

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAR 5 2021

JAMES PLAS SAMS,

Petitioner-Appellant,

v.

NEIL McDOWELL, Warden,

Respondent-Appellee.

No. 19-56352

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

D.C. No. 5:18-cv-01754-SVW-SS
Central District of California,
Riverside

ORDER

Before: CANBY and VANDYKE, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

1
2
3 JS-6
4
5
6
7
8
9
10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 JAMES PLAS SAMS,
12 Petitioner,
13 v.
14 NEIL McDOWELL, Warden,
15 Respondent.

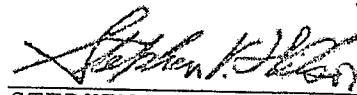
Case No. EDCV 18-1754 SVW (SS)

JUDGMENT

17 Pursuant to the Court's Order Accepting Findings, Conclusions
18 and Recommendations of United States Magistrate Judge,

20 IT IS HEREBY ADJUDGED that the above-captioned action is
21 dismissed with prejudice.

23 DATED: November 6, 2019


24 STEPHEN V. WILSON
25 UNITED STATES DISTRICT JUDGE
26
27
28

APPENDIX B

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAR 26 2021

JAMES PLAS SAMS,

Petitioner-Appellant,

v.

NEIL McDOWELL, Warden,

Respondent-Appellee.

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

No. 19-56352

D.C. No. 5:18-cv-01754-SVW-SS
Central District of California,
Riverside

ORDER

Before: CHRISTEN and WATFORD, Circuit Judges.

Appellant has filed a combined motion for reconsideration and motion for reconsideration en banc (Docket Entry No. 4).

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

EVIDENCE TAPE

People v. JAMES PLAS SAMS

RIF1601743

Transcript of Interview with Jessica Boyd

April 12, 2016

HT161030001/RSDE

Key: AVILA : DEP AVILA

BOYD JESSICA BOYD

13 AVILA: Okay. Here's what's goin' on. Um, obviously Shelly got some injuries.
14

15 BOYD: Yeah

17 AVILA: Okay? Uh, you've been staying here for...

19 BOYD: Yes. A and I

21 | AVV. A

22 | Page

24
25

26

28
29 AVILA: Okay. Um, you want to add to this?

31 ((CROSSTALK))

32 //

33 | //

34 //

35 //

MICHAEL A. HESTRIN
DISTRICT ATTORNEY
County of Riverside
State of California

People v. RJF1601743

Interview Date: 04/12/2016

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1 AVILA: Okay. Have you ever noticed any injuries s- on her in the past?

2

3 BOYD: Usually it's him that's got the injuries.

4

5 AVILA: Okay. Do - do - so you don't know of him abusing her in the past?

6

7 BOYD: I - I've never seen it before, but I've always seen her abuse him before.

8

9 AVILA: Has Shelly ever told you anything about that?

10

11 BOYD: Uh-uh.

12

13 AVILA: Okay. And what do you mean, she abuses him?

14

15 BOYD: Um, on his birthday she hit him in the head with a rock. Almost killed him.

16

17 AVILA: Really? Why?

18

19 BOYD: I don't know. And that's when I was over there, and I had one of my dogs with my and my dogs almost attacked him. So I was pullin' my dog back, and she - bam, bam. Hit him in the head with a rock. I was, like, "Oh, crap."

20

21

22

23 AVILA: Okay. Um, have you ever heard her threaten him? I mean, him threaten her?

24

25 BOYD: Uh-mmm.

26

27 AVILA: But you just know she's - Jim - James won't let Shelly got to your...

28

29 BOYD: Yeah.

30

31 AVILA: ...to your tent and talk to you?

32

33 BOYD: Uh-uh. Right.

34

35 AVILA: Separately?

36

MICHAEL A. HESTRIN
DISTRICT ATTORNEY
County of Riverside
State of California

People v. RIF1601743
Interview Date: 04/12/2016
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EVIDENCE TAPE

People v. JAMES PLAS SAMS

RF1601743

Transcript of Interview with Shelly Sams

April 12, 2016

HT161030001/RSDE

Key: RECKSIEK : DEP. RECKSIEK

AVILA : DEP. AVILA

SAMS : SHELLY SAMS

RECKSIEK: ...tired of - of feeling the pain.

SAMS: I (unintelligible) he would slap me, "Time to wake up. Make me some coffee." I'm like I drink too much caffeine during the day. Coffee ain't gonha do crap for me. I was like...

RECKSIEK: So this - this black knife is the one he also used six days ago to poke you on the backside of your side?

SAMS: Yes

RECKSIEK: But the one that he held to your throat, I

SAMS: That's the same knife.

RECKSIEK: Well you - which one was the counted - the 21

SAMS: That was - that was the black knife that he had it and he was going to cut me. But I wasn't gonna let that happen and I just went and grabbed it and I wouldn't let go of it.

11

People v. RIF1601743

Interview Date: 04/12/2016

Page 1 R-16-280-B TRACK 2

MICHAEL A. HESTRIN
DISTRICT ATTORNEY
County of Riverside
State of California

1
2 RECKSIEK: And what were you thinkin' at this point?
3
4 SAMS: "Please don't kill me. I don't wanna die." And then he begged me to kill him and
5 I said "I can't kill you. I can't. No, I can't kill you."
6
7 RECKSIEK: Why would he ask you to kill him?
8
9 SAMS: Because if I didn't kill him he was gonna kill me is what James said. He said,
10 "Kill me or I kill you." I mean sorry. "I can't. I love you too much." And he was
11 like, "Yeah right. You don't love me 'cause you're just a whore." And I said,
12 "I'm sorry you feel that way." And then there was this part of me that just took
13 over and I said, "Okay. You wanna die? You want me to kill you?" I thought,
14 you know what? This is justifiable and then on my behalf. They look at my face,
15 look at me, they ain't gonna say shit if I kill him. They're gonna say, "Wow girl.
16 Yeah you actually got him."
17
18 RECKSIEK: So for a split second it crossed your mind?
19
20 SAMS: Yeah. And actually I started to choke his windpipe. And I pretended that I didn't
21 know what I was doin'.
22
23 RECKSIEK: That night or you said it was...
24
25 SAMS: That night. That same night. I just grabbed and I started squeezing.
26
27 RECKSIEK: Grabbed what?
28
29 SAMS: I grabbed his - his throat right here. His jugular. And I just started crushin' it.
30 And just squeezin' it. And it - I just stopped.
31
32 RECKSIEK: What did he do when you did that?
33
34 SAMS: He couldn't do nothin' to me because I was on him. I pinned down his arms. Did
35 I tell you that I grew up with a lot of boys? I had four...
36

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County of Riverside
State of California

