

EXHIBIT A

DECLARATION OF MARC ERIC NORTON

I, Marc Eric Norton, declare under penalty of perjury that I have personal knowledge of the matters set forth herein and if called to testify as a witness could and would competently testify as follows:

1. I am an attorney licensed to practice law in the State of California and in the United States Federal Courts.
2. On July 31, 2022, I met with NICHOLAS HAMMAN at the Sacramento County Jail in Sacramento, CA.
3. NICHOLAS HAMMAN affirmed that he was the victim of a crime in 2003, in Placer County and that SHAWN RODRIGUEZ was one of the perpetrators of this crime.
4. NICHOLAS HAMMAN told me, *inter alia*, that he falsely testified at the trial of SHAWN RODRIGUEZ. For example, NICHOLAS HAMMAN affirmed that he testified at trial that the water level in the room in which he was trapped rose to his neck. He told me that was not the truth, that the water level "got up to my thighs." I asked him why he testified untruthfully at the trial. His reply was, "I don't know."
5. I showed NICHOLAS HAMMAN a hand-written letter with a RECEIVED date stamp of FEB 23 2015 from the Superior Court of California, County of Placer (Attached as Exhibit 1). The letter is signed by Nicholas Hamman #J98016. NICHOLAS HAMMAN told me, "I didn't write this."
6. I asked him who was the leader in the crime against you. He replied, "Anna Rugg was the mastermind, not Shawn."
7. I asked him if SHAWN RODRIGUEZ threatened to shoot him. "I think he did say that. I'm not sure. Shawn shot at the window with a long revolver about six times. Then he banged the gun on the window."
8. After introducing myself at the beginning of the interview with NICHOLAS HAMMAN and informing him that I was there to at the behest of SHAWN RODRIGUEZ, I asked NICHOLAS HAMMAN why he was presently in custody. He replied, "Arson. I was trying to make soup. I'm homeless." I then asked him if he had any family. He replied, "I have kids."

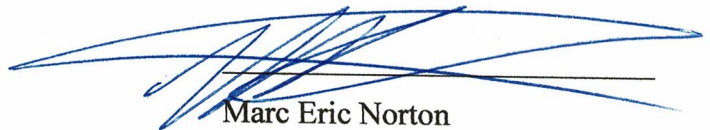
I asked him, "How many kids do you have?"

He replied, "You wouldn't believe me if I told you."

I said, "Try me."

He responded, "I have 55 kids. Had 56, but one of the twins wrapped the umbilical cord around the other one's neck. Twins be like that. But my son (the surviving twin) is doing good. I sent him to the military school in Jamestown, and he graduated valedictorian. He went to Harvard as the second youngest ever, behind me. I went to Harvard at 12 years old. I went to Notre Dame when I was 10."

I declare under the penalty of perjury that the foregoing is true of my own personal knowledge. Executed on August 18, 2022, at Zamora, California.



Marc Eric Norton

Declarant

EXHIBIT B

W=With

Wrote, 2-15-2015

mailed 2-18-2015

Mr. D. A. 3A-034689

Phenochio

62-81545

Let me come right to the point.

I PerJured myself in A TRIal against Two
DIFFERANT DEFENDANTS, Back IN 2003; But I'm
a christian Now! IN your county.

It was in Two Separate TRIALS involving me as A
Victim + ANNA Rugg #X02316 D.O.B. 10-2-1982
Sentenced To 15 to Life on 12-3-2003 currently
Housed at C.I. W. EA. The other one was Shawn
M. Rodriguez #V16387 D.O.B. 8-30-1983 senten-
ced To 25 to Life on 12-8-2003 currently housed
at P.B.S.P.

I Lied about how deep the water in the cell got it did not
get up to my KNECK, it only got up to my Lower
Part of my Thighs + then, I was Able to move the Rags
They had Stuffed under the door + it went down,
the water that is.

SWORN TO BE TRUE UNDER PENALTY OF PERJURY.

SIGNATURE: Mr. Nicholas W. Hannaman #J98016

PRINT NAME: MR. Nicholas W. Hannaman #J98016

RECEIVED

RECEIVED

FEB 23 2015

A-4 - 209
Housing and Cell

Superior Court of California
County of Placer



#7=With

W/ Cole's 2-15-2015

32-034657

Mailed: 2-18-2015

Mr. D.A. Scott

62-81545

Let me come right to the point.

