man. Chacal and I were there, we were in the living room.

23 Q. And where was Cachie?

24 A. In the bedroom.

25 Q. And do you know what he was doing in the bedroom?

DIRECT/BRITO/PEOPLE

1 A. All of us, Rafael, Chacal, Jermaine, and I.

2 Q. And you said you pushed Cachie?

3 A. Yes.

4 Q. You recall who pushed him?

5 A. Well, either Chacal pushed him or I did because that
6 was something that happened quickly, it happened fast.

7 Q. And what was the reason for pushing Cachie at that
8 time?

9 A. Because he was acting like the victim and he was
10 acting as though we had brought him there by force.

11 Q. And what happened once you were all inside the
12 apartment?

13 A. We ran into older man and a lady in there.

14 Q. And do you know where the older man was when you
15 first came into the apartment?

16 A. He was lying on the sofa.

17 Q. And do you remember where the woman was when you
18 first entered?

19 A. She was coming out of the bedroom.

20 Q. And what happened, what was done with regard to all
21 three of them, the man, the older man and woman?

22 A. We threw Cachie on the ground. We threw the guy who
23 had been hit on the nose on the ground. The old man we left
24 him on the sofa and I grabbed the lady. *ella y el papa dijeron que
yo estaba todo el tiempo en
una silla*

25 Q. And was anything done to the old man on the sofa?

1 A. He was in a black car but he wasn't right there.

2 Q. And did you have any more discussions in the car you
3 were in with Rafael and the others?

4 A. Yes. That we were going to go to the cousin's. And
5 that we were going to go there to see if something turned up.

6 That Cachie was going to take us over there to the
7 cousin's.

8 Q. Any other detailed plans discussed at that time in the
9 car?

10 A. That Cachie was going to act like the victim.

11 Q. And when was that discussed for the first time?

12 A. As we were driving in the car.

13 Q. From 135th to 145th?

14 A. Yes.

15 Q. Short drive?

16 A. Yes, just a short while.

17 Q. Who was driving?

18 A. Rafael.

19 Q. And whose car was it?

20 A. Rafael's.

21 Q. And what happened once you got to 145th Street?

22 Did you see anybody when you got there outside?

23 A. Cachie.

24 Q. And where was Cachie when you first saw him?

25 A. He got out of the car.

*Lucy pag. 275
@ 141 este el día que yo estaba esperando en la 145. donde vivía Manuel*

1 A. No. 050

2 Q. Just you and Chacal?

3 A. Yes.

4 Q. Why were you and Chacal going there at that time?

5 A. To kidnap them.

6 Q. And did you have any weapons at that time?

7 A. Yes, two weapons. Yes, two weapons.

8 Q. And where did you go then?

9 A. To 183rd and Broadway.

10 Q. And what did you see when you got there? pg. 275

11 A. I was driving and Chacal was in the passenger seat.

12 From the moment we parked I saw Cachie in the car. He
13 get out of the car. I saw his wife.

14 And I realized that the other guy there was the one
15 with the five kilos.

16 Q. Had you ever seen that person before?

17 A. No.

18 Q. And what happened at that point?

19 A. And so at that point Chacal got out of the car and he
20 jumped on him.

21 THE COURT: Jumped on who?

22 THE WITNESS: The guy with the five kilos.

23 Q. And what happened then?

24 A. Chacal tried to take out his weapon but it got caught
25 on the inside of his coat.

1 Q. And that was all that happened that day; is that
2 correct?

3 INTERPRETER: Your Honor, I'm just going to ask the
4 witness, I know that he does know some English, but I don't
5 want him to jump at the end of my sentence. I know it's
6 hard.

7 Q. Okay. What is the next thing that happened with regard
8 to this issue, this problem?

9 A. A day or two after I was in the basement at 135th.

10 Rafael said, "Cachie called me and he said that he had
11 Wilson in the car and that he and his wife were going to come to
12 Manhattan".

13 Q. And at that point did you know who Wilson was?

14 A. I didn't know who Wilson was but I did know that he was
15 the one who had the five kilos.

16 Q. And after you had that conversation with Rafael what
17 did you do?

18 A. Chacal and I took Rafael's car. We went to wait for
19 them at 183rd.

20 Q. You went to wait for who?

21 A. To wait for Cachie for the one with the five kilos and
22 his wife.

23 Q. Did Rafael come with you?

24 A. No.

25 Q. And how about Germane?

*estábamos todos juntos
yo fui con Lock y María Sol
a la casa de Rafael Dedegnero
ellos llegaron todos y luego
fuimos a la casa de Rafael
y ellos sobornaron a Chago
lo que había estado*

070

GERARD DIMURO / CROSS / MR. WILLIAMS

1 A. Okay.

2 Q. Did you interview a woman by the name of Merlyn
3 Paulino as part of this investigation?

4 A. Yes.

5 Q. And did you learn that she was the girlfriend of the
6 deceased?

7 A. Well, she knew him, yes.

8 According to this she went out to eat with him and was
9 familiar with him.

10 MR. WILLIAMS: Thank you.

11 Nothing further, your Honor.

12 THE COURT: Okay. Anything?

13 MR. DRUCKER: No, your Honor.

14 THE COURT: Okay. Thank you.

15 (Witness is excused).

16 THE COURT: Do you have another witness for today?

17 MR. DRUCKER: Not for today.

18 THE COURT: Okay. That's it for today.

19 According to everyone we're right on schedule and we
20 will continue with this tomorrow. Have a good evening.

21 Do not discuss this case among yourself or with anyone
22 else. Okay.

23 (Jurors exit the courtroom).

24 THE COURT: Did I tell them ten o'clock?

25 COURT OFFICER: I will tell them, your Honor.

Lourdes Torres-Fuster, Senior Court Reporter

GERARD DIMURO / CROSS / MR. WILLIAMS

1 Q. And which detective created that?

2 A. I did.

3 Q. How do you know it's your DD5?

4 A. Because it says Dimuro.

5 THE COURT: That would be a good hint.

6 So does that refresh your recollection?

7 THE WITNESS: Well, I'm reading it and what he said is
8 accurate. It said -- should I say what it says?

9 THE COURT: Just tell us what you, paraphrase it.

10 THE WITNESS: It's an interview with the super and he
11 was arrested for drugs and a gun.

12 THE COURT: Who was arrested for drugs and a gun?

13 THE WITNESS: Mr. DelGado, the super.

14 And that at one point he indicates in the interview
15 that the gun and the drugs were given to him for
16 safekeeping by the victim.

17 Q. Thank you.

18 And, finally, detective, as part of your investigation
19 you interviewed a woman by the name of Merlyn Paulino, correct?

20 A. I don't remember.

21 MR. DRUCKER: Objection.

22 THE COURT: Do you remember that?

23 THE WITNESS: No.

24 THE COURT: He doesn't remember.

25 MR. WILLIAMS: One moment, your Honor.

Lourdes Torres-Fuster, Senior Court Reporter

GERARD DIMURO / CROSS / MR. WILLIAMS

1 (Discussion at the bench was held off the record).

2 Q. Detective Dimuro--

3 A. Yes.

4 Q. -- as a result of that interview the conversation with
5 Mr. DelGado you learned that Mr. DelGado was in possession of a
6 gun and drugs that he claimed belonged to the deceased, right?

7 MR. DRUCKER: Objection.

8 THE COURT: Is that true?

9 A. I know he was arrested for drugs and guns. I don't
10 know if he claimed it was the deceased. I just don't remember.
11 He might have said it. I just don't remember.

12 Q. I'm going to hand over what will be marked Defense A.

13 MR. DRUCKER: I'm going to object.

14 THE COURT: I will allow it for identification.

15 Q. I'm going to ask you to review that document and see if
16 that refreshes your recollection as to what occurred with Mr.
17 DelGado?

18 (Handing).

19 A. Okay. It says right here in the 5 that I did--

20 MR. DRUCKER: Objection.

21 Q. How do you know?

22 Please first tell the jury what it is you're looking
23 at?

24 A. This is a DD5. That's a report a detective does after
25 each interview.

1 Pedro was one of those men that came to the apartment, right?

2 A. I don't know if the old man mentioned Pedro. I know
3 Angelina mentioned Pedro.

4 Q. But, at some point the old man talked about one
5 individual that you kind of later learned when you thought about
6 things that was Pedro?

7 A. No. The old man was pretty -- I won't say
8 uncooperative -- but right from the get-go he said "I'm not
9 viewing any pictures and I didn't see anything".

10 He actually said he had a pillow over his head the
11 entire time. So we focused on her because she was very
12 cooperative.

13 Q. Okay. And did she talk about Pedro?

14 A. Yes.

15 Q. What did she say about him?

16 A. She said--

17 MR. DRUCKER: Objection.

18 THE COURT: I will allow it. Part of the narrative.

19 Go ahead.

20 A. She said a guy that visited the night before was the
21 same guy that came back with the group.

22 Q. And she didn't say that he participated in the killing
23 of her husband, right?

24 A. No, she didn't say that at all. She said that he was
25 present and that there actually came a point in time when he was

WILSON GONZALEZ / CROSS / MR. WILLIAMS

1 A. I don't understand, in what way?

2 Q. What do you do for work?

3 A. I had an accident. I fell from a forth floor and I am
4 handicap now and I don't work.

5 Q. Before your unfortunate accident how were you
6 supporting yourself?

7 A. I worked in construction.

8 Q. Have you ever been involved in the drug business, Mr.
9 Gonzalez?

10 A. No.

11 MR. WILLIAMS: Thank you. Nothing further.

12 MR. DRUCKER: No questions.

13 THE COURT: Okay. Thank you.

14 (Witness is excused).

15 THE COURT: We're going to take just a five minute
16 break, jurors.

17 (Recess).

18 THE COURT: Mr. Drucker, who is your next witness?

19 MR. DRUCKER: Retired Detective Dimuro.

20 THE COURT: Jury in.

21 COURT OFFICER: Jurors entering.

22 THE COURT: Next witness.

23 MR. DRUCKER: People call retired Detective Gerard
24 Dimuro.

25 COURT OFFICER: Witness entering.

Lourdes Torres-Fuster, Senior Court Reporter

1 Q. Did you ever introduce him to your cousin Manuel?

2 A. No.

3 Q. Did you ever introduce him to Manuel's wife Angelly?

4 A. No.

5 Q. Mr. Drucker asked you some questions about a day that
6 Cachie met with you and Alfredo in front of your job?

7 A. Yes.

8 Q. Had you met his girlfriend Lucy at that point?

9 A. Whose girlfriend?

10 Q. Cachie's?

11 A. Well, the one who lives in North Carolina I met a
12 girlfriend of his who lived there but I don't know her name.

13 Q. On the day that he was with you and Alfredo was any
14 other person with Cachie?

15 A. No.

16 Q. Was there a woman with him?

17 A. That I remember, no.

18 Q. Okay.

19 INTERPRETER: Counselor, there was a question that you
20 asked that I didn't answer because he was answering at the
21 same time that you were asking it.

22 MR. WILLIAMS: He answered it.

23 INTERPRETER: Okay.

24 MR. WILLIAMS: Thank you.

25 Q. How do you support yourself, Mr. Gonzalez, presently?

Lourdes Torres-Fuster, Senior Court Reporter

1 that correct?

2 A. I don't remember. As I said, I can't remember.

3 Q. And soon after that did you leave the United States?

4 A. After I declared, I testified, I left the United
5 States. I went to Europe. Then I came back from Europe to
6 testify again. I testified again and here I am again
7 testifying.

8 Q. And you live in Europe now?

9 A. Yes.

10 Q. And you've been living there since 1999; is that
11 correct?

12 A. Yes, from '99.

13 MR. DRUCKER: No further questions.

14 CROSS-EXAMINATION

15 BY MR. WILLIAMS:

16 Q. Good afternoon, Mr. Gonzalez.

17 Have you ever been threatened by this man?

18 A. No.

19 Q. You testified earlier you said that he was never your
20 boss, correct?

21 A. No, he was never my boss.

22 Q. Now, he used to date your cousin Wendy, right?

23 A. Yes.

24 Q. Who met him first you or Wendy?

25 A. Wendy.

1 who "he" was in that sentence. She interpreted what he
2 said and he used the word "he" and I want to clarify who
3 "he" was.

4 THE COURT: All right.

5 MR. DRUCKER: If the reporter can make read back the
6 last answer.

7 (Court reporter read back the last answer).

8 Q. When you said that he said, Alfredo said if you call
9 Cachie he's going to kill you, to who was he saying was going to
10 kill you too?

11 A. He told me that if I talked that he would kill me.

12 THE COURT: Who would kill you? Give us the name.

13 THE WITNESS: Alfredo from the bodega.

14 THE COURT: Alfredo will kill you?

15 THE WITNESS: If I spoke. If I talked.

16 Q. And then what else did he say about that?

17 A. Alfredo, that if I called Cachie that he was going to
18 kill me also because he stole five kilos of cocaine because he
19 told Cachie that I was in jail.

20 Q. And is it your testimony that was the first you knew
21 about any actual cocaine deal?

22 MR. WILLIAMS: Objection.

23 THE COURT: I will allow it.

24 A. That's when I found out.

25 Q. And that's the first you knew about the amount of five

1 A. Right now I don't remember. More or less I don't
2 remember what time, how long.

3 Q. Do you know if it was a short time, a long time?

4 A. I don't know. It's been a long time. I can't tell
5 you right now. I don't know how much.

6 Q. Okay. Tell us what what happened when -- withdrawn.
7 Did you say he was driving you to the Bronx, to the
8 bodega to the Bronx?

9 A. Yes, to work in the bodega in the Bronx.

10 Q. This is Alfredo?

11 A. Yes.

12 Q. Tell us what happened during that ride?

13 A. I was going with him. When I got to the Bronx, if I'm
14 not mistaken, he got out of the car. I saw him get out of the
15 car to make a phone call. He got back into the car. He told me
16 that if I talked that he would kill me because he stole five
17 kilos from Mr. Cachie. And that he said that he had called
18 Cachie and said that I was in jail and that if I called Cachie
19 that he was going to kill me too.

20 Q. I'm sorry, just to clarify that last thing--

21 THE COURT: Wait. Wait. I didn't hear what she said.
22 You can't interrupt, then you'll clarify, but let her
23 finish.

24 What did he say?

25 MR. DRUCKER: He's continuing. I just want to clarify

Lourdes Torres-Fuster, Senior Court Reporter

1 Q. And during that time do you know where the defendant
2 was living most of the time?

3 A. Yes.

4 Q. Where was that?

5 A. North Carolina.

6 Q. And did you ever spend anytime yourself in North
7 Carolina?

8 A. Yes, I went.

9 Q. Is it your testimony, Mr. Gonzalez, that you never
10 worked for the defendant?

11 A. No.

12 Q. No, you did not work for him?

13 A. No, not for him, no.

14 Q. That's your testimony; is that correct?

15 A. Yes.

16 Q. Did you know the defendant's wife?

17 A. Yes, I got to meet her. I got to see her.

18 Q. Was she living with him in North Carolina?

19 A. Yes.

20 Q. Did you know any of the defendant's brothers?

21 A. No.

22 Q. Did you know a brother, his name is Rafael?

23 MR. WILLIAMS: Objection, your Honor.

24 THE COURT: He said he didn't know his brothers.

25 MR. DRUCKER: All right.

Lourdes Torres-Fuster, Senior Court Reporter

10³⁰ AM Tues. 5/21/02 @ Wilson, B.A. Jim, Eddie
I worked Manuel Lodge 5^{1/2} / 5^{1/2} t + 5^{-t}
I was work in Dept. in P.L.S. t + 5^{-t}
I was near Happy Grocery
I met Alfie the owner

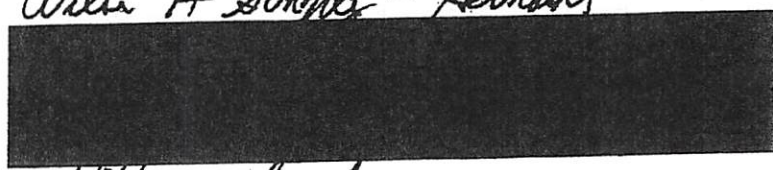
" sold the lodge.
Cachi come to grocery store (Manuel)
I met Cachi through Wendy
Cachi wife was Luz (Colombia)
Luz was in Columbia - Wendy was out of Luz
Wendy + Cachi went to live in North Carolina @ Alan
" in my cousin.

Wilson Gonzalez
interview
I met Wendy
went Luz was in
Colombia and Wendy
introduced me to
Wilson in 1999,
in 1998 when Angell
Ortiz came for her
vacation, I did not
know Wendy and
Wilson.

I first met Cachi in a lodge in Jamaica
1996 came to us for DR.
lived @ us in Jamaica Ques
Wendy was having problems @ work +
after 5 men moved out + went to her
with Manuel (deceased) for 1 week.

Cachi sold drugs + women in North Car.
" would transport drugs
I would transport prostitutes
one time sleep delivery, pros. Gordin, Alex Or
retiring 2 feet from under hood.
Cachi, Pedro
Air battle ~~Alfredo~~
" " Raphael he get it for Cachi

maner.

Cachi Walter A Gonzales - Hernandez


Saw 5 bikes in location in N.C

WILSON GONZALEZ / DIRECT / MR. DRUCKER

1 Q. And you currently live outside of the country?

2 A. Yes.

3 Q. Okay. I want to call your attention now to 1998,
4 1999, where were you living during that time?

5 A. What time?

6 Q. 1998, 1999, around there?

7 A. Here.

8 Q. Do you know the defendant in this case?

9 A. Yes.

10 Q. And by what name do you know him?

11 A. Cachie or Pedro.

12 Q. Do you know his true first name?

13 MR. WILLIAMS: Objection.

14 THE COURT: I will allow it.

15 A. No.

16 Q. Do you know his last name?

17 A. No.

18 Q. And how did you meet him?

19 A. Through my cousin because they were together.

20 Q. And what's your cousin's name?

21 A. Wendy.

22 Q. And what was Wendy's relationship with the defendant?

23 A. They were dating for a month and a half.

24 Q. And where was it that you first met the defendant?

25 A. Here in New York.

Lourdes Torres-Fuster, Senior Court Reporter

CARLOS ORTIZ / CROSS / MR. WILLIAMS

1 Q. Could you show the jury exactly how he was holding his
2 head, how he was sitting?

3 (Witness complies).

4 MR. WILLIAMS: Let the record reflect that Mr. Ortiz has
5 his head down and he has his right hand to his head.

6 Q. You said that you heard a voice say, concerning you,
7 "Leave him alone. He has nothing to do with this"?

8 A. "Don't do that to that man because he has nothing to do
9 with that".

10 Q. Do you remember which one of the men said that?

11 A. No.

12 Q. Do you remember from which direction that voice came
13 from?

14 A. I don't remember.

15 Q. Did Pedro ever say anything to you on that evening?

16 A. No.

17 MR. WILLIAMS: Nothing further, your Honor.

18 MR. KRATVILLE: No redirect, your Honor.

19 THE COURT: Okay. Thank you.

20 (Witness is excused).

21 THE COURT: You want to come up here for a minute.

22 (Discussion was held at the bench off the record).

23 THE COURT: We have to take another break.

24 Come here. Just wait.

25 (Discussion was held at the bench off the record).

Lourdes Torres-Fuster, Senior Court Reporter

CARLOS ORTIZ / DIRECT / MR. KRATVILLE

1 Q. And if you could show where you remember Pedro sitting?

2 A. Around here.

3 MR. KRATVILLE: Pointing at the chair on the right side
4 of the living room. *page 31*

5 I have no further questions, your Honor.

6 Thank you, sir.

7 CROSS-EXAMINATION

8 BY MR. WILLIAMS:

9 Q. Good morning, Mr. Ortiz.

10 A. Good morning.

11 Q. Put the microphone down to you, please.

12 You said that the man that you knew as Pedro was seated
13 in a chair in the living room?

14 A. Yes.

15 Q. And he was seated directly in front of you but right
16 across from you?

17 A. Yes.

18 Q. Is that where Pedro sat throughout this whole incident?

19 A. That I remember, yes.

20 Q. Are there some things about this night that you don't
21 remember now?

22 A. Could be.

23 Q. Now, you said that at some point Pedro was sitting with
24 his head down?

25 A. The times I saw him.

Lourdes Torres-Fuster, Senior Court Reporter

1 Q. Okay. At some point did you come back to 135th Street?

2 A. Yes.

3 Q. And was that the same day or the following day?

4 A. It was 40 or 50 minutes after what had happened before,
5 no longer.

6 Q. And who was there and what did you observe when you go
7 back to 135th Street to the basement apartment?

8 A. Rafael, Chacal and Germane were in the car.

9 Q. And was anybody else in the location in the area?

10 A. No. No, not in the car, no.

11 Q. And what did you do then?

12 A. I said "Well, what happened? Where you going?"

13 Q. And what did they tell you?

14 A. "We're going to go". They said to the cousin, the guy's
15 cousin's house. "Cachie knows where he lives so we're going to
16 go there".

17 Q. And was anything more discussed in terms of what you
18 would do once you got to the cousin's house?

19 A. Well, before we got to the door Cachie was going to act
20 as though he was the victim, as though he was also kidnapped.

21 Q. I'll bring you back just a little bit.

22 When you were in the car it's yourself, Rafael, Chacal
23 and Germane?

24 A. Yes.

25 Q. Do you know where Cachie was at that time?

*I importante
porque eso indica
que to do pasos el
mismo dia*

pag. 121

1 in.

2 Q. Did you eventually go somewhere after that?

3 A. A little while after they took me to the precinct.

4 They took Angelly and me to the precinct.

5 Q. And did you talk to them about what had happened?

6 A. Yes.

7 Q. After that night did you eventually return to the

8 Dominican Republic?

9 A. Not right away. A month later.

10 Q. Have you sometimes returned to New York after that in
11 connection with this case?

12 A. Yes.

13 MR. KRATVILLE: Can we get the Tv turned on?

14 Q. I'm showing you what is in evidence as People's Exhibit
15 1-E. Do you recognize that?

16 A. Yes.

17 Q. Where in that picture, if at all, is the sofa you were
18 lying on?

19 A. There where that cover is.

20 Q. The sofa on the right side?

21 A. Yes, where the cover is.

22 Q. Now, I'm just going to ask you if you could stand up
23 and point to the photograph where your head was in that sofa.

24 (Witness complies).

25 A. Here.

CARLOS ORTIZ / DIRECT / MR. KRATVILLE

1 Q. And why couldn't you say who they were?

2 A. Because I could only see them from the waist down.

3 Q. Were you able to hear if they actually made that phone
4 call?

5 A. Well, I could hear that they were talking in there but
6 I don't know what they did.

7 Q. Did they later come back into the living room?

8 A. Yes.

9 Q. What happened after they came back into the living
10 room?

11 A. They said that they were going to take Manuel with
12 them. They told him to get dressed because he was just wrapped
13 in a towel and that they were going to take him with them.

14 Q. Did they, in fact, have Manuel get dressed?

15 A. He got dressed.

16 Q. When all of this is going on did you see Pedro?

17 A. Yes. Pedro was sitting on a chair but I couldn't see
18 him well because he was sitting there and his head was lowered.

19 Q. You said they took Manuel and had him get dressed, what
20 did they do after that?

21 A. Well, they were going to take him with them. They
22 were going to take him with them. They were leaving and then
23 they came back and they said, "No, we're going to take Manuel's
24 documents".

25 Q. Okay. Throughout all of this did you see Angelly at

1 Philadelphia.

2 Q. Did you learn why Wilson was in trouble?

3 A. Yes, he had gone missing with some kilos.

4 Q. And did you know at that time what kilos referred to?

5 A. No.

6 Q. Did Pedro say what he planned to do as a result of
7 this?

8 A. He wanted at that hour to go and try to get Wilson
9 released but he said at that time it was impossible to find an
10 attorney who would go to help him get Wilson released.

