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COURT OF APPEAL OF THE STATE OF CALIFORNIA

In and for the

THIRD APPELLATE DISTRICT

---oOo---

The People of the State of California
Plaintiff

Appellate No. C045887

Vs.

Shawn Michael Rodriguez

Case No. 62-34689

Defendant/ Appellant

Volume 1 of 2
Pages 1 through 279

---oOo---

CLERK'S TRANSCRIPT ON APPEAL

---oOo---

THE FILING OF AN APPEAL
IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA IN AND FOR
THE COUNTY OF PLACER

---oOo---

HONORABLE FRANCES KEARNEY

-oOo---

Court of Appeal, Third Appellate District
900 N Street, Room 400
Sacramento, CA 95814-4869

Central California Appellate Program
2407 J Street, Suite 301
Sacramento, CA 95816

Department of Justice
Office of the Attorney General
1300 I Street, Suite 1101
Sacramento, CA 94244-2560



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1 BRADFORD R. FENOCCHIO,
2 Placer County District Attorney
3 State Bar No. 80027
4 11562 B Avenue
5 Auburn, CA. 95603-2687

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Tel: (530) 889-7000
Fax: (530) 889-7129

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

MAR 19 2003

JOHN MENDES
EXECUTIVE DEPUTY CLERK
By Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

--oOo--

THE PEOPLE OF THE
STATE OF CALIFORNIA,

NOS. 62-034689A
62-034689B

Plaintiff,

FELONY COMPLAINT

-vs-

SHAWN MICHAEL RODRIGUEZ
aka Shawn Michael Rodriguaz
aka Shawn Rodriguez
aka Shawn Smiley
ANNA MARIE RUGG

Auburn

Defendants.

COUNT ONE

On or about March 16, 2003, in the County of Placer, State of California, the crime of KIDNAPPING FOR RANSON SPEC ALLEG-BODILY HARM, in violation of section 209(a) of the Penal Code, a felony, was committed by Shawn Michael Rodriguez and Anna Marie Rugg, who did willfully and unlawfully seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, and carry away NICHOLAS HAMMAN with the intent to hold and detain, and who did hold and detain, the said NICHOLAS HAMMAN for ransom, reward, extortion, and to exact from the

1 said NICHOLAS HAMMAN money and other valuable things, to wit, ATM
2 CARD and PIN.

3
4 "NOTICE: The above offense is a serious felony within the
5 meaning of Penal Code Section 1192.7(c)."
6

7 It is further alleged that the said victim, NICHOLAS HAMMAN,
8 while being subjected to said kidnapping, suffered bodily harm and
9 death, and was intentionally confined in a manner which exposed him
10 to a substantial likelihood of death, within the meaning of Penal
11 Code Section 209(a).

12 **COUNT TWO**

13 On or about March 16, 2003, in the County of Placer, State of
14 California, the crime of WILLFUL, DELIBERATE, PREMEDITATED ATTEMPTED
15 MURDER, in violation of section 664/187(a) of the Penal Code, a
16 felony, was committed by Shawn Michael Rodriguez and Anna Marie Rugg,
17 who did willfully, unlawfully and with malice aforethought attempt to
18 murder NICHOLAS HAMMAN, a human being.
19

20 It is further alleged as to count TWO that the aforesaid
21 attempted murder was committed willfully, deliberately and with
22 premeditation within the meaning of Penal Code section 664(a) and is
23 a serious felony pursuant to Penal Code section 1192.7(c).

24 **COUNT THREE**

25 On or about March 16, 2003, in the County of Placer, State of
26 California, the crime of WILLFUL, DELIBERATE, PREMEDITATED ATTEMPTED
27 MURDER, in violation of section 664/187(a) of the Penal Code, a
28 felony, was committed by Shawn Michael Rodriguez and Anna Marie Rugg,

1 who did willfully, unlawfully and with malice aforethought attempt to
2 murder NICHOLAS HAMMAN, a human being.

3
4 It is further alleged as to count THREE that the aforesaid
5 attempted murder was committed willfully, deliberately and with
6 premeditation within the meaning of Penal Code section 664(a) and is
7 a serious felony pursuant to Penal Code section 1192.7(c).

8 **COUNT FOUR**

9 On or about March 16, 2003, in the County of Placer, State of
10 California, the crime of 2ND DEGREE ROBBERY, in violation of section
11 211 of the Penal Code, a felony, was committed by Shawn Michael
12 Rodriguez and Anna Marie Rugg, who did willfully, unlawfully, and by
13 means of force and fear take personal property from the person,
14 possession, and immediate presence of NICHOLAS HAMMAN.

15
16 "NOTICE: The above offense is a serious felony within the
17 meaning of Penal Code Section 1192.7(c)."

18 **COUNT FIVE**

19 On or about March 16, 2003, in the County of Placer, State of
20 California, the crime of FALSE IMPRISONMENT BY VIOLENCE, in violation
21 of section 236 of the Penal Code, a felony, was committed by Shawn
22 Michael Rodriguez and Anna Marie Rugg, who did willfully and
23 unlawfully violate the personal liberty of NICHOLAS HAMMAN, said
24 violation being effected by violence, menace, fraud, and deceit.

25 **COUNT SIX**

26 On or about March 16, 2003, in the County of Placer, State of
27 California, the crime of UNLAWFUL DRIVING OR TAKING OF A VEHICLE, in
28 violation of section 10851(a) of the Vehicle Code, a felony, was

1 committed by Shawn Michael Rodriguez and Anna Marie Rugg, who did
2 willfully and unlawfully drive and take a certain vehicle, to wit,
3 1992 CHEVROLET CALIFORNIA LICENSE #3FHS432, then and there the
4 personal property of NICHOLAS HAMMAN without the consent of and with
5 intent, either permanently or temporarily, to deprive the said owner
6 of title to and possession of said vehicle.

7 **COUNT SEVEN**

8 On or about March 16, 2003, in the County of Placer, State of
9 California, the crime of SECOND DEGREE COMMERCIAL BURGLARY, in
10 violation of section 459 of the Penal Code, a felony, was committed
11 by Shawn Michael Rodriguez and Anna Marie Rugg, who did willfully and
12 unlawfully enter a commercial building occupied by the BANK OF
13 AMERICA with the intent to commit larceny and any felony.

14 **COUNT EIGHT**

15 On or about March 16, 2003, in the County of Placer, State of
16 California, the crime of SECOND DEGREE COMMERCIAL BURGLARY, in
17 violation of section 459 of the Penal Code, a felony, was committed
18 by Anna Marie Rugg, who did willfully and unlawfully enter a
19 commercial building occupied by ALBERTSONS with the intent to commit
20 larceny and any felony.

21 **COUNT NINE**

22 On or about March 16, 2003, in the County of Placer, State of
23 California, the crime of USING ANOTHER'S NAME TO OBTAIN
24 CREDIT/PROPERTY, in violation of section 530.5 of the Penal Code, a
25 felony, was committed by Shawn Michael Rodriguez and Anna Marie Rugg,
26 who did willfully and unlawfully obtain personal identifying
27 information of another, to wit, NICHOLAS HAMMAN, without the
28 authorization of that person, and used that information to obtain or

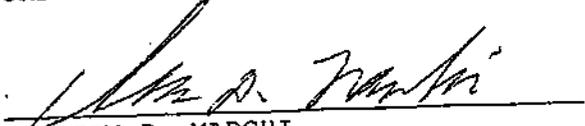
1 attempt to obtain credit, goods, or services in the name of the other
2 person and without that person's consent at the Bank of America.

3 COUNT TEN

4 On or about March 16, 2003, in the County of Placer, State of
5 California, the crime of USING ANOTHER'S NAME TO OBTAIN
6 CREDIT/PROPERTY, in violation of section 530.5 of the Penal Code, a
7 felony, was committed by Shawn Michael Rodriguez and Anna Marie Rugg,
8 who did willfully and unlawfully obtain personal identifying
9 information of another, to wit, NICHOLAS HAMMAN, without the
10 authorization of that person, and used that information to obtain or
11 attempt to obtain credit, goods, or services in the name of the other
12 person and without that person's consent at Albertsons.

13
14 I declare under penalty of perjury that the foregoing is true
15 and correct. Executed March 19, 2003 at Auburn, Placer County,
16 California.

17
18 BRADFORD R. FENOCCHIO, DISTRICT ATTORNEY

19
20 By: 
21 WILLIAM D. MARCHI,
22 DEPUTY DISTRICT ATTORNEY

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WDM

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NOTICE
PLEASE TAKE NOTICE THAT COUNSEL FOR THE PEOPLE HEREBY
MAKE AN INFORMAL DEMAND FOR DISCOVERY (PURSUANT TO PC
1054.3) WITHIN FIFTEEN DAYS.

SUMMARY OF CHARGES AND PUNISHMENT

Shawn Michael Rodriguez

(DOB: 08/30/83)

COUNT	CHARGE	PUNISHMENT	EFFECT
1	PC209(a)	LWOP	
2	PC187(a)	Life	
3	PC187(a)	Life	
4	PC211	2-3-5	
5	PC236	16-2-3	
6	VC10851(a)	16-2-3	
7	PC459	16-2-3	
9	PC530.5	16-2-3	
10	PC530.5	16-2-3	

SUMMARY OF CHARGES AND PUNISHMENT

Anna Marie Rugg

(DOB: 10/02/82)

COUNT	CHARGE	PUNISHMENT	EFFECT
1	PC209(a)	LWOP	
2	PC187(a)	Life	
3	PC187(a)	Life	
4	PC211	2-3-5	
5	PC236	16-2-3	
6	VC10851(a)	16-2-3	
7	PC459	16-2-3	
8	PC459	16-2-3	
9	PC530.5	16-2-3	
10	PC530.5	16-2-3	

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

People vs. Shawn Michael Rodriguez Case No. 62-34689
Date: 3-19-03 Court met at: 1:00 Dept.: 13 Judge: OTR BARNUM
Clerk: Clayton Butler Reporter: _____ Probation: _____
Defense Counsel: Pat Zehring D.D.A.: Donna Berman Probation: _____
Nature of Proceedings: Arr Arresting Agency: Aub
Custody Status: PCJ Interpreter: _____ certified qualified Language: _____ oath on file

NEXT COURT APPEARANCE:
ESC 3-24-03 830. DL3

- Defendant present not present.
- Arrn waived Arrn completed Viol of Prob
- Appt. Public Defender Conflict Firm
- Not guilty Denied
- Guilty Nolo contendere
- Admitted Advised
- PLX time waived 10 60 time not waived
- Trial time waived to next date general
- Dismissed _____
- Amended _____
- Boykin/Tahl rights waived. Oral / written
- _____(initial) Jury trial / Contested hearing.
- _____(initial) Confrontation & examination.
- _____(initial) Right to remain silent.
- Attend _____ self helps meetings per week until further order of the court
- Ordered booked/released
- Advised pynt of booking/ incarceration fees
- Advised financial resp.
- RPO waived
- Re-test ordered
- Ar buckle waiver
- Appeal waiver
- Stipulate to ProTem
- Drop
- Proof shown not shown
- Probation summarily revoked
- B/W ordered. Bail \$ _____
- Arrest warrant ordered.
- B/W stayed / held
- B/W recalled set aside
- Bail forfeited O/R revoked
- Bail exonerated
- reinstated upon payment of reinstatement fee
- Bail apply / balance exonerated
- Forfeiture set aside
- Defendant ordered to report to the:
- Criminal Division
- Public Defender
- Probation Department
- forthwith on _____

Preliminary examination waived, defendant held to answer. Court deemed Complaint to be Information.

Eval 730 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 W1 3051 with Dr. _____

Offer: _____

Indication: _____

Plea: _____

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)
Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sec/code: _____

- REMANDED to custody of Sheriff until next appearance. Bail \$ NO BAIL to be delivered to CDC / CRC per sentence.
- ORDERED RELEASED O / R DISCHARGED (present case only)
- COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
- Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.
Defendant's signature _____ Address _____ 000008

32

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

People vs. SHAWN MICHAEL RODRIGUEZ Case No.: 02-346089
Date: 3-24-03 Court met at: 8:30 Dept.: 13 Judge: COZZENS
Clerk: TUMS Reporter: JONES Probation: _____
Defense Counsel: FD Benca D.D.A.: MARCHI Probation: _____
Nature of Proceedings: ESC Arresting Agency: ALB
Custody Status: ESC Interpreter: _____ certified qualified Language: _____ oath on file

NEXT COURT APPEARANCE:
ESC 04.21.03 830 D-13

- Defendant present not present.
- Arrn waived Arrn completed Viol of Prob
- Appt. Public Defender Conflict Firm
- Not guilty Denied
- Guilty Nolo contendere
- Admitted Advised
- PLX time waived 10 60 Time not waived
- Trial time waived to next date General
- Dismissed _____
- Amended _____
- Boykin/Tahl rights waived. Oral / written _____
(initial) Jury trial / Contested hearing.
- _____ (initial) Confrontation & examination.
- _____ (initial) Right to remain silent.
- Attend _____ self helps meetings per week until further order of the court
- Preliminary examination waived, defendant held to answer. Court deemed Complaint to be Information.

- Ordered booked/released
- Advised pymt of booking/ incarceration fees
- Advised financial resp.
- RPO waived
- Re-test ordered
- Arbuckle waiver
- Appeal waiver
- Stipulate to ProTem
- Drop
- Proof shown not shown

- Probation summarily revoked
- B/W ordered. Bail \$ _____
- Arrest warrant ordered.
- B/W stayed / held
- B/W recalled set aside
- Bail forfeited O/R revoked
- Bail exonerated
- reinstated upon payment of reinstatement fee
- Bail apply / balance exonerated
- Forfeiture set aside

- Defendant ordered to report to the:
- Criminal Division
 - Public Defender
 - Probation Department
 - forthwith on _____

Eval 730 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 WI 3051 with Dr. _____
Offer: Public Defender withdraws as counsel of record w/ 02-346086 Erin Hughes

Indictment: _____
Plea: _____

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)
Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sec/code: _____

- REMANDED to custody of Sheriff until next appearance. Bail \$ _____ to be delivered to CDC / CRC per sentence.
- ORDERED RELEASED O / R DISCHARGED (present case only)
- COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
- Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

PROMISE TO APPEAR - I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.
Defendant's signature _____ Address 000009

24

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

People vs. Shawn Michael Rodriguez Case No.: 62-34689 62-31679
Date: 04.21.03 Court met at: 830J Dept. 13 Judge: COLZENS
Clerk: TOMS Reporter: JONES Probation:
Defense Counsel: PA Benca D.D.A.: Martini
Nature of Proceedings: ESC Arresting agency: AUW
Custody status: PCJ Interpreter: certified qualified Language: oath on file

NEXT COURT APPEARANCE:
ESC 05.05.03 830 D-13

- Defendant present not present.
- Arrn waived Arrn completed Viol of Prob
- Appt. Public Defender Conflict Firm
- Not guilty Denied
- Guilty Nolo contendere
- Admitted Advised
- PLX time waived 10 60 Time not waived
- Trial time waived to next date general
- Dismissed
- Amended
- Boykin/Tahl rights waived. Oral / written
(initial) Jury trial / Contested hearing.
(initial) Confrontation & examination.
(initial) Right to remain silent.
- Ordered booked/released
- Advised pymt of booking/ incarceration fees
- Advised financial resp.
- RPO waived
- Re-test ordered
- Arbuckle waiver
- Appeal waiver
- Stipulate to ProTem
- Drop
- Proof shown not shown
- Probation summarily revoked reinstated
- B/W ordered. Bail \$
- Arrest warrant ordered.
- B/W stayed / held
- B/W recalled set aside
- Bail forfeited O/R revoked
- Bail exonerated
- reinstated upon payment of reinstatement fee
- Bail apply / balance exonerated
- Forfeiture set aside
- Defendant ordered to report to the:
 - Criminal Division
 - Public Defender
 - Probation Department
 - forthwith on

Preliminary examination waived, defendant held to answer. Court deemed Complaint to be Information.
Eval 730 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 WI 3051 with Dr. _____

Offer: _____

Indication: _____

Plea: _____

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)
Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sec/code: _____

REMANDED to custody of Sheriff until next appearance. Bail \$ _____ to be delivered to CDC / CRC per sentence.

ORDERED RELEASED O / R DISCHARGED (present case only)

COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____

Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

PROMISE TO APPEAR - I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.
Defendant's signature _____ Address 000010

26

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

62-31679

People vs Shawn Michael Rodriguez Case No. 62-34689
Date: 05-03 Court met at: 830 Dept.: 139 Judge: Wuzino
Clerk: Rogers Reporter: Jones Probation: _____
Defense Counsel: Berbench D.D.A.: _____
Nature of Proceedings: PC Arresting Agency: AUB
Custody Status: PCJ Interpreter: _____ certified qualified Language: _____ oath on file

NEXT COURT APPEARANCE:
PX 5-28-03 830 D.4 1 hr

- Defendant present not present.
- Arm waived Arm completed Viol of Prob
- Appt. Public Defender Conflict Firm
- Not guilty Denied
- Guilty Nolo contendere
- Admitted Advised
- PLX time waived 10 60 Time not waived
- Trial time waived to next date general
- Dismissed
- Amended
- Boykin/Tahl rights waived. Oral / written
____ (initial) Jury trial / Contested hearing.
____ (initial) Confrontation & examination.
____ (initial) Right to remain silent.
- Attend _____ self helps meetings per week until further order of the court
- Preliminary examination waived, defendant held to answer. Court deemed Complaint to be Information.
- Eval 730 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 W1 3051 with Dr. _____

- Ordered booked/released
- Advised pymt of booking/ incarceration fees
- Advised financial resp.
- RPO waived
- Re-test ordered
- Arbuckle waiver
- Appeal waiver
- Stipulate to Pro Tem
- Drop
- Proof shown not shown

- Probation summarily revoked
- B/W ordered. Bail \$ _____
- Arrest warrant ordered.
- B/W stayed / held
- B/W recalled set aside
- Bail forfeited O/R revoked
- Bail exonerated
- reinstated upon payment of reinstatement fee
- Bail apply / balance exonerated
- Forfeiture set aside

- Defendant ordered to report to the:
- Criminal Division
 - Public Defender
 - Probation Department
 - forthwith on _____

Offer: _____
Indication: _____
Plea: _____

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)
Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sec/code: _____

- REMANDED to custody of Sheriff until next appearance. Bail \$ as set to be delivered to CDC / CRC per sentence.
- ORDERED RELEASED O / R DISCHARGED (present case only)
- COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
- Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.
Defendant's signature _____ Address 000011

PLACER COUNTY SUPERIOR COURT

Case No.:

62-31679

62-34689

Date: 5-28-03 Court met at: 1:30 pm People vs. Shawn Michael Rodriguez
 Dept. 4 Judge: Loeder Clerk: Fields Reporter: Sasen
 Defense Counsel: P.D. Benka D.D.A.: Marchi Probation: _____
 Nature of Proceedings: Preliminary Examination Interpreter: _____ certified qualified
 Agency: AUB Status: PCJ Bail Cash Bail O/R _____ Language: _____ oath on file

NEXT COURT APPEARANCE:

Court. 5-29-03 Dept. 4 8⁰⁰

- Defendant present not present.
- Time waived for jury trial
- By stipulation, parties waive single session

- B/W ordered. Bail \$ _____
- Bail forfeited O/R revoked
- B/W stayed B/W recalled set aside
- Bail exonerated reinstated

Witness(es) sworn and examined:

Andrea Harris
Gary Hopping
Dale Hutchins
Dan Coe

Exhibit Record:

#	Party	Ident	Admit	W/Drawn	Description

Witnesses ordered to return on above date.

Parties stipulate exhibits submitted to be returned to offering party.

- Preliminary Examination waived. _____ rights waived _____ confrontation & examination _____ right to remain silent
- Defendant held to answer to the following _____
- The following misdemeanor counts are certified: _____
- The following counts were not held to answer: _____ People move to dismiss granted denied
- Court deemed Complaint to be information. Arraigned Waived arraignment.
- Motion pursuant to Penal Code Section 17(b) granted denied.
- Defense request for release on own recognizance. People state objections. Request granted denied.

- REMANDED to custody of Sheriff until next appearance. Bail \$ As Set to be delivered to CDC per sentence.
- ORDERED RELEASED O/R DISCHARGED (present case only)
- COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
- Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

Defendant's signature _____ Address _____ 000012

PLACER COUNTY SUPERIOR COURT

Case No.:

62-31679
62-34689

Date: 5-29-03 Court met at: 8:30 People vs. Shawn Michael Rodriguez
Dept. 4 Judge: Roeder Clerk: Fields Reporter: Sasek
Defense Counsel: P.D. Benka D.D.A.: Marchi Probation:
Nature of Proceedings: Preliminary Examination Interpreter: certified qualified
Agency: Alb Status: PCJ Bail Cash Bail O/R Language: oath on file

NEXT COURT APPEARANCE:

App. on 6-9-03 Rept. 13 8:30
Info 62-31679 + trails

Defendant present not present
 Time waived for jury trial
 By stipulation, parties waive single session

B/W ordered. Bail \$
 Bail forfeited O/R revoked
 B/W stayed B/W recalled set aside
 Bail exonerated reinstated

Px ongoing from 5-28-03

Witness(es) sworn and examined:

Dan Poe

Exhibit Record:

#	Party	Ident	Admit	W/Drawn	Description

Witnesses ordered to return on above date.

Parties stipulate exhibits submitted to be returned to offering party.

Preliminary Examination waived. _____ rights waived _____ confrontation & examination _____ right to remain silent

Defendant held to answer to the following Ct. 1 PC 209(a), Ct. 3 PC 664/187
Ct. 4 PC 211, Ct. 5 PC 236, Ct. 6 VC 10851(a)
Ct. 9 PC 530.5 Ct. 10 PC 530.5

The following misdemeanor counts are certified:

The following counts were not held to answer: Ct. 2, Ct. 7. People move to dismiss granted denied

Court deemed Complaint to be Information. Arraigned Waived arraignment.

Motion pursuant to Penal Code Section 17(b) granted denied.

Defense request for release on own recognizance. People state objections. Request granted denied.

REMANDED to custody of Sheriff until next appearance. Bail \$ No Bail to be delivered to CDC per sentence.

ORDERED RELEASED O/R

DISCHARGED (present case only)

COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____

Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

Defendant's signature _____

Address _____

000013

MAY 29 2003

62-34689

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By [Signature] Deputy

ORDER HOLDING TO ANSWER AFTER PRELIMINARY HEARING

It appearing to me that the offense in the within Complaint mentioned, to wit, Ch. 1 PC 209(a), Ch. 3 PC 664/184, Ch. 4 PC 211, Ch. 5 PC 230, Ch. 6 VC 10851(a), Ch. 9 PC 530.5, Ch. 10 PC 530.5
has been committed, and that there is sufficient cause to believe the within named, Shawn Michael Rodriguez

guilty thereof, I order that defendant(s) be held to answer to the same, and

that defendant(s) be admitted to bail in the sum of \$ As Set and that defendant(s)

be committed to the custody of the Sheriff of Placer County until defendant(s) gives such bail.

Dated: 5-29-03

[Signature]
Judge of the Superior Court

ORDER HOLDING TO ANSWER AFTER WAIVER OF PRELIMINARY EXAMINATION

Defendant(s) _____ having appeared with counsel, _____

and having waived the right to a preliminary examination, I order that defendant(s) be held to answer to the charges contained in the Complaint and that defendant(s) be admitted to bail in the sum of \$ _____ and that defendant(s) be committed to the Sheriff of the County of Placer until such bail is given.

Dated: _____

Judge of the above-entitled court
Committing Magistrate

l:\csl\clerk\criminal\NHTA.doc

000014

(8)

PLACER COUNTY SUPERIOR COURT
APRAIGNMENT/PLEA/JUDGMENT & SENTENCE

62-31679

Case No.: 62-34689

Date: 6-9-03 Court met at: 8:30 am People vs. Shawn Michael Rodrig ez
Dept. 13 Judge: COUZENS Clerk: TOMS Reporter: JONES
Defense Counsel: P.O. CUMMO D.D.A.: MURPHY Probation:
Nature of Proceedings: A.P. on Information (62-34689) Interpreter: certified qualified
Agency: Aub Status: PCJ Bail Cash Bail O/R Language: oath on file

NEXT COURT APPEARANCE:
TCC 07-28-03 830 D13 TA 08-11-03 1:00 D-1
TD 08-12-03 830 TBA

- Defendant present not present.
- Arrn waived Arrn completed Viol of Prob
- Appt. Public Defender Conflict Firm
- Not guilty Denied
- Guilty Nolo contendere
- Admitted Advised
- PLX time waived 10 60 Time not waived
- Trial time waived to next date general
- Dismissed
- Amended
- Waives re-arraignment. Not guilty plea/denial entered.
- Boykin/Tahl rights waived. Oral / written.
- ____ (initial) Jury Trial / Contested Hearing
- ____ (initial) Confrontation & examination
- ____ (initial) Right to remain silent
- Preliminary Examination waived, defendant held to answer. Court deemed Complaint to be Information.

- Ordered booked/released
- Advised pymt of booking/ incarceration fees
- Advised financial resp.
- RPO waived
- Re-test ordered
- Arbuckle waiver
- Appeal waiver
- Stipulate to ProTem
- Appeal waiver
- Drop
- Proof shown not shown

- B/W ordered. Bail \$ 5000
- Arrest warrant ordered.
- Bail forfeited O/R revoked
- Probation summarily revoked reinstated
- B/W stayed / held
- B/W recalled set aside
- Bail exonerated
- reinstated upon payment of reinstatement fee
- Bail apply / balance exonerated
- Forfeiture set aside
- Defendant ordered to report to the:
 - Criminal Division
 - Public Defender
 - Probation Department
 - forthwith on _____

Eval 730 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 WI 3051 with Dr. _____

Offer: _____

Indication: _____

Plea: _____

- Prior prison term(s) (P.C. §667.5(b)) _____ (number) Prior serious felony convictions (P.C. §667(a)) _____ (number)
- Other prior(s) sec/code: _____
- Enhancements: _____
- Sentence to be imposed under the Three Strikes Law (P.C. §1170.12)

REMANDED to custody of Sheriff until next appearance. Bail \$ 0000 to be delivered to CDC per sentence.

ORDERED RELEASED O/R DISCHARGED (present case only)

COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____

Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.
Defendant's signature _____ Address 000015

1 LEONARD K. TAUMAN, State Bar No. 051685
2 PLACER COUNTY PUBLIC DEFENDER
3 12834 Earhart Avenue
4 Auburn, California 95602
5 Telephone: (530) 885-2422

6 JESSE SERAFIN
7 Assistant Public Defender
8 State Bar No. 195586

9 Attorneys for Defendant,
10 SHAWN RODRIGUEZ

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

JUL 17 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By *[Signature]* Deputy

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER

12
13 THE PEOPLE OF THE STATE
14 OF CALIFORNIA,

15 Plaintiff,

16 vs.

17 SHAWN RODRIGUEZ,

18 Defendant.

CASE NO. 62-34689

**NOTICE OF MOTION AND
MOTION FOR CONTINUANCE**
[Penal Code § 1050]

DATE: JULY 22, 2003

TIME: 8:30 A.M.

DEPT: 13

CUSTODY STATUS: IN

19
20 TO BRADFORD FENOCCHIO, DISTRICT ATTORNEY FOR PLACER COUNTY, and
21 the CLERK OF THE COURT:

22 PLEASE TAKE NOTICE that on JULY 22, 2003 at 8:30 A.M., or as soon thereafter as
23 the matter can be heard in the above-entitled Court, the Defendant, SHAWN RODRIGUEZ,
24 through his attorney, JESSE SERAFIN, Assistant Public Defender, will and hereby does move the
25 Court for an Order continuing the TCC scheduled for July 28, 2003 and the TAC scheduled for
26 August 11, 2003.

27 Placer County
Public Defender
12834 Earhart Avenue
Auburn, CA 95602
(530) 885-2422
(530) 885-FAXX

1 This motion is based upon the attached Points and Authorities, the attached Declaration c
2 JESSE SERAFIN, the files, papers, and documents heretofore filed in this action, and on such
3 further testimony as may be presented at the hearing on the motion.

4 DATED: July 17, 2003

5 PLACER COUNTY PUBLIC DEFENDER

6
7 
8 _____
9 JESSE SERAFIN
Assistant Public Defender
Attorney for Defendant,
SHAWN RODRIGUEZ

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 Continuances shall be granted only upon a showing of good cause. (California Penal Code
4 § 1050.)

5 II.

6 A continuance motion may be written or oral and a written motion must be made at least
7 two court days before the hearing sought to be continued. (California Penal Code § 1050(b).)

8 III.

9 Good cause for a continuance has been found to exist when a defense counsel requests
10 time to adequately prepare a defense. (*People v. Maddox* (1967) 67 Cal.2d 647, 652.)

11 IV.

12 The constitutional right of the defendant to confrontation of witnesses and to effective
13 representation by counsel gives rise to a policy favoring continuances where they are necessary
14 for the protection of these rights. (*People v. Fong Chung* (1907) 5 Cal.App. 587; *Hughes v.*
15 *Superior Court* (1980) 106 Cal.App.3d 1.)

16 V.

17 Good cause for a continuance has been found where the facts necessitate the continuance.
18 Necessity sufficient to support a continuance has been found where counsel has been unprepared
19 to proceed. (*People v. Leary*, (1946) 28 Cal.2d, 727, 734; *Hughes v. Superior Court*, (1980) 106
20 Cal.App.3d.)

21 VI.

22 Good cause necessitating a continuance is also established by the absence of material,
23 necessary and obtainable evidence. (*People v. Bloemsma* (1959) 171 Cal.App.2d 261, 266.)

24 VII.

25 Where party seeking a continuance in a criminal case fails to comply with notice
26 requirements, the court may excuse untimeliness for good cause. (*People v. Harvey* (1987) 193
27 Cal.App.3d 767, 238 Cal.Rptr. 516.)

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In this case, the defense requests a continuance of the TCC scheduled for July 28, 2003
and TAC scheduled for August 11, 2003.

DATED: July 17, 2003

PLACER COUNTY PUBLIC DEFENDER



JESSE SERAFIN
Assistant Public Defender
Attorneys for Defendant,
SHAWN RODRIGUEZ

1 DECLARATION OF JESSE SERAFIN

2
3 I, JESSE SERAFIN, hereby declare:

4 I am an Assistant Public Defender for Placer County and the Public Defender's Office has been
5 appointed to represent Defendant in this matter.

6 This matter is presently scheduled for TCC on July 28, 2003 and TAC on August 11, 2003.

7 Patrick Benca was handling this case when it was set for trial assignment conference. Mr.
8 Benca recently left the employ of the Placer County Public Defender and this case was reassigned
9 to me for trial.

10
11 It is respectfully requested that this case be continued because recent investigation has
12 revealed several items and information that are necessary to explore as they are essential to the
13 defense in this life exposure case.

14 This request is being made at the earliest possible time after becoming aware of the above-
15 stated situation.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct, except those matters that are based on information and belief and as to those matters,
18 I believe them to be true.

19 Executed on July 17, 2003, at Auburn, CA.

20
21 PLACER COUNTY PUBLIC DEFENDER

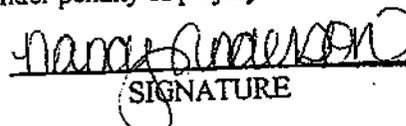
22 I am an employee or agent of the Placer County
23 Public Defender's Office, over the age of eighteen,
24 and not a party to this action. I personally served a
25 true and correct copy of this document upon an
26 employee or agent of the Placer County District
27 Attorney's Office.



JESSE SERAFIN
Assistant Public Defender
SHAWN RODRIGUEZ

28 This I declare under penalty of perjury.

Placer County
Public Defender
12834 Easthart Avenue
Auburn, CA 95602
(530) 885-2422
(530) 885-FAXX

29 7/17/03 
DATE SIGNATURE

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF PLACER

3 DEPARTMENT NUMBER 4

HON. JAMES L. ROEDER, JUDGE

4 --o0o--

5 THE PEOPLE OF THE STATE OF)
6 CALIFORNIA,)
7 Plaintiff,)
8 vs.)
9 SHAWN MICHAEL RODRIGUEZ and)
10 ANNA MARIE RUGG,)
11 Defendants.)

ORIGINAL

No. 62-034689

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

JUN 09 2003

12 --o0o--

13 WEDNESDAY, MAY 28, 2003 By

EXECUTIVE OFFICER & CLERK
[Signature] Deputy

14 --o0o--

15 (The above-entitled matter came on regularly this day
16 for preliminary examination.

17 The said defendant, Shawn Michael Rodriguez, was personally
18 present, and he was represented by Patrick Benca, Assistant Public
19 Defender.

20 The said defendant, Anna Marie Rugg, was personally present,
21 and she was represented by David Cohen, Attorney at Law.

22 The People were represented by William Marchi, Deputy
23 District Attorney.

24 The Court Reporter was Jon Sasek, CSR 1650.

25 Proceedings were then had, to wit :)

26 --o0o--

1 COURT: Let's go on the record on the matter of People
2 versus Rodriguez and Rugg, Item Number 14 and 15. Appearances,
3 please?

4 MR. MARCHI: Bill Marchi for the People.

5 MR. COHEN: David Cohen on behalf of Anna Rugg, who is
6 present in custody.

7 MR. BENCA: And Patrick Benca on behalf of Mr. Rodriguez.

8 COURT: Who is also present --

9 MR. BENCA: Yes, sir.

10 COURT: -- in custody. And the preliminary examination is
11 on Case Number 62-34689. We are dealing with the Felony Complaint
12 filed March 19. Parties prepared to proceed?

13 MR. COHEN: Yes, your Honor.

14 COURT: You may call your first witness.

15 MR. MARCHI: Yes. That will be Dr. Harris.

16 (Andrea Harris was then called as a witness on behalf of the
17 People herein.)

18 CLERK: Raise your right hand.

19 Do you solemnly state that the testimony you are about to
20 give in the matter now pending before this Court shall be the
21 truth, the whole truth, and nothing but the truth, so help you God?

22 WITNESS: I do.

23 CLERK: Please state your full name and spell your last for
24 the record.

25 WITNESS: Andrea Harris, H-a-r-r-i-s.

26 COURT: Good afternoon.

27 WITNESS: Good afternoon.

28 COURT: Just have a seat here, please.

1 TESTIMONY OF

2 ANDREA HARRIS, witness called on behalf of the People:

3 DIRECT EXAMINATION

4 BY MR. MARCHI:

5 Q Doctor, by whom are you employed?

6 A Sutter Emergency Medical Associates.

7 Q And how long have you been so employed?

8 A Since August of 1994.

9 Q And can you tell us what is your background and training for
10 your current position?

11 A Oh, I finished college at U C Santa Barbara, and then went
12 to medical school in Detroit, Michigan, and did four years of
13 medical school and three years of emergency medicine residency
14 training, graduating there in '94.

15 Q All right. Did you have an internship you had to complete
16 after that or --

17 A The internship is like the first year of the three years of
18 the emergency medicine specialty.

19 Q All right. And you've been employed as an emergency room
20 doctor at Auburn Faith since 1994?

21 A No. I was working at Sutter General and Sutter Memorial
22 until just about a year ago.

23 Q Okay. And that's all the Sutter Group, including Auburn
24 Faith?

25 A It is the same group, yes.

26 Q That has been out in the emergency room?

27 A Yes. We're a group of physicians that just work in the
28 emergency rooms at Sutter General, Sutter Memorial, Sutter Auburn

1 Faith and Sutter Davis Hospitals.

2 Q And would it be fair to say that your particular specialty
3 has to do with treating emergencies in the emergency room, kind of
4 life-saving situations sometimes?

5 A Exactly.

6 Q And have you testified before in court as an expert witness?

7 A Just on one occasion.

8 Q And where was that?

9 A That was in Sacramento.

10 MR. MARCHI: Okay. Counsel, care to inquire as to her
11 qualifications?

12 MR. BENCA: No.

13 MR. MARCHI: Mr. Cohen, do you care to inquire?

14 MR. COHEN: No.

15 MR. MARCHI: I'll be offering her as an expert witness, your
16 Honor, at this time.

17 COURT: You may proceed in that fashion.

18 MR. MARCHI: Thank you.

19 Q Ma'am, were you working for Auburn Faith on March 17 of 2003
20 at about 2:50 in the morning?

21 A Yes, I was.

22 Q And again were you assigned to the emergency room that day?

23 A Yes, I was.

24 Q And did you have occasion to examine a Nick Hamman
25 complaining of coldness?

26 A Yes.

27 Q Okay. And you examined him?

28 A I did.

1 Q All right. And what was the main problem you found with him
2 that day?

3 A The patient presented basically complaining that he had been
4 kidnapped in such a fashion that he had been locked into some kind
5 of jail cell, and basically told, he told me that whoever had done
6 this to him had attempted to drown him and that he had been
7 standing or partly submerged in cold water for hours to date. At
8 that time the patient was a little unclear about how long it had
9 been going on.

10 It seemed like he had been somewhat disoriented when he was
11 actually taken to that place, and he was complaining of basically
12 coldness and shivering.

13 Q And did you notice him to shake physically?

14 A He was physically shivering and very anxious.

15 Q And did you notice anything unusual about his hands at all?

16 A His hands and his feet, I think especially his feet, showed
17 that he had been definitely submerged in cold water for a period of
18 time.

19 They were blanched and looked like your extremities do when
20 they have been soaking in water for a long period of time.

21 Q All right. And you wrote a report in this regard, did you
22 not, or at least a summary, hospital summary sheet?

23 A Uh-huh.

24 Q All right. And I believe you indicated some of your final
25 impressions, and one of them was mild trench foot?

26 A Yes.

27 Q What do you mean by trench foot exactly?

28 A Trench foot is an injury that occurs when the extremities

1 are basically submerged in cold water, usually within clothes.

2 And he had on some like high cowboy boots, so basically he
3 was in the water that was standing, you know, within his cowboy
4 boots for days, and that affects the tissues by causing them to be
5 cold, and then also like just saturated with the water for several
6 hours.

7 Q Okay. And in an extreme case of trench foot can you lose
8 the feet?

9 A Yeah, the extremities can be lost in extreme cases.

10 Q Okay. And you also diagnosed a mild dehydration. You noted
11 some problems in that regard for Mr. Hamman?

12 A He had some mild dehydration based on his laboratory test.
13 The bun creatine are some just routine laboratory tests we do to
14 evaluate kidney function, and his were mildly elevated indicating
15 he could have been slightly dehydrated or not eating or drinking
16 for a period of time that he was in there.

17 Q And was he treated for that in some fashion with fluids
18 or --

19 A He was treated with, I believe, at least two liters of I.V.
20 fluids, and then he was given some regular food to eat.

21 Q All right. And because of his complaint of being cold you
22 did take temperatures on him?

23 A He had several temperatures taken, which were just minimally
24 below normal.

25 Q And the lowest temperature was done orally, correct, you
26 came up with --

27 A I believe oral temperature was about 94.4.

28 Q Okay. Then you also did the rectal?

1 A The rectal temperatures were, I believe, 97, whatever is in
2 that written report.

3 Q All right. And as far as hypothermia, when you get at
4 levels below 97 that's when you have at least a mild form of
5 hypothermia?

6 A Yes. I would say he had a mild form of hypothermia.
7 Certainly there are several stages of hypothermia, and he was in
8 the mild to early form.

9 Q And to get to the severe area where you would actually lose
10 consciousness at some point, would you know if you got cold enough?

11 A Yes.

12 Q But are we talking about temperatures below 90 degrees in
13 some area?

14 A Yes.

15 Q Okay.

16 A He was never unconscious --

17 Q Okay.

18 A -- the time he was with me.

19 Q All right. So his main treatment was observations, trying
20 to warm him up, and giving him fluids; would that be fair to say?

21 A Yes. And he received some, I believe, anti-nausea medicine
22 because he had some various complaints of nausea and gagging and
23 coughing.

24 Q And did he also receive any form of nourishment, food, that
25 type of thing or --

26 A Yeah. He had the I.V. fluids, and then I believe after we
27 gave him the nausea medicine we got him what we call a food tray,
28 something to eat for the emergency room.

1 Q And he was retained there how long before he was released?

2 A I believe it was about two and a half hours.

3 Q Okay. So he would be observed?

4 A He was observed and improved.

5 Q So you then observed him later on before he was released?

6 A Sure. I mean, I routinely reassess my patients while I'm
7 working, and go back in to make sure they are okay to go home.

8 Q And was his coloring better, and that sort of thing, or --

9 A The initial -- his overall condition was much improved by
10 the time he left. His shivering had subsided. He was able to talk
11 better.

12 He had spent a lot of time talking with officers while he
13 was there. And his hands and feet were much improved. I would say
14 almost back to normal.

15 Q All right. And the body actually does shiver, does it not,
16 to kind of counteract the body for reducing itself somewhat; isn't
17 that a symptom of at least a mild form?

18 A It is a natural response to being cold.

19 Q And the shivering actually helps warm the core up, doesn't
20 it?

21 A Exactly.

22 MR. MARCHI: Thank you. No further questions.

23 COURT: Mr. Cohen?

24 MR. COHEN: Thank you.

25 CROSS-EXAMINATION

26 BY MR. COHEN:

27 Q Dr. Harris, hypothermia, essentially, -- I am not a doctor,
28 I'm a lawyer, both professions do a little bit of understanding of

1 Latin -- that's below normal body temperature?

2 A Subnormal, yes.

3 Q So there is a normal range for body temperature?

4 A Right.

5 Q For adult male human beings? And essentially if a person is

6 hypothermic would it mean just simply their level, their core

7 temperature is below normal level?

8 A Yes.

9 Q Okay. So when you said mild hypothermia, that would be the

10 area just below normal body temperature?

11 A Yes.

12 Q Okay. And any time anyone is shivering would that be a sign

13 then that they are hypothermic?

14 A I don't think that any time you shiver you are necessarily

15 hypothermic. In fact, sometimes you can almost shiver from having

16 a fever. We base that based on a temperature, accurate

17 temperature.

18 Q Other than the history in terms of the information he

19 provided you about what had happened to him, you had physical

20 symptoms of shivering?

21 A Yes.

22 Q And then the observation of his hands and feet?

23 A And his rectal temperature was 97 degrees. Normal being

24 98.6.

25 Q Okay. All right. Was he given any medications while at the

26 hospital to treat his condition?

27 A Not for hypothermia. He did not require any medicine for

28 that specifically.

1 Q Was he admitted to the hospital?

2 A No.

3 Q Okay. Was he ordered to do any follow-up with a physician?

4 A He was ordered to do a follow-up with the Placer County

5 Clinic where his usual doctor is, to make sure that his hands and

6 his feet were not showing any signs of ongoing cold injury, such as

7 blisters or sores. I don't know if he did that.

8 Q At the time that you last saw him, though, he did not appear

9 to have any ongoing problems, hands or feet?

10 A He improved -- appeared much improved. He did still

11 complain of some, quote, unquote, tingling of his feet.

12 Q Okay. Those weren't the only diagnoses you made. You also

13 indicated some kind of psychiatric disorder, as well?

14 A Yes. The patient told me he had a psychiatric disorder.

15 Q Did that call into question the history that he had provided

16 to you as part of the basis for your determination of his injuries?

17 A Well, I don't think the psychiatric disease influenced my

18 diagnosis. I mean --

19 Q Is that part of the basis of why you referred him back to

20 his treating physician?

21 A No. We refer everybody back to their treating physician,

22 and that physician that he was referred to is not a psychiatrist,

23 but just his general medical doctor here in Auburn.

24 Q Okay. How would the level of hypothermia that you observed

25 in this patient differ from a more serious form of hypothermia;

26 what type of symptoms would you anticipate seeing in a more serious

27 case of hypothermia?

28 A Well, hypothermia is a continuum from very mild to very

1 severe.

2 Almost all the organ systems can be affected. One who lost
3 consciousness, the heart can go into irregular rhythms. Eventually
4 when you become cold enough your heart slows down and stops.

5 The skin findings are important depending on what kind of an
6 environment you are in, whether you are in water or whether you are
7 in snow, whether you have clothing on. The kidney function could
8 be much, much worse. Eventually there could be an effect on the
9 pulmonary system.

10 So I would say that he had a very mild case.

11 MR. COHEN: Okay. No further questions.

12 CROSS-EXAMINATION

13 BY MR. BENCA:

14 Q Hi, Doctor.

15 A Hi.

16 Q I have some follow-up questions with regard to you gave him
17 two, you took his temperature in two different ways, one orally,
18 correct?

19 A Yes.

20 Q And then one -- appears that you took two temperatures,
21 rectally, a rectal temperature?

22 A Yes.

23 Q Is that rectal temperature more accurate than the oral?

24 A A rectal temperature is much more accurate.

25 Q You took those temperatures after you took a temperature
26 orally, is that correct?

27 A Yes. The nurse routinely takes a temperature when the
28 patient is checked in, and usually that is an oral temperature.

1 Sometimes a tympanic temperature. So that initial
2 temperature is done by the nurse. I did personally do a rectal
3 temperature on him.

4 Q And that registered that he was about 1.6 degrees less than
5 normal, is that correct?

6 A Right.

7 Q And so you diagnosed him -- actually, in your final
8 impression you diagnosed that as -- you do not list mild
9 hypothermia as one of your final impressions?

10 A I felt it was very mild and that he did not really suffer
11 any adverse consequences or require any specific intervention for
12 that.

13 Q So it wasn't worthy of putting it in as a final impression
14 based upon your expertise?

15 A It is borderline.

16 Q With regard to trench foot, I am trying to understand
17 exactly what that was.

18 I am imagining myself in a hot tub for six hours. Is that
19 similar? When I walk out my feet are very pruned, I would say?

20 A The term trench foot I believe comes from like old war
21 injuries where soldiers would be for days in the trenches in cold
22 weather and rain and snow, and their feet would be -- basically
23 they were in trenches.

24 So I think that that's, I believe, where the term comes
25 from, and he basically just had a cold exposure injury, but as
26 opposed to frostbite where you are in like a freezing temperature.
27 He more was submerged in that within his clothes.

28 Q I understand. You testified that in your expert opinion

1 that was just considered mild?

2 A Yes.

3 Q Although in some cases you said it can get extreme?

4 A Certainly.

5 Q But this wasn't one of those cases, was it?

6 A No.

7 Q Then you also note in your final impression that he was

8 mildly dehydrated?

9 A Yes.

10 Q You state in your testimony he was just slightly dehydrated,

11 it was easily fixed, correct?

12 A Yes.

13 Q So your final impression overall was in your expert opinion

14 he only had mild trench foot and mild dehydration?

15 A Yes.

16 Q And also you list some impressions that Mr. Hamman had prior

17 to him even arriving at your facility?

18 A Right. We typically do that.

19 Q Let me ask you with regard to are you familiar with carbon

20 monoxide poisoning in your practice in the emergency room?

21 A Somewhat.

22 Q Do you see it occasionally?

23 A Very occasionally.

24 Q Okay. When you say very occasionally, how often do you see

25 it?

26 A Oh, well, again there's different degrees of carbon monoxide

27 poisoning.

28 I mean, to the point where somebody needs to go to a

1 hyperbaric chamber and get emergency treatment in that fashion.

2 I have probably seen it once, maybe twice.

3 Q And in those cases where it is extreme are you familiar with
4 how long that person is exposed to carbon monoxide?

5 A I think it all depends on the situation, the surroundings,
6 if they are in a ventilated area.

7 Part of it depends on the patient itself and their base line
8 conditions.

9 Older people and younger people are more predisposed to
10 having carbon monoxide poisoning as opposed, like more effects from
11 it than a young, healthy person.

12 Q Would you agree with me with regard to carbon monoxide
13 poisoning you have to be exposed to carbon monoxide for a long
14 period of time, is that correct?

15 A A long period of time is, I guess, relative to what a long
16 period of time is.

17 Q It is probably based on how large the room is, --

18 A The ventilation and --

19 Q -- a variety of factors, correct?

20 A Exactly.

21 Q So someone -- let's just say in your experience that you
22 have seen in the hospital room, a room that is the size of an eight
23 by ten room that isn't properly ventilated --

24 A Is not?

25 Q Is not properly ventilated, would an exposure for a period
26 of minutes subject that person to severe carbon monoxide poisoning?

27 A I don't think minutes would cause any severe carbon monoxide
28 poisoning.

1 Q How about an hour?

2 A I think an hour is potentially. There would be some
3 symptoms.

4 Q Okay. Symptoms of some form of carbon monoxide poisoning,
5 but not necessarily the extreme?

6 A Yes.

7 Q What would the symptoms be of someone who is exhibiting
8 severe overexposure to carbon monoxide poisoning that you have
9 seen?

10 A The symptoms of mild carbon monoxide poisoning are very
11 unspecific: headaches, nausea, vomiting, dizziness, oftentimes
12 confused with flu symptoms. More severe include loss of
13 consciousness.

14 Q And you did not indicate in your final impression that
15 Mr. Hamman was exposed to any --

16 A I was not aware that there was any exposure like that. He
17 did not indicate that to me and I had none of that information.

18 We did not do testing on that because there was no suspicion
19 of it at the time to look into that.

20 MR. BENCA: Very good. Nothing further.

21 REDIRECT EXAMINATION

22 BY MR. MARCHI:

23 Q Ma'am, is car exhaust a good sort of carbon monoxide if you
24 are going to poison someone?

25 A Yes.

26 Q In fact, you hear of suicides where people connect up to
27 their tailpipe and run it --

28 A Yes.

1 Q -- into the car?

2 A Yes.

3 Q That is real, it is not just something you see on TV?

4 A No. It is real.

5 Q You did note he had some nausea when he presented himself?

6 A He did complain of some nausea.

7 Q And is that one symptom of carbon monoxide poisoning?

8 A That is.

9 MR. MARCHI: No further questions.

10 RECROSS-EXAMINATION

11 BY MR. COHEN:

12 Q Brief follow-up. Doctor, did you see any other symptoms
13 that you just noted as symptoms of carbon monoxide poisoning in
14 this patient?

15 A From what I recall, and I have to review my dictated report,
16 I know he complained of nausea.

17 I believe he complained of some coughing and randomly
18 coughing up some blood, I think in the ambulance. I don't really
19 recall any other symptoms.

20 Q Okay. And actually you indicated in your review that you
21 did not find presence of a headache, correct, or he denied having
22 headaches?

23 A If that's what my review of systems says, then yes.

24 Q Do you have your report on it?

25 A I do.

26 Q If it will help refresh your recollection.

27 If you could review the second page of the emergency room
28 notes?

1 A Yeah. He says no headache, no passing out.

2 Q Okay. The other nausea that he discussed or the coughing in
3 part of our medical history that you took of this patient, were
4 there other things in his background that also could have
5 contributed to that, those symptoms?

6 A I think that these symptoms are very nonspecific. They
7 don't really point to any one specific problem.

8 Q In giving you his past medical history he did tell you he
9 did suffer from asthma?

10 A I don't believe asthma was one of those past medical
11 problems.

12 Oh, yes, it was according to my dictation, yes.

13 Q Okay. Then also coronary artery disease?

14 A That's what he claims.

15 Q He also indicated he had been shot near his heart at some
16 point in the past?

17 A Yes.

18 Q And he indicated that he smokes?

19 A Yes.

20 Q All right.

21 MR. COHEN: No further questions.

22 MR. MARCHI: Just a couple questions.

23 REDIRECT EXAMINATION

24 BY MR. MARCHI:

25 Q Under the history area you indicate chief complaint is cold,
26 and then in the second paragraph under history you indicate the
27 patient complains of being cold.

28 He also states he has abdominal pain, nausea, coughing,

1 some chest pain and some difficulty breathing. He also complained
2 of pain in his feet.

3 I assume the pain in his feet was associated with the mild
4 trench foot?

5 A Yes.

6 Q What about the abdominal pain, nausea, coughing and chest
7 pain with the difficulty in breathing; would that have anything to
8 do with any mild form of carbon monoxide poisoning?

9 A Abdominal pain is not usually a complaint of carbon monoxide
10 poisoning.

11 Nausea can be, but like I said, that's very nonspecific.

12 From what I recall, his coughing and his chest pain started
13 just prior to him being brought to the emergency room.

14 In my opinion they were very nonspecific findings and, you
15 know, we did an EKG and monitored all those things, and they
16 basically rapidly improved.

17 Q Okay. And the difficulty breathing, are you able to
18 attribute that to anything, the coldness or just excitability or
19 what?

20 A I think the difficulty breathing was because of his
21 coldness, and he was, you know, very emotionally upset and had been
22 through some trauma.

23 Q Did he appear to be in any kind of state of shock, which
24 sometimes people who are injured suffer?

25 A I would say he was mostly just anxious and scared.

26 MR. MARCHI: Okay. Thank you. No further questions.

27 MR. COHEN: Nothing further.

28 MR. BENCA: Nothing further, your Honor.

1 MR. MARCHI: May this witness be excused?

2 MR. BENCA: Yes.

3 COURT: Thank you. Next witness?

4 MR. MARCHI: Gary Hopping.

5 (Gary Hopping was then called as a witness on behalf of the
6 People herein.)

7 CLERK: Do you solemnly state that the testimony you are
8 about to give in the matter now pending before this Court shall be
9 the truth, the whole truth, and nothing but the truth, so help you
10 God?

11 WITNESS: I do.

12 CLERK: State your full name and please spell your last for
13 the record.

14 WITNESS: My name is Gary Hopping, H-o-p-p-i-n-g.

15 CLERK: Thank you.

16 COURT: Good afternoon.

17 WITNESS: Good afternoon, sir.

18 TESTIMONY OF

19 GARY HOPPING, witness called on behalf of the People:

20 DIRECT EXAMINATION

21 BY MR. MARCHI:

22 Q Sir, by whom are you employed?

23 A The Auburn Police Department.

24 Q And what capacity?

25 A I'm a patrol officer.

26 Q And how long have you been so employed in the State of
27 California?

28 A Three years and ten months.

1 Q How long have you been a peace officer in the State of
2 California?
3 A That is my career as a police officer.
4 Q And have you also taken the course from P.O.S.T. regarding
5 testifying?
6 A Yes, sir.
7 Q Pursuant to Prop. 115?
8 A Yes, I did.
9 Q Do you are Prop. 115 qualified?
10 A Yes, I am.
11 Q Okay. And calling your attention to March 17 of 2003, at
12 about two in the morning were you on duty for Auburn Police
13 Department as a peace officer that day?
14 A Yes, I was.
15 Q And that's a Monday morning early in the morning?
16 A I have to assume it was. I don't have my face page with me
17 right here.
18 Q Okay. I do.
19 A Okay.
20 Q We are on page 1, Counsel. Showing you the face page, and
21 then below that I think is your report here.
22 A I have the report. I didn't bring the face page. Okay.
23 Q That is a Monday?
24 A Yes, sir.
25 Q Early Monday morning at 2:00 in the morning did you have
26 occasion to receive a message from dispatch to respond to the Shell
27 station, sir?
28 A Yes, I did.

1 Q And where is that located at?

2 A The Shell station is on the corner of State Route 49 at the
3 intersection with Elm Avenue.

4 Q And did you encounter an employee there for Shell by the
5 name of Hammer, H-a-m-m-e-r?

6 A Yes, I did.

7 Q All right. Was that a male or a female?

8 A He's a male.

9 Q And did he show you some item that caused you to go
10 somewhere else?

11 A Yes, he did.

12 Q What did he show you?

13 A It was a note.

14 Q All right. And can you tell the Court what the note said?

15 A I'd have to, for verbatim I'd have to refer to my report.

16 Q Would you do that?

17 A Yes. The note said, call 911. Nick Hamman is locked in the
18 old juvenile jail drowning. Shawn is driving his red Berretta.
19 Shawn Rodriguez kidnapped me, with Anna Rugg's signature on it.

20 Q All right. Just skipping ahead for a moment, did you later
21 find a red Berretta in the Auburn area with Shawn Rodriguez and
22 Anna Rugg in it?

23 A Yes, I did.

24 Q And are those people in the courtroom today?

25 A Yes, they are.

26 Q The person that was later known to you as Shawn Rodriguez,
27 would you point to him and describe what he is wearing today?

28 A He's the young man there with the orange jumpsuit.

1 MR. MARCHI: May the record reflect identification of the
2 defendant Shawn Michael Rodriguez, your Honor?

3 COURT: Yes.

4 MR. MARCHI: Thank you.

5 Q And the other person, Anna Rugg, did you find her in a red
6 Berretta later that day?

7 A Yes, I did.

8 Q And is she in the courtroom?

9 A Yes, she is.

10 Q Would you point to her and describe what she is wearing
11 today?

12 A She is sitting next to Officer Coe wearing a red jumpsuit.

13 MR. MARCHI: May the record reflect identification of Anna
14 Marie Rugg, your Honor?

15 COURT: Yes.

16 MR. MARCHI: Thank you.

17 Q Now, based on that note, sir, did you have occasion to
18 respond to the old juvenile hall?

19 A Yes, I did.

20 Q And where is that located at?

21 A It's on Epperle Drive off of Auburn Ravine. It is behind
22 the Gottschalk retail store.

23 Q And that's Placer County, right?

24 A Yes.

25 Q Okay, for the record. Okay. And when you arrived there was
26 there any other officer present?

27 A Yes.

28 Q And who is that?

1 A Officer Hammond, Stan Hammond, Badge Number 4.

2 Q All right. And did you approach the -- now, this is the old
3 juvenile hall, correct?

4 A Yes, it is.

5 Q And is it abandoned?

6 A Yes, it is.

7 Q In other words, it is no longer being used to house
8 juveniles?

9 A No, it is not being used that way.

10 Q So did you and the other officer approach the juvenile hall
11 that morning?

12 A When I arrived at the juvenile hall Officer Hammond was in
13 the front parking lot. I went to the rear of the building.

14 Q All right. And did you notice anything coming out of the
15 building?

16 A Yes. A large amount of water coming from the doorways, out
17 from beneath the doorways.

18 Q You were in communication with Officer Hammond?

19 A Yes, I was.

20 Q All right. Did you both decide to go in to see what was
21 inside?

22 A Yes, we did.

23 Q And where did you first start searching, sir?

24 A Well, we entered the building through a window in the
25 kitchen. An open -- window had been broken open. The hole was
26 large enough for people to enter into.

27 Q All right. You both went in at the same time?

28 A Yes, we did.

070044²³

1 Q And did you hear water coming from, what appeared to be from
2 a certain area of the building?

3 A Initially I couldn't tell where the water was coming from.
4 I could hear water running.

5 Q All right. And were you able to later determine what area
6 that water was coming from?

7 A Yes, I did.

8 Q And where was it?

9 A The water was coming from the area, when it was a juvenile
10 hall it was the initial holding tank/booking room for juveniles.

11 Q All right. And did you hear anything besides the water
12 about that point, sir?

13 A Not until I actually entered the room, that room.

14 Q The room that goes toward the booking area, sir?

15 A It was the booking room.

16 Q Okay. And is there a room within the booking room itself
17 then?

18 A Yes, there is.

19 Q And what is that?

20 A It was the holding cell for that room.

21 Q All right. And when you got into that area did you hear,
22 something additional besides the water, sir?

23 A Yes, I did.

24 Q What did you hear?

25 A As I entered the room with my flashlight activated I heard a
26 male subject inside the holding cell banging on the Plexiglas
27 window.

28 Q All right. What was he saying?

1 A Get me out of here.

2 Q And in what tone of voice was he using?

3 A He was panicky, scared, obviously.

4 Q All right. And did you later identify who that person was?

5 A Yes, I did.

6 Q Who was he?

7 A His last name was Hamman.

8 Q And about that point was the other officer with you then,

9 sir?

10 A Yes, he was.

11 Q And initially were you able to enter the door right away?

12 A To the holding cell?

13 Q Yes.

14 A No.

15 Q Did one of the two of you discover that you could open it,

16 sir?

17 A I did discover that, yes.

18 Q Okay. How did you open it?

19 A There's a handle on the outside of the door which --

20 Q So you just pushed the handle?

21 A Turned the handle, yes.

22 Q Okay. And it came open?

23 A It did.

24 Q All right. And when that happened did any more water come

25 out, sir?

26 A There was a small amount, slight amount of water built up

27 under the door which was released, yes.

28 Q And by that door itself did you notice any sort of tape

1 around it, sir?

2 A Around the exterior of the doorframe there was duct tape.

3 Q Is that the gray stuff?

4 A Yes.

5 Q Okay.

6 A For duct work.

7 Q And was it actually physically attached to the doorframe

8 itself in some --

9 A Yes. From the door to the doorframe.

10 Q All right. And did you notice anything near, near the front

11 of that holding cell door, sir?

12 A I saw in front of the door it looked to be a wooden -- it

13 was white color. I would say it was a bookshelf of some type

14 laying on its back.

15 Q How far was that from the actual door itself, sir?

16 A As I recall, approximately six inches. I'd have to refer

17 for a more accurate --

18 Q Did you have to move that out of the way to get the door to

19 swing open?

20 A Yes, we did. I did.

21 Q Now, you were able to get the door open by turning the

22 handle and swinging the door open?

23 A Yes.

24 Q And what did you do then, sir?

25 A When my officer -- my partner came to assist me we had

26 Mr. Hamman step out of the cell.

27 Q And can you describe his physical appearance when you first

28 got him out of the cell, sir?

1 A Shivering. Really heavy amount of shivering. Very cold.

2 Q He had complaints of being cold?

3 A Very cold, yes. He said he was freezing.

4 Q And were you able to do something in that regard to help him

5 somewhat?

6 A We put, we put an emergency, yellow emergency blanket we

7 have in our patrol cars, I put that over his shoulders.

8 Q That is one of the first things you did?

9 A Yes, first thing.

10 Q Did Mr. Hamman make a statement to you of how he ended up in

11 the cell?

12 A Yes.. He stated that Anna Rugg and Shawn Rodriguez had

13 locked him in there.

14 Q And did he say about how long he had been in there?

15 A He did. He was kind of conflicting at the time. I couldn't

16 quite hear him, what he was saying.

17 Q And did he attribute any bad conduct toward them; in other

18 words, that they were trying to do something to him?

19 A Yes. He said they had stolen his car.

20 Q All right. And did you indicate in your report that they

21 were trying to do something in addition to just taking his vehicle?

22 A Let me refer to my report. Can I do that?

23 Q Would you please? Let me refer you to page 5, the first

24 real paragraph about halfway through.

25 A Yes. He did state that Mr. Rodriguez and Ms. Rugg were

26 trying to kill him.

27 Q Okay. Those were his words?

28 A Yes.

1 Q All right. And according to Mr. Hamman was he missing some
2 property?

3 A Yes.

4 Q What did he tell you about that?

5 A Other than his car, he was also missing his ATM card.

6 Q All right. Did he indicate what happened to the keys to his
7 car?

8 A Yeah. He said that those two had taken the keys to his car
9 when they took his car.

10 Q All right. And did you cause Mr. Hamman to be taken to the
11 hospital, sir?

12 A I think my sergeant is actually the one who called for
13 medical aid.

14 Q All right. And where was he taken to your knowledge?

15 A To my knowledge Auburn Faith Hospital.

16 Q Okay. Now, where did you go after Mr. Hamman was removed,
17 sir?

18 A After the scene was secure I returned to the Shell station
19 for follow-up investigation.

20 Q With the employee Hammer?

21 A Mr. Hammer, yes.

22 Q Okay. And what did you speak to Mr. Hammer about?

23 A I got a description of Rodriguez and Rugg, initial
24 description. I asked him again for detail how he got the note, and
25 then I asked him to tell me where their vehicle was parked while
26 they were in the gas station.

27 Q Let me stop you right there. Did Mr. Hammer attribute the
28 statements to Ms. Rugg surrounding the note, sir?

1 A I'm sorry?

2 Q You've been up a while?

3 A Yeah.

4 Q Did Mr. Hammer, the employee, indicate Ms. Rugg told him
5 something about the bathroom?

6 A Yes.

7 Q Okay. What did Mr. Hammer say that Ms. Rugg told him?

8 A When she first walked into the gas station she asked him for
9 a pen and something to write on.

10 Q And according to Mr. Hammer did she disappear somewhere with
11 the pen?

12 A She went into the restroom.

13 Q And according to Mr. Hammer, when she came out did Ms. Rugg
14 say something to Mr. Hammer?

15 A Yes. Ms. Rugg told Mr. Hammer that she knocked over a
16 hamper in the bathroom.

17 Q All right. And according to Mr. Hammer, at some point did
18 he then go into the bathroom?

19 A Yes.

20 Q And according to him what did he discover?

21 A He found the note in the bathroom.

22 Q This is the same note he had given to you before you went to
23 the juvenile hall?

24 A Yes.

25 Q Okay. Now, then Mr. Hammer actually started to go outside
26 with you to show you where the car had been, correct?

27 A Yes, Mr. Hammer went outside with us.

28 Q This was the red Berretta?

1 A Yes.

2 Q All right. And did he point to a particular pump?

3 A Yes. He pointed to pump number three.

4 Q All right. And when you looked in that direction what, if

5 anything, did you see?

6 A Looking from the store looking toward pump three I was

7 looking at Elm Avenue. I saw the red -- a red Chevy Berretta with

8 two occupants drive by the gas station.

9 Q All right. And did that vehicle itself, was that consistent

10 with the description you had gotten from Mr. Hammer?

11 A Yes, it was.

12 Q As a result of that did you have the vehicle stopped, sir?

13 A Yes, I did.

14 Q And did you, yourself, approach the vehicle?

15 A No. We did a high risk stop.

16 Q Right. But at some point you got there by the vehicle?

17 A Yes, I did. Yes.

18 Q Okay. So you did a high risk stop, meaning lights and

19 siren, ordering out with the gun and --

20 A Yes, hands up.

21 Q How many occupants?

22 A Two.

23 Q Who was driving?

24 A Shawn Rodriguez. Shawn Michael Rodriguez.

25 Q This person you previously identified?

26 A Yes.

27 Q And who was the passenger?

28 A Anna Rugg.

1 Q And what was the license number on the vehicle, sir?
2 A I have to refer to my report. Can I do that?
3 Q Yes.
4 A The license was 3 Frank -- I am sorry -- 3FHS432.
5 Q And was it a Chevrolet Berretta?
6 A Yes, it was.
7 Q And what color was it?
8 A Red.
9 Q And did you check who the vehicle was registered to?
10 A Yes.
11 Q And who was it?
12 A It was returned registered to Mr. Hamman.
13 Q Now, did you search Mr. Rodriguez?
14 A Yes, I did.
15 Q And did you find any receipts on him?
16 A I did. I did find --
17 Q What did you find?
18 A -- bank receipts. And for the details I will have to refer
19 to my report again.
20 Q Please.
21 A Okay. Mr. Rodriguez had two bank receipts from Bank of
22 America.
23 Q All right. And one was dated when, sir?
24 A Again I have to refer to my report.
25 Q Please do so.
26 A The 5th of March this year.
27 Q All right. And was there a card number associated with that
28 receipt that you saw?

1 A Yes.

2 Q And what was that?

3 A 5764.

4 Q All right. And the second receipt, sir, what was the date
5 on that?

6 A It was an account balance inquiry.

7 Q Right. I am sorry.

8 A March 16.

9 Q And did it have a time on the receipt, sir?

10 A At 0343 hours.

11 Q Did it have a card number association?

12 A Yes, it did. 2013.

13 Q So it was an account inquiry on a different card number,
14 correct?

15 A Yes.

16 Q Now, did you also find a grocery receipt, sir?

17 A Yes. That was on Mr. Rodriguez.

18 Q Also on Mr. Rodriguez?

19 A Yes.

20 Q And what was the date on that receipt?

21 A The 16th, as well, of March.

22 Q Did it have a time on the receipt?

23 A 2155 hours, 9:55 p.m.

24 Q Okay. And did it indicate on the receipt what item was
25 purchased?

26 A As I recall, duct tape was one item on the receipt.

27 Q Okay. Now, with respect to Ms. Rugg, did you find any
28 receipts on her that you seized, sir?

1 A Yes, I did.

2 Q And can you describe those for the Court?

3 A Again I will have to refer.

4 Q Please do.

5 A Okay. They were two \$40 withdrawals.

6 Q And the date on them, sir?

7 A Was also the 16th.

8 Q And did it have a card number associated?

9 A 2013.

10 Q All right. And did it also have a location printed out on

11 the receipt?

12 A It had an address on Sunset Boulevard in Rocklin.

13 Q And that's in Placer County?

14 A Yes, it is.

15 Q And those are two different receipts for the same card

16 number 2013?

17 A Yes.

18 Q Both \$40?

19 A Yes.

20 Q One moment, your Honor. Did you cause the red Berretta to

21 be impounded for a period of time, or at least taken into police

22 custody, sir?

23 A Yes, we did.

24 Q All right. And did you turn that matter over then to Dale

25 Hutchins of your office?

26 A Specifically, I don't know which investigator took it. It

27 was the Investigations Department of Auburn Police Department.

28 Q For any further workup, sir?

1 A Yes.

2 Q Okay. Then in securing that item was it locked up or how it
3 was, how was it kept, sir?

4 A Typically we take it into the sally port at the police
5 department. Both sally ports have roll-down gates and locking
6 doors securing the car from anything outside.

7 Q So you left any remaining items as they were, sir?

8 A Yes.

9 Q Just one moment. As far as Mr. Hamman's demeanor when you
10 first found him in the cell, did he seem concerned about being in
11 that cell for the period of time he was?

12 A He appeared very frightened.

13 MR. MARCHI: I have no further questions.

14 CROSS-EXAMINATION

15 BY MR. COHEN:

16 Q Good afternoon, Officer. I represent Anna Rugg. I want to
17 get some more details about this note and your discussion with the
18 employee at the store.

19 A Okay.

20 Q When you initially got to the store and were given the note
21 he gave you some information about the circumstances of him finding
22 that note?

23 A Yes.

24 Q And when he gave you those circumstances, on direct
25 examination you didn't exactly lay out how it came to be that she
26 left the store. Do you recall him telling you how or why she left
27 the store?

28 A Yes, I do.

1 Q What is it that Mr. Hammer said at that time? I am sorry.
2 Mr. Hammer?

3 A Mr. Hammer said while Ms. Rugg was in the store a male later
4 identified as Mr. Rodriguez entered the store and demanded that
5 Ms. Rugg come out and leave with him.

6 Q Okay. And then later when you went back and interviewed
7 Mr. Hammer to get greater details about what had occurred, do you
8 recall him indicating anything to you about his belief about why
9 she told him about the hamper being knocked over?

10 A His belief was that Ms. Rugg wanted him to go in there to
11 that bathroom.

12 Q Okay. And in that second interview did he again confirm the
13 circumstances of her leaving the store involving her being
14 essentially demanded to leave by the other male?

15 A Yes.

16 MR. COHEN: No further questions.

17 CROSS-EXAMINATION

18 BY MR. BENCA:

19 Q I just want to talk about a couple things. Is it Sergeant
20 Hopping?

21 A No. Officer.

22 Q Not quite yet, huh? With regard to when you arrived at the
23 scene, I'm talking about the juvenile center, you described it as a
24 booking room.

25 When you arrived on the scene there was water. Was there
26 water coming from underneath the door?

27 A The booking room?

28 Q Yes, where Mr. Hamman was located?

1 A Actually, inside the hall, once inside the hall there was a
2 large amount of water. The hall was flooded.

3 Maybe under perfect conditions I could see the water
4 movement, but I can't say that the booking room itself water came
5 out that door.

6 Q Let me ask you this: When you finally were able to open up
7 the door, when you finally realized you could open up the door from
8 the outside, did a lot of water rush out; was there a lot of water
9 rushing from underneath the door?

10 A There was water coming out from underneath the door as I sat
11 there and looked at it before I opened the door. When I opened the
12 door, yes, more water did come out.

13 Q But it didn't appear to you at that time that the door had
14 been blocked to prevent water from coming out?

15 A It is not correct.

16 Q Describe to me what that --

17 A It appeared to me --

18 Q I am sorry. I interrupted.

19 A It appeared to me the white bookcase had been pushed up
20 against the door to keep water inside the door, to make the seal on
21 the bottom of the door.

22 Q As I understand, the bookcase was against the door. When
23 you removed the bookcase away from the door then the water came
24 from underneath it?

25 A No.

26 Q I am sorry. I put words in your mouth.

27 A When I arrived, finally got to that room, the bookcase was
28 slightly away from the door. It is my suspicion that the water

1 pressure had pushed it away from the door.

2 Q Let me ask you this: When you looked inside the Plexiglas
3 -- you indicated in your testimony there was Plexiglas when you
4 arrived?

5 A Uh-huh.

6 Q You looked inside there with your light. Did there appear,
7 were you able to tell from looking in there how much water was in
8 there at the time?

9 A No, I could not tell that.

10 Q Okay. Do you have a suspicion as to how much water was in
11 there at the time?

12 A No.

13 Q All right. So it could have been an inch, could have been
14 two inches?

15 A Yes.

16 Q You stated that, your report indicates it appears that there
17 was some time before you realized you could actually open the door
18 from the outside, is that correct?

19 A Yes.

20 Q You even contacted the Auburn Fire Department, correct, --

21 A Correct.

22 Q -- to eradicate --

23 A Extricate.

24 Q Extricate Mr. Hamman from the room?

25 A Yes.

26 Q So at that time you were unaware that you could open it just
27 from the outside?

28 A That is correct.

1 Q Approximately how long did that take from the moment that
2 you were there until the time you realized you could open the door?
3 A I'd have to estimate five minutes.
4 Q So it took you approximately five minutes to realize that.
5 Officer Hopping, how big is this room? And I'm talking
6 about the room that Mr. Hamman was found in. Approximately how big
7 is that room?
8 A I'd have to estimate ten by ten.
9 Q So ten by ten room?
10 A It is not square.
11 Q Roughly?
12 A Yeah.
13 Q I won't hold you to it. Your report also indicates that you
14 looked inside the vehicle. I'm talking about Mr. Hamman's vehicle,
15 correct?
16 A Yes.
17 Q Did you do an inventory of that vehicle?
18 A Did I -- initially I did, yes. I'm sorry. Not an
19 inventory, no.
20 Q All right. But you looked inside and saw some personal
21 effects in the vehicle, correct?
22 A Yes.
23 Q Did you see a hacksaw?
24 A I believe the hacksaw was in the trunk.
25 Q Okay. So at some point you did see the hacksaw in the
26 vehicle, correct?
27 A Yes. I am sorry. Yes.
28 Q Did you see a vent going into the room, this room that

1 Mr. Hamman was found in?
2 A I did not.
3 Q Now, when you arrived at the scene you noticed that -- and
4 you were able to get Mr. Hamman out of the room you noticed that he
5 was shivering, correct?
6 A Yes.
7 Q Was there any indication that he was drowning at the time
8 that you opened that door?
9 A No.
10 Q All right. To the contrary, he was not drowning; would that
11 be a fair statement?
12 A He did not appear to be drowning. I did not see through the
13 Plexiglas window water near his face.
14 Q All right. How high in relation to this Plexiglas window,
15 how high on Mr. Hamman's person were you able -- or how low, what
16 area of his body were you able to see through the Plexiglas?
17 A I would say from mid-chest, the bottom of the window to
18 Mr. Hamman.
19 Q And when you opened the door there wasn't a great rush of
20 water coming out of the room that would indicate to you that there
21 was a high level of water in the room, correct?
22 A Correct. The bookcase had been pushed back.
23 Q Okay. You testified on direct examination that it was your
24 believe that there was a slight amount of water in the room at the
25 time you opened the door; is that a fair statement?
26 A There was water in the room.
27 Q You indicated a slight amount, would that be fair?
28 A Did I indicate that in my report?