I PERJURED MYSELF IN A TRIAL AGAINST
TWO DIFFERANT DEFENDANTS, BACK IN
2003, BUT I'm a christian NOW! IN YOUR COUNTY,

IT WAS IN TWO SEPARATE TRIALS INVOLVING ME
AS A VICTIM + ANNA Rugg #X02316 D.O.B.
10-2-1982 SENTENCED TO 15 TO LIFE ON 12-3-
2003 CURRENTLY HOUSED AT C.I.W. IN CA. +

THEE OTHER ONE WAS SHAWN M. RODRIGUEZ #V16387
D.O.B. 8-30-1983 SENTENCED TO 25 TO LIFE ON
12-8-2003 CURRENTLY HOUSED AT P.B.S.P.

I LIED ABOUT HOW DEEP THE WATER IN THE CELL
GOT IT DIDNT GET UP TO MY KNECK IT ONLY GOT
UP TO MY LOWER PART OF MY THIGHS + THEN
I WAS ABLE TO MOVE THE RAGS THEY HAD STUFFED
UNDER THE DOOR + IT WENT DOWN THE WATER THAT
IS. RECEIVED

SWORN TO BE TRUE UNDER PENALTY OF PERJURY.
Signature: Mr. Nicholas W. Hamman #J980/6

PRINT Name: MR. NICHOLAS W. HAMMAN #J980/6

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HOUSING and cell



Wrote 3-29-2015
Mailed 3-30-2015
Newcomb / BERNARDIN

DOCKETED

APR - 2 2015

By R. Ferris

No. SA2001DA1469

SA2001DA1469

Mr. Harris

Mame Mabey you didn't understand.

But I Perjured myself in The ANNA RUGG
and Shawn Rodriguez cases.

Shawn Rodriguez case # C045882

ANNA RUGG case # C047245

In There ORIGINAL TRIAL I Perjured myself
2 Times ONCE IN ANNA'S TRIAL AND ONCE
IN SHAWN'S TRIAL

That's why I Need The NAMES OF THE ~~THE~~ ADDRESSE
OF The Judge and The PROSECUTOR SO I CAN
Let Them know.

Also I'm the victim in The case

SWORN TO BE TRUE UNDER PENALTY OF PERJURY.

Signed: Mr. Nicholas W. Hamman #

Printed: MR. NICHOLAS W. HAMMAN # J98016

A-4 ~ 209

HOUSING + CELL

Also me and some of The guys are going on a

HUNGER STRIKE I'll write and Tell you why
and ARE demands later once its in Full swing.

Wrote: 4-29-2015
Mailed: 4-30-2015

Dear Sir

If you want to know what Exactly I
Perjured myself about. I suggest you
have your lawer come see me.

I saw the Thier county DA's investigator on
~~Friday~~ Friday 4-24-2015 + I told him what I
Lied about + he said nothing would come
of it cause ~~there~~ thier appeals our all
over

I'm not saying anymore in a letter.
So I suggest you have your lawer come see me.
the form you sent has to much on it + you talk
about a ~~conspiracy~~ conspiracy + there is none
In the one who lied

Yours Truly
in Jesus Christ
Love Br. Nicholas

EXHIBIT C

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF PLACER

FILED
Superior Court of California
County of Placer

SEP 9 2016

3
4 DEPARTMENT 3

HON. MARK S. CURRY, JUDGE
By: Jake Chatters
Executive Officer & Clerk
Deputy

5
6 IN RE PETITION FOR WRIT OF HABEAS
7 CORPUS,

Case No.: WHC 1400

62- 34689

8
9 SHAWN RODRIGUEZ,

COURT ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS.

10 #V16387

11 Petitioner.

12
13 *Procedural History*

14 In 2003, Petitioner Shawn Michael Rodriguez was convicted by a jury of kidnapping for
15 extortion, conspiracy to commit murder, vehicle theft, and two counts of using another's name to
16 obtain credit or property. He was sentenced to 25 years to life in prison. The conviction was
17 affirmed in the court of appeal on January 4, 2005. (*People v. Rodriguez* 3rd DCA #C045882
18 unpub.)