11 Q. As a result of that did they make any plans for the
12 next day?

13 A. Yes.

14 Q. What did they plan to do the next day?

15 A. Find an attorney and go and see if they could go get
16 Wilson out.

17 Q. Were they going to do that together?

18 A. Well, according to what they spoke about, yes.

19 Q. At the end of this conversation did Pedro stay in the
20 apartment or did he leave?

21 A. He left.

22 Q. Where did Manuel go when Pedro left?

23 A. To the bedroom with Angelly.

24 Q. I'm now going to direct your attention to the next
25 morning October 7th, 1999, what did you do that day?

CARLOS ORTIZ / DIRECT / MR. KRATVILLE

1 A. I'm not sure.

2 Q. Looking around the courtroom do you see Pedro in the
3 courtroom today?

4 A. I don't recognize him.

5 Q. Okay. During this meeting did you learn how Pedro
6 knew Manuel?

7 A. No.

8 Q. Now, what did Pedro do when he came over?

9 A. He said that he needed to look for Wilson, that Wilson
10 was missing and that most likely he was in jail in Philadelphia.

11 Q. Who is Wilson?

12 A. One of Manuel's cousins.

13 Q. And when Pedro said these things who did he say them
14 to?

15 A. To Manuel.

16 Q. What room were Pedro and Manuel in when they had this
17 conversation?

18 A. In the living room.

19 Q. What room were you in at that time?

20 A. In the living room.

21 Q. So, you heard their conversation?

22 A. Well, yes, I wasn't paying a lot of attention because I
23 wasn't involved in that, but, yes, I did hear it.

24 Q. Now, what specifically did Pedro say about Wilson?

25 A. He was missing and that possibly he was in jail in

CARLOS ORTIZ / DIRECT / MR. KRATVILLE

1 Q. Did you stay at that apartment when you visited Manuel?

2 A. That's right.

3 Q. Where did you sleep when you stayed with Manuel?

4 A. On a sofa in the living room.

5 Q. Where did Angelly and Manuel sleep?

6 A. In the bedroom.

7 Q. I'm now going to direct your attention to the evening
8 of October 6, 1999.

9 Q. Were you at Manuel's apartment that night?

10 A. That's right.

11 Q. Did anyone come to Manuel's apartment that night?

12 A. Yes.

13 Q. Who came to Manuel's apartment?

14 A. Pedro.

15 Q. Had you ever met Pedro before that night?

16 A. No.

17 Q. Were you introduced to him when he came over?

18 A. Yes.

19 Q. Who introduced you to him?

20 A. Manuel.

21 Q. And did he tell you his name?

22 A. Yes.

23 Q. And his name was Pedro?

24 A. Pedro.

25 Q. Would you recognize Pedro if you saw him again?

1 A. Yes.

2 Q. When is the last time you traveled home to Columbia?

3 A. That was in 1999.

4 Q. And since then you haven't been back?

5 A. No.

6 Q. Can you go back home to Columbia?

7 A. No.

8 Q. Why not?

9 A. Because I don't have my Green Card.

10 Q. So, you're scared that you won't be let back into the
11 country?

12 A. Yes.

13 Q. How did you come to the United States the first time
14 you came here?

15 A. I came by Mexico, yes.

16 Q. Did you take a plane from Mexico to the United States
17 or did you cross the border?

18 A. I crossed the border.

19 Q. Did you cross the border by use of a coyote?

20 A. Yes.

21 THE COURT: Use of what?

22 MR. WILLIAMS: Coyote.

23 THE COURT: The animal?

24 Q. Would you please explain to the jury what a coyote is?

25 THE WITNESS: You're funny.

1 Q. Did you see any of these gentlemen there on the board
2 or Miguel with any weapons on that day before they went into the
3 building?

4 A. No.

5 Q. Did Miguel have any weapons on him on that day at all?

6 A. No, he's not a violent person.

7 Q. As far as you know have you ever seen Miguel in
8 possession of a gun or a knife or any other type of weapon?

9 A. Never. Never.

10 Q. Now, you said that in 2000 you were arrested and
11 charged with kidnapping, right?

12 A. Yes.

13 Q. Were there any other charges other than kidnapping that
14 you were accused of?

15 A. No. Conspiracy.

16 THE COURT: I'm sorry?

17 THE WITNESS: No, they accused me of kidnapping. Just
18 kidnapping.

19 Q. Did you have any other codefendants in that case other
20 than Ellerman?

21 A. Yes.

22 Q. Who was with you on the day during the events that led
23 up to your arrest of kidnapping, who was with you?

24 A. It was Wanda. Wanda Tavaréz.

25 THE COURT: Who is she?

1 Q. Did you see any of these gentlemen there on the board
2 or Miguel with any weapons on that day before they went into the
3 building?

4 A. No.

5 Q. Did Miguel have any weapons on him on that day at all?

6 A. No, he's not a violent person.

7 Q. As far as you know have you ever seen Miguel in
8 possession of a gun or a knife or any other type of weapon?

9 A. Never. Never.

10 Q. Now, you said that in 2000 you were arrested and
11 charged with kidnapping, right?

12 A. Yes.

13 Q. Were there any other charges other than kidnapping that
14 you were accused of?

15 A. No. Conspiracy.

16 THE COURT: I'm sorry?

17 THE WITNESS: No, they accused me of kidnapping. Just
18 kidnapping.

19 Q. Did you have any other codefendants in that case other
20 than Ellerman?

21 A. Yes.

22 Q. Who was with you on the day during the events that led
23 up to your arrest of kidnapping, who was with you?

24 A. It was Wanda. Wanda Tavarez.

25 THE COURT: Who is she?

Lourdes Torres-Fuster, Senior Court Reporter

1 CONTINUED CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q. Did you ask them to take Christian for you?

4 A. They told me like "Lucy, don't worry. We're going to
5 take Christian" and because I know that they love him, because
6 they love him. But, to fight with me for full custody I don't
7 think so.

8 Q. Okay.

9 A. No.

10 Q. Now, you said that -- I'm going to October 8, 1999.

11 You said that while you were sitting in the car with
12 Marisol you saw everybody run out of the building, correct?

13 THE COURT: Did you see everyone run out of the
14 building?

15 THE WITNESS: Yes.

16 Q. And you said that Miguel was upset?

17 A. Yes, very upset.

18 Q. And he said that Chacal did a stupid thing?

19 A. Yes.

20 Q. What else did he do that let you know that he was
21 upset, that he didn't approve of what happened?

22 A. He keep telling me all the time that they went there
23 not to get to that point. Like they don't want to do that. He
24 don't want to do that. Like they just went there to make a
25 phone call. Like he don't want that to happen, you know.

Lourdes Torres-Fuster, Senior Court Reporter

DIRECT/MULERO/PEOPLE

1 was like hysterical, like he was mad, he was telling Chacal
2 that, who told you to do that? Why you did that? We not
3 suppose to do that. We just went there to make a phone call,
4 you're not supposed to do that, why did you do that?
5 He said that was accident I am sorry.
6 Q. He said that was a what?
7 A. Accident.
8 Q. That's what Chacal said?
9 A. Yeah.
10 Q. Okay. And what else was done in the hotel, what else
11 happened that night in the hotel?
12 A. Chacal is staying in the hotel that night and we went
13 to our house or to the our -- I don't remember where we went
14 that night. I don't believe that was the house.
15 Q. And what happened with Chacal the next day?
16 A. Cachie told him that it's better to go to the
17 Dominican Republic for a little while until everything calm
18 down. So he buy the ticket for him and he flew to the
19 Dominican Republic.
20 Q. Who bought the ticket?
21 A. Cachie bought the ticket.
22 Q. For Chacal to go back to the Dominican Republic?
23 A. Yeah.
24 Q. And what did you and the defendant do in the
25 following days?

DIRECT/MULERO/PEOPLE

1 hand.

2 THE COURT: With a box?

3 THE WITNESS: Yeah.

4 Q. A box or bags?

5 A. Bags.

6 MR. WILLIAMS: Objection.

7 THE COURT: I would rather she testify.

8 MR. DRUCKER: I said did she say a box or bags.

9 THE COURT: Okay.

10 A. Plastic bags.

11 Q. And did you see what was in the bags?

12 A. No.

13 Q. And did you see what they did with the bags?

14 A. They put them in the other car.

15 Q. Did you have any conversation with them at that time?

16 A. No.

17 Q. And do you know what they did after they put the bags
18 in the car?

19 A. I think they go back to the building.

20 Q. And then what happened after that?

21 A. I was sitting in the car waiting and when I see they
22 coming out of the building running, they was running.

23 Q. Who did you see running?

24 A. Ellerman, Cachie, Rafael and Chacal. I don't see
25 Punalata. I don't remember.

DIRECT/MULERO/PEOPLE

1 A. Okay. In the car that I was, Cachie was driving,
2 Ellerman and Marisol.

3 Q. Ellerman came into your car?

4 A. Yes.

5 THE COURT: And who else?

6 THE WITNESS: And Marisol, the girl, and me.

7 Q. And the other three?

8 A. And the other three in the other car. I don't
9 remember who was driving, if it was Rafael. Yeah, I guess it
10 was Rafael.

11 Q. Did any of them know where the cousin's apartment
12 was?

13 A. No.

14 Q. Who knew where the cousin's apartment was?

15 A. Cachie.

16 Q. And did he drive there?

17 A. Yeah.

18 Q. And how did the other car know where to go?

19 A. They was following him.

20 Q. And where did you guys go at that time?

21 A. We going to Washington Heights to Wilson's cousin's
22 apartment.

23 Q. At that point was there any problem that the
24 defendant had mentioned to you?

25 A. No.

DIRECT/MULERO/PEOPLE

1 to sell it to people, to go there and get it.

2 Q. And who did Ellerman work for?

3 A. Actually he was more Rafael's friend than Cachie, you
4 know.

5 Q. Anyway, what was it the defendant said to you in the
6 car then?

7 A. That he gonna stop in Ellerman's house for a little
8 while.

9 Q. Did he say who was on the phone call that he was
10 talking?

11 A. No.

12 Q. Do you know who he was talking to on the phone?

13 A. No.

14 Q. Okay. And then where did you go then?

15 A. Went to Ellerman's house.

16 Q. On 135th Street?

17 A. Yeah.

18 Q. And what happened when you got there?

19 A. Marisol and I stay in the car waiting for him and
20 after that I saw Ellerman, Punalata, Chacal, Rafael and Cachie
21 leave the building and when he went to the car told me that
22 they going to Wilson's cousin apartment.

23 THE COURT: Who told you that?

24 THE WITNESS: Cachie told me.

25 Q. Let me stop you now and show you some photographs,

pag. 135
33
Grand J 141
278

pag. 33
Grand Jurado
ella dijo que ella estaba
adentro en el ~~car~~ sala

DIRECT/MULERO/PEOPLE

1 for him.

2 Q. And what happened then while you waited in the car?

3 A. Then I need to use the bathroom. So I went to the
4 apartment because he told me where was the apartment. So I
5 knock the door. So a guy open the door and then he was sitting
6 like talking nice with the guy like they know for long time.

7 THE COURT: Who was sitting?

8 THE WITNESS: Miguel.

9 THE COURT: Okay.

10 A. And I just ask him for a favor to use the bathroom.
11 So he let me use the bathroom and then I go back to the car.

12 Q. And who did you see in the apartment while you were
13 there?

14 A. I see Cachie and two guys that I don't remember
15 faces.

16 Q. Do you remember the age of the two of them?

17 A. No. I know one of them was an old guy but I don't
18 remember the other guy.

19 Q. Okay. Did that appear to be a friendly conversation
20 they were having at that time?

21 A. Very friendly.

22 Q. Then you went back to the car?

23 A. Yes, I went back to the car.

24 Q. When you went back to the car did the defendant stay
25 with you or he stayed in the apartment?

DIRECT/MULERO/PEOPLE

1 the only thing I remember is that the guy escape from them, he
2 run, he start running.

3 THE COURT: Were you present?

4 ~~X~~ THE WITNESS: Yes, I was there.

5 THE COURT: You were present and you saw him
6 run?

7 THE WITNESS: Yes.

8 THE COURT: What did the other guys do?

9 THE WITNESS: They try to run to get him or
10 something but he escape.

11 THE COURT: When they first saw him, though,
12 what did they do?

13 THE WITNESS: They just tried to grab him and he
14 start running.

15 BY MR. DRUCKER:

16 Q. And do you know who the people were that came on your
17 behalf?

18 A. It was Rafael, Rafael's friends.

19 Q. And do you know who his friends were?

20 ~~X~~ A. At that moment no but I met them later, was Punalata,
21 they call him Punalata, Chacal and Ellerman.

