

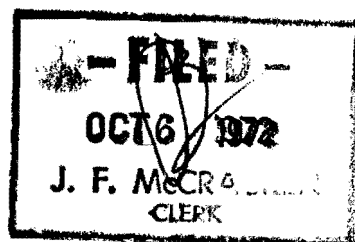
B

IN THE MAGISTRATE'S COURT IN
AND FOR DADE COUNTY, FLORIDA

NO. M-008309 72-7137
M-008688

STATE OF FLORIDA, :
vs. :

RAMON DONESTEVEZ, :
Defendant. :



STATE OF FLORIDA, :
vs. :
EMILIO NAVARRO, :
Defendant. :

M-008310

STATE OF FLORIDA, :
vs. :
ALFREDO RUIZMALDONALDO, :
Defendant. :

M-008753

Proceedings had and taken before The
Honorable Arthur Winton, Magistrate, in open court, at
1351 Northwest 12th Street, Miami, Florida, on September
22, 1972, commencing at or about 1:30 p.m.

- - -

APPEARANCES:

RICHARD E. GERSTEIN, State Attorney,
by WILLIAM R. TUNKEY, Assistant State
Attorney, on behalf of the State.

PEARSON & JOSEFSBERG, by
ROBERT JOSEFSBERG, Esq.,
on behalf of Defendant Donestevez.

PHILLIP A. HUBBART, Public Defender,
by WILLIAM AARON, Assistant Public
Defender, on behalf of Defendants
Navarro and Ruizmaldonado.

- - - - -

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
Jose C. Canto		
By Mr. Tunkey	9	
By Mr. Josefsberg		20
By Mr. Aaron		27

THE COURT: Let's proceed on the case of Ramon Donestevez, Emilio J. Navarro and Alfredo Ruizmaldonado

MR. TUNKEY: Your Honor, I would request a representation first; I would like a representation as to whether or not the defendants are before the Court for this hearing.

MR. JOSEFSBERG: They are.

MR. TUNKEY: All right.

Your Honor, this hearing was set for two o'clock this afternoon, Your Honor, that was my understanding--

THE COURT: They were here at one-thirty.

MR. JOSEFSBERG: Your Honor, regarding the representation of the defendants; I am going to represent the defendant, Ramon Donestevez.

I think they said that they have the same counsel, but I think there may be areas of legal conflict between the three of them.

I have requested Mr. Aaron of the Public Defender's office to be here and I would request him to defend the other two defendants, the co-defendants, solely for the purposes of this hearing.

Whether they would be appointed later on,

or the defendants may choose to seek private counsel; but, Your Honor, I believe that there might be a conflict.

I really don't know, but for right now, I don't think it would be proper for me to interview them and go into detail.

THE COURT: Well, if he has no objection.

MR. TUNKEY: No objection, Your Honor.

THE COURT: All right, for the purposes of this hearing.

MR. TUNKEY: I have no objection, Your Honor.

MR. JOSEFSBERG: Fine.

THE COURT: Are you ready to go on this case?

MR. TUNKEY: The State is ready as soon as the defendant pleas, Your Honor.

THE COURT: They have already entered pleas of not guilty.

MR. TUNKEY: Fine, the State is ready to proceed.

THE COURT: Let's see; do you have an interpreter here?

THE CLERK: Yes, Your Honor.

THE COURT: Fine.

Please sit down between them and you can interpret what is going on to them.

(Interpreter complies.)

MR. TUNKEY: Your Honor, the State will call as its first witness, Jose C. Canto.

Your Honor, likewise, Mr. Canto will need an interpreter and I don't know this gentleman's qualifications, but Sergeant Vincent Oller is present in court and speaks fluent English and Spanish and can interpret the testimony of this witness.

THE COURT: It's all right, I have an interpreter.

Now, we'll use you to interpret from the stand and Mr. Duval will sit between the two gentlemen as he is and interpret the proceedings to them.

All right.

Where's the witness?

MR. TUNKEY: Call Mr. Canto.

THE COURT: Mr. Duval, in the event there is any question they don't understand that you might interpret at the time for them, please let us know.

