No. _____

IN THE

Supreme Court of the United States

JUAN BOSCO ALVAREZ,

Petitioner,

v.

DEBBIE ASUNCION,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

PAGE

PETITIONER'S APPENDIX 1

NOT FOR PUBLICATION

FILED

DEC 14 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN BOSCO ALVAREZ, Petitioner-Appellant, v. DEBBIE ASUNCION, Warden, Respondent-Appellee.	No. 17-55360 D.C. No. 2:12-cv-07494-RGK-MRW MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted November 16, 2018
Pasadena, California

Before: W. FLETCHER and PAEZ, Circuit Judges, and GLEASON,** District Judge.

In 2002, Juan Alvarez ("Alvarez") was convicted by a state court jury of attempted murder, assault with a firearm, and eluding a police officer. At the time of his trial, Alvarez suffered from Graves' disease, a form of hyperthyroidism.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Sharon L. Gleason, United States District Judge for the District of Alaska, sitting by designation.

Although Graves' disease can affect a person's mental state, Alvarez's counsel did not investigate whether Alvarez was competent to stand trial. Beginning in 2011, Alvarez filed several state court habeas petitions as well as a federal habeas petition. In 2016, the California Supreme Court denied habeas relief on the merits. And in 2017, the district court denied Alvarez's 28 U.S.C. § 2254 petition. Alvarez appeals the district court's denial of his habeas petition, raising a substantive incompetence claim and an ineffective assistance of counsel claim, both of which he raised in his state habeas petitions.

We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm.

1. Alvarez argues that he was tried while incompetent in violation of his due process rights.[1] In order to stand trial, a defendant must "ha[ve] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and . . . ha[ve] a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960).

Here, there is ample evidence in the record that Alvarez both understood the proceedings against him and had a present ability to consult with his lawyer. According to Alvarez's counsel, Alvarez participated in his own defense by

[1] Alvarez only raises a substantive incompetence claim on appeal. Although Alvarez alleged a procedural incompetence claim in his habeas petition—arguing that the trial judge should have conducted a competency hearing sua sponte—he has not pursued that argument on appeal.

providing an alibi, testifying to this alibi at his trial, and identifying an additional witness who could support his alibi. Alvarez also made an informed decision to reject a favorable plea deal after discussions with his counsel and the trial judge. When the trial court judge asked Alvarez if he still wished to go to trial, Alvarez stated that he did. Because Alvarez's decision-making and participation in his defense indicate that he was competent to stand trial, the district court properly denied habeas relief on this ground.

2. In addition to his substantive incompetence claim, Alvarez alleges that he received ineffective assistance of counsel—in violation of his Sixth Amendment rights—because Alvarez's trial counsel did not investigate whether he was competent to stand trial. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that this deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

The record demonstrates that Alvarez's trial counsel was aware of Alvarez's hyperthyroidism; indeed, trial counsel referenced Alvarez's condition several times throughout the trial proceedings to explain his unusual behavior. Despite observing that Alvarez's condition "makes him react more nervously than the normal human being would," trial counsel did not investigate Alvarez's competency to stand trial. Even assuming that counsel's failure to investigate

Alvarez's competency constituted deficient performance, Alvarez cannot show prejudice. For the reasons previously discussed, it is not reasonably probable that the trial court would have found Alvarez incompetent to stand trial had his counsel raised the issue. Thus, the district court did not err in denying habeas relief on this claim.

3. Because we affirm the district court's denial of habeas on the merits, we need not decide whether Alvarez's claims were procedurally barred.

AFFIRMED.

PETITIONER'S APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JUAN BOSCO ALVAREZ,
Petitioner,
v.
BRENDA M. CASH, Warden,
Respondent.

Case No. CV 12-7494 RGK (MRW)

JUDGMENT

Pursuant to the Order Accepting Findings and Recommendations of the United States Magistrate Judge,

IT IS ADJUDGED that the petition is denied and this action is dismissed with prejudice.

DATE: March 3, 2017

HON. R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

PETITIONER'S APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JUAN BOSCO ALVAREZ,

Petitioner,

v.

BRENDA M. CASH, Warden,

Respondent.

Case No. CV 12-7494 RGK (MRW)

ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court reviewed the petition, the records on file, and the Report and Recommendation of the United States Magistrate Judge. Further, the Court engaged in a de novo review of those portions of the Report to which Petitioner objected. The Court accepts the findings and recommendation of the Magistrate Judge.

IT IS ORDERED that Judgment be entered denying the petition and dismissing this action with prejudice.

DATE: March 3, 2017

HON. R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

PETITIONER'S APPENDIX 4

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JUAN BOSCO ALVAREZ,

Petitioner,

v.

BRENDA M. CASH, Warden,

Respondent.

Case No. CV 12-7494 RGK (MRW)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable R. Gary Klausner, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

SUMMARY OF RECOMMENDATION

This is a habeas action involving a state prisoner. A jury convicted Petitioner of attempted murder for shooting his neighbor. The core of Petitioner's action is his claim that his now-obvious mental health problems should have led the trial judge and his defense lawyer to take different actions at

the time of trial. He also raises other constitutional claims regarding his conviction and appeal.

However, on federal habeas review, the Court concludes the state court decision denying Petitioner's claims was neither contrary to, nor an unreasonable application of, clearly established federal law. As a result, the Court recommends that the petition be denied.

FACTS AND PROCEDURAL HISTORY

Trial Proceedings

Petitioner ambushed his neighbor outside their apartment complex in the middle of the night. Petitioner fired several shots at the victim with a handgun, striking him twice. Petitioner then fled in his car. (Lodgment # 2, 2RT at 48-61.)

The neighbor survived the shooting. He testified at trial that Petitioner was the assailant. Another neighbor heard the gunshots and identified Petitioner's car leaving the scene. (Id. at 47-66, 119-22.) A police officer located Petitioner driving that car about a half-hour later, and arrested him after a chase. (3RT at 152-59.)

Petitioner testified in his defense. He denied shooting the neighbor, and stated that he was at a friend's house at the time of the shooting. (Id. at 192, 196-99.) Petitioner's friend corroborated that testimony. (Id. at 245-46.)

Nevertheless, the jury found Petitioner guilty of attempted premeditated murder, assault with a firearm, and evading the police, with weapon and great bodily injury enhancements. (Id. at 401-04.) The trial court sentenced Petitioner to a life term in prison plus a consecutive term of 25 years to life. (Id. at 413.)

Appellate and Habeas Proceedings

The state appellate court affirmed Petitioner's conviction on direct appeal. In a brief, unpublished opinion, the appellate court found no error regarding

Petitioner's claim that the trial court should have instructed the jury regarding attempted voluntary manslaughter instead of murder.[1] Petitioner did not file a petition for review. His conviction became final by January 2004.

In 2011 and early 2012, Petitioner filed numerous habeas actions in state court. The state courts uniformly and summarily denied relief without substantive discussion of Petitioner's claims. (Lodgment # 6-18.)

This federal action began in mid-2012. The original petition was clearly untimely by many years. However, due to Petitioner's apparent mental health issues, the Court (Magistrate Judge Wilner) appointed the Federal Public Defender to represent him. (Docket # 4-6.) The Court subsequently found that Petitioner was entitled to equitable tolling of the federal limitations period – which made his federal action timely – based on his "long, documented history of severe mental health conditions." (Docket # 83.)

Petitioner filed a First Amended Petition that raised several new claims. (Docket # 33.) The Court stayed the federal action to allow Petitioner to present these claims in state court. (Docket # 84, 85.) The state superior and appellate courts denied relief on procedural grounds. However, the state supreme court denied relief "on the merits" of Petitioner's claims. (Docket # 94-1.)

DISCUSSION

Standard of Review Under AEDPA

Under AEDPA, federal courts may grant habeas relief to a state prisoner "with respect to any claim that was adjudicated on the merits in State court proceedings" only if that adjudication:

[1] The Attorney General lodged a hard copy of the appellate decision on direct appeal at an earlier stage of this action. For ease of reference, the Court refers to the iteration of the decision available online at People v. Alvarez, 2003 WL 22977564 (Cal. App. 2003).

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

In a habeas action, this Court generally reviews the reasonableness of the state court's last reasoned decision on a prisoner's claims. Murray v. Schriro, 746 F.3d 418, 441 (9th Cir. 2014); Harrington v. Richter, 562 U.S. 86, 99 (2011). Here, the state appellate court's opinion on direct appeal was the last reasoned decision addressing Petitioner's instructional error and related ineffective assistance claim.[2] That decision will be reviewed for reasonableness.

The state supreme court denied the remainder of Petitioner's claims on habeas review without explanation, but "on the merits."[3] (Docket # 94-1.) Because the state court's decision was "unaccompanied by an explanation" of its reasoning, AEDPA requires the Court to perform an "independent review of the record" to determine "whether the state court's decision was objectively unreasonable." Richter, 562 U.S. at 98. When the state court does not explain

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[2] Petitioner presented his instructional and IAC claims to the state supreme court on habeas review over a decade after the conclusion of his direct appeal. Nevertheless, given (a) the supreme court's statements that it reached the merits of Petitioner's claims and (b) the court's citation to Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991), the Court concludes that it is appropriate to "look through" the silent denial of these specific claims to evaluate the brief (but reasoned) explanation in the appellate court's earlier decision.

[3] The Attorney General argues that all of Petitioner's claims are procedurally defaulted. (Docket # 100 at 25-31.) Could be, but the Court declines to take up these complex issues. The state supreme court expressly considered Petitioner's substantive claims which, on deferential AEDPA review, the Court finds to be meritless. Boyd v. Thompson, 147 F.3d 1124, 1127 (9th Cir. 1998) (a district court "may, in its discretion, reach the merits of a habeas claim" that is clearly meritless "to further the interests of comity, federalism, and judicial efficiency."); Ellis v. Armenakis, 222 F.3d 627, 631 (9th Cir. 2000) (when claim fails on merits, interests of judicial efficiency may be "better served by addressing claim on merits rather than default").

the basis for its rejection of a prisoner's claim, a federal habeas court "must determine what arguments or theories [ ] could have supported the state court's decision" in evaluating its reasonableness. Id. at 102.

Overall, AEDPA presents "a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court." Burt v. Titlow, ___ U.S. ___, 134 S. Ct. 10, 16 (2013). On habeas review, AEDPA places on a prisoner the burden to show that the state court's decision "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement" among "fairminded jurists." Richter, 562 U.S. at 101, 103. Federal habeas corpus review therefore serves as "a guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction" in the state court system. Id. at 102.

Claims Involving Petitioner's Competency (Grounds 1-3)

Petitioner contends that he was mentally incompetent to stand trial. He argues that the trial court erred by failing to conduct a competency hearing sua sponte. Relatedly, Petitioner claims that his lawyer was constitutionally ineffective for failing to investigate his mental health problems, request a competency hearing, or pursue an insanity-related defense. (Docket # 41 at 29-39, 44-45, 50-51; Docket # 113 at 20-23; 25-29.)

Relevant Facts

Petitioner suffers from hyperthyroidism. This ailment can lead to severe psychiatric problems. On habeas review, both sides attempt to convince the Court whether Petitioner's current mental health problems were known or reasonably should have been apparent during the criminal trial in 2002.

An overwhelming amount of proof establishes that Petitioner's condition deteriorated seriously after trial and during the years of post-trial incarceration in

prison. While in state prison, Petitioner was institutionalized and forcibly medicated due to profound, objectively-observed mental health problems. Numerous prison and jail medical records show diagnoses of serious psychiatric conditions, hospitalizations, and a considerable amount of treatment in recent years.

A psychiatrist whom the Federal Public Defender retained during the equitable tolling proceedings of this federal habeas action examined Petitioner and his medical history. Dr. Lavid concluded that Petitioner suffers from psychosis and delusional disorder. Based on a review of medical records, statements from witnesses (mentioned below), and Petitioner's post-conviction status, the practitioner retrospectively concluded that Petitioner was mentally incompetent to stand trial in 2002 and 2003, or to have been able to file a habeas action in the years after his conviction. (Docket # 39 at 5-15; # 114-3 at 4-11.)

Petitioner also offers several declarations and other statements from various people familiar with Petitioner at the time of trial. One individual described Petitioner as "quirky." An appellate lawyer who represented Petitioner for a time after conviction claims that two other lawyers who handled Petitioner's case before trial had questions about Petitioner's mental status. Neither lawyer provided details about their observations, although one of the lawyers stated that Petitioner was "not 1368" – that is, incompetent enough for an attorney to declare a doubt about competence.

Moreover, Petitioner apparently took some medication for his thyroid condition while in pretrial custody. (Docket # 41 at 34.) The impact of this medication on Petitioner's mental processes – and whether its effect was apparent to others – is not established in the record. To that end, a pretrial report from the county probation office observed that Petitioner may have had some kind of mental illness. That report offered no further diagnosis, details, or

assessment of Petitioner's condition. It also is not clear whether this observation was shared with the trial judge or Petitioner's lawyer. (Id. at 31.)

However, what is clear is that no issues involving Petitioner's mental health or competency became the subject of extensive discussion during his trial or on direct appeal. Neither Petitioner's defense lawyer nor any of the judges before whom Petitioner appeared ever "declared a doubt" under state law about his mental status. There was no statement in the transcripts from any of the superior court judges who handled trial or pretrial proceedings that reflected any concern about Petitioner's ability to participate in his defense. To the contrary, the judges were able to conclude that Petitioner knowingly and intelligently understood his rights and voluntarily waived them appropriately at various stages of the proceeding. (2RT at B-3, D-3-7, E-4; 3RT at 408.)

Other aspects of the proceedings further demonstrated that Petitioner was not impaired by any psychiatric problem. Petitioner was gainfully employed at the time of his arrest. On that basis, Petitioner's lawyer asked that Petitioner be released from custody because he was "the sole earner of his household."[4] (2RT at C-2.) Similarly, at the time of sentencing, Petitioner's brother described Petitioner as "a responsible person, he's a hard-working person, a family man." (3RT at 412.) Neither the brother nor any other family member raised any concern about Petitioner's mental health during the trial.

[4] The record reveals some confusion regarding Petitioner's custody status during the proceedings. The trial court set bail at various amounts ranging between $35,000 and $1 million based on the nature of the pending charges. Petitioner does not appear to have been able to satisfy those terms; the docket regularly identifies his custody status as "remanded." (CT at 21, 56, 62, 66.) Yet, at one stage, the trial judge "ordered [Petitioner] back" to court for a bail hearing and instructed Petitioner not to have any contact with the victim in the case, which suggests that he was at liberty. (2RT at D-7.) Additionally, Petitioner's trial lawyer stated in his declaration that Petitioner "managed to bail out of custody before the trial" and met the lawyer at his office. (Lodgment # 7.)

Petitioner's conduct during trial also did not appear to raise concerns about his mental status. During trial, Petitioner testified coherently in his defense to establish an alibi to the shooting. (3RT at 191-243.) That testimony was subject to extensive cross-examination from the prosecution. The trial transcript reveals that Petitioner was able to cogently respond to those adverse questions. And, according to Petitioner's attorney, Petitioner identified a witness who eventually testified at trial to support Petitioner's alibi. Both Petitioner and his alibi witness gave statements that were logical, understandable, and reasonably consistent with each other.[5]

The parties obtained a declaration from Petitioner's trial lawyer in the course of the federal habeas proceedings that explained his subjective recollection of the client. (Docket # 101-6.) The trial lawyer found Petitioner's current allegations of severe mental health problems and incompetency to be "astounding, because [ ] in all the time I represented Mr. Alvarez, I never noticed, nor did any member of his family tell me, that he was mentally ill." The trial lawyer described Petitioner as "always calm and in control of himself. Our conversations were always rational. He never said anything wild or crazy or delusional. His answers to my questions were always appropriate."

The trial lawyer further concluded that Petitioner "clearly understood the charges against him" and actively participated in his own defense. The lawyer explained that he did not request a competency hearing or pursue an insanity defense because of "what was obvious to me at the time, that my client was a

[5] That said, the prosecutor refuted Petitioner's alibi defense during an effective closing argument. Even though the alibi was "corroborated," the jury was certainly entitled to conclude that Petitioner and his buddy colluded on an improbable story to avoid culpability for the shooting.

sane and normal man who understood the charges against him and aided me in the conduct of his defense."[6] (Id.)

The defense lawyer certainly was aware of the existence of Petitioner's thyroid condition. During Petitioner's testimony, the lawyer elicited from Petitioner the fact that he suffered from "a nervous and a heart condition" based on his hyperthyroidism. Petitioner explained that this gave him insomnia and caused him to feel nervous and hyperactive. (2RT at 45; 3RT at 196, 383.) The lawyer apparently drew attention to Petitioner's medical condition to explain his physical behavior in the courtroom during trial.

Further, although there are some medical records demonstrating treatment for Petitioner's thyroid condition before trial, there are no records of any mental health treatment or hospitalization at any point before the commission of the crime.[7]

Relevant Law

Mental Competency

The trial of an incompetent defendant violates the Constitution's Due Process Clause. Drope v. Missouri, 420 U.S. 162, 171 (1975). The federal constitutional standard for competence to stand trial is whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of

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[6] The Court takes notice that Petitioner's former lawyer was the subject of state bar disciplinary proceedings. (Docket # 113 at 21.) Issues regarding the credibility of the lawyer were presented to – and apparently rejected by – the state supreme court in previous proceedings. Further, the Court has no basis to conclude that the lawyer demonstrated an inadequate "loyalty to his former client" (id.) by providing the Attorney General with a declaration in this action. See, e.g., Lambright v. Ryan, 698 F.3d 808, 818 (9th Cir. 2012) (prisoner "impliedly waive[d] his attorney-client privilege" – and obligations of loyalty? – "the moment he file[d] a habeas petition alleging ineffective assistance of counsel").

[7] One exception – as a teenager, Petitioner reported that he threw himself out of a car after an argument in an attempt at suicide. (Docket # 39 at 7.) There was no report of any mental health follow up regarding this.

rational understanding," and whether he has "a rational as well as factual understanding of the proceedings against him." Dusky v. United States, 362 U.S. 402, 402 (1960) (per curiam).

When a trial court possesses evidence that "raises a 'bona fide doubt'" as to a defendant's competence to stand trial, the judge must conduct a competency hearing. Pate v. Robinson, 383 U.S. 375, 385 (1966). A "bona fide doubt" exists when "a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced a doubt with respect to competency to stand trial." Maxwell v. Roe, 606 F.3d 561, 568 (9th Cir. 2010) (quoting de Kaplany v. Enomoto, 540 F.2d 975, 983 (9th Cir. 1976) (en banc)).

Factors for a court to consider in determining whether there is a bona fide doubt about a defendant's competence include "evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial." Id. A trial court should also consider the opinion of a defendant's trial lawyer, as that lawyer "is in the best position to evaluate a client's comprehension of the proceedings." Stanley v. Cullen, 633 F.3d 852, 861 (9th Cir. 2011) (quotation omitted). A court should also evaluate its own interactions with the defendant, including whether "the defendant is alert," able to testify coherently, and participating in colloquies with the court. United States v. Lewis, 991 F.2d 524, 528 (9th Cir. 1993).

In evaluating a competency claim, a reviewing court "may consider facts and evidence that were not available to the state court" during trial. Williams v. Woodford, 384 F.3d 567, 607 (9th Cir. 2004). However, retrospective determinations of incompetence are generally disfavored. Boyde v. Brown, 404 F.3d 1159, 1167 (9th Cir. 2004). A reviewing court may properly "accord

substantial weight" to contemporaneous assessments of a defendant's mental state. Williams, 384 F.3d at 609.

Ineffective Assistance of Counsel

To establish ineffective assistance (i.e., that a lawyer was not competent) under Strickland v. Washington, 466 U.S. 668 (1984), "a defendant must show both deficient performance by counsel and prejudice." Knowles v. Mirzayance, 556 U.S. 111, 112 (2009). A trial lawyer is "strongly presumed to have rendered adequate assistance," and should not have a reviewing court "second-guess counsel's assistance." Cullen v. Pinholster, 563 U.S. 170, 189 (2011).

An attorney's failure to move for a competency hearing amounts to ineffective assistance when "there are sufficient indicia of incompetence to give objectively reasonable counsel reason to doubt the defendant's competency, and there is a reasonable probability that the defendant would have been found incompetent to stand trial had the issue been raised and fully considered." Stanley, 633 F.3d at 862.

The failure of an attorney to raise a meritless claim or take a futile action fails both Strickland prongs. Gonzalez v. Knowles, 515 F.3d 1006, 1017 (9th Cir. 2008) ("counsel cannot be deemed ineffective for failing to raise [a] meritless claim"); Jones v. Ryan, 691 F.3d 1093, 1101 (9th Cir. 2012) ("It should be obvious that the failure of an attorney to raise a meritless claim is not prejudicial."); Rupe v. Wood, 93 F.3d 1434, 1445 (9th Cir. 1996) (an attorney's "failure to take a futile action can never be deficient performance").

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). Establishing that a state court's application of Strickland was unreasonable under AEDPA "is all the more difficult." Richter, 562 U.S. at 105. The standards created by Strickland and Section

2254(d) are both "highly deferential"; when the two apply in tandem, "review is doubly so." Id. (quotation omitted).

Analysis

The state supreme court denied Petitioner's claims regarding his mental competency without comment on habeas review. As noted above, AEDPA requires this Court to review the reasonableness of that decision based on an independent review of the record. That review is deferential and broad – it requires the Court to consider reasons that "could have supported the state court's decision." Richter, 562 U.S. at 102. As for Petitioner's IAC claims, that review becomes doubly-deferential; the federal court defers to the silent state court decision, which itself must have avoided "second guessing" a trial lawyer's actions. Id. at 105.

The Court independently concludes that the state court did not unreasonably apply clearly established federal law when it denied relief on Petitioner's claims. The state supreme court could fairly have concluded that there was an insufficient basis to doubt that Petitioner actually suffered from a serious mental health condition at the time of trial. On that basis, the state supreme court did not act unreasonably under Drope, Pate, Dusky, or Strickland. The Court concludes that Petitioner is not entitled to habeas relief.

The Court's independent review of the pretrial and trial transcripts strongly refutes any conclusion that Petitioner suffered from a latent or patent mental health problem at the time of trial. Directly put, there were no clear red flags that warranted inquiry into Petitioner's mental competency to stand trial.

In his dealings with the trial judge and his lawyer, Petitioner gave no indication of having any psychiatric problem that should have raised a concern about his ability to consult with his lawyer or understand the proceedings against

him. Dusky, 362 U.S. at 402. Petitioner's lawyer and family attested to the fact that he was gainfully employed and able to function in society at the time of trial. Also, Petitioner had not been treated for any mental illness, nor had he been hospitalized or treated for competency matters in an earlier criminal case. Maxwell, 606 F.3d at 568. Moreover, nothing in the trial transcripts suggests that Petitioner's in-court behavior warranted more inquiry from any of the judges involved in the case.

Further, Petitioner's involvement in his defense at trial could clearly have convinced the state supreme court that no reasonable trial judge would have pursued competency proceedings. Petitioner testified rationally – and certainly not delusionally, as any layperson would observe – in establishing his alibi for the time of the shooting. And that testimony was corroborated by another witness who came to court and testified consistently with Petitioner's account of the evening. According to Petitioner's lawyer, it was Petitioner who laid out the course of the defense case and identified the corroborating witness for the lawyer to subpoena for trial. By lining up a witness to back up his I-wasn't-there-and-I-didn't-do-it defense, Petitioner obviously did not wish to assert any type of insanity defense.

To that end, the trial lawyer subjectively found it "astounding" that Petitioner later developed such severe mental health problems. The lawyer did not believe that Petitioner was incompetent or had any problems that warranted further inquiry. The state supreme court could reasonably have concluded that the trial judge did not possess evidence that "raise[d] a 'bona fide doubt'" about Petitioner's competence. Pate, 383 U.S. at 385. The state court certainly did not have any complaint from Petitioner's lawyer regarding his opinion of his client's capacity to participate in the trial. Stanley, 633 F.3d at 861.

On the other side of the scale, Petitioner credibly established that his condition deteriorated after conviction and during his time in state prison. The Court is mindful of the forensic opinion of Dr. Lavid that Petitioner may have suffered from severe mental problems at the time of trial. But the proof that the trial judge or a reasonably professional defense lawyer should have been on notice of Petitioner's internal difficulties is awfully thin. Looking back more than a decade after the trial, Petitioner points to snippets of observations from various individuals, medical records that describe his thyroid medications, and a passing reference in a probation report; these facts do not weigh heavily in favor of a finding that Petitioner was mentally incompetent at the time of trial, and that a reasonable judge or lawyer should have seen this. Williams, 384 F.3d at 608.

The state supreme court could reasonably have concluded that the trial court did not err in declining to sua sponte conduct competency proceedings during Petitioner's trial. Drope, 420 U.S. at 171; Pate, 383 U.S. at 385; Dusky, 362 U.S. at 402. From this, the state court could also have concluded that a reasonable attorney would not have been required to spend time investigating Petitioner's non-apparent mental health status at the time of trial. Strickland, 466 U.S. at 687; Stanley, 633 F.3d at 862. There was also no basis for Petitioner's lawyer to pursue an insanity defense on the shooting charges.

Given the minimal proof regarding Petitioner's condition at trial – and the overwhelming proof that he possessed the ability and intelligence to participate meaningfully in his defense – the Court discerns no constitutional error that constituted an "extreme malfunction" in the state criminal justice system in Petitioner's case. Id. at 102. Habeas relief is not warranted.

Remaining Claims

Petitioner's remaining constitutional claims also cannot lead to habeas relief.

Ineffective Assistance Based on Plea Offer. Petitioner claims his lawyer inadequately represented him in plea negotiations. Petitioner acknowledges that his lawyer advised him to plead to a charge that would result in a significantly shorter sentence (eight years instead of life in prison). However, Petitioner contends that he did not understand the terms of the deal or the immigration consequences of it at the time of trial. (Docket # 41 at 39-41; # 113 at 23-24.)

Petitioner's claim is too tenuous to lead to relief. The trial judge discussed the offer with Petitioner at a pretrial hearing; the transcript reveals that Petitioner understood the sentence he faced if he went to trial. (2RT at E4.) Further, as explained above, there is no basis to conclude that Petitioner's lawyer was ineffective in failing to diagnose Petitioner's potential mental health problems before trial. Finally, there is no proof that any aspect of Petitioner's immigration status had any impact on his decision to reject the plea offer. Petitioner's unsupported claim is insufficient to overcome the "formidable barrier" to habeas relief under AEDPA. Burt, 134 S. Ct. at 16.

Instructional Error. Petitioner contends that the trial court violated due process by failing to give an attempted voluntary manslaughter instruction based on heat of passion. (Docket # 41 at 46-50; # 113 at 26-27.) He also raises a derivative claim that his lawyer was ineffective for failing to request the instruction. (Docket # 41 at 41-44.)

The Court summarily rejects both claims. The state appellate court rejected Petitioner's claims in a single paragraph on direct appeal. The appellate court concluded that a heat of passion instruction was not justified under state law. According to the appellate decision, there was "no evidence that defendant ever felt provoked at all, much less to the point of homicidal rage," and that a manslaughter / passion theory was "sheer speculation." 2003 WL 22977564

at *1. That conclusion is supported by the trial record and was reasonable under the relevant federal authority. Lewis v. Jeffers, 497 U.S. 764, 780 (1990) (a federal habeas court does not review jury instructions to determine whether they violate state law, as federal habeas relief "does not lie for errors of state law."); Clark v. Brown, 450 F.3d 898, 904-05 (9th Cir. 2006) (the failure to instruct on a particular defense theory is not error unless "the theory is legally sound and evidence in the case makes it applicable.") (citation omitted); Gonzalez, 515 F.3d at 1017 ("counsel cannot be deemed ineffective for failing to raise [a] meritless claim").

The jury instruction claim is also wildly inconsistent with Petitioner's own testimony at trial – Petitioner's defense was "I didn't shoot the victim," not "I shot him because I was enraged when I found out that he had an affair with my wife." Petitioner cannot demonstrate constitutional error based on the lawyer's failure to request a jury instruction that would have directly undermined his own trial testimony.

Ineffective Assistance of Appellate Counsel. Petitioner contends that his appellate attorneys were ineffective by failing to file a reply brief on direct appeal or a petition for review with the state supreme court, and for failing to investigate or raise his mental incompetency claims. (Docket # 41 at 51-52; # 113 at 29.)

Ineffective assistance by an appellate lawyer is measured by the same Strickland criteria. Turner v. Calderon, 281 F.3d 851, 872 (9th Cir. 2002). An appellate attorney is not required to raise "every colorable" or "nonfrivolous issue" on appeal. Jones v. Barnes, 463 U.S. 745, 750-52 (1983). Rather, the "weeding out of weaker issues is widely recognized as one of the hallmarks of effective appellate advocacy." Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989).

Petitioner fails to establish prejudice under Strickland. It is unclear why Petitioner's appellate lawyers failed to file a reply brief or a petition for review. However, Petitioner offers no non-speculative basis to conclude that he would have received affirmative relief on direct appeal had the lawyers filed either document in furtherance of his case. Moreover, as explained above, Petitioner's appellate lawyers could reasonably have concluded that issues regarding his mental health condition at the time of trial were unlikely to lead to relief on direct appeal. The state supreme court did not act unreasonably in denying these derivative claims on habeas review. Jones, 463 U.S. at 750-52; Richter, 562 U.S. at 98, 102.

Cruel and Unusual Punishment. Petitioner contends that his sentence of life plus 25 years to life violates the Eighth Amendment prohibition against cruel and unusual punishment. This claim is essentially based on two premises: that California sometimes sentences murderers (as opposed to attempted murderers) to lesser terms, and that Petitioner's sentence is disproportionate to the way the prosecution originally charged the case. (Docket # 41 at 54-56; # 113 at 30.)

However, neither theory forms the basis for a claim of constitutional error. Petitioner fails to offer an adequate presentation that demonstrates that his sentence was "grossly disproportionate" to the severity of his crimes. Graham v. Florida, 560 U.S. 48, 59-60 (2010). To the contrary, the state supreme court could well have concluded that the cold-blooded ambush of a defenseless person in the middle of the night that led to serious gunshot wounds would warrant a significant prison sentence. Moreover, Petitioner points to any Supreme Court decision that clearly establishes a right to constitutional relief based on a change

in a prosecutor's charging decision. Petitioner's Eighth Amendment challenge cannot lead to habeas relief.

Cumulative Error. Petitioner argues that the cumulative effect of the errors he alleges violated his constitutional rights. (Docket # 41 at 53-54; # 113 at 29-30.) The "combined effect" of multiple errors may give rise to a due process violation if the errors rendered a trial "fundamentally unfair" and "infected the trial with unfairness," even if each error considered individually would not require reversal. Parle v. Runnels, 505 F.3d 922, 927 (9th Cir. 2007) (citing Chambers v. Mississippi, 410 U.S. 284 (1973), and Montana v. Egelhoff, 518 U.S. 37, 53 (1996)). But, when there is no single constitutional error, there is "nothing to accumulate to a level of a constitutional violation." Mancuso v. Olivarez, 292 F.3d 939, 957 (9th Cir. 2002). The Court finds that none of Petitioner's claims amount to constitutional error. Since none of Petitioner's separate arguments is meritorious, his cumulative error claim also fails.

CONCLUSION

IT IS THEREFORE RECOMMENDED that the District Judge issue an order: (1) accepting the findings and recommendations in this Report; (2) directing that judgment be entered denying the Petition; and (3) dismissing the action with prejudice.

Dated: January 23, 2017

HON. MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE

PETITIONER'S APPENDIX 5

S219891

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re JUAN BOSCO ALVAREZ on Habeas Corpus.

The petition for writ of habeas corpus is denied on the merits. (See *Harrington v. Richter* (2011) 562 U.S. 82, 100-101, citing *Ylst v. Nunnemaker* (1991) 501 U.S. 797, 803.)

CANTIL-SAKAUYE
Chief Justice

PETITIONER'S APPENDIX 6

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JUAN BASCO ALVAREZ on Habeas Corpus.	B255464 (L.A.S.C. No. BA232567) (TERRY A. BORK, Judge) ORDER

THE COURT*:

The petition for writ of habeas corpus, filed April 10, 2014, has been read and considered.

The petition is denied.

*ROTHSCHILD, Acting P. J. CHANEY, J. JOHNSON, J.

Exhibit 42 - 1362

PETITIONER'S APPENDIX 7

CV 12-7494-RGK (MRW)
Lodgment # 8

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 12 2014

Sherri R. Carter, Executive Officer/Clerk
By Yolanda Reza Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff and Respondent, versus JUAN BOSCO ALVAREZ, Defendant and Petitioner,	Case No. BA 232567 ORDER SUMMARILY DENYING PETITION FOR WRIT OF HABEAS CORPUS (CRC 4.551(g))

IN CHAMBERS

Petition for Writ of Habeas Corpus by Juan Bosco Alvarez ("Petitioner") is Denied.

The Court has read and considered the unredacted Petition for Writ of Habeas Corpus filed by the Petitioner on September 19, 2013, along with the unredacted Exhibits in Support of the Petition. The Court has further read and considered Respondent's Informal Response To Petition For Writ Of Habeas Corpus, along with the Petitioner's Informal Reply. The Court finds that the following apply:

Petitioner has failed to explain and justify the significant delay in seeking habeas relief. *In re Clark*, (1993) 5 Cal.4th 750, 765; *In re Swain* (1949) 34 Cal. 2nd 300, 302.

The petition raises issues which could have been raised on appeal, but were not, and Petitioner has failed to allege facts establishing an exception to the rule barring habeas consideration of claims that could have been raised on appeal. *In re Reno* (2012) 55 Cal. 4th 428, 490-93; *In re Harris*, (1993) 5 Cal.4th 813, 825-26; *In re Dixon*, (1953) 41 Cal. 2nd 755, 759; *In re Smith* (1911) 161 Cal. 208.

The petition raises issues which were raised and rejected on appeal and Petitioner has failed to allege facts establishing an exception to the rule barring habeas consideration of claims

Exhibit 36 - 1220

that were been raised on appeal. *In re Reno* (2012) 55 Cal. 4th 428, 478-79; *In re Harris*, (1993) 5 Cal.4th 813, 825-26 (1993); *In re Waltreus*, (1965) 62 Cal. 2nd 218, 225.

The petition presents claims raised and rejected in a prior habeas petition and Petitioner has not alleged facts establishing an exception to the rule barring reconsideration of claims previously rejected. Such successive claims constitute an abuse of the writ of habeas corpus. *In re Reno* (2012) 55 Cal. 4th 428, 455; *In re Martinez* (2009) 46 cal. 4th 945, 956; *In re Clark*, (1993) 5 Cal.4th 750, 767-68; *In re Miller* (1941) 17 Cal. 2nd 734, 735.

Petitioner filed a prior petition for habeas relief and failed to raise the claims raised in the current petition, and Petitioner has not alleged facts establishing an exception to the rule requiring all claims to be raised in one timely filed petition. *In re Reno* (2012) 55 Cal. 4th 428, 454; *In re Clark*, (1993) 5 Cal.4th 750, 767-68; *In re Horowitz* (1949) 33 Cal. 2nd 534, 546-47.

As to the claim of ineffective assistance of appellate counsel during Petitioner's first appeal of right, Petitioner has failed to show that appellate counsel's exercise of professional judgment was deficient or that, but for counsel's errors, the outcome of the appeal would have been different. *Smith v. Robbins* (2000) 528 U. S. 259, 288; *Jones v Barnes* (1983) 463 U. S. 745, 750-52.

For all of the foregoing indicated reasons, the petition is DENIED.

The Clerk is ordered to serve a copy of this memorandum upon the Petitioner through his counsel, Lauren Collins, Deputy Federal Public Defender, 321 East 2nd Street, Los Angeles, CA 90012, and upon the Respondent, Deputy District Attorney Hyman Sisman (Habeas Corpus Litigation Team), 320 West Temple Street, Suite 540, Los Angeles, California 90012.

Dated: March 12, 2014

Terry A. Bork

TERRY A. BORK
Judge of the Superior Court

SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA

Exhibit 36 - 1221

PETITIONER'S APPENDIX 8

2/18

CV 12-7494-RGK (MRW
Lodgment #5

CRIM.
No. B164193
(Super.Ct.No. BA 232567)

COURT OF APPEAL
SECOND APPELLATE DISTRICT
Division One

THE PEOPLE

VS.

JUAN B. ALVAREZ

LODGED
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CENTRAL DIST. OF CALIF.
LOS ANGELES
BY:

O P I N I O N

COURT OF APPEAL - SECOND DIST.
FILED
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JOSEPH A. LANE Clerk
Deputy Clerk

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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN B. ALVAREZ,

Defendant and Appellant.

B164193

(Los Angeles County
Super. Ct. No. BA 232567)

APPEAL from a judgment of the Superior Court of Los Angeles County. Ruth A. Kwan, Judge. Affirmed.

Ted T. Yamamoto and Erik W. Ward for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Marc E. Turchin and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

Convicted of shooting his neighbor, defendant raises two related claims. He says the trial court should have, *sua sponte*, instructed the jury on attempted voluntary manslaughter and says his lawyer failed him by neglecting to ask for the instructions. We reject both claims.

Several weeks before the shooting, the victim (Aguilar) and defendant had a conversation outside the apartment complex where both lived. Defendant had asked Aguilar if he had seen defendant's wife with anyone else. Aguilar said he had only seen her with defendant and her children. At trial, Aguilar denied having any kind of "relationship" with defendant's wife.

On June 7, 2002, just after 3:00 a.m., defendant ambushed Aguilar outside the apartment building, shooting at him several times and hitting him twice, once in the leg and once in the stomach. Defendant fled in an automobile and later led the police on a chase before he abandoned the car and tried unsuccessfully to flee on foot.

Defendant presented an alibi defense, claiming he had never had any problem with Aguilar. The jury found him guilty of assault with a firearm, evading an officer, and attempted premeditated murder. The trial court imposed a life prison sentence for the attempted murder plus a consecutive 25 years-to-life for a firearm enhancement.

Defendant's counsel properly refrained from asking and the trial court properly refrained from giving instructions on attempted voluntary manslaughter. In order to justify such instructions, the evidence must show provocation to the point "that a reasonable person in defendant's position would have reacted with homicidal rage." (*People v. Koontz* (2002) 27 Cal.4th 1041, 1086.) Defendant ambushed Aguilar either for no reason or because he had some vague notion that Aguilar might have been a little too familiar with defendant's wife. Certainly, neither would be the reaction of "a *reasonable* person." (See *People v. Hyde* (1985) 166 Cal.App.3d 463, 473.) Indeed, the record contains no evidence that defendant ever felt provoked at all, much less to the point of homicidal rage. A manslaughter verdict could have been constructed only from sheer speculation.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ORTEGA, J.

We concur:

SPENCER, P.J.

MALLANO, J.

PETITIONER'S APPENDIX 9

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-7494 RGK (MRW)	Date	March 31, 2014
Title	Alvarez v. Soto		

Present: The Honorable	Michael R. Wilner	
Veronica McKamie		n/a
Deputy Clerk		Court Reporter / Recorder
Attorneys Present for Petitioner:		Attorneys Present for Respondent:
n/a		n/a

Proceedings: (IN CHAMBERS) ORDER RE: TIMELINESS AND EQUITABLE TOLLING OF HABEAS ACTION

INTRODUCTION AND SUMMARY OF RULING

This is a state habeas action. Petitioner initiated the action well after the statutory deadline for federal court consideration of his claims. Petitioner contends that his long, documented history of severe mental health conditions warrants equitable tolling of the federal limitations period.

The Court agrees. The weight of the medical and psychiatric evidence establishes that Petitioner's condition made it impossible for him to pursue habeas relief in a timely manner. That evidence reveals lengthy periods during which Petitioner's mental health issues caused him to be institutionalized in psychiatric hospitals and forcibly medicated by prison officials over the years. The Court gave close consideration to the limited progress and stability that Petitioner had in recent years. However, the extent of his treatment, the ongoing diagnoses of severe psychiatric conditions, his delusional behavior, and the compelling opinions of psychiatrists – both the consultant retained by Petitioner, and those treating Petitioner in prison in realtime – are sufficient to meet the legal test for equitable tolling. Additionally, Petitioner has been reasonably diligent under the circumstances in pursuing assistance from "jailhouse lawyers" to advance his claims.

The Court therefore finds that Petitioner's action and First Amended Petition are timely under AEDPA.[1]

[1] Because the Court concludes that Petitioner is entitled to equitable tolling due to his mental health conditions, the Court declines to address the parties' contentions regarding other bases for

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-7494 RGK (MRW)	Date	March 31, 2014
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PROCEDURAL HISTORY

A state court jury convicted Petitioner of attempted murder and assault in 2002. The trial court sentenced Petitioner to life in state prison. After Petitioner's conviction was affirmed on appeal, he pursued no further legal challenges for nearly a decade.

Then, in July 2012, after a short flurry of unsuccessful habeas actions in state court, Petitioner filed a habeas action in this federal court. The action was untimely on its face. The Court solicited a further statement from Petitioner regarding the status of the action. From a review of Petitioner's petition and additional materials, the Court learned that Petitioner had considerable mental health issues over the years. The Court appointed counsel to assist Petitioner in establishing the timeliness of the action and potentially asserting that Petitioner was entitled to equitable tolling of the federal limitations period. (Docket # 4-6.)

That led to an extensive set of submissions from both parties regarding the history of Petitioner's psychiatric conditions while in custody.[2] (Docket # 40, 51, 59, 62, 75, 82.) Petitioner also sought to amend his federal petition to add additional claims. (Docket # 28, 33.) Additionally, the Attorney General filed a motion to dismiss the entire federal action as untimely under AEDPA. (Docket # 50.)

STANDARD FOR EQUITABLE TOLLING

Under AEDPA, state prisoners have a one-year period within which they must seek federal habeas review of their habeas claims. 28 U.S.C. § 2244(d)(1). The federal AEDPA limitations period is generally triggered when state court appellate review becomes final, or under other specific conditions set forth in the statute. 28 U.S.C. § 2244(d)(1)(A-D); Lee v. Lampert, 653 F.3d 929, 933 (9th Cir. 2011). State habeas actions commenced after the end of the one-year limitations period cannot "revive" an untimely federal petition. Gonzalez v. Thaler,

---

equitable tolling (lack of access to legal materials, limited English language skills, etc.) or the claim that a different limitations accrual period applies to this action. However, as noted below, aspects of Petitioner's personal circumstances may be relevant under Ninth Circuit precedent in evaluating whether Petitioner was appropriately diligent in pursuing habeas relief.

[2] The Court applauds both lawyers for the superb quality and uniformly fair tone of their briefing to date. All of the parties' filings have been of significant assistance to the Court in evaluating this unique and difficult action.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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___ U.S. ___, 132 S. Ct. 641, 653 (2012) (AEDPA clock not "reset" by untimely state habeas actions).

AEDPA's statutory limitations period may be tolled for equitable reasons "in appropriate cases." Holland v. Florida, 560 U.S. 631, 645 (2010). The Ninth Circuit recognizes the availability of equitable tolling of the one-year statute of limitations in situations where "extraordinary circumstances beyond a prisoner's control make it impossible to file a petition on time." Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003). A prisoner must establish that: (1) he has been pursuing his rights diligently; and (2) some extraordinary circumstances caused the delay. Pace, 544 U.S. at 418.

The words "extraordinary" and "impossible" suggest the limited availability of this doctrine. Indeed, equitable tolling is "unavailable in most cases." Miles v. Prunty, 187 F.3d 1104, 1007 (9th Cir. 1999). This difficult burden ensures that the exceptions do not swallow the rule. Miranda v. Castro, 292 F.3d 1063, 1066 (9th Cir. 2002). The rare cases warranting relief generally involve extreme circumstances beyond a prisoner's control that directly prevented the petitioner from filing.

Equitable tolling may apply due on a prisoner's severe mental illness. Bills v. Clark, 628 F.3d 1092, 1097 (9th Cir. 2010); Laws v. Lamarque, 351 F.3d 919, 922 (9th Cir. 2003); see also Calderon v. United States, 163 F.3d 530, 541 (9th Cir. 1998) (prisoner's mental incompetency is an extraordinary circumstance beyond his control that may warrant equitable tolling pending a competency hearing). In Bills, the Ninth Circuit established a two-part test to determine eligibility for equitable tolling due to mental impairment:

> (1) First, a petitioner must show his mental impairment was an "extraordinary circumstance" beyond his control [ ] by demonstrating the impairment was so severe that either
>
> > (a) petitioner was unable rationally or factually to personally understand the need to timely file, or
> > (b) petitioner's mental state rendered him unable personally to prepare a habeas petition and effectuate its filing.
>
> (2) Second, the petitioner must show diligence in pursuing the claims to the extent he could understand them, but that the mental impairment made it impossible to meet the filing deadline under the totality of the circumstances, including reasonably available access

UNITED STATES DISTRICT COURT
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to assistance.

Bills, 628 F.3d at 1100.

The Bills Court then stated what a district court must do "[i]n practice" to evaluate a claim of equitable tolling based on such an impairment. A district court must:

> (1) find the petitioner has made a non-frivolous showing that he had a severe mental impairment during the filing period that would entitle him to an evidentiary hearing; (2) determine, after considering the record, whether the petitioner satisfied his burden that he was in fact mentally impaired; (3) determine whether the petitioner's mental impairment made it impossible to timely file on his own; and (4) consider whether the circumstances demonstrate the petitioner was otherwise diligent in attempting to comply with the filing requirements.

Id. at 1100-01.[3] Boiled down to basic principles, the relevant question for a court to consider is "Did the mental impairment cause an untimely filing?" in the course of habeas review. Stancle v. Clay, 682 F.3d 948, 959 (9th Cir. 2012).

ANALYSIS

After a candid discussion of the case at a status conference with the parties and reviewing their supplemental briefs, the Court finds it appropriate to evaluate Petitioner's equitable tolling claim separately for the periods: (a) from the time Petitioner's conviction became final in early 2004 through mid-2010; and (b) from mid-2010 through the initiation of this action in federal court. As to each period, the parties submitted considerable medical and psychiatric records from prison practitioners, expert evaluations, and legal analysis of the significance of those materials.

[3] Because of the comprehensive nature of the parties' submissions regarding Petitioner's history of treatment and diagnoses and the opinions of professionals, the Court concludes that an additional evidentiary hearing would not materially assist the Court in evaluating the evidence in the record. See Local Rule 7-15.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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Period before Mid-2010

The parties agree that Petitioner's conviction became final in January 2004 after the conclusion of his direct appeal. Petitioner was in state prison well before that date, though. Petitioner's psychiatric problems were apparent at that time.

Petitioner's medical records indicate that he was hospitalized within the prison for psychiatric reasons on several occasions during 2003 and 2004. (Docket # 40 at 12.) During this period, prison medical staff determined that Petitioner suffered from numerous severe psychiatric conditions, likely as a result of a serious thyroid condition. The medical evidence suggests that Petitioner had a period of relative stability in 2005 and 2006. Even so, Petitioner was prescribed a considerable regimen of antipsychotic medication, was seen regularly by psychiatric staff, and suffered from delusions and other mental health symptoms. (Docket # 39 at 10-15, Ex.7.)

His condition apparently deteriorated in 2007. The deterioration culminated in a lengthy hospitalization at a psychiatric hospital from April 2007 through December 2008. The medical records for that period show that Petitioner was considerably impaired by his diagnosed psychiatric problems, including severe delusions, psychosis, lack of insight into his psychiatric condition, and lack of receptivity to medication. (Docket # 39-1 at 78-79, 39-3 at 32-35.)

As a result, Petitioner was the subject of involuntary medication proceedings. Those proceedings began in November 2007 when Petitioner began his lengthy hospitalization. Prison psychiatrists attested that involuntary administration of antipsychotic medication was warranted because of Plaintiff's diagnosis of psychotic disorder, not otherwise specified (NOS); chronic paranoia; bizarre delusions; and other affect disorders. (Docket # 39-1 at 16-17.) The staff asserted that Plaintiff posed a considerable danger to others. Notably, the prison psychiatrists opined that Petitioner was unable to understand the nature of his mental illness, did not recognize the need for continued treatment, and could not give informed consent to the medication prescribed for him. (Id. at 17, 24-25.) At the request of prison officials, an administrative law judge ordered that Petitioner receive medications involuntarily. The orders requiring administration of medication continued until August 2010 – considerably after Petitioner's discharge from the psychiatric hospital.

The Court concludes that Petitioner carried his burden of establishing that his mental status in the period from 2004 through the termination of the involuntary medication order in 2010 made it impossible for him to file a timely federal habeas action. The proof of Petitioner's longterm and serious mental illness during that period is compelling. Petitioner's psychiatric condition (even after the thyroid-related physical cause of his symptoms was identified and

UNITED STATES DISTRICT COURT
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treated) deteriorated to such a level that Petitioner was hospitalized repeatedly and for lengthy periods of time. Further, correctional officials initiated proceedings to forcibly medicate Petitioner because of his inability to care for himself and the danger he posed to others due to his mental condition.

The Court concludes that Petitioner was mentally impaired such that it was impossible for him to file a timely habeas action in this Court during this period. Based on his circumstances – persistently delusional, forcibly medicated, and in and out of psychiatric institutions – Petitioner must fairly be excused from having to "comply with the filing requirements" under AEDPA. Bills, 628 F.3d at 1100-01.

Period from Mid-2010 through 2012

To the state's credit, the Attorney General does not vigorously challenge Petitioner's equitable tolling claim for the pre-2010 period. See, e.g., Docket 62 at 1 (evidence "suggests that (at most) [Petitioner] is entitled to equitable tolling through August 2010").[4] Instead, the Attorney General argues that Petitioner's condition improved considerably after that time. As a result, the state contends that Petitioner is unable to satisfy the Bills impossible-to-file / diligent-in-trying-to standard for the period from August 2010 until July 2012 when he commenced this action.

To that end, the Court directed the parties to submit additional briefs and evidence that focused on this later period. (Docket # 75, 82.) Petitioner also obtained a second report from a psychiatric expert, Dr. Lavid, who based his opinions on an examination of Petitioner and a review of Petitioner's treatment records. (Docket # 39 at 5, # 75 at 33.)

The record is largely silent as to why the involuntary medication order concluded in 2010. It also does not appear that prison officials sought to hospitalize Petitioner as a result of his illness or conduct since then. However, it is clear that Petitioner continued to take a considerable course of psychiatric medications voluntarily. (Docket # 39 at 35-77.)

Additionally, the prison accommodated Petitioner's condition by placing him in the Enhanced Outpatient Program (EOP) within his institution. According to the Attorney General, the EOP provides services for prisoners who have an "inability to function in the general prison

[4] The Court declines to join the Federal Public Defender's conclusion that the state "concedes" that Petitioner is entitled to equitable tolling for that period. (Docket # 59 at 3.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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population." (Docket # 62 at 4.) Based on the information in the parties' submissions, the Court does not understand the EOP to function in a manner that restricts a prisoner's ability to contact the outside world (in the manner that, say, an involuntary hospitalization or incarceration in a secure housing unit likely would).

Petitioner was regularly treated by psychiatrists, psychologists, and other professionals within the prison for his mental health conditions during the 2010-2012 timeframe. In addition to medications, Petitioner participated in regular meetings and evaluations with the psychiatric staff. The Court closely reviewed their contemporaneous notes and assessments. (Docket # 39-1 at 34-77.) According to those notes, Petitioner's psychiatric diagnosis remained essentially the same – delusional disorder, psychotic disorder NOS, or mood disorder NOS.

The parties advance a real dispute regarding the severity of Petitioner's symptoms and mental condition during this period. Petitioner's attorney (based on Dr. Lavid's review of the prison staff's treatment notes) emphasizes continued observations regarding Petitioner's delusional behavior and abnormal affect. (Docket # 75 at 35-38.) By contrast, the Attorney General notes that the medical reports from 2010-2012 "vary widely," and regularly record positive, stable assessments of Petitioner's condition. (Docket # 82 at 3.) Both sides are also equally able to point to specific judicial decisions in which the facts presented either did or did not support an equitable tolling claim. (Docket # 51 at 15-16, # 59 at 9-10.)

The Court concludes that Petitioner was severely impaired by his mental illness during this period. The progress notes and mental health treatment plan documents from the prison's record show that Petitioner was generally able to maintain his personal hygiene, voluntarily take his medication, and display cognitive functions (concentration, attention, memory, etc.) within normal limits. Yet, the notes clearly reveal that Petitioner suffered from considerable psychiatric problems from mid-2010 through mid-2011 and beyond.[5] Those observed and reported problems include:

- September 2010 – delusions and concerns about keeping "voices 'quiet'" internally (Docket # 39-1 at 75);

[5] Because Petitioner filed his federal petition in July 2012, he only needs the Court to find equitable tolling of the AEDPA limitations period through July 2011 for the action to be timely. See 28 U.S.C. § 2244(d). However, the timeliness of the First Amended Petition requires a finding that equitable tolling applied through June 2012.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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- December 2010 – flattened affect and poor insight into conditions (Id. at 70);
- March 2011 – inappropriate laughter, obsessions and delusions about release date (Id. at 68);
- May 2011 – having "weird thoughts," delusional thought process, inappropriate affect (Id. at 63);
- August 2011 – "presented with inappropriate affect (giggling)," expressed paranoid and delusional thoughts about prison guards, "continues to exhibit [symptoms] consistent with delusional disorder" (Id. at 58);
- May 2012 – "mild deterioration" in symptoms based on increased frequency and intensity of bizarre/delusional thoughts (Id. at 44);
- July 2012 – new bizarre and delusional thought: "he believes the government owes him money because he helped the government to fight crime" (Id. at 39.)

Based on the medical evidence, the Court concludes that Petitioner's ongoing psychiatric ailments "rendered him unable personally to prepare a habeas petition and effectuate its filing" during this period. Bills, 628 F.3d at 1100. The main difference between Petitioner's situation in 2010-2012 and in earlier years was that he apparently agreed to take antipsychotic medication voluntarily without a court order. Even so, Petitioner continued to suffer from considerable delusions (including delusions about the status of his prison term and release date), paranoid thoughts, noticeable defects in his affect and presented behavior, and lack of full understanding of the state of his mental health. He participated in a prison program to provide additional assistance and treatment to mentally ill inmates. Some of his symptoms were not as dire or threatening as they had been in previous years, and did not warrant hospitalization or involuntary medication. However, Petitioner's persistent problems were far from the run-of-the-mill psychological ailments that inmates typically suffer from. In Petitioner's circumstance, his conditions were serious, sustained, and subject to lengthy and significant treatment. Additionally, as Dr. Lavid persuasively explained in his supplemental report, Petitioner's "stable" condition on medication still rendered him considerably impaired by his mental health conditions and suffering from continued symptoms. (Docket # 73, Lavid Report at 6.)

A prisoner with Petitioner's delusional and bizarre thought process and other behavioral problems – magnified by his educational and English-language limitations – could not possibly have filed a lucid habeas petition with this Court within AEDPA's time limits. What complicates this analysis is the additional overlay of the role of jailhouse lawyers in 2011 and 2012. Petitioner apparently relied on other inmates to initiate state court proceedings to reopen Petitioner's criminal case or seek habeas relief. Importantly, Petitioner's treatment notes in

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-7494 RGK (MRW)	Date	March 31, 2014
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February 2012 acknowledge Petitioner's ability and desire to participate in the legal system – or seek assistance from others to do so. (Id. at 49.) Those notes indicate that Petitioner was "working on appealing the sentencing of his case" based on his mental illness. Petitioner told the psychiatric staff that he "was able to ask for help on his legal paperwork from other inmates."

However, there is no basis for the Court to conclude that Petitioner personally participated in those state court filings. The psychiatric records and a declaration from one of the inmates (Docket # 5 at 13-16) establish that Petitioner was not able to understand the nature of the state habeas documents. Petitioner had limited literacy and English-language skills, was heavily medicated, and still suffering from the psychological ailments – particularly, a delusional and bizarre thought process – that made it impossible for him to file a habeas action on his own. Moreover, according to the jailhouse lawyer's declaration, Petitioner did not seek assistance on his own; "It was his Hispanic friends who informed me" about Petitioner's need for legal help and problems that another inmate caused with Petitioner's filings. (Id. at 8.)

To obtain equitable tolling of the limitations period, Petitioner must show that he was diligent "in pursuing his claims to the extent he could understand them, but that the mental impairment made it impossible to meet the filing deadline under the totality of the circumstances." Bills, 628 F.3d at 1100. The legal and medical record shows that Petitioner was minimally aware that another inmate was acting on his behalf in some manner in state court. That shows some amount of diligence on the part of a severely mentally impaired and medicated prisoner. Beyond that, though, the Court is unable to conclude that Petitioner could have taken additional steps to meet his filing obligation on time. Petitioner satisfied the diligence component of the Pace / Bills equitable tolling test.

* * *

Equitable tolling based on psychiatric problems requires a detailed, realistic analysis of a prisoner's oft-times complicated medical history. In the present action, the Court concludes that Petitioner is entitled to sufficient tolling from the time his conviction became final in 2004 until he filed this action in federal court to render the action and the First Amended Complaint timely. Petitioner's mental illness prevented him from filing for habeas relief within the statutory period. His condition may have improved marginally in recent years, and Petitioner was apparently able to obtain minimal resources (fellow inmates) to advance his claims inartfully in state court. Nevertheless, the Court finds that Petitioner's psychiatric condition made it impossible for him to file on time despite the diligence he demonstrated under the circumstances.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-7494 RGK (MRW)	Date	March 31, 2014
Title	Alvarez v. Soto		

CONCLUSION

The Court concludes that Petitioner is entitled to equitable tolling. The Attorney General's motion to dismiss the action as untimely (Docket # 50) is denied without prejudice.

The Court is aware that Petitioner is in the midst of further state proceedings to obtain habeas relief or exhaust the claims for which he wants consideration in his First Amended Petition. (Docket # 66, 81.) Petitioner suggests that he will seek a Rhines stay of this action until the conclusion of the state proceedings. (Docket # 59 at 12.) In light of the ruling regarding equitable tolling, the Court requests that the parties informally meet to determine whether the Attorney General will stipulate to (or agree not to oppose) such a stay request in this Court. If the parties cannot reach such an agreement, Petitioner will file his stay request by or before April 21, 2014.

PETITIONER'S APPENDIX 10

EXHIBIT COVER PAGE

B

EXHIBIT

Description of Exhibit: MENTAL HEALTH RECORD SUPERIOR COURT

Number of pages to this Exhibit: 5 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Suprme Court
- ☐ Grand jury

PERSONAL HISTORY:

SOURCES OF INFORMATION (this page)
PRE-TRIAL RECORDS

SUBSTANCE ABUSE:

X No record, indication, or admission of alcohol or controlled substance abuse.

— Occasional social or experimental use of _____ acknowledged.

___ See below: Indication / admission of significant substance abuse problem.

Referred to Narcotic Evaluator ☐ Yes ☐ No ___ Narcotic Evaluator's report attached

Additional Information

ACCORDING TO PRE-TRIAL RECORDS, THE DEFENDANT STATES NO ALCOHOL OR DRUG USE.

PHYSICAL / MENTAL / EMOTIONAL HEALTH:

— No indication or claim of significant physical / mental / emotional health problem.

X See below: Indication / claim of significant physical / mental / emotional health problem.

Additional Information

ACCORDING TO PRE-TRIAL RECORDS, THE DEFENDANT'S MOTHER REPORTS THAT THE DEEFNDANT IS UNDER A DOCTOR'S CARE AND TAKES MEDICATION FOR THYROID PROBLEMS.

PERSONAL HISTORY:

SOURCES OF INFORMATION (this page)
DEFENDANT

SUBSTANCE ABUSE:

_x_ No record, indication, or admission of alcohol or controlled substance abuse.

___ Occasional social or experimental use of _____ acknowledged.

___ See below: Indication / admission of significant substance abuse problem.

Referred to Narcotic Evaluator ☐ Yes ☒ No ____ Narcotic Evaluator's report attached

Additional Information

PHYSICAL / MENTAL / EMOTIONAL HEALTH:

___ No indication or claim of significant physical / mental / emotional health problem.

_x_ See below: Indication / claim of significant physical / mental / emotional health problem.

Additional Information

THE DEFENDANT CAN NOT HOLD STILL. HE HAS A HYPER TYROID CONDITION THAT CAUSES HIM TO JERK AND FIDGET CONSTANTLY. HE GIVES THE IMPRESSION OF BEING ON A DRUG. HE SAYS HE DOES NOT TAKE DRUGS ILLEGALLY, BUT HE TAKES PRESCRIBED MEDICATION FOR HIS CONDITION. IT DOES NOT ALWAYS HELP.

DEFENDANT'S STATEMENT:

THE PROBATION OFFICER, DUE TO TIME CONSTRAINTS, WAS UNABLE TO ARRANGE AN INTERVIEW WITH THE DEFENDANT PRIOR TO THE SUBMISSION OF THE COURT REPORT. HOWEVER, INFORMATION OBTAINED FROM PRE-TRIAL RECORDS WAS INCORPORATED IN THE REPORT.

INTERESTED PARTIES:

THE PROBATION OFFICER ATTEMPTED CONTACT WITH THE INVESTIGATING OFFICERS, OFFICER MITCHELL AND OFFICER JONES OF THE CALIFORNIA HIGHWAY PATROL/EAST LOS ANGELES DIVISION WITHOUT SUCCESS. A MESSAGE WAS LEFT FOR THE OFFICERS TO MAKE CONTACT WITH THE PROBATION OFFICER. HOWEVER, THERE HAD BEEN NO RESPONSE FROM THE OFFICERS PRIOR TO SUBMISSION OF THE COURT REPORT.

EVALUATION:

THE DEFENDANT IS 30 YEARS OLD WITH A MINIMAL ARREST HISTORY. HOWEVER, THE ALLEGATIONS OF ATTEMPTED MURDER IN ANOTHER CASE, WHICH IS STILL AT THE INVESTIGATING LEVEL, WARRANTS CONCERN. THE INSTANT ARREST IN AND OF ITSELF WARRANTS CONCERN FOR THE SAFETY OF THE COMMUNITY AS THE DEFENDANT BLATANTLY EVADES POLICE OFFICERS AND JUMPS OUT OF A MOVING VEHICLE WHICH ROLLS INTO A FENCE. IT SHOULD BE IMPRESSED UPON THE DEFENDANT, AT THIS JUNCTURE, THAT THIS TYPE OF BEHAVIOR IS UNACCEPTABLE. FORTUNATELY NO ONE WAS INJURED SERIOUSLY IN THIS EPISODE.

IN LIGHT OF THE FOREGOING, THE FOLLOWING

EVALUATION:

HE HAS SOME MENTAL DEFICIENCY THAT NEEDS TO BE ADDRESSED IN A CLOSED SETTING. IF CONVICTED, HE SHOULD NOT BY ANY STRETCH OF THE IMAGINATION BE CONSIDERED AS SUITABLE FOR PROBATION.

PETITIONER'S APPENDIX 11

(PAUSE IN THE PROCEEDINGS.)

THE COURT: MR. MONTANEZ, WOULD YOU LIKE TO MAKE AN OPENING STATEMENT OR RESERVE IT?

MR. MONTANEZ: I WOULD LIKE TO MAKE ONE.

OPENING STATEMENT

BY MR. MONTANEZ:

GOOD MORNING, LADIES AND GENTLEMEN.

MR. ALVAREZ AND I WOULD LIKE TO THANK YOU VERY MUCH FOR YOUR ATTENTION IN THIS MATTER.

AS THE COURT HAS ALREADY TOLD YOU, OPENING STATEMENT IS NOT EVIDENCE. IT IS JUST THE ATTORNEYS' INTERPRETATION OF WHAT THEY BELIEVE THE EVIDENCE WILL SHOW.

AND THE EVIDENCE WILL SHOW YOU THAT MR. ALVAREZ HAD NOTHING TO DO WITH THIS SHOOTING. MR. ALVAREZ DID NOT HURT THE VICTIM IN THIS CASE.

THE EVIDENCE WILL SHOW THAT HE WAS IN FACT IN PASADENA WITH A FRIEND BY THE NAME OF LAURENCE FROM 8:00 AT NIGHT TO ABOUT 3:45 THAT MORNING.

THE EVIDENCE WILL SHOW THAT HE LEAVES THE HOME OF LAURENCE -- BAUTISTA HIS LAST NAME IS -- AT 3:45, AND HE GOES TO EAST LOS ANGELES WHERE HIS PARENTS LIVE.

HE WAS STAYING WITH HIS PARENTS THOSE FEW DAYS BEFORE THIS INCIDENT.

AND MR. ALVAREZ HAD HIS LICENSE SUSPENDED

BECAUSE HE HAD FALLEN BEHIND IN CHILD SUPPORT PAYMENTS AND, THEREFORE, HAD A WARRANT OUT FOR HIM.

THE EVIDENCE WILL ALSO SHOW YOU THAT HE SUFFERS FROM A NERVOUS CONDITION THAT MAKES HIM JITTERY AND MAKES HIM REACT MORE NERVOUSLY THAN THE NORMAL HUMAN BEING WOULD.

HE ACTUALLY AT 3:45, TEN TO 4:00 RUNS A STOP SIGN AND SEES THE LIGHTS OF THE BLACK AND WHITE CHP UNIT STOPPING HIM. HE GETS NERVOUS AND FLEES, DOES NOT STOP, AND THAT WAS IN THE EAST LOS ANGELES AREA, ONE BLOCK AWAY FROM WHERE HIS PARENTS LIVE.

AND HE SAYS, NO, I'M JUST GOING TO GO TO MY PARENTS' HOME. AND AS HE DID NOT STOP, THE BLACK AND WHITE UNIT RAMS INTO MR. ALVAREZ'S CAR, RAMS THE CAR INTO A FENCE.

THE OFFICERS COME OVER, THEY BEAT THE HELL OUT OF MR. ALVAREZ. THEY ARREST HIM.

PRIOR TO THAT HE HAD RECEIVED A SHOOTING REPORT, SHOOTING CALL. THIS CRIME BEING A VEHICLE SIMILAR TO WHAT MR. ALVAREZ WAS DRIVING.

AND THEY TAKE HIM TO THE LOCATION. MR. ALVAREZ IS IN HANDCUFFS.

OH, BY THE WAY, THEY DID NOT FIND AT THE TIME OF THE ARREST A WEAPON ON MR. ALVAREZ'S PERSON OR IN THE CAR.

THEY -- MR. ALVAREZ WILL TELL YOU THEY SWABBED HIS HANDS. THEY TAKE -- THE GUNPOWDER RESIDUE TEST IS USED. THEY TAKE THE TOP HE WAS WEARING WITH

MR. MONTANEZ: IT IS SOMETHING THAT I AM PERSONALLY ASKING AND NOT THE DEFENDANT.

THE COURT: WELL, YOU KNOW WHAT. I UNDERSTAND WHAT YOU MEAN ABOUT NOT WANTING THE TRIAL TO GO ON UNNECESSARILY, BUT ON THE OTHER HAND, THE JURORS ARE WAITING TO HEAR THE NEXT WITNESS.

I'LL GIVE HIM A CHANCE TO DO IT AROUND 3:00. OKAY?

MR. MONTANEZ: VERY WELL. THANK YOU.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY:)

THE CLERK: SIR, PLEASE STATE YOUR NAME FOR THE RECORD. INTERPRETER SPELLING, PLEASE.

THE WITNESS: OSWALDO RIVAS CHACON.

THE INTERPRETER: O-S-W-A-L-D-O. RIVAS, R-I-V-A-S. CHACON, C-H-A-C-O-N.

THE COURT: PLEASE PROCEED.

MR. ARIAS: THANK YOU.

DIRECT EXAMINATION

BY MR. ARIAS:

Q. MR. CHACON, I'M GOING TO BE ASKING YOU SOME QUESTIONS ABOUT JUNE 7TH, THE YEAR 2002, AT APPROXIMATELY 3:15 A.M.

NOW, ON THAT DAY AND TIME WERE YOU AT 2677

TO COME TO COURT?

A. NO.

Q. DIDN'T YOU AS YOU SAT IN THE DISTRICT ATTORNEY'S OFFICE THIS MORNING WITH ME AND THE D.A. INVESTIGATOR -- DIDN'T YOU TELL US YOU THOUGHT THE DEFENDANT WAS CUCKOO AS YOU SAID, AND YOU DID A THING LIKE THIS WITH YOUR HAND?

DIDN'T YOU IN FACT DO THAT?

A. YES, BECAUSE OF --

Q. YOU HAVE ANSWERED MY QUESTION.

A. -- WHAT HAD HAPPENED.

Q. OKAY. DIDN'T YOU IN FACT TELL THE D.A. INVESTIGATOR THAT YOU WERE WORRIED AND YOU DID NOT WANT YOUR PERSONAL INFORMATION REVEALED SUCH AS YOUR ADDRESS, TELEPHONE NUMBER, AND THAT SORT OF THING?

ISN'T THAT CORRECT?

A. MY TELEPHONE?

Q. YES.

A. NO.

Q. DIDN'T YOU IN FACT TELL THE D.A. INVESTIGATOR YOU WERE WORRIED, YOU DID NOT WANT YOUR PERSONAL INFORMATION MADE AVAILABLE TO ANYBODY HERE BECAUSE YOU WERE AFRAID?

A. NO, I DID NOT SAY THAT.

Q. BUT YOU DID TELL HIM YOU DID NOT WANT YOUR PERSONAL INFORMATION RELEASED BECAUSE YOU WERE WORRIED ABOUT THAT; RIGHT? YES OR NO?

A. NO.

D E F E N S E

JUAN BOSCO ALVAREZ,
THE DEFENDANT HEREIN, CALLED AS A WITNESS IN HIS OWN BEHALF, WAS SWORN AND TESTIFIED AS FOLLOWS:

THE CLERK: SIR, PLEASE STOP THERE. RAISE YOUR RIGHT HAND.

YOU DO SOLEMNLY STATE THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: YES.

THE CLERK: THANK YOU, SIR. PLEASE BE SEATED AT THE WITNESS STAND.

THE WITNESS: HOW ARE YOU?

THE CLERK: SIR, PLEASE PULL THE MICROPHONE COMFORTABLY IN FRONT OF YOU.

THEN SPEAKING INTO THE MICROPHONE PLEASE STATE AND THEN SPELL YOUR FULL NAME FOR THE RECORD, SIR.

THE WITNESS: OKAY. YEAH, MY NAME IS JUAN BOSCO ALVAREZ. AND I'M REPRESENTING HERE BY MY ATTORNEY, MR. MONTANEZ, AND --

MR. MONTANEZ: YOU HAVE TO SPELL YOUR LAST NAME, PLEASE.

THE WITNESS: MY LAST NAME IS A-L-V-A-R-E-Z.

MR. MONTANEZ: OKAY. THANK YOU.

A. YEAH, IT WAS AT THE SAME TIME.

Q. DID THEY TELL YOU THAT IT WAS TO BE ANALYZED?

A. NO, THEY DID NOT.

Q. I SEE.

A. THEY JUST TOOK IT.

Q. I SEE. DO YOU SUFFER FROM A NERVOUS CONDITION?

A. YES, I DO. I SUFFER FROM A NERVOUS -- IT'S A NERVOUS AND A HEART CONDITION THAT I HAVE. IT'S CALLED HYPERTHYROIDISM.

Q. WHAT DOES THAT MAKE YOU FEEL?

A. THAT CAUSES INSOMNIA AND NERVOUSNESS SYSTEM LIKE FAILURE, AND IT CAUSES A HYPER -- HYPERACTIVITY, HYPERTENSION.

Q. I SEE. SO IT ACTUALLY CAUSES YOU TO BE A LITTLE HYPER THAN NORMAL?

A. YEAH, VERY HYPERACTIVE.

Q. I SEE.

A. THAT'S WHY IT IS CALLED HYPERTHYROIDISM.

Q. YES. WELL, YOU HEARD THE TESTIMONY OF MR. AGUILAR HERE.

HE SAID THAT HE RECOGNIZED YOU AS THE GUY WHO HAD THE GUN --

A. UH-HUH.

Q. -- WHO FIRED AT HIM?

A. UH-HUH.

Q. DID YOU EVER -- DID YOU FIRE A GUN AT

A. YES, THAT'S CORRECT.

Q. AND YOU'RE POSITIVE YOU WERE CARRYING THE COMPUTER TO HIS HOUSE; RIGHT?

A. YES, POSSIBLY.

Q. BECAUSE HE WAS GOING TO FIX IT; CORRECT?

A. NO, HE WAS NOT GOING TO FIX IT. HIS FRIEND HAD FIXED IT FOR ME.

Q. SO THE COMPUTER --

A. IT'S JUST AT THAT TIME I COULDN'T FIND PETER AT HIS HOME. THAT'S THE REASON WHY I WENT TO LARRY BAUTISTA'S HOME.

THEY'RE NOT FAR AWAY. THEY'RE MAYBE ABOUT FIVE BLOCKS AWAY FROM EACH OTHER.

Q. SO YOU WERE AT ANOTHER FRIEND'S HOME, AND HE WAS FIXING THE COMPUTER; IS THAT CORRECT?

A. NO, I WAS NEVER AT HIS HOME FIXING NO COMPUTER. I PASSED THROUGH HIS HOUSE LOOKING FOR HIM. SO THE NEIGHBORS TOLD ME WASN'T THERE. SO THAT'S WHY I WENT OVER TO LARRY BAUTISTA'S HOME.

Q. EXCUSE FOR SOME BEER?

A. EXCUSE ME?

Q. YOU WENT THERE FOR SOME BEER; IS THAT CORRECT?

A. NO, WHEN I GOT THERE, HE WAS DRINKING A LITTLE BEER. I DON'T DRINK BEER DUE TO MY HEALTH CONDITION.

Q. PERHAPS I'M CONFUSED. SO LET ME ASK THE QUESTION.

OPINION HOW LONG MR. BAUTISTA WAS LOOKING AT YOUR COMPUTER, TINKERING WITH IT, WHATEVER HE WAS DOING.

A. I DON'T KNOW. THREE HOURS.

Q. ABOUT THREE HOURS?

A. THREE-AND-A-HALF HOURS, THREE HOURS.

Q. OKAY. ABOUT THREE, THREE-AND-A-HALF HOURS?

A. UH-HUH.

Q. AND WHILE HE'S WORKING ON THE COMPUTER FOR THREE OR THREE-AND-A-HALF HOURS, WHAT ARE YOU DOING?

A. WELL, I WAS LOOKING AT HIS WORKING ON THE COMPUTER. I WANTED TO LEARN A LITTLE BIT MYSELF.

Q. WHAT EXACTLY WAS HE DOING TO THE COMPUTER THAT YOU SAW?

A. WELL, HE WAS TRYING TO OPEN UP THE WINDOWS I COULD REMEMBER BECAUSE IT JUST LOCKED, AND THE -- I KNOW THAT THE WINDOWS WOULDN'T OPEN, AND THEN BY ITSELF EVERYTHING WOULD TURN OFF.

THEY SAID THAT IT WAS A LITTLE PROBLEM WITH THE LITTLE BATTERY IF I COULD REMEMBER.

Q. WHO SAID THAT?

A. A FEW PEOPLE TOLD ME. MAYBE MORE THAN TWO PEOPLE.

Q. OKAY. BUT ACTUALLY WHAT I'M TALKING ABOUT IS MR. BAUTISTA AS HE'S WORKING ON YOUR COMPUTER FOR THE THREE-AND-A-HALF HOURS, WHAT DID YOU GUYS TALK ABOUT?

A. WE WERE TALKING ABOUT COMPUTERS.

Q. FOR THE ENTIRE THREE-AND-A-HALF HOURS?

A. I DO REMEMBER HE TRIED TO GIVE ME A LITTLE BOTTLE, A LITTLE BEER, BUT AT THAT TIME, NO, I DIDN'T WANT TO DRINK NO BEER.

Q. BECAUSE YOU HAVE A HEALTH CONDITION; CORRECT?

A. YEAH, I DO HAVE A HEALTH CONDITION.

Q. SO YOU DEFINITELY DIDN'T DRINK ANY BEER THAT NIGHT; RIGHT?

A. NOT REALLY.

Q. WELL, "NOT REALLY" IS NOT REALLY AN ANSWER. YES OR NO?

A. NO, I DIDN'T DRINK -- I DON'T DRINK -- I DIDN'T DRINK ANY BEER.

Q. YOU DID NOT HAVE ANY BEER AT ALL?

A. I DIDN'T DRINK NO BEERS.

Q. NOT EVEN A SIP; IS THAT CORRECT?

A. MAYBE A SIP, YEAH.

Q. OKAY. MAYBE YOU HAD A SIP?

A. MAYBE I HAD THE BOTTLE RIGHT THERE JUST FOR HIM NOT TO FEEL BAD, BUT, NO, I DON'T DRINK.

Q. SO LET ME SEE IF I GOT THIS STRAIGHT.

YOU TOLD HIM THAT YOU DON'T DRINK BECAUSE OF A HEALTH CONDITION; CORRECT?

A. UH-HUH.

Q. YOU TOLD HIM THAT?

A. NO, HE DIDN'T KNOW. I DIDN'T TELL HIM. HE ACTUALLY DOESN'T KNOW MY PERSONAL LIFE, NO.

Q. RIGHT. SO HE OFFERS YOU A BEER; CORRECT?

DESK RIGHT THERE.

AND ME, YOU KNOW, I WENT TO THE KITCHEN, AND I WENT TO THE LIVING ROOM, AND I WENT TO HIS -- TO HIS ROOM. HE HAS LIKE A BIG STUDIO OF COMPUTERS AND STUFF.

Q. SO WHERE DID YOU EAT YOUR HOT DOGS?

A. AT THE LIVING ROOM.

Q. IN THE LIVING ROOM?

A. YEAH.

Q. AND WHERE DID MR. BAUTISTA EAT HIS HOT DOGS?

A. I HAD TWO HOT DOGS.

ACTUALLY, I WAS BITING THEM, WALKING AROUND BECAUSE I TOLD YOU I CAN'T BE STILL. I HAVE TO BE CONSTANTLY MOVING AROUND.

Q. WHAT ABOUT MR. BAUTISTA? WHERE DID HE EAT HIS HOT DOGS?

A. I CAN'T TELL YOU. I DON'T REMEMBER ABOUT NO HOT DOG HIM EATING.

Q. BUT YOU JUST TESTIFIED YOU BOUGHT HIM A HOT DOG?

A. YEAH, BUT I DON'T REMEMBER HIM EATING NO HOT DOG. I DIDN'T SEE HIM, YOU KNOW.

Q. OKAY. SO YOU ARE SAYING THAT HE INVITED YOU IN TO EAT THE HOT DOG?

A. YEAH, BUT THAT TYPE OF GUY HE DOESN'T REALLY LIKE HOT DOGS, YOU KNOW. HE WAS LIKE, OH, YOU KNOW, WHAT ARE YOU GOING TO EAT A HOT DOG FOR.

Q. WHEN DID HE SAY THIS TO YOU?

A. EXCUSE ME?

LAURENCE BAUTISTA,

CALLED AS A WITNESS BY THE DEFENDANT, WAS SWORN AND TESTIFIED AS FOLLOWS:

THE CLERK: SIR, PLEASE STEP FORWARD THROUGH THE DOUBLE DOORS NEAR THE WITNESS STAND, PLEASE.

STOP RIGHT THERE. RAISE YOUR RIGHT HAND.

YOU DO SOLEMNLY STATE THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: THANK YOU, SIR. PLEASE STEP FORWARD AND BE SEATED IN THE WITNESS STAND.

SIR, PLEASE ADJUST THE MICROPHONE ARM COMFORTABLY IN FRONT OF YOU. THEN SPEAKING INTO THE MICROPHONE, PLEASE STATE AND THEN SPELL YOUR FULL NAME FOR THE RECORD, SIR.

THE WITNESS: LAURENCE BAUTISTA. IT'S B-A-U-T-I-S-T-A.

THE CLERK: THANK YOU, SIR.

DIRECT EXAMINATION

BY MR. MONTANEZ:

Q. GOOD AFTERNOON, MR. BAUTISTA.

DO YOU KNOW MR. ALVAREZ?

A. YES, I DO.

Q. HOW LONG HAVE YOU KNOWN MR. ALVAREZ?

A. APPROXIMATELY TWO-AND-A-HALF YEARS.

Q. NOW, YOU REMEMBER COMING TO COURT ON NOVEMBER 21ST OF THIS YEAR?

DO YOU REMEMBER COMING TO COURT?

A. YES.

Q. AND YOU SAT DOWN -- ACTUALLY YOU MET IN THE HALLWAY WITH MYSELF, AND THERE WAS A D.A.I. INVESTIGATOR THERE?

A. YES.

Q. BY THE NAME OF MR. LANGFORD?

A. I'M NOT SURE HIS NAME. BUT THERE WAS AN INVESTIGATOR THERE.

Q. DO YOU REMEMBER TELLING MR. LANGFORD THAT YOU THOUGHT THE DEFENDANT WAS A LITTLE WEIRD?

A. NO, I DIDN'T SAY THAT.

Q. YOU NEVER SAID THAT?

A. I SAID HE'S QUIRKY.

Q. OKAY.

NOW, DO YOU REMEMBER TELLING MR. LANGFORD WHEN HE ASKED YOU, ALL RIGHT, WHAT HAVE YOU GOT TO TELL ME, AND DO YOU REMEMBER TELLING HIM YOU WERE NOT SURE WHAT DAY THIS WAS?

DO YOU REMEMBER MAKING THAT STATEMENT?

A. NO, I SAID -- NO, I DIDN'T SAY THAT.

Q. WHAT DID YOU SAY EXACTLY?

A. I SAID I WASN'T SURE WHAT DAY OF THE WEEK IT WAS.

Q. OKAY. WHEN HE ASKED YOU THIS WAS JUNE 6, DO YOU REMEMBER SAYING I DON'T REALLY RECALL WHAT DAY IT

ATTORNEYS WILL ARGUE THEIR CASE TO YOU.

PLEASE REMEMBER WHAT THE ATTORNEYS HAVE TO SAY IS NOT EVIDENCE.

IF EITHER OF THEM MISSTATES THE EVIDENCE, YOU ARE TO RELY ON THE EVIDENCE THAT YOU HAVE HEARD THROUGHOUT THE COURSE OF THIS TRIAL.

IF EITHER OF THEM MISSTATES THE LAW, YOU ARE TO RELY ON THE LAW THAT I HAVE GIVEN YOU AND THE LAW THAT I WILL GIVE YOU AT THE CONCLUSION OF THE ARGUMENTS.

THE PEOPLE WILL ARGUE FIRST AND LAST BECAUSE THE PEOPLE SHOULDER THE BURDEN OF PROOF.

MR. ARIAS.

MR. ARIAS: THANK YOU, YOUR HONOR.

OPENING ARGUMENT

BY MR. ARIAS:

GOOD AFTERNOON, LADIES AND GENTLEMEN.

NOW, LADIES AND GENTLEMEN, AS YOU CAN SEE IN THIS TRIAL ONE OF THE BIGGEST ISSUES WILL BE WHOM YOU BELIEVE OF THESE WITNESSES BECAUSE OBVIOUSLY NOT ALL OF THEM ARE TELLING THE TRUTH.

NOW, IN DOING THAT, ONE OF THE JURY INSTRUCTIONS YOU GET IT'S GOT A WHOLE LIST OF FACTORS ON THE BELIEVABILITY OF A WITNESS, AND THE JUDGE READ THEM TO YOU. IT HAS EVERYTHING TO DO WITH THEIR DEMEANOR, AND IT GOES ON AND ON.

AND I'M NOT GOING TO GO THROUGH ALL OF THEM

AND HE IS TRYING TO DITCH IT. THAT'S WHAT THE EVIDENCE SHOWS US.

NOW, I'M NOT GOING TO GET INTO THE DEFENDANT'S VERSION EXCEPT I SUBMIT TO YOU THAT IT WAS JUST UTTERLY RIDICULOUS. HE RAMBLED AT TIMES.

THESE TWO HAD SO MANY INCONSISTENCIES TOGETHER. HOW ABOUT WHO HAD THE COMPUTER? THEY'RE BOTH POSITIVE THEY EACH HAD IT.

HOW LONG TV WAS WATCHED, WHETHER THE DEFENDANT WAS REALLY INVITED IN AFTER GETTING BACK FROM THE 7-ELEVEN. THESE TWO JUST DIDN'T HAVE THEIR STORY STRAIGHT, AND THAT WAS THEIR PROBLEM.

AND I MEAN AS FAR AS HIS WHOLE ENTIRELY RAMBLING INCOHERENT AT TIMES STORY, I'M NOT GOING TO GET INTO THIS.

I WILL JUST URGE ALL OF YOU TO TAKE A LOOK AT THAT INSTRUCTION, BELIEVABILITY OF A WITNESS. TAKE THOSE FACTORS AND APPLY THEM TO THE DEFENDANT'S STORY. THAT'S ALL I WILL ASK.

NOW, LET ME TALK ABOUT THE CHARGES.

ATTEMPTED MURDER. OKAY. WHAT WE HAVE GOT IS THE DEFENDANT OUTSIDE IN THE PARKING LOT OF THE COMPLEX, APPARENTLY HANGING OUT THERE BECAUSE MR. AGUILAR SAID HE WAS SORT OF LEANING AGAINST THE WALL.

MR. AGUILAR WALKS BY, SAYS HELLO BECAUSE HE RECOGNIZES HIM, CONTINUES ONTO HIS CAR, GETS TO THE GATE, AND GETS OUT TO THE STREET.

CLOSING ARGUMENT

BY MR. MONTANEZ:

GOOD AFTERNOON, LADIES AND GENTLEMEN.

MR. ALVAREZ AND I WOULD LIKE TO ALSO THANK YOU FOR YOUR HARD WORK AND YOUR ATTENTION IN THIS CASE. WITHOUT YOU THIS SYSTEM WOULD NOT WORK.

AS YOU KNOW, THIS IS A CRIMINAL TRIAL WHERE THE BURDEN OF PROOF IS ON THE PROSECUTION TO PROVE EACH AND EVERY ELEMENT BEYOND A REASONABLE DOUBT. IT'S NOT LIKE A CIVIL CASE. THAT IT IS BY PREPONDERANCE OF THE EVIDENCE.

AND YOU'VE HEARD THE EVIDENCE, AND I WOULD SUBMIT TO YOU THEY HAVE NOT PROVED EACH AND EVERY ELEMENT OF EVERY CRIME BEYOND A REASONABLE DOUBT.

LET'S TALK ABOUT THE ATTEMPTED MURDER.

WHAT DOES THE VICTIM, MR. AGUILAR SAYS?

HE SAYS THAT HE'S WALKING OUT OF HIS HOUSE AT 3:15 IN THE MORNING. HE GLANCED AT A FIGURE THAT WAS TO THE LEFT BEHIND OF HIS.

GLANCING DOES NOT MEAN STARING. I SUBMIT TO YOU HE DID NOT HAVE AN OPPORTUNITY IN THAT DARK AREA EVEN THOUGH THERE ARE TWO LIGHTS UP THERE, STILL 3:30 -- 3:15 IN THE MORNING, TO REALIZE WHO THAT PERSON IS.

NO FACIAL FEATURES. HE TOLD YOU I GLANCED AT THAT PERSON. HE CONTINUES ON. SEES OR HEARS SOMETHING. TURNS AROUND. HE GETS SHOT IN THE FOREARM.

HE ENTERS INTO A STATE OF SHOCK AT THAT

MR. ALVAREZ WAS THERE WITH ME UNTIL ABOUT THAT TIME. FROM PASADENA TO THE EAST LOS ANGELES AREA MIGHT TAKE YOU AT THAT TIME OF THE MORNING FIFTEEN MINUTES.

WAS MR. ALVAREZ A TRUTHFUL WITNESS? OF COURSE HE WAS. HE HAD REALLY -- HE WAS HIMSELF. YOU MIGHT FIND THAT HE MOVES A LITTLE BIT WEIRD AND HE'S A LITTLE NERVOUS, BUT THAT'S WHOM HE IS.

HE WAS TELLING YOU THE TRUTH. THERE WAS NO INCONSISTENT TESTIMONY. ONLY ONE. WHO HAD THE COMPUTER.

ONE OF THEM MUST HAVE HAD IT, EITHER MR. ALVAREZ OR -- THIS DOES NOT MEAN THAT YOU SHOULD DISREGARD THE ENTIRE TESTIMONY.

THAT HAPPENED A FEW MONTHS AGO. THAT'S THE ONLY INCONSISTENCY. NOT BECAUSE HE DOESN'T LIKE HOT DOGS. HE DOESN'T LIKE HOT DOGS. HE DIDN'T EAT HIS HOT DOG. HE JUST DIDN'T WANT TO KICK MR. ALVAREZ OUT AT THAT TIME. HE WAS TELLING YOU THE TRUTH.

NOW, I AM NOT GOING TO GET INTO WHETHER, YOU KNOW, THE PREMEDITATED OR DELIBERATE OR EVEN IF THE GUY -- HIS INJURIES AMOUNTED TO GREAT BODILY INJURY, WAS HE DYING.

THE FACT IS THAT MR. ALVAREZ DID NOT DO THIS CRIME.

YOU KNOW THIS IS THE BEYOND A REASONABLE DOUBT THING STANDARD. YOU MAY THINK, WELL, MR. ALVAREZ MIGHT HAVE DONE IT. I MIGHT BELIEVE THE I.D. OF

AND THE COURT WILL FIRST SENTENCE THE DEFENDANT ON COUNT 4, PENAL CODE SECTION 664 AND 187 WITH THE ALLEGATION THAT HE COMMITTED THE ATTEMPTED MURDER WILLFULLY, DELIBERATELY, AND WITH PREMEDITATION WITHIN THE MEANING OF PENAL CODE SECTION 664(A).

THE SENTENCE FOR THAT COUNT IS LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE.

ADDITIONALLY, THE ALLEGATIONS PURSUANT TO PENAL CODE SECTION 12022.53(B), 12022.53(C) AND 12022.53(D) WERE FOUND TO BE TRUE BY THE JURY. THE GREATEST OF THESE ENHANCEMENTS IS PENAL CODE SECTION 12022.53(D), WHICH IS 25 YEARS TO LIFE.

THEREFORE, THE DEFENDANT IS SENTENCED TO SERVE 25 YEARS TO LIFE CONSECUTIVE TO THE LIFE TERM IMPOSED FOR THE ATTEMPTED MURDER.

HE IS ALSO GIVEN 215 DAYS OF ACTUAL CREDIT. NO GOOD TIME/WORK TIME CREDIT.

HE WAS ARRESTED ON JUNE 7TH. I GAVE HIM CREDIT FROM JUNE 7TH TO TODAY'S DATE, WHICH THE COURT COMPUTES TO BE 215 DAYS.

WITH RESPECT TO THE DETERMINATE SENTENCING COUNTS, WHICH IS COUNT 1 AND 2, THE COURT SELECTS COUNT 1 AS THE PRINCIPAL TERM BECAUSE IT HAS THE GREATEST TERM OF IMPRISONMENT.

THE COURT SELECTS THE MIDTERM OF THREE YEARS AS THE BASE TERM TO COUNT 1.

ADDITIONALLY, THE JURY FOUND THE ALLEGATION PURSUANT TO 12022.5(A)(1) AND PENAL CODE SECTION

12022.7(A) TO BE TRUE.

WITH RESPECT TO THE ALLEGATION PURSUANT TO 12022.5(A)(1) THE COURT SELECTS THE MIDTERM OF FOUR YEARS TO RUN CONSECUTIVE TO THE THREE YEARS BASE TERM IN COUNT 1.

WITH RESPECT TO THE ALLEGATION PURSUANT TO 12022.7(A), THE DEFENDANT IS ALSO GIVEN THREE YEARS TO RUN CONSECUTIVE TO THE BASE TERM IN COUNT 1.

THE TOTAL PRISON TERM FOR COUNT 1 IS TEN YEARS.

THE TEN YEARS IS STAYED BECAUSE THE OFFENSE ALLEGED IN COUNT 1 IS BASED ON AN ACT THAT MAY BE CHARGED UNDER DIFFERENT STATUTES, AND IN THIS CASE IT WAS CHARGED UNDER COUNT 4, BUT CAN ONLY BE PUNISHED FOR ONE WITH THE LONGEST POTENTIAL TERM OF IMPRISONMENT.

THE SENTENCE OF TEN YEARS OF COUNT 1 IS STAYED PURSUANT TO PENAL CODE SECTION 654.

WITH RESPECT TO COUNT 2, VEHICLE CODE SECTION 2800.2(A), THE COURT SELECTS THE MIDTERM OF TWO YEARS AS THE BASE TERM TO RUN CONCURRENT TO THE SENTENCE IMPOSED IN COUNT 4.

BECAUSE THE CRIME ALLEGED OR THE CRIME IN COUNT 2 WAS COMMITTED CLOSELY IN TIME TO THE CRIME IN COUNT 4 AND ALSO BECAUSE THE DEFENDANT HAS BEEN GIVEN TWO LIFE TERMS IN COUNT 4, FOR THOSE REASONS COUNT 2 IS TO RUN CONCURRENT TO COUNT 4.

HE IS ALSO ORDERED TO PAY $1,000 IN RESTITUTION FINE.

PETITIONER'S APPENDIX 12

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. 01 JUAN BOSCO ALVAREZ (1/31/1972) (Bk# 7308285) Defendant(s).	CASE NO. BA232567 *INFORMATION* Arraignment Hearing Date: 07/05/2002 Department: CEN 113

JUL 05 2002
JOHN A. CLARKE, CLERK
BY SONIA HERRERA, DEPUTY

INFORMATION SUMMARY

Ct. No.	Charge	Charge Range	Defendant	Special Allegation	Alleg. Effect
1	PC 245(a)(2)	2-3-4	ALVAREZ, JUAN BOSCO	PC 12022.5(a)(1) PC 12022.7(a)	+3-4-10 +3 Yrs

The District Attorney of the County of Los Angeles, by this Information alleges that:

COUNT 1

On or about June 7, 2002, in the County of Los Angeles, the crime of ASSAULT WITH A FIREARM, in violation of PENAL CODE SECTION 245(a)(2), a Felony, was committed by JUAN BOSCO ALVAREZ, who did willfully and unlawfully commit an assault on GERALDO ANGELES-AGUILAR with a firearm.

It is further alleged that, pursuant to Penal Code section 1203.095, there is a presumptive minimal jail time required if you are convicted of this charge.

"NOTICE: Conviction of this offense will require you to provide specimens and samples pursuant to Penal Code section 296. Willful refusal to provide the specimens and samples is a crime."

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

It is further alleged that in the commission and attempted commission of the above offense, the said defendant(s), JUAN BOSCO ALVAREZ, personally used a firearm(s), to wit: HANDGUN, within the meaning of Penal Code sections 1203.06(a)(1) and 12022.5(a)(1) also causing the above offense to become

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 12/04/02

CASE NO. BA232567

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: JUAN BOSCO ALVAREZ

INFORMATION FILED ON 07/05/02.

COUNT 01: 245(A)(2) PC FEL - ASSAULT WITH FIREARM ON PERSON.
COUNT 02: 2800.2(A) VC FEL - ELUDE/FLEE FROM PURSUING OFFCR.
COUNT 03: 14601.1(A) VC MISD - DRIVING WITH SUSPENDED LICENSE.
COUNT 04: 664-187(A) PC FEL - ATTEMPTED MURDER.

ON 12/04/02 AT 900 AM IN L.A. SUPERIOR - CENTRAL DEPT 115

CASE CALLED FOR JURY TRIAL

PARTIES: RUTH ANN KWAN (JUDGE) MICHAEL TORRES (CLERK)
MARIANNE BRACCI (REP) CARL B. ARIAS (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY E J MONTANEZ PRIVATE COUNSEL

THE INFORMATION IS AMENDED BY INTERLINEATION AND THE DEFENDANT IS ARRAIGNED.

COUNT (03) : DISPOSITION: DISMISSAL IN FURTH OF JUSTICE PER 1385 PC

COURT GRANTS PEOPLES MOTION TO DISMISS COUNT 3 PURSUANT TO PENAL CODE SECTION 1385 AS MORE FULLY REFLECTED IN THE NOTES OF THE COURT REPORTER.

NEXT SCHEDULED EVENT:
JURY TRIAL IN PROGRESS

MATTER TRANSFERRED FROM DEPARTMENT 100 IS CALLED FOR JURY TRIAL WITH DEFENDANT, COUNSEL AND ALL PROSPECTIVE JURORS PRESENT AS HERETOFORE.
OUT OF THE PRESENCE OF THE PROSPECTIVE JURORS:
COURT GRANTS PEOPLE'S MOTION TO DISMISS COUNT 3 AND AMEND THE INFORMATION BY INTERLINEATION AS TO COUNT 4 BY STRIKING THE WORD "DEATH" AS TO THE GREAT BODILY INJURY ALLEGATION.

DEFENSE MOTION PURSUANT TO EVIDENCE CODE SECTION 402 TO EXCLUDE/ LIMIT THE TESTIMONY OF WITNESS OSBALDO IS HEARD AND DENIED AS MORE FULLY REFLECTED IN THE NOTES OF THE OFFICIAL COURT REPORTER

CASE NO. BA232567
DEF NO. 01

DATE PRINTED 12/04/02

.
COURT ORDERS WITNESS MR. L. BAUTISTA IS ORDERED ON CALL FOR THE NEXT 10 DAYS WITHOUT FURTHER ORDER,NOTICE OR SUBPOENA.

.
IN THE PRESENCE OF THE PROSPECTIVE JURORS:
A PANEL OF 50 PROSPECTIVE JURORS ARE SWORN RE:QUALIFICATIONS,
THE FIRST 18 PROSPECTIVE JURORS ARE SEATED AND VOIR DIRE COMMENCES.

.
THE PROSPECTIVE JURORS ARE ADMONISHED AND ALLOWED TO SEPARATE FOR THE LUNCH BREAK.

.
OUT OF THE PRESENCE OF THE PROSPECTIVE JURORS:

COURT AND COUNSEL CONFER RE:G.S.R.KIT AS MORE FULLY REFLECTED IN THE NOTES OF THE COURT REPORTER.
IN THE PRESENCE OF THE PROSPECTIVE JURORS:
VOIR DIRE RESUMES.

.
12 JURORS AND 2 ALTERNATE JURORS ARE SWORN TO TRY THE CAUSE.

.
THE JURORS ARE ADMONISHED AND ALLOWED TO SEPARATE.
JURY TRIAL IS CONTINUED TO 12-5-02 IN THIS DEPARTMENT.
ALL PARTIES ARE ORDERED TO RETURN.

COURT ORDERS AND FINDINGS:

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.

NEXT SCHEDULED EVENT:
12/05/02 1030 AM JURY TRIAL IN PROGRESS DIST L.A. SUPERIOR - CENTRAL DEPT 115

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 12/05/02

CASE NO. BA232567

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: JUAN BOSCO ALVAREZ

INFORMATION FILED ON 07/05/02.

COUNT 01: 245(A)(2) PC FEL - ASSAULT WITH FIREARM ON PERSON.
COUNT 02: 2800.2(A) VC FEL - ELUDE/FLEE FROM PURSUING OFFCR.
COUNT 04: 664-187(A) PC FEL - ATTEMPTED MURDER.

ON 12/05/02 AT 1030 AM IN L.A. SUPERIOR - CENTRAL DEPT 115

CASE CALLED FOR JURY TRIAL IN PROGRESS

PARTIES: RUTH ANN KWAN (JUDGE) MICHAEL TORRES (CLERK)
MARIANNE BRACCI (REP) CARL B. ARIAS (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY E J MONTANEZ PRIVATE COUNSEL

BAIL SET AT $1,000,000

JURY TRIAL RESUMES FROM 12-4-02 WITH DEFENDANT, COUNSEL AND ALL JURORS PRESENT AS HERETOFORE.

IN THE PRESENCE OF THE JURY:
COURT INSTRUCTS THE JURY WITH CALJIC JURY INSTRUCTION #.50.

PEOPLE AND DEFENSE MAKE OPENING STATEMENTS.

GERALDO AGUILAR, ASSISTED BY SPANISH INTERPRETER-ARMONDO REYNOSO,OATH ON FILE, IS CALLED SWORN AND TESTIFIES FOR THE PEOPLE.

PEOPLE'S EXHIBIT # 1 (POSTERBOARD WITH 6 COLOR PHOTOS-A/F) AND #2 (COLOR PHOTO) ARE MARKED FOR IDENTIFICATION ONLY.

OUT OF THE PRESENCE OF THE JURY:
WITNESS OSWALDO RIVAS CHACON-ASSISTED BY SPANISH INTERPRETER, ARMONDO REYNOSO,OATH ON FILE IS ORDERED TO RETURN AT 1:30 P.M.

CASE NO. BA232567
DEF NO. 01 DATE PRINTED 12/05/02

WITHOUT FURTHER ORDER NOTICE OR SUBPOENA.
.
IN THE PRESENCE OF THE JURY:
WITNESS OSWALDO RIVAS CHACON-ASSISTED BY SPANISH INTERPRETER, ARMONDO REYNOSO,OATH ON FILE IS CAALLED, SWORN AND TESTIFIES FOR THE PEOPLE.
CARLOS VALLENCIA AND MANUEL DOMINGUEZ ARE CALLED SWORN AND TESTIFIES FOR THE PEOPLE.
.
DEFENSE EXHIBITS # A AND B (EACH A COLOR PHOTO BLOW-UP) ARE MARKED FOR IDENTIFICATION ONLY.
.
THE JURY IS ADMONISHED AND ALLOWED TO SEPARATE.JURY TRIAL IS

CONTINUED TO 12-6-02.
ALL PARTIES ARE ORDERED TO RETURN.

COURT ORDERS AND FINDINGS:

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.

NEXT SCHEDULED EVENT:
12/06/02 1030 AM JURY TRIAL IN PROGRESS DIST L.A. SUPERIOR - CENTRAL DEPT 115

CUSTODY STATUS: DEFENDANT REMANDED

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 12/06/02

CASE NO. BA232567

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: JUAN BOSCO ALVAREZ

INFORMATION FILED ON 07/05/02.

COUNT 01: 245(A)(2) PC FEL - ASSAULT WITH FIREARM ON PERSON.
COUNT 02: 2800.2(A) VC FEL - ELUDE/FLEE FROM PURSUING OFFCR.
COUNT 04: 664-187(A) PC FEL - ATTEMPTED MURDER.

ON 12/06/02 AT 1030 AM IN L.A. SUPERIOR - CENTRAL DEPT 115

CASE CALLED FOR JURY TRIAL IN PROGRESS

PARTIES: RUTH ANN KWAN (JUDGE) MICHAEL TORRES (CLERK)
MARIANNE BRACCI (REP) CARL B. ARIAS (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY E J MONTANEZ PRIVATE COUNSEL

BAIL SET AT $1,000,000

JURY TRIAL RESUMES FROM 12-5-02 WITH DEFENDANT, COUNSEL AND ALL JURORS PRESENT AS HERETOFORE.

OUT OF THE PRESENCE OF THE JURY:
COURT AND COUNSEL CONFER RE:TRIAL AND WITNESS SCHEDULE.

IN THE PRESENCE OF THE JURY:
OFFICER ANTHONY JONES IS CALLED, SWORN AND TESTIFIES FOR THE PEOPLE.

PEOPLE'S EXHIBIT # 3 AND #4 (EACH TWO COLOR PHOTO COPYS ON WHITE PAPER); #5 (COLOR MAP DIAGRAM)AND #6 (LAC+USC MEDICAL RECORDS) ARE MARKED FOR IDENTIFICATION.
BRANDON GARRETT IS CALLED, SWORN AND TESTIFIES FOR THE PEOPLE.

COURT AND COUNSEL STIPULATE AS MORE FULLY REFLECTED IN THE NOTES OF THE OFFICIAL COURT REPORTER.

CASE NO. BA232567
DEF NO. 01 DATE PRINTED 12/06/02

PEOPLE'S EXHIBITS # 1 THRU #6 PREVIOUSLY MARKED FOR IDENTIFICATION ARE ADMITTED INTO EVIDENCE.PEOPLE REST.

.
OUT OF THE PRESENCE OF THE JURY:
DEFENDANT'S MOTION FOR JUDGMENT ON ACQUITTAL PURSUANT TO PENAL CODE SECTION 1118.1 IS HEARD AND DENIED AS MORE FULLY REFLECTED IN THE NOTES OF THE OFFICIAL COURT REPORTER.

.
COURT AND COUNSEL CONFER RE:TRIAL AND WITNESS SCHEDULE.

.
IN THE PRESENCE OF THE JURY:
JUAN BOSCO ALVAREZ IS CALLED, SWORN AND TESTIFIES IN HIS OWN BEHALF.

.
LAWRENCE BAUTISTA IS CALLED, SWORN AND TESTIFIES FOR THE DEFENSE.

.
OUT OF THE PRESENCE OF THE JURY:
COURT AND COUNSEL CONFER RE:PEOPLE'S MOTION TO LIMIT/EXCLUDE LETTER BY WITNESS BAUTISTA AS RULED UPON AND MORE FULLY REFLECTED IN THE NOTES OF THE OFFICIAL COURT REPORTER.

.
IN THE PRESENCE OF THE JURY:
WITNESS LAWRENCE BAUTISTA, PREVIOUSLY CALLED AND SWORN RESUMES TESTIFYING FOR THE DEFENSE.

.
DEFENSE EXHIBIT #C (COLOR PHOTO) AND #D (HANDWRITTEN LETTER) ARE MARKED FOR IDENTIFICATION ONLY.

.
DEFENSE EXHIBITS # A,B,C AND D PREVIOUSLY MARKED FOR IDENTIFICATION ARE ADMITTED INTO EVIDENCE.

.
DEFENSE RESTS.

.
THE JURY IS ADMONISHED AND ALLOWED TO SEPARATE.JURY TRIAL IS CONTINUED TO 12-9-02 IN THIS DEPARTMENT.
ALL PARTIES ARE ORDERED TO RETURN.

COURT ORDERS AND FINDINGS:

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.

NEXT SCHEDULED EVENT:
12/09/02 1030 AM JURY TRIAL IN PROGRESS DIST L.A. SUPERIOR - CENTRAL DEPT 115

CUSTODY STATUS: DEFENDANT REMANDED

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 12/11/02

CASE NO. BA232567

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: JUAN BOSCO ALVAREZ

INFORMATION FILED ON 07/05/02.

COUNT 01: 245(A)(2) PC FEL - ASSAULT WITH FIREARM ON PERSON.
COUNT 02: 2800.2(A) VC FEL - ELUDE/FLEE FROM PURSUING OFFCR.
COUNT 04: 664-187(A) PC FEL - ATTEMPTED MURDER.

ON 12/09/02 AT 1030 AM IN L.A. SUPERIOR - CENTRAL DEPT 115

CASE CALLED FOR JURY TRIAL IN PROGRESS

PARTIES: RUTH ANN KWAN (JUDGE) WAYNE SASAKI (CLERK)
MARIANNE BRACCI (REP) CARL B. ARIAS (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY E J MONTANEZ PRIVATE COUNSEL

BAIL SET AT $1,000,000

OUT OF THE PRESENCE OF THE JURY, THE COURT IS INFORMED THAT JUROR NUMBER 6 IS ILL. THE COURT INFORMS COUNSEL AND IT IS STIPULATED THAT ALTERNATE ONE WOULD TAKE THE PLACE OF JUROR

NUMBER 6.

BY ORDER OF THE COURT THE JURY PANEL IS ORDERED INTO COURT.

THE MATTER IS CALLED AS A TRIAL IN PROGRESS WITH ALL JURORS PRESENT IN THE COURTROOM TO RESUME JURY TRIAL WITH THE PEOPLE'S REBUTTAL CASE.

BRENT MITCHELL IS CALLED, SWORN AND TESTIFIES FOR THE PEOPLE.

THE PEOPLE REST.

THE DEFENSE REBUTTAL CASE BEGINS WITH OSVALDO RIVAS-CHCON, WHO IS CALLED, SWORN AND TESTIFIES FOR THE DEFENSE, USING THE SPANISH INTERPRETER, AMMIE LEON, OATH ON FILE.

CASE NO. BA232567
DEF NO. 01 DATE PRINTED 12/11/02

THE DEFENSE RESTS. EACH SIDE INDICATES THAT THEY REST.

OUT OF THE PRESENCE OF THE JURY, THE COURT AND COUNSEL CONFER AND ESTABLISH THE FINAL JURY INSTRUCTIONS.

BY ORDER OF THE COURT, THE JURY IS BROUGHT INTO THE COURT AND THE JURY IS READ PRELIMINARY JURY INSTRUCTIONS BY THE COURT.

CLOSING ARGUEMENTS ARE MADE BY THE PEOPLE AND THE DEFENSE.

THE JURY IS ADMONISHED AND EXCUSED FOR THE NOON RECESS AND ORDERED TO RETURN AT 1:30PM TO RESUME CLOSING ARGUMENTS.

THE MATTER RESUMES AT 1:30PM WITH THE ALL PARTIES PRESENT TO RESUME CLOSING ARGUMENTS.

ALL PARTIES HAVING RESTED, THE COURT GIVES THE JURORS THEIR FINAL JURY INSTRUCTIONS.

ALL PARTIES STIPULATE TO THE COURT GIVING THE JURY INSTRUCTIONS AS READ TO THE JURY WITH THE EXHIBITS AS PREVIOUSLY ENTERED. PEOPLE'S 1 THROUGH 06 AND DEFENSE A THROUGH D ARE GIVEN TO THE JURY.

THE BAILIFF IS ORDERED SWORN BY THE CLERK OF THE COURT TO TAKE CHARGE OF THE JURY AND THE ALTERNATE JURORS.

COUNSEL STIPULATE TO THE JURY DELIBERATION SCHEDULE AS 9:00AM TO 12:00PM AND FROM 1:30PM TO 4:30PM DAILY.

THE JURY BEGINS DELIBERATION AT 3:45PM.

AT 4:30PM, THE JURY IS ADMONISHED AND EXCUSED FOR THE EVENING RECESS.

THE MATTER CONTINUES AS A TRIAL IN PROGRESS, JURY IN DELIBERATIONS, TO THE DATE AND TIME INDICATED BELOW.

COURT ORDERS AND FINDINGS:

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.

NEXT SCHEDULED EVENT:
12/10/02 900 AM JURY DELIBERATIONS DIST L.A. SUPERIOR - CENTRAL DEPT 115

CUSTODY STATUS: DEFENDANT REMANDED

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA vs. 01: JUAN BOSCO ALVAREZ	**DEPT: 115** **CASE NUMBER: BA232567-01** **GUILTY VERDICT** **COUNT 1**

We, the jury in the above entitled action, find the defendant, **JUAN BOSCO ALVAREZ, guilty** of the crime of **ASSAULT WITH A FIREARM**, against Geraldo Angeles-Aguilar, in violation of Penal Code Section 245(a)(2), a felony, as charged in Count 1 of the Information.

We further find the allegation that the said defendant, **JUAN BOSCO ALVAREZ**, personally used a firearm, to wit a handgun, within the meaning of Penal Code section 12022.5(a)(1) to be True.

Insert **TRUE** or **NOT TRUE**

We further find the allegation that the said defendant, **JUAN BOSCO ALVAREZ**, personally inflicted great bodily injury upon Geraldo Angeles-Aguilar, within the meaning of Penal Code section 12022.7(a) to be True.

Insert **TRUE** or **NOT TRUE**

FILED
LOS ANGELES SUPERIOR COURT
DEC 10 2002
JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY W. M. Sasaki
DEPUTY

DATED: 12/10/02

#10
JURY FOREPERSON/ Seat Number

Juror ID Number 01468443

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA	**DEPT:** 115 **CASE NUMBER:** BA232567-01
vs.	**GUILTY VERDICT**
01: JUAN BOSCO ALVAREZ	**COUNT 2**

We, the jury in the above entitled action, find the defendant, **JUAN BOSCO ALVAREZ**, guilty of the crime of EVADING AN OFFICER, WILLFUL DISREGARD, within the meaning of VEHICLE CODE Section 2800.2 (a), a felony, as charged in Count 02 of the Information.

FILED
LOS ANGELES SUPERIOR COURT
DEC 10 2002
JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY W. M. Sasaki
DEPUTY

DATED: 12/10/02

#10
JURY FOREPERSON/ Seat Number

Juror ID Number 01468431

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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FILED
LOS ANGELES SUPERIOR COURT
DEC 10 2002
JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY Gloria Sisuki DEPUTY

PEOPLE OF THE STATE OF CALIFORNIA

vs.

01: JUAN BOSCO ALVAREZ

DEPT: 115 CASE NUMBER: BA232567-01

GUILTY VERDICT

COUNT 4

We, the jury in the above entitled action, find the defendant, **JUAN BOSCO ALVAREZ**, **guilty** of the crime of **ATTEMPTED MURDER**, upon Geraldo Angeles-Aguilar in violation of Penal Code Section 664/187(a), a felony, as charged in Count 4 of the Information.

We further find the allegation that the aforesaid attempted murder was committed willfully, deliberately and with premeditation within the meaning of Penal Code section 664(a) to be True.
Insert **TRUE** or **NOT TRUE**

We further find the allegation that the said defendant, **JUAN BOSCO ALVAREZ**, personally used a firearm, to wit a handgun, within the meaning of Penal Code section 12022.53(b) to be True.
Insert **TRUE** or **NOT TRUE**

We further find the allegation that the said defendant, **JUAN BOSCO ALVAREZ**, personally and intentionally discharged a firearm, to wit a handgun, within the meaning of Penal Code section 12022.53(c) to be True.
Insert **TRUE** or **NOT TRUE**

We further find the allegation that the said defendant, **JUAN BOSCO ALVAREZ**, personally and intentionally discharged a firearm, which proximately caused great bodily injury upon Geraldo Angeles-Aguilar, within the meaning of Penal Code section 12022.53(d) to be True.
Insert **TRUE** or **NOT TRUE**

DATED: 12\10\02

#10
JURY FOREPERSON/ Seat Number

Juror ID Number 01468443

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 12/11/02

CASE NO. BA232567

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: JUAN BOSCO ALVAREZ

INFORMATION FILED ON 07/05/02.

COUNT 01: 245(A)(2) PC FEL - ASSAULT WITH FIREARM ON PERSON.
COUNT 02: 2800.2(A) VC FEL - ELUDE/FLEE FROM PURSUING OFFCR.
COUNT 04: 664-187(A) PC FEL - ATTEMPTED MURDER.

ON 12/10/02 AT 900 AM IN L.A. SUPERIOR - CENTRAL DEPT 115

CASE CALLED FOR JURY DELIBERATIONS

PARTIES: RUTH ANN KWAN (JUDGE) WAYNE SASAKI (CLERK)
MARIANNE BRACCI (REP) CARL B. ARIAS (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY E J MONTANEZ PRIVATE COUNSEL

COUNT (01) : DISPOSITION: FOUND GUILTY - CONVICTED BY JURY
COUNT (02) : DISPOSITION: FOUND GUILTY - CONVICTED BY JURY
COUNT (04) : DISPOSITION: FOUND GUILTY - CONVICTED BY JURY

COURT ORDERS AND FINDINGS:

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.

-X:1825008 BKG:7308285 EXHIBIT RECEIPT NUMBER:1777469.

.
THE MATTER IS CALLED AS A TRIAL IN PROGRESS WITH ALL JURORS
PRESENT IN THE JURY ROOM TO BEGIN DELIBERATIONS AT 9:10AM.

.
JURY DELIBERATIONS RESUME FROM 12/09/02 AT 9:10AM AND CONTINUES
UNTIL 11:00AM, WITH ONE 25 MINUTE BREAK AT 11:00AM TO 11:25AM.

.
AT 09:55AM THE COURT IS INFORMED BY THE JURY THAT THEY WOULD
LIKE TO HAVE READBACK OF TESTIMONY.

.
THE CLERK IS DIRECTED AND DOES CONTACT AND ORDER COUNSEL
TO APPEAR IN COURT AS SOON AS POSSIBLE.
.

CASE NO. BA232567
DEF NO. 01 DATE PRINTED 12/11/02

COUNSEL ARRIVES AT 11:40AM AND OUT OF THE PRESENCE OF THE JURY IT IS DETERMINED THAT THE DEFENDANT WOULD NOT WAIVE HIS PRESENCE AT READBACK.

AT 11:45AM WITH THE COURT AND COUNSEL PRESENT IN OPEN COURT WITH THE JURY PANNEL, READBACK IS READ BY THE COURT REPORTER.

THE JURY IS ADMONISHED AND EXCUSED FOR THE NOON RECESS AND ORDERED TO RETURN AT 1:30PM TO RESUME DELIBERATIONS.

JURY DELIBERATIONS RESUME AT 1:30AM AND CONTINUE TO 2:02PM WHEN THE COURT IS INFORMED THAT A VERDICT HAS BEEN REACHED IN THIS CASE. COUNSEL ARE NOTICED TO APPEAR AND DO APPEAR AT 2:40PM.

BY ORDER OF THE COURT, THE JURY AND ALTERNATE JUROR ARE ORDERED TO BE BROUGHT INTO COURT.

THE VERDICT IS READ AS FOLLOWS:
"TITLE OF COURT AND CAUSE...
WE, THE JURY IN THE ABOVE ENTITLED ACTION, FIND THE DEFENDANT, JUAN BOSCO ALVAREZ, GUILTY OF THE CRIME OF ASSAULT WITH A FIREARM, AGAINST GERALDO ANGELES-AGUILAR, IN VIOLATION OF PENAL CODE SECTION 245(A)(2), A FELONY, AS CHARGED IN COUNT 1 OF THE INFORMATION.

WE FURTHER FIND THE ALLEGATION THAT THE SAID DEFENDANT, JUAN BOSCO ALVAREZ, PERSONALLY USED A FIREARM, TO WIT A HANDGUN, WITHIN THE MEANING OF PENAL CODE SECTION 12022.5(A)(1) TO BE TRUE.

WE FURTHER FIND THE ALLEGATION THAT THE SAID DEFENDANT, JUAN BOSCO ALVAREZ, PERSONALLY INFLICTED GREAT BODILY INJURY UPON GERALDO ANGELES-AGUILAR, WITHIN THE MEANING OF PENAL CODE SECTION 12022.7(A) TO BE TRUE.

THIS 10TH DAY OF DECEMBER, 2002 JURY FOREPERSON SEAT NUMBER 10.
JUROR IDENTIFICATION NUMBER:014684431."

"TITLE OF COURT AND CAUSE...
WE, THE JURY IN THE ABOVE ENTITLED ACTION, FIND THE DEFENDANT, JUAN BOSCO ALVAREZ, GUILTY OF THE CRIME OF FLIGHT FROM PEACE OFFICER, WITHIN THE MEANING OF VEHICLE CODE SECTION 2800.1(A), A LESSER CRIME THAN THAT CHARGED IN COUNT 02 OF THE INFORMATION.

THIS 10TH DAY OF DECEMBER, 2002 JURY FOREPERSON SEAT NUMBER 10.
JUROR IDENTIFICATION NUMBER:014684431."

"TITLE OF COURT AND CAUSE...

CASE NO. BA232567
DEF NO. 01

DATE PRINTED 12/11/02

WE, THE JURY IN THE ABOVE ENTITLED ACTION, FIND THE DEFENDANT, JUAN BOSCO ALVAREZ, GUILTY OF THE CRIME OF ATTEMPTED MURDER, UPON GERALDO ANGELES-AGUILAR IN VIOLATION OF PENAL CODE SECTION 664/187(A), A FELONY, AS CHARGED IN COUNT 4 OF THE INFORMATION.

WE FURTHER FIND THE ALLEGATION THAT THE AFORESAID ATTEMPTED MURDER WAS COMMITTED WILLFULLY, DELIBERATELY AND WITH PREMEDITATION WITHIN THE MEANING OF PENAL CODE SECTION 664(A) TO BE TRUE.

WE FURTHER FIND THE ALLEGATION THAT THE SAID DEFENDANT, JUAN BOSCO ALVAREZ, PERSONALLY USED A FIREARM, TO WIT A HANDGUN,

WITHIN THE MEANING OF PENAL CODE SECTION 12022.53(B) TO BE TRUE.

WE FURTHER FIND THE ALLEGATION THAT THE SAID DEFENDANT, JUAN BOSCO ALVAREZ, PERSONALLY AND INTENTIONALLY DISCHARGED A FIREARM, TO WIT A HANDGUN, WITHIN THE MEANING OF PENAL CODE SECTION 12022.53(C) TO BE TRUE.

WE FURTHER FIND THE ALLEGATION THAT THE SAID DEFENDANT, JUAN BOSCO ALVAREZ, PERSONALLY AND INTENTIONALLY DISCHARGED A FIREARM, WHICH PROXIMATELY CAUSED GREAT BODILY INJURY UPON GERALDO ANGELES-AGUILAR, WITHIN THE MEANING OF PENAL CODE SECTION 12022.53(D) TO BE TRUE.

THIS 10TH DAY OF DECEMBER, 2002 JURY FOREPERSON SEAT NUMBER 10. JUROR IDENTIFICATION NUMBER:014684431."

THE VERDICTS ARE ORDERED RECORDED AND COUNSEL WAIVES READING OF THE VERDICTS AS RECORDED. THE VERDICTS AND JURY INSTRUCTIONS WHICH ARE GIVEN ARE FILED.

THE JURY IS POLLED, THANKED AND EXCUSED.

THE MATTER IS CONTINUED TO THE DATE AND TIME INDICATED BELOW.

BAIL SET AT $1,000,000.

NEXT SCHEDULED EVENT:
01/07/03 830 AM PROBATION AND SENTENCE HEARING DIST L.A. SUPERIOR - CENTRAL DEPT 115

CUSTODY STATUS: DEFENDANT REMANDED

No. _____

IN THE

Supreme Court of the United States

JUAN BOSCO ALVAREZ,

Petitioner,

v.

DEBBIE ASUNCION,

Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

CERTIFICATE OF SERVICE

I, Lauren Collins, do swear or declare that on this date, March 12, 2019, as required by Supreme Court Rule 29, I have served the enclosed Motion for Leave to Proceed in Forma Pauperis, Petition for Writ of Certiorari and Appendix, on each party to the above proceeding required to be served, or that party's counsel, by depositing an envelope containing the above documents in the United Sates mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Idan Ivri, Deputy Assistant Attorney General — Counsel for Respondent
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
(213) 269-6168

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 12, 2019 at Los Angeles, California.

/s/ Lauren Collins
Lauren Collins*

Attorney for Petitioner
Juan Bosco Alvarez
**Counsel of Record*