To be argued by:
David Billingsley
15 mins. requested

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

FELIX MORALES,

Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT FELIX MORALES

New York Cty. Ind. No. 5578-2013

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PRELIMINARY STATEMENT

This is an appeal from a judgment rendered on July 7, 2016, by the Supreme Court, New York County. Felix Morales was convicted after a bench trial of two counts of Robbery in the Second Degree, one each under N.Y. Penal Law § 160.10(1) and § 160.10(2)(a), one count of Strangulation in the Second Degree, Penal Law § 121.12, and four counts of Grand Larceny in the Fourth Degree, Penal Law § 155.30(4). Mr. Morales received 25 years to life in prison on each of the robbery and strangulation charges, and 2 to 4 years in prison on the grand larceny charges, all to be served concurrently.

Justice Arlene Goldberg presided over the suppression hearing. Justice Maxwell Wiley presided over the bench trial and sentencing. Timely notice of appeal was filed. No stay of execution has been sought. Mr. Morales is currently serving his term of imprisonment.

QUESTIONS PRESENTED

1. Should Felix Morales's videotaped statement implicating himself in a robbery have been suppressed as the result of a single, continuous chain of events beginning with Detective Raymond Alicea's initial *Miranda* violation?

2. Was Mr. Morales deprived of his right to due process and to cross-examine and confront the key prosecution witness, where the trial court prevented defense counsel from cross-examining Det. Alicea about lawsuits alleging his misconduct in support of false arrests?

3. Were Felix Morales's maximum sentences unduly harsh and excessive because they were disproportionate given the nature of the offenses and Mr. Morales's prior record?

INTRODUCTION

Felix Morales's conviction of several counts of robbery, grand larceny and one count of strangulation was largely based on his videotaped statement in which he stated that he, his wife, and a third person robbed the complainant. This statement followed suppressed statements elicited by Det. Raymond Alicea without *Miranda* warnings, and other post-*Miranda* statements that were also suppressed. Mr. Morales's conviction must be reversed for two reasons.

First, the court should have suppressed his videotaped statement. Although it followed a *Miranda* warning, it flowed from the initial un-Mirandized statements in a single, continuous chain of events in which there was no significant change to the circumstances of the interrogation, no meaningful time delay, and Det. Alicea, who unlawfully elicited the earlier statements, was still present and continued to participate in the interrogation. Without Mr. Morales's videotaped statement, the other evidence against him was equivocal. Thus, the admission of the videotaped statement was prejudicial, and his conviction must be reversed.

Second, the trial court denied defense counsel the opportunity to cross-examine Det. Raymond Alicea about factual allegations in two lawsuits against him that alleged that he knowingly submitting false affidavits and attempted to induce a witness to falsely identify a defendant as the perpetrator of a robbery. At trial, whether Mr. Morales's videotaped statement was induced by promises from Det. Alicea to have Mr. Morales's wife released in exchange for a confession from Mr. Morales was at issue, and went to the voluntariness of Mr. Morales's videotaped statement. The allegations against Det. Alicea in the lawsuits therefore created a good-faith basis for an inquiry on cross-examination. Denying this to defense counsel deprived Mr. Morales of due process and the right to confront the key prosecution witness against him, requiring reversal.

If this Court does not reverse his convictions, his sentences should be reduced closer to the minimum terms. Mr. Morales did not deserve to receive maximum sentences of 25 years to life in prison on the robbery and strangulation charges. The offenses did not result in serious injury to the complainant, and while Mr. Morales was adjudicated a persistent violent felony offender, his past record, which was the result of his

longtime drug addiction, did not justify a maximum sentence. Thus, sentences of 25 years-to-life were disproportionate.

STATEMENT OF FACTS

Felix Morales and two co-defendants were charged with seven felony counts related to the robbery of the complainant Yongzhon Chen on Nov. 23, 2013. *See* N.Y. Cty. Ind. No. 5578-2013 (hereinafter, "Indictment"); T.[1] 47. These charges included two counts of Robbery in the Second Degree, one each under N.Y. Penal Law § 160.10(1) and § 160.10(2)(a), one count of Strangulation in the Second Degree, Penal Law § 121.12, and four counts of Grand Larceny in the Fourth Degree, Penal Law § 155.30(4). Mr. Morales and his co-defendants were alleged to have robbed Mr. Chen in an elevator by going through his pockets after Mr. Chen was rendered unconscious by being put into a choke hold from behind. *See* Crim. Compl. at 1.

A. Mr. Morales Makes Both Mirandized and Un-Mirandized Statements Implicating Himself in the Robbery in Response to Det. Alicea's Interrogation.

Mr. Morales sought to suppress oral, written, and videotaped statements he made to police and an assistant district attorney on

[1] Citations to "H." refer to hearing proceedings held on Sep. 30, 2014 - Oct. 1, 2014. Citations "P." refer to pre-trial proceedings held on Jan. 22-27, 2014. Citations "T." refer to bench trial proceedings held on Jan. 27 - Feb. 9, 2016. Citations to "S." refer to the sentencing on July 7, 2016.

December 19, 2013. H. 1. Det. Raymond Alicea testified that his precinct received a report that the complainant had been choked from behind while an unknown woman went through his pockets as he was in the elevator of his apartment building at 240 Madison Street. H. 10. Police were able to recover surveillance footage from the lobby and elevator capturing the robbery which showed three perpetrators, including two men and a woman. H. 10-13. Police then selected still images of the three perpetrators to release to the public as wanted posters along with a YouTube video seeking information about the perpetrators' identity. H. 10-13, 136-37, 208. The images selected of the suspects were relatively small and low-resolution. *See* People's Hearing Exh. 2, Wanted Poster.

Det. Alicea testified that based on this poster, the police received tips claiming that the woman's name was "Danielle" or "Daniela", and that she was the wife or girlfriend of Mr. Morales, who was claimed by tipsters to be one of the men in the posters. H. 17-18, 21, 24-26. The other man in the poster was referred to by tipsters as "Tony Toca" or "Touch Tone." H. 21, 25. Police also received tips identifying the men as

several other people, such as "Isaac Morales," "Francisco Garcia," and "Roberto Castineras." H. 81-82.

Danielle Morales was arrested on a warrant on Dec. 17, 2013. H. 28. When placed into a lineup, the complainant identified her as one of the robbers. H. 28.

Det. Alicea testified that Felix Morales called the precinct on Dec. 19, 2013 and stated that he wanted to come in to give the police some information. H. 29. Mr. Morales arrived to the precinct with his father in the early afternoon. H. 29, 104-05. Det. Alicea testified that at this time he already intended to arrest Mr. Morales, even though the complainant had failed to identify Mr. Morales from a photo array. H. 95-96, 104-05, 205.

During an interview with Dets. Alicea, Jose Toala and James Gillespie, Mr. Morales initially offered information about drug dealers and drug sale locations. H. 30-31. Mr. Morales also stated that he had recently been released from jail in Florida, had since married Danielle, and was taking care of her daughter as his own. H. 32, 103-04. Mr. Morales also told the detectives that he had been a longtime addict and had recently relapsed and returned to using drugs. H. 103.

During this interview, Det. Alicea told Mr. Morales that he had been identified in the robbery. H. 33-34, 120-21. He showed Mr. Morales still photographs taken from the surveillance footage of the robbery. H. 34. Det. Alicea stated that Mr. Morales denied recognizing himself in the photos but claimed to recognize an "Anthony Gonzalez" whom he stated was known as "Touch Tone." H. 34. Mr. Morales also stated that his wife Danielle and Anthony Gonzalez had recently run off together, and she had returned with money from an unknown source. H. 34. When asked where he was at the time of the robbery, Mr. Morales stated that he was at home with his cousins Clarissa and Brittany and his grandmother watching football. H. 35.

Det. Alicea stated that, after this, "approximately an hour later," they took a break. H. 35. Mr. Morales was given a sandwich to eat and spoke with his father in the interview room. H. 35. According to Det. Alicea, up to this point, Mr. Morales was not handcuffed, told that he was under arrest, made any promises or threats, or told that he was not free to leave. H. 30-31, 33, 35.

