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APPENDIX 1

FILED

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES R. WILLARD, Petitioner-Appellant, v. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondent-Appellee.	No. 18-56152 D.C. No. 2:16-cv-03805-CJC-SHK Central District of California, Los Angeles ORDER

Before: SILVERMAN and CALLAHAN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 6) is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

APPENDIX 2

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHARLES R. WILLARD, Petitioner, v. CALIFORNIA DEPART. OF CORRECTIONS, Warden, Respondent.	Case No. 2:16-cv-03805-CJC (SHK) ORDER DENYING CERTIFICATE OF APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts reads as follows:

> (a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals

under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) **Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

Under 28 U.S.C. § 2253(c)(2), a Certificate of Appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has held that this standard means a showing that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (citation and internal quotation marks omitted).

Here, after duly considering Petitioner's contentions in support of the claims alleged in the Petition, the Court finds and concludes that Petitioner has not made the requisite showing with respect to any of those claims.

Accordingly, a Certificate of Appealability is DENIED in this case.

Dated: July 26, 2018

HONORABLE CORMAC J. CARNEY
United States District Judge

Presented by:

SHASHI H. KEWALRAMANI
United States Magistrate Judge

APPENDIX 3

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHARLES R. WILLARD,

Petitioner,

v.

CALIFORNIA DEPART. OF CORRECTIONS,

Respondent.

Case No. 2:16 cv-03805-CJC (SHK)

ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE AND DISMISSING ACTION WITH PREJUDICE

Pursuant to Title 28 of the United States Code, section 636, the Court has reviewed the Petition for a Writ of Habeas Corpus, the records on file, and the Report and Recommendation ("R&R") of the United States Magistrate Judge. The Court has engaged in de novo review of those portions of the R&R to which Petitioner has objected. The Court accepts the findings and recommendation of the Magistrate Judge.

In his Objections, Petitioner, through counsel, asserts that his first ground for relief – directed to trial counsel's failure to object to and "argue" the false testimony of victim Hernandez – must be considered exhausted because

Respondent failed to argue that it was not exhausted and because Petitioner's pro se habeas petition to the California Supreme Court must be broadly construed. Petitioner's reliance on Wood v. Milyard, 566 U.S. 463, 471 (2012), for the proposition that this court may consider a nonexhaustion argument that was "'inadverten[tly]' overlooked by the State in the District Court" only in exceptional cases is misplaced. Wood addressed a federal court's resurrection of a statute of limitations issue not raised by the respondent, and not an exhaustion issue. ECF No. 42, Objections at 1; Wood, 566 U.S. at 471-72.

Further, federal courts are expressly prohibited from granting an application for a writ of habeas corpus unless "the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). While Respondent is correct that Petitioner's pro se First Amended Petition must be construed more leniently than a petition filed with the assistance of counsel, Davis v. Silva, 511 F. 3d 1005, 1009 (9th Cir. 2008), Petitioner must still reference specific provisions of the federal Constitution or federal case law, Robinson v. Schriro, 595 F.3d 1086, 1101 (9th Cir. 2010), and the claim will not be considered to have been fairly presented to the state court if that court "must read beyond a petition or a brief (or a similar document) that does not alert it to the presence of the federal claim in order to find material . . . that does." Robinson v. Kramer, 588 F.3d 1212, 1217 (9th Cir. 2009) (parenthetical in original). Here, Petitioner contends that his lengthy handwritten document appended to his California Supreme Court filing, which included the language, "defense Counsel[] McGurk committed several incompetent acts," coupled with the inclusion of (1) a letter from his appellate lawyer (to him) stating that Petitioner believed his attorney had failed to rebut key information presented by the prosecution at trial, and (2) citations to the record and mention of several inconsistent statements in another of

his handwritten exhibits (a motion that had been filed in the trial court) should have alerted the California Supreme Court to the nature of his claim.

The Court observes that Petitioner's purported claim that his counsel failed to adequately challenge the false testimony of the victim at trial is not listed as a separate ground for relief on the habeas petition filed in the California Supreme Court (totaling 62 pages in length), and that although he attempted to spell out several other challenges to his counsel's competency at trial in his pages of handwritten work (claims that were not otherwise listed on the habeas form) (see ECF No. 25-27 at 16-17), trial counsel's failure to challenge this allegedly false testimony was not among them. This Court cannot find that the general allegation that counsel committed incompetent acts, the inclusion of a letter from the appellate lawyer, and the inclusion of a motion filed in the trial court were sufficient to have alerted the California Supreme Court to the nature of Petitioner's claim raised in this Court. This is especially so when Petitioner attempted to set out multiple separate bases for his claim that counsel acted incompetently in the handwritten pages of his state habeas petition, but did not include any reference to this claim. The Court therefore concurs with the Magistrate Judge that this claim was not properly exhausted in the California Supreme Court.

As to the merits of the claim, the Court agrees with the Magistrate Judge that counsel did not perform ineffectively and that Petitioner was not prejudiced. As described in the R&R, the entire incident was recorded on the MTA bus camera and played for the jury. Any argument that Petitioner was acting in self-defense was readily presented to the jury and the state courts. There is no basis for finding that counsel's failure to more fully probe the victim's inconsistent statements or argue them in closing constituted deficient performance, or prejudiced Petitioner in light of the camera footage and the insignificance of those inconsistencies. More specifically, inconsistent testimony regarding how many people were on the bus,

whether there was a lot or a little bit of blood from the stab wound, and how many times Petitioner approached the victim in a harassing manner before the victim kicked him in the stomach (after the victim had already been cut) was properly considered to be irrelevant to the issue of whether Petitioner acted in self-defense, and the victim's failure to identify Petitioner at the preliminary hearing was irrelevant given Petitioner's concession that he did stab the victim. Finally, this Court is prohibited from granting relief on this claim because it is unexhausted.

Next, Petitioner, through counsel, argues that his second ground for relief must be liberally construed to include the argument that counsel was deficient in failing to investigate and argue Petitioner's mental illness in support of the Romero motion. This is so, Petitioner argues, because he asserted in his 140 pages of attachments to the First Amended Petition that "The Trial Court did not address . . . petitioner's mental illness in the motion under Romero [sic];" the transcript of the Romero motion (included with the FAP) reflected that counsel made little argument about his mental illness; trial counsel made only a short mental health argument in one paragraph in the attached Supplemental Motion to Dismiss; and Petitioner appended a mental health evaluation that included facts that trial counsel should have emphasized. Petitioner further asserts that in his filing in the California Supreme Court, he made that same allegation cited above – that "defense Counsel[] McGurk . . . committed several incompetent acts," and "referenced" the fact that the "trial court did not give due consideration to Petitioner's mental health problems." ECF No. 42, Objection at 8-9.

This Court concurs with the Magistrate Judge that the FAP should not be read to include this argument. These generalized statements regarding trial counsel performing incompetently and the trial court not giving due consideration to the mental health issues, coupled with the inclusion of documents (found among 140 pages in attachments), reflecting that counsel made little argument on this

issue, are simply too vague to be read as a claim that counsel was ineffective for failing to adequately investigate and present evidence of Petitioner's mental illness in support of the Romero motion. Further, the mere fact that extensive records of Petitioner's mental health existed and were readily discoverable does not mean that Petitioner, even as a pro se litigant who is entitled to have his claims broadly construed, did an adequate job of alerting this Court or the California Supreme Court to this aspect of his claim. ECF No. 42, Objections at 9

Finally, although Petitioner challenges the Magistrate Judge's finding that robbery qualifies as a strike under California law, and that trial counsel was ineffective in failing to challenge the evidence underlying the 1987 prior convictions, Petitioner provides no evidence or citation to authority to the contrary. Therefore, the Court concurs with the Magistrate Judge's findings on these issues.

IT IS THEREFORE ORDERED that Judgment be entered (1) **DENYING** the Petition for a Writ of Habeas Corpus; and (2) **DISMISSING** this action with prejudice.

Dated: July 26, 2018

HONORABLE CORMAC J. CARNEY
United States District Judge

APPENDIX 4

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHARLES R. WILLARD, Petitioner, v. CALIFORNIA DEPART. OF CORRECTIONS, Warden, Respondent.	Case No. CV 16-03805-CJC (SHK) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation ("R&R") is submitted to United States District Judge Cormac J. Carney pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. SUMMARY OF RECOMMENDATION

On June 1, 2016, Petitioner Charles R. Willard ("Petitioner"), proceeding pro se, filed a Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, challenging his 2011 California state conviction for two counts of assault with a deadly weapon. On June 29, 2016, Petitioner filed a First Amended Petition ("FAP"). In the FAP, Petitioner claims that his counsel rendered ineffective assistance by failing to object to the false testimony of the victim and by failing to

challenge his 1987 prior convictions. Because the first claim is not exhausted and both claims fail on the merits, the Court recommends denying the entire Petition.

II. PROCEDURAL HISTORY

On January 18, 2011, following a jury trial in the Los Angeles County Superior Court, Petitioner was convicted of two counts of assault with a deadly weapon in violation of § 245(a) of the California Penal Code. 1 Clerk's Transcript on Appeal ("CT") at 140-41; Electronic Case Filing Docket Number ("ECF No.") 25-6, 2 Reporter's Transcript on Appeal ("RT") at 286-87.[1] The trial court

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[1] The Court's citations to Lodged Documents refer to documents lodged in response to the Court's July 12, 2016 Order Governing Proceedings Involving First Amended Petition for Writ of Habeas Corpus, see ECF No. 17 and in support of Respondent's Response to First Amended Petition, see ECF No. 24. Respondent numbers the Lodged Documents as follows:

(1) CT (excluding confidential probation report): one volume (ECF No. 25-1)
(2) RT: Two volumes (ECF No. 25-2 through 25-7) [In citing to this Lodgment, or Lodgment number 9, the Court will refer to both the ECF Docket Number and the transcript volume to avoid confusion.]
(3) Supplemental Clerk's Transcript from trial: one volume (ECF No. 25-8 & 25-9)
(4) Supplemental Clerk's Transcript from trial: one volume (ECF No. 25-10)
(5) Petitioner's Opening Brief in California Court of Appeal case number B233492 (ECF No. 25-11)
(6) Respondent's Brief in California Court of Appeal case number B233492 (ECF No. 25-12)
(7) Opinion in California Court of Appeal case number B233492 (ECF No. 25-13)
(8) Clerk's Transcript on remand: one volume (ECF No. 25-14)
(9) Reporter's Transcript on remand: two volumes (ECF No. 25-15 & 25-16)
(10) Supplemental Clerk's Transcript on remand: one volume (ECF No. 25-17)
(11) Augmented Clerk's Transcript on remand: one volume (ECF No. 25-18)
(12) Augmented Reporter's Transcript on remand: one volume (ECF No. 25-19)
(13) Petitioner's Opening Brief in California Court of Appeal case number B250588 (ECF No. 25-20)
(14) Opinion in California Court of Appeal case number B250588 (ECF No. 25-21)
(15) Petition for writ of habeas corpus in California Court of Appeal case number B257962 (ECF No. 25-22)
(16) Order denying petition for writ of habeas corpus in California Court of Appeal case number B257962 (ECF No. 25-23)
(17) Docket from Los Angeles County Superior Court case number BA362410, reflecting petition for writ of habeas corpus filed September 15, 2014, which was denied January 27, 2015 (ECF No. 25-24)
(18) Petition for writ of habeas corpus in California Court of Appeal case number B262329 (ECF No. 25-25)

found that Petitioner had suffered two prior convictions and one prior juvenile adjudication for robbery within the meaning of California's Three Strikes Law, California Penal Code Sections 667(b)-(i), 1170.12(a)-(d). The trial court sentenced Petitioner to 30 years-to-life in state prison. 1 CT at 184-85; ECF No. 25-7, 2 RT at 342-43, 366-67.

Petitioner appealed his conviction to the California Court of Appeal, which reversed his sentence on the ground that the evidence was insufficient to establish that Petitioner was at least sixteen years old at the time he committed the crime that was the subject of his juvenile adjudication. The Court of Appeal remanded for a potential re-trial on the juvenile adjudication, observing in its order that the trial court could exercise its discretion to dismiss one of the prior strike convictions for robbery in 1987 since they arose from the same incident. Respondent's Notice of Lodging ("Lodg.") 7.

On remand, Petitioner requested a jury trial on the juvenile strike allegation. On May 14, 2013, after the state presented evidence of Petitioner's date of birth (October 1, 1960) and the date of the commission of the juvenile offense (May 1, 1978), the jury found true the allegation that Petitioner had suffered the prior juvenile adjudication. The trial court determined that the juvenile adjudication constituted a prior strike conviction and declined to dismiss any of the prior strike convictions. On August 7, 2013, the trial court re-sentenced Petitioner to a term of 30 years-to-life. Lodg. 17.

Petitioner's appointed counsel appealed to the California Court of Appeal following remand, this time filing a brief pursuant to People v. Wende, 25 Cal. 3d

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(19) Order denying petition for writ of habeas corpus in California Court of Appeal case number B262329 (ECF No. 25-26)

(20) Petition for writ of habeas corpus in California Supreme Court case number S226093 (ECF Nos. 25-27 & 25-28)

(21) Order denying petition for writ of habeas corpus in California Supreme Court case number S226093 (ECF No. 25-29)

436, 411 (1979). The California Court of Appeal denied the appeal. Lodg. 14. Petitioner did not file a Petition for Review. See http://appellatecourtinfo.cases.ca.gov.

On August 14, 2014, Petitioner filed a petition for writ of habeas corpus in the California Court of Appeal, raising, among other claims, a claim generally corresponding to the second ground for relief alleged in the FAP. Lodg. 15. The Court of Appeal summarily denied this petition on August 6, 2014. Lodg. 16. Next, on September 15, 2014, Petitioner filed a petition for writ of habeas corpus in Los Angeles County Superior Court raising, among other things, a claim generally corresponding to the second ground for relief alleged in the FAP. The superior court denied the petition in a reasoned decision issued on January 27, 2015. Lodg. 17. On March 3, 2015, Petitioner filed a petition for writ of habeas corpus in the California Court of Appeal, raising, among other claims, a claim generally corresponding to the second ground for relief alleged in the FAP herein. Lodg. 18. That Petition was denied on March 4, 2015. Lodg. 19. On April 27, 2015, Petitioner filed a petition for writ of habeas corpus in the California Supreme Court raising, inter alia, a claim corresponding to the second ground for relief alleged in the FAP herein. Lodg. 20. That petition was summarily denied on July 22, 2015.[2] Lodg. 21.

Petitioner filed his petition for writ of habeas corpus in this Court on May 31, 2016. ECF No. 2. He filed the FAP on June 29, 2016. ECF No. 14. The Court granted Petitioner's request for the appointment of counsel in an Order issued on July 11, 2016. ECF No. 16. Following two extensions of time, Respondent filed a Response to First Amended Petition ("Response"), on October 10, 2016. ECF No. 24. Following three extensions of time, Petitioner's appointed counsel filed a Traverse on August 2, 2017. ECF No. 38. On August 11, 2017, the case was

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[2] Petitioner apparently attempted to file this petition on March 23, 2015 but it was returned for lack of an original signature. ECF No. 25-28, Lodg. 20 at 62.

transferred to this Court's calendar. This matter thus stands submitted and ready for decision.

III. SUMMARY OF FACTS

For a summary of the facts, this Court relies on respondent's summary of the evidence presented at trial (ECF No. 24, Memorandum of Points and Authorities ("Mem. P&A") in Response at 3-5):[3]

A. Prosecution Case-in-Chief

On September 21, 2009, Santos Hernandez and his friend and coworker David Ponce were on a Metropolitan Transit Authority ("MTA") bus heading home from work. They sat in the back of the bus. (1 RT at 60-61, 135-36.) There were fifteen to twenty other people who eventually boarded the bus. (1 RT at 61.) Petitioner was approximately four rows, or ten feet, in front of Hernandez and Ponce. Neither Hernandez nor Ponce had ever seen Petitioner before that day. (1 RT at 62-63, 137.)

After five minutes on the bus, Petitioner approached Hernandez. (1 RT at 63, 137.) Petitioner touched Hernandez's face and said, "Pinche Mexico" ("Fucking Mexican"). Hernandez said, "No problema" ("No problem" or "No trouble"), by which Hernandez meant that he did not want any trouble. Petitioner continued speaking in English, but Hernandez and Ponce did not understand what he was saying. Petitioner returned to his seat and took a knife from his backpack. (1 RT at 63-64, 67, 91, 108, 137-38,

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[3] Because the claims raised on direct appeal did not relate to the trial evidence, the California Court of Appeal did not summarize the evidence presented at trial. Respondent has prepared a summary of the facts in its Response. Petitioner does contest Respondent's summary. As such, the Court relies on this summary of the facts as a fair representation of the evidence presented at trial.

All citations to the record in this summary are from the original trial transcript, ECF Nos. 25-2 through 25-7.

152-53.) Petitioner walked back toward Hernandez and Ponce with the knife unfolded. He held the knife at chest level. Hernandez and Ponce jumped onto the bus seat because they were scared. Petitioner swiped the knife at Hernandez's lunch bag. Petitioner swung again and cut Hernandez in the arm. Hernandez kicked Petitioner in the stomach or chest area. (1 RT at 65-66, 103-04, 139-40.) Video surveillance footage of the incident was obtained from MTA and played for the jury. (1 RT at 87-89.)

During the commotion, the bus driver stopped the bus and everyone exited the bus. (1 RT at 66.) Petitioner got off the bus after Hernandez and Ponce did. (1 RT at 67, 109, 141.) Ponce followed Petitioner while calling 911. He followed Petitioner into a CVS store. (1 RT at 116, 141-42.)

The police arrived approximately five minutes later. (1 RT at 109-10.) Based on the radio dispatch description of the suspect, Los Angeles County Sheriff's Deputy Andrew Armes detained Petitioner inside a CVS store. Petitioner was wearing a gray jersey with a large red number "8" on the back. (1 RT at 119, 121-22, 124.) Deputy Armes searched Petitioner's backpack , which contained a switch-blade knife with a six-inch blade. The blade had residue that appeared consistent with blood. (1 RT at 122-23.) Deputy Armes interviewed Hernandez and Ponce who were "very shooken up." They appeared to be nervous and physically shaking. (1 RT at 126.) Hernandez identified Petitioner as the assailant. (1 RT at 113.)

Hernandez was taken to a nearby hospital where he received treatment. (1 RT at 115.) Hernandez suffered an inch and a half cut that required five stitches and left a permanent scar. 1 RT at 68-69.

/ / /

B. Defense case

Petitioner testified on his own behalf. (2 RT at 182.) On September 21, 2009, Petitioner was on an MTA bus carrying a backpack with razors and electric toothbrushes that he was planning to sell. (2 RT at 183-84.) Petitioner also had a knife in his backpack, which he carried for protection because he was injured in 2008 by a "Mexican" and suffered twenty-three stitches. (2 RT at 184.)

Petitioner was trying to sell some razors when Hernandez looked at him in a "strange way," and shouted, "No, no. I'll take something from you." (2 RT at 184.) Hernandez's tone was aggressive. (2 RT at 211.) Petitioner perceived that as a threat. Petitioner saw Hernandez clench his fists. Petitioner returned to his seat, retrieved the knife from his backpack, and went toward Hernandez. The switch-blade was open such that the knife was exposed. Petitioner carried the knife at his side. Hernandez jumped onto a bus seat and kicked Petitioner in the chest with steel-toed boots. Petitioner cut Hernandez's right arm near the elbow with the knife. Petitioner told Hernandez to get off the bus because he was not sure what else Hernandez was capable of doing. Petitioner only swung the knife because he was acting in self-defense after Hernandez kicked him. (2 RT at 185-86, 192, 195-96.) Petitioner exited the bus and went to the CVS store to buy asthma medicine. (2 RT at 186-87.)

Petitioner acknowledged that the MTA video footage depicted him in a gray jersey with the number "8" on the back. (2 RT at 189.) However, he claimed that the video footage shown to the jury was not the "original copy." Rather, the original copy, which Petitioner claimed was in the prosecutor's possession, showed a different sequence of events. Petitioner maintained that he was seated in the

back of the bus, and that the bus driver could have testified to the same, but was "excluded in [the] trial." (2 RT at 197-98.)

When shown a photograph of Hernandez's injury on the left arm, Petitioner denied that he caused the injury. He maintained that he only nicked Hernandez on the right arm near the elbow. (2 RT at 191.)

IV. PETITIONER'S CLAIMS FOR RELIEF

Petitioner presents the following claims in the FAP:

(1) Trial counsel was ineffective in failing to object to the false testimony of the alleged victim, Hernandez.

(2) Trial counsel did not object to or challenge the evidence on the 1987 adult prior convictions.

ECF No. 14, FAP at 5-6.[4]

Respondent contends that both grounds fail on the merits. ECF No. 24, Mem. P&A in Response at 5-11.

V. STANDARD OF REVIEW

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a federal court may not grant habeas relief on a claim adjudicated on its merits in state court unless the adjudication:

(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).

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[4] The Court refers to the pages of the FAP as they are assigned by the Court's electronic docketing system.

"'[C]learly established Federal law' for purposes of § 2254(d)(1) includes only 'the holdings, as opposed to the dicta, of th[e] [United States Supreme] Court's decisions'" in existence at the time of the state court adjudication. White v. Woodall, ____ U.S. ____, 134 S. Ct. 1697, 1702, 1706 (2014). However, "circuit court precedent may be 'persuasive' in demonstrating what law is 'clearly established' and whether a state court applied that law unreasonably." Maxwell v. Roe, 628 F.3d 486, 494 (9th Cir. 2010).

Overall, the 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). The federal statute presents "a difficult to meet . . . and highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt." Cullen v. Pinholster, 563 U.S. 170, 181 (2011) (internal citation and quotation marks omitted). On habeas review, the AEDPA places the burden on petitioners to show 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." Harrington v. Richter, 562 U.S. 86, 103 (2011). Put another way, a state court determination that a claim lacks merit "precludes federal habeas relief so long as fairminded jurists could disagree" on the correctness of that ruling. Id. at 101. 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 through appeal." Id. at 102-03 (internal citation and quotation marks omitted).

Where the last state court disposition of a claim is a summary denial, this Court must review the last reasoned state court decision addressing the merits of the claim under the AEDPA's deferential standard of review. Maxwell, 628 F.3d at 495; see also Berghuis v. Thompkins, 560 U.S. 370, 380 (2010); Ylst v. Nunnemaker, 501 U.S. 797, 803-04 (1991).

Here, the superior court's January 27, 2015 opinion denying Petitioner's habeas petition stands as the last reasoned decision as to Ground Two. See Lodg. 17. Accordingly, the Court will review this claim under the AEDPA's deferential standard of review for claims "adjudicated on the merits." 28 U.S.C. § 2254(d); Richter, 562 U.S. at 99. As to Ground One, the Court finds that this claim has not been exhausted. Nevertheless, the Court addressees this ground and denies it for the reasons discussed later in this Report & Recommendation.

VI. DISCUSSION

The Sixth Amendment guarantees a right to effective assistance of counsel. See Strickland v. Washington, 466 U.S. 668 (1984). To establish an ineffective assistance of counsel claim, a petitioner must establish: (1) counsel's performance fell below an "objective standard of reasonableness" under prevailing professional norms; and (2) the deficient performance prejudiced the defense. Id. at 687. "The inquiry under Strickland is highly deferential and 'every effort [must] be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.'" Greenway v. Schriro, 653 F.3d 790, 802 (9th Cir. 2011) (quoting Strickland, 466 U.S. at 689); see also Earp v. Cullen, 623 F.3d 1065, 1074 (9th Cir. 2010).

Regarding the first prong, there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland, 466 U.S. at 689. As for the second prong, a petitioner must show a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Id. at 694; Towery v. Schriro, 641 F.3d 300, 315 (9th Cir. 2010). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Williams v. Taylor, 529 U.S. 362, 391 (2000) (quoting Strickland, 466 U.S. at 694). The focus of the prejudice inquiry is "whether counsel's deficient performance renders the result of the trial unreliable

or the proceeding fundamentally unfair." Lockhart v. Fretwell, 506 U.S. 364, 372, (1993).

Under the AEDPA, "[t]he question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied Strickland's deferential standard." Gonzalez v. Wong, 667 F.3d 965, 987 (9th Cir. 2011) (citing Harrington, 562 U.S. at 105).

A. Habeas Relief Is Not Warranted With Respect To Petitioner's Claim That Trial Counsel Was Ineffective In Failing To Challenge The Allegedly False Testimony Of Victim Hernandez.

As an initial matter, a state prisoner must exhaust his state court remedies before a federal court may consider granting habeas corpus relief. 28 U.S.C. § 2254(b)(1)(A); O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999). To satisfy the exhaustion requirement, a habeas petitioner must fairly present his federal claims in the state courts in order to give the State the opportunity to pass upon and correct alleged violations of the prisoner's federal rights. Duncan v. Henry, 513 U.S. 364, 365 (1995) (per curiam). Although Respondent appears to concede that Petitioner's ineffective assistance of counsel claim, directed to counsel's failure to challenge Hernandez's "false" testimony, is exhausted (ECF No. 24, Response at 1, π4), and Petitioner claims the same (ECF No. 14, FAP at 5; ECF No. 38, Traverse at 7), nowhere does either party cite to the pages of the habeas petition filed in the California Supreme Court where this claim is purportedly alleged.[5] Based on the Court's review of this filing (Lodg. 20), the Court finds that this claim was, in fact, not exhausted in the California Supreme Court.[6] Nonetheless, this

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[5] This petition was the only filing made in the California Supreme Court following Petitioner's re-sentencing in the trial court. Lodg. 20.

[6] The Court observes that in that Supreme Court filing, Petitioner appended his pro se "Amended Motion to Dismiss Information," which had been filed in the trial court, and which cites some of Hernandez's inconsistent testimony. However, those citations were set forth in support of his argument that the charges should be reduced to a misdemeanor. ECF No. 25-28, Lodg. 20 at 37. In that document, he also alleges that the prosecutor had evidence prior to

Court can still deny the claim on the merits because it is not colorable. Cassett v. Stewart, 406 F.3d 614, 624 (9th Cir. 2005) ("[A] federal court may deny an unexhausted petition on the merits only when it is perfectly clear that the applicant does not raise even a colorable federal claim.").

Petitioner contends in the FAP that trial counsel failed to object to the false testimony of the victim, Hernandez. He cites to pages of the transcript and trial records that purport to show where Hernandez "lied" during his testimony. The allegedly false testimony reflects discrepancies in Hernandez's testimony regarding: the medical treatment he received (Hernandez testifying that he received medical treatment on his arm versus a trial exhibit reflecting that there were no records of Hernandez receiving treatment at the hospital he claimed to have been treated at); and how many days of work he missed due to the injury (Hernandez testifying at trial that he missed three days of work and at the preliminary hearing that he missed a full week). ECF No. 38, Traverse at 3-4. Petitioner's counsel, in his Traverse, identifies other areas where Hernandez's preliminary hearing and trial testimony differ – specifically: (1) Hernandez testified at preliminary hearing (17 days after the incident) that he did not recognize anyone on the bus in the courtroom, but immediately identified Petitioner as the person on the bus with the knife at trial (roughly 16 months after the incident); (2) Hernandez testified at the preliminary hearing that Petitioner approached him twice and that, the second time, he climbed onto the seat and stopped him by kicking him, but he testified at trial that Petitioner approached him three times and that after the third time, he kicked Petitioner in the stomach; (3) Hernandez testified at the preliminary hearing that he bled "a little" when he received medical treatment at a hospital, but testified at trial that when Petitioner stabbed him, he was "very

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Hernandez testifying to receiving five stitches, that he in fact received no treatment from a hospital at all. Id. at 46-47. These allegations, made in a motion before the trial court, are insufficient to alert the California Supreme Court, on habeas review, that Petitioner intended to raise an ineffective assistance of counsel claim based on the failure to object to false testimony.

injured" and there was "a lot of blood;" (4) Hernandez testified at the preliminary hearing that he didn't know how many people were on the bus, but testified at trial that were 15-20 people on the bus; and (5) Hernandez initially testified at trial that Petitioner made an upward swinging or slashing motion, waving the knife from side to side but later testified that Petitioner did not wave the knife that way. ECF No. 38, Traverse at 10-11.

The Court agrees with Respondent that Petitioner's counsel would have had no basis under California law to object on the basis of "false" testimony, because there is no evidentiary objection under California state law for "false testimony." For this reason alone, Petitioner's claim must be denied because the failure to make a futile argument does not constitute ineffective assistance of counsel. James v. Borg, 24 F.3d 20, 27 (9th Cir. 1994). Even if the Court were to broadly construe Petitioner's claim as directed to counsel's failure to adequately cross-examine and argue Hernandez's inconsistent testimony, Petitioner's claim still fails. First, the Court observes that there were several instances where counsel did cross-examine Hernandez on his inconsistent testimony – e.g., the discrepancy between his testimony regarding how much work he missed (ECF No. 25-3, 1 RT at 94), and the discrepancy between his testimony regarding how Petitioner held the knife when he approached Hernandez with it, and whether he was waving it (id. at 103-04). It is too speculative, however, to find that Hernandez's inconsistent testimony would have had any impact on the jury's decision-making had they been more fully explored and argued by trial counsel. Moreover, the video from the MTA bus camera was played for the jury and showed the entire incident, and Petitioner was followed by Ponce into a CVS and was arrested in the same clothing just minutes after the assault. Id. at 87-92, 119-22. In light of the evidence against Petitioner, Petitioner cannot establish that he suffered any prejudice from counsel's failure to more fully elucidate the discrepancies in Hernandez's testimony.

For these reasons, the Court finds that habeas relief is not warranted on this claim.

B. Habeas Relief Is Not Warranted With Respect to Petitioner's Claim That Trial Counsel Was Ineffective In Failing to Challenge The 1987 Prior Convictions.

Petitioner maintains that trial counsel was ineffective in failing to challenge the evidence supporting the 1987 adult prior convictions. ECF No. 14, FAP at 5-6. Petitioner claims that counsel failed to argue that the prior convictions did not "qualif[y] as a strike." Id. at 24.

1. Petitioner's Claim Cannot Fairly Be Read To Include The Argument That Counsel Was Deficient In Failing To Argue Petitioner's Mental Illness And Addiction In Support Of The Romero Motion.

In the Traverse, Petitioner's counsel argues that Petitioner's pro se claim should be read to include the allegation that, at sentencing, trial counsel failed to argue Petitioner's mental health and addiction issues before and around the time of the 1987 robberies. ECF No. 38, Traverse at 10-12. Although Petitioner contends in the FAP that the trial court did not address his mental illness in the motion made pursuant to Romero, ECF No. 14, FAP at 27, he does not contend that his trial counsel was ineffective in failing to adequately argue his mental illness in support of the motion. Nor did he make this argument in his habeas petition before the Court Supreme Court. See Lodg. 20, ECF No. 25-27 at 33 (California Supreme Court habeas petition arguing the trial court did not give due consideration to Petitioner's mental health in deciding the Romero motion, but not arguing that trial counsel was ineffective in adequately arguing mental health in support of the motion). The Court therefore finds that this ineffective assistance of counsel claim cannot fairly be read to include an argument relating to counsel's failure to argue mental illness and addiction in support of the motion to strike the prior convictions.

2. Robbery Qualifies As A Strike Under State Law, And Trial Counsel Was Not Ineffective In Failing To Challenge The Evidence Underlying The 1987 Prior Convictions

Petitioner raised his ineffective assistance of counsel claim on habeas review in the state court. The superior court denied the claim in a reasoned opinion, finding that counsel made a motion pursuant to Romero and that it was denied by the trial court. Lodg. 17 at 33-34.

To the extent Petitioner's claim is directed to counsel's failure to object to the 1987 prior strike allegations on the basis that they do not qualify as strikes (on their face), the Court concurs with Respondent that robbery is a qualifying strike under California's Three Strikes Law.[7] See Cal. Penal Code §§ 667(d)(1) (indicating that a prior conviction of a serious and/or violent felony shall be defined as those listed in §§ 667.5 and 1192.7), 667.5(c)(9) (listing "any robbery" as a violent felony). Counsel therefore could not have been ineffective in failing to object on this basis. James, 24 F.3d at 27.

To the extent that Petitioner's claim is directed to counsel's failure to challenge the evidence underlying the 1987 strike convictions, the Court finds that habeas relief is still not warranted. In his habeas petition before the California Supreme Court, Petitioner argued that, in the trial court, there was a discussion regarding whether the 1987 robberies involved one incident with two separate victims or two separate incidents with two separate victims. He maintained that

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7 In the FAP, Petitioner asserts that the current offense (Cal. Penal Code § 245(a)(1)) does not qualify as a serious felony under Cal. Penal Code § 667.5(c) or § 1192.7. ECF No. 14, FAP at 25. The Court observes that Cal. Penal Code § 1192 addresses the trial court's duty to determine the degree of a crime or attempted crime to which a defendant pleads guilty. The Court presumes that Petitioner actually meant to cite to Section 1192.7(c) (setting forth crimes that qualify as serious felonies). Counsel accurately conceded at trial that the current offense was "of course" a strike offense. ECF No. 25-7, 2 RT at 356. In any event, the ground presented to the Court with respect to this claim is not whether assault with a deadly weapon qualifies as a serious or violent felony, but whether trial counsel was deficient is failing to challenge the evidence underlying the *prior* convictions for robbery.

the prosecution was able to prove that there were two victims but was unable to prove whether the crime involved one or two incidents, Lodg. 20, ECF No. 25-27 at 21, and that trial counsel should have challenged this lack of evidence on the robberies. Id. at 4, 6, 8, 21-22. In making this argument, Petitioner asserted that trial counsel's stated[8] "excuse" for not challenging the evidence on the 1987 prior convictions was that the trial court would strike the two 1987 robbery convictions under Romero. Id. at 22.

At the hearing on the priors, the trial court heard testimony from a fingerprints expert and a paralegal from the Los Angeles County District Attorney's office on the issue of Petitioner's identity as the defendant convicted of the prior convictions alleged against him. ECF No. 25-6, 2 RT at 297-309, 310-32. At that hearing, trial counsel made no argument that the prior convictions alleged were not suffered by Petitioner or that they were not serious or violent felonies. ECF No. 25-7, 2 RT at 338. The trial court found that the People had proven beyond a reasonable doubt that Petitioner was the person convicted of the alleged crimes, with the exception of a 1981 prior alleged in Case No. A198987. Id. at 339-43.

Under California law, "each conviction for a serious or violent felony counts as a prior conviction for sentencing purposes under the Three Strikes law, even where the convictions were based upon conduct against a single victim committed at the same time with a single intent." People v. Benson, 18 Cal.4th 24, 30 (Cal. 1998). Here, the prosecution provided evidence that Petitioner suffered two convictions for robbery that were prosecuted in the same case.[9] The People

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8 It is unclear to the Court where, exactly, this was stated.

9 The Court of Appeal stated that the two 1987 convictions for robbery arose from the same incident. Lodg. 7 at 4. It is clear that when Petitioner was sentenced, however, the trial court was not certain on this issue. ECF No. 25-7, 2 RT at 343 (finding Petitioner suffered a conviction under Cal. Penal Code § 211 on April 28, 1987 and a second conviction under § 211 on the same date, but not identifying whether Petitioner was convicted of two robberies with two victims or one robbery with two victims); ECF No. 25-16, 2 RT at 1202 (on resentencing following remand

proved that Petitioner suffered those two convictions in 1987 and proved that robbery qualified as a strike under state law. Petitioner has cited no authority for the proposition that any more was required of the People.[10] Petitioner, therefore, cannot show any deficient performance or any prejudice arising from his counsel's failure to argue that there was insufficient proof to sustain the true findings on the prior strikes from 1987. The Court therefore finds that the state court's rejection of this claim was neither contrary to nor involved an unreasonable application of clearly established Supreme Court law.

C. Petitioner Is Not Entitled To An Evidentiary Hearing.

In his FAP, Petitioner requests an evidentiary hearing. ECF No. 14, FAP at 25. The Supreme Court, however, has held that the AEDPA requires federal courts to evaluate the reasonableness of state court decisions on the basis of the

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from the Court of Appeal; trial judge stating, "I understand the argument with respect to the 1987 convictions because there are 2 counts of 211. I actually do not know the facts of that case; but even if the court were to strike one of those, Mr. Willard still has the one from 1978."); id. at 1207 (discussion between trial counsel and the trial court regarding whether the two 1987 convictions arose from one incident or two; noting that the verdict form reflects two victims but does not reflect whether one incident or two gave rise to the charges).

[10] While Petitioner's conviction of one robbery with two victims may have provided a basis on which the trial court might have considered striking one of the 1987 prior convictions, see Lodg. 7 at 4 (California Court of Appeal opinion on direct review, observing that "the trial court may choose, on remand, to exercise its discretion to strike one of those [1987] qualifying prior strike convictions in resentencing [Petitioner]"), it is clear from the record that the Superior Court denied counsel's motion to strike the prior strikes, Lodg. 17 at 34, but also, that whether the robberies arose from one incident or two was not material when it came to the trial court's sentence. The trial court, during sentencing under the Three Strikes Law, made it abundantly clear that its primary rationale for not striking any of the prior strikes was that Petitioner's record as whole (including strike and non-strike offenses) reflected that he had been in and out of jail and prison for decades and had repeatedly picked up new cases while on parole in others. ECF No. 25-7, 2 RT at 354-55 ("there's not a period of time where he was not in custody or having been convicted of a crime"), 365. The trial court also cited the violence involved in the current offense, the fact that Petitioner's background, character, and prospects did not suggest he fell outside the spirit of the Three Strikes Law, and that Petitioner was not honest on the stand. Id. at 355-56. Further, as it observed in resentencing, even if it struck one of the 1987 priors, Petitioner had still suffered the other 1987 robbery strike, the 1978 juvenile strike, and the current offense. ECF No. 26-16, 2 RT at 1202.

record before the state court. Pinholster, 563 U.S. at 181-85. The Supreme Court reasoned that the "backward-looking language" of Section 2254(d)(1) "requires an examination of the state-court decision at the time it was made," and thus, the record under review must be "limited to the record in existence at that same time *i.e.* , the record before the state court." Id. at 182. Accordingly, under Pinholster, petitioner is not entitled to an evidentiary hearing. Further, an evidentiary hearing is not warranted where, as here, "the record refutes the applicant's factual allegations or otherwise precludes habeas relief." Schriro v. Landrigan, 550 U.S. 465, 474 (2007). "It is axiomatic that when issues can be resolved by reference to the state court record, an evidentiary hearing becomes nothing more than a futile exercise." Totten v. Merkle , 137 F.3d 1172, 1176 (9th Cir. 1998). Therefore, petitioner's request for an evidentiary hearing should be denied.

VII. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Court issue an Order: (1) accepting this Report and Recommendation; (2) denying the Petition; and (3) dismissing this action with prejudice.

Dated: May 21, 2018

HONORABLE SHASHI KEWALRAMANI
United States Magistrate Judge

APPENDIX 5

S226093

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re CHARLES R. WILLARD on Habeas Corpus.

The petition for writ of habeas corpus is denied.

SUPREME COURT
FILED

JUL 22 2015

Frank A. McGuire Clerk

Deputy

Chief Justice

APPENDIX 6

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL - SECOND DIST.
FILED
MAR - 4 2015
JOSEPH A. LANE Clerk
D. SANDERS Deputy Clerk

In re

CHARLES ROBERT WILLARD

on Habeas Corpus.

B262329

(Super. Ct. No. BA362410)

(Gail R. Feuer and Henry J. Hall, Judges)

ORDER

THE COURT:

The petition for writ of habeas corpus filed herein March 3, 2015 has been read and considered. The court has also examined the files in proceedings numbers B233492 and B250588, petitioner Willard's direct appeals from judgments in Los Angeles County Superior Court case number BA362410. The petition is denied.

PERLUSS, P. J., WOODS, J., ZELON, J.

APPENDIX 7

CV 16-3805-CJC(JC)
Lodged Doc. 16

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL – SECOND DIST.
FILED
Aug 06, 2014
JOSEPH A. LANE, Clerk
Eva McClintock Deputy Clerk

In re

CHARLES R. WILLARD

on Habeas Corpus.

B257962

(Super. Ct. No. BA362410)

(Gary R. Feuer and Henry J. Hall, Judges)

ORDER

THE COURT:

The petition for writ of habeas corpus filed herein August 4, 2014 has been read and considered. The court has also examined the file in proceeding number B250588, petitioner Willard's direct appeal from the judgment in Los Angeles County Superior Court case number BA362410. The petition is denied.

PERLUSS, P. J., ZELON, J., SEGAL, J. (Assigned)

APPENDIX 8

Filed 7/16/14

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL – SECOND DIST.
FILED
Jul 16, 2014
JOSEPH A. LANE, Clerk
Eva McClintock Deputy Clerk

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES ROBERT WILLARD,

Defendant and Appellant.

B250588
(Los Angeles County
Super. Ct. No. BA362410)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gail R. Feuer and Henry J. Hall, Judges. Affirmed.

Charles R. Willard, in pro. per., and Renee Rich, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This case comes before us a second time. Charles Robert Willard was convicted by a jury on two counts of assault with a deadly weapon after he threatened two men on a bus with a knife, one of whom he then stabbed.[1] In a bifurcated proceeding, the trial court found Willard had suffered two prior serious felony convictions and one prior juvenile adjudication for robbery, making him eligible for sentencing under the three strikes law, and he had served separate prison terms for felonies (Pen. Code, §§ 667, subds. (a), (b)-(i), 1170.12, subds. (a)-(d); 667.5, subd. (b)). Willard was sentenced to concurrent aggregate state prison terms of 30 years to life. On appeal, we concluded the evidence was insufficient that Willard was at least 16 years old at the time he committed the robbery, which was the subject of his juvenile adjudication. We affirmed the judgment of conviction and remanded for a possible retrial on the prior strike conviction , noting the trial court may choose to exercise its discretion to dismiss one of the prior strike convictions for robbery in 1987 because they arose from the same incident. (*People v. Willard* (Jan. 8, 2013, B233492) [nonpub. opn.])[2]

On remand, Willard requested a jury trial on the juvenile strike allegation. Prior to the People's presentation of evidence, the trial court heard and denied Willard's motion to replace his appointed counsel (*People v. Marsden* (1970) 2 Cal.3d 118). Following an evidentiary hearing, the court found Willard was the person who had suffered the prior juvenile adjudication (Pen. Code, § 1025, subd. (c)).

At trial, the People introduced evidence consisting of certified copies of various documents, including the pleadings and minute orders from the superior court file of the 1978 juvenile adjudication for robbery, a chronology from the California Youth Authority (now Division of Juvenile Justice), and a California Law Enforcement

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[1] The jury found not true a great bodily injury allegation (Pen. Code, § 12022.7, subd. (a)).

[2] We treated Willard's motion for judicial notice of our records in that case as a motion to augment the record, and, as such, granted the motion.

Telecommunications System (CLETS) criminal history (rap sheet) which showed Willard's date of birth as October 1, 1960 and the date of the robbery as May 1, 1978. The jury found true the allegation that Willard had suffered the prior adjudication for robbery with the use of a firearm in 1978 (Pen. Code, § 1025, subd. (b)). The trial court determined Willard's juvenile adjudication constituted a prior strike conviction.

Prior to sentencing, Willard's defense counsel filed a "Supplemental Motion to Dismiss Prior Convictions Alleged Under Three Strikes Law" (Pen. Code, § 1385) and to impose a determinate state prison sentence of 19 years. Willard filed a hand-printed document in pro. per. in which he challenged the verdict on various constitutional and statutory grounds.

At sentencing, the trial court declined to exercise its discretion to dismiss the prior strike convictions and sentenced him to concurrent aggregate state prison terms of 30 years to life. The court awarded Willard presentence custody credit of 2,140 days and imposed statutory fees, fines and assessments.

We appointed counsel to represent Willard on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On March 12, 2014, we advised Willard he had 30 days within which to personally submit any contentions or issues he wished us to consider.

After granting Willard several extensions of time, on April 22, 2014 we received a hand printed 13-page supplemental brief plus exhibits in which Willard challenged his conviction. To the extent they can be understood, Willard's contentions are his defense counsel provided ineffective assistance in failing to challenge the evidence supporting his prior adult robbery convictions and the evidence was insufficient to support the great bodily injury enhancement allegation. Willard's ineffective assistance of counsel claim is beyond the scope of our remand and thus cannot be addressed in the context of this appeal. If cognizable at all, Willard's claim must be pursued by a different, appropriate procedure. As for the great bodily injury enhancement, the jury found the allegation not true.

We have examined the entire record and are satisfied Willard's counsel has complied fully with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

WOODS, Acting P. J.

We concur:

ZELON, J. **SEGAL, J.**[*]

[*]Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX 9

Filed 1/8/13 P. v. Willard CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. CHARLES ROBERT WILLARD, Defendant and Appellant.	B233492 (Los Angeles County Super. Ct. No. BA362410)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gail Ruderman Feuer, Judge. Judgment of conviction affirmed, remanded for resentencing.

Renee Rich, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

Charles Robert Willard threatened two men on a bus with a knife, one of whom he stabbed. A jury convicted Willard on two counts of assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).)[1] In a bifurcated proceeding, the trial court found Willard had suffered two prior serious felony convictions and one prior juvenile adjudication for robbery, making him eligible for sentencing under the "Three Strikes" law, and he had served separate prison terms for felonies. (§§ 667, subds. (a), (b)-(i), 1170.12, subds. (a)-(d); 667.5, subd. (b).) Willard was sentenced to an aggregate state prison term of 30 years to life. On appeal, he contends insufficient evidence supports the true finding on his prior 1978 juvenile robbery adjudication. We affirm the judgment of conviction and remand for resentencing.

FACTUAL AND PROCEDURAL BACKGROUND

During the court trial on Willard's prior conviction allegations, the People introduced evidence of his two 1987 robbery convictions in Los Angeles Superior Court case No. A635439[2] and his 1978 juvenile adjudication for robbery in case No. J250484. With respect to his juvenile adjudication, the admitted evidence showed Willard was born on October 1, 1960, arrested for committing robbery (§ 211) on February 22, 1978, adjudicated as having committed the offense on June 13, 1978, and confined at the California Youth Authority, as it was formerly known, from June 19, 1978 until October 15, 1981.

The trial court found true Willard's three prior strike convictions, and sentenced him to an aggregate term of 30 years to life.

DISCUSSION

Willard contends, and the People acknowledge, the evidence is insufficient to support a finding that he was at least 16 years old at the time he committed robbery.

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[1] Statutory references are to the Penal Code, unless otherwise indicated.

[2] Case numbers refer to Los Angeles Superior Court cases.

The Three Strikes law expressly permits a prior juvenile adjudication to constitute a felony strike when: "(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense. [¶] (B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony. [¶] (C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law. [¶] (D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code." (§ 667, subd. (d)(3)(A-D).) Paragraphs (A) through (D) of subsection (d)(3) "all state independent necessary requirements for use of a prior juvenile adjudication." (*People v. Garcia* (1999) 21 Cal.4th 1, 12.)

A prior conviction must be proved beyond a reasonable doubt. (*People v. Henley* (1999) 72 Cal.App.4th 555, 562.) The prosecution must establish the fact of the defendant's conviction and that the conviction was of an offense within the definition of the particular statute invoked, and any other element required by the statute alleged. (*Ibid.*) The trier of fact is entitled to draw reasonable inferences from certified records offered to prove the prior conviction. However, such inferences must be supported by substantial evidence. (*Id.* at p. 651.)

We agree the evidence is insufficient that Willard was at least 16 years old at the time he committed the robbery which is the subject of his juvenile adjudication. The record establishes he was born on October 1, 1960, making him 17 years old when he was thereafter committed to the California Youth Authority (now the Division of Juvenile Facilities) for robbery. The People did not produce a Welfare and Institutions Code section 602 petition or other documents showing the date of the offense or Willard's age at the time of the offense. In the absence of this evidence, Willard's juvenile adjudication does not qualify as a strike. We remand the matter for a further evidentiary hearing at the People's election as permitted by *People v. Barragan* (2004) 32 Cal.4th 236, which held that for Three Strikes sentencing purposes, an alleged prior juvenile adjudication may be retried.

Whether or not the People elect to retry the juvenile adjudication, we note that Willard's two 1987 convictions for robbery arose from the same incident, and the trial court may choose, on remand, to exercise its discretion to strike one of those qualifying prior strike convictions in resentencing Willard. (*People v. Benson* (1998) 18 Cal.4th 24, 36 fn. 8. ["Because the proper exercise of a trial court's discretion under section 1385 necessarily relates to the circumstances of a particular defendant's current and past criminal conduct, we need not and do not determine whether there are some circumstances in which two prior felony convictions are so closely connected--for example, when multiple convictions arise out of a single act by the defendant as distinguished from multiple acts committed in an indivisible course of conduct--that a trial court would abuse its discretion under section 1385 if it failed to strike one of the priors."].)

DISPOSITION

The judgment of conviction is affirmed, and the cause is remanded for resentencing in accordance with this opinion.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.

APPENDIX 10

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CHARLES R. WILLARD,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF CORRECTIONS,

Respondent.

Case No. CV 16-3805-CJC (JC)

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Petitioner Charles Willard hereby files this Traverse to Respondent's Response to First Amended Petition for Writ of Habeas Corpus.

I. General Allegations

Petitioner incorporates herein by reference his first amended petition for writ of habeas corpus in this case and all other writings and documents filed by Petitioner in this action.

Except as expressly admitted herein, Petitioner specifically refutes each and every denial set forth in Respondent's Response and realleges each of the denied averments.

The Response does not admit or deny each factual allegation contained in the petition. When Respondent has failed to make a specific denial of facts, he should be deemed to have admitted the facts alleged to support the claim.

The Response does not show legal warrant or authority for the detention of Petitioner. Neither the facts set forth in the Response nor other facts not stated therein legally warrant Petitioner's restraint.

Respondent correctly concedes that Williard's first amended petition is timely; that both claims in it are exhausted; and that neither claim is procedurally barred or barred by the doctrine of *Teague v. Lane*, 489 U.S. 288 (1989). Response (docket no. 24) at 1. Accordingly, the Traverse focuses on the merits of Willard's claims and not procedural defenses.

II. 28 U.S.C. § 2254(d) Does Not Bar Relief on Claim One, and the Court Should Grant Relief on *De Novo* Review

A. Willard's Allegations and Supporting Facts

Claim One of Willard's *pro se* first amended habeas petition alleges that his trial counsel rendered prejudicially ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984), by failing to challenge and argue the facts of the false testimony of prosecution witness and alleged victim Santos Hernandez. Docket no. 14 at 5. Respondent argues that "Petitioner's claim must be rejected as conclusory because he

has failed to identify the instances in which Hernandez offered supposedly 'false' testimony to which defense counsel should have objected." Memorandum in Support of Response at 9.

As an initial matter, it is important to note that the state courts did not find that Petitioner's claims were conclusory. When California state courts conclude that a habeas petition fails to allege claims with sufficient particularity, they say so by citing *In re Swain*, 209 P.2d 793 (Cal. 1949), and/or *People v. Duvall*, 886 P.2d 1252 (Cal. 1995). *Gaston v. Palmer*, 417 F.3d 1030, 1039 (9th Cir. 2005), *amended*, 447 F.3d 1165 (9th Cir. 2006); *Kim v. Villalobos*, 799 F.2d 1317, 1319 (9th Cir. 1986).

Willard asserted Claim One in state habeas, and Respondent admits that the claim is exhausted. Response at 1. As shown below, none of the state habeas denials cites *Swain*. Notice of Lodging, Lodgments 16, 17, 19, 21.

Williard filed a *pro* se habeas petition in the California Court of Appeal on August 4, 2014 that the court summarily denied without reasoning or citations two days later. Docket nos. 25-22, 25-23.

Willard filed a *pro* se habeas petition in Los Angeles County Superior Court in January 2015 (he actually filed it on September 15, 2014 but the court said on January 9, 2015 that it could not find a copy). Docket no. 25-24 at ECF pages 32-33. The court denied the petition on January 27, 2015 in a reasoned opinion on the merits for failure to state a prima facie case for relief. *Id*. at ECF pages 33-34. The opinion does not cite *Swain*. It cites *Duvall*, but with a pinpoint cite to the part of *Duvall* stating that a petition will be denied for failure to state a prima facie case, not the part of the opinion discussing the failure to allege claims with sufficient particularity. *Id*. at ECF page 34.

Willard filed a *pro se* habeas petition in the California Court of Appeal on March 3, 2015 that the court summarily denied the next day without reasoning or citations. Docket nos. 25-25, 25-26.

Willard filed a *pro se* habeas petition in the California Supreme Court on April 27, 2015 (the court received the petition on March 23, 2015 but complained that it

lacked an original signature). Docket no. 25-27 at ECF page 1; docket no. 25-28 at ECF page 62. The court summarily denied the petition on the merits on July 22, 2015, stating that "[t]he petition for writ of habeas corpus is denied." Docket no. 25-29.

Thus, no state court ever held that Willard's claims failed because they were conclusory. A federal court cannot apply a state procedural bar when the state court failed to do so, *Cone v. Bell*, 556 U.S. 449, 468-69 (2009), and Respondent admits that neither of Willard's claims is procedurally defaulted.

Respondent's argument that Willard's federal claims fail as conclusory is unavailing. Williard filed his petition *pro se*, and *pro se* pleadings are liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). Further, verified *pro se* allegations like Willard's are treated as affidavits,[1] and Respondent has not disputed the content of Willard's assertions.

Moreover, Willard identified in his *pro se* amended petition specific parts of Hernandez's testimony that he contends are false. He cited line 22 of page 68 of the reporter's transcript of trial ("RT"), docket no. 14 at 5, where Hernandez testified that he received medical treatment on his arm. This is false testimony because Willard's Trial Exhibit A showed that there were no records of Hernandez receiving treatment at the hospital he claimed to have been treated at. RT 214, 262.

Willard cited lines 10-28 of RT 69 in his amended petition. Docket no. 14 at 5. Among other things, in this part of his testimony, Hernandez said he missed three days of work because of his injury, whereas at the preliminary hearing he testified to missing a full week of work. Clerk's Transcript ("CT") 11 ("I just stopped working for a week").

[1] *Laws v. Lamarque*, 351 F.3d 919, 924 (9th Cir. 2003); *Weddington v. Zatecky*, 721 F.3d 456, 464 (7th Cir. 2013).

Willard cited RT 214, where, as noted above, the defense presented an exhibit showing that there were no hospital records of Hernandez receiving treatment for his injury. Docket no. 14 at 5.

Willard filed with his amended petition his *pro se* amended motion to dismiss filed in Superior Court on May 10, 2010, where he complained of various instances of Hernandez's false testimony at the preliminary hearing. *Id*. at ECF pages 107-32; *see especially* pages 108, 121, 122, 131. Respondent's procedural defense is not well taken.

Nor is it supported by the cases he cites. *See* Memorandum in Support of Response at 9. In *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1994), the habeas petitioner failed to identify any evidence that counsel should have presented to show that petitioner was not the shooter. As shown above, Willard identified specific evidence of Hernandez's false testimony in his form petition and he attached a prior filing further explaining his claim.

Respondent cites *United States v. Smith*, 924 F.2d 889, 896 (9th Cir. 1991), for the point that "unsupported and conclusory claims are not sufficient to show error." Memorandum in Support of Response at 9. *Smith* is a direct criminal appeal case, not a habeas case, and the quoted statement is made in response to appellant's argument that his application for a writ of habeas corpus ad testificandum was denied. 924 F.2d at 896. *Smith* doesn't shed light on pleading standards for substantive habeas corpus claims.

Respondent's parenthetical on the import of *Barahona v. Madden*, 2015 WL 9311650, at *7 (C.D. Cal. Sept. 16, 2015), is self-negating. Respondent quotes the case "as rejecting as conclusory the claim that trial counsel failed to object or 'follow up'on 'false and misleading' witness testimonies where petitioner failed to identify which witness testimonies were false and why it was false." Memorandum in Support of Response at 9. But Willard identified Hernandez as being the false witness and he identified by transcript page and line number instances of Hernandez's false testimony.

In *Loveday v. Haws*, 2008 WL 5246091, at *14 (E.D. Cal. Dec. 15, 2008), the petitioner complained that his lawyer failed to call alibi and character witnesses but failed to identify those witnesses or the substance of their proposed testimony. Petitioner also failed to specify the evidence he contended his lawyer should have objected to. Again, Willard's amended petition names the witness he contends gave false testimony and identifies parts of the testimony he alleges is false and could have been challenged or used by his lawyer to benefit his case.

Willard's claim is supported by the discrepancies between Hernandez's preliminary hearing testimony and trial testimony that defense counsel failed to exploit, both in cross-examination and closing argument. The incident on the bus occurred on September 21, 2009 (RT 60); Hernandez testified at the preliminary hearing on October 8, 2009 (CT 1-2); and he testified at trial on January 14, 2011 (RT 29, 59).

At trial, Hernandez immediately identified Willard as the person on the bus with the knife. RT 62. At the preliminary hearing, he twice stated that he did not recognize anyone on the bus who was in the courtroom. CT 4.

At trial, Hernandez testified that Willard approached him on the bus three times, and that after "the third time he did that," he kicked Willard in the stomach. RT 65-66. At the preliminary hearing, Hernandez testified that Willard approached him twice, and that "the second time, [he] climbed up on the seat, and [he] stopped him" by kicking him. CT 16-18.

At trial, Hernandez testified that when Willard stabbed him, he was "very injured" and there was "a lot of blood." RT 68. At the preliminary hearing, he testified that he bled "a little" when he received medical treatment at a hospital. CT 10-11.[2]

[2] As noted above, the hospital had no record of treating Hernandez.

At trial, Hernandez testified that there were 15 to 20 people on the bus. RT 61. At the preliminary hearing, a little over two weeks after the incident, he testified that he "wouldn't know" how many people were on the bus. CT 15.

At trial, Hernandez initially testified that Willard made an upward swinging or slashing motion, waving the knife from side to side, but he later testified that Willard did not wave the knife that way. RT 65-66, 103.

Defense counsel did not confront or impeach Hernandez with any of these discrepancies on cross, and did not mention any of them in his closing argument. As shown below, this constitutes deficient performance under *Strickland*.

B. 28 U.S.C. § 2254(d) Is Satisfied and the Court Should Grant Relief

Willard filed his federal habeas corpus petition after the effective date of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), and therefore his petition is governed by AEDPA. *Woodford v. Garceau*, 538 U.S. 202, 204 (2003). To obtain habeas relief under AEDPA, a habeas petitioner must show that his constitutional rights were violated under 28 U.S.C. § 2254(a) and that § 2254(d) does not bar relief on any claim adjudicated on the merits in state court. *Frantz v. Hazey*, 533 F.3d 724, 735-36 (9th Cir. 2008) (en banc). Review under § 2254(d) "is limited to the record that was before the state court that adjudicated the claim[s] on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). When a federal habeas court concludes that the state court decision is contrary to *or* an unreasonable application of federal law, § 2254(d)(1), *or* is based on an unreasonable determination of the facts, § 2254(d)(2), it:

(1) reviews the claim *de novo* in assessing whether the petitioner's constitutional rights were violated;[3]

[3] *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007); *Wiggins v. Smith*, 539 U.S. 510, 528-29 (2003); *Frantz*, 533 F.3d at 733-39; *Maxwell v. Roe*, 628 F.3d 486, 494-95 (9th Cir. 2010) ("when a state court adjudication is based on an antecedent

(2) can consider evidence not presented in state court and grant discovery and an evidentiary hearing;[4] and

(3) grant relief.[5]

Willard's ineffective assistance claim is based on *Strickland*, 466 U.S. 668, which under AEDPA is "clearly established Federal law, as determined by the Supreme Court . . . ." (*Terry*) *Williams v. Taylor*, 529 U.S. 362, 391 (2000); *Pinholster*, 563 U.S. at 189. "An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense." *Wiggins*, 539 U.S. at 514, 522, 524.

Defense counsel performed deficiently by not impeaching Hernandez with his inconsistent and false testimony on cross or highlighting the discrepancies in closing. This case turned on a credibility battle between Hernandez and Willard. Hernandez testified that Willard approached him out of the blue and attacked him. RT 97. Willard testified that he acted in self-defense and stabbed Hernandez only after Hernandez verbally threatened him and kicked him in the chest. RT 184-85. The jury was instructed that the prosecution had the burden of proving beyond a reasonable doubt

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unreasonable determination of fact, we proceed to consider petitioner's related claim de novo"); *see also Brumfield v. Cain*, 135 S. Ct. 2269, 2276, 2283 (2015) (because § 2254(d)(2) was met, habeas petitioner "has satisfied the requirements of § 2254(d)" and the Court need not address his § 2254(d)(1) argument).

[4] *Brumfield*, 135 S. Ct. at 2275-76 ("federal habeas courts may 'take new evidence in an evidentiary hearing' when § 2254(d) does not bar relief"); *Hurles v. Ryan*, 752 F.3d 768, 790-92 (9th Cir. 2014) (holding that state court denial of judicial bias claim was based on an unreasonable determination of the facts and remanding for federal evidentiary hearing on claim); *Earp v. Ornoski*, 431 F.3d 1158, 1166-72 (9th Cir. 2005) (holding that California Supreme Court's summary denial was based on an unreasonable determination of the facts and remanding for a federal evidentiary hearing).

[5] *See, e.g.*, *Porter v. McCollum*, 558 U.S. 30 (2009) (per curiam); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Miller-El v. Dretke*, 545 U.S. 231 (2005); *Wiggins*, 539 U.S. 510; (*Terry*) *Williams v. Taylor*, 529 U.S. 362 (2000).

that Willard did not act in self-defense. RT 234, 246. The jury was also instructed that in evaluating a witness's testimony, it may consider whether the witness "made a statement in the past that is . . . inconsistent with his or her testimony." RT 240-41. The jurors were further instructed that "[i]f you decided that a witness deliberately lied about something significant in the case, you should consider not believing anything that witness says." RT 242.

Yet in this "he said, he said" battle, defense counsel did not confront Hernandez with the inconsistent statements noted above on cross or note them to the jury in closing to argue it should discredit Hernandez in assessing whether the prosecution proved beyond a reasonable doubt that Willard did not act in self-defense. *See* RT 260-66 (defense counsel's closing argument). Impeaching Hernandez on his inconsistent testimony would have been consistent with the defense trial counsel presented: When Hernandez testified at trial that he missed three days of work because of his injury, defense counsel impeached him with his contrary testimony at the preliminary hearing that he missed an entire week at work. RT 94. And counsel emphasized in closing that there was no record of Hernandez receiving hospital treatment for his injuries, as he claimed at trial, and that the prosecution had failed to prove that Willard did not act in self-defense. RT 262, 266; *Reynoso v. Giurbino*, 462 F.3d 1099, 1107-08 (9th Cir. 2006) (affirming grant of relief on ineffective assistance claim in AEDPA case where the challenged omission -- failing to cross two prosecution witnesses about their knowledge of a reward before identifying the defendant as the shooter in a murder case -- was consistent with the defense actually presented). Counsel simply, and unreasonably, failed to impeach the prosecution's key witness on the other inconsistencies in his testimony and unreasonably failed to highlight these discrepancies in closing. *Reynoso*, 462 F.3d at 1115. The state court's denial of Willard's claim on the record before it is both contrary to and an unreasonable application of clearly established federal law, and is based on an unreasonable

determination of the facts. 28 U.S.C. § 2254(d)(1), (2); *Reynoso*, 462 F3d at 1101, 1118-20; *Nunes v. Mueller*, 350 F.3d 1045, 1054 (9th Cir. 2003).

The state court record also shows that Willard was prejudiced by counsel's deficient performance. During deliberations, the jury sent a note asking the court to clarify the definition of "significant or substantial physical injury." RT 281. *See Mayfield v. Woodford*, 270 F.3d 915, 932 (9th Cir. 2001) (en banc) (jury notes indicate prejudice from constitutional violation). And the jury found the allegation that Willard inflicted great bodily injury on Hernandez not true, RT 287, indicating that it was willing to discredit Hernandez's testimony. But for counsel's deficient performance, there is a reasonable probability that the jury would have had a reasonable doubt that the prosecution proved each element of the assault with a deadly weapon charges. *Reynoso*, 462 F.3d at 1116-18. The state court's denial is unreasonable under § 2254(d)(1) and (2). *Id*. at 1119-20.

On *de novo* review, *supra* at 6, the Court should grant relief for the reasons explained above. If the Court is not inclined to grant relief on the current record, it should at a minimum grant discovery and an evidentiary hearing to allow Willard to further prove his entitlement to relief. Willard is entitled to a hearing because he presented the factual basis of his claim in state court,[6] he did not receive a hearing in state court, and his allegations, if proven, entitle him to relief. *Earp*, 431 F.3d at 1169-72, 1179-80; *Horton v. Mayle*, 408 F.3d 570, 582 n.6 (9th Cir. 2005); *Lawson v. Borg*, 60 F.3d 608, 611 (9th Cir. 1995).

III. 28 U.S.C. § 2254(d) Does Not Bar Relief on Claim Two, and the Court Should Grant Relief on *De Novo* Review

Claim Two of Willard's *pro se* amended petition alleges that trial counsel was prejudicially ineffective under *Strickland* in failing to object to or challenge the

[6] Willard requested an evidentiary hearing in state habeas. *See, e.g.*, docket no. 25-27 at ECF page 35.

admission of evidence regarding his 1987 robbery conviction at sentencing. Docket no. 14 at pages 5-6. "[T]he Supreme Court has clearly established that *Strickland* governs claims for ineffective assistance of counsel in noncapital sentencing proceedings." *Daire v. Lattimore*, 812 F.3d 766, 767 (9th Cir. 2016) (en banc) (per curiam) (footnote omitted).

Respondent contends that the claim fails because "robbery *is* a qualifying offense under" California's Three-Strikes Law and therefore there was no basis to object to the conviction. Memorandum in Support of Response at 10 (original emphasis). Willard's amended petition contends otherwise, *see, e.g.*, docket no. 14 at ECF pages 24-25, but even assuming Respondent is correct, Willard's claim is still meritorious.

Properly read, Willard's claim includes the allegation that counsel performed deficiently at sentencing by failing to investigate and present additional evidence of Willard's mental illness and impairments, including at and before the time of the 1987 robbery and the resulting trial and conviction. *See id*. at ECF pages 27, 61, 66-68, 81-84; *see also* docket no. 25-27 at ECF pages 33, 35, 59-60 (Willard's *pro se* claim in his habeas petition filed in the California Supreme Court).

At sentencing, defense counsel presented some evidence of Willard's mental illness and substance abuse in support of the defense request that the court dismiss prior strikes under *People v. Superior Court (Romero)*, 917 P.2d 628 (Cal. 1996). CT 65-86. Counsel argued that Willard was under the influence of cocaine and alcohol at the time of the dispute on the bus and that he had suffered from mental illness from the time he was a child. CT 71. Counsel argued that Willard's "poor choices can be directly linked to his mental illness and his extreme alcohol and drug addiction." CT 73. However, the only evidence counsel presented of Willard's mental illness and substance addiction consisted of an interview of Willard by counsel's paralegal and a report by Dr. William Vicary in 1987 noting Willard's "chronic psychotic mental illness" and drug abuse. CT 75-86.

Reasonable counsel also would have presented more contemporary evidence by the State's own prison doctors corroborating and further explaining Willard's history of mental illness and impairments and substance addiction. Attached to this Traverse as Exhibit 1 are copies of documents from Willard's prison records that were readily available before the time of the trial in this case. Dr. Dickerman's 1993 report shows that Willard sustained significant trauma in a motor vehicle accident in 1978, well before both the 1987 robbery and the 2009 bus incident. Dr. Dickerman reports that as a result of the accident, Willard sustained head injuries and "may have remained in a coma like state for about two weeks." *See* Exhibit 1 at 3. Other prison records note Petitioner's attempted suicide in 1985 (*id.* at 2); his PCP use and organic brain syndrome (*id*. at 1); his major depression (*id*. at 7-8); his possible mood disorder (*id*. at 8); his possible thought disorder (*id.* at 7, 9); and his paranoia, including complaints that people were putting blood in his food (*id.* at 10-12). Presenting this evidence from the State's own witnesses would have been consistent with counsel's strategy at sentencing, and reasonable counsel would have presented it. *Reynoso*, 462 F.3d at 1107-08, 1115.

Willard was prejudiced by counsel's deficient performance at sentencing. As the court noted at sentencing, both of the prior felony convictions were "fairly old strikes." RT 352. But the court held that "nothing has been submitted to the court to show that there is a -- something redeeming in his background why he should fall outside the spirit of the Three Strikes Law." RT 355. The omitted records from the State's own doctors would have filled in the blanks. Defense counsel conceded that the only doctor's report he submitted -- by Vicary in 1987 -- was "a little bit dated." RT 357. The prison records from the 1990s and 2000s would have cured this deficiency and carried the imprimatur of the State to boot. They also would have shown that Petitioner's mental illness and paranoia contributed to his behavior on the bus, further explaining and mitigating his conduct. But for counsel's deficient performance, there is a reasonable probability that Willard would have received a lesser sentence. *Reynoso*,

462 F.3d at 1116-18. Counsel noted before sentencing that Willard's sentence would be 13 years if the defense motion to strike was granted in its entirety. CT 72. Instead, Willard was sentenced to 30 years to life. RT 365-66. If the Court is not inclined to grant relief on the current record, it should order an evidentiary hearing to allow Willard to further show his entitlement to relief. *Supra* at 9.

IV. Conclusion

For the foregoing reasons, and the reasons given in Willard's prior filings, the Court should grant relief.

Respectfully submitted,

HILARY POTASHNER
Federal Public Defender

DATED: August 2, 2017

By */s/ Mark R. Drozdowski*
MARK R. DROZDOWSKI
Deputy Federal Public Defender

Attorneys for Petitioner
CHARLES R. WILLARD

EXHIBIT 1

DEPARTMENT OF CORRECTIONS — STATE OF CALIFORNIA

ALLERGY

DATE	TIME	
6-16-87		(East) Plan = continue present meds Check blood pressure today - if high, refer to PCP BP 150/100 (L) Arm seated (180) (RA) 150/90 Chrono Inmate has past history of HTN, pressure with resultant hallucinations Inmate presently stabilized on medication. Impression = O.B.S. with hallucinations He may go to any mainline facility [illegible]
6-16-87		1. Claims has High BP 2. PE = BP 6-4-87 140/90 BP 6-16-87 150/100 Psych history - took Sentin, Clonid. RTC 6-18-87 for BP recheck 6-19-87

NAME Willard, Charles — NUMBER C-36206

OUTPATIENT MEDICAL RECORD

CDC 7254 (Rev. 9/77)

(OVER)

Authenticated Copy

CDCR 01332

DEPARTMENT OF CORRECTIONS

STATE OF CALIFORNIA

PAGE

DATE	
6.4.87	1985 – attempted suicide 1984 – " "
	Used to smoke PCP – until recently → auditory hallucinations GI problem – – abdominal pain – constant acid – hypertension.
	Has been on Mellaril, Cogentin, + Inderal?
	Paroled from DVI – 1984. – to the street –
	Plan – Mellaril 100 mg bid x60 d Cogentin 2 mg bid x60 d
6/16/87	Recall next week Mdsg
6.16.87	– Doing well as long as he gets medication. Taking meds now. – Feeling tired. – see next page

HOSPITAL

NAME Williams Charles NUMBER C-36204

Physician's Progress Notes

CDC-7230 (Rev. 9/77)

Authenticated Copy

CDCR 01333

ELIAS DICKERMAN, M.D., Ph.D.

NEUROLOGICAL CONSULTATION REPORT

WILLARD, CHARLES C36206
1/8/93
REFERRING PHYSICIAN: Dr. Johns.

IDENTIFYING DATA & CHIEF COMPLAINT: Mr. Charles Willard is a 32 year old right handed male, referred for neurological consultation.

HISTORY OF PRESENT ILLNESS: The history is obtained from the patient who is considered to be a fair historian. Appropriate sections of the medical chart have been reviewed.

Mr. Willard was involved in a motor vehicle accident in 1978, sustaining significant trauma. It appears that he was a passenger in a motor vehicle, and was ejected from the motor vehicle. The accident occurred in Littlefield, Texas. He sustained multiple injuries, including to his head, and as best as can be ascertained, he may have remained in a coma like state for about two weeks. The hospitalization was prolonged. However, he very specifically states that following the hospitalization he never had any seizures, had never had episodes of loss of consciousness. He was treated primarily with Motrin.

Since the above motor vehicle accident, he has had difficulty with his memory, and also what he describes as dizziness. The dizziness is not vertiginous, but instead it is a lightheaded sensation that takes place when the patient is actively exercising, occasionally with rapid standing, a sensation that lasts only for a few seconds. There is no evidence of diplopia, monocular loss of vision, lack of coordination, imbalance, focal paresthesias, focal weakness. The patient denies any history of headaches.

The patient's past medical history is remarkable for a greater than 10 year history of hypertension. His current medications are Clonidine 0.1 mg t.i.d. for control of blood pressure. The only other medications used are Ibuprofen b.i.d., Hydrocortisone ointment for rash, Benzoyl gel to apply to the face area.

PAST MEDICAL HISTORY:

SURGERIES: None.

FRACTURES: Right hand.

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MEDICAL: History of hypertension, chronic low back pain without radiation, mild arthritis, dizziness, chronic insomnia.

MEDICATIONS: Please see above.

ALLERGIES: None.

TOBACCO: None.

ETOH: None.

DRUGS: Previous use of marijuana, PCP.

FAMILY HISTORY: Non-contributory.

PHYSICAL EXAMINATION: A directed physical examination was performed on the patient on this occasion.

The patient appears an alert, well nourished, well developed, mildly overweight but muscular male who appeared to be in no acute distress, cooperative.

VITAL SIGNS: Supine 138/88, pulse 64 regular, sitting 150/90, pulse 64 regular, standing 155/96, pulse 80 regular. No symptoms were reported.

SKIN: Multiple tattoos, otherwise unremarkable.

HEENT: Normocephalic, atraumatic; sclerae and conjunctivae clear; nose midline; TM's not visualized; oropharynx clear; no bruits appreciated.

NECK: Supple, no adenopathy, thyromegaly or bruits appreciated. Full range of motion was noted.

COR: S1, S2, without murmurs or gallops appreciated.

THORACOLUMBAR SPINE: The patient had no evidence of visible or palpable muscle spasms. There was diffuse midline tenderness throughout the lumbosacral area. There was no focal tenderness at the S/I, trochanteric, sciatic or paravertebral muscle bundles bilaterally. There was significant evidence of increased lordosis noted, no scoliosis was noted.

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The patient was able to flex fully, touching his toes. Full extension, full left and right lateral flexion. Negative straight leg raising to 90 degrees, with significantly tight hamstrings, no radiation. Normal hip rotations and flexions.

CRANIALS: Pupils equal, round, reactive to light, direct and consensual; visual fields grossly intact to confrontation; fundi with sharp disks, no hemorrhages or exudates; negative Marcus-Gunn. EOM's full, no nystagmus was noted. Positive corneals, sensation and masseters intact. No facial asymmetry. Air greater than bone with Weber to midline. Positive gag, palate with midline elevation on phonation. Intact sternocleidomastoid and trapezius. Tongue to midline, no fasciculations noted.

MOTOR: Muscle masses in the upper and lower extremities appeared clinically symmetrical. There was no focal atrophy, no fasciculations were noted. Tone was normal throughout. Strength of 5/5 throughout. Normal gait, equal weight bearing, without limp or list. Able to walk on toes, heels.

COORDINATION: Well performed tapping, finger to nose maneuvers, heel to knee to shin. Normal tandem gait.

DEEP TENDON REFLEXES: Trace at the biceps, triceps, bracheoradialis; 1-2+ at the knees, ankles; downgoing toes.

SENSORY: Intact to soft touch, pinprick, vibratory, position, graphesthesia, stereognosia, negative Romberg.

IMPRESSION:

1. HYPERTENSION.
2. TRANSIENT LIGHTHEADEDNESS SECONDARY TO HYPERTENSION AND MILD ORTHOSTATIC CHANGES.
3. NO EVIDENCE OF INTRACRANIAL PATHOLOGY.
4. CHRONIC LOW BACK PAIN SECONDARY TO INCREASED HYPERLORDOSIS.
5. CHRONIC INSOMNIA.

Elias Dickerman, M.D., Ph.D.

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DISCUSSION AND RECOMMENDATIONS: The patient's history and examination are described above. The diagnoses are given above. With respect to the episodes of dizziness, it appears that this really refers to transient lightheadedness, usually brought on by exercise, or rapid rising. The examination today suggests that this patient is hypertensive, fairly well controlled, but mild orthostatic changes were noted. Most likely, the patient's brief lightheadedness, which is seen usually with exercise or rapid rising, is a reflection of his high blood pressure, and mild orthostatic changes. There is no evidence of intracranial pathology.

With respect to treatment, the patient should be advised not to get up fast, which will produce a transient hypoperfusion to the brain, resulting in lightheadedness. If necessary, at a later date, you may wish to consider a change in his anti-hypertensive medications, but this is not a necessity, given the history and examination today. Otherwise, the patient can exercise routinely, to avoid the orthostatic changes.

With respect to the history of chronic low back discomfort, this is secondary to sacroiliac ligament strain, secondary to the patient's significant hyperlordosis, which is on a congenital basis. He does not have any radicular pattern, neurologically he is intact. With respect to the low back discomfort, the patient should be advised to perform lumbosacral range of motion exercises, McKenzie exercises. The judicious use of anti-inflammatory medications may be of benefit.

With respect to the insomnia, this is chronic, no specific intervention needs to be made at this time.

Thank you very much for referring this patient for neurological examination. Please let me know if I can be of any further assistance.

ELIAS DICKERMAN, M.D., Ph.D.
ED:kmd

Authenticated Copy

CALIFORNIA DEPARTMENT OF CORRECTIONS

BRIEF SCREENING REPORT (VER. EH 2.0)

Willard

ID: C32206

DATE INTERVIEWED: 8/4/200

THESE STATEMENTS ARE BASED ON THE BEHAVIORS AND HISTORIES OF PERSONS WITH SIMILAR INTERVIEW RESPONSES. THE DIAGNOSTIC IMPRESSIONS LISTED BELOW, IF ANY, SHOULD BE CONSIDERED AS HYPOTHESES WHICH SHOULD BE CONFIRMED OR RULED OUT FOLLOWING EXAMINATION BY QUALIFIED PERSONNEL.

POTENTIAL ADJUSTMENT ISSUES:

There are indications that this offender has a possible thought disorder

There are indications that this offender is experiencing a major depression

Based on this initial brief screening, there is an indication that this offender is suffering from a mental illness. Referral to a mental health professional is indicated.

Authenticated Copy

CDCR 02488

CALIFORNIA DEPARTMENT OF CORRECTIONS

BRIEF SCREENING REPORT

==========(VER. CA 1.0)

ID: C36206

DATE INTERVIEWED: 06/09/95

THESE STATEMENTS ARE BASED ON THE BEHAVIORS AND HISTORIES OF PERSONS WITH SIMILAR INTERVIEW RESPONSES. THE DIAGNOSTIC IMPRESSIONS LISTED BELOW, IF ANY, SHOULD BE CONSIDERED AS HYPOTHESES WHICH SHOULD BE CONFIRMED OR RULED OUT FOLLOWING EXAMINATION BY QUALIFIED PERSONNEL.

POTENTIAL ADJUSTMENT ISSUES:

There are indications that this offender has a possible mood disorder

There are indications that this offender is experiencing a major depression

Based on this initial brief screening, there is an indication that this offender is suffering from a mental illness. Referral to a mental health professional is indicated.

Authenticated Copy

CDCR 02494

CALIFORNIA DEPARTMENT OF CORRECTIONS

BRIEF SCREENING REPORT

==========(VER. CA 1.0)

ID: C36206

DATE INTERVIEWED: 05/15/96

THESE STATEMENTS ARE BASED ON THE BEHAVIORS AND HISTORIES OF PERSONS WITH SIMILAR INTERVIEW RESPONSES. THE DIAGNOSTIC IMPRESSIONS LISTED BELOW, IF ANY, SHOULD BE CONSIDERED AS HYPOTHESES WHICH SHOULD BE CONFIRMED OR RULED OUT FOLLOWING EXAMINATION BY QUALIFIED PERSONNEL.

POTENTIAL ADJUSTMENT ISSUES:

There are indications that this offender has a possible thought disorder

Based on this initial brief screening, there is an indication that this offender is suffering from a mental illness. Referral to a mental health professional is indicated.

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Chronological Interdisciplinary Progress Notes: State of California, Department of Corrections – Pelican Bay State Prison

Date: 4-1-03 Time: _____ Chart available? Y Reason for Visit: C/O Ref Location of Visit: SHU Unit

S: Y/m agitated that a ref had been made. Said S any info "They were lying." Y/m was unwilling/unable to clarify Pt/Ho was lying & what were they lying about. Ref addressed concerns re: paranoia, blame & inability to remain focused on current issues.

O: Appearance, Behavior, Speech, LOC, Orientation, Cognition, Memory, Concentration, Affect, Mood, Insight, Judgment, Thought Processes & Content, Suicidal and/or Homicidal ideation.

O: Quick emotional reactiveness c circumstantiality of speech. Very defensive c in a hostile & blaming speech pattern. Became hostile c primitive facial aggression when attempts were made to redirect him back to the initial questions.

A: Diagnosis & Discussion: Treatment Team's diagnosis per MH 2 *first*, then concur, propose, etc..., *with supportive discussion*; condition, case formulation, data analyses, etc....

A: Offices reports & notes in log reveal an anxious hostile & paranoid response pattern to: surprise, change or challenge. In past interviews over time & once calmed from a # of reassurances Y/m is capable of explaining himself, but not S a: Circumstantial discourse. Para P.D. c ASPD features.

P: Follow-up care/appt., *medication changes with rationale*, treatment recommendations, AIMS, consents, diagnostic studies, patient education, etc....

P: Monitor via rounds & referrals for severity changes indicating any decompensation. Cx present functioning is adequate in SHU, but just barely.

PSYCHIATRIC MEDICATIONS (optional for clinicians):

Drug	Dosing	Duration	Target Symptom(s)	Response, blood level, lab results, compliance, anticipated duration, etc...

☐ SEE PAGE 2 →

Signature: D. Costiloe Print Name: D. COSTILOE, LCSW PhD / LCSW / MD / PsyTech / Other:

MENTAL HEALTH INTERDISCIPLINARY PROGRESS NOTE MH 3 (10/11/02) Confidential Client/Patient Information See W & I Code, Section 5328	Level of Care: Inpatient Outpatient	Last Name: Willard	First Name:	MI:
		CDC #: C36206	House: C 16-101	

Authenticated Copy

CDCR 02520

Chronological Interdisciplinary Progress Notes: State of California, Department of Corrections – Pelican Bay State Prison

Date: 4/4/02 Time: 1530 Chart available? _____ Reason for Visit: C/O Referral Location of Visit: _____

S: "He puts blood in my food and serves it to me that way" "He's a little shit (referring to C/O) and always trying to mess w/ me (call from ast. w/ C/O Hagelmeier)

O: Appearance, Behavior, Speech, LOC, Orientation, Cognition, Memory, Concentration, Affect, Mood, Insight, Judgment, Thought Processes & Content, Suicidal and/or Homicidal ideation.

: agitated, angry, ruminately reflecting some paranoid thinking also some distorted judgement in relation to C/O's behavior. Basically, attributing behavior to C/O that he could not possibly be responsible for. No SI, no danger to others

A: Diagnosis & Discussion: Treatment Team's diagnosis per MH 2 first, then concur, propose, etc..., with supportive discussion; condition, case formulation, data analyses, etc....

: ASPD w/ developing paranoid features that may be rising to the threshold of STPD secondarily. Hallucinations deny, however, this danger and hostility seems all out of proportion to C/O Hagelmeier's statements

P: Follow-up care/appt., medication changes with rationale, treatment recommendations, AIMS, consents, diagnostic studies, patient education, etc....

: PC in IDTT on 4/9/02, continue to monitor

PSYCHIATRIC MEDICATIONS (optional for clinicians):

Drug	Dosing	Duration	Target Symptom(s)	Response, blood level, lab results, compliance, anticipated duration, etc...
none				

☐ SEE PAGE 2 →

Signature: [signature] Print Name: E. DOUGLASS PhD / LCSW / MD / PsyTech / Other:

MENTAL HEALTH INTERDISCIPLINARY PROGRESS NOTE MH 3 (10/11/02) Confidential Client/Patient Information See W & I Code, Section 5328	Level of Care: Inpatient Outpatient	Last Name: Willard First Name: MI: CDC #: C36206 House: CH-215L

Authenticated Copy

CDCR 02521

Chronological Interdisciplinary Progress Notes: State of California, Department of Corrections – Pelican Bay State Prison

Date: 4/6/02 Time: 0820 Chart available? ____ Reason for Visit: C/O F/U Location of Visit: SHU-office

S: C/O Hagelmier who referred T/M Willard stating that T/M Willard had apologized to him for his outburst at Hagelmier and his behavior in a more appropriate way

O: Appearance, Behavior, Speech, LOC, Orientation, Cognition, Memory, Concentration, Affect, Mood, Insight, Judgment, Thought Processes & Content, Suicidal and/or Homicidal ideation.

: T/M Willard seems to be able to control his behavior even though apparently he still has paranoid thoughts concerning staff. Hagelmier C/O referred he has no control over himself and T/M Willard accepted

A: Diagnosis & Discussion: Treatment Team's diagnosis per MH 2 *first*, then concur, propose, etc..., *with supportive discussion*; condition, case formulation, data analyses, etc....

: ASPD w/ paranoid thinking

P: Follow-up care/appt., ***medication changes with rationale***, treatment recommendations, AIMS, consents, diagnostic studies, patient education, etc....

: Due to recent behaviors C/O T/M Willard, he will not be brought to IDTT on 4/6/02, but will continue to be monitored for additional referrals by C/O Hagelmier

PSYCHIATRIC MEDICATIONS (optional for clinicians):

Drug	Dosing	Duration	Target Symptom(s)	Response, blood level, lab results, compliance, anticipated duration, etc...
NO MEDS				

☐ SEE PAGE 2 →

Signature: E. Burgess Print Name: E. Burgess PhD / (LCSW) / MD / PsyTech / Other:

MENTAL HEALTH INTERDISCIPLINARY PROGRESS NOTE MH 3 (10/11/02) Confidential Client/Patient Information See W & I Code, Section 5328	Level of Care: Inpatient / Outpatient	Last Name: Willard.	First Name:	MI:
		CDC #: C36206	House: C11-215L	

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CDCR 02522

State of California, Department of Corrections - Institution: PBSP Prior Page Number: _____

CHRONOLOGICAL INTERDISCIPLINARY PROGRESS NOTES: All Staff, Clinicians, Treatment Teams.

Date/Time	Use Name & Title Stamp
10-30-02	Discussed case w/ Dr Douglas re: eval, he suggests I call SHU Psychiatrist for eval if not available Douglas will provide. Dr Moreno will eval 7M re: beliefs of food being poisoned. — D. Costello LCSW

Page # _____

MENTAL HEALTH INTERDISCIPLINARY PROGRESS NOTES

MH 3 (03/22/96)

Confidential Client/Patient Information See W & I Code, Section 5328

Level of Care: Inpatient / Outpatient

Last Name: Willard First Name: _____ MI: _____

CDC #: C36206 HOUSE: C11-215

DOB: / /

Authenticated Copy

CDCR 02524

Other Answers

2:16-cv-03805-CJC-JC Charles R. Willard v. California Depart. of Corrections

194

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Drozdowski, Mark on 8/2/2017 at 4:37 PM PDT and filed on 8/2/2017

Case Name: Charles R. Willard v. California Depart. of Corrections
Case Number: 2:16-cv-03805-CJC-JC
Filer: Charles R. Willard
Document Number: 38

Docket Text:
TRAVERSE filed by petitioner Charles R. Willard. (Attachments: # (1) Exhibit) (Drozdowski, Mark)

2:16-cv-03805-CJC-JC Notice has been electronically mailed to:

Lara Kristin Hoffman lara_k_hoffman@fd.org, zzCAC_FPD_Document_Receiving@fd.org

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2:16-cv-03805-CJC-JC Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

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Document description: Main Document
Original filename:O:\NON-CAPITAL\WILLARD, Charles 16-02862\To Be Filed\TRAVERSE.pdf
Electronic document Stamp:
[STAMP cacdStamp_ID=1020290914 [Date=8/2/2017] [FileNumber=23981160-0] [038b1772967e3f610da76693be3948585eeb25898112ec974b5a8102036ed9ed4657 eb05a11de7b4f41ba8ba8f4f2f2ca38f4025a10c36781138286316e18501]]
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00ea175d018be9d1aa5cf133b4cb8f146ce470e81ff3a72dfa0571fba126]]

APPENDIX 11

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Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CHARLES R. WILLARD,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF CORRECTIONS,

Respondent.

Case No. CV 16-03805-CJC (JC)

RESPONSE TO FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS; MEMORANDUM OF POINTS AND AUTHORITIES

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Respondent, Debbie Asuncion,[1] Acting Warden of California State Prison, Los Angeles County in Lancaster, California, files this Response to the First Amended Petition for Writ of Habeas Corpus ("FAP"), and admits, alleges, and denies the following:

1. Petitioner is properly in the custody of the California Department of Corrections and Rehabilitation under the authority of a valid judgment and felony conviction in Los Angeles County Superior Court case number BA362410, pursuant to which Petitioner is serving a state prison term of thirty years to life.

2. Grounds One and Two alleged in the FAP should be denied and dismissed with prejudice because the California Supreme Court's denial of relief on these claims was neither contrary to nor an unreasonable application of clearly established United States Supreme Court precedent. *See* 28 U.S.C. § 2254(d).

3. The FAP appears to be timely.

4. As currently alleged, the claims set forth in the FAP appear to be exhausted.

5. Neither claim in the FAP appears to be procedurally barred.

6. Neither claim in the FAP appears to be barred by the non-retroactivity doctrine set forth in *Teague v. Lane*, 489 U.S. 288, 310 (1989).

7. No evidentiary hearing is necessary to resolve the claims alleged in the FAP because a proper application of 28 U.S.C. § 2254(d) requires that the claims be denied on the basis of the record before the state court. *See Cullen v. Pinholster*, 563 U.S. 170 (2011). Moreover, no evidentiary hearing should be held because, to the extent that Petitioner's claims are not fully factually developed, he failed to exercise "due diligence" within the meaning of 28 U.S.C. § 2254(e), and cannot otherwise meet the stringent requirements of that statute.

[1] Ms. Asuncion is the current custodian of the institution where Petitioner is incarcerated. Substitution of the proper respondent is authorized pursuant to Rule 25 of the Federal Rules of Civil Procedure.

8. Respondent denies each and every allegation of the FAP and specifically denies that Petitioner's custody is in any way improper, that the judgment underlying Petitioner's custody is in any way improper, and that his federal constitutional rights are being violated in any way.

9. This Response is based on the attached Memorandum of Points and Authorities, this Court's file, and the concurrently lodged documents ("LD") in this case, including the clerk's transcript ("CT") and reporter's transcript ("RT") prepared in connection with Petitioner's direct appeals, and on such other matters as are properly submitted to the Court.

WHEREFORE, Respondent respectfully requests that the First Amended Petition for Writ of Habeas Corpus be denied with prejudice.

Dated: October 10, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
JASON TRAN
Supervising Deputy Attorney General

/s/ Stephanie C. Santoro
STEPHANIE C. SANTORO
Deputy Attorney General
Attorneys for Respondent

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MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

Petitioner was convicted in 2011 by a jury in Los Angeles County Superior Court case number BA362410 of two counts of assault with a deadly weapon (Cal. Penal Code § 245(a)). (1CT at 140-41; 2RT at 286-87.)[2] The trial court found Petitioner had suffered two prior convictions and one prior juvenile adjudication for robbery within the meaning of California's Three Strikes Law (Cal. Penal Code §§ 667(b)-(i), 1170.12(a)-(d)). Petitioner was sentenced to thirty years to life in state prison. (1CT at 184-85; 2RT at 342-43, 366-67.)

In the first of Petitioner's two state direct appeals, California Court of Appeal case number B233492, the California Court of Appeal concluded the evidence was insufficient that Petitioner was at least sixteen years old at the time he committed the crime which was the subject of his juvenile adjudication. The court of appeal affirmed the judgment of conviction and remanded for a possible retrial on the prior strike conviction, noting the trial court could elect to exercise its discretion to dismiss one of the prior strike convictions for robbery in 1987 because they arose from the same incident. (LD 7.)

On remand, after Petitioner's request for a jury trial on the juvenile strike allegation, the State presented evidence of Petitioner's date of birth (October 1, 1960) and the date of the commission of that crime (May 1, 1978). On that basis, the jury found true the allegation that Petitioner had suffered the prior adjudication, and the trial court determined the juvenile adjudication constituted a prior strike conviction. On resentencing, the trial court declined to exercise its discretion to dismiss any of the prior strike convictions. Petitioner was resentenced to a state prison term of thirty years to life. (LD 17.)

In the second direct appeal, California Court of Appeal case number B250588,

[2] Unless otherwise noted, all further references to the clerk's and reporter's transcripts are to those from Petitioner's underlying trial. (*See* LD 1, 2.)

the California Court of Appeal affirmed the judgment pursuant to *People v. Wende*, 25 Cal. 3d 436, 411 (1979), after appointed counsel found no arguable issues from her review of the record. (LD 14.) Petitioner did not seek review in the California Supreme Court. *See* http://appellatecourtinfo.cases.ca.gov.

On August 4, 2014, Petitioner filed a petition for writ of habeas corpus in California Court of Appeal case number B257962, which was denied on August 6, 2014. (LD 15, 16.)

On September 15, 2014, Petitioner filed a petition for writ of habeas corpus in Los Angeles County Superior Court case number BA362410, which was denied on January 27, 2015. (LD 17.)[3]

On March 3, 2015, Petitioner filed a petition for writ of habeas corpus in California Court of Appeal case number B262329, which was denied on March 3, 2015. (LD 18, 19.)

On April 27, 2015, Petitioner filed a petition for writ of habeas corpus in California Supreme Court case number S226093, which was denied on July 22, 2015. (LD 20, 21.)

Petitioner filed the original federal habeas petition on May 25, 2016. (*See* Dkt. No. 2.)

Petitioner filed the FAP on June 25, 2016. (*See* Dkt. No. 14.)

On July 12, 2016, this Court ordered Respondent to file a response to the FAP, which "at a minimum, addresses the merits of Grounds One and Two." (Dkt. No. 17 at 2.)

PETITIONER'S CONTENTIONS

1. Defense counsel was ineffective for failing to object to false testimony by the victim. (FAP at 5.)[4]

[3] Respondent was unable to obtain a copy of this petition and its denial order, and therefore relies on the superior court docket for information about this proceeding, including the filing and denial date.

[4] For ease of reference, Respondent refers to the pagination generated by this (continued…)

2. Defense counsel was ineffective for failing to object to the admission of evidence of Petitioner's 1987 robbery conviction. (FAP at 5-6.)

STATEMENT OF FACTS[5]

A. Prosecution Case-in-Chief

On September 21, 2009, Santos Hernandez and his friend and coworker David Ponce, were on a Metropolitan Transit Authority ("MTA") bus heading home from work. They sat in the back of the bus. (1RT at 60-61, 135-36.) There were fifteen to twenty other people who eventually boarded the bus. (1RT at 61.) Petitioner was approximately four rows, or ten feet, in front of Hernandez and Ponce. Neither Hernandez nor Ponce had ever seen Petitioner before that day. (1RT at 62-63, 137.)