22 Q. Okay. We'll discuss them in a few minutes, okay?

23 A. Okay.

24 Q. And after that happened what else did the defendant
25 do to try to contact Wilson?

1 A. The bodega was closed.

2 Q. About how long after the actual sale was made did you
3 go to the bodega?

4 A. Was like three days after that, four days, because he
5 was keep calling Wilson. He never answer the phone. So
6 something was funny. So he said, "Let's go to the bodega to see
7 what happen", and nobody was there.

8 Q. And anything else the defendant did to try to contact
9 Wilson at that time?

10 A. He just try all ways to contact Wilson.

11 And Wilson's family and the cousin Wendy they don't
12 know nothing about him, so.

13 Q. Do you know who in Wilson's family he tried to contact?

14 A. I think that he called his father in the Dominican
15 Republic and his brother, but I don't know where his brother
16 was.

17 Q. And did you learn anything from those calls?

H 18 A. No. And we heard that somebody told Cachie that he
19 was in jail in Pennsylvania.

20 Q. Do you know who told the defendant that?

21 A. I don't remember who told him that.

22 Q. Who told him who was in jail in Pennsylvania?

23 A. That Wilson was in jail in Pennsylvania.

24 Q. And did the defendant believe that?

25 A. We actually not, not believe that.

1 THE COURT: No. Where were they in the bodega?

2 THE WITNESS: Yes. This was inside the bodega, sorry.

3 Q. And at some point did the defendant come out of the
4 bodega?

5 A. Yes.

6 Q. What happened then?

7 A. He told me that the guy wants five kilos and he say
8 that he's going to pay in two days and I just tell him like do
9 whatever you want to do.

10 Q. And did the defendant have the five kilos with him at
11 that time?

12 A. Yes. No, no, not in the bodega.

13 Q. What happened then?

14 A. The next day he give the five kilos to Wilson.

15 THE COURT: "He" being?

16 THE WITNESS: Miguel.

17 Q. And how do you know that?

18 A. Miguel told me.

19 Q. So, tell us what happened the next day?

20 A. Wilson went there to Cachie's house and Cachie went
21 with him to the apartment where the merchandise is and give him
22 the five kilos.

23 Q. How did you learn that?

24 A. He told me. Cachie told me.

25 Q. Who told you?

ANGELLY ORTIZ / CROSS / MR. WILLIAMS

1 A. Yes.

2 Q. What did the older man do next?

3 A. I don't remember. I just remember he was walking and
4 that he went to the bathroom.

5 Q. During that time while he was in the bathroom and when
6 he came out of the bathroom what was Pedro doing?

7 A. I just remember he was sitting. *trial pag. 283*

8 Q. Now, yesterday you said that when the men try to bind
9 your hands that Pedro told them to not do that to you, correct?

10 A. Correct. *page 37*

11 Q. Did they listen to him and not tie your hands?

12 A. No.

13 Q. Do you remember which of the gentlemen tied your hands
14 together?

15 A. No.

16 Q. Your father was seated on the sofa, did anyone try to
17 bind his hands together?

18 A. I don't remember that.

19 Q. Did anyone hold your father down or put anything over
20 his face at that time?

21 A. They put a pillow on his face.

22 Q. Do you remember which individual did that?

23 A. No.

24 Q. Did Pedro say anything to any of the men when they put
25 the pillow over your father's face?

ANGELLY ORTIZ / CROSS / MR. WILLIAMS

1 A. Yes.

2 Q. What did the older man do next?

3 A. I don't remember. I just remember he was walking and
4 that he went to the bathroom.

5 Q. During that time while he was in the bathroom and when
6 he came out of the bathroom what was Pedro doing?

7 A. I just remember he was sitting.

trial pag. 283

8 Q. Now, yesterday you said that when the men try to bind
9 your hands that Pedro told them to not do that to you, correct?

10 A. Correct.

11 Q. Did they listen to him and not tie your hands?

12 A. No.

13 Q. Do you remember which of the gentlemen tied your hands
14 together?

15 A. No.

16 Q. Your father was seated on the sofa, did anyone try to
17 bind his hands together?

18 A. I don't remember that.

19 Q. Did anyone hold your father down or put anything over
20 his face at that time?

21 A. They put a pillow on his face.

22 Q. Do you remember which individual did that?

23 A. No.

24 Q. Did Pedro say anything to any of the men when they put
25 the pillow over your father's face?

ANGELLY ORTIZ / CROSS / MR. WILLIAMS

1 Q. Was he sitting on the arm of the sofa or was he sitting
2 on the floor or in a chair to the left of the sofa? *micate*

3 A. In a chair.

*paq-10?
dijo yo estaba
sentado en el sofa*

4 Q. And, there were other men in the apartment other than
5 him, your father and your husband, correct?

6 A. Yes.

7 Q. What were the other men doing, the other four men?

8 I guess the four other men in the apartment what were
9 they doing?

10 A. I remember the older man who was walking and went into
11 the bathroom and there were several of them. I don't remember.

12 Q. When you say the older man I'm going to show you
13 People's 7 in evidence.

14 THE COURT: You want to put it on the screen?

15 MR. WILLIAMS: No, I'll just show it to the witness.

16 (Handing).

17 Q. Is that the older man that you spoke of?

18 A. Yes.

19 Q. Did he go into the bathroom alone or was he with
20 another person?

21 A. With another person.

22 Q. And how long did they stay in the bathroom?

23 A. A little time.

24 Q. And at some point they came back out into the living
25 room?

ANGELLY ORTIZ / CROSS / MR. WILLIAMS

1 understand just ask me to repeat myself. Okay?

2 A. Okay.

3 Q. Now, you said that the first time that you saw a man,
4 I'll call him Pedro, was on October 6 of 1999, correct?

5 A. I had said I had seen him in '98.

6 Q. '98. And when you first met him you didn't have a long
7 conversation with him, right?

8 A. No, sir.

9 Q. You only saw him or spoke with him for a few minutes,
10 right?

11 A. Correct.

12 Q. And the next time that you saw him face-to-face was on
13 the 9th that your husband was killed, correct?

14 A. Yes.

15 Q. Did you see him when he entered the apartment?

16 A. Yes, inside the apartment.

17 Q. Well, were you in the living room when he entered the
18 apartment or with you in the bedroom?

19 A. In the room.

20 Q. In the bedroom?

21 A. Bedroom.

22 Q. When you walked into the living room where was he?

23 A. In the living room.

24 Q. But, where in the living room?

25 A. He was sitting at the left of the sofa.

Lourdes Torres-Fuster, Senior Court Reporter

*pedro = 1998
el JO que yo estaba sentado
en silla*

DIRECT/ANGELLY ORTIZ/PEOPLE

1 A. They had left the door open and I closed it and at
2 that moment they knocked on the door and the person said that
3 it was the super.

4 Q. What did you do?

5 A. I asked him if he could go and call nine-eleven.

6 Q. Why did you need him to call 911?

7 A. Because Manuel was wounded.

8 Q. Why couldn't you do that from your apartment?

9 A. Because they took the telephone with them.

10 Q. Did you go with them to call 911 be or did you stay
11 there?

12 A. I went to the super's apartment and I called 911.

13 Q. Where did you after you called 911?

14 A. I remember that the police came very quickly and they
15 took me with them.

16 Q. Where did they take you to?

17 A. To the precinct.

18 Q. Was Manuel still in the apartment when they took you
19 to the precinct?

20 A. I don't remember. I think that the ambulance people
21 were there but I don't remember.

22 Q. And when you got to the precinct what did you do?

23 A. They were asking me questions for a long time.

24 Q. Were you able to tell them who any of the men were
25 who were involved?

DIRECT/ANGELLY ORTIZ/PEOPLE

1 concerning October 6th. In the morning session when she
2 testified at the Independent Source Hearing she said that she
3 didn't know who was in the apartment, she didn't recognize the
4 voice, she only knew that it was Mr. Dellos Santos because
5 Manuel told her so.

6 Now here she said that she, that Manuel told her that
7 Pedro was coming to the apartment and that she recognized his
8 voice. Which is drastically different.

9 I would just ask that her testimony concerning
10 October 6th be stricken from the record. It really shouldn't
11 be considered by the jury because she contradicted herself and
12 I think when trying to impeach her without being able to put
13 the transcript in her face --

14 THE COURT: You can get the transcript you won't
15 be cross examining her until tomorrow.

16 MR. WILLIAMS: That's true.

17 THE COURT: And I don't think that's the remedy
18 to strike her testimony. Certainly it's fruitful for
19 impeachment and I would allow that.

20 MR. WILLIAMS: I guess in light of the
21 circumstances instead of beating on her about that fact I think
22 it could be better if perhaps the People would be willing to
23 stipulate that in fact on October 6th she did not know that
24 Pedro was in the apartment.

25 THE COURT: We'll get the minutes and obviously

DIRECT/ANGELLY ORTIZ/PEOPLE

1 A. Yes.

2 Q. What were they tied with?

3 A. Tape.

4 Q. And what happened when they tied your hands?

5 A. Pedro asked why they tied me up when I had not done
6 anything. *ped. 10?*

7 Q. Did they tie your father up as well?

8 A. No.

9 Q. How about Manuel?

10 A. No. That I recall, no.

11 Q. What was the next thing that happened?

12 A. He told me again to go get Manuel's documents. So I
13 went to the bedroom to look for them.

14 Q. I am going to stop you for just a second. Prior to
15 this moment when you went into the bedroom had anyone else gone
16 into the bedroom since you came out?

17 A. Yes.

18 Q. When had anyone else gone to the bedroom?

19 A. When Manuel went to open the door when they arrived
20 Manuel had gone to door with a towel wrapped around his waist.
21 Before they told me to look for the documents they had gone
22 with Manuel to the bedroom so that he could get dressed and
23 leave with them to look for his cousin.

24 Q. Do you recall who said that they would have him get
25 dressed and then leave to look for his cousin?

DIRECT/ANGELLY ORTIZ/PEOPLE

1 T-4 - Peo. V Miguel Dellos Santos, Ind.#3444/02

2 July 2, 2014:

3 CONTINUED DIRECT EXAMINATION

4 BY MR. KRATAVILLE:

5 Q. When you say he changed color, how do you mean?

6 A. My father is dark skin and he was like white.

7 Q. Do you remember whether there was anything covering
8 his face or head at that time?

9 A. No.

10 Q. No there wasn't or no you don't remember?

11 A. I don't remember.

12 Q. You said Manuel was standing up in the living room?

13 A. Yes.

14 Q. Where in the living room was he?

15 A. He was in front of the sofa.

16 Q. The one that your father was lying on?

17 A. Yes.

18 Q. Where was Pedro?

19 A. He was sitting on the sofa but in the space after
20 where my father's feet stopped. page 210
page 215

21 Q. Was there anyone else near Pedro at that time?

22 A. I don't remember if they were near him.

23 Q. Was there anything unusual about his appearance?

24 A. Pedro's appearance?

25 Q. Yes. Pedro's appearance.

1 A. Manuel told me that he was thinking about going to look
2 for him in several places.

3 Q. And during this conversation did Manuel tell you what
4 he planned to do the following day?

5 A. Yes.

6 Q. What did Manuel plan to do the next day?

7 A. He was going to wait for Pedro's call and then go out
8 and look for his cousin.

9 Q. Was he going to look alone or was he going to look with
10 someone?

11 A. Manuel and Pedro.

12 Q. And he formed those plans as a result of that
13 conversation he just had?

14 COURT INTERPRETER: I'm sorry, counsel.

15 Q. He formed those plans as a result of the conversation
16 he had just had?

17 A. Yes.

18 Q. Now, I'm going to direct your attention to the next
19 morning October 7th, 1999.

20 What happened that morning?

21 A. Manuel called an uncle that he and Wilson had in
22 common.

23 Q. So, he was the uncle of both Manuel and of Wilson?

24 A. Yes.

25 Q. What was that uncle's name?

1 A. A few minutes.

2 Q. Were you still in the bedroom when the conversation
3 ended?

4 A. Yes.

5 Q. Where did Manuel go after the conversation ended?

6 A. He came to the bedroom where I was.

7 Q. How did he appear when he came into the bedroom?

8 A. Worried.

9 Q. Did he speak to you at that time?

10 A. Yes.

11 Q. How did he sound when he spoke to you?

12 A. Very worried.

13 Q. What did he tell you?

14 MR. WILLIAMS: Objection.

15 THE COURT: I will allow it. It is part of the
16 narrative.

17 A. He said that Pedro had come to tell him that his cousin
18 was missing. That his cousin was going around with some devices
19 and that they didn't know if he had been arrested and they
20 didn't know if they had taken the devices away from him.

