

No. \_\_\_\_\_

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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ROBERT JURADO, Petitioner,

vs.

RONALD DAVIS, Warden, Respondent.

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

**APPENDICES  
(Vol. 2 of 2)**

(Capital Case)

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## INDEX TO APPENDICES

Page

### Vol. 1 of 2

#### APPENDIX A

Opinion, United States Court of Appeals for the Ninth Circuit, filed September 10, 2021, *Jurado v. Davis*, 12 F.4th 1084 (9th Cir. 2021) . . . . . 1

#### APPENDIX B

Order, United States Court of Appeals for the Ninth Circuit, Denying Petition for Rehearing and Petition for Rehearing En Banc, *Jurado v. Davis*, Case No. 18-99009 (9th Cir. October 25, 2021) . . . . . 17

#### APPENDIX C

Order Denying Writ and Granting COA, *Jurado v. Davis*, Case No. 08cv1400 JLS (JMA) (United States District Court, Southern District of California), September 17, 2018 . . . . . 18

#### APPENDIX D

Relevant Portions of Memorandum and Order [internal pages 1-16, 46-62, 187-201, 285-288] (1) Denying Petitioner's Request for Evidentiary Development, Discovery And/or Evidentiary Hearing and (2) Denying Habeas Relief on Claims 2-4, 7-13, 15-32, 35-42, 44, and 46-48 in the Second Amended Petition, *Jurado v. Davis*, Case No. 08cv1400 JLS (JMA) (United States District Court, Southern District of California), September 17, 2018 . . . . . 20

#### APPENDIX E

Order, United States Supreme Court, Case No. 06-5162, October 10, 2006 . . . . . 72

#### APPENDIX F

Opinion, California Supreme Court, *People v. Jurado*, 38 Cal.4th 72 (2006). . . . . 73

### Vol. 2 of 2

#### APPENDIX G

Opinion, California Court of Appeal, *People v. Jurado*, 4 Cal.App.4th 1217 (1992) . . . . . 133

APPENDIX H

San Diego Police Department Investigator's Report, SDPD Case #91-048370, Officer R. Larmour, dated May 20, 1991 . . . . .	147
--	-----

APPENDIX I

Transcript of Robert Jurado's Interrogation by San Diego Police Department, dated May 18, 1991 . . . . .	151
---	-----

APPENDIX J

Reporter's Transcript (Hearing Re: Videotaped Confession), <i>People v.</i> <i>Jurado</i> , San Diego County Superior Court, No. CR 124438, June 1, 1994 .	184
---	-----

APPENDIX K

Reporter's Transcript (Plea), <i>People v. Jurado</i> , San Diego County Superior Court, No. CR 124438, November 21, 1991 . . . . .	220
--	-----

APPENDIX L

Probation Officer's Report, San Diego County Probation Dept., <i>People v.</i> <i>Jurado</i> , Court No. CR 124438, December 23, 1991 . . . . .	271
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**THE PEOPLE**

Petitioner

**v.**

**THE SUPERIOR COURT OF SAN DIEGO COUNTY**

Respondent

**ROBERT A. JURADO, JR.**

Real Party in Interest

4 Cal.App.4th 1217

6 Cal.Rptr.2d 242

[No. D015875.

Fourth Dist., Div. One.

Mar 24, 1992.]

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**Citing Cases 60**

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(Superior Court of San Diego County, No. CR124438, David M. Gill, Judge.)

(Opinion by Huffman, J., with Wiener, Acting P. J., and Todd, J., concurring.)

Edwin L. Miller, Jr., District Attorney, Thomas F. McArdle and Craig E. Fisher, Deputy District Attorneys, for Petitioner.

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No appearance for Respondent.

Glenn Stewart Warren and Elizabeth A. Missakian for Real Party in Interest.

Elaine A. Alexander and Martin Buchanan as Amici Curiae, upon the request of the Court of Appeal, on behalf of Real Party in Interest.

**OPINION**



This case requires us to determine whether the "lying-in-wait" special- circumstance allegation ( **Pen. Code, § 190.2, subd. (a)(15)**) <sup>1</sup> was properly charged under the facts and whether a defendant who is successful in having such allegation dismissed before jeopardy attaches may plead guilty to the remaining charges and allegations, and invoke principles of double jeopardy to prevent appellate review of such dismissal and the subsequent reinstatement of the dismissed allegation. We conclude neither the double jeopardy clause of the federal or state Constitutions bars appellate review or reinstatement of the dismissed allegation. We further find the trial court erred in dismissing the "lying- in-wait" special circumstance which was properly charged on the facts of this case. Accordingly, we will grant the People's mandamus petition, vacate the stay, and return the matter to the trial court for further proceedings.

## **Factual and Procedural Background**

On May 17, 1991, the body of Teresa Holloway was discovered in a culvert adjacent to highway 163 in San Diego's Balboa Park. She had visible trauma to her head and face consistent with being struck with a hard object. An autopsy revealed she died as a result of strangulation and blunt force to the head.

Real party in interest Robert A. Jurado, Jr., and two women, Denise Renee Shigemura and Anna Jeannette Humiston, were arrested and charged with the murder of Holloway. On July 29, 1991, a preliminary hearing was held on an amended complaint which charged all three with murder in violation of **section 187** with the allegation that Jurado used a deadly weapon during the murder, to wit a cord and tire jack, within the meaning of **section 12022, subdivision (b)**. <sup>2</sup> All three were bound over for trial as charged.

When the information was filed in the superior court, the prosecution added a special circumstance allegation that the three defendants murdered \*1224 Holloway intentionally while lying in wait within the meaning of **section 190.2, subdivision (a)(15)**. The information was amended on October 11, 1991, to add a count charging all three defendants with conspiracy to commit murder, a violation of **sections 182, subdivision (a)(1)**, and **187**. Each defendant thereafter filed a motion pursuant to **section 995** to quash the information. On November 29, 1991, the trial court denied the motions as to both counts in the information and their attendant allegations, but granted as to the alleged special circumstance.

Jurado immediately pled guilty to all the remaining counts and allegations in the information. The prosecutor, however, refused to sign the change of plea form, and informed Jurado and the court the district attorney was considering a writ petition in the appellate court to review the dismissal of the alleged special circumstance. Jurado did not

waive time for sentencing, which was then scheduled for December 23, 1991. The remaining defendants were set for trial.

The district attorney filed a petition in this court on December 13, 1991, seeking a stay and a peremptory writ of mandate to reinstate the alleged special circumstance as to all three defendants. We denied the petition as to Shigemura and Humiston and stayed Jurado's sentencing pending review of the petition's merits as to Jurado. <sup>3</sup>

Approximately a week prior to the murder, both Jurado and his girlfriend, Shigemura, made efforts to obtain a gun. Jurado needed the gun in order to "take care of somebody," by which he meant to kill someone. Shigemura wanted the gun to "take care of a problem."

On the evening of the killing, the three defendants and Holloway were visiting at Mark Schmidt's home. The three defendants all expressed some unhappiness with Holloway because she stayed on the telephone at the Schmidt residence, making the group late to return Shigemura to the halfway house where she resided. In her interview with police, Shigemura said before the group left Schmidt's house, Jurado told her they (meaning Shigemura and Jurado) needed to get rid of Holloway. Shigemura agreed, but said they didn't have time to do it then. Before they left, Jurado repeated, "We have to take care of her."

As the group drove away in Humiston's car, Holloway was in the front passenger seat. Jurado was sitting directly behind her in the backseat of the **\*1225** car. Shortly after they drove away from Schmidt's house, Jurado took a cord which he had with him, placed it around Holloway's neck while she was seated in front of him, and began to strangle her. Apparently Jurado found it harder to kill the struggling victim by strangulation than he had planned. Humiston came to his aid, the victim was subdued and struck in the head with a tire jack.

Evidence of the attack was found by the police in the front passenger area of the car. The police found blood and hair in the area of the front passenger's seat, door and roof, indicating to the homicide detective the assault had occurred at that spot. At some point after the assault began, the car stopped. Holloway was thrown from the car and again struck in the head with the tire jack. Her body was left in a culvert adjacent to the road where it remained until May 17 when it was found by a motorist who had stopped near the location because of car trouble.

## Discussion

We begin our discussion by determining the appropriate standard of review. We then review the sufficiency of the evidence to support the alleged special circumstance

pursuant to that standard. Finally, we will examine the double jeopardy issues raised by Jurado in his opposition to the petition.

## I Standard of Review

We note at the outset we are not reviewing the sufficiency of the evidence to justify a jury finding of the truth of the alleged special circumstance. Our only task is to determine whether there is sufficient evidence in the preliminary examination transcript to permit the district attorney to file such allegation and take the matter to trial. (See **People v. Laiwa (1983) 34 Cal.3d 711, 718 [195 Cal.Rptr. 503, 669 P.2d 1278]**.)

Although the special circumstance at issue was not in the criminal complaint before the magistrate, the district attorney in appropriate circumstances has the authority to add such allegation to the information filed in superior court. [1] **Section 739** permits a prosecutor to file in superior court "an information against the defendant which may charge the defendant with either the offense or offenses named in the order of commitment or any offense or offenses shown by the evidence taken before the magistrate to have been committed." Such additional charge or allegation may be brought where there is sufficient evidence in the transcript of the preliminary examination to justify an added offense which occurred during the same transaction involved in the commitment order. (**Jones v. Superior Court (1971) 4 Cal.3d 660, 664-665 [94 Cal.Rptr. 289, 483 P.2d 1241]**.) \*1226

[2] In determining if charges in an information can withstand a motion under **section 995**, neither the superior court nor the appellate court may reweigh the evidence or determine the credibility of the witnesses. (**People v. Block (1971) 6 Cal.3d 239 [103 Cal.Rptr. 281, 499 P.2d 961]**; **People v. Hall (1971) 3 Cal.3d 992, 996 [92 Cal.Rptr. 304, 479 P.2d 664]**.) Ordinarily, if there is some evidence in support of the information, the reviewing court will not inquire into its sufficiency. (**People v. Block, supra, 6 Cal.3d 239; Rideout v. Superior Court (1967) 67 Cal.2d 471, 474 [62 Cal.Rptr. 581, 432 P.2d 197]**.) Thus, an indictment or information should be set aside only when there is a total absence of evidence to support a necessary element of the offense charged. (**Somers v. Superior Court (1973) 32 Cal.App.3d 961, 963 [108 Cal.Rptr. 630]**; **People v. Massengale (1968) 261 Cal.App.2d 758, 763 [68 Cal.Rptr. 415]**.)

[3] "[A]lthough there must be some showing as to the existence of each element of the charged crime [citation] such a showing may be made by means of circumstantial evidence supportive of reasonable inferences on the part of the magistrate." (**Williams v. Superior Court (1969) 71 Cal.2d 1144, 1148 [80 Cal.Rptr. 747, 458 P.2d 987]**, original italics.) "Every legitimate inference that may be drawn from the evidence must be drawn in favor of the information." (**Rideout v. Superior Court, supra, 67 Cal.2d 471, 474; Caughlin v. Superior Court (1971) 4 Cal.3d 461, 464-465 [93 Cal.Rptr. 587, 481 P.2d 211]**.) Thus, the ultimate test is that " "[a]n information will not be set aside or prosecution thereon prohibited

if there is some rational ground for assuming the possibility that an offense has been committed and the accused is guilty of it." ' ' " (**People v. Slaughter (1984) 35 Cal.3d 629, 637 [200 Cal.Rptr. 448, 677 P.2d 854]**, original italics.)

We review the evidence in support of the information to determine whether as a matter of law it is sufficient, not whether the trial court's ruling was reasonable. (**People v. Laiwa, supra, 34 Cal.3d 711, 718; People v. Superior Court (Grilli) (1978) 84 Cal.App.3d 506, 511 [148 Cal.Rptr. 740]**.)

## II Sufficiency of the Evidence

[4a] The district attorney contends the evidence before the magistrate was sufficient to support the lying-in-wait special-circumstance allegation under **section 190.2, subdivision (a)(15)** added to the information. In order to determine the validity of such contention, we look first to the elements of lying in wait as defined in that special circumstance.

The district attorney relies on **People v. Morales (1989) 48 Cal.3d 527, 553-557 [257 Cal.Rptr. 64, 770 P.2d 244]**, to support his assertion the \*1227 lying-in-wait special circumstance was properly charged. In **Morales** the defendant was charged with the same special circumstance as Jurado is charged with here. There, the defendant and others had "lured" the victim into a car, strangled her with a belt until it broke, then beat her over the head with a hammer, removed her from the car, committed an act of sexual intercourse upon her, and then stabbed her to ensure she was dead. In upholding a true finding by the jury on the special circumstance, the court identified the components of lying in wait as defined in **section 190.2, subdivision (a)(15)**. It concluded there were three principal features of a murder committed by lying in wait. That form of intentional murder includes "(1) a concealment of purpose, (2) a substantial period of watching and waiting for an opportune time to act, and (3) immediately thereafter, a surprise attack on an unsuspecting victim from a position of advantage." (**People v. Morales, supra, 48 Cal.3d at p. 557.**)

The court found the evidence supporting the special circumstance to be sufficient "... based on defendant's watchful waiting, from a position of advantage in the backseat, while the car was being driven to a more isolated area, and his sudden surprise attack from behind and without warning ...." (**People v. Morales, supra, 48 Cal.3d at p. 555.**)

The **Morales** case instructs us that the principal component of this particular special circumstance is the waiting of a defendant for the opportunity to take the victim by surprise by concealing his murderous purpose in order to gain the advantage of ambush or surprise. As we apply the principles of **Morales** to the case before us, we reiterate we are not reviewing the sufficiency of evidence to support a jury verdict. Rather, we are only deciding if there is some evidence to support the alleged special circumstance allegation.

Put differently, does the evidence before the magistrate support an inference Jurado concealed his purpose, watched and waited, and took Holloway by surprise? (**People v. Slaughter, supra, 35 Cal.3d at p. 637.**) We believe the record clearly supports such an inference.

The testimony before the magistrate shows Jurado and Shigemura attempted to obtain a gun at least one week before the killing. They needed a gun in order to "take care of somebody" or to take care of a "problem." The testimony also revealed before Jurado and his companions left Schmidt's house, Jurado told Shigemura they would have to "get rid of" Holloway. When Shigemura agreed but raised the issue of timing, Jurado repeated they would have to get rid of Holloway. The clear inference from this testimony is that Holloway was the problem to be "taken care of" and "gotten rid of." Such evidence bears on Jurado's state of mind before he and his cohorts entered the automobile on the evening of the murder. \*1228

When he got into the car, Jurado positioned himself in the backseat immediately behind Holloway. His later use of a cord and tire jack to kill her supports an inference he brought or arranged the murder implements in advance of his opportunity to use them. Moreover, after Jurado and his friends had driven away from the Schmidt residence (an amount of time unclear from the record), Jurado ambushed Holloway by a surprise attack from behind. Clearly, the evidence supports an inference he used his opportunity to position himself behind Holloway and wait to take her "unawares" and obtain the advantage of surprise.

[5] Jurado argues the **Morales (supra, 48 Cal.3d 527)** case is inapposite to these facts because the men in **Morales** "lured" the victim into the car. He further contends the Supreme Court retrenched from **Morales** in its later opinion in **People v. Webster (1991) 54 Cal.3d 411, 448 [285 Cal.Rptr. 31, 814 P.2d 1273]**. He is wrong on both assertions.

It is true both Morales and Webster were said by the court to have "lured" the victims into a position where the defendants could take advantage. It is also clear the fact a victim was "lured" is but one factor in a lying-in- wait analysis. The court's discussion in both cases focuses principally on the respective defendants' concealment of purpose which put each in a position of advantage to take his victim by surprise. (**People v. Webster, supra, 54 Cal.3d at p. 448.**) **Webster** specifically relies on the **Morales** decision, which it holds does not represent a change in the previous law. (See also **People v. Ruiz (1988) 44 Cal.3d 589, 615 [244 Cal.Rptr. 200, 749 P.2d 854]**.)

Even if **Webster** raised any question regarding the vitality of the **Morales** holding on the lying-in-wait special circumstance, the court's most recent opinion discussing lying in wait puts the issue to rest. In **People v. Edwards (1991) 54 Cal.3d 787, 821- 825 [1 Cal.Rptr.2d 696, 819 P.2d 436]**, the court revisited **section 190.2, subdivision (a)(15)**. In **Edwards**, the defendant, who was an excellent marksman, shot two young girls who were walking in a campground. The defendant, who was familiar with the campground, had

driven around it several times on the day he shot his victims as they were walking down a road in the campground. The defendant pulled alongside of the victims, said, "Girls," then fired two shots which killed one girl and wounded the other. The defendant in **Edwards** was charged with the special circumstance of lying in wait.

The Supreme Court upheld the jury's true finding on the special circumstance allegation. It reaffirmed its earlier holding in **Morales** which it found indistinguishable from **Edwards**. The court found Edwards had engaged in waiting and watching for an opportune time to act, and clarified the watching did not have to continue for any particular period of time provided its \*1229 duration was sufficient to establish waiting, watching, and concealment or other secret design to take the victim unawares and by surprise. (**People v. Edwards, supra, 54 Cal.3d at p. 821.**)

The court in **Edwards** found the defendant waited and watched for an opportunity to commit the murder and had concealed his purpose so as to take the victims by surprise which was sufficient to prove the special circumstance. Clearly, the murdered victim in **Edwards** was not "lured" to the location of her death.

We are satisfied lying in wait can be shown where the victim is not "lured" into the location and where the victim is actually aware of the defendant's presence if the defendant's conduct indicates a period of watching or waiting and concealment of purpose so as to put the defendant in a position to take the victim "unawares and by surprise." (**People v. Edwards, supra, 54 Cal.3d at p. 823.**)

[4b] There is sufficient evidence in this record to raise an inference of lying in wait. That is all that is required to permit the pleading to survive a challenge under **section 995**. We therefore find the trial court erred in dismissing the alleged special circumstance under **section 190.2, subdivision (a)(15)**.

### ***III Double Jeopardy***

Immediately following the trial court's decision to dismiss the lying-in- wait special circumstance, Jurado indicated his desire to plead guilty to all of the remaining charges and allegations. He submitted to the trial court a change of plea form which the district attorney declined to sign. Following Jurado's guilty plea to the remaining charges and allegations in the information, his case was set for sentencing, which was stayed by this court pending review of the People's writ application.

[6a] Jurado claims his guilty plea placed him in jeopardy since it stands as a conviction and principles of double jeopardy bar reinstatement of the special circumstance allegation dismissed in the prejeopardy hearing pursuant to **section 995**.<sup>4</sup>

Jurado's response to the People's petition presents the question of whether the prejeopardy dismissal of the special circumstance allegation pursuant to **\*1230** Jurado's motion under **section 995** and his immediate guilty plea without the concurrence of the prosecutor and before the prosecutor could seek pretrial review of that dismissal would result in a "second prosecution" for the same offense after "acquittal" or "conviction." We believe the record demonstrates Jurado was never in jeopardy within the meaning of the double jeopardy clause for the alleged special circumstance and his immediate guilty plea as a tactic to cut off review and reinstatement of the dismissed allegation does not raise the bar of double jeopardy to further prosecution.

[7] The Fifth Amendment of the United States Constitution provides in part: "[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb; ..."

**Article I, section 15, of the California Constitution** similarly provides: "Persons may not be twice put in jeopardy for the same offense."

The double jeopardy clause is designed to protect an individual from being subjected to trial and possible conviction more than once for the "same offense." (**Burks v. United States (1978) 437 U.S. 1, 11 [57 L.Ed.2d 1, 10-11, 98 S.Ct. 2141]**.) As appropriate to the issues in this case, the double jeopardy clause protects an individual against a second prosecution for the same offense after an acquittal or a conviction and it protects against multiple punishments for the same offense. (**Grady v. Corbin (1990) 495 U.S. 508, 516 [109 L.Ed.2d 548, 561, 110 S.Ct. 2084]**.) The issue before us does not implicate multiple punishments for the same offense. Rather, the question is whether Jurado has been convicted or acquitted of the "same offense" within the meaning of the double jeopardy clause.

[8] We are mindful the California courts may construe state constitutional provisions to provide more protection for a criminal defendant than does the federal Constitution. (**Bunnell v. Superior Court (1975) 13 Cal.3d 592, 601 [119 Cal.Rptr. 302, 531 P.2d 1086]**; see also **Cal. Const., art. I, § 24**, and **Raven v. Deukmejian (1990) 52 Cal.3d 336 [276 Cal.Rptr. 326, 801 P.2d 1077]**.) The California Supreme Court has recognized, however, that we should give deference to decisions of the United States Supreme Court interpreting similar basic rights in the absence of good cause for departure or deviation therefrom. (**52 Cal.3d at p. 353**.) Nothing in Jurado's tactical decision to plead guilty in an apparent effort to foreclose reinstatement of a properly charged special circumstance should compel a California court to chart a course separate from the decision of the United States Supreme Court analyzing a virtually identical tactic. (See **Ohio v. Johnson (1984) 467 U.S. 493, 501-502 [81 L.Ed.2d 425, 434-435, 104 S.Ct. 2536]**.)

[6b] Dismissal of a charging allegation pursuant to **section 995** is not a postjeopardy determination. While principles of double jeopardy are often **\*1231** difficult to define in precise terms, determination of when jeopardy attaches is not. Jeopardy occurs when a defendant is taken to trial on an accusatory pleading in a jurisdictionally competent court. The point in the trial when jeopardy actually attaches is the swearing of the jury in a jury trial and the taking of evidence in a court trial. (**Crist v. Bretz (1978) 437 U.S. 28, 35**

[57 L.Ed.2d 24, 31, 98 S.Ct. 2156]; Bunnell v. Superior Court, supra, 13 Cal.3d 592, 601.]

Moreover, jeopardy bars retrial following conviction for the "same offense." (Burks v. United States, supra, 437 U.S. 1, [57 L.Ed.2d 1, 9-10].) It is clear Jurado was never placed in jeopardy on the special circumstance of lying in wait. He was not tried or convicted on that "offense." Nor does a prejeopardy dismissal of a charging allegation constitute an acquittal. (Serfass v. United States (1975) 420 U.S. 377, 393 [43 L.Ed.2d 265, 277, 95 S.Ct. 1055]; United States v. Scott (1978) 437 U.S. 82 [57 L.Ed.2d 65, 98 S.Ct. 2187]; People v. Jackson (1991) 1 Cal.App.4th 697, 701 [2 Cal.Rptr.2d 308].)

[9] The lying-in-wait special circumstance is not a lesser included offense of the charged murder to which Jurado pled, nor is it an added element which would create a greater offense out of the charged murder. Rather, a special circumstance is a penalty enhancement and not an element of the murder offense. (People v. Odle (1988) 45 Cal.3d 386, 411, fn. 11 [247 Cal.Rptr. 137, 754 P.2d 184].) Penalty enhancements are not part of the greater or lesser offense analysis. (People v. Wolcott (1983) 34 Cal.3d 92, 101 [192 Cal.Rptr. 748, 665 P.2d 520].) In California criminal procedure special circumstances are decided during the guilt phase, after a verdict of first degree murder has been reached by the jury. (People v. Odle, supra, 45 Cal.3d at p. 411, fn. 11.)

[10] (See fn. 5.) Jurado and amicus Appellate Defenders, Inc. (ADI) rely heavily on People v. Mims (1955) 136 Cal.App.2d 828, 831 [289 P.2d 539] to support the claim his plea to the murder charge bars reinstatement of the special circumstance.<sup>5</sup> We find Mims inapposite to this case. In Mims the defendant had pled guilty to petty theft in violation of section 488. Before the defendant could be sentenced, the district attorney successfully moved \*1232 the municipal court to set aside the guilty plea. The district attorney thereafter charged Mims with section 666 (petty theft after a prior theft, a felony). Mims claimed jeopardy and the Court of Appeal agreed.

In its analysis, the Court of Appeal began with the premise "[i]t is agreed that the charge of petty theft to which respondent pleaded guilty was an offense necessarily included in the later charge of violating [section] 666." (People v. Mims, supra, 136 Cal.App.2d at p. 830.) The Court of Appeal thus found the plea to be a conviction of a lesser included offense of section 666 and therefore a bar to further prosecution for that "same offense."

Jurado's case is different in its beginning point. The lying-in-wait special circumstance is not involved as a greater or lesser offense of the charges to which he has pled. Further, Mims's analysis of the relationship of sections 666 and 488 is doubtful in itself in light of the recent decision of the California Supreme Court in People v. Bouzas (1991) 53 Cal.3d 467, 480 [279 Cal.Rptr. 847, 807 P.2d 1076], holding the prior theft conviction is not an element of the crime of petty theft after a prior, but is rather a penalty enhancement. Moreover, other case law since Mims has cast doubt on the validity of its reasoning.

In People v. Tideman (1962) 57 Cal.2d 574 [21 Cal.Rptr. 207, 370 P.2d 1007], the court dealt with a defendant who was charged with abortion and murder arising from that abortion.



The defendant pled guilty to abortion and then claimed double jeopardy barred his trial on murder, as abortion was a lesser included offense in that case. Before Tideman was sentenced for the abortion charge, he was convicted in a jury trial of the murder offense. The Supreme Court found no double jeopardy bar to the murder conviction. Noting this was an action which included multiple charges in a single accusatory pleading as authorized by **section 954**, the court concluded the plea to one count did not stand as an acquittal of the other charged count. The court found **section 1023** did not bar prosecution of the remaining count in the same information.

The defendant in **Tideman** relied on **Mims** and **People v. Blue (1958) 161 Cal.App.2d 1 [326 P.2d 183]**, which had followed the **Mims** reasoning. The Supreme Court found **Mims** provided no support for the defendant. It held that the opinion in **Blue** was mistaken in applying double jeopardy to multiple counts in the same pleading. More importantly, the court distinguished **People v. Krupa (1944) 64 Cal.App.2d 592 [149 P.2d 416]** on which **Mims** had relied. The court said **Krupa** dealt with a person who had not only been convicted by plea, but had been *sentenced and punished*. (**People v. Tideman, supra, 57 Cal.2d at p. 588.**) \*1233

Thus, not only is **Mims** distinguishable because it assumed it was dealing with a lesser included offense, but the authority on which it relied was distinguished away by a subsequent Supreme Court decision.

The case which most closely resembles this case, and from which we receive the most guidance, is **Ohio v. Johnson, supra, 467 U.S. 493, 500-502 [81 L.Ed.2d 425, 434-435]**. In that case the defendant was charged with murder, involuntary manslaughter, aggravated robbery, and grand theft. Over the state's objection, the defendant pled guilty to manslaughter and grand theft. The trial court then dismissed the balance of the charges on double jeopardy grounds. The Ohio Supreme Court affirmed the trial court. The United States Supreme Court reversed.

The court in **Johnson** first accepted that manslaughter and grand theft were probably lesser included offenses of murder and robbery in Ohio. The court noted that Ohio did not permit cumulative punishment for those charges, but that the issue was not cumulative punishment, but rather whether the guilty plea barred trial on the remaining charges. The court said, "While the Double Jeopardy Clause may protect a defendant against cumulative punishments for convictions on the same offense, the Clause does not prohibit the State from prosecuting respondent for such multiple offenses in a single prosecution." (**Ohio v. Johnson, supra, 467 U.S. at p. 500 [81 L.Ed.2d at p. 434]**.)

The defendant in **Johnson** argued nonetheless his conviction should serve as a bar to further prosecution. In response the court said, "The answer to this contention seems obvious to us .... Respondent's argument is apparently based on the assumption that trial proceedings, like amoebae, are capable of being infinitely subdivided, so that a determination of guilt and punishment on one count of a multicount indictment

immediately raises a double jeopardy bar to continued prosecution on any remaining counts that are greater or lesser included offenses of the charge concluded. We have never held that, and decline to hold it now." (Ohio v. Johnson, supra, 467 U.S. at pp. 500-501 [81 L.Ed.2d at p. 434].) The court distinguished its previous holding in Brown v. Ohio (1977), 432 U.S. 161 [53 L.Ed.2d 187, 97 S.Ct. 2221], finding in the Johnson case there was no double jeopardy interest protected which would be violated by proceeding on the remaining charges. The court found Johnson had not been exposed to conviction on the dismissed charges, "... nor ha[d] the State had the opportunity to marshal its evidence and resources more than once or to hone its presentation of its case through a trial." (Ohio v. Johnson, supra, 467 U.S. at p. 501 [81 L.Ed.2d at p. 435].)

The facts in Johnson presented none of the types of governmental overreaching the double jeopardy clause is designed to protect against. The court \*1234 said, "On the other hand, ending prosecution now would deny the State its right to one full and fair opportunity to convict those who have violated its laws," citing Arizona v. Washington (1978) 434 U.S. 497, 509 [54 L.Ed.2d 717, 730, 98 S.Ct. 824]. (Ohio v. Johnson, supra, 467 U.S. at p. 502 [81 L.Ed.2d at p. 435].) The court continued, "Notwithstanding the trial court's acceptance of respondent's guilty pleas, respondent should not be entitled to use the Double Jeopardy Clause as a sword to prevent the State from completing its prosecution on the remaining charges." (Ibid.)

[11] Jurado and amicus curiae ADI try to avoid the clear applicability of Ohio v. Johnson by claiming the district attorney did not sufficiently object to Jurado's plea. It is claimed the district attorney allowed Jurado to place himself in jeopardy and should have done more to prevent the plea or to more "affirmatively" object to it. We find such argument to be meritless.

First we note Jurado pled to the "face" of the remaining pleading. He did not strike a plea bargain, but rather admitted all remaining charges and allegations. We think he was entitled by section 1016 to enter a guilty plea if he was otherwise competent to do so. Certainly the plea was without the district attorney's concurrence as the prosecutor refused to sign the change of plea form. The record demonstrates much more than "non-concurrence." The prosecutor several times advised the court and Jurado he would be reviewing the possibility of seeking a writ in this court to set aside the trial court's dismissal of the special circumstance. Prior to the plea, the prosecutor stated:

"Mr. Pettine: Your Honor, just for the record, I've advised counsel that the People would not be signing the change of plea form. I know he can plead to the face at any time, but consulting with Mr. Fisher there's a possibility that the People may take a writ on the ruling by the court. So I just wanted counsel to be aware that the plea could conceivably be set aside at a later time depending on how that procedure goes." The court repeated a warning on the possibility of writ review in its admonition to Jurado when it said, "Now, aside from the legal issue that remains unresolved, in the sense that the People may seek

to get a review of my ruling by the Court of Appeal, if the Court of Appeal reverses me then we'll be back in a little different posture. ..."

During the change of plea process, the court repeated its admonition on the possibility of review when it was questioning Jurado in the context of warning him as to the possible consequences of statements made in the plea proceeding and their impact on the possibility of a later trial. [12] (See fn. 6.) The court said: **\*1235**

"The Court: Maybe at this point we need to take a step backwards just for a minute.

"Mr. Pettine, so I'm sure I understand your position, if the decision is to pursue a writ to review my ruling on the 995 on the special circumstances allegation, and the Court of Appeal agrees with your position, so my ruling is reversed and the special circumstances allegation is reinstated, then I assume if it was the further decision of your office to proceed against Mr. Jurado on that basis that you would contemplate that he would be allowed to withdraw his plea and-pleas, and we'd be back basically to where we started before I made my ruling?

"Is that-the reason I mention that is, I think if that's the position, then perhaps he needs to be advised that anything he says here in connection with entering this plea, if the plea is withdrawn and, you know, the special circumstances are reinstated, could not be used against him at the trial on the merits. I think that's a correct statement of the law and I-I think maybe he needs to understand that. Is that-" <sup>6</sup>

It is apparent Jurado made a conscious decision to plead guilty in the face of the possibility there would be writ review and that the special circumstance could be reinstated. The reason for this decision on his part is obvious. Jurado was attempting to cut off the district attorney's ability to get the special circumstance reinstated. The trial court summed up the reasons for Jurado's plea fairly well in his early discussions with him. The court said:

"All right. So basically you're pleading guilty to or admitting everything that presently is pending against you because I've stricken the special circumstances. But basically you're admitting and pleading guilty to everything else that's before you here. Nothing else is being dismissed. And the law, of course, prescribes the term for these sentences so there's really no sentence bargaining here."

[6c] Jurado was never in jeopardy for the special circumstance, nor was he ever convicted or acquitted of that charge. Since the special circumstance **\*1236** is not in a lesser- or greater-offense relationship to the murder, there is no reason to allow Jurado's tactical maneuver to deny the People the right to a trial on the merits of that allegation. Ordinarily, the prosecutor is entitled to "one full and fair opportunity to present his evidence to an impartial jury." (*Arizona v. Washington, supra*, **434 U.S. 497, 505 [54 L.Ed.2d 717, 728]**.) Nothing in this record compels a different result. [13] (See fn. 8.) We find no

double jeopardy bar to our review of the ruling on the 995 motion, or to the reinstatement of the improperly dismissed special circumstance. <sup>7</sup>

## Disposition

Let a peremptory writ of mandate issue directing the superior court to vacate its order granting Jurado's motion to dismiss the lying-in-wait special-circumstance allegation and enter a new order denying the motion in its entirety. The stay issued by this court on December 20, 1991, is vacated.

Wiener, Acting P. J., and Todd, J., concurred.

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<sup>1</sup> **Section 190.2, subdivision (a)(15)** reads as follows: "The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in state prison for a term of life without the possibility of parole in any case in which one or more of the following special circumstances has been charged and specially found under **Section 190.4**, to be true: [¶] ... [¶] The defendant intentionally killed the victim while lying in wait."

All statutory references are to the Penal Code unless otherwise specified.

<sup>2</sup> Much of the testimony in the preliminary examination transcript is hearsay. The preliminary examination was conducted pursuant to **section 872, subdivision (b)**, added by Proposition 115. The use of hearsay at preliminary examinations was upheld in ***Whitman v. Superior Court* (1991) 54 Cal.3d 1063 [2 Cal.Rptr.2d 160, 820 P.2d 262]**. No procedural or evidentiary challenge to the evidence at the preliminary examination has been made by any of the parties to this writ proceeding. Accordingly, our review of the facts is based in large part on hearsay evidence.

<sup>3</sup> The trial court has already determined there is sufficient evidence in the preliminary examination transcript to support a charge of murder and conspiracy to commit murder. The parties have not challenged that determination. Our focus on the evidence bearing on the special circumstance allegation is therefore somewhat limited.

<sup>4</sup> Because of the importance of the double jeopardy question raised by Jurado, we requested and received amicus briefs from the Appellate Defenders, Inc., and the Attorney General. Both briefs have been of great assistance to the court in resolving the double jeopardy issue.

<sup>5</sup> Amicus curiae ADI urges us to decide this case on statutory grounds pursuant to **section 1023**. That section provides as follows: "When the defendant is convicted or acquitted or has been once placed in jeopardy upon an accusatory pleading, the conviction, acquittal, or jeopardy is a bar to another prosecution for the offense charged in such accusatory pleading, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that accusatory pleading."

We do not find the statute controlling. The statute was intended to codify the basic protections of double jeopardy. (***People v. Bivens* (1991) 231 Cal.App.3d 653, 658-659 [282 Cal.Rptr. 438]**.) The

question in this case, however, is whether Jurado was "convicted" of the same offense. We must analyze decisional law to resolve that question. **Section 1023** does not assist us, nor is it controlling, on the issue before this court.

<sup>6</sup> The question of whether Jurado should be entitled to set aside his guilty plea upon the reinstatement of the special circumstance is not before us. The decision to permit or not to permit a defendant to set aside a guilty plea is one vested in the sound discretion of the trial court. That discretion has not yet been exercised and we express no opinion on the proper determination of that issue should it be raised in the trial court.

We do note, however, the court's reference to the withdrawal of the plea is ambiguous insofar as it fails to address the evidentiary implications of a refusal to withdraw the plea. Accordingly, we think it would be unfair, in the event the plea is not withdrawn, to allow Jurado's statements to the trial court to be received in evidence at a trial on the special circumstance. Should such evidence be offered at trial, fundamental fairness requires the trial court to exclude it.

<sup>7</sup> Jurado argues we should deny this petition because of the prosecutor's delay. Acknowledging the 15- day rule of **section 999a** does not apply to the prosecutor, Jurado nonetheless argues the 21 days between the plea and the filing of the petition ought to bar relief. Jurado cites no pertinent authority to support that result and has shown absolutely no prejudice as the result of any prefiling delay. We see no reason on this record to avoid review on the merits because of alleged delay.

**SAN DIEGO POLICE DEPARTMENT  
INVESTIGATOR'S REPORT**

**DATE (occurr.):** May 17 1991 (Friday)  
**TIME (occurr.):** 0730 Hours  
**LOCATION:** North Bound Highway 163 208 feet north of the Laurel Street Bridge and 2 feet east of entrance to (east end) Culvert.  
**SUBJECT:** 187(a) PC Murder - SDPD Case #91-048370

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**VICTIM:** HOLLOWAY, Theresa Ann  
W/F (26) DOB: 12-12-64  
Address: 3011 Suncrest  
Occupation: Waitress  
Unemployed

**SUSPECT #1:** JURADO, Robert (N)  
H/M (20) DOB: 06-11-70  
Address: 4688 39th Street #A  
No phone  
SSN: 561-89-6719  
Unemployed

**SUSPECT #2:** HUMISTON, Anna  
W/F (17) DOB: 01-29-74  
Address: 6566 Glenroy  
Student: Patrick Henry High

**SUSPECT #3:** SHIGEMURA, Denise Renee  
W/F (22) DOB: 10-22-68  
Address: 2727 Boston  
Occupation: Food Server/Mission Valley

**SUSPECT #1 INTERVIEW:**

On May 18, 1991, at approximately 1315 hours, Detective Felix ZAVALA and I interviewed Robert JURADO. Robert JURADO had been arrested by Sergeant MANIS and Detective ZAVALA earlier for the homicide of Theresa HOLLOWAY. Robert JURADO was arrested outside his residence along with Anna HUMISTON. Robert JURADO was interviewed in the Homicide Office of the Headquarters building. Robert JURADO was read his constitutional rights per P.D. form 145 and agreed to talk with me. The interview was video and tape recorded. Robert JURADO in essence stated:

I didn't do anything. I don't know why they are blaming me.

Robert JURADO is asked to go over the day's events and the last time he saw Terry HOLLOWAY.

Reporting Officer R. LARMOUR I.D.# 1550 Homicide Team II  
Approved By [Signature] Date of Report 05/20/91:dd Time 1130 Hours

Investigator's Report  
Case #91-048370  
Page 2

Terry is Bryan JOHNSEN's girlfriend. Terry does dope and used to take money from everyone.

The last time I saw Terry was on Wednesday. It was Wednesday night around 8:00 P.M. I saw her at Mark's house. Mark, Anna, Terry, Denise and I were at the house. Anna is my girlfriend. Denise's last name is SHIGEMURA. Denise is a friend. I don't know Mark's last name. I don't know the address of Mark's house for sure.

We left Mark's house. Terry said she was going home. Anna and I were going to take Denise home. I went to get gas with Anna. We went over to a Chevron Station close by to my house. Denise stayed to make a phone call. Denise lives in a halfway house and had to call in. Denise was due back at 9:00 P.M. When Anna and I got back, Denise was gone. We found Denise about 10:00 P.M. Denise had been beat up. Denise said she got jumped by three people. Denise said she got jumped by the Big Bear Market. Denise was late for the halfway house and didn't know what to do. I took care of Denise. Denise stayed at my house for one and a half days. Denise is back at the halfway house now. The halfway house is off of Harbor Boulevard.

Anna doesn't live with me. Anna lives with her parents. Anna has a curfew. Anna was back at her house on Wednesday night by 10:00. The blue car belongs to Anna. Anna also has a brand new red car. I don't know the make of the red car.

I never heard from Terry after she left us that night. I heard about Terry from the police. I told Sergeant MANIS everything I knew. I don't think I told him about Denise getting jumped. I've known Denise and Anna for over a year.

Terry never stole from me. I don't let anybody steal from me. I don't have a drug problem. I used to have a drug problem but have gotten rid of it.

Robert JURADO is advised of physical evidence and facts we know about the case. Robert JURADO is further questioned about the homicide.

I didn't do a thing. You guys are questioning the wrong person.

Robert JURADO turned away from me and put his hands up to his face. Robert JURADO said, "Give me a few minutes".

I did it. My family was in danger. I didn't want to die. I am not a snitch. A few weeks ago, a guy in jail had me kidnapped. When I was kidnapped, I had a baseball put to my head. I think Terry had something to do with that. I think

Reporting Officer R. LARMOUR I.D.# 1550 Homicide Team II  
Approved By \_\_\_\_\_ Date of Report 05/20/91:dd Time 1130 Hours

Investigator's Report  
Case #91-048370  
Page 3

Terry had something to do with my motorcycle being ripped off. I was afraid for my family.

The girls had nothing to do with it. The girls weren't there. I did it alone.

The murder happened in the car. I dropped the body off on the freeway. The car broke down a few feet away.

The hair in Terry's hands are mine. Anna wasn't there. I swear to God Anna wasn't there. I tried to choke Terry. It didn't work. I was choking her with a long piece of plastic. I had this plastic with me. I then started hitting Terry over the head with the car's jack. I threw it away going up the hill after the car broke down.

Was Terry still alive when you pulled her out of the car?

I don't know. I don't want to think about it. I started to strangle Terry on the freeway. Terry was sitting in the front seat of the car.

The car broke down before the off ramp of 163 and Quince. I didn't get it towed until the next day. Anna came over to my house and they brought the car to that location. The tow slip signature is Anna's.

There was some blood in the car. I cleaned up the blood. I threw Terry's purse and shoe away in a dumpster.

The night of the murder, I was wearing a white pair of pants and a red shirt. The clothes had blood on them. I threw the clothes away. I don't remember where it was that I threw away the clothes.

I didn't get any injuries in the murder. The only injury I have was to my conscious.

The interview with Robert JURADO was concluded.

Robert JURADO was taken through the homicide processing procedures. After the physical examination at Harbor View Hospital, Robert JURADO agreed to show us the location where he had thrown the car's jack. Detective ZAVALA and I drove to the Quince Street Bridge which over Highway 163. Robert JURADO showed us the spot where he had tossed the jack into some bushes just past the bridge. Robert JURADO said that it might have got hung up in the branches of the tree. Sergeant MANIS and Evidence Technician DORSETT were made aware of this location. Evidence Technician DORSETT proceeded to look for the tire jack.

Reporting Officer R. LARMOUR I.D.# 1550 Homicide Team II  
Approved By \_\_\_\_\_ Date of Report 05/20/91:dd Time 1130 Hours



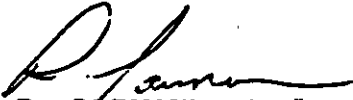
Investigator's Report

Case #91-048370

Page 4

Robert JURADO was asked if he'd show us the halfway house where Denise SHIGEMURA resides. Robert JURADO agreed and gave us directions to the halfway house. Robert JURADO pointed out the address of 2727 Boston Avenue as being Denise SHIGEMURA's residence.

Robert JURADO was booked into County Jail.



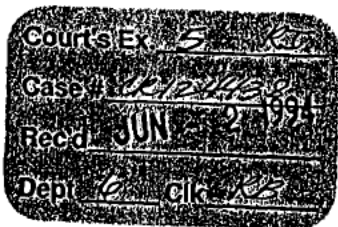
R. LARMOUR, ID#1550

Homicide Team II

05/20/91, 1130 hours /dd8864

Reporting Officer R. LARMOUR I.D.# 1550 Homicide Team II  
Approved By \_\_\_\_\_ Date of Report 05/20/91:dd Time 1130 Hours

1370



MAY 18, 1991  
S.D.P.D. INTERVIEW

WITH  
ROBERT JURADO  
(B86889)

TRANSCRIBED BY: ROBERTA OLIN  
JULY 15, 1991

000267

1371

1 JURADO: Are we allowed to smoke?

2 LARMOUR: Not in here. What I'll do is I, we'll talk for a little  
3 bit and then ah I'll take you and we'll get a smoke break  
4 'cause I smoke too. Detective Zavala, did you already meet  
5 him out there?

6 ZAVALA: No, I saw him out there but I didn't.

7 OFFICER: Okay. This is, this is my partner, Felix Zavala.

8 ZAVALA: How you doing?

9 LARMOUR: And I'm Ron Larmour. Basically we're still working on that  
10 case that we were working on yesterday when you talked to  
11 Manis, Sergeant Manis. I didn't talk to you so I'll get  
12 some information from you. Okay. Okay, first name is  
13 Robert. Middle name?

14 JURADO: None.

15 LARMOUR: None. No middle name. Spell your last name for me.

16 JURADO: J-u-r-a-d-o.

17 LARMOUR: J-u-r ...

18 JURADO: A-d-o. Spelt it wrong.

19 LARMOUR: J-u-r, take out the 'a' right?

20 JURADO: Yeah.

21 LARMOUR: How old are you?

22 JURADO: I'm 20.

23 LARMOUR: 20. What's your address?

24 JURADO: 4688 ...

25 LARMOUR: Uh ha.

26 JURADO: 39th Street, Apartment A.

27 LARMOUR: Phone number there?

28 JURADO: None.

1 LARMOUR: No phone?

2 JURADO: No.

3 LARMOUR: Do you work?

4 JURADO: No. Temporary, helping someone do carpentry.

5 LARMOUR: Kind of scab work?

6 JURADO: Yeah.

7 LARMOUR: What's your specialty when you work?

8 JURADO: Ah just kicking and tacking.

9 LARMOUR: Tacking? That's a good job if your knees last though. I

10 had a friend that ...

11 JURADO: They don't last.

12 LARMOUR: That's true. Date of birth Robert?

13 JURADO: 6-11-70.

14 LARMOUR: Do you know your Social Security Number?

15 JURADO: 561-89-6719.

16 LARMOUR: 6719? Correct?

17 JURADO: Uh ha.

18 LARMOUR: All right. I think I've got it all there. Now before I

19 talk with anyone what I like to do is advise them of their

20 rights. Everybody I talk to I advise of their rights.

21 Okay so it's just an understanding when I advise you, you

22 know, if you don't answer a question I ask you, that means

23 you don't have to. Okay? Let me read you your rights.

24 You have the right to remain silent. If you give up the

25 right to remain silent, anything you do say can and will be

26 used against you in court. You have the right to speak

27 with an attorney of your choice before questioning and to

28 have the attorney present during questioning. If you

1 cannot afford an attorney, one will be appointed for you <sup>1373</sup>  
2 the court prior to any questioning if you so desire. The  
3 attorney will not cost you anything. The services are  
4 free. Do you understand those rights?  
5 JURADO: Yes Sir.  
6 LARMOUR: Having in mind those rights, are you willing to talk to me?  
7 JURADO: I guess.  
8 LARMOUR: Okay. The answer is yes? Okay. Basically Robert I didn't  
9 talk to you yesterday so I don't know what you know about  
10 Terry and stuff like that. Can you go over that with me?  
11 JURADO: I didn't do nothing man. I don't know why they're blaming  
12 me.  
13 LARMOUR: Well, tell me what you knew about Terry. I'm trying to  
14 get, get caught up on what you told Sergeant Manis about  
15 Terry. Something that ah ...  
16 JURADO: She's Brian Johnson's girlfriend.  
17 LARMOUR: Okay.  
18 JURADO: Does, dope.  
19 LARMOUR: Okay.  
20 JURADO: Doesn't work.  
21 LARMOUR: Okay.  
22 JURADO: Um, she used to take money from a lot of people.  
23 LARMOUR: Okay. Now did you tell him the last time you saw her or  
24 anything?  
25 JURADO: I seen her Wednesday or Tuesday I think.  
26 LARMOUR: Can you be more specific? 'Cause we're trying to narrow  
27 down a time span.  
28 JURADO: Um, probably Wednesday or Tuesday. I can't remember what

1374

1 day.

2 LARMOUR: Well that's two different days now. Is there ...

3 JURADO: Well I think Wednesday, I think.

4 LARMOUR: Wednesday?

5 JURADO: Yeah, I think so.

6 LARMOUR: During the day or at night?

7 JURADO: Um I seen her in the evening.

8 LARMOUR: Evening, okay. Ah about what time was that?

9 JURADO: Um, about eight.

10 LARMOUR: 8:00?

11 JURADO: Yeah.

12 LARMOUR: Okay and where was this at? Your house, somebody else's

13 house ...

14 JURADO: Friend's house.

15 LARMOUR: Who's that?

16 JURADO: Uh Mark.

17 LARMOUR: Mark.

18 JURADO: I don't know his last name or address.

19 LARMOUR: But that's over close to where you live I think.

20 JURADO: Uh ha.

21 LARMOUR: Okay. Who was in the house there with you?

22 JURADO: Ah, me, Mark, ah Anna ...

23 LARMOUR: Anna, who's Anna?

24 JURADO: My girlfriend.

25 LARMOUR: That's your girlfriend, okay. Anybody else?

26 JURADO: And a girl named Denise.

27 LARMOUR: Denise. Do you know her last name?

28 JURADO: Shigemura.

1 LARMOUR: Shigemura? How would you spell that?  
2 JURADO: S-h-i-g-e-m-u-r-a.  
3 LARMOUR: Okay S-h-i-g-e-r-u ...  
4 JURADO: S-h-i-g- ...  
5 LARMOUR: Uh ha.  
6 JURADO: A, e, S-h-i-g-e-m-u-r-a.  
7 LARMOUR: M-u-r-a, okay. Ah, anybody else.  
8 JURADO: Um, that was it.  
9 LARMOUR: That was it, okay. And what happened after that?  
10 JURADO: Ah we all departed. Me, Denise, Anna, went to my house.  
11 Terry said she was going home.  
12 LARMOUR: Terry said she was going home?  
13 JURADO: Uh ha.  
14 LARMOUR: Okay. All right.  
15 JURADO: And ah Denise had to make a call to call the half-way house  
16 to tell them she'd probably be late, and we went to get  
17 gas.  
18 LARMOUR: What time was she due for that half-way house?  
19 JURADO: 9:00.  
20 LARMOUR: So she called to say she's late?  
21 JURADO: Yeah.  
22 LARMOUR: Okay. Okay, go ahead.  
23 JURADO: And ah me and Anna went to the gas station. And she locked  
24 the thing. When I came back she wasn't there and then she  
25 showed up about 10:00 beat up.  
26 LARMOUR: Who?  
27 JURADO: Denise.  
28 LARMOUR: All right.

1 JURADO: She said she got jumped by three people.  
2 LARMOUR: Okay.  
3 JURADO: It was behind Big Bear.  
4 LARMOUR: Behind Big Bear up by where you live?  
5 JURADO: Yeah.  
6 LARMOUR: Okay. So Denise said she got jumped. Where did you go and  
7 get gas at then?  
8 JURADO: At the Chevron down the street.  
9 LARMOUR: Do you know what corner that is?  
10 JURADO: Adams.  
11 LARMOUR: Adams and what?  
12 JURADO: Ah, ah Adams, I have no idea.  
13 LARMOUR: But a few blocks from your house? Okay. So it was just  
14 you and Anna that went and got gas.  
15 JURADO: Uh ha.  
16 LARMOUR: In what car?  
17 JURADO: The blue one, Chevy.  
18 LARMOUR: Okay, the blue one. Denise didn't go with you.  
19 JURADO: No.  
20 LARMOUR: Okay and Denise got beat up. Terry went home. Then what  
21 happened after you got, Denise told you she got beat up?  
22 JURADO: She was late to the half-way house and didn't know what to  
23 do. So I took care of her for about a day and a half.  
24 LARMOUR: She stayed at your house?  
25 JURADO: Uh ha. She had no place else to stay. She was beat up.  
26 She couldn't move.  
27 LARMOUR: Oh. Well where is she at now?  
28 JURADO: She's in the half-way house.



1 LARMOUR: Oh she's back now?

2 JURADO: Yeah.

3 LARMOUR: Do you know the name of that half-way house? Okay, where's  
4 it located at?

5 JURADO: Somewhere by Harbor.

6 LARMOUR: Okay. What is she in a half-way house for?

7 JURADO: Ah because she don't have a place to live yet and she got  
8 out of MCC.

9 LARMOUR: Okay, what, what, that's what I meant. She must be on ah,  
10 be exchanging time, probation.

11 JURADO: Yeah.

12 LARMOUR: So what is it for as far as MCC?

13 JURADO: Ah drugs.

14 LARMOUR: Drugs. So she had a federal rap on her then.

15 JURADO: Yeah.

16 LARMOUR: Okay. Do you have a phone number for the half-way house?  
17 Maybe I, I need to talk to her about this too.

18 JURADO: I don't have it.

19 LARMOUR: You don't have it. How would you get a hold of her then?  
20 She just ...

21 JURADO: She would ah go to work for Creative Croissants.

22 LARMOUR: Where does she work at?

23 JURADO: Creative Croissants.

24 LARMOUR: Where's that at?

25 JURADO: Mission Valley Mall.

26 LARMOUR: Does she work there during the day or night? It must be  
27 during the day.

28 JURADO: Mornings. She was supposed to work the next day. And she

1 didn't show up and she didn't call because the half-way  
2 house would call there looking for her.

3 LARMOUR: Okay. Creative Croissants, Mission Valley or Fashion  
4 Valley?

5 JURADO: Mission.

6 LARMOUR: Mission, okay. When you say she was beat up, did she have  
7 injuries on her face or what?

8 JURADO: She had them on her body. She said they threw her on the  
9 ground and she was curled up in a ball and they were  
10 kicking her and punching her.

11 LARMOUR: So she's got what, maybe bruises and stuff on her arms?

12 JURADO: Yeah, they were all over.

13 LARMOUR: Okay. So she never made it to the half-way house that  
14 night.

15 JURADO: Uh un.

16 LARMOUR: Does Anna live with you?

17 JURADO: No.

18 LARMOUR: So she what, where does she live at?

19 JURADO: With her parents.

20 LARMOUR: With her parents. And that's Anna's car?

21 JURADO: Yeah.

22 LARMOUR: Does she take the car home when she goes to her parents'?

23 JURADO: Yeah.

24 LARMOUR: Now for some reason somebody pointed out a red car, whose  
25 car is that?

26 JURADO: She got a new car.

27 LARMOUR: Oh she got a new car and what, she went and dumped this  
28 other one?

1 JURADO: No, um she still has it.

2 LARMOUR: Oh, two cars?

3 JURADO: Yeah.

4 LARMOUR: Oh she's pretty lucky at that age to have two, huh? Okay.

5 And the last time you saw Terry was that night.

6 JURADO: Yeah.

7 LARMOUR: And she went off on her own.

8 JURADO: Uh ha.

9 LARMOUR: And all of a sudden, what? Next thing you hear, do you

10 ever hear from Terry for a day and a half?

11 JURADO: Uh un.

12 LARMOUR: How about Brian, the boyfriend?

13 JURADO: Uh un, I don't have a phone. He's in jail.

14 LARMOUR: Okay. Are you and him close? You buddies?

15 JURADO: Yeah, we're close.

16 LARMOUR: How close is close? Best friend or just acquaintance?

17 JURADO: We used to be best friends.

18 LARMOUR: Best friends.

19 JURADO: And now we're kind of like, we're good friends.

20 LARMOUR: Okay. Ah so what, how'd you hear about Terry?

21 JURADO: Police.

22 LARMOUR: That's when Sergeant Manis came up and talked to you, what

23 yesterday some time?

24 JURADO: Yesterday and then they asked for info.

25 LARMOUR: Is there anything you gave, you haven't, what you told me

26 that you didn't tell him that day?

27 JURADO: He didn't ask about Denise.

28 LARMOUR: Okay. Where she lives and stuff like that?

1 JURADO: Yeah.

2 LARMOUR: Okay. Anything else?

3 JURADO: I just told them I had a friend that got jumped. I don't

4 know if they wrote that down.

5 LARMOUR: What happened, what happened to Terry?

6 JURADO: Um she took off up the street to go see if she could go

7 home yet.

8 LARMOUR: Okay. Well ...

9 JURADO: She got kicked out.

10 LARMOUR: Sergeant Manis obviously told you that she's a homicide

11 victim, she's dead.

12 JURADO: Yeah, that's what he told me.

13 LARMOUR: What do you think happened there?

14 JURADO: He told me what happened.

15 LARMOUR: Which is?

16 JURADO: She got beat up and killed and ah I thought it was over

17 dope.

18 LARMOUR: You think it was over dope? Anybody you know that would do

19 that?

20 JURADO: The guy she live with. That's what I told him.

21 LARMOUR: Who's that? Is that ...

22 JURADO: I don't know.

23 LARMOUR: Tom or something like that?

24 JURADO: He lives on Cherokee. I just don't know, I don't know

25 who ...

26 LARMOUR: Lives on Cherokee.

27 JURADO: She didn't tell us nothing. And she got jumped too about

28 Tuesday or maybe Monday.

1 LARMOUR: Uh ha.

2 JURADO: It was right in the alley where we were. She found a  
3 suitcase.

4 LARMOUR: Yeah.

5 JURADO: And ah we went up the street and I didn't walk her home.  
6 I went to the store and then three guys jumped her. One at  
7 knife, they had her knife point. One stabbed the tire.  
8 One grabbed her purse and took it from her.

9 LARMOUR: Uh ha.

10 JURADO: And one guy was holding her by the hair.

11 LARMOUR: Uh ha.

12 JURADO: And they told her, 'We seen you take our suitcase.'

13 LARMOUR: Uh ha.

14 JURADO: But there was nothing in it.

15 LARMOUR: Okay. What time did ah your girlfriend go home that night  
16 when Denise got hurt? We're going back to Wednesday now.  
17 You've gone and got gas, you come back and Denise is hurt.  
18 Did Anna stay all night, did she go home? What happened?

19 JURADO: No, she went home. She has curfew.

20 LARMOUR: So just you and, what time's her curfew?

21 JURADO: Ah 10:00.

22 LARMOUR: Did she make it home on time?

23 JURADO: Yeah.

24 LARMOUR: And how long have you known Anna?

25 JURADO: About a year and a month, year and two months.

26 LARMOUR: How long did you know Terry?

27 JURADO: Um about, almost a year.

28 LARMOUR: Year.

1 JURADO: I met her and Brian.

2 LARMOUR: You met her through Brian?

3 JURADO: Yeah.

4 LARMOUR: How long did you know Brian before that?

5 JURADO: About a year.

6 LARMOUR: So for being best of friends, you've only been best of  
7 friends for a year.

8 JURADO: Yeah.

9 LARMOUR: Okay. And Denise, how long have you known her?

10 JURADO: Since the month before last June.

11 LARMOUR: So that's almost a year too. How long have you lived at  
12 that address on ah ...

13 JURADO: Ah since I got out of camp, um January something, about  
14 February 1st, I guess.

15 LARMOUR: Of this year, okay. Why would someone want to kill Terry?

16 JURADO: I think over dope?

17 LARMOUR: She owe a lot of people dope?

18 JURADO: She stole from a lot of friends and that's what I told him.

19 LARMOUR: Did she ever steal from you?

20 JURADO: No, she never stole from me.

21 LARMOUR: How about Anna?

22 JURADO: No.

23 LARMOUR: Ever from Denise?

24 JURADO: No.

25 LARMOUR: I have a question for you and I don't care one way or  
26 other, and I, you know, I'm not gonna do anything about it.  
27 I don't really care. Do have any kind of a little dope  
28 usage yourself?

1 JURADO: I was for a while but I've been going straight ...

2 LARMOUR: Going straight now?

3 JURADO: Yeah.

4 LARMOUR: Good, good. That's excellent.

5 JURADO: I've had two dirty piss tests.

6 LARMOUR: Oh since you've got, since your time?

7 JURADO: Yeah.

8 LARMOUR: What, what were you using?

9 JURADO: Just weed.

10 LARMOUR: Just weed?

11 JURADO: Uh ha.

12 LARMOUR: We've been working on this thing since, what, yesterday  
13 morning. And we went, broke last night. You got  
14 interviewed last night, we broke last night, came back, we  
15 then started early this morning at first light. Been doing  
16 a lot of work on it and ah basically we've talked to a lot  
17 of people.

18 JURADO: Yeah.

19 LARMOUR: You also understand the aspects of ah physical evidence, ah  
20 stuff left in the scene, ah fibers, hairs, fingerprints,  
21 and things like that. And we've been hitting it straight.  
22 And I mean we did, we did well to get her identified 'cause  
23 we had her strictly as Jane Doe. And basically what I  
24 really need you to do for me, Robert, is we know what  
25 happened.

26 JURADO: Uh ha.

27 LARMOUR: We need to know why it happened.

28 JURADO: I think over drugs. You know, I don't know what's going on

1 but I think over drugs or someone she owed. 'Cause she's  
2 ripped off in the past a couple hundred bucks from here,  
3 there.

4 LARMOUR: But she's never ripped you off?

5 JURADO: No. I don't let her rip me off. I don't let people rip me  
6 off.

7 LARMOUR: And you don't have, you're one of the last people to see  
8 her. You and Denise and Anna.

9 JURADO: Anna and Mark. (Unintelligible)

10 LARMOUR: One of the last people to see her.

11 JURADO: Yeah she went up the street and that's all I know.

12 LARMOUR: Yeah.

13 JURADO: You know.

14 LARMOUR: You know, I think what we need to do is, yeah, be a little  
15 bit more honest. Robert you're not sit ...

16 JURADO: This is honest as I can man.

17 LARMOUR: Robert you're not sitting in this room right now, you're  
18 not sitting in this room right now because we want to take  
19 a follow up on your interview Robert. You're sitting in  
20 this room because we know the truth. We know what happened  
21 Robert.

22 JURADO: I didn't do nothing man.

23 LARMOUR: Robert we need you to take and tell us the truth. Because  
24 all we need to know from you is just a reason why. We  
25 know ...

26 JURADO: I didn't do nothing man.

27 LARMOUR: Robert, you did.

28 JURADO: I did not.



1 LARMOUR: But you did.

2 JURADO: I did not.

3 LARMOUR: There's physical evidence, there's people that are telling  
4 us, there's people that have already talked to us about it.  
5 And Robert ...

6 JURADO: I didn't do nothing man.

7 LARMOUR: The only thing we need from you is a reason why. There's  
8 always a reason why these things happen. I've been doing  
9 homicide investigations for a few years. People just don't  
10 go out and shoot somebody for the hell of it. Somebody has  
11 done somebody bad. Somebody's done somebody dirty and  
12 that's the reason these things happen. And that's why, you  
13 know, you need to tell your side of the story as far as  
14 what happened.

15 JURADO: I didn't do anything man.

16 LARMOUR: What she did to you, why, why it got out of hand. What  
17 happened?

18 JURADO: I didn't do a damn thing.

19 LARMOUR: Robert, you're getting tight inside now. You're getting  
20 tight.

21 JURADO: Well you're getting all in my face man.

22 LARMOUR: I'm not. I'm right here. You're getting tight inside.  
23 You're getting tight and it's like, you know, you've been  
24 caught. Now you've got to sit there and find your way out.

25 JURADO: I didn't do a damn thing. You know, all you guys, you're  
26 questioning the wrong person.

27 LARMOUR: Robert, why did you want to kill that girl?

28 JURADO: I didn't want to kill nobody man. I didn't kill nobody.

1 LARMOUR: All right, you were there when it happened?

2 JURADO: Where was I?

3 LARMOUR: You were there when it happened. You took this four foot-  
4 eleven little girl, little girl, twenty seven years old,  
5 this four foot-eleven and I understand this girl can  
6 sometimes be a real bitch. She can sometimes shoot her  
7 mouth off when she shouldn't and maybe being that way she  
8 probably also gets a little feisty when she shouldn't, and  
9 she could probably make somebody very, very angry. I've  
10 talked to Brian and Brian has told me at times he's  
11 handcuffed her because she gets wild and whacked out on  
12 weed and ah and meth. And he's already told me that he's  
13 felt about times where he could do her too because it just  
14 is, she just gets a person to that point. That's what I  
15 need to understand. If she worked you guys up to that  
16 point or if she created a problem to work someone up to  
17 that point, that's an explanation Robert. That's an  
18 explanation. It's not a cold blooded murder. That's an  
19 explanation about what happened, what went down, and that's  
20 what I'm asking you to tell me. This is gonna be your  
21 opportunity to tell me your side of what caused this that  
22 night. What cause this to happen. No one else knows but  
23 you. No one else knows but who else was in the car. We  
24 know that Denise was in the car, we also know that Anna was  
25 in the car.

26 JURADO: They were at my house.

27 LARMOUR: And they were also in the car. We also know that the car  
28 broke down on 163.

1 JURADO: Hmm.

2 LARMOUR: Just a little bit where the body was dumped. We also know  
3 there's a tow slip from where that came up. We also know  
4 about stuff that was discarded there. Robert, we need the  
5 explanation as to why this went down. People don't just  
6 kill people for no reason at all. Be honest with us  
7 Robert. Just tell us.

8 JURADO: All right. Give me a few minutes. I did it. I feel in  
9 fucken danger man. She had my motorcycle ripped off.  
10 Fucken all I know is I'm in danger, my family's in danger  
11 and the girls had nothing to do with it. That's the truth.  
12 The girls did not have nothing, Denise or Anna had nothing  
13 to do with it.

14 LARMOUR: Well then how did it happen?

15 JURADO: Like you said.

16 LARMOUR: I need more than that Robert. I need to know how it  
17 happened. What, who did what?

18 JURADO: I did. Nobody was with me.

19 LARMOUR: No, Robert. Don't protect the ladies. We know the ladies  
20 were there.

21 JURADO: They were not there.

22 LARMOUR: Denise was there, Anna was there.

23 JURADO: They were not there. They were not there.

24 LARMOUR: Okay. Were they in ...

25 JURADO: I was alone okay. Okay my family's in danger. All I ask  
26 is you protect them.

27 LARMOUR: We'll take care, we'll help your family out. But Robert  
28 what I'm saying is ...

1 JURADO: They had me kidnapped. They had me kidnapped not too long  
2 ago out of my house. I don't know if I should say who  
3 'cause one's in jail and I don't want to die man. I don't  
4 want to die. He just got busted. I don't want to die.  
5 I'm not a snitch.

6 LARMOUR: Huh?

7 JURADO: I'm not a snitch. You know, I don't want to die.

8 LARMOUR: Well nothing says you're gonna die. Nothing says you're  
9 snitching. If it helps us understand why this happened,  
10 then we'll know. Was it Brian who's in jail? All right.

11 JURADO: (Crying) I can't help it.

12 LARMOUR: Well you're doing the right thing.

13 JURADO: Honestly the girls had nothing to do with this.

14 LARMOUR: Okay. But Robert I know they were in the car before it  
15 actually happened.

16 JURADO: They weren't in the car.

17 LARMOUR: Then you're gonna have to tell me to convince me they  
18 weren't in the car, how it happened. I mean what you did.

19 JURADO: I wasn't with them. I was alone.

20 LARMOUR: You were alone? Okay. Where did the murder happen at then  
21 Robert?

22 JURADO: In the car.

23 LARMOUR: In the car.

24 JURADO: And then, then, and then I took her by there and dropped  
25 her off and then the car broke down.

26 LARMOUR: All right. Is this before or after you dropped off Denise?

27 JURADO: It was way before. She was at my house and Anna was at my  
28 house. I went alone.

1 LARMOUR: I understand you're trying to protect the girls, but they  
2 were there also.

3 JURADO: No they weren't. They weren't there man. I swear to god  
4 they weren't there.

5 LARMOUR: All right, whose hair is that in ah Terry's hands? She's  
6 got two big groups of hair where she ripped them out.

7 JURADO: Probably mine.

8 LARMOUR: Why does Anna say it's her's?

9 JURADO: She didn't say that man. It wasn't her's man.

10 LARMOUR: Why does it match up to Anna's?

11 JURADO: It doesn't match up to nobody but mine man. I'm the one  
12 that did it. Me.

13 LARMOUR: All right, all right. Okay. All right. I'll get off of  
14 that. Why did this happen? What did she do to you to make  
15 you that mad?

16 JURADO: My family's in danger. All I know is I got kidnapped not  
17 too long ago.

18 LARMOUR: Okay.

19 JURADO: I got, they kidnapped me because of something that happened  
20 before.

21 LARMOUR: Okay.

22 JURADO: And all they wanted was the truth to find out who was  
23 lying.

24 LARMOUR: Okay.

25 JURADO: And I told the truth. They had me at bat, a bat to my head  
26 and said I was gonna die.

27 LARMOUR: Okay.

28 JURADO: And she had a part to do with that too.

1 LARMOUR: Terry did, okay.

2 JURADO: I just don't want nobody else getting into trouble. I'm  
3 the one man. Nobody else.

4 LARMOUR: Okay. Did you choke her?

5 JURADO: I tried but it didn't work.

6 LARMOUR: What did you choke her with?

7 JURADO: (Unintelligible)

8 LARMOUR: Pardon me?

9 JURADO: Plastic thing.

10 LARMOUR: What is a plastic thing? Is it a wrapper, is it a plastic  
11 strap, what?

12 JURADO: Like a piece of long plastic.

13 LARMOUR: What, where would I find a piece of plastic like that?  
14 That could mean anything to me.

15 JURADO: I don't know. I just found it.

16 LARMOUR: Was it in the car?

17 JURADO: It was with me.

18 LARMOUR: It was with you.

19 JURADO: I threw it away.

20 LARMOUR: You threw it away. Did you throw it away ah by where you  
21 dumped the body?

22 JURADO: No.

23 LARMOUR: Where did you throw it away at?

24 JURADO: I can't remember.

25 LARMOUR: All right. What did you hit her over the head with?

26 JURADO: The jack.

27 LARMOUR: Was this the jack handle, the jack, what part of it?

28 JURADO: The jack.

1 LARMOUR: The jack itself that you lift the car up with. Not the  
2 handle.  
3 JURADO: Yeah.  
4 LARMOUR: Where was that?  
5 JURADO: I threw that away.  
6 LARMOUR: Okay, was that in the back of the car where you could  
7 easily grab it? Did you throw that away just a little bit  
8 of distance from where the body was dumped? Going up  
9 towards the hill, towards the 7/Eleven?  
10 JURADO: Somewhere.  
11 LARMOUR: Somewhere in there. Was she still alive when you pulled  
12 her out of the car and threw her down in that little ah,  
13 little drainage ditch?  
14 JURADO: I don't know. I don't know. Only God knows that, man.  
15 LARMOUR: How many times did you hit her?  
16 JURADO: I don't want to think about it.  
17 LARMOUR: Well you hit her more than once. Is that correct? You  
18 want some water Robert?  
19 JURADO: Please. And a cigarette.  
20 LARMOUR: I can't get you a cigarette right yet, but I'm gonna get  
21 you some water. Kind of relax here, all right. And I  
22 really appreciate you being honest with me, coming clean.  
23 JURADO: (Unintelligible)  
24 LARMOUR: And you're gonna find, you're gonna find, you're gonna find  
25 that ah you're gonna feel a lot better.  
26 JURADO: (Unintelligible) But I'm scared. I don't want my family  
27 fucken, (unintelligible) I'm gonna do something like this  
28 towards my family.

1 LARMOUR: You have fear for your family. What did they say she was  
 2 gonna, what did they say they were gonna do to your family?  
 3 JURADO: They said that's the only way to get even with you. And  
 4 everybody knows where my mom lives. I've been followed  
 5 there and not known about it. And then I found out that  
 6 and I had to do it.  
 7 LARMOUR: Okay. Okay.  
 8 JURADO: I don't want to spend the years of all of my life in jail.  
 9 I don't.  
 10 LARMOUR: Did the car break down on you Robert? Where did it break  
 11 down at?  
 12 ZAVALA: Robert, would like some water? Okay. It's not the end of  
 13 the world.  
 14 JURADO: Sorry.  
 15 ZAVALA: I know you are. I know you are.  
 16 JURADO: (Unintelligible)  
 17 LARMOUR: It's okay. It's okay.  
 18 JURADO: (Unintelligible)  
 19 ZAVALA: Okay. (Unintelligible) If you need anything else, yell.  
 20 LARMOUR: Did the car break down before the ah, the ramp going up to  
 21 Quince Street? Over that ramp that goes up towards the  
 22 park? Did you walk up to the 7/Eleven and call from there  
 23 for the tow?  
 24 JURADO: I couldn't get a tow at, tow yet.  
 25 LARMOUR: Okay so someplace between where Terry was dumped and the  
 26 car broke down, you got rid of that jack. Okay.  
 27 JURADO: It was a little further maybe.  
 28 LARMOUR: The car got back over to your house. Was there any blood



in the car?

JURADO: Yes Sir.

LARMOUR: Did it get cleaned out?

JURADO: I cleaned it.

LARMOUR: You cleaned it? How about the purse and the shoe that she left in the car?

JURADO: I threw it away.

LARMOUR: Did you throw it away in a trash can?

JURADO: In a dumpster.

LARMOUR: Close to your house? What day did you throw it away?

JURADO: Right after it happened.

LARMOUR: Is Thursday trash day up there? When the trash man comes around?

JURADO: I'm not sure.

LARMOUR: Not sure, okay. Where's the rest of her clothing? Do you have any idea?

JURADO: Uh un.

LARMOUR: No? And this is because you got threats to your family.

JURADO: It's the only reason man. I could never do this to nobody.

LARMOUR: You talked to her friend or her boyfriend, Brian on the phone earlier. Did you tell him what you were gonna do?

JURADO: No, he didn't know. Nobody knew.

LARMOUR: And Brian is not the one who threatened you or your family? I want you to be honest with me now. I talked to Brian in the jail last night. He's not the sharpest tool in the shed.

JURADO: I know.

LARMOUR: Did Brian have anything to do with this?

1 JURADO: Oh man I gave you what I could. I can't give no more man.  
2 I'm gonna get killed when I go to jail.  
3 LARMOUR: Well ...  
4 JURADO: I'm not a snitch. I refuse to be one.  
5 LARMOUR: You're not gonna get killed when you go to jail.  
6 JURADO: Yeah I will.  
7 LARMOUR: No you won't.  
8 JURADO: He's got friends in there.  
9 LARMOUR: Who does?  
10 JURADO: Brian knows people in there. What if he wants to kill me?  
11 LARMOUR: Brian and those people? Brian who? Are we talking about  
12 Brian, the boyfriend?  
13 JURADO: Yeah. He ...  
14 LARMOUR: Was he the one that threatened you?  
15 JURADO: No, he didn't threaten me.  
16 LARMOUR: Okay. So you think Brian's gonna get retaliation for,  
17 okay. It's not gonna happen. You're not going to where  
18 he's at.  
19 JURADO: I know but I'll be in prison.  
20 LARMOUR: Well, I don't think he's going to prison.  
21 JURADO: He has friends in there.  
22 LARMOUR: Is there anything else that you can think to tell me? This  
23 is your one, this is your chance to tell me now. Where was  
24 she when you started to strangle her? This was in the car,  
25 so now think. Where was she?  
26 JURADO: I can't remember. It was on the freeway.  
27 LARMOUR: Okay where was she sitting?  
28 JURADO: In front.

1 LARMOUR: In the front seat? Were you sitting directly behind her?  
2 JURADO: I was sitting, driving.  
3 LARMOUR: You were driving? Okay where, how ...  
4 JURADO: I did it man. I was alone.  
5 LARMOUR: Okay, I want you to understand where I'm coming from.  
6 Because I understand you're trying to protect the two  
7 girls. If you solely did it then you are protecting the  
8 two girls. But don't lie and say they weren't there.  
9 Because they're not saying that. They're saying that Terry  
10 was sitting in the front seat ...  
11 JURADO: They didn't say that.  
12 LARMOUR: You were sitting behind her and that's when you tried to  
13 choke her.  
14 JURADO: I know you're lying to me.  
15 LARMOUR: You know I'm lying to you?  
16 JURADO: Why would you lie to me? The girls wouldn't say nothing  
17 even if they were there.  
18 LARMOUR: Well, there's no reason for me to lie to you. Denise is  
19 driving the car, you're in the back seat with Terry, I mean  
20 with your, Terry's in the front seat, you're in the back  
21 seat with Anna. And logically there's no way you can be  
22 driving a car and choke Terry by yourself as far as just be  
23 sitting there. I mean you'd have to pull the car over.  
24 She's gonna say what's going on. And you're gonna take and  
25 bring out this plastic and try and strangle her. And  
26 that's not gonna work. She's gonna jump out of the car.  
27 It would take a, a blind lady not to see what was going on,  
28 to where she could jump. To where if you were behind her,

1           you could come up behind her and get her real easy. I'm  
2           not at fault if I'm sitting in the car driving and the  
3           people in the car get into a fight and the people, one of  
4           them gets killed. It's not my fault.  
5   JURADO:   It's only mine man. Nobody else's. That's all man. It's  
6           the truth. Nobody else's.  
7   LARMOUR:   All right so ...  
8   JURADO:   Let the lord be my judge.  
9   LARMOUR:   Well don't say the lord is the judge on that one. Because  
10           that one you're, you know, you're trying to protect.  
11   JURADO:   Then I'll just trust--That's true.  
12   LARMOUR:   Okay well I'm not gonna, I'm not gonna go any further with  
13           it because you've been honest with me and if that's what  
14           you want to say, that's fine.  
15   JURADO:   The girls didn't do nothing man.  
16   LARMOUR:   Okay, then I'll leave it at that. Do you have anything  
17           Felix?  
18   ZAVALA:   How did ah, how did the ah, is that your signature on the  
19           tow slip? For the car?  
20   JURADO:   No, I told Anna to sign, sign her name.  
21   ZAVALA:   Where was ...  
22   JURADO:   When I got it towed.  
23   ZAVALA:   Where was Anna when she signed that tow slip?  
24   JURADO:   Where was she?  
25   ZAVALA:   Yeah.  
26   JURADO:   She was, when they towed her car I had him park it. And  
27           then he wanted me to sign it and I didn't want to sign.  
28   ZAVALA:   Went to park it where?