1 Q No. You indicated it in your direct examination?

2 A I don't remember saying slight. I know there was an amount
3 of water.

4 Q Okay. And is it fair to say that both you and Officer
5 Burns, who was your partner at the time, correct?

6 A No.

7 Q All right. Mr. Burns, Officer Burns was there with you at
8 the scene?

9 MR. MARCHI: Well, objection. That states facts not in
10 evidence. There was never an Officer Burns there to my knowledge.
11 There may have been a Sergeant Burns later.

12 MR. BENCA: Q Who arrived with you on the scene?

13 A Officer Hammond arrived with me. He was in the building
14 with me.

15 Q I am sorry. Is it fair to say both you and Officer Hammond
16 had some confusion with regard to this door being open or the
17 ability to open it from the outside at the time?

18 A I can't testify that Hammond, his state of mind. I know I
19 was under the belief that it was locked.

20 MR. BENCA: Very good. Nothing further. Thanks.

21 REDIRECT EXAMINATION

22 BY MR. MARCHI:

23 Q Would it be fair to say that the only source of the water
24 was coming from the holding cell, sir?

25 A Yes.

26 Q So there was no other water leaking anywhere?

27 A None that I saw.

28 Q And you described previously that when you first arrived

1 outside the building there was quite a bit of water running out of
2 the building?

3 A Yes.

4 Q And when you started to go through the building itself
5 before you got to the holding cell area and then the actual holding
6 cell or the booking room and the holding cell, there was water
7 throughout the premises?

8 A Yes.

9 Q All right. And there was still -- so it appeared that some
10 water had been running for a period of time, --

11 A Yes.

12 Q -- is that fair to say?

13 A Yes.

14 Q Now, as far as the holding cell itself where Mr. Hamman was,
15 was there any way to open the door from the inside of the cell,
16 sir?

17 A I think there is only one a key lock on the inside of that.
18 No handle.

19 Q All right. And so from the outside there was a handle?

20 A Yes.

21 Q And so when you tried it it opened?

22 A Yes.

23 MR. MARCHI: Okay. No further questions.

24 RE-CROSS-EXAMINATION

25 BY MR. COHEN:

26 Q Officer Hopping, at the time you opened the door and the
27 water comes out you weren't knocked off your feet by the water?

28 A No.

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1 Q And when you are there when you first arrived I believe you
2 testified that Mr. Hamman was knocking on the door, correct?
3 A He was knocking on the window.
4 Q He was knocking on the window. So he was awake?
5 A Conscious, yes.
6 Q And trying to communicate with you through the window?
7 A Yes.
8 Q Presumably standing?
9 A Yes.
10 Q Okay. And you were able to see some of his body. Were you
11 able to -- were you trying to see his whole body?
12 A Trying to see his whole body, no.
13 Q Through the window opening? And at the time you are there
14 you have already seen and reviewed the note that you received from
15 the employee in the station, so you knew he was over there?
16 A Yes.
17 Q Okay. One of the things I note in your report is you
18 indicate you didn't want to open the door without having another
19 officer present. What was the basis for that?
20 A I don't know -- I did not know Mr. Hamman's state of mind,
21 if he'd react in a panic. I'm not certain.
22 Q Did you know if he was armed in any way?
23 A I didn't know anything.
24 Q He appeared agitated, though, when you arrived?
25 A Panicky, yes.
26 Q And once that second officer was there, this is Officer
27 Hammond, at that point is when you tested the door and realized it
28 could be opened from the outside?

1 A (Witness nodding head.)

2 MR. COHEN: No further questions.

3 MR. BENCA: Nothing further, your Honor.

4 MR. MARCHI: Just a couple.

5 REDIRECT EXAMINATION

6 BY MR. MARCHI:

7 Q Was the water still going inside the cell when you arrived,
8 sir?

9 A Yes.

10 Q Okay. And to describe for the Court, how was the water
11 being emitted into the holding cell?

12 A There was a fire sprinkler up in the wall, up high near the
13 ceiling that was active.

14 Q Did that seem to spray the whole room then, sir?

15 A It appeared to be, yes.

16 Q So you got a little bit wet yourself when you went in there?

17 A I didn't go in the room.

18 Q Okay.

19 A Holding cell where the water was spraying.

20 Q You had him come out?

21 A Yes, he did come out.

22 Q And did you observe Mr. Hamman's clothes when he came out?

23 A Yes.

24 Q Was he entirely drenched?

25 A Yes, he was.

26 MR. MARCHI: No further questions.

27 ///

28 ///

1 COURT: Put your hand up.

2 CLERK: Do you solemnly state that the testimony you are
3 about to give in the matter now pending before this Court shall be
4 the truth, the whole truth, and nothing but the truth, so help you
5 God?

6 WITNESS: I do.

7 CLERK: Okay. Please state your name and spell your last
8 for the record.

9 WITNESS: Dale Hutchins, H-u-t-c-h-i-n-s.

10 COURT: Good afternoon.

11 WITNESS: Good afternoon, sir.

12 COURT: What did you do?

13 WITNESS: Rotator cuff surgery. Old injury that finally
14 required getting fixed.

15 TESTIMONY OF

16 DALE HUTCHINS, witness called on behalf of the People:

17 DIRECT EXAMINATION

18 BY MR. MARCHI:

19 Q Officer, you are employed by Auburn Police Department?

20 A Yes, I am.

21 Q And you are assigned to the detective unit currently?

22 A That's correct.

23 Q And how long have you been a peace officer in the State of
24 California?

25 A Oh, approximately 18 years.

26 Q And calling your attention to Monday, March 17, 2003, about
27 3:15 in the morning, did you have occasion to get called into work?

28 A Yes, I did.

1 Q All right. And did you have occasion to respond to the
2 juvenile hall that day?

3 A Later that morning, yes, I was.

4 Q All right. And you were involved in helping other people
5 gather some physical evidence from the cell itself?

6 A That's correct.

7 Q All right. And referring to the juvenile, the old juvenile
8 hall, is there what's known as a holding cell and a booking room
9 type area, sir?

10 A That's correct.

11 Q Did you have a view of that that morning when you went
12 there?

13 A Yes, I did.

14 Q Did you have occasion to see some toilet paper in a certain
15 location?

16 A Yes, I did.

17 Q And can you describe to the Court what you saw in that
18 regard?

19 A On the outside of the holding cell there's an air
20 conditioning vent. It had toilet paper stuffed in the grates of
21 the vent, and there was a -- stuffed throughout the vent, but there
22 was a spot, a round spot in the vent where there wasn't any toilet
23 paper.

24 Q All right. And can you describe the pattern of the spot
25 that there wasn't any paper?

26 A It was round.

27 Q It was like a round hole?

28 A That's correct. Approximately one inch in diameter.

1 Q All right. And sir, did you see any duct tape around this
2 or near this holding cell door?
3 A Yes, I did.
4 Q And where did you find that at?
5 A It was on both sides of the door at the doorframe, and the
6 door all the way around the top, bottom and sides.
7 Q And was this on the outside of the door, sir?
8 A On the outside of the door, that's correct.
9 Q All right. And where the toilet paper was clogging the
10 vent, was that on the cell door itself or where was it?
11 A That was about the cell door.
12 Q Just above it?
13 A That's correct.
14 Q And that appeared to go right into the holding cell itself?
15 A It appeared to.
16 Q All right. Now, sir, at a later point in time were you
17 present with Detective Coe to my left to interview a Shawn
18 Rodriguez?
19 A Yes, I was.
20 Q Is he in the courtroom today?
21 A Yes, he is.
22 Q And where is he seated at and what is he wearing?
23 A He's wearing orange suit, seated left of defense counsel.
24 MR. MARCHI: May the record reflect identification of the
25 defendant Rodriguez, your Honor?
26 COURT: Yes.
27 MR. MARCHI: Q And he was Mirandized before he was talked
28 to, sir?

1 A That's correct.

2 Q All right. And at one point during the discussion did

3 Mr. Rodriguez indicate he didn't want to talk about a part of the

4 red Berretta, sir?

5 A That's correct.

6 Q And what did Mr. Rodriguez tell you about that?

7 A He did not want to talk about what was in the trunk of the

8 car.

9 Q All right. And had you looked into the trunk of the red

10 Berretta at the time you were sitting next to Detective Coe talking

11 to defendant Rodriguez?

12 A No.

13 Q Did you then go look later into the trunk of the red

14 Berretta?

15 A Yes.

16 Q All right. And the red Berretta, do you remember what the

17 license number of that was, sir?

18 A No.

19 Q Okay. Would it refresh your memory to refer to the report?

20 A I'm not sure if I have it in my report. The report

21 indicates that it is 3 Frank Henry Sam 432, California plate.

22 Q All right. Was it a red Berretta, sir?

23 A That's correct.

24 Q And did you then look into the red Berretta for items that

25 you -- might be of interest or to see, sir?

26 A Later on that morning I did, yes.

27 Q Was it in police custody at that point; had the vehicle been

28 impounded?

1 A It was impounded in a secure sally port.

2 Q All right. And in the trunk of the red Berretta what, if

3 anything, did you find, sir?

4 A Two garden hoses hooked together, and on the end of one of

5 the garden hoses was duct tape.

6 Q All right. And from the vehicle itself, sir, was there an

7 Item 12 that you seized?

8 A Yes, there was.

9 Q And what was that?

10 A Item 12 was the victim's Washington Mutual check card.

11 Q Okay. It was in the name of Nicholas Hamman?

12 A Yes, it was.

13 Q Okay. Where did you find that item at in the vehicle?

14 A Found it right on, I believe, right on the center console.

15 Q All right. And with respect to Item 13, what was that that

16 you found in the vehicle, sir?

17 A That was a copy of a citation issued to Mr. Rodriguez by

18 the California Highway Patrol.

19 Q Was there a date on that item, sir?

20 A There was.

21 Q Do you remember what that was?

22 A I can't remember what the exact date was.

23 Q All right. And sir, Item 14, what was that that you found

24 in the vehicle?

25 A A hacksaw.

26 Q And Item 15, sir?

27 A That was a type of club.

28 Q Okay. And Item 16, sir?

1 A The jacket belonging to the victim Hamman.

2 Q And Item 17, what was that item, sir?

3 A That's a glove that I found in the vehicle, which was also

4 consistent or the match to a glove found inside of City Hall -- I

5 mean, juvenile hall.

6 Q The glove, what type of glove was it, sir?

7 A A leather nylon racing type glove.

8 Q It wasn't a surgical glove?

9 A No.

10 Q Something more distinctive?

11 A Correct.

12 Q And the other glove found inside the hall, did it appear to

13 be the mate, so to speak?

14 A It appeared so.

15 Q Okay. Item 18, sir, what was that you seized?

16 A That was a plumbing fixture. It looked like an older

17 plumbing fixture that would be on the top of a urinal.

18 Q Was it galvanized, metal; what was it?

19 A Chrome.

20 Q Okay. And Item 19, what was that that you found, sir?

21 A A box of latex gloves.

22 Q All right. Now, you didn't find any latex gloves inside the

23 hall, sir, to your knowledge?

24 A We found pieces of what appeared to be latex glove on the

25 duct tape around the cell door.

26 Q This would have been from the outside of the cell door from

27 the booking room side?

28 A That's correct.

1 Q And Item 20, sir, what was that you found?
2 A That was a knife.
3 Q All right. And 21, sir, what was that?
4 A Cell phone.
5 Q And did you later determine whose phone that was?
6 A I believe that was identified as Ms. Rugg's cell phone.
7 Q Then Item 22 was the garden hoses, sir?
8 A That's correct.
9 Q And how many were there?
10 A Two.
11 Q Then finally, what was Item 23, sir?
12 A Item 23 was a letter written by Mr. Rodriguez to his friend
13 or girlfriend Erin Hughes during his interview at APD.
14 Q All right. Now, calling your attention to March 18 of 2003,
15 the next day at about 11:30 in the morning, did you have occasion
16 to make contact with Nicholas Hamman?
17 A Yes.
18 Q All right. And did you show him the red Berretta you
19 previously identified?
20 A That's correct.
21 Q And did he indicate that was, in fact, his vehicle
22 A That's correct.
23 Q And also did you show him Item 12, the Washington Mutual
24 check card, sir?
25 A Yes, I did.
26 Q And did he identify that card as his?
27 A He did.
28 Q Now, was this the type of check card you would use on an

1 ATM type machine, sir?

2 A Yes, it was.

3 Q Now, showing him Item 16, the jacket, did Mr. Hamman
4 identify that jacket?

5 A He identified it as being his.

6 Q Okay. Did you show him Item 18, the plumbing fixture,
7 Mr. Hamman?

8 A Yes, I did.

9 Q What did he say about that item?

10 A He said that's what Mr. Rodriguez used to hit the cell door
11 window.

12 Q The Plexiglas?

13 A That's correct.

14 Q And showing you or referring to Item 17, the glove, did
15 Mr. Hamman recognize that item?

16 A Yes, he did.

17 Q What did he say about Item 17?

18 A He stated that it belonged to Ms. Rugg.

19 Q And with respect to Item 22, the cell phone, did you show
20 that to Mr. Hamman?

21 A Yes, I did.

22 Q According to him, was he able to identify that item?

23 A Item Number 21, he stated it was Rugg's, Anna Rugg's cell
24 phone.

25 MR. MARCHI: All right. Thank you. No further questions.

26 MR. COHEN: I have no questions.

27 MR. BENCA: I have just a couple questions.

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CROSS-EXAMINATION

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BY MR. BENCA:

Q You stated with regard to the -- there was a hacksaw that was found?

A That's correct.

Q And according to your investigation what was the purpose of that hacksaw?

A I sat in with the interview with Detective Coe. If I remember right, it was Mr. Rodriguez stated he retrieved the hacksaw to cut the water pipe to stop the water flow into the cell.

Q Were you privy to a conversation or an interview that was conducted on Mr. Romine; did you sit in on that conversation?

A I don't believe so.

Q And in your interview with Mr. Hamman, he indicated to you that my client attempted to break the Plexiglas window with that pipe, is that correct?

A That's correct.

Q He also talked about a vent, air conditioning vent that was above the door of this particular room. I'm talking about the room that Mr. Hamman was found in?

A That's correct, yes.

Q There was toilet paper that was bunched up in the air conditioning unit?

A Yes, there was.

Q All right. But you have no knowledge as to whether that vent's going directly into the room or it is coming from some other area in the building, is that correct?

A I do.

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1 Q All right. Where is it coming from?

2 A It -- from the knowledge that I have limited to construction
3 knowledge, it appeared to be an air conditioning vent that would
4 come from the main unit outside into the booking area.

5 Q Okay. So it wasn't a direct link into the room that
6 Mr. Hamman was found in, is that correct?

7 A As far as I know, it was not.

8 MR. BENCA: I have nothing further.

9 REDIRECT EXAMINATION

10 BY MR. MARCHI:

11 Q If you just looked at the vent above the cell door from the
12 booking room, does it appear as if it might go into the cell
13 itself, sir?

14 A Yes, it does.

15 Q So from the outside there is no way of telling where the
16 duct goes?

17 A That's correct.

18 MR. MARCHI: Okay. Thank you. No further questions.

19 MR. COHEN: Very briefly.

20 CROSS-EXAMINATION

21 BY MR. COHEN:

22 Q That vent, it was above the door?

23 A That's correct.

24 Q About how high off the ground?

25 A Eight and a half feet, maybe.

26 Q Okay. Toilet paper was stuffed in it. Were there any
27 tables or chairs placed around or near the door when you --

28 A There was a table that they used or a counter that they

1 used to use for -- in the booking room at juvenile hall, and that
2 was very close to it.

3 Q Did you find any other toilet paper in the general area?

4 A I don't recall finding any other toilet paper.

5 MR. COHEN: Okay. Nothing further.

6 RE-CROSS-EXAMINATION

7 BY MR. BENCA:

8 Q I want to talk a little bit more about this vent.

9 Approximately how big was the vent?

10 A Twenty-four by nine. We removed the vent and booked it into
11 evidence. Maybe 18 and 24 inches wide. Maybe nine inches wide --
12 high.

13 Q So when you describe the toilet paper being stuffed in the
14 vent, was it stuffed in all areas of that vent?

15 A Except for the one -- that's correct, except for the one
16 spot, the one round spot.

17 MR. BENCA: Okay. Very good. Nothing further.

18 MR. MARCHI: Oh, I do have one further.

19 REDIRECT EXAMINATION

20 BY MR. MARCHI:

21 Q The round spot and the roundness of the two hoses you found,
22 were they -- were the size consistent with each other?

23 A Yes, they were, and consistent with Rodriguez' statement
24 made to Detective Coe.

25 Q As to what was done with the hose?

26 A That's correct.

27 MR. MARCHI: Thank you. No further questions.

28 MR. COHEN: Nothing further.

1 MR. BENCA: I'm through, your Honor.

2 COURT: You may step down. Thank you.

3 WITNESS: Thank you.

4 MR. MARCHI: Call Detective Coe at this time.

5 (Daniel Coe was then called as a witness on behalf of the
6 People herein.)

7 COURT: Raise your right hand.

8 Swear the testimony you are about to give in the matter now
9 pending before this Court shall be the truth, the whole truth, and
10 nothing but the truth, so help you God?

11 WITNESS: I do.

12 COURT: State your name.

13 WITNESS: First name Daniel, last name Coe, C-o-e.

14 COURT: Okay. Thank you.

15 TESTIMONY OF

16 DANIEL COE, witness called on behalf of the People:

17 DIRECT EXAMINATION

18 BY MR. MARCHI:

19 Q Sir, by whom are you employed?

20 A City of Auburn Police Department.

21 Q And in what capacity?

22 A I work as a detective.

23 Q How long have you been a peace officer in the State of
24 California?

25 A Seven years, four months.

26 Q And sir, were you on duty for Auburn Police Department as a
27 peace officer or called on duty, I should say, on March 17 of 2003?

28 A Yes. I was called in to work.

1 something first?

2 A He had a roommate with him that he had to take back to, I
3 believe it was Ophir before he could help them out.

4 Q All right. And according to Mr. Hamman did he then return
5 back to Auburn to assist Mr. Rodriguez and Ms. Rugg?

6 A He did. He met with them at the Elmwood Motel, which is
7 across the street from Rowdy Randy's on the corner of Elm and High,
8 also.

9 Q All right. And according to Mr. Hamman, did he in fact help
10 load or watch them load items into his vehicle that day?

11 A That's correct.

12 Q According to Mr. Hamman what vehicle was he driving?

13 A He was driving his red Berretta.

14 Q All right. And according to Mr. Hamman where did he go with
15 Ms. Rodriguez -- Ms. Rugg and Mr. Rodriguez?

16 A They went to the old juvenile hall facility on Epperle.

17 Q And according to Mr. Hamman was there another person present
18 initially?

19 A Erin Hughes.

20 Q All right. So he did tell you she was present?

21 A That's correct.

22 Q Now, according to Mr. Hamman did he go into the juvenile
23 hall initially, sir?

24 A Initially, no. He said that Mr. Rodriguez climbed in
25 through a busted-out window and opened the door for everybody else.

26 Q All right. So according to Mr. Hamman did Ms. Rugg and Erin
27 Hughes go inside the juvenile hall?

28 A Once the door was opened up.

1 Q Right.

2 A Right.

3 Q And according to Mr. Hamman where did he stay?

4 A He was out by the car.

5 Q All right. And according to Mr. Hamman did something cause
6 him to go inside the juvenile hall thereafter?

7 A Yes. Well, he was out by his vehicle. Ms. Rugg came out to
8 where his location was and told him that Erin Hughes had hurt
9 herself inside, and so he rushed into the juvenile hall facility.

10 Q In order to help?

11 A That's correct.

12 Q And according to Mr. Hamman what area did he go to or was he
13 directed to, I should say?

14 A He was led to the front of the building in question, the old
15 booking room holding cell area.

16 Q And according to Mr. Hamman who led him into this area?

17 A Anna Rugg.

18 Q And did Mr. Hamman describe something that happened to him
19 once he got into this booking area?

20 A He was directed toward the holding room inside the booking
21 area, and when he went inside he was -- the door was pushed closed
22 behind him.

23 Q And did Mr. Hamman tell you who pushed the door, who he saw
24 push the door?

25 A He said that Anna Rugg and Shawn Rodriguez both pushed the
26 door behind him.

27 Q According to Mr. Hamman did he try to prevent the door from
28 closing in some manner?

1 A Yes, he did. He stuck his leg out which blocked the door
2 from being closed initially.

3 And then he said that he was kicked by Mr. Rodriguez in
4 order to get the door closed completely.

5 Q All right. And according to Mr. Hamman the door was closed
6 on him in the holding cell, sir?

7 A That's correct.

8 Q And did Mr. Hamman indicate whether he could get out at that
9 point?

10 A He said he was locked in.

11 Q All right. According to Mr. Hamman did he demand of
12 Mr. Rodriguez and Ms. Rugg to let him out of the holding cell?

13 A Yes, he did.

14 Q And what was -- did Mr. Hamman indicate whether anybody
15 responded to his requests?

16 A Nobody let him out, no.

17 Q According to Mr. Hamman was there any sort of conversation
18 that at least ensued for a period of time between himself,
19 Mr. Rodriguez and Ms. Rugg?

20 A As far as?

21 Q Initially just in general was there any discussion besides
22 just let me out?

23 A I believe he said that Ms. Rugg said she was mad at him and
24 would let him out later.

25 Q All right. And according to Mr. Hamman where was Erin
26 Hughes after he had gotten locked into the holding cell?

27 A She wasn't in that area at the time. She came in later and
28 he heard her, overheard her saying to Ms. Rugg and Mr. Rodriguez

1 that he should be let out.

2 Q And according to Mr. Hamman was he let out?

3 A No, he was not.

4 Q Did Mr. Hamman say about how long that was after he was
5 initially locked in that he first heard Erin Hughes in the area?

6 A I don't recall how long.

7 Q All right. And according to Mr. Hamman after that
8 conversation did the other three parties leave?

9 A He did see Mr. Rodriguez shoving toilet paper in the vent
10 prior to them leaving the first time.

11 Q All right. So before he saw them leave the first time he
12 described Mr. Rodriguez putting the toilet paper -- is this the
13 vent above the cell door?

14 A That's correct. And Mr. Rodriguez also made a statement he
15 was going to burn the place down.

16 Q All right. And then according to Mr. Hamman shortly
17 thereafter did the parties appear to leave or disappear?

18 A Yes. He lost sight of them. He figured they had left.

19 Q According to Mr. Hamman what time was it on Saturday, the
20 15th, that he was first pushed into the cell, approximately?

21 A He first met with them at Rowdy Randy's around 9:30. I'm
22 not exactly sure what time they got to the hall. Approximately
23 10:00, 10:30.

24 Q So his indication was he went to Ophir and back, picked them
25 up and then went o the hall?

26 A That's correct.

27 Q And according to Mr. Hamman after the parties left the first
28 time in the afternoon hours did he do something?

1 A Yeah. After being in the cell for several hours he decided
2 that he would activate the fire sprinkler that was in the holding
3 cell where he was at in a hope that it would set off an alarm so
4 the fire department would respond.

5 Q And did Mr. Hamman indicate approximately how much time he
6 thought passed?

7 A He estimated that he activated the alarm roughly 1:00, 2:00
8 p.m. on Saturday.

9 Q And did Mr. Hamman describe how he activated the water?

10 A He had a lighter.

11 Q All right. And in fact did Mr. Hamman describe what
12 happened with the sprinkling system in the cell?

13 A It activated.

14 Q And the whole room was wet?

15 A That's correct.

16 Q Okay. Now, did Mr. Hamman describe the return of any of the
17 parties later on that day?

18 A Yes, he did.

19 Q And according to Mr. Hamman who returned out of the three
20 that initially were there?

21 A Anna Rugg and Shawn Rodriguez.

22 Q And according to Mr. Hamman did he recall approximately what
23 time that might be?

24 A It was roughly 9:00, 10:00 o'clock in the evening.

25 Q Did Mr. Hamman indicate whether or not he had a watch or any
26 way to tell time?

27 A He did have a watch.

28 Q Okay. And according to Mr. Hamman did he have a

1 conversation with either Mr. Rodriguez or Ms. Rugg when they
2 returned between 9:00 and 10:00 p.m.?

3 A Yes, he did.

4 Q And who was the conversation with?

5 A With Mr. Rodriguez.

6 Q And according to Mr. Hamman did Mr. Rodriguez demand
7 something of him?

8 A Yes. He wanted his ATM card, pin and money.

9 Q So he wanted the ATM card, the pin number and the money?

10 A That's correct.

11 Q And according to Mr. Hamman what did he tell
12 Mr. Rodriguez?

13 A Mr. Rodriguez had told him that if he gave him those he
14 would be let out. And Mr. Hamman said that he would just give him
15 the pin number to start.

16 Q And so according to Mr. Hamman did he give up his pin number
17 to Mr. Rodriguez?

18 A Yes, he did.

19 Q And according to Mr. Hamman was Ms. Rugg in the area at that
20 time?

21 A Yes.

22 Q Now, after Mr. Hamman gave up the pin number did Mr. Hamman
23 describe some activity imparted to Mr. Rodriguez?

24 A He said Mr. Rodriguez hit the Plexiglas window a couple of
25 times with a metal object.

26 Q And according to Mr. Hamman did the window break?

27 A No, it did not.

28 Q After the pin number was given did Mr. Rodriguez let

1 Mr. Hamman out, according to Mr. Hamman?

2 A No, he did not.

3 Q And according to Mr. Hamman what did he observe with respect
4 to the two parties, Ms. Rugg and Mr. Rodriguez?

5 A They had left the room for a while, he estimated
6 approximately 20 minutes, before they came back in.

7 Q All right. And according to Mr. Hamman did both
8 Mr. Rodriguez and Ms. Rugg return after about 20 minutes?

9 A Yes.

10 Q And according to Mr. Hamman did anyone demand something of
11 him on their return after 20 minutes?

12 A Mr. Rodriguez again demanded his ATM, cash and also keys to
13 his vehicle.

14 Q All right. And according to Mr. Hamman did Mr. Rodriguez
15 promise to do something if he gave up the items?

16 A That he would call the police and have him let out of the
17 cell.

18 Q And did Mr. Hamman indicate what he told Mr. Rodriguez?

19 A He said that he wasn't going to give him those items.

20 Q Again according to Mr. Hamman was Ms. Rugg also in the area
21 at the time Mr. Rodriguez made those demands?

22 A Yes.

23 Q All right. And after Mr. Hamman said no did Mr. Hamman
24 attribute some conduct, further conduct to Shawn Rodriguez and Anna
25 Rugg?

26 A Yes. He saw both of them place a, it is either a bookshelf
27 or a large counter with some shelving on the front of the door
28 along with some rags stuffed underneath.

1 Q And according to Mr. Hamman did Mr. Rodriguez or Ms. Rugg,
2 either one of them, say anything to him as that was going on?
3 A I don't recall anything specifically.
4 Q All right. And according to Mr. Hamman did he see Ms. Rugg
5 do anything in that regard?
6 A As far as just helping?
7 Q Right.
8 A Helping push the item in front of the door. Also putting
9 paint cans and stuff inside.
10 Q Inside of what?
11 A Inside the bookshelf.
12 Q That would weight it down to some degree?
13 A That's correct.
14 Q And according to Mr. Hamman what did he see Ms. Rugg do in
15 that regard?
16 A Actually put the paint cans in there.
17 Q And according to Mr. Hamman did Mr. Rodriguez and Ms. Rugg
18 then leave again?
19 A Yes, they did.
20 Q And what did Mr. Hamman describe with respect to the water
21 level once the bookshelf was placed there with the paint cans.
22 A Once the bottom of the door was blocked off with the rags
23 and the bookshelf, the water level started to rise in the room.
24 He described it rising up all the way above his shoulders.
25 Q And how tall is Mr. Hamman?
26 A If I could refer to my report? I might see it in here.
27 It is not listed, but recollection I would say he's five
28 six.

1 Q And according to Mr. Hamman was he becoming concerned for
2 his safety?

3 A Yes, he was.

4 Q While the water was rising?

5 A Yes, he was.

6 Q And this was in the middle of March, correct?

7 A That's correct.

8 Q , This would have been 9:00, 10:00 o'clock at that point when
9 they first blocked the doorway?

10 A In the evening, yes.

11 Q All right. And according to Mr. Hamman did Mr. Rodriguez
12 and Ms. Rugg ever return again?

13 A Yes, they did.

14 Q And about how much later was that, sir?

15 A I believe about two hours later.

16 Q So this could have been pretty close to midnight of
17 March 16?

18 A Correct.

19 Q A Sunday?

20 A Correct.

21 Q All right. And according to Mr. Hamman, when they returned
22 is this when the water was up pretty close to his neck level?

23 A That's correct.

24 Q All right. And when Mr. Rodriguez and Ms. Rugg returned did
25 either Mr. Rodriguez or Ms. Rugg demand anything of him?

26 A Mr. Rodriguez again demanded those items he had asked for,
27 the ATM, money and the keys, and at that time Mr. Hamman agreed
28 because he was afraid for his own safety.

1 Q And again did Mr. Rodriguez promises to get him out somehow
2 at that point?
3 A He said he'd have the police get him out.
4 Q All right. Again was Ms. Rugg in the area according to
5 Mr. Hamman?
6 A Yes.
7 Q So were the items according to Mr. Hamman pulled away from
8 the door --
9 A Yes.
10 Q -- by someone?
11 A The bookshelf with the paint and the rags was pulled away.
12 The water level went down, and he slid then the items that they had
13 asked for.
14 Q All right. And that included the ATM card, sir?
15 A That's correct.
16 Q There was some money involved?
17 A I believe a little bit of cash and also car keys.
18 Q Now, according to Mr. Hamman once he gave those items up was
19 he let out?
20 A No, he was not.
21 Q And again according to Mr. Hamman what was the water level
22 after the bookshelf was pulled away.
23 A About four inches.
24 Q So there was always about four inches of water in the cell
25 at all times?
26 A That was my understanding, yes.
27 Q And according to Mr. Hamman did he ever see Ms. Rugg and
28 Mr. Rodriguez again after that?

1 A No, he did not.

2 Q So to his knowledge they didn't return?

3 A Not that he saw.

4 Q Now, calling your attention to March 17 of 2003 at about
5 10:30 in the morning did you have an occasion to interview an Erin
6 Hughes?

7 A Yes, I did.

8 Q And is she in some way, did she know the parties involved in
9 this situation?

10 A Yes, she did.

11 Q All right. She was the third person that was there with
12 them initially?

13 A That's correct.

14 Q All right. Does she have some relation to one of the two
15 defendants?

16 A Girlfriend to Mr. Rodriguez is what I was told.

17 Q By both of them?

18 A Yes.

19 Q Okay. And according to Ms. Hughes did she, in fact, stay
20 with Mr. Rodriguez and Ms. Rugg at the Elmwood before they went to
21 the hall?

22 A On Friday night before they met up with Mr. Hamman, which
23 would have been Saturday, that's correct.

24 Q So that would have been, Friday night would have been the
25 14th?

26 A That's correct.

27 Q And according to Ms. Hughes did she overhear any
28 conversation from Ms. Rugg regarding Mr. Hamman?

1 A Yes, she --

2 Q On the 14th?

3 A Yes, she did.

4 Q And according to Ms. Hughes what statement did she attribute

5 to Ms. Rugg regarding Mr. Hamman?

6 A She said that Anna Rugg wanted to kill Mr. Hamman.

7 Q And did she say anything about attributing a statement to

8 Ms. Rugg about Mr. Hamman's vehicle?

9 A She said that she wanted to take that. Actually, both her

10 and Mr. Rodriguez talked about taking the vehicle.

11 Q And according to Erin Hughes did she say why Ms. Rugg said

12 she wanted to kill Mr. Hamman?

13 A Because he had injured her on a previous date.

14 Q Did she relate it to a particular part?

15 A A burn on her arm, I believe it was.

16 Q And you later encountered Ms. Rugg in custody, is that

17 correct?

18 A That's correct.

19 Q Did you ever see any burns on her arm?

20 A She did have an injury on her arm. I can't remember which

21 one.

22 Q And according to Ms. Hughes did she attribute some more

23 statements about other ways to dispose of Mr. Hamman on the 14th?

24 A Yeah. Anna talked about wanting to push him off the

25 Foresthill Bridge, and also talked about stabbing him.

26 Q All right. And according to Ms. Hughes did she attribute a

27 statement to Mr. Rodriguez in regard to those types of actions?

28 A Mr. Rodriguez made mention that he didn't want to

1 participate in the pushing off the bridge. However, mentioned that
2 they should just lock him up.

3 Q And according to Ms. Hughes did Ms. Rugg then suggest a
4 location in that regard?

5 A She suggested the old juvenile hall facility.

6 Q Now, you have heard testimony that -- well, you have given
7 the testimony of Mr. Hamman, said he met with the three parties and
8 Randy Rowdy's the next day.

9 Did Ms. Hughes confirm that, in fact, she saw Mr. Hamman at
10 Rowdy Randy's along with Mr. Rodriguez and Ms. Rugg?

11 A Rowdy Randy, yes. Yes.

12 Q I am sorry.

13 A Okay.

14 Q And according to Ms. Hughes did they later meet up with
15 Mr. Hamman at the Elmwood?

16 A That's correct.

17 Q And then again according to Ms. Hughes did, in fact, they
18 all go to the old juvenile hall?

19 A Yes, they did.

20 Q And again according to Ms. Hughes where did she go initially
21 in terms of the hall once they got there?

22 A At one point all four of them were inside the facility,
23 and at sometime during that morning Anna Rugg directed her, Erin
24 Hughes, and Rodriguez, suggested they go take a walk.

25 Q And according to Ms. Hughes did she ever see Mr. Hamman
26 locked up in the holding cell?

27 A Yes. She said when they started going for a walk she heard
28 a loud bang, went to see what it was, and saw Mr. Hamman locked

1 in the holding cell.

2 Q So according to Ms. Hughes she blamed only Ms. Rugg for that
3 conduct?

4 A That's correct.

5 Q And according to Ms. Hughes did she ever make a statement
6 to Mr. Rodriguez and Ms. Rugg about getting him out of the holding
7 cell, him being Mr. Hamman?

8 A I'm sorry?

9 Q Did Ms. Hughes confirm that she asked that they let
10 Mr. Hamman out after he had been locked up for a while?

11 A She did suggest that, but didn't push it because she said
12 she was afraid of Anna.

13 Q And according to again Ms. Hughes, after a period of time
14 did she leave the juvenile hall?

15 A Yes, she did.

16 Q And who did she leave with?

17 A She left with Anna and Shawn in Hamman's vehicle.

18 Q All right. And did she describe that vehicle?

19 A Red Berretta.

20 Q Okay.

21 And according to Ms. Hughes where did they go after they
22 took off in the Berretta?

23 A She said that they drove around Grass Valley, Roseville,
24 Sacramento area in his vehicle.

25 Q And did she indicate who was driving, if she did?

26 A I don't recall that, no.

27 Q Okay.

28 And according to Ms. Hughes was there ever a trip

1 to Albertson's?

2 A She said that she was dropped off at Albertson's at one
3 point, I am not sure when, and that Rodriguez and Rugg went back to
4 the juvenile hall facility.

5 Q According to Ms. Hughes is that what she said, she
6 attributed the statement that that is where the other two were
7 going?

8 A Yes.

9 Q She never actually went with them?

10 A That's correct.

11 Q Okay. Then according to Ms. Hughes did Mr. Rodriguez and
12 Ms. Rugg return back to Albertson's for her at a later point in
13 time?

14 A Yes, they did.

15 Q And again according to Ms. Hughes did they indicate what had
16 happened to Mr. Hamman at the juvenile hall when they were all
17 gone?

18 A She said there was a lot of water coming in from the cell
19 that Hamman was in, and that I believe Rodriguez said it was
20 started by a cigarette is what he told Erin.

21 Q Now, according to Ms. Hughes did they later go somewhere in
22 the Berretta?

23 A They went down to Mr. Romine's house, who my understanding
24 is a former foster brother to Mr. Rodriguez.

25 Q And according to Ms. Hughes where was that place located at?

26 A It's in Sacramento.

27 Q And according to Ms. Hughes did she ever go back to the
28 juvenile hall area with Rodriguez and Rugg?

1 A She said that she didn't.

2 Q All right. And according to Ms. Hughes did she attribute
3 any other statements to Rodriguez and Rugg about, about Mr.
4 Hamman?

5 A She said that when they picked her back up at the
6 Albertson's Anna Rugg had asked how long it would take for
7 Mr. Hamman to die from the cold, the water. And she heard
8 Mr. Rodriguez say probably a couple days.

9 Q All right.

10 Now, calling your attention to March 17 again, 2003, about
11 11:00 a.m. did you have occasion to interview a Richard Romine?

12 A Yes, I did.

13 Q And is this the alleged half-brother of Mr. Rodriguez?

14 A Yeah. Foster brother or something along those lines is what
15 I recall.

16 Q Foster brother.

17 And did Mr. Romine indicate that Mr. Rodriguez, Ms. Rugg
18 and Ms. Hughes did in fact contact him in a red Berretta?

19 A That's correct.

20 Q And was this at his place where he lived at?

21 A Yeah. He lived in a trailer, in a trailer park down in
22 Sacramento.

23 Q And according to Mr. Romine, did he attribute a statement
24 to Mr. Rodriguez regarding Mr. Hamman's condition when they first
25 arrived at the place?

26 A Yes.

27 Q And what did he tell you about that?

28 A He had -- Mr. Rodriguez had told Mr. Romine that Hamman

1 was locked up in a cell up there, and that Mr. Romine said that he
2 needed to be let out.

3 Q And according to Mr. Romine was he able to convince
4 Mr. Rodriguez into letting Mr. Hamman out of the holding cell?

5 A No.

6 Q And was there a further conversation from Mr. Rodriguez
7 regarding another method to deal with Mr. Hamman?

8 A Mr. Rodriguez had talked about drowning Mr. Hamman,
9 and also talked about possibly gassing him out with carbon
10 monoxide.

11 Q And according to Mr. Romine did Mr. Rodriguez say how he
12 was going to do that?

13 A How he was which part?

14 Q I am sorry. How he was going to do the carbon monoxide
15 poisoning?

16 A With the hose and the car that they were driving,
17 Mr. Hamman's. It was -- excuse me. It was Mr. Hamman's vehicle.

18 Q According to Mr. Romine did he do anything to dissuade
19 Mr. Rodriguez?

20 A He again told him he needed to let him out.

21 Q And did Mr. Romine indicate who he thought was more in
22 charge of the situation for some reason?

23 A He thought that Anna Rugg had a lot to do with what was
24 going on. He said when he talked to Mr. Rodriguez, Mr. Rodriguez
25 would glance over at Rugg as if trying to get her approval what
26 they were talking about.

27 Q He did indicate Ms. Rugg was present when Mr. Rodriguez was
28 making these statements then?

1 A Correct.

2 Q And according to Mr. Romine how long did they stay at his
3 place; Rugg and Rodriguez, that is?

4 A They stayed at his place overnight, which would have been
5 Saturday night.

6 Q The 15th until Sunday morning, the 16th?

7 A Correct.

8 Q Now, on March 17 of 2003 at about 5:30 in the morning did
9 you have occasion to interview Anna Rugg?

10 A Yes, I did.

11 Q And did you give her what is commonly referred to as her
12 Miranda rights?

13 A Yes, I did.

14 Q And did she indicate she understood those rights?

15 A Yes, she did.

16 Q And did she agree to speak with you?

17 A Yes, she did.

18 Q And did you ask her whether she knew Mr. Hamman?

19 A Yes, I did.

20 Q And what did she say?

21 A She said that she had known him for a short while. I am not
22 exactly sure for how long. Was an acquaintance of hers.

23 Q And according to Ms. Rugg did she, in fact, ask Mr. Hamman
24 on Saturday, the 15th, to take her to the juvenile hall?

25 A Yes.

26 Q And according to Ms. Rugg did they, in fact, go to juvenile
27 hall?

28 A Yes, they did.

1 Q And who did Ms. Rugg describe as being present beside
2 herself and Mr. Hamman?

3 A Mr. Rodriguez and Erin Hughes.

4 Q And according to Ms. Rugg did someone break out a window at
5 the old juvenile hall?

6 A The window was already broken out.

7 Q All right. Did Ms. Rugg indicate who went in first?

8 A Mr. Rodriguez.

9 Q All right. Now, according to Ms. Rugg who did she describe
10 as going into the old juvenile hall initially?

11 A Actually, all four of them went in.

12 Q All right. And according to Ms. Rugg did she attribute some
13 conduct to Mr. Hamman inside the hall?

14 A Yes. She said when Erin and Shawn went for a little walk
15 together that her and Hamman were by themselves, and she said that
16 Hamman freaked out, grabbed her arm and attempted to grab one of
17 her breasts.

18 Q Now, just jumping ahead for a moment, you later interviewed
19 Mr. Shawn Rodriguez after Miranda, is that correct?

20 A That's correct.

21 Q And did he confirm that that was a true story, that
22 Mr. Hamman, in fact, tried to grab Ms. Rugg, or did he claim that
23 was not a true story?

24 A He said it was not a true story.

25 Q That is something they decided to cook up?

26 A Correct.

27 Q And again talking with Ms. -- you're interviewing Ms. Rugg.

28 Did she attribute any statement to Ms. Hughes after Mr. Hamman had

1 been locked up in the cell?

2 A She said that Erin had to ask them to let him out, but they
3 didn't.

4 Q According to Ms. Rugg how did Mr. Hamman get locked up in
5 the cell?

6 A She said that she was able to pull away from him when she
7 said that she was grabbed by him and closed the cell door behind
8 her locking him in.

9 Q And according to Ms. Rugg did she, in fact, indicate that it
10 was Mr. Rodriguez that was making the demands for the ATM card from
11 Mr. Hamman?

12 A That's correct.

13 Q And according to Ms. Rugg did they get that card initially?

14 A I believe she said they did get it initially, yes.

15 Q And according to Ms. Rugg did she ever describe or confirm
16 the placement of the bookcase and placement of paint cans on the
17 bookshelf by the cell door?

18 A She said it was right in front of the -- right against the
19 door.

20 Q And did she indicate to you how she put the paint in the
21 bookcase?

22 A Yes. She said she handed the paint cans to Mr. Rodriguez so
23 he could put them inside the bookshelf.

24 Q Did Ms. Rugg give you any detail as to why they were doing
25 that at that time, sir?

26 A At that time I don't believe so, no.

27 Q All right. Did she, in fact, confirm that they had gone
28 away for a period of time and found Mr. Hamman with the water

1 coming down, or did she leave that part out of her story, sir?

2 A I don't recall if she left that out initially. I know she
3 did say that there was water coming out at one point. As far as
4 when, I can't remember exactly when.

5 Q All right. Did she say why it was that Mr. Hamman finally
6 gave up the ATM card, Ms. Rugg? Did she indicate why Mr. Hamman
7 gave up the ATM card?

8 A Because Mr. Rodriguez said he'd let him out if he gave it
9 up.

10 Q How did Ms. Rugg describe the water level that Mr. Hamman
11 was enduring in the cell, sir?

12 A She said at one time it was up to his waist.

13 Q Now, according to Ms. Rugg did she, herself, use the ATM
14 card after it was obtained from Mr. Hamman?

15 A Yes, she did.

16 Q And what did she say in that regard as to the use of the ATM
17 card?

18 A She said that she attempted to use it at a U.S. Bank on
19 Sunset down in Rocklin, and she also used it inside a Safeway on
20 Sunset in Rocklin.

21 Q And did she indicate whether she actually got some money
22 from the use of the card?

23 A Yes, she did. From the Safeway. From the Safeway she got
24 money.

25 Q And what did she say she got, sir?

26 A I don't think she gave a specific dollar amount. She just
27 said she got some money.

28 Q All right. Now, at some point did Ms. Rugg admit that

1 she and Mr. Rodriguez went to Albertson's to get duct tape?

2 A Yes.

3 Q And how did she describe that, that series of events?

4 She seems to be missing some events here if we are to firm
5 other people's statements up.

6 How did she place the order in terms of getting the duct
7 tape?

8 A The duct tape came sometime after the water had already
9 started inside his cell.

10 Q And did Ms. Rugg indicate the purpose for getting the duct
11 tape?

12 A Specifically, I don't recall her saying specifically what it
13 was for.

14 Q All right. Did Ms. Rugg ever talk about getting some hoses
15 in relation to the duct tape, trying to do something with respect
16 to the cell?

17 A Yes. She said that they were going to attempt to gas him
18 from the vehicle by attaching hoses to the exhaust pipe and running
19 it to the room.

20 Q And according to Ms. Rugg did they, in fact, get duct tape
21 from Albertson's?

22 A Yes, they did.

23 Q And according to Ms. Rugg did she and Mr. Rodriguez then
24 proceed to the juvenile hall?

25 A Yes.

26 Q And according to Ms. Rugg did someone try and attach a hose
27 to the Berretta tailpipe?

28 A Yes.

1 Q And who did they attribute that conduct?
2 A Mr. Rodriguez.
3 Q And according to Ms. Rugg did she do something with the
4 other end of the hose?
5 A She was helping to feed the hose for Mr. Rodriguez into the
6 juvenile hall facility.
7 Q And did Ms. Rugg describe where the hoses were obtained
8 from?
9 A No, she did not.
10 Q And according to Ms. Rugg were they successful in keeping
11 the hose in the tailpipe, sir?
12 A No. She said that it kept popping out.
13 Q According to Ms. Rugg was the car running?
14 A Yes.
15 Q Now, did Ms. Rugg indicate what day they tried to gas him in
16 her version?
17 A Just from the chain of events with them going to Romine's
18 house, and the next day it would have been Sunday night sometime.
19 Q And according to Ms. Rugg was there any discussion about
20 getting rid of Mr. Hamman's body?
21 A Yes, there was.
22 Q And where did Ms. Rugg say that conversation occurred at?
23 A I believe it occurred down at Romine's place in Sacramento.
24 Q And according to Ms. Rugg who was present when those
25 discussions were had?
26 A It was her and Rodriguez.
27 Q And according to Ms. Rugg did she describe what plans they
28 may have for the body?

1 A Yeah. The two of them talked about how they'd get rid of
2 the body.

3 They talked about a pond somewhere, a quarry, Penryn.
4 I believe it was a mineshaft in the Colfax area. There's also an
5 abandoned house somewhere they talked about possibly placing his
6 body.

7 Q All right. Did Ms. Rugg indicate why it was they wanted to
8 gas Mr. Hamman in addition to what was already done?

9 A To, to make sure that he was dead.

10 Q And according to Ms. Rugg after they were unable to keep the
11 hose in the tailpipe what did she and Mr. Rodriguez do?

12 A They left at that time and went back down to Sacramento. Or
13 actually, no. They stopped at the 49'er Shell Station prior to
14 going to Sacramento.

15 Q And did Ms. Rugg describe to you leaving the note in the
16 bathroom?

17 A Yes, she did.

18 Q All right. And did Ms. Rugg say why she did that at that
19 point?

20 A She said that she basically had a change of heart and wanted
21 to make sure that Hamman got out.

22 Q Now, did you also interview Shawn Rodriguez at about 6:00 in
23 the morning on March 17?

24 A Yes, I did.

25 Q And did you give him his Miranda warnings?

26 A Yes, I did.

27 COURT: Excuse me, Counsel. Before you go to that it is
28 about ten till four.

1 MR. MARCHI: I have about five more minutes, I think.

2 COURT: Oh, okay. If you can wrap it up then before 4:00.

3 MR. MARCHI: Q And according to Mr. Rodriguez did he
4 initially -- well, did he subsequently admit his initial stories to
5 you weren't true when you first started interviewing him?

6 A That's correct.

7 Q And toward the end of the interview did he admit, well, this
8 is the real story now?

9 A Yeah. He basically said, okay, time out. Here is what
10 really happened.

11 Q And according to Mr. Rodriguez did he confirm that they were
12 taking -- that Ms. Rugg and he were taking Mr. Hamman to the
13 juvenile hall for some purpose?

14 A Yeah. They had talked when they spent the night at the
15 Elmwood about taking his car and robbing him; Mr. Hamman, that is.

16 Q And did Mr. Rodriguez confirm that, that Mr. Hamman was
17 locked up in the cell?

18 A That's correct.

19 Q And did he say who did that?

20 A Anna.

21 Q According to Mr. Rodriguez did he admit to putting the
22 toilet paper in the vent?

23 A Yes.

24 Q And during the course of that interview that's when he said
25 he didn't want to talk about the trunk?

26 A That's correct.

27 Q Okay. Did Mr. Rodriguez confirm they had the subsequent
28 carbon monoxide plan, gas him later?

1 A That's correct.

2 Q And again according to Mr. Rodriguez did he indicate to you
3 that he had, in fact, demanded the ATM card from Mr. Hamman?

4 A Correct.

5 Q And according to Mr. Rodriguez did he initially get the
6 card?

7 A I don't recall if he said he got it initially. At one point
8 he did get it.

9 Q And did Mr. Rodriguez describe putting the bookcase up
10 against the cell door in order to block the water from coming out?

11 A He did.

12 Q And did Mr. Rodriguez indicate what water level he saw
13 Mr. Hamman in?

14 A He saw the water level about three feet at one time.

15 Q And according to Mr. Rodriguez did he then again demand the
16 ATM card?

17 A That's correct.

18 Q And did he get the ATM card?

19 A I believe it was pushed under the door and Anna actually
20 retrieved it. This is according to Mr. Rodriguez.

21 Q All right. And Mr. Rodriguez did confirm having driven the
22 car belonging to Mr. Hamman?

23 A Yes. He even said in my interview, 10851, you've got me
24 right there, at one time.

25 Q At one time. And according to Mr. Rodriguez did he admit
26 going to Albertson's to get the duct tape?

27 A Yes, he did.

28 Q And according to Mr. Rodriguez did he say where he got the

1 hoses from?

2 A He said him and Anna drove out to DeWitt Center and stole
3 two hoses.

4 Q And again according to Mr. Rodriguez did he admit putting
5 the hoses together?

6 A He admitted to putting the hoses together, using something
7 like a pant leg or some fabric or something to help keep the hose
8 in the tailpipe.

9 Q And did Mr. Rodriguez indicate what was done with the other
10 end of the hose?

11 A He said it was stuck in the vent above the holding door, but
12 he wasn't specific about who put it there.

13 Q All right. And did you ever see the hole and the tissue in
14 the vent?

15 A Yes, I did.

16 Q And was that hole size consistent with the hose, sir?

17 A Yes, it was.

18 Q And according to Mr. Rodriguez, who put the hose or tried to
19 put the hose, or who put the hose in the vent above the door?

20 A He wasn't specific as to who did it.

21 Q All right. And again did Mr. Rodriguez admit to the
22 conversation about where to put Mr. Hamman's body?

23 A Yes. He said that him and -- he and Anna had talked about
24 it. He said that Anna talked about disposing of the body down at
25 Robie Point. He talked about putting the body in Griffith Quarry,
26 which I guess is in Penryn. I am not -- that's where I heard it
27 was. Anyway, he said, forget about that. It is too far to carry a
28 body.

1 Q And did Mr. Rodriguez indicate where he and Ms. Rugg
2 discussed that?

3 A I believe it was down at Mr. Romine's.

4 Q And then at a later point in time, sir, did you get from
5 Mr. Hamman some bank receipts?

6 A Yes, I did.

7 Q And was that on the same Washington Mutual account?

8 A Yes, it was.

9 Q And that's in relation to his ATM card?

10 A That's correct.

11 Q And did he point out some charges that he had made?

12 A He didn't actually point them out. I had talked to him out
13 at the Placer County Jail, had him sign a waiver so I could get
14 those records.

15 He said the transactions that I would be looking for would
16 be two \$40 withdrawals, that a dollar fifty service fee is attached
17 to each, and also a \$29 -- roughly around a \$29 charge at the Shell
18 station.

19 Q All right. And on the bank receipt was there a transaction
20 date for those, for two \$40 charges?

21 A Yes, there was.

22 Q And what was the transaction date?

23 A Let me refer to my report so I can be accurate.

24 On the actual statement the two \$41.50 or \$41.50
25 transactions down in Rocklin posted on the account on 3/17 of '03.

26 According to Karen Garcia, the assistant manager at
27 Washington Mutual, she said that those most likely were done
28 approximately two days prior to that. So they would have actually

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been done on the 15th.

MR. MARCHI: Thank you. No further questions.

COURT: We are going to have to break. When do you want to come back?

MR. MARCHI: I prefer to come back tomorrow morning, if we can.

COURT: Well, I've got a jury coming in. How much longer are we going to be?

MR. BENCA: Your Honor, I basically cut through a lot. It is going to take me two minutes to do mine.

COURT: I know it will take two minutes.

MR. BENCA: Your Honor, it will. I promise you.

MR. COHEN: My situation, your Honor, is I have two cases set for jury trial in Department 3. They both are fairly likely to resolve tomorrow.

So if it can be coordinated with Department 3, we can finish first thing in the morning, if you need to do it that way, as opposed to this afternoon.

COURT: So, what, 20 minutes in the morning you think will do it?

MR. COHEN: We will have 20 minutes of cross-examination and argument on a couple of counts.

COURT: Okay. Be here at 8:30 sharp. We should be able to work you in before the jury.

MR. BENCA: Very good, your Honor.

COURT: Thank you. 8:30 tomorrow morning.

MR. COHEN: Thank you.

(Whereupon, the proceedings were adjourned,

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to reconvene at 8:30 a.m. on Thursday,
May 29, 2003.)

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1 PROCEEDINGS

2 THURSDAY, MAY 29, 2003

8:30 A.M.

3 --c0o--

4 COURT: Okay. Let's return to the record on our preliminary
5 examination on Rodriguez and Rugg. Counsel and parties are
6 present.

7 MR. COHEN: Good morning, your Honor. I believe we are at
8 our cross-examination of the witness Detective Coe.

9 DANIEL COE,
10 witness recalled on behalf of the People, having previously been
11 duly sworn and testified, testified further as follows:

12 CROSS-EXAMINATION

13 BY MR. COHEN:

14 Q You took a statement of Anna Rugg, correct?

15 A Correct.

16 Q And you took a statement of Mr. Rodriguez in the co-
17 defendant's case?

18 A Correct.

19 Q You took a statement of Nicholas Hamman?

20 A Correct.

21 Q You also took a statement of Mr. Romine and Erin Hughes?

22 A That's correct.

23 Q Okay. And essentially they have all given you somewhat
24 overlapping versions of the events that occurred over that period
25 of time when Mr. Hamman was at the juvenile hall?

26 A Correct.

27 Q Some of the aspects of their statements were consistent with
28 each other, but some where different?

1 A Correct.

2 Q What I'm trying to kind of obtain from you, it is a bit of a
3 rundown of the sequence of events, if I could just ask you briefly.
4 There seems to have been some indication from Mr. Hamman
5 that he did not turn over the keys to his vehicle until after the
6 situation with the water level rising and falling?

7 A That's what he said, correct.

8 Q Is that consistent with the statements that were given to
9 you by the other individuals you interviewed?

10 A From the two defendants, no.

11 Q Okay. And do you have evidence that, in fact, his car --
12 or belief that his car was actually used during the time period
13 that he claimed to still have the keys?

14 A It was used during the time period. As far as when it was
15 actually first used, I'm not exactly sure.

16 Q There was about a seven-hour period between the time that
17 they initially left him alone and then came back and demanded the
18 keys and credit card and things like that?

19 A Approximately.

20 Q Okay. And is it your belief that they actually did use the
21 vehicle during that seven-hour period?

22 A According to Mr. Hamman, no, but according to the
23 defendants, they were using it.

24 Q All right. And some of the things that the defendants did
25 tell you were consistent with the things that Mr. Hamman had told
26 you, correct?

27 A Some things, yes.

28 Q For example, Ms. Rugg, her version of the early aspects of

1 the circumstances of them all coming together were an exact match
2 with what Mr. Hamman said; is that accurate?

3 A They were similar, yes.

4 Q About meeting at the Rowdy Randy's gas station?

5 A Rowdy Randy's.

6 Q Rowdy Randy's gas station. About getting a ride from the
7 Elmwood Motel?

8 A Right.

9 Q Both of them mentioned having an argument with each other
10 about what route to take to the juvenile hall, correct?

11 A Correct.

12 Q Okay. Did you ever do an investigation to determine whether
13 or not the keys could have fit underneath that door?

14 A If I recall correctly, there was a pretty good size gap
15 underneath the door.

16 Q Good size meaning like an inch, two inches?

17 A I'd say anywhere from a half-inch to an inch.

18 Q This is obviously where water would have been coming out if
19 something wasn't placed in front of the door?

20 A That's correct.

21 Q Erin Hughes said that the three had gotten in the car and
22 left during the period of time of that seven hours, isn't that
23 accurate?

24 A That's what she said, yes.

25 Q That is the same as what Mr. Rodriguez and Ms. Rugg
26 indicated to you?

27 A That's correct.

28 Q In interviewing Mr. Hamman did you conclude that he was

1 frightened by this interchange with the individuals?

2 A Yes, he was.

3 Q And did you conclude that he felt -- actually, during the
4 course of the interaction he indicated to you that Mr. Rodriguez
5 made several threats to him, isn't that accurate?

6 A That's correct.

7 Q Threatened to burn the building down while he was locked in
8 the room?

9 A That's one of them.

10 Q What were the other threats that were leveled at Mr. Hamman,
11 if you recall?

12 A He said that he would have -- if he reported them as being
13 suspects in the matter that he would have some of his H.A., Hells
14 Angels friends take care of him, or he even made mention that he
15 would shoot him with a gun that he had.

16 Q Okay. There was a discussion of him having a gun and
17 shooting him with a gun?

18 A Correct.

19 Q Okay. And also during the interaction it appeared to
20 Mr. Hamman that if he didn't comply with their requests they were
21 going to let him drown in that room, is that correct?

22 A He felt that he was going to drown, yes.

23 Q Okay. Did he indicate to you that they forced him to turn
24 over this property?

25 A Physically force? Not physically, no.

26 Q Coerced him?

27 A When the room filled up that was, I would say, coercion,
28 yes.

1 Q Okay. So he didn't want them to have the ATM card?

2 A No.

3 Q He didn't want them to have the keys to his car?

4 A No.

5 Q He didn't want them to have his money?

6 A No.

7 MR. COHEN: No further questions. Thank you.

8 CROSS-EXAMINATION

9 BY MR. BENCA:

10 Q You are lead investigator in this case, is that correct?

11 A Yes, I am.

12 Q All right. So you know all aspects of the case with regard
13 to investigation against my client, Mr. Rodriguez?

14 A I took part in all parts of the investigation, except for
15 evidence collection which was done by Detective Hutchins.

16 Q All right. Let's talk about this letter real quick, this
17 note that was left at the, what was it, the seventy- --

18 A The Shell station?

19 Q The Shell station. It was left by Ms. Rugg your
20 investigation concluded, is that correct?

21 A That's correct.

22 Q All right. And in that note there were references to the
23 fact that Mr. Hamman was drowning at the juvenile hall, --

24 A Correct.

25 Q -- correct?

26 But your investigation concluded that he was not, in fact,
27 drowning, was he?

28 A No.

1 Q All right. As a matter of fact, he was far from that, is it
2 fair to say?

3 A At the time he was discovered there wasn't enough water in
4 there to fill the room to where he could drown.

5 Q All right. And there is nothing -- your investigation
6 indicated to you that Ms. Rugg at the time she wrote that letter
7 probably was aware of that, is that fair to say?

8 MR. MARCHI: Objection. Speculation.

9 MR. BENCA: Ms. Rugg's state of mind.

10 MR. MARCHI: Correct. It would be speculation on the part
11 of this officer.

12 COURT: The question is whether Ms. Rugg at the time the
13 note was written knew the water level in the room?

14 MR. BENCA: Would have known.

15 COURT: Sustained.

16 MR. BENCA: Q Is there any indication to you at the time
17 that Ms. Rugg wrote that letter that Mr. Hamman was in fact
18 drowning?

19 A I mean she wrote down on the note that he was.

20 Q All right. But at the time that she wrote the note because
21 this all occurred around the same approximate period of time, the
22 time that the note was discovered, the time that officers went to
23 the old juvenile center, is that correct?

24 A That's correct.

25 Q Then how long of a time period between the time the note was
26 discovered or the note was written, rather, until the time that
27 Mr. Hamman was discovered in this booking room?

28 A I wasn't there that night, but I really don't know.

1 Q Mr. Hamman indicated in his interview that the water level
2 had -- the water level in the room was lowered approximately a day,
3 day and a half before that, is that correct?
4 A That it was lowered?
5 Q Yes.
6 A The water level in the room was filled late Saturday night
7 or into early Sunday morning. He was discovered early Monday
8 morning, so only a day had passed.
9 Q All right. But your investigation concluded at the time
10 that you went -- at the time the note was written Mr. Hamman was,
11 in fact, not close to drowning, is that correct?
12 A The water level in the room wasn't high at that time.
13 Q Thank you. And also Ms. Rugg indicated in that note that
14 she had been kidnapped by Mr. Rodriguez, isn't that true?
15 A That's correct.
16 Q All right. Has your investigation concluded that she was,
17 in fact, kidnapped by Mr. Rodriguez?
18 A She wasn't kidnapped.
19 Q All right. It was quite the opposite, wasn't it?
20 A Through my investigation I would say yes.
21 Q So through your investigation with regard to the letter, the
22 note that was left by Ms. Rugg, there were two inaccuracies in the
23 letter, in the note, isn't that correct?
24 A That's correct.
25 Q Did you do anything to prove that Mr. Hamman's story about
26 the water level in the booking room that he was held in?
27 Mr. Hamman stated in his interview with you that the water level
28 got above his shoulders at one point?

1 A Right.

2 Q Did you do any investigation with regard to finding out,
3 corroborating his story with regard to how high the water level was
4 in that room?

5 A The only other people that gave me an idea of how high the
6 water level was were the two defendants.

7 He was the only other person in the room, and being that the
8 room was completely drenched there was no way to tell exactly how
9 high the water level got.

10 Q All right. Did you check with regard to the seals that were
11 on the Flexiglas in the window to see if they were airtight seals?

12 A I didn't, no.

13 Q And you stated that the bottom of the door, there is an area
14 of an inch to an inch and a half beneath the door?

15 A I believe it is a half an inch to an inch.

16 Q You interviewed Mr. Romine, is that correct?

17 A That's correct.

18 Q And Mr. Romine indicated to you that he gave Mr. Rodriguez a
19 hacksaw, correct?

20 A Yes.

21 Q All right. And the purpose of giving him that hacksaw was
22 so that Mr. Rodriguez could stop the flow of water going into the
23 room?

24 A That's what he said.

25 Q And that was indicated to you by other parts of your
26 investigation, isn't that correct?

27 A By Mr. Rodriguez.

28 Q Okay. And you also found the hacksaw in his possession,

1 did you not?

2 A Detective Hutchins found it in the vehicle.

3 Q Mr. Hamman indicated to you that Mr. Rodriguez attempted to
4 break the Plexiglas out of the room with a water pipe, is that
5 correct?

6 A He did strike the Plexiglas window with a metal toilet
7 component.

8 Q And in Mr. Hamman's words, the attempt was to break the
9 Plexiglas?

10 A Correct.

11 Q All right. And your investigation concluded that a lot of
12 people, including officers, weren't aware that you can open that
13 door from the outside, is that correct?

14 MR. MARCHI: Object. That mischaracterizes the evidence.
15 Somewhat irrelevant, also.

16 MR. BENCA: Your Honor, Officer Hopping testified yesterday
17 that he, himself, and another officer that was with him were
18 confused about opening the door.

19 COURT: Your question was did a lot of officers? You may
20 rephrase.

21 MR. BENCA: Thank you, your Honor.

22 Q You were aware that two officers, Officer Hopping and --
23 A Hammond.

24 Q -- had a difficult time opening or did not realize that you
25 could open the door from the outside, correct?

26 A I believe what Officer Hopping said was it only took him
27 five minutes to figure out the door could be opened from the
28 outside.

1 Q Yeah. And he also said that he had to call the Auburn Fire
2 Department to extricate Mr. Hamman from the room?

3 A Correct.

4 Q All right. So there was the impression that you couldn't
5 open the door from the outside, would that be fair to say?

6 MR. MARCHI: I object due to relevance at this point. It is
7 very tangential at this point.

8 MR. BENCA: I don't know how it is tangential, your Honor.
9 He is charged with two counts of attempted murder, and there is
10 some indication that my client attempted to remove him from the
11 room prior to him being discovered in there, and there is some
12 evidence that officers had a difficult time or did not understand
13 that you can open the door from the outside.

14 My client's being charged with two counts of attempted
15 murder. I don't know how that is tangential.

16 COURT: How much more time are you going to spend on how
17 many officers couldn't open the door?

18 MR. BENCA: I'm pretty much through, your Honor.

19 COURT: All right. Then move on to your next question.

20 MR. BENCA: Q So it would appear to you that there was a
21 couple of officers and some others that were at the facility that
22 had a difficult -- or did not know that you can open the door from
23 the outside, isn't that correct, based on your investigation?

24 A I don't know about anyone else other than the two officers
25 at the time.

26 Q Well, in your interview with Mr. Hamman, Mr. Hamman recalls
27 Mr. Rodriguez asking Rugg where the keys to the room are, did he
28 not?

1 A I don't recall him saying that, no.

2 Q You don't dispute that that was said by Mr. Rodriguez, do
3 you?

4 MR. MARCHI: Well, objection. It has been asked and
5 answered. He doesn't recall. I don't know how he's going to
6 dispute what he doesn't recall.

7 MR. BENCA: Q Would referring to your report help you with
8 that answer?

9 A I recall Mr. Rodriguez saying to Anna Rugg to find the keys.
10 I don't recall Mr. Hamman telling me that he heard that statement.

11 MR. BENCA: Fair enough. Nothing further, your Honor.

12 MR. MARCHI: Just one question.

13 REDIRECT EXAMINATION

14 BY MR. MARCHI:

15 Q At the time Mr. Hamman indicated he gave up the ATM card was
16 he in fear of drowning, sir?

17 A That's correct.

18 Q And according to Mr. Hamman was the water still rising at
19 that time?

20 A It had risen all the way up to past his shoulders, he said.

21 Q In approximately two hours?

22 A Yes.

23 MR. MARCHI: No further questions.

24 MR. COHEN: Nothing further, your Honor.

25 MR. BENCA: Nothing further, your Honor.

26 COURT: You may step down.

27 MR. MARCHI: No further witnesses, your Honor.

28 MR. COHEN: No witnesses on behalf of Ms. Rugg.

1 MR. BENCA: And no witnesses on behalf of Mr. Rodriguez.

2 COURT: Summation?

3 MR. MARCHI: Yes. I'm just going to address a couple of
4 issues and then maybe reserve in case anything else is raised.

5 Addressing Count One, the kidnapping for extortion, that's
6 kind of a special section under CALJIC 9.53.

7 There is no requirement that the person be carried or
8 otherwise moved for any distance against their own will if you are
9 decoyed or enticed and in that fashion detained as this man was.
10 That actually is element number one under CALJIC.

11 The enticing or decoying has to be done with the specific
12 intent to detain or hold that person to commit either extortion or
13 obtain something of value from that same person, and you in fact
14 can extort property from the same victim. The Macinnés case is the
15 case law on that.

16 So I believe both elements have been shown here. Basically
17 Ms. Rugg enticed the victim to go into the holding cell purportedly
18 because the other person, Ms. Hughes, was in danger. He was pushed
19 in there, according to Mr. Hamman, by both parties and locked in
20 the cell, and of course they started demanding his property. So I
21 think those elements have been met.

22 The second part, which is an enhancement, is whether or not
23 the victim suffered bodily harm in so being detained over and above
24 the actual detention.

25 And I would submit there is some evidence of that aspect of
26 that. There is actually another aspect.

27 The enhancement can either be that the victim suffered
28 bodily harm or they were intentionally confined or kidnapped in

1 a manner which exposed that person to a substantial likelihood of
2 death. And again that's in CALJIC 9.53, and I would say certainly
3 the latter is much stronger than the former.

4 He suffered some minor injuries, minor hypothermia, thank
5 goodness, and minor trench foot which resulted in two and a half
6 hours at the hospital.

7 However, he certainly was exposed to a substantial
8 likelihood of death. In their trying to get the ATM card the water
9 had risen almost up to his neck. It was still rising, and he
10 finally gave up the card.

11 Had he not done that or had he just slipped and fell and
12 hurt himself there would be a substantial likelihood of his having
13 died when they left him in there for over two hours in the water
14 that was rising.

15 So I think we have met that, at least for the purposes of
16 getting to a jury and for this hearing.

17 With regard to the attempted murder, there were actually two
18 counts alleged, and I would submit I am only actually going to in
19 the future be charging one count.

20 I think the real attempted murder aspect arises with the
21 premeditation and deliberation when the parties came back the next
22 day having planned to dispose of the body at different sites having
23 tried to gas him by connecting up the hoses, several overt acts of
24 getting duct tape, getting hoses, connecting them, actually putting
25 them into what they thought was a vent going into the cell and
26 appeared to be so from the outside, the one hole in the tissue, and
27 actually trying to put the gas in there by connecting it up to the
28 tailpipe.

1 And that would be -- originally I had thought the water
2 could possibly be an attempted murder, but quite frankly, I think
3 more importantly the gassing is the real issue there.

4 I'm not going to address the two eleven on the rest of the
5 counts. I believe those are all pretty self-evident.

6 COURT: Mr. Cohen?

7 MR. COHEN: Thank you. Although I appreciate the District
8 Attorney's indication of his plans with respect to future charging,
9 as it is not conceded for the purposes of the preliminary hearing I
10 will ask the Court to strike Count Two and find that the evidence
11 was insufficient to find a willful, deliberate, premeditated
12 attempted murder in this case with respect to the alleged attempted
13 drowning.

14 The evidence as presented at the preliminary hearing shows
15 that the efforts to increase the water level in the room were done
16 with the specific intent to get Nicholas Hamman to turn over items
17 of property and not to kill him, and as such I'd ask the Court to
18 find that there is only one -- if the Court does find that there is
19 sufficient evidence for attempted murder, that there is only one in
20 this case.

21 The elements of attempted murder -- so the elements of
22 attempted murder, according to CALJIC 8.66, are that a direct but
23 ineffectual act was done by one person towards killing another
24 human being; and, Two, the person committing the act harbored
25 express malice aforethought, namely, a specific intent to kill
26 unlawfully another human being.

27 We are guided also by CALJIC 8.67 which further defines the
28 specific intent required for an attempted murder, that the slayer

1 must weigh and consider the question of killing and the reasons for
2 and against such choice and decide to kill. It must be a clear,
3 deliberate attempt to kill.

4 I submit that the only time you get attempted murder, as
5 opposed to actual murder in real life circumstances, is one of
6 three scenarios:

7 The first is that the person is prevented from completing
8 their task.

9 Someone alleges that somebody with a knife with the intent
10 to stab and kill them and is held back and prevented by force or
11 other means from completing the task.

12 The second is when the person has believed they have been
13 successful in completing their task and essentially leaves the
14 person for dead believing them to have been killed, and the person
15 miraculously is able to survive. The person gets stabbed 29 times,
16 left in the ditch. The person leaves that person for dead. The
17 person survives.

18 The third is when the circumstances of the attempt are such
19 that limits the ability for the person to complete the act.

20 This would be a drive-by shooting type scenario where after
21 the shooting has happened the car has moved on. They are not able
22 to complete the task.

23 None of those three circumstances are present in the instant
24 case. Mr. Hamman is locked in a cell. He is at the mercy of these
25 two individuals for a period of about three days.

26 If they truly had the specific intent and desire to kill
27 him, they could have done so.

28 I submit that the evidence shows that they merely wanted

1 to mess around with this guy and take his property.

2 Had they wanted to kill him they could have done so.

3 There was discussion of Mr. Rodriguez obtaining a gun, being
4 able to shoot him. Found in the vehicle was a large knife and a
5 hacksaw. There were plenty of opportunities if the real intent of
6 these individuals was to kill this individual for them to have done
7 so.

8 I concede that the acts themselves appear to be the kinds of
9 things that would be taken by someone who wanted to kill someone,
10 but in this type of situation the impossibility of their attempts
11 clearly demonstrate that they were really messing with this guy
12 more than anything else.

13 Further, the steps they had taken after they took these
14 dramatic steps further indicate that they did not have the
15 expressed intent to kill Mr. Hamman.

16 Mr. Rodriguez indicated to the police that he had gotten the
17 hacksaw with an intent to turn the water off, to get him out of the
18 room.

19 Ms. Rugg wrote the note, said someone go get him.

20 If these individuals wanted to have this man killed they
21 could have done so.

22 So I don't believe there is sufficient evidence that they
23 had the intent to kill for the purpose of a holding order as to
24 attempted murder.

25 I will concede for the purposes of the preliminary hearing
26 that the evidence clearly demonstrates sufficient evidence for
27 Count Four, a second-degree robbery.

28 Further, I would concede Count Six, Count Eight, Count Nine

1 and Count Ten.

2 As to Count Seven, no evidence was presented at the
3 preliminary hearing of anybody entering the Bank of America
4 building as charged in that count.

5 The evidence demonstrated that it appears Ms. Rugg used the
6 ATM card twice at the Albertson's, which would be Counts Eight,
7 Nine and Ten.

8 As to Count Five, the false imprisonment by violence, in
9 this case the false imprisonment was not effected by violence,
10 menace, fraud or deceit. False imprisonment was accomplished by
11 means of a locked door.

12 Once they turned around, shut the door with him in the room,
13 there was no violence, menace, fraud or deceit in order to keep --
14 necessary in order to effectuate that false imprisonment.

15 Once that door was locked he was in prison. So I submit
16 that that was not a false imprisonment by violence, but a simple
17 false imprisonment.

18 The principal count that I need to address is Count One, the
19 kidnap for in this case ransom under 209.

20 What we have in this case is a taking of property by force
21 or fear.

22 Mr. Hamman did not consensually turn over these items, but
23 had these items taken from him by fear, the elements of a robbery
24 as charged and as essentially admitted for purposes of the
25 preliminary hearing.

26 In looking at the code sections, if we were to hold that
27 there is no distinction between extortion and robbery and that the
28 evidence here showed both an extortion or a robbery, we would

1 essentially vitiate Section 209(b) which is a separate provision
2 for kidnapping for robbery.

3 In order for there to be sufficient evidence for kidnap for
4 robbery the intent to rob has to predate the asportation.

5 209(a) which does not have that requirement deals with a
6 different type of crime, the crime of extortion.

7 If the Court were to conclude that -- and essentially the
8 difference between extortion and robbery is the intent of the
9 victim at the time the property is turned over.

10 The jury instruction for extortion which lays out the
11 elements are as follows:

12 That a person obtained property from the alleged victim.

13 The second element is the property was obtained with the
14 consent of the alleged victim.

15 And third, the consent was induced by wrongful use of force
16 or fear.

17 Extortion is to cover a situation wherein a robbery type
18 situation the force or fear is threatened or applied to a different
19 individual than the individual who is turning over property.