Now, in any event, the witness is going to

be testifying in Spanish, so you shouldn't have any trouble

MR. DUVAL: Yes, Your Honor.

If it's all right, I want to explain to
Mr. Navarro, sir.

THE COURT: There is nothing to explain to
Mr. Navarro. He'll hear the testimony in Spanish.

(Thereupon, MR. DUVAL and JAY GUERRA were
duly sworn to truthfully and faithfully interpret all ques-
tions posed to the witness from English to Spanish and all
answers given by the witness from Spanish to English.)

MR. TUNKEY: Your Honor, could I have the
witnesses sworn?

THE COURT: Please come over here.

(Thereupon, the witnesses
complied.)

MR. AARON: Your Honor, if there is going
to be more than one witness, I request that the Rule be
invoked.

THE COURT: Will there be more than one
witness?

MR. TUNKEY: Possibly, Your Honor.

Your Honor, it was just brought to our
attention that the defendant knows the interpreter and

that the interpreter knows Mr. Navarro personally, and for that reason, we would request that we use a different interpreter in this cause.

THE COURT: Why do you say that? Because he knows somebody he can't be an interpreter?

MR. TUNKEY: Your Honor, I would like to inquire as to his friendship with the defendant Navarro because the record will depend solely upon the interpretation of what Mr. Conto says.

THE COURT: Do you know him?

THE INTERPRETER: Yes, Your Honor.

MR. TUNKEY: Your Honor, perhaps we can use Sergeant Oller.

THE COURT: No, we have an interpreter. See if you can get Jay Guerra for a few minutes.

THE CLERK: Yes, sir.

THE COURT: Who were the other witnesses that you might call?

MR. TUNKEY: The State may conceivably call Sergeant Havens of the Public Safety Department and Sergeant Vincent Oller.

THE COURT: Are they here?

MR. TUNKEY: Yes, Your Honor.

THE COURT: Please remain outside the court-
room and don't discuss the case with anyone until it is
concluded.

(Witnesses comply.)

THE COURT: Mr. Guerra, would you be kind
enough to act as interpreter for me?

MR. GUERRA: Sure, Your Honor.

(Thereupon, JAY GUERRA was duly sworn to
truthfully and faithfully interpret from English to
Spanish all questions posed to the witness and from Spanish
to English all answers given by the witness.)

THE COURT: Mr. Guerra, would you swear the
witness in in Spanish and tell him to raise his right hand
and be sworn.

(Thereupon, the witness
was duly sworn.)

THE COURT: All right, let's proceed.

Thereupon--

JOSE C. CANTO

a witness herein, called at the instance of the State,
having been previously duly sworn, was examined and testi-
fied through the interpreter as follows:

DIRECT EXAMINATION

BY MR. TUNKEY:

Q Would you state your name.

A Jose Canto.

Q Mr. Canto, I direct your attention to September 1st, 1972; did you have occasion to be at 9970 Banyan Street, in Perrine, Dade County, Florida?

A What was the street?

Q Banyan Street.

A Yes, sir.

Q Is that the location where a building is located known as Piranha Diesel?

A Yes.

Q What time did you arrive there?

A Approximately 9:30 p.m.

Q When you arrived, did anyone meet you outside of Piranha Diesel?

A No.

Q What did you do when you arrived at the building in your car?

A The front door was opened at that time, and at the time I was approaching the door, the owner of the plant was there.

Q Who was the owner of the plant as you know him?

A Ramon Donestevez.

Q Do you see Mr. Donestevez in the courtroom today; and, if so, would you please point to him?

A This gentleman (indicating).

MR. TUNKEY: For the record, indicating the defendant Ramon Donestevez.

Q (By Mr. Tunkey) What did you do or what did Mr. Donestevez say to you when you were greeted by him at the doorway of Piranha Diesel?

A He told me to come in and we went to the office.

Q Was there anyone else in the office when you arrived in the office?

A No, sir.

Q What did he do upon going into the office?

A When we came into the office, I sat down and right away, after that, Mr. Navarro came in.

Q Mr. Navarro?

A Yes. Right there (indicating).

MR. TUNKEY: For the record, indicating the defendant Navarro.

