

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
PASSAIC COUNTY
INDICTMENT NO. 14-02-0094-I
A.D. # A-001915-15-T2

STATE OF NEW JERSEY,

vs.

ARCADIO J. NOVA,

Defendant.

TRANSCRIPT
OF
TRIAL

Place: Passaic County Courthouse
77 Hamilton Street
Paterson, NJ 07505

Date: July 17, 2015

B E F O R E:

HONORABLE MARILYN C. CLARK, J.S.C. AND JURY

TRANSCRIPT ORDERED BY:

DEBORAH C. COLLINS, ESQ.,
(Office of the Public Defender, Appellate Section)

A P P E A R A N C E S

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I N D E X7/17/15PagePRELIMINARY JURY INSTRUCTION

3

JURY SELECTION

8

1 All right. Juror No. 4, Raul Saharig.

2 THE CLERK: Yes.

3 (Sidebar in chambers)

4 THE CLERK: Have a seat in the middle.

5 THE COURT: Have a seat, sir. Okay. Good
6 morning, sir.

7 MR. SAHARIG: Good morning.

8 THE COURT: Sir, yesterday you said that -- I
9 asked you have you or any family member or close friend
10 ever worked in law enforcement. Who was that, sir?

11 MR. SAHARIG: Yes. My nephew --

12 THE COURT: Your nephew.

13 MR. SAHARIG: -- works at the jail. From the
14 State Jail?

15 THE COURT: The Passaic County Jail?

16 MR. SAHARIG: He works at the State.

17 THE COURT: The Passaic County Jail?

18 MR. SAHARIG: (No verbal response)

19 THE COURT: Yes. Okay. Would you --

20 MR. SAHARIG: Yes.

21 THE COURT: -- verbalize because we're on the
22 tape?

23 MR. SAHARIG: I'm sorry.

24 THE COURT: Okay. What is your nephew's
25 name?

1 MR. SAHARIG: Miguel Saharig.

2 THE COURT: Okay. And is he a Sheriffs'

3 Officer?

4 MR. SAHARIG: No.

5 THE COURT: Well, what position does he have?

6 MR. SAHARIG: I'm --

7 THE COURT: You don't know?

8 MR. SAHARIG: Well, I mean, I know it's -- he
9 has a uniform and he goes to the jail.

10 THE COURT: Okay. How often do you see him?

11 MR. SAHARIG: I think three or four times a
12 year.

13 THE COURT: Three or four times a year?

14 MR. SAHARIG: Yes.

15 THE COURT: When was the last time you saw
16 him?

17 MR. SAHARIG: In Christmas.

18 THE COURT: Christmas?

19 MR. SAHARIG: Yeah. Last Christmas.

20 THE COURT: Okay. All right. Would the fact
21 that your nephew works in the Passaic County Jail in
22 any way affect your ability to be fair in this case?

23 MR. SAHARIG: No, it does not.

24 THE COURT: No?

25 MR. SAHARIG: No.

1 THE COURT: Okay. When do you anticipate you
2 would see him again? Do you know?

3 MR. SAHARIG: Excuse me?

4 THE COURT: When -- when do you think you
5 would see him again?

6 MR. SAHARIG: I don't know. Maybe his father
7 (sic) birthday.

8 THE COURT: And when is that?

9 MR. SAHARIG: In November.

10 THE COURT: November. Okay.

11 MR. SAHARIG: Yes.

12 THE COURT: So you don't see him much, right?

13 MR. SAHARIG: No.

14 THE COURT: No. Okay.

15 MR. SAHARIG: Not so close.

16 THE COURT: Not close?

17 MR. SAHARIG: Yeah.

18 THE COURT: All right. Now you indicated
19 that you think it's more likely that an officer would
20 tell the truth and you would give greater weight to the
21 testimony of an officer. Is that right?

