

No. _____

IN THE
Supreme Court of the United States

TEDROY DAVIS,

Petitioner,

v.

JEFFREY BEARD, WARDEN

Respondent.

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

PETITIONER'S APPENDIX

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FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAR 29 2022

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

TEDROY DAVIS,

No. 20-56402

Petitioner-Appellant,

D.C. No. 2:14-cv-07544-VBF-LAL
Central District of California,
Los Angeles

v.

JEFFREY A. BEARD,

ORDER

Respondent-Appellee.

Before: CALLAHAN and MILLER, Circuit Judges.

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

Any pending motions are denied as moot.

DENIED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 | TEDROY DAVIS,

Petitioner,

Case No. LACV 14-7544-VBF (LAL)

ORDER DENYING CERTIFICATE OF APPEALABILITY

13 | JEFFERY BEARD,

Respondent.

17 For the reasons stated in the Final Report and Recommendation, the Court finds that
18 Petitioner has not made a substantial showing of the denial of a constitutional right.¹ Thus, the
19 Court declines to issue a certificate of appealability.

21 DATED: November 23, 2020

/s/ Valerie Baker Fairbank

Hon. VALERIE BAKER FAIRBANK
UNITED STATES DISTRICT JUDGE

²⁸ See 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 TEDROY DAVIS, Case No. LA CV 14-07544-VBF (LAL)
11 Petitioner,
12 v.
13 JEFFERY BEARD,
14 Respondent.
15

16
17 Final judgment is hereby entered in favor of the respondent and against petitioner Tedroy
18 Davis. IT IS SO ADJUDGED.
19

20 DATED: November 23, 2020

/s/ Valerie Baker Fairbank
Hon. VALERIE BAKER FAIRBANK
UNITED STATES DISTRICT JUDGE

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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
DIVISION FIVE

Zee Rodriguez

Docketed
Los Angeles

JAN 11 2013

THE PEOPLE,

B237536

By: B. Davalos
No. LA 2012603159

Plaintiff and Respondent,

(Los Angeles County
Super. Ct. No. BA373310)

v.

TEDROY DAVIS,

Defendant and Appellant.

APPEAL from an order of the Superior Court of the County of Los Angeles, Sam Ohta, Judge. Affirmed.

Sara H. Ruddy, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, Zee Rodriguez, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Following trial, a jury found defendant and appellant Tedroy Davis (defendant) guilty of second degree murder and of being a felon in possession of a firearm. On appeal, defendant contends that during a rebuttal examination of one of the investigating detectives, the prosecutor committed *Doyle*¹ error when, on four separate occasions, she asked the detective improper questions about statements defendant made or failed to make after he invoked his right to counsel.

We hold that defendant forfeited each of the claims of *Doyle* error by failing to object to the questions in issue and request curative instructions. We do not reach defendant's claim of ineffective assistance of counsel, as such a claim is more appropriately raised by way of a writ of habeas corpus. We therefore affirm the judgment of conviction.

FACTUAL BACKGROUND²

A. The Shooting

Hubert McFarlane owned a restaurant which defendant frequented. About a week before the shooting, McFarlane witnessed an altercation outside the restaurant between defendant and the victim during which McFarlane heard the victim tell defendant to "take off his red shirt." During that incident, McFarlane saw a gun in defendant's pants pocket which defendant always carried.

On July 3, 2010, defendant followed the victim and two other men into a market near McFarlane's restaurant. Defendant left the market and returned to the front of the

¹ *Doyle v. Ohio* (1976) 426 U.S. 610.

² Because defendant's claims of *Doyle* error involve only certain portions of his testimony and the rebuttal testimony of the investigating detective, we do not include a detailed discussion of the other evidence.

restaurant. As the victim and the two other men left the market, defendant gestured and exchanged words with them. The victim then confronted defendant. Defendant and the victim argued, and the victim threw a punch at defendant. Defendant pulled a gun and shot and killed the retreating victim. Defendant then ran to his truck and left. A surveillance videotape showed defendant at the scene at the date and time of the shooting. Defendant was arrested in Arizona on July 30, 2010.

B. Defendant's Testimony

Defendant testified in his own defense. Among other things, defendant testified he was aware the victim was a gang member and that he armed himself on the day of the shooting because he was afraid of the victim who had threatened to kill him. He also said he did not intend to hurt the victim. He thought the victim was reaching for a gun. Defendant admitted he shot the victim out of fear and that he was the man depicted in the surveillance video.

C. Rebuttal Testimony of Investigating Detective

In rebuttal, the prosecutor called one of the investigating detectives who had questioned defendant while he was in custody in Arizona. The detective testified that he and his partner advised defendant of his *Miranda*³ rights.

1. First Claim of Doyle Error

After eliciting testimony from the detective that defendant had been advised of his *Miranda* rights, the prosecutor asked the detective, "And how did defendant respond?" In response, the detective stated, "He said that he wanted an attorney." Defense counsel did not object, seek to strike the answer, or request a curative admonition.

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

2. *Second Claim of Doyle Error*

The prosecutor next asked the detective the following questions: “And after the defendant said he wanted an attorney, how did you or your partner respond? [¶] A. We said we would still want to talk to him to get some basic information from him.

[¶] Q. Did you attempt to get basic information from him? [¶] A. Yes. [¶] Q. What type of information did you attempt to get from him? [¶] A. Where he lived, who his wife or significant other was. Things like that. [¶] Q. Did he ask any questions about why he was being there or why he was arrested? [¶] A. Yes. [¶] Q. And did you respond? [¶] A. Yes. [¶] Q. And why [*sic*], did you all say? [¶] A. We told him we had a warrant for his arrest for the crime of murder. [¶] Q. And did he ever tell you, during his interview, and give you any—well, did he ever tell you that he shot the victim because he was scared of the victim? [¶] A. No. [¶] Q. Did he ever tell you that? [¶] [Defense Counsel]: Object. Counsel leading the witness. [¶] The Court: That is sustained. Sidebar please.”

During the sidebar conference, the trial court told the prosecutor that because defendant had invoked his right to counsel, the prosecutor must limit the questions to what defendant said, and must not ask questions about what defendant did not say because “he invoked.” Defendant’s counsel did not object based on *Doyle* and did not request a curative admonition.

3. *Third Claim of Doyle Error*

Following the sidebar conference, the prosecutor asked the detective, “[W]hat did [defendant] tell you during your interview with [him] about any murder?” The detective responded, “My recollection was that [defendant said] he didn’t know anything about a murder.” Defense counsel did not object, move to strike, or request a curative admonition.

4. *Fourth Claim of Doyle Error*

The last question the prosecutor asked the detective was, “Do you remember the defendant say[ing] anything else about that murder that day?” The detective responded that “[defendant] didn’t say anything else about the murder.” Defense counsel did not object, move to strike, or request a curative admonition.

In addition to failing to object based on *Doyle* during the rebuttal testimony, defendant did not raise any *Doyle* error in his motion for new trial. And neither the prosecution nor the defense referred in their opening statements or closing arguments to anything that transpired in connection with the claimed *Doyle* errors.

PROCEDURAL BACKGROUND

In an information, the Los Angeles County District Attorney charged defendant in count 1 with murder in violation of Penal Code section 187, subdivision (a)⁴ and in count 2 with being a felon in possession of a firearm in violation of section 12021, subdivision (a)(1). The District Attorney alleged that in the commission of the murder, defendant personally used a firearm, personally discharged a firearm, and personally discharged a firearm causing death or great bodily injury within the meaning of section 12022.53, subdivisions (b), (c), and (d).

Following trial, the jury found defendant guilty of the lesser included offense of second degree murder and of being a felon in possession of a firearm. The jury also found the firearm allegations to be true. The trial court sentenced defendant to a total term of 40 years to life, comprised of a 15 years to life term on count 1, plus a 25 years to life term based on the section 12022.53, subdivision (d) firearm enhancement, and a concurrent term of three years on count 2. The sentence enhancements under section 12022.53, subdivisions (b) and (c) were stayed. The trial court also imposed fines and assessments and stayed the parole revocation fine.

