

128

EX-AB

CR SCD106382 DA P4699901

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

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

PROBATION 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

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.

M. Bryan
DEPUTY DISTRICT ATTORNEY

ROGERS TYRONE
DEFENDANT

J. GILBERT
ATTORNEY FOR DEFENDANT (APPTD/RETAINED)

VIOLATION OF PC459 CT1 PC459 CT2

ALLEG: PC460 CT 1, 2
PC462(a) CT 1, 2

INTERPRETER
LANGUAGE SWORN/CERT

- 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.
- ☐ PERFORM _____ HRS/DAYS PSWP/VOL. WORK AT NONPROFIT ORG. SUBMIT PROOF TO PROBATION/COURT BY _____.
- ☐ FOURTH AMENDMENT WAIVER OF PERSON/AUTO/RESIDENCE/PERSONAL EFFECTS. ☐ SHORT TERM WORK FURLOUGH, REPORT: _____.
- ☐ 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).
- ☐ DEFENDANT IS COMMITTED TO DEPARTMENT OF CORRECTIONS FOR LOWER/MIDDLE/UPPER TERM OF _____ YEARS/MONTHS
- ON COUNT _____ CODE & NO. _____ ☐ PRINCIPAL COUNT. ☐ PER PC 1170(d):
- ☐ NO VISITATION, PER PC 1202.05. VICTIM IS UNDER 18 YRS. OF AGE. DA TO COMPLY WITH NOTICES.
- ☐ DEFENDANT IS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY. ☐ PER W&I 1737
- ☐ DEFENDANT IS ADVISED REGARDING PAROLE/APPEAL RIGHTS.
- ☐ REGISTRATION PER PC 290/H&S 11590/PC 457.1. ☐ TESTING PER PC 1202.1
- ☐ CIRCUMSTANCES IN MITIGATION/AGGRAVATION OUTWEIGH THOSE IN MITIGATION/AGGRAVATION.
- ☐ RESTITUTION/FINE OF \$ _____ PER GC 13967, STAYED PER PC 1202.4(b)/FORTHWITH PER PC 2085.5.
- ☐ 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.
- ☐ DEFENDANT TO PAY PRE-PELA INVESTIGATION AND REPORT PREPARATION COSTS. ☐ DEFENDANT TO PAY BOOKING FEES.
- ☐ REFERRED TO REVENUE AND RECOVERY. ☐ COURT APPOINTED ATTORNEY FEES ORDERED, AMOUNT TO BE DETERMINED/OF \$ _____.

CREDIT FOR TIME SERVED

_____ DAYS LOCAL

_____ DAYS STATE INST.

_____ DAYS PC 4019

_____ TOTAL DAYS CREDIT

- DEFENDANT ADVISED OF RIGHTS AND ADMITS/DENIES A VIOLATION OF PROBATION _____. ☐ WAIVES HEARING.
- PROBATION IS: FORMALLY/SUMMARILY ☐ REVOKED ☐ REINSTATED ☐ MODIFIED ☐ CONTINUED ☐ ST&C ☐ EXTENDED _____ YEARS.
- ☐ DEFENDANT REMANDED TO CUSTODY OF SHERIFF. ☐ WITHOUT BAIL. ☐ WITH BAIL SET AT \$ _____.
- ☐ DEFENDANT ORDERED RELEASED FROM CUSTODY. ☐ ON PROBATION. ☐ ON OWN/SUPERVISED RECOGNIZANCE. ☐ THIS CASE ONLY.
- ☒ DEFENDANT TO REMAIN AT LIBERTY. ☒ ON BOND POSTED \$ 20,000. ☐ ON OWN/SUPERVISED RECOGNIZANCE.

- ☐ DEFENDANT WAIVES STATUTORY TIME FOR PRONOUNCEMENT OF JUDGMENT.
- ☐ DEFENDANT REFERRED FOR DIAGNOSTIC EVALUATION. ☐ PER PC 1203.03. ☐ PER W&I 707.2.
- Continued to/set for 2-23-95 at 2:00 P.M. IN DEPT. 9 ON MOTION
- OF COURT/DA/DEFENDANT/PROBATION OFFICER. REASON:

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

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

- ☐ 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 ~~proceeds~~ will be filed. (ADC is notified - cma)

Defendants phone # is 238-4191.

(1/19/95- Court is notified by ADC that atty. B. Burgeon has been assigned. ~~Robert May~~ file not available for today's hrq.

JUDGE OF THE SUPERIOR COURT

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: HON ~~ROBERT E. MAY~~ WILLIAM D. MUDO

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. GilBERT
ATTORNEY FOR DEFENDANT (APPTD/RETAINED)

VIOLATION OF *PC459 CT 1 *PC459 CT 2

ALLEG: PC460 CT 1, 2

INTERPRETER

SWORN/CERT

PC462(a) CT 1, 2 LANGUAGE

DEFENDANT ☒ PRESENT. ☐ WAIVES ARRAIGNMENT. ☐ ARRAIGNED FOR JUDGMENT. ☐ IMPOSITION OF SENTENCE IS SUSPENDED.

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☐ PERFORM _____ HRS/DAYS PSWP/VOL. WORK AT NONPROFIT ORG. SUBMIT PROOF TO PROBATION/COURT BY _____

☐ FOURTH AMENDMENT WAIVER OF PERSON/AUTO/RESIDENCE/PERSONAL EFFECTS. ☐ SHORT TERM WORK FURLOUGH, REPORT: _____

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PHES - NOT 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:

☐ BENCH WARRANT TO ISSUE, BAIL SET AT \$ _____ ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO _____

☐ BENCH WARRANT ISSUED/ORDERED _____ IS RECALLED/RESCINDED.

