

NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES
ADMINISTRATIVE ADJUDICATION BUREAU

IN THE MATTER OF:

JESUS MARTINEZ-SOSA

DMV CASE NO.: 24-70444

ADMINISTRATIVE LAW JUDGE ANDREW GIRDHARI

HEARING DATE/TIME: October 28, 2024
2:30 p.m.

HEARING LOCATION: Remote

APPEARANCES: JESUS MARTINEZ-SOSA
Respondent

REX M. PIETROBONO, ESQ.
Attorney for the Respondent

OFFICER JOHN HECHT
Police Department

SERGEANT TIMOTHY HICKS
Police Department

OFFICER ALESSANDRA RICIGLIANO
Police Department



THE COURT: All right. So it looks like the respondent is here, the respondent's attorney. I see Counsel's microphone is muted.

MR. PIETROBONO: Now they can hear me speak?

THE COURT: Yes, I can hear you now. And can you hear me okay? All right. So we're still awaiting the officer, and then we'll get started.

(Pause)

THE COURT: Okay. I believe counsel has called in separately. Counsel, can you hear me?

MR. PIETROBONO: Afternoon, Your Honor. Rex Pietrobono, 2 Sarles Street, Mount Kisco, New York. Appearing via video conferencing that's at my office. And my client, Jesus Martinez-Sosa is present sitting away from me. Hopefully avoiding any reverb.

THE COURT: Okay. Very well. Yeah, I really don't have a preference, you know. You can be in the same, I guess, image. Or separate, you know. Whichever is easier. So we're still awaiting the officers in this case. I believe there are three of them, and then we'll get started. As you know, we do give everyone ten minutes, so hopefully we should be getting started by 2:30 or 2:40, the latest. All right?

MR. PIETROBONO: Thank you very much, Your Honor.

THE COURT: Sure. Feel free to mute your mic, and we'll get started shortly.



MR. PIETROBONO: Okay.

THE COURT: Okay. And I see someone just called in, can you please identify yourself?

OFFICER HECHT: Officer John Hecht.

THE COURT: Okay. And Officer, were you the one who made the arrest in this case?

OFFICER HECHT: I was.

THE COURT: All right. And I see someone else just called in. Is this the other officer?

OFFICER HECHT: There's two other officers calling in, I believe. Or one officer and one sergeant.

THE COURT: Okay. And the other officer who's here, can you please identify yourself -- or sergeant?

OFFICER RICIGLIANO: Yes. This is Ofc. Ricigliano.

THE COURT: Okay. And what part did you play in this arrest, if anything, Officer?

OFFICER RICIGLIANO: I was the BAO operator.

THE COURT: Okay. And there's a sergeant as well. What role did the sergeant play in this, if any of the officers know?

OFFICER HECHT: The sergeant observed and initiated the traffic stop and performed the standard field sobriety testing.

THE COURT: All right. So we are going to wait to see if the sergeant does appear, and then we'll get started. So everyone just remain connected, and then we'll get started.



Hopefully by 2:30 or 2:35.

And I see someone else just called in. Is this the sergeant?

SERGEANT HICKS: Yeah, this is Sgt. Hicks, how are you?

THE COURT: Good afternoon. I'm good, everyone is here. So we will get started.

We are on the record of Jesus Martinez-Sosa. Case number 24-70444. Today's date, October 28th, 2024. And it is now 2:29 P.M.

Present for the hearing we have the respondent, the respondent's attorney, and three officers. I'm going to begin with the respondent, Mr. Martinez-Sosa.

Can you please state your name and address for the record? And I believe -- okay.

MR. PIETROBONO: You're muted, unmute it. Press the button so it -- that's what you want to do. Okay, now you can speak.

THE RESPONDENT: Hello, how are you, sir? This is Jesus Martinez.

THE COURT: Okay. And your address, Mr. Martinez-Sosa?

THE RESPONDENT: My address is -- I live in 132 Carpenter Avenue.

THE COURT: Is it 132 or 101 Carpenter Avenue?

THE RESPONDENT: Oh, I'm sorry. 101 Carpenter Avenue, Apartment letter E.



THE COURT: Okay. Is the address on screen correct for you?

THE RESPONDENT: Yes, sir.

THE COURT: Okay, thank you.

And representing the respondent, we have, also your appearance, please?

MR. PIETROBONO: Rex Pietrobono, 2 Sarles Street Mount Kisco, New York 10549.

THE COURT: All right. Then I'm going to begin with the -- I believe the sergeant who made the stop.

And Sergeant, your name and command, please?

SERGEANT HICKS: Yes. It's Sergeant Timothy Hicks, and we're Westchester County Police.

THE COURT: Okay. And the other officer who's here -- Sergeant, were you the officer -- or the sergeant who made the arrest, or was there another officer who made the arrest?

SERGEANT HICKS: So I was the -- I was the officer that did the initial traffic stop. Officer John Hecht was the arresting officer.

THE COURT: All right. And then the arresting officer, can you please state your name and shield?

OFFICER HECHT: Officer John Hecht, shield 1158.

THE COURT: Thank you.

And the other officer who's here?

OFFICER RICIGLIANO: Officer Alessandra Ricigliano,



shield 1175, rural Westchester County.

THE COURT: Okay. And what part did you play in this arrest, Officer Ricigliano?

OFFICER RICIGLIANO: I was the BAO operator.

THE COURT: Okay. All right. You can remain just in case we need your testimony. I'm going to begin, obviously, with the officer who made the initial stop.

My name is Andrew Girdhari, I am an impartial Administrative Law Judge that has been assigned for today's hearing. Purpose of this hearing is to determine an allegation of a Chemical Test Refusal on April 23rd, 2024, in Westchester County. The hearing will be conducted as follows: testimony under oath, followed by cross-examination, and then a closing statement.

Counselor, are you ready to begin?

MR. PIETROBONO: Yes, Your Honor.

THE COURT: And Sergeant, are you ready to begin?

SERGEANT HICKS: Yes.

THE COURT: Okay. And Sergeant, could you please raise your right hand?

SERGEANT TIMOTHY HICKS

called as a witness on behalf of the Petitioner, having been sworn, did testify upon his oath as follows:

THE COURT: Thank you. And Sergeant, before I take your testimony -- and Sgt. Hicks, before I take your testimony, I do



have one item I'd like to make a part of the record. For those of you who can see my screen, and this is the notice of today's hearing sent to the sergeant, the two officers, the respondent, and the respondent's attorney. As the front and back are counted as two separate pages, I have a total of ten pages.

Counsel, any comments and or objections to this document going into the record?

MR. PIETROBONO: No, Your Honor.

THE COURT: And Sergeant, any objections to this going in the record?

SERGEANT HICKS: No.

THE COURT: So the notice will go in as hearing Exhibit 1, bearing today's date. So marked and received for the record.

(Whereupon Petitioner's Exhibit 1 admitted without objection)

THE COURT: And Sergeant, did you encounter the respondent on April 23rd, 2024?

THE WITNESS: Yes.

DIRECT TESTIMONY

THE COURT: Can you tell us the circumstances of that encounter?

THE WITNESS: I was responding as the 11th sergeant in vehicle 1647, working 4-3 which is 1430 to 2230 hours. Approximately 1820 hours. I observed a 2009 Ford Pickup truck, color grey, New York registration KNL7702. It failed to use



the designated lane while traveling westbound on Lexington Avenue in Mount Kisco. The vehicle then failed to signal properly when turning off of Lieto Drive. And continued to -- failed to maintain the designated lane. And it turns into Maple Avenue. The vehicle was stopped at 111 Maple Avenue. I activated my front headlights, and the vehicle stopped up on -- onto the curb. I exited the vehicle, activated my body-worn camera. Spoke to the operator in the vehicle who was identified as Jesus Martinez-Sosa, date of birth 1/20/1970, New York State driver's license.

THE COURT: I'm sorry, could you -- I'm sorry, your microphone -- you're going in and out a little, so if you can just move closer to the microphone.

MR. PIETROBONO: I have a question, Your Honor, if I may?

THE COURT: Yes, go ahead.

MR. PIETROBONO: So these are all witnesses that will be testifying about the same event. Should they all be present during the testimony of the other? Shouldn't they be --

THE COURT: Well, that's up to you. If you would request that they be sequestered, then I would grant that. Usually I don't on my own, only if there's a specific -- specific request from an attorney.

MR. PIETROBONO: I do ask that, please.

THE COURT: All right. And then we are going to ask for a call back number for both officers, just in case we need your



testimony as well.

OFFICER HECHT: Are you ready -- do you want that now?

THE COURT: Yes, please. Not the sergeant, Sergeant Hicks you can remain.

I believe officer, is it Hecht? Officer Hecht?

OFFICER HECHT: Yeah.

THE COURT: Okay. And your call back number?

OFFICER HECHT: It's going to be (914) 642-5744.

THE COURT: So it's (914) 642-5744?

OFFICER HECHT: Correct.

THE COURT: And Officer Ricigliano?

OFFICER RICIGLIANO: Yeah. It's going to be (914) 714-8262.

THE COURT: (914) 714-8261, you said?

OFFICER RICIGLIANO: Yeah.

THE COURT: Okay. All right. And just in case an officer -- obviously, these hearings usually take about an hour. Just in case you don't receive a call back knowing that we -- I probably did not need your testimony, but I'm just going to ask you to at least remain available for the next hour. So the hearing should conclude by then, at least. All right? So the two officers, Officer Hecht and Officer Ricigliano may disconnect.

OFFICER HECHT: Okay, thank you.

OFFICER RICIGLIANO: All right. Thank you.



THE COURT: All right. Based on the specific request by counsel, so therefore, I'm going to sequester on those.

So continue, Sergeant.

THE WITNESS: So after I identified the operator, I immediately detected an odor or an alcoholic beverage emanating from his person. I asked him to exit the vehicle, he had to lean on his vehicle to hold himself up. And I immediately observed that he had urinated in his pants. He was unsteady on his feet; he had bloodshot watery eyes and slurred speech. I asked him for the registration of his vehicle, and he handed me his suspension notice for his driver's license.

So then what I did is I had him come to the back of the vehicle, he was leaning on the back of his vehicle. I was trying to give him standard field sobriety tests. During those tests, I did the HGN test, and he wouldn't cooperate with the test. Not following the stimulus, which would be my finger. So he wouldn't let me see his eyes at maximum deviation. There was nystagmus, obvious nystagmus, and lack of smooth pursuit in both eyes.

I asked him if he could stand on one -- one foot. He kept repeating that he had a bad back, bad hip, that his body -- his whole body was shit is what he said. And that his 04 and 05 disc, is what I'm assuming, in his back was bad. He could -- I gave him the instructions to do the one-legged stand, he couldn't keep his leg up off the ground for more than one

second. We walked up onto the sidewalk; I instructed him on his to do the nine step walk and turn. He continued to say that he -- he had a bad back. I asked him if he was willing to attempt to do the test, and he started, but was unable to complete the test.

So I did an alphabet test, he said he knew the alphabet. I asked him to start with the letter H and end with the letter T. He said that's not how he learned how to do the alphabet, but he couldn't -- he couldn't complete that. So then I moved onto a finger dexterity test, which he also failed. At that point, he was given an opportunity to submit to a preliminary breath test.

He kept -- he wouldn't blow into the roadside screening, and ultimately, we were able to get a sample even though he was giving a full breath sample into the roadside test for the positive presence of alcohol. He was placed under arrest and was transported back to our precinct. He was placed under arrest at 18:38 hours, and PO Hecht transported him back to our precinct in vehicle 1496 for processing.

At that point, PO Castro completed an inventory search of the vehicle -- excuse me, an inventory of the vehicle. And there was an open Corona -- open Corona beer located on the floor. And there was an open twelve pack of Corona in the back seat, containing multiple empty bottles. So he was transported back to the precinct where he was processed, and PO Ricigliano

was the breath test operator. And PO Hecht took over the arrest processing.

THE COURT: Okay. Did you have any other interactions with the respondent, Sergeant?

THE WITNESS: Just having to issue him a desk appearance ticket.

THE COURT: All right. Anything else that you think is relevant that we did not discuss?

THE WITNESS: No, I think that's it.

THE COURT: All right.

Counsel, any questions for the sergeant?

MR. PIETROBONO: Yes.

CROSS-EXAMINATION

BY MR. PIETROBONO:

Q First, Sergeant, I couldn't make out your name when you said it before. Sergeant what?

A Timothy Hicks.

Q Timothy Hicks. So Sgt. Hicks, were you the arresting officer?

A No, I was the supervisor for the tour up in Mount Kisco. And John Hecht took the arrest processing.

Q You had a body-cam video on at the time of your involvement with Mr. Martinez-Sosa?

A Yes.

Q So let me see, were you the officer administering the



PBT?

A PO Hecht attempted to get a breath sample from him, and was in a -- unable to. And then I was -- asked him to submit a test and instructed him on how to do it and then was able to get the reading that I got.

Q And that was at the scene, right?

A Correct.

Q So did you -- let me see, did you administer or attempt to administer SFSTs?

A Yes. I was the -- I was the officer that did administer the SFSTs.

Q Now did you give him instructions in English or Spanish?

A English. And he was asked if he understood, he said he understood so.

Q And what did he -- and when you asked him, what did he say as far as did he understand or not?

A Specifically, I don't recall. I just remember asking him if he understood the test.

Q Okay. Just trying to get my -- I sent in --

MR. PIETROBONO: Your Honor, you received three videos?

THE COURT: I did, yes.

MR. PIETROBONO: So there's one that finishes with 97357, is that any identification? Did you recognize sergeant?

THE COURT: Yes. I'm sorry, yes. So Counsel, right. You

can refer to those videos, you can use it in your argument, ask questions about them. So if you would like, those will be admitted as well in evidence. But you can go ahead and ask the officer about anything that's contained in those videos.

MR. PIETROBONO: Okay. Okay.