21 Q. When you say devices is that a slang term?

22 A. Yes.

23 Q. What did you understand that term to mean?

24 A. Manuel told me that it was drugs.

25 Q. Did Pedro say where Wilson was at that time?

Lourdes Torres-Fuster, Senior Court Reporter

1 Q. Now, when you say you weren't paying attention were
2 there sounds that you weren't paying attention to or there
3 weren't any sounds at all?

4 A. Probably I was watching television.

5 Q. Did you hear any voices?

6 A. Yes.

7 Q. Where were the voices coming from?

8 A. From the living room.

9 Q. How many voices could you hear?

10 A. Two.

11 Q. Was one of them Manuel's?

12 A. Yes.

13 Q. Did you recognize the other voice?

14 A. The other one was Pedro.

15 Q. You said you didn't pay attention to what they were
16 saying?

17 A. No.

18 Q. Why not?

19 A. Well, maybe because the visit was short and I was doing
20 something else.

21 Q. Now, that conversation happened in the living room, did
22 it eventually end?

23 A. Yes.

24 Q. You said it was short, was it again a few seconds, a
25 few minutes, more than a few minutes?

*Grand Jurado
42*

1 A. Pedro.

2 Q. Who is the cousin?

3 A. Wilson.

4 Q. How many times did you meet Pedro in June of 1998?

5 A. Once.

6 Q. For how long did you meet him?

7 A. A short time.

8 Q. Was it a few seconds, a few minutes or more than a few
9 minutes?

10 A. Minutes.

11 Q. Who was there when you met Pedro?

12 A. Manuel, Wilson, Pedro and myself.

13 Q. Do you remember the circumstances of meeting Pedro?

14 A. No, I don't.

15 Q. You said Wilson was Manuel's cousin?

16 A. Yes.

17 Q. Had you met Wilson before then?

18 A. Yes.

19 Q. When?

20 A. In Santo Domingo.

21 THE COURT: Any problem with that?

22 MR. WILLIAMS: No, your Honor.

23 THE COURT: In evidence. What number?

24 MR. KRATVILLE: People's 5, your Honor.

25 THE COURT: Just put it on the screen if you want.

Lourdes Torres-Fuster, Senior Court Reporter

Carroll 100317

PROCEEDING

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: She said she saw a lot of photographs and it's been a long time, but I do believe the People have met their burden on the Independent Source.

She saw him once very briefly in '98 and then when he came to the home with the others she remembered him from the last meeting. He was in the home for quite some time under very intense circumstances. It's clear that she saw him. She viewed him. She remembered him. She is testifying about his identification, not based on any photos that she saw 15 years ago but on her independent recollection of the man who was in the home when her husband was killed.

She will be able to identify him in court.

Okay. I'll see you at 2:15.

(Luncheon Recess)

PROCEEDING

1 THE COURT: Anything?

2 MR. WILLIAMS: No.

3 THE COURT: Okay. You're excused, ma'am.

4 (Witness is excused).

5 THE COURT: All right.

6 MR. DRUCKER: You want argument now, your Honor?

7 THE COURT: Yes.

8 MR. DRUCKER: We argue that there is truly an
9 independent source for the Court to allow the witness to
10 identify the defendant in court untainted by the photo
11 arrays she was shown.

12 Again, I know it is very difficult for the Court since
13 you were not there for the Wade hearing and what I will say
14 about it will not be contested and the minutes are
15 available if the Court--

16 THE COURT: I looked at them.

17 MR. DRUCKER: Okay. Great. Initially, the witness knew
18 the defendant prior to the incident. She saw him for an
19 extended time during the incident. She clearly knew of the
20 people during the crime which one was Pedro and in terms of
21 how much she was tainted by the photo arrays she viewed
22 photographs, the lineups from many years ago, and I think
23 it is common sense that she remembers today the incident
24 where her husband was killed over an extended period of
25 time, not one or two, among many photos, she was shown 12,

Lourdes Torres-Fuster, Senior Court Reporter

1 when Investigator Hall showed it to you?

2 A. The time, no.

3 Q. Was it a short time or a long time?

4 A. The time that was needed.

5 Q. Over the course of this case did you also view several

6 lineups?

7 A. Yes.

8 Q. Was Pedro ever in any of those lineups?

9 A. No, no, I don't remember.

10 Q. Looking around the courtroom do you recognize Pedro in
11 the courtroom today?

12 A. Yes.

13 Q. Can you point to him and indicate an article of
14 clothing he is wearing?

15 A. He has a cream colored tie on.

16 THE COURT: Indicating the defendant.

17 MR. KRATVILLE: Thank you, your Honor.

18 THE COURT: Anything else?

19 MR. KRATVILLE: Just two quick questions.

20 Q. When you say you recognize Pedro in the courtroom where
21 do you recognize him from?

22 A. From Manuel's apartment.

23 Q. Not from the photographs you were shown?

24 A. No.

25 MR. KRATVILLE: No further questions, your Honor.

Lourdes Torres-Fuster, Senior Court Reporter

she never knew me

ANGELLY ORTIZE-INDEPENDENT SOURCE-DIRECT-MR. KRATVILLE

1 vision?

2 A. Yes.

3 Q. About how much time would you say passed from when yo
4 came into the living room until the time you heard the shot?

5 A. About an hour. 1 10:52

6 Q. And the days after Manuel was shot do you recall
7 talking to NYPD detectives?

8 A. Yes.

9 Q. In particular, do you recall a Detective Dimuro showing
10 you a series of photographs?

11 A. Yes.

12 Q. At this time do you recall whether any of the
13 photographs you were shown in the days and months after the
14 murder was a picture of Pedro?


15 A. I saw a lot of photographs but I don't remember.

16 Q. You don't remember if one of them was Pedro?

17 A. I'm not sure. I saw a lot of them.

18 Q. Then about two and a half years later in 2002, do you
19 recall Investigator Joe Hall showing you some arrays of
20 photographs?

21 A. Yes.

22 Q. Do you recall whether any of those arrays of
23 photographs had a picture of Pedro? 

24 A. Yes.

25 Q. Do you recall how long you looked at that photo array

ANGELLY ORTIZ-INDEPENDENT SOURCE-DIRECT-MR. KRATVILLE

1 which ones.

2 Q. Where was Pedro?

3 A. I don't remember if he went into the bedroom or if he
4 stayed in the living room.

5 Q. What happened after that?

6 A. They came back out with Manuel. That they were going
7 to take him to go get his cousin. They told me to go and get
8 Manuel's documents. And as I said they hit Manuel in the face
9 because he was signalling to me to not go get the documents.

10 But, anyway they sent me to get them. When I went to
11 get them that's when the shot was heard.

12 Q. Where did you go get the documents?

13 A. To the room.

14 Q. The bedroom?

15 A. Yes.

16 Q. Until you went there into the bedroom, right before you
17 heard the shot, where had you been the whole time since coming
18 out to the living room?

19 A. In the living room sitting.

20 Q. And, for most of that time where was Pedro?

21 A. Seated.

22 Q. Did you look at Pedro at all during that period of
23 time?

24 A. Yes.

25 Q. ~~And for most of that time he was in your field of~~

1 Q. Of the five men that you described aside from your
2 father and Manuel did you recognize any of them?

3 A. Yes, Pedro was there.

4 Q. Where did you recognize Pedro from?

5 A. From the year before when I had come for my vacation.

6 Q. Did you recognize any of the four men?

7 A. No.

8 Q. Could you briefly describe what happened after you came
9 out into the living room?

10 A. There was a man there pointing a pistol at Manuel's
11 head. The other four men were there. The person who was
12 holding the gun to Manuel's head was threatening him and telling
13 him not to look at him. He told me to look. He told me to go
14 and get Manuel's documents. And Manuel was making signals to me
15 like to not look for them. And the person hit Manuel in the
16 face with the gun.

17 Q. Now, up until that point had anyone gone into the
18 bedroom since you came out?

19 A. Afterwards they went into the bedroom with Manuel.

20 Q. Who went into the bedroom with Manuel?

21 MR. WILLIAMS: Objection, your Honor.

22 Outside the scope of this hearing.

23 THE COURT: I will allow it.

24 A. I remember that the man who was holding the gun to his
25 head was one of them. And another two but I don't remember

ANGELLY ORTIZE-INDEPENDENT SOURCE-DIRECT-MR. KRATVILLE

1 A. Yes.

2 Q. Did anyone come to visit Manuel on October 6, 1999?

3 A. Yes.

4 Q. Who came to visit that day?

5 A. Pedro.

6 Q. Did you see Pedro when he came to visit on October 6?

7 A. No.

8 Q. Where were you at that time?

9 A. In the bedroom.

10 Q. Where was Pedro?

11 A. In the living room.

12 Q. Who was in the living room with him?

13 A. That I remember just Manuel.

14 Q. Did Manuel afterwards tell you who had come by?

15 A. Yes.

16 Q. Who did he say come had by?

17 A. He told me that Pedro had come over.

18 Q. When he told you that did you recognize Pedro's name?

19 A. Yes.

20 Q. Did you have an image of Pedro in your mind when he had
21 told you that Pedro had come by?

22 A. No, I don't recall.

23 Q. Now, I'm going to direct your attention to the next
24 night October 7th, 1999, were you in the apartment that night as
25 well?

1 Q. Were you visiting anyone in particular?

2 A. My husband.

3 Q. What was your husband's name?

4 A. Manuel Gonzalez.

That never happened

5 Q. Who was it that introduced you to Pedro while you were
6 visiting Manuel Gonzalez?

7 A. He was with one of Manuel's cousins.

8 Q. And what was that cousin's name?

9 A. Wilson.

10 Q. Who else was there when you met Pedro and Wilson?

11 A. Manuel, Wilson and Pedro.

12 Q. It was just the four of you?

13 A. Yes, that I recall.

14 Q. And what was going on when you met Pedro?

15 A. Well, they just came to visit.

16 Q. How long did you meet Pedro for in 1998?

17 A. I don't recall.

18 Q. Was it more than a few minutes?

19 A. A few minutes.

20 Q. Was that the only time you met Pedro during that trip?

21 A. Yes.

22 Q. Now, directing your attention to October 6, 1999, where
23 were you on October 6?

24 A. In New York, Manhattan.

25 Q. Were you again visiting Manuel?

ANGELLY ORTIZE-INDEPENDENT SOURCE-DIRECT-MR. KRATVILLE

1 ANGELLY ORTIZ,

2 called as a witness by and on behalf of the People at
3 the Independent Source hearing, having been first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. KRATVILLE:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. Are you familiar with an individual known to you as
10 Pedro?

11 A. Yes.

12 Q. When did you first meet Pedro?

13 A. 1998.

14 Q. What city were you in when you met Pedro?

15 A. Manhattan.

16 Q. Were you living in New York at that time?

17 A. No.

18 Q. Where did you live at that time?

19 A. Santo Domingo.

20 COURT INTERPRETER: Your Honor, and everyone, can you
21 hear me all right?

22 MR. WILLIAMS: Yes.

23 COURT INTERPRETER: Thank you.

24 Q. What brought you to New York?

25 A. Vacation.

Lourdes Torres-Fuster, Senior Court Reporter

ANGELLY ORTIZE-INDEPENDENT SOURCE-DIRECT-MR. KRATVILLE

1 THE COURT: Let's do the Independent Source hearing.

2 MR. DRUCKER: Angelly Ortiz, your Honor!

3 THE COURT: This witness needs an interpreter.

4 I think we only need one interpreter speaking because
5 she's going to speak in Spanish. The witness is going to
6 speak in Spanish. He'll understand that. She's going to
7 interpret for me in English.