22 MR. SAHARIG: Yeah. Of course.

23 THE COURT: Okay. All right. Well, --

24 MR. SAHARIG: They are --

25 THE COURT: -- let me ask you --

1 MR. SAHARIG: They are the law.

2 THE COURT: Yeah. Let me ask you this.

3 Those questions talk about -- well, at least the first
4 one as a general proposition you expect that an officer
5 will tell the truth. Is that correct?

6 MR. SAHARIG: Yes.

7 THE COURT: Okay. If an individual officer
8 gets on the witness stand, would you automatically lean
9 in favor of that officer, or would you wait to see how
10 that officer presented himself or herself and judge the
11 individual?

12 MR. SAHARIG: Of course. I'd have to hear to
13 listen to what -- what they say and weigh --

14 THE COURT: And weigh --

15 MR. SAHARIG: -- the facts.

16 THE COURT: All right. Would you
17 automatically lean toward that officer, or would you --
18 let's assume you expect officers to tell the truth.
19 They're sworn to tell the truth. You have an
20 expectation. But that individual witness, could you
21 start from square one and evaluate what they say and
22 either believe it, not believe, or somewhere in the
23 middle?

24 MR. SAHARIG: They are officer of the law.

25 They are right most of the time. Maybe they can say

1 something as generate a doubt but was not. I have to
2 weigh what they say.

3 THE COURT: Okay. So can you evaluate an
4 officer like any other witness, or do you think you
5 would be leaning in favor of that witness as the
6 witness takes the stand?

7 MR. SAHARIG: I have to evaluate, of course.

8 THE COURT: You have to what?

9 MR. SAHARIG: Evaluate what he say, and
10 before I make a decision, but I think he's right
11 because he's a officer of the law.

12 THE COURT: Okay. So would you lean toward
13 that officer? Would you kind of favor that officer's
14 testimony?

15 MR. SAHARIG: I say you again I have to
16 evaluate what -- what he say.

17 THE COURT: You have to evaluate what he
18 says?

19 MR. SAHARIG: Yeah. What they say. And --

20 THE COURT: Okay.

21 MR. SAHARIG: -- I -- I think you need to --
22 to favor him.

23 THE COURT: You -- you would generally favor
24 him?

25 MR. SAHARIG: Yeah. Maybe. Yes.

1 THE COURT: Maybe. Okay. But would you
2 favor him or her because the officer let's say explains
3 what happened, and you're satisfied with it, or would
4 you favor the officer because he or she is an officer?

5 MR. SAHARIG: No, no, no. I -- I have to
6 listen and hear her say and explain the -- the facts.

7 THE COURT: Right.

8 MR. SAHARIG: Then it's -- if it's explain
9 (sic) satisfy me, okay, I favor him.

10 THE COURT: Right. But if they explain the
11 facts well, and you're satisfied you favor him, could
12 you -- if the officer doesn't satisfy you, and you're
13 not accepting what the officer says, could you reject
14 it?

15 MR. SAHARIG: I don't think so.

16 THE COURT: You don't think so?

17 MR. SAHARIG: I don't think so.

18 THE COURT: Okay. Okay.

19 MR. SAHARIG: Even though I refer too much to
20 officer they are then I think they are right in their
21 explanation and I have to listen obviously --

22 THE COURT: Okay.

23 MR. SAHARIG: -- to what they say.

24 THE COURT: Okay. Sir, just step outside for
25 a minute. I want to talk to the attorneys. Okay.

1 Just step outside.

2 MR. SAHARIG: Okay.

3 (Sidebar concluded)

4 THE COURT: Counsel, I'm attempting to probe
5 the witness because, again, this question addresses a
6 general proposition. At least the first one does. And
7 I try to probe how the person would handle an
8 individual witness. The -- the gentleman is fluent,
9 but I don't believe that he's necessarily understanding
10 everything. And I think he has some difficulty fully
11 expressing himself in English. So that may be part of
12 the problem.

13 What are your thoughts, Ms. Saltiel?

14 MS. SALTIEL: I don't necessarily -- I mean,
15 I -- I think what he's trying to convey is -- is clear.
16 I don't necessarily have a problem with any of his
17 answers.