When Det. Alicea returned to the interview room around 4 PM, Mr. Morales attempted to leave. H. 37-39, 105-06. Det. Alicea testified

that he then removed Mr. Morale's shoes from his feet. H. 36, 106. When Mr. Morales asked whether he could leave, and promised that he would come back, Det. Alicea said, "No, you can't leave…I gave you several opportunities to tell me what happened. I asked you to step up and be a man." H. 37-39. Det. Alicea then said, "Your wife is already incarcerated on this, and you wouldn't tell me what happened," Mr. Morales began crying and, according to Det. Alicea, said, "I did it. I robbed the guy." H. 37-39; *see also* H. 106.

Det. Alicea testified that only then did he go to "retrieve" written Miranda warnings and show them to Mr. Morales. H. 37, 123. Det. Alicea testified that "after [Det. Alicea] read him all of the warnings, he agreed to speak with [Det. Alicea]" and gave a verbal statement at 4:25 PM implicating himself, Danielle and "Tone" in the robbery. H. 41-43, 119. In total, Mr. Morales was in the precinct for approximately three hours before giving a verbal confession. H. 105-06.

Det. Alicea testified that he personally drove Mr. Morales at 6:20 PM to the Early Case Assessment Bureau (ECAB) unit of the Manhattan District Attorney's office for his statement to be recorded on video. H. 44-45, 126. While Det. Alicea was in the room, Assistant

District Attorney Leah Saxstein read Mr. Morales *Miranda* warnings again. H. 46-47. With Det. Alicea present in the room for its entirety, Mr. Morales at around 7:05 PM again made a verbal statement implicating himself in the robbery. People's Hearing Exh. 5, Video of Felix Morales (hereinafter, "ECAB Statement").

Mr. Morales can be observed to be crying at several points in the video, as he did when he first was arrested by Det. Alicea. *See* ECAB Statement at 22:10-23:00, 25:50-27:15.[2] Det. Alicea can be heard asking questions about the landmarks near 240 Madison St., how Mr. Morales, Danielle, and "Tone" exited 240 Madison St., his relationship to "Tone" and when Mr. Morales later saw him, and instructing Mr. Morales to "put yes and then your initials" next to certain paragraphs on the *Miranda* form. ECAB Statement at 1:30-1:40, 15:00-15:22, 23:00-24:47.

Mr. Morales stated that the "main cause" of his criminal activities in the past were because of his "problems with drugs." ECAB Statement at 2:20-2:35. He stated that he and his wife were primarily addicted to heroin. ECAB Statement at 7:15-7:25, 8:10-8:25. He stated that he had

[2] Citations in the format "MM:SS" refer to the video's timestamp, e.g., 22:10 means 22 minutes and 10 seconds.

been sober following his release from prison in Florida but later met up with old friends and began using drugs again. ECAB Statement at 2:30-3:10, 5:50-6:20. Mr. Morales was also unable to work and he and Danielle became homeless. ECAB Statement 5:50-6:20, 7:50-8:40. Mr. Morales and Danielle came to New York in order to get drug addiction treatment. ECAB Statement at 6:50-7:20, 8:10-8:25. Mr. Morales attempted to get into a drug treatment program but could not afford it without insurance and because there was no available space at the program he tried to enter. ECAB Statement at 6:50-7:20.

He also expressed remorse about "destroy[ing] [his] wife's life" by "introduc[ing] her to drugs" and that she had had a "good upbringing" and did not have a criminal record before meeting him. ECAB Statement at 25:50-26:20. He stated that he came to the police because "I wanna help her to get [her life] back, if I'm with her or not, I feel good if at least she's okay and got her life back with the baby, I would feel better. That's what I want. That's why I'm here." ECAB Statement at 25:50 – 26:21. When asked if he had any questions at the conclusion of his statement, Mr. Morales asked what he could do "to help [his] wife." ECAB Statement at 27:30-27:40.

B. The Hearing Court Suppresses All Statements Made After the "Sandwich Break" Except the Videotaped Statement.

The hearing court suppressed all of Mr. Morales's statements made at the precinct after Det. Alicea returned to the interview room and took Mr. Morale's shoes following the "sandwich break." Decision and Order of Hon. Arlene Rodriguez, dated Apr. 28, 2015 (hereinafter, "Suppression Decision") at 3. The court held that Mr. Morale's statement "I did it. I robbed the guy" were in response to Det. Alicea's statements that he told Mr. Morales that he had had "several opportunities to tell [him] what happened" and to "step up and be a man" and that his "wife was already incarcerated on this." *Id.* Thus they were the "functional equivalent of interrogation" in custody following an arrest. *Id.*

The court held that those inculpatory statements made at the precinct following the reading of Miranda warning must also be suppressed since "they are not attenuated having been made so soon

after the initial illegally obtained statement by the same questioner at the same location."[3] *Id.*

However, the court denied suppression of Mr. Morale's videotaped statement at ECAB because it was made "more than two hours later," after a second reading of Miranda rights, and Mr. Morales was not shown to be "threatened or promised anything and never requested an attorney." Suppression Decision at 4. The court noted that Det. Alicea was present during the ECAB statement but incorrectly stated that that he did not participate in the questioning. *Id.*

C. The Trial Court Prevented Mr. Morales's Counsel From Cross-Examining Det. Alicea About Factual Allegations in Two Lawsuits in Which Det. Alicea is Alleged to Have Submitted a False Affidavit and Pressured a Witness to Make a False Identification.

Prior to trial, defense counsel moved to be allowed to cross-examine Dets. Alicea regarding two lawsuits, in which he was the only individually named defendant, regarding his conduct in support of false arrests.

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[3] The court also suppressed a written statement purportedly made by Mr. Morales since there was "no testimony at all about [Mr. Morales] having written any statements." Thus, the court could not conclude that the statement was voluntarily made. Suppression Decision at 3-4.

1. *The Jiminez lawsuit.*

The complaint in *Jiminez v. City of New York* alleges that in Feb. 2007, Juan Jiminez was taken to the precinct by Det. Alicea for the purported purpose of discussing drug activity in Mr. Jiminez's apartment building. Complaint, *Jiminez v. City of New York*, No. 07-CV-10592 (S.D.N.Y) (hereinafter, "*Jiminez* Complaint") at ¶ 13-15. Det. Alicea is alleged to have interrogated Mr. Jiminez, and afterward placed him into a lineup. *Id.* at ¶ 16-17. The complaint alleged that Det. Alicea then brought the victim of a robbery, Christian De La Cruz, to make an identification from the lineup. *Id.* at ¶ 18. The transcript of the trial testimony in the ensuing criminal case against Mr. Jiminez, attached to the complaint, shows that Mr. De La Cruz was "100% certain" that no one in the lineup matched the person who robbed him. *Id.* at ¶ 18-20; *see* Exh. A to *Jiminez* Complaint.

Mr. De La Cruz testified at Mr. Jiminez's criminal trial that, even though he had stated to Det. Alicea "unequivocally" that the robber was not in the lineup, Det. Alicea repeatedly asked him if he was "sure," to which Mr. De La Cruz responded that he was still "100% certain," and

when asked again, he stated again that he was "absolutely certain." *See Jiminez* Complaint at ¶ 21-22; Exh. A to *Jiminez* Complaint. The complaint alleges that Det. Alicea then instead asked Mr. De La Cruz to choose the person in the lineup who "most resembled" the robber, yet Mr. De La Cruz continued to insist that "really no one" in the lineup looked like the robber, and even stated that Mr. Jiminez was "too light skinned," and "chubbier" than the robber. *Id.* at ¶ 23-25.

The complaint states that Det. Alicea arrested Mr. Jiminez anyway. *Jiminez* Complaint at ¶ 26. The complaint also alleges that "defendants" – of whom Det. Alicea is the only one individually named – "filed false police reports" in support of the charges against Mr. Jiminez and "gave false and misleading testimony throughout the criminal proceedings." *Id.* at ¶ 35-36. The complaint states that no physical or forensic evidence was recovered implicating Mr. Jiminez, nor was a weapon or stolen property found in his possession, and that Mr. Jiminez was later acquitted of all charges. *Id.* at ¶ 28-33.