20 And although there is case law support for the theory that
21 an individual can be both the person who turns over the property in
22 extortion and the person being held for that purpose, there has to
23 be some other use or other meaning to it than simply it's the same
24 as a robbery.

25 Robbery is to take by force or fear. Extortion is the
26 essential turning over of property.

27 In this case we did not have a consensual turning over of
28 property and, therefore, Section 209(a) should not lie, a finding

1 for that section.

2 If we hold that the distinction between kidnapping for
3 robbery and kidnapping for extortion is this section, it turns on
4 whether or not the individual had the item ripped from his hands or
5 handed it to him. With the same showing of force or fear we would
6 end up with a situation where the distinction between the two is
7 too subtle to warrant such disparate punishment.

8 Under the law one is life in prison without the possibility
9 of parole if the individual voluntarily turns over the property,
10 and then in the other circumstance where it is ripped from their
11 hands, an act that could be more violent, the punishment would be
12 less, life imprisonment with the possibility of parole.

13 It is my belief that you cannot have such a subtle
14 distinction under the law. There has to be meaning to the term
15 extortion for the special circumstance, for the special sentence
16 that would apply under 209(a) to apply, and I submit that what the
17 Legislature's intending in that section is to preclude a situation
18 where someone is taken so that others can return property for their
19 return.

20 COURT: Thank you.

21 MR. BENCA: With that, your Honor, I am not going to cover
22 the same aspects that Mr. Cohen did. I think he covered a lot of
23 things I would cover.

24 With that I would join in his motion for purposes of this
25 preliminary hearing.

26 I would add that under 209(a), I know Mr. Marchi said that
27 there are some factors with regard to bodily harm and he said that
28 or there is a substantial likelihood of death.

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000127

1 That's not my reading of the statute. My reading of the
2 statute is and there is a substantial likelihood of death.

3 The bodily harm requirement under 209(a), getting this out
4 of CALJIC 9.53, bodily harm means, quote, substantial injury to the
5 body of a person who was kidnapped by the application of physical
6 force above and in addition to the force which is necessarily
7 involved in the commission of kidnapping.

8 We had the doctor up there yesterday afternoon who said that
9 the harm to Mr. Hamman was minor at best.

10 Her findings, her findings at the conclusion of evaluating
11 Mr. Hamman were that he had minor trench foot, that he had minor
12 dehydration and that he had minor hypothermia.

13 Those are not substantial injuries for justification of
14 bodily harm under 209(a).

15 And so with that I would ask that the Court consider that
16 special allegation, as well, because if there is a bodily harm
17 finding that there was substantial injury to the person of
18 Mr. Hamman, which there was not, then the People can proceed with a
19 punishment of life without parole. Dropping that bodily harm
20 allegation means that they can pursue life with the possibility of
21 parole. There was no bodily harm.

22 And I join in Mr. Cohen's other statements with regard to
23 the allegations against my client.

24 Thank you.

25 MR. MARCHI: Your Honor, I might, just so the record's
26 clear, 9.53 clearly states it is or. The victim suffered bodily
27 harm, and then about five lines down, next-to-the-last paragraph,
28 or the defendant intentionally confined the person kidnapped in a

1 manner which exposed that person to a substantial likelihood of
2 death.

3 So it is an or proposition, and I believe there is
4 sufficient evidence in that regard.

5 With regard to Count Four, there is force that was used to
6 shut the door when Shawn Rodriguez kicked the victim in the foot,
7 as the victim told the detective he did in order to close the door.

8 He had tried to stick his foot in there. So he was confined by
9 force.

10 I think counsel confuses 209 and the kidnapping for robbery.

11 This, I think, is a special situation where you do have
12 both, albeit the two eleven may be 654 for sentencing.

13 Normally you have a kidnapping for robbery, you take the
14 person somewhere else and you shake them down and rob them.

15 In this particular case, as we know, the night before they
16 had talked about the plan of locking him up. They talked about
17 throwing him off the bridge and some other alternatives.

18 Mr. Rodriguez came up with the idea of locking him up at the
19 old juvenile hall. They all agreed on that, and that is what they
20 did.

21 They wanted to get his property from him, in addition, and
22 that's also what they did.

23 So clearly 209 became relevant and applicable in this
24 particular case, and it also just happens to be in this particular
25 circumstance the elements of the two eleven as I would submit is
26 probably 654 for sentencing, but certainly a crime for a jury to
27 consider along with the kidnapping in order to get, to get the
28 property from another. That other person being the victim.

1 With that I'd submit it.

2 COURT: The Court's ruling will be as follows:

3 First of all, I did take the opportunity last night to go
4 back and review my notes and review the jury instructions, the case
5 law and statutes that have been essentially discussed by counsel,
6 and I'll not go back and repeat all of those.

7 Let me just suggest that when you consider the term of
8 bodily injury or great bodily injury, typically we consider that as
9 being something significant or substantial and something that is
10 not referred to as insignificant or trivial.

11 If you review the case of Kimbrel, K-i-m-b-r-e-l, 130
12 Cal.App.3d 869, we're instructed that the term great bodily injury
13 is not a technical term, but a term commonly understandable to
14 jurors.

15 When we review the necessity to have sufficient cause for a
16 holding order the case of Hatch vs. Superior Court found at 80.
17 Cal.App.4th, page 170, instructs that sufficient cause is evidence
18 of facts that would lead a person of ordinary caution or prudence
19 to believe and conscientiously entertain a strong suspicion that a
20 crime has been committed and that the defendant is guilty of a
21 crime.

22 Cummiskey, C-u-m-m-i-s-k-e-y, vs. Superior Court found at
23 3 Cal.4th, page 1018, instructs that evidence that will support a
24 prosecution need not be sufficient to support a conviction.

25 The case of Williams vs. Superior Court found at 71 Cal.2nd,
26 page 1144, instructs that sufficient cause must be found for every
27 element of the statutory offense charged and may be based on
28 reasonable inferences drawn by the magistrate from circumstantial

1 evidence.

2 I would agree with counsel that the circumstances of this
3 event are unusual, and it is clear that depending upon what the
4 trier of fact finds considering all of the circumstances would
5 necessarily make the CALJIC instructions and the statutes that we
6 have discussed either applicable or not applicable.

7 For purposes of the preliminary examination I do find as
8 follows:

9 There is sufficient evidence to hold each defendant to
10 answer for the charge in Count One of Penal Code Section 209,
11 subparagraph (a), as felonies, and I so order, including the
12 enhancement of substantial likelihood of death or bodily harm,
13 great bodily harm.

14 Given the comments of the People and the defense Count Two
15 will be dismissed.

16 I find sufficient evidence for a holding order as to each
17 defendant on Count Three, attempted willful, deliberate,
18 premeditated murder, which is 664 slash 187, subparagraph (a), of
19 the Penal Code as a felony.

20 Similarly as to Count Four there is sufficient evidence to
21 hold each defendant to second degree robbery, Penal Code Section
22 211. So ordered.

23 Count Five, false imprisonment by violence, there is
24 sufficient evidence for a holding order. So ordered as to Penal
25 Code Section 236 on each defendant.

26 Count Six, the unlawful driving or taking of a vehicle,
27 Vehicle Code Section 10851, subparagraph (a), as a felony, there is
28 a holding order directed as to each defendant.

1 Count Seven has to do with the commercial burglary charge of
2 entering the Bank of America. There is insufficient evidence on
3 that charge as to each defendant and it is dismissed as to each
4 defendant.

5 Count Eight is the second degree commercial burglary as to
6 Albertson's. As to Anna Marie Rugg there is sufficient evidence to
7 hold her to answer on that charge as a felony. So ordered.

8 Counts Nine and Ten are each charges of Penal Code Section
9 530.5 as felonies as to each defendant, and as to each defendant on
10 each count there is a holding order directed.

11 Defendants will each be continued on a no-bail status.

12 Do you want to file an Information and set an arraignment
13 date?

14 MR. MARCHI: Yes, I would, your Honor.

15 COURT: What date would you folks like for that?

16 MR. MARCHI: I think we should set a trial at that time,
17 trial date then, your Honor, would be preferable.

18 COURT: Is it an Auburn track on a Monday?

19 MR. COHEN: May we have 6/9?

20 COURT: 6/9 for arraignment?

21 MR. COHEN: Yes.

22 COURT: Okay. Then I'll set arraignment on the Information
23 for June 9 at 8:30 in Department 13 for each defendant. I'll
24 direct appointed counsel to be present for that proceeding.

25 Date acceptable to you, Mr. Rodriguez?

26 DEFENDANT RODRIGUEZ: Yes, sir.

27 COURT: Ms. Rugg?

28 DEFENDANT RUGG: Yes.

1 COURT: Counsel join?
2 MR. MARCHI: Yes, your Honor.
3 MR. COHEN: Yes, your Honor.
4 COURT: All right. Anything further from the People?
5 MR. MARCHI: No, your Honor.
6 COURT: For Ms. Rugg?
7 MR. COHEN: No, sir.
8 COURT: Mr. Rodriguez?
9 MR. BENCA: No, sir.
10 COURT: Thank you very much.

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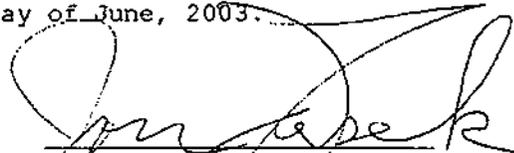
REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF PLACER)

I, JON SASEK, Certified Shorthand Reporter of the Superior Court, County of Placer, State of California, do hereby certify that the foregoing pages, 1 through 112, inclusive, comprise a full, true and correct transcript of the proceedings had in the above-entitled matter held on Wednesday and Thursday, May 28 and 29, 2003, respectively, to the best of my ability.

I also certify that if portions of the transcript are governed by the provisions of C.C.P. 237(a)(2), that all personal juror identifying information has been redacted.

IN WITNESS WHEREOF, I have subscribed this certificate at Auburn, California, this 9th day of June, 2003.


JON SASEK, CSR 1650
Official Court Reporter
County of Placer

11000134

28

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

841 62-31679
62-34689

People vs. Shawn Rodriguez Case No.: _____
Date: 7-22-02 Court met at: 8:30 Dept.: 13 Judge: COUZENS
Clerk: TOMS Reporter: KATYDS Probation: _____
Defense Counsel: PO Serafini D.D.A.: Beattie for Marzhi
Nature of Proceedings: Motion to Continue Trial Arresting Agency: Pub
Custody Status: PCJ Interpreter: _____ certified qualified Language: _____ oath on file

TCJ
NEXT COURT APPEARANCE: Motion to Continue 07-28-03 1:00 D-13

- Defendant present not present
- Arrn waived Arrn completed Viol of Prob
- Appt. Public Defender Conflict Firm
- Not guilty Denied
- Guilty Nolo contendere
- Admitted Advised
- PLX time waived 10 60 Time not waived
- Trial time waived to next date general
- Dismissed
- Amended
- Boykin/Tahl rights waived. Oral / written
____ (initial) Jury trial / Contested hearing.
____ (initial) Confrontation & examination.
____ (initial) Right to remain silent.
- Attend _____ self helps meetings per week until further order of the court
- Ordered booked/released
- Advised pymt of booking/ incarceration fees
- Advised financial resp.
- RPO waived
- Re-test ordered
- Arbuckle waiver
- Appeal waiver
- Stipulate to ProTem
- Drop
- Proof shown not shown
- Probation summarily revoked
- B/W ordered. Bail \$ _____
- Arrest warrant ordered.
- B/W stayed / held
- B/W recalled set aside
- Bail forfeited O/R revoked
- Bail exonerated
- reinstated upon payment of reinstatement fee
- Bail apply / balance exonerated
- Forfeiture set aside
- Defendant ordered to report to the:
 - Criminal Division
 - Public Defender
 - Probation Department
 - forthwith on _____

Preliminary examination waived, defendant held to answer. Court deemed Complaint to be Information.
Eval 730 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 WI 3051 with Dr.
Offer: Ruggs PC 995 motion will be heard at 1:00 PM on ~~08.04.03~~ instead of at 8:30 a.m.

Indication: 08.04.03
Date: _____

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)
Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sec/code: _____

REMANDED to custody of Sheriff until next appearance. Bail \$ _____ to be delivered to CDC / CRC per sentence.
 ORDERED RELEASED O / R DISCHARGED (present case only)
 COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
 Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.
Defendant's signature _____ Address 000135

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

62-31679

People vs. Shawn Michael Rodriguez Case No. 62-34689
Date: 7-20-03 Court met at: 830 Dept: 13 Judge: Kearney
Clerk: JONES Reporter: JONES Probation:
Defense Counsel: Pat Serafini D.D.A.: Maizhi
Nature of Proceedings: TCC / Motion to Continue TCC + JA Arresting Agency: AWB
Custody Status: PCJ Interpreter: certified qualified Language: oath on file

NEXT COURT APPEARANCE:
PC 995 08.11.03 1:00 D13 // JA 09.08.03
TD 09.09.03

- Defendant present not present.
- Arrn waived Arrn completed Viol of Prob
- Appt. Public Defender Conflict Firm
- Not guilty Denied
- Guilty Nolo contendere
- Admitted Advised
- PLX time waived 10 60 Time not waived
- Trial time waived to next date general
- Dismissed
- Amended
- Boykin/Tahl rights waived. Oral / written
- ____ (initial) Jury trial / Contested hearing.
- ____ (initial) Confrontation & examination.
- ____ (initial) Right to remain silent.
- Attend _____ self helps meetings per week until further order of the court
- Ordered booked/released
- Advised pymt of booking/incarceration fees
- Advised financial resp.
- RPO waived
- Re-test ordered
- Arbuckle waiver
- Appeal waiver
- Stipulate to ProTem
- Drop
- Proof shown not shown
- Probation summarily revoked
- B/W ordered. Bail \$ _____
- Arrest warrant ordered.
- B/W stayed / held
- B/W recalled set aside
- Bail forfeited O/R revoked
- Bail exonerated
- reinstated upon payment of reinstatement fee
- Bail apply / balance exonerated
- Forfeiture set aside
- Defendant ordered to report to the:
- Criminal Division
- Public Defender
- Probation Department
- forthwith on _____

Preliminary examination waived, defendant held to answer. Court deemed Complaint to be Information.

Eval 770 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 W 3051 with Dr. _____

Other: Motion to Continue granted

Indication: _____

Plea: _____

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)
Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sep/code: _____

- REMANDED to custody of Sheriff until next appearance. Bail \$ _____ to be delivered to CDC / CRC per sentence.
- ORDERED RELEASED O / R DISCHARGED (present case only)
- COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
- Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form. 000135
Defendant's signature _____ Address _____

8

PLACER COUNTY SUPERIOR COURT
MOTIONS / OTHER HEARINGS

Fugt 62.31679

Case No: 62.34689

Date: 8.11.03 Court met at: 100 People vs. Shawn Michael Rodriguez
Dept. 13 Judge: Mike Jones Clerk: JAMS Reporter: Leminger
Defense Counsel: Al Hagan D.D.A. March Probation:
Nature of Proceedings: PC 995 Interpreter: certified / qualified
Agency: AUS Status: PC Bail Cash Bail O/R Language: oath on file

NEXT COURT APPEARANCE:
PC 995 08.18.03 1:00 D-B

Defendant present not present
Stip Pro Tem
 B/W ordered. Bail \$
 Bail forfeited O/R revoked
 B/W stayed B/W recalled set aside
 Bail exonerated reinstated

MOTIONS:
 Discovery denied granted, with compliance.
 1538.5 PC. denied granted as to _____ submitted
Witness(es) sworn and examined: _____ Exhibit Record: _____
 995 PC denied granted as to _____ submitted
 Motion to amend Complaint/Information denied granted. Defendant waives re-arraignment. Not guilty plea(s)/denial(s) entered.
 Motion to exonerate bail denied granted. Bail bond # _____
 Motion to specify offense as a misdemeanor pursuant to P.C. 17(b) granted denied.
 Motion to terminate probation pursuant to P.C. 1203.4 granted denied.
 Motion _____ granted denied submitted

REFERRAL ORDERS:
 Referred to M. D. T. for initial review placement _____
 Court appoints Dr. _____ under the authority of Evidence Code 730 1017 to evaluate defendant pursuant to
 1368 PC 1026 PC 288.1 PC other _____
 Full Consultation
 Returned to originating court for _____ Case may be returned to M.H.C. calendar for disposition.
 Returned to originating court. Case not suitable for M.H.C.
 Report of examining expert(s) received. On stipulation of parties, presence of experts waived and matter submitted to court for decision.
 Court finds defendant IS IS NOT competent to stand trial. Criminal proceedings resumed.
 Referred to Mental Health Director for placement report.
 Placement report received and reviewed by the court. Defendant ordered placed in _____

REMANDED to custody of Sheriff until next appearance. Bail \$ _____
 to be delivered / released to _____
 ORDERED RELEASED O / R DISCHARGED (present case only)
 COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
 Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

6

PLACER COUNTY SUPERIOR COURT
MOTIONS / OTHER HEARINGS

Case No: 62-31677
62-34689

Date: 8.18.03 Court met at: 100 People vs: Shawn Michael Rodriguez
Dept: 13 Judge: Citizens Clerk: TAMS Reporter: Jones
Defense Counsel: PC Serafin D.D.A.: Marchi Probation:
Nature of Proceedings: PC 995 Interpreter: certified / qualified
Agency: AWD Status: PC Bail Cash Bail O/R Language: oath on file

*Motions 08-25-03 1:00 D-13

NEXT COURT APPEARANCE:
*TA 09.08.03 1:00 D-1 / TO 09.09.03 830 D-13A

Defendant present not present Dressed for trial.
 B/W ordered. Bail \$
 Bail forfeited O/R revoked
 B/W stayed B/W recalled set aside
 Bail exonerated reinstated

MOTIONS:
 Discovery denied granted, with compliance.
 1538.5 PC. denied granted as to _____ submitted
Witness(es) sworn and examined: _____ Exhibit Record: _____
 995 PC denied granted as to _____ submitted
 Motion to amend Complaint/Information denied granted. Defendant waives re-arraignment. Not guilty plea(s)/denial(s) entered.
 Motion to exonerate bail denied granted. Bail bond # _____
 Motion to specify offense as a misdemeanor pursuant to P.C. 17(b) granted denied.
 Motion to terminate probation pursuant to P.C. 1203.4 granted denied.
 Motion _____ granted denied submitted

REFERRAL ORDERS:
 Referred to M. D. T. for initial review placement _____
 Court appoints Dr. _____ under the authority of Evidence Code 730 1017 to evaluate defendant pursuant to
 1368 PC 1026 PC 288.1 PC other _____
 Full Consultation
 Returned to originating court for _____ Case may be returned to M.H.C. calendar for disposition.
 Returned to originating court. Case not suitable for M.H.C.
 Report of examining expert(s) received. On stipulation of parties, presence of experts waived and matter submitted to court for decision.
 Court finds defendant IS IS NOT competent to stand trial. Criminal proceedings resumed.
 Referred to Mental Health Director for placement report.
 Placement report received and reviewed by the court. Defendant ordered placed in _____

REMANDED to custody of Sheriff until next appearance. Bail \$ _____
 to be delivered / released to _____
 ORDERED RELEASED O / R DISCHARGED (present case only)
 COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
 Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

1 LEONARD K. TAUMAN, State Bar No. 051685
2 PLACER COUNTY PUBLIC DEFENDER
3 12834 Earhart Avenue
4 Auburn, California 95602
5 Telephone: (530) 885-2422

6 JESSE SERAFIN
7 Assistant Public Defender
8 State Bar No. 195586

9 Attorneys for Defendant,
10 SHAWN MICHAEL RODRIGUEZ

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

AUG 20 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By *John Mendes* Deputy

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER

12
13 THE PEOPLE OF THE STATE
14 OF CALIFORNIA,

15 Plaintiff,

16 vs.

17 SHAWN MICHAEL RODRIGUEZ,

18 Defendant.

CASE NO. 62-34689

NOTICE OF MOTION AND MOTION
TO PRESERVE EVIDENCE, COMPEL
DISCOVERY, AND FOR REVIEW OF
SUBPOENAED DOCUMENTS

DATE: AUGUST 2⁵~~2~~, 2003
TIME: 1:00 P.M. DEPT: 13
CUSTODY STATUS: IN

19
20 TO BRADFORD FENOCCHIO, DISTRICT ATTORNEY FOR PLACER COUNTY, and
21 the CLERK OF THE COURT:

22 PLEASE TAKE NOTICE that on August 26, 2003, at 1:00 P.M., or as soon thereafter
23 as the matter can be heard in the above-entitled Court, the Defendant, SHAWN MICHAEL
24 RODRIGUEZ, through his attorney, JESSE SERAFIN, Assistant Public Defender, will and
25 hereby does move the Court for the following:
26

27 Placer County
Public Defender
12834 Earhart Avenue
Auburn, CA 95602
(530) 885-2422
(530) 885-FAXX
28

000139

1 BRADFORD R. FENOCCHIO,
2 Placer County District Attorney
3 State Bar No. 80027
4 11562 B Avenue
5 Auburn, CA 95603-2687
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FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

AUG 22 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK
John Mendes Deputy

SUPERIOR COURT OF PLACER COUNTY

STATE OF CALIFORNIA

--oOo--

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,
14 Plaintiff,
15 vs.
16 SHAWN MICHAEL RODRIGUEZ,
17 Defendant.

No. 62-034689

POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT'S
MOTION TO PRESERVE EVIDENCE
AND COMPEL DISCOVERY

Date: 8/25/03
Time: 1 P.M.
Dept: 13

The People submit the following points and authorities in
opposition to defendant Rodriguez's motion to preserve evidence
and compel discovery:

I

REQUEST TO PRESERVE HALL OF NO UTILITY

Defendant Rodriguez requests that the old juvenile hall, which is scheduled to be demolished the last week of August 2003, be preserved. The county has an interest in tearing down the facility, and the defense has had five months to deal with anything on scene they think may be of assistance. The defense was allowed to tour the building in July. The request the defense makes will not produce any material evidence. The People request that the court indicate that each side has had ample time to view the scene and that the scheduled demolition be allowed to occur. The People have preserved the actual sprinkler head in as much as it is in evidence since it was seized the night of the crimes. The People are not required to preserve evidence that has no exculpatory value. California v. Trombetta (1984) 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed.2d 413; People v. Beeler (1995) 9 Cal. 4th 953, 978. For the reasons stated below, there is no exculpatory value to the current old juvenile hall.

II

COUNTY RECORDS APPARENTLY DO NOT EXIST—FURTHER TESTING IMMATERIAL

According to County official Mary Detrick, who is in charge of the demolition, a search for records of water flow has not produced any documents. The original sprinkler head in the cell was removed as evidence at the time of the crime. A new head was put in place of the old one. It is not known if the same conditions of pressure and water flow now exists at this time. It

1 is not known if the replacement head is of the same rating as the
2 one removed.

3 Mike Cassady has informed the parties that 100 pounds of
4 water pressure had existed in the sprinkler system on the average
5 and that the flow rate should have been approximately 14 gallons
6 per minute of the type of head removed from the system. The flow
7 rate is a rough one based on Mr. Cassady calling personnel that
8 deal with the type of sprinkler head removed from the premises.

9 The defense requests that the water system be turned back on
10 to measure current water flow. The conditions that existed in
11 March 2003 in the water system may or may not be identical at
12 this time. Water pressure varies depending on the time of year,
13 time of day, and day of week in any city water system. It is not
14 known what the exact specifications were at the time of the
15 weekend of the crime. Furthermore, the old sprinkler head was
16 removed as evidence and the inner seal is no longer operative
17 because that is the design of the sprinkler head. All inner doors
18 of the old hall to include the cell door have been removed. To
19 try to duplicate the conditions at this time would be impossible.
20 Furthermore, letting out more water on the premises of the old
21 hall will just add to the demolition problem.

22 To put this matter into perspective, the victim states that
23 the water level was shoulder high. The victim stands
24 approximately 5 feet 6 inches. Therefore, he claims the water
25 reached less than five feet high. Defendant Rodriguez described
26 the water as waist high—it is not known if he meant his own waist
27 or the victim's. Defendant Rugg described the water as three
28

1 feet high. It would be impossible at this time to really narrow
2 the range from 36 inches to about 56 inches high depending on
3 whom you believe. There are too many variables (water pressure,
4 a different sprinkler head, whether the system will be at the
5 same pressurized level now that it has been turned off, the time
6 of year of the offense compared to now) to include the fact that
7 the original pressure level and water flow rate on the weekend of
8 March 15 through March 17, 2003 was not known. What is known is
9 that police officers describe the entire hall as being in a
10 flooded condition. Water was seen outside the premises when
11 police arrived as well. The sprinkler was still going at the
12 time the police rescued the victim. The police describe the
13 premises as containing a lot of water.

14 Any calculation based on the average 100 pound pressure and
15 an educated estimate of 14 gallons per minute over the time frame
16 of approximately 1 P.M. March 15, 2003 until 2 A.M. March 17,
17 2003 would be a guess. To try to duplicate the conditions would
18 be impossible at this time for the reasons stated above. The
19 outside of the cell was sealed after a fashion with duct tape. A
20 bookcase was placed up against the bottom of the door to keep
21 more of the water in the cell. It is not known how airtight the
22 conditions were. Therefore, the People would request that the
23 motion be denied and that the Court order that the County be
24 allowed to proceed with demolition. All parties have had the
25 opportunity to view the premises and have done so. The
26 experiment the defense wants to conduct will not produce any
27 material or credible evidence. The jury will simply have to

28

1 judge the credibility of the witnesses who will be subjected to
2 cross-examination. Any flow test at this time would not have
3 exculpatory value because it would be mere speculation. It is
4 impossible to duplicate the exact conditions at the time frame of
5 the crimes.

6 III

7 THE PEOPLE HAVE COMPLIED WITH 1054 OF THE PENAL CODE

8 The People do not have in its possession any police reports
9 regarding pending charges in Yolo against defendant Rugg.
10 Defendant Rugg's attorney has not requested this information.
11 The People have not sought such reports because they are
12 irrelevant to the proceedings before this court. The public
13 defender received a letter dated July 29, 2003 a copy of which is
14 attached as Exhibit "A" which outlines the case law in this area.
15 People v. Superior Court (Barrett) (2000) 80 Cal.App.4th 1305,
16 1319-1321 held that the prosecution has no duty to obtain records
17 in the possession of another agency. The People do not exercise
18 any control over any such reports. There is a felony case
19 pending against Defendant Rugg in Yolo County and the Public
20 Defender has been made aware of the jurisdiction, type of crimes,
21 and date of occurrence. The Yolo County matter has not yet been
22 adjudicated. Evidence of prior felony convictions can be offered
23 for impeachment. There are no felony convictions from Yolo
24 County. People v. Santos (1994) 30 Cal.App.4th 169, 176; People
25 v. Allen 1986) 42 Cal.3d 1222, 1270. Inquiry into the
26 circumstances and underlying facts of the felony is prohibited
27 when the evidence is offered for impeachment purposes. People v.

28

1 Santos, supra, at p. 176; People v. Heckathorne (1988) 202
2 Cal.App.3d 458,462. The pending matter in Yolo County has no
3 other possible purpose than impeachment value of which such value
4 is nonexistent. There are no known connections between the Yolo
5 County matter and this case. If the Public Defender thinks
6 something from that matter is needed, People v. Superior
7 Court(Barrett), supra, 1319-1321, suggests that the remedy is a
8 subpoena duces tecum to the appropriate agency-Yolo County. The
9 People request that this motion be denied.

10 IV

11 DISCOVERY OF CDC RECORDS IMPROPER

12 In the letter of July 29, 2003 authority is again cited
13 regarding records in another agency's possession. Furthermore,
14 the underlying facts of any conviction in prison or any conduct
15 in prison is prohibited pursuant to People v. Santos and People
16 v. Allen cited above. Any conduct of the victim in prison would
17 be immaterial to the proceedings before this court. It would be
18 improper to inquire behind any conviction that may involve moral
19 turpitude. The date of conviction, the fact of a felony
20 conviction, and the crime is all that is permitted for
21 impeachment. Any material in victim's file would be
22 inadmissible, immaterial, and improper. There is no need for an
23 in camera review of the documents. The public defender has not
24 cited any authority for the release of these documents or any
25 justification for the court to review the file in camera. The
26 People request that this motion be denied based on the authority
27 cited above.

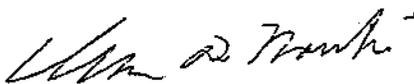
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CONCLUSION

The People request that all of defendant Rodriguez' motions be denied. No authority is cited in defendant's motions for any of the requested materials. The People have supplied the defense with all the materials in its possession. Wherefore, the People request that all motions be denied. The People also request that the court order that the premises of the old juvenile hall no longer have to be preserved. All parties have had an opportunity to view the premises and ample notice regarding the pending demolition date.

DATED: August 21, 2003

BRADFORD R. FENOCCHIO
DISTRICT ATTORNEY

BY: 
WILLIAM D. MARCHI
DEPUTY DISTRICT ATTORNEY



BRADFORD R. FENOCCHIO
DISTRICT ATTORNEY

PLACER COUNTY DISTRICT ATTORNEY

11562 "B" Avenue • Auburn, CA 95603-2600
530 889-7000 • FAX 530 889-7122

www.placer.ca.gov

July 29, 2003

Jesse Serrafin
Placer County Public Defender
Sent by Fax 530-885-3299

Re: People v. Rodriguez & Rugg
Case # 62-034689

Dear Jesse:

With regard to your request for discovery of records of criminal history, convictions, arrests, etc. contained in your letter of July 22, 2003, I am attaching my previous letter to Mr. Benca of April 10, 2003 and will add any additional information. Pursuant to 1054.1 of the Penal Code, you are entitled to all felony convictions of material witnesses. In addition I will provide information regarding any misdemeanor convictions of moral turpitude value, and any matters that are pending and unresolved. For the reasons explained below, I will not be supplying the actual rap sheets, any arrests that did not result in a felony conviction or misdemeanor conviction of moral turpitude value, unless they are still pending, or any reports regarding any such matters.

The People must disclose the record of a felony conviction of a material witness, but they need not disclose the actual rap sheet. If a felony conviction exists, the matter must be disclosed. People v. Little (1997) 59 Cal.App.4th 426, 433. Rap sheets themselves should not be disclosed. People v. Roberts (1992) 2 Cal.4th 271, 308; Penal Code Section 11142; People v. Santos (1994) 30 Cal.App.4th 169, 176. "Evidence of prior felony convictions offered for impeachment purposes is restricted to the name or type of crime and the date and place of conviction." People v. Santos, supra, at page 176 citing People v. Allen (1986) 42 Cal.3d 1222, 1270. Inquiry into the circumstances and underlying facts of the felony is prohibited when the evidence is offered for impeachment purposes only. People v. Santos, supra, at page 176; People v. Heckathorne (1988) 202 Cal.App.3d 458, 462.

Page 1 of 3

EXHIBIT A

000149

As far as obtaining reports from other agencies regarding any prior convictions or pending matters, the courts cannot require the prosecution to obtain records in the possession of another agency unless the People are in possession of the matters or the prosecution has the right to exercise control over the material. People v. Superior Court(Barrett) (2000) 80 Cal.App.4th 1305, 1319-1321. I do not have any reports of prior felony convictions of Mr. Hamman or Ms. Rugg, nor do I exercise any control over them. In the Barrett matter, the court indicated the remedy is for the defense to issue a subpoena duces tecum for any such reports. Some justification for such documents would have to be indicated since the agency involved may try to quash such a request. The only relevance of any prior convictions of the material witnesses is for impeachment. Therefore, inquiry into the underlying facts of any such convictions is prohibited. People v. Santos, supra, at page 176.

The only changes to the records previously disclosed in my April 10, 2003 letter are as follows:

1. NICHOLAS HAMMAN—new arrest on 5/8/03, 23152 a and 23152b, in Placer County—ESC 8/6. The rest of his record is the same.
2. ERIN HUGHES—received diversion and is pending review 1/14/04 on the Placer County case of two counts of 470 PC, specified misdemeanors which occurred on 3/18/03. In addition she was charged with 537 PC, specified infraction, Placer County, on 3/11/03 which she received diversion. This resolution occurred in mental health court on both matters.
3. RICHARD ROMINES—His record is the same. However, the entry of 12/27/91 should read 12/27/89. Otherwise, there are no changes.

In addition other witnesses' records are as follows:

1. ROBERT HAMMER—10/30/90—Assault 2nd degree, felony, Yamhill County, Oregon; 4/2/91—Assault 3rd degree w/firearm, felony, Yamhill County, Oregon.
2. KAREN GARCIA—no record.

With regard to Anna Rugg, as I disclosed in previous ESCs, she had pending as of 11/02—459 PC 1st, 10851, CVC, 496 PC, 182 PC in Yolo County; 3/11/03, 459 PC 2nd, Placer County, was declined. 3/11/03, 537 PC, specified infraction, pending—just arraigned in Court on 7/28/03.

The above information together with the letter of 4/10/03 should meet your discovery request. I do intend to proceed to trial on 9/9/03. If you believe you are entitled to any additional information, I would suggest you file a discovery motion as

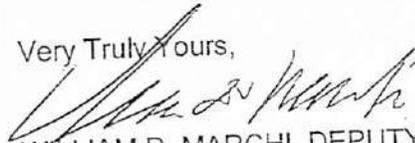
BRADFORD R. FENOCCHIO
DISTRICT ATTORNEY

PLACER COUNTY DISTRICT ATTORNEY
11562 "B" Avenue • Auburn, CA 95603-2687
530 889-7000 • FAX 530 889-7000

www.placer.ca.gov

as soon as possible. I will not be in agreement to any further continuances. Your office has been assigned this matter since March 19, 2003.

Very Truly Yours,



WILLIAM D. MARCHI, DEPUTY DA

CC: DAVID COHEN, CONFLICTS
BY FAX

Page 3 of 3

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9

PLACER COUNTY SUPERIOR COURT
MOTIONS / OTHER HEARINGS

Case No: 62-34687

Date: 8-25-03 Court met at: 1:00 People vs: Shawn Michael Rodriguez
Dept: 13 Judge: COUZENS Clerk: TOMS Reporter: JONES
Defense Counsel: A. S. S. S. S. D.D.A.: MARZU Probation:
Nature of Proceedings: MOTION TO P.C. SUD. COMPEL Interpreter: AS. KOUZOS certified / qualified
Agency: AWS Status: Bail Cash Bail O/R Language: _____ oath on file

NEXT COURT APPEARANCE:
TA 09 08.03 1:00 D-1 dressed for trial

Defendant present not present
 B/W ordered. Bail \$ _____
 Bail forfeited O/R revoked
 B/W stayed B/W recalled set aside
 Bail exonerated reinstated

MOTIONS: denied as to water.
 Discovery denied granted, with compliance. submitted
 1538.5 PC. denied granted as to _____
Witness(es) sworn and examined: Yolo Co. Police Report Exhibit Record: _____
ODC Records - granted (in camera review)
A request for 290 records for return - granted
 995 PC denied granted as to _____
 Motion to amend Complaint/Information denied granted. Defendant waives re-arraignment. Not guilty plea(s)/denial(s) entered.
 Motion to exonerate bail denied granted. Bail bond # _____
 Motion to specify offense as a misdemeanor pursuant to P.C. 17(b) granted denied.
 Motion to terminate probation pursuant to P.C. 1203.4 granted denied.
 Motion _____ granted denied submitted

REFERRAL ORDERS:
 Referred to M. D. T. for initial review placement _____
 Court appoints Dr. _____ under the authority of Evidence Code 730 1017 to evaluate defendant pursuant to
 1368 PC 1026 PC 288.1 PC other _____
 Full Consultation
 Returned to originating court for _____ Case may be returned to M.H.C. calendar for disposition.
 Returned to originating court. Case not suitable for M.H.C.
 Report of examining expert(s) received. On stipulation of parties, presence of experts waived and matter submitted to court for decision.
 Court finds defendant IS IS NOT competent to stand trial. Criminal proceedings resumed.
 Referred to Mental Health Director for placement report.
 Placement report received and reviewed by the court. Defendant ordered placed in _____

REMANDED to custody of Sheriff until next appearance. Bail \$ _____
 to be delivered / released to _____
 ORDERED RELEASED O / R DISCHARGED (present case only)
 COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
 Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

00015

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

AUG 28 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
)	No. 62-34689
Plaintiff,)	
vs.)	
)	ORDER RE: DISCOVERY OF
SHAWN MICHAEL RODRIGUEZ and)	CDC RECORDS OF VICTIM
ANNA MARIE RUGG,)	
)	
Defendants.)	
_____)	

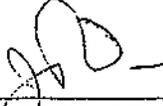
The defendant Rodriguez's request for records of the California Department of Corrections regarding NICHOLAS WILLIAM HAMMAN is granted. In order to protect the confidentiality of the names of other inmates and correctional personnel, the information is being released to counsel for the parties under the following restrictions:

1. The information shall be used solely for the purposes of the defense or prosecution of the instant case.
2. None of the reports or information shall be disclosed to any other person except an

investigator of the parties, and then only for the purposes of preparation for trial in the instant case.

3. None of the records shall be disclosed to the defendants.
4. The names of other inmates or any correctional staff shall not be disclosed to the defendants.
5. The records are released to counsel for RODRIGUEZ for copying and distribution to all other counsel in the case.

Dated: August 28, 2003



J. RICHARD COUZENS
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

CASE NAME: PEOPLE vs. RODRIGUEZ AND RUGG

CASE NUMBER: 62-34689

I am employed by Placer County in the State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 101 Maple Street, Auburn, California 95603. On August 28, 2003 I served the following document described as:

ORDER RE: DISCOVERY OF CDC RECORDS OF VICTIM

by placing a true copy thereof for collection and mailing so as to cause it to be mailed on the above date, following standard court practices, in sealed envelopes addressed as follows:

PLACER COUNTY DISTRICT ATTORNEY

PLACER COUNTY PUBLIC DEFENDER

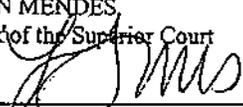
LAW OFFICE OF MARK BERG – CONFLICT FIRM

I am readily familiar with the county's practice of collection and processing correspondence for mailing. Under such practice this document would be deposited with the U.S. Postal Service and/or interoffice mail on that same day with postage fully prepaid at Auburn, California, in ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated and executed at Auburn, California on August 28, 2003.

JOHN MENDES
Clerk of the Superior Court

by: 
L. Tomis, Deputy Clerk

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

People vs Shawn Michael Rodriguez Case No.: 02-34689
 Date: 09.08.03 Court met at: 1:00 Dept.: 01 Judge: Pineda
 Clerk: N. N. N. N. N. Reporter: Babbitt Probation: _____
 Defense Counsel: PD D.D.A.: Manke
 Nature of Proceedings: Trial Assignment Arresting Agency: AUB
 Custody Status: PC Interpreter: _____ certified qualified Language: _____ oath on file

NEXT COURT APPEARANCE:
D3 9/8/03 1:35 pm

- | | | |
|--|---|--|
| <input type="checkbox"/> Defendant present <input checked="" type="checkbox"/> Not present. | <input type="checkbox"/> Ordered booked/released | <input type="checkbox"/> Probation summary revoked |
| <input type="checkbox"/> Arm waived <input type="checkbox"/> Arm completed <input type="checkbox"/> Viol of Prob | <input type="checkbox"/> Advised pymt of booking/ incarceration fees | <input type="checkbox"/> B/W ordered. Bail \$ _____ |
| Appt. <input type="checkbox"/> Public Defender | <input type="checkbox"/> Advised financial resp. | <input type="checkbox"/> Arrest warrant ordered. |
| <input type="checkbox"/> Conflict Firm | <input type="checkbox"/> RPO waived | <input type="checkbox"/> B/W stayed / held |
| <input type="checkbox"/> Not guilty <input type="checkbox"/> Denied | <input type="checkbox"/> Re-test ordered | <input type="checkbox"/> B/W recalled set aside |
| <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo contendere | <input type="checkbox"/> Arbuckle waiver | <input type="checkbox"/> Bail forfeited <input type="checkbox"/> O/R revoked |
| <input type="checkbox"/> Admitted <input type="checkbox"/> Advised | <input type="checkbox"/> Appeal waiver | Bail <input type="checkbox"/> exonerated |
| PLX time waived <input type="checkbox"/> 10 <input type="checkbox"/> 60 <input type="checkbox"/> Time not waived | <input type="checkbox"/> Stipulate to ProTem | <input type="checkbox"/> reinstated upon payment of reinstatement fee |
| Trial time waived <input type="checkbox"/> to next date <input type="checkbox"/> general | <input type="checkbox"/> Drop | <input type="checkbox"/> Bail apply / balance exonerated |
| <input type="checkbox"/> Dismissed | Proof <input type="checkbox"/> shown <input type="checkbox"/> not shown | <input type="checkbox"/> Forfeiture set aside |
| <input type="checkbox"/> Amended | | |
| <input type="checkbox"/> Boykin/Tahl rights waived. Oral / written | | Defendant ordered to report to the: |
| _____ (initial) Jury trial / Contested hearing. | | <input type="checkbox"/> Criminal Division |
| _____ (initial) Confrontation & examination. | | <input type="checkbox"/> Public Defender |
| _____ (initial) Right to remain silent. | | <input type="checkbox"/> Probation Department |
| <input type="checkbox"/> Attend _____ self helps meetings per week until further order of the court | | <input type="checkbox"/> forthwith <input type="checkbox"/> on _____ |

Preliminary examination waived. defendant held to answer. Court deemed Complaint to be Information.
 Eval 730 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 WI 3051 with Dr. _____

Offer: _____

Indication: _____

Plea: _____

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)
 Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sec/code: _____

REMANDED to custody of Sheriff until next appearance. Bail \$ 0aset to be delivered to CDC / CRC per sentence.
 ORDERED RELEASED O / R DISCHARGED (present case only)
 COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
 Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing. 000157

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.
 Defendant's signature _____ Address _____

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

People vs Shawn Michael Rodriguez Case No. 02-34689
 Date: 9/8/03 Court met at: 135 Dept.: 3 Judge: Kearney
 Clerk: Murphy Reporter: KARLOS Probation: 0
 Defense Counsel: PD Serajia D.D.A.: Marke
 Nature of Proceedings: TRIAL Arresting Agency: APD
 Custody Status: IC Interpreter: _____ certified qualified Language: _____ oath on file

NEXT COURT APPEARANCE:

Trial 9-9-03 D3 9am

- | | | |
|--|---|--|
| <input type="checkbox"/> Defendant present <input checked="" type="checkbox"/> Not present. | <input type="checkbox"/> Ordered booked/released | <input type="checkbox"/> Probation summarily revoked |
| <input type="checkbox"/> Arrn waived <input type="checkbox"/> Arrn completed <input type="checkbox"/> Viol of Prob | <input type="checkbox"/> Advised pymt of booking/ incarceration fees | <input type="checkbox"/> B/W ordered. Bail \$ |
| Appt. <input type="checkbox"/> Public Defender | <input type="checkbox"/> Advised financial resp. | <input type="checkbox"/> Arrest warrant ordered. |
| <input type="checkbox"/> Conflict Firm | <input type="checkbox"/> RPO waived | <input type="checkbox"/> B/W stayed / held |
| <input type="checkbox"/> Not guilty <input type="checkbox"/> Denied | <input type="checkbox"/> Re-test ordered | <input type="checkbox"/> B/W recalled set aside |
| <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo contendere | <input type="checkbox"/> Ar buckle waiver | <input type="checkbox"/> Bail forfeited <input type="checkbox"/> O/R revoked |
| <input type="checkbox"/> Admitted <input type="checkbox"/> Advised | <input type="checkbox"/> Appeal waiver | Bail <input type="checkbox"/> exonerated |
| PLX time waived <input type="checkbox"/> 10 <input type="checkbox"/> 60 <input type="checkbox"/> Time not waived | <input type="checkbox"/> Stipulate to ProTem | <input type="checkbox"/> reinstated upon payment of reinstatement fee |
| Trial time waived <input type="checkbox"/> to next date <input type="checkbox"/> general | <input type="checkbox"/> Drop | <input type="checkbox"/> Bail apply / balance exonerated |
| <input type="checkbox"/> Dismissed | Proof <input type="checkbox"/> shown <input type="checkbox"/> not shown | <input type="checkbox"/> Forfeiture set aside |
| <input type="checkbox"/> Amended | | |
| <input type="checkbox"/> Boykin/Tah) rights waived. Oral / written | | Defendant ordered to report to the: |
| _____ (initial) Jury trial / Contested hearing. | | <input type="checkbox"/> Criminal Division |
| _____ (initial) Confrontation & examination. | | <input type="checkbox"/> Public Defender |
| _____ (initial) Right to remain silent. | | <input type="checkbox"/> Probation Department |
| <input type="checkbox"/> Attend _____ self helps meetings per week until further order of the court | | <input type="checkbox"/> forthwith <input type="checkbox"/> on _____ |

Preliminary examination waived, defendant held to answer. Court deemed Complaint to be Information.
 Eval 730 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 WI 3051 with Dr. _____

Offer: _____
 Indication: _____

Plea: Witnesses David Chadwick, Tan Grimes and Travis Wiley are ordered to return 9-23-03 D3 at 9am

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)
 Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sec/code: _____

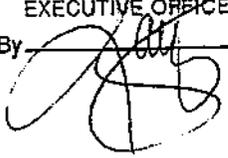
- REMANDED to custody of Sheriff until next appearance. Bail \$ AS Set to be delivered to CDC / CRC per sentence.
- ORDERED RELEASED O / R DISCHARGED (present case only)
- COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
- Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing. 000158

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.
 Defendant's signature _____ Address _____

1 BRADFORD R. FENOCCHIO,
2 Placer County District Attorney
3 State Bar No. 80027
4 11562 B Avenue
5 Auburn, CA 95603-2687
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FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

SEP 08 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By  Deputy

SUPERIOR COURT OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,
14 Plaintiff,
15 vs.
16 SHAWN MICHAEL RODRIGUEZ and ANNA
17 MARIE RUGG,
18 Defendant.

No. 62-034689

MOTION IN LIMINE

Date: 9/9/03
Time: 8:30 A.M.
Dept: TO BE ASSIGNED

The People request that the trial court consider and rule on the issues outlined below prior to the selection of a jury in the above-captioned matters. Rulings on this matter are critical to jury selection and any opening statement that will be made by the People.

STIPULATION REGARDING PHOTOGRAPHS

1
2
3 The People have supplied the defense with thumbnails of the
4 photographs they intend to present in their case in chief. The
5 People request a stipulation from the defense that the
6 photographs contained in the photograph exhibit book, which will
7 be offered into evidence for the jury to use in the jury room,
8 are identical to the photos to be projected on a screen for the
9 jury during the trial. The People will request that the court
10 clerk mark the photos in the photo book as exhibits in the same
11 order as the thumbnails, so that the images projected can simply
12 be referred to by exhibit number. This procedure would be
13 efficient instead of having each witness manually compare each
14 photo in the book to the one projected on the screen. The photos
15 in the photo book are in the same order and were produced from
16 the same set of digital photos supplied in discovery to all
17 parties as the thumbnails supplied from trial director. The
18 People will make the scanner available to the defense during
19 trial for projecting the thumbnails provided by the People during
20 their cross examination or for their direct examination of
21 witnesses.

22 Absent a stipulation by defense, the court could take
23 judicial notice pursuant to Evidence Code Section 452 that the
24 projected photos from the thumbnails are the same as the photos
25 marked in the exhibit book. The court can rule that the projected
26 photos will be referred to by the same exhibit numbers as marked
27 in the book so that the record is clear. It will be necessary to
28

1 state on the record what numbered exhibit is being projected to
2 the jury as they are being projected to the witnesses, so that
3 the court reporter can make a clear transcript. If the defense
4 has any objections to the use of any of the proposed photos, I
5 request that such objections be tendered within this motion in
6 limine and ruled on by the court prior to jury selection.

7 II

8 USE OF PRIOR CONVICTIONS FOR IMPEACHMENT

9 Prior felony convictions that involve moral turpitude are
10 admissible to impeach a witness's testimony. People v. Castro
11 (1985) 38 Cal.3d 301, 306, 211 Cal.Rptr. 719; Cited in People v.
12 Feaster (2002) 102 Cal.App.4th 1084, 1091; Evidence Code Section
13 788. Moral turpitude is defined as the "general readiness to do
14 evil". Castro, supra at p. 314; People v. Barnett (1998) 17
15 Cal.4th 1044, 1126-1127, 74 Cal.Rptr.2d 121. It is noted that
16 "the least adjudicated elements of the conviction necessarily
17 involve moral turpitude" to make the conviction admissible for
18 impeachment. Castro, supra at p. 317.

19 It is necessary that the conviction be a felony to be used
20 for impeachment. If a crime is a wobbler and the court imposes
21 a misdemeanor sentence, the conviction cannot be used for
22 impeachment. People v. Martinez (1998) 62 Cal.App.4th 1454, 73
23 Cal.Rptr.2d 358.

24 The court retains discretion to weight the probative value
25 of a felony conviction involving moral turpitude against undue
26 prejudice pursuant to a balancing test under Evidence Code
27 Section 352. Courts have considered the age of the prior felony

28

1 convictions and whether or not there are any subsequent
2 violations of the law. People v. Pitts (1990) 223 Cal.App.3d
3 1547, held conviction more than 10 years old cannot be used for
4 impeachment. People v. Morris (1991) 53 C.3d 152, 194, held that
5 9 year old convictions were not too remote. People v. Massey
6 (1987) 192 Cal.App.3d 819, 825 held that a prior conviction 12
7 years old was not too remote when the defendant was incarcerated
8 for most of the intervening period. People v. Campbell (1994)
9 held that a conviction 10 years old was not too remote since
10 defendant had other convictions. The balancing test is in the
11 sound discretion of the trial court.

12 The witness Robert Hammer has two prior felonies—10/90
13 Assault 2nd degree and 4/2/91 Assault with firearm out of the
14 state of Oregon. I do not show any other convictions for this
15 witness. Therefore, under the above authority, the People would
16 move to exclude the use of these convictions pursuant to Evidence
17 Code Section 352. The convictions are remote. Mr. Hammer was
18 born 7/3/71 and would have been 19 years old at the time of his
19 last conviction. The probative value seems outweighed by undue
20 prejudice since the convictions are 12 years old with no
21 subsequent convictions.

22 Erin Hughes does not have any felony convictions. Her
23 misdemeanor conviction has been resolved. There are no
24 impeachable offenses.

25 Richard Romines does not have any felony convictions. There
26 are no impeachable offenses.

27
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1 Nicholas Hamman's record consists of the following
2 convictions: 6/85-Forcible Sodomy, felony; 3/96-476a PC, felony;
3 3/98-12021 PC, felony, 12025 PC, misdemeanor; and 7/02-4501.1 PC,
4 felony. In terms of the 1985 conviction, the undue prejudice
5 would outweigh the probative value of impeachment. The
6 conviction is in the state of Missouri and is quite old. There
7 are more current felonies to impeach the witness with to include
8 the March 1996 476 PC and March 1998 12021 PC conviction. The
9 People would move to exclude the 1985 conviction. The risk is
10 that improper jury nullification would occur because of the old
11 conviction, and the only purpose of the defense in tendering such
12 a conviction, in light of the more recent ones, is to try to
13 throw dirt on the witness who is the victim in this matter. In
14 view of the more recent felonies, the undue prejudice would far
15 outweigh probative value of impeachment. With regard to the 7/02
16 4501.1 PC conviction, it appears to be a crime of moral
17 turpitude. A battery on a policeman or inmate has been held to
18 be crimes involving moral turpitude. People v. Lindsay (1989)
19 209 Cal.App.3d 849,857; People v. Clarida (1988) 197 Cal.App.3d
20 547. With this recent felony conviction to impeach the victim,
21 the 1985 conviction seems to have even less probative value
22 compared to undue prejudice. The People request that the court
23 rule on the admissibility of the felony convictions for
24 impeachment purposes prior to the selection of a jury.

25 With regard to defendant Rodriques, the People would use his
26 prior felonies for impeachment should he choose to testify. His
27 adult convictions consist of a 2001 12021 PC, as a felony and a
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1 10/02 felony convictions for 10851 CVC and a 496D PC. The People
2 intend to impeach defendant Rodrigues with these felonies should
3 he testify.

4 Defendant Rugg does not have any felony convictions.

5 III

6 SEVERANCE ISSUES

7 Defendant Rugg has made a motion to sever her trial from
8 that of Defendant Rodriguez. Both defendants confess to having
9 committed the acts of confining the victim, taking his property
10 as a result of such confinement, and trying to kill the victim by
11 carbon monoxide poisoning. Defendant Rodriguez made statements
12 to witnesses Romines and Hughes in furtherance of Rodriguez and
13 Rugg's conspiracy to kill the victim. Rodriguez's statements in
14 furtherance of said conspiracy are admissible against both
15 Rodriguez and Rugg whether or not there is a joint or separate
16 trial. People v. Gant (1967) 252 Cal.App.2d 101,111; People v.
17 Morales (1968) 263 Cal.App.2d 368,374; People v. Brawley (1969) 1
18 Cal.3d 277, 286; People v. Roberts (1992) 2 Cal.4th 271, 304.

19 Each defendant admits to going to the juvenile hall and
20 confining the victim. Each version is a little different without
21 any real legal distinction. Each defendant admits to returning
22 to the hall to find that the victim had activated the overhead
23 sprinkler in the cell which had water in it. Each defendant
24 admits to assisting the other in putting a bookcase in front of
25 the cell door to block the escape of water from under the cell
26 door. Each defendant admits to returning to the hall at a later
27 time after obtaining victim's ATM card and trying to gas the

28

1 victim. The confessions may well be able to be redacted so that)
2 one trial can be presented.

3 If the court determines that redaction is not a remedy in
4 this case, the People would suggest impaneling dual juries in
5 this matter. This procedure has been authorized in a number of
6 cases. People v. Harris (1989) 47 Cal.3d 1047; People v. Wardlow
7 (1981) 118 Cal.App.3d 375. This procedure would save time for
8 the courts and would accommodate two out of state witnesses who
9 would only have to appear once. The People request that the
10 court rule on this issue prior to jury selection.

11 IV

12 RULINGS ON SPECIFIED JURY INSTRUCTIONS

13 The People have submitted an initial set of jury
14 instructions for the court that may be supplemented at the end of
15 the case with additional ones if needed. The People have also
16 drafted a special instruction regarding attempted murder that has)
17 been submitted. The People request a ruling regarding the use of
18 these instructions prior to the selection of the jury. Authority
19 for the special instruction is included. The People intend to use
20 these instructions in its opening statement.

21 V

22 USE OF INCIDENT RECORDS OF RODRIGUEZ

23 The People have discovered incident reports of Defendant
24 Rodriguez to both defense attorneys. The People do not intend to
25 use these matters in its case in chief and do not anticipate any
26 relevance of these matters to the case before this court. The
27 People would request the court to rule on the admissibility of
28

1 these matters. Despite Proposition 8, evidence of impeachment
2 involving uncharged acts is admissible when relevant to honesty
3 or veracity. People v. Harris (1989) 47 Cal. 3d 1047. The court
4 may exclude such evidence pursuant to Evidence Code Section 352.
5 The court needs to weigh the probative value against consumption
6 of time, danger of undue prejudice, or mislead the jury. People
7 v. Jennings (1991) 53 Cal. 3d 334, 372; People v. Morse (1992) 2
8 Cal.App.4th 620; People v. Hayes (1992) 3 Cal.App.4th 1238.

9 It does not appear that write ups in jail are sufficiently
10 probative. They should be excluded.

11 VI

12 IMPEACHMENT WITH PRIOR ACTS

13 Defendant Rodriguez had sought CDC records of misconduct in
14 prison by Victim Hamman. The People would move to exclude this
15 evidence as not having any probative value. Such matters would
16 not be relevant to impeaching the victim for honesty or veracity.
17 Furthermore, to the extent that it has any probative value it
18 should be excluded pursuant to Evidence Code Section 352.

19 Defendant Rodriguez also sought information on Victim
20 Hamman's 290 registration history. The People move to keep out
21 this information pursuant to Evidence Code Section 352. There
22 does not seem to be any relevance regarding this information.
23 The victim was also current on his registration. The fact that
24 Victim Hamman is on parole also is a fact that is irrelevant to
25 impeachment. The People would move to keep this information away
26 from the jury.

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1 Defendant Rodriguez has obtained discovery of Defendant
2 Rugg's pending felony matter in Yolo County wherein she is
3 charged with burglary and unlawful taking of a vehicle. The
4 people would move to exclude this evidence. If defendant Rugg
5 were to testify in Rodriguez' trial, this evidence may be
6 admissible to impeach Rugg even though she has not been convicted
7 if she were to think she would somehow receive something for her
8 testimony. The People do not anticipate Rugg testifying in
9 Rodriguez' trial at this time. If Rugg does so at a joint trial,
10 the court would then have to consider the probative value and do
11 a 352 Evidence code hearing with respect to admitting such
12 evidence.

13 VII

14 CONCLUSION

15 Based on the foregoing, the People request rulings on the
16 above issues prior to jury selection.

17
18 DATED:

19
20 BRADFORD R. FENOCCHIO
21 DISTRICT ATTORNEY

22
23
24 BY: 

25 WILLIAM D. MARCHI
26 DEPUTY DISTRICT ATTORNEY
27
28

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SEP 09 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK

By:  Deputy

1 **LEONARD K. TAUMAN**
2 **PLACER COUNTY PUBLIC DEFENDER**
3 12834 Earhart Ave.
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5 Telephone: (530) 885-2422

6 **JESSE SERAFIN**
7 State Bar No. 195586
8 Assistant Public Defender

9 Attorneys for Defendant,
10 **Shawn Rodriguez**

11 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER**

12 **THE PEOPLE OF THE STATE**
13 **OF CALIFORNIA,**

14 Plaintiff,

15 vs.

16 **SHAWN RODRIGUEZ,**

17 Defendant.

CASE NO. --

**NOTICE OF MOTIONS AND
MOTIONS IN LIMINE AND
POINTS AND AUTHORITIES
REGARDING 1101(b) MATERIALS**

DATE: TBD

TIME: TBD

DEPT: TBD

18 **TO THE PLACER COUNTY DISTRICT ATTORNEY AND HIS REPRESENTATIVE AND**
19 **THE CLERK OF THE ABOVE-ENTITLED COURT.**

20 **PLEASE TAKE NOTICE** that on September 10, 2003, at 8:30 a.m., or as soon thereafter
21 as the matter may be heard in a Department to be determined, Defendant, **SHAWN RODRIGUEZ,**
22 by and through his attorney, Jesse Serafin, Assistant Public Defender, will move the court for orders as
23 set forth herein.

24 The motions are made on the grounds set forth below.

1 The motions are based on this Notice of Motion and Points and Authorities, the papers and
2 pleadings on file herein, and such further oral or written pleadings, evidence, and argument that may
3 be received by the court.

4 **Section 1101(b)**

5 Section 1101 of the Evidence Code states as follows:

6 (a) Except as provided in this section and in Sections 1102, 1103, 1108, and 1109, evidence of
7 a person's character or a trait of his or her character (whether in the form of an opinion,
8 evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible
9 when offered to prove his or her conduct on a specified occasion.

10 (b) Nothing in this section prohibits the admission of evidence that a person committed a crime,
11 civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent,
12 preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant
13 in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably
14 and in good faith believe that the victim consented) other than his or her disposition to commit
15 such an act.

16 (c) Nothing in this section affects the admissibility of evidence offered to support or attack the
17 credibility of a witness.

18 Subdivision (b) permits "other crimes" evidence if its purpose is to prove something other than
19 a disposition to commit the crime charged. See People v. Nible (1988) 200 Cal. App. 3d 838, 847,
20 n.7, 246 Cal.Rptr. 119. Pursuant to subdivision (b), evidence that a defendant has committed an
21 offense is relevant, and may be admitted to establish, among other things, identity, intent, motive, or
22 plan.

23 Its admissibility depends upon three principal factors: (1) the materiality of the fact to be
24 proved or disproved; (2) the tendency of the uncharged crime to prove or disprove the material fact;
25 and (3) the existence of a rule or policy requiring the exclusion of relevant evidence. See People v.
26 Anderson (1987) 43 Cal.3d 1104, 1136, 340 Cal.Rptr. 585. When the material fact to be established is

1 identity, the evidence must disclose common marks or identifiers, that, considered singly or in
2 combination, support a strong inference that the defendant committed both crimes. See People v
3 Bradford (1997) 15 Cal 4th 1229, 65 Cal Rptr 2d 145; People v. Ewoldt 1994), 7 Cal.4th 380, 403, 27
4 Cal.Rptr.2d. 46.

5 However, when the material fact is common design or plan, the required degree of similarity is
6 much lower:

7
8 To establish the existence of a common design or plan, the common features must indicate the
9 existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed
10 need not be distinctive or unusual. For example, evidence that a search of the residence of a
11 person suspected of rape produced a written plan to invite the victim to his residence and, once
12 alone, to force her to engage in sexual intercourse would be highly relevant even if the plan
13 lacked originality. In the same manner, evidence that the defendant has committed uncharged
14 criminal acts that are similar to the charged offense may be relevant if these acts demonstrate
15 circumstantially that the defendant committed the charged offense pursuant to the same design
16 or plan he or she used in committing the uncharged acts. Unlike evidence of uncharged acts
17 used to prove identity, the plan need not be unusual or distinctive; *it need only exist to support*
18 *the inference that the defendant employed that plan in committing the charged offense.*

19 Ewoldt, 7 Cal.4th at 403 (Italics added).

20 When the material fact is relevant to prove intent, the required degree of similarity is even
21 lower:

22 The least degree of similarity (between the uncharged act and the charged offense) is required
23 in order to prove intent . . . In order to be admissible to prove intent, the uncharged misconduct
24 must be sufficiently similar to support the inference that the defendant " probably harbor[ed]
25 the same intent in each instance.

26 Ewoldt, 7 Cal.4th 402-04 (Citing People v. Robbins (1988) 45 Cal.3d 867, 879).

27 Moreover, courts have found that even when the period between the prior conduct sought to
28 be admitted and the present is great, the prior conduct may still be admitted if relevant to show identity,
intent, plan, motive or any material fact other than mere disposition. The remoteness of evidence that

1 defendant committed crimes other than those charged usually goes to the weight of such evidence, not
2 to its admissibility. Ewoldt, 7 Cal.4th at 397 (allowing uncharged misconduct occurring 12 years
3 earlier); People v. Peete (1946) 28 Cal.2d 306 (uncharged conduct occurred 24 years earlier); People
4 v. Ing (1967) 65 Cal.2d 603, 612 (uncharged conduct occurred 15 years prior).

5 In this case, defense intends to introduce relevant evidence of Ms. Rugg's prior conduct to
6 show her intent, and plan in the present case.

7 **MATERIALITY/RELEVANCE**

8
9 The undisputed facts of the present case are that Nick Hamman was locked in the holding cell
10 by one or both of the co-defendants. He stayed there for the next two days without either party
11 attempting to let him out. One or both of the co-defendants placed various items against the door and
12 at some point connected a hose from the exhaust of a vehicle to the vent above Mr. Hamman's cell.
13 The central issue at trial consists of the intent and frame of mind of both defendants in committing these
14 acts and choosing not to make every effort to release Mr. Hamman.

15
16 The district attorney claims that Mr. Rodriguez driving intent behind all his actions for those
17 two days was to kidnap, kill, and conspire to kill Nicholas Hamman, as well as intentionally place him
18 in a situation likely to cause death. Mr. Rodriguez contends his intent was based on three separate
19 factors and must be allowed to offer evidence supporting all these factors.

20
21 1. Mr. Rodriguez' intent in not letting Hamman out after Anna locked him in is based partly in
22 fear of Mr. Hamman's direct and immediate retaliation against Shawn. He is severely outweighed by
23 Mr. Hamman who is extremely upset and making threats against both defendants while he is in the cell.

1 In support of this notion, any prior evidence showing Mr. Hamman's tendency toward violence
2 should be admissible. Further, any evidence of prior threatening behavior in a similar setting would be
3 relevant to show the likeliness that Mr. Hamman reacted the same in this case and would justify Mr.
4 Rodriguez' fear of such reaction.

5 2. Shawn's intent in following the program for two days and not turning on Anna was based,
6 not on a desire to kill the victim, but to prevent any future retaliation from Anna - whom
7 he knows is very capable of taking such recourse. She had already threatened Shawn's
8 girlfriend and had taken similar actions against many individuals in the past during the
9 commission or conspiracy to commit various crimes.
10

11 Therefore, any prior evidence of Ms. Rugg's tendency towards violence in similar situations
12 would be directly relevance to Shawn's intent in not pulling the plug. Further, any direct evidence
13 where she made and/or carried out threats to her would be co-conspirators would be material to
14 support the credibility of Mr. Rodriguez' explanation in the current case.
15

16 3. Shawn's intent was also motivated by a fear that if he did not go along with Anna's plan to
17 a certain extent, she would then do whatever possible to blame the entire thing on him and
18 use his juvenile history to get him in severe trouble with the law.
19

20 In support of this belief, any prior occasion where in a criminal act or in preparation for a
21 criminal act, Ms. Rugg then blamed or attempted to blame another person for her own participation is
22 directly relevant to her intent in doing the same to Shawn in the instant case if he did not follow the
23 plan. Evidence in this area is particularly relevant considering the note Anna left in the instant case. It
24 has carried a large basis for the theory that Rodriguez is the heavy in this case. Evidence that she
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1 typically will play innocent when things turn bad or people don't go along with her schemes is material
2 to her motivation behind this note.

3 **CASE LAW IN SUPPORT OF ALLOWING 1101(B) EVIDENCE IF**

4 In People v. Denis (1990) 224 Cal. App. 3d 563, 273 Cal.Rptr.724, defendant, a drug
5 dealer, was convicted of felony murder and attempted second-degree robbery. Defendant was a
6 drug dealer. See People v. Denis (1990) 224 Cal. App. 3d 563, 565, 273 Cal.Rptr.724.
7 Defendant argued that Rhodes, had solicited his help in "jacking" customers. Id. at 566. The
8 victim, Johnson, approached defendant and Rhodes, and Rhodes shot the victim. Id. Defendant
9 told police his participation in the robbery was dependent on the amount of money involved, and
10 that he did not know Rhodes planned to rob Johnson specifically. Id. Defendant also told the
11 police that he had participated in prior robberies with Rhodes. Id.

12 The issue was whether to admit evidence that defendant and Rhodes had previously
13 robbed persons on several occasions. Id. Defendant denied that he intended to steal from
14 Johnson. Id. Defendant testified that Rhodes was unpredictably violent and was feared by
15 appellant and most other people, and that he had not refused Rhodes's invitation to join in a
16 robbery only because it had seemed prudent to humor Rhodes; *he had no intention of actually*
17 *robbing anyone* Id. (italics added). The prosecution argued that it was probative of defendant's
18 state of mind or intent at the time of the charged offense, and was admissible for that purpose. Id.

19 The defense argued it was inadmissible because it only showed defendant's propensity or
20 disposition to commit the charged offenses. Denis, 224 Cal. App. 3d at 567. The trial court
21 admitted the evidence of defendant's prior robberies. Id.

1 The appellate court affirmed, finding that where a person acts similarly in similar
2 situations, it can logically be inferred that he probably harbors the same intent. Id. The court
3 stated that a "lesser degree of similarity is required to show intent than to show identity," and
4 added that the robberies were not dissimilar in that they were perpetrated at the same location
5 against potential drug purchasers. Id.

6 In our case, Rodriguez's intent, like the defendant's intent in Denis, is the central issue for
7 the defense. Did Rodriguez harbor the intent to kill the victim. Evidence of Rugg's prior conduct
8 of soliciting underlings into her criminal plots, threatening them or their loved ones if they back
9 out, and then blaming them when things go bad, is relevant to show that the plan was Rugg's, that
10 Rodriguez became an unwilling participant, in part, due to threats against his girlfriend by Rugg,
11 and that Rugg, and not Rodriguez, harbored the intent to kill in this case.

12 Evidence is relevant not only when it tends to prove or disprove the precise fact in issue,
13 but also when it tends to establish a fact from which the existence or nonexistence of the fact in
14 issue can be directly inferred. See People v. Lint (1960) 182 Cal. App. 2d 402, 6 Cal.Rptr. 95.

15 In a recent California Supreme Court case, the issue was whether the trial court erred
16 when it admitted evidence that 17 years prior to the charged offense, defendant had killed an
17 individual, as being relevant to defendant's intent to kill. See People v. Steele (2002) 27 Cal.4th
18 1230, 1244-45, 120 Cal.Rptr.2d 432. In affirming the trial court's decision, the Court held that
19 the two killings were similar enough to make the earlier one relevant to the mental state with
20 which defendant committed the later one. Id. at 1244.

21 The only evidence of similarity between the prior uncharged act and present offense was that both
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1 victims were strangled, received a cluster of stab wounds to the upper torso, somewhat resembled each
2 other, and the defendant admitted the killing, but supplied an explanation. Steele, 27 Cal.4th at 1244.
3 In holding that the two killings were "similar enough" to make the earlier one relevant, the Court stated
4 that the "least degree of similarity between crimes is needed to prove intent" (citing People v. Ewoldt
5 (1994) 7 Cal.4th 380, 402), and that "the doctrine of chances teaches that the more often one does
6 something, the more likely that something was intended . . ." Steele, 27 Cal.4th at 1244.

7
8 **1101(B) EVIDENCE OFFERED IN THE CURRENT CASE**

9 1. Direct evidence through the testimony of Ian Grimes

10 Ian is a juvenile who knows Anna from the streets. She has spent a lot of time around him and his
11 friends as she is usually homeless. One week before our case, Anna broke into a local church. She
12 stayed the night there and asked Ian and his friend Travis to help her steal some of the church
13 belongings. Ian refused and left the scene. Anna was later arrested for the church theft. At that time
14 she told the police that Ian Grimes knows the location of the missing items. The police then confronted
15 Ian who explained to them that he had nothing to do with it.

16
17 2. Testimony of Travis Welty

18 Travis was at the church with his friend Ian and Anna. While there, Ms. Rugg took pictures of both
19 juvenile boys. She then asked them to remove property from the church. Travis refused and left the
20 scene. Rugg then apparently stole the items herself because she asked Travis and Ian to pawn the
21 various items the next day. When the theft was eventually traced to Anna Rugg she named Travis as
22 helping her. Travis was subsequently arrested. Both Travis and Ian explained that the police also
23 mentioned Shawn Rodriguez as a suspect – information they received from Anna Rugg. Both
24
25
26

1 juveniles said that Rodriguez was never present at the church.

2 3. Testimony of Mitch Cypert

3 Mitch is another young male who will testify to knowing Anna off and on for the last year. He has
4 heard through mutual acquaintances of numerous instances of violence and theft involving Anna, so he
5 was not shocked when she came to him asking for help. Anna was angry with her stepfather and
6 wanted help robbing him. She suggested that Mitch and his friend Brian could hit him over the head
7 with a shovel or some type of stick and she would split the money with them. She took them to
8 Sacramento to carry out the crime. As the act grew nearer, Mitch backed out, and Anna stated he
9 would regret it if he ever mentioned the incident.

11 4. Testimony from Austin Hands

12 Austin knew Anna from his friend Eric Werve and some of the other juvenile's already mentioned. He
13 explained a desire to have nothing to do with Anna Rugg. When asked why he and others still spent
14 any time with her, he explained that she was always around, was manipulative, and people were scared
15 of her. He describes her as very unstable. Prior to the instant case, Rugg asked Austin to help her rob
16 Nick Hamman. She said it would be "quick and easy", but Hands refused. On another occasion, Anna
17 was driving a stolen Uhaul. She asked Austin and Eric to go with her to rob the local radio shack. On
18 a third occasion, Anna asked suggested to Austin the idea of robbing Cindy. Cindy was the trailer park
19 manager where Austin and Eric lived. Cindy was very involved in drugs, and Anna suggested they
20 could make a big score and then burn the trailer down. In September of last year, after many of these
21 requests were denied, Anna offered Austin crank. Austin took the crank, but recognized something
22 wrong with it. He recognized the substance as powdered draino, and later that night while searching
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1 Anna's car, he found drains in the backseat. Hands has seen people killed on the streets in a similar
2 manner.

3 5. Testimony from Yolo County police officers and Eric Werve

4 Just weeks before our case, Anna was arrested and charged with first-degree burglary and vehicle theft
5 in Yolo County. A Sacramento Probation Officer was housing Anna at the time. The probation officer
6 was on vacation for one week. Anna and a male friend of hers entered the house, stole money,
7 property, and the probation officer's car keys. When contacted by police, she explained that a kid
8 named Eric Werve and his brother Justin made her commit the burglary against her will. Eric had
9 supposedly come to Anna's brother's house while she was there, put a knife to her brother's neck, and
10 demanded she take him to burglarize the probation officer's home. Anna further explained that Eric
11 then drove off with the car and kept it for weeks.
12

13 Subsequent investigation by the officers revealed several witnesses to the fact that Anna had
14 the car and Eric had nothing to do with it. After being found with the car, Anna then confessed her
15 earlier lie. In the meantime, an arrest warrant went out for Eric Werve – an individual who never set
16 foot at the crime scene.
17

18 Eric will further substantiate the testimony of incidents describes by Mitch Cypert and Austin
19 Hands.
20

21 6. Testimony from Oscar Mejia

22
23 **THIS PRIOR CONDUCT SUGGESTS A SIMILAR INTENT AND PLAN TO THAT IN THE**
24 **INSTANT CASE AND ARE THEREFORE ADMISSABLE UNDER 1101(B)**

25 Shawn Rodriguez is being prosecuted for life based on his own "admissions." When taken in
26

1 their full context, these admissions involve his explanation that Anna Rugg came up with the idea to
2 rob Nicholas Hamman. She had the only motive to do so just as she did in these prior instances. She
3 then initiated the help of a young male to carry out her plan like the prior incidents. When her intent
4 then went too far for Shawn (i.e. murder), he said no, and she began scheming a way to blame
5 everything on him. This is why she made up the story of being kidnapped and dropped the note. This
6 is a key point not only in her own defense, but also in the prosecution of Shawn Rodriguez. The fact
7 that Anna has turned on others in a similar pattern once she was in trouble is certainly relevant to her
8 intent and plan in the instant case.
9

10 **THE SIMILARITY IN INTENT AND PLAN IN THESE PAST INSTANCES SUPPORTS**
11 **THE TRUTH OF SEVERAL MATERIAL FACTS OFFERED BY SHAWN RODRIGUEZ**

12 Once the prior conduct is proven to show the necessary similarity to satisfy 1101(b), case law
13 requires the offering party to show that this evidence is material to certain facts in our case. This was
14 addressed in the first part of the brief. In essence, any conduct pertaining to Ms. Rugg's active intent is
15 directly relevant to Mr. Rodriguez' lack of intent. Next, we must show that the prior acts have some
16 tendency to prove these relevant facts.
17

18 Taken at face value, it is hard to imagine that Shawn would go as far as he did because he was
19 afraid of his female cohort in any way. It's even harder to imagine that a random female could create
20 such a diabolical plan and then go this far to blame another for it. The fact that Anna Rugg has
21 schemed similar crimes in the past with at least six other males certainly lends some credibility to Mr.
22 Rodriguez' explanation that this was her idea.
23

24 The fact that Anna threatened others who wouldn't comply with her plans in the past is an
25 indicator that she may very well have threatened Shawn or his girlfriend in the present case. In his
26

1 statement to the police, Shawn repeatedly expressed a concern for Erin Hughes and hinted that was a
2 reason for much of his compliance.