18 THE COURT: So how do you feel about --

19 MS. SALTIEL: I'm not asking for you to
20 remove him for cause.

21 THE COURT: You're not asking -- I believe
22 he's trying to say I'll listen to the person. Now --

23 MS. SALTIEL: Yeah. I'm not asking --

24 THE COURT: -- is -- is --

25 MS. SALTIEL: -- for a removal.

1 THE COURT: Okay. Is -- are -- do you have
2 any issue with his command of English? He certainly is
3 -- is very fluent. Do you have any issue with that?

4 MS. SALTIEL: No. I think -- I think largely
5 it may be he has a very thick accent. I mean, he works
6 full time. I don't -- I don't think --

7 THE COURT: I don't --

8 MS. SALTIEL: -- he's a manager --

9 THE COURT: It's not his accent to me. I --
10 he has a little difficulty expressing exactly what he
11 wants to say. I think he struggles a little bit. But
12 I think he's understanding --

13 MS. SALTIEL: I think he understands.

14 THE COURT: -- everything.

15 MS. SALTIEL: I don't -- I don't have a
16 problem.

17 THE COURT: All right. I just want to make
18 sure.

19 MS. SALTIEL: Yeah.

20 THE COURT: Do you have any issue with that?

21 MS. WALSH: No, Your Honor. I think -- I
22 think he's answering the question very truthfully and
23 honestly. And I --

24 MS. SALTIEL: Uh-huh. I think part of his
25 accent because I heard him say -- he said quite a --

1 numerous times that, you know, he would evaluate. He
2 would listen.

3 THE COURT: And then he said I would favor.
4 But I think he's saying I would favor if I believe
5 them.

6 MS. SALTIEL: Yeah.

7 MS. WALSH: Yes.

8 MS. SALTIEL: That's how --

9 THE COURT: All right. I --

10 MS. SALTIEL: -- I heard.

11 THE COURT: I just want to make sure --

12 MS. SALTIEL: Yeah.

13 THE COURT: -- and have you explore anything
14 with --

15 MS. SALTIEL: Yeah. No. I'm fine with him.

16 THE COURT: Okay. All right.

17 Would you bring him back in, please?

18 (Sidebar in chambers)

19 THE COURT: All right. Have a seat again,
20 sir.

21 MR. SAHARIG: Thank you.

22 THE COURT: All right. Sir, one of the
23 questions is you speak Spanish, correct?

24 MR. SAHARIG: Oh, yes. Yeah.

25 THE COURT: And you read and write Spanish?

1 MR. SAHARIG: Yes.

2 THE COURT: You read and write Spanish?

3 MR. SAHARIG: Excuse me?

4 THE COURT: You read and write Spanish?

5 MR. SAHARIG: Yeah. (In Spanish)

6 THE COURT: Okay. You obviously -- you
7 obviously speak Spanish. Okay.

8 MR. SAHARIG: (Indiscernible)

9 THE COURT: Okay. Sir, we only ask that
10 question because there will be an interpreter for one
11 or two witnesses. Can you accept the interpreter's
12 interpretation, even if you might disagree with a word
13 or a phrase here or there?

14 MR. SAHARIG: If the interpretation -- excuse
15 me, the interpretation distort the question or the --
16 the answer, of course, I got to say something. But if
17 the interpretation is good. So.

18 THE COURT: Okay. Let me ask you this. And
19 our interpreters are very trained. They're very
20 trained. Okay. Some -- most of the jurors don't speak
21 Spanish so they have to rely on the interpreter. And
22 we want the jurors to rely on the same information. So
23 if the interpreter -- there's a word or phrase you
24 don't agree with, can you accept the interpreter so
25 everybody relies on the same information?

1 MR. SAHARIG: I understand that. There's an
2 issue if somebody say what you say, but I don't --
3 (indiscernible), right? Excuse.

4 (Unrelated matters discussed)

5 MR. SAHARIG: But -- but the translation
6 change the meaning what you say or whether or not
7 people way is not good. Right? Because I believe this
8 is -- (indiscernible) when I saw the -- the Judge ask
9 something and the interpreter change what -- what other
10 people have to say. Hey, it's -- it's not true.

11 THE COURT: Okay. Quite honestly, I don't
12 expect this to happen because they're very trained.

13 MR. SAHARIG: Well, that's good.

14 THE COURT: Okay.

15 MR. SAHARIG: That's good.

16 THE COURT: But here or there if there's a
17 word or a phrase, can you accept the interpreter so
18 that all jurors rely on the same information?

19 MR. SAHARIG: Yeah.

20 THE COURT: You can?

21 MR. SAHARIG: Yes.

22 THE COURT: You will. I understand that
23 you'd have a concern if there was something different.
24 But the bottom line is can you rely on what the
25 interpreter says?

1 MR. SAHARIG: Okay. Yeah.

2 THE COURT: Okay.

3 All right. Any questions about that for --

4 MS. WALSH: No.

5 THE COURT: -- the --

6 MS. SALTIEL: No.

7 THE COURT: -- gentleman? Okay. Thank you.

8 All right. Sir, the other questions. The
9 defendant is presumed innocent. He must be found not
10 guilty unless the State proves the case beyond a
11 reasonable doubt. Can you accept that?

12 MR. SAHARIG: Yeah. Because this is -- it is
13 a law. You give us a rule.

14 THE COURT: Right. So --

15 MR. SAHARIG: Everyone is presumed innocent
16 until somebody of the State or somebody else --

17 THE COURT: Proves --

18 MR. SAHARIG: -- proves --

19 THE COURT: -- him guilty?

20 MR. SAHARIG: -- his guilt.

21 THE COURT: Okay. That's fine. The nature
22 of the charges, obviously, very seriously charges.

23 MR. SAHARIG: Okay.

24 THE COURT: Notwithstanding that, can you be
25 fair to the State and the defendant and find him not

1 guilty or guilty based upon the evidence you hear? Can
2 you do that?

3 MR. SAHARIG: Yeah.

4 THE COURT: Yes?

5 MR. SAHARIG: Yes.

6 THE COURT: Okay. So, again, they're serious
7 charges. Can you, notwithstanding those charges, give
8 both sides a fair trial?

9 MR. SAHARIG: The charges are serious, of
10 course I can.

11 THE COURT: But everybody agrees the charges
12 are serious.

13 MR. SAHARIG: Yes.

14 THE COURT: The defendant has pleaded not
15 guilty. Can you give both sides a fair trial?

16 MR. SAHARIG: No, no. Because --

17 THE COURT: You cannot?

18 MR. SAHARIG: No.

19 THE COURT: You cannot give both sides a fair
20 trial?

21 MR. SAHARIG: According to the -- in the --
22 in the proofs, according to the information, according
23 to -- (indiscernible) you have an idea what is -- what
24 is going on. What happened in this case.

25 THE COURT: Okay. So -- so do you believe

1 you could be a fair juror?

2 MR. SAHARIG: Yes.

3 THE COURT: Yes. Okay. So perhaps you
4 didn't understand. I just asked could you give both
5 sides a fair trial. Can you be a fair juror in this
6 trial?

7 MR. SAHARIG: You know what, I have to be
8 fair. Impartial.

9 THE COURT: Okay.

10 MR. SAHARIG: Yes.

11 THE COURT: All right. The defendant is
12 presumed innocent. Doesn't have to present any
13 evidence. Doesn't have to testify. And doesn't even
14 have to be present. The whole burden is on the State.
15 Can you accept that, sir?

16 MR. SAHARIG: Yeah. Of course.

17 THE COURT: And why do you feel you can
18 accept that?

19 MR. SAHARIG: I think the Prosecutor -- the
20 Prosecutor has their what they're doing to prove all
21 charge against the defendant.