The *Jiminez* case was settled with an agreement for the City of New York to pay Mr. Jiminez $65,000 in exchange for the dismissal of the suit and the release of all claims against the defendants. Stipulation

and Order of Settlement and Dismiss, *Jiminez v. City of New York*, No. 07-CV-10592 (S.D.N.Y) (hereinafter, "*Jiminez* Settlement Stipulation") at ¶ 2. The settlement stipulation contained a clause stating that "Nothing herein shall be deemed to be an admission by any of the defendants that they have in any manner or way violated plaintiff's rights, or the rights of any other person or entity…" *Id.* at ¶ 4.

2. *The Santiago lawsuit.*

In a second lawsuit, *Santiago v. City of New York*, Det. Alicea is again the only individually named defendant. Complaint, *Santiago v. City of New York*, No. 14-CV-02228 (S.D.N.Y.) (hereinafter, "*Santiago* Complaint"). The civil complaint alleges that in a criminal complaint against the plaintiff, Juan Santiago, Det. Alicea stated that an individual named Jonathan Flores had accused the plaintiff, Juan Santiago of robbing him. *Santiago* Complaint at ¶ 21-23. Det. Alicea stated that the robbery occurred at 2:19 PM on Nov. 23, 2012 on the lower east side of Manhattan. *Id.*

However, the *Santiago* civil complaint states that a separate criminal complaint against Jonathan Flores, filed prior to the criminal complaint against Mr. Santiago, alleged that Flores was in police

custody at New York Presbyterian Hospital on the upper east side of Manhattan – approximately 4 miles away – where police recovered drugs from Mr. Flores. *Id.* at ¶ 24-26, 28. The separate criminal complaint stated that Mr. Flores was in custody at 2:10 PM on Nov. 23, 2012 – merely 9 minutes before Det. Alicea alleged in his criminal complaint that Mr. Santiago had robbed Mr. Flores. *Id.* at ¶ 25. The *Santiago* civil complaint against Det. Alicea alleged that, since this was a "factual impossibility," either "Defendant Alicea … completely fabricated the allegations against the plaintiff," or he "knew or should have known them to be false…when they were made." *Id.* at ¶ 25, 26, 29. It also states that the "factual allegations sworn to by defendant Alicea against plaintiff were materially false and deliberately made to justify [Mr. Santiago's] illegal arrest." *Id.* at ¶ 35. The criminal charges against Mr. Santiago were dismissed on motion from the District Attorney, while Mr. Flores was later convicted of the charges alleged in the criminal complaint against him. *Id.* at ¶ 33-34.

3. *Defense counsel's proposed cross-examination of Det. Alicea.*

Prior to Felix Morales's trial, defense counsel sought permission to inquire about the *Jiminez* and *Santiago* lawsuits, explaining to the trial

court that Det. Alicea was alleged in the *Jiminez* lawsuit to have "continue[d] to press" Mr. De La Cruz to identify Mr. Jiminez as the robber. P. 56. Mr. Morales's counsel argued that this entitled him to cross-examine Det. Alicea about the facts alleged in the lawsuit because "it seems as if he has a history of doing things that are somewhat untoward." P. 56. The court then reviewed the pages of transcript attached to the *Jiminez* civil complaint in which Mr. De La Cruz stated that he repeatedly insisted to Det. Alicea that no one in the lineup Det. Alicea presented to him matched the robber. P. 57. The court withheld decision on whether to allow defense counsel to cross-examine Det. Alicea about the *Jiminez* case. However, the court denied permission to cross-examine Det. Alicea about the *Santiago* case, saying only "the Santiago case is out," without any further discussion. P. 57.

The next day the court denied Mr. Morales's counsel permission to cross-examine Det. Alicea regarding the *Jiminez* lawsuit as well because "I don't see here that there really is [sic] good faith grounds to cross-examine … Det. Alicea on that case." P. 63. The court stated that this was because the complaint "alleges he gave false testimony but it never alleges he actually told anybody … that the eyewitness in the

case had in fact positively identified Mr. Jiminez in the lineup." P. 62. The court also noted that the suit was settled with a "stipulation [that] there was no admission of guilt or wrongdoing or reliability." P. 63. The court also held that "the fact that Det. Alicea arrested Mr. Jiminez even though there was no lineup identification doesn't necessarily mean there was a false arrest." P. 63.

D. Trial.

Mr. Morales elected to proceed with a bench trial. P. 45-49.

1. *The Complainant Was Unable to Identify Mr. Morales, And No Physical Evidence or Stolen Property Connecting Mr. Morales Was Recovered.*

The complainant, Yongzhou Chen, testified that he was robbed on Nov. 23, 2013 in the elevator of his apartment building. T. 172-173. He stated that two "Hispanic" men and a "Hispanic" woman followed him home to 240 Madison Street at approximately between 10:30 and 11:00 PM. T. 173-175. These three people followed him into the elevator of his building along with several other people. T. 176. Once he was alone with the three people who had followed him, one of the men, whom he described as "dark-skinned," grabbed him from behind and choked him

so that he passed out. T. 177-78. When he woke up, his wallet, cellphone and car keys were gone. T. 178.

Mr. Chen identified Danielle Morales in a lineup. T. 181-83, however he also stated on the witness stand that he "did not recall exactly how she looked like" when describing the robbery. T. 176. Mr. Chen testified that when shown a photo array containing Mr. Morales's photo, he was not able to identify Mr. Morales. T. 184-85.

No fingerprints or DNA linking Mr. Morales were recovered. T. 84-85, 133, 142-43. No stolen property was found in his possession. T. 80.

2. *Det. Alicea Testifies About the Circumstances Leading Up to Mr. Morales's ECAB Statement and the Circumstances of Mr. Morales's Interrogation.*

At trial Det. Alicea testified that he was the lead investigator in the case. T. 106. He was unable to identify any eyewitnesses to the robbery. T. 48. He stated that he canvassed the building where the robbery occurred for cameras and later recovered security footage. T. 47-49. He then arranged for the security footage and wanted posters based on still images to be released to the public. T. 51-55. He testified that in response to tips, the resulting investigation led him to look for

Mr. Morales, Danielle Morales, and a man named Jose Velez as suspects. T. 56.

Det. Alicea claimed that two witnesses, "Melissa" and "Teetee," together identified Mr. Morales based on a still photo from security footage. T. 111-12, 119. However, he admitted, as he did at the suppression hearing, that several other tips named various other male suspects. T. 103-04. He stated that while he compared one of the suspects identified in the tip to the surveillance video and determined that this suspect was not in the video, Det. Alicea himself did not investigate tips relating to the other suspects besides Mr. Morales. T. 104, 108. He claimed simply that other officers "didn't come up with any information that may aid in the investigation." T. 105.

According to Det. Alicea, in the days prior to Mr. Morales's interrogation, Alicea told Mr. Morales's father that he "need[ed] to speak with" Mr. Morales, and told his father "to either call [Det. Alicea] or bring Felix in." T. 126. He also visited Mr. Morales's grandmother's home at 571 FDR Drive in Manhattan, approximately one mile from the scene of the robbery at 240 Madison Street. T. 58. Det. Alicea testified that Mr. Morales came in to the precinct with his father on Dec. 19,

2013. T. 67. Det. Alicea said that he was with Mr. Morales in the precinct for approximately 6 hours. T. 67-68. He later drove him to the ECAB unit. T. 67-68, 120. In total, on the day of Mr. Morales's interrogation he was with Mr. Morales for eight hours. T. 86. He testified that he had no conversation with Mr. Morales outside of what was shown on the ECAB video statement. T. 76. He also testified that he made no promises in return for Mr. Morales making a statement. T. 124, 394-95.