Q (By Mr. Tunkey) Please continue.

A Well, when we came in, he came in with a gun on his hands.

Q Describe the gun.

A It was a U.S. American made nine millimeter

Q This was a pistol or a rifle?

A First it was a pistol.

Q Now, at that time who else was in the room?

A At that time another person coming in with him.

Q Do you see that other person in this courtroom today?

A When they showed me the pictures, it seemed to me--but he is not sure--he is not sure for the purpose of identification.

Q Now, what did this other person who said he was not sure of as to identification, what did this other person have with him when he came into the room?

A At that time, those three persons?

Q How many weapons were in the room at that time?

A Three pistols and one rifle, and one R-18.

Q Was this a rifle or an automatic weapon?

A I don't know by the model, I know it by the model, but I don't know how it works.

Q Please ask him to describe the thing he called a rifle.

THE COURT: What is the materiality of it? He is not here charged with possession of a machine gun, is he?

MR. TUNKEY: No, Your Honor.

THE COURT: All right. Don't bother with it.

Q (By Mr. Tunkey) What happened after the guns were drawn on him?

A They said they needed \$800.

Q Who said this?

A Mr. Donestevéz.

Q Did they say what they needed the \$800 for?

A I cannot recall exactly. They said for guns.

Q For guns?

A Yes, sir.

Q Please tell him to go on and tell us what happened after they informed him they needed \$800 for guns.

A I told them I don't have the money.

Q Please ask Mr. Canto to give us a narrative from that point as to what occurred in the room.

A I explained to them that I don't have the money, then Mr. Navarro, Mr. Navarro told me to give up the wealthy things, and those wealthy things that they would hold it until I find out the \$800 they needed.

Q Did any of the three men say whether he could leave before he paid this \$800?

A They asked me to give them all what I have wealthy at that time.

Q What did you have of wealth on your person at that time?

A It was an I.D. chain of gold and a wrist clock.

Q A what?

A A wrist clock.

Q What else?

A A ring, they searched my automobile too.

Q Did they take anything from the automobile?

A I had a revolver in my car.

Q Go on.

A Nothing else.

Q Who took these items from you, Mr. Canto?

A I put that on the desk and Mr. Donestevéz took it.

Q Now, did you owe \$800 to them or any sum of money to them at that time?

A No, sir.

Q Why did you give your personal items such as the watch, the bracelet and the ring, and the gun to the three men at that time?

A Because they told me they were going to get that in a fair or unfair way.

Q I couldn't understand that, I'm sorry.

A He means they were going to get those items by one way or another.

Q Was your life threatened?

A At the beginning, yes, they told me that I wouldn't go out alive if I didn't give up my money.

Q Before you left Piranha Diesel, were you told to be back there by any certain date?

A They told me that I have fifteen days to come back, excuse me, they told me that I have fifteen days for getting the money.

Q How much money?

A \$800.

Q Did all three men tell you that or just two, or just one of the men?

A I'm trying to recall.

Q All right.

A I'm trying to recall the person who I talked to more, and that was Mr. Donestevéz.

Q All right.

What time did you leave Piranha Diesel that night?

A Approximately 10:30 p.m.

Q Now, after this evening on September 1st; on September 12th, did you have occasion to receive a letter signed, "The Three"?

A I received a paper with no signature and no name on it.

Q Was there a typewritten ending saying "Los Tres"?

A Yes, sir, I took it and I take it to the police.

Q All right.

Please tell us briefly what that letter said.

MR. JOSEFSBERG: Your Honor, we are going to object to that.

THE COURT: Well, they have the letter--

MR. JOSEFSBERG: True, Your Honor, they have the letter and if it is material, the letter is the best evidence.

MR. TUNKEY: Your Honor, there is a second charge as to the defendant Donestevez; the charge of extortion, and this letter would go to that charge.

MR. JOSEFSBERG: Well, then, the best evidence is the letter.

THE COURT: That's right.

Do you have the letter?

MR. TUNKEY: For the purposes of this hearing, Your Honor, I would present to the Court a copy of a letter.

THE COURT: A copy is admissible for the purposes of a preliminary hearing.