8 COURT OFFICER: You're going to remain standing. Put
9 your bag down. Raise your right hand. Face the Clerk.

10 COURT CLERK: Do you swear or affirm the testimony you
11 are about to give the Court will be the truth, the whole
12 truth and nothing but the truth?

13 THE WITNESS: Yes, I swear.

14 COURT CLERK: You can have a seat.

15 COURT OFFICER: State your name please. Give the
16 spelling of your last name.

17 THE COURT: I just need you to do me a favor. When
18 you're speaking in Spanish I need you to speak loud enough
19 for him to hear.

20 THE WITNESS: Angelly Ortiz. O-r-t-i-z.

21 COURT CLERK: County of residence.

22 THE WITNESS: Florida.

23 THE COURT: Please have her speak loudly in Spanish.
24 Thank you. Okay.

25 MR. KRATVILLE: Thank you.

Lourdes Torres-Fuster, Senior Court Reporter

DIRECT/DET.ULAN/PEOPLE

1 THE COURT: Thank you. Now you can come up.

2 (The witness was excused and exits the courtroom.)

3 (Bench conference was held off the record with the
4 Court and counsel.)

5 (Sidebar concluded, back in open court.)

6 THE COURT: All right, here's the good news, you
7 are going to lunch. I just want to say a few things to you.
8 You can enjoy your lunch, you can not discuss this case among
9 yourselves.

10 What I failed to tell you this morning, there may be
11 some newspaper account of this trial. I don't know but there
12 may be. You are not to read the newspapers. You are on your
13 honor. Because you decide what happens here not what the
14 newspapers say.

15 All right. Have a good lunch. I will see you at
16 2:15. Okay.

17 (The jury was excused for a luncheon recess.)

18 THE COURT: All right. We're going to go to the
19 Independent Source Hearing now.

20 (Continued on next page.)

21

22

23

24

25

Glenn J. Merola, Sr. Court Reporter

1 A. Yes.

2 Q. And just so the record is clear,
3 he is different from the Rafael who was
4 involved in taking and buying cocaine with
5 Wilson?

6 A. Yeah.

7 Q. And Ellerman Valverde, he is the
8 man that we have referred to as Ellerman,
9 correct?

10 A. Yeah.

11 Q. The one whose house he went to
12 the night the shooting happened?

13 A. Yes.

14 MS. KANE: Does that
15 satisfy your question?

16 JUROR: Yes.

17 MS. KANE: Members of the
18 Grand Jury, I am going to ask

19 that Ms. Mulero step out. You
20 may be excused. Thank you very
21 much for your time today.

22 (WITNESS EXCUSED.)

0000000000

1 Grand Jury has now heard more of the story and
2 can connect everything better.

3 Your boyfriend during the time
4 of this incident that you told us about was
5 Miguel Del Los Santos, correct?

6 A. Yes.

7 Q. And he went by the nickname
8 Cachie?

9 A. Yes.

10 Q. And what other nickname did he
11 use?

12 A. Pedro.

13 Q. And some other names too?

14 A. Yeah, but I don't remember.

15 Q. Now, you testified about Chacal?

16 A. Yeah.

17 Q. Chacal is Juan Rincon?

18 A. Yeah.

19 Q. Punalada, is he Juan Pilne?

20 A. Yes.

21 Q. Rafael Del Los Santos, is he
22 Miguel Del Los Santos' brother?

000206

DIRECT/DET.ULAN/PEOPLE

1 living room?

2 A. Yes.

3 Q. I am showing you 1D, is this also part of the living
4 room?

5 A. Yes.

6 Q. I am showing you 1E. What is that door in 1E there?

7 A. That's the front door to the apartment.

8 Q. And that pool of blood in the middle, is that the
9 same pool of blood where you say you found the body?

10 A. Yes.

11 Q. This is 1F. And that's, again, the same pool of
12 blood and couch?

13 A. Yes.

14 Q. And this is 1G, can you describe what we're seeing
15 here?

16 A. That's the the same couch that you saw on the
17 previous photo but laying on the ground perspective, you can
18 see the firearm under the couch.

19 Q. If you could actually stand up and try and point out
20 where that firearm is to the jury.

21 (Witness complies.)

22 A. This is the firearm right here. This is the barrel.

23 MR. KRATVILLE: For the record, the witness is
24 pointing about a third of the way of the photo directly under
25 the couch.

1 A. Yeah, Rafael said that Chacal
2 got to go, he cannot stay here and they say he
3 had to go back to Dominican Republic and that
4 moment they say that but he went to Puerto
5 Rico.

6 Q. How do you know that is where he
7 went, to Puerto Rico?

8 A. Because Rafael bought the
9 ticket.

10 Q. Rafael Del Los Santos bought a
11 ticket for Chacal to fly to Puerto Rico?

12 A. Yes.

13 Q. How soon after that night where
14 Wilson's cousin was shot did that happen, the
15 ticket was purchased for Chacal and he left?

16 A. That was two days after that.

17 Q. Did you ever see Chacal again
18 after that time?

19 A. No.

20 Q. Ms. Mulero, I am going to show
21 you what has been previously marked as Grand
22 Jury Exhibit No. 1 for identification. I am



COMPLAINT FOLLOW-UP INFORMATIONAL
PD 313-081A SECOND SHEET (Rev 8-90)-H-1

Pct	Page	of	Pages
30	7546		
Complaint No.		Date of This Report	
7546		10-7-99	

DETAILS

..... He said I don't know They hit him Manuel said I have his father's # let me call him They took in the back to call I hear a struggle. They took the pillow off me one guy says don't do anything to this guy he didn't do anything. I took a blanket and covered my face. The guy says take it off so you can breathe better. They called D.R. Manael screamed tell them where he is they are agoing to kill me. They came back then they told manuel to lie on the floor..we are going to kill you. They then turned to another guy and said we are going to kill you too. The guy said you don't have to watch me you have my son. They said we will kill you then we will kill your son. That was when I realized that the guy talking was the same guy that was with manuel last night (guy who said you have my kid) I then heard a shot. Someone said oh my god let's get out of here They all ran out

note; prior to shot they had told manuel to get dressed.
note; At one point I heard something drop and get pushed under sofa.

Case active.

CASE <input type="checkbox"/> ACTIVE <input type="checkbox"/> CLOSED		DATE REVIEWED/CLOSED 10/8/99	IF ACTIVE, DATE OF NEXT REVIEW	
REPORTING OFFICER DIMURO	RANK DET	SIGNATURE	NAME PRINTED DIMURO	TAX REG. NO. 878995
REVIEWING/CLOSING SUPERVISOR	CASE CLOSED: C _____ OR B _____	ENTER DESIGNATION	SIGNATURE	COMMAND 30 sqd.
			C.O.'s INITIALS	

1 Q. But you knew it that night, is
2 that right?

3 A. Yeah, uh-huh. So I was waiting
4 in the car for about 40, 45 minutes; and I need
5 to use the bathroom.

6 Q. You had to go to the bathroom?

7 A. Yeah. So I get out of the car
8 and I went to the building, and I went to the
9 apartment. And when I open the door, this guy
10 opened the door.

11 Q. Okay. When you opened the door,
12 someone opened the door, is that right?

13 A. Yes.

14 Q. Had you ever seen this person
15 before?

16 A. No.

17 Q. Okay. Was Miguel Del Los Santos
18 inside the apartment at that time?

19 A. Yes.

20 Q. What did you do when you saw
21 these two individuals?

74 trail
Page 201

22



COMPLAINT - FOLLOW UP INFORMATIONAL PD 313-081A (Rev. 4-89)-31

Crime: Homicide 11-99 Pct: 30 OCCB No. 7546 Date of This Report: 10-8-99

of Orig. Report: 10-8-99 Date Assigned: same Case No.: 1581 Unit Reporting: 30th detective quad Follow-up No.: 11

Complainant's Name - Last, First, M.I.: PSNV Victim's Name - If Different:

AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."

Comp. Interviewed: Yes/No In Person: Yes/No By Phone: Yes/No Date: Time: Results: Same as Comp. Report - Different (Explain in Details)

Witness Interviewed: Yes/No In Person: Yes/No By Phone: Yes/No Date: Time: Results: Same as Comp. Report - Different (Explain in Details)

Canvass Conducted: Yes/No If Yes - Make Entry in Body Re: Time, Date, Names, Addresses, Results Crime Scene Visited: Yes/No If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained

Complainant Viewed Photos: Yes/Refused/Future Results: Witness Viewed Photos: Yes/Refused/Future Results:

Crime Scene Disturbed: Yes/No By (Enter Results in Details) Crime Scene Photos: Yes/No By (Enter Results in Details)

If Closing Case "No Results," Check Appropriate Box and State Justification in Details: C-1 Improper Referral C-2 Inaccurate Facts C-3 No Evidence / Can't ID C-4 Uncooperative Complainant C-5 "Leads" Exhausted

DETAILS: INVESTIGATION : HOMICIDE 11-99 SUBJECT : INTERVIEW CARLOS ORTIZ 10-2-43 478 W145th st apt33

On October 8-99 at 0826hrs Carlos Ortiz provided the following statement re: the events that took place inside of apt 33 at 478 W 145th st leading up to the shooting death of Manuel Gonzalez;

- I have known deceased Manuel Gonzalez for 11 years My daughter and Manuel have two children together 8 and 4 years old Both in D.R. # I have visited Manuel at 478 W 145th st many times and stayed there alone on one occasion. My daughter lives in D.R. Manuel moved here permanently 5 years ago. I ve been here at least six times since 1998. Manuel has had the apt for five years.

Two nights ago (Wednesday) Manuel had a visitor (I don't know him -M/H /32 He told Manuel that he was told that Wilson was in jail in Philly. Wilson is Manuel's cousin. The man said Wilson had started working for him in his grocery store and had begun transporting drugs on a bus. It sounded like he was lying. HE said he would call him 1000 in the morning the next morning. When he left he said Pedro was a liar. Maneul got tel # of the store where Wilson was working and they told him that Wilson had taken someo drugs and he had left. Manuel then calls DR to speak to Wilson's father who says he does not know where Wilson was (Ororio Gonzalez.)

On Thursday night at 1200 in the morning I was laying down in the living room. I heard the bell. Manuel went over. I heard the locks unlock. The next thing I know I saw some legs heard " you are going to talk. The y placed a pillow on my face and then placed a foot on the pillow and put a gun in my ribs and said dont talk. I heard three different voices talking at least. They cover Manuels mouth. He begs what do you want to know. " Where is your cousin "

CASE: ACTIVE/CLOSED DATE REVIEWED / CLOSED: 10/8/99 IF ACTIVE, DATE OF NEXT REVIEW: REPORTING OFFICER: Dimuro RANK: DET SIGNATURE: NAME PRINTED: Dimuro TAX REG. NO: 878995 COMMAND: 12 sq d

REVIEWING / CLOSING SUPERVISOR: CASE ENTER DESIGNATION: SIGNATURE: C.O.'S INITIALS: Choice 1 Choice 2 Perp 1 Perp 2

1 A. No.

2 Q. Do you ever see Punalada again?

3 A. No.

4 Q. Once Rafael and Chacal and
5 Ellerman show up at the hotel, are there
6 discussions about what had happened that
7 night?

8 A. Yes.

9 Q. Were the other men, were they
10 mad at Chacal?

11 A. Yeah.

12 Q. What was said that night?

13 A. Rafael was the one who was more
14 pissed. He say that why you did it, you are
15 not supposed to did it, you crazy, now we have
16 a lot of problems, so why you did it and he
17 said that was accident. That is the only
18 thing he said.

19 Q. That is what Chacal said?

20 A. Yeah.

21 Q. Was anything said about what
22 happened in the apartment, if Chacal got

OPENING/WILLIAMS

1 ask that you render the only verdict that will be supported by
2 the evidence that you have to judge and that's a verdict of not
3 guilty on all counts.