People v. RIF1601743
Interview Date: 04/12/2016
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1
2 RECKSIEK: You did tell me that.
3
4 SAMS: I had - I had three brothers. I pinned him down. So I grabbed his chest and he
5 said, "Oh no w- wait a minute." 'Cause he knows once I start sittin' on his hands
6 that he's gonna get it. This is according to him and - and I said o- he says - I said,
7 "Oh don't worry honey, I'm not gonna kill you. I'm not gonna hurt you." And he
8 went, "Okay." And I did. I started choking him. And I was like, yeah. This is
9 what I want. Now I can live. I'll be alive. And then I started looking into his eyes
10 and I was like, no. You can't. (Unintelligible) my daughter's gonna be pointin'
11 out - hey (unintelligible) that's my mom in the (unintelligible) I just don't
12 understand why he's always - why James is always the exception to the rule?
13
14 RECKSIEK: So he must've been layin' on his back when you were on top of him? And I'm
15 assuming you meaning, like, over the top of him maybe straddling his body?
16
17 SAMS: Yeah. He was laying this way and I just took his arms (unintelligible) and I just
18 one by one 'cause I still had another arm - with my arm behind his back while he
19 was laying down 'cause I pushed his arms up under his back because he was
20 laying on 'em. So I was like, well his weight and my weight I'm good to go. And
21 then I took one hand at a time, put under my knee and all my weight was - was
22 on my knee. I was kneeling to make sure his hands couldn't go and to - and to
23 really ensure (unintelligible) let go I had my arms intertwined with his. And I
24 learned not to stay too close to his head - James's head. He head-butts. And he's
25 got a hard head.
26
27 RECKSIEK: So then you - you get his arms pinned down but because, I mean, because...
28 SAMS: Yeah.
29
30 RECKSIEK: ...at one point you have to let your hand go, right?
31
32 SAMS: To choke him yes. I let one hand go - it's the right hand 'cause that's my
33 stronger. And I just grabbed and mainly used the pressure of my thumb to do it a
34 little bit more. Little more. And I started seeing the light go out of his eyes and
35 he started struggling a little bit. He said, "Hey, what are you," James said, "What
36

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People v. RIF1601743
Interview Date: 04/12/2016
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1 are you doin'?" I said, "I'm giving you what you want baby. I'm killing you."
2 And he said, "You better stop that. And I tried one more time. I tried twice. But
3 I couldn't. I said, "See? Told you I won't." I told James, I said, "I'm a little
4 pathetic little bitch. I can't kill you."

RECKSIEK: So you tried to choke him once and did he retaliate?

8 | SAMS: No

10 RECKSIEK: So then you said you tried to choke him again?

12 SAMS Year

14 RECKSIEK: And he was awake when you did both of them.

16 | SAM

18 RECKSIEK: And he didn't try to fit in.

19 SAMS: No. V. 111. 1. 1960

RECKSIEK: . . . So you tried to choke him twice. Do you do that?

23

RECKSIEK: And your reasoning behind it?

27 |
28 SAMS: Because I did not know

29
30 BECKSIEK.

31
32 SAMS

33 33 I didn't go in- let him get up he would kill me.

EVIDENCE TAPE

People v. JAMES PLAS SAMS

RIF1601743

Transcript of Interview with Defendant

April 12, 2016

HT161030001/RSDE

Key: AVILA : DEP. AVILA

SAMS : JAMES SAMS

AVILA: Come on. So since you and I - you and I know each other so well, I'm gonna go ahead and take those handcuffs off you so you're a little more comfortable, okay?

SAMS: Okay, good. Thanks

AVILA: Okay. You need to stretch, go ahead and stretch a little bit. You good?

SAMS: Yeah. Oh, okay.

AVILA: Here you go.

SAMS: Oh, thank you.

AVILA: You all right?

SAMS: No.

AVILA: Go ahead and drink some water, maybe that'll help you a little bit.

SAMS: Okay, that's good

AVILA: You good?

People v. RIF1601743

Interview Date: 4/12/16

Page 1 R-16-280-A

1 AVILA: Okay, so she was on top of you, she was straddling you and you said your arms
2 were, how were your arms?

3

4 SAMS: I don't know how she had the ~~she had just had, I couldn't get my arm up but I,~~
5 as soon as I got like one arm I guess I might have hit her in the eye, maybe.

6

7 AVILA: You said...

8

9 SAMS: Something like that.

10

11 AVILA: Okay, wh- and you said you might...

12

13 SAMS: 'Cause she was choking me.

14

15 AVILA: Right, and then you said you might have hit her, how did you - how did you, how
16 do you think you hit her?

17

18 SAMS: I don't know, like let's just say less than (unintelligible), you know? It was a jab,
19 I guess.

20

21 AVILA: So like this?

22

23 SAMS: Yeah, it probably was a jab, man.

24

25 AVILA: Okay, well so is it fair to say you - you hit her with a - a - a closed fist or a open
26 hand, how was it? How do you think it was?

27

28 SAMS: I don't know. Probably a fist. I'm not trying to hurt that girl.

29

30 AVILA: Right, I understand.

31

32 SAMS: I don't know - I don't know.

33

34 AVILA: So...

35 ///

36

People v. RIF1601743

Interview Date: 4/12/16

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1 SAMS: I just wanted her off me and to stop choking me. Um...

2
3 AVILA: So you don't think it was a fist?

4
5 SAMS: No.

6
7 AVILA: You think, so did you like was it...

8
9 SAMS: It was like a push.

10
11 AVILA: Okay.

12
13 SAMS: Maybe I might have hit like a ha- a palm might have hit.

14
15 AVILA: The palm of your hand?

16
17 SAMS: Yeah, and the eye, I mean.

18
19 AVILA: What, okay, what eye do you think you hit her in?

20
21 SAMS: Um, left.

22
23 AVILA: Okay.

24
25 SAMS: The left one (unintelligible).

26
27 AVILA: Right. Yeah, that - that'd be - that'd be a tough position. How, okay, so what happened after that?

29
30 SAMS: She continued with the hair pulling and the yelling and banging her face into things and fucking.

32
33 AVILA: Okay, but after you hit her did she - did she stop, did she get stunned, did she try to hurt you more, what did she do?