MR. TUNKEY: Your Honor, I would like to have this marked for the purposes of this hearing, Your Honor, and to remove it at the conclusion thereof.

THE COURT: Granted.

Let's proceed.

Q (By Mr. Tunkey) Mr. Canto, is this a copy of the letter which you received on the 12th day of September, 1972?

A Yes, sir.

Q It is?

A Yes.

MR. TUNKEY: At this time, Your Honor, I would request that the interpreter, who is before the Court and has been sworn, translate the letter, which is written in Spanish to English for the purposes of the record for identifying it.

THE COURT: I'll allow the translation.

THE INTERPRETER: "The place where we'll meet, I'll tell you by telephone.

"The next fifteen days try to bring the \$800.

"This, we are not kidding.

"I believe that you realize that every day of the fifteenth, we not get the money, we are going to put some dynamite in your home and car and we are going to fill up your stomach with lead.

"Take care with your mouth because there will be people who try to retaliate you."

Signed "The Three."

MR. TUNKEY: Thank you.

THE COURT: Do you have anything further of this witness?

MR. TUNKEY: Just a few more questions, Your Honor.

Q (By Mr. Tunkey) Mr. Canto, you said you then turned this letter over to the police, is that correct?

A Yes, sir.

Q Now, on the 14th day of September, 1972, did you make a telephone call to Ramon Donestevéz which telephone call was tape recorded?

A Yes, sir.

Q Did Donestevéz identify himself?

A Yes, sir.

Q Did you recognize his voice?

A Yes, sir.

Q During your conversation, was it arranged as to when and where you could pay the \$800?

A Yes, I want to give you an explanation; we make a deal to make another telephone call.

We make a deal at six o'clock p.m., to

make another telephone call the following day, the following day at 6:00 p.m.

Q And that would be on the 15th, is that correct?

A Yes.

Q In return for giving this money to Doneste this \$800, were you to get your jewelry back?

A Yes, sir.

Q Did you, in fact, see Donestevez on the 15th, and in return for the \$800 cash, get the jewelry back?

A Yes, sir.

THE COURT: Are you finished?

MR. TUNKEY: One more question, Judge.

Q (By Mr. Tunkey) Did all of these transactions, both the robbery and the receiving of the phone calls and the passing of the money and jewelry; did all this take place in Dade County, Florida?

A Yes, sir, in Perrine, Dade County.

MR. TUNKEY: Your Honor, do you want to take judicial notice of the fact that Perrine is in Dade County?

THE COURT: For the purposes of this

preliminary hearing, yes.

MR. JOSEFSBERG: I will stipulate that Perrine is in Dade County, if that will make you happy.

MR. TUNKEY: Thank you, Counsellor.

THE COURT: Who wants to go first?

MR. JOSEFSBERG: I will, Your Honor.

THE COURT: All right, proceed.

CROSS EXAMINATION

BY MR. JOSEFSBERG:

Q Mr. Canto, when did you receive that letter?

A September 12th or September 13th, I can't recall exactly.

Q Did you receive it by the U.S. Mail?

A Yes, sir.

Q Did you receive it in an envelope?

A I took the envelope and the letter to the police department.

Q When did you first go to the police department with this matter?

A When it was the long weekend, when the long weekend was through, I think it was Tuesday that I went to the police.

Q Well, this incident with all the guns, where they took your stuff from you; was that on a Friday, is that correct?

A (No response)

Q September 1st?

A Yes, sir.

Q You didn't go to the police on Saturday or Sunday or Monday?

A (No response)

MR. TUNKEY: Objection, Your Honor, it's immaterial.

THE COURT: Sustained.

Q (By Mr. Josefsberg) Did you attempt to reach the police at any time before Tuesday?

MR. TUNKEY: Same objection, Your Honor, it's the same question.

THE COURT: Overruled, you started it, so he's going into it.

All right.

A Yes, sir.

Q How did you attempt to reach the police?

A Well, I didn't go exactly to the police department, I was trying to go to the F.B.I.

Q Did you go?

A Yes, sir.

Q When did you go?

A I--

THE COURT: Now you are getting into a deposition.

MR. JOSEFSBERG: Your Honor--I'll get back to this.

Q (By Mr. Josefsberg) You said you never owed Mr. Donestevez money; is that true?

MR. TUNKEY: Objection, that's not correct.

Q (By Mr. Josefsberg) You said you didn't owe him money on September 1st, is that correct?

THE COURT: He said he didn't owe him \$800.

Q (By Mr. Josefsberg) On September 1st--

THE COURT: Rephrase the question.

Q (By Mr. Josefsberg) Do you owe Mr. Donestevez money today?

A No, sir.

Q Did you owe him money on September 1st?

A No, sir.

Q Mr. Canto, have you ever purchased a boat from Mr. Donestevez?

MR. TUNKEY: Objection, it's immaterial.

THE COURT: What's the materiality?

MR. JOSEFSBERG: At this time, he owed him-

THE COURT: All right.

Let's assume he owed him money, all right?

MR. JOSEFSBERG: All right.

THE COURT: That isn't relevant, this isn't a civil case for damages, and there is no relationship to owing him money in this case, that's not the charge against him.

MR. JOSEFSBERG: Your Honor, I intend to prove that on Friday, September 1st, this man owed the defendant in excess of \$3,000.

THE COURT: So, what difference does that make for the purposes of this preliminary hearing?

The charge against him is robbery and extortion and what is the difference as to whether he owed him money or didn't owe him money?

When the crime of robbery is committed, it doesn't have anything to do with whether a person owed you money or not.

MR. JOSEFSBERG: Your Honor, you can rob from a person who owes you money as well as a person who

doesn't, you are right.

THE COURT: Yes.

MR. JOSEFSBERG: However, I intend to show Your Honor that one, he did owe him money; and, two, that that was the reason there was that complaint to the police.

Now, dealing with the concept of first outcry, I think relating to this witness' testimony, the Court will find that if the Court accepts his version of what occurred, it would be preposterous, it would be like waiting three days after a rape to go to the police, which is something to see when someone first complains about it.

I intend to prove to you why he waited all this time and one of the reasons was there was a civil matter, and it didn't occur in this transaction, and as a predicate, I have to show that he had known him for a long time and owed him money for a long time.

THE COURT: It isn't relevant; I don't see the relevancy as to this charge; let's assume he owes him money for a boat; the charge here is that he was robbed, and it wouldn't make any difference if he owed money or didn't owe money, if those are the facts, and we are only here to get the facts concerning the alleged

crime or robbery.

So, I'm not going to allow it in because it doesn't add to this procedure.

Q (By Mr. Josefsberg) Did you know Mr. Donestevez before you went there on Friday; why did you go there on Friday?

MR. TUNKEY: Objection. I object to the two questions before the Court.

Q (By Mr. Josefsberg) Why did you go there on Friday?

A Because he called me and told me to go.

Q Did you know him before he called you?

A Yes, I knew him.

Q How did you know him?

MR. TUNKEY: Objection, it's immaterial.

THE COURT: Sustained, that's not material.

Q (By Mr. Josefsberg) Is he a friend of yours?

A No, sir.

Q Have you done business with him?

MR. TUNKEY: Objection, it's immaterial and outside the scope.

THE COURT: Sustained.

Q (By Mr. Josefsberg) Did you know the other two gentlemen?

A One of them, yes, I worked with him and the other, I realize I saw him once in a while, maybe once out of two times.

Q Did Mr. Donestevez ever put a gun to you?

A All of them put the gun to me.

Q And just so the record is clear, your testimony, under oath, is that on September 1st, 1972, you did not owe any money to Piranha Boat Company or Ramon Donestevez?

MR. TUNKEY: Objection, it's immaterial and repetitious.

THE COURT: Sustained.

MR. JOSEFSBERG: Your Honor, this goes to the man's credibility.

THE COURT: If that's the only time you're going to ask that question, I'm going to allow him to answer it.

MR. TUNKEY: Your Honor, I'm going to object because the question is duplicitous.

THE COURT: I'll allow him to ask it.

Q (By Mr. Josefsberg) All right.

A I didn't owe him any money, I didn't owe money to either Mr. Donestevéz or the company.