19 On July 24, 2015, the Petitioner filed in the Superior Court a petition for writ of habeas
20 corpus. The Court found a prima facie case for relief was established concerning the issue of
21 whether there was new evidence in the form of the recantation of a material witness. The Court
22 issued an Order to Show Cause and appointed Petitioner the Public Defender. On August 27,
23 2015, the respondent (Placer County District Attorney) filed a "response."¹ The Petitioner,
24 through his counsel, filed a request to extend the time to file a Traverse, however, in the
25 meantime, the Petitioner filed his own Traverse on October 21, 2015, and a motion "stipulating
26 to the withdrawal of the public defender." On December 2, 2015, the Public Defender withdrew

27
28 ¹ The correct response should have been a "Return." (*People v. Duvall* (1995) 9 Cal.4th 464.)

1 their representation citing the Petitioner's desire to represent himself. Subsequently, however, the
2 Public Defender was re-appointed. On December 22, 2015, the Court ordered an evidentiary
3 hearing.

4 On July 20, 2016, in Department 33, an evidentiary hearing was held. The Petitioner was
5 personally present, represented by Public Defender Martin Jones. The People were represented
6 by DDA Jeff Moore. It was stipulated by the parties that no actual testimony was required. The
7 People conceded that witness Hamman had presented false testimony at the trial regarding the
8 depth of the water in the cell, as described in a statement/letter he had written to the District
9 Attorney. A copy of the letter was admitted as evidence without objection. (Exb. #1, # 2;
10 [Attached]) It was further stipulated that in the determination of whether the "new evidence"
11 warrants a new trial, the Court would consider and review the 2003 trial evidence. Thereafter, the
12 Court took the matter under submission.

13 *Contested Issue*

14 The Petitioner contends that because a material witness lied during his testimony at the
15 2003 trial, a new trial is required. The prosecution, on the other hand, contends that other
16 evidence of the Petitioner's guilt at trial was so strong that a different result is not probable upon
17 retrial.

18 *Summary of 2003 Trial Evidence*

19 It was uncontested at trial that prosecution witness, Nicholas Hamman (hereinafter
20 referred to as "Hamman"), was locked against his will in a holding cell of an abandoned juvenile
21 detention facility in Auburn, California. He remained locked in the cell for nearly 40 hours until
22 found by law enforcement. While locked in the cell Hamman relinquished to others his ATM
23 card, PIN number, car keys, and cash. In addition, Hamman intentionally activated a fire
24 sprinkler on the ceiling of the cell thereby causing water to spray into the cell.

25 Hamman was the prosecution's chief witness who provided his account of what occurred.
26 (Summarized below.) He testified how the Petitioner and Anna Rugg² (hereinafter referred to as
27

28

² Ms. Rugg was charged and tried separately.

1 "Anna") locked him in the cell against his will, threatened him, and demanded his property. He
2 testified that ultimately he surrendered his property to the Petitioner and Anna. The prosecution
3 introduced as evidence a statement made by the Petitioner to the police following his arrest
4 wherein he admitted being present when Hamman was locked in the cell.

5 The Petitioner testified in his own defense. (Summarized below.) He admitted
6 committing many of the acts alleged by the prosecution to form the basis for the charged crimes,
7 but denied that he ever formed an intent to kill Hamman. He attributed the plan to rob and to kill
8 Hamman to his accomplice "Anna" and explained that he went along with her plans only to
9 "appease her."

10 The Prosecution's theory of criminal liability was that the Petitioner and Anna locked
11 Hamman in the cell with the intent to rob him. Subsequently, they conspired to kill Hamman by
12 planning to introduce carbon monoxide into the cell. The defense contended the Petitioner
13 lacked the requisite criminal intent for the charged crimes. The contested issue at the trial,
14 therefore, was the Petitioner's mental state and intent.

15 *Summary of Hamman's Trial Testimony*

16 At about 9:30 a.m. Hamman was driving his car when he was flagged down by the
17 Petitioner, Anna, and Erin Hughes, who requested his help moving out of a motel room.
18 Hamman agreed. Hamman drove to the hotel where a discussion occurred about going to the old
19 juvenile hall. Anna was the one who suggested they go to the juvenile hall. Hamman drove
20 Anna and Erin to the abandoned facility and the Petitioner rode his bicycle. Once at the facility,
21 Hamman assisted bringing their bags from his vehicle into the building. When they were finished
22 unpacking, Hamman asked whether there was anything else he could do. Anna told him that
23 Erin was hurt inside and needed help. Anna appeared hysterical so he ran inside looking for
24 Erin. Anna pointed to a room and told him that Erin was inside. Anna was leading the way.
25 When Hamman ran into the cell, he saw the room was empty. Anna attempted to slide the cell
26 door shut, but Hamman jammed his leg in the door jamb to prevent it from closing. The
27 Petitioner then kicked him in the thigh, so he pulled his leg back and the cell door closed. He
28 was trapped in the cell. Anna said she would open the door when he calmed down. The
Petitioner began stuffing toilet paper in a vent and said he was going to burn the building down.

1 The Petitioner also threatened to shoot him. The Petitioner, Erin, and Anna then departed and
2 Hamman remained locked in the cell. While they were gone, Hamman noticed a sprinkler on the
3 ceiling, so he used a lighter to set the sprinkler off thinking the fire department would be
4 notified. Water from the sprinkler began to spray into the cell.

5 Later that afternoon, Petitioner and Anna returned. The Petitioner wanted Hamman to
6 give them his ATM card and PIN number, but the Hamman said no. The Petitioner said he
7 (Hamman) would drown if he didn't. Hamman agreed to provide his PIN number, but would
8 not give them the ATM card. He observed the Petitioner and Anna talking. The Petitioner said
9 he would turn off the water, but he did not. The Petitioner got a crate and put it in front of the
10 cell door with some cans stuffed with rags. The rags were put under the cell door. Hamman told
11 them (Anna and Petitioner) that the water level was rising. The Petitioner told Hamman he would
12 drown unless he gave them his ATM car, keys, and cash. The water level in the cell rose to
13 approximately his shoulders and neck. He was afraid for his life. [Hamman RT 47; 52]
14 (Hamman also told the police during an interview that the water level had reached his shoulders.)
15 Hamman agreed to surrender his ATM card and the towels were removed and he slid his ATM
16 card, cash, and keys under the cell door, as directed. Anna picked them up. The Petitioner was
17 standing by the door. Anna said the Petitioner would attempt to break the window and the
18 Petitioner hit the window with a fixture one time, but the window did not break. The Petitioner
19 told Hamman that he had friends in YA who would make sure he disappeared if he ever testified
20 or said anything. The Petitioner and Anna departed and Hamman remained locked in the cell.
21 He never saw them again. Hamman was locked in the cell for a total of about 40 hours. He was
22 not aware there was any plan to kill him with carbon monoxide and he never saw anyone put a
23 hose into the cell. Hamman admitted he was a convicted felon and a registered sex offender

24 *Summary of Petitioner's Trial Testimony*

25 The Petitioner went to the juvenile hall facility with Anna, Erin, and Hamman. Anna
26 had a plan to rob Hamman to get his ATM card. She was talking about stabbing and killing
27 Hamman, but Petitioner did not take it seriously. Without the Petitioner's knowledge, Anna
28 locked Hamman in the cell. She was smiling and holding the keys. Hamman was banging on
the window and telling Anna to get him out. Thereafter, Petitioner, Erin, and Anna left the

1 building and took Hamman's car. The drove to the Foresthill Bridge and then to Sacramento.
2 They returned to the juvenile hall building about 7-8 hours later. There was water running in the
3 cell where Hamman was confined. Anna had a plan to get Hamman's ATM PIN number. She
4 told Hamman that if he gave her the PIN number she would break the glass and let him out. The
5 Petitioner asked Hammon for the PIN number to his ATM card. Eventually, Hamman did give
6 them his PIN number and the Petitioner tried unsuccessfully to break the window. However,
7 Anna did not want to break the window and said to wait until Hamman dies. The Petitioner
8 could hear a loud water sound coming from the cell. Anna then demanded that Hamman
9 surrender his ATM card. The Petitioner climbed up on a counter in order to yell to Hamman
10 what Anna was saying. Hamman would not give up his ATM card. The Petitioner and Anna
11 attempted to block the cell door with some towels and he moved a shelf in front of the door.
12 They blocked the door in an effort to scare Hamman. The Petitioner assumed the towels would
13 raise the water level in the cell, but he could not see the water level because it was dark. The
14 Petitioner was unable to see the water level in the cell, but heard Hamman say the water level
15 was about three feet. After about 20 minutes, Hamman slid his ATM card and some cash under
16 the door. The Petitioner pulled the plug allowing the water to drain. Afterwards, the Petitioner
17 tried to turn off the water, but he was unsuccessful.