Q (By Mr. Pietrobono) So on that video, do you recall asking him if he drank anything that day?

A Yes. And he said that he -- he said I don't -- I don't drink anything.

Q Okay.

MR. PIETROBONO: So Your Honor, how would I -- if I wanted to show some video, I have a certain time.

THE COURT: Yes.

MR. PIETROBONO: So it's not watching the whole thing, is there some way to sort of queue it up?

THE COURT: You can. So what you can do is just share it on your screen, I've given you sharing privileges. So if you can just share it on the screen, then that should be fine.

MR. PIETROBONO: Okay, let's see. Okay, here's sharing. Are you able to see that?

THE COURT: I can see your screen, yes.

MR. PIETROBONO: All right. So all right, now that's 26.

Q (By Mr. Pietrobono) Okay. So the question I asked you, it would be reflected at, let me see, 2 minutes 28 seconds.



(Video played)

SERGEANT HICKS: There's nothing on you, right? Keep your hands out of your pockets. Don't reach into your pockets, all right?

(Video paused)

Q (By Mr. Pietrobono) Is that -- do you recognize your -- is that your voice, Sergeant?

A Yeah.

(Video played)

MR. MARTINEZ-SOSA: (Indiscernible) sir.

SERGEANT HICKS: Okay. How much have you had to drink today?

MR. MARTINEZ-SOSA: I don't drink anything. I drink just a beer.

SERGEANT HICKS: Okay.

(Video paused)

Q (By Mr. Pietrobono) All right. So does that refresh your recollection as to what he said specifically, Sergeant?

THE COURT: Sergeant, were you able to hear what was said --

THE WITNESS: Sorry.

THE COURT: -- on the video?

THE WITNESS: Yes. I'm sorry, I had to check off the mute. Yes, he said exactly what I said. He did -- I don't drink anything.



Q (By Mr. Pietrobono) Okay, good. Look at the -- you mentioned that he complained about some physical ailments or limitations; is that correct?

A Correct.

Q Okay. I'm going to turn to 3:48.

(Video played)

MR. MARTINEZ-SOSA: (Spanish spoken).

THE COURT: Maybe you want to raise the volume a little bit, Counsel, so that sergeant can hear it as well.

(Video played)

SERGEANT HICKS: Okay. What you're going to do -- you know what, we'll go on the sidewalk.

(Video paused)

Q (By Mr. Pietrobono) So there he mentioned his back, his L -- I think he said L4, L5; is that right?

A Yes.

Q Okay. So I'm going to then move to 5:45.

(Video played)

SERGEANT HICKS: Hold your leg six inches above the ground, like this.

MR. MARTINEZ-SOSA: I can't because I move -- well, I can't because of my L4 and L5.

SERGEANT HICKS: Okay. So you -- you could try -- I mean, don't hurt yourself, but --

MR. MARTINEZ-SOSA: I can't. That's the problem because I



know it going to bother me.

SERGEANT HICKS: Go ahead, try. You've got to keep your hands down while (indiscernible).

MR. MARTINEZ-SOSA: I can't.

SERGEANT HICKS: No? Okay. How about walking in a line, do you think you can walk the line?

MR. MARTINEZ-SOSA: I can walk in whatever the line you want.

(Video paused)

Q (By Mr. Pietrobono) So let me ask you a question, did he when you -- what observations did you make of him at the time of your stop, and I guess during the testing. Aside from the SFSTs, what other observations did you make?

A Okay. So I'm -- what I've already stated before was, obviously, the odor of an alcoholic beverage emanating from his breath, slurred speech, bloodshot glassy eyes. When he exited the vehicle, like I said, he was unsteady on his feet, leaning on the side of the truck. When I asked him to come to the back of the vehicle, he was leaning on the back of his vehicle. He had urinated his pants.

Q Any other observations that you noted?

A Yeah. That he failed the SFSTs.

Q Okay. Okay, so you said when he got out of the vehicle, he was unsteady on his feet. Then he went to the back of the vehicle, and he leaned on it. Watching this video, he



doesn't appear to be swaying at any time except during the test. Is that your observation too?

A No, he was swaying the whole time.

Q He was swaying the whole time?

A Yeah. I never -- I didn't say that originally, but you were asking me if he was swaying. So yeah, he was swaying.

Q Uh-huh. Let's see, 7:40, let's continue on with his physical restrictions. 7:40.

(Video played)

SERGEANT HICKS: Okay. Yeah, heel to toe like this.

MR. MARTINEZ-SOSA: I have a problem my feet, I said.

SERGEANT HICKS: I thought you said you could walk in a straight line, though?

MR. MARTINEZ-SOSA: I can walk in whatever, but --

SERGEANT HICKS: What, you can't put your left foot in front of your right foot?

MR. MARTINEZ-SOSA: I can, but I have a problem with knee and hip.

SERGEANT HICKS: Okay. Well, let's do -- let's do this, okay? What you're going to do is you're going to -- yeah, put your left foot in front of your right foot. Okay. What you're going to do is you're going to take nine heel-to-toe steps down -- down --

MR. MARTINEZ-SOSA: Okay.

SERGEANT HICKS: -- and then nine heel-to-toe steps back.



I'm going to show you how to do it, okay?

MR. MARTINEZ-SOSA: You're showing me, but I can't --

SERGEANT HICKS: Okay.

MR. MARTINEZ-SOSA: -- because I have a lot of problem here.

SERGEANT HICKS: Okay. All right. Okay.

MR. MARTINEZ-SOSA: You gave me a test; I'm doing the test you want.

SERGEANT HICKS: Right. Okay.

MR. MARTINEZ-SOSA: Believe me, I don't care. You can't make me.

SERGEANT HICKS: Okay.

MR. MARTINEZ-SOSA: (Indiscernible) me.

SERGEANT HICKS: Okay.

MR. MARTINEZ-SOSA: I say to you I have a problem in my hip. I cannot -- I have trouble with my back.

SERGEANT HICKS: Answer me this, did you have a stroke? Did you have a stroke?

MR. MARTINEZ-SOSA: No.

SERGEANT HICKS: Why did you -- why are your pants wet?

MR. MARTINEZ-SOSA: What? Why my pants wet?

SERGEANT HICKS: Yeah.

MR. MARTINEZ-SOSA: Because I was working so hard today, everyone.

SERGEANT HICKS: Okay. So what you're going to do is



you're going to put your left foot in front of your right foot.

(Video paused)

Q (By Mr. Pietrobono) On that -- on that note, if you heard him -- you asked him about his pants, why are his pants wet. Do you remember doing that?

A Yeah.

Q All right. So I'm confused, what was -- how do you know it was urine?

A Could be -- could be something else.

Q All right. But you specifically wrote on the Report of Refusal, you wrote glassy eyes, slurred speech, soiled pants. So what were you referring to when you said soiled pants?

A Obviously the wet spot on his crotch.

Q Okay. So now you acknowledge it could be something else. It was just -- it was a -- it appeared to be a liquid stain of some kind; is that correct?

A Correct.

Q All right. And when you asked him, he explained it as something other than urine, didn't he?