After five minutes on the bus, Petitioner approached Hernandez. (1RT at 63, 137.) Petitioner touched Hernandez's face and said, "Pinche Mexico" ("Fucking Mexican"). Hernandez said, "No problema" ("No problem" or "No trouble"), by which Hernandez meant that he did not want any trouble. Petitioner continued speaking in English, but Hernandez and Ponce did not understand what he was saying. Petitioner returned to his seat and took a knife from his backpack. (1RT at 63-64, 67, 91, 108, 137-38, 152-53.) Petitioner walked back toward Hernandez and Ponce with the knife unfolded. He held the knife at chest level. Hernandez and Ponce jumped onto the bus seat because they were scared. Petitioner swiped the knife at Hernandez's lunch bag. Petitioner swung again and cut Hernandez in the arm. Hernandez kicked Petitioner in the stomach or chest area. (1RT at 65-66, 103-04, 139-40.) Video surveillance footage of the incident was obtained from MTA and played for the jury. (1RT at 87-89.)

(…continued)
Court's electronic case filing system.

[5] A summary of the underlying crimes was not included in the California Court of Appeal's opinion because it was not necessary to the issue raised on appeal. (*See* LD 7.) The second appeal also did not include such a summary because no arguable issues were found to exist pursuant to *People v. Wende*, 25 Cal. 3d at 441. (*See* LD 14.)

During the commotion, the bus driver stopped the bus and everyone exited the bus. (1RT at 66.) Petitioner got off the bus after Hernandez and Ponce did. (1RT at 67, 109, 141.) Ponce followed Petitioner while calling 911. He followed Petitioner into a CVS store. (1RT at 116, 141-42.)

The police arrived approximately five minutes later. (1RT at 109-10.) Based on the radio dispatch description of the suspect, Los Angeles County Sheriff's Deputy Andrew Armes detained Petitioner inside a CVS store. Petitioner was wearing a gray jersey with a large red number "8" on the back. (1RT at 119, 121-22, 124.) Deputy Armes searched Petitioner's backpack, which contained a switch-blade knife with a six-inch blade. The blade had residue that appeared consistent with blood. (1RT at 122-23.) Deputy Armes interviewed Hernandez and Ponce who were "very shooken up." They appeared to be nervous and physically shaking. (1RT at 126.) Hernandez identified Petitioner as the assailant. (1RT at 113.)

Hernandez was taken to a nearby hospital where he received treatment. (1RT at 115.) Hernandez suffered an inch and a half cut that required five stitches and left a permanent scar. (1RT at 68-69.)

B. Defense Case

Petitioner testified on his own behalf. (2RT at 182.) On September 21, 2009, Petitioner was on an MTA bus carrying a backpack with razors and electric toothbrushes that he was planning to sell. (2RT at 183-84.) Petitioner also had a knife in his backpack, which he carried for protection because he was injured in 2008 by a "Mexican" and suffered twenty-three stitches. (2RT at 184.)

Petitioner was trying to sell some razors when Hernandez looked at him in a "strange way," and shouted, "No, no. I'll take something from you." (2RT at 184.) Hernandez's tone was aggressive. (2RT at 211.) Petitioner perceived that as a threat. Petitioner saw Hernandez clench his fists. Petitioner returned to his seat, retrieved the knife from his backpack, and went toward Hernandez. The switch-blade was open such that the knife was exposed. Petitioner carried the knife at his

side. Hernandez jumped onto a bus seat and kicked Petitioner in the chest with steel-toed boots. Petitioner cut Hernandez's right arm near the elbow with the knife. Petitioner told Hernandez to get off the bus because he was not sure what else Hernandez was capable of doing. Petitioner only swung the knife because he was acting in self-defense after Hernandez kicked him. (2RT at 185-86, 192, 195-96.) Petitioner exited the bus and went to the CVS store to buy asthma medicine. (2RT at 186-87.)

Petitioner acknowledged that the MTA video footage depicted him in a gray jersey with the number "8" on the back. (2RT at 189.) However, he claimed that the video footage shown to the jury was not the "original copy." Rather, the original copy, which Petitioner claimed was in the prosecutor's possession, showed a different sequence of events. Petitioner maintained that he was seated in the back of the bus, and that the bus driver could have testified to the same, but was "excluded in [the] trial." (2RT at 197-98.)

When shown a photograph of Hernandez's injury on the left arm, Petitioner denied that he caused that injury. He maintained that he only nicked Hernandez on his right arm near the elbow. (2RT at 191.)

ARGUMENT

I. RELITIGATION OF PETITIONER'S CLAIMS IN FEDERAL COURT IS BARRED BY 28 U.S.C. § 2254(D), AS EACH WAS REASONABLY REJECTED ON THE MERITS BY THE CALIFORNIA SUPREME COURT

As amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254(d) constitutes a "threshold restriction," *Renico v. Lett*, 559 U.S. 766, 773 n.1 (2010), on federal habeas corpus relief that "bars relitigation of any claim 'adjudicated on the merits' in state court" subject to two narrow exceptions. *Harrington v. Richter*, 562 U.S. 86, 98 (2011). These exceptions require a petitioner to show that the state court's previous adjudication of the claim either (1) 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) was "'based on an unreasonable determination of the facts in light of the evidence presented at the State Court proceeding.'" *Id*. at 97-98 (quoting 28 U.S.C. § 2254(d)).

"Section 2254(d) reflects the view that habeas corpus is a 'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." *Harrington v. Richter*, 562 U.S. at 102-03 (quoting *Jackson v. Virginia*, 443 U.S. 307, 332 n.5 (1979)). Accordingly, to overcome the bar of § 2254(d), a petitioner is required to show at the threshold that "the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id*. at 103; *see also Johnson v. Williams*, 133 S. Ct. 1088, 1091, 1094 (2013) (standard set forth in § 2254(d) is "difficult to meet" and "sharply limits the circumstances in which a federal court may issue a writ of habeas corpus to a state prisoner whose claim was 'adjudicated on the merits in State court proceedings'"). Moreover, the analysis under § 2254(d) "is limited to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011); *accord* § 2254(d)(2).

Here, Petitioner's claims were most recently rejected on the merits on habeas corpus by the California Supreme Court. (LD 20, 21.) Thus, the California Supreme Court's denial is the relevant state-court decision for purposes of § 2254(d). *See Harrington v. Richter*, 562 U.S. at 98 (state court's summary denial of a claim constitutes a denial on the merits for purposes of 28 U.S.C. § 2254(d)); *see also In re Reno*, 55 Cal. 4th 428, 447 (2012) (summary habeas denial reflects rejection of each claim on the merits). Where, as here, a state-court adjudication is unexplained, the question under § 2254(d) is "whether there is any reasonable argument" supporting the state court's denial of relief. *Harrington v. Richter*, 562 U.S. at 98, 105. As will be explained, AEDPA precludes relitigation of Petitioner's

claims on federal habeas corpus.

II. THE CLAIM IN GROUND ONE IS CONCLUSORY; IN ANY EVENT, THE CALIFORNIA SUPREME COURT REASONABLY REJECTED IT

In Ground One of the FAP, Petitioner contends that defense counsel was ineffective for failing to object to the false testimony of the victim. (FAP at 5, 21.) This claim is conclusory and in any event, warrants no habeas relief because the California Supreme Court reasonably rejected it.

A. Applicable Law

In order to prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's conduct fell below an objective standard of reasonableness, and that the defendant was prejudiced by counsel's acts or omissions. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *accord Harrington v. Richter*, 562 U.S. at 104.

The first prong of the *Strickland* test – deficient performance – requires a showing that counsel's performance was "outside the wide range of professionally competent assistance." *Strickland v. Washington*, 466 U.S. at 690. "A court considering a claim of ineffective assistance must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." *Harrington v. Richter*, 562 U.S. at 104 (citing *Strickland v. Washington*, 466 U.S. at 689).

The second prong of the *Strickland* test – prejudice – requires a showing of a "reasonable probability that, but for counsel's unprofessional errors, the result of the [trial] would have been different." *Strickland v. Washington*, 466 U.S. at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.*; *see also Woodford v. Visciotti*, 537 U.S. 19, 22 (2002). "The likelihood of a different outcome must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. at 112 (citing *Strickland v. Washington*, 466 U.S. at 693).

Because the *Strickland* standard is a general one, state courts have great

leeway in applying it. *Knowles v. Mirzayance*, 556 U.S. at 123; *see Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004) ("The more general the rule, the more leeway [state] courts have in reaching outcomes in case by case determinations."); *see also Bobby v. Van Hook*, 558 U.S. 4, 7 (2009) (per curiam) (*Strickland* necessarily established a general standard because "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant") (internal quotation marks omitted). On federal habeas review, "[a] state court must be granted a deference and latitude that are not in operation when the case involves review under the *Strickland* standard itself." *Harrington v. Richter*, 562 U.S. at 101.

As the Supreme Court has cautioned: "Federal habeas courts must guard against the danger of equating unreasonableness under *Strickland* with unreasonableness under § 2254(d). When § 2254(d) applies, the question is *not* whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Harrington v. Richter*, 562 U.S. at 105 (emphasis added).

Judicial review of a *Strickland* claim is "highly deferential," and "doubly deferential when it is conducted through the lens of federal habeas." *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (per curiam); *see also Delgado v. Lewis*, 223 F.3d 976, 981 (9th Cir. 2000) (*Strickland* standard is "very forgiving"). "'Surmounting *Strickland*'s high bar is never an easy task[,]'" and "[e]stablishing that a state court's application of *Strickland* was unreasonable under § 2254(d) is all the more difficult." *Harrington v. Richter*, 562 U.S. at 105 (quoting *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010)).

B. This Claim Should be Rejected as Conclusory

Petitioner asserts in the FAP that defense counsel was ineffective for failing to object to Hernandez's "false" testimony. (FAP at 5.) However, he fails to identify

the specific portions of allegedly false testimony offered by Hernandez and demonstrate how or why they were untrue. *See James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (rejecting ineffective assistance claim because "[c]onclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief"); *United States v. Smith*, 924 F.2d 889, 896 (9th Cir. 1991) ("[U]nsupported and conclusory claims are not sufficient to show error."). Thus, Petitioner's claim must be rejected as conclusory because he has failed to identify the instances in which Hernandez offered supposedly "false" testimony to which defense counsel should have objected. *See Barahona v. Madden*, 2015 WL 9311650, at *7 (C.D. Cal. Sept. 16, 2015) (rejecting as conclusory the claim that trial counsel failed to object or "follow up" on "false and misleading" witness testimonies where petitioner failed to identify which of the witness testimonies were false and why it was false); *Loveday v. Haws*, 2008 WL 5246091, at *14 (E.D. Cal. Dec. 15, 2008) (claim that trial counsel rendered ineffective assistance for failing to object to "hearsay statements" were vague and conclusory; "failure to identify the . . . substance of [the] proposed testimony, or the nature of the objections counsel should have made, is fatal to these claims").

C. The California Supreme Court's Decision Was Reasonable

To the extent Petitioner's claim can be addressed, it warrants no habeas relief because the California Supreme Court's rejection of it was reasonable. Defense counsel was not deficient in failing to object to Hernandez's testimony on the grounds that it was "false." Indeed, that is not a recognized objection under California's Evidence Code. Thus, defense counsel could not be deficient in not making a futile objection. *See James v. Borg*, 24 F.3d at 27 (failure to make futile objection does not constitute ineffective assistance of counsel); *Rupe v. Wood*, 93 F.3d 1434, 1445 (9th Cir. 1996) ("[T]he failure to take a futile action can never be deficient performance.").

Additionally, Petitioner has failed to establish any prejudice. Absent a

showing of which portions of Hernandez's testimony are allegedly false, it is impossible to determine how Petitioner could have been prejudiced by his attorney's failure to object. However, even assuming Petitioner had specified which portions of Hernandez's testimony he now challenges, his mere skepticism about or disagreement with Hernandez's version of events is insufficient to establish that his counsel was ineffective. *See Loveday v. Haws*, 2008 WL 5246091, at *15-16 (petitioner's unfounded suspicions and insinuations that the detective's testimony was false were insufficient to support a claim of ineffective assistance of counsel; petitioner failed to show any resulting prejudice from trial counsel's failure to object to portions of the detective's testimony). Indeed, Petitioner had the opportunity—of which he took full advantage—to testify in his own behalf and present his version of the incident. Nevertheless, the jury chose to credit Hernandez's testimony rather than Petitioner's.

In sum, the California Supreme Court's rejection of the claim was reasonable. Therefore, no habeas relief is warranted as to Ground One.

III. THE CALIFORNIA SUPREME COURT REASONABLY REJECTED THE CLAIM IN GROUND TWO

In Ground Two, Petitioner contends that defense counsel was ineffective for failing to object to evidence of his 1987 robbery conviction on the ground that it did not qualify as a "strike" under California's Three Strikes Law. (FAP at 5-6, 24-25.) No habeas relief is warranted as to this claim because the California Supreme Court's rejection of this claim was reasonable.

Respondent hereby incorporates the applicable legal standards regarding ineffective assistance claims. (*See* Arg II.A, *supra*.) Here, counsel had no duty – indeed no legal basis – for objecting to the 1987 robbery conviction on the ground that it did not qualify as a "strike" under California's Three Strikes Law. Such an objection would have been meritless because robbery *is* a qualifying offense under that sentencing scheme. *See* Cal. Penal Code §§ 667(d)(1), 667.5(c)(9),

1192.7(c)(19). Petitioner's ineffective assistance therefore warrants no habeas relief. *See Juan H. v. Allen*, 408 F.3d 1262, 1273 (9th Cir. 2005) ("trial counsel cannot have been ineffective for failing to raise a meritless objection"); *United States v. Oplinger*, 150 F.3d 1061, 1071-72 (9th Cir. 1998) (same); *United States v. Quintero-Barraza*, 78 F.3d 1344, 1349 (9th Cir. 1996) (counsel not required to make unavailing motion); *James v. Borg*, 24 F.3d at 27 (failure to make futile objection does not constitute ineffective assistance of counsel); *Boag v. Raines*, 769 F.2d 1341, 1344 (9th Cir. 1985) (failure to raise meritless argument at trial not ineffective assistance).

CONCLUSION

Based on the foregoing arguments and authorities, Respondent respectfully requests that the First Amended Petition for Writ of Habeas Corpus be denied with prejudice.

Dated: October 10, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
JASON TRAN
Supervising Deputy Attorney General

/s/ Stephanie C. Santoro
STEPHANIE C. SANTORO
Deputy Attorney General
Attorneys for Respondent

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APPENDIX 12

CLEAR FORM

Charles R. Willard
NAME
C-36206, T.D.3-143H
PRISON IDENTIFICATION/BOOKING NO.
P.O. Box 4670
ADDRESS OR PLACE OF CONFINEMENT
Lancaster, CA 93539

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

ORIGINAL

FILED
CLERK, U.S. DISTRICT COURT
JUN 29 2016
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

original copy.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Charles R. Willard
FULL NAME (*Include name under which you were convicted*)
Petitioner,

v.

California Dept. of Corrections;
NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER
Respondent.

CASE NUMBER: BA362410
CV 16-3805-CJC (JC)
To be supplied by the Clerk of the United States District Court

☑ Petition is AMENDED

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY
28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION
PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT (*List by case number*)
CV
CV

INSTRUCTIONS - PLEASE READ CAREFULLY

1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
6. You must pay a fee of $5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds $25.00, you must pay the filing fee.
7. When you have completed the form, send the original and two copies to the following address:

Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
312 North Spring Street
Los Angeles, California 90012

Sec. 68630. Legislative, Finding and declaration (A.) B.) (C.)

PLEASE COMPLETE THE FOLLOWING: (*Check appropriate number*)

This petition concerns:
1. ☒ a conviction and/or sentence.
2. ☐ prison discipline.
3. ☐ a parole problem.
4. ☐ other.

PETITION

1. Venue
   a. Place of detention P.O. Box 4670, Lancaster, CA 93539.
   b. Place of conviction and sentence L.A. County Superior Court. 210 West. Temple St. Los Angeles, CA 90012.
2. Conviction on which the petition is based *(a separate petition must be filed for each conviction being attacked).*
   a. Nature of offenses involved *(include all counts)*: 2 COUNTS OF ASSAULT WITH (A) Deadly WEAPON UNDER P.C. 245, Subd. A)1)
   b. Penal or other code section or sections: 245 A)1)
   c. Case number: BA362410
   d. Date of conviction: 1-18-11
   e. Date of sentence: 5/24/11
   f. Length of sentence on each count: 30 YEARS TO Life
   g. Plea *(check one)*:
      ☐ Not guilty
      ☐ Guilty
      ☐ Nolo contendere
   h. Kind of trial *(check one)*:
      ☒ Jury
      ☐ Judge only
3. Did you appeal to the California Court of Appeal from the judgment of conviction? ☒ Yes ☐ No
   If so, give the following information for your appeal *(and attach a copy of the Court of Appeal decision if available)*:
   a. Case number: B262329
   b. Grounds raised *(list each)*:
      (1) Trial Counsel was Ineffective for Failing To Challenge
      (2) the Alleged priors Conviction in 1987, In (A) Bifurcated proceeding. See, Exh (B) NO. 1207-338-339.)

Attach on page 2. on. Exhibits. with petition.

2.

DEFENSE COUNSEL'S FAILURE TO REQUEST JURY INSTRUCTIONS LIMITING THE JURY'S CONSIDERATION OF PETITIONER'S, 1987, PRIORS. (3) TRIAL COUNSEL MCGURK, AGAIN WAS INEFFECTIVE FOR FAILING (4) TO OBJECT AND ARGUED THE FACTS NECESSARY THAT (5) CONSTITUTE FALSE TESTIMONY BY THE ALLEGED VICTIMS. HERNANDEZ. (6)

c. Date of decision: 3-4-2015... SEE ALSO, OPINION 7-16-2014.

d. Result AFFIRMED

4. If you did appeal, did you also file a ~~Petition for Review with~~ the California Supreme Court of the Court of Appeal decision? ☒ Yes ☐ No

HABEAS CORPUS FOR REVIEW, IN.

If so give the following information *(and attach copies of the Petition for Review and the Supreme Court ruling if available)*:

a. Case number: S226093

b. Grounds raised *(list each)*:

(1) SAME GROUNDS RAISED ON PAGE 4-5

(2)

(3)

(4)

(5)

(6)

c. Date of decision: July. 22. 2015

d. Result AFFIRMED.

5. If you did not appeal: N/A

a. State your reasons

b. Did you seek permission to file a late appeal? ☐ Yes ☐ No N/A

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

☑ Yes ☐ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: C.C.B. SUPERIOR COURT

(2) Case number: BIA362410

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: JAN-27-2015

(4) Grounds raised *(list each)*:

(a) the Jury found that petitioner did not inflict Bodily
(b) Injury or Great Bodily Injury in the commission
(c) of the charged offenses. petitioner was
(d) sentence and enhanced under P.C. Sec. 12022.7
(e) Subd.C, making this offense (A) felony under P.C. Sec.
(f) 1192.7.(C) See, Attach Sheet, page 1.)-pag 7-

(5) Date of decision: 1-27-2015. Back of ptition.

(6) Result Affirmed

(7) Was an evidentiary hearing held? ☒ Yes ☐ No

b. (1) Name of court: Court of Appeal

(2) Case number: B250588 and also, B262329.

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: July-16-14-/3-4-2015

(4) Grounds raised *(list each)*:

(a) Statement of the Case
(b) In Mr. Willard first appeal, and in his
(c) second appeal the Court of Appeals
(d) affirmed his (2) convictions for assault with
(e) (A) Deadly Weapon. In. Pen. Code Sec. 245,
(f) Subd. (A)1.) the Jury convicted petitioner

(5) Date of decision: See, Attach Sheet. Page (1.A.) 2A-3A,

(6) Result Affirmed.
See, Opinion Dated. July. 16, 2014.

(7) Was an evidentiary hearing held? ☒ Yes ☐ No

c. (1) Name of court: LA. County Superior Court

(2) Case number: BA362410. B233492.

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: 1-8-2013.

(4) Grounds raised *(list each)*:

(a) See, Above
(b)
(c)
(d)
(e)
(f)

(5) Date of decision: July. 16, 2014.

(6) Result AFFirmed.

(7) Was an evidentiary hearing held? ☐Yes ☐No

7. Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know): N/A

8. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement*: In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: Trial Counsel MCGurk. was Ineffective for failing To object, and Argued the Facts

(1) Supporting FACTS: Necessary That Constitute False Testimony by the Alleged Victims Hernandez Under Pen. Code. Sec. 1473, A) b) 1) c) See, Trans-Crpt. No. 68- Line 22.- No. 71.) Line 10-28.) No. 69.) Line 2-5-28.) No. 214.) Line. 9-15-27, ON, Exh A on page 1

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☒Yes ☐No

(3) Did you raise this claim in a ~~Petition for~~ Habeas Review to the California Supreme Court? ☒Yes ☐No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☒Yes ☐No

b. Ground two: Trial Counsel MCGurk, Did NOT object or, Challenge The Evid. on the, 1987, Adult Prior

(1) Supporting FACTS: See Transcrpt. 339-338. on page (4.) ON, Exh B page 2 Attach To this petition

See Attached Sheet That Is Part Of This Petition. 1. The Brief Sheet From The Brief. 2. Prosecution Evid. And (3.) The Defense. Evid. (4.) Attach Sheets Supporting Facts. With this Fed. Writ. With Exhibits and Opinions From State Court. See, Page 7 And Page 12 Back of Petition

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☒ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☒ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☒ Yes ☐ No

c. Ground three: _____

_____

(1) Supporting FACTS: _____

_____

_____

_____

_____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

d. Ground four: _____

_____

(1) Supporting FACTS: _____

_____

_____

_____

_____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

e. Ground five: _____

_____

(1) Supporting FACTS: _____

_____

_____

_____

_____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☒ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

9. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: N/A

10. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

☐ Yes ☒ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court:

(2) Case number:

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*:

(4) Grounds raised *(list each)*:

(a)

(b)

(c)

(d)

(e)

(f)

(5) Date of decision:

(6) Result

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: LA COUNTY Superior COURT

(2) Case number: BA362410.

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: 1-27-2015

(4) Grounds raised *(list each)*: It Has Held That the Appropriate

(a) STANDARD IS That of Reasonably

(b) effective ASSISTANCE BUT HAS NOT ATTEMP-

(c) Ted, To SET OUT more specific Guidelines

(d) Leaving the DETERMINATION of the ISSUE'S TO

(e) the Good SENSE AND DISCRETION To the Fed-

(f) eral. COURTS. MC MANN. VS. Richardson. 1970, 397.

(5) Date of decision: U.S 709. Strickland VS. WASHINGTON. (1984)

466 U.S 668.

7.

(6) Result AFFirmed

(7) Was an evidentiary hearing held? ☒ Yes ☐ No See the information on page (4.) and see, Attach sheet page 1A - AN 2A-3A

11. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? ☒ Yes ☐ No

If so, give the following information *(and attach a copy of the petition if available)*:

(1) Name of court:

(2) Case number:

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*:

(4) Grounds raised *(list each)*: CONSTITUTIONAL VIOLATIONS.

(a) the due process GUARANTEED by the FOURT-
(b) eeNTh, AMENDMENT To the UNITED STATE, AND
(c) FEDERAL CONSTITUTION REQUIRES THAT HA, CON-
(d) VICTION. Be SUPPORTED by SUBSTANT-
(e) IAL, EVId.) MARTIN VS. OHIO. 1987, 480 U.S. 228.
(f) 231-236. Citing JACKSON VS. VIRGINIA. 1979, 443 U.S. 307-318, 319.

12. Are you presently represented by counsel? ☐ Yes ☒ No

If so, provide name, address and telephone number: N/A

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on JUNE-25-16
Date

Signature of Petitioner

CHARLES R WILLARD
Petitioner

Respondent(s)
CALIFORNIA DEPART. OF CORRECTIONS.

ELECTION REGARDING CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

- A magistrate judge is available under 28 U.S.C. § 636 (c) to conduct all proceedings in this case, including dispositive matters, and entry of final judgment. However, a magistrate judge may be assigned to rule on dispositive matters only if all parties voluntarily consent.
- Parties are free to withhold consent to magistrate judge jurisdiction without adverse substantive consequences.
- If both parties consent to have a magistrate judge decide the case, any appeal would be made directly to the Ninth Circuit Court of Appeals, as if a district judge had decided the matter.
- Unless both parties consent to have a magistrate judge decide the case, the assigned magistrate judge will continue to decide only non-dispositive matters, and will issue a Report and Recommendation to the district judge as to all dispositive matters.

Please check the "yes" or "no" box regarding your decision to consent to a United States Magistrate Judge, and sign below.

☒ Yes, I voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in this case, decide all dispositive and non-dispositive matters, and order the entry of final judgment.

☐ No, I do not consent to have a United States Magistrate Judge conduct all further proceedings in this case.

Executed on JUNE 25-16
Date

Signature of Petitioner/Counsel for Petitioner

Charles R. Willard
Petitioner

California Dept of Corrections
Respondent(s)

DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, Charles R. Willard, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? ☐ Yes ☒ No

   a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. N/A

   b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. Homeless N/A

2. Have you received, within the past twelve months, any money from any of the following sources?

   a. Business, profession or form of self-employment? ☐ Yes ☒ No
   b. Rent payments, interest or dividends? ☐ Yes ☒ No
   c. Pensions, annuities or life insurance payments? ☐ Yes ☒ No
   d. Gifts or inheritances? ☐ Yes ☒ No
   e. Any other sources? ☐ Yes ☒ No

   If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: IN PRISON SERVE 9-21-2009.

3. Do you own any cash, or do you have money in a checking or savings account? *(Include any funds in prison accounts)*
   ☐ Yes ☒ No

If the answer is yes, state the total value of the items owned: N/A

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? *(Excluding ordinary household furnishings and clothing)* ☐Yes ☒No

If the answer is yes, describe the property and state its approximate value: N/A

Non

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: N/A

I, declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on June 26-16 *Date* *Signature of Petitioner*

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of $_____ on account to his credit at the _____ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution: _____

_____ *Date*

_____ *Authorized Officer of Institution/Title of Officer*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION SEVEN

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. **CHARLES R. WILLARD,** Defendant and Appellant.	**B233492**

STATEMENT OF THE CASE

Following a jury trial, appellant was convicted of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))[1] upon Santos Hernandez (count 1) and David Ponce (count 2). (CT 140-143.)[2] In a bifurcated proceeding after the verdicts, the court found appellant had served four prior prison terms (§ 667.5, subd. (b)). The court also found appellant had suffered two prior serious or violent felony convictions in case number A635439 and a prior juvenile adjudication in case number J250484, which together qualified as three strikes under the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). As to counts 1 and 2, the court further found under section 667, subdivision (a), that appellant had suffered prior serious felony convictions in case number A635439. (CT 145-146; RT 342-343.)

[1] Statutory references are to the Penal Code, unless otherwise indicated.

[2] The jury found not true an allegation that appellant inflicted great bodily injury upon Hernandez (§ 12022.7). (CT 140.)

At sentencing, as to count 1, the court imposed a five-year term for the prior serious felony enhancement and an indeterminate term of 25 years to life under the Three Strikes law. The court imposed the same sentence on count 2, to be served concurrently. In the interests of justice (§ 1385), the court dismissed the prior prison term enhancements (§ 667.5, subd. (b)). Appellant was also ordered to pay mandatory fines and assessments (§§ 1202.4, subd. (b), 1465.8, subd. (a)(1); Gov. Code, § 70373). (CT 178-180.)

Appellant filed a timely notice of appeal (CT 181-182), and this appeal is authorized by section 1237, subdivision (a).

STATEMENT OF FACTS

A. Prosecution Evidence

After leaving work the afternoon of September 21, 2009, Santos Hernandez and his friend and co-worker, David Ponce, boarded a Metropolitan Transit Authority (MTA) bus for the trip home. (1RT 60, 135-136.) Hernandez and Ponce sat together at the back of the bus, with an empty seat between them. (1RT 61, 136, 153.)

Appellant, who neither Hernandez nor Ponce had seen before, got on the bus during their trip and sat about four rows in front of them. (1RT 62-63, 94, 137.) After several minutes, appellant got out of his seat and walked towards Hernandez. (1RT 63, 137.) Appellant touched the left cheek of Hernandez's face and said "Pinche Mexican," a derogatory term for Mexicans. (1RT 63-64, 137, 153.) Appellant made other statements in English, which Hernandez did not understand because he does not speak English. (1RT 67, 96.) Hernandez responded, "No problem" or "No problema." (1RT 91, 96.) Ponce heard appellant saying things to Hernandez, but only understood "Pinche Mexican." Ponce did not hear Hernandez say anything in response. (1RT 153.)

Appellant walked back to his seat and retrieved a folding knife from his backpack. He opened the knife as he walked back towards Hernandez. (1RT 64-65, 97.) According to Ponce, appellant was saying something in English as he approached. (1RT 156.) Hernandez testified appellant was carrying the

knife low or at chest level and was not waving the knife. (1RT 102-103.)[3] Hernandez and Ponce jumped up and stood on the bus seats when they saw appellant walking towards them with the knife. (1RT 105, 139, 146.) Appellant came at Hernandez with the knife, once hitting Hernandez's lunch bag and the second time cutting his arm. Hernandez then kicked appellant in the chest or stomach. (1RT 65-66, 139-140.)

The bus stopped and Ponce and Hernandez were able to exit. Appellant got off the bus and walked away. (1RT 66-67, 140-141, 159.) While talking to the police on the telephone, Ponce followed appellant to a CVS Pharmacy. (1RT 141.) When appellant was taken into custody at the pharmacy, he was carrying a blue backpack which contained a folding knife, in a closed position. The recovered knife had what appeared to be blood on the blade. (1RT 119, 121-124.)

The MTA bus was equipped with a camera, and a video of the incident (People's Exh. 1) was played for the jury. (1RT 89, 143-144, 146-147.)

Hernandez received a cut to his arm about an inch and a half in length. (1RT 68.) He testified that one of the police officers took him to the hospital and there he received five stitches for the injury to his arm. (1RT 68-69.) However, the hospital did not have a record of providing him any medical treatment. (Defense Exh. A; 2RT 214.)

(352)
1987

[3] In his statement immediately after the incident, Hernandez said appellant was waving the knife in front of him as appellant approached. (1RT 102.)

B. Defense Evidence

Appellant testified in his own defense. While riding the bus on September 21, 2009, appellant had various items in his bag, like razors and electric toothbrushes, which he had purchased at wholesale and intended to sell. (2RT 182-183.) Appellant would ask people on the bus if they needed a product and he would sell it to them if they wanted to buy it. Appellant was also carrying a knife in his bag for protection as he was injured by a man in 2008, and appellant had received 23 stitches for his injury. (2RT 183-184.)

While on the bus, appellant had an argument with Hernandez. Appellant tried to sell Hernandez some razors. Hernandez looked at him strangely and loudly shouted "No." Hernandez said he would take something from appellant. Appellant took the statement to be a threat. (2RT 184.) Appellant looked at Hernandez and Hernandez clenched his fists. Appellant walked back to his bag and retrieved his knife. (2RT 185.) He then went towards Hernandez and looked at him, holding the knife on his side. Hernandez jumped on the seat and kicked appellant in the chest twice with steel-toe boots. Appellant nicked Hernandez's right arm near his elbow, because Hernandez kicked him. The bus stopped and appellant ordered Hernandez to get off the bus because he was afraid Hernandez would come at him. (2RT 185-186, 192, 194-195.) Appellant did not intend to hurt Hernandez, but was trying to respond to the threat. (2RT 195.) Appellant got off the bus and walked to a nearby CVS Pharmacy to pick-up his asthma medication. (2RT 187.)

Appellant did not say anything to Ponce, did not have any problem with him, and never attempted to strike him. (2RT 185, 211.)

Appellant admitted he had two theft-related felonies from 28 or 29 years ago. (2RT 186, 210.)

(7 of 9)

ON, (A) 245, (A.)1) (A) Wobbler offense
IN COUNT (1.) ON, HERNANDEZ, AND IN COUNT (2.)
(A) MISDEMEANOR ON DAVID PONCE.
MAKING IT ELIGIBLE TO BE CHARGED AS (A)
MISDEMEANOR. AND TO THE JUVENILE PRIOR
HELD THE EVIDENCE WAS SUFFICIENT TO
SUPPORT THE TRIAL COURTS FINDING THAT
PETITIONER'S PRIOR JUVENILE ADJUD-
ICATION CONSTITUTES (A) FELONY UNDER
THE THREE STRIKES LAW. SEC. 667. SUBD. (B)(1)
1170.12. SUBD. A) d)
APPELLATE COUNSEL RENEE RICHS "SOLE"
CLAIM ON APPEAL IS THAT THE PROSECUTION
FAILED TO PROVE PETITIONER WAS AT LEAST
16 YEARS OLD AT THE TIME OF HIS JUVENILE
OFFENSE WAS COMMITTED AS REQUIRED TO
USE THE OFFENSE AS (A) PRIOR STRIKE
CONVICTION.
ONCE MR. WILLARD'S CASE WAS REMANDED
TO THE SUPERIOR COURT (A) JURY TRIAL WAS COM-
MENCED, BEFORE JUDGE HALL ON MAY 10 2013 ON
THE JUVENILE STRIKE ALLEGATION, PRIOR TO THE
PROSECUTIONS PRESENTATION OF (EVID.) ON,
PAG 1 (A)
MAY 13, 2013 COUNSEL OBJECT DURING HEARING
BY MAKING (A) MOTION UNDER P.C. 1118.1, SEE,
MINUTE ORDER DATED 1-19-11. ON, 6th D ON PAGE 4
FROM PETITION @ PAGE (4.) GROUNDS RAISED. NEXT PAGE A2

1 (A 2.) CONTINUING

2. After the Hearing CT 12.)
3. Judge HALL. SUBSEQUENTLY FOUND
4. PETITIONER, WAS the person who Suffered the
5. prior JUVENILE Adjudication. IN. 1978, 38 yea-
6. rs. AGO TODAY, AND of SEC: 1025. SUBd(C)
7. WAS CONVICTED of Robbery.
8. With use of (A) firearm IN. 1978, of, Sec: 1025
9. Subd. b) the COURT found PETITIONER'S JUVENILE
10. Adjudication. WAS (A) Valid Strike prior
11. the CASE Then RETURNED To Judge Feuer for
12. Resentencing AS She again presided over
13. Mr, Willard'S INITIAL TRIAL. CT 17.) prior to the Sen-
14. Tencing, Hearing, PETITIONER filed (A) SUPP.
15. Motion To Dismiss prior CONVICTIONS Alleged
16. Under the Three Strikes LAW"
17. Requesting the COURT Dismiss Two of His
18. prior CONVICTION IN (1987) In the FURTHERANCE
19. of JUSTICE Under. Pen. Code. Sec: 1385.) And Im-
20. pose, (A), DETERMINATE, STATE PRISON Sentence
21. of (19 years CT 19-52.)
22. the TRIAL COURT Denied petitioner's
23. Motion To Dismiss Any of His prior
24. Strike CONVICTION. Under
25. people VS. Romero. 1996) 13 CAL. 4TH. 497
26. AND PETITIONER WAS (AGAIN) RESENTENCED
27. To State prison for an AGGREGATE Term
28. of 30 years To Life. See A-3) CONTINUE

1. 3(A) CONTINUE B233492
2. Statement of the case Front
3. Sheet. And prosecution (Evid.) w/so
4. Defense (Evid.) Attach to the
5. petition on [redacted] on page 12-5
6.
7.
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1 8.) this CONSTITUTIONAL Error IS (A) VIOLATION UNDER
2 PEN. Code Sec. 12022.7 Subd. (C)
3 this Federal CONSTITUTIONAL VIOLATION AND Error IS (IN)
4 the TRIAL COURT (A) DECISION (A) QUESTION of LAW
5 Did ARISE DURING the COURSE of the TRIAL
6 RELATING To the OFFENSE [redacted] AND CHARGE the
7 JURY ASK WHAT WAS RELATED IN DAVID PONCE ALLE-
8 GATION. the TRIAL COURT Judge GAIL R. FEUER DID NOT
9 GIVE AN ANSWER To THAT QUESTION "NOT" DID TRIAL COUN-
10 SEL, MC GURK object or ARGUED the FACT of LAW.
11 Why DEFENSE COUNSEL FAILING To "ACT" IN (A) MANNER
12 EXPECTED. BUT DID STATED FOR the RECORD "WE" DID
13 NOT ASK the JURY WHETHER It WAS INSIGNIFICANT or
14 NOT. See, TRANSCRIPT. NO. 1206.) ON, Line 13-28.) ON,
15 Exh. [redacted], ON, PAGE 3 With PETITION.
16 PETITIONER'S TRIAL WAS NOT SUPPORTED by ANY
17 SUBSTANTIAL (EVID.) OF ANY INJURY To DAVID PONCE OR
18 HERNANDEZ, See, DEFENSE TRANSCRIPT. 2RT 214.) ON,
19 EXH. (A) ON, PAGE 1 With PETITION. AND ALSO. (A) DOCUMENT
20 From the CUSTODIAN OF RECORDS From ST. VINCENT HOSPITAL. DATED
21 2/4/[redacted] 2010./ the day of INJURY DATED 9/21/[redacted] 2009. See,
22 Number. 2RT 214.) EXHIBITS... AND PEN. Code. SEC. 1181.
23 GROUND To MODIFICATION OF VERDICT FINDING OR
24 JUDGMENT To CONFORM To (EVID.)
25 the JURORS VERDICT WAS BASED UPON FALSE TESTIMONY
26 THAT WAS PRESENTED AT TRIAL. the JURORS VERDICT IS
27 UNDER. SEC. SUBD. 5.) AND 6.) THAT PRESCRIBES The. ERROR
28 the GROUND UPON WHICH (A) TRIAL COURT MAY GRANT

PAGE (1.) SEE PAGE (2.)

CONTINUING FROM PAGE (1.2N)(2.)

7.) (A) NEW TRIAL AFTER (A) VERDICT OR FINDING HAS BEEN MADE UNDE SEC. 1181. SUBD (6.) (A) TRIAL COURT MAY GRANT (A) NEW TRIAL WHEN THE VERDICT OR FINDING IS CONTRARY TO LAW OR EVIDENCE. BUT IF THE (EVID.) SHOWS, THE PETITIONER TO BE NOT GUILTY OF THE DEGREE OF THE CRIME OF WHICH HE OR SHE WAS CONVICTED OF (A) LESSER CRIME INCLUDED THEREIN THE COURT MAY MODIFY THE VERDICT FINDING OR JUDGMENT ACCORDINGLY WITHOUT, GRANTING OR ORDERING (A) NEW TRIAL. AND THIS POWER SHALL EXTEND TO ANY COURT TO WHICH THE CAUSE MAY BE APPEALED.

THE DISTRICT ATTORNEY'S CHARGED PETITIONER WITH TWO COUNTS OF ASSAULT WITH (A) DEADLY WEAPON IN VIOLATION OF PEN. CODE. SEC. 245. SUBD (A) 1.) IT WAS ALLEGED IN COUNT (1.) THAT PETITIONER INFLICTED GREAT BODILY INJURY WITHIN THE MEANING OF SEC. 12022.7. SUBD (C) THE JURY FOUND THAT THE GREAT BODILY INJURY ELEMENTS WAS NOT FOUND TO BE TRUE BY THE JURY. BUT THE TRIAL COURT ILLEGALLY AND EXCESSIVELY SENTENCED PETITIONER TO STATE PRISON FOR (AN) AGGREGATE TERM OF 30 YEARS TO LIFE FOR (A) NON STRIKABLE OR AGGRAVATE OFFENSE (A) MISDEMEANOR.

COUNT (1.) IS (A) WOBBLER OFFENSE ON. HERNANDEZ
COUNT (2.) IS (A) MISDEMEANOR ON, DAVID PONCE

28. THE JURY STATED THAT SEE, TRANSCRIPT. NO. 1205.

SEE PAGE (3.)

(3) 1. ON, PAGE 4 ON, EXH D WITH PETITION.
2. THE OFFENSE DOES NOT QUALIFY AS (A)
3. PRIOR SERIOUS FELONY UNDER. PEN. CODE. SEC.
4. 667. 5. SUBD (C) ON, EXH D. ON, PAGE 5
5. NO: 1205) LINE 19. 26.
6. FOR (A) SERIOUS FELONY OR ANY FELONY IN,
7. WHICH THE DEFENDENT INFLICTS GREAT
8. BODILY INJURY OR USES (A) DEADLY WEAPOON OR
9. (A) FIREARM. IF ALL OF THE FACTUAL ELEMENTS
10. OF THOSE SUBD. V.) ARE ADEQUATELY ALLEGED
11. AND PROVEN. CONSEQUENTLY THE OFFENSE
12. MAY BE FOUND TO BE (A) SERIOUS FEL-
13. ONY, FOR THE PURPOSES OF PEN. CODE. SEC:
14. 667.)
15. THE DUE PROCESS CLAUSE OF THE
16. FOURTEENTH AMEND. TO THE UNITED STATE
17. AND FEDERAL CONTITUTIONS REQUIRES THE
18. PROSECUTION TO PROVE EACH ELEMENT
19. OF (A) SENTENCE ENHANCEMENT BEY-
20. OND (A) REASONABLE DOUBT.
21.
22. IN, RE WINSHIP. 1970. 397 U.S. 358
23. CITING JACKSON VS. VIRGINIA 1979 443 U.S
24. 307-318-319.
25. CITING MARTIN VS. OHIO. 1987, 480 U.S
26. 228-231. 236.
27.
28. PEN. CODE. SEC: 1260.

1. 4.) Trial Counsel MCGurk. Did NOT Obj-
2. ect, or Challenge the Evidence on the
3. 1987, Adult prior CONVICTION IN (A)
4. Bifurcated proceeding To prove
5. That the 1987 priors QUALifies AS (A)
6. Strike Sentence ENHANCEMENT.
7. Under Sec: 1170.12.
8. See, Transcript. NO. 1207.) Line. 4-17-28.)
9. 1208.) Line. 19-27.)
10. 1209.) Line. 12-23.)
11. Also, MINUTE order Dated 3/2/12. page (3.)
12. NO. 338. Line 1-22-28.) 339, Line 5-6-28.) on,
13. Exhibit B on page 2.
14.
15. Citing Monge VS. California
16. (1998) 524 U.S. 721.
17. Citing Gill VS. Ayers 9th Cir 2003
18. 342 F.3d 911.
19. Trial Counsel failed To ACT IN (A) MANNER
20. To be Expected of (A) Reasonable
21. competent Attorney acting AS (AN) Diligent
22. Advocate and (b) that counsel's performance
23. Resulted IN (A) Withdrawal of (A) potent-
24. ially Meritorious Defense
25. the federal Rule
26. Criminal Defendant Has the Right To
27. The Effective ASSISTANCE of
28. COUNSEL. This Right IS GUARANTEED by

see page 5.

the Sixth Amendment of the Federal Constitution. Powell vs. Alabama (1932) 287 U.S. 45.) and applies to the States by virtue of the Fourteenth Amendment Cuyler vs. Sullivan (1980) 446 U.S. 335, the Right is also Guaranteed in California by Cal. Const. Art. 1, Sec: 15. People vs. Nation (1980) 26 C.3d 169. 178)

(A) Remand on the 1987 Alleged Adult priors, and Dismiss the Sentence Enhancement. Under. pen. Cod. Sec: 12022.7, Subd.(c) Because the Current offense 245.) A)1) does not qualify as a Serious Felony, Under. pen. Code. Sec. 667.5.(c) and also it does not qualify Under. pen. Code. Sec: 1192. 7.)

I, the petitioner Respectfully Request that this federal Court (1.) issue an order to Show cause to Respondent, to file a Return to this petition (2.) order an Evidentiary Hearing (3.) Appoint Counsel to Represent petitioner's Because the Record in this case provides ample Evidence of petitioner

5. CONTINUE from PAGE 5,
Dismiss the Charges AGAINST Petitioner Why BECAUSE there WAS NO SUBSTANTIAL EVid.) on all Elements of GUIT Beyond (A) REASONable DOUbt.
GRANT other and further Relief ON, pen. code. Sec. 1181. Ground TO Modification of Verdict finding or Judgment TO CONFORM TO EVid.) and pen. code Sec 12022.7. Subd.(c) THAT this federal COURT. DEEMS JUST.

1. see proof of service by MAIL WITH petition on PAGE

2. see Motion 995, for Review Filed MAY 10. 2010 ON, PAGE 1 -

3. See, Motion for APPOINTMENT of COUNSEL Under. 18 U.S.C. sec 3006 (A, 9.) B) for (A) EVIDENTIARY HEARING on PAGE - 6 . And DOCUMENTS from the 1385 Romero Motion on EXHIBITS on PAGE

CHING MASSIARO VS. 2003. 538 U.S. 500. 509.
ABNEY VS US. 1977 65/ 656.

6. 1 Mentalillness. See, Transcript No. 357.369
2. Line. 7-15.) (19.) on, Exh C on page 3
3. However the Trial Court Did Not Add-
4. ress, this fact or consideration of
5. Petitioners Mentalillness in the Motion
6. under Romero. See, Documents by Dr,
7. W. Vicary Report prepared. on Exh C on
8. page 3 with this petition
9.
10. (Statutory Authority For Relief,)
11. Under Sec. 1473, Subd. B.) 1.) 2.) C.) D.) A.) A Writ
12. of, Habeas Corpus may be prosecuted
13. If false (Evid.) That is substantially Mate-
14. rial, or punishment was introduced Agai-
15. inst, (A,) person at any Hearing or Trial Re-
16. lated, To His Incarceration.
17. Citing, Thompson vs. City of Louisville
18. (1960) 362 U.S. 199. 80 S.Ct. 624.
19. Medwed Cal. Dreaming? the Golden State's
20. Restless Approach To Newly Discovered
21. Evid. on the 245, (A.)1). Innocence 2007.
22. 40 U.C. Davis L. Rev. 1437,
23. In Chapman vs. Cal. 1967, 386. U.S. 18.
24. Neder vs U.S. 19, 119 S.Ct. 1827.
25.
26.
27.
28.

CONSTITUTIONS,
UNITED STATES, AND FEDERAL CONSTITUTIONS, AND CAL. CONSTITUTION
ART I. SEC. 15
U.S. CONST. 14TH, AM, 6TH AMEND.

SEE, ATTACH TO THIS PETITION
THE EXHIBITS, AND OPINION
ALSO, ATTACH SHEET, EXPLAINING ARGUMENT
AND FACTS OF THE CASE.
THE EXHIBITS AND OPINIONS.
AND PROOF OF SERVICE
IS ON PAGE 13 AND PAGE ___
IS ATTACH TO THIS AMENDED PETITION

I DECLAR UNDER PENALTY OF PERJURY UNDER
THE LAWS OF THE UNITED STATES OF AMERICA
THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON JUNE 25, 2016.

DECLARANT'S SIGNATURE

CHARLES R. WILLARD
C-36206 F-D-3-143
PROPER.

PROOF OF SERVICE

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. §1746)

I, Charles R. Willard C-36206 declare:

I am over 18 years of age and a party to this action. I am a resident of Los Angeles, County State Prison, in the county of P.O. Box-4670 State of California. My prison address is Lancaster, CA 935-39.

On June. 25-16 (date)

I served the attached: Petition And Exhibit's And Opinion from State Court (My Petition) On, One. And motion For Of Counsel (Attach) (Describe Document)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

United State
District Court
312 North Spring Street
Los Angeles CA 90012

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 6-25-2016. (date)

Declarant's Signature

(13.)

I, due NOT Have Exhibit A)

See, AT the Bottom in Number 214 Line 27
A) Document from the Custodian

Consist of. Nonber 214.) 68- 71.)
Custodian of Records from St. Vincent
Hospital. The Affidavit for Subpoena
Duces Tecun Dated 2/4/2009. Injury Dated.
9/12/2009
Document from Appellant Counsel Renee Rich
Dated. 1-16-2012- 10-3-2012.
Information Summary. Dated 10-22-2009
Number 220-225-and 228..AND
356- B7.) B7.)

EXHIBIT COVER PAGE

A
EXHIBIT

Description of this Exhibit: Transcript.

Number of pages to this Exhibit: 26 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ■ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

1.

Q SIR, IS THAT CORRECT?
A YES.
Q OKAY.
MR. CANO: NOTHING FURTHER.
THE COURT: ALL RIGHT.
MR. MC GURK: THAT'S ALL I HAVE.
THE COURT: OKAY. MR. WILLARD, THANK YOU. YOU MAY STEP DOWN.
DOES THE DEFENSE WISH TO CALL ANY ADDITIONAL WITNESSES?
MR. MC GURK: NO ADDITIONAL WITNESSES, YOUR HONOR. WE'D ASK TO MOVE DEFENSE A INTO EVIDENCE.
THE COURT: ALL RIGHT. IF YOU CAN JUST DESCRIBE DEFENSE A FOR THE RECORD.
MR. MC GURK: YES. IT'S A LETTER FROM ST. VINCENT MEDICAL CENTER REGARDING SANTOS VASQUEZ HERNANDEZ.
THE COURT: IS THERE A STIPULATION REGARDING THE ADMISSION OF THIS?
MR. CANO: YES, YOUR HONOR.
THE COURT: ALL RIGHT. SO THERE'S NO OBJECTION TO THE ADMISSION OF DEFENSE A?
MR. CANO: CORRECT.
THE COURT: ALL RIGHT. SO DEFENSE A WILL BE ADMITTED.

(MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE: = EXHIBIT A.)

//

UNDERSTAND ANY OF IT.

Q WHEN YOU GOT OFF THE BUS, WERE YOU ABLE TO SEE IF YOU HAD SUFFERED AN INJURY ON YOUR ARM?

A YES.

Q CAN YOU TELL US WHAT IT LOOKED LIKE?

A EXCUSE ME?

Q CAN YOU PLEASE EXPLAIN TO US WHAT THE INJURY LOOKED LIKE?

A I STILL HAVE IT HERE.

Q OKAY. FIRST I WANT TO KNOW AT THE TIME THE INCIDENT HAPPENED, YOU KNOW, RIGHT WHEN YOU GOT OFF THE BUS, CAN YOU TELL US WHAT THE INJURY LOOKED LIKE AT THAT TIME?

A VERY INJURED, A LOT OF BLOOD.

Q OKAY. DID YOU HAVE A PUNCTURE WOUND ON YOUR ARM?

A A CUT.

Q HOW LONG WAS THE CUT?

A PERHAPS AN INCH AND A HALF.

Q DID IT HURT?

A YES.

Q DID YOU RECEIVE ANY MEDICAL TREATMENT THAT DAY ON YOUR ARM?

A YES. A POLICEMAN TOOK ME TO THE HOSPITAL.

Q OKAY. WHEN YOU GOT TO THE HOSPITAL, DID YOU RECEIVE ANY TREATMENT FROM SOMEBODY THERE?

A YES.

Q CAN YOU TELL US WHAT THEY DID?

WITNESS.

MR. CANO: THANK YOU. I'M JUST GOING TO ASK THE WITNESS TO SHOW COUNSEL THE SCAR ON HIS ARM.

AND, YOUR HONOR, I DON'T KNOW IF THE COURT IS -- HAS A PROBLEM WITH THIS. SINCE IT'S ON HIS ARM, WOULD THE COURT MIND IF THE WITNESS JUST STEPPED DOWN AND SHOWED THE JURY WHERE THE INJURY IS?

THE COURT: THAT'S ACCEPTABLE.

ANY OBJECTION BY THE DEFENSE?

MR. MC GURK: NO OBJECTION.

THE COURT: ALL RIGHT. YOU MAY.

SO, MR. HERNANDEZ, IF YOU CAN JUST STEP DOWN AND SHOW YOUR ARM TO THE JURY.

MR. CANO: CAN HE POINT OUT....

THE COURT: FOR THE RECORD, MR. HERNANDEZ IS SHOWING HIS ARM TO THE JURY, WHICH IS HIS LEFT ARM, USING HIS RIGHT HAND TO POINT TO IT.

(PAUSE IN PROCEEDINGS.)

MR. CANO: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. IF YOU CAN HAVE A SEAT.

AND IF I CAN ASK, MR. HERNANDEZ, MAY I SEE IT AS WELL?

ALL RIGHT. THANK YOU, SIR.

ALL RIGHT. MR. CANO, YOU MAY --

MR. CANO: THANK YOU.

THE COURT: -- PROCEED.

A HE CLEANED IT AND STITCHED IT.
Q HOW MANY STITCHES DID YOU RECEIVE IN THE WOUND?
MR. MC GURK: OBJECTION, LACK OF FOUNDATION.
THE WITNESS: FIVE.
THE COURT: OVERRULED.
THE WITNESS: FIVE.
BY MR. CANO:
Q SO YOU RECEIVED FIVE STITCHES?
A YES.
Q AND THESE ARE STITCHES THAT YOU COULD SEE YOURSELF; IS THAT RIGHT?
A YES.
Q NOW, AT THE TIME YOU MENTIONED YOU WERE COMING FROM WORK, CORRECT?
A YES.
Q DID YOU HAVE TO MISS ANY WORK BECAUSE OF THAT INJURY?
A YES.
Q HOW MUCH TIME?
A THREE DAYS.
Q AND WHY DID YOU HAVE TO MISS THOSE DAYS?
A BECAUSE I WORK WITH METAL, AND THE POSSIBILITY OF RUST MIGHT HAVE IMPEDED THE LENGTH OF MY HEALING.
Q NOW, DO YOU STILL HAVE A SCAR ON YOUR ARM TODAY?
A YES.

MR. CANO: IF I CAN HAVE ONE MOMENT, YOUR HONOR?
THE COURT: OKAY.
THE INTERPRETER: YOUR HONOR?
THE COURT: YES?
THE INTERPRETER: COULD WE CHANGE INTERPRETERS NOW?
THE COURT: YES.
THE INTERPRETER: I JUST WANTED TO MAKE SURE SHE WAS FAMILIAR.
MR. CANO: YOUR HONOR, CAN WE APPROACH? BOTH COUNSEL APPROACH THE WITNESS?
THE COURT: SURE. LET'S SWAP INTERPRETERS FIRST.
MR. CANO: SURE.
THE COURT: SO WE DON'T HAVE A TRAFFIC JAM.
THE INTERPRETER: SHE'LL BE RETURNING THIS AFTERNOON, IN CASE ANY OF THIS HELPS.
THE COURT: AND LET ME ALSO NOTE, MR. CANO, I HAD OVERRULED AN OBJECTION SUBJECT TO THE LAYING OF A FOUNDATION. I DON'T KNOW IF YOU'RE GOING TO LAY THE FOUNDATION. IF NOT, I WILL STRIKE THE RESPONSE.
MR. CANO: YOU CAN JUST GO AHEAD AND STRIKE IT.
THE COURT: OKAY. SO THERE WAS AN OBJECTION TO THE TESTIMONY OF MR. HERNANDEZ REGARDING WHAT DAVID DID AFTER HE LEFT THE BUS REGARDING FOLLOWING THE DEFENDANT. THIS TESTIMONY REGARDING THE WITNESS ABOUT WHAT DAVID DID IN TERMS OF FOLLOWING THE DEFENDANT, THAT IS STRICKEN FROM THE RECORD. I'M SUSTAINING THE OBJECTION. THE JURY IS INSTRUCTED TO DISREGARD THAT TESTIMONY.
ALL RIGHT. COUNSEL, YOU MAY APPROACH THE

SO LET ME HEAR FROM MR. MC GURK FIRST.

MR. MC GURK: WELL, YOUR HONOR, I WOULD JUST STATE THAT, FIRST OF ALL, IN TERMS OF THE NATURE OF THE CURRENT OFFENSE, IT'S CONCEDED THAT IT IS, OF COURSE, A STRIKE OFFENSE. IT'S A VIOLENT FELONY. HOWEVER, THERE WAS NO SERIOUS INJURY. IN FACT, THE JURY FOUND THE GBI ALLEGATION TO BE NOT TRUE. I BELIEVE THE INJURY THAT WAS TESTIFIED TO WAS A TWO-INCH CUT ON THE ARM AREA OF MR. HERNANDEZ.

THE MEDICAL DOCUMENTATION THAT WAS TESTIFIED TO WAS IN -- "INCONSISTENT" MIGHT NOT BE THE RIGHT WORD, BUT IT WASN'T VERY CLEAR IN TERMS OF WHAT TREATMENT HE HAD RECEIVED CONSIDERING THAT WE HAD DOCUMENTATION THAT -- FROM THE HOSPITAL STATING THAT HE GOT NO MEDICAL ATTENTION WHATSOEVER.

I THINK IT'S FAIR TO SAY THE INJURY WAS NOT A SERIOUS INJURY SUFFERED BY MR. HERNANDEZ. I THINK THE JURY'S VERDICT WAS CONSISTENT WITH THAT OPINION. THIS WAS NOT A VIOLENT ACT THAT WAS DURING THE COMMISSION OF A ROBBERY OR A THEFT OF ANY KIND.

MR. WILLARD ALLOWED BOTH GENTLEMEN TO LEAVE THE BUS WITHOUT ATTEMPTING TO STRIKE THEM FURTHER. THIS WAS ONE CUT AND THAT WAS IT. I'M NOT TRYING TO MINIMIZE WHAT THE CRIME IS. THE JURY RENDERED A VERDICT. AND I'M NOT GONNA REARGUE THE CASE, BUT I THINK IT'S FAIR TO SAY THAT ON THE SCALE OF ASSAULTS WITH DEADLY WEAPONS, THIS WOULD BE ON THE LOW END OF ONES WE WOULD SEE GENERALLY IN THIS COURTHOUSE JUST TAKING THE OFFENSE IN AND OF ITSELF

WRITE THE REPORT. AND IF -- INVESTIGATING OFFICER, HE -- I'VE GOT NO SUPPLEMENTAL REPORTS.

THE COURT: DID WE EVER HAVE A -- HAVE A NAME OF THIS OFFICER?

MS. HIGHTOWER: NOT TO MY KNOWLEDGE. SO THIS WOULD BE AN INVESTIGATING OFFICER WOULD I PRESUME WHO -- WHO WOULD GO TO SPEAK TO HIM. BUT I GOT NO SUPPLEMENTAL REPORTS FROM AN INVESTIGATING OFFICER WHICH I'VE ASKED. I'VE ASKED THAT. I REQUESTED THE VIDEO. I DID SO INFORM HIM.

ACTUALLY, TODAY IT'S SET FOR DISCOVERY COMPLIANCE. I SUBPOENAED THE M.T.A. PEOPLE WHO HAVE NOT -- TODAY AS YET HAVE NOT GIVEN OVER THE VIDEO TO MR. GOWEN. HE STILL INDICATES HE HAS NOT BEEN ABLE TO CONTACT -- THEY HAVEN'T CONTACTED HIM AND HAVEN'T GIVEN HAD THE VIDEO. APPARENTLY, NO ONE CHECKED IN. I DO HAVE THE SUBPOENA. SO NO ONE CHECKED IN FROM M.T.A. TODAY.

SO I HAVE PURSUED THE VIDEO. I HAVE PURSUED GETTING ANY ADDITIONAL REPORTS FROM ANY INVESTIGATING OFFICER. I HAD NO CONVERSATION WITH MR. WILLARD ABOUT PUTTING OVER THE PRELIMINARY HEARING SO THAT WE COULD GET AN OFFICER TO TESTIFY, A SPECIFIC OFFICER TO TESTIFY. I DON'T KNOW WHO THAT OFFICER IS.

AND AS REGARD TO EVERYTHING ELSE, I'VE CONTINUED TO ASK FOR INFORMAL DISCOVERY. I DID SUBPOENA ANY MEDICAL RECORDS THAT MIGHT HAVE COME FROM ST. VINCENT HOSPITAL. I BELIEVE THAT'S WHERE THE

COPY

SUBPOENA FOR APPEARANCE OF WITNESS

County of Los Angeles,
State of California

THE PEOPLE OF THE STATE OF CALIFORNIA v. **CHARLES WILLARD**	
CASE NUMBER **BA362410**	ATTORNEY FOR DEFENDANT: HOLLY HIGHTOWER Deputy Public Defender, 210 W. TEMPLE ST. 19TH FL., LOS ANGELES, CA 90012 (213) 893-0175

The People of the State of California, **TO:**

CUSTODIAN OF RECORDS, ST. VINCENT HOSPITAL, AND/OR REPRESENTATIVE, 2131 WEST 3RD STREET, LOS ANGELES, CA 90057

YOU ARE ORDERED TO APPEAR AS A WITNESS IN THIS ACTION AS FOLLOWS:

DATE:	**FEBRUARY 4, 2010**	**IF YOU DO NOT APPEAR AS ORDERED, A WARRANT MAY BE ISSUED FOR YOUR ARREST AND YOU MAY BE PUNISHED FOR CONTEMPT OF COURT. (PENAL CODE SECTION 1331.5)**
TIME:	**8:30 A.M.**	
COURTROOM:	DEPT. 123	
ADDRESS:	210 W. TEMPLE STREET LOS ANGELES, CA 90012	

YOU ARE NOT REQUIRED TO APPEAR IN PERSON IF YOU PRODUCE THE RECORDS DESCRIBED IN THE ACCOMPANYING AFFIDAVIT IN COMPLIANCE WITH EVIDENCE CODE SECTIONS 1560 AND 1561.

If you have any questions about the time or date for you to appear, or if you want to be certain that your presence is required, contact HOLLY HIGHTOWER, (213) 893-0175, before the date on which you are to appear.

You may be entitled to witness fees, mileage, or both, at the discretion of the court. Contact the above Attorney for Defendant after your court appearance.

Dated: January 12, 2010

Issued by: Holly Hightower

HOLLY HIGHTOWER
Deputy Public Defender

PROOF OF SERVICE

I declare that at _____ (a.m.) (p.m.) on _____, _____, I served the within subpoena by delivering a copy of the subpoena to (Name of Person Served) _____ (Title)_____ personally at _____.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on _____, _____, at _____, California.

By: (Signature) _____

(Print Name)_____ (Occupation)_____

Reason not served: _____

INDIVIDUAL WENT. I RECEIVED A LETTER THAT THEY DON'T HAVE ANY MEDICAL RECORDS FROM THAT DAY AND TIME FOR THE VICTIM. AND SO TODAY I ASKED MR. GOWEN, DID YOU HAVE ANY E.M.T. RECORDS, ANY RECORDS, ANY MEDICAL RECORDS BECAUSE THEY, ST. VINCENT HOSPITAL, DOES NOT HAVE ANY. SO -- AND THEY SENT A LETTER TO THAT EFFECT WHICH I'M SATISFIED WITH THAT. I HAD ALSO SUBPOENAED THEM, BUT I'M SATISFIED WITH THE FACT THAT --

THE COURT: COMPLIANT WITH THE SUBPOENA?

MS. HIGHTOWER: THEY DON'T HAVE ANY. YEAH. AND SO I THINK PRETTY MUCH THAT'S IT. I DON'T -- I HAVE TALKED TO HIM AT LENGTH. I APPRECIATE THAT HE BELIEVES THAT HE'S BEEN PATIENT. THERE HAVE BEEN TIMES WHEN WE'VE DISCUSSED THINGS IN THE BACK. AND, BASICALLY, HE'S DECIDED THAT HE WOULD NOT SPEAK TO ME ANYMORE, SO I CAN'T TALK TO HIM, YOU KNOW. SO THAT HAS OCCURRED.

BUT EVERY TIME I GO IN TO SPEAK TO HIM AND ASK FOR HIS PERSONAL MEDICAL RECORDS, I HAVE ON A COUPLE OCCASIONS ATTEMPTED TO GET HIM TO SIGN A MEDICAL RELEASE SO I CAN GET HIS MEDICAL RECORDS. AND HE HAS NOT DONE THAT. I'VE ASKED FOR PLACES WHERE HE HAS BEEN TO THE HOSPITAL THAT SO I COULD SUBPOENA THOSE OR IF HE'S BEEN TO A DOCTOR SO I COULD SUBPOENA THOSE. AND HE HAS NOT GIVEN ME THAT INFORMATION. SO HE -- EFFECTIVELY, I CAN'T GET THE INFORMATION.

THE DEFENDANT: OH, YOUR HONOR --

MS. HIGHTOWER: I CAN'T GET --

THE COURT: HOLD ON.

CHANGED TO HAVE THE CORRECT DATE, WHICH IS SEPTEMBER 21ST, 2009.

LET ME KNOW WHEN YOU'VE GONE THROUGH THEM.

(PAUSE IN PROCEEDINGS.)

MR. CANO: THEY APPEAR FINE TO ME.

THE COURT: OKAY. SO IT LOOKS LIKE COUNSEL HAVE HAD TIME TO REVIEW THEM.

MR. CANO, THEY'RE ACCEPTABLE TO YOU?

MR. CANO: YES.

THE COURT: MR. MC GURK?

MR. MC GURK: YES.

THE COURT: LET ME READ ON THE RECORD I WILL GIVE THE FOLLOWING INSTRUCTIONS: 200, 201, 202, 207, 220, 222, 223, 224, 225, 226, 250, 300, 301, 302, 318, 358, 370, 372, 875, 3470, 3471, 3472, 3474, 3550, 3577. I'LL MODIFY IT TO HAVE IT REFER TO ONE ALTERNATE JUROR. SO THAT'S ALTERNATE JUROR NUMBER 1. AND 3590.

AGAIN, TO CONFIRM WITH COUNSEL, THOSE ARE ACCEPTABLE AS INSTRUCTIONS TO READ TO THE JURY?

MR. CANO?

MR. CANO: YES.

THE COURT: AND MR. MC GURK?

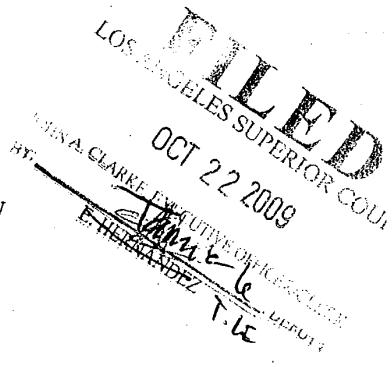
MR. MC GURK: YES, YOUR HONOR.

THE COURT: OKAY.

ANYTHING ELSE WE NEED TO DO DURING OUR LUXURIOUS THREE MINUTES BEFORE THE JURY ARRIVES?

00024

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



THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. **01 CHARLES ROBERT WILLARD (10/01/1960) (Bk# 2067605)** Defendant(s).	**CASE NO. BA362410** ***INFORMATION*** Arraignment Hearing Date: 10/22/2009 Department: CEN 123

INFORMATION
SUMMARY

Ct. No.	Charge	Charge Range	Defendant	Special Allegation	Alleg. Effect
1	PC 245(A)(1)	2-3-4	WILLARD, CHARLES ROBERT	PC 1170.12(A)-(D) PC 667.5(B) PC 12022.7(A) PC 667(A)(1)	MSP Check Code +1 yr. per prior +3 Yrs +5 yrs per prior
2	PC 245(A)(1)	2-3-4	WILLARD, CHARLES ROBERT	PC 667.5(B) PC 1170.12(A)-(D) PC 667(A)(1)	+1 yr. per prior MSP Check Code +5 yrs per prior

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

COUNT 1

On or about September 21, 2009, in the County of Los Angeles, the crime of ASSAULT WITH A DEADLY WEAPON, in violation of PENAL CODE SECTION 245(a)(1), a Felony, was committed by CHARLES ROBERT WILLARD, who did willfully and unlawfully commit an assault upon SANTOS HERNANDEZ with a deadly weapon, to wit, knife.

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

RENEE RICH
ATTORNEY AT LAW
P.O. Box 1018, Seal Beach, California 90740
Telephone: (562) 594-4901
January 16, 2012

Mr. Charles R. Willard, BK#2916876
Terminal Annex
P.O. Box 86164
Los Angeles, CA 90086

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
Re: Your appeal - Court of Appeal Case No. B233492

Dear Mr. Willard:

I received your letters dated December 29, 2011 and January 9, 2012. On January 3, 2012, I contacted Mr. Jeffrey Price and relayed to him your wish to return to Calipatria. He indicated that you were no longer needed as a witness in his criminal case and that he would contact the court and request your transfer.

Enclosed you will find a copy of an extension request I filed in your case before the Court of Appeal. An extension of time is necessary as we are still waiting on the trial judge to issue a ruling on our motion to correct your custody credits. We need to wait on the judge's decision because if the trial judge does not correctly calculate your custody credits, we can then raise the issue in our opening brief before the Court of Appeal.

I have been preparing our opening brief. In our opening brief, we will argue that the evidence was insufficient to establish that your prior juvenile adjudication was a strike. In order to use a prior juvenile adjudication as a strike, the prosecution must prove that you were at least 16 years old at the time you committed the offense. The evidence submitted by the prosecution at the hearing on your prior convictions did not establish that you were 16 years old when you committed the robbery. If the Court of Appeal agrees with our argument, the appellate court will reverse the true finding on this strike. We will ask the Court of Appeal to send the case back to the trial court for further proceedings and for the trial court to reconsider your sentence. You will not get a new trial on the assault charges. If the Court of Appeal sends the case back for further proceedings, it will be to give the District Attorney an opportunity to prove your prior juvenile adjudication is a strike. It seems given the age of this prior, the District Attorney may not be able to do so. Unfortunately, even if the District Attorney can not prove your juvenile prior was a strike, this does not guarantee your sentence will be reduced. The trial court also found you had two strikes for robbery convictions in 1987. The prosecution presented substantial evidence to prove that these two prior convictions were strikes. This means that even if we are able to reverse the finding that your prior juvenile adjudication is a strike, your sentence may not change.

In your letters to me, you have explained that you do not believe your prior juvenile adjudication can be used as a strike because you were not given a jury trial during the juvenile court proceedings. Unfortunately, the California Supreme Court has rejected this argument. In *People v. Nguyen* (2009) 46 Cal.4th 1007, the California Supreme Court held that non-jury juvenile adjudications can be used as strikes to enhance a subsequent adult sentence. Thus, this does not present a viable argument for your appeal.

I also want to discuss with you other issues you have mentioned in your letters to me. After looking at these issues, I have concluded that they do not present arguable issues for your appeal. One of your main concerns was that you feel your trial attorney, Mr. Kevin McGurk, did not adequately represent you at trial. You complained that Mr. McGurk did not call the bus driver or Deputy Arguello to testify as defense witnesses. You also felt that he refused to rebut any information presented by the prosecution during your trial. I evaluated your complaints about your trial attorney to determine if we have a winning argument that you did not receive effective assistance of counsel and that your convictions should be reversed. To prevail on a claim that counsel provided ineffective assistance, an appellant must satisfy two prongs. First, an appellant must show that counsel's performance was deficient, meaning that counsel failed to perform as a reasonably competent attorney. Second, an appellant must prove that the deficient performance prejudiced his defense -- meaning that an appellant must show that, but for counsel's unprofessional errors, the result of the trial would have been different. (*Strickland v. Washington* (1984) 466 U.S. 668, 686 [104 S.Ct. 2052, 80 L.Ed.2d 674].) According to case law on the first prong, there is a strong presumption that an attorney's conduct falls within the range of reasonable professional assistance. Courts will defer to certain decisions made by defense attorneys which are considered "tactical decisions" or trial strategy. This means that appellate courts give a great deal of deference to the decisions of trial attorneys in how to present a case, including which witnesses to call.

I asked Mr. McGurk why he did not call the bus driver as a witness at trial. He explained he did not call the bus driver, Ms. Lopez, because he did not believe her testimony would have been helpful for your defense. As part of the investigation, Ms. Lopez made a statement and prepared a report for the Metropolitan Transportation Authority, which defense counsel reviewed. Based on her report, counsel did not believe she would provide testimony that would have supported your defense. I understand you wanted Deputy Arguello to testify because he told you that he had reviewed the video and told you that it appeared you were not the aggressor but were defending yourself. Deputy Arguello's opinion of what the video showed would not have been admissible at trial. The jury was able to review the videotape themselves and determine this issue. The court would not have permitted the deputy's opinion testimony. Mr. McGurk's explanation as to why he did not call these individuals as defense witnesses was reasonable given the facts of your case. There is a strong presumption that an attorney's conduct falls within the range of reasonable professional assistance, and I do not believe we could overcome this presumption here. His decision to not call these witnesses would be considered a tactical decision. Because he had a reasonable explanation

as to why he did not call these witnesses, the appellate court would not find his performance was deficient in this regard. Thus, I do not believe we could prove you received ineffective assistance of counsel.

Nor could we establish ineffective assistance of counsel based on your complaint that trial counsel did not rebut the prosecution's evidence. The record of the trial proceedings shows that Mr. McGurk cross-examined the prosecution's witnesses. Also your testimony was presented in the defense case. In this closing argument, counsel argued the great bodily injury enhancement was not proven and the jury agreed. He also argued there was no assault against Ponce and that you used self-defense against Hernandez. It is not clear exactly what else you expected counsel to do at trial that he did not.

You also complained that trial counsel McGurk did not allow you to participate in jury selection. Unfortunately, this does not constitute ineffective assistance of counsel. The court feels that jury selection is a matter within the purview of trial attorneys, and the court will defer to defense counsel's decisions on keeping or removing prospective jurors as part of an attorney's trial strategy.

I understand that you feel you were wrongly convicted of the charges of assault with a deadly weapon and that the witnesses Hernandez and Ponce committed perjury at trial. As I explained before, an appeal is not a new trial. In an appeal, the Court of Appeal reviews the trial court proceedings for legal error; it does not reevaluate the evidence. At your trial, the jury heard testimony from the prosecution's witnesses and the jury heard your testimony of what happened. More importantly, the jury saw the video of the incident. The jury believed the prosecution's witnesses, but did not find the serious bodily injury enhancement true. The Court of Appeal will not reject Hernandez and Ponce's testimony and reverse your conviction because of some inconsistencies. Established California case law provides that it is the duty of the jury and not the Court of Appeal to weigh the evidence, determine the credibility of the witnesses and resolve any conflicts or inconsistencies in the testimony. (*People v. Jones* (1990) 51 Cal.3d 294, 314; *People v. Barnes* (1986) 42 Cal.3d 284, 303; *People v. Ozene* (1972) 27 Cal.App.3d 905, 910.) Thus, if the witness is believed by the jury, the Court of Appeal will not reverse the jury's credibility decision. We would not be able to convince the Court of Appeal to reject the testimony of Hernandez and Ponce and reverse your convictions based on inconsistencies in their testimony.

Another issue you wrote about was the court's denial of your section 995 motion. To prevail on appeal from a denial of a section 995 motion, a defendant must establish not only that the denial of his motion was erroneous, but that he was prejudiced by such error. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 140.) Prejudice cannot be established where a jury finds a defendant guilty of the charge and the prosecution presented sufficient evidence at trial to support it. (*People v. Crittenden* (1994) 9 Cal.4th 83, 137.) Thus, we cannot establish in the denial of your section 995 motion was prejudicial.

You also made two *Marsden* motions to have different public defenders relieved from your case and the court denied both. A denial of a *Marsden* motion is reviewed for an abuse of discretion. (*People v. Berryman* (1993) 6 Cal.4th 1048, 1070.) Denial of a *Marsden* motion is not an abuse of discretion unless the defendant has shown that a failure to replace the appointed attorney would substantially impair the defendant's right to assistance of counsel. (*People v. Webster* (1991) 54 Cal.3d 411, 435.)

In your first *Marsden* motion, you said that your attorney misled you on some issues, did not visit you at county jail, had not filed a subpoena duces tecum for Hernandez's medical records, did not get the videotape from the bus showing self-defense, and had not postponed the preliminary hearing, as you requested, to allow Deputy Arguello to testify. Trial counsel explained she had requested the videotape from the bus, had subpoenaed Hernandez's medical records, and had talked to you about the case at length. She denied agreeing to postpone the preliminary hearing. She also stated that she had asked you to sign a medical release form, which you refused to do and that you had stopped talking to her. Although the court found you and your counsel were having difficulty communicating, the court denied the *Marsden* motion. Based on the record, we would not be able to convince the Court of Appeal that the judge abused his discretion in denying your motion.

In your second *Marsden* motion, you complained that Mr. McGurk had not subpoenaed the bus driver or Deputy Arguello as witnesses, had not filed a motion for an expert to enhance the video footage, failed to interview the key prosecution witnesses, and had not discussed the defense case with you. Mr. McGurk said he had subpoenaed the witnesses, had gone over the possible defenses with you several times, and that both of the prosecution's witnesses had been interviewed. The court denied this motion also. Again, based on the record, we would not be able to convince the Court of Appeal that the failure to replace Mr. McGurk substantially impaired your right to effective assistance of counsel.

During trial, the prosecution moved to amend the information to add another strike prior, after realizing that one strike allegation in the information involved two counts of robbery in 1987. Such an amendment is allowed. Prior conviction enhancements may be added to the charges any time prior to the discharge of the jury. (*People v. Valladoli* (1996) 13 Cal.4th 590 [Pen. Code, § 969(a) permits the prosecution to amend the information to allege a prior conviction after the verdict where the jury has not been discharged].) Additionally, there was no notice problem with the amendment as the prosecution had alleged a prior strike from the same 1987 case. (*People v. Sandoval* (2006) 140 Cal.App.4th 111, 134 [oral amendment alleging prior strike upheld as defendant had reasonable notice of prior strike allegation and was not prejudiced].)

Additionally, I researched several issues concerning the jury instructions in your case. In order to have any hope of success on appeal on these issues, we must show not only that there was some error in the instructions given the jury, but also that the error was substantial

enough to require reversal of your conviction - that the error prejudiced your right to a fair trial. First, the trial court failed to give CALCRIM No. 316, limiting the jury's consideration of your prior convictions (your admission during your testimony that you had two prior theft-related felony convictions). CALCRIM No. 316 instructs the jurors that if they find a witness has been convicted of a felony, they may consider that fact only in evaluating the witness's testimony, that the fact of a conviction does not necessarily destroy or impair the witness's credibility, and that it is up to them to decide the weight of the fact and whether it makes the witness less believable. The court does not have to automatically give this instruction, but that it must be given upon request. (*People v. Kendrick* (1989) 211 Cal.App.3d 1273, 1278; *People v. Hernandez* (2004) 33 Cal.4th 1040, 1051-1052.) There is no indication in the record that your trial counsel requested CALCRIM No. 316. I do not believe an argument that defense counsel rendered ineffective assistance in failing to request the court instruct with CALCRIM No. 316 has any hope of success on appeal (or in habeas). The trial court gave CALCRIM No. 226, which instructed the jury that it may consider whether the witness has been convicted of a felony in assessing the credibility of the witness. (CT 129-130.) The prosecutor did not reference your prior convictions in his closing argument. Defense counsel did, as part of his argument that you were honest and forthright in your testimony. (2RT 264.) It is not reasonably probable that, but for the failure to request CALCRIM No. 226, the result of the proceedings would have been more favorable to you.

During the discussions on jury instructions, the court indicated to counsel that it would give CALCRIM No. 3515. (2RT 221.) However, the court failed to give this instruction. CALCRIM No. 3515 informs the jurors that each count is a separate crime and that they must consider each count separately and return a separate verdict for each count. The court should give this instruction if requested, but the court does not have a sua sponte duty to give the instruction. (See also *People v. Beagle* (1972) 6 Cal.3d 441, 456 ["An instruction that the jury must decide each count separately on the evidence and law applicable thereto, uninfluenced by their verdict on any other count, need not be given in the absence of a request therefor"], overruled on other grounds in *People v. Castro* (1985) 38 Cal.3d 301.) Although it was error for the court to fail to give CALCRIM No. 3515, after the court indicated it would do so, the error is harmless. The jury was given separate verdict forms for the two counts, and it was clear from the verdict forms that the each count concerned a separate victim.

I also evaluated the potential argument that the court should have dismissed one of your prior strike convictions. I know you have not suffered a strike conviction in a number of years, but there is no "washout" period for prior strike convictions. Convictions which are 20 or 30 years old or more can be used as strikes. The reasons the trial court gave for denying the motion to strike your prior conviction were valid. The trial court has a lot of leeway in deciding whether to strike a prior conviction, and the trial court's decision to not strike a prior conviction is reviewed by the Court of Appeal for an abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 374.) The Court of Appeal will not find that the

Case 2:16-cv-03805-CJC-JC Document 14 Filed 06/29/16 Page 47 of 155 Page ID #:294

trial court abused its discretion unless "its decision is so irrational or arbitrary that no reasonable person could agree with it." (Id. at p. 377.) The Court of Appeal must find that you are outside the spirit of the Three Strikes law. (*People v. Williams* (1998) 17 Cal.4th 148, 161.) Given your criminal record, the appellate court is not going to find that the trial court abused its discretion in failing to strike one of your prior strike convictions.

I understand that you may be unhappy with my evaluation of these issues. I have made these determinations based on my training and experience as an appellate attorney for many years. After the appeal has been decided, you will be able to present any of these issues in a petition for writ of habeas corpus, if you wish. After the appeal is complete, I will send you information on how to file a petition for writ of habeas corpus.

After I receive the trial court's ruling on our motion to correct your custody credits, I will file our opening brief. I will send you a copy of the brief, as well as the court's ruling on our custody credits motion.

Again, you should write to me if you have any questions or concerns about your appeal.

Very truly yours,

Renee Rich
Attorney at Law

Enclosure

RENEE RICH
ATTORNEY AT LAW
P.O. Box 1018, Seal Beach, California 90740
Telephone: (562) 594-4901

October 3, 2012

Mr. Charles R. Willard, C36206
CAL SP
P.O. Box 5005
Calipatria, CA 92233

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
Re: Your appeal - Court of Appeal Case No. B233492

Dear Mr. Willard:

I received your letter sent on September 21, 2012. It is possible that your sentence will be reduced if the Court of Appeal agrees with our argument and finds the prosecution failed to prove your juvenile adjudication was a strike and remands your case back to the trial court for further proceedings. If the case returns to the trial court, the prosecution will have another opportunity to prove your juvenile matter is a strike. As I have explained before, it seems unlikely the District Attorney will be able to make the necessary showing, given the age of your juvenile case and that the juvenile court file has been destroyed. If, upon remand, the prosecution is not able to prove the juvenile adjudication is a strike, your attorney can make another *Romero* motion, asking the trial judge to dismiss one of your remaining strikes. As I argued in our brief, there are several things the judge should take into consideration in deciding whether to dismiss one of your strikes, reasons that support dismissing one of the strikes. If the judge does so, then your sentence would be reduced. The Court of Appeal cannot change your sentence. The matter has to return to the trial court for further proceedings. It is possible that at the end of those proceedings, the trial judge will reduce your sentence.

She Lied about the Robbery Because Counsel didn't Challenge the Robbery the 1987

In your letter you complain that I did not challenge your other strike convictions. Prior to filing our brief, I reviewed the evidence presented by the prosecution to prove that you were convicted of two counts of robbery in 1987. The prosecution presented sufficient evidence to prove these two convictions were strikes. Thus, there were no grounds in the appellate record to challenge your two other strikes.

If

Robbery

You also complain in your letter that I failed to argue before the Court of Appeal that you were denied a fair trial because the judge did not give CALCRIM No. 316. I explained in my letter on January 16 (which you have), why I did not raise this issue.

In your letter, you also accuse me of lying to you about the 995 motion and the *Marsden* motion. I am not sure why you believe I lied to you. I explained to you in my letter on January 16, why we would not be challenging on appeal the denial of your 995 motion or *Marsden* hearings. I understand you are unhappy with my evaluation of these issues and decision that they did not offer you any hope of success on appeal. I made those determinations based on my training and experience as an appellate attorney for many years. Once the Court of Appeal issues its decision in your case, you will be able to file a petition for writ of habeas corpus on your own and present any of these issues you want. After the appeal is complete, I will send you all of the transcripts from your trial proceedings and information on how to file a petition for writ of habeas corpus.

As you requested, I am returning your letter to you. I am not working with the Attorney General against you. Because we have a sound argument, the Attorney General agreed with us that the evidence was insufficient to prove your prior juvenile adjudication was a strike. If the Court of Appeal sends the case back to the trial court, you have a chance at a reduced sentence.

The Court of Appeal has placed your case on its calendar for November 1 (calendar notice enclosed). Because the Attorney General agreed with our argument in our brief, I have decided to not request oral argument. I do not believe oral argument would not contribute to the court's understanding of the issues in your appeal because the issues have been fully discussed by both parties in the written briefs. The Court of Appeal will issue its written decision after November 1. It often takes several weeks, or even months, for the court to issue its decision. I will send you a copy of the opinion as soon as I receive it from the court. In the meantime, please write to me if you have any questions or concerns about your appeal.

Very truly yours,

Renee Rich
Attorney at Law

Enclosures

THE COURT: OKAY. THE ONLY OTHER ISSUE I WANT TO RAISE IS 2.25 IS CIRCUMSTANTIAL EVIDENCE, INTENT OR MENTAL STATE.

I THINK, MR. CANO, YOU HAD PROPOSED 2.24 AND 2.26. BECAUSE ASSAULT WITH A DEADLY WEAPON REQUIRES A SPECIFIC MENTAL STATE, EVEN THOUGH IT'S NOT A SPECIFIC INTENT CRIME, IT SEEMS TO ME THAT 2.25 WOULD BE APPROPRIATE.

MR. CANO: THE ONLY REASON I DIDN'T INCLUDE THAT IS THAT MY UNDERSTANDING IS THAT TYPICALLY UNDER THE NOTES YOU INCLUDE EITHER 2.24 OR 2.25, AND YOU INCLUDE 2.25 WHEN THAT'S THE ONLY THING RELIED ON BY CIRCUMSTANTIAL EVIDENCE. PERHAPS IT IS IN THIS CASE. I DON'T KNOW.

THE COURT: I THINK -- 2.25 AND 2.24 HAVE SOME OVERLAPPING LANGUAGE, BUT TO THE EXTENT THERE IS A REQUIREMENT TO PROVE MENTAL STATE, IT IS NOT COVERED BY 2.24 IN TERMS OF CIRCUMSTANTIAL EVIDENCE. SO I WOULD BE INCLINED TO GIVE BOTH. IS THERE ANY OBJECTION TO THAT?

MR. MC GURK: NO, YOUR HONOR.

THE COURT: MR. CANO?

MR. CANO: NO, YOUR HONOR.

THE COURT: AND GOING INTO THE 3500 SERIES, WE'VE GONE INTO THE FACT THAT THERE WILL NOT BE A LESSER INCLUDED. SO I WILL NOT GIVE 3517. I WILL GIVE 3515. AND THEN THE REMAINING INSTRUCTIONS ARE THE STANDARD INSTRUCTIONS.

LET ME CHECK ONE MORE THING BECAUSE I THINK WHAT I'LL DO IS HAVE THEM READY FOR YOU AT 1:30, BUT IT'S

INCLUDED?

MR. MC GURK: NO, YOUR HONOR.

THE COURT: OKAY. SO I THINK AT THIS TIME THE EASIEST THING IS TO TAKE THE BREAK FOR LUNCH.

ANY OTHER ISSUES WE NEED TO DISCUSS BEFORE WE COME BACK TO JURY INSTRUCTIONS?

MR. MC GURK: I DON'T BELIEVE SO, YOUR HONOR.

MR. CANO: NO. THERE'S THAT ISSUE OF THE PRIOR, BUT I GUESS WE CAN DO THAT ONCE THEY START DELIBERATING.

THE COURT: IN TERMS -- WHICH ISSUE?

MR. CANO: THE ISSUE OF ADDING THE PRIOR STRIKE TO THE INFORMATION.

THE COURT: ACTUALLY, SINCE WE HAVE A FEW MINUTES, WHY DON'T WE TAKE CARE OF THAT NOW.

ALL RIGHT. SO THE CURRENT INFORMATION INCLUDES A NUMBER OF PRIOR OFFENSES, MR. CANO.

MR. CANO: YES.

THE COURT: HOW DID YOU INTEND TO AMEND IT?

MR. CANO: TO ADD -- THE FIRST OF THE THREE STRIKE PRIORS STARTS WITH A63. I WOULD SIMPLY ASK TO ADD THAT EXACTLY AS THE FOURTH PRIOR UNDER THAT CODE SECTION AS WELL.

THE COURT: AND IT'S ALSO FOR PENAL CODE 211?

MR. CANO: YES. SAME CASE NUMBER, SAME CHARGE, SAME CONVICTION DATE.

MR. MC GURK: THAT WOULD BE OVER DEFENSE OBJECTION, YOUR HONOR, BASED ON THE FACT IT'S UNTIMELY. SUBMITTED.

THE COURT: ALL RIGHT. I AM GOING TO GRANT THE

MOTION TO AMEND THE INFORMATION IN LIGHT OF THE FACT THAT THE INFORMATION INCLUDES THE ALLEGATION AS TO THE SAME CASE NUMBER AND CHARGE BUT LEFT OUT ONE CHARGE AS TO WHICH MR. WILLARD WAS ALLEGEDLY CONVICTED. I THINK SUFFICIENT NOTICE HAS BEEN GIVEN TO DEFENSE BECAUSE IT'S THE SAME CASE THAT WAS ALLEGED AS TO HIM.

SO I AM GOING TO GRANT THE MOTION TO AMEND TO ADD AN ALLEGED PRIOR STRIKE, AND THAT WOULD BE CHARGED, I ASSUME, BOTH ON PAGE 3 AS AN ADDITIONAL STRIKE PRIOR AND ALSO AS AN ADDITIONAL CONVICTION OF A SERIOUS FELONY? IN BOTH PLACES, MR. CANO?

MR. CANO: IT'S ACTUALLY MY UNDERSTANDING THAT -- WELL, I GUESS TECHNICALLY, YES, IT WOULD BE. I'M NOT SURE IF WE WOULD GET ANY ADDITIONAL TIME OFF OF THAT SINCE IT'S THE SAME PRISON COMMITMENT, BUT I'D ASK --

THE COURT: WELL, IF YOU'RE SEEKING TO AMEND ONLY THE STRIKE PARAGRAPH, THAT'S FINE. I JUST WANT TO BE CLEAR ABOUT WHAT YOU'RE SEEKING.

MR. CANO: YEAH. I GUESS IN AN ABUNDANCE OF CAUTION I MIGHT AS WELL SEEK TO AMEND BOTH, AND WE'LL DEAL WITH THE SENTENCING ISSUE IF IT BECOMES AN ISSUE. SO BOTH THE STRIKE SECTION AND THE 667(A) SECTION.

THE COURT: ALL RIGHT. SO I AM GOING TO GRANT IT AS TO BOTH. I THINK YOU ARE CORRECT, IT WOULD NOT MAKE A DIFFERENCE IN TERMS OF TIME AS TO THE SECOND, BUT SINCE IT IS THE SAME CONVICTION DATE, IT WOULD MAKE SENSE TO HAVE IT LISTED IN BOTH, WHICH IS A CONVICTION DATE OF APRIL 28TH, 1987. I'M GOING TO AMEND IT BY INTERLINEATION. AND

THEN TECHNICALLY MR. WILLARD NEEDS TO BE ARRAIGNED ON THE ADDITIONAL ALLEGATION.

DO YOU WAIVE FORMAL READING OF THE ALLEGATION AND DENY THE ALLEGATION ON HIS BEHALF?

MR. MC GURK: YES, YOUR HONOR.

THE COURT: OKAY. SO IT WILL BE AMENDED IN THAT MANNER.

MR. CANO: AND WHEN THE -- WHEN THE JURY DOES GET THE CASE, I'LL -- BEFORE WE LEAVE, I'LL BE ASKING THE COURT AND COUNSEL AS TO WHAT WE'RE GOING TO DO WITH THE PRIORS ON THE CASE. SO JUST -- IT'S IN ANTICIPATION OF THAT. I JUST WANTED TO MENTION THAT.

MR. MC GURK: I'LL SPEAK TO MR. WILLARD ABOUT THAT.

THE COURT: ALL RIGHT. SO THAT'S HELPFUL. AND THE KEY ISSUE WOULD BE IF THE JURY WERE TO RETURN A GUILTY VERDICT -- OBVIOUSLY, SITTING HERE AT THIS POINT WE DON'T KNOW WHAT THEY'RE GOING TO DO, BUT IT'S HELPFUL IN ADVANCE TO HAVE THAT CONVERSATION AND TO LET THE COURT KNOW WHETHER MR. WILLARD WILL BE SEEKING A JURY TRIAL AS TO THE PRIORS, BECAUSE IF SO, WE NEED TO BE PREPARED TO KNOW WHETHER WE'RE KEEPING THE JURY FURTHER.

MR. MC GURK: ABSOLUTELY. THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. VERY WELL. SO WITH THAT WE ARE ADJOURNED UNTIL 1:30. I'LL HAVE A DRAFT FOR COUNSEL RIGHT AT 1:30 OF THE PROPOSED JURY INSTRUCTIONS.

WE ARE IN RECESS.

MR. CANO: THANK YOU.

//

FORCE."

ANY OBJECTION TO THE COURT GIVING 3472?

MR. MC GURK: NO, YOUR HONOR.

MR. CANO: NO.

THE COURT: ALL RIGHT. AND 3474 CONCERNS WHETHER THE DANGER NO LONGER EXISTS. IT READS, "THE RIGHT TO USE FORCE IN SELF-DEFENSE CONTINUES ONLY AS LONG AS THE DANGER EXISTS OR REASONABLY APPEARS TO EXIST." THAT APPEARS APPLICABLE.

ANY OBJECTION TO GIVING 3474?

MR. CANO: NO.

MR. MC GURK: NO, YOUR HONOR.

MR. CANO: AND THERE WAS ALSO 3471; IS THAT RIGHT?

THE COURT: 3471 THERE WAS NOT AN OBJECTION TO.

MR. CANO: OKAY.

THE COURT: SO IN TOTAL IT WOULD BE 3470, WHICH IS THE BASIC SELF-DEFENSE INSTRUCTION; 3471, WHICH IS MUTUAL COMBAT; 3472, MAY NOT BE CONTRIVED; AND 3474, DANGER NO LONGER EXISTS. AND THEN THE OTHER ONES WERE NOT APPLICABLE.

MR. MC GURK, ARE THERE ANY OTHER ON THIS LIST?

MR. MC GURK: I DON'T BELIEVE SO, YOUR HONOR.

THE COURT: OKAY. LET ME JUST COMPARE IT TO MY LIST FOR A SECOND AND SEE IF THERE'S ANYTHING ELSE TO DISCUSS, AND THEN I'LL HAVE AN ACTUAL LIST FOR COUNSEL TO REVIEW AT 1:30.

(PAUSE IN PROCEEDINGS.)

HELPFUL TO GO OVER THEM NOW.

WAS THERE OPINION TESTIMONY OF A LAY WITNESS?

MR. CANO: DISTANCE. THERE WAS DISTANCES FROM SEVERAL WITNESSES. I DON'T KNOW IF THAT -- OR I GUESS THE COURT REALLY -- IT SEEMED TO ME THAT, YOU KNOW, THEY'RE SAYING THAT -- YOU KNOW, IF THE PERSON IS SO MANY FEET AWAY FROM THEM, THAT'S KIND OF LAY PERSON TESTIMONY. I DON'T KNOW IF IT'S AN IMPORTANT FACT IN THE CASE, BUT TECHNICALLY I THINK IT WOULD JUSTIFY THE INSTRUCTION.

THE COURT: I DON'T THINK THAT REALLY IS OPINION. I THINK THAT'S A STATEMENT OF FACT. AND DURING THE TRIAL -- I CAN USE THE FACT THAT WE HAVE A CARD THAT SAYS HOW FAR AWAY THAT WAS, BUT I DON'T THINK THAT FALLS UNDER AN OPINION BY A LAY WITNESS.

MR. CANO: OKAY.

MR. MC GURK: I DON'T REALLY HAVE A STRONG FEELING ONE WAY OR THE OTHER.

MR. CANO: I DON'T EITHER.

THE COURT: I'M INCLINED NOT TO GIVE IT BECAUSE IT CAN BE CONFUSING TO THE JURY BECAUSE IT REALLY WAS NOT AN OPINION. USUALLY THAT'S MORE OF AN EXPERT TYPE OF AN OPINION GIVEN BY A LAY WITNESS.

MR. CANO: OKAY.

THE COURT: SO I'M NOT GOING TO GIVE 333.

EVERYTHING ELSE IS FAIRLY STANDARD.

ANYTHING ELSE, MR. MC GURK, ON THE LIST THAT YOU THINK EITHER WAS NOT INCLUDED OR SHOULD NOT BE

06. Line 12-5-26.
07. Line 12-17-28.)
08. Line 13-28.
9. Line 12-28.)
Document by Dr. Vicary ID. 1987.)

338. Line 1-28, 22.
339. Line 3-6, 28.
340. Line 1-8-18-21-28
the Document [redacted] one the Prove That Counsel MCGurk. Refuse To Challenge the Evid. on the 1987. Adult Robbery Conviction.
ID. 00161. Line 15-This motion Romero Supp. Line 22-31. NO. 00162. 3-20.)
3rd page. 6 of motion Line 4-15.)
ID. 1210. Line 15-11-16-28.

EXHIBIT COVER PAGE

B
EXHIBI

Minute order Date. 1-19-11. the Jury 3-12/12 In count 1.

Description of this Exhibit: Transcript And Document.

Number of pages to this Exhibit: 18 pages.

JURISDICTION: (Check only one)

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

2.

IT'S A SERIOUS FELONY THAT IT CAN BE CHARGED AS A MISDEMEANOR INHERENTLY PUTS IT ON THE BOTTOM END OF STRIKE OFFENSES; AND THE ONLY OFFENSE THAT COMES TO MIND THAT CAN BE CHARGED A STRIKE IS 422. THERE MIGHT BE SOME OTHERS, AND THE FACT THAT IT CAN BE CHARGED AS A MISDEMEANOR, MR. WILLARD'S DEFENSE IS WHERE THE DEFENSE IS COMING FROM WHEN IT'S COMING ON THE LOW END OF STRIKE OFFENSES. I DON'T THINK INSIGNIFICANT IS THE CORRECT WORD, AND I DON'T THINK I USED THAT.

THE COURT: WELL, I THINK IT WAS USED TO DESCRIBE THE INJURY.

MR. MCGURK: WELL, I WOULD CONSIDER AN INCH AND A HALF CUT ON A FOREARM TO BE INSIGNIFICANT, AND WE DIDN'T ASK THE JURY WHETHER IT WAS INSIGNIFICANT OR NOT. WE DID NOT ASK FOR IT TO BE FOUND INSIGNIFICANT, AND I THINK IT'S IMPORTANT TO NOTE THAT AT NO TIME THAT HAS MR. WILLARD EVER ADMITTED CAUSING SIGNIFICANT INJURY OR HAS IT BEEN PROVEN BY ADMISSION OR JURY VERDICT IN ALL OF MR. WILLARD'S CRIMINAL BEHAVIOR. THERE'S NEVER BEEN A SUBSTANTIAL INJURY SHOWN IN ANY CASE.

THE COURT: BUT THE ORIGINAL OFFENSE, THE FIRST STRIKE, THOUGH, WAS ROBBERY WITH A FIREARM.

MR. MCGURK: CORRECT, BUT THERE'S NO INJURY ALLEGED NOR IS THERE AN INJURY ALLEGED IN 1987; AND WHILE THEY ARE STRIKE OFFENSES -- AND I DON'T WANT TO MINIMIZE ROBBERIES. THEY ARE ALL THEFT-RELATED, WHICH FRANKLY, IT'S TIED DRUG INTO DRUG ADDICTION AND MENTAL ILLNESS. AND I THINK THE COURT HAS SEEN THAT WHEN YOU HAVE THEFT-RELATED CASES AND

THEFT-RELATED PRIORS, A GREAT DEAL OF THOSE CASES HAVE TO DO WITH DRUG ADDICTION IN TERMS OF GETTING CURRENCY TO CONTINUE YOUR HABIT, IF YOU WILL.

AND I ALSO WANT TO NOTE THAT 1987, THE TWO STRIKE PRIORS THAT MR. WILLARD WAS FOUND CONVICTED BY JURY, HE WAS ALSO DURING THE PENDENCY OF THAT CASE FOUND INCOMPETENT -- EXCUSE ME, A DOUBT WAS DECLARED AS TO HIS COMPETENCE DURING THE SAME CASE. IT'S QUITE FREQUENT THAT WHEN SOMEONE'S CHARGED WITH THE MULTIPLE STRIKES, A DISPOSITION CAN BE REACHED WHERE THE PERSON WILL PLEAD TO ONE STRIKE. I CAN'T SPEAK WHETHER THAT WAS AN OPTION FOR MR. WILLARD OR NOT IN 1987, BUT IT IS A VERY COMMON OCCURRENCE, CONSIDERING THAT A DOUBT WAS DECLARED AS TO HIS COMPETENCE, I THINK THAT WOULD HINDER ANY RATIONAL DISCUSSIONS OF A PLEA AGREEMENT. SO HAD I THINK THE COURT SHOULD TAKE THAT INTO CONSIDERATION.

THE COURT: DO YOU KNOW IF THE 211 FROM 1987 WAS ONE INCIDENT WITH TWO VICTIMS OR TWO SEPARATE INCIDENTS?

MR. MCGURK: WE'VE BEEN WAITING FOR THE FILE AND STILL HAVEN'T GOTTEN IT. I WAS ABLE TO PROCURE THE VERDICT FORMS, AND THERE WERE TWO DIFFERENT NAMES; BUT THERE WAS NO INDICATION IN TERMS OF WHETHER IT WAS TWO PEOPLE STANDING AT ONE TIME OR 2 INCIDENTS. I WAS NOT ABLE TO LOCATE THAT. BUT THERE WERE TWO DIFFERENT NAMES ON THE JURY VERDICTS.

THE COURT: ALL RIGHT, WHICH I WOULD ASSUME -- WHAT I CAN'T TELL IS WHETHER IT WAS --

MR. MCGURK: RIGHT.

THE COURT: -- ONE CRIME OR TWO CRIMES.

MR. MCGURK: AND I ALSO, IF I MAY, YOUR HONOR, I THINK IT'S IMPORTANT TO LOOK AT THE COURT'S DETERMINATIVE SENTENCING OPTIONS, WHICH THE COURT IS ALLOWED TO DO IN DETERMINING WHAT THE APPROPRIATE SENTENCE WOULD BE: CONSIDERING MR. WILLARD'S AGE, WHICH IS HE IS IN HIS '50'S, CONSIDERING THAT THE CURRENT OFFENSE -- I UNDERSTAND THE COURT'S CONCERN WITH THE OFFENSE, AND I REALLY DO UNDERSTAND IT; BUT IT IS THE DEFENSE'S POSITION THAT IT'S LOWER END STRIKE CONDUCT SIMPLY BECAUSE HE WAS CHARGED AS A MISDEMEANOR, AND IT WAS NOT A SERIOUS INJURY, AND THE SENTENCING OPTIONS THE COURT HAS IS UP TO 19 YEARS IN STATE PRISON.

I THINK A 19-YEAR SENTENCE FOR A CHARGE THAT CAN BE CHARGED AS A MISDEMEANOR, NO MATTER WHAT THE PERSON'S HISTORY, I THINK IS SUBSTANTIAL. I THINK IT'S SUFFICIENT IN THIS CASE, ESPECIALLY WHEN YOU CONSIDER THE PREVIOUS HISTORY OF DRUG ADDICTION, THE PREVIOUS HISTORY THAT THERE'S BEEN NO INJURY EVER SHOWN OR FRANKLY ALLEGED UNTIL THE CURRENT OFFENSE. THE FACT THAT THE 1987 PRIORS ARE MORE THAN 25 YEARS OLD AND OCCURRED IN THE SAME JURY TRIAL DURING THE PENDENCY OF WHICH A DOUBT WAS DECLARED AS TO HIS COMPETENCE. THE THIRD STRIKE IS OVER 30 YEARS OLD AND WAS A JUVENILE PRIOR IN WHICH THE PROSECUTION WANTED TO SHOW HIM UNFIT FOR JUVENILE SUPERVISION, AND THAT WAS DENIED, WHICH SPEAKS TO THE GRAVITY OF THE OFFENSE. THE JUVENILE COURT HAD MADE A DETERMINATION WHICH WAS IN THE DEFENSE MOTION.

AND CONSIDERING ALL OF THOSE, I'D ALSO LIKE TO ADD

THAT I WOULD CONSIDER A NINE-YEAR SENTENCE FOR 11350 SUBSTANTIAL, AND I BELIEVE THAT WAS -- I THINK THAT WAS A 1998 CONVICTION FOR 11350 WHERE HE RECEIVED 9 YEARS IN STATE PRISON.

THE COURT: RIGHT.

MR. MCGURK: AND I'M FAIRLY CONFIDENT THAT HE RECEIVED THOSE 9 YEARS DUE TO THE SAME 1987 AND 1978 CONVICTIONS THE COURT HAS IN FRONT OF IT TODAY. SO CONSIDERING ALL THAT, I THINK A 19-YEAR DETERMINATIVE SENTENCE, ONE, IS MORE THAN SUFFICIENT, CONSIDERING THE CURRENT OFFENSE; AND TWO, I THINK THE STRIKES ARE UNIQUE ENOUGH, ONE A JUVENILE PRIOR, 1987, 2 STRIKES, AND ONE TRIAL WHERE HE WAS DECLARED -- A DOUBT WAS DECLARED CONSIDERING THOSE TWO FACTS, PLUS HIS DRUG ADDICTION, PLUS MENTAL ILLNESS, I THINK IT'S UNIQUE ENOUGH TO FIND HIM OUTSIDE THE SPIRIT OF THE 3 STRIKES LAW.

THE COURT: LET ME HEAR FROM THE PEOPLE. I CONTINUE TO HAVE A CONCERN REGARDING THE NATURE OF THIS OFFENSE AND THE PRIOR OFFENSES. I GUESS THE ISSUE THAT I THINK WOULD BE BETTER FOR ME TO ADDRESS THAT'S A NEW ISSUE, NOT RAISED BEFORE, IS IF THE COURT WERE HYPOTHETICALLY TO MAX HIM OUT AT 19 YEARS, WHY THAT IS NOT A SUFFICIENT SENTENCE, AND THE COURT INSTEAD SHOULD PROCEED UNDER THE THREE STRIKES LAW.

MR. HAIDAR: WELL, IS THE COURT ASKING ME IS 19 YEARS A SIGNIFICANT SENTENCE? I BELIEVE IT IS. THERE'S NO QUESTION THERE. I BELIEVE THE ACTUAL QUESTION HERE IS WHETHER THIS IS A CASE WITHIN THE SPIRIT OF ROMERO AND SHOULD THE STRIKE BE STRICKEN, AND THE COURT ALREADY ITEMIZED ALL THE FACTORS WHY IT'S NOT WITHIN THE SPIRIT OF

Document Number 15

Moreover, in considering appellant's background, character, and prospects, the trial court did not give due consideration to appellant's mental health problems. Recently in *People v. Smith* (Feb. 24, 2012, B223181) __ Cal.App.4th __ [2012 WL 593397], Division 1 of this Second Appellate District found a trial court abused its discretion in failing to consider the defendant's mental illness and other factors when deciding the defendant's *Romero* motion. In the instant matter, the defense "Request For Court To Dismiss Prior Alleged Under Three Strikes Law Under PC § 1385" laid out appellant's long history of mental illness. (Supp. CT 65-86.) At the hearing on the *Romero* motion, defense counsel also discussed appellant's mental illness as a reason the court should dismiss the strike findings. (2RT 357, 359.) However, the trial court did not address this factor in its consideration of appellant's *Romero* motion. (2RT 350-355, 364-365.)

The record provides ample evidence of appellant's mental illness. A doubt as to appellant's competency was declared during the criminal trial proceedings in 1987, wherein appellant was ultimately convicted of two counts of robbery, the two strike offenses. (Supp. CT 16, 83.) The defense *Romero* motion included a competency report prepared by Dr. Vicary in 1987, which stated that appellant "has an extensive prior psychiatric history beginning at the age of twelve" and appellant previously had two psychiatric hospitalizations. (Supp. CT 83-84.) Appellant had a family history of mental illness (Supp. CT 77, 84) and his sister reported he has suffered from mental problems from the time he was a child (Supp. CT 78). He has a history of auditory and visual hallucinations. (Supp. CT 85.) Appellant was previously

THE COURT: ALL RIGHT. WELL, FIRST OF ALL, THERE IS A MOTION TO AMEND THE INFORMATION BY INTERLINEATION TO HAVE THE CORRECT CASE NUMBER FOR THE 1978 CONVICTION.

ANY OBJECTION?

MR. MC GURK: NO, YOUR HONOR.

THE COURT: SO THE CORRECT CASE NUMBER, J250484, IS SUBSTITUTED.

JUST SO I UNDERSTAND, MR. MC GURK, YOU RAISED AN ISSUE REGARDING THE 1981 CONVICTION AND WITH RESPECT TO THE OTHER ALLEGED PRIORS, AND THAT INCLUDES BA160602 AND BA295169 AND A635459 AND A628204, AS WELL AS J250484. I THINK THAT COVERS '78-7

MR. CANO: YES, YOUR HONOR.

THE COURT: -- ALL OF THEM.

ALL RIGHT. WITH RESPECT TO ANY OF THOSE, IS THERE ANY ARGUMENT THAT THESE ARE NOT PRIOR CONVICTIONS, AND WITH RESPECT TO THREE OF THEM, PRIOR STRIKE CONVICTIONS, THAT THEY ARE NOT -- FOR STARTERS, THEY ARE NOT PRIOR CONVICTIONS OF MR. WILLARD? IS THERE ANY ARGUMENT TO THAT EFFECT?

MR. MC GURK: THERE'S NO ARGUMENT. I WOULD SUBMIT ON THE MOTION.

THE COURT: OKAY. AND WITH RESPECT TO THE ALLEGATION THAT HE HAS SUFFERED A PRIOR CONVICTION OF A SERIOUS OR VIOLENT FELONY -- AND AGAIN, I'M LEAVING ASIDE THE 1981 ALLEGED CONVICTION. IS THERE ANY ARGUMENT WITH RESPECT TO CONVICTIONS OF A SERIOUS OR VIOLENT FELONY?

MR. MC GURK: THERE'S NO ARGUMENT AT THIS TIME.

THERE CAN BE MOTIONS AFTER THIS DATE.

THE COURT: RIGHT.

MR. MC GURK: THERE CAN BE OTHER SUBJECTS COMING UP REGARDING THAT ISSUE, BUT NOW I WOULD SUBMIT ON THAT.

THE COURT: THIS IS FOR DETERMINATION OF THE COURT. AND I'M FINDING THAT THE ALLEGATIONS ARE TRUE.

OKAY. SO THAT LEAVES US WITH THE 1981 ALLEGED CONVICTION. ON THAT ISSUE, I'M GOING TO TAKE A BRIEF RECESS. AND I SEE THAT THE DEFENDANT IS HERE ON THE OTHER TRIAL MATTER. I WANT TO BRIEFLY TURN TO THAT, AND THEN I'LL RULE WITH RESPECT TO THE PRIORS TRIAL.

MR. MC GURK: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

(RECESS.)

THE COURT: OKAY. WE'RE BACK ON THE RECORD. MR. WILLARD IS PRESENT. BOTH COUNSEL ARE PRESENT.

I HAVE REVIEWED ALL OF THE DOCUMENTS IN THE CASE AND THE TESTIMONY OF THE WITNESSES.

WITH RESPECT TO THE ALLEGED PRIORS, I FIND THAT WITH RESPECT TO ALL BUT ONE THAT THE PEOPLE HAVE PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS THE PERSON WHO WAS CONVICTED OF THE ALLEGED CRIMES. I'LL GO THROUGH THAT WITH SOME SPECIFICITY, BUT LET ME ADDRESS THE ONE FOR WHICH I FEEL THE PEOPLE HAVE NOT MET THEIR BURDEN.

WITH RESPECT TO THE ALLEGED STRIKE PRIOR IN CASE A198987, I HAVE LOOKED CLOSELY AT PEOPLE'S 4 AND 5,

AND AS THE WITNESS TESTIFIED, THERE'S NOTHING IN THIS DOCUMENT THAT SHOWS A BIRTH DATE, COMPARISON OF FINGERPRINTS, OR ANY FINGERPRINTS PROVIDED OR A BOOKING PHOTO, MEANING THAT THERE IS NO BOOKING PHOTO OR FINGERPRINT DATA THAT WAS USED OR COULD BE USED IN THE TRIAL TO BE COMPARED TO MR. WILLARD. THAT IS IN CONTRAST TO THE OTHER ALLEGED PRIORS.

I FIND THAT THE PEOPLE HAVE NOT PROVEN BEYOND A REASONABLE DOUBT THAT THE PERSON WHO IS NAMED IN THAT CASE, ALTHOUGH THAT PERSON BEARS THE IDENTICAL NAME TO THE DEFENDANT HERE, BUT GIVEN THE LACK OF THE OTHER INDICIA, I DO NOT FIND THAT PEOPLE'S 5, WHICH IS THE CLETS RAP SHEET, IS SUFFICIENT BASED ON THE TESTIMONY OF THIS WITNESS THAT HE WAS TAUGHT IN A SEMINAR 15 YEARS AGO THAT IF THERE IS AN ENTRY ON THE RAP SHEET, IT MEANS, UNLESS IT IS INDICATED OTHERWISE, THAT THE FINGERPRINTS WERE COMPARED.

SO WITH RESPECT TO THE STANDARD OF BEYOND A REASONABLE DOUBT, I DO NOT FIND THAT THAT PRIOR HAS BEEN PROVEN BEYOND A REASONABLE DOUBT. Case NO-A635989

HOWEVER, FIRST, WITH RESPECT TO THE ALLEGATIONS UNDER PENAL CODE SECTION 667.5(B), THE COURT FINDS THAT THE DEFENDANT, CHARLES WILLARD, HAS SUFFERED THE FOLLOWING CONVICTIONS:

THOSE ARE THE CONVICTIONS IN CASE NUMBER BA160602 -- AND BEFORE I GO FURTHER, LET ME INQUIRE, MR. CANO, I GUESS THE QUESTION OF WHAT TO DO ABOUT THE CONVICTION DATES. I'M NOT SURE WE NEED THE CONVICTION

statement of facts is unnecessary to the issue raised on appeal, and it is therefore omitted.

ARGUMENT

IT APPEARS THE MATTER SHOULD BE REMANDED BECAUSE THE EVIDENCE DID NOT DISCLOSE APPELLANT'S AGE AT THE TIME OF HIS PRIOR JUVENILE OFFENSE

Appellant's sole claim on appeal is that the prosecution failed to prove appellant was at least 16 years old at the time his juvenile offense was committed, as required to use the offense as a prior strike conviction. (AOB 7-14.) It appears appellant is correct.

A. Relevant Proceedings Below

After the jury found appellant guilty of the substantive charge, the trial court held a bifurcated hearing on appellant's prior convictions. The prosecution introduced records from appellant's 1978 juvenile adjudication for robbery and driving a vehicle without consent. (Supp. CT 2, 24-25, 50-51, 59-60.) The prosecution also introduced evidence of appellant's two adult robbery convictions from 1987. (Supp. CT 16.) Appellant did not challenge the evidence supporting those convictions, and the trial court found them true. (2RT 338-339.)

The admitted evidence showed appellant's date of birth was October 1, 1960. (Supp. CT 2.) One document showed the date of appellant's arrest on the prior juvenile offense was February 22, 1978. (Supp. CT 24-25.) Two documents indicated the date appellant was received at "SRCC" was July 13, 1978. (Supp. CT 2, 60.) Other documents showed the dates of appellant's confinement to the Department of the Youth Authority for the juvenile adjudication was from June 19, 1978 to October 15, 1981. (Supp. CT 59-60.) On their face, none of the admitted documents appear to indicate the date of the offense.

C. Miscellaneous Factors

The Supreme Court in Garcia also approved the trial court's dismissal of priors based on the following reasons: [I] "defendant's prior convictions all arose from a single period of aberrant behavior for which he served a single prison term. [ii] Defendant cooperated with police, [iii] his crimes were related to drug addiction, and [iv] his criminal history does not include any actual violence." (Garcia, supra, 20 Cal.4th 490, 503.)

V. This Court Should Dismiss Two "Strike" Priors

It is conceded that the charges in the present case are considered violent felonies. However that isn't the end of the analysis. A closer look at the facts of the case reveal that while the conduct is serious, it is certainly not as violent as a majority of cases with similar charges.

The state of Mr. Hernandez's injuries is a two inch laceration to the forearm. Mr. Ponce received no injuries. Furthermore, the severity of the injury is in even greater doubt considering that the hospital that Mr. Hernandez claimed to have received treatment from had no record of such treatment. This fact was likely a factor in the jury's determination that the great bodily injury allegation was not proven.

The violent act in question was also limited to one swipe of Mr. Willard's relatively small knife. Mr. Willard didn't attempt to rob either party and actually allowed them to leave the bus as opposed to continuing the encounter. This motion's intent is not to minimize the seriousness of Mr. Willard's conduct. It simply asks the Court to take it in context when considering fact patterns of other Assault with a Deadly Weapon cases. It is the defense position that these facts would place this case squarely in the bottom third in terms of seriousness.

The Court should also consider the large range of sentencing options it has even if it were to follow the defense's recommendation. The Court could sentence Mr. Willard anywhere from ten to eighteen years in state prison if two "strike" priors were stricken. That range is more than sufficient considering the facts of this case

ruled that the two prior convictions had arisen from the same act and therefore were so closely connected that a failure to strike one of them would be an abuse of conviction. (Burgos, supra at 1216.) The Court in Burgos went further in its analysis of Mr. Burgos' present and past criminal history, stating "his criminal history aside from the strike convictions consisted of misdemeanors, including a juvenile finding of battery on his sister and adult convictions of interference with a bus driver, unruly behavior at a bus terminal, and littering, and of one felony conviction for sale of a substance in lieu of a controlled substance, the matter for which he was in the holding cell where he committed the current offenses. While the current offenses were not merely petty theft or drug possession offenses, neither were they, under the circumstances, the worst of crimes." (People v. Burgos, 117 Cal. App. 4th at 1216.)

The current offenses in the Burgos matter were a robbery and an assault that produce great bodily injury on the complaining witness. Furthermore, the defendant in Burgos suffered his prior strike convictions less than two years prior.

In Mr. Willard's case, his current offenses are eligible to be charged as misdemeanors and no great bodily injury occurred. Furthermore, Mr. Willard's two 1987 "strike" convictions were the product of one criminal case and occurred more than twenty years prior to the current offenses. Clearly after an analysis of both the nature of Mr. Willard's criminal convictions, and the length of time between them, that Mr. Willard should be considered well below a standing that would preclude him from being considered outside the spirit of the three strikes law.

and is a legitimate factor for the Court to analyze when considering the merits of this motion.

The prior convictions the defense asks the court to strike are also extremely dated. Before the present case, Mr. Willard has not been convicted for anything that could be considered violent for over 22 years. Since 1987, the only felony convictions Mr. Willard has suffered are for simple drug possession. Mr. Willard has a long history of substance abuse problems which is referenced in his attached social history. It is also notable that one of the prior convictions we ask the court to strike occurred when Mr. Willard was a juvenile. The other two prior "strike" convictions the prosecution asks the Court in impose occurred within the same case and were disposed of simultaneously.

Due to the seriousness of the present case, the range of sentencing options available to the court, and the age and circumstances of the alleged priors, Mr. Willard respectfully requests this court exercise its discretion and dismiss two "strike" priors as alleged in this matter.

Dated: March 16th, 2009

Respectfully submitted,

Kevin T. McGurk
Attorney for Defendant

juvenile offense in 1978 in which a 17 year old Charles Willard was deemed fit for juvenile court.

As to the current offense, Mr. Willard caused a one and a half inch cut on Santos Hernandez's arm. An injury that a jury of his peers specifically found wasn't serious or significant. The court has the ability to sentence Mr. Willard to 19 years in state prison for the commission of this offense. This is an extremely reasonable sentence and one that is more than sufficient considering the nature of the current offense. For all the reasons stated above, Charles Willard is outside the spirit of the three strikes law and the court should strike two of Mr. Willard's prior convictions.

Respectfully Submitted,

Kevin McGurk

Kevin McGurk
Deputy Public Defender

MR. WILLARD'S HISTORY OF MENTAL ILLNESS IS A COMPELLING FACTOR AND PLACES HIM OUTSIDE THE SPRIT OF THE THREE STRIKES LAW.

The court should also consider Mr. Willard's extensive history of drug addiction and mental illness when determining whether his personal characteristics place him outside the spirit of the three strikes law. Dr. William Vicary opined in 1987 that Mr. Willard suffered from a chronic psychiatric illness. (See Attachment B). Furthermore, the attached mitigation report previously submitted at Mr. Willard's initial sentencing documents his almost lifelong battle with addiction and its direct connection to his criminal acts. A mental condition that significantly reduces culpability for a crime has been explicitly deemed a mitigating factor. (See Cal. Rules of Court, rule 4.423(b)). In fact, in the same case in which Mr. Willard suffered his two "strike" convictions in 1987, a doubt as to his mental competence was declared during its pendency. Defense council submits to the court that when a defendant has been charged with multiple strikes it is common practice to enter into a plea agreement in which one would be pled to. One could easily envision that opportunity not being available to Mr. Willard due to his mental capacity.

CONCLUSION

Prior to 2009, Charles Willard hadn't been convicted of a violent offense for 22 years. That offense in 1987 resulted in two strike convictions during the pendency of which a doubt was declared as to Mr. Willard's competence. Mr. Willard's only other "strike" was a

any further offensive behavior as the two men departed and there was no record of any medical treatment provided to Mr. Hernandez.

Considering the insignificance of Mr. Hernandez's injury, the facts elicited at trial could properly be considered misdemeanor conduct. A motion to reduce the charges to misdemeanors pursuant to Penal Code Section 17(b) was not available to the defense due to the great bodily injury allegation that the jury found untrue. Absent Mr. Willard's prior convictions, a motion to reduce on these facts would at the bare minimum be meritorious. It is certainly fair to say that on the scale of conduct constituting felony "strike" conduct, the facts elicited at trial would place Mr. Willard's conduct at the extreme low end.

In terms of Mr. Willard's past convictions, it's incredibly important to note that Mr. Willard has never pled nor been convicted by jury of causing a serious or significant injury to anyone. Mr. Willard suffered a 1978 juvenile adjudication for robbery pursuant to Penal Code Section 211, with a further allegation that a firearm was used pursuant to Penal Code Section 12022.5. (See Attachment A). However, no injury suffered by the complaining witness was alleged and the Petitioner's motion to find 17 year old Mr. Willard unfit pursuant to Welfare and Institutions Code 707(b). These facts are certainly relevant in determining the seriousness of the juvenile conduct. In fact, the gravity of the offense is explicitly stated as one of the factor the Court must consider before ruling on a motion for unfitness. (See CALIFORNIA WELFARE AND INSTITUTIONS CODE § 707(b).)

CASE NO. BA362410
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TO RUN CONCURRENT TO THE SENTENCE IN COUNT 1.

.

TOTAL STATE PRISON SENTENCE AS TO COUNT 2 = 30 YEARS TO LIFE WITH THE POSSIBILITY OF PAROLE.

.

SENTENCE IN COUNT TWO TO RUN CONCURRENT TO SENTENCE IN COUNT 1.
BOOKING # 2067605 X-26246
CUSTODY STATUS: REMANDED IN STATE PRISON.

.

REMAINING ALLEGATIONS PURSUANT TO PENAL CODE SECTION 667.5(B) ARE DISMISSED PURSUANT TO PENAL CODE SECTION 1385.

.

DEFENDANT'S CONDUCT CREDITS ARE NOT LIMITED BY PENAL CODE

SECTION 2933.1 TO 15 PER CENT BECAUSE HE WAS CONVICTED OF ASSAULT WITH A DEADLY WEAPON BUT THE ALLEGATION OF GREAT BODILY INJURY WAS FOUND TO BE NOT TRUE, SO DEFENDANT WAS NOT CONVICTED OF A VIOLENT FELONY UNDER PENAL CODE SECTION 667.5(C).

.

REMAINING ALLEGATIONS OF PRIOR CONVICTIONS IN CASES BA160602, BA295169, A635459 AND A628204 PURSUANT TO PENAL CODE SECTION 667.5(B) ARE DISMISSED PURSUANT TO PENAL CODE SECTION 1385 IN THE INTEREST OF JUSTICE. THE COURT FINDS BASED ON THE FACTS IN THIS CASE THAT THE SENTENCE OF 30 YEARS TO LIFE IS AN APPROPRIATE SENTENCE AND THAT IT IS IN THE INTEREST OF JUSTICE THAT DEFENDANT NOT BE SENTENCED TO SERVE ADDITIONAL YEARS IN PRISON FOR THE FOUR PRISON PRIORS PURSUANT TO PENAL CODE SECTION 667.5(B), WHICH ADDITIONAL TIME WOULD BE EXCESSIVE IN LIGHT OF THE FACTS PROVEN AT TRIAL.

.

.

IT APPEARING TO THE COURT THAT, THROUGH INADVERTENCE OR CLERICAL ERROR, THE MINUTE ORDER DATED MAY 24, 2011 DOES NOT PROPERLY REFLECT THE ORDER OF THE COURT. SAID MINUTE ORDER IS AMENDED NUNC PRO TUNC, AS FOLLOWS:

.

BY STRIKING: "470", "410" AND "60"

.

BY INSERTING: "915", "611" AND "304"

.

BY ADDING: "DEFENDANT'S CONDUCT CREDITS ARE NOT LIMITED BY PENAL CODE SECTION 2933.1 TO 15 PER CENT BECAUSE HE WAS CONVICTED OF ASSAULT WITH A DEADLY WEAPON BUT THE ALLEGATION OF GREAT BODILY INJURY WAS FOUND TO BE NOT TRUE, SO DEFENDANT WAS NOT CONVICTED OF A VIOLENT FELONY UNDER PENAL CODE SECTION 667.5(C)."

.

BY ADDING: "REMAINING ALLEGATIONS OF PRIOR CONVICTIONS IN CASES BA160602, BA295169, A635459 AND A628204 PURSUANT TO PENAL CODE SECTION 667.5(B) ARE DISMISSED PURSUANT TO PENAL CODE SECTION 1385 IN THE INTEREST OF JUSTICE. THE COURT FINDS

CASE NO. BA362410
DEF NO. 01 DATE PRINTED 01/19/11

.
DEFENSE EXHIBITS A(LETTER) IS MARKED AND ADMITTED INTO EVIDENCE.
.
DEFENSE REST.
.
OUT OF THE PRESENCE OF THE JURY:
.
THE COURT AND COUNSEL DISCUSS AND FINALIZE JURY INSTRUCTIONS.
.
IN THE PRESENCE OF THE JURY:
.
THE COURT PRE-INSTRUCTS THE JURY.
.
CLOSING ARGUMENTS ARE MADE.
.
AT 2:50 P.M., THE BAILIFF IS SWORN TO TAKE CHARGE OF THE JURY.
.
AT 3:53 P.M., THE JURY SIGNALS THEY HAVE A QUESTION.
.
AT 4:15 P.M., THE JURY AND COUNSEL ARE PRESENT. THE COURT RESPONDS TO THE JURY'S QUESTION.
.
AT 4:28 P.M., THE JURY SIGNALS THEY HAVE REACHED A VERDICT.
.
AT 4:33 P.M., THE FOLLOWING VERDICT IS READ:
.
WE, THE JURY IN THE ABOVE ENTITLED ACTION, FIND THE DEFENDANT, CHARLES WILLARD, GUILTY OF THE CRIME OF ASSAULT WITH A DEADLY WEAPON, UPON SANTOS HERNANDEZ, IN VIOLATION OF PENAL CODE SECTION 245(A)(1), A FELONY, AS CHARGED IN COUNT 1 OF THE INFORMATION.
WE FURTHER FIND THE ALLEGATION THAT IN THE COMMISSION OF THE CRIME THE DEFENDANT, PERSONALLY INFLICTED GREAT BODILY INJURY UPON SANTOS HERNANDEZ, WITHIN THE MEANING OF PENAL CODE SECTION

12022.7(A) TO BE NOT TRUE.
THIS 18TH DAY OF JANUARY, 2011, JUROR FOREPERSON NUMBER 1
.
WE, THE JURY IN THE ABOVE-ENTITLED ACTION, FIND THE DEFENDANT, CHARLES WILLARD, GUILTY OF THE CRIME OF ASSAULT WITH A DEADLY WEAPON, UPON DAVID PONCE, IN VIOLATION OF PENAL CODE SECTION 245(A)(1), A FELONY, AS CHARGED IN COUNT 2 OF THE INFORMATION.
THIS 18TH DAY OF JANUARY, 2011 JUROR FOREPERSON NUMBER 1
.
NO POLLING OF THE JURY.
.
THE CLERK IS DIRECTED TO RECORD THE VERDICTS. RE-READING OF THE VERDICTS AS RECORDED IS WAIVED.
.
THE JURY INSTRUCTIONS AND REDACTED VERDICTS ARE FILED AND

ROMERO. THE DEFENDANT'S HISTORY CLEARLY SHOWS THAT HE'S CONTINUED IN HIS DANGEROUS CONDUCT TO SOCIETY. HE JUST CANNOT CONDUCT HIMSELF PROPERLY WHEN HE'S OUTSIDE THE PRISON SYSTEM. THAT'S WHAT WE HAVE HERE, AND THE ONLY ARGUMENT I KEEP HEARING COUNSEL MAKE IS BELITTLING THE 245 IN THIS CASE. I MEAN, I WASN'T HERE DURING THE TRIAL, BUT FROM WHAT THE COURT SAID, LUCKILY ONE OF THE VICTIMS KICKED THE DEFENDANT IN THE CHEST AND KNOCKED HIM AWAY DURING THE ATTACK. IT COULD HAVE ESCALATED INTO ANOTHER TYPE OF CRIME.

THE CRIME WAS CHARGED AS A FELONY. WASN'T CHARGED AS A MISDEMEANOR. SO WHETHER IT'S A WOBBLER -- IT'S A WOBBLER. THERE ARE ASSAULTS THAT ARE MINIMAL, BUT CLEARLY AT THIS POINT IT COULD HAVE ESCALATED; AND FORTUNATELY FOR THE VICTIMS, IT DIDN'T.

SO YES, 19 YEARS IS A SIGNIFICANT SENTENCE; BUT I BELIEVE THE DEFENDANT IS ENTITLED TO THE THIRD STRIKE SENTENCING LAW BECAUSE HE'S NOT WITHIN THE SPIRIT OF ROMERO. THEY'RE JUST TWO SEPARATE THINGS.

THE COURT: ALL RIGHT, ANYTHING FURTHER, MR. MCGURK?

MR. MCGURK: NO, YOUR HONOR.

THE COURT: ALL RIGHT, SO THE ISSUES THAT WERE RAISED TODAY ARE THE ISSUES THAT THE COURT ADDRESSED AT THE ORIGINAL SENTENCING. THE QUESTION THAT THE COURT OF APPEAL CONSIDERED WAS WHETHER OR NOT THE JUVENILE PRIOR WAS AT A TIME WHEN MR. WILLARD WAS 16 OR OLDER, WHICH WAS FOUND TO BE TRUE.

THE ROMERO MOTION IS DENIED. THE DIFFICULTY I

NO. 357. Line 7-13. 28.) from Dr. Vicary

358. Line. 1-13-28

359. Line 9-24

355 Line 14-28 Background and Character.

366 Line 6. Romero Motion, the defense Motion, under 1385

Transcript on first count 1. and (A) Medical Documents by Dr. Vicary MD. 4 pages.

EXHIBIT COVER PAGE

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EXHI

Description of this Exhibit:

Number of pages to this Exhibit: 9 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ■ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

3.

FOR WHAT IT IS.

ALSO, IN TERMS OF MR. WILLARD AS A PERSON IN GENERAL, I THINK IT'S BEYOND QUESTION THAT MR. WILLARD HAS NOT ONLY HAD A DOCUMENTED HISTORY OF DRUG AND ALCOHOL ABUSE, BUT HE ALSO HAS HAD SOME SERIOUS MENTAL HEALTH CONCERNS. I PROVIDED A LETTER THAT MY PARALEGAL FOUND FROM DR. VICARY. GRANTED, IT'S A LITTLE BIT DATED, BUT IN THAT IT TALKS ABOUT MR. WILLARD BEING INVOLUNTARILY HOSPITALIZED TWICE. THAT'S A SERIOUS ACT. THAT'S NOT SOMEONE GETTING A LITTLE COUNSELING ON THE WEEKEND. THAT'S AN INVOLUNTARY HOSPITALIZATION THAT WOULD BE CERTAINLY INDICATIVE OF SOMEONE WITH A SERIOUS MENTAL HEALTH CONCERN.

CONSIDERING THAT HE HAS NOT RECEIVED TREATMENT OR ANY SORT OF CONSISTENT TREATMENT FROM NOT ONLY HIS MENTAL ILLNESS OR HIS RAMPANT DRUG AND ALCOHOL ABUSE, WHICH I THINK HE'S ACTUALLY FAIRLY CANDID ABOUT IN THE SENTENCING REPORT THAT I PROVIDED TO THE COURT, I THINK WHEN ONE CONSIDERS THAT IF THESE PROGRAMS WERE AVAILABLE TO HIM IN STATE PRISON AND HE COULD AVAIL HIMSELF OF THESE -- AND AVAIL HIMSELF OF THESE PROGRAMS, IT WOULD ALLEVIATE MUCH OF THE CONCERN OF HIM BEING A REPEAT OFFENDER WHEN HE WERE TO GET OUT OF CUSTODY.

THE COURT ALSO MENTIONED THAT WHILE HE HASN'T HAD A LARGE AMOUNT OF TIME BEING COMPLETELY CRIME FREE, A 1978 AND 1987 STRIKE PRIOR, SINCE THEN NO VIOLENT CONVICTIONS UNTIL THE ONE IN QUESTION. HE RECEIVED NINE YEARS FOR AN 11350, WHICH IS CERTAINLY AN INFLATED

SENTENCE NORMALLY FOR THAT TYPE OF CHARGE.

THE COURT: I ASSUME IT'S BECAUSE OF THE STRIKES.

MR. MC GURK: OF COURSE. NO QUESTION. BUT --

THE COURT: DO YOU KNOW WHAT WAS THE BASIS OF HIS PAROLE VIOLATIONS?

MR. MC GURK: I BELIEVE IT WAS ABSCONDING.

THE COURT: I'M SORRY?

MR. MC GURK: I BELIEVE IT WAS ABSCONDING. THE LAST ONE, YOUR HONOR. I DON'T KNOW ABOUT THE '95 AND '96, WHAT THE NATURE OF THE VIOLATIONS WERE IN THOSE CASES. I DO NOT. I BELIEVE THE LAST VIOLATION HE HAD WAS FOR ABSCONDING, AND THE REPORT -- THE MOST RECENT PROBATION REPORT INDICATES THAT.

AND SO I THINK -- FROM THE DEFENSE POSITION, WHEN TAKING INTO CONSIDERATION BOTH THE -- THE RELATIVE -- THE NATURE OF THE CURRENT OFFENSE IN TERMS OF HOW IT RELATES TO OTHER SIMILAR CRIMES, I THINK IT'S ON THE LOW END. I ALSO THINK, UNLIKE A SITUATION WHERE -- AND THIS IS A FACTOR THE COURT CAN CONSIDER IN A LOT OF SITUATIONS WHERE THE COURT IS LEFT WITH A PROBATION OR A MINIMAL SENTENCE VERSUS AN INDETERMINATE SENTENCE. IN THIS CASE THE COURT IS NOT LEFT WITH THOSE TWO OPTIONS. THE COURT HAS A NUMBER OF OPTIONS THAT THEY COULD SENTENCE MR. WILLARD TO OTHER THAN AN INDETERMINATE SENTENCE WITH THE FIVE-YEAR PRIOR. WITH MR. WILLARD'S ONE-YEAR PRIORS, THE COURT COULD GIVE MR. WILLARD A DETERMINATE SENTENCE THAT WOULD BE OVER TEN YEARS. AND I THINK CONSIDERING THAT RANGE OF OPTIONS FOR THE COURT, I THINK THAT IS MUCH

MORE REASONABLE CONSIDERING THE NATURE OF THE OFFENSE AND THE REMOTENESS OF THE PRIORS THAN AN INDETERMINATE SENTENCE FOR MR. WILLARD, AND IT WOULD ALSO ALLOW HIM THE OPPORTUNITY TO AVAIL HIMSELF OF MENTAL HEALTH TREATMENT, OF DRUG TREATMENT, IF IT'S AVAILABLE IN STATE PRISON, IF THE COURT WERE TO RECOMMEND HIM TO A PLACE WITH THESE PROGRAMS AND PAROLE CAN MAKE THE DETERMINATION WHETHER HE'S REALLY TURNED THE CORNER.

FROM WHAT I CAN SEE AND WHAT THE PARALEGAL WAS ABLE TO FIND, HE SIMPLY HAS NOT HAD THE OPPORTUNITY TO GET THE TREATMENT HE NEEDS, AND I THINK THAT HAS A DIRECT CORRELATION WITH THE BEHAVIOR HE'S BEEN ENGAGING IN.

THE COURT: ALL RIGHT.

LET ME HEAR FROM MR. CANO.

MR. CANO: THE PEOPLE ARE ASKING FOR THE COURT TO IMPOSE THE 30 YEARS TO LIFE SENTENCE. THIS IS A DEFENDANT WHO -- YOU KNOW, I'M NOT GOING TO REPEAT EVERYTHING I PUT IN THE MOTION, BUT A DEFENDANT WHO HAS, AS THE COURT HAS JUST NOTED, BEEN IN AND OUT OF PRISON. HE SPENT MOST OF HIS ADULT LIFE IN PRISON. HE HAS CONTINUED TO REOFFEND. HE HAS VIOLENCE ON HIS RECORD, NOT JUST THE PRIOR STRIKES, BUT ALSO THE MORE RECENT ARREST, WHICH WAS A 2008 CASE THAT APPEARS WAS DISMISSED AT THE PRELIMINARY HEARING DUE TO DELAY.

SO FOR ALL OF THOSE REASONS I DO BELIEVE THAT THE 30-YEAR-TO-LIFE SENTENCE IS APPROPRIATE.

I WOULD LIKE THE OPPORTUNITY TO BRIEFLY POINT OUT A COUPLE THINGS THAT WERE NOTED IN THE EXHIBIT,

ARRESTED FOR POSSESSION OF A CONTROLLED SUBSTANCE AND SENTENCED TO NINE YEARS IN PRISON. THEN A 2005 CONVICTION FOR POSSESSION OF A CONTROLLED SUBSTANCE FOR WHICH HE RECEIVED 32 MONTHS' STATE PRISON. AND THEN HE WAS ARRESTED IN MARCH 2008 FOR A DIFFERENT ASSAULT. THAT WAS DISMISSED BECAUSE OF THE DELAY. AND THEN IN THIS CASE HE WAS ARRESTED IN SEPTEMBER 2009. HE WAS STILL ON PAROLE.

SO THERE'S NOT A PERIOD OF TIME WHERE HE WAS NOT IN CUSTODY OR HAVING BEEN CONVICTED OF A CRIME. SO IN TERMS OF REMOTENESS, 1978 AND 1987 ARE A SIGNIFICANT AMOUNT OF TIME AGO, BUT SINCE THEN MR. WILLARD HAS BEEN SENTENCED OR FOUND IN VIOLATION AND PUT BACK IN STATE PRISON NUMEROUS SOMETIMES.

AND, FINALLY, "BACKGROUND, CHARACTER AND PROSPECTS OF THE DEFENDANT." NOTHING HAS BEEN SUBMITTED TO THE COURT TO SHOW THAT THERE IS A -- SOMETHING REDEEMING IN HIS BACKGROUND WHY HE SHOULD FALL OUTSIDE OF THE SPIRIT OF THE THREE STRIKES LAW.

I AM TROUBLED, ALSO -- I WOULD NOTE I DO THINK THAT MR. WILLARD WAS NOT HONEST ON THE STAND. I BELIEVE THAT THE STORY HE CREATED ABOUT WHAT HAPPENED WAS INCONSISTENT WITH BOTH THE TESTIMONY OF THE TWO OTHER WITNESSES AND THE VIDEOTAPE THAT WAS ADMITTED INTO EVIDENCE.

IN LIGHT OF THESE FACTORS, MY TENTATIVE RULING IS TO FIND THAT HE IS NOT OUTSIDE THE SCHEME'S SPIRIT AND SHOULD NOT BE TREATED AS HAVING NOT COMMITTED ONE OF THE PRIOR FELONIES.

BE 30 TO LIFE, AND THEN IT WOULD RUN CONCURRENT WITH RESPECT TO COUNT 1 AND 2. SO IT'S ONE 30-TO-LIFE SENTENCE LESS ANY CREDIT THAT'S GIVEN.

MR. MC GURK, DO YOU WANT TO BE HEARD ON THE SENTENCING PART?

MR. MC GURK: IT'S -- CONSIDERING THE DENIAL OF THE *ROMERO* MOTION, THE DEFENSE WILL SUBMIT.

THE COURT: ALL RIGHT. AND THE PEOPLE SUBMIT?

MR. CANO: YES.

THE COURT: WOULD MR. WILLARD LIKE TO BE HEARD?

MR. MC GURK: DO YOU WANT TO BE HEARD?

THE DEFENDANT: (SHAKES HEAD).

MR. MC GURK: YOU DON'T?

THE DEFENDANT: (SHAKES HEAD).

MR. MC GURK: NO, YOUR HONOR.

THE COURT: ALL RIGHT. AND I ASSUME THERE ARE NO VICTIMS PRESENT WHO WISH TO BE HEARD?

MR. CANO: CORRECT, YOUR HONOR.

THE COURT: MR. MC GURK, ON BEHALF OF MR. WILLARD, DO YOU WAIVE ARRAIGNMENT FOR JUDGMENT, TIME FOR SENTENCING?

MR. MC GURK: YES, NO LEGAL CAUSE.

THE COURT: ALL RIGHT.

ALL RIGHT. THE FOLLOWING SENTENCE IS TO BE IMPOSED:

FIRST, ON COUNT 1, FOR A VIOLATION OF PENAL CODE SECTION 245(A)(1), DEFENDANT IS TO BE IMPRISONED IN STATE PRISON FOR A TOTAL AGGREGATE TERM OF 30 YEARS TO

WILLIAM VICARY, J.D., M.D.
FORENSIC PSYCHIATRY
3575 CAHUENGA BOULEVARD WEST
SUITE 300
LOS ANGELES, CA 90068
(213) 876-9133

PQ START

March 25, 1987

Honorable Nancy Brown
Judge of the Superior Court
Department South Central J
200 West Compton Blvd.
Compton, CA 90220

Re: Charles WILLARD, Jr.
Case No. A635459

Judge Brown:

Pursuant to the Court Order under Evidence Code §730 and Penal Code §1368, the above-named defendant was interviewed at the Central Jail for one hour. The police report and other records were requested but thus far have not been received. In preparing this report, the following were reviewed:

(1) Conversation with Jail Medical Staff
(2) Jail Medical Chart

The defendant was made aware that the interview would form the partial basis for a psychiatric report to the Court. I informed him that he had the right to refuse to answer any or all questions.

He is apparently charged with robbery. I was instructed to explore the issues of his competency to stand trial and the need for psychiatric treatment.

OPINION

The defendant suffers from a chronic psychotic mental illness. His drug abuse has been an exacerbating factor. At the jail he has received psychiatric treatment and antipsychotic medication. His current mental state is fairly stable and he is mentally competent to stand trial. He should continue to receive his psychiatric medication while incarcerated.

DATA AND REASONING BASIC TO OPINION

The defendant's twenty-eight year old brother has had psychiatric hospitalizations. The defendant's nineteen-year-old brother has had some misdemeanor arrests. No family members have alcohol or drug abuse problems.

The defendant has an extensive prior psychiatric history beginning at the age of twelve. He had two psychiatric hospitalizations in Texas. The longest hospitalization was for two years. He was diagnosed as suffering from a chronic psychotic mental illness and was treated with antipsychotic medications, such as Thorazine. A complicating factor is that he has a history of drug abuse. The principal drugs of abuse have been marijuana and PCP. He denied the abuse of alcohol.

He has a prior criminal record. As a juvenile there were some arrests for assault and resisting arrest. As an adult he has had arrests for thefts and robberies. As a result of these arrests there have been County Jail incarcerations and one prison term for two and one-half years.

He graduated from high school. He has worked in a factory and as a forklift operator. The only significant medical history involves some episodes of high blood pressure. At the age of twenty-four he married his wife who was the same age. She had one child from a prior relationship. She has no children by the defendant.

In the period prior to the alleged offense, the defendant was residing with his wife. He was unemployed. He was receiving antipsychotic and antidepressant medications from his family doctor with the assistance of a consulting psychiatrist.

The alleged offense occurred in January of 1986. "The case involves a robbery where some rings were taken. I don't remember. It's a case of mistaken identification."

At the jail the defendant was observed to be suffering from a chronic psychotic mental illness. He was placed on a one-man-cell psychiatric treatment module. He has received substantial doses of antipsychotic and antidepressant medications (1300 mg. of Thorazine and 175 mg. of Elavil each day). His recent

adjustment has been fairly unremarkable. There have been no major incidents with deputies of other prisoners. He has had no visitors. He reported that he is scheduled for a brain scan at Los Angeles County/USC Medical Center in the near future.

On mental status examination there was evidence of a chronic psychotic mental illness. He described a history of auditory and visual hallucinations. His mood was calm. He was cooperative and answered all my questions. He was articulate and appeared to be of average intelligence. There was no evidence of any gross physical brain damage. Any current suicidal or homicidal ideation was denied. He expressed an interest in cooperating with a mandated treatment program.

As a result of his psychiatric treatment and medications at the jail, the defendant's mental condition has improved and is fairly stable at this time. He appears to be aware of the nature and purpose of the legal proceedings against him. He knows the specific charge. His claims of mistaken identification or an inability to remember are a conscious, rational attempt at avoiding full criminal responsibility. They are not the product of his psychotic mental illness. He is capable of giving a consistent account of his behavior prior to, during and after the alleged offense. He is very familiar with the roles of defense counsel, district attorney and judge. At this time there is no substantial impediment to rational cooperation with counsel in going forward with the legal proceedings.

While incarcerated the defendant should continue to receive psychiatric treatment and medications. If sent to prison, the most appropriate treatment facility would be the Psychiatric Unit at CMC East. As part of any future probation or parole, he should have a transition period of treatment at a facility such as Gateways. Any future outpatient status should be contingent upon injections of long-acting antipsychotic medication and drug abuse monitoring with random urine testing. With such a treatment program, the likelihood of any further antisocial behavior could be reduced.

If you need any further assistance with this case, please contact me.

Very truly yours,

Wm Vicary MD

William Vicary, J.D., M.D.
Diplomate, American Board of
Psychiatry and Neurology
Diplomate, American Board of
Forensic Psychiatry

WV:y

DEFENDANT'S MOTION TO DISMISS
-23-24.
DOCUMENT from the Ramona Motion
1386. Line 15-20-32
And also this DOCUMENT Rep. Transcript
nder pen. code. sec. 1118.1 by Renee
1. Dated 11-24-2013
. Transcript on count 1. Line 26-28.
ted. May. 14-2013. And The Juvenile
le or petition Dated. May 4. 1978.

EXHIBIT COVER PAGE

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EXHIBIT

Description of this Exhibit: Transcript

Number of pages to this Exhibit: 11 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ■ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

4.

KNIFE IN SELF-DEFENSE.

SO MR. MCGURK, LET ME HEAR FROM YOU.

MR. MCGURK: IF I MAY BRIEFLY. ONE ISSUE IN TERMS OF THE COURT GOING THROUGH MR. WILLARD'S HISTORY, I BELIEVE AT THE CONCLUSION OF THE FIRST TRIAL -- NOT THE PRIORS TRIAL, BUT THE CURRENT OFFENSE -- THE COURT FOUND THE 1981 PRIOR NOT PROVEN. SO WE -- THE COURT WENT THROUGH THE 1978 AND THEN ARRESTED AND CONVICTED IN 1981. WHEN THE PROSECUTION PUT ON THEIR CASE ON THE PRIORS, THE COURT FIND FOUND THE '81 PRIOR NOT PROVEN. SO I DON'T KNOW IF THE COURT WOULD CONSIDER THAT NOW.

THE COURT: THE REASON I WAS CITING THAT WAS LESS FOR WHAT HE DID AND MORE TO SHOW THAT HE HAS BEEN IN STATE PRISON OR IN CUSTODY FOR MOST OF THE PERIOD SINCE 1978. SO WHILE I FOUND IT NOT PROVEN, HE DID SERVE 4 YEARS IN STATE PRISON. SO THAT'S WHAT I WAS TRYING TO -- THE REASON I'M GOING THROUGH THAT IS TYPICALLY IF I LOOK AT SOMETHING FROM 1978, I MIGHT BE INCLINED TO GRANT A MOTION, EVEN WHERE THE INSTANT OFFENSE IS VIOLENT; BUT HE HASN'T HAD A SIGNIFICANT PERIOD OF TIME WHERE HE HAD BEEN OUT OF CUSTODY AND HAS REMAINED NON-OFFENDING, BUT RATHER HE'S BEEN IN CUSTODY MOST OF THE PERIOD SINCE THEN.

MR. MCGURK: AND IF I MAY JUST BRIEFLY SUPPLEMENT THE DEFENSE MOTION, I UNDERSTAND WHAT THE COURT IS SAYING; BUT WHERE THE DEFENSE IS TO COME FROM, THE CURRENT OFFENSE, 245, IS A WOBBLER. IT CAN BE CHARGED AS A MISDEMEANOR. IT IS A STRIKE, BUT IT'S NOT CONSIDERED A VIOLENT FELONY. IT'S CONSIDERED A SERIOUS FELONY, AND I THINK THE FACT THAT

Constitution 1724

THE PRESENCE OF VIOLENCE OR LACK THEREOF IN MR. WILLARD'S PAST AND PRESENT CRIMINAL CONDUCT ARE RELEVANT CONSIDERATIONS IN DETERMING WHETHER MR. WILLARD IS WITHIN THE SPIRIT OF THE THREE STRIKES LAW.

The relative level of violence both in the present offense and Mr. Willard's past convictions are also of paramount importance under a proper consideration of whether or not to strike a prior "strike" pursuant to Penal Code Section 1385. Williams, supra at 161. In terms of the present offense, Mr. Willard was convicted by jury of two counts of California Penal Code Section 245(a)(1). The jury explicitly found not true the allegation that Mr. Willard had inflicted great bodily injury toward Santos Hernandez pursuant to Penal Code Section 12022.7. While a violation of Penal Code Section 245(a)(1) is considered a "strike" offense, it is not considered a violent felony pursuant to Penal Code Section 667.5(c). In fact, Penal Code Section 245(a)(1) is a "wobbler" offense making it eligible to be charged as a misdemeanor.

In the current case, the evidence in the light most favorable to the prosecution shows that Mr. Willard approached Santos Hernandez and David Ponce on a public bus. As he did so, he stated something in the English language undecipherable to both Mr. Hernandez and Mr. Ponce. Mr. Willard was carrying a folding knife as he approached the two gentlemen. Upon seeing the knife, both Mr. Hernandez and Mr. Ponce jumped up and stood on their seats. Mr. Willard then hit Mr. Hernandez with the folding knife on the arm, causing a cut approximately one and a half inches in length. Mr. Hernandez then kicked Mr. Willard in the chest and both men exited the bus. Mr. Willard did not engage in

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 01/19/11

CASE NO. BA362410

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: CHARLES ROBERT WILLARD

INFORMATION FILED ON 10/22/09.

COUNT 01: 245(A)(1) PC FEL
COUNT 02: 245(A)(1) PC FEL

ON 01/18/11 AT 1030 AM IN CENTRAL DISTRICT DEPT 113

CASE CALLED FOR JURY TRIAL IN PROGRESS

PARTIES: GAIL RUDERMAN FEUER (JUDGE) DONNA PEALE (CLERK)
RENE MARIE EVANKO (REP) COLBY ANTHONY CANO (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY KEVIN T. MCGURK DEPUTY PUBLIC DEFENDER

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

COURT ORDERS AND FINDINGS:

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

TRIAL RESUMES FROM 1/17/11, WITH ALL PARTIES PRESENT AS HERETOFORE.

.

OUT OF THE PRESENCE OF THE JURY:

.

DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL, PURSUANT TO PENAL CODE 1118.1 IS HEARD AND DENIED.

.

IN THE PRESENCE OF THE JURY:

.

PEOPLE REST.

.

DEFENSE CASE IN CHIEF.

.

CHARLES WILLARD IS SWORN AND TESTIFIES ON HIS OWN BEHALF.

People's Exhibit 3 Fingerprint card with the name Charles Willard, Jr. (2 pages);
People's Exhibit 4 Certified CLETS rap sheet for Charles Willard, Jr. (1 page);
People's Exhibit 5 Document with photograph dated February 22, 1978; and
People's Exhibit 6 Fingerprint card obtained on May 10, 2013.

Reporter's Transcript

The Reporter's Transcript of proceedings on May 14, 2013. (Cal. Rules of Court, rule 8.230(c)(2), (3).) The court's minutes indicate that on May 14, 2013, the court heard and denied the defense motion for judgment of acquittal (Pen. Code, § 1118.1); the court and counsel conferred regarding exhibits and verdict forms; and the jury returned its verdict. The court reporter for the proceedings on May 14, 2013 was **Sylvia Miller, CSR #8767.** (CT 15-16.)

Pursuant to California Rules of Court, rule 8.340(b), please transmit one copy of these missing items to the Court of Appeal and copies to appellate counsel for the parties. Please send appellant's copy directly to counsel for appellant at the above address.

Thank you very much for your attention to this matter. If you have any questions, please contact me at (562) 594-4901.

Sincerely,

Renee Rich
Attorney at Law
State Bar No. 186569

CASE NUMBER: BA362410-01
CASE NAME: PEOPLE VS. CHARLES WILLARD
LOS ANGELES, CALIFORNIA TUESDAY, MAY 14, 2013
DEPARTMENT 111 HON. HENRY J. HALL, JUDGE
REPORTER: SYLVIA ALMAGUER-MILLER, CSR #8767
TIME: A.M. SESSION
APPEARANCES:

THE PEOPLE OF THE STATE OF CALIFORNIA REPRESENTED BY MARIO HAIDAR, DEPUTY DISTRICT ATTORNEY;
01-DEFENDANT, CHARLES WILLARD, PRESENT AND REPRESENTED BY COUNSEL, KEVIN MCGURK, DEPUTY PUBLIC DEFENDER.

(WHEREUPON THE JURY RESUMED DELIBERATIONS.)

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

THE COURT: GOING BACK ON THE RECORD IN THE MATTER OF THE PEOPLE VERSUS CHARLES WILLARD, CASE BA362410. WHEN I ZOOMED OUT OF HERE LAST NIGHT, THERE WERE A COUPLE OF MATTERS WE HAD LEFT TO AT LEAST PUT ON THE RECORD, AND I THINK THE FIRST OF THOSE WAS, MR. MCGURK, YOU HAD A MOTION.

MR. MCGURK: YES, YOUR HONOR. A MOTION TO DISMISS PURSUANT TO 1118.1.

SUBMITTED.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
JUVENILE COURT

BY K. W. McCATTY, DEPUTY

PETITION

In the Matter of
THE PEOPLE OF THE STATE OF CALIFORNIA
v
WILLARD, CHARLES
a minor

Number J250484-0540606-AC-2 | New
Dism. Number | Active XX

Petitioner is informed and believes and therefore alleges, that WILLARD, CHARLES, hereinafter called minor, resides at 14121 S. HILFORD AVENUE COMPTON, CALIFORNIA, and was born on 10-1-60 and was 17 years of age on MAY 1, 1978, and comes within the provisions of Section 602 of the Welfare and Institutions Code of California, in that:

COUNT I: SAID MINOR, ON OR ABOUT 5-1-78 DID WILLFULLY, UNLAWFULLY, FELONIOUSLY AND BY MEANS OF FORCE AND FEAR TAKE PERSONAL PROPERTY FROM THE PERSON, POSSESSION, AND IMMEDIATE PRESENCE OF HAROLD CORNELL; THEREBY VIOLATING SECTION 211 OF THE PENAL CODE, A FELONY.

IT IS FURTHER ALLEGED THAT IN THE COMMISSION OF THE ABOVE OFFENSE THE SAID MINOR, CHARLES WILLARD, USED A FIREARM, TO WIT, A GUN, WITHIN THE MEANING OF PENAL CODDE SECTION 12022.5.

The name and residence address of each parent and guardian of minor, known to me, is as follows:
MOTHER: FRANCIS WILLARD
14121 S. HILFORD AVENUE
COMPTON, CALIFORNIA

The name and residence address of an adult relative residing within the county, or if there is no such person known, the name and residence address of the adult relative known to me to reside nearest to the court, is:

Minor was taken into custody by LASD FILE#478-06290-1636-604 INV., C. BARNES#004272 on 5-2-78 at 5:00 p. M. Minor IS detained. The present whereabouts of minor is JUVENILE HALL.

THEREFORE, petitioner respectfully requests that this minor be adjudged and declared a ward of the Juvenile Court and dealt with as such.

JOHN K. VAN DE KAMP, DISTRICT ATTORNEY
~~XXXX

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
JUVENILE COURT

Date: 5-26-78 DEPT. 261

JUDGE
REFEREE COMMR. JAMES A. BRAGGS
Deputy Clerk K. MC CATTY
Deputy Sheriff

Probation Officer
DPSS Social Worker
Reporter NONE

IN THE MATTER OF

WILLARD
~~WILLIAM~~, CHARLES ROBERT, JR., a minor

MINUTE ORDER

J250484-0540606-AC/2-643 NO.

Clerks Statistics Only	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
		08	00	00												

☐ NO PROBATION OFFICER'S REPORT HAVING BEEN RECEIVED, CASE IS CONTINUED FOR REPORT TO THE NON-APPEARANCE CALENDAR INDICATED.

☐ NO PROGRESS REPORT HAVING BEEN RECEIVED FROM THE DEPARTMENT OF PUBLIC SOCIAL SERVICE, CASE IS CONTINUED FOR REPORT TO THE NONAPPEARANCE CALENDAR INDICATED.

☐ NOTICE IS RECEIVED THAT MINOR HAS BEEN PLACED. CONTINUE TO THE NONAPPEARANCE CALENDAR INDICATED

☐ THE COURT HAVING READ AND CONSIDERED THE PROBATION OFFICER'S REPORT OR THE REPORT OF THE DEPARTMENT OF PUBLIC SOCIAL SERVICE, AND IT APPEARING TO THE COURT THAT THE CONDUCT AND BEHAVIOR OF MINOR MAY ENDANGER THE HEALTH, PERSON, WELFARE OR PROPERTY OF OTHERS, ORDERS THAT A WARRANT OF ARREST, SERVICEABLE DAY OR NIGHT, BE ISSUED AND SERVED ON MINOR FORTHWITH; UPON APPREHENSION MINOR SHALL BE DETAINED AT JUVENILE HALL/MACLAREN HALL.

☐ WARRANT OF ARREST ISSUED ON _____ REMAINS IN FULL FORCE AND EFFECT.

☐ WARRANT OF ARREST ISSUED ON _____ IS RECALLED.

☐ WARRANT RECALL ISSUED.

☒ MINOR REMAINS A ~~DEPENDENT CHILD~~ WARD OF THE COURT PURSUANT TO SECTION 602 OF THE JUVENILE COURT LAW.

☒ ORDER OF Camp Placement MADE ON 2-28-77 SHALL REMAIN IN FULL FORCE AND EFFECT. MINOR SHALL REMAIN AS PLACED. CASE CONTINUED AS INDICATED.

☐ ORDER OF _____ MADE ON _____ IS VACATED/TERMINATED.

☐ MINOR IS RETURNED TO THE HOME OF HIS _____ UNDER THE SUPERVISION OF THE PROBATION OFFICER, AND CASE IS CONTINUED AS INDICATED.

☐ JURISDICTION TERMINATED. ANY OUTSTANDING WARRANTS OF ARREST ARE ORDERED RECALLED.

MINOR HAVING ANOTHER MATTER SET FOR ADJUDICATION THIS DATE IN DEPARTMENT 260, MATTER IS CONTINUED AS INDICATED.

CASE IS:

☐ ADVANCED FROM THE NONAPPEARANCE CALENDAR OF _____ IN DEPT. _____

☒ CONTINUED TO THE APPEARANCE CALENDAR OF ~~XXXX~~ 6-19-78 IN DEPT. 260

☐ CONTINUED TO THE NONAPPEARANCE CALENDAR OF _____ IN DEPT. _____

☐ CONTINUED TO THE NONAPPEARANCE CALENDAR OF _____ IN DEPT. _____
FOR 15 DAY REVIEW.

THIS ORDER WAS ENTERED , COUNTY CLERK AND CLERK OF THE SUPERIOR COURT

76M412C (REV. 10/75) - 2/76
J-51

MINUTE ORDER

Pink original to File
White Copy to Processing
Goldenrod Copy to Calendar
Buff Copy to PROB/DPSS
Yellow Copy to Prob. Index
Green Copy for Courtroom

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: 5-24-78 JUVENILE COURT DEPT. 252

REFEREE JUDGE H P SHEPARD | Probation Officer N DAVIS
Deputy Clerk C M DUENAS | DPSS Social Worker
Deputy Sheriff N GAYHART | Reporter C CAIN

IN THE MATTER OF

WILLARD, CHARLES 17, a minor

FINDINGS AND ORDER OF REFEREE (DISPOSITION #2)
FITNESS HEARING

NO. J250484 0540606 AC2 643

Clerks Statistics Only	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

APPEARANCES: [X] MINOR [ ] MOTHER [ ] FATHER [X] ATTY'S A GRANT 700
FITNESS DDA: M PARGAMENT

DISPOSITION PROCEEDING: The Court having read and considered the social study filed herein and said report is admitted into evidence by reference. 602 PETITION FILED 5-5-78

[ ] Minor is advised of his constitutional rights.

MINOR'S MOTHER IS NOT PRESENT AND MINOR WAIVES HER APPEARANCE.

THE COURT FINDS:

[ ] CUSTODY OF MINOR IS TAKEN from the parents and guardians and minor is placed in the care, custody, and control of the Probation Officer or the Department of Public Social Services for _____.

[ ] The Court finds legal residence to be in _____ County, and the entire case is TRANSFERRED TO THE JUVENILE COURT OF _____ COUNTY, CALIFORNIA, together with all files and papers contained herein.

[X] The Court finds that minor was 16 years of age or over and that the minor would ~~not~~ be amenable to the care, treatment and training program available through the facilities of the Juvenile Court.

[X] PETITIONER'S MOTION TO FIND MINOR UNFIT PURSUANT TO 707B WIC IS DENIED. MINOR IS FOUND TO BE A FIT AND PROPER SUBJECT FOR JUVENILE COURT.

THE COURT ORDERS AND ADJUDGES THAT:

[ ] Minor is _____ of the Court under Section _____ of the Welfare and Institutions Code.
[ ] Referred to District Attorney to prosecute under General Law.
[ ] Case # _____ is referred back to _____ Court on _____ at _____ with proceedings under General Law to be resumed.
[ ] The Probation Officer is to TRANSPORT MINOR TO LEGAL RESIDENCE at _____, without an attendant and to pay any costs involved in transportation of minor which is to be a charge against the County of Los Angeles.
[ ] County will pay any costs in connection with the placement or transportation of said minor pursuant to Article 9, Section 739, WIC, and Article 16, Sections 900-914 WIC.
[ ] Minor is ordered placed in the COMMUNITY DAY CENTER PROGRAM, subject to all rules and regulations of said program.
[ ]

PENDING SAID ORDER, Minor is to be:

[X] ~~Detained~~ / Remain at Juvenile HALL
[ ] Detained / Remain at DPSS Shelter Care or MacLaren Hall
[ ] The Continuance date of _____, Dept. _____, is advanced and vacated.
[ ] Remain with _____
[ ] Released to _____
[ ] Other _____

MATTER IS CONTINUED TO:

[X] APPEARANCE CALENDAR OF 5-26-78 AM, DEPT. 260, FOR ADJUDICATION
[ ] NONAPPEARANCE CALENDAR OF _____, DEPT. _____, FOR REPORT.

_____
REFEREE OF JUVENILE COURT

APPROVED: _____ DATED:
JUDGE OF JUVENILE COURT

Names and addresses of persons to be served with copies of this order:

[ ] PUBLIC DEFENDER'S OFFICE JUVENILE COURT

Page 1 of 1 pages

THIS ORDER WAS ENTERED

WILLIAM G. SHARP, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT

75-155 B (REV. 10-71) 11-71

DISPOSITION #2 (Judge's Signature)

Original to File Yellow copy to Probation Index
White copy to Processing Green copy to Register
Pink copy to PROB/DPSS

3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date 5-5-78 — JUVENILE COURT — Dept. 252

JUDGE

Referee COMR. JAMES A. BRAGGS — Deputy Sheriff V. JONES

Deputy Clerk KEN MC CATTY — Probation Officer G. ARNOLD

IN THE MATTER OF — Reporter E. FUCK

MINUTE ORDER - DETENTION/ARRAIGNMENT

WILLARD, CHARLES 17 yrs — NO J250484-0540606-A0/2-Acr

a minor

APPEARANCES: ☒ Minor ☐ Father ☒ Mother ☐ Guardian ☒ DDA E. Ferns

☒ Attorneys: A. Grant (Tod)

☐ Minor and parents advised of their constitutional rights.

☒ The Court has advised minor and parents that they will be liable for the cost to the County of legal services rendered to minor at any proceedings in Juvenile Court, to the extent of their ability to pay. ☐ Financial notice served.

☒ The Public Defender is appointed to represent minor.

☒ The Public Defender announces that a conflict of interest exists. Private counsel is appointed to represent minor

☐ Matter continued 24 hours to _____, Dept. _____.

☒ Allegations of 602 petition filed 5-5-78 are read to minor and minor ☐ admits ☐ indicates admission _____ ☒ denies ☐ admits paragraph _____

☐ MATTER IS BEFORE THE COURT FOR CHANGE OF PLACEMENT/WARRANT HEARING.

☐ Warrant of arrest written on _____ is recalled. Recall written on _____.

ADJUDICATION PROCEEDINGS: Petition is amended by interl. as reflected on its face.

THE COURT FINDS THAT: ☐ Notice has been given as required by law.

☐ Minor's birthdate is ☐ as shown in the petition ☐ _____

☐ Minor's county of residence is Los Angeles / _____ County.

☐ The minor has knowingly and intelligently waived his constitutional rights. ☐ The minor understands the nature of the conduct alleged in the petition and the possible consequences of an admission. ☐ The admission by the minor is freely and voluntarily made. ☐ There is a factual basis for the minor's admission.

☐ The petition filed _____ as to Count(s) _____ is true, and the petition is sustained, except that Count (s) _____ is dismissed

☐ MINOR IS A PERSON DESCRIBED BY SECTION _____ OF THE WELFARE AND INSTITUTIONS CODE.

☐ Minor is to remain a ward of the Court under Section _____ of the Juvenile Court Law. The order dated _____ ordering _____ is to remain in full force and effect.

☐ An accelerated clinical study is ordered given minor at the Probation Department Psychiatric Clinic.

☒ The Court finds that it is a matter of ~~immediate and urgent~~ necessity for the protection of the minor and the persons and property of others that he be detained. Minor is detained in ☒ Juvenile Hall ☐ _____ ☒ pending ☐ placement ☐ return to camp. ☒ Next hearing

☐ Minor is released to custody of _____ ☐ on conditions filed herein this date.

☒ CONTINUED TO: 5-26-78 8:30 A.M. IN DEPT. 260 for ☒ Adjudication. (1½)

☐ Disposition ☐ Adjudication and Disposition ☐ Detention Rehearing A.M. P.M., Dept. _____

☒ Fitness Hearing / ~~Detention Rehearing~~ set: 5-23-78 8:30 A.M./P.M., Dept. 252

☐ Nonappearance Calendar of _____, Dept. _____ for report.

☐ Nonappearance Calendar of _____, Dept. _____ for 15 day review.

☐ The continuance date of _____, Dept. _____ is advanced and vacated.

☐ The Probation Officer/District Attorney is ordered to subpoena all necessary witnesses.

☐ The Probation Officer is ordered to notify parents of next hearing.

☐ The Probation Officer/Clerk is ordered to cite parents for next hearing.

☐ Court advises minor and parties of appeal and rehearing rights.

☐ Written notice of hearing is waived.

☒ All parties present are ordered to return without further order, notice or subpoena.

JAMES A. BRAGGS
REFEREE OF THE JUVENILE COURT

Names and Addresses of Persons to be served with copies of this order: ☐ Public Defender's Office, Juvenile Court

1

MINUTES ENTERED
COUNTY CLERK

76D356 (Rev. 4-77) 5-77
J058

MINUTE ORDER - DETENTION/ARRAIGNMENT

Pink Original to File
White Copy to Processing
Goldenrod Copy to Calendar
Buff Copy to Probation
Yellow Copy to Probation Index
Green Copy to Courtroom

4

Instructions

1. To two certified copies of this document, attach:
   a. Completed "Referral Document," YA 1.411.
   b. Three copies of current probation report, including Face Sheet and full social history sufficient to insure complete understanding of the minor's background.
   c. Two copies of all psychiatric, psychological and medical reports, and prior probation reports.
   d. Two copies of current Petition and Court Findings or Orders.
   e. Two copies of Arrest Report.
   f. One copy of Youth Authority case summary if previously referred for a diagnostic evaluation under WIC 704.
   g. California Educational Cumulative Record.
2. Mail to Case Services, Youth Authority, 4241 Williamsbourgh Drive, Sacramento, CA 95823.

Space below for use by Court Clerk only

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

In the Matter of

WILLARD, CHARLES JR.
(Name of Ward)

Court No. J250484

COMMITMENT TO THE YOUTH AUTHORITY
(Juvenile)
(W.I.C. Sec. 731)

To the Youth Authority of the State of California:

The Court finds that:

1. This person was under the age of 18 at the time of the commission of the offense for which he is being committed. D.O.B.: 10-1-60
2. The mental and physical condition and qualifications of this minor are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority.
3. The minor named in this matter is described in Section 602 Welfare and Institutions Code, and has been adjudged as ward of the court based upon the following sustained allegations:

	PETITION DATE	OFFENSE	CODE SECTION	DEGREE	ENHANCEMENT	TERM
1	4-10-78	DRIVING WITHOUT OWNERS CONSENT	10851 V.C.			6 YEARS
2	5-5-78	ROBBERY	211 P.C.		12022.5 P.C.	
3						
4						
5						

Minor is to be given credit for _____ days in custody.

THEREFORE, the minor is hereby committed to the Youth Authority of the State of California.

Dated: JUNE 19, 1978.

KENNETH W. GALE
Judge

SUPERIOR COURT LOS ANGELES COUNTY CALIFORNIA

CERTIFICATION

I hereby certify that the foregoing is a correct copy of the original on file in my office.

Dated: JUNE 29, 1978.

JOHN J. CORCORAN County, Clerk

V. Vasquez, Deputy Clerk

V. VASQUEZ

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
JUVENILE COURT

Date JUNE 28, 1978 DEPT. 218

JUDGE TERRY J HATTER, JR
REFEREE J MIZUKI
Deputy Clerk
Deputy Sheriff

Probation Officer
DPSS Social Worker
Reporter

IN THE MATTER OF MINUTE ORDER

WILLARD, CHARLES JR a minor NO. J250484 0540606 AC2 ACT

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Clerks Statistics Only																

It appearing to the Court that through inadvertence and clerical error, the minute order of 4-17-78, does not properly reflect the Court's order, said minute order is amended nunc pro tunc in part as of that date as follows:

DELETE: The petition filed 4-17-78 is true...,

INSERT: The petition filed 4-10-78 is true....

THIS ORDER WAS ENTERED

XXXX

JUVENILE COURT — Dept. 260

Judge — Deputy Sheriff: CARRAWAY
Referee: JEANNETTE CHRISTY — Probation Offic: J HUGHES
Deputy Clerk: M L SIEDEL — Reporter: P MERRILL
IN THE MATTER OF — MINUTE ORDER - DISPOSITION # 1

WILLARD, CHARLES — 17 Yrs. — a minor — NO. J250484-0540606 AC2 ACT

APPEARANCES: [X] Minor [ ] Father [X] Mother [ ] Guardian [X] DDA E. FERNS
[X] Attorneys: ANN RUTH GRANT - 700

DISPOSITION PROCEEDING OF PETITION FILED 4-10-78 & 5-5-78. The Court states it has read and considered the social study filed herein and said report is admitted into evidence by reference.

[ ] _____ is sworn to interpret _____

THE COURT FINDS:

[X] Welfare of minor requires that custody be taken from parents or guardians.
[X] CUSTODY OF MINOR IS TAKEN from the parents and guardians and minor is placed in the care, custody, and control of the Probation Officer for CALIFORNIA YOUTH AUTHORITY
[X] The Court finds that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefitted by the reformatory educational discipline or other treatment provided by the Youth Authority.
[ ]

THE COURT ORDERS AND ADJUDGES THAT:

[X] Minor is [ ] declared [X] to remain / a ward of the court under Section 602 WIC.
[X] County will pay any costs in connection with the placement or transportation of said minor pursuant to Section 739 WIC. and Sections 900-914 WIC. The Probation Officer is authorized to provide medical, surgical, dental or other remedial care.
[X] Offense is declared to be a ~~felony~~/misdemeanor. on 602 petition filed 4-10-78.
[X] Minor may not be held in physical confinement for a period to exceed Minors 23rd birthday.**
[ ] Minor is placed on probation for a period of six months pursuant to Section 725A WIC.
[ ] Minor is placed HOME ON PROBATION. (See conditions attached.) See Below
[ ] Minor is placed in the home of his _____
[ ] Minor is ordered SUITABLY PLACED.
[ ] Minor is ordered Placed in the CAMP COMMUNITY PLACEMENT PROGRAM.
[X] Minor is ordered _____ COMMITTED / ~~RECOMMITTED~~ TO THE CALIFORNIA YOUTH AUTHORITY.
[ ] The petition filed _____ is dismissed.
[X] The previous order for CAMP dated 2-28-77 is TERMINATED / ~~REMAINS IN FULL FORCE AND EFFECT~~
[ ] The case is dismissed. [ ] Jurisdiction terminated.

PENDING SAID ORDER, Minor is to be: [X] ~~Released~~ / Remain at Juvenile Hall.
[ ] Released to / Remain with _____
[ ] Other: _____

MATTER IS CONTINUED TO:

[ ] APPEARANCE CALENDAR OF _____, DEPT. _____, FOR _____
[ ] NONAPPEARANCE CALENDAR OF _____, DEPT. _____, FOR REPORT.
[X] NONAPPEARANCE CALENDAR OF 7-3-78, DEPT. 260, FOR 15 DAY REVIEW.
[ ] The continuance date of _____ is advanced and vacated.
[X] Court advises minor and parties of appeal and rehearing rights.

FINANCIAL HEARING - The Court finds that:

[X] MINORS MOTHER has / ~~has~~ no financial ability to reimburse the County for the costs of legal services rendered.
[ ] $_____ is a reasonable fee for legal services rendered.
[ ] _____ has / have the financial ability to pay $_____ for legal services rendered and payment of said amount is ordered. The Department of Collections is ordered to effect collection.
[ ] Liability is joint and several.

JEANNETTE CHRISTY — Referee of the Juvenile Court
APPROVED: Kenneth W Hale — Judge of the Juvenile Court
6-20-78 — Date

Names and addresses of persons to be served with copies of this order: [ ] Public Defender's Office, Juvenile Court

CHARLES WILLARD - cjh

FRANCIS WILLARD
14121 S. HILFORD AVE.,
COMPTON, CALIFORNIA

ANN RUTH GRANT
6521 S. EASTERN AVE.,
BELL GARDENS, CALIFORNIA

** The Court finds that the offense in 602 petition filed 5-5-78 is a felony and that the physical confinement on the offense shall not exceed 4 years; physical confinement on the use allegation of the 602 petition filed 5-5-78 shall not exceed 2 years; with a total of 6 years physical confinement. The Court orders that ~~XXX~~ time for physical confinement ~~[redacted]~~ on both petition shall be served concurrent with each other.

JUDGMENTS ENTERED
COUNTY CLERK

76F424A (Rev. 4-77) 5-77
J067

MINUTE ORDER - DISPOSITION #

Page 1 of 1

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Buff Copy to Probation
Yellow Copy to Probation Index
Green Copy to Courtroom

Date: 5-26-78 DEPT. 260

REFEREE	JEANNETTE CHRISTY	Probation Officer	J HUGHES
Deputy Clerk	M L SIEDEL	DPSS Social Worker	
Deputy Sheriff	H CARRAWAY	Reporter	V ANDERSON

IN THE MATTER OF

FINDINGS AND ORDER OF REFEREE (ADJUDICATION)

WILLARD, CHARLES 17 Yrs. a minor NO. J250484-0540606 AC2 ACT

Clerks Statistics Only	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

APPEARANCES: ☒ MINOR ☐ FATHER ☐ MOTHER ☐ GUARDIAN ☒ DDA E. Torres
☒ ATTORNEYS Ann Ruth Grant-Pro

ADJUDICATION PROCEEDINGS: The 602 petition filed on 5-5-78 is read to those present, and the minor and any parent or guardian or adult relatives are informed of their constitutional rights.

- ☐ _____ is sworn to interpret _____.
- ☐ The Court has advised minor and parents that they will be liable for the cost to the County of legal services rendered to minor at any proceedings in the Juvenile Court, to the extent of their ability to pay.
- ☐ The parent or guardian or adult relative present, being advised of his rights, indicates his desire to proceed without independent counsel.
- ☐ The Public Defender is appointed as counsel for minor,
- ☐ Public Defender declares a conflict of interest. _____ is appointed pursuant to section 700 WIC as counsel for minor.
- ☐ Minor admits the allegations in petition filed _____, Paragraph _____ (as amended).
- ☐ Minor denies the allegations in petition filed _____, Paragraph _____ (as amended).
- ☐ Other:
- ☐ Bench warrant issued on _____ is recalled/remain in full force and effect. ADVANCE N/A _____

SWORN AND TESTIFYING: Harold Cornell, Bruce Bland, Claude Barnes, Charles Willard, Francis Willard and Karen Richardson.

Petitioner's Exhibit 1(Line-up identification form dated 5-4-78) is admitted into evidence.

THE COURT FINDS:

- ☐ The petition filed _____ as to Paragraph(s) _____ is true, and the petition is sustained, except that Paragraph(s) _____ is dismissed _____.
- ☒ The petition filed 5-5-78 ~~as~~ use allegation is true, and said petition is sustained.
- ☒ Minor is a person described by Section 602 of the Welfare and Institutions Code.

THE COURT ORDERS:

- ☐ The _____ petition filed _____ is dismissed _____.
- ☐ Jurisdiction terminated. ☐ Case dismissed. The Court orders that an accelerated ~~xii~~ clinical study be given minor at the Probation
- ☐ Minor released to _____
- ☒ Minor shall ~~be detained~~ remain at Juvenile Hall/ Department Psychiatric Clinic prior to the pending the next hearing. next hearing.

CONTINUED TO: 6-19-78 8:45 A.M. IN DEPT. 260 for ☒ Disposition. Time waived

☐ ☒ Minor ☒ Parent(s) ☐ Guardian ☒ ~~Witnesses~~ ordered to return on that date without further order, notice or subpoena.

JEANNETTE CHRISTY
REFEREE OF JUVENILE COURT

NAMES AND ADDRESSES OF PERSONS TO BE SERVED WITH COPIES OF THIS ORDER.

CHARLES WILLARD - CJH

FRANCIS WILLARD
14121 S. HILFORD AVE.,
COMPTON, CALIFORNIA

ANN RUTH GRANT
6521 S. EASTERN AVE.,
BELL GARDENS, CALIFORNIA

☐ PUBLIC DEFENDER'S OFFICE, JUVENILE COURT

Page 1 of 1 pages

FOR CLERICAL USE ONLY.

☐ CONF ☐ DA ☐ DET ☐ INT ☐ OTHER _____ HR _____ UNITS

THIS ORDER WAS ENTERED

~~ALEXANDER X. GONZALEZ~~, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT

76-324 (REV. 5-75) J-45

ADJUDICATION (No Judge's Signature)

PINK TO FILE
WHITE COPY TO PROCESSING
GOLDENROD COPY CALENDAR
BUFF COPY TO PROB/DPSS
YELLOW COPY TO PROBATION INDEX
GREEN COPY TO COURTROOM

CONSIST OF,

NO. 311 Line 2-28. AND 312 Line 1-28.

NO. 304. Lines. 14-28 ON objecting

NO: 229-230

EXHIBIT COVER PAGE

E

EXHIBIT

Description of this Exhibit: TRANSCRIPT.

Number of pages to this Exhibit: 005 pages.

JURISDICTION: (Check only one)

- [ ] Municipal Court
- [ ] Superior Court
- [ ] Appellate Court
- [ ] State Supreme Court
- [x] United States District Court
- [ ] State Circuit Court
- [ ] United States Supreme Court
- [ ] Grand Jury

6.

RENEE RICH
ATTORNEY AT LAW
P.O. Box 1018, Seal Beach, California 90740
Telephone: (562) 594-4901

March 23, 2012

Mr. Charles R. Willard, C36206
CAL SP
P.O. Box 5005
Calipatria, CA. 92233

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
Re: Your appeal - Court of Appeal Case No. B233492

Dear Mr. Willard:

I received your letter mailed on March 19. However, I did not receive it until March 22, so it was not possible for me to respond before March 21, as you requested. In your letter, you discuss the need for a jury to determine if you suffered any prior convictions. You state that you did not agree to waive your right to a jury trial on the prior conviction allegations and that if you did, you were manipulated by trial counsel into doing so. You request I raise this issue in the reply brief in your appeal.

The record does not support this claim. The record indicates that you personally waived your right to a jury trial on the prior conviction allegations and agreed to a court trial on this matter. I have enclosed the pages of the reporter's transcript reflecting the exchange between you and the court, wherein the judge explains your right to have the jury decide the prior conviction allegations and you agree to waive your right to a jury trial on the prior allegations. Furthermore, the information you have provided me does not indicate trial counsel manipulated you into waiving your right to a jury trial on the prior conviction allegations. Therefore, I will not be making this claim in our reply brief.

As always, you can write to me if you have questions concerning your appeal.

Very truly yours,

Renee Rich
Attorney at Law

MR. MC GURK: I DON'T BELIEVE SO, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. MC GURK: OH, MR. WILLARD WILL BE AMENABLE DOING A COURT TRIAL IF THE PRIORS ARE NECESSARY.

THE COURT: OKAY. WELL, WHY DON'T WE TAKE CARE OF THAT NOW.

SO, MR. WILLARD, I'M GOING TO ADDRESS THAT ISSUE NOW. AS I INDICATED EARLIER, OBVIOUSLY, WE'RE JUST TRYING TO RESOLVE THIS ISSUE IN ADVANCE, NOT KNOWING, OF COURSE, WHAT THE JURY WILL DO, BUT IF THE JURY RETURNS A GUILTY VERDICT WITH RESPECT TO COUNT 1 OR COUNT 2, YOU DO HAVE A RIGHT TO A JURY TRIAL WITH RESPECT TO THE ALLEGATIONS AS TO PRIOR CONVICTIONS, INCLUDING THOSE CONVICTIONS THAT ARE ALLEGED AS PRIOR STRIKES PURSUANT TO PENAL CODE SECTION 1170.12 AND 667(B) THROUGH (I), AND ALSO AS PRIOR SERIOUS FELONIES UNDER 667, SUBDIVISION (A)(1).

SO YOU DO HAVE A RIGHT TO A JURY TRIAL. YOUR COUNSEL HAS INDICATED THAT YOU WOULD GIVE UP THAT RIGHT TO A TRIAL. IT WOULD BE SIMILAR TO THE RIGHT THAT YOU HAVE WITH RESPECT TO A TRIAL ON THE MAIN CASE IN WHICH YOUR ATTORNEY CAN CALL WITNESSES. YOU'D HAVE THE OPPORTUNITY THROUGH COUNSEL TO CONFRONT AND CROSS-EXAMINE WITNESSES WITH RESPECT TO THE TRIAL, THE RIGHT TO REMAIN SILENT WITH RESPECT TO THE BIFURCATED PORTION OF THE TRIAL.

DO YOU AT THIS TIME AGREE TO WAIVE YOUR RIGHT TO A JURY TRIAL ON THE ALLEGATIONS OF THE PRIORS?

THE DEFENDANT: (NODS HEAD).

THE COURT: YES?

THE DEFENDANT: YES.

THE COURT: OKAY. COUNSEL JOINS?

MR. MC GURK: I DO, YOUR HONOR.

THE COURT: OKAY. VERY WELL.

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

THE COURT: GOOD AFTERNOON AND WELCOME.

WE'RE BACK ON THE RECORD IN THE MATTER OF PEOPLE VERSUS CHARLES WILLARD. MR. WILLARD IS PRESENT. BOTH COUNSEL ARE PRESENT, AND ALL OF OUR JURORS AND ALTERNATE ARE PRESENT.

SO THANK YOU ALL. AT THIS TIME I AM READY TO INSTRUCT YOU ON THE LAW. WHEN YOU START YOUR DELIBERATIONS, YOU WILL HAVE TWO COPIES OF THE JURY INSTRUCTIONS IN THE JURY ROOM. SO YOU'RE WELCOME TO TAKE NOTES, BUT YOU DO NOT HAVE TO TAKE NOTES IF YOU DO NOT WANT.

ALL RIGHT.

JURY INSTRUCTIONS

THE COURT: (READING).

MEMBERS OF THE JURY, I WILL NOW

AND THEN I'M THROUGH.

HE ALSO REFUSED TO CHALLENGE THE 1987 PRIORS. NOW, HE TOLD ME PERSONALLY THAT HE WILL ALLOW THAT TO COME UP ON THE 1385 *ROMERO* MOTION SUBMITTED TO THE COURT, THE JUDGE IN DEPARTMENT 113, WHO GAVE ME 30 TO LIFE AND DON'T HAVE A PROBLEM WITH IMPLEMENTING HAVING 25 TO LIFE AS RESULT OF STRIKING ONE STRIKE. IT'S NOT GOING TO STOP FROM GIVING ME 25 YEARS IF I GET CONVICTED ON THIS INSUFFICIENT STUFF. THE PROBLEM IS HE REFUSES TO CHALLENGE THESE PRIORS, MAN.

I CAN DO THAT MYSELF. THIS IS MY LIFE. YOU HEAR ME? I GOT ONE LIFE TO LIVE, AND I'M TRYING TO DO THE BEST I CAN WITH IT. I CAN'T IF YOU'RE NOT GIVING ME A FAIR HEARING, A FAIR TRIAL. I AIN'T KILL NOBODY. I AIN'T HURT NOBODY. YOU'RE STILL PUSHING THIS TO THE LEVEL. I DON'T THINK IT MAKES ANY SENSE. I THOUGHT YOU CAN GIVE ME JUSTICE YOU'RE NOT GIVING ME JUSTICE. YOU'RE TRYING TO DESTROY ME.

THE COURT: I'M TRYING TO HEAR THE PRIOR.

THE DEFENDANT: I KNOW.

THE COURT: LET ME HEAR FROM MR. MCGURK.

MR. MCGURK: I WANT -- AS I SAID, I DON'T BELIEVE, UNLESS THE COURT -- UNLESS I'M WRONG, I DON'T BELIEVE I'M PERMITTED TO ARGUE THE 1987 PRIORS.

THE COURT: RIGHT. THEY'RE NOT HERE.

THE DEFENDANT: THE ARRAIGNMENT.

MR. MCGURK: NO, I'M NOT --

THE DEFENDANT: EXCUSE ME, SIR.

THE COURT: MR. WILLARD, LET HIM FINISH, PLEASE.

MR. MCGURK: IT'S AN ISSUE FOR THE SENTENCING JUDGE,

JUDGE FEUER, WHICH I EXPLAINED TO MR. WILLARD. HE'S ELIGIBLE, NO MATTER WHAT HAPPENS IN THIS PRIORS TRIAL, FOR RESENTENCING. THE JUDGE MADE THAT CLEAR. THE ONLY JUDGE I CAN BRING THAT UP TO IS JUDGE FEUER, THE SENTENCING JUDGE.

THE COURT: RIGHT.

MR. MCGURK: I'M BOUND BY LAW TO DO THAT, AND IT WILL BE DONE.

THE DEFENDANT: LET ME SAY THIS.

THE COURT: IT HAS BEEN DONE.

MR. MCGURK: IT HAS BEEN DONE ONCE, AND IT WILL BE DONE AGAIN.

THE DEFENDANT: INDEED, I'M SURE IT WILL BE.

THE COURT: MR. WILLARD, HOLD ON A SECOND.

THE BAILIFF: LET HIM FINISH.

THE DEFENDANT: OKAY. MY APOLOGIES.

THE COURT: I KNOW JUDGE FEUER IS CONSIDERING THE ROMERO MOTION. I KNOW THAT SHE'S UNWILLING TO COMMIT HERSELF ONE WAY OR ANOTHER HOW SHE'S GOING TO RULE ON IT, WHICH IS WHY WE'RE DOING WHAT WE'RE DOING. IF SHE HAD SAID -- HOLD ON -- IF SHE HAD SAID SHE WAS GOING TO GRANT THE *ROMERO* MOTION OR DENY THE *ROMERO* MOTION, WE WOULDN'T BE HERE BECAUSE THIS TRIAL WOULD BE IRRELEVANT?

THE DEFENDANT: WOULD DO YOU MEAN? EXPLAIN THAT AGAIN.

THE COURT: ON FRIDAY WHEN THIS CASE WAS SENT HERE, SHE WAS ASKED WHETHER OR NOT SHE WAS GOING TO GRANT OR DENY THE *ROMERO* MOTION. IF SHE HAD BEEN WILLING TO COMMIT SHE WAS GOING TO GRANT IT, THEN WE WOULDN'T BE HERE. IF SHE WAS WILLING TO COMMIT THAT SHE WAS GOING TO DENY IT, WE WOULDN'T BE HERE. SHE

WAS VIOLATED UNDER DUE PROCESS.

THE COURT: HOW IS THAT?

THE DEFENDANT: THE TRIAL COUNSEL, MR. MCGURK, AND PROSECUTOR WAS GRANTED UNILATERAL CONTROL BY THE TRIAL COURT TO PRACTICE JURY COMPOSITION FOR MID-TRIAL. THE PROSECUTOR AND TRIAL COUNSEL, MR. MCGURK, WORKED TOGETHER DURING JURY SELECTION TO EXCLUDE ALL AFRICAN-AMERICAN JURORS FROM THE JURY POOL BY DEMONSTRATING GROUP BIAS BY NOT CONSIDERING AFRICAN-AMERICAN JURORS IN THE PETITION FOR JURY TRIAL. IT IS A FACT THAT PETITIONER DO NOT HAVE ANY AFRICAN-AMERICAN JURORS AFTER THE JURY HAS BEEN SELECTED ON THE JURY PANEL.

TRIAL ATTORNEY MR. MCGURK DID NOT OBJECT TO THIS ACTION DURING JURY SELECTION. I AM THE PETITIONER IN ACTION NUMBER B233492 ON APPEAL IS OBJECTING TO THIS ACTION. AND I'M IMPLEMENTING WHEELER/BATSON VIOLATION, AND I STATED THAT THE CONSTITUTION GUARANTEE THE RIGHT TO TRIAL BY JURY WHICH IS CONTAINED IN THE SIXTH AMENDMENT TO THE FEDERAL CONSTITUTION ARTICLE I, SECTION 16 OF THE CONSTITUTION REQUIRES THAT IT BE DRAWN FROM A REPRESENTATIVE CROSS SECTION OF THE COMMUNITY, *PEOPLE VS. WHEELER* 1978.