22 THE COURT: Okay. And can you accept the
23 defendant doesn't have to prove anything?

24 MR. SAHARIG: No. I accept that the
25 defendant doesn't have to prove anything.

1 THE COURT: Okay. You accept that. And why
2 do you accept that?

3 MR. SAHARIG: Because it's -- it's -- you
4 give us a law. You are charging for something criminal
5 or another crime you -- the people who accuse you has
6 to prove.

7 THE COURT: Okay.

8 MR. SAHARIG: Yeah.

9 THE COURT: Any questions?

10 MS. SALTIEL: I just wanted to clarify before
11 when you said about giving a fair trial, do you have
12 any belief that because he is charged, he is already
13 guilty, or --

14 MR. SAHARIG: No.

15 MS. SALTIEL: Okay.

16 MR. SAHARIG: I didn't say that.

17 MS. SALTIEL: I just wanted to clarify.

18 MR. SAHARIG: No. I'm a Christian. But you
19 have to -- you have -- (indiscernible) -- you have laws
20 and make laws. *What?*

21 THE COURT: Okay. And the law is that he's
22 -- as we stand here today, he's not guilty. And he
23 can't be guilty unless and until you are satisfied
24 beyond a reasonable doubt. And if you're not, then he
25 has to be not guilty. Do you understand that?

1 MR. SAHARIG: Yes.

2 THE COURT: And do you accept all that, sir?

3 MR. SAHARIG: Yes.

4 THE COURT: All right.

5 Anything else?

6 MS. WALSH: No, Your Honor.

7 MS. SALTIEL: No, Your Honor.

8 THE COURT: All right. You can step outside,
9 sir?

10 MR. SAHARIG: Thank you.

11 THE COURT: Thank you.

12 (Sidebar concluded)

13 THE COURT: Ms. Walsh?

14 MS. WALSH: Your Honor, he gave all the -- I
15 don't want to say appropriate answers, but he was very
16 honest with what he's saying. I think there's just a
17 little bit of confusion with how he answers the
18 question. I don't know if that's a -- a language
19 issue. But he'll say no, and then be like -- he'll say
20 no, but then answer in the affirmative that he could be
21 fair and impartial.

22 THE COURT: Let me just --

23 MS. WALSH: So it's --

24 THE COURT: Le me --

25 MS. WALSH: -- a little --

1 THE COURT: Let me just throw out something
2 and then you react to it. I have no doubt this person
3 can be fair. That's my impression.

4 MS. WALSH: Uh-huh.

5 THE COURT: My only concern is does he
6 understand everything? He's fluent. I'm concerned
7 whether he's understanding everything. Now there's a
8 difference between understanding basically everything,
9 and having that same ability to fully express yourself
10 in another language. Because I said clearly could you
11 give the defendant a fair trial, and he said no. Other
12 answers clearly indicate to me he could give the
13 defendant a fair trial. I'm not doubting that. He's a
14 very fair person.

15 I'm only asking is it your impression that he
16 understands everything? If he -- if he can't express
17 himself absolutely fully in English, that's different
18 to me than understanding everything. He also has to be
19 able to deliberate fully.

20 MS. SALTIEL: Uh-huh.

21 THE COURT: But what are your thoughts?

22 MS. SALTIEL: I think that -- I think he's
23 fully understanding. I think his ability to express is
24 -- is somewhat minimally -- minimally when -- and I
25 think for this purpose in a deliberation setting he --

1 he won't have to -- it will be more of a casual -- he
2 probably -- I think he'll be fine expressing something
3 in the deliberation situation because it is very casual
4 and it's not -- I think sometimes the way the questions
5 are worded might be confusing to anybody, let alone
6 someone who has English as a second language. I think
7 he's perfectly understanding of everything. I think he
8 would be fair and impartial. I have no objection to
9 him.