A What -- what did -- can you repeat the video again?

Q Well, when you asked him, he said it was -- he -- listen to what he said. Listen here.

(Video played)

SERGEANT HICKS: Did you have a stroke?



MR. MARTINEZ-SOSA: No.

SERGEANT HICKS: Why did you -- why are your pants wet?

MR. MARTINEZ-SOSA: What? Why my pants wet?

SERGEANT HICKS: Yeah.

MR. MARTINEZ-SOSA: Because I was working so hard today, everyone.

SERGEANT HICKS: Okay. So --

(Video paused)

Q (By Mr. Pietrobono) All right. So his answer was, if you could hear it, was, well because I'm working so hard everywhere, right? Something to that effect? Does that refresh your recollection?

A That does.

Q Do you know what he -- what kind of work he was doing at the time?

A No.

Q Okay. Did he ever say he was a landscaper to you?

A No, I don't recall.

Q Okay. And have you interacted with Mr. Martinez-Sosa before this incident?

A Not that I know of.

Q All right. So you -- you don't know how he speaks ordinarily, do you?

A No, I'm -- I wouldn't know how he speaks ordinarily.

Q Okay. And so you also -- similarly, you've never



observed him walking at any time besides this date in question to the best of your knowledge; is that correct?

A Okay, yes.

Q Okay. So you're not familiar with his gait or his usual customary walk, are you?

A No.

Q Okay. Okay, I'm just going to continue here. So earlier you said you asked him -- you remember asking him if he understood the instructions. You don't remember his answer though; is that correct?

A Can you ask that again?

Q You asked if he understood the instructions -- you remember asking him if he understood, but you didn't remember his response; is that correct?

A Correct.

Q All right. So let's see -- I think I have it in here. Okay.

(Video played)

SERGEANT HICKS: Each step out loud as you go, leaving your hands along the seam of your pants. Do you understand everything that I just told you?

MR. MARTINEZ-SOSA: No, I don't understand. I have to tell you -- what's going on?

SERGEANT HICKS: Do you have any --

(Video paused)



Q (By Mr. Pietrobono) All right. So he did -- do you hear him say a definitive no, right? A resounding no; is that correct?

A Yeah, then he continued to talk and said that he could do it --

Q Yeah.

A -- correct.

Q He's a little verbose. I'll give you that, he's trying.

A Right, right. So -- you know, go ahead.

Q Yeah. So when you're asking him -- you're asking him to do these tests, you're asking him -- you're asking him questions, do you recall a time at the scene of the arrest that he asked to speak to a lawyer?

A No, I don't recall.

Q Okay. Let me see, so in the same video, we'll play at 26:24 I'll play a little before because I don't want to miss it. All right. So this is -- I guess this is 26 minutes in.

(Video played)

SERGEANT HICKS: You're not blowing. You're -- you're not blowing into the -- listen.

MR. MARTINEZ-SOSA: I'm blowing. You made me bump it. You want me, I do it again.

SERGEANT HICKS: You can't even stand, my man.

MR. MARTINEZ-SOSA: I can do the --



SERGEANT HICKS: You can't even stand. You can't stand.

MR. MARTINEZ-SOSA: I can stand. I have (indiscernible)
And I did all -- I have a humungous x-ray.

SERGEANT HICKS: Okay. Go ahead. You're still not doing it, but --

(Video paused)

Q (By Mr. Pietrobono) So there you said, he did the PBT, he blew in it, you withdrew the PBT. And you said, you're still not doing it, but. Does that mean you got it, or you didn't get it? I'm confused.

A You can short click those things even though they don't blow into it, you've still got me?

Q Yeah. Is that what happened there?

A You can click it off, and it won't be a sufficient reading. So your reading that came on the roadside PBT test for your client was a .1, it was a partial reading. So it still shows the presence of alcohol, even though he wasn't blowing into it like he should have. All these tests were stopped for his safety on the safety on the side of the road because he couldn't even stand so.

Q Okay. Well, okay, you call that a quick test or a quick click, something?

A Yeah, you can -- you can click a reading button on the side of this roadside PBT test. And if there's a sufficient enough sample, it'll still take a reading. But it

won't be as if he actually blew into it all the way.

Q It wouldn't be as accurate then?

A Correct, it would be higher.

Q Okay. So I'm going to continue playing it to get to the point that I was trying to get to. Which is you asked -- I mean, I'm asking a question to you.

(Video played)

SERGEANT HICKS: You're still not doing it, but --

MR. MARTINEZ-SOSA: Can I call my lawyer, please? That would be my right, right? Can I call my lawyer?

(Video paused)

Q (By Mr. Pietrobono) So do you -- now that you've refreshed your recollection about him asking to speak to an attorney?

A Yes.

Q Okay. And do you recall what your response was?

A No.

Q Yeah, okay. Let's replay a little more.

(Video played)

MR. MARTINEZ-SOSA: (Indiscernible).

(Video paused)

Q (By Mr. Pietrobono) So it looks like, in response to his question, you told him to turn around and handcuff him. Does that sound correct?

A I don't -- I don't see the video in front of me right

now.

Q Right. But I guess what I'm getting at -- I don't see -- I didn't hear any answer at all, any response to his request for an attorney. Does that --

A Yeah. At that point -- at that point, like, if it's -- time has, you know, it can't -- he's not going to -- he can't ask for an attorney, he's not even under arrest yet. But now he's under arrest, now he can ask for an attorney.

Q Well, was he free to leave just an instant before?

A No, no. He was getting -- he was getting arrested for driving while intoxicated.

Q Right. So he asked -- he asked to speak to an attorney, and you did not respond to that; is that correct?

A At that timeframe, no.

Q Well, was there another timeframe that you -- you did respond to that question? This is at the arrest scene.

A Not that I recall.

Q Okay. So to the best of your recollection, you didn't respond to his request to speak to an attorney; is that correct?

A Not at that -- not at that time, no.

Q Okay. Since he indicated he had some physical limitations, did you offer him any other kind of chemical -- any other tests than the SFSTs?

A Any other tests? As far as what?

Q Well, if he --

A Like, I gave him an alphabet test, and he couldn't complete. And I gave him the finger dexterity test, which he couldn't complete.

Q Okay.

A That's also on the video.

Q Right. And again, your instructions -- it was, your instructions were in English, not Spanish, right?

A Correct.

Q Could you have asked another officer to translate at the scene?

A There was another officer there, yeah. PO Castro.

Q So this Ofc. Castro, would he be able to translate into this particular language?

A If he was Spanish.

Q Okay. So you're not aware if he was -- if he is Spanish or not?

A He said he was from South America so.

Q My client or Ofc. Castro?

A Your client.

Q Oh, okay. So my question to you is, does Ofc. Castro speak Spanish or not?

A Well, Ofc. Castro does, but your -- your client knew the alphabet, he said that he didn't learn how to start from the letter H and end with the letter T is why he couldn't

complete that test. But he knows the alphabet. He started saying it in English, but.

Q He said he knows the alphabet; is that correct?

A Right. That's what he said, right?

Q Right. But it is -- if Spanish is his first native language, that would be asking him to speak in a different language. Wouldn't that be correct?

THE COURT: Right. I'm so sorry, those arguments you can make before me. I don't know if it might --

MR. PIETROBONO: Okay.

THE COURT: -- be fair questions for the officer.

MR. PIETROBONO: Okay. So just one more moment, please.

Q (By Mr. Pietrobono) Oh, on the Report of Refusal, Sergeant, did you fill this out, or did someone else?

A No, the Refusal Report should be filled out by PO Ricigliano.

Q Okay. Why would she fill this out?

A Because she's the breath test operator. She's the one who reads the DWI warnings.

Q Okay. But this indicates the reasonable grounds to make the arrest, indicating the vehicle information. In Section A, these are -- but she wasn't at the scene of the -- the stop, was she?

A No. I don't -- I don't have the form in front of me. Who's the undersign on it?

Q The -- well, it's just a name and rank of arresting officers, Police Officer Hecht, and then it says in the presence of Police Officer Ricigliano.

A Okay.

Q Does that have any meaning for you?

A No, because I didn't fill it out.

Q But then -- okay, so she wrote this, but she wasn't there at the scene of the stop, was she?

A No, she's the breath test operator.

Q Okay. So she only got involved at the station; is that correct?

A Correct.

Q So she personally did not make any of these observations made in the section A of the Report of Refusal; is that correct?

A I -- say it again, just because I don't know what's actually on it so.

Q We could -- actually, I could -- I guess I could stop this share.

MR. PIETROBONO: Right, Judge? Your Honor, I could go back to the screen.

THE COURT: Yes, you can go. Even though I believe that the sergeant has answered that by stating that, you know, she was not there.

MR. PIETROBONO: Oh, okay. All right. Okay.

THE WITNESS: I can only say that she was not at the scene. I don't know whether she can actually put her observations of how he behaved at the precinct, or what observations she observed at the precinct. She has her own forms for that.

MR. PIETROBONO: Okay, I have no further questions of the sergeant. Thank you so much for your cooperation.

THE WITNESS: Thank you.

THE COURT: All right. Then Sergeant, you can disconnect, on.

Counsel, do you have a preference for any of the officers?

MR. PIETROBONO: Am I able to make any objections at this point, Your Honor? For the document, the Report of Refusal or?

THE COURT: You can, it's not being admitted at this point. You know, at some point you're going to -- it's going to be admitted and you can make those observations -- objections then. So that you know, obviously, the Report of Refusal would have more weight in the Gray v. Aducci hearing. If there's any defects on the Report of Refusal that you're going to argue, the preferred evidence would be the testimony that's presented here today. Not so much the defects on that document. So at that point, when I do admit it, you can, of course, state your objections and preserve the record.

So do you have -- it's not admitted yet, I would just reserve it for then at that point. So do you have a

preference?

MR. PIETROBONO: Do you intend to introduce it or?

THE COURT: I usually do to have a complete record, yes. And the question is, obviously, what weight I give to it being that the officers are here to testify anyway. All right.

MR. PIETROBONO: Okay. Okay, very good. Okay, so --

THE COURT: We have Ofc. Hecht and Ofc. Ricigliano. I don't have a preference, that's why I'm just -- I'm asking you.

MR. PIETROBONO: Yeah, I guess -- I guess Ofc. Hecht.

THE COURT: Okay.

MR. PIETROBONO: No? If you change your mind, here is a water.

THE COURT: And just bear with us, we're waiting for.

MR. PIETROBONO: Your Honor, I'm trying to find another video, so. 96855 -- 968.

THE COURT: Okay. Ofc. Hecht, can you hear us?

OFFICER HECHT: I can.

THE COURT: All right. Then Ofc. Hecht, can you please raise your right hand?

OFFICER JOHN HECHT

called as a witness on behalf of the Petitioner, having been sworn, did testify upon his oath as follows:

DIRECT TESTIMONY

THE COURT: All right. And Officer, can you tell us about your encounter with the respondent on April 23rd, 2024?



THE WITNESS: Sure. I was working 11 Baker up in Mount Kisco, part of our 11 precinct. I heard the sergeant put over a radio transmission that he was conducting a traffic stop. So I went and backed him up. Around 111 Maple Avenue. When I responded there, he was already at the vehicle. And I believe he was behind it, and he had Mr. Martinez-Sosa outside of the vehicle.

THE COURT: Okay. What did you do?

THE WITNESS: I approached both of them. Upon approaching, Mr. Martinez-Sosa I could detect the odor of an alcoholic beverage emanating off of him. I had walked over to the front driver side window, which was open of his vehicle. I could also detect an odor of an alcoholic beverage emanating from inside the vehicle. He also appeared to have soiled himself. I also observed his eyes to be glassy and bloodshot, and he was a little bit unstable on his feet, and was slurring some of his speech. Sgt. Hicks conducted the SFSTs, so Standard Field Sobriety Testing. I can't attest to observations for that, I didn't give the testing, Sgt. Hicks did. He advised me that Mr. Martinez-Sosa failed the testing. We requested that he submit to a personal breath test, he complied. At least when I tried to submit him to the personal breath testing, he did not follow the direction and tried to manipulate the testing by not placing his mouth around the straw, or by inhaling when I asked him to exhale. And then

Sgt. Hicks issued the personal breath test. It gave some sort of sample reading, and then Sgt. Hicks asked me to place him under arrest.

THE COURT: Okay. And what happened after the arrest?

THE WITNESS: I transported him into the 11th precinct, and that's when Ofc. Ricigliano came in to do her BAO observations.

THE COURT: All right. Were you present when Ofc. Ricigliano interacted with the respondent?

THE WITNESS: I was in the same room, but I was doing paperwork.

THE COURT: Okay.

Counsel, any questions for the officer?

MR. PIETROBONO: Yes.

CROSS-EXAMINATION

BY MR. PIETROBONO:

Q Hi, Officer. Did you -- you had a -- did you have a body camera on at the time of the interaction with Mr. Martinez-Sosa?

A At scene?

Q Yes.

A Yes, I did.

Q Okay. And you attempted, you say, to give him a PBT test or -- you said a personal breath test?

A Yeah, it's a PBT test.



Q A preliminary breath test?

A Yes.

Q Okay. All right. So I'm just -- so do you recall Mr. Martinez-Sosa asking to speak to a lawyer?

A I don't recall.

Q So let me -- all right.

MR. PIETROBONO: Your Honor, could -- that video is already in evidence, right? That's where the --

THE COURT: Yes.

MR. PIETROBONO: Could you share, please, again? And I'll -- I'll just go right to that point.

THE COURT: Yeah, you have the sharing privileges. So you can go ahead, and just -- the same way you did previously.

MR. PIETROBONO: Got you. Are you able to see that?

THE COURT: No, no. I believe the officer is here by phone, obviously. So you are unable to see the screen. No, Counsel, but you can ask -- if -- because you're only playing it for my benefit. So you know, I have access to the videos.

MR. PIETROBONO: Okay.

THE COURT: You can just confirm the officer about what it shows, and what date, and see if he remembers.

MR. PIETROBONO: Okay, let's see.

THE COURT: And then you can argue that, you know, obviously.

MR. PIETROBONO: Yes.



THE COURT: Okay.

MR. PIETROBONO: Okay. So let's just see.

Q (By Mr. Pietrobono) While you were there, did you observe -- did you observe -- or hear Mr. Martinez-Sosa complain about some certain physical limitations that he -- that he complained that he had?

A Yeah, I believe that he complained he had some sort of leg problem or something.

Q Okay. Was any kind of accommodation offered as a result of that -- of his complaint, like to the test, or to his participation?

A Not that I recall. I didn't issue the testing, so I don't remember exactly what was offered, or what was requested at that time.

Q Okay. I'm going to play a sound bite, and I don't know if you can hear it. If you can't, let us know. So my question to you was --

A Did you play -- excuse me, just -- don't mean to interrupt you. Did you play it? Because if you did, I couldn't hear it.

Q No, you're right. Not yet, just about to.

A Okay.

Q I just wanted to remind you, my question was, if you recall him asking to speak to an attorney -- a lawyer --

A No, I don't.



Q -- any communications at all?

A I don't recall.

Q So listen up, here it comes.

(Video played)

MR. MARTINEZ-SOSA: -- humungous x-ray.

SERGEANT HICKS: Okay. Go ahead. You're still not doing it, but --

MR. MARTINEZ-SOSA: Can I call my lawyer, please? That would be my right, right? Can I call my lawyer, please? You're(indiscernible) big guy -- no reason (Spanish spoken).

SERGEANT HICKS: Turn around.

(Video paused)

Q (By Mr. Pietrobono) Okay. Could you hear that?

A Most of it, yes.

Q Okay.

THE COURT: Yeah, I just have a clarification. Was some of that in Spanish, Officer? If you remember. Or Counsel can clarify for me, because it broke up a little bit at the end.

MR. PIETROBONO: He spoke in English to --

THE COURT: Okay.

MR. PIETROBONO: -- broken English to the officer -- the arresting officer. And then there was also -- there's another officer off to the side, I guess it must be Ofc. Castro, would be my guess.

Q (By Mr. Pietrobono) But did you -- I'll ask the



officer, did you observe Ofc. Castro present when you arrived on scene?

A I believe he was on scene, I don't remember if I arrived before him or if he arrived prior to me. I'm fairly certain he was on scene though.

Q Is that a gentleman and I -- I'm sorry, to just have to do a physical description, does he have no hair? Does he have a bald head? Is that him?

A That's correct.

Q Okay.

MR. PIETROBONO: So he -- to answer your question, Your Honor. The -- my client first spoke in the broken English to the arresting officer, then he turned to Ofc. Castro and spoke in Spanish. I don't see a response, I just see him reaching out to somebody in his native language. That's all I -- the video shows. Then he's placed under arrest, he's handcuffed.

THE COURT: Thank you. Okay.

Q (By Mr. Pietrobono) So that was -- so to the best of your knowledge, there was no response from any officer to his request for an attorney. Is that correct, Officer?

A To the best of my knowledge, at that point in time on scene, no.

Q Okay.

MR. PIETROBONO: I have no further questions of this officer.



THE COURT: All right. And Officer, feel free to disconnect. We're just going to call the final officer, Ofc. Ricigliano.

MR. PIETROBONO: Thank you for your cooperation, Officer.

OFFICER HECHT: Thank you. Take care everybody.

THE COURT: Thank you, Officer.

OFFICER HECHT: All right.

MR. PIETROBONO: Bye.

THE COURT: Okay, good afternoon. Is this Ofc. Ricigliano?

OFFICER RICIGLIANO: Yes, it is.

THE COURT: All right. Then Officer, can you please raise your right hand?

ALLESSANDRA RICIGLIANO

called as a witness on behalf of the Petitioner, having been sworn, did testify upon her oath as follows:

DIRECT TESTIMONY

THE COURT: And Officer, can you tell us about your encounter with the respondent on April 23rd, 2024?

THE WITNESS: Yes. I was called to the Mount Kisco precinct to conduct the BAO machine for the -- the arresting officer.

THE COURT: All right. And so that the record is clear, what's the BAO machine?

THE WITNESS: That's the Breath Analysis Operator, that's



what I am. It -- it's the DataMaster, is what it's called. And that is used to determine the alcohol content of someone's blood by getting a breath sample.

THE COURT: Okay. And continue, what did you do?

THE WITNESS: So when I arrived, I began my twenty-minute observation period at 1905 hours. After that twenty-minute observation period, the defendant -- I gave him the DWI refusal warnings.

THE COURT: Oh, did you give these warnings from memory or some kind of document?

THE WITNESS: No, we have a specific card that's in all of the precincts.

THE COURT: And do you have that card with you? I'm sorry.

THE WITNESS: On me -- on me, no. They're at the specific precincts. They are attached to the -- we have to submit them in the -- when we submit the case. So I don't have a copy on me, but a copy is submitted into the report.

THE COURT: All right. I'm not sure -- you know, what you're referring to. Obviously, we just have the Report of Refusal.

THE WITNESS: Uh-huh.

THE COURT: And Officer, are you able to tell us anything that was said to the respondent in terms of that warning?

THE WITNESS: Basically what it is is just, you're

asking -- you're asking them if they're willing to give you a sample of their breath.

THE COURT: Okay.

THE WITNESS: That's a very -- I would say that's a very broad term for what those -- those actual warnings are. It's very --

THE COURT: All right. So do you remember asking the respondent that question?

THE WITNESS: Yes, I asked them a series of questions -- the series of questions at 19:27 hours. And that was the first -- first refusal. And after each subsequent refusal, you wait an additional ten minutes. So I asked again, same exact warning, at 19:37 hours. He said no, and then I waited another ten minutes, and asked at 19:49 hours, and that was the final refusal.

THE COURT: Okay. Now these warnings you said there's a card that you read to him?

THE WITNESS: Yes.

THE COURT: You -- and whatever's contained on that card to then read to the respondent. Were these warnings read in English or Spanish?

THE WITNESS: They were read in English.

THE COURT: And Officer, did you file a Report of Refusal?

THE WITNESS: Yes, I did.

THE COURT: All right. So for those of you who can see my

screen, I have a very -- not a good copy, that's on my screen that was submitted to us. A lot of it is illegible, but I will still admit it, obviously, to put forward evidence with the testimony that's given here today.

And Counsel, you know, it's -- whatever's on my screen, that's what I have. There's some --

MR. PIETROBONO: I don't object.

THE COURT: -- parts you're unable to see.

MR. PIETROBONO: I have a better copy. It's not -- no objection.

THE COURT: And Ofc. Ricigliano, any -- well, first, let me ask you. Did you submit this document?

THE WITNESS: I don't recall if I submitted it, but I was there when it was filled out.

THE COURT: Okay. Were you the one who filled it out, or was it another officer, a combination of both officers -- or two officers?

THE WITNESS: I think it was a -- I really don't recall; it was a long time ago.

THE COURT: Okay. All right. So it looks like Ofc. Hecht on the lower left from what I can see and Ofc. Ricigliano on the lower right. So this is a one-page document, not -- not clear. So this will go in as Exhibit 2, bearing today's date so marked and received for the record.

(Whereupon Petitioner's Exhibit 2 admitted without



objection)

And anything else, Ofc. Ricigliano?

THE WITNESS: No, that's it.

THE COURT: And Counsel, any questions for the officer?

MR. PIETROBONO: I do.

CROSS-EXAMINATION

BY MR. PIETROBONO:

Q Good afternoon, Officer. Thank you for coming.

A Good afternoon.

Q So do you recall -- so you read Mr. Martinez-Sosa, or you advised him of his warnings -- of his refusal warnings; is that correct?

A Yes, I read it off the -- the department issued card.

Q And part of -- part of your questioning to him was did he understand. And what was his answer to that?

A I don't recall specifics. I --

Q Would you recall --

A Yeah, I don't recall.

Q Do you recall him asking to speak to an attorney?

A I don't recall.

Q Okay. Let's see. And so you don't have that card with you?

A No, I don't have it yet -- it's in the -- it's at our headquarters, or in the Mount Kisco precinct. We don't get copies of them just to have.



Q And you -- do you recall asking him or telling him that he would -- if he doesn't take the test, he would lose his license. Do you recall asking him that?

A I believe that is one of the bullet points on there, yes.

Q Uh-huh. But that -- I guess what I'm saying, that wasn't -- that wasn't necessarily written on the card. It was you trying to explain to him, I guess, the consequence of not taking a chemical breath test. Is that -- is that correct?

A I read right off the card, and that's all I -- all I said.

Q Okay. Let's see.

THE COURT: I just want to clarify what counsel asked, I guess, a few questions ago. And that's with respect to the attorney. And I just want to -- and on the timeframe -- timeframe. After you read these warnings to the respondent, after they were read, not before. Do you remember after you read these warnings of the respondent indicated to you that he would like to speak to an attorney? Did he not -- did he -- or you can't remember if he did?

THE WITNESS: I -- I really don't recall.

THE COURT: Thank you.

You may continue, Counsel.

MR. PIETROBONO: Thank you.

Q (By Mr. Pietrobono) Again, trying to. To answer



your question, I've got -- you had a body camera on; is that correct, Officer?

A Yes.

Q And I've watched it -- let me see. Okay. Did you -- at some point in the station do you take it off to set it up to observe your -- the whole scenario in the pen?

A I don't believe that -- I think the camera might have not been -- so the overhead camera. I'm not sure. I don't normally work in Mount Kisco.

Q Okay. No, this is one that's like on the table, and -- anyway. So I believe it -- I wear glasses, I'm just asking, you wear eyeglasses; is that correct?

A Yes.

Q Okay. So that -- I'm sorry, but I'm just trying to identify. There's a female officer that appears in this -- in this video.

A That would -- I think that's me, yeah.

Q That would be you. And Mr. Martinez-Sosa is in, I believe, is called the pen at the station. Is this -- it looks like a very small cell. Is that familiar?

A I am aware of where it is, but we don't call it that.

Q Okay. Okay, so I'm going to put this up to two minutes -- at the two-minute mark.

MR. PIETROBONO: This one, Your Honor, I sent this video in. It ends with 97987.

THE COURT: Very well, thank you.

MR. PIETROBONO: Okay. So let's see it, two minutes.

Q (By Mr. Pietrobono) That other officer, then, was sitting here for the whole -- whatever 40 minutes or so. I just highlighted some times. All right. So this is starting at one minute and 36 seconds, just because that's as close as I seem to be able to get. Okay. I'll try 1:54; let's see.

(Video played)

MR. MARTINEZ-SOSA: (Indiscernible).

OFFICER HECHT: Okay, you should lead with that.

MR. MARTINEZ-SOSA: I've studied all of those.

OFFICER HECHT: Not the United States Military?

MR. MARTINEZ-SOSA: No, I haven't. This is my country, all of this country. Because I love America.

OFFICER HECHT: Good, me too.

MR. MARTINEZ-SOSA: My son born here, my daughter born here, my grandchildren born here. Everything is here. My life is here.

(Video paused)

MR. PIETROBONO: I'm sorry. I don't know if that's the -- that's not the two-minute point. I'm trying to make sure I've got the right camera.

THE COURT: You may want to raise the volume a little so that the officer can hear.

MR. PIETROBONO: 7987. Oh, I'm sorry. Okay. 97987,



let's try that.

(Video played)

OFFICER RICIGLIANO: You're under arrest. You've got your four bullet points.

(Video paused)

MR. PIETROBONO: Oh, jeez. Let's see. Okay. So this -- yeah, okay.

Q (By Mr. Pietrobono) Officer, can you -- if you can't hear this, let us know, okay? I'm going to put it on. It sounds like -- it sounds like your voice that I hear right now, so I presume this is you.

(Video played)

OFFICER RICIGLIANO: Yeah, this one is different. That one -- that one didn't count. This one is the -- this one is the main one, okay? Your refusal to submit to a chemical test, which is that --

MR. MARTINEZ-SOSA: Uh-huh.

OFFICER RICIGLIANO: -- or any portion thereof can be introduced into evidence against you at any trial, proceeding, or hearing resulting from this address. So now that I've explained it to you, will you submit to a chemical test to determine the alcohol or drug content --

MR. MARTINEZ-SOSA: (Indiscernible) about anything -- about anything right now. I needed to see -- I needed to call my friend first. Second, I needed to call my lawyer.



OFFICER RICIGLIANO: Okay. This is first before that, okay.

MR. MARTINEZ-SOSA: I'm not going to do anything anymore right now. You can even put me in the ground if you want.

OFFICER RICIGLIANO: That's not appropriate.

MR. MARTINEZ-SOSA: You have violated my right.

OFFICER RICIGLIANO: Okay.

MR. MARTINEZ-SOSA: And I (indiscernible) never had problem. Never had a problem.

OFFICER RICIGLIANO: Okay. So is that a no? Is that a no?

MR. MARTINEZ-SOSA: The answer is no.

OFFICER RICIGLIANO: Okay, all right. I'm going to ask again in ten minutes, all right?

(Video paused)

Q (By Mr. Pietrobono) Okay. So does that refresh your recollection about him requesting a lawyer after you read him the warning?

A Yes, he did.

Q Okay. And did you -- did you -- did you respond to his request for a lawyer?

A I just was there to read off the warnings. That's all I am there for. So that is not what my job is.

Q Okay. And so you did not convey to him that his insistence to speak to an attorney would be -- would be

considered a refusal, did you?

A I'm sorry. Repeat that, it broke up.

Q Did you -- so if -- you read from -- you read from a card, correct?

A Yes.

Q Okay. And you do recall him -- when you asked him, does he understand, he asked for an attorney, correct?

A Yes.

Q And do you recall what response, if any, that you gave in response to his request?

A I asked him to answer the question.

Q Okay. But you didn't -- you didn't opine or respond to the -- his actual request for a lawyer, did you?

A At that point in time, no, I was just -- needed an answer to the question that I was asked -- that I asked.

Q Did you tell him -- did you say anything to him that his insisting on speaking to a lawyer would constitute a refusal, or did you just say you'll come back in ten minutes?

A I just -- I told him I needed the answer to the question, and I said I would ask him in ten minutes again. As per the policy.

Q Okay. Okay. You weren't at the scene of the arrest, right?

A No.

Q And let's see, so you don't recall, also, on the

Report of Refusal if you filled that out or if somebody else did?

A I don't recall. It might have been -- I really don't recall.

Q Okay. It could have been you?

A I don't want to answer yes or no when I don't remember.

Q Okay. Okay.

A I don't have the -- a copy of it in front of me, so I can't.

Q If the -- if the -- if you did fill it out, if there's information that was not observed by you, where would you have gotten that information?

A I'm sorry. I don't understand the question.

Q If you did fill out this form, and it -- and it, under section A, it's asking for specific observations. And if you weren't there, where would you have gotten that information from? If it's filled out.

A Is it the BAO paperwork? Or is it --

Q Yeah.

THE COURT: What I'm going to do, Counsel, is ask you to move on from that.

MR. PIETROBONO: Okay.

THE COURT: She doesn't remember if she filled out so.

THE WITNESS: If it's the BAO paperwork, it would be



filled out by me, yes.

THE COURT: Okay.

THE WITNESS: But I'm not sure which specific document you're referring to.

THE COURT: That's fine. You don't have to provide a response to that.

Q (By Mr. Pietrobono) Does -- just to cut -- okay.

MR. PIETROBONO: Okay. No further questions.

THE COURT: All right then. Counsel, it's up to you. Do you -- is the respondent going to be testifying?

MR. PIETROBONO: Yes.

THE COURT: All right. And Mr. Martinez-Sosa, can you please raise your right hand?

JESUS MARTINEZ-SOSA

called as a witness on behalf of the Respondent, having been sworn, did testify upon his oath as follows:

THE COURT: Thank you. You can lower your hand.

Go ahead, Counsel.

MR. PIETROBONO: Your Honor, would I be able to make my arguments before he testifies to you? Or -- I guess, a motion to dismiss or -- for insufficiency?

THE COURT: Yes, you can. Go ahead.

MR. PIETROBONO: Okay, good. Thank you. Okay, so clearly, he is -- I mean, just first and foremost, this is not his native language. So he's doing his best to cooperate, and



maybe extends himself a little far, but he -- one thing is clear, he very adamantly requested to speak to an attorney, okay? And at the scene he asked it clearly, and the response was turn around, he's going -- he handcuffs him. So there was no -- no response to inquiry, not like, we'll get to that, or later, or yes, or no. Or -- give us -- anything, he just turned around and arrested him. That was at the scene.

And then we have here where the officer is, you know, she's testifying she read from the card. And she asked if he understands, and he says -- or he's taking a test, and he says he wants to speak to a lawyer. She clearly stated that she did not address that request except to say she's going to come back and read the warnings again, that she's reading from the card and the company policy. But that she did not specifically convey to him that if he kept insisting on speaking to an attorney first, that that could constitute a refusal. So that was never read back to him. So not only did they not say okay, you can speak to an attorney to advise you of your rights. They also -- they didn't tell him if he continues to do that, we're going -- we're going to constitute a refusal. All she said was that's -- that's a no. So that right there, under *Cook v. Adduci*, that would be insufficient to -- to for the process of reading his refusal warnings in clear and unequivocal language, and that he's allowed to ask for an attorney. And they didn't respond to that. And that's --

that's been validated by every attorney, every officer who spoke today, who testified. They all heard the question, and there was no answer. Or there was an answer with the handcuffing him. So he's allowed to have counsel -- he's allowed to request counsel, and if they aren't going to oblige him, they are obliged to tell him you can't just keep asking that or it's going to be a refusal. Instead they just treated it as a refusal, and that's -- that's what happened here.

And also just on the Report of Refusal, the observations made by the officer who made the stop, he didn't fill out -- he testified clearly that he didn't fill out the form, and it's -- it gives these observations. It really -- it only -- it says reasonable grounds to make the arrest, give us the indication the arrest -- it says failure to use designated lane, improper signal, did not stop immediately, and drove up on curb. And that it's for -- under Section A.

THE COURT: All right. And Counsel, if you don't mind, I'll just interrupt you for a minute and I'll explain why, obviously, in a minute. At this point, obviously, I -- I like to say I have no issues with Section A. I have no issues with the basis for the stop or the probable cause for the arrest, or even that there was a language barrier at this point. Before I even get to the language barrier, I have another issue with this case. I have no issues with the warning being read to the respondent, and the respondent refuse. But where I do agree

with you is in the case you quoted as well as the case, the matter of Lamb, which I believe is controlling. The respondent in these cases have no right to an attorney in these cases. But certain procedures has to be followed. One, I believe that you can give them the right, and if they get the benefit of that attorney's advice then the basis may be covered. However, in the instances when one was not given, and when one was given and they don't have the benefit of the advice and then what controls. And I believe those two cases then controls.

In this case, his counsel argued he was not told that the insistence in speaking to an attorney would be considered a refusal. I think looking at Lamb, and very well the case Counsel may have quoted, the cases clearly stated that certain procedures has to followed, and he have to be told that this would be considered a refusal or his final attempt in taking the test. And anything but a consent or taking the test will be considered a refusal. So I'm going to grant your motion, Counsel, based on that argument that the matter of Lamb was not complied with or followed. So being that I'm going to grant that motion, then I would dismiss this case with no action against the respondent's license.

MR. PIETROBONO: Is there anything else you'd like to say, or from the officer, before we end the hearing? I'll begin with the officer.

THE WITNESS: No.



THE COURT: All right.

And Counsel?

MR. PIETROBONO: I'd like -- I'd thank the officer for her participation, and her -- her testimony, thank you.

THE COURT: All right. So thank you everyone for appearing again. There are three officers in this case who have been disconnected, but that would be ruling. I don't believe any of the other officers would be able to add to the Gray v. Adduci hearing, and in addition to -- we don't have the video evidence as well. So based on that, I've issued my ruling. A dismissal based in the matter of Lamb. So it's now 3:46 P.M. Counsel, you and the respondent will be receiving something in writing from me as well within a few days. And it's now 3:46, and feel free to disconnect.

MR. PIETROBONO: Thank you, Your Honor. Thank you, Officer.

THE COURT: You're welcome. Take care, everyone.

(Whereupon this matter was concluded)

C E R T I F I C A T E

I hereby certify the foregoing, consists of 55 pages, inclusive, to be true and accurate transcription from the tapes provided to me, to the best of my skill and ability.

Witness my hand, this the 19th of November, 2024.

REBECCA RIVERA

Rebecca Rivera
Transcriptionist