18 It was not his intention to kill or injure Hamman. Anna was talking about various
19 locations to bury the Hamman's body. Sporadically, over a two-hour period of time Anna talked
20 about shooting, stabbing, and beating the Hamman with a barbed wire pole. The Petitioner was
21 "kind of non-committal" about Anna's suggestions. The Petitioner figured that once they had
22 Hamman's ATM card they could leave the state or call the cops from Reno.

23 The Petitioner and Anna departed leaving Hamman still locked in the cell. They went to
24 the Petitioner's step-brother's house where it was suggested by his stepbrother that Hamman
25 could be killed with carbon monoxide. The Petitioner relayed that suggestion to Anna. Anna
26 wanted to do it. She wanted to "gas him." The Petitioner, however, did not want to go with her
27 and requested to be dropped off at a friend's house, however, the friend was not home. The
28 Petitioner went along with Anna's plan because it would "shut her mouth" and the plan would
not work. Anna obtained some hose while the Petitioner went into Albertsons to get some duct
tape. The Petitioner tied the hoses together and took them into the juvenile hall. He put the end

1 of the hose through a vent of the cell where Hamman was located. Anna hooked the other end
2 of the hose to the car exhaust and started the engine. The Petitioner waited in the car and
3 smoked a cigarette . After about 15 minutes, he told Anna to turn off the engine. He told Anna
4 that Hamman should be dead by now, but in fact, he did not think 15 minutes would have been
5 enough time to kill Hamman. He did not intend to kill the Hamman. He wanted to get out of
6 there because he had court the next morning He went along with her plan to make her think he
7 was on board, but he did not want to kill Hamman. When they discovered the Hamman was still
8 alive, he pulled out the hoses and put them in the trunk. Anna wanted to kill Hamman with
9 barbed wire poles, but the Petitioner would not agree to it. He told Anna that if she wanted him
10 dead, she was going to have to do it. They decided to leave Hamman and drove away. It was
11 on the drive home that they were stopped by the police. He never intended to kill Hamman and,
12 in fact, he prevented it. He was fearful of Anna.

13 During cross-examination, the Petitioner said he had lied to police when he told them
14 during an interview that he had hit Hamman in the cell. He never hit Hamman. Prior to going
15 with Hamman to the juvenile hall, it was Anna who wanted to rob Hamman, and he
16 (Petitioner) went along with her, but he did not want to "beat him down." He put duct tape
17 around the cell door to "to appease Anna." He asked his step-brother how to kill people. He
18 asked Hamman for the PIN number to his ATM card while Hamman was locked in the cell. He
19 also pushed a bookcase against the cell door to "scare him." He assumed it was a possibility
20 Hamman could drown. After they had obtained Hamman's ATM card and PIN number, Anna
21 used it at an ATM and the Petitioner used cash from the card to obtain gas for Hamman's car.

22 *Hamman's Recantation*

23 On February 15, 2015, Hamman prepared a handwritten letter addressed to the District
24 Attorney. (Exb. 1 & 2) In the letter, the Hamman wrote the following:

25 "Let me come right to the point. I perjured myself in a trial against two different
26 defendants, back in 2003; But I am a Christian now! In your county. It was in two
27 separate trials involving me as a Hamman + Anna Rugg#X02326 DOB 10-2-1982
28 sentenced to 15 year to life on 12-3-2003 currently housed at C.I.W.in CA. + the other
one was Shawn M. Rogriguez #V16387 D.O.B. 12-8-1993 sentenced to 25 to life on
12-8-2003. Currently housed at P.B.S.P"

1 "I lied about how deep the water in the cell got it didn't get up to my kneck it
2 only got up to my lower part of my thighs + then, I was able to move the rags they had
3 stuffed under the door+ it went down, that water that is.

4 "Sworn to be true under penalty of perjury.
5 Signed Nicolas W. Hamman #J98016"

6 *Standard*

7 A defendant is entitled to a new trial if the new evidence renders a different result
8 probable if a new trial is held. A motion for a new trial should be granted when the newly
9 discovered evidence contradicts the strongest evidence introduced against the defendant.
10 However, a new trial on the grounds of newly discovered evidence is not granted where the only
11 value of the newly discovered testimony is as "impeaching evidence" or to contradict a witness
12 of the opposing party. (*People v. Hall* (2010) 187 Cal.App.4th 282, 298.) When a defendant
13 makes a motion for a new trial based on newly discovered evidence, he has met his burden of
14 establishing that a different result is probable on retrial of the case if he has established that it is
15 probable that at least one juror would have voted to find him not guilty had the new evidence
16 been presented. ." (*People v. Soojian* (2010) 190 Cal.App.4th 491, 519-521 (*Soojian*).)

17 *Analysis*

18 For the sake of this analysis, it is assumed that Hamman did in fact lie during his
19 testimony concerning the depth of the water in the cell. The People concede this fact. He
20 testified the water level had risen to his shoulder/neck area, however, according to his letter it
21 had only risen to his thighs. There is no evidence before the Court that Hamman lied in respect to
22 any other portion of his testimony.

23 The Prosecution's evidence at trial was strong. Through his testimony and statements to
24 police, the Petitioner essentially admitted his role in the robbery of Hamman. For example, he
25 admitted that he was present when Anna locked Hamman in the cell and was aware of her plan to
26 rob him. The Petitioner knew there was water running in the cell and participated in the sealing
27 the cell door with towels to cause the water level to rise in order to "scare" Hamman. He
28 communicated to Hamman Anna's demands and threats. The Petitioner also admitted he took
possession of the victim's vehicle and ATM card and he was with Anna when it was used to
obtain cash, goods, or gas for the vehicle.

1 In light of the above, the Court finds that the Petitioner's testimony standing alone was
2 strong evidence of the Petitioner's commission of robbery and kidnapping for the purpose of
3 extortion, despite his claim he went along with Anna's plan only to "appease" her or to "shut her
4 mouth." In this regard, therefore, the actual depth of the water in the cell, whether it was to
5 Hamman's thighs or his neck, was essentially irrelevant to the issue of whether the Petitioner
6 meant to rob or extort Hamman.

7 The thrust of the Petitioner's testimony and his main defense at trial was that he never
8 intended to kill Hamman, a defense to conspiracy to commit murder. The People's theory of the
9 conspiracy to kill centered on the Petitioner and Anna's attempt to introduce carbon monoxide
10 into the cell via a hose attached to the exhaust pipe of the car. [See DA Markey Arg. RT 709-
11 710] The overt acts alleged to form the basis of conspiracy were the purchasing of duct tape,
12 obtaining garden hoses, duct taping the cell door, and attaching hose to the vent of the cell.
13 During his testimony, the Petitioner admitted he and/or Anna performed all these acts,

14 In that regard, during his testimony, the Petitioner admitted that he knew Anna wanted to
15 kill Hamman; that he asked his step-brother how to kill someone; that he procured the duct tape
16 and sealed the cell door; and that he placed the end of the hose into Hamman's cell. He also
17 admitted that he did these acts *knowing* that Anna was attaching the other end of the hose to the
18 car exhaust, intending to kill Hamman. He also admitted that he knew Anna had started the
19 engine of the car and that he waited with Anna in the car as exhaust was presumably being
20 pumped into Hamman's cell. However, the Petitioner claimed he did these acts only to make
21 Anna believe he was "on board" and that he never actually formed an intent to kill Hamman.
22 Similar to the earlier robbery, the Petitioner's testimony and admissions were strong evidence of
23 his participation in a conspiracy with Anna to kill Hamman, despite his claim of lack of intent.
24 Thus, the Court finds that there is no reasonable probability of a different result at a new trial if
25 the true level of the water in the cell were known, i.e. to Hamman's thighs rather than to his neck
26 or shoulders.

27 However, Hamman also testified that Petitioner threatened to shoot him and burn the
28 building down. Hamman testified that Petitioner kicked him in the thigh as Anna was attempting
to shut the cell door. During testimony, Petitioner denied making these statements and denied
kicking Hamman. However, the Petitioner conceded that he did tell investigators that he had hit

1 the Hamman, but explained that was lie to the detectives. Thus, the credibility of Hamman
2 regarding the defendant's threats and act of kicking him was at issue. It could be argued that a
3 jury, knowing that Hamman was lying about the depth of the water, might look less favorably
4 upon his testimony, as a whole.

5 If the chief evidence of the Petitioner's guilt at trial was largely dependent upon
6 Hamman's credibility, the Petitioner's argument for a new trial could have greater merit.
7 However, in this case, given the strength of the Prosecution's case based mainly upon the
8 admissions made by the Petitioner, both in his statements to police and during trial testimony, the
9 credibility of Hamman is much less important. As discussed, it was uncontested that Hamman
10 was locked in a cell against his will for nearly 40 hours. The Petitioner admitted most of the acts
11 the Prosecution pointed to as evidence of robbery, extortion, and a conspiracy to commit murder,
12 i.e., placing rags under the cell door to raise the water level to scare Hamman; taking Hamman's
13 property; purchasing duct tape; putting the hose in the vent and sealing the cell with duct tape.
14 As such, the Prosecution had a very strong case. Even without Hamman's testimony concerning
15 the Petitioner's threats or kicking him in the thigh, the Court finds there was overwhelming
16 evidence the Petitioner committed robbery and actively participated with Anna in a plan to kill
17 Hamman. Therefore, the Court finds that Hamman's lie about the depth of the water does not
18 contradict sufficiently the Prosecution's strongest evidence to warrant a new trial. The Court
19 finds that Petitioner's admissions were so damning that there is no reasonable probability that a
20 different result would occur upon retrial. There is no reasonable probability that even one juror
21 would render a contrary verdict upon a retrial. (*Soojian*, supra.) Accordingly, the petition for
22 writ if habeas corpus is denied.

23 The Sheriff is directed to return the Petitioner forthwith to the CDCR.

24
25
26
27 MARK S. CURRY
28 JUDGE OF THE SUPERIOR COURT
COUNTY OF PLACER

September 9, 2016

EXHIBIT D

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.

NOV 6, 2003

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 NOMINATED HIMSELF AND THE REST OF THE PEOPLE ON THE JURY CONCURRED
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 (PULSIFIED TO GAS MR. HAMMAN) AND ASKED HIS FOSTER BROTHER (WAYS TO KILL SCHEME)
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

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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 LUGG 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 WAS
NOT FIT THE CRIME.
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

COULD

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THREE MORE THAN A YEAR IN (CONFINEMENT)"
THREE WERE A JURORS ON JULY WHEN 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 LESSER 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 INNOCENT
ON ALL OTHER CHARGES

IT WAS OUR INSTRUCTIONS & DEFINITIONS &
THE TAPED CONFESSION WHICH CHANGED THINGS

Sincerely,
Joe Sereni
JUROR

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EXHIBIT E

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.

J. - still need intent

L K

Jury Instructions

000255

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.

J Mere knowledge that a crime is being committed and the failure to prevent it does not amount to aiding and abetting.

L K

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 3. Planned crime, another crime
Come naturally from that*

Jury Instructions

000257

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.



EXHIBIT E

1 upon the People the burden of proving him guilty beyond a
2 reasonable doubt. Reasonable doubt is defined as possible -- as
3 excuse me, as follows:

4 It is not a mere possible doubt because everything
5 relating to human affairs is open to some possible or imaginary
6 doubt. It is that state of the case which, after the entire
7 comparison and consideration of all the evidence, leaves the
8 minds of the jurors in that condition that they cannot say they
9 feel an abiding conviction of the truth of the charge.

10 Persons who are involved in committing or attempting to
11 commit a crime are referred to principals in that crime. Each
12 principal, regardless of the extent or manner of participation,
13 is equally guilty. Principals include those who directly and
14 actively commit or attempt to commit the act constituting the
15 crime or those who aid and abet the commission or attempted
16 commission of the crime.

17 A person aids and abets the commission or attempted
18 commission of a crime when he or she, with knowledge of the
19 unlawful purpose of the perpetrator and with the intent or
20 purpose of committing or encouraging or facilitating the
21 commission of the crime, and by act or advice aids, promotes,
22 encourages, or instigates the commission of the crime. A person
23 who aids and abets the commission or attempted commission of a
24 crime need not be present at the scene of the crime. Mere
25 presence at the scene of the crime, which does not itself assist
26 the commission of the crime does not amount to aiding and
27 abetting. Mere knowledge that a crime is being committed and
28 the failure to prevent it does not amount to aiding and

1 abetting.

2 One who aids and abets another in the commission of a
3 crime or crimes is not only guilt of those crimes, but is also
4 guilty of any other crime committed by a principal which is a
5 natural and probable consequence of the crimes originally aided
6 and abetted.

7 In order to find a defendant guilty of the crimes as
8 charged in Counts One through Eight, you must be satisfied
9 beyond a reasonable doubt that the crime or crimes charged were
10 committed; that the defendant aided and abetted these crimes;
11 that a co-principal in that crime committed the crimes as
12 charged in Counts One through Eight; and the crimes were a
13 natural and probable consequence of the commission of the crimes
14 as charged in Count One through Eight.

15 In determining whether a consequence is natural and
16 probable, you must apply an objective test based on not what the
17 defendant actually intended, but on what a person with
18 reasonable and ordinary prudence would have expected likely to
19 occur. The issue is to be decided in light of all the
20 circumstances surrounding the incident. A natural consequence
21 is one in which is within the normal range of outcomes that may
22 reasonably be expected to occur if nothing unusual has
23 intervened.

24 Probable means likely to happen. You are not required to
25 unanimously agree as to which originally contemplated crime the
26 defendant aided and abetted so long as you are satisfied beyond
27 a reasonable doubt and unanimously agree that the defendant
28 aided and abetted the commission of an identified and defined

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1 target crime, and that the remaining crimes were a natural and
2 probable consequence of the commission of that target crime.

3 Before the commission of the crimes charged in Counts One
4 through Eight, an aider and abettor may withdraw from
5 participation in those crimes and thus avoid responsibility for
6 those crimes by doing two things. First, he must notify the
7 other principal known to him of his intention to withdraw from
8 the commission of those crimes. Second, he must do everything
9 in his power to prevent its commission.

10 An accomplice is a person who is subject to prosecution
11 for the identical offense charged Counts One through Eight
12 against the defendant on trial by reason of aiding and abetting
13 or being a member of a criminal conspiracy.

14 Merely assenting to or aiding or assisting in the
15 commission of a crime without knowledge of the unlawful purpose
16 of the perpetrator and without the intent or purpose of
17 committing, encouraging, or facilitating the commission of the
18 crime is not criminal. Thus a person who assents to or aids and
19 assists in the commission of a crime without that knowledge and
20 without that intent or purpose is not an accomplice in the
21 crime.

22 In the crimes charged in Count Five, Seven and Eight,
23 namely the crimes of false imprisonment by violence, using
24 another's name to obtain credit or property, and using another's
25 name to obtain credit or property, there must exist a union or
26 joint operation of act or conduct and general criminal intent.
27 General intent does not require an intent to violate the law.
28 When a person intentionally does that which the law declares to

1 after the they got the card from Mr. Hamman and both slips are
2 similarly dated, same date and time on them. They were
3 apparently used one right after the other. Apparently at the
4 same machine.

5 In addition, in Exhibit 68, what you will find is the
6 Albertsons receipt for the duct tape and that applies later on
7 to the conspiracy to commit murder and the attempted murder.
8 That was also found on the defendant as testified to by the
9 officers.

10 So the elements here are that the defendant obtained
11 personal identifying information and that he did so without the
12 authorization of the victim, and he did so, he used the
13 information for the unlawful purpose. Namely, he was able to
14 use the ATM check card to get money out of the victim's account
15 or at least Ms. Rugg did.

16 Now, remember the Court read to you the instructions about
17 principal and aider and abettor and when there's two People
18 involved in crimes often each does the crime if they know what
19 the purpose is and help in any way, they're just as guilty. And
20 this is kind of an example here. It comes up in some of the
21 rest of the case as well.

22 But here what you have, it indicates under principal,
23 persons who are involved in committing or attempting to commit a
24 crime are referred to principals in that crime. Each principal,
25 regardless of the extent or manner of participation, is equally
26 guilty. Principals include those who directly or actively
27 commit or attempt to commit the act constituting the crime and
28 in part, the defendant did part of that. He's the one that got

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