35 ///

36

People v. RIF1601743

Interview Date: 4/12/16

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1 **Evidence:**

2	<u>Item:</u>	<u>Qty:</u>	<u>Description:</u>
3	01	01	Compact disc with digital photographs of injuries to Victim-1
4	02	01	Compact disc containing audio interview with James Sams
5	03	01	Compact disc containing audio interview with Victim-1
6	04	01	Compact disc containing video from Deputy Avila's department
7			Issued body camera (VIEVU)
8			
9			I booked the above listed evidence in a Jurupa Valley evidence locker on April 14, 2016.
10			

11 **Injuries:**

12 V-1 sustained bruising to both eyes, the right being severely more bruised and swollen than the
13 left eye. The right side of V-1's face was discolored and slightly swollen. V-1 had several lumps
14 on her scalp. V-1 sustained two lacerations to the right leg/shin area, approximately $\frac{1}{2}$ " wide.
15

16 **Attachments:**

17 (01) Envelope containing additional disc with copies of digital photographs
18 (02) Envelope containing Emergency Protective Order for V-1
19

20 **Details:**

21 On April 12, 2016, approximately 1530 hours, while assigned to the Riverside County Sheriff's
22 Homeless Outreach Team and in full uniform, Deputy Avila and I were conducting follow-up
23 with a family in regards to potential housing assistance. The family resides in the city of Jurupa
24 Valley, within the county of Riverside, west of Canal Street and 26th Street in the hills.
25

26 **Background History:**

27 The family includes James Sams, the Victim who requested to remain confidential and will be
28 further referred to as V-1, and their daughter Ashly Bell. The family has been living in a
29 motorhome in Jurupa Valley for about 2 years. V-1 and Sams are legally married and have been
30 so for approximately 6 years. Their marriage has included emotional, mental, and physical abuse
31 that has increasingly become worse over the last few years. At this time, it is not known if the
32 abuse has been experienced by Bell who is developmentally slow (15 years old). Bell is a happy
33 child and shows no outward signs of abuse.
34

35 **Incident Details:**

36 On April 11, 2016, Deputy Avila and I attempted to make contact with the family at the above
37 location. We were speaking with Sams and had asked where V-1 was. Sams told us that V-1 was
38 shopping with friends and was not there. Sams said Bell was in school and he kept looking at his
39 watch, saying he needed to leave to pick her up from the bus stop. We left without further
40 incident.
41

42 On April 12, 2016, Deputy Avila and I were at the above named location again to inquire if Sams
43 had obtained his California ID in order to be eligible for housing services. Deputy Avila asked
44 where V-1 was and Sams said she was asleep in the motorhome. I asked why would V-1 be

1 sleeping in the middle of the day. Sams told me V-1 was suffering from depression and sleeps
2 due to that. Deputy Avila asked for Sams to wake up V-1 so we could speak with them together.
3 Sams entered the motorhome and returned less than one minute later, telling us she was coming
4 out. Shortly thereafter, V-1 exited the motorhome and walked over to speak with us wearing dark
5 sunglasses.

6
7 As V-1 walked up to me (due to my height and V-1 being shorter than I) I could see in the top of
8 the dark sunglasses V-1 was wearing. I noticed V-1's right eye was purple and swollen. I asked
9 V-1 to remove the sunglasses for me to see her eye. V-1 partially dropped the sunglasses down
10 the bridge of her nose. I could see the right eye was severely swollen and bruised (dark purple in
11 color), V-1 also had slight reddish bruising to the left eye. I asked V-1 what happened and V-1
12 said she didn't want to say anything if Sams was going to be arrested.

13
14 I explained to V-1 the importance of telling the truth regardless if Sams would be arrested. V-1
15 then said she feared for her life if Sams knew V-1 told me anything regarding the incident. V-1
16 then told me if I could find V-1 and Bell a safe place to go, V-1 wanted to leave and provide
17 me with details. V-1 then told me Sams had been hitting V-1 in the face on Sunday night (April
18 10, 2016) which caused the bruising. For fear Sams could hear us talking, V-1 quickly changed
19 the subject and pointed to her right shin area where I noticed a large square Band-Aid. The Band-
20 Aid appeared to have blood seeping through it. V-1 told me she cut her leg while shaving with a
21 cheap razor, nearly going down to the bone. V-1 claimed she was ok, but I noticed she had a
22 slight limp. We concluded our conversation by telling them we would be back to follow-up and
23 drove off the hill.

24
25 Due to the known violent history of Sams and to protect V-1 from further harm, Deputy Avila
26 and I contacted the Jurupa Valley Special Enforcement Team (SET) to assist with the arrest.
27 Deputy Avila and I provided the SET team with the known information for the incident. Four
28 deputies and one sergeant on the Jurupa SET team drove to the location and placed Sams under
29 arrest for domestic violence. Deputies Lycopolous and Melendez transported Sams back to the
30 Jurupa Station for further investigation. Deputy Avila and I stayed in the area until he was
31 transported and then approached the area to contact V-1. V-1 and Bell were given some time to
32 pack clothes, personal hygiene items and secure the motorhome.

33
34 **Interview with Witness- Jessica Boyd:**

35 During this time, Deputy Avila spoke with the neighbor "Star" who was identified as Jessica
36 Marie Boyd. Boyd told Deputy Avila that she hears V-1 and Sams yelling a lot, but stays out of
37 it. On April 12, 2016 she saw V-1 with a black eye. Boyd told Sams she would give him a black
38 eye if he doesn't stop doing this to V-1. He told Boyd "she asked for it." Boyd said she has never
39 talked to V-1 about the abuse because Sams won't allow her talk to V-1. Boyd has been friends
40 with Sams for a long time. She hears the arguing and believes it's always over cheating. Boyd
41 said Sams and V-1's relationship is "edgy" and Sams has a temper problem. She describes V-1 as
42 being "mouthy."

43
44 On April 10, 2016, in the late evening, Boyd said Sams called out to her, waking her up. Sams
45 told her V-1 had a stab wound. Both V-1 and Sams told her she had two stab wounds on her leg.

1 Boyd did not know who was responsible for the wounds. Boyd pointed to her lower right leg to
2 show Deputy Avila where the stab wounds were on V-1. Boyd told V-1 she needed to go to the
3 hospital but V-1 refused to go. Deputy Avila thanked Boyd for talking with him and ended the
4 conversation.

5
6 Deputy Avila and I then transported Belle and V-1 to the Jurupa Station for further investigation.
7 While at the Jurupa Station, I spoke briefly with V-1 about taking photographs of her injuries. V-
8 I told me she lied to me about the injury under the Band-Aid, and then proceeded to open the
9 Band-Aid, where V-1 revealed an approximate $\frac{1}{2}$ " wide laceration. Then V-1 showed me an
10 additional laceration just to the outside (right side of leg), which was approximately $\frac{1}{2}$ " wide as
11 well. The first being covered appeared to be clean, but the other uncovered one was scabbed over
12 with what appeared to be dried blood. V-1 told me the one covered in the Band-Aid kept draining
13 fluids and that is the reason it was covered up. V-1 expressed to me that she felt a little pain in
14 her leg.

15
16 V-1 agreed to photographs of the injuries. I took V-1 to the front lobby bathroom, where V-1
17 could show me additional injuries I had not seen. While in the bathroom, V-1 told me that
18 approximately six days ago Sams had punctured the back of her legs with the tip of a knife. V-1
19 took down her sweatpants (wearing jean shorts underneath) and showed me two small scabbed
20 areas where V-1 said Sams punctured her with the knife. V-1 cried while talking about this and
21 said it was due to Sams always thinking V-1 was cheating on him. I photographed the injuries to
22 both of her legs, eyes, and face. V-1 also expressed that she felt lumps on her scalp from Sams
23 hitting her. Although V-1 allowed me to touch her scalp to feel the lumps (I felt about 3), the
24 lumps were not something that could be photographed.

25
26 I offered V-1 medical services for the injuries, which V-1 adamantly declined. V-1 said the
27 swelling had gone down in her eye and had she never lost her vision other than from the swelling
28 of the eye lids. V-1 mentioned that today (April 12, 2016) was the first day she could feel her
29 temple area, noticing that the swelling was starting to reduce. V-1 also mentioned it hurt to move
30 her eyebrows in an upward motion. Again I offered medical services which she again declined.

31
32 V-1 told me she wanted to tell me several times that she was being abused by Sams, but V-1 was
33 so fearful of retaliation from Sams. She said she has experienced this retaliation and it was not
34 good. V-1 said she never asked to go to the hospital because she was afraid to leave Bell with him.
35 V-1 also said it crossed her mind to say she did this all by herself and check herself into a mental
36 facility. V-1 said that way she could cover this up because she didn't know how to safely leave
37 this situation. V-1 was thankful we came by her motorhome when we did, and that I offered to
38 help. She felt it was the right time. After photographing the injuries to V-1, Deputy Avila and I
39 conducted an interview with her in the Investigations Bureau of the Jurupa Valley Station.

40
41 **Summary of Interview with V-1:**

42 The following is a summary of the incident as told by V-1. V-1 said she fears the night time
43 because that's when the "creepers" come out and when Sams is the most violent towards her.
44 About 2300 hours, on April 12, 2016, V-1 said she was in the motorhome with Sams when he
45 said he heard the "creepers" outside. V-1 described the "creepers" as a friend of Sams named

1 "Matt." Sams blames her for cheating on him with "Matt." At this time V-1 noted that Bell was
2 sleeping on the bed over the front cab of the motorhome, not aware of what was going on.
3

4 V-1 recalled the night starting with Sams arguing with V-1 over whether or not she was cheating
5 on him. This is a typical argument. V-1 was crying and rocking in her chair as she revisited the
6 incident with us. V-1 then spoke of an incident that occurred approximately six days ago. V-1
7 said Sams accused her of making flirty eyes to a friend of his. V-1 said she does not want to be
8 with anyone else. V-1 said she was lying on her stomach in the motorhome that night when Sams
9 poked the back side of V-1's thighs with a knife, drawing blood. Sams refers to V-1 as a "big fat
10 whore, hood rat." V-1 described the knife as a doubled edged knife, all black in color with two
11 folding handles. V-1 said she went to sleep and then woke up sometime later to Sams holding a
12 knife to the left side of her throat and asked her if she wanted to die now. V-1 told Sams he was
13 crazy. The knife did not leave a mark on her neck, she just feels her life is always threatened.
14 Sams continues to blame her for cheating on him. V-1 said she was terrified and thought she was
15 going to die. V-1 saw the look in Sams' eyes, which she explained as evil hatred. V-1 said, "I
16 knew I was gonna die." Sams believes V-1 is lying to her about cheating on him, Sams has told
17 her he was going to torture her and said she didn't know what pain was yet. Sams asked her if
18 she wanted to die.
19

20 V-1 told us she is scared of knives due to her childhood. V-1 experienced times when her father
21 used knives against her in an abusive way. We did not ask V-1 to elaborate on this.
22

23 When asked about her bruised eye, V-1 said she did not go to sleep on April 10, 2016. Sams
24 started talking about "sex spots" (empty dirt spaces where Sams blames her for sleeping with
25 men) and the "creepers" that were trying to get her attention with lights. That night, V-1 told
26 Sams she slept with the men, hoping if she just said she did it, then he may not hurt her any
27 worse.
28

29 V-1 was sitting in her bed on a mattress in the back of the motorhome with her eyes closed,
30 praying she wouldn't die tonight. V-1 then felt a sharp pain to her right leg (shin area). V-1
31 opened her eyes and noticed Sams holding a knife that was in her leg. Sams then took the knife
32 out and stabbed her leg on more time just to the left of the first puncture. V-1 recalled not being
33 able to feel her leg. Sams was sitting on the bed near her when this occurred. Sams told V-1 to
34 exit the motorhome and bring back the "creepers", and to not return until V-1 found them. Sams
35 called V-1 a whore and pulled her by her arm, forcing her out of the motorhome. Sams went to
36 get a neighbor, "Star", to help stop the bleeding. The arguing continued and "Star" left. Sams
37 then told V-1 to get back in the motorhome, which she refused because V-1 knew it was going to
38 get worse.
39

40 A physical altercation began between Sams and V-1 where Sams hit V-1 in the right side of her
41 face and eye area with an open flat hand (in a palm strike motion) twice. V-1 was unable to
42 identify which hand was used due to darkness. V-1 had no doubt it was the palm of his hand that
43 was used to hit her face. V-1 said she has been hit this way before, that's why she knows. V-1
44 said he uses all his force when he hits her. Due to him hitting her, V-1 "bear hugged" Sams to
45 stop him from hitting her. During the time she was trying to "bear hug" him, Sams was hitting

1 her "like a windmill" in the head and face. V-1 said she put her arms up over her head to protect
2 V-1's head from the hits. V-1 said when Sams hit her good in the eye, V-1 saw stars. V-1 then
3 went in the motorhome, where she began praying for Sams to not kill her. V-1 said it got worse,
4 and Sams continued to slap her. V-1 cried as she said her face was so swollen she couldn't look
5 in the mirror.

6
7 V-1 tried to wake Bell by pulling the covers off her. Bell didn't fully wake up and told V-1 to
8 leave her alone. Sams asked her what she was doing, and V-1 played stupid. V-1 hoped that
9 Sams would stop hurting her and that maybe she wouldn't die that night.