4 Thank you.

5 THE COURT: Call your witness.

6 MR. KRATVILLE: The People call Detective John
7 Ulan.

8 (The witness, Det. John Ulan, enters the
9 courtroom, takes the witness stand, is duly
10 sworn/affirmed in by the Clerk of the Court, responds to
11 the oath and testifies as follows:)

12 THE COURT CLERK: Do you solemnly swear or
13 affirm the testimony you are about to give shall be the
14 truth, the whole truth, and nothing but the truth, so
15 help you God?

16 THE WITNESS: I do.

17 THE COURT OFFICER: State your name, shield,
18 current assignment, spelling of your last name.

19 THE WITNESS: My name is John Ulan. U-l-a-n. I
20 am Third Grade Detective assigned to the Manhattan
21 Special Victims Squad. My shield number is 4216.

22 THE COURT: Go ahead.

23 MR. KRATVILLE: Thank you, Judge.

24 DIRECT EXAMINATION

25 BY MR. KRATVILLE:

1 Rafael Del Los Santos and Ellerman.

2 Q. When Rafael Del Los Santos and
3 Ellerman come down, is Cachie with them?

4 A. No.

5 Q. Is Chacal with them?

6 A. No.

7 Q. Is Punalada with them?

8 A. No.

9 Q. What happens after Rafael Del
10 Los Santos and Ellerman come back downstairs?

11 A. I asked them again what is
12 happening and he said that everything is okay
13 and Wilson's cousin come with Cachie and --
14 and he is okay, like he is cooperating, like
15 everything is okay.

16 Q. What happens next?

17 A. Next I saw when Cachie, Punalada
18 and Chacal came out the apartment running,
19 running like something happened; and when I
20 see that, I tried to pass to the seat to drive
21 the car and Cachie told me get out, get out,
22 let me drive. I asked him what happened and

6-11-65

1 that.

2 Q. They didn't want to leave
3 evidence behind in the apartment?

4 A. Yeah. I asked what happened.
5 They said, No, everything was okay. He didn't
6 tell me nothing else.

7 Q. What happened -- what happens
8 after you see the two men and the bag? What
9 happens next?

10 A. They went back to the apartment
11 and like three minutes after that, they came
12 down again and they went to the bodega and
13 they buy some beer. From the car I can't see
14 it was beer, but they told me later it was
15 beer.

16 Q. Could you see they had went to
17 the grocery store and purchased something?

18 A. Yeah.

19 Q. What happens next?

20 A. They went again to the
21 apartment, but they don't take long over
22 there, four or five minutes, they came down,

1 A. So they went into the apartment
2 and Marisol and me stayed in the car and.

3 Q. When you say "they," you mean
4 the five men?

5 A. Yeah, and like 10, 15 minutes
6 after that, Rafael Del Los Santos and Ellerman
7 came down with two plastic bags in their
8 hands.

9 Q. Did you speak to them?

10 A. Yeah, I asked Ellerman what is
11 that and he said that everything we touched in
12 there, everything they touched, they take it
13 out of the apartment.

14 Q. So, he said the plastic bags
15 they had been carrying, contained all the
16 different items the men touched in the
17 apartment?

18 A. Yeah.

19 Q. What did they do with those
20 bags?

21 A. I don't know. He said that they
22 don't want to leave evidence or something like

1 the money back?

2 A. Yeah.

3 Q. For the five kilograms of
4 cocaine?

5 A. Uh-huh.

6 Q. After you learned about the
7 plan, did you actually go in to Washington
8 Heights?

9 A. Yeah.

10 Q. How did you get there that
11 night?

12 A. By car. Cachie was driving the
13 car and I was with him, Marisol and Ellerman.

14 Q. They were all in Cachie's car
15 with you?

16 A. Yeah, and another car was
17 Rafael, Chacal and Punalada.

18 Q. That night, do both cars show
19 up at the apartment in Washington Heights?

20 A. Yes.

21 Q. And what happened? What happens
22 once everyone arrives at the apartment?

1 A. Cachie told me that they plan to
2 go to Wilson's cousins apartment and talk with
3 him and say that they need for him to
4 cooperate with him. That is like kidnapping,
5 but not by force, you understand me? That way
6 Wilson is going to show up.

7 Q. So, let me make the Grand Jury
8 understand it as well. The plan was, you were
9 going back to Wilson's cousin's house, the
10 apartment that you had been to the night
11 before in Washington Heights and the men,
12 Chacal and Ellerman and Punalada and Cachie
13 and Rafael, they were all going into the
14 apartment and get Wilson's cousin to cooperate
15 with them. You understand that to mean
16 kidnap him to get him to cooperate?

17 A. Yeah.

18 Q. And they were going to do that
19 because they thought then Wilson would come
20 out of hiding?

21 A. Yeah.

22 Q. And they would be able to get

000192

1 A. Yeah.

2 Q. Chacal, Punalada Cachie and
3 Rafael Del Los Santos?

4 A. Yeah.

5 Q. Although you couldn't hear what
6 was being said, could you hear they were
7 actually speaking to one another?

8 A. No.

9 Q. Could you hear them talking the
10 sounds of the conversation?

11 A. I know they was talking, but I
12 don't know what they was talking about.

13 Q. At some point, do the men come
14 out of the room and join up with you and
15 Marisol?

16 A. Yeah.

17 Q. At that point in time, does
18 Miguel tell you about the conversation that he
19 had with the other men?

20 A. Yes.

21 Q. What did you do after he tells
22 you about that conversation?

1 Marisol and her daughter. When Rafael paged
2 Cachie and Cachie spoke with him on the phone,
3 then he told me like Rafael want me to go to
4 Ellerman's house so he drove to Manhattan and
5 we went in Ellerman's house.

6 Q. Along with you and Marisol and
7 Miguel, who else was in Ellerman's house that
8 night?

9 A. It was Rafael Del Los Santos,
10 Punalada came, Chacal and Ellerman.

11 Q. So it was you, Marisol and the
12 five men?

13 A. Yeah.

14 Q. When you were at Ellerman's
15 house that night, what happened?

16 A. I was in the living room with
17 Marisol and Ellerman and they was talking in
18 the other room so I don't know what
19 conversation they had over there.

20 Q. When you say they were talking
21 in the other room, do you mean the men were
22 talking in the other room?

Lucy
Trail pag- 135
ella dijo que estaba
en el carro esperando
abvera

32
48

1 cousin, did Miguel continue to try to find out
2 where Wilson was?

3 A. Yes.

4 Q. Now, turning your attention to
5 the next day, October 7, 1999, on that day,
6 were you with Miguel again?

7 A. Yes.

8 Q. And was he still talking with
9 his brother, Rafael about trying to get the
10 money for the five kilograms of cocaine back
11 from Wilson and from Rafael?

12 A. Yes.

13 Q. During that day, the day of
14 October 7th, did Miguel continue to make
15 efforts to try to find Wilson?

16 A. Yes.

17 Q. That night, the night of October
18 7th, were you with Miguel in the evening that
19 night?

20 A. Yes.

21 Q. On that night, where did you go?

22 A. We was in Queens with my friend

000159

1 apartment that night, where was the bathroom
2 located?

3 A. It was right in the --

4 Q. Right off the main hallway when
5 you walk in?

6 A. When he opened the door, it was
7 right there.

8 Q. When you used the bathroom that
9 night, could you see who else was in the
10 apartment?

11 A. No, I just see Cachie and this
12 guy.

13 Q. And that was it?

14 A. Yeah.

15 Q. After you used the bathroom and
16 you went back to the car, did Cachie come back
17 and join you in the car?

18 A. Yes.

19 Q. Did he tell you about the
20 meeting he had with Wilson's cousin?

21 A. Yes.

22 Q. After that meeting with Wilson's

Handwritten notes:
- 132
- 2/16/02
- 10:00 AM

1 Q. Now, I want to move forward in
2 time to the night of October 6, 1999. On that
3 night, were you with Cachie?

4 A. Yes.

5 Q. And were you with him when he
6 paid a visit to Wilson's family members in
7 Manhattan?

8 A. Uh-huh.

9 Q. What part of Manhattan did you
10 and Miguel go to that night when he visited
11 with Wilson's family members?

12 A. We went in Washington Heights.
13 I don't know the address.

14 Q. You know it was in Washington
15 Heights?

16 A. Yes.

17 Q. And which of Wilson's relatives
18 did Miguel go to see that night?

19 A. His cousin.

20 Q. Was Wilson's cousin involved in
21 the drug business with Miguel?

22 A. No.

1 Q. Can you tell the Grand Jurors
2 did Miguel -- did he share with his other
3 narcotics associates that he was having
4 problems with Wilson and Rafael in getting the
5 money back for the five kilos? Did he tell
6 his other narcotics buddies about that?

7 A. He just tell his brother about
8 the problem.

9 Q. His brother Rafael Del Los
10 Santos?

11 A. Yeah.

12 Q. And what did Rafael do?

13 A. Rafael said that you have to
14 find where Wilson is because they will figure
15 Wilson sold the money.

16 Q. The hundred thousand dollars
17 that he owed for the cocaine?

18 A. Yeah, uh-huh.

19 Q. Did Rafael then try to get help
20 from Punalada and Chacal and Ellerman to help
21 with this problem?

22 A. Yes.

1 Agreed?

2 MR. DRUCKER: Very good. Thank you.

3 THE COURT: 2:15.

4 (WHEREUPON, A RECESS WAS HELD)

5 THE CLERK: Hearing continued, Miguel Delos
6 Santos.

7 Defendant and counsel and interpreter are before
8 the Court.

9 THE COURT: Thank you very much.

10 Good afternoon, everyone. Does either side wish
11 to be heard further on the hearing?

12 MR. WILLIAMS: No, your Honor.

13 MR. DRUCKER: No, your Honor.

14 THE COURT: We did do some research over the lunch
15 hour and based on that research I am going to grant the
16 motion to suppress.

17 As in all of these situations the People, of
18 course, can proceed or attempt to proceed with what's called
19 an independent source hearing. The leading case that we
20 found is the People versus Lawal, which is a third
21 department case. I'll have a written decision for you both
22 on Tuesday when you come back to Part 85. That's where the
23 case is going to go.

24 That doesn't mean that 85 will be trying the case.
25 In fact, I believe Part 85 is on trial, but they will find a

1 name was Juan Rincon; is that right?

2 A. That is correct.

3 Q. Now, during that same time
4 period, did you also know an individual by the
5 name of Wilson Gonzalez?

6 A. Yes.

7 Q. And did the Del Los Santos
8 brothers hire Wilson Gonzalez to work for them
9 as part of their narcotics business also?

10 A. Yes.

11 Q. What was his role in the
12 narcotics business?

13 A. Cachie used to give -- he just
14 give -- he made a deal, five kilos and Wilson
15 introduced him with another guy the name
16 Rafael too.

17 Q. I want to -- before we get to
18 ~~that, I want to take you just a little bit~~
19 before that, okay?

20 A. Okay.

21 Q. Was Wilson someone who worked
22 for Cachie?

1 Ellerman Valverde?

2 A. Yes.

3 Q. And was he also involved in the
4 Del Los Santos narcotics business?

5 A. Yes.

6 Q. What kind of things would
7 Ellerman do for the narcotics business?

8 A. The same thing like Punalada, he
9 used to help Rafael and Cachie, whatever they
10 needed and also he live in a basement and they
11 do all the business in his house.

12 Q. So he would allow them to come
13 in and conduct narcotics business from his
14 apartment where he lived?

15 A. Yeah.

16 Q. Would he let them store drugs
17 there in his apartment?

18 A. Yes.

19 Q. Would he find other customers
20 for them to sell the drugs to?

21 A. Yeah, they used to do business
22 in the --

000170

1 A. Yes.

2 Q. And did you later learn that
3 Punalada's name was Juan Pilne?

4 A. Yes, I found out later.

5 Q. Was Punalada involved in
6 Miguel's narcotics business?

7 A. Yeah.

8 Q. And was he involved with Rafael
9 also?

10 A. Yes.

11 Q. What would he do?

12 A. Rafael used to supply Punalada
13 with the merchandise and Punalada bring the
14 money.

15 Q. So, just so the Grand Jury is
16 clear, Punalada would get drugs from Rafael,
17 he'd sell them, he'd give the money for those
18 ~~drugs back to Rafael who would in turn give~~
19 them to his brother Miguel?

20 A. Yes.

21 Q. Did you know another individual
22 during that same time period with the name of

1 A. Yes.

2 Q. Is he related to Miguel Del Los
3 Santos?

4 A. Yes, that is his brother.

5 Q. Was, Rafael involved in his
6 brother Miguel's narcotics business also?

7 A. Yes.

8 Q. What type of work would Rafael
9 do for Miguel in terms of the drug business?

10 A. He is the one who sell the drugs
11 and collect the money for Miguel.

12 Q. And then after he would sell the
13 drugs, he would, for example, give the money
14 that he collected back to Miguel?

15 A. Yes.

16 Q. Aside from Rafael, did Miguel
17 hire other people to help him with the drug

18 business?

19 A. Yes.

20 Q. During that same time period,
21 1998 and '99, did you know an individual who
22 you knew by the nickname of Punalada?

000171

1 Q. Cachie?

2 A. Yes.

3 Q. During the years that he was
4 your boyfriend, how did he earn a living?

5 A. We used to sell drugs and we
6 have prostitution business.

7 Q. And did you help Miguel Del Los
8 Santos with both of these businesses, the
9 narcotics business and also with the
10 prostitution business?

11 A. Yes.

12 Q. During that time period 1998 to
13 1999, where did Miguel Del Los Santos conduct
14 his businesses?

15 A. In New York and North Carolina.

16 Q. In both places?

17 A. In both places.

18 Q. Did he use other people to help
19 him with his narcotics business?

20 A. Yes.

21 Q. Do you know an individual by the
22 name of Rafael Del Los Santos?

OPENING / MR. DRUCKER

1 were doing that for one reason, as crazy as this may sound,
2 they were kidnapping him because they thought his cousin
3 had cheated them out of a large cocaine deal. This case
4 will be about that kidnapping, about that senseless murder
5 and about the drug deal that led up to it. It will be
6 about what happened. It will be about why it happened.

7 And because most importantly it will be about who did
8 it. Five men you'll learn committed this crime.

9 As you know only one man is on trial before you at this
10 time. But, you will learn at the trial the names of all
11 five of those men. And you'll learn that this defendant
12 Miguel Dellos Santos was not the shooter, was not the man
13 that pulled the trigger that actually killed Manuel
14 Gonzalez. He was not even one of the two men that came
15 into the apartment for the kidnapping armed with guns.

16 But, you will learn that he was the driving force
17 behind the kidnapping. He was the boss. It was his
18 drugs that were involved. It was his money that was owed
19 and it was a lot.

20 This involved five kilo grams of cocaine which was
21 worth back then about a hundred thousand dollars. A lot
22 of money. And they were his drugs that were stolen. It
23 was his drugs that were not paid for. He was the one who
24 was out the hundred thousand dollars and the other four
25 were really doing it for him. Their boss. Their

Lourdes Torres-Fuster, Senior Court Reporter

Proceeding

1 And as the judges of the facts you will be called upon
2 to weigh, assess and evaluate the credibility, the
3 reliability, the believability of the witnesses, the
4 strangers, you're going to meet here.

5 You have to determine is the witness truthful or not.
6 Is the witness accurate or exaggerating. Is the witness
7 reliable or unreliable. I have no golden rule to give you
8 as to how to do that. No judge does. But, I can say
9 that in a short time these lawyers had with you they picked
10 you because they felt you exhibited good common sense. So
11 use that common sense. Bring it right in here everyday.
12 Use the same strategies, the same guidelines that you would
13 use to size up any stranger that you might meet in your
14 daily life. Use those strategies to size up the strangers
15 you're going to meet here.

16 The one rule that I can give you is that if you find
17 any witness intentionally lies to you about something
18 important in this case you may disregard their entire
19 testimony. You may accept any portion of it that you
20 believe is truthful. You may accept all of it. It's
21 entirely up to you.

22 And I ask you not only to listen to the witness but
23 look at the witness. Observe the witness. Because I'm
24 sure you will agree with me that the way a person responds
25 their demeanor may be as important as what they say, so

Proceeding

1 your own home?" And the witness said "No". You can't say
2 to yourself "Oh, she must own her own home because she was
3 asked that question". This doesn't work that way. It's
4 the question and the answer that's the evidence.

5 Now, during the course of the questioning any lawyer
6 may make objections. They make their objections based on
7 their understanding of the law and I make my rulings based
8 on my understanding of the law and since I am the sole
9 judge of the law in this case what I say goes.

10 So, if I sustain the objection that means I believe the
11 question or the answer is improper. You may not consider
12 it. If I overruled the objection that means I believe the
13 question or the answer is proper. You may consider it.

14 Please don't resent the fact that these lawyers object
15 because I don't.

16 Please don't think that I like one lawyer better than
17 the other or that I have an opinion about this case, I
18 don't. I know as much about this case as you do. I will
19 hear it unfold with you.

20 I make my rulings solely on my understanding of the law
21 and I am the sole Judge of the law in this room.

22 But, you are the most important judges in this room
23 because you are the sole judges of what did or did not
24 happen in this case. You will decide the facts here, not
25 me.

Lourdes Torres-Fuster, Senior Court Reporter

Proceeding

1 COURT CLERK: Case on trial continued.
2 All parties present.
3 There are no jurors present at this time.
4 COURT OFFICER: Jury entering.
5 THE COURT: Good morning.
6 COURT CLERK: This is the People of the State of New
7 York versus Miguel Dellos Santos.
8 The defendant, his attorney and the A.D.A is present.
9 All jurors are present and properly seated.
10 THE COURT: Good morning, everyone.
11 We're all together now. The trial has begun with your
12 selection.
13 The next step of the trial will be the opening
14 statement by the Government. At which time the prosecutor
15 is required by law to tell you what he intends to prove by
16 way of evidence.
17 After he opens the defense may open.
18 Remember, I told you that the defense has absolutely
19 nothing to prove here so they don't have to open. The
20 Government must prove this case so they must open.
21 What the prosecutor says in his opening statement is
22 not evidence. It is a preview of what he believes the
23 evidence will show.
24 After he opens he will begin his direct case. Call a
25 witness to the stand. The witness will take an oath and he
Lourdes Torres-Fuster, Senior Court Reporter

SUPREME COURT NEW YORK COUNTY
CRIMINAL TERM PART 66

PEOPLE OF THE STATE OF NEW YORK,

INDICTMENT #
3444/2002

-against-

MIGUEL DELLOS SANTOS,

Defendant

Trial

111 Centre Street
New York, New York 10013
July 2, 2014

B E F O R E:

THE HONORABLE RUTH PICKHOLZ, J.S.C.
JUSTICE OF THE SUPREME COURT

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

For the People:

OFFICE OF THE SPECIAL NARCOTICS
York New York County
By: David Drucker, Esq.
Eryck Kratville, Esq.
Assistant District Attorneys
(For the People)

For the Defendant:

NORMAN WILLIAMS, Jr., ESQ.
27 Madison Avenue, 14th Floor
New York, New York
(Attorney for defendant Miguel Dellos Santos)

Also Present: Official Court Spanish Interpreters:

Lourdes Torres-Fuster, Senior Court Reporter
Glenn Merola, Senior Court Reporter

PROCEEDING

1 The verdict in this matter was repugnant, somewhat odd.
2 Kind of strange that they would find him not guilty of
3 burglary but guilty--

4 THE COURT: I don't think it is strange at all.
5 I don't think it is repugnant at all.

6 MR. WILLIAMS: As well as not guilty of the drugs.

7 THE COURT: It is not repugnant at all.

8 You can make any motion you want, but I do not see any
9 repugnancy here.

10 MR. WILLIAMS: In light of that I guess I'd like a
11 little bit more than the standard two weeks.

12 THE COURT: He's remanded until.

13 MR. WILLIAMS: Of course.

14 What's your schedule like in the month of August?

15 THE COURT: Beginning of August I'm here, first two
16 weeks.

17 COURT CLERK: Till the 15th.

18 MR. WILLIAMS: August 11.

19 THE COURT: That's fine.

20 MR. DRUCKER: That's for sentencing?

21 THE COURT: Yes, and for any motions.

22 MR. DRUCKER: I'd ask any motion be made give us a
23 little bit of time to respond.

24 THE COURT: Are you going to have that, are you going
25 to have it before August 11 so I can have a decision by

Lourdes Torres-Fuster, Senior Court Reporter

VERDICT

1 guilty?

2 FOREPERSON: Guilty.

3 COURT CLERK: How say you as to the fifth count of this
4 indictment charging the defendant with the crime of
5 unlawful imprisonment in the first-degree in regards to
6 Carlos Ortiz, guilty or not guilty?

7 FOREPERSON: Guilty.

8 COURT CLERK: How say you as to the sixth count of this
9 indictment charging the defendant with the crime of
10 burglary in the first-degree, guilty or not guilty?

11 FOREPERSON: Not guilty.

12 COURT CLERK: How you as to the seventh count of this
13 indictment charging the defendant with the crime of
14 criminal sale of a controlled substance in the
15 first-degree, guilty or not guilty?

16 FOREPERSON: Not guilty.

17 COURT CLERK: How say you as to the eighth count of this
18 indictment charging the defendant with the crime of
19 conspiracy in the second-degree, guilty or not guilty?

20 FOREPERSON: Not guilty.

21 COURT CLERK: Your Honor, poll the jurors?

22 THE COURT: Do you wish the jurors polled?

23 MR. WILLIAMS: Yes, your Honor.

24 COURT CLERK: Members of the jury, you say through your
25 Foreperson that you find the defendant Miguel Dellos Santos

Lourdes Torres-Fuster, Senior Court Reporter

VERDICT

1 COURT OFFICER: Remain seated. Come to order.

2 THE COURT: The jury has reached a verdict.

3 Jury in.

4 COURT OFFICER: Jury entering.

5 (Jurors enter the courtroom at 3:50 p.m.)

6 THE COURT: I understand you've reached a verdict and
7 we'll take that verdict.

8 COURT CLERK: Will the Foreperson please rise.

9 How say you as to the first count of this indictment
10 charging the defendant Miguel Dellos Santos with the crime
11 of murder in the second-degree, guilty or not guilty?

12 FOREPERSON: Not guilty.

13 COURT CLERK: How say you as to the second count of this
14 indictment charging the defendant Miguel Dellos Santos with
15 the crime of murder in the second-degree, guilty or not
16 guilty?

17 FOREPERSON: Guilty.

18 COURT CLERK: How say you as to the third count of this
19 indictment charging the defendant Miguel Dellos Santos with
20 the crime of kidnapping in the first-degree, guilty or not
21 guilty?

22 FOREPERSON: Guilty.

23 COURT CLERK: How say you as to the forth count of this
24 indictment charging the defendant with the crime of
25 unlawful imprisonment in the first-degree, guilty or not

Lourdes Torres-Fuster, Senior Court Reporter

SUMMATION/DRUCKER

1 the whole thing was all about. Getting the money that is owed
2 to the defendant selling five kilograms of cocaine.

3 Again, the law requires two ounces or more, kilogram
4 is over two ounces. So it's way, way more than that. So
5 there's no question backward and forward. And whether it was,
6 to what extent Wilson was involved, is meaningless. And that's
7 pretty easy count.

8 And the final count is conspiracy. Actually it was
9 mentioned two conspiracy counts early on. One will be
10 submitted to you. Conspiracy to sell drugs.

11 Which is really not much more than the actual drug
12 sale plus the attempt to get the money for it afterward. It's
13 kind of complicated charge the judge has to give you for
14 conspiracy, bear with her, but you will see they agreed to
15 certainly take steps to collect the money and took, obviously,
16 overt acts to do that, the defendant and the others.

17 That's the indictment, the elements of the crime,
18 that's pretty much it.

19 Again, I ask you to, just to, again, sift through the
20 evidence, use your common sense, you do that and this
21 defendant, Miguel Dellos Santos, can have no complaint. He's
22 got what every defendant should have, and is entitled to have
23 and has had in this system, he's had his day in court. He's
24 had his right to a fair trial.

25 We brought the charges, we got to bring the witnesses

Glenn J. Merola, Sr. Court Reporter