THE COURT: Are you finished?

MR. JOSEFSBERG: Your Honor, if I cannot ask him questions about this prior relationship, then I am through.

THE COURT: Do you want to ask this man any questions?

MR. AARON: Yes, Your Honor.

BY MR. AARON:

Q When you said Mr. Navarro first came into the office he had a gun; was this gun in his hand at that time?

A He was carrying a pistol, a nine millimeter, at that time.

Q Did he ever point the gun at you?

A Yes.

Q When did he do that?

A As soon as I sat down he pointed at me.

Q Did he say anything?

A He told me, "Don't move," he told me, "Don't move," and then at that time, Donestevéz started to talk.

Q What did he do with the gun at that time?

A I want to know when you referred to the person.

Q Well, what did Mr. Navarro do with the gun at that time?

A He was behind me all the time.

Q Mr. Navarro was behind you?

A I had one in each side.

Q You stated that you once worked with one of these gentlemen; was that Mr. Navarro?

A Repeat the question, please.

MR. TUNKEY: Your Honor, I'm going to object.

That was never the testimony; he said he had seen him, I believe, on two or three occasions.

THE COURT: No, that was not the testimony.

MR. AARON: Your Honor, he said one of them worked for Donestevez.

THE COURT: Well--

MR. AARON: Your Honor, I will withdraw the question.

THE COURT: Go ahead.

Do you have any more questions?

MR. AARON: I have no further questions at

this time, thank you.

THE COURT: Ask him if he only identifies two out of the three defendants.

THE INTERPRETER: Yes, sir.

THE COURT: Is there any more testimony?

MR. TUNKEY: Yes, the State will call--Your Honor, I would like Mr. Canto to be excused, but to wait outside, and at this time I will call Sergeant Oller.

THE COURT: What is the purpose of that additional testimony at this hearing?

MR. TUNKEY: If Your Honor doesn't think it is necessary, the State will rest.

THE COURT: You only have to show probable cause here.

I don't think it is necessary for any further testimony at this point.

MR. TUNKEY: Your Honor, the State would dismiss the charges against the defendant Ruizmaldonado.

THE COURT: Granted.

MR. JOSEFSBERG: Your Honor, there is absolutely no proof connecting this typewritten letter to anyone.

The extortion letter is something which is

not linked to any defendants or anyone else.

THE COURT: There is testimony from the witness concerning the extortion matter, omitting the letter for the purposes of arguing this case, the letter doesn't do anything but add to the testimony that is already in.

MR. JOSEFSBERG: Yes, there is probable cause, I agree, but--

THE COURT: He was told that if he wasn't back in fifteen days, the testimony of the witness was, that he was going to have the car dynamited, and that's from the witness on the stand, and the letter doesn't detract from that.

MR. TUNKEY: That's right, Your Honor.

THE COURT: There is probable cause, and whether the letter would be admissible in the trial or not is not my concern here today.

MR. JOSEFSBERG: Your Honor, the thing I am interested in is the question of bond.

And one of the defendants, I guess we are not even talking about.

MR. TUNKEY: Yes, I moved to dismiss, Your Honor.

THE COURT: What is the State's position on this?

MR. TUNKEY: Your Honor, the State's position would be that the presumption in this case when it is evidenced is sufficient to deny bond.

Your Honor, this is a crime which carries a possible life sentence.

THE COURT: I know the rule about that.

MR. TUNKEY: The State feels that the taped telephone calls and pictures taken at the place where the exchange of property took place--

THE COURT: There's no need to go into that, I'm going to bind the defendants over on the charges, and there will be no bond; you'll have to go to the Criminal Court on that bond.

MR. JOSEFSBERG: Can the Court hear us on that?

THE COURT: No.

MR. JOSEFSBERG: Your Honor, this is within your jurisdiction.

THE COURT: You mean as to whether I determine if there is going to be bond or a lesser charge of robbery is from the testimony I hear from the stand

and whether or not we bond in the case.

MR. JOSEFSBERG: Correct, but there are matters aside from the presumption of a proof which the Court is supposed to take into consideration.