3 The fact that in all these past cases, Anna picked a vulnerable male with a troubled history
4 tends to explain why she would pick Shawn to help carry out this plan. Combine his general lack of
5 credibility with Anna's tendency to turn on or blame others for the crimes she schemed; and it's far
6 more reasonable to think she could make up that note, drop it on purpose, and immediately tell the
7 police it was all Shawn simply to escape blame herself. Her past is consistent with Shawn's fear that
8 she would turn him in down the road and make up whatever story necessary to law enforcement. This
9 is a perfect example of prior bad acts showing a similar intent to a material element in the current case.

11 Finally, the fact that she has intimidated and threatened others in the past supports the notion
12 that Shawn was afraid of her retaliation if he directly opposed her. On at least nine occasions she has
13 attempted to elicit others to help her in aggressive, violent crimes. All with an overall purpose to
14 obtain money or property without concern in causing harm to any of these potential victims. When
15 added together, these past incidents support the notion that none of this was Shawn's idea, and in fact
16 he was attempting to set Mr. Hamman free when Anna decided to drop the note, and she was the only
17 one that wanted to kill him. This is his statement to the police, and it is corroborated by the prior
18 testimony of at least 6 people who have nothing to gain.

20 **THE PROBATIVE VALUE FAR OUTWEIGHS ANY PREJUDICE IN THIS CASE**

22 Courts must also consider whether admitting evidence of other crimes violates any extrinsic
23 policy requiring exclusion, namely, California Evidence Code § 352. In doing so, the court must
24 determine whether the probative value of the evidence of defendant's uncharged offenses is

1 "substantially outweighed by the probability that its admission [would] . . . create substantial danger of
2 undue prejudice, of confusing the issues, or of misleading the jury." Cal. Evid. Code § 352. In People
3 v. Yu (1983) 143 Cal. App. 3d 358, 191, Cal.Rptr. 859 (cert denied 104 S.Ct. 981), the court upheld
4 the trial court's decision to allow evidence of an uncharged murder allegedly ordered by the defendant.
5 People v. Yu (1983) 143 Cal. App. 3d 358, 191, Cal.Rptr. 859 (cert denied 104 S.Ct. 981). In
6 addressing 352, the court stated the following:
7

8 As for defendant's argument that the evidence was substantially more prejudicial than
9 probative, all evidence, which tends to prove guilt is prejudicial or damaging to the defendant's
10 case. The stronger the evidence, the more it is "prejudicial." The "prejudice" referred to in
11 Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional
12 bias against defendant as an individual and which has very little effect on the issues. In applying
13 section 352, "prejudicial" is not synonymous with "damaging."

14 Yu, 143 Cal. App. 3d at 377; see also People v. Garceau (1993) 6 Cal.4th 140, 178. The word
15 "prejudice" in Evid C § 352 does not refer to evidence that will damage one party's case. It refers to
16 an emotional bias against the party that has little to do with the issues." See People v. Crittenden
17 (1994) 9 Cal.4th 83, 133, 36 Cal.Rptr.2d 474.

18 The 352 argument generally relates to the potential prejudice against a defendant in a criminal
19 case. The goal is to prohibit evidence that elicits an emotional bias against a charged defendant. Mr.
20 Rodriguez is offering the current evidence to support his own actions. A jury judging Anna Rugg will
21 never hear the offered evidence; therefore, there can be no prejudice against a charged defendant.

22 SUMMARY

23 This prior conduct fits the relatively low similarity standard required by common plan and/or
24 intent under 1101(b), and these similarities do have some tendency to prove a material fact in Mr.
25 Rodriguez defense. His defense relies on an ability to show that Anna Rugg is capable of creating this

1 entire scheme. His explanation as to why he did not stand up to her plans and back out earlier is
2 directly related to her past. Anna's past shows what she is capable of in the present case. What she is
3 capable of is directly related to Shawn's actions and whether or not he had the requisite intent to
4 kidnap and kill Nicholas Hamman.

5 There is nothing in 1101(b) that says it can only be used by prosecutors. There is no legal basis
6 for exclusion of this evidence. Nothing interferes with the district attorney's ability to cross-examine
7 these witnesses, downplay the weight of the evidence, or argue that it is unbelievable.
8

9 Dated September 9, 2003

10
11 PLACER COUNTY PUBLIC DEFENDER

12
13
14 
15 JESSE SERAFIN
16 Attorney for Shaun Rodriguez

17
18
19
20 I am an employee or agent of the Placer County
21 Public Defender's Office, over the age of eighteen,
22 and not a party to this action. I personally served a
23 true and correct copy of this document upon an
24 employee or agent of the Placer County District
Attorney's Office.

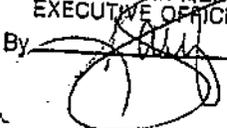
25 This I declare under penalty of perjury.

26 9-9-03 _____
27 DATE SIGNATURE 14

28
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Public Defender
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SEP 10 2003

JOHN MENDES
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8 SUPERIOR COURT OF PLACER COUNTY
9 STATE OF CALIFORNIA

10 --oOo--

11
12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,
14 Plaintiff,
15 vs.
16 SHAWN MICHAEL RODRIGUEZ,
17 Defendant.

No. 62-034689

POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT'S
MOTION IN LIMINE

Date: 9/10/03
Time: 8:30 A.M.
Dept: 3

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22 The People submit the following points and authorities in
23 opposition to defendant SHAWN MICHAEL RODRIGUEZ' motion to
24 introduce evidence of bad acts:

25 I

26 INTRODUCTION

27 Defendant Rodriguez admits in his statement to Detective Coe
28 and Detective Hutchins that he did not report that the victim was

1 locked up at the old juvenile hall because he was afraid the
2 victim would report him and his parole would be violated. (See
3 page 8 of transcript). Rodriguez does not mention anything about
4 Anna Rugg blaming him or that he knows she has done so in the
5 past with anyone else.

6 Defendant Rodriguez goes on to say that he was going to tell
7 the true story. (see page 11 of transcript) Rodriguez admits
8 that he and Rugg discussed robbing the victim the day before.
9 Rodriguez admitted that he told Rugg he would tag along. No
10 mention is made that Rodriguez was being coerced at that time.

11 Rodriguez further admits that he returned to the hall with
12 Rugg after the victim had been confined, and the plan was to have
13 the victim slide the victim's ATM card and cash under the cell
14 door, and give his PIN to the defendants since he was confined in
15 the hall. Transcript p. 11. Rodriguez does not mention of any
16 threats or that it was involuntary. Rodriguez goes on to admit
17 that he was willing to share in the use of the ATM card of the
18 victim.

19 Rodriguez goes on to admit that he assisted in placing the
20 paint cans in front of the cell door and that he relayed messages
21 to the victim regarding giving up the ATM card. Rodriguez states
22 he is having second thoughts but does not let out the victim
23 because it was not his business. There does not appear to be any
24 coercion involved by anyone. (P. 12 of transcript)

25 Defendant further admits he is concerned with the victim
26 being found because the water is running. Rodriguez indicates we
27 can't let him out. Rodriguez is concerned the victim will tell
28

1 people what happened to him. Rodriguez indicates that Rugg
2 suggests gassing the victim. Rodriguez admits he goes along with
3 the plan and describes getting hoses and duct tape and described
4 the attempt to kill the victim. (Transcript of tape p. 14)

5 Rodriguez admits that he was going to turn the water off and
6 hope that someone finds the victim and hope that he does not die.
7 (No mention is made of reporting the whereabouts of the victim to
8 police or fire departments). Rodriguez states that he got Rugg
9 out of the store because he did not have time to waste.

10 Rodriguez was going to lay low. Rodriguez stated that Rugg said
11 take 49 and we'll see if there's cops there. Rodriguez says that
12 he is thinking "okay, uh that's logical. Maybe she's getting her
13 head back". Again, defendant Rodriguez is only concerned with
14 getting caught, not with the victim's well being or any fear to
15 anyone.

16 Defendant Rodriguez further describes his state of mind on
17 page 19 of the transcript when he answers the question what
18 should happen to the persons doing what they did. Rodriguez
19 indicates one should be dealt with firmer than the other, but the
20 "tag along" isn't innocent either. Yeah. I see time". Rodriguez
21 describes himself as a tag along, apparently, but does not say he
22 acted out of fear for others or that he was coerced into his
23 actions, or even that he was duped into doing what he did.

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II
UNCHARGED CRIMES OF CODEFENDANT RUGG

For evidence to be admissible, it must prove or disprove a material fact in issue. People v. Pitts (1990) 223 Cal.App.3d 606; People v. Daniels (1998) 52 Cal.3d 815, 856.

"Evidence that a defendant has committed crimes other than those currently charged is not admissible to prove that the defendant is a person of bad character or has a criminal disposition; but evidence of uncharged crimes is admissible to prove, among other things, the identity of the perpetrator of the charged crimes, the existence of a common design or plan, or the intent with which the perpetrator acted in the commission of the charged crimes. Evidence of uncharged crimes is admissible to prove identity, common design or plan, or intent only if the charged and uncharged crimes sufficiently similar to support a rational inference of identity, common design or plan, or intent." People v. Catlin (2001) 26 Cal. 4th 81, at p. 111 citing People v. Kipp (1998) 18 Cal.4th 349, 369.

In order to be relevant as a common design or plan, "evidence of uncharged misconduct must demonstrate 'not merely a similarity in the results, but such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestations.'" People v. Catlin, supra, at p. 111; People v. Ewoldt (1994) 7 Cal.4th 380, 402.

In Ewoldt, supra, at page 403, the court goes on to state that "the common features must indicate the existence of a plan

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1 rather than a series of similar spontaneous acts," and that
2 "evidence that the defendant has committed uncharged criminal
3 acts that are similar to the charged offense may be relevant if
4 these acts demonstrate circumstantially that the defendant
5 committed the charged offense pursuant to the same design or plan
6 he or she used in committing the uncharged acts."

7 The Public Defender offers testimony of several witnesses to
8 show what he believes to be a common scheme or plan.

- 9 1. Ian Grimes--the incident involving the church does not
10 involve a common scheme or plan. The relevance and
11 materiality is non existent in the face of statements
12 outlined above where defendant Rodriguez refers to
13 himself as the "tag along". Grimes claims not to be
14 involved at all.
- 15 2. Travis Welty--Travis refused to be involved in crime.
16 It is not known who stole items from the church--the
17 defense speculates it is Rugg. Rugg apparently
18 points the finger at Welty and Grimes. There are no
19 real similarities.
- 20 3. Cypert--He describes being talked into hitting another
21 over the head and taking the property. Cypert claims
22 that the plan was not carried out. If the court
23 severs the trials of Rodriguez and Rugg, Rugg will
24 not present evidence that Rodriguez made her do the
25 crimes and will not present evidence that Rodriguez
26 had bad behavior on custody. The matter does not
27 seem material. The court must balance the
28

1 materiality under Evidence Code Section 352 to
2 determine if the matter should be admitted. The note
3 written by Rugg indicates she is kidnapped by
4 Rodriguez. However, this information by itself does
5 not justify admission of the evidence.

6 4. Hands--Several bad acts are described. For the
7 reasons stated above the evidence is not relevant in
8 the face of Rodriguez' statement to the police. The
9 people would move to exclude under 352 of the
10 Evidence Code.

11 5. Werve and Police officers--Yolo County incident--This
12 involved a theft when no victim was home. The matter
13 does not seem to have materiality and relevance
14 compared to considerations under Evidence Code 352
15 considerations.

16 6. The testimony of Oscar Mejia is not outlined in
17 defendant's brief.

18 Based on the foregoing, the court should exclude the incidents as
19 immaterial to the case before this court. If the court grants a
20 severance, defendant Rugg will not be bringing in Rodriguez' bad
21 acts. The materiality would seem to be lacking in the face of
22 Ms. Rugg's absence. Therefore, the People move to exclude these
23 matters pursuant to Evidence Code Section 352.

24 **III**

25 **VIOLENCE OF VICTIM**

26 On page 4 of defendant's motion in limine, the defense seeks
27 to present evidence of the victim Hamman's violence. The issue
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1 is that he did not let out Hamman because he was afraid of
2 violence. To show defendant's state of mind with prior bad acts
3 of violence, the defendant must be able to show that he knew of
4 such acts at the time the events occurred during the commission
5 of the crimes before the court. People v. Cash (2002) 28 Cal.4th
6 703, at p. 726. The defendant cannot state that he knew of any
7 of the victim's conduct including CDC writeups. The defense also
8 has a witness Chadwic who was involved with unreported incidents
9 where Hamman hit him. None of these matters is material unless
10 defendant Rodriguez knew of these incidents, and because of them,
11 he decided not to let the victim out. However, it would not
12 relieve Rodriguez of responsibility for the crimes in question.
13 He agreed to go to the hall with Rugg and rob the victim as the
14 tag along. The defendant continued to leave the victim in the
15 cell despite the rising water and left him there thereafter. He
16 is responsible for the foreseeable consequences of this actions.
17 Any evidence of conduct in prison or on the streets would be
18 immaterial given the current state of the facts.

19 If the court lets in any of the acts of violence attributed
20 to the victim, the people are entitled to rebut this testimony
21 with acts of violence by defendant Rodriguez. People v. Walton
22 (1996) 42 Cal. App. 4th 1004, 1014, 1015; Evidence Code Section
23 1103(b). The defendant's bad and violent conduct to include
24 threats made while in custody in the Placer County Jail that
25 defendant Rugg seeks to introduce would then be admissible.
26 There are several matters and witnesses that could be called in
27 that regard. The undue consumption of time involved by the whole
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1 procedure and confusion of issues for the jury under 352 of the
2 Evidence Code would be obvious. The People request that this
3 information not be paraded before the jury pursuant to Evidence
4 Code Section 352.

5 IV

6 ALLEGED THREATS BY RUGG

7 There does not seem to be any evidence that Rugg threatened
8 Hughes. Rodriguez does not state this in his statement. Erin
9 Hughes may not be a witness in this matter. She may claim a
10 privilege pursuant to the 5th amendment. At this time the people
11 do not intend to call her as a witness. The People received a
12 new statement from the defense on September 8, 2003 which
13 statement was taken on July 31, 2003. Ms. Hughes seems to make a
14 great deal of changes in her story. Therefore, she is no longer
15 a credible witness. Ms. Hughes is represented by Mr. Bolton who
16 indicated that he will want a hearing outside the presence of the
17 jury so that he can advise his client of any 5th amendment claims
18 of privilege. As a result there will not be any evidence of
19 threats by Ms. Rugg towards defendant Rodriguez. The People
20 request the exclusion of this evidence.

21 IV

22 CONCLUSION

23 A review of defendant Rodriguez' transcript of his statement
24 to detective Coe makes it clear that Rodriguez "tagged along"
25 with Rugg on his own volition. At no time does he state that he
26 was in fear of Rugg or that Rugg had threatened anyone.
27 Defendant Rodriguez tried to minimize his own responsibility, yet
28

1 he acknowledges some responsibility and sees time coming as he
2 put it. Rodriguez admitted to freely and voluntarily doing all
3 the acts in question that comprise the crimes he is charged with.
4 Rodriguez even describes laying low and was glad that Rugg had
5 regained her thoughts so that they would not get caught. A review
6 of Cal Jic Sections 6.11 and 6.20 makes it clear that there is no
7 materiality of the evidence of Defendant Rugg trying to talk
8 others into various crimes and then blaming them for the matters.
9 Each conspirator is liable not only for the particular crime they
10 agree to but the natural and probable consequences of any crime
11 or act of a co-conspirator. As a member of the conspiracy each
12 defendant is liable to the acts and declarations of their co-
13 conspirator until you effectively withdraw from the conspiracy or
14 the conspiracy has terminated. Defendant Rodriguez' statement
15 shows that he entered into the conspiracy not only to rob, but to
16 kill and never withdrew from the conspiracy. In fact he assisted
17 Rugg at all times. As a result the materiality of the proffered
18 evidence of Rugg getting others to assist her in crime and then
19 blaming them is non-existent. If Rugg were to claim duress
20 caused by Rodriguez in a joint trial, this evidence may have more
21 materiality. . If the court grants a severance of the trial of
22 defendant Rugg, the evidence of Rugg's other crimes should be
23 excluded pursuant to Evidence Code Section 352.

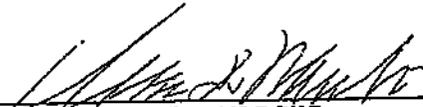
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DATED: September 9, 2003.

BRADFORD R. FENOCCHIO
DISTRICT ATTORNEY

BY: 
WILLIAM D. MARCHI
DEPUTY DISTRICT ATTORNEY

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SEP 12 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By _____ Deputy

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

PEOPLE OF THE STATE OF CALIFORNIA)
)
)
 V)
)
 SHAWN RODRIGUEZ)

CASE NO: 62-034689
ORDER
RE: IN LIMINE MOTIONS

This cause came on regularly for pre-trial in limine motions on September 10, 2003. Deputy District Attorney, Bill Marchi, appeared on behalf of the People. The defendant appeared in person and with counsel, Jesse Serafin. The court made certain orders, including severing the trial of the co-defendant, Anna Rugg, and took certain issues under submission. After careful consideration the court finds and orders as follows:

1101(B) EVIDENCE RE: CO-DEFENDANT, RUGG:

The defense seeks to present testimony of six witnesses regarding seven to eight prior acts of the co-defendant, Anna Rugg. Specifically, the defendant seeks to present evidence of prior occasions when Ms. Rugg purportedly sought the services of young men to commit both theft and assaultive crimes in accordance with plans devised by Ms. Rugg. In addition, the defense points to prior instances in which the co-defendant

1 demonstrated a pattern of falsely blaming others for crimes she committed, successfully transferring blame to
2 a lesser-involved participants, and scheming to cause blame to be visited on those who failed to do her
3 bidding. In this regard, the defense notes "Shawn's intent in following the program for two days and not
4 turning on Anna was based, not on a desire to kill the victim but to prevent future retaliation from Anna –
5 who he knows is very capable of taking such recourse." The defense notes further that "Shawn's intent was
6 also motivated by a fear that if he did not go along with Anna's plan to a certain extent, she would then do
7 whatever possible to blame the entire thing on him and use his juvenile history to get him in severe trouble
8 with the law. "

9 As such, the defense contends the proposed 1101(b) evidence is material in two areas – 1) the co-
10 defendant's intent and the defendant's intent or lack thereof; and 2) the defendant's inability to extricate
11 himself from the events because of his knowledge of the co-defendant's pattern of behavior and his fear that
12 all would be blamed on him. The defense is permitted to introduce evidence of prior bad acts by a co-
13 defendant if relevant for some purpose other than to show disposition to commit such acts. People v. Davis
14 (1995) 10 Cal. 4th 463.
15

16 The court has carefully considered the proposed testimony of the six witnesses. In the Grimes and
17 Welty instances, the co-defendant purportedly sought the services of a young man to commit a crime and
18 both young men declined. Thereafter, the co-defendant committed the crime and when caught, she falsely
19 blamed the young men. As to the Cypert instance, the co-defendant purportedly sought the services of the
20 witness to rob and assault her stepfather. The witness initially agreed and then backed out. The co-
21 defendant purportedly stated he would regret it if he ever reported the incident. As to witness Hand, he was
22 reportedly asked to participate in three different robberies: 1) a robbery of Mr. Hannam, the victim herein; 2)
23 a robbery of a radio shack; and 3) the robbery of a trailer park manager. On all occasions the witness
24 declined to participate. There is no indication that the crimes went forward. Thereafter, the co-defendant
25 purportedly gave the witness a substance she said was methamphetamine but which the witness believed was
26 Drano, leading the witness to believe she was trying to kill him. Lastly, the Co-defendant was arrested a
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1 few weeks before the present case for a first- degree burglary and auto theft in Yolo County. She
2 purportedly falsely alleged that two other young men forced her to commit the crime against her will.

3 Viewed in the light most favorable to the defendant, the cited conduct portrays the co-defendant as a
4 person who 1) attempts, with limited success, to get young men to join her in very serious criminal endeavors
5 and when they decline she commits the crime on her own and then blames them, or 2) or upon obtaining no
6 assistance she fails to go forward with her plans and then threatens the young men not to tell on her, or 3) she
7 commits a crime and falsely accuses a third party of doing the crime, or 4) has given an individual, who
8 failed on three occasions to join with her in a crime, a substance believed to be life-threatening.

9 The defendant gave a statement to the police in which he sets forth in considerable detail his
10 participation in the charges before the court. He admits that at the request of the co-defendant he joined her
11 in an attempt to rob the victim. He admits that thereafter he engaged in certain activities, including refusing
12 to release the victim from the holding cell, stuffing materials under the cell door, which caused the cell to fill
13 with water, blocking the door with furniture and paint cans, and inserting a hose from his car's exhaust into
14 what he believed was the air vent to the holding cell. He admits knowingly leaving the victim in the holding
15 cell for two days. Assuming the People's case is consistent with the defendant's admission, the court fails to
16 see the materiality of the purported conduct of the co-defendant on the issue of intent. In other words, the
17 purported testimony would support the contention that the co-defendant has a history of committing crimes
18 and until she joined with the defendant, an unsuccessful history of getting others to join with her. Herein, by
19 the defendant's own admission he agreed to join with her in the endeavor to rob the victim. The court
20 cannot see anything, at present, in the proposed 1101(b) evidence that is material in the instant case on the
21 Defendant's intent to commit the crimes that he is charged with, in the absence of the issue of duress or fear
22 which is discussed below. In the event, however, that the People's case sets forth evidence or theories of the
23 case, inconsistent with the defendant's admission, the court reserves jurisdiction to revisit the issue.

24
25 As to the defendant's contention that he was unable to extricate himself from the situation because of
26 fear of the co-defendant's retaliation, there must be some evidence that the defendant knew of her reputation
27 prior to the subject incident. The defendant has indicated he will not be testifying and there is nothing in his
28

1 statement to the police that supports such a contention. There is no indication that any other evidence would
2 be property submitted, in the absence of the defendant's testimony, that would support the contention that the
3 defendant knew of the co-defendant's reputation for retaliation or ability to manipulate facts to cause guilt to
4 fall on other person, prior to the incident in question. In the absence of such evidence, there is no legitimate
5 basis for the receipt of the proposed evidence. In the event, the defendant chooses to testify, the court
6 reserves jurisdiction to revisit the issue. Alternatively, if the defendant is suggesting that the evidence is
7 relevant on the contention that he was suffering from duress or was somehow duped into performing the
8 activities in question, the court notes that neither contention was mentioned by the defendant in his statement
9 to the police. As such, in the absence of the defendant testifying or alternatively some other admissible
10 evidence that brings that issue before the court, evidence of the co-defendant's past conduct is not
11 admissible.

12
13 DATED: 9-12-03


FRANCES KEARNEY
JUDGE OF THE SUPERIOR COURT

SEP 16 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK

By  Deputy

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8 SUPERIOR COURT OF PLACER COUNTY
9 STATE OF CALIFORNIA

10 --oOo--

11
12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,
14 Plaintiff,
15 vs.
16 SHAWN MICHAEL RODRIGUEZ,
17 Defendant.

No. 62-034689

POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT'S
MOTION TO RECONSIDER EVIDENCE
CODE SECTION 1101(b) MATTERS

Date:
Time:
Dept: 3

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22 The People submit the following points and authorities in
23 opposition to Defendant's Motion to Reconsider:

24 I

25 NO MATERIALITY TO PROFFERED EVIDENCE

26 The defense's claim that the incidents regarding Anna Rugg's
27 conduct on other occasions is material to issues before the court
28

1 is still not the case. The defense claims that the People must
2 prove that Defendant Rodriguez intended to kidnap and murder the
3 victim. That is certainly one theory of guilt. Another theory
4 is that Rodriguez could be an aider and abettor to Rugg's crimes
5 and equally guilty with such a status.

6 The People have requested aider and abettor jury
7 instructions on the basis that it was anticipated that at least
8 one defendant, Rodriguez or Rugg, or both, would claim not to be
9 the leader regarding the commission of the crimes. Notes to Cal
10 Jic 3.01 cites several cases that make it clear that as an
11 abettor one defendant shares the intent of the other.

12 "An aider and abettor will 'share' the perpetrator's
13 specific intent when he or she knows the full extent of the
14 perpetrator's criminal purpose and gives aid or encouragement
15 with the intent or purpose of facilitation the perpetrator's
16 commission of the crime." People v. Beeman (1984) 35 Cal. 3d
17 547, 560.

18 The California Supreme Court in People v. Mendoza (1998) 18
19 Cal.4th 1114, at page 1122-1123, makes it clear that the actual
20 perpetrator of the crime must have whatever mental state is
21 required for each crime charged, whereas, an aider and abettor
22 must "act with knowledge of the criminal purpose of the
23 perpetrator and with an intent or purpose either of committing,
24 or of encouraging or facilitating commission of the offense."
25 Citing People v. Beeman, supra, at p. 560.

26 In People v. Laster (1997) 52 Cal.App.4th 1450, 1462 the
27 court again reaffirms that an aider and abettor is a person who,
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1 acting with (1) knowledge of the unlawful purpose of the
2 perpetrator; and (2) with the intent or purpose of committing,
3 encouraging, or facilitating the commission of the offense, (3)
4 by act or advice aids, promotes, encourages or instigates, the
5 commission of the crime. As an aider and abettor a defendant is
6 a principal and equally guilty for the same crimes. An aider and
7 abettor is also liable for any reasonably foreseeable offenses
8 that the perpetrator commits.

9 In People v. McCoy (2001) 25 Cal.4th 1111, at page 1118, the
10 court stated "When the offense charged is a specific intent
11 crime, the accomplice must share the specific intent of the
12 perpetrator; this occurs when the accomplice knows the full
13 extent of the perpetrator's criminal purpose and gives aid or
14 encouragement with the intent or purpose of facilitating the
15 perpetrator's commission of the crime".

16 The defense states that defendant told the police that he
17 did not intend those crimes. However, he told them that Anna Rugg
18 did, and that he aided her in that regard. As an aider and
19 abettor he acted with knowledge of her purpose, if we are to
20 believe defendant Rodriguez, and is equally guilty in the eyes of
21 the law because he aided in extorting the property from the
22 victim and helped in some of the activities involved in the
23 attempted murder knowing what Rugg's intent was if we are to
24 believe Rodriguez. Defendant Rodriguez conspired with Rugg at
25 all times and even conspired to give a phony story about the
26 victim trying some sort of assault against defendant Rugg if the
27 police questioned them. Whether a jury in Rodriguez' trial

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1 believed that it was Rugg's idea, or whether a jury in Rugg's
2 trial believed that it was Rodriguez' idea is immaterial, so
3 long as it is clear that, whose ever idea it was, the aider and
4 abettor knew of the other's intent, and aided or assisted in
5 carrying out the idea. The Supreme Court of California also
6 concluded that it obviates the necessity to decide who was the
7 aider and abettor and who the direct perpetrator or to what
8 extent each played which role. People v. Garcia (2002) 28
9 Cal.4th 1166, 1173; People v. McCoy (2001) 25 Cal.4th 1111, 1120.
10 It is not even necessary for an aider and abettor to be at the
11 scene of the crime. In this case both defendants were at the
12 crime scene by their own admission and by the victim's statement.
13 Defendant Rodriguez admits doing some of the acts in question
14 that the court has outlined in its ruling regarding 1101(b)
15 evidence.

16 The court concludes in its order that the defendant would
17 have to testify that he was suffering from duress or was duped
18 into performing the activities. Such duress would have to be
19 direct and immediate. At this time the state of the evidence
20 does not support such a contention. The court correctly
21 concluded that the evidence that defendant Rodriguez offers about
22 defendant Rugg is inadmissible at this time as irrelevant.

23 II

24 SPECIAL INSTRUCTION

25 At the conclusion of the evidence, the People will request a
26 special instruction regarding the fact that it is not necessary
27 to prove which defendant was the aider and abettor and which was
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1 BRADFORD R. FENOCCHIO,
2 Placer County District Attorney
3 State Bar No. 80027
4 11562 B Avenue
5 Auburn, CA. 95603-2687

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Tel: (530) 889-7000
Fax: (530) 889-7129

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

JUN 04 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By *James V. [Signature]* Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

--oOo--

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff,

-vs-

NOS. 62-034689A
62-034689B

INFORMATION

SHAWN MICHAEL RODRIGUEZ
aka Shawn Michael Rodrigquz
aka Shawn Rodriguez
aka Shawn Smiley
ANNA MARIE RUGG

Defendants.

COUNT ONE

On or about and between March 15, 2003 and March 17, 2003, in
the County of Placer, State of California, the crime of KIDNAPPING
FOR RANSOM SPEC ALLEG ~~DDLY~~ HARM, in violation of section 209(a) of
the Penal Code, a felony, was committed by Shawn Michael Rodriguez
and Anna Marie Rugg, who did willfully and unlawfully seize, confine,
inveigle, entice, decoy, abduct, conceal, kidnap, and carry away
NICHOLAS HAMMAN with the intent to hold and detain, and who did hold
and detain, the said NICHOLAS HAMMAN for ransom, reward, extortion,

10/22/03
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1 and to exact from said NICHOLAS HAMMAN money and other valuable
2 things, to wit, an ATM CARD and a PIN .

3
4 "NOTICE: The above offense is a serious felony within the
5 meaning of Penal Code Section 1192.7(c)."

6 SPECIAL ALLEGATION

7 It is further alleged with respect to Count One above that the
8 said victim, NICHOLAS HAMMAN, while being subjected to said
9 kidnapping, was intentionally confined in a manner which exposed him
10 to a substantial likelihood of death, within the meaning of Penal
11 Code Section 209(a).

12 COUNT TWO

13 On or about and between March 16, 2003 and March 17, 2003, in
14 the County of Placer, State of California, the crime of CONSPIRACY TO
15 COMMIT MURDER, in violation of section 182(a)(1)/187(a) of the Penal
16 Code, a felony, was committed by Shawn Michael Rodriguez and Anna
17 Marie Rugg, who did willfully and unlawfully conspire together to
18 commit the crime of WILLFUL, DELIBERATE, AND PREMEDITATED MURDER, in
19 violation of Sections 182(a)(1)/187(a) of the PENAL Code, a felony;
20 that pursuant to and for the purpose of carrying out the objects and
21 purposes of the aforesaid conspiracy, the said defendants committed
22 the following overt act and acts at and in the County of PLACER:

23 OVERT ACT NO. 1

24 Defendants Shawn Michael Rodriguez and Anna Marie Rugg drove to
25 Albertson's Supermarket in the city of Auburn, County of Placer and
26 purchased duct tape.

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OVERT ACT NO. 2

Defendants Shawn Michael Rodriguez and Anna Marie Rugg drove to the DeWitt Center, in the City of Auburn, County of Placer, and obtained two garden hoses.

OVERT ACT NO. 3

Defendants Shawn Michael Rodriguez and Anna Marie Rugg drove to the old juvenile hall in the City of Auburn, County of Placer and taped duct tape around the outside of the holding cell door behind which Nicholas Hamman was confined.

OVERT ACT NO. 4

Defendants Shawn Michael Rodriguez and Anna Marie Rugg drove to the old juvenile hall in the City of Auburn, County of Placer and attached one end of a garden hose to a vent above the holding cell door behind which Nicholas Hamman was confined, and tied the other end of the garden hose to the exhaust system of a 1992 Chevrolet Beretta, California License number 3FHS432.

COUNT THREE

On or about and between March 16, 2003 and March 17, 2003, in the County of Placer, State of California, the crime of WILLFUL, DELIBERATE, PREMEDITATED ATTEMPTED MURDER, in violation of section 664/187(a) of the Penal Code, a felony, was committed by Shawn Michael Rodriguez and Anna Marie Rugg, who did willfully, unlawfully and with malice aforethought attempt to murder NICHOLAS HAMMAN, a human being.

SPECIAL ALLEGATION

It is further alleged as to count Three above that the aforesaid attempted murder was committed willfully, deliberately and with

1 premeditation within the meaning of Penal Code section 664/187(a) and
2 is a serious felony pursuant to Penal Code section 1192.7(c).

3 COUNT FOUR

4 On or about and between March 15, 2003 and March 16, 2003, in
5 the County of Placer, State of California, the crime of 2ND DEGREE
6 ROBBERY, in violation of section 211 of the Penal Code, a felony, was
7 committed by Shawn Michael Rodriguez and Anna Marie Rugg, who did
8 willfully, unlawfully, and by means of force and fear take personal
9 property from the person, possession, and immediate presence of
10 NICHOLAS HAMMAN.

11
12 "NOTICE: The above offense is a serious felony within the
13 meaning of Penal Code Section 1192.7(c)."

14 COUNT FIVE

15 On or about and between March 15, 2003 and March 17, 2003, in
16 the County of Placer, State of California, the crime of FALSE
17 IMPRISONMENT BY VIOLENCE, in violation of section 236 of the Penal
18 Code, a felony, was committed by Shawn Michael Rodriguez and Anna
19 Marie Rugg, who did willfully and unlawfully violate the personal
20 liberty of NICHOLAS HAMMAN, said violation being effected by
21 violence, menace, fraud, and deceit.

22 COUNT SIX

23 On or about and between March 15, 2003 and March 17, 2003, in
24 the County of Placer, State of California, the crime of UNLAWFUL
25 DRIVING OR TAKING OF A VEHICLE, in violation of section 10851(a) of
26 the Vehicle Code, a felony, was committed by Shawn Michael Rodriguez
27 and Anna Marie Rugg, who did willfully and unlawfully drive and take
28 a certain vehicle, to wit, 1992 CHEVROLET CALIFORNIA LICENSE

1 #3FHS432, then and there the personal property of NICHOLAS HAMMAN
2 without the consent of and with intent, either permanently or
3 temporarily, to deprive the said owner of title to and possession of
4 said vehicle.

5 COUNT SEVEN

6 On or about March 16, 2003, in the County of Placer, State of
7 California, the crime of USING ANOTHER'S NAME TO OBTAIN
8 CREDIT/PROPERTY, in violation of section 530.5 of the Penal Code, a
9 felony, was committed by Shawn Michael Rodriguez and Anna Marie Rugg,
10 who did willfully and unlawfully obtain personal identifying
11 information of another, to wit, NICHOLAS HAMMAN, without the
12 authorization of that person, and used that information to obtain or
13 attempt to obtain credit, goods, or services in the name of the other
14 person and without that person's consent, to wit \$40.00 from an ATM
15 machine.

16 COUNT EIGHT

17 On or about March 16, 2003, in the County of Placer, State of
18 California, the crime of USING ANOTHER'S NAME TO OBTAIN
19 CREDIT/PROPERTY, in violation of section 530.5 of the Penal Code, a
20 felony, was committed by Shawn Michael Rodriguez and Anna Marie Rugg,
21 who did willfully and unlawfully obtain personal identifying
22 information of another, to wit, NICHOLAS HAMMAN, without the
23 authorization of that person, and used that information to obtain or
24 attempt to obtain credit, goods, or services in the name of the other
25 person and without that person's consent, to wit \$40.00 from an ATM
26 machine.

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I declare under penalty of perjury that the foregoing is true and correct. Executed March 19, 2003 at Auburn, Placer County, California.

BRADFORD R. FENOCCHIO, DISTRICT ATTORNEY

By: *William D. Marchi*
WILLIAM D. MARCHI,
DEPUTY DISTRICT ATTORNEY

WDM

*10/27/03
SM*

*CFS -
P.C. 455-20, K -
3/17/03 - Shaeel station*

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NOTICE
PLEASE TAKE NOTICE THAT COUNSEL FOR THE PEOPLE HEREBY
MAKE AN INFORMAL DEMAND FOR DISCOVERY (PURSUANT TO PC
1054.3) WITHIN FIFTEEN DAYS.

SUMMARY OF CHARGES AND PUNISHMENT
Shawn Michael Rodriguez
(DOB: 08/30/83)

COUNT	CHARGE	PUNISHMENT	EFFECT
1	PC209(a)	LWOP	
2	PC182(a)(1)/187	25-Life	
3	PC664/187(a)	7-Life	
4	PC211	2-3-5	
5	PC236	16-2-3	
6	VC10851(a)	16-2-3	
7	PC530.5	16-2-3	
8	PC530.5	16-2-3	

SUMMARY OF CHARGES AND PUNISHMENT
Anna Marie Rugg
(DOB: 10/02/82)

COUNT	CHARGE	PUNISHMENT	EFFECT
1	PC209(a)	LWOP	
2	PC182(a)(1)	25-Life	
3	PC664/187(a)	7-Life	
4	PC211	2-3-5	
5	PC236	16-2-3	
6	VC10851(a)	16-2-3	
7	PC530.5	16-2-3	
8	PC530.5	16-2-3	



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Rodriguez and Rugg

Case Number: 62-034689

Judge: Frances Kearney

Event Date: 09-09-03

Location: Department 3 Historic Courthouse

Clerk: Kathy Morgan

Event: Jury Trial: TNW

Reporter: Pam Katros

Bill Marke: Attorney for the People

David Cohen: Attorney for Anna Rugg

Jesse Serafin: Attorney for Shawn Rodriguez

This being the time and day assigned for trial, court convenes at 10:05 a.m. Present are all counsel, the defendants are not present. Motions in limine are filed by the People and David Cohen. Exhibits 1a) video tape of interview with Rodriguez, 1b) video tape of interview with Rugg, 1c) audio CD of interview with Rugg, 2) transcript of interview with Rodriguez, 3a) transcript of 1st interview with Rugg and 3b) transcript of 2nd interview with Rugg are marked for identification by the People. Trial is continued to allow the judge to preview the tapes and CD to Wednesday, September 10, 2003 at 8:30 a.m. in department 3. Court is adjourned at 10:11 a.m.

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Rodriguez and Rugg

Case Number: 62-034689

Judge: Frances Kearney

Event Date: 09-10-03

Location: Department 3 Historic Courthouse

Clerk: K. Morgan

Event: Jury Trial: Long Cause

Reporter: P. Katros

Bill Marchi: Attorney for the People

Jesse Serafin: Attorney for Shawn Rodriguez

David Cohen: Attorney for Anna Rugg

Court reconvenes at 9:19 a.m. with all parties present. This being the time for motions in limine. Motion by both defendants to sever the trial is granted with no opposition by the people. Motions in limine for Anna Rugg will be continued over for her trial, scheduled for Trial Assignment November 3rd, 2003 in department 1 at 1:00 p.m. and Jury trial November 4th, 2003 at 8:30 a.m. in a department to be announced. An ESC / TCC is scheduled for October 14th, 2003 at 8:30 a.m. in department 13. Defendant Rugg waives time as to the 10/60 and is remanded back to the custody of the Sheriff at this time until next court date.

Peoples motions:

- 1) Stipulation regarding photographs is granted
- 2) Use of prior convictions for impeachment will be granted as to the victims most recent crimes and sex offense but only as to the crime, date and conviction.
- 3) Ruling on specified jury instructions: Defense stipulates subject to review to which they will give a timely notice. Instructions may be in opening remarks.
- 4) Use of incident records of Rodriguez is deferred.
- 5) Impeachment with prior acts is granted unless victim testifies to not being a violent person

Defendants motions:

- 1) Specific statements by victim: Covered in Peoples motion #5
- 2) Allowing 1101(B) evidence is taken under submission.

It is agreed upon that each side will have 20 pre-emptory challenges. All parties, with the exception of Ms. Rugg and her attorney are ordered back on September 16th, 2003 at 1:00 pm. in department 3. The defendant is to be dressed for trial and is remanded to the custody of the sheriff until the next court date.

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SEP 12 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By Shawn Rodriguez Deputy

1 LEONARD K. TAUMAN
2 PLACER COUNTY PUBLIC DEFENDER
3 12834 Earhart Ave.
4 Auburn, California 95602
5 Telephone: (530) 885-2422

6 JESSE SERAFIN
7 State Bar No. 195586
8 Assistant Public Defender

9 Attorneys for Defendant,
10 Shawn Rodriguez

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER

12 THE PEOPLE OF THE STATE
13 OF CALIFORNIA,

14 Plaintiff,

15 vs.

16 SHAWN RODRIGUEZ,

17 Defendant.

CASE NO. --

MOTION FOR RECONSIDERATION
REGARDING RULING ON 1101(B)
EVIDENCE ADMISSABILITY

DATE: TBD
TIME: TBD
DEPT: TBD

18 TO THE PLACER COUNTY DISTRICT ATTORNEY AND HIS REPRESENTATIVE
19 AND THE CLERK OF THE ABOVE-ENTITLED COURT.

20 PLEASE TAKE NOTICE that on September 10, 2003, at 8:30 a.m., or as soon thereafter
21 as the matter may be heard in a Department to be determined, Defendant, SHAWN
22 RODRIGUEZ, by and through his attorney, Jesse Serafin, Assistant Public Defender, will move
23 the court for orders as set forth herein.

24 The facts and case law surrounding this motion have been previously laid out in Defense

1 original motion in limine. The arguments herein are a supplement to those made in the earlier
2 motion. This motion is in response to the Court's denial of 1101(b) evidence in an effort to clarify
3 the ruling. Previously, the defendant offered several theories for admissibility. This supplement
4 will focus on one aspect that was argued orally, but does not seem to be clearly addressed by the
5 court in its ruling.

6 The court concluded that it: "cannot see anything, at present, in the proposed 1101(b)
7 evidence that is material in the instant case on the Defendant's intent to commit the crimes that he
8 is charged with."

9
10 To prove its case the district attorney must prove that Shawn Rodriguez intended to kidnap
11 and murder Nicholas Hamman. Mr. Rodriguez, in his statement to police, made three specific
12 statements regarding his lack of intent to kidnap or murder the victim.

- 13 1. The co-defendant, Anna Rugg, created the plan to trap Nicholas Hamman without any
14 input from Mr. Rodriguez.
- 15 2. The co-defendant coerced Nicholas Hamman to the building, into the cell, and locked
16 him in there without any input or aid from Mr. Rodriguez.
- 17 3. The subsequent acts in furtherance of kidnap, extortion, and murder were done because
18 of the Ms. Rugg's intent. The defendant told police he did not intend those crimes.
19

20 Mr. Rodriguez admitted committing certain acts; however, the issue is his intent when
21 committing those acts. His contention that the co-defendant planned and initiated the capture and
22 lockdown of the victim by herself is certainly relevant to his lack of intent. The fact that the co-
23 defendant created the plans of stealing from the victim and later attempting to kill him is certainly
24

1 relevant to Mr. Rodriguez' lack of intent. His entire statement to the police is based on the notion
2 that Anna Rugg is the only one who carried the requisite intent to commit these crimes. Evidence
3 that she intended to commit similar crimes in the past is material to support that notion.

4 The fact that certain acts were taken demands logically that at least one of the two
5 defendants "intended" a certain result. If a jury does not believe Shawn's claim that Anna Rugg
6 had the intent to commit these crimes, then he is automatically guilty. This set of circumstances
7 makes Anna Rugg's intent a critical issue in Mr. Rodriguez' claimed "lack" of intent.
8

9 Evidence that the co-defendant has formed similar intent to commit similar crimes in the
10 past is directly material and relevant to defendant's claim that she carried that same intent in the
11 instant case. The jury verdict in this case is a two-step process. The defendant's intent is only step
12 two. There's no need to address it absent any belief or evidence that the co-defendant carried the
13 requisite intent. It is clear beyond a reasonable doubt that one of these two intended to kidnap,
14 detain, rob, and kill Nicholas Hamman. There is no other explanation for the known acts. It
15 follows that if a jury has no reason to believe that Anna Rugg carried this intent, they must conclude
16 that Shawn did. Therefore, any evidence that tends to prove Anna's intent becomes directly
17 relevant.
18

19 While this argument was mentioned in our earlier motion, the materiality issue was not
20 adequately explained. The defense focus was on the similarity between Anna's past acts and her
21 present act. It seems by the court's silence on the issue that the court finds based on the law, that
22 the evidence offered meets the standard of intent and/or plan as it relates to 1101(b). This would
23 suggest that the evidence would be allowed as material in a case against Anna Rugg to show her
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26

1 intent to commit these crimes. The point of this motion is to clarify the fact that any evidence
2 material to Anna Rugg's intent is equally as material to Shawn Rodriguez' lack of intent.

3 The court's ruling seemed to hinge on the conclusion that "by the defendant's own
4 admission he agreed to join with her in the endeavor to rob the victim." If that were his only
5 charge, I would agree there is no intent issue. However, Shawn clearly stated that while he did join
6 in certain acts, he did not do so with the intent to kidnap or murder. His statement suggests the
7 overall theory that he was the follower in this case while Anna was the leader. If this theory is
8 supported, it could be relevant to a jury on the issue of Shawn's guilt. The district attorney argued
9 that the notion of Anna being the leader, and Shawn following without an actual intent to do harm
10 was unlikely. The believability of a defendant's theory as it pertains to this motion is irrelevant. If
11 the defendant makes a defense, and there exists evidence that supports that defense, and that
12 evidence is admissible under the rules of court, then it comes in. At that point it can then be
13 attacked through cross-examination and impeachment.
14
15

16 The acts themselves do not carry a life term without the required intent. If Anna carried the
17 intent, and not Shawn, he cannot get life in prison. Therefore, it is our belief that Anna's intent is
18 not only material, but critical. Any evidence tending to prove that intent must be allowed in Mr.
19 Rodriguez' defense.
20
21

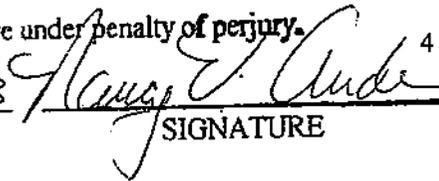
PLACER COUNTY PUBLIC DEFENDER

22 I am an employee or agent of the Placer County
Public Defender's Office, over the age of eighteen,
and not a party to this action. I personally served a
true and correct copy of this document upon an
employee or agent of the Placer County District
Attorney's Office.



JESSE SERAFIN

Placer County
Public Defender
12834 Earhart Avenue
Auburn, CA 95602
(530) 885-2472
(530) 885-FAXX

This I declare under penalty of perjury.
287/12-03 

DATE SIGNATURE

000213



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Shawn Michael Rodriguez Case Number: 62-034689
Judge: Frances Kearney Event Date: 09-16-03
Location: Department 3 Historic Courthouse Clerk: Kathy Morgan
Event: Jury Trial: Long Cause Reporter: Pam Katros

Bill Marchi: Attorney for the People

Jesse Serafin: Attorney for the Defendant

1:24 p.m. Outside the presence of the prospective jurors and on the record, the defense discloses their witness list and files in court. The Defendant inquires of the court if there has been a decision on the submitted matter of the 1101(b) before the court. The Court has not ruled on the matter at this point. The People move to amend the wording in count 1 of the complaint, motion granted. The people put the offer on the record that if the defendant pleads today, the offer would be, plead to count 1 with out the special allegation and count 3 the sentence would be two consecutive 7 to life terms, should the defendant not plead today the maximum exposure would be life with out the possibility of parole. The defendant rejects the Peoples offer.

Off the record the clerk took roll of the prospective jurors and administered hardships. At 1:55 p.m. the prospective jurors are brought into the courtroom and the first 18 are seated in the jury box and Voir Dire begins at 2:10 p.m. Court breaks at 3:02 p.m. Off the record, prospective juror 230128184 meets with the judge and attorneys and a motion is brought by the People to excuse 230128184 for cause, the defense stipulates and prospective juror # 230128184 is excused.

Court reconvenes at 3:15 a.m. with all parties and prospective jurors present. There is a motion by the People to excuse prospective jurors # 230019789, 230046697 and 230070873 for cause and the defendant stipulates and the jurors are excused and prospective jurors are called to fill the empty seats. Court breaks at 4:04. Prospective jurors and parties are ordered to return on Wednesday, September 17, 2003 in department 3 at 8:30 a.m. The defendant is remanded to the custody of the Sheriff to be returned on the next court date dressed for trial.

Exhibits 1-62, color photos, are marked for identification by the People. Exhibits 63) bank card, 64) traffic cite, 65) toilet flusher, 66) handwritten note, 67) video tape of Rodriguez interview 68) 4 receipts 69) air vent and 70) Plexi glass window.

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Shawn Michael Rodriguez Case Number: 62-034689
Judge: Frances Kearney Event Date: 09-17-03
Location: Department 3 Historic Courthouse Clerk: Kathy Morgan
Event: Jury Trial: Long Cause Reporter: Pam Katros

Bill Marchi: Attorney for the People

Jesse Serafin: Attorney for the Defendant

Court reconvenes at 8:44 a.m. with all parties and prospective jurors present. Voir dire continues. Both sides pass for cause. Counsel exercise peremptory challenges. Court breaks at 9:44 a.m.

Court reconvenes at 9:57 a.m. with all parties and prospective jurors present. People motion to excuse #230060682 and 230160633 and the defendant stipulates, both are excused for cause. Both parties pass for cause and voir dire continues. The court excuses juror #230078093 for cause. Both sides being satisfied, the following jurors are impaneled and sworn to try the cause: 1) 230076278 2) 230140124 3) 230168646 4) 230085548 5) 230094038 6) 230081403 7) 230106246 8) 230027425 9) 230170400 10) 230078370 11) 230085685 12) 230024581 Alt) 230146182 Alt) 230084651 Alt) 230092561. Court breaks at 11:07 a.m.

Court reconvenes at 11:32 a.m. with all parties and jurors present. The jury is pre-instructed by the court and released for noon break. Outside the presence of the jury, discussion is held on the order of the witnesses and the presentation of Anna Rugg for identification. Court breaks at 11:47 a.m.

Court reconvenes at 1:01 p.m. with all parties and jurors present. Opening statement by the People commenced and concluded. Opening statement by the Defendant commenced and concluded. Officer GARY HOPPING, called on behalf of the People, is duly sworn, examined and excused. Court admonishes and releases the jurors for break at 2:23 p.m. On the record and outside the presence of the jury the People request the two tapes, marked on motion, to edit. Court breaks at 2:28 p.m.

Court reconvenes at 2:38 p.m. outside the presence of the jury, Anna Rugg is brought into the courtroom and at 2:39 p.m. the jurors are brought into the courtroom and the witness resumes the stand and cross examination begins. Anna Rugg is removed from the courtroom. The witness is excused and subject to recall. STAN HAMELIN, called on behalf of the People, is duly sworn, examined and excused, this witness is subject to recall. Court breaks at 3:26 p.m. The jurors are admonished and excused. All parties are ordered to return on Monday, September 22 at 8:30 a.m. in department 3. The defendant is remanded to the custody of the Sheriff to be returned on the next court date dressed for trial.

000215

fsmn001



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Shawn Michael Rodriguez Case Number: 62-034689
Judge: Frances Kearney Event Date: 09-22-03
Location: Department 3 Historic Courthouse Clerk: Kathy Morgan
Event: Jury Trial: Long Cause (Ongoing) Reporter: Pam Katros

Bill Marchi: Attorney for the People

Jesse Serafin: Attorney for the Defendant

Court reconvenes at 8:42 a.m. with all parties and jurors present. Off the record, exhibits 73-83, color photos of the old Jevvenile Hall, were marked for identification by the People. ANDREA HARRIS, called on behalf of the People, is duly sworn, examined and excused. ROBERT HAMMER, called on behalf of the People, is duly sworn, and examined. The jurors are excused at 9:30 a.m. Anna Rugg is brought into the court room. The jurors are brought back into the courtroom and examination continues. The witness identifies Anna Rugg. Anna Rugg is removed from the court room. The witness is thanked and excused. RICHARD ROMINES, called on behalf of the People, is duly sworn, and examined. The jurors are excused at 10:06 a.m. Outside the presence of the jury, discussion is had as to the witness exposure to the crime and his possible implication to this case. The witness is advised to his rights to have an attorney present before he is cross examined by the defendant, the witness declines. Court breaks at 10:10 a.m.

At 10:25 a.m., Alternate juror 2 is brought into the courtroom outside the presence of the other jurors, and requests to be released from jury service due to an medical emergency, both parties stip to her release and the court grants her request. 10:26 a.m., the jurors are brought in and all parties are present and cross examination begins. The witness is thanked and excused. Court breaks at 10:52 a.m.

At 11:00 a.m. on the record and outside the presence of the jury, Anna Rugg and Nicholas Hamman are brought into the courtroom. At 11:02 a.m. all jurors and parties are present in court. NICHOLAS HAMMAN, called on behalf of the People, is duly sworn and examined. Anna Rugg is excused. Court breaks at 12:02 p.m.

Court reconvenes at 1:33 p.m. with all parties and jurors present. Mr. Hamman resumes the stand and examination continues. Court breaks at 2:35 p.m.

Court reconvenes at 2:57 p.m. with all parites and jurors present. The witness resumes the stand and examination continues.

000216

fsmn001



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Shawn Micahel Rodriguez Case Number: 62-034689
Judge: Frances Kearney Event Date: 09-23-03
Location: Department 3 Historic Courthouse Clerk: Kathy Morgan
Event: Jury Trial: Long Cause (Ongoing) Reporter: Pam Katros

Bill Marchi: Attorney for the People

Jesse Serafin: Attorney for the Defendant

Court reconvenes at 8:43 a.m. with all parties and jurors present. DALE HUTCHINS, called on behalf of the People, is duly sworn and examined. The jurors are excused at 10:05 a.m. Outside the presence of the jury, discussion is had as to limited evidentiary issues. Court breaks at 10:10 a.m.

Court reconvenes at 10:21 a.m. with all parties and jurors present. The witness is thanked and excused and subject to recall. DANIEL COE, called on behalf of the People, is duly sworn, and examined. The jurors are shown a video of an interview with the defendant. The parties stipulate that the court reporter does not need to take down the statements on the video. The jurors are excused at 12:08 p.m. Outside the presence of the jury issues as to what officer Coe would testify to and who on the maintenance staff for the old juvenile hall might be testifying, and if so, there would have to be a 402 hearing to see if testimony would be allowed. Court breaks at 1:15 p.m.

Court reconvenes at 1:21 p.m. Outside the presence of the jury, the issues regarding Anna Rugg's statement are:

- 1) Whether Anna Rugg is an unavailable witness, and the court determines that she is.
- 2) Whether Anna Rugg's statement is a trustworthy one, and the court finds that it is not.

At 1:38 p.m. and still outside the presence of the jury, the court conducts a 402 hearing. STEVEN HECKERT, is duly sworn, examined and excused. GLEN JOHNSON, is duly sworn, examined and excused. Court makes the following finding, the testimony of the two prior witnesses will not be allowed and counsel is to proceed without disclosing the fact that the vent that the hose was put into, directly fed into the holding cell where the victim was being held. The jury enters the courtroom at 1:55 p.m. and officer Coe resumes the stand and examination continues. Exhibits 84, Video taped interview of Rodriguez, and 85, transcript of video tape are marked for identification by the People. Court breaks at 2:53 p.m.

Court reconvenes at 3:09 p.m. with all parties and jurors present. Officer Coe resumes the stand and examination continues. Court is in recess at 4:01 p.m. All parties and jurors are ordered to return on Wednesday, September 24, 2003 at 10:00 a.m. in department 3. The defendant is remanded to the custody of the sheriff and ordered to return on the next court date dressed for trial.

000217

fsmn001



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Shawn Michael Rodriguez Case Number: 62-034689
Judge: Frances Kearney Event Date: 09-24-03
Location: Department 3 Historic Courthouse Clerk: Kathy Morgan
Event: Jury Trial: Long Cause (Ongoing) Reporter: Pam Katros

Bill Marchi: Attorney for the People

Jesse Serafin: Attorney for the Defendant

Court reconvenes at 10:05 a.m. with all parties and jurors present. Officer Coe resumes the stand and examination continues. The People rest their case in chief. The witness is thanked and excused and subject to recall. The jury is excused at 10:22 a.m. Outside the presence of the jury, People move to have exhibits 1-85 admitted into evidence, the court grants the motion and all are moved into evidence as well as each of the copies of transcripts that were given to the jurors which they are allowed to retain. Court breaks at 10:34 a.m.

Court reconvenes at 1:43 p.m. all parties present and outside the presence of the jury. A 402 hearing on testimony of Erin Hughes is held. ERIN HUGHES, called on behalf of the People, is duly sworn and examined. Sitting beside the witness is her attorney, Michael Bolton. The court rules as follows, Questions will be narrowly limited to:

- 1) Who was present in the Elmwood motel on the Friday night before.
- 2) Where was everyone seated
- 3) Was there any unwanted touching between Anna and Nick.

if counsel adheres to the above questions, then Anna Rugg will not be deemed unavailable. The defendant decides not to call Erin Hughes to the stand.

Jurors enter the courtroom at 2:35 p.m. MARTHA McKENNEY, called on behalf of the defendant, is duly sworn, examined and excused. Court is in recess at 2:50 p.m. The court admonishes the jurors and all parties are ordered to return on Monday September 29th, 2003 at 9:00 a.m. in department 3. The defendant is remanded to the custody of the Sheriff to be delivered on the next court date dressed for trial.

000218

fsmn001



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Shawn Michael Rodriguez	Case Number: 62-034689
Judge: Frances Kearney	Event Date: 09-29-03
Location: Department 3 Historic Courthouse	Clerk: Kathy Morgan
Event: Jury Trial: Long Cause (Ongoing)	Reporter: Pam Katros

Bill Marchi: Attorney for the People

Jesse Serafin: Attorney for the Defendant

Court reconvenes at 9:34 a.m. with all parties and jurors present. SHAWN RODRIGUEZ, called on behalf of the defendant, is duly sworn and examined. Court breaks at 10:27 a.m.

Court reconvenes at 10:45 a.m. with all parties and jurors present. Examination of the witness continues. Cross-examination begins and ends. Redirect begins and concludes. Re-cross begins and concludes. Court is in recess at 12:07 p.m. until Tuesday, September 30th 2003 at 8:30 a.m. in department 3, all parties are ordered to be present. The defendant is remanded to the custody of the Sheriff to be delivered on the next court date dressed for trial.

000219

fsmn001



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Rodriguez and Rugg

Case Number: 62-034689

Judge: Frances Kearney

Event Date: 09-30-03

Location: Department 3 Historic Courthouse

Clerk: H. Sigler

Event: Jury Trial: Long Cause (Ongoing)

Reporter: Pam Katros

Bill Marchi: Attorney for the People

Jesse Serafin: Attorney for the Defendant

Court reconvenes at 8:40 a.m. with all parties present and outside the presence of the jurors. The parties stipulate the lesser crimes of attempted manslaughter; grand theft and attempted robbery will not be included in the instructions.

Exhibit # 67 is withdrawn and returned to the People. Exhibits 1B & 1C marked during the time of the Preliminary Examination of Anna Rugg ordered returned to the People to be preserved for trial. Exhibit #84 entered into evidence and will be available to the jurors.

Jurors were given a transcript of a taped interview of Shawn Rodriguez, defendant, to read along and make changes but at the request of the Defense and stipulation of the parties the Court orders the transcript collected.

The jury enters the courtroom at 8:46 a.m. Both sides rest, subject to admission of exhibits. Transcripts of taped interview of Shawn Rodriguez are collected. The Court instructs the jury in the law applicable to this case and reviews the verdict form(s). The complete set of the instructions will be provided to the jurors during deliberations. Court breaks at 9:44 a.m.

Court reconvenes at 9:58 a.m. with all parties and jurors present. Bill Marchi presents closing argument on behalf of the People. Court breaks at 11:15 a.m. Court reconvenes at 11:25 a.m. with all parties and jurors present. Bill Marchi continues with closing argument. Court takes a noon recess. Court reconvenes at 1:00 p.m. with all parties and jurors present. Jesse Serafin presents rebuttal argument on behalf of the Defendant. Alternate jurors are excused. The bailiff is sworn to take charge of the jury, and the jury retires to begin deliberations at 2:17 p.m.

The jury will deliberate until 3:30 p.m. when it is deemed admonished and allowed to separate. The defendant remanded to the custody of the Sheriff to be delivered on the next court date dressed for trial. Court adjourns.

000220

fsmn001



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

Exhibit List

Case Name: People vs. Rodriguez and Rugg
Case Number: 62-034689

Parties:

A. Plaintiff: Bill Marchi

B. Defendant: Jesse Serafin

PARTY	IDENT.	EVID.	W/DRN	DESCRIPTION
A1	9/16/03	9/24/03		Diagram of Old Juvenile Hall
A2	9/16/03	9/24/03		Color photo of Front entrance
A3	9/16/03	9/24/03		Color photo of front of Hall
A4	9/16/03	9/24/03		Color photo of overview of street
A5	9/16/03	9/24/03		Color photo of overview rear of building
A6	9/16/03	9/24/03		Color photo of overview point of entry exterior
A7	9/16/03	9/24/03		Color photo of overview rear of building
A8	9/16/03	9/24/03		Color photo of Point of entry exterior
A9	9/16/03	9/24/03		Color photo of point of entry exterior
A10	9/16/03	9/24/03		Color photo of glass and bricks under window
A11	9/16/03	9/24/03		Color photo of point of entry interior
A12	9/16/03	9/24/03		Color photo of overview point of entry from inside
A13	9/16/03	9/24/03		Color photo of overview point of entry from inside
A14	9/16/03	9/24/03		Color photo of Kitchen
A15	9/16/03	9/24/03		Color photo of Kitchen
A16	9/16/03	9/24/03		Color photo of door entering into booking area
A17	9/16/03	9/24/03		Color photo of booking area
A18	9/16/03	9/24/03		Color photo of booking area window of holding cell
A19	9/16/03	9/24/03		Color photo of booking area door to holding cell
A20	9/16/03	9/24/03		Color photo of booking area
A21	9/16/03	9/24/03		Color photo of booking area
A22	9/16/03	9/24/03		Color photo of booking area outside holding cell
A23	9/16/03	9/24/03		Color photo of booking area outside holding cell
A24	9/16/03	9/24/03		Color photo of door of holding cell
A25	9/16/03	9/24/03		Color photo of holding cell
A26	9/16/03	9/24/03		Color photo of ceiling inside holding cell
A27	9/16/03	9/24/03		Color photo of inside holding cell

cvexhib1

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A28	9/16/03	9/24/03		Color photo of floor inside holding cell
A29	9/16/03	9/24/03		Color photo of towel in sprinkler in holding cell
A30	9/16/03	9/24/03		Color photo of towel in sprinkler in holding cell
A31	9/16/03	9/24/03		Color photo of cell window from interior
A32	9/16/03	9/24/03		Color photo of towel in sprinkler in holding cell
A33	9/16/03	9/24/03		Color photo of cell door - closed - interior
A34	9/16/03	9/24/03		Color photo of cell door with tape
A35	9/16/03	9/24/03		Color photo of cell door with tape
A36	9/16/03	9/24/03		Color photo of booking area
A37	9/16/03	9/24/03		Color photo of booking area
A38	9/16/03	9/24/03		Color photo of vent above cell door
A39	9/16/03	9/24/03		Color photo of vent above cell door
A40	9/16/03	9/24/03		Color photo of group area from booking
A41	9/16/03	9/24/03		Color photo of overview of note in front hall
A42	9/16/03	9/24/03		Color photo of midrange of note in hall (front)
A43	9/16/03	9/24/03		Close up of note in hall front
A44	9/16/03	9/24/03		White plastic material stuck to tape
A45	9/16/03	9/24/03		White plastic material stuck to tape
A46	9/16/03	9/24/03		Overview of vehicle
A47	9/16/03	9/24/03		Overview fo vehicle
A48	9/16/03	9/24/03		Front seat of car
A49	9/16/03	9/24/03		Driver side rear seat
A50	9/16/03	9/24/03		Passenger side interior
A51	9/16/03	9/24/03		Center console area / ATM card
A52	9/16/03	9/24/03		Center console / traffic ticket
A53	9/16/03	9/24/03		Overview of trunk / hose
A54	9/16/03	9/24/03		Duct tape on hose in trunk
A55	9/16/03	9/24/03		Hose from trunk / end w/tape
A56	9/16/03	9/24/03		Bag of gloves from rear passenger floor
A57	9/16/03	9/24/03		Glove on rear seat
A58	9/16/03	9/24/03		Photo of victims right hand
A59	9/16/03	9/24/03		Photo of victims right hand
A60	9/16/03	9/24/03		Photo of victims left hand
A61	9/16/03	9/24/03		Photo of victims left hand
A62	9/16/03	9/24/03		Photo of victim
A63	9/16/03	9/24/03		One ATM card
A64	9/16/03	9/24/03		Traffic citation
A65	9/16/03	9/24/03		Flushing mechanism
A66	9/16/03	9/24/03		Note
A67	9/16/03	9/24/03	9/30/03	Rodriguez interview tape
A68	9/16/03	9/24/03		Four receipts
A69	9/16/03	9/24/03		Vent
A70	9/16/03	9/24/03		Plexi glass window
A71	9/16/03	9/24/03		Hose
A72	9/16/03	9/24/03		Handwritten note
A73	9/22/03	9/24/03		Color photo of old Juvenile Hall
A74	9/22/03	9/24/03		Color photo of old Juvenile Hall
A75	9/22/03	9/24/03		Color photo of old Juvenile Hall
A76	9/22/03	9/24/03		Color photo of old Juvenile Hall

cvexhib1

000222



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Rodriguez and Rugg

Case Number: 62-034689

Judge: Frances Kearney

Event Date: 10-01-03

Location: Department 3 Historic Courthouse

Clerk: Haydee Sigler

Event: Jury Trial: Long Cause (Ongoing)

Reporter: Pam Katros

Bill Marchi: Attorney for the People

Jesse Serafin: Attorney for the Defendant

The jury commences deliberation at 8:30 a.m. and will deliberate until 3:30 p.m. when it is deemed admonished and allowed to separate. The defendant remanded to the custody of the Sheriff to be delivered on the next court date dressed for trial. Court adjourns.

fsmn001

000224

COVER SHEET

TOP

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

Department Three

Case No. 62-034689
(Space below for file stamp only)

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

OCT - 6 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK

People of the State of California,
Plaintiff,

By _____ Deputy

vs.

Shawn Michael Rodriguez
Defendant.

Frances Kearney

Frances Kearney
Judge Presiding,

- Instructions given
- Instruction refused or withdrawn or held
- Verdicts used
- Verdicts not used
- Questions asked during deliberation

Consisting of 86 pages herein.

000225

CALJIC 0.50

**PRE-TRIAL ADMONITION
(PEN. CODE, § 1122, subd. (a))**

0.50 - 1 of 3

Members and alternate members of the Jury:

You have been selected and sworn as jurors and alternate jurors. I shall now instruct you as to your basic functions, duties and conduct. At the conclusion of the case, I will give you further instructions on the law. All of the court's instructions, whether given before, during, or after the taking of testimony are of equal importance.

You must base the decisions you make on the facts and the law.

First, you must determine the facts from the evidence received in the trial and not from any other source. A "fact" is something proved by the evidence or by stipulation. A stipulation is an agreement between attorneys regarding the facts. Second, you must apply the law that I state to you, to the facts, as you determine them, and in this way arrive at your verdict and any finding you are instructed to include in your verdict.

You must accept and follow the law as I state it to you, regardless of whether you agree with it. If anything concerning the law said by the attorneys in their arguments or at any other time during the trial conflicts with my instructions on the law, you must follow my instructions.

You must not be influenced by pity for the defendant or by prejudice against him. You must not be biased against the defendant because he has been arrested for this offense, charged with a crime, or brought to trial. None of these circumstances is evidence of guilt and you must not infer or assume from any or all of them that he is more likely to be guilty than not guilty. You must not be influenced by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the People and defendant have a right to expect that you will conscientiously consider and weigh the evidence, apply the law, and reach a just verdict regardless of the consequences.

Statements made by the attorneys during the trial are not evidence. However, if the attorneys stipulate or agree to a fact, you must regard that fact as proven.

If an objection is sustained to a question, do not guess what the answer might have been. Do not speculate as to the reason for the objection.

Do not assume to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it helps you to understand the answer. Do not consider for any purpose any offer of evidence that is rejected, or any evidence that is stricken by the court; treat it as though

Jury Instructions

000226

CALJIC 0.50

PRE-TRIAL ADMONITION
(PEN. CODE, § 1122, subd. (a))

187-664/200 preadmitted
Find 664/187 then advise preadmitted
* 3.14
* 8.66
* 253
needs special on literary Death
CPreston page

0.50 - 2 of 3

you had never heard of it.

You must not independently investigate the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works or persons for additional information.

You must not converse among yourselves, or with anyone else, on any subject connected with the trial, except when all the following conditions exist:

- (a) The case has been submitted to you for your decision by the court, following arguments by counsel and jury instructions;
- (b) You are discussing the case with a fellow juror; and
- (c) All twelve jurors and no other persons are present in the jury deliberating room.

You must not read or listen to any accounts or discussions of the case reported by the newspapers or other news media, including radio, television, the internet or any other electronic source.

You will be given notebooks and pencils. Leave them on your seat when you leave each day and at each recess. You will be able to take them into the jury room when you deliberate.

A word of caution: You may take notes; however, you should not permit note-taking to distract you from the ongoing proceedings. Remember you are the judges of the believability of witnesses.

Notes are only an aid to memory and should not take precedence over recollection. A juror who does not take notes should rely on his or her recollection of the evidence and not be influenced by the fact that other jurors do take notes. Notes are for the note-taker's own personal use in refreshing his or her recollection of the evidence.

Should a discrepancy exist between a juror's recollection of the evidence and a juror's notes, or between a juror's recollection and that of another, you have a right to and may request that the reporter read back the relevant testimony which must prevail.

You will be permitted to separate at recesses. You must return following the recesses at such times as I instruct you. During recesses, you must not discuss with anyone any subject connected with this trial.

As for the Alternate Jurors, you are bound by all of these admonitions. You

CALJIC 0.50

**PRE-TRIAL ADMONITION
(PEN. CODE, § 1122, subd. (a))**

0.50 - 3 of 3

must not converse among yourselves or with anyone else on any subject connected with this trial, or form or express any opinion on it until the case is submitted to you, which means until such time as you are substituted in for one of the 12 jurors and begin deliberating on the case.

This means that you must not decide how you would vote if you were deliberating with the other jurors and that you must not form or express an opinion about the case, unless and until you have been substituted in as a juror in the case.

You must not visit or view the premises or place where the crime or crimes charged were allegedly committed, or any other premises or place mentioned or involved in the case.

During the course of this trial and before you begin your deliberations, you must keep an open mind on this case and upon all of the issues that you will be asked to decide. In other words, you must not form or express any opinions on this case until the matter is finally submitted to you. Before, and within 90 days of your discharge as a juror in this matter, you must not request, accept, agree to accept, or discuss with any person, receiving or accepting, any payment or benefit in consideration for supplying any information concerning the trial.

You must promptly report to the Court any incident within your knowledge involving an attempt by any person to improperly influence any member of this jury.

At this time, the lawyers will be permitted to make an opening statement if they choose to do so. An opening statement is not evidence. Because it is not evidence, do not take any notes during the opening statement. Neither is it an argument. Counsel are not permitted to argue the case at this point in the proceedings. An opening statement is simply an outline by counsel of what he or she believes or expects the evidence will show in this trial. Its sole purpose is to assist you in understanding the case as it is presented to you.

CALJIC 1.00

RESPECTIVE DUTIES OF JUDGE AND JURY

1.00

Members of the Jury:

You have heard all the evidence and the arguments of the attorneys, and now it is my duty to instruct you on the law that applies to this case. The law requires that I read the instructions to you. You will have these instructions in written form in the jury room to refer to during your deliberations.

You must base your decision on the facts and the law.

You have two duties to perform. First, you must determine what facts have been proved from the evidence received in the trial and not from any other source. A "fact" is something proved by the evidence or by stipulation. A stipulation is an agreement between attorneys regarding the facts. Second, you must apply the law that I state to you, to the facts, as you determine them, and in this way arrive at your verdict and any finding you are instructed to include in your verdict.

You must accept and follow the law as I state it to you, regardless of whether you agree with it. If anything concerning the law said by the attorneys in their arguments or at any other time during the trial conflicts with my instructions on the law, you must follow my instructions.

You must not be influenced by pity for or prejudice against a defendant. You must not be biased against a defendant because he has been arrested for this offense, charged with a crime, or brought to trial. None of these circumstances is evidence of guilt and you must not infer or assume from any or all of them that a defendant is more likely to be guilty than not guilty. You must not be influenced by sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the People and a defendant have a right to expect that you will conscientiously consider and weigh the evidence, apply the law, and reach a just verdict regardless of the consequences.

CALJIC 1.01

INSTRUCTIONS TO BE CONSIDERED AS A WHOLE

1.01

If any rule, direction or idea is repeated or stated in different ways in these instructions, no emphasis is intended and you must not draw any inference because of its repetition. Do not single out any particular sentence or any individual point or instruction and ignore the others. Consider the instructions as a whole and each in light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

CALJIC 1.02

**STATEMENTS OF COUNSEL--EVIDENCE STRICKEN OUT--
INSINUATIONS OF QUESTIONS--STIPULATED FACTS**

1.02

Statements made by the attorneys during the trial are not evidence. However, if the attorneys have stipulated or agreed to a fact, you must regard that fact as proven.

If an objection was sustained to a question, do not guess what the answer might have been. Do not speculate as to the reason for the objection.

Do not assume to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it helps you to understand the answer. Do not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken by the court; treat it as though you had never heard of it.

A handwritten signature in black ink, appearing to be 'L. K.', is written above a horizontal line.

CALJIC 1.03

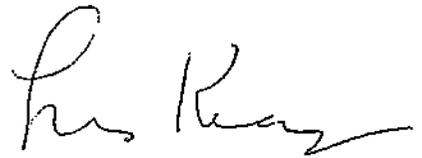
JUROR FORBIDDEN TO MAKE ANY INDEPENDENT INVESTIGATION

1.03

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source.

You must not independently investigate the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works or persons for additional information.

You must not discuss this case with any other person except a fellow juror, and then only after the case is submitted to you for your decision and only when all twelve jurors are present in the jury room.



CALJIC 1.05

JUROR'S USE OF NOTES

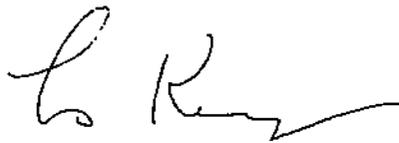
1.05

You have been given notebooks and pencils. Leave them on your seat in the jury room when you leave each day and at each recess. You will be able to take them into the jury room when you deliberate.

A word of caution: You may take notes; however, you should not permit note-taking to distract you from the ongoing proceedings. Remember you are the judges of the believability of witnesses.

Notes are only an aid to memory and should not take precedence over recollection. A juror who does not take notes should rely on his or her recollection of the evidence and not be influenced by the fact that other jurors do take notes. Notes are for the note-taker's own personal use in refreshing his or her recollection of the evidence.

Finally, should any discrepancy exist between a juror's recollection of the evidence and a juror's notes, or between one juror's recollection and that of another, you may request that the reporter read back the relevant testimony which must prevail.

A handwritten signature in black ink, appearing to be "L. R.", is written above a horizontal line.

CALJIC 1.20

"WILLFULLY"--DEFINED

1.20

The word "willfully" when applied to the intent with which an act is done or omitted means with a purpose or willingness to commit the act or to make the omission in question. The word "willfully" does not require any intent to violate the law, or to injure another, or to acquire any advantage.