10 THE COURT: Ms. Walsh?

11 MS. WALSH: (No verbal response)

12 THE COURT: I can tell you right now I think
13 he's fair.

14 MS. WALSH: I -- I think he's fair. But my
15 concern is during deliberations or anything else,
16 that's what I'm just thinking about at this time. My
17 -- just my concern is -- as -- as you said he'll say
18 no, but then he'll answer with the appropriate -- not
19 appropriate response, but he'll -- can you be -- can
20 you be fair and impartial, no. But I'll evaluate all
21 the --

22 THE COURT: I --

23 MS. WALSH: -- evidence.

24 THE COURT: I -- I think the no may almost be
25 a bridge to what he's about to say.

1 MS. SALTIEL: Yes.

2 THE COURT: Because he's processing --

3 MS. SALTIEL: Right.

4 THE COURT: -- what he heard. All right.
5 I'm going to --

6 MS. SALTIEL: (Indiscernible) -- sometimes
7 answers questions the wrong -- in that way.

8 THE COURT: Well, I --

9 MS. SALTIEL: Like no, yes. No, yes.

10 THE COURT: Many jurors are bilingual. And
11 it's only occasionally that I'll have a concern.

12 MS. SALTIEL: Uh-huh.

13 THE COURT: And I -- I couldn't help but feel
14 some concern here. I'm -- I think he understands
15 everything. I think he has a little difficulty fully
16 expressing himself in English. But I think he's all
17 right to serve on this jury. But I -- I think it had
18 to be discussed because --

19 MS. SALTIEL: Of course.

20 MS. WALSH: Yes.

21 THE COURT: -- when he says no to a fair
22 trial, and then he starts to explain why he can be
23 fair, I -- I do think that there's some difficulty
24 fully expressing himself. But I think he is fluent
25 enough in his expressions --

1 MS. SALTIEL: Right.

2 THE COURT: -- that he could be a fair
3 deliberating juror. I just want to cover that
4 completely.

5 MS. WALSH: Right.

6 THE COURT: All right. That was Juror No. 4.

7 THE CLERK: Right.

8 THE COURT: All right. Juror No. 5.

9 (Sidebar in chambers)

10 THE COURT: Come on in, sir. All right. Mr.
11 Gerold, you indicated that you have previously
12 testified in a court proceeding. Is that correct?

13 MR. GEROLD: Yes.

14 THE COURT: And --

15 THE COURT: In a civil proceeding. When was
16 that, sir?

17 MR. GEROLD: Maybe thirty, 35 years ago.

18 THE COURT: Okay.

19 MR. GEROLD: My wife was involved in an
20 automobile accident and I had to testify.

21 THE COURT: Okay. Anything about that which
22 would in any way affect your ability to be fair here?

23 MR. GEROLD: No.

24 THE COURT: Okay. The next question you
25 answered yes to was, have you ever served on a jury

1 Tuesday a limiting instruction regarding the identity
2 evidence. And then, of course. Monday and Tuesday
3 prior to -- hopefully, we'll have a jury by Tuesday,
4 we'll just go over anything else that needs to be
5 reviewed.

6 As I indicated, if -- if I'm concerned about
7 the schedule, then we'll sit that Monday the 27th. If
8 not, then we won't. Okay. All right. Thanks very
9 much.

10 MS. WALSH: Thank you.

11 MS. SALTIEL: Thank you, Your Honor.

12 (Jury adjourned to 7/20/15 at 9 a.m.)
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CERTIFICATION

I, Charlene P. Scognamiglio, the undersigned transcriber, do hereby certify that the following transcript of the proceedings in the Passaic County Superior Court, Criminal Division, on July 17, 2015, CD No. 7/17/15, Index Nos. 9:33:22 a.m. to 11:41:09 a.m., Index Nos. 12:06:11 p.m. to 12:29:33 p.m., Index Nos. 12:30:33 p.m. to 12:34:37 p.m., and Index Nos. 1:49:25 p.m. to 2:31:06 p.m., is prepared in full compliance with the Transcript Format for the Judicial proceedings, and is a true and accurate non-compressed transcript of the proceeding.

Charlene P. Scognamiglio

Date: 4/8/16

Charlene P. Scognamiglio AD/T 473

King Transcription Services