10
11 V-1 noted Sams wasn't always so violent. It's been increasing over time. Sams tells V-1 she
12 loves to get "fucked" by other guys and tells her she is crazy, that she is covering up for the men.
13 V-1 said she often plays along with hearing the "creepers" outside. V-1 then asks him to keep her
14 safe from them, in hopes that he won't hurt V-1. V-1 said Sams has multiple personalities (4-5)
15 some being more violent than others, one being suicidal, and a few others. V-1 really thought
16 Sams was going to kill her that night. Sams then told her to kill him, because one of them was
17 going to die. V-1 told him no. After Sams felt asleep on his back, V-1 thought if she didn't try to
18 kill him that she would die. V-1 said she straddled over the top of him and used her right hand, to
19 squeeze his neck and choke him. She used her body and left arm to try and pin him down. V-1
20 really thought that was what she wanted, because she would live. But realized she couldn't kill
21 him and stopped. V-1 kept saying that she believed she was going to die.

22
23 I asked V-1 where the knife was that Sams used to stab her in the leg. She said Sams got rid of it
24 in the hills somewhere on Monday night (April 11, 2016). She is not sure where it would be,
25 because he just wonders off. V-1 said she feared if she did not tell me about this incident that she
26 would die.

27

28 **Summary of Interview with Suspect James Sams:**

29 Deputy Avila conducted the interview with Sams. Prior to speaking with him, Deputy Avila read
30 Sams his Miranda rights from his county issued Miranda card. Sams said he understood his rights
31 and agreed to speak with Deputy Avila regarding the incident. The following is summary of the
32 incident as told by Sams:

33

34 Sams started crying right away and told Deputy Avila that V-1 is crazy and he is tired because of
35 it. Sams said V-1 is trying to cheat on him with his friends. On April 10, 2016, Sams heard the
36 "creeper" (Matthew) calling for Bell outside his motorhome. Sams recalls it was sometime after
37 2200 hours and was dark outside. Sams often hears the "creepers" and goes to look for them but
38 never finds anyone outside the motorhome. Sams believes V-1 cheats on him with this man in
39 the bushes just outside the motorhome. This makes Sams mad. Sams said the black eye V-1 has
40 is a self-inflicted wound from hitting herself. Sams says he never tries to call for help when she is
41 hurting herself.

42

43 Sams and V-1 were in their bed in the back of the motorhome when V-1 began pulling out all her
44 hair and hitting herself in the face. V-1 ran at Sams and began swinging her hands at him. Sams
45 tried to stop her by pushing his hands outwards in front of him, pushing her away. Sams said

1 during this time, V-1 tackled him in a bear hug style. He thinks he may have hit V-1 in the eye
2 with the palm of his hand. V-1 told him that if he left she would tell people that he beat her up.

3
4 Sams agreed to stay and went to sleep. Sams said V-1 straddled over him, taking a hold of his
5 throat with her hand and trying to choke him, but didn't choke him.

6
7 Sams admitted he lied to us about V-1 being gone shopping the day prior when we came to see
8 them. He said he was asked by V-1 to not tell us she was there due to the injury on V-1's face.
9 Sams didn't want to deal with the hassle of explaining the injury.

10
11 Sams said he believes he has multiple personalities and sometimes can't remember things. He
12 blames this on old PCP habits when he was younger.

13
14 Deputy Avila asked Sams if he stabbed V-1 in the leg and Sams denied that. He said V-1 may
15 have fallen on something and got that injury or hurt herself. Deputy Avila asked about Sams
16 going to get the neighbor "Star" to help. Sams said he got her to calm V-1 down, not to tend to a
17 leg injury. Sams denied knowing about the leg injury.

18
19 Sams said he did tell V-1 to kill him when they were inside the motorhome, but did not think she
20 would try. Sams keeps saying V-1 is crazy. Sams continued to blame all injuries to V-1 as self-
21 inflicted. He says V-1 often tries to kill herself, but he again never calls to get her help. Sams
22 claims he has injury to his throat and eyes from V-1. Deputy Avila checked his throat and eyes,
23 finding no injury. Deputy Avila photographed Sams prior to the interview ending.

24
25 **Additional Information:**

26
27 Bell was not interviewed regarding this incident due to her mental status, as we believe this
28 would be too traumatic for her to speak about if she saw anything. V-1 expressed that Bell did
29 not see this; however, she has seen Sams hit V-1 in the past. This portion of the case will be
30 requested to be handled if necessary, by specialists through the District Attorney's Office.

31
32 Deputy Avila contacted dispatch and requested an on-call judge for an Emergency Protective
33 Order (EPO). Honorable Judge Bermudez contacted Deputy Avila by phone and granted the EPO
34 to protect V-1 and Bell from Sams. Deputy Avila provided V-1 a copy and explained it to her.
35 Deputy Avila served Sams with a copy and also explained it to him. Deputy Avila faxed dispatch
36 a copy of the EPO for records.

37
38 V-1 signed a confidentiality form requesting her name to be kept private. V-1 was provided
39 information on Alternatives to Domestic Violence and Marsy's Rights card. Due to the violent
40 nature of this incident and the fear V-1 felt of Sams possibly hurting her again, V-1 and Bell
41 were taken to an undisclosed location for safety.

42
43 V-1 expressed many times of the extreme fear she feels when Sams is angry and how many times
44 he has told her he was going to kill her, that V-1 has truly come to believe this. After obtaining
45 the statements for this incident, it is my opinion that Sams used the palm of his hand to strike V-

1 in the face with intention of physically causing harm to her. This in fact caused the severe
2 bruising to the face and right eye. Sams corroborated that with his statements and motioned how
3 he may have struck her. Sams expressed a liking for knives to us, and we have often found many
4 knives laying around. It is my opinion that during the altercation between the two, Sams became
5 increasingly angry possibly using a knife or like object to puncture V-1's leg twice.

6 It is apparent that both Sams and V-1 have a violent marriage physically and emotionally. The
7 injuries to the eye and face do not appear to be self-sustained. I have not noticed and previous
8 scars on V-1 to establish that she tries to kill herself. It is my opinion that V-1 did not inflict the
9 lacerations to her own leg. Although Sams said he didn't notice the lacerations, yet said they
10 were accidental from falling on something, or self-inflicted; Boyd stated she was contacted by
11 Sams telling her they were "stab" wounds corroborating that they were just that. It is my opinion
12 that none of the injuries sustained by V-1 were self-inflicted and were caused by Sams.

13
14 Sams was arrested for 273.5(a) PC, 245(A)(1) PC and 422 PC. Sams was transported and booked
15 into the Robert Presley Detention Center for those charges. A copy of this report will be
16 forwarded to the Riverside County District Attorney's Office for prosecution of James Plas Sams
17 for the previously mentioned charges.