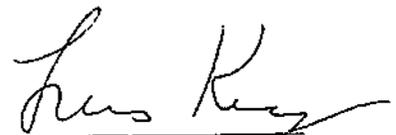


CALJIC 1.21

"KNOWINGLY"--DEFINED

1.21

The word "knowingly," means with knowledge of the existence of the facts in question. Knowledge of the unlawfulness of any act or omission is not required. A requirement of knowledge does not mean that the act must be done with any specific intent.

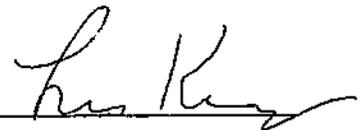


CALJIC 1.22

"MALICE" AND "MALICIOUSLY"—DEFINED

1.22

The words "malice" and "maliciously" mean a wish to vex, defraud, annoy or injure another person, or an intent to do a wrongful act.

A handwritten signature in black ink, appearing to read "L. King", is written over the horizontal line.

CALJIC 2.00

DIRECT AND CIRCUMSTANTIAL EVIDENCE—INFERENCES

2.00

Evidence consists of the testimony of witnesses, writings, material objects, or anything presented to the senses and offered to prove the existence or non-existence of a fact.

Evidence is either direct or circumstantial.

Direct evidence is evidence that directly proves a fact. It is evidence which by itself, if found to be true, establishes that fact. Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence. It is not necessary that facts be proved by direct evidence. They also may be proved by circumstantial evidence or by a combination of direct and circumstantial evidence. Both direct and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.



CALJIC 2.01

SUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE--GENERALLY

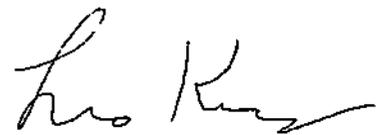
2.01

However, a finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with the theory that the defendant is guilty of the crime, but (2) cannot be reconciled with any other rational conclusion.

Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance on which the inference necessarily rests must be proved beyond a reasonable doubt.

Also, if the circumstantial evidence as to any particular count permits two reasonable interpretations, one of which points to the defendant's guilt and the other to his innocence, you must adopt that interpretation that points to the defendant's innocence, and reject that interpretation that points to his guilt.

If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable.



CALJIC 2.02

**SUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE TO PROVE
SPECIFIC INTENT OR MENTAL STATE**

2.02

The specific intent or mental state with which an act is done may be shown by the circumstances surrounding the commission of the act. However, you may not find the defendant guilty of the crime charged in Counts one, two, three, four and six, unless the proved circumstances are not only (1) consistent with the theory that the defendant had the required specific intent or mental state but (2) cannot be reconciled with any other rational conclusion.

Also, if the evidence as to any specific intent or mental state permits two reasonable interpretations, one of which points to the existence of the specific intent or mental state and the other to its absence, you must adopt that interpretation which points to its absence. If, on the other hand, one interpretation of the evidence as to the specific intent or mental state appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable.

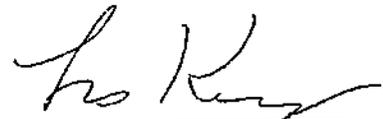


CALJIC 2.03

CONSCIOUSNESS OF GUILT—FALSEHOOD

2.03

If you find that before this trial the defendant made a willfully false or deliberately misleading statement concerning the crimes for which he is now being tried, you may consider that statement as a circumstance tending to prove a consciousness of guilt. However, that conduct is not sufficient by itself to prove guilt, and its weight and significance, if any, are for you to decide.

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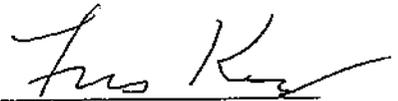
CALJIC 2.11

PRODUCTION OF ALL AVAILABLE EVIDENCE NOT REQUIRED

2.11

Neither side is required to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events. Neither side is required to produce all objects or documents mentioned or suggested by the evidence.

S. 21.5 (no prob)



CALJIC 2.11.5

UNJOINED PERPETRATORS OF SAME CRIME

2.11.5

There has been evidence in this case indicating that persons other than the defendant were or may have been involved in the crime for which the defendant is on trial.

There may be many reasons why other persons are not here on trial. Therefore, do not discuss or give any consideration as to why the other persons are not being prosecuted in this trial or whether they has been or will be prosecuted. Your sole duty is to decide whether the People have proved the guilt of the defendant on trial.

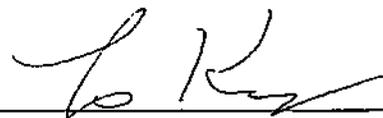


CALJIC 2.13

PRIOR CONSISTENT OR INCONSISTENT STATEMENTS AS EVIDENCE

2.13

Evidence that at some other time a witness made a statement or statements that is or are inconsistent or consistent with his or her testimony in this trial, may be considered by you not only for the purpose of testing the credibility of the witness, but also as evidence of the truth of the facts as stated by the witness on that former occasion. If you disbelieve a witness' testimony that he or she no longer remembers a certain event, that testimony is inconsistent with a prior statement or statements by him or her describing that event.

A handwritten signature in black ink, appearing to be 'L. K.', written over a horizontal line.

CALJIC 2.20

BELIEVABILITY OF WITNESS

2.20

Every person who testifies under oath is a witness. You are the sole judges of the believability of a witness and the weight to be given the testimony of each witness.

In determining the believability of a witness you may consider anything that has a tendency reasonably to prove or disprove the truthfulness of the testimony of the witness, including but not limited to any of the following:

The extent of the opportunity or ability of the witness to see or hear or otherwise become aware of any matter about which the witness testified; The ability of the witness to remember or to communicate any matter about which the witness has testified;

The character and quality of that testimony;

The demeanor and manner of the witness while testifying;

The existence or nonexistence of a bias, interest, or other motive;

The existence or nonexistence of any fact testified to by the witness; The attitude of the witness toward this action or toward the giving of testimony;

A statement previously made by the witness that is consistent or inconsistent with his/her testimony;

An admission by the witness of untruthfulness;

The witness' prior conviction of a felony;

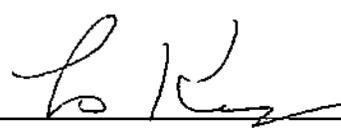
Past criminal conduct of a witness amounting to a misdemeanor.

CALJIC 2.21.1

DISCREPANCIES IN TESTIMONY

2.21.1

Discrepancies in a witness's testimony or between a witness's testimony and that of other witnesses, if there were any, do not necessarily mean that a witness should be discredited. Failure of recollection is common. Innocent misrecollection is not uncommon. Two persons witnessing an incident or a transaction often will see or hear it differently. You should consider whether a discrepancy relates to an important matter or only to something trivial.

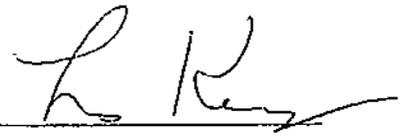
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CALJIC 2.22

WEIGHING CONFLICTING TESTIMONY

2.22

You are not required to decide any issue of fact in accordance with the testimony of a number of witnesses, which does not convince you, as against the testimony of a lesser number or other evidence, which you find more convincing. You may not disregard the testimony of the greater number of witnesses merely from caprice, whim or prejudice, or from a desire to favor one side against the other. You must not decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. The final test is not in the relative number of witnesses, but in the convincing force of the evidence.

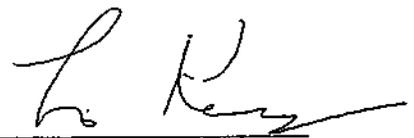
A handwritten signature in black ink, appearing to read "L. King", is written over a horizontal line.

CALJIC 2.23

BELIEVABILITY OF WITNESS--CONVICTION OF A FELONY

2.23

The fact that a witness has been convicted of a felony, if this is a fact, may be considered by you only for the purpose of determining the believability of that witness. The fact of a conviction does not necessarily destroy or impair a witness's believability. It is one of the circumstances that you may consider in weighing the testimony of that witness.

A handwritten signature in black ink, appearing to read "L. K.", is written above a horizontal line.

CALJIC 2.51

MOTIVE

2.51

Motive is not an element of the crime charged and need not be shown. However, you may consider motive or lack of motive as a circumstance in this case. Presence of motive may tend to establish the defendant is guilty. Absence of motive may tend to show the defendant is not guilty.

A handwritten signature in black ink, appearing to be 'L. R.', written over a horizontal line.

CALJIC 2.70

CONFESSION AND ADMISSION—DEFINED

2.70

A confession is a statement made by a defendant in which he has acknowledged his guilt of the crimes for which he is on trial. In order to constitute a confession, the statement must acknowledge participation in the crimes as well as the required criminal intent or state of mind.

An admission is a statement made by the defendant which does not by itself acknowledge his guilt of the crimes for which the defendant is on trial, but which statement tends to prove his guilt when considered with the rest of the evidence.

You are the exclusive judges as to whether the defendant made a confession or an admission, and if so, whether that statement is true in whole or in part.

Evidence of an oral confession or an oral admission of the defendant not made in court should be viewed with caution.

A handwritten signature in black ink, appearing to be "L. K.", written over a horizontal line.

CALJIC 2.71
ADMISSION--DEFINED

2.71

An admission is a statement made by the defendant which does not by itself acknowledge his guilt of the crimes for which the defendant is on trial, but which statement tends to prove his guilt when considered with the rest of the evidence.

You are the exclusive judges as to whether the defendant made an admission, and if so, whether that statement is true in whole or in part. Evidence of an oral admission of the defendant not made in court should be viewed with caution.

§: 2.71.4



CALJIC 2.71.7

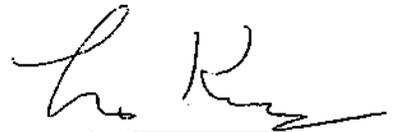
PRE-OFFENSE STATEMENT BY DEFENDANT

2.71.7

Evidence has been received from which you may find that an oral statement of intent, plan, motive, or design was made by the defendant before the offense with which he is charged was committed.

It is for you to decide whether the statement was made by the defendant.

Evidence of an oral statement ought to be viewed with caution.

A handwritten signature in black ink, appearing to be 'L. R.', is written over a horizontal line.

CALJIC 2.72

**CORPUS DELICTI MUST BE PROVED INDEPENDENT
OF ADMISSION OR CONFESSION**

2.72

No person may be convicted of a criminal offense unless there is some proof of each element of the crime independent of any confession or admission made by him outside of this trial.

The identity of the person who is alleged to have committed a crime is not an element of the crime nor is the degree of the crime. The identity or degree of the crime may be established by a confession or admission.

A handwritten signature in black ink, appearing to be 'L. R.', is written over a horizontal line.

CALJIC 2.80

EXPERT TESTIMONY—QUALIFICATIONS OF EXPERT

2.80

A witness who has special knowledge, skill, experience, training or education in a particular subject has testified to certain opinions. This type of witness is referred to as an expert witness. In determining what weight to give to any opinion expressed by an expert witness, you should consider the qualifications and believability of the witness, the facts or materials upon which each opinion is based, and the reasons for each opinion.

An opinion is only as good as the facts and reasons on which it is based. If you find that any fact has not been proved, or has been disproved, you must consider that in determining the value of the opinion. Likewise, you must consider the strengths and weaknesses of the reasons on which it is based.

You are not bound by an opinion. Give each opinion the weight you find it deserves. You may disregard any opinion if you find it to be unreasonable.

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CALJIC 2.90

PRESUMPTION OF INNOCENCE—REASONABLE DOUBT—BURDEN OF PROOF

2.90

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to a verdict of not guilty. This presumption places upon the People the burden of proving him guilty beyond a reasonable doubt.

Reasonable doubt is defined as follows: It is not a mere possible doubt; because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge.

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CALJIC 3.00

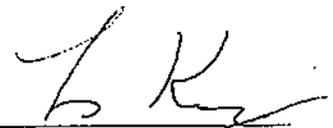
**PRINCIPALS--DEFINED
(PEN. CODE, § 31)**

3.00

Persons who are involved in committing or attempting to commit a crime are referred to as principals in that crime. Each principal, regardless of the extent or manner of participation is equally guilty. Principals include:

1. Those who directly and actively commit or attempt to commit the act constituting the crime, or
2. Those who aid and abet the commission or attempted commission of the crime.

§ - still need intent



CALJIC 3.01

AIDING AND ABETTING--DEFINED

3.01

A person aids and abets the commission or attempted commission of a crime when he or she:

- (1) With knowledge of the unlawful purpose of the perpetrator, and
- (2) With the intent or purpose of committing or encouraging or facilitating the commission of the crime, and
- (3) By act or advice aids, promotes, encourages or instigates the commission of the crime.

A person who aids and abets the commission or attempted commission of a crime need not be present at the scene of the crime.

Mere presence at the scene of a crime which does not itself assist the commission of the crime does not amount to aiding and abetting.

Mere knowledge that a crime is being committed and the failure to prevent it does not amount to aiding and abetting.

CALJIC 3.02

PRINCIPALS--LIABILITY FOR NATURAL AND PROBABLE CONSEQUENCES

3.02

One who aids and abets another in the commission of a crime or crimes is not only guilty of those crimes, but is also guilty of any other crime committed by a principal which is a natural and probable consequence of the crimes originally aided and abetted. In order to find the defendant guilty of the crimes as charged in counts one through eight, you must be satisfied beyond a reasonable doubt that:

1. The crime or crimes as charged were committed;
2. That the defendant aided and abetted those crimes;
3. That a co-principal in that crime committed the crimes as charged in counts one through eight;; and
4. The crimes were a natural and probable consequence of the commission of the crimes as charged in counts one through eight.

In determining whether a consequence is "natural and probable," you must apply an objective test, based not on what the defendant actually intended, but on what a person of reasonable and ordinary prudence would have expected likely to occur. The issue is to be decided in light of all of the circumstances surrounding the incident. A "natural" consequence is one which is within the normal range of outcomes that may be reasonably expected to occur if nothing unusual has intervened. "Probable" means likely to happen.

You are not required to unanimously agree as to which originally contemplated crime the defendant aided and abetted, so long as you are satisfied beyond a reasonable doubt and unanimously agree that the defendant aided and abetted the commission of an identified and defined target crime and that the remaining crimes were a natural and probable consequence of the commission of that target crime.

*J: D.A. Trying to say kidnap was natural consequence
Must show 5. Planned crime, another crime
came naturally from that*



CALJIC 3.03

TERMINATION OF LIABILITY OF AIDER AND ABETTER

3.03

Before the commission of the crimes charged in Counts one through eight, an aider and abetter may withdraw from participation in those crimes, and thus avoid responsibility for those crimes by doing two things: First, he must notify the other principals known to him of his intention to withdraw from the commission of those crimes; second, he must do everything in his power to prevent its commission.

S: That's what I. Doing what
Drop note



Jury Instructions

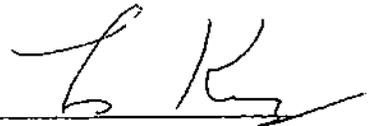
000258

CALJIC 3.10

ACCOMPLICE--DEFINED

3.10

An accomplice is a person who is subject to prosecution for the identical offense charged counts one through eight against the defendant on trial by reason of aiding and abetting or being a member of a criminal conspiracy.

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CALJIC 3.14

CRIMINAL INTENT NECESSARY TO MAKE ONE AN ACCOMPLICE

3.14

Merely assenting to or aiding or assisting in the commission of a crime without knowledge of the unlawful purpose of the perpetrator and without the intent or purpose of committing, encouraging or facilitating the commission of the crime is not criminal. Thus a person who assents to, or aids, or assists in, the commission of a crime without that knowledge and without that intent or purpose is not an accomplice in the commission of the crime.

J. Defense Theory

CALJIC 3.30

CONCURRENCE OF ACT AND GENERAL CRIMINAL INTENT

Request by People		Request by Defendant		Request by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		_____ Judge			
Withdrawn					

Print Date:

In the crimes charged in Counts five, seven and eight, namely the crimes of False Imprisonment by Violence, Using Another's Name to Obtain Credit/Property, and Using Another's Name to Obtain Credit/ Property there must exist a union or joint operation of act or conduct and general criminal intent. General intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he is acting with general criminal intent, even though he may not know that his act or conduct is unlawful.



000261

CALJIC 3.31

CONCURRENCE OF ACT AND SPECIFIC INTENT

3.31

In the crimes and allegations charged in Counts one, two, three, four, and six, namely, Kidnapping for Ransom, Conspiracy to Commit Murder, Attempted Murder, Robbery, and Unlawful Driving/Taking of a Motor Vehicle, there must exist a union or joint operation of act or conduct and a certain specific intent in the mind of the perpetrator. Unless this specific intent exists the crime or allegation to which it relates is not committed or is not true.

The specific intent required is included in the definitions of the crimes or allegations set forth elsewhere in these instructions.

A handwritten signature in black ink, appearing to be the initials 'L K' followed by a flourish.

CALJIC 3.31.5

MENTAL STATE

3.31.5

In the crimes charged in Counts two and three namely, Conspiracy to Commit Murder and Attempted Murder, there must exist a union or joint operation of act or conduct and a certain mental state in the mind of the perpetrator. Unless this mental state exists the crime to which it relates is not committed.

The mental states required are included in the definitions of the crimes set forth elsewhere in these instructions.

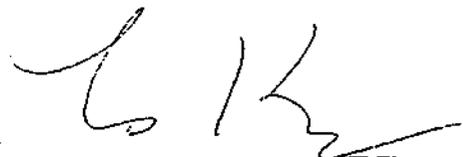
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CALJIC 6.00
ATTEMPT--DEFINED

6.00

An attempt to commit a crime consists of two elements, namely, a specific intent to commit the crime, and a direct but ineffectual act done toward its commission.

In determining whether this act was done, it is necessary to distinguish between mere preparation, on the one hand, and the actual commencement of the doing of the criminal deed, on the other. Mere preparation, which may consist of planning the offense or of devising, obtaining or arranging the means for its commission, is not sufficient to constitute an attempt. However, acts of a person who intends to commit a crime will constitute an attempt where those acts clearly indicate a certain, unambiguous intent to commit that specific crime. These acts must be an immediate step in the present execution of the criminal design, the progress of which would be completed unless interrupted by some circumstance not intended in the original design.

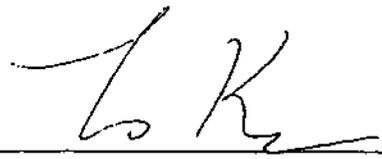
A handwritten signature in black ink, appearing to be 'C. K.', is written over a horizontal line.

CALJIC 6.01

ABANDONMENT OF ATTEMPT—WHEN NOT A DEFENSE

6.01

A person, who has once committed acts which constitute an attempt to commit a crime, is liable for the crime of attempted MURDER even though he does not proceed further with the intent to commit the crime, either by reason of voluntarily abandoning his purpose or because he was prevented or interfered with in completing the crime.

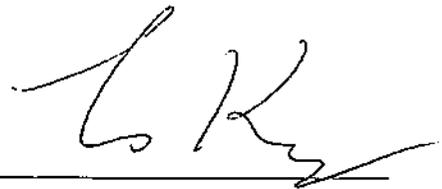
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CALJIC 6.02

ABANDONMENT OF ATTEMPT--WHEN A DEFENSE

6.02

If a person intends to commit a crime but, before committing any act toward the ultimate commission of the crime, freely and voluntarily abandons the original intent and makes no effort to accomplish it, that person has not attempted to commit the crime.

A handwritten signature in black ink, appearing to be 'L. Key' or similar, written over a horizontal line.

CALJIC 9.53

KIDNAPPING FOR RANSOM, REWARD OR EXTORTION
(PEN. CODE, § 209, subd. (a))

9.53

[Defendant is accused [in Count one] of having violated section 209, subdivision (a) of the Penal Code, a crime.]

Every person who [^{Yes}confines], [^{NO}inveigles], [^{NO}entices], [^{NO}decoys], [^{Possible}conceals], [^{YES}holds], or [^{Yes}detains] another person by any means whatsoever with the specific intent to hold or detain that person to commit extortion, is guilty of a violation of Penal Code section 209, a crime.

[It is not essential to that crime that the person be carried or otherwise moved for any distance, or at all.]

In order to prove this crime, each of the following elements must be proved:

1. A person was confined, inveigled, enticed, decoyed, concealed, held, or detained; and
2. The confining, inveigling, enticing, decoying, concealing, holding, or detaining of that person was done with the specific intent [to commit extortion]. The person from whom the property is obtained may be the same person who is being confined, inveigled, enticed, decoyed, concealed, held, or detained.

[If you should find the defendant guilty of the charge against him [under Count one], you must also find whether [the defendant, or his co-conspirator, intentionally confined the person kidnapped in a manner which exposed that person to a substantial likelihood of death] and state your decision in that respect in your verdict.

Jury Instructions

000267A

CALJIC 9.53

KIDNAPPING FOR RANSOM, REWARD OR EXTORTION
(PEN. CODE, § 209, subd. (a))

Only highlighted + written things

9.53

Defendants are accused in Count One of having violated section 209, subdivision (a) of the Penal Code, a crime.

Every person who confines, inveigles, entices, decoys, conceals, holds or detains another person by any means whatsoever with the specific intent to hold or detain that person to commit extortion, is guilty of a violation of Penal Code section 209, a crime.

It is not essential to that crime that the person be carried or otherwise moved for any distance, or at all.

In order to prove this crime, each of the following elements must be proved:

1. A person was confined, inveigled, enticed, decoyed, concealed, held, or detained; and

2. The confining, inveigling, enticing, decoying, concealing, holding, or detaining of that person was done with the specific intent to commit extortion. The person from whom the property is obtained may be the same person who is being confined, inveigled, enticed, decoyed, concealed, held, or detained.

If you should find the defendant guilty of the charge against him/her under Count One, you must also find whether each defendant intentionally confined the person kidnapped in a manner which exposed that person to a substantial likelihood of death and state your decision in that respect in your verdict.

Must Prove: That Saturday ^{morning} ~~Shawn~~ Shawn planned to extort money from Nick and then kidnapped him ^{to} ~~to~~ do so

- barely knew
- chance meeting
- not his idea to go to hall
- didn't lock him in
- theft came 12 hours later

Evidence to Prove Shawn's Intent

① Nick Hamman

② Fact Shawn didn't let him out ~~etc~~

Z67B

SPECIAL INSTRUCTION NO. 2

In considering whether the person kidnapped was intentionally confined in a manner which exposed him to a substantial likelihood of death, you may consider the circumstances of confinement for as long as the detention continues even though the property sought by the defendant has been given up by the victim.

The words "substantial likelihood of death" are to be given their plain ordinary meaning. You may consider whether or not the kidnapper intentionally increased the risk of death otherwise inherent in kidnapping.

AUTHORITY;

People v. Chacon (1995) 37 Cal.App.4th 52, 60.

People v. Centers (1999) 73 Cal.App.4th 84, 92.

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00026 ,

CALJIC 9.55

ACHIEVEMENT OF PURPOSE NOT ESSENTIAL TO KIDNAPPING

9.55

Where a person is charged with the crime of kidnapping for the purpose of extortion, it is not necessary to establish that this purpose was accomplished. The crime is complete if the kidnapping is done for that purpose.

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CALJIC 14.70

EXTORTION--DEFINED
(PEN. CODE, § 518)

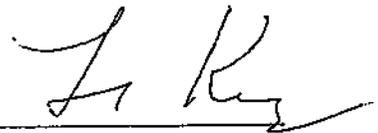
14.70

Every person who obtains [money] [property] (other thing of value)] from another with [his] consent, which consent has been induced by a wrongful use of [force] [or] [fear], is guilty of the crime of extortion in violation of Penal Code section 518.

In order to prove this crime, each of the following elements must be proved:

1. A person obtained property from the alleged victim;
2. The property was obtained with the consent of the alleged victim;
3. The alleged victim's consent was induced by the wrongful use of [force] [or] [fear]; and
4. The person who wrongfully used [force] [or] [fear] did so with the specific intent to induce the alleged victim to consent to the giving up of [his] property.

5. For life - need this intention
5. kidnaped



CALJIC 14.71

EXTORTION—WHAT THREATS CONSTITUTE INDUCING FEAR

14.71

Fear, may be induced by a threat:

[To inflict an unlawful injury on [the person threatened].



CALJIC 14.73

EXTORTION—CAUSAL RELATION BETWEEN FEAR AND CONSENT

14.73

To constitute extortion, the [force] [or] [fear induced by the threat] must be the operating or inducing cause which produces consent and results in the [property] [money] [or] [(other thing of value)] being delivered to another. If some other cause is the primary and controlling cause for the consent to the property being delivered to another, the crime of extortion has not been proved.

A handwritten signature in black ink, appearing to be the initials 'L K' followed by a flourish.

CALJIC 14.74

EXTORTION—WHAT CONSTITUTES CONSENT

14.74

As used in the law of extortion, "consent" is obtained:

From the person threatened when [money] [property] [or] [(other thing of value)] is turned over to another with the understanding that [the person threatened] will be saved from injury to himself;

The delivery of the [money] [property] [or] [(other thing of value)] is the lesser of two unpleasant alternatives. Consent as used in the law of extortion exists under these circumstances, notwithstanding the fact that the person threatened may silently protest in [his] own mind against the circumstances which compel the choice.

A coerced and unwilling consent compelled by the wrongful use of force or fear constitutes consent in extortion.

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CALJIC 9.60

**FALSE IMPRISONMENT BY VIOLENCE OR MENACE
(PEN. CODE, § 236)**

9.60

Defendant is accused in Count five of having committed the crime of false imprisonment by violence or menace, a violation of section 236 of the Penal Code. Every person who by violence or menace violates the liberty of another person by intentionally and unlawfully restraining, confining, or detaining that person and compelling that person to stay or go somewhere without his consent is guilty of the crime of false imprisonment by violence or menace in violation of Penal Code section 236.

"Violence" means the exercise of physical force used to restrain over and above the force reasonably necessary to effect the restraint.

"Menace" means a threat of harm express or implied by word or act.

False imprisonment does not require that there be confinement in a jail or prison.

In order to prove this crime, each of the following elements must be proved:

1. A person intentionally and unlawfully restrained, confined, or detained another person, compelling him to stay or go somewhere;
 2. The other person did not consent to the restraint, confinement, or detention;
- and
3. The restraint, confinement or detention was accomplished by violence or menace.

CALJIC 8.66

ATTEMPTED MURDER
(PEN. CODE, §§ 664 & 187)

8.66

Defendant is accused in Count three of having committed the crime of attempted murder, in violation of sections 664 and 187 of the Penal Code.

Every person who attempts to murder another human being is guilty of a violation of Penal Code sections 664 and 187.

Murder is the unlawful killing of a human being with malice aforethought.

In order to prove attempted murder, each of the following elements must be proved;

1. A direct but ineffectual act was done by one person towards killing another human being; and

2. The person committing the act harbored express malice aforethought, namely, a specific intent to kill unlawfully another human being.

In deciding whether or not such an act was done, it is necessary to distinguish between mere preparation, on the one hand, and the actual commencement of the doing of the criminal deed, on the other. Mere preparation, which may consist of planning the killing or of devising, obtaining or arranging the means for its commission, is not sufficient to constitute an attempt. However, acts of a person who intends to kill another person will constitute an attempt where those acts clearly indicate a certain, unambiguous intent to kill. The acts must be an immediate step in the present execution of the killing, the progress of which would be completed unless interrupted by some circumstances not intended in the original design.

CALJIC 8.67

ATTEMPTED MURDER—WILLFUL, DELIBERATE, AND PREMEDITATED
(PEN. CODE, §§ 664, subd. (a) & 189)

8.67

It is also alleged in Count three that the crime attempted was willful, deliberate, and premeditated murder. If you find the defendant guilty of attempted murder, you must determine whether this allegation is true or not true.

"Willful" means intentional. "Deliberate" means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action. "Premeditated" means considered beforehand.

If you find that the attempted murder was preceded and accompanied by a clear, deliberate intent to kill, which was the result of deliberation and premeditation, so that it must have been formed upon pre-existing reflection and not under a sudden heat of passion or other condition precluding the idea of deliberation, it is attempt to commit willful, deliberate, and premeditated murder.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation.

To constitute willful, deliberate, and premeditated attempted murder, the would-be slayer must weigh and consider the question of killing and the reasons for and against such a choice and, having in mind the consequences, decides to kill and makes a direct but ineffectual act to kill another human being.

The People have the burden of proving the truth of this allegation. If you have a reasonable doubt that it is true, you must find it to be not true.

You will include a special finding on that question in your verdict, using a form that will be supplied for that purpose.

CALJIC 8.69

CONSPIRACY TO COMMIT MURDER
(PEN. CODE, § 182, subd. (a)(1))

8.69 - 1 of 2

Defendant is accused in Count two of having committed the crime of conspiracy to commit murder in violation of section 182, subdivision (a)(1) of the Penal Code.

Every person who conspires with any other person or persons to commit the crime of murder is guilty of a violation of Penal Code section 182, subdivision (a)(1), a crime.

Murder is the unlawful killing of a human being with malice aforethought.

A conspiracy to commit murder is an agreement entered into between two or more persons with the specific intent to agree to commit the crime of murder and with the further specific intent to commit that murder, followed by an overt act committed in this state by one or more of the parties for the purpose of accomplishing the object of the agreement. Conspiracy is a crime.

The crime of conspiracy to commit murder requires proof that the conspirators harbored express malice aforethought, namely, the specific intent to kill unlawfully another human being.

In order to find a defendant guilty of conspiracy, in addition to proof of the unlawful agreement and specific intent, there must be proof of the commission of at least one of the acts alleged in the information to be an overt act and that the act found to have been committed was an overt act. It is not necessary to the guilt of any particular defendant that defendant personally committed an overt act, if he was one of the conspirators when the overt act was committed.

The term "overt act" means any step taken or act committed by one or more of the conspirators which goes beyond mere planning or agreement to commit a crime and which step or act is done in furtherance of the accomplishment of the object of the conspiracy.

To be an "overt act," the step taken or act committed need not, in and of itself, constitute the crime or even an attempt to commit the crime which is the ultimate object of the conspiracy. Nor is it required that the step or act, in and of itself, be a criminal or an unlawful act.

In order to prove this crime, each of the following elements must be proved:

1. Two or more persons entered into an agreement to kill unlawfully another human being;
2. Each of the persons specifically intended to enter into an agreement with one or more other persons for that purpose;

CALJIC 8.69

**CONSPIRACY TO COMMIT MURDER
(PEN. CODE, § 182, subd. (a)(1))**

8.69 - 2 of 2

3. Each of the persons to the agreement harbored express malice
aforethought, namely a specific intent to kill unlawfully another human being; and
4. An overt act was committed in this state by one or more of the persons who
agreed and intended to commit murder.

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CALJIC 6.10

CONSPIRACY AND OVERT ACT--DEFINED

6.10

A conspiracy is an agreement entered into between two or more persons with the specific intent to agree to commit the crime of murder and with the further specific intent to commit that crime, followed by an overt act committed in this state by one or more of the parties for the purpose of accomplishing the object of the agreement. Conspiracy is a crime.

In order to find a defendant guilty of conspiracy, in addition to proof of the unlawful agreement and specific intent, there must be proof of the commission of at least one of the acts alleged in the information, to be an overt act and that the act found to have been committed was an overt act. It is not necessary to the guilt of any particular defendant that he personally committed an overt act, if he was one of the conspirators when the alleged overt act was committed.

The term "overt act" means any step taken or act committed by one or more of the conspirators which goes beyond mere planning or agreement to commit a crime and which step or act is done in furtherance of the accomplishment of the object of the conspiracy.

To be an "overt act", the step taken or act committed need not, in and of itself, constitute the crime or even an attempt to commit the crime which is the ultimate object of the conspiracy. Nor is it required that the step or act, in and of itself, be a criminal or an unlawful act.



CALJIC 6.11

CONSPIRACY--JOINT RESPONSIBILITY

6.11

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if that act or declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators.

A member of a conspiracy is not only guilty of the particular crime that to his knowledge his confederates agreed to and did commit, but is also liable for the natural and probable consequences of any crime or act of a co-conspirator to further the object of the conspiracy, even though that crime or act was not intended as a part of the agreed upon objective and even though he was not present at the time of the commission of that crime or act.

You must determine whether the defendant is guilty as a member of a conspiracy to commit the originally agreed upon crime or crimes, and, if so, whether the crime alleged in Counts two was perpetrated by a co-conspirator in furtherance of that conspiracy and was a natural and probable consequence of the agreed upon criminal objective of that conspiracy.

In determining whether a consequence is "natural and probable" you must apply an objective test based not on what the defendant actually intended but on what a person of reasonable and ordinary prudence would have expected would be likely to occur. The issue is to be decided in light of all of the circumstances surrounding the incident. A "natural consequence" is one which is within the normal range of outcomes that may be reasonably expected to occur if nothing unusual has intervened. "Probable" means likely to happen.



CALJIC 6.12

CONSPIRACY--PROOF OF EXPRESS AGREEMENT NOT NECESSARY

6.12

The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence. It is not necessary to show a meeting of the alleged conspirators or the making of an express or formal agreement.

J. K.

CALJIC 6.20

WITHDRAWAL FROM CONSPIRACY

6.20

A member of a conspiracy is liable for the acts and declarations of his co-conspirators until he effectively withdraws from the conspiracy or the conspiracy has terminated.

In order to effectively withdraw from a conspiracy, there must be an affirmative and good faith rejection or repudiation of the conspiracy which must be communicated to the other conspirators of whom he has knowledge.

If a member of a conspiracy has effectively withdrawn from the conspiracy he is not thereafter liable for any act of the co-conspirators committed after his withdrawal from the conspiracy, but he is not relieved of responsibility for the acts of his co-conspirators committed while he was a member.

J. K.

CALJIC 6.22

CONSPIRACY--CASE MUST BE CONSIDERED AS TO EACH DEFENDANT

6.22

Defendant SHAWN MICHAEL RODRIGUEZ in this case is individually entitled to, and must receive, your determination whether he was a member of the alleged conspiracy. As to this defendant you must determine whether he was a conspirator by deciding whether he willfully, intentionally and knowingly joined with any other or others in the alleged conspiracy.

Before you may return a guilty verdict as to defendant SHAWN MICHAEL RODRIGUEZ of the crime of conspiracy, you must unanimously agree and find beyond a reasonable doubt, that (1) there was a conspiracy to commit the crime of murder, and (2) defendant SHAWN MICHAEL RODRIGUEZ willfully, intentionally and knowingly joined with any other or others in the alleged conspiracy. You must also unanimously agree and find beyond a reasonable doubt, that an overt act was committed by one of the conspirators. You are not required to unanimously agree as to who committed an overt act, or which overt act was committed, so long as each of you finds beyond a reasonable doubt, that one of the conspirators committed one of the acts alleged in the information to be overt acts.

A handwritten signature in black ink, appearing to be 'I. K.', written over a horizontal line.

CALJIC 6.23

CONSPIRACIES AND SUBSTANTIVE CRIMES CHARGED AND OVERT ACTS

6.23 - 1 of 2

In this case the defendant is charged with conspiracy to commit the following public crimes:

WILFULL, DELIBERATE, PREMEDITATED MURDER.

It is alleged that the following acts were committed in this state by one or more of the defendants and were overt acts and committed for the purpose of furthering the object of the conspiracy:

OVERT ACT NO. 1

Defendant SHAWN MICHAEL RODRIGUEZ and ANNA MARIE RUGG drove to Albertson's Supermarket in the city of Auburn, California, County of Placer and purchased duct tape.

OVERT ACT NO. 2

Defendant SHAWN MICHAEL RODRIGUEZ and ANNA MARIE RUGG drove to the DeWitt Center, in the City of Auburn, County of Placer, and obtained two garden hoses.

OVERT ACT NO.3

Defendant SHAWN MICHAEL RODRIGUEZ and ANNA MARIE RUGG drove to the old juvenile hall in the city of Auburn, County of Placer and taped duct tape around the outside of the holding cell door behind which NICHOLAS HAMMAN was confined.

OVERT ACT NO. 4

Defendant SHAWN MICHAEL RODRIGUEZ and ANNA MARIE RUGG drove to the old juvenile hall in the City of Auburn, County of Placer and attached one end of a garden hose to a vent above the holding cell door behind which NICHOLAS HAMMAN was confined, and tied the other end of the garden hose to the exhaust system of a 1992 Chevrolet Beretta, California License number 3FHS432.

The defendant is also charged with the commission of the remaining crimes as

Jury Instructions


000284

CALJIC 6.23

CONSPIRACIES AND SUBSTANTIVE CRIMES CHARGED AND OVERT ACTS

6.23 - 2 of 2

listed in the information.

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Jury Instructions

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CALJIC 9.40

**ROBBERY
(PEN. CODE, § 211)**

9.40

Defendant is accused in Count four of having committed the crime of robbery, a violation of section 211 of the Penal Code.

Every person who takes personal property in the possession of another, against the will and from the person or immediate presence of that person, accomplished by means of force or fear and with the specific intent permanently to deprive that person of the property, is guilty of the crime of robbery in violation of Penal Code section 211.

The words "takes" or "taking" require proof of (1) taking possession of the personal property, and (2) carrying it away for some distance, slight or otherwise.

"Immediate presence" means an area within the alleged victim's reach, observation or control, so that he or she could, if not overcome by violence or prevented by fear, retain possession of the subject property.

"Against the will" means without consent.

In order to prove this crime, each of the following elements must be proved:

1. A person had possession of property of some value however slight;
2. The property was taken from that person or from his immediate presence;
3. The property was taken against the will of that person;
4. The taking was accomplished either by force or fear; and
5. The property was taken with the specific intent permanently to deprive that person of the property.

CALJIC 9.40.1

**ROBBERY--AIDING AND ABETTING--WHEN INTENT
TO ABET MUST BE FORMED**

9.40.1

The commission of the crime of robbery is not confined to a fixed place or a limited period of time and continues so long as the stolen property is being carried away to a place of temporary safety.

Jury Instructions

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CALJIC 9.41

ROBBERY--FEAR--DEFINED

9.41

The element of fear in the crime of robbery may be either:

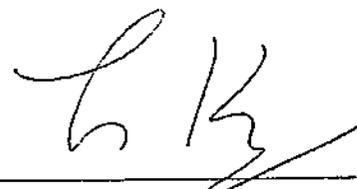
1. The fear of an unlawful injury to the person or property of the person robbed, or to any of his relatives or family members; or
2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery.

CALJIC 9.43

SECOND DEGREE ROBBERY AS A MATTER OF LAW

9.43

There are two degrees of robbery. If you find the defendant guilty of the crime of robbery, I instruct you that it is robbery in the second degree as a matter of law.

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Jury Instructions

000289

CALJIC 14.36

**UNLAWFUL VEHICLE TAKING
(VEH. CODE, § 10851)**

14.36

Defendant is accused in Count six of having violated section 10851 of the Vehicle Code, a crime.

Every person who drives or takes a vehicle not his own without the consent of the owner and with the specific intent to deprive the owner either permanently or temporarily of his title to or possession of the vehicle is guilty of a violation of Vehicle Code section 10851, a crime.

In order to prove this crime, each of the following elements must be proved:

1. A person took or drove a vehicle belonging to another person;
2. The other person had not consented to the taking or driving of his vehicle;
and
3. When the person took or drove the vehicle, he had the specific intent to deprive the owner either permanently or temporarily of his title to or possession of the vehicle.

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CALJIC 2.15

POSSESSION OF STOLEN PROPERTY

2.15

If you find that a defendant was in conscious possession of recently stolen extorted property, the fact of that possession is not by itself sufficient to permit an inference that the defendant SHAWN MICHAEL RODRIGUEZ is guilty of the crime of ROBBERY, UNLAWFUL TAKING OR DRIVING A MOTOR VEHICLE, and USING ANOTHER'S NAME TO OBTAIN CREDIT. Before guilt may be inferred, there must be corroborating evidence tending to prove defendant's guilt. However, this corroborating evidence need only be slight, and need not by itself be sufficient to warrant an inference of guilt.

As corroboration, you may consider the attributes of possession--time, place and manner, that the defendant had an opportunity to commit the crime charged, the defendant's conduct, his false or contradictory statements, if any, and other statements he may have made with reference to the property, a false account of how he acquired possession of the stolen property, and any other evidence which tends to connect the defendant with the crime charged.

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CALJIC 15.60

**UNAUTHORIZED USE OF PERSONAL IDENTIFYING INFORMATION
(PEN. CODE, § 530.5)**

15.60

Defendant is accused in Counts seven and eight of having violated section 530.5 of the Penal Code, a crime.

Every person who willfully obtains personal identifying information of another person without the authorization of that person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a violation of Penal Code section 530.5, a crime.

The phrase, "personal identifying information" means the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number of an individual person.

In order to prove this crime, each of the following elements must be proved:

1. A person willfully obtained personal identifying information of another person;
2. The person obtaining the information, did so without the authorization of the other person; and
3. The person used that information for any unlawful purpose, including the obtaining, or attempted obtaining of credit, goods, services, or medical information in the name of the other person without the consent of that person.

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CALJIC 17.02

**SEVERAL COUNTS--DIFFERENT OCCURRENCES--JURY
MUST FIND ON EACH**

17.02

Each Count, other than counts One and Four, charge[s] a distinct crime. You must decide each Count, except for Counts One and Four separately. The defendant may be found guilty or not guilty of Counts Two, Three, Five, Six, Seven, and Eight charged in the information. Your finding as to each Count must be stated in a separate verdict.

Jury Instructions

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CALJIC 17.03

TWO COUNTS--SAME OCCURRENCE--ONLY ONE CRIME

Request by People		Request by Defendant		Request by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		_____ Judge			
Withdrawn					

Print Date:

The defendant is accused in Count One of having committed the crime of KIDNAPPING FOR EXTORTION and in Count Four of having committed the crime of ROBBERY, and in Count Five of having committed the crime of FALSE IMPRISONMENT BY VIOLENCE. The charges of ROBBERY and FALSE IMPRISONMENT BY VIOLENCE are made in the alternative to the crime of KIDNAPPING FOR EXTORTION and in effect allege that the defendant committed an act or acts which constitutes either the crime of KIDNAPPING FOR EXTORTION or the crimes of ROBBERY and/or FALSE IMPRISONMENT BY VIOLENCE. If you find that the defendant committed an act or acts constituting one of the charged crimes, you then must determine which of the crimes so charged was thereby committed.

In order to find the defendant guilty you must all agree as to the particular crime committed, and, if you find the defendant guilty of KIDNAPPING FOR EXTORTION, you must find him not guilty of the other crimes; and if you find him guilty of FALSE IMPRISONMENT and/or ROBBERY you must find him not guilty of KIDNAPPING FOR EXTORTION. *What is*

LK

000294

CALJIC 17.10

CONVICTION OF LESSER INCLUDED OR LESSER RELATED OFFENSE--
IMPLIED ACQUITTAL-FIRST

17.10

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime charged, you may nevertheless convict him of any lesser crime, if you are convinced beyond a reasonable doubt that the defendant is guilty of the lesser crime.

The crime of ROBBERY as charged in Count Four, the crime of FALSE IMPRISONMENT BY VIOLENCE as charged in Count Five of the Information, and the lesser included crime of Extortion are lesser to that of KIDNAPPING FOR EXTORTION charged in Count One of the Information.

Thus, you are to determine whether the defendant is guilty or not guilty of the crimes charged in Counts One, Four and Five and the lesser included crime of Extortion. In doing so, you have discretion to choose the order in which you evaluate each crime and consider the evidence pertaining to it. You may find it productive to consider and reach a tentative conclusion on all charges and lesser crimes before reaching any final verdicts. However, the court cannot accept a guilty verdict on Count Four, Five, and the lesser crime of Extortion unless you have unanimously found the defendant not guilty of Count One, KIDNAPPING FOR EXTORTION.

LK

CALJIC 17.30

JURY NOT TO TAKE CUE FROM THE JUDGE

17.30

I have not intended by anything I have said or done, or by any questions that I may have asked, or by any ruling I may have made, to intimate or suggest what you should find to be the facts, or that I believe or disbelieve any witness.

If anything I have done or said has seemed to so indicate, you will disregard it and form your own conclusion.

CALJIC 17.31

ALL INSTRUCTIONS NOT NECESSARILY APPLICABLE

17.31

The purpose of the court's instructions is to provide you with the applicable law so that you may arrive at a just and lawful verdict. Whether some instructions apply will depend upon what you find to be the facts. Disregard any instruction which applies to facts determined by you not to exist. Do not conclude that because an instruction has been given I am expressing an opinion as to the facts.

CALJIC 17.40

INDIVIDUAL OPINION REQUIRED--DUTY TO DELIBERATE

17.40

The People and the defendant are entitled to the individual opinion of each juror.

Each of you must consider the evidence for the purpose of reaching a verdict if you can do so. Each of you must decide the case for yourself, but should do so only after discussing the evidence and instructions with the other jurors.

Do not hesitate to change an opinion if you are convinced it is wrong. However, do not decide any question in a particular way because a majority of the jurors, or any of them, favor that decision.

Do not decide any issue in this case by the flip of a coin, or by any other chance determination.

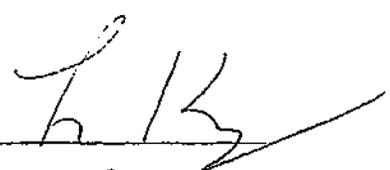
A handwritten signature in black ink, appearing to read "L. K.", is written over the horizontal line.

CALJIC 17.41

HOW JURORS SHOULD APPROACH THEIR TASK

17.41

The attitude and conduct of jurors at all times are very important. It is rarely helpful for a juror at the beginning of deliberations to express an emphatic opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may be aroused, and one may hesitate to change a position even if shown it is wrong. Remember that you are not partisans or advocates in this matter. You are impartial judges of the facts.

A handwritten signature in black ink, appearing to be 'L. K.', written over a horizontal line.

CALJIC 17.42

JURY MUST NOT CONSIDER PENALTY--NON-CAPITAL CASE

17.42

In your deliberations do not discuss or consider the subject of penalty or punishment. That subject must not in any way affect your verdict.

A handwritten signature in black ink, appearing to be 'L. K.', is written over the horizontal line.

CALJIC 17.43

JURY DELIBERATIONS

17.43

During deliberations, any question or request you may have should be addressed to the Court on a form that will be provided.

If there is any disagreement as to the actual testimony, you have the right, if you choose, to request a readback by the reporter. You may request a partial or total readback, but any readback should be a fair presentation of that evidence. If a readback of testimony is requested, the reporter will delete objections, rulings, and sidebar conferences so that you will hear only the evidence that was actually presented.

Please understand that counsel must first be contacted, and it may take time to provide a response, or readback. Continue deliberating until you are called back into the courtroom.

CALJIC 17.45

**MANNER OF RECORDING INSTRUCTION OF NO SIGNIFICANCE--
CONTENT ONLY GOVERNS**

17.45

The instructions which I am now giving to you will be made available in written form for your deliberations. They must not be defaced in any way.

You will find that the instructions may be typed, printed or handwritten. Portions may have been added or deleted. You must disregard any deleted part of an instruction and not speculate as to what it was or as to the reason for its deletion. You are not to be concerned with the reasons for any modification.

Every part of the text of an instruction, whether, typed, printed or handwritten, is of equal importance. You are to be governed only by the instruction in its final wording.

CALJIC 17.47

ADMONITION AGAINST DISCLOSURE OF JURY BALLOTING

17.47

Do not disclose to anyone outside the jury, not even to me or any member of my staff, either orally or in writing, how you may be divided numerically in your balloting as to any issue, unless I specifically direct otherwise.

CALJIC 17.49

USE OF MULTIPLE VERDICT FORMS--IMPLIED ACQUITTAL-FIRST

17.49

In this case, the defendant has been charged with ~~(burglary, robbery, kidnapping, etc.)~~ all felonies. The foregoing charged crimes includes the lesser offenses of ~~(theft, misdemeanor false imprisonment, etc.)~~.

You will be given _____ verdict forms encompassing both the charged crimes and the lesser included offenses.

Since the lesser offenses is are included in the greater, you are instructed that if you find the defendant guilty of the greater offenses, you should not complete the verdicts on the corresponding lesser offenses and that those verdicts should be returned to the Court unsigned by the Foreperson.

If you find the defendant not guilty of the felonies charged, you then need to complete the verdicts on the lesser included offenses by determining whether the defendant is guilty or not guilty of the lesser included crimes, and the corresponding verdicts should be completed and returned to the Court signed by the Foreperson.

- 1) Kidnapping for Ransom
 - 2) Conspiracy to Commit Murder
 - 3) Attempted Murder
 - 4) Robbery
 - 5) Unlawful Taking of Motor Vehicle
 - 6) False Imprisonment by Viol.
 - 7) Using another's name to obtain credit
-
1. Robbery
 2. False Imprisonment by Viol
 3. Extortion

Jury Instructions



000304

CALJIC 17.50

CONCLUDING INSTRUCTION

17.50

You shall now retire and select one of your number to act as foreperson. He or she will preside over your deliberations. In order to reach verdicts, all twelve jurors must agree to the decision and to any finding you have been instructed to include in your verdict. As soon as you have agreed upon a verdict, so that when polled each may state truthfully that the verdicts express his or her vote, have them dated and signed by your foreperson and then return with them to this courtroom. Return any unsigned verdict forms.

When you reach a verdict as to any particular count, place all verdict forms for that count in a sealed envelope which will be held by the Clerk until verdicts on all counts have been reached. At that time, the sealed verdicts will be returned to the foreperson, and the jury will return with them to this courtroom. Return any unsigned verdict forms.

CALJIC 17.52

SEPARATION ADMONITION

17.52

You will be permitted to separate at the noon and evening recesses. During your absence the courtroom will be locked. You are to return following the recesses on the next succeeding court date. During periods of recess, you must not discuss with anyone any subject connected with this trial, and you must not deliberate further upon the case until all 12 of you are together and reassembled in the jury room. At that time you shall notify the clerk or the bailiff that the jury is reassembled, and then continue your deliberations.

Jury Instructions

A handwritten signature in black ink, appearing to be 'LK' with a long horizontal stroke extending to the right.

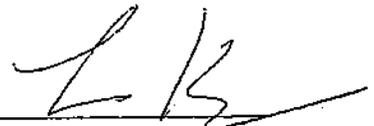
000306

CALJIC 17.53

ADMONITION TO ALTERNATE JURORS

17.53

As for the Alternate Jurors, you are still bound by the admonition that you are not to converse among yourselves or with anyone else on any subject connected with this trial, or to form or express any opinion on it until the case is submitted to you, which means until such time as you are substituted in for one of the 12 jurors now deliberating on the case. This also means that you are not to decide how you would vote if you were deliberating with the other jurors.

A handwritten signature in black ink, appearing to be 'L. K.', is written above a horizontal line.

CALJIC 17.60

**POST VERDICT JUROR ADMONITION/ORDER
(CODE CIV. PROC., §§ 206 & 237)**

17.60

Members and alternate members of the jury. You have now completed your service as jurors in this case. On behalf of the Superior Court, I want to thank you for giving your time and efforts to the administration of justice in this community.

You have the absolute right to either discuss or not to discuss the juror deliberations or verdict with anyone. However, be advised that,

1. Following discharge of the jury, the defendant, or his or her attorney or representative, or the prosecutor, or his or her representative, may discuss the jury's deliberations or verdict with any member of the jury, provided that the juror consents to the discussion, and that the discussion occurs at a reasonable time and place;

2. Any unreasonable contact with a juror by a defendant, or his or her attorney or representative, or by the prosecutor, or his or her representative, without the juror's consent, must be immediately reported to me;

3. Any violation of what I have just told you will be considered a violation of a lawful court order and shall be subject to reasonable monetary sanctions.

It is hereby ordered that the court's record of personal juror identifying information, including names, addresses and telephone numbers, is sealed until further order of this court.

In the event that any petition for access to the sealed information is set for hearing by the court, the affected juror, or jurors, will be given written notice of the time and place of the hearing. At the hearing, any affected former juror may appear in person, in writing, by telephone or by counsel, and request that the hearing be closed so as to protect juror anonymity, and may protest the release of the confidential information. Whether this confidential information, or any part of it, will be disclosed to the petitioner, and if so, under what terms, conditions or circumstances, are matters within the court's discretion.

Again, thank you for your service, and you are now excused.

Jury Instructions



000308

SPECIAL INSTSTUCTION NO. 1

ATTEMPTED MURDER—TEST OF APPARENT POSSIBILITY

If there is an apparent ability to commit the crime in the way attempted, even though, unknown to the person making the attempt, the crime cannot be committed because the means employed are unsuitable or because of an obstruction by the victim or a third party, the person making such attempt is not relieved of criminal responsibility for his or her conduct.

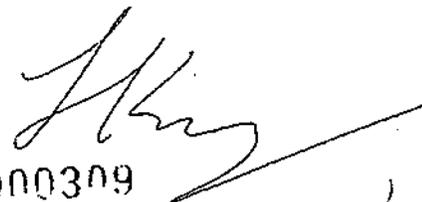
When guilty intent is coupled with action that would result in a crime but for the intervention of some fact or circumstance unknown to the defendant, the defendant is held responsible for the attempt to commit the crime.

It is immaterial whether or not the crime attempted was impossible of completion if you find that it was apparently possible of completion to the defendant so acting with the necessary intent.

AUTHORITY:

People v. Thompson (1993) 12 Cal.App.4th 195,202;
People v. Staples (1970) 6 Cal.App.3d 61,66;
People v. Rojas (1961) 55 Cal.2d 252, 257;
People v. Siu (1954) 126 Cal.App.2d 41,43;
People v. Grant (1951) 105 Cal.App.2d 347,356.

000309

A handwritten signature in black ink, appearing to be 'J. King', is written over the number 000309. The signature is stylized and cursive.

CALJIC 17.60

**POST VERDICT JUROR ADMONITION/ORDER
(CODE CIV. PROC., §§ 206 & 237)**

17.60

Members and alternate members of the jury. You have now completed your service as jurors in this case. On behalf of the Superior Court, I want to thank you for giving your time and efforts to the administration of justice in this community.

You have the absolute right to either discuss or not to discuss the juror deliberations or verdict with anyone. However, be advised that,

1. Following discharge of the jury, the defendant, or his or her attorney or representative, or the prosecutor, or his or her representative, may discuss the jury's deliberations or verdict with any member of the jury, provided that the juror consents to the discussion, and that the discussion occurs at a reasonable time and place;

2. Any unreasonable contact with a juror by a defendant, or his or her attorney or representative, or by the prosecutor, or his or her representative, without the juror's consent, must be immediately reported to me;

3. Any violation of what I have just told you will be considered a violation of a lawful court order and shall be subject to reasonable monetary sanctions.

It is hereby ordered that the court's record of personal juror identifying information, including names, addresses and telephone numbers, is sealed until further order of this court.

In the event that any petition for access to the sealed information is set for hearing by the court, the affected juror, or jurors, will be given written notice of the time and place of the hearing. At the hearing, any affected former juror may appear in person, in writing, by telephone or by counsel, and request that the hearing be closed so as to protect juror anonymity, and may protest the release of the confidential information. Whether this confidential information, or any part of it, will be disclosed to the petitioner, and if so, under what terms, conditions or circumstances, are matters within the court's discretion.

Again, thank you for your service, and you are now excused.

SPECIAL INSTSTUCTION NO. 1

ATTEMPTED MURDER—TEST OF APPARENT POSSIBILITY

If there is an apparent ability to commit the crime in the way attempted, even though, unknown to the person making the attempt, the crime cannot be committed because the means employed are unsuitable or because of an obstruction by the victim or a third party, the person making such attempt is not relieved of criminal responsibility for his or her conduct.

When guilty intent is coupled with action that would result in a crime but for the intervention of some fact or circumstance unknown to the defendant, the defendant is held responsible for the attempt to commit the crime.

It is immaterial whether or not the crime attempted was impossible of completion if you find that it was apparently possible of completion to the defendant so acting with the necessary intent.

AUTHORITY:

People v. Thompson (1993) 12 Cal.App.4th 195,202;
People v. Staples (1970) 6 Cal.App.3d 61,66;
People v. Rojas (1961) 55 Cal.2d 252, 257;
People v. Siu (1954) 126 Cal.App.2d 41,43;
People v. Grant (1951) 105 Cal.App.2d 347,356.

000311

COVER SHEET

TOP

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER**

Department Three

Case No. 62-034689
(Space below for file stamp only)

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

OCT - 6 2003

People of the State of California,

Plaintiff,

JOHN MENDES
EXECUTIVE OFFICER & CLERK

By _____ Deputy

vs.

Shawn Michael Rodriguez

Defendant.

Frances Kearney
Frances Kearney

Judge Presiding,

- Instructions given
- Instruction refused or withdrawn or held
- Verdicts used
- Verdicts not used
- Questions asked during deliberation

Consisting of 9 pages herein.

000312

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SUPERIOR COURTS OF PLACER COUNTY

STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

SHAWN MICHAEL RODRIGUEZ

Defendant.

No. 62-34689

V E R D I C T

GUILTY-Count One

COPY
Original Under Seal

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, GUILTY of a violation of Penal Code section 209(a), Kidnapping For Extortion, a felony, as charged in Count One of the Information.

Dated: OCTOBER 03, 2003.

FOREPERSON

Recorded this 6 day of October,
20 03, at the hour of 2:05 pm.

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SUPERIOR COURTS OF PLACER COUNTY

STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF

No. 62-34689

CALIFORNIA,

V E R D I C T

Plaintiff,

NOT GUILTY-Count One-Lessor
Included

vs.

SHAWN MICHAEL RODRIGUEZ

Defendant.

COPY
Original Under Seal

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, NOT GUILTY of a violation of Penal Code section 518, Extortion, a felony, a lesser but necessarily included offense to the offense charged in Count One of the Information.

Dated: OCTOBER 03, 2003.

FOREPERSON

Recorded this 6 day of October
20 03, at the hour of 2:05 pm.

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

SHAWN MICHAEL RODRIGUEZ

Defendant.

No. 62-34689

V E R D I C T

GUILTY-Count Two

COPY
Original Under Seal

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, GUILTY of a violation of Penal Code section 182(a)(1)/187(a), Conspiracy To Commit Murder, a felony, as charged in Count Two of the Information, and agree that one or more of the overt acts alleged has been committed by a conspirator.

Dated: OCTOBER 02, 2003.

FOREPERSON

Read this 6 day of October,

20 03, at the hour of 2:05 pm.

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--000--

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

SHAWN MICHAEL RODRIGUEZ

Defendant.

No. 62-34689

V E R D I C T

NOT GUILTY-Count Four

COPY
Original Under Seal

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, NOT GUILTY of a violation of Penal Code section 211, Second Degree Robbery, a felony, as charged in Count Four of the Information.

Dated: October 03, 2003.

Recorded this 6 day of October,
20 03, at the hour of 2:05 pm

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SUPERIOR COURTS OF PLACER COUNTY

STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF

No. 62-34689

CALIFORNIA,

V E R D I C T

Plaintiff,

GUILTY-Count Six

vs.

SHAWN MICHAEL RODRIGUEZ

COPY

Defendant.

Original Under Seal)

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, GUILTY of a violation of Vehicle Code section 10851(a), Unlawful Driving Or Taking Of A Vehicle, a felony, as charged in Count Six of the Information.

Dated: October 01, 2003.

(FOREPERSON)

Recorded this 6 day of October,
20 03, at the hour of 2:05 pm

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,
vs.
SHAWN MICHAEL RODRIGUEZ
Defendant.

No. 62-34689

V E R D I C T

GUILTY-Count Seven

COPY
Original Under Seal

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, GUILTY of a violation of Penal Code section 530.5, Using Another's Name To Obtain Credit/Property, a felony, as charged in Count Seven of the Information.

Dated: October 01, 2003.

FOREPERSON

Recorded this 6 day of October,

20 03, at the hour of 2:05 pm

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,
vs.
SHAWN MICHAEL RODRIGUEZ
Defendant.

No. 62-34689

V E R D I C T

GUILTY-Count Eight

COPY
Original Under Seal

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, GUILTY of a violation of Penal Code section 530.5, Using Another's Name To Obtain Credit/Property, a felony, as charged in Count Eight of the Information.

Dated: October 01, 2003.

FOREPERSON

Recorded this 6 day of October,

20 23, at the hour of 2:05 PM

000321

COVER SHEET

TOP

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

Department Three

Case No. 62-034689

(Space below for file stamp only)

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

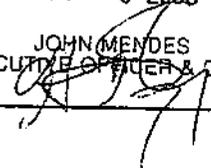
OCT - 6 2003

People of the State of California,

Plaintiff,

JOHN MENDES

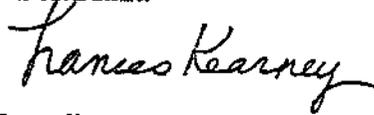
EXECUTIVE OFFICER & CLERK

By  Deputy

vs.

Shawn Michael Rodriguez

Defendant.



Frances Kearney

Judge Presiding,

- Instructions given
- Instruction refused or withdrawn or held
- Verdicts used
- Verdicts not used
- Questions asked during deliberation

Consisting of 8 pages herein.

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,
vs.
SHAWN MICHAEL RODRIGUEZ
Defendant.

No. 62-34689

V E R D I C T

NOT GUILTY-Count One

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, NOT GUILTY of a violation of Penal Code section 209(a), Kidnapping For Extortion, a felony, as charged in Count One of the Information.

Dated: _____, 2003.

*Verdicts
not used*

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

SHAWN MICHAEL RODRIGUEZ

Defendant.

No. 62-34689

V E R D I C T

GUILTY-Count One-Lessor Included

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, GUILTY of a violation of Penal Code section 518, Extortion, a felony, a lessor but necessarily included offense to the offense charged in Count One of the Information.

Dated: _____, 2003.

FOREPERSON

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,
vs.
SHAWN MICHAEL RODRIGUEZ
Defendant.

No. 62-34689

V E R D I C T

NOT GUILTY-Count Two

We, the Jury in the above-entitled action, find the
defendant, SHAWN MICHAEL RODRIGUEZ, NOT GUILTY of a violation of
Penal Code section 182(a)(1)/187(a), Conspiracy To Commit
Murder, a felony, as charged in Count Two of the Information.

Dated: _____, 2003.

FOREPERSON

000325

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,
vs.
SHAWN MICHAEL RODRIGUEZ
Defendant.

No. 62-34689

V E R D I C T

GUILTY-Count Four

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, GUILTY of a violation of Penal Code section 211, Second Degree Robbery, a felony, as charged in Count Four of the Information.

Dated: _____, 2003.

FOREPERSON

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,
vs.
SHAWN MICHAEL RODRIGUEZ
Defendant.

No. 62-34689

V E R D I C T

GUILTY-Count Five

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, GUILTY of a violation of Penal Code section 236, False Imprisonment By Violence, a felony, as charged in Count Five of the Information.

Dated: _____, 2003.

FOREPERSON

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,
vs.
SHAWN MICHAEL RODRIGUEZ
Defendant.

No. 62-34689

V E R D I C T

NOT GUILTY-Count Six

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, NOT GUILTY of a violation of Vehicle Code section 10851(a), Unlawful Driving Or Taking Of A Vehicle, a felony, as charged in Count Six of the Information.

Dated: _____, 2003.

FOREPERSON

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,
vs.
SHAWN MICHAEL RODRIGUEZ
Defendant.

No. 62-34689

V E R D I C T

NOT GUILTY-Count Seven

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, NOT GUILTY of a violation of Penal Code section 530.5, Using Another's Name To Obtain Credit/Property, a felony, as charged in Count Seven of the Information.

Dated: _____, 2003.

FOREPERSON

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SUPERIOR COURTS OF PLACER COUNTY
STATE OF CALIFORNIA

--oOo--

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,
vs.
SHAWN MICHAEL RODRIGUEZ
Defendant.

No. 62-34689

V E R D I C T

NOT GUILTY-Count Eight

We, the Jury in the above-entitled action, find the defendant, SHAWN MICHAEL RODRIGUEZ, NOT GUILTY of a violation of Penal Code section 530.5, Using Another's Name To Obtain Credit/Property, a felony, as charged in Count Eight of the Information.

Dated: _____, 2003.

FOREPERSON

000330

COVER SHEET

TOP

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF PLACER

Department Three

Case No. 62-034689
(Space below for file stamp only)

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

OCT - 6 2003

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By _____ Deputy

People of the State of California,

Plaintiff,

vs.

Shawn Michael Rodriguez

Defendant.

Frances Kearney

Judge Presiding,

- Instructions given
- Instruction refused or withdrawn or held
- Verdicts used
- Verdicts not used
- Questions asked during deliberation

000331

Consisting of 32 pages herein.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

<p>THE PEOPLE OF THE STATE OF CALIFORNIA,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>SHAWN RODRIGUEZ</p> <p style="text-align: center;">Defendant.</p>	
	CASE # 62-34689 SUPERIOR COURT DEPT. # 3

We, the jury in the above-entitled action, request the following:

WE ARE UNABLE TO REACH AN
UNANIMOUS DECISION ON THE
FINAL COURT BEING DELIBERATED.
WE HAVE SPENT 12 HOURS (APPROX) OVER
THREE DAYS DISCUSSING THIS COMPLAINT.
PLEASE PROVIDE DIRECTION.

This 6th day of OCTOBER, 2003
Robert J. Stefan, Foreperson 11:35 AM

000332

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

THE PEOPLE OF THE STATE OF CALIFORNIA, <p style="text-align: center;">Plaintiff,</p> vs. SHAWN RODRIGUEZ <p style="text-align: center;">Defendant.</p>	 CASE # 62-34689 SUPERIOR COURT DEPT. # 3
---	---

We, the jury in the above-entitled action, request the following:

COUNT # 5 WHY IS THE WORD
"MENACE" DELETED FROM THE VERDICT
SHEET? DOES THIS MATTER?

The verdict form just sets forth
a title, not the elements of the
crime. It does not matter that
~~the word~~ "menace" was left
out of the verdict form.

Judge James Kearney

This 2ND day of OCTOBER, 2003
Robert J. Stefan, Foreperson
10:30 AM

000334

AS TO QUESTION ONE,
THE JUDGE HAS ANSWERED.
AND CONFIRMS IN ORDER
TO ANSWER THE QUESTION.
PLEASE CONTINUE DEBATE
THE ANSWER WILL BE
DELIVERED SOON.

000335

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. SHAWN RODRIGUEZ Defendant.	
	CASE # 62-34689 SUPERIOR COURT DEPT. # 3

We, the jury in the above-entitled action, request the following:

COUNT #1 DID THE DEFENDANT HAVE TO
HAVE THE PLAN TO "KIDNAP FOR EXTORTION"
FORMULATED PRIOR TO THE CONFINEMENT,
OR COULD THIS PLAN HAVE BEEN FORMULATED
DURING THE CONFINEMENT?

This 2ND day of OCTOBER, 2003
Robert J. [Signature], Foreperson
10:30AM

000336

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.
SHAWN RODRIGUEZ

Defendant.

CASE # 62-34689
SUPERIOR COURT DEPT. # 3

We, the jury in the above-entitled action, request the following:

COUNT #1 DID THE DEFENDANT HAVE TO
HAVE THE PLAN TO "KIDNAP FOR EXTORTION"
FORMULATED PRIOR TO THE CONFINEMENT,
OR COULD THIS PLAN HAVE BEEN FORMULATED
DURING THE CONFINEMENT?

Response on page 2

This 2ND day of OCTOBER, 2003
10:30AM
Robert J. Jeter, Foreperson

000337

Every person who confines, abducts, kidnaps, conceals, holds or detains another person by any means whatsoever with the specific intent to hold or detain that person to commit extortion is guilty of the crime of Kidnap for Extortion. In order to prove this crime you must find that Nicholas Hamman was held or detained by the defendant, Shawn Rodriquez, and it was done with the specific intent to commit extortion. As such, you must unanimously agree that Shawn Rodriquez held or detained Nicholas Hamman and it was done with the specific intent to commit extortion. The intent may be formulated after the detention, however, you must unanimously find that the defendant thereafter detained or held Nicholas Hamman with the specific intent to commit extortion.

James Kearney

000338

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. SHAWN RODRIGUEZ Defendant.	 CASE # 62-34689 SUPERIOR COURT DEPT. # 3
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We, the jury in the above-entitled action, request the following:

REQUEST A REVIEW OF THE COMPLETE
TESTIMONY OF SHAWN MICHAEL
RODRIGUEZ AS RECORDED BY
THE COURT REPORTER.

They got a Botched Transcript
of the Botched Interview
from 3-17-03 instead of
My Testimony.

This 03 day of OCTOBER, 2003 11:40AM
Robert J. Stejsko, Foreperson

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COURT OF APPEAL OF THE STATE OF CALIFORNIA

In and for the

THIRD APPELLATE DISTRICT

---oOo---

The People of the State of California
Plaintiff

Appellate No. C045882

Vs.

Shawn Michael Rodriguez
Defendant/ Appellant

Case No. 62-34689

Volume 1 of 1
Pages 1 through 22

---oOo---

CLERK'S AUGMENTED TRANSCRIPT ON APPEAL

---oOo---

THE FILING OF AN APPEAL
IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA IN AND FOR
THE COUNTY OF PLACER

---oOo---

HONORABLE FRANCES KEARNEY

---oOo---

*This is Not
My Testimony
Recorded by My
Court Reporter.*

Court of Appeal, Third Appellate District
900 N Street, Room 400
Sacramento, CA 95814-4869

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COPY



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Exhibit
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62-34689

DR #76-02-03
RODRIGUEZ, Sean; Det. Dan Coe
March 17, 2003 / For item # 34

- DC: Okay Sean, I previously advised you of your right to remain silent and you said that you didn't want to talk to me, but now you do. Okay? So, now I've got to finish the Rights, okay? Okay let me just go through them, I'll go through them all again okay? They require yes or no answers. You have the right to remain silent, do you understand?
- SR: Yes.
- DC: Anything you say may be used against you in court. Do you understand?
- SR: Yes.
- DC: You have the right to the presence of an attorney before and during questioning. Do you understand?
- SR: Yes, sir.
- DC: If you cannot afford an attorney, one will be appointed for you, free of charge, before any questioning if you want. Do you understand?
- SR: Yes.
- DC: Okay, you understand all of those rights that I've just read to you? Okay. It is the 17th, and it is 6:33 in the morning. Okay Sean, why don't you tell me in your own words why you're here.
- SR: My name is Sean Rodriguez, and I'm here because a man named Nick was in a holding cell in the Juvenile Hall in Auburn for the last two days. Me, myself, two friends of mine – who I am very close to – spent the night at the Elmwood Motel on – I want to say Saturday night? Possibly Friday night? Saturday night sounds more like it. The next morning we had to get out of the Elmwood Motel, and we had no other place to go. And then I called a friend named Nick, who I had met previously a couple of times just in passing, don't know him that personally. Anna doesn't like the guy, just uses him to get a ride. Ya know, he takes her to wherever she needs to go. She gets by, she's a survivor. She called Nick and asked Nick for ride to Foresthill, and he said why? Said we're gonna go camp out under the bridge, our equipment's still there. The sleeping bag's still there, the tent's still there ... should be. Nick said that he would take us to the Juvenile Hall, he knows a way in there. Anna said she knew about the Juvenile Hall, and we went over to the Juvenile Hall, got out of the car, got into the Juvenile Hall and me and my other friend who I'm really close to –
- DC: Erin?
- SR: Yeah, Erin. Me and Erin went for a walk, Anna wanted to be alone with Nick. I don't know why, she's got a fat burn mark on her arm because he held a lighter to her arm. I don't know if she showed you that, if you saw that. And just the things I hear about the guy, he's nuts. He's on so many psychotropic pills, has enough pills to open a fucking pharmacy with them. When me & Anna were in jail previously, the guy was making moves on Erin, and then the night before in the hotel room he was there briefly, and I heard Anna numerous times tell

him "stop that" and "you're doin' too much" and that pertained to the way he was touching her. She did not want to be touched. They asked us to take a walk; we took a walk and when I came back Anna was yelling and when I came in we were - I can't remember the exact position, but I was closer to the door than he was in the holding cell, and Anna's shirt was up and the guy was doing what the fuck he wanted to do, he was tryin' to do that. I ran up on him and I hit him, and I was (unclear) He should've slammed the door on me! I got out and she slammed the door. We left to re-group, everyone's goin' we don't what the fuck to do. Went outside, had a cigarette, we jumped in the guy's car (???) 10851 there we go, no shit. Went ??? down the street, came back and water was leaking out from what we gathered 'cause I saw the cigarette (unclear) that much, a Kool, which she smokes, I gathered he tried to light a cigarette in there and set off the fire sprinklers. You know, at this point I'm scared, don't know what to do, guy's probably goin' crazy, we got him in there, he's yelling he gonna fucking kill us. I don't (particularly?) like the guy. Erin's cryin', she's four months pregnant, she throws up, I don't want her to lose the baby, she just got beat up by her ex-boyfriend, who this guy lives with, while I was in jail, the guy says it's my kid and fuckin' beat the shit out of her, nailed her in the stomach tryin' to get her to loose the kid. He thinks it is mine but it is not. She's throwin' up, and he's going ballistic??? With that I said let's bail. We left, from there went up to the Foresthill bridge, out there and we were talkin' about what the hell we were gonna do. At this point we still don't fucking know, 'cause I don't wanna let the guy out 'cause I don't know what the fuck he's gonna do, he'll probably call the cops. I'm on parole and now that's trespassing on federal property, or state or county, what is it? I don't know. And I'm not in the county I'm supposed to be in. So there I'm fucked twice. I just hit the guy, so now I'm fucked again, so I'm not lettin' him out. I could call the cops on myself, but (???) either, so (sigh) ... took Erin down to my brother's house and I dropped her off and (unclear) And said she wanted to come, and so we went late last night, we went back. Water all over the place, it's leakin' out obviously (unclear) so, like I said, I'm not tryin' to get all of us in trouble. Erin doesn't need it. I don't need it. We had a pending court case, I'm due in court in about 2 hours here. And you guys just (just got a warrant???) Tuesday, but - (unclear) I'm trying to hold back crying.

DC: It's okay. Take your time, man.

SR: I'm fucking scared man (Unclear, crying, mumbling) He didn't die did he?

DC: What's that?

SR: He didn't die did he?

DC: No. But he's still in the hospital. So, I mean, you know, you know you're doing the right thing.

SR: (crying, mumbling)

DC: What happens when you go back up to confront him and Anna comes with you?

SR: Went up there and it stinks bad in the car. (unclear)

DC: What was in the car?

SR: The ax handle that was varnished, that's mine? The knife, that has something to do with it, that's Anna's. That was in her bag. I used that to cut up some strips (unclear). We went back

and he's talkin' about "wonderin' if you'll let me out" and just a whole bunch of shit. So he got out right there next to me, so I told him ~ ya know, I told him that "well, what do you want me to do?", and he said break the window, so (unclear) I grabbed one of those things you flush a john with and I tried to bust the window with it, and that wouldn't go. I pulled around ~ 'cause we had barricaded the door with a shelf and some paint ~

DC: When did you do that?

SR: We did that earlier in the day just before we left.

DC: Why'd you do that?

SR: In case he tried to kick it down.

DC: You wanted him to stay in there?

SR: He told me to get the hell out of there, I don't know how strong the door is. (unclear)

DC: What'd you barricade it with?

SR: A shelf sitting on the floor with paint cans inside it.

DC: You and Anna did that?

SR: Yeah.

DC: Okay. And the water was running too at this time, right?

SR: Yeah.

DC: Okay.

SR: It was. I tried to break the window with that, my fingerprints were all over the window 'cause I tried to fuckin' yank one of the bars were off and unscrewed some of the screws to try to start breaking that out so we could just bail out, and let him get out.

DC: Um hum.

SR: (unclear; coughing) And it got to the point where the dude was screaming fuckin' he ended up passing us his ATM card and he gave us the pin number to it --

DC: The PIN number?

SR: The PIN number, and then (unclear) because at first I trusted him to let him out, to open the door, and I was gonna break the window then go, and fucking after banging on the window, he started goin' off again and I mean you wanna hear about the guy bein' crazy I'll ~ ya know, that bi-polar type shit nothing can be done with that. You're not gonna fuckin' open the door and try to bail out when it's fuckin' wet in there and slippery (unclear). Then attempted to make acknowledgements, called the cops, in fact, I told him I would while he was goin' off, I told him, you know, I'm gonna fuckin' go call the cops. Just don't put our names in it, just let this be the end of it. You go your way, we'll go ours. Ya know, 'cause

we've got somethin' on him, he's got somethin' on us, and just let it be. You know what I mean? Anna said she was okay, she wasn't really super stressed over it, as long as he just left Erin and Anna alone, and me, obviously. Ya know, just be the end of it. And then we were goin' thru the Albertson parking lot again and I recognized (???) Then he stopped, I was driving. We'd stopped to use the phone. The phone was dead. Woke up this morning, (unclear) Sunday morning, then about noon and thinking we had lots to do because Erin's kicked out of her halfway house because she's pregnant and she needs her medication and I need to find somewhere to put her because eventually I'm gonna get in trouble like I am now. So once we, an old friend of mine wanted to meet us (???) have you heard of (MIGA's?) it's in Sacramento for Women - Substance Abuse Recovery - and she said the way the State's budget's going there's not gonna be able to get in there, and since Erin doesn't have an ID, it's gonna be hard to get her into a lot of things, and checked out. So, things that we can get her into like St. Francis' Home, the Salvation Army, stuff like that, and we were gonna come back up here and demand to get her prescriptions from her care mother or sponsor or whatever it is up here, and then go to the church, and we need to ask Pastor Mark for a hotel voucher so we could just stay up here tonight, and that didn't work out, we ended up going back to Sacramento. And the whole time me and Anna were goin' off to the side and ya know "what are we gonna do?", and we dropped Erin off, did laundry, I got dressed and we came back up. I tried to bust the window to get in, didn't work. Now I'm thinkin' the fuckin' water's probably gonna fill up in there, or he's fuckin' soaked. Why not cut the pipe then instead of havin' the water go in there, go to the outside at least, that's what we decided the fuck to do. So I went to the store, and I got some duct tape and I put it over the top of the door and the sides so that when we cut the pipe above the door it wouldn't go right in the fuckin' door. And then I fuckin' remembered I didn't have my fuckin' hack saw, so we went all the way back to Sacramento and back, that's when you guys caught us.

DC: How many times you think you went back to the Juvenile hall on Saturday?

SR: Saturday was this morning, so Saturday was -

DC: The day you guys got out of the Elmwood and went to the Juvenile Hall in the first place.

SR: We went there in the first place, me and Erin took a walk so, but that was before that happened, so we got there and then -

DC: - After he was locked in the room, how many times did you come back?

SR: After he was locked in the room, we started leaving, and then there were the homeless people outside and we fucking freaked (???) 'cause we didn't want them to go before us (???) ya know, 'cause we're still goin' at this point, so we moved them away from there, (unclear), and lied to them saying that I got called off there because somebody was trespassing on there, and it was made out to make them leave. So, we got them out of there. (unclear) And then came back after the Foresthill Bridge, the second time, and then me and Anna came later that night.

DC: So you came back two times after you locked him in the room.

SR: Yeah.

DC: And yesterday how many times did you go up and try callin'?

SR: None. Not until last night about 9, 10 o'clock, that's when we got there.

DC: That's when you got the duct tape and sealed it up and stuff like that? And you sealed it up so the water wouldn't rush into the room?

SR: 'Cause if I'm gonna cut the pipe over the door, I don't want it goin' straight back in the room. (?) down there.

DC: Okay. Tell me about -

SR: I know where it's going, It's not what it looks like. You can stop questioning right here. I don't know what to say about that.

DC: Do you want me to stop questioning you about the duct tape or can I still ask you other stuff?

SR: Depends on what it's about.

DC: Why would I ask you -

SR: - I can refuse to answer certain questions, can't I?

DC: That's your right.

SR: (unclear)

DC: That's your right.

SR: Yeah.

DC: Definitely your right.

SR: Okay.

DC: Where's Erin at now?

SR: That is something I am not willing to disclose.

DC: Okay.

SR: This has nothing to do with her (???)

DC: I understand that, but I'm still going to have to talk with her. I'm not looking at her as being in trouble.

SR: (unclear)

DC: Right now.

DH: We need to determine whether he wants to talk or not, to you.

DC: You want to talk any more period?

SR: Not about her and not about what's in the trunk.

DC: Not about her or what's in the trunk?

SR: Neither of those two. Neither. I will not speak about Erin.

DC: Okay.

SR: Erin is okay, and I want her to remain that way. She's four months pregnant, and this is not her fault. It has nothing to do with her.

DC: I haven't looked in the trunk, have you?

DH: Um hum.

DC: So you know what's in there?

DH: Um hum.

DC: So why don't you question 'cause I don't know what's in there.

DH: He doesn't want to talk about it. (unclear)

DC: I know, but I don't want to ask him any questions that pertain to what might be in the trunk. Is there anything that you wanted to ask him?

DH: Your story about the unwanted touching, to Miss Rugg those two have known each other for quite awhile. She told us that they have somewhat of a relationship.

SR: They HAD, until he burned the shit out of her arm.

DH: Okay.

SR: And then tried to do it again in a restaurant in front of 15-20 people. Didn't you see the burn mark on her arm? Didn't she show you that? She didn't tell you about that?

DC: She showed that to me last week when I arrested her, she said she just fell into a fire.

SR: Bullshit.

DC: I'm just tellin' you what she told me. I saw it the day after it happened when she had the bandage on her arm.

SR: She told me and Erin all about it.

DC: Alright, I'm just tellin' you what I was told.

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DH: Didn't you tell Miss Rugg that this guy ratted on you guys, that you guys were gonna make up a story because he's a child- sex registrant, child molester, that you'd be able to match with his story because of that?. And you guys made up the part about the unwanted touching?

SR: No.

DH: Why did you stuff rags in the bottom of the door?

SR: (unclear) to scare him.

DC: How deep did the water get?

SR: (unclear) about 3 feet.

DC: So it got right around 3 feet, but nothing higher?

SR: Nothin' ever higher.

DC: What'd you do when it started getting' higher?

SR: Pull the plug in the corner.

DC: Pulled the rag away?

SR: Figured he was scared enough. See if we can't talk him into just leaving

DC: What were you trying to scare him for?

SR: Scare him senseless so the guy doesn't try to attack us if we finally do let him out.

DC: Was it his idea to give you the ATM card and PIN? Or did you ask for it?

SR: I won't comment on that.

DC: Okay. Was the ATM card used down in Sacramento or Roseville?

SR: No.

DH: Rocklin?

SR: Yeah.

DC: Safeway in Rocklin?

SR: Yeah.

DH: You used it to get gas, too, didn't you?

SR: I didn't, no.

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DH: Did Miss Rugg use it to get gas?

SR: She may have, I'm not sure (unclear) She said she was filling the tank up.

DH: What do you think ought to happen to someone like you that did this crime? (unclear)

SR: (unclear) Not sure (unclear)

DC: Did you think that there was a chance since he was in there for two days and the water was running that there could be problems with hypothermia, stuff like that?

SR: Some idea yes

DC: And did it cross your mind that with hypothermia could be the death? But yet you were still too afraid to open the door, even though he could die in there.

DH: Sean I haven't seen this guy, now how big is he?

SR: About your size.

DH: About my size? That's a pretty good size guy then.

SR: Yeah. Pretty good size crazy guy. He still had the strength at that time to beat the shit out of the window to make a gap in it that big, beat it out, enough strength but then (unclear) after being in there for 24 hours late at night, yeah, good size guy. Hypothermia hadn't set in, it had crossed my mind, but it wasn't there. Considering the guy wants to kill me, I'm not gonna fucking let out to kill me. Fuck that! Take that to court.

DH: Why not just drive off then like you did, and make an anonymous call to the fire department, tell them there's some guy -

SR: - Thought about that, but the first thing he's gonna say is Sean Rodriguez and Ann Rugg put me in here. Sean Rodriguez has addresses all over the Sacramento area, so all his friends they get hit, eventually Sean gets caught, that looks as if Sean's running from it, which he was, now Sean's on violation of his parole and up on charges just like he is now. Cut and dry. Same conclusion all around.

DC: When you were -

SR: - only thing better now is that Erin is not involved.

DC: She IS involved.

SR: No she is not. She didn't do anything. Leave her alone.

DH: All we know right now it doesn't seem like, it doesn't appear that Erin has any criminal involvement, but she is involved -

DC: - We still have to talk to her. Doesn't mean that she's gonna get in trouble for it. When you were hitting the window with the toilet thingy-jigger, were you just doing that for show?

8 000008

SR: Why don't you go take a look at the window, and you tell me.

DC: Well, on one hand you're telling me you don't want to let him out, but yet on the other hand you're banging on the windows.

SR: If you break a Plexiglas window, it cracks. The guy's strong enough to beat the bar back that's holding it there, and if I crack it, he can probably push it the rest of the way out and get out, 'cause he's telling me break the window so I can get out.

DC: That's all I'm clarifying.

SR: So no, I wasn't doing it for show.

DC: Okay.

SR: It didn't break; I tried.

DH: So obviously neither Detective Coe or myself were there, okay? That's a given.

SR: I apologize, I'm just a little (bonko?) in the head right now.

DC: We're out to piece it together.

DH: We're asking you these questions because we weren't there, and we don't know. That's all. We talked to Anna, that is Anna Rugg, right?

SR: Um hum.

DH: We talked to her for over an hour, and her statement was a bit different than yours, and there are some things that you're telling us that don't quite jive with some of the circumstances, you know what I mean?

SR: Um hum.

DH: So, that's why we're trying to clarify it.

SR: Is he in a coma?

DH: What's that?

SR: Is he in a coma?

DH: Don't know how he's doing right now.

SR: Feel better once he can testify.

DC: You'll feel better once he can?

SR: Yes.

DC: Why?

SR: Because I tried.

DH: You tried what?

SR: I tried to help.

DH: Well, I think that if he is able to testify that means he made it that's the part I'm concerned with.

DC: I have a question.

SR: Yeah?

DC: If you're hitting the window trying to crack it for him so he can get out, correct?

SR: Um hum.

DC: Why were you sticking stuff in front of the door then?

SR: I was hittin' the window after that when he conceded.

DC: Okay.

SR: When it seemed like he wasn't gonna go ballistic if we let him out.

DC: Okay.

SR: I told him give me your ID and all your money.

DC: Why'd you ask him for that?

SR: So he couldn't get very far. So we would have bail time

DC: Uh huh.

DH: How much money did he have?

SR: How much money did HE have?

DH: Uh huh.

SR: Thirteen dollars cash. (unclear)

DH: Where were his car keys at this time?

SR: At that time?

DH: Um hum.

SR: In my pocket.

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DC: How'd they get in your pocket?

SR: You know what let's just start from the beginning. Obviously, Anna's telling her cock and bull and I have, too. From the beginning he hurt Anna. He's hurt Erin. And my genuine emotion is about Erin. I just don't want anything to happen to Erin. Obviously Anna, Anna lied. Even in the police part she was telling me this, about shredding some court date, she told me what she wanted to do. When we got up to Juvenile Hall, first off, Nick was going to an AA meeting, we flagged him down, she told me the night before she wanted to rob him. I said well, you know I'm not gonna beat the guy down or nothin', but I'll tag along. We got to the Juvenile Hall, she told me and Erin to go outside and get the other bags, and (unclear) told Nick she wanted to talk to him. And she got his keys from him. She took him in the holding cell there, she said come here, I want to show you this. I could hear this as I'm walking outside. I heard the door slam, then I heard it slam again, then I hear Nick saying Anna, come off it. And previously, I was supposed to put my bike behind the Elmwood Motel, because I was on bicycle at the time, and Nick was supposed to wait on the side of the road to pick me up so I could go, too. Nick passed me up because of traffic, Anna went off on him, and she went off on him, she got out of the car. I got her back in the car, we stopped in front (unclear) in the same parking lot Albertson's, Gottschalk's, all that, it's right on Maple, it's right against Maple as you come off the freeway, the very first one. From Maple, you're gonna turn right, the very first right. I wanna say there's a bank, but I'm not sure. We stopped there, pulled in there (unclear) in the car, and Nick kept apologizing and he kept saying do you accept my apology? Do you accept my apology? That brings us to the part where she has him locked in there and saying Anna come off it, I love you Anna, stop, and she's saying wait! I haven't accepted your apology yet, I'm thinking about that. She's talking to him, and I'm not getting into it. I'm not. I'm out there with Erin, we went outside to have a cigarette, 'cause I'm a fuckin' idiot! Come back in, (unclear) see people sleepin' out here man, and she came up with the inspector story (unclear). And we came back, the plan was to have him slide her his ATM card and his cash, give her his pin. Come back and there's water pouring out the fuckin' door, and yes, like I said, I saw a cigarette, so I knew what the fuck happened. Because I had started, I started to light one up myself and I fuckin' looked up, I'm not a fuckin' dumb ass. I smoke in Juvenile Hall and fuckin' I didn't do shit, so obviously I'm not gonna do that. Cigarettes are my habit, my fuckin' habit (???). So, then we went down, like I said, we went down to the Foresthill Bridge, our shit is still there. I don't know what the fuck to do at this point, 'cause now we got (unclear) my name's involved in it more so than it should have been, it shouldn't be comin' off like this because, ya know, she should've got the ATM card and that should have been the fuckin' end of it (???) you know what I'm sayin'? I would've had too much involvement if I'd just keep my fuckin' mouth shut and be done, ya know what I'm sayin'? I came along for the ride and if she wants to pay for a motel room for me and Erin so I can stay and help her until my court date, the more fuckin' power to her. And if she's - she stayed with us in the last motel room because me and Erin stopped to get a hotel voucher from the Salvation Army for the Elmwood. And I mean if she wants to use his ATM card, I don't have a problem with it. Fuck it. She didn't let the guy out, she can do what she wants, she can (unclear) that's all on her. (unclear) Erin's too small to drive (???), Erin's too pregnant and she just doesn't mess with it. She's 25 years old and she never drives, she's driven twice in her life. (unclear) Foresthill Bridge, I'm getting' fuzzy about after the Foresthill Bridge. (long pause) Gotcha, that's right! From Foresthill Bridge we went up to Colfax. I figured while I have a car, I might as well run some errands of mine; I just sold my car to my friend, Mike, who's a close friend of mine; and he (unclear) check on that, talked to Mike. Jumped in, drove the car (unclear) Then like I said I took Erin down to my brother's, she has not been back since. We

told her that we let him out. That's what she believes, and that's all the involvement I wanted for her, I don't want anything to happen to her. I care for Erin so much. (unclear) couple weeks, and she's just a really special person. And she's already been through so much, with Jeremy beating her while she's pregnant 'cause he says it's my kid, 'cause the guy fuckin' doesn't wanna take the responsibility, and she ain't got - (unclear) no fuckin' ID, her whole family lives out in New York and now she's homeless out here - I don't need to give the list (???). So we left her there, and then we went back.

And we're still trying to get the ATM card up. So, the whole time Anna's having me run the errands while she wants to do the talking. Yeah, I'm shovin' shit under the door, shovin' that fuckin' shelf down by the door, grabbin' paint cans to hold the fuckin' shelf down, shovin' shit in the cracks in the door. Anna's all of a sudden I can't hear him anymore, you climb up there and talk to him. So now I'm relaying messages, and he'll tell you that. I think that's it. That's what I'm saying about because in the very beginning I was having second thoughts in the very beginning before the water even started going off, I was like Anna forget) this, this ain't cool. Ya know, 'cause I started having second thoughts right then and there, and he was pleading to me - and I mean I'm not gonna go open the door, 'cause it's not my business, you know what I mean? That's just how I grew up, that's like the morals that I came up by, ya know. I didn't do it, it's not my job, but I did try to talk to her, like Anna this ain't cool, this don't feel right. Ya know ya get that gut feeling?

DC: Uh huh.

SR: Don't feel right. And if he's not too pissed off at me telling you all this, everything that happened in front of him, well after the water went off and I'm hearing (unclear) was quite a bit hazy because it was real loud in there, now I'm relaying messages - last night, no, Saturday night - he threw \$13.00 at me his hand caught under the door. After that we were gonna break the window.

DC: Yeah?

SR: Yeah. (unclear) We tried to break the window, she wanted me to play it off. Your forensic is still in there right now, and they'll see the big fuckin' spot on the window where I tried to break it. And if you tell them to dust the very bottom (unclear) from trying to unscrew it, trying to give him that chance, you know? 'Cause it's not fuckin' right.

DC: Uh huh.

SR: And uh, got that, tried to break the window with the two good solid hits, we couldn't, wouldn't give, wasn't breakin'. And at that point I should probably just have fuckin' opened the door! But like I said, I'm fuckin' screwed, 'cause I don't want to go back, and now I got this, WE did put him in there and now it is an attempted murder because we only locked him in there a couple hours with water going. And at this point, like I said, before any other (unclear) or a change in story (???) just the touching, that's all how it went down. Like I said before at this point I want him to get out, I want to go home, I don't want to go back to the joint. So I don't know what the fuck to do. So I'm just gonna go get some sleep, I'm gonna sleep on it, and the guy is flipping out he has enough strength so he's knocked down half the barrier and didn't totally get off my mind, but at least I felt a little better for the guy, and at least I know that I was able to pull part of the window sill off so he could knock that window out (unclear). Went back in and said let's stop by a bank. So I think about it, and (unclear) fuckin' bank. Camera, Safeway in Sunset in Rocklin see me standing by (unclear)

(mumbling) see me stand behind from the back (???) and fast cash is \$40, \$40, then we (unclear). Got back in the car, and we were driving down Sunset, so I said "you wanna see where my dad lives?", show you where he lives and what he drives? (unclear) So I took her through there and showed her how my dad lives a life of luxury, took off through there, hit 80, drove back to the pad. Stayed in my brother's trailer, and I was sit there every now and then (unclear) Laundromat, so I took off. I told the dude, don't ask questions. (unclear) not really in the best state of mind. (unclear) and I told him that earlier, and he said it's cool. Got back there, and he didn't ask questions. (unclear) went to bed. Woke up at noon, and the first thing I'm thinkin' is get the fuckin' water off. You talk to Anna, you talk to my brother, they'll tell you that. First thing I'm thinking, it's fuckin' cold, and I left it on and he said that you better get that water off. So I went down there.(unclear) You know, me goin' over there and beatin' him a bit (unclear) knock him out or something, drag him out, at least he's out of there. When he wakes up I am not around. I gave a couple suggestions. Woke up at noon(unclear) Stopped at a gas station, put gas in the car, and then (unclear) Just because he thought it was my kid. She had said something about suicide (unclear) Stockton Blvd, have you heard about that. There is a mental hospital out there. She needs her Zoloft for depression, and she is talking about killing herself, and there is nowhere else to put her. And I don't want to do that cause I don't want a shrink yank out what is going on out there. So I figured I'll just go out there and get her pills. See what we can do up there. About her, about Nick, and maybe about Jared (unclear) cause he told me that and that is fucked up you know? She was having stomach pains the other night. I almost took her to the hospital. She turned out to be okay so she says, but I don't know. She seems fine today. Last night different. So um, we head up to Auburn, went over to the juvenile hall, and I noticed the water main in front. We dropped off Erin at Kevin's cause like I said I didn't want her to be over there. Dropped her off at Kevin's, and I said we were going to go turn off the water. There were a bunch of valves, I hit two, and then I hit another one. It sprayed all over Anna. It went all over Anna and she flipped the fuck out on me. Went and picked her up, from there went back down to Sacramento. We didn't take care of anything fro Erin that we needed to. I was thinking of that the whole fucking drive back up here. Pissed me off cause we were totally fucking sidetracked. And now she is still stuck without her fucking medication and shit.

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SR: We dropped her off driving out there like I said (inaudible) get him out of there before we killed (inaudible) -

Yeah, pretty much 'cos either way we go we're fucked. (People are) gonna notice that water going in there and find him and we can't let him out. If we let him out he's probably gonna go fucking talk to everybody about us. (Inaudible) Anyway I'd rather not kill him. 'Cos that's not my thing. I'm not a violent person. Unless it comes to family. (Inaudible) You know what I mean.

I said well if you'll drop me off at this chick's house and can pick me up about 11 (inaudible) We need to do (inaudible) So we ended up-up there at 9:00 and I'm talking "what the fuck are we gonna do?" And then (pause) she said "gas him".

So we went in there and he starts banging on the fucking window again. So, I said "you drive." She drives up to DeWitt-grabbed two hoses out of there. Stopped by Albertsons and then picked up duct tape. While she hits the bathroom. We went back down to the juvenile hall-put the hoses together. Went in there and duct taped it. Stuck it in the car. Started taking it through the window. Stuck it in there. And I went and smoked. I went and had a cigarette.

I duct taped it and I put the hoses together. That's all I'll admit to 'cos that's all I did. 'Cos I didn't want to be responsible for killing the guy. It's just like every time she wanted to go and (beat him) 'cos she talked about it all the time. But she'd just go in there and (shit) the (bar wires) all in the bag. She said we can (inaudible) pull up to of those (posts) and just go in there swinging on him. Everytime. She's trying to get me to go in first. She wants me to take the hit so you know towards the end I'm thinking "what the fuck-I'm becoming a scapegoat here. Something's up." I don't want nothing to do with gassing the guy. Something needs to be done so-she wants me to buy some duct tape-so I'll buy-go get some fucking duct tape. I can sit out in the cold (inaudible) to get the hoses and I put the hoses together.

You know I tried them together and I shoved them through the widow. Fuck yeah. I even duct taped the door. Then I wh- That's what I used the knife for was to cut off a leg of a pant to wrap around the hose. And I showed her how she could do it. She shoved it in there-got the fucking duct tape around it-get back and (the car was going). The car made it about 15 minutes and I'm like-I was like (inaudible) that's enough. He's dead by now.

You know damn well it's fucking gonna take an hour and a half -two hours in a room that size for fucking carbon monoxide poisoning to happen. You know with all the water and shit it's not going to happen in 15 minutes.

So I said "you know he's dead by now. Let's go in there and get him (inaudible)." She's bitching. So I'm thinking, "fuck it. Just let him out. I'll take my chances." I've got my boots on. I left the front door open so I could just fuckin bail. And uh she said "well whoever holds the flashlight [REDACTED], which was mine. And she says "takes the first shot." And she tried to hand it to me and I'm like "fuck that." Since you want to beat him so bad how bout if you just go in there and do it and I'll pick up the board and I'll back you up if you need it.

She wasn't (down) with that. So I didn't know what to do and I don't want the water in there on the guy anymore. She's going psycho on me. So I took the [REDACTED] from her-threw it in the back of the car-I yanked the fucking hose out of there and the whole time she was bitching at me. I packed it up. I said "get in the fucking-get in the car now. We're shutting the water off. You know I-well first-at first she-she agreed a little bit. You know I told her "go stand by the front door and tell me if you hear that water go off."

And I started hitting valves again-you know I'm hitting all of them. Water's shooting up in the fuckin air. I'm hitting all the valves now and shit's not going off so I figure its gotta be the two on top. That's the only (one) that's gonna be able to do it.

And I told her "c'mon".

"Where are we going?"

"Just fucking come on-Don't fuckin worry about it."

"Where are we going?"

"C'mon"

And she's like "Come here. I have a suggestion. I have a logical suggestion to make."

That's her fucking thing-I'm like "well, what?"

And she said "You see those barbed wire things right there-(inaudible)"

And I'm like "no-fucking get in the car."

"Where are we going?"

"We're going back-we're gonna fucking fly down to Sacramento. We're gonna get the fucking- We're- We're gonna get the hacksaw. I'm gonna turn this fucking water of and we're gonna hope that the guy doesn't fucking die-somebody finds him." End of story. If I need to fuckin' bounce and lay low for a couple of days that's what I'm gonna do. But I'm not gonna-no-and fucking-we uh bounce down to the Shell and as we're coning out of the Shell she's acting really fuckin' funny.

Yeah she paid with a fuckin ATM card-she paid for gas with the ATM card and she's like real funny in the Shell and I'm thinking this bitch is gonna try to put this all off on me. She's trying to give that guy a signal in the Shell station. So I fucking stood there next to her and I bought a little fucking cigarillo to have a reason to be in the store and it fucking really reluctant to come out of the store and I'm like "we really don't have time to waste-we've got to go-we've got to go."

Finally got her in the car-it took 23 minutes to get from here to Sacramento-can you believe that? Ran inside and told him "I need a hacksaw and I need it now-don't ask questions-just give me the fuckin saw."

He handed me the saw and said "Do you have any fuckin smokes?" And I said "Yeah, here." 21 minutes on the way back up and I fuckin timed it. No bullshit. I fuckin timed it.

She said uh "take 49 and we'll see if there's cops there." And I'm thinking, "okay, uh that's-that's logical. Maybe she's getting her head back." And we passes the Shell station and -and there was an APD and a Sheriff there. And she said "they just ran out and got in their cars." And I'm like "well, maybe they think we're him-we'll just say we're borrowing the car. You know

we'll fucking get this done and over with. And then um we had to continue past the street 'cos one of your (durangos) was out there. And then they popped us on Palm. End of story. Hacksaw's in the car.

I never got to shut the water off. And I'm glad you guys found him. I don't know what's gonna happen to me. And I don't know what's gonna happen to me and I don't know what's going to happen to Anna.

DC: Well-

SR: But I don't want anything to happen to Erin.

DC: I'm being straight with you right now that right now the only thing that I need to deal with (Erin) is just ask you a couple of questions. I'm not looking at her as being involved in this thing.

SR: Your word?

DC: I'm telling you-if I talk to her and something else changes then something else changes. But as of right now I'm being straight with you. All I need to do is talk to her to get her statement.

SR: I'm being straight with you. She didn't do anything wrong. You're not gonna put her in jail-

DC: And that's what Anna said too.

SR: She didn't do anything wrong.

DC: Anna said the same thing that she wasn't even there, except for like the first time you guys were there. So-

SR: That is probably one of the reasons she's so stressed out.

DC: And I'm being straight with you, and, and I'm just looking at her as just a person to get some information from and that's it.

SR: (Inaudible-crying)

DC: What's that?

SR: because (inaudible) I don't want (my) brother flippin' out and I don't want her getting scared and stressed out.

DC: Okay

SR: Try to take her away. (Inaudible) Go to Sacramento. ;It's off of Auburn Blvd. It's 3700 Morse Avenue.

DC: Morse? M-O-R-S-E?

SR: Morse. Morse Avenue. Space Number 60.

DC: Is that where she's staying?

SR: 60. If you (go) down Auburn and hit Morse and you make a left and you'll see a trailer park entrance-there's four of them-the second one (inaudible) the very first trailer on the right as you're going in. There's a -

DC: The second entrance?

SR: Yeah the second entrance. The very first trailer on the right with the Isuzu parked in front. She should be there (inaudible) coming back. She thought we were-We hoped it would be over and we could deal with her bullshit that she's got a lot, and she needs (me) right now.

DC: Like I said-

SR: I don't even know if (inaudible) relationship with her right now (inaudible) but I can't-

DC: Like I said. All we need to do is talk to her at this stage, and that's it.

SR: (Inaudible) I've given you this-you give me something. In your opinion-what am I looking at?

DC: You know I'm gonna be honest with you-there's a lot of stuff that happened that's , that's not good.

SR: I know.

DC: You know the stuff that I told you about back in the back the different charges and stuff, that's what you're gonna be booked on.

SR: If what I just told you is true, what all am I looking at (inaudible) my part?

DH: There's no way we can predict that (inaudible) Well-

SR: (Inaudible) murder?

DC: Well, by your own words you put the hoses together and helped put the hoses inside, right? ✓

SR: Yep-

DC: And you and Anna had talked about-about you know-taking care of (inaudible). So-that's part of it. Where-where Erin's at right now-Is there a guy named Rick? That's your brother?

DH: That's your brother? Or a good friend you consider a brother?

SR: He was my foster brother when I was 13 and he's like blood now.

DC: What's his last name?

SR: Romines (Inaudible)It's clear-my probation officer cleared me to stay with him.

DC: What's his last name?

SR: Romaines-R-O-M-I-N-E-S

DC: I-N-E-S?

SR: Yes

DC: Just so I'm clear when I'm talking to-when I go down there.

DH: At any time was there talk about dumping this guy in a pond? Or rock quarry or mine shaft?

SR: Yeah

DH: How'd that come about?

SR: She was talking about killing him. She asked me where we could get rid of him. And I'm thinking of places 'cos you know-what if it comes to that, then if it comes to that-then it comes to that. (Inaudible) fucking want it to.

DC: (But can't you) think about how you want to protect yourself?

SR: Me, Anna, Erin. Anybody else involved. Yeah. Anna's telling me-what's that place called? Something point? It's like a cliff up here where all the kids go to drink-

DC: Robie?

SR: Yeah

DC: Robie's point.

SR: And I go "whatever". Foresthill bridge covered with rocks won't work. I said "well you know I heard a bunch of bodies've been dumped in Griffin Quarry but there's no way we could fucking carry him that far. You guys been to Griffin Quarry in Penryn?"

DH: (Inaudible) I have

SR: There's no way you're gonna carry him from the parking lot to the quarry. You know where the cave is? It's that shaft back there-no way it's gonna fucking happen.

DC: When-when Anna got the ATM card from him, did she-was there a reference made that uh "well if you give us this stuff then we'll let you out?"

SR: Yeah

DC: Who said that?

SR: Anna did through me. Like I said-like I said-I was saying-

DC: Relaying the message

SR: I was playing message boy cos I could get up on the counter and yell into the little window at that point. And she'd tell me "let's ask him this, ask him that." And he was answering.

DH: Did anyone tell him that if he didn't give up the ATM card and the money that you-that you guys were going to drown him?

SR: No-that was-that was -that was never said. Those threats were never made. The threat that was made was that if he didn't give us the ATM card and it was a bluff and we hoped he did call it-was that we were gonna call the police and report a sex offender in there that had tried to commit a sex offense and that had gotten locked in there. And-we told him there were six of us that were gonna corroborate the story and he was gonna go back to the joint.

DC: That was a bluff.

SR: We weren't gonna call the fucking cops-are you serious?

DH: Okay, now thinking back on this-um-is there anything you lied to us about now that you want to change? Or are you pretty much telling us the straight up truth or what?

SR: Remember when I said fuck it, let's start from the beginning?

DH: Uh huh. From that-that was the whole truth, right?

SR: Yeah

DH: Okay

SR: Something's edited for Erin's safety but-but I mean I had to give it up anyway so-

DH: With that in mind uh-Rick's a good friend of yours, right?

SR: He's my brother.

DH: What would you want-if someone did this to Rick, what would you do to them? What would you want done to them?

SR: (no answer)

DH: If someone locked Rick up in a room for two days showering water down on him and so on and so forth-

SR: I'd want to beat the shit out of him. That's what I'd do personally-that's what I'd do.

DH: Well-In today's society-maybe it'd happen years and years ad years ago, but in today's society one thing you can be confident of-we're not gonna beat the shit out of you. Um, we're not gonna threaten you-nothing like that-we don't work that way. In today's society we punish people that do things wrong-they do jail time, prison time-stuff like that.

SR: (Inaudible)

DH: For someone that did something like you did to Rick-should that person go to prison-what do you think? He's your best friend-what do you think about that?

SR: See, I see it the way I saw it-and I see two different parties in two different positions and I think that in one position punishment would be firmer than the other. But the tag along isn't innocent either. Yeah. I see time (for me).

DH: If you had it to do over again, what would you change?

SR: The conversation (inaudible)

DH: What you mean about getting the guy over there and rolling him?

SR: And rolling him

DH: Okay, the conversation with (inaudible) what about after that-anything else? If you had it to do over again, today, let's say today the conversation was the same at the Elmwood-would you still go ahead and do it- if you had it to do over again? Would you still go along with it? 'Cos there's a point in time here where you could have bailed out right?

SR: As soon as that water turned on we cold have bailed out.

DH: Before that.

SR: We could have bailed out, yeah.

DH: Before you ever went to Juvenile Hall, that's what I'm saying. If you had to do it over again, what point in time would you say -you know what-

SR: the conversation-

DH: That's what you'd have to say "see you later-I'm out of here"

SR: I wouldn't have said that, but I'd have talked her down because you know, it's one of her friends too. Don't know what she's doing right now.

DH: Talk her down means talk her out of doing this, right?

SR: Yeah.

DH: Right

SR: Yeah

DH: You're 19 years old, right? Isn't that what they said earlier?

SR: (inaudible) fuckin 60 when I get out. 19 and on parole-I just fucked myself for life.

DH: What county are you on parole in? Sac County?

SR: Sac

DH: Who's your parole officer?

SR: Sharon R (inaudible) juvenile parole since I was 16

DC: Sharon what?

SR: Sharon (Mean) I haven't talked to her since October 18th last year. She doesn't care. She can't.

DH: Why can't she care?

SR: I'm on informal-

DH: Why can't she care?

SR: She can't violate me. She can't violate me. I'm on informal-

DH: Informal probation or informal parole?

SR: Informal parole-juvenile beef. I maxed out (inaudible). I'm a parolee.

DH: This is probably the only time you're going to get to tell our side of the story. That's just my guess with all the years I have. I'm thinking you're probably not going to get to say this one more time. With that in mind, what would you tell someone about yourself? What would you tell someone w.-anything in the story? Would you want to tell them anything?

SR: Could you repeat that?

Dh: This is going to be the last time, probably, that you're going to tell someone like myself this story. You want to change anything or is there anything you want to add to it-okay, so we know the whole truth?

SR: (Nods affirmatively)

Dh: 'Cos remember earlier on I asked you about the rock quarry and-

SR: Ask away.

Dh: What's that?

SR: Ask away.

Dh: Okay. Isn't Rick the guy who was telling you how to get rid of him.

SR: (Nods negatively)

DH: Didn't Rick tell you how to get rid of the guy?

SR: No. I was asking Rick. He uh-he suggested a couple of things-he didn't tell me to do this or do that. He just said "don't get yourself in trouble."

DH: Didn't he tell you that if you came up to Auburn to try to take care of the problem that if you run into problems-that if you run into problems to give him a call?

SR: No, no, no. See you're thinking of a different Rick. You're thinking of her Uncle Rick. Did she tell you about her Uncle Rick?

DH: Uh huh. Who? Anna's uncle?

SR: Yes.

DH: I thought (inaudible) it was Rick down at wh-

SR: No. There are two different Ricks. There's my brother Rick and there's her Uncle Rick, who's supposed to be an ex-hit man and fucking he works at the Flyers gas station. And we stopped there and fucking he's the one who gave us the trash bags and shit and said "fucking do this and do that and fuckin'.."

DH: What do you mean "do this and do that?"

SR: He was gonna give us a map to a cave where he's put bodies before. This is coming from her mouth. I barely even talked to the guy.

DH: Okay.

SR: I sat out in the car most of the time and I came in and got a soda and the guy said "You got, you've got balls to be sticking around with shit like this you know. You got too many loose ends." And I went "yeah, well you know..what can I do?" And we were thinking of-her -her Uncle Rick-

DH: Okay

SR: You know, my-my brother Rick was looking out for me. He's keeping an eye on Erin right now. He's looking out for me and I told him that uh if the cops came there looking for me, call

mom and tell her to come visit me. Cos he knows that I'm going out to get in trouble and he worries for me. But he doesn't take control.

DH: Are you kinda predisposed to get in trouble like this or what?

SR: I'm not sure what predisposed means.

DC: Um-

DH: It's common-

SR: -prone-am I prone to that?

DH: Yeah. Are you prone to going out and getting in trouble like this?

SR: I just-It's my moods.

DH: No, no, no.

SR: No-just bear with me. He knows my moods and he can tell when something's wrong-when I'm in trouble. He's always known. And I have been in a lot of trouble and he knows when something's up. He knows when I'm worried, yeah. I'm not super prone to this, no. I've-the last thing I did was steal a car before this. And I went back and I did four months and I got probation.

DH: Why don't you sit here for a minute while my partner and I go out and talk, okay?

SR: All right.

DC: You feeling all right? Is that bread helping?

SR: Yeah.

DC: Okay. You need any water or anything like that?

SR: Water would be nice. Hey can (inaudible) my cigarettes are in the car in the center console-the Kools.

DH: Actually right now that car is evidence and we can't take anything out of it.

SR: Oh God-

DH: and neither one of us smoke.

SR: You can't take a single cigarette out of my pack?

DH: We can't (inaudible)

DH: Sit tight, okay?



Placer County Superior Courts
Proof of Service

CASE NO: CO45882 County 62-34689 CASE NAME: People vs. Rodriguez
I am employed by Placer County, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 101 Maple Street, Auburn, California, 95603. On 4/1/04, I served the following document described as:

Clerk's Augmented Transcript on Appeal

by placing a true copy thereof for collection and mailing so as to cause it to be mailed on the above date, following standard court practices, in sealed envelopes addressed as follows:

Court of Appeal, Third Appellate District
900 N Street, Room 400
Sacramento, CA 95814-4869

Department of Justice,
Office of the Attorney General
1300 I Street, Suite 1101
Sacramento, CA 94244-2560

John F. Schuck
Law Offices of John F. Schuck
4083 Transport Street, Suite B
Palo Alto, CA. 94303

I am 'readily familiar' with the County's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. postal service and/or interoffice mail on that same day with postage thereon fully prepaid at Auburn, California, in the ordinary course of business.

I declare under penalty of perjury the laws of the State of California that the above is true and correct.

Dated and executed at Auburn, California on 4/1/04

JOHN MENDES, Executive Officer
and Clerk of Superior Court

by: NW
Nanette Weathers, Deputy Clerk, Appeals



People of the State of California vs. SHAWN MICHAEL RODRIGUEZ

1 STATE OF CALIFORNIA)
2 COUNTY OF PLACER)

CLERK'S CERTIFICATE
PLACER NO. 62-34689 CO45882

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I, Nanette Weathers, Deputy Clerk of the Superior Court in and for the County of Placer, State of California, do hereby certify that I have compared the foregoing Transcript with the original documents in the above-entitle action, now on file in my office and that it contains a true and correct copy of said documents as the same that appears on record and on file in my office, and that said Transcript is correct. I also certify that portions of the transcript are governed by the provisions of CCP 237(a)(2), and that all personal juror identifying information has been redacted.

I WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 1st day of April, 2004.

JOHN MENDES
Clerk of the Superior Court



By NW
Nanette Weathers, Appeal Clerk



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

TRIAL MINUTES

Case Name: People vs. Shawn Rodriguez

Case Number: 62-034689

Judge: John L. Cosgrove

Event Date: 10-06-03

Location: Department 3 Historic Courthouse

Clerk: H. Sigler/K. Borg

Event: Jury Trial: Long Cause (Ongoing)

Reporter: Judy Boucree

The jury commences deliberation at 8:30 a.m. and will deliberate until 12:00 p.m. when it is deemed admonished and allowed to separate. Court Reporter completes read back at 9:40 a.m.

Court reconvenes at 1:48 p.m. in Dept 2, all parties present and outside the presence of the jurors. The Court reads the note from the foreperson ... we are unable to come to a unanimous decision on the final count being deliberate we have spent 12 hours over three days discussing this complaint, please advise. Defendant waives appearance when the Court questions the jurors and is taken out of the courtroom. Jurors enter the courtroom at 1:53 p.m. Jurors are deadlock on Ct 3 – premeditated attempted murder. The Court asks each juror the following question, "Do you think in your opinion additional deliberation would help?" All jurors answer, "NO." Jurors retire to jury room @ 2:01 p.m. Defendant escorted into the courtroom @ 2:03 p.m. All jurors are present and properly seated at . Judge Cosgrove hands the seven sealed envelopes to the clerk. At the direction of the Court, the clerk opens the sealed envelopes and reads the verdict as follows:

Count One PC 209(a) Kidnapping For Extortion – Guilty
Special Allegation Count One – Not Guilty
Count One Lessor Included PC 518 – Not Guilty
Count Two PC 182(a)(1)/187(a) Conspiracy To Commit Murder – Guilty
Count Four PC 211 Second Degree Robbery – Not Guilty
Count Five PC 236 False Imprisonment by Violence – Not Guilty
Count Six VC 10851(a) Unlawful Driving of Taking of a Vehicle – Guilty
Count Seven PC 530.5 Using Another's Name To Obtain Credit – Guilty
Count Eight PC 530-5 Using Another's Name to Obtain Credit – Guilty

Court inquired of jury if this is their verdict, all jurors responding yes. Verdicts are recorded at 2:05 p.m. All exhibits are ordered returned to the parties. RPO set for October 23, 2003 @ 1:00 p.m. Dept 13. Jurors are thanked, released from the admonishment and excused at 2:22 p.m.

Court reconvenes at 2:23 p.m. outside the presence of the Defendant and the jurors. Mr. Marchi requests dismissal of Count Three without prejudice – granted. Court adjourns at 2:24 p.m.

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

Exhibit List

Case Name: People vs. Rodriguez and Rugg
Case Number: 62-034689

Parties:

A. Plaintiff: Bill Marchi

B. Defendant: Jesse Serafin

PARTY	IDENT.	EVID.	W/DRN	DESCRIPTION
A1	9/16/03	9/24/03		Diagram of Old Juvenile Hall
A2	9/16/03	9/24/03		Color photo of Front entrance
A3	9/16/03	9/24/03		Color photo of front of Hall
A4	9/16/03	9/24/03		Color photo of overview of street
A5	9/16/03	9/24/03		Color photo of overview rear of building
A6	9/16/03	9/24/03		Color photo of overview point of entry exterior
A7	9/16/03	9/24/03		Color photo of overview rear of building
A8	9/16/03	9/24/03		Color photo of Point of entry exterior
A9	9/16/03	9/24/03		Color photo of point of entry exterior
A10	9/16/03	9/24/03		Color photo of glass and bricks under window
A11	9/16/03	9/24/03		Color photo of point of entry interior
A12	9/16/03	9/24/03		Color photo of overview point of entry from inside
A13	9/16/03	9/24/03		Color photo of overview point of entry from inside
A14	9/16/03	9/24/03		Color photo of Kitchen
A15	9/16/03	9/24/03		Color photo of Kitchen
A16	9/16/03	9/24/03		Color photo of door entering into booking area
A17	9/16/03	9/24/03		Color photo of booking area
A18	9/16/03	9/24/03		Color photo of booking area window of holding cell
A19	9/16/03	9/24/03		Color photo of booking area door to holding cell
A20	9/16/03	9/24/03		Color photo of booking area
A21	9/16/03	9/24/03		Color photo of booking area
A22	9/16/03	9/24/03		Color photo of booking area outside holding cell
A23	9/16/03	9/24/03		Color photo of booking area outside holding cell
A24	9/16/03	9/24/03		Color photo of door of holding cell
A25	9/16/03	9/24/03		Color photo of holding cell
A26	9/16/03	9/24/03		Color photo of ceiling inside holding cell
A27	9/16/03	9/24/03		Color photo of inside holding cell

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A28	9/16/03	9/24/03		Color photo of floor inside holding cell
A29	9/16/03	9/24/03		Color photo of towel in sprinkler in holding cell
A30	9/16/03	9/24/03		Color photo of towel in sprinkler in holding cell
A31	9/16/03	9/24/03		Color photo of cell window from interior
A32	9/16/03	9/24/03		Color photo of towel in sprinkler in holding cell
A33	9/16/03	9/24/03		Color photo of cell door - closed - interior
A34	9/16/03	9/24/03		Color photo of cell door with tape
A35	9/16/03	9/24/03		Color photo of cell door with tape
A36	9/16/03	9/24/03		Color photo of booking area
A37	9/16/03	9/24/03		Color photo of booking area
A38	9/16/03	9/24/03		Color photo of vent above cell door
A39	9/16/03	9/24/03		Color photo of vent above cell door
A40	9/16/03	9/24/03		Color photo of group area from booking
A41	9/16/03	9/24/03		Color photo of overview of note in front hall
A42	9/16/03	9/24/03		Color photo of midrange of note in hall (front)
A43	9/16/03	9/24/03		Close up of note in hall front
A44	9/16/03	9/24/03		White plastic material stuck to tape
A45	9/16/03	9/24/03		White plastic material stuck to tape
A46	9/16/03	9/24/03		Overview of vehicle
A47	9/16/03	9/24/03		Overview fo vehicle
A48	9/16/03	9/24/03		Front seat of car
A49	9/16/03	9/24/03		Driver side rear seat
A50	9/16/03	9/24/03		Passenger side interior
A51	9/16/03	9/24/03		Center console area / ATM card
A52	9/16/03	9/24/03		Center console / traffic ticket
A53	9/16/03	9/24/03		Overview of trunk / hose
A54	9/16/03	9/24/03		Duct tape on hose in trunk
A55	9/16/03	9/24/03		Hose from trunk / end w/tape
A56	9/16/03	9/24/03		Bag of gloves from rear passenger floor
A57	9/16/03	9/24/03		Glove on rear seat
A58	9/16/03	9/24/03		Photo of victims right hand
A59	9/16/03	9/24/03		Photo of victims right hand
A60	9/16/03	9/24/03		Photo of victims left hand
A61	9/16/03	9/24/03		Photo of victims left hand
A62	9/16/03	9/24/03		Photo of victim
✓ A63	9/16/03	9/24/03		One ATM card
✓ A64	9/16/03	9/24/03		Traffic citation
✓ A65	9/16/03	9/24/03		Flushing mechanism
✓ A66	9/16/03	9/24/03		Note
✓ A67	9/16/03	9/24/03	9/30/03	Rodriguez interview tape
✓ A68	9/16/03	9/24/03		Four receipts
✓ A69	9/16/03	9/24/03		Vent
✓ A70	9/16/03	9/24/03		Plexi glass window
✓ A71	9/16/03	9/24/03		Hose
✓ A72	9/16/03	9/24/03		Handwritten note
A73	9/22/03	9/24/03		Color photo of old Juvenile Hall
A74	9/22/03	9/24/03		Color photo of old Juvenile Hall
A75	9/22/03	9/24/03		Color photo of old Juvenile Hall
A76	9/22/03	9/24/03		Color photo of old Juvenile Hall

cvexhib1

000342

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

62-31679
62-34689

People vs. Shawn Michael Redregan Case No.: 62-34689
Date: 10-23-03 Court met at: 8:30 Dept.: 22 Judge: Cosgrove
Clerk: Sigler Reporter: _____ Probation: _____
Defense Counsel: Pat Serapin D.D.A.: Mareli
Nature of Proceedings: PT Arresting Agency: _____
Custody Status: RPO Interpreter: _____ certified qualified Language: _____ oath on file

NEXT COURT APPEARANCE:

RPO 10-23-03 1:00 DLB

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Defendant present <input type="checkbox"/> not present. | <input type="checkbox"/> Ordered booked/released | <input type="checkbox"/> Probation summarily revoked |
| <input type="checkbox"/> Arm waived <input type="checkbox"/> Arm completed <input type="checkbox"/> Viol of Prob | <input type="checkbox"/> Advised pymt of booking/ incarceration fees | <input type="checkbox"/> B/W ordered. Bail \$ _____ |
| Appt. <input type="checkbox"/> Public Defender | <input type="checkbox"/> Advised financial resp. | <input type="checkbox"/> Arrest warrant ordered. |
| <input type="checkbox"/> Conflict Firm | <input type="checkbox"/> RPO waived | <input type="checkbox"/> B/W stayed / held |
| <input type="checkbox"/> Not guilty <input type="checkbox"/> Denied | <input type="checkbox"/> Re-test ordered | <input type="checkbox"/> B/W recalled set aside |
| <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo contendere | <input type="checkbox"/> Arbuckle waiver | <input type="checkbox"/> Bail forfeited <input type="checkbox"/> O/R revoked |
| <input type="checkbox"/> Admitted <input type="checkbox"/> Advised | <input type="checkbox"/> Appeal waiver | Bail <input type="checkbox"/> exonerated |
| PLX time waived <input type="checkbox"/> 10 <input type="checkbox"/> 60 <input type="checkbox"/> Time not waived | <input type="checkbox"/> Stipulate to ProTem | <input type="checkbox"/> reinstated upon payment of reinstatement fee |
| Trial time waived <input type="checkbox"/> to next date <input type="checkbox"/> general | <input type="checkbox"/> Drop | <input type="checkbox"/> Bail apply / balance exonerated |
| <input type="checkbox"/> Dismissed _____ | Proof <input type="checkbox"/> shown <input type="checkbox"/> not shown | <input type="checkbox"/> Forfeiture set aside |
| <input type="checkbox"/> Amended _____ | | |
| <input type="checkbox"/> Boykin/Tahl rights waived. Oral / written | | Defendant ordered to report to the: |
| _____(initial) Jury trial / Contested hearing. | | <input type="checkbox"/> Criminal Division |
| _____(initial) Confrontation & examination. | | <input type="checkbox"/> Public Defender |
| _____(initial) Right to remain silent. | | <input type="checkbox"/> Probation Department |
| <input type="checkbox"/> Attend _____ self helps meetings per week until further order of the court | | <input type="checkbox"/> forthwith <input type="checkbox"/> on _____ |

Preliminary examination waived, defendant held to answer. Court deemed Complaint to be Information.

Eval 730 1017 Full Consultation Gen't PC1368 PC 1026 PC 288.1 WI 3051 with Dr. _____

Offer: _____

Indication: _____

Plea: _____

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)

Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sec/code: _____

REMANDED to custody of Sheriff until next appearance. Bail \$ _____ to be delivered to CDC / CRC per sentence.

ORDERED RELEASED O / R DISCHARGED (present case only)

COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____

Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing. 000344

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.

Defendant's signature _____ Address _____

1 Penal Code. The defendant does not qualify for a grant of
2 probation as discussed below. A term of imprisonment in state
3 prison will be recommended.

4 II

5 NO UNUSUAL CIRCUMSTANCES

6 Pursuant to Penal Code Section 1203(e) subsections (4) and
7 (5), probation shall not be granted to any person who has been
8 previously convicted twice in this state of a felony, or who has
9 been convicted once in this state of a felony, and is convicted
10 of kidnapping or conspiracy to commit murder unless unusual
11 circumstances exist pursuant to Rule of Court 4.413.

12 The defendant was convicted on October 16, 2002 of two
13 felonies in Sacramento County—a violation of 10851 of the Vehicle
14 Code and a violation of 496d of the Penal Code. Therefore, the
15 court may not grant probation absent unusual circumstances.

16 Rule of Court 4.413(c) indicates that a case is not unusual ()
17 unless there are facts or circumstances indicating that the crime
18 is less serious than circumstances typically present in other
19 cases. The facts before this court do not so indicate. The
20 victim was confined for 40 hours. The safety of the victim was
21 endangered not only by the defendant causing water to rise in the
22 holding cell to at least waist high, but also by the gassing of
23 the victim with fumes from the victim's own vehicle. Moreover,
24 the victim was not released from the cell after the property was
25 obtained from the victim. In fact the defendant was not going to
26 release the victim from confinement. He intended to shut off the
27 water to the cell so the victim would not be discovered in the
28 holding cell. Therefore, the defendant's case does not meet this

1 criteria to be called an unusual one. The second provision that
2 the current offense is less serious than a prior felony
3 conviction that is the cause of the limitation on probation also
4 does not apply to this case.

5 There are no facts that reduce the defendant's culpability
6 for the offense. The victim did not provoke the crimes the
7 defendant committed and the defendant was not acting under
8 duress.

9 There is no mental condition of the defendant that would
10 make the condition unusual. Although the defendant is youthful,
11 he does have a significant prior record both as an adult and
12 juvenile and was in fact both on Youth Authority Parole and
13 Sacramento County felony probation at the time of these crimes.

14 There are no unusual circumstances that apply. The
15 defendant is ineligible for probation.

16 III

17 SENTENCING CHOICES AVAILABLE TO THE COURT

18 Count one, Kidnapping for Extortion, a violation of Penal
19 Code 209(a) is punishable by life with the possibility of parole.
20 Penal Code Section 3046 requires that at least 7 years be served
21 before a defendant can be paroled. There is no conduct credit
22 granted. The minimum term of 7 calendar years must be served.
23 People v. Carpenter (1979) 99 Cal.App.527, 535-536. Penal Code
24 Section 3046.

25 Count two, Conspiracy to Commit Murder, a violation of Penal
26 Code Sections 182/187 is punishable the same as for first degree
27 murder. Penal Code Section 190 (a) provides that first degree
28 murder is punishable 25 years to life. There is no conduct

1 credit reduction for the minimum term of 25 years. Penal Code
2 Section 2933.2 (a).

3 Count six, Unlawful Taking or Driving of a Motor Vehicle, a
4 violation of 10851 of the California Vehicle Code is punishable
5 by 16 months, 2 or 3 years in prison as a determinate term. No
6 credits other than day for day are to be granted because Penal
7 Code Section 2933.2 applies to the whole term of imprisonment to
8 include any indeterminate or determinate terms in the same
9 action. People v. McNamee (2002) 96 Cal.App.4th 66, at page 70;
10 People v. Herrera (2001) 88 Cal.App.4th 1353; Penal Code Section
11 2933.2.

12 Counts seven and eight, Using Personal Identifying
13 Information of Another, a violation of Penal Code Section 530.5
14 is punishable 16 months, two or three years in prison. As
15 subordinate terms to count six, the 10851 of the Vehicle Code,
16 the court could impose two 8 month terms consecutive to count
17 six.

18 Indeterminate sentences are imposed under Penal Code Section
19 1168(b) and are computed separately from determinate sentences
20 that are subject to principal/subordinate computation under Penal
21 Code Section 1170.1. Indeterminate sentences can be consecutive
22 to each other and can be consecutive to determinate sentences.
23 If consecutive, the determinate term is served first and is not
24 credited toward any indeterminate parole eligibility time. Penal
25 Code Section 669; Rule of Court 451(a); People v. McGahuey (1981)
26 1212 Cal.App.3d 524, 530-532; People v. Reyes (1989) 212
27 Cal.App.3d 852, 856-859. Consecutive indeterminate sentences are
28 imposed full term pursuant to Penal Code Section 1168(b): People

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000348

1 v. Jackson (1993) 14 Cal.App.4th 1818, 1832-1834; People v. Felix
2 (2000) 22 Cal.4th 651, 657-659.

3 IV

4 RECOMMENDED SENTENCING SCHEME

5 The People recommend that the defendant be sentenced to the
6 maximum provided by law. The defendant was the primary
7 participant in the crimes for which he was convicted. He showed
8 a callous disregard for the safety of the victim. The defendant
9 was going to shut off the water and lay low until the victim
10 died. The co-defendant foiled his plan by alerting the Shell
11 Station attendant which saved the victim's life. The victim was
12 subjected to 40 hours of confinement under circumstances of
13 duress to include rising water levels and the gassing of the
14 victim. The defendant participated in both these activities which
15 posed a great deal of danger to the victim. Therefore, the
16 People recommend a sentencing scheme with two separate
17 indeterminate terms to run consecutive to each other and
18 consecutive to a determinate term which is to be served first.

19 For Count one the people recommend 7 years to life to be run
20 consecutive to any other term.

21 For Count two the people recommend 25 years to life to be
22 run consecutive to count one and any determinate term.

23 For Counts 6 the people recommend the upper term of three
24 years. Factors in aggravation outweigh any factors in mitigation
25 because of defendant's record, the fact he was on parole and
26 probation at the time, the danger posed to the victim, and the
27 seriousness of the crimes in question. The people recommend that
28 for counts 7 and 8 that two terms of 8 months run consecutive to

1 the three years for count 6. The total determinate term would be
2 4 years 4 months with the two indeterminate terms to run
3 consecutive to the determinate term and to each other. No
4 credits other than day for day are to be awarded.

5

6 DATED: 10/9/03

7

8

9

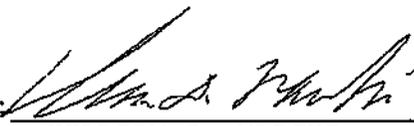
BRADFORD R. FENOCCHIO
DISTRICT ATTORNEY

10

11

12

13

BY: 
WILLIAM D. MARCHI
DEPUTY DISTRICT ATTORNEY

14

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000350

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

Case No.:

62-31679-101
62-34689

Date: 10-23-03 Court met at: 1:00 People vs. Shawn Michael Rodriguez
Dept. 13 Judge: McElhenny Clerk: Morgan Reporter: Bouchee
Defense Counsel: pd Mummolo A.A.: March Probation: _____
Nature of Proceedings: RPO Interpreter: _____ certified qualified
Agency: APD Status: PCJ Bail Cash Bail O/R _____ Language: _____ oath on file

NEXT COURT APPEARANCE: RPO 11-6-03 D 13 1:00

- Defendant present not present.
- Arm waived Arm completed Viol of Prob
- Appl. Public Defender Conflict Firm
- Not guilty Denied
- Guilty Nolo contendere
- Admitted Advised
- PLX time waived 10 60 Time not waived
- Trial time waived to next date general
- Dismissed
- Amended
- Waives re-arraignment. Not guilty plea/denial entered.
- Boykin/Tahi rights waived. Oral / written.
- _____ (initial) Jury Trial / Contested Hearing
- _____ (initial) Confrontation & examination
- _____ (initial) Right to remain silent
- Preliminary Examination waived, defendant held to answer. Court deemed Complaint to be Information.

- Ordered booked/released
- Advised pymt of booking/incarceration fees
- Advised financial resp.
- RPO waived
- Re-test ordered
- Ar buckle waiver
- Appeal waiver
- Stipulate to ProTem
- Appeal waiver
- Drop
- Proof shown not shown

- B/W ordered. Bail \$ _____
- Arrest warrant ordered.
- Bail forfeited O/R revoked
- Probation summarily revoked reinstated
- B/W stayed / held
- B/W recalled set aside
- Bail exonerated
- reinstated upon payment of reinstatement fee
- Bail apply / balance exonerated
- Forfeiture set aside
- Defendant ordered to report to the:
 - Criminal Division
 - Public Defender
 - Probation Department
 - forthwith on _____

Eval 730 1017 Full Consultation Gen'l PCI368 PC 1026 PC 288.1 WI 3051 with Dr. _____

Offer: _____

Indication: _____

Plea: _____

- Prior prison term(s) (P.C. §667.5(b)) _____ (number) Prior serious felony convictions (P.C. §667(a)) _____ (number)
- Other prior(s) sec/code: _____
- Enhancements: _____
- Sentence to be imposed under the Three Strikes Law (P.C. §1170.12)

REMANDED to custody of Sheriff until next appearance. Bail \$ As set to be delivered to CDC per sentence.

ORDERED RELEASED O/R DISCHARGED (present case only)

COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____

Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.
Defendant's signature _____ Address _____

000352

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

People vs. Shawn Michael Rodriguez Case No.: 62-34689 62-31679
Date: 11-20-03 Court met at: 1:00 Dept.: 130 Judge: Hearney
Clerk: Slater Reporter: Caldsberry Probation: _____
Defense Counsel: Ra Serafin D.D.A.: Mardi
Nature of Proceedings: RPO Arresting Agency: APD
Custody Status: PCJ Interpreter: _____ certified qualified Language: _____ oath on file

NEXT COURT APPEARANCE:
RPO 12-5-03 2:00 D13

- Defendant present not present.
- Arrn waived Arrn completed Viol of Prob
- Appt. Public Defender Conflict Firm
- Not guilty Denied
- Guilty Noto contendere
- Admitted Advised
- PLX time waived 10 60 Time not waived
- Trial time waived to next date general
- Dismissed
- Amended
- Boykin/Tahl rights waived. Oral / written
- _____(initial) Jury trial / Contested hearing.
- _____(initial) Confrontation & examination.
- _____(initial) Right to remain silent.
- Attend _____ self helps meetings per week until further order of the court
- Ordered booked/released
- Advised pynt of booking/ incarceration fees
- Advised financial resp.
- RPO waived
- Re-test ordered
- Arbuckle waiver
- Appeal waiver
- Stipulate to ProTem
- Drop
- Proof shown not shown
- Probation summarily revoked
- B/W ordcred. Bail \$ _____
- Arrest warrant ordered.
- B/W stayed / held
- B/W recalled set aside
- Bail forfeited O/R revoked
- Bail exonerated
- reinstated upon payment of reinstatement fee
- Bail apply / balance exonerated
- Forfeiture set aside
- Defendant ordered to report to the:
- Criminal Division
- Public Defender
- Probation Department
- forthwith on _____

Preliminary examination waived, defendant held to answer. Court deemed Complaint to be Information.

Eval 730 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 WI 3051 with Dr. _____

Offer: _____

Indication: _____

Plea: _____

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)
Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sec/code: _____

- REMANDED to custody of Sheriff until next appearance. Bail \$ _____ to be delivered to CDC / CRC per sentence.
- ORDERED RELEASED O / R DISCHARGED (present case only)
- COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
- Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form. 000353
Defendant's signature _____ Address _____

4

PLACER COUNTY SUPERIOR COURT
ARRAIGNMENT/PLEA/JUDGMENT & SENTENCE

~~02-34689~~

People vs. Shawn Michael Rodriguez Case No: 02-34689 62-31679
Date: 11-06-03 Court met at: 1:00 Dept.: 13 Judge: Kearney
Clerk: Sigler Reporter: Caldsberry Probation: Edmundson
Defense Counsel: PCJ Serafin D.D.A.: Marchi
Nature of Proceedings: RPO Arresting Agency: APD
Custody Status: RPO Interpreter: _____ certified qualified Language: _____ oath on file

NEXT COURT APPEARANCE:

RPO 11-20-03 1:00 D13

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Defendant present <input type="checkbox"/> not present. | <input type="checkbox"/> Ordered booked/released | <input type="checkbox"/> Probation summarily revoked |
| <input type="checkbox"/> Arrn waived <input type="checkbox"/> Arrn completed <input type="checkbox"/> Viol of Prob | <input type="checkbox"/> Advised pyint of booking/ incarceration fees | <input type="checkbox"/> B/W ordered. Bail \$ _____ |
| Appt. <input type="checkbox"/> Public Defender | <input type="checkbox"/> Advised financial resp. | <input type="checkbox"/> Arrest warrant ordered. |
| <input type="checkbox"/> Conflict Firm | <input type="checkbox"/> RPO waived | <input type="checkbox"/> B/W stayed / held |
| <input type="checkbox"/> Not guilty <input type="checkbox"/> Denied | <input type="checkbox"/> Re-test ordered | <input type="checkbox"/> B/W recalled set aside |
| <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo contendere | <input type="checkbox"/> Arbuckle waiver | <input type="checkbox"/> Bail forfeited <input type="checkbox"/> O/R revoked |
| <input type="checkbox"/> Admitted <input type="checkbox"/> Advised | <input type="checkbox"/> Appeal waiver | Bail <input type="checkbox"/> exonerated |
| PLX time waived <input type="checkbox"/> 10 <input type="checkbox"/> 60 <input type="checkbox"/> Time not waived | <input type="checkbox"/> Stipulate to ProTem | <input type="checkbox"/> reinstated upon payment of reinstatement fee |
| Trial time waived <input type="checkbox"/> to next date <input type="checkbox"/> general | <input type="checkbox"/> Drop | <input type="checkbox"/> Bail apply / balance exonerated |
| <input type="checkbox"/> Dismissed _____ | Proof <input type="checkbox"/> shown <input type="checkbox"/> not shown | <input type="checkbox"/> Forfeiture set aside |
| <input type="checkbox"/> Amended _____ | | |
| <input type="checkbox"/> Boykin/Fahl rights waived. Oral / written | | Defendant ordered to report to the: |
| _____ (initial) Jury trial / Contested hearing. | | <input type="checkbox"/> Criminal Division |
| _____ (initial) Confrontation & examination. | | <input type="checkbox"/> Public Defender |
| _____ (initial) Right to remain silent. | | <input type="checkbox"/> Probation Department |
| <input type="checkbox"/> Attend _____ self helps meetings per week until further order of the court | | <input type="checkbox"/> forthwith <input type="checkbox"/> on _____ |
| <input type="checkbox"/> Preliminary examination waived, defendant held to answer. <input type="checkbox"/> Court deemed Complaint to be Information. | | |

Eval 730 1017 Full Consultation Gen'l PC1368 PC 1026 PC 288.1 WI 3051 with Dr. _____

Order: Briefs to be filed 11-13-03
D.A. response by 11-18-03

Indication: _____

Plea: _____

Prior serious felony convictions P.C. §667(a) _____ (number) P.C. 1170.12 _____ (number)
Prior prison term(s) (P.C. §667.5(b)) _____ (number) Other prior(s) sec/code: _____

- REMANDED to custody of Sheriff until next appearance. Bail \$ _____ to be delivered to CDC / CRC per sentence.
- ORDERED RELEASED O / R DISCHARGED (present case only)
- COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
- Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

PROMISE TO APPEAR-- I will appear at all times and places as ordered by the Court and have read and understand all conditions set forth on reverse side of this form.

Defendant's signature _____ Address _____

000354

1 **LEONARD K. TAUMAN, State Bar No. 051685**
2 **PLACER COUNTY PUBLIC DEFENDER**
3 12834 Earhart Avenue
4 Auburn, CA 95602
5 530-885-2422

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

NOV 13 2003

5 **JESSE SERAFIN**
6 Assistant Public Defender
7 State Bar No. 195586

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By *J. Mendez* Deputy

8 Attorneys for Defendant,
9 **SHAWN RODRIGUEZ**

10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER**

11
12
13 PEOPLE OF THE STATE OF
14 CALIFORNIA,

CASE NO. 62-34689

15 Plaintiff,

**NOTICE OF MOTION FOR NEW
TRIAL; MOTION FOR NEW TRIAL**

16 vs.

17 **SHAWN RODRIGUEZ,**

DATE: NOVEMBER 20, 2003

18 Defendant.

TIME: 1:30 P.M.

DEPT: 13

CUSTODY STATUS: IN

19
20
21 **TO BRADFORD FENOCCHIO, DISTRICT ATTORNEY FOR PLACER**
22 **COUNTY, and the CLERK OF THE COURT:**

23 **PLEASE TAKE NOTICE** that on November 20, at 1:30 P.M., or as soon
24 thereafter as the matter can be heard in the above entitled court, the
25 Defendant, SHAWN RODRIGUEZ, through his attorney, JESSE SERAFIN,
26 Assistant Public Defender, will move for an order granting a new trial.
27

28 Defendant should be granted a new trial pursuant to Penal Code § 1181

000355

1 on three separate grounds:

- 2 1. Juror misconduct on the part of the jury foreman has prevented
3 defendant from a fair and due consideration of the case.
4
5 2. The court has misdirected the jury in a matter of law.
6
7 3. The jury's evidentiary conclusion is contrary to their actual verdicts as
8 a matter of law.

9 Dated: November 13, 2003

10
11 **PLACER COUNTY PUBLIC DEFENDER**

12
13 
14 _____
15 JESSE SERAFIN
16 Assistant Public Defender
17 Attorney for Defendant,
18 **SHAWN RODRIGUEZ**

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000356

1 **STATEMENT OF FACTS**

2 The following statement of facts differs from the conclusions of the
3 prosecution. They are a summary of the jury's view of the evidence - a view
4 that most jurors have volunteered to offer to this court if required.
5

6 During the weekend of March 17, 2003, Nicholas Hamman was locked in
7 a cell within an abandoned juvenile hall building. Mr. Hamman remained in
8 that cell approximately forty hours. At some point, he activated the sprinkler
9 system within the cell. The jury concluded that Anna Rugg (the co-defendant
10 in this case) planned to lock the victim in and did so on her own. The jury
11 concluded that SHAWN RODRIGUEZ agreed at some point to help Ms. Rugg get
12 money and an atm card from Mr. Hamman, which they succeeded in doing.
13
14

15 Both defendants used Mr. Hamman's car. Ms. Rugg used his atm to take
16 \$60 and Mr. RODRIGUEZ used his ATM to put \$20 of gas in the car. Hamman
17 was eventually released by the police after Anna Rugg dropped a note in a gas
18 station bathroom alerting the storeowner of Hamman's whereabouts.
19

20 All seven of the jurors contacted post trial concluded this note to be self-
21 serving. Ms. Rugg left the note - lying that she had been kidnapped - in an
22 attempt to frame SHAWN RODRIGUEZ for the plan she had initiated. The
23 prosecution's theory that Mr. RODRIGUEZ was leaving the state, leaving
24 Hamman to die, is unsupported by any evidence and unproven in the minds of
25 the jury hearing this case.
26
27
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000357

1 PROCEDURAL POSTURE

2 On October 6, 2003, following a three week jury trial, SHAWN
3 RODRIGUEZ was found guilty of Conspiracy to Commit Murder, Kidnapping for
4 Extortion, Vehicle Theft, and Using Another's Access Card. The jury was hung
5 ten to two in favor of Not Guilty on the charge of Attempted Murder.
6

7 Pursuant to Penal Code § 1181, the Defendant is now asking this court to
8 grant an order for a new trial on several grounds.
9

10 1: JUROR MISCONDUCT

11 Penal Code § 1181 provides that:

12 [when a verdict has been rendered or a finding made against a
13 defendant, the court may, upon his application, grant a new
14 trial, in the following cases only:(3) When the jury has been
15 guilty of misconduct by which a fair and due consideration of
16 the case has been prevented.

17 It has come to our attention post trial that the jury foreman withheld
18 personal information which clearly affected the defense ability to evaluate the
19 potential for any bias on his part. During Voir Dire, the court asked all the
20 jurors the standard questions regarding any friends or family in law
21 enforcement. Juror #10, *Robert J. Stefan* did not at any time mention any
22 acquaintances that worked in law enforcement. Once selected to the jury, he
23 then nominated himself as jury foreman. The other jurors acquiesced and
24 after four days of deliberations, a verdict was rendered.
25

26 While most of the jurors remained to speak with myself and the deputy
27 district attorney outside the courtroom, *Stefan*
28 approached a newspaper

*Appellate Attorney
John F. Schuck Tried
to prevent my knowing his Name.
But I was at Trial. I'll Never Forget.*

000358

1 reporter nearby. The following statement was printed the next day. " [REDACTED] ^{Stefun}
2 said his father was a federal prison warden. Some people make the right
3 choice and avoid crimes and others don't."

4
5 The point of voir dire in our legal system is to avoid any preconceived
6 bias from potential jurors before the facts are heard from both sides. Being
7 raised as the son of a prison warden carries obvious potential for just such bias
8 against anyone charged with a crime – especially when that person is
9 admitting some of the crimes committed and has a criminal past as Mr.

10 RODRIGUEZ did. Whether intentional or not, this omission on the part of Mr.
11 ^{Stefun} [REDACTED] prevented any further questions on the issue, and in all likelihood, he
12 would have been excused by the defense.
13
14

15 The potential bias is more striking when you consider the fact that Mr.
16 ^{Stefun} [REDACTED] elected himself to be the foreman. There is further evidence from
17 speaking to other jurors that as foreman Mr. ^{Stefun} [REDACTED] was very aggressive with
18 his opinions, and on a couple of occasions rejected other jurors suggestions
19 regarding questions for the judge.
20

21 There is no telling what ^{Stefun} [REDACTED] preconceived notions Mr. [REDACTED] had against
22 SHAWN RODRIGUEZ and how that affected his view of the evidence. The fact
23 that in a brief conversation with a newspaper reporter Mr. ^{Stefun} [REDACTED] volunteered
24 his father's profession indicates what already would appear obvious: Growing
25 up in a family focused on law enforcement affects both your perception of the
26 evidence and your belief in anyone charged with a crime. In a society driven
27
28

000359

1 by the notion of innocent till proven guilty, the defendant must be privy to
2 such potential bias.

3
4 **2. THE COURT HAS MISDIRECTED THE JURY IN A MATTER OF LAW**

5 The Defendant was charged with kidnapping for extortion under Penal
6 Code § 209(a). By law in a kidnapping case the jury must be instructed with
7 the lesser-included crime of false imprisonment – Penal Code § 236. False
8 imprisonment can be a misdemeanor or a felony depending upon the facts.
9
10 In the present case, the jury was given an instruction and a verdict form only
11 as to the felony Penal Code § 236 – false imprisonment by violence, menace,
12 fraud, or deceit. In verbal and written declarations after the trial, the jurors
13 explained the panel's original conclusion was that the Defendant was guilty of
14 false imprisonment, not kidnapping. However, they did not believe SHAWN
15 RODRIGUEZ had anything to do with the original lock down of Nicholas
16 Hamman. Therefore, they could not find any evidence supporting violence,
17 menace, fraud, or deceit. For that reason they rejected the notion of false
18 imprisonment. When asked if the jury would have rendered a guilty verdict on
19 false imprisonment if the instruction did not include the added terms, all seven
20 juror members that I spoke with said yes.

21
22
23
24 In a written statement, one of the jurors went so far as to say that he
25 suggested asking the court if they could find false imprisonment without
26 violence, menace, or fraud. His suggestion was rejected. "My biggest regret is
27 that I wanted to ask the judge if we could have the charge 'false imprisonment
28

000360

1 with violence' changed to just "false imprisonment ... My regret is not pushing
2 that issue to ask the judge regardless of what the other jurors said."