According to Det. Alicea, prior to his taking Mr. Morales's shoes, Mr. Morales stated in the precinct that he had a falling out with Teetee and Melissa leading them to call the police to "get him out of grandma's house." T. 119, 125. Mr. Morales offered an alibi stating that he was with his cousin Clarissa and his grandmother at the time of the robbery. T. 118-19. Det. Alicea stated that he did not investigate this alibi prior to eliciting the confession because, he claimed, he "had a video," in which Melissa and Teetee identified Mr. Morales, and because "he confessed to what he did." T. 119, 125-26.

3. *Evidence Relating To Call And Text Logs And Cell-Site Information.*

Det. Alicea also testified that two cellphones, a Kyocera with phone number 347-375-2350 and a LG with phone number 917-284-4826, were recovered from Mr. Morales prior to him being brought to the ECAB unit. T. 69-70, 157, 161.

Various logs from MetroPCS and AT&T showed that these two phones had calls and texts with 347-421-4994, a phone number associated with Mr. Velez, numerous times between Nov. 1 and Dec. 30, 2013. T. 81, 219-221[4], 252-260; People's Trial Exhs. 20B (MetroPCS Phone Records and Subscriber Information), 21B (MetroPCS Phone Records and Subscriber Information), 24B (AT&T Phone Records and Subscriber Information). These logs also showed many calls near the time of the robbery, along with several other unknown numbers. *See* T. 252-260; People's Trial Exhs. 20B, 21B, 24B.

The prosecution also presented cell-site location information (CSLI) showing the cell-towers that handled calls between these numbers on Nov. 23, 2013, between approximately 5PM and 11:30PM.

[4] These pages should not be confused with T. 219a-221a, which precede T. 219-221.

See T. 204-207, 241-49; People's Exhs. 21C, 24B, 25. The prosecution elicited testimony that cell-companies have a dense network of towers that typically cover a block to a few blocks, and that calls are handled at the towers that have the strongest signal connection with the phone. T. 205-207, 217a-18a.[5] However, the tower with the strongest signal to the phone is not necessarily the closest tower physically, and in New York City a cellphone may even use a tower that is across the East River or Hudson River. T. 207, 249.

A map of the locations showed that on Nov. 23, 2013, three towers handled seven calls to and from 917-284-4826 within an hour of the time of the robbery at 10:40PM. People's Exh. 25A, "MetroPCS # (917) 284-4826, All Mappable Communications (Voice Calls), November 23, 2013 5:22:59 PM 11:33:13 PM." Two of these towers occupy the general area of the Lower East Side between 571 FDR Dr. and 240 Madison St. *Id.*

[5] These pages should not be confused with T. 217-18, which come after 217a-18a.

4. *Mr. Morales Testifies That He Implicated Himself Following Promises That His Wife Would Be Released If He Confessed.*

Mr. Morales testified that he was at home at 571 FDR Drive at the time of the robbery. T. 305-06. He stated that Danielle had stormed out of the apartment following a fight on November 23, 2013 and did not return until 3 or 4 AM the next day. T. 305-06, 325-26. Mr. Morales's cousin, Clarissa Velasquez, also testified that he was home when she left on the evening of Nov. 23, 2013 and was home when she returned later in the evening before midnight. T. 280-82, 293-98.

Mr. Morales stated that after his wife was arrested, he received a call from her, in which she told him that she was being charged and that the police wanted her to become a confidential informant. T. 307-08. Mr. Morales decided that he would offer to become an informant in exchange for Danielle's freedom. T. 308-310. Mr. Morales testified that during his interview with Det. Alicea, Dets. Alicea and Toala mentioned names Mr. Morales recognized, and told him, "[W]ell these are the little fish, we need to go after the big fish." T. 310-11. He also stated that at some point at the precinct, Det. Alicea yelled at him, banged on the table and said "I know you fucking did it," and took turns with other officers using "aggressive" interrogation tactics. T. 349-50.

Mr. Morales testified that when he was arrested and told that he had already been given an opportunity to confess, he asked "[B]ut what happened – what about exchanging for my wife's freedom[?]" T. 312. He was told by Det. Alicea and other detectives that Det. Alicea said, "[T]he only way you can get out of this someone has to take the blame for the charge." *Id.* Mr. Morales testified that after this he first confessed to the robbery, saying, "[A]ll right I did it." T. 312.

After he confessed, the detectives told him not to "play no games" and threatened "to call child services to have the baby removed." T. 312-313. Mr. Morales stated that during the ride to the ECAB unit Dets. Alicea and Toala also told him that they "knew some officers on Rikers Island, they would discuss whatever could be done to help me after [Danielle]'s out." T. 313.

Mr. Morales testified further that prior to his ECAB statement, Det. Alicea told him to repeat the confession he had made at the precinct. T. 314. Det. Alicea said that the assistant district attorney who would be interrogating him "can be a real 'B'" and that if he did not "be calm and stay relaxed," then Mr. Morales's wife would not be released. T. 314.

Mr. Morales also explained the contents of a recorded call from jail in which he told Clarissa Velasquez that he implicated himself to the police in order to secure his wife's release. *See* T. 231; People's Exh. 27, Audio Recording of Phone Call. He explained that his statement that "eventually I would have got caught" was in reference to a warrant in Queens on an unrelated case. T. 362. Mr. Morales also stated that significant portions of the recording had been redacted, taking his words out of context to appear incriminating. T. 362.

In the prosecution's rebuttal case, Dets. Alicea and Toala denied making threats or promises to Mr. Morales. T. 382, 392-94. However, Det. Toala admitted that, while Danielle Morales was in custody, he had a conversation with her in which he conducted a "debriefing of any current crimes" to see if she had any information "that could be helpful to us." T. 377. Det. Toala said to her, "[Y]ou know once this is over … we could work," to which Danielle responded "Okay, if I have something I'll come back." T. 377. Det. Toala also admitted that he gave Danielle one of his business cards. T. 377. Det. Toala also stated that he did not remember Det. Gillespie "being in the office that day," whereas Det. Alicea had repeatedly stated that he, Det. Toala and Det. Gillespie did

"come in and out of the interview room" over the course of the interrogation, T. 393-94, as Mr. Morales had described in his testimony.

Det. Alicea also admitted that Mr. Morales had been handcuffed "all the time" between the precinct and arrival at the ECAB Unit (up to the point of the actual statement). T. 390.

E. Verdict and Sentence.

The court found Mr. Morales guilty on all counts on Feb. 9, 2016. T. 428-29. On July 7, 2016, at sentencing, Mr. Morales was adjudicated a persistent violent felony offender based on two robberies from the 1990s. S. 4-5. Mr. Morales also had violent felony convictions from a 1998 case in Florida, as well as several theft and drug-related misdemeanors. Presentence Investigation Face Sheet (hereinafter, "PSI") at 4. Mr. Morales was sentenced to 25 years to life in prison on each of the robbery and strangulation charges, and 2 to 4 years in prison on the grand larceny charges, all to be served concurrently. S. 10.

ARGUMENT

POINT I

FELIX MORALES'S CONVICTIONS MUST BE REVERSED BECAUSE HIS VIDEOTAPED STATEMENT SHOULD HAVE BEEN SUPPRESSED AS THE RESULT OF A SINGLE, CONTINUOUS CHAIN OF EVENTS BEGINNING WITH DETECTIVE ALICEA'S INITIAL *MIRANDA* VIOLATION.

Det. Alicea's unlawful custodial interrogation of Felix Morales at the precinct began a single continuous chain of events in which he transported Mr. Morales to the ECAB unit, was present for the entirety of Mr. Morales's videotaped statement merely two hours later, and assisted in continuing the interrogation. *People v. Paulman,* 5 N.Y.3d 122, 130-31 (2005). There were no significant changes in the circumstances of his interrogation, nor had sufficient time passed to interrupt this process. Mr. Morales's videotaped statement at ECAB was therefore not attenuated from Det. Alicea's original unlawful interrogation. The trial court should have suppressed Mr. Morales's videotaped statement in its entirety and this Court must reverse his conviction. U.S. Const. Amends. VI, XIV; N.Y. Const., Art. I, § 6.

