

EXHIBIT M

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

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

1 Q. Were you visiting anyone in particular?

2 A. My husband.

3 Q. What was your husband's name?

4 A. Manuel Gonzalez.

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

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

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?

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. 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

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,

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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.

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DIRECT/MULERO/PEOPLE

1 Q. And where did he go?

2 A. He went to the basement.

3 Q. That was Ellerman's apartment?

4 A. Ellerman's apartment.

5 Q. How long was he there for?

6 A. Maybe ten minutes.

7 Q. Do you know what they were talking about during that
8 time?

9 A. No.

10 Q. You weren't part of that conversation?

11 A. No.

12 Q. And did he come out of that apartment then?

13 A. Yes.

14 Q. And did he come to the car?

15 A. Yes.

16 Q. And what did he tell you at that time?

17 A. Cachie me that we gonna stop in Wilson's cousin
18 apartment and we just gonna make a phone call. And I ask him
19 who you gonna call? He said we gonna call Wilson from his
20 cousin apartment maybe he going to answer the phone.

21 Q. And did he say what would be different about this
22 then the night before?

23 A. No.

24 Q. And then who went where at that point, who went into
25 what car at that point?

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 A. Actually nothing because Cachie was devastated.

2 THE COURT: Devastated?

3 THE WITNESS: Devastated. Like he -- like he
4 was thinking he's not supposed to be in that position that
5 moment because he don't want that problem. He's not a violent
6 person. So that's why he don't want that problem, you know, he
7 was in the house for long days he don't go out.

8 Q. After this happened he stayed in the house?

9 A. Yeah.

10 Q. I'm sorry. Going back to the hotel the night this
11 happened. Did anybody go back to the apartment, to the
12 cousins' street?

13 A. Yeah. It was friend of us and we tell her to go and
14 see what's going on there.

15 Q. Who told her that?

16 A. Cachie told her to go and pass in a taxi. And she
17 saw the yellow, how you say, you see when there's a accident
18 the police put out the yellow --

19 Q. Yellow tape?

20 A. Tape. Yeah.

21 Q. What was this woman's name?

22 A. Payola.

23 Q. So the defendant sent Payola to see what's happening
24 there?

25 A. Yeah.

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.

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?

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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. 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.

1 after.

2 Q. Before or after you went to the police?

3 A. That's what I don't remember.

4 Q. And did you speak to the police detectives in
5 Manhattan?

6 A. They went to get me in Connecticut.

7 Q. And did they tell you about what happened to Manuel,
8 your cousin Manuel?

9 A. Yes.

10 Q. And at any time before you went to the police were you
11 aware of the defendant trying to contact you either directly or
12 through people in your family?

13 MR. WILLIAMS: Objection. Asked and answered already,
14 your Honor.

15 THE COURT: I will allow it.

16 INTERPRETER: Could you repeat that last part, please.

17 Q. At any time before you went to the police were you
18 aware of the defendant trying to reach you?

19 A. No, because I didn't have a phone or anything.

20 Q. And you're not aware of any phone call to your brother
21 or to your father?

22 A. I don't remember. If I'm not mistaken I don't
23 remember. I was 20-years-old. That was 15 years ago.

24 Q. And, again, so it's clear, you first learned Manuel was
25 killed after you had gone, after you spoke to the police; is

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 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?

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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 fourth 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

SUMMATION/DRUCKER

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(The jury was excused and exits the courtroom.)

MR. DRUCKER: One legal point on your charge.

THE COURT: Of course.

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

(Continued on next page.)

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)

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JURY CHARGE

1 the furtherance of that kidnapping caused the death of
2 Manuel Gonzalez. And that Mr. Gonzalez was not a
3 participant in that crime.

4 If you find that the prosecution has proven both of
5 these elements beyond a reasonable doubt then you must find
6 Mr. Dellos Santos guilty of murder in the second-degree in
7 this count.

8 On the other hand, if you find that the prosecution has
9 not proven either one or both of these elements beyond a
10 reasonable doubt then you must find him not guilty.

11 Now, the third count charges Mr. Dellos Santos with
12 kidnapping in the first-degree.

13 Again, a person is guilty of kidnapping in the first
14 degree when he abducts another person with the intent to
15 compel another person to engage in a particular conduct.

16 In this case it is the prosecution's theory that Manuel
17 Gonzalez was kidnapped in order to compel Wilson Gonzalez
18 to pay money for drugs that were allegedly purchased from
19 Mr. Dellos Santos.

20 I have already given you all of the definitions that
21 pertain to the legal definitions of abduct. And that
22 applies here.

23 In order for you to find Mr. Dellos Santos guilty of
24 kidnapping in the first-degree the prosecution must prove
25 not only that acting in concert with others he abducted Mr.

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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

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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
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JURY CHARGE

1 this count the prosecution is required to prove beyond a
2 reasonable doubt:

3 One, that on October 8, 1999 in New York Mr. Dellos
4 Santos acting in concert with others restricted the
5 movements of Angelly Ortiz in such a manner as to interfere
6 substantially with her liberty by moving her from one place
7 to another or by confining her either in the place where
8 the restriction began or in a place to which she had been
9 moved.

10 Two, that the movements of Ms. Ortiz were restricted
11 without her consent.

12 Three, that Mr. Dellos Santos acted intentionally.

13 Four, that the restriction of Ms. Ortiz movements was
14 unlawful. And that Mr. Dellos Santos knew that.

15 Five, that Mr. Dellos Santos or one or more people
16 acting with him restrained Ms. Ortiz under circumstances
17 which exposed her to a risk of serious physical injury.

18 If you find that the prosecution has proven all of
19 these elements to your satisfaction beyond a reasonable
20 doubt then you must find Mr. Dellos Santos guilty of this
21 count.

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

25 Count 5 charges Mr. Dellos Santos with unlawful

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JURY CHARGE

1 imprisonment in the first-degree on the theory that acting
2 in concert with others he unlawfully imprisoned Carlos
3 Ortiz. It is the same as the last one. The same
4 elements but this time you look at the action vis-a-vis
5 Carlos Ortiz.

6 So, in order for you to find Mr. Dellos Santos guilty
7 of Count 5 the prosecution is required to prove beyond a
8 reasonable doubt that on October 8, 1999 in New York Mr.
9 Dellos Santos acting in concert with others restricted the
10 movements of Carlos Ortiz in such a manner as to interfere
11 substantially with his liberty by moving him from one place
12 to another or by confining him either in a place where the
13 restriction began or in a place to which he had been moved.

14 Two, that his movements were restricted without his
15 consent. That Mr. Dellos Santos acted intentionally.
16 That the restriction was unlawful. And Mr. Dellos Santos
17 knew that. And that Mr. Dellos Santos or one or more
18 people acting in concert with him restrained Mr. Ortiz
19 under circumstances which exposed him to risk of serious
20 physical injury.

21 If you find that the prosecution has proven all of
22 these elements beyond a reasonable doubt then you must find
23 Mr. Dellos Santos guilty of this count of unlawful
24 imprisonment.

25 On the other hand, if you find that the prosecution has
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JURY CHARGE

1 failed to prove one or more of these elements beyond a
2 reasonable doubt then you must find him not guilty.

3 Count 6 charges Mr. Dellos Santos with burglary in the
4 first-degree on the theory that he or someone acting in
5 concert with him was armed with a deadly weapon while
6 burglarizing Apartment 33 at 478 West 145 Street.

7 The penal law states a person is guilty of burglary in
8 the first-degree when he knowingly enters unlawfully a
9 dwelling with the intent to commit a crime. And when he
10 uses or threatens the immediate use of a dangerous
11 instrument. In this case a gun.

12 The term dwelling means a building which is usually
13 occupied by a person who sleeps there at night.

14 Where a building consist of two or more units
15 separately secured or occupied each unit is considered both
16 a separate building in itself and part of the main
17 building.

18 According to the law a person unlawfully enters a
19 dwelling when he has no permission to do so. And he
20 knowingly enters the dwelling unlawfully when he is aware
21 that he doesn't have permission.

22 A person also enters a dwelling unlawfully when he
23 enters by means of a trick or deception.

24 In addition, the prosecution must prove that at the
25 time that Mr. Dellos Santos entered the building he

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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 the second-degree when acting either alone or with one or more other persons he commits or attempts to commit a kidnapping and in the course of and in furtherance of the crime or of the immediate flight from the crime he or another participant causes the death of a person other than one of the participants.

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Under our law a person is guilty of kidnapping in the second-degree when he abducts another person. To abduct

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means to restrain a person with the intent to prevent the person's liberation either by secreting or holding him in a place where he is not likely to be found or by using or threatening to use deadly physical force.

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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.

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PROCEEDING

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).

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PROCEEDING

1 MR. WILLIAMS: Again.

2 THE COURT: I will keep them until 4:30 and start
3 again tomorrow.

4 Jury in.

5 COURT OFFICER: Jury entering.

6 THE COURT: Okay. So we have your note. You want
7 Angelly Ortiz direct testimony regarding the October 6
8 conversation with Manuel after Pedro left. The first
9 conversation. So that will be the direct examination by
10 Mr. Kratville, Page 75, Line 5 to Page 76 Line 17 and I
11 will read it for you.

12 (The Court read back to the jury).

13 THE COURT: Then you wanted my instruction on burglary
14 and conspiracy. So I'll start with Count 6, burglary.

15 Count 6 charges Mr. Dellos Santos with burglary in the
16 first-degree on the theory that he or someone acting in
17 concert with him was armed with a deadly weapon while
18 burglarizing Apartment 33 at 478 West 145th Street.

19 The penal law states a person is guilty of burglary in
20 the first-degree when he knowingly enters unlawfully in a
21 dwelling with the intent to commit a crime in that dwelling
22 and when he uses or threatens the immediate use of a deadly
23 weapon. In this term a gun.

24 The term dwelling means a building which is usually
25 occupied by a person lodging there at night.

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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

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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

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