3
4 The jurors responses evidence exactly why the law requires both
5 definitions of false imprisonment be given. They came to the factual
6 conclusion that SHAWN RODRIGUEZ had nothing to do with originally locking
7 the victim, Nicholas Hamman, in the holding cell. That is what the Defendant
8 had explained all along. By believing his testimony, the jury (without knowing
9 it) was actually trapped into finding him guilty of a far worse charge - the
10 kidnapping. Had they believed Nicholas Hamman's story that the Defendant
11 kicked him and locked him in the cell originally, they would have had their
12 false imprisonment by violence, and SHAWN RODRIGUEZ would have been
13 found guilty of a simple felony. By not including misdemeanor Penal Code §
14 236 in the verdict forms as the law requires, the jury was then left to analyze
15 Penal Code § 209(a), and eventually found him guilty of a felony kidnapping
16 carrying a potential life sentence.
17

18
19 Without any supporting evidence, the defense contends that this failure
20 to properly instruct on both possibilities of false imprisonment is reversible
21 error demanding a new trial. However, when you add the contentions of the
22 individual jurors, the damage to SHAWN RODRIGUEZ caused by this omission
23 becomes undeniable.
24

25
26
27 **3. THE JURY VERDICT IS CONTRARY TO THE LAW**

28 It is our contention that SHAWN RODRIGUEZ is also entitled to a new

1 look at the jury conclusions. Given more time, we can get more written
2 declarations. Many offered after the trial to give statements under oath in
3 court.
4

5 We are not asking to re-hear evidence or re-argue the case. The
6 evidence has been presented by both sides and the jury reached a
7 "conclusion". If that "conclusion" was SHAWN RODRIGUEZ never carried
8 specific intent to kill Nicholas Hamman, then their guilty verdict directly
9 contradicts the law and a new trial must be granted as to the Conspiracy
10 charge.
11

12 **IN THE ALTERNATIVE, DEFENSE ASKS THE COURT TO EXERCISE IT'S**
13 **DISCRETION UNDER PEOPLE V. DILLON AND SET ASIDE THE VERDICT**
14 **OF CONSPIRACY TO COMMIT MURDER.**

15 Considering the jury conclusions in the present case, a twenty five to life
16 sentence for this twenty year old kid violates the constitutional prohibition
17 against cruel or unusual punishment, and we ask that the conviction of
18 Conspiracy be set aside.
19

20 In *People v. Dillon* (1983) 194 Cal.Rptr. 390, our California Supreme
21 Court emphasized the well established notion that, "Even though a statutory
22 maximum penalty may not be facially excessive, the constitution requires that
23 in every case the defendant be given a specific term that is not
24 disproportionate to the culpability of the individual offender and reflects the
25 circumstances existing at the time of the offense."
26
27

28 In a lengthy opinion, the *Dillon* court acknowledged the important role of

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1 trial on the charge of Conspiracy to Commit Murder. Verbal and written
2 declarations from many of the jurors post trial have revealed a startling
3 contradiction between their evidentiary conclusions and their actual verdict.
4 Almost all of the jurors concluded, after hearing all the evidence, that SHAWN
5 RODRIGUEZ at no time had the specific intent to kill Nicholas Hamman. For
6 this reason, the jury hung 10 to 2 in favor of not guilty on the attempted
7 murder.
8

9
10 The guilty verdict on Conspiracy to Commit Murder was based on a literal
11 interpretation. They found that SHAWN RODRIGUEZ agreed with the plan and
12 took some steps to carry that plan out, and based in part on the prosecution's
13 misstatement of the law, that was enough for conspiracy regardless of any
14 actual intent to carry out the murder.
15

16 The prosecution will argue it is improper to challenge a juror's thought
17 process or rational, and regardless of how inconsistent their conclusions may
18 be, it is not reversible error. The defense here is not challenging the jury's
19 conclusion. It is the fact that their conclusion is directly contradictory to their
20 verdict as a matter of law that demands a new trial. The jury concluded that
21 SHAWN RODRIGUEZ took certain steps and agreed to a plan for several
22 reasons. None of the reasons included an intent to actually kill another human
23 being. The law requires this intent for a Conspiracy conviction. The jury did
24 not understand that. Now we are being asked to sentence a man based on a
25 conclusion that was never actually reached. The defense begs this court to
26
27
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1 the legislature in establishing statutory sentences, but emphasized that the
2 final judgment as to whether the punishment it decrees exceeds constitutional
3 limits must be a judicial function.

4
5 The logic is simple; It is impossible for the legislature in setting standard
6 sentences to predict all possible scenarios. A case such as this one and the
7 many noted within the *Dillon* opinion may involve extenuating circumstances
8 not contemplated when establishing the original sentence. After detailed
9 analysis, the *Dillon* court concluded that "where defendant was unusually
10 immature and his act was in response to a perceived threat, the life sentence
11 constituted cruel and unusual punishment." (*Id.* at 390.)
12

13
14 Here we have a Conspiracy to Commit Murder conviction requiring a life
15 sentence with the "possibility" of parole in 25 years – an obviously extreme
16 sentence reserved for only the most horrific crimes. It is assumed if a jury is
17 able to properly follow the law, that a guilty verdict of this crime means the
18 following three facts are undisputed beyond a reasonable doubt.
19

- 20
- 21 1. A person planned to kill another human being.
 - 22 2. That person did certain acts in furtherance of that plan.
 - 23 3. The plan and acts were done with the sole purpose and intent to
24 actually kill.

25 The strongest of sentences is naturally reserved for an individual who
26 tries to murder another human being. Nobody can argue with this logic.
27 However, the present case did not result in all three factual findings. Most of
28

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How do we
know this?

1 the jury concluded SHAWN RODRIGUEZ never intended to kill anyone. The
2 jury inexplicably misconstrued the statute to require only a plan and an overt
3 act without the necessity of specific intent to kill. A horrible injustice results
4 from this inadvertent mistake. If this court turns a blind eye to the jurors' true
5 findings, denies the motion for new trial, and follows the legislature's guideline
6 - then we are essentially applying a murderer's sentence to a kid whom the
7 jury concluded did not want or try to murder anyone.
8

9
10 The *Dillon* court (referencing *In re Foss* (1974) Cal.3d 910, 919)
11 explained the goal was: "to consider not only the offense in the abstract - as
12 defined by the legislature - but also the facts of the crime in question - the
13 totality the circumstances surrounding the commission of the offense in the
14 case at bar, including such factors as its motive, the way it was committed, the
15 extent of the defendant's involvement, and the consequences of his acts." (*Id.*
16 at 415.)
17

18
19 The question that all courts need to ask before imposing a life sentence
20 is "whether the punishment is grossly disproportionate to the defendant's
21 individual culpability as shown by such factors as his age, prior criminality,
22 personal characteristics, and state of mind." (*Id.* at 414.)
23

24 The prosecution will likely respond by regurgitating the same police
25 report that we all have memorized. The defense is asking this court to listen
26 to the unbiased citizens of our county that were called upon to be our jurors.
27 While their verdict regarding Conspiracy was guilty, their factual conclusions
28

1 were quite different. In talking to some and reading the statements of other
2 the jury found SHAWN RODRIGUEZ to be a young kid in a bad situation – a kid
3 with no history of violence who made mistakes but never intended to hurt
4 anyone.
5

6 In exercising it's constitutional discretion, the *Dillon* court referred to a
7 similar finding of cruel and unusual punishment by the United States Supreme
8 Court in *Enmund v. Florida* (1982) 458 U.S. 782, 102 S.Ct. 3368. In *Enmund*
9 two persons robbed and fatally shot an elderly couple at their farmhouse.
10 Enmund's only involvement was acting as a look out, but he was found guilty
11 as a constructive aider and abettor (a theory often used to describe SHAWN
12 RODRIGUEZ' guilt in the present case). Under the penalties prescribed by the
13 state legislature at that time, Enmund was then sentenced to death. The
14 Supreme Court reversed explaining, "Enmund did not kill or intend to kill and
15 thus his culpability is plainly different from that of the robbers who killed; yet
16 the state treated them alike and attributed to Enmund the culpability of those
17 who killed. This was impermissible under the Eight Amendment... American
18 criminal law has long considered a defendant's intention – and therefore his
19 moral guilt – to be critical to the degree of his criminal culpability, and the
20 Court has found criminal penalties to be unconstitutionally excessive in the
21 absence of intentional wrongdoing." (*Id.*, at 798, 102 S.Ct. at 3377.)
22
23
24
25
26

27 If we are to ignore this jury's error in relation to granting SHAWN
28 RODRIGUEZ a new trial, we at the very least cannot ignore their conclusions,

1 their cries for justice. The triers of fact in the present case have gone out of
2 their way to express the inappropriateness of a life sentence. After hearing the
3 evidence, they have expressly declared an absence of "intentional wrongdoing"
4 as it relates to SHAWN RODRIGUEZ' intent to kill.
5

6 In *People v. Dillon* a 17-year-old kid joined several others in a robbery
7 attempt. As the intended victims began to fight back, Dillon tried to flee the
8 scene. In so doing, he came face to face with one of the victims whom he
9 thought had a gun. Dillon then fired nine separate shots killing him instantly.
10 Under the felony murder rule he was convicted of first-degree murder and
11 sentenced to life without parole. The court reduced his murder to second
12 degree and sent him to the youth authority based on the following analysis.
13
14

15 "When he committed the offenses herein defendant was a 17 year old
16 high school student. At trial he took the stand in his own behalf and told the
17 jury his side of the story. From that testimony a plausible picture emerged of
18 the evolution of the defendant's state of mind during these events - from
19 youthful bravado, to uneasiness, to fear for his life, to panic. (*Dillon*, at 416.)
20
21

22 The Court then reversed the first-degree murder conviction saying that
23 the defendant was young, had no prior history of violence, and was just
24 reacting poorly to the situation without actually forming an intent to kill. The
25 court went to great lengths to conclude that Dillon was an immature kid who
26 got himself in a bad situation, but did not deserve a life sentence. In light of
27 the juror statements post trial, the same analysis applies to SHAWN
28

1 RODRIGUEZ. In fact, the penalty is even more disproportionate to the crime in
2 this case, because no one was actually injured.

3
4 Perhaps the most compelling analysis in *People v. Dillon*, as it relates to
5 the instant case, is the reliance of the Supreme Court on post trial comments
6 from the jury. At the invitation of the prosecution, the jury foreman wrote a
7 letter to the Judge two days after the verdict.

8
9 Expressing "the general consensus of opinion of most or all jurors," the
10 foreman expressed compassion for the kid they had just convicted and
11 implored the judge to give the defendant "his best opportunity in life". (*Id.* at
12 418.) The letter asked for counseling and training to be used as a tool to help
13 this immature, unguided kid rather than worthless confinement for life.

14
15 In *Dillon*, a 17-year-old kid shot and killed another human being. The
16 court exercised it's constitutional right to set aside the verdict and the life (
17 imprisonment it carried. In so doing, the court placed "a great deal of weight
18 to the jury's recommendation, not because I have to, but because it makes
19 some sense to me." (*Id.* at 419.) The court noted the fact that the jurors
20 were not advocates, but unbiased judges of the evidence and witnesses
21 presented, as a big reason for trusting their judgment in the case.

22
23 Attached to this motion are the only three written declarations yet
24 received from the jury. I have been told specifically that two more are on the
25 way. It should be noted that six other jurors shared the views expressed by
26 these three declarations verbally with me after the trial.
27
28

000368

1 Based on the jurors post trial statement and the reasons laid out above,
2 it is our contention that the law requires that SHAWN RODRIGUEZ be given a
3 new trial. In the alternative, we humbly beg this court to listen to the hearts
4 and minds of our jury. Applying the well laid out and supported reasoning of
5 *Dillon*, our judicial system would be committing a gross injustice by sending a
6 20 year old kid to prison for the rest of his life for Conspiracy to Commit
7 Murder without actually concluding that he intended to kill.
8
9

10 DATED: November 13, 2003

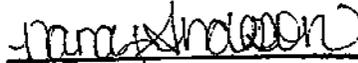
11 **PLACER COUNTY PUBLIC DEFENDER**

12
13
14 
15 _____
16 JESSE SERAFIN
17 Assistant Public Defender
18 Attorney for defendant
19 **SHAWN RODRIGUEZ**
20
21

22 I am an employee or agent of the Placer County
23 Public Defender's Office, over the age of eighteen,
24 and not a party to this action. I personally served a
25 true and correct copy of this document upon an
26 employee or agent of the Placer County District
27 Attorney's Office.

28 This I declare under penalty of perjury.

11/13/03
DATE


SIGNATURE

000369

1 **LEONARD K. TAUMAN, State Bar No. 051685**
2 **PLACER COUNTY PUBLIC DEFENDER**
3 12834 Earhart Avenue
4 Auburn, CA 95602
5 530-885-2422

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

NOV 14 2003

By JOHN MENDES Deputy
EXECUTIVE OFFICER & CLERK

5 **JESSE SERAFIN**
6 Assistant Public Defender
7 State Bar No. 195586

7 Attorneys for Defendant,
8 **SHAWN RODRIGUEZ**

10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER**

12
13 PEOPLE OF THE STATE OF
14 CALIFORNIA,

15 Plaintiff,

16 vs.

17 **SHAWN RODRIGUEZ,**

18 Defendant.

CASE NO. 62-34689

**ATTACHMENTS TO
NOTICE OF MOTION FOR NEW
TRIAL; MOTION FOR NEW TRIAL**

DATE: NOVEMBER 20, 2003
TIME: 1:30 P.M.
DEPT: 13
CUSTODY STATUS: IN

20 _____
21 **TO BRADFORD FENOCCHIO, DISTRICT ATTORNEY FOR PLACER
22 COUNTY, and the CLERK OF THE COURT:**

23 *///* I am an employee or agent of the Placer County
24 *///* Public Defender's Office, over the age of eighteen,
25 *///* and not a party to this action. I personally served a
26 *///* true and correct copy of this document upon an
27 *///* employee or agent of the Placer County District
28 *///* Attorney's Office.

/// This I declare under penalty of perjury.

28 *///* 11-14-03 Nancy Anderson
DATE SIGNATURE

000370

~~XXXXXXXXXXXXXXXXXXXX~~

NOV 6, 2003

Leo Lewis' JURY QUESTIONNAIRE

The following is a list of questions designed to explore some of the thought process behind your findings and to clarify some of the actual conclusions. There is no right or wrong answer, and please understand it is not our goal to challenge your conclusions - only to clarify them.

Please feel free to expand on or explain in as much detail as you like any of your answers.

1. How was the jury foreman selected? Did he elect, nominate, or vote for himself?
 HE DOMINATED HIMSELF AND THE REST OF THE PEOPLE ON THE JURY CONCERNED
 NO ONE ELSE WANTED THE POSITION.
2. Did you vote Not Guilty on attempted murder?
 YES
3. Did you conclude that the defendant had the specific intent to murder Nicholas Hamman?
 NO
4. How did you conclude that there was no intent for the attempted murder, but there was intent for the conspiracy to commit murder?
 I BELIEVED THAT MR. RODRIGUEZ DID NOT INTEND TO KILL MR. HAMMAN, HOWEVER DURING HIS TAPED CONFESSION MR. RODRIGUEZ STATED THAT HE AND MS RUGG (CONSPIRED TO GAS MR. HAMMAN) AND ASKED HIS FOSTER BROTHER (WAYS TO KILL SOMEONE)
5. Did the jury seem to discuss and understand that the law requires the same specific intent to kill for conspiracy as it does for attempted murder?
 NO, I DO NOT BELIEVE SO
6. Did you or any of the jurors ever suggest asking the judge a clarifying question regarding the intent necessary for the conspiracy charge?
 YES
7. If so, why was such a question never given to the judge?
 WE DID ASK THE JUDGE FOR CLARIFICATION AND SHE RESPONDED WITH A WRITTEN ANSWER.
8. Did the jury discuss the False Imprisonment charges before debating the kidnap?
 YES, THE MAJORITY OF THE JURY WAS LEANING TOWARD FALSE IMPRISONMENT. HOWEVER AFTER RECEIVING CLARIFICATION ON THE QUESTION OF EXTORTION AFTER KIDNAPING WE WENT THE OTHER WAY, BECAUSE IT WAS AFTER MR. HAMMAN WAS CONFINED, THAT MR. RODRIGUEZ TOOK HIS ATM CARD

000371

9. Would you have voted guilty for false imprisonment if it did not include the term "violence"? *yes.*

10. At what point did you conclude that the defendant formed the intent to kidnap Nicholas Hamman?

WHEN MR HAMMAN ASKED TO BE LET OUT OF THE HOLDING CELL AND WAS REFUSED HIS REQUEST

11. Did you conclude that when the defendant intended to kidnap Mr. Hamman, he did so with the goal of getting money from him?

yes

12. Do you have any regrets regarding your decision in this case?

yes, punishment is too severe

13. Is there anything about the jury instructions that you feel you may not have understood clearly?

NO

13. Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted to kill Nicholas Hamman?

NO, HE WANTED TO PLEASE MS RUGG BUT NO I DO NOT BELIEVE THERE WAS INTENT ON HIS BEHALF

14. Based on the evidence you have heard in this case, do you feel that life imprisonment is a fair punishment for Shawn Rodriguez? Please Explain

NO, I WAS SHOCKED WHEN I HEARD HOW SEVERE THE PUNISHMENT COULD BE. EVEN THOUGH JURY INSTRUCTIONS STATED THAT WE COULD NOT REFERENCE THE PUNISHMENT TO OUR DECISION MAKING.

IT IS OF MY OPINION THAT THE PUNISHMENT DOES NOT FIT THE CRIME.

THE NOBODY WAS HURT, WHERE IS JUSTICE??

I FEEL SHAWN WAS A VICTIM OF CIRCUMSTANCE AND MADE SOME POOR CHOICES WHEN HE HAD THE OPPORTUNITY TO CORRECT THE SITUATION.

IT IS ALSO OF MY OPINION THAT SHAWN

000372

COUL

no more than one year in confinement.
(Should spend no more than a year in confinement")

THERE WERE 2 JURORS ON JULY WHOM I FELT WOULD NOT LISTEN TO REASON, THEY WANTED GUILTY VERDICTS ON EVERYTHING, WITHOUT FURTHER DISCUSSION. MOST OF THE OTHER JURY MEMBERS WERE GOING TO VOTE FOR FALSE IMPRISONMENT "THE LESSE CHARGE AFTER CLARIFICATION FROM THE JUDGE ON WHAT WE THOUGHT "EXTORTING AFTER YOU HAVE THE INDIVIDUAL CONFINED" WE HAD TO GO WITH THE MORE SERIOUS OFFENSE, BECAUSE WE THOUGHT THAT IT WAS THE WAY THE LAW & INSTRUCTIONS WERE WRITTEN.

I MUST ADD THAT ATTORNEY JESSE SERAFINI; IN MY OPINION, DID A GREAT JOB REPRESENTING MR. RODRIGUEZ, AND PRIOR TO DELIBERATING OUR VERDICTS, I PERSONALLY THOUGHT MR. RODRIGUEZ WAS GUILTY OF, FALSE IMPRISONMENT, ROBBERY AND AUTO THEFT ONLY, AND INCOMPETENT ON ALL OTHER CHARGES.

IT WAS OUR INSTRUCTIONS & DEFINITIONS & THE TAPED CONFESSION WHICH CHANGED THINGS

Sincerely,
Leo Jemel
JUROR

372 B



Fax Cover Sheet

To: N: Jesse Serafin
 Placer County Public Defender

Jennifer Baran

From: ~~XXXXXXXXXX~~
 Juror #1 for the People vs. Shawn Rodriguez
 Case # 62-34689

Phone: 1-916-631-9030 ext. 2014
Fax: 1-916-631-9714 or 631-9715

Date: 10/21/03

of pages including cover page: 4

000373

1. *How was the jury foreman selected? Did he elect, nominate, or vote for himself?*
Bob had stated that he had served on two other juries, and he seemed to have a good understanding of the process in general. I nominated him, and nobody disagreed.
2. *Did you vote Not Guilty on attempted murder?*
Yes.
3. *Did you conclude that the defendant had the specific intent to murder Nicholas Hamman?*
For me, the point at which "conspiracy" became actual "attempt" was when the car was turned on and gas went into the cell. At this point, I concluded that it was not Shawn Rodriguez's intent to kill Hamman.
4. *How did you conclude that there was no intent for the attempted murder, but there was intent for the conspiracy to commit murder?*
This was a huge issue for us while we discussed this charge. I tried as much as I could to follow the jury instructions, and I read and re-read the definitions of conspiracy and attempted murder, as well as all the other definitions we had. Those who were leaning towards a "guilty" verdict on the attempted murder charge also posed this question to me. As I understood the definitions, "conspiracy" is an agreement, and deals with only the time during which the agreement is made, who it is made between, the overt acts committed to accomplish the goal of the conspiracy and if there was malice aforethought. I believed at the time that all these criteria were met. Shawn willfully entered into the agreement with Anna and committed the overt acts, i.e. getting duck tape and hoses, taping the door shut, hooking up the hoses to the car and running it to the cell. At the time I also believed that there was malice aforethought, namely the intent to kill, though I will admit it now, I had some doubts. I told myself however, that despite my doubts as to Shawn's intent, he still entered into an agreement with Anna, and he knew she wanted Nick Hamman dead. He helped formulate the plan. He helped Anna Rugg get everything together. He was, therefore, a conspirator. So how could it come to a guilty verdict on this charge and not on the attempted murder? Simple - according to the instructions as I understood them, I could not use the presence of a conspiracy to point to guilt in an attempted murder. The instructions said that all acts done in preparation to commit a murder could not be used as evidence of guilt in the actual attempt. I thought I had to treat these charges separately, and that conspiracy became attempt when the car was turned on. According to the instructions as I understood them, Shawn could do everything in the world to prepare to murder someone, but unless he had the intent to kill while the attempt was taking place, he was not guilty of attempted murder.
5. *Did the jury seem to discuss and understand that the law requires the same specific intent to kill for conspiracy as it does for attempted murder?*
Yes, I believe we understood that.
6. *Did you or any of the jurors ever suggest asking the judge a clarifying question regarding the intent necessary for the conspiracy charge?*
No.
7. *If so, why was such a question never given to the judge?*
N/A
8. *Did the jury discuss the False Imprisonment charges before debating the kidnap?*
No, we discussed the Kidnapping charge first. All the elements pointing to guilt were being met until we came to the issue of whether or not Nick Hamman was kidnapped with the specific intent to extort him. The question was, did the intent have to be formulated before the confinement took place, or could the plan to extort be formulated during the confinement. While we were waiting for the answer from the judge, we explored the other lesser charges of

000374

robbery, false imprisonment and the lesser charge of extortion that was attached to count one. We all agreed that Shawn took an active part in extorting, robbing, and falsely imprisoning Nick Hamman. However, the words "violence and menace" in the false imprisonment charge threw a wrench in these discussions. We all agreed that Shawn took part in Nick Hamman's confinement. He did nothing to get Nick out after the door was shut, but we saw no proof that Shawn had anything to do with actually getting him in the cell. There was no violence or menace on Shawn's part as far as we could see. It was looking like we would be forced to vote not guilty on that charge because of the presence of those two words. However, as you know, the judge's answer came back telling us that the plan to extort someone can occur after the confinement or detainment has taken place. Thus, in our eyes, all the criteria were met for a guilty verdict on the Kidnapping for Extortion charge.

9. *Would you have voted guilty for false imprisonment if it did not include the term "violence"?*
Yes, though I don't know what that would have meant once we got the answer back from the judge regarding count one.
10. *At what point did you conclude that the defendant formed the intent to kidnap Nicholas Hamman?*
Going by the jury instructions and the definitions we were given, I concluded that the intent was formed when Shawn saw that Nick was locked in the cell and did nothing to get him out. According to the definition of kidnapping, just confining or detaining someone against his will constitutes kidnapping. Shawn intended to leave him in the cell, he intended to confine Nick when it was clear Nick did not want to be in that cell. Thus Shawn intended to "kidnap" him.
11. *Did you conclude that when the defendant intended to kidnap Mr. Hamman, he did so with the goal of getting money from him?*
I concluded that when Shawn initially decided to not let Nick Hamman out of the cell, it was not necessarily his intention to get money from him. By his own admission, though, once Nick was in there, a plan was formulated to leave him in there until they got his money, PIN number and ATM cards. Based on what the judge told us, it didn't matter that the initial kidnapping was not done with the intent to extort. That plan could be formulated later - the intent could change from one thing to another.
12. *Do you have any regrets regarding your decision in this case?*
I regret my decision on Count Two. I should have listened to what my gut was telling me and insisted that we explore that charge further. Perhaps I was unclear in regards to the definitions and should have re-read them one more time. Upon further reflection, and believe me there has been a lot of further reflection, I no longer believe that Shawn had malice aforethought, namely the intent to kill when he entered into the agreement with Anna Rugg. It is not because I now know that this charge carries a life sentence that I feel this way. It is because now I realize that maybe I did not have as clear an understanding as I thought I did when it came to the instructions and the definitions regarding this charge.
13. *Is there anything about the jury instructions that you feel you may not have understood clearly?*
Yes, as I said in the previous answer, I am not as certain of my understanding of the instructions to Count 2 as I thought I was. I don't think I fully understood that Shawn himself had to possess the intent to kill when the conspiracy took place. As I stated before, I thought at the time that Shawn did have this intent, but at the same time I had doubts of that fact, if that makes sense to you. However, I thought the greater issue was that someone in the conspiracy definitely had this intent, and that Shawn willfully entered into this agreement and committed acts to carry out the goal of this agreement.

000375

14. *Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted to kill Nicholas Hernandez?*
No. Upon further reflection, I do not believe that Shawn ever wanted Nick dead, much less kill him himself.
15. *Based on the evidence you have heard in this case, do you feel that life imprisonment is a fair punishment for Shawn Rodriguez? Please explain.*
No, at no time during the trial or during the deliberations did I feel that Shawn was deserving of life in prison. Shawn is unquestionably guilty of many horrible things, and I believe that he most definitely must be punished for the crimes he committed. I am not saying that he does not deserve prison time. What I am saying is that I believe justice could have been served and punishment been meted out without the kid spending the rest of his life in jail. I don't understand why the district attorney brought these particular charges to the table when I know that other charges could have been brought that would have accomplished the same goal. I also don't understand why Shawn was not offered a plea bargain. Why did the charge of Kidnapping for Extortion have to be brought? Why did the words "violence and menace" have to be added on to the False Imprisonment charge? I just don't feel that this "go for the throat" attitude on the part of the district attorney was appropriate in this case. I do not believe that Shawn Rodriguez is a cold-blooded killer, and I do not believe he is deserving of this punishment, one that is usually given to those who are.

Hopefully these answers will be helpful to you. If you need further explanation, or if you have any other questions, please don't hesitate to call. If you need to meet with me, I am willing to do that also. Here's my contact information if you need it:

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916-631-9030 2014

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000376

JURY QUESTIONNAIRE

The following is a list of questions designed to explore some of the thought process behind your findings and to clarify some of the actual conclusions. There is no right or wrong answer, and please understand it is not our goal to challenge your conclusions - only to clarify them.

Please feel free to expand on or explain in as much detail as you like any of your answers.

1. How was the jury foreman selected? Did he elect, nominate, or vote for himself?
 Job volunteered for the position. When we all got into the deliberation room, he was very outspoken and seemed to be someone who knew what he was doing. When he volunteered, everyone seemed to go along with it. No one else really volunteered.
2. Did you vote Not Guilty on attempted murder? At the time the last vote was taken, I voted "yes" however, I also stated that, that was where I was leaning unless someone could convince me otherwise.
3. Did you conclude that the defendant had the specific intent to murder Nicholas Hamman? I concluded that the defendant had the specific intent to go now through on the initial agreement he made with Anna Rugg. It was more about a "I said I'd help you, so here I am" type of agreement.
4. How did you conclude that there was no intent for the attempted murder, but there was intent for the conspiracy to commit murder? I felt like the attempt was made initially, but then abandoned. Even if I had thought there was no attempt, I believe a person can conspire to do something and then actually not do the intended event.
5. Did the jury seem to discuss and understand that the law requires the same specific intent to kill for conspiracy as it does for attempted murder? Yes and no. I personally brought to the attention of the jurors that I felt there was an inconsistency in their regarding the 2 charges. I read to them the law regarding the "same frame of mind" that needed to be present. I felt that the group had the thinking that they knew even though Shawn did not want to personally kill Nicolas, he still conspired with.
6. Did you or any of the jurors ever suggest asking the judge a clarifying question regarding the intent necessary for the conspiracy charge? ~~Yes~~ ^{sure, yes I do!}
 One of the jurors wanted to ask the judge if a guilty verdict on one charge could have a bearing on how he weighed the next charge (it had to do with the conspiracy/attempted murder charges.) He didn't because I believe he felt the answer was found on the "specific intent" instruction. Had the question been asked, I do believe it would have clarified it for everyone else.
 If so, why was such a question never given to the judge? Well I don't believe the other jurors really understood that there had to be the same connection of motive, intent, heat etc in both charges. Even though we read "specific intent" instruction a number of times.
8. Did the jury discuss the False Imprisonment charges before debating the kidnap?
 Yes we did, however, the full charge was False Imprisonment with violence. Since we felt that Shawn was not present at the time Anna lured Nicolas into the holding cell, that would mean that he did not falsely imprison him with violence. There was no "violence" evident. So we had to defer to kidnaping.

answer is found in the paragraph

0003

#5 (cont)

so therefore he was guilty to
cons piracy

Anna with obvious "overt" actions. However, ~~the~~ I saw the inconsistency
come into play with the attempted murder charge. The majority of the group
believed Shawn that he knew "15 minutes would not kill the guy" and did it only
to appease Anna. So they felt he should not be guilty of attempted murder. The
same intent was present at each point along with overt actions, however, they
judged each one differently. Hopefully you can understand what I am trying
to say - it is very difficult to explain in words.

377B

000378

to who remains to return them (at least that's what punishment is meant for)
 by the prosecution. I always believed that our justice system was
 charges brought a "life sentence" I felt that led into the decisions
 through advocacy. I have to be honest, that when I learned that that
 Shawn seems to be a particularly great end. He needs help, not to be
 man learn about choices and consequences, respect and responsibility.
 would include some time in prison along with counseling to help this young
 life in prison will be reduced criminals, but rather, a punishment that
 that life in prison is fair at all. What this young man needs is not
 choices and needs to take responsibility for them. However, I do not feel
 find in them were to or not. He definitely made some very bad
 making it seem like he was going to kill Nicolas (whether or not was
 taking money out of ATM. He was guilty of going along w/ them & even
 imprisoning & determining Nicolas, taking the PIN & money, the car, and
 Did Shawn commit some bad stuff? Yes! He was guilty of falsifying
 imprisonment is a fair punishment for Shawn Rodriguez? Please Explain Absolutely Not!

14. Based on the evidence you have heard in this case, do you feel that life
 because he had any bad feelings toward Nicolas.
 help and was doing what he did because of his word to them - not
 "want" to kill Nicolas, but that he had to do that he would
 to kill Nicolas Hamman? It was my conclusion that Shawn did not
 13. Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted
 very subjective to individuals

definitely these when I wish we could have a lawyer there
 to interpret the laws, it seemed as if he knew at times we
 understood clearly? Jury instructions can be very complicated. There were
 13. Is there anything about the jury instructions that you feel you may not have
 regardless of what the other jurors said.
 to get a change changed. My regret is not pushing that issue to the judge
 changed to just "false imprisonment." Some of the jurors said that it was impossible
 I wanted to ask the judge if we could have the change "false imprisonment w/ violence"

12. Do you have any regrets regarding your decision in this case? My biggest regret is that
 where got money from him

11. Did you conclude that when the defendant intended to kidnap Mr. Hamman, he
 did so with the goal of getting money from him? Yes, at least to help

10. At what point did you conclude that the defendant formed the intent to kidnap
 Nicholas Hamman? I concluded that the intent came after the fact
 already provided Nicolas, Shawn came into the scene after the fact
 and then took advantage of the situation.

9. Would you have voted guilty for false imprisonment if it did not include the term
 "violence"? Yes, absolutely.

But how can "retention" take place when you know you'll spend the rest of your life in prison? Why bother? There's no hope! Personally, I believe the jury should be able to have a say in the sentence term. After all, if we are capable of sending or not sending someone to prison, why not let us help determine the length of stay. After all, we are a jury of his "peers" Shawn deserves a ~~good~~ chunk of time behind bars. Give him 10-15-20 years in prison. But do not send him to prison for the rest of his life.

I'm sure I sound like someone who has seen too many "Perry Mason" programs as a kid or too many episodes of "The Practice". It's not my intent to come across like that, however, it is my intent for the court to reconsider the sentence for this young man. I beg the court to consider a punishment for Shawn that will help him to come out of his prison term a new, different and better person. Please do not throw his young life away.

378 B

JURY QUESTIONNAIRE

1. *How was the jury foreman selected? Did he elect, nominate or vote for himself?*
Bob jumped right in there to get us focused as a group. When it was apparent that he seemed to be a leader that was willing to take on the position, someone in the group nominated him and the group responded with a yes.
2. *Did you vote Not Guilty on attempted murder?*
No. At the last vote I made it clear to the group that I as of that point I felt that the defendant was guilty based on how we had determined the conspiracy verdict.
3. *Did you conclude that the defendant had the specific intent to murder Nicholas Hamman?*
I felt that the defendant had the specific intent to follow through on the promise he had made to his co-conspirator.
4. *How did you conclude that there was no intent for attempted murder, but there was intent for the conspiracy to commit murder?*
This question is not applicable to me.
5. *Did the jury seem to discuss and understand that the law requires the same specific intent to kill for conspiracy as it does for attempted murder?*
I remember bringing that point up to the group and reading that particular rule to the group. There seemed to be confusion among some of them regarding this. I remember the argument was that some felt these were two separate charges and should be regarded as so.
6. *Did you or any of the jurors ever suggest asking the judge a clarifying question regarding the intent necessary for the conspiracy charge?*
I do believe I brought that up to the group.
7. *If so, why was such a question never given to the judge?*
A number of the more "outspoken" of the group did not see the need to do so, so I did not push the matter. I'm not sure why, however it seemed that any time someone wanted to ask the judge a question, some in the group argued about it. It did not seem an easy thing to do within this group.
8. *Did the jury discuss the False Imprisonment charges before debating the kidnap?*
Yes.
9. *Would you have voted guilty for false imprisonment if it did not include the term "violence"?*
Yes.
10. *At what point did you conclude that the defendant formed the intent to kidnap Nicholas Hamman?*
After the defendant was already imprisoned by Anna Rugg and the issue arose between her and Shawn as to what they should do.
11. *Did you conclude that when the defendant intended to kidnap Mr. Hamman, he did so with the goal of getting money from him?*
I concluded that after he saw the defendant was imprisoned, then it was a good opportunity to get what he could from him.

12. Do you have any regrets regarding your decision in this case?

Only that I did not push the matter regarding asking the judge about the above stated question. I saw an inconsistency in the group regarding the conspiracy and attempt charges.

13. Is there anything about the jury instructions that you feel that you may not have understood clearly?

I do not believe so.

14. Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted to kill Nicholas Hamman?

It was my conclusion that Shawn Rodriguez was following through with what he had told Anna Rugg he would do. It was an issue of being true to his word.

15. Based on the evidence you have heard in this case, do you feel that life imprisonment is a fair punishment for Shawn Rodriguez? Please explain.

No I do not feel it is a fair punishment. I felt that Shawn definitely needs to spend time in prison, maybe 10,15 or even 20 years or so, but not life. I believe Shawn made some very poor choices and needs to pay the penalty for doing so, however, he is not an evil person that society should never look upon ever again. He was at the wrong place, at the wrong time, with the wrong friends. I believe Shawn needs to be "reformed", not discarded. I personally would like to see him put in an environment that will allow him to change, not harden his heart any more, so that possibly one day he can walk out of prison and live his life before he turns 50 years old.

JURY QUESTIONNAIRE

The following is a list of questions designed to explore some of the thought process behind your findings and to clarify some of the actual conclusions. There is no right or wrong answer, and please understand it is not our goal to challenge your conclusions - only to clarify them.

Please feel free to expand on or explain in as much detail as you like any of your answers.

1. How was the jury foreman selected? Did he elect, nominate, or vote for himself?

Volunteer

2. Did you vote Not Guilty on attempted murder? *Yes*

3. Did you conclude that the defendant had the specific intent to murder Nicholas Hamman? *No*

4. How did you conclude that there was no intent for the attempted murder, but there was intent for the conspiracy to commit murder?

He gathered materials, hose, tape which indicated a plan was formulated.

5. Did the jury seem to discuss and understand that the law requires the same specific intent to kill for conspiracy as it does for attempted murder?

We discussed but obviously, did not understand that the law requires

6. Did you or any of the jurors ever suggest asking the judge a clarifying question regarding the intent necessary for the conspiracy charge?

Yes

7. If so, why was such a question never given to the judge?

We concluded that we should evaluate each charge independently.

8. Did the jury discuss the False Imprisonment charges before debating the kidnap? *Yes*

9. Would you have voted guilty for false imprisonment if it did not include the term "violence"?

yes, absolutely; many of the jurors would have

10. At what point did you conclude that the defendant formed the intent to kidnap Nicholas Hamman?

after Hamman was in the cell

11. Did you conclude that when the defendant intended to kidnap Mr. Hamman, he did so with the goal of getting money from him?

NO

12. Do you have any regrets regarding your decision in this case?

That we did not have an understanding the law requires the same specific intent to kill as it does for conspiracy.

13. Is there anything about the jury instructions that you feel you may not have understood clearly?

All 12

13. Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted to kill Nicholas Hamman?

No, I did not believe Shawn wanted to kill N. Hamman.

14. Based on the evidence you have heard in this case, do you feel that life imprisonment is a fair punishment for Shawn Rodriguez? Please Explain

It seems very harsh given that I do not believe he intended to kill him. I do believe Shawn did not want to open the cell door for fear of N Hamman. Shawn obtained a hack saw to turn the water off. We'll never know if he would have called the police to report. I believe he would have. I don't believe Shawn was part of a plan to entrap the victim that weekend. They just happened to run into him.

(12)

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PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

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EXECUTIVE OFFICER & CLERK
By B. V. [Signature] Deputy

8 SUPERIOR COURT OF PLACER COUNTY
9 STATE OF CALIFORNIA

10 --oOo--

11
12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,
14 Plaintiff,
15 vs.
16 SHAWN MICHAEL RODRIGUEZ,
17 Defendant.

No. 62-034689

POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT'S
MOTION FOR A NEW TRIAL

18
19 The People submit the following Points and Authorities in
20 Opposition to Defendant's motion for a new trial:

21 I

22 INTRODUCTION

23 The defense makes a motion for a new trial based on
24 evidence not admissible under Evidence Code Section 1150(a).
25 Evidence admissible must be that that would be otherwise
26 admissible evidence in a hearing or trial. No hearsay evidence
27 is admissible unless it is in affidavit form and relates to

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1 proper areas that the court may review. Evidence Code Section
2 1150(a) provides that "no evidence is admissible to show the
3 effect of a statement, conduct, condition or event upon a juror
4 either in influencing him to assent to or dissent from the
5 verdict or concerning the mental processes by which it was
6 determined". Therefore, the People request that the jury
7 questionnaires the defense submitted as exhibits be stricken
8 from the record and that the court not consider them or any
9 summary of them in defendant's motion. The questionnaire's
10 first paragraph states "The following is a list of questions
11 designed to explore some of the thought process behind your
12 findings and to clarify some of the actual conclusions." This
13 area is a strictly prohibited one pursuant to Evidence Code
14 Section 1150(a). Cases outlined below indicate the reasoning
15 behind this strictly followed statutory and common law rule.

16 In the case of People v. Steele (2002) 27 Cal.4th 1230, at
17 pages 1259-1265, the California Supreme Court outlines the long
18 standing reasons for prohibiting the court to consider the
19 mental process of the jury. In Steele statements of the jurors
20 regarding their understanding of the meaning of a life sentence
21 and what they would have done had they believed differently come
22 squarely within the prohibition against impeaching a verdict
23 with evidence of jurors' mental processes. People v. Steele,
24 supra, at p. 1261 citing People v. Morris (1991) 53 Cal.3d 152,
25 231, quoting People v. Sutter (1982) 134 Cal.App.3d 806, 819.
26 Preventing the invasion of the jurors' reasoning processes ". . .
27 excludes unreliable proof of thought processes and thereby

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1 preserves the stability of verdicts". People v. Steele, supra, (
2 at p. 1261. The court in Steele cites the United States Supreme
3 Court case of Tanner v. United States (1987) 483 U.S. 107 [107
4 S.Ct. 2739, 97 L.Ed.2d 90] wherein a federal statute similar to
5 Evidence Code Section 1150 is discussed. In Tanner as cited in
6 Steele, the United States Supreme Court states as follows:

7 "Substantial policy considerations support the common-law
8 rule against the admission of jury testimony to impeach a
9 verdict. As early as 1915 this Court explained the
10 necessity of shielding jury deliberations from public
11 scrutiny: 'Let it once be established that verdicts
12 solemnly made and publicly returned into court can be
13 attacked and set aside on the testimony of those who took
14 part in their publication and all verdicts could be, and
15 many would be, followed by an inquiry in the hope of
16 discovering something which might invalidate the finding.
17 Jurors would be harassed and beset by the defeated party in
18 an effort to secure from them evidence of facts which might
19 establish misconduct sufficient to set aside a verdict. If
20 evidence thus secured could be thus used, the result would
21 be to make what was intended to be a private deliberation,
22 the constant subject of public investigation—to the
23 destruction of all frankness and freedom of discussion and
24 conference.'" (Id. At pp. 119-120 [107 S.Ct. at p. 2747],
25 quoting McDonald v. Pless (1915) 238 U.S. 264, 267-268 [35
26 S.Ct. 783, 784, 59 L.Ed. 1300].)

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1 The court in Steele noted that not all thoughts "by all jurors
2 at all times will be logical, or even rational, or, strictly
3 speaking, correct. But such [thoughts] cannot impeach a
4 unanimous verdict; a jury verdict is not so fragile." People v.
5 Steele, supra, at p. 1262 citing People v. Riel (2000) 22 Cal.4th
6 1153, 1219 [96 Cal.Rptr.2d 1, 998 P. 2d 969.

7 The court in Steele also discussed People v. Hill (1992) 3
8 Cal.App.4th 16, 28-33 wherein the court concluded that Evidence
9 Code Section 1150(a) embodies a substantive rule of law, derived
10 from the common law, which renders a juror's subjective
11 reasoning process irrelevant. Hill discussed relevant evidence
12 as admission of evidence relevant to a material point and having
13 a tendency in reason to prove or disprove any disputed fact that
14 is of consequence to the determination of the action. "The rule
15 prohibiting impeachment of a verdict by examining the jurors'
16 mental processes is one of substantive law. The juror'
17 deliberations, their expressions, arguments, motives and beliefs
18 represent that state of mind which must precede every legal act
19 and is in itself of no jural consequence." The court summarized
20 that in short "under both the common law and Evidence Code
21 section 1150, the jurors' motive, beliefs, misunderstandings,
22 intentions, and the like are immaterial". People v. Hill,
23 supra, at p. 1264; People v. Steele, supra at p. 1264. In
24 Steele, the court concluded that the juror's thought process is
25 irrelevant to any legal issue and is excluded from consideration
26 by Evidence Code Section 1150(a).

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1 There are a host of other cases prohibiting affidavits
2 under oath that attempt to show the jurors' mental process in
3 reaching a verdict and they all indicate such affidavits or any
4 evidence in this area is inadmissible. (Mescher v. County of
5 San Diego (1992) 9 Cal.App.4th 1677; People v. Morris (1991) 53
6 Cal.3d 152—rejects how juror felt or how he understood trial
7 court's instructions; Ferreria v. Quik Stop Markets, Inc. (1983)
8 141 Cal.App.3d 1023—rejects affidavits regarding reasoning
9 processes of jurors; People v. Sutter (1982) 134 Cal.App.3d 806;
10 People v. Flores (1979) 92 Cal.App.3d 461; People v. Ozene
11 (1972) 27 Cal.App.3d 905—sworn declaration regarding reasons why
12 juror changed vote after giving of "Allen" instruction was
13 inadmissible as evidence of mental process; People v. Duran
14 (1996) 50 Cal.App.4th 103—rejected testimony from jurors
15 regarding their own mental process and rejected statements made
16 by jurors in the course of their deliberations which are also
17 verbal reflections of juror's mental processes.

18 Based on this body of law, the court must not consider the
19 defense's questionnaires. Even if they were actually affidavits
20 signed under penalty of perjury, they would be inadmissible.
21 Furthermore, the comments made in the questionnaires were made
22 after the jurors learned of the penalties attached to some of
23 their verdicts after they were discharged as jurors. Any
24 comments would be tainted by knowing the penalties attached to
25 certain verdicts which they properly did not consider during
26 their deliberations.

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000383

1 The People will discuss each issue raised by the defense
2 below even though no competent evidence is before the court.

3
4 II

5 NO JUROR MISCONDUCT SHOWN

6 The defense claims that a juror failed to mention an
7 acquaintance was in law enforcement. There is no credible
8 evidence before this court that any juror had a relative at some
9 time in the federal prison system. The defense relies on a
10 newspaper article. Such a statement is hearsay and not
11 admissible in a claim of juror misconduct.

12 "When a party seeks a new trial based upon jury misconduct,
13 a court must undertake a three-step inquiry. The court must
14 first determine whether the affidavits supporting the motion are
15 admissible under Evidence Code section 1150, subdivision (a).
16 If the evidence is admissible, the court must then consider
17 whether the facts establish misconduct. (Krouse v. Graham (1977)
18 19 Cal.3d 59, 79-82 [137 Cal.Rptr. 863, 562 P.2d 1022].)
19 Finally, assuming misconduct, the court must determine whether
20 the misconduct was prejudicial." People v. Von Villas (1992) 11
21 Cal.App.4th 175, 255; 15 Cal.Rptr.2d 112. People v. Dorsey (1995)
22 34 Cal.App.4th 694, 40 Cal.Rptr.2d 384.

23 The evidence that the defense can use to determine this
24 issue would be any questions asked on the record of the juror
25 and the questionnaire of the particular juror. In defendant's
26 motion there is no evidence that the court can rely on that a
27 juror's father was once a warden in a prison. The defense would

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000384

1 have to obtain an affidavit under oath from the juror in
2 question to that effect, or the court could subpoena the juror,
3 and have him appear for testimony primarily conducted by the
4 court so that care is taken not to invade juror mental
5 processes. People v. Hedgecock (1990) 51 Cal.3d 395, 415. Even
6 an unsworn letter from a juror appended to a motion for a new
7 trial, does not constitute admissible evidence for the purposes
8 of showing jury misconduct. People v. Von Villas, supra, at pp.
9 251-257. The court may not rely on the hearsay that the defense
10 states in his brief. The People request that the hearsay
11 statements be stricken from the record.

12 The first part of the three part inquiry has not been
13 satisfied. However, the court can open the sealed packet of
14 questionnaires and determine what the answer to the question was
15 regarding law enforcement contacts and can refer to the record
16 during jury selection. Attached hereto as Exhibit A is a
17 transcript of the particular juror's response to questions asked
18 by the court. According to the court reporter, those were the
19 only questions asked of that particular juror. No one asked the
20 juror about what his parents' occupations were. The juror
21 indicates that nothing came to mind about the other questions
22 the court asked of the prospective jurors. He further indicated
23 that he could be fair to both sides. The questionnaire may
24 reveal the answers regarding law enforcement, but would have
25 little meaning in the absence of the juror's understanding of
26 the question if he did not outline law enforcement contacts.

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1 The second prong of the three part inquiry is also not
2 present. There would not be any showing of misconduct. Juror
3 affidavits can be used to show juror misconduct if bias was
4 revealed by false answers on voir dire or by testimony of the
5 juror. The juror must conceal information that would show bias.
6 People v. Murphy (1973) 35 Cal.App.3d 905; People v. Hord (1993)
7 15 Cal.App.4th 711. There is no showing by the defense that any
8 answers by the juror were willfully false. If in fact a parent
9 of the particular juror was a warden in a prison system, that
10 fact alone does not indicate a bias on the part of the juror.
11 Exhibit A indicates that the juror did not go into a law
12 enforcement job. Moreover, a lay person may not think of a
13 prison warden as a law enforcement position. A warden gets
14 inmates after arrest and conviction. They do not have the usual
15 function of police officers with regard to arrest and the
16 finding of guilt; they have more of a social work function in
17 caring for the needs of inmates. Therefore, it cannot be
18 concluded that the juror had any purpose in not indicating what
19 his parents' occupations were. No one asked, and the
20 association of bias the defense claims is pure speculation. If
21 in fact the defense can show through competent evidence that a
22 son of a warden (who did not follow in his father's footsteps in
23 terms of a career) was on the jury, it cannot be presumed that
24 such a juror had a bias against one who is presumed innocent
25 until the opposite is shown by proof beyond a reasonable doubt.
26 The second prong of the three part test is also not present.

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1 The third part of the three prong test is whether the
2 misconduct is prejudicial. The defense admits that they are
3 not sure that they would have disqualified the juror had they
4 thought to ask the juror what his parents' occupations were.
5 Retired police officers have sat on juries. Spouses of police
6 officers have sat on juries. District Attorney's have sat on
7 juries. Therefore, there is no showing of prejudice to the
8 defendant.

9 The defense also makes a claim of misconduct by the juror
10 regarding the selection of the jury foreman. Again the
11 information is hearsay and inadmissible for the court's
12 consideration. The selection of a jury foreperson is entirely
13 up to the jury. It is clear that a judge cannot select one.
14 The means used by the jury to select a foreperson is up to them.
15 Dorshkind v. Harry N. Koff Agency (1976) 64 Cal.App.3d 302.
16 Therefore, the defense's hearsay claim of how the foreperson was
17 selected is without merit.

18 After a review of the questionnaire by the court and the
19 voir dire record regarding the juror, the court, in an abundance
20 of caution, could require the juror to appear regarding this
21 matter. However, the defense has not made the proper showing at
22 this stage, and there does not appear to be any misconduct, much
23 less prejudice. The motion should be denied on this basis.

24 III

25 THE COURT DID NOT MISDIRECT THE JURY IN A MATTER OF LAW

26 The defense claims that the court had a duty to instruct on
27 a misdemeanor violation of Penal Code Section even though the
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1 felony section was given. Counsel stipulated that the
2 instructions which included extortion and felony false
3 imprisonment would be the only lesser included and alternative
4 offenses to count one, Kidnapping for Extortion, that would be
5 given. Robbery was also an alternative to count one. There
6 were also many lesser offenses to robbery that the court pointed
7 out to the defense. However, the defense declined those lesser
8 offenses. See Exhibit B attached hereto, a transcript of the
9 stipulation on jury instructions. If the jury convicts on Count
10 one, it must acquit on the crimes of Extortion, False
11 Imprisonment (felony or misdemeanor) and Robbery or any lesser
12 crimes to Robbery. Counsel for the defense did not request that
13 misdemeanor false imprisonment be given. He also indicated that
14 several other possible lesser included offenses need not be
15 given. The only lesser offense requested by the defense was
16 extortion which was given as an alternative to count one at the
17 defendant's request even though count one does not require that
18 the crime of extortion actually be completed. Because the
19 defense did not request misdemeanor false imprisonment and
20 stipulated to the charges and lesser crimes given, he waived the
21 giving of not only the misdemeanor false imprisonment, but also
22 several other lesser offenses not requested by him. Because of
23 the stipulation, he cannot now complain that the court
24 misdirected the jury. It can be assumed that tactical decisions
25 were made by the defense to try to get the jury to convict on
26 some crimes that the defense knew were not life terms. One
27 tactic would be not to request a misdemeanor charge when the

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1 conduct had substantial impact on the victim. The defense would
2 appear to be giving the jury felony alternatives that the
3 defense knew were much less in penalty. Therefore, the defense
4 cannot now say that the court misdirected the jury. The court
5 was willing to consider any lesser crimes the defense requested.
6 It appears that tactical decisions were made, and counsel is
7 bound by his stipulations. Furthermore, the people request that
8 the court strike from the record any of the surveys done by the
9 defense. As discussed above the surveys are not affidavits
10 signed under penalty of perjury, and they contain information
11 regarding the jury's mental process which is not admissible
12 evidence in a motion for a new trial pursuant to Evidence Code
13 Section 1150(a) and the cases cited in the People's introductory
14 paragraph. Even if proper affidavits are obtained, any
15 statement regarding whether they should have requested some
16 alternative to the false imprisonment charge is not competent
17 evidence because it is the mental process involved in obtaining
18 a verdict. See cases cited above in Introductory paragraph.

19 Upon a review of section 209(a) of the Penal Code and cases
20 interpreting this area, it is clear that, even absent the
21 defense's stipulation, there is no sua sponte duty for the court
22 to instruct on the misdemeanor violation of Penal Code Section
23 236 under the circumstances of this case. In order to consider
24 this area, it is necessary to review the elements of Penal Code
25 Section 209(a) and consider cases interpreting this section.

26 The elements of Penal Code Section are as follows:
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- 1 1. The victim was either seized, or confined, or inveigled,
2 or enticed, or decoyed by another; and,
- 3 2. The seizing, or confining, or enticing, etc. was done
4 with the specific intent to hold or detain the person in
5 order to commit extortion.

6 There is no requirement that the confining by whatever means and
7 the specific intent to detain for extortion be premeditated. In
8 other words, both Rugg and Rogrigues could decide to extort
9 property after the initial confinement. As long as the
10 confinement continues, any attempt at extorting property becomes
11 Kidnapping for Extortion. That is why the courts have allowed
12 the conduct during the entire confinement to be considered when
13 determining whether or not the enhancement of substantial
14 likelihood of death is true or not. People v. Chacon (1995) 37
15 Cal.App.4th 52, 60; People v. Centers (1999) 73 Cal.App.4th 84,
16 92; Parnell v. Superior Court 91981) 119 Cal.App. 3d 392. The
17 only way to avoid this result is to let the victim out of
18 confinement before a suspect tries to obtain property. Case law
19 provides that obtaining a PIN number is property that can be
20 extorted. People v. Kozlowski (2002) 96 Cal.App.4th 853, at page
21 868. Therefore, as soon as the PIN number was obtained from the
22 victim in this case, the crime was completed. Even though other
23 property was obtained thereafter (ATM card and cash), only one
24 crime of Kidnapping for Extortion is committed because the
25 kidnapping (confinement in this case) is continuous. Therefore,
26 multiple convictions for 209 cannot be obtained. The crime
27 continues until the confinement ceases. People v. Masten (1982)

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1 137 Cal.App.3d 579, 589; People v. Thomas (1994) 26 Cal.App.4th
2 1328; Parnell v. Superior Court (1981) 119 Cal.App.3d 392. The
3 confinement need not be with force. A suspect can trick a
4 victim into confinement. It is clear that if there is no
5 attempt to extort property while the victim is confined, then
6 false imprisonment may be in issue. However, if the attempt to
7 extort occurs while the victim is confined, the jury must acquit
8 for false imprisonment (felony or misdemeanor), extortion,
9 robbery, and any lesser crimes to robbery.

10 In the case of People v. Thomas (1994) 26 Cal.App.4th 1328
11 at pp. 1334-1335, the court outlines the continuous nature of
12 kidnapping. In that case the defendant kidnapped his victim
13 from a mall with the intent of robbing her. However, on the way
14 to rob her, he stopped the car to commit numerous sexual
15 offenses. Then the defendant drove on to the victim's apartment
16 to rob her. The court indicated that although defendant's plan
17 to obtain money changed in approach during the course of the
18 kidnapping, the initial kidnapping did not end with the
19 commission of the sexual offenses when the car was first
20 stopped. Therefore, there was only one kidnapping that the
21 defendant could be convicted of because there was only one
22 abduction which continued as long as the detention continued.
23 The court noted that once abducted, the victim remained
24 vulnerable to the defendant's predations and at his mercy.
25 People v. Thomas, supra, at p. 1335. In the type of crime in
26 the case before this court, the confinement constitutes the
27 circumstances under which a "kidnapping", when combined with
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1 extortion or ransom, can occur. Therefore, once the victim is
2 confined, the parties could have planned to take his money ahead
3 of time by confining him; or, they could have decided after the
4 initial confinement upon return to the hall to extort his PIN,
5 ATM, and cash (which Defendant Rodriguez admitted in his tape)
6 while the victim was still confined. The victim remained
7 vulnerable to defendant Rodriguez and Rugg's predations and at
8 their mercy upon their return to the hall. Once defendant
9 Rodriguez returned and tried to extort the property knowing that
10 the victim was confined, he is guilty of kidnapping for
11 extortion whether or not the plan was made before the initial
12 confinement. Under these circumstances, the defendant cannot be
13 convicted of false imprisonment, robbery or extortion. See
14 People v. Contreras (1997) 55 Cal.App.4th 760.

15 In the case of People v. Ordonez (1991) 226 Cal.App.3d
16 1207, at p. 1233, the court determined that there was no error
17 in failing to instruct the jury, sua sponte, on the necessarily
18 included lesser offense of false imprisonment. This case is
19 similar to defendant Rodriguez's case in that there were
20 elements of false imprisonment and elements of Kidnapping for
21 Ransom or Extortion. The court noted that a instruction on the
22 lesser included offense of false imprisonment is not required
23 where the evidence establishes that the defendant was either,
24 guilty of kidnapping or was not guilty at all. Citing People v.
25 Kelly (1990) 51 Cal.3d 931, 959; People v. Leach (1985) 41
26 Cal.3d 92. The court concluded in Ordonez that defendant's
27 conduct either went beyond the mere violation of Gomez's

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1 personal liberty, or it was not culpable. The victim Gomez was
2 first encountered by the defendant and others at his home where
3 his liberty was restrained. When the property requested by the
4 defendant was not obtained from victim Gomez, he was taken out
5 of his home and put in a trunk. Gomez was taken to another
6 location and forced to write a ransom note to his family. The
7 victim never regained his liberty and was killed. Under these
8 facts there was no duty to instruct on misdemeanor false
9 imprisonment because defendant Ordonez's conduct went beyond a
10 simple violation of Gomez' personal liberty (misdemeanor false
11 imprisonment) and evolved to kidnapping for ransom or extortion.
12 Ordonez was either guilty of the kidnapping for ransom or
13 extortion, or not guilty at all because the facts clearly showed
14 that the conduct went beyond mere restraint of personal liberty.
15 Because the facts were beyond mere restraint of personal
16 liberty, Ordonez could not be convicted of any false
17 imprisonment charge which is an alternative charge to Kidnapping
18 for Ransom or Extortion. Defendant Rodriguez is faced with the
19 same circumstance. The evidence is uncontroverted that
20 defendant Rodriguez participated in the attempt to extort
21 property from the victim while he was confined, or he is not
22 guilty of any crime. The defendant admitted in his tape and
23 trial testimony that when he returned the victim was still
24 confined in the holding cell at the old juvenile hall.
25 Defendant admitted he did the talking in trying to obtain the
26 victim's PIN, ATM card, and cash. The victim gave up his PIN,
27 but he refused to give up his ATM card and cash. Defendant

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1 admitted he placed property up against the cell door to get the
2 victim to give up the ATM card and cash. Defendant admits the
3 victim did so after he was promised that the water would be
4 released and that someone would be contacted to rescue him.
5 Either those facts are believed, in which case defendant is
6 convicted of Kidnapping for Extortion, or the jury rejects the
7 fact that Rodriguez returned to the hall or that any demand for
8 property was made in which case Rodriguez would be not guilty of
9 Kidnapping for Extortion, Extortion, Robbery, or False
10 Imprisonment. Both the victim and defendant Rodriguez testified
11 otherwise. Also defendant Rodriguez's taped admissions to the
12 police indicated otherwise. Thus the court is in the same
13 position as the court in Ordonez—there was no sua sponte duty to
14 instruct on misdemeanor false imprisonment.

15 Had the jury convicted only on False Imprisonment as an
16 alternative charge to Count One, Kidnapping for Extortion, the
17 defense would have a better argument that misdemeanor false
18 imprisonment should have been given. But even then, the
19 defense had stipulated that no other lesser offenses were
20 requested and could not then claim error by the court.

21 Based on the foregoing, defendant's request for a new trial
22 for misdirecting the jury must be denied.

23 IV

24 JURY VERDICT IS NOT CONTRARY TO LAW

25 The defense claims that the court must look into the jury
26 conclusion involving their state of mind on the Conspiracy
27 charge. Based on the case law cited in paragraph one above and
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1 Evidence Code section 1150(a), the court may not consider such
2 information. The state of mind of the jurors and how they
3 reached conclusions is not competent evidence to impeach a
4 verdict. As pointed out in People v. Steele above, not all
5 thoughts by all jurors at all times will be logical, or even
6 rational, or strictly speaking correct. Such thoughts cannot
7 impeach a unanimous verdict. In People v. Hill cited above, the
8 court indicated juror deliberations, their expressions,
9 arguments, motives, beliefs, misunderstanding, and intentions
10 represent their state of mind and are immaterial to a new trial.
11 The court may not consider any evidence as to how they reached
12 their verdict. The jury is presumed to have followed the law
13 given to them and weighted and considered the evidence
14 presented. The jury verdict is not contrary to law. There is
15 no admissible evidence to the contrary.

16 The jury was fully instructed on the law of Conspiracy to
17 Commit Murder. The jury did hang on attempted murder; however,
18 when there is a conspiracy to commit a crime, there is no
19 requirement that the target crime be completed. Conspiracy
20 requires the specific intent to agree or conspire to commit the
21 offense. Even if a conspirator decides to withdraw from a
22 conspiracy, he must do so before the commission of an overt act,
23 or he is guilty of conspiracy. People v. Sconce (1991) 228
24 Cal.App.3d 693. Mr. Romines testified that he told defendant
25 Rodriguez about a CSI program where carbon monoxide poisoning
26 was used to kill someone by connection a hose from a car exhaust
27 to a dungeon like room. This statement was made after Rodriguez

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1 asked how to kill someone. Romines indicated that Rodriguez
2 brought in Rugg and had Romines repeat the story in front of
3 Rugg and Rodriguez. Thereafter, Rodriguez and Rugg by
4 Rodriguez' own admissions committed the overt acts in question.
5 The jury convicted of Conspiracy to Commit murder which is
6 supported by the evidence. The jury could well have decided or
7 were unsure whether or not after overt acts were committed that
8 defendant Rodriguez decided to change his mind and not complete
9 the target offense of murder. Rodriguez claimed he pulled out
10 the hose after some gas when into the holding cell. Rodriguez
11 also indicated he smoked a cigarette and then told Rugg that was
12 enough. There were facts for the jury to conclude, or at least
13 disagree, over whether or not Rodriguez decided to abandon the
14 murder after an overt act was committed with the intent to kill.
15 The verdicts are not inconsistent. Therefore, the court may not
16 entertain any evidence regarding how they reached their verdicts
17 on any of the charges. The Conspiracy to Commit Murder charge
18 is not contrary to law.

19 The defense claims the Dillon case should provide relief
20 from the Conspiracy to Commit Murder verdict. That case relied
21 on special facts to reduce a first degree felony murder charge
22 to second degree murder. The case did not advise looking into
23 the jury's state of mind and mental process after they were told
24 what the penalties were in that case. The court simply
25 reviewed the evidence on the record of the actual trial.

26 In People v. Dillon (1983) 34 Cal.3d 441, pp. 477-482, the
27 court considered that particular defendant's involvement in the
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1 crime he was convicted of and emphasized his total lack of a
2 prior criminal record. The court decided it could reduce the
3 conviction from first degree murder under the felony murder rule
4 to second degree. The case was decided in 1983. Since then
5 there have been many other cases that have refused to reduce
6 penalties on the Dillon logic. In People v. Millwee (1998) 18
7 Cal.4th 96, at p. 168, the court indicated that a proportionality
8 review is not constitutionally compelled. Citing People v. Webb
9 6 Cal.4th 494. The court went on to indicate in Millwee the
10 penalty was not disproportionate to his individual culpability
11 under the factors in Dillon. Defendant had murdered his mother
12 in that case by shooting her and had claimed an accidental
13 shooting. In People v. Hines (1997) the court was asked to
14 conduct a proportionality review pursuant to Dillon. The
15 defendant was 20 years old and had beat and shot and killed a 15
16 year old girl's mother. The defendant did not have a prior
17 history of violence. The court declined to invalidate the
18 sentence as unconstitutional. In People v. Hill (1992) 3 Cal.4th
19 959, 1014, the court indicated the test is whether the sentence
20 is proportionate to the defendant's individual culpability
21 irrespective of punishment imposed on others. Defendant
22 personally committed heinous murders on two trusting friends
23 during the course of a robbery. The court found the sentence
24 prescribed by statute to be appropriate. In People v. Jackson
25 (1996) 13 Cal.4th 1164, the court found that defendant's sentence
26 for his conviction for murder for hire to be appropriate.

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1 Defendant Rodriguez's situation is quite different from
2 Dillon's case. Rodriguez was the leader in this case in the
3 conspiracy to commit murder. Rodriguez solicited ways in which
4 to kill Mr. Hamman. Rodriguez equally participated in the overt
5 acts in question. Moreover, defendant Rodriguez had a
6 substantial prior record which resulted in a commitment to the
7 California Youth Authority and a felony conviction as an adult
8 prior to the commission of the offenses currently before this
9 court. Defendant Rodriguez did not want to inform the
10 authorities about the victim's plight in the old juvenile hall.
11 The victim had been in the holding cell for 40 hours at the time
12 he was rescued by the police only because of a note Anna Rugg
13 left at the Shell station. Defendant by his own admission was
14 going to shut off the water and lay low for awhile. Defendant
15 admitted to detective Coe that he was not going to tell the
16 officer about the whereabouts of the victim even when he was
17 stopped in the victim's car and arrested. The punishment fits
18 the crime as imposed on defendant Rodriguez. This case is not
19 like the Dillon case where the felony murder rule was applied to
20 someone who did not actually shoot the victim or directly cause
21 the suffering of the victim. The court may not consider any
22 statements from the jurors regarding the mental process by which
23 they rendered a guilty verdict—their beliefs regarding the
24 defendant's state of mind. The jury is presumed to have followed
25 the law and weighed and considered the evidence. The crime of
26 conspiracy is considered to be an evil or corrupt agreement that
27 deserves the same punishment as if the target offense had been

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1 carried out. People v. Alleyne (1998) 82 Cal.App.4th 1256. Based
2 on the foregoing authority, defendant's conviction for
3 Conspiracy to Commit Murder must stand.

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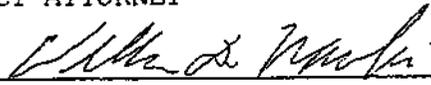
6 CONCLUSION

7 Defendant's motion for a new trial must be denied for the
8 reasons stated above. If the court feels it needs more
9 information regarding the jury foreman, the court should command
10 the juror's appearance so that the court can conduct any further
11 inquiry regarding any nondisclosure of information at the voir
12 dire stage. Wherefore, the People request that the motion be
13 denied and that the defendant be sentenced according to law.

14
15 Dated: November 18, 2003.

16 Respectfully submitted,

17 BRADFORD R. FENOCCHIO,
18 DISTRICT ATTORNEY

19 BY: 
20 WILLIAM D. MARCHI,
21 DEPUTY DISTRICT ATTORNEY

22 WDM
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

DEPARTMENT THREE HON. FRANCES A. KEARNEY, JUDGE

--000--

PEOPLE OF THE STATE OF CALIFORNIA,)
)
 Plaintiff,)
)
 vs.) No. 62-34689
)
 SHAWN MICHAEL RODRIGUEZ,)
)
 Defendant.)
)

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* * * REPORTER'S PARTIAL TRANSCRIPT * * *

JURY SELECTION

SEPTEMBER 16, 2003

--o0o--

A-P-P-E-A-R-A-N-C-E-S

For the People: BRADFORD R. FENOCCHIO
District Attorney
County of Placer
11562 B. Avenue
Auburn, California 95603
By: WILLIAM MARCHI
Deputy District Attorney

For the Defendant: LEONARD TAUMAN
Public Defender
County of Placer
12834 Earhart Avenue
Auburn, California 95602
By: JESSE SERAFIN
Assistant Public Defender

Reported by: PAMELA R. KATROS, RPR
CSR License No. 9383
Official Court Reporter
County of Placer

ORIGINAL

EXHIBIT A

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THE COURT: Did your wife work outside the home?

PROSPECTIVE JUROR 230078370: She worked while the kids were small in the school district.

THE COURT: As a teacher or teachers aide, something like that?

PROSPECTIVE JUROR 230078370: Right.

THE COURT: Looks like you were on a jury in another state and the jury was able to reach a verdict?

PROSPECTIVE JUROR 230078370: Yes.

THE COURT: Anything about having participated in that experience that you think would make it difficult for you to do it again?

PROSPECTIVE JUROR 230078370: Shouldn't be a problem.

THE COURT: Was it a criminal case or civil case?

PROSPECTIVE JUROR 230078370: They were all civil.

THE COURT: All civil cases. Now, you understand in a civil case, it is preponderance of evidence. In a criminal case, it is beyond a reasonable doubt so it is going to be a higher standard, and we'll spend a lot of time talking about that if you are selected. You heard the questions I was asking the other jurors. Did that bring to mind anything you think would be important for us to know about you?

PROSPECTIVE JUROR 230078370: Not that I'm aware of.

THE COURT: Do you feel you could be fair to both sides in this case?

PROSPECTIVE JUROR 230078370: Yes.

(Ordered portion of the transcript completed.)

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

DEPARTMENT THREE HON. FRANCES A. KEARNEY, JUDGE

--000--

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff,)	
)	
vs.)	No. 62-34689
)	
SHAWN MICHAEL RODRIGUEZ,)	
)	
Defendant.)	
)	

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* * * REPORTER'S PARTIAL TRANSCRIPT * * *

STIPULATION OF JURY INSTRUCTIONS

SEPTEMBER 30, 2003

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A-P-P-E-A-R-A-N-C-E-S

For the People:	BRADFORD R. FENOCCHIO District Attorney County of Placer 11562 B. Avenue Auburn, California 95603 By: WILLIAM MARCHI Deputy District Attorney
-----------------	---

For the Defendant:	LEONARD TAUMAN Public Defender County of Placer 12834 Earhart Avenue Auburn, California 95602 By: JESSE SERAFIN Assistant Public Defender
--------------------	---

Reported by:	PAMELA R. KATROS, RPR CSR License No. 9383 Official Court Reporter County of Placer
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ORIGINAL

EXHIBIT B

1 AUBURN, CALIFORNIA

2 TUESDAY, SEPTEMBER 30, 2003, 8:40 A.M.

3 --o0o--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

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18 (The following proceedings took place
19 outside the presence of the jury.)

20 THE COURT: On the record in the matter of the People
21 versus Shawn Rodriguez, Case Number 62-034689. The defendant is
22 present in court with counsel. Also present, counsel for the
23 People. The jury is not present. A couple issues. I met with
24 counsel last night on jury instructions, and I have a set of
25 jury instructions that have been prepared by the People. And
26 after conversation with counsel for the defense, it's my
27 understanding that the package of jury instructions that I now
28 have in final form are by stipulation of both sides; is that

1 correct?

2 MR. SERAFIN: That's correct.

3 MR. MARCHI: Yes, your Honor.

4 THE COURT: In that jury instructions conversation we
5 discussed several things, and I think it is important to put
6 some of them on the record. First of all, that the jury
7 instructions are all by stipulation, and there were no
8 objections.

9 Number two, that it was agreed by both counsel for the
10 People and counsel for the defense that the lesser included of
11 manslaughter would not be appropriate in this case and,
12 therefore, the Court would not be instructing -- excuse me,
13 attempted manslaughter. Also that grand theft and attempted
14 robbery are potential lesser included to the crime of robbery,
15 but it was agreed that it is not appropriate for the Court in
16 this case to instruct on grand theft and attempted robbery; is
17 that correct?

18 MR. SERAFIN: That's correct, your Honor.

19 MR. MARCHI: Yes, your Honor.

20 (Ordered portion completed.)

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

DEPARTMENT THREE HON. FRANCES A. KEARNEY, JUDGE

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,)
)
) Plaintiff,)
 vs.) No. 62-34689
)
) SHAWN MICHAEL RODRIGUEZ,) REPORTER'S
) CERTIFICATE
) Defendant.)

STATE OF CALIFORNIA)
) ss
COUNTY OF PLACER)

I, PAMELA R. KATROS, Certified Shorthand Reporter of the Superior Court of the State of California, for the County of Placer, do hereby certify that the foregoing pages, 1 through 3, inclusive, comprise a full, true, and correct transcript of the proceedings had in the above-entitled matter held on September 30, 2003.

I also certify that if portions of the transcript are governed by the provisions of CCP 237(a)(2), all personal juror identifying information has been redacted.

IN WITNESS WHEREOF, I have subscribed this certificate at Auburn, California, this 14th day of November, 2003.


PAMELA R. KATROS, CSR, RPR
License No. 9383
Official Court Reporter
County of Placer

000407

13

PLACER COUNTY SUPERIOR COURT
MOTIONS / OTHER HEARINGS

People vs. Shawn Rodriguez Case No.: 62-34689
Date: 11-20-03 Court met at: 1:00 Dept.: 13 Judge: Hearney
Clerk: Sigler Reporter: Caldsberry Probation:
Defense counsel: Sergan D.D.A.: Marchi
Nature of Proceedings: MOTION FOR NEW TRIAL Arresting agency: APD
Custody status: PCT Interpreter: certified qualified Language: oath on file

NEXT COURT APPEARANCE:
Motion For New Trial 12-5-03 2:00 D 13

Defendant present not present
 Probation summarily revoked Bail exonerated reinstated
 B/W ordered. Bail \$ Reinstated upon payment of reinstatement fee
 B/W stayed B/W recalled Bail apply/balance exonerated
 Bail forfeited O/R revoked Forfeiture set aside

MOTIONS:
 Discovery denied granted, with compliance by _____
 PC1538.5 denied granted as to _____ submitted
Witness(es) sworn and examined: _____ Exhibit Record: _____
 PC995 denied granted as to _____ submitted
 Motion to amend Complaint/Information denied granted. Defendant waives re-arraignment. Not guilty plea(s)/denial(s) entered.
 Motion to exonerate bail denied granted. Bail bond # _____
 Motion to specify offense as a misdemeanor pursuant to PC17(b) granted denied.
 Motion to terminate probation pursuant to PC1203.3 granted denied.
 Motion to withdraw plea and dismiss charges pursuant to PC1203.4 granted denied
 Motion FOR NEW TRIAL granted denied submitte
 Summary judgement entered.

REFERRAL ORDERS:
 Court appoints Dr. _____ under the authority of Evidence Code 730 1017 to evaluate defendant pursuant to
 1368 PC 1026 PC 288.1 PC other _____ Full Consultation
 Returned to originating court for _____ Case may be returned to M.H.C. calendar for disposition.
 Returned to originating court. Case not suitable for M.H.C.
 Report of examining expert(s) received. On stipulation of parties, presence of experts waived and matter submitted to court for decision.
 Court finds defendant IS IS NOT competent to stand trial. Criminal proceedings resumed.
 Referred to Mental Health Director for placement report.
 Placement report received and reviewed by the court. Defendant ordered placed in: _____

REMANDED to custody of Sheriff until next appearance. Bail \$ _____
 to be delivered / released to _____
 ORDERED RELEASED O / R DISCHARGED (present case only)
 COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____ / _____
 Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

Defendant Jail Revenue Services DA Defense Counsel

personally boys, but more likely much less, either way to protect my life.

At least hear out the jury and my lawyer. March set me up to die, no matter what the truth was. You saw what he did to manipulate Erin, Whites was on the stand, to prevent the truth from coming to light. He helped erick Hamman lie to 12 people who had my life in their hands. What's their criminal? But they saw through it, and are inclined and very willing to tell you now.

Your honor, I know what I did. I stole a car. I held a gun against a wit in court - I did more, I robbed him. But I'm no killer. I'm a young idiot who was in a bad situation that you were, and honestly did what I figured was easiest to keep him alive and in the least amount of trouble with all W.S. said and done.

Please Don't kill me for Anna. I've considered that class a disappointment. Sadness erick sent on causing trouble, and in 8 mos I've learned a whole volume lesson. I need to learn more. I know. Please give me a purpose. I learn more. Please. All my life I've been in 1st class. Wake up I don't want to anymore. I want to go to prison in a somewhat dull environment to learn things to help me put together a Bible and a family.

30 Lk will prevent me from ever obtaining that goal. Even if I miraculously survive in P.C. or something, I will be going to the highest and so instinct that I won't know how to take a step out of prison.

Please give me a chance to protect my life. Just one chance to gain some knowledge and go out there and try again. To have a family. To know joys in life that at 20 yrs old I don't even imagine yet.

Even 7-life, the sentence what the state believe conspiracy we know am not guilty of, preserves a little of my life for me. It's not best or mean. No 4 yard with vicious birds who want to take me down with them, but a term of hope and enlightenment with people who are more apt to be the same.