⁴ All further statutory references are to the Penal Code unless otherwise noted.

DISCUSSION

A. Applicable Legal Principles

Defendant contends that the prosecutor committed *Doyle* error during her rebuttal examination of one of the investigating detectives. According to defendant, the prosecutor improperly elicited testimony from the detective concerning defendant's silence after he invoked his right to counsel.

Under *Doyle*, a prosecutor's use of a defendant's post-*Miranda* advisement silence to impeach the defendant violates due process. (*People v. Collins* (2010) 49 Cal.4th 175, 203 (*Collins*).) *Doyle*, however, "does not apply when a defendant presents exculpatory testimony at trial inconsistent with a voluntary post-*Miranda* statement." (*Id.* at p. 203, citing *Anderson v. Charles* (1980) 447 U.S. 404.) When a defendant provides such testimony, voluntary post-*Miranda* statements and voluntary statements obtained in violation of *Miranda* are admissible to impeach that defendant. (*People v. Demetrulias* (2006) 39 Cal.4th 1, 29, citing *Harris v. New York* (1971) 401 U.S. 222, 225-226; see *Oregon v. Hass* (1975) 420 U.S. 714, 722; *People v. Peevy* (1998) 17 Cal.4th 1184, 1188.) The Supreme Court has also stated in *People v. Thomas* (2012) 54 Cal.4th 908, 936, "The *Doyle* rule is not violated when "the evidence of [a] defendant's invocation of the right to counsel was received without objection and the remarks of the prosecutor did not invite the jury to draw any adverse inference from either the *fact* or the *timing* of defendant's exercise of his constitutional right.'" (*People v. Huggins* (2006) 38 Cal.4th 175, 199 [41 Cal.Rptr.3d 593, 131 P.3d 995].) Moreover, a '... *Doyle* violation does not occur unless the prosecutor is *permitted* to use a defendant's postarrest silence against him at trial' (*Clark*, at p. 959.)" (See also *Greer v. Miller* (1987) 483 U.S. 756, 764.)

B. Forfeiture

It is well established that the failure to object on *Doyle* grounds and request a curative admonition constitutes a forfeiture of claims of *Doyle* error. (*People v. Tate*

(2010) 49 Cal.4th 635, 691-692; *Collins, supra*, 49 Cal.4th at p. 202; *People v. Huggins* (2006) 38 Cal.4th 175, 198; *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 118.)

Defendant's counsel objected to only one of the four alleged instances of *Doyle* error at trial, and did not object on *Doyle* grounds in that instance, but rather on the ground that the question was leading. The trial court apparently treated the objection as one based on *Doyle* in any event and clarified that the prosecutor could ask only about the defendant's statements, not his silence. Defense counsel did not ask for any curative admonition. With regard to the other allegedly improper questions by the prosecutor, defense counsel made no objection and did not request any curative admonitions. Accordingly, defendant forfeited the claims of *Doyle* error. (See *People v. Carter* (2003) 30 Cal.4th 1166, 1207 [even assuming *Doyle* error, "defendant has failed to show that a prompt admonition . . . would not have cured any harm"].)

C. Ineffective Assistance of Counsel

Defendant asserts that if there was a forfeiture by failing to object, that failure constituted ineffective assistance of counsel. "[N]ormally a claim of ineffective assistance of counsel is appropriately raised in a petition for writ of habeas corpus [citation], where relevant facts and circumstances not reflected in the record on appeal . . . can be brought to light." (*People v. Snow* (2003) 30 Cal.4th 43, 111; see *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

There is no indication or contention that the only apparent reason for calling the detective was to establish defendant's invocation of his *Miranda* rights, in which case, the trial court may have had a duty to intervene. (See *People of the Territory of Guam v. Veloria* (9th Cir. 1998) 136 F.3d 648, 652; O'Neill, California Confessions Law (2012 ed.) § 15:4, p. 324.) Moreover, there are possible reasons justifying defense counsel's failure to object. As to the second claim of *Doyle* error, defense counsel objected, and the trial court sustained the objection and held a sidebar to discuss the permissible areas of inquiry. The Supreme Court has said that if an objection is made on a non-*Doyle*

ground, and it is sustained, the “incipient *Doyle* misconduct” [was] “nipped in the bud.” (*People v. Tate, supra*, 49 Cal.4th at p. 92.)

As to the other claims of *Doyle* error, defense counsel may have concluded, as the Supreme Court later said in *People v. Thomas, supra*, 54 Cal.4th at page 936, that because “the prosecutor did not attempt and was not permitted to use the comment against defendant by inviting the jury to draw any adverse inference from the remark. . . . there was no violation of the *Doyle* rule.” Moreover, defense counsel may have resisted objecting in order not to place any undue emphasis before the jury on the interrogation. This is especially so in light of defendant’s statement during that interrogation that he knew nothing about a murder and his insistence that he was not the person in a photograph from the surveillance video, both of which statements were inconsistent with his trial testimony. Given defendant’s inconsistent statements, it is possible that defense counsel’s failure to make objections was not out of ignorance of the law, but rather tactical. (See *People v. Hinton* (2006) 37 Cal.4th 839, 867.)

This is not a case in which there is no explanation for a failure to object other than ineffective assistance of counsel. Accordingly, the contention is not appropriate in this case on direct appeal.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.

Court of Appeal, Second Appellate District, Division Five - No. B237536

S208671

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

TEDROY DAVIS, Defendant and Appellant.

The petition for review is denied.

SUPREME COURT
FILED

MAR 27 2013

Frank A. McGuire Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

IA **FILED**
Superior Court of California
County of Los Angeles

JAN 27 2014

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent/Plaintiff,
vs.
TEDROY DAVIS,
Petitioner/Defendant.

CASE NO. BA3/3319 Sherri R. Carter, Executive Officer/Clerk
By David Marquez Deputy
David Marquez

ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS

The Court has read and considered the Petitioner's Petition for Writ of Habeas Corpus filed on January 6, 2014.

Following review of the Petition, all exhibits in support attached thereto, trial record, and the overall court file, this Court hereby denies the underlying Petition for the following reasons:

1. Petitioner has failed to set forth a *prima facie* case for relief. (*In Re Crow*(1971) 4 Cal.3rd 613, 624). The burden is on petitioner to establish grounds for his release. (*People v. Duvall*(1995) 9 Cal.4th 464, 474)
2. Petitioner contends that the trial court committed error by “not instructing the jury on the elements of malice.” However, a review of the trial record including the jury instructions given therein fails to support said contention. Additionally, the petition raises an issue that should have been raised on appeal, but was not, and petitioner has failed to allege facts establishing an exception to the rule barring habeas consideration of claims that could have been raised on appeal. *In re Reno*(2012) 55 Cal. 4th 428, 490-93; *In re Harris*(1993) 5 Cal. 4th 813, 825-26; *In re Dixon*(1953) 41 Cal. 2nd 755, 759; *In re Smith*(1911) 161 Cal. 208.

1
2 3. As to the claim of ineffective assistance of appellate counsel, during Petitioner's first appeal of right,
3 Petitioner has failed to show that appellate counsel's exercise of professional judgment was deficient or
4 that, but for counsel's errors, the outcome of the appeal would have been different. Appellate counsel
5 is not required to raise every non-frivolous issue and Petitioner alleges no more than a failure to raise
6 issues. Smith v. Robbins(2000) 528 U.S. 259, 288; Jones v. Barnes(1983) 463 U.S. 745, 750-52.

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8 For the foregoing reasons, the Petition is denied. A true copy of this order is forwarded to the
9 Petitioner/Defendant this date.

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25 DATED: 1/22/14



George G. Lomeli
Judge of the Superior Court

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL – SECOND DIST.

DIVISION FIVE

F I L E D

Apr 11, 2014

JOSEPH A. LANE, Clerk

JBelcher Deputy Clerk

In re TEDROY DAVIS

B254620

(Super. Ct. No. BA373310)

on

(George G. Lomeli, Judge)

Habeas Corpus

O R D E R

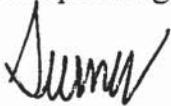
THE COURT:

The court has read and considered the petition for writ of habeas corpus filed February 28, 2014. The petition is denied.