18
19
20 **Case Status:** Arrest

JUVENILE JURISDICTIONAL and DISPOSITIONAL FORM
1001 — 602 Welfare and Institutions Code

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN — JUVENILE COURT
Court met at Juvenile Justice Center, French Camp, CA

10 6/13/90 Date R. Woodson Reporter JOHN E. CRUTKSHANK JR.

Minor(s) previous order of placement: JJC MCCW JUDGE C. Telcheira

Minor(s) resides with: parents mother father COURT CLERK

IN _____
OUT _____

IN RE: Minor(s) Age: PRESENT BEFORE THE COURT: D.A. *Frank J. Travers*
 DPA/C.W.U.C. P.O./Supervisor *Frank J. Travers*
 DPA/S.S.W. Pro. Officer *Frank J. Travers*
 Minor mother father
 Pub. Defender Other(s)

Frank J. Travers
JAMES PLAS SAMS 18

TYPE OF HEARING: FURTHER HEARING 707(b) MOTION

COURT EXPLAINED ALLEGATIONS OF PETITION(S) dated 10/27/89 (NEW) 602 W & I CODE ALLEGING:
 187 PC, PEL., CT. I *And Negligence*
 12022.5 PC, ENHANCEMENT
 ATI 187 PC, PEL., CT. I
 12022.5 PC, ENHANCEMENT

THE COURT THEREUPON FINDS THAT for jurisdictional purposes the requirements of the Juvenile Court Law have been complied with

Court appoints the PUBLIC DEFENDER for minor mother Minor Mother Father knowingly, voluntarily waive right to either counsel

Court appoints for minor mother father Counsel was requested by minor mother father minor mother father

Court refers parties to the LAWYER'S REFERENCE SERVICE for selection of counsel for minor mother father minor mother father

Court orders Petition of minor mother father

Court orders amended petition be filed amended on its face to corrected to

M arraigned waives formal arraignment

Allegations of Petition(s) *10-27-89 CTT AND DENEG* are ADMITTED DENIED by *Frank J. Travers* *Frank J. Travers*

M MO FA enters a Plea of No Contest to allegations of petition(s)

Frank J. Travers *8941a521* REPORT HAVING BEEN CONSIDERED BY THE COURT, THE COURT FINDS:

NOTICE HAS BEEN GIVEN AS REQUIRED BY LAW.

Minor mother father has/have been advised has/have knowingly and intelligently waived his/her constitutional rights as follows:

to a court trial to remain silent to confront and cross-examine witnesses to subpoena witnesses to present a defense to counsel at every hearing in Juvenile Court

The minor mother father understands the nature of the conduct alleged in the Petition and the possible consequences of an admission/plea of no contest

The admission/plea of no contest is freely and voluntarily made

The maximum period of physical confinement is *Life*

Frank J. Travers *8941a521* *on the motions of the District Attorney* *for further hearing* *10/27/90* *withholding*

THE COURT ORDERS: *June 2, 1990 @ 1:30 P.M.*

CONTINUANCE *June 2, 1990 @ 1:30 P.M.*
 Pet. No 10 Juvenile Justice Center

Dispositional OSC Contested Detention Rev.

Bench warrant review Juris. upon request of minor parent counsel

STATUTORY TIME WAIVED BY minor parent counsel

Minor having run away/failed to appear; A Bench Warrant be issued for minor's arrest.

Bench Warrant ordered recalled remain outstanding.

Continuance date of is advanced and vacated

Minor mother Father shall undergo psychological and/or psychological examination to be arranged by P.O. HSA

Report NOT to be used at jurisdictional phase except with consent of minor mother father

Minor(s) remain - with be released to: mother father under conditions of release as announced in Court Home Supervision House Arrest House Arrest Deleted OSC conditions. obey law Probation Officer, Parents, School attend school Home Supervision deleted P.O. has discretion to delete reinstate home supervision house arrest

Pending hearing Date *6/14/90*

Copy of Petition served on *Frank J. Travers*

Copy of Request for Detention served on *Frank J. Travers*

Mother Father Minor(s) Counsel Private Counsel Social Worker District Attorney Parent

CC: Probation Officer Public Defender LRS Minor Sup. Ct. 70

Frank J. Travers *6/14/90* *On the motions of the District Attorney* *for further hearing* *10/27/90* *withholding*

Minor(s) remain in be detained in On Bench Warrant Mary Graham Children's Shelter Juvenile Justice Center San Joaquin County Jail Men's Women's Temporary Shelter Care Non Secured Detention Transportation in custody to County of Pending trial sentencing formulation & completion of place Discretion to P.O. HSA to release minor(s) to MO FA Responsible adult

Frank J. Travers *6/14/90* *On the motions of the District Attorney* *for further hearing* *10/27/90* *withholding*

JUDGE OF THE JUVENILE COURT

Witness(es) sworn and examined. SEE PAGE 2

ORDER and MINUTE ORDER

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 12 2016

PEOPLE V. SAMS

C. Benedicti CT

RIF1601743

James Sams

NOTICE OF RULINGS ON DEFENDANT'S MOTION TO STRIKE PRIORS

- A. Defendant James Plas Sams' Motion to Strike his Juvenile Adjudication in San Joaquin Superior Court case J-66931 is denied without prejudice.
- B. Defendant's Motion to Strike Subsequent Convictions in which he plead to charges in substantial part because of the prospective punitive role of that Juvenile Adjudication is also denied without prejudice.

Phillip J. Argento,

Assigned Judge

July 11, 2016

44
JUL 14 2016
12

I. INTRODUCTION

Defendant Sam's Motion to Strike Prior Convictions (Motion) requests first an order declaring his priors unconstitutional and second an order striking the prior convictions from the accusatory pleading. Both are denied despite their plausibility, as more fully explained below.

His evidentiary grounds, set forth in his moving papers and reply to the People's opposition, are that the People entered into a prior plea agreement and violated that agreement such that he is entitled to specific performance of the plea agreement. He stated that the motion is based on the Contracts Clause of the United States Constitution, Article 1, section 10 clause 1; the Contracts Clause of the California State Constitution, Article 1, section 9; *Santobello v. New York* (1971) 404 U.S. 257; and other authority cited in his Memorandum of Points and Authorities. As evidence, he furnished a copy of the San Joaquin Superior Court's Juvenile Minute Order of June 13, 1990 and his Declaration filed with this the Riverside Superior Court on June 28, 2016. His Declaration is missing a specific date of execution.

The People filed their People's Opposition to Defendant's Motion to Strike Prior Convictions and Points and Authorities in Support Thereof (Opposition). In addition, the People submitted a copy of the San Joaquin Superior Court's Minute Order of July 2, 1990.

Defendant filed his Anticipated Reply to the People's Opposition to Motion to Strike Priors and/or Supplemental Points and Authorities in Support Thereof (Reply).

Prior to the hearing on the Motion, the Court through Judge Argento gave both sides an opportunity to disqualify him as judge under Code of Civil Procedure section 170.6 after making disclosures on the

1

record. In short, Judge Argento had presided at a jury trial resulting in Defendant being found guilty in *People v. Sams* (RIF135461). There, Defendant was sentenced to an aggregate of six years after all motions were decided.

One such motion was his Motion to Enforce Agreement to Not Use Juvenile Prior for Three Strikes Sentencing, a motion grounded in essentially the same legal theory as his present Motion. The Court denied it. Another was Motion to Dismiss the Prior Conviction (Pen. C. § 667(b) in Furtherance of Justice (Pen. C. sec. 1385) as to the Adult Conviction for Criminal Threat (Pen. C. § 422). The Court denied this motion as well. Following an analysis pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 and subsequent cases interpreting it, Judge Argento did grant Defendant's motion to dismiss the Juvenile prior in furtherance of justice. A *Romero* motion is not before Judge Argento.

In regard to denial of the Defendant's motion to strike the juvenile prior on the Contracts Clause theory, the Court through Judge Argento in RIF135461 stated:

I do it upon the authority of *People v. Gipson* (2004) 117 Cal. App. 4th 1065, 1070: "Therefore, defendant's contract clause challenge fails. His plea bargain is 'deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy... .' [Citation omitted.] The plea bargain 'vest[ed] no rights other than those which relate[d] to the immediate disposition of the case.' [Citation omitted.] The 1994 amendment to section 667 did not affect the 1992 plea bargain; it did not create or destroy any substantive rights defendant had in the plea bargain. Subsequent to the plea bargain, the Legislature amended the law; defendant committed another crime; defendant became subject to the penalty described in the amended statute. The increased penalty in the current case had nothing to do with the previous case except that the existence of the previous case brought defendant within the description of persons eligible for a five-year enhancement for his prior conviction on charges brought and tried separately. There was no error."

Thus, the agreement reached about 20 years ago by Defendant [Sams] and the People as to the future use of the juvenile adjudication of second degree murder incorporated and contemplated not only the then existing law but the reserve power of the state to amend the law and enact additional laws. However, for reasons explained below that adjudication is dismissed as a strike under Penal Code section 1385.

(RIF135461 RULINGS ON PENDING MOTIONS, SENTENCING CHOICES, AND REASONS INCLUDING EXERCISE OF DISCRETION UNDER PENAL CODE SECTION 1385 (June 4, 2010)

Gipson is discussed by both the People and Defendant in this present case (RIF 1601743). After 2004, the Ninth Circuit decided *Davis v. Woodford* (9th Cir. 2006) 446 F.3d 957. As stated in the oral colloquy prior to taking the present Motion under submission, the holding of the Ninth Circuit is not binding on this superior court; cases by higher California courts are binding, and they have held that a prior juvenile adjudication to serve as strike for sentencing purposes is permissible. For that reason, the

tentative ruling by this Court on Defendant's present Motion was to deny it. But because it has been about six years since Judge Argento previously addressed the issue decided then by *Gipson*, a case distinguished in *Davis*, it is appropriate to revisit the law and to consider Defendant's evidence more thoroughly.

II. DISCUSSION OF LAW RE JUVENILE CONVICTION

The Court commends both the People and Defendant for the quality of their respective points and authorities. It is clear from the record that Defendant's prior juvenile adjudication factually meets the four statutory requirements of Penal Code section 657(d)(3) and 1170.12(b)(3). Here, the focus is whether, despite those facts, other law and the particulars of that negotiated agreement resulting in the 1990 juvenile adjudication mandate its non-use for purposes of the Three Strikes Law.

A. People v. Fowler (1999)

People v. Fowler (1999) 72 Cal. App. 4th 581, 585 (citing *People v. Lucky* (1988) 45 Cal. 3d 259, 295) is cited by the People for the proposition that it is "well established that the trial court may consider a defendant's juvenile adjudications as evidence of past criminal conduct for the purpose of increasing an adult defendant's sentence." *Fowler* further stated: "By enacting the three strikes law, the Legislature has not transformed juvenile adjudications into criminal convictions; it simply has said that, under specified circumstances, a prior juvenile adjudication may be used as evidence of past criminal conduct for the purpose of increasing an adult defendant's sentence." (*Fowler, supra* at p. 586.)

The specific issue in *Fowler* was: "Can Defendant's Juvenile Adjudication Be Used as a Strike When It Occurred Without a Jury Trial or Waiver of a Jury Trial?" (*Id.* at p. 584.) *Fowler* held: "The fact defendant was neither afforded nor waived a jury trial at the prior juvenile adjudication does not prevent the use of that adjudication as a strike for purposes of sentencing in his current adult proceeding."

In *Lucky*, the juvenile adjudication was relevant to whether the death penalty should be imposed pursuant to Penal Code section 190.3. Despite the "well understood distinction between a juvenile wardship adjudication on the one hand, and adult criminal proceedings leading to a 'felony conviction' on the other [citation omitted]" a "juvenile court disposition is no bar to admission under factor (b) of a penal violation involving the threat of force or violence." (*Lucky, supra* at p. 295.) The *Lucky* court explained:

As we noted in *Phillips, supra*, 41 Cal.3d 29, the legislative history of the identical factor (b) of the 1977 law makes clear that, with respect to past violent acts, admissible "criminal activity" includes evidence of misconduct, regardless of "conviction," which amounts to an "actual crime, specifically, the violation of a penal statute," so long as defendant was not "acquitted." (41 Cal.3d at pp. 71-72, *italics added*; see also *Balderas, supra*, 41 Cal.3d at p. 201, & fn. 28 [1978 law].) The Juvenile Court Law expressly provides that a minor is eligible for wardship status "when he violates any law . . . or . . . ordinance . . . defining crime. . . ." (Welf. & Inst. Code, § 602.) Contrary to defendant's

assertion, nothing in the 1977 or 1978 laws indicates an intent to exclude violent criminal misconduct while a juvenile as an aggravating factor, simply on grounds the misconduct resulted in a juvenile wardship adjudication.

(*Lucky*, *supra* at p. 295.)

In other words, *Lucky* did not authorize the use of a juvenile adjudication *per se*; it authorized the use of evidence of misconduct, regardless of conviction, underlying the adjudication for its relevance under section 190.3 as to whether death should be imposed. Penal Code section 667(d)(3) expressly declares that a qualified adjudication shall constitute a conviction "for purposes of sentence enhancement." *Fowler* indicates that although a qualified Juvenile adjudication is not strictly a conviction, it is evidence of misconduct that can be considered, akin to *Lucky*, to increase punishment.

It is hard for this trial court to reconcile the statutory language of Welfare & Institutions Code section 203, specifically, "An order adjudicating a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding" (emphasis supplied) with the language in Penal Code section 667(d)(3), "A prior juvenile adjudication shall constitute a prior serious and/or violent felony conviction for purposes of sentence enhancement if" four statutory requirements are met. Section 667(d)(3) does what the prior statute prohibits. However, *Fowler* impliedly reconciled them in light of its result.

B. People v Nguyen (2009)

Fowler was decided before *Apprendi v. New Jersey* (2000) 530 U.S. 466. There, the United States Supreme Court held that any fact other than a prior conviction used to increase a sentence beyond the statutory maximum for a crime must either be admitted by the defendant or found by the jury beyond a reasonable doubt. *Apprendi* re-raised the issue of a juvenile adjudication as a strike because a judge, not a jury, decides the issue.

Nine years after *Apprendi*, this issue was decided by the California Supreme Court in *People v. Nguyen* (2009) 46 Cal.4th 1007. There, the defendant pleaded guilty to felon in possession of a firearm (Pen. C. § 12021.1(a)) and gave up his right to jury trial as to the existence of prior juvenile adjudication for assault with a deadly weapon. The trial court found the alleged prior to be true and doubled the sentence under the Three Strikes Law. On appeal, defendant argued that a juvenile court adjudication of a felony by a minor is outside the recidivist exception to *Apprendi* because there is no right to trial in juvenile proceedings. *Nguyen* held that *Apprendi* does not preclude the use of nonjury juvenile adjudications to enhance later adult sentences.

Nguyen explained the sentencing fact is whether defendant had a prior adjudication of criminal conduct that qualified under the Three Strikes Law. Recognizing that recidivism is both a rational and traditional basis for increasing punishment, the *Nguyen* court stated that *Apprendi* requires that prior criminal conduct be determined in reliable adjudication, and a juvenile court adjudication is sufficient reliable because juvenile proceedings have most of the safeguards of adult criminal trials except for the right to a jury trial. (*Nguyen*, *supra* at pp. 1019, 1025.)

"California, in the exercise of its sovereign prerogative, has made the rational determination, expressed in its Three Strikes law, that certain serious prior juvenile adjudications should serve as 'prior felony convictions' for the purpose of enhancing the sentences for subsequent adult felony offenses." (*Id* at p. 1028.) As explained more fully below, this trial court is bound by *Nguyen* despite section 203's apparent statutory prohibition of what section 667(d)(3) does.

In her dissent in *Nguyen*, Justice Kennard, after discussing significant problems with the majority opinion in light of *Apprendi* agreed with the holding of the Court of Appeal: "[T]he Sixth Amendment's right to a jury trial does not permit a trial court to impose additional punishment that is based on prior juvenile criminal conduct for which there was no right to a jury trial." ((*Nguyen, supra* at p. 1034 (Dissent, J. Kennard).) As she explained:

As the majority notes, federal and state courts are divided on the issue. (Maj. opn., ante, at p. 1021, fn. 10.) [¶] *Apprendi* itself says that the exception to the jury trial right applies only to the "fact of a prior conviction." (*Apprendi, supra*, 530 U.S. at p. 490, italics added.) As used in the field of law, the term "conviction" ordinarily does not include juvenile court adjudications. (*People v. Hayes* (1990) 52 Cal.3d 577, 633 [276 Cal. Rptr. 874, 802 P.2d 376] ("Juvenile court adjudications under Welfare and Institutions Code section 602 are not criminal convictions")) This is not a matter of semantics: A conviction is obtained in a trial court proceeding at which the adult defendant has the right to a jury trial. By contrast, a juvenile court adjudication results from a proceeding at which the accused juvenile has no right to a jury trial.

Justice Kennard's opinion and her stature as a jurist supports the inference that 667(d)(3) conflicts with 203. This trial court has found no citable published case squarely on point, that is, expressly addressing whether section 203 conflicts with section 667(d)(3). Indeed, the best argument in support of Defendant's position, to the extent it is independently based on section 203 as a mandatory provision of a plea agreement, appears in the Court of Appeal's decision reversed by the California Supreme Court in *Nguyen*. It is quoted below, not as binding authority, but to illustrate that Defendant's argument has reasonable plausibility in light of Justice Kennard's dissent agreeing with it.

C. Gonzales v. Superior Court (1995)

Gonzales v. Superior Court (1995) 37 Cal.App.4th 1302, 1309 upholds retroactive application of the Three Strikes Law in the context of prior convictions for adult felonies as did other cases *Gonzalez* cited reaching essentially the same conclusion. None of these expressly addressed retroactive use of a prior juvenile adjudication pursuant to section 667(d).

It is clear however, that the Legislature intended retroactive use of juvenile adjudications that meet the four criteria. However, the Legislature did not expressly amend section 203 to avoid tension between those two sections

D. People v. Gipson (2004)

freeze the law as it was in 1986. Instead, the parties agreed on the facts (number of "priors") that could be used, later, to sentence Petitioner under whatever law might then be in effect.

(*Id.* at p. 962.)

In *Davis*:

The prosecutor unequivocally stated that Petitioner would have only one prior conviction on his record 'for all purposes.' Even if there were ambiguity, which we think there was not, any such ambiguity should be resolved in Petitioner's favor. As a matter of California contract law, Petitioner's prior conviction counted as only one strike.

(*Id.* at p. 962.)

Again, in Defendant's Motion, it is not clear whether the prosecutor in Defendant's juvenile adjudication used a phrase such as "for all purposes" a phrase used by the prosecutor in *Davis* and consistent with the language of section 203. The use of a phrase such as "for all purposes" by the prosecutor could bring the representation within California contract law, the basis of a *Santobello* claim, in addition to the "for all purposes" language of section 203, impliedly rejected by *Nguyen*, as explained above.

IV. EFFECT OF JUVENILE ADJUDICATION ON SUBSEQUENT CASES

Defendant's Declaration states that in subsequent cases, the juvenile adjudication "was used to scare me with increased exposure and used as an illegal inducement to plead guilty. Those cases were also doubled sentences at eighty percent." (Decl. 1: 15-19.) In the present context, the role the juvenile adjudication as an inducement to plead guilty to subsequent charges first depends upon the resolution of the legality of the prior adjudication as the functional equivalent of a strike under the Three Strikes law.

Because Defendant's evidence is insufficient to specify the prosecutors express or implied promises as distinct from what section 203 provides, Defendant's Motion as to strike subsequent convictions as influenced by the juvenile adjudication is also denied without prejudice.