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Wm. Burgerer APPOINTED AS Counsel for Motion for New Trial or
ATTY Burgerer Requests Continuance, People object to Motion
for New Trial To Be filed in a timely fashion, and further
Continuances.

William D. Mudo

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

Exhibit B

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 INFLICT AN INJURY UPON
21 ANOTHER.

22 DURESS MEANS A DIRECT OR IMPLIED THREAT OF
23 FORCE, VIOLENCE, DANGER, OR RETRIBUTION SUFFICIENT TO
24 COERCE 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:

3
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 MISSEADING 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 COMMITTING THEFTS.

Exhibit B

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

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

0004

8004

OCT 17 1994

(copy)

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

TYRONE ROGERS,

Defendant(s)

10-28-94

SC No. SCD 106382
DA No. P 046999

INFORMATION

INFORMATION
SUMMARY

Ct. No.	Charge	Sentence Range	Defendant	Special Allegation	Alleg. Effect
1	PC459	Check	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

~~0002~~

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
NARRATIVE

Written by Detective Hattie

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

SIDE SECTION AND DESCRIPTION (ONE INCIDENT ONLY)				MONTH	DAY	YEAR	PAGE 3 OF 8		CASE NUMBER 94-063733	
LOCATION OF INCIDENT (OR ADDRESS)				CITY			BEAT		DISTRICT	
PERSON(S) INVOLVED: VICTIM DECASTRO, RUTH				SUSPECT (IF NAMED)			PROPERTY TAG NO. (S)			

ALIGIN: 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 DECASTRO TOLD ME SHE LEFT HER APARTMENT APPROX. 0830 HRS. DECASTRO'S BOYFRIEND WAS STILL IN HER APARTMENT WHEN SHE LEFT.

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

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

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

REPORTING OFFICER R. REYES	I.D. # 3578	DIVISION N-3	APPROVED BY 	DATE OF REPORT 08 06 94	MONTH 08	DAY 06	YEAR 94	TIME 0710
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Exhibit C

PHOTO LINEUP

CASE 94-065937

ON 8-16-94 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. HATZER #4077
(NAME)

SOPD
(AGENCY)

REMARKS:

I am ABSOLUTELY POSITIVE
* That this is the man who was
in my bedroom on 8/13/94.
Am. Keen

Exhibit C
PHOTO LINEUP

CASE NO. 94-063733

ON 08-31-94 , AT 1500 , AT 4275 EASTGATE MALL
(DATE) (TIME) (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. HATZER #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. HATLER #4077
(OFFICER) SAN DIEGO POLICE DEPARTMENT

REMARKS:

DAILY SECURITY REPORT

CL. NT SITE:		RECEIVED FROM		RETURNED TO	CONDITION
DATE:		RADIO(S)			
DAY OF WEEK:		PAGER(S)			
IN - OUT	OFFICER'S NAME	KEY(S)			

WHY - WHEN - WHERE - WHO - WHAT & 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 car 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 red blue
	Cadillac Deville, plate # 676 Z NG

1
2
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7
8 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 IN THE MATTER OF THE APPLICATION OF:)

11 TYRONE ROGERS,)

12 Petitioner.)

HC 22330

SCD 106382

ORDER DENYING PETITION FOR WRIT
OF HABEAS CORPUS

13)
14)
15)
16 AFTER REVIEWING THE PETITION FOR WRIT OF HABEAS CORPUS AND THE
17 COURT FILE IN THE ABOVE-REFERENCED MATTER, THE COURT FINDS AS
18 FOLLOWS:

19 In the present Petition, Petitioner challenges a conviction from 1995 for two counts of
20 violating Penal Code section 459 (Case No. SCD106382). In that case, Petitioner was sentenced
21 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
to grant relief.** (*People v. Villa* (2009) 45 Cal.4th 1063, 1069-1070, 90
Cal.Rptr.3d 344, 202 P.3d 427; *In re Stier* (2007) 152 Cal.App.4th 63, 82, 61
Cal.Rptr.3d 181 (Stier); *In re Wessley W.* (1981) 125 Cal.App.3d 240, 246, 181
Cal.Rptr. 401.)

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

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

27 Here, Petitioner is in custody based on his 2004 conviction in Superior Court Case No.
28

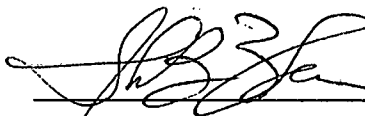
1 SCD 176027, not SCD 106382. At the time of the trial for which petitioner is currently
2 incarcerated, he was not in actual or constructive custody for the 1995 convictions. Petitioner
3 has not satisfied the jurisdictional requirements that he be in custody based on the conviction he
4 is challenging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

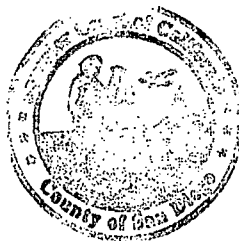
5 Therefore, the petition is denied.

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


SHARON B. MAJORS-LEWIS
JUDGE OF THE SUPERIOR COURT



CLERK'S CERTIFICATE

The foregoing document, consisting of
3 pages, is a full, true, and correct
copy of the original ☒ original ☐ copy on file in
this office.

Clerk of the Superior Court

1-27-16
Date

by Angela
Deputy