The issue of error by the trial court in “not instructing the jury on the elements of malice” could have been, but was not, raised on appeal. (*In re Harris* (1993) 5 Cal.4th 813, 826; *In re Clark* (1993) 5 Cal.4th 750, 765; *In re Waltreus* (1965) 62 Cal.2d 218, 225.) To the extent the failure to raise this issue is attributable to appellate counsel, we hold that petitioner has no ground for a claim of ineffective assistance of appellate counsel. (*Smith v. Robbins* (2000) 528 U.S. 259, 285-286; *Jones v. Barnes* (1983) 463 U.S. 745, 750; *Miller v. Keeney* (9th Cir. 1989) 882 F.2d 1428, 1434, fn. 10.)

Davis’ allegations that the prosecution did not turn over the victim’s arrest record and that the government deported a witness are conclusory, and do not show that failure to provide discovery, if any, was prejudicial. Also, as to the deportation of the

witness, there is no indication that the prosecution knew that the witness was going to testify in a pending criminal case before deportation.



TURNER, P.J.



KRIEGLER, J.



MINK, J. *

* Retired judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

Supreme Court

Change court *Court data last updated: 10/08/2014 11:47 AM*

Docket (Register of Actions)

DAVIS (TEDROY) ON H.C.
Case Number S219140

Date	Description	Notes
06/06/2014	Petition for writ of habeas corpus filed	Petitioner: Tedroy Davis Pro Per 1 volume of lodged exhibits with petition.
08/13/2014	Petition for writ of habeas corpus denied	

[Click here](#) to request automatic e-mail notifications about this case.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
PLAINTIFF-RESPONDENT,)
VS.)
TEDROY A. DAVIS,)
DEFENDANT-APPELLANT.)

JAN 09 2012

SUPERIOR COURT
NO. BA373310-01

COPY

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE SAM OHTA, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL

NOVEMBER 10, 2010, DECEMBER 7, 2010, JANUARY 26, 2011
AUGUST 25, 2011, AUGUST 26, 2011, AUGUST 29, 2011
AUGUST 30, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CALIFORNIA 90012

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

GEORGETTE L. RODARTE, CSR 8747, RPR, CRR
OFFICIAL REPORTER

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601 THROUGH 687-900
901 THROUGH 1066-1200

1 AND SO UNLIKE THE PRESENT OFFENSE AND HE HAS NOT SUFFERED
2 NOR HAS HE BEEN SUBJECT TO ANY ACTIONS OF THE STATE
3 AGAINST HIM SINCE THAT TIME THAT IT SHOULD BE EXCLUDED.

4 THE COURT: I AM NOT QUITE CLEAR WHAT I AM BEING
5 ASKED TO DO.

6 MR. WILLOUGHBY: THAT PEOPLE NOT BE ALLOWED TO TELL
7 THE JURY ABOUT HIS PRIOR CONVICTION IN CANADA.

8 THE COURT: SO YOU ARE RUNNING A 402 ON WHETHER OR
9 NOT THE DEFENDANT SHOULD BE SUBJECT TO IMPEACHMENT?

10 MR. WILLOUGHBY: YES.

11 THE COURT: ON THE ROBBERY?

12 WELL, LIKE I SAID, THEN, UNLESS YOU
13 STIPULATE THAT THE ROBBERY IS A CRIME OF MORAL TURPITUDE,
14 I HAVE TO ASCERTAIN WHETHER IT IS OR IT IS NOT. THAT
15 WOULD BE THE FIRST STEP.

16 AND IN DOING THAT FIRST STEP, I WOULD NEED
17 THE STATUTE. I WOULD NEED TO REVIEW THE STATUTE AND THEN
18 MAKE A DECISION AS TO WHETHER OR NOT THE CONVICTION
19 RELATES TO A CRIME OF MORAL TURPITUDE.

20 AS I SAID, YOU COULD STIPULATE TO THAT SO
21 THAT WE GET BY THAT FIRST STEP WHICH THEN LEADS ME TO THE
22 ANALYSIS OF WHETHER OR NOT IT OUGHT TO BE USED FOR
23 PURPOSES OF IMPEACHMENT. BUT THE FIRST STEP IS AGAIN
24 WHETHER OR NOT THE CRIME IN CANADA IS A CRIME OF MORAL
25 TURPITUDE.

26 MR. WILLOUGHBY: WELL, I WOULD SUBMIT THAT IS, IN
27 FACT A CRIME OF MORAL TURPITUDE. IT'S A THEFT OFFENSE.

28 THE COURT: YOU WOULD SUBMIT OR STIPULATE? I HAVE

1 TO LOOK AT THE STATUTE OTHERWISE.

2 MR. WILLOUGHBY: I WOULD STIPULATE.

3 THE COURT: THE COURT, THE LAW REQUIRES I HAVE TO
4 LOOK AT THE STATUTE.

5 MR. WILLOUGHBY: I WOULD STIPULATE THE CRIME
6 APPEARS TO BE A CRIME OF MORAL TURPITUDE.

7 THE COURT: DO YOU STIPULATE, MISS HUMPHREY?

8 MS. HUMPHREY: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 THE STIPULATION IS RECEIVED. ALL RIGHT.

11 LET ME TAKE ONE SECOND THEN.

12 MS. HUMPHREY: JUST TO LET THE COURT KNOW, EVEN
13 THOUGH THE INFORMATION ALLEGES THE ONE PRIOR, THE ROBBERY,
14 MR. DAVIS' ACTUAL CANADIAN RECORD ALLEGES 2 CONVICTIONS,
15 ONE IN '92 FOR THE ROBBERY WITH A GUN AND WITH A DISGUISE
16 WITH INTENT AS WELL AS IN '93 OF AN AGGRAVATED ASSAULT IN
17 VIOLATION OF A CERTAIN SECTION THERE.

18 SO THE PEOPLE DO HAVE THAT FOR THE COURT IF
19 THE COURT NEEDS TO REVIEW THAT AS WELL AS WELL AS THE
20 COPIES OF THE CANADIAN STATUTE ASSOCIATED WITH THOSE
21 CHARGES.

22 THE COURT: HOW MANY YEARS WAS HE IN PRISON?

23 I AM LOOKING AT THE PRE-PLEA REPORT. IT
24 SHOWS SEVERAL DIFFERENT NUMBERS. IT SAYS 7 YEARS, 9
25 YEARS, 2 YEARS. I AM NOT SURE WHICH IT IS.

26 MS. HUMPHREY: FOR THE ROBBERY FOR 1992, 7 YEARS.
27 IN 1993, HE WAS SENTENCED ON THE AGGRAVATED ASSAULT FOR 9
28 YEARS CONCURRENT WITH THE SENTENCE HE WAS SERVING ON THE

1 MS. HUMPHREY: CORRECT. THAT WAS ALSO INDICATED ON
2 THE CONVICTION SHEET. I DO HAVE THE LAW HERE FOR THE
3 COURT.

4 THE COURT: WELL, I WILL SAY THIS, THOUGH, THAT IF
5 YOU ARE USING THAT FOR PURPOSES OF IMPEACHMENT, IT IS VERY
6 SIMILAR TO THE OFFENSE OF MURDER. AND I'M NOT SURE THAT I
7 WOULD ALLOW IT AS IS.

8 AGGREGATED ASSAULT, SHOOTING SOMEBODY, YOU
9 HAVE A CHARGE OF MURDER, THERE IS A DANGER THAT THE JURORS
10 MIGHT USE THAT IN AN IMPROPER FASHION TO SIMPLY CONVICT
11 THE DEFENDANT BECAUSE THEY FEEL HE HAS A PROPENSITY TO
12 SHOOT PEOPLE WITH A GUN.

13 SO I AM NOT SAYING THAT I WOULD LET YOU USE
14 IT. BUT I DON'T HAVE A STIPULATION ON THAT. SO I AM JUST
15 GOING THROUGH THE STEPS HERE.

16 MS. HUMPHREY: WELL, AT THE VERY LEAST, THERE ARE
17 TWO PRIOR FELONY CONVICTIONS WHICH THE PEOPLE WOULD ASK TO
18 USE TO IMPEACH.

19 THE COURT: WHAT ARE THEY?

20 MS. HUMPHREY: THE ROBBERY AND THEN THE AGGRAVATED
21 ASSAULT.

22 THE COURT: OKAY. SO I AM TALKING ABOUT THE
23 AGGRAVATED ASSAULT. SO I DON'T HAVE A STIPULATION THAT IS
24 A CRIME OF MORAL TURPITUDE.

25 BOTH OF YOU STIPULATED WITH ME THAT THE
26 ROBBERY CONVICTION IN CANADA IS A CRIME OF MORAL
27 TURPITUDE. SO I DO NOT HAVE TO ANALYZE WHETHER THAT IS A
28 CRIME OF MORAL TURPITUDE BASED ON THE STIPULATION.

1 gave him the witness's phone number, and they exchanged
2 phone numbers, and they were supposed to be interviewing
3 Mr. McFarlane over the weekend. I did get a message from
4 Mr. Willoughby that his investigator was unable to
5 interview the witness over the weekend and he would do it
6 in the morning.

7 My understanding is that that was not arranged or
8 not done. So I just wanted to make it clear that this
9 witness is available to be interviewed by the defense
10 attorney, or his investigator, but it wasn't done over the
11 weekend, for whatever reasons, and it hasn't been done up
12 until now.

13 Hubert McFarlane is the People's first witness
14 that we plan to call. I just didn't want an issue
15 regarding counsel not being able to interview him as an
16 issue that would come up.

17 **MR. WILLOUGHBY:** My response, for the record, is that
18 we made arrangements for Sunday morning. Unfortunately,
19 when I got ahold of my investigator, he was not available
20 Sunday morning; so I notified counsel I couldn't do it
21 Sunday morning and asked would the witness be available
22 this morning so he could be interviewed. I never heard
23 back from the D.A.

24 However, Miss Humphrey did tell me that -- I
25 guess it was subject to interpretation -- she thought I
26 could do it on my own. I was trying to arrange it through
27 her for this morning. To me, it's not an issue one way or
28 the other, other than he gave a statement on Friday that --

1 a statement that he saw my client angry on the day of the
2 incident, something he's never said before. And I asked,
3 in my text to counsel over the weekend, could I have a copy
4 of whatever statement or synopsis that he gave, and I
5 haven't received that.

6 MS. HUMPHREY: And I told counsel I did not take notes
7 or write a report regarding that information, that is why I
8 told him the information.

9 THE COURT: Could I go off the record for a second?

10

11 (Discussion held off the record.)

12

13 THE COURT: We're back on the record.

14 I just want to be clear. I don't know that it is
15 clear for the record what new information was provided to
16 the defense on Friday. My understanding is that the new
17 information related to something about the victim and the
18 defendant being on opposite ends of some political dispute.
19 Is that right?

20 MS. HUMPHREY: No, your Honor.

21 THE COURT: No?

22 MS. HUMPHREY: No.

23 THE COURT: Explain for the record what it is.

24 MS. HUMPHREY: And I just want to be clear. It's
25 additional information regarding statements that witness
26 Hubert McFarlane made.

27 Within the murder book, there is another witness,
28 Frank Fuller, who told police that the defendant and them

1 had gotten into a political discussion, not into detail of
2 what that discussion was about. But counsel had
3 information that there was a political discussion going on
4 at the restaurant.

5 When I interviewed Hubert McFarlane, he told
6 me -- this was on Friday -- that, when the defendant
7 arrived at the restaurant, he was already upset visibly
8 over something. The witness did not know what he was upset
9 about. But then after the defendant arrived at the
10 restaurant, he began -- or brought up a conversation
11 regarding politics. In particular, the defendant accused
12 the witness -- that is Hubert McFarlane, not the victim --
13 of being in one political party, the Jamaican Labour Party,
14 whereas the defendant himself was in a PNP, or the People's
15 National Party. And apparently these are two rival parties
16 in Jamaica.

17 So there was some discussion on that within the
18 restaurant which the defendant was very animated over. And
19 this was prior to the altercation with the victim, when the
20 victim arrived. So that information is something that's
21 more detailed about the political discussion. That
22 happened on the day before the victim was shot.

23 THE COURT: So another person -- what is that person's
24 name?

25 MS. HUMPHREY: Frank Fuller.

26 THE COURT: Frank Fuller was interviewed, and he
27 indicated that the defendant was saying something about
28 politics before the incident happened?

1 Q Looking at People's 1, you're pointing to an area
2 on the pavement in front of your restaurant, between the
3 two cars that are in this photograph?

4 A Yes, ma'am.

5 Q And when the defendant would come to your
6 restaurant, is that a place where he would normally stand?

7 A Yes, ma'am.

8 Q And what happened when you saw the defendant get
9 into an altercation with someone on that day?

10 A I went out, I was standing right in front of the
11 restaurant, and I asked him, "What's happening?" And he
12 say it's nothing. I say, yes, something wrong. But like a
13 lot of times they hide things from me because they don't
14 want me to know.

15 Q Okay. Hold on. Let me ask you this: Before you
16 asked Indian what's wrong, did you see him interact with
17 anyone? Did you see him have any kind of words with
18 someone?

19 A Yes, ma'am.

20 Q All right. So let's back up a little. Did you
21 see anyone walk into the parking structure that Indian had
22 words with?

23 A Yes, ma'am.

24 Q And how many people did you see?

25 A It was like two of them.

26 Q And what did they look like? Do you recall what
27 race they were? What color they were?

28 A American.

1 Q American?

2 A Yes, ma'am.

3 Q Were they African-American?

4 A African-American, yes, ma'am.

5 Q About how old were they?

A One was like about 25, and one was about like 19.

7 Q Showing you what I'll mark as People's 2, for the
8 record, your Honor.

9 THE COURT: Yes.

10 MS. HUMPHREY: People are marking another photograph
11 as People's 2 of another individual.

13 (People's Exhibit No. 2 marked
14 for identification, photograph.)

16 Q BY MS. HUMPHREY: Do you recognize the person
17 shown in that photograph?

18 A Can you bring it closer.

19 THE COURT: You can freeze it and take it to him.

20 THE WITNESS: Yes, ma'am.

21 Q BY MS. HUMPHREY: And the person I'm showing you,
22 do you recognize him from that day?

23 A Yes, ma'am.

24 Q And what did you see -- let me ask you this: Was
25 this person one of the two people that you saw walk up in
26 the parking lot?

27 A Yes, ma'am.

28 MS. HUMPHREY: And for the record, your Honor, would

1 counsel stipulate this is Daren Dunning?

2 MR. WILLOUGHBY: So stipulated.

3 Q BY MS. HUMPHREY: And for the record, when
4 you saw this young man, Mr. Dunning, where was Mr. Dunning
5 when you first saw him that day?

6 A I seen him coming from across the street.

7 Q What street is that that your restaurant is on?

8 A That was -- the street is Florence and Cimarron.
9 The cross street is Cimarron.

10 Q And when you saw the two of them cross the
11 street, where did Mr. Dunning go?

12 A In the store.

13 Q Which store?

14 A The market, in the market.

15 Q The market that says Sunny Market?

16 A Yeah, the one that says Sunny Market right there.

17 Q Did he ever walk towards your restaurant?

18 A No. No.

19 Q And when he and the other person he was with
20 walked to the market, did you hear him say anything or the
21 young man that was with him say anything?

22 A Yell.

23 Q What did you hear one of them say?

24 A One of them said to Indian he's going to cut off
25 his red shirt.

26 Q Go and take off his red shirt?

27 A Yes, sir.

28 Q Which one said that to the defendant?

1 A Well, the one there.

2 Q Is that the one I just showed you, Mr. Dunning?

3 A No, ma'am.

4 MS. HUMPHREY: May I approach your Honor?

5 THE COURT: Yes.

6 Q BY MS. HUMPHREY: Looking at People's 2, do you

7 know if that's the one that died? Do you know or not?

8 A Yes, ma'am.

9 Q Is that the one that died?

10 A Yes, ma'am.

11 Q Okay. So the person I'm showing you in this

12 photograph, People's 2, is this the one that told the

13 defendant to take off his red shirt?

14 A Yes, ma'am.

15 Q Now, the man that was with Mr. Dunning, did you

16 hear him say anything to the defendant?

17 A No, ma'am. I never hear him say anything to the

18 defendant.

19 Q And where were you standing so you could hear

20 these words from Mr. Dunning?

21 A Right in the front, right at the -- in the front

22 of my restaurant, at the door. Right in the walkway.

23 Q In the doorway?

24 A Yeah, into the restaurant.

25 Q And was the defendant outside your doorway?

26 A He was on the right-hand side, going to the

27 market.

28 Q Towards the market?

1 A Yes, ma'am.

2 Q So how far away was the defendant from you?

3 A He was like -- like probably two feet,
4 three feet.

5 Q And when the defendant -- when you saw the
6 defendant earlier that day, did he have a weapon on him?

7 MR. WILLOUGHBY: Objection. No foundation.

8 THE COURT: Overruled. If you know.

9 THE WITNESS: He always had his gun with him.

10 Q BY MS. HUMPHREY: Did you see a gun on that
11 day?

12 A Yes, ma'am.

13 Q And where was the gun?

14 A In his pocket.

15 Q And what kind of gun was it?

16 A It's a small -- I think it's a small shrug.

17 Q When you say shrug, is that like Jamaican for a
18 gun? Is that what Jamaicans call a gun? Or what does a
19 shrug mean?

20 A A shrug in America the same way, a small gun, a
21 shrug. Shrug like meaning like a powerful -- a shrug, but
22 a powerful shrug.

23 Q So a shrug is a small but powerful gun?

24 A Yes, ma'am.

25 Q And what color was the gun?

26 A It was black.

27 Q And where did the defendant have his gun on that
28 day?

1 A In his pocket.

2 Q And do you know which pocket he kept the gun in,
3 the right or left?

4 A He always keep it in his right-side pocket.

5 Q Is that a pant pocket or a shirt pocket?

6 A Pant's pocket.

7 Q And when Mr. Dunning here told the defendant to
8 take off his red shirt, what did the defendant -- let me
9 ask you this: When Mr. Dunning said that, where was he?
10 Do you recall where he was on this photograph?

11 A Yes, ma'am.

12 Q Where was he?

13 A He was turning to the left between -- between the
14 two of them right there.

15 Q Can you point using the pointer.

16 A He was standing right between the two car right
17 there, mostly to the right.

18 Q So the victim, Mr. Dunning, you're pointing to
19 where he was standing when he told Indian to take off the
20 red shirt?

21 A (Indicating). He goes to the -- close to the
22 market right there.

23 Q You're pointing to an area that is underneath the
24 sign that says "market"; is that right?

25 A Yes, ma'am. Right there.

26 Q And that's where Mr. Dunning was when he told the
27 defendant Indian to take off his red shirt?

28 A Yes, ma'am.

1 Q So he saying it loudly?

2 A Yes. He said it loud. So I could hear.

3 Q What did the defendant say -- what did Indian say
4 after that?

5 THE WITNESS: Can I use the word, Judge?

6 THE COURT: Yes.

7 THE WITNESS: He said, "I'm no fucking, no
8 gang-banger."

9 Q BY MS. HUMPHREY: And how was the defendant's
10 demeanor when he said that?

11 A It was -- he went to the store.

12 Q No. Indian, when he was saying, "I'm" -- you
13 said, "I'm not no fucking gang-banger," what was his
14 demeanor?

15 A He just said, "I'm not a gang-banger." He was
16 kind of calm.

17 Q Was he calm?

18 A Yes.

19 Q And then Mr. Daren Dunning, did he go into the
20 store after that?

21 A Yes, ma'am.

22 Q And then what was Indian doing?

23 A He was just standing still, standing on the side.

24 Q And what was his demeanor then?

25 A He was like walking back and forth, back and
26 forth.

27 Q Okay. Had you ever seen him do that before?

28 A All the time he do that.

1 THE COURT: Yes.

2 Q BY MS. HUMPHREY: So again drawing your attention
3 to the top, left-hand corner of the video, does there
4 appear to be Indian's feet at that corner?

5 A Yes, ma'am.

6 Q And at this point are you inside the restaurant?

7 A Yes, ma'am.

8 Q Now I'm going to fast-forward, and then I'm going
9 to pause it at certain points.

10 A Yes, ma'am.

11 Q And I want you to keep looking at, for example,
12 the top, left-hand corner. The person that just stepped
13 out, do you know who that is?

14 A Can you play it again.

15 Q Did you recognize that individual?

16 A It looked to me like -- make it go --

17 Q Do you want me to rewind?

18 A Yeah. That look like Buju. Yeah. That's Buju
19 right there.

20 Q Okay. I'm going to fast-forward it. And the
21 person now in the frame? Do you recognize who that is?

22 A Yes, ma'am.

23 Q Who is that?

24 A That's Buju right there.

25 Q Okay. With the white shirt and dark pants?

26 A Yes, ma'am.

27 Q Are you sure that's not Indian?

28 MR. WILLOUGHBY: I'm going to object. Counsel is

1 Q Mr. Dunning also said things that related to
2 gangs; isn't that true?

3 A I never hear that.

4 MR. WILLOUGHBY: I'd like to read 41, line 27 to 28.

5 MS. HUMPHREY: Same objection, your Honor.

6 THE COURT: I sustained that already. It's the same
7 issue.

8 Q BY MR. WILLOUGHBY: Do you know what gang is
9 around the neighborhood of your restaurant?

10 MS. HUMPHREY: Objection. Relevance.

11 THE COURT: That is overruled.

12 THE WITNESS: I only hear them talk about six-oh.

13 Q BY MR. WILLOUGHBY: Six-oh?

14 A Yes.

15 Q The Rollin 60s?

16 A Yes, sir.

17 Q And the Rollin 60s is a crip gang; isn't that
18 true?

19 MS. HUMPHREY: Objection. Speculation.

20 THE COURT: Do you know?

21 THE WITNESS: No. No, sir.

22 THE COURT: That's the answer.

23 Q BY MR. WILLOUGHBY: In looking at the video, you
24 saw yourself go out into the parking lot, correct?

25 A Yes, sir.

26 Q And you didn't hear Mr. Davis saying anything to
27 Mr. Dunning, did you?

28 A No, sir.

1 that happened earlier that day?

2 A I reviewed it myself, yes.

3 Q What we've been watching as -- for People's 3, is
4 that what you saw on that day?

5 A Yes.

6 Q And is that what you had downloaded from the
7 system?

8 A Yes.

9 Q Now, at some point did you interview those
10 witnesses, Javance Bailey and Robert Cotton?

11 A Actually, Detective Moon conducted the interview
12 with Robert Cotton. I spoke with Javance Bailey and Hubert
13 McFarlane.

14 Q And after the interviews, did they give you
15 identifications on the person who shot Mr. Dunning?

16 A Eventually, yes.

17 Q And did you track down the person who they
18 identified as the person who shot Mr. Dunning?

19 A Yes.

20 Q And where did you eventually locate that
21 individual?

22 A In Tucson, Arizona.

23 Q And what date were you -- or were you informed
24 that this individual was in Tucson, Arizona?

25 A I discovered shortly after his identification
26 that he had possibly fled to the Tucson area. We didn't
27 confirm that he was there until the end of July. And I
28 went there -- I think I arrived in Tucson on July 29, and

1 he was eventually taken into custody on July 30th.

2 Q What was the date, to your memory, that you knew
3 the -- the shooter was in Tucson, Arizona?

4 A I can't remember if -- I think it may have been
5 July 7, but I'm not positive. I don't remember the exact
6 date.

7 Q If the shooting happened on the 3rd, it was a
8 couple of days after?

9 A Yes.

10 Q But you mentioned that you did not confirm it
11 until what day?

12 A We actually didn't have a real good location of
13 where he might be until the end of July. Like I said,
14 July, I think, the 28th or 29th is when we actually had
15 isolated a certain area, and then, like I said, my partner
16 and I flew out to Tucson on the 29th.

17 Q So on the 7th you knew the city and state, but
18 you didn't know the actual area within the city?

19 A Correct.

20 Q And you flew out on the 29th?

21 A Yes.

22 Q When you flew out, where did you end up going in
23 Tucson, Arizona?

24 MR. WILLOUGHBY: I'd object. 352. I'll stipulate he
25 arrested my client.

26 THE COURT: I'll overrule it. I don't think this is
27 undue consumption.

28 THE WITNESS: Repeat your question.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

COPY

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE SAM OHTA, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
AUGUST 31, 2011 AND SEPTEMBER 1, 2011

APPEARANCES:

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FOR DEFENDANT-APPELLANT: IN PROBRA PERSONA

GEORGETTE L. RODARTE, CSR 8747, RPR, CRR
OFFICIAL REPORTER

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1501 THROUGH 1637-1800

1 MS. HUMPHREY: Objection. Speculation. Move to
2 strike.

3 THE COURT: Overruled.

4 THE WITNESS: I was wearing a red shirt, and he
5 approached me and said to me -- could I use the language he
6 used, sir?

7 THE COURT: Go ahead.

8 THE WITNESS: He said, "60's, Rollin 60's
9 neighborhood. Why you wearing that fucking red shirt
10 around here? This is my neighborhood. You don't wear a
11 fucking red shirt around here. Rollin 60's."

12 Q BY MR. WILLOUGHBY: And did you respond to him?

13 A I tell him, "Young man, I'm not a gang banger.
14 I'm an older person. I don't bang."

15 Q And subsequent to that, did you have another
16 run-in with Mr. Dunning?

17 A Yes, sir.

18 Q And when did that happen?

19 A The Friday before the incident, sir.

20 Q The incident happened on a Saturday, the 3rd;
21 correct?

22 A Yes, sir.

23 Q So on that Friday, what happened?

24 A He -- when I pulled up, I pulled up in Cimarron
25 and Florence. When I come up my truck, he approached me
26 with two more guys, and he said, "What did I tell you?
27 Don't come around here. Don't come around here. This --
28 don't fucking come around here. This is Rollin 60's

1 neighborhood." And I tell him again, "Young man, I don't
2 bang. I'm an older person."

3 Q And did he threaten you in any manner?

4 A Yeah.

5 MS. HUMPHREY: Objection. Leading. Move to strike.

6 THE COURT: There's no answer. But it is leading.
7 Sustained.

8 Q BY MR. WILLOUGHBY: Did he say anything else to
9 you?

10 A Yeah. He said he's going to shoot me, he's going
11 to kill me, sir.

12 Q On -- how did that make you feel?

13 A Scared me, sir. Scared for my life.

14 Q And on July 3rd did you happen to see
15 Mr. Dunning?

16 A Yes, sir.

17 Q Now did you do anything on July 3rd to protect
18 yourself?

19 A Yes, sir.

20 Q What did you do?

21 A I get a weapon, sir.

22 Q And on July 3rd at about 6:30 in the evening,
23 were you at -- it's a store and a restaurant in the
24 complex; correct?

25 A Yes, sir.

26 Q Were you at that complex on July 3rd at
27 approximately 6:30 p.m.?

28 A Yes, sir.

1 A No, sir.

2 Q Do you remember making a separate report on
3 July 28, 2010?

4 A Not that I remember.

5 Q And do you remember on that date that the
6 gentlemen outside your restaurant did a simulation with a
7 gun to the head like this (indicating)?

8 A Yes, sir.

9 Q They did that, and you went and reported it,
10 correct?

11 A Yes, sir.

12 Q And you told the officers that you were feeling
13 intimidated; isn't that true?

14 A Yes, sir.

15 Q And that you were in fear of your safety;
16 correct?

17 A Yes, sir.

18 Q And you also told them the suspects, one and two,
19 were friends of the homicide victim, didn't you?

20 A Can you repeat that question for me.

21 Q You also told them that the people that was doing
22 this was friends of the homicide victim, Mr. Dunning;
23 correct?

24 A No, sir.

25 Q I want you to read the line that I underlined in
26 the report.

27 A (Complies.)

28 Yes, sir.

1 Q Does it state that you told the police officers
2 that suspects one and two, on the day that they came to
3 your restaurant and simulated a gun to the head --

4 A Yes, sir.

5 Q -- were friends of the homicide victim?

6 A Yes, sir.

7 Q And did you further tell officers that there's a
8 group of four or five of them but suspect No. 1 in
9 particular come by your restaurant every day, three or four
10 times a day and threaten you?

11 A Yes, sir.

12 Q And he threatened you in a similar manner?

13 A Yes, sir.

14 Q And that you were fearful of him and therefore
15 you locked up the doors to your restaurant?

16 A Yes, sir.

17 Q And that you believed that suspect 1 lives at
18 71st and Cimarron?

19 A Yes, sir.

20 Q Now, as you stated previously in your testimony,
21 you blame my client for your restaurant closing; isn't that
22 true?

23 A Yes, sir.

24 Q Now, you knew Mr. Davis made necklaces and beads
25 and chains, correct?

26 A No, sir.

27 Q You didn't know that?

28 A No, sir.

1 Q And did you make that happen? Or is it automatic
2 that it happens with all interviews at that station? If
3 you know.

4 A No. They showed me where the system was, and
5 they started it, one of the Tucson detectives.

6 Q When you started interviewing the defendant, did
7 you or your partner attempt to advise him of his Miranda
8 rights?

9 A I did.

10 Q And how did you make that attempt?

11 A I read him the rights, as I described, from LAPD
12 form 15.03 and took his responses.

13 Q Were you able to do that uninterrupted?

14 A Meaning?

15 Q Meaning were there any interruptions to you
16 trying to advise the defendant of his rights? Did he make
17 any statements or interject in any way before you were able
18 to fully advise him his rights?

19 A He was asking questions during the process, yes.

20 Q And do you recall what rights you read to the
21 defendant, and can you tell the jury what responses he
22 made.

23 A "You have the right to remain silent. Do you
24 understand?

25 "Anything you say may be used against you in
26 court. Do you understand?

27 "You have the right to the presence of an
28 attorney before and during any questioning, if you want.

1 Do you understand?"

2 I can't remember the last one right now. I'm
3 sorry.

4 Q And would looking at your -- the transcript of
5 that interview assist?

6 A Yes.

7 MS. HUMPHREY: May I approach?

8 THE COURT: Yes.

9 MR. WILLOUGHBY: Your Honor, I'd stipulate he read him
10 his rights.

11 THE COURT: It's all right.

12 A (Reviewing.)

13 Okay. Would you like me to read what I said?

14 Q Well, does that help refresh your memory as to if
15 you're missing anything that you may have told the
16 defendant regarding his rights?

17 A Yes.

18 "If you cannot afford an attorney, one will be
19 appointed for you free of charge before any questioning, if
20 you want."

21 Q And how did the defendant respond?

22 A He said that he wanted an attorney.

23 Q All right. Did he -- other than that, did he say
24 he understood all of the rights?

25 A Yes. I clarified a few things with him, but he
26 said that he understood.

27 Q And after the defendant said he wanted an
28 attorney, how did you or your partner respond?

1 A We said we would still want to talk to him to get
2 some basic information from him.

3 Q Did you attempt to get basic information from
4 him?

5 **A** Yes.

6 Q What type of information did you attempt to get
7 from him?

8 A Where he lived, who his wife or significant other
9 was. Things like that.

10 Q Did he ask any questions about why he was
11 being there or why he was arrested?

12 A Yes.

13 Q And did you respond?

14 A Yes.

15 Q And why, did you all say?

16 A We told him we had a warrant for his arrest for
17 the crime of murder.

18 Q And did he ever tell you, during this interview,
19 and give you any -- well, did he ever tell you that he shot
20 the victim because he was scared of the victim?

21 A No.

22 Q Did he ever tell you that?

23 MR. WILLOUGHBY: Object. Counsel leading the witness.

24 THE COURT: That is sustained. Sidebar please.

25

26 (The following proceedings
27 were held in open court
28 at sidebar:)

1 THE COURT: Because he invoked, you can't get into
2 what he didn't say. But you can get into what he said. He
3 invoked, okay? So to what he said --

4 MS. HUMPHREY: Okay.

5

6 (The following proceedings
7 were held in open court, in
8 the presence of the jury:)

9

10 Q BY MS. HUMPHREY: Detective, what did he tell you
11 during your interview with the defendant about any murder?

12 A My recollection was that he didn't know anything
13 about a murder.

14 Q And is that basically all you remember of him
15 saying about that incident?

16 A Well, I also remember when my partner showed him
17 a photograph, one of the still photos from the video that
18 we've seen several times, showing the defendant in the
19 video, he said that's another thing, that's another guy,
20 that's the other guy.

21 Q Now, the point in the video, excuse me, that you
22 were showing Mr. Davis was what part in the video?

23 A When he's inside the store, where you can clearly
24 see that necklace that was recovered, and his clothing.

25 Q Just so we're clear, when he's entered the
26 market, following behind the victims?

27 A Yes, ma'am.

28 Q And you show the defendant is in the still photo

1 with that individual?

2 A Detective Mendoza did.

3 Q And what did the defendant respond to that?

4 A Something along the line of "That's the other
5 guy."

6 Q Did he say who the other guy was?

7 A No.

8 Q And was Mr. Mendoza or yourself pointing to the
9 defendant in that still photo?

10 A Yes.

11 Q Do you remember the defendant say anything else
12 about that murder that day?

13 A He didn't say anything else about the murder.

14 MS. HUMPHREY: Thank you. No further questions.

15 THE COURT: Cross-examination.

16

17 CROSS-EXAMINATION

18 BY MR. WILLOUGHBY:

19 Q Good afternoon -- good morning almost afternoon.

20 A Good morning.

21 Q Detective Crosson, originally you believed that
22 my client had said that he didn't know anything about the
23 murder; correct?

24 A Right.

25 Q And I showed you a transcript and that's not
26 contained in it, correct?

27 A What I read of the transcript, it's not
28 contained....

ATTORNEY GENERAL

COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and **RESPONDENT**

No. BA373310-01

Vs

TEDROY ANTHONY DAVIS,

Volume 1 of 1 Volumes
Notice of appeal filing date: 11/17/11

Defendant(s) and **APPELLANTS**

CLERK'S TRANSCRIPT
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Appearances:

**Appeal from the Superior Court,
County of Los Angeles**

Counsel for Plaintiff:

Honorable Sam Ohta, Judge

THE ATTORNEY GENERAL

Counsel for Defendant:

c/o CAP

Date Mailed to:

Defendant (in pro per)
Defendant's Trial Attorney
Defendant's Appellate Attorney
District Attorney
Attorney General

JAN 13 2012

It is further alleged that said defendant(s), TEDROY ANTHONY DAVIS personally and intentionally discharged a firearm, a handgun , which caused great bodily injury and death to within the meaning of Penal Code Section 12022.53(d) also causing the above offense to become a serious felony pursuant to Penal Code section 1192.7(c)(8) and a violent felony within the meaning of Penal Code section 667.6(c)(8).

It is further alleged that said defendant(s), TEDROY ANTHONY DAVIS personally and intentionally discharged a firearm, a handgun , within the meaning of Penal Code Section 12022.53(c) also causing the above offense to become a serious felony pursuant to Penal Code section 1192.7(c)(8) and a violent felony within the meaning of Penal Code section 667.5(c)(8).

It is further alleged that said defendant(s), TEDROY ANTHONY DAVIS personally used a firearm, a handgun , within the meaning of Penal Code Section 12022.53(b) also causing the above offense to become a serious felony pursuant to Penal Code section 1192.7(c)(8) and a violent felony within the meaning of Penal Code section 667.5(c)(8).

* * * * *

COUNT 2

On or about July 3, 2010, in the County of Los Angeles, the crime of POSSESSION OF FIREARM BY A FELON - ONE PRIOR, in violation of PENAL CODE SECTION 12021(a)(1), a Felony, was committed by TEDROY ANTHONY DAVIS, who did unlawfully own, possess, purchase, receive, and have custody and control of a firearm, to wit, handgun, the said defendant having theretofore been duly and legally convicted of a felony or felonies, to wit:

<u>Case No.</u>	<u>Charge Code/Statute</u>	<u>Conv. Date</u>	<u>County of Court</u>	<u>State</u>	<u>Court Type</u>
	ROBBERY CC 303	12/11/1992	CANADA		ROYAL
	ACK INS FALS- CC 405	12/11/1992	CANADA		ROYAL
	POSS UNREG - CC 091A	12/11/1992	CANADA		ROYAL
	AGG ALT- CC 268 (1)	12/11/1992	CANADA		ROYAL

* * * * *

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 12/07/10

CASE NO. BA373310

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: TEDROY ANTHONY DAVIS

NUNC PRO TUNC ORDER PREPARED. IT APPEARING TO THE COURT THAT THE MINUTE ORDER
IN THE ABOVE ENTITLED ACTION DOES NOT PROPERLY REFLECT THE COURT'S ORDER. SAID
MINUTE ORDER IS AMENDED NUNC PRO TUNC AS OF THAT DATE. ALL OTHER ORDERS ARE TO
REMAIN IN FULL FORCE AND EFFECT. DETAILS LISTED AT END OF THIS MINUTE ORDER.

INFORMATION FILED ON 11/10/10.

COUNT 01: 187(A) PC FEL
COUNT 02: 12021(A)(1) PC FEL

ON 12/07/10 AT 830 AM IN CENTRAL DISTRICT DEPT 122

CASE CALLED FOR ARRAIGNMENT AND PLEA

PARTIES: CRAIG E VEALS (JUDGE) SYLVIA M. CEDENO (CLERK)
DIANNE MCGIVERN (REP) MICHELLE M. HUMPHREY (DA)

ALTERNATE PUBLIC DEFENDER, WALID KAMILE WAIMRIN, APPOINTED

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY WALID KAMILE WAIMRIN

ALTERNATE PUBLIC DEFENDER

THE DEFENDANT IS ARRAIGNED.

THE DEFENDANT IS ADVISED OF FINANCIAL RESPONSIBILITY.

DEFENDANT WAIVES ARRAIGNMENT, READING OF INFORMATION/INDICTMENT, AND STATEMENT
OF CONSTITUTIONAL AND STATUTORY RIGHTS.

DEFENDANT PLEADS NOT GUILTY TO COUNT 01, 187(A) PC.
DEFENDANT PLEADS NOT GUILTY TO COUNT 02, 12021(A)(1) PC.

COURT ORDERS AND FINDINGS:

- THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
- BOOKING #2444050 PPR/TRANSCRIPT IN FILE LAST DAY 02-07-11
- DDA: MICHELLE HUMPHREY #204045

PAGE NO. 1 ARRAIGNMENT AND PLEA
HEARING DATE: 12/07/10

CASE NO. BA373310
DEF NO. 01

DATE PRINTED 12/07/10

THE PUBLIC DEFENDER'S OFFICE DECLARES A CONFLICT. THE ALTERNATE
PUBLIC DEFENDER'S OFFICE, HAVING COMPLETED A CONFLICT CHECK,
IS APPOINTED.

THE DEFENDANT DENIES ANY AND ALL SPECIAL ALLEGATIONS.

THE MATTER IS SET FOR PRETRIAL CONFERENCE AS INDICATED BELOW.

WAIVES STATUTORY TIME.

NUNC PRO TUNC ORDER PREPARED ON 12-7-10 BY S. CEDENO, JUDICIAL
ASSISTANT. SAID MINUTE ORDER IS AMENDED AS FOLLOWS:

- BY ADDING: LAST DAY: 02-07-11

BAIL SET AT \$2,000,000.

NEXT SCHEDULED EVENT:

1/26/11 830 AM PRETRIAL CONFERENCE DIST CENTRAL DISTRICT DEPT 122

CUSTODY STATUS: DEFENDANT REMANDED

PAGE NO. 2 ARRAIGNMENT AND PLEA
HEARING DATE: 12/07/10

SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY

231

The People of the State of California vs. TEDROY ANTHONY DAVIS, Defendant	Plaintiff	Case Number BA373310	Department 108
		VERDICT (Guilty) COUNT 1 Second Degree	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES SEP 06 2011 John A. Clarke, Executive Officer/Clerk BY <u>G. Barrera</u> Deputy Gloria Barrera

We, the Jury in the above-entitled action, find the Defendant, TEDROY ANTHONY DAVIS, guilty of the crime of SECOND DEGREE MURDER of DAREN HAROLD DUNNING, in violation of Penal Code Section 187(a), a felony, as charged in Count 1 of the Information.

We further find the allegation that in the commission of the above offense, the defendant personally and intentionally discharged a firearm, to wit: a handgun, which caused great bodily injury and death to DAREN HAROLD DUNNING, within the meaning of Penal Code Section 12022.53(d) to be TRUE. ("TRUE" or "NOT TRUE")

We further find the allegation that in the commission of the above offense, the defendant personally and intentionally discharged a firearm, to wit: a handgun, within the meaning of Penal Code Section 12022.53(c) to be TRUE. ("TRUE" or "NOT TRUE")

We further find the allegation that in the commission of the above offense, the defendant personally used a firearm, to wit: a handgun, within the meaning of Penal Code Section 12022.53(b) to be TRUE. ("TRUE" or "NOT TRUE")

This 6th day of September 2011, Juror #. 26 /s/
Foreperson

VERDICT (Guilty)

SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY 00232

**The People of the State
of California**

vs.

TEDROY ANTHONY DAVIS,

Plaintiff

Defendant

Case Number
BA373310

Department 108

**VERDICT (Guilty)
COUNT 2**

FILED

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

SEP 06 2011

John A. Clarke, Executive Officer/Clerk
BY G. Barrera Deputy
Gloria Barrera

We, the Jury in the above-entitled action, find the Defendant, TEDROY ANTHONY DAVIS, guilty of the crime of POSSESSION OF FIREARM BY A FELON – ONE PRIOR, in violation of Penal Code Section 12021(a)(1), a felony, as charged in Count 2 of the Information.

VERDICT (Guilty)

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 11/02/11

CASE NO. BA373310

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: TEDROY ANTHONY DAVIS

INFORMATION FILED ON 11/10/10.

COUNT 01: 187(A) PC FEL
COUNT 02: 12021(A)(1) PC FEL

ON 11/02/11 AT 830 AM IN CENTRAL DISTRICT DEPT 108

CASE CALLED FOR P & S/MOT FOR NEW TRIAL

PARTIES: SAM OHTA (JUDGE) GLORIA BARRERAS (CLERK)
GEORGETTE URBANO (REP) MICHELLE M. HUMPHREY (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY A. WILLOUGHBY PRIVATE COUNSEL

DEFENDANT WAIVES ARRAIGNMENT FOR JUDGMENT AND STATES THERE IS NO LEGAL CAUSE
WHY SENTENCE SHOULD NOT BE PRONOUNCED. THE COURT ORDERED THE FOLLOWING
JUDGMENT:

AS TO COUNT (01):

COURT ORDERS PROBATION DENIED.

040 YEARS TO LIFE IMPRISONMENT AS TO COUNT (01)

DEFENDANT GIVEN TOTAL CREDIT FOR 461 DAYS IN CUSTODY 461 DAYS ACTUAL CUSTODY
AND 0 DAYS GOOD TIME/WORK TIME

PLUS \$40.00 COURT SECURITY ASSESSMENT (PURSUANT TO 1465.8(A)(1) P.C.)

\$30.00 CRIMINAL CONVICTION ASSESSMENT (PURSUANT TO 70373 G.C.)

TEMPORARY COMMITMENT ISSUED.

TOTAL DUE: \$70.00

IN ADDITION:

-THE DEFENDANT IS TO PAY A RESTITUTION FINE PURSUANT TO SECTION
1202.4(B) PENAL CODE IN THE AMOUNT OF \$ 5,000.

-A PAROLE REVOCATION RESTITUTION FINE IN THE SAME AMOUNT AS

P & S/MOT FOR NEW TRIAL
PAGE NO. 1 HEARING DATE: 11/02/11

CASE NO. BA373310
DEF NO. 01

DATE PRINTED 11/02/11

THE RESTITUTION FINE, PER PC 1202.45, PAYMENT IS STAYED UNTIL
PAROLE IS REVOKED AND YOU ARE RETURNED TO PRISON.

COURT ORDERS AND FINDINGS:

-PURSUANT TO PC SECTION 296, THE DEFENDANT IS ORDERED TO PROVIDE
BUCCAL SWAB SAMPLES, A RIGHT THUMB PRINT, A FULL PALM PRINT
IMPRESSION OF EACH HAND, ANY BLOOD SPECIMENS OR OTHER BIOLOGICAL
SAMPLES AS REQUIRED BY THIS SECTION FOR LAW ENFORCEMENT
IDENTIFICATION.

COURT ADVISES DEFENDANT OF HIS APPEAL/PAROLE RIGHTS.

BOOKING #2444050 X-2062486

COURT HAS READ AND CONSIDERED THE PROBATION REPORT.

DEFENDANT'S MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE TO FIND
THE DEFENDANT GUILTY OF A LESSER CRIME IS ARGUED AND DENIED.

VICTIM IMPACT STATEMENTS ARE MADE IN OPEN COURT.

DEFENDANT'S PRO PER MOTION IS ARGUED AND DENIED AS UNTIMELY.

AS TO THE BASE TERM IN COUNT 1: DEFENDANT IS SENTENCED TO
15 YEARS TO LIFE IMPRISONMENT.

COUNT 1 IS ENHANCED BY PENAL CODE SECTION 12022.53(D)
TERM IMPOSED: 25 YEARS TO LIFE IMPRISONMENT.
DEFENDANT IS TO BE IMPRISONED IN ANY STATE PRISON FOR A TOTAL
INDETERMINATE SENTENCE OF 40 YEARS TO LIFE.

COUNT 1 IS FURTHER ENHANCED AS FOLLOWS:

PENAL CODE SECTION 12022.53(C)
TERM IMPOSED: 20 YEARS ORDERED STAYED;

PENAL CODE SECTION 12022.53(B)
TERM IMPOSED: 10 YEARS ORDERED STAYED.

COUNT (01): DISPOSITION: FOUND GUILTY - CONVICTED BY JURY

DMV ABSTRACT NOT REQUIRED

NEXT SCHEDULED EVENT:
SENTENCING

DEFENDANT WAIVES ARRAIGNMENT FOR JUDGMENT AND STATES THERE IS NO LEGAL CAUSE
WHY SENTENCE SHOULD NOT BE PRONOUNCED. THE COURT ORDERED THE FOLLOWING
JUDGMENT:

AS TO COUNT (02):

COURT ORDERS PROBATION DENIED.

SERVE 3 YEARS IN ANY STATE PRISON

PAGE NO. 2

P & S/MOT FOR NEW TRIAL
HEARING DATE: 11/02/11

CASE NO. BA373310
DEF NO. 01

DATE PRINTED 11/02/11

COURT SELECTS THE UPPER TERM OF 3 YEARS AS TO COUNT 02.

PLUS \$40.00 COURT SECURITY ASSESSMENT (PURSUANT TO 1465.8(A)(1) P.C.)

TOTAL DUE: \$40.00

COURT ORDERS AND FINDINGS:

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.

SENTENCE IN COUNT 2 TO RUN CONCURRENT TO COUNT 1.

COUNT (02): DISPOSITION: FOUND GUILTY - CONVICTED BY JURY

DMV ABSTRACT NOT REQUIRED

NEXT SCHEDULED EVENT:
11/30/11 830 AM RESTITUTION HEARING DIST CENTRAL DISTRICT DEPT 108

PAGE NO. 3 P & S/MOT FOR NEW TRIAL
HEARING DATE: 11/02/11