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**ORDER DENYING PETITION FOR REVIEW,
SUPREME COURT OF CALIFORNIA
(MARCH 19, 2025)**

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN PHILLIPS,

Defendant and Appellant.

S289190

Court of Appeal, Sixth Appellate

District - No. H051373

Before: GUERRERO, Chief Justice.

The petition for review is denied.

/s/ Guerrero

Chief Justice

**OPINION, COURT OF APPEAL
OF THE STATE OF CALIFORNIA,
SIXTH APPELLATE DISTRICT
(JANUARY 6, 2025)**

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA, SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN PHILLIPS,

Defendant and Appellant.

H051373

(Santa Clara County
Super. Ct. No. BB516948)

Before: WILSON, J., BAMATTRE-MANOUKIAN,
Acting P.J., and Danner, J.

In 2006, Jonathan Phillips entered a plea of no contest to one charge of felony false imprisonment (Pen. Code, § 236/237.)¹ The trial court sentenced Phillips to a total term of 90 days in jail.

¹ Undesignated statutory references are to the Penal Code.

Between 2008 and 2023, Phillips filed four separate motions pursuant to section 17, subdivision (b)², asking that his conviction be reduced from a felony to a misdemeanor. Phillips' fourth petition filed in 2023, which is the underlying subject of this appeal, was denied by the court on the basis that it was barred by collateral estoppel, and that Phillips' charge of felony false imprisonment was not eligible for reduction to a misdemeanor under section 17, subdivision (b).

On appeal, Phillips argues that the trial court abused its discretion in denying his petition because all of the elements of collateral estoppel were not satisfied, and the facts of his offense demonstrate he was eligible for a reduction. The Attorney General concedes that collateral estoppel was not a valid basis for denial, but argues that the court did not abuse its discretion in finding that Phillips' charge was not eligible for reduction.

For the reasons explained below, we find no reversible error and affirm the court's order.

² This section provides, in relevant part, that “[w]hen a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: [¶] (1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.” (§ 17, subd. (b).)

I. Factual and Procedural Background

A. Factual Background³

On September 30, 2005, victim C.P.⁴ was driving with a friend when Phillips, whom C.P. had met through college, called her and asked to hang out at a night club in Mountain View. After C.P. and her friend drove by the night club, Phillips saw and followed them in his car to another friend's house. C.P.'s friend attempted to evade Phillips but was unable to do so. After they reached the house, Phillips followed C.P. and her friend inside and did not leave when asked to do so. Phillips stated that he wanted to "hang out" with C.P. and asked her if he could get some "alone time" with her. When C.P. responded "[n]o" and told him she needed to get home, Phillips offered to give her a ride, which she accepted.

After C.P. got into Phillips' car, he asked her if she wanted to get into the back seat, which she refused. C.P. began feeling uncomfortable and wanted to exit the car, but Phillips began driving before she could do so. When C.P. attempted to give Phillips directions to her house, he ignored her and began driving erratically. C.P. asked him to stop the vehicle so she could leave, but he refused, began running red lights, and drove around for approximately 20 minutes without allowing her to exit.

³ The facts of this offense are taken from the police report, which is also quoted in Phillips' opening brief.

⁴ We refer to the victim in the proceedings by his or her initials only to protect personal privacy interests pursuant to California Rules of Court, rule 8.90(b)(10) and (11).

After Phillips began driving on the highway, C.P. told him that she would call the police. Phillips slowed down, opened the passenger door, and pushed C.P., causing her to fall out of the car. Although C.P. initially stated she was not injured, she later indicated that she had sprained her ankle.

B. Charges, Plea, and Original Sentence

On October 13, 2005, the Santa Clara County District Attorney's Office filed a felony complaint charging Phillips with false imprisonment (§ 236/237; count 1).⁵ The complaint specifically noted that the charge was for felony false imprisonment because it had been effected by "violence, menace, fraud, or deceit."

On February 24, 2006, Phillips entered a plea of no contest to felony false imprisonment. On April 13, 2006, the trial court sentenced Phillips to 90 days in county jail, but suspended the imposition of his sentence and placed him on three years of formal probation.

⁵ Section 237, subdivision (a), as it existed at the time of Phillips' charging and conviction, read as follows: "False imprisonment is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment in the state prison." The statute was subsequently amended in 2011, where the concluding sentence was modified from "in the state prison" to "pursuant to subdivision (h) of section 1170." (Stats. 2011, ch. 15, § 288.)

C. Post-Plea Proceedings

1. 2008 and 2013 Motions

On February 8, 2008, Phillips filed his first section 17, subdivision (b) motion, asking that his conviction be reduced from a felony to a misdemeanor. Shortly thereafter, the motion was taken off calendar, which his counsel later explained was due to it being “effectively, a waste of [Phillips’] resources.”

On March 21, 2008, Phillips filed a motion requesting that his probation be terminated and the entire action be dismissed pursuant to sections 1203.3⁶ and 1203.4.⁷ On April 7, 2008, the trial court granted Phillips’ motion, terminated his probation, and dismissed the criminal action.

⁶ Section 1203.3 provides, in relevant part, that “[t]he court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person held.” (§ 1203.3, subd. (a).)

⁷ Section 1203.4 provides, in relevant part, that when a defendant “has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interest of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if they are not then serving a sentence for an offense, on probation for an offense, or charged with the commission of an offense, be permitted by the court to withdraw their plea of guilty or plea of nolo contendere and enter a plea of not guilty . . . and . . . the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which they have been convicted.” (§ 1203.4, subd. (a).)

On January 8, 2013, Phillips filed a new section 17, subdivision (b) motion requesting that his conviction be reduced to a misdemeanor. Although his case had already been dismissed, Phillips indicated that he was still requesting a reduction in order to allow him to apply for certain jobs that required a record clear of felony convictions. On April 25, 2013, the matter was taken off calendar without prejudice; the minute order does not indicate the reason for the matter being taken off calendar.

2. 2016 motion and appeal⁸

On May 31, 2016, Phillips filed his third section 17, subdivision (b) motion (2016 motion). Phillips again claimed that a reduction to a misdemeanor would allow him to achieve better job prospects and pay. He further argued that false imprisonment is a “wobbler” offense that could be charged as either a misdemeanor or felony, thus making him eligible for relief under section 17, subdivision (b). Phillips also noted that he had no other criminal conduct since this conviction, was only 20 years old when the offense occurred, and had been an employed, productive member of society since completion of his sentence.

In response, the probation department recommended against reduction on the basis that Phillips’ conviction was for a non-alternative felony. The department noted that under section 237, false imprisonment was required to be punished as a felony if it was “affected by violence, menace, fraud, or deceit.” Therefore, based on the facts of the case, the department contended

⁸ The record does not reflect the People filed a response to Phillips’ motion.

that Phillips' conviction could not be reduced to a misdemeanor.

In his supplemental briefing, Phillips' counsel asserted that the facts of the offense, as stated by C.P. in the police report, did not reflect any use of violence, menace, fraud, or deceit. Counsel claimed that the only possible "violence" was when Phillips pushed C.P. out of the vehicle, which effectively ended the encounter. As the sentencing transcript did not address the issue of what portion of section 237 Phillips was being sentenced under, and no plea form or transcript from the change of plea hearing could be located, counsel argued that the facts from the police report were sufficient to demonstrate that Phillips' conviction was eligible for a reduction to a misdemeanor offense.

On December 1, 2016, the trial court held a hearing on Phillips' motion. The court indicated that subdivision (a) of section 237 was divided into two portions as follows: (1) a first section for misdemeanor false imprisonment, which was punishable by a fine or a county jail sentence; and (2) a second section for felony false imprisonment, which involved the use of violence, menace, fraud, or deceit, and was punishable as provided in section 1170, subdivision (h). Accordingly, the court concluded that the People could only charge the offense as felony false imprisonment if there was sufficient evidence to demonstrate one of the aforementioned four elements was present. Based on this conclusion, the court found that Phillips was not eligible for a reduction and denied his motion.

Phillips timely appealed the court's order but failed to submit a supplemental brief on his own behalf after his attorney filed an opening brief pursuant to *People v. Serrano* (2012) 211 Cal.App.4th 496. There-

fore, on February 21, 2018, this court dismissed his appeal as abandoned and did not reach the merits.⁹

3. 2023 motion proceedings

a. Phillips' motion and response

On May 3, 2023, Phillips filed a fourth section 17, subdivision (b) motion (2023 motion), which is the subject of the instant appeal. Like the 2016 motion, Phillips' counsel again argued that the facts in the police report did not reflect that Phillips used violence, menace, fraud, or deceit during the commission of the offense. Counsel noted that in other cases involving similar section 17, subdivision (b) motions for false imprisonment convictions, courts defined "menace" as "a threat of harm express or implied by word or act[.]" while defining violence as "the exercise of physical force used to restrain over and above the force reasonably necessary to effect such restraint[.]" (*People v. Babich* (1993) 14 Cal. App. 4th 801, 806, italics omitted.) Counsel contended that Phillips' behavior of simply pushing the victim out of the vehicle fell "far below the standard" required to demonstrate any violence or menace. Lastly, counsel argued that it would be in the interests of justice to reduce Phillips' conviction to a misdemeanor based on his young age (20) at the time of the offense, his lack of any further criminal activity, and his consistent employment as a security guard since 2013.

In response, the People argued that Phillips' motion should be barred under the principles of collateral

⁹ On our motion, we take judicial notice of the record in Phillips' first appeal (No. H044377.)

estoppel and res judicata, which prevented relitigation of issues argued and decided in prior proceedings. The People noted that because Phillips raised the same issue in his 2016 section 17, subdivision (b) motion, which was heard and decided on the merits, collateral estoppel should preclude him from bringing the same motion again. Next, the People argued that because felony false imprisonment constituted a “straight felony” that could only be punished pursuant to section 1170, subdivision (h), the trial court had no power to reduce Phillips’ conviction to a misdemeanor. Further, the People distinguished the cases cited by Phillips, noting that those cases all involved trials where the prosecution failed to prove the elements of violence, menace, fraud, or deceit beyond a reasonable doubt. Because Phillips did not go to trial and entered a guilty plea, the People contended that his plea amounted to an admission of every element of the crime such that the court need not conduct a factual analysis of whether the facts were sufficient to demonstrate felony false imprisonment.

b. Hearing

On August 16, 2023, a different judge from the judge who heard the 2016 motion held a hearing on Phillips’ 2023 motion. At the hearing, Phillips’ counsel again argued that there were insufficient facts to demonstrate that Phillips’ conduct involved violence, menace, fraud, or deceit. Counsel also argued that the court should take Phillips’ youth into account in determining whether he fully appreciated what he was doing or had the appropriate intent to commit the crime in question.

The court disagreed, finding that under *People v. Superior Court (Feinstein)* (1994) 29 Cal.App.4th 323 (*Feinstein*), false imprisonment was not a wobbler offense, but constituted a “straight felony” if committed by violence, menace, fraud, or deceit. The court also indicated that because Phillips pled to the felony charge and admitted there was a factual basis for his plea, the court did not have the authority to “go back” and review the facts to see if Phillips could have been charged with a misdemeanor. The court noted that “restraining someone in a car that’s driving down the highway, that sounds like it satisfies the felony statute.”

The court ultimately denied the motion for the following two reasons: (1) the motion was barred by collateral estoppel as it had already been taken up with another judge and denied, then unsuccessfully appealed; and (2) the felony charge to which Phillips pled was not a wobbler and therefore was ineligible for reduction to a misdemeanor.

Phillips timely appealed.

II. Discussion

Phillips contends that the trial court abused its discretion in denying his motion for four reasons. First, Phillips argues that collateral estoppel is inapplicable to section 17, subdivision (b) motions, particularly when filed in a single case as opposed to multiple separate litigations. Second, he claims the court abused its discretion in finding that felony false imprisonment was not eligible for reduction to a misdemeanor. Third, Phillips asserts that because of his youth and childhood trauma, the trial court was mandated to reduce his conviction to a misdemeanor

and abused its discretion in refusing to do so. Finally, Phillips argues that the trial court improperly failed to consider whether reduction of his conviction would be in the interests of justice.

A. Legal Principles and Standard of Review

As discussed above, section 17, subdivision (b) specifies the circumstances under which wobbler offenses are deemed misdemeanors rather than felonies. (§ 17, subd. (b) [“When a crime is punishable, in the discretion of the court, either [1] by imprisonment in the state prison or . . . [2] by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances”].) “[S]ection 17[, subdivision] (b), read in conjunction with the relevant charging statute, rests the decision whether to reduce a wobbler solely ‘in the discretion of the court.’” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.)

However, the statute does not confer upon the trial court the authority to reduce a straight felony to a misdemeanor. (See *People v. Mauch* (2008) 163 Cal.App.4th 669, 674–675 (*Mauch*); *People v. Douglas* (2000) 79 Cal.App.4th 810, 813; *Feinstein, supra*, 29 Cal.App.4th at pp. 329–330.) “Fixing the penalty for crimes is the province of the Legislature, which is in the best position to evaluate the gravity of different crimes and to make judgments among different penological approaches.” [Citation.] Phrased differently: ‘The definition of crime and the determination of punishment are foremost among those matters that fall within the legislative domain.’ [Citations.]” (*Mauch, supra*, 163 Cal.App.4th at p. 674.) When the Legislature has classified an offense as a felony without providing

for an alternate punishment, a trial court exceeds its jurisdiction “in purporting to reduce the offense to a misdemeanor.” (*Ibid.*)

As a general matter, we review a trial court’s decision to deny a section 17, subdivision (b) motion for an abuse of discretion. However, in reviewing Phillips’ arguments and the trial court’s order, we find that the court’s basis for denying the motion was based on a legal theory, namely, the inapplicability of section 17, subdivision (b) to Phillips’ offense. Therefore, Phillips’ claim that he was eligible for a reduction under section 17, subdivision (b) is a purely legal question of statutory interpretation, which we review de novo. (*See People v. Jimenez* (2020) 9 Cal.5th 53, 61.)

B. Phillips’ Eligibility for Relief Under Section 17, Subdivision (b)¹⁰

Phillips contends that the trial court abused its discretion in finding that his conviction for felony false imprisonment was not a wobbler offense, and therefore was ineligible for relief under section 17, subdivision (b). Phillips argues that by entering a plea of no contest to felony false imprisonment and stipulating to a factual basis, he was not admitting that the facts in the police report were true or conceding that the offense was committed using violence, menace, fraud, or deceit. He further asserts that the facts, as taken

¹⁰ The Attorney General concedes that collateral estoppel did not apply to Phillips’ motion. We need not decide whether the court erred in finding collateral estoppel barred Phillips from bringing his 2023 motion, since, as we explain in more detail below, the other reason given by the trial court in denying the section 17, subdivision (b) motion was legally sound.

from the police report, did not demonstrate any use of force or violence in the course of the offense.

We disagree. To summarize, the substance of Phillips' argument is that because there was insufficient evidence to support the offense as charged, he was entitled to a reduction pursuant to section 17, subdivision (b). However, such an inquiry into the nature and circumstances of the offense is only relevant if the offense in question is a true "wobbler" offense that can be charged as either a misdemeanor or felony. As noted in *Feinstein, supra*, 29 Cal.App.4th at pages 330-331, false imprisonment is not a wobbler offense because section 237, subdivision (a) does not provide for either punishment in the county jail or imprisonment in state prison. Instead, section 237, subdivision (a) specifically delineates that if the false imprisonment is effected by violence, menace, fraud, or deceit, it can only be charged as a felony offense. (*Feinstein, supra*, 29 Cal.App.4th at p. 331.) Here, it is undisputed that Phillips was charged with felony false imprisonment that included the use of violence, menace, fraud, or deceit, and entered a plea to this charge. Accordingly, given that Phillip's plea was to a straight felony charge, the trial court correctly found that it did not have the authority to reduce his offense to a misdemeanor.

Phillips additionally relies on the case of *People v. Matian* (1995) 35 Cal.App.4th 480 (*Matian*), where the appellate court reversed the defendant's conviction for felony false imprisonment on the basis that there was insufficient evidence demonstrating violence or menace. In *Matian*, the appellate court found that the defendant's actions of: (1) painfully sexually assaulting the victim; (2) yelling at her "not

to go[;]” and (3) glaring at her and getting out of his chair to approach her whenever she attempted to leave did not constitute restraining the victim through violence or reflect an express or implied threat of harm. (*Id.* at pp. 486-487.) Phillips argues that because his actions in the instant matter fell “far below” those in *Matian*, there was no demonstration of any violence or menace that would support his conviction for felony false imprisonment.

We find the holding in *Matian* inapplicable to the instant matter. Unlike in *Matian*, which involved the sufficiency of the evidence presented at trial, Phillips admitted to the sufficiency of the evidence establishing the crime by entering a plea of no contest, and is therefore not entitled to a review on the merits. (See *People v. Thomas* (1986) 41 Cal.3d 837, 844 [concluding that a plea of no contest admits every element of an alleged crime and waives a challenge on appeal of insufficient evidence].) Accordingly, regardless of whether Phillips admitted to the actual facts in the police report itself, his plea constituted an admission to the elements of the offense as charged, which included the allegation that the offense was effected by violence, menace, fraud, or deceit. (See *People v. Tuggle* (1991) 232 Cal.App.3d 147, 154 [noting that a plea of guilty admits not only every element of the offense charged but also “all allegations, and factors comprising the charge contained in the pleading”].) Phillips cites no authority, nor are we aware of any, that permits him to challenge the sufficiency of the evidence by means of a section 17, subdivision (b) motion.

In conclusion, we find no error in the trial court’s denial of Phillips’ motion on the basis that felony false

imprisonment was not eligible for relief under section 17, subdivision (b).¹¹

C. Consideration of Phillips' Youth and Childhood Trauma

Phillip argues that the trial court abused its discretion by refusing to consider Phillips' childhood trauma and young age at the time of the offense in evaluating his section 17, subdivision (b) motion. Phillips cites the recently amended version of section 1170, subdivision (b)(6), which requires a court to impose a lower term sentence if either trauma or youth was a contributory factor to commission of the offense, and argues that the same principles should apply to a court's consideration of a section 17, subdivision (b) motion.