We would like to present to the Court, firstly, the facts of this case are such that something is rather unusual about it where a man, according to his own testimony, gives over his watch, bracelet, ring and pistol and then he comes back with \$800 and is supposedly given back to him.

Your Honor, that is not what you would call a typical armed robbery as such, that's a rather unusual circumstance, Judge, regardless of the degree of proof, regardless of the degree of proof they have, I would like to present proof to the Court that Ramon Donestevéz owns a home, a boat factory and has a wife and four children, and that he lives here in Dade County, and there is absolutely no question but that he'll respond to any bond that is set for him, Your Honor, and it is entirely within this Court's discretion, and I would like to produce the testimony right now that he does own a boat yard.

No one else is working, he is the one that runs the boat yard.

Your Honor, I have his two sons here and I have his wife here and other members of the family, and I can't see any benefit to the State or to society by not setting a bond.

THE COURT: Well, the way I understand it, I mean the test for a bond, the test for a bond in a robbery case is if the proof is not clear and convincing enough to the Court, that the Court at its discretion may enter a bond.

I am not here as a trial judge, and I don't have to measure a quantum of proof beyond a reasonable doubt, but I do have the authority in this proceeding whether you request a bond reduction, to make a determination as to determine by the evidence whether there is a suspicion, a mere suspicion, or whether or not there is enough evidence for probable cause or, in a greater degree, wherein it is almost beyond a reasonable doubt for the purposes of determining the question of bond.

I have heard this witness on the stand and I am satisfied that this is not a situation where it is not clear and convincing at this point and that to me this satisfies the test, at this point, in the case of the charge of robbery.

MR. JOSEFSBERG: Fine, now you go into a different area, Your Honor, and we are discussing the law.

If you did not feel that way you would not have no discretion, you would, as a matter of law, be obligated to set bond on him.

Now, that you have, as a matter of fact, found that the proof is clear and convincing--

THE COURT: For the purposes of this hearing.

MR. JOSEFSBERG: --right, and right now it is within your discretion to decide whether you want bond or not; he is not entitled to bond as far as right and--

THE COURT: Pardon me.

All right, continue.

MR. JOSEFSBERG: Your Honor, is the State entitled to ask for no bond as a matter of right? There are factors which leave it up to your discretion, Your Honor.

THE COURT: My understanding is that if I find the proof is not clear and convincing, then at this point I have the discretion whether to set bond or not.

I think you have it backward.

MR. JOSEFSBERG: Your Honor, we can look it up right now.

THE COURT: Once I make a determination for the purposes of this hearing that it is not beyond not being clear and convincing, I must say that I will set no bond in this case.

MR. JOSEFSBERG: Your Honor, will you hear the law on it?

THE COURT: That's my understanding of the law.

MR. JOSEFSBERG: Well, Your Honor, the reason--

THE COURT: Mr. Josefsberg, I don't intend to set bond in this case.

I suggest that if you feel that you still want bond, I suggest you take it up with the judge in the other court.

I am not going to set bond in this case.

MR. JOSEFSBERG: I take it that what the Court is saying is that if in this case you didn't find that the proof was clear and convincing, then it was your opinion that the defendant is entitled to bond as a matter of right?

MR. TUNKEY: Objection, Your Honor.

THE COURT: Mr. Josefsberg, I think in most cases, I would come to that conclusion, but I don't say in every case.

MR. JOSEFSBERG: Fine.

Your Honor, all I am saying is that if I can come back and show you the statutes that the right is now within your discretion, that the State is apparently telling you you shouldn't set bond,--

MR. TUNKEY: Objection.

THE COURT: He didn't say that.

MR. JOSEFSBERG: Your Honor, it seems to be your opinion, as a matter of fact, that once you find it clear and convincing, there should be no bond?

THE COURT: I don't know if that's rigid or not, but from what I heard here today, I'm not going to set bond.

MR. JOSEFSBERG: You haven't heard anything about how he would respect his bond; all you heard about is the crime.

THE COURT: I understand that, and I know that the purpose of bond is to determine whether or not the person is going to be at the court hearing, but that's where

you get into a situation where what crime is bondable as a matter of right, but this is a different situation because the legislature, in its wisdom, have stipulated that there are certain crimes that are not bondable, per se, unless you meet certain territories, and it is my understanding of the law that the judge would be well within his province to say, "No bond," and I'm saying, "No bond."

MR. JOSEFSBERG: But, the problem is that you are saying that based on the facts of the case--

THE COURT: Excuse me, Mr. Josefsberg, but I am saying, basically, on what I heard, and also my feelings about the testimony in this case, that the proof, for the purposes of this hearing, I have found to be convincing enough that I am not going to exercise any discretion to impose or set bond; so, I'm giving it right back to you like you were giving it to me.

I don't know if you are satisfied with that explanation.

MR. JOSEFSBERG: I understand exactly what the Court is saying, the problem is that if the State is directly misstating law to the Court--

THE COURT: No, he didn't misstate it, he

merely said the bond shouldn't be set and I didn't really get a chance to ask his reason other than he made this reference.

MR. JOSEFSBERG: Your Honor, the problem is in your exercising your discretion, we have not presented to you, and the State has not presented to you, one iota of facts which should be the basis of your making your opinion.

THE COURT: I don't agree with you.

Is that the statute on rights?

MR. JOSEFSBERG: That is correct, Your Honor, and the State has looked it up; would you care to show the statute to the Judge?

MR. TUNKEY: Your Honor, I would if I could have found it, but I can't find it, Your Honor.

THE COURT: Let us not deal in semantics, gentlemen. Let's not deal in semantics here; let's assume that it is a pure discretionary matter at this point, and let's assume that I am not going to exercise my discretion on what I heard from the stand to set a bond.

MR. JOSEFSBERG: You shouldn't, there has been nothing from the stand as to what type of person he is.

THE COURT: Well, from what I heard from the witness about the facts surrounding this incident, I don't intend to exercise any discretions on bond in this case regardless of what you claim as to how long he lived in the community, because you already said that to me, and I will accept that statement from you, that he is a business man and he is a family man, and he has the sole support of the business, you don't have to put on testimony for that; if you told me those were the facts, I would accept them.

I'm not going to set bond in this case.

MR. JOSEFSBERG: I'll petition another court, I think those are the facts upon which the Court should base its decision one way or the other.

THE COURT: All right. I am exercising my discretion, you can take it where you think it should be.

I have indicated that I would not set bond in this case, a case of this nature.

MR. AARON: Your Honor, for the record, the charges against the defendant Ruizmaldonado are dismissed?

THE COURT: Who?

MR. AARON: Ruizmaldonado.

THE COURT: The State has requested and I granted the dismissal.

MR. TUNKEY: Correct.

THE COURT: And Mr. Navarro is bound over.

MR. JOSEFSBERG: Your Honor, with reference to bond for Mr. Navarro?

THE COURT: The same decision goes for Mr. Navarro as it did for Mr. Donestevez at this time.

MR. JOSEFSBERG: Thank you, Your Honor.

MR. TUNKEY: Thank you, Your Honor.

MR. AARON: Thank you, Your Honor.

(Thereupon, the hearing
was concluded.)

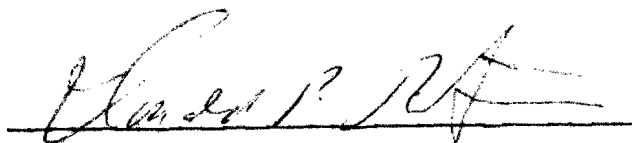
- - - - -

CERTIFICATE

STATE OF FLORIDA)
)
COUNTY OF DADE)

I, DONALD P. ROTUNNO, Court Reporter and Notary Public in and for the State of Florida at Large, hereby certify that I was authorized to and did report in shorthand the proceedings and evidence in the matter of The State of Florida versus Ramon Donestevez, Emilio Navarro and Alfredo Ruizmaldonado, Defendants, before The Honorable Arthur Winton, Magistrate, on September 22, 1972; and, that the foregoing pages, numbered 1 to 40, inclusive, constitute a true record thereof.

Dated at Miami, Dade County, Florida, this 3rd day of October, 1972.



My Commission Expires: 10/20/75