

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CR SCD106382DA P4699901

DATE 1-19-95 AT 10:00 M.

PRBATION HRG-SENTENCING

0084

PRESENT: HON ROBERT E. MAY

JUDGE PRESIDING DEPARTMENT

009

CLERK C. Sheal REPORTER LESLIE NICOLET CSR 8130 CSR#

REPORTER'S ADDRESS: P.O. BOX 128, SAN DIEGO, CA 92112-4104

M. Bhayani DEPUTY DISTRICT ATTORNEY

THE PEOPLE OF THE STATE OF CALIFORNIA  
VS.ROGERS TYRONE  
DEFENDANT

J. GILBERT

ATTORNEY FOR DEFENDANT (APPTD/RETAINED)

VIOLATION OF PC459 CT1/PC459 CT2  
ALLS6; PC460 CT1,2  
PC462(a) CT1,2

INTERPRETER

SWORN/CERT

LANGUAGE

- DEFENDANT  NOT PRESENT.  WAIVES ARRAIGNMENT.  ARRAIGNED FOR JUDGMENT.  IMPOSITION OF SENTENCE IS SUSPENDED.
- DEFENDANT SENTENCED TO STATE PRISON, EXECUTION SUSPENDED. PROBATION IS:  DENIED  GRANTED \_\_\_\_\_ YEARS (FORMAL/SUMMARY).
- COMMITMENT TO SHERIFF FOR \_\_\_\_\_ DAYS. STAYED TO: \_\_\_\_\_.  ADULT INST. RECOMMENDED.  PAROLE NOT TO BE GRANTED.
- J PERFORM \_\_\_\_\_ HRS/DAYS PSWP/VOL. WORK AT NONPROFIT ORG. SUBMIT PROOF TO PROBATION/COURT BY \_\_\_\_\_.
- J FOURTH AMENDMENT WAIVER OF PERSON/AUTO/RESIDENCE/PERSONAL EFFECTS.  SHORT TERM WORK FURLough, REPORT: \_\_\_\_\_.
- U UPON COMPLETION OF CUSTODY, DEFENDANT RELEASED TO U.S.I.N.S./UPON DEPORTATION, FORMAL PROBATION REVERTS TO SUMMARY.
- U FURTHER CONDITIONS ARE SET FORTH IN PROBATION ORDER.  VEHICLE INTERLOCK DEVICE (VC 23235).
- D DEFENDANT IS COMMITTED TO DEPARTMENT OF CORRECTIONS FOR LOWER/MIDDLE/UPPER TERM OF \_\_\_\_\_ YEARS/MONTHS
- G ON COUNT \_\_\_\_\_ CODE & NO. \_\_\_\_\_  PRINCIPAL COUNT.  PER PC 1170(d):
- M NO VISITATION, PER PC 1202.05. VICTIM IS UNDER 18 YRS. OF AGE. DA TO COMPLY WITH NOTICES.
- M DEFENDANT IS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY.  PER W&I 1737
- E DEFENDANT IS ADVISED REGARDING PAROLE/APPEAL RIGHTS.
- E REGISTRATION PER PC 290/H&S 11590/PC 457.1.  TESTING PER PC 1202.1
- N CIRCUMSTANCES IN MITIGATION/AGGRAVATION OUTWEIGH THOSE IN MITIGATION/AGGRAVATION.
- T RESTITUTION/FINE OF \$ \_\_\_\_\_ PER GC 13967, STAYED PER PC 1202.4(b)/FORTHWITH PER PC 2085.5.
- T FINE OF \$ \_\_\_\_\_ INCLUDING PENALTY ASSESSMENT.  RESTITUTION OF \$ \_\_\_\_\_ TO VICTIM/REST. FUND.
- AT \$ \_\_\_\_\_ PER MONTH.  COMBINED RATE. TO START 60 DAYS AFTER RELEASE/ON \_\_\_\_\_ THROUGH REVENUE AND RECOVERY.
- P DEFENDANT ADVISED OF RIGHTS AND ADMITS/DENIES A VIOLATION OF PROBATION \_\_\_\_\_.  WAIVES HEARING.
- R PROBATION IS: FORMALLY/SUMMARILY  REVOKED  REINSTATED  MODIFIED  CONTINUED  ST&C  EXTENDED \_\_\_\_\_ YEARS.
- S DEFENDANT REMANDED TO CUSTODY OF SHERIFF.  WITHOUT BAIL.  WITH BAIL SET AT \$ \_\_\_\_\_.
- U DEFENDANT ORDERED RELEASED FROM CUSTODY.  ON PROBATION.  ON OWN/SUPERVISED RECOGNIZANCE.  THIS CASE ONLY.
- S A DEFENDANT TO REMAIN AT LIBERTY.  ON BOND POSTED \$ 20,000.  ON OWN/SUPERVISED RECOGNIZANCE.
- T T DEFENDANT WAIVES STATUTORY TIME FOR PRONOUNCEMENT OF JUDGMENT.
- F DEFENDANT REFERRED FOR DIAGNOSTIC EVALUATION.  PER PC 1203.03.  PER W&I 707.2.
- U T P 1/13/95 and 1/16/95 for new trial. CONTINUED TO SET FOR 2-03-95 AT 2:00 P.M. IN DEPT. 9 ON MOTION OF COURT/DDA/DEFENDANT/PROBATION OFFICER. REASON: \_\_\_\_\_

CREDIT FOR TIME SERVED
DAYS LOCAL
DAYS STATE INST.
DAYS PC 4019
TOTAL DAYS CREDIT

- B BENCH WARRANT TO ISSUE, BAIL SET AT \$ \_\_\_\_\_.  SERVICE FORTHWITH.  ORDERED WITHHELD TO \_\_\_\_\_.
- O BENCH WARRANT ISSUED/ORDERED \_\_\_\_\_ IS RECALLED/RESCINDED.
- D BOND IS  EXONERATED.  FORFEITED. AMOUNT \$ \_\_\_\_\_. BOND NO. \_\_\_\_\_
- S BOND COMPANY \_\_\_\_\_ AGENT \_\_\_\_\_

- M PROCEEDINGS SUSPENDED  PER PC 1368, MENTAL COMPETENCY. (SEE BELOW FOR DATES OF EXAMINATION AND HEARING.)
- H  PER W&I 3051, ADDICTION OR DANGER OF ADDICTION. (SEE BELOW FOR SERVICE DATE OF PETITION AND ORDER.)

- O  SUPPLEMENTAL REPORT ORDERED.  REPORT TO REGISTRAR OF VOTERS.  DMV ABSTRACT. B.A.C. \_\_\_\_\_

Court appoints Conflict Counsel to make determination if Motion for New trial for ineffectiveness of Counsel ~~for 2000-2001~~ will be filed. (ADC is notified - cmu)

Defendant's phone # is 238-4191.

1/19/95- Court is notified by ADC that Atty B. Burgos has been assigned. Robert May is assigned. File not available for today's hrg.

100 SDS

Ex-A

CR SCD106382 DA P4699901

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DATE 02-23-95 AT 02:00 M.

94160679

PROB HEAR-SENTENCING 0085

PRESENT: HONORABLE ~~ROBERT E.~~ MAY WILLIAM D. MUDD

JUDGE PRESIDING DEPARTMENT 009

CLERK BARBARA ROSENTHAL

REPORTER ROBERT F. STARK, CSR # 5104

CSR#

REPORTER'S ADDRESS: P.O. BOX 128, SAN DIEGO, CA 92112-4104

THE PEOPLE OF THE STATE OF CALIFORNIA  
VS.M. BHAYANI  
DEPUTY DISTRICT ATTORNEY

ROGERS TYRONE

DEFENDANT

B - P. DEFENDERS T. G. Best

ATTORNEY FOR DEFENDANT (APPTD/RETAINED)

VIOLATION OF \*PC459 CT 1 \*PC459 CT 2

ALLEG: PC 460 CT 1, 2 INTERPRETER SWORN/CERT  
PC 462 (a) CT 1, 2 LANGUAGEDEFENDANT  PRESENT.  WAIVES ARRAIGNMENT.  ARRAIGNED FOR JUDGMENT.  IMPOSITION OF SENTENCE IS SUSPENDED. DEFENDANT SENTENCED TO STATE PRISON, EXECUTION SUSPENDED. PROBATION IS:  DENIED  GRANTED YEARS (FORMAL/SUMMARY). COMMITMENT TO SHERIFF FOR DAYS. STAYED TO:  ADULT INST. RECOMMENDED.  PAROLE NOT TO BE GRANTED. J PERFORM HRS/DAYS PSWP/VOL. WORK AT NONPROFIT ORG. SUBMIT PROOF TO PROBATION/COURT BY U FOURTH AMENDMENT WAIVER OF PERSON/AUTO/RESIDENCE/PERSONAL EFFECTS.  SHORT TERM WORK FURLough, REPORT: D UPON COMPLETION OF CUSTODY, DEFENDANT RELEASED TO U.S.I.N.S./UPON DEPORTATION, FORMAL PROBATION REVERTS TO SUMMARY. FURTHER CONDITIONS ARE SET FORTH IN PROBATION ORDER.  VEHICLE INTERLOCK DEVICE (VC 23235). D DEFENDANT IS COMMITTED TO DEPARTMENT OF CORRECTIONS FOR LOWER/MIDDLE/UPPER TERM OF YEARS/MONTHS G ON COUNT CODE & NO.  PRINCIPAL COUNT.  PER PC 1170(d).

## CREDIT FOR TIME SERVED

DAYS LOCAL

DAYS STATE INST.

DAYS PC 4019

TOTAL DAYS CREDIT

 M NO VISITATION, PER PC 1202.05. VICTIM IS UNDER 18 YRS. OF AGE. DA TO COMPLY WITH NOTICES. E DEFENDANT IS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY.  PER W&I 1737 E DEFENDANT IS ADVISED REGARDING PAROLE/APPEAL RIGHTS. N REGISTRATION PER PC 290/H&S 11590/PC 457.1.  TESTING-PER PC 1202.1 T CIRCUMSTANCES IN MITIGATION/AGGRAVATION OUTWEIGH THOSE IN MITIGATION/AGGRAVATION. T RESTITUTION/FINE OF \$ PER GC 13967, STAYED PER PC 1202.4(b)/FORTHWITH PER PC 2085.5. T FINE OF \$ INCLUDING PENALTY ASSESSMENT.  RESTITUTION OF \$ TO VICTIM/REST. FUND.AT \$ PER MONTH.  COMBINED RATE. TO START 60 DAYS AFTER RELEASE/ON THROUGH REVENUE AND RECOVERY. T DEFENDANT TO PAY PRE-PLEA INVESTIGATION AND REPORT PREPARATION COSTS.  DEFENDANT TO PAY BOOKING FEES. T REFERRED TO REVENUE AND RECOVERY.  COURT APPOINTED ATTORNEY FEES ORDERED, AMOUNT TO BE DETERMINED/OF \$ P DEFENDANT ADVISED OF RIGHTS AND ADMITS/DENIES A VIOLATION OF PROBATION  WAIVES HEARING. R PROBATION IS: FORMALLY/SUMMARILY  REVOKED  REINSTATED  MODIFIED  CONTINUED  ST&C  EXTENDED YEARS. C S DEFENDANT REMANDED TO CUSTODY OF SHERIFF.  WITHOUT BAIL.  WITH BAIL SET AT \$ U T DEFENDANT ORDERED RELEASED FROM CUSTODY.  ON PROBATION.  ON OWN/SUPERVISED RECOGNIZANCE.  THIS CASE ONLY. T T DEFENDANT TO REMAIN AT LIBERTY.  ON BOND POSTED \$ 20,000  ON OWN/SUPERVISED RECOGNIZANCE. F H DEFENDANT WAIVES STATUTORY TIME FOR PRONOUNCEMENT OF JUDGMENT. F R DEFENDANT REFERRED FOR DIAGNOSTIC EVALUATION.  PER PC 1203.03.  PER W&I 707.2. T S THIS MOTION FOR NEW TRIAL CONTINUED TO/SET FOR 4-6-95 AT 2:00 M. IN DEPT. 9 ON MOTION

OF COURT/DDA/DEFENDANT/PROBATION OFFICER. REASON:

 B W BENCH WARRANT TO ISSUE, BAIL SET AT \$.  SERVICE FORTHWITH.  ORDERED WITHHELD TO . O R BENCH WARRANT ISSUED/ORDERED IS RECALLED/RESCINDED. N D BOND IS  EXONERATED.  FORFEITED. AMOUNT \$. BOND NO. . S S BOND COMPANY AGENT . M PROCEEDINGS SUSPENDED  PER PC 1368, MENTAL COMPETENCY. (SEE BELOW FOR DATES OF EXAMINATION AND HEARING.) H  PER W&I 3051, ADDICTION OR DANGER OF ADDICTION. (SEE BELOW FOR SERVICE DATE OF PETITION AND ORDER.) D T O SUPPLEMENTAL REPORT ORDERED.  REPORT TO REGISTRAR OF VOTERS.  DMV ABSTRACT, B.A.C. H E R Wm. Burgerer Appointed as Counsel for Motion for New Trial or

ATTY Burgerer Requests Continuance, People object. Motion for New Trial to be filed in a timely fashion, and further

Continuances.

William D. Mudd

1 (PEOPLE'S EXHIBIT NUMBER THREE, LA SCALA APARTMENT

2 VILLAS BROCHURE, IS ADMITTED AT THIS TIME.)

3 THE COURT: ALL RIGHT. PEOPLE HAVE FURTHER EVIDENCE,

4 MR. BHAYANI?

5 MR. BHAYANI: NO. PEOPLE REST.

6 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU'VE

7 GOT TO TAKE ANOTHER RECESS, ONLY THIS TIME IT'S FOR THE

8 PURPOSE OF THE COURT GOING OVER THE INSTRUCTIONS, THAT IS,

9 THE LAW THAT IS APPLICABLE IN THIS CASE, WITH THE ATTORNEYS.

10 AFTER THAT, WE WILL BE INSTRUCTING YOU ON THE  
11 LAW AND THEN THE LAWYERS WILL ARGUE THE CASE, GIVE YOU THEIR  
12 VIEWS ON THE EVIDENCE, AND THE MATTER WILL BE FINALLY  
13 SUBMITTED TO YOU.

14 SO, IT WILL BE AT LEAST 20 MINUTES. WHY DON'T  
15 YOU ASSEMBLE AT 10:35 OUTSIDE THE COURTROOM. REMEMBER NOT  
16 TO TALK ABOUT THE CASE IN ANY WAY.

17 (THE FOLLOWING PROCEEDINGS WERE CONDUCTED WITHOUT THE  
18 PRESENCE AND HEARING OF THE JURY:)

19 THE COURT: ALL RIGHT. WHY DON'T WE DO THIS OFF THE  
20 RECORD. IF THERE IS ANY OBJECTIONS OR ANY REQUESTS THAT ARE  
21 NOT GRANTED, THEN WE CAN PUT THEM ON THE RECORD, OKAY?

22 MS. GILBERT: THAT'S A GOOD IDEA.

23 (RECESS TAKEN.)

24 THE COURT: OKAY. WE ARE CONVENED NOW OUTSIDE THE  
25 PRESENCE OF THE JURY. WE HAVE GONE OVER THE JURY  
26 INSTRUCTIONS INFORMALLY.

27 YOU HAVE SOME MATTERS YOU WANT TO PUT ON THE  
28 RECORD, MS. GILBERT?

Exhibit B

1 MS. GILBERT: YES, I DO. THANK YOU, YOUR HONOR.

2 FOR THE RECORD, I OBJECT TO THE GIVING OF CALJIC  
3 2.03, AS WELL AS 2.21.2, WHICH IS THE WITNESS WILLFULLY  
4 FALSE AND THE DEFENDANT WILLFULLY FALSE STATEMENTS. I DO  
5 NOT THINK THEY APPLY IN THIS CASE.

6 ALSO, AS TO THE DISCUSSION REGARDING THE  
7 BURGLARY AND WHAT THE INTENT IS AND HOW IT SHOULD READ, I  
8 BELIEVE THAT THE SPECIFIC OFFENSE MUST BE STATED WITH THE  
9 INTENT TO COMMIT RAPE, WHATEVER; SODOMY, ORAL COPULATION. I  
10 DO NOT THINK IT SHOULD READ, GENERICALLY, A FELONY SEXUAL  
11 OFFENSE. I THINK THAT'S IMPROPER. I THINK ON OUR TYPICAL  
12 BURGLARY, IT'S A THEFT. AND THEY'RE INSTRUCTED WITH THE  
13 INTENT TO COMMIT THEFT. THAT IS THIS CRIME. THE CRIME, A  
14 FELONY SEXUAL OFFENSE IS NOT A CRIME. IT'S A CATCH-ALL,  
15 AND I THINK IT'S INAPPROPRIATE. I AGREE THEY DON'T HAVE TO  
16 AGREE ON WHICH SPECIFIC ONE, BUT THEY NEED TO BE GIVEN WHAT  
17 THE FELONIOUS INTENT IS, WHAT THE FELONY IS THAT HE IS IN  
18 THERE TO COMMIT. THERE IS NO SUCH THING AS A FELONY SEXUAL  
19 OFFENSE.

20 THE COURT: WELL, BUT WE INCLUDE SUCH AND WE  
21 WILL DEFINE WHAT THOSE FELONY SEXUAL OFFENSES ARE, SO I  
22 DON'T SEE HOW THE DEFENSE COULD COMPLAIN.

23 MS. GILBERT: I THINK IT'S MISLEADING.

24 THE COURT: ALL RIGHT. AS TO THE WITNESS WILLFULLY  
25 FALSE, I THINK THAT IS SOMETHING THE JURY CAN FIND OR COULD  
26 FIND AS TO ANY WITNESS, SO IT'S PROPERLY GIVEN.

27 AND AS TO THE FALSE OR MISLEADING STATEMENTS  
28 GIVEN BY THE DEFENDANT, THAT'S AGAIN, SOMETHING THE JURY

1 IF THE EVIDENCE SHOWS THAT THE DEFENDANT WAS  
2 INTOXICATED AT THE TIME OF THE ALLEGED CRIME, YOU SHOULD  
3 CONSIDER THAT FACT IN DETERMINING WHETHER OR NOT THE  
4 DEFENDANT HAD SUCH SPECIFIC INTENT.

5 IF FROM ALL OF THE EVIDENCE YOU HAVE A  
6 REASONABLE DOUBT WHETHER THE DEFENDANT FORMED SUCH SPECIFIC  
7 INTENT, YOU MUST FIND THAT HE DID NOT HAVE SUCH SPECIFIC  
8 INTENT.

9 VOLUNTARY INTOXICATION OR INTOXICATION OF A  
10 PERSON IS VOLUNTARILY IF IT RESULTS FROM THE WILLING USE OF  
11 ANY INTOXICATING LIQUOR, DRUG, OR OTHER SUBSTANCE, KNOWING  
12 THAT IT IS CAPABLE OF AN INTOXICATING EFFECT OR WHEN HE  
13 WILLINGLY ASSUMES THE RISK OF THAT EFFECT.

14 VOLUNTARY INTOXICATION INCLUDES THE VOLUNTARY  
15 INGESTION, INJECTING OR TAKING BY ANY OTHER MEANS OF ANY  
16 INTOXICATING LIQUOR, DRUG, OR OTHER SUBSTANCE.

17 AN ACT COMMITTED OR AN OMISSION MADE IN  
18 IGNORANCE OR BY REASON OF A MISTAKE OF FACT WHICH DISPROVES  
19 ANY CRIMINAL INTENT IS NOT A CRIME.

20 THUS A PERSON IS NOT GUILTY OF A CRIME IF HE  
21 COMMITS AN ACT OR ADMITS THE ACT UNDER AN HONEST OR AND  
22 REASONABLE BELIEF IN THE EXISTENCE OF CERTAIN FACTS OR  
23 CIRCUMSTANCES WHICH, IF TRUE, WOULD MAKE SUCH ACT OR  
24 OMISSION LAWFUL.

25 THE DEFENDANT IS ACCUSED IN COUNTS ONE AND TWO  
26 OF THE INFORMATION OF HAVING COMMITTED A CRIME OF BURGLARY,  
27 A VIOLATION OF SECTION 459 OF THE PENAL CODE.

28 EVERY PERSON WHO ENTERS ANY BUILDING WITH THE

1 INTERCOURSE WITH ANOTHER PERSON WHO IS NOT THE SPOUSE OF THE  
2 PERPETRATOR, ACCOMPLISHED AGAINST SUCH PERSON'S WILL BY  
3 MEANS OF FORCE, VIOLENCE, DURESS, MENACE, OR FEAR OF  
4 IMMEDIATE AND UNLAWFUL BODILY INJURY TO SUCH PERSON, IS  
5 GUILTY OF THE FELONY CRIME OF RAPE.

6 IN ORDER TO PROVE THE CRIME, EACH OF THE  
7 FOLLOWING ELEMENTS MUST BE PROVED:

8 (1) THAT A MALE AND FEMALE PERSON ENGAGED IN AN  
9 ACT OF SEXUAL INTERCOURSE;

10 (2) THAT THE TWO PERSONS WERE NOT MARRIED TO  
11 EACH OTHER AT THE TIME OF THE ACT OF SEXUAL INTERCOURSE;

12 (3) THE ACT OF INTERCOURSE WAS AGAINST THE WILL  
13 OF THE ALLEGED VICTIM, AND

14 (4) SUCH ACT WAS ACCOMPLISHED BY MEANS OF  
15 FORCE, VIOLENCE, DURESS, MENACE, OR FEAR OF IMMEDIATE AND  
16 UNLAWFUL BODILY INJURY TO SUCH PERSON.

17 AGAINST SUCH PERSON'S WILL MEANS WITHOUT THE  
18 CONSENT OF THE ALLEGED VICTIM.

19 MENACE MEANS ANY THREAT, DECLARATION, OR ACT  
20 WHICH SHOWS AN INTENTION TO INFILCT AN INJURY UPON  
21 ANOTHER.

22 DURESS MEANS A DIRECT OR IMPLIED THREAT OF  
23 FORCE, VIOLENCE, DANGER, OR RETRIBUTION SUFFICIENT TO  
24 COHERCE A REASONABLE PERSON OF ORDINARY SUSCEPTIBILITIES TO  
25 PERFORM AN ACT WHICH OTHERWISE WOULD NOT HAVE BEEN  
26 PERFORMED, OR TO ACQUESCE IN AN ACT WHICH OTHERWISE WOULD  
27 NOT HAVE BEEN SUBMITTED.

28 THE TOTAL CIRCUMSTANCES, INCLUDING THE AGE OF

1 CLOSING ARGUMENT  
2 BY MR. BHAYANI:

4                   GOOD MORNING. THIS IS THE TIME THAT I GET TO  
5        SUMMARIZE THE EVIDENCE AND BASICALLY SHOW YOU WHY THE PIECES  
6        FIT TOGETHER, AND WHY THE PROSECUTION HAS PROVED THIS CASE  
7        BEYOND A REASONABLE DOUBT.

8. BEFORE I DO THAT, I WANT TO TAKE THIS  
9. OPPORTUNITY TO THANK YOU FOR YOUR SERVICES IN THIS  
10. PARTICULAR CASE.

11 YOU KNOW, I WAS BORN IN EAST AFRICA, COUNTY OF  
12 UGANDA, AND I COULD TELL YOU THAT ARE NOT GOING TO HAVE A  
13 CIVILIZED SOCIETY. AND ONE OF THE THINGS THAT THE JURY  
14 SYSTEM IN AMERICA DOES, BUT WHICH IS VERY, VERY IMPORTANT,  
15 IT RUNS A SYSTEM. IT'S PROBABLY NOT THE PERFECT SYSTEM IN  
16 THE WORLD, BUT IT IS THE BEST THAT WE HAVE. WITHOUT THE  
17 JURY SYSTEM YOU ARE NOT GOING TO BE ABLE TO RUN THE JUDICIAL  
18 SYSTEM AT ALL, OR THE CRIMINAL JUSTICE SYSTEM. YOU MAY NOT  
19 TAKE AT HEART HOW VALUABLE YOUR TIME AND ATTENTION IN THIS  
20 CASE IS, BUT THE PRACTICE IN THIS PARTICULAR PROFESSION,  
21 REALLY FEEL THAT WITHOUT YOU, IT WOULD NOT WORK.

22 NOW, LET'S GET TO THE EVIDENCE IN THIS CASE.  
23 THERE ARE TWO COUNTS THAT HAVE BEEN CHARGED HERE BY THE  
24 PROSECUTION. BOTH ARE OF BURGLARY.

25 AS THE COURT INDICATED TO YOU, SOMETIMES THERE  
26 IS A MISSLEADING NOTION ABOUT BURGLARIES. YOU KNOW, THE LAY  
27 PERSON'S OPINION IS THAT, OKAY, A BURGLARY WOULD BE BREAKING  
28 AND ENTERING INTO A HOME FOR PURPOSES OF COMMITING THEFTS.

1 HOWEVER, YOU COULD ALSO CHARGE BURGLARY WHEN YOU HAVE A  
2 PERSON WHO BREAKS AND ENTERS IN A DWELLING WITH THE PURPOSE  
3 OF COMMITTING A FELONY. AND IT COULD BE MURDER, IT COULD BE  
4 RAPE, IT COULD BE SODOMY, IT COULD BE ORAL COPULATION. IT  
5 COULD BE ANY NUMBER OF FELONIES AND YOU COULD CHARGE THAT  
6 PERSON WITH BURGLARY. AND THAT'S THE REASON WHY MR. ROGERS  
7 HAS BEEN CHARGED WITH TWO COUNTS OF RESIDENTIAL BURGLARY.

8 LET'S TAKE COUNT ONE. LET'S TAKE THE FIRST  
9 INCIDENT OF AUGUST 6. THE ELEMENTS ARE GOING TO BE THE  
10 SAME, AND I JUST WANT TO BASICALLY COVER THOSE.

11 DID THE DEFENDANT BREAK AND ENTER INTO A  
12 DWELLING HOME WHICH IS NORMALLY INHABITED BY A PERSON?  
13 THERE IS NO QUESTION IN THIS CASE THAT THE APARTMENT IN  
14 QUESTION OF MS. RUTH DECASTRO IS AN APARTMENT, A DWELLING  
15 HOUSE WHERE SHE LIVES. SO YOU DON'T HAVE TO SPEND A LOT OF  
16 TIME TRYING TO FIGURE OUT WHETHER THIS WAS A DWELLING HOME  
17 OR NOT. THAT PARTICULAR ELEMENT MAKES IT A FIRST DEGREE  
18 BURGLARY.

19 IF IT IS A COMMERCIAL BUILDING, LIKE A STORE  
20 LIKE BROADWAY OR SOMETHING LIKE THAT, THEN YOU WOULD HAVE A  
21 SECOND DEGREE BURGLARY. ALL OTHER BURGLARIES ARE SECOND  
22 DEGREE. ONE THAT IS AN INHABITED DWELLING IS A FIRST  
23 DEGREE. BOTH OF THE COUNTS REFERRED TO HERE ARE FIRST  
24 DEGREE BURGLARIES BECAUSE BOTH APARTMENTS IN QUESTION ARE  
25 INHABITED DWELLINGS.

26 THE FIRST ELEMENT, DID HE BREAK AND ENTER INTO  
27 THIS PARTICULAR APARTMENT? THERE IS NO ISSUE THERE EITHER.  
28 IT'S VERY OBVIOUS THAT MS. DECASTRO INDICATED -- OF COURSE

0004  
IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

OCT 17 1994  
10-28-94

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,

v.

TYRONE ROGERS,

Defendant(s)

SC No. SCD 106382  
DA No. P 046999

INFORMATION

I N F O R M A T I O N  
S U M M A R Y

Ct. No.	Charge	Sentence Range	Defendant Check	Special Alleg. Allegation	Effect Effect
1	PC459		ROGERS, TYRONE	PC460 PC462(a)	No Prob No Prob
2	PC459	Check	ROGERS, TYRONE	PC460 PC462(a)	No Prob No Prob

The District Attorney of the County of San Diego, State of California, accuses the Defendant of committing, in the County of San Diego, State of California, the following crime(s):

COUNT - 1 RESIDENTIAL BURGLARY

On or about August 6, 1994 TYRONE ROGERS did willfully and unlawfully enter a building with the intent to commit a felony, in violation of PENAL CODE SECTION 459.

And, it is further alleged that said burglary was a burglary of an inhabited dwelling house, trailer coach, inhabited portion of a building, and a vessel as defined in the Harbor and Navigation Code which is inhabited and designed for habitation, within the meaning of Penal Code section 460.

And, it is further alleged that the defendant is ineligible for probation pursuant to section 462(a) of the Penal Code.

Exhibit B

0005

0082

COUNT - 2 RESIDENTIAL BURGLARY

On or about August 13, 1994 TYRONE ROGERS did willfully and unlawfully enter a building with the intent to commit a felony, in violation of PENAL CODE SECTION 459.

And, it is further alleged that said burglary was a burglary of an inhabited dwelling house, trailer coach, inhabited portion of a building, and a vessel as defined in the Harbor and Navigation Code which is inhabited and designed for habitation, within the meaning of Penal Code section 460.

And, it is further alleged that the defendant is ineligible for probation pursuant to section 462(a) of the Penal Code.

THIS INFORMATION NUMBERED SCD 106382, CONSISTS OF 2 COUNT(S)

EDWIN L. MILLER, JR.  
DISTRICT ATTORNEY  
County of San Diego  
State of California

Dated 10/12/1994

By: 

SAN DIEGO REGIONAL  
OFFICER'S REPORT

Written by Detective Haffke

OFFICER'S REPORT ONLY  
CONTINUED:  ARR./JUV./CON.  
FROM  CRIME  
 OTHER

## NARRATIVE

PAGE

3 OF 8

CASE NUMBER

9A 063733

JOE SECTION AND DESCRIPTION (ONE INCIDENT ONLY)

MONTH

DAY

YEAR

DAY OF WEEK

TIME

LOCATION OF INCIDENT (OR ADDRESS)

CITY

BEAT

DISTRICT

PERSON(S) INVOLVED: VICTIM

SUSPECT (IF NAMED)

PROPERTY TAG NO. (S)

DECASTRO, RUTH

REIGIN: ON 08-06-94 AT APPROX. 0515 HRS. I RECEIVED A RADIO CALL OF A BURGLARY HOT PROWL OCCURRING AT 3833 NOBEL DR. # 3121.

VICTIM'S STATEMENT: RUTH DECOSTRO TOLD ME SHE LEFT HER APARTMENT APPROX. 0830 HRS. DECOSTRO'S BOYFRIEND WAS STILL IN HER APARTMENT WHEN SHE LEFT.

DECOSTRO RETURNED TO HER APARTMENT AT APPROX. 2230 HRS. HER BOYFRIEND, MEHRDAD YAZDANI, RETURNED AT APPROX. 2330 HRS.

DECOSTRO WENT TO BED WITH HER BOYFRIEND AND SHE FELL ASLEEP. DECOSTRO WOKE UP WHEN SHE FELT THE SUSPECT FEELING ON HER LEFT LEG. DECOSTRO SAW THE SILHOUETTE OF THE SUSPECT KNEELING TOWARDS HER. DECOSTRO SAID THE SUSPECT HAD AN AFRO. FROM THE SHAPE OF THE SILHOUETTE (THE BEDROOM WAS DARK).

DECOSTRO STARTED SCREAMING AND HER BOYFRIEND, YAZDANI, WOKE UP. YAZDANI GOT UP AND CHASED THE SUSPECT OUT OF THE APARTMENT. DECOSTRO WAS STILL STARTLED AND SHE CALLED THE POLICE A FEW MINUTES LATER.

REPORTING OFFICER

I.D. #

DIVISION

APPROVED BY

R. Reyes

3578

N-3

DATE OF REPORT

MONTH

DAY

YEAR

TIME

# Exhibit C

## PHOTO LINEUP

CASE 94-065937

ON 8-26-94 AT 1115 HRS AT 4275 EASTGATE MALL  
(DATE) (TIME) (LOCATION)

THE VICTIM/WITNESS DONNA AMY KEEHN WAS READ THE FOLLOWING STATEMENT, AND THEN WAS ALLOWED TO VIEW THE PHOTO LINEUP:

I AM GOING TO ASK YOU TO LOOK AT A GROUP OF 5 PHOTOGRAPHS. YOU SHOULD NOT INFER ANYTHING FROM THE FACT THAT THE PHOTOGRAPHS ARE BEING SHOWN TO YOU, OR THAT WE HAVE ANY SUSPECT IN CUSTODY AT THIS TIME. PLEASE LOOK THROUGH THE PHOTOGRAPHS AND SEE IF YOU CAN IDENTIFY ANY OF THE INDIVIDUALS PICTURED.

THE VICTIM/WITNESS WAS THEN ALLOWED TO VIEW THE PHOTOGRAPHIC LINEUP.

IDENTIFIED PHOTO# 3 AS THE SUSPECT.

COULD NOT IDENTIFY \_\_\_\_\_.

LINEUP PRESENTED BY D.C. HATTED #4077  
(NAME)

SJPD  
(AGENCY)

REMARKS: I am ABSOLUTELY POSITIVE  
\*that\* the 15 the man who was  
in my bedroom on 8/13/94.  
Am. K-17

Exhibit C  
PHOTO LINEUP

CASE NO. 94-063733

ON 08-31-94 (DATE) AT 1500 (TIME) AT 4275 EAST GATE MALL (LOCATION)

THE VICTIM/WITNESS ROTH DECASTRO WAS READ THE FOLLOWING STATEMENT, AND THEN ALLOWED TO VIEW THE PHOTO LINEUP:

I AM GOING TO ASK YOU TO LOOK AT A GROUP OF 5 PHOTOGRAPHS.

YOU SHOULD NOT INFER ANYTHING FROM THE FACT THAT THE

PHOTOGRAPHS ARE BEING SHOWN TO YOU, OR THAT WE HAVE ANY

SUSPECT IN CUSTODY AT THIS TIME. PLEASE LOOK THROUGH THE

PHOTOGRAPHS AND SEE IF YOU CAN IDENTIFY ANY OF THE

INDIVIDUALS PICTURED.

THE VICTIM/WITNESS WAS THEN ALLOWED TO VIEW THE PHOTOGRAPHIC LINEUP.

IDENTIFIED PHOTO # \_\_\_\_\_ AS THE SUSPECT:

COULD NOT IDENTIFY X

LINEUP PRESENTED BY D.C. HATTER #4077  
(OFFICER) SAN DIEGO POLICE DEPARTMENT

REMARKS:

Exhibit C  
PHOTO LINEUP

CASE NO. 94-063733

ON 08-31-94 AT 1500 AT 4275 EASTGATE MALL  
(DATE) (TIME) (LOCATION)

THE VICTIM/WITNESS MEHRDAD (YAZDANI) WAS READ THE  
FOLLOWING STATEMENT, AND THEN ALLOWED TO VIEW THE PHOTO LINEUP:

I AM GOING TO ASK YOU TO LOOK AT A GROUP OF 5 PHOTOGRAPHS.  
YOU SHOULD NOT INFER ANYTHING FROM THE FACT THAT THE  
PHOTOGRAPHS ARE BEING SHOWN TO YOU, OR THAT WE HAVE ANY  
SUSPECT IN CUSTODY AT THIS TIME. PLEASE LOOK THROUGH THE  
PHOTOGRAPHS AND SEE IF YOU CAN IDENTIFY ANY OF THE  
INDIVIDUALS PICTURED.

THE VICTIM/WITNESS WAS THEN ALLOWED TO VIEW THE PHOTOGRAPHIC  
LINEUP.

IDENTIFIED PHOTO # \_\_\_\_\_ AS THE SUSPECT.

COULD NOT IDENTIFY X

LINEUP PRESENTED BY D.C. HATZER #4077  
(OFFICER) SAN DIEGO POLICE DEPARTMENT

REMARKS:

# DAILY SECURITY REPORT

CL. NT SITE:	
DATE:	
DAY OF WEEK:	
IN - OUT	OFFICER'S NAME

	RECEIVED FROM	RETURNED TO	CONDITION
RADIOS (S)			
PAGER (S)			
KEY (S)			

WHY - WHEN - WHERE - WHO - WHAT &amp; HOW

TIME	OFFICER'S REPORT	Page IV
	around and saw a black man which I'd seen earlier hanging around the pool area when I kicked the 3 girls out at 2:30. This time when I saw him I asked him what he was doing and he said he had gone down to turn his alarm off (which I didn't hear). I asked him where he was parked said right beside my cart in front of Club house, that he was too loaded to move it. He said he lived here and he did have keys to get in the building. He wouldn't tell me his apt. # but I got his license plate #. It's a <del>blue</del> blue Cadillac Deville, plate # 676ZNG	

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO**

IN THE MATTER OF THE APPLICATION OF: )  
TYRONE ROGERS, ) HC 22330  
Petitioner. ) SCD 106382  
 ) ORDER DENYING PETITION FOR WRIT  
 ) OF HABEAS CORPUS  
 )  
 )  
 )  
 )  
 )

AFTER REVIEWING THE PETITION FOR WRIT OF HABEAS CORPUS AND THE COURT FILE IN THE ABOVE-REFERENCED MATTER, THE COURT FINDS AS FOLLOWS:

In the present Petition, Petitioner challenges a conviction from 1995 for two counts of violating Penal Code section 459 (Case No. SCD106382). In that case, Petitioner was sentenced to the middle term of 4 years, and has completed the custodial portion of that sentence.

22 On January 13, 2004, in Superior Court Case No. SCD176027, the Court, sitting without  
23 a jury, convicted petitioner of one count of rape by foreign object of an unconscious victim (Pen.  
24 Code § 289(D)) and one count of attempted rape of an unconscious person (Pen. Code §§  
25 664/261(A)(4).) The court sentenced petitioner to 25-years-to-life. The court imposed a prior  
26 conviction enhancement of 10 years. (Pen. Code § 667(A)(1).) On appeal, that enhancement  
27 was reduced to 5 years. Petitioner is currently in custody in Superior Court Case No.  
28 SCD176027.

1 As Petitioner has already been told by this court in a May 22, 2007, Order denying a  
2 previous petition for writ of habeas corpus in which Petitioner also challenged his 1995  
3 convictions, Petitioner fails to meet the jurisdictional requirements for habeas corpus relief as he  
4 is not in actual or constructive custody in case number SCD106382.

5 Penal Code section 1473, subdivision (a) states: "Every person unlawfully  
6 imprisoned or restrained of his liberty, under any pretense whatever, may  
7 prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment  
8 or restraint." Traditionally, a writ of habeas corpus applied to those under actual  
9 physical restraint; however, decisional law has expanded the scope of the writ to  
10 apply to those in constructive custody situations and today may apply to those on  
11 parole [citation], probation [citation], bail [citation], or sentenced prisoners  
12 released on their own recognizance pending hearing on the merits of their petition  
[citation]. **Without actual or constructive custody, courts have no authority**  
13 **to grant relief.** (*People v. Villa* (2009) 45 Cal.4th 1063, 1069–1070, 90  
14 Cal.Rptr.3d 344, 202 P.3d 427; *In re Stier* (2007) 152 Cal.App.4th 63, 82, 61  
15 Cal.Rptr.3d 181 (Stier); *In re Wessley W.* (1981) 125 Cal.App.3d 240, 246, 181  
16 Cal.Rptr. 401.)

17 (In re Douglas (2011), 200 Cal. App. 4th 236, 246-47.)

18 In *In re Douglas* (2011), 200 Cal. App. 4th 236, 248-49, the petitioner was in custody  
19 pursuant to his second offense (failing to register as a sex offender), not pursuant to his earlier  
20 offense (sexual battery). (*Id.* at. p. 248.) The court held that he was not in constructive custody  
21 on the sexual battery offense, "since his detention and probation for that offense was fully  
22 completed as of 2000, and sex offender registration was a collateral consequence." (*Id.*)  
23 Therefore, Petitioner could not challenge the sexual battery conviction via a petition for writ of  
24 habeas corpus. In making its decision to deny the petition, the court of appeal looked at the  
25 history of habeas corpus proceedings, including, the Supreme Court decisions in *Maleng v. Cook*  
26 (1989), 490 U.S. 488, *Daniels v. U.S.* (2001) 532 U.S. 374, and *Lackawanna County Dist.*  
27 *Attorney v. Coss* (2001) 532 U.S. 394, and explained that the principle underlying the Supreme  
28 Court decisions "is that, for habeas corpus purposes, custody on a later case does not allow an  
earlier, expired conviction to be collaterally challenged, even if it is used to enhance a later  
case." (*In re Douglas, supra*, 200 Cal. App. at p. 249.)

29 Here, Petitioner is in custody based on his 2004 conviction in Superior Court Case No.

1 SCD 176027, not SCD 106382. At the time of the trial for which petitioner is currently  
2 incarcerated, he was not in actual or constructive custody for the 1995 convictions. Petitioner  
3 has not satisfied the jurisdictional requirements that he be in custody based on the conviction he  
4 is challenging in this petition.

5 Therefore, the petition is denied.

6 A copy of this Order shall be served upon Petitioner and the San Diego Office of the  
7 District Attorney.

8 IT IS SO ORDERED.

9  
10 DATED: January 25, 2016

  
11 SHARON B. MAJORS-LEWIS  
12 JUDGE OF THE SUPERIOR COURT

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23  
24 CLERK'S CERTIFICATE

25 The foregoing document, consisting of  
26 3 page(s), is a full, true, and correct  
27 copy of the  original  copy on file in  
this office.

Clerk of the Superior Court

1-27-16 by Sharon  
Date Deputy