As Phillips himself concedes, he failed to raise any arguments regarding section 1170, subdivision (b) in the trial court. Accordingly, his argument is forfeited. (*See People v. Saunders* (1993) 5 Cal.4th 580, 589-590 [claims not raised in the trial court may not be raised for the first time on appeal].) Moreover, Phillips provides no authority in support of his claim that when evaluating a section 17, subdivision (b) motion, a trial court must or has discretion to apply the provisions in section 1170, subdivision (b), which specifically address felony sentencing guidelines for terms of imprisonment. An appellate court may treat

¹¹ Because we find that the trial court was correct in its determination that Phillips' conviction was not eligible for a reduction, we also do not address Phillips' argument that the trial court failed to evaluate whether a reduction would be in the interests of justice, as this would only be relevant if section 17, subdivision (b) was applicable.

as forfeited any legal argument for which there is no citation of authorities for the point made. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

III. Disposition

The order denying Phillips' section 17, subdivision (b) motion is affirmed.

Wilson, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Danner, J.

People v. Phillips
H051373

**JUDGMENT — PROBATION AND SENTENCING
SUPERIOR COURT CALIFORNIA
(APRIL 13, 2006)**

Superior Court
270 Grant Avenue
Palo Alto, CA 94306

People vs. Jonathan Phillips

L.K.A.	22 Fairfield WY San Francisco, CA 94127
Judge	Hon. Rise J. Pichon
Reporter	Gutierrez
Def. Atty,	Simmons. R
Charges	F (001) PC236/237
Case No.	BB516948
Cen	05055045
Date	04/13/2006 1:30 PM Dept. 88 09/17/1985 CAD5661416 CDY BK:Y
Clerk	Jan Millard DVT592 M
Hearing	Probation and Sentencing
Agency	LA-04305-G2592-Green
Status	0-BB -55000/P3 TW
DA	Baldocchi
APO	Rodriguez
Violation Date	09/30/2005

[Next] Appearance

- Defendant Present
- Atty Present AR
- Bail Exonerated
- TW Sentence

Plea Conditions:

- PC12021 (110) & 12316(B)(1)

Probation

- Imposition of Sentence suspended for probation period
- FORMAL PROBATION GRANTED for 3 Yrs
- Report to APO within 3 Days
- No contact with victim unless appr by APO
- Submit Search
- Educ/Voc Trng/Empl
- PC296 (DNA)

Fines/Fees: Pay to

- Ref to DOR
- | | |
|----------|----------------------------------|
| RF | \$ 220 |
| | Add'l RF \$ 200 Susp'd PC1202.44 |
| SECA | \$ 20 |
| P/INVEST | NE \$ 450 |
| P/SUP | \$ NTE 64/Mo |
| CJAF | \$ 207.55 |

- Restitution to be determined by APO

Jail/Prison

Count	F/M	Violation	Hrs/Days/Mos
1	F	PC 236/237	90 days

CTS= 4 ACT+ 2 ☐ PC4019 = 6 Total Days

TOTAL TERM 90 days

- WWP

- PC1209 Fees

Serve Consec MO/TU/SU

- Pre-process 4-24-06 AM

- Stay to 6-4, 5, 6-06@ ____ AM/PM or sooner

- Remanded-Bail \$ _____

[. . .]

**NARRATIVE REPORT,
LOS ALTOS POLICE DEPARTMENT
(SEPTEMBER 30, 2005)**

**LOS ALTOS POLICE DEPARTMENT
NARRATIVE REPORT**

CA0430500

Case No: 050930-1718
Offense and Description: 236 P.C.- False Imprisonment
Location: Seena Avenue @ Edge Lane
Victim/Suspect: Perdue/Angel
Date: 09-30-05
Reporting Officer: Lnenicka/L0775
UCR: 26
Reviewer _____

ADDITIONAL CHARGES: 242 P.C. - Battery

SYNOPSIS:

This report reflects the false imprisonment and battery that occurred on 09-30-05, between the hours of 2120 and 2140. Suspect Angel was giving victim Perdue a ride to her residence. While giving her a ride she requested to exit the vehicle because she did not feel comfortable with him. Suspect Angel refused to stop the vehicle and would not let the victim exit.

After approximately 20 minutes of erratic driving the victim stated she was going to call the police. The suspect pulled over (approximately 5 mph.) to the shoulder of HWY 101, opened the passenger door, and pushed victim Perdue out. Suspect Angel was last seen traveling NB on HWY 101 and is still at large. Victim Perdue received no injuries from the incident.

NARRATIVE:

On 09-30-05, at approximately 2234 hours, I responded to the LAPD to meet a citizen on the report of a false imprisonment. Upon arrival I contacted the victim, Corinna Perdue, who stated the following:

STATEMENT OF VICTIM CORINNA PERDUE:

She informed me that she is a student at Foothill College in Los Altos. She stated that on 09-30-05, she was driving in her friend's vehicle when an acquaintance she met at Foothill College, called her on her cell. She stated the acquaintance's name was Angel or possibly Jonathan and he was possibly from San Francisco. Perdue informed me that she did not know his real name or where he lived. She told me that Angel called her and told her he was in the area (The Monte Carlo, Mountain View) and wanted to hang out. She informed me that her and her friend drove by the Monte Carlo, and Angel must have seen her in the vehicle, because he began to follow them.

Perdue stated that her friend tried to evade Angel but he could not, and he followed them to her friend's residence on Seena Avenue. Perdue stated that she went inside the residence with her friend and Angel followed them. Perdue stated her friend asked him to leave, but he told them he wanted to hang out. Perdue

informed me that Angel began telling her and her friends how he was famous. Perdue stated that he then asked her, "are we going to get some alone time." Perdue told him, "No," and stated she needed to get a ride to her parent's home in Mountain View. Angel told her that he would give her a ride in his vehicle. Perdue stated that she agreed to go With Angel. Perdue stated when she got into the vehicle, Angel asked her if she wanted to get in the back seat and she said, "No." Perdue informed me that she felt uncomfortable and was thinking of exiting the vehicle, but Angel began driving. Perdue informed me that she tried to give him directions to her residence, but Angel ignored her directions and began to drive erratically. She stated that she told him she wanted to leave and he would not stop the vehicle, and began running red lights. Perdue informed me that he drove around for approximately 20 minutes not allowing her to exit. She stated that he began driving NB on HWY 101, and she told him that she was going to call the police. She told me that he slowed down to approximately 5 mph. and open the passenger door. She stated that he then pushed her in the shoulder area causing her to fall out of the vehicle. She told me that she landed on her feet and does not have any injuries from the incident. Perdue informed me that she last observed Angel driving NB on HWY 101.

Perdue described Angel as a black male, with blonde hair, blue eyes, approximately 6'00", 150lbs., wearing a white shirt and blue pants. He was driving a 1990's 4-door sedan, possibly light green in color, but Perdue stated she was unsure. Perdue told me that she would not recognized the vehicle if she saw it again, but stated she would recognize Angel. Perdue stated

that she has seen Angel at Foothill College before, but she does not know if he is a student.

Perdue stated that she is going to contact her friends in the morning and attempt to find out more identify information on Angel.

NARRATIVE CONT.:

I had Communications send out a bulletin to the neighboring agencies advising them of the incident (*See Attached*).

RECOMMENDATIONS:

I recommend this case be forwarded back to me for additional follow-up.

PLEOS:

None.

**Los Altos Police Department
Supplemental Report CA 4305
UCR: 26**

Case: 050930—1718,

Date: 10/7/05

Offense/ Description: 236 P.C. / False Imprisonment

Victim/Suspect: Perdue / Phillips

Officer: S. Sweezey 86235

Reviewed By:

Additional Offences:

207(a) P.C. — Kidnapping

245(a)(1) P.C.

— Assault With force likely to produce G.B.I.

Narrative:

On 10/6/05, I made contact with (V) Perdue, and requested that she come to the LAPD to speak with me about the incident between her and the (S). Perdue agreed, and spoke with me in the LAPD interview room #6. Sgt. Epley was also present in the interview.

Statement of (V) Corinna Perdue:

Perdue said that she first met the suspect on Wednesday September 28th. She said that at approx. 1130 hours, she was sitting in the quad area of Foothill College reading a book. She said that the (S) approached her, and began talking to her. She said that he identified himself as “Angel”, but said that she overheard him talking to other people and referring to himself as “Jonathan”: Perdue told me that she believed his true name to be “Jonathan”. Perdue said

that he told her that his friends were having a party and that he wanted her to come. Perdue said that the (S) asked for her phone number, and she gave him her cell phone number. Perdue said that later that day, the (S) called her twice, and asked her to meet with him. Perdue said that she refused. The next day, Perdue said that the (S) called her from a blocked phone number and again asked to meet with her, to which she refused.

On 9/30/05, Perdue said that the (S) called her at approx. 1700 hours. Perdue said that the (S) asked her What she was planning on doing that night, and she told him that she would be with her friends. The (S) asked her where they were going, and she replied somewhere in the area of Mountain View, Sunnyvale or Palo Alto. Later that night at approx. 2045 hours, the (S) called Perdue again. He said that he was in downtown Mountain View in front of a night club called the Carlo. Perdue said that when the (S) called, she and her 2 friends, (O1) [REDACTED] and (O2) [REDACTED] were in downtown Mountain View as well. Perdue said that she didn't want to talk to the (S), so she handed the phone to (O2). Perdue said that (O2) told the (S) that they were driving past the Monte Carlo in a truck, and said that the (S) saw them and began to follow them.

Perdue said that the (S) followed them to (O1)'s house in Los Altos (1115 Seena Avenue). Perdue said that the (S) asked if he could hang out with the girls, and they invited him inside of the house. Perdue said that no one else was home at the time. Perdue said that she wanted to go home (to her mother's house in Mountain View), and the (S) offered to drive her home. She said that she left with the (S), and got into his

vehicle. She said that the (S) asked for “alone time” with her, asked Perdue to get into the back seat of his vehicle, and said that he would drive them to Foothill College. Perdue said that she only wanted a ride home, and said that if he didn’t want to drive her home she would find another ride. During this time Perdue and the (S) were parked in front of (O1)’s house with the vehicle running.

Perdue said that she got a telephone call from (O2), who asked if she was alright. Perdue told (O2) that she wanted to go home, and said that she was in the car with the (S). Perdue said that the (S) turned up the vehicle’s radio very loud, causing her to have to hang up the phone. After Perdue hung up the telephone, she said the (S) turned the radio back down to a normal volume level. Perdue said that the (S) asked if she wanted to come to San Francisco with him, and she refused. Perdue said that she felt uncomfortable with the (S), and she turned to exit the vehicle. Perdue said that the (S) suddenly sped off down the street. Perdue said that the (S) turned eastbound on Covington Road, heading towards Miramonte Avenue. Perdue said that she asked the (S) to turn left on Miramonte, but he did not listen to her and continued straight through the intersection, failing to stop at the stop sign. Perdue said that she felt that the (S) didn’t stop because she would have gotten out of the vehicle.

Perdue said that the (S) took Covington to Grant Road, where he made a left turn (northbound Grant). She said that he took Grant Road to El Camino Real. She said that when he approached El Camino Real, he was in the left-turn stacking lane to head northbound on El Camino Real. She said that when he neared the limit line, the light was red for Grant Road traffic.

Perdue said that the (S) turned right, and cut across the #1, 2, and 3 lanes of Grant Road, and proceeded southbound on El Camino Real. Perdue said that the (S) did not stop at any red lights or stop signs during this time. Perdue told me that she kept asking the (S) to stop the car and take her home, but he only laughed, and said that they were heading to San Francisco. She said that the (S) turned onto northbound HWY 85, and continued to northbound HWY 101. Perdue said that she was telling the (S) to exit the freeway, and said that he would near the exit ramps, but swerve at the last minute to avoid exiting the freeway. Perdue said that she was very scared, and started to cry. She said that she told the (S) that if he didn't let her out she would call the police on her cell phone. Perdue said that the (S) slowed the vehicle down, and began to reach across her to open the passenger door. Perdue said that she thought the (S) was going to push her out of the vehicle, so she was able to ready herself. Perdue said that the seatbelts weren't present, so she was not wearing a seatbelt. She said that the (S) pulled his vehicle to the shoulder of northbound HWY 101, south of the San Antonio Road exit. She said that he slowed to approx. 5 MPH, and opened her passenger side door. Perdue said that the (S) pushed her with his right arm out of the side of the vehicle, without coming to a complete stop. Perdue said that she stumbled out of the vehicle, causing a sprain to her ankle. Perdue said that the (S) continued northbound on HWY 101, and said that she didn't see him after that.

Perdue said that she immediately called (O2), and told her what had happened. Perdue said that she was crying, and said that she walked to the San Antonio Road exit. Perdue said that she called (O1) as

well, who offered to pick her up. Perdue said that (O1) drove to her location, and picked her up. Perdue told (O1) to drop her off at the Safeway store near Miramonte and Cuesta in Mountain View. Perdue said that her ex-boyfriend met her there, and drove her to the LAPD to report the incident.

Perdue elaborated on her previous suspect description, adding that the (S) wears a lot of jewelry, specifically a belt with his name on it which hangs very low off his waist. She also said that he has gold teeth, and commented that he died his hair blonde.

Narrative Cont.:

After speaking with Perdue, I traveled to Foothill College to attempt to locate / identify the suspect. I spoke with Foothill College Police Department, and informed them of my suspect's description. One of the officers remembered the (S) from a previous traffic citation, and was able to retrieve his information. The information I received was Jonathan Phillips [REDACTED], with an address of [REDACTED], a phone number of [REDACTED], a [REDACTED], and an associated vehicle of [REDACTED] (registered to the same address, a 1994 Ford Escort 4d green in color). The officer commented that he remembered Phillips, and told me that he had odd colored hair, gold teeth, and was wearing a shiny belt with his name on it which hung very low. I was able to retrieve a photograph of Phillips, and presented it to Perdue. Perdue told me that Jonathan Phillips was (S) "Jonathan". Based upon the above, I formed the opinion that Phillips was the suspect in this case.

I directed Perdue to call (S) on a recorded telephone line. She agreed, and called the (S) at approx.

1600 hours. The (S) commented on the phone to Perdue that he “thought you hated me”. When asked why he left Perdue on the side of the freeway, he replied “I was going to take you to Frisco and take you back” and “I drove all the way up there for nothing”. Perdue asked if he heard her asking him to take her home and he replied “You’re right, you’re right. I apologize, I should have got off that exit.”

After speaking with Perdue, I made contact with (O1) [REDACTED] who provided me with the following statement.

Statement of (O1) [REDACTED]

[REDACTED] told me that she was with Perdue and (O2) on Friday, September 30th. She said that they were driving in downtown Mountain View, when the (S) called Perdue. [REDACTED] said that they passed the (S)’s location, and the (S) followed them to her home. [REDACTED] said that the (S) asked to hang out with them, and she allowed him to come inside her house [REDACTED] said that she went into her bedroom for a while, and when she came back out Perdue and the (S) were leaving together. [REDACTED] said that she believed the (S) was giving Perdue a ride home. [REDACTED] said that approx. 25 minutes later, Perdue called her crying, saying that the (S) had pushed her out of the car on the side of HYW 101. [REDACTED] said that she picked up Perdue from San Antonio Road near HWY 101, and drove her to a Safeway in Mountain View.

Narrative Cont:

After speaking with (O1), I made contact with (O2) [REDACTED], who provided me with the following statement.

Statement of (O2) [REDACTED]

[REDACTED] told me that she was with (O1) and Perdue on Friday, September 30th. She said that Perdue got a phone call from the (S), and said that Perdue handed the phone to her [REDACTED] said that she talked to the (S), and told him that they were driving past where he was parked. [REDACTED] said that the (S) saw her, and began to follow the girls back to (O1)'s house. [REDACTED] said that the (S) came inside, and sat quietly in the living room. [REDACTED] said that her father arrived at the house and took her home to San Jose, prior to anyone else leaving.

[REDACTED] said that she was worried about Perdue, so she called to check up on her [REDACTED] said that when she called, Perdue was in the car with the (S) [REDACTED] said that Perdue told her that she wanted to go home [REDACTED] said that she heard the (S) telling Perdue to get off the phone, and said that Perdue hung up the phone [REDACTED] said that approx. 20 minutes later, she got a phone call from Perdue. She said that Perdue was crying, and said that the (S) had pushed her out of his vehicle on HWY 101. [REDACTED] said that her father pulled over into a gas station, and offered to pick up Perdue, but Perdue refused.

Narrative:

On 10/7/05, Sgt. Epley and I traveled to 22 Fairfield Way in San Francisco to attempt contact with (S) Jonathan Phillips. I arrived at the residence, and asked if Jonathan was home. A female voice told me to wait (his grandmother), and a few seconds later Phillips came outside to meet with me. I confirmed that he was Jonathan Phillips, and then placed him in custody for the above listed violations. I escorted

Phillips to my vehicle, gave him a Miranda admonishment, and he told me that he understood his rights. Sgt. Epley and I transported Phillips back to the LAPD for processing. At the LAPD, I spoke with Phillips in interview room #6. Phillips provided me with the following statement.

Statement of (S) Jonathan Phillips:

Phillips told me that he first met Perdue approx. 2 weeks prior to my contact. He said that on a Friday night, he had plans to hang out with Perdue. Phillips said that Perdue originally told him that she would pick him up from his house in San Francisco, but later called him and said that she couldn't pick him up because she was hanging out with her girlfriends. Phillips said that he traveled down to Mountain View to meet with Perdue. He said that he met with Perdue near the Monte Carlo in Mountain View, and said that he followed her to a friend's house (O1).

Phillips said that he was uncomfortable sitting in a stranger's house, and asked Perdue if she wanted to leave with him. Phillips said that Perdue told him that she wanted to go home, and asked if he could drive her. Phillips said that he felt like Perdue was "using" him for his vehicle, and thought that he and Perdue would go out to a movie or to a party or something. Phillips said that he overheard Perdue making other plans for that night with another party on her cell phone, and Phillips said that he was upset that he drove to meet her only to have to drive her home.

Phillips said that he agreed to drive Perdue home. He said that he asked Perdue how to get to her house, but she was busy talking on her cell phone. I

asked Phillips if he ran any stop signs or red lights, and he initially told me that he did run a stop sign because lip didn't see it in time. I asked Phillips if any traffic cameras would have caught him running any red lights, and he told me that he probably did run a few red lights as well. Phillips said that he didn't run the red lights to prevent Perdue from exiting the vehicle, but instead ran the stop sign and red lights because he has a habit of doing it. Phillips said that he sometimes gets distracted, and has a lot on his mind, so he runs stop signs and red lights.

Phillips said that he asked Perdue about how to get to her house from a freeway, so he could drop her off and go immediately back to San Francisco. Phillips said that Perdue directed him towards HWY 101, and told him to get off at an exit (he was not specific about which one). Phillips said that he missed the exit because a white vehicle was blocking him and he could not merge over in time. Phillips said that Perdue became upset with him, and started yelling at him, cursing at him, and crying. Phillips said that Perdue yelled that he missed her exit, and told him to stop the car and let her off. Phillips said that Perdue appeared very angry, and Phillips feared that Perdue would hit him.

Phillips said that he pulled to the shoulder of northbound HWY 101 to let Perdue out of the vehicle because she was scaring him. I asked Phillips if Perdue threatened to call 911 unless he let her out. He originally said no, stating that Perdue was going to call her friend, but further questioning revealed that Phillips remembered Perdue threatening to call 911 just prior to him letting her out. Phillips said that he stopped the vehicle briefly, but didn't keep his foot on the

brake so the vehicle continued forward at idle speed. Phillips said that he did that on purpose to make it easier to merge back into traffic after Perdue exited. Phillips said that Perdue exited the vehicle on her own, and stated that he never pushed her or forced her to exit. Phillips said that Perdue was right near an off-ramp, and didn't feel it was dangerous to let her out at that time. Phillips said that after Perdue exited his vehicle, he continued northbound on HWY 101.

Narrative Cont.:

Based upon the above, I formed the opinion that Phillips violated Perdue's personal liberty by not allowing her to exit his moving vehicle — a violation of 236 P.C. I also believe that Phillips transported Perdue against her will from the area of Covington Road and Miramonte Avenue in Los Altos to northbound HWY 101 near San Antonio Road, and based upon Perdue's state of mind at the time (crying and repeated requests to let her exit the vehicle), I believe that Phillips instilled fear into Perdue — a violation of 207(a) P.C. Furthermore, I believe that Phillips forced Perdue to exit his vehicle while it was still moving, along the shoulder of a busy highway at nighttime, an action likely to produce great bodily injury or death — a violation of 245(a)(1) P.C.

I asked Phillips if he wanted to be booked into San Francisco County Jail, or if he would consent to being booked into Santa Clara County Jail, and he told me that he would consent to Santa Clara County booking. Sgt. Epley and I transported Phillips to the Santa Clara County Main Jail, where he was booked on charges of 207(a) P.C., 236 P.C., and 245(a)(1) P.C.

Property and Evidence:

I booked audio recordings of my interviews with Perdue and Phillips, and a cassette tape of Perdue's telephone call with Phillips into LAPD evidence.

Recommendations:

Case cleared by arrest. Forwarded to the Santa Clara County District Attorney's Office.

**DECLARATION OF DEFENDANT
JONATHAN PHILLIPS
(JANUARY 8, 2013)**

Michael Ross SBN: 98692
Attorney at Law
473 Jackson Street, 2nd Floor
San Francisco, CA 94111-1607
Tel: (415) 345-1335 Fax: (415) 446-9528

Attorney for Defendant JONATHAN PHILLIPS

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

JONATHAN PHILLIPS, (DOB: 09/17/1985),

Defendant.

Case No.: BB516948

CEN: 05055045

DA No.: 051028599

**DECLARATION OF DEFENDANT
JONATHAN PHILLIPS IN SUPPORT OF HIS
MOTION TO REDUCE A FELONY CHARGE
TO A MISDEMEANOR**

I, JONATHAN PHILLIPS, hereby declare that:

1. I am the Defendant in the instant case.

2. On February 24, 2006, I entered a plea of Nolo Contendre on advice of counsel to one felony count of Penal Code Section 236 as a felony. I was convicted and sentenced in Palo Alto Superior Court on April 13, 2006 before the Honorable Rose J. Pichon. I have not suffered any subsequent arrest or conviction for any other offense in any jurisdiction, ether before or after this case.

3. Prior to the entry of this plea of Nolo Contendre, my counsel, ReBecca [sic] R. Simmons, advised me that I should change my plea from Not Guilty to Nolo Contendre for two reasons: she advised me that I could not expect to receive a fair trial in the Palo Alto courts because I was a black person and would thus suffer invidious discrimination by any Palo Alto jury, and, additionally, that any Palo Alto jury would also discriminate against me at trial because I was a resident of the City and County of San Francisco.

4. I wished to contest the allegations of the alleged victim in this case at trial, but Ms. Simmons dissuaded me from exercising my constitutional rights to a trial by convincing me that the probability of any Palo Alto jury harboring feelings of resentment and discrimination would overcome any chance for a fair consideration of the facts of the case.

Ms. Simmons advised me that taking the plea bargain offered in which I changed my plea to Nolo Contendere of a felony count of § 829a P.C. would be in my best interests since I could thereby avoid a possible conviction by a jury whose prime consideration would be my race and where I lived at the time.

5. This case is the first exposure to the court system and the criminal justice system, and I relied totally on the judgment and advice of Ms. Simmons for my choices in this case.

6. I have been advised by my new counsel that Ms. Simmons' advice regarding the probability of racial or regional discrimination was less likely in the Palo Alto Courts and with Palo Alto juries that any other venue in the United States. I was further thus informed that the educational level and diversity of the Palo Alto jury venire was better than almost anywhere else in the United States, and thus I could rely on having a fair jury deciding the case on the facts and without prejudice, had I elected to exercise my right to trial.

My Motion is based on this newer information and advice regarding the nature of a jury trial in my case, and I am seeking the relief stated in my Motion.

I declare under penalty of perjury that the foregoing is true as to my own personal knowledge, except those matters upon information and belief, and as to those I believe them to be true.

EXECUTED this 12/21/12 day of December, 2012
in the City and County of San Francisco.

/s/ Jonathan Phillips
Declarant

**NOLO CONTENDERE PLEA SET ASIDE
(APRIL 7, 2008)**

Superior Court
270 Grant Avenue
Palo Alto, CA 94306

People vs. Jonathan Phillips

L.K.A.	22 Fairfield WY San Francisco, CA 94127
Judge	Hon. Rise J. Pichon
Reporter	Barbee Machado
Def. Atty,	Simmons, R
Charges	F(001) PC236/237
D.A.	Sanderson
Case No.	BB516948
CEN	05055045
Date	04/07/2008 1:30 PM Dept 88 09/17/1985 CAD5661416 CDY BK:Y
Clerk	J. Millard DVT592 M
Hearing	PC1203.4 Record Clearance Hrng
DV:	Agency LA-04305-G2592-Green
Child:	Status O- -3FX 4-13-09 TW?
APO	Supo: P736
Violation Date	09/30/2005

Next Appearance

- Defendant Present
- Atty Present AR
- Hrg on Motion PC 1203.3/1203.4
- Granted

Plea Conditions:

- Jail / Prison Term of
Plea of guilty or no contest is set aside;
not guilty plea entered
- Dismissal
Pleas to PC 1203.4; PC 1203.3

VOP:

- Prob / Term'd

**NOTICE OF MOTION AND
MOTION TO REDUCE GUILTY PLEA
(MAY 3, 2023)**

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JONATHON PHILLIPS

SUPERIOR COURT FOR THE
STATE OF CALIFORNIA
IN THE COUNTY OF SANTA CLARA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

JONATHON PHILLIPS,

Defendant.

Case No.: BB516948

**NOTICE OF MOTION AND
MOTION TO REDUCE GUILTY PLEA
PURSUANT TO PENAL CODE SECTION 17(b)**

TO: HONORABLE JUDGE AND TO THE SANTA CLARA'S DISTRICT ATTORNEY'S OFFICE:

Defendant, Jonathon Phillips, by and through his attorney, Orly Ahrony, moves this Court to reduce his felony conviction to a misdemeanor pursuant to Penal Code Section 17(b)¹ for his 2005 conviction.

**MEMORANDUM OF POINTS
AND AUTHORITIES**

I. Summary of Defendant's Conviction

In 2005, Mr. Phillips, while attending Foothill College, gave his friend (the victim) a ride in his vehicle and apparently the two got into a dispute. At some point, the victim wanted to leave the vehicle, but they were on the freeway and due to his bad judgement Mr. Phillips failed to stop the vehicle in time. From the police report, Mr. Phillips was upset that the victim was attending a party and failed to invite Mr. Phillips causing him to drive in some form of rage. Clearly for immature reasons as he was only 20 at the time, his impulsivity and his youth took over the situation as he improperly handled the situation. Fortunately, the victim was not hurt.

Mr. Phillips pled to Penal Code 236/237 (a felony) on April 13, 2006. He was sentenced to 90 days in county jail, however in lieu of serving time he enrolled

¹ All further statutory references are to the Penal Code unless otherwise stated.

in the Sheriff's work program. Mr. Phillips successfully completed all terms and conditions imposed. On April 7, 2008, he was successful in expunging this matter pursuant to Penal Code 1203.3/1203.4. Mr. Phillips never had any felonies or misdemeanors in the past.

Further, PC 236/237 is a wobbler given that "(a) False imprisonment is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170." (Penal Code Section 237, West (2023)). Given there was no menace, fraud, or violence proven in this matter, Mr. Phillips' felony should be reduced to a misdemeanor. This court has the power and discretion to do so under 17(b).

II. This Court has the Discretion to Reduce Mr. Phillips Conviction to a Misdemeanor Pursuant to PC 17(b)

Pursuant to Penal Code Section 17(b), a felony offense can be reduced to a misdemeanor if the felony is considered a "wobbler."

A "wobbler" offense is an offense that "in the trial court's discretion, may be sentenced alternately as felonies or misdemeanors—upon imposition of a punishment other than state prison (§ 17(b)(1)) or by declaration as a misdemeanor after a grant of probation (§ 17(b)(3)). (*People v. Superior Court (Alvarez)* (1997) 14 Cal. 4th 968, 974.

Although false imprisonment (§ 237) is alternatively punishable as a felony or a misdemeanor and

thus constitutes a wobblers offense, when an additional finding is made that the offense was “committed by violence, menace, fraud, or deceit” the statute in question prescribes a sentence to state prison, and is then a straight felony that may not be reduced to a misdemeanor in the court’s discretion under section 17, subdivision (b)(3). (*People v. Superior Ct. (Feinstein)*, 29 Cal. App. 4th 323, 330 (1994); *People v. Feyrer*, 48 Cal. 4th 426, 442-43, 226 P.3d 998, 1009-10 (2010).) In order to qualify as a “straight” felony — thus disqualifying one from seeking relief under pursuant to PC 17(b) — the crime must have been committed by means of “violence, menace, fraud, or deceit”. (*People v. Superior Ct. (Feinstein)*, 29 Cal. App. 4th 323, 330 (1994).)

According to the official police report, Mr. Phillips “slowed down to approximately 5mp . . . [opened] the passenger door . . . [and] then pushed her [Perdue], the victim in the shoulder area causing her to fall out of the vehicle.” Perdue landed on her feet and had *no injury*. The police reports also reflects that she needed no treatment. Further it states, that Phillips was not armed, did not resist arrest, and was not combative with the officer. Although undeniably immature, these actions *do not* constitute violence, menace, fraud, or deceit.

Case law supports this finding. In *People v. Matian*, appellant sought review of the judgment of the Superior Court for Los Angeles County after he was convicted of sexual battery by restraint, felony false imprisonment, and genital penetration with a foreign object, on the grounds that the evidence was insufficient to support the felony false imprisonment conviction because there was no evidence of violence or menace.

The California court of appeal held that the evidence was insufficient to support a felony false imprisonment conviction, as the evidence was inadequate to establish express or implied threat of harm and modified the judgement to reflect a conviction of misdemeanor false imprisonment, as the verdict was contrary to the law. (*People v. Matian* (1995) 35 Cal.App.4th 480, 482.) In *Matian*, the appellant had “squeezed [the victim’s] breast sufficiently hard enough to cause her pain, possibly even bruising,” “grabbed her arm,” “yelled at her not to go,” and “glared at her as he approached her each time she attempted to leave”. (*Id.* at 459, 461.) The victim testified that she “was afraid, did not want him [appellant] to touch her again and sat back down.” (*Id.*)

The court held that there was no evidence presented that constituted express or implied threat of harm; its reasoning of this finding was rooted in the court’s reading of *People v. Babich*, which defined “violence” as “the exercise of physical force used to restrain over and above the force reasonably necessary to effect such restraint.” (*People v. Babich* (1993) 35 Cal.App.4th 480, 482.) “Menace” was defined as “a threat of harm express or implied by word or act.” (*Id.*) Although despicable, the defendant’s behavior did not qualify as violence or menace; the court’s decision was guided by the prior decisions, which upheld convictions for felony false imprisonment involving menace when there was evidence that the defendant used a deadly weapon or verbally threatened harm. (*People v. Webber* (1991) 228 Cal.App.3d 1146, [defendant restrained victim by pointing a gun at her head]; *People v. Raley* (1992) 2 Cal.4th 870, 907, [the defendant brought children into his camper and told them to

take their clothes off. Nearby he kept a leather belt with a big metal belt buckle on it. The defendant told the children if they did not do what he said, or told anyone about the incident, he would hit them with the belt]; *People v. Magana* (1991) 230 Cal.App.3d 1117 [after raping the victim, the defendant forced her to walk through a park, while he held her hand, and when she asked him to let go, he threatened to kill her].

As stated above, the California court of appeal held that the appellant's behavior did not support a finding of felony false imprisonment, and modified the judgment to a conviction of misdemeanor false imprisonment under Cal. Penal Code 236.

In the present case, Phillips behavior is incomparable to these cases and thus falls far below the standard to qualify as use of violence, menace, fraud or deceit. The same is true when comparing Phillips' actions with those described in *People v. Superior Court (Feinstein)*, where it was held that the Magistrate erred in modifying defendant's felony false imprisonment conviction to a misdemeanor given that the evidence presented constituted the defendant's use of violence and menace. Defendant "threw himself upon her [victim]," "slammed her to the wall," "pinned her with the weight of his body," "thrust one hand inside [victim's] blouse, onto her breast, and the other under her skirt and undergarments to fondle her genital area." (*People v. Superior Ct. (Feinstein)*, 29 Cal. App. 4th 323, 327, (1994), as modified (Nov. 15, 1994).)

Slowing down the vehicle, opening the passenger door, and pushing Perdue with only enough force so that she still landed on her feet unscathed — these actions demonstrate some concern for Perdue's basic

safety; more importantly in the present case, Phillip's actions do not demonstrate violence.

Based on the foregoing cases, it is clear that the legislature definition of violence, menace, fraud, or deceit was a high burden for the prosecution to meet. Given that Mr. Phillips was a youth at the time and simply pled to the charges, the prosecution never had to prove these elements. The facts of the case were never established as the police report was the only evidence obtained. Mr. Phillips did not elect to go to trial and did not have a meaningful, opportunity to cross examine the evidence. It is more likely than not that at a jury trial or bench trial, the prosecution would be unsuccessful in obtaining a felony conviction given the case law and the facts pertaining to the incident.

Thus, Mr. Phillips' actions — while immature and impulsive — do not demonstrate any use of “violence, menace, fraud, or deceit” (*Id.*). For the reasons set below and Mr. Phillips' impeccable record, he respectfully requests this court to reduce the conviction pursuant to 17(b) as a misdemeanor.

III. In the Interests of Justice, This Court Should Exercise Its Discretion to Resentence Mr. Phillips to a Misdemeanor Charge

Mr. Phillips's PC 236/237 felony should be reduced to a misdemeanor due to the fact he has been law abiding for over 17 years and that he was only 20 at the time of the incident and extremely naive. Mr. Phillip's impulsivity and irrational behavior was connected to his youth and childhood trauma, as this is not an incident that would occur today. Pursuant to penal code section 1016.7, a youth is anyone under 26 years of age.

Jonathon Phillips was born on September 17, 1985, raised in San Francisco and lived with his mother. His father abandoned him at birth and this unfortunately created childhood trauma for Mr. Phillips. His mother assumed the role of playing both parents. Mr. Phillips struggled in school as he was diagnosed with attention deficient disorder and placed in special need classes.

In 2013, Mr. Phillips moved to Los Angeles and was inspired to pursue a career in protecting the community. Mr. Phillips attended a Security Officer Academy program (*see* Exhibit B, attached certificates). He was a great student as his teacher Aurelio Martin provided a letter recommendation and also described Mr. Phillip's limitation by his felony conviction in the industry. (*see* Exhibit C.)

Mr. Phillips was employed by LA Universal Protection and LA Barton² as a security guard. Mr. Phillips worked part time for both companies, for three years as a "security temp." Part of his job included guarding equipment and facilities, preventing homeless from breaking into properties and prohibiting people from graffitiing.

Mr. Phillips secured a permanent position where he worked overnight as a security guard for the Metrolink—the Los Angeles area commuter rail service. At Metrolink he monitored the equipment to ensure that no one trespassed and vandalized the machinery.

² In 2017 LA Universal Protection and LA Barton merged into the new security company, LA Universal, whom Mr. Phillips still works for to this day.

Through 2018-2020, Mr. Phillips worked seven days a week as a security guard as a “temp,” rotating to wherever he was needed. Once the pandemic unraveled, Mr. Phillips reduced his workload from seven days a week to five or six days a week. He is currently still working as a security guard temp all throughout Los Angeles county.

Mr. Phillips visits his family in San Francisco at least once a year. His dream is to return to school and earn a university degree in security studies. He has researched programs at Cambridge and Pepperdine. Mr. Phillips wants to pursue his goal of protecting the community, but believes that his past is preventing him from moving forward. After receiving a degree, he hopes to be employed by a vital government agency such as homeland security. Unfortunately, his conviction will prevent him from obtaining that goal. (*see* Exhibit C.) There are many security positions for which Mr. Phillips would like to apply, but his options are substantially limited because of his 2005 felony conviction. Mr. Phillips has been crime free for the last 17 years and has proven that he deserves another chance. This court should use its discretion to resentence him to a misdemeanor to allow him the opportunity to properly expunge his record, specifically because a person’s youth and childhood trauma is now a recognized post-conviction factor in mitigation that a court must consider when making resentencing decisions. The Legislature was guided by science research establishing that anyone under the age of 26 has an undeveloped brain³.

³ Penal Code 1016.7

Mr. Phillips continues to feel great remorse, as he described to the District Attorney's Office: "I [Phillips] feel horrible and think about this incident everyday . . . If I could talk to her [victim] I would tell her how sorry I am and how I wish I could go back in time." (Exhibit A.) Since this regrettable incident, Mr. Phillips has dedicated himself to a career where he can make his community safer; he explains that "my passion for serving as a security guard stems from this incident as I feel like I owe to the community for my sin." (Exhibit A.)

The evidence is clear that he is deserving of the relief requested. If granted such relief, he would be a benefit to the security industry.

IV. Conclusion

As stated, this Court has the absolute and final discretion to decide if this motion ought to be granted. In coming to a decision, it is respectfully requested of this court to ask itself this: what more could Mr. Phillips possibly have done to show that he is entitled to this relief?

Since his conviction, Mr. Phillips has been a model citizen. If the legislature put forth 17(b) as a reward to those who successfully complete probation and, over time, prove that they show no risk of reoffending, then it seems the statute was put in place precisely for individuals like Mr. Phillips. Therefore, it is respectfully requested that this Honorable Court exercises its discretion and resentence Mr. Phillips to a misdemeanor charge.

App.51a

Respectfully Submitted,

/s/ Orly Ahrony

Ahrony Appeals Law Group

Orly Ahrony

Attorney for Jonathan Phillips

Dated: May 2, 2023

EXHIBIT A.
JONATHAN PHILLIPS “JOURNEY LETTER”

Honorable Judge,

This is my letter of remorse as I would like to share my insight of the crime.

In 2005, as I was only 20 in college, I was young, dumb, and very immature. I offered a ride to a friend (the victim) in college as I was eager to make new friends. I always struggled with friendships as I was insecure growing up. My father abandoned me when I was born and I never met him. School didn't come easy as I was diagnosed with ADD and placed with special need kids. It was hard fitting in and making connections growing up.

The day of the incident, I offered the victim a ride. She was on the phone and talking about attending a party, and didn't invite me. The idea of rejection as I was abandoned as a child was a trigger for me. My emotions and rage got the best of me. When she asked me to stop the vehicle, I ignored her even though I knew I shouldn't have. It must have been really scary for her knowing that she didn't have any control of the situation. Driving with such rage was callous of me as I could have caused a horrible accident and really hurt other people as well. I feel horrible and think about this incident everyday. It was a terrible mistake. My immaturity, my fake sense of self, and rejection issues handicapped my ability to stop the vehicle and let her out.

If I could talk to her I would tell her how sorry I am and how I wish I could go back in time.

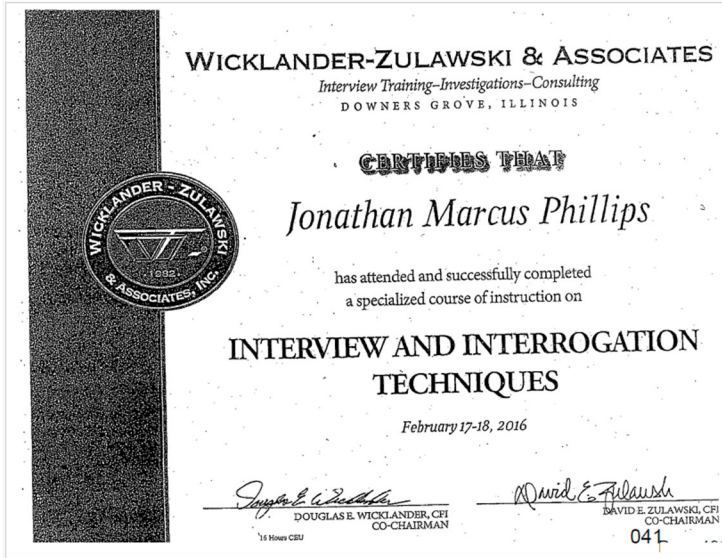
I have dedicated my life to being a better person as I have been law abiding for the past 17 years and will continue to do so. My passion for serving as a security guard stems from this incident as I feel like I owe to the community for my sin.

I have dreams of going back to school and this felony conviction has hindered my abilities for employment.

I pray that you give me another opportunity as I have proven myself to be law abiding and will continue to be a great example for our society.

Jonathon Phillips

EXHIBIT B.
CERTIFICATIONS (WITH TRANSCRIPTIONS)



WICKLANDER-ZULAWSKI & ASSOCIATES
Interview Training-Investigations-Consulting
DOWNERS GROVE, ILLINOIS

CERTIFIES THAT

Jonathan Marcus Phillips

has attended and successfully completed a
specialized course of instruction on

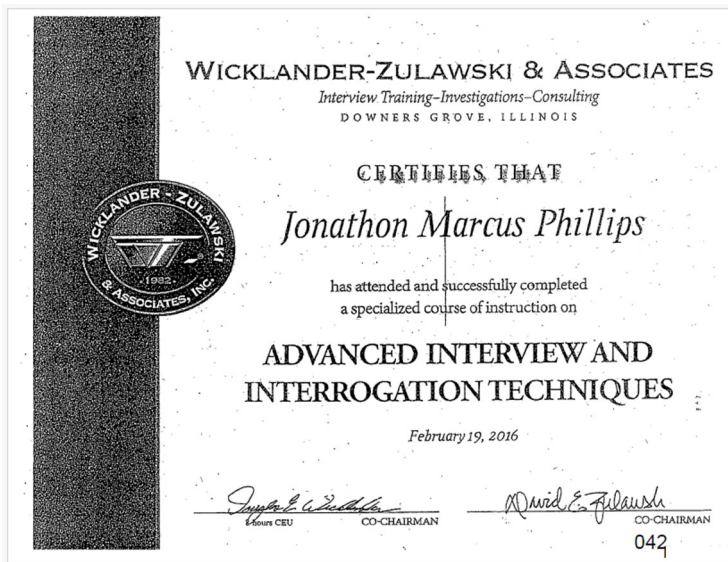
**INTERVIEW AND
INTERROGATION TECHNIQUES**

February 17-18, 2016

/s/ Douglas E. Wicklander, CFI
Co-Chairman

/s/ David E. Zulawski, CFI
Co-Chairman

{Image 2}



{Transcription}

WICKLANDER-ZULAWSKI & ASSOCIATES
Interview Training-Investigations-Consulting
DOWNERS GROVE, ILLINOIS

CERTIFIES THAT

Jonathan Marcus Phillips

has attended and successfully completed a
specialized course of instruction on

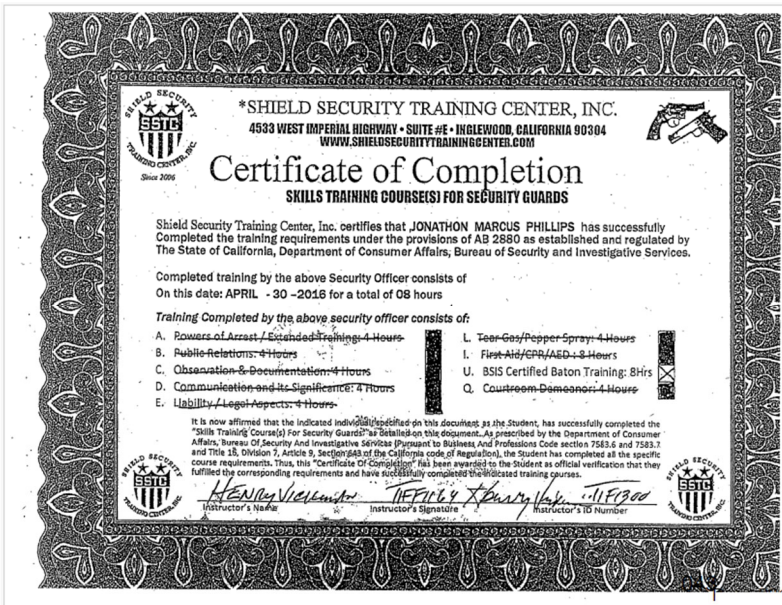
ADVANCED INTERVIEW AND
INTERROGATION TECHNIQUES

February 19, 2016

/s/ Douglas E. Wicklander, CFI
Co-Chairman
8 hours CEU

/s/ David E. Zulawski, CFI
Co-Chairman

{Image 3}



{Transcription}

***SHIELD SECURITY TRAINING CENTER, INC.**
4533 WEST IMPERIAL HIGHWAY SUITE #E
INGLEWOOD, CALIFORNIA 90304
WWW.SHIELDSECURITYTRAININGCENTER.COM

CERTIFICATE OF COMPLETION
SKILLS TRAINING COURSE(S) FOR SECURITY GUARD

Shield Security Training Center, Inc. certifies that **JONATHON MARCUS PHILLIPS** has successfully Completed the training requirements under the provisions of AB 2880 as established and regulated by The State of California, Department of Consumer Affairs; Bureau of Security and Investigative Services.

Completed training by the above Security Officer consists of

On this date: APRIL - 30 -2016 for a total of 08 hours
Training Completed by the above security officer
consists of:

U. BSIS Certified Baton Training: 8Hrs

It is now affirmed that the indicated Individual specified on this document as the Student, has successfully completed the “Skills Training Course(s) For Security Guards as detailed on this document. As prescribed by the Department of Consumer Affairs, Bureau of Security And Investigative Services (Pursuant to Business And Professions Code section 7583.6 and 7583.7 and Title 16, Division 7, Article 9, Section 643 of the California Code of Regulation), the Student has completed all the specific course requirements. Thus, this “Certificate Of Completion”, has been awarded to the Student as official verification that they fulfilled the corresponding requirements and have successfully completed the indicated training courses.

Henry



Instructor's Name

Tiffany

Instructor's Signature

Instructor's ID Number

{Image 4}

BASIC LIFE SUPPORT	
BLS Provider	 American Heart Association®
Jonathan Phillips has successfully completed the cognitive and skills evaluations in accordance with the curriculum of the American Heart Association Basic Life Support (CPR and AED) Program.	
Issue Date 4/28/2018	Recommended Renewal Date 04/2020
Training Center Name Training Solutions	Instructor Name Queen Caldwell
Training Center ID CA15284	Instructor ID 01170530345
Training Center Address 20831 Burbank Blvd, Suite D WOODLAND HILLS CA 91367 USA	eCard Code 185504351101
Training Center Phone Number (818) 703-6228	QR Code 
<small>To view or verify authenticity, students and employers should scan this QR code with their mobile device or go to www.heart.org/cpr/mycards. © 2016 American Heart Association. All rights reserved. 15-3001 3/16</small>	

{Transcription}

BASIC LIFE SUPPORT

BLS Provider

American Heart Association

JONATHAN PHILLIPS

has successfully completed the cognitive and skills evaluations in accordance with the curriculum of the American Heart Association Basic Life Support

(CPR and AED) Program.

Issue Date: 4/28/2018

Training Center Name: Training Solutions

Training Center ID: CA15264

Training Center Address

20931 Burbank Blvd, Susie D
Woodland Hills CA 91367 USA

Training Center Phone Number: (818) 703-6228

Recommended Renewal Date: 04/2020

Instructor Name: Queen Caldwell

Instructor ID: 01170530345

eCard Code: 185504351101

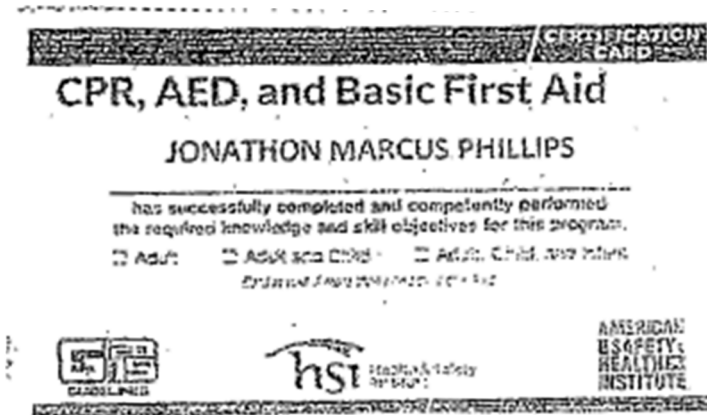
QR Code:

To view or verify authenticity, students and employers should scan this QR code with their mobile device or go to www.heart.org/cpr/mycards.

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{Image 5}



{Transcription}

CPR, AED, and Basic First Aid

JONATHON MARCUS PHILLIPS

has successfully completed and competently performed this required knowledge and skill objectives for this program

- ☐ Adult
- ☐ Adult and Child
- ☐ Adult, Child and Infant

{Image 6}

ED GIDAYA	
Authorized Instructor (Print Name)	
2533120	
Registry No.	
05/22/2018	05/2020
Class Completion Date	Expiration Date
310 406-7262	2557191
Training Center Phone No.	Training Center ID

This card certifies the above named individual has successfully completed the required objectives and standards for AHA certification to the satisfaction of a currently certified AHA instructor. This program conforms to the 2015 AHA Guidelines Update for CPR and ECC and the 2015 AHA and PFA Guidelines Update for First Aid. This program is not designed to meet pediatric first aid training regulatory requirements and should not be used for that purpose. Expiration date may not exceed 245 days to 24 months of class completion.

{Transcription}

ED GIDAYA

Authorized Instructor (Part Name)

2533120

Registry No.

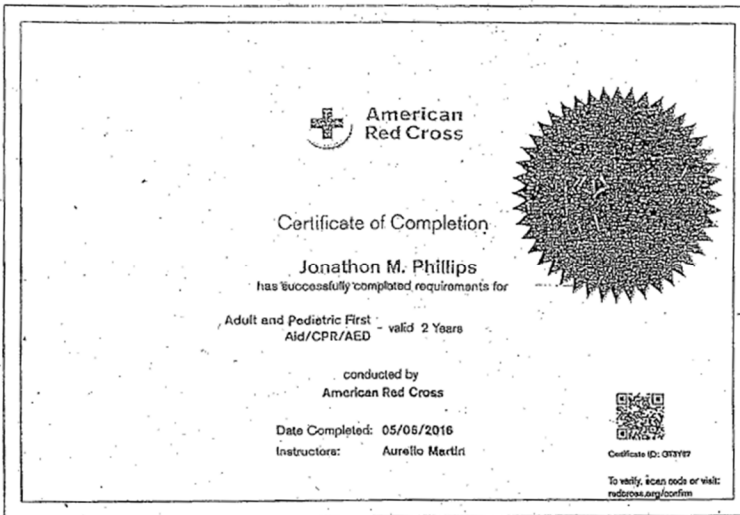
05/22/2018

05/2020

310 406-7262

2557191

{Image 7}



{Transcription}

American Red Cross

Certificate of Completion

Jonathon M. Phillips
has successfully completed requirements for
Adult and Pediatric First Aid/CPR/AED
Valid 2 Years

Conducted by
American Red Cross

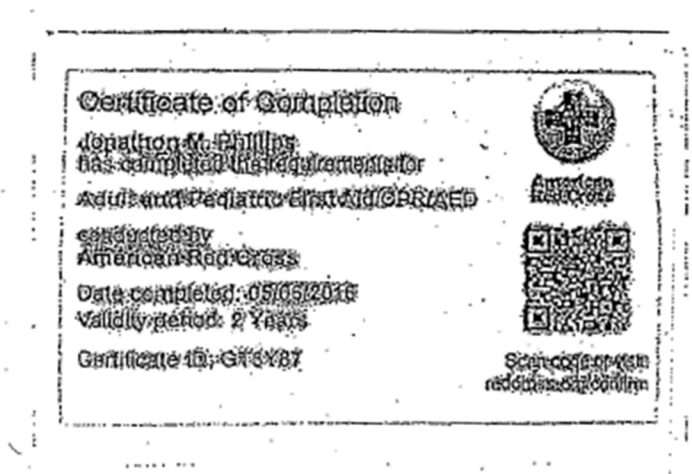
Date Completed: 05/06/2016

Instructors: Aurelio Martin

Certificate ID: OT3Y67

To verify scan code or visit: redcross.org/confirm

{Image 8}



{Transcription}

Certificate of Completion

Jonathon M. Phillips
has successfully completed requirements for
Adult and Pediatric First Aid/CPR/AED

Conducted by
American Red Cross

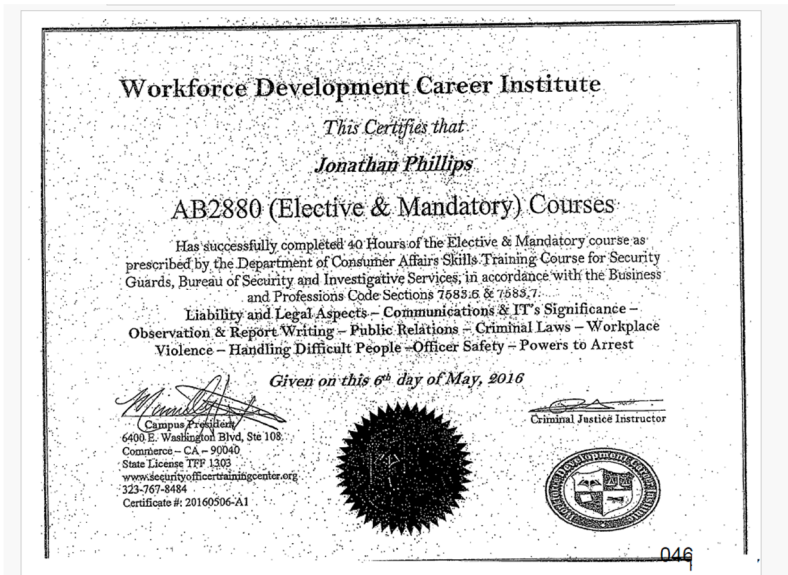
Date Completed: 05/06/2016

Validity period: 2 Years

Certificate ID: OT3Y67

scan code or visit: redcross.org/confirm

{Image 9}



{Transcription}

Workforce Development Career Institute

This Certifies that

Jonathan Phillips

AB2880 (Elective & Mandatory) Courses

Has successfully completed 40 Hours of the
Elective & Mandatory course as prescribed by the
Department of Consumer Affairs Skills Training
Course for Security Guards, Bureau of Security and
Investigative Services, in accordance with the
Business and Professions Code
Sections 75836 & 75837.

**Liability and Legal Aspects – Communications & IT's
Significance – Observation & Report Writing –
Public Relations – Criminal Laws – Workplace
Violence – Handling Difficult People – Officer Safety**

– Powers to Arrest

Given on this 6th day of May, 2016

/s/ Illegible

Campus President

6400 E. Washington Blvd, Ste 108

Commerce – CA – 90040

State License TFF 1303

www.securityofficertrainingcenter.org

323-767-8484

Certificate #: 20160506-A1

/s/ Illegible

Criminal Justice Instructor