THE UNITED STATES OF THE SUPREME COURT SPECIFICALLY FOLLOWING *WHEELER* HAS EXPRESSED SIMILAR VIEWS IN REVERSING A CONVICTION IN WHICH THERE WAS REASON TO BELIEVE THE PROSECUTION HAS SYSTEMATICALLY EXCLUDED BLACK JURORS, *BATSON VS. KENTUCKY* 1986. *STRICKLAND VS. WASHINGTON*, UNDER COUNSEL'S LEAD UNPROFESSIONAL ERRORS, TRIAL COUNSEL, MR. MCGURK AND THE PROSECUTOR IS USING ERRONEOUS, INSUFFICIENT, AND ILLEGAL DOCUMENTS IN THE TRIAL TO PROVE PETITIONER SUFFERED A JUVENILE

assist of the 995.Motion.filed.MAY 10-
10, and what is attach is the opini-
.from the State courts.
irmed.There Decision and Dated:
with proof of service by mail

EXHIBIT COVER PAGE

F

EXHIBIT

Description of this Exhibit: 995.Motion and opinion
Motion 28,Pages and TW opinion)

Number of pages to this Exhibit: _____ pages. 20 pages)
with attach proof of service by MAIL
one.

JURISDICTION: (Check only one)

- [ ] Municipal Court
- [ ] Superior Court
- [ ] Appellate Court
- [ ] State Supreme Court
- [x] United States District Court
- [ ] State Circuit Court
- [ ] United States Supreme Court
- [ ] Grand Jury

60.

00056

Charles R. Willard #2067605
441 Bauchet Street
Los Angeles, CA 90012

FILED
LOS ANGELES SUPERIOR COURT
MAY 10 2010
JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY: E. HERNANDEZ, DEPUTY

IN. propria persona

Superior Court of California
County of Los Angeles

the people of California, PLAINTIFF,
VS.
Charles R. Willard DEFENDANT

NO. BA 362410
Amended Motion To Dismiss Information, Pen. C. sec 995/Non-Statutory, Date: May 20 2010 Time 9:30 A.m IN, Dept. 123,

To: the District Attorney for the County of Los Angeles and/or His Deputy:

Please Take Notice That pursuant To Section 995 of the Penal Code of the State of California, and Non-Statutory

1.

00057

GROUNDS, DEFENDANT CHARLES R. WILLIARD ON MAY 20, 2010, OR AS SOON THEREAFTER AS THE MOTION CAN BE HEARD, DEFENDANT WILL MOVE THE COURT TO SET ASIDE THE INFORMATION FILED IN THIS ACTION ON THE GROUNDS THAT (1.) THE DEFENDANT HAS BEEN COMMITTED ON COUNT (2.) WITHOUT ANY EVIDENCE, TO SUPPORT THE CHARGE; (2.) THE PROSECUTOR, FAILED TO REVEAL EXCULPATORY EVIDENCE TO DEFENSE PRIOR TO PRELIMINARY HEARING; AND (3.) THE DEFENSE COUNSEL, RENDERED PREJUDICIAL INEFFECTIVE ASSISTANCE.

THIS MOTION IS BASED ON THE TRASCRIPT OF THAT PRELIMINARY HEARING, RECORDS ON FILE, THE MEMORANDUM OF POINTS, AND AUTHORITIES, AND EXHIBITS, AS WELL AS ALL ORAL ARGUMENTS MADE AT THE HEARING IN SUPPORT OF THIS MOTION.

2.

Dated: May 7, 2010.

Respectfully submitted,

/s/
Charles R. Willard

IN, propria persona

Memorandum of points, and Authorities

I.

facts.

ON, October 8. 2009, the preliminary Hearing proceedings begins. Defendant, was charged with two counts of Assault with (a) Deadly Weapon in Violation of penal Code section 245(a)(1). and Enhanced under section 12022.7(a), causing the offenses To Become Serious felonie within sec 1192.7)c)8).

the only witness To Testify at the preliminary Hearing was Mr. Santos Hernandez, the Alleged Victim of, count-1.

Mr. Santos Hernandez, Testify That on September 21. 2009, While Riding the Mtva Bus in the area of Western, and 8th Street, in the County of. Los Angeles. He was coming from work Alone

With His coworker David Ponce. (PHT, pages 3-4.)

While conversing with His friend, Defendant walked over To them, and poked Him IN His face with His finger, while stating: pinche Mexica'. (PHT, page. 5:1-20) Then Defendant went Back To His seat, which, was About four seats away; Took (A) six-inch knife out of His Backpack Then Returned. (PHT, page. 5:21-28, Thru 6-1-18.)

Defendant Had His knife open As He Returned, so, Mr, Hernandez, Testified That He put His Backpack IN, front of Himself, As Defendant made (A) stabbing motion towards Him With the knife, and Attempted To thwart off the Thrust. However. Mr, Hernandez, Testified He got stabbed IN The Arm. (PHT. page, 6:8-28, Thru-7:1-28.)

Mr. Hernandez, Testified That His friend David Ponce, As Defendant Approached them With the Knife, Jumped over the Seat, Was positioned Behind Him, Then Got off the Bus. (PHT, Page. 8-9: 1-24)

Defendant did Not make (A) Second Attempt To Stab Him. He and Defendant Got off on the Bus. (PHT, Page. 10: 3-24.)

Mr. Hernandez, Testified That the Deputies took Him To the Hospital, Where He Received five Stitches, and (A) prescriptions for Antibiotics, and (A) painkiller. (PHT, Page. 10: 25-28, Thru 11: 1-14.)

* Mr. Hernandez, Testified That He Has (A) Little Scar from being Stabbed, or Cut. (PHT, Page., 11: 15-16.)

On Cross-Examination Mr. Hernandez Testified That He Jumped Upon the Bus Seat, and Kicked Defendant

IN. His Chest Twice With His Steel Toe Boots, To Keep Him from Stabbing Him. (PHT, page. 17: 19-28. Thru 20: 1-5.)

Based on the Testimony of Mr. Santos Hernandez, the Magistrate Judge, found probable cause on both counts against Mr. Hernandez, and David Ponce. David Ponce Nor (A) qualified Investigating officer Testified To the Charge against Mr. Ponce (PHT. page. 22:9-17.)

II.

ARGUMENT(S)

1.

THERE IS INSUFFICIENT EVIDENCE TO SHOW PROBABLE CAUSE

THERE MUST BE SOME DIRECT OR CIRCUMSTANTIAL EVIDENCE FROM WHICH (A) REASONABLE INFERENCE MIGHT BE DRAWN FROM THE EVIDENCE TO SUPPORT, (A) PROBABLE CAUSE FINDING, SEE, WILLIAMS VS. SUPERIOR COURT, (1969) 71 CAL. 2d. 1144, 1148.

COUNT 2, ASSAULT WITH A DEADLY WEAPON UPON DAVID PONCE, HAS ABSOLUTELY NO COMPETENT EVIDENCE TO SUPPORT (A) PROBABLE, CAUSE FINDING BY THE MAGISTRATE JUDGE RENDERED ON OCTOBER 8, 2009.

THE CONSTITUTIONAL 'TRUTH-IN-EVIDENCE' PROVISION, CONTAINED IN CALIFORNIA CONSTITUTION ARTICLE I, SEC. 28(d), MANDATES THAT "RELEVANT, EVIDENCE SHALL NOT BE EXCLUDED IN ANY

Criminal proceeding" However, It Does NOT affect the Statutory Hearsay Rule. See, Art. I, Sec: 28 (d.)

California Evidence Code sec: 1200, forbids Hearsay Evidence. And it defines Hearsay Evidence As:

"(A) "Hearsay Evidence" is Evidence of (A) Statement That was made other Than by (A) Witness while Testifying AT the Hearing AND That is offered To prove, the Truth of the Matter Stated:

(B) Except As provided by Law. Hearsay Evidence is Inadmissible?

David Ponce did NOT Testify AT the preliminary Hearing, Nor did (A) qualified officer That would be able To Testify To His Hearsay Statements Under proposition 115 See, penal code sec: 872(b)

the MAGISTRATE'S Role AT the preliminary, HEARING IS To ASCERTAIN whether There is probable CAUSE To believe the DefendANT IS GUILTY of (A) public offense, and should be Bound over for TRIAL. (pen. code sec. 872.) the MAGISTRATE However, MUST FIND SUFFICIENT, EVIDENCE To support It's probable, CAUSE DeTERMINATION. the MAGISTRATE MUST be ABLE To POINT To some EVIDENCE To support EACH Element of the Crime; See, Williams VS. Superior Court of Los Angeles County, (1969) 71 CAL. 2d 1144, 1148-1149; AND Birt VS. Superior Court (1973) 34 CAL. APP. 3d 934, 937.)

there WAS ABSOLUTELY NO EVIDENCE, PRESENTED AT the preliminary HEARING To support the probable CAUSE FINDING ON COUNT 2.)

2.

the prosecutor Denied Defendant (A) substantial right when it failed to turn over potentially exculpatory evidence prior to the preliminary Hearing.

(A) nonstatutory motion to dismiss must be used to redress [any] error not known or apparent at the time of the preliminary Hearing, Especially when the error is not ascertainable from the preliminary Hearing transcript see, Merrill vs. Superior Court. (4th Dist. 1994) 27 Cal. App. 4th 1586, 1596.

Such (A) claim that squarely fits in this category is (an) claim the prosecution failed to reveal potentially exculpatory evidence to the Defense prior to the preliminary Hearing. Merrill vs. Sup. 27 Cal. App. 4th, at page 1595.

11.

Defendant overheard deputy District Attorney Louis Morin at the preliminary hearing mention to his assistant that he had viewed the Metro Bus Video of the incident. (See, Exhibit-A, Defendant Charles Willard's Declaration, paragraph 13.)

I believe Defense Attorney Holly HighTower overheard the prosecutor make the statement of viewing the video as well. (Id. Exhibit-(A), paragraph 14.)

the metro video of the INCIDENT that occurred on September 21, 2009, shows Defendant Defending Himself in a fight with Santos Hernandez, not assaulting him with a knife for no reason at all-as Mr. Hernandez testified. (Id. Exhibit-A), paragraph 5.)

Defendant, in the INCIDENT Report written by Deputy A. Armijo

Penal Code Sec. 417.6. States:

(A) If, in the commission of (A) violation of section (417) or 417.8, serious bodily injury is intentionally inflicted by the person drawing or exhibiting the firearm or deadly weapon. the offense shall be punished, by imprisonment in the county jail not exceeding (one) year or by imprisonment in the state prison

(b) As used in this section, serious bodily injury" means (A) serious impairment of physical condition. including, but not limited to the following, loss of consciousness; concussion; bone fracture, protracted loss or impairment of function of any bodily member or organ; (A) wound requiring "extensive suturing, and serious disfigurement.")

IN ruling on (A) Nonstatutory Motion To Dismiss, on the Grounds That the prosecution failed To Reveal potentially, Exculpatory Evidence the Reviewing, court must first look To the materiality of the Nondisclosed Information and what Effect it Had on the Determination of probable Cause. Merrill supra. 27 cal. app. 4th. at 1596.) Having Examined the Non Disclosed Information, The court must Add it To the Evidence That the original, Magistrate Heard. finally, this court must ReTest the Combined Evidence for probable Cause. Merrill. supra. 27 cal. app. 4th. at 1594-1596)

Santos Hernandez, testified at the preliminary Hearing That for No Reason at all Defendant Got up from His Seat on the Bus. Walked over To Him and poked Him in the Side of, His face with His finger, while stating.

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"Pinche Mexica." Then, again, Hosent and Probscation, returned to his seat and retrieved (a) knife from his black pack, opened it, and walked back to where he, and David Ponce were sitting and began thrusting the knife at him attempting to stab him. He blocked the first thrust, but got (cut) on his left forearm. Then he kicked Defendant in the chest with his steel toe boots to thwart Defendant's second attempt to stab him in the abdomen area. (See, PHT. page. 11:21-28, thru 20:1-18.

the Metro Bus Video shows [redacted] Santos Hernandez, [redacted] as the initiators of the fight. It shows Defendant retrieved his knife to defend himself. This

this evidence. If not withheld

by the prosecution, would have required the charge of ASSAULT with (A) Deadly Weapon To be Reduced, To (A) misdemeanor under Sec. 417(A)(1). for Sections 417.6 cannot be sustained Because, Mr. Hernandez's Injury cannot be classified as (A) Great bodily Injury. Sec. 417.6(b).) Extensive suturing, or serious Disfigurement.))

Mr. Hernandez, Testified That He Received five stitches AT St. Vincent Hospital. (RT. page. 10:25-28, Thru 11: 1-4.) However. St. Vicent Hospital had no Record of any such Medical Treatment of Mr. Hernandez, [See Exhibit-A, paragraph 16.)

Mr. Hernandez, also Testified AT the preliminary Hearing That He only had (A) "Little" "SCAR" from the "CUT" on His Arm. (RT. page. 11:15-16.)

the Charge Therefore, MUST be Reduced to (A) Misdemeanor Violation of section 417(A).

3.

Defendant was Denied the Effective Assistance of Counsel at (A) Critical Stage of the prosecution

the preliminary Hearing, for purposes of the Right to Counsel is (A) Critical Stage of the prosecution. See, Coleman vs. Alabama (1970) 399 U.S. 1, 7-10.

Representing The Defendant IN(A) Criminal case is(A) Difficul and Demading Job. (A) "Trial" Attorney, is Not there for the purpose of making (A) "pretty" Record. She is there To Give Her Client the Very Best professional Representation possible. Hopefully,

19.

With successful results for her client." See, People vs. Huffman, (4th Dist. 1977) 71 Cal. App. 3d 63, 75.

[An] attorney must not intentionally recklessly, or repeatedly fail to perform legal services with competence. (See, Rules of professional conduct. Rule 3-110(A).) And competence is defined as the: (1) Diligence; (2) Learning and skill; and (3) mental, emotional and physical ability reasonably necessary for the performance of such service. (Id.) [Rule 3-110(B)].)

the Defendant is entitled to insist that same defense be presented by his attorney. See, People vs. Frierson, (1985) 39 Cal. 3d 803, 815.

Counsel committed several incompetent, acts or omissions which prejudiced the outcome of the proceedings:

(A) Defense Counsel Failed To Seek CONTINUANCE of preliminary Hearing To Secure Metro Video Tape and Arresting officers That Viewed The Video:

California penal code section 1050(E) Require (A) Good CAUSE showing In order To obTAIN(A) CONTINUANCE.

Good CAUSE" AS Defined by section 1050(g)(2). Includes Those CASES INCLUDING (A) CASE being Handled IN The CAreer CRIMINAL Prosecutions program pursuant To sections 999 b-Through-999-H

Defendant is prosecuted Under the Multiple Strike provision. therefore, "Good" CAUSE" EXISTED FOR (A) CONTINUANCE.

(A) Defendant is Denied (A) Substantial Right AT the preliminary Hearing by (A)

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Magistrate's Refusal To Grant Continuance In order To produce (A) Material Witness. See. People vs. Jocca (1974) 37 Cal. App 3d 73, 79-80.

Defendant Requested That Deputy public Defender Holly Hightower, produce the Metro Video from the Bus To prove he was Not the Aggressor But was Defending Himself Against Attack, And That the Arresting officers viewed the Bus Video, And Told Defendant It showed Him merely Defending Himself. Defendant Requested They be subpoenaed To Testify. (See Exhibit-A) paragraph's 7-8)

Ms. Hightower Failed To Secure Either for the preliminary Hearing. Id.) Exhibit-A) paragraph 9.)

this Evidence could Have Changed the Felony To (A) Misdemeanor See section 417(B). Of the Penal Code.

(b) Counsel failed To file (A) Sec: 995 Motion To Dismiss Count-2) on Grounds of Insufficient Evidence.

there was Absolutely No Evidence presented on count-2, [Assault with (A) Deadly Weapon upon David Ponce], And Counsel failed To Challeng This Charge IN(A) section 995 Motion IN Superior Court:

there can be No Legitimate Strategy To Elect To Subject Defendant To (A) Trial on this Chrirge.

Counsel Challenged count-2, At the preliminary Hearing, on the Insufficient Evidence:

"M.S. HighTower:..

Motion To
Dismiss for Insufficiency
of, the Evidence."
(RT, page. 22: 6-10)

Counsel's failure To file motions
falls Below prevailing professional
Norms. See, Kimmelman vs. Morrison
(1986) 477 U.S. 365, 385

Counsel was found Incompetent
for failure To file motion To Dismiss
for Speedy Trial.,
Violation. see, people vs. Harding
(1984) 150 Cal. App. 3d 1015, 1023.

Defense Counsel Rendered
Ineffective Assistance of Counsel
for failing To file section 995)
Motion To Dismiss on Count. 2.

(C) Finally, If, this Court Find That Defense Counsel Waived objections, To Inadmissible Evidence Being presented At the preliminary, Hearing- Santos Hernandez, Hearsay Testimony - Then Defendant Submit, This Too Denied the Effective, Assistance of Counsel, and prejudiced the outcome of the proceedings. (See, people vs. fisher 2d Dist: 1972) 27 Cal. App. 3d 929, 932 [Counsel must object To Inadmissible, Evidence or objections To Evidence is Waived.])

15.) My Attorney, Ms, HighTower, I, Believe She Should Have Requested (A) Copy of the Metro Video from the prosecutor for the purposes of, USING IT AT the preliminary Hearing To Establish That I, was defending Myself, With the Knife, AGAINST Two Assressors AT the Time of the Incident;

16.) I, do NOT Believe My Attorney Ms, HighTower Lodged (ANY) Informal Request for Discovery with the prosecutor, Requesting the Metro Video That deputy A. Armes Requested From the Metro on 9/21/09. see, Attachment-1, AT page. 5, paragraph, (0.) Because I, was Given (A) Copy of Her file, and there is No, Copy of one in The Copy of Her file That I, Received:

17.) A copy of the Metro Video HAS been Recovered by Defense Counsel Ms, HighTower, AND It Shows THAT I, WAS IN (A) FIGHT Defending Myself With the Knife. THAT I, WAS NOT the Aggressor

18.) Based on Information and Belief the prosecutor HAd Evidence prior To SANTOS HERNANDEZ, testifying To Receiving, five stitches, THAT Mr, Hernandez, HAD IN FACT NOT Received ANY Type of treatment from the Hospital.

19.) Deputy A. Aymes wrote IN His INCIDENT Report THAT Mr, HERNANDEZ HAd Refused TRANSPORTATION by the Responding PARAMEDICS To The Hospital For Treatment, (See. ATTACHMENT 1-1,) on page. 4.) PARAGRAPH 7.) BUT following field IDENTIFICATION Requested To be TRANSPORTED To the HOSPITAL. Deputy Rodriguez. # T 600W9). TRANSPORTED Mr, HERNANDEZ, To St. VINCENT Hospital INC.

2131 W. 3rd St., Los Angeles, 90057.
Id.)

20.) ON JANUARY 29, 2010, the St. VINCENT Medical Center, 2131 W. Third Street, Los Angeles, CA., 90057-0992, NOTIFIED the DEPUTY PUBLIC Defender, IN, Response To (A) Medical Records Request THAT They HAD NO Records for Him (See copy of Letter AS Attachment-3.)

I, Charles R. Willard, Declare THAT the Above-MENTIONED IS True, and correct, and based ON My memory, and I, Am Willing To Testify To such facts.

This Declaration was Executed AT Los Angeles, California ON MAY 7. 2010

/s/ [signature]
CHARLES R. WILLARD
DECLARANT

7.

ATTACHMENT

1

(5, opinion)'s To this
fed. writ.

7.

Number of pages to this 5 pages.

Description of this OPINION is From the Superior Court. Affirmed the Conviction ON Appendix. Dated. 1-27-2015. NO. BA362410

1.

A

MC-275

Name: CHARLES R. WILLARD
Address: P.O. BOX 4670
LANCASTER, CA 93539
F.D-
CDC or ID Number: C-36206

IN the SUPERIOR COURT OF the STATE OF CALIFORNIA.
(Court)

CHARLES R. WILLARD.
Petitioner
vs.
PETITIONER AND APPELLANT.
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

Original

FILED
Superior Court of California
County of Los Angeles
JAN 12 2015
Sherri R. Carter, Executive Officer/Clerk
By Christine Gyimesi Deputy

No. _____
(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles
JAN 27 2015
Sherri R. Carter, Executive Officer/Clerk
By Christine Gyimesi, Deputy

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

IN RE CHARLES ROBERT WILLARD, Petitioner	)	No. BA362410 **ORDER ON PETITION FOR HABEAS CORPUS**

The court received and reviewed the instant Petition for Writ of Habeas Corpus, as well as all of the Exhibits attached thereto.

On Jan. 18, 2011 a jury found the defendant guilty of 2 counts of Penal Code section 245(a)(1). On Jan. 19, 2011, the court found the defendant's two prior strike convictions as true. On May 24, 2011, the court sentenced defendant to an aggregate term of 30 years to life. Defendant's convictions were affirmed on September 17, 2014.

In this Petition, petitioner alleges: 1.) his trial counsel was ineffective in that he a.) failed to requests CalCrim instructions 316, 226 and 3515; and b.) counsel failed to challenge defendant's alleged prior convictions; 2.) that his appellate counsel was ineffective in that he failed to raise any issues on appeal; 3.) the trial court abused its discretion in failing to grant defendant's Romero motion to strike his alleged prior strikes.

As to the ineffective assistance of counsel claims, the burden is on the petitioner to establish grounds for relief. In re Crow (1971) 4 Cal.3d 613; People v. Duvall (1995) 9 Cal.4th 464. A presumption of regularity attaches to a judgment collaterally attacked. In re Smith (1979) 2 Cal.3d 508.

A review of the entire court file reveals that CalCrim numbers 226 and 316 were given to the jury. As to number 3515 the court has no sua sponte duty to give this instruction. *People v. Beagle* (1972) 6 Cal.3d 441. As to the prior strikes hearing, defense counsel made a motion to strike his strikes and the court heard and considered arguments at a full hearing.

As to the ineffective assistance of appellate counsel claim, competent counsel on appeal is not required to raise every conceivable issue. Exercising professional discretion selectively does not equate with ineffective appellate representation. Experienced attorneys recognize the importance of selecting one or a few key issues to raise on appeal and of winnowing out the weaker issues. [P v. Kipp (2001) 26 Cal.4th 110; In re Smith (1970) 3 Cal.3d 192]. No law, nor the Constitution compels an appointed attorney to raise every nonfrivolous issue requested by his client, if the attorney in his professional

judgment decides otherwise [6 Witkin & Epstein, Cal.Criminal Law (3d. 2000) Criminal Appeal, 37, p.280)]

These principles have been reiterated in numerous cases. Merely arguing that an issue was not advanced by prior counsel does not itself establish inadequate performance by prior counsel. Appellate counsel (and by analogy habeas counsel) performs properly and competently when he exercises discretion and presents only the strongest claims instead of every conceivable claim. [In re Robbins (1998) 18 Cal.4'th 770, 810]. Such discretion and selectivity are "the hallmark of effective appellate advocacy" [Smith v. Murray (1986) 477 U.S. 527, 536]. Lawyers cannot be criticized for failing to make arguments that would have been futile [P v. Lewis (1990) 50 Cal.3d 262, 289].

As to the trial court's abuse of discretion claims, the petitioner fails to set forth a prima facie case of relief. After reviewing the petition and all other filings, attached documents and records in this matter, the Court finds that Petitioner has failed to plead facts that would, if true, entitle him to relief on the grounds asserted. *In re Clark* (1993) 5 Cal.4th 750, 781 ("Summary disposition for a petition which does not state a prima face case for relief is the rule."); *People v. Duvall* (1995) 9 Cal.4th 464, 475 (1995) ("If no prima facie case for relief is stated, the court will summarily deny the motion."). The trial court considered the nature and circumstance of his current and prior convictions and the particulars of his background, character and prospects and reached an impartial decision. *People v. Williams* (1998) 17 Cal.4th, 148.

Therefore, the court orders the entire Petition **DENIED**.

Clerk to give notice.

Dated: Jan. 27, 2015

SUPERIOR COURT, LOS ANGELES COUNTY • CALIFORNIA •

Bernie C. LaForteza
Judge of the Superior Court

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 01/27/15

CASE NO. BA362410

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: CHARLES ROBERT WILLARD

INFORMATION FILED ON 10/22/09.

COUNT 01: 245(A)(1) PC FEL
COUNT 02: 245(A)(1) PC FEL

ON 01/27/15 AT 830 AM IN CENTRAL DISTRICT DEPT 113

CASE CALLED FOR HABEAS CORPUS PETITION

PARTIES: BERNIE C. LAFORTEZA (JUDGE) CHRISTINE GYIMESI (CLERK)
SHAWN BIVENS (REP) NONE (DDA)

PURSUANT TO DEFENDANT'S WRITTEN REQUEST, AND NOT REPRESENTED BY COUNSEL

COURT ORDERS AND FINDINGS:

-PETITION FOR WRIT OF HABEAS CORPUS IS DENIED.

THE COURT RECEIVED AND REVIEWED THE INSTANT PETITION FOR WRIT OF HABEAS CORPUS, AS WELL AS ALL OF THE EXHIBITS ATTACHED THERETO.

.

ON JAN. 18, 2011 A JURY FOUND THE DEFENDANT GUILTY OF 2 COUNTS OF PENAL CODE SECTION 245(A)(1). ON JAN. 19, 2011, THE COURT FOUND THE DEFENDANT'S TWO PRIOR STRIKE CONVICTIONS AS TRUE. ON MAY 24, 2011, THE COURT SENTENCED DEFENDANT TO AN AGGREGATE TERM OF 30 YEARS TO LIFE. DEFENDANT'S CONVICTIONS WERE AFFIRMED ON SEPTEMBER 17, 2014.

.

IN THIS PETITION, PETITIONER ALLEGES: 1.) HIS TRIAL COUNSEL WAS INEFFECTIVE IN THAT HE A.) FAILED TO REQUESTS CALCRIM INSTRUCTIONS 316, 226 AND 3515; AND B.) COUNSEL FAILED TO CHALLENGE DEFENDANT'S ALLEGED PRIOR CONVICTIONS; 2.) THAT HIS APPELLATE COUNSEL WAS INEFFECTIVE IN THAT HE FAILED TO RAISE ANY ISSUES ON APPEAL; 3.) THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO GRANT DEFENDANT'S ROMERO MOTION TO STRIKE HIS ALLEGED

CASE NO. BA362410
DEF NO. 01 DATE PRINTED 01/27/15

PRIOR STRIKES.

.

AS TO THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS, THE BURDEN IS ON THE PETITIONER TO ESTABLISH GROUNDS FOR RELIEF. IN RE CROW (1971) 4 CAL.3D 613; PEOPLE V. DUVALL (1995) 9 CAL.4TH 464. A PRESUMPTION OF REGULARITY ATTACHES TO A JUDGMENT COLLATERALLY ATTACKED. IN RE SMITH (1979) 2 CAL.3D 508.

.

A REVIEW OF THE ENTIRE COURT FILE REVEALS THAT CALCRIM NUMBERS 226 AND 316 WERE GIVEN TO THE JURY. AS TO NUMBER 3515 THE COURT HAS NO SUA SPONTE DUTY TO GIVE THIS INSTRUCTION. PEOPLE V. BEAGLE (1972) 6 CAL.3D 441. AS TO THE PRIOR STRIKES HEARING, DEFENSE COUNSEL MADE A MOTION TO STRIKE HIS STRIKES AND THE

COURT HEARD AND CONSIDERED ARGUMENTS AT A FULL HEARING.

.

AS TO THE INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL CLAIM, COMPETENT COUNSEL ON APPEAL IS NOT REQUIRED TO RAISE EVERY CONCEIVABLE ISSUE. EXERCISING PROFESSIONAL DISCRETION SELECTIVELY DOES NOT EQUATE WITH INEFFECTIVE APPELLATE REPRESENTATION. EXPERIENCED ATTORNEYS RECOGNIZE THE IMPORTANCE OF SELECTING ONE OR A FEW KEY ISSUES TO RAISE ON APPEAL AND OF WINNOWING OUT THE WEAKER ISSUES. [P V. KIPP (2001) 26 CAL.4TH 110; IN RE SMITH (1970) 3 CAL.3D 192]. NO LAW, NOR THE CONSTITUTION COMPELS AN APPOINTED ATTORNEY TO RAISE EVERY NONFRIVOLOUS ISSUE REQUESTED BY HIS CLIENT, IF THE ATTORNEY IN HIS PROFESSIONAL JUDGMENT DECIDES OTHERWISE [6 WITKIN & EPSTEIN, CAL.CRIMINAL LAW (3D. 2000) CRIMINAL APPEAL, 37, P.280)]

.

THESE PRINCIPLES HAVE BEEN REITERATED IN NUMEROUS CASES. MERELY ARGUING THAT AN ISSUE WAS NOT ADVANCED BY PRIOR COUNSEL DOES NOT ITSELF ESTABLISH INADEQUATE PERFORMANCE BY PRIOR COUNSEL. APPELLATE COUNSEL (AND BY ANALOGY HABEAS COUNSEL) PERFORMS PROPERLY AND COMPETENTLY WHEN HE EXERCISES DISCRETION AND PRESENTS ONLY THE STRONGEST CLAIMS INSTEAD OF EVERY CONCEIVABLE

CLAIM. [IN RE ROBBINS (1998) 18 CAL.4'TH 770, 810]. SUCH DISCRETION AND SELECTIVITY ARE "THE HALLMARK OF EFFECTIVE APPELLATE ADVOCACY" [SMITH V. MURRAY (1986) 477 U.S. 527, 536]. LAWYERS CANNOT BE CRITICIZED FOR FAILING TO MAKE ARGUMENTS THAT WOULD HAVE BEEN FUTILE [P V. LEWIS (1990) 50 CAL.3D 262, 289].

.

AS TO THE TRIAL COURT'S ABUSE OF DISCRETION CLAIMS, THE PETITIONER FAILS TO SET FORTH A PRIMA FACIE CASE OF RELIEF. AFTER REVIEWING THE PETITION AND ALL OTHER FILINGS, ATTACHED DOCUMENTS AND RECORDS IN THIS MATTER, THE COURT FINDS THAT PETITIONER HAS FAILED TO PLEAD FACTS THAT WOULD, IF TRUE, ENTITLE HIM TO RELIEF ON THE GROUNDS ASSERTED. IN RE CLARK (1993) 5 CAL.4TH 750, 781 ("SUMMARY DISPOSITION FOR A PETITION WHICH DOES NOT STATE A PRIMA FACE CASE FOR RELIEF IS THE RULE."); PEOPLE V. DUVALL (1995) 9 CAL.4TH 464, 475 (1995) ("IF

CASE NO. BA362410
DEF NO. 01 DATE PRINTED 01/27/15

NO PRIMA FACIE CASE FOR RELIEF IS STATED, THE COURT WILL SUMMARILY DENY THE MOTION."). THE TRIAL COURT CONSIDERED THE NATURE AND CIRCUMSTANCE OF HIS CURRENT AND PRIOR CONVICTIONS AND THE PARTICULARS OF HIS BACKGROUND, CHARACTER AND PROSPECTS AND REACHED AN IMPARTIAL DECISION. PEOPLE V. WILLIAMS (1998) 17 CAL.4TH, 148.

.

THEREFORE, THE COURT ORDERS THE ENTIRE PETITION DENIED.

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CLERK TO GIVE NOTICE.

.

DATED: JANUARY 27, 2015 BERNIE C. LAFORTERA
JUDGE OF THE SUPERIOR COURT

.

COPIES OF THE COURT'S ORDER AND THIS MINUTE ORDER ARE FORWARDED TO THE DEFENDANT VIA U.S. MAIL AS FOLLOWS:

.

.

CALIFORNIA STATE PRISON
CHARLES R. WILLARD
C.D.C.R. #C-36206; FDI-228 #L
P.O. BOX 4670
LANCASTER, CA 93539

NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

Number of pages to this 2 pages.

Description of this OPINION) is from the COURT OF APPEALS AFFIRMED the CONVICTION ON APPEAL.
Dated or filed 1-8-2013. P.V. Willard CA 2/7.) No B233492.)

2.

B

Filed 1/8/13 P. v. Willard CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. CHARLES ROBERT WILLARD, Defendant and Appellant.	B233492 (Los Angeles County Super. Ct. No. BA362410)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gail Ruderman Feuer, Judge. Judgment of conviction affirmed, remanded for resentencing.

Renee Rich, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

The Three Strikes law expressly permits a prior juvenile adjudication to constitute a felony strike when: "(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense. [¶] (B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony. [¶] (C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law. [¶] (D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code." (§ 667, subd. (d)(3)(A-D).) Paragraphs (A) through (D) of subsection (d)(3) "all state independent necessary requirements for use of a prior juvenile adjudication." (*People v. Garcia* (1999) 21 Cal.4th 1, 12.)

A prior conviction must be proved beyond a reasonable doubt. (*People v. Henley* (1999) 72 Cal.App.4th 555, 562.) The prosecution must establish the fact of the defendant's conviction and that the conviction was of an offense within the definition of the particular statute invoked, and any other element required by the statute alleged. (*Ibid.*) The trier of fact is entitled to draw reasonable inferences from certified records offered to prove the prior conviction. However, such inferences must be supported by substantial evidence. (*Id.* at p. 651.)

We agree the evidence is insufficient that Willard was at least 16 years old at the time he committed the robbery which is the subject of his juvenile adjudication. The record establishes he was born on October 1, 1960, making him 17 years old when he was thereafter committed to the California Youth Authority (now the Division of Juvenile Facilities) for robbery. The People did not produce a Welfare and Institutions Code section 602 petition or other documents showing the date of the offense or Willard's age at the time of the offense. In the absence of this evidence, Willard's juvenile adjudication does not qualify as a strike. We remand the matter for a further evidentiary hearing at the People's election as permitted by *People v. Barragan* (2004) 32 Cal.4th 236, which held that for Three Strikes sentencing purposes, an alleged prior juvenile adjudication may be retried.

Number of pages to this 4 pages.

Description of this OPINION IS From the COURT OF APPEALS AFFIRMED the CONVICTION ON APPENDIX DATED JUL 11 6-2014. NO. B250088.

B.

C

Filed 7/16/14

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL – SECOND DIST.
FILED
Jul 16, 2014
JOSEPH A. LANE, Clerk
Eva McClintock Deputy Clerk

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES ROBERT WILLARD,

Defendant and Appellant.

B250588
(Los Angeles County
Super. Ct. No. BA362410)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gail R. Feuer and Henry J. Hall, Judges. Affirmed.

Charles R. Willard, in pro. per., and Renee Rich, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This case comes before us a second time. Charles Robert Willard was convicted by a jury on two counts of assault with a deadly weapon after he threatened two men on a bus with a knife, one of whom he then stabbed.[1] In a bifurcated proceeding, the trial court found Willard had suffered two prior serious felony convictions and one prior juvenile adjudication for robbery, making him eligible for sentencing under the three strikes law, and he had served separate prison terms for felonies (Pen. Code, §§ 667, subds. (a), (b)-(i), 1170.12, subds. (a)-(d); 667.5, subd. (b)). Willard was sentenced to concurrent aggregate state prison terms of 30 years to life. On appeal, we concluded the evidence was insufficient that Willard was at least 16 years old at the time he committed the robbery, which was the subject of his juvenile adjudication. We affirmed the judgment of conviction and remanded for a possible retrial on the prior strike conviction, noting the trial court may choose to exercise its discretion to dismiss one of the prior strike convictions for robbery in 1987 because they arose from the same incident. (*People v. Willard* (Jan. 8, 2013, B233492) [nonpub. opn.])[2]

On remand, Willard requested a jury trial on the juvenile strike allegation. Prior to the People's presentation of evidence, the trial court heard and denied Willard's motion to replace his appointed counsel (*People v. Marsden* (1970) 2 Cal.3d 118). Following an evidentiary hearing, the court found Willard was the person who had suffered the prior juvenile adjudication (Pen. Code, § 1025, subd. (c)).

At trial, the People introduced evidence consisting of certified copies of various documents, including the pleadings and minute orders from the superior court file of the 1978 juvenile adjudication for robbery, a chronology from the California Youth Authority (now Division of Juvenile Justice), and a California Law Enforcement

---

[1] The jury found not true a great bodily injury allegation (Pen. Code, § 12022.7, subd. (a)).

[2] We treated Willard's motion for judicial notice of our records in that case as a motion to augment the record, and, as such, granted the motion.

Telecommunications System (CLETS) criminal history (rap sheet) which showed Willard's date of birth as October 1, 1960 and the date of the robbery as May 1, 1978. The jury found true the allegation that Willard had suffered the prior adjudication for robbery with the use of a firearm in 1978 (Pen. Code, § 1025, subd. (b)). The trial court determined Willard's juvenile adjudication constituted a prior strike conviction.

Prior to sentencing, Willard's defense counsel filed a "Supplemental Motion to Dismiss Prior Convictions Alleged Under Three Strikes Law" (Pen. Code, § 1385) and to impose a determinate state prison sentence of 19 years. Willard filed a hand-printed document in pro. per. in which he challenged the verdict on various constitutional and statutory grounds.

At sentencing, the trial court declined to exercise its discretion to dismiss the prior strike convictions and sentenced him to concurrent aggregate state prison terms of 30 years to life. The court awarded Willard presentence custody credit of 2,140 days and imposed statutory fees, fines and assessments.

We appointed counsel to represent Willard on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On March 12, 2014, we advised Willard he had 30 days within which to personally submit any contentions or issues he wished us to consider.

After granting Willard several extensions of time, on April 22, 2014 we received a hand printed 13-page supplemental brief plus exhibits in which Willard challenged his conviction. To the extent they can be understood, Willard's contentions are his defense counsel provided ineffective assistance in failing to challenge the evidence supporting his prior adult robbery convictions and the evidence was insufficient to support the great bodily injury enhancement allegation. Willard's ineffective assistance of counsel claim is beyond the scope of our remand and thus cannot be addressed in the context of this appeal. If cognizable at all, Willard's claim must be pursued by a different, appropriate procedure. As for the great bodily injury enhancement, the jury found the allegation not true.

We have examined the entire record and are satisfied Willard's counsel has complied fully with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

WOODS, Acting P. J.

We concur:

ZELON, J.

SEGAL, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Number of pages to this 1 pages.

Description of this OPINION from the COURT of APPEALS AFFIRMED the CONVICTION ON APPENDIX Dated MAR - 4 - 2015 NO. B262329

4/0

D

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL - SECOND DIST.
FILED
MAR - 4 2015
JOSEPH A. LANE Clerk
D. SANDERS Deputy Clerk

In re

CHARLES ROBERT WILLARD

on Habeas Corpus.

B262329

(Super. Ct. No. BA362410)

(Gail R. Feuer and Henry J. Hall, Judges)

ORDER

THE COURT:

The petition for writ of habeas corpus filed herein March 3, 2015 has been read and considered. The court has also examined the files in proceedings numbers B233492 and B250588, petitioner Willard's direct appeals from judgments in Los Angeles County Superior Court case number BA362410. The petition is denied.

PERLUSS, P. J., WOODS, J., ZELON, J.

Number of pages to this 1 pages.

Description of this opinion from the State Supreme Court Affirmed the Conviction on Appendix Dated Jul. 22- 2015 NO. S226093

5

E

S226093

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re CHARLES R. WILLARD on Habeas Corpus.

The petition for writ of habeas corpus is denied.

SUPREME COURT
FILED

JUL 22 2015

Frank A. McGuire Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ.P.5; 28 U.S.C§ 1746)

I, Charles R. Willard c-56206, declare: I am over 18 years of age and a party to this action. I am a resident of _____ Prison, in the county of _____, State of California. My prison address is: _____.

On _____, I served the attached:

_____

_____

_____

on the parties herein by placing true and correct copies there of, enclosed in a sealed envelope, with postage thereon fully paid, in the United State Mail in a deposit box so provided at the above-named correctional institution in which I am currently confined. The envelope was address as follows:

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

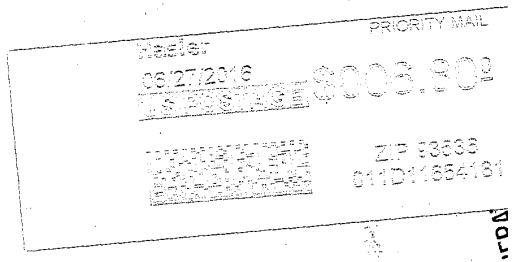
_____ _____

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed on _____ _____
(Date) (Declarant signature)

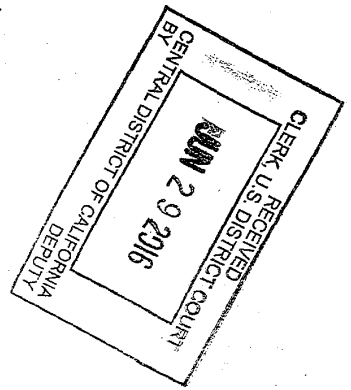
NO. CV 16-3[illegible]

Mr. Charles R. Willard C-36206
F.D. 3-143#L
P.O. Box=4670
Lancaster, Calif. 93539.





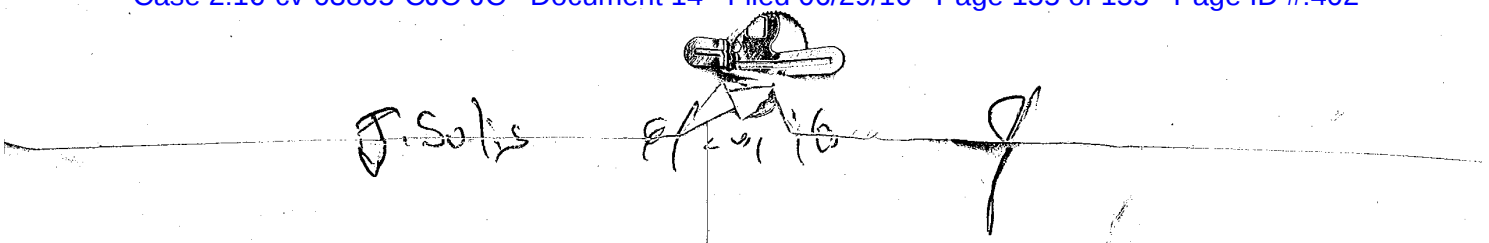
JC



United States Distr
Court. Office of the
U.S. Court House. F
312 North Spring St
Los Angeles, Calif 9

LEGAL AND CONFIDENTIAL MAIL

PRISON GENERATED MAIL



APPENDIX 13

ORIGINAL

SUPREME COURT
FILED

APR 27 2015

Frank A. McGuire Clerk

Deputy

MC-275

Name: Charles R Willard
Address: P.O. Box 4670
Lancaster, CA 93539
F.D-3-143#
CDC or ID Number: C-36206

In the Supreme Court of the State of California

(Court)

Charles R. Willard
Petitioner
vs.
Respondent Warden

PETITION FOR WRIT OF HABEAS CORPUS

No. S226093

(To be supplied by the Clerk of the Court)

NO. BA362410
P.C. 1258 Hearing After

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies required to the Supreme Court and Court of Appeal.

RECEIVED
MAR 23 2015
CLERK SUPREME COURT

MC-275

This petition concerns:

- [x] A conviction
- [ ] Parole
- [ ] A sentence
- [ ] Credits
- [ ] Jail or prison conditions
- [ ] Prison discipline
- [ ] Other *(specify)*:

1. Your name: CHARLES R. WILLARD
2. Where are you incarcerated? P.O. BOX=4670, LANCASTER, CA 93539
3. Why are you in custody? [x] Criminal conviction [ ] Civil commitment

Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").
the COURT OF APPEALS AFFIRMED the State CONVICTION IN PEN.CODE 245 (A-1- ALSO WAS CONFIRMED WAS THE TWO ADULT PRIORS from 1987, CONVICTION THAT

b. Penal or other code sections: PETITIONER DUE process were violated. see Attach

c. Name and location of sentencing or committing court: ~~LOS ANGELES COUNTY SUPERIOR COURT~~
210 WEST. Temple St. LOS ANGELES, CA 90012.

d. Case number: BA362410

e. Date convicted or committed: 1-18-11

f. Date sentenced: 5/24/11

g. Length of sentence: 30 YEARS TO life

h. When do you expect to be released? N/A

i. Were you represented by counsel in the trial court? [x] Yes [ ] No *If yes, state the attorney's name and address:*
MR, MC CLERK. NUMBER. 235729. PUBLIC DEFENDER
ONE REGENT, STINGLEWOOD, CA 90301

4. What was the LAST plea you entered? *(Check one)*:
[ ] Not guilty [ ] Guilty [ ] Nolo contendere [ ] Other:

5. If you pleaded not guilty, what kind of trial did you have?
[x] Jury [ ] Judge without a jury [ ] Submitted on transcript [ ] Awaiting trial

MC-275

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)*

Reverse the Two (1987, ADJT prior CONVICTIONS That the prosecution Failed to prove that QUALIFIES (AS, A prior Strike Sentence ENHANCEMENT under P.C. Sec. 667 Subd. D and 1170.12

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time *(when)* or place *(where)*. *(If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

See, Attach page 4 of 6

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Attorney Error's That CONSTITUTES Ineffective ASSISTANCE of COUNSEL IS CAUSE To SET ASIDE, (A, Procedural Default Hough VS. Anderson, 272 F3d 878, 892, 7th Cir. 2001. Williams VS. Taylor, 529 US. 362, 380, 146 L. Ed. 2d 389.

See, attach petition on, page 1.

MC-275

7. Ground 2 or Ground _____ (if applicable):

a. Supporting facts:

Appellate counsel Renee Rich was ineffective for not challenging petitioner Two prior strike of 1987 on Direct appeal that the Trial court found True, without due process. And the court submit or Did not submit (A) jury instruction the court fail to Give Cal. Crim. Number 3515, after the court in-dicated. It would do so.

Mr. mcGurk Defense counsel's failed To challenge the Evidence on the 1987, ADULT prior CONVICTIONS.

AND the prosecution failed To prove petitioner 1987, ADULT prior CONVICTIONS qualifies (AS, A) prior strike Sentence ENHANCEMENT.

b. Supporting cases, rules, or other authority:

People VS. Delgado. 2008, 43 Cal. 4th 1059, 1067, Jackson VS. Virginia 1979, 443 U.S. 307, 318, 319, 99 S.Ct. 2781, McFowler VS. Jaimet, 349 F.3d 436, 446 7th Cir. 2003, People VS. Tenner. 1993, 6 Cal. 4th 559, 567, Citing MARTIN. VS. Ohio. 1987, 480 U.S. 228, 231, 236. 107. S.Ct. 1098.

See. attach petition. page (1)

IN AN OPINION by Justice Werdeger. Dated. Sept. 10. 2013. Decided by the California State Supreme Court.

Under. pen. Code. Sec: 1385. Issues. A. Defendant Serving A. Sentence Under, the Three Strikes Law Imposed by. A. Court That Misunderstood the Scope of it's Discretion To Strike prior felony conviction allegation IN furtherance of justice. pursuant. To Sec: 1385. People vs. Romero. 1996. 13 Cal. 4th 497. People vs. Fuhrman 1997. 16 Cal. 4th 930.

May Raise the Issue on Appeal, or if Relief on Appeal is No Longer available. may file. A. Petition For Habeas Corpus To Secure. Reconsideration of [redacted] the Sentence. People vs. Vargas. 2012 206 Cal. App. 4th 971. Under. pen. Code Sec: 654. Subd. A. Two Crimes Based on the Same Act. See. Transcripts the proceeding Dated March. 19-2012- And Sept. 25. 2013. on. Exhibit D In Number. 1207. Line. 4-11-17. 28. on page 34 with Petition.

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the Two Alleged Priors Convictions With out Sufficient Evidence Arising out of a Single Case in, 1987. As these Circumstances are Substantially, Different Than those under which the Court originally Considered petitioner Romero Motion: See. Transcript Number, 1207. Line. 4-11-17-28. on Exhibit D on. page 34.

And See. Attorney General Document. Dated Sept. 7. 2012 Number. 338. Line 15-28. on. Exhibit B on. page 32

Where it state Relevant proceeding Below, That Defence Counsel Mr mc Gurk. Did Not Challenge Those 1987. priors in a Bifurciated Hearing under People vs. Tenner, 1993, 6 Cal. 4th 559. 566. 567.

See. Where Counsel and Judge Feller Discuss the 1987. Adult priors Convictions. in Transcript. Number 1207. Line. 4-11-17. 28.

Violated of Due process.

And Also. See. Attach Documents on. Miscellaneous

FACTORS by Defense Counsel MC GURK. See Number 00161 - AND 00162 ON Appendix C with petitions on page 38.

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Relief is sought by the petitio-
ner, please; order, an, evidentiary
Hearing:
To show why Defense counsel's Mr,
mc Gurk. With drawal from challen-
ging. Those .1987. adult priors con-
viction. During ja. Bifurcated he-
aring. proceeding on. petitioners
.1987. priors. That the Trial court
found true. see, Document by The
Attorney General. Dated. Sept. 7,
2012. In Number 338. and Transcript
Number. 338 Line 10-28. Also. 339 Line
1-24. on. page 32 on. Exhibit B
When counsel mc Gurk. Refuse
To challeng the .1987. adult priors
convictiod in ja. Bifurcated pro-
ceeding, To prove That the priors
do qualifies as. ja. prior strike sen-
tence. Enhancement under. pen. code
sec. 667. Subd D and 1170.12.

That with drawal from That
proceeding "Prejudice" The petti-
oner. Right To ja. Fair Hearing
That violated petitioner Fourtee-
nth. Amend. Due. process were
violated. If Defense counsel Did

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NOT withdrawl from those proceeding. petitioner would have receive only 12 years. toward his sentence, not 30 years to life. for (A) 245 (A-1. P.C.

I am asking that the supreme court to remande the matter as in sending the case back to the superior court for possible Dismissal on the 1987. adult priors see. Transcript. Number. 1207. Line 1-17-28. on. Exhibit D on. page 34

or strike the two. 1987. adult priors that was not challeng under martin. vs. ohio. 1987. 480 U.S. 228. 231 236. 107. S. Ct. 1098.

People vs. Tenner. 1993. 6 Cal. 4th 559. 566. 567. People vs. Vargas. 2012. 206 Cal. App. 4th 971.

or please Resentencing petitioner, To 12 years.

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IN MY AFFIDVIT. AND INFORMATION. AND BELIEF. I HAVE READ. THE FOREGOING PETITION FOR WRIT OF HABEAS CORPUS KNOW ITS CONTENTS

I AM INFORMED AND BELIEVE THAT THE MATTERS STATED THEREIN ARE TRUE. AND ON THAT GROUND. VERIFY THAT THE ISSUES I RAISE ARE TRUE.

I. CHARLES R. WILLARD C-36206 DECLARE. UNDER PENALTY OF. PERJURY THAT THE FOREGOING IS TRUE. AND CORRECT TO THE BEST OF MY KNOWLEDGE OF LAW.

EXECUTED AT. P.O. BOX=4670. LANCASTER, CALIFORNIA. 93539.

/S/ DATED 3/16 2015

CHARLES R. WILLARD C-36206
PETITIONER
F.D3-143.

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CHARLES R. WILLARD C-36206
F.D-3-143#
P.O. BOX=4670
LANCASTER, CA 93539

IN the SUPREME COURT OF
the STATE OF CALIFORNIA

the PEOPLE of the STATE.
OF CALIFORNIA.
PLAINTIFF. AN RESPONDENT.
VS
CHARLES R. WILLARD.
PETITIONER.

NO. B263624(D
PETITION FOR WRIT
OF HABEAS CORPUS
REVIEW:
SUPPLEMENTAL
RAISING INDEPEND-
ENT CLAIMS. FOR RE-
VIEW, IN the SUPREME
COURT:

PETITIONER IS APPEALING
FROM the SUPERIOR COURT
OF LOSANGELES COUNTY:
the HON: GAIL R. FEUER. Judge. AND COURT OF
APPEALS. the HON: PERLUSS. P.J. PRESIDING JUSTICES.
AFFIRMING the JUDGMENT AN CONVICTION
SEE. APPENDIX A AND APPENDIX B ON PAGE
36 AN 37 OF PETITION.
TO: the HON: CHIEF JUSTICE. AND TO the HONORABLE. ASSOCIATE JUSTICES OF the SUPREME
COURT OF the STATE OF CALIFORNIA.
IN PROSE. PETITIONER IS FILING
(AN WRIT OF HABEAS CORPUS FOR
REVIEW:
the SUPPLEMENTAL PETITION
RAISING INDEPENDENT
CLAIMS FOR REVIEW:

(Introduction)

1.) ON Direct Appeal, Petitioner. WAS Appointed, Appellate Counsel's. Renee Rich, IN December. 29. 2011.

Appellant Counsel's Sole Claim ON Appeal Is That the prosecution Failed To prove Appellant WAS AT LeAST 16 years old AT the Time His JUVENILE OFFENSE WAS Committed. (AS) Required To USE the offense (AS) A prior strike CONVICTION.

See. Attorney General Document, and TRANSCRIPTS. NUMBER. 338. LINE. 10-28. And 339. LINE 11-24.) ON. EXHIBIT B ON PAGE 32. Dated. Sept. 7. 2012.

(Statement of the Case)

ONCE Mr. Willard's CASE WAS Remanded To the Superior COURT (A) JURY TRIAL WAS COMMENced. Before Judge HALL ON MAY. 10. 2013. ON the JUVENILE Strike Allegation. CT 1. 10 11.) prior To the prosecution's PRESENTATION OF Evidence ON. MAY. 13. 2013. Appellant Made (A) MOTION PURSUANT To People VS. Marden. 1970. 2 CAL. 3d 118. Also. people VS. Wheeler. 1978. See. TRANSCRIPT. NUMBER. 304.) ON. EXHIBIT C ON. PAGE 33 LINE. 19.) IN Which WAS Denied AFter the HEARING CT 12.) Judge HALL. SUBSEQUENTLY found Appellant. WAS the person Who SUFFered the prior JUVENILE Adjudication OF SEC. 1025. Subd. C.) AND the JURY FOUND Appellant WAS CONVICted OF Robbery.

See. NEXT page, 3.

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With use of a firearm in 1978, of, section 1025. subd. b). CT 16: Supp. CT 10. RT 348- Aug. RT 5.) the court found appellant's juvenile adjudication was a valid strike prior. Aug. RT 6.)

the case then returned to Judge Feuer for sentencing, as she again presided over Mr. Willard's initial Trial. CT 17.) prior to the sentencing. Hearing appellant filed a supplemental motion to Dismiss prior convictions alleged under the three strikes Law".)

Requesting the court Dismiss Two of his prior convictions in the Furtherance of Justice under. section 1385. and Impose a Determinate. State prison sentence of 19 years. CT 19-52.)

the Trial court Denied appellant's Motion To Dismiss any of his prior strike convictions under.

People vs. Romero. (1996) 13 Cal. 4th 497. and appellant was again sentenced. To State prison for [an] aggregate. Term of 30 years To Life

Reason Why Petition Should Be Granted

Petitioner's Habeas Corpus petition should be granted on the merits and or claims.

(1.) the Error's of constitutional magnitude. led To A Trial That was so, fundamentially unfair That absent the Error's No Reasonable Judge or Jury would Have convicted the petitioner.

(2.) the petitioner acted In self Defense of That crime of which He was convicted.

(3.) And Defense Counsel Failed To Challenge the Evidence on the 1987, Adult prior convictions.

See. opinion from the Superior. Court. Affirmed 1 2015. As. Appendix A on. petition. on. page 36 21

And See. opinion from the Court of Appeals. Affirmed 3 4 2015. with petition on page 37 As. Appendix B

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CHARLES R. WILLARD C-36206
F.D.3.143#
P.O. BOX=4670
LANCASTER. CA 93539

IN the SUPREME COURT OF
the STATE OF CALIFORNIA.

the people of the State of CALIFORNIA. PLAINTIFF AN RESPONDENT VS. CHARLES R. WILLARD PETITIONER.	NO: B273624(D PETITION FOR WRIT OF HABEAS CORPUS REVIEW: SUPPLEMENTIAL RAISING INDEPENDENT CLAIMS FOR REVIEW IN the SUPREME COURT: MEMORANDUM OF POINTS AND AUTHORITES IN SUPPORT THEREOF ON. PAGE 15

PETITIONER IS SEEKING REVIEW IN the SUPREME COURT of the STATE OF CALIF-ORNIA.

TO. the HON: CHIEF JUSTICE. AND TO the HON: ASSOCIATE JUSTICES of the SUPREME COURT:

IN. PRO SE, PETITIONER IS FILING (A) WRIT OF HABEAS CORPUS FOR REVIEW.

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To: the Hon. Gail R. Feuer of the State Superior Court of the State of California.

Petitioner petition this Honorable Court for a Writ of Habeas Corpus, a Supplemental Petition For Review.

Petitioner is Raising Independent Claims on Direct Appeal For Review In the Superior Court.

(1.) the Issues is That Defense Counsels. Mr Mc Gurk Fail To procure Cal. Crim. Number 316, Jury Instructions limiting the Jury Consideration of Appellant priors convictions.

(2.) the Failure For NOT Requesting Cal. Crim Number 226, and the Court Fail To Give Cal. Crim. Number. 3515, After the Court Indicated It would do so.

(3.) the prosecution Failed To Prove Petitioner, 1987, ADUIT prior Convictions Qualifies as a prior Strike Sentence Enhancement.

(4.) Also, Mr. Mc Gurk, Defense Counsels. Failed To Challenge the Evidence On the 1987, ADUIT prior Convictions.

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STATEMENTS OF FACTS.

DEFENSE COUNSEL'S. MC GURK; COMMITTED SEVERIAL INCOMPETENT ACTS OF OMISSIONS:

1.) COUNSEL'S FAILED TO OBTAIN(ANY) INSTRUCTION (A) JURY INSTRUCTION ON (A) CRITICAL ELEMENT OF the CHARGED CRIME, 2.) COUNSEL'S FAILURE TO PROCURE CAL. CRIM. NUMBER. 316.) LIMITING THE JURY'S CONSIDERATION OF PETITIONER'S, PRIOR CONVICTION. 3.) the FAILURE FOR NOT REQUESTING CAL. CRIM. NUMBER. 226.) AND the COURT FAIL TO GIVE CAL. CRIM. NUMBER. 3515. AFTER the COURT INDICATED IT WOULD DO SO 4.) the PROSECUTION FAILED TO PROVE. PETITIONER. 1987.) ADULT PRIOR'S CONVICTIONS. QUALIFIES (AS) (A) PRIOR STRIKE SENTENCE ENHANCEMENT.

5.) ALSO, MC GURK. DEFENSE COUNSEL'S FAILED TO CHALLENGE the EVIDENCE ON the (1987.) ADULT PRIOR CONVICTIONS. during the DISCUSSION ON the JURY INSTRUCTIONS, the COURT INDICATED TO COUNSEL'S. MC GURK. THAT IT WOULD GIVE CAL. CRIM. NUMBER. 3515.) HOWEVER the COURT FAI;

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led. To Give this INSTRUCTION. CAL. Crim. NO. 3515.) INforms the Jurors THAT EACH COUNT IS, A, Separate Crime, AND THAT they MUST CONSIDER EACH COUNT SEPARATELY. Although it WAS Error for the COURT To FAil To GIVE CAL. Crim. Number. 3515.) After the COURT INDICATED it would do so. CAL. Crim. Number. 226. Which IN-STRUCTED, the Juror THAT it MAY CONSIDER Whe-Ther. the WITNESS HAS BEEN CONVICTED OF, A, FELONY IN-ASSESSING the Credibility of the WITNESS.

DEFENSE COUNSEL'S MC GURK.,
ERROR'S With the Jury INSTRUCTIONS WERE NOT, A, Strategic DECISION To Forego "ONE" INFAVOR of His CLIENTS. It WAS the Re-SULT. of, A, MISUNDERSTANDING of the LIAW. the QUESTION of the CONSTITU-TIONAL., SUFFICENCY of the EVID-ENCE. IS Being WHOLLY UNRELATED To How RATIONALLY the VERDICT WAS ACTUALLY REACHED during. PETITIONER TRIAL WITHOUT Jury INSTRUCTIONS NUMBER. 316.) AND NUMBER 226.) ALSO. NUMBER. 3515.) AT (A, CRITICAL ELEMENT of the CHARGED of CRIME AND Thereby. ABANDOND His CLIENTS MOST Promising DEFENSE'S.

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Errors may so infect the Trial with unfairness, as to make the resulting conviction an Denial of due process." Greer vs. Miller. 1987, 483 U.S. 756, 764.

U.S. const. 6th[an] 14th amend. Indeed where there are an number of errors at Trial issue by issue [redacted] Harmless Error Review is fairless meaningful than analyzing the over all effect of the errors in the context of the evidence introduced at Trial against the petitioner United States vs. Wallace. 9th Cir. 1988, 848 F. 2d 1464, 1476.

Accordingly all of the above discussed errors must be considered together to determine if petitioner received an fair Trial.

Statements of Facts
Continue on page. (8.)(11.)

After the Jury found petitioner Guilty of the substantive charge. the Trial Court Held, an Bifurcated Hearing on petitioner's prior convictions. the prosecution introduced Records from petitioner's, 1978, Juvenile Adjudication for Robbery, and Driving, a, Vehicle without consent. Supp. CT 2. 24-25. 50-51-59-60.)

the prosecution also introduced Evidence of petitioner's 'Two' Adult, Robbery convictions. from. 1987, Supp. CT/16.) and Appellant. Did not Challenge the Evidence Supporting Those convictions. That the Trial Court found them true see. Attorney General Document. and Court Transcripts. Number. 338. Line. 10-28. and. 339 Line. 11-24. on. page. 32 on. Exhibit B. Dated. Sept. 7. 2012.

Defense Counsel's Failed To Challenge, the Evidence on the. 1987, Allege prior conviction That the Trial Court found them to be true.

petitioner Fourteenth Amend. due process were violated when the Trial Court found petitioner Guility on the, 1987, Adult Robbery conviction without due process. See. Transcript, Number. 1207, 1-17-28.) on. Exhibit D. on. page. 34.

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the COURT. the HON: GAIL R. FEUER. STATED FOR the RECORD do. YOU KNOW IF the (211.) FROM 1987, WAS "ONE" INCIDENT WITH "TWO" VICTIMS OR. "TWO" SEPARATE INCIDENT? COUNSEL'S MCGURK. STATED FOR the RECORD THAT WE'VE BEEN WAITING FOR the FILE. AND STILL HAVENT GOTTEN it. COUNSEL'S AGAIN STATED FOR the RECORD I. WAS ABLE TO PROCURE the VERDICT FORMS AND there WERE TWO DIFFERENT NAMES. BUT there WAS "NO" INDICATION IN TERMS OF WHETHER it WAS TWO people STANDING AT "ONE") TIME OR (2) INCIDENTS I. WAS NOT ABLE TO "LOCATE" THAT., BUT there WERE "TWO" DIFFERENT NAMES ON the JURY VERDICTS:

the COURT. ALL RIGHT WHICH I WOULD "ASSUME" WHAT I CANT "TELL" IS WHETHER. it WAS THEN COUNSEL'S RIGHT the COURT. "ONE" CRIME OR "TWO" CRIMES SEE. TRANSCRIPTS. 1207.) DEVOLD OF ANY RELEVANT EVIDENCE THAT the PROSECUTION. HAD ANY EVIDENCE ON the 1987, PRIOR CONVICTION OR ANY INFORMATION THAT the ALLEDGE CONVICTION. do. "EXIST" IN. 1987. SEE. EXHIBIT D. NUMBER. 1207. ON. PAGE 34 LINE. 1-17-28.)

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Petitioner Did INFACT objected To Defense. Counsel's. MC Gurk For Failing To Challenge. the Evidence ON. the 1987. prior CONviction. see. Exhibit C LINE. 1-28. on. page 33 on. Transcript. Number. 311.)

the Burden of proving. a Claim of Inadequate Trial ASSISTANCE IS ON the Petitioner. In people vs. Pope. 1979) 23 C. 3d 425.

Petitioner. MUST Show That (a) Trial Counsel. Failed To "ACT" IN (a) MANNER To Be Expected of (a) Reasonably competent Attorney ACTING (AS) (a) Diligent advocate AND (b) That Counsel's performance Resulted. IN (a) Challenged Withdrawal of (a) potentially meritorious Defense.

Counsel Fully Describe the Reasons. for ACTing or Failing To ACT IN the MANNER Complained.

Defense Counsel's Excuse For NOT Challenging. the Evidence ON. the. 1987. Allege. priors. Counsels Believe. That the Trial Judge. the Hon. Gail R. Feuer. of the Superior COURT. IN DEPART 113F Would Strike the Two. 1987. ADULT Robbery CONVICTION. Under. PENAL. Code. Sec. 1385 Romero:

Counsel's (MC Gurk.) Stated For the Record It's [AN] ISSUE For the SENTENCING. Judge. Judge. Feuer. Which I, Explained To. Mr. Willard. He's Eligible

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No matter what happens in this priors Trial. for Reseantencing the Judge made that Clear. see. Transcript. Number. 311- and. 312. on. Exhibit C. on. page 33.

Argument. I.

Counsel's Failure For Not Challenging Those priors Resulted in Depriving Pet- itioner. Due process. and Equal protect- ion. under. his 6th [and] 14th amend. That Fell Below [an] objective standard of professional conduct. under. Cal. Rule of Court. Rule. 3110.) (A) And Rule. 2-111. (A) 2.)

Citing Cooper VS. Fitzharris. (1978) 9th Cir. 586 F.2d 1325 1333.

When Claim of Ineffective assistan- ce. of Counsel's performance Resulted in (a) Challenged withdrawal of (a) potentially meritorious Defense.

petitioner has suffered Extreme Prejudice (as) a Result of Defense Counsel's McGurk. Deficiencies There is (a) Reasonable probability. But for Counsel's unprofessional Error's of the proceedings would have been Different??

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PAGE 13 CONTINUE;
HERE.

ARGUMENT. I. CONTINUING

THE PROSECUTION FAILED TO PROVE PETITIONER, 1987, ADULT PRIORS CONVICTIONS QUALIFIES, AS, PRIOR STRIKE'S OFFENSE. UNDER THE THREE STRIKE LAW. UNDER. PEN. CODE. SEC: 667. SUBD. d) AND 1170.12.

THE RECORD OR, TRANSCRIPT IN THIS CASE IS WHOLLY DEVOID OF ANY RELEVANT EVIDENCE THAT THE PROSECUTION. PROVE ANY ELEMENT OF (A) SENTENCE. ENHANCEMENT ON. THE, 1987, ADULT PRIOR'S CONVICTIONS. OR PROVE THAT THE PRIOR'S QUALIFIES AS (A) STRIKE OFFENSE, UNDER. THE THREE STRIKE LAW UNDER. PEN. CODE. SECTION 667. SUB d. D.) AND 1170.12.)

SEE, TRANSCRIPT. NUMBER. 1207, 1-17. AND LINE 28. ON. EXHIBIT D ON PAGE 34 CONCERNING THE, 1987, ADULT PRIORS CONVICTION (A) VIOLATION OF DUE PROCESS

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Memorandum of Points
And Authorities In Support
There of.

the due process Clause of the Fourteenth Amend. To the United States, And Federal Constitutions Requires the Prosecution To prove Each Element of (A) Sentence Enhancement Beyond (A) Reasonable Doubt.

Citing. In Re Winship. (1970) 397, U.S. 358.)

Also, Citing. Martin vs. Ohio. (1987) 480 U.S. 228, 234, 236.

People vs. Tenner. (1993, 6 Cal. 4th 559. 24 Cal. Rptr. 2d 840.

Evitts. vs Lucey. (1985, 469 US. 387-105 S.Ct. 830.
6th [An] 14th Amend:

quoting. Strickland vs. Washington. (1984, 466 U.S. AT 685, the Lower Federal Court And Many State Courts. overwhelmingly Have Recognized (An Right To Effective Assistance. of Counsel.

the Standard of Review for Determining Whether [An] Alleged Sentencing. Enhancement is Supported by Substantial Evidence is the Same Standard. Used For Substantive Counts.

After Viewing the Evidence In. the light Most Favorable To the Judgment.

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the Federal COURT. or Reviewing COURT MUST Determine Whether (A) RATIONAL Trier of FACT could Have FOUND that the prosecution SUSTAINed it's Burden of Proving Elements of the Sentence ENHANCEMENT Beyound (A) REASONABLE DOUBT"?

Citing. IN Re Winship. 1970, 397 U.S. 358. #321. UNITED States" under the WINSHIP., DECISION, It IS CLEAR THAT (A) State prisoner Who Alleges That the Evidence IN Support of His State CONVICTION CANNOT Be Fairly CHARACTERIZED (AS) SUFFICIENT To HAVE led (A) RATIONAL Trier of FACT To FIND GUILTY Beyound (A) REASONABLE DOUBT HAS stated (A) Federal CONSTITUTIONAL Claim:

> the Due process Clause of the Federal CONSTITUTION Prohibits the CRIMINAL CONVICTION of ANY person EXCEPT UPON proof of GUILT Beyond (A) REASONABLE DOUBT.

Citing. JACKSON VS. Virginia (1979, 443 U.S. 307, 318-319.

PETITIONER Hereby Motion this INDEPENDENT. 6th AND 14th Amend. Claims of Appellate ON DIRECT Appeal.

ARGUMENT. II.

PETITIONER. CONTENTIONS IS Appellate COUNSEL'S MS. ReNee Rich.)

see, NEXT PAGE

Did NOT "Raise" or. Argued ANY certified issue's, and or. Error's That was preserved. by Mr. Mc Gurk, Defense Counsel. Nor Did Appellate Counsel. Raised ANY Claims IN Appellant opening Brief, Appellate Counsel's Did Request for INDependent Review of the Record UNder., people VS. Wende., 1979, 25 Cal. 3d 436 the opinion From the Court of Appeals: Dated. July, 16, 2014. Affirming. the CONVICTION ON. Appendix. ≡. ON. page ≡.

Appellate Counsel's, knowing That there EXIST several State issues of Claims. and federal Claims from The TRANScript. To Raised IN the Brief. On March. 11, 2014. ON Direct Appeal:

Appellate Counsel Ms. Renee. Rich. Did INFACT Explain, To, Mr, Willard. IN written Document's Dated Jan, 16, 2012 ON. page. 4-5, and All their IN. That Counsel Had "Researched" several issue's Relating To the Jury INSTRUCTIONS IN Petitioner Case. That there was Some Error's IN the INSTRUCTIONS Given To the Jury. and That the Error's was SubstANTial ENough To Require. "Reversal" of petitioner CONVICTIONS

see. TRANSCRIPTS. Number. 220, Through. 225, AND Relevant Documents by Appellate Counsels Ms. Renee Rich. and the Date of Court TRANSCRIPTS. Dated. Jan. 18-19. May 24. 2011. ON. Exhibit, A ON. page 31

(Argument. I. Continuing;

Defense Counsel's. Mc Gurk: for Petitioner. As Counsel. During the year of 2010. Stated (A) Very Important Questions. for the Court. and Record on. Transcript, Number. 1206, and Number. 1207, and Number. 1206, Line. 12-24.) Dated. Sept. 25. 2013.) Line. 13, We Did Not Ask the Jury Whether It Was Insignificant or. Not. those Question. Above Concern the Jury Instruction That the Jury Did Not Received. and Defense. Counsel's Fail To Request Cal. Crim. Number. 316.) and 226.) the Court Refuse To Give Cal. Crim. Number. 3515.) After the Court Indicated It Would do So,

Petitioner's Fourteenth Amendment Due process Rights To (A) Fair Trial Was Violated Due To Improper Jury Voir Dire Procedure. and Restrictions:

the Trial Court Had (A) Sua Sponte. duty To Instruct the Jury on the principles, Element Charged of Crime However the Trial Court Failed to Instruct the Jury on the Elements Required To Support. (A) Conviction Based On Charged of Crime Number. 316. and 226.) Also. Number 3515.) those Instructional Error Was Allowed. for the Jury To Convicted Petitioner. Without proof on All Elements of Guilty Beyond. (A) Reasonable Doubt.

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see next page. 19.)

Argument. II.
CONTENTIONS CONTINUE
From page 17, LINE. 13,

Counsel HAVING Knowledge OF this, CrITICIAL ElementS.: Appellate COUNsels. Failure WAS THAT COUNSEL Did NOT RIAISed this EVIdence on DIVECT. IAppeal. In the opening Brief. (AS) To the ElementS.
See. page. 20.

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1.) Defense Counsel Failed To Challenge the Evidence On the 1987 Alledge Convictions That the Trial Court Found Them To Be True. See. Transcript. Number. 1207.) Line. 1-17. 28. On Exhibit D. On. page 34. See. Also. A Trans-Cribe. Copy by the Attorney General Document In Number 338. Line. 10-28.) Dated. Sept. 7/2012. On. Exhibit B. On. Page 32.

2.) Defense Counsel's Failed Against To obtain An Jury Instructions On An Crit-ical. Elements of the Charged Crime Number. 316.) And Number. 226.) Also. the Court Refuse To Give Cal. Crime Number. 3515.) See. Transcript. Number. 221-228. Line 15-19.) 221. Line. 24.) On. Exhibit A. On. page. 31.

3.) the prosecution Failed To Pro-ve. Petitioner. 1987. Adult prior Convictions Qualifies. As An prior Strike Sentence Enhancement. See. An Document by the Attorney General. Dated. Sept. 7-2012. Number. 338. Line. 10. 28.) and 339. Line. 21-28. And Transcripts. Number. 1207. Line. 1-17-28. On. Exhibit B. On. page 32. And Exh: D page 34. these issues. and "Elements" above Was Not Decided on the "merits". and Was Not ommitted.

For these Reasons It Can Not be Said That Renee Rich, Appellate Coun-sel's. Provided. petitioner. With Eff-ective. Assistance of Counsel on. Direct Appeal. As Guaranteed by the Sixth and Fourteenth Amendments To the United States. and federal Constitution and California Constitution Art I. Sec: 15.)

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CONTINUING From Page 13

4.) the Failure To RAISed ISSUE's OR, CLAIMS ON Direct APPEAL:

Citing. Delgado. VS. Lewis 9th Cir. 2000. 223 F. 3d 976 980. 82.

Judge. Fever. Abuse Her Discretion ON the 1987, Alleged prior CONVICTION: see. TRANSCRIPT. Number. 1207, LINE. 1-17-28. ON, EXHIBIT D. ON PAGE 34

the CLOSENESS OF the Two Alleged PRIORS CONVICTION IS AN FACTOR, A COURT MUST CONSIDER IN DETERMINING WHETHER TO, DISMISS. "ONE" In the EXERCISE OF It's DISCRETION. Citing. People VS. VARGAS. 2012, 206, CAL. APP. 4th 971. 142 CAL. RPTR. 3d 238.

PETITIONER WAS ENTITLED To CONSIDERATION, by the TRIAL COURT OF the CLOSENESS of the Two Alleged PRIORS IN DETERMINING WHETHER "ONE" OR "TWO" SHOULD, BE STRICKEN:

Two Alleged PRIORS [redacted] CONVICTIONS, With NO EVIDENCE ARISING OUT OF A SINGLE CASE IN, 1987, AS, these CIRCUMSTANCES, ARE SUBSTANTIALLY DIFFEREAT THAN those UNDER WHICH the COURT ORIGINALLY, CONSIDERED PETITIONER. ROMERO MOTION:

SEC: 654.) SUBD. A, PROVIDES IN PERTINENT PART AN, ACT OR OMISSION THAT IS PUNISHABLE, IN DIFFERENT WAYS by DIFFERENT PROVISION THAT PROVIDES for the longest POTENTIAL TERM OF IMPRISONMENT BUT IN [redacted] NO CASE SHALL

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the ACT or omission be punished under more THAN "ONE" provision. which Expressly, prohibits Separate PUNISHMENT For Two Crimes BASED ON the SAME ACT. BUT HAS Been Interpreted To Also. preclude. Multiple PUNISHMENT For Two or More Crimes occurring within the Same Course of CONDUCT. PURSUANT To (A) Single Intent.

See. Neal. VS. State of CAL. (1960) 55 CAL. 2d 11; 9 CAL. RPTr. 607.

Citing. People VS. VARGAS., 2012. 206. CAL. APP. 4th 971. 142 CAL. RPTr. 3d 238.

CONTINUE From page. ([redacted]) 21

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People vs. Smith. Feb. 24, 2012. B223181. Cal. App. 4th 2012 WL 593397. Div. 1. Of.

this Second Appellate District Found (A) Trial Court Abused it's Discretion In-Failing To Consider the Defendants Mental illness. and other factors When Deciding Defendants Romero Motion. Moreover In considering Appellants and petitioner Back Ground Chiaractor and prospects the Trial Court Did Not Give Due Consideration To, petitioner's Mental Health problems. See. Document. From. The opening Brief. Dated. March. 19, 2012. Also. See. Documents Number. 1206-1209. on. Exhibit D. on page 34

Appellate counsels ms. Renee Rich Failures Alone petitioner Relied upon Equal protection Guarantee of Const. Due process. Appellate Counsels Failed, To Acommodiate petitioner's Requests. For Issues To Be Raised Along With Failing To Request for Rehear-ing. on, Appeal.

See. Document by Renee Rich Appellate. Counsel. on. page. 1-5. Dated. 1-16-2012. And 10-3-2012. 1-2. on. Exhibit A on. page 31

CONCLUSION.

For the Fore Going Reason petitioner Repectfully Requests Review IN the [redacted] Superior Court. Review IS Required To Determine. If the Evidence IS SUFFICIENT To Support. Where the prosecution Failed To Prove. the Evidence ON the 1987, Adult Conviction That Qualifies, As, A Strike Sentence Enhancement, See. Transcript. Number. 1207, Line. 1-17-28.) ON. Exhibit D. ON. page 34

the Superior Court IN. Department 113th MUST GRANT Review To SETTle the QUESTION OF LAW Whether. A. Trial COURT Errs Prejudicially. by REFUSING To Dismissed prior Term ENHANCEMENTS UNder. Pen. Code. SEC. 1385. Romero.

For the Two 1987, prior CONVICTIONS petitioner Request That this COURT Review All the ISSUES RAISE. and or presented IN this petition ON Direct Appeal.

To Secure UNIFormity of the Decisional. LAW Addressing.

GRIFFIN VS. Illinois
351 U.S. 12.

Trial IS A. prerequisite To. A. DECISION ON the MERITS of AN Appeal.

Also. Citing. MARTIN VS. Ohio. 1987, 480 U.S. 228. 231. 236.

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Declaration of. Charles R. Willard
In support of petition.

I. Charles Willard. Declare:

1.) I am the petitioner in the case of the people vs. Charles R. Willard. Number. BIA362410.

I am over the age of 18 yrs.

2.) I am currently Representing Myself without the Aid of Counsel's

3.) petitioner Requests That this Court Take Judicial Notice of the Record on (A. 995. motion filed. May. 10. 2010. Lodged. with this Court In Case No. BIA362410. this motion is for Review and To Raised on appeal in this Act-ion. on. Exhibit E on. page 35. filed In. Dept. 123.

4.) petitioner is asking Respondent To Show Cause why petitioner is not Entitled To the Relief Sought In the petition.; and To Conduct an Evid-entiary. Hearing. Under. Rule. of. Cal. Rule. 4550(A)(1)(2)(3)(12) Also. 8.252. Subd. (A)(1)

To. answer the factual questio-ns. necessary To Determine the Merits and Claims asserted In this petition That the petitioner was Deprived of His constitutional. Right To Effective assistance of counsel.

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the CONSTITUTIONAL Claims CANNOT Be PRESENTed (AS) Strongly ON APPEAL UNless, Filed AND RAISED IN Superior COURT. AS. It IS HEREIN BECAUSE It's FACTUAL BASIS REST IN PART ON EVIDENCE CONTAINed. IN the Record.

It IS EQUALLY SETTled THAT JURY INSTRUCTIONS. THAT OMIT or MISDESCRIBE ELEMENTS OF the Charged OFFENSE THAT DEPRIVE PETITIONER OF His FEDERAL. AND STATE CONSTITUTIONAL RIGHTS To due process AND To (A) Jury TRAIL by ALLOWING For CONVICTION With PROOF To the JURY OF All OF the REQUIRED ELEMENTS BEYOND (A) REASONABLE DOUBT.

IN Appellate COUNSEL'S WRITTEN DOCUMENTS. RENEE RICH GAVE (A) BRIEF MENTION WHY COUNSEL'S REFUSE To RAISE ANY ISSUES. IN the opening BRIEF ON DIRECT APPEAL [redacted] IN [redacted], MARCH. 11. 2014. IN CASE NO: B250588. ON APPEAL NO: B1A362410. See. EXHIBIT A ON. PAGE 31 Dated. OCTOBER. 3. 2012. L. 18-23.)

See. ALSO. TRANSCRIPTS. Number. 338 LINE 10-28.) Number. 221. LINE. 23-28.) Number. 223 LINE. 11-20.) ON. EXHIBIT A ON. PAGE 31 AND ALSO. REVIEW. TRANSCRIPTS. NUMBER 1207.) LINE. 1-17-28.) ON. PAGE [redacted]34

(Petitioner Declaration, Continue:

the Evidence In the motion, the 995, Non-Statutory motion Should Have Been Raised In Appellate Brief. on. Direct Appeal, Dated. March. 19, 2012. And 3-11-2014 Reason It Was Substantial, Evidence, and Materiality of the Crime of Charged and How petitioner Was Erroneously Convicted In David ponce and Santos Hernandez Case During Trial, and Why "Relief" Is possible In this case for (A) New "Trial."

see, Exhibit E on, page 35 Concerning The 995. Non-Statutory motion, Dated. MAY. 10. 2010.

the Trial Court Finding on the Convictions. In David PONCE, And Santos Hernandez, Case MUST be Reversed." Due To Insufficient Evidence, and Materiality, the Trial Court Had (A) Sua-Sponte, duty To Instruct the Jury on the principles Element Charged of Crime However the Trial Court Failed To Instruct the Jury ON the Elements Required To Support (A) CONVICTION Biased ON Charged of Crime. Number. 316-226, and 3515.) this Instructional Error's Was Allowed For the Jury To Convicted petitioner.

see, Next page

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See, Transcript. Number. 1206.) Line. 1-3
5-13-19-28. Error's on. the Current
offenses the, 245.(A)(1) Conviction After
Trial. That the Error's Prejudiced petit-
ioner, Right To (A) Fair Trial. It is Clear
from the Record That Defense Cou-
nsel's, Mr. Mc Gurk. Did Intend Strategic-
ally, To Forego this Materiality. the Court
Ask Several Times To Mr. Mc Gurk. Is There
any objection To the Materiality on The
Jury's Instruction. Counsel's stated "NO" the
Trial Court Failed To Give Cal. Crim. NO: 316
limiting the Jury's Consideration of Petit-
ioner. Prior Convictions. Number. 316. Instru-
cts. the Jurors. That If they Find (A) Witness
Has Been Convicted of (A) Felony they may
Consider That Fact only (in) Evaluating
the Witness's Testimony. That the Fact of
(A) Conviction does Not Necessarily Dest-
roy, or Impair the Witness's Cre-
dibility. and Number. 226. Which Instructed
the Jurors That It may Consider Whether the
Witness Has Been Convicted of (A) Felony
In-Assessing the Credibility of the Wit-
ness; and Number. 3515.) the Court Failed
To Give [redacted] those Instruction for his Cli-
ent. As (A) Matter of Right To (A) Fair Trial
the Action of Defense Counsel's In this Case
offer Such Plausible Evidence Why the
Case on Which the Counsel's Circumstanc-
es. and Performance was Prejudical
To Petitioner.

[redacted] 28.

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CYCLED PAPER

See. Number 221 Line. 24-28.
ON. Exhibit A ON. page 31
of. Number 3515.

I. CHARLES R. Willard do. Declare Under PENALTY of perjury That the Forgoing is True, and correct. and That this Declaration WAS Executed AT California State prison Los Angeles County P.O. Box=4670. LANCASTER, CA 93539 2015

Dated. this 3/[redacted] day of 16 20[redacted].

By CHARLES R. Willard
C-36206 pro se
Seeking Review

PRINTED ON RECYCLED PAPER

ORIGINAL

MC–275

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes If yes, continue with number 13. ☐ No If no, skip to number 15.

13. a. (1) Name of court: _____

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result *(attach order or explain why unavailable):* _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result *(attach order or explain why unavailable):* _____

(5) Date of decision: _____

c. *For additional prior petitions, applications, or motions, provide the same information on a separate page.*

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

_____

_____

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

_____

_____

16. Are you presently represented by counsel? ☐ Yes ☒ No If yes, state the attorney's name and address, if known:

_____

_____

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes ☒ No If yes, explain:

_____

_____

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

PETITIONER'S MENTAL INCOMPETENCE IS IN PLACE SEE TRANSCRIPT NUMBER 1207, LINE 7-28, SEE BROWN VS. ROE. 9TH CIR. 2002 279 F.3d 742

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 3/16/2015

(SIGNATURE OF PETITIONER)

CHARLES R. WILLARD
PETITIONER, PRO SE

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APPENDIX (B, IS the OPINION FROM COURT OF APPEALS. DATED. 3-4-2015. (2) PAGES ON, PAGE 37.

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V.

Charles R. Willard #
P.O. Box 4670
Lancaster, CA 93539
FD3 193

In Pro Per

IN the Supreme Court of
the State of California

Charles Willard
Petitioner.

v.

(Warden), Respondent.

CASE No. B1A362410

REQUEST FOR RULING ON APPLICATION FOR WRITT OF HABEAS CORPUS.

I Charles Willard the petitioner in this matter filed in this Supreme Court pursuant to the California Rules of Court, rule 4.551(a)(3)(B)(i), requesting a ruling on the Petition for Writ of Habeas Corpus submitted to this Court on or about 3/16/2015

The petitioner has not received a ruling on the Application for Writ submitted to The Supreme Court for which this Request for Ruling is now being submitted. 4/12/2015

This Request is hereby submitted along with the attached NOTICE.

Attached is a copy of the submitted Writ of Habeas Corpus in accordance.

//

DATED: 4-12-2015

Respectfully Submitted,

Charles Willard/Petitioner
In Pro Per

RECEIVED
APR 16 2015
CLERK SUPREME COURT

Charles F. Willard
[redacted] P.O. Box=4670
Lancaster, CA 93539

In Pro Per

In the Supreme Court of the [redacted] State of California

Charles Willard [redacted],
Plaintiff.
v.
(WARDEN), Respondent.

CASE No. B1A362410

NOTICE FOR REQUEST FOR RULING.

Comes now the petitioner, Charles Willard [redacted], to this Supreme Court [redacted] to serve NOTICE on all parties of interest that on the next available court date, a REQUEST FOR RULING on an Application for a Writ of Habeas Corpus submitted to this Court for filing on or about [redacted] 3/16/15., will be duly requested from the presiding judge.

This Notice is hereby attached to the Request and submitted pursuant to the California Rules of Courts, rule 4.551(a)(3)(B)(i).

All parties are duly Notified by petitioner [redacted] Willard

//

DATED: 4/12/2015

Respectfully Submitted,

[redacted]

Charles Willard /PETITIONER
In Pro Per

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ.P.5; 28 U.S.C§ 1746)

C.C.P. Sec: 101.A. 2015S 28U.S.C. 1746

I, CHARLES R. WILLARD CASE NO. BIA362410, declare: I am over 18 years of age and a party to this action. I am a resident of CALIFORNIA STATE Prison, in the county of LANCASTER, State of California. My prison address is: P.O. BOX-4170 LANCASTER, CA 93539.

On APRIL 12/ 2015, I served the attached: AS FOLLOW DOCUMENT (IA) PETITION FOR WRIT OF HABEAS CORPUS.

TO: CLERK, OF THE CAL. SUPREME COURT. 350 MCALLISTER STREET, SAN FRANCISCO, CA. 94102-4797.

on the parties herein by placing true and correct copies there of, enclosed in a sealed envelope, with postage thereon fully paid, in the United State Mail in a deposit box so provided at the above-named correctional institution in which I am currently confined. The envelope was address as follows:

P.O. BOX-4670
LANCASTER, CA 93539

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed on 4/12/15 (Date)

(Declarant signature)

Original

ORIGINAL

S226093

SUPREME COURT
LODGED EXHIBITS

APR 27 2015

CONSIST OF TRANSCRIPTS OF COURT proceeding Concerning the JURY INSTRUCTIONS. AND INFORMATION RELEVANT DOCUMENTS FROM APPELLATE COUNSEL'S MS. RENEE RICH. DATED. JAN. 16. 2012. NUMBER. 1-6. DATED. JAN. 18-19. AND MAY. 24. 2011 DATED. SEPT. 21. 2012. DATED OCT. 3. 2012

NUMBER. 220 THROUGH (228.)

EXHIBIT COVER PAGE

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EXHIBIT

Description of this Exhibit: (A)

Number of pages to this Exhibit: 15 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

CHANGED TO HAVE THE CORRECT DATE, WHICH IS SEPTEMBER 21ST, 2009.

LET ME KNOW WHEN YOU'VE GONE THROUGH THEM.

(PAUSE IN PROCEEDINGS.)

MR. CANO: THEY APPEAR FINE TO ME.

THE COURT: OKAY. SO IT LOOKS LIKE COUNSEL HAVE HAD TIME TO REVIEW THEM.

MR. CANO, THEY'RE ACCEPTABLE TO YOU?

MR. CANO: YES.

THE COURT: MR. MC GURK?

MR. MC GURK: YES.

THE COURT: LET ME READ ON THE RECORD I WILL GIVE THE FOLLOWING INSTRUCTIONS: 200, 201, 202, 207, 220, 222, 223, 224, 225, 226, 250, 300, 301, 302, 318, 358, 370, 372, 875, 3470, 3471, 3472, 3474, 3550, 3577. I'LL MODIFY IT TO HAVE IT REFER TO ONE ALTERNATE JUROR. SO THAT'S ALTERNATE JUROR NUMBER 1. AND 3590.

AGAIN, TO CONFIRM WITH COUNSEL, THOSE ARE ACCEPTABLE AS INSTRUCTIONS TO READ TO THE JURY?

MR. CANO?

MR. CANO: YES.

THE COURT: AND MR. MC GURK?

MR. MC GURK: YES, YOUR HONOR.

THE COURT: OKAY.

ANYTHING ELSE WE NEED TO DO DURING OUR LUXURIOUS THREE MINUTES BEFORE THE JURY ARRIVES?

THE COURT: OKAY. THE ONLY OTHER ISSUE I WANT TO RAISE IS 2.25 IS CIRCUMSTANTIAL EVIDENCE, INTENT OR MENTAL STATE.

I THINK, MR. CANO, YOU HAD PROPOSED 2.24 AND 2.26. BECAUSE ASSAULT WITH A DEADLY WEAPON REQUIRES A SPECIFIC MENTAL STATE, EVEN THOUGH IT'S NOT A SPECIFIC INTENT CRIME, IT SEEMS TO ME THAT 2.25 WOULD BE APPROPRIATE.

MR. CANO: THE ONLY REASON I DIDN'T INCLUDE THAT IS THAT MY UNDERSTANDING IS THAT TYPICALLY UNDER THE NOTES YOU INCLUDE EITHER 2.24 OR 2.25, AND YOU INCLUDE 2.25 WHEN THAT'S THE ONLY THING RELIED ON BY CIRCUMSTANTIAL EVIDENCE. PERHAPS IT IS IN THIS CASE. I DON'T KNOW.

THE COURT: I THINK -- 2.25 AND 2.24 HAVE SOME OVERLAPPING LANGUAGE, BUT TO THE EXTENT THERE IS A REQUIREMENT TO PROVE MENTAL STATE, IT IS NOT COVERED BY 2.24 IN TERMS OF CIRCUMSTANTIAL EVIDENCE. SO I WOULD BE INCLINED TO GIVE BOTH. IS THERE ANY OBJECTION TO THAT?

MR. MC GURK: NO, YOUR HONOR.

THE COURT: MR. CANO?

MR. CANO: NO, YOUR HONOR.

THE COURT: AND GOING INTO THE 3500 SERIES, WE'VE GONE INTO THE FACT THAT THERE WILL NOT BE A LESSER INCLUDED. SO I WILL NOT GIVE 3517. I WILL GIVE 3515. AND THEN THE REMAINING INSTRUCTIONS ARE THE STANDARD INSTRUCTIONS.

LET ME CHECK ONE MORE THING BECAUSE I THINK WHAT I'LL DO IS HAVE THEM READY FOR YOU AT 1:30, BUT IT'S

FORCE."

ANY OBJECTION TO THE COURT GIVING 3472?

MR. MC GURK: NO, YOUR HONOR.

MR. CANO: NO.

THE COURT: ALL RIGHT. AND 3474 CONCERNS WHETHER THE DANGER NO LONGER EXISTS. IT READS, "THE RIGHT TO USE FORCE IN SELF-DEFENSE CONTINUES ONLY AS LONG AS THE DANGER EXISTS OR REASONABLY APPEARS TO EXIST." THAT APPEARS APPLICABLE.

ANY OBJECTION TO GIVING 3474?

MR. CANO: NO.

MR. MC GURK: NO, YOUR HONOR.

MR. CANO: AND THERE WAS ALSO 3471; IS THAT RIGHT?

THE COURT: 3471 THERE WAS NOT AN OBJECTION TO.

MR. CANO: OKAY.

THE COURT: SO IN TOTAL IT WOULD BE 3470, WHICH IS THE BASIC SELF-DEFENSE INSTRUCTION; 3471, WHICH IS MUTUAL COMBAT; 3472, MAY NOT BE CONTRIVED; AND 3474, DANGER NO LONGER EXISTS. AND THEN THE OTHER ONES WERE NOT APPLICABLE.

MR. MC GURK, ARE THERE ANY OTHER ON THIS LIST?

MR. MC GURK: I DON'T BELIEVE SO, YOUR HONOR.

THE COURT: OKAY. LET ME JUST COMPARE IT TO MY LIST FOR A SECOND AND SEE IF THERE'S ANYTHING ELSE TO DISCUSS, AND THEN I'LL HAVE AN ACTUAL LIST FOR COUNSEL TO REVIEW AT 1:30.

(PAUSE IN PROCEEDINGS.)

HELPFUL TO GO OVER THEM NOW.

WAS THERE OPINION TESTIMONY OF A LAY WITNESS?

MR. CANO: DISTANCE. THERE WAS DISTANCES FROM SEVERAL WITNESSES. I DON'T KNOW IF THAT -- OR I GUESS THE COURT REALLY -- IT SEEMED TO ME THAT, YOU KNOW, THEY'RE SAYING THAT -- YOU KNOW, IF THE PERSON IS SO MANY FEET AWAY FROM THEM, THAT'S KIND OF LAY PERSON TESTIMONY. I DON'T KNOW IF IT'S AN IMPORTANT FACT IN THE CASE, BUT TECHNICALLY I THINK IT WOULD JUSTIFY THE INSTRUCTION.

THE COURT: I DON'T THINK THAT REALLY IS OPINION. I THINK THAT'S A STATEMENT OF FACT. AND DURING THE TRIAL -- I CAN USE THE FACT THAT WE HAVE A CARD THAT SAYS HOW FAR AWAY THAT WAS, BUT I DON'T THINK THAT FALLS UNDER AN OPINION BY A LAY WITNESS.

MR. CANO: OKAY.

MR. MC GURK: I DON'T REALLY HAVE A STRONG FEELING ONE WAY OR THE OTHER.

MR. CANO: I DON'T EITHER.

THE COURT: I'M INCLINED NOT TO GIVE IT BECAUSE IT CAN BE CONFUSING TO THE JURY BECAUSE IT REALLY WAS NOT AN OPINION. USUALLY THAT'S MORE OF AN EXPERT TYPE OF AN OPINION GIVEN BY A LAY WITNESS.

MR. CANO: OKAY.

THE COURT: SO I'M NOT GOING TO GIVE 333.

EVERYTHING ELSE IS FAIRLY STANDARD.

ANYTHING ELSE, MR. MC GURK, ON THE LIST THAT YOU THINK EITHER WAS NOT INCLUDED OR SHOULD NOT BE

INCLUDED?

MR. MC GURK: NO, YOUR HONOR.

THE COURT: OKAY. SO I THINK AT THIS TIME THE EASIEST THING IS TO TAKE THE BREAK FOR LUNCH.

ANY OTHER ISSUES WE NEED TO DISCUSS BEFORE WE COME BACK TO JURY INSTRUCTIONS?

MR. MC GURK: I DON'T BELIEVE SO, YOUR HONOR.

MR. CANO: NO. THERE'S THAT ISSUE OF THE PRIOR, BUT I GUESS WE CAN DO THAT ONCE THEY START DELIBERATING.

THE COURT: IN TERMS -- WHICH ISSUE?

MR. CANO: THE ISSUE OF ADDING THE PRIOR STRIKE TO THE INFORMATION.

THE COURT: ACTUALLY, SINCE WE HAVE A FEW MINUTES, WHY DON'T WE TAKE CARE OF THAT NOW.

ALL RIGHT. SO THE CURRENT INFORMATION INCLUDES A NUMBER OF PRIOR OFFENSES, MR. CANO.

MR. CANO: YES.

THE COURT: HOW DID YOU INTEND TO AMEND IT?

MR. CANO: TO ADD -- THE FIRST OF THE THREE STRIKE PRIORS STARTS WITH A63. I WOULD SIMPLY ASK TO ADD THAT EXACTLY AS THE FOURTH PRIOR UNDER THAT CODE SECTION AS WELL.

THE COURT: AND IT'S ALSO FOR PENAL CODE 211?

MR. CANO: YES. SAME CASE NUMBER, SAME CHARGE, SAME CONVICTION DATE.

MR. MC GURK: THAT WOULD BE OVER DEFENSE OBJECTION, YOUR HONOR, BASED ON THE FACT IT'S UNTIMELY. SUBMITTED.

THE COURT: ALL RIGHT. I AM GOING TO GRANT THE

MOTION TO AMEND THE INFORMATION IN LIGHT OF THE FACT THAT THE INFORMATION INCLUDES THE ALLEGATION AS TO THE SAME CASE NUMBER AND CHARGE BUT LEFT OUT ONE CHARGE AS TO WHICH MR. WILLARD WAS ALLEGEDLY CONVICTED. I THINK SUFFICIENT NOTICE HAS BEEN GIVEN TO DEFENSE BECAUSE IT'S THE SAME CASE THAT WAS ALLEGED AS TO HIM.

SO I AM GOING TO GRANT THE MOTION TO AMEND TO ADD AN ALLEGED PRIOR STRIKE, AND THAT WOULD BE CHARGED, I ASSUME, BOTH ON PAGE 3 AS AN ADDITIONAL STRIKE PRIOR AND ALSO AS AN ADDITIONAL CONVICTION OF A SERIOUS FELONY? IN BOTH PLACES, MR. CANO?

MR. CANO: IT'S ACTUALLY MY UNDERSTANDING THAT -- WELL, I GUESS TECHNICALLY, YES, IT WOULD BE. I'M NOT SURE IF WE WOULD GET ANY ADDITIONAL TIME OFF OF THAT SINCE IT'S THE SAME PRISON COMMITMENT, BUT I'D ASK --

THE COURT: WELL, IF YOU'RE SEEKING TO AMEND ONLY THE STRIKE PARAGRAPH, THAT'S FINE. I JUST WANT TO BE CLEAR ABOUT WHAT YOU'RE SEEKING.

MR. CANO: YEAH. I GUESS IN AN ABUNDANCE OF CAUTION I MIGHT AS WELL SEEK TO AMEND BOTH, AND WE'LL DEAL WITH THE SENTENCING ISSUE IF IT BECOMES AN ISSUE. SO BOTH THE STRIKE SECTION AND THE 667(A) SECTION.

THE COURT: ALL RIGHT. SO I AM GOING TO GRANT IT AS TO BOTH. I THINK YOU ARE CORRECT, IT WOULD NOT MAKE A DIFFERENCE IN TERMS OF TIME AS TO THE SECOND, BUT SINCE IT IS THE SAME CONVICTION DATE, IT WOULD MAKE SENSE TO HAVE IT LISTED IN BOTH, WHICH IS A CONVICTION DATE OF APRIL 28TH, 1987. I'M GOING TO AMEND IT BY INTERLINEATION. AND

THEN TECHNICALLY MR. WILLARD NEEDS TO BE ARRAIGNED ON THE ADDITIONAL ALLEGATION.

DO YOU WAIVE FORMAL READING OF THE ALLEGATION AND DENY THE ALLEGATION ON HIS BEHALF?

MR. MC GURK: YES, YOUR HONOR.

THE COURT: OKAY. SO IT WILL BE AMENDED IN THAT MANNER.

MR. CANO: AND WHEN THE -- WHEN THE JURY DOES GET THE CASE, I'LL -- BEFORE WE LEAVE, I'LL BE ASKING THE COURT AND COUNSEL AS TO WHAT WE'RE GOING TO DO WITH THE PRIORS ON THE CASE. SO JUST -- IT'S IN ANTICIPATION OF THAT. I JUST WANTED TO MENTION THAT.

MR. MC GURK: I'LL SPEAK TO MR. WILLARD ABOUT THAT.

THE COURT: ALL RIGHT. SO THAT'S HELPFUL. AND THE KEY ISSUE WOULD BE IF THE JURY WERE TO RETURN A GUILTY VERDICT -- OBVIOUSLY, SITTING HERE AT THIS POINT WE DON'T KNOW WHAT THEY'RE GOING TO DO, BUT IT'S HELPFUL IN ADVANCE TO HAVE THAT CONVERSATION AND TO LET THE COURT KNOW WHETHER MR. WILLARD WILL BE SEEKING A JURY TRIAL AS TO THE PRIORS, BECAUSE IF SO, WE NEED TO BE PREPARED TO KNOW WHETHER WE'RE KEEPING THE JURY FURTHER.

MR. MC GURK: ABSOLUTELY. THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. VERY WELL. SO WITH THAT WE ARE ADJOURNED UNTIL 1:30. I'LL HAVE A DRAFT FOR COUNSEL RIGHT AT 1:30 OF THE PROPOSED JURY INSTRUCTIONS.

WE ARE IN RECESS.

MR. CANO: THANK YOU.

//

RENEE RICH
ATTORNEY AT LAW
P.O. Box 1018, Seal Beach, California 90740
Telephone: (562) 594-4901

January 16, 2012

Mr. Charles R. Willard, BK#2916876
Terminal Annex
P.O. Box 86164
Los Angeles, CA 90086

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
Re: Your appeal - Court of Appeal Case No. B233492

Dear Mr. Willard:

I received your letters dated December 29, 2011 and January 9, 2012. On January 3, 2012, I contacted Mr. Jeffrey Price and relayed to him your wish to return to Calipatria. He indicated that you were no longer needed as a witness in his criminal case and that he would contact the court and request your transfer.

Enclosed you will find a copy of an extension request I filed in your case before the Court of Appeal. An extension of time is necessary as we are still waiting on the trial judge to issue a ruling on our motion to correct your custody credits. We need to wait on the judge's decision because if the trial judge does not correctly calculate your custody credits, we can then raise the issue in our opening brief before the Court of Appeal.

I have been preparing our opening brief. In our opening brief, we will argue that the evidence was insufficient to establish that your prior juvenile adjudication was a strike. In order to use a prior juvenile adjudication as a strike, the prosecution must prove that you were at least 16 years old at the time you committed the offense. The evidence submitted by the prosecution at the hearing on your prior convictions did not establish that you were 16 years old when you committed the robbery. If the Court of Appeal agrees with our argument, the appellate court will reverse the true finding on this strike. We will ask the Court of Appeal to send the case back to the trial court for further proceedings and for the trial court to reconsider your sentence. You will not get a new trial on the assault charges. If the Court of Appeal sends the case back for further proceedings, it will be to give the District Attorney an opportunity to prove your prior juvenile adjudication is a strike. It seems given the age of this prior, the District Attorney may not be able to do so. Unfortunately, even if the District Attorney can not prove your juvenile prior was a strike, this does not guarantee your sentence will be reduced. The trial court also found you had two strikes for robbery convictions in 1987. The prosecution presented substantial evidence to prove that these two prior convictions were strikes. This means that even if we are able to reverse the finding that your prior juvenile adjudication is a strike, your sentence may not change.

In your letters to me, you have explained that you do not believe your prior juvenile adjudication can be used as a strike because you were not given a jury trial during the juvenile court proceedings. Unfortunately, the California Supreme Court has rejected this argument. In *People v. Nguyen* (2009) 46 Cal.4th 1007, the California Supreme Court held that non-jury juvenile adjudications can be used as strikes to enhance a subsequent adult sentence. Thus, this does not present a viable argument for your appeal.

I also want to discuss with you other issues you have mentioned in your letters to me. After looking at these issues, I have concluded that they do not present arguable issues for your appeal. One of your main concerns was that you feel your trial attorney, Mr. Kevin McGurk, did not adequately represent you at trial. You complained that Mr. McGurk did not call the bus driver or Deputy Arguello to testify as defense witnesses. You also felt that he refused to rebut any information presented by the prosecution during your trial. I evaluated your complaints about your trial attorney to determine if we have a winning argument that you did not receive effective assistance of counsel and that your convictions should be reversed. To prevail on a claim that counsel provided ineffective assistance, an appellant must satisfy two prongs. First, an appellant must show that counsel's performance was deficient, meaning that counsel failed to perform as a reasonably competent attorney. Second, an appellant must prove that the deficient performance prejudiced his defense -- meaning that an appellant must show that, but for counsel's unprofessional errors, the result of the trial would have been different. (*Strickland v. Washington* (1984) 466 U.S. 668, 686 [104 S.Ct. 2052, 80 L.Ed.2d 674].) According to case law on the first prong, there is a strong presumption that an attorney's conduct falls within the range of reasonable professional assistance. Courts will defer to certain decisions made by defense attorneys which are considered "tactical decisions" or trial strategy. This means that appellate courts give a great deal of deference to the decisions of trial attorneys in how to present a case, including which witnesses to call.

I asked Mr. McGurk why he did not call the bus driver as a witness at trial. He explained he did not call the bus driver, Ms. Lopez, because he did not believe her testimony would have been helpful for your defense. As part of the investigation, Ms. Lopez made a statement and prepared a report for the Metropolitan Transportation Authority, which defense counsel reviewed. Based on her report, counsel did not believe she would provide testimony that would have supported your defense. I understand you wanted Deputy Arguello to testify because he told you that he had reviewed the video and told you that it appeared you were not the aggressor but were defending yourself. Deputy Arguello's opinion of what the video showed would not have been admissible at trial. The jury was able to review the videotape themselves and determine this issue. The court would not have permitted the deputy's opinion testimony. Mr. McGurk's explanation as to why he did not call these individuals as defense witnesses was reasonable given the facts of your case. There is a strong presumption that an attorney's conduct falls within the range of reasonable professional assistance, and I do not believe we could overcome this presumption here. His decision to not call these witnesses would be considered a tactical decision. Because he had a reasonable explanation

as to why he did not call these witnesses, the appellate court would not find his performance was deficient in this regard. Thus, I do not believe we could prove you received ineffective assistance of counsel.

Nor could we establish ineffective assistance of counsel based on your complaint that trial counsel did not rebut the prosecution's evidence. The record of the trial proceedings shows that Mr. McGurk cross-examined the prosecution's witnesses. Also your testimony was presented in the defense case. In this closing argument, counsel argued the great bodily injury enhancement was not proven and the jury agreed. He also argued there was no assault against Ponce and that you used self-defense against Hernandez. It is not clear exactly what else you expected counsel to do at trial that he did not.

You also complained that trial counsel McGurk did not allow you to participate in jury selection. Unfortunately, this does not constitute ineffective assistance of counsel. The court feels that jury selection is a matter within the purview of trial attorneys, and the court will defer to defense counsel's decisions on keeping or removing prospective jurors as part of an attorney's trial strategy.

I understand that you feel you were wrongly convicted of the charges of assault with a deadly weapon and that the witnesses Hernandez and Ponce committed perjury at trial. As I explained before, an appeal is not a new trial. In an appeal, the Court of Appeal reviews the trial court proceedings for legal error; it does not reevaluate the evidence. At your trial, the jury heard testimony from the prosecution's witnesses and the jury heard your testimony of what happened. More importantly, the jury saw the video of the incident. The jury believed the prosecution's witnesses, but did not find the serious bodily injury enhancement true. The Court of Appeal will not reject Hernandez and Ponce's testimony and reverse your conviction because of some inconsistencies. Established California case law provides that it is the duty of the jury and not the Court of Appeal to weigh the evidence, determine the credibility of the witnesses and resolve any conflicts or inconsistencies in the testimony. (*People v. Jones* (1990) 51 Cal.3d 294, 314; *People v. Barnes* (1986) 42 Cal.3d 284, 303; *People v. Ozene* (1972) 27 Cal.App.3d 905, 910.) Thus, if the witness is believed by the jury, the Court of Appeal will not reverse the jury's credibility decision. We would not be able to convince the Court of Appeal to reject the testimony of Hernandez and Ponce and reverse your convictions based on inconsistencies in their testimony.

Another issue you wrote about was the court's denial of your section 995 motion. To prevail on appeal from a denial of a section 995 motion, a defendant must establish not only that the denial of his motion was erroneous, but that he was prejudiced by such error. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 140.) Prejudice cannot be established where a jury finds a defendant guilty of the charge and the prosecution presented sufficient evidence at trial to support it. (*People v. Crittenden* (1994) 9 Cal.4th 83, 137.) Thus, we cannot establish in the denial of your section 995 motion was prejudicial.

You also made two *Marsden* motions to have different public defenders relieved from your case and the court denied both. A denial of a *Marsden* motion is reviewed for an abuse of discretion. (*People v. Berryman* (1993) 6 Cal.4th 1048, 1070.) Denial of a *Marsden* motion is not an abuse of discretion unless the defendant has shown that a failure to replace the appointed attorney would substantially impair the defendant's right to assistance of counsel. (*People v. Webster* (1991) 54 Cal.3d 411, 435.)

In your first *Marsden* motion, you said that your attorney misled you on some issues, did not visit you at county jail, had not filed a subpoena duces tecum for Hernandez's medical records, did not get the videotape from the bus showing self-defense, and had not postponed the preliminary hearing, as you requested, to allow Deputy Arguello to testify. Trial counsel explained she had requested the videotape from the bus, had subpoenaed Hernandez's medical records, and had talked to you about the case at length. She denied agreeing to postpone the preliminary hearing. She also stated that she had asked you to sign a medical release form, which you refused to do and that you had stopped talking to her. Although the court found you and your counsel were having difficulty communicating, the court denied the *Marsden* motion. Based on the record, we would not be able to convince the Court of Appeal that the judge abused his discretion in denying your motion.

In your second *Marsden* motion, you complained that Mr. McGurk had not subpoenaed the bus driver or Deputy Arguello as witnesses, had not filed a motion for an expert to enhance the video footage, failed to interview the key prosecution witnesses, and had not discussed the defense case with you. Mr. McGurk said he had subpoenaed the witnesses, had gone over the possible defenses with you several times, and that both of the prosecution's witnesses had been interviewed. The court denied this motion also. Again, based on the record, we would not be able to convince the Court of Appeal that the failure to replace Mr. McGurk substantially impaired your right to effective assistance of counsel.

During trial, the prosecution moved to amend the information to add another strike prior, after realizing that one strike allegation in the information involved two counts of robbery in 1987. Such an amendment is allowed. Prior conviction enhancements may be added to the charges any time prior to the discharge of the jury. (*People v. Valladoli* (1996) 13 Cal.4th 590 [Pen. Code, § 969(a) permits the prosecution to amend the information to allege a prior conviction after the verdict where the jury has not been discharged].) Additionally, there was no notice problem with the amendment as the prosecution had alleged a prior strike from the same 1987 case. (*People v. Sandoval* (2006) 140 Cal.App.4th 111, 134 [oral amendment alleging prior strike upheld as defendant had reasonable notice of prior strike allegation and was not prejudiced].)

Additionally, I researched several issues concerning the jury instructions in your case. In order to have any hope of success on appeal on these issues, we must show not only that there was some error in the instructions given the jury, but also that the error was substantial

enough to require reversal of your conviction - that the error prejudiced your right to a fair trial. First, the trial court failed to give CALCRIM No. 316, limiting the jury's consideration of your prior convictions (your admission during your testimony that you had two prior theft-related felony convictions). CALCRIM No. 316 instructs the jurors that if they find a witness has been convicted of a felony, they may consider that fact only in evaluating the witness's testimony, that the fact of a conviction does not necessarily destroy or impair the witness's credibility, and that it is up to them to decide the weight of the fact and whether it makes the witness less believable. The court does not have to automatically give this instruction, but that it must be given upon request. (*People v. Kendrick* (1989) 211 Cal.App.3d 1273, 1278; *People v. Hernandez* (2004) 33 Cal.4th 1040, 1051-1052.) There is no indication in the record that your trial counsel requested CALCRIM No. 316. I do not believe an argument that defense counsel rendered ineffective assistance in failing to request the court instruct with CALCRIM No. 316 has any hope of success on appeal (or in habeas). The trial court gave CALCRIM No. 226, which instructed the jury that it may consider whether the witness has been convicted of a felony in assessing the credibility of the witness. (CT 129-130.) The prosecutor did not reference your prior convictions in his closing argument. Defense counsel did, as part of his argument that you were honest and forthright in your testimony. (2RT 264.) It is not reasonably probable that, but for the failure to request CALCRIM No. 226, the result of the proceedings would have been more favorable to you.

During the discussions on jury instructions, the court indicated to counsel that it would give CALCRIM No. 3515. (2RT 221.) However, the court failed to give this instruction. CALCRIM No. 3515 informs the jurors that each count is a separate crime and that they must consider each count separately and return a separate verdict for each count. The court should give this instruction if requested, but the court does not have a sua sponte duty to give the instruction. (See also *People v. Beagle* (1972) 6 Cal.3d 441, 456 ["An instruction that the jury must decide each count separately on the evidence and law applicable thereto, uninfluenced by their verdict on any other count, need not be given in the absence of a request therefor"], overruled on other grounds in *People v. Castro* (1985) 38 Cal.3d 301.) Although it was error for the court to fail to give CALCRIM No. 3515, after the court indicated it would do so, the error is harmless. The jury was given separate verdict forms for the two counts, and it was clear from the verdict forms that the each count concerned a separate victim.

I also evaluated the potential argument that the court should have dismissed one of your prior strike convictions. I know you have not suffered a strike conviction in a number of years, but there is no "washout" period for prior strike convictions. Convictions which are 20 or 30 years old or more can be used as strikes. The reasons the trial court gave for denying the motion to strike your prior conviction were valid. The trial court has a lot of leeway in deciding whether to strike a prior conviction, and the trial court's decision to not strike a prior conviction is reviewed by the Court of Appeal for an abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 374.) The Court of Appeal will not find that the

trial court abused its discretion unless "its decision is so irrational or arbitrary that no reasonable person could agree with it." (Id. at p. 377.) The Court of Appeal must find that you are outside the spirit of the Three Strikes law. (*People v. Williams* (1998) 17 Cal.4th 148, 161.) Given your criminal record, the appellate court is not going to find that the trial court abused its discretion in failing to strike one of your prior strike convictions.

I understand that you may be unhappy with my evaluation of these issues. I have made these determinations based on my training and experience as an appellate attorney for many years. After the appeal has been decided, you will be able to present any of these issues in a petition for writ of habeas corpus, if you wish. After the appeal is complete, I will send you information on how to file a petition for writ of habeas corpus.

After I receive the trial court's ruling on our motion to correct your custody credits, I will file our opening brief. I will send you a copy of the brief, as well as the court's ruling on our custody credits motion.

Again, you should write to me if you have any questions or concerns about your appeal.

Very truly yours,

Renee Rich
Attorney at Law

Enclosure

RENEE RICH
ATTORNEY AT LAW
P.O. Box 1018, Seal Beach, California 90740
Telephone: (562) 594-4901

October 3, 2012

Mr. Charles R. Willard, C36206
CAL SP
P.O. Box 5005
Calipatria, CA 92233

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
Re: Your appeal - Court of Appeal Case No. B233492

Dear Mr. Willard:

I received your letter sent on September 21, 2012. It is possible that your sentence will be reduced if the Court of Appeal agrees with our argument and finds the prosecution failed to prove your juvenile adjudication was a strike and remands your case back to the trial court for further proceedings. If the case returns to the trial court, the prosecution will have another opportunity to prove your juvenile matter is a strike. As I have explained before, it seems unlikely the District Attorney will be able to make the necessary showing, given the age of your juvenile case and that the juvenile court file has been destroyed. If, upon remand, the prosecution is not able to prove the juvenile adjudication is a strike, your attorney can make another *Romero* motion, asking the trial judge to dismiss one of your remaining strikes. As I argued in our brief, there are several things the judge should take into consideration in deciding whether to dismiss one of your strikes, reasons that support dismissing one of the strikes. If the judge does so, then your sentence would be reduced. The Court of Appeal cannot change your sentence. The matter has to return to the trial court for further proceedings. It is possible that at the end of those proceedings, the trial judge will reduce your sentence.

She Lied about the Robbery Because Counsel did not Challenge the Robbery the 1987

In your letter you complain that I did not challenge your other strike convictions. Prior to filing our brief, I reviewed the evidence presented by the prosecution to prove that you were convicted of two counts of robbery in 1987. The prosecution presented sufficient evidence to prove these two convictions were strikes. Thus, there were no grounds in the appellate record to challenge your two other strikes.

Robbery

If

You also complain in your letter that I failed to argue before the Court of Appeal that you were denied a fair trial because the judge did not give CALCRIM No. 316. I explained in my letter on January 16 (which you have), why I did not raise this issue.

In your letter, you also accuse me of lying to you about the 995 motion and the *Marsden* motion. I am not sure why you believe I lied to you. I explained to you in my letter on January 16, why we would not be challenging on appeal the denial of your 995 motion or *Marsden* hearings. I understand you are unhappy with my evaluation of these issues and decision that they did not offer you any hope of success on appeal. I made those determinations based on my training and experience as an appellate attorney for many years. Once the Court of Appeal issues its decision in your case, you will be able to file a petition for writ of habeas corpus on your own and present any of these issues you want. After the appeal is complete, I will send you all of the transcripts from your trial proceedings and information on how to file a petition for writ of habeas corpus.

As you requested, I am returning your letter to you. I am not working with the Attorney General against you. Because we have a sound argument, the Attorney General agreed with us that the evidence was insufficient to prove your prior juvenile adjudication was a strike. If the Court of Appeal sends the case back to the trial court, you have a chance at a reduced sentence.

The Court of Appeal has placed your case on its calendar for November 1 (calendar notice enclosed). Because the Attorney General agreed with our argument in our brief, I have decided to not request oral argument. I do not believe oral argument would not contribute to the court's understanding of the issues in your appeal because the issues have been fully discussed by both parties in the written briefs. The Court of Appeal will issue its written decision after November 1. It often takes several weeks, or even months, for the court to issue its decision. I will send you a copy of the opinion as soon as I receive it from the court. In the meantime, please write to me if you have any questions or concerns about your appeal.

Very truly yours,

Renee Rich
Attorney at Law

Enclosures

ORIGINAL COPY

CONSIST OF TRANSCRIPTS OF COURT PROCEEDING.

NUMBER. 337 3810.

ALSO, DOCUMENT FROM THE ATTORNEY GENERAL, OFFICE DATED SEPT. 7. 2012

EXHIBIT COVER PAGE

32
EXHIBIT

Description of this Exhibit: (B)

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 Supreme Court
- ☐ Grand Jury

statement of facts is unnecessary to the issue raised on appeal, and it is therefore omitted.

ARGUMENT

IT APPEARS THE MATTER SHOULD BE REMANDED BECAUSE THE EVIDENCE DID NOT DISCLOSE APPELLANT'S AGE AT THE TIME OF HIS PRIOR JUVENILE OFFENSE

Appellant's sole claim on appeal is that the prosecution failed to prove appellant was at least 16 years old at the time his juvenile offense was committed, as required to use the offense as a prior strike conviction. (AOB 7-14.) It appears appellant is correct.

A. Relevant Proceedings Below

After the jury found appellant guilty of the substantive charge, the trial court held a bifurcated hearing on appellant's prior convictions. The prosecution introduced records from appellant's 1978 juvenile adjudication for robbery and driving a vehicle without consent. (Supp. CT 2, 24-25, 50-51, 59-60.) The prosecution also introduced evidence of appellant's two adult robbery convictions from 1987. (Supp. CT 16.) Appellant did not challenge the evidence supporting those convictions, and the trial court found them true. (2RT 338-339.)

The admitted evidence showed appellant's date of birth was October 1, 1960. (Supp. CT 2.) One document showed the date of appellant's arrest on the prior juvenile offense was February 22, 1978. (Supp. CT 24-25.) Two documents indicated the date appellant was received at "SRCC" was July 13, 1978. (Supp. CT 2, 60.) Other documents showed the dates of appellant's confinement to the Department of the Youth Authority for the juvenile adjudication was from June 19, 1978 to October 15, 1981. (Supp. CT 59-60.) On their face, none of the admitted documents appear to indicate the date of the offense.

REFERENCED, 36206, AND THAT'S THE SAME NUMBER THAT WE HAVE FROM ALL THE OTHER DOCUMENTS, INCLUDING THE ONES WITH PHOTOGRAPHS AND FINGERPRINTS.

THE COURT: OKAY. I WANT TO LOOK AT THESE MORE CLOSELY, SO I WILL NEED TO TAKE A SHORT BREAK.

BUT LET ME INQUIRE, MR. MC GURK, IS THERE ANY ADDITIONAL EVIDENCE THAT THE DEFENSE WISHES TO PRESENT TO THE COURT?

MR. MC GURK: NO, YOUR HONOR. THANK YOU.

THE COURT: OKAY.

MR. CANO: AND, YOUR HONOR, FOR THE RECORD, AND THIS CAME OUT OF THE TESTIMONY, REGARDING THE STRIKE PRIOR FROM 1978, THE CASE NUMBER IS ACTUALLY J250484, NOT Y021972. SO I'D ASK THE COURT TO INTERLINEATE THAT CHANGE.

THE COURT: OKAY. AND I HAVE THAT FROM THE TESTIMONY. J250484?

MR. CANO: YES.

THE COURT: AND ALSO, THE CONVICTION DATES APPEAR TO BE INCORRECT. I HAVE A CONVICTION DATE FROM THE TESTIMONY JUNE 19, 1978.

MR. CANO: YEAH. I'M....

THE COURT: DO YOU KNOW WHERE YOUR CONVICTION DATES CAME FROM?

MR. CANO: I DON'T KNOW IF THESE WERE SENTENCING DATES. I MEAN, IF THERE'S SOME DISTINCTION BETWEEN -- IT SEEMS LIKE THESE DATES, FOR WHATEVER REASON, APPEAR TO BE TRAILING ABOUT A MONTH BEHIND.

THE COURT: ALL RIGHT. WELL, FIRST OF ALL, THERE IS A MOTION TO AMEND THE INFORMATION BY INTERLINEATION TO HAVE THE CORRECT CASE NUMBER FOR THE 1978 CONVICTION.

ANY OBJECTION?

MR. MC GURK: NO, YOUR HONOR.

THE COURT: SO THE CORRECT CASE NUMBER, J250484, IS SUBSTITUTED.

JUST SO I UNDERSTAND, MR. MC GURK, YOU RAISED AN ISSUE REGARDING THE 1981 CONVICTION AND WITH RESPECT TO THE OTHER ALLEGED PRIORS, AND THAT INCLUDES BA160602 AND BA295169 AND A635459 AND A628204, AS WELL AS J250484. I THINK THAT COVERS '78?

MR. CANO: YES, YOUR HONOR.

THE COURT: -- ALL OF THEM.

ALL RIGHT. WITH RESPECT TO ANY OF THOSE, IS THERE ANY ARGUMENT THAT THESE ARE NOT PRIOR CONVICTIONS, AND WITH RESPECT TO THREE OF THEM, PRIOR STRIKE CONVICTIONS, THAT THEY ARE NOT -- FOR STARTERS, THEY ARE NOT PRIOR CONVICTIONS OF MR. WILLARD? IS THERE ANY ARGUMENT TO THAT EFFECT?

MR. MC GURK: THERE'S NO ARGUMENT. I WOULD SUBMIT ON THE MOTION.

THE COURT: OKAY. AND WITH RESPECT TO THE ALLEGATION THAT HE HAS SUFFERED A PRIOR CONVICTION OF A SERIOUS OR VIOLENT FELONY -- AND AGAIN, I'M LEAVING ASIDE THE 1981 ALLEGED CONVICTION. IS THERE ANY ARGUMENT WITH RESPECT TO CONVICTIONS OF A SERIOUS OR VIOLENT FELONY?

MR. MC GURK: THERE'S NO ARGUMENT AT THIS TIME.

THERE CAN BE MOTIONS AFTER THIS DATE.

THE COURT: RIGHT.

MR. MC GURK: THERE CAN BE OTHER SUBJECTS COMING UP REGARDING THAT ISSUE, BUT NOW I WOULD SUBMIT ON THAT.

THE COURT: THIS IS FOR DETERMINATION OF THE COURT. AND I'M FINDING THAT THE ALLEGATIONS ARE TRUE.

OKAY. SO THAT LEAVES US WITH THE 1981 ALLEGED CONVICTION. ON THAT ISSUE, I'M GOING TO TAKE A BRIEF RECESS. AND I SEE THAT THE DEFENDANT IS HERE ON THE OTHER TRIAL MATTER. I WANT TO BRIEFLY TURN TO THAT, AND THEN I'LL RULE WITH RESPECT TO THE PRIORS TRIAL.

MR. MC GURK: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

(RECESS.)

THE COURT: OKAY. WE'RE BACK ON THE RECORD. MR. WILLARD IS PRESENT. BOTH COUNSEL ARE PRESENT.

I HAVE REVIEWED ALL OF THE DOCUMENTS IN THE CASE AND THE TESTIMONY OF THE WITNESSES.

WITH RESPECT TO THE ALLEGED PRIORS, I FIND THAT WITH RESPECT TO ALL BUT ONE THAT THE PEOPLE HAVE PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS THE PERSON WHO WAS CONVICTED OF THE ALLEGED CRIMES. I'LL GO THROUGH THAT WITH SOME SPECIFICITY, BUT LET ME ADDRESS THE ONE FOR WHICH I FEEL THE PEOPLE HAVE NOT MET THEIR BURDEN.

WITH RESPECT TO THE ALLEGED STRIKE PRIOR IN CASE A198987, I HAVE LOOKED CLOSELY AT PEOPLE'S 4 AND 5,

AND AS THE WITNESS TESTIFIED, THERE'S NOTHING IN THIS DOCUMENT THAT SHOWS A BIRTH DATE, COMPARISON OF FINGERPRINTS, OR ANY FINGERPRINTS PROVIDED OR A BOOKING PHOTO, MEANING THAT THERE IS NO BOOKING PHOTO OR FINGERPRINT DATA THAT WAS USED OR COULD BE USED IN THE TRIAL TO BE COMPARED TO MR. WILLARD. THAT IS IN CONTRAST TO THE OTHER ALLEGED PRIORS.

I FIND THAT THE PEOPLE HAVE NOT PROVEN BEYOND A REASONABLE DOUBT THAT THE PERSON WHO IS NAMED IN THAT CASE, ALTHOUGH THAT PERSON BEARS THE IDENTICAL NAME TO THE DEFENDANT HERE, BUT GIVEN THE LACK OF THE OTHER INDICIA, I DO NOT FIND THAT PEOPLE'S 5, WHICH IS THE CLETS RAP SHEET, IS SUFFICIENT BASED ON THE TESTIMONY OF THIS WITNESS THAT HE WAS TAUGHT IN A SEMINAR 15 YEARS AGO THAT IF THERE IS AN ENTRY ON THE RAP SHEET, IT MEANS, UNLESS IT IS INDICATED OTHERWISE, THAT THE FINGERPRINTS WERE COMPARED.

SO WITH RESPECT TO THE STANDARD OF BEYOND A REASONABLE DOUBT, I DO NOT FIND THAT THAT PRIOR HAS BEEN PROVEN BEYOND A REASONABLE DOUBT. Case NO-A635489

HOWEVER, FIRST, WITH RESPECT TO THE ALLEGATIONS UNDER PENAL CODE SECTION 667.5(B), THE COURT FINDS THAT THE DEFENDANT, CHARLES WILLARD, HAS SUFFERED THE FOLLOWING CONVICTIONS:

THOSE ARE THE CONVICTIONS IN CASE NUMBER BA160602 -- AND BEFORE I GO FURTHER, LET ME INQUIRE, MR. CANO, I GUESS THE QUESTION OF WHAT TO DO ABOUT THE CONVICTION DATES. I'M NOT SURE WE NEED THE CONVICTION

ORIGINAL

CONSIST OF (4) TRANSCRIPTS OF Mr, Willard objecting To Counsel McGurk For NOT CHallenging the 1987, conviction

Dated. MAY. 13. 2013

Number: (304, 310, 311-312)

EXHIBIT COVER PAGE

33

EXHIBIT

Description of this Exhibit: (C)

Number of pages to this Exhibit: 4 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ■ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

WAS VIOLATED UNDER DUE PROCESS.

THE COURT: HOW IS THAT?

THE DEFENDANT: THE TRIAL COUNSEL, MR. MCGURK, AND PROSECUTOR WAS GRANTED UNILATERAL CONTROL BY THE TRIAL COURT TO PRACTICE JURY COMPOSITION FOR MID-TRIAL. THE PROSECUTOR AND TRIAL COUNSEL, MR. MCGURK, WORKED TOGETHER DURING JURY SELECTION TO EXCLUDE ALL AFRICAN-AMERICAN JURORS FROM THE JURY POOL BY DEMONSTRATING GROUP BIAS BY NOT CONSIDERING AFRICAN-AMERICAN JURORS IN THE PETITION FOR JURY TRIAL. IT IS A FACT THAT PETITIONER DO NOT HAVE ANY AFRICAN-AMERICAN JURORS AFTER THE JURY HAS BEEN SELECTED ON THE JURY PANEL.

TRIAL ATTORNEY MR. MCGURK DID NOT OBJECT TO THIS ACTION DURING JURY SELECTION. I AM THE PETITIONER IN ACTION NUMBER B233492 ON APPEAL IS OBJECTING TO THIS ACTION. AND I'M IMPLEMENTING WHEELER/BATSON VIOLATION, AND I STATED THAT THE CONSTITUTION GUARANTEE THE RIGHT TO TRIAL BY JURY WHICH IS CONTAINED IN THE SIXTH AMENDMENT TO THE FEDERAL CONSTITUTION ARTICLE I, SECTION 16 OF THE CONSTITUTION REQUIRES THAT IT BE DRAWN FROM A REPRESENTATIVE CROSS SECTION OF THE COMMUNITY, *PEOPLE VS. WHEELER* 1978.

THE UNITED STATES OF THE SUPREME COURT SPECIFICALLY FOLLOWING *WHEELER* HAS EXPRESSED SIMILAR VIEWS IN REVERSING A CONVICTION IN WHICH THERE WAS REASON TO BELIEVE THE PROSECUTION HAS SYSTEMATICALLY EXCLUDED BLACK JURORS, *BATSON VS. KENTUCKY* 1986. *STRICKLAND VS. WASHINGTON*, UNDER COUNSEL'S LEAD UNPROFESSIONAL ERRORS, TRIAL COUNSEL, MR. MCGURK AND THE PROSECUTOR IS USING ERRONEOUS, INSUFFICIENT, AND ILLEGAL DOCUMENTS IN THE TRIAL TO PROVE PETITIONER SUFFERED A JUVENILE

JUDGE FEUER WILL ULTIMATELY BE THE SENTENCING COURT IN THIS CASE. YOUR POINTS ARE BETTER TAKEN UP WITH HER.

THE ONLY THING I'M DO IS DOING THE JURY TRIAL ON THE PRIOR CONVICTION, AND THAT'S WHAT WE'RE DOING?

THE DEFENDANT: YOU KNOW WHAT SHE TOLD ME DURING THIS PROCESS WHEN SHE GAVE ME 30 TO LIFE, SHE SAID TO ME, "YOU'RE LUCKY I DIDN'T GIVE YOU 60 TO LIFE." COME ON, MAN. SHE'S NOT FAIR ABOUT NOTHING.

THE COURT: MR. WILLARD --

THE DEFENDANT: IF SHE WAS FAIR, ALL I'M SAYING, SHE WOULDN'T EVEN GO THROUGH THIS PROCESS AND SPEND TAXPAYER'S MONEY AS A RESULT TO GO THROUGH THIS INSUFFICIENT THING HERE LET ME TAKE A DEAL AND GO ON WITH MY LIFE. I'M ALREADY IN PRISON. I'VE ALREADY BEEN CONVICTED OF THE CRIME.

THE COURT: THE ONLY THING I'M DOING IN THIS CASE IS TRYING THE PRIOR CONVICTION.

THE DEFENDANT: I AGREE WITH THAT. I'M NOT TRYING TO THROW EVERYTHING AT YOU.

THE COURT: IF THE EVIDENCE IS ADMISSIBLE, IT'S COMING IN. IF THE EVIDENCE IS NOT ADMISSIBLE, IT'S NOT COMING IN. IT'S THAT SIMPLE.

THE DEFENDANT: LET ME STATE THIS. I HAVE AN ATTORNEY HERE. UNFORTUNATELY, I CAN DO BETTER BY MYSELF, MAN. I CAN CONVICT MYSELF AND SEND MYSELF TO PRISON THAN TO ALLOW MY ATTORNEY. MY ATTORNEY IS NOT GOING TO DO NOTHING. YOU'RE GOING TO WITNESS THAT. HE DID THIS BEFORE. THIS IS NOTHING UNUSUAL ABOUT HIS CONDUCT HERE, DOING ANY PROCEEDING, BECAUSE HE DOESN'T EVEN KNOW -- NOT ONLY THAT, I WANT TO PUT THIS IN

AND THEN I'M THROUGH.

HE ALSO REFUSED TO CHALLENGE THE 1987 PRIORS. NOW, HE TOLD ME PERSONALLY THAT HE WILL ALLOW THAT TO COME UP ON THE 1385 *ROMERO* MOTION SUBMITTED TO THE COURT, THE JUDGE IN DEPARTMENT 113, WHO GAVE ME 30 TO LIFE AND DON'T HAVE A PROBLEM WITH IMPLEMENTING HAVING 25 TO LIFE AS RESULT OF STRIKING ONE STRIKE. IT'S NOT GOING TO STOP FROM GIVING ME 25 YEARS IF I GET CONVICTED ON THIS INSUFFICIENT STUFF. THE PROBLEM IS HE REFUSES TO CHALLENGE THESE PRIORS, MAN.

I CAN DO THAT MYSELF. THIS IS MY LIFE. YOU HEAR ME? I GOT ONE LIFE TO LIVE, AND I'M TRYING TO DO THE BEST I CAN WITH IT. I CAN'T IF YOU'RE NOT GIVING ME A FAIR HEARING, A FAIR TRIAL. I AIN'T KILL NOBODY. I AIN'T HURT NOBODY. YOU'RE STILL PUSHING THIS TO THE LEVEL. I DON'T THINK IT MAKES ANY SENSE. I THOUGHT YOU CAN GIVE ME JUSTICE YOU'RE NOT GIVING ME JUSTICE. YOU'RE TRYING TO DESTROY ME.

THE COURT: I'M TRYING TO HEAR THE PRIOR.

THE DEFENDANT: I KNOW.

THE COURT: LET ME HEAR FROM MR. MCGURK.

MR. MCGURK: I WANT -- AS I SAID, I DON'T BELIEVE, UNLESS THE COURT -- UNLESS I'M WRONG, I DON'T BELIEVE I'M PERMITTED TO ARGUE THE 1987 PRIORS.

THE COURT: RIGHT. THEY'RE NOT HERE.

THE DEFENDANT: THE ARRAIGNMENT.

MR. MCGURK: NO, I'M NOT --

THE DEFENDANT: EXCUSE ME, SIR.

THE COURT: MR. WILLARD, LET HIM FINISH, PLEASE.

MR. MCGURK: IT'S AN ISSUE FOR THE SENTENCING JUDGE,

JUDGE FEUER, WHICH I EXPLAINED TO MR. WILLARD. HE'S ELIGIBLE, NO MATTER WHAT HAPPENS IN THIS PRIORS TRIAL, FOR RESENTENCING. THE JUDGE MADE THAT CLEAR. THE ONLY JUDGE I CAN BRING THAT UP TO IS JUDGE FEUER, THE SENTENCING JUDGE.

THE COURT: RIGHT.

MR. MCGURK: I'M BOUND BY LAW TO DO THAT, AND IT WILL BE DONE.

THE DEFENDANT: LET ME SAY THIS.

THE COURT: IT HAS BEEN DONE.

MR. MCGURK: IT HAS BEEN DONE ONCE, AND IT WILL BE DONE AGAIN.

THE DEFENDANT: INDEED, I'M SURE IT WILL BE.

THE COURT: MR. WILLARD, HOLD ON A SECOND.

THE BAILIFF: LET HIM FINISH.

THE DEFENDANT: OKAY. MY APOLOGIES.

THE COURT: I KNOW JUDGE FEUER IS CONSIDERING THE ROMERO MOTION. I KNOW THAT SHE'S UNWILLING TO COMMIT HERSELF ONE WAY OR ANOTHER HOW SHE'S GOING TO RULE ON IT, WHICH IS WHY WE'RE DOING WHAT WE'RE DOING. IF SHE HAD SAID -- HOLD ON -- IF SHE HAD SAID SHE WAS GOING TO GRANT THE *ROMERO* MOTION OR DENY THE *ROMERO* MOTION, WE WOULDN'T BE HERE BECAUSE THIS TRIAL WOULD BE IRRELEVANT?

THE DEFENDANT: WOULD DO YOU MEAN? EXPLAIN THAT AGAIN.

THE COURT: ON FRIDAY WHEN THIS CASE WAS SENT HERE, SHE WAS ASKED WHETHER OR NOT SHE WAS GOING TO GRANT OR DENY THE *ROMERO* MOTION. IF SHE HAD BEEN WILLING TO COMMIT SHE WAS GOING TO GRANT IT, THEN WE WOULDN'T BE HERE. IF SHE WAS WILLING TO COMMIT THAT SHE WAS GOING TO DENY IT, WE WOULDN'T BE HERE. SHE

Consist of Transcripts of Court proceeding

Dated. March. 19. 2012 and Sept. 25, 2013

Number. 1205 Through. 1209) AND an Document from the opening Brief. Dated. March 11. 2014.

EXHIBIT COVER PAGE

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EXHIBIT

Description of this Exhibit: (D)

Number of pages to this Exhibit: 6 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
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- ☐ United States Supreme Court
- ☐ Grand Jury

KNIFE IN SELF-DEFENSE.

SO MR. MCGURK, LET ME HEAR FROM YOU.

MR. MCGURK: IF I MAY BRIEFLY. ONE ISSUE IN TERMS OF THE COURT GOING THROUGH MR. WILLARD'S HISTORY, I BELIEVE AT THE CONCLUSION OF THE FIRST TRIAL -- NOT THE PRIORS TRIAL, BUT THE CURRENT OFFENSE -- THE COURT FOUND THE 1981 PRIOR NOT PROVEN. SO WE -- THE COURT WENT THROUGH THE 1978 AND THEN ARRESTED AND CONVICTED IN 1981. WHEN THE PROSECUTION PUT ON THEIR CASE ON THE PRIORS, THE COURT FIND FOUND THE '81 PRIOR NOT PROVEN. SO I DON'T KNOW IF THE COURT WOULD CONSIDER THAT NOW.

THE COURT: THE REASON I WAS CITING THAT WAS LESS FOR WHAT HE DID AND MORE TO SHOW THAT HE HAS BEEN IN STATE PRISON OR IN CUSTODY FOR MOST OF THE PERIOD SINCE 1978. SO WHILE I FOUND IT NOT PROVEN, HE DID SERVE 4 YEARS IN STATE PRISON. SO THAT'S WHAT I WAS TRYING TO -- THE REASON I'M GOING THROUGH THAT IS TYPICALLY IF I LOOK AT SOMETHING FROM 1978, I MIGHT BE INCLINED TO GRANT A MOTION, EVEN WHERE THE INSTANT OFFENSE IS VIOLENT; BUT HE HASN'T HAD A SIGNIFICANT PERIOD OF TIME WHERE HE HAD BEEN OUT OF CUSTODY AND HAS REMAINED NON-OFFENDING, BUT RATHER HE'S BEEN IN CUSTODY MOST OF THE PERIOD SINCE THEN.

MR. MCGURK: AND IF I MAY JUST BRIEFLY SUPPLEMENT THE DEFENSE MOTION, I UNDERSTAND WHAT THE COURT IS SAYING; BUT WHERE THE DEFENSE IS TO COME FROM, THE CURRENT OFFENSE, 245, IS A WOBBLER. IT CAN BE CHARGED AS A MISDEMEANOR. IT IS A STRIKE, BUT IT'S NOT CONSIDERED A VIOLENT FELONY. IT'S CONSIDERED A SERIOUS FELONY, AND I THINK THE FACT THAT

IT'S A SERIOUS FELONY THAT IT CAN BE CHARGED AS A MISDEMEANOR INHERENTLY PUTS IT ON THE BOTTOM END OF STRIKE OFFENSES; AND THE ONLY OFFENSE THAT COMES TO MIND THAT CAN BE CHARGED A STRIKE IS 422. THERE MIGHT BE SOME OTHERS, AND THE FACT THAT IT CAN BE CHARGED AS A MISDEMEANOR, MR. WILLARD'S DEFENSE IS WHERE THE DEFENSE IS COMING FROM WHEN IT'S COMING ON THE LOW END OF STRIKE OFFENSES. I DON'T THINK INSIGNIFICANT IS THE CORRECT WORD, AND I DON'T THINK I USED THAT.

THE COURT: WELL, I THINK IT WAS USED TO DESCRIBE THE INJURY.

MR. MCGURK: WELL, I WOULD CONSIDER AN INCH AND A HALF CUT ON A FOREARM TO BE INSIGNIFICANT, AND WE DIDN'T ASK THE JURY WHETHER IT WAS INSIGNIFICANT OR NOT. WE DID NOT ASK FOR IT TO BE FOUND INSIGNIFICANT, AND I THINK IT'S IMPORTANT TO NOTE THAT AT NO TIME THAT HAS MR. WILLARD EVER ADMITTED CAUSING SIGNIFICANT INJURY OR HAS IT BEEN PROVEN BY ADMISSION OR JURY VERDICT IN ALL OF MR. WILLARD'S CRIMINAL BEHAVIOR. THERE'S NEVER BEEN A SUBSTANTIAL INJURY SHOWN IN ANY CASE.

THE COURT: BUT THE ORIGINAL OFFENSE, THE FIRST STRIKE, THOUGH, WAS ROBBERY WITH A FIREARM.

MR. MCGURK: CORRECT, BUT THERE'S NO INJURY ALLEGED NOR IS THERE AN INJURY ALLEGED IN 1987; AND WHILE THEY ARE STRIKE OFFENSES -- AND I DON'T WANT TO MINIMIZE ROBBERIES. THEY ARE ALL THEFT-RELATED, WHICH FRANKLY, IT'S TIED DRUG INTO DRUG ADDICTION AND MENTAL ILLNESS. AND I THINK THE COURT HAS SEEN THAT WHEN YOU HAVE THEFT-RELATED CASES AND

THEFT-RELATED PRIORS, A GREAT DEAL OF THOSE CASES HAVE TO DO WITH DRUG ADDICTION IN TERMS OF GETTING CURRENCY TO CONTINUE YOUR HABIT, IF YOU WILL.

AND I ALSO WANT TO NOTE THAT 1987, THE TWO STRIKE PRIORS THAT MR. WILLARD WAS FOUND CONVICTED BY JURY, HE WAS ALSO DURING THE PENDENCY OF THAT CASE FOUND INCOMPETENT -- EXCUSE ME, A DOUBT WAS DECLARED AS TO HIS COMPETENCE DURING THE SAME CASE. IT'S QUITE FREQUENT THAT WHEN SOMEONE'S CHARGED WITH THE MULTIPLE STRIKES, A DISPOSITION CAN BE REACHED WHERE THE PERSON WILL PLEAD TO ONE STRIKE. I CAN'T SPEAK WHETHER THAT WAS AN OPTION FOR MR. WILLARD OR NOT IN 1987, BUT IT IS A VERY COMMON OCCURRENCE, CONSIDERING THAT A DOUBT WAS DECLARED AS TO HIS COMPETENCE, I THINK THAT WOULD HINDER ANY RATIONAL DISCUSSIONS OF A PLEA AGREEMENT. SO HAD I THINK THE COURT SHOULD TAKE THAT INTO CONSIDERATION.

THE COURT: DO YOU KNOW IF THE 211 FROM 1987 WAS ONE INCIDENT WITH TWO VICTIMS OR TWO SEPARATE INCIDENTS?

MR. MCGURK: WE'VE BEEN WAITING FOR THE FILE AND STILL HAVEN'T GOTTEN IT. I WAS ABLE TO PROCURE THE VERDICT FORMS, AND THERE WERE TWO DIFFERENT NAMES; BUT THERE WAS NO INDICATION IN TERMS OF WHETHER IT WAS TWO PEOPLE STANDING AT ONE TIME OR 2 INCIDENTS. I WAS NOT ABLE TO LOCATE THAT. BUT THERE WERE TWO DIFFERENT NAMES ON THE JURY VERDICTS.

THE COURT: ALL RIGHT, WHICH I WOULD ASSUME -- WHAT I CAN'T TELL IS WHETHER IT WAS --

MR. MCGURK: RIGHT.

THE COURT: -- ONE CRIME OR TWO CRIMES.

MR. MCGURK: AND I ALSO, IF I MAY, YOUR HONOR, I THINK IT'S IMPORTANT TO LOOK AT THE COURT'S DETERMINATIVE SENTENCING OPTIONS, WHICH THE COURT IS ALLOWED TO DO IN DETERMINING WHAT THE APPROPRIATE SENTENCE WOULD BE: CONSIDERING MR. WILLARD'S AGE, WHICH IS HE IS IN HIS '50'S, CONSIDERING THAT THE CURRENT OFFENSE -- I UNDERSTAND THE COURT'S CONCERN WITH THE OFFENSE, AND I REALLY DO UNDERSTAND IT; BUT IT IS THE DEFENSE'S POSITION THAT IT'S LOWER END STRIKE CONDUCT SIMPLY BECAUSE HE WAS CHARGED AS A MISDEMEANOR, AND IT WAS NOT A SERIOUS INJURY, AND THE SENTENCING OPTIONS THE COURT HAS IS UP TO 19 YEARS IN STATE PRISON.

I THINK A 19-YEAR SENTENCE FOR A CHARGE THAT CAN BE CHARGED AS A MISDEMEANOR, NO MATTER WHAT THE PERSON'S HISTORY, I THINK IS SUBSTANTIAL. I THINK IT'S SUFFICIENT IN THIS CASE, ESPECIALLY WHEN YOU CONSIDER THE PREVIOUS HISTORY OF DRUG ADDICTION, THE PREVIOUS HISTORY THAT THERE'S BEEN NO INJURY EVER SHOWN OR FRANKLY ALLEGED UNTIL THE CURRENT OFFENSE. THE FACT THAT THE 1987 PRIORS ARE MORE THAN 25 YEARS OLD AND OCCURRED IN THE SAME JURY TRIAL DURING THE PENDENCY OF WHICH A DOUBT WAS DECLARED AS TO HIS COMPETENCE. THE THIRD STRIKE IS OVER 30 YEARS OLD AND WAS A JUVENILE PRIOR IN WHICH THE PROSECUTION WANTED TO SHOW HIM UNFIT FOR JUVENILE SUPERVISION, AND THAT WAS DENIED, WHICH SPEAKS TO THE GRAVITY OF THE OFFENSE. THE JUVENILE COURT HAD MADE A DETERMINATION WHICH WAS IN THE DEFENSE MOTION.

AND CONSIDERING ALL OF THOSE, I'D ALSO LIKE TO ADD

THAT I WOULD CONSIDER A NINE-YEAR SENTENCE FOR 11350 SUBSTANTIAL, AND I BELIEVE THAT WAS -- I THINK THAT WAS A 1998 CONVICTION FOR 11350 WHERE HE RECEIVED 9 YEARS IN STATE PRISON.

THE COURT: RIGHT.

MR. MCGURK: AND I'M FAIRLY CONFIDENT THAT HE RECEIVED THOSE 9 YEARS DUE TO THE SAME 1987 AND 1978 CONVICTIONS THE COURT HAS IN FRONT OF IT TODAY. SO CONSIDERING ALL THAT, I THINK A 19-YEAR DETERMINATIVE SENTENCE, ONE, IS MORE THAN SUFFICIENT, CONSIDERING THE CURRENT OFFENSE; AND TWO, I THINK THE STRIKES ARE UNIQUE ENOUGH, ONE A JUVENILE PRIOR, 1987, 2 STRIKES, AND ONE TRIAL WHERE HE WAS DECLARED -- A DOUBT WAS DECLARED CONSIDERING THOSE TWO FACTS, PLUS HIS DRUG ADDICTION, PLUS MENTAL ILLNESS, I THINK IT'S UNIQUE ENOUGH TO FIND HIM OUTSIDE THE SPIRIT OF THE 3 STRIKES LAW.

THE COURT: LET ME HEAR FROM THE PEOPLE. I CONTINUE TO HAVE A CONCERN REGARDING THE NATURE OF THIS OFFENSE AND THE PRIOR OFFENSES. I GUESS THE ISSUE THAT I THINK WOULD BE BETTER FOR ME TO ADDRESS THAT'S A NEW ISSUE, NOT RAISED BEFORE, IS IF THE COURT WERE HYPOTHETICALLY TO MAX HIM OUT AT 19 YEARS, WHY THAT IS NOT A SUFFICIENT SENTENCE, AND THE COURT INSTEAD SHOULD PROCEED UNDER THE THREE STRIKES LAW.

MR. HAIDAR: WELL, IS THE COURT ASKING ME IS 19 YEARS A SIGNIFICANT SENTENCE? I BELIEVE IT IS. THERE'S NO QUESTION THERE. I BELIEVE THE ACTUAL QUESTION HERE IS WHETHER THIS IS A CASE WITHIN THE SPIRIT OF ROMERO AND SHOULD THE STRIKE BE STRICKEN, AND THE COURT ALREADY ITEMIZED ALL THE FACTORS WHY IT'S NOT WITHIN THE SPIRIT OF

Moreover, in considering appellant's background, character, and prospects, the trial court did not give due consideration to appellant's mental health problems. Recently in *People v. Smith* (Feb. 24, 2012, B223181) ___ Cal.App.4th ___ [2012 WL 593397], Division 1 of this Second Appellate District found a trial court abused its discretion in failing to consider the defendant's mental illness and other factors when deciding the defendant's *Romero* motion. In the instant matter, the defense "Request For Court To Dismiss Prior Alleged Under Three Strikes Law Under PC § 1385" laid out appellant's long history of mental illness. (Supp. CT 65-86.) At the hearing on the *Romero* motion, defense counsel also discussed appellant's mental illness as a reason the court should dismiss the strike findings. (2RT 357, 359.) However, the trial court did not address this factor in its consideration of appellant's *Romero* motion. (2RT 350-355, 364-365.)

The record provides ample evidence of appellant's mental illness. A doubt as to appellant's competency was declared during the criminal trial proceedings in 1987, wherein appellant was ultimately convicted of two counts of robbery, the two strike offenses. (Supp. CT 16, 83.) The defense *Romero* motion included a competency report prepared by Dr. Vicary in 1987, which stated that appellant "has an extensive prior psychiatric history beginning at the age of twelve" and appellant previously had two psychiatric hospitalizations. (Supp. CT 83-84.) Appellant had a family history of mental illness (Supp. CT 77, 84) and his sister reported he has suffered from mental problems from the time he was a child (Supp. CT 78). He has a history of auditory and visual hallucinations. (Supp. CT 85.) Appellant was previously

CONSIST OF (A) 995, NONSTATUTON
MOTION FOR DISMISSAL
FILED. MAY. 10. 2010.
IN, DEPT: 123.

EXHIBIT COVER PAGE

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EXHIBIT

Description of this Exhibit: (E)

Number of pages to this Exhibit: 27 pages.

JURISDICTION: (Check only one)

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

Charles R. Willard #2067655
441 Bauchet Street
Los Angeles, Ca. 90012

FILED
LOS ANGELES SUPERIOR COURT
MAY 10 2010
JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY: E. HERNANDEZ, DEPUTY

In propria persona

Superior Court of California
County of Los Angeles

the people of California, Plaintiff, vs. Charles R. Willard Defendant	No. BA 362410 Amended Motion To Dismiss Information, Pen. C. Sec 995/Non-Statutory, Date: May 20 2010 Time 9:30 A.M. In, Dept. 123,

To: the District Attorney for the County of Los Angeles and/or His Deputy:

Please Take Notice That pursuant To Section 995 of the Penal Code of the State of California, And Non-Statutory

1.

GROUNDS, DEFENDANT, CHARLES R. WILLARD ON MAY 20, 2010, OR AS SOON THEREAFTER AS THE MOTION CAN BE HEARD, DEFENDANT WILL MOVE THE COURT TO SET ASIDE THE INFORMATION FILED IN THIS ACTION ON THE GROUNDS THAT (1.) THE DEFENDANT HAS BEEN COMMITTED ON COUNT (2.) WITHOUT ANY EVIDENCE, TO SUPPORT THE CHARGE; (2.) THE PROSECUTOR, FAILED TO REVEAL EXCULPATORY EVIDENCE TO DEFENSE PRIOR TO PRELIMINARY HEARING; AND (3.) THE DEFENSE COUNSEL, RENDERED PREJUDICIAL INEFFECTIVE ASSISTANCE.

THIS MOTION IS BASED ON THE TRASCRIPT OF THAT PRELIMINARY HEARING, RECORDS ON FILE, THE MEMORANDUM OF POINTS, AND AUTHORITIES, AND EXHIBITS, AS WELL AS ALL ORAL ARGUMENTS MADE AT THE HEARING IN SUPPORT OF THIS MOTION.

2.

Dated: May 7, 2010.

Respectfully Submitted,

/s/

CHARLES R. WILLIARD

IN, propria persona

Memorandum of points, and Authorities

I.

facts.

On, October 8. 2009, the preliminary Hearing proceedings began. Defendant, was charged with two counts of Assault with (a) Deadly Weapon in Violation of penal Code section 245(a)1). and Enhanced under section 12022.7(a), causing the offenses To Become serious felonie within sec 1192.7)c)8).

the only Witness To Testify at the preliminary Hearing was Mr. Santos Hernandez, the Alleged Victim of, count-1.

Mr. Santos Hernandez, Testify That on September 21, 2009, While Riding the Mtra Bus in the area of Western, and 8th Street, in the County of, Los Angeles. He was Coming from Work Along

4.

With His Co-Worker David Ponce. (PHT, pages 3-4.)

While conversing with his friend, Defendant walked over to them, and poked him in his face with his finger, while stating: pinche Mexican. (PHT, page. 5:1-20.) Then Defendant went back to his seat, which, was about four seats away; took (a) six-inch knife out of his backpack. Then returned. (PHT, page. 5:21-28, thru 6-1-18.)

Defendant had his knife open as he returned, so, Mr. Hernandez, testified, that he put his backpack in front of himself, as Defendant made (a) stabbing motion towards him with the knife, and attempted to thwart off the thrust. However. Mr. Hernandez, testified he got stabbed in the arm. (PHT. page. 6:8-28, thru-7:1-28.)

Mr. Hernandez Testified That His friend DAVID Ponce, AS Defendant Approached them With the Knife, Jumped over the Seat, Was positioned Behind Him, Then Got off the Bus. (PHT, PAGE. 8-9: 1-24.)

Defendant did Not make (A) Second Attempt To Stab Him. He and Defendant Got off of the Bus. (PHT, PAGE. 10: 3-24.)

Mr. Hernandez Testified That the Deputies Took Him To the Hospital, Where He Received Five Stitches, and (A) prescription for Antibiotics, and (A) painkiller. (PHT, PAGE. 10: 25-29, Thru 11: 1-14.)

* Mr. Hernandez, Testified That He Has (A) Little Scar from being Stabbed, or "CUT." (PHT, PAGE., 11: 15-16.)

On Cross-Examination Mr. Hernandez Testified That He Jumped Up on the Bus Seat, and Kicked Defendant

IN, His Chest Twice With His Steel Toe Boots, To Keep Him From Stabbing Him. (PHT, Page. 17, 19-28, Thru 20, 1-5.)

Based on the Testimony of Mr. SANTOS HERNANDEZ, the MAGISTRATE JUDGE, found Probable Cause on both COUNTS AGAINST Mr, HERNANDEZ, and DAVID PONCE. DAVID PONCE, NOT (A) qualified INVESTIGATING OFFICER Testified To the Charge AGAINST Mr, PONCE (PHT, Page. 22:9-17.)

II.

ARGUMENT (S)

1.

THERE IS INSUFFICIENT EVIDENCE TO SHOW PROBABLE CAUSE

THERE MUST BE SOME DIRECT OR CIRCUMSTANTIAL EVIDENCE FROM WHICH (A) REASONABLE INFERENCE MIGHT BE DRAWN FROM THE EVIDENCE TO SUPPORT, (A) PROBABLE CAUSE FINDING, SEE, WILLIAMS VS. SUPERIOR COURT, (1969) 71 CAL. 2d. 1144. 1148.

COUNT 2, ASSAULT WITH (A) DEADLY WEAPON UPON DAVID PONCE, HAS ABSOLUTELY NO COMPETENT EVIDENCE TO SUPPORT (A) PROBABLE, CAUSE FINDING BY THE MAGISTRATE JUDGE RENDERED ON OCTOBER 8, 2009.

THE CONSTITUTIONAL 'TRUTH-IN-EVIDENCE' PROVISION, CONTAINED IN CALIFORNIA CONSTITUTION ARTICLE I, SEC. 28(d), MANDATES THAT "RELEVANT, EVIDENCE SHALL NOT BE EXCLUDED IN ANY

Criminal proceeding") However, it Does Not affect the Statutory Hearsay Rule. See, Art. I, Sec. 28 (d).

California Evidence Code Sec. 1200, forbids Hearsay Evidence. and it defines Hearsay Evidence as:

"(A) "Hearsay Evidence") is Evidence of (A) Statement that was made other than by (A) Witness while testifying at the Hearing and that is offered To prove, the Truth of the matter Stated.

(B) Except as provided by Law. Hearsay Evidence is Inadmissible?)

David Ponce did Not Testify at the preliminary Hearing. Nor did (A) qualified officer that would be able To testify To His Hearsay Statements Under proposition 115 See, penal code Sec. 872(b)

9

the Magistrate's Role at the preliminary Hearing is to ascertain whether there is probable cause to believe the Defendant is guilty of (a) public offense, and should be bound over for trial. (Pen. Code, Sec. 872.) The Magistrate however, must find sufficient evidence to support it's probable cause determination. the Magistrate must be able to point to some evidence to support each element of the crime; see, Williams vs. Superior Court of Los Angeles County, (1969) 71 Cal. 2d 1144 1148-1149, and Birt vs. Superior Court (1973) 34 Cal. App. 3d 934, 937.)

there was absolutely no evidence presented at the preliminary Hearing to support the probable cause finding on count 2.)

2.

The Prosecutor Denied Defendant (A) Substantial Right When It Failed To Turn over potentially Exculpatory Evidence prior To the preliminary Hearing.

(A) Nonstatutory Motion To Dismiss MUST be used To Redress [Any] Error Not Known or apparent at the time of the preliminary Hearing. Especially When the Error is Not Ascertainable from the preliminary Hearing Transcript see, Merrill vs. Superior Court. (4th Dist. 1994) 27 Cal. App. 4th 1586, 1596.

Such (A) Claim That squarely fits in this category is (A) Claim the prosecution Failed To Reveal potentially Exculpatory Evidence To the Defense prior to the preliminary Hearing. Merrill vs. Sup. 27 Cal. App. 4th, at page 1595.

Defendant overheard deputy District Attorney Louis Morino at the Preliminary Hearing mentions to his assistant that he had viewed the Metro Bus Video of the Incident. (See, Exhibit-A, Defendant Charles Willard's Declaration, paragraph 13.)

I believe Defense Attorney Holly Hightower overheard the prosecutor make the statement of viewing the video as well. (Id. Exhibit-(A), paragraph 14.))

the metro video of the INCIDENT that occurred on September 21, 2009, shows Defendant Defending Himself in a fight with Santos Hernandez, not assaulting him with a knife for no reason at all-as Mr. Hernandez testified. ((I.d. Exhibit-A), paragraph 5.))

Defendant, in the Incident Report written by Deputy A. Armes,

Penal Code Sec. 417.6. States:

(A) If, In the Commission of (A) Violation of Section (417) or 417.8, Serious Bodily Injury is Intentionally Inflicted by the person Drawing or Exhibiting the Firearm or Deadly Weapon, the offense shall be PUNISHED, by Imprisonment In the County Jail Not Exceeding (One) year or by Imprisonment In the State prison.

(b) As Used In this Section, "Serious bodily Injury" Means (A) Serious Impairment of physical Condition, Including, But Not Limited To the following, Loss of Consciousness; Concussion; Bone fracture, protracted loss or Impairment of function of any Bodily Member or organ; (A) Wound Requiring "Extensive" Suturing, and Serious Disfigurement."

15.

In ruling on (a) Nonstatutory Motion To Dismiss, on the Grounds That the Prosecution Failed To Reveal Potentially Exculpatory Evidence the Reviewing Court must First Look To the Materiality of the Nondisclosed Information and What Effect It Had on the Determination of probable Cause. Merrill supra. 27 Cal. App. 4th at 1596.) Having Examined the Non Disclosed Information, The Court must Add It To the Evidence That the original Magistrate Heard. Finally, this Court must ReTest the Combined Evidence for probable Cause. Merrill, supra. 27 Cal. App. 4th. at 1594-1596)

Santos Hernandez, testified at the preliminary Hearing That for No Reason at all Defendant Got up from His Seat on the Bus. Walked over To Him and poked Him in the Side of, His face with His finger, While Stating.

"Sinche Mexica." Then, again, closed
And Proceeded, Returned To His Seat
And Retrieved (A) Knife From His Black
Pack, opened It, and Walked Back
To Where He, and David Ponce Were
Sitting and began Thrusting the
Knife At Him Attempting To Stab
Him. He blocked the first Thrust, BUT
Got (cut) on His Left forearm. Then
He Kicked Defendant In the Chest
With His Steel Toe Boots To Thwart
Defendant's Second Attempt To
Stab Him In the Abdomen Area.
(See, PHT. page: 11:21-28, Thru 20:1-18.

the Metro Bus Video Shows [redacted]
Santos Hernandez, [redacted]
[redacted] As the Initiators
of the fight. It shows
Defendant Retrieved His
Knife To Defend Himself
This

this Evidence. If not Withheld

by the prosecution, would have required the charge of ASSAULT with (A) Deadly Weapon to be reduced, to (A) misdemeanor under Sec. 417(a)(1). For Section 417.6 cannot be substantiated because, Mr. Hernandez's injury cannot be classified as (A) Great bodily injury. Sec 417.6(b).) Extensive scarring, or serious disfigurement.))

Mr. Hernandez, testified that he received five stitches at St. Vincent Hospital. (RT. page. 10:25-28, thru 11:1-4.) However. St. Vicent Hospital had no record of any such medical treatment of Mr. Hernandez. (see Exhibit-A, paragraph 16.)

Mr. Hernandez, also testified at the preliminary hearing that he only had (A) "Little scar" from the "cut" on his arm. (RT. page. 11:15-16.)

the Charge Therefore, MUST be Reduced To (A) Misdemeanor Violation of Section 417(A).

3.

Defendant was Denied the Effective Assistance of Counsel At (A) Critical Stage of the prosecution

the preliminary Hearing, for purposes of the Right To Counsel is (A) Critical Stage of the prosecution. See, Coleman vs. Alabama (1970) 399 U.S. 1, 7-10.

Representing The Defendant IN (A) Criminal case is (A) Difficul and Demanding Job. (A) "Trial" Attorney, is NOT there for the purpose of making (A) "pretty Record. She is there To Give Her Client the Very best professional Representation possible, Hopefully,

19.

With Successful Results for Her Client). See, People vs. Huffman, (4th Dist. 1977) 71 Cal. App. 3d 63, 75.

[An] Attorney must Not Intentionally, Recklessly, or Repeatedly fail To perform Legal services With Competence. (See, Rules of Professional Conduct, Rule 3-110(A).) And competence is Defined as the: (1) Diligence; (2) Learning, And Skill; And (3) mental, Emotional And physical ability Reasonably Necessary, for the performance of such service. (Id.) [Rule 3-110(B)].)

the Defendant is Entitled To INSIST That Some Defense be presented by His Attorney. See, People vs. Frierson, (1985) 39 Cal. 3d 803, 815.

Counsel committed several Incompetent, Acts or omissions which Prejudiced the outcome of the Proceedings.

20.

(A) Defense Counsel Failed To Seek Continuance Of Preliminary Hearing To Secure Metro Video Tape And Interviewing Officers That Viewed The Video.

California Penal Code Section 1050(E) Require (A) Good Cause Showing In order To obtain (A) Continuance.

"Good Cause" As Defined by Section 1050(g)(2). Includes Those Cases Including (A) Case Being Handled In The Career Criminal Prosecutions program pursuant To sections 999 b-Through-999-H

Defendant is prosecuted under the Multiple Strike provision. Therefore, "Good Cause" Existed for (A) Continuance.

(A) Defendant is Denied (A) Substantial Right At the preliminary Hearing by (A)

Magistrate's Refusal To Grant Continuance In order To Produce (A) Material Witness. See. People vs. Jocca (1974) 37 Cal. App 3d 73, 79-80.

Defendant Requested That Deputy Public Defender Holly Hightower, produce the Metro Video From the Bus To Prove He was Not the Aggressor But was Defending Himself Against Attack, And That the Arresting officers viewed the Bus Video, And Told Defendant It showed Him merely Defending Himself. Defendant Requested They be subpoenaed To Testify. (See Exhibit-A) paragraphs 7-8) Ms. Hightower failed To secure Either for the Preliminary Hearing. Id.) Exhibit-A) paragraph 9.)

this Evidence could Have Changed the Felony To (A) Misdemeanor see sections 417(a). of the Penal code.

(b) Counsel Failed To File (A) Sec. 995 Motion To Dismiss Count-2) on Grounds Of Insufficient Evidence.

There Was Absolutely No Evidence Presented on Count-2, [Assault With (A) Deadly Weapon Upon David Ponce], And Counsel Failed To Challenge This Charge In (A) Section 995 Motion In Superior Court.

There Can be No Legitimate Strategy To Elect To Subject Defendant To (A) Trial on this Charge.

Counsel Challenged Count-2, At the preliminary Hearing, on the Insufficient Evidence:

"M.S. High Tower: ...

Motions To
Dismiss for Insufficiency
of the Evidence."
(RT, Page. 22: 6-10)

Counsel's failure to file motions falls below prevailing professional Norms. See, Kimmelman vs. Morrison (1986) 477 U.S. 365, 385

Counsel was found incompetent for failure to file motion to Dismiss for Speedy Trial, violation. See, People vs. Horning (1984) 150 Cal. App. 3d 1015, 1023.

Defense Counsel Rendered Ineffective Assistance of Counsel for failing to file section 995) Motion To Dismiss on Count-2.

(C) Finally, If this Court Find That Defense Counsel Waived objection, To Inadmissible Evidence Being presented At the preliminary Hearing- Santos Hernandez, Hearsay Testimony- Then Defendant Submit, This Too Denied the Effective, Assistance of Counsel, And prejudiced the outcome of the proceedings. (See, people vs. Fisher 2d Dist: 1972) 27 Cal. App. 3d 928, 932 [Counsel must object To Inadmissible, Evidence or objections To Evidence is waived.]

15.) My Attorney, Ms, HighTower, I, Believe she should Have Requested (A) Copy of the Metro Video from the prosecutor for the purposes of, Using it at the preliminary Hearing To Establish that I, was defending myself With the knife, against Two Assressors at the Time of the Incident.

16.) I, do Not Believe My Attorney Ms, HighTower Lodged (ANY) Informal Request for Discovery with the prosecutor, Requesting the metro Video That deputy A. Armes Requested from the Metro on 9/21/09.

see, Attachment-1, at page. 5, paragraph, 10.) Because I, was Given (A) Copy of Her file, and there is No, Copy of one in The Copy of Her file That I, Received.

17.) A copy of the Metro Video Has been Recovered by Defense Counsel Ms. HighTower, And It Shows That I, was in (A) fight Defending myself With the Knife. That I, was not the Aggressor

18.) Based on Information and Belief the prosecutor Had Evidence Prior To Santos Hernandez, testifying To Receiving, five stitches, That Mr. Hernandez, Had in fact not Received any Type of treatment from the Hospital.

19.) Deputy A. Armes wrote in His Incident Report That Mr. Hernandez Had Refused Transportation by the Responding Paramedics To The Hospital For Treatment, (See. Attachment, -1,) on page. 4.) paragraph 7.) But following field identification Requested To be Transported To the Hospital. Deputy Rodriguez. #T 600w9). Transported Mr. Hernandez, To St. Vincent Hospital ER.

2131 W. 3rd St., Los Angeles, 90057.
Id.)

20.) ON JANUARY 29, 2010, THE St. VINCENT Medical Center, 2131 W. Third Street, Los Angeles, CA., 90057-0992, NOTIFIED THE Deputy Public Defender, IN, Response To (A) Medical Records Request THAT They Had No Records for Him. (See copy of Letter AS ATTACHMENT-3.)

I, Charles R. Willard, Declare THAT the Above-mentioned is True, and correct, and Is based on My Memory, and I, Am Willing To Testify To such facts.

This Declaration was Executed AT Los Angeles, California on May 7, 2010.

/s/
CHARLES R. WILLARD
DECLARANT

7.

ATTACHMENT

1

Appendix A

Consist of Superior Court opinion Dated Jan-27-2015 (IN, Number BA362-410.

57 pages

Conviction Affirmed

1-27-2015

ITED ON
YCLED PAPER

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles
JAN 27 2015
Sherri R. Carter, Executive Officer/Clerk
By Christine Gylmesi, Deputy

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

	)	
	)	No. BA362410
IN RE	)	
CHARLES ROBERT WILLARD,	)	**ORDER ON PETITION FOR**
Petitioner	)	**HABEAS CORPUS**
	)	

The court received and reviewed the instant Petition for Writ of Habeas Corpus, as well as all of the Exhibits attached thereto.

On Jan. 18, 2011 a jury found the defendant guilty of 2 counts of Penal Code section 245(a)(1). On Jan. 19, 2011, the court found the defendant's two prior strike convictions as true. On May 24, 2011, the court sentenced defendant to an aggregate term of 30 years to life. Defendant's convictions were affirmed on September 17, 2014.

In this Petition, petitioner alleges: 1.) his trial counsel was ineffective in that he a.) failed to requests CalCrim instructions 316, 226 and 3515; and b.) counsel failed to challenge defendant's alleged prior convictions; 2.) that his appellate counsel was ineffective in that he failed to raise any issues on appeal; 3.) the trial court abused its discretion in failing to grant defendant's Romero motion to strike his alleged prior strikes.

As to the ineffective assistance of counsel claims, the burden is on the petitioner to establish grounds for relief. In re Crow (1971) 4 Cal.3d 613; People v. Duvall (1995) 9 Cal.4th 464. A presumption of regularity attaches to a judgment collaterally attacked. In re Smith (1979) 2 Cal.3d 508.

A review of the entire court file reveals that CalCrim numbers 226 and 316 were given to the jury. As to number 3515 the court has no sua sponte duty to give this instruction. *People v. Beagle* (1972) 6 Cal.3d 441. As to the prior strikes hearing, defense counsel made a motion to strike his strikes and the court heard and considered arguments at a full hearing.

As to the ineffective assistance of appellate counsel claim, competent counsel on appeal is not required to raise every conceivable issue. Exercising professional discretion selectively does not equate with ineffective appellate representation. Experienced attorneys recognize the importance of selecting one or a few key issues to raise on appeal and of winnowing out the weaker issues. [P v. Kipp (2001) 26 Cal.4th 110; In re Smith (1970) 3 Cal.3d 192]. No law, nor the Constitution compels an appointed attorney to raise every nonfrivolous issue requested by his client, if the attorney in his professional

judgment decides otherwise [6 Witkin & Epstein, Cal.Criminal Law (3d. 2000) Criminal Appeal, 37, p.280)]

These principles have been reiterated in numerous cases. Merely arguing that an issue was not advanced by prior counsel does not itself establish inadequate performance by prior counsel. Appellate counsel (and by analogy habeas counsel) performs properly and competently when he exercises discretion and presents only the strongest claims instead of every conceivable claim. [In re Robbins (1998) 18 Cal.4'th 770, 810]. Such discretion and selectivity are "the hallmark of effective appellate advocacy" [Smith v. Murray (1986) 477 U.S. 527, 536]. Lawyers cannot be criticized for failing to make arguments that would have been futile [P v. Lewis (1990) 50 Cal.3d 262, 289].

As to the trial court's abuse of discretion claims, the petitioner fails to set forth a prima facie case of relief. After reviewing the petition and all other filings, attached documents and records in this matter, the Court finds that Petitioner has failed to plead facts that would, if true, entitle him to relief on the grounds asserted. *In re Clark* (1993) 5 Cal.4th 750, 781 ("Summary disposition for a petition which does not state a prima face case for relief is the rule."); *People v. Duvall* (1995) 9 Cal.4th 464, 475 (1995) ("If no prima facie case for relief is stated, the court will summarily deny the motion."). The trial court considered the nature and circumstance of his current and prior convictions and the particulars of his background, character and prospects and reached an impartial decision. *People v. Williams* (1998) 17 Cal.4th, 148.

Therefore, the court orders the entire Petition **DENIED**.

Clerk to give notice.

Dated: Jan. 27, 2015

SUPERIOR COURT LOS ANGELES COUNTY CALIFORNIA

Bernie C. LaForteza
Judge of the Superior Court

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 01/27/15

CASE NO. BA362410

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: CHARLES ROBERT WILLARD

INFORMATION FILED ON 10/22/09.

COUNT 01: 245(A)(1) PC FEL
COUNT 02: 245(A)(1) PC FEL

ON 01/27/15 AT 830 AM IN CENTRAL DISTRICT DEPT 113

CASE CALLED FOR HABEAS CORPUS PETITION

PARTIES: BERNIE C. LAFORTEZA (JUDGE) CHRISTINE GYIMESI (CLERK)
SHAWN BIVENS (REP) NONE (DDA)

PURSUANT TO DEFENDANT'S WRITTEN REQUEST, AND NOT REPRESENTED BY COUNSEL

COURT ORDERS AND FINDINGS:

-PETITION FOR WRIT OF HABEAS CORPUS IS DENIED.

THE COURT RECEIVED AND REVIEWED THE INSTANT PETITION FOR WRIT OF HABEAS CORPUS, AS WELL AS ALL OF THE EXHIBITS ATTACHED THERETO.

.

ON JAN. 18, 2011 A JURY FOUND THE DEFENDANT GUILTY OF 2 COUNTS OF PENAL CODE SECTION 245(A)(1). ON JAN. 19, 2011, THE COURT FOUND THE DEFENDANT'S TWO PRIOR STRIKE CONVICTIONS AS TRUE. ON MAY 24, 2011, THE COURT SENTENCED DEFENDANT TO AN AGGREGATE TERM OF 30 YEARS TO LIFE. DEFENDANT'S CONVICTIONS WERE AFFIRMED ON SEPTEMBER 17, 2014.

.

IN THIS PETITION, PETITIONER ALLEGES: 1.) HIS TRIAL COUNSEL WAS INEFFECTIVE IN THAT HE A.) FAILED TO REQUESTS CALCRIM INSTRUCTIONS 316, 226 AND 3515; AND B.) COUNSEL FAILED TO CHALLENGE DEFENDANT'S ALLEGED PRIOR CONVICTIONS; 2.) THAT HIS APPELLATE COUNSEL WAS INEFFECTIVE IN THAT HE FAILED TO RAISE ANY ISSUES ON APPEAL; 3.) THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO GRANT DEFENDANT'S ROMERO MOTION TO STRIKE HIS ALLEGED

CASE NO. BA362410
DEF NO. 01 DATE PRINTED 01/27/15

PRIOR STRIKES.

.

AS TO THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS, THE BURDEN IS ON THE PETITIONER TO ESTABLISH GROUNDS FOR RELIEF. IN RE CROW (1971) 4 CAL.3D 613; PEOPLE V. DUVALL (1995) 9 CAL.4TH 464. A PRESUMPTION OF REGULARITY ATTACHES TO A JUDGMENT COLLATERALLY ATTACKED. IN RE SMITH (1979) 2 CAL.3D 508.

.

A REVIEW OF THE ENTIRE COURT FILE REVEALS THAT CALCRIM NUMBERS 226 AND 316 WERE GIVEN TO THE JURY. AS TO NUMBER 3515 THE COURT HAS NO SUA SPONTE DUTY TO GIVE THIS INSTRUCTION. PEOPLE V. BEAGLE (1972) 6 CAL.3D 441. AS TO THE PRIOR STRIKES HEARING, DEFENSE COUNSEL MADE A MOTION TO STRIKE HIS STRIKES AND THE

COURT HEARD AND CONSIDERED ARGUMENTS AT A FULL HEARING.

.

AS TO THE INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL CLAIM, COMPETENT COUNSEL ON APPEAL IS NOT REQUIRED TO RAISE EVERY CONCEIVABLE ISSUE. EXERCISING PROFESSIONAL DISCRETION SELECTIVELY DOES NOT EQUATE WITH INEFFECTIVE APPELLATE REPRESENTATION. EXPERIENCED ATTORNEYS RECOGNIZE THE IMPORTANCE OF SELECTING ONE OR A FEW KEY ISSUES TO RAISE ON APPEAL AND OF WINNOWING OUT THE WEAKER ISSUES. [P V. KIPP (2001) 26 CAL.4TH 110; IN RE SMITH (1970) 3 CAL.3D 192]. NO LAW, NOR THE CONSTITUTION COMPELS AN APPOINTED ATTORNEY TO RAISE EVERY NONFRIVOLOUS ISSUE REQUESTED BY HIS CLIENT, IF THE ATTORNEY IN HIS PROFESSIONAL JUDGMENT DECIDES OTHERWISE [6 WITKIN & EPSTEIN, CAL.CRIMINAL LAW (3D. 2000) CRIMINAL APPEAL, 37, P.280)]

.

THESE PRINCIPLES HAVE BEEN REITERATED IN NUMEROUS CASES. MERELY ARGUING THAT AN ISSUE WAS NOT ADVANCED BY PRIOR COUNSEL DOES NOT ITSELF ESTABLISH INADEQUATE PERFORMANCE BY PRIOR COUNSEL. APPELLATE COUNSEL (AND BY ANALOGY HABEAS COUNSEL) PERFORMS PROPERLY AND COMPETENTLY WHEN HE EXERCISES DISCRETION AND PRESENTS ONLY THE STRONGEST CLAIMS INSTEAD OF EVERY CONCEIVABLE

CLAIM. [IN RE ROBBINS (1998) 18 CAL.4'TH 770, 810]. SUCH DISCRETION AND SELECTIVITY ARE "THE HALLMARK OF EFFECTIVE APPELLATE ADVOCACY" [SMITH V. MURRAY (1986) 477 U.S. 527, 536]. LAWYERS CANNOT BE CRITICIZED FOR FAILING TO MAKE ARGUMENTS THAT WOULD HAVE BEEN FUTILE [P V. LEWIS (1990) 50 CAL.3D 262, 289].

.

AS TO THE TRIAL COURT'S ABUSE OF DISCRETION CLAIMS, THE PETITIONER FAILS TO SET FORTH A PRIMA FACIE CASE OF RELIEF. AFTER REVIEWING THE PETITION AND ALL OTHER FILINGS, ATTACHED DOCUMENTS AND RECORDS IN THIS MATTER, THE COURT FINDS THAT PETITIONER HAS FAILED TO PLEAD FACTS THAT WOULD, IF TRUE, ENTITLE HIM TO RELIEF ON THE GROUNDS ASSERTED. IN RE CLARK (1993) 5 CAL.4TH 750, 781 ("SUMMARY DISPOSITION FOR A PETITION WHICH DOES NOT STATE A PRIMA FACE CASE FOR RELIEF IS THE RULE."); PEOPLE V. DUVALL (1995) 9 CAL.4TH 464, 475 (1995) ("IF

CASE NO. BA362410
DEF NO. 01 DATE PRINTED 01/27/15

NO PRIMA FACIE CASE FOR RELIEF IS STATED, THE COURT WILL SUMMARILY DENY THE MOTION."). THE TRIAL COURT CONSIDERED THE NATURE AND CIRCUMSTANCE OF HIS CURRENT AND PRIOR CONVICTIONS AND THE PARTICULARS OF HIS BACKGROUND, CHARACTER AND PROSPECTS AND REACHED AN IMPARTIAL DECISION. PEOPLE V. WILLIAMS (1998) 17 CAL.4TH, 148.

THEREFORE, THE COURT ORDERS THE ENTIRE PETITION DENIED.

CLERK TO GIVE NOTICE.

DATED: JANUARY 27, 2015 BERNIE C. LAFORTERA
JUDGE OF THE SUPERIOR COURT

COPIES OF THE COURT'S ORDER AND THIS MINUTE ORDER ARE FORWARDED TO THE DEFENDANT VIA U.S. MAIL AS FOLLOWS:

CALIFORNIA STATE PRISON
CHARLES R. WILLARD
C.D.C.R. #C-36206; FDI-228 #L
P.O. BOX 4670
LANCASTER, CA 93539

NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

Appendix B

CONSIST OF COURT OF APPEALS. SECOND APPELLATE DISTRICT

IN Number; B262329

Dated. MARCH, 4. 2015

<27 pages

CONVICTION AFFIRMED

3-4-2015

ITED ON
YCLED PAPER

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL - SECOND DIST.
FILED
MAR -4 2015
JOSEPH A. LANE Clerk
D. SANDERS Deputy Clerk

In re

CHARLES ROBERT WILLARD

on Habeas Corpus.

B262329

(Super. Ct. No. BA362410)

(Gail R. Feuer and Henry J. Hall, Judges)

ORDER

THE COURT:

The petition for writ of habeas corpus filed herein March 3, 2015 has been read and considered. The court has also examined the files in proceedings numbers B233492 and B250588, petitioner Willard's direct appeals from judgments in Los Angeles County Superior Court case number BA362410. The petition is denied.

PERLUSS, P. J., WOODS, J., ZELON, J.

Charles R. Willard
Los Angeles County State Prison
44750 - 60th Street West
Lancaster, CA 93536-7620

Case Number B262329
Division 7

In re CHARLES R. WILLARD on Habeas Corpus.

Appendix C

Consist of Miscellaneous Factors by Defense Counsel McGurk.

See Documents in Number 00161 and 00162 on Appendix C,

Dated March 16th 2009

ITED ON YCLED PAPER

C. Miscellaneous Factors

The Supreme Court in Garcia also approved the trial court's dismissal of priors based on the following reasons: [i] "defendant's prior convictions all arose from a single period of aberrant behavior for which he served a single prison term. [ii] Defendant cooperated with police, [iii] his crimes were related to drug addiction, and [iv] his criminal history does not include any actual violence." (Garcia, supra, 20 Cal.4th 490, 503.)

V. This Court Should Dismiss Two "Strike" Priors

It is conceded that the charges in the present case are considered violent felonies. However that isn't the end of the analysis. A closer look at the facts of the case reveal that while the conduct is serious, it is certainly not as violent as a majority of cases with similar charges.

The state of Mr. Hernandez's injuries is a two inch laceration to the forearm. Mr. Ponce received no injuries. Furthermore, the severity of the injury is in even greater doubt considering that the hospital that Mr. Hernandez claimed to have received treatment from had no record of such treatment. This fact was likely a factor in the jury's determination that the great bodily injury allegation was not proven.

The violent act in question was also limited to one swipe of Mr. Willard's relatively small knife. Mr. Willard didn't attempt to rob either party and actually allowed them to leave the bus as opposed to continuing the encounter. This motion's intent is not to minimize the seriousness of Mr. Willard's conduct. It simply asks the Court to take it in context when considering fact patterns of other Assault with a Deadly Weapon cases. It is the defense position that these facts would place this case squarely in the bottom third in terms of seriousness.

The Court should also consider the large range of sentencing options it has even if it were to follow the defense's recommendation. The Court could sentence Mr. Willard anywhere from ten to eighteen years in state prison if two "strike" priors were stricken. That range is more than sufficient considering the facts of this case

and is a legitimate factor for the Court to analyze when considering the merits of this motion.

The prior convictions the defense asks the court to strike are also extremely dated. Before the present case, Mr. Willard has not been convicted for anything that could be considered violent for over 22 years. Since 1987, the only felony convictions Mr. Willard has suffered are for simple drug possession. Mr. Willard has a long history of substance abuse problems which is referenced in his attached social history. It is also notable that one of the prior convictions we ask the court to strike occurred when Mr. Willard was a juvenile. The other two prior "strike" convictions the prosecution asks the Court in impose occurred within the same case and were disposed of simultaneously.

Due to the seriousness of the present case, the range of sentencing options available to the court, and the age and circumstances of the alleged priors, Mr. Willard respectfully requests this court exercise its discretion and dismiss two "strike" priors as alleged in this matter.

Dated: March 16th, 2009

Respectfully submitted,

Kevin T. McGurk
Attorney for Defendant

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ.P.5; 28 U.S.C§ 1746)

E.C.D. Sec: 10.1.A. 20155. 28 U.S.C 1746

I, CHARLES R WILLIAMS, Case NO. BA362410, declare: I am over 18 years of age and a party to this action. I am a resident of California State Prison, in the county of LANCASTER, State of California. My prison address is: P.O. BOX-4670 LANCASTER, CA 93539

On MARCH 1 / 2015, I served the attached: AS Follow Document (A) petition for WRIT OF HABEAS CORPUS. To the State Supreme Court

to: Clerk. California Supreme Court. 350 MC Allister Street. San Francisco, CA 94102-4797.

on the parties herein by placing true and correct copies there of, enclosed in a sealed envelope, with postage thereon fully paid, in the United State Mail in a deposit box so provided at the above-named correctional institution in which I am currently confined. The envelope was address as follows:

LANCASTER State prison California.

P.O. BOX-4670 LANCASTER. CA 93539

Seeking Review:

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

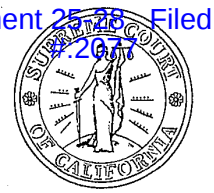
Executed on 3/16/2015 (Date)

(Declarant signature)

39

JORGE NAVARRETE
ASSISTANT CLERK/ADMINISTRATOR

MARY JAMESON
AUTOMATIC APPEALS SUPERVISOR



EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

Supreme Court of California

FRANK A. McGUIRE
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

April 16, 2015

Mr. Charles Willard
C-36206 F.D.3-143
California State Prison – Los Angeles
P.O. Box 4670
Lancaster, CA 93539

Re: **Petition for Writ of Habeas Corpus**

Dear Mr. Willard:

We hereby return unfiled your petition for writ of habeas corpus received March 23, 2015. We must have an original signature. Please sign the form at the place indicated and return it with the enclosed copy of this letter so that it may be properly filed.

Very truly yours,

FRANK A. McGUIRE
Court Administrator and
Clerk of the Supreme Court

By: H. Wong, Deputy Clerk

Enclosures

RECEIVED
APR 27 2015
CLERK SUPREME COURT

APPENDIX 14

ATTORNEY GENERAL

COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA

JUL 12 2011
K. Coamy
LA2011503353

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and **RESPONDENT**

No. BA362410-01

Vs

CHARLES WILLARD,

Volume **1** of **1** Volumes
Notice of appeal filing date: **5/27/11**

Defendant(s) and **APPELLANTS**

CLERK'S TRANSCRIPT
Page 1 to 187

Appearances:

Counsel for Plaintiff:

THE ATTORNEY GENERAL

Counsel for Defendant:

c/o CAP

Appeal from the Superior Court,
County of Los Angeles

Honorable Gail R. Feuer, Judge

Date Mailed to:
Defendant (in pro per)
Defendant's Trial Attorney
Defendant's Appellate Attorney
District Attorney
Attorney General

JUL 08 2011

00001

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 38 HON. DARRELL MAVIS, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF,

VS.

CHARLES WILLARD,
DEFENDANT.

CASE NO. BA362410

ORIGINAL

PRELIMINARY FELONY HEARING

OCTOBER 8, 2009

APPEARANCES:

FOR THE PEOPLE: STEVE COOLEY, DISTRICT ATTORNEY
BY: LOUIS MORIN, DEPUTY
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

FOR DEFENDANT: MICHAEL P. JUDGE, PUBLIC DEFENDER
BY: HOLLY HIGHTOWER, DEPUTY
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

LOS ANGELES

OCT 19 2009 : 2

BY

HTA: 10/22/09
DEPT. 123

VIENNA NGUYEN, CSR NO. 13137
OFFICIAL REPORTER

00001A

I N D E X

PEOPLE'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
SANTOS HERNANDEZ	3	11	20	21

E X H I B I T S

(NO EXHIBITS OFFERED.)

00001h

CASE NUMBER: BA362410
CASE NAME: PEOPLE V. CHARLES WILLARD
LOS ANGELES, CALIFORNIA OCTOBER 8, 2009
DEPARTMENT 38 HON. DARRELL MAVIS
REPORTER: VIENNA NGUYEN, CSR NO. 13137
TIME: 3:08 P.M.
APPEARANCES:
DEFENDANT CHARLES WILLARD, PRESENT WITH COUNSEL HOLLY HIGHTOWER, DEPUTY PUBLIC DEFENDER; LOUIS MORIN, DEPUTY DISTRICT ATTORNEY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

THE COURT: NUMBER TWO IS CHARLES WILLARD, NUMBER BA362410.

MS. HIGHTOWER: HOLLY HIGHTOWER, DEPUTY PUBLIC DEFENDER, FOR MR. WILLARD.

MR. MORIN: LOUIS MORIN, DEPUTY D.A., FOR THE PEOPLE.

THE COURT: BOTH SIDES READY FOR PRELIMINARY HEARING?

MS. HIGHTOWER: YES. WELL, I AM.

MR. MORIN: YES.

THE COURT: CALL YOUR FIRST WITNESS.

MR. MORIN: SANTOS HERNANDEZ.

MS. HIGHTOWER: ANY OTHER WITNESSES TO BE EXCLUDED.

THE COURT: GRANTED.

(ALEJANDRO ALCANTARA, INTERPRETING FOR THE WITNESS ENGLISH INTO SPANISH AND SPANISH INTO ENGLISH.)

SANTOS HERNANDEZ,

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

THE CLERK: PLEASE FACE ME AND RAISE YOUR RIGHT HAND.

DO YOU 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. PLEASE BE SEATED IN THE WITNESS STAND.

WOULD YOU PLEASE STATE AND SPELL YOUR FIRST AND LAST NAME FOR THE RECORD.

THE WITNESS: SANTOS HERNANDEZ.

THE INTERPRETER: INTERPRETER SPELLING, YOUR HONOR?

THE COURT: PLEASE.

THE INTERPRETER: FIRST NAME SANTOS, S-A-N-T-O-S. LAST NAME HERNANDEZ, H-E-R-N-A-N-D-E-Z.

THE CLERK: THANK YOU.

DIRECT EXAMINATION

BY MR. MORIN:

Q MR. HERNANDEZ, ON SEPTEMBER 21ST OF 2009, AROUND 4:15 P.M., WERE YOU RIDING ON A BUS?

A YEAH.

Q WAS THAT IN THE AREA OF WESTERN AND EIGHTH, IN THE COUNTY OF LOS ANGELES?

A YES, SEVENTH AND EIGHTH.

Q OKAY. WERE YOU BY YOURSELF OR WERE YOU RIDING THE BUS WITH SOMEBODY ELSE?

A I WAS THERE WITH MY COWORKER.

Q IS THAT DAVID PONCE?

A YEAH.

Q WERE YOU SITTING NEXT TO EACH OTHER?

A WE WERE SITTING NEXT TO EACH OTHER.

Q WHICH SIDE OF YOU WAS HE ON?

A NO -- YOU MEAN THE ATTACKER?

Q NO, DAVID PONCE. WAS HE SITTING ON YOUR RIGHT OR ON YOUR LEFT?

A TO MY LEFT.

THE COURT: INDICATING THE DEFENDANT -- SORRY.

Q BY MR. MORIN: HOW CLOSE WAS HE TO YOU?

THE WITNESS: MY FRIEND, YOU MEAN?

Q BY MR. MORIN: YES.

A RIGHT NEXT TO ME.

Q WAS HE TOUCHING YOU, OR WERE THERE A COUPLE INCHES BETWEEN YOU?

A NO, SEPARATED BY A FEW INCHES.

Q OKAY. AT SOME POINT, DID YOU SEE A PERSON WHO'S IN COURT HERE TODAY?

A NO, NO.

Q DO YOU RECOGNIZE ANYBODY IN THIS ROOM WHO WAS ON THE BUS AS WELL?

A NO.

Q WHEN YOU WERE ON THE BUS, AT SOME POINT, DID A PERSON WALK UP TO YOU?

A NOBODY DID, NO.

Q DID ANYBODY YELL AT YOU WHEN YOU WERE ON THE BUS?

A NO. JUST -- NO, NOBODY YELLED AT ME. NOBODY YELLED AT US.

Q DID ANYBODY CALL YOU AND YOUR FRIEND, "FUCKING MEXICANS"?

A YEAH, HE DID.

Q IS THAT PERSON IN THE COURTROOM RIGHT NOW?

A YES.

Q WHERE IS THAT PERSON SITTING AND WHAT COLOR IS HE WEARING?

A IT'S HIM IN BLUE.

THE COURT: INDICATING THE DEFENDANT.

Q BY MR. MORIN: WHERE WAS HE WHEN YOU FIRST SAW HIM?

A IN THE BUS, FOUR ROWS IN FRONT OF ME.

Q WHAT WAS THE FIRST THING THAT HE SAID TO YOU?

A I JUST LOOKED AT HIM AS I WAS TALKING TO MY FRIEND, AND THEN HE CAME TO ME AND TOUCHED MY FACE LIKE THIS (INDICATING).

MR. MORIN: MAY THE RECORD REFLECT THAT THE WITNESS PUT HIS FINGER ON THE LEFT SIDE OF HIS CHEEK NEAR THE CHEEKBONE?

THE COURT: OKAY.

Q BY MR. MORIN: SO DID HE STAND UP AND WALK OVER TO YOU?

A HE STOOD UP AND CAME TO ME AND TOUCHED MY FACE.

Q OKAY. DID HE SAY ANYTHING THEN?

A HE -- HE JUST SAID, "PINCHE MEXICA," AND WENT TO HIS BACKPACK AND PULLED OUT HIS KNIFE.

THE INTERPRETER: FOR THE RECORD, YOUR HONOR, THE SPELLING: P-I-N-C-H-E, SEPARATE WORD, M-E-X-I-C-A.

THE COURT: THANK YOU.

Q BY MR. MORIN: DO YOU RECALL WHETHER HE SAID MEXICAN, SINGULAR, OR MEXICANS, PLURAL?

A MEXICAN, "PINCHE MEXICA."

Q AND WHAT DID HE DO NEXT?

A HE TOOK OUT HIS KNIFE AND CAME TO ME.

Q WHERE DID HE GET THE KNIFE FROM?

A FROM A BACKPACK HE HAD ON THE SEAT.

Q CAN YOU DESCRIBE WHAT THE KNIFE LOOKED LIKE?

A IT WAS ABOUT SIX INCHES ONCE HE OPENED IT.

Q WAS IT A FOLDING KNIFE?

A THE ONES WITH A SPRING, BUT HE HAD IT IN HIS POCKET.

Q DID HE HAVE TO GO BACK TO HIS SEAT IN ORDER TO GET IT?

A YES.

Q WAS THE WHOLE KNIFE SIX INCHES, OR JUST THE BLADE?

A NO. ONCE HE EXTENDED IT, IT WAS ABOUT SIX INCHES LONG.

Q OKAY. WHAT DID HE DO NEXT?

A HE CAME AT ME AND STABBED ME HERE.

Q OKAY. LET ME BACK UP FOR A MINUTE.

HOW FAR AWAY WAS HE STANDING FROM YOU WHEN HE FIRST OPENED UP THE KNIFE?

A AS SOON AS HE GOT UP FROM THE SEAT.

Q AND YOU SAID THAT WAS ABOUT FOUR SEATS AWAY?

A YES, AND THEN HE APPROACHED ME.

Q HOW WAS HE HOLDING THE KNIFE WHEN HE APPROACHED YOU? CAN YOU SHOW US?

A YES, LIKE THIS (INDICATING).

MR. MORIN: MAY THE RECORD REFLECT THE WITNESS IS HOLDING HIS RIGHT ARM EXTENDED OUT AT CHEST LEVEL?

THE COURT: YES.

Q BY MR. MORIN: DID HE HOLD THE KNIFE STEADY OR DID HE MOVE IT AROUND AT ALL?

A NO, HE MOVED IT.

MS. HIGHTOWER: I'M GOING TO OBJECT AS THE LINE OF

QUESTIONING IS IRRELEVANT.

THE COURT: OVERRULED.

Q BY MR. MORIN: WAS HE -- HOW FAST WAS HE MOVING TOWARDS YOU? WAS HE WALKING OR RUNNING?

A NO, HE WAS WALKING.

Q WHEN YOU SAY THAT HE STABBED YOU IN THE ARM, DID HE MAKE SOME SORT OF A MOTION WITH THE KNIFE?

A JUST LIKE THIS AGAINST ME.

MR. MORIN: MAY THE RECORD REFLECT THE WITNESS IS MAKING A MOTION FROM RIGHT TO LEFT WITH HIS RIGHT ARM ON A HORIZONTAL PLANE?

THE COURT: OKAY.

Q BY MR. MORIN: COULD YOU SEE WHAT PART OF YOUR BODY THE KNIFE WAS GOING TOWARDS?

A THE FIRST TIME HE ATTACKED ME, IT WAS LIKE THIS AGAINST ME, AND I HAD MY BACKPACK.

Q I'M SORRY. CAN YOU SHOW US AGAIN?

A YOU MEAN THE KNIFE?

Q YEAH. WHICH PART OF YOUR BODY WAS HE HITTING?

A I WAS LIKE THIS IN FRONT OF HIM, AND I HAD MY BACKPACK IN FRONT OF ME. HE WENT LIKE THIS THROUGH THE PACK, BUT I RAISED MY ARM LIKE THIS (INDICATING).

Q OKAY. SO WOULD YOU SAY THAT THE KNIFE WAS GOING TOWARDS THE LEFT SIDE OF YOUR BODY?

A TO THE LEFT SIDE.

Q WHY DID YOU LIFT UP YOUR ARM?

A TO BLOW OFF WHAT WAS COMING TOWARDS ME,

MEANING HIS KNIFE.

Q IS THAT THE SAME SIDE THAT DAVID PONCE WAS SITTING ON?

A HE HAD ALREADY WALKED BEHIND ME AND LEFT THE BUS.

Q WHEN DID HE DO THAT?

A YOU MEAN WHEN DID HE GET OUT?

Q WHEN DID DAVID PONCE GET UP?

A WHEN HE SAW THIS GUY COMING TOWARDS US WITH A KNIFE.

Q SO DID YOU SEE WHERE EXACTLY DAVID WAS WHEN YOU GOT STABBED?

A I'M SORRY?

Q WHEN YOU GOT STABBED IN THE ARM, COULD YOU SEE WHERE DAVID WAS?

A DAVID, MY COWORKER?

Q YES. WHERE EXACTLY WAS HE WHEN YOU GOT STABBED?

A HE HAD ALREADY MOVED BEHIND ME. WHEN HE SAW THIS GUY COMING WITH THE KNIFE, HE MOVED BEHIND ME, AND THEN HE GOT OFF.

Q OKAY. DO YOU KNOW HOW FAR BEHIND YOU HE WAS?

A WELL, HE WAS ON THIS SEAT NEXT TO ME. BUT WHEN HE SAW THIS GUY COMING WITH THE KNIFE, HE JUMPED OVER THE SEAT BEHIND ME, AND I WAS IN FRONT OF HIM.

Q WAS HE SITTING IN THE SEAT BEHIND YOU?

A WHO?

Q DAVID PONCE. WHEN HE JUMPED OVER THE SEAT, DID HE STAY IN THE SEAT BEHIND YOU? WAS HE STAYING THERE?

A NO, HE GOT OUT.

Q OKAY. DID HE GET OUT BEFORE OR AFTER YOU GOT STABBED IN THE ARM?

A HE FIRST GOT OUT.

Q OKAY. DID YOU SEE WHERE HE WENT WHEN HE GOT OUT?

A WHO?

Q DAVID PONCE, YOUR COWORKER. DID YOU SEE WHERE HE WENT WHEN HE GOT OUT?

MS. HIGHTOWER: OBJECTION. RELEVANCE.

THE COURT: WHAT'S THE RELEVANCE?

MR. MORIN: I JUST WANT TO TRY AND ESTABLISH HOW FAR DAVID PONCE ACTUALLY WENT. IN OTHER WORDS, IF HE WALKED THREE FEET AWAY, THAT WOULD BE RELEVANT TO THE ASSAULT CHARGE, I THINK. BUT IF HE LEFT THE BUS, THEN IT'S LESS LIKELY THAT HE WAS -- WOULD HAVE BEEN INJURED.

THE COURT: OKAY. OVERRULED.

Q BY MR. MORIN: DID DAVID PONCE, YOUR COWORKER, LEAVE THE BUS OR DID HE STAY ON THE BUS AT THAT POINT?

A HE LEFT THE BUS BEFORE I DID.

Q OKAY. WHAT HAPPENED AFTER YOU GOT STABBED IN THE ARM?

A THE DRIVER HELPED ME OUT.

Q AFTER YOU GOT HIT IN THE ARM, WHAT DID THE

DEFENDANT DO?

A HE LEFT.

Q DID HE TRY TO STAB YOU AGAIN?

A NO, NOT AFTER THAT. AFTER WE GOT OUT -- OUT OF THE BUS, NO.

Q WHAT ABOUT WHILE -- YOU WERE ON THE BUS; RIGHT?

A YES. HE WENT LIKE THIS AGAIN RIGHT UNDER THE BACKPACK.

Q CAN YOU SHOW ME ONE MORE TIME? I COULDN'T SEE.

A LIKE THIS, LIKE BELOW THE BACKPACK AND COMING THIS WAY.

MR. MORIN: MAY THE RECORD REFLECT THE WITNESS IS GESTURING TOWARDS HIS ABDOMEN AREA?

THE COURT: YES.

Q BY MR. MORIN: WHAT HAPPENED AFTER THAT?

A HE TOLD ME TO GET OUT FIRST, AND I GOT OUT BECAUSE I WAS WOUNDED AND THE DRIVER HAD ME SEATED ON THE BENCH.

Q WHERE DID THE DEFENDANT GO? DID HE LEAVE?

A HE LEFT, BUT HE WAS FOLLOWED UNTIL THEY CALLED THE POLICE ON HIM.

Q DID YOU GET ANY MEDICAL TREATMENT FOR YOUR ARM?

A THE POLICE JUST TOOK ME TO THE HOSPITAL.

Q WHAT KIND OF TREATMENT DID YOU GET AT THE

HOSPITAL?

A THEY JUST GAVE ME STITCHES.

Q HOW MUCH STITCHES?

A FIVE STITCHES.

Q WERE YOU BLEEDING?

A A LITTLE.

Q DID IT HURT?

A A LITTLE. I JUST STOPPED WORKING FOR A WEEK.

Q DID YOU TAKE ANY -- DID THE DOCTORS GIVE YOU ANY MEDICINE?

A YES, A PRESCRIPTION, WHICH I BOUGHT.

Q WAS THAT A PAINKILLER?

A YES, AND ANTIBIOTICS.

Q DO YOU HAVE A SCAR NOW?

A NO. WELL, A LITTLE.

MR. MORIN: THANK YOU. NOTHING FURTHER.

THE COURT: MS. HIGHTOWER?

MS. HIGHTOWER: YES, PLEASE.

CROSS-EXAMINATION

BY MS. HIGHTOWER:

Q GOOD AFTERNOON, MR. HERNANDEZ.

A GOOD AFTERNOON.

Q MR. HERNANDEZ, YOU SAY THAT YOU WERE SEATED ON THE BUS; IS THAT CORRECT?

THE INTERPRETER: I'M SORRY, COUNSEL?

Q BY MS. HIGHTOWER: YOU STATED THAT

YOU WERE SEATED ON THE BUS; IS THAT CORRECT?

A YEAH.

Q AND THAT YOU WERE WITH YOUR COWORKER, MR. PONCE; IS THAT CORRECT?

A YES.

Q OKAY. AND YOU SAW MR. WILLARD APPROACH YOU; IS THAT CORRECT?

A YES.

Q ALL RIGHT. AND WHEN YOU SAW HIM APPROACH YOU, DID HE TALK TO YOU?

A NO.

Q OKAY. DID HE EVER SAY ANYTHING TO YOU?

A ONLY "PINCHE MEXICA," AND HE TOUCHED MY FACE.

Q AND WHEN HE SAYS "PINCHE," IS THAT A SPANISH WORD?

A YEAH.

Q AND WHAT DOES IT MEAN TO YOU?

A IT'S LIKE SOMETHING YOU CALL A MEXICAN.

Q OKAY. DID YOU SEE HIM HOLDING ANYTHING OUT TO YOU WHEN HE FIRST CAME TO YOU?

A NO, HE DIDN'T HAVE ANYTHING WITH HIM YET.

Q SO HE HAD NOTHING WITH HIM?

A NOT AT FIRST.

Q OKAY. AND HE WAS NOT TALKING TO YOU AT ALL, OTHER THAN --

A I DIDN'T EVEN KNOW HIM.

Q OKAY. BUT SOMETIMES PEOPLE TALK TO YOU WHO

DON'T KNOW YOU. THEY MAY WALK UP AND SAY HELLO. AND THEY MAY BE SPEAKING ENGLISH, SO YOU WOULDN'T UNDERSTAND THEM; IS THAT CORRECT?

A YEAH.

Q OKAY. SO WAS HE SPEAKING ENGLISH TO YOU OR MR. PONCE?

A HE ONLY SAID THOSE TWO WORDS.

Q OKAY. ONLY SAID TWO WORDS. AND THEN YOU STATE THAT HE JUST TURNED AROUND, WENT BACK TO HIS BACKPACK; IS THAT CORRECT?

A TO HIS BACKPACK.

Q OKAY. NOW, WHEN YOU WERE TOUCHED ON THE FACE, DID YOU STAND UP?

A I JUST SAID, "NO PROBLEM." THAT'S ALL I SAID.

THE INTERPRETER: FOR THE RECORD, THOSE TWO WORDS WERE SAID IN ENGLISH, THOSE TWO WORDS.

THE COURT: THANK YOU.

Q BY MS. HIGHTOWER: SO YOU SAID, "NO PROBLEM." WHY?

A BECAUSE HE TOUCHED MY FACE. THAT'S ALL.

Q ALL RIGHT. AND YOU WERE SAYING YOU DIDN'T WANT ANY PROBLEMS?

A YES, NO PROBLEMS. THAT'S WHAT I WANTED HIM TO UNDERSTAND.

Q SO YOU DID NOT STAND UP THEN?

A NO.

Q OKAY. AND DID YOU -- WHEN HE CAME BACK TO

YOU, DID YOU HAVE AN ARGUMENT WITH HIM?

A I WAS ALWAYS SITTING, BUT AT THAT POINT, I DID GET UP.

Q ALL RIGHT. SO TO BE CLEAR, MR. WILLARD CAME TO YOU AND THEN WALKED AWAY TO HIS BACKPACK; IS THAT CORRECT?

A YEAH.

Q AND YOU WERE SEATED?

A I WAS STILL SITTING THEN.

Q AND YOU ONLY SAID NO PROBLEM?

A "NO PROBLEM."

Q AND DID MR. PONCE SAY ANYTHING?

A HE JUST WENT LIKE THIS AT ME (INDICATING). HE DIDN'T SAY ANYTHING ELSE.

Q BUT DID MR. PONCE SAY ANYTHING TO MR. WILLARD, THE GENTLEMAN NEXT TO ME?

A NO.

Q ALL RIGHT. AND SO WHEN MR. WILLARD CAME BACK, YOU WERE STANDING; IS THAT CORRECT?

A YES, BECAUSE HE WAS COMING TOWARD ME WITH A KNIFE.

Q OKAY. AND DID MR. PONCE STAND UP?

A HIM?

Q DID MR. PONCE -- YOUR FRIEND, DID HE STAND UP?

A YES.

Q ALL RIGHT. AND WHEN HE CAME TO YOU WITH THIS KNIFE FROM HIS BACKPACK, WAS THE KNIFE OPEN?

A AS SOON AS HE PULLED IT OUT, HE OPENED IT.

Q ALL RIGHT. AND WHEN HE CAME TO YOU, YOU'RE SAYING THAT HE -- HOW MANY STEPS DID HE HAVE TO TAKE TO COME TO YOU?

A I COULDN'T TELL. IT'S FOUR ROWS OF SEATS WITHIN THE BUS.

Q WERE OTHER PEOPLE SEATED IN THOSE SEATS?

A THEY WERE NEXT TO HIM, BUT THEY GOT OUT RIGHT AWAY.

Q AND THE BUS WAS STOPPED AT THIS POINT?

A YES. IT WAS NOT A BUS STOP, BUT IT STOPPED.

Q ALL RIGHT. HOW DID THE BUS STOP?

A SLOWLY, UNTIL THEY OPENED THE DOORS SO THAT EVERYBODY COULD GET OUT.

Q SO THE BUS DRIVER TOLD EVERYBODY TO GET OUT?

MR. MORIN: OBJECTION.

THE COURT: OVERRULED.

THE WITNESS: YES.

Q BY MS. HIGHTOWER: ALL RIGHT. AT WHAT POINT DID THE BUS DRIVER TELL EVERYONE TO GET OUT?

A SHE DIDN'T TELL THEM. SHE JUST OPENED THE DOORS AND EVERYBODY STARTED GETTING OUT.

Q HOW MANY PEOPLE WERE ON THE BUS THEN?

A I WOULDN'T KNOW. THERE WERE A LOT OF PEOPLE.

Q SO THERE WAS NO ONE, THOUGH, BETWEEN YOU AND MR. PONCE IN THAT SEAT, AND MR. WILLARD FOUR ROWS AHEAD; IS THAT CORRECT?

A NO -- YES -- NO.

Q OKAY. I'LL ASK IT JUST AGAIN SO WE CAN GET A CLEAR ANSWER.

WAS THERE ANY -- WERE THERE ANY BUS PASSENGERS BETWEEN THE SEAT WHERE YOU AND MR. PONCE WERE SEATED -- WERE SEATED AND THE SEAT BEFORE YOU SAW MR. WILLARD?

A ONLY RIGHT NEXT TO HIM.

Q OKAY. AND WERE YOU SEATED NEAR THE BACK ENTRANCE, THE BACK EXIT?

A I WAS ON ONE OF THE LAST SEATS, NOT THAT CLOSE, MAYBE SIX SEATS FROM HIM.

Q SO WHEN YOU SAW MR. WILLARD COMING TOWARD YOU, DID YOU KICK HIM?

THE INTERPRETER: MAY THE INTERPRETER INQUIRE, YOUR HONOR?

THE COURT: PLEASE.

THE WITNESS: THE SECOND TIME, I CLIMBED UP ON THE SEAT, AND I STOPPED HIM.

Q BY MS. HIGHTOWER: ALL RIGHT. AND LET'S BE CLEAR.

THE FIRST TIME WAS WHEN HE WALKED UP TO YOU AND YOU SAY THAT HE TOUCHED YOUR FACE.

IS THAT WHAT YOU MEAN BY THE FIRST TIME?

A YEAH, YES.

Q OKAY. AND YOU SAY THAT RIGHT AWAY, HE WENT TO A BACKPACK, GOT A KNIFE, AND CAME BACK; IS THAT CORRECT?

A EXACTLY.

Q AND YOU DIDN'T SAY A WORD TO HIM WHEN HE WALKED AWAY FROM YOU?

A NO.

Q AND MR. PONCE DIDN'T SAY A WORD TO HIM WHEN HE WALKED AWAY FROM THE TWO OF YOU?

A NOT AT ALL.

Q AND HE DIDN'T SAY A WORD TO YOU?

A NO, ONLY "PINCHE MEXICA." THAT'S ALL.

Q OKAY. AND EVERYBODY ELSE ON THE BUS WAS QUIET?

A QUIET, BUT THEY STARTED GETTING OUT OF THE BUS.

Q ALL RIGHT. SO WHEN YOU CAME BACK -- I'M SORRY.

WHEN MR. WILLARD CAME BACK TOWARDS YOU, YOU CLIMBED UP ON THE CHAIRS AND YOU KICKED HIM; IS THAT CORRECT?

A I -- YEAH. THE SECOND TIME HE STABBED ME, I PUT MY FOOT TO STOP HIM.

Q AND WHEN YOU SAY YOU PUT YOUR FOOT TO STOP HIM, IS THAT A KICK?

A I JUST PUSHED HIM BACK AND HE STOPPED STABBING ME.

Q OKAY. DID YOU KICK HIM WITH A BOOT?

A THESE SAME WORK SHOES.
Q SO THEY WERE WORK SHOES; IS THAT CORRECT?
A YES, I WAS COMING FROM WORK.
Q ALL RIGHT. AND DO YOU WORK IN CONSTRUCTION?
A WELDING.
Q ALL RIGHT. SO ARE THESE -- DO THESE BOOTS HAVE IRON IN THEM?
A YEAH, IT HAS IRON BECAUSE YOU WORK WITH WELDING.
Q YES. AND YOU KICKED HIM ONCE OR TWICE?
A ONLY ONE TIME. I STOPPED HIM WITH THIS.
Q AND THEN DID HE COME AT YOU THEN WITH THE KNIFE?
A NOT ANYMORE. HE JUST TOLD ME TO GET OUT OF THE BUS.
Q AND YOU UNDERSTOOD HIM?
A YES, BUT I WAS TELLING HIM IN SPANISH TO FOLD THE KNIFE BACK, BUT HE WAS NOT UNDERSTANDING.
Q AND AT THIS POINT, YOUR FRIEND IS GONE; IS THAT CORRECT?
A HE WAS OUT OF THE BUS.
Q SO YOU WERE TALKING TO HIM IN SPANISH; IS THAT CORRECT?
A ONLY THOSE WORDS. WHEN HE TOLD ME TO GET OUT OF THE BUS, I TOLD HIM FOLD THE KNIFE.
Q AND SO BEFORE THAT, YOU DIDN'T TELL HIM TO FOLD THE KNIFE?

A NO.

Q OKAY. AND BEFORE THAT, YOU DIDN'T TELL HIM ANYTHING?

A NOTHING AT ALL.

Q OKAY. AND SO YOU'RE SAYING THAT YOU STOOD UP ON THE CHAIR AND HE STABBED YOU WHILE YOU WERE UP ON THE CHAIR?

A THE SECOND TIME, YES.

Q AND YOU WERE ATTEMPTING TO KICK HIM AT THAT POINT?

A NO, ONLY TO STOP HIM SO HE WOULD STOP DOING THAT.

Q YOU WERE ATTEMPTING TO STOP HIM BY KICKING HIM AT THAT POINT?

A ONLY ONE TIME, I STOPPED HIM LIKE THIS.

Q BUT YOU HAD ALREADY CLIMBED UP ON THE CHAIR; IS THAT RIGHT?

A YES. THE SECOND TIME HE WENT LIKE THIS, I DID CLIMB ON THE CHAIR.

Q SO NO ONE WAS SAYING ANYTHING, THOUGH?

A MOST OF THE PEOPLE WERE OUT OF THE BUS.

Q AND YOUR FRIEND WAS GONE AS WELL?

A HE WAS OUT.

Q SO WHEN YOU CLIMB UP ON THE CHAIR, HOW DID HE -- HOW DID HE STAB YOU WITH HIS KNIFE?

A I WAS UP ON THE CHAIR, AND HE STABBED ME FORWARD, BUT I USED MY FOOT TO PUSH HIM WITH THE FOOT.

Q SO HE DIDN'T STAB YOU THAT TIME? IS THAT

WHAT YOU'RE SAYING?

A NO, HE DIDN'T. HE DIDN'T STAB ME AGAIN.

Q OKAY. AND WHEN YOU KICKED HIM, DID YOU COME -- DID YOU CLIMB OVER ANOTHER CHAIR TO GET HIM?

A NO, NO, NO.

Q AND --

A JUST TO GET OUT -- GET DOWN.

Q YOU GOT DOWN, AND THEN WHERE DID YOU GO?

A THE BUS DRIVER HELPED ME, AND SHE SAT ME ON A BENCH WAITING FOR THE POLICE AND FIRE DEPARTMENT.

Q AND WHERE WAS THE BUS DRIVER WHILE ALL THIS HAPPENED?

A BY THE BUS DOOR.

Q I'M SORRY. I DIDN'T HEAR.

A BY THE DOOR.

Q AND JUST TO BE CLEAR, WAS THERE ONE DOOR OR TWO DOORS ON THAT BUS?

A IT HAS THREE DOORS. THREE DOORS.

MS. HIGHTOWER: NOTHING FURTHER.

THE COURT: ANYTHING FURTHER?

MR. MORIN: YES.

REDIRECT EXAMINATION

BY MR. MORIN:

Q HAD YOU EVER SEEN THE DEFENDANT BEFORE THAT DATE?

A NO.

Q IS YOUR FRIEND DAVID PONCE MEXICAN?

A HE'S FROM HONDURAS.

Q WHO WAS SITTING CLOSER TO THE AISLE, YOU OR YOUR FRIEND?

A MY FRIEND.

MR. MORIN: THANK YOU. NOTHING FURTHER.

THE COURT: ANYTHING FURTHER, MS. HIGHTOWER?

MS. HIGHTOWER: YES.

RECROSS-EXAMINATION

BY MS. HIGHTOWER:

Q ALL RIGHT. YOU SAY THAT MR. PONCE WAS ON THE AISLE SIDE OF THE SEAT; IS THAT CORRECT?

A YES.

Q AND YOU WERE NEXT TO THE WINDOW; IS THAT CORRECT?

A YES.

Q AND IT'S YOUR TESTIMONY THAT MR. WILLARD LEANED OVER MR. PONCE TO TOUCH YOU ON THE CHEEK?

A YES.

Q AND SO HE SAID NOTHING TO MR. PONCE; IS THAT CORRECT? AND HE LEANED OVER --

A NO, AND I JUST SAID, "NO PROBLEM."

Q AND HE LEANED OVER MR. PONCE TO TOUCH YOU IN PARTICULAR?

A YES.

Q AND YOU HADN'T SAID A WORD TO HIM?

A NO.

MS. HIGHTOWER: NOTHING FURTHER.

MR. MORIN: NOTHING FURTHER.

THE COURT: THANK YOU, SIR.

MR. MORIN: NO MORE WITNESSES, YOUR HONOR. THE PEOPLE REST.

THE COURT: MS. HIGHTOWER?

MS. HIGHTOWER: NO AFFIRMATIVE DEFENSE, YOUR HONOR. MOTION TO DISMISS FOR INSUFFICIENCY OF THE EVIDENCE.

THE COURT: MOTION TO DISMISS IS RESPECTFULLY DENIED.

IT APPEARING TO ME FROM THE EVIDENCE PRESENTED THE FOLLOWING OFFENSES HAVE BEEN COMMITTED AND THERE IS SUFFICIENT CAUSE TO BELIEVE THE DEFENDANT GUILTY THEREOF, TO WIT, A VIOLATION OF COUNTS 1 AND 2 OF PENAL CODE SECTION 245, SUBDIVISION (A), SUBDIVISION (1), ALONG WITH THE SPECIAL ALLEGATION IN COUNT 1 OF PENAL CODE SECTION 12022.7(A).

I ORDER THE DEFENDANT HELD TO ANSWER THEREFORE AND ADMITTED TO A BAIL IN THE SUM OF $1,210,000. HE'S COMMITTED TO THE CUSTODY OF THE SHERIFF UNTIL SUCH A BAIL IS GIVEN.

DATE OF ARRAIGNMENT IS OCTOBER 22ND IN DEPARTMENT 123 AT 8:30.

(THE PROCEEDINGS ARE CONCLUDED.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 129 HON. MONICA BACHNER, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VS. CHARLES WILLARD, DEFENDANT.	NO. BA362410 REPORTER'S CERTIFICATE

I, VIENNA NGUYEN, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 22, COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE ABOVE-ENTITLED CAUSE ON OCTOBER 8, 2009.

DATED THIS 9TH DAY OF OCTOBER, 2009.

VIENNA NGUYEN, CSR NO. 13137

OFFICIAL REPORTER

Court Ex 3
3:53 pm

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES 90122

The People of the State of California

PLAINTIFF(S)

VS.

CHARLES WILLARD,

DEFENDANT(S)

FILED
Los Angeles Superior Court
JAN 18 2011
John A. Clarke, Executive Officer/Clerk
By Donna Peale, Deputy

CASE NUMBER	DEPARTMENT NUMBER
BA362410	113

JURY QUESTION

We, the Jury in the above-entitled action, have the following question:

Please clarify the definition of significant or substantial physical injury & when significant or substantial becom more than minor or moderate harm.

Also, does physical injury include psychological injury

This 18 day of January, 2011 FOREPERSON SEAT NUMBER 1

JURY QUESTION

Of Pages 00187

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Defendant's Name: **CHARLES WILLARD**
Case #: **BA362410-01**

I, JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK of the Superior Court for the County and State aforesaid, do hereby certify that I have compared this transcript with the original documents on file and/or of record in this office and it is a full, true and correct copy.

JOHN A, CLARKE
Executive Officer/Clerk

Date: 6/8/11 By: D. WILLIAMS, Deputy

☐ Notice of Completion of the Clerk's Transcripts on appeal of the within action having been mailed/delivered to the attorneys representing the appellant and the respondent pursuant to Rule 8.336(f) of the rules on appeal, I hereby certify the foregoing record consisting of pages to be a full, true and correct transcript on appeal.

Date: JUL 0 8 2011 By: , Deputy

☒ Portions of this transcript are governed by the provisions of Code of Civil Procedure Section 237(a)(2), and all of the personal juror identifying information has been redacted.

Date: 6/8/11 By: D. WILLIAMS, Deputy

APPENDIX 15

ATTORNEY GENERAL

DOCKETED
LOS ANGELES
NOV 07 2011
LA2011503353
BY A. ALVAREZ
NO.

COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and **RESPONDENT**

vs

CHARLES WILLARD,
Defendant(s) and **APPELLANT**

SUPPLEMENTAL
Superior Court No. BA362410-1
2d Criminal No. B533492
Volume **1** of **1** Volumes
Notice of Appeal File Date: **5/27/11**

CLERK'S TRANSCRIPT
Page 1 to 90

Appearances:

Counsel for Plaintiff:

THE ATTORNEY GENERAL

Counsel for Defendant:

RENEE RICH
ATTORNEY AT LAW
P.O.BOX#1018
SEAL BEACH, CA 90740

Appeal from the Superior Court,
County of Los Angeles

Honorable Gail R. Feuer, Judge

Date Mailed to:
Defendant (in pro per)
Defendant's Trial Attorney
Defendant's Appellate Attorney
District Attorney
Attorney General

RECEIVED
JUL 01 2011

113 Appellate 00065

FILED
Los Angeles Superior Court
MAY 20 2011
John A. Clarke, Executive Officer/Clerk
By [signature] Deputy

State Bar Number 235729

Attorney for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. CHARLES WILLARD, Defendant.	No. BA362410 REQUEST FOR COURT TO DISMISS PRIOR ALLEGED UNDER THREE STRIKES LAW UNDER PC § 1385

Defendant hereby requests that the court on its own motion dismiss two or more of the defendant's prior convictions alleged under the Three Strikes law in the furtherance of justice under Penal Code section 1385. Under People v. Superior Court (Romero) (1996) 13 Cal.4th 497, this court has the power to dismiss "strike" priors in the furtherance of justice under Penal Code section 1385, even over the prosecution's objection.

A hearing on this issue is requested in Department 113 on the date of May 24th, 2011.

Dated this 17th day of May, 2011.

Respectfully submitted,

Kevin McGurk

Attorney for Defendant

POINTS AND AUTHORITIES

THIS COURT IS AUTHORIZED TO DISMISS A DEFENDANT'S "STRIKE" PRIORS IN THE FURTHERANCE OF JUSTICE UNDER PENAL CODE SECTION 1385, AND THERE ARE SEVERAL FACTORS THAT SUPPORT SUCH A DISMISSAL

Penal Code section 1385 authorizes this court's dismissal of priors. Section 1385, subdivision (a), provides, in relevant part,

> "(a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed."

A. This Court's Power To Dismiss

The California Supreme Court in People v. Superior Court (Romero), supra, 13 Cal.4th 497, held that trial courts may dismiss "strike" priors in the furtherance of justice under Penal Code section 1385. Under Romero, a court may dismiss "strike" priors under Penal Code section 1385 even though the prosecution objects, and does not move for the dismissal.

The Supreme Court made clear that a Penal Code section 1385 dismissal may occur "before, during or after trial, up to the time judgment is pronounced." (Romero, supra, 13 Cal.4th at p. 524, quotation omitted.) Romero further held that this court must state in its minutes the detailed reasons for exercising its power under Penal Code section 1385.

B. This Court's Discretion Is Very Broad And Will Seldom Be Abused

Three seminal cases have been issued by the California Supreme Court regarding abuse of discretion in Three Strikes cases. All cases demonstrate the high degree of deference that an

appellate court must give to a trial court's determination whether dismissal of "strike" priors is warranted.

1. **Romero**:

The Supreme Court in Romero stated that it is an abuse of discretion for a judge to dismiss a "strike" prior "solely to accommodate judicial convenience or because of court congestion"; or to dismiss "simply because a defendant pleads guilty"; or to dismiss "guided solely by a personal antipathy for the effect that the three strikes law would have on [a] defendant" (People v. Superior Court (Romero), supra, 13 Cal.4th 497, 531, quotations omitted.) Romero emphasized that dismissals under Penal Code section 1385 will be improper unless the judge weighs "the defendant's background, the nature of his present offenses, and other individualized considerations." (Ibid.)

2. **Williams**:

The California Supreme Court in People v. Williams (1998) 17 Cal.4th 148, held that in properly exercising its discretion under Penal Code section 1385,

> "[T]he court in question must consider whether, in light of the nature of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the [Three Strikes law's] spirit . . . ." (People v. Williams, supra, 17 Cal.4th 148, 161.)

Williams concluded that dismissing a "strike" prior and sentencing the defendant in its case to nine years in prison rather than 25-years-to-life was an abuse of discretion. The Court found that there was nothing favorable or mitigating about the defendant's current offense of felony drunk driving with multiple priors, and nothing favorable about his priors--an attempted robbery and a rape. (Williams, supra, 17 Cal.4th 148, 163.)

The Court reviewed defendant's "background, character, and prospects," and also failed to find anything favorable: the defendant had committed four burglaries as a juvenile, and four felonies and eight misdemeanors as an adult, as well as countless probation and parole violations. (Williams, supra, 17 Cal.4th 148, 154, 163.) Williams viewed as particularly aggravating the fact that the defendant's last misdemeanor conviction had occurred only three months before the current offense, and that it involved violence: the defendant had suffered a conviction for spousal battery for beating up and inflicting corporal injury on his wife or cohabitant. (Williams, supra, 17 Cal.4th 148, 164.)

3. Garcia:

The Supreme Court in People v. Garcia (1999) 20 Cal.4th 490 held that a trial court did not abuse its discretion in dismissing five "strike" priors with regard to one current count charging the defendant with residential burglary. The trial court imposed a 25-years-to-life sentence on the remaining count of residential burglary, and a consecutive 16-month sentence on the count where the "strikes" were dismissed. (16 months was one-third of the mid-term of the burglary charge imposed under Pen. Code, § 1170.1, subd. (a).)

Garcia held that the trial court had properly found that the defendant was outside the "Spirit" of the Three Strikes law. The Supreme Court cautioned courts to not place undo emphasis on a defendant's prior record and recidivism:

> " 'While a defendant's recidivist status is undeniably relevant, it is not singularly dispositive' . . . . the purpose of 'ensur[ing] longer prison sentences' in Three Strikes cases, while relevant to a court's exercise of its section 1385 discretion, does not 'predominate the trial court's exercise of [that] discretion,' which 'would be one step shy of declaring the three strikes law eliminates the court's [section 1385] discretion

entirely.' " (Garcia, supra, 20 Cal.4th at p. 501, quoting People v. Superior Court (Alvarez) (1997) 14 Cal.4th at p. 973, 979.)

C. Factors That Can Support This Court's Dismissal Of Priors

1. The nature of the current offense:

A defendant whose current offense is not life-threatening is obviously far less culpable than one whose current crime is one in which a victim has received grave injury. As the Supreme Court held in Garcia, "A court might therefore be justified in striking prior conviction allegations with respect to a relatively minor current felony, while considering those prior convictions with respect to a serious or violent current felony." (Garcia, supra, 20 Cal.4th 490, 499.)

Even when defendants have extensive records, the minor and non-aggravated nature of the current offense is a powerful factor that can support dismissal of "strike" priors. (See In re Saldana (1997) 57 Cal.App.4th 620; People v. Bishop (1997) 56 Cal.App.4th 1245.)

It is conceded that the current offense is one that qualifies as a serious or violent felony. However, that should not be the end of the analysis. California Rules Of Court 4.421 and 4.423 specify certain factors that the court may consider in determining what term of imprisonment if any would be warranted. This inquiry is certainly similar to the required evaluation of the seriousness of the current offense. Of the twelve aggravating factors related to the crime stated in Rule 4.421, only one could reasonably be argued to be present here. That factor would be (2), the defendant was armed with or used a weapon at the time of the commission of the crime. All eleven other aggravating factors can be discounted after an evaluation of the facts of the current offense and only three even merit discussion.

Rule 4.421:

(1) The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness.

The current offense is not one that caused great bodily injury to the victim. The jury's verdict in this matter made that abundantly clear. In fact, it is unclear based on the evidence elicited at trial what kind of treatment was required for the injury shown by the victim. Considering the evidence indicating that the hospital stated by Mr. Hernandez as the facility where he had received treatment had no record of such treatment, this Court would be on solid ground to conclude that the injury required only the most basic of treatment. It would also be a stretch to define the current offense as one that disclosed a high degree of cruelty, viciousness, or callousness. The criminal act in question is one slight cut from a reasonably small knife. In the range of felony assaults, that behavior simply doesn't qualify as the high degree of anything.

(3) The victim was particularly vulnerable

The victim in this matter is from all accounts a relatively healthy male adult. He also had the assistance at the time of the incident of another seemingly healthy male adult. The victim also during the assault from his own testimony kicked Mr. Willard in the chest with what Mr. Willard described as steel toed boots. These facts are not being presented to suggest that Mr. Hernandez wasn't in fact a victim in this case. He was. What he wasn't was a *particularly* vulnerable victim.

(8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism.

The crime in question was carried out while Mr. Willard was under the influence, while riding a public bus, and while being videotaped. There is no evidence that Mr. Willard planned this

confrontation and Mr. Willard's "escape" was walking calmly to a nearby CVS store. These facts don't indicate anything near sophistication.

In terms of mitigating factors, the following apply:

(a)(3) The crime was committed because of an unusual circumstance, such as great provocation, that is unlikely to recur.

The present offense occurred while Mr. Willard was under the influence of cocaine and alcohol. If Mr. Willard is fortunate enough to receive an effective measure of treatment for these afflictions, a similar set of events can be avoided in the future.

(a)(4) The defendant participated in the crime under circumstances of coercion or duress, or the criminal conduct was partially excusable for some other reason not amounting to a defense.

Mr. Willard was under a certain amount of duress during the offense, as he was under the influence and trying to earn enough money for his next drug intake. But for the language barrier between the participants and Mr. Willard's obvious inebriation, nothing further would have occured.

(b)(2) The defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime.

Mr. Willard had been identified by family as suffering from mental illness from the time he was a child. In fact, he has been involuntarily hospitalized twice. There is little doubt that this mental illness was a contributing factor to Mr. Willard's decision to self medicate through drugs and alcohol and is a contributing factor to the crime.

Considering the mitigating factors present, the facts of the case, the lack of any serious injury, and the dearth of aggravating factors, the nature of the present offense weights towards granting the motion.

2. The lengthy sentence that will still be imposed:

The Supreme Court in Garcia found no abuse of discretion because of the fact that the defendant was still going to receive a long sentence: "[A] defendant's sentence is also a relevant consideration when deciding whether to strike a prior conviction; in fact it is the overarching consideration because the underlying purpose of striking prior conviction allegations is the avoidance of unjust sentences." (Garcia, supra, 20 Cal.4th 490, 500.)

The Court of Appeal has also upheld use of this factor: "The length of sentence to be imposed also presents an open-ended inquiry because, when considered in conjunction with the defendant's age, it presents the trial court with an opportunity to evaluate factors such as how long the state maintains an interest in keeping the defendant as a public charge and after what period of incarceration he is no longer likely to offend again." (People v. Bishop, supra, 56 Cal.App.4th 1245, 1250.)

In the present case the court has a wealth of sentencing options as it relates to Mr. Willard. Considering that the court found true that Mr. Willard has suffered a prior conviction pursuant to Penal Code Section 667(a) as well as three convictions pursuant to 667.5, Mr. Willard could be sentenced to thirteen years if this motion was granted in its entirety. A thirteen year sentence is more than sufficient when considering the nature of the present offense.

3. Miscellaneous other factors:

The Supreme Court in Garcia also approved the trial court's dismissal of priors based on reasons including but not limited to: "[ii] Defendant cooperated with police and [iii] his crimes were related to drug addiction." (Garcia, supra, 20 Cal.4th 490, 503.) In the current matter both of those factors are present. Mr. Willard did not resist arrest in any manner and as previously argued drug addiction is a salient factor in the commission of the crime.

CONCLUSION

Mr. Willard is not an inherently violent individual. Until the present offense, Mr. Willard had not suffered a violent conviction since 1987. His poor choices can be directly linked to his mental illness and his extreme alcohol and drug addiction. Attached to this motion is a mitigation report and letters regarding Mr. Willard's history of mental illness. To say someone is within the sprit of the three strikes law is in a way stating that the individual is no longer a potentially valued member of civil society. If Mr. Willard can get the treatment he so desperately needs he would not be an appropriate member of that category. Considering Mr. Willard's background and the nature of the offense, Mr. Willard falls outside the sprit of the three strikes law.

Respectfully submitted,

Attorney for Defendant

ATTACHMENT A

SENTENCING MEMORANDUM

FOR

CHARLES WILLARD

Case# BA362410

KEVIN McGURK
Deputy Public Defender

Katharine Sloan
Senior Paralegal

I. INTRODUCTION

Charles Willard has suffered from substance abuse and mental illness for the better part of forty years. It was at the age of 13 when he had his first drink. "I liked the way it made me feel," he states. He readily admits to being a devoted drug addict since the age of 15 when he first sampled a friend's marijuana cigarette. "For me, all it took was one inhale, and I was hooked." Five years later, after his introduction to cocaine, he states that *all* of his subsequent criminal activity stemmed from the basic need to finance his addictions. "Back in the day when I still was robbing people, I never wanted to hurt no one. All I wanted was their money, and I'd be *gone*."

Asked why he never availed himself of prison drug programs, he states that because most of his incarcerations were spent during months of full lockdowns, "we didn't have no drug programs and nothing to do. Drugs make the time go by when you ain't got no hope." Asked why he never tried to abstain from drugs and alcohol on his own, he stares back incredulously. "Hell, if I knew how to do *that*, I wouldn't be here, now would I?"

What is difficult for the Client to admit is the true extent of his own psychiatric history, which according to 1987 competency reports by both **Drs. Sharma and Vicary**, is quite considerable. As **Dr. Vicary** writes, "The defendant has an extensive prior psychiatric history, beginning at the age of 12. He had two psychiatric hospitalizations in Texas. The longest hospitalization was for two years. He was diagnosed as suffering from a chronic psychotic mental illness and was treated with anti-psychotic medications, such as Thorazine." **[SEE ATTACHMENT: Dr. Vicary Competency report, March 25, 1987]**

Upon release in 2009, the Client states that he went back to live with his aging mother – and immediately started using drugs and alcohol. "I had found where my Mama was living through a friend. First day I got out, I went back to using crack and powder, just like I did in prison." He adds that during his brief periods of freedom, no parole officer ever offered him a program of any kind. "**Mr. Miley**, my last parole officer, told me he didn't care how much alcohol I drank – 'just learn how to handle it.' And all he cared about was that I didn't rob nobody, which was fine, because I was not into doing that no more."

As for being drug tested, the Client states that he has become quite adept at "faking" the urine test. "Three days before my appointment with the PO, I'd stay off coke, eat lots of food and drink lots of juice and water. That way, I never tested positive, even though I'd been using from the first day I left prison."

The Client states that when he was arrested on a prior offense in 2006, he was so deep in the throes of addiction that he ignored the clear signs of police activity in the area:

> "The day I got caught, I was going to go get on GR, only I couldn't stay sober long enough to do that. I didn't have my glasses on, so I couldn't see the undercover cops real clearly, but I knew something was up. I saw this woman walking up and down the street, and I knew she was a cop. She even asked me for a date. I had the chance to stop right there, but I didn't. I was so hooked, I couldn't walk away from it. When they arrested me, I was real tore up. Right

then, I would have said anything to get out of it, but what *could* I say -- except I need help."

II. FAMILY BACKGROUND

The Client states that both of his parents were alcoholics who came from large, chaotic families where addiction and mental illness were common. His father, **Charles Willard, Sr.** a highly erratic man who worked as a truck driver, died in 1967 at the age of 31, after purposely driving his vehicle off a cliff in Littleton, Texas. His mother, **Frances Shaw Willard** (now 73), states that she has had six children by three different men. While unwilling to talk about her own alcoholism for the report in 2006, she states, "All of my children have had problems with drugs or alcohol...And my first two sons are both mental."

The Client states that he is the second oldest sibling:

> "My oldest brother is **David Willard** (47). He's a paranoid schizophrenic living on SSI in Portland, Oregon. Then there's me. My next sister, **Jeannice Moore** (41) who's a recovered alcoholic, but she still smokes grass. My next sister, **Samantha Willard** (38) has the same father, because my mother kept going back to Charles, Sr., even though they was divorced. She drinks, too. My last two brothers come from Charlie Evans who died in the early 90's. **Freddie Evans** (36) is in Federal Prison for selling drugs and my youngest brother, **Avery Evans** (35) is an alcoholic and crack addict in Houston, Texas. In fact, me and Avery used to do it together."

Today, perhaps because of his lengthy incarcerations, the Client's family is remarkably uninvolved in his life. Contacted several times for the writing of this report in 2011, none of our calls were returned. When they were contacted for the writing of this social history in 2006, none of them knew about his arrest on the charges; Charles adds that when he was finally released in 2009, none of them knew he was out.

"But we wasn't surprised when we learned he was back in prison again," states the Client's sister, Jeannice back in 2006, "because Charles is crazy, and him using cocaine all the time don't help." She went on to describe him as acting much like his older brother, David: "Only Charles wasn't mean like David. But he is like a lot of my mother's relatives. One of her sisters was mental, and all of Aunt Sheila's sons is on medication. One of my cousins is in a mental hospital in LA right now, and we don't know when he's ever getting out."

When Frances was asked five years ago if her son was ever hospitalized with mental problems, she answered with remarkable indifference. "I don't know about that. I can't remember all that long ago." Then she added, "Maybe his father's people put him in a hospital a

few times." She goes on to explain that even after she moved with her children to Compton, California, she would often send her children to live with their father's family in Texas. "That's because I think they always liked him better than me."

It was just difficult to get the family to describe Charles' odd behavior as a child in any specific way. While Frances insisted that both Charles's and David's mental illness was due to excessive drug use, Jeannice disagreed. "Charles was always acting crazy, even when we was kids. I remember we all used to laugh at him and throw stuff at him because he was so weird." When pressed for specific examples, she stated, "He'd be talking to himself like someone else who wasn't there was talking back. Like he was talking out of his head. Then, next thing we'd know, he'd disappear and be gone. We wouldn't see him for days and days."

Asked if her mother ever tried to get help for her brother, Jeannice stated that she never lived with Charles long enough to know, despite the fact that there is only a five-year difference in their ages. "I didn't really grow up with Charles, because it seems to me, he was *always* gone."

Again, any attempts in 2011 to contact Jeannice about her brother's situation were met with failure.

III. DRUG HISTORY

After moving to Compton, California from Texas at the age of 14, the Client states he spent most of his time hanging out on the street: "After we moved here, my mother was drinking heavy. When she got mad, she'd beat all of us with a rubber hose. Got so it'd be safer to be outside than be in the house."

While the Client studiously avoided gangs ("I don't like being in large groups"), he states that he embraced drugs and alcohol while in his early teens. "Alcohol made everything seem a lot easier, if you know what I mean. Suddenly, all the bad stuff in your life didn't bother you. Same thing with weed." Left to his own devices by a mother who sporadically worked as an in-home caregiver, the Client states that he rarely attended school and can't even remember the name of the Junior High School he attended. "I would run away a lot."

While in high school, the Client experimented with other drugs ("I tried Sherm, but I didn't like it all that much.") and finally graduated to cocaine rolled in a cigarette. He states that he ultimately discovered that he preferred powder cocaine, because "it's more mellow. Crack makes you nervous and paranoid, and I didn't like that." After dropping out of high school in the 11th grade, the Client states that he concentrated on his addictions full time. "I was hanging out with a group of addicts who just cared about drinking and getting high."

IV. SURVIVING IN PRISON WITH THE HELP OF DRUGS

In 1998 when the Three Strikes Law was new and sentences for mere drug possession

were common, Charles Willard was sentenced to nine years in state prison at 80%. "I entered prison at Delano on June 6, 1998. First I was on single-cell status, but within a week, I got me some marijuana and powder cocaine." The Client states that he would finance his drug habit by trading toiletries, gambling at dice and cards or betting on sports. "Back then, I could sustain a $50-100/week habit, because I had friends who were the suppliers."

The Client states he was eventually transferred to the prison in High Desert where it was cold most of the time. After 65 days, he was transferred to Pelican Bay where he did the last five years of his sentence. Again, he was given a single cell, but was unimpeded in his efforts to score a steady line of cocaine. "After a year, they gave me a cellie named "Scrap Iron" who was the same age as me. He was a drug addict and an alcoholic. When I was first put in his cell, he'd already brewed the pruno. Good thing about him was if we couldn't score drugs, we could always get drunk." Evidently, Scrap Iron got out two years before Charles. "People told me he's doing all right and not using no more. I think he'd finally had enough of prison, just like me. He ain't never coming back."

The Client's next cellie was a religious zealot from whom he had to hide his drug use. After a 60 day stint in a mental health unit where he was heavily medicated with anti-psychotic medication, Charles was moved to another empty cell. Allowed to pick his new cellie, he was careful to choose another addict. "Michael had a life sentence for murder – all because of drugs. We got along real good. In fact, he was real broke up when I paroled."

V. PAROLE IN 2005

Charles states that he paroled with $200 in his pocket from Pelican Bay on November 2, 2005 at 7:20 in the morning. "First me and two white guys took the Shuttle to Merced. That cost us $20. Then we went to a liquor store and bought rum and Jack Daniels." The bus ticket to Los Angeles cost $68; the Client had spent $6.00 on alcohol. He now had $94 left.

"All the way to Oakland, me and the other guys kept drinking," states the Client. "But I felt I needed something stronger in order to face life on the outside. Being out is scary, because you're still watching your back all the time, just like you did in prison. So, as soon as we got into Oakland, I scored two lids of powder for $20 at the bus station. At bus stations, you can get anything you want – even a gun – if you know where to go."

The ride to Los Angeles took another 36 hours, during which time the Client spent another $6.00 on snacks. However, as soon as he arrived at the bus station in Los Angeles, he bought another two lids of cocaine for $20. With $60 left to his name, the Client was sitting in front of a shoe store when he spotted people selling flowers and candy for the United Restoration Ministry [located at 1634 West. Temple Street] in downtown LA. "They 'recruited' me and let me live at their church, if I would sell for them, so I did. When they said I was allowed to keep a dollar here and there for personal expenses, I spent that money on buying more drugs and liquor."

Asked how he was able to avoid detection by his parole officer, Charles states that Mr. Miley didn't really take much notice of him. "I was 24 hours late in reporting to him, but when my tests came back clear, he was cool." However, by the time Mr. Miley got around to checking out the Client's "address," he had left the Church. "I was living on the street and selling on my own. I knew where to buy the flowers and candy and got real good at selling. After a while I was even making enough to stay at motels every now and then." Asked if he was thinking about getting into a program, the Client shakes his head. "Drug addicts like me can't think that far into the future."

VI. PAROLE – AND RE-ARREST IN 2009

When arrested on December 20, 2005, Charles Willard had been at liberty for only 48 days. As for the current offense, the Client states he got out in sometime 2007 and was arrested in September of 2009 on a bus from Compton to Hollywood where he hoped to spend the day with an old drinking buddy:

> "That morning, I would have been up by 5AM, because of my need for drugs. I would have to take a #51 bus for an hour so I could get to a liquor store on Venice that opens early. I'd be feeling crazy and counting stuff along the way, just to keep my mind off of the fact that I'm low. Once at the store, I'd buy a 211 Malt Liquor 40 oz and a half-pint of brandy. If I drank half of the brandy and all of the malt liquor, I'd be okay for another 30 minutes. By that time, I'd be able to scare up at least a $10 piece of crack, right near Washington and Western where there'd be places to smoke. And walking down this area, it wouldn't be more than five minutes before I'd see someone I knew, and maybe they'd help me out."

The Client continues, stating that he is well-liked in this area:

> "That's because I don't get involved in taking people's stuff like when I was young and stupid. I learned that you don't mess with your safety net; and when I can help somebody, I know I'm going to get a return on it someday. Weird thing is, in this case, it didn't make no sense that I'd be the one to cause trouble. Here I was on a public bus with all these people, just trying to get to Hollywood, so I can hang out with my friend. Why would I want to attack this guy? All I wanted to do is make a little money, so I could scare up my next line of dope, so I could keep finding my way to Hollywood. And believe you me, I'm *never* so drunk or so high that I don't remember I got strikes."

Asked then, why the matter escalated to violence, the Client shakes his head wearily:

> "All I was trying to do is sell this guy some razor blades. Maybe it was the language barrier. Maybe he hates junkies. I don't blame him! But when this guy kicked me which in the chest with his steel-toed boots, I thought he was out to do real damage. What could I do, but make him stop? Once I nicked him one time, I moved out of the way, so he

could get off the bus. C'mon, if I was really the maniac they're claiming, wouldn't I have tried to do more damage? I didn't want to hurt nobody! I never did, and I never will."

VIII CONCLUSION

Now faced with a sentence of 25-to-life, Charles Willard is at a complete loss. While he fully recognizes his culpability in the current offense, he states that he never had any intention of hurting the victim in any way, until he thought he was being attacked. More importantly, after yet another stint in prison, he *still* has no idea how to abstain from drugs on his own.

As he previously stated in 2006:

> "If I did, I wouldn't be where I am today. I know I need help. I knew it in 1998 when they sent me to prison the time before last. But surely, they don't think sending me back there is going to solve nothing, do they? Last time, all they saw when they looked at me was I was worth 25 years to life. Now, they see me as being worth a lot less. But it makes no difference – because if I ever get out, I'd be coming out the same drug addict who went in. Maybe if they gave me chance to go into a program, they'd see me in a different light. I don't want to go back to prison anymore – I'm too old for that. I want to learn how to live outside, and if that means I give up drugs and alcohol, then, I'm ready."

Charles Willard's legal indiscretions are invariably tied to his battle with mental illness and to his rampant addiction to drugs and alcohol. This information has not been provided to the court to argue that these explanations justify Mr. Willard's behavior. They in fact do not. They are presented in order to explain Mr. Willard's behavior. They are presented to argue that Mr. Willard is not a serially violent criminal that his beyond any societal assistance but instead one that can still be a productive member of society if he is able to get the assistance that he desperately needs.

ATTACHMENT B

WILLIAM VICARY, J.D., M.D.
FORENSIC PSYCHIATRY
3575 CAHUENGA BOULEVARD WEST
SUITE 300
LOS ANGELES, CA 90068
(213) 876-9133

March 25, 1987

Honorable Nancy Brown
Judge of the Superior Court
Department South Central J
200 West Compton Blvd.
Compton, CA 90220

Re: Charles WILLARD, Jr.
Case No. A635459

Judge Brown:

Pursuant to the Court Order under Evidence Code §730 and Penal Code §1368, the above-named defendant was interviewed at the Central Jail for one hour. The police report and other records were requested but thus far have not been received. In preparing this report, the following were reviewed:

(1) Conversation with Jail Medical Staff
(2) Jail Medical Chart

The defendant was made aware that the interview would form the partial basis for a psychiatric report to the Court. I informed him that he had the right to refuse to answer any or all questions.

He is apparently charged with robbery. I was instructed to explore the issues of his competency to stand trial and the need for psychiatric treatment.

OPINION

The defendant suffers from a chronic psychotic mental illness. His drug abuse has been an exacerbating factor. At the jail he has received psychiatric treatment and antipsychotic medication. His current mental state is fairly stable and he is mentally competent to stand trial. He should continue to receive his psychiatric medication while incarcerated.

DATA AND REASONING BASIC TO OPINION

The defendant's twenty-eight year old brother has had psychiatric hospitalizations. The defendant's nineteen-year-old brother has had some misdemeanor arrests. No family members have alcohol or drug abuse problems.

The defendant has an extensive prior psychiatric history beginning at the age of twelve. He had two psychiatric hospitalizations in Texas. The longest hospitalization was for two years. He was diagnosed as suffering from a chronic psychotic mental illness and was treated with antipsychotic medications, such as Thorazine. A complicating factor is that he has a history of drug abuse. The principal drugs of abuse have been marijuana and PCP. He denied the abuse of alcohol.

He has a prior criminal record. As a juvenile there were some arrests for assault and resisting arrest. As an adult he has had arrests for thefts and robberies. As a result of these arrests there have been County Jail incarcerations and one prison term for two and one-half years.

He graduated from high school. He has worked in a factory and as a forklift operator. The only significant medical history involves some episodes of high blood pressure. At the age of twenty-four he married his wife who was the same age. She had one child from a prior relationship. She has no children by the defendant.

In the period prior to the alleged offense, the defendant was residing with his wife. He was unemployed. He was receiving antipsychotic and antidepressant medications from his family doctor with the assistance of a consulting psychiatrist.

The alleged offense occurred in January of 1986. "The case involves a robbery where some rings were taken. I don't remember. It's a case of mistaken identification."

At the jail the defendant was observed to be suffering from a chronic psychotic mental illness. He was placed on a one-man-cell psychiatric treatment module. He has received substantial doses of antipsychotic and antidepressant medications (1300 mg. of Thorazine and 175 mg. of Elavil each day). His recent

adjustment has been fairly unremarkable. There have been no major incidents with deputies of other prisoners. He has had no visitors. He reported that he is scheduled for a brain scan at Los Angeles County/USC Medical Center in the near future.

On mental status examination there was evidence of a chronic psychotic mental illness. He described a history of auditory and visual hallucinations. His mood was calm. He was cooperative and answered all my questions. He was articulate and appeared to be of average intelligence. There was no evidence of any gross physical brain damage. Any current suicidal or homicidal ideation was denied. He expressed an interest in cooperating with a mandated treatment program.

As a result of his psychiatric treatment and medications at the jail, the defendant's mental condition has improved and is fairly stable at this time. He appears to be aware of the nature and purpose of the legal proceedings against him. He knows the specific charge. His claims of mistaken identification or an inability to remember are a conscious, rational attempt at avoiding full criminal responsibility. They are not the product of his psychotic mental illness. He is capable of giving a consistent account of his behavior prior to, during and after the alleged offense. He is very familiar with the roles of defense counsel, district attorney and judge. At this time there is no substantial impediment to rational cooperation with counsel in going forward with the legal proceedings.

While incarcerated the defendant should continue to receive psychiatric treatment and medications. If sent to prison, the most appropriate treatment facility would be the Psychiatric Unit at CMC East. As part of any future probation or parole, he should have a transition period of treatment at a facility such as Gateways. Any future outpatient status should be contingent upon injections of long-acting antipsychotic medication and drug abuse monitoring with random urine testing. With such a treatment program, the likelihood of any further antisocial behavior could be reduced.

If you need any further assistance with this case, please contact me.

Very truly yours,

Wm Vicary MDq

William Vicary, J.D., M.D.
Diplomate, American Board of
Psychiatry and Neurology
Diplomate, American Board of
Forensic Psychiatry

WV:y

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Of Pages **5**
Defendant's Name: **CHARLES R. WILLARD**
Case #: **BA362410-01**

I, JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK of the Superior Court for the County and State aforesaid, do hereby certify that I have compared this transcript with the original documents on file and/or of record in this office and it is a full, true and correct copy.

JOHN A, CLARKE
Executive Officer/Clerk

Date: 3/14/12 By: _____, Deputy
D. WILLIAMS

☐ Notice of Completion of the Clerk's Transcripts on appeal of the within action having been mailed/delivered to the attorneys representing the appellant and the respondent pursuant to Rule 8.336(f) of the rules on appeal, I hereby certify the foregoing record consisting of pages to be a full, true and correct transcript on appeal.

Date: MAR 16 2012 By: _____, Deputy

☒ Portions of this transcript are governed by the provisions of Code of Civil Procedure Section 237(a)(2), and all of the personal juror identifying information has been redacted.

Date: 3/14/12 By: _____, Deputy
D. WILLIAMS

APPENDIX 16

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT, VS. CHARLES ROBERT WILLARD, DEFENDANT-APPELLANT.	SUPERIOR COURT NO. BA362410-01

COPY
JUL 05 2011

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE GAIL RUDERMAN FEUER, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

OCTOBER 22, 2009
FEBRUARY 4 & NOVEMBER 18, 2010
JANUARY 13 & 14, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA D. HARRIS
STATE ATTORNEY GENERAL
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FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 1 OF 2 VOLUMES

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PAGES B1 THROUGH B17, INCL.
PAGES C1 THROUGH C15, INCL.
PAGES 1 THROUGH 174, INCL.

RENE MARIE EVANKO, CSR #6404
OFFICIAL REPORTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 113 HON. GAIL RUDERMAN FEUER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF,
VS. NO. BA362410-01
CHARLES ROBERT WILLARD,
DEFENDANT.

REPORTERS' TRANSCRIPT ON APPEAL

OCTOBER 22, 2009
FEBRUARY 4, 2010
NOVEMBER 18, 2010
JANUARY 13, 14, 18 & 19, 2011
MAY 24, 2011

APPEARANCES:

FOR THE PEOPLE:
STEVE COOLEY
DISTRICT ATTORNEY
BY: COLBY CANO, DEPUTY
FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET
18TH FLOOR
LOS ANGELES, CA 90012

FOR THE DEFENDANT:
RONALD BROWN
PUBLIC DEFENDER
BY: KEVIN MC GURK, DEPUTY
FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET
19TH FLOOR
LOS ANGELES, CA 90012

RENE' MARIE EVANKO, CSR #6404
CANDACE J. HENRY, CSR #9311
OFFICIAL REPORTERS

CASE NUMBER: BA362410-01
CASE NAME: PEOPLE VS. CHARLES WILLARD
LOS ANGELES, CALIF. FRIDAY, JANUARY 14, 2011
DEPARTMENT NO. 113 HON. GAIL RUDERMAN FEUER, JUDGE
REPORTER: RENE MARIE EVANKO, CSR #6404
TIME: 10:44 A.M.

APPEARANCES: (AS HERETOFORE NOTED.)

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

THE COURT: OKAY. WE ARE ON THE RECORD IN THE MATTER OF CHARLES WILLARD, BA362410. MR. WILLARD IS PRESENT. BOTH COUNSEL ARE PRESENT.

SO AT THIS TIME I'M GOING TO SUGGEST WE PUT THE JURY IN THE JURY ROOM.

MR. MC GURK: YOUR HONOR, BEFORE WE DO THAT, QUICKLY, IT'S MY UNDERSTANDING THAT MR. CANO'S GOING TO USE THE VIDEO FOOTAGE DURING HIS OPENING STATEMENT, AND THERE WOULD BE AN OBJECTION ON FOUNDATION GROUNDS BEFORE IT'S ADMITTED INTO EVIDENCE. SO JUST FOR THE RECORD, IF THERE'S AN OFFER OF PROOF AS TO --

THE COURT: WHY ARE YOU GOING TO USE THE VIDEO IN OPENING STATEMENT?

MR. CANO: BECAUSE IT'S THE KEY PIECE OF EVIDENCE IN THE CASE. IT'S A LARGE PORTION OF WHAT I EXPECT THE

JUST VERY BRIEFLY SPEAK TO MY COLLEAGUE?

THE COURT: YOU MAY.

SANTOS HERNANDEZ,

CALLED BY THE PEOPLE AS A WITNESS, WAS SWORN AND TESTIFIED THROUGH THE SPANISH-LANGUAGE INTERPRETER AS FOLLOWS:

THE CLERK: PLEASE STEP OVER BY THE WITNESS STAND. RAISE YOUR RIGHT HAND.

DO YOU 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: PLEASE HAVE A SEAT.

AND THROUGH THE SPANISH INTERPRETER CAN YOU PLEASE STATE AND SPELL THE NAME?

THE INTERPRETER: THE NAME IS SANTOS HERNANDEZ, S-A-N-T-O-S, H-E-R-N-A-N-D-E-Z.

THE CLERK: THANK YOU.

THE COURT: YOU MAY PROCEED.

MR. CANO: THANK YOU, YOUR HONOR.

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DIRECT EXAMINATION

BY MR. CANO:

Q GOOD MORNING, MR. HERNANDEZ.

A GOOD MORNING.

Q I WANT TO ASK YOU ABOUT AN INCIDENT THAT HAPPENED ON SEPTEMBER 21ST OF 2009. ON THAT DATE AT AROUND 4:30 P.M. WERE YOU ABOARD AN MTA BUS?

A YES.

Q WHICH BUS WERE YOU ABOARD?

A 720 ON WESTERN.

Q AND DID THE BUS PASS THE AREA OF WESTERN AND 8TH IN THE COUNTY OF LOS ANGELES?

A YES.

Q AT WHAT STOP DID YOU BOARD THE BUS?

A VERNON AND WESTERN.

Q AND WHEN YOU BOARDED THE BUS, WERE YOU WITH ANYBODY THAT YOU KNEW?

A A FRIEND OF MINE, A WORKING MATE.

Q WHAT'S THAT GENTLEMAN'S NAME?

A DAVID.

Q DO YOU KNOW HIS LAST NAME?

A I DON'T REMEMBER.

Q WHERE WERE YOU COMING FROM?

A I HAD BEEN WORKING.

Q AND WHERE WERE YOU GOING?

A TO MY HOUSE.

Q HOW LONG IS THAT TRIP?

A BETWEEN A HALF AN HOUR AND 45 MINUTES.
Q AND IS THAT A TRIP THAT YOU MAKE OFTEN?
A YES.
Q WHEN YOU BOARDED THE BUS, WHERE DID YOU SIT?
A ON THE BACK SEAT.
Q AND WHERE DID DAVID SIT?
A BESIDE ME.
Q WERE THERE OTHER PEOPLE ON THE BUS IN ADDITION TO THE TWO OF YOU?
A YES, MORE CAME ON.
Q ABOUT HOW MANY PEOPLE WERE ON THE BUS?
A ON THE WHOLE BUS? BETWEEN 15 --
THE INTERPRETER: ONE FIVE.
THE WITNESS: -- AND 20 PEOPLE.
BY MR. CANO:
Q IS THE BUS LARGE OR SMALL?
A YES, IT'S LARGE.
Q IS IT A -- IS IT A NORMAL BUS LINE OR IS IT A RAPID BUS LINE?
A IT'S THE RAPID WITH TWO COACHES.
Q AND WAS IT STILL LIGHT OUTSIDE?
A EXCUSE ME?
Q WAS IT STILL DAYLIGHT OUTSIDE?
A YES.
Q AT SOME POINT DURING THAT BUS TRIP, WERE YOU INVOLVED IN AN INCIDENT WITH ANOTHER PASSENGER?
A EXCUSE ME?

Q DID YOU SUFFER AN INJURY THAT DAY ON THE BUS?
A YES.
Q WAS ANOTHER PASSENGER ON THE BUS THE ONE WHO GAVE YOU THE INJURY?
A EXCUSE ME?
Q HOW DID YOU GET THE INJURY?
A WITH A BLADE. A KNIFE.
Q DO YOU SEE THE PERSON IN COURT TODAY THAT WAS HOLDING THE KNIFE WHEN YOU SUFFERED THAT INJURY?
A YES.
Q COULD YOU PLEASE POINT TO HIM AND DESCRIBE WHAT HE'S WEARING TODAY?
A YES. IT'S HIM.
Q WHAT'S HE WEARING TODAY?
A GRAY JACKET.
THE COURT: ALL RIGHT. INDICATING THE DEFENDANT, MR. WILLARD.
BY MR. CANO:
Q NOW, BEFORE THAT DAY WHEN YOU GOT ON THE BUS, HAD YOU EVER SEEN MR. WILLARD BEFORE?
A HIM? HIM?
Q YES.
A NO.
Q WAS HE SITTING SOMEWHERE ON THE BUS WHEN YOU FIRST NOTICED HIM?
A HE WAS IN FRONT OF ME.
Q APPROXIMATELY HOW MANY ROWS IN FRONT OF

YOU?

A ABOUT FOUR ROWS. LIKE 10 FEET.

Q AT SOME POINT DID YOU SEE HIM STAND UP?

A HE WAS SEATED.

Q OKAY. SO YOU SAW HIM SEATED, CORRECT?

A YES.

Q AT SOME POINT DID YOU SEE HIM GO SOMEWHERE ELSE?

A NO.

Q AT SOME POINT DID HE WALK IN YOUR DIRECTION?

A YES.

Q APPROXIMATELY HOW FAR INTO YOUR BUS TRIP WERE YOU WHEN THE DEFENDANT WALKED IN YOUR DIRECTION?

A EXCUSE ME?

Q HOW MANY MINUTES HAD YOU BEEN ON THE BUS WHEN THE DEFENDANT WALKED TOWARDS YOU?

A ABOUT 15 --

THE INTERPRETER: ONE FIVE.

THE WITNESS: -- MINUTES.

BY MR. CANO:

Q WHAT HAPPENED WHEN THE DEFENDANT WALKED TOWARDS YOU?

A HE TOUCHED MY FACE, AND HE SAID TO ME, "FUCKING MEXICAN."

Q DID HE MAKE THAT STATEMENT TO YOU IN ENGLISH OR IN SPANISH?

A AS YOU ARE HEARING IT, "PINCHE MEXICO."

Q SO IN SPANISH?
A YES, THAT'S THE WAY I UNDERSTOOD IT.
Q AND YOU MENTIONED THAT HE TOUCHED YOU. WHAT PART OF YOUR BODY DID HE TOUCH YOU ON?
A HERE. THIS SIDE.
MR. CANO: YOUR HONOR, THE WITNESS, FOR THE RECORD, HAS TAKEN HIS LEFT HAND AND INDICATED HIS LEFT CHEEK.
THE COURT: SO NOTED FOR THE RECORD.
BY MR. CANO:
Q AND WHAT PART OF HIS BODY DID HE TOUCH YOU WITH?
A WITH HIS FINGER.
MR. CANO: YOUR HONOR, THE WITNESS HAS TAKEN HIS RIGHT HAND WITH HIS INDEX FINGER EXTENDED AND EXTENDED IT FORWARD.
THE COURT: SO NOTED.
BY MR. CANO:
Q WHAT DID THE DEFENDANT DO AFTER HE POKED YOU IN THE CHEEK?
A HE WENT BACK TO HIS SEAT AND TOOK A KNIFE OUT OF HIS BACKPACK.
Q OKAY. AND DID YOU GET A LOOK AT THE KNIFE?
A YES.
Q OKAY. AND AFTER HE GRABBED THE KNIFE OUT OF HIS BACKPACK, COULD YOU SEE IF THE KNIFE WAS -- OR COULD YOU DESCRIBE WHAT KIND OF KNIFE IT WAS?
A YES. IT'S A BLADE THAT FOLDS OVER.
Q OKAY. WHEN YOU FIRST SAW HIM TAKE THE

KNIFE OUT OF HIS BACKPACK, DO YOU REMEMBER IF THE KNIFE WAS CLOSED OR OPEN?

A WHEN HE WAS COMING TOWARDS ME, THAT'S WHEN HE OPENED IT.

Q OKAY. AND YOU SAW THAT HAPPEN?

A YES.

Q AFTER THE DEFENDANT TOOK THE KNIFE OUT AND STARTED WALKING TOWARDS YOU, WHAT DID HE DO NEXT?

A HE STABBED ME ONCE LIKE THAT IN MY LUNCH BAG.

Q AND, SIR, WOULD YOU MIND DOING THAT AGAIN? I DIDN'T SEE IT.

A YES. ONCE INTO MY LUNCH BAG, AND THE SECOND TIME HERE ON MY ARM.

MR. CANO: AND, YOUR HONOR, FOR THE RECORD, THE WITNESS TOOK HIS RIGHT HAND IN A KIND OF UPWARD SWINGING MOTION WITH HIS HAND CLOSED, MADE A SLASHING MOTION.

THE COURT: ALL RIGHT. SO NOTED FOR THE RECORD. AND THEN I'LL NOTE HE ALSO, WHEN HE TESTIFIED REGARDING HIS ARM, POINTED TO HIS LEFT ARM.

BY MR. CANO:

Q WHEN THE DEFENDANT FIRST CAME IN YOUR DIRECTION WITH THE KNIFE, DID YOU REMAIN SEATED OR DID YOU DO SOMETHING ELSE?

A NO. I STOOD UP.

Q OKAY. AND WHAT DID YOU DO NEXT AFTER YOU STOOD UP?

A FOR THE THIRD TIME HE DID THAT, I KICKED

HIM HERE IN HIS STOMACH.

Q OKAY. WHEN YOU KICKED HIM, WAS THAT AFTER YOU HAD ALREADY BEEN CUT?

A YES.

Q WHILE ALL OF THIS COMMOTION WAS GOING ON, WHAT WAS DAVID DOING?

A HE GOT OFF THE BUS BEFORE I DID.

Q WAS HE NEXT TO YOU DURING SOME OF THE INCIDENT?

A YES.

Q DID YOU SEE WHAT, IF ANYTHING, THE OTHER PASSENGERS ON THE BUS DID WHILE THIS INCIDENT WAS GOING ON?

A YES. THEY ALL GOT DOWN.

Q WHEN YOU SAY THEY GOT DOWN, WHAT DO YOU MEAN?

A THEY GOT OUT OF THE BUS.

Q AT SOME POINT DID THE BUS STOP?

A YES, BUT NOT AT A BUS STOP.

Q JUST ON THE SIDE OF THE ROAD?

A YES, ON ONE SIDE.

Q AFTER DAVID LEFT, CAN YOU TELL US WHAT HAPPENED NEXT?

A HE FOLLOWED THE MAN TO WHERE HE WAS HIDING TO --

MR. MC GURK: OBJECTION, CALLS FOR SPECULATION.

THE COURT: ALL RIGHT. I'M GOING TO SUSTAIN THE OBJECTION SUBJECT TO YOU LAYING THE FOUNDATION. SO I'M

NOT GOING TO STRIKE IT YET. I'M GOING TO SEE IF A FOUNDATION IS LAID.

BY MR. CANO:

Q WHEN DAVID LEFT, YOU WERE STILL ON THE BUS; IS THAT RIGHT?

A YES.

Q OKAY. WHILE YOU WERE ON THE BUS, JUST YOU AND MR. WILLARD, WHAT HAPPENED THEN?

A NO, I GOT DOWN.

Q SO YOU GOT OFF THE BUS AS WELL?

A YES, AND HE STAYED INSIDE.

Q OKAY. AT SOME POINT DID YOU SEE MR. WILLARD GET OFF THE BUS?

A YES.

Q OKAY. YOU MENTIONED A STATEMENT THAT MR. WILLARD SAID TO YOU EARLIER. DID HE SAY ANYTHING ELSE TO YOU OTHER THAN THAT STATEMENT WHILE THIS INCIDENT HAPPENED ON THE BUS?

THE INTERPRETER: MAY THE INTERPRETER REPEAT?

THE COURT: OKAY.

THE WITNESS: NO, JUST THOSE TWO WORDS.

BY MR. CANO:

Q OKAY. AND JUST SO WE'RE A HUNDRED PERCENT CLEAR, ARE YOU SAYING THAT HE DIDN'T SAY ANYTHING ELSE, OR ARE YOU SAYING THAT HE SAID OTHER THINGS BUT YOU COULDN'T UNDERSTAND THEM?

A WHAT I DID UNDERSTAND WERE THOSE TWO WORDS, BUT HE CONTINUED TO SPEAK IN ENGLISH, AND I DID NOT

UNDERSTAND ANY OF IT.

Q WHEN YOU GOT OFF THE BUS, WERE YOU ABLE TO SEE IF YOU HAD SUFFERED AN INJURY ON YOUR ARM?

A YES.

Q CAN YOU TELL US WHAT IT LOOKED LIKE?

A EXCUSE ME?

Q CAN YOU PLEASE EXPLAIN TO US WHAT THE INJURY LOOKED LIKE?

A I STILL HAVE IT HERE.

Q OKAY. FIRST I WANT TO KNOW AT THE TIME THE INCIDENT HAPPENED, YOU KNOW, RIGHT WHEN YOU GOT OFF THE BUS, CAN YOU TELL US WHAT THE INJURY LOOKED LIKE AT THAT TIME?

A VERY INJURED, A LOT OF BLOOD.

Q OKAY. DID YOU HAVE A PUNCTURE WOUND ON YOUR ARM?

A A CUT.

Q HOW LONG WAS THE CUT?

A PERHAPS AN INCH AND A HALF.

Q DID IT HURT?

A YES.

Q DID YOU RECEIVE ANY MEDICAL TREATMENT THAT DAY ON YOUR ARM?

A YES. A POLICEMAN TOOK ME TO THE HOSPITAL.

Q OKAY. WHEN YOU GOT TO THE HOSPITAL, DID YOU RECEIVE ANY TREATMENT FROM SOMEBODY THERE?

A YES.

Q CAN YOU TELL US WHAT THEY DID?

A HE CLEANED IT AND STITCHED IT.

Q HOW MANY STITCHES DID YOU RECEIVE IN THE WOUND?

MR. MC GURK: OBJECTION, LACK OF FOUNDATION.

THE WITNESS: FIVE.

THE COURT: OVERRULED.

THE WITNESS: FIVE.

BY MR. CANO:

Q SO YOU RECEIVED FIVE STITCHES?

A YES.

Q AND THESE ARE STITCHES THAT YOU COULD SEE YOURSELF; IS THAT RIGHT?

A YES.

Q NOW, AT THE TIME YOU MENTIONED YOU WERE COMING FROM WORK, CORRECT?

A YES.

Q DID YOU HAVE TO MISS ANY WORK BECAUSE OF THAT INJURY?

A YES.

Q HOW MUCH TIME?

A THREE DAYS.

Q AND WHY DID YOU HAVE TO MISS THOSE DAYS?

A BECAUSE I WORK WITH METAL, AND THE POSSIBILITY OF RUST MIGHT HAVE IMPEDED THE LENGTH OF MY HEALING.

Q NOW, DO YOU STILL HAVE A SCAR ON YOUR ARM TODAY?

A YES.

MR. CANO: IF I CAN HAVE ONE MOMENT, YOUR HONOR?
THE COURT: OKAY.
THE INTERPRETER: YOUR HONOR?
THE COURT: YES?
THE INTERPRETER: COULD WE CHANGE INTERPRETERS NOW?
THE COURT: YES.
THE INTERPRETER: I JUST WANTED TO MAKE SURE SHE WAS FAMILIAR.
MR. CANO: YOUR HONOR, CAN WE APPROACH? BOTH COUNSEL APPROACH THE WITNESS?
THE COURT: SURE. LET'S SWAP INTERPRETERS FIRST.
MR. CANO: SURE.
THE COURT: SO WE DON'T HAVE A TRAFFIC JAM.
THE INTERPRETER: SHE'LL BE RETURNING THIS AFTERNOON, IN CASE ANY OF THIS HELPS.
THE COURT: AND LET ME ALSO NOTE, MR. CANO, I HAD OVERRULED AN OBJECTION SUBJECT TO THE LAYING OF A FOUNDATION. I DON'T KNOW IF YOU'RE GOING TO LAY THE FOUNDATION. IF NOT, I WILL STRIKE THE RESPONSE.
MR. CANO: YOU CAN JUST GO AHEAD AND STRIKE IT.
THE COURT: OKAY. SO THERE WAS AN OBJECTION TO THE TESTIMONY OF MR. HERNANDEZ REGARDING WHAT DAVID DID AFTER HE LEFT THE BUS REGARDING FOLLOWING THE DEFENDANT. THIS TESTIMONY REGARDING THE WITNESS ABOUT WHAT DAVID DID IN TERMS OF FOLLOWING THE DEFENDANT, THAT IS STRICKEN FROM THE RECORD. I'M SUSTAINING THE OBJECTION. THE JURY IS INSTRUCTED TO DISREGARD THAT TESTIMONY.
ALL RIGHT. COUNSEL, YOU MAY APPROACH THE

WITNESS.

MR. CANO: THANK YOU. I'M JUST GOING TO ASK THE WITNESS TO SHOW COUNSEL THE SCAR ON HIS ARM.

AND, YOUR HONOR, I DON'T KNOW IF THE COURT IS -- HAS A PROBLEM WITH THIS. SINCE IT'S ON HIS ARM, WOULD THE COURT MIND IF THE WITNESS JUST STEPPED DOWN AND SHOWED THE JURY WHERE THE INJURY IS?

THE COURT: THAT'S ACCEPTABLE.

ANY OBJECTION BY THE DEFENSE?

MR. MC GURK: NO OBJECTION.

THE COURT: ALL RIGHT. YOU MAY.

SO, MR. HERNANDEZ, IF YOU CAN JUST STEP DOWN AND SHOW YOUR ARM TO THE JURY.

MR. CANO: CAN HE POINT OUT....

THE COURT: FOR THE RECORD, MR. HERNANDEZ IS SHOWING HIS ARM TO THE JURY, WHICH IS HIS LEFT ARM, USING HIS RIGHT HAND TO POINT TO IT.

(PAUSE IN PROCEEDINGS.)

MR. CANO: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. IF YOU CAN HAVE A SEAT.

AND IF I CAN ASK, MR. HERNANDEZ, MAY I SEE IT AS WELL?

ALL RIGHT. THANK YOU, SIR.

ALL RIGHT. MR. CANO, YOU MAY --

MR. CANO: THANK YOU.

THE COURT: -- PROCEED.

BY MR. CANO:

Q NOW, DID THE POLICE ARRIVE AT SOME POINT THAT NIGHT?

A ABOUT FIVE OR SIX MINUTES LATER THEY ARRIVED.

Q AND THEN AT SOME POINT THAT NIGHT DID YOU HAVE AN OPPORTUNITY TO -- TO PHYSICALLY SEE THE DEFENDANT AGAIN?

A YES, WHEN HE WAS DETAINED.

Q OKAY. AND WHEN HE WAS DETAINED, WAS HE WEARING THE SAME CLOTHES THAT HE'D BEEN WEARING ON THE BUS?

A YES.

Q AND CAN YOU TELL US WHAT THAT CLOTHING WAS THAT HE'D BEEN WEARING ON THE BUS?

A I DON'T REMEMBER. AT THIS MOMENT I DO NOT REMEMBER THE CLOTHING THAT HE WAS WEARING.

Q AT THE TIME OF THE INCIDENT DID YOU REMEMBER THE TYPE OF CLOTHING?

MR. MC GURK: OBJECTION, RELEVANCE.

THE COURT: OVERRULED.

THE WITNESS: EXCUSE ME?

BY MR. CANO:

Q AT THE TIME OF THIS INCIDENT, DO YOU REMEMBER TAKING NOTE OF WHAT IT WAS THAT THE DEFENDANT WAS WEARING?

A HIM?

Q YES.

A NO, I DON'T REMEMBER THE CLOTHING HE HAD ON, BUT I DO REMEMBER THAT HE HAD ON SHORTS.

MR. CANO: COURT'S INDULGENCE, YOUR HONOR, IF I CAN JUST HAVE A MOMENT FOR THE MACHINE TO HEAT UP?

THE COURT: OKAY.

MR. CANO: ACTUALLY, WHILE I'M DOING THAT, YOUR HONOR -- ONE SECOND, YOUR HONOR.

YOUR HONOR, I'M HOLDING IN MY HAND A CD. ON THE TOP IT SAYS, "L.A. COUNTY DISTRICT ATTORNEY," AND IN HANDWRITING IT SAYS, "CONVERT MTA VIDEO TO WMV."

I'D ASK THAT THIS CD BE MARKED AS PEOPLE'S 1.

THE COURT: ALL RIGHT. SO MARKED.

(MARKED FOR I.D.: = EXHIBIT 1.)

MR. CANO: MAY I APPROACH THE WITNESS?

THE COURT: YOU MAY.

BY MR. CANO:

Q SIR, SHOWING YOU THIS CD MARKED AS PEOPLE'S 1, DO YOU RECOGNIZE THIS CD?

A YES.

Q AND WHEN WAS THE PREVIOUS TIME THAT YOU SAW THIS CD?

A TODAY.

Q AND DID YOU HAVE THE OPPORTUNITY TO VIEW THE CONTENTS OF THIS CD?

A YES.

Q OKAY. I'M GOING TO ASK YOU A LITTLE BIT MORE ABOUT THAT IN A MINUTE.

MR. CANO: YOUR HONOR, I ALSO HAVE A SERIES OF PHOTOGRAPHS. FIRST, I HAVE A BLACK AND WHITE PHOTOGRAPH, ONE-PAGE DOCUMENT -- ACTUALLY, IT HAS TWO PHOTOGRAPHS ON IT. THE TOP PHOTOGRAPH APPEARS TO HAVE SOME KIND OF WOUND, AND THE LOWER PHOTOGRAPH APPEARS TO BE A PICTURE OF MR. HERNANDEZ LOOKING OFF CAMERA.

I'D ASK THAT THIS BE MARKED AS PEOPLE'S 2.

THE COURT: OKAY. SO MARKED.

(MARKED FOR I.D.: = EXHIBIT 2.)

BY MR. CANO:

Q SHOWING YOU WHAT'S BEEN MARKED AS PEOPLE'S 2, DO YOU RECOGNIZE WHAT'S DEPICTED IN THESE PHOTOGRAPHS?

A YES.

Q WHAT'S IN THE TOP PHOTO?

A THAT'S MY WOUND.

Q AND WHAT'S IN THE BOTTOM PHOTOGRAPH?

A THIS IS MYSELF.

Q WHEN WERE THESE PHOTOGRAPHS TAKEN?

A OUTSIDE OF THE BUS.

Q ON THE DATE OF THE INCIDENT?

A EXCUSE ME. HERE THAT'S WHEN I WAS WITH THE POLICE OFFICER WHEN THEY HAD ALREADY DETAINED HIM.

MR. MC GURK: OBJECTION, CALLS FOR SPECULATION AS

TO POLICE DETAINING THE DEFENDANT.

THE COURT: I'M GOING TO OVERRULE IT SUBJECT TO THE LAYING OF A FOUNDATION. IF NOT, I'LL STRIKE IT.

BY MR. CANO:

Q YOU SAW THE DEFENDANT AFTER HE'D BEEN DETAINED THAT DAY, CORRECT?

A YES.

MR. MC GURK: OBJECTION TO THE LANGUAGE "DETAINED" AS SPECULATION.

THE COURT: ALL RIGHT. I'M GOING TO SUSTAIN THE OBJECTION AS TO THE LANGUAGE. SO I WILL STRIKE THE ANSWER BECAUSE IT DOES CALL FOR A LEGAL CONCLUSION. SO I WILL ALSO SUSTAIN THE EARLIER OBJECTION IN TERMS OF WHEN THE PHOTOGRAPH WAS TAKEN. I'LL ALLOW MR. CANO TO REASK IT DIFFERENTLY, BUT THE PRIOR TESTIMONY REGARDING THE TIMING AND THE DEFENDANT, MR. WILLARD, BEING DETAINED, THAT TESTIMONY IS STRICKEN, AND THE JURY'S INSTRUCTED TO DISREGARD IT.

MR. CANO?

BY MR. CANO:

Q WAS THIS BOTTOM PHOTOGRAPH IN PEOPLE'S 2 TAKEN AFTER YOU WERE CUT ON THE BUS?

A YES.

Q OKAY. THANK YOU.

AND, ACTUALLY, STILL REGARDING PEOPLE'S 2, ARE BOTH OF THESE PHOTOGRAPHS FAIR AND ACCURATE REPRESENTATIONS OF HOW YOU LOOKED AND HOW YOUR INJURY LOOKED THAT DAY?

A YES.

MR. CANO: I HAVE ANOTHER DOCUMENT, ONE PAGE, BLACK AND WHITE, WITH TWO PHOTOGRAPHS. I'D ASK THAT IT BE MARKED AS PEOPLE'S 3.

THE COURT: SO MARKED.

(MARKED FOR I.D.: = EXHIBIT 3.)

BY MR. CANO:

Q SHOWING YOU WHAT'S BEEN MARKED AS PEOPLE'S 3, DO YOU RECOGNIZE THE IMAGES DEPICTED IN THESE PHOTOGRAPHS?

A YES.

Q WHO IS DEPICTED IN THE TOP PHOTOGRAPH?

A THIS IS MYSELF.

Q WHO IS DEPICTED IN THE BOTTOM PHOTOGRAPH?

A MY WORK COMPANION, DAVID.

Q OKAY. DO YOU KNOW WHEN THESE PHOTOGRAPHS WERE TAKEN?

A YES, THAT SAME DAY OF THE ACCIDENT.

Q OKAY. AND ARE THESE PHOTOS TRUE AND ACCURATE REPRESENTATIONS OF HOW YOU AND YOUR FRIEND DAVID LOOKED THAT DAY?

A YES.

MR. CANO: YOUR HONOR, I HAVE ANOTHER DOCUMENT WITH TWO PHOTOGRAPHS ON IT. I'D ASK THAT IT BE PLEASE MARKED AS PEOPLE'S 4.

THE COURT: OKAY. SO MARKED.

(MARKED FOR I.D.: = EXHIBIT 4.)

BY MR. CANO:

Q SHOWING YOU WHAT'S BEEN MARKED AS PEOPLE'S 4, DO YOU RECOGNIZE WHAT'S DEPICTED IN THESE PHOTOGRAPHS?

A YES.

Q AND WHAT IS DEPICTED IN THESE PHOTOGRAPHS?

A THE SHIRT THAT I TOOK OFF TO TIE IT AROUND MY HAND.

Q OKAY. ARE THESE PHOTOGRAPHS TRUE AND ACCURATE REPRESENTATIONS OF HOW YOUR SHIRT LOOKED THAT DAY?

A YES.

MR. CANO: AND FOR THE COURT.

THE COURT: THANK YOU.

MR. CANO: YOUR HONOR, I'M HOLDING A ONE-PAGE BLACK AND WHITE DOCUMENT, AGAIN WITH TWO PHOTOGRAPHS. I'D ASK THAT THIS DOCUMENT PLEASE BE MARKED AS PEOPLE'S 5. AND FOR THE RECORD, THE TOP DOCUMENT APPEARS TO BE MR. HERNANDEZ HOLDING UP HIS ARM, AND THE BOTTOM DOCUMENT IS A -- THE BOTTOM PHOTOGRAPH IS A RELATIVELY BLURRY IMAGE OF WHAT APPEARS TO BE A WOUND.

THE COURT: SO MARKED.

(MARKED FOR I.D.: = EXHIBIT 5.)

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BY MR. CANO:

Q SHOWING YOU WHAT'S BEEN MARKED AS PEOPLE'S 5, DO YOU RECOGNIZE WHAT'S DEPICTED IN THESE PHOTOGRAPHS?

A YES.

Q WHAT DO YOU RECOGNIZE IN THE TOP PHOTOGRAPH OF PEOPLE'S 5?

A THIS IS MYSELF.

Q AND WHAT ARE YOU DOING IN THAT PHOTOGRAPH?

A SHOWING MY ARM TO THE POLICE OFFICERS THAT WANTED TO TAKE THE PHOTOGRAPH.

Q OKAY. AND WHAT'S DEPICTED IN THE BOTTOM PHOTOGRAPH?

A WHAT I SEE, THAT IS MY WOUND.

Q OKAY. AND ARE THESE PHOTOGRAPHS TRUE AND ACCURATE REPRESENTATIONS OF HOW YOUR WOUND AND YOURSELF LOOKED THAT DAY?

A YES.

Q IF I CAN HAVE IT.

MR. CANO: YOUR HONOR, I HAVE ANOTHER PHOTOGRAPH, TWO CLOSE-UPS OF THE WOUND. I'D ASK THAT IT BE MARKED AS PEOPLE'S 6.

THE COURT: OKAY. SO MARKED.

(MARKED FOR I.D.: = EXHIBIT 6.)

BY MR. CANO:

Q DO YOU RECOGNIZE WHAT IS DEPICTED IN THESE

TWO PHOTOGRAPHS IN PEOPLE'S 6?

A YES.

Q CAN YOU TELL US WHAT IT IS?

A THAT IS MY HAND AND CARD THAT THE SHERIFF PUT AT THE SIDE OF MY HAND.

Q AND THE WOUND DEPICTED IN THE PHOTOGRAPHS, DO YOU RECOGNIZE THAT?

A YES.

MR. CANO: FOR COUNSEL AND THE COURT.

Q IS THIS A TRUE AND ACCURATE REPRESENTATION, THESE TWO PHOTOGRAPHS, OF YOUR INJURY THAT DAY?

A YES.

Q WHEN THESE PHOTOGRAPHS OF YOUR WOUND WERE TAKEN, REFERRING TO PEOPLE'S 2 THROUGH 6, HAD YOUR WOUND BEEN CLEANED YET OR NOT?

A NO, NOT YET.

Q OKAY. TWO MORE.

MR. CANO: I'M HOLDING A ONE-PAGE DOCUMENT WITH TWO PHOTOGRAPHS THAT I'D ASK TO BE MARKED AS PEOPLE'S 7. IN THE UPPER PHOTOGRAPH IT APPEARS TO BE A CLOSED KNIFE. IN THE LOWER PHOTOGRAPH IT APPEARS TO BE AN OPENED KNIFE.

THE COURT: OKAY.

(MARKED FOR I.D.: = EXHIBIT 7.)

MR. CANO: I'M HANDING IT TO THE WITNESS.

Q DO YOU RECOGNIZE WHAT'S IN PEOPLE'S 7?

A YES.

MR. CANO: YOUR HONOR, I'M ALSO HOLDING A LAST DOCUMENT I'D ASK TO BE MARKED AS PEOPLE'S 8. IT HAS ONE PHOTOGRAPH THAT APPEARS TO BE A CLOSER-UP VIEW OF A KNIFE IN A CLOSED POSITION.

THE COURT: OKAY. SO MARKED.

(MARKED FOR I.D.: = EXHIBIT 8.)

BY MR. CANO:

Q ALSO SHOWING YOU PEOPLE'S 8, DO YOU RECOGNIZE THE KNIFE DEPICTED IN THESE PHOTOGRAPHS?

A YES.

Q HOW DO YOU RECOGNIZE THEM?

A THAT WAS THE KNIFE THAT CUT ME.

Q OKAY. AND ARE THESE PHOTOGRAPHS A TRUE AND ACCURATE REPRESENTATION OF HOW THE KNIFE LOOKED ON THAT DAY?

A YES.

Q THANK YOU.

THE COURT: MR. CANO?

MR. CANO: YES? THIS MIGHT BE A GOOD TIME TO --

THE COURT: I THINK THIS MIGHT BE A GOOD TIME TO BREAK --

MR. CANO: YEAH.

THE COURT: -- IF YOU'RE ABOUT TO SHOW THE VIDEO AND IT'S LONGER THAN THE TIME WE HAVE LEFT.

MR. CANO: CORRECT.

THE COURT: SO AT THIS TIME WE WERE ARE GOING TO

TAKE A BREAK FOR LUNCH. WE'LL BE IN RECESS UNTIL 1:30 P.M.

IF I CAN HAVE JUROR 2 WAIT FOR A MOMENT SO WE CAN TALK TO YOU.

AND, MR. HERNANDEZ, I'M ORDERING YOU BACK FOR 1:30 P.M.

I'M ORDERING THE JURY BACK AS WELL.

SAME ADMONITION, DO NOT TALK ABOUT THE CASE OR ANY ISSUES INVOLVED IN THE CASE OR MAKE UP YOUR MIND ABOUT ANY ISSUE.

SO AGAIN, JUROR NUMBER 2 CAN STICK AROUND. YOU CAN LEAVE YOUR PADS ON YOUR CHAIR. THE JURY IS EXCUSED UNTIL 1:30 THIS AFTERNOON.

AND, MR. HERNANDEZ, IF YOU CAN WAIT FOR A MOMENT UNTIL THE JURY LEAVES, AND THEN YOU CAN STEP DOWN AS WELL.

JUROR NUMBER 2, WHILE THEY'RE LEAVING, IF I CAN HAVE YOU COME AROUND COUNSEL TABLE AND WE'LL SEE YOU AT SIDEBAR.

IF I CAN HAVE COUNSEL AT SIDEBAR WITH JUROR NUMBER 2.

(THE FOLLOWING PROCEEDINGS WERE HELD AT SIDEBAR:)

THE COURT: WE ARE AT SIDEBAR WITH JUROR NUMBER 2. I WANTED TO CHECK IN WITH YOU AND SEE HOW YOU WERE DOING. IT LOOKED LIKE YOU MIGHT BE HAVING A DIFFICULT TIME DURING

THE TRIAL.

JUROR NO. 2: A LITTLE BIT. I MEAN, THIS IS HARD FOR ME, BUT I'M TRYING TO MAKE IT THROUGH. SO I DON'T KNOW IF YOU WANT ME TO CONTINUE ON OR -- I MEAN, I CAN TRY FOR THE REST OF THE DAY, IF YOU'D LIKE.

THE COURT: OKAY. IT'S BEEN -- AND YOU'RE TEARING UP A LITTLE BIT NOW. I TAKE IT IT HAS BEEN DIFFICULT WATCHING.

JUROR NO. 2: SORRY. YEAH.

THE COURT: OKAY. LET ME HAVE YOU WAIT JUST IN THE BACK SEATS FOR A MOMENT WHILE I TALK TO COUNSEL.

JUROR NO. 2: OKAY. THANK YOU.

(JUROR NUMBER 2 LEAVES SIDEBAR AND RETURNS TO THE JURY BOX.)

THE COURT: OKAY. I'LL NOTE FOR THE RECORD THAT WHILE I WAS TALKING TO JUROR NUMBER 2, SHE WAS CRYING. ALSO, DURING MY READING THE INSTRUCTIONS THIS MORNING, WHICH ARE NOT VERY EMOTIONAL, SHE WAS WIPING HER EYES AND APPEARED TO BE CRYING.

AT THIS POINT IS THERE A STIPULATION TO EXCUSE JUROR NUMBER 2?

MR. MC GURK: YES, YOUR HONOR.

MR. CANO: YES.

THE COURT: OKAY. SO WE'RE GOING TO GO AHEAD AND EXCUSE HER. WE'LL PULL LOTS FOR WHO GOES IN. WE'LL DEAL WITH THAT AT 1:30.

MR. MC GURK: THANK YOU.

MR. CANO: THANK YOU.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT:)

THE COURT: JUROR NUMBER 2, THANK YOU FOR YOUR SERVICE. I AM GOING TO EXCUSE YOU AS A JUROR IN THIS CASE. I DO APPRECIATE YOU PUTTING IN THE TIME AND MAKING AN EFFORT TO STAY FOR THE TRIAL, BUT I AM GOING TO EXCUSE YOU. PLEASE REPORT TO THE JURY ROOM ACROSS THE WAY.

JUROR NO. 2: THANK YOU. MY APOLOGIES.

THE COURT: THANK YOU.

WITH THAT, WE ARE IN RECESS UNTIL 1:30 THIS AFTERNOON.

(AT 12:00 NOON, A LUNCH RECESS WAS TAKEN UNTIL 1:30 P.M. OF THE SAME DAY.)

CASE NUMBER: BA362410-01
CASE NAME: PEOPLE VS. CHARLES WILLARD
LOS ANGELES, CALIF. FRIDAY, JANUARY 14, 2011
DEPARTMENT NO. 113 HON. GAIL RUDERMAN FEUER, JUDGE
REPORTER: RENE MARIE EVANKO, CSR #6404
TIME: 1:38 P.M.

APPEARANCES: (AS HERETOFORE NOTED.)

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

THE COURT: GOOD AFTERNOON.
MR. MC GURK: GOOD AFTERNOON.
MR. CANO: GOOD AFTERNOON.
THE COURT: WE ARE BACK ON THE RECORD. MR. WILLARD IS PRESENT. BOTH COUNSEL ARE PRESENT.
MR. MC GURK: YES, YOUR HONOR.
THE COURT: DO YOU NEED A MOMENT?
MR. MC GURK: JUST ONE MOMENT, PLEASE.

(THE DEFENDANT AND HIS COUNSEL CONFER OFF THE RECORD.)

THE COURT: BEFORE WE TURN TO WITNESSES, I'VE NOW EXCUSED JUROR NUMBER 2. SO I HAVE PUT IN THE BASKET OVER THERE A NUMBER ONE AND A NUMBER TWO. I'M GOING TO HAVE

THE CLERK DRAW ONE OF THOSE TWO NUMBERS. IS THAT AN ACCEPTABLE PROCEDURE?

MR. MC GURK: THAT WOULD BE FINE, YOUR HONOR.

MR. CANO: YES.

THE COURT: OKAY. SO LET ME ASK THE CLERK TO DRAW ONE OF THOSE TWO, AND THAT WILL BE THE ALTERNATE THAT WILL BE SUBSTITUTED IN FOR THE JUROR.

THE CLERK: JUROR NUMBER 2.

THE COURT: OKAY. SO ALTERNATE NUMBER 2 WILL BE SUBSTITUTED IN FOR JUROR NUMBER 2 WHO HAS BEEN EXCUSED. AND ALTERNATE NUMBER 1 WILL REMAIN ALTERNATE NUMBER 1.

OKAY. VERY WELL. IF WE CAN HAVE MR. HERNANDEZ RETAKE THE STAND.

MR. CANO: YES.

MR. HERNANDEZ?

THE COURT: ALL RIGHT. AND WE'LL HAVE THE JURY COME IN.

SANTOS HERNANDEZ,

CALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER THROUGH THE SPANISH-LANGUAGE INTERPRETER AS FOLLOWS:

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

THE COURT: OKAY. GOOD AFTERNOON. WE ARE BACK ON THE RECORD IN THE MATTER OF MR. CHARLES WILLARD. YOU'LL NOTE THERE'S AN EMPTY SEAT WHERE JUROR NUMBER 2 WAS SITTING. I HAVE EXCUSED JUROR NUMBER 2, AND I'M GOING TO AT THIS POINT SUBSTITUTE IN ALTERNATE NUMBER 2. AS I MENTIONED, WE WERE GOING TO DO THIS BY LOT, SO WE HAVE SELECTED ALTERNATE NUMBER 2.

IF YOU CAN PLEASE TAKE SEAT NUMBER 2.

AND, ALTERNATE NUMBER 1, YOU'LL STAY AS ALTERNATE NUMBER 1 FOR US.

SO FROM THIS POINT FORWARD, ALTERNATE JUROR NUMBER 2, YOU WILL BE CONSIDERED JUROR NUMBER 2. THANK YOU.

I'LL ALSO NOTE FOR THE RECORD WE HAVE MR. HERNANDEZ ON THE STAND.

YOU'RE STILL UNDER OATH.

WE WERE IN THE MIDDLE OF MR. CANO'S EXAMINATION. YOU MAY PROCEED.

MR. CANO: THANK YOU.

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DIRECT EXAMINATION

(RESUMED)

BY MR. CANO:

Q SIR, I'M GOING TO DIRECT YOUR ATTENTION TO THE PROJECTOR HERE, THE PROJECTED IMAGE. DO YOU SEE THAT?

A YES.

Q OKAY. WHAT I'M GOING TO DO IS I'M GOING TO -- WELL, FIRST I'M GONNA ASK YOU, LOOKING AT THIS IMAGE WHICH IS PAUSED RIGHT NOW AT THE BEGINNING, 0000, DO YOU RECOGNIZE WHAT'S DEPICTED IN THIS IMAGE?

A YES.

Q DO YOU SEE YOURSELF DEPICTED IN THIS IMAGE?

A YES.

Q WHERE ARE YOU IN THIS IMAGE?

A IN THE CORNER. THAT'S THE ONE THAT'S AT THE REAR.

Q WHAT COLOR SHIRT ARE YOU WEARING IN THIS IMAGE?

A WHITE.

MR. CANO: AND FOR THE RECORD, YOUR HONOR, THIS IS THE IMAGE FROM PEOPLE'S 1.

THE COURT: OKAY. SO NOTED.

BY MR. CANO:

Q AND DO YOU SEE YOUR FRIEND DAVID IN THIS IMAGE?

A YES.

Q WHERE IS HE IN RELATION TO YOU IN THE

IMAGE?

A HE'S TO MY SIDE.

Q SO ON THE UPPER LEFT PART OF THE IMAGE, THE INDIVIDUAL IN THE WHITE SHIRT, THAT'S YOU?

A YES.

Q AND IN THE MIDDLE OF THE SCREEN SEATED NEXT TO YOU TO YOUR LEFT AS YOU WOULD BE FACING FORWARD IS DAVID; IS THAT RIGHT?

A YES.

Q AND DO YOU SEE THE DEFENDANT IN THIS IMAGE?

A YES.

Q WHERE IS HE?

A HE'S THE ONE OVER HERE.

Q ON -- CAN YOU BE A LITTLE BIT MORE SPECIFIC WHERE HE IS IN THE IMAGE?

A HE'S RIGHT THERE AT THE CORNER, THE ONE THAT HAS THE INSIGNIA RIGHT HERE.

Q THIS GENTLEMAN IN THE BOTTOM RIGHT?

A YES.

Q AND DOES THIS APPEAR TO BE THE SAME -- AN IMAGE FROM THE SAME VIDEO THAT YOU VIEWED THIS MORNING?

A YES.

Q AND THIS MORNING YOU HAD AN OPPORTUNITY TO VIEW THIS VIDEO STRAIGHT THROUGH ALL THE WAY TO THE END?

A YES.

Q AND WAS WHAT YOU SAW IN THE VIDEO AS YOU WATCHED IT A FAIR AND ACCURATE REPRESENTATION OF WHAT HAPPENED ON THE BUS THAT DAY?

A YES.

MR. CANO: YOUR HONOR, I'M GONNA BEGIN TO PLAY THE VIDEO STARTING AT 0000 --

THE COURT: OKAY.

MR. CANO: -- AND ASK THE WITNESS TO WATCH.

(EXHIBIT 1 PLAYED.)

BY MR. CANO:

Q AS THE VIDEO'S PLAYING NOW PAST 30 SECONDS, SIR, OTHER THAN DAVID, DID YOU KNOW ANYONE ELSE ON THE BUS THAT DAY?

A NO.

(EXHIBIT 1 PLAYED.)

BY MR. CANO:

Q BEFORE THE -- AS THE VIDEO'S PLAYING, ONE MINUTE AND 15 SECONDS, DO YOU REMEMBER NOTICING THE DEFENDANT ON THE BUS THAT DAY BEFORE THE INCIDENT WHERE YOU GOT CUT?

A EXCUSE ME?

Q DO YOU REMEMBER PAYING ANY SPECIAL ATTENTION TO THE DEFENDANT THAT DAY BEFORE THE INCIDENT WHERE YOU WERE CUT?

A NO.

(EXHIBIT 1 PLAYED.)

MR. CANO: PASSING THE THREE-MINUTE MARK, YOUR HONOR.

BY MR. CANO:

Q AS THE VIDEO'S PLAYING, SIR, CAN YOU TELL US WHEN IT IS THAT THE DEFENDANT IS SPEAKING TO YOU, OR BEGAN SPEAKING TO YOU?

A UNTIL HE WAS ALMOST -- UNTIL HE ALMOST REACHED ME.

Q SO NOW HE'S APPROACHED YOU AT ABOUT 4:33? IS THAT WHEN HE BEGAN TO SPEAK TO YOU?

A YES.

Q AND AT THIS POINT, AT 4:43 WHEN HE RETURNS TO HIS SEAT, ARE YOU WATCHING HIM STILL?

A YES.

Q AND AT THIS POINT HE'S ALREADY POKED YOU IN THE CHEEK?

A NO.

Q I'M GOING TO STOP IT AT 5:15.

CORRECT ME IF I'M WRONG. IT APPEARS THAT YOU'VE HOPPED ONTO THE -- ONTO THE SEAT ITSELF WITH YOUR FEET THAT YOU WERE SITTING ON; IS THAT CORRECT?

MR. MC GURK: OBJECTION, LEADING AND IT'S A NARRATION.

THE COURT: I'M GOING TO SUSTAIN. PLEASE REPHRASE.

BY MR. CANO:

Q CAN YOU PLEASE EXPLAIN WHY YOU TOOK THE ACTION THAT YOU JUST DID IN THE VIDEO?

MR. MC GURK: OBJECTION. THAT'S NARRATION. IT'S

NARRATING.

THE COURT: OVERRULED.

THE WITNESS: FOR FEAR AS HE HAD HIS BLADE.

MR. CANO: STOPPING IT AGAIN AT 5:20.

Q AT THIS POINT IN THE VIDEO, HAD YOU BEEN CUT YET BY THE KNIFE?

A NOT YET.

Q LET ME KNOW WHEN.

(PAUSE IN PROCEEDINGS.)

THE WITNESS: THERE.

MR. CANO: STOPPING IT AT 5:31.

Q WE JUST PASSED THE POINT WHERE YOU WERE CUT; IS THAT RIGHT?

A YES.

Q DURING THIS INCIDENT, WHEN THE DEFENDANT APPROACHED YOU, DID YOU EVER SAY ANYTHING TO HIM?

A NO, JUST "NO PROBLEM" I SAID. "NO PROBLEMA."

MR. CANO: I DON'T HAVE ANY FURTHER -- ACTUALLY, ONE FURTHER QUESTION.

Q NOW THAT WE'VE REVIEWED THE ENTIRE VIDEO IN OPEN COURT, SIR, IS WHAT YOU'VE SEEN A FAIR AND ACCURATE REPRESENTATION OF WHAT HAPPENED ON THE BUS THAT DAY?

A YES.

Q THANK YOU.

THE COURT: ALL RIGHT. VERY WELL. AT THIS TIME

I'LL TURN TO MR. MC GURK.

MR. MC GURK: THANK YOU.

CROSS-EXAMINATION

BY MR. MC GURK:

Q GOOD AFTERNOON, MR. HERNANDEZ.

IF I SPEAK TOO FAST AND YOU DON'T UNDERSTAND SOMETHING, PLEASE LET ME KNOW AND I'LL SAY IT AGAIN. OKAY?

A OKAY.

Q IS THAT ALL RIGHT WITH YOU, SIR?

A YES.

Q NOW, THIS ISN'T THE FIRST TIME THAT YOU'VE SEEN THE EVIDENCE PRESENTED TO YOU TODAY?

A EXCUSE ME?

Q IS THIS THE FIRST TIME THAT YOU'VE SEEN THIS EVIDENCE PRESENTED TO YOU TODAY?

A IN THE MORNING AND NOW.

Q SO YOU SAW IT -- BEFORE YOU TESTIFIED, YOU SAW IT THIS MORNING, CORRECT?

A YES.

Q YOU SAW IT WITH THE PROSECUTOR?

A YES.

Q DID YOU TALK ABOUT YOUR TESTIMONY TODAY?

A YES.

Q HOW LONG DID YOU DO THAT FOR?

A SEVEN MINUTES. SIX OR SEVEN MINUTES.

Q HAVE YOU SEEN IT PRIOR TO TODAY? THE EVIDENCE, I MEAN.

A NO.

Q DO YOU REMEMBER TESTIFYING AT A PRELIMINARY HEARING ON THIS CASE, SIR?

A IN THIS SAME CASE? YES.

Q IT WAS A DIFFERENT HEARING WHERE YOU CAME UP AND SAT IN THE WITNESS CHAIR. DO YOU REMEMBER THAT, SIR?

A EXCUSE ME?

Q DID YOU TESTIFY AT AN EARLIER PROCEEDING ON THIS CASE, SIR?

A YES.

Q AND WHEN YOU CAME TO COURT ON THAT DAY, DID YOU TALK ABOUT THE CASE WITH THE PROSECUTOR? A DIFFERENT ONE.

A YES.

Q AND DID YOU TALK ABOUT YOUR TESTIMONY ON THAT DAY WITH THAT PROSECUTOR?

A NO. I CAME DIRECTLY TO THE COURT.

Q AND YOU DIDN'T TALK TO ANYBODY BEFORE YOU TESTIFIED?

A NO. NO.

Q OKAY. AND I BELIEVE YOU STATED, SIR, THAT ON THE DAY IN QUESTION YOU WERE COMING HOME FROM YOUR WORK, YOUR JOB?

A YES.

Q AND IS -- YOUR JOB, IS THAT A MONDAY-THROUGH-FRIDAY JOB?

A YES.

Q NOW, I BELIEVE YOU STATED EARLIER THAT AS A RESULT OF THE CUT ON YOUR ARM YOU HAD TO MISS -- I BELIEVE YOU SAID THREE DAYS OF WORK, SIR?

A OF WORK.

Q NOW, WHEN YOU TESTIFIED PREVIOUSLY AT THAT PRELIMINARY HEARING, DID YOU SAY THAT YOU MISSED AN ENTIRE WEEK AT WORK?

A WELL, IF IT WAS MIDWEEK -- I DON'T REMEMBER DIRECTLY ON WHAT DAY THE 21ST FELL.

Q OKAY. NOW, WHEN YOU WERE ON THE BUS, DID YOU SEE MR. WILLARD GET ON THE BUS?

A DIRECTLY? I DIDN'T SEE WHERE HE GOT ON.

Q DO YOU REMEMBER IF HE WAS ALREADY ON THE BUS WHEN YOU GOT ON THE BUS?

A NO, HE GOT ON AFTER I DID.

Q OKAY. DO YOU REMEMBER HOW LONG YOU HAD BEEN ON THE BUS BEFORE HE ARRIVED, SIR?

A ABOUT 15 MINUTES.

Q YOU'D BEEN ON THE BUS ABOUT 15 MINUTES BEFORE HE GOT ON THE BUS; IS THAT RIGHT?

A YES.

Q AND YOUR FRIEND, YOUR WORK FRIEND, MR. PONCE, DID HE GET ON THE BUS AT THE SAME TIME YOU DID?

A YES.

Q AND WERE THERE LOTS OF OTHER PEOPLE ON THE

BUS SITTING BETWEEN YOU AND MR. WILLARD?

A YES.

Q AND WHEN MR. WILLARD GOT ON THE BUS, WERE ANY WORDS EXCHANGED BETWEEN YOU AND MR. WILLARD?

A NO.

Q WERE ANY WORDS EXCHANGED BETWEEN MR. WILLARD AND YOUR WORK FRIEND, MR. PONCE?

A NO. HE WAS TALKING TO ME. MY CO-WORKER WAS TALKING WITH ME.

Q YOU AND MR. PONCE WERE HAVING A CONVERSATION TOGETHER?

A YES.

Q AND SO MR. WILLARD -- YOUR TESTIMONY IS THAT WHEN HE GOT ON THE BUS HE JUST SAT DOWN?

A YES.

Q AND ABOUT HOW LONG HAD PASSED BEFORE MR. WILLARD APPROACHED YOU FOR THE FIRST TIME?

A EXCUSE ME?

Q HOW LONG HAD MR. WILLARD BEEN ON THE BUS BEFORE HE APPROACHED YOU?

A DIRECTLY, I DON'T REMEMBER HOW MUCH TIME.

Q WAS IT OVER 10 MINUTES?

A I'M NOT SURE.

Q OKAY. AND WHEN HE APPROACHED YOU FOR THE FIRST TIME, AT THIS POINT WAS THERE ANY CONVERSATION BETWEEN YOU AND MR. WILLARD?

A NO. HE JUST SAID, "PINCHE MEXICAN."

Q OKAY. NOW, I BELIEVE YOU HAD STATED -- AND

CORRECT ME IF I'M WRONG, BUT I BELIEVE THAT YOU STATED HE SAID SOME OTHER THINGS BUT THEY WERE IN ENGLISH AND YOU DIDN'T UNDERSTAND HIM; IS THAT FAIR?

A YES. I JUST UNDERSTOOD THE TWO WORDS. THE REST I DID NOT UNDERSTAND.

Q AND SOME OF THESE THINGS THAT YOU DID NOT UNDERSTAND, WERE THEY SAID BEFORE HE STATED, I BELIEVE, "PINCHE MEXICAN"?

A EXCUSE ME?

Q SOME OF THESE THINGS THAT MR. WILLARD WAS SAYING IN ENGLISH THAT YOU DID NOT UNDERSTAND, WERE SOME OF THESE THINGS STATED BEFORE HE MADE THE COMMENT "PINCHE MEXICAN" THAT YOU TESTIFIED TO?

A NO, AFTER HE SAID THOSE WORDS.

Q SO IT WAS ONLY AFTER THOSE WORDS THAT HE SAID OTHER THINGS IN ENGLISH THAT YOU DID NOT UNDERSTAND?

A YES.

Q NOW, HOW ARE YOUR ENGLISH SKILLS, MR. HERNANDEZ? DO YOU SPEAK ENGLISH AT WORK?

A NO.

Q DO YOU KNOW IF -- AND ONLY IF YOU KNOW, SIR, DOES YOUR FRIEND MR. PONCE SPEAK ENGLISH?

A NO.

Q NOW, WHEN MR. WILLARD WAS SPEAKING TO YOU IN THIS MANNER, AT THIS POINT DID EITHER YOU OR MR. PONCE RESPOND AT ALL?

A NO. THE ONLY THING I SAID WAS, "NO PROBLEMA." NO PROBLEM. THAT'S ALL.

Q AND THAT'S IT?
A THAT'S ALL I SAID.
Q OKAY. SO YOUR TESTIMONY IS THAT MR. WILLARD GOT UP OUT OF HIS SEAT AND APPROACHED YOU UNSOLICITED, MEANING....
A YES.
THE INTERPRETER: YOUR HONOR, CAN WE HAVE AN INTERPRETER CHANGE?
THE COURT: YES.
THE INTERPRETER: THANK YOU.
THE COURT: I'LL JUST LET THE JURY KNOW AS WE'RE GOING THROUGH THE TRIAL, AS WE HAVE WITNESSES SPEAKING SPANISH, WE'LL BE SWITCHING OUT INTERPRETERS TO GIVE THEM A BREAK.
ALL RIGHT. YOU MAY PROCEED.
MR. MC GURK: THANK YOU, YOUR HONOR.
Q NOW, LET'S TALK ABOUT -- YOU TESTIFIED THAT YOU SAW MR. WILLARD WITH A KNIFE; IS THAT CORRECT, SIR?
A YES.
Q AND DID YOU HAPPEN TO SEE WHERE HE RETRIEVED THAT KNIFE FROM?
A FROM HIS BACKPACK.
Q AND WAS THIS BACKPACK -- WAS HE HOLDING IT OR WAS IT ON THE CHAIR?
A IT WAS -- IT WAS ON HIS SEAT.
Q IT WAS ON HIS SEAT?
A YES.
Q NOW, THE FIRST TIME HE APPROACHED YOU, I

BELIEVE YOU SAID HE DID NOT HAVE A KNIFE; IS THAT CORRECT?

A HE DID NOT HAVE IT, YES.

Q YOU STATED, I BELIEVE, ON DIRECT EXAMINATION THAT HE WENT BACK TO HIS SEAT AND THAT'S WHERE YOU SAW THE KNIFE; IS THAT RIGHT?

A YES.

Q SO WHEN HE IS WALKING TOWARD WHERE HIS SEAT WAS, HIS BACK WAS TOWARD YOU, CORRECT?

A YES.

Q AND HE'S WALKING DOWN THE MIDDLE AISLE OF THE BUS, CORRECT?

A YES.

Q AND THE BUS SEATS, THEY HAVE A BACK TO THEM, THE SEATS?

A THE SEAT THAT I'M IN?

Q NO. THE SEATS ON THE BUS HAVE A BACK TO THEM LIKE THIS SEAT RIGHT HERE?

A YES.

Q AND THE SEATS ALSO HAVE A PLACE WHERE YOU CAN SIT DOWN LIKE THIS CHAIR RIGHT HERE?

A YES.

Q AND THE BACKPACK ARE YOU SAYING WAS ON THE CHAIR RIGHT HERE?

A YES.

Q SO --

THE COURT: FOR THE RECORD, --

MR. MC GURK: OF COURSE.

THE COURT: -- I'LL JUST NOTE THAT COUNSEL'S

POINTING TO THE SEAT OF THE CHAIR.

BY MR. MC GURK:

Q AND WHEN YOU SAW HIM PULL OUT -- DID HE UNZIP THE BAG FIRST?

A EXCUSE ME?

Q WAS THE BAG ALREADY OPEN OR WAS IT -- DID HE HAVE TO OPEN THE BAG FIRST BEFORE HE GOT THE KNIFE?

A HE HAD TO OPEN THE BAG, HIS BACKPACK.

Q NOW, WHILE YOU'D BEEN ON THE BUS PREVIOUSLY, DID YOU NOTICE MR. WILLARD DOING ANYTHING WITH HIS BACKPACK OR SPEAKING TO ANY OF THE OTHER PATRONS ON THE BUS?

A HE WAS ALONE, ALSO.

Q DID YOU SEE HIM SPEAK TO ANY OTHER PATRONS ON THE BUS?

A NO. HE WAS JUST THERE WITH HIS -- RIDING WITH HIS BACKPACK, AND HE WAS JUST MOVING HIS BACKPACK AROUND, THAT'S ALL.

Q DID YOU NOTICE WHETHER HE HAD HEADPHONES ON LISTENING TO MUSIC?

A NO, I DIDN'T NOTICE.

Q YOU'RE NOT SURE ONE WAY OR THE OTHER; IS THAT FAIR?

A NO, I'M NOT SURE ONE WAY OR THE OTHER.

Q AND WHEN YOU SAY THAT HE GOT THE KNIFE, DO YOU RECALL WHAT HAND HE GOT THE KNIFE -- WAS IT THE LEFT HAND OR THE RIGHT HAND?

A HIS RIGHT.

Q HIS RIGHT HAND.

AND --

MR. MC GURK: MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YOU MAY.

BY MR. MC GURK:

Q AND, SIR, I BELIEVE YOU STATED THAT THIS TOP PHOTO HERE -- IS THIS WHAT YOU SAW IN HIS HAND, SIR?

A YES. WELL, BY THE TIME I SAW IT ON HIM, HE ALREADY HAD IT THIS WAY.

THE COURT: LET ME JUST PAUSE FOR A MOMENT. IS THAT PEOPLE'S 7?

MR. MC GURK: ONE MOMENT.

YES, IT IS.

THE COURT: ALL RIGHT. THANK YOU.

BY MR. MC GURK:

Q SO, MR. HERNANDEZ, WHEN HE PULLED THE KNIFE -- WHEN HE TOOK THE KNIFE OUT OF THE BAG, WAS THE BLADE ALREADY OUT OR WAS IT RETRACTED? WAS IT CLOSED?

A WHEN HE PULLED IT OUT, HE DIDN'T HAVE IT YET, BUT WHEN HE WENT TOWARDS ME, HE -- YES, HE HAD ALREADY PULLED IT -- PULLED IT OPEN.

Q OKAY. NOW, ABOUT HOW FAR AWAY -- WHEN HE WAS SITTING IN HIS CHAIR AND YOU WERE ON THE BUS, ABOUT HOW FAR APART WERE YOU TWO? DO YOU RECALL?

A ABOUT 10 FEET. TEN FEET AHEAD OF ME. HE WAS AHEAD OF ME AND I WAS TOWARD THE BACK.

Q OKAY. SO WAS HE ABOUT THIS CLOSE?

A A LITTLE BIT MORE. THAT WAY.
Q OUT RIGHT HERE?
A A LITTLE BIT MORE.
Q ABOUT RIGHT HERE?
A YES.
Q OKAY. AND WHEN YOU -- SORRY.
THE COURT: LET ME JUST STOP YOU FOR A SECOND. SO FOR THE RECORD, WHERE COUNSEL IS STANDING IS APPROXIMATELY 13 FEET FROM WHERE THE WITNESS IS SITTING.
MR. MC GURK: THANK YOU, YOUR HONOR.
Q AND WHEN YOU SAW THE KNIFE AS IT WAS -- AS THE BLADE WAS OUT, ABOUT HOW FAR AWAY WAS HE FROM YOU?
WAS HE ABOUT THIS FAR?
A MORE OR LESS, YES.
MR. MC GURK: AND THIS WOULD BE ABOUT, YOUR HONOR -- I'D SAY SEVEN FEET?
THE COURT: IT'S APPROXIMATELY -- IT'S 12 FEET TO THE BEGINNING OF COUNSEL TABLE, SO I'D SAY IT'S ABOUT --
MR. MC GURK: SIX TO SEVEN --
THE COURT: -- EIGHT FEET, APPROXIMATELY.
MR. MC GURK: OKAY.
Q AND DO YOU REMEMBER TALKING TO LAW ENFORCEMENT AFTER THIS HAPPENED, SIR, ON THE DAY IN QUESTION?
A EXCUSE ME?
Q DID YOU TALK TO THE POLICE AFTER THIS HAPPENED, SIR?
A WHEN THEY QUESTIONED ME THERE. WHEN THEY

TOOK ME TO SEE HIM AT A LONG DISTANCE TO SEE IF IT WAS HIM.

Q OKAY. DO YOU REMEMBER TALKING TO A DEPUTY SHERIFF?

A YES, BUT HIS NAME I DON'T REMEMBER. HE GAVE ME HIS CARD, BUT I LOST IT. IT'S BEEN A LONG TIME NOW.

Q THAT'S NO PROBLEM, SIR.

WHEN YOU SPOKE TO THIS DEPUTY, DID YOU TELL HIM THAT AS MR. WILLARD APPROACHED HE WAS WAVING THE KNIFE IN FRONT OF HIM?

A I DIDN'T UNDERSTAND THE QUESTION.

Q SURE. WHEN YOU WERE SPEAKING TO THE DEPUTY AND YOU WERE TELLING HIM WHAT HAPPENED, DID YOU TELL HIM THAT AS MR. WILLARD APPROACHED HE WAS WAVING THE KNIFE IN FRONT OF HIM LIKE SO?

A YES.

Q AND WHEN YOU TESTIFIED EARLIER AT THE PRELIMINARY HEARING, DID YOU TELL THE JUDGE THAT AS MR. WILLARD APPROACHED YOU, HE WAS HOLDING THE KNIFE OUT CHEST HIGH WITH A STRAIGHT ARM?

A HE WAS LIKE THIS. HE WAS CARRYING IT LOW. IT WASN'T UP HIGH. IT WAS SORT OF LOWER.

Q OKAY. WHAT I'M ASKING YOU, THOUGH, IS WHEN YOU TESTIFIED -- DO YOU REMEMBER TESTIFYING PREVIOUSLY, SIR?

A A FEW QUESTIONS OF THE ONES THAT -- WELL, I DON'T DIRECTLY REMEMBER. IT'S BEEN MONTHS SINCE I CAME TO

COURT.

Q OKAY. BUT YOU CAME TO COURT AND TOOK AN OATH TO TELL THE TRUTH, CORRECT?

A I CAME TWICE. IT'S JUST THAT ONCE I WAS BEFORE THE COURT AND THE OTHER TIME I JUST SHOWED UP AND THERE WAS NO COURT.

Q OKAY. LET'S TALK ABOUT THE TIME WHERE YOU TESTIFIED IN COURT. OKAY?

A OKAY.

Q AND WHEN YOU DID THAT, THEY DID THE SAME OATH THEY DID TODAY, TELL THE TRUTH, HOLD YOUR HAND UP, RIGHT?

A YES.

Q AND WHAT I'M ASKING YOU, SIR, IS DO YOU RECALL THE FIRST TIME YOU TESTIFIED SAYING THAT AS MR. WILLARD APPROACHED, HE HELD THE KNIFE OUT CHEST HIGH IN FRONT OF HIM?

A YES. HE WAS JUST CARRYING IT LIKE THIS, AT THIS HEIGHT. HE WASN'T CARRYING IT ALL THE WAY UP. IT WAS JUST UP AT THIS HEIGHT.

Q WAS IT CHEST LEVEL, LIKE MY CHEST?

A YES. YES.

Q AND DID YOU STATE DURING YOUR EARLIER TESTIMONY THAT HE WAS WAVING IT FROM SIDE TO SIDE?

A NO. HE WAS JUST CARRYING IT LIKE THIS. HE NEVER WAVED IT LIKE THIS. NOT LIKE THIS, NO.

Q DID YOU TELL DEPUTY -- I KNOW YOU DON'T KNOW HIS NAME, BUT I BELIEVE YOU JUST SAID THAT YOU TOLD

THE DEPUTY ON THE DAY THIS HAPPENED THAT HE WAS WAVING THE KNIFE IN FRONT OF HIM.

A I DON'T REMEMBER DIRECTLY. WHAT I RECALL IS THAT WHEN I WAS HERE IN COURT, I SAID HE WAS CARRYING IT UP AT THIS HEIGHT, AND WHEN THE POLICE QUESTIONED ME, I SAID THE SAME THING.

Q ALL RIGHT.

MR. CANO: YOUR HONOR, FOR THE RECORD, DURING THE LAST ANSWER THE WITNESS RAISED HIS RIGHT ARM IN ALMOST LIKE A SWINGING MOTION IN FRONT OF HIM.

THE COURT: SO NOTED.

BY MR. MC GURK:

Q NOW, YOU -- I BELIEVE YOU STATED DURING YOUR DIRECT EXAMINATION THAT YOU KICKED MR. WILLARD; IS THAT CORRECT?

A YES.

Q HOW MANY TIMES DID YOU KICK HIM, SIR?

A ONCE.

Q DO YOU RECALL WHAT PART OF HIS BODY YOU KICKED?

A YES, HERE IN THE STOMACH.

MR. MC GURK: I BELIEVE IT'S THE MID-STOMACH AREA, YOUR HONOR.

THE COURT: YES. I'LL NOTE THE WITNESS WAS TOUCHING HIS STOMACH AS HE TESTIFIED IN THE MIDDLE OF HIS STOMACH.

BY MR. MC GURK:

Q DO YOU RECALL WHICH FOOT YOU USED TO KICK

HIM WITH, SIR?

A YES, WITH MY RIGHT FOOT.

Q AND WHEN YOU DID THIS, YOU WERE STANDING ON TOP OF THE SEAT YOU HAD PREVIOUSLY BEEN SITTING ON; IS THAT CORRECT?

A YES.

Q SO MR. WILLARD IS STANDING, AND YOU'RE STANDING ABOVE HIM AT AN ELEVATED POSITION; IS THAT CORRECT?

A UP HIGHER, YES.

Q AND YOU KICKED DOWNWARD INTO MR. WILLARD'S CHEST?

A YES.

Q AND I BELIEVE THAT YOU HAD STATED DURING DIRECT EXAMINATION THAT THE FIRST TIME HE APPROACHED YOU WITH THE KNIFE HE APPROACHED YOU IN A LUNGING POSITION. WHAT I MEAN BY THAT IS THAT HIS HAND WAS GOING FORWARD LIKE THIS IN SORT OF AN UPWARD POSITION; IS THAT CORRECT?

A YES.

Q AND I BELIEVE YOU STATED THAT HE MADE CONTACT WITH -- WHAT I THINK YOU STATED WAS A LUNCH PACK; IS THAT CORRECT?

THE INTERPRETER: I'M SORRY, A LUNCH PACK?

BY MR. MC GURK:

Q DID YOU HAVE A BAG WITH YOU, SIR?

A YES, MY LUNCH BAG.

Q YOUR LUNCH BAG.

NOW, DID YOU TAKE A LOOK AT YOUR LUNCH BAG

AFTER THIS INCIDENT TOOK PLACE?

A AFTER THE INCIDENT, YES.

Q WERE THERE ANY HOLES IN YOUR LUNCH BAG?

A NO. IT WAS JUST --

THE INTERPRETER: YOUR HONOR, MAY THE INTERPRETER INQUIRE?

THE COURT: YES, YOU MAY.

(THE INTERPRETER INQUIRES OF THE WITNESS OFF THE RECORD.)

THE WITNESS: IT WAS JUST SLASHED JUST A LITTLE BIT. TORN.

BY MR. MC GURK:

Q IT WAS TORN UP?

A YES.

Q DID YOU TELL THE POLICE THAT?

A THEY SAW IT.

Q THE POLICE SAW YOUR BAG?

A YES.

Q DID YOU TELL THEM HOW THAT TEAR IN YOUR BAG GOT THERE?

A THEY DIDN'T ASK ME ABOUT THAT. THEY JUST LOOKED AT IT AND THAT WAS IT. THEY JUST FOCUSED ON THE WOUND THAT I HAD ON MY HAND.

Q AND AFTER THIS TEAR IN YOUR BAG TOOK PLACE, IS THAT WHEN YOU KICKED MR. WILLARD IN THE CHEST?

A WHEN HE GOT THE LUNCH BAG, THAT WAS THE

FIRST TIME, AND THEN THE SECOND TIME WAS HERE, AND THEN WHEN HE CAME AT ME THE THIRD TIME, THAT WAS WHEN I -- WHEN I KICKED HIM.

Q SO THE BLADE MADE CONTACT WITH YOUR ARM PRIOR TO YOU KICKING MR. WILLARD; IS THAT YOUR TESTIMONY?

A YES.

Q AND WHAT ARM DID THE BLADE MAKE CONTACT WITH YOU?

A WITH THIS ONE.

THE COURT: ALL RIGHT. FOR THE RECORD, THE WITNESS IS HOLDING UP HIS LEFT ARM.

BY MR. MC GURK:

Q YOUR LEFT ARM.

AND MR. PONCE WAS RIGHT NEXT TO YOU WHEN THIS WAS OCCURRING, CORRECT?

A YES.

Q SO THERE WERE TWO OF YOU AND JUST MR. WILLARD BELOW YOU; IS THAT FAIR?

A YES.

Q DID MR. -- DID YOUR FRIEND, MR. PONCE, STRIKE MR. WILLARD AT ANY TIME?

A NO. HE --

THE INTERPRETER: YOUR HONOR, MAY THE INTERPRETER INQUIRE?

THE COURT: YES, YOU MAY.

(THE INTERPRETER INQUIRES OF THE WITNESS OFF THE RECORD.)

THE WITNESS: NO. HE GOT OFF THE BUS WHEN HE WAS ABLE.

BY MR. MC GURK:

Q NOW, WHEN THIS WAS OCCURRING, WAS EITHER YOU OR MR. PONCE MAKING ANY STATEMENTS AT THIS TIME TO MR. WILLARD?

A NO. I JUST SAID THAT TO HIM, "NO PROBLEM."

Q SO YOU'RE STATING THAT WHEN MR. WILLARD WAS COMING AT YOU WITH A KNIFE, YOU SAID, "NO PROBLEM"?

A YES.

Q THAT'S ALL THAT YOU SAID? A MAN CAME AT YOU WITH A KNIFE, SIR, AND YOU SAID, "NO PROBLEM"?

THE INTERPRETER: YOUR HONOR, MAY THE INTERPRETER INTERJECT?

THE COURT: YES.

THE INTERPRETER: THE WORD THAT THE WITNESS IS USING MEANS "PROBLEM," BUT IT COULD ALSO MEAN "TROUBLE."

THE COURT: SAY AGAIN, WHAT YOU'RE INTERPRETING IT AS.

THE INTERPRETER: "PROBLEM" COULD ALSO MEAN "TROUBLE."

THE COURT: OKAY. COULD YOU INQUIRE TO DETERMINE WHICH HE MEANS?

THE WITNESS: THAT I DIDN'T WANT TO HAVE ANY TROUBLE.

BY MR. MC GURK:

Q DID YOU SEE YOUR FRIEND, MR. PONCE, LEAVE THE BUS?

A YES.
Q WHEN HE WAS DOING THIS, DID MR. WILLARD TRY TO STOP HIM OR ATTEMPT TO STRIKE HIM IN ANY WAY?
A NO.
Q AND THEN WHEN YOU GOT OFF THE BUS, DID MR. WILLARD TRY TO STOP YOU OR STRIKE YOU IN ANY WAY?
A NO. I MOVED OVER TO ONE SIDE AND HE PASSED.
Q MR. WILLARD JUST ALLOWED YOU TO PASS HIM?
A NO. I MOVED TO ONE SIDE, AND THEN HE GOT OFF AND WENT OFF IN HIS OWN DIRECTION.
Q WHO GOT OFF THE BUS FIRST, YOU OR MR. WILLARD?
A I GOT OFF FIST.
Q AND WHEN YOU GOT OFF THE BUS, MR. WILLARD WAS FAIRLY CLOSE TO YOU, CORRECT?
A YES.
Q AND MR. WILLARD DIDN'T TRY TO STOP YOU FROM GETTING OFF THE BUS OR STRIKE YOU IN ANY WAY, CORRECT?
A NO.
Q AND WHEN YOU GOT OFF THE BUS, DID MR. WILLARD ATTEMPT TO CHASE YOU OR FOLLOW YOU?
A NO.
Q DO YOU KNOW IF HE TRIED TO FOLLOW OR CHASE YOUR FRIEND, MR. PONCE?
A NO.
Q NOW, AFTER YOU GOT OFF THE BUS, HOW LONG DID YOU WAIT UNTIL LAW ENFORCEMENT ARRIVED?

A FIVE TO SIX MINUTES.

Q FIVE TO SIX MINUTES.

AND WHEN THEY GOT THERE, IS THAT WHEN YOU TOLD THEM WHAT HAPPENED?

A YES. THEY TOOK ME IN THE POLICE CAR TO IDENTIFY HIM AT A LONG DISTANCE TO SEE IF -- IF IT WAS HIM OR NOT.

Q AND I BELIEVE YOU STATED THAT THERE WERE SOME PHOTOGRAPHS TAKEN OF YOU; IS THAT CORRECT?

A YES.

Q NOW, HOW LONG AFTER YOU HAD GOTTEN OFF THE BUS WERE THESE PHOTOGRAPHS TAKEN OF YOU, SIR?

A NOT UNTIL THEY'D ALREADY DETAINED HIM.

Q SO DO YOU RECALL ABOUT HOW LONG -- WAS IT AN HOUR?

A NO, LIKE HALF HOUR.

Q SO ABOUT 30 MINUTES AFTER YOU GOT OFF THE BUS IS WHEN THOSE PHOTOGRAPHS WERE TAKEN OF YOU?

A YES.

Q SO LET'S GO BACKWARD A LITTLE BIT, IF I MAY, SIR.

YOU GET OFF THE BUS AND ABOUT FIVE TO SIX MINUTES LATER LAW ENFORCEMENT ARRIVES, CORRECT?

A YES.

Q AND WHEN THEY GET THERE, THEY PROBABLY ASKED YOU WHAT HAPPENED; IS THAT RIGHT?

A THEY ASKED ME AND TO THE BUS DRIVER.

Q AND -- SO YOU HAD A CONVERSATION WITH

THIS -- THE SHERIFF. DO YOU KNOW IF IT WAS LAPD OR WAS IT A SHERIFF? DO YOU RECALL?

A I'M NOT DIRECTLY SURE.

Q DID HE HAVE A BLUE UNIFORM ON OR MORE OF A TAN ONE?

A OH, IT WAS THE TAN ONE.

Q THE TAN ONE.

SO THIS -- THIS OFFICER WITH THE TAN UNIFORM, HOW LONG OF A CONVERSATION DID YOU HAVE WITH HIM?

A JUST DURING THE TIME THAT HE BROUGHT ME TO WHERE THE AGGRESSOR WAS, AND THEN HE TOOK ME TO THE HOSPITAL.

Q WELL, LET ME SLOW YOU DOWN A LITTLE BIT, SIR.

YOU HAD TO TELL HIM WHAT HAPPENED BEFORE HE KNEW WHO TO LOOK FOR, RIGHT?

A YES.

Q SO YOU HAD A CONVERSATION WITH HIM BEFORE YOU WENT TO DO THIS IDENTIFICATION, CORRECT?

A EXCUSE ME?

Q YOU HAD TO HAVE A CONVERSATION WITH THIS MAN IN THE TAN UNIFORM PRIOR TO GOING TO I.D. THE PERSON. YOU GOT TO TELL HIM WHAT HAPPENED, CORRECT?

A YES.

Q FOR EXAMPLE, HE PROBABLY ASKED YOU FOR A DESCRIPTION OF THE PERSON, CORRECT?

A YES.

Q AND HE ASKED YOU WHAT HAD OCCURRED PRIOR TO

YOU GETTING OFF THE BUS, CORRECT?

A YES.

Q AND WERE THEY INTERVIEWING YOUR FRIEND, MR. PONCE, AT THE SAME TIME?

THE INTERPRETER: YOUR HONOR, MAY THE INTERPRETER INQUIRE?

THE COURT: YOU MAY.

(THE INTERPRETER INQUIRES OF THE WITNESS OFF THE RECORD.)

THE WITNESS: HE WAS WITH SOME OTHER OFFICERS IN THE PLACE WHERE THE -- WHERE THE ATTACKER HAD -- WHERE THEY HAD CAUGHT HIM.

BY MR. MC GURK:

Q WHEN YOU WERE INTERVIEWING WITH THE MAN WITH THE TAN UNIFORM, COULD YOU SEE YOUR FRIEND, MR. PONCE?

A NO.

MR. MC GURK: I OBJECT TO THE LAST ANSWER AS NON-RESPONSIVE, SPECULATION, MOVE TO STRIKE.

THE COURT: ONE MOMENT.

AT THIS POINT, IT'S NOT CLEAR -- I'M GOING TO OVERRULE THE OBJECTION AT THIS POINT BECAUSE IT'S NOT CLEAR IN TERMS OF TIMING, THAT IT HAPPENED AT A TIME THAT HE DID NOT OBSERVE IT.

MR. MC GURK: UNDERSTOOD. I'LL INQUIRE.

Q SO WHILE YOU'RE TALKING TO THIS OFFICER IN

THE TAN UNIFORM PRIOR TO THE IDENTIFICATION, HOW LONG OF A CONVERSATION DID YOU HAVE?

HOW MUCH TIME HAD PASSED?

A TEN -- SEVEN TO TEN MINUTES, AND THEN HE TOOK ME TO WHERE THE ATTACKER WAS.

Q OKAY. SO SEVEN TO TEN MINUTES LATER HE PROBABLY GETS A LITTLE BEEP ON HIS RADIO; IS THAT RIGHT?

A YES.

Q AND HE SAYS, "HEY, I WANT TO TAKE YOU SOMEWHERE TO IDENTIFY SOMEBODY"; IS THAT CORRECT?

A YES.

Q AND HE DRIVES YOU TO A LOCATION TO IDENTIFY A PERSON, CORRECT?

A YES, BUT FROM THE INSIDE OF HIS CAR, OF HIS PATROL CAR I IDENTIFIED HIM, AND I SAID THAT IT WAS HIM.

Q OKAY. HOW LONG DID YOU DRIVE BEFORE YOU GOT TO THE LOCATION THAT YOU MADE THE IDENTIFICATION?

A OH, NO, TWO OR THREE MINUTES. IT WAS CLOSE.

Q AND THEN AFTER -- WHEN YOU GOT THERE TWO TO THREE MINUTES LATER, THAT'S WHEN YOU MADE THE IDENTIFICATION FROM THE CAR?

A YES.

Q AND WAS IT AFTER THIS THAT THE PHOTOGRAPHS WERE TAKEN OF YOU?

A YES.

Q SO THEY TOOK YOU BACK OUT OF THE CAR AND BEGAN TO TAKE PICTURES OF YOU?

A THEY'D ALREADY TAKEN HIM AWAY IN THE PATROL CAR, AND THEN THEY TOOK ME OUT.

Q OKAY. SO DID YOU DO ANYTHING ELSE BETWEEN THE TIME YOU IDENTIFIED THE PERSON AND WHEN YOU HAD PICTURES TAKEN?

A EXCUSE ME?

Q DID YOU DO ANYTHING ELSE BETWEEN THE TIME YOU IDENTIFIED THE PERSON AND WHEN YOU HAD THE PICTURES TAKEN OF YOU, SIR?

A NO. THEY JUST TOOK ME OUT OF THE CAR, AND THEY JUST TOOK THE PICTURES OF ME AND THAT WAS IT. HE LEFT AND THEN -- AND THEN THEY TOOK ME OUT OF THE CAR.

Q OKAY. THANKS.

MR. MC GURK: MAY I APPROACH, YOUR HONOR?

THE COURT: YOU MAY.

MR. MC GURK: AND I'M APPROACHING WITH PEOPLE'S 2.

THE COURT: OKAY.

BY MR. MC GURK:

Q AND, SIR, THIS TOP PHOTO HERE THAT YOU SAID WAS OF YOUR WOUND, WAS THAT ONE OF THE PHOTOS THAT THEY TOOK?

A YES.

Q AND THIS PHOTO, PEOPLE'S 2, WAS TAKEN -- I BELIEVE YOU SAID ABOUT A HALF HOUR AFTER THE INCIDENT; IS THAT CORRECT?

A YES.

Q THANK YOU.

AND ISN'T IT TRUE, SIR, THE DEPUTY, WHEN HE

FIRST ASKED YOU IF YOU WANTED TO GO TO THE HOSPITAL, YOU SAID YOU DIDN'T WANT TO?

A NO, I DIDN'T SAY I DIDN'T WANT TO GO TO THE HOSPITAL. I SAID I DIDN'T WANT THE ONES WHO COME WITH THE FIRE DEPARTMENT TO TAKE ME THERE, BUT I DID WANT TO GO TO THE HOSPITAL. EXACTLY.

Q AND DO YOU REMEMBER WHAT HOSPITAL YOU WENT TO?

A YES, THE ONE THAT'S ON 3RD AND -- 3RD AND ALVARADO. I DON'T KNOW THE NAME OF IT THERE. I DON'T KNOW WHAT IT'S CALLED.

Q AND, FIRST, IS YOUR FULL NAME SANTOS VASQUEZ HERNANDEZ?

A YES.

Q NOW, HOW LONG WERE YOU AT THE HOSPITAL BEFORE YOU WERE DISCHARGED?

A OH, NO, IT WAS FAST, LIKE MAYBE AN HOUR AND A HALF OR AN HOUR. THEY JUST SEWED ME UP AND THEN THEY TOLD ME THAT I COULD GO.

Q YOU WERE THERE FOR 60 TO 90 MINUTES?

A YES.

Q HOW LONG DID YOU WAIT IN THE WAITING ROOM BEFORE YOU WERE SEEN?

A HALF HOUR, 15 MINUTES. MAYBE 15 TO 20 MINUTES.

Q FIFTEEN TO 20 MINUTES?

A YES.

Q HOW MANY TIMES DID YOU GO BACK TO THE

HOSPITAL AFTER THAT DAY?

A NO, THEY GAVE ME A PRESCRIPTION SO THAT I COULD BUY MY ANTIBIOTICS, MY PILLS, ALL OF THAT.

Q SO YOU NEVER WENT BACK TO THE HOSPITAL AFTER THE DAY IN QUESTION?

A NO.

Q THAT'S ALL I HAVE. THANK YOU VERY MUCH.

THE COURT: MR. CANO?

REDIRECT EXAMINATION

BY MR. CANO:

Q SIR, WHEN YOU SPOKE TO -- WITHDRAW THAT.

WHEN YOU GOT OFF THE BUS AND THE POLICE ARRIVED, WERE YOU STILL IN VIEW OF THE BUS?

A YES. NOT UNTIL THE POLICE ARRIVED DID THE BUS DRIVER TAKE OFF.

Q AND DID YOU PERSONALLY WITH YOUR OWN EYES SEE IN WHICH DIRECTION MR. WILLARD WENT AFTER HE GOT OFF THE BUS?

A MY FRIEND WENT BEHIND HIM, FOLLOWED BEHIND HIM UNTIL THE POLICE ARRIVED.

Q DID YOU SEE THAT?

A THAT HE WENT BEHIND HIM? YES.

Q WHICH DIRECTION FROM THE BUS DID THEY GO? WAS IT THE SAME DIRECTION THE BUS WAS GOING?

A EXACTLY.

Q OKAY.

MR. CANO: NO FURTHER QUESTIONS.

(THE DEFENDANT AND HIS COUNSEL CONFER OFF THE RECORD.)

MR. MC GURK: I'M SORRY. I'M SORRY.

THE COURT: ANYTHING FURTHER?

MR. MC GURK: NO FURTHER QUESTIONS.

THE COURT: OKAY. MR. HERNANDEZ, THANK YOU. YOU ARE EXCUSED. YOU CAN STEP DOWN.

MR. CANO: THANK YOU. THE PEOPLE CALL DEPUTY ARMES. MAY I HAVE ONE MOMENT?

THE COURT: YOU MAY.

THE WITNESS: DO I NOT HAVE TO COME BACK HERE TODAY?

THE COURT: NO. YOU'RE EXCUSED.

THE WITNESS: OKAY.

ANDREW ARMES,

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

THE CLERK: PLEASE STEP FORWARD BY THE WITNESS STAND.

PLEASE STOP THERE AND RAISE YOUR RIGHT HAND.

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT, VS. CHARLES ROBERT WILLARD, DEFENDANT-APPELLANT.	SUPERIOR COURT NO. BA362410-01

COPY
JUL 05 2011

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE GAIL RUDERMAN FEUER, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

JANUARY 18 & 19, 2011
MAY 24, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA D. HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 2 OF 2 VOLUMES

PAGES 175 THROUGH 369, INCL.

RENE MARIE EVANKO, CSR #6404
OFFICIAL REPORTER

CASE NUMBER: BA362410-01
CASE NAME: PEOPLE VS. CHARLES WILLARD
LOS ANGELES, CALIF. TUESDAY, JANUARY 18, 2011
DEPARTMENT NO. 113 HON. GAIL RUDERMAN FEUER, JUDGE
REPORTER: RENE MARIE EVANKO, CSR #6404
TIME: 10:46 A.M.

APPEARANCES: (AS HERETOFORE NOTED.)

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

THE COURT: OKAY. GOOD MORNING.

MR. CANO: GOOD MORNING.

MR. MC GURK: GOOD MORNING, YOUR HONOR.

THE DEFENDANT: GOOD MORNING.

THE COURT: WE ARE BACK ON THE RECORD IN THE MATTER OF THE PEOPLE VERSUS CHARLES WILLARD, BA362410. MR. WILLARD IS PRESENT. MR. MC GURK AND MR. CANO ARE BOTH PRESENT.

SO LET ME JUST INQUIRE ON THE RECORD OF MR. CANO. DO THE PEOPLE PLAN ON CALLING ANY ADDITIONAL WITNESSES?

MR. CANO: NO.

THE COURT: ALL RIGHT. SO WITH THE ADMISSION OF THE EXHIBITS, THE PEOPLE ARE GOING TO REST?

MR. CANO: YES.

THE COURT: AND WITH THAT, MR. CANO, DO THE PEOPLE REST?

MR. CANO: YES.

THE COURT: OKAY. SO AT THIS TIME I'LL TURN TO MR. MC GURK.

MR. MC GURK, YOU HAD RESERVED YOUR OPENING STATEMENT. DO YOU WISH TO MAKE AN OPENING STATEMENT AT THIS TIME?

MR. MC GURK: WE'D RATHER PROCEED JUST TO TESTIMONY, YOUR HONOR.

THE COURT: ALL RIGHT. WOULD YOU LIKE TO CALL ANY WITNESSES?

MR. MC GURK: YES. THE DEFENSE WILL CALL MR. WILLARD.

THE COURT: OKAY. VERY WELL.

MR. WILLARD, IF YOU COULD PLEASE STAND BY THE WITNESS BOX SO YOU CAN BE SWORN IN.

D E F E N S E

CHARLES WILLARD,

CALLED ON HIS OWN BEHALF AS A WITNESS, WAS SWORN AND TESTIFIED AS FOLLOWS:

THE WITNESS: IS THIS --

THE CLERK: RIGHT BY THE MICROPHONE, PLEASE.

THE WITNESS: RIGHT HERE?

THE CLERK: RAISE YOUR RIGHT HAND.

DO YOU 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: PLEASE HAVE A SEAT.

CAN YOU PLEASE STATE AND SPELL YOUR NAME FOR THE RECORD?

THE WITNESS: MY NAME IS CHARLES WILLARD, W-I-L-L-A-R-D.

THE CLERK: THANK YOU.

THE COURT: ALL RIGHT. MR. MC GURK, YOU MAY PROCEED.

MR. MC GURK: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. MC GURK:

Q GOOD MORNING, SIR.

A GOOD MORNING.

Q DO YOU RECALL SEPTEMBER 21ST OF 2009, MR. WILLARD?

A TO A CERTAIN DEGREE, YES.

Q DO YOU RECALL RIDING A BUS THAT DAY?

A YES, I DO.

Q DID SOMETHING OCCUR WHILE YOU WERE ON THAT BUS?

A YES, WITH A MEXICAN.

Q OKAY. WHAT HAPPENED, SIR?

A WELL, WHEN I MOUNTED THE BUS -- I GOT ON THE BUS. I DIDN'T KNOW ANYONE ON THE PARTICULAR BUS.

THE COURT: CAN I STOP YOU FOR A MOMENT?

COULD YOU JUST MOVE THAT MICROPHONE CLOSER TO YOU?

THE WITNESS: I DIDN'T KNOW ANYONE ON THE PARTICULAR BUS, AND I WAS SITTING IN THE RIGHT SIDE IN THE BACK OF THE BUS THREE SEATS AWAY FROM THE TWO ALLEGED VICTIMS, I BELIEVE.

BY MR. MC GURK:

Q THE PEOPLE WHO TESTIFIED?

A WHO TESTIFIED, YES. AND I HAD MY BAG WITH ME, AND IN MY BAG I HAD ITEMS, LIKE RAZORS, ELECTRIC TOOTHBRUSHES, AND THINGS OF THAT NATURE. WHAT I DO IS I GET WHOLESALE, AND I SELL TO ANYONE WHO ACTUALLY WANTS TO BUY.

THE COURT: ALL RIGHT. MR. WILLARD, LET ME STOP YOU.

IF YOU CAN ASK QUESTIONS, PLEASE.

MR. MC GURK: YES. OF COURSE.

Q I'LL ASK YOU QUESTIONS AS WE CONTINUE SO IT'S NOT A NARRATIVE THING.

SO ARE YOU SAYING, SIR, THAT YOU WERE ON THE BUS SELLING THOSE ITEMS IN YOUR BAG?

A WELL, NOT LIKE THAT, BUT I DO -- IF I SEE SOMEONE WHO ACTUALLY NEEDS SOMETHING, I WOULD ASK THE QUESTION, AND IF THE PERSON WANTS TO BUY IT, THEN I'LL SELL IT TO THEM.

Q OKAY. DID YOU ALSO HAVE A KNIFE IN YOUR BAG, MR. WILLARD?

A YES, I DID HAVE ONE, A WEAPON IN MY BAG.

Q WHY DO YOU CARRY THAT, SIR?

A WELL, BECAUSE -- FOR PROTECTION ACTUALLY. I WAS -- I WAS INJURED ABOUT 2008 BY ANOTHER MAN, A MEXICAN, AND I SUFFERED 23 STITCHES.

Q SO YOU'RE SAYING THAT YOU CARRY THAT KNIFE FOR PROTECTION AS A RESULT OF THAT HAPPENING TO YOU, SIR?

A WELL, NOT JUST FOR -- YOU KNOW, THAT'S ONE OF THE REASONS I CARRY IT, YES.

Q OKAY. AND WHILE YOU WERE ON THE BUS, DID YOU HAVE AN ALTERCATION WITH A GENTLEMAN?

A WELL, AN ARGUMENT. I WAS TRYING TO SELL SOME RAZORS. THE PERSON -- I DON'T KNOW, MAYBE HE WAS UPSET ABOUT SOMETHING, AND HE LOOKED AT ME IN A STRANGE WAY, AND HE SHOUTED OUT "NO" -- "NO" REAL LOUD. AND HE SAID HE WOULD TAKE SOMETHING FROM ME.

NOW, HE SPEAKS SPANISH, BUT HE DID SAY SOMETHING IN ENGLISH.

Q YOU UNDERSTOOD HIM?

A WELL, I MEAN, "I'LL TAKE SOMETHING FROM YOU." THAT'S WHAT HE SAID TO ME. SO I TOOK THAT AS BEING A THREAT.

Q AND HOW DID YOU PROCEED, SIR? WHAT DID YOU DO NEXT?

A WELL, I LOOKED AT HIM, AND HE CLENCHED HIS FISTS. IT WAS -- AND SO I WALKED BACK AND I WENT TO MY BAG AND I RETRIEVED A WEAPON. I DID THAT. AND HE JUMPED IN THE CHAIRS, AND HE COME FORWARD AT ME AND KICKED ME IN THE CHEST. AND I SKINNED HIM ON HIS RIGHT ARM NEAR THE ELBOW, AND I TOLD HIM TO GET OFF THE BUS. THE BUS HAD STOPPED. AND I SAID -- I ORDERED HIM TO GET OFF THE BUS BECAUSE I DIDN'T KNOW WHAT ELSE HE WAS GONNA DO AFTER -- AFTER I NICKED HIM ON HIS ARM. AND THE ONLY REASON WHY I NICKED HIM ON HIS ARM IS BECAUSE HE KICKED ME IN THE CHEST. I DIDN'T JUST DECIDE I WANTED TO DO ANYTHING TO HIM, BUT WHEN HE MADE A THREAT TO ME, I TOOK THAT AS BEING SERIOUS.

Q OKAY. NOW, WAS HE WITH ANOTHER PERSON, MR. WILLARD?

A I DIDN'T KNOW THAT BECAUSE I DIDN'T HAVE -- I DIDN'T HAVE A PROBLEM WITH ANOTHER PERSON. IT WAS JUST THE GUY NAMED HERNANDEZ.

Q OKAY.

A ME AND HIM -- HE WAS THE ONLY PERSON THAT WE HAD ANY WORDS.

Q SO IS IT YOUR TESTIMONY, MR. WILLARD, THAT YOU DID NOT MAKE CONTACT WITH THIS MAN'S ARM UNTIL HE HAD KICKED YOU IN THE CHEST?

A UNTIL HE KICKED ME IN MY CHEST.

Q AND HE DID THAT BY JUMPING UP ON THE BUS

SEAT?

A YES, HE DID.

Q AND KICKING DOWNWARD TOWARDS YOU; IS THAT CORRECT?

A YES, HE DID.

Q NOW, MR. WILLARD, IT'S TRUE, SIR, THAT YOU'VE HAD TWO FELONY-RELATED THEFTS IN YOUR PAST, CORRECT?

A YES, I HAVE. YES.

Q BUT YOU'RE TESTIFYING HERE TRUTHFULLY TODAY; IS THAT CORRECT?

A YES, I AM.

Q AND YOU SAY THAT YOU TOLD HIM TO GET OFF THE BUS?

A YES, BECAUSE I DIDN'T KNOW IF HE WAS GOING TO COME AT ME AGAIN, YOU KNOW, EVEN THOUGH THAT WHEN I WENT TOWARDS HIM, I STOPPED, AND I JUST LOOKED AT HIM. AND I HAD MY WEAPON ON THE SIDE, AND I JUST LOOKED AT HIM, AND HE LOOKED AT ME, AND THEN HE KICKED ME IN THE CHEST. AND THEN I -- I JUST SKIMMED HIM ON HIS RIGHT ARM, AND I TOLD HIM TO GET OFF THE BUS BECAUSE I DIDN'T KNOW IF HE WAS GOING TO COME AT ME, BEHIND ME, OR WHATEVER.

Q SO YOU'RE STATING TODAY THAT YOU WERE DEFENDING YOURSELF AND THAT'S WHY YOU TOOK THE ACTION THAT YOU DID?

A YES, I DID.

Q AND DID YOU GET OFF THE BUS AS WELL?

A YES, I DID.

Q AND WHAT DID YOU DO, SIR?

A I WENT TO THE CVS DRUG STORE TO GET MEDICATION BECAUSE I'M AN ASTHMATIC, AND DURING THAT TIME THE OFFICERS OR WHATEVER CAME AND THEY LOOKED AT ME, AND THEY HAD THEIR GUNS OUT AND ORDERED ME TO TURN AROUND, AND THAT'S WHEN THEY HANDCUFFED ME.

Q OKAY. SO IS IT FAIR TO SAY THAT YOU DIDN'T ATTEMPT TO RESUME THE ALTERCATION WITH THIS GENTLEMAN OUTSIDE THE BUS, CORRECT?

A NO, I DID NOT.

Q YOU WALKED --

A I HAD NO -- FIRST OF ALL, I REALLY BELIEVED THAT I DIDN'T DO ANYTHING WRONG. IF YOU KICK ME, IF YOU KICK ME, IF YOU COME AT ME FIRST AND DO SOMETHING TO ME, I HAVE A RIGHT TO DEFEND MYSELF. SO I DIDN'T THINK THAT WAS WRONG.

IF I THOUGHT ANYTHING WAS WRONG, I WOULD HAVE RAN OR WHATEVER BECAUSE USUALLY PEOPLE, WHEN THEY COMMIT SOMETHING, A CRIME OR SOMETHING, THEY USUALLY RUN FROM IT. I WENT DIRECTLY INTO THE CVS STORE TO PURCHASE MEDICATION THAT I NEED, ASTHMA MEDICATION.

Q AND YOU WERE COOPERATIVE WITH POLICE WHEN THEY ARRIVED?

A WHAT DO YOU MEAN WHEN YOU SAY THAT?

Q YOU DIDN'T STRUGGLE OR --

A NO.

Q -- RUN AWAY?

A THEY HAD ASKED ME -- WHEN THE POLICE HAD

ARRESTED ME, HE SAID, "WHAT HAPPENED?" AND I TOLD HIM, "I DON'T KNOW YET." AND THEN FROM THERE ON, WHEN THEY TOOK ME DOWN TO THE TWIN TOWERS, WHEN HE ARRESTED ME, HE TOLD ME HE WAS ARRESTING ME FOR -- FOR AN ASSAULT. AND ONE OF THE OFFICERS THAT CAME IN THERE --

THE COURT: LET ME STOP YOU THERE, ALL RIGHT? BECAUSE I THINK THAT ANSWERED THE QUESTION. AND I'LL HAVE COUNSEL FOLLOW UP.

BY MR. MC GURK:

Q AND JUST TO BE CLEAR, SIR, YOU SAID WHEN YOU WERE ATTACKED THAT WAS IN 2008, SIR; IS THAT CORRECT?

A YES.

Q AND YOU RECEIVED -- WAS IT 23 STITCHES?

A TWENTY-THREE STITCHES ON MY ARM.

Q AND THAT WAS BY A KNIFE? SOMEONE ATTACKED YOU WITH A KNIFE?

A YES.

MR. MC GURK: I HAVE NO FURTHER QUESTIONS.

THANK YOU, MR. WILLARD.

THE COURT: ALL RIGHT.

MR. MC GURK: NO, SIR.

THE WITNESS: OH.

MR. MC GURK: THEY GET A CHANCE, TOO.

THE WITNESS: OH, EXCUSE ME.

THE COURT: MR. CANO.

MR. CANO: THANK YOU.

//

//

CROSS-EXAMINATION

BY MR. CANO:

Q GOOD MORNING, SIR.

A GOOD MORNING.

Q I'M GOING TO GO THROUGH THE TESTIMONY THAT YOU JUST GAVE IN A LITTLE MORE DETAIL.

FIRST, LET ME DIRECT YOU TO PEOPLE'S 1, WHICH IS ON THE PROJECTOR. HAVE YOU HAD A CHANCE TO VIEW THIS DURING THE TRIAL?

A YES, I DID.

Q AND -- BUT LET ME JUST ASK YOU A QUESTION. THIS GENTLEMAN IN THE UPPER RIGHT IN THE JERSEY WITH THE NUMBER 8 ON THE BACK, --

A YES.

Q -- IS THAT YOU?

A YES, IT IS.

Q AND THE GENTLEMAN YOU DESCRIBED AS MR. HERNANDEZ, IS THAT THE GENTLEMAN IN THE BACK HERE THAT TESTIFIED ON FRIDAY?

A YES, IT IS.

MR. CANO: YOUR HONOR, MAY I APPROACH WITH PEOPLE'S 2 THROUGH 8?

THE COURT: YOU MAY.

BY MR. CANO:

Q SIR, SHOWING YOU WHAT'S BEEN MARKED AS PEOPLE'S 3, --

A YES, I SEE THAT.

Q -- DO YOU RECOGNIZE THE GENTLEMAN IN THE TOP PHOTO?

A YES, I DO.

Q WHO IS THAT?

A HIS NAME IS HERNANDEZ.

Q OKAY. SO THAT GENTLEMAN ON THE TOP IS THE ONE THAT YOU'VE BEEN REFERRING TO AS HERNANDEZ?

A YES.

Q AND THEN THE GENTLEMAN ON THE BOTTOM, DO YOU RECOGNIZE HIM?

A YES. HIS NAME IS PONCE.

Q OKAY. AND YOUR TESTIMONY IS THAT YOU DIDN'T HAVE ANYTHING TO DO WITH HIM THAT DAY, CORRECT?

A NONE WHATSOEVER.

Q OKAY. DID YOU EVER GET A CHANCE TO SEE MR. HERNANDEZ' INJURIES?

A FROM THE PHOTOS, YES.

Q OKAY. DID YOU SEE THEM ON THE DAY OF THE INCIDENT?

A NO, I DID NOT.

Q LET ME SHOW YOU ONE IN PARTICULAR, PEOPLE'S 5. DO YOU SEE THE INJURY TO MR. HERNANDEZ' ARM IN THAT PHOTO?

A ON THE VIDEO FOOTAGE, BUT I NICKED HERNANDEZ.

Q OKAY.

A I NICKED HIM ON HIS RIGHT ARM NEAR THE ELBOW.

Q OKAY.
A THAT'S WHAT I'M TESTIFYING TO.
Q OKAY.
A THAT I HAVE NO KNOWLEDGE OF THAT -- THAT MARK.
Q SO THE MARK THAT APPEARS TO BE ON HIS LEFT ARM IN THIS PHOTOGRAPH, THAT'S NOT WHERE YOU NICKED HIM?
A NO, IT'S NOT.
Q SO YOU'RE SAYING YOU DIDN'T CAUSE THAT INJURY?
A NOT THAT INJURY, NO.
Q OKAY.
MR. CANO: YOUR HONOR, APPROACHING WITH PEOPLE'S 7 AND 8.
THE COURT: ALL RIGHT.
BY MR. CANO:
Q SHOWING YOU PEOPLE'S 7 AND 8, SIR, DO YOU RECOGNIZE THAT KNIFE?
A YES, I SEE THAT. YES, I DO.
Q AND HOW DO YOU RECOGNIZE THAT KNIFE, SIR?
A I HAD THAT KNIFE IN MY BACKPACK.
Q OKAY. IS THIS THE KNIFE THAT YOU NICKED MR. HERNANDEZ WITH?
A THAT'S THE KNIFE THAT I HAD IN MY BACKPACK, THAT IS CORRECT.
Q AND SO JUST TO BE CLEAR, THIS IS THE KNIFE THAT YOU NICKED MR. HERNANDEZ WITH?
A ON HIS RIGHT ARM NEAR THE ELBOW, YES, NOT

ON HIS LEFT ARM.

Q OKAY. NOW, WHEN YOU APPROACHED MR. HERNANDEZ, DID YOU HAVE YOUR KNIFE OUT ALREADY?

A WHEN I APPROACHED HERNANDEZ?

Q YES.

A YES, I DID. I HAD IT BY MY SIDE. NEVER --

Q WHEN YOU'RE SAYING YOUR SIDE, CAN YOU TELL US WHAT YOU MEAN?

A CAN I SHOW YOU? CAN I STAND UP AND SHOW YOU?

THE BAILIFF: HE CAN STAND UP WHERE HE'S AT.

BY MR. CANO:

Q GO AHEAD AND STAND UP AND SHOW US.

A WHEN I APPROACHED HERNANDEZ, I WAS WALKING. I HAD MY WEAPON NEAR MY SIDE. I NEVER RAISED IT UP UNTIL HE KICKED ME IN THE CHEST TWICE.

Q AT THAT MOMENT, WHEN YOU HAD IT BY YOUR SIDE, WAS THE --

A THE BLADE WAS OUT, CORRECT.

Q THE BLADE WAS OUT?

A YES, IT WAS.

Q OKAY. THANK YOU.

YOU HAD NEVER SEEN MR. HERNANDEZ BEFORE THE BUS THAT DAY, CORRECT?

A NO, I HAVE NOT.

Q AND YOU HAD NEVER SEEN MR. PONCE BEFORE THE BUS THAT DAY?

A I HAVE NOT.

Q WHEN YOU GOT ON THE BUS THAT DAY, DO YOU REMEMBER HOW LONG YOU'D BEEN ON THE BUS BEFORE --

A NO.

Q -- THIS INCIDENT HAPPENED?

A NO, I DON'T.

Q YOU MENTIONED EARLIER THAT ONE OF THE REASONS THAT YOU HAD THE KNIFE WAS FOR PROTECTION, CORRECT?

A YES, I DID.

Q OKAY. WHAT WERE THE OTHER REASONS YOU HAD THE KNIFE?

A THAT SEEMED TO BE THE ONLY REASON.

Q OKAY. FOR YOUR PERSONAL PROTECTION?

A YES.

Q THIS PRIOR INCIDENT WHERE YOU WERE CUT WITH A KNIFE, YOU REMEMBER THAT INCIDENT, CORRECT?

A YES, I DO. SOME. SOME. OF SOME, YES.

Q IN THAT PRIOR INCIDENT --

A RIGHT.

Q -- SOMEBODY CUT YOU, AND I DON'T WANT TO GET INTO ALL THE DETAILS, BUT SOMEBODY CUT YOU WITH A KNIFE; IS THAT RIGHT?

A WHAT HAPPENED -- WHAT HAPPENED --

Q HOLD ON. SIR, I'M NOT ASKING YOU WHAT HAPPENED. I'M JUST ASKING YOU YES OR NO. IN THE PRIOR INCIDENT SOMEBODY CUT YOU WITH A KNIFE?

A YES.

Q SO THE OTHER PERSON, THE OTHER INDIVIDUAL

IN THAT PRIOR INCIDENT HAD A WEAPON, CORRECT?

A YES, THEY DID.

Q DID YOU HAVE A WEAPON AT THAT PRIOR INCIDENT?

A NO, I DID NOT.

Q OKAY. THAT PRIOR INCIDENT, OBVIOUSLY, WAS NOT WITH EITHER OF THE GENTLEMEN ON THE BUS?

A NO, IT WAS NOT, BUT I TAKE A PERSON'S THREAT SERIOUSLY, ONCE YOU THREATEN A PERSON.

Q YOU SAID THAT THE THREAT THAT WAS MADE TO YOU BY MR. HERNANDEZ IS "I'LL TAKE SOMETHING FROM YOU," CORRECT?

A YES.

Q HOW LONG -- HOW MUCH TIME PASSED FROM THE TIME HE MADE THAT THREAT TO YOU UNTIL THE TIME THAT YOU APPROACHED HIM?

A TO BE HONEST WITH YOU, I DON'T KNOW.

Q ARE YOU ABLE TO SAY IF IT WAS LESS THAN 30 MINUTES?

A I CAN'T SAY.

Q SO IT COULD HAVE BEEN MORE THAN 30 MINUTES?

A I DON'T KNOW. IT'S BEEN OVER A YEAR, SO I -- I DON'T KNOW.

Q ARE YOU ABLE TO SAY WHETHER OR NOT YOU WENT BACK TO A SEATED POSITION ON THE BUS AFTER YOU HEARD THE THREAT?

A I THINK I DID RETURN BACK TO MY BAG, YES.

Q OKAY. AND I'M SORRY TO PRESS, LET ME JUST

ASK YOU ONE MORE TIME, ARE YOU ABLE TO TELL US IF IT WAS A MATTER OF MINUTES OR SECONDS OR 20 MINUTES, NARROW IT DOWN AT ALL IN THAT RANGE?

A I DON'T KNOW APPROXIMATELY. I CAN'T SAY, --

Q OKAY.

A -- YOU KNOW. BUT I DO KNOW THAT I RETURNED, AND I'D STAND ABOUT -- AT LEAST -- I DON'T KNOW, TWO OR THREE FEET AWAY FROM HIM, AND AS HE WENT AND JUMPED UP ON THE CHAIRS, THEN HE LUNGED AND KICKED AT ME, AND THAT'S WHEN I CUT HIM ON HIS ARM. AND THEN FROM THAT POINT I MOVED OUT THE WAY AND I ASKED HIM TO LEAVE THE BUS BECAUSE I DON'T KNOW WHAT ELSE HE WOULD DO.

MOST PEOPLE, IF YOU HAVE A WEAPON IN YOUR HAND, THEY USUALLY THROW THEIR HANDS UP AND MOVE BACK. HE DID NOT DO THAT. AND I DIDN'T HAVE MY WEAPON RAISED AT HIM. I HAD IT DOWN. SO USUALLY A PERSON WOULDN'T THROW THEMSELF AT YOU RATIONALLY. HE DID THAT. SO WHEN I ORDERED HIM -- AS YOU SEE, MY ARM IS TURNING THIS WAY ORDERING HIM TO GET OFF THE BUS BECAUSE I DIDN'T WANT HIM TO CONTINUE TO COME AT ME BECAUSE, LIKE I SAID AGAIN, I HAD NO -- NO INTENT TO REALLY TRY TO HURT HIM, JUST ONLY TO RESPOND TO A THREAT.

Q OKAY. SIR, DID YOU EVER SEE MR. HERNANDEZ WITH A WEAPON?

A WELL, HE -- NO, I DID NOT, NOT -- NOT A WEAPON IN TERMS OF WHAT I HAD, NO. BUT FROM THE LOOKS OF HIS SHOES THAT HE HAD ON -- AND IT WAS SAID THAT HE HAD

STEEL-TOED BOOTS ON, AND HE USED THEM TO KICK ME IN THE CHEST.

Q OKAY. DID YOU EVER SEE MR. PONCE WITH A WEAPON?

A NO. I DON'T -- PONCE NEVER HAD NOTHING TO DO WITH THIS SITUATION. AS A MATTER OF FACT, DURING THAT TIME, I SAW THE INDIVIDUAL LEAVING THE BUS. WHEN I APPROACHED, HE WAS LEAVING OFF THE BUS, AND I WAS ASKING HERNANDEZ ALSO LEAVE BECAUSE I DIDN'T THINK -- I DIDN'T KNOW WHAT ELSE HE WOULD HAVE DONE AS A RESULT. SO MY INTENT WAS NOT ACTUALLY TO HURT HIM, JUST TO STOP HIM FROM COMING AT ME. SO I DON'T KNOW WHAT THIS GENTLEMAN ACTUALLY WAS THINKING.

Q THE THREAT THAT YOU HEARD THAT DAY WAS, "I'LL TAKE SOMETHING FROM YOU"; IS THAT CORRECT?

A YES, AND THAT'S A THREAT BECAUSE IF YOU -- IF YOU TELL SOMEONE YOU'RE GONNA TAKE SOMETHING FROM HIM, THEN LOOK WHAT YOU -- LOOK WHAT YOU'LL HAVE TO GO THROUGH BY TAKING IT FROM THAT PERSON.

Q WHERE WAS MR. HERNANDEZ WHEN HE THREATENED YOU?

A HE WAS SITTING DOWN ON HIS SEAT.

Q IN THE BACK OF THE BUS WHERE HE IS RIGHT NOW --

A YES, HE WAS.

Q -- IN PEOPLE'S 1?

A YES.

Q AND WHERE WERE YOU WHEN YOU HEARD THAT

THREAT?

A I WAS SETTING THREE SEATS IN THE BACK.

Q WHERE YOU ARE IN THE PROJECTION?

A NO. I WAS SETTING THREE SEATS IN THE BACK. AS A MATTER OF FACT, THAT'S THE SECOND COPY. THERE'S TWO COPIES. THE ORIGINAL COPY'S DIFFERENT. THAT IS TWO COPIES THAT WAS MADE. I SAW THOSE TWO COPIES.

Q THE ORIGINAL COPY OF THIS VIDEO?

A THAT'S NOT THE ORIGINAL COPY, NO. THERE'S TWO MORE COPIES MADE FROM THE ORIGINAL ONE, AND THE ORIGINAL ONE SHOWS A DIFFERENT TRANSITION OF MOVEMENTS OF EVERYTHING. THIS SHOWS DIFFERENT.

Q DO YOU HAVE THOSE, SIR?

A NO, I DON'T HAVE THEM. YOU HAVE THEM. THE ATTORNEY HAVE ONE AND YOU HAD ONE. BUT I SAW TWO WHEN THE INVESTIGATOR COME AND SAW ME. HE RUN ME TWO COPIES OF THE -- OF THE ORIGINAL FOOTAGE THAT THEY TAPED, AND I SAW TWO COPIES, AND EACH COPY HAD A DIFFERENT TRANSITION OF EVENTS ON IT. IT'S NOT LIKE THE ORIGINAL.

Q OKAY. SO ARE YOU SAYING THAT YOU WERE SEATED SOMEWHERE DIFFERENT?

A I WAS SEATED IN THE BACK. AND IF I -- IF THE WITNESS WHO WAS THE BUS DRIVER WAS IN THIS HERE, SHE WOULD HAVE TESTIFIED TO THAT, TOO.

Q OKAY.

A SHE WAS EXCLUDED IN MY TRIAL. I DON'T KNOW WHY.

Q OKAY. I'M GONNA GO BACK TO THE BEGINNING

OF THE VIDEO, SIR.

A AS I STATED BEFORE, YOU HAVE TWO COPIES.

THE COURT: HOLD ON.

ALL RIGHT.

BY MR. CANO:

Q OKAY. SIR, I'M GOING TO ASK YOU ABOUT THE COPY THAT WE HAVE. OKAY?

A OKAY.

Q IT'S BEEN MARKED AS PEOPLE'S 1.

A ALL RIGHT.

Q IT'S ABOUT SEVEN MINUTES LONG. AND WHAT I'M GONNA DO IS I'M GONNA GO TO THE BEGINNING.

A CAN I SAY SOMETHING?

Q NO, YOU CANNOT.

MR. MC GURK: NO QUESTION PENDING, YOUR HONOR.

THE COURT: MR. WILLARD, I JUST NEED YOU TO WAIT UNTIL THERE'S A QUESTION FROM MR. CANO.

THE WITNESS: ALL RIGHT.

THE COURT: YOUR ATTORNEY CAN FOLLOW UP WITH QUESTIONS IF HE WANTS.

BY MR. CANO:

Q I'M GONNA GO AHEAD AND PLAY THE VIDEO, AND I WANT YOU TO STOP ME AT THE MOMENT THAT YOU SEE YOURSELF THREATENED.

A OKAY.

(EXHIBIT 1 PLAYED.)

//

THE WITNESS: THAT'S WHEN HE MADE A REMARK.

BY MR. CANO:

Q RIGHT AROUND THERE?

A HE MADE A REMARK.

MR. CANO: FOR THE RECORD, YOUR HONOR, IT'S 4:18 IN THE VIDEO.

Q HOW FAR WOULD YOU SAY YOU WERE FROM MR. HERNANDEZ AT THAT POINT?

A I WAS NO MORE THAN THREE SEATS AWAY FROM HIM.

Q IS THAT ABOUT 10 FEET?

A EXCUSE ME?

Q IS -- THE DISTANCE THAT'S DEPICTED IN THIS VIDEO RIGHT NOW AT 4:18, IS THAT ACCURATE?

A THREE SEATS AWAY FROM HIM WOULD HAVE PUT ME SOMEWHERE BETWEEN -- I DON'T KNOW, ABOUT MAYBE SIX OR SEVEN FEET AWAY, SOMETHING LIKE THAT.

Q OKAY. IS THAT THE DISTANCE THAT'S DEPICTED IN THE VIDEO? IS THAT ACCURATE?

A NO. THAT'S -- IT SEEM LIKE IT'S FURTHER THAN THAT FROM WHAT I CAN SEE.

Q OKAY. SO ARE YOU -- JUST TO BE CLEAR, ARE YOU SAYING THAT YOU WERE ACTUALLY CLOSER THAN --

A OF COURSE.

Q -- WHAT'S DEPICTED?

A YES, I WAS.

Q OKAY.

A BECAUSE I ALWAYS -- WHEN I MOUNT A BUS, I

ALWAYS GO TO THE BACK, AND I ALWAYS EITHER SET ON THE BACK OF THE BUSES, SEATS, OR ON THE SIDE. IF YOU'D HAVE WENT INTO THE ARCHIVES AND PULLED THAT, YOU'D HAVE SAW ME SEVERAL TIMES ON THIS PARTICULAR BUS.

Q OKAY. ALL RIGHT.

I'M GOING TO ASK YOU TO CONTINUE TO WATCH THE VIDEO, SIR.

(EXHIBIT 1 PLAYED.)

MR. MC GURK: I'M GOING TO OBJECT. THERE'S NO QUESTION PENDING.

MR. CANO: I'M GOING TO HAVE A QUESTION BASED ON THIS.

THE COURT: ALL RIGHT. I'LL ALLOW IT.

THE WITNESS: THAT'S MY -- RIGHT THERE IS WHEN I WAS TALKING TO HIM, RIGHT THERE, WHEN HE SAID WHAT HE SAID TO ME.

THE COURT: OKAY. LET'S STOP FOR A MOMENT.

ALSO, IF YOU CAN PLEASE -- I NEED YOU TO WAIT FOR A QUESTION. BUT SINCE YOU MADE THAT STATEMENT, MR. CANO, DO YOU WANT TO NOTE FOR THE RECORD WHERE YOU ARE ON THE VIDEO?

MR. CANO: YES, YOUR HONOR. I PAUSED IT AT 4:35, AND THERE WAS A COUPLE SECONDS PLAYED FROM WHEN HE WAS TALKING.

Q SO, SIR, YOU'RE SAYING SOMETHING TO MR. HERNANDEZ HERE?

A NO, I'M RESPONDING TO HIS THREAT, WHAT HE SAID TO ME.

Q SO AT THIS POINT --

A AND THAT'S WHEN I WALK CLOSER TO HIM THERE, SPEAKING TO HIM. HE UNDERSTANDS A LITTLE ENGLISH, AND HE SPEAKS A LITTLE ENGLISH, AS I -- AS I UNDERSTOOD THAT.

Q SO AT THIS POINT --

A SO FROM THAT POINT I WALKED -- WHEN HE SAID WHAT HE SAID TO ME, I WALKED BACK AND I RETRIEVE MY WEAPON OUT OF MY BAG AND THEN I STOPPED.

Q SIR, LET ME STOP YOU THERE AND ASK YOU A QUESTION. OKAY?

A EXCUSE ME.

Q SIR, DID YOU HEAR THE STATEMENT BEFORE YOU APPROACHED MR. HERNANDEZ OR DID YOU HEAR IT ONCE YOU APPROACHED HIM?

A WELL, HE WAS SAYING SOMETHING, YOU KNOW, IN SPANISH AS I -- AS I CONTINUE ON. IT WAS -- DURING THAT TIME -- HE DIDN'T SAY ANYTHING TO ME ABOUT NO PROBLEM. I DIDN'T --

Q SIR, LET ME JUST ASK YOU A DIRECT QUESTION. DO YOU SEE AT THIS POINT IN THE VIDEO YOU HAVE APPROACHED MR. HERNANDEZ?

A YES, I DID.

Q DID HE THREATEN YOU BEFORE YOU APPROACHED?

A YES.

Q OKAY. AND THAT'S WHY YOU APPROACHED HIM?

A YES, I DID. AND DURING THAT TIME HE WAS

SAYING SOME THINGS TO ME IN SPANISH WHICH I DON'T KNOW.

Q OKAY.

THE COURT: OKAY. LET ME JUST -- MR. WILLARD, YOUR ATTORNEY CAN ASK YOU QUESTIONS, BUT WHEN RESPONDING TO THE QUESTION FROM THE PROSECUTOR, MR. CANO, YOU NEED TO WAIT FOR THE QUESTIONS AND RESPOND. OKAY? AND YOUR ATTORNEY CAN ASK YOU ADDITIONAL QUESTIONS.

THE WITNESS: OKAY. SORRY.

BY MR. CANO:

Q AND THIS FIRST TIME YOU APPROACHED MR. HERNANDEZ YOU DID NOT HAVE A WEAPON WITH YOU, CORRECT?

A NO, I DID NOT.

Q AND YOU DID NOT SEE MR. HERNANDEZ WITH A WEAPON, CORRECT?

A NO, I DID NOT.

Q AND ONCE YOU GOT CLOSER TO HIM, DID HE THREATEN YOU AGAIN?

A WELL, HE WAS STILL SAYING SOME THINGS TO ME.

Q BUT YOU DON'T KNOW WHAT IT WAS BECAUSE IT WAS IN SPANISH?

A NO, I DIDN'T, BUT I DO -- I DO RECALL THAT HE SPOKE TO ME IN ENGLISH.

Q OKAY.

A HE SAID A FEW WORDS IN ENGLISH.

Q OKAY. SO, SIR, LET ME PLAY A PORTION OF THE VIDEO, AND THEN I'M GONNA ASK YOU A QUESTION IN A SECOND. OKAY? AND I'M STARTING AT 4:35.

(EXHIBIT 1 PLAYED.)

BY MR. CANO:

Q NOW, AT THIS POINT, SIR, AND I'M STOPPING AT 4:40, YOU WALK AWAY FROM MR. HERNANDEZ, CORRECT?

A YES, I DID.

Q AND YOU WALK BACK TO YOUR BAG?

A YES, I DID.

Q AND THEN YOU RETRIEVE YOUR KNIFE; IS THAT CORRECT?

A YES, I DID.

Q AND THEN ONCE YOU RETRIEVE YOUR KNIFE, YOU GO BACK TOWARDS MR. HERNANDEZ, CORRECT?

A YES, I DO. TOWARDS THE BACK, YES.

Q OKAY. AND I'M PLAYING IT AGAIN AT 4:40. AND I HAVE ANOTHER QUESTION COMING.

(EXHIBIT 1 PLAYED.)

BY MR. CANO:

Q I'M GOING TO PAUSE IT AT 5:02.

SIR, DOES YOUR MEMORY AGREE WITH THE VIDEO THAT UP UNTIL THIS POINT MR. HERNANDEZ HAS BEEN IN HIS SEAT THE ENTIRE TIME?

A YES, I DO.

Q CONTINUING TO PLAY AT 5:02.

(EXHIBIT 1 PLAYED.)

BY MR. CANO:

Q NOW, PAUSING IT AT 5:06, DO YOU SEE THE -- MR. PONCE HAS JUMPED UP ON THE SEAT THERE, SIR?

A YES, I DID.

Q AT THIS POINT, DO YOU HAVE YOUR KNIFE OUT?

A I HAD MY KNIFE, YES, WITH ME, BUT I ALSO HAD IT TO MY SIDE, YES.

Q SO IT'S IN YOUR RIGHT HAND; IS THAT CORRECT?

A IT'S IN MY RIGHT HAND, CORRECT.

Q AND THAT'S THIS HAND.

MR. CANO: I'M INDICATING TO THE RIGHT --

THE WITNESS: YES.

MR. CANO: -- OF MR. WILLARD IN THE VIDEO, YOUR HONOR.

THE WITNESS: YES, IT IS.

BY MR. CANO:

Q CONTINUING TO PLAY AT 5:06.

(EXHIBIT 1 PLAYED.)

BY MR. CANO:

Q PAUSING AT 5:10.

AT THIS POINT IN THE VIDEO, SIR, BOTH MR. HERNANDEZ AND MR. PONCE ARE UP ON THE SEATS IN THE BACK OF THE BUS IN THE FAR LEFT CORNER; IS THAT CORRECT?

A YES, IT IS.

Q AND DOES YOUR MEMORY -- YOU ALSO REMEMBER

THAT HAPPENING?

LET ME ASK YOU A DIFFERENT WAY.

DO YOU AGREE THAT THAT'S WHAT HAPPENED AT THIS POINT, THAT THEY HOPPED UP ON THE CHAIRS?

A YES, I AGREE WITH THAT.

Q OKAY. AND YOU SEE YOURSELF STILL IN THE VIDEO AT 5:10, CORRECT?

A YES, I DO.

Q DO YOU AGREE THAT THAT'S HOW CLOSE TO MR. PONCE AND MR. HERNANDEZ THAT YOU WERE AT THAT MOMENT?

A YES, I WAS.

Q CONTINUING TO PLAY.

(EXHIBIT 1 PLAYED.)

BY MR. CANO:

Q PAUSING AT 5:25.

SIR, 15 SECONDS HAVING PASSED SINCE THE LAST PART IN THE VIDEO WHERE I ASKED YOU ABOUT THE VICTIMS, THEY ARE STILL IN THAT CORNER OF THE BUS STANDING ON THE CHAIRS. IS THAT HOW YOU REMEMBER IT?

A NO, I DON'T.

Q WHAT DO YOU REMEMBER THEM DOING AT THIS POINT?

A I REMEMBER THEM GETTING OFF THE BUS. WELL, PONCE, AND HERNANDEZ FOLLOWED.

Q OKAY. I'M GOING TO PLAY AT 5:25.

A THAT'S WHEN HE KICKED ME IN THE CHEST

THERE.

Q SO THAT'S WHERE -- THIS PORTION AT 5:30, THAT'S WHERE YOU SAY YOU WERE KICKED?

A YES, DURING THAT TIME THERE IN THE CHEST. AND I NICKED HIM --

THE COURT: LET ME STOP ONE SECOND UNTIL THERE'S A QUESTION, MR. WILLARD.

THE WITNESS: EXCUSE ME.

BY MR. CANO:

Q AND NOW AT 5:38 DO YOU STILL SEE YOURSELF STANDING IN THE FRAME, SIR?

A YES, I DO.

Q AND YOU SEE MR. HERNANDEZ NOW STANDING ON THE BACK RIGHT OF THE BUS?

A YES.

Q AND AT THIS POINT HAVE YOU NICKED HIM OR NOT?

A I'M NOT ACTUALLY SURE RIGHT NOW.

Q BASED ON -- I'M ASKING YOU BASED ON YOUR MEMORY. DO YOU REMEMBER IF AT THIS POINT YOU HAD KICKED HIM?

A EXCUSE ME?

Q DO YOU REMEMBER IF -- DO YOU REMEMBER HOW LONG IT WAS FROM WHEN YOU SAY YOU WERE KICKED BY HIM UNTIL YOU SAY YOU NICKED HIM?

A NO, I DON'T REMEMBER THE TIME, BUT I DO KNOW WHEN -- AFTER HE KICKED ME IN THE CHEST AND I NICKED HIM ON HIS ARM WITH THE KNIFE, YES.

Q NOW PLAYING AT 5:38.

A AND THEN I ORDERED THE --

THE COURT: OKAY. IF YOU CAN PLEASE WAIT --

THE WITNESS: OH, EXCUSE ME.

THE COURT: ALL RIGHT. IF YOU CAN JUST WAIT FOR A QUESTION.

(EXHIBIT 1 PLAYED.)

BY MR. CANO:

Q I'M GOING TO PAUSE IT AT 6:26.

SIR, DO YOU SEE MR. HERNANDEZ ON THE LEFT SIDE OF THE BUS?

A YES, I DO.

Q DO YOU SEE THAT HE DOESN'T APPEAR TO HAVE A CAST OR A BANDAGE ON EITHER SIDE OF HIS ARM?

A I ALSO AGREE WITH THAT, OF COURSE.

Q OKAY. AND DO YOU AGREE THAT THAT'S HOW IT WAS THAT DAY, THAT HE DIDN'T HAVE A BANDAGE ON HIS ARM AT THIS POINT?

A YES, I SEE THAT.

Q DO YOU AGREE WITH THAT BASED ON YOUR MEMORY?

A YES, I DO.

Q WHEN YOU GOT OFF THE BUS THAT DAY, YOU TOOK -- YOU TOOK THE KNIFE WITH YOU?

A OF COURSE I DID.

Q AND WHAT'D YOU DO WITH IT?

A I PUT IT IN MY BACKPACK.
Q OKAY. AND DID YOU HAVE THAT BACKPACK WITH YOU WHEN YOU WENT INTO THE CVS?
A YES, I DID.
Q AND DO YOU REMEMBER THE OFFICERS LOOKING INTO YOUR BACKPACK AND FINDING THE KNIFE?
A I REMEMBER THE OFFICERS CAME IN AND -- WITH THEIR WEAPONS DRAWN AND ASKED ME TO TURN AROUND AND THEY PUT -- AND THEY PUT HANDCUFFS ON ME, AND THEN THEY TOOK ME OUT AND -- WITH THE BAG ITSELF AND SEARCHED THE BAG AND THEY CAME OUT WITH THE WEAPON.
Q ALL RIGHT. HOW LONG DID YOU WAIT AT THE SCENE WHEN YOU GOT OFF THE BUS?
A I WASN'T RUNNING FROM ANYTHING. I WENT THERE TO GET MEDICATION. I COULD HAVE -- LIKE I SAID, AGAIN, I DIDN'T BELIEVE I DID ANYTHING WRONG.
Q OKAY. AND --
A ONLY RESPONDED TO SOMEONE WHO KICKED ME IN THE CHEST.
Q SIR, IS IT FAIR TO SAY THAT YOU STILL DON'T BELIEVE YOU DID ANYTHING WRONG?
A NO, I STILL BELIEVE THAT, YES, TODAY. BECAUSE IF I HAD DONE ANYTHING --
MR. MC GURK: OBJECTION, NO QUESTION PENDING.
THE COURT: ALL RIGHT. SUSTAINED.
BY MR. CANO:
Q SIR, DID -- WITHDRAW THAT.
WERE YOU WATCHING WHEN THE OFFICERS PULLED

THE KNIFE OUT OF YOUR BAG?

A EXCUSE ME? SAY IT AGAIN.

Q WERE YOU WATCHING AS THE OFFICERS PULLED THE KNIFE OUT OF YOUR BAG?

A NO, I DIDN'T --

MR. MC GURK: OBJECTION, RELEVANCE.

THE WITNESS: NO, I DIDN'T SEE THE OFFICER DIRECTLY IN THE BAG, NO.

THE COURT: THE OBJECTION'S OVERRULED.

BY MR. CANO:

Q HOW LONG DID YOU WAIT AT THE SCENE WHERE THE BUS WAS BEFORE --

A THE OFFICERS --

THE COURT: HOLD ON. OUR REPORTER HAS TO GET THIS DOWN, SO WE NEED TO PAUSE.

CAN YOU STATE THE QUESTION AGAIN?

MR. CANO: YES.

Q SIR, HOW LONG DID YOU WAIT AT THE SCENE WHERE THE BUS WAS STOPPED BEFORE YOU LEFT THE SCENE?

A WELL, THE BUS HAD STOPPED ON WILSHIRE AND WESTERN, I THINK BETWEEN 7 AND 8, AND HOW LONG -- AT LEAST ABOUT A THIRD OF A BLOCK FROM WESTERN ON WILSHIRE, AND THE CVS STORE -- I WOULD SAY I'D BEEN IN THERE FOR ABOUT, I DON'T KNOW, SOMEWHERE BETWEEN 20, 22 MINUTES, I WOULD SAY, INSIDE THE STORE.

Q SIR, I WANT YOU TO LISTEN TO MY QUESTION, AND I JUST WANT TO HAVE THE ANSWER TO THAT QUESTION.

HOW LONG DID YOU WAIT AT THE BUS AFTER YOU

GOT OFF THE BUS BEFORE YOU LEFT THE SCENE?

A I DON'T KNOW. MAYBE A MINUTE AND I JUST LEFT.

Q OKAY. WERE THE POLICE THERE YET WHEN YOU LEFT?

A NO, THEY WAS NOT.

Q WHY DIDN'T YOU WAIT FOR THE POLICE TO ARRIVE?

A BECAUSE I HAD -- I'M AN ASTHMATIC, AND I NEEDED SOME MEDICATION. THAT'S THE REASON WHY I WAS ON THE BUS ANYWAY, GOING THERE AND GETTING MY MEDICATION. I GET SUBSCRIPTIONS (SIC) FROM THERE AND RIGHT OFF SUNSET AND VERMONT. I GET MY SUBSCRIPTION AND MEDICATION FROM THOSE PLACES. SO THAT WAS THE REASON WHY I WAS GOING INTO THE CVS STORE.

Q AND, SIR, YOUR COUNSEL ASKED YOU ABOUT THIS EARLIER, BUT ISN'T IT TRUE YOU SUFFERED TWO PRIOR THEFT RELATED FELONIES IN YOUR PAST?

A TWENTY-EIGHT, 29 YEARS AGO, OF COURSE.

Q OKAY. THANK YOU.

MR. CANO: NOTHING FURTHER.

THE COURT: MR. MC GURK?

MR. MC GURK: JUST BRIEFLY.

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REDIRECT EXAMINATION

BY MR. MC GURK:

Q MR. WILLARD, I UNDERSTAND THIS HAPPENED A LONG TIME AGO, BUT WOULD YOU DESCRIBE -- WHEN MR. HERNANDEZ WAS MAKING THESE STATEMENTS TO YOU, WOULD YOU DESCRIBE HIS TONE OF VOICE AS AGGRESSIVE?

A YES, IT WAS.

MR. CANO: OBJECTION, YOUR HONOR, LEADING.

THE COURT: I'M GOING TO OVERRULE THE OBJECTION, BUT CAUTION COUNSEL NOT TO LEAD.

MR. MC GURK: OKAY.

Q AND DO YOU RECALL -- HOW LONG AFTER MR. HERNANDEZ KICKED YOU IN THE CHEST DID YOU STRIKE HIM WITH YOUR KNIFE?

A I THINK IT WAS AFTER HE STRUCK -- KICKED ME IN THE CHEST. I REACTED JUST SPONTANEOUS. MY ARM JUST WENT UP.

Q DID YOU ATTEMPT TO STRIKE HIM A SECOND OR THIRD TIME?

A NO, I DID NOT.

Q DID YOU ATTEMPT TO STRIKE MR. PONCE AT ANY TIME?

A NONE WHATSOEVER.

Q WHY NOT?

A BECAUSE IT WAS NOT -- IT WAS -- THE WAY I LOOKED AT IT, WHEN PONCE -- I MEAN, HERNANDEZ, WHEN HE SAW THE KNIFE ACTUALLY COMING AT HIM AND I SKIMMED HIM, HE

RESPONDED TO -- YOU KNOW, NOT REACTING NO MORE. SO THAT LET ME KNOW THAT THERE'S NO PROBLEM, YOU KNOW, FROM THAT POINT ON. AND SO ME, I, AND FEAR OF MYSELF KNOWING THAT HE COULD DO SOMETHING TO ME, SO -- I -- I DIDN'T LET HIM COME BEHIND ME, AND I TOLD HIM -- I TOLD HIM, "OKAY. WELL, GET OFF THE BUS NOW." AND I POINTED. AND THAT'S EXACTLY WHAT THEY DID.

Q IN FACT, ON THE SCREEN RIGHT NOW, IS THIS WHEN HE WAS LEAVING THE BUS?

A YEAH. I'M POINTING AND TELLING HIM TO GET OFF THE BUS.

Q YOU DIDN'T ATTEMPT TO TRY TO STOP HIM FROM LEAVING THE BUS?

A NO. NO.

Q YOU DIDN'T ATTEMPT TO PHYSICALLY HARM HIM ANYMORE?

A NO.

Q YOU JUST WANTED HIM OFF THE BUS?

A I JUST WANTED -- WELL, I WANTED THEM NOT BEHIND ME BECAUSE I'M TRYING TO GET OFF THE BUS AS WELL.

Q AND ABOUT HOW -- DO YOU RECALL HOW FAR AWAY THE CVS IS FROM THE -- FROM WHERE THE BUS STOPPED, SIR?

A THE BUS STOPPED ON WESTERN AND WILSHIRE, ABOUT -- BETWEEN 8 AND 7 STREET. I WOULD SAY IT'S A HALF A BLOCK.

Q AND YOU WALKED THERE?

A YES. I JUST -- AS I GOT OFF THE BUS FOR A MINUTE, AND I JUST WENT ACROSS THE STREET AND WALKED TO

THE CVS MEDICAL -- STORE.

Q AND ONLY IF YOU REMEMBER, SIR, DO YOU KNOW HOW LONG IT WOULD TAKE YOU TO WALK FROM WHERE THE BUS STOPPED TO THE CVS?

A PROBABLY ABOUT TWO MINUTES.

MR. MC GURK: I HAVE NOTHING FURTHER. THANK YOU, MR. WILLARD.

THE COURT: MR. CANO?

RECROSS-EXAMINATION

BY MR. CANO:

Q I'M SORRY, DID I JUST HEAR YOU TESTIFY THAT YOU WERE AFRAID OF MR. HERNANDEZ --

A OF COURSE.

Q -- AND THAT'S WHY YOU HAD TO GET OFF THE BUS?

YES OR NO? IS THAT WHAT YOU TESTIFIED TO?

A YES, I'M AFRAID OF SOMEONE COMING BEHIND ME THAT -- HE JUMPED AT ME, HE KICKED ME TWICE IN THE CHEST, AND AM I TO ASSUME HE MAY NOT DO SOMETHING ELSE TO ME?

Q EVEN THOUGH YOU APPROACHED HIM WITH YOUR OPEN KNIFE?

A BECAUSE I HAD --

Q SIR, IS THAT CORRECT? YOU APPROACHED HIM WITH THE OPEN KNIFE; IS THAT CORRECT?

A BECAUSE HE THREATENED ME, CORRECT.

Q SIR, IS THAT CORRECT?

A YES.

Q OKAY.

MR. CANO: NOTHING FURTHER.

THE COURT: ALL RIGHT.

MR. MC GURK: THAT'S ALL I HAVE.

THE COURT: OKAY. MR. WILLARD, THANK YOU. YOU MAY STEP DOWN.

DOES THE DEFENSE WISH TO CALL ANY ADDITIONAL WITNESSES?

MR. MC GURK: NO ADDITIONAL WITNESSES, YOUR HONOR. WE'D ASK TO MOVE DEFENSE A INTO EVIDENCE.

THE COURT: ALL RIGHT. IF YOU CAN JUST DESCRIBE DEFENSE A FOR THE RECORD.

MR. MC GURK: YES. IT'S A LETTER FROM ST. VINCENT MEDICAL CENTER REGARDING SANTOS VASQUEZ HERNANDEZ.

THE COURT: IS THERE A STIPULATION REGARDING THE ADMISSION OF THIS?

MR. CANO: YES, YOUR HONOR.

THE COURT: ALL RIGHT. SO THERE'S NO OBJECTION TO THE ADMISSION OF DEFENSE A?

MR. CANO: CORRECT.

THE COURT: ALL RIGHT. SO DEFENSE A WILL BE ADMITTED.

(MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE: = EXHIBIT A.)

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CASE NUMBER: BA362410-01
CASE NAME: PEOPLE VS. CHARLES WILLARD
LOS ANGELES, CALIF. TUESDAY, JANUARY 18, 2011
DEPARTMENT NO. 113 HON. GAIL RUDERMAN FEUER, JUDGE
REPORTER: RENE MARIE EVANKO, CSR #6404
TIME: 1:40 P.M.

APPEARANCES: (AS HERETOFORE NOTED.)

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

THE COURT: OKAY. GOOD AFTERNOON. WE ARE BACK ON THE RECORD IN THE MATTER OF MR. CHARLES WILLARD. MR. WILLARD IS PRESENT. BOTH COUNSEL ARE PRESENT.

GOOD AFTERNOON.

THE DEFENDANT: GOOD AFTERNOON.

MR. MC GURK: GOOD AFTERNOON.

THE COURT: SO COUNSEL HAVE A COPY OF THE DRAFT JURY INSTRUCTIONS, BASICALLY WHAT WE REVIEWED THIS MORNING. COUNSEL WANT TO TAKE A FEW MINUTES TO REVIEW THEM?

MR. MC GURK: I BELIEVE THE DATE IS WRONG ON THE INSTRUCTIONS. IT SAYS, "NOVEMBER 2008."

THE COURT: YOU ARE CORRECT. I CONFESS I BORROWED FROM SOMEONE ELSE.

SEPTEMBER 21ST, 2009. SO 2.07 WILL BE

ALSO GET A COPY OF THE FINAL INSTRUCTIONS.

ALL RIGHT. THANK YOU, ALL. WE'LL BE IN RECESS.

(JURY DELIBERATIONS.)

(AT 4:05 P.M., THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

THE COURT: SO WE'RE BACK ON THE RECORD IN THE WILLARD MATTER. MR. WILLARD IS PRESENT. BOTH COUNSEL ARE PRESENT. WE'RE OUTSIDE THE PRESENCE OF THE JURY.

WE HAVE A QUESTION FROM THE JURY, "PLEASE CLARIFY THE DEFINITION OF SIGNIFICANT OR SUBSTANTIAL PHYSICAL INJURY AND WHEN SIGNIFICANT OR SUBSTANTIAL BECOMES MORE THAN MINOR OR MODERATE. ALSO, DOES PHYSICAL INJURY INCLUDE PSYCHOLOGICAL INJURY?"

SO, FIRST OF ALL, WITH RESPECT TO PSYCHOLOGICAL INJURY, I WOULD THINK IT'S FAIR TO SAY THAT PHYSICAL INJURY DOES NOT INCLUDE PSYCHOLOGICAL INJURY.

MR. CANO: I AGREE.

MR. MC GURK: I AGREE, YOUR HONOR.

THE COURT: OKAY. SO THAT'S THE EASY ONE.

AS TO THE FIRST ONE REQUESTING ADDITIONAL GUIDANCE, I THINK THE BEST THING TO DO IS TO GIVE THEM THE SAME DEFINITION. I DON'T THINK THAT THE COURT SHOULD PROVIDE ANY ADDITIONAL GUIDANCE OTHER THAN WHAT IS IN

3160.

COUNSEL HAVE ANY THOUGHTS?

MR. MC GURK: I AGREE, YOUR HONOR.

MR. CANO: I AGREE.

THE COURT: ALL RIGHT.

MR. CANO: THERE IS ONE OF THE INSTRUCTIONS, I BELIEVE IN THE 200 SERIES, THAT SAYS SOMETHING ABOUT, YOU KNOW, WHEN YOU'RE LOOKING AT THE EVIDENCE, USE YOUR COMMON SENSE AND EXPERIENCE. I DON'T KNOW IF THAT'S SOMETHING THAT'S RELEVANT HERE.

THE COURT: WELL, IN THE 200 ITSELF IT SAYS YOU SHOULD USE YOUR EVERYDAY ORDINARY MEANINGS UNLESS I GIVE IT A DIFFERENT DEFINITION. I DON'T KNOW IF THIS IS THE ONE YOU'RE REFERRING TO, BUT 200 DOES SAY, "WORDS AND PHRASES NOT SPECIFICALLY DEFINED IN THESE INSTRUCTIONS ARE TO BE USED IN THEIR EVERYDAY ORDINARY MEANINGS."

SO I'M INCLINED TO BRING THE JURY OUT AS OPPOSED TO A NOTE THAT MAY FRUSTRATE THEM TELLING THEM "SORRY, I CAN'T HELP YOU." AND WHAT I WOULD PROPOSE TO DO IS FIRST TELL THEM THAT PHYSICAL INJURY DOES NOT INCLUDE PSYCHOLOGICAL INJURY, THEN TO TELL THEM THAT WITH RESPECT TO THEIR REQUEST FOR ADDITIONAL CLARIFICATION, I CANNOT PROVIDE THEM ANY ADDITIONAL CLARIFICATION. I'LL JUST DIRECT THEM TO -- AND I'LL DIRECT THEM BOTH TO THE PORTION OF 200, WHICH I'LL READ TO THEM AGAIN, AS TO THE FACT THAT THEY NEED TO USE THE ORDINARY EVERYDAY MEANINGS, AND THEN I'LL GIVE THEM THE DEFINITION AGAIN FROM 3160.

IS THAT ACCEPTABLE TO COUNSEL?

THE CASE?

JUROR NO. 1: YES, I AM.

THE COURT: ALL RIGHT. AND HAS THE JURY REACHED A VERDICT ON BOTH COUNTS?

JUROR NO. 1: YES.

THE COURT: CAN YOU PLEASE HAND THE VERDICT FORMS TO THE BAILIFF? AND HE WILL PROVIDE THEM TO ME.

(PAUSE IN PROCEEDINGS.)

THE COURT: I DO HAVE THE VERDICT FORMS WITH RESPECT TO COUNT 1 AND COUNT 2. THE VERDICT FORMS ARE SIGNED AND DATED AND OTHERWISE ARE IN REGULAR AND PROPER FORM.

I WILL PROVIDE THEM TO THE CLERK.

ALL RIGHT. MR. WILLARD, IF YOU WILL -- YOU CAN STAY SEATED, BUT FACE THE JURY, PLEASE.

AT THIS TIME I'LL ASK THE CLERK TO PLEASE READ THE VERDICTS AS THEY WILL BE RECORDED.

THE CLERK: THE PEOPLE OF THE STATE OF CALIFORNIA VERSUS CHARLES R. WILLARD.

WE, THE JURY IN THE ABOVE-ENTITLED ACTION, FIND THE DEFENDANT, CHARLES WILLARD, GUILTY OF THE CRIME OF ASSAULT WITH A DEADLY WEAPON UPON SANTOS HERNANDEZ, IN VIOLATION OF PENAL CODE SECTION 245(A)(1), A FELONY, AS CHARGED IN COUNT 1 OF THE INFORMATION.

WE FURTHER FIND THE ALLEGATION THAT

IN THE COMMISSION OF THE CRIME THE DEFENDANT PERSONALLY INFLICTED GREAT BODILY INJURY UPON SANTOS HERNANDEZ, WITHIN THE MEANING OF PENAL CODE SECTION 12022.7(A), TO BE NOT TRUE.

WE THE JURY IN THE ABOVE-ENTITLED ACTION, FIND THE DEFENDANT, CHARLES WILLARD, GUILTY OF THE CRIME OF ASSAULT WITH A DEADLY WEAPON UPON DAVID PONCE, IN VIOLATION OF PENAL CODE SECTION 245(A)(1), AS CHARGED IN COUNT 2 OF THE INFORMATION.

THIS 18TH DAY OF JANUARY, 2011.

JUROR FOREPERSON, NUMBER 1.

LADIES AND GENTLEMEN OF THE JURY, ARE THESE YOUR VERDICTS, SO SAY YOU ONE, SO SAY YOU ALL?

(THE JURORS ANSWERED COLLECTIVELY "YES.")

THE COURT: ALL RIGHT. AND WOULD COUNSEL LIKE TO HAVE THE JURY POLLED?

MR. MC GURK: NO, YOUR HONOR.

MR. CANO: NO, YOUR HONOR.

THE COURT: ALL RIGHT. THE CLERK WILL PLEASE RECORD THE VERDICTS.

DO COUNSEL WAIVE READING OF THE VERDICTS AS RECORDED?

MR. MC GURK: YES, YOUR HONOR.

MR. CANO: YES.

CASE NUMBER: BA362410-01
CASE NAME: PEOPLE VS. CHARLES WILLARD
LOS ANGELES, CALIF. TUESDAY, MAY 24, 2011
DEPARTMENT NO. 113 HON. GAIL RUDERMAN FEUER, JUDGE
REPORTER: RENE MARIE EVANKO, CSR #6404
TIME: 1:52 P.M.

APPEARANCES:

DEFENDANT WILLARD PRESENT IN COURT WITH HIS COUNSEL, KEVIN MC GURK, DEPUTY PUBLIC DEFENDER OF LOS ANGELES COUNTY; COLBY CANO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

THE COURT: OKAY. GOOD AFTERNOON. WE ARE ON THE RECORD IN THE MATTER OF CHARLES WILLARD, BA362410. MR. WILLARD IS PRESENT.

GOOD AFTERNOON.

LET ME GET COUNSEL'S APPEARANCES.

MR. MC GURK: THANK YOU, YOUR HONOR. DEPUTY PUBLIC DEFENDER KEVIN MC GURK FOR MR. WILLARD.

MR. CANO: COLBY CANO FOR THE PEOPLE. GOOD AFTERNOON.

THE COURT: GOOD AFTERNOON.

ALL RIGHT. SO WE'RE ACTUALLY JUST ABOUT TO GET STARTED. AND OUR CLERK IS HERE. ALL THE JURORS --

THE BAILIFF: ALL THE JURORS ARE HERE.

THE COURT: OFF THE RECORD.

(DISCUSSION HELD OFF THE RECORD.)

THE COURT: WITH MY APOLOGIES, I THINK WE NEED TO QUICKLY TAKE A VERDICT AND WE'LL COME BACK TO MR. WILLARD.

MR. MC GURK: OKAY.

(RECESS.)

THE COURT: OKAY. WE ARE BACK ON THE RECORD IN THE MATTER OF CHARLES WILLARD. MR. WILLARD IS PRESENT.

GOOD AFTERNOON.

I THINK WE GOT AS FAR AS COUNSEL'S APPEARANCES. LET'S GET COUNSEL'S APPEARANCES STARTING WITH MR. MC GURK.

MR. MC GURK: THANK YOU, YOUR HONOR. KEVIN MC GURK, DEPUTY PUBLIC DEFENDER, FOR MR. WILLARD.

MR. CANO: COLBY CANO FOR THE PEOPLE.

THE COURT: SO TODAY WAS SET FOR A SENTENCING DATE. I HAVE A MOTION THAT WAS FILED BY THE DEFENSE ON BEHALF OF MR. WILLARD, THE *ROMERO* MOTION, WHICH I WILL ADDRESS FIRST. I WILL NOTE FIRST FOR THE RECORD, FOR PURPOSES OF THE SENTENCING, I REVIEWED THE ORIGINAL PROBATION OFFICER'S REPORT DATED OCTOBER 16, 2009. I'M NOW IN POSSESSION OF A MORE RECENT ONE THAT WAS PROVIDED TODAY. IT'S ACTUALLY NOT DATED, BUT IT WAS RECEIVED TODAY, MAY 24TH.

I'VE ALSO REVIEWED THE SENTENCING MEMORANDUM FILED BY THE PEOPLE AND THE *ROMERO* MOTION FILED BY THE DEFENSE.

SO I'M GOING TO START WITH THE *ROMERO* MOTION, AND THEN WE'LL MOVE TO THE SENTENCING ISSUES.

FIRST OF ALL, WITH RESPECT TO THE *ROMERO* MOTION, THE QUESTION FOR THE COURT AS STATED IN THE SEMINAL CASES, INCLUDING *PEOPLE V. WILLIAMS,* 17 CAL.4TH 148 AT 161, WHICH IS A 1998 CASE, IS, "WHETHER IN LIGHT OF THE NATURE AND CIRCUMSTANCES OF HIS PRESENT FELONIES AND PRIOR SERIOUS AND/OR VIOLENT FELONY CONVICTIONS AND THE PARTICULARS OF HIS BACKGROUND, CHARACTER AND PROSPECTS THE DEFENDANT MAY BE VIEWED OUTSIDE THE SCHEME'S SPIRIT IN WHOLE OR IN PART AND TEND TO BE TREATED AS THOUGH HE HAD NOT PREVIOUSLY BEEN CONVICTED OF ONE OR MORE SERIOUS AND/OR VIOLENT FELONIES," CLOSED QUOTE. SO THAT'S TAKEN FROM THE *WILLIAMS* CASE.

MY TENTATIVE IS TO DENY THE MOTION FOR THE FOLLOWING REASONS: THE COURT AND OTHER COURTS, INCLUDING, OBVIOUSLY, *ROMERO* AND THE COURTS SINCE THEN, LOOKED AT THREE MAJOR FACTORS. AND AGAIN, THIS IS MY TENTATIVE RULING. I HAVE REVIEWED THE PAPERS. I DO WANT TO HEAR FROM COUNSEL.

FIRST IS THE NATURE AND CIRCUMSTANCES OF THE CURRENT OFFENSE. THE CURRENT OFFENSE IS A CRIME OF VIOLENCE. ACCORDING TO THE TESTIMONY OF DAVID PONCE AND SANTOS HERNANDEZ, THEY WERE SEATED IN THE BACK OF THE BUS, MR. WILLARD APPROACHED THEM, POINTED A FINGER AT

MR. HERNANDEZ, ACTUALLY TOUCHING HIM, AND SAID IN SPANISH "PINCHE MEXICAN," WHICH WAS TRANSLATED AS "FUCKING MEXICAN."

ACCORDING TO THE TESTIMONY, THERE WAS NO PROVOCATION, BUT RATHER MR. WILLARD CAME UP, WALKED TO THE BACK OF THE BUS, POINTED AT AND TOUCHED MR. HERNANDEZ. HE THEN WENT BACK TO HIS SEAT, TOOK OUT A KNIFE. MR. PONCE AND HERNANDEZ IN FEAR STOOD ON THE SEAT OF THE BUS WHICH WE SAW IN THE VIDEOTAPE.

MR. WILLARD USED THE BLADE, FIRST, ACCORDING TO THE TESTIMONY, HIT A LUNCH BAG, AND THEN STRUCK -- I BELIEVE IT WAS MR. HERNANDEZ, IN THE ARM CAUSING A WOUND. MR. HERNANDEZ THEN KICKED THE DEFENDANT AND THE TWO ESCAPED OUT OF THE SIDE OF THE BUS.

SO IN TERMS OF THE CIRCUMSTANCES OF THE CURRENT OFFENSE, IT IS A VIOLENT OFFENSE AND IT IS TROUBLING.

I WOULD NOTE THERE WAS CONFLICTING TESTIMONY FROM MR. WILLARD. HE TESTIFIED THAT HE WAS ON THE BUS AND HE HAD A KNIFE IN HIS BAG FOR PROTECTION BECAUSE OF A PRIOR INCIDENT WITH PEOPLE HE CALLED MEXICANS. HE SAID HE GOT IN AN ARGUMENT WITH MR. PONCE AND MR. HERNANDEZ AND FELT THREATENED AND THAT MR. HERNANDEZ KICKED HIM AND IN RESPONSE MR. WILLARD USED HIS KNIFE AND SKIMMED THE ARM OF MR. HERNANDEZ.

I'LL NOTE THE JURY FOUND PRESUMABLY MR. PONCE AND MR. HERNANDEZ WERE CREDIBLE FINDING MR. WILLARD GUILTY OF ASSAULT WITH A DEADLY WEAPON WITH

RESPECT TO BOTH MR. PONCE AND MR. HERNANDEZ.

WITH RESPECT TO THE NATURE AND CIRCUMSTANCES OF THE OTHER PRIOR SERIOUS OR VIOLENT FELONIES, BOTH WERE ROBBERIES. THE KEY ISSUE, FRANKLY, IS THE ISSUE OF REMOTENESS, WHICH IS THE PRINCIPLE ISSUE RAISED BY COUNSEL. THE FIRST WAS FROM 1978 WHEN THE DEFENDANT WAS 17 AND THE MORE RECENT ONE FROM 1981. THEY ARE BOTH FAIRLY OLD STRIKES.

THE REASON WHY MY TENTATIVE IS TO DENY THE MOTION TO DISMISS THE STRIKES FOR PURPOSES OF SENTENCING IS THAT WHILE THEY ARE OLD, MR. WILLARD HAS BEEN IN AND OUT OF PRISON FAIRLY CONSISTENTLY SINCE THEN. IN REVIEWING HIS RECORD FROM THE PROBATION DEPARTMENT, IN 1978 HE WAS CONVICTED OF ROBBERY WITH A FIREARM. HE WAS SENTENCED TO FOUR YEARS AND PAROLED IN 1981.

WHILE HE WAS ON PAROLE, HE WAS ARRESTED AGAIN FOR ROBBERY AND A NUMBER OF OTHER CRIMES AND CONVICTED AGAIN OF ROBBERY WITH A FIREARM AND SENTENCED TO FOUR YEARS IN STATE PRISON.

IN 1986 HE VIOLATED HIS PROBATION. HE HAD BEEN FOUND GUILTY ON A THEFT CHARGE AND WAS SENTENCED TO THREE YEARS IN STATE PRISON.

IN 1987, THAT WAS -- IT'S UNCLEAR IF THAT WAS THE CONVICTION FOR THE EARLIER ROBBERY, BUT IT APPEARS HE HAS A CONVICTION AGAIN FOR ROBBERY WITH A FIREARM --

MR. CANO: IF I MAY CHIME IN ON THAT ONE, YOUR HONOR.

THE COURT: IS THAT THE SAME ONE?

MR. CANO: AT THE COURT TRIAL IT WAS FOUND NOT TRUE, THE 1981 PRIOR, BUT DID FIND TRUE A SEPARATE 1987 PRIOR.

THE COURT: SO THEY'RE TWO SEPARATE ONES?

MR. CANO: CORRECT.

THE COURT: OKAY. SO IT'S A 1978 ONE, AND THE 1981 WAS FOUND NOT TRUE, WHICH WAS THE IDENTITY ISSUE, AND THEN IN 1986 HE WAS FOUND IN VIOLATION OF PROBATION. THE 1987 WAS THE SECOND PRIOR OF ROBBERY WITH A FIREARM. HE WAS CONVICTED AND SENTENCED TO THREE YEARS. HE WAS OUT BY 1994 AND CONVICTED OF A THEFT MISDEMEANOR, AND THEN HE WAS VIOLATED ON HIS PROBATION IN 19 -- ON HIS PAROLE. RIGHT? IS ONE OF THOSE AN ERROR?

MR. MC GURK: MR. WILLARD IS SAYING THAT THAT 1987 CONVICTION IS AN ERROR.

THE DEFENDANT: YES, IT IS.

MR. MC GURK: I DON'T HAVE THE RECORD RIGHT IN FRONT OF ME.

THE COURT: WELL, THERE WERE TWO PRIORS. ONE THE JURY FOUND TO BE TRUE AND THE OTHER THE JURY DID NOT.

OKAY. THE ONE THAT WAS NOT FOUND TO BE TRUE WAS THE 1981 --

THE DEFENDANT: YES.

THE COURT: -- ROBBERY. THE 1987 ONE IS THE ONE THAT WAS FOUND TO BE TRUE. SO I WOULD NOT CONSIDER THE 1981 CONVICTION, BUT I WILL CONSIDER THE 1987 CONVICTION. THE CONCERN I HAVE IS THAT AFTER THE 1987 CONVICTION --

MR. MC GURK: YOUR HONOR, I THINK WHAT MR. WILLARD

IS SAYING -- I APOLOGIZE FOR INTERRUPTING. MR. WILLARD IS INDICATING THE 1987 CONVICTION DID NOT INVOLVE A FIREARM AND THE COURT IS INDICATING THAT IT DID.

THE COURT: OKAY. AND HIS UNDERSTANDING IS IT DID NOT INVOLVE A FIREARM?

MR. MC GURK: THAT'S CORRECT.

THE DEFENDANT: NO WEAPON INVOLVED.

THE COURT: OKAY. IT WAS -- I BELIEVE I GOT THAT FROM THE PROBATION REPORT. I MAY HAVE CONFUSED THE 1981 AND THE 1987 ONE.

THE 1981 HAD A FIREARM -- THE 1987 CONVICTION, IT LOOKS LIKE IT WAS ACTUALLY -- IS THAT THE ONE THAT ARISES OUT OF THE 1984 ARREST OR IS THAT A DIFFERENT CASE?

MR. CANO: ALL I SEE IS THAT THE CASE WAS FILED IN 1987. I DON'T HAVE INFORMATION ON THE -- I'M SORRY, THE ORIGINAL FILING DATE WAS FEBRUARY 6, 1986, ON THE 1987 CONVICTION, ACCORDING TO THE DOCUMENT I HAVE, WHICH IS A DOCUMENT I GOT OFF OF THE --

THE COURT: OKAY.

MR. CANO: -- D.A.'S WEBSITE.

THE COURT: THE 1987 ONE, I CANNOT TELL IF IT WAS WITH A FIREARM.

WHAT IS TROUBLING IS THAT WHILE THE 1987 CONVICTION AND THE 1978 CONVICTION ARE DATED, SINCE THAT TIME MR. WILLARD HAD A 1994 THEFT CONVICTION AND THEN A PAROLE VIOLATION SENDING HIM BACK TO STATE PRISON IN 1995, AGAIN IN 1996, THEN AGAIN IN 1997. THEN IN 1997 HE WAS

ARRESTED FOR POSSESSION OF A CONTROLLED SUBSTANCE AND SENTENCED TO NINE YEARS IN PRISON. THEN A 2005 CONVICTION FOR POSSESSION OF A CONTROLLED SUBSTANCE FOR WHICH HE RECEIVED 32 MONTHS' STATE PRISON. AND THEN HE WAS ARRESTED IN MARCH 2008 FOR A DIFFERENT ASSAULT. THAT WAS DISMISSED BECAUSE OF THE DELAY. AND THEN IN THIS CASE HE WAS ARRESTED IN SEPTEMBER 2009. HE WAS STILL ON PAROLE.

SO THERE'S NOT A PERIOD OF TIME WHERE HE WAS NOT IN CUSTODY OR HAVING BEEN CONVICTED OF A CRIME. SO IN TERMS OF REMOTENESS, 1978 AND 1987 ARE A SIGNIFICANT AMOUNT OF TIME AGO, BUT SINCE THEN MR. WILLARD HAS BEEN SENTENCED OR FOUND IN VIOLATION AND PUT BACK IN STATE PRISON NUMEROUS SOMETIMES.

AND, FINALLY, "BACKGROUND, CHARACTER AND PROSPECTS OF THE DEFENDANT." NOTHING HAS BEEN SUBMITTED TO THE COURT TO SHOW THAT THERE IS A -- SOMETHING REDEEMING IN HIS BACKGROUND WHY HE SHOULD FALL OUTSIDE OF THE SPIRIT OF THE THREE STRIKES LAW.

I AM TROUBLED, ALSO -- I WOULD NOTE I DO THINK THAT MR. WILLARD WAS NOT HONEST ON THE STAND. I BELIEVE THAT THE STORY HE CREATED ABOUT WHAT HAPPENED WAS INCONSISTENT WITH BOTH THE TESTIMONY OF THE TWO OTHER WITNESSES AND THE VIDEOTAPE THAT WAS ADMITTED INTO EVIDENCE.

IN LIGHT OF THESE FACTORS, MY TENTATIVE RULING IS TO FIND THAT HE IS NOT OUTSIDE THE SCHEME'S SPIRIT AND SHOULD NOT BE TREATED AS HAVING NOT COMMITTED ONE OF THE PRIOR FELONIES.

SO LET ME HEAR FROM MR. MC GURK FIRST.

MR. MC GURK: WELL, YOUR HONOR, I WOULD JUST STATE THAT, FIRST OF ALL, IN TERMS OF THE NATURE OF THE CURRENT OFFENSE, IT'S CONCEDED THAT IT IS, OF COURSE, A STRIKE OFFENSE. IT'S A VIOLENT FELONY. HOWEVER, THERE WAS NO SERIOUS INJURY. IN FACT, THE JURY FOUND THE GBI ALLEGATION TO BE NOT TRUE. I BELIEVE THE INJURY THAT WAS TESTIFIED TO WAS A TWO-INCH CUT ON THE ARM AREA OF MR. HERNANDEZ.

THE MEDICAL DOCUMENTATION THAT WAS TESTIFIED TO WAS IN -- "INCONSISTENT" MIGHT NOT BE THE RIGHT WORD, BUT IT WASN'T VERY CLEAR IN TERMS OF WHAT TREATMENT HE HAD RECEIVED CONSIDERING THAT WE HAD DOCUMENTATION THAT -- FROM THE HOSPITAL STATING THAT HE GOT NO MEDICAL ATTENTION WHATSOEVER.

I THINK IT'S FAIR TO SAY THE INJURY WAS NOT A SERIOUS INJURY SUFFERED BY MR. HERNANDEZ. I THINK THE JURY'S VERDICT WAS CONSISTENT WITH THAT OPINION. THIS WAS NOT A VIOLENT ACT THAT WAS DURING THE COMMISSION OF A ROBBERY OR A THEFT OF ANY KIND.

MR. WILLARD ALLOWED BOTH GENTLEMEN TO LEAVE THE BUS WITHOUT ATTEMPTING TO STRIKE THEM FURTHER. THIS WAS ONE CUT AND THAT WAS IT. I'M NOT TRYING TO MINIMIZE WHAT THE CRIME IS. THE JURY RENDERED A VERDICT. AND I'M NOT GONNA REARGUE THE CASE, BUT I THINK IT'S FAIR TO SAY THAT ON THE SCALE OF ASSAULTS WITH DEADLY WEAPONS, THIS WOULD BE ON THE LOW END OF ONES WE WOULD SEE GENERALLY IN THIS COURTHOUSE JUST TAKING THE OFFENSE IN AND OF ITSELF

FOR WHAT IT IS.

ALSO, IN TERMS OF MR. WILLARD AS A PERSON IN GENERAL, I THINK IT'S BEYOND QUESTION THAT MR. WILLARD HAS NOT ONLY HAD A DOCUMENTED HISTORY OF DRUG AND ALCOHOL ABUSE, BUT HE ALSO HAS HAD SOME SERIOUS MENTAL HEALTH CONCERNS. I PROVIDED A LETTER THAT MY PARALEGAL FOUND FROM DR. VICARY. GRANTED, IT'S A LITTLE BIT DATED, BUT IN THAT IT TALKS ABOUT MR. WILLARD BEING INVOLUNTARILY HOSPITALIZED TWICE. THAT'S A SERIOUS ACT. THAT'S NOT SOMEONE GETTING A LITTLE COUNSELING ON THE WEEKEND. THAT'S AN INVOLUNTARY HOSPITALIZATION THAT WOULD BE CERTAINLY INDICATIVE OF SOMEONE WITH A SERIOUS MENTAL HEALTH CONCERN.

CONSIDERING THAT HE HAS NOT RECEIVED TREATMENT OR ANY SORT OF CONSISTENT TREATMENT FROM NOT ONLY HIS MENTAL ILLNESS OR HIS RAMPANT DRUG AND ALCOHOL ABUSE, WHICH I THINK HE'S ACTUALLY FAIRLY CANDID ABOUT IN THE SENTENCING REPORT THAT I PROVIDED TO THE COURT, I THINK WHEN ONE CONSIDERS THAT IF THESE PROGRAMS WERE AVAILABLE TO HIM IN STATE PRISON AND HE COULD AVAIL HIMSELF OF THESE -- AND AVAIL HIMSELF OF THESE PROGRAMS, IT WOULD ALLEVIATE MUCH OF THE CONCERN OF HIM BEING A REPEAT OFFENDER WHEN HE WERE TO GET OUT OF CUSTODY.

THE COURT ALSO MENTIONED THAT WHILE HE HASN'T HAD A LARGE AMOUNT OF TIME BEING COMPLETELY CRIME FREE, A 1978 AND 1987 STRIKE PRIOR, SINCE THEN NO VIOLENT CONVICTIONS UNTIL THE ONE IN QUESTION. HE RECEIVED NINE YEARS FOR AN 11350, WHICH IS CERTAINLY AN INFLATED

SENTENCE NORMALLY FOR THAT TYPE OF CHARGE.

THE COURT: I ASSUME IT'S BECAUSE OF THE STRIKES.

MR. MC GURK: OF COURSE. NO QUESTION. BUT --

THE COURT: DO YOU KNOW WHAT WAS THE BASIS OF HIS PAROLE VIOLATIONS?

MR. MC GURK: I BELIEVE IT WAS ABSCONDING.

THE COURT: I'M SORRY?

MR. MC GURK: I BELIEVE IT WAS ABSCONDING. THE LAST ONE, YOUR HONOR. I DON'T KNOW ABOUT THE '95 AND '96, WHAT THE NATURE OF THE VIOLATIONS WERE IN THOSE CASES. I DO NOT. I BELIEVE THE LAST VIOLATION HE HAD WAS FOR ABSCONDING, AND THE REPORT -- THE MOST RECENT PROBATION REPORT INDICATES THAT.

AND SO I THINK -- FROM THE DEFENSE POSITION, WHEN TAKING INTO CONSIDERATION BOTH THE -- THE RELATIVE -- THE NATURE OF THE CURRENT OFFENSE IN TERMS OF HOW IT RELATES TO OTHER SIMILAR CRIMES, I THINK IT'S ON THE LOW END. I ALSO THINK, UNLIKE A SITUATION WHERE -- AND THIS IS A FACTOR THE COURT CAN CONSIDER IN A LOT OF SITUATIONS WHERE THE COURT IS LEFT WITH A PROBATION OR A MINIMAL SENTENCE VERSUS AN INDETERMINATE SENTENCE. IN THIS CASE THE COURT IS NOT LEFT WITH THOSE TWO OPTIONS. THE COURT HAS A NUMBER OF OPTIONS THAT THEY COULD SENTENCE MR. WILLARD TO OTHER THAN AN INDETERMINATE SENTENCE WITH THE FIVE-YEAR PRIOR. WITH MR. WILLARD'S ONE-YEAR PRIORS, THE COURT COULD GIVE MR. WILLARD A DETERMINATE SENTENCE THAT WOULD BE OVER TEN YEARS. AND I THINK CONSIDERING THAT RANGE OF OPTIONS FOR THE COURT, I THINK THAT IS MUCH

MORE REASONABLE CONSIDERING THE NATURE OF THE OFFENSE AND THE REMOTENESS OF THE PRIORS THAN AN INDETERMINATE SENTENCE FOR MR. WILLARD, AND IT WOULD ALSO ALLOW HIM THE OPPORTUNITY TO AVAIL HIMSELF OF MENTAL HEALTH TREATMENT, OF DRUG TREATMENT, IF IT'S AVAILABLE IN STATE PRISON, IF THE COURT WERE TO RECOMMEND HIM TO A PLACE WITH THESE PROGRAMS AND PAROLE CAN MAKE THE DETERMINATION WHETHER HE'S REALLY TURNED THE CORNER.

FROM WHAT I CAN SEE AND WHAT THE PARALEGAL WAS ABLE TO FIND, HE SIMPLY HAS NOT HAD THE OPPORTUNITY TO GET THE TREATMENT HE NEEDS, AND I THINK THAT HAS A DIRECT CORRELATION WITH THE BEHAVIOR HE'S BEEN ENGAGING IN.

THE COURT: ALL RIGHT.

LET ME HEAR FROM MR. CANO.

MR. CANO: THE PEOPLE ARE ASKING FOR THE COURT TO IMPOSE THE 30 YEARS TO LIFE SENTENCE. THIS IS A DEFENDANT WHO -- YOU KNOW, I'M NOT GOING TO REPEAT EVERYTHING I PUT IN THE MOTION, BUT A DEFENDANT WHO HAS, AS THE COURT HAS JUST NOTED, BEEN IN AND OUT OF PRISON. HE SPENT MOST OF HIS ADULT LIFE IN PRISON. HE HAS CONTINUED TO REOFFEND. HE HAS VIOLENCE ON HIS RECORD, NOT JUST THE PRIOR STRIKES, BUT ALSO THE MORE RECENT ARREST, WHICH WAS A 2008 CASE THAT APPEARS WAS DISMISSED AT THE PRELIMINARY HEARING DUE TO DELAY.

SO FOR ALL OF THOSE REASONS I DO BELIEVE THAT THE 30-YEAR-TO-LIFE SENTENCE IS APPROPRIATE.

I WOULD LIKE THE OPPORTUNITY TO BRIEFLY POINT OUT A COUPLE THINGS THAT WERE NOTED IN THE EXHIBIT,

I BELIEVE IT'S EXHIBIT A, TO THE DEFENSE MOTION THAT WAS FILED ON MAY 20TH. THE REVIEW OF THAT EXHIBIT, WHICH IS THE PARALEGAL SENTENCING MEMORANDUM, INDICATES THAT -- WELL, REALLY, A COUPLE OF THINGS THAT ARE TROUBLING. ONE OF THEM IS THAT, ACCORDING TO WHAT'S IN THIS EXHIBIT, THE DEFENDANT IS STILL, NOT JUST DURING THE TRIAL, BUT STILL, AFTER BEING CONVICTED, NOT TAKING RESPONSIBILITY FOR WHAT HE DID IN THIS CASE. HE SAYS ON PAGE 5 OF THAT EXHIBIT THAT "THE WEIRD THING IS IN THIS CASE IT DIDN'T MAKE NO SENSE THAT I'D BE THE ONE TO CAUSE TROUBLE. WHY WOULD I ATTACK THIS GUY? ALL I WAS TRYING TO DO IS SELL, YOU KNOW, THIS GUY SOME RAZOR BLADES. MAYBE IT WAS THE LANGUAGE BARRIER. MAYBE HE HATES JUNKIES. BUT WHEN HE KICKED ME, I THOUGHT HE WAS OUT TO DO DAMAGE. WHAT COULD I DO BUT MAKE HIM STOP?"

I THINK THAT THAT IS, AND AGAIN, WITHOUT BEATING A DEAD HORSE, COMPLETELY INCONSISTENT WITH WHAT'S ON THE VIDEO AND THE TESTIMONY OF THE WITNESSES.

SO IN THAT SENSE, THIS DEFENDANT IS NOT TAKING RESPONSIBILITY FOR HIS CONDUCT IN THIS CASE AND HIS ROLE IN THE SITUATION THAT HE FINDS HIMSELF IN NOW. AND THAT'S, I THINK, A FACTOR THAT THE COURT CAN CONSIDER BOTH -- OR MAINLY WITH REGARD TO WHETHER OR NOT THIS IS SOMEBODY THAT WE BELIEVE IS GONNA BE CHANGED, A CHANGED PERSON, IF THEY WERE -- IF THE COURT WERE TO STRIKE A STRIKE AND, YOU KNOW, LET THIS PERSON OUT OF PRISON EARLIER.

THERE'S ALSO A NUMBER OF EXAMPLES THAT ARE

IN THIS DOCUMENT THAT ARE -- ARE TROUBLING. ONE IS APPARENTLY THIS DEFENDANT HAS BECOME, ACCORDING TO THE DOCUMENT, AN EXPERT AT FAKING THE URINE TESTS. SO COUNSEL SAYS, "HEY, WELL, LET'S GIVE THIS GUY AN OPPORTUNITY TO GET DRUG TREATMENT AND TO REALLY CHANGE HIMSELF," BUT IT APPEARS THAT HE'S TAKEN THE OPPOSITE STANCE IN THE PAST WHEN HE'S HAD OPPORTUNITY TO REFLECT ON HIS PRIOR CONVICTIONS AND TO CHANGE HIS BEHAVIOR AND TO CONFORM HIS BEHAVIOR BASED ON HIS PRIOR PRISON COMMITMENTS TO THE STANDARDS OF SOCIETY.

HE SAYS THAT IN 2006, I BELIEVE, WHEN HE WAS RELEASED FROM PRISON UPSTATE HE TOOK A BUS DOWN TO OAKLAND AND THEN TO L.A., AND HE ADMITS THAT ON THAT BUS TRIP, LITERALLY FROM STATE PRISON AFTER BEING PAROLED, HE GOES AND BUYS COCAINE IN OAKLAND AT A PIT STOP AND THEN BUYS MORE COCAINE WHEN HE GETS DOWN HERE TO L.A. AND THEN ADMITS HE WAS SELLING COCAINE WHEN HE GOT -- YOU KNOW, WITH SOMEBODY THAT HE MET AT UNION STATION. AND THIS IS PRESUMABLY HOURS, IF NOT, YOU KNOW, AT THE MOST, DAYS AFTER BEING PAROLED.

THIS IS SOMEBODY WHO, YOU KNOW, HASN'T BEEN PAROLED IN THE PAST AND THEN HAD, YOU KNOW, 5, 10, 15 YEARS OF, QUOTE/UNQUOTE, GOOD OR HONEST OR, YOU KNOW, FAITHFUL ATTEMPTS AT COMPLYING WITH PAROLE AND COMPLYING WITH MOVING FORWARD. THIS IS SOMEBODY WHO LITERALLY AS SOON AS HE GETS A CHANCE TO DO IT IS OUT THERE COMMITTING MORE CRIMES, BREAKING THE LAW, DESPITE THE FACT THAT HE'S ALREADY BEEN SENT TO PRISON MULTIPLE TIMES FOR DOING THAT

IN THE PAST.

THIS IS SOMEBODY THAT I URGE THE COURT -- IT'S NOT SOMEBODY THAT WE CAN TRUST, YOU KNOW, IN 10 OR 13 YEARS IF HE WERE TO BE PAROLED AND OUT ON THE STREETS AGAIN AT THE AGE OF 60 OR 63. IT'S JUST NOT SOMEBODY WE CAN TRUST TO CHANGE HIS BEHAVIOR. INSTEAD, WE'RE GOING TO BE IN THE SITUATION THAT WE'RE IN RIGHT NOW WHERE THERE ARE MORE VICTIMS. HOPEFULLY, IT WOULDN'T BE THE SITUATION WHERE IT IS NOW WHERE, YOU KNOW, SOMEBODY GOT HURT, BUT, FRANKLY, IT COULD HAVE BEEN WORSE. I MEAN, THIS IS A CASE WHERE THIS DEFENDANT USED A KNIFE ON TWO PEOPLE. AFTER ALL THE PROBLEMS THAT HE'S HAD IN THE PAST, HE'S STILL OUT THERE DOING THE SAME STUFF. THERE'S NO REASON TO THINK IT'S GONNA CHANGE.

AND I JUST WANTED TO HIGHLIGHT THAT, I THINK, THAT IS SUPPORTED NOT JUST BY HIS RECORD, BUT EVEN BY THE DEFENSE PAPERS IN THE CASE THAT WERE FILED ON FRIDAY.

SO WITH THAT I'D SUBMIT.

THE COURT: CAN I INQUIRE WITH RESPECT TO THE PEOPLE'S POSITION?

YOUR POSITION IS FOR THE COURT TO DENY THE *ROMERO* MOTION AND TO IMPOSE THE FIVE-YEAR 667 ENHANCE -- ENHANCEMENT, WHICH THE COURT ACTUALLY HAS NO DISCRETION TO STRIKE, BUT THEN TO GO AHEAD AND STRIKE THE INDIVIDUAL ONE-YEAR PRIORS. AND THEN IS IT YOUR POSITION, SINCE IT'S 30 TO LIFE, THAT THE COURT WOULD IMPOSE CONCURRENT SENTENCES WITH RESPECT TO BOTH COUNTS?

I ASSUME YOU'RE NOT ASKING FOR 60 TO LIFE.

MR. CANO: I'M NOT, YOUR HONOR. I WOULD ASK THE COURT TO IMPOSE CONCURRENT TIME ON THE INDIVIDUAL COUNTS. I THINK, FROM WHAT THE COURT SAW, IF IT'S NOT -- THERE ARE SEPARATE VICTIMS IN THE TWO COUNTS, BUT IT'S CLEARLY FROM THE VIDEO ONE COURSE OF CONDUCT, AND THE TWO VICTIMS ARE LITERALLY STANDING RIGHT NEXT TO EACH OTHER. SO, YEAH, THE COURT WOULD ASK -- OR THE PEOPLE WOULD ASK THE COURT TO IMPOSE JUST THE 30, NOT ANY MORE THAN THAT.

THE COURT: ALL RIGHT. MR. MC GURK, ANYTHING ELSE YOU WANT TO ADD?

MR. MC GURK: JUST BRIEFLY. I THINK IT'S IMPORTANT TO NOTE THAT THE REASON THAT THE SENTENCING REPORT WAS SUBMITTED IN THE MANNER IT WAS, I THINK IT SHOWS ACTUALLY A GREAT DEAL OF CANDOR ON MR. WILLARD'S PART. THIS IS NOT A WHOA-IS-ME STATEMENT.

MR. WILLARD TALKS QUITE SPECIFICALLY AND CLEARLY ABOUT HOW HE WAS ABLE TO USE DRUGS WHILE IN PRISON, THAT HE WAS ABLE TO GET NARCOTICS SHORTLY AFTER HIS RELEASE FROM PRISON. THAT'S WHAT DRUG ADDICTS DO, THEY BUY COCAINE AS SOON AS THEY CAN.

HE HAS RECEIVED LITERALLY NO SUPERVISION OR TREATMENT THROUGH PAROLE. IN FACT, I BELIEVE IT'S MENTIONED IN THE REPORT THAT THE PAROLE OFFICER DIDN'T CARE IF HE WAS ABUSING DRUGS OR ALCOHOL, JUST LEARN HOW TO HANDLE IT, WHICH IS SORT OF A FLIPPANT STATEMENT, IF YOU THINK ABOUT IT, WHEN HE'S TALKING TO SOMEONE WHO HAS DOCUMENTED ISSUES. THE REASON IT WAS SUBMITTED IN THAT

REGARD IS MR. WILLARD HAS BEEN QUITE HONEST WITH THE COURT. THAT'S NOT SOMETHING THAT WAS MADE UP. IT CERTAINLY DOESN'T READ THAT WAY.

IT'S NOT A SELF-SERVING STATEMENT TO SAY WHAT HIS BEHAVIOR HAS BEEN IN TERMS OF HIS DRUG OR ALCOHOL ADDICTIONS. I THINK HE'S BEEN HONEST WITH THE COURT AND THAT'S WHY I SUBMITTED IT, BECAUSE IT SHOWS CLEARLY THE PROBLEMS HE'S HAD IN THAT REGARD.

ALSO, IN TERMS OF HIS STANCE ABOUT THE DIRECTION OF THE TRIAL, THE JURY MADE THEIR DECISION. MR. WILLARD MADE CLEAR THAT HE DID HAVE A WEAPON, THAT HE DID STRIKE MR. HERNANDEZ. HE DIDN'T HAVE TO DO THAT. HE DIDN'T HAVE TO TESTIFY. IN FACT, ON THE TAPE YOU CAN'T EVEN SEE THE KNIFE, BUT HE DID IT ANYWAY.

SO I THINK CERTAINLY YOU CAN ARGUE TWO DIFFERENT WAYS ABOUT THE NATURE OF THE EVIDENCE, BUT I DON'T THINK MR. WILLARD HAS BEEN COMPLETELY WITHOUT CANDOR IN FRONT OF THIS COURT.

AND I'D SUBMIT ON THAT.

THE COURT: ALL RIGHT. AND I WILL NOTE I DO THINK THAT THE STATEMENTS IN THE ATTACHMENT REGARDING THE DRUG ADDICTION ARE WITH CANDOR, AND IT IS SOMETHING THAT IS HELPFUL.

I WOULD SAY THE LACK OF TAKING RESPONSIBILITY FOR THE UNDERLYING CRIME IS TROUBLING BECAUSE IT CAUSES THE COURT TO HAVE A CONCERN WHICH IS CONSISTENT WITH THE THREE-STRIKES LAW THAT WHEN MR. WILLARD IS RELEASED, THAT HE WOULD ENGAGE IN CONTINUED

VIOLENT CONDUCT. AND IT'S DIFFICULT FOR THIS COURT TO FIND THAT IF HE WERE TREATED FOR HIS DRUG PROBLEMS, THAT HE WOULD NOT REOFFEND, AND I WOULD HAVE TO SAY THIS INCIDENT, WHILE I AGREE WITH MR. MC GURK THAT IT IS NOT ON THE HIGHEST LEVEL OF WHAT AN ASSAULT WITH A DEADLY WEAPON COULD BE -- THERE COULD BE A STABBING. THE JURY COULD HAVE FOUND THE GREAT BODILY INJURY ALLEGATION TO BE TRUE. AT THE SAME TIME, IT'S A TROUBLING INCIDENT BECAUSE THERE WAS NO PROVOCATION.

FROM WHAT I CAN TELL, MR. WILLARD HAS SOME ANGER OR HOSTILITY INSIDE HIM, PERHAPS DIRECTED TOWARDS A PARTICULAR ETHNICITY, BUT IN ANY EVENT, TOWARDS THE TWO INDIVIDUALS ON THE BUS AND OUT OF NOWHERE CAME, PUSHED THEM, CALLED THEM NAMES, AND THEN USED THE KNIFE.

SO I AM GOING TO DENY THE *ROMERO* MOTION. I DO BELIEVE THAT IN THIS CASE, FOR THE REASONS I'VE SET FORTH ON THE RECORD, THAT MR. WILLARD IS WITHIN THE SPIRIT OF THE LAW WHICH DOES INTEND THAT REPEAT OFFENDERS AND THOSE WHO HAVE BEEN CONVICTED PREVIOUSLY OF SERIOUS OR VIOLENT FELONIES SERVE LONGER SENTENCES, AND THAT WAS A DECISION MADE BY THE LEGISLATURE. AND IN MY REVIEW OF THE FACTS OF THIS CASE AND FROM WHAT I'VE SET FORTH IN THE RECORD, I DO NOT THINK THAT THIS CASE IS PROPERLY OUTSIDE OF THAT SCHEME.

HAVING SAID THAT, MY TENTATIVE ON THE SENTENCE WOULD BE THE 25 TO LIFE PLUS ADDING THE FIVE YEARS, WHICH THE COURT DOES NOT HAVE DISCRETION, BUT STRIKING WHAT I DO HAVE DISCRETION TO STRIKE. SO IT WOULD

BE 30 TO LIFE, AND THEN IT WOULD RUN CONCURRENT WITH RESPECT TO COUNT 1 AND 2. SO IT'S ONE 30-TO-LIFE SENTENCE LESS ANY CREDIT THAT'S GIVEN.

MR. MC GURK, DO YOU WANT TO BE HEARD ON THE SENTENCING PART?

MR. MC GURK: IT'S -- CONSIDERING THE DENIAL OF THE *ROMERO* MOTION, THE DEFENSE WILL SUBMIT.

THE COURT: ALL RIGHT. AND THE PEOPLE SUBMIT?

MR. CANO: YES.

THE COURT: WOULD MR. WILLARD LIKE TO BE HEARD?

MR. MC GURK: DO YOU WANT TO BE HEARD?

THE DEFENDANT: (SHAKES HEAD).

MR. MC GURK: YOU DON'T?

THE DEFENDANT: (SHAKES HEAD).

MR. MC GURK: NO, YOUR HONOR.

THE COURT: ALL RIGHT. AND I ASSUME THERE ARE NO VICTIMS PRESENT WHO WISH TO BE HEARD?

MR. CANO: CORRECT, YOUR HONOR.

THE COURT: MR. MC GURK, ON BEHALF OF MR. WILLARD, DO YOU WAIVE ARRAIGNMENT FOR JUDGMENT, TIME FOR SENTENCING?

MR. MC GURK: YES, NO LEGAL CAUSE.

THE COURT: ALL RIGHT.

ALL RIGHT. THE FOLLOWING SENTENCE IS TO BE IMPOSED:

FIRST, ON COUNT 1, FOR A VIOLATION OF PENAL CODE SECTION 245(A)(1), DEFENDANT IS TO BE IMPRISONED IN STATE PRISON FOR A TOTAL AGGREGATE TERM OF 30 YEARS TO

LIFE. IT WILL BE A FORTHWITH COMMITMENT. THAT INCLUDES THE BASE TERM OF 25 YEARS TO LIFE PLUS THE FIVE-YEAR ENHANCEMENT PURSUANT TO PENAL CODE SECTION 667(A)(1). AND, AS CORRECTLY STATED IN THE PAPERS, WHILE THERE ARE ALLEGATIONS OF TWO CRIMES WITH RESPECT TO 667(A)(1), ONLY ONE WOULD BE IMPOSED. SO THAT WOULD BE WITH RESPECT TO THE 1987 PRIOR IN CASE A635459.

THE COURT WILL BE DISMISSING IN THE INTEREST OF JUSTICE THE ADDITIONAL PRISON TIME THAT'S ALLEGED WITH RESPECT TO THE PRIORS UNDER 667.5(B). SO THOSE WILL NOT BE IMPOSED. THAT'S WITH RESPECT TO COUNT 1.

WITH RESPECT TO COUNT 2, DEFENDANT IS TO BE SENTENCED TO 30 YEARS TO LIFE. HOWEVER, IT WILL BE CONCURRENT WITH THE PRINCIPLE TERM.

AND HOW MANY DAYS' CREDIT DOES HE HAVE?

MR. MC GURK: ACCORDING TO THE LAST PROBATION OFFICER'S REPORT WHICH IS DATED FOR TODAY, HE HAS 410 ACTUAL DAYS.

THE COURT: HE HAS 410. AND HAVE YOU CALCULATED THE GOOD TIME?

SO HE WOULD FALL UNDER -- DOES HE FALL UNDER THE 15 PERCENT OR THE ONE-THIRD CREDIT?

I BELIEVE HE WOULD FALL UNDER THE 15 PERCENT, ALTHOUGH THE JURY FOUND NO GBI.

MR. MC GURK: SO 410 PLUS ANOTHER 60 GOOD TIME/WORK TIME.

THE COURT: OKAY. AND OFF THE RECORD FOR A SECOND.

(DISCUSSION HELD OFF THE RECORD.)

THE COURT: OKAY. SO BACK ON THE RECORD.

I WAS JUST CONFIRMING WITH COUNSEL, IT IS MY UNDERSTANDING THAT IT WOULD BE THE 15 PERCENT, IN WHICH CASE HE WOULD HAVE CREDIT FOR 410 ACTUAL, PLUS 60 GOOD TIME/WORK TIME. IF COUNSEL CONFIRMS THAT IT'S THE ONE-THIRD AND NOT THE 15 PERCENT, WE CAN AT THAT POINT MODIFY THE CREDITS SO THAT WE HAVE IT ACCURATE. SO THAT WOULD BE 470 DAYS' CREDIT.

YOU'LL BE REQUIRED TO PAY THE FINES AND FEES AS SET FORTH BELOW, AND YOU ARE TO PROVIDE A DNA SAMPLE AND PRINT IMPRESSIONS.

AND THE FEES ARE A $200 RESTITUTION FINE, $200 PAROLE REVOCATION FINE. HOWEVER, IT WILL BE STAYED AND ONLY APPLY IF YOU VIOLATE PAROLE. $40 COURT SECURITY FEE AND A $30 CRIMINAL CONVICTION ASSESSMENT.

AND, MR. WILLARD, YOU DO HAVE A RIGHT TO APPEAL FROM THE SENTENCE. IF YOU WISH TO APPEAL, YOU MUST FILE A WRITTEN NOTICE OF APPEAL WITH THE CLERK OF THE COURT WITHIN 60 DAYS OF TODAY. IF YOU APPEAL AND ARE UNABLE TO HIRE A LAWYER, THE APPELLATE COURT WILL APPOINT A LAWYER TO REPRESENT YOU ON APPEAL AT NO COST TO YOU.

YOU ALSO HAVE A RIGHT TO A FREE TRANSCRIPT AND RECORD OF THE NECESSARY PROCEEDINGS IN THIS COURT. THE WRITTEN NOTICE OF APPEAL MUST BE TIMELY FILED.

DO YOU UNDERSTAND THAT?

THE DEFENDANT: UH-HUH.

THE COURT: IS THAT A "YES"?

THE DEFENDANT: YES.

THE COURT: ALL RIGHT. AND BECAUSE OF YOUR CONVICTION OF A FELONY, AS YOU KNOW, UNDER PENAL CODE SECTION 12021(D)(1), YOU ARE UNABLE TO POSSESS ANY FIREARM.

FINALLY, AFTER YOU SERVE YOUR PRISON SENTENCE, YOU MAY BE RELEASED ON PAROLE FOR A PERIOD OF YOUR LIFE GIVEN THE LIFE SENTENCE. IF YOU VIOLATE YOUR PAROLE, YOU CAN BE RETURNED TO PRISON FOR UP TO 24 MONTHS FOR A VIOLATION OF PAROLE. IF YOU ABSCOND, ANY PERIOD FOLLOWING SUSPENSION OR REVOCATION OF PAROLE UNTIL YOU'RE RETURNED TO CUSTODY WILL NOT APPLY TO THE LIMITS ON THE PAROLE TERM.

THIS WILL BE A FORTHWITH COMMITMENT.

ANYTHING ELSE I'M MISSING?

MR. CANO: NO, YOUR HONOR.

MR. MC GURK: NO, YOUR HONOR.

THE COURT: ALL RIGHT.

AND, MR. WILLARD, GOOD LUCK TO YOU. YOU ARE COMMITTED TO THE CUSTODY OF THE SHERIFF FOR DELIVERY TO THE DEPARTMENT OF CORRECTIONS UPON PREPARATION OF THE ABSTRACT.

THANK YOU, COUNSEL.

MR. CANO: THANK YOU.

(AT 2:35 P.M., THE MATTER WAS CONCLUDED.)

THE DEFENDANT: (NODS HEAD).

THE COURT: YES?

THE DEFENDANT: YES.

THE COURT: OKAY. COUNSEL JOINS?

MR. MC GURK: I DO, YOUR HONOR.

THE COURT: OKAY. VERY WELL.

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

THE COURT: GOOD AFTERNOON AND WELCOME.

WE'RE BACK ON THE RECORD IN THE MATTER OF PEOPLE VERSUS CHARLES WILLARD. MR. WILLARD IS PRESENT. BOTH COUNSEL ARE PRESENT, AND ALL OF OUR JURORS AND ALTERNATE ARE PRESENT.

SO THANK YOU ALL. AT THIS TIME I AM READY TO INSTRUCT YOU ON THE LAW. WHEN YOU START YOUR DELIBERATIONS, YOU WILL HAVE TWO COPIES OF THE JURY INSTRUCTIONS IN THE JURY ROOM. SO YOU'RE WELCOME TO TAKE NOTES, BUT YOU DO NOT HAVE TO TAKE NOTES IF YOU DO NOT WANT.

ALL RIGHT.

JURY INSTRUCTIONS

THE COURT: (READING).

MEMBERS OF THE JURY, I WILL NOW

IS PRESUMED TO BE INNOCENT. THIS PRESUMPTION REQUIRES THAT THE PEOPLE PROVE EACH ELEMENT OF A CRIME BEYOND A REASONABLE DOUBT. WHENEVER I TELL YOU THE PEOPLE MUST PROVE SOMETHING, I MEAN THEY MUST PROVE IT BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU WITH AN ABIDING CONVICTION THAT THE CHARGE IS TRUE. THE EVIDENCE NEED NOT ELIMINATE ALL POSSIBLE DOUBT BECAUSE EVERYTHING IN LIFE IS OPEN TO SOME POSSIBLE OR IMAGINARY DOUBT.

IN DECIDING WHETHER THE PEOPLE HAVE PROVED THEIR CASE BEYOND A REASONABLE DOUBT, YOU MUST IMPARTIALLY COMPARE AND CONSIDER ALL THE EVIDENCE THAT WAS RECEIVED THROUGHOUT DURING THE ENTIRE TRIAL. UNLESS THE EVIDENCE PROVES THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, HE IS ENTITLED TO AN ACQUITTAL AND YOU MUST FIND HIM NOT GUILTY.

YOU MUST DECIDE WHAT THE FACTS ARE IN THIS CASE. YOU MUST USE ONLY THE EVIDENCE THAT WAS PRESENTED IN THE COURTROOM. EVIDENCE IS THE SWORN

TESTIMONY OF WITNESSES, THE EXHIBITS ADMITTED INTO EVIDENCE, AND ANYTHING ELSE I TOLD YOU TO CONSIDER AS EVIDENCE.

NOTHING THAT THE ATTORNEYS SAY IS EVIDENCE. IN THEIR OPENING STATEMENTS AND CLOSING ARGUMENTS, THE ATTORNEYS DISCUSS THE CASE, BUT THEIR REMARKS ARE NOT EVIDENCE. THEIR QUESTIONS ARE NOT EVIDENCE. ONLY THE WITNESSES' ANSWERS ARE EVIDENCE. THE ATTORNEYS' QUESTIONS ARE SIGNIFICANT ONLY IF THEY HELPED YOU TO UNDERSTAND THE WITNESSES' ANSWERS. DO NOT ASSUME THAT SOMETHING IS TRUE JUST BECAUSE ONE OF THE ATTORNEYS ASKED A QUESTION THAT SUGGESTED IT WAS TRUE.

DURING THE TRIAL, THE ATTORNEYS MAY HAVE OBJECTED TO QUESTIONS OR MOVED TO STRIKE ANSWERS GIVEN BY THE WITNESSES. I RULED ON THE OBJECTIONS ACCORDING TO THE LAW. IF I SUSTAINED AN OBJECTION, YOU MUST IGNORE THE QUESTION. IF THE WITNESS WAS NOT PERMITTED TO ANSWER, DO NOT GUESS WHAT THE ANSWER MIGHT HAVE BEEN OR WHY I RULED AS I DID. IF I ORDER TESTIMONY STRICKEN FROM THE RECORD,

YOU MUST DISREGARD IT AND MUST NOT CONSIDER THAT TESTIMONY FOR ANY PURPOSE.

YOU MUST DISREGARD ANYTHING YOU SAW OR HEARD WHEN THE COURT WAS NOT IN SESSION EVEN IF IT WAS DONE OR SAID BY ONE OF THE PARTIES OR WITNESSES.

THE COURT REPORTER HAS MADE A RECORD OF EVERYTHING THAT WAS SAID DURING THE TRIAL. IF YOU DECIDE IT IS NECESSARY, YOU MAY ASK THAT THE COURT REPORTER'S NOTES BE READ TO YOU. YOU MUST ACCEPT THE COURT REPORTER'S NOTES AS ACCURATE.

FACTS MAY BE PROVED BY DIRECT OR CIRCUMSTANTIAL EVIDENCE OR BY A COMBINATION OF BOTH. DIRECT EVIDENCE CAN PROVE A FACT BY ITSELF. FOR EXAMPLE, IF A WITNESS TESTIFIES HE SAW IT RAINING OUTSIDE BEFORE HE CAME INTO THE COURTHOUSE, THAT TESTIMONY IS DIRECT EVIDENCE THAT IT WAS RAINING. CIRCUMSTANTIAL EVIDENCE ALSO MAY BE CALLED INDIRECT EVIDENCE. CIRCUMSTANTIAL EVIDENCE DOES NOT DIRECTLY PROVE THE FACT TO BE DECIDED, BUT IS EVIDENCE OF ANOTHER FACT OR

GROUP OF FACTS FROM WHICH YOU MAY CONCLUDE THE TRUTH OF THE FACT IN QUESTION. FOR EXAMPLE, IF A WITNESS TESTIFIES THAT HE SAW SOMEONE COME INSIDE WEARING A RAINCOAT COVERED WITH DROPS OF WATER, THAT TESTIMONY IS CIRCUMSTANTIAL EVIDENCE BECAUSE IT MAY SUPPORT A CONCLUSION THAT IT WAS RAINING OUTSIDE.

BOTH DIRECT AND CIRCUMSTANTIAL EVIDENCE ARE ACCEPTABLE TYPES OF EVIDENCE TO PROVE OR DISPROVE THE ELEMENTS OF THE CHARGE, INCLUDING INTENT AND MENTAL STATE AND ACTS NECESSARY TO A CONVICTION, AND NEITHER IS NECESSARILY MORE RELIABLE THAN THE OTHER. NEITHER IS ENTITLED TO ANY GREATER WEIGHT THAN THE OTHER. YOU MUST DECIDE WHETHER A FACT IN ISSUE HAS BEEN PROVED BASED ON ALL THE EVIDENCE.

BEFORE YOU MAY RELY ON CIRCUMSTANTIAL EVIDENCE TO CONCLUDE THAT A FACT NECESSARY TO FIND THE DEFENDANT GUILTY HAS BEEN PROVED, YOU MUST BE CONVINCED THAT THE PEOPLE HAVE PROVED EACH FACT ESSENTIAL TO THAT CONCLUSION BEYOND A REASONABLE DOUBT.

ALSO, BEFORE YOU MAY RELY ON CIRCUMSTANTIAL EVIDENCE TO FIND THE DEFENDANT GUILTY, YOU MUST BE CONVINCED THAT THE ONLY REASONABLE CONCLUSION SUPPORTED BY THE CIRCUMSTANTIAL EVIDENCE IS THAT THE DEFENDANT IS GUILTY. IF YOU CAN DRAW TWO OR MORE REASONABLE CONCLUSIONS FROM THE CIRCUMSTANTIAL EVIDENCE, AND ONE OF THOSE REASONABLE CONCLUSIONS POINTS TO INNOCENCE AND ANOTHER TO GUILT, YOU MUST ACCEPT THE ONE THAT POINTS TO INNOCENCE. HOWEVER, WHEN CONSIDERING CIRCUMSTANTIAL EVIDENCE, YOU MUST ACCEPT ONLY REASONABLE CONCLUSIONS AND REJECT ANY THAT ARE UNREASONABLE.

THE PEOPLE MUST PROVE NOT ONLY THAT THE DEFENDANT DID THE ACTS CHARGED, BUT ALSO THAT HE ACTED WITH A PARTICULAR MENTAL STATE. THE INSTRUCTION FOR THE CRIME EXPLAINS THE MENTAL STATE REQUIRED.

A MENTAL STATE MAY BE PROVED BY CIRCUMSTANTIAL EVIDENCE.

BEFORE YOU MAY RELY ON CIRCUMSTANTIAL EVIDENCE TO CONCLUDE THAT A FACT NECESSARY TO FIND THE

DEFENDANT GUILTY HAS BEEN PROVED, YOU MUST BE CONVINCED THAT THE PEOPLE HAVE PROVED EACH FACT ESSENTIAL TO THAT CONCLUSION BEYOND A REASONABLE DOUBT.

ALSO, BEFORE YOU MAY RELY ON CIRCUMSTANTIAL EVIDENCE TO CONCLUDE THAT THE DEFENDANT HAD THE REQUIRED MENTAL STATE, YOU MUST BE CONVINCED THAT THE ONLY REASONABLE CONCLUSION SUPPORTED BY THE CIRCUMSTANTIAL EVIDENCE IS THAT THE DEFENDANT HAD THE REQUIRED MENTAL STATE. IF YOU CAN DRAW TWO OR MORE REASONABLE CONCLUSIONS FROM THE CIRCUMSTANTIAL EVIDENCE, AND ONE OF THOSE REASONABLE CONCLUSIONS SUPPORTS A FINDING THAT THE DEFENDANT DID HAVE THE REQUIRED MENTAL STATE AND ANOTHER REASONABLE CONCLUSION SUPPORTS A FINDING THAT THE DEFENDANT DID NOT, YOU MUST CONCLUDE THAT THE REQUIRED MENTAL STATE WAS NOT PROVED BY THE CIRCUMSTANTIAL EVIDENCE. HOWEVER, WHEN CONSIDERING CIRCUMSTANTIAL EVIDENCE, YOU MUST ACCEPT ONLY REASONABLE CONCLUSIONS AND REJECT ANY THAT ARE UNREASONABLE.

YOU ALONE MUST JUDGE THE CREDIBILITY OR BELIEVABILITY OF THE

WITNESSES. IN DECIDING WHETHER TESTIMONY IS TRUE AND ACCURATE, USE YOUR COMMON SENSE AND EXPERIENCE. THE TESTIMONY OF EACH WITNESS MUST BE JUDGED BY THE SAME STANDARD. YOU MUST SET ASIDE ANY BIAS OR PREJUDICE YOU MAY HAVE, INCLUDING ANY BASED ON THE WITNESS' GENDER, RACE, RELIGION OR NATIONAL ORIGIN. YOU MAY BELIEVE ALL, PART, OR NONE OF THE WITNESS' TESTIMONY. CONSIDER THE TESTIMONY OF EACH WITNESS AND DECIDE HOW MUCH OF IT YOU BELIEVE.

IN EVALUATING A WITNESS' TESTIMONY, YOU MAY CONSIDER ANYTHING THAT REASONABLY TENDS TO PROVE OR DISPROVE THE TRUTH OR ACCURACY OF THAT TESTIMONY. AMONG THE FACTORS YOU MAY CONSIDER ARE THE FOLLOWING:

HOW WELL COULD THE WITNESS SEE, HEAR, OR OTHERWISE PERCEIVE THE THINGS ABOUT WHICH THE WITNESS TESTIFIED?

HOW WELL WAS THE WITNESS ABLE TO REMEMBER AND DESCRIBE WHAT HAPPENED?

WHAT WAS THE WITNESS' BEHAVIOR WHILE TESTIFYING?

DID THE WITNESS UNDERSTAND THE QUESTIONS AND EVEN THEM DIRECTLY?

WAS THE WITNESS' TESTIMONY INFLUENCED BY A FACTOR SUCH AS BIAS OR PREJUDICE, A PERSONAL RELATIONSHIP WITH SOMEONE INVOLVED IN THE CASE, OR A PERSONAL INTEREST IN HOW THE CASE IS DECIDED?

WHAT WAS THE WITNESS' ATTITUDE ABOUT THE CASE OR ABOUT TESTIFYING?

DID THE WITNESS MAKE A STATEMENT IN THE PAST THAT IS CONSISTENT OR INCONSISTENT WITH HIS OR HER TESTIMONY?

HOW REASONABLE IS THE TESTIMONY WHEN YOU CONSIDER ALL THE OTHER EVIDENCE IN THE CASE?

DID OTHER EVIDENCE PROVE OR DISPROVE ANY FACT ABOUT WHICH THE WITNESS TESTIFIED?

DID THE WITNESS ADMIT TO BEING UNTRUTHFUL?

HAS THE WITNESS BEEN CONVICTED OF A FELONY?

HAS THE WITNESS ENGAGED IN OTHER CONDUCT THAT REFLECTS ON HIS OR HER BELIEVABILITY?

DO NOT AUTOMATICALLY REJECT

TESTIMONY JUST BECAUSE OF INCONSISTENCIES OR CONFLICTS. CONSIDER WHETHER THE DIFFERENCES ARE IMPORTANT OR NOT. PEOPLE SOMETIMES HONESTLY FORGET THINGS OR MAKE MISTAKES ABOUT WHAT THEY REMEMBER. ALSO, TWO PEOPLE MAY WITNESS THE SAME EVENT YET SEE OR HEAR IT DIFFERENTLY.

IF YOU DO NOT BELIEVE A WITNESS' TESTIMONY THAT HE OR SHE NO LONGER REMEMBERS SOMETHING, THAT TESTIMONY IS INCONSISTENT WITH THE WITNESS' EARLIER STATEMENT ON THAT SUBJECT.

IF YOU DECIDE THAT A WITNESS DELIBERATELY LIED ABOUT SOMETHING SIGNIFICANT IN THE CASE, YOU SHOULD CONSIDER NOT BELIEVING ANYTHING THAT WITNESS SAYS. OR, IF YOU THINK THE WITNESS LIED ABOUT SOME THINGS BUT TOLD THE TRUTH ABOUT OTHERS, YOU MAY SIMPLY ACCEPT THE PART THAT YOU THINK IS TRUE AND IGNORE THE REST.

EVERY CRIME OR OTHER ALLEGATION CHARGED IN THIS CASE REQUIRES PROOF OF THE UNION OR JOINT OPERATION OF ACT AND WRONGFUL INTENT.

IN ORDER TO BE GUILTY OF THE

AS FAR FROM HIM AS THEY CAN GET. AND THEN WHEN THEY TRY TO MOVE, HE CUTS MR. HERNANDEZ LEAVING HIM WITH THAT PERMANENT SCAR.

LADIES AND GENTLEMEN, THIS IS NOT SELF-DEFENSE. THIS IS A PERSON WHO IS GUILTY OF ASSAULT ON MR. HERNANDEZ, HE'S GUILTY OF ASSAULT ON MR. PONCE, AND HE'S GUILTY OF GREAT BODILY INJURY FOR LEAVING MR. HERNANDEZ WITH THAT PERMANENT SCAR TO REMIND HIM OF THAT DAY.

I URGE YOU TO PLEASE COME BACK WITH A SWIFT GUILTY VERDICT.

THANK YOU.

THE COURT: OKAY. VERY WELL.

TURNING TO THE DEFENSE FOR CLOSING ARGUMENT, MR. MC GURK.

MR. MC GURK: THANK YOU, YOUR HONOR.

CLOSING ARGUMENT

MR. MC GURK: GOOD AFTERNOON, LADIES AND GENTLEMEN. THANK YOU FOR YOUR PATIENCE.

THIS IS THE ONLY TIME I GET TO TALK TO YOU BECAUSE, AS YOU'VE ALREADY HEARD, THE PEOPLE HAVE THE BURDEN OF PROVING THE CASE AND THEY GET TO GO LAST.

AND I'D LIKE TO FIRST TALK ABOUT WHAT -- THIRD TIME'S A CHARM.

I'D LIKE TO FIRST TALK TO YOU ABOUT WHAT

THE STANDARD OF PROOF IS IN THE CASE, AND IT'S BEYOND A REASONABLE DOUBT. AND I DON'T NEED TO SIT HERE AND GO ON AND ON ABOUT WHAT THAT MEANS. IT'S PRETTY SELF-EVIDENT. BUT I'D JUST LIKE TO SAY IT'S THE HIGHEST LEGAL STANDARD WE HAVE. IT'S HIGHER THAN THE STANDARD WE USE TO IMPEACH THE PRESIDENT. THAT'S CLEAR AND CONVINCING. THE STANDARD OF PROOF IS PROOF BEYOND A REASONABLE DOUBT. WHAT THAT MEANS IS THE PEOPLE NEED TO PROVE EACH ELEMENT OF THE CRIME CHARGED BEYOND A REASONABLE DOUBT. THEY ALSO HAVE TO PROVE THAT IT WASN'T SELF-DEFENSE BEYOND A REASONABLE DOUBT.

AND THERE'S THREE MAIN ISSUES IN THIS CASE. NUMBER ONE, WHETHER MR. WILLARD IS GUILTY OF ASSAULT WITH A DEADLY WEAPON UPON MR. HERNANDEZ; NUMBER TWO, ON MR. PONCE; AND, NUMBER THREE, WHETHER GREAT BODILY INJURY WAS ADMINISTERED TO MR. HERNANDEZ.

I'D LIKE TO START WITH THE LAST ONE, GREAT BODILY INJURY. AND YOU'RE GOING TO SEE THE INSTRUCTION. GREAT BODILY INJURY IS SERIOUS OR SUBSTANTIAL INJURY, MORE THAN MINOR OR MODERATE HARM. NOW, AS YOU CAN SEE RIGHT HERE, THIS IS A LETTER FROM ST. VINCENT HOSPITAL WHERE MR. HERNANDEZ SAYS HE WENT ON THE DAY IN QUESTION. "NO RECORDS FOR THE ABOVE PATIENT." ZERO.

MR. HERNANDEZ TESTIFIED THAT HE HAD A CUT THAT WAS ABOUT -- I THINK AN INCH AND A HALF IS WHAT HE SAID, BETWEEN ONE AND TWO INCHES. HE SAID HE GOT FIVE STITCHES THAT DAY, YET HE SAID HE NEVER WENT BACK TO THE HOSPITAL. NORMALLY, IF YOU HAVE STITCHES, YOU GET THEM

OUT. NEVER WENT BACK TO THE HOSPITAL.

HE WAS INTERVIEWED BY POLICE FOR 20 TO 30 MINUTES. NO ONE RUSHED HIM TO THE HOSPITAL. HE'S STANDING THERE GIVING AN INTERVIEW WITH POLICE. IF THIS ISN'T MODERATE HARM OR MINOR HARM, WHAT IS?

AND IF YOU TAKE ALL OF THE INJURIES THAT HAVE BEEN CAUSED BY ACTS, FROM DEATH ALL THE WAY DOWN TO A PAPER CUT, AND YOU RANKED THEM, WHERE WOULD THIS BE? WOULD IT BE SERIOUS AND SUBSTANTIAL INJURY, OR WOULD IT BE MODERATE OR MINOR HARM? AND I'D ARGUE, LADIES AND GENTLEMEN, IT'S MODERATE AT BEST. IT'S A ONE-AND-A-HALF-INCH CUT THAT QUITE POSSIBLY HE DIDN'T SEEK ANY MEDICAL ATTENTION WHATSOEVER. HE SAYS HE WENT. I CAN'T SAY FOR CERTAIN EITHER WAY. I WASN'T THERE. I JUST HAVE THE LETTER FROM THE HOSPITAL THAT SAYS, "NO RECORDS."

HE GAVE AN INTERVIEW, WAS NOT RACED TO THE HOSPITAL IN SOME AMBULANCE. EVEN THE OFFICER SAID, "IT DIDN'T SEEM LIKE A LIFE-THREATENING INJURY TO ME." IT'S PRETTY OBVIOUS WHAT IT IS. IT'S A CUT.

AND I'M NOT TRYING TO MINIMIZE THIS MAN'S INJURY. I'M NOT A TOUGH GUY, OR CERTAINLY NO MORE THAN ANYONE ELSE. NO ONE LIKES BEING CUT. BUT AT THE SAME TIME WE HAVE CERTAIN CRIMES AND CERTAIN ENHANCEMENTS, AND THIS CRIME MAKES IT SERIOUS, MORE SERIOUS, YOU KNOW, GREAT BODILY INJURY, AND THE BOTTOM LINE IS IT'S SIMPLY NOT A SERIOUS OR SUBSTANTIAL INJURY. IT'S A MODERATE INJURY. NO ONE LIKES THAT, BUT IT'S ALSO NOT AN ENHANCEMENT, AND THE PEOPLE HAVE NOT SHOWN THAT.

SECOND ISSUE, MR. PONCE. MR. PONCE HIMSELF TESTIFIED THAT MR. WILLARD HAD -- I BELIEVE HE DESCRIBED IT AS A LUNGE, TWO LUNGES WITH THE KNIFE. AND IF THERE'S -- IF I MISS -- IF I MISSTATE THE TESTIMONY IN ANY WAY, YOU CAN GET READBACK. IF YOU HAVE A QUESTION, YOU CAN GO CHECK IT OUT AT YOUR LEISURE BACK THERE.

HE SAID THE FIRST TIME AS THE KNIFE WENT FORWARD IT HIT MR. HERNANDEZ' BACKPACK, HIS BACKPACK, AND THE SECOND TIME WAS THE ONE THAT MADE CONTACT WITH MR. HERNANDEZ' ARM. TWO. TWO LUNGES. SO WHERE IS THE LUNGE ON MR. PONCE? WHERE IS THE ASSAULT? YOU CAN'T MAKE EVERYONE ON THE BUS A VICTIM OF ASSAULT WITH A DEADLY WEAPON SIMPLY BECAUSE THEY WERE THERE.

MR. HERNANDEZ IS THE MAIN PERSON INVOLVED HERE, MR. HERNANDEZ AND MR. WILLARD. MR. PONCE'S IN THE AREA, NO QUESTION, BUT THE PEOPLE'S OWN WITNESS TESTIFIED TWO LUNGES WITH THE KNIFE, ONE HIT MR. HERNANDEZ' BACK, ONE HIT HIS ARM. THAT'S THE TESTIMONY. YOU CAN'T MAKE UP AN ASSAULT BY SAYING, "WELL, PROBABLY THERE WAS A THIRD ONE OR PROBABLY A FOURTH ONE." THE TESTIMONY IS WHAT IT IS. THERE'S NO ASSAULT ON MR. PONCE.

THOSE TWO ISSUES I THINK ARE EASIER. THE BIG ONE'S THE THIRD, WHETHER MR. WILLARD WAS USING LAWFUL SELF-DEFENSE AGAINST MR. HERNANDEZ. AND LET'S TALK ABOUT THAT.

I THOUGHT MR. WILLARD, AS HE TESTIFIED THIS MORNING, WAS PRETTY SELF-EXPLANATORY. I THINK HE WAS PRETTY DIRECT IN HIS TESTIMONY. HE DIDN'T HAVE TO GET UP

THERE. HE HAS A CONSTITUTIONAL RIGHT, WE TALKED ABOUT THIS EARLIER, JUST TO SIT THERE AND SAY NOTHING. BUT HE GOT UP THERE, LOOKED YOU IN THE EYE, TESTIFIED, ADMITTED THAT HE HAS TWO FELONY THEFT PRIORS IN HIS PAST. THAT'S NOT EASY TO DO. IT'S EMBARRASSING, BUT HE DID IT ANYWAY. HE WAS STRAIGHT WITH YOU. AND WHAT DID HE SAY?

FIRST OF ALL, THE VIDEO THAT YOU CAN SEE AS MUCH AS YOU WANT HAS NO AUDIO. THERE'S NO AUDIO ON THE TAPE. SO THE ONLY WAY YOU CAN DETERMINE IF ANYTHING WAS SAID AND WHAT WAS SAID IS BY THE WITNESSES' TESTIMONY. THE TAPE DOESN'T SHOW WHAT WAS SAID BECAUSE YOU CAN'T HEAR IT.

MR. WILLARD SAID HE -- THAT MR. HERNANDEZ SAID HE WAS GOING TO TAKE SOMETHING FROM HIM. I THINK IT'S PRETTY OBVIOUS THERE'S A LANGUAGE BARRIER BETWEEN THE WITNESSES AND MR. WILLARD. SO MAYBE SOMETHING WAS SAID THAT WASN'T UNDERSTOOD ONE WAY OR THE OTHER.

BUT LET'S TALK ABOUT THE INJURY. ONE CUT ON THE ARM ONE TIME. THIS ISN'T A SITUATION WHERE MR. WILLARD WALKED DOWN TO THE OTHER SIDE OF THE BUS WAVING THE KNIFE AROUND. IF YOU'LL NOTICE ON THE TAPE, YOU CAN'T EVEN SEE THE KNIFE. JUST LIKE MR. WILLARD SAID, IT WAS RIGHT HERE ON HIS SIDE, NEVER WAVING IT. HAD IT RIGHT HERE IN CASE HE NEEDED TO USE IT.

AND WHY DOES HE HAVE A KNIFE? WELL, HE TOLD YOU HE WAS ATTACKED AT KNIFEPOINT A YEAR EARLIER, HAD 23 STITCHES. IT'S A PRETTY GOOD REASON TO CARRY A KNIFE IN YOUR BACKPACK JUST IN CASE. I DON'T CARRY ONE

PERSONALLY, BUT I ALSO HAVEN'T BEEN THE VICTIM OF ASSAULT WITH A DEADLY WEAPON. MR. WILLARD HAS.

HE WALKED, JUST LIKE MR. WILLARD SAID, WITH THE KNIFE THIS WAY, NEVER WAVED IT, AND WAS KICKED IN THE CHEST TWICE BY MR. HERNANDEZ. MR. HERNANDEZ HIMSELF -- AS THE PROSECUTOR WAS PLAYING THE TAPE AND HE ASKED HIM, "CAN YOU POINT OUT WHEN YOU WERE CUT ON THE ARM," HE GAVE A CERTAIN TIME. "CAN YOU POINT OUT WHEN YOU KICKED MR. WILLARD?" GAVE A CERTAIN TIME. THE KICK COMES BEFORE THE CUT. THAT'S THE TESTIMONY. LOOKED RIGHT AT THE TAPE AND SAID IT. AND YOU CAN SEE IT YOURSELF ON THE TAPE. YOU CAN SEE HIM GO FORWARD AND KICK, NOT ONCE, BUT TWICE.

AND WHAT WAS MR. WILLARD'S RESPONSE? ONE SMALL CUT ON THE ELBOW. DIDN'T TRY TO CUT HIM AGAIN. DIDN'T START HACKING AT HIM. AND THEN WHAT DID HE DO? HE SAID, "GET OFF THE BUS." AND HE STOOD THERE AND ALLOWED THEM BOTH TO WALK OFF. DIDN'T GET OFF AND CHASE THEM. WALKED CALMLY TO THE CVS. IN FACT, HE WALKED IN SUCH A MANNER THAT MR. PONCE COULD FOLLOW HIM EASILY WHILE TALKING TO POLICE. SO, OBVIOUSLY, MR. WILLARD DIDN'T RUN OR FLEE THE SCENE, WHICH IS WHAT THE PROSECUTOR IS TRYING TO MAKE IT SOUND LIKE. HE CLEARLY DID NOT. HE WALKED TO THE CVS BECAUSE, AS MR. WILLARD TOLD YOU, HE DIDN'T THINK HE HAD DONE ANYTHING WRONG.

HE THOUGHT HE USED REASONABLE FORCE. WHEN I SAY "REASONABLE," ONE ACT AND THEN RETREATED, BACKED UP AND LET THEM WALK AWAY. THAT, LADIES AND GENTLEMEN, IS SELF-DEFENSE. AND THE ISSUE IS, HAVE THE PEOPLE PROVEN

BEYOND A REASONABLE DOUBT THAT MR. WILLARD COULDN'T HAVE BEEN DEFENDING HIMSELF, AND I SUBMIT TO YOU, LADIES AND GENTLEMEN, I DON'T BELIEVE THEY HAVE. IT WOULD BE COMPLETELY DIFFERENT IF MR. WILLARD HAD FIVE OR SIX OR SEVEN CUTS OR LUNGING AT THEM OR STABBING AT THEM WALKING IN THE BUS WAVING A KNIFE OR TRIED TO ROB THEM OR WOULDN'T LET THEM GET OFF THE BUS OR CHASED THEM DOWN. TOTALLY DIFFERENT CASE. WE DON'T HAVE THAT HERE.

THE TAPE IS PRETTY CLEAR, LETS THEM WALK RIGHT OFF THE BUS. WE HAVE ONE CUT. IS IT WITH A KNIFE? YES. AND NORMALLY, WHEN YOU SEE A WEAPON, YOUR FIRST INCLINATION IS IT'S AN ATTACK, BECAUSE MOST OF US IN OUR DAILY LIVES PROBABLY DON'T WALK AROUND WITH A WEAPON, BUT IN SOME PARTS OF THE CITY PEOPLE DO, AND MOST OF THOSE PEOPLE ARE THE TYPE THAT HAVE BEEN INJURED PREVIOUSLY, LIKE MR. WILLARD. HE TOLD YOU EXACTLY WHAT HAPPENED, TOLD YOU WHY HE CARRIES IT.

AND AT THE END OF THE DAY THE PEOPLE SIMPLY HAVE NOT SHOWN THAT IT WAS NOT SELF-DEFENSE BEYOND A REASONABLE DOUBT. THERE'S NO GREAT BODILY INJURY. MR. PONCE IS NOT A VICTIM. AND MR. WILLARD WAS USING LAWFUL, REASONABLE FORCE TO DEFEND HIMSELF AND THEN LEFT THE SCENE.

THAT'S THE CASE, LADIES AND GENTLEMEN. THAT'S IT.

THANK YOU VERY MUCH FOR YOUR TIME. I APPRECIATE IT.

THE COURT: OKAY. VERY WELL. FOR THE FINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 113 HON. GAIL RUDERMAN FEUER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF,	NO. BA362410-01
VS.	REPORTER'S CERTIFICATE
CHARLES ROBERT WILLARD, DEFENDANT.	

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, RENE MARIE EVANKO, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 369 COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON JANUARY 13, 14, 18, 19 & MAY 24, 2011.

DATED THIS 1ST DAY OF JULY, 2011.

Rene Marie Evanko, CSR #6404

OFFICIAL REPORTER