Please don't sentence me to death. Get something to do. 5.11.11 10 0411

Probation Officer's Report

Confidential Envelope

Contains pages

412 through 464

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 SEN JUDGE
 PARALEL

FILED
 PLACER COUNTY
 SUPERIOR COURT OF CALIFORNIA

DEC 05 2003

PLACER COUNTY PROBATION DEPARTMENT)
 11564 "C" AVENUE)
 AUBURN, CA 95603)
 (530) 889-7900)

JOHN MENDES
 EXECUTIVE OFFICER & CLERK
 By _____ Deputy

SUPERIOR COURT OF CALIFORNIA - COUNTY OF PLACER

PEOPLE OF THE STATE OF CALIFORNIA,) Department: 13
) Judge: Cosgrove/Kearney
 Plaintiff,) Case No.: 62-34689
 vs.)
) PROBATION OFFICER'S
 SHAWN MICHAEL RODRIGUEZ,) REPORT
 Defendant.)
) X Presentence

AGE: 20 BORN: August 30, 1983
 ADDRESS: Placer County Jail/Transient
 DATE COMMITTED: On or about and between: March 15, 2003 and
 March 17, 2003
 DATE OF ARREST: March 17, 2003
 TIME IN CUSTODY: 220 days (actual)
 FELONY COMPLAINT FILED: March 19, 2003
 INFORMATION FILED: June 2, 2003
 GUILTY BY: Jury
 GUILTY OF: COUNT ONE: Section 209(a) PC, KIDNAPPING FOR
 EXTORTION, a felony;
COUNT TWO: Section 182(a)(1)/187(a) PC, CONSPIRACY
 TO COMMIT FIRST DEGREE MURDER, a felony;
COUNT SIX: Section 10851(a) VC, UNLAWFUL DRIVING OR
 TAKING OF A VEHICLE, a felony;
COUNT SEVEN: Section 530.5 PC, USING ANOTHER'S NAME
 TO OBTAIN CREDIT/PROPERTY, a felony;
COUNT EIGHT: Section 530.5 PC, USING ANOTHER'S NAME
 TO OBTAIN CREDIT/PROPERTY, a felony.

REPRESENTED BY: Public Defender (Serafin)

000412

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REFERRAL TO PROBATION OFFICER: October 6, 2003

JUDGEMENT AND SENTENCING: October 23, 2003

PROBATION OFFICER'S RECOMMENDATION: Department of Corrections

PLACER COUNTY
PROBATION DEPARTMENT

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PRESENT OFFENSE:

On March 15, 2003, the defendant and codefendant Rugg lured the victim, Nicholas Hamman, to the old Placer County Juvenile Hall building where they locked him in a cell in an attempt to obtain his ATM card, PIN number, cash, and vehicle. However, the victim refused, and the defendants left him in the cell. They returned later, and found the cell flooded due to fire sprinklers which the victim set off in an attempt to obtain help from the fire department. The victim again refused to provide the property demanded, so they placed towels and a dresser in front of the door, causing the water in the cell to reach over Hamman's shoulders. The victim then complied with their demands but the defendants left him in the cell. They used his ATM card to obtain cash, and later returned and attempted to kill Hamman with carbon monoxide fumes from the victim's own vehicle routed into the cell through hoses, but their attempts were unsuccessful.

The following information is taken, in summary, from Auburn Police Department Report No. 076-02-03, and Placer County District Attorney records:

On March 17, 2003, Auburn Police Officer Hopping responded to the Shell gas station on the corner of Highway 49 and Elm Avenue regarding a report of a suspicious note. Shell employee Robert Hammer said he had found a note written on a credit card blank which indicated, "Call 911 - Nick Hamman is locked in the old juvenile jail drowning. We are driving his red Beretta. SHAWN RODRIGUEZ kidnapped me. Anna Rugg."

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Officer Hopping responded to the old juvenile hall building on Epperle Drive and met with Officer Hamelin. The officers discovered a window had been broken in the rear of the building which was large enough for a person to pass through. They also noticed a large volume of water coming out of the hall from under the doors. The officers entered the building and heard the sound of running water and heard a banging noise. They discovered an individual, later identified as Nicholas Hamman, the victim, inside a small holding cell. He was hitting the Plexiglas window and screaming, "Get me out of here!" He appeared extremely afraid and agitated. Officer Hopping also noticed duct tape on the outside of the doorframe around the door. Through the window he saw water pouring down on Hamman's head and it was running out of the cell from under the door. There was also a large bookcase lying on the floor in front of the door. Officers opened the door and Hamman exited, shivering and cold. He appeared to be suffering from hypothermia. He said SHAWN RODRIGUEZ and Anna Rugg had locked him in the cell two days ago and had tried to kill him. He said the defendants had taken the keys to his red Chevrolet Beretta and his ATM card. Hamman was then transported to the hospital for treatment.

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Officers later located a vehicle matching the victim's description which had been reportedly stolen by the defendants. The driver, later identified as SHAWN RODRIGUEZ and the passenger later identified as Anna Rugg, were in the vehicle and both were taken into custody. A search of Rugg's person revealed two ATM withdrawal receipts, both in the amount of \$40, at 2220 Sunset Blvd. in Rocklin. It was later determined that both withdrawals had been committed by RODRIGUEZ and Rugg by fraudulently using Hamman's ATM card with his PIN number.

On March 17, 2003, Auburn Police Detective Hutchins spoke with Rugg in an interview room at the Auburn Police Department. She was advised of her rights per Miranda, stated she understood her rights, and agreed to speak with the detective. Rugg stated she was with the defendant, SHAWN RODRIGUEZ, and Erin Hughes at a gas station when they saw the victim, Nicholas Hamman. Rugg told Hamman she, RODRIGUEZ, and Hughes had obtained a voucher to sleep at the Elmwood Motel the night before but were now looking for someone to help them take their belongings to the old juvenile hall. Hamman agreed to provide them a ride to the hall. Upon arrival, RODRIGUEZ entered through a broken rear window and they opened the door to the hall so the rest could enter. They then split up, with RODRIGUEZ and Hughes walking together, while she and Hamman were together.

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At one point, Rugg said she and Hamman were sitting in a room together and Hamman "freaked out" and grabbed her by the arm and tried to grab her breast. Rugg said she pulled away, left the room, and closed the door behind her which locked Hamman inside. Hughes stated they should let him out but Rugg said RODRIGUEZ did not want to let him out. RODRIGUEZ said Hamman was getting violent and was afraid he would harm them if released.

Rugg said she, Hughes, and RODRIGUEZ then left the hall with Hamman locked in the room. They took Hamman's car to Richard Romines' house in Sacramento. Rugg continued, and said that after being at Romines' for awhile, she and RODRIGUEZ returned to the hall and discovered it was flooded due to the fire sprinklers. RODRIGUEZ asked Hamman to give him his ATM card, and told Hamman if he complied, he would try to break the window out. Rugg said Hamman slid the ATM card under the door along with some cash, and RODRIGUEZ hit the window with a metal object but the window did not break. Rugg said RODRIGUEZ began to "mess" with Hamman and he moved a large shelving unit in front of the door filled with paint cans and towels. Rugg handed paint cans to RODRIGUEZ when he asked for them. Rugg said that she saw the water in the cell had risen up to Hamman's waist.

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Before leaving the hall, she said RODRIGUEZ told Hamman he would call the police so that he could be released, but Rugg said a short time later, RODRIGUEZ changed his mind and decided not to call for help. Rugg said she and RODRIGUEZ drove to Rocklin and used the ATM card at the Safeway on Sunset, obtaining \$80. She said they used the money for food.

Rugg stated she and RODRIGUEZ then went back to Sacramento and again stayed with Romines. RODRIGUEZ began talking with Rugg about Hamman dying. RODRIGUEZ said they needed to make sure Hamman was dead and then get rid of the body so they would not get in trouble. They talked about putting his body in a pond, in a quarry, in a mineshaft, or leaving his body in an abandoned house. RODRIGUEZ also asked Romines what they should do. Rugg said Romines arrived at the idea of killing Hamman with gas. Rugg and RODRIGUEZ stayed with Romines that night.

The next day, Rugg said she and RODRIGUEZ went back to Auburn and checked on Hamman. She said the room was very quiet, but they could still hear water running. They then decided to use carbon monoxide fumes from the victim's vehicle to make sure Hamman was dead. They purchased duct tape and sealed the cell door with tape. RODRIGUEZ then hooked up some hose to the vehicle's exhaust and ran it to the vent above the cell door. Rugg said she helped feed the hose through the window.

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However, their plan did not work as the hose kept "shooting off" the exhaust pipe. Rugg said she then left a note for the clerk at the Shell gas station in the bathroom indicating Hamman was locked inside the old juvenile hall. Rugg said she and RODRIGUEZ then went back to Sacramento so RODRIGUEZ could obtain a hacksaw so he could cut a pipe and divert the water from the fire sprinklers somewhere else so that perhaps Hamman's body would never be found. However, before he could return to the hall, they were stopped and arrested.

When asked by Detective Coe why she did not free Hamman if she was concerned for him, Rugg said RODRIGUEZ would not allow her to leave him at any time (however, she said he did not physically restrain her from leaving). Rugg said she believed that Hamman could have died due to the water, the cold, hypothermia, or from the car exhaust. She said they did not initially plan on killing Hamman, and explained that she and RODRIGUEZ were planning on killing the father of Hughes' unborn child as they were angry with him for punching Hughes in the stomach on an earlier occasion. She said Hamman being locked in the cell began as an accident, but they later became scared of getting in trouble for what they had done.

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Also, on March 17, 2003, Detective Coe interviewed the victim, Nicholas Hamman, at the hospital. Hamman said he was driving through Auburn on March 15, 2003, when he encountered Rugg, RODRIGUEZ, and Hughes at the gas station. Hamman knew all three from previous contacts. He agreed to help them move their property out of the motel room and to the juvenile hall. Hamman said he waited outside while RODRIGUEZ, Rugg, and Hughes entered the hall. However, Rugg then told Hamman that Hughes had injured herself inside. Hamman said he entered the building and Rugg directed him to a room near the front of the building. Hamman entered the room but did not see RODRIGUEZ hiding behind the door. Both Rugg and RODRIGUEZ then pushed the door closed behind him. Hamman said his leg was in the way when they tried to close the door, so RODRIGUEZ kicked Hamman's leg. Rugg told Hamman she was mad at him and would let him out in a few minutes. However, Hamman then saw RODRIGUEZ shoving toilet tissue in the vent directly above the door as he said he was going to burn the place down. Hamman then saw Hughes walk into view and heard her tell Rugg and RODRIGUEZ to let Hamman out, as it would be attempted murder if they left him there. RODRIGUEZ told them not to worry because Rugg would let him out when she stopped being mad at him. However, Rugg, RODRIGUEZ, and Hughes then left the hall.

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After a few hours, Hamman decided to use his lighter to activate the sprinkler system in an effort to have the fire department respond to his location. The sprinklers activated, but the fire department never arrived. A number of hours later, Rugg and RODRIGUEZ returned and RODRIGUEZ demanded his ATM card and PIN number. He said if he obtained those items, he would break out the window. Hamman gave RODRIGUEZ only his PIN number, and RODRIGUEZ then struck the window a few times with a silver object but the window did not break. RODRIGUEZ then demanded Hamman's ATM card, money, ID card, and car keys. In return, RODRIGUEZ would call the police to get him out of the cell. However, Hamman said he refused. RODRIGUEZ and Rugg then placed towels and a large box in front of the door and RODRIGUEZ said he (Hamman) was going to drown if he did not give him the items. The defendants then left. They returned approximately two hours later, and the water had now risen to above Hamman's shoulders, causing him to have to stand on a table. RODRIGUEZ again asked for the previously mentioned items and Hamman agreed. RODRIGUEZ and Rugg then pulled the items away from the door and the water drained out to approximately four inches deep. RODRIGUEZ and Rugg told Hamman they would call the police and then they left. However, Hamman said he did not see anyone else until the police arrived the next day.

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Hamman added that RODRIGUEZ told him that they locked him the room because he was a child molester. He said RODRIGUEZ told him not to report the incident otherwise he would be a "marked man" as RODRIGUEZ would spread the word that he was a "snitch." RODRIGUEZ added that he would claim Hamman sexually assaulted Rugg and would have three friends corroborate the story.

Detective Coe also spoke with the defendant, SHAWN RODRIGUEZ. RODRIGUEZ was advised of his rights per Miranda, stated he understood his rights, and agreed to speak with the detective. RODRIGUEZ said he, Hughes, and Rugg stayed at the Elmwood Motel one night. The next morning, March 15, 2003, Rugg contacted Hamman on the phone and asked for a ride to Foresthill. Hamman did not want to drive to Foresthill so he suggested going to the old juvenile hall. They entered the juvenile hall, and RODRIGUEZ was with Hughes while Rugg and Hamman were together. The defendant said he heard Rugg yelling and then saw that Rugg had her shirt lifted up. RODRIGUEZ felt that Rugg was being assaulted so he immediately punched Hamman a few times and Rugg locked him in a holding cell. [RODRIGUEZ later said that his claim that Hamman sexually assaulted Rugg was false.] The three then left in Hamman's vehicle.

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The three then returned and found the hall flooded. RODRIGUEZ said he went to the holding cell but Hamman yelled, "I will fucking kill you!" RODRIGUEZ said he felt Hamman was too violent, so he left him in the cell. They then barricaded the door with a shelf and paint cans in case Hamman tried to kick down the door. The three then left the hall again in Hamman's vehicle. RODRIGUEZ said he did not want to release Hamman, as he was afraid he would get in trouble. RODRIGUEZ said he then took Hughes down to his brother's residence in Sacramento, as he did not want her involved. The defendant and Rugg then returned to the hall. RODRIGUEZ said he told Hamman he would attempt to break the window, but was unsuccessful. RODRIGUEZ said he then told Hamman he wanted his ATM card and PIN number. In return, RODRIGUEZ said he would call the police for help as long as Hamman did not provide their names. The defendant said Hamman gave him the ATM card, and he and Rugg then left. However, RODRIGUEZ said he became scared and never called the police.

RODRIGUEZ continued, and said that he and Rugg went back to his brother's (Romines') residence in Sacramento. The next morning, he and Rugg returned to the hall and again tried to break the window but without success. He said he then decided to cut the water pipe above the door so the water would stop flooding the room.

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He purchased some duct tape and sealed the top and sides of the door so that when the pipe was cut, it would not spray into the room. He left the hall to get a hacksaw from his brother's residence but was later stopped by the police.

RODRIGUEZ then said he sealed the door with tape in an attempt to scare Hamman. However, he said the highest the water level rose was three feet. The defendant said Rugg used the card at the ATM machine inside of Safeway on Sunset Drive. He said he wanted the ATM card and money so that Hamman would not get "very far" if he got out. RODRIGUEZ admitted that the thought crossed his mind that Hamman could have died from hypothermia.

RODRIGUEZ then provided some details, such as Rugg discussing a desire to rob Hamman, as she did not like him. She discussed this while she, RODRIGUEZ, and Hughes were staying at the Elmwood Motel. RODRIGUEZ said he would not "beat anyone down," but said he would help her if needed. He also said Rugg actually lured Hamman into the cell and then closed the door on him, with the plan to obtain Hamman's ATM card, PIN, and money. RODRIGUEZ said he tried to help Hamman by unscrewing some screws to the window. However, he said he was not going to open the door because it wasn't his "business," as it was between Rugg and Hamman.

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When asked about the plan to use carbon monoxide from the car's exhaust, RODRIGUEZ said Rugg arrived at this idea herself. He said they purchased duct tape and then went to the DeWitt Center to steal some hoses which they taped together. They also cut up a pair of pants to help keep the hose attached to the car. They routed the other end of the hose onto the vent to Hamman's cell. The defendant said the hose was hooked on the car for approximately 15 minutes. RODRIGUEZ said he smoked a cigarette and then thought Hamman was probably dead and so they left. RODRIGUEZ also said he and Rugg discussed what to do with Hamman's body. He said they discussed disposing the body at Robie Point or at Griffith Quarry, but decided that would be too far to carry the body.

Detective Coe also spoke with Erin Hughes. She stated she stayed at the Elmwood Motel with RODRIGUEZ and Rugg on March 14, 2003. While staying in the room, Rugg and RODRIGUEZ talked about wanting to steal Hamman's vehicle. Rugg also talked about wanting to kill Hamman, as she was angry with him because he had injured her arm on a previous day. Rugg talked about pushing him off the Foresthill Bridge or stabbing him. RODRIGUEZ then suggested that they simply lock Hamman up. Rugg then said they should take Hamman to the old juvenile hall.

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While at the juvenile hall, Hughes said she was with RODRIGUEZ while Rugg was with Hamman. She said Rugg suggested that she (Hughes) and RODRIGUEZ take a walk. Hughes then heard a loud bang and saw that Rugg had locked Hamman inside a room. Hamman yelled that he wanted to be released, but Rugg said she did not have the keys. RODRIGUEZ told Rugg to find the keys and Rugg walked away and began closing all the doors so no one could hear Hamman screaming. Hughes said she started to panic but did not want to confront Rugg, as she was afraid of her and not strong enough to stand up to her. The three then left the hall in Hamman's vehicle. They drove around areas of Placer and Sacramento Counties before returning to Auburn. Hughes said she was let out at Albertson's while RODRIGUEZ and Rugg checked on Hamman. They came to pick her up later and said Hamman had activated the sprinklers with a cigarette and was getting all wet. They said Hamman was yelling and banging on the walls. She said Rugg then asked RODRIGUEZ how long it would take for Hamman to die with water running in the cell. RODRIGUEZ said he would probably die in a couple of days. The three then left and drove to Romines' residence. Hughes said Rugg told her she had to stay quiet and not tell anyone about what had occurred at the juvenile hall. Hughes added that RODRIGUEZ wanted to let Hamman out of the cell, but for some reason, he did what Rugg wanted to do.*

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Detective Coe also spoke with Richard Romines. Romines said he was told of the situation with Hamman by RODRIGUEZ and the others. He said he told RODRIGUEZ several times that Hamman needed to be released and he (Romines) did not want to be involved. On another occasion, RODRIGUEZ told Romines he thought Hamman was really hurt and may be dead. Romines said he told RODRIGUEZ that Hamman needed to be checked on and released to make sure he was not dead. Romines said he made a comment, in jest, about disposing of Hamman's body with "cement shoes." Additionally, according to District Attorney records, RODRIGUEZ mentioned to Romines that he had seen a television show in which someone had been killed by using car exhaust fumes. RODRIGUEZ then told Rugg about this and discussed it again with Romines. Romines said that RODRIGUEZ and Rugg talked about possibly killing Hamman by filling the cell with water or by "gassing" him with carbon monoxide. RODRIGUEZ then discussed that they would place a hose in the vehicle tailpipe and then run the hose to the cell. Romines said it seemed as if Rugg was the "mastermind" as RODRIGUEZ constantly looked at her as if trying to gain her approval for what he was saying. Romines added that he told RODRIGUEZ and Rugg several times to let Hamman out of the cell and that they needed to turn the water off as soon as possible before Hamman died from the cold.

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Medical records indicated that after being treated in the emergency room for two-and-a-half hours, Hamman's shivering and anxiety improved, and the white discoloration and coldness of his hands and feet had improved significantly. He indicated that sensation was returning to his extremities. He had also been treated for mild dehydration. Medical records also indicate he had an abrasion on his right inner thigh, which Hamman said was caused by being kicked by RODRIGUEZ. In Dr. Harris' opinion, Hamman did not sustain any significant hypothermia or cold injury.

On October 6, 2003, RODRIGUEZ appeared in Court and was convicted by a jury of the charges noted on the face sheet of this report. The matter was continued to October 23, 2003, for receipt of this report and for Judgment and Sentencing.

STATUS OF CODEFENDANTS:

According to Placer County District Attorney records, codefendant Anna Rugg was charged with the same charges as SHAWN RODRIGUEZ, the defendant. Jail records indicate her next Court date is scheduled for November 3, 2003, at 1:00 p.m. in Department 1.

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DEFENDANT'S STATEMENT - OFFENSE:

The defendant did not submit a written statement regarding his version of the present offense.

On October 14, 2003, RODRIGUEZ was interviewed at the Placer County Jail regarding his version of the instant offense. He agreed he had been convicted by jury of the charges noted on the face sheet of this report. However, he believed the special allegation attached to COUNT ONE (kidnapping which exposed the victim to a substantial likelihood of death resulting in life without the possibility of parole) had been found true.

RODRIGUEZ said his maximum exposure regarding imprisonment had been discussed with him by his attorney, and they discussed the case in detail. RODRIGUEZ also said he had reviewed copies of the police reports and also testified at trial. RODRIGUEZ also mentioned that sometimes he wished he had accepted an earlier plea agreement of 14 years to life but said that, ultimately, he wanted the "truth" to come out.

Regarding the instant offenses, RODRIGUEZ said he was "reluctant" to talk about what happened as he stated his attorney was filing a motion for a new trial to be heard the same date as sentencing; October 23, 2003. He stated his attorney would be asking for a one week continuance and then for a ruling on the motion.

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RODRIGUEZ said that he and his attorney believed the jury had not been properly instructed. If the motion is not granted, RODRIGUEZ said the case would then go to the appellate level.

Although RODRIGUEZ said he did not wish to discuss the case due to the above issues, he said he would answer "yes or no" questions. He mentioned that he was reluctant to discuss the case with Probation as he had in the past and his words had always been "twisted."

The officer asked RODRIGUEZ if Rugg discussed wanting to rob or kill Hamman while at the Elmwood Motel. RODRIGUEZ said she mentioned she wanted to rob her "old man" referring to Hamman. The defendant said he believed Rugg and Hamman were "together" based upon the way they were conducting themselves when he saw them on March 14, 2003. RODRIGUEZ said that "everyone" believed that Hamman and Rugg were dating, including the victim himself.

This officer asked RODRIGUEZ another "yes or no" question, RODRIGUEZ paused, and then asked if this officer wanted to know "what happened." RODRIGUEZ then stated his involvement consisted of telling the victim he wanted his ATM card and then stealing Hamman's car. RODRIGUEZ said he never used the ATM card, but Rugg did. He said he took the ATM card in order to help Rugg as he believed, at the time, she was his friend.

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RODRIGUEZ said Rugg locked Hamman in the cell without his (RODRIGUEZ') assistance. He said the story about Hamman grabbing her breast was created by Rugg later on. The defendant said Hamman was asked for his ATM card and PIN number only once (which was after they discovered the sprinklers had been turned on inside the cell). When the victim refused, he and Rugg stuck towels under the door and a dresser in front. They returned after approximately 20 minutes and RODRIGUEZ said Hamman stated the water was approximately three feet high. RODRIGUEZ asked for the card and PIN again, the victim complied, and the towels and dresser were removed. When asked by this officer why they did not release Hamman at that time, the defendant said he "can't go into that here."

RODRIGUEZ said that the idea to kill Hamman by using carbon monoxide was his foster brother Romines' idea. However, the defendant mentioned that he did not know if Romines was referring specifically to killing Hamman when he brought up the idea.

RODRIGUEZ said Rugg had previously mentioned wanting to kill Hamman by either shooting, stabbing, or beating him to death by using poles covered with barbed wire. RODRIGUEZ said he did not know why she wanted to kill Hamman, and said she never stated any reason.

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RODRIGUEZ said he attempted to "stall" so Hamman would survive. The defendant said he was planning on "stalling" until the next day when he had court, so he could tell the authorities about Hamman being locked inside the old juvenile hall and use that information as leverage. RODRIGUEZ then purchased the duct tape while Rugg obtained the hoses. They went to the old juvenile hall where RODRIGUEZ taped the door and helped run the hose to the vehicle while Rugg attempted to tie the hose onto the exhaust pipe. RODRIGUEZ said his previous story about taping the door to prevent water from spraying inside after he cut the pipe was a lie. He said he actually taped the door in an effort to cause Rugg to believe that he was actually participating. RODRIGUEZ said he did not route the hose into the vent of Hamman's cell but routed it elsewhere in an effort to keep Hamman alive. The defendant said the hose stayed on the exhaust pipe for approximately five to six minutes and then fell off. The defendant said he told Rugg that the victim was dead and so they should leave. However, Rugg wanted to check on him, and discovered he was very much alive, as he was standing and talking in the cell.

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RODRIGUEZ said Rugg then wanted to open the cell and beat Hamman to death with poles covered with barbed wire, but RODRIGUEZ said he stalled and told her he needed to obtain a saw to cut a chain so he could shut the water off, and so they left. However, Rugg then left a note in a gas station, in RODRIGUEZ' opinion, in an effort to blame him for what occurred.

When asked by this officer why he went to such an extent to help Rugg, RODRIGUEZ said he did not want to call the police in front of Rugg as he was afraid of some type of retaliation from her. He said that he and Rugg were never separated once Hamman was locked in the cell. Although he said he was not sure if Rugg would retaliate against him physically, he said the codefendant had a history of committing crimes and blaming others for them, as well as trying to kill someone by giving them Drano, claiming it was methamphetamine, and giving another individual Freon to "huff" when they believed it was nitrous.

RODRIGUEZ told this officer that when Rugg initially began talking about wanting to rob Hamman, he did not believe her and "blew her off." He said he did not believe her, as she often talked about wanting to rob or kill other individuals but none of her plans ever came to fruition.

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When asked by this officer why he, then, was so scared of Rugg if she never followed through with any of her plans, RODRIGUEZ said he did not believe she was going to follow through with the robbery until they were at the old juvenile hall and Rugg suggested the four separate into pairs. Once she locked Hamman in the cell, RODRIGUEZ said he was "off balance" and became more and more afraid of Rugg as she began talking more and more seriously about killing Hamman. However, RODRIGUEZ said he was not going to allow Hamman to die. RODRIGUEZ said Rugg did talk about disposing of Hamman's body. RODRIGUEZ said he did not offer any potential solutions, but simply told Rugg why her ideas would not be practical. RODRIGUEZ added that he never knew why Rugg wanted to kill Hamman, but said he had heard from Rugg that Hamman had burned her on the arm with a cigarette, and that she told him (RODRIGUEZ) Hamman was a sex offender.

When asked for his response to the victim's version of what had occurred, RODRIGUEZ said he never closed the door to the cell with Rugg. He also said Hamman was never lured into the cell by he and Rugg by claiming that Hughes was injured. He said Rugg told him she lured him into the cell by telling him they would have some "S&M sex" in the cell at the juvenile hall. RODRIGUEZ said this was why Hamman agreed to go to the hall with them.

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RODRIGUEZ said the water never reached Hamman's neck but only approximately three feet high (as he said he asked Hamman how high the water was). He also said the victim's thigh must have been injured by the door hitting him when it was closed by Rugg. RODRIGUEZ said he never kicked Hamman. He called the victim a liar who suffered from "hallucinations."

When asked by this officer what he would do differently if he could, RODRIGUEZ said he would never have returned to Auburn nor would he have contacted Rugg. In retrospect, he said he would have gone immediately to the police if he had known she was going to carry through with her plans regarding Hamman.

Ultimately, RODRIGUEZ said he knew what he did in the instant offense, robbing Hamman and stealing his vehicle, and said he was willing to "do the time" for his crimes. However, he said he would never have allowed Hamman to die.

The defendant denied being under the influence of any drugs or alcohol at the time he committed the instant offenses.

DEFENDANT'S STATEMENT - PROBATION:

The defendant did not submit a written statement regarding the granting of probation.

Based upon the recommended disposition of this case, specific terms and conditions of probation were not discussed with the defendant.

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VICTIM'S STATEMENT/RESTITUTION:

Nicholas Hamman was interviewed in the Placer County Jail on October 14, 2003, by this officer. Regarding restitution, Hamman said the bank had "covered" the charges. However, he stated he would like restitution in the amount of \$50 to reimburse the cost of new glasses, as he broke the pair he was wearing in an effort to escape from the cell. When asked his opinion regarding a just disposition in this case, Hamman said he did not know and did not feel he could appropriately judge.

This officer also asked Hamman additional questions regarding the offense. Hamman said that he and Rugg were not dating, although he said that at one time, he would have liked to date her. However, he said he found out she was into "S&M sex" which Hamman said he was "turned off by." However, he said that his statement as reflected in the police report was accurate, that he was lured in by a claim that Hughes had been injured, and that his memory of the incident was clear. During the course of the interview, Hamman mentioned that he currently and previously suffered from depression as well as schizophrenia, as he "heard voices." He said he had not taken any medication for schizophrenia since January 1, 2003, and he discontinued his medication without his physician's consultation.

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He said he currently heard voices, and said that when his stress level increased, his symptoms of schizophrenia increased. However, he said he was not hearing voices when locked up in the cell in the instant offense. He said he would like to resume taking medication for depression and schizophrenia. Hamman said he did not hear a hose being placed into the vent of his cell when the defendants attempted to kill him by using carbon monoxide. He said he must have been asleep or perhaps "passed out" at that time due to exhaustion and being cold. He confirmed that the water at one point rose up to his neck, and he had to stand on a table. He denied being under the influence of any drugs or alcohol at the time of the instant offense.

PRIOR RECORD:

<u>DATE</u>	<u>AGENCY</u>	<u>CHARGE</u>	<u>DISPOSITION</u>
10-26-98	CASO SACRAMENTO #0000513978	CNT:01 451(D) PC - ARSON:PROPERTY	DISPO: -TO JUVENILE HALL
10-12-99	CAPR RIVERSIDE #909110	CNT:01 777 WI - MODIFY COURT ORDER:COMMITMENT/ PROB/ETC	DISPO: -TO JUVENILE HALL
CUSTODY:CYA 02-28-00	CAYA SACRAMENTO #Y83905	CNT:01 777 W&I - 10851(A) VC - TAKE VEH W/O OWN CONSENT/VEH THEFT	11-17-01: PAROLED FROM CYA RECVD BY-CAPA YOUTH AUTHORITY

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10-16-02 CASC SACRAMENTO CNT:01 CONVICTED
 #02F07649 10851(A) VC - CONV STATUS:
 TAKE VEH W/O OWN FELONY
 CONSENT/VEH THEFT SEN: 5 YR PROB,
 180 DS JL,
 FINE FNSS RSTN

5 Regarding the above entries dated January 26, 1998, October
 6 12, 1999, February 28, 2000, and November 17, 2001, RODRIGUEZ
 7 told this officer that his juvenile criminal history began at age
 8 seven for petty theft when he stole some candy. He said he then
 9 continued to commit petty thefts and was ultimately adjudicated
 10 of assault, possession of marijuana, vehicle theft, and two cases
 11 of arson. The first case occurred when the defendant was age 13
 12 or 14 when he was walking through the fields with his foster
 13 brother. RODRIGUEZ said "somehow" a dead cat was lit on fire
 14 which spread to a field. RODRIGUEZ laughed as he recounted this,
 15 and said he could not recall exactly who lit the dead cat on
 16 fire. RODRIGUEZ said he and his foster brother were "pretty
 17 drunk" at the time. The second incident of arson occurred in a
 18 group home when the defendant lit some toilet paper on fire and
 19 used hairspray to create torches. RODRIGUEZ said they did this
 20 as they were "messing" with someone else in the group home with
 21 whom he had no animosity (until the individual reported their
 22 conduct). The defendant said he was committed to the Youth
 23 Authority at the age of 16 for continually failing group home
 24 placements.
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He was committed for 40 months and was released on January 17, 2001, as he had "maxed out." The defendant stated he had many "petty" write-ups while in the Youth Authority, but no acts of violence. He said he was not a violent person.

Regarding the entry dated October 16, 2002, although the defendant's criminal history indicates convictions for violating Section(s) 496d(a) PC and 20002(a) VC on the same date, per Sacramento County Probation records (in a telephone call by this officer to Deputy Probation Officer Gary Palmer on October 15, 2003), those charges were dropped and only the felony conviction for vehicle theft remains in this case. In this offense, RODRIGUEZ said he stole a vehicle from his previous employer for transportation purposes. Officer Palmer indicated he only had contact with the defendant a few times over the course of a few weeks after RODRIGUEZ released from custody. He said RODRIGUEZ was having problems with finding a place to live, and in his opinion, was using methamphetamine.

A check with the Department of Motor Vehicles under California Driver's License No. D4439042, reflects the following:

LICENSE STATUS:
SUSPENDED OR REVOKED
SERVICE NEEDED, SEE HISTORY BELOW*

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DEPARTMENTAL ACTIONS:

FR PRF REQ 12-01-02 TERM: 12-01-06*
 DRV LIC SUSPENDED*EFF:12-01-02*ORDER MAILED:11-01-02*AUTH:16004A*
 REASON:ACCIDENT - FR*SERVICE:M/03-11-03*
 VERBAL NOTICE-COURT, LAW ENFORCEMENT AGENCY, OR DMV*
 ABOVE SUSP DOES NOT AFFECT PRIV TO DRIV EMPLOYERS VEHICLE IN
 COURSE OF EMPLOYMENT, 16073 VC.
 DRV LIC SUSPENDED*EFF:12-01-02*ORDER MAILED:11-01-02*AUTH:16070*
 REASON:ACCIDENT - FR*SERVICE:M/03-11-03*
 VERBAL NOTICE-COURT, LAW ENFORCEMENT AGENCY, OR DMV*
 ABOVE SUSP DOES NOT AFFECT PRIV TO DRIV EMPLOYERS VEHICLE IN
 COURSE OF EMPLOYMENT, 16073 VC.
 DRV LIC SUSPENDED*EFF:08-07-03*ORDER MAILED:07-08-03*AUTH:13365*
 REASON:FAILURE TO APPEAR NOTICE*SERVICE:A/07-08-03*
 MAILED, NOT RETURNED UNCLAIMED*
 VERBAL OR PERSONAL SERVICE NEEDED*

CONVICTIONS:

<u>VIOL/DT</u>	<u>CONV/DT</u>	<u>SEC/VIOL</u>	<u>DISPOSITION</u>
02-09-03	04-03-03	16028A VC 22349A VC 405095 VC DKT/NO: 96421RS COURT: 34470 VEH/LIC: 4LST906	FINE
DMV POINT COUNT 1			

FAILURES TO APPEAR:

<u>VIOL/DT</u>	<u>SEC/VIOL</u>	<u>DKT/NO</u>	<u>COURT</u>	<u>VEH/LIC</u>
09-06-02	20002A VC 12500A VC 16028A VC	70571RC	34470	4MPE921
01-28-03	40508A VC 27315E VC	582526	31455	NO PLATE
02-05-03	40508A VC 16028A VC	581784	31455	4LST906
03-15-03	40508A VC 23111 VC 12951A VC	588124	31455	3FHS532

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ACCIDENTS:

<u>DATE</u>	<u>LOCATION</u>	<u>VEH/LIC</u>	<u>REPORT NO.</u>
09-06-02	SACRAMENTO 100302	4MPE921	FR CASE NO: 02 06 43847

PROBATION ADJUSTMENT:

The defendant is currently on an active grant of formal probation in Sacramento County Case 02F07649 for violating Section 10851(a) VC, a felony. He was placed on this grant on October 16, 2002. Details of this offense can be found under the "Prior Record" section of this report, as well as a limited probation adjustment summary from Deputy Probation Officer Gary Palmer from Sacramento County. As RODRIGUEZ committed the instant offenses while on this active grant of felony probation, his performance has been unsatisfactory.

SOCIAL STUDY:

The following information was provided by the defendant during the probation interview, and has not been verified:

SHAWN MICHAEL RODRIGUEZ was born August 30, 1983, in Roseville, California. He is the younger of two sons born from the unmarried union of George David Rodriguez, a truck driver currently age 49, and Michelle Ann Smiley, currently in her forties.

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RODRIGUEZ mentioned that his older brother Craig is currently in the Placer County Jail as well. RODRIGUEZ said he did not know his mother's occupation or her whereabouts, and did not care. He mentioned his mother had problems with both substance abuse and alcohol. He said his father previously had an alcohol problem, but has been sober now for awhile.

RODRIGUEZ stated he could never recall a time in his life when he was raised by both his parents. He was raised mostly by his mother in Rocklin until she "kicked" both the defendant and his younger half-brother out of the house. RODRIGUEZ said he was then placed in foster care at the age of eight and lived in various group homes until ultimately being committed to the California Youth Authority at the age of 16 (see the "Prior Record" section of this report for details). RODRIGUEZ described his childhood as "shitty" and very tumultuous. He said that the reason he had become involved in criminal activity was not entirely his fault. He said he had been abused sexually, physically, and mentally by his parents.

The defendant denied any gang involvement whatsoever, although he said he had been previously labeled as being a Norteño, Sureño, and White Supremacist. When asked about the tattoo on his hand indicating "666," the defendant mentioned he experimented with Satanism at the age of 14 but said he no longer pursued these beliefs. He added that he is now an Atheist.

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RODRIGUEZ currently has an older brother Craig (mentioned previously in this section), a younger half-brother, and a younger half-sister. The defendant mentioned that Rick Romines, mentioned in the "Present Offense" section, is his foster brother.

The defendant completed the 10th grade in school. However, he took and passed the GED examination at the age of 16 (1999). RODRIGUEZ said he passed in the top ten percent in the country of all seniors who took the test.

RODRIGUEZ has never enlisted or served in any branch of the United States Armed Forces.

The defendant is currently single and has never married. He mentioned that he had only been in a relationship with Erin Hughes for approximately one or two months before his commission of the instant offenses. The defendant has fathered no children.

RODRIGUEZ described his health as "pretty good." He said he was bitten on the head by a dog when he was very young but said he does not suffer from any chronic problems. He also said he was stabbed in the knee on one occasion, but said he could not recall the details as he was drunk. Regarding medications, RODRIGUEZ currently takes Prilosec for ulcers and Benadryl to help him sleep.

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Regarding mental health, RODRIGUEZ said he was first diagnosed with ADHD at the age of five or six and placed on medication. He was subsequently diagnosed as severely emotionally disturbed (SED) at the age of nine or ten. He was placed on additional medication. However, he discontinued the medications on his own at the age of 16 as he felt that he needed to be able to control himself and not rely on medication. He added that he had also been diagnosed with Post Traumatic Stress Disorder, Bi-polar Disorder, as well as Conduct Disorder. RODRIGUEZ said he did not notice any change in his affect or emotions after discontinuing the medications.

DRUG/ALCOHOL USE:

At the age of 11 or 12, the defendant first consumed alcohol on a social basis. His drinking increased as he became older, to where he would consume between three and four shots of liquor and ten beers per week. He said his drinking also increased on special occasions as well. The defendant said he did not consume alcohol when depressed and only on a social basis. However, he admitted suffering from blackouts when intoxicated in the past (getting stabbed in one incident, lighting a dead cat on fire as a juvenile, and also stealing cars from a mall). RODRIGUEZ laughed as he recounted these incidents.

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The defendant said he did have an alcohol problem. When asked why he felt he had a problem with alcohol, RODRIGUEZ said that he got to a point where all he wanted to do was "get drunk."

However, he said he was able to stop drinking on his own without any difficulties. He denied having consumed alcohol recently to his commission of the instant offenses.

At the age of 18, the defendant first used methamphetamine. He stated he was introduced to the drug by his ex-fiancée. He almost immediately began using the drug on a near daily basis by smoking it. He said he would often use the drug to help him stay awake due to his odd work schedule. However, RODRIGUEZ said it had not been difficult to stop using methamphetamine, and mentioned he had been "clean" from approximately July 2002 until his arrest in Sacramento County in September 2002. He said he did not have a problem with methamphetamine use as he could quit when he chose to.

The defendant experimented with marijuana at the age of 13 but did not like it, so he did not continue to use it. He denied using any other illegal drugs.

RODRIGUEZ said he did not currently have a drug or alcohol problem, had never completed treatment, and did not wish to do so.

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FINANCIAL CONSIDERATION:

Around the time of the instant offense, the defendant had been working on an occasional basis for a temporary employment agency. He also mentioned selling magazines in January 2003 for two weeks, and working at McDonalds for less than one week as he was accused of stealing a cellular phone (which RODRIGUEZ denied). The defendant said he believed this was the allegation which resulted in charges filed against him for receiving stolen property in Placer County Case 62-31679. The defendant is currently in custody on a warrant in the amount of \$5,000 in this case.

Regarding his living situation, RODRIGUEZ stated he had been transient since approximately August 15, 2002, except for periods of incarceration. However, as the defendant is able-bodied and has some employable skills, standard fines and restitution are recommended.

COLLATERAL INFORMATION:

According to Placer County Jail records, the defendant has received at least twenty "write ups" during his present stay in the Placer County Jail; the first on May 5, 2003 and the most recent on October 8, 2003.

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These violations have included using profanity towards officers, disrespecting officers, becoming assaultive and physically struggling with officers on numerous occasions, failing to comply with basic rules, and having contraband in his cell such as "Pruno," pills, metal shards, pepper balls (which the defendant said he snorted to stay awake but which could also be used as a weapon), and makeshift cuff keys. He has also attempted to retain documents in his cell which would have otherwise have been taken away by mailing them to himself as "legal.". He has also threatened officers as well as attempted to bite them per Placer County Jail records.

When asked about these many "write-ups," RODRIGUEZ said he was a "heathen." He said the correctional officers did not like him because he stood up for himself. If the officers tried to "screw (him) out of 20 minutes of rec time" RODRIGUEZ said he would tell them. If they escalated the situation, RODRIGUEZ said he responded "in kind," and would not shut up when told to do so. He explained that when he is disrespected by deputies, he will disrespect them as well. He said many officers were in violation of the deputies' own rulebook which, per RODRIGUEZ, states that officers should treat inmates as the inmates treat them. RODRIGUEZ said he responded to respect, and if he was respected, he would return the favor.

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When asked by this officer if he had an anger control problem, RODRIGUEZ said it was not so much anger but that he was stubborn. He said he had a "big mouth." He said he simply refused to comply with officers' directives if he, personally, did not see the need to do so. Once committed to state prison, RODRIGUEZ said he would keep his mouth shut and stay out of trouble. He said that prison guards would not bother him about "petty shit."

PROBATION ELIGIBILITY:

The defendant is ineligible for probation per Section 1203(k) PC as he was on probation for a felony conviction for violating Section 10851(a) VC when he committed serious and violent felonies in Case 62-34689; kidnapping and conspiracy to commit first degree murder.

RODRIGUEZ is also presumptively ineligible for probation per Section 1203(e)(5) PC as he has one prior felony conviction for which he is currently on probation, and he has been convicted of kidnapping and conspiracy to commit murder in Case 62-34689.

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RULE 4.421 - CIRCUMSTANCES IN AGGRAVATION:

(a) Facts relating to the crime:

(1) *The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness or callousness.*

It appears that COUNT ONE involved a threat of great bodily harm to the victim as the defendants allowed the water to rise up to the victim's shoulders, per Hamman, in an attempt to coerce him into giving up his ATM card and PIN number. The defendants' use of hoses to route carbon monoxide into Hamman's cell also involves a threat of great body harm (however, this use of carbon monoxide is included in COUNT TWO, CONSPIRACY TO COMMIT FIRST DEGREE MURDER).

Additionally, in this officer's opinion, RODRIGUEZ' and Rugg's actions in the instant offense involved callousness as they kept Hamman locked in a cell for approximately two days without food, cold and soaking wet due to the fire sprinklers being on most of time, and the defendant admitted to this officer that they kept Hamman inside the cell even after receiving the ATM card, PIN number, and cash, and after telling Hamman he would be released if he provided the items demanded (per RODRIGUEZ' and Rugg's original statements to the police).

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(3) The victim was particularly vulnerable.

Hamman was particularly vulnerable as he was lured into a cell by RODRIGUEZ and Rugg who used a ruse, claiming that Hughes had been injured, was in the cell, and needed help.

(8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism.

The way in which the instant offenses were committed clearly indicates planning, as RODRIGUEZ admitted Rugg discussed robbing Hamman prior to traveling to the juvenile hall the next day, their luring Hamman to the cell by using trickery, and their plans to make sure Hamman was dead by attempting to kill him by using carbon monoxide fumes from the victim's own vehicle routed into the cell through hoses (after RODRIGUEZ attempted to seal the door by using duct tape).

(11) The defendant took advantage of a position of trust or confidence to commit the offense.

As indicated by their use of a ruse as described under Rule 4.421(a)(3), and as Hamman knew RODRIGUEZ and Rugg prior to the instant offense and likely did not suspect they would want to harm him, the defendants took advantage of a position of trust or confidence to commit the instant offenses.

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(b) Facts relating to the defendant:

(1) *The defendant has engaged in violent conduct which indicates a serious danger to society.*

The defendant's conduct in the instant offenses, coupled with his two adjudications of arson and violent conduct while confined recently in the Placer County Jail, indicates he likely poses a significant danger to the safety of others in the community if released.

(2) *The defendant's prior record of convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing seriousness.*

As noted under the "Prior Record" section of this report, RODRIGUEZ' commission of significant offenses as a juvenile, his commitment to the Youth Authority, prior felony conviction as an adult, and commission of the instant offenses, indicates he has a recent, regular, and increasingly serious pattern of criminal behavior.

(4) *The defendant was on probation when the crime was committed.*

The defendant was on one formal grant of felony probation when he committed the instant offenses.

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(5) The defendant's prior performance on probation was unsatisfactory.

The defendant's prior performance on probation, both as a juvenile and as an adult, has been unsatisfactory. His probation as a juvenile was ultimately revoked when he was committed to the Youth Authority. He also committed the instant offenses while on a grant of formal probation for a felony conviction as an adult.

RULE 4.423 - CIRCUMSTANCES IN MITIGATION:

(a) Facts relating to the crime:

(4) The defendant participated in the crime under circumstances of coercion or the criminal conduct was partially excusable for some other reason not amounting to a defense.

RODRIGUEZ claimed he did not report Hamman's confinement in the cell due to his fear of some type of retaliation by Rugg. However, he admitted that he believed the retaliation may not involve any physical harm to himself, but simply said he believed she would retaliate in some way. He also admitted Rugg made no specific threats towards him so he would assist her or not tell the authorities.

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(b) Facts relating to the defendant:

None.

RULE 4.424 - CONSIDERATION OF APPLICABILITY OF SECTION 654 PC:

COUNT ONE involves the defendant's kidnapping of Hamman for the purposes of extortion; taking Hamman's ATM card and PIN number. COUNT TWO involves RODRIGUEZ' and Rugg's conspiracy to murder Hamman by using gasses from the victim's own vehicle. As these counts involve separate acts and offenses with different intents and objectives, no stay of imposition of sentence per Section 654 PC is required.

COUNT SIX involves the defendants' theft of Hamman's vehicle. COUNTS SEVEN and EIGHT involve the defendants' use of Hamman's identity (through use of his ATM card and PIN) to obtain cash. Although COUNT ONE does not specifically list the theft of Hamman's vehicle as one of the objects of extortion, Hughes stated the defendants discussed wanting to steal Hamman's vehicle while staying at the Elmwood Motel. It also seems likely that they initially intended on stealing his vehicle as well, as neither Rugg nor RODRIGUEZ had transportation. COUNTS SEVEN and EIGHT involve the defendants actually using the ATM card and PIN obtained from the victim by extortion in COUNT ONE.

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As COUNTS SIX through EIGHT appear to involve conduct which involves a single intent and objective relative to COUNT ONE, it appears a stay of imposition of sentence per section 654 PC is required (People v. Beamon, 8 C.3d 625, People v. Bauer, 1 C.3d 368). [It is noted that in Bauer, the defendant used the victim's vehicle simply as a means of escape, and it appears the vehicle theft was not the original objective of the 211 PC]. In this officer's opinion, COUNTS SIX through EIGHT were committed close enough in time to COUNT ONE such that an exception to the above due to time elapsed (as indicated by People v. Williams 201 C.A.3d 439 and People v. Kwok 63 C.A.4th 1236) would not apply.

RULE 4.425 - CRITERIA FOR CONCURRENT OR CONSECUTIVE SENTENCING:

Consecutive sentencing could be imposed regarding COUNTS ONE and TWO as the offenses involved predominantly independent objectives (extortion in COUNT ONE, murder in COUNT TWO). Per Section 669 PC, life terms may be run consecutive with one another, and the Court need not state a reason for consecutive sentencing (People v. Arvisio 201 C.A.3d 1055).

As it appears a stay of imposition of sentence per Section 654 PC is required as to COUNTS SIX though EIGHT, these counts will not be addressed under Rule 4.425.

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ALTERNATIVE SENTENCING:

Based upon the mandated and recommended disposition of this case, alternative sentencing is not appropriate nor is it recommended.

TIME SERVED CREDITS - Section 2900.5/ 4019 PC:

The defendant was in custody in this case as follows:

<u>Facility</u>	<u>Dates</u>		<u>Actual</u>	<u>Case Law</u>	<u>Total</u>
	<u>From</u>	<u>To</u>	<u>Days Served</u>	<u>Credit</u>	
<u>Case 62-34689:</u>					
Placer Co. Jail	03-17-03	10-23-03	220	*0	220

* Note: As the punishment for conspiracy to commit first degree murder is punishable in the same manner as the actual commission of first degree murder (25 years to life), it appears that per Section(s) 190(e) PC and 2933.2 PC, the defendant shall not accrue any conduct credits whatsoever, either pre or post sentence. It also appears this limitation would also prevent RODRIGUEZ from receiving conduct credits related to other counts in this case as People v. Palacios 56 C.A.4th 252 indicates the limitation on credits applies to the entire sentence even if the defendant is committed to prison for other crimes which are included as part of the sentence.

EVALUATION:

Before the Court for sentencing is SHAWN MICHAEL RODRIGUEZ, having been convicted by a jury of the charges noted on the face sheet of this report.

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In these offenses, on March 15, 2003, the defendant and codefendant Rugg lured the victim, Nicholas Hamman, to the old juvenile hall where they locked him in a cell in an attempt to obtain his ATM card, PIN number, cash, and to steal his vehicle. The victim refused, and the defendants left him in the cell. They returned later and found the cell flooded due to Hamman activating the fire sprinklers in an attempt to have the fire department respond to help. The victim still refused to hand over the property, so RODRIGUEZ and Rugg placed towels under the door and moved a dresser in front of it, causing the water to rise over Hamman's shoulders. Hamman then complied with their demands, but the defendants left him in the cell. They used his ATM card to obtain cash, and later returned and attempted to kill him with carbon monoxide fumes from Hamman's own vehicle, but were unsuccessful.

Details of the instant offenses and the defendant's statements regarding the offenses, can be found previously in this report. In summary, RODRIGUEZ told this officer that although Rugg discussed wanting to rob Hamman, he did not truly believe she would follow through until immediately before she locked him in a cell. Thereafter, RODRIGUEZ said he assisted Rugg as she was his friend.

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He admitted stealing Hamman's ATM card and vehicle, but said he never used the card himself (Rugg used it). He also admitted moving towels and a dresser in front of the door of the juvenile hall in order to coerce Hamman into providing the property demanded. When Hamman complied, RODRIGUEZ said he removed the towels and dresser, and said he would call the police so that Hamman could be released, but RODRIGUEZ never did. The defendant said he never intended on killing Hamman, but said as time went on, Rugg talked more and more of killing the victim which caused RODRIGUEZ to become more scared. Due to hearing stories of her blaming other individuals for crimes she committed, and her ever increasing talk of murdering Hamman, RODRIGUEZ said he was scared to tell the authorities about Hamman, as he feared some type of retaliation from Rugg, albeit not necessarily physical harm.

The defendant is absolutely ineligible for probation per Section 1203(k) PC as he committed two strikeable offenses, both serious and violent felonies in COUNTS ONE and TWO, while on a grant of felony probation in Sacramento County Case 02F07649. RODRIGUEZ is also presumptively ineligible for probation per Section 1203(e) (5) PC as discussed previously in this report.

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In addition to being absolutely ineligible for probation, this officer also has serious concerns regarding RODRIGUEZ' suitability. The defendant has been convicted of significant offenses in this case which involved planning throughout, as well as significant callousness towards the victim by leaving Hamman in the cell while being drenched with water after promising to release him after he provided the demanded items, their attempt to kill him through routing vehicle exhaust fumes (from Hamman's own vehicle) into the cell, and the victim previously knew both RODRIGUEZ and Rugg, and said he nearly dated Rugg. Therefore, he likely trusted them and did not think they would do anything to hurt or harm him. Additionally, RODRIGUEZ and Rugg coercing Hamman into providing the demanded items by causing the water level in the cell to rise to Hamman's neck is also particularly callous.

Although RODRIGUEZ took some responsibility for his actions, he significantly mitigated his conduct and largely blamed the codefendant as the ringleader, planner, and instigator. Although RODRIGUEZ claimed he wanted to save Hamman, he told this officer he would have kept the victim in the cell overnight and then told authorities the morning of March 18, 2003, in an effort to obtain some leverage for a case he currently faced.

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Clearly, if the defendant was truly concerned about Hamman's well being, he would not have planned on waiting an additional night to obtain help. It is evident RODRIGUEZ was more concerned for himself.

RODRIGUEZ has also failed to express remorse for his actions towards the victim or express any empathy for what he endured. Instead, RODRIGUEZ focused on himself, as he told this officer he wasn't really angry with the victim for Hamman's "lies," rather than even considering how angry the victim might be with him and Rugg.

This officer also notes the defendant has a history of abusing drugs as well as alcohol. However, he stated he could stay "clean" and sober on his own without assistance, and said he did not need treatment. In this officer's opinion, this attitude significantly reduces the efficacy of any ordered treatment and greatly increases the risk of relapse.

RODRIGUEZ also has a significant prior record as a juvenile consisting of thefts and, most notably, two adjudications for arson. He was committed to the California Youth Authority and released from custody, per RODRIGUEZ' own admission, as he "maxed out" and served his entire period of confinement in custody without truly being placed on parole.

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He admitted incurring numerous "minor" violations while in the Youth Authority. His prior record indicates he committed a felony vehicle theft in Sacramento County less than one year after being released from the Youth Authority, which resulted in a felony conviction and placement on formal probation. The defendant then committed the instant offenses approximately five months after being placed on this formal grant of probation.

This officer also notes the defendant was transient around the time of the instant offense, and admitted being, in essence, homeless for quite some time. He also said he had never had regular employment, as when this officer asked about his last, steady employment, he described two jobs, the longest of which lasted two weeks.

RODRIGUEZ also admitted suffering from numerous mental illnesses, and said he discontinued his prescribed medications on his own accord at approximately age 16. If the defendant's account of having been diagnosed with these mental illnesses is accurate, his discontinuance of the medications has likely caused significant instability in his life. Of further concern, it appears the defendant does not wish to resume taking these medications as he felt he needed to be able to control himself without the assistance of medications.

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Based upon numerous statements made by RODRIGUEZ during his interview with this officer, it is highly unlikely that he would comply with any term and condition of probation that he comply with his physician's medication regimen.

Lastly, this officer is significantly concerned with the defendant's out-of-control, disrespectful, and violent conduct during his present stay at the Placer County Jail as noted under the "Collateral Information" section of this report. Per Placer County Jail records, it appears RODRIGUEZ has received 20 documented "write ups" for having contraband in his cell including "pruno," pepper balls, pills, and metal shards, as well as becoming combative with staff on numerous occasions. Based upon RODRIGUEZ' violent and out-of-control conduct while incarcerated, and his expressed attitudes towards authority, it seems difficult to believe the defendant could be adequately supervised in the community under terms and conditions of probation.

Therefore, as the defendant is ineligible for probation and also unsuitable, it is recommended probation be denied and RODRIGUEZ be committed to state prison. The following sentencing scheme takes into account factors discussed under Rules 4.424 and 4.425. As the defendant is able-bodied, standard fines and full restitution are also recommended.

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The following sentencing scheme is respectfully offered to
 the Court:

Case 62-34689:

<u>Determinate Term:</u>	<u>Range</u>	<u>Impose</u>
CT 06: 10851(a) VC	16 mos, 2 yrs, 3 yrs	2 years (Stayed per Section 654 PC)
CT 07: 530.5 PC	16 mos, 2 yrs, 3 yrs	2 years (Stayed per Section 654 PC)
CT 08: 530.5 PC	16 mos, 2 yrs, 3 yrs	2 years (Stayed per Section 654 PC)

Total Determinate Term: (Stayed per Section 654 PC)

Indeterminate Term:

CT 01: 209(a) PC	7 years to life	7 years to life
CT 02: 182(a)(1)/187(a) PC	25 years to life	25 years to <u>life C/S</u>

Total Indeterminate Term: 32 years to life (with
 possibility of parole)

COURT INDICATION:

None.

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RECOMMENDATION:

Case 62-34689:

IT IS THEREFORE RESPECTFULLY RECOMMENDED probation be denied, and SHAWN MICHAEL RODRIGUEZ be committed to the Department of Corrections for the indeterminate term of 32 years to life with the possibility of parole; with credit for time served of 220 days (220 actual/0 conduct).

- Defendant shall submit to collection of specimens, samples and print impressions as required in Section(s) 295 PC, et seq.
- Defendant shall make restitution to the victim, Nicholas Hamman, through the Department of Corrections, in the amount of \$50; minimum monthly payments to be paid through and at a rate to be determined by the Department of Corrections. (Order to pay restitution could be deemed a money judgment and if so, shall constitute a civil judgment.) (1203.04(a)(1) PC)

IT IS FURTHER RECOMMENDED the matter of further restitution be held in abeyance until further order of the Court.

IT IS FURTHER ORDERED the defendant pay a RESTITUTION FINE to the State Restitution Fund in the amount of \$2,000, through and at a rate to be determined by the California Department of Corrections. (1202.4(b) PC)

IT IS FURTHER ORDERED the defendant pay an additional RESTITUTION FINE in the amount of \$2,000. This additional RESTITUTION FINE shall be suspended unless the person's parole is revoked. (1202.45 PC)

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Respectfully submitted,

FREDERICK MORAWCZNSKI
Chief Probation Officer

By: _____
/s/ KURT WOMACK
Deputy Probation Officer

KW/la
October 20, 2003

Approved by:

/s/ STEPHEN G. PECOR
Probation Manager

I have read and considered the foregoing report
and recommendation of the Probation Officer.
Thomas Kearney

JUDGE OF THE ABOVE ENTITLED COURT

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PLACER COUNTY SUPERIOR COURT
MOTIONS / OTHER HEARINGS

62-31679

Case No: 62-34689

Date: 12.05.03 Court met at: 200 People v: Shawn Rodriguez
Dept: 3 Judge: Kearney Clerk: Vidal Reporter: Goldsberry
Defense Counsel: Pe Serafin D.D.A.: Marchi Probation: Jackson
Nature of Proceedings: motion for new trial Interpreter: certified / qualified
Agency: APD Status: PCJ Bail Cash Bail O/R Language: oath on file

NEXT COURT APPEARANCE:

Defendant present not present
Advised of appeal rights.
 B/W ordered. Bail \$
 Bail forfeited O/R revoked
 B/W stayed B/W recalled set aside
 Bail exonerated reinstated

MOTIONS:
 Discovery denied granted, with compliance.
 1538.5 PC. denied granted as to _____ submitted
Witness(es) sworn and examined: _____ Exhibit Record: _____
 995 PC denied granted as to _____ submitted
 Motion to amend Complaint/Information denied granted. Defendant waives re-arraignment. Not guilty plea(s)/denial(s) entered.
 Motion to exonerate bail denied granted. Bail bond # _____
 Motion to specify offense as a misdemeanor pursuant to P.C. 17(b) granted denied.
 Motion to terminate probation pursuant to P.C. 1203.4 granted denied.
 Motion for a new trial granted denied submitted

REFERRAL ORDERS:
 Referred to M. D. T. for initial review placement _____
 Court appoints Dr. _____ under the authority of Evidence Code 730 1017 to evaluate defendant pursuant to
 1368 PC 1026 PC 288.1 PC other _____
 Full Consultation
 Returned to originating court for _____ Case may be returned to M.H.C. calendar for disposition.
 Returned to originating court. Case not suitable for M.H.C.
 Report of examining expert(s) received. On stipulation of parties, presence of experts waived and matter submitted to court for decision.
 Court finds defendant IS IS NOT competent to stand trial. Criminal proceedings resumed.
 Referred to Mental Health Director for placement report.
 Placement report received and reviewed by the court. Defendant ordered placed in _____

REMANDED to custody of Sheriff until next appearance. Bail \$ _____
 to be delivered / released to CDC
 ORDERED RELEASED O / R DISCHARGED (present case only) 62-31679
 COMMITTED to custody of Sheriff until sentence is satisfied. (original sentence/CTS) _____
 Defendant permitted to remain at liberty on bail O/R & is specifically ordered to appear on date set for hearing.

000465

People vs. Shawn Michael Rodriguez

Defendant sentenced to serve the previously suspended state prison sentence ordered on _____ with _____ days credit for time served (_____ actual + _____ conduct).

Probation is denied. Defendant is sentenced to state prison for a total term of 25 yrs TO LIFE with 263 days credit for time served (263 actual + 0 conduct).

CT 2 PC 182(a)(1) CDC 25 yrs 40 Life
CT 1 PC 209(a) CDC 7 1/2 yrs TO LIFE / C/C
CT 7 PC 530.5 CDC M 20 yrs C/C
CT 8 PC 530.5 CDC M 2 yrs C/C
CT 6 1/2 PC 10851(a) CDC mid 2 yrs SCK
PC 654

Referred to the Probation Department for report pursuant to Penal Code §1203(c). Parole advisement.
 EXECUTION of sentence is suspended for purpose of granting probation.

CASE NO.	CONDITIONAL SENTENCE (number of years)	FORMAL PROBATION (number of years)	PROBATION REINSTATED	JAIL SENTENCE	CREDIT FOR TIME SERVED	C/S	C/C
			<input type="checkbox"/> yes <input type="checkbox"/> no		(+)		
			<input type="checkbox"/> yes <input type="checkbox"/> no		(+)		
			<input type="checkbox"/> yes <input type="checkbox"/> no		(+)		
			<input type="checkbox"/> yes <input type="checkbox"/> no		(+)		
			<input type="checkbox"/> yes <input type="checkbox"/> no		(+)		
			<input type="checkbox"/> yes <input type="checkbox"/> no		(+)		
			<input type="checkbox"/> yes <input type="checkbox"/> no		(+)		

_____ testing. Register pursuant to _____ other orders PC 296
 W&I 3051: Proceedings suspended. D.A. ordered to file petition. Court appoints Dr.(s) _____
 Report(s) received. on stipulation of parties, presence of experts waived and matter submitted to court for determination.
 The Court finds the defendant: IS NOT IS addicted or in imminent danger of addiction and is ordered committed to custody of Sheriff to be delivered to the California Rehabilitation Center with _____ days credit for time served (_____ actual + _____ conduct).

Pay fine of: \$ _____
 PC §1202.4(b) \$ 2000.00 (forthwith pursuant to PC §2085.5)
 PC §1202.45 \$ 2000.00 (suspended unless parole revoked)
 Attorney fees \$ _____ hearing waived
\$5000 per month on Hammer
 Restitution \$ _____ to victim _____
 SBOC Restitution held in abeyance

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - INDETERMINATE

[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

CR-292

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: Placer			FILED		PLACER COUNTY SUPERIOR COURT OF CALIFORNIA
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: Shawn Michael Rodriguez		DOB: 08-30-83	62-34689	-A	DEC 05 2003
AKA: Shawn Smiley				-B	JOHN MENDES EXECUTIVE OFFICER & CLERK
CII#: A11762872				-D	<i>[Signature]</i> Deputy
BOOKING #: P142729		<input type="checkbox"/> NOT PRESENT			
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT		<input type="checkbox"/> AMENDED ABSTRACT			
DATE OF HEARING	DEPT. NO.	JUDGE			
12-5-03	13	Kearney			
CLERK	REPORTER	PROBATION NO. OR PROBATION OFFICER			
S Vidal	Goldsberry	Jackson			
COUNSEL FOR PEOPLE	COUNSEL FOR DEFENDANT	<input checked="" type="checkbox"/> APPTD.			
Marchi	Serafin				

1. Defendant was convicted of the commission of the following felonies:

Additional counts are listed on attachment
_____ (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			CONCURRENT	CONSECUTIVE	664 STAT
						JURY	COURT	PLEA			
2	PC	182(a)(1)	Conspiracy to commit murder	2003	10-06-03	X					
1	PC	209(a)	Kidnapping	2003	10-06-03	X		X			
					..						
					..						
					..						
					..						

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT.	ENHANCEMENT	YIS	ENHANCEMENT	YIS	ENHANCEMENT	YIS	ENHANCEMENT	YIS	TOTAL	

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	YIS	ENHANCEMENT	YIS	ENHANCEMENT	YIS	ENHANCEMENT	YIS	TOTAL	

Defendant was sentenced to State Prison for an INDETERMINATE TERM as follows:

- 4. LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts
- 5. LIFE WITH THE POSSIBILITY OF PAROLE on counts
- 6. a. 15 years to Life on counts _____ c. 7 years to Life on counts 1
- b. 25 years to Life on counts 2
- d. _____ years to Life on counts _____
- PLUS enhancement time shown above.
- 7. Additional determinate term (see CR-290).
- 8. Defendant was sentenced pursuant to PC 667(b)-(i) or PC 1170.12 PC 667.61 PC667.7 other (specify):

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.

000467

9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

a. Restitution Fine(s):

Case A: \$2,000	per PC 1202.4(b) forthwith per PC 2085.5;	\$2,000	per PC 1202.45 suspended unless parole is revoked.
Case B: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.
Case C: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.
Case D: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.

b. Restitution per PC 1202.4(f):

Case A: \$	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case B: \$	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case C: \$	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case D: \$	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund

(*List victim name(s) if known and amount breakdown in item 11, below.)

c. Fine(s):

Case A: \$	per PC 1202.5. \$	per VC 23550 or	_____ days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case B: \$	per PC 1202.5. \$	per VC 23550 or	_____ days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case C: \$	per PC 1202.5. \$	per VC 23550 or	_____ days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case D: \$	per PC 1202.5. \$	per VC 23550 or	_____ days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS

d. Lab Fee and Drug Program Fee:

Case A: Lab Fee: \$	per HS 11372.5(a) for counts _____.	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case B: Lab Fee: \$	per HS 11372.5(a) for counts _____.	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case C: Lab Fee: \$	per HS 11372.5(a) for counts _____.	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case D: Lab Fee: \$	per HS 11372.5(a) for counts _____.	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).

10. TESTING

a. AIDS pursuant to PC 1202.1 b. DNA pursuant to PC 296 c. other (specify):

11. Other orders (specify):

12. EXECUTION OF SENTENCE IMPOSED

- a. at initial sentencing hearing.
- b. at resentencing per decision on appeal.
- c. after revocation of probation.
- d. at resentencing per recall of commitment. (PC 1170(d).)
- e. other (specify):

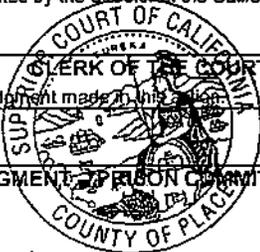
13. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	263	263	0 <input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
B			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
C			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
D			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
Date Sentence Pronounced:		Time Served in State Institution:	
12-5-03		DMH	CDC CRC
		()	() ()

14. The defendant is remanded to the custody of the sheriff forthwith after 48 hours excluding Saturdays, Sundays, and holidays.
 To be delivered to the reception center designated by the director of the California Department of Corrections.
 other (specify):

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE S Vidal <i>Shawn Michael Rodriguez</i>	12-05-03
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000468

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE
 [NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED]

CR-290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: Placer		FILED PLACER COUNTY SUPERIOR COURT OF CALIFORNIA DEC 05 2003 JOHN MENDES EXECUTIVE OFFICER & CLERK By <i>[Signature]</i> Deputy	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: Shawn Michael Rodriguez		DOB: 08-30-83	62-34689
AKA: Shawn Smiley			
CI#: A11762872			
BOOKING #: P142729		<input type="checkbox"/> NOT PRESENT	
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT		<input type="checkbox"/> AMENDED ABSTRACT	
DATE OF HEARING 12-05-03	DEPT. NO. 13	JUDGE Kearney	
CLERK S Vidal	REPORTER Goldsberry	PROBATION NO. OR PROBATION OFFICER Jackson	
COUNSEL FOR PEOPLE Marchi		COUNSEL FOR DEFENDANT Serafin <input checked="" type="checkbox"/> APPTD.	

1. Defendant was convicted of the commission of the following felonies:
 Additional counts are listed on attachment
 ___ (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TERM (L, M, U)	CONCURRENT	CONSECUTIVE 1/3 VIOLENT	CONSECUTIVE 1/3 NON-VIOLENT	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (1-10-1982)	\$54 STAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
						JURY	CRIM.	REA.								YRS.	MOS.
7	PC	530.5	Using Another's Name	2003	10-06-03	X			M	X						(2)	(0)
8	PC	530.5	Using Another's Name	2003	10-06-03	X			M	X						(2)	(0)
6	VC	10851(a)	Vehicle theft	2003	10-06-03	X			M	M					X		

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

4. Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

5. INCOMPLETED SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

6. TOTAL TIME ON ATTACHED PAGES: _____

7. Additional indeterminate term (see CR-292).

8. TOTAL TIME EXCLUDING COUNTY JAIL TERM: _____

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

000469

9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

a. Restitution Fines(s):

Case A: \$ _____	per PC 1202.4(b) forthwith per PC 2085.5;	\$ _____	per PC 1202.45 suspended unless parole is revoked.
Case B: \$ _____	per PC 1202.4(b) forthwith per PC 2085.5;	\$ _____	per PC 1202.45 suspended unless parole is revoked.
Case C: \$ _____	per PC 1202.4(b) forthwith per PC 2085.5;	\$ _____	per PC 1202.45 suspended unless parole is revoked.
Case D: \$ _____	per PC 1202.4(b) forthwith per PC 2085.5;	\$ _____	per PC 1202.45 suspended unless parole is revoked.

b. Restitution per PC 1202.4(f):

Case A: \$ _____	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case B: \$ _____	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case C: \$ _____	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case D: \$ _____	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund

(*List victim name(s) if known and amount breakdown in item 11, below.)

c. Fine(s):

Case A: \$ _____	per PC 1202.5. \$ _____	per VC 23550 or _____	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case B: \$ _____	per PC 1202.5. \$ _____	per VC 23550 or _____	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case C: \$ _____	per PC 1202.5. \$ _____	per VC 23550 or _____	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case D: \$ _____	per PC 1202.5. \$ _____	per VC 23550 or _____	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS

d. Lab Fee and Drug Program Fee:

Case A: Lab Fee: \$ _____	per HS 11372.5(a) for counts _____.	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case B: Lab Fee: \$ _____	per HS 11372.5(a) for counts _____.	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case C: Lab Fee: \$ _____	per HS 11372.5(a) for counts _____.	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case D: Lab Fee: \$ _____	per HS 11372.5(a) for counts _____.	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).

10. TESTING

a. AIDS pursuant to PC 1202.1 b. DNA pursuant to PC 296 c. other (specify):

11. Other orders (specify):

12. EXECUTION OF SENTENCE IMPOSED

- a. at initial sentencing hearing.
- b. at resentencing per decision on appeal.
- c. after revocation of probation.
- d. at resentencing per recall of commitment (PC 1170(d)).
- e. other (specify):

13. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
B			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
C			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
D			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
Date Sentence Pronounced:		Time Served in State Institution:	
		DMH	CDC CRC
		()	() ()

14. The defendant is remanded to the custody of the sheriff forthwith after 48 hours excluding Saturdays, Sundays, and holidays.

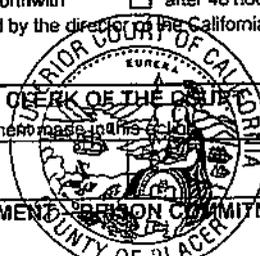
To be delivered to the reception center designated by the director of the California Department of Corrections.
 other (specify):

I hereby certify the foregoing to be a correct abstract of the judgment rendered in this case.

DEPUTY'S SIGNATURE

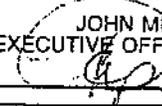
S Vidal

Sandy Vidal



12-5-03

000470

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) SHAWN MICHAEL RODRIGUEZ C/O California Department of Corrections		FOR COURT USE ONLY FILED PLACER COUNTY SUPERIOR COURT OF CALIFORNIA JAN - 6 2004 JOHN MENDES EXECUTIVE OFFICER & CLERK By  Deputy
TELEPHONE NO.	FAX NO.	
ATTORNEY FOR (Name) IN PRO PER SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER		
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: SHAWN MICHAEL RODRIGUEZ Date of birth: <u>8/30/83</u> California Dept. of Corrections No. (if applicable): _____		
NOTICE OF APPEAL—FELONY (DEFENDANT) (Pen. Code, §§ 1237, 1538.5(m); Cal. Rules of Court, rule 31(d))		CASE NUMBER(S) 62-34689

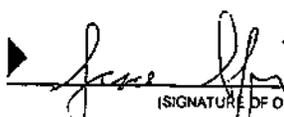
NOTICE

- If your appeal challenges the validity of the plea you must complete the *Request for Certificate of Probable Cause* on the other side of this form. (Pen. Code, § 1237.5.)
- You must file this form in the superior court within 60 days after entry of judgment.

1. Defendant (name): **SHAWN MICHAEL RODRIGUEZ**
appeals from the order or judgment entered on (specify date of order, judgment, or sentence): **December 5, 2003**
2. This appeal follows:
 - a. A jury or court trial. (Pen. Code, § 1237(a).)
 - b. A contested violation of probation. (Pen. Code, § 1237(b).)
 - c. A guilty (or no-contest) plea or an admitted probation violation (check all boxes that apply):
 - (1) This appeal is based on the sentence or other matters occurring after the plea. (Cal. Rules of Court, rule 31(d).)
 - (2) This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
 - (3) This appeal challenges the validity of the plea or admission. (You must complete the Request for Certificate of Probable Cause on the other side of this form.)
 - d. Other (specify): **On December 5, 2003, Defendant's motion for new trial and motion to set aside the verdict on Conspiracy to Commit Murder based on a constitutional violation of cruel and unusual punishment were denied.**
3. I request that the court appoint an attorney on appeal. Defendant was was not represented by an appointed attorney in the superior court.
4. Defendant's address: same as in attorney box above.
 as follows:

Date: **December 23, 2003**

JESSE SERAFIN, Ass't. Public Defender.
(TYPE OR PRINT NAME)


 (SIGNATURE OF DEFENDANT OR ATTORNEY)

RECEIVED

JAN 06 2004

 PLACER COUNTY
 SUPERIOR COURT

(A Request for Certificate of Probable Cause is on the other side)



People vs. Shawn Michael Rodriguez

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STATE OF CALIFORNIA)
COUNTY OF PLACER)

CLERK'S CERTIFICATE

PLACER CASE NO. 62-34689

APPELLATE CASE NO. C0

I, Diane Carroll, Deputy Clerk of the Superior Court in and for the County of Placer, State of California, do hereby certify that I have compared the foregoing Transcript with the original documents in the above-entitle action, now on file in my office and that it contains a true and correct copy of said documents as the same that appears on record and on file in my office, and that said transcript is correct. I also certify that portions of the transcript are governed by the provisions of CCP 237(a)(2), and that all personal juror identifying information has been redacted.

I WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this January 13, 2004

JOHN MENDES

Clerk of the Superior Court

SEAL

By N.W.
Diane Carroll-Patton, Appeal Clerk