A. Mr. Morale's ECAB Statement Must Be Suppressed as the Result of a Single, Continuous Chain of Events Beginning With Det. Alicea's Initial Miranda Violation.

In order to establish attenuation and avoid suppression following a constitutional violation, the burden is on the prosecution to show that intervening events broke the causal connection between the illegal police activity and the later obtained evidence. It is well-settled that "where an improper, unwarned statement gives rise to a subsequent Mirandized statement as part of a 'single continuous chain of events,' … the warned statement must also be suppressed." *Paulman,* 5 N.Y.3d at 130-31, *quoting People v. Chapple*, 38 N.Y.2d 112, 114-15 (1975). The later, warned statement must be suppressed unless the hearing testimony establishes a " 'pronounced break' in [the] interrogation adequate to justify a finding that the defendant was no longer under the sway of the prior [un-Mirandized] questioning when the warnings were [later] given." *People v. Guilford*, 21 N.Y.3d 205, 209 (2013), *quoting Chapple*, 38 N.Y. 2d at 115. Without such a break, the defendant "may well be put in such a state of mind that the warnings which would ordinarily suffice will no longer be enough to protect his rights." *Chapple*, 38 N.Y.2d at 115. Thus, the circumstances leading to the later

statement must give adequate "assurance that the Miranda warnings were effective in protecting a defendant's rights" *Paulman,* 5 N.Y.3d at 130, "by 'return[ing] [the defendant], in effect, to the status of one who is not under the influence of [unlawful] questioning," *People v. Daniel*, 122 A.D.3d 401, 404 (1st Dep't 2014) *quoting Chapple*, 38 N.Y.2d at 115.

Although no one factor is determinative, several factors indicate that a single continuous chain of events connects unlawfully-obtained statements to later Mirandized statements. These factors include the "time differential between the Miranda violation and the subsequent admission;" whether "the same police personnel were present and involved in eliciting each statement;" and whether there was a change in the "location or nature of the interrogation." *Paulman*, 5 N.Y.3d at 130-31.

Here, there was no significant change in the location or nature of the interrogation of Mr. Morales. Just like Det. Alicea's interrogation, the questions asked by the assistance district attorney and by Det. Alicea were designed to and did elicit incriminating statements from Mr. Morales about the robbery of Mr. Chen. *See* ECAB Statement. Although there was a change in location, it was simply from a police

precinct to the Early Case Assessment Bureau of the Manhattan District Attorney's office – from one law enforcement building to another. H. 44-45, 126. This movement could not give any assurance "that the Miranda warnings were effective in protecting a defendant's rights." *Paulman*, 5 N.Y.3d at 130; *see also People v. Harris*, 141 A.D.3d 1024, 1028–29 (3d Dep't 2016) (change in location from meth lab, where defendant was arrested and un-Mirandized statement unlawfully obtained, to police station, where Mirandized statements were obtained, was not significant enough to warrant attenuation as defendant was effectively in custody in both locations).

Next, the same police officer was present and involved in eliciting each statement, as Mr. Morales was continuously in Det. Alicea's presence from the unlawful questioning until the end of his ECAB statement. *Paulman*, 5 N.Y.3d at 130; *see also Guilford*, 21 N.Y.3d at 213 (subsequent statement suppressed after defendant returned from 8 hour stay in holding pen and arraignment "to face[] the same interrogator"); *Daniel*, 122 A.D.3d at 402 (suppressing subsequent written statements elicited by same detective who unlawfully elicited earlier un-Mirandized statements); *People v. Rodriguez*, 132 A.D.3d

781, 782-83 (2d Dep't 2015) (subsequent statement was part of single, continuous chain of events where detective "who [unlawfully] elicited the [earlier] statement … was present during the subsequent videotaped interrogation."); *People v. Sedunova*, 83 A.D.3d 965, 967–68 (2d Dep't 2011) (single, continuous chain of events established where "the defendant remained continuously in the presence of the detectives from the time she made her pre-Miranda statements until the completion of the ADA's videotaped interview"); *People v. Moyer*, 292 A.D.2d 793, 794-95 (4th Dep't 2002) ("[D]efendant was questioned post-Miranda…by an officer who was present during the pre-*Miranda* questioning," requiring suppression of post-*Miranda* statement).

After Det. Alicea removed Mr. Morale's shoes and unlawfully elicited incriminating statements from him, and Mr. Morales began to cry, Det. Alicea arrested Mr. Morales, read him his *Miranda* rights, and then immediately elicited further extensive incriminating statements from him. H. 37-39. The hearing court correctly suppressed these statements because they followed immediately from Det. Alicea's unlawful custodial interrogation, rendering the *Miranda* warnings ineffective. Suppression Decision at 3.

But the hearing court essentially ignored the fact that Det. Alicea then drove Mr. Morales to the ECAB unit, where he sat in the room with Mr. Morales as the assistant district attorney interrogated Mr. Morales on video for the entirety of his statement. H. 45, 126. The trial court also incorrectly stated that Det. Alicea did not "participate" in the questioning, when in fact Det. Alicea asked several questions about the details of the robbery and Mr. Morales's relationship to one of the other suspects. ECAB Statement at 1:30-1:40, 15:00-15:22, 23:00-24:47. Mr. Morales continued to cry in the videotaped statement, just as he did when Det. Alicea first arrested him. *See* ECAB Statement. Mr. Morales was indeed still "facing the same interrogator" in Det. Alicea, and was indeed reacting in the same way. *Guilford*, 21 N.Y.3d at 213. This suggests to a reasonable person that Mr. Morales expected to incriminate himself in a similar manner as he did in the first pre-*Miranda* interrogation, even though a different person was voicing the same questions. *Id.* Hence, it is clear that Mr. Morales was still "under the influence of [Det. Alicea's] questioning," which continued until nearly the end of Mr. Morale's videotaped statement, *Rodriguez*, 132 A.D.3d at 782-83.

Next, the time differential between the *Miranda* violation and the subsequent video statement was only about 2.5 hours. H. 41-43, 119 (verbal statement at 4:25 PM); ECAB Statement at 2:00 (assistant district attorney noting that statement beginning just after 7 PM). This is similar to or shorter than the time differential in several other cases in which a Mirandized statement was found not to be attenuated from an unlawful police action and suppressed. *See People v. Johnson*, 66 N.Y.2d 398, 407–08 (1985) (suppressing Mirandized statement following 4.5 hours after unlawful arrest without probable cause); *People v. Byas*¸ 172 A.D.2d 242, 242-44 (1st Dep't 1991) (suppressing Mirandized statement made 3 hours after unlawful warrantless arrest); *Harris,* 141 A.D.3d at 1028–29 (subsequent Mirandized statement was part of single, continuous chain of events lasting 3 hours); *Rodriguez*, 132 A.D.3d at 782-83 (time differential of 2 hours did not establish "a definite, pronounced break between the defendant's first and second videotaped statements sufficient to return the defendant to the status of one who was not under the influence of [unlawful] questioning.").

Moreover, it is evident from the fact that Mr. Morales is seen crying in the video that "by the time of [his ECAB] statements, his

options seemed so constricted, by what he had already divulged during the earlier portion of the interrogation, as to render the intervening temporal buffer practically irrelevant." *Guilford*, 21 N.Y.3d at 213; ECAB Statement at 22:10-23:00, 25:50-27:15. Just as attenuation was not established in the cases cited above, it should not have been found for Mr. Morales's ECAB statement.

In sum, the hearing court suppressed all of the statements made by Mr. Morales while at the precinct, most of which followed *Miranda* warnings, in recognition that they followed in a clearly continuous chain from Det. Alicea's initial unlawful custodial interrogation. Yet, nothing significant interrupted the continuous chain of events from the precinct to the ECAB statement to return Mr. Morales to the status of one who was not influenced by the earlier unlawful questioning. *Daniel*, 122 A.D.3d at 402-04. For that reason, Mr. Morale's ECAB statement must also be suppressed. U.S. Const. Amends. VI, XIV; N.Y. Const., Art. I, § 6.

B. This Court Must Reverse Mr. Morale's Conviction Because His Videotaped Statement was the Centerpiece of the Prosecution's Case, Tying All Other Elements of the Case Together.

An error may be deemed harmless only when there is "no reasonable possibility that the error might have contributed to defendant's conviction." *People v. Schaeffer*, 56 N.Y.2d 448, 454 (1982), *quoting People v. Crimmins*, 36 N.Y.2d 230, 237 (1975). This is especially the case when the suppressed evidence is a confession because "confessions of crime, supremely self-condemnatory acts, are almost sure to weigh most heavily with fact finders." *Id.*; *see also Bruton v. United States*, 391 U.S. 123, 139 (1968) (White, J., dissenting) ("(T)he defendant's own confession is probably the most probative and damaging evidence that can be admitted against him."). For that reason, New York courts have reversed where an improperly elicited confession provides "highly probative and damaging evidence against a defendant," and "the evidence of the defendant's guilt, without reference to the error, was not overwhelming." *People v. Lloyd-Douglas*, 102 A.D.3d 986, 987 (2d Dep't 2013); *People v. Dunbar*, 104 A.D.3d 198, 214 (2d Dep't 2013) ("Such a constitutional error can be harmless only if the evidence of guilt, without reference to the error, is overwhelming").

Here, Mr. Morales's ECAB statement strongly contributed to his conviction. There was no testimony from the complainant or any co-defendants identifying Mr. Morales as one of the robbers. No fingerprints, DNA, stolen property, or other physical evidence implicating Mr. Morales were recovered. The only evidence which actually placed Mr. Morales inside the apartment building at the time of the robbery was his videotaped ECAB statement. The other evidence against him was equivocal.

The cell site and call logs evidence presented by the prosecution were circumstantial evidence that suggested Mr. Morales's connection with his co-defendants and probable geographic proximity to the crime, but could not, without the unlawfully obtained ECAB statement, constitute proof beyond a reasonable doubt of his participation in the crime.

Mr. Morales was also not clearly identifiable from the relatively low resolution security footage and stills from the apartment building lobby. The face of the person alleged to be Mr. Morales is partially obscured when outside the elevator, and not visible at all when inside the elevator. *See* People's Trial Exh. 1 (security footage), Trial Exh. 33A-

T (still photographs from security footage). Without the ECAB statement, a factfinder could hardly conclude beyond a reasonable doubt that Mr. Morales was involved in the robbery based on these images, especially since the complainant also failed to identify Mr. Morales from a photograph. T. 184-85.

The recording of a phone call from jail in which Mr. Morales stated to Clarissa Velasquez that he went to the police to implicate himself in order to help his wife was also equivocal without the context of the ECAB statement. *See* People's Exh. 27, Audio Recording of Phone Call. Mr. Morales's statements on this call did not exclude the possibility that Mr. Morales was *falsely* implicating himself, i.e., merely doing or saying what he thought was necessary to secure his wife's release, especially because the call was redacted. *See* T. 362. Mr. Morales testified that he had initially come to the precinct to offer other information unrelated to the robbery in order to negotiate for his wife's release. T. 308-310. He also testified that he was promised Danielle's release by Det. Alicea and other detectives up to the point of his ECAB statement. T. 310-14. In Mr. Morales's ECAB statement he also explained that his purpose in coming to the police was to "help

[Danielle] to get [her life] back, if I'm with her or not, I feel good if at least she's okay and got her life back with the baby, I would feel better." ECAB Statement at 25:50-26:21.

In sum, the ECAB statement was the centerpiece of the prosecution's case. Without it, the remaining evidence did not add up to guilt beyond a reasonable doubt. Thus, this Court must reverse his conviction.

POINT II

THE TRIAL COURT DEPRIVED MR. MORALES OF HIS RIGHT TO DUE PROCESS AND TO CONFRONT THE KEY PROSECUTION WITNESS BY PREVENTING DEFENSE COUNSEL FROM CROSS-EXAMINING DET. ALICEA ABOUT LAWSUITS ALLEGING HIS MISCONDUCT IN SUPPORT OF FALSE ARRESTS.

Det. Alicea was the only individually named defendant in two lawsuits alleging that he had engaged in misconduct, including submitting false affidavits and testimony to in order to secure false convictions. These allegations created a good-faith basis for defense counsel to impeach Det. Alicea during cross-examination. As the lead investigator and only witness who was present for the entirety of Mr. Morales's interrogation, Det. Alicea's credibility was critical to securing Mr. Morale's conviction. By excluding this impeachment evidence, the trial court improperly deprived Mr. Morales of the right to confront and cross-examine the key prosecution witness and deprived him of due process. *People v. Smith*, 27 N.Y.3d 652, 660-63 (2016); *People v. Holmes,* 170 A.D.3d 532, 533 (1st Dep't 2019). His conviction must be reversed. U.S. Const. Amends. VI, XIV; N.Y. Const., Art. I, § 6.

It is elementary that the right of cross-examination is "implicit in the constitutional right of confrontation." *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973). It is also implicit to the constitutional right to due process because "[c]ross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested" *Davis v. Alaska*, 415 U.S. 308, 316 (1974). "Impeachment is a particular form of cross-examination whose purpose is, in part, to discredit the witness and to persuade the fact finder that the witness is not being truthful." *People v. Walker*, 83 N.Y.2d 455, 461 (1994). Thus, any witness "may be cross-examined on 'prior specific criminal, vicious, or immoral conduct,' provided that 'the nature of such conduct or the circumstances in which it occurred bear logically and reasonably on the issue of credibility.'" *Smith,* 27 N.Y.3d at 660, *quoting People v. Sandoval*, 34 N.Y.2d 371, 376 (1974).

Recognizing that "[i]mpeachment evidence … may make the difference between conviction and acquittal," the Court of Appeals in *People v. Garrett,* 23 N.Y.3d 878, 886 (2014), held that allegations made in a civil complaint against a police witness may constitute evidence that a defendant may use to impeach the witness's credibility. *People v.*

Smith, 27 N.Y.3d at 662, later set forth the specific framework under which such allegations should be admitted. Cross-examination of a police witness about prior bad acts should be allowed when counsel "presents a good faith basis for inquiring [about] the lawsuit relied upon," defense counsel identifies "specific allegations that are relevant to the credibility of the law enforcement officer," and the allegations will not cause undue confusion or risk of misleading the factfinder, nor cause undue prejudice to the parties. *Id.* Under this framework, defense counsel should have been permitted to cross-examine Det. Alicea regarding the allegations contained in both *Jiminez v. City of New York* and *Santiago v. City of New York*. In both cases he was the only individually named defendant and was accused specifically of engaging in misconduct that bore on the credibility of testimony he gave in support of Mr. Morales's conviction.

A. The Specific Allegations Against Det. Alicea in the *Jiminez* and *Santiago* Lawsuits Supported a Good-Faith Inquiry On Cross-Examination About Det. Alicea's Past Attempts to Induce or Make False Statements In Support Of An Arrest.

In *Santiago vs. City of New York*, Det. Alicea is alleged to have submitted an affidavit that he knew or should have known to falsely accuse the plaintiff of a robbery. *Santiago* Complaint at ¶ 21-26. Det.

Alicea's sworn statement in a support of the criminal complaint accused Mr. Santiago of committing a robbery against a person who was in police custody several miles away at the alleged time of the robbery. *Id.* This is a specific allegation against Det. Alicea that created a good faith basis for inquiry because it alleges that in the past he has knowingly submitted sworn statements about a defendant's alleged criminal activity that he either knew to be false, or could easily have determined to be false with a modicum of diligence. Yet the trial court disallowed any inquiry into the facts alleged in the *Santiago* complaint without any basis. P. 57.

Next, the allegations in *Jiminez* "[bore] logically and reasonably" on Det. Alicea's credibility because the complaint states that Det. Alicea attempted to induce a criminal complainant to make a false identification of Mr. Jiminez despite repeated, unequivocal statements from that complainant that the robber was not in a lineup. *Smith*, 27 N.Y.3d at 660-63, *quoting Sandoval,* 34 N.Y.2d at 376; *Jiminez* Complaint at ¶ 13-35. When this attempt to induce a false identification failed, Det. Alicea was alleged to have falsely arrested Mr. Jiminez anyway despite a dearth of other evidence against him. *Jiminez*

Complaint at ¶ 26. This created a "good faith basis" for inquiring about the lawsuit because it raises a question of whether Det. Alicea attempted to induce false testimony from the complainant in support of a false arrest. *See Smith*, 27 N.Y.3d at 662.

Indeed, any misconduct – not merely false testimony – by police officers alleged to have been committed in support of a false arrest creates a good-faith for basis for inquiry on cross-examination. *See People v. Holmes,* 170 A.D.3d 532, 533 (1st Dep't 2019) ("Counsel had a good faith basis for seeking to impeach the officer's credibility by asking him about allegations that he and other officers … filed baseless criminal charges against him."); *People v. Enoe*, 144 A.D.3d 1052, 1054 (2d Dep't 2016) ("The allegations of prior bad acts in the federal lawsuit against the sergeant established the defendant's good faith basis for cross-examining him with respect to …the specific allegations[] that Sergeant Gaspari had previously falsely arrested an individual on a weapon possession charge.").

Here, a history of attempting to induce false testimony from a complainant should raise the question in a reasonable factfinder's mind of whether Det. Alicea was telling the truth when he denied that he

offered to secure Danielle Morales's release in exchange for Mr. Morales's confession. T. 392-94. It also calls into question his denials that he made any other promises or threats in advance of Mr. Morales's ECAB statement. T. 382, 392-94. These same allegations also raise doubt as to whether, as Det. Alicea claimed, Mr. Morales really was identified by tipsters based on the small, low resolution images from security footage. T. 124, 394-95; People's Hearing Exh. 2, Wanted Poster. The fact that the complaint in *Jiminez* did not allege that Det. Alicea himself "told anybody … that the eyewitness in the case had in fact positively identified Mr. Jiminez," P. 62, was thus of no significance. The fact of having made an attempt to induce a false identification from a complainant to wrongfully accuse a defendant "bear[s] logically and reasonably" on Det. Alicea's credibility regarding whether he uses dishonest tactics in support of wrongful arrests. *Smith*, 27 N.Y.3d at 660.

Furthermore, the *Jiminez* complaint alleges not only that Det. Alicea tried to induce a false identification, but also that police officers submitted false testimony and filed false police reports in support of Mr. Jiminez's arrest. *Jiminez* Complaint at ¶ 35-36. The fact that Det.

Alicea is the only individually named officer in the complaint creates a good-faith basis for an inquiry into whether Det. Alicea himself made false statements falsely implicating Mr. Jiminez. In any case, the prosecution in this case admitted that the *Jiminez* complainant ultimately did identify Mr. Jiminez, T. 62, giving rise to a reasonable inference that Det. Alicea's alleged conduct was ultimately successful in procuring a false identification and effecting a false arrest.

The fact that the *Jiminez* case was settled without an admission of wrongdoing did not eliminate defense counsel's good faith basis for cross-examination, as the trial court suggested it did. P. 63. *Smith* specifically held that in settled lawsuits, inquiry should be allowed "to ask questions about the specific allegations of the lawsuit if the allegations are relevant to the credibility of the witness." *Smith*, 27 N.Y.3d at 662; *see also Holmes*, 170 A.D.3d at 533 (allowing inquiry into settled lawsuit against police witness). Moreover, the words of the settlement stipulation should be taken at their meaning – that the stipulation cannot be construed as an admission of having violated the plaintiff's rights. *Jiminez* Settlement Stipulation at ¶ 4. By the plain meaning of these words, it does not follow that Det. Alicea was actually

innocent of the accusations against him, simply that the settlement stipulation explicitly did not say one way or the other. A good-faith basis for inquiry into the underlying facts of the lawsuit thus existed despite this clause.

For a similar reason, it was also irrelevant that the *Jiminez* complaint did not conclusively demonstrate that Mr. Jiminez's arrest was false. *See* P. 63. The question is not whether the arrest was ultimately false but rather whether the officer may have engaged in bad acts that bear upon his credibility when testifying as a law enforcement officer in the subsequent criminal proceeding. *See Garrett*, 23 N.Y.3d at 886 ("Although [the federal complaint] did not explicitly allege that the confession O'Leary procured was false, the complaint described coercive tactics O'Leary allegedly used to extract a confession against the plaintiff's will."). Since the *Jiminez* complaint alleged facts that, if true, would strongly imply that the arrest was false, this established a good-faith basis for cross-examination. *Id.*; *Smith*, 27 N.Y.3d at 660-63.

B. Det. Alicea's Credibility Was Central to the Prosecution's Case, Preventing Any Risk of Confusing the Issues or Misleading the Trial Court.

There was no risk that the trial court might be confused or misled by the impeaching evidence, nor was there any risk of prejudice to any party because Det. Alicea's credibility was part of the bedrock of the prosecution's case. He was the central witness who tied together the entire case for the prosecution from the initial investigation, when Mr. Morales was first identified as a subject, to Mr. Morale's ultimate confession at the ECAB unit of the District Attorney's office. Convicting Mr. Morales required the factfinder to believe Det. Alicea when he stated that Mr. Morales was identified by tips based on security footage stills and that Det. Alicea did not make any promises or threats at any point along the way to Mr. Morales's ECAB statement as Mr. Morales testified. T. 56, 308-14, 392-94. With the main police investigator's credibility in question, especially as to the conduct he employs to secure arrests and convictions, the prosecution's case could have been seen by the factfinder as like a house built on sand.

Cross-examining Det. Alicea about the *Santiago* lawsuit would raise the question of whether Det. Alicea had lied, or negligently or

recklessly failed to verify information, in support of arrests in the past. There was no risk that this that this could have misled or confused the judge, who was the factfinder for this trial. Similarly, there was no reason why, if the *Jiminez* arrest was not actually wrongful, and Det. Alicea did not engage in misconduct in support of a false arrest, that he should not be able to explain this upon cross-examination or redirect.

Without credible testimony from Det. Alicea, the prosecution could not have proved beyond a reasonable doubt that Mr. Morales's ECAB statement was voluntary, which could have led to an acquittal. *See People v. Huntley,* 15 N.Y.2d 72, 78 (1965) (voluntariness of an otherwise admissible confession is an issue for factfinder in criminal trial). Denying Mr. Morales's counsel the opportunity to cross examine and impeach Det. Alicea about each lawsuit therefore deprived Mr. Morales of a critical "means to discredit [Det. Alicea] and cast doubt on the prosecution's case," which centered heavily on Det. Alicea's testimony. *Smith,* 27 N.Y.3d at 660. This violated Mr. Morale's federal and state constitutional rights to due process, to confront the witnesses against him and to present a defense. *Id.*; U.S. Const. Amends. VI, XIV; N.Y. Const., Art. I, § 6. His conviction must be reversed.

POINT III

FELIX MORALE'S MAXIMUM SENTENCES WERE UNDULY HARSH AND EXCESSIVE BECAUSE THEY WERE DISPROPORTIONATE GIVEN THE NATURE OF THE OFFENSES AND MR. MORALES'S PREVIOUS RECORD.

Mr. Morales did not deserve to receive maximum sentences of 25 years to life in prison on the robbery and strangulation charges. The offenses did not result in serious injury to the complainant, and while Mr. Morales did have previous felonies, he showed promise for rehabilitation and was hardly among the category of irredeemable people who should be given the longest possible sentences. If this Court does not reverse his convictions, his sentences should be reduced closer to the minimum terms.

This Court has "broad, plenary power to modify a sentence that is unduly harsh or severe under the circumstances . . . without deference to the sentencing court." *People v. Delgado*, 80 N.Y.2d 780, 783 (1992). The Court should consider "the nature of the crime, the defendant's circumstances, the need for societal protection, and the prospects for the defendant's rehabilitation." *People v. Fernandez*, 84 A.D.3d 661, 664 (1st Dep't 2011) (internal quotation omitted). The Court should also consider these factors with a view toward imposing the "minimum amount of

confinement" necessary. *People v. Notey*, 72 A.D.2d 279, 282-83 (2d Dep't 1980) (internal citation omitted).

Maximum sentences should be reserved for the worst offenses and the worst offenders. As violent felonies, the offenses here were serious, but they did not represent the kind of crimes that ought to be punished by a minimum of 25 years in prison. The complainant was not seriously injured, nor did he suffer a grave financial injury. *See* T. 178-80. For this reason alone, sentences of 25 years to life on the robbery and strangulation counts were simply disproportionate to the conduct. New York courts have also reduced sentences for people have who inflicted much worse injury. *See People v. Colon*, 133 A.D.3d 532, 532-33 (1st Dep't 2015) (reducing sentences for murder, robbery, burglary and criminal possession of a weapon); *People v. Charles*, 124 A.D.3d 986, 988 (3d Dep't 2015) (reducing sentences for multiple counts of rape, criminal sexual act, sexual abuse, and endangering the welfare of a child).

Mr. Morales himself is not among the worst offenders. His two violent felonies in New York led to his adjudication as a persistent violent felony offender, requiring an enhanced sentence of at least 16 years to life on the robbery and strangulation charges. This very severe

minimum already contemplates these two offenses. N.Y. Penal Law § 70.08. In order for Mr. Morales to receive the *maximum* sentence, there must be other factors present, aside from these two convictions, to show that Mr. Morales was totally underserving of anything other than the harshest possible sentence.

Mr. Morales does have another violent felony case in Florida, in addition to several other misdemeanors, however, all of Mr. Morales's run-ins with law have been due to his longtime heroin addiction. *See* PSI at 5 (Mr. Morales has used heroin since the age of 20). Mr. Morales is one of thousands of people in this country that has suffered from a debilitating opioid addiction. The National Institute of Health has recognized that an epidemic of "highly addictive" opioid abuse plagues the nation, constituting a "public health crisis with devastating consequences." Nat'l Inst. Drug Abuse, Nat'l Inst. Health, Opioid Overdose Crisis (March 2018).[6]

[6] *Available at* https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis

In recognition of the fact that drug addiction is a chronic illness, not a moral failing,[7] New York courts, in recognition of the fact that drug addiction mitigates culpability, have reduced sentences for those whose offenses reflect compulsive drug-seeking behavior. *See, e.g., People v. Walsh*, 101 A.D.3d 614, 614 (1st Dep't 2012) (reducing a sentence for burglary despite an "extensive" criminal record, where prior offenses were due to "drug and alcohol abuse"); *People v. Cowell*, 170 A.D.2d 343, 343-44 (1st Dep't 1991) (reducing sentence for drug sale in spite of numerous prior "larceny or drug-related" convictions given that the drug sales were to support a drug habit); *People v. Maryea*, 157 A.D.2d 605, 606 (1st Dep't 1990) (reducing sentence for robbery despite a history of larceny in support of drug habit); *People v. Kordish*, 140 A.D.3d 981, 981-984 (2d Dep't 2016) (reducing sentence where a drug offense was committed to support a drug addiction for a person on probation for the same offense); *People v. Nealon*, 36 A.D.3d 1076, 1077, 1079 (3d Dep't 2007) (reducing sentence in drug case despite an

[7] *See* Juleyka Lantigua-Williams, "Declaring Addiction a Health Crisis Could Change Criminal Justice," *Atlantic*, May 26, 2016, *available at* https://www.theatlantic.com/politics/archive/2016/11/addiction-health-crisis-criminal-justice/508409/.

"extensive" criminal history, in view of the history of addiction and mental illness).

This Court should recognize that Mr. Morales's past offenses are not the result of his incorrigibility but rather the fact that he has been struggling with an illness for many years. *See* PSI at 4 (showing history of offenses consistent with drug seeking behavior). Indeed, Mr. Morales has shown potential for rehabilitation in his attempts to seek treatment. Thus, not only does a maximum sentence punish Mr. Morales for struggling with an illness, it also ignores the fact that Mr. Morales has sought to have his illness treated, showing his potential for rehabilitation.

Moreover, even though his past record is serious, if his convictions stand, he cannot serve anything less than the better part of two decades in prison even at the statutory minimum sentence. He would also be under supervision for the rest of his life. Given this, a 25-year floor (as opposed to a 16-year floor) on his indeterminate sentence was simply unnecessary. This appeal asks only that, if Mr. Morale's convictions are affirmed, he be given the possibility of earlier release, depending on the future assessments of the parole board.

This Court should also note that, even if sentenced to the minimum terms, Mr. Morales would be at least 58 years old upon release. No matter what Mr. Morales's past record is, there will be much reduced need for deterrence or incapacitation in the future because older inmates have a very low risk of re-offense following release. In New York State arrest rates for people over 50 are only 2%. Center for Justice, Columbia Univ., *Aging in Prison*: *Reducing Elder Incarceration and Promoting Public Safety*, at ix (Nov. 2015). For those released from prison between the ages of 50-64, only 6.6% return to prison for new offenses (compared to 14.5% across all ages). In view of this reduced risk, New York courts have also reduced sentences in the interest of justice due to age, even in homicide or other more injurious offenses than those in this case. *People v. Ocasio*, 110 A.D.3d 599, 600 (1st Dep't 2013) (finding sentence for second degree murder excessive in part due to age); *see also Walsh*, 101 A.D.3d at 614 (modifying sentences for a second felony offender to run concurrently with each other, in part due to age); *People v. Hill*, 34 A.D.3d 1130, 1132 (3d Dep't 2006) (reducing sentence for sexual abuse, in part due to age). There is little need to add an additional ten years to the minimum of Mr. Morales's

indeterminate term simply because he will already have a reduced risk for re-offense after the minimum of 16 years.

In sum, the offenses here did not deserve 25-to-life sentence, and neither did Mr. Morales. The "minimum amount of confinement necessary" requires that Mr. Morale's sentences on the robbery and strangulation charges be reduced to terms closer to the minimum. *Notey*, 72 A.D.2d at 282-83.

CONCLUSION

For the foregoing reasons, Mr. Morales's convictions must be reversed. If the convictions are not reversed, his sentences should be reduced to terms closer to the minimum term.

Dated: New York, New York
September 25, 2019

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ADDENDA

Supreme Court of the State of New York
Appellate Division: First Department

The People of the State of New York, Respondent, — against — Felix Morales, Defendant-Appellant.	Ind. No. 5578-2013

Statement Pursuant to Rule 5531

1. The indictment number in the court below was 5578-2013.
2. The full names of the original parties were "The People of the State of New York" against "Felix Morales," "Danielle Morales," and "Jose Velez."
3. This action was commenced in Supreme Court, New York County.
4. This action was commenced by the filing of an indictment.
5. This is an appeal from a judgment rendered on July 7, 2016, by Supreme Court, New York County. Felix Morales was convicted after bench trial of two counts of Robbery in the Second Degree, one each under Penal Law § 160.10(1) and Penal Law § 160.10(2)(a), one count of Strangulation in the Second Degree, 121.12, and four counts of Grand Larceny in the Fourth Degree, Penal Law § 155.30(4). Mr. Morales received 25 years to life in prison on each of the robbery and strangulation charges, and 2 to 4 years in prison on the grand larceny charges, all to be served concurrently. Justice Arlene Goldberg presided over the suppression hearing. Justice Maxwell Wiley presided over the bench trial and sentencing.
6. Mr. Morales has been granted leave to appeal as a poor person on the original record and typewritten briefs.

Supreme Court of the State of New York
Appellate Division: First Department

The People of the State of New York, Respondent, — against — Felix Morales, Defendant-Appellant.	Ind. No. 5578-2013

Printing Specification Statement

1. The following statement is made in accordance with First Department Rule 600.10.

2. Mr. Morales's brief was prepared with Microsoft Word 2010 with Garamond typeface 14 point in the body and 12 point in the footnotes.

3. The text of the brief has a word count of 10,839, as calculated by the processing system and is 58 pages.