1 JURADO: By my house.  
2 ZAVALA: By your house, okay. So how did you get Anna to sign that  
3 tow slip? Where was Anna?  
4 JURADO: Oh, she came over and she asked me to have it towed. And  
5 I told her I was gonna get it towed and then I had it  
6 towed.  
7 ZAVALA: Okay but ...  
8 JURADO: And I had her wait and sign it.  
9 ZAVALA: Okay but earlier you told us that ah ...  
10 JURADO: (Unintelligible)  
11 ZAVALA: Robert, ah, ah listen to me for just a second please guy.  
12 Um you told us she had made it home before curfew which is  
13 10:00. How could she sign that slip ...  
14 JURADO: It was the next morning we got it towed.  
15 ZAVALA: It was the next morning.  
16 JURADO: We got it towed in the morning.  
17 ZAVALA: Do you remember what time it was?  
18 JURADO: Eight or nine.  
19 ZAVALA: Okay.  
20 LARMOUR: What were you wearing the night it happened?  
21 JURADO: A white pair of pants.  
22 LARMOUR: What kind of shirt?  
23 JURADO: I can't remember the shirt. It was a red shirt.  
24 LARMOUR: Red shirt? Did you get blood on them?  
25 JURADO: I threw them away.  
26 LARMOUR: Where'd you throw them away at?  
27 JURADO: Various spots, dumpsters.  
28 LARMOUR: Where at?

1 JURADO: I don't know. I just went through places and just got rid  
2 of it.

3 LARMOUR: So honestly you don't remember where you dumped the stuff  
4 off at.

5 JURADO: Honestly I don't.

6 LARMOUR: I can't take you and you can't show me where it was?

7 JURADO: (Unintelligible)

8 LARMOUR: Did you get any injuries in, in this fight? Obviously she  
9 tried to fight back. Do you got any scratches or anything  
10 on your body from it?

11 JURADO: The only injury I got is from my, just from my conscience.

12 LARMOUR: Your conscience, well your conscience is gonna feel a  
13 little better now that you told us.

14 JURADO: I know.

15 LARMOUR: 'Cause this is something that would eat a person up inside.  
16 All right. You sit here for a minute and I'll come back in  
17 here and explain to you what we're gonna be doing, okay?

18 JURADO: Can we smoke a cigarette?

19 LARMOUR: No, not in here. Okay? Just relax. (LEAVES ROOM)

20 JURADO: (TO HIMSELF) Lord help me get out early. I don't want to  
21 waste my life in prison.

22 LARMOUR: (ENTERS ROOM) Okay I'll get you some water in just a  
23 second. One thing I'd like to do Robert is, it's gonna  
24 save a lot of time and stuff, if you don't mind. I'd like  
25 to take your apartment and look through it for evidence.

26 JURADO: Okay.

27 LARMOUR: Okay there's nothing there so there's no problem. What I'd  
28 like you to do is read this consent form saying I can go in

1 and look in your apartment, me and another detective. Let  
2 me put my name down here.

3 JURADO: (Unintelligible)

4 LARMOUR: Well I want to read it to you first.

5 JURADO: How much time am I gonna do?

6 LARMOUR: That's not, that's not for me to do. Okay? Okay. Let me  
7 read this before you go, okay? Having been informed of my  
8 Constitutional right not to have a search warrant, not to  
9 have a search made on the premises ...

10 JURADO: I'm on probation. You can go in anyway.

11 LARMOUR: Correct. Hereinafter mentioned without a search warrant  
12 and of my right to refuse to consent to such a search. I  
13 hereby authorize myself and detective Zavala, members of  
14 the San Diego Police Department, to conduct a complete  
15 search of my premises, located at: Okay what I'd like you  
16 to do is print your name here, print your address here and  
17 then sign it here, if you would. Now also since you have  
18 been in that blue car, I would also like to have one on  
19 that also.

20 JURADO: Okay.

21 LARMOUR: But I'll bring you another slip for that. Okay, just print  
22 your address.

23 JURADO: What's gonna happen to Anna? She didn't do nothing.

24 LARMOUR: Okay, and I need you to sign it here. Okay, this is the  
25 same thing. I want you to go ahead and print your name  
26 there. This is a description of that blue car.

27 JURADO: It's not my car.

28 LARMOUR: I know but it's just you and have also been driving it so

1 we want to make sure that we check both ways. That's not  
2 a problem.

3 JURADO: You don't need a key to get in it. The front door on the  
4 driver's side is broken.

5 LARMOUR: Hm. Just jar it open.

6 JURADO: Yeah.

7 LARMOUR: It's a nice looking car from the outside. It must need a  
8 lot of interior work. Okay let me explain what's gonna  
9 happen here. You're obviously gonna take and be ah  
10 arrested for a homicide. Okay? There are certain steps  
11 that we go through as far as in our, ah procedure before we  
12 place you in county jail. Ah we take and go through a  
13 physical. We go through taking fingerprints, naturally,  
14 photographs and things like that. And we'll go through  
15 those steps. It'll take a little bit of time but we'll get  
16 through them. Okay? Ah basically ah we're, we're gonna  
17 probably have a dental ah examiner come in and take a set  
18 of ah, you know, a casting of your teeth. That will also  
19 happen later on.

20 JURADO: Before we go to county?

21 LARMOUR: Before we go to county.

22 JURADO: So I'll probably get there late at night?

23 LARMOUR: No, I wouldn't say late at night. It's according to how  
24 fast we get through the ah, through the steps. Okay. So  
25 once we get started, then we just kind of numerically go  
26 through the steps as far as what we're doing. Then ah  
27 we'll go there. And we'll both be with you as far as  
28 through the procedure. Okay? Now ah let me get you some



1 crackers. You said you're hungry. I have some, some  
2 crackers. I'll get you some more water. Just relax here  
3 for a minute.

4 JURADO: Can we go smoke a cigarette?

5 LARMOUR: Not right now, okay. If we do that, we'll be doing that  
6 all day. Let's get started with this stuff. Okay what I  
7 am gonna do though, is I'm just gonna take a, are you left  
8 or right handed?

9 JURADO: I'm right handed.

10 LARMOUR: Right handed, okay. So I'm gonna put your left hand there.

11 JURADO: I've got sores here.

12 LARMOUR: What's that from?

13 JURADO: I had syphilis before.

14 LARMOUR: You had what?

15 JURADO: Syphilis.

16 LARMOUR: Oh.

17 JURADO: Oops.

18 LARMOUR: Okay, Put this hand, there we got it. Just kind of bend  
19 yourself and make yourself (unintelligible).

20 JURADO: (Unintelligible)

21 LARMOUR: Okay, make yourself comfortable. I'll get you some, some  
22 water. (LEAVES ROOM)

23 JURADO: (TO HIMSELF) God help me. Help me God. I can't deal with  
24 this. Is that Anna?

25 ZAVALA: Huh?

26 JURADO: Is that Anna?

27 ZAVALA: No, that's somebody else. Ah let me ah go ahead and put  
28 you in the other tank there bud. Did you get treatment for

1 that syphilis yet?

2 JURADO: Yeah but I don't know if it, the sores never completely  
3 went away. Will I ever get to talk to Anna?

4 ZAVALA: Ah, if she wants to.

5 JURADO: Yeah. (Unintelligible) For sure, or are you just telling  
6 me?

7 ZAVALA: Is she wants to talk to you, there's no problem. We'll let  
8 you talk to her.

9 JURADO: Okay.

10 ZAVALA: Go ahead and grab your hat, okay, and let's walk right  
11 through here. We'll go through this tank right in here.

12 (LEAVE ROOM) END OF INTERVIEW.  
13  
14  
15  
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28

3104

1     SAN DIEGO, CALIFORNIA - WEDNESDAY, 06/01/94 - 9:09 A.M.

2                                 --000--

3                     (AT 9:09 A.M. THE FOLLOWING PROCEEDINGS WERE  
4                     HELD IN OPEN COURT IN THE ABSENCE OF THE JURY  
                   AND THE DEFENDANT:)

5             THE COURT:   ALL RIGHT.   WE REMAIN OUT OF THE PRESENCE  
6     OF THE JURY.

7                     WE WERE ABLE TO REACH MOST OF THE JURORS LAST  
8     NIGHT WITH THE MESSAGE NOT TO COME TODAY.   THE BAILIFF'S  
9     CHECKING RIGHT NOW TO SEE IF THERE MIGHT BE ONE OR TWO WHO  
10    MIGHT BE OUT THERE.   BUT I THINK WE REACHED THE MAJORITY OF  
11    THEM.

12                    WE ARE ALSO OUT OF THE PRESENCE OF MR. JURADO.  
13    I THINK HIS PERSONAL WAIVER OF HIS PRESENCE YESTERDAY  
14    CONTINUES TO HAVE EFFECT FOR THESE PROCEEDINGS.

15                    I APOLOGIZE THAT WE ARE A LITTLE BIT LATE IN  
16    GETTING STARTED.   I WAS READING SOME CASES CITED BY THE  
17    PROSECUTION IN ONE OF THEIR SUBMISSIONS.

18                    BUT, AT ANY RATE, WE DID PROVE ONE THING, THAT  
19    MR. PETTINE CAN BE HERE NOT RIGHT EXACTLY AT 8:30, BUT ALMOST  
20    AT 8:30.   SO THAT'S --

21                    MR. PETTINE:   THANK YOU, YOUR HONOR, FOR NOTICING THAT  
22    ON THE RECORD.

23                    THE COURT:   YES.   WELL, FOR WHATEVER FUTURE IMPORTANCE  
24    THAT MIGHT HAVE.

25                    THE CASES I WAS READING ARE IN CONNECTION WITH  
26    THE ISSUE CONCERNING THE ADMISSIBILITY OF MR. JURADO'S  
27    STATEMENT, WHICH IS REFERRED TO AS A CONFESSION IN THE  
28    DEFENSE SUBMISSION, THE DEFENSE SUBMISSION BEING ENTITLED

3105

1 "MEMORANDUM OF LAW IN SUPPORT OF ADMISSION OF EVIDENCE OF  
2 ROBERT JURADO'S CONFESSION DURING THE PENALTY PHASE." AND  
3 THEN THE PEOPLE HAVE RESPONDED TO THAT SUBMISSION BY "POINTS  
4 AND AUTHORITIES IN OPPOSITION TO EVIDENCE OF ROBERT JURADO'S  
5 CONFESSION DURING THE PENALTY PHASE."

6 I TAKE IT FROM THE DEFENSE SUBMISSION THAT WHAT  
7 THEY SEEK TO PROVE IS WHAT THEY STATE AT THE TOP OF PAGE FOUR  
8 OF THEIR SUBMISSION: "THE EMOTIONAL RESPONSE AND REMORSE  
9 EVIDENCE IN MR. JURADO'S CONFESSION SHOULD BE PRESENTED TO  
10 THE JURY AS A BASIS ON WHICH A SENTENCE LESS THAN DEATH MAY  
11 BE IMPOSED." SO I TAKE IT WHAT WE ARE TALKING ABOUT IS WHAT  
12 THEY CHARACTERIZE AS EMOTIONAL RESPONSE AND REMORSE EVIDENCE.

13 I HAVEN'T SEEN THE VIDEOTAPE, OF COURSE, AND I  
14 HAVEN'T READ A WRITTEN TRANSCRIPT OF THE AUDIO PORTION OF THE  
15 INTERVIEW OF MR. JURADO. THERE'S BEEN SOME MENTION OF THAT  
16 INTERVIEW AT OTHER POINTS IN THE TRIAL. BASICALLY WHAT FORM  
17 DOES THE EMOTIONAL RESPONSE AND THE REMORSE EVIDENCE TAKE IN  
18 HIS STATEMENT, MR. WARREN?

19 MR. WARREN: WELL, YOUR HONOR, I WANT TO BE CLEAR THAT  
20 WE'RE NOT SEEKING PRIMARILY TO INTRODUCE THIS AS A STATE OF  
21 MIND EXCEPTION TO THE HEARSAY RULE. IN OTHER WORDS, WE'RE  
22 NOT SEEKING TO INTRODUCE THIS FOR THE TRUTH OF THE MATTER.  
23 AND I THINK THAT'S -- THAT'S AN IMPORTANT POINT, BECAUSE THE  
24 CASES THAT THE COURT HAS REVIEWED I THINK ALL DEAL WITH 1250  
25 OF THE EVIDENCE CODE, STATE OF MIND EXCEPTION TO THE HEARSAY  
26 RULE.

27 THE STATEMENT ITSELF -- AND, BY THE WAY, WE  
28 REFER TO IT AS A CONFESSION IN OUR MEMORANDUM BECAUSE THE

3106

1 PROSECUTION HAD BEEN REFERRING TO IT AS A CONFESSION.  
2 WHETHER IT'S A TRUE CONFESSION OR NOT I THINK IS PROBABLY  
3 DEBATABLE, AND IT'S NOT TOO IMPORTANT.

4 BUT IN THIS STATEMENT, MR. JURADO BASICALLY  
5 MAKES INCULPATORY STATEMENTS ABOUT THE FACT THAT HE USED SOME  
6 KIND OF LIGATURE AND HE USED THE JACK AND HE WAS RESPONSIBLE.  
7 WHERE HE IS NOT TRUTHFUL IS NOT -- IS IN HIS ATTEMPT TO STATE  
8 THAT THE TWO CODEFENDANTS ARE NOT RESPONSIBLE AT ALL. AND --  
9 BUT --

10 THE COURT: BASICALLY, DOES HE SAY IT WAS JUST HE AND  
11 TERRY HOLLOWAY?

12 MR. WARREN: HE SAYS IT WAS JUST HE AND TERRY  
13 HOLLOWAY. AND HE IS ASKED SOME QUESTIONS: WELL, HOW COULD  
14 IT JUST BE THE TWO OF YOU IF YOU'RE IN A CAR? AND HE REFUSES  
15 TO STATE THAT THE OTHER TWO INDIVIDUALS ARE RESPONSIBLE, BUT  
16 HE CLEARLY STATES THAT HE IS RESPONSIBLE HIMSELF.

17 THAT'S OBVIOUSLY NOT WHAT WE ARE TRYING TO  
18 INTRODUCE IT FOR. IT'S VERY EMOTIONAL AT CERTAIN POINTS, AND  
19 THAT'S WHY, TO GET A TRUE FLAVOR OF IT, I THINK YOU HAVE TO  
20 REALLY SEE THE TAPE ITSELF, BECAUSE READING THE ACTUAL  
21 TRANSCRIPT IN ITS DRY FORM DOESN'T GIVE THE FULL FLAVOR OF  
22 WHAT'S GOING ON. AND IT'S --

23 THE COURT: WELL, IN TERMS OF WHAT? DOES HE CRY OR  
24 BREAK DOWN?

25 MR. WARREN: HE CRIES. HE CRIES, HE SOBS, HE -- THAT  
26 KIND OF THING. AND OUR POSITION IS THIS TAKES PLACE TWO DAYS  
27 AFTERWARDS. REMORSE IS OBVIOUSLY A FACTOR WHICH IS RELEVANT  
28 AT A PENALTY PHASE, AND IT'S VERY DIFFICULT TO SHOW REMORSE

3107

1 BECAUSE THE CASES SAY THAT IF A DEFENDANT TALKS TO SOMEBODY  
2 AFTERWARDS AND HE SAYS, "BOY, I'M SORRY FOR WHAT I DID,"  
3 THAT'S HEARSAY. IT'S ADMITTED FOR THE TRUTH OF THE MATTER --  
4 OR IT'S SOUGHT TO BE ADMITTED FOR THE TRUTH OF THE MATTER AND  
5 PROBABLY INADMISSIBLE UNDER 1250 AND THE RELIABILITY FINDING  
6 THAT THE COURT HAS TO MAKE.

7 SO YOU CAN HAVE THE DEFENDANT TESTIFY IF YOU  
8 CHOOSE - THAT'S ONE WAY OF EXHIBITING REMORSE - OR YOU CAN  
9 HAVE AN EXPERT WITNESS SAY, "I TALKED TO THE PERSON," WHICH  
10 IS SORT OF A ROUNDABOUT WAY OF GETTING IN THE -- WHAT WOULD  
11 OTHERWISE BE PROBABLY NOT ADMISSIBLE HEARSAY STATEMENTS. BUT  
12 THIS, IF YOU LOOK AT IT, I THINK HAS A STRONG INDICIA OF  
13 RELIABILITY IN TERMS OF WHAT HE IS EXPRESSING. AND WE FEEL  
14 THAT THIS SHOULD BE SOMETHING THAT THE JURY CAN LOOK AT AND  
15 THEY CAN DECIDE WHETHER HE IS IN FACT EXHIBITING REMORSE OR  
16 WHETHER THIS IS SOMETHING WHICH IS CONTRIVED. AND IT'S OUR  
17 STRONG FEELING THAT ANYBODY THAT LOOKS AT THIS WILL NOT FEEL  
18 THAT THE EMOTIONAL ASPECT OF IT IS CONTRIVED. THAT'S WHAT WE  
19 ARE SEEKING TO ADMIT.

20 AND WHEN THE COURT SAYS EMOTIONAL RESPONSE, ONE  
21 OF THE CASES --

22 THE COURT: WELL, THAT'S YOUR LANGUAGE IN YOUR  
23 SUBMISSION.

24 MR. WARREN: OKAY. WELL, I JUST WANT TO CLEAR UP.  
25 ONE OF THE CASES - AND I FORGET WHICH ONE IT IS - TALKS ABOUT  
26 THE EMOTIONAL RESPONSE THAT THE DEFENDANT MADE WHEN  
27 CONFRONTED WITH THE FACT, AND THAT'S NOT WHAT WE ARE SEEKING  
28 TO SHOW. WE ARE SEEKING TO BE -- TO SHOW THAT HE IS

3108

1 REMORSEFUL, BECAUSE IN THAT CASE WHAT THEY WERE TRYING TO SAY  
2 IS HE WAS SURPRISED WHEN HE WAS SHOWN EVIDENCE OF THE FACT  
3 THAT SOMEBODY HAD BEEN MURDERED, AS IF THAT SURPRISE  
4 INDICATED HE COULD NOT HAVE BEEN INVOLVED BECAUSE HE WOULDN'T  
5 HAVE REACTED THAT WAY.

6 THE COURT: THAT'S THE WHITT CASE, I THINK. AND AS  
7 THEY CITE, THE DEFENSE DID NOT IN THE WHITT CASE ARGUE THE  
8 POSITION THAT YOU'RE NOW ARGUING, THAT IT HAS A NONHEARSAY  
9 RELEVANCE. THE COURT --

10 MR. WARREN: THAT'S RIGHT.

11 THE COURT: -- POINTS THAT OUT.

12 AND I DON'T THINK THEY INDICATE ONE WAY OR  
13 ANOTHER WHAT THEIR RULING WOULD HAVE BEEN ON THAT THEORY, BUT  
14 THEY WERE QUICK TO POINT OUT THAT THAT THEORY WAS NOT  
15 ADVANCED IN THIS CASE BY THE -- WELL, IT WAS NOT ON THE TRIAL  
16 LEVEL; IT WAS RAISED, I THINK, ON THE APPELLATE LEVEL. THEY  
17 SAY, "TOO LATE, YOU'VE WAIVED THAT."

18 MR. WARREN: ALL THE CASES CITED BY THE PROSECUTION,  
19 IT SEEMS THAT THE DEFENSE WAS TRYING TO ADMIT EITHER  
20 STATEMENTS OR VIDEOTAPES TO EXONERATE THE DEFENDANT, TO SHOW  
21 HE WAS NOT GUILTY, AND TO SHOW -- THE VIDEOTAPE OR THE  
22 STATEMENTS WERE IN SOME WAY EXCULPATORY, AND THAT'S NOT WHAT  
23 WE ARE TRYING TO DO HERE. I THINK THAT'S AN IMPORTANT  
24 DISTINCTION.

25 THE COURT: WELL, THE EMOTIONAL RESPONSE, IF YOU WILL,  
26 OR THE DISPLAY OF EMOTION, THAT OCCURS AT VARIOUS POINTS  
27 THROUGHOUT THE INTERVIEW? I MEAN IS THAT WHY IT'S NECESSARY  
28 TO PLAY THE ENTIRE TAPE OR --



3109

1 MR. WARREN: WELL, WHAT HAPPENS IS THAT FOR THE FIRST  
2 PART OF THE INTERVIEW, HE DENIES ANY LIABILITY AT ALL. AND  
3 THEN AT SOME POINT HE BREAKS DOWN AND HE SAYS, "YES, I DID  
4 IT," AND THEN HE GOES ON TO DESCRIBE HOW HE DID IT. HE'S  
5 ASKED QUESTIONS ABOUT THE OTHER TWO, AND HE DENIES THAT THEY  
6 ARE AT ALL RESPONSIBLE.

7 I THINK IT WOULD BE PROBABLY DIFFICULT TO EDIT  
8 OUT PARTICULAR STATEMENTS, BUT AGAIN WE ARE NOT GOING TO BE  
9 ARGUING AND THE COURT WOULD CERTAINLY INSTRUCT THE JURY THAT  
10 THIS IS NOT SOUGHT TO BE INTRODUCED FOR THE TRUTH OF THE  
11 MATTER OF THE STATEMENTS THAT ARE MADE THERE. SOME OF THEM  
12 ARE OBVIOUSLY TRUE. SOME OF THEM ARE OBVIOUSLY NOT TRUE.  
13 AND --

14 MR. PETTINE: THE WHOLE TAPE IS FILLED WITH UNTRUTHS,  
15 YOUR HONOR. THERE'S ABOUT NINE SIGNIFICANT LIES HE TELLS  
16 FROM THE BEGINNING TO THE END. IN THE MIDDLE HE ACKNOWLEDGES  
17 THAT HE DID KILL HOLLOWAY, AND THEN HE CONTINUES TO TELL MORE  
18 LIES AFTERWARDS.

19 THE COURT: THAT WAS -- I HAD THAT GENERAL  
20 UNDERSTANDING FROM OUR EARLIER DISCUSSIONS.

21 WELL, WHAT YOU REFER TO AS THE EMOTIONAL  
22 RESPONSE AND REMORSE EVIDENCE IS REALLY NOT WHAT HE SAID, BUT  
23 HIS EMOTIONAL AFFECT, IF YOU WILL?

24 MR. WARREN: EXACTLY. EXACTLY.

25 THE COURT: DID HE EVER VERBALIZE REMORSE? I MEAN  
26 WILL YOU BE SEEKING TO -- IN ANY WAY TO SAY, WELL, HE  
27 EXPRESSLY STATED REMORSE OR HE VERBALIZED REMORSE, OR IS IT  
28 THE NONVERBAL?



3110

1 MR. WARREN: I THINK AT SOME POINT HE SAYS SOMETHING  
2 ABOUT HIS CONSCIENCE. AND AGAIN THE MAIN THRUST OF OUR  
3 ARGUMENT IS NOT FOR THE WORDS THAT ARE SAID, BUT FOR WHAT IS  
4 CONVEYED BY LOOKING AT HIM AND OBSERVING HIM AND -- (PAUSE).

5 THE COURT: AND THE JURORS MAY CONCLUDE THAT THAT, YOU  
6 SAY, WAS NOT CONTRIVED OR NOT SHOW THAT HE WAS PUTTING ON,  
7 THAT THAT WAS GENUINE?

8 MR. WARREN: YES. AND I THINK THAT IF YOU LOOK AT IT,  
9 WHICH THE COURT MAY WANT TO DO, I THINK THAT IT -- YOU KNOW,  
10 OUR STRONG FEELING IS THAT IT'S NOT CONTRIVED; THAT CERTAINLY  
11 YOU CAN LIE ABOUT, YOU KNOW, CERTAIN THINGS; YOU CAN MAKE  
12 STATEMENTS THAT ARE NOT TRUE, BUT THAT TO CONTRIVE THAT KIND  
13 OF EMOTION WOULD BE VERY DIFFICULT. AND WE ARE NOT GOING TO  
14 BE ARGUING THAT, WELL, LADIES AND GENTLEMEN, HE LIED ABOUT  
15 THIS, BUT THIS IS TRUE AND THIS IS NOT TRUE.

16 AND THAT'S NOT THE PURPOSE OF THIS, BECAUSE IF  
17 WE WERE SEEKING TO INTRODUCE THIS FOR THE TRUTH OF THE  
18 MATTER, I THINK WE PROBABLY FALL UNDER THE PROHIBITION OF  
19 SOME OF THE OTHER CASES. AT LEAST THE COURT WOULD HAVE TO  
20 MAKE A DETERMINATION WHETHER THERE WAS RELIABILITY IN WHAT  
21 WAS SAID, BUT THAT'S NOT -- THAT'S NOT WHAT WE'RE SEEKING TO  
22 DO.

23 THE COURT: BUT ISN'T THAT REALLY A -- ULTIMATELY  
24 ISN'T THAT A HEARSAY USE, REALLY, OF NONVERBAL COMMUNICATION,  
25 IF YOU WILL? AREN'T YOU ASKING THE JURY TO FIND TO BE TRUE  
26 WHAT HE IS COMMUNICATING NOT SO MUCH IN WORDS THAT HE SPOKE,  
27 BUT IN THE CRYING, IN THE SOBBING, IN THE WHATEVER OTHER --  
28 YOU KNOW, NONVERBAL COMMUNICATION? ISN'T THAT REALLY A FORM

3111

1 OF COMMUNICATION THAT HAS TO BE -- IS RELEVANT ONLY IF  
2 RECEIVED FOR THE TRUTH OR ACCEPTED FOR THE TRUTH OF IT: IN  
3 FACT, HE IS COMMUNICATING TRUE REMORSE?

4 MR. WARREN: I DON'T THINK IT'S A COMMUNICATION. A  
5 COMMUNICATION TO ME IS AN EFFORT TO PRESENT SOMETHING TO  
6 SOMEBODY ELSE. AND I THINK THAT WHAT THIS IS, IS IT'S  
7 CIRCUMSTANTIAL EVIDENCE OF A STATE OF MIND RATHER THAN BEING  
8 A COMMUNICATION. I MEAN I WOULD FALL BACK ON -- IF THE COURT  
9 FELT THAT IT WAS SOMEHOW A COMMUNICATION, THAT THE COURT  
10 SHOULD MAKE A 1250 RELIABILITY DETERMINATION, BUT THAT'S NOT  
11 MY PRIMARY POSITION. MY PRIMARY POSITION IS THAT IT'S NOT A  
12 COMMUNICATION.

13 THE COURT: WELL, THAT HE WAS NOT INTENDING TO  
14 COMMUNICATE TO HIS INTERROGATORS OR ANYBODY ELSE THAT THIS  
15 WAS JUST A SOMEWHAT INVOLUNTARY, IF YOU WILL, RESPONSE, OR --

16 MR. WARREN: WELL, I THINK SO. IN CONTRAST, WE HAVE  
17 THE --

18 THE COURT: -- TO WHAT THEY WERE DISCUSSING, TO THE  
19 SUBJECT MATTER THAT WAS BEING DISCUSSED?

20 MR. WARREN: EXACTLY. WE HAVE THE ONE CASE -- I JUST  
21 READ THESE LAST NIGHT, AND I'M NOT FAMILIAR WITH THE NAMES OF  
22 ALL OF THEM. I THINK AGAIN IT'S THE WHITT CASE WHERE WE HAVE  
23 THE DEFENDANT WHO'S IN PRISON, AND HE GIVES AN INTERVIEW AND  
24 HE SAYS, "GEE, I'VE REALLY TURNED MY LIFE AROUND." WELL,  
25 HE'S COMMUNICATING SOMETHING. HE'S SAYING, YOU KNOW, "I'M A  
26 CHANGED PERSON." THAT'S A DIRECT ATTEMPT AT COMMUNICATION.

27 THE COURT: WELL, YEAH, THAT IS WHITT. I GUESS MAYBE  
28 THE MANIFESTING SURPRISE WAS NOT WHITT. THAT MAY HAVE BEEN

3112

1 ONE OF THE OTHER CASES.

2 MS. MISSAKIAN: THAT WAS KAURISH, YOUR HONOR.

3 THE COURT: WAS THAT KAURISH?

4 BUT I THINK WE DO HAVE, YOU KNOW, THE NOTION IN  
5 THE LAW OF -- WELL, CONDUCT IS HEARSAY AND NONVERBAL HEARSAY  
6 -- I MEAN THE LAW DOES RECOGNIZE THAT SOMETIMES ACTS -- THERE  
7 CAN BE NONVERBAL COMMUNICATION. THERE CAN BE ACTS WHICH ARE  
8 IN EFFECT HEARSAY BECAUSE THEY ARE THE SUBSTITUTE FOR A  
9 STATEMENT.

10 MR. WARREN: BUT I THINK THAT IMPLIES SOME SORT OF  
11 AFFIRMATIVE TYPE OF ACTION ON THE PART OF THE DECLARANT. I  
12 THINK KAURISH IS THE CASE THAT THE COURT'S THINKING OF.

13 THE COURT: YES. YOU'RE RIGHT. OF COURSE, THE COURT  
14 DIDN'T REACH THAT ISSUE BECAUSE THEY FOUND THAT IT HAD NOT  
15 BEEN RAISED ON THE TRIAL COURT LEVEL SO IT COULD NOT BE  
16 RAISED FOR THE FIRST TIME ON APPEAL.

17 MR. WARREN: IN KAURISH YOUR HONOR, YOU HAD A  
18 SITUATION WHERE THE DEFENDANT WAS OBVIOUSLY TRYING TO DO  
19 SOMETHING THAT WAS SELF-SERVING. AND IF YOU LOOK AT  
20 MR. JURADO IN THIS TAPE, I THINK IT'S OBVIOUS THAT HE'S NOT  
21 TRYING TO COMMUNICATE IN A SELF-SERVING WAY. I DON'T THINK  
22 HE'S AFFIRMATIVELY TRYING TO COMMUNICATE. I THINK HE'S  
23 REACTING SPONTANEOUSLY TO THE SITUATION AND NOT TRYING TO  
24 COMMUNICATE ANYTHING.

25 THE COURT: YOU WOULD PROPOSE PRESENTING THIS EVIDENCE  
26 BY HAVING THE VIDEOTAPE PLAYED FOR THE VIEWING AND LISTENING  
27 OF THE JURY; IS THAT --

28 MR. WARREN: YES, YOUR HONOR.

3113

1 THE COURT: LAYING A BRIEF FOUNDATION THROUGH ONE OF  
2 THE INTERVIEWING OFFICERS?

3 MR. WARREN: YES.

4 THE COURT: WHAT YOU ARGUE, THAT ITS RELEVANCE IS  
5 REALLY THREEFOLD: ONE, THAT IT'S SUBPARAGRAPH (A) EVIDENCE  
6 BECAUSE IT'S EVIDENCE OF THE CIRCUMSTANCES OF THE OFFENSES;  
7 TWO, BECAUSE IT REBUTS THE TESTIMONY OF CHRISTIE MEDLIN; AND,  
8 THREE, BECAUSE IT'S SO-CALLED EXPANDED FACTOR (K) EVIDENCE.

9 MR. WARREN: YES, YOUR HONOR. IN FACT, IF IT WERE TO  
10 BE LOOKED AT AS A COMMUNICATION, WHICH I'M NOT ARGUING THAT  
11 IT IS, BUT IF IT'S -- IF IT'S ARGUED THAT IT'S A  
12 COMMUNICATION, THEN I WOULD SUBMIT IT'S AN INCONSISTENT  
13 STATEMENT WITH WHAT HE ALLEGEDLY SAID TO CHRISTIE MEDLIN.  
14 PRIOR INCONSISTENT STATEMENT.

15 THE COURT: WELL, IN POINT OF TIME.

16 MR. WARREN: IT'S PRIOR. BECAUSE HE'S ARRESTED, HE'S  
17 INTERVIEWED, AND THEN A COUPLE OF DAYS LATER HE CALLS HER, OR  
18 A WEEK LATER HE CALLS HER.

19 THE COURT: WELL, HOW DOES THAT -- I'M NOT SURE HOW  
20 THAT -- THAT I FOLLOW THAT. PRIOR INCONSISTENT STATEMENT  
21 BY -- NOT BY CHRISTIE MEDLIN?

22 MR. WARREN: NO, NO. BY MR. JURADO. BECAUSE  
23 SUPPOSEDLY HE SAYS TO HER, YOU KNOW, I -- THE IMPLICATION IS,  
24 YOU KNOW, THE LANGUAGE, THAT HE DOESN'T CARE ABOUT WHAT  
25 HAPPENED; AND THIS -- THIS IS INCONSISTENT WITH THAT,  
26 INDICATING THAT HE DOES CARE ABOUT WHAT HAPPENED.

27 THE COURT: I DON'T SEE THAT THAT'S AN INDEPENDENT  
28 GROUNDS OF ADMISSIBILITY. MAYBE I'M MISSING SOMETHING HERE.

3114

1 MR. WARREN: WELL -- (PAUSE.) WELL, WHAT WE HAVE IS  
2 WE HAVE -- MR. JURADO'S THE DECLARANT. HE MAKES A STATEMENT  
3 TO CHRISTIE MEDLIN THAT "I'M NOT REMORSEFUL." BEFORE THAT HE  
4 MAKES A STATEMENT TO THE POLICE THAT HE IS REMORSEFUL.  
5 THAT'S THE INCONSISTENCY, IF YOU TAKE IT AS A COMMUNICATION.

6 THE COURT: ALL RIGHT.

7 THE PEOPLE?

8 MR. FISHER: YOUR HONOR, IN TERMS OF USING IT AS A  
9 HEARSAY STATEMENT, I THINK THE COURT'S ANALYSIS IS PROPER,  
10 AND I'LL SUBMIT ON MY PAPERWORK IN TERMS OF THAT ANALYSIS.

11 BUT ASSUMING WE LOOK AT IT AS BEING NONHEARSAY  
12 OF SOME FORM, I THINK YOU GOT A HUGE 352 PROBLEM HERE. I'LL  
13 SKIP RELEVANCY AND MOVE TO 352. THE PROBATIVE VALUE OF THIS  
14 IS BASICALLY NIL UNDER THE CIRCUMSTANCES WHICH IT IS GIVEN,  
15 AND WHICH IS BASICALLY THE SAME THEORY THAT'S USED FOR  
16 FINDING THAT IT'S UNRELIABLE AS A STATE OF MIND EVIDENCE.  
17 IT'S GIVEN TO A POLICE OFFICER AFTER ARREST, AFTER BEING TOLD  
18 WHAT HE'S BEING CHARGED WITH.

19 BASICALLY SIMILAR TO WHAT THEY TALK ABOUT IN  
20 PEOPLE VS. EDWARDS, 54 CAL.3D AT PAGE 820:

21 WHEN THE DEFENDANT MADE THE STATEMENTS,  
22 NINE DAYS HAD ELAPSED SINCE THE SHOOTING. HE  
23 KNEW HE HAD KILLED ONE 12-YEAR-OLD GIRL AND  
24 WOUNDED A SECOND. HE HAD A COMPELLING MOTIVE  
25 TO DECEIVE AND TO SEEK TO EXONERATE HIMSELF, OR  
26 AT LEAST MINIMIZE HIS RESPONSIBILITY FOR THE  
27 SHOOTING.

28 AND IN THIS CASE THAT'S EXACTLY WHAT'S GOING ON.



3115

1 I MEAN HE'S -- HE HAD PREPARED FOR THIS EVENTUALITY. I DON'T  
2 KNOW WHETHER IT CAME OUT IN TERMS OF IN FRONT OF THE JURY,  
3 BUT I BELIEVE THERE IS EVIDENCE THAT BASICALLY THE THREE  
4 DEFENDANTS HAD CONSPIRED SO THAT IF JURADO GOT CAUGHT, HE  
5 WOULD TAKE RESPONSIBILITY FOR EVERYTHING. SO THEY'D ALREADY  
6 PLANNED --

7 THE COURT: THAT'S NOT BEFORE THE JURY, I THINK. I  
8 MEAN YOU MAY HAVE SOME PERCEPTION THERE IS SUCH EVIDENCE IN  
9 THE DISCOVERY MAYBE, BUT THAT'S NOT BEFORE THE JURY. I DON'T  
10 THINK IT IS.

11 MR. PETTINE: WELL, NO, THAT STATEMENT CAME FROM  
12 HUMISTON IN ONE OF THE DECLARATIONS AGAINST INTEREST THAT THE  
13 COURT SAID ASIDE. BUT THERE WAS THE TESTIMONY THAT JURADO  
14 GAVE TO MEDLIN, "I'M JUST WAITING FOR THE POLICE TO ARRIVE,"  
15 ALTHOUGH THAT DOESN'T JUMP THE ENTIRE BRIDGE THAT MR. FISHER  
16 IS RAISING.

17 MR. FISHER: BUT BASICALLY IF -- MY UNDERSTANDING OF  
18 THE CONTENT OF THE STATEMENT IS REMORSE IS BEING EXPRESSED  
19 EITHER BY WORDS OR EMOTION OR REALLY THE REMORSE ABOUT BEING  
20 CAUGHT AND SPENDING THE REST OF HIS LIFE IN PRISON, AND THAT  
21 PROSPECT IS WHAT BRINGS TEARS TO HIS EYES.

22 THE COURT: YEAH, THAT -- I THINK THAT MIGHT BE ARGUED  
23 TO THE JURY THAT'S THE CONCLUSION THEY SHOULD DRAW. I MEAN  
24 IT'S BEING OFFERED AS CIRCUMSTANTIAL EVIDENCE, AS MR. WARREN  
25 SAID, CIRCUMSTANTIAL EVIDENCE OF HIS MENTAL STATE. NOT  
26 HEARSAY, THOUGH, BUT JUST CIRCUMSTANTIAL EVIDENCE FROM WHICH  
27 THE JURORS CAN REASONABLY DRAW CERTAIN INFERENCES. YOU CAN  
28 ARGUE THAT IT'S ALSO EQUALLY REASONABLE TO DRAW THE

3116

1 INFERENCES YOU'RE SUGGESTING. \_

2 MR. FISHER: WELL, AGAIN, WE ARE TALKING ABOUT THE  
3 COURT MAKING A THRESHOLD FINDING OF WHAT THE PROBATIVE VALUE  
4 REALLY IS OF THIS EVIDENCE. AND I THINK THAT'S SOMETHING  
5 THAT THE COURT CAN TAKE INTO ACCOUNT FOR ITSELF.

6 THE COURT: WELL, ISN'T IT REASONABLE FOR THE COURT TO  
7 ASSUME THAT THE JURY IS GOING TO BE URGED TO FIND THE  
8 PROBATIVE VALUE OF CHRISTIE MEDLIN'S TESTIMONY AS INDICATING  
9 A CALLOUS DISREGARD, DISRESPECT FOR HUMAN LIFE, NO REMORSE,  
10 NO REGRET AT ALL? ISN'T THAT THE ARGUMENT THAT THE DEFENSE  
11 IS GOING TO MAKE, THAT THE JURY OUGHT TO -- THAT'S THE  
12 SIGNIFICANCE OF THE TESTIMONY OF CHRISTIE MEDLIN? SO DOESN'T  
13 THIS HAVE SOME SIGNIFICANT PROBATIVE VALUE TO REBUT THAT  
14 INTEREST OR THAT ARGUMENT?

15 MR. FISHER: NOT UNDER THESE CIRCUMSTANCES. HER  
16 STATEMENT WAS MADE UNDER CIRCUMSTANCES WHERE HE'S NOT TALKING  
17 TO A POLICE OFFICER; HE'S NOT -- DOESN'T -- NOT BEING  
18 SOMETHING HE KNOWS IS GOING TO BE PART OF THE OFFICIAL  
19 RECORD. AND WHEN WE ARE TALKING ABOUT THIS STATEMENT, WE ARE  
20 TALKING ABOUT AN UNRELIABLE SET OF CIRCUMSTANCES IN WHICH  
21 THESE STATEMENTS ARE BEING MADE.

22 THE COURT: WELL, FIRST OF ALL, THE DEFENSE SAID WE  
23 ARE NOT TALKING ABOUT STATEMENTS. WE ARE NOT TALKING ABOUT  
24 SOMETHING HE SAID. WE ARE TALKING ABOUT SOME EMOTIONAL  
25 DISPLAY. DID HE KNOW THIS, THAT HE WAS BEING VIDEOTAPED?

26 MR. WARREN: NO.

27 MR. FISHER: TO MY KNOWLEDGE --

28 THE COURT: IF HE DIDN'T, DOESN'T THAT SHOOT YOUR

3117

1 ARGUMENT THAT HE KNEW THIS WAS ON THE RECORD OR WAS GOING TO  
2 BE PART OF THE RECORD? HE DIDN'T KNOW WHATEVER CRYING OR  
3 SOBBING MIGHT SHOW UP ON A VIDEOTAPE. THAT'S THE ONLY WAY  
4 IT'S GOING TO SHOW UP. IF HE DIDN'T KNOW IT WAS BEING  
5 VIDEOTAPED, HE WOULDN'T THINK THAT NECESSARILY THAT THE  
6 DETECTIVES WERE MAKING NOTES THAT AT THIS POINT OR CRIED OR  
7 AT THIS POINT HE SOBBED. I DON'T THINK IT WOULD BE  
8 REASONABLE TO ASSUME THAT HE WOULD THINK THAT.

9 MR. FISHER: WELL, THAT GETS TO THE NEXT PROBLEM.  
10 YOU'RE TALKING ABOUT TRYING TO SEPARATE THE NONVERBAL  
11 RESPONSES FROM THE VERBAL RESPONSES, AND I THINK THAT'S ALSO  
12 PART OF THE 352 ANALYSIS. YOU CAN'T DO THAT IN THIS CASE,  
13 FROM MY UNDERSTANDING. THEY WANT TO PLAY THE WHOLE TAPE, AND  
14 THE JURY IS GOING TO HAVE TO LISTEN TO IT AND HEAR ALL THESE  
15 LIES AND --

16 THE COURT: HOW DOES THAT HURT YOU? HOW'S THE  
17 PROSECUTION REALLY HURT BY THAT?

18 MR. FISHER: I DON'T KNOW THAT THEY CAN PROVE ALL OF  
19 THEM ARE LIES.

20 THE COURT: HE'S NOT EXCULPATING HIMSELF. HE'S  
21 INCULPATING HIMSELF WHOLLY, TOTALLY. HE'S EXCULPATING,  
22 TRYING TO EXCULPATE THE TWO CODEFENDANTS; BUT AS I  
23 UNDERSTAND, HE'S NOT TRYING TO EXCUSE HIMSELF OR EXCULPATE  
24 HIMSELF AT ALL. SO HOW IS THE PROSECUTION REALLY HURT BY THE  
25 VERBAL PART OF THE INTERVIEW?

26 MR. PETTINE: COULDN'T CROSS-EXAMINE.

27 THE COURT: YOU CAN ALSO LIE THAT -- YOU CAN ALSO MAKE  
28 THE ARGUMENT THAT THIS IS THE OTHER EVIDENCE THAT YOU HEARD



3118

1 UPON -- WHICH YOU BASED YOUR VERDICTS ON IN THE FIRST PART OF  
2 THE CASE, PUT THE LIE TO A LOT OF WHAT HE SAID. I MEAN THAT  
3 ARGUMENT IS GOING TO BE FULLY AVAILABLE TO YOU.

4 MR. FISHER: AGAIN, I'M NOT CLEAR WHAT THESE -- ALL  
5 THESE PARTICULAR LIES ARE AND WHETHER OR NOT ALL OF THEM HAVE  
6 BEEN REBUTTED OR WHETHER SOME OF THEM MIGHT BE TAKEN AT FACE  
7 VALUE. MAYBE MR. PETTINE CAN ADDRESS WHAT SPILLOVER EFFECTS  
8 THERE MIGHT BE TO THE ADMISSIBILITY OF THOSE STATEMENTS AND  
9 TRYING TO TELL THE JURY: WELL, JUST LOOK AT WHAT HE'S -- HOW  
10 HE'S REACTING. DON'T LISTEN TO OR CONSIDER THE TRUTH OF WHAT  
11 HE'S SAYING.

12 THE COURT: WELL, I AGREE. THAT GETS A LITTLE  
13 METAPHYSICAL TO THAT, I THINK, THAT THE JURY IS REALLY GOING  
14 TO BE ABLE TO FOLLOW THAT ADMONITION. BUT IF THEY DO -- I --  
15 MY POINT IS IF THEY DON'T FOLLOW THE ADMONITION, SO TO SOME  
16 EXTENT THEY DO CONSIDER WHAT HE SAID FOR THE TRUTH OF WHAT HE  
17 SAID, I'M NOT SURE I SEE HOW THE PEOPLE ARE PARTICULARLY HURT  
18 OR DISADVANTAGED BY THAT.

19 MR. FISHER: PERHAPS I SHOULD DEFER TO MR. PETTINE  
20 BECAUSE HE IS MORE FAMILIAR WITH THE CONTENTS THAN I AM.

21 THE COURT: SURE. WELL, ALL RIGHT. BUT HAVE YOU  
22 OTHERWISE FINISHED YOUR LEGAL ARGUMENT?

23 MR. FISHER: YES.

24 THE COURT: SO EVEN -- I TAKE IT EVEN IF I ACCEPT THAT  
25 THIS IS NOT A HEARSAY ISSUE, IT'S A -- BASICALLY A 352 ISSUE,  
26 RELEVANCE AND PROBATIVE VALUE, THAT A LOT OF THE SAME  
27 CONSIDERATIONS THAT GO INTO THE 1252 SECTION ANALYSIS,  
28 PRIMARILY IS THERE INDEPENDENT EVIDENCE OF INDICIA OF

3119

1 TRUTHFULNESS AND RELIABILITY, THEN A LOT OF THAT SAME  
2 ANALYSIS OUGHT TO GO INTO A 352 ANALYSIS TO KEEP IT OUT ON  
3 THE GROUNDS THAT THOSE FACTORS OUTWEIGH WHAT YOU VIEW AS VERY  
4 SLIGHT OR LIMITED PROBATIVE VALUE. IS THAT --

5 MR. FISHER: THAT'S TRUE, YOUR HONOR.

6 I WOULD ADD TO THE LACK OF PROBATIVE VALUE  
7 THAT -- THE SAME ANALYSIS FROM THE HEARSAY CASES, AND THAT IS  
8 THERE IS NO NECESSITY FOR PUTTING IN THIS EVIDENCE IN THIS  
9 FORM. DEFENDANT IS AVAILABLE. HE CAN BE -- USING A  
10 STATEMENT WE DON'T GET TO CROSS-EXAMINE VERSUS IF HE TAKES  
11 THE STAND. I DON'T THINK THERE'S GOING TO BE A CLAIM IF HE  
12 TOOK THE STAND, "WELL, ISN'T THE REMORSE THAT YOU'RE  
13 EXPRESSING HERE ON THE STAND JUST SOMETHING YOU JUST MADE  
14 UP?" AND THEN THE DEFENSE CAN COME BACK AND SAY, "NO, WE  
15 HAVE GOT THE STATEMENT THREE DAYS AFTER THE CRIME WHERE HE  
16 SHOWS REMORSE." I DON'T THINK THERE'S GOING TO BE A CLAIM OF  
17 RECENT FABRICATION IN TERMS OF HIS REMORSE. WE ARE GOING  
18 TO -- I THINK THE ARGUMENT WOULD BE THIS IS -- WHAT HE'S  
19 SAYING NOW IS NOT -- NOT BELIEVABLE BECAUSE OF THESE  
20 PARTICULAR CIRCUMSTANCES.

21 THE COURT: HE'S NOT REMORSEFUL NOW; HE NEVER HAS BEEN  
22 REMORSEFUL?

23 MR. FISHER: BASICALLY, YES.

24 MR. FISHER: AND HE CAN GET UP AND TESTIFY THAT,  
25 "WELL, I -- THE TIME I TALKED TO THE POLICE I WAS VERY  
26 REMORSEFUL AND I WAS CRYING; AND WHEN I WAS TALKING TO THE  
27 POLICE OFFICERS, THIS REALLY HIT ME TERRIBLY WHEN I REALIZED,  
28 YOU KNOW, THE ENORMITY OF WHAT I WAS FACING AND WHAT I HAD

3120

1 DONE."

2 I DON'T KNOW THAT THAT MAKES A TACTICAL DECISION  
3 FOR US WHETHER OR NOT WE PLAY THE TAPE TO TRY TO IMPEACH HIM  
4 OR NOT, BUT I DON'T THINK WE ARE GOING TO GET TO THE POINT OF  
5 ACTUALLY WANTING TO SHOW THE TAPE FOR IMPEACHMENT OR  
6 DISCLAIMING THAT WHATEVER REMORSE HE'S FEELING IS SOMETHING  
7 THAT HAS JUST HIT HIM SINCE HE'S BEEN FACING THIS PARTICULAR  
8 TRIAL RIGHT NOW. I HOPE I'M CLEAR ON WHERE I'M GOING WITH  
9 THAT.

10 AGAIN, I THINK THE IMPORTANCE OF THE  
11 CROSS-EXAMINATION AND THE AVAILABILITY OF THE DEFENDANT IS  
12 ALSO SOMETHING THAT YOU CAN TAKE INTO ACCOUNT IN 352.

13 THE COURT: I'M A LITTLE CURIOUS ABOUT YOUR STATEMENT  
14 YOU THINK IT HAS LITTLE OR NO PROBATIVE VALUE. ARE YOU  
15 SAYING THAT THE ISSUE OF WHETHER HE DOES OR DOESN'T HAVE  
16 REMORSE IS NOT A SIGNIFICANT CENTRAL ISSUE, OR THAT IT IS A  
17 SIGNIFICANT CENTRAL ISSUE, BUT THIS SIMPLY DOESN'T HAVE ANY  
18 TENDENCY TO PROVE THAT FACT ONE WAY OR ANOTHER? IS THAT --  
19 BECAUSE I DON'T THINK YOU CAN SAY THAT REMORSE -- ADD THE  
20 PRESENCE OR ABSENCE OF REMORSE IS NOT A SIGNIFICANT ISSUE AT  
21 THIS STAGE IN THE CASE.

22 AGAIN, I'M SURE MR. PETTINE ONE WAY OR ANOTHER  
23 IS GOING TO ARGUE THE HECK OUT OF THE LACK OF REMORSE. AND  
24 THE CASES ARE LEGION THAT THE DEFENSE IS ENTITLED TO SHOW THE  
25 PRESENCE. YOU CAN SEE THAT, THAT THAT'S A RELEVANT ISSUE,  
26 THAT THAT'S A RELEVANT ISSUE AT THE PENALTY PHASE, THE  
27 PRESENCE OR ABSENCE OF REMORSE. SO I DON'T THINK -- YOU'RE  
28 NOT ARGUING THAT. IT'S JUST THAT THIS PARTICULAR EVIDENCE

3121

1 HAS LITTLE TENDENCY TO PROVE THAT FACT ONE WAY OR ANOTHER?

2 MR. FISHER: YES, YOUR HONOR. THE LATTER ARGUMENT.

3 THE COURT: WELL --

4 MR. FISHER: AND --

5 THE COURT: BUT WHAT'S YOUR RESPONSE, THEN, TO THEIR  
6 ARGUMENT THAT THE JURORS MIGHT WELL CONCLUDE THAT THIS IS  
7 GENUINE REMORSE AND NOT CONTRIVED REMORSE BECAUSE OF THE  
8 SPONTANEOUS NATURE OF IT OR THE -- AGAIN, I MEAN, TO GET BACK  
9 TO THE POINT THAT HE DIDN'T KNOW HE WAS BEING VIDEOTAPED, SO  
10 HE WASN'T PUTTING ON SOME PERFORMANCE FOR THE VIDEO CAMERA  
11 BECAUSE HE DIDN'T KNOW THAT HE WAS BEING VIDEOTAPED; AND THAT  
12 THIS WAS NOT SO MUCH HIS EFFORT TO COMMUNICATE, YOU WOULD  
13 ARGUE FALSELY, COMMUNICATE TO THE INTERROGATOR SOME REMORSE,  
14 BUT JUST A SOMEWHAT SPONTANEOUS, INVOLUNTARY, IF YOU WILL,  
15 RESPONSE ON HIS PART TO WHAT THEY WERE DISCUSSING, BUT NOT AN  
16 EFFORT ON HIS PART TO COMMUNICATE TO ANYBODY ELSE, JUST A  
17 SPONTANEOUS, HONEST DISPLAY OF EMOTION OVER WHICH HE DIDN'T  
18 HAVE SUFFICIENT CONTROL TO KEEP WITHIN HIMSELF? WHY ISN'T  
19 THAT AN ARGUMENT THAT THEY'RE ENTITLED TO MAKE TO THE JURY,  
20 AND THEY NEED THIS EVIDENCE REALLY TO MAKE THAT, THAT  
21 ARGUMENT?

22 IT'S NOT ENOUGH TO SIMPLY CALL THE OFFICER AND  
23 SAY: "WELL, WHEN YOU WERE TALKING TO HIM, WERE THERE TIMES  
24 WHEN HE CRIED OR WHEN HE SOBBED?" "YES, THERE WERE." THAT  
25 DOESN'T DO IT. THAT DOESN'T CAPTURE THE -- THAT DOESN'T HELP  
26 THEM MAKE THE ARGUMENT THAT THIS WAS NOT CONTRIVED OR NOT  
27 PUTTING ON A SHOW. GENUINE DISPLAY OF EMOTION.

28 MR. FISHER: I THINK THE KEY IS NOT HIS -- FOR THE

3122

1 JURY IN TERMS OF ITS VALUE IS SEEING THE REMORSE FROM THE  
2 DEFENDANT, NOT ONLY WHEN HE'S JUST SPEAKING WITHOUT BASICALLY  
3 BEING CROSS-EXAMINED OR BEING EXAMINED FOR THAT PARTICULAR  
4 TRAIT OF REMORSE. REMORSE, AS I UNDERSTAND IT, THE  
5 RELEVANCY, IS REMORSE FOR THE CRIME IN TERMS OF A PRESENT  
6 STATE OF MIND, AND THE KEY FOR THE JURY IS REMORSEFUL AT THIS  
7 POINT.

8 THE COURT: WELL, SURE, I SUPPOSE THE IDEAL MIGHT BE  
9 IF HE WAS, YOU KNOW, SITTING IN HIS OWN LIVING ROOM AND NOT  
10 BEING INTERROGATED BY ANYBODY, AND UNBEKNOWNST TO HIM SOME  
11 FAMILY MEMBER HAD A VIDEO CAMERA RUNNING, AND HE SORT OF  
12 BROKE DOWN AND SAID, "OH, GOD, I'VE DONE A TERRIBLE THING. I  
13 CAN'T LIVE WITH MYSELF ANYMORE." THAT WOULD BE THE IDEAL, I  
14 SUPPOSE.

15 BUT SEEMS TO ME THEY CAN MAKE THE ARGUMENT TO  
16 COUNTER YOUR OBVIOUS ARGUMENT THAT, "SURE, TWO YEARS LATER  
17 HERE NOW HE'S GOING TO PUT ON A SHOW FOR YOU FOLKS ON THE  
18 JURY WHEN HE GETS ON THE WITNESS STAND HERE, BUT HE WASN'T  
19 DOING THAT TWO DAYS AFTER THIS EVENT WHEN ALL THE  
20 RAMIFICATIONS OF THE POSITION HE WAS IN AND THAT HE WAS NOW  
21 ON TRIAL FOR HIS LIFE HAD SUNK IN AND HE HAD A MOTIVE TO  
22 FABRICATE A LIE"; THAT THIS WAS CLOSER IN TIME WHEN HE  
23 ARGUABLY DIDN'T HAVE QUITE THE SAME MOTIVE.

24 MR. FISHER: WELL, WE WOULDN'T BE MAKING THAT ARGUMENT  
25 THAT HE DIDN'T HAVE -- DIDN'T EXPRESS REMORSE OR MADE SOME  
26 STATEMENT OF REMORSE TWO DAYS AFTER THE CRIME. BASICALLY, WE  
27 WOULD BE FOCUSING IN ON HIS -- THE VERACITY, IF YOU WILL, OF  
28 THAT EXPRESSION IN TOTAL, BASICALLY, NOT AT ANY PARTICULAR



3123

1 POINT IN TIME, JUST BASICALLY -- THE CIRCUMSTANCES WOULD BE  
2 BASICALLY THE SAME AS THEY WOULD BE HERE. HE'S ALREADY BEEN  
3 CHARGED WITH A CRIME. BASICALLY, HE'S BEEN ACCUSED OF THE  
4 CRIME. HE'S PREPARED FOR THAT SITUATION OF BEING CAUGHT.

5 BUT IT'S MY UNDERSTANDING HE WAS INTERVIEWED AS  
6 JUST BASICALLY A WITNESS BEFORE HE WAS ACTUALLY ARRESTED. AT  
7 SOME POINT THE OFFICERS CAME TO HIM AND ASKED HIM IF HE HAD  
8 ANY INFORMATION.

9 THE COURT: HE KNEW THE POLICE WERE OUT INVESTIGATING  
10 THE DEATH OF TERRY HOLLOWAY. THERE'S NO QUESTION ABOUT THAT.  
11 AND MR. PETTINE SAYS IT IS PART OF THE EVIDENCE THAT -- AND I  
12 FORGET WHO -- ANYWAY, THERE IS EVIDENCE IN THE -- THERE IS  
13 PART OF THE EVIDENCE NOW THAT HE MADE SOME STATEMENT ABOUT  
14 "I'M JUST WAITING FOR THE POLICE TO COME" OR SOMETHING. SO  
15 THAT -- I THINK THAT'S -- THERE'S AN EVIDENTIARY BASIS FOR  
16 MAKING THAT ARGUMENT, THAT HE HAD GOOD REASON TO EXPECT THAT  
17 THERE WAS GOING TO BE A KNOCK ON HIS DOOR AT ANY TIME FROM  
18 THE POLICE.

19 MR. FISHER: SO THE POINT IS IF HE'S GOING TO HAVE --  
20 IF THE EXPRESSION OF REMORSE IS GOING TO HAVE PROBATIVE  
21 VALUE, IT'S GOING TO HAVE MORE PROBATIVE VALUE OR BETTER  
22 PROBATIVE VALUE, IF YOU WILL, IF IT'S MADE ON THE STAND IN  
23 FRONT OF THIS JURY SUBJECT TO CROSS-EXAMINATION, BECAUSE THE  
24 SET OF CIRCUMSTANCES ARE BASICALLY THE SAME. AND DEPRIVING  
25 US OF THE OPPORTUNITY OF CROSS-EXAMINATION --

26 THE COURT: THE DEFENSE IS PROTECTED, REALLY, TO SOME  
27 EXTENT AGAINST YOUR -- I MEAN IF YOU CHOSE TO MAKE IT, IF THE  
28 PROSECUTION CHOSE TO MAKE IT. AS I SAY, YOU MIGHT NOT, BUT

3124

1 IF YOU CHOSE TO URGE SOME SORT OF A RECENT FABRICATION  
2 ARGUMENT, THEY ARE PROTECTED AGAINST THAT BECAUSE THAT THEN  
3 WOULD PROBABLY OPEN UP THE SHOWING OF THE VIDEOTAPE TO SAY,  
4 "NO, THIS IS THE SAME EMOTIONS HE MANIFESTED TWO DAYS AFTER  
5 THE CRIME." SO THEY'RE PROTECTED AGAINST THAT SORT OF ATTACK  
6 BY THE PROSECUTION, REALLY, OR AT LEAST THEY HAVE THAT --  
7 THAT MIGHT -- IF THAT ATTACK WAS MOUNTED, THAT MIGHT OPEN UP  
8 THE ADMISSIBILITY OF THE TAPE.

9 MR. FISHER: THAT WOULD BE ONE RESPONSE TO THAT TYPE  
10 OF ARGUMENT. BUT THAT -- MY POSITION IS THAT TYPE OF  
11 ARGUMENT, WHETHER IT'S BY THE DEFENSE OR PROSECUTION, WHEN  
12 YOU'RE ARGUING THE LACK OF EVIDENCE, BUT IT'S EVIDENCE THAT  
13 YOU'VE BEEN SUCCESSFUL IN KEEPING OUT, HAVING EXCLUDED, I  
14 THINK THAT'S UNETHICAL ARGUMENT, WHETHER IT'S MADE FOR THE  
15 DEFENSE OR PROSECUTION. IF YOU HAVE SOME PRETRIAL SETTING  
16 WHERE YOU HAVE HAD EVIDENCE EXCLUDED, YOU CAN'T THEN TELL THE  
17 JURY, "WELL, THEY DIDN'T PUT ON ANY EVIDENCE ABOUT THAT, THEY  
18 DIDN'T PUT ON ANY EVIDENCE ABOUT THAT."

19 THE COURT: NO, NO, I'M NOT SAYING YOU CAN MAKE  
20 THAT -- I AGREE, I DON'T THINK YOU CAN MAKE THAT ARGUMENT.  
21 BUT, I MEAN, IF EXPLICIT OR IMPLICIT IN YOUR  
22 CROSS-EXAMINATION, FOR EXAMPLE, OF MR. JURADO WAS THAT THIS  
23 IS JUST A SHOW THAT HE IS PUTTING ON FOR THE JURY NOW, AND,  
24 YOU KNOW, THAT THIS IS THE FIRST TIME -- I MEAN I'M NOT  
25 SUGGESTING THAT YOU NECESSARILY WALK INTO THAT BECAUSE YOU'D  
26 PROBABLY BE WALKING INTO A TRAP. BUT I MEAN THEIR -- THE  
27 DEFENSE HAS SOME PROTECTION AGAINST THE ARGUMENT THAT, WELL,  
28 SURE, THIS IS SOMETHING TWO OR THREE YEARS LATER NOW WHEN

3125

1 HE'S ON TRIAL FOR HIS LIFE NOW HERE IN THE COURTROOM HE'S  
2 GOING TO SHOW EMOTION, BUT -- SHOW REMORSE.

3 MR. PETTINE: COULD I JUST MAKE A COMMENT, BECAUSE I'M  
4 A LITTLE MORE FAMILIAR WITH THE TAPE THAN MR. FISHER.

5 I GUESS THE ISSUE HERE IS REMORSE AND A TEAR BY  
6 MR. JURADO ON THE VIDEOTAPE, AND WHAT DOES THAT TEAR MEAN?  
7 DOES IT EQUAL REMORSE? MR. WARREN CAN'T STAND UP HERE AND  
8 TELL YOU THAT AT ANY TIME WHILE THE TEAR FLOWS THERE WAS A  
9 STATEMENT BY JURADO THAT ATTACHES THE MEANING "I'M SORRY  
10 TERRY HOLLOWAY IS DEAD" TO THAT TEAR. IT DOESN'T APPEAR ON  
11 THE TAPE.

12 REALLY, THE STATEMENTS THAT HE MAKES ARE "I'M  
13 SORRY I'M IN THE PREDICAMENT THAT I'M IN." AND -- BUT SINCE  
14 THE TEAR EXISTS, MR. WARREN WANTS TO ARGUE THAT, "WELL, EVEN  
15 THOUGH HE DIDN'T SAY HE WAS SORRY THAT HOLLOWAY DIED, WE WANT  
16 YOU TO INFER CIRCUMSTANTIALY THAT THAT'S WHAT THE TEAR  
17 MEANS." THE PROBLEM --

18 THE COURT: THAT'S A HEARSAY USE, IT SEEMS TO ME, OR  
19 AT LEAST THAT'S CLOSE ENOUGH TO A HEARSAY USE THAT THE SAME  
20 ANALYSIS ABOUT INHERENT TRUSTWORTHINESS AND RELIABILITY OUGHT  
21 TO BE BROUGHT TO BEAR ON THAT. YEAH.

22 MR. PETTINE: THAT'S OUR POSITION, IS THAT IT IS. I  
23 MEAN THAT'S WHY MR. WARREN DOESN'T CALL IT AN ADMISSION  
24 BECAUSE THEN HE CAN'T OFFER IT AS A PARTY PROPONENT. BUT  
25 WHETHER YOU CALL IT AN ADMISSION OR A STATE OF MIND  
26 EXCEPTION, WE CAN'T CROSS-EXAMINE IT TO DETERMINE WHAT THAT  
27 TEAR MEANS. AND THAT'S WHY THE DEFENSE IS OFFERING IT. THEY  
28 WANT TO SHOW THE EVIDENCE OF THE TEAR AND ARGUE ONE



3126

1 INTERPRETATION OF IT SO THAT MR. JURADO DOESN'T GET TO BE  
2 CROSS-EXAMINED ON WHAT THAT TEAR MEANS.

3 THE COURT: WELL, BUT AREN'T THEY AT THE SAME  
4 DISADVANTAGE THAT YOU ARE IF HE DOESN'T MAKE ANY STATEMENT  
5 FROM WHICH YOU CAN DIRECTLY INFER THE SIGNIFICANCE OF THE  
6 TEAR? THEY HAVE TO ARGUE THAT CIRCUMSTANTIALLY THE JURY  
7 SHOULD INFER THAT THAT TEAR IS A MANIFESTATION OF GENUINE  
8 REMORSE BECAUSE IT OCCURRED RIGHT AT THE TIME WHEN THEY WERE  
9 DISCUSSING OR HE WAS DETAILING HOW HE KILLED HER OR WHATEVER,  
10 AND SO THE REASONABLE INFERENCE IS THAT THAT WAS A GENUINE  
11 EMOTIONAL RESPONSE TO THE FACTS THAT HE WAS RECITING.

12 YOU, ON THE OTHER HAND, SAY, "WELL, NO, THERE'S  
13 AN EQUALLY AND WE THINK EVEN A MORE COMPELLING INFERENCE THAT  
14 HERE HE KNOWS HIS GOOSE IS COOKED NOW. HE'S -- WHAT HE TOLD  
15 SOMEBODY WAS GOING TO HAPPEN HAS HAPPENED. HE WAS WAITING  
16 FOR THE POLICE, JUST WAITING FOR THE POLICE TO COME ARREST  
17 HIM. NOW THEY HAVE. NOW HE'S IN JAIL. NOW HE'S FACING A  
18 MURDER CHARGE. WHATEVER REMORSE HE IS MANIFESTING IS REMORSE  
19 FOR HIS CONDITION, THE FACT HE'S CAUGHT. NOW HE'S IN JAIL,  
20 AND HE'S FACING SERIOUS CONSEQUENCES. THAT'S -- IF YOU WANT  
21 TO INFER THAT THIS TEAR SHOWED SOME REMORSE, THE MORE LOGICAL  
22 INFERENCE IS IT'S REMORSE FOR HIS OWN UNHAPPY PLIGHT, NOT FOR  
23 WHAT HE DID TO TERRY HOLLOWAY." BUT --

24 MR. PETTINE: WELL, TO RESPOND TO THAT, IF IT'S  
25 OFFERED UNDER A HEARSAY THEORY, THEN IT'S A COMMUNICATION.  
26 THEN IT WOULD NOT BE ADMISSIBLE.

27 THE COURT: IT'S NOT. DEFENSE SAYS IT'S NOT.

28 MR. PETTINE: I GUESS WHAT WE ARE SAYING IS IF WE GET

3127

1 INTO THE 352 ANALYSIS, ALL THOSE FACTORS THAT WE ARE TALKING  
2 ABOUT SHOW THAT THE PREJUDICE OUTWEIGHS THE PROBATIVE VALUE;  
3 THAT THE ENTIRE -- THE TEARS ON THE TAPE HAVE TO BE ATTACHED  
4 TO DIALOGUE IN SOME FASHION, UNLESS YOU'RE JUST GOING TO PLAY  
5 A VIDEOTAPE WITH NO SOUND OR NO VERBAL COMMUNICATION EXCEPT  
6 THE TEARS. AND I'M NOT SURE WHAT RELEVANCE THAT THAT WOULD  
7 HAVE.

8 BUT IF YOU ATTACH THE VERBAL COMMUNICATION OF  
9 JURADO TO THE POLICE, YOU'RE NOT ONLY TALKING ABOUT A SETTING  
10 WHERE HE'S IN THE PRESENCE OF A POLICE OFFICER, WHICH  
11 OBVIOUSLY THE RELIABILITY IS AT ISSUE, BUT YOU'RE TALKING  
12 ABOUT A CONSTANT STREAM OF LIES ON THE TAPE, ABOUT EVERYTHING  
13 SURROUNDING THE CASE, BOTH BEFORE THE ADMISSION OF  
14 CULPABILITY AND AFTER THE ADMISSION OF CULPABILITY. SO WE  
15 WON'T BE ABLE TO CROSS-EXAMINE THAT TAPE TO DETERMINE WHAT  
16 THE RELEVANCE OF THOSE TEARS ARE. AND THAT'S PRECISELY WHY  
17 THE DEFENSE WANTS TO OFFER IT, SO JURADO DOESN'T HAVE TO  
18 TESTIFY. THAT'S WHY THE PEOPLE'S CASE IS SO SEVERELY  
19 PREJUDICED BY THAT.

20 MR. WARREN: YOUR HONOR, THE ONLY STATEMENTS THAT HE  
21 MAKES AFTER HE STARTS SOBBING IN CONNECTION WITH WHY HE'S  
22 SOBBING, WHICH CAN BE ARGUED BY THE PROSECUTION AS, YOU KNOW,  
23 "I DON'T WANT TO SPEND THE REST OF MY LIFE IN PRISON." NOW,  
24 THEY CAN CLEARLY ARGUE FROM THAT THAT HE IS -- HE'S CRYING  
25 BECAUSE OF HIS OWN PREDICAMENT, AND THE JURY HAS TO -- I'M  
26 OBVIOUSLY GOING TO ARGUE SOMETHING DIFFERENT. THE JURY HAS  
27 TO MAKE THAT DETERMINATION, BUT -- AS TO WHAT THIS ALL MEANS.  
28 BUT IT'S -- PROSECUTION IS OBVIOUSLY AFRAID OF IT. THAT'S

3128

1 WHY THEY'RE ARGUING AGAINST ITS ADMISSION. I THINK A VERY  
2 REASONABLE INTERPRETATION OF IT, A REASONABLE INTERPRETATION  
3 OF IT IS THAT IT SHOWS REMORSE. IT CAN BE ARGUED THAT IT'S  
4 CONCERN ABOUT HIS OWN PREDICAMENT.

5 MR. PETTINE: WE ARE NOT CONCERNED OR AFRAID OF  
6 REMORSE EVIDENCE. WE ARE JUST -- WANT TO BE ABLE TO  
7 CROSS-EXAMINE IT TO SHOW THAT IT'S LEGITIMATE. HE DOESN'T  
8 JUST -- HE CRIES AT ONE POINT ON THE TAPE WHERE HE'S TALKING  
9 ABOUT HIS FEAR OF BEING A SNITCH. AND HE CRIES WHEN -- HIS  
10 FEAR OF HIS PREDICAMENT. HE CRIES AT DIFFERENT STAGES. THEN  
11 WHEN THE POLICE LEAVE THE ROOM, HE STOPS CRYING. I MEAN THE  
12 TEARS ARE THERE WHEN THE POLICE ARE THERE. WHEN THE POLICE  
13 ARE NOT THERE, THERE ARE NO TEARS.

14 MR. WARREN: JURY CAN LOOK AT ALL THAT AND THEY CAN  
15 DRAW CONCLUSIONS FROM THAT. THIS IS PERHAPS THE PUREST FORM  
16 OF TRYING TO FIND OUT WHAT'S GOING ON, BECAUSE HE'S NOT ON  
17 THE WITNESS STAND TRYING TO MAKE UP SOMETHING, ALBEIT HE  
18 WOULD BE SUBJECT TO CROSS-EXAMINATION, BUT A SOPHISTICATED  
19 DEFENDANT COULD GET UP THERE ON THE WITNESS STAND AND SAY,  
20 "GOD, I'M SO SORRY ABOUT WHAT I DID," AND GIVE ALL SORTS OF  
21 EXPLANATION AND BE CROSS-EXAMINED. BUT AS THE COURT POINTED  
22 OUT, THIS IS TWO DAYS AFTER THE EVENT WHERE HE'S IN AN  
23 INTERVIEW WHERE HE DOESN'T REALIZE HE IS BEING VIDEOTAPED.

24 MR. PETTINE: AND I THINK THE DEFENSE POSITION, YOUR  
25 HONOR, IS THAT THEY WANT TO GET THIS TAPE IN SO STRONGLY  
26 BECAUSE THEY DON'T HAVE ANY OTHER TRUE REMORSE EVIDENCE, AND  
27 THEY CAN AT LEAST ARGUE THAT, "WELL, YOU SEE, FOLKS, THERE'S  
28 A TEAR DROP THERE. LET'S ATTACH REMORSE TO THAT." AND THEN

3129

1 THE PROSECUTION CAN'T CROSS-EXAMINE IT. WE ARE STUCK WITH  
2 WHAT APPEARS ON THE VIDEOTAPE. THEY HAVE REMORSE EVIDENCE  
3 AVAILABLE TO THEM. THEY CAN PUT IT ON, AND WE CAN  
4 CROSS-EXAMINE IT AND SEE IF IT EXISTS.

5 THE COURT: WELL, YOU SAY YOU'RE STUCK WITH WHAT'S ON  
6 THE TAPE. YOU DON'T FEEL THAT WHAT IS ON THE TAPE GIVES YOU  
7 A FAIR OPPORTUNITY TO ARGUE EITHER THAT IT'S CROCODILE TEARS,  
8 THEY DON'T DEMONSTRATE REMORSE OR ANYTHING, OR IF THEY DO  
9 DEMONSTRATE REMORSE, THEY DEMONSTRATE REMORSE FOR MAYBE BEING  
10 LABELED AS A SNITCH OR BEING CAUGHT OR HIS OWN UNHAPPY  
11 PREDICAMENT, BUT NOT REMORSE FOR THE DEATH OF THE TERRY  
12 HOLLOWAY AND WHAT HE DID TO CAUSE THAT DEATH? WHY ARE YOU  
13 UNFAIRLY DISADVANTAGED FROM WHAT IS ON THE TAPE MAKING THAT  
14 ARGUMENT?

15 MR. PETTINE: BECAUSE I CAN'T QUESTION MR. JURADO ON  
16 THE WITNESS STAND ABOUT --

17 THE COURT: WELL, NEITHER CAN THEY.

18 MR. PETTINE: THEY DON'T WANT TO. THEY DON'T WANT TO  
19 EXPOSE HIM TO CROSS-EXAMINATION BECAUSE I THINK THEY'RE  
20 FEARFUL THAT UNDER CROSS-EXAMINATION, NONE OF THIS REMORSE  
21 ARGUMENT WILL HOLD WATER.

22 SO IF WE PLAY THE TAPE AND THEN THE D.A. CAN'T  
23 GET INTO THE TAPE, SO TO SPEAK, BECAUSE THE TAPE IS A FIXED  
24 PRODUCT -- YOU KNOW, THE JURY IS GOING TO HEAR WHATEVER IS ON  
25 THE TAPE PRESENTED AT THE TIME, AND WE CAN'T QUESTION ANYBODY  
26 ON IT. WE CAN ARGUE THEORIES; BUT, YOU KNOW,  
27 CROSS-EXAMINATION IS THE TRUTH-SEEKER IN A CRIMINAL TRIAL.  
28 WE ALL AGREE TO THAT.

3130

1 THE COURT: RUNNING THROUGH ALL THESE CASES, THERE'S  
2 NO DOUBT THAT THE COURT MAKES A REPEATED POINT OF THE FACT  
3 THAT -- THAT THE DEFENSE CANNOT BE ALLOWED TO AVOID THE  
4 CRUCIBLE OF TRUTH, CROSS-EXAMINATION, BY SEEKING TO ADMIT  
5 INADMISSIBLE HEARSAY TO AVOID PUTTING THE DEFENDANT THROUGH  
6 THE -- THROUGH CROSS-EXAMINATION.

7 MR. PETTINE: SO I GUESS IF WE ARE TALKING ABOUT IT AS  
8 A HEARSAY COMMUNICATION, WE AGREE THAT IT PROBABLY WOULDN'T  
9 BE ADMISSIBLE. IF WE ARE TALKING ABOUT IT AS A 352  
10 CONSIDERATION AND WEIGHING AND BALANCING ALL THE  
11 CONSIDERATIONS, THE STREAM OF LIES, THE ABSENCE OF ANY  
12 MENTION OF REMORSE FOR TERRY HOLLOWAY, AND ALL THE OTHER  
13 CONFUSION SURROUNDING THE INTERPRETATION OF WHAT THAT TEAR  
14 COULD POSSIBLY MEAN, AND THE INABILITY TO CROSS-EXAMINE ANY  
15 DEFENSE WITNESSES THAT ARE PRESENTED ON THE ISSUE OF REMORSE  
16 I THINK SEVERELY PREJUDICES THE PEOPLE'S CASE.

17 THE COURT: WELL, CROSS-EXAMINE ANY OTHER --  
18 PRESUMABLY YOU'RE GOING TO BE ABLE TO CROSS-EXAMINE OTHER  
19 WITNESSES ON REMORSE IF THEY PUT ANY ON. YOU'RE JUST NOT  
20 GOING TO BE ABLE TO CROSS HIM IF I ALLOW THE TAPE.

21 MR. PETTINE: TRUE. HE IS THE SUBJECT OF THE TAPE,  
22 THE FOCUS OF THE TAPE.

23 THE COURT: YOU SAID THE INABILITY TO CROSS-EXAMINE  
24 OTHER REMORSE --

25 MR. PETTINE: I MISSPOKE MYSELF. THE TAPE FOCUSES ON  
26 JURADO. IF THEY PLAY THE TAPE, I CAN'T CROSS-EXAMINE HIM AS  
27 TO THE LEGITIMACY OF THOSE TEARS. I'M NOT CERTAIN WHETHER OR  
28 NOT THEY CAN CALL OTHER WITNESSES TO SAY, "WELL, I TALKED TO



3131

1 MR. JURADO AND HE SAYS HE'S SORRY." I MEAN THAT WOULD BE  
2 HEARSAY COMMUNICATION.

3 THE COURT: I DON'T THINK THEY CAN. I THINK THE CASES  
4 ARE PRETTY -- THAT CLEARLY WOULD BE INADMISSIBLE HEARSAY.

5 MR. PETTINE: SO THEY REALLY WANT TO PRESENT  
6 MR. JURADO TO THE JURY WITHOUT HAVING HIM CROSS-EXAMINED.

7 THE COURT: I THINK THAT'S TRUE. THE QUESTION IS DOES  
8 THE LAW PERMIT THEM TO DO THAT. AND THERE'S A STRONG --  
9 STRONG UNDERCURRENT UNDERPINNING MOST OF THESE CASES THAT THE  
10 LAW DOES NOT. BUT, OF COURSE, THEY ARE TREATING THE EVIDENCE  
11 AS HEARSAY AND FINDING THAT THERE'S NO EXCEPTION TO ALLOW ITS  
12 ADMISSION. IF IT'S NOT HEARSAY, WE DON'T NEED TO REACH THAT  
13 POINT.

14 MR. WARREN: AND IN LOOKING AT THAT ISSUE, EVERY ONE  
15 OF THE CASES CITED BY THE PROSECUTION, THE DEFENDANT WAS  
16 TRYING TO MINIMIZE HIS GUILT AND IS TRYING TO INTRODUCE THE  
17 STATEMENTS OR WHATEVER HAPPENED IN AN EXCULPATORY WAY. AND  
18 THAT'S NOT THE CASE HERE.

19 MR. PETTINE: WELL, THAT'S EXACTLY WHAT'S GOING ON IN  
20 THIS CASE. I MEAN, HE'S TELLING LIE AFTER LIE AFTER LIE, AND  
21 THEN AT ONE POINT THEY'RE SAYING, "WHY DID THIS HAPPEN?" HE  
22 GOES, "WELL, I WAS AFRAID FOR MY FAMILY," TRYING AGAIN TO  
23 MINIMIZE THE REASON WHY HE DID THIS. AND AT NO TIME DOES HE  
24 SAY, "STOP, POLICE. I'M GOING TO CRY NOW BECAUSE TERRY  
25 HOLLOWAY, MY FRIEND, IS DEAD, AND I DID IT AND I'M CRYING FOR  
26 HER."

27 MR. WARREN: AND IF WE DID THAT, YOUR HONOR, IF WE DID  
28 THAT, THEN IT WOULD BE CLEARLY A HEARSAY PURPOSE, AND WE

3132

1 WOULDN'T BE HAVING THIS ARGUMENT RIGHT NOW IF HE SAID, "I  
2 FEEL REMORSE FOR TERRY HOLLOWAY. I'M CRYING BECAUSE OF  
3 THAT." THEN THE COURT WOULD EXCLUDE IT. IT WOULD BE CLEARLY  
4 HEARSAY.

5 MR. PETTINE: WELL, I MEAN THAT'S AN INTERESTING  
6 ARGUMENT. THAT SHOWS THE UNRELIABILITY OF THE TAPE. I MEAN  
7 MR. WARREN IS ACKNOWLEDGING THAT THERE'S NO EVIDENCE OF  
8 REMORSE FOR THE VICTIM, AND THAT'S WHAT REMORSE IS ALL ABOUT.  
9 HE HAS SOME TEARS THAT ARE -- THAT ARE GIVEN IN A CONTEXT  
10 THAT'S ABSOLUTE CONFUSION AS TO WHAT IT MEANS, AND HE WANTS  
11 TO ARGUE AND ATTACH A MEANING. AND THAT'S THE 352 PROBLEM  
12 THAT I THINK HE'S JUST EXPLAINED TO THE COURT. YOU CAN'T  
13 READ THIS TEAR -- WATCH THIS TAPE AND SEE ANYTHING ON THERE  
14 WHERE JURADO IS EXPRESSING REMORSE FOR THE VICTIM.

15 MR. WARREN: AND MR. PETTINE'S INTERPRETATION OF THE  
16 TAPE.

17 THE COURT: YES. I MEAN THAT SORT OF BEGS THE  
18 QUESTION. IF THAT WERE THE CASE, THEN IT WOULDN'T BE  
19 RELEVANT. IT WOULD BE A SIMPLE RELEVANCE CALL THEN. I MEAN  
20 IF I AGREE WITH YOU THAT THIS DOESN'T HAVE ANY TENDENCY TO  
21 PROVE THE FACT AT ISSUE, WHETHER HE HAS ANY REMORSE FOR THE  
22 DEATH OF TERRY HOLLOWAY, THEN THAT WOULD BE A SIMPLE  
23 RELEVANCE CALL. BUT THAT SORT OF BEGS THE QUESTION.

24 (PAUSE IN PROCEEDINGS.)

25 THE COURT: THE COURT RULES INADMISSIBLE THE EVIDENCE  
26 OFFERED BY THE DEFENSE. SECTION 225 OF THE EVIDENCE CODE  
27 DEFINES THE WORD "STATEMENT" TO MEAN AN ORAL OR WRITTEN  
28 VERBAL EXPRESSION OR, 'B', NOT VERBAL CONDUCT OF A PERSON

3133

1 INTENDED BY HIM AS A SUBSTITUTE FOR ORAL OR WRITTEN VERBAL  
2 EXPRESSION.

3 THE CASES IN WHITT, THEY TALK ABOUT SEEKING TO  
4 INTRODUCE -- AND IN WHITT IT WAS OUT-OF-COURT STATEMENTS, BUT  
5 THEY MAKE THE STATEMENT FOR THE, QUOTE, HEARSAY, CLOSE QUOTE,  
6 PURPOSE OF PROVING THAT THE EVENTS AND FEELINGS DESCRIBED  
7 THEREIN ACTUALLY OCCURRED, THAT IS, THAT HE HAD ONCE ACTED  
8 AND FELT A CERTAIN WAY.

9 AND ONE OF THE OTHER CASES THAT WE HAVE ALL BEEN  
10 LOOKING AT, EDWARDS OR LIVADITIS OR KAURISH, ONE OF THOSE  
11 CASES, THEY ALSO TALK ABOUT NONVERBAL COMMUNICATION, IF YOU  
12 WILL, AND NONVERBAL CONDUCT THAT CONSTITUTES A STATEMENT. SO  
13 I THINK FOR THIS EVIDENCE TO HAVE ANY RELEVANCE, IT REALLY  
14 HAS TO HAVE A HEARSAY PURPOSE, THAT IS, TO COMMUNICATE HIS  
15 MENTAL OR EMOTIONAL STATE, EITHER THROUGH EXPRESS WORDS OR  
16 CONDUCT WHICH IS A SUBSTITUTE FOR WORDS.

17 SO I THINK THERE IS THE INHERENT DANGER AND  
18 MISCHIEF IN HEARSAY. I THINK THE CIRCUMSTANCES UNDER WHICH  
19 THE STATEMENT WAS MADE RAISE SERIOUS, SERIOUS QUESTIONS ABOUT  
20 THE RELIABILITY OF THE TRUSTWORTHINESS OF THE STATEMENTS.  
21 USING "STATEMENTS" AS DEFINED IN SECTION 225 OR THE CONDUCT  
22 AND BRING THIS -- MAKE THIS A RATHER CLASSIC CASE WITHIN  
23 THE -- THAT COMES WITHIN THE LANGUAGE OF LIVADITIS, WHICH IS  
24 A JUNE 1992 DECISION OF THE SUPREME COURT, 2 CAL. 4TH 759, AT  
25 PAGE 780, WHERE THE COURT SAYS -- THE COURT, MEANING THE  
26 TRIAL COURT:

27 THE COURT DID NOT PREVENT DEFENDANT FROM  
28 PRESENTING EVIDENCE OF REMORSE, BUT ONLY



3134

1 EVIDENCE IN THE FORM OF INADMISSIBLE HEARSAY  
2 NOT SUBJECT TO CROSS-EXAMINATION.

3 SO THAT'S MY ANALYSIS, AND THAT'S MY RULING.

4 MR. WARREN: YOUR HONOR, COULD WE DO TWO THINGS:  
5 COULD WE MAKE THE VIDEOTAPE PART OF THE RECORD, AND COULD  
6 MRS. MISSAKIAN FOR THE RECORD SUMMARIZE RELEVANT PORTIONS OF  
7 THE VIDEOTAPE SO WE HAVE THAT AS PART OF THE RECORD?

8 THE COURT: YEAH. YES.

9 HOW LONG IS THE VIDEOTAPE?

10 MS. MISSAKIAN: THE INDIVIDUAL TAPE I THINK IS ABOUT  
11 40 MINUTES LONG, YOUR HONOR, AND I THINK WHAT --

12 THE COURT: WELL, I WILL -- IF YOU MAKE THE VIDEOTAPE  
13 AVAILABLE TO ME, I'LL TAKE THE TIME TO LOOK AT IT.

14 MS. MISSAKIAN: THANK YOU.

15 THE COURT: AND IF I'M PERSUADED DIFFERENTLY, WHY --  
16 BUT BASED ON WHAT I'VE HEARD AND, YOU KNOW, THE ARGUMENTS WE  
17 HAVE HAD AND THE CASE AUTHORITY, THAT'S MY RULING. BUT IF  
18 YOU WANT TO MAKE THE VIDEO AVAILABLE TO ME, I'LL --

19 MR. WARREN: WE WOULD ASK YOU TO DO THAT, THEN.

20 THE CLERK: DID YOU WANT IT MARKED AS A COURT'S  
21 EXHIBIT?

22 THE COURT: YES.

23 THE CLERK: IT WOULD BE COURT'S EXHIBIT NO. 4.

24 (MARKED FOR ID:)

25 #(COURT'S EXHIBIT 4, VIDEOTAPE OF JURADO  
26 CONFESSION)

27 THE COURT: MR. PETTINE, I TAKE IT YOU AGREE THAT THIS  
28 IS A VIDEOTAPE OF THE INTERVIEW WE ARE TALKING ABOUT?

3135

1 MR. PETTINE: I'M ASSUMING IT IS BECAUSE MR. WARREN  
2 RECEIVED IT FROM US.

3 MS. MISSAKIAN: IT IS THE COPY WE RECEIVED FROM --

4 MR. PETTINE: UNLESS HE WENT TO VIDEO VAULT AND GOT  
5 SOMETHING DIFFERENT.

6 THE CLERK: ARE YOU RECEIVING THAT INTO EVIDENCE?

7 THE COURT: YES.

8 THE CLERK: THANK YOU.

9 (RECEIVED INTO EVID:)

10 #(COURT'S EXHIBIT NO. 4)

11 THE COURT: I'LL LOOK AT IT. I'LL LOOK AT IT, BECAUSE  
12 I THINK I OWE YOU THAT AT LEAST, AND A COUPLE OF THESE CASES  
13 DO POINT OUT THAT THE JUDGE DIDN'T ACTUALLY LISTEN TO OR LOOK  
14 AT THE PARTICULAR TAPE IN QUESTION, SO I'LL GIVE YOU THAT.

15 I MEAN I UNDERSTAND YOUR ARGUMENT, AND I THINK  
16 IT'S A CLOSE CALL, A LITTLE CLOSER THAN SOME OF THESE CASES,  
17 I THINK. BUT I JUST THINK ANY WAY YOU CUT IT, IT'S A -- IT'S  
18 EITHER HEARSAY OR SO CLOSE TO HEARSAY THAT THE HEARSAY  
19 ANALYSIS IS RELEVANT, REALLY, AND APPLICABLE. I JUST DON'T  
20 THINK THERE'S THE INHERENT TRUSTWORTHINESS OR FUNDAMENTAL  
21 INDICIA OF RELIABILITY THAT IS REQUIRED TO ADMIT EVIDENCE IN  
22 THE FACE OF THE HEARSAY OBJECTION AND IN THE ABSENCE OF ANY  
23 READILY APPARENT APPLICABLE EXCEPTION. SO -- (PAUSE). BUT  
24 I'LL LOOK AT THE TAPE.

25 AND YOU WANT TO MAKE A STATEMENT FOR THE RECORD  
26 ALSO?

27 MS. MISSAKIAN: NO, I DON'T THINK SO, YOUR HONOR. I  
28 THINK THE TAPE WILL SPEAK FOR ITSELF. I JUST DID WANT TO ASK

3136

1 AND CLARIFY. AT THAT SAME PARAGRAPH IN LIVADITIS, THE COURT  
2 DOES POINTS OUT THAT THE JURY DID HEAR DEFENDANT'S STATEMENT  
3 TO THE POLICE SHORTLY AFTER THE ARREST THAT HE WAS SORRY FOR  
4 THE CRIMES.

5 SO I WANTED TO CLARIFY THAT, FOR EXAMPLE, THE  
6 DETECTIVES LARMOUR AND ZAVALA, IF CALLED TO TESTIFY, COULD BE  
7 QUESTIONED ABOUT MR. JURADO'S STATEMENTS TO THEM, HIS  
8 Demeanor AND THE FACT HE DID CRY AND THE STATEMENTS THAT HE  
9 DID MAKE, THAT THE COURT'S RULING WOULD NOT EXCLUDE THAT.  
10 BUT THE COURT IS RULING -- I GUESS I'M ASKING: IS THE  
11 COURT'S RULING LIMITED TO THE VIDEOTAPE OR TO ALL EVIDENCE OF  
12 MR. JURADO'S CONDUCT, Demeanor, AND STATEMENTS DURING THAT  
13 INTERVIEW?

14 THE COURT: NO, I THINK MY RATIONALE, MY ANALYSIS  
15 WOULD REACH THAT EVIDENCE TOO.

16 MS. MISSAKIAN: IT WOULD REACH THAT EVIDENCE?

17 THE COURT: YES. BECAUSE I THINK YOU'RE STILL USING  
18 HIS CONDUCT AND Demeanor FOR A HEARSAY PURPOSE, WHETHER IT'S  
19 EVIDENCE -- WHETHER IT'S PROVED BY THE VIDEOTAPE OR WHETHER  
20 IT'S PROVED BY THE TESTIMONY OF OBSERVING WITNESSES.

21 MS. MISSAKIAN: WELL, THEN --

22 THE COURT: YOU STILL DON'T HAVE THE  
23 CROSS-EXAMINATION. YOU DON'T HAVE THAT CRUCIBLE OF TRUTH,  
24 CROSS-EXAMINATION.

25 AS I SAY, WE ARE NOT PREVENTING YOU FROM PROVING  
26 THE FACT OF REMORSE. I'M JUST SAYING THAT I DON'T THINK YOU  
27 CAN DO IT THROUGH WHAT I THINK IS INADMISSIBLE EVIDENCE,  
28 INADMISSIBLE EVIDENCE IN THE FORM OF THE VIDEOTAPE,

3137

1 INADMISSIBLE EVIDENCE IN THE FORM OF THE TESTIMONY OF THE TWO  
2 OFFICERS WHO WERE THERE DURING THE INTERVIEW WHICH IS THE  
3 SUBJECT OF THE VIDEOTAPE. THEY CAN BE TESTIFYING ABOUT THE  
4 SAME THING. WHETHER THE JURY OBSERVES FIRSTHAND ON THE VIDEO  
5 HIS REACTION OR WHETHER THEY HEAR ABOUT IT THROUGH THE  
6 TESTIMONY OF THE WITNESSES, IT'S THE SAME THING IN MY VIEW.  
7 SO I THINK TO BE CONSISTENT, I THINK MY RULING REACHES THAT  
8 FORM OF EVIDENCE ALSO.

9 MS. MISSAKIAN: THEN I WOULD JUST ASK, IN LIGHT OF THE  
10 COURT'S RULING ABOUT -- IN CONSIDERATION OF THE ISSUE OF  
11 TRUSTWORTHINESS OF THE COMMENTS OF DETECTIVE LARMOUR AND  
12 ZAVALA TO MR. JURADO WHEN HE'S MAKING THESE STATEMENTS AND  
13 EXPRESSING THIS EMOTION, WHICH I THINK THAT -- ARE CLEAR ON  
14 THE VIDEOTAPE.

15 THE COURT: ALL RIGHT. AGAIN, THAT'S WHY I'M WILLING  
16 TO LOOK AT THE VIDEO. MAYBE I'LL --

17 MR. WARREN: AND, AGAIN, YOUR HONOR, JUST FOR  
18 CLARIFYING THE RECORD, ONE OF THE ISSUES WE RAISED WAS THE  
19 CHRISTIE MEDLIN STATEMENT, AND THAT THIS WAS AT A PRIOR POINT  
20 IN TIME.

21 THE COURT: WELL, I TAKE THAT. I MEAN I THINK YOU'RE  
22 ENTITLED TO REBUT THAT EVIDENCE, BUT NOT BY INADMISSIBLE  
23 EVIDENCE. I MEAN THAT'S THE PROBLEM. I AGREE IN GENERAL YOU  
24 ARE ENTITLED TO REBUT THE CHRISTIE MEDLIN EVIDENCE, BUT YOU  
25 HAVE TO DO SO BY ADMISSIBLE EVIDENCE, NOT BY INADMISSIBLE  
26 EVIDENCE.

27 YEAH. I MEAN THAT'S WHY I -- I APPROACH THIS  
28 ISSUE FROM THE STANDPOINT THAT THE EVIDENCE WAS RELEVANT ON

3138

1 PROBABLY ALL THREE GROUNDS YOU MENTIONED. I THINK IT'S --  
2 I'M NOT AS -- THINK IT'S ARGUABLE THAT IT'S NOT ADMISSIBLE AS  
3 SUBPARAGRAPH (A) EVIDENCE, CIRCUMSTANCES OF THE CRIME ITSELF,  
4 BUT I THINK CLEARLY TO REBUT THE -- CHRISTIE MEDLIN'S  
5 TESTIMONY AND/OR AS EXTENDED FACTOR (K) EVIDENCE, IT'S  
6 RELEVANT. THE PRESENCE OF REMORSE IS RELEVANT. BUT THAT  
7 DOESN'T ANSWER HOW YOU PROVE IT. I MEAN YOU HAVE TO PROVE IT  
8 BY ADMISSIBLE EVIDENCE. JUST SAYING IT IS RELEVANT -- IT  
9 DOES ADDRESS AN ISSUE IN THE CASE AT THIS POINT. THAT  
10 DOESN'T MEAN THAT YOU CAN PROVE IT BY ALL SORTS OF  
11 INADMISSIBLE EVIDENCE. AND THESE CASES DON'T STAND FOR THAT  
12 PROPOSITION.

13 MR. WARREN: I JUST WANT TO ADD - THEN I'LL LEAVE THE  
14 ISSUE - THAT I THINK THE -- I WOULD URGE THE COURT TO  
15 CONSIDER GREEN V. GEORGIA.

16 THE COURT: I HAVE. THAT'S WHY I SAID I DON'T THINK  
17 THERE'S THE COMPELLING EVIDENCE OF TRUSTWORTHINESS AND  
18 RELIABILITY THAT GREEN VS. GEORGIA -- NO, I'M WELL AWARE OF  
19 GREEN VS. GEORGIA.

20 MS. MISSAKIAN: MR. WARREN IS READY TO LEAVE, BUT I  
21 JUST HAVE ONE ADDITIONAL COMMENT.

22 I JUST WANT TO MAKE SURE FOR THE RECORD, YOUR  
23 HONOR -- I THINK OUR PAPERS ARE CLEAR, BUT I WANT TO MAKE  
24 SURE FOR THE RECORD THAT OTHER THAN STATE GROUNDS THAT THIS  
25 IS MADE ON INDEPENDENT FEDERAL GROUNDS UNDER SKIPPER VS.  
26 SOUTH CAROLINA, THAT THIS IS ADMISSIBLE EVIDENCE TO SHOW  
27 THE -- IN ORDER TO BE ABLE TO MAKE A RELIABLE DETERMINATION  
28 OF PENALTY --

3139

1 THE COURT: NO, I --

2 MS. MISSAKIAN: -- ALL RELEVANT MITIGATING EVIDENCE BE  
3 PRESENTED. AND WITH THAT I HAVE NOTHING FURTHER.

4 THE COURT: NO, I UNDERSTAND THAT THAT IS YOUR  
5 POSITION.

6 ALL RIGHT. LET'S TAKE A RECESS.

7 (AT 10:18 A.M. THE COURT WAS IN  
8 RECESS UNTIL 10:33 A.M.)  
9  
10  
11  
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28



1 SAN DIEGO, CALIFORNIA, THURSDAY, 11/21/91, 1:13 P. M.

2 --000--

3

4 MR. PETTINE: YOUR HONOR, BEFORE WE GET INTO THE MOTIONS  
5 THIS AFTERNOON I WONDER IF I COULD MAKE A COUPLE OF REQUESTS ON  
6 THE RECORD?

7 THE COURT: YES.

8 MR. PETTINE: THE FIRST REQUEST HAS TO DO WITH DISCOVERY.  
9 AS YOU KNOW, JUDGE RODRIGUEZ ISSUED AN ORDER RELATING TO ALL  
10 LAWYERS COMPLYING WITH THE NEW DISCOVERY STATUTES. THERE HAS  
11 BEEN NO COMPLIANCE BY THE DEFENSE IN THIS CASE TO DATE.

12 I'D JUST LIKE TO INDICATE TO THE COURT THAT OUR  
13 FIRST REQUEST FOR COMPLIANCE WAS MADE LAST JULY, OR STRIKE THAT,  
14 LAST MAY, WHEN THIS CASE WAS ORIGINALLY ISSUED. SINCE THAT TIME  
15 I'VE MADE INFORMAL REQUESTS, VERBAL REQUESTS TO THE LAWYERS, AND  
16 I'VE ALSO WRITTEN ALL THREE OF THEM, DATED SEPTEMBER 30TH, 1991,  
17 WHERE I AGAIN REQUESTED COMPLIANCE WITH THE NEW STATUTES. TO  
18 DATE I HAVE NOT RECEIVED ANY DISCOVERY FROM EITHER OF THE THREE  
19 DEFENSE LAWYERS.

20 WHAT I WOULD LIKE IS THE COURT TO ISSUE ORDERS  
21 TODAY ASKING THE LAWYERS TO COMPLY WITH THE STATUTES, THEN SET  
22 THIS MATTER FOR A FURTHER HEARING ON DECEMBER 6TH TO DETERMINE  
23 WHETHER COMPLIANCE IS GOING TO BE HAD OR SANCTIONS WILL NEED TO  
24 BE ISSUED.

25 THE COURT: ANYBODY WANT TO RESPOND?

26 MS. CROWLE: I'LL RESPOND FIRST, YOUR HONOR.

27 FIRST, THERE'S BEEN ONGOING DISCOVERY FROM THE  
28 PROSECUTION. WE RECEIVED OUR LAST DISCOVERY, I BELIEVE IT WAS

15  
1 THE COURT: WE'RE NOT TALKING ABOUT A CONSPIRACY WE'RE  
2 TALKING ABOUT THE SPECIAL CIRCUMSTANCE OF LYING IN WAIT. THAT'S  
3 WHAT WE'RE TALKING ABOUT. WE'RE NOT TALKING ABOUT CONSPIRACY.  
4 I'M NOT TALKING ABOUT THAT RIGHT NOW. THEY SUBMITTED THAT,  
5 THAT -- THE 995 ON THAT. I'M READY TO OVERRULE THAT. DON'T  
6 EXERCISE YOURSELF ABOUT THAT. THERE'S PLENTY OF EVIDENCE OF  
7 CONSPIRACY. WE'RE TALKING ABOUT NOW WHETHER THE EVIDENCE IS  
8 SUFFICIENT TO ESTABLISH THE SPECIAL CIRCUMSTANCE. IN MY VIEW  
9 IT'S NOT. SO THE 995 IS GRANTED AS TO THE SPECIAL CIRCUMSTANCE,  
10 DENIED AS TO THE CONSPIRACY.

11 THE CLERK: THIS AS TO EACH DEFENDANT?

12 THE COURT: YES. ALL RIGHT. TAKE A RECESS.

13 (RECESS TAKEN)

14

15 THE COURT: IT OCCURRED TO ME THAT I MAY HAVE -- I DON'T  
16 KNOW IF MISSPOKE MYSELF IS THE CORRECT CHARACTERIZATION, BECAUSE  
17 I -- I THINK I KNEW WHAT I WAS SAYING AT THE TIME. I MAY HAVE  
18 ON ONE OR MORE INDICATIONS REFERRED TO THE WEAPON IN QUESTION AS  
19 A TIRE IRON. AND I DO UNDERSTAND IT WAS NOT A TIRE IRON, IT WAS  
20 A SCISSORS JACK. I'VE SEEN THE PICTURES OF IT, AND SO I DO  
21 UNDERSTAND THAT, ALTHOUGH I MAY HAVE USED THE TERM TIRE IRON.

22 THE FACT THAT IT WAS A SCISSORS JACK IMPRESSES ME,  
23 THOUGH, THAT'S NOT -- DOESN'T SEEM TO ME THAT'S A  
24 PARTICULARLY -- A PREMEDITATED WEAPON OF CHOICE. I WOULDN'T  
25 THINK THAT WAS THE KIND OF THING ONE MIGHT, WITH SOME  
26 PREMEDITATION, IF ONE WAS GOING TO USE AS A WEAPON OF CHOICE.  
27 BUT AT ANY RATE, I WANTED THE RECORD TO BE CLEAR IN THAT REGARD.  
28 ///



1 MR. WARREN.

2 MS. WARREN: BEFORE WE GET STARTED, I'D LIKE TO  
3 INDICATE TO THE COURT MR. JURADO IS PREPARED TO PLEAD GUILTY  
4 TO FIRST DEGREE MURDER. AND WE HAVE NOT HAD AN OPPORTUNITY  
5 TO PREPARE THE CHANGE OF PLEA FORM, BUT THAT IS OUR DESIRE.

6 THE COURT: WELL, IT OCCURRED TO ME YOU HAD MENTIONED  
7 THE OTHER DAY THAT AT SOME POINT, PERHAPS TODAY, WE MIGHT --  
8 IT MIGHT BE PRODUCTIVE TO HAVE A READINESS CONFERENCE. HOW  
9 DO THE OTHER PEOPLE FEEL ABOUT THAT?

10 MR. GRIMES: JUST TALKING TO MR. PETTINE ABOUT THAT.  
11 AND I'VE -- I WOULD LIKE TO HAVE A READINESS CONFERENCE.  
12 MR. PETTINE INDICATES FAIRLY STRONG FEELINGS ABOUT A POSITION  
13 OF THE PEOPLE THEY HAVE HAD FOR A LONG TIME, WHICH IS  
14 DIFFERENT FROM OUR POSITION ON SETTLEMENT. I'M NOT SURE IF  
15 IT'S GOING TO BE PRODUCTIVE, YOUR HONOR, AS TO MISS HUMISTON.  
16 IT IS SOMETHING THAT WE WOULD CONSIDER THOUGH.

17 THE COURT: WELL, I'M NOT SOLICITING NONPRODUCTIVE  
18 READINESS CONFERENCES BUT -- SO YOU'RE THE BETTER JUDGE OF  
19 THAT, IF THERE'S SOME FEELING IT MIGHT BE PRODUCTIVE.

20 MR. PETTINE: THE ONLY -- NOT TO BELABOR THE POINT,  
21 YOUR HONOR, THE ONLY ADDITIONAL FACTOR THAT YOU MIGHT WANT TO  
22 CONSIDER IN TERMS OF THE LYING IN WAIT ISSUE, I MEAN YOU'VE  
23 MADE YOUR RULING, WE'VE MADE ARGUMENT ON THIS, I DON'T WANT  
24 TO BELABOR IT, BUT I'M NOT SURE IT WAS CORRECTLY ARTICULATED  
25 THAT IT'S THE PEOPLE'S VIEW THAT IN ADDITION TO ALL THE OTHER  
26 THINGS THAT WE ARGUED, THERE WAS REALLY NO REASON TO TAKE  
27 TERRY HOLLOWAY FROM THE SCHMIDT RESIDENCE, BASED ON THE  
28 INFORMATION IN THE TRANSCRIPT, OTHER THAN TO KILL HER. I

1 MEAN THERE WAS NO REASON TO TAKE HER TO THE HALFWAY HOUSE  
2 WITH DENISE SHIGEMURA. IF THE LEGITIMATE PURPOSE WAS TO GO  
3 TO THE HALFWAY HOUSE, AND THIS SPONTANEOUSLY HAPPENED, THERE  
4 WOULD BE NO REASON TO BE MAD AT HER WHEN SHE WAS TALKING ON  
5 THE PHONE TO HER, AS INDICATED IN THE TRANSCRIPT, AND TAKE  
6 HER AWAY FROM THE HOUSE AND PUT HER IN HUMISTON'S CAR. WE  
7 WOULD OF COURSE ASK YOU TO CONSIDER THAT AS WELL AS THE OTHER  
8 FACTORS.

9 THE COURT: I TAKE THAT POINT. IT'S -- IT'S A CLOSE  
10 CALL. I THINK IT'S A CLOSE CALL. I THINK OBVIOUSLY THE  
11 EXTENT OF OUR DISCUSSIONS HERE I WAS -- IT'S A CLOSE CALL I  
12 THINK, A CLOSE CALL. BUT I'VE GIVEN IT MY BEST -- BEST SHOT.

13 MISS CROWLE, ANY COMMENTS?

14 MS. CROWLE: I THINK A READINESS MIGHT PROVE  
15 PRODUCTIVE AS TO MISS SHIGEMURA.

16 THE COURT: WELL, I -- THE TIMING OF THAT IS -- I'M  
17 AGREEABLE TO PURSUING THAT NOW IF THAT SEEMS APPROPRIATE  
18 TIMING, OR WHENEVER.

19 I'M SURE COUNSEL HAVE COMMUNICATED TO THEIR  
20 RESPECTIVE CLIENTS THAT THE FACT THE COURT MAY HAVE GRANTED  
21 THE 995 WITH RESPECT TO THE LYING IN WAIT, THAT'S, YOU KNOW,  
22 THAT'S A LEGAL RULING BY THE COURT BASED ON WHAT I -- THE  
23 EVIDENCE BEFORE ME AND WHAT I THINK IS MY RESPONSIBILITY IN  
24 THAT REGARD. THAT'S NOT TO BE TAKEN IN ANY WAY AS ANY  
25 INDICATION ON THE PART OF THE COURT THAT THE COURT VIEWS THIS  
26 AS ANYTHING OTHER THAN A VERY, VERY SERIOUS MATTER AND VERY  
27 OUTRAGEOUS CONDUCT. SO I DON'T WANT ANY MISINTERPRETATION OR  
28 ANY FALSE MESSAGES BEING RECEIVED HERE.

1 MR. PETTINE: YOUR HONOR, JUST FOR THE RECORD, I'VE  
2 ADVISED COUNSEL THAT THE PEOPLE WOULD NOT BE SIGNING THE  
3 CHANGE OF PLEA FORM. I KNOW HE CAN PLEAD TO THE FACE AT ANY  
4 TIME, BUT CONSULTING WITH MR. FISHER, THERE'S A POSSIBILITY  
5 THAT THE PEOPLE MAY TAKE A WRIT ON THE RULING BY THE COURT,  
6 SO I JUST WANTED COUNSEL TO BE AWARE THAT THE PLEA COULD  
7 CONCEIVABLY BE SET ASIDE AT A LATER TIME DEPENDING ON HOW  
8 THAT PROCEDURE GOES.

9 MR. WARREN: YOUR HONOR, I'M NOT GOING TO TAKE A  
10 POSITION ON THAT, BUT WE'RE PREPARED TO PLEAD TO THE  
11 INFORMATION.

12 THE COURT: ALL RIGHT. IF IT WOULD FACILITATE YOUR  
13 DISCUSSIONS WE CAN CERTAINLY TAKE A RECESS AT THIS POINT.

14 MR. GRIMES: OH, THANK YOU.

15 THE COURT: I DON'T MEAN TO BE ANY INHIBITING OR  
16 INTIMIDATING FACTOR SITTING UP HERE, SO IF WANT TO TAKE A  
17 RECESS THAT'S FINE.

18 MR. GRIMES: THAT'S NOT NECESSARY, YOUR HONOR. I JUST  
19 TOOK AN OPPORTUNITY TO TALK TO MR. PETTINE WHILE MR. WARREN  
20 WAS FILLING OUT THE CHANGE OF PLEA FORM. AFTER FURTHER  
21 TALKING TO MR. PETTINE I -- I FEEL THAT WE MIGHT BE WASTING  
22 THE COURT'S TIME IF WE WERE TO TALK TO THE COURT AT THIS  
23 TIME, BECAUSE I FEEL THE PEOPLE'S POSITION AS TO  
24 MISS HUMISTON I DON'T BELIEVE HAS CHANGED AND OUR POSITION  
25 HASN'T CHANGED. SO I THINK IF MR. PETTINE AND I -- WELL, IF  
26 ANYTHING ARISES IN OUR FURTHER CONVERSATIONS MAKES ME FEEL TO  
27 INVOLVE THE COURT I WOULD CERTAINLY ASK THE COURT THAT  
28 OPPORTUNITY.



1 THE COURT: I'M SURE YOU WILL.

2 MS. CROWLE: MR. PETTINE AND I HAVE ENGAGED IN  
3 INFORMAL DISCUSSIONS PREVIOUSLY, YOUR HONOR. I DON'T THINK  
4 WE WERE THAT FAR APART IN WHAT WE WERE DISCUSSING. I THINK  
5 THAT SOME FURTHER DISCUSSIONS PERHAPS WITH THE COURT IN  
6 CHAMBERS WHEN WE'RE CONCLUDED WITH MR. WARREN AND HIS CLIENT  
7 MIGHT BE PRODUCTIVE. I DON'T KNOW IF MR. PETTINE DIFFERS IN  
8 THAT, I HAVEN'T HAD AN OPPORTUNITY TO SPEAK TO HIM THIS  
9 AFTERNOON ON THAT SUBJECT.

10 MR. PETTINE: WELL, WITH THE POSSIBILITY OF A WRIT IN  
11 THE OFFING, WE'RE NOT BASICALLY IN A POSITION TO MAKE OFFERS  
12 AT THIS POINT IN TIME.

13 THE COURT: WELL, I GUESS THAT RESOLVES THAT FOR THE  
14 MOMENT, THEN.

15 WITH RESPECT TO THE REMAINING MATTERS TO BE  
16 HEARD THIS AFTERNOON, IS IT -- ASSUMING MR. JURADO ENTERS THE  
17 PLEA AS INDICATED, IS IT CONTEMPLATED THEN WE WOULD GO AHEAD  
18 AND HEAR THE MOTION TO SEVER, OR WHAT?

19 MR. PETTINE: I DON'T -- FROM A LEGAL STANDPOINT, JUST  
20 ASSUMING THAT A WRIT IS TAKEN UP, ASSUMING THE WRIT IS  
21 GRANTED AND MR. JURADO IS BACK IN THE CASE, THEN MY QUESTION  
22 WOULD BE HOW WOULD THE COURT'S RULINGS THIS AFTERNOON WITH  
23 RESPECT TO ARANDA AFFECT MR. JURADO'S RIGHTS IF MR. WARREN  
24 DOESN'T PARTICIPATE?

25 THE COURT: WELL, I WOULD THINK WE'D HAVE TO -- NO, I  
26 WOULD EXPECT THAT HIS RIGHTS WOULD BE PRESERVED IN THAT  
27 REGARD. SO MAYBE THAT'S A -- A REASON NOT TO -- NOT TO HEAR  
28 IT AT THIS TIME, BECAUSE I WOULDN'T -- I WOULDN'T WANT TO

1 TAKE THE POSITION THAT HE HAD LOST HIS -- I DON'T THINK THAT  
2 WOULD BE MY POSITION THAT HE HAD LOST HIS RIGHT TO -- TO BE  
3 HEARD ON THAT MATTER AND TO LITIGATE THAT MATTER.

4 MR. PETTINE: IT JUST OCCURRED TO ME AS WE WERE  
5 TALKING.

6 THE COURT: WELL, THAT OCCURRED TO ME ALSO, THAT'S  
7 WHY -- THAT'S SORT OF WHY I ASKED THE QUESTION. I WONDERED  
8 HOW MUCH MORE WE CAN OR SHOULD DO AT THIS POINT, REALLY.

9 MR. PETTINE: MAYBE THIS WOULD BE A CONVENIENT TIME TO  
10 RECESS AND THOSE DECISIONS CAN BE MADE, AND WE'LL APPRISE THE  
11 COURT AT THE EARLIEST POSSIBILITY. AND IF THE DECISION IS  
12 MADE NOT TO PROCEED ON A WRIT, PERHAPS THAT WOULD BE A SIGNAL  
13 TO THE DEFENSE AS TO THE REMAINING TWO DEFENDANTS.

14 THE COURT: WELL, I'M OPEN TO YOUR SUGGESTION, BUT I  
15 -- I DO TAKE THE POINT THAT MAYBE NOT TOO MUCH IN A  
16 DEFINITIVE -- DEFINITIVE WAY CAN OR SHOULD BE DONE AT THIS  
17 POINT ON THE MOTION TO SEVER UNTIL WE -- SOME OF THESE OTHER  
18 DECISIONS ARE MADE. I -- DO YOU HAVE ANY -- EITHER  
19 MISS CROWLE OR MR. GRIMES, DO YOU HAVE ANY CONTRARY VIEW?

20 MR. GRIMES: I SUBMIT IT, YOUR HONOR. WE'RE PREPARED  
21 TO -- TO ARGUE THE SEVERANCE MOTIONS WHENEVER THE COURT --  
22 THE COURT CHOOSES. I WOULD -- SINCE I KNOW THE COURT IS  
23 GOING TO BE BEGINNING OR RESUMING THE WALDON CASE TOMORROW,  
24 AND IT'S SOMETIMES IS HARD TO GET EVERYBODY TOGETHER, AND  
25 BECAUSE I FEEL -- I MEAN I TEND TO FEEL IF THE PEOPLE REVIEW  
26 THIS THEY WILL DECIDE THAT A WRIT WOULD NOT PREVAIL, IF THEY  
27 TAKE THE WRIT I THINK THE WRIT WILL BE -- THEY'RE GOING TO  
28 LOSE THE WRIT, SO I FEEL IF THE COURT WERE DECIDE TO PROCEED

1 WITH THE SEVERANCE MOTION THIS AFTERNOON IT MIGHT END UP  
2 BEING TIME PRODUCTIVELY SPENT.

3 MS. CROWLE: FRANKLY, YOUR HONOR, I THINK WE SHOULDN'T  
4 PROCEED WITH THE SEVERANCE MOTION.

5 THE COURT: SHOULD NOT?

6 MS. CROWLE: SHOULD NOT. BECAUSE OF A LOGISTICAL  
7 CHANGE. WHILE I'M CERTAINLY READY TO ARGUE THEM I WOULD LIKE  
8 SOME ADDITIONAL TIME TO CONSIDER HOW MR. JURADO'S PLEA MIGHT  
9 IMPACT.

10 THE COURT: WHETHER YOU WANT TO PURSUE THE SEVERANCE  
11 MOTION?

12 MS. CROWLE: I THINK WE STILL WILL BE CONSIDERING  
13 STATEMENTS MADE BY MISS HUMISTON, BUT IF THE SPECIAL  
14 CIRCUMSTANCES AS THEY HAVE BEEN BASICALLY ELIMINATED FROM  
15 THIS CASE CONTINUE TO BE ELIMINATED FROM THIS CASE, THAT  
16 CHANGES THE POSTURING THAT WE MAY WANT TO TALK FURTHER  
17 AMONGST COUNSEL.

18 THE COURT: WELL, MR. PETTINE, I GUESS YOUR -- I TAKE  
19 YOUR VIEW YOU'RE NOT -- YOU'RE SUGGESTING MAYBE WE SHOULD NOT  
20 PROCEED, MISS CROWLE DOESN'T WANT TO PROCEED, MR. GRIMES IS  
21 NOT STRONGLY -- I GUESS SUGGESTING WE DO PROCEED BUT NOT  
22 VIGOROUSLY OR STRONGLY. IS THAT A FAIR READING?

23 MR. PETTINE: THAT'S FAIR.

24 THE COURT: OKAY.

25 MR. FISHER: YOUR HONOR, WE COULD ALWAYS DO THE ARANDA  
26 MOTION AS TO DEFENDANT SHIGEMURA.

27 THE COURT: YEAH, I'M READY TO -- I CAN CERTAINLY RULE  
28 ON THAT.

1 MR. PETTINE: WE'RE PREPARED ON THAT.

2 THE COURT: WHY DON'T WE DO THAT, TAKE THE PLEA, HEAR  
3 THE ARANDA MOTION AS IT RELATES TO MISS SHIGEMURA. I THINK  
4 THEY'LL BE -- WE CAN SCHEDULE SOME APPROPRIATE TIME TO HEAR  
5 THE SEVERANCE MOTION IF THAT'S GOING TO BE APPROPRIATE AT  
6 SOME REASONABLE TIME SUFFICIENTLY IN ADVANCE OF THE PRESENT  
7 TRIAL DATE TO ACCOMMODATE EVERYBODY'S NEEDS. BUT I -- I  
8 THINK I'M -- I'M SORT OF INCLINED NOT TO HEAR THE ARANDA  
9 MOTION AT THIS TIME.

10 MR. GRIMES: YOUR HONOR, MIGHT MISS HUMISTON BE  
11 EXCUSED FOR THE MISS SHIGEMURA'S MOTIONS?

12 THE COURT: YEAH. LET'S SEE. WE DON'T WANT TO LOSE  
13 TRACK OF THE CASE HERE. I DON'T WANT TO -- I DON'T WANT TO  
14 PUT IT OUT TOO FAR IN THE FUTURE. WHAT -- I'M NOT SURE,  
15 FRANKLY, IS THERE A CERTAIN PERIOD OF TIME IN WHICH YOU HAVE  
16 TO SEEK YOUR WRIT? I KNOW YOU'LL HAVE -- FIRST OF ALL YOU'LL  
17 HAVE TO DISCUSS THE MATTER WITH WHOEVER AND DECIDE WHETHER  
18 YOU'RE GOING TO PURSUE THE WRIT, BUT IF YOU ARE IS THERE A  
19 CERTAIN TIME IN WHICH YOU HAVE A PURSUE THAT WRIT?

20 MR. FISHER: NOT AWARE THERE'S A TIME FOR THE PEOPLE,  
21 THERE ARE CERTAIN ONES FOR THE DEFENSE. OBVIOUSLY WITH DUE  
22 SPEED AND REQUEST FOR A STAY.

23 THE COURT: AS A PRACTICAL MATTER HOW SOON DO YOU  
24 THINK THAT DECISION MIGHT BE MADE WHETHER YOU ARE OR AREN'T  
25 GOING TO PURSUE THE WRIT?

26 MR. PETTINE: WITHIN A DAY, A DAY TO TWO DAYS.

27 THE COURT: WELL, WHAT WOULD YOU THINK MIGHT BE A  
28 REASONABLE TIME, THEN, IN WHICH TO HAVE THE MATTER -- LET'S



1 SEE. I GUESS RIGHT NOW WE HAVE A -- A READINESS DATE.

2 THE CLERK: THE 9TH OF DECEMBER.

3 THE COURT: YEAH, WE HAVE IT ON CALENDAR RIGHT NOW FOR  
4 9 O'CLOCK ON THE 9TH OF DECEMBER FOR A READINESS DATE. IS  
5 THAT -- WANT TO LEAVE IT AT THAT FOR NOW, AND ALSO IF THE  
6 ARANDA MOTION IS GOING TO BE ARGUED MAYBE ARGUE THAT AT THAT  
7 TIME ALSO?

8 MR. GRIMES: THAT WOULD BE FINE.

9 MS. CROWLE: THAT'S FINE.

10 THE COURT: THAT SEEM REASONABLE?

11 MR. PETTINE: I'M SORRY, I DIDN'T HEAR YOU.

12 THE COURT: WE HAVE A READINESS DATE ALREADY SCHEDULED  
13 FOR THE 9TH OF DECEMBER. I WAS SUGGESTING MAYBE WE COULD  
14 LEAVE THAT AS SCHEDULED BUT ALSO PUT THE ARANDA MOTION OVER  
15 TO THAT DAY. THAT'S -- THE TRIAL DATE IS STILL THE 6TH OF  
16 JANUARY, SO THAT'S ALMOST A MONTH IN ADVANCE OF THE DAY OF  
17 TRIAL. DOES THAT SEEM REASONABLE?

18 MR. PETTINE: YES.

19 THE COURT: OBVIOUSLY IF THERE'S SOME REASON TO YOU  
20 CAN CERTAINLY COME IN AND PUT SOMETHING ON CALENDAR BEFORE  
21 THAT, BUT DOES THAT SEEM REASONABLE?

22 MR. PETTINE: THAT'S FAIR.

23 THE COURT: ALL RIGHT. WHY DON'T WE EXCUSE, THEN,  
24 MISS HUMISTON AND MR. GRIMES, THEN, UNTIL 9 O'CLOCK ON THE  
25 9TH OF DECEMBER FOR READINESS AND THE HEARING ON THE ARANDA  
26 MOTION TO SEVER.

27 MR. GRIMES: THANK YOU, YOUR HONOR.

28 THE COURT: ALL RIGHT.



1 THE CLERK: HEARING ON THE MOTION TO SEVER?

2 THE COURT: MOTION TO SEVER, YES.

3 (WHEREUPON MR. GRIMES AND DEFENDANT HUMISTON  
4 LEAVE THE COURTROOM.)

5 THE COURT: MISS CROWLE, IF YOU COULD BETTER SPEND THE  
6 NEXT FEW MINUTES, YOU KNOW, TALKING TO YOUR CLIENT ELSEWHERE  
7 OR DOING SOMETHING ELSE, YOU'RE CERTAINLY NOT REQUIRED TO SIT  
8 HERE THROUGH THE -- MR. JURADO'S ENTRY OF A PLEA.

9 MS. CROWLE: THANK YOU, YOUR HONOR, BUT I THINK I'LL  
10 REMAIN.

11 MR. PETTINE: YOUR HONOR, DOES THE COURT HAVE THE  
12 CHANGE OF PLEA FORM?

13 THE COURT: YES.

14 MR. PETTINE: WE HAVEN'T SEEN IT.

15 MS. WARREN: YOU DON'T WANT TO SIGN IT.

16 MR. PETTINE: I REALIZE THAT BUT WE STILL WANT TO SEE  
17 IT.

18 THE COURT: OKAY.

19 MR. PETTINE: THANK YOU. WE'RE JUST INTERESTED, YOU  
20 KNOW.

21 THE CLERK: IT'S TO THE FACE?

22 THE COURT: INTERESTED PARTY.

23 MS. CROWLE: FRIEND OF THE COURT.

24 THE COURT: RIGHT.

25 MR. FISHER: YOUR HONOR, IF I COULD RAISE ONE ISSUE  
26 ABOUT THE PLEA FORM?

27 THE COURT: YES.

28 MR. FISHER: AND THAT IS WITH THE DESCRIPTION OF THE

1 CONSEQUENCES OF THE PLEA, THE PENAL CONSEQUENCES. I DON'T  
2 KNOW IF COUNSEL HAS LOOKED INTO THIS, AND I ONLY HAVE A  
3 PASSING KNOWLEDGE OF THE SUBJECT, BUT MY UNDERSTANDING IS  
4 THAT IT MAY BE AN OPEN QUESTION IN CALIFORNIA WHETHER OR NOT  
5 YOU CAN BE PUNISHED FOR BOTH COUNT 1 AND COUNT 2. AND THAT  
6 IS, THAT PENAL CODE SECTION 654 DOES NOT APPLY TO A  
7 CONVICTION UNDER THESE CIRCUMSTANCES. I KNOW THE FEDERAL  
8 RULE IS CLEAR THAT YOU CAN BE PUNISHED FOR BOTH. I HAVE A  
9 CASE WITH ME, I THINK IT'S CALLED PINKERTON. I KNOW I FOUND  
10 SOME OLD CALIFORNIA CASES THAT SEEM TO INDICATE THAT 654 DID  
11 NOT APPLY. I'M NOT SURE IF THE LAW HAS CHANGED SINCE THEN.  
12 I HAVE SOME QUESTION ABOUT THAT PART OF THE PLEA FORM,  
13 WHETHER IT SHOULD READ 50 YEARS OR 57 YEARS TO LIFE, BECAUSE  
14 THERE'S ALSO A KNIFE OR A DANGEROUS WEAPON USE ALLEGATION, I  
15 THINK A ONE-YEAR ALLEGATION ON COUNT 2. SO THOSE ARE THE  
16 QUESTIONS I HAVE ABOUT THAT.

17 THE COURT: MR. WARREN.

18 MR. WARREN: WELL, YOUR HONOR, AS TO THE WEAPON I'D  
19 SUBMIT THAT. THAT'S PROBABLY APPROPRIATE THAT A YEAR BE  
20 ADDED ON IF THAT'S ALLEGED. IF THE COURT WISHES TO ADVISE  
21 MR. JURADO THAT THERE'S A POSSIBILITY IT WOULD BE  
22 CONSECUTIVE, THAT'S FINE. IT'S MY UNDERSTANDING OF THE LAW  
23 THAT CONSPIRACY MERGED INTO THE SUBSTANTIVE OFFENSE FOR  
24 PURPOSES OF SENTENCING.

25 THE COURT: I'M FRANK TO ADMIT THAT'S AN ISSUE I  
26 HAVEN'T CONSIDERED IN A LONG TIME, SO I --

27 MR. PETTINE: I THINK COUNSEL NEEDS TO LOOK AT THAT  
28 BEFORE MR. JURADO PLEADS GUILTY.

1 MS. WARREN: I DON'T THINK I DO, COUNSEL. I'VE  
2 INDICATED TO THE COURT THAT I'M WILLING TO HAVE THE COURT  
3 ADVISE MR. JURADO THAT THOSE ARE POSSIBLE CONSEQUENCES.

4 MR. PETTINE: WELL, THE APPELLATE COURTS LOOK VERY  
5 KEENLY WHAT A MAXIMUM PUNISHMENT IS AND EXPOSURE WHEN THEY  
6 REVIEW THE SUFFICIENCY OF A PLEA, NOTWITHSTANDING COUNSEL'S  
7 COMMENTS.

8 THE COURT: OKAY. OKAY. IF HE IS ADVISED THAT THE --  
9 YOU SAID 57 YEARS? HOW DID WE --

10 MR. FISHER: I'M SORRY, I MEANT 51 YEARS.

11 THE COURT: RIGHT. OKAY. IF HE IS ADVISED THAT THE  
12 MAXIMUM POSSIBLE SENTENCE IS 51 YEARS TO LIFE, THEN HAVEN'T  
13 WE COVERED THAT?

14 MR. PETTINE: I THINK THE PROBLEM IS IRRELEVANT.

15 THE COURT: THEN HAVEN'T WE COVERED THAT?

16 MR. PETTINE: YES.

17 THE COURT: YOU'VE EXPLAINED THAT TO MR. JURADO AND  
18 HE'S WILLING TO GO FORWARD ON THAT -- ON THAT BASIS?

19 MR. WARREN: YES, YOUR HONOR.

20 THE COURT: OKAY. I THINK WE'VE PROBABLY COVERED THAT  
21 POINT, THEN.

22 ALL RIGHT, MR. JURADO, IF YOU WOULD STAND,  
23 PLEASE, AND RAISE YOUR RIGHT HAND SO YOU CAN BE SWORN.

24 ROBERT JURADO, JR.,

25 THE DEFENDANT HEREIN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

26 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD  
27 AND SPELL YOUR LAST NAME.

28 THE DEFENDANT: ROBERT JURADO, JR., J-U-R-A-D-O.

1 THE CLERK: THANK YOU. YOU MAY BE SEATED.

2 EXAMINATION

3 BY THE COURT:

4 Q. MR. JURADO, I'M GOING TO SPEND MORE THAN JUST A  
5 COUPLE OF MINUTES WITH YOU NOW HERE TALKING ABOUT SOME VERY  
6 IMPORTANT MATTERS, VERY IMPORTANT MATTERS.

7 I'M NOT YOUR ATTORNEY, THE ATTORNEY IS SITTING  
8 RIGHT NEXT TO YOU. HE'S A VERY, VERY FINE ATTORNEY, VERY  
9 COMPETENT, VERY EXPERIENCED. I'M NOT PRESUMING FOR A MOMENT  
10 TO SECOND-GUESS HIM OR -- OR -- OR SUGGEST THAT YOU LISTEN TO  
11 ANYBODY FOR YOUR LEGAL ADVICE OTHER THAN HIM. HE'S YOUR  
12 LEGAL ADVISOR, I'M NOT PRESUMING IN ANY WAY TO GIVE YOU LEGAL  
13 ADVICE. BUT I HAVE TO BE SATISFIED THAT YOU HAVE CAREFULLY  
14 CONSIDERED THE ADVICE YOU'VE BEEN GIVEN, YOU'VE CAREFULLY  
15 CONSIDERED WITHIN YOURSELF THE DECISIONS THAT YOU APPARENTLY  
16 HAVE MADE AS EVIDENCED BY THIS FORM, AND THAT YOU HAVE COME  
17 TO THE DECISION THAT THIS IS WHAT YOU WANT TO DO. THAT'S A  
18 CONSCIOUS, CONSIDERED, THOUGHTFUL DECISION AND JUDGMENT ON  
19 YOUR PART.

20 I'M NOT SAYING THAT IT WOULD NEVER BE AN  
21 OPPORTUNITY TO COME BEFORE THE COURT AND ASK TO UNDUE SOME OF  
22 THIS OR TO WITHDRAW YOUR PLEA, BUT THE COURT DOES NOT LOOK  
23 WITH FAVOR UPON SUCH MOTIONS. WE CONSIDER THAT IF YOU'RE  
24 GOING TO PLEAD GUILTY HERE AS INDICATED THAT'S BECAUSE YOU'VE  
25 GIVEN IT A LOT OF THOUGHT AND YOU'VE DECIDED THAT'S WHAT YOU  
26 WANT TO DO. AND BASICALLY WE'RE GOING TO EXPECT YOU TO LIVE  
27 WITH THE CONSEQUENCES OF THAT DECISION.

28 NOW, ASIDE FROM THE LEGAL ISSUE THAT REMAINS



1 UNRESOLVED, IN THE SENSE THAT THE PEOPLE MAY SEEK TO GET A  
2 REVIEW OF MY RULING BY THE COURT OF APPEAL, IF THE COURT OF  
3 APPEAL REVERSES ME THEN WE'LL BE BACK IN A LITTLE DIFFERENT  
4 POSTURE. ASIDE FROM THAT POSSIBILITY I WANT TO BE SURE THAT  
5 YOU'VE GIVEN THIS A LOT OF THOUGHT AND THIS IS WHAT YOU WANT  
6 TO DO AND YOU UNDERSTAND WHAT THE CONSEQUENCES ARE TO YOU.  
7 SO THAT'S WHY I'M GOING TO TAKE SOME TIME NOW. I SAY, AGAIN  
8 NOT TO SUGGEST FOR A MINUTE THAT YOU HAVEN'T GOTTEN  
9 ABSOLUTELY PROPER, COMPETENT ADVICE FROM YOUR ATTORNEY, AND  
10 I'M NOT PRESUMING TO GIVE YOU ANY LEGAL ADVICE, BUT I DON'T  
11 WANT LATER THERE TO BE ANY MISUNDERSTANDING OR  
12 MISCOMMUNICATION HERE.

13 I DO HAVE A CHANGE OF PLEA FORM IN HAND WHICH  
14 INDICATES THAT YOU HAVE DECIDED NOW AND ARE ASKING THE COURT  
15 TO ALLOW YOU TO ENTER PLEAS OF GUILTY TO BOTH OF THE CHARGES  
16 AGAINST YOU IN THIS INFORMATION. AND ALSO, ALTHOUGH IT  
17 DOESN'T SPECIFICALLY MENTION IT, I TAKE IT THERE'S GOING TO  
18 BE AN ADMISSION OF THE 12022(B) ALLEGATION IN CONNECTION WITH  
19 COUNT 2?

20 MR. WARREN: YES, YOUR HONOR.

21 THE COURT: ALL RIGHT. SO BASICALLY YOU'RE PLEADING  
22 GUILTY TO OR ADMITTING EVERYTHING THAT PRESENTLY IS PENDING  
23 AGAINST YOU, BECAUSE I'VE STRICKEN THE SPECIAL CIRCUMSTANCES.  
24 BUT, BASICALLY, YOU'RE ADMITTING AND PLEADING GUILTY TO  
25 EVERYTHING ELSE THAT'S BEFORE YOU HERE. NOTHING ELSE IS  
26 BEING DISMISSED. AND THE LAW OF COURSE PRESCRIBES THE TERM  
27 FOR THESE SENTENCES SO THERE'S REALLY NO SENTENCE BARGAINING  
28 HERE.

1           YOU'RE BASICALLY ADMITTING EVERYTHING, AND THE  
2 COURT'S NOT GOING TO HAVE -- WITH THE EXCEPTION OF POSSIBLY  
3 WHETHER THESE SENTENCES CAN RUN CONSECUTIVELY OR NOT, THE  
4 COURT'S NOT GOING TO HAVE ANY REAL DISCRETION TO THE  
5 SENTENCE. THE LAW PRESCRIBES THE SENTENCE, 25 YEARS TO LIFE.  
6 IT'S NOT AS IF I CAN SAY IT OUGHT TO BE ONLY 15 YEARS OR I  
7 THINK IT OUGHT TO BE 30 YEARS OR 45 YEARS, IT'S GOING TO BE  
8 25 YEARS TO LIFE. SO I WANT TO BE SURE YOU UNDERSTAND THAT.  
9 AGAIN NOT TO TALK YOU IN OR OUT OF ANYTHING BUT JUST TO BE  
10 SURE YOU MADE THE SORT OF DECISIONS, THOUGHTFUL DECISIONS  
11 THAT THE LAW DEMANDS OF YOU.

12           DID YOU GO OVER CAREFULLY WITH MR. WARREN  
13 EVERYTHING ON THIS WRITTEN CHANGE OF PLEA FORM ITSELF?

14           A.     I DID.

15           Q.     ALL RIGHT. AND IF YOU HAD ANY QUESTIONS DID YOU  
16 MAKE SURE HE EXPLAINED THEM TO YOU AND CLARIFIED YOUR  
17 QUESTIONS BEFORE YOU PUT ANY INITIALS HERE BEFORE YOU SIGNED  
18 IT?

19           A.     YES, SIR.

20           Q.     ALL RIGHT. I'M GOING TO ASSUME THAT EVERYWHERE  
21 I SEE THESE INITIALS THAT MEANS YOU READ AND UNDERSTOOD WHAT  
22 THE INITIALS RELATE TO.

23           A.     YES.

24           Q.     I DON'T WANT TO ASSUME THAT IF THAT'S NOT TRUE.  
25 THIS IS PART OF A COURT RECORD. SOMEBODY LOOKING AT IT CAN  
26 SAY, WELL, HE INDICATED HE KNEW HIS RIGHTS AND HE MADE AN  
27 UNDERSTANDING DECISION. I WANT TO BE SURE THAT'S THE CASE.

28           HAVE YOU HAD ENOUGH TIME BOTH TODAY AND BEFORE

1 TODAY TO TALK WITH MR. WARREN ABOUT THIS CASE, WHAT THE  
2 CHARGES ARE, WHAT THE EVIDENCE IS, WHAT THE CONSEQUENCES ARE,  
3 WHAT YOUR RIGHTS ARE?

4 A. YES.

5 Q. OKAY. I -- I KNOW HE'S VERY CONSCIENTIOUS AND  
6 VERY DILIGENT AND I'M SURE HE'S BEEN DOWN TO SEE YOU IN THE  
7 JAIL AND I'M SURE HE'S GONE OVER THIS WITH YOU. ARE YOU  
8 SATISFIED THAT'S THE CASE, ARE YOU SATISFIED YOU'VE HAD  
9 ENOUGH TIME TO TALK TO HIM, MAKE SURE YOU UNDERSTAND ALL THE  
10 ASPECTS OF THIS CASE, ALL THE OPTIONS YOU HAVE, ALL THE  
11 ALTERNATIVES, ALL THE CONSEQUENCES THAT YOU'RE FACING?

12 A. YES.

13 Q. ALL RIGHT. HE CAN ADVISE YOU BUT THESE ARE YOUR  
14 RIGHTS. YOU'RE THE ONE THAT HAS THESE RIGHTS, YOU'RE THE ONE  
15 THAT HAS TO GIVE THEM UP IF THAT'S YOUR DECISION; YOU  
16 UNDERSTAND THAT?

17 A. YES.

18 Q. OKAY. ALL RIGHT. IS IT YOUR DECISION NOW TO  
19 PLEAD GUILTY TO THE CHARGE IN COUNT 1, THAT ALONG WITH DENISE  
20 SHIGEMURA AND ANNA HUMISTON YOU WILLFULLY AND UNLAWFULLY  
21 CONSPIRED TO COMMIT THE CRIME OF MURDER, IN VIOLATION OF  
22 182(A)(1) OF THE PENAL CODE AND 187(A) OF THE PENAL CODE?

23 A. YES.

24 Q. I'M SORRY?

25 A. YES.

26 Q. ALL RIGHT. IS IT YOUR DECISION, THEN, TO ALSO  
27 PLEAD GUILTY TO THE ALLEGATION THAT ON OR ABOUT THAT SAME  
28 DATE, MAY 15TH, 1991, THAT YOU WILLFULLY AND UNLAWFULLY

1 MURDERED TERESA HOLLOWAY?

2 A. YES.

3 Q. AND ARE YOU PREPARED TO FURTHER ADMIT THAT IN  
4 THE COMMISSION OF THAT MURDER YOU PERSONALLY USED A DEADLY  
5 AND A DANGEROUS WEAPON, TO WIT, A CORD AND A TIRE JACK,  
6 WITHIN THE MEANING OF 12022(B)?

7 A. YES.

8 Q. YOU UNDERSTAND THAT IF YOU MAKE THAT ADMISSION  
9 THAT ADDS A YEAR CONSECUTIVELY AND ADDITIONAL ONTO THE TERM  
10 FOR THE MURDER ITSELF?

11 A. YES.

12 Q. UNDERSTAND THAT?

13 A. YES.

14 Q. SO THAT MAKES ITS 26 YEARS TO LIFE INSTEAD OF 25  
15 YEARS TO LIFE.

16 ARE YOU SATISFIED WITH THE ADVICE AND COUNSEL  
17 WHICH MR. WARREN HAS PROVIDED TO YOU?

18 A. YES.

19 Q. AND YOU BELIEVE THAT HE HAS AND CONTINUES  
20 ADVISING YOU IN THAT REGARD TO ACT IN YOUR BEST INTEREST?

21 A. YES.

22 Q. DO YOU UNDERSTAND THAT YOU HAVE A RIGHT TO BE  
23 TRIED BY A JURY OF 12 PEOPLE, WHO WOULD SIT RIGHT OVER THERE  
24 IN THAT JURY BOX, THEY WOULD BE PICKED OUT OF A GROUP OF SOME  
25 40 OR 50 PEOPLE? YOU'D HAVE A RIGHT TO ASK THAT CERTAIN  
26 PEOPLE BE EXCUSED, THE PEOPLE HAVE A RIGHT TO EXCUSE CERTAIN  
27 PEOPLE. BUT WE'D WIND UP WITH A GROUP OF 12 PEOPLE DRAWN  
28 FROM A BROAD CROSS SECTION OF THE COMMUNITY.



1           THEY WOULD BE THE ONES THAT WOULD BE RESPONSIBLE  
2 FOR DECIDING THE FACTS. THEY WOULD BE THE ONES DECIDING THE  
3 CASE. RESPONSIBLE FOR DECIDING THE CASE BY APPLYING THE LAW  
4 TO THOSE FACTS. NOT THE COURT, NOT COUNSEL, THOSE 12 FOLKS  
5 FROM THE COMMUNITY IN THE JURY.

6           YOU UNDERSTAND YOU HAVE A RIGHT TO A JURY TRIAL  
7 AND HAVE THEM DECIDE WHETHER YOU'RE GUILTY OF MURDER, WHETHER  
8 YOU'RE GUILTY OF CONSPIRACY?

9           A.     YES.

10          Q.     THAT WOULD OCCUR HERE IN THIS COURTROOM IN A  
11 TRIAL OPEN TO THE PUBLIC, AND IN A SPEEDY TRIAL HELD WITHIN  
12 THE TIME LIMITS REQUIRED BY THE LAW. AND PRESUMABLY AT THIS  
13 TIME A TRIAL THAT WOULD START IN EARLY JANUARY AND PROCEED  
14 AHEAD UNTIL IT WAS CONCLUDED. UNDERSTAND YOU HAVE THOSE  
15 RIGHTS?

16          A.     YES.

17          Q.     DO YOU NOW CONSCIOUSLY AND KNOWINGLY GIVE UP  
18 YOUR RIGHT TO A JURY TRIAL AND SPEEDY AND PUBLIC TRIAL?

19          A.     YES.

20          Q.     AT THAT TRIAL YOU WOULD HAVE A RIGHT TO CONFRONT  
21 AND CROSS-EXAMINE ALL THE WITNESSES AGAINST YOU. WITNESSES  
22 WOULD HAVE TO COME HERE TO COURT, BE SWORN, HAVE A SEAT ON  
23 THE WITNESS STAND, TESTIFY IN YOUR PRESENCE AND IN YOUR  
24 HEARING, AND BE CROSS-EXAMINED ON YOUR BEHALF BY MR. WARREN.  
25 ALL THAT WOULD OCCUR IN THE PRESENCE OF THE JURY. THE JURY  
26 WOULD HEAR ALL THAT. THE JURY WOULD BE TOLD YOU FOLKS DECIDE  
27 WHO'S TELLING THE TRUTH, YOU DECIDE WHO IS A CREDIBLE  
28 WITNESS, YOU DECIDE WHO PERSUADES YOU AND WHO DOES NOT

1 PERSUADE YOU. YOU UNDERSTAND YOU HAVE A RIGHT TO CONFRONT  
2 AND CROSS-EXAMINE ANY WITNESSES AGAINST YOU?

3 A. YES.

4 Q. YOU HAVE AN ABSOLUTE RIGHT TO REMAIN SILENT.  
5 YOU CANNOT BE COMPELLED TO MAKE ANY STATEMENT ABOUT THESE  
6 CHARGES OR ANYTHING RELATED TO THESE CHARGES AGAINST YOU. I  
7 CAN'T COMPEL YOU TO DO THAT, THE DISTRICT ATTORNEY CAN'T  
8 COMPEL YOU TO DO THAT. NOBODY CAN. YOU HAVE AN ABSOLUTE  
9 RIGHT TO REMAIN SILENT.

10 THE LAW PRESUMES THAT YOU ARE INNOCENT. YOU  
11 DON'T HAVE TO PROVE A THING. THEY HAVE TO PROVE THAT YOU'RE  
12 GUILTY. YOU DON'T HAVE TO PRESUME -- PROVE YOU'RE INNOCENT,  
13 WE PRESUME YOU'RE INNOCENT. YOU CANNOT EVEN BE CALLED TO  
14 TESTIFY. YOU HAVE A RIGHT NOT TO EVEN BE CALLED AS A  
15 WITNESS. OTHER PEOPLE WOULD BE CALLED AS A WITNESS. THEY  
16 CAN'T REFUSE TO TESTIFY. THEY MAY REFUSE TO ANSWER A  
17 PARTICULAR QUESTION BUT THEY CAN'T REFUSE TO TESTIFY. YOU  
18 CAN'T BE CALLED TO TESTIFY, YOU CAN'T BE REQUIRED TO MAKE ANY  
19 STATEMENT UNDER ANY CIRCUMSTANCES ABOUT THESE CHARGES AGAINST  
20 YOU. DO YOU UNDERSTAND THAT?

21 A. YES.

22 Q. IF YOU PLEAD GUILTY, OF COURSE YOU'RE GIVING UP  
23 YOUR RIGHT TO REMAIN SILENT BECAUSE YOU'RE CONVICTING  
24 YOURSELF BY OUR OWN PLEA AND OWN ADMISSIONS. YOU DON'T HAVE  
25 TO DO THAT. IF YOU DO THAT THAT HAS TO BE YOUR CHOICE AND A  
26 VOLUNTARY AND KNOWING CHOICE ON YOUR PART. YOU UNDERSTAND  
27 THAT?

28 A. YES.

1 Q. OKAY. WITH THAT UNDERSTANDING OF THAT RIGHT AND  
2 THAT YOU AND YOU ALONE CAN GIVE UP THAT RIGHT, DO YOU NOW  
3 GIVE UP YOUR RIGHT TO REMAIN SILENT?

4 A. YES.

5 Q. OF COURSE YOU WOULD HAVE A RIGHT TO TESTIFY ON  
6 YOUR OWN BEHALF IF WE DID GO TO TRIAL, BUT THAT WOULD BE  
7 ENTIRELY YOUR CHOICE. IF YOU WANTED TO TESTIFY YOU COULD BUT  
8 NOBODY COULD FORCE YOU TO. IF WE DON'T HAVE A TRIAL, IF YOU  
9 PLEAD GUILTY, THEN OF COURSE YOU'RE GIVING UP YOUR RIGHT TO  
10 TESTIFY IN OUR OWN BEHALF BEFORE THE JURY AS A TRIER OF FACT.  
11 YOU UNDERSTAND THAT?

12 A. YES.

13 Q. ALL RIGHT. YOU HAVE A RIGHT TO PRESENT, IN  
14 ADDITION TO YOUR OWN TESTIMONY, PRESENT ANY OTHER EVIDENCE  
15 THAT YOU WOULD WANT TO PRESENT. CALL WITNESSES, HAVE THEM  
16 SUBPOENAED, HAVE THEM SERVED WITH A COURT ORDER TO COME HERE  
17 AND TESTIFY AT NO EXPENSE TO YOURSELF. AND IF THEY DIDN'T  
18 OBEY THAT COURT ORDER, OF COURSE I'D SEND THE BAILIFFS OUT TO  
19 GET THEM AND BRING THEM HERE INTO COURT TO HAVE THEM TESTIFY.  
20 SO YOU HAVE THE RIGHT TO THE COURT PROCESS TO REQUIRE THOSE  
21 PEOPLE TO COME AND TESTIFY IN YOUR BEHALF AT NO EXPENSE TO  
22 YOURSELF.

23 YOU HAVE A RIGHT TO PRESENT ANY OTHER EVIDENCE  
24 YOU MIGHT WANT TO PRESENT: PHOTOGRAPHS, DIAGRAMS, ITEMS OF  
25 PERSONAL PROPERTY, TEST RESULTS, WHATEVER THAT EVIDENCE MIGHT  
26 BE; ANY RELEVANT EVIDENCE THAT IN ANY WAY RELATED TO THESE  
27 CHARGES, YOU HAVE A RIGHT TO PRESENT THAT. YOU DON'T HAVE TO  
28 PRESENT THAT BECAUSE YOU DON'T HAVE TO PROVE ANYTHING BUT YOU

1 CERTAINLY HAVE A RIGHT TO PRESENT THAT. AND THE JURY HAS TO  
2 CONSIDER AS PART OF THE EVIDENCE WHATEVER EVIDENCE YOU  
3 PRESENT.

4 YOU UNDERSTAND YOU HAVE THAT RIGHT?

5 A. YES.

6 Q. IF YOU PLEAD GUILTY THERE'S NOT GOING TO BE A  
7 TRIAL, THE JURY IS NOT GOING TO DECIDE THE ISSUE, SO YOU'RE  
8 GIVING UP YOUR RIGHT TO PRESENT EVIDENCE AND PRESENT -- HAVE  
9 WITNESSES SUBPOENAED ON YOUR BEHALF.

10 DO YOU NOW GIVE UP YOUR RIGHT TO PRESENT  
11 EVIDENCE AND TO HAVE WITNESSES SUBPOENAED TO TESTIFY ON YOUR  
12 BEHALF?

13 A. YES.

14 Q. DO YOU UNDERSTAND -- AT THIS POINT MAYBE I  
15 BETTER GIVE THE FORM BACK TO YOU SO YOU CAN -- WE CAN INITIAL  
16 AND CORRECT THAT. THE BASIC TERM FOR EACH OF THESE CRIMES,  
17 CONSPIRACY TO COMMIT MURDER OR THE MURDER ITSELF IS 25 YEARS  
18 TO LIFE. THE USE OF THE WEAPON ADDS ON ONE YEAR. SO THAT  
19 GIVES US 26 YEARS TO LIFE. BUT IT'S -- YOU SHOULD CONSIDER  
20 IT NOW AS AN OPEN ISSUE, NOT YET DECIDED, AND THEREFORE THE  
21 POSSIBILITY THAT IF THE SENTENCES WERE RUN CONSECUTIVELY THAT  
22 YOU COULD BE SENTENCED TO 51 YEARS TO LIFE. I'M NOT SAYING  
23 THAT'S GOING TO HAPPEN BUT YOU NEED TO UNDERSTAND THAT THAT'S  
24 THE MAXIMUM POSSIBLE SENTENCE UNDER THE LAW THAT MIGHT  
25 HAPPEN. I CAN'T ASSURE YOU THAT IT WON'T HAPPEN. SO IF YOU  
26 ENTER YOUR PLEA NOW YOU BETTER DO SO WITH THE UNDERSTANDING  
27 THAT THE SENTENCE COULD BE 51 YEARS TO LIFE. NOW, IF THAT  
28 CHANGES YOUR VIEW AT ALL OR CHANGES YOUR FEELINGS AT ALL NOW



1 IS THE TIME TO LET US KNOW ABOUT THAT.

2 MR. WARREN: YOUR HONOR, HE HAS PLACED HIS INITIALS  
3 NEXT TO THE PORTION OF THE FORM WHERE IT INDICATES THE  
4 MAXIMUM POSSIBLE PENALTY IS 51 YEARS TO LIFE.

5 THE COURT: ALL RIGHT. THANK YOU.

6 Q. I'M FRANK TO ADMIT, AS I DID JUST A MOMENT AGO,  
7 I'M NOT SURE, FRANKLY, OF THE PRESENT STATE OF THE LAW IN  
8 CALIFORNIA. I THINK THE PEOPLE ARE NOT SURE ABOUT THAT  
9 EITHER. MR. WARREN HAS GIVEN YOU THE BENEFIT OF HIS BEST  
10 ADVICE AND COUNSEL IN THAT REGARD, AND AGAIN I DON'T PRESUME  
11 FOR A MOMENT TO SAY THAT YOU SHOULD DO ANYTHING OTHER THAN  
12 PAY CLOSE ATTENTION TO WHAT HE'S TOLD YOU IN THAT REGARD.  
13 I'M NOT SUGGESTING THAT HE'S TOLD YOU ANYTHING THAT'S  
14 IMPROPER OR INCORRECT. BUT IF THAT IS THE LAW THAT YOU COULD  
15 BE SENTENCED CONSECUTIVELY, AND IF THE COURT WERE PERSUADED  
16 THAT WAS THE APPROPRIATE THING TO DO, TO SENTENCE YOU  
17 CONSECUTIVELY, THAT WOULD BE THE WITHIN THE DISCRETION OF THE  
18 COURT, THEN YOU COULD BE SENTENCED FOR 51 YEARS TO LIFE.

19 IF YOU ENTER YOUR PLEA UNDERSTANDING THAT THE  
20 MAXIMUM COULD BE 51 YEARS TO LIFE THEN I THINK WE'VE -- I  
21 THINK THAT'S A KNOWING ENTRY OF THE PLEA ON YOUR PART. IF IT  
22 TURNS OUT IT'S 26 YEARS TO LIFE, WELL, ALL THE BETTER FOR YOU  
23 I GUESS IN THAT -- IF YOU WANT TO LOOK AT IT THAT WAY. I'M  
24 NOT PROMISING YOU WHAT IT'S GOING TO BE. IT'S NOT GOING TO  
25 BE ANY LESS. I THINK WE KNOW IT'S NOT GOING TO BE LESS THAN  
26 26 YEARS TO LIFE BUT IT MIGHT BE 51 YEARS TO LIFE. SO YOU  
27 UNDERSTAND THAT?

28 A. YES.

1 Q. OKAY. YOU'VE HAD ENOUGH TIME TO TALK WITH  
2 MR. WARREN ABOUT THAT ASPECT OF THE -- OF THE POSSIBLE  
3 SENTENCE?

4 A. YES.

5 Q. ALL RIGHT. WITH THAT UNDERSTANDING, THEN, AND  
6 THAT CLARIFICATION YOU STILL WANT TO GO AHEAD AND ENTER THE  
7 PLEAS AT THIS TIME; IS THAT CORRECT?

8 A. YES.

9 Q. ALL RIGHT. YOU WOULD BE SENTENCED TO THE  
10 DEPARTMENT OF CORRECTIONS OF COURSE FOR THAT INDETERMINATE  
11 TERM OF EITHER 26 YEARS TO LIFE OR 51 YEARS TO LIFE. THEY  
12 WOULD DETERMINE ANY PAROLE ELIGIBILITY. YOU COULD BE ON  
13 PAROLE FOR THE REST OF YOUR LIFE OF COURSE.

14 SEE, I GUESS HE HAS TO SERVE A MINIMUM OF --  
15 AGAIN THAT'S SOMETHING I HAVEN'T LOOKED UP RECENTLY BUT I --

16 MR. WARREN: I BELIEVE IT'S TWO-THIRDS.

17 MR. PETTINE: IT'S TWO-THIRDS ON A FIRST DEGREE PLEA,  
18 BUT THIS MAY BE A CONSECUTIVE SENTENCING SITUATION.

19 THE COURT: WELL, YOU'D HAVE TO SERVE AT LEAST I THINK  
20 TWO-THIRDS OF -- OF 26 YEARS AT LEAST BEFORE YOU'D BE  
21 ELIGIBLE FOR PAROLE. THAT MAKES YOU ELIGIBLE FOR PAROLE,  
22 THAT DOESN'T MEAN YOU'RE GOING TO BE PAROLED. THAT WOULD BE  
23 DETERMINED BY THE PAROLE AUTHORITIES WITHIN THE DEPARTMENT OF  
24 CORRECTIONS. AND I SAY, THE CONDITIONS OF YOUR PAROLE, THE  
25 TERM OF YOUR PAROLE, WHICH COULD BE FOR THE REST OF YOUR  
26 LIFE, THAT WOULD ALL BE DETERMINED BY THEM. IF YOU'RE PUT ON  
27 PAROLE AND YOU VIOLATE A CONDITION OF YOUR PAROLE THEN OF  
28 COURSE BACK INTO PRISON YOU GO. I SAY, THE TERM COULD BE FOR

1 THE REST OF YOUR LIFE. SO YOU COULD BE ON PAROLE AND/OR IN  
2 PRISON FOR A COMBINATION THEREOF FOR THE REST OF YOUR LIFE

3 Q. AND YOU UNDERSTAND THAT? AM I CORRECT YOU  
4 UNDERSTAND THAT?

5 A. YES.

6 Q. ALL RIGHT. I KNOW THAT'S NOT A HAPPY THING TO  
7 CONTEMPLATE BUT YOU HAVE TO FACE UP TO THE FACTS HERE.

8 MR. PETTINE: YOUR HONOR, THAT INFORMATION THAT YOU  
9 JUST CONVEYED TO MR. JURADO ABOUT THE LENGTH OF HIS PAROLE,  
10 I'M NOT SURE IF THAT'S IN THE CHANGE OF PLEA FORM, BECAUSE I  
11 KNOW THAT'S A STANDARD FORM THAT USUALLY REFERS TO 48 MONTHS  
12 OF PAROLE.

13 THE COURT: RIGHT. WELL, AGAIN MAYBE WE -- MAYBE WE  
14 BETTER CORRECT THAT RIGHT NOW. THAT'S RIGHT. OKAY. MAYBE  
15 WE BETTER -- YOU'RE RIGHT.

16 MR. WARREN: YOUR HONOR, I'VE INDICATED IN PARAGRAPH 8  
17 THAT IF HE'S RELEASED ON PAROLE HE COULD BE ON PAROLE FOR UP  
18 TO THE REST OF HIS LIFE, AND HE'S INITIALED THAT.

19 THE COURT: THANK YOU. THANK YOU.

20 Q. AGAIN I'M NOT TRYING TO SCARE YOU OR TALK YOU  
21 OUT OF ANYTHING BUT WE NEED TO BE SURE THAT YOU UNDERSTAND  
22 ALL THE RAMIFICATIONS HERE OF THIS.

23 SO AGAIN, SORT OF TO RECAP, YOU'RE NOT EVEN  
24 GOING TO BE ELIGIBLE FOR PAROLE UNTIL YOU SERVED ABOUT 18 OR  
25 20 YEARS PROBABLY. THEN THAT ONLY MAKES YOU ELIGIBLE. YOU  
26 MAY NEVER BE PAROLED. OR YOU MAY SERVE A LOT MORE THAN 18 OR  
27 20 YEARS BEFORE YOU'RE PAROLED. AND IF YOU'RE PAROLED THAT  
28 COULD BE FOR THE REST OF YOUR LIFE. DO YOU UNDERSTAND THAT?

1 A. YES.

2 Q. OKAY. AGAIN, WITH THAT UNDERSTANDING YOU WANT  
3 TO GO FORWARD NOW AND ENTER THESE PLEAS; AM I CORRECT?

4 A. YES.

5 Q. ALL RIGHT. SECTION 8(B) UNDER THE CONSEQUENCES  
6 AGAIN HAS A NUMBER OF SUB CHOICES, AND THE DIRECTIONS ARE TO  
7 CIRCLE THE APPLICABLE CONSEQUENCES.

8 MR. WARREN: YOUR HONOR, I'M SORRY, I DID NOT CIRCLE  
9 THOSE. I DID INDICATE TO MR. JURADO -- WE DISCUSSED THE FACT  
10 THAT THIS WOULD BE A PRIORABLE OFFENSE AND WOULD BE A SERIOUS  
11 FELONY PRIOR, AND I BELIEVE THOSE ARE THE ONLY CONSEQUENCES,  
12 COLLATERAL CONSEQUENCES OF THE PLEA.

13 THE COURT: OKAY. MAYBE WE OUGHT TO -- SINCE WE'VE --  
14 AGAIN SO THERE'S NO AMBIGUITIES THAT LATER COME BACK TO HAUNT  
15 US, CONSECUTIVE SENTENCES IS SUB "A." WE HAVE TALKED ABOUT  
16 THAT POSSIBILITY. SO MAYBE WE BETTER CIRCLE THAT ONE. I'M  
17 SURE HE UNDERSTANDS HE'S NOT ELIGIBLE FOR PROBATION, BUT  
18 AGAIN MAYBE WE OUGHT TO CIRCLE THAT ONE JUST TO BE SURE  
19 THERE'S NO -- NO -- YOU KNOW, NO QUESTION ABOUT THAT.

20 MR. FISHER: TECHNICALLY I THINK MAYBE HE IS.

21 MR. PETTINE: IT'S NOT A .5 ALLEGATION.

22 THE COURT: OKAY. I GUESS YOU MIGHT BE ELIGIBLE FOR  
23 PROBATION, BUT YOU KNOW -- YOU KNOW WE'RE NOT TALKING ABOUT  
24 PROBATION HERE. THERE'S NO WAY YOU'RE GOING TO GET  
25 PROBATION. I THINK YOU KNOW THAT. MAYBE WE OUGHT TO CIRCLE  
26 "A" CONSECUTIVE; "I," SERIOUS FELONY PRIOR, AND "J,"  
27 PRIORABLE. HAVE HIM INITIAL THAT TO BE SURE.

28 MR. WARREN: YOUR HONOR, I'VE CIRCLED A, I AND J, AND



1 HE HAS PLACED HIS INITIALS NEXT TO THE CIRCLES.

2 THE COURT: THANK YOU.

3 Q. ALL RIGHT. THE FORM INDICATES THAT IF YOU'RE  
4 NOT A UNITED STATES CITIZEN -- I DON'T KNOW WHETHER YOU ARE  
5 OR NOT AND I DON'T NEED TO KNOW AT THIS POINT, BUT IF YOU ARE  
6 NOT A UNITED STATES CITIZEN YOU HAVE ACKNOWLEDGED YOUR  
7 UNDERSTANDING THAT THIS PLEA AND THIS CONVICTION COULD RESULT  
8 IN YOUR DEPORTATION, EXCLUSION FROM THE COUNTRY OR DENIAL OF  
9 NATURALIZATION. SO IF THAT APPLIES TO YOU, I ASSUME YOU'VE  
10 TAKEN THAT INTO ACCOUNT IN DECIDING TO ENTER THE PLEA.

11 IF YOU'RE ON ANY KIND OF PROBATION OR PAROLE  
12 NOW, AGAIN I DON'T KNOW WHETHER YOU ARE OR NOT, BUT IF YOU  
13 ARE YOU'VE ALSO BY YOUR INITIALS ACKNOWLEDGED THAT YOU  
14 REALIZE THIS PLEA AND THIS CONVICTION COULD RESULT IN THE  
15 REVOCATION OF ANY PROBATION OR PAROLE YOU MIGHT BE ON. SO I  
16 ASSUME YOU'VE TAKEN THAT INTO ACCOUNT IF THAT APPLIES TO YOU.

17 ON THE BACK OF THE CHANGE OF PLEA FORM, THEN,  
18 ITEM 11 SAYS, "I NOW PLEAD GUILTY TO THE CHARGES DESCRIBED IN  
19 NO. 1 ABOVE," WHICH MENTIONS THE CONSPIRACY TO COMMIT MURDER  
20 IN COUNT 1 AND THE MURDER ITSELF IN COUNT 2. AND ADMIT THAT  
21 ON THE DATE CHARGED -- THEN YOU'RE ASKED TO STATE IN A FEW OF  
22 YOUR OWN WORDS WHAT YOU DID THAT MAKES YOU GUILTY OF EACH OF  
23 THESE CRIMES.

24 MS. WARREN: YOUR HONOR, WITH REGARD TO THAT SECTION  
25 WE WOULD SUBMIT THE PRELIMINARY HEARING TRANSCRIPT FOR THE  
26 COURT'S CONSIDERATION AS TO A FACTUAL BASIS WHICH THE COURT  
27 HAS ALREADY READ.

28 MR. PETTINE: WE WOULD ASK THE COURT TO GET A FACTUAL

1 BASIS FROM MR. JURADO. WE WOULD NOT BE INCLINED TO STIPULATE  
2 TO A FACTUAL BASIS.

3 THE COURT: EXCUSE ME JUST A MINUTE.

4 MR. WARREN: YOUR HONOR, I DON'T KNOW THAT -- THEY'RE  
5 NOT PART OF THIS CHANGE OF PLEA FORM. IT'S UP TO THE COURT  
6 TO MAKE A DETERMINATION, AND THE COURT HAS CAREFULLY  
7 CONSIDERED THE PRELIMINARY HEARING TRANSCRIPT. I THINK  
8 THAT'S MORE THAN ADEQUATE.

9 MR. PETTINE: I THINK IN A PLEA OF THIS NATURE WITH  
10 THE CONSEQUENCES AT STAKE IN THIS PLEA FOR MR. JURADO, I  
11 THINK THE COURT SHOULD TAKE A FACTUAL BASIS FROM THE MOUTH OF  
12 MR. JURADO AS TO WHAT HE DID IN THIS CASE.

13 THE COURT: WELL, I'M INCLINED TO THINK SO ALSO,  
14 MR. WARREN. I -- I DON'T KNOW THAT I NEED TO, YOU KNOW,  
15 BELABOR THE POINT IN GREAT DETAIL.

16 BUT LET ME SAY THIS, MR. JURADO, I HAVE, I THINK  
17 PROPERLY AND APPROPRIATELY SO IN CONNECTION WITH THE MOTIONS  
18 THAT WERE BEFORE ME UNDER 995, I HAVE, AS I PREVIOUSLY STATED  
19 ON THE RECORD, I'VE READ THE TRANSCRIPT OF THE PRELIMINARY  
20 EXAMINATION, SO I KNOW WHAT EVIDENCE WAS PRESENTED BEFORE THE  
21 MAGISTRATE THERE. AS I INDICATED EARLIER ON, BECAUSE IT  
22 HAPPENED TO BE ON THE SAME TAPE, I DID WATCH AND VIEW AND  
23 LISTEN TO OF COURSE THE TAPED INTERVIEW OF YOU BY THE TWO  
24 DETECTIVES, BECAUSE IT WAS ON THE SAME TAPE ALONG WITH THE  
25 INTERVIEW OF MISS SHIGEMURA. SO I -- I HAVE THE BENEFIT OF  
26 HAVING WATCHED THAT TAPE AND LISTENED TO THAT TAPE, AND I  
27 KNOW WHAT YOU TOLD THE POLICE AT THAT -- AT THAT POINT. AND  
28 OF COURSE I HAD A WRITTEN TRANSCRIPT OF THAT INTERVIEW ALSO

1 IN CONNECTION WITH SOME OF THE MOTIONS BEFORE ME. SO ALL  
2 THAT INFORMATION I HAVE BEFORE ME.

3 BUT I DO THINK BECAUSE OF THE SERIOUS NATURE OF  
4 THESE CHARGES, THE SERIOUS CONSEQUENCES TO YOU, AND OUT OF MY  
5 RESPONSIBILITY TO MAKE SURE THAT THIS IS A NOT ONLY A FREE  
6 AND VOLUNTARY DECISION ON YOUR PART, BUT THAT THERE IS A  
7 PROPER FACTUAL BASIS FOR YOUR ENTERING THESE PLEAS AND MAKING  
8 THESE ADMISSIONS, THAT I DO NEED YOU TO -- REQUIRE YOU TO  
9 TELL ME A LITTLE BIT MORE IN YOUR OWN WORDS WHAT YOU DID THAT  
10 MAKES YOU GUILTY.

11 WE DON'T NEED, I SAY, TO BELABOR IT AND GO INTO  
12 A WHOLE LOT OF DETAIL. BUT THE FORM SAYS "CONSPIRED TO  
13 COMMIT MURDER" AND YOU MURDERED TERESA HOLLOWAY WITH  
14 PREMEDITATION.

15 Q. FIRST OF ALL, HAS MR. WARREN EXPLAINED TO YOU  
16 WHAT THE PEOPLE WOULD BE REQUIRED TO PROVE BEYOND A  
17 REASONABLE DOUBT BY COMPETENT EVIDENCE, TO PROVE THAT YOU  
18 CONSPIRED TO COMMIT MURDER AND AS A SEPARATE CHARGE, THAT YOU  
19 MURDERED TERESA HOLLIDAY, (SIC) WITH PREMEDITATION, WHICH  
20 WOULD MAKE IT FIRST DEGREE MURDER? HAS HE GONE OVER WITH YOU  
21 IN SOME DETAIL WHAT THE ESSENTIAL ELEMENTS ARE OF THOSE  
22 CRIMES?

23 A. YES.

24 Q. WHAT THE PEOPLE WOULD HAVE TO PROVE?

25 A. YES.

26 Q. YOU UNDERSTAND THAT. ALL RIGHT.

27 THAT'S WHAT THEY WOULD HAVE TO PROVE. BUT ALSO  
28 THAT'S WHAT YOU ARE ADMITTING TO ME IF YOU RELIEVE THEM OF

1 THEIR BURDEN OF PROVING THAT AND YOU CONVICT YOURSELF BY  
2 ADMITTING EVERY ESSENTIAL ELEMENT OF THE CRIME RATHER THAN  
3 REQUIRING THEM TO PROVE IT. SO THAT'S WHY YOU AND I NEED TO  
4 TALK A LITTLE BIT ABOUT THAT.

5 AGAIN, YOU DON'T HAVE TO DO THAT. EVEN THOUGH  
6 YOU MAY FEEL IN YOUR HEART OF HEARTS THAT YOU'RE GUILTY YOU  
7 STILL HAVE A RIGHT TO REQUIRE THEM TO PROVE THAT TO THIS JURY  
8 BEYOND A REASONABLE DOUBT. YOU DON'T HAVE TO ADMIT ANYTHING.  
9 AND YOU'RE PLEADING TO EVERYTHING. THERE'S NO AGREEMENT HERE  
10 ON THE SENTENCING, SO YOU'RE NOT, YOU KNOW, NOT APPARENTLY  
11 GAINING ANYTHING IN THAT SENSE BY ENTERING THESE PLEAS AT  
12 THIS POINT. SO I WANT TO BE SURE THAT YOU UNDERSTAND ALL  
13 THAT.

14 THE CHARGE IS THAT IN COUNT 1 THAT ON OR ABOUT  
15 MAY 15TH, 1991 YOU, MISS SHIGEMURA, MISS HUMISTON WILLFULLY  
16 AND UNLAWFULLY, THAT MEANS CONSCIOUSLY, KNOWINGLY,  
17 INTENTIONALLY CONSPIRED TOGETHER, AGREED TOGETHER -- NOT THAT  
18 YOU SAT DOWN AND WROTE OUT SOME FORMAL WRITTEN DOCUMENT, BUT  
19 THAT YOU DISCUSSED THE MATTER AND YOU CAME TO A MEETING OF  
20 THE MINDS AND A SHARED INTENT AND PURPOSE AND DESIRE TO KILL  
21 TERESA HOLLOWAY, FOR WHATEVER REASONS, MOTIVATIONS YOU MAY  
22 HAVE HAD. THAT WAS SOMETHING YOU DISCUSSED, THERE WAS SOME  
23 COMMON UNDERSTANDING, SOME COMMON AGREEMENT, SOME MUTUAL  
24 PURPOSE AND GOAL HERE AND DECISION AND AGREEMENT TO KILL  
25 MISS HOLLOWAY.

26 NOW, IS THAT TRUE, IS WHAT -- THAT IS WHAT  
27 HAPPENED?

28 MR. WARREN: YOUR HONOR, COULD THE COURT REPEAT THE



1 QUESTION, PLEASE?

2 THE COURT: MAYBE AT THIS POINT WE NEED TO TAKE A STEP  
3 BACKWARDS JUST FOR A MINUTE.

4 MR. PETTINE, SO I'M SURE I UNDERSTAND YOUR  
5 POSITION, IF THE DECISION IS TO PURSUE A WRIT TO REVIEW MY  
6 RULING ON THE 995 ON THE SPECIAL CIRCUMSTANCES ALLEGATION,  
7 AND THE COURT OF APPEAL AGREES WITH YOUR POSITION SO MY  
8 RULING IS REVERSED AND THE SPECIAL CIRCUMSTANCES ALLEGATION  
9 IS REINSTATED, THEN I ASSUME IF IT WAS THE FURTHER DECISION  
10 OF YOUR OFFICE TO PROCEED AGAINST MR. JURADO ON THAT BASIS,  
11 THAT YOU WOULD CONTEMPLATE THAT HE WOULD BE ALLOWED TO  
12 WITHDRAW HIS PLEA AND -- PLEAS, AND WE'D BE BACK BASICALLY TO  
13 WHERE WE STARTED BEFORE I MADE MY RULING? IS THAT --

14 THE REASON I MENTION THAT IS, I THINK IF THAT'S  
15 THE POSITION, THEN PERHAPS HE NEEDS TO BE ADVISED THAT  
16 ANYTHING HE SAYS HERE IN CONNECTION WITH ENTERING THIS PLEA,  
17 IF THE PLEA IS WITHDRAWN AND, YOU KNOW, THE SPECIAL  
18 CIRCUMSTANCES ARE REINSTATED, COULD NOT BE USED AGAINST HIM  
19 AT THE TRIAL ON THE MERITS. I THINK THAT'S A CORRECT  
20 STATEMENT OF THE LAW AND I -- I THINK MAYBE HE NEEDS TO  
21 UNDERSTAND THAT. IS THAT --

22 MR. FISHER: YOUR HONOR, IF I CAN RUN WITH THAT ONE?

23 THE COURT: YEAH.

24 MR. FISHER: I AGREE WITH THE SECOND PART OF YOUR  
25 STATEMENT, THAT IS, ANY STATEMENT HE MAKES HERE CANNOT BE  
26 USED AGAINST HIM LATER IF THE PLEA IS WITHDRAWN. I THINK THE  
27 LAW IS FAIRLY CLEAR ON THAT.

28 ///

1 BY THE COURT:

2 Q. ALL RIGHT. ALL RIGHT. YOU UNDERSTAND BASICALLY  
3 WHAT WE SAID, MR. JURADO?

4 A. YES.

5 Q. ALL RIGHT. BECAUSE I NEED YOU TO BE OPEN AND  
6 CANDID WITH ME NOW, AND I NEED YOU TO GIVE ME A FACTUAL BASIS  
7 FOR YOUR PLEAS. BUT IF THE PLEAS ARE LATER WITHDRAWN WHAT  
8 YOU TELL ME NOW CANNOT BE USED AGAINST YOU TO PROVE YOU'RE  
9 GUILTY AT A TRIAL.

10 A. I UNDERSTAND THAT.

11 Q. OKAY. ALL RIGHT. WELL, BASICALLY THE  
12 ALLEGATION IS AGAINST YOU IN COUNT 1 THAT YOU, AND IN THIS  
13 CASE MISS SHIGEMURA AND MISS HUMISTON CONSPIRED TO COMMIT A  
14 CRIME, TO WIT, THE CRIME OF MURDER, WHICH WOULD BE THE  
15 UNLAWFUL KILLING OF TERRY HOLLOWAY, WITH MALICE AFORETHOUGHT.  
16 INTENTIONALLY, DELIBERATELY, UNLAWFULLY TO KILL HER. THAT  
17 YOU AND THESE OTHER TWO PEOPLE CONSPIRED TO COMMIT THAT  
18 CRIME. IT'S ALLEGED THAT OCCURRED ON MAY 15TH, 1991. THAT  
19 YOU WILLFULLY AND UNLAWFULLY CONSPIRED TO UNLAWFULLY KILL  
20 TERRY HOLLOWAY WITH MALICE AFORETHOUGHT, WHICH BASICALLY FOR  
21 OUR PURPOSES HERE MEANS INTENTIONALLY.

22 SO I NEED -- IS THAT TRUE? THAT WOULD MEAN  
23 BASICALLY YOU ALL TALKED ABOUT THIS, THAT YOU CAME TO -- YOU  
24 DISCUSSED KILLING HER, FOR WHATEVER MOTIVES YOU THOUGHT  
25 WERE -- THOUGHT THAT ACTION APPROPRIATE IN YOUR JUDGMENT, OR  
26 NECESSARY OR WHATEVER, BUT THAT YOU HAD A MEETING OF THE  
27 MINDS, YOU -- YOU DISCUSSED THAT, YOU AGREED, THERE WAS A  
28 SHARED INTENT, A SHARED PURPOSE, A SHARED DESIRE AND DESIGN

1 AND INTENT TO KILL TERRY HOLLOWAY.

2 MR. WARREN: YOUR HONOR, IF I MIGHT INTERJECT. THE  
3 COURT HAS PHRASED IT IN TERMS OF BOTH DENISE SHIGEMURA AND  
4 ANNA HUMISTON, AND I'M NOT SURE THAT -- MR. JURADO CAN SPEAK  
5 FOR HIMSELF -- THAT HE WOULD -- WOULD AGREE THAT HE DISCUSSED  
6 IT WITH BOTH OF THE INDIVIDUALS.

7 THE COURT: WELL, IT DOESN'T NEED TO TO BE BOTH OF  
8 THEM, IT HAS TO BE ONE OF THEM. IT TAKES TWO TO CONSPIRE.  
9 THE LAW SAYS IF IT'S TWO OR MORE HAS TO CONSPIRE. IT HAS TO  
10 BE YOU AND ONE OTHER PERSON. THE ALLEGATION IS IT WAS BOTH,  
11 BUT FOR OUR PURPOSES HERE IT WOULD SUFFICE IF IT WAS AT LEAST  
12 ONE OF THEM.

13 IF THAT'S YOUR PROBLEM, THEN, ADMITTING THAT ALL  
14 THREE OF YOU CONSPIRED, WHY, YOU'RE GOING TO HAVE TO TELL ME  
15 THOUGH THAT YOU CONSPIRED WITH AT LEAST ONE OF THE OTHER  
16 TWO --

17 A. YEAH.

18 Q. -- TO -- TO -- AND THAT YOU DISCUSSED IT AND  
19 THERE WAS A MEETING OF THE MINDS AND A SHARED INTENT, A  
20 SHARED PURPOSE, A SHARED DESIRE THAT TERRY HOLLOWAY WOULD BE  
21 KILLED.

22 A. YES, THERE WAS A DISCUSSION, BUT NOT BETWEEN ALL  
23 THREE.

24 Q. ALL RIGHT. BUT WITH ONE OR THE OTHER OF THEM  
25 YOU DID DISCUSS THAT?

26 A. YES.

27 MR. PETTINE: MAY WE HAVE HIM ELABORATE ON THE RECORD,  
28 YOUR HONOR?

1 THE COURT: IN WHAT REGARD, WHO IT WAS OR --

2 MR. PETTINE: YES.

3 THE COURT: ALL RIGHT.

4 Q. WHICH ONE?

5 A. HAD DISCUSSION WITH MISS SHIGEMURA.

6 Q. OKAY. YOU DISCUSSED WHY THAT SEEMED TO BE  
7 NECESSARY AND WHY YOU AND SHE CONCLUDED THAT IT WAS NECESSARY  
8 TO KILL MISS HOLLOWAY.

9 A. I CAN'T RECALL THE WHOLE DISCUSSION OR WHAT  
10 ABOUT -- THE DISCUSSION WAS ABOUT, BUT THERE WAS A DISCUSSION  
11 ABOUT -- ABOUT A MURDER.

12 Q. WELL, THE EVIDENCE SEEMS TO SUGGEST THAT YOU  
13 WERE BOTH AFRAID THAT SHE WAS GOING TO MAKE CERTAIN  
14 STATEMENTS TO ANOTHER PERSON THAT YOU WERE AFRAID OF, SNITCH  
15 YOU OFF I GUESS IS ONE WAY OF PUTTING IT?

16 A. YEAH.

17 Q. AT LEAST TELL -- TELL THIS OTHER PERSON THAT  
18 BOTH OF YOU WERE VERY MUCH AFRAID OF CERTAIN INFORMATION THAT  
19 MIGHT -- THAT IN YOUR VIEW MIGHT JEOPARDIZE YOUR LIVES. IS  
20 THAT BASICALLY IT?

21 A. YES.

22 Q. OKAY.

23 MR. PETTINE: MAY I INQUIRE, YOUR HONOR?

24 THE COURT: ALL RIGHT.

25 BY MR. PETTINE:

26 Q. WHEN DID YOU HAVE THIS DISCUSSION WITH  
27 MISS SHIGEMURA?

28 MR. WARREN: YOUR HONOR, I'M GOING TO OBJECT AT THIS



1 POINT. I SEE THIS AS AN EFFORT BY MR. PETTINE TO GET  
2 DISCOVERY FOR LATER PROSECUTION. I DON'T THINK THAT THAT'S  
3 APPROPRIATE AT THIS POINT. I THINK MR. JURADO HAS GIVEN A  
4 FACTUAL BASIS AND I THINK THAT'S SUFFICIENT.  
5 BY THE COURT:

6 Q. WELL, DID THIS OCCUR ON OR ABOUT MAY 15TH?

7 A. YES.

8 Q. ALL RIGHT. HERE IN SAN DIEGO COUNTY?

9 A. YES.

10 Q. AND DID -- AS A RESULT OF THOSE DISCUSSIONS DID  
11 YOU AND MISS SHIGEMURA COME TO AN AGREEMENT THAT INDEED YOU  
12 WOULD UNLAWFULLY KILL TERRY HOLLOWAY?

13 A. THERE WAS A DISCUSSION AND AGREEMENT.

14 Q. I'M SORRY?

15 A. THERE WAS AN AGREEMENT.

16 Q. ALL RIGHT. SO YOU DID AGREE AND YOU HAD A  
17 SHARED PURPOSE AND INTENT THEN TO UNLAWFULLY KILL TERRY  
18 HOLLOWAY?

19 A. YES.

20 MR. PETTINE: YOUR HONOR, THERE'S A SERIES OF OVERT  
21 ACTS THAT ARE ALLEGED. MAY WE HAVE HIM COMMENT ON THOSE?

22 THE COURT: WHICH ONE OR MORE OF THESE WAS IT  
23 CONTEMPLATED HE WOULD ADMIT?

24 MR. WARREN: HE WOULD -- HE WOULD ADMIT OVERT ACT NO.  
25 3, YOUR HONOR.

26 THE COURT: ALL RIGHT, THE MURDER ITSELF. I THINK  
27 THAT'S SUFFICIENT FOR THE COURT'S PURPOSES AND MY  
28 UNDERSTANDING OF THE LAW.

1 MR. PETTINE: THEY DIDN'T THINK SO BUT --

2 THE COURT: I REALIZE THEIR POSITION WAS THAT WAS NOT  
3 SUFFICIENT AS AN OVERT ACT BUT -- MR. WARREN.

4 MR. WARREN: WELL, HE'S PREPARED TO INDICATE, YOUR  
5 HONOR, THAT AFTER LEAVING THE RESIDENCE HE MURDERED TERESA  
6 HOLLOWAY.

7 THE COURT: AND THAT WAS IN FURTHERANCE OF AND TO  
8 ACCOMPLISH THE GOALS OF THE CONSPIRACY?

9 MR. WARREN: CORRECT.

10 THE COURT: WELL, I REALIZE THE POSITION YOU ALL TOOK  
11 IN THE 995. I DON'T THINK THAT THAT'S A CORRECT POSITION  
12 UNDER THE LAW, BUT I REALIZE YOU DID ASSERT THE POSITION THAT  
13 COULD NOT BE AN OVERT ACT. SO I THINK MR. PETTINE'S CONCERN  
14 IS WE DON'T HAVE THAT COME UP TO BITE US LATER. WHAT'S THE  
15 PROBLEM IN ADMITTING ONE OF THE OTHER?

16 MS. WARREN: THERE'S NO PROBLEM. WE CAN ADMIT OVERT  
17 ACT NO. 4.

18 THE COURT: WELL, OF COURSE AS TO THAT IT WAS ASSERTED  
19 THAT TOOK PLACE AFTER THE MURDER AND THEREFORE COULD NOT BE  
20 AN OVERT ACT IN FURTHERANCE OF THE CONSPIRACY. SO I THINK  
21 WHAT I'M LOOKING AT IS 1, 2 AND/OR THREE OR SOME COMBINATION  
22 THEREOF.

23 MR. WARREN: WELL, OVERT ACT NO. 1, I THINK THE  
24 EVIDENCE IS CLEAR THAT HE AND MISS SHIGEMURA AND TERRY  
25 HOLLOWAY WERE PRESENT AT MARK SCHMIDT'S RESIDENCE.

26 MR. PETTINE: THAT'S SUFFICIENT, BUT MR. JURADO HASN'T  
27 INDICATED THAT OR AFFIRMED THAT.

28 THE COURT: OKAY.

1 Q. ALL RIGHT, MR. JURADO, IT'S -- AS A PART OF THE  
2 LAW OF CONSPIRACY IT'S NECESSARY TO ALLEGE AND TO PROVE OR  
3 HAVE YOU ADMIT ONE OR MORE OVERT ACTS IN FURTHERANCE OF THE  
4 CONSPIRACY. THAT MEANS AS PARTS OF THE CONSPIRACY TO ACHIEVE  
5 THE PURPOSE OF THE CONSPIRACY, TO ACCOMPLISH THE PURPOSE,  
6 WHICH THE PURPOSE BEING TO MURDER OF HOLLOWAY.

7 IT'S ALLEGED AS OVERT ACT NO. 1 THAT ON OR ABOUT  
8 MAY 15TH YOU AND DENISE SHIGEMURA MET WITH TERESA HOLLOWAY AT  
9 MARK SCHMIDT'S RESIDENCE AT 3743 WARD ROAD IN SAN DIEGO.  
10 THAT THAT WAS AN ACT DONE BY THE TWO OF YOU IN PURSUANCE OF  
11 THE CONSPIRACY, THE AGREEMENT TO KILL HER. AND IN ORDER TO  
12 FURTHER THAT -- REACH THAT GOAL OF KILLING HER AND FURTHER  
13 THAT OBJECT OF THE CONSPIRACY THAT YOU MET WITH HER AT MARK  
14 SCHMIDT'S RESIDENCE.

15 YOU ADMIT THAT YOU IN FACT MET WITH HER ON THAT  
16 DATE AT MARK SCHMIDT'S RESIDENCE?

17 A. YES.

18 Q. AND THAT THAT WAS TO ACCOMPLISH THE CONSPIRACY,  
19 TO ACCOMPLISH THE GOALS OF KILLING HER, THAT WAS PART OF THE  
20 CONSPIRACY TO FURTHER --

21 A. THAT WASN'T THE REASON FOR THE MEETING. IT JUST  
22 CAME UP. BUT IT'S TO CALL A MEETING FOR THAT. THAT WASN'T  
23 WHAT IT WAS -- THAT WASN'T WHAT WE WENT TO MARK'S HOUSE FOR.

24 Q. MAY NOT HAVE BEEN ORIGINALLY THE PURPOSE?

25 A. YEAH, IT WASN'T.

26 Q. BUT DID YOU TURN TO IT, THAT PURPOSE, ONCE YOU  
27 ALL MET AT MARK'S HOUSE?

28 A. YES.

1 Q. DID YOU DECIDE TO USE THAT FOR THAT PURPOSE,  
2 TO -- TO FURTHER YOUR AGREEMENT AND YOUR CONSPIRACY TO KILL  
3 HER?

4 A. YES.

5 Q. ALL RIGHT. THEN AS ALLEGED DID YOU ON OR ABOUT  
6 MAY 15TH, YOU AND DENISE SHIGEMURA IN FACT MURDERED MISS  
7 HOLLOWAY AFTER LEAVING THE SCHMIDT RESIDENCE AND WHILE YOU  
8 WERE IN THE VEHICLE?

9 MR. WARREN: YOUR HONOR, I THINK AGAIN IF I MIGHT  
10 INTERJECT. I THINK THE EVIDENCE IS THAT MISS SHIGEMURA WAS  
11 DRIVING AND MR. JURADO ACTUALLY COMMITTED THE ACT.  
12 BY THE COURT:

13 Q. DID YOU MURDER DENISE -- I MEAN TERESA HOLLOWAY  
14 IN THE CAR AFTER LEAVING THE SCHMIDT RESIDENCE, AGAIN IN  
15 FURTHERANCE OF AND TO ACHIEVE THE PURPOSE OF THE CONSPIRACY  
16 TO KILL TERESA HOLLOWAY, DID YOU IN FACT MURDER HER ON THAT  
17 DATE?

18 A. YES, IT WAS ME.

19 MR. PETTINE: HIS STATEMENT "IT WAS ME" AND ME ALONE,  
20 WHICH IS AN INDICATION TO THE COURT THAT HE IS NOT PREPARED  
21 TO PLEAD GUILTY TO COUNT 1. JUST INDICATED THAT HE CONSPIRED  
22 WITH MISS SHIGEMURA AND NOW HE SAID "IT WAS ME" AND ME ALONE.

23 MR. WARREN: YOUR HONOR, HE IS INDICATING, CONTRARY TO  
24 WHAT MR. PETTINE IS TRYING TO ARGUE, THAT HE WAS THE ONE,  
25 AFTER CONSPIRING HE WAS THE ONE THAT COMMITTED THE PHYSICAL  
26 ACTS WHICH RESULTED IN THE DEATH OF MISS HOLLOWAY. NOW, I  
27 KNOW THAT MR. --

28 MR. PETTINE: IF HE --

1 MR. WARREN: EXCUSE ME, COUNSEL, I'M NOT THROUGH.

2 MR. PETTINE: WHAT --

3 THE COURT: MR. PETTINE, I'M NOT GOING TO ALLOW YOU  
4 BOTH TO TALK AT THE SAME TIME. HE DOESN'T INTERRUPT YOU, YOU  
5 DON'T INTERRUPT HIM.

6 MS. WARREN: NOW, I KNOW MR. PETTINE WOULD DESPERATELY  
7 LIKE MR. JURADO TO SAY THAT --

8 MR. PETTINE: YOUR HONOR, MAY WE GO OUT OF THE  
9 PRESENCE -- WHAT HE'S TRYING TO DO IS SUGGEST --

10 MR. WARREN: YOUR HONOR.

11 THE COURT: LOOK, I'M GOING TO FIND YOU BOTH IN  
12 CONTEMPT IF YOU DON'T --

13 MR. PETTINE: MAY WE GO SIDEBAR OUT OF THE PRESENCE  
14 OF --

15 THE COURT: NO. SIT DOWN AND LET MR. WARREN TALK.

16 MR. WARREN: YOUR HONOR, WHAT HE IS DESPARETLY TRYING  
17 TO GET MR. JURADO TO SAY THAT MISS HUMISTON WAS INVOLVED IN  
18 THE ACTUAL PHYSICAL ACTS. WHETHER THAT'S THE CASE OR NOT IS  
19 A QUESTION OF FACT WHICH IS GOING TO BE DETERMINED AT HER  
20 TRIAL. FOR PURPOSES OF THIS PLEA HE IS ADMITTED CONSPIRING  
21 WITH MISS SHIGEMURA, AND HE WILL ADMIT TO THE COURT AND HAS  
22 ADMITTED TO THE COURT THAT HE PHYSICALLY KILLED MISS  
23 HOLLOWAY.

24 MR. PETTINE: MAY I JUST MAKE ONE COMMENT?

25 THE COURT: YES.

26 MR. PETTINE: COUNSEL IS ABSOLUTELY INCORRECT IN HIS  
27 ASSERTION. MR. JURADO TOLD THE POLICE, AND YOU SAW THE TAPE,  
28 THAT HE ACTED ALONE. AND NOW HE'S COMING IN HERE AND HE'S



1 PLEADING GUILTY TO CONSPIRING WITH MISS SHIGEMURA TO DOING  
2 THE MURDER. AND I'M TRYING TO DETERMINE IF THERE IS A TRUE  
3 FACTUAL BASIS FOR HIM PLEADING TO COUNT 1, THAT IS, WHETHER  
4 HE BELIEVES HE'S GUILTY OF COUNT 1. AND HIS COMMENT JUST A  
5 MOMENT AGO WAS THAT HE AND HE ALONE KILLED HER. NOW, THERE  
6 SEEMS TO BE AN ISSUE IN MY MIND WHETHER HE'S PREPARED TO  
7 PLEAD GUILTY TO COUNT 1. I KNOW COUNSEL WANTS TO PLEA TO THE  
8 SHEET BUT I'M NOT SURE MR. JURADO IS PREPARED TO STATE A  
9 FACTUAL BASIS.

10 THE COURT: I WILL BE THE DETERMINER OF THAT,  
11 MR. PETTINE, THANK YOU.

12 Q. ALL RIGHT, MR. JURADO, SO THERE'S NO  
13 MISUNDERSTANDING NOW, I -- I UNDERSTAND YOU TO HAVE TOLD ME  
14 ALREADY THAT YOU AND DENISE SHIGEMURA CONSPIRED?

15 A. WE BOTH CONSPIRED AND THE PHYSICAL ACT, I -- I  
16 ACTED ALONE.

17 Q. THAT MEANS YOU TALKED ABOUT IT, YOU CAME TO A  
18 MUTUAL AGREEMENT, A MUTUAL UNDERSTANDING, A SHARED INTENT AND  
19 PURPOSE THAT YOU WOULD KILL TERESA HOLLOWAY, CORRECT?

20 A. YES.

21 Q. AND ALTHOUGH THE ORIGINAL MEETING AT MARK  
22 SCHMIDT'S HOUSE MAY NOT HAVE BEEN FOR THAT PURPOSE, WHEN IT  
23 OCCURRED YOU AND SHE DECIDED TO USE IT FOR THAT PURPOSE, TURN  
24 IT -- TO UTILIZE THE MEETING AND YOUR CONTACT AND YOUR  
25 PRESENCE WITH TERRY HOLLOWAY FOR THE PURPOSE OF FURTHERING  
26 THE CONSPIRACY TO KILL HER; IS THAT CORRECT?

27 A. WE DIDN'T USE IT FOR THAT PURPOSE BUT THAT IS  
28 WHAT THE OUTCOME WAS.

1 Q. WELL --

2 A. THAT'S THE DIRECTION IT TURNED TOWARDS.

3 Q. WELL, ALL RIGHT. YOU UNDERSTOOD THAT YOU WERE  
4 GOING TO USE IT FOR THAT PURPOSE?

5 A. YEAH. YES.

6 Q. YOU PERSONALLY IN OUR OWN MIND UNDERSTAND THAT  
7 NOW THAT WE'RE ALL HERE, TERRY IS HERE, DENISE IS HERE, I'M  
8 HERE, I'M GOING TO TAKE THIS OPPORTUNITY TO KILL HER?

9 A. YES.

10 Q. ALL RIGHT. YOU'RE TELLING ME THAT IN OUR OWN  
11 MIND THAT WAS YOUR -- YOUR INTENT AND YOUR PURPOSE?

12 A. YES.

13 Q. ALL RIGHT. WITH THAT INTENT AND PURPOSE THEN  
14 YOU IN FACT ARE THE ONE WHO -- IS IT TRUE YOU ARE IN FACT THE  
15 ONE THAT STRANGLED HER AND BLUDGEONED HER WITH THE  
16 SCISSORS -- THE JACK, SCISSORS JACK?

17 A. CORRECT.

18 Q. ALL RIGHT. YOU DID THOSE PHYSICAL ACTS THEN  
19 WHICH RESULTED IN HER DEATH?

20 A. YES.

21 Q. THEN YOU DISPOSED OF HER BODY, AS INDICATED BY  
22 THE EVIDENCE; IS THAT CORRECT?

23 A. YES.

24 Q. ALL RIGHT. AND ALL THAT AGAIN WAS IN  
25 FURTHERANCE OF THE CONSPIRACY WITH DENISE SHIGEMURA, WHICH  
26 HAD AS ITS INTENT AND PURPOSE TO KILL TERESA HOLLOWAY; IS  
27 THAT TRUE?

28 A. YES.



1 Q. ALL RIGHT. IF IT ISN'T TRUE YOU TELL ME, I  
2 DON'T MEAN TO BE PUTTING WORDS IN YOUR MOUTH BUT -- ALL  
3 RIGHT. ALL RIGHT. ALL RIGHT. ANY QUESTIONS NOW ABOUT WHAT  
4 WE'VE TALKED ABOUT UP THIS POINT?

5 A. NO.

6 Q. IS IT STILL YOUR PERSONAL DECISION AND INTENT  
7 NOW TO PLEAD GUILTY TO THE CHARGE OF CONSPIRACY IN COUNT 1,  
8 CONSPIRING WITH DENISE SHIGEMURA TO MURDER TERRY HOLLOWAY?

9 A. YES.

10 Q. HOW DO YOU PLEAD TO THAT CHARGE?

11 A. GUILTY.

12 Q. AS ALLEGED THE OBJECT OF THE CONSPIRACY WAS TO  
13 KILL TERESA HOLLOWAY; IS THAT TRUE?

14 A. YES.

15 Q. ALL RIGHT. AND TO ACHIEVE THAT OBJECT AND FOR  
16 THE PURPOSE OF ACHIEVING THAT OBJECT YOU IN FACT DID KILL HER  
17 ON OR ABOUT MAY 15TH, 1991 IN THE AUTOMOBILE; IS THAT  
18 CORRECT?

19 A. YES.

20 Q. AFTER HAVING MET WITH HER AND DENISE THERE AT  
21 MARK SCHMIDT'S HOUSE --

22 A. YES.

23 Q. -- IS THAT CORRECT?

24 ALL RIGHT. COUNT 2 ALLEGES AS A SEPARATE MATTER  
25 THE CRIME OF THE MURDER ITSELF. ON OR ABOUT MAY 15TH THAT  
26 YOU WILLFULLY AND UNLAWFULLY MURDERED TERESA HOLLOWAY, A  
27 HUMAN BEING, IN VIOLATION OF PENAL CODE SECTION 187(A).

28 AGAIN HAS MR. WARREN EXPLAINED TO YOU THE

1 ESSENTIAL ELEMENTS UNDER OUR LAW OF THE CRIME OF MURDER, THE  
2 UNLAWFUL KILLING OF ONE HUMAN BEING BY ANOTHER WITH MALICE  
3 AFORETHOUGHT? HAS HE EXPLAINED TO YOU IN TERMS YOU  
4 UNDERSTOOD WHAT THAT MEANS UNDER THE LAW?

5 A. YES.

6 Q. ALL RIGHT. IT HAS TO BE AN UNLAWFUL KILLING,  
7 NOT JUSTIFIED OR NOT EXCUSABLE. HAS HE EXPLAINED TO YOU THAT  
8 ALTHOUGH YOU AND/OR DENISE MAY HAVE FELT THAT THERE WAS SOME  
9 NECESSITY OR SOME JUSTIFICATION IN YOUR MIND FOR KILLING HER,  
10 THAT THE LAW DOES NOT ACCEPT AS JUSTIFICATION THE REASONS YOU  
11 FELT YOU HAD FOR KILLING HER? HAVE YOU DISCUSSED THAT WITH  
12 MR. WARREN?

13 A. YES.

14 Q. OKAY. SO YOU'RE -- YOU'RE SATISFIED IN YOUR OWN  
15 MIND THAT WHATEVER YOUR REASONS MAY HAVE BEEN THE LAW WOULD  
16 NOT RECOGNIZE THEM AND ACCEPT THEM AS BEING JUSTIFIABLE?

17 A. REPEAT THAT.

18 Q. ARE YOU SATISFIED IN YOUR OWN MIND THAT WHATEVER  
19 REASONS YOU MAY HAVE HAD IN YOUR OWN MIND, OR THE FEELING YOU  
20 HAD TO KILL HER, OR IT WAS NECESSARY IN KILL HER, THAT THE  
21 LAW WOULD NOT ACCEPT AND NOT RECOGNIZE YOUR REASONS AS BEING  
22 A JUSTIFICATION?

23 MS. WARREN: LET ME MAKE SURE HE UNDERSTANDS, YOUR  
24 HONOR.

25 THE COURT: OKAY.

26 THE DEFENDANT: YES.

27 BY THE COURT:

28 Q. ALL RIGHT. DO YOU UNDERSTAND THAT UNDER OUR LAW

1 MURDER IN THE FIRST DEGREE REQUIRES THAT THE KILLING -- THE  
2 UNLAWFUL KILLING BE INTENTIONAL, WITH PREMEDITATION, WITH  
3 DELIBERATION? THAT IS -- HAVE THOSE TERMS BEEN EXPLAINED TO  
4 YOU BY MR. WARREN?

5 A. YES.

6 Q. BASICALLY THAT MEANS YOU HAVE TO HAVE THE  
7 SPECIFIC INTENT. YOU HAD TO HAVE HAD THE SPECIFIC INTENT TO  
8 KILL TERRY HOLLOWAY. THAT INTENT HAS TO HAVE BEEN FORMED AS  
9 A RESULT OF SOME THOUGHT AND CONSIDERATION AND WEIGHING AND  
10 BALANCING ON YOUR PART OF WHETHER YOU SHOULD KILL HER,  
11 WHETHER YOU SHOULD NOT KILL HER, WHY YOU THOUGHT YOU SHOULD  
12 KILL HER, THE CONSEQUENCE OF YOUR ACTION. AFTER THAT  
13 WEIGHING AND BALANCING AND THOUGHT PROCESS YOU CAME TO A  
14 CONSCIOUS DECISION TO KILL HER. THAT IS WHAT'S REQUIRED FOR  
15 WILFUL, PREMEDITATED, DELIBERATE MURDER UNDER OUR LAW.

16 A. YES.

17 Q. ALL RIGHT. IS IT TRUE THAT ON OR ABOUT MAY  
18 15TH, 1991 THAT YOU WILLFULLY AND UNLAWFULLY MURDERED TERESA  
19 HOLLOWAY?

20 A. YES.

21 Q. THAT OCCUR HERE IN SAN DIEGO COUNTY?

22 A. YES.

23 Q. AND DID YOU DO SO BY THE PHYSICAL ACT OF  
24 STRANGLING HER AND THEN BEATING HER ON THE HEAD WITH THAT  
25 JACK?

26 A. YES.

27 Q. ALL RIGHT. YOU'RE SATISFIED THAT THAT -- THOSE  
28 ACTIONS RESULTED IN HER DEATH?

1 A. YES.

2 Q. YOU'RE AWARE OF THE EVIDENCE OF THE OPINION OF  
3 THE -- THE FORENSIC PATHOLOGIST THAT SHE DIED AS A RESULT OF  
4 STRANGULATION AND BLUNT INSTRUMENT TRAUMA TO THE HEAD?

5 A. YES.

6 Q. ALL RIGHT. YOU'RE SATISFIED THAT WAS A RESULT  
7 OF YOUR ACTIONS?

8 A. YES.

9 Q. ALL RIGHT. DID YOU INTEND TO KILL HER?

10 A. YES.

11 Q. AND WAS THAT INTENT FORMED AS A RESULT OF  
12 DISCUSSIONS WITH OTHERS, CAREFUL THOUGHT ON YOUR PART,  
13 WEIGHING AND THINKING ABOUT IT, THE POSSIBLE CONSEQUENCES,  
14 WHETHER YOU SHOULD OR SHOULDN'T KILL HER, DID THAT INTENT  
15 RESULT FROM THAT PROCESS OF -- OF THOUGHT, DELIBERATION,  
16 PREMEDITATION?

17 A. YES.

18 Q. ALL RIGHT. ALL RIGHT. DO YOU ADMIT, THEN -- OR  
19 HOW DO YOU PLEAD TO THE CHARGE THAT ON OR ABOUT MAY MAY 15TH,  
20 1991 YOU WILLFULLY AND UNLAWFULLY MURDERED TERESA HOLLOWAY?

21 A. GUILTY.

22 Q. DO YOU ADMIT THAT WAS A RESULT OF PREMEDITATION  
23 AND DELIBERATION AS THE LAW DEFINES THOSE TERMS?

24 A. YES.

25 Q. AS YOU -- AS YOU AND I HAVE DISCUSSED THEM HERE,  
26 DO YOU ADMIT THAT YOU DID PREMEDITATE AND DELIBERATE YOUR  
27 INTENT TO KILL HER?

28 A. YES.

1 Q. ALL RIGHT. IT IS FURTHER ALLEGED THAT IN THE  
2 COMMISSION OF THE MURDER OF TERESA HOLLOWAY YOU PERSONALLY -  
3 THAT MEANS YOURSELF - USED A DEADLY AND DANGEROUS WEAPON, TO  
4 WIT, A CORD AND A TIRE JACK WITHIN THE MEANING OF 12022(B).  
5 DO YOU UNDERSTAND THAT IF YOU ADMIT THAT ALLEGATION THAT ADDS  
6 A YEAR ONTO THE 25 TO LIFE TERM FOR THE MURDER ITSELF?

7 A. YES.

8 Q. MAKE IT 26 YEARS TO LIFE. YOU UNDERSTAND THAT?

9 A. YES.

10 Q. ALL RIGHT. THAT LANGUAGE I THINK IS FAIRLY  
11 SELF-EXPLANATORY. DID YOU YOURSELF PERSONALLY USE THE CORD  
12 IN THE KILLING OF TERRY HOLLOWAY?

13 A. YES.

14 Q. THAT WAS WHAT YOU USED TO STRANGLE HER WITH?

15 A. YES.

16 Q. AND DID YOU PERSONALLY USE THE TIRE JACK?

17 A. YES.

18 Q. THAT WAS WHAT YOU USED TO HIT HER WITH; IS THAT  
19 CORRECT?

20 A. YES.

21 Q. THAT OCCURRED IN CONNECTION WITH THE COMMISSION  
22 OF THE MURDER ON MAY 15TH IN THE AUTOMOBILE HERE IN SAN  
23 DIEGO; IS THAT RIGHT?

24 A. YES.

25 Q. ALL RIGHT. ANY QUESTIONS NOW ABOUT WHAT WE'VE  
26 TALKED ABOUT HERE?

27 A. NO.

28 THE COURT: ALL RIGHT, I'LL ACCEPT THE PLEA OF GUILTY



1 TO COUNT 1, CONSPIRACY TO COMMIT THE CRIME OF MURDER AS  
2 ALLEGED IN COUNT 1. I THINK THERE'S A FACTUAL BASIS FOR THAT  
3 CHARGE FOUND IN THE EVIDENCE PRESENTED AT THE PRELIMINARY  
4 EXAMINATION. I THINK THERE'S A FACTUAL BASIS FOR HIS  
5 ADMISSION OF GUILT FOUND IN THAT SAME EVIDENCE, PLUS HIS  
6 ADMISSIONS TO THE DETECTIVES, INVESTIGATING OFFICERS FROM THE  
7 POLICE DEPARTMENT.

8 I FIND TO BE TRUE AS ALLEGED AND BASED ON HIS  
9 ADMISSION THE ALLEGATION THAT THE OBJECT OF THE CONSPIRACY  
10 WAS TO KILL TERESA HOLLOWAY.

11 I'LL ACCEPT AS TRUE, FIND BASED ON HIS  
12 ADMISSIONS AND THE EVIDENCE BEFORE ME WHAT IS ALLEGED AS  
13 OVERT ACT NO. 1 AND OVERT ACT NO. 3.

14 SO THE PLEA TO COUNT 1 IS ACCEPTED.

15 I'LL ACCEPT THE PLEA TO COUNT 2, THE CRIME OF  
16 MURDER, IN VIOLATION OF 187(A), MURDER OF TERESA HOLLOWAY ON  
17 OR ABOUT MAY 15TH, 1991.

18 AGAIN I THINK THERE'S SUFFICIENT FACTUAL -- A  
19 FOUNDATION FOR THE ALLEGATION AND FOR MR. JURADO'S ADMISSIONS  
20 AND FOR HIS PLEA BASED ON HIS ADMISSIONS BEFORE ME HERE TODAY  
21 UNDER OATH AND THE EVIDENCE PRESENTED AT THE PRELIMINARY  
22 HEARING.

23 I'LL FURTHER ACCEPT HIS ADMISSION AS TRUE THE  
24 ALLEGATION PURSUANT TO 12022(B). AGAIN I THINK BASED ON THE  
25 EVIDENCE PRESENTED AT THE PRELIMINARY HEARING, HIS ADMISSIONS  
26 BEFORE ME TODAY UNDER OATH THERE'S SUFFICIENT FACTUAL BASIS  
27 FOR THE ALLEGATION OF THE PERSONAL USE OF A CORD AND A TIRE  
28 JACK, EACH WHICH WOULD CONSTITUTE DEADLY AND DANGEROUS

1 WEAPONS WITHIN THE MEANING OF THE LAW.

2 SO THE PLEAS TO BOTH COUNTS ARE ACCEPTED, THE  
3 ADMISSION AS TRUE UNDER 12022(B).

4 I THINK HE'S MADE A KNOWING AND INTELLIGENT  
5 DECISION TO ENTER THESE PLEAS, MAKE THESE ADMISSIONS. I  
6 THINKS HE UNDERSTANDS THE RIGHTS HE HAS, THE RIGHTS HE'S  
7 GIVING UP BY ADMITTING OR ENTERING THESE PLEAS AND MAKING  
8 THESE ADMISSIONS.

9 I THINK HE UNDERSTANDS THE POSSIBLE MAXIMUM  
10 CONSEQUENCES IN TERMS OF MAXIMUM POSSIBLE SENTENCE OF 51  
11 YEARS TO LIFE. THAT IF GRANTED PAROLE THE PAROLE CAN BE FOR  
12 THE TERM OF HIS NATURAL LIFE. THE OTHER POSSIBLE  
13 CONSEQUENCES OF TERMS OF CONSECUTIVE SENTENCING, SERIOUS  
14 FELONY PRIORS -- PRIOR FELONY ALLEGATIONS.

15 I THINK HE'S HAD SUFFICIENT TIME BOTH TODAY AND  
16 BEFORE TODAY TO CONSULT WITH HIS COUNSEL, MR. WARREN, FOR  
17 WHOM THE COURT HAS GREAT RESPECT AS A THOROUGHLY COMPETENT,  
18 WELL EXPERIENCED, DEDICATED COUNSEL. AND I'M SURE HE'S GIVEN  
19 MR. JURADO THE BENEFIT OF HIS VERY BEST COUNSEL AND ADVICE.  
20 I THINK MR. JURADO HAS INDICATED TO ME THAT HE IS SATISFIED  
21 WITH AND HAS RELIED UPON THAT COUNSEL AND ADVICE. BUT I'M  
22 SATISFIED THAT THE PLEAS ENTERED HERE AND THE DECISIONS  
23 REFLECTED ARE PERSONAL, KNOWING, INTELLIGENT, VOLUNTARY  
24 DECISIONS OF MR. JURADO HIMSELF, AFTER RECEIVING THE ADVICE  
25 OF HIS COUNSEL. SO THE PLEAS ARE ACCEPTED AS ENTERED AND THE  
26 ADMISSION OF THE 12022(B) ALLEGATION.

27 ALL RIGHT, THE MATTER IS REFERRED TO THE  
28 PROBATION DEPARTMENT AT THIS TIME FOR THE PREPARATION OF THE



1 APPROPRIATE PRE-SENTENCE REPORT.

2 YOU WANT TO -- MINDFUL OF THE POSSIBLE FURTHER  
3 PROCEEDINGS THAT WE'VE ALLUDED TO EARLIER, WHAT'S THE  
4 THINKING ON TIMING OF THE SENTENCING HEARING? YOU WANT TO  
5 WAIVE TIME FOR THAT?

6 MS. WARREN: WHEN WOULD IT NORMALLY BE SET?

7 THE CLERK: 20TH JUDICIAL DAY IS DECEMBER 23RD.

8 MR. WARREN: WELL, WHY DON'T WE LEAVE IT AT THAT DATE,  
9 AND IF WE HAVE TO MAKE OTHER ARRANGEMENTS WE CAN DO THAT  
10 LATER.

11 THE COURT: THAT'S FINE. ALL RIGHT. ALL RIGHT, 23RD  
12 OF DECEMBER 9 O'CLOCK THIS DEPARTMENT.

13 SEE, HIS PRESENT CUSTODY STATUS IS?

14 THE CLERK: 3 MILLION.

15 THE COURT: I'M SORRY?

16 THE CLERK: 3 MILLION.

17 MR. PETTINE: WE'D ASK HE BE REMANDED WITHOUT BAIL.

18 THE COURT: MR. WARREN.

19 MR. WARREN: THAT'S FINE, YOUR HONOR.

20 THE COURT: ACADEMIC PROBABLY AT THIS POINT. ALL  
21 RIGHT, HE'S REMANDED TO CUSTODY WITHOUT BAIL PENDING THE  
22 HEARING ON THE 23RD OF DECEMBER.

23 ALL RIGHT, ANYTHING FURTHER WITH RESPECT TO  
24 MR. JURADO FOR NOW?

25 MR. WARREN: NO, YOUR HONOR.

26 THE COURT: THANK YOU.

27 LET ME CONFER WITH MY CLERK JUST FOR A MOMENT  
28 HERE.

1 I'M PREPARED, AS I INDICATED EARLIER, TO HEAR  
2 AND RULE ON THE MOTION TO SUPPRESS THE, AT LEAST IN PART, THE  
3 STATEMENTS OF MISS SHIGEMURA. IF THERE'S GOING TO BE ANY  
4 MORE THAN JUST THE BRIEFEST OF ARGUMENTS WE NEED TO GIVE THE  
5 REPORTER A BREAK.

6 I'VE READ THE POINTS AND AUTHORITIES, I'VE  
7 LISTENED TO AND VIEWED THE VIDEOTAPE, SO I'M READY TO HEAR  
8 THE MATTER. BUT I DON'T WANT TO PRECLUDE YOU FROM MAKING  
9 WHATEVER ARGUMENT YOU HAD IN MIND MAKING, BUT THE REPORTER  
10 HAS BEEN GOING FOR AN HOUR AND 15 MINUTES SO WE HAVE TO --

11 MS. CROWLE: I THINK PERHAPS WE SHOULD GIVE THE  
12 REPORTER A BREAK, IN LIGHT OF THE FACT WE ALL THOUGHT THE 995  
13 WAS GOING TO BE SHORT AND IT TURNED OUT TO BE LONGER THAN WE  
14 HAD ANTICIPATED.

15 THE COURT: ALL RIGHT. YOU WANT TO TRY TO HEAR THE  
16 MATTER, THOUGH, YET THIS AFTERNOON OR HOW LONG DO YOU  
17 ANTICIPATE YOUR ARGUMENT TO BE?

18 MS. CROWLE: PROBABLY A GOOD 15, 20 MINUTES. IN LIGHT  
19 OF THE FACT THAT IT'S A QUARTER AFTER 4:00, AND I KNOW THE  
20 SHERIFFS HAVE SOME CONCERNS ABOUT RETURNING MISS SHIGEMURA TO  
21 LAS COLINAS, PERHAPS IT WOULD BE BETTER TO RESCHEDULE IT.  
22 I'M CERTAINLY WILLING TO GO LATE.

23 THE COURT: I CAN'T GO MUCH BEYOND 4:30 SO --

24 MR. PETTINE: YOUR HONOR, WE CAN PUT IT OVER TO THE  
25 9TH?

26 MS. CROWLE: THAT'S FINE.

27 THE COURT: ALL RIGHT, WE'LL CONTINUE THE HEARING,  
28 THEN, ON THE MOTION TO SUPPRESS THE STATEMENTS OF

1 MISS SHIGEMURA UNTIL THE 9TH OF DECEMBER AT 9 O'CLOCK THIS  
2 DEPARTMENT. SHE'S ORDERED TO RETURN AT THAT TIME FOR THAT  
3 HEARING.

4 MR. PETTINE: THANK YOU.

5 THE COURT: ANYTHING FURTHER?

6 MS. CROWLE: NO. THANK YOU.

7 THE COURT: OKAY. THANKS TO ALL OF YOU.

8 MR. PETTINE: THANK YOU.

9 (AN ADJOURNMENT WAS TAKEN UNTIL  
10 9:00 A.M., MONDAY, 12-9-91)

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SAN DIEGO COUNTY PROBATION DEPARTMENT  
ADULT SERVICES  
PROBATION OFFICER'S REPORT

0129

*Count*  
SC 6  
KENNETH E. MART  
C. J. De Soria

THE PEOPLE OF THE STATE OF CALIFORNIA  v.  RN: JURADO, ROBERT JR.  CN: JURADO, ROBERT  AKA:				COURT NO. CR 124438		DEPT. & JUDGE SC 6 GILL DEC 20 1991	
				DA FILE NO. B 8688901		ATTORNEY BY: K. BLANCHARD, L. G. WARREN ADPT. X RET	
				HEARING DATE/TIME 12-23-91 @ 9:00 AM		PROB CASE NO. A 713 535	
				PROBATION OFFICER ROSA NAVARRO:lc		PO TEL. NO. 531-6087	
ADDRESS 5916 CAMINITO ELEGANTE SAN DIEGO, CA. 92108				TEL. NO.  JOSEFINA JURADO		BIRTHPLACE/CITIZENSHIP LOS BANOS,, CA.	
BIRTH DATE 6-11-70	AGE 21	RACE H	SEX M	HT 5-8	WT 150	EYES BRN	HAIR BLK
O.		DRIVER'S LIC. NO. <input type="text"/>		INS. NO.		OTHER ID DATA	
DATE OFFENSE COMMITTED 5-15-91		DATE CONVICTED 11-21-91		HOW PG		CUSTODY STATUS VI U4	
INVESTIGATING AGENCY SDPD		DATE INFORMATION FILED 10-11-91		SDSO SYSTEM NO. 90108 061135			
CII NO. 09585204		FBI NO. 419568MA0		ARREST REPORT NO.		SDSO BOOKING NO. 91138986A	

**CONVICTED OF:**

On 11-21-90, the defendant entered a plea of guilty on the following counts:

Count One: Conspiracy to Commit First Degree Murder, PC182(a)(1)/187 First Degree and admits to overt acts 1 & 3.

Count Two: Murder First Degree, PC187 with 12022(b)PC allegation in that the defendant personally used a deadly dangerous weapon, to wit, cord and tire jack.

**CODEFENDANT(S):**

Anna Jeannette Humiston, DOB \_\_\_\_\_ on 7-17-91 the defendant was found not a fit subject to be dealt with under the Juvenile Court law. Humiston has pled not guilty to First Degree Murder, 187(a)PC. Trial is set for 1-6-91.

Denise Renee Shigemura, DOB \_\_\_\_\_ has pled not guilty to First Degree Murder, 187(a)PC. Trial is set for 1-6-92.

RECOMMENDATION: State Prison

000003



THE OFFENSE:

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SOURCES OF INFORMATION for this section

SDPD REPORTS, AUTOPSY REPORTS;  
DA FILE

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On 5-17-91, at approximately 7:30 a.m., a stranded motorist, using a call box at Highway 163, discovered the body of a female lying in a drainage ditch just south of the Quince Street off ramp in Balboa Park. The victim, Theresa Ann Holloway, DOB 12-12-62, suffered trauma to the head and upper body, causing her death.

At 9:25 p.m., San Diego Police Officers interviewed Brian Johnsen, the victim's boyfriend, in County Jail. He advised that Theresa Holloway was his girlfriend and was carrying his baby. They had been fighting off and on, and Theresa had been using methamphetamine (crystal). Johnsen stated that earlier in the day he had received a call from Jeff Lattimer, who reported that he and his girlfriend, Larissa, were out walking in the alley, Larissa looked into a trash can and saw a purse. She and Lattimer recognized the purse as belonging to Terry Holloway, the victim. Terry's father was called and made a missing person's report on Terry.

On 5-18-91 at 11:15 a.m., after receiving statements from Melissa Andre implicating Anna Humiston and Robert Jurado in the murder of Terry Holloway, Sergeant Manis and Detective Gerbac staked out Jurado's apartment. Jurado and Anna Humiston arrived and the pair were taken to the police station for questioning.

Initially, Anna Humiston and Robert Jurado denied knowing or killing Theresa Holloway. Both were advised of the physical evidence and facts known about the case, and were further questioned about the homicide.

Jurado said, "I didn't do a thing. You guys are questioning the wrong guy." Jurado then put his hands up to his face and said, "Give me a few minutes."

"I did it. My family was in danger. I didn't want to die. I am not a snitch. A few weeks ago, a guy in jail had me kidnapped. When I was kidnapped, I had a baseball bat put to my head. I think Terry had something to do with that. I think Terry had something to do with my motorcycle being ripped off. I was afraid for my family.

The girls had nothing to do with it. The girls were not there. I did it alone.

The murder happened in the car. I dropped the body off on the freeway, and the car broke down a few feet away.

I tried to choke Terry. I was choking her with a long piece of plastic. I then started hitting Terry over the head with the car's jack. I threw it away after the car broke down."

000004

Soon after, the interview with Jurado was concluded.

Jurado pointed out the area where he had thrown the car jack. The tire jack was located in a tree adjacent to Quince Street. It had red stains all over it and hair attached to it. Jurado was taken to jail.

When Anna Humiston was interviewed, she admitted to being a participant in the killing of Terry Holloway.

On the same date, at approximately 6:15 p.m., Denise Shigemura was admonished of her rights. Shigemura initially denied participating in the killing, but when confronted with the facts gathered throughout the investigation, she admitted to being a participant in the killing of Terry Holloway.

Robert Jurado, Anna Humiston, and Denise Shigemura related the following events regarding the killing of Terry Holloway:

The three defendants decided to kill their friend, Terry Holloway, for "snitching" on them. The defendants admitted to being involved in drugs and claim to be in fear for their lives due to Holloway's actions.

The defendants lured Holloway into Humiston's car, where she sat in the front passenger seat. Jurado and Humiston are in the back seat behind Holloway. Shigemura was the driver. Jurado then began to strangle Holloway with a cord while the car was moving. Humiston hit Holloway and restrained her for Jurado. When Holloway failed to die quickly, Jurado struck her over the head with a tire jack. While Jurado was striking her, Holloway kept screaming, "Why are you doing this to me?" "Why? Tell me why?"

The defendants ended up on Highway 163 and the car was dying. Jurado then told Shigemura to pull over. After the car stopped, Jurado pulled Holloway out of the car and threw her down into the ditch. He then went down to check and make sure she was dead. Jurado hit Holloway a few more times on the head with the jack.

Jurado drove the car away from the body and made some phone calls and waited for a friend, Dave, to pick them up. The car was towed the next day to Jurado's house. The car had a lot of blood in it so Humiston and Shigemura cleaned up the car. Jurado took Holloway's sandal and purse and threw them into a trash can.

On a follow-up investigation, David Coloson told investigators that on Monday night, 5-13-91, Jurado called him about 1:30 a.m. in the morning and wanted to borrow one of his brother's guns. Jurado told him, "Do you think I could borrow one of Jeff's guns. I have to do somebody up." Coloson said that Jurado in the past had talked about doing "somebody up" (killing them). Coloson always thought it was just talk.

On 9-16-91, Brian Johnsen was interviewed by the DA office. Johnsen stated that while he was in custody, he, Jurado, and Shigemura had a



three way telephone conversation on the night that Holloway was killed. They were planning to kill Doug Mynatt. Johnsen said that Shigemura, later told him that after having the three way conversation, Jurado told Shigemura and Humiston that Holloway had to be taken out, she was asking to many questions. Jurado also said, "Don't worry about it, I will take care of it."

An autopsy of Theresa Ann Holloway, age 26 years and five months, indicated that she died of a blunt forced head injury and strangulation. The right eye was collapsed, and there were conjunctival hemorrhage in both eyes. There were contusions on the calves and thighs, and there were numerous contusions, abrasions and lacerations on the neck, face and scalp. There were many palpable facial and skull fractures. A large wrench, contained within a black plastic case, was found near the decedent's body. A white scarf and one black left sandal were found on the edge of the dirt roadway just about the drainage ditch where the decedent was found.

VICTIMS:

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RESTITUTION: UNKNOWN

VICTIM NOTIFIED OF P&S HEARING: YES

INTENDS TO APPEAR: YES

SOURCES OF INFORMATION for this section

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VICTIMS: JAMES & JOANNE CUCINOTTA

Mr. Cucinotta, the victim's father and the victim's mother, Mrs. Cucinotta have been notified of today's hearing. Mr. Cucinotta stated that his family does intend to appear for the sentencing. Mr. Cucinotta stated that he will make a statement for the family at the time of the time of the sentencing.

According to Mr. Cucinotta, his family has paid over \$2000 to bury his daughter. Mr. Cucinotta said that their loss is not money, but instead the life of their daughter which could never be replaced or repaid.

Mr. Cucinotta concluded by stating that emotionally, he and his wife have been severely dramatized.

DEFENDANT'S STATEMENT:

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SOURCES OF INFORMATION for this section

PERSONAL INTERVIEW WITH DEFENDANT

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The defendant did not submit a written statement on his probation questionnaire.

Robert Jurado was interviewed at Vista Mens Detention Facility on 12-12-91. The defendant admitted to the crime.

Mr. Jurado stated, "If I had to do it all over again, I would take it all back." He said if he knew ahead what was going to occur, he would have moved out of San Diego. He claims that the abuse of narcotics and bad companions led him to where he is now.

Mr. Jurado expressed remorse for his actions and said he did not have a right to take Terry's life. Further, he is sorry he hurt Terry's family and expressed sadness for her mother.

According to Mr. Jurado, the whole event revolved around his kidnapping a week and a half before the offense. He was kidnapped due to a misunderstanding that took place a year ago. The persons that kidnapped him are dangerous and are heavily involved in the use and sales of narcotics. He believed that Terry was "snitching" and he feared for his life.

The defendant concluded by stating that he plans to withdraw his plea, because he cannot perceive being incarcerated for 26 years.

CRIMINAL HISTORY:

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SOURCES OF INFORMATION for this section

CII DATED 12-4-91;  
FBI DATED 12-5-91;  
LOCAL RECORDS

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2-22-87	Unk.	Ct 1, PC459;	3-9-87 pet fld; 3-19-87, TF
		Ct 2, PC484;	on Ct 3; 4-7-87 ward of
		Ct 3, H&S11550(a)	Crt.

Count One and Two, defendant was caught taking Gatorade from a 7-11 Store and investigation disclosed that he entered the store with the intention to steal.

Count Three, Mrs. Jurado found her son under the influence and called the Sheriffs. She also found a glass vial, a razor blade and a short straw.

000007

4-5-88	Unk.	602/777W&I	4-5-88 pet fld; 4-15-88, TF; 5-31-88 comit JRF 240 dys.
10-11-90	CHP	Ct 1, H&S11379; Ct 2, H&S11378; Ct 3, H&S11377; Ct 4, H&S11359; Ct 5, H&S11550(a); Ct 6, VC23152(a)	CR 117373: 11-21-90, conv, Ct 4; 3 yrs f prob, 180 dys jl. 12-23-91 prob rvctn hrng. PENDING.
5-18-91	SDPD	Ct 1, 182(a)(1)/ 187PC Admit to Advert Act 1&3; Ct 2, 187(a)PC w\12022(b)PC.	CR 124438: INSTANT OFFENSE.

PERSONAL HISTORY

The following information was offered by the defendant. Unless noted otherwise it has not been verified.

Significant Family Information:

He was raised by his mother. His parents divorced when he was under the age of five. He rarely has contact with his father. He has not seen his father since 1974. His father is remarried and lives in Northern California. His mother is employed as a school teacher in the San Diego District. He only has one sibling, a sister who is 18-years old. Both his mother and sister reside in San Diego. He remembers his childhood as being resentful towards his father because he was not there when he was growing up. He denies any physical or sexual abuse.

Family Criminal History:

Law-abiding.

Education:

Dropped out of the tenth grade. He was heavily involved with drugs and could not concentrate in school. He went back to school and finished half of the twelfth grade.

Employment History:

He started working at the age of 16 at a fast food, Jack-In-The-Box. He also worked as a busboy at San Marcos Country Club. At age 18 he worked temporarily for Arby's Restaurant. Prior to being arrested, he was employed full-time at WWI-Wholesale Warehouse.

000008

Source of Support:

Employment at WWI-Wholesale Warehouse Industry and paid commission.

Financial Condition:

Poor.

Number of Dependents & Ages/Relationship to Defendant:

None.

Military Status:

N/A.

Marital Status:

Single.

Psychological/Medical Problems:

The defendant stated that in 1988 while at Harbor View Medical Center he was under an adolescent treatment program because he attempted twice suicide. With reference to medical problems, the defendant denies.

Physical Health:

Good.

Substance Abuse History:

See Special Problems.

Gang Affiliation:

Denies.

Other:

None.

SPECIAL PROBLEMS:

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SOURCES OF INFORMATION for this section

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The defendant began experimenting and using marijuana and cocaine at the age of 12. At age 14 he was introduced to methamphetamine. During the age of 16 through 18, he was using acid every week. He claims that he took acid more than twice a week.

000009

According to the defendant, his heaviest period of use of methamphetamine was at age 16 through 17 and at age 19. He was smoking one gram a day of methamphetamine. The defendant admits to being addicted to methamphetamine.

The defendant claims that during the Instant Offense, he was under the influence of acid. He had taken acid about four to five hours before the offense.

SENTENCING DATA:

As to Count One and Count Two:

There will be no discussion of Circumstances in Aggravation or Mitigation as to Count One and Two, they carry an undetermined sentence.

Prison Term Analysis:

Count One, Conspiracy to Commit a Murder (182(a)(1)PC/187PC) is punishable by 25 years to life. Murder in the First Degree (187(a)PC) is punishable by 25 years to life. Further, there is a PC12022(b) Enhancement attached to Count Two, that carries an additional one year.

It appears that additional punishment for Count One is barred pursuant to 654PC as both the conspiracy and the murder had the same objective.

EVALUATION:

Circumstances Supporting a Grant of Probation:

Rule 414(b)(7): The defendant expressed feelings of remorse for his behavior.

Circumstances Supporting a Denial of Probation:

Rule 413(b): The defendant appears to be presumptively ineligible for probation except in the unusual case pursuant to 1203(e)(2)PC, Count two. The undersigned has reviewed California Judicial Rules of Court 413 and the criteria affecting probation in the unusual case. The undersigned believes that there is no readily applicable criteria for which to find that this is an unusual case. However, pursuant to Rule 408(a), the Court might find that the defendant is youthful in age (21-years) and does not have the history of violence. However, because the crime is so serious and cost a woman her life, we do not believe the factor cited is sufficient to make this an unusual case. Even if he were to be found eligible for probation, we would not recommend probation for this defendant due to the danger he poses to others. This offense not only involved the plot to kill this victim, but also a plot to kill another man.

Rule 414(a)(1): The nature of the crime is serious compared to other instances of the same crime. The defendant acted with high degree of callousness when he struck the victim repeatedly over the head with the tire jack when she pled for her life.

Rule 414(a)(9): The defendant took advantage of a position of trust as a friend to commit the crime. He lured the victim to the car in order to murder her.

Rule 414(b)(1): The Instant Offense is evidence that the defendant's criminal record is of an increasing serious nature.

Rule 414(b)(2): The defendant's adjustment to probation is viewed as unsatisfactory in that he was on probation in case CR 117373 when he committed the Instant Offense.

Rule 414(b)(8): The community is at danger if the defendant is not imprisoned.

Before the Court is 21-year old Robert Jurado, who entered a plea of guilt on the following counts: Count One, Conspiracy to Commit First Degree Murder (PC182(a)(1)/187) and admitted to overt acts 1 & 3; Count Two, Murder First Degree (PC187) with 12022(b)PC allegation.

On 5-17-91, at approximately 7:37 a.m., a stranded motorist, using a call box at Highway 163 discovered the body of Theresa Ann Holloway, DOB 12-12-63, lying in a drainage ditch just south of the Quince Street off ramp in Balboa Park. The victim suffered trauma to the head and upper body, causing her death.

On 5-18-91 at 11:15 a.m., San Diego Police Officers received a statement from Melissa Andre implicating Anna Humiston and Robert Jurado in the murder of Terry Holloway.

On the same day, at approximately 6:15 p.m., Denise Shigemura was arrested in connection with the murder.

After the defendants decided to kill their friend, Theresa Holloway, for "snitching" on them. The defendants lured Holloway into a vehicle, where she sat in the front passenger seat. Jurado and Humiston sat in the back seat behind Holloway. Shigemura was the driver. Jurado then began to strangle Holloway with a cord while the car was moving. Humiston hit Holloway and restrained her for Jurado. When Holloway failed to died quickly, Jurado struck her over the head with a tire jack.

The defendants ended up on Highway 163 when their car stopped. Jurado pulled Holloway out of the car and threw her down into the ditch. He then went down to check and make sure she was dead. Jurado hit Holloway several more times on the head with a jack.

An autopsy of Theresa Ann Holloway indicated that she died of a blunt forced head injury and strangulation. Mr. Robert Jurado has a history of criminal behavior that impact to his youth. These past



crimes have been primarily associated to drugs. Further, he was on formal probation in case CR 117373 when he committed the Instant Offense.

The defendant's crime was heinous. The vicious<sup>ness</sup> and cruelty of his act as well as the community's right to be protected from such individual argues for the maximum penalty.

The defendant appears to be presumptively ineligible; however, a grant of probation will not be recommended in view of the nature of the offense. Therefore, the undersigned recommends that probation be denied and the defendant be sentenced to State Prison for 26 years.

CUSTODY DATA:

At the time of sentencing, PC 1191.3 requires the Court to make an oral statement that statutory law permits the award of conduct and work-time credits up to one-third or one-half of the sentence that is imposed by the Court; that the award and calculation of credits is determined by the Sheriff in cases involving imprisonment in county jails; by the Department of Corrections in cases involving imprisonment in the state prison; and that credit for presentence incarceration served by the defendant is calculated by the Probation Department under current state law.

<u>Date Confined</u>	<u>Date Released</u>	<u>Place</u>	<u>Custody Days</u>
5-18-91	12-23-91 (in custody)	County Jail	220
		4019PC Credits	110
		Total CTS	330

RECOMMENDATION:

That probation be denied and the defendant be committed to the Department of Corrections for the undetermined term of 26 years to life, with credit for time served of 220 actual days and 110 days 4019 PC credits, a total of 330 days credit; further, that the defendant pay a restitution fine pursuant to 13967 Government Code in the amount of \$500 to be paid forthwith or as provided in 2085.5 PC.

Term Recommendation Breakdown by Count is as Follows:

<u>Crime</u>	<u>Suggested Base Term</u>	<u>Recommended Term</u>	<u>Recommended Stay</u>
Ct 1, PC182(a)(1)/ 187 with avert act 1&3	25 years to life	0	25 years to life (barred per 654PC)
Ct 2, PC187(a) First Deg	25 years to life	25 years to life	0

000012

JURADO, Robert Jr.  
CR 124438

11

0139

12-23-91

Enhancement 1 year  
12022(b)  
(Tire Jack)

1 year

0

Total 26 to life

Respectfully submitted,

CECIL H. STEPPE  
Chief Probation Officer

By: Rosa E. Ibarra Navarro  
ROSA IBARRA-NAVARRO  
Deputy Probation Officer

Approved Susan J. Blackwell  
SUSAN J. BLACKWELL, Supervisor

I have read and considered the foregoing report.

[Signature]  
JUDGE OF THE SUPERIOR COURT

RIN:lc

PROB. 2185 (6-19-91)

000013