

No. 19-

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In the  
**United States Supreme Court**

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ROHAN McDERMOTT,

*Petitioner,*

v.

J. SOTO, Warden,

*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Under 28 U.S.C. § 2253(c)(2), a state habeas petitioner is entitled to a certificate of appealability (“COA”) when he raises a “debatable” issue. *Buck v. Davis*, 137 S. Ct. 759, 774 (2017). Petitioner Rohan McDermott, serving mandatory life without parole for felony murder, raised a freestanding actual innocence claim based on a post-trial confession by the killer, which he argued was enough to prove his innocence given the uncommonly weak prosecution case, a legally insufficient prosecution theory, and an improperly excluded defense witness. Despite his unanswered objections to the district court’s dismissal, a Ninth Circuit motions panel denied him a COA in an unexplained order.

Did the panel so clearly misapprehend section 2253’s modest standard as to call for summary reversal?

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## PETITION FOR WRIT OF CERTIORARI

Rohan McDermott is before the Court because the man who shot Troy Lewis dead during a failed 2004 drug robbery has since admitted that McDermott had nothing to do with it.

But what makes this a “truly extraordinary case,” *Herrera v. Collins*, 506 U.S. 390, 427 (1993) (O’Connor, J., concurring), are glaring injustices that were there all along: a felony-murder special circumstance premised on a legally insufficient prosecution theory, thus obviating the need for jurors to credit the serial liar who served as the prosecution’s key witness, his credibility further shielded by the fundamentally unfair exclusion of a credible defense witness, and all of this against the background of a troubling rush to judgment.

Taking the killer’s newly discovered admissions as “proven,” considering them alongside all the other evidence “as a whole,” 28 U.S.C. § 2244(b)(2)(B)(ii), and evaluating McDermott’s freestanding claim of innocence “in the light of the previous proceedings in this case,” *Herrera*, 506 U.S. at 398, McDermott’s claim is at least “debatable,” thus entitling him to a certificate of appealability (“COA”) under 28 U.S.C. § 2253(c)(2). *Buck v. Davis*, 137 S. Ct. 759, 774 (2017).

The Ninth Circuit’s contrary conclusion, reached without analysis, in a case involving an arguably innocent person sentenced to die in prison, “so far depart[s]” from the standard articulated in *Buck* “as to call for an exercise of this Court’s supervisory power.” Sup. Ct. R. 10(a). The Court should grant certiorari and summarily reverse.

## OPINIONS BELOW

The Ninth Circuit's unpublished order denying McDermott's request for a COA on his freestanding innocence claim is at App. 1–2. The unpublished final report and recommendation adopted by the U.S. District Court is at App. 4–26. The state court's unpublished denial of McDermott's claim is at App. 215–18.

## JURISDICTION

The Ninth Circuit denial order issued on December 21, 2018. App. 1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in relevant part: “[No State shall] deprive any person of life, liberty, or property, without due process of law.”

28 U.S.C. § 2253(c)(2) provides in relevant part: “A certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right.”

28 U.S.C. § 2244(b) provides in relevant part:

**(2)** A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless--

....

**(B)(i)** the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and **(ii)** the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

## STATEMENT OF THE CASE<sup>1</sup>

### A. The deal

In late April 2004, Dwane Godoy contacted his friend Dave Daly to see about getting 100 pounds of marijuana. He was trying to set up a sale after meeting and talking with Rohan McDermott and Alcliff Daley (no relation to Daly). Daly said he knew someone who could get the weed—his nephew Troy Lewis.

On April 30, all four met in the morning at a house in Los Angeles. Lewis's girlfriend, Karla DeDunn, was also there; she waited in her SUV while the others talked. At some point, the group decided to make their way to Daley's apartment, about 10 miles away.

### B. The shooting

The four men reconvened outside the apartments; DeDunn had driven to a nearby 7-Eleven to await word from Lewis when the deal was done. Godoy and Lewis got into McDermott's rental and the four drove into the apartment parking garage, where McDermott dropped

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<sup>1</sup> Unless otherwise indicated by separate citation, the facts in this section are based on the state court of appeal's opinion at App. 27a–40a.

the other three off then drove back out to the street. The three went into Daley's apartment and waited for McDermott to return and join them.

When he did, Daley pulled a gun, ordered Lewis and Godoy to the floor, and told McDermott to tape them up. Exactly what happened next would be the core dispute at trial.

In Godoy's version, McDermott retrieved the tape and began binding them. When Godoy partially freed himself, Daley put the gun to Godoy's head, threatened to kill him if he did it again, and told McDermott to retape him. Daley then said he was going after the marijuana, and told McDermott to "get the other gun" and guard Lewis and Godoy. McDermott instead followed Daley, giving Godoy an opportunity to get free. But McDermott returned before Godoy had loosed his bounds and tried to force him back into the apartment, which was when he was able to break free and make his escape, running down the courtyard yelling for help.

In McDermott's version, once he was back in the apartment, he heard his name called and turned to see Daley holding the gun on Lewis and Godoy. Daley ordered McDermott, at gunpoint, App. 125, to tape them up. McDermott demurred, saying he didn't want to get involved, relenting only when he saw Daley's expression. But as soon as Daley turned his back, McDermott fled the apartment.

What is undisputed is that Troy Lewis wound up dead that afternoon, still there in the apartment, bound and lying on the floor, a single gunshot to the head. App. 115. By around 2:10 p.m., Godoy had

made his way to a home nearby and asked the residents to call the police. App. 113–114.

When police arrived, Godoy gave them a false story—that he and Lewis had come to the area by bus, and that Lewis had been kidnapped on the street by two men brandishing guns. App. 44. He never mentioned the drug deal, the apartment nearby, or Lewis’s immediate peril there. And he would persist in these omissions for some time, only filling in some of the blanks as detectives pressured him over the course of ensuing interviews. *See infra* Argument Part A.2.

McDermott, after leaving the apartment, made his way back to Florida, where he was later arrested, briefly questioned, then brought back to California to be tried on felony murder charges and a felony-murder special circumstance. Cal. Penal Code §§ 187, 190.2(a)(17). Daley was also caught, and would be tried after McDermott.

### **C. The trial**

Godoy was the prosecution’s key eyewitness at trial, and the prosecutor requested that he be granted immunity. But when Godoy opted not to invoke his Fifth Amendment rights, the prosecutor did not try to persuade him to do otherwise.

Yet the prosecutor took a different tack with Karla DeDunn. She had willingly spoken with detectives before trial, telling them (contrary to Godoy’s story) that there’d been no marijuana in her SUV. She had also readily agreed to take a lie detector test when asked. App. 214. And when it became clear that she was a potential witness in the case,

she was appointed counsel to consult with her about her Fifth Amendment rights. App. 67.

But when her attorney stated that he saw no need to invoke those rights, the prosecutor interceded. “Just so you know,” he told her attorney, “there were four or five other witnesses who say she had a hundred pounds of marijuana in the car.” DeDunn’s attorney was “sold,” and advised her to take the Fifth.

And she did.

This led McDermott’s trial counsel to challenge the disparate approach the prosecutor had taken with DeDunn, and to ask the trial court to grant her judicial immunity, explaining that her testimony that there was no weed in her car would go directly to the defense theory that it had been in Godoy’s. App. 107.

The trial court, acknowledging that DeDunn’s testimony was “clearly relevant” and “beneficial to the defense,” still denied the motion, ruling that the evidence was neither “essential” nor “clearly exculpatory.” App. 106. At the same time, the court also rejected defense counsel’s alternative request to admit DeDunn’s statements as statements against interest, ruling that they didn’t qualify because the investigator was “not interested in prosecuting” her. App. 110.

The jury thus heard Godoy’s testimony unchecked by DeDunn’s.

Godoy’s testimony in many respects agreed with McDermott’s: Both said that the meeting at the apartment was about a drug deal; that Daley had pulled the gun; that Daley had made the death threats;

that Daley had told McDermott to tape Lewis and Godoy; and that McDermott had done so.

The main differences between their stories were about whether McDermott had been involved in negotiating the sale and persuading Lewis and Godoy to come to the apartment; and about whether McDermott had tried to impede Godoy's escape.

Yet the prosecutor largely obviated these differences during closing, at least as far as the felony-murder special circumstance was concerned. To prove that allegation, the prosecution had to prove, beyond a reasonable doubt, that McDermott (1) was a "major participant" in the underlying felonies (robbery or kidnapping), and (2) acted with "reckless indifference to human life." App. 132. As to the first element, the prosecutor argued, it was enough that McDermott had "negotiat[ed] all the marijuana," "fl[own] in, do[ne] the drug deal, and le[ft] carnage behind." App. 141. As to the second, it was enough that McDermott had "tape[d] two people down in an apartment at gunpoint." *Id.*

Having heard these arguments, the jury found McDermott guilty of first degree felony murder and the felony-murder special circumstance. The verdict mandated a sentence of life without parole. Cal. Penal Code § 190.2(a)(17).

#### **D. Direct review and initial postconviction proceedings**

On direct review, McDermott challenged the superior court's decision not to confer immunity on DeDunn. The decision was affirmed by

the state court of appeal in a reasoned decision, and review summarily denied by the state supreme court. App. 5.

In state postconviction proceedings, McDermott challenged (among other things) the sufficiency of the evidence to prove felony murder and the related special circumstance. He also challenged the prosecutor's refusal to request immunity for DeDunn as prosecutorial misconduct. The state court denied the claims on the merits. App. 5.

McDermott then timely raised the same claims in his first federal habeas petition. App. 2–3. The district court rejected them on the merits—the immunity claim for lack of relevant “clearly established” law as determined by this Court, App. 61, and the sufficiency claim because there was sufficient evidence that McDermott intended to commit an underlying felony when Lewis was killed, and that the killing and felony were part of a continuing transaction, App. 60.1–60.9. Yet the court provided no analysis of McDermott's sufficiency challenge to the felony-murder special circumstance—despite McDermott's dedicating six pages of his petition to it. App. 225–231.

The district court denied a certificate of appealability. So did the Ninth Circuit. McDermott did not petition for certiorari.

#### **E. New postconviction proceedings following gunman Alcliff Daley's admissions**

But in 2014, McDermott discovered that Alcliff Daley had made statements to inmate Leonard Dove. According to Dove's declaration, Daley said that McDermott had not known about the gun, and that he had “order[ed]” McDermott to subdue the victims after McDermott had



“refused to get involved.” App. 64. At some point “the gun went off and a victim was shot.” *Id.* As McDermott started to leave, Daley pointed the gun at him and ordered him “not to leave,” and “to tie up the other victim.” *Id.* Daley said that McDermott was acting “like a punk and coward.” *Id.* Daley also said he should have shot McDermott, whom he “fault[ed] for letting one of the victim[s] get away by not stopping him as he exited the apartment and is why ... the victim was able to testify” at trial. *Id.*

Based on the declaration, McDermott sought and was denied relief in state court on a claim of actual innocence. App. 215–18. The Ninth Circuit then authorized McDermott to file a second or successive petition raising that claim. App. 56–57.

But after the petition was filed, the district court granted the Warden’s motion to dismiss. Though concluding that McDermott timely filed his petition and had been diligent in doing so, App. 17, 25, the court ruled that Daley’s admissions and other evidence McDermott marshalled did not disturb the jury’s finding that he’d been recklessly indifferent to human life, and thus failed to satisfy the substantive standard for second or successive petitions based on newly discovered facts, as set out in 28 U.S.C. § 2244(b)(2)(B)(ii). App. 21–24. Despite objections interposed by McDermott and left unanswered, both the district court and the Ninth Circuit denied a certificate of appealability, without analysis. App. 1.

This petition follows.

## REASONS FOR GRANTING THE WRIT

### **The Ninth Circuit’s denial of a COA so clearly misapprehends the governing standard as to call for summary reversal.**

McDermott is entitled to a COA if he makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To do that, he needs to show that at least one reasonable jurist could “disagree with the district court’s resolution of his constitutional claims.” *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). In a word, his claim need only be “debatable.” *Id.* at 774. And he can meet this modest standard even if “every jurist of reason might agree [he] will not prevail.” *Id.*

Because McDermott’s innocence is plainly “debatable,” and because the Ninth Circuit panel’s unexplained order risks perpetuating an innocent man’s lifelong incarceration, the Court should summarily reverse. *Tolan v. Cotton*, 572 U.S. 650, 659 (2014) (per curiam) (summarily reversing in excessive-force action, where “opinion below reflect[ed] a clear misapprehension of summary judgment standards in light of [Court’s] precedents”).

#### **A. McDermott’s innocence claim is plainly “debatable.”**

So far as McDermott’s innocence is concerned, the question is whether Daley’s statements, if proven and viewed in light of the evidence “as a whole,” would be enough to establish by “clear and convincing evidence” that “but for constitutional error, no reasonable factfinder would have found [McDermott] guilty” of felony murder and the related special circumstance. 28 U.S.C. § 2244(b)(2)(B)(ii). And to prove the underlying innocence claim, McDermott would affirmatively have to prove that he is probably innocent. *Herrera*, 506 U.S. at 419;

(O'Connor & Kennedy, JJ., concurring); *id.* at 429 (White, J., concurring); *id.* at 435 (Blackmun, Stevens & Souter, JJ., dissenting). See also *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013) (noting that it remains an open question whether freestanding claim of actual innocence may entitle petitioners to habeas relief).

This focus on innocence means that the courts below were to consider “all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility that would govern at trial,” *House v. Bell*, 547 U.S. 518, 538 (2006) (internal quotations omitted), and all “in the light of the previous proceedings in this case,” *Herrera*, 506 U.S. at 398.

In that light, McDermott’s claim is plainly “debatable.”

**1. The jury likely based its special circumstance finding on an inadequate legal theory.**

To begin with, jurors were “left the option of relying upon a legally inadequate theory” to find McDermott guilty of the felony-murder special circumstance. *Griffin v. United States*, 502 U.S. 46, 59 (1991). This is part of the innocence inquiry, because that theory is the one the jury most likely relied on in reaching its verdict.

Here’s why. The jury found McDermott guilty of first degree felony murder during a kidnapping and robbery. App. 175. There was no evidence that McDermott was the “actual killer.” Cal. Penal Code § 190.2(b). Nor was there evidence that McDermott acted with an “intent to kill.” *Id.* § 190.2(c). To determine whether McDermott was guilty of the felony-murder special circumstance, then, the jury had to

decide whether he acted with “reckless indifference to human life.” *Id.* § 190.2(d); App. 173–74. *See also Tison v. Arizona*, 481 U.S. 137, 158 (1987).

But the prosecutor’s baseline argument for finding McDermott reckless was that he “tape[d] two people down in an apartment at gunpoint.” App. 141. That theory of recklessness is difficult to square with this Court’s precedent. *See Tison v. Arizona*, 481 U.S. 137, 151 (1987) (noting among other things that both defendants supplied arsenal to convicted murderers to facilitate prison break). And it is impossible to square with the California Supreme Court’s. *See, e.g., People v. Clark*, 63 Cal. 4th 522, 618–24 (2016), *reh’g denied* (Aug. 10, 2016), *cert. denied sub nom. Clark v. California*, 137 S. Ct. 1227 (2017) (holding evidence of recklessness insufficient, where defendant “mastermind” “planned” and “organized” robbery knowing that “gun w[ould] be used” and victims would be handcuffed).

But McDermott’s jurors didn’t know the theory was inadequate. And since finding guilt on that theory obviated any reliance on Godoy’s dubious testimony (about which more in a moment), it’s an option jurors likely took.

**2. Dwane Godoy—the prosecution’s only eyewitness—was categorically untrustworthy.**

Whether or not the prosecutor’s improper argument induced jurors to adopt that theory, though, the evidence was still uncommonly weak—for both the underlying felony and the special circumstance.

To begin with, the only meaningful physical evidence presented at trial was a set of fingerprints found on the newspaper used as filler in the bundles of “flash” money to be flourished during negotiations. And those prints were Daley’s. App. 93–94.

That left Godoy’s testimony. But Godoy, it is undisputed, lied to investigators, repeatedly, even during the critical moments when Troy Lewis’s life might have been saved. And Godoy’s credibility too is part of the innocence inquiry. *See Schlup v. Delo*, 513 U.S. 298, 330 (1995) (distinguishing gateway innocence and evidentiary sufficiency inquiries). The following examples of the serial revisions Godoy made to five parts of his story, though conveying only a glimmer of his dishonesty, are enough to show why no juror, acting reasonably, would credit his uncorroborated testimony.

*How did Godoy and Lewis get there?* On May 1, Godoy at first told detectives that he and Lewis got to the area by bus. App. 192. Then it was by taxi. App. 179. On May 3, he admitted that they’d come in Godoy’s car. App. 164. Asked whether the reason he’d lied was to prevent police from finding the drugs in his car, he denied it, App. 168—but provided no other reason for lying, and never would.

*Where did Godoy and Lewis end up?* After Godoy made his way to the house next door, he told responding officers that he and Lewis had been kidnapped right off the street by two men brandishing “large revolvers.” App. 44. No mention of the apartment. And even the next day, knowing by then that something must have gone terribly wrong, Godoy persisted in his story about a street-side kidnapping. Not until

detectives told him that they'd found his prints—and Lewis's body—in the apartment did he finally come clean that he and Lewis had been there. App. 150–53.

*Who got the tape?* On May 3, Godoy told detectives that after Daley ordered McDermott to tape the other two up, Daley “thr[e]w” the tape to McDermott, App. 165—which corroborated McDermott's subsequent testimony on the point, App. 118. At trial, however, Godoy testified that upon Daley's order, McDermott had “start[ed] looking for the tape” in the kitchen, App. 80, as if he knew where the tape was kept.

*Who brought the weed?* On May 1, Godoy suggested that he “thought” there might have been marijuana in DeDunn's car, App. 179–80—which, given his false story about traveling by bus or taxi, *see supra* p. 13, was the only place the drugs logically could have been. But on May 3, when asked whether he ever *saw* any weed in the back of DeDunn's SUV, Godoy hedged, saying that all he saw were “boxes,” and that he “d[id]n't know what” was in them. App. 169. Yet at the preliminary hearing, Godoy tacked to claiming that he actually saw marijuana in DeDunn's SUV. App. 155. And by the time of trial, he was telling jurors that the drugs “[filled up] the whole back of [it].” App. 101.

*Whose earring was it?* Finally, there was the matter of an earring found outside the apartment. On April 30, Godoy made no mention to anyone about any earrings. On May 1—before owning up to his presence at the apartment—Godoy spontaneously mentioned that he had taken his earrings out the day before because one of them had been

bent after one of the men pushed a gun against his ear. App. 178. He never mentioned seeing anyone else's earrings, even though the topic came up repeatedly. App. 186–90, 195–98, 200, 203.

Yet after the topic came up for about the ninth time, Godoy said, “I think he [McDermott] had a[n] earring just like mine too.” App. 204; *accord* App. 205. And sure enough, by the end of the interview, Godoy was describing McDermott's earrings in detail—their size, brilliance, and array of diamonds. App. 206. By trial, not only did Godoy claim to have seen McDermott's earrings, he claimed to have seen one of them *fall off* during their “struggle.” App. 83–84, 100.

Simply put, Godoy was a rank fabulist. And his pattern of lies isn't plausibly explained by his stated fear of getting arrested for dealing drugs. *Cf.* App. 23. No rational juror alerted to that pattern—and this jury wasn't, *cf. id.*—could conscientiously apply the reasonable doubt standard and yet rely on Godoy's ever-changing story.

### **3. Daley's admissions are reliable, and taken as true prove McDermott's innocence.**

But to the extent that any juror's verdict hung on Godoy's testimony, any amount of straw would break that camel's back. And Daley's statements, taken as “proven,” 28 U.S.C. § 2244(b)(2)(B)(ii), are more than enough.

To begin with, his admissions are reliable. It is a “commonsense notion that reasonable people, even reasonable people who are not especially honest, tend not to make self-inculpatory statements unless they believe them to be true.” *Williamson v. United States*, 512 U.S.

594, 599 (1994). And since Daley, by his statements, accepted undiluted responsibility rather than attempting to avoid it, he wouldn't have made them unless he believed them to be true. *Id.*

That so, Daley's admissions make McDermott's innocence more likely. *Cf.* App. 20–21. McDermott's initial refusal to comply with Daley's order undercuts the idea that McDermott committed, attempted, or aided and abetted the underlying felonies, an element of the felony murder theory. App. 130–31. It likewise undermines both elements of the felony-murder special circumstance, *cf.* App. 20–21: McDermott's refusal to get involved shows that he was not “a major participant” in it, *Clark*, 63 Cal. 4th at 614–15; and Daley's ordering McDermott to tape the two men shows that McDermott's doing so was under duress rather than through “reckless indifference to human life,” *id.*

**4. Karla DeDunn's unjustly excluded statements are credible, and corroborate McDermott's innocence.**

But Daley's admissions aren't the only evidence jurors never heard. They also never heard from Karla DeDunn. Yet, as the trial court rightly observed, her statement that she didn't have any marijuana in her car were relevant to the defense theory, which was that the drugs were in Godoy's car.

But her testimony would also have shown that Godoy lied to the jury in at least two other, dramatic ways that the jury never learned about: First, that his reason for lying about how he got to the apartment was that he'd had a gun in his car, App. 168; and second, that he



had *been to Daley's apartment before*, App. 167—something he'd repeatedly denied. *See* App. 89, 183–84, 194, 199, 202.

These statements—among others<sup>2</sup>—are all a proper part of the analysis here. A habeas court “must” make its innocence determination in light of “all the evidence,” including evidence “tenably claimed to have been wrongly excluded.” *Schlup*, 513 U.S. at 328. And here the prosecution offered immunity to Godoy, App. 74, while not only denying it to DeDunn, but lobbying her lawyer to advise her to invoke her Fifth Amendment rights—and doing so in evident bad faith, claiming to have “four or five other witnesses” who could testify to something that, at best, two witnesses had any personal knowledge of.<sup>3</sup> Given these undisputed facts, it is at least “tenable” that the prosecutor’s machinations worked a wrongful exclusion of DeDunn’s testimony. *See United States v. Straub*, 538 F.3d 1147, 1162 (9th Cir. 2008) (holding that courts are constitutionally authorized to compel use immunity when prosecution grants it to its own witness but denies it to defense witness who would have “directly contradicted” prosecution’s).

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<sup>2</sup> DeDunn could also have testified that she was “scared” of Godoy, App. 213; that she believed Godoy was “the one who set [Lewis] up,” App. 206, and pressured him to go through with the deal, App. 209; that Godoy had been talking with the others about weighing the marijuana, while looking in the trunk of his own car, App. 210–11; and that Godoy had been wearing a gun when he went to the apartment, App. 207.

<sup>3</sup> That would be Godoy and maybe Lewis’s uncle Daly, who according to Godoy urged him to lie. App. 88.

**5. McDermott’s testimony is consistent with the evidence.**

As for McDermott’s own testimony, his story about what had happened in the apartment was simple: Once Godoy and Lewis were bound, Daley turned his back, at which point McDermott ran from the apartment. App. 119. And he fled on foot because he couldn’t find his car key. *Id.* All of this was consistent with the physical evidence.

Aside from Godoy’s suspect testimony, then, the prosecution’s case turned mostly on smearing him as a drug dealer, based on an earlier seizure of cash he’d had with him at Long Beach Airport in 2003, and on accusations that he’d had \$2,000 in cash with him when he returned in April 2004.

Yet it is undisputed that McDermott’s April 2004 trip followed notice from the U.S. Department of Justice, dated less than three weeks earlier, that he had until May 7 to contest the prior forfeiture. App. 46, 126–27. And there wasn’t a scintilla of evidence at trial that McDermott’s trip to Los Angeles had anything to do with Daley’s drug deal. That the prosecution thus could have secured McDermott’s conviction based on a prior cash seizure—regarding which no charges have ever been filed—is itself cause for concern. *See Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., statement respecting denial of certiorari) (noting “egregious and well-chronicled abuses” of civil forfeiture system).

**6. There are also troubling indications of a rush to judgment.**

Despite Godoy’s lies and all the holes in the final draft of his story, the lead detectives decided—within four days of the killing—that they

would rely on his statements to conclude that McDermott was responsible for the kidnapping and murder. *See* App. 52 (“Based on the above...”). Notably, this was before anyone had even spoken to McDermott, or conducted any recorded interview with DeDunn.

And there are still other signs of a rush to judgment. To start, there was no indication anywhere in the court records, in available discovery, or in prior counsel’s own work product of any attempts by law enforcement to contact Dave Daly, App. 55—a man who Godoy twice testified had both facilitated the deal and encouraged Godoy to lie to the police, App. 88, 154.

Yet another set of concerns arises about how investigators and the prosecutor treated DeDunn. Again, the prosecutor pressured her not to testify, based on little (if anything) more than Godoy’s dubious, self-serving statements. *See supra* Part A.2. And these tactics raise questions that are unsettling: If detectives and the prosecutor really did buy Godoy’s late-breaking claim that DeDunn had been sitting there at the 7-Eleven with marijuana stacked to the roof of her SUV, what did they think she did with it afterward? Why was there “no[] interest[] in prosecuting” her, App. 110, if she disposed of \$30,000 worth of marijuana to conceal her participation in a drug deal that ended in murder?

These considerations (among others) cast an even greater pall over the detectives’ and prosecutor’s easy, unwavering reliance on Godoy.

**7. All the evidence taken together extinguishes Godoy's credibility and proves McDermott's innocence.**

Ultimately, this case involves one of the “rare instances” in which actual innocence can be shown: when “another person has credibly confessed to the crime.” *Sawyer v. Whitley*, 505 U.S. 333, 340 (1992).

And Daley's confession is at least in its broad strokes corroborated by DeDunn's statements. Though she was not in the apartment, she witnessed key events that led up to the meeting there, and described Daley (the “skinny” Jamaican) as the one who was negotiating actively—and behaving suspiciously. *See* App. 208 (describing Daley as “the top one”); App. 212 (describing him as “the noisy [*sic*—probably nosey] one” who “ke[pt] looking at the car”).)

In turn, DeDunn's testimony that Godoy's manner “scared” her, App. 213, corroborates McDermott's own testimony that he was getting a negative “vibe” from Lewis and Godoy, App. 121–22. It was a critical piece of information, too. For its absence enabled the prosecutor, having engineered the exclusion of DeDunn's testimony, *supra* pp. 5–6, to argue over and over that McDermott's gut instinct about Godoy was unsubstantiated. App. 134–38, 140.

Yet, to focus solely on the exculpatory evidence here would be to ignore maybe the two most striking differences between McDermott's innocence case and other cases in which this Court has addressed innocence: (1) None among the latter involved a petitioner likely convicted under an inadequate legal theory, and (2) all involved far stronger evidence of guilt at trial. *See Schlup*, 513 U.S. at 302 (testimony by two correctional officers that they'd seen petitioner jump on murder victim

while other inmate attacked); *House*, 547 U.S. at 526–28 (eyewitness testimony about petitioner’s suspicious walk near murder scene; expert testimony about blood and fiber evidence tying his clothes to murder; and his false alibi to police); *McQuiggin*, 569 U.S. at 388 (testimony by one eyewitness that he’d seen petitioner kill victim, and by another that petitioner told him he planned to kill victim and later confessed to having done so); *Herrera*, 506 U.S. at 393–94, 418 (two eyewitness identifications of petitioner as murderer; numerous pieces of circumstantial evidence; and handwritten letter by petitioner apologizing for killing and offering to turn himself in); *Calderon v. Thompson*, 523 U.S. 538, 560 (1998) (noting that petitioner made “no appreciable effort to assert his innocence of ... murder,” and reviewing evidence that he’d raped victim, including his own “disastrous” trial testimony).

The district court’s partial responses to McDermott’s points are unconvincing.

To begin with, the duct tape found along the path Godoy took to leave the apartment is no more consistent with his story than with McDermott’s. *Cf.* App. 23.

And the interests implicated by Daley’s admissions are broader than just “penal.” *Cf.* App. 19. By the time he made them in 2008, he would soon be filing a habeas petition in federal court. App. 233. Had his statements come to light at the time, they would have “tend[ed] to invalidate [his] claim[s],” Fed. R. Evid. 804(b)(3)(A), not to mention undermine his chances of prevailing upon any retrial. The statements were thus “against interest” under Rule 804’s plain language.

Nor does Daley's reference to "the other victim" support a "reasonable inference" that one victim had already been shot. *Cf.* App. 23. And even if it were otherwise, the inference would contradict Godoy as much as it would McDermott, because both claimed they'd left before the shooting.

Similarly, that Daley "fault[ed]" McDermott for "not stopping" Godoy as he tried to escape says nothing about McDermott's guilt. *Cf.* App. 22. After all, Daley had ordered McDermott at gunpoint to tape the two up. So it would hardly be surprising if by some twisted logic Daley held McDermott responsible for Godoy's escape.

Finally, McDermott's duress defense at trial is consistent with his contention that he didn't know anything about Daley's likelihood of killing. *Cf.* App. 22. By the time McDermott learned how dangerous Daley was, Daley was the only one holding a gun. McDermott thus lacked any meaningful "opportunity to act as a restraining influence" on him. *Clark*, 63 Cal. 4th at 619.

Given these and other unanswered points put to the district court, it cannot be plausibly be denied that the district court's ruling is at least "debatable." *Buck*, 137 S. Ct. at 774. The Ninth Circuit panel's contrary conclusion "is as inexplicable as it is unexplained." *Felkner v. Jackson*, 562 U.S. 594, 598 (2011). It should be reversed. *Id.*

**B. Only cursory review is needed here to avert the intolerable risk that an innocent man will die in prison.**

This Court “has not shied away from summarily deciding [even] fact-intensive cases where, as here, lower courts have egregiously misapplied settled law.” *Wearry v. Cain*, 136 S. Ct. 1002, 1007 (2016) (citing cases) (summarily reversing upon holding that prosecution suppressed evidence in violation of due process). And the question presented here is far less fact-intensive than in cases like *Wearry*, because the COA inquiry is to be made “without full consideration of the factual or legal bases adduced in support of the [underlying] claim[].” *Buck*, 137 S. Ct. at 773 (internal quotation marks omitted).

Besides which, almost none of the adjudicative facts here are in dispute. Thus, even a cursory review of just the district court’s adopted report coupled with McDermott’s arguments and unanswered objections to it (all reflected in this petition), along with any response the Warden may provide, should make it manifest to the Court that the district court’s decision is “debatable.” *Id.* at 774. Plenary review of the claim can then be left to the lower courts. *See, e.g., Spears v. United States*, 555 U.S. 261 (2009) (per curiam) (summarily reversing and remanding for resentencing in light of *Kimbrough v. United States*, 552 U.S. 85 (2007), which had been decided year before); *In re Davis*, 557 U.S. 952 (2009) (summarily transferring case to district court for hearing and findings on petitioner’s innocence).

The minimal effort would be worth it. McDermott was convicted under a doctrine that, despite its persistence, is notoriously difficult to square with fundamental principles of criminal liability. *See*

2 W. LaFave & A. Scott, *Substantive Criminal Law* § 14.5(h) (Oct. 2018 update) (“[I]t is arguable that there should be no such [thing as felony-murder doctrine].”). And California’s felony-murder special circumstance exposes defendants to a sentence of death. Cal. Penal Code § 190.2(a).

Given the stakes, and given the absence of any substantive response to McDermott’s objections, the Ninth Circuit motion panel’s unexplained denial order raises a risk that it implicitly and improperly “invert[ed] the statutory order of operations,” first deciding the merits and then “justif[ying] its denial” on the basis of that merits analysis. *Buck*, 137 S. Ct. at 774.

That risk is intolerable here, because it means that an arguably innocent person will spend the rest of his life in prison without even a reasoned denial of a COA. And because the Ninth Circuit panel’s unreasoned denial “departs in so stark a manner” from the modest standard that governed McDermott’s motion, summary reversal is appropriate. *Erickson v. Pardus*, 551 U.S. 89, 90 (2007) (so holding of lower court’s misapplication of federal civil pleading standard).

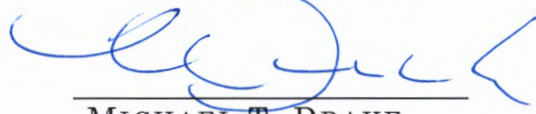


**CONCLUSION**

The Ninth Circuit may well decide the merits of McDermott's claim against him. But his claim can be "debatable" even if "every jurist of reason might agree ... [he] will not prevail." *Buck*, 137 S. Ct. at 774. And when getting it wrong means perpetuating a fundamentally unjust life sentence, a colorable claim of innocence shouldn't be brushed aside with an unreasoned denial of even a COA. This Court should therefore grant McDermott's petition, reverse, and remand with instructions to grant a COA.

Respectfully submitted,

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March 21, 2019

# APPENDIX

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

DEC 21 2018

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

ROHAN MCDERMOTT,

Petitioner-Appellant,

v.

J. SOTO, Warden,

Respondent-Appellee.

No. 18-56230

D.C. No. 2:16-cv-01888-GW-AGR  
Central District of California,  
Los Angeles

ORDER

Before: TALLMAN and FRIEDLAND, Circuit Judges.

The motion to file an overlength motion for certificate of appealability (Docket Entry No. 2) is granted.

The request for a certificate of appealability (Docket Entry Nos. 2 & 3) is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

**DENIED.**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROHAN McDERMOTT,  
Petitioner,  
v.  
J. SOTO, Warden,  
Respondent.

NO. CV 16-1888-GW (AGR)  
JUDGMENT

Pursuant to the Order Accepting Findings and Recommendation of United States Magistrate Judge,

IT IS ADJUDGED that the Petition in this matter is denied and dismissed as second or successive pursuant to 28 U.S.C. § 2244(b)(2).

DATED: September 17, 2018



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GEORGE H. WU  
United States District Judge

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROHAN McDERMOTT,  
Petitioner,  
v.  
J. SOTO,  
Respondent.

NO. CV 16-1888-GW (AGR)

ORDER ACCEPTING FINDINGS  
AND RECOMMENDATION OF  
MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the other records on file herein, the Report and Recommendation of the United States Magistrate Judge and the Objections. Further, the Court has engaged in a *de novo* review of those portions of the Report and Recommendation to which objections have been made. The Court accepts the findings and recommendation of the Magistrate Judge.

IT THEREFORE IS ORDERED that judgment be entered dismissing the Petition as second or successive pursuant to 28 U.S.C. § 2244(b)(2).

DATED: September 17, 2018



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GEORGE H. WU  
United States District Judge

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROHAN McDERMOTT,  
Petitioner,  
v.  
J. SOTO, Warden,  
Respondent.

NO. CV 16-1888-GW (AGR)

REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE

The court submits this Report and Recommendation to the Honorable George H. Wu, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order No. 05-07 of the United States District Court for the Central District of California. For the reasons set forth below, the magistrate judge recommends that the Petition for Writ of Habeas Corpus be dismissed as second or successive pursuant to 28 U.S.C. § 2244(b)(2).



## I.

**SUMMARY OF PROCEEDINGS**

1  
2  
3 On March 15, 2006, a Los Angeles County Superior Court jury found  
4 Petitioner guilty of first degree murder. The jury found true special circumstance  
5 allegations that the murder was committed during an attempted robbery and an  
6 attempted kidnapping for ransom. (Lodged Document ("LD") 1 at 219-21.) The  
7 jury also found true that a principal was armed with a handgun. (*Id.*) The court  
8 sentenced Petitioner to life without the possibility of parole plus one year. (*Id.* at  
9 239-42.)

10 On June 27, 2007, the California Court of Appeal affirmed the conviction  
11 and, on September 12, 2007, the California Supreme Court summarily denied  
12 review. (LD 8, 10.) Petitioner's state habeas petitions were also denied. (LD 12,  
13 14, 15, 17, 26.)

14 On October 28, 2008, Petitioner filed a habeas petition pursuant to 28  
15 U.S.C. § 2254 in the action *McDermott v. Felker*, Case No. CV 08-7099-GW  
16 (AGR). Petitioner raised ten grounds: (1) insufficient evidence; (2) violation of  
17 Petitioner's constitutional rights based on the trial court's refusal to grant judicial  
18 immunity to DeDunn; (3) cruel and unusual punishment in violation of the Eighth  
19 Amendment; (4) violation of rights to confront and cross examine accuser; (5)  
20 juror bias of Juror No. 5; (6) erroneous introduction of inflammatory, irrelevant  
21 and prejudicial evidence; (7) prosecutorial misconduct in vouching for Godoy's  
22 credibility; (8) ineffective assistance of counsel for failing to move to dismiss Juror  
23 No. 5; (9) ineffective assistance of appellate counsel; and (10) violation of due  
24 process and compulsory process rights based on trial court's denial of Petitioner's  
25 request for immunity for DeDunn.

26 On November 15, 2011, the magistrate judge recommended that the  
27 petition be denied. On February 29, 2012, the District Court accepted the  
28 recommendation with modifications, entered judgment dismissing the action and

1 denied a certificate of appealability. The Ninth Circuit denied Petitioner's request  
2 for a certificate of appealability.

3 In 2014, Petitioner pursued relief based on a claim of newly discovered  
4 evidence of innocence. On August 27, 2014, the Los Angeles County Superior  
5 Court denied two habeas petitions on the grounds that the new evidence  
6 consisted of inadmissible hearsay that did not undermine the prosecution's entire  
7 case so as to warrant relief. (LD 18.) On October 1, 2014, the California Court of  
8 Appeal denied his petition on the grounds that the new evidence was  
9 inadmissible hearsay that, even if admissible and true, was not sufficient to  
10 establish Petitioner's "reduced culpability." (LD 20.) On March 18, 2015, the  
11 California Supreme Court summarily denied his habeas petition. (LD 22.)

12 On July 30, 2015, Petitioner filed an application in the Ninth Circuit for  
13 authorization to file a second or successive habeas petition under 28 U.S.C.  
14 § 2254. Respondent opposed the application. On March 17, 2016, the Ninth  
15 Circuit granted Petitioner's application and ordered that the Petition be  
16 transferred to this court and filed as a habeas petition, with a filing date of July 30,  
17 2015, or earlier if applicable. (LD 23.) The Petition was filed as of July 30, 2015  
18 and contains a single claim: Petitioner contends that newly discovered evidence  
19 shows he is actually innocent.<sup>1</sup> (Petition at 8-23.)<sup>2</sup>

20 On June 30, 2016, Respondent filed a motion to dismiss the Petition on the  
21 grounds that it (1) does not meet the requirements for a second or successive  
22 habeas petition and (2) is untimely. On September 12, 2016, Petitioner filed an  
23 opposition. On October 17, 2016, the court appointed the Office of the Federal  
24 Public Defender to represent Petitioner. On December 14, 2016, the court held a

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25  
26 <sup>1</sup> Petitioner purports to assert four claims, but each claim states "see  
27 attached pages." The attached pages assert only a single freestanding actual  
innocence claim.

28 <sup>2</sup> Page citations are to the page numbers assigned by CM/ECF in the  
header.

1 status conference and set a briefing schedule to allow Petitioner to file another  
2 opposition through his counsel. Petitioner filed his second opposition on June 26,  
3 2017. Respondent filed a reply on October 10, 2017.

## 4 II.

### 5 STATEMENT OF FACTS

6 Below are the facts set forth in the California Court of Appeal decision on  
7 direct appeal. (LD 8 at 2-7.) To the extent an evaluation of Petitioner's claims  
8 depends on an examination of the record, the court has made an independent  
9 evaluation of the record specific to Petitioner's claims for relief.

#### 10 "1. *Prosecution evidence.*

11 On April 28, 2004, [FN2] Dwane Godoy met with defendant McDermott and  
12 Alcliff Daley. They asked if Godoy knew anyone who could get marijuana for  
13 them. Godoy promised to check around. He contacted Troy Lewis's uncle Dave,  
14 who subsequently called back to say Lewis could get the marijuana.

15 [FN2]. All further calendar references are to the year 2004 unless  
16 otherwise specified.

17 On the night of April 29, McDermott, Daley, Godoy, Lewis, Dave, and  
18 Lewis's girlfriend Karla DeDunn got together at a house on 36th Street.  
19 McDermott said he wanted to buy 100 pounds of marijuana. Godoy testified the  
20 price for this amount of marijuana was between \$28,000 and \$35,000. Lewis had  
21 33 pounds of marijuana in DeDunn's S.U.V. McDermott inspected it and said "he  
22 could work with the stuff," but he wanted to buy the entire hundred pounds at one  
23 time. The group agreed to meet the following day. Godoy testified McDermott  
24 had been doing all the negotiating during this first meeting. Later that night,  
25 Lewis called Godoy to say he had acquired the rest of the marijuana and the deal  
26 could take place in the morning.

27 On the morning of April 30, Godoy returned to the house on 36th Street.  
28 McDermott, Daley, Lewis and DeDunn were already there. This surprised

1 Godoy, because McDermott and Daley only knew Lewis through him; Godoy  
2 feared McDermott and Daley might be trying to cut him out of the deal. The  
3 marijuana was in the back of DeDunn's S.U.V. McDermott was holding a  
4 Converse tennis shoe box. Lewis said, "Let's count the cash." McDermott  
5 opened the Converse box, but then both he and Daley started "to fidget around,"  
6 "acting . . . nervous." McDermott took some money out of the box. The money  
7 was wrapped in plastic. Then McDermott put the money back into the Converse  
8 box and said he wanted a scale. Lewis said, "We don't play games. . . . It's a  
9 hundred and three [pounds] there. If you short, we gonna give you that." Godoy  
10 testified he said, "This is business. We could do it right here if the cash is right."  
11 But McDermott replied, "Well, I need a scale. I want to weigh out everything.

12 They agreed to go to Daley's apartment in Hawthorne because McDermott  
13 said he had an electric scale there. McDermott and Daley left in McDermott's  
14 rental car and took the Converse box with them. Lewis and Godoy went in  
15 Godoy's car, and DeDunn drove the S.U.V. Lewis told DeDunn to drive around  
16 until everything was settled. At one point, the two cars pulled over. DeDunn was  
17 nowhere in sight. McDermott indicated he would complete the drug deal right  
18 there, that he would give them the money when they put the marijuana in his car.  
19 However, a police car drove past just then. McDermott panicked and said he had  
20 to get out of there. Lewis jumped into McDermott's car and Godoy drove by  
21 himself.

22 Godoy called Lewis on his cell phone to ask what was happening. Godoy  
23 thought McDermott was trying to convince Lewis to do the deal without him.  
24 Godoy told them to pull over so he could catch up. When he did, there were  
25 more negotiations and then the four of them again agreed to go to Daley's  
26 apartment. Lewis got back into Godoy's car. Meanwhile, Lewis stayed in phone  
27 contact with DeDunn, who was still driving the marijuana around in her S.U.V.

28 Godoy and Lewis got to Daley's apartment complex first. There was a

1 7-Eleven nearby and Lewis told DeDunn to wait there until it was time to bring the  
2 marijuana. When the others arrived, Godoy and Lewis got into McDermott's car  
3 and he drove through the security gate into the parking garage. Godoy thought  
4 they were going to complete the transaction right there, but McDermott handed  
5 the Converse box to Daley and then drove back out onto the street. Daley, Lewis  
6 and Godoy went upstairs to Daley's apartment.

7 Inside apartment 200, Daley put the Converse box down on a table. He  
8 showed Godoy and Lewis pictures of a house he was building in Jamaica.  
9 Meanwhile, McDermott telephoned Daley repeatedly. During these calls, Godoy  
10 could hear McDermott asking Daley what they were doing. At one point, Lewis  
11 went over to the Converse box and said, "Let's count the money." Daley told him  
12 not to touch it because it was McDermott's money and he didn't want McDermott  
13 to come upstairs and say . . . something is missing. . . ." Finally, McDermott  
14 showed up. He did not look at Godoy and Lewis when he came in; he kept his  
15 head down and just walked into the kitchen with the Converse box and sat down.

16 Daley went into a back room and suddenly reappeared with a gun. He  
17 ordered Godoy and Lewis not to move, and he told McDermott to get the tape  
18 and tie them up. Daley said he was going to kill Godoy and Lewis "and just leave  
19 us in the closet to stink up." He ordered them onto the floor, where McDermott  
20 taped their hands and legs. Godoy got his hands free, but when Daley noticed it  
21 he put the gun to Godoy's head and said, "If you do that again, I'm gonna kill  
22 you." McDermott re-taped Godoy's hands.

23 Daley announced he was going after the marijuana. He told McDermott to  
24 "get the other gun" and guard Godoy and Lewis. But when Daley left the  
25 apartment, McDermott walked out right behind him. Godoy again managed to  
26 free his hands and he got to the front door. But as he pulled it open, McDermott  
27 suddenly appeared and said, "You're not going no-where." A struggle ensued,  
28 during which a window broke. Godoy got away and started screaming for help.

1 With McDermott chasing after him, Godoy ran from the apartment complex  
2 and hid underneath a car in a neighboring yard. A man holding a shotgun told  
3 Godoy he was trespassing, but Godoy refused to leave. When the man's  
4 daughter intervened, Godoy begged her to call the police, saying he and a friend  
5 had just been "jacked in that apartment building over there." The woman called  
6 the police, who arrived 40 minutes later.

7 Godoy gave police a false story, saying he and his friend had been walking  
8 down the street when they were kidnapped. He didn't tell the truth because he  
9 realized he could be prosecuted for drug trafficking. When the police took Godoy  
10 back to the apartment complex to look around, he did not tell them about  
11 apartment 200 or Lewis being tied up there.

12 Anna Fitzgerald lived in apartment 201. On the afternoon of April 30, she  
13 heard a single gunshot, followed by breaking glass and then someone saying,  
14 "Hey, get back here." Fitzgerald looked out and saw that apartment 200's  
15 security screen door was open and that the doorknob had smashed backward  
16 into the kitchen window.

17 On the afternoon of April 30, Edna Martinez, assistant manager at Daley's  
18 apartment complex, received several telephone messages about a problem in  
19 apartment 200. That night, she went to apartment 200. The security screen door  
20 had apparently been slammed into the kitchen window, cracking it. Inside the  
21 apartment she found Lewis's dead body.

22 Lewis had been shot in the head. His hands were behind his back, bound  
23 with tape. The Converse tennis shoe box was on the kitchen counter. Inside the  
24 box there were several bundles of cut up newsprint. Each bundle was covered  
25 by a little paper money and wrapped in cellophane. A similar bundle was found  
26 under the front seat of McDermott's car. The total amount of real money in all the  
27 bundles was \$1,120.

28 That night, Godoy's uncle convinced him to go to the police. At first, Godoy

1 repeated his story about having been kidnapped off the street, but after learning  
2 Lewis had been killed he described the marijuana deal and what took place inside  
3 apartment 200. Godoy gave police the license number of McDermott's rental car,  
4 which was found parked in front of Daley's apartment complex.

5 Godoy testified he did not have either the marijuana or a gun in his car that  
6 day, nor did he have a gun on him when he went up to apartment 200.

7 *2. Defense evidence.*

8 McDermott testified he was living in Florida in 2004. In late April, he  
9 flew to Los Angeles in order to retain an attorney to represent him in a forfeiture  
10 proceeding. In November 2003, officers had taken \$14,000 from him when he  
11 flew into Long Beach, and he wanted to reclaim that money. He was planning to  
12 stay with Daley in Hawthorne. Because Daley did not own a car, McDermott  
13 rented one.

14 On April 29, Daley gave McDermott a ride to the corner of Slauson and  
15 Western Avenue, where Daley met with Godoy and spoke to him about buying  
16 marijuana. Godoy seemed to know McDermott, but McDermott couldn't place  
17 him until he remembered Godoy's cousin had once introduced them. That night,  
18 while McDermott stayed at Daley's apartment, Daley borrowed the rental car;  
19 McDermott didn't know where he went.

20 On April 30, McDermott drove Daley to 36th Street to meet Godoy again.  
21 Godoy showed Daley a small plastic bag of marijuana. There was an S.U.V.  
22 there with a female driver and a male passenger who McDermott later learned  
23 was Lewis. When Daley got back in the car, he told McDermott he had ordered  
24 some marijuana from Godoy. McDermott thought Godoy was going to call them  
25 to set up the exchange. McDermott and Daley drove to a restaurant to get  
26 take-out food. There was never a discussion about a scale and they did not stop  
27 anywhere on the street to discuss the drug transaction.

28 When they got to Daley's apartment complex, Lewis and Godoy were

1 waiting for them in front. McDermott drove them into the garage and then went to  
2 park his car. He suddenly felt uncomfortable about Godoy and Lewis going up to  
3 Daley's apartment because he didn't like their "vibes." McDermott made a series  
4 of phone calls to the apartment, during which he urged Daley to tell Godoy and  
5 Lewis to leave. But Daley kept hanging up on him. Finally, Daley told McDermott  
6 to come upstairs and McDermott complied.

7 When he got inside apartment 200, McDermott went to the kitchen to get  
8 something to drink. Then he heard his name called. He walked into the living  
9 room and saw Daley pointing a gun at Godoy and Lewis. When Daley ordered  
10 McDermott to tie them up, McDermott "said, 'Man, I don't want to get involved in  
11 this.' And when I said that, I was about to leave. But the expression on [Daley's]  
12 face change[d], and I tied them up." Then, when Daley turned his back,  
13 McDermott fled from the apartment. As he was running, he heard a loud noise.  
14 McDermott could not find his car key, so he ran "all the way to Century." He took  
15 a cab to where a friend of his worked.

16 Several weeks later, McDermott was apprehended in Florida.

17 McDermott denied having any more than \$100 on him when he landed at  
18 Long Beach in April 2004. He testified that when the \$14,000 was taken from him  
19 at the Long Beach airport in November 2003, he told the detaining officer he lived  
20 in Florida. McDermott specifically denied telling the officer he lived in Los  
21 Angeles.

### 22 3. *Rebuttal evidence.*

23 Michael Vanagas testified he worked at the Long Beach airport as part of a  
24 California Department of Justice task force intercepting shipments of drugs and  
25 drug money. On November 24, 2003, he seized \$14,000 from McDermott. On  
26 that day, Vanagas asked McDermott where he lived and McDermott said Los  
27 Angeles.

28 Vanagas testified he was working the same assignment on April 21, 2004,



1 when he again came into contact with McDermott. Because he remembered  
2 McDermott from before, Vanagas searched him and found he was carrying  
3 approximately \$2,000. Vanagas did not take possession of this money because  
4 the policy was to seize only amounts over \$5,000.”

5 **III.**

6 **LEGAL STANDARDS**

7 The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”)  
8 “greatly restricts the power of federal courts to award relief to state prisoners who  
9 file second or successive habeas corpus applications.” *Tyler v. Cain*, 533 U.S.  
10 656, 661 (2001). In 28 U.S.C. § 2244(b), Congress established a “gatekeeping”  
11 mechanism for consideration of second or successive habeas corpus petitions.  
12 *Stewart v. Martinez-Villareal*, 523 U.S. 647, 641 (1998); *Felker v. Turpin*, 518  
13 U.S. 651, 657 (1996). An individual seeking to file a second or successive  
14 habeas petition must move in the appropriate court of appeals for an order  
15 directing the district court to consider his petition. *Stewart*, 523 U.S. at 641. The  
16 appellate court may authorize the filing of a second or successive habeas petition  
17 only if it determines that the application makes a “prima facie showing” that it  
18 satisfies the requirements of § 2244(b). 28 U.S.C. § 2244(b)(3)(C); *Morales v.*  
19 *Ornoski*, 439 F.3d 529, 531 (9th Cir. 2006) (citation omitted). “A prima facie  
20 showing is a sufficient showing of possible merit to warrant a fuller exploration by  
21 the district court.” *Landrigan v. Trujillo*, 623 F.3d 1253, 1257 n.6 (9th Cir. 2010)  
22 (internal quotation marks and citation omitted).

23 Once the appellate court authorizes the filing of a second or successive  
24 petition, the petitioner has the burden in the district court of actually showing that  
25 each claim satisfies the requirements of § 2244(b). See *Tyler*, 533 U.S. at 660  
26 n.3 (“[t]his requirement differs from the one that applicants must satisfy in order to  
27 obtain permission from a court of appeals to file a second or successive petition”;  
28 “to survive dismissal in district court, the applicant must actually ‘show’ that the

1 claim satisfies the standard”). “A district court shall dismiss any claim presented  
2 in a second or successive application that the court of appeals has authorized to  
3 be filed unless the applicant shows that the claim satisfies the requirements of  
4 this section.” 28 U.S.C. § 2244(b)(4). “[U]nder section 2244(b)(4), a district court  
5 must conduct a thorough review of all allegations and evidence presented by the  
6 prisoner to determine whether the [petition] meets the statutory requirements for  
7 the filing of a second or successive [petition].” *United States v. Villa-Gonzalez*,  
8 208 F.3d 1160, 1165 (9th Cir. 2000). “[T]he prisoner must make more than  
9 another prima facie showing.” *Id.* at 1164. “To dismiss a second or successive  
10 petition, a district court must determine that the record ‘conclusively shows’ that  
11 the petitioner failed to meet section 2244’s requirements.” *Gimenez v. Ochoa*,  
12 821 F.3d 1136, 1142 (9th Cir.), *cert. denied*, 137 S. Ct. 503 (2016); *see also Cox*  
13 *v. Powers*, 525 Fed. Appx. 541, 542 (9th Cir. 2013) (grant of leave to file second  
14 or successive petition “did not, as Cox argues, preclude the district court from  
15 nonetheless dismissing his petition for failing to satisfy § 2244(b)(2)”).

16 Claims presented in a previous federal habeas petition must be dismissed.  
17 28 U.S.C. § 2244(b)(1). Claims not previously presented must be dismissed  
18 unless:

19 (A) the applicant shows that the claim relies on a new rule of  
20 constitutional law, made retroactive to cases on collateral  
21 review by the Supreme Court, that was previously  
22 unavailable; or

23 (B)(i) the factual predicate for the claim could not have been  
24 discovered previously through the exercise of due diligence;  
25 and

26 (ii) the facts underlying the claim, if proven and viewed in  
27 light of the evidence as a whole, would be sufficient to  
28 establish by clear and convincing evidence that, but for

1 constitutional error, no reasonable factfinder would have  
2 found the applicant guilty of the underlying offense.

3 28 U.S.C. § 2244(b)(2). The requirements of § 2244(b)(2)(B) are  
4 conjunctive and, if either subpart is not satisfied, the claim must be dismissed.  
5 *West v. Ryan*, 652 F.3d 1071, 1078 (9th Cir. 2011) (petitioner “must satisfy both  
6 requirements to prevail”).

#### 7 IV.

#### 8 DISCUSSION

##### 9 A. New Evidence

10 Petitioner’s new evidence consists of a declaration dated April 27, 2014 by  
11 inmate Leonard Dove, supplemented by Petitioner’s own declaration dated July 1,  
12 2015.<sup>3</sup> (Petition, Exhs. 5 [McDermott Decl.], 6 [Dove Decl.].) Dove, aka Ashman  
13 Edwards, declares that Daley was his cellmate in 2008 at Kern Valley State  
14 Prison. (Dove Decl. at 1.) Daley told Dove that Petitioner did not know he had a  
15 gun. Daley ordered Petitioner “to subdue the victims” because Petitioner refused  
16 to get involved. At some point “the gun went off and a victim was shot.” Daley  
17 told Dove that Petitioner started to leave, but Daley pointed the gun at him and  
18 ordered him “not to leave and to tie up the other victim.” Daley said Petitioner  
19 was acting “like a punk and coward.” (*Id.*) Over “the months” that followed, Daley  
20 said he should have shot Petitioner, who “was at fault for letting one of the  
21 victim[s] to get away by not stopping him as he exited the apartment and is why  
22

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23 <sup>3</sup> Although Petitioner presented Dove’s declaration to the state courts,  
24 he did not present his own declaration. Respondent contends his failure may  
25 render Petitioner’s claim unexhausted but does not seek dismissal on that basis.  
26 (Motion at 14-15 n.7.) Petitioner’s declaration is relevant principally to the  
27 diligence inquiry under § 2244(b)(2)(B)(i) and does not fundamentally alter the  
28 actual innocence claim considered by the state courts. See *Vasquez v. Hillery*,  
474 U.S. 254, 260 (1986). It does not place Petitioner’s claim in a “significantly  
different and stronger evidentiary posture than it was when the state courts  
considered it” and does not “substantially improve[] the evidentiary basis” for it.  
*Aiken v. Spalding*, 841 F.2d 881, 883 (9th Cir. 1988). Thus, Petitioner’s  
declaration does not render his actual innocence claim unexhausted.

1 he, the victim was able to testify at court.” (*Id.*)

2 In his own declaration, Petitioner states he met Dove in April 2014 at the  
3 California State Prison in Los Angeles. (McDermott Decl. ¶ 2.) Dove recognized  
4 Petitioner’s name and asked about his crime. Dove “spilled the beans,” *i.e.*, told  
5 Petitioner what Daley had said. (*Id.*) Petitioner obtained an affidavit from Dove  
6 and began to prepare his state habeas corpus petition. (*Id.* ¶ 3.) Petitioner states  
7 that cellmates commonly share information about their crimes so that each knows  
8 the other is not a child molester or rapist, as these offenders are targeted for  
9 violence by other inmates and their cellmates are “frowned upon.” (*Id.* ¶ 2.)

#### 10 **B. Section 2244(b)(2)(B)**

11 Petitioner does not contend that his claim rests on a new rule of  
12 constitutional law under § 2244(b)(2)(A). Thus, he must satisfy the requirements  
13 of § 2244(b)(2)(B). *Morales*, 439 F.3d at 531. The Petition must be dismissed if  
14 Petitioner fails to satisfy either requirement. *West*, 652 F.3d at 1078.

#### 15 **1. Diligence**

16 To show diligence, Petitioner must show that “the factual predicate for the  
17 claim could not have been previously discovered through the exercise of due  
18 diligence.” 28 U.S.C. § 2244(b)(2)(B)(i). Respondent argues that the facts set  
19 forth in Dove’s declaration are merely additional evidence in support of the  
20 defense Petitioner presented at trial. Petitioner argues the factual predicate is not  
21 his own knowledge but rather Daley’s 2008 admissions to Dove.

22 Daley did not testify at Petitioner’s trial. Daley was tried separately and  
23 testified at his own trial, where he was convicted. As relevant here, Daley testified  
24 that Godoy pulled out a gun and told Daley and Lewis to get on the floor. Godoy  
25 told Petitioner to tie them up with tape but Daley ran out of the apartment before  
26 he could be bound and only later learned that Lewis had been shot. (LD 24,  
27 *People v. Daley*, 2007 WL 3033838, at \*4 (Oct. 18, 2007)). By contrast, in his  
28 purported statements to Dove, Daley admits shooting Lewis and states that he

1 ordered Petitioner to bind the victims. The factual predicate for Petitioner's actual  
2 innocence claim for purposes of § 2244(b)(2)(B)(i) is Daley's 2008 recantation  
3 which, based on the record before the court, Petitioner discovered when he first  
4 learned of the recantation in 2014.<sup>4</sup> See *Cooper v. McDaniel*, 2013 WL 1315079,  
5 at \*7-8 (D. Nev. March 28, 2013) (petitioner discovered factual predicate for  
6 purposes of § 2244(d)(1)(D) when he learned of eyewitness' recantation); *Mora v.*  
7 *Almager*, 2012 WL 845920, at \*4 (C.D. Cal. Jan. 23, 2012) (same), *accepted by*  
8 2012 WL 845764 (C.D. Cal. Mar. 12, 2012). Petitioner explains that it took six  
9 years for him to learn of Daley's statements to Dove at a different prison because  
10 Petitioner first met Dove in 2014. (McDermott Decl. ¶ 2.) Before then, Petitioner  
11 had no reason to think Daley would recant his trial testimony.

12 Respondent argues that, after obtaining Dove's declaration, Petitioner was  
13 not diligent in filing state habeas petitions. Petitioner was not dilatory. He  
14 obtained Dove's declaration and, in approximately 14 months, completed a full  
15 round of state habeas petitions and sent an application to the Ninth Circuit for  
16 authorization to file a second or successive federal habeas petition. (LD 18-23.) .

17 Petitioner has satisfied the diligence requirement of § 2244(b)(2)(B)(i).

## 18 **2. Actual Innocence**

19 The court must determine whether "the facts underlying the claim, if proven  
20 and viewed in light of the evidence as a whole, would be sufficient to establish by  
21

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22 <sup>4</sup> By contrast, in cases cited by Respondent, the subject matter of the  
23 new evidence was not new to the petitioners. See *King v. Trujillo*, 638 F.3d 726,  
24 729-30 (9th Cir. 2011) (witness' affidavit that he was too intoxicated to remember  
25 events was not newly discovered evidence because witness claimed memory  
26 loss at trial and trial court found he was lying); *Sims v. Subia*, 2015 WL 3750450,  
27 at \*22-24 (C.D. Cal. June 14, 2015) (victim's recantation did not satisfy  
28 § 2244(b)(2)(B)(i) because petitioner knew at time of trial that if counsel had  
called them to the stand, victim's family members would have testified that victim  
admitted lying about molestation); *Taylor v. Scribner*, 2014 WL 6609299, at \*3  
(C.D. Cal. Oct. 20, 2014) (new evidence consisted of witness's recantation but  
petitioner always claimed witness was lying and previously presented recantation  
by same witness with forged signature), *accepted by* 2014 WL 6609316 (C.D.  
Cal. Nov. 19, 2014).

1 clear and convincing evidence that, but for constitutional error, no reasonable  
2 factfinder would have found [Petitioner] guilty” of the special circumstance murder  
3 of Lewis. 28 U.S.C. § 2244(b)(2)(B)(ii).

4 Petitioner asserts a freestanding actual innocence claim.

5 “Section 2244(b)(2)(B)(ii) also requires petitioners to state a predicate  
6 ‘constitutional error.’”<sup>5</sup> *Gimenez*, 821 F.3d at 1143. The Supreme Court “ha[s] not  
7 resolved whether a prisoner may be entitled to habeas relief based on a  
8 freestanding claim of actual innocence.” *McQuiggin v. Perkins*, 569 U.S. 383, 392  
9 (2013); *see also Dist. Attorney's Office v. Osborne*, 557 U.S. 52, 71-72 (2009);  
10 *House v. Bell*, 547 U.S. 518, 554-55 (2006); *Herrera v. Collins*, 506 U.S. 390, 416-  
11 17 (1993). The Ninth Circuit also has not resolved whether a freestanding actual  
12 innocence claim in a noncapital case is cognizable, but has assumed that such  
13 claims are viable, *see Jones v. Taylor*, 763 F.3d 1242, 1246 (9th Cir. 2014);  
14 *Carriger v. Stewart*, 132 F.3d 463, 476 (9th Cir. 1997) (en banc), and may be  
15 brought in a second or successive petition under § 2244(b)(2). *Cox*, 525 Fed.  
16 Appx. at 543; *Morales*, 439 F.3d at 533 (assuming petitioner could assert “stand-  
17 alone claim of actual innocence” in successive habeas petition).

18 Assuming that a freestanding actual innocence claim is cognizable, it is well  
19 settled that the threshold showing is “extraordinarily high.” *Herrera*, 506 U.S. at  
20 417. “[A] habeas petitioner asserting a freestanding innocence claim must go  
21 beyond demonstrating doubt about his guilt, and must affirmatively prove that he  
22 is probably innocent.” *Carriger*, 132 F.3d at 476; *see, e.g., House*, 547 U.S. at  
23 555 (freestanding actual innocence claim would require “more convincing proof of  
24 innocence” than *Schlup* standard applicable to overcome procedural default);  
25 *Jones*, 763 F.3d at 1251 (“[e]vidence that merely undercuts trial testimony or casts  
26

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27 <sup>5</sup> *See In re Davis*, 565 F.3d 810, 823-24 (11th Cir. 2009) (explaining  
28 language of § 2244(b)(2)(B)(ii) “does not readily accommodate” freestanding  
actual innocence claim absent another constitutional violation).

1 doubt on the petitioner's guilt, but does not affirmatively prove innocence, is  
2 insufficient to merit relief on a freestanding claim of actual innocence"); *Morales*,  
3 439 F.3d at 533.

4 Petitioner's factual showing does not meet these demanding standards. The  
5 new evidence consists entirely of hearsay statements. Petitioner argues that  
6 evidence of innocence need not meet evidentiary standards for admissibility and  
7 that, in any event, Daley's statements to Dove fall within the hearsay exception for  
8 statements against interest. However, statements must be against a declarant's  
9 penal interest when the statements were made. Fed. R. Evid. 804(b)(3). At the  
10 time Daley made the alleged statements to Dove, he had already been convicted  
11 of Lewis' murder of Lewis and his conviction had been affirmed on appeal.<sup>6</sup>  
12 Moreover, affidavits purporting to show innocence based on hearsay statements  
13 are "particularly suspect."<sup>7</sup> *Herrera*, 506 U.S. at 417.

14 Most importantly, Daley's statements, viewed in light of the evidence as a  
15 whole, are not "sufficient to establish by clear and convincing evidence that, but  
16 for constitutional error, no reasonable factfinder would have found [Petitioner]  
17 guilty" of the special circumstance felony murder of Lewis. To show actual  
18 innocence of the felony murder of Lewis, Petitioner must show actual innocence of  
19

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20 <sup>6</sup> Daley was convicted on March 30, 2006, and sentenced to life  
21 without the possibility of parole plus 10 years on April 26, 2006. The California  
22 Court of Appeal affirmed his conviction on October 18, 2007 and the California  
23 Supreme Court denied review on January 30, 2008. (See *Daley v. Harrington*,  
No. CV 09-2660-RGK (AGR), Dkt. No. 20 at 2.) He filed his habeas petition in  
this court on April 16, 2009 and raised the same claims he had raised on direct  
appeal. (*Id.*)

24 <sup>7</sup> As discussed above, Daley's purported statements to Dove recant his  
25 testimony at his own trial. In general, recantation evidence "is properly viewed  
26 with great suspicion." *Jones*, 763 F.3d at 1248 (citation omitted); see also  
27 *Herrera*, 506 U.S. at 423 (O'Connor, J., concurring) (affidavits purporting to  
28 exculpate convicted prisoner through new version of events are "not uncommon"  
and "are to be treated with a fair degree of skepticism"); *Carriger*, 132 F.3d at 477  
(although third party's confession constituted some evidence affirmatively  
showing petitioner's innocence, court could not ignore contradictions in third  
party's story and his history of lying).

1 the underlying felonies. See *Taylor v. Beard*, 811 F.3d 326, 333 (9th Cir.)  
2 (“prosecutor only needed to prove that Taylor had intent to *rob* in order to convict  
3 him as an aider and abettor to felony murder”), *cert denied*, 137 S. Ct. 278 (2016);  
4 *People v. Clark*, 63 Cal. 4th 522, 615 (2016) (“actus reus requirement for an aider  
5 and abettor to first degree felony murder is aiding and abetting the underlying  
6 felony or attempted felony that results in the murder”; mental state is “simply the  
7 specific intent to commit the underlying felony”), *cert. denied*, 137 S. Ct. 1227  
8 (2017). The prosecution’s felony murder theory was that Daley shot Lewis in the  
9 course of an attempted robbery and attempted kidnapping for ransom, and that  
10 Petitioner actively participated in or aided and abetted the underlying felonies.  
11 (LD 3 at 2201-02, 2409; see also *id.* at 2186-87, 2191 (jury instructions).) Daley’s  
12 purported statements to Dove do not undermine the evidence supporting  
13 Petitioner’s felony murder conviction. That evidence was summarized in  
14 *McDermott v. Felker*, CV 08-7099 GW (AGR), in the Report and  
15 Recommendation, Dkt. No. 34 at 13-19, and the Order Accepting Findings and  
16 Recommendation, Dkt. No. 46.

17 Petitioner also asserts his actual innocence of the felony murder special  
18 circumstance.<sup>8</sup> See *Morales*, 439 F.3d 533 (addressing freestanding actual  
19 innocence claim asserted solely with respect to special circumstance). Because  
20 the prosecution did not argue Petitioner was the shooter,<sup>9</sup> it had to prove beyond a  
21 reasonable doubt that (1) he was a major participant in the underlying felonies and  
22 (2) he acted with reckless indifference to human life at the time. See *Clark*, 63

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23  
24 <sup>8</sup> Petitioner also argues that the evidence was insufficient to support a  
25 finding of reckless indifference under California law. “[A]ctual innocence’ means  
26 factual innocence, not mere legal insufficiency.” *Morales*, 439 F.3d at 533  
(quoting *Bousley v. United States*, 523 U.S. 614, 623 (1998)); see *id.* at 533  
(factual innocence claim in second or successive petition fails unless new facts  
establish actual innocence).

27 <sup>9</sup> (See LD 3 at 2203 (“it looks like from the evidence that Mr. Daley’s  
28 the actual killer”; *id.* at 2203-04 (“the D.A. has proven actual killing, okay, not that  
Mr. McDermott is the actual killer, okay?”).)



1 Cal. 4th at 615; Cal. Penal Code § 190.2(d); (LD 3 at 2190 (jury instructions).

2 Dove's declaration leaves the major participant element of the special  
3 circumstance undisturbed. As for the reckless indifference element, the  
4 prosecution's theory was that Petitioner acted with reckless indifference to human  
5 life when he taped up Lewis and Godoy while Daley was threatening them with a  
6 gun, tried to stop Godoy from escaping and failed to call the police after he left the  
7 scene. (LD 3 at 2205-06, 2213, 2224, 2408-09, 2412.) Godoy testified that Daley  
8 waved a gun at Godoy and Lewis, and told Petitioner to tie them up with tape. (*Id.*  
9 at 1235-36.) Petitioner, who did not look scared, taped up the two men while  
10 Daley kept his gun on them and threatened to kill them. (*Id.* at 1236-40.) Daley  
11 told Petitioner to watch Godoy and Lewis while he looked for DeDunn, but  
12 Petitioner followed Daley out. (*Id.* at 1244-45.) Godoy was able to partially free  
13 himself, but Petitioner returned as Godoy was leaving the apartment. (*Id.* at 1246-  
14 47.) Petitioner tried to push Godoy back inside and they struggled. (*Id.* at 1248-  
15 50.) During the struggle, a window was broken and Petitioner lost an earring. (*Id.*  
16 at 1249.) Godoy got away and ran through the apartment building and outside  
17 until he got to a van in someone's yard. (*Id.* at 1250, 1281-82.) A detective  
18 testified that he found pieces of tape outside the apartment where Godoy testified  
19 he had run during his escape, and found an earring outside the front door. (*Id.* at  
20 1640-41, 1643-48.) Fitzgerald, a resident in the same apartment building, testified  
21 that she heard a shot, glass breaking and someone saying "Hey, get back here."  
22 (*Id.* at 927.) She looked down over a balcony and saw the screen door of  
23 apartment 200 open and the doorknob in its broken window. (*Id.* at 927-28; see  
24 *also id.* at 1630 (detective's testimony regarding broken window).) Martinez, an  
25 assistant manager in the building, later approached that apartment with another  
26 assistant manager and found a body inside on the floor with his hands tied and  
27 eyes rolled up. (*Id.* at 917-18.) The detective testified that Lewis had a gunshot  
28 wound in his forehead. (*Id.* at 1634.)

1 Dove's declaration regarding Daley's statements that Petitioner "was at fault  
2 for letting one of the victim[s] to get away by not stopping him as he exited the  
3 apartment and is why he, the victim was able to testify at court" is consistent with  
4 Godoy's testimony about his struggle with Petitioner, who tried to stop him from  
5 leaving but failed. (Dove Decl. at 1; LD 3 at 1246-50.) Petitioner testified at trial  
6 that he was wearing an earring and that he told a detective he lost the earring.  
7 (LD 3 at 2112.) Petitioner's trial testimony also confirmed that Daley had ordered  
8 him to tie up Godoy and Lewis. (*Id.* at 1876.) Petitioner said, "man, I don't want to  
9 get involved in this." Petitioner nevertheless tied Godoy and Lewis up with tape  
10 after the "expression" on Daley's face changed. (*Id.* at 1876, 1952.)

11 Daley's statements corroborate Petitioner's testimony that he did not know in  
12 advance that Daley had a gun, and that Daley ordered him to tie up Lewis and  
13 Godoy after he refused to get involved. However, these facts do not undermine  
14 the evidence of reckless indifference. Petitioner was physically present at the  
15 scene and observed Daley's threatening behavior toward the victims with a gun.  
16 See *Clark*, 63 Cal. 4th at 619. Petitioner now argues he knew nothing about  
17 Daley's likelihood of killing, but his argument is inconsistent with his duress  
18 defense at trial. If Petitioner did not consider Daley likely to kill, he could hardly  
19 have claimed duress when he tied up the victims. Moreover, although Petitioner  
20 testified that he heard "a big noise" after he left the apartment (LD 3 at 1876), he  
21 did not do anything to protect either victim from the danger he helped create. See  
22 *Clark*, 63 Cal. 4th at 619 (considering failure to render aid to victim who might not  
23 be dead as evidence of reckless indifference). Petitioner did not alert the police to  
24 the situation of Lewis and Godoy after hearing one loud noise after he allegedly  
25 left the scene. (LD 3 at 2116-17, 2119, 2124-25.)

26 Significantly, Daley's purported statements to Dove contradict Petitioner's  
27 trial testimony on some critical points. Daley's statement that Petitioner was at  
28 fault for letting one of the victims get away is inconsistent with Petitioner's

1 testimony that both Lewis and Godoy were tied up when he left the apartment and  
2 that he did not return to it. (*Id.* at 1876-77.) In addition, according to Dove, Daley  
3 said that at some point “a victim was shot,” Petitioner started to leave, and Daley  
4 pointed a gun at him and ordered him to stay and tie up “the other victim.” (Dove  
5 Decl. at 1.) The implication that Petitioner was present when Lewis was shot is  
6 inconsistent with Petitioner’s testimony that after tying up the victims he left when  
7 Daley turned away to go to the bathroom. (LD 3 at 1876-77.) Although Petitioner  
8 protests that the sentence order does not imply a chronology, the reference to “the  
9 other victim” certainly supports a reasonable inference that one victim had already  
10 been shot.

11 Petitioner argues that Godoy lied repeatedly to the police and his description  
12 of his escape from the apartment was implausible.<sup>10</sup> But Petitioner does not  
13 dispute that, if Dove’s declaration about Daley’s statements is to be believed,  
14 Daley lied under oath at his own trial. Godoy, who was a participant in a drug  
15 transaction for 100 pounds of marijuana, was confronted on the stand about his  
16 earlier lies. He admitted lying and explained that he lied because he feared  
17 prosecution for drug trafficking. (LD 3 at 1284-96, 1556, 1604.) The prosecution  
18 conceded to the jury that Godoy initially lied to police about not being involved in  
19 the marijuana deal, and told the truth only after he was told Lewis was dead. (*Id.*  
20 at 2212-13, 2215.) Godoy’s story about how he got away was corroborated by the  
21 duct tape found along the path he took. (*Id.* at 1246-50, 1281-82, 1590-1607,  
22 1619-20, 1642-49.)

23 To summarize, Petitioner has shown neither “constitutional error” nor clear  
24 and convincing evidence that “no reasonable factfinder would have found [him]

---

25  
26 <sup>10</sup> Petitioner also notes that Godoy is currently facing charges on three  
27 counts of attempted murder based on a domestic violence incident in 2017.  
28 (Second Opposition at 29 & Exhs. 2, 12-14.) These charges have minimal  
relevance to the Section 2244(b)(2)(B)(ii) inquiry.

1 guilty of the underlying offense.”<sup>11</sup> 28 U.S.C. § 2244(b)(2)(B)(ii); see *Cox*, 525  
2 Fed. Appx. at 543; *Pizzuto v. Blades*, 673 F.3d 1003, 1009 (9th Cir. 2012).<sup>12</sup> The  
3 Petition does not meet the statutory requirements for a second or successive  
4 petition.

### 5 C. Timeliness

6 Respondent also contends that the Petition is untimely under 28 U.S.C.  
7 § 2254(d). The AEDPA contains a one-year statute of limitations. 28 U.S.C. §  
8 2244(d)(1). The one-year period starts running on the latest of either the date  
9 when a conviction becomes final under 28 U.S.C. § 2244(d)(1)(A) or on a date set  
10 in § 2244(d)(1)(B)-(D). Under § 2244(d)(1)(D), the statute of limitations starts to  
11 run on the date a petitioner discovered (or through due diligence could have  
12 discovered) the factual predicate for the claim. 28 U.S.C. § 2244(d)(1)(D). The  
13 time starts to run when the petitioner knows or through diligence could discover  
14 the important facts, not when the petitioner realizes their legal significance. *Hasan*

---

15  
16 <sup>11</sup> Petitioner contends that Daley’s admissions are corroborated by  
17 “unjustly excluded statements” made by DeDunn to police. DeDunn told police  
18 that she saw a gun in Godoy’s waistband and denied that she had marijuana in  
19 her vehicle. (LD 2 at 143, 155, 198; LD 1 at 235-37.) DeDunn invoked her Fifth  
20 Amendment privilege at the trials of both Petitioner and Daley. The prosecutor  
21 did not offer her immunity and the trial court refused to do so. (LD 3 at 607, 1201,  
22 1801-14.) The Report and Recommendation in Petitioner’s first habeas petition  
23 addressed his immunity claims regarding DeDunn. (Dkt. No. 34 at 20-22, 26-27,  
24 CV 08-7099.) DeDunn was not present when the events set forth in Dove’s  
25 declaration took place. Had she testified, she would not have corroborated  
26 Daley’s admissions to Dove and would not have exculpated Petitioner.

27 <sup>12</sup> Petitioner requests an evidentiary hearing. An evidentiary hearing is  
28 not necessary because even assuming that Daley made the statements  
recounted in Dove’s declaration and that the statements are true, they do not  
show, clearly and convincingly, that no reasonable jury would have convicted  
Petitioner or found the special circumstance to be true. See *Cox*, 525 Fed. Appx.  
at 543 (finding district court was not obligated to hold evidentiary hearing on  
newly discovered evidence when, assuming “proffered eyewitness was credible  
and told the truth as he perceived it,” standards for second or successive petition  
were not met); *Villa-Gonzalez*, 208 F.3d at 1165 (summary denial without  
evidentiary hearing “is proper when the [petition] and the files and records of the  
case conclusively show that the prisoner’s [petition] does not meet the second or  
successive [petition] requirements”).

1 *v. Galaza*, 254 F.3d 1150, 1154 n.3 (9th Cir. 2001).

2 Respondent argues that the applicable provision is § 2244(d)(1)(A) and that  
3 the statute of limitations for Petitioner's second Petition started running when his  
4 conviction became final. He argues that Petitioner is not entitled to a later  
5 commencement date under § 2244(d)(1)(D) because he was aware of the factual  
6 predicate for his actual innocence claim at the time of his trial. (*Id.* at 34-35.) For  
7 the reasons discussed in connection with the § 2244(b)(2)(B)(i) analysis, the court  
8 finds that Petitioner discovered the factual predicate for his actual innocence claim  
9 when he first learned of Daley's recantation, sometime between April 1 and 27,  
10 2014.<sup>13</sup> See *Cooper*, 2013 WL 1315079, at \*7-8; *Mora*, 2012 WL 845920, at \*4.  
11 The one-year statute of limitations started to run at that time. Absent tolling, it  
12 expired no earlier than April 1 and no later than April 27, 2015. Petitioner  
13 constructively filed the Petition on July 1, 2015.<sup>14</sup> (Petition at 40.)

14 The statute of limitations is tolled during the time "a properly filed application  
15 for State post-conviction or other collateral review with respect to the pertinent  
16 judgment or claim is pending." 28 U.S.C. § 2244(d)(2). A California habeas  
17 petition remains pending between a lower court's denial and the filing of a habeas  
18 petition raising the same general claims in a higher state court, as long as that  
19 period is "reasonable." *Evans v. Chavis*, 546 U.S. 189, 191-92 (2006).

20 Assuming that the statute started running on April 1, 2014 (the earliest date),  
21 Petitioner needs only 91 days of tolling to render his Petition timely. The Petition  
22 was filed well within the one-year period of the AEDPA statute of limitations.

---

24 <sup>13</sup> According to Petitioner's declaration, Dove told him about Daley's  
25 statements sometime in April 2014. (McDermott Decl. ¶ 2.) Dove's declaration is  
dated April 27, 2014. (Dove Decl. at 2.)

26 <sup>14</sup> Under the "mailbox rule," a habeas petition is deemed filed when the  
27 prisoner delivers it to prison authorities for mailing to the court, not when the  
petition is actually filed by the court. *Stillman v. Lamarque*, 319 F.3d 1199, 1201  
28 (9th Cir. 2003). The court assumes Petitioner delivered the Petition for mailing on  
the date he signed the Petition. (Petition at 40-41.)

1 Petitioner constructively filed his habeas petition in the Los Angeles County  
2 Superior Court on June 30, 2014, and it was pending until August 27, 2014. (LD  
3 18; LD 19 at 15.) He filed a habeas petition in the California Court of Appeal on  
4 September 25, 2014, and it was pending until October 1, 2014. (LD 19, 20.) His  
5 California Supreme Court petition has a proof of service reflecting a mailing date  
6 of October 23, 2014, was signed on “December 14, 20[1]4,” was filed in the  
7 California Supreme Court on December 22, 2014, and was denied on March 18,  
8 2015. (LD 21 at 1, 5, 25; LD 22.) If Petitioner is entitled to a constructive filing  
9 date of October 23, 2014 for his California Supreme Court petition, he is entitled to  
10 the entire amount of statutory tolling from June 30, 2014 until March 18, 2015, or  
11 261 days, because all of the gaps were reasonable. Even assuming that the  
12 October 23, 2014 date is an error and that Petitioner delayed filing his California  
13 Supreme Court petition until December 14, 2014, he remains entitled to at least  
14 179 days of statutory tolling and the Petition remains timely.<sup>15</sup>

15 V.

16 **RECOMMENDATION**

17 For the reasons discussed above, it is recommended that the District Court  
18 issue an Order (1) accepting this Report and Recommendation; and (2) directing  
19 that judgment be entered dismissing the Petition as second or successive  
20 pursuant to 28 U.S.C. § 2244(b)(2).

21  
22 DATED: January 5, 2018

*Alicia G. Rosenberg*

ALICIA G. ROSENBERG  
United States Magistrate Judge

23  
24  
25  
26 <sup>15</sup> Petitioner is entitled to 93 days between June 30, 2014 constructive  
27 filing date of his superior court petition and the October 1, 2014 denial of his  
28 California Court of Appeal petition, and 86 days between the December 22, 2014  
actual filing date of his California Supreme Court petition and its March 18, 2015  
denial by the California Supreme Court petition, for a total of 179 days.

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

COURT OF APPEAL - SECOND DIST.

FILED

DIVISION THREE

JUN 27 2007

THE PEOPLE,

B193585

JOSEPH A. LANE

Clerk

Plaintiff and Respondent,

(Los Angeles County  
Super. Ct. No. SA052445)

Deputy Clerk

v.

ROHAN McDERMOTT,

Defendant and Appellant.

T. TIMBADIA  
DOCKETED  
LOS ANGELES  
JUN 28 2007  
BY M. SANTOS  
NO. LA06204180

APPEAL from a judgment of the Superior Court of Los Angeles County,  
James R. Dabney, Judge. Affirmed as modified.

Robert D. Bacon, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lance E. Winters  
and Tasha G. Timbadia, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Rohan McDermott, appeals from the judgment entered following his conviction, by jury trial, for special circumstance first degree murder (during commission of kidnapping and robbery), with a firearm use enhancement (Pen. Code, §§ 187, 190.2, subd. (a)(17)).<sup>1</sup> Sentenced to state prison for life without possibility of parole plus one year, McDermott claims there was trial error.

The judgment is affirmed as modified.

### BACKGROUND

Viewed in accordance with the usual rule of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206, we find the evidence established the following.

1. *Prosecution evidence.*

On April 28, 2004,<sup>2</sup> Dwane Godoy met with defendant McDermott and Alcliff Daley. They asked if Godoy knew anyone who could get marijuana for them. Godoy promised to check around. He contacted Troy Lewis's uncle Dave, who subsequently called back to say Lewis could get the marijuana.

On the night of April 29, McDermott, Daley, Godoy, Lewis, Dave, and Lewis's girlfriend Karla DeDunn got together at a house on 36th Street. McDermott said he wanted to buy 100 pounds of marijuana. Godoy testified the price for this amount of marijuana was between \$28,000 and \$35,000. Lewis had 33 pounds of marijuana in DeDunn's S.U.V. McDermott inspected it and said "he could work with the stuff," but he wanted to buy the entire hundred pounds at one time. The group agreed to meet the following day. Godoy testified McDermott had been doing all the negotiating during this first meeting. Later that night, Lewis called Godoy to say he had acquired the rest of the marijuana and the deal could take place in the morning.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

<sup>2</sup> All further calendar references are to the year 2004 unless otherwise specified.



On the morning of April 30, Godoy returned to the house on 36th Street. McDermott, Daley, Lewis and DeDunn were already there. This surprised Godoy, because McDermott and Daley only knew Lewis through him; Godoy feared McDermott and Daley might be trying to cut him out of the deal. The marijuana was in the back of DeDunn's S.U.V. McDermott was holding a Converse tennis shoe box. Lewis said, "Let's count the cash." McDermott opened the Converse box, but then both he and Daley started "to fidget around," "acting . . . nervous." McDermott took some money out of the box. The money was wrapped in plastic. Then McDermott put the money back into the Converse box and said he wanted a scale. Lewis said, "We don't play games. . . . It's a hundred and three [pounds] there. If you short, we gonna give you that." Godoy testified he said, "This is business. We could do it right here if the cash is right." But McDermott replied, "Well, I need a scale. I want to weigh out everything."

They agreed to go to Daley's apartment in Hawthorne because McDermott said he had an electric scale there. McDermott and Daley left in McDermott's rental car and took the Converse box with them. Lewis and Godoy went in Godoy's car, and DeDunn drove the S.U.V. Lewis told DeDunn to drive around until everything was settled. At one point, the two cars pulled over. DeDunn was nowhere in sight. McDermott indicated he would complete the drug deal right there, that he would give them the money when they put the marijuana in his car. However, a police car drove past just then. McDermott panicked and said he had to get out of there. Lewis jumped into McDermott's car and Godoy drove by himself.

Godoy called Lewis on his cell phone to ask what was happening. Godoy thought McDermott was trying to convince Lewis to do the deal without him. Godoy told them to pull over so he could catch up. When he did, there were more negotiations and then the four of them again agreed to go to Daley's apartment. Lewis got back into Godoy's car. Meanwhile, Lewis stayed in phone contact with DeDunn, who was still driving the marijuana around in her S.U.V.

Godoy and Lewis got to Daley's apartment complex first. There was a 7-Eleven nearby and Lewis told DeDunn to wait there until it was time to bring the marijuana.

When the others arrived, Godoy and Lewis got into McDermott's car and he drove through the security gate into the parking garage. Godoy thought they were going to complete the transaction right there, but McDermott handed the Converse box to Daley and then drove back out onto the street. Daley, Lewis and Godoy went upstairs to Daley's apartment.

Inside apartment 200, Daley put the Converse box down on a table. He showed Godoy and Lewis pictures of a house he was building in Jamaica. Meanwhile, McDermott telephoned Daley repeatedly. During these calls, Godoy could hear McDermott asking Daley what they were doing. At one point, Lewis went over to the Converse box and said, "Let's count the money." Daley told him not to touch it because it was McDermott's money and he didn't want McDermott "to come upstairs and say . . . something is missing. . . ." Finally, McDermott showed up. He did not look at Godoy and Lewis when he came in; he kept his head down and just walked into the kitchen with the Converse box and sat down.

Daley went into a back room and suddenly reappeared with a gun. He ordered Godoy and Lewis not to move, and he told McDermott to get the tape and tie them up. Daley said he was going to kill Godoy and Lewis "and just leave us in the closet to stink up." He ordered them onto the floor, where McDermott taped their hands and legs. Godoy got his hands free, but when Daley noticed it he put the gun to Godoy's head and said, "If you do that again, I'm gonna kill you." McDermott re-taped Godoy's hands.

Daley announced he was going after the marijuana. He told McDermott to "get the other gun" and guard Godoy and Lewis. But when Daley left the apartment, McDermott walked out right behind him. Godoy again managed to free his hands and he got to the front door. But as he pulled it open, McDermott suddenly appeared and said, "You're not going nowhere." A struggle ensued, during which a window broke. Godoy got away and started screaming for help.

With McDermott chasing after him, Godoy ran from the apartment complex and hid underneath a car in a neighboring yard. A man holding a shotgun told Godoy he was trespassing, but Godoy refused to leave. When the man's daughter intervened, Godoy

begged her to call the police, saying he and a friend had just been “jacked in that apartment building over there.” The woman called the police, who arrived 40 minutes later.

Godoy gave police a false story, saying he and his friend had been walking down the street when they were kidnapped. He didn't tell the truth because he realized he could be prosecuted for drug trafficking. When the police took Godoy back to the apartment complex to look around, he did not tell them about apartment 200 or Lewis being tied up there.

Anna Fitzgerald lived in apartment 201. On the afternoon of April 30, she heard a single gunshot, followed by breaking glass and then someone saying, “Hey, get back here.” Fitzgerald looked out and saw that apartment 200's security screen door was open and that the doorknob had smashed backward into the kitchen window.

On the afternoon of April 30, Edna Martinez, assistant manager at Daley's apartment complex, received several telephone messages about a problem in apartment 200. That night, she went to apartment 200. The security screen door had apparently been slammed into the kitchen window, cracking it. Inside the apartment she found Lewis's dead body.

Lewis had been shot in the head. His hands were behind his back, bound with tape. The Converse tennis shoe box was on the kitchen counter. Inside the box there were several bundles of cut up newsprint. Each bundle was covered by a little paper money and wrapped in cellophane. A similar bundle was found under the front seat of McDermott's car. The total amount of real money in all the bundles was \$1,120.

That night, Godoy's uncle convinced him to go to the police. At first, Godoy repeated his story about having been kidnapped off the street, but after learning Lewis had been killed he described the marijuana deal and what took place inside apartment 200. Godoy gave police the license number of McDermott's rental car, which was found parked in front of Daley's apartment complex.

Godoy testified he did not have either the marijuana or a gun in his car that day, nor did he have a gun on him when he went up to apartment 200.

2. *Defense evidence.*

McDermott testified he was living in Florida in 2004. In late April, he flew to Los Angeles in order to retain an attorney to represent him in a forfeiture proceeding. In November 2003, officers had taken \$14,000 from him when he flew into Long Beach, and he wanted to reclaim that money. He was planning to stay with Daley in Hawthorne. Because Daley did not own a car, McDermott rented one.

On April 29, Daley gave McDermott a ride to the corner of Slauson and Western Avenue, where Daley met with Godoy and spoke to him about buying marijuana. Godoy seemed to know McDermott, but McDermott couldn't place him until he remembered Godoy's cousin had once introduced them. That night, while McDermott stayed at Daley's apartment, Daley borrowed the rental car; McDermott didn't know where he went.

On April 30, McDermott drove Daley to 36th Street to meet Godoy again. Godoy showed Daley a small plastic bag of marijuana. There was an S.U.V. there with a female driver and a male passenger who McDermott later learned was Lewis. When Daley got back in the car, he told McDermott he had ordered some marijuana from Godoy. McDermott thought Godoy was going to call them to set up the exchange. McDermott and Daley drove to a restaurant to get take-out food. There was never a discussion about a scale and they did not stop anywhere on the street to discuss the drug transaction.

When they got to Daley's apartment complex, Lewis and Godoy were waiting for them in front. McDermott drove them into the garage and then went to park his car. He suddenly felt uncomfortable about Godoy and Lewis going up to Daley's apartment because he didn't like their "vibes." McDermott made a series of phone calls to the apartment, during which he urged Daley to tell Godoy and Lewis to leave. But Daley kept hanging up on him. Finally, Daley told McDermott to come upstairs and McDermott complied.

When he got inside apartment 200, McDermott went to the kitchen to get something to drink. Then he heard his name called. He walked into the living room and saw Daley pointing a gun at Godoy and Lewis. When Daley ordered McDermott to tie

them up, McDermott “said, ‘Man, I don’t want to get involved in this.’ And when I said that, I was about to leave. But the expression on [Daley’s] face change[d], and I tied them up.” Then, when Daley turned his back, McDermott fled from the apartment. As he was running, he heard a loud noise. McDermott could not find his car key, so he ran “all the way to Century.” He took a cab to where a friend of his worked.

Several weeks later, McDermott was apprehended in Florida.

McDermott denied having any more than \$100 on him when he landed at Long Beach in April 2004. He testified that when the \$14,000 was taken from him at the Long Beach airport in November 2003, he told the detaining officer he lived in Florida. McDermott specifically denied telling the officer he lived in Los Angeles.

### 3. *Rebuttal evidence.*

Michael Vanagas testified he worked at the Long Beach airport as part of a California Department of Justice task force intercepting shipments of drugs and drug money. On November 24, 2003, he seized \$14,000 from McDermott. On that day, Vanagas asked McDermott where he lived and McDermott said Los Angeles.

Vanagas testified he was working the same assignment on April 21, 2004, when he again came into contact with McDermott. Because he remembered McDermott from before, Vanagas searched him and found he was carrying approximately \$2,000. Vanagas did not take possession of this money because the policy was to seize only amounts over \$5,000.

## CONTENTIONS

1. The trial court erred by refusing to grant judicial immunity to Karla DeDunn.
2. The trial court erred by imposing a parole revocation fine.

## DISCUSSION

1. *Trial court did not err by refusing to grant judicial immunity.*

McDermott contends his constitutional rights were violated because the trial court refused to grant judicial immunity to Karla DeDunn. This claim is meritless.

a. *Background.*

DeDunn told police she had seen a gun in Godoy's waistband shortly before he and Lewis left the 36th Street house to drive to Daley's apartment in Hawthorne.<sup>3</sup> She also told police there had not been any marijuana in her S.U.V. on April 30, and that she had not been involved in any drug deal. McDermott argues this was crucial defense evidence because it contradicted Godoy's testimony that he did not have a gun and that DeDunn had the marijuana in her S.U.V.

At trial, the prosecutor requested immunity for Godoy, but it turned out to be unnecessary because Godoy decided not to claim the Fifth Amendment privilege against self-incrimination. DeDunn's attorney initially told the trial court nothing DeDunn said would incriminate her. However, the prosecutor told counsel, "Just so you know, there were four or five other witnesses who say she had a hundred pounds of marijuana in the car." After some discussion, DeDunn's attorney said, "Okay. You sold me. I guess she should take the Fifth. That makes sense." Subsequently, DeDunn informed the trial court she would invoke the Fifth Amendment if called to testify. The prosecutor told the trial court he was not going to call DeDunn as a witness, or ask that she be granted immunity, because he believed her testimony would be false.

McDermott's attorney subsequently asked the trial court to grant DeDunn judicial immunity. The prosecutor opposed the request, saying: "I do not believe the testimony exculpable. It is not exculpable. Simply put, it's a statement by Ms. DeDunn that is suspect in nature based upon the entire rest of the evidence in this case." The prosecutor also told the trial court DeDunn's testimony would be false: "[T]here is no truth to anything Ms. DeDunn is saying. There's no truth. I will not, as an officer of the court, ask this court under [section] 1324 to grant immunity based on . . . fictitious testimony."

The trial court denied the defense immunity request, ruling that even if it had

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<sup>3</sup> DeDunn said Godoy later told her he left the gun in his car when he and Lewis arrived at Daley's apartment, which was why he didn't tell the police about Lewis being tied up there.

power to grant it, judicial immunity was unwarranted. DeDunn's proposed testimony was not clearly exculpable because she had not been there when Lewis was murdered,<sup>4</sup> and there was no reason to think the prosecutor had refused to grant DeDunn statutory immunity "in order to subvert the fact-finding process."

b. *Legal principles.*

Under section 1324,<sup>5</sup> the granting of immunity is a prosecutorial function. "It was undoubtedly within the power of the Legislature to make the grant of immunity conditional upon a request of the district attorney . . . , the power to provide for the exercise of a grant of immunity being essentially a legislative function. [Citations.] Making a grant of immunity subject to a request therefor by the district attorney . . . does not invade judicial prerogatives, since the decision to seek immunity is an integral part of the *charging* process, and it is the prosecuting attorneys who are to decide what, if any, crime is to be charged." (*In re Weber* (1974) 11 Cal.3d 703, 720.) McDermott acknowledges this rule, but contends the trial court had the inherent authority to grant DeDunn judicial immunity and that its failure to do so constituted prejudicial error.

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<sup>4</sup> The trial court reasoned that, although evidence that DeDunn saw a gun in Godoy's waistband and that she did not have any marijuana in the S.U.V. would have benefited the defense, "I just don't . . . see it as being clearly exculpatory, because it doesn't go to the heart of the case as to what transpired in apartment 200."

<sup>5</sup> Section 1324 provides, in pertinent part: "In any felony proceeding or in any investigation or proceeding before a grand jury for any felony offense if a person refuses to answer a question or produce evidence of any other kind on the ground that he or she may be incriminated thereby, and if the district attorney of the county or any other prosecuting agency in writing requests the court, in and for that county, to order that person to answer the question or produce the evidence, a judge shall set a time for hearing and order the person to appear before the court and show cause, if any, why the question should not be answered or the evidence produced, and the court shall order the question answered or the evidence produced unless it finds that to do so would be clearly contrary to the public interest, or could subject the witness to a criminal prosecution in another jurisdiction, and that person shall comply with the order."

Although our Supreme Court has assumed, *arguendo*, that a trial court could grant immunity if necessary to protect a defendant's due process rights, it has not had to decide the issue because every case so far has failed on its facts. "As [*People v. Hunter* (1989) 49 Cal.3d 957] makes clear, the vast majority of cases, in this state and in other jurisdictions, reject the notion that a trial court has 'inherent power' to confer immunity on a witness called by the defense. We noted and discussed the 'one case which has clearly recognized such a right, *Government of Virgin Islands v. Smith* (3d Cir. 1980) 615 F.2d 964,' and concluded that even under *Smith*, the defendant's offer of proof 'fell well short of the standards set forth' in that case. [Citation.] We reach the same conclusion, by the same reasoning, in this case. [¶] As we explained in *Hunter, supra*, although the *Smith* court recognized the possibility of judicially conferred immunity in special cases, it 'also recognized that "the opportunities for judicial use of this immunity power must be clearly limited; . . . the proffered testimony must be clearly exculpatory; the testimony must be essential; and there must be no strong governmental interests which countervail against a grant of immunity . . . . [¶] [T]he defendant must make a convincing showing sufficient to satisfy the court that the testimony which will be forthcoming is both clearly exculpatory and essential to the defendant's case. Immunity will be denied if the proffered testimony is found to be ambiguous, not clearly exculpatory, cumulative or it is found to relate only to the credibility of the government's witnesses." [Citation.]' [Citation.]" (*In re Williams* (1994) 7 Cal.4th 572, 610.)

"The first of the two tests outlined in *Hunter* . . . would recognize the authority of a trial court to confer immunity upon a witness when each of the following three elements is met: (1) 'the proffered testimony [is] clearly exculpatory; [(2)] the testimony [is] essential; and [(3)] there [is] no strong governmental interest[ ] which countervail[s] against a grant of immunity.' [Citation.]" (*People v. Stewart* (2004) 33 Cal.4th 425, 469, fn. omitted.) "The second of the two tests referred to in *Hunter* . . . as authorizing a trial court to grant immunity to a defense witness, would recognize such authority when 'the prosecutor intentionally refused to grant immunity to a key defense witness for the



purpose of suppressing essential, noncumulative exculpatory evidence,' thereby distorting the judicial factfinding process." (*Id.* at p. 470.)

"Clearly exculpatory" in this context means evidence that, if believed, would logically require the defendant's acquittal. (Compare *Government of Virgin Islands v. Smith, supra*, 615 F.2d at p. 966 [judicial immunity might be justified where witness's proposed testimony, admitting culpability and naming accomplices in victim's assault, would have necessarily exculpated several defendants] with *U.S. v. Eagle Hawk* (8th Cir. 1987) 815 F.2d 1213, 1217 [even if district court could grant judicial immunity to witness who found victim's wallet in her basement, where defendant's accuser had been living, denial of immunity was not erroneous because evidence at most cast doubt on accuser's credibility and did not necessarily exculpate defendant].)

c. *Analysis.*

The prosecution's theory of the case was that McDermott and Daley intended to steal the marijuana after tricking Godoy and Lewis into thinking they would be paid tens of thousands of dollars.<sup>6</sup> The plan was to tie up Godoy and Lewis inside apartment 200, then go find DeDunn's S.U.V. and grab the marijuana.

McDermott's theory was that he had been an innocent bystander to a conspiracy between Godoy and Daley to steal Lewis's marijuana. He argues DeDunn's testimony was crucial because it supported both this theory and his testimony that he had nothing to do with Lewis's murder. During closing argument, defense counsel proposed the following scenario to the jury. Daley and Godoy planned to make it look like Daley was robbing both Godoy and Lewis, so they went through the charade of forcing McDermott

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<sup>6</sup> As noted, above, Godoy testified one hundred pounds of marijuana was worth between \$28,000 and \$35,000. Presumably Godoy was going to get a percentage of Lewis's profit for having introduced him to the buyers.

to tie them both up. Lewis got shot trying to escape, probably just after McDermott fled from the apartment. Counsel suggested Daley shot Lewis,<sup>7</sup> which caused Godoy to panic because he had only planned on robbing Lewis, not getting him killed. In his panic, Godoy forgot to take his car when he fled from the apartment complex. The marijuana was in Godoy's car. McDermott had been an innocent bystander to everything that happened.

Whether judicial immunity was warranted depends on the degree to which DeDunn's testimony would have confirmed the defense scenario and corroborated McDermott's testimony. DeDunn told police she saw Godoy with a gun on the day Lewis was murdered. She said Godoy would be delivering the marijuana to McDermott and Daley, and that Lewis was only going along to help Godoy count the money. DeDunn tagged along in her S.U.V. because she and Lewis were supposed to attend her sister's graduation. DeDunn said at one point there was a stop on the drive over to Daley's apartment and Lewis called to tell her where they were. When DeDunn drove up, she asked Lewis "[W]hat happened? And he was like man, they didn't want to do it right here, you know? . . . [A]nd I was okay, let's go, but [Godoy] told him, man, we can do this, you know. We can do this. We can make this happen." So Lewis agreed to go with Godoy to Daley's apartment. DeDunn waited at the nearby 7-Eleven from 12:30 until 1:30 p.m. Lewis called her twice from Daley's apartment. The first time Lewis called he said, "we almost done counting the money," and then he called again to say, "I'm done counting the money." She never heard from him again.

The following colloquy occurred during DeDunn's police interview:

"DET. STEINWAND: Could this have been [Lewis's] marijuana that they are

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<sup>7</sup> The prosecutor also opined it had probably been Daley who shot Lewis.

ripping off?

“[DeDUNN]: No.

“DET. STEINWAND: You don’t think so?

“[DeDUNN]: I don’t think so.”

DeDunn stuck to this story, even though Detective Steinwand asked her, “[W]hat would be [Godoy’s] motive if . . . it wasn’t [Lewis’s] marijuana according to you?”

As the trial court pointed out, DeDunn was not present inside apartment 200 when Lewis got shot, and nothing she said made it impossible for McDermott to have been guilty of Lewis’s murder. That is, DeDunn’s assertions that she did not have the marijuana and Godoy had a gun would have tended to impeach Godoy’s credibility, but they would not have clearly exculpated McDermott. Hence, the trial court properly refused to grant judicial immunity under the first *Hunter* test. (See *People v. Stewart, supra*, 33 Cal.4th at p. 469 [one test for granting judicial immunity requires proffered testimony that is “essential” and “clearly exculpatory”].)

Moreover, some of DeDunn’s story did not support McDermott’s testimony. For instance, DeDunn told of a stop on the drive over to Daley’s apartment, which was more consistent with Godoy’s testimony than with McDermott’s. More damaging for McDermott, some parts of DeDunn’s story were so improbable they tended to justify the prosecutor’s assertion her testimony would be false. First, as the detective who interviewed DeDunn realized, if the marijuana did not belong to Lewis it must have belonged to Godoy, but then Godoy had no motive for engaging in the conspiracy posited by the defense theory. Second, DeDunn told police Lewis called her from apartment 200 and said they had finished counting the money. But there was no money to count; there

were only bundles of fake money. It seems highly improbable Lewis could have said this to DeDunn.<sup>8</sup> Hence, the trial court properly refused to grant judicial immunity under the second *Hunter* test. (See *People v. Stewart, supra*, 33 Cal.4th at p. 470 [one test for granting judicial immunity requires prosecutor's intentional refusal to immunize key defense witness in order to suppress exculpatory evidence].)

The trial court did not err because neither of the two tests approved by our Supreme Court for granting judicial immunity was met.

2. *Trial court imposed an unauthorized parole revocation fine.*

McDermott contends the trial court erred by imposing a parole revocation fine under section 1202.45 because he was given a term of life without possibility of parole and, therefore, his sentence does not include a period of parole. The Attorney General properly concedes this claim has merit.

Section 1202.45 provides: "In every case where a person is convicted of a crime and whose sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4. This additional parole revocation restitution fine shall be suspended unless the person's parole is revoked."

*People v. Oganessian* (1999) 70 Cal.App.4th 1178, held that where one of the terms imposed on a defendant was for life without possibility of parole, the trial court did not err by declining to impose a parole revocation fine "because the sentence does not presently allow for parole and there is no evidence it ever will." (*Id.* at p. 1185; accord *People v. Jenkins* (2006) 140 Cal.App.4th 805, 819.) *Oganessian* reasoned the legislative

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<sup>8</sup> Ironically, McDermott tries to impeach Godoy by noting he testified that Lewis called DeDunn to say "they were about to count the money, but by the prosecution's evidence there were only packages of fake money, not real money to count." Lewis, however, might indeed have thought they were *about to count* the money in the Converse box because he was unaware the money was fake. But DeDunn's statement that Lewis called to say they had *already counted* the money is another matter.

purpose of restitution fines is to recoup “from prisoners and potentially from parolees who violate the conditions of their parole some of the costs of providing restitution to crime victims,” but given there is only the slimmest chance anything would be recouped from a defendant sentenced to a term that prohibited parole, “there is no evidence the Legislature intended that its cost recoupment purposes were to apply under such an extremely limited set of circumstances.” (*People v. Oganessian, supra*, 70 Cal.App.4th at pp. 1184-1185.)

We will order the parole revocation fine vacated.

#### **DISPOSITION**

The judgment is affirmed as modified. The parole revocation fine shall be vacated. In all other respects, the judgment is affirmed. The clerk of the superior court shall prepare an amended abstract of judgment to reflect this modification, and forward the amended abstract of judgment to the Department of Corrections.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.

1 HILARY POTASHNER (Bar No. 167060)  
2 Federal Public Defender  
3 MICHAEL T. DRAKE (Bar No. 225773)  
4 (Email: michael\_drake@fd.org)  
5 Research and Writing Attorney  
6 321 East 2nd Street  
7 Los Angeles, CA 90012-4202  
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9 Facsimile: (213) 894-2854

10 *Attorneys for Petitioner*  
11 ROHAN MCDERMOTT

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 ROHAN MCDERMOTT,  
15 Petitioner,  
16 v.  
17 J. SOTO, Warden,  
18 Respondent.

No. CV 16-1888-GW (AGR)  
**OPPOSITION**

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# EXHIBIT 1

HAWTHORNE POLICE DEPARTMENT  
OFFICER KANG  
P.C. 211, 207, 245(a)(2)  
DR#: 04-5964  
APRIL 30, 2004

S1 - I730 NEXTEL (#310-916-1228)  
EV2 - GREY DUCT TAPE

On 04-30-04 at approximately 1410 hours, I (Kang) was dispatched to 3538 W. 135<sup>th</sup> St regarding a male subject refusing the leave the location because some guys were chasing him. The male black subject was described as a male black adult, 25-30 years old, 6', medium build, and wearing a grey shirt and navy jeans. We were further informed the subject was restrained with duct tape, freed himself, and ran to the rear of the location.

Upon arrival at the location, I contacted the subject (Dwane Goday), who related the following information. Goday stated he was walking with his friend (Justin, nfi) northbound in the 13500 block of Yukon Ave. Goday stated he and Justin were attempting to "hook-up" with a female subject.

Goday stated he and Justin were walking with the female subject on the east side walk when a silver older model, possibly Chevy, pulled along side of them. Goday stated the two occupants of the vehicle pointed large revolvers at them and ordered Goday and Justin to get into the vehicle.

Goday stated the suspects pulled into the south driveway of 13518 S. Yukon Ave, opened the security gate with a remote, and drove to the rear of the location. Goday stated they were both ordered out of the car at gunpoint. Goday stated he was told to lie on the ground and his hands were duct taped.

Goday stated one of the suspects told him, "Stay on the ground or I will kill you!". Goday stated he observed both suspects take Justin into the parking structure out of sight. Goday stated he freed himself from the duct tape and fled the location on foot.

Goday stated he was in fear for their safety and he was yelling for help. Goday stated he opened the passenger door to a moving vehicle, however, the driver told him to get out of his vehicle.

Goday ran northbound Yukon Ave, eastbound 135<sup>th</sup> St, and ran to the rear of 3528 W. 135<sup>th</sup> St. Goday stated he was confronted by the residents and told them of the incident. Goday stated he told them he was afraid and he needed police assistance.



# EXHIBIT 9



**U.S. DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION**

Rohan McDermott  
[REDACTED]  
Hollywood, CA 33029

P#42

<b>Asset Id:</b>	04-DEA-429381
<b>Case Number:</b>	RQ-04-0013
<b>Property:</b>	\$14,490.00 in U.S. Currency
<b>Asset Value:</b>	\$14,490.00
<b>Seizure Date:</b>	11/24/03
<b>Seizure Place:</b>	Long Beach, CA
<b>Owner Name:</b>	McDermott, Rohan
<b>Seized From:</b>	McDermott, Rohan
<b>Judicial District:</b>	Central District of California

**NOTICE MAILING DATE:** April 2, 2004

**NOTICE OF SEIZURE**

The above-described property was seized by Special Agents of the Drug Enforcement Administration (DEA) for forfeiture pursuant to Title 21, United States Code (U.S.C.), Section 881, because the property was used or acquired as a result of a violation of the Controlled Substances Act (Title 21, U.S.C., Sections 801 et seq.). The seizure date and place, as well as other pertinent information regarding the property are listed above.

Pursuant to Title 18, U.S.C., Section 983 and Title 19, U.S.C., Sections 1602-1619, procedures to administratively forfeit this property are underway. You may petition the DEA for return of the property or your interest in the property (remission or mitigation), and/or you may contest the seizure and forfeiture of the property in Federal court. **You should review the following procedures very carefully.**

**TO REQUEST REMISSION OR MITIGATION OF FORFEITURE**

If you want to request the remission (pardon) or mitigation of the forfeiture, you must file a petition for remission or mitigation with the Forfeiture Counsel of the DEA within thirty (30) days of your receipt of this notice. The petition must include proof of your

interest in the property and state the facts and circumstances which you believe justify remission or mitigation. The regulations governing the petition process are set forth in Title 28, Code of Federal Regulations, Part 9.

**TO CONTEST THE FORFEITURE**

In addition to, or in lieu of petitioning for remission or mitigation, you may contest the forfeiture of the seized property in UNITED STATES DISTRICT COURT. To do so, you must file a claim with the Forfeiture Counsel of the DEA by **May 7, 2004**. The claim need not be made in any particular form (Title 18, U.S.C., Section 983(a)(2)(D)). The claim shall identify the specific property being claimed; state the claimant's interest in such property; and be made under oath, subject to penalty of perjury (Title 18, U.S.C., Section 983(a)(2)(C)). A frivolous claim may subject the claimant to a civil fine in an amount equal to ten (10) percent of the value of the forfeited property, but in no event will the fine be less than \$250 or greater than \$5,000 (Title 18, U.S.C., Section 983(h)). Upon the filing

of a claim under Title 18, U.S.C., Section 983(a), a claimant may request, pursuant to Section 983(f), release of the seized property during the pendency of the forfeiture proceeding due to hardship. Requests must be sent to the Forfeiture Counsel of the DEA. The following property is not eligible for hardship release: contraband, currency, or other monetary instruments or electronic funds unless the property constitutes the assets of a legitimate business which has been seized; property to be used as evidence of a violation of the law; property, by reason of design or other characteristic, particularly suited for use in illegal activities; and property likely to be used to commit additional criminal acts if returned to the claimant.

**WHERE TO FILE CORRESPONDENCE**

All submissions must be filed with the Forfeiture Counsel, Asset Forfeiture Section, Office of Domestic Operations, Drug Enforcement Administration, HQs Forfeiture Response, P.O. Box 1475, Quantico, Virginia 22134-1475. Correspondence sent via private delivery must be sent to Asset Forfeiture Section, Office of Domestic Operations, Drug Enforcement Administration, 2401 Jefferson Davis Highway, Alexandria, Virginia 22301. **A PETITION, CLAIM, OR OTHER CORRESPONDENCE WILL BE DEEMED FILED WHEN ACTUALLY RECEIVED BY THE DEA ASSET FORFEITURE SECTION IN ARLINGTON, VIRGINIA. SUBMISSIONS BY FACSIMILE OR OTHER ELECTRONIC MEANS WILL NOT BE ACCEPTED.** The Asset Id referenced above should be used with all submissions. **Failure to include the Asset ID may cause a delay in processing your submission(s).**

# EXHIBIT 10

**COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT - SUPPLEMENTARY REPORT**

**DATE:** MAY 4, 2004

**FILE NO.:** 004-00044-3199-011

**C:** MURDER - 187 P.C./KIDNAPPING - 207 P.C.

**ACTION:** ACTIVE / STATEMENT OF FACTS FOR FILING PURPOSES

**V:** (SEE BELOW)

**D:** 04-30-2004 (FRIDAY) AT 2104 HOURS

**L:** 13518 SOUTH YUKON AVENUE  
APARTMENT #200, HAWTHORNE 90815

**S:** (SEE BELOW)

\*\*\*\*\*

**VICTIMS:**

**V#1:** LEWIS, TROY ANTHONY MB/34, DOB: [REDACTED]

**V#2:** GODOY, DWANE ANTHONY MB/21, DOB: [REDACTED]

**SUSPECTS:**

**S#1:** MC DERMOTT, ROHAN MB/33, DOB: [REDACTED]  
CDL # [REDACTED]  
(Not in Custody)

**S#2:** DALEY, ALCLIFF MORGON MB/27, DOB: [REDACTED]  
CDL # [REDACTED], CII # [REDACTED]  
(Not in Custody)

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### STATEMENT OF FACTS

On 04-30-2004 at 2130 hours, Sergeant Randy Seymour and Detective Brian Steinwand were detailed to 13518 Yukon Avenue, Apartment #200, in the city of Hawthorne, to assist the Hawthorne Police Department in the investigation of the shooting death of Victim Troy Anthony Lewis.

Investigators arrived and noted the area was contained by Hawthorne police officers and yellow crime scene tape. The incident occurred in Apartment #200 of the apartment complex which is located on the south side of the complex, near the southeast corner. Investigators noted that the front door of Apartment #200 is the second door from the end on the southeast side of the building. The front door faces north towards other apartments and had the number "200" affixed to the front door itself.

Investigators, along with Hawthorne Police Department personnel, obtained a search warrant to enter the location and gather evidence pertaining to the crime. Investigators entered the apartment into the living room. The living room was void of any furniture. Investigators observed a white long-sleeve shirt and gray checked shorts on the floor just inside the front door. Investigators observed an apparent blood stain on the sleeve of the white shirt.

Investigators observed the dining area which was located just west of the living room. There was a black table with a glass top in the northwest corner of the dining area. The kitchen was located adjacent to and south of the dining area and extended south along the west wall of the apartment. Investigators observed a stainless steel scale on the west kitchen counter and a black "Converse" shoe box containing miscellaneous U.S. currency, which was wrapped in cellophane, also on that same counter top, next to the kitchen sink.

Investigators observed Victim Troy Lewis lying on the living room floor with his head facing south and his feet facing to the north. Investigators observed that the victim's feet were near the threshold of the living room and the kitchen. Investigators noted that Victim Lewis was lying face down and his hands were behind his back. His hands were bound with both gray and transparent tape. Investigators looked more closely at Victim Lewis and observed he had an apparent gunshot wound to the back of his head, with an additional gunshot wound, or exit wound, to the front of his head.

While at the scene, Investigators directed Forensic Identification Specialists Gil Trujillo and Mario Cortez to check for fingerprints on various items within the location and of the location itself, hoping to identify any persons associated with the location. Investigators were subsequently informed that several fingerprints were obtained from throughout the location. Investigators also recovered numerous items of evidence, including paperwork, clothing, a hat, an expended bullet, and several pictures from the location, again hoping to identify anyone associated with the location.

Once Investigators completed their processing of the crime scene they contacted Victim **DWANE GODOY**. Over the next couple of days, Investigators interviewed Victim Godoy several times regarding the incident. The following is a brief summary of those interviews:

Victim Godoy said he accompanied Victim Lewis when Lewis arranged to sell some marijuana to two Jamaican males. Victim Godoy said he was with Lewis on 04-29-2004 at Lewis's grandmother's house in Los Angeles. He said the two Jamaican suspects arrived in a silver Chevrolet Cavalier, California License #5EYW678. Lewis and the two Jamaicans discussed the pending sale of the marijuana and subsequently decided to complete the transaction the following day.

Godoy said he and Lewis met the Jamaican suspects the following day in Los Angeles. He said the suspects again arrived in a silver Chevrolet Cavalier. Godoy said that the Jamaicans wanted to conduct the transaction at their apartment in the city of Hawthorne. He said the Jamaicans wanted to be able to weigh the marijuana they were purchasing from Victim Lewis and indicated they could do this at their apartment in Hawthorne. Godoy said that he and Lewis subsequently followed the Jamaicans to an apartment on Yukon Avenue in the city of Hawthorne. He stated that Victim Lewis' girlfriend, Karla Garcia, also drove to Hawthorne in a burgandy Ford expedition but was instructed to park around the corner from the location.

Victim Godoy said he and Lewis arrived at the location in his gold Dodge Intrepid and parked on the street near the front of the apartment complex. He said they got out of their car and were instructed to get into the Chevrolet Cavalier driven by the two Jamaicans. Once inside, Godoy said the Jamaicans used a remote control to open a security gate accessing the parking area beneath the apartments at 13518 Yukon Avenue. He said they drove to the rear of the underground parking area where they parked their car.

Godoy said that he and Lewis subsequently followed one of the Jamaican suspects, later identified as Alcliff Daley, up to Apartment #200 within the complex, while the other suspect, later identified as Rohan McDermott, drove the Chevy Cavalier back out of the parking area. Godoy said that within a few minutes, Suspect McDermott joined them in Apartment #200.

Victim Godoy said that once all four of them were inside the apartment, Suspect McDermott produced a "Converse All-Star" shoe box containing what appeared to be money wrapped in cellophane. Godoy said Suspect McDermott and Suspect Daley indicated the money for the drug transaction was contained in the shoe box. Godoy added that as Suspect McDermott was about to begin to count the money in Victim Lewis's presence, Suspect Daley walked to the back room of the apartment. He said that Daley returned and pointed a handgun at both him and Lewis and ordered them to lay face down on the living room floor. Godoy described the pistol as a black revolver with an approximate 4-inch long barrel and wood hand grips.

Godoy said that once he and Lewis were lying on the floor, Suspect Daley threw a roll of tape to Suspect McDermott who bound both of them with the tape. Godoy said that both his hands and his feet were bound with tape. He said his hands were bound behind his back. Godoy said that once he and Lewis were bound and lying on the floor, Suspect Daley said he was going to go outside and find "the bitch." Godoy explained that he believed Suspect Daley was referring to Victim Lewis' girlfriend who had parked the burgandy Ford Expedition around the corner from the location. Godoy speculated that Lewis's girlfriend was carrying the marijuana Lewis intended to sell to the two Jamaicans. As Suspect Daley walked out of the apartment, he was closely followed by Suspect McDermott. Godoy said he heard Daley tell McDermott to "get the other gun" and to guard both him and Lewis.

Godoy said that once Suspect McDermott and Suspect Daley were both out of the apartment, he immediately got to his feet and made his way to the front door. He said he was able to break the tape on his hands and as he opened the front door to flee, he ran into Suspect McDermott, who was returning into the apartment. Godoy said he struggled with Suspect McDermott and during the struggle the tape around his ankles broke and he was able to push his way past Suspect McDermott and flee the apartment building. Godoy subsequently ran to a residence down the street and asked the people there to call the police. Hawthorne Police Department was eventually called. They arrived and Godoy attempted to explain to them where he had been, but there was some confusion as to what had happened since Godoy did not initially provide truthful information to the officers about the attempted marijuana transaction he was involved with. Victim Lewis was eventually discovered by a tenant in the apartment, who then called the Hawthorne Police Department.

Godoy subsequently provided Hawthorne Police Department with the license plate number of the silver Chevrolet Cavalier driven by the two Jamaican suspects. Hawthorne Police Officers subsequently located the Chevrolet Cavalier parked on the street near the location. They discovered the car was a rental car which had been rented by Suspect McDermott.

A California driver's license photo was obtained for Suspect McDermott and was subsequently placed in a six-pack photo lineup. Investigators advised Godoy regarding photographic show-up procedures and showed him the six-pack containing Suspect McDermott's photo. Godoy looked at the six-pack and positively identified Suspect Rohan McDermott as one of the two Jamaicans who had kidnapped him and Victim Lewis.

Godoy explained that Suspect McDermott was the suspect who was driving the Chevrolet Cavalier. He was also the suspect who began attempting to count the money for the drug transaction and then later taped Godoy and Lewis up. Godoy added that Suspect McDermott was also the suspect who he had fought with at the front door as he was escaping the location.

On 05-03-2004, during the evening hours, Investigators received a call from the apartment manager at 13518 Yukon Avenue. He said that per policy, he was cleaning Apartment #200 and bagging the items that were still inside the location, pending an eviction of the renters. While doing this he found a series of photographs which contained some pictures of one of

the individuals who he knew had frequented apartment #200. The manager provided the photographs to Investigators. Investigators noted that some of the photographs depicted a male Black who looked similar to the description given to Investigators of Suspect #2 (Suspect Daley) by Victim Godoy. Investigators placed that photograph, along with five other photographs, in another six-pack photographic lineup and again contacted Victim Godoy. Investigators re-advised Godoy regarding photographic show-up procedures. Godoy said he understood, and after looking at the six-pack, he positively identified the individual from the photo found by the apartment manager as Suspect #2 in this case.

Shortly after Victim Godoy identified the photograph of Suspect #2, Investigators received information from Forensic Identification Specialist Mario Cortez that he had lifted a fingerprint from inside apartment #200 which returned to an Alcliff Daley. A California driver's license photo was obtained for Alcliff Daley (CDL # [REDACTED]), and Investigators immediately saw that the driver's license photograph of Suspect Daley was the same person depicted in the photograph that had just been identified by Victim Godoy as Suspect #2.

Investigators subsequently contacted a female, who wishes to remain anonymous, who said she was a part-time girlfriend of Suspect Daley. She was shown both the photograph that was used in the six-pack which Victim Godoy identified as Suspect #2 in this case and the driver's license photo of Suspect Daley. She said that both photographs were of her part-time boyfriend, identified as Suspect Daley.

This female said on 05-01-2004, during the morning hours, she was contacted by Suspect Daley who said he had to leave the state because he had gotten into some trouble with some Americans. She said that Daley and another individual, who she described both as Jamaicans, had left the state. She believed they were possibly in Florida.

Based on the above, Investigators believe that Suspect Rohan McDermott and Suspect Alcliff Daley are responsible for the kidnapping of both Victim Lewis and Victim Godoy and for the murder of Victim Lewis. Investigators believe both suspects have fled the state and are currently in the state of Florida. Investigators are seeking murder and kidnapping charges be filed against both suspects and warrants be issued for their arrest.

This investigation is continuing with further and more detailed reports to follow.

**BY: SERGEANT RANDY SEYMOUR, #220745  
DETECTIVE BRIAN STEINWAND, #218524  
APPROVED BY: LIEUTENANT DANIEL ROSENBERG, #111228  
HOMICIDE BUREAU - DETECTIVE DIVISION**

ah/rs/bs



# EXHIBIT 11

**DECLARATION OF MARY VERAL**

- 1  
2 1. I am an investigator with the Office of the Federal Public Defender  
3 for the Central District of California.
- 4 2. I am the assigned investigator in Rohan McDermott's noncapital  
5 habeas case, *McDermott v. Soto*, CV No. 16-1888-GW-AGR (C.D.  
6 Cal.).
- 7 3. Other than this declaration (which is based on my personal  
8 knowledge about McDermott's case), the exhibits in support of  
9 McDermott's opposition to the Warden's motion to dismiss are true  
10 copies of records that our office has acquired either through prior  
11 counsel or directly from courts or databases, as follows:
  - 12 a. Exhibits 1 [Hawthorne Police Department Report by Officer Kang  
13 of Dwane Anthony Godoy Incident dated April 30, 2014] and 10  
14 [Los Angeles County Sheriff's Department Supplementary  
15 Report] are discovery material provided to us by McDermott's  
16 prior counsel, Michael Evans.
  - 17 b. Exhibits 3 through 9 [People's Exhibits] and 14 [GODOY  
18 PROBATION REPORT] are court records that either I or  
19 investigative support staff in our office personally retrieved from  
20 the courts in which the indicated cases were docketed.
  - 21 c. Exhibits 12 [TCIS Inquiry for Jason Godoy] and 13 [ELAP print  
22 request for Daly] are reports I ran on the indicated databases.
- 23 4. On June 20, 2017, I spoke on the telephone with Perry Berkowitz.  
24 Berkowitz prepared Dwane Godoy's probation report for SA095255-  
25 01 (Exhibit 14). I told Berkowitz the probation report number and  
26 Berkowitz said he was going to pull up the file during our  
27 conversation. I asked him for the basis for criminal activity  
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7. I have reviewed the discovery material and work product provided to our office by McDermott’s prior counsel Michael Evans. I found nothing in those materials to indicate that law enforcement ever contacted or questioned Dave Daly.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, this day of June 26, 2017, in Los Angeles, California.

  
MARY VERAL

<b>FILED</b> CLERK, U.S. DISTRICT COURT  <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">           03/18/2016         </div> CENTRAL DISTRICT OF CALIFORNIA BY: <i>LR</i> _____ DEPUTY
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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

MAR 17 2016

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

ROHAN MCDERMOTT,

Petitioner,

v.

J. SOTO,

Respondent.

No. 15-72401

2:16-cv-01888 - GW-AGR  
ORDER

Before: GOODWIN, LEAVY, and CHRISTEN, Circuit Judges.

The application for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition in the district court is granted. We recommend that the district court appoint counsel for petitioner.

The Clerk shall transfer the application and accompanying materials, received on July 30, 2015, to the United States District Court for the Central District of California, to be treated as a petition for writ of habeas corpus. The petition shall be deemed filed in the district court on July 30, 2015, or on any earlier date on which the district court determines the application was delivered to prison authorities for forwarding to this court. *See* Fed. R. App. P. 4(c)(1). The district court may permit petitioner to file an amended petition on the appropriate district court forms.

The Clerk shall also serve on the district court this order, the respondent's

response filed in this court, and petitioner's reply thereto.

Upon transfer of the application, the Clerk shall close this original action.

ROHAN MCDERMOTT  
 NAME  
 F-25647  
 PRISON IDENTIFICATION/BOOKING NO.  
 PO BOX 4670  
 ADDRESS OR PLACE OF CONFINEMENT  
 LANCASTER, CA 93539  
 Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

<b>FILED</b> CLERK, U.S. DISTRICT COURT <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 100px; text-align: center;">07/30/2015</div> CENTRAL DISTRICT OF CALIFORNIA BY: <u>JK</u> DEPUTY
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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

ROHAN MCDERMOTT  
 FULL NAME (Include name under which you were convicted)  
 Petitioner,

v.

J. SOTO, (WARDEN)  
 NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED  
 PERSON HAVING CUSTODY OF PETITIONER  
 Respondent.

CASE NUMBER:

CV 2:16-cv-01888 - GW-AGR  
 To be supplied by the Clerk of the United States District Court

AMENDED

**PETITION FOR WRIT OF HABEAS CORPUS  
 BY A PERSON IN STATE CUSTODY**  
 28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION LOS ANGELES  
 PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT  
 (List by case number)  
 CV 2:08-CV-07099-GW-AGR  
 CV \_\_\_\_\_

**INSTRUCTIONS - PLEASE READ CAREFULLY**

- To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
- In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
- Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
- Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
- You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
- You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.
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 Clerk of the United States District Court for the Central District of California  
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**EXHIBIT 3**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROHAN McDERMOTT,  
Petitioner,  
v.  
TOM FELKER, Warden,  
Respondent.

NO. CV 08-7099-GW (AGR)

REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE

The court submits this Report and Recommendation to the Honorable George H. Wu, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order No. 05-07 of the United States District Court for the Central District of California. For the reasons set forth below, the magistrate judge recommends the Petition for Writ of Habeas Corpus be denied.

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1 comprehended in existing law beyond any possibility for fairminded  
2 disagreement.” *Id.* at 786-87.

3 “Factual determinations by state courts are presumed correct absent clear  
4 and convincing evidence to the contrary, § 2254(e)(1), and a decision adjudicated  
5 on the merits in a state court and based on a factual determination will not be  
6 overturned on factual grounds unless objectively unreasonable in light of the  
7 evidence presented in the state-court proceeding, § 2254(d)(2).” *Miller-El v.*  
8 *Cockrell*, 537 U.S. 322, 340, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).

9 In applying these standards, this court looks to the last reasoned State  
10 court decision. *Davis v. Grigas*, 443 F.3d 1155, 1158 (9th Cir. 2006). To the  
11 extent no such reasoned opinion exists, as when a state court rejected a claim  
12 without explanation, this court must conduct an independent review to determine  
13 whether the decisions were contrary to, or involved an unreasonable application  
14 of, “clearly established” Supreme Court precedent. *Delgado v. Lewis*, 223 F.3d  
15 976, 982 (9th Cir. 2000). If the state court declined to decide a federal  
16 constitutional claim on the merits, this court must consider that claim under a *de*  
17 *novo* standard of review rather than the more deferential “independent review” of  
18 unexplained decisions on the merits authorized by *Delgado*. *Lewis v. Mayle*, 391  
19 F.3d 989, 996 (9th Cir. 2004) (standard of *de novo* review applicable to claim  
20 state court did not reach on the merits).

#### 21 IV.

#### 22 **DISCUSSION**<sup>1</sup>

#### 23 **A. GROUND ONE: Insufficiency of the Evidence**

24 “[T]he Due Process Clause protects the accused against conviction except  
25 upon proof beyond a reasonable doubt of every fact necessary to constitute the  
26 crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364, 90 S. Ct.  
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28 <sup>1</sup> Petitioner’s claims will be addressed out of order.

1 1068, 25 L. Ed. 2d 368 (1970). “[T]he critical inquiry on review of the sufficiency  
2 of the evidence to support a criminal conviction must be . . . to determine whether  
3 the record evidence could reasonably support a finding of guilt beyond a  
4 reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L.  
5 Ed 2d 560 (1979). “[A] reviewing court must consider all of the evidence  
6 admitted by the trial court,’ regardless whether that evidence was admitted  
7 erroneously.” *McDaniel v. Brown*, 130 S. Ct. 665, 672, 175 L. Ed. 2d 582 (2010)  
8 (citation omitted). This inquiry does not require a court to “ask itself whether *it*  
9 believes that the evidence at the trial established guilt beyond a reasonable  
10 doubt.” *Jackson*, 443 U.S. at 318-19 (emphasis in original). “A reviewing court  
11 may set aside the jury’s verdict on the ground of insufficient evidence only if no  
12 rational trier of fact could have agreed with the jury.” *Cavazos v. Smith*, 2011  
13 U.S. LEXIS 7603, at \*1 (2011). A reviewing court must give “full play to the  
14 responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh  
15 the evidence, and to draw reasonable inferences from basic facts to ultimate  
16 facts.” *Jackson*, 443 U.S. 319. “What is more, a federal court may not overturn a  
17 state court decision rejecting a sufficiency of the evidence challenge simply  
18 because the federal court disagrees with the state court. The federal court  
19 instead may do so only if the state court decision was ‘objectively unreasonable.’”  
20 *Cavazos*, 2011 U.S. LEXIS 7603, at \*1 (citation omitted).

21 Petitioner argues there was insufficient evidence to support a conviction of  
22 first degree felony murder with the underlying felonies of attempted robbery and  
23 attempted kidnap for ransom. Petition 6a-6r.

24 “The felony-murder special circumstance applies to a murder committed  
25 while the defendant was engaged in, or was an accomplice in the commission of,  
26 the attempted commission of, or the immediate flight after committing or  
27 attempting to commit, various enumerated felonies, . . . . ([Cal. Penal Code] §  
28

1 190.2, subd. (a)(17).<sup>2</sup> A strict causal or temporal relationship between the felony  
2 and the murder is not required; what is required is proof beyond a reasonable  
3 doubt that the defendant intended to commit the felony at the time he killed the  
4 victim and that the killing and the felony were part of one continuous transaction.”  
5 *People v. Coffman*, 34 Cal. 4th 1, 87, 17 Cal. Rptr. 3d 710 (2004).

6 Cal. Penal Code § 211 defines robbery as “the felonious taking of personal  
7 property in the possession of another, from his person or immediate presence,  
8 and against his will, accomplished by means of force or fear.” See *People v.*  
9 *Davis*, 46 Cal. 4th 539, 608, 94 Cal. Rptr. 3d 322 (2009), *cert. denied*, 130 S. Ct.  
10 1079 (2010). Cal. Penal Code § 209(a) defines one who kidnaps for ransom as  
11 “[a]ny person who seizes, confines, inveigles, entices, decoys, abducts, conceals,  
12 kidnaps or carries away another person by any means whatsoever with intent to  
13 hold or detain, or who holds or detains, that person for ransom, reward or to  
14 commit extortion or to exact from another person any money or valuable thing, or  
15 any person who aids or abets any such act.” See *People v. Lancaster*, 41 Cal.  
16 4th 50, 86, 58 Cal. Rptr. 3d 608 (2007).

17 “Attempted” commission of a felony requires the intent to commit that felony  
18 and a direct, ineffectual act (beyond mere preparation) towards its commission.  
19 *People v. Medina*, 41 Cal. 4th 685, 694, 61 Cal. Rptr. 3d 677 (2007).

20 There was abundant evidence to support Petitioner’s felony murder  
21 conviction in connection with attempted robbery or attempted kidnap for ransom.  
22 Godoy testified that on April 28, 2004, Daley and Petitioner said they wanted to  
23 buy marijuana and asked if he knew where to find some. (LD 3 at 978, 981.)  
24 Godoy identified Petitioner and Daley in open court. (*Id.* at 978, 982-83.) Godoy  
25

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26 <sup>2</sup> Contrary to Petitioner’s argument, the felony murder special  
27 circumstance applies to an attempted commission of an enumerated felony. Cal.  
28 Penal Code § 190.2(a)(17). The enumerated felonies include robbery in violation  
of Cal. Penal Code § 211 and kidnaping in violation of Cal. Penal Code § 209.  
Cal. Penal Code § 190.2(a)(17)(A) & (B).

1 contacted Lewis' uncle, Dave Daly. (*Id.* at 980.) Daly called back and said his  
2 nephew, Troy Lewis (aka Justice or Jus), could get the marijuana. (*Id.* at 981.)  
3 On April 29, 2004, Godoy and Lewis met with Petitioner and Daley at Lewis'  
4 grandmother's house. (*Id.*) Also present were Daly and Lewis' girlfriend, Karla  
5 DeDunn. (*Id.* at 982.)

6 Petitioner wanted to buy 100 pounds of marijuana. (*Id.* at 983.) The cost  
7 would be between \$28,000 and \$35,000. (*Id.*) Lewis had 33 pounds of  
8 marijuana in DeDunn's truck. (*Id.* at 984.) Petitioner inspected the marijuana and  
9 said "he could work with the stuff." (*Id.* at 985.) However, he did not want just 33  
10 pounds; he wanted 100 pounds. (*Id.*) Godoy and Lewis arranged to have 100  
11 pounds the next day. (*Id.* at 985, 1205.)

12 The next morning, Lewis called Godoy to say he was already at his  
13 grandmother's house with DeDunn. (*Id.* at 1206.) Petitioner did not call Godoy,  
14 which Godoy thought was unusual. (*Id.* at 1207.) Godoy went to Lewis'  
15 grandmother's house between 10:00 and 11:00 a.m., and found Petitioner, Daley,  
16 Lewis and DeDunn already there. (*Id.* at 1208.) DeDunn backed her SUV into  
17 the back yard, and Petitioner and Daley went along. Petitioner had a Converse  
18 shoe box with him, which he put on a table in the yard. (*Id.* at 1209.)

19 Lewis demanded, "Let's count the cash." (*Id.*) Petitioner opened the box.  
20 Both Petitioner and Daley started to "fidget around," acting nervous. (*Id.* at 1209-  
21 10.) The money in the box was wrapped in plastic. Petitioner acted as if he were  
22 going to start counting, but then put the money back, closed the box, and said "I  
23 want a scale." (*Id.* at 1210.) Lewis responded, "We don't play games. You  
24 know. It's a hundred and three [pounds of marijuana] there. If you short, we  
25 gonna give you that." (*Id.*) The marijuana was in DeDunn's truck. (*Id.* at 1211.)  
26 Petitioner told Godoy to come to his house. (*Id.*) Although Godoy replied they  
27 could do the deal right there if the cash was right, Petitioner insisted he needed a  
28 scale to weigh everything. (*Id.* at 1212.) Daley remained quiet while Petitioner

1 carried on the negotiations. (*Id.*) All agreed to go with Petitioner and Daley.  
2 DeDunn drove her SUV, Lewis and Godoy went in Godoy's car, and Petitioner  
3 and Daley went in Petitioner's car. (*Id.*) Petitioner took the Converse box. (*Id.* at  
4 1213.) Godoy had not seen money in the box unwrapped from the cellophane.  
5 (*Id.*) They all had cell phones to stay in contact. (*Id.* at 1214.)

6 Lewis told DeDunn "just to like go drive until these dudes make up their  
7 minds." (*Id.*) Petitioner asked again to go to his house because he had an  
8 electric scale there. (*Id.*) En route, the two cars pulled over to the side of the  
9 road. Godoy and Lewis talked to Petitioner. (*Id.* at 1216.) DeDunn continued  
10 driving around. (*Id.*) Petitioner proposed exchanging the Converse box for the  
11 marijuana right there. (*Id.* at 1217.) However, a police car came along and  
12 everyone left, with Lewis riding in Petitioner's car and Godoy alone in his car. (*Id.*  
13 at 1216.)

14 Godoy called Lewis in Petitioner's car. Godoy asked where they were and  
15 to pull over. Godoy believed Petitioner was trying to cut him out of the deal. (*Id.*  
16 at 1219-20.) After the cars pulled over, Godoy asked Daley, "What's up with  
17 [Petitioner], like he playing a lot of games, like he want to do business or what?  
18 What he want to do?" (*Id.* at 1220.) They talked for about six minutes and  
19 agreed to go to Petitioner's house. (*Id.* at 1220-21.) Lewis again joined Godoy in  
20 Godoy's car. Lewis continued to check in frequently with DeDunn, who was still  
21 driving around. (*Id.* at 1221.)

22 As they pulled up in front of the apartment building,<sup>3</sup> Lewis told DeDunn to  
23 pull into a 7-Eleven parking lot until he called for her to bring the marijuana over.  
24 (*Id.* at 1222.) Shortly thereafter, Petitioner and Daley arrived at the apartment.  
25 Godoy and Lewis got in the back seat of Petitioner's car, and Petitioner drove into  
26 the apartment garage. (*Id.* at 1223.) Godoy and Lewis got out. Petitioner gave  
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28 <sup>3</sup> Petitioner was staying with Daley in apartment 200. (LD 3 at 1861-62.)

1 Daley the Converse box and drove back out of the garage while Daley “was trying  
2 to get us to go upstairs in the building.” (*Id.* at 1224.) Godoy became concerned  
3 because Petitioner and Daley were acting suspicious, “like they had a plan.” (*Id.*  
4 at 1224-25.) Instead of counting the money there, Daley was trying to get them  
5 into the apartment while Petitioner drove back out of the garage. (*Id.* at 1225-26.)  
6 The three of them went up to the apartment. (*Id.* at 1231.) Daley put the  
7 Converse box down on a table while they talked. Petitioner was calling Daley by  
8 cell phone “every minute,” at least seven times. (*Id.* at 1231-32.) Daley could not  
9 talk to Petitioner because Godoy and Lewis could hear him. (*Id.* at 1232.) Lewis  
10 wanted to count the money. Daley refused, saying the money was Petitioner’s,  
11 and Daley did not want Petitioner to come up and say something was missing.  
12 (*Id.* at 1232-33.)

13 Petitioner entered the apartment, acting differently from before, not looking  
14 at Godoy and Lewis, and keeping his head down. (*Id.* at 1233.) He took the  
15 Converse box and went into the kitchen. (*Id.*) Daley walked into another room  
16 and came back with a gun. (*Id.* at 1235.) Daley waved the gun and told Godoy  
17 and Lewis, “Don’t move.” Godoy and Lewis put up their hands. (*Id.* at 1236.)  
18 Daley told Petitioner to “Get the tape. Tape them up.” (*Id.*) Petitioner, who was  
19 not scared, started looking for the tape. (*Id.* at 1236-37.) Daley was talking to  
20 Godoy and Lewis. He said he had never worked since coming to America and  
21 that “before he leave here, he gonna kill both of us and just leave us in the closet  
22 to stink up.” (*Id.* at 1237.) Petitioner started taping their hands together while  
23 they lay face down on the floor. (*Id.* at 1238.) Godoy managed to get a hand  
24 free. Daley put the gun to his head and said, “If you do that again, I’m gonna kill  
25 you.” (*Id.* at 1239.) Daley kept the gun on Godoy and Lewis, but never pointed it  
26 at Petitioner. (*Id.*) Petitioner bound Godoy’s hands behind his back with tape.  
27 (*Id.* at 1240.) Although Petitioner and Daley took their cell phones, Godoy and  
28 Lewis could hear Daley ask over Lewis’ cell, which was on speaker, “What’s taking

1 you so long?" (*Id.* at 1240-41.) Daley said he was going to "go for the [Daly] and  
2 . . . Karla." (*Id.* at 1240, 1244.) Godoy testified that while Lewis and DeDunn  
3 were talking by cell phone in the apartment, Daley learned where DeDunn was.  
4 (*Id.* at 1618-19.)

5 Daley continued to talk about killing Godoy and Lewis, and again said he  
6 was going to go for DeDunn and Daly. (*Id.* at 1244.) Daley put the gun in his  
7 waistband. Daley told Petitioner to get the other pistol and watch Godoy and  
8 Lewis. (*Id.*) Godoy and Lewis begged not to be killed. (*Id.* at 1245.) Daley left  
9 the apartment and Petitioner followed right behind him. (*Id.*)

10 Godoy got to his feet, with his hands taped behind his back and his feet  
11 taped together. (*Id.* at 1245-46.) He got a hand free, but not his feet. He hopped  
12 to the door and opened it, meeting Petitioner returning to the apartment. (*Id.* at  
13 1246-47.) They struggled. Petitioner said something like, "You not going  
14 nowhere" and tried to push Godoy back into the apartment. Petitioner lost an  
15 earring in the struggle. (*Id.* at 1249.) They broke the apartment's window during  
16 the struggle when Petitioner tried to "slam" Godoy back into the apartment. (*Id.* at  
17 1249-50.) Godoy managed to get away when the tape came loose from his feet.  
18 He ran through the apartment building, screaming for help. (*Id.* at 1250.) He ran  
19 straight for the exit, with Petitioner following him for "two, two and a half building"  
20 before turning back. (*Id.* at 1281.) He ran until he was weak. He stopped in  
21 someone's yard and laid down by a van. A lady who lived there gave him water  
22 and called the police. (*Id.* at 1282.)

23 Fitzgerald, a resident of the apartment building, was home on April 30. (*Id.*  
24 at 926-27.) That afternoon, she heard a shot, glass breaking, and somebody say,  
25 "Hey, get back here." (*Id.* at 927.) She estimated the time to be 3:15 p.m. but  
26 was uncertain. (*Id.*) She looked down over a balcony and saw the screen door of  
27 apartment 200 open and its doorknob "in the window," which had been broken.  
28 (*Id.* at 927-28.) She noticed that again later when she left for work. (*Id.* at 931.)

1           Martinez, the assistant manager of the apartment building, testified that on  
2 April 30 she received four or five phone messages shortly after 3:00 p.m. that  
3 there was a problem in apartment 200. (*Id.* at 910-11.) Around 8:00 p.m., she  
4 and another assistant manager went to investigate. They found the screen safety  
5 door had “slammed” into the window, which was broken. (*Id.* at 913-14.) As they  
6 approached the apartment with a flashlight, they saw a body inside on the floor  
7 with the hands tied and eyes rolled up. They called 911. (*Id.* at 917-18.)

8           Detective Steinwand responded to the call. (*Id.* at 1622, 1624.)  
9 Approaching apartment 200, he found the window broken by the security screen  
10 door. He found Lewis’ body on the floor of the apartment with a lot of blood on  
11 the carpet near his head and on his face, and with his hands bound behind his  
12 back with tape. (*Id.* at 1630, 1632-33.) It appeared Lewis had been shot at that  
13 location and not moved. Steinwand found a bullet wound on Lewis’ forehead and  
14 an exit wound by his right ear, which appeared to be a single gunshot wound.  
15 (*Id.* at 1633-34.) He and the coroner’s investigator found an expended bullet on  
16 the carpet under Lewis’ body. (*Id.*) He found clear tape and duct tape in the  
17 apartment, and Lewis’ hands had been bound with both. (*Id.* at 1635.) He also  
18 found pieces of tape outside the apartment, where Godoy testified he had run  
19 during the escape. (*Id.* at 1644.) Inside the Converse box on the kitchen counter  
20 were six bundles that appeared to be money wrapped in cellophane. However,  
21 they were bundles of cut newspaper with bills on the outside wrapped to look like  
22 bundles of money. (*Id.* at 1650.) In Petitioner’s car, he found newspaper cuttings  
23 wrapped in money and cellophane. (*Id.* at 1652.) There were one or two bills of  
24 currency in denominations from \$20 to \$100 wrapped around each newspaper  
25 bundle to look like an actual roll of money. (*Id.* at 1656.)

26           A forensic identification specialist, Kergil, testified that, in apartment 200,  
27 Petitioner’s print was found on a cologne bottle and a toothpaste tube. Daley’s  
28 print was on a soda can. (*Id.* at 1569, 1573-74.) Both Petitioner’s and Daley’s



1 prints were found on Petitioner's car. (*Id.* at 1575.) Daley's prints were found on  
2 newspaper pieces bound in cellophane. (*Id.* at 1577.) Petitioner's prints were  
3 found on a roll of clear "Uline" packing tape. (*Id.*)

4 Petitioner testified in his defense and contended the drug deal was between  
5 Daley, Godoy and Lewis, and that he was not involved. (*Id.* at 1865.) He went  
6 with Daley on April 30 because Daley asked him for a ride. (*Id.* at 1866.) After  
7 returning everyone to the apartment, Petitioner testified he left the garage to park  
8 his car and eat his food. (*Id.* at 1874.) He called Daley, then in apartment 200  
9 with Godoy and Lewis, to make the others leave. (*Id.*) He went back up to the  
10 apartment kitchen when he heard Daley calling him. (*Id.* at 1875.) He went to  
11 the living room and saw Daley holding a gun. (*Id.*) Although Petitioner did not  
12 want to get involved, he followed Daley's orders to bind Godoy and Lewis with  
13 tape because "the expression on his face change." (*Id.* at 1876.) Then he ran  
14 out of the apartment when Daley turned his back and heard a "big noise" as he  
15 ran out of the building. (*Id.* at 1876-77.)

16 The state court's decision was not contrary to, or an unreasonable  
17 application of, clearly established federal law and was not an unreasonable  
18 determination of the facts. Petitioner argues his version of events. However, "a  
19 reviewing court 'faced with a record of historical facts that supports conflicting  
20 inferences must presume – even if it does not affirmatively appear in the record –  
21 that the trier of fact resolved any such conflicts in favor of the prosecution, and  
22 must defer to that resolution.'" *McDaniel*, 130 S. Ct. at 673 (citation omitted). A  
23 rational jury could reasonably find beyond a reasonable doubt that Petitioner  
24 intended to commit robbery or kidnap for ransom at the time victim was killed,  
25 and that the killing and the underlying felony were part of one continuous  
26 transaction. Ground One does not warrant habeas relief.

27 **B. GROUNDS TWO, SIX AND SEVEN: Prosecutorial Misconduct**

28 Prosecutorial misconduct rises to the level of a constitutional violation only

1 U.S. 887, 889, 111 S. Ct. 222, 112 L. Ed. 2d 190 (1990) (Marshall, J., dissenting  
2 on denial of certiorari) (“I would grant the petition so that this Court can determine  
3 whether a criminal defendant has a due process right to judicially immunized  
4 testimony, and, if so, what standards govern immunized-testimony requests in  
5 capital sentencing proceedings.”).

6 For purposes of habeas relief, clearly established federal law consists of the  
7 holdings of the United States Supreme Court as of the time of the relevant state  
8 court decision. *Musladin*, 549 U.S. at 74. When there is no clearly established  
9 federal law on an issue, a state court cannot be said to have unreasonably  
10 applied the law as to that issue. *Knowles v. Mirzayance*, 556 U.S. 111, 129 S. Ct.  
11 1411, 1419, 173 L. Ed. 2d 251 (2009); see *Allen v. Woodford*, 395 F.3d 979, 996  
12 (9th Cir. 2004) (federal habeas relief is not available for a claim of judicially  
13 conferred immunity under *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L.  
14 Ed. 2d 334 (1989); *Stewart v. Woodford*, 2007 WL 1577889, \*11-12 (N.D. Cal.  
15 2007) (no United States Supreme Court case establishes a right to judicial grant  
16 of immunity). Circuit precedent may not create clearly established federal law on  
17 an issue the Supreme Court has not yet addressed. *Holley*, 568 F.3d at 1098.

18 The state court decision was not contrary to, or an unreasonable application  
19 of, clearly established federal law. Ground Ten does not warrant habeas relief.

20 **D. GROUND THREE: Cruel And Unusual Punishment**

21 “The Eighth Amendment, which forbids cruel and unusual punishments,  
22 contains a ‘narrow proportionality principle’ that ‘applies to noncapital sentences.’”  
23 *Ewing v. California*, 538 U.S. 11, 20, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (2003);  
24 see also *Lockyer*, 538 U.S. at 72. The “precise contours” of the principle are  
25 “unclear”; however, they apply “only in the ‘exceedingly rare’ and ‘extreme’ case.”  
26 *Id.* at 73. If a comparison of the gravity of the offense with the harshness of the  
27 sentence does not raise an inference of gross disproportionality, a court need not  
28 consider the other factors. See *Harmelin v. Michigan*, 501 U.S. 957, 1005-06,

**EXHIBIT 6**

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

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Signature of Document Signer No. 1 Signature of Document Signer No. 2 (if any)

State of California  
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me  
 on this 28 day of April, 2014  
Date Month Year

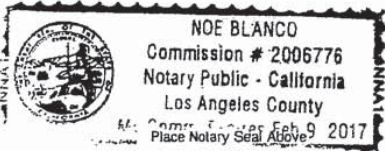
by (1) \_\_\_\_\_  
Name of Signer

proved to me on the basis of satisfactory evidence  
 to be the person who appeared before me (1) (1)  
 (and

(2) \_\_\_\_\_  
Name of Signer

proved to me on the basis of satisfactory evidence  
 to be the person who appeared before me.)

Signature [Signature]  
Signature of Notary Public



OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

Further Description of Any Attached Document

Title or Type of Document: Affidavit

Document Date: 4/27/14 Number of Pages: 2

Signer(s) Other Than Named Above: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER #1	RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here	Top of thumb here

~~ATFA DAVID~~ ~~ATFA DAVID~~  
IN THE YEAR 2008 AT KERN VALLEY STATE PRISON (K VSP). I WAS HOUSED WITH ONE ALCIFF DALEY CDC # F23701, WHILE AS CELLMATES DALEY, SHARED WITH ME ISSUES ABOUT HIS CASE. HE DECLARED TO ME THAT McDERMONT, DIDN'T KNOW HE HAD A GUN. HE ALSO DECLARED THAT HE WAS ORDERING McDERMONT, TO SUDJUE THE VICTIMS AS McDERMONT, REFUSED TO GET INVOLVED IN THE MATTER.

AT SOME POINT IN THE MATTER THE GUN WENT OFF AND A VICTIM WAS SHOT. DALEY, DECLERED THAT McDERMONT, STARTED TO LEAVE AND HE POINTED THE GUN AT HIM ORDERING HIM NOT TO LEAVE AND TO TIE UP THE OTHER VICTIM. HE STATED THAT McDERMONT, WAS ACTING LIKE A PUNK AND COWARD.

OVER THE MONTHS AS CELLMATES ~~DALEY~~, SHARED ALOT OF ASPECTS WITH ME SURRENDING THIS MATTER, ONE NOTABLE IS THAT HE SHOULD HAVE ALSO SHOT McDERMONT, HE FURTHER STATED McDERMONT, WAS AT FAULT FOR LETTING ONE OF THE VICTIM TO GET AWAY BY NOT STOPPING HIM AS HE EXITED THE APARTMENT AND IS WHY HE, THE VICTIM WAS ABLE TO TESTIFY AT COURT.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

**DOCKETED**  
**LOS ANGELES**  
JUL 18 2006  
BY M. CARTER  
NO. LA 200650295

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, )  
 )  
 VS. )  
 )  
 ROHAN MC DERMOTT, )  
 )  
 DEFENDANT-APPELLANT(S). )

NO. SA052445

**JUL 07 2006**

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY  
HONORABLE STEVEN R. VAN SICKLEN, JUDGE PRESIDING  
REPORTER'S TRANSCRIPT ON APPEAL  
MARCH 2, 3, 6, 7, 2006

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: BILL LOCKYER  
STATE ATTORNEY GENERAL  
300 SOUTH SPRING STREET  
NORTH TOWER, SUITE 5001  
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 2 OF 5  
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JOYCE KATHLEEN RODELA  
CSR NO. 9878  
OFFICIAL REPORTER

1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MC DERMOTT  
3 LOS ANGELES, CALIFORNIA MONDAY, MARCH 6, 2006  
4 DEPARTMENT LX-F HON. JAMES R. DABNEY, JUDGE  
5 REPORTER: JOYCE K. RODELA, CSR NO. 9878  
6 TIME: P.M. SESSION

7

8 APPEARANCES: (AS HERETOFORE NOTED.)

9

10 (THE JURY ENTERED THE COURTROOM  
11 AND THE FOLLOWING PROCEEDINGS  
12 WERE HELD:)

13

14 THE COURT: BACK ON THE RECORD ON PEOPLE VERSUS  
15 MC DERMOTT. BOTH COUNSEL ARE PRESENT. THE DEFENDANT IS  
16 PRESENT. THE PROSPECTIVE JURY PANEL IS PRESENT. WE'RE READY  
17 TO RESUME WITH THE JURY SELECTION PROCESS, GETTING THE  
18 BACKGROUND INFORMATION, STARTING OFF WITH JUROR NO. 6.

19

20 (VOIR DIRE OF PROSPECTIVE JURORS.)

21

22 THE COURT: WE'RE GOING TO TAKE A BREAK. IT'S ACTUALLY  
23 THREE O'CLOCK, SO IT IS TIME FOR OUR AFTERNOON RECESS. 15  
24 MINUTES. 15 MINUTES, THEN WE'LL RESUME.

25

THANK YOU.

26

27

(A RECESS WAS TAKEN.)

28

1 (THE FOLLOWING PROCEEDINGS WERE  
2 HELD IN OPEN COURT, OUT OF THE  
3 PRESENCE OF THE JURY PANEL:)

4  
5 THE COURT: YOU WANTED SOMETHING OUT OF THE PRESENCE?

6 MR. MARKUS: YES.

7 WE HAVE KARLA DEDUNN HERE WITH DETECTIVE  
8 STEINWAND, AND SHE HAS APPOINTED COUNSEL -- I'M SORRY.

9 MR. MEYER: MURRAY MEYER.

10 MR. MARKUS: MR. MEYER. I'M SORRY.

11 AND IT APPEARS THAT WE'RE AT A POSITION WHERE  
12 MS. DEDUNN IS GOING TO MAKE A DECISION AS TO WHETHER SHE'S  
13 GOING TO TESTIFY OR NOT. AND I THINK THIS WILL BE A QUICK  
14 MATTER, SO WE CAN GET EVERYBODY ON THEIR WAY. AND I WONDERED  
15 WHETHER OR NOT THE COURT WOULD ENTERTAIN THIS RIGHT NOW, OR  
16 DID YOU WANT TO WAIT UNTIL 4:30?

17 THE COURT: WELL, I GUESS THE PROBLEM I HAVE, AT THIS  
18 POINT WE DON'T HAVE A JURY, SO SHE'S NOT BEING CALLED AS A  
19 WITNESS AT THIS POINT. I GUESS WE'RE KIND OF TAKING IT A  
20 LITTLE OUT OF ORDER.

21 HOWEVER, I SUPPOSE IF MS. DEDUNN HAS ALREADY MADE  
22 UP HER MIND, AND BOTH COUNSEL HAVE NO OBJECTION TO PROCEEDING  
23 AT THIS STAGE --

24 MR. MARKUS: I HAVE NO OBJECTION. AND MY INTENTION  
25 WOULD BE TO JUST INFORM MS. DEDUNN THAT, YOU KNOW, SHE IS A  
26 POTENTIAL WITNESS IN THE CASE AND HAVE HER, THROUGH HER  
27 LAWYER, INDICATE WHAT SHE INTENDS TO DO.

28 THE COURT: ALL RIGHT. AT THIS POINT SHE'S STILL GOING



1 THE COURT: BOTH COUNSEL ARE PRESENT. THE DEFENDANT  
2 IS PRESENT. WE'RE BACK ON THE RECORD ON PEOPLE VERSUS  
3 MC DERMOTT. WE'RE READY TO RESUME WITH THE JURY SELECTION  
4 PROCESS.

5  
6 (VOIR DIRE OF PROSPECTIVE JURORS.)

7  
8 MR. MARKUS: ACCEPT THE JURY.

9 MR. EVANS: ACCEPT THE JURY.

10 THE COURT: ALL RIGHT. WOULD THE 12 OF YOU PLEASE RISE  
11 TO BE SWORN.

12 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

13 DO YOU, AND EACH OF YOU, UNDERSTAND AND AGREE  
14 THAT YOU WILL WELL AND TRULY TRY THE CAUSE NOW PENDING BEFORE  
15 THIS COURT, AND A TRUE VERDICT RENDER ACCORDING ONLY TO THE  
16 EVIDENCE PRESENTED TO YOU AND TO THE INSTRUCTIONS OF THE  
17 COURT? IF YOU DO SO UNDERSTAND AND AGREE, PLEASE SAY,  
18 "I DO."

19 (THE JURY RESPONDED, "I DO.")

20  
21 (VOIR DIRE OF PROSPECTIVE ALTERNATE  
22 JURORS.)

23  
24 THE COURT: DID YOU WANT TO EXERCISE A PEREMPTORY  
25 CHALLENGE AS TO 14, AND 15?

26 MR. MARKUS: NO.

27 THE COURT: DEFENSE?

28 MR. EVANS: NO. WE ACCEPT.

1 THE COURT: OKAY. THANK YOU.

2 ALL RIGHT. JUROR NO. 15, IF YOU WOULD TAKE THE  
3 SEAT THERE. AND I'LL ASK JURORS 13 AND 14 TO PLEASE STAND.

4 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

5 DO YOU, AND EACH OF YOU, UNDERSTAND AND AGREE  
6 THAT YOU WILL WELL AND TRULY TRY THE CAUSE NOW PENDING BEFORE  
7 THIS COURT, AND A TRUE VERDICT RENDER ACCORDING ONLY TO THE  
8 EVIDENCE PRESENTED TO YOU AND TO THE INSTRUCTIONS OF THE  
9 COURT? IF YOU DO SO UNDERSTAND AND AGREE, PLEASE SAY,  
10 "I DO."

11 (THE ALTERNATE JURORS RESPONDED, "I DO.")

12 THE COURT: THANK YOU. PLEASE BE SEATED.

13 ALL RIGHT. AS FOR THE REST OF YOU, THANK YOU  
14 VERY MUCH FOR YOUR PATIENCE AND TIME AND ATTENTION YOU'VE  
15 GIVEN THIS CASE. WE REALLY APPRECIATE YOU FULFILLING YOUR  
16 JURY DUTY. I HOPE YOU UNDERSTAND THE IMPORTANCE OF WHAT  
17 JURORS DO IN THE SYSTEM AND HOW OUR SYSTEM OF JUSTICE SIMPLY  
18 COULD NOT OPERATE WITHOUT PEOPLE SUCH AS YOURSELVES WILLING  
19 TO COME DOWN AND FULFILL YOUR JURY DUTY. I HOPE YOU  
20 UNDERSTAND THE IMPORTANCE THAT THAT SERVICE IS -- THE  
21 IMPORTANCE OF THAT SERVICE.

22 AND YOU'RE ALL EXCUSED FROM THIS CASE. RETURN TO  
23 THE JURY ASSEMBLY ROOM TO BE PROCESSED OUT. THANK YOU VERY  
24 MUCH.

25  
26 (THE JURY PANEL EXITED THE COURTROOM  
27 AND THE FOLLOWING PROCEEDINGS WERE  
28 HELD:)

1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MC DERMOTT  
3 LOS ANGELES, CALIFORNIA TUESDAY, MARCH 7, 2005  
4 DEPARTMENT LX-F HON. JAMES R. DABNEY, JUDGE  
5 REPORTER: JOYCE K. RODELA, CSR NO. 9878  
6 TIME: P.M. SESSION

7

8 APPEARANCES: (AS HERETOFORE NOTED.)

9

10 (THE FOLLOWING PROCEEDINGS WERE  
11 HELD IN OPEN COURT, OUT OF THE  
12 PRESENCE OF THE JURY PANEL:)

13

14 THE COURT: ON THE RECORD ON PEOPLE VERSUS MC DERMOTT.  
15 ARE WE READY TO PROCEED?

16

MR. MARKUS: YES.

17

MR. EVANS: YES, YOUR HONOR.

18

THE COURT: ALL RIGHT. LET'S BRING IN THE JURY.

19

20 (THE JURY ENTERED THE COURTROOM  
21 AND THE FOLLOWING PROCEEDINGS  
22 WERE HELD:)

23

24 THE COURT: ALL RIGHT. WELCOME BACK, LADIES AND  
25 GENTLEMEN. WE'RE READY TO RESUME THE TRIAL HERE, PEOPLE  
26 VERSUS MC DERMOTT.

27

PEOPLE MAY CALL THEIR NEXT WITNESS.

28

MR. MARKUS: YES.

1 (THE JURY PANEL EXITED THE COURTROOM  
2 AND THE FOLLOWING PROCEEDINGS WERE  
3 HELD:)

4  
5 THE COURT: ALL RIGHT. THE JURORS HAVE LEFT THE  
6 COURTROOM. LET'S SEE. A COUPLE THINGS: IS THERE A  
7 TRANSCRIPT OF THIS? THERE SHOULD BE. I DON'T KNOW IF THERE  
8 IS. WAS ONE PREPARED?

9 MR. MARKUS: NO.

10 THE COURT: IT'S FAIRLY CLEAR. NORMALLY, WE SHOULD  
11 HAVE HAD ONE, BUT...

12 MR. MARKUS: WE HAVE A TRANSCRIPT FOR THE NEXT TAPE.  
13 WE DON'T INTEND TO USE IT, BUT THERE'S A TRANSCRIPT.

14 THE COURT: YOU DON'T INTEND TO USE THE NEXT TAPE?

15 MR. MARKUS: NO. USE THE TRANSCRIPT.

16 THE COURT: OKAY. ALL RIGHT.

17 NOW, AS TO MR. GODOY, WE HAVE COUNSEL,  
18 MR. LEVITIN, WHO HAS BEEN BROUGHT IN TO FIND OUT FROM  
19 MR. GODOY WHAT WE'RE GOING TO DO ABOUT HIS TESTIMONY.

20 MR. LEVITIN: I HAVEN'T COMPLETED MY INTERVIEW WITH  
21 HIM.

22 THE COURT: DO YOU WANT TO CHAT WITH HIM AND LET US  
23 KNOW?

24 MR. LEVITIN: I NEED THREE OR FOUR MINUTES.

25 THE COURT: WE'LL COME BACK AT 3:10 AND CONCLUDE THE  
26 ISSUE. WE'RE DOING IT OUT OF AN ABUNDANCE OF CAUTION.

27 MR. GODOY APPARENTLY TESTIFIED AT THE PRELIMINARY HEARING,  
28 BUT I WANT COUNSEL TO HAVE -- HE DIDN'T HAVE AN OPPORTUNITY

1 TO TALK TO COUNSEL. SO WE CAN GO FROM THERE.

2 MR. MARKUS: IF THE COURT PREFERS, I CAN USE A  
3 TRANSCRIPT FOR THE NEXT RECORDING. I CAN DO THAT.

4 THE COURT: WELL, WE JUST NEED TO MARK ONE. I DON'T  
5 KNOW IF YOU WANT TO -- I MEAN, THE COURT RULES STIPULATE THAT  
6 WHEN WE HAVE AN AUDIOTAPE OR VIDEOTAPE, THERE SHOULD BE A  
7 TRANSCRIPT. IF YOU THINK -- THIS IS FAIRLY CLEAR, SO I DON'T  
8 HAVE A PROBLEM WITH IT.

9 IF YOU THINK IT WOULD BE HELPFUL FOR THE JURORS  
10 TO FOLLOW ALONG, GREAT, WE CAN GIVE THEM COPIES OF THE  
11 TRANSCRIPT. IF YOU DON'T THINK IT'S REALLY NECESSARY, THEN  
12 JUST MARK A COPY AND -- FOR IDENTIFICATION, SO IT CAN GO WITH  
13 THE COURT RECORD.

14 MR. MARKUS: OKAY. THANK YOU.

15 THE COURT: OKAY. ALL RIGHT. 3:10.

16 (A RECESS WAS TAKEN.)

17 MR. MARKUS: THERE ARE TWO THINGS I WANTED TO PUT ON  
18 THE RECORD, BECAUSE THE COURT IS SOMEWHAT IN THE DARK ABOUT  
19 THESE THINGS.

20 THE COURT: OKAY.

21 MR. MARKUS: AND I APOLOGIZE TO THE COURT. THIS  
22 VIDEOTAPE THAT'S BEING PLAYED BEFORE THIS JURY THE  
23 PROSECUTION DID NOT INTEND TO PLAY. THE PROSECUTION IS  
24 PLAYING IT TO ACCOMMODATE THE DEFENSE ATTORNEY IN  
25 RELATIONSHIP TO THE ABILITY TO CROSS-EXAMINE THIS WITNESS.

26 THE COURT: OKAY.

27 MR. MARKUS: SHOULD THE VIDEOTAPE NOT BE PLAYED FOR  
28 THIS JURY, HE WOULD NOT BE ALLOWED TO CROSS-EXAMINE ON THE

1 CONTENTS. I DID NOT INTEND TO INTRODUCE THE VIDEO; HENCE, I  
2 HAVE NOT PRODUCED A TRANSCRIPT OF THIS.

3 THE COURT: OKAY.

4 MR. MARKUS: I REALLY APPRECIATE THE COURT INDICATING  
5 IT WOULD ALLOW US TO DO THAT WITHOUT A TRANSCRIPT, BECAUSE I  
6 THINK THE VIDEOTAPE IS FAIRLY CLEAR. THE SECOND TAPE I DID  
7 INTEND TO INTRODUCE, SO THAT I DO IN FACT HAVE A TRANSCRIPT  
8 OF THAT TAPE-RECORDING, SO THAT YOU KNOW.

9 BUT I THINK THIS WILL EXPEDITE THINGS FOR THE  
10 COURT, BECAUSE THE JURY HAS ALREADY HEARD THIS VIDEOTAPE.  
11 DEFENSE COUNSEL CAN REFER TO THE BEGINNING OF THE VIDEOTAPE  
12 WHEN THE WITNESS WAS NOT BEING FORTHRIGHT. SO THAT YOU  
13 UNDERSTAND, I WAS JUST PLANNING ON PLAYING THE SECOND  
14 VIDEOTAPE.

15 THE COURT: OKAY.

16 MR. EVANS: IT'S THE TYPE OF ISSUE I KNOW THAT THE  
17 COURT OF APPEALS, IF FOR SOME REASON THERE'S AN APPEAL IN  
18 THIS MATTER, WOULD LIKE TO UNDERSTAND WHY THERE ISN'T A  
19 TRANSCRIPT. I WILL STATE FOR THE RECORD I BELIEVE THAT THIS  
20 TAPE IS EXTREMELY BENEFICIAL FOR MY CLIENT'S DEFENSE. SO TO  
21 THE EXTENT I DON'T THINK IT EVER WOULD PLAY AGAINST HIM, NOT  
22 HAVING IT, IT'S IN HIS BENEFIT TO DO SO.

23 THE COURT: ALSO, I JUST -- JUST -- THAT'S FINE. AND  
24 IT WAS MY IMPRESSION FROM EVERYTHING THAT'S TRANSPIRED UP TO  
25 THIS POINT THAT BOTH SIDES WERE RELYING ON PORTIONS OF THE  
26 TAPE. I ALLOWED -- I WENT AHEAD WITH PLAYING THE TAPES  
27 BEFORE CALLING MR. GODOY BASED ON WHAT I BELIEVE MR. GODOY IS  
28 GOING TO TESTIFY TO IN TERMS OF BEING ABLE TO LAY THE

1 FOUNDATIONAL REQUIREMENTS FOR THE TAPES IN THE FIRST PLACE,  
2 AND SINCE THERE WAS NO OPTION OTHER THAN ESTABLISHING THE  
3 FOUNDATION THAT THIS WAS THE TAPE OF MR. GODOY. SO I ALLOWED  
4 IT FOR THOSE PURPOSES. I MEAN, THAT'S WHY WE'RE PLAYING IT  
5 WITHOUT -- I DON'T WANT TO WASTE TIME.

6 NOW, THAT BEING SAID, AS TO THE ISSUE AS TO  
7 MR. GODOY, IT DOES APPEAR TO ME JUST FROM DOING SOME VERY  
8 QUICK RESEARCH, HE WOULD BE ALLOWED TO ASSERT THE PRIVILEGE  
9 EVEN THOUGH HE TESTIFIED AT THE PRELIMINARY HEARING. I WANT  
10 TO KNOW IF HE'S GOING TO ASSERT.

11 MR. LEVITIN: HE IS NOT GOING TO ASSERT THE PRIVILEGE.  
12 IT'S HIS INTENTION TO TESTIFY FORTHRIGHTLY. AND FOR SOME  
13 REASON, WHICH I TRIED TO DISSUADE HIM OF, HE TRUSTS  
14 MR. MARKUS.

15 THE COURT: OKAY.

16 MR. MARKUS: SHOULD THE COURT BE CONCERNED AT ANY  
17 POINT, MY RESEARCH, BY THE WAY -- I HAVE OTHER CASES THAT  
18 INDICATE ONCE THE WITNESS HAS TESTIFIED, IS SUBJECT TO  
19 CROSS-EXAMINATION, HE IN FACT HAS WAIVED THE PRIVILEGE. BUT  
20 I UNDERSTAND THE COURT UNDERSTANDS THAT'S THE PRESUMPTION I  
21 WAS OPERATING UNDER.

22 THE COURT: OKAY.

23 MR. MARKUS: IF AT ANY TIME THE COURT GETS  
24 UNCOMFORTABLE WITH WHAT IS GOING ON, I HAVE NO PROBLEM  
25 SUBMITTING A WRITTEN REQUEST FOR A FULL GRANT OF IMMUNITY.  
26 THAT'S NOT THE ISSUE.

27 THE COURT: IT'S NOT MY COMFORT I'M WORRIED ABOUT. AS  
28 LONG AS THE WITNESS HAS HAD AN OPPORTUNITY TO CONFER WITH

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DWANE GODOY,  
CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED AS  
FOLLOWS:

THE CLERK: DO YOU SOLEMNLY STATE THAT THE TESTIMONY  
YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL  
BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO  
HELP YOU GOD?

THE WITNESS: YES.

THE CLERK: PLEASE TAKE THE WITNESS STAND, BE SEATED.

PLEASE STATE YOUR NAME FOR THE RECORD AND THEN  
SPELL YOUR FULL NAME.

THE WITNESS: DWANE GODOY; D-W-A-N-E, G-O-D-O-Y.

THE CLERK: THANK YOU.

MR. MARKUS: MAY I PROCEED?

THE COURT: YES, YOU MAY.

DIRECT EXAMINATION

BY MR. MARKUS:

Q MR. GODOY, DID YOU HAVE OCCASION TO VIEW THAT  
VIDEOTAPE OR LISTEN TO THAT VIDEOTAPE THAT WAS JUST BEING  
PLAYED?

A YES.

Q OKAY. AND COULD YOU DESCRIBE FOR THE JURY IN  
THIS CASE HOW YOU KNOW TROY LEWIS, THE VICTIM IN THIS CASE?

A WELL, I USED TO DO PARTIES AND STUFF, AND HE WAS  
A D.J., YOU KNOW. THAT'S WHY. I MET HIM THROUGH HIS UNCLE,  
TOO.

Q OKAY. AND HOW LONG HAD YOU KNOWN TROY LEWIS UP



1 MR. MC DERMOTT, YOU'RE REFERRING TO THE DEFENDANT THAT'S IN  
2 COURT HERE TODAY?

3 A YES, SIR.

4 MR. MARKUS: FOR THE RECORD, THE DEFENDANT, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. MARKUS: THANK YOU.

7 Q AND THEN YOU SAW MR. DALEY THERE, TOO?

8 A YES, SIR.

9 Q AND THEN WHAT HAPPENED?

10 A WELL, THAT'S WHEN THEY SAID LIKE IF I KNOW WHO  
11 GOT SOME WEED AND STUFF, YOU KNOW. LIKE THEY INTERESTED TO  
12 BUY SOME -- SOME WEED, YOU KNOW. I GO CHECK AROUND, YOU  
13 KNOW, BECAUSE I TELL THEM, I DON'T HAVE NOTHING, YOU KNOW.

14 Q NOW, ARE YOU A WEED DEALER?

15 A NO, SIR.

16 Q DID YOU -- WERE YOU DEALING IN MARIJUANA BEFORE  
17 THEN?

18 A NO, SIR.

19 Q WHY ARE THEY COMING TO YOU?

20 A WELL, BECAUSE LIKE I USED TO LIKE -- I USED TO  
21 SELL C.D.'S AND STUFF, AND I'M IN THE STREETS, YOU KNOW.

22 Q NOW, WHERE ARE YOU FROM, WHAT COUNTRY?

23 A I'M ORIGINALLY FROM BELIZE.

24 Q HOW LONG HAVE YOU BEEN IN THIS COUNTRY?

25 A FOR LIKE SIX YEARS.

26 Q DO YOU KNOW TROY LEWIS'S UNCLE?

27 A YES, SIR.

28 Q AND WHAT IS HIS NAME?

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

**DOCKETED**  
**LOS ANGELES**  
JUL 18 2006  
BY M. CARTER  
NO. 172006502195

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, )  
 )  
 VS. )  
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 ROHAN MC DERMOTT, )  
 )  
 DEFENDANT-APPELLANT(S). )

NO. SA052445

JUL 07 2006

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY  
HONORABLE STEVEN R. VAN SICKLEN, JUDGE PRESIDING  
REPORTER'S TRANSCRIPT ON APPEAL  
MARCH 8, 9, 2006

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: BILL LOCKYER  
STATE ATTORNEY GENERAL  
300 SOUTH SPRING STREET  
NORTH TOWER, SUITE 5001  
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 3 OF 5  
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JOYCE KATHLEEN RODELA  
CSR NO. 9878  
OFFICIAL REPORTER

1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MC DERMOTT  
3 LOS ANGELES, CALIFORNIA WEDNESDAY, MARCH 8, 2006  
4 DEPARTMENT LX-F HON. JAMES R. DABNEY, JUDGE  
5 REPORTER: JOYCE K. RODELA, CSR NO. 9878  
6 TIME: A.M. SESSION

7

8 APPEARANCES: (AS HERETOFORE NOTED.)

9

10 (THE FOLLOWING PROCEEDINGS WERE  
11 HELD IN OPEN COURT, OUT OF THE  
12 PRESENCE OF THE JURY PANEL:)

13

14 THE COURT: ON THE RECORD ON PEOPLE VERSUS MC DERMOTT.  
15 ALL RIGHT. WE ARE HERE OUTSIDE OF THE PRESENCE OF THE JURY  
16 ON THE ISSUE OF A DEFENSE WITNESS, MS. DUNDEE (SIC).

17 MR. MARKUS: DEDUNN, D-E-D-U-N-N.

18 THE COURT: DEDUNN. SORRY.

19 AND THE COURT HAD PREVIOUSLY APPOINTED COUNSEL,  
20 MR. MURRAY, TO SPEAK WITH THE WITNESS, MS. DEDUNN. AND IT'S  
21 MY UNDERSTANDING, BASED ON REPRESENTATIONS EARLIER MADE, THAT  
22 MS. DEDUNN, IF CALLED TO THE STAND, WOULD TESTIFY IN THIS  
23 MATTER WITH REGARD TO ANY QUESTIONS RELATING TO THE SPECIFIC  
24 ACTIVITIES ON THE DATE IN QUESTION HERE WITH THE PARTIES  
25 INVOLVED, INCLUDING MR. GODOY, SHE WOULD INVOKE HER FIFTH  
26 AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION.

27 IS THAT CORRECT, MR. MURRAY?

28 MR. MURRAY: YES.

1 DWANE GODOY,  
2 CALLED AS A WITNESS BY THE PEOPLE, HAVING PREVIOUSLY BEEN  
3 SWORN, TESTIFIED AS FOLLOWS:  
4

5 DIRECT EXAMINATION (RESUMED)  
6 BY MR. MARKUS:

7 Q MR. GODOY, WE LEFT OFF YESTERDAY WITH THE 29TH OF  
8 APRIL, OKAY, AND THE MEETING AT TROY'S GRANDMOTHER'S HOUSE;  
9 DO YOU REMEMBER THAT TESTIMONY?

10 A YES, SIR.

11 Q NOW, SO THAT THE JURY UNDERSTANDS, THERE IS A  
12 PERSON BY THE NAME OF -- THERE ARE TWO DALEYS; IS THAT RIGHT?

13 A YES, SIR.

14 Q WHAT'S TROY'S UNCLE'S FIRST NAME?

15 A DAVE.

16 Q OKAY. SO LET'S CALL HIM UNCLE DAVE, OKAY?

17 A YES, SIR.

18 Q ALL RIGHT. SO WHAT HAPPENED OVER THE 29TH,  
19 APRIL 29TH INTO THE 30TH?

20 A WELL, WE WAS -- WE WAS OVER THERE ON -- ON 36TH,  
21 36TH STREET.

22 Q AND NORMANDIE?

23 A YES, SIR.

24 Q AND THAT'S WHOSE HOUSE?

25 A THAT'S JUSTICE'S, TROY'S GRANDMOTHER'S HOUSE.

26 Q AND WHAT HAPPENS?

27 A WE ALL MEET UP. IT WAS FIVE OF US. IT WAS ME,  
28 DAVE, KARLA, MC DERMOTT, AND DALEY.

1           A       HE -- HE JUST START LOOKING FOR THE TAPE LIKE --  
2       LIKE -- LIKE HE START LOOKING. HE LEAVE THE BOX, AND HE JUST  
3       START LOOKING FOR THE TAPE. HE KNOW WHERE THE TAPE WAS.

4           Q       OKAY.

5           MR. EVANS: OBJECTION: MOTION TO STRIKE AS TO WHAT  
6       MR. MC DERMOTT KNOWS. CALLS FOR SPECULATION.

7           THE COURT: ALL RIGHT. THE LAST PORTION WHERE HE KNOWS  
8       WHERE THE TAPE WAS WILL BE STRICKEN.

9           GO AHEAD.

10       BY MR. MARKUS:

11       Q       WAS THERE TAPE IN THE ROOM?

12       A       YES, SIR.

13       Q       WHERE WAS IT?

14       A       IT WAS LIKE -- LIKE -- LIKE RIGHT WHERE  
15       MC DERMOTT WAS, IN LIKE THE KITCHEN AREA.

16       Q       OKAY. WHAT DID MR. MC DERMOTT DO WHEN HE WAS  
17       TOLD TO GET THE TAPE BY MR. DALEY?

18       A       HE GET THE TAPE.

19       Q       WHAT HAPPENED NEXT?

20       A       AT THIS TIME DALEY, HE STILL GOT THE GUN, AND HE  
21       TELLING US LIKE FROM WHEN HE CAME TO AMERICA, HE NEVER WORK.  
22       AND, YOU KNOW, HE LIKE -- BEFORE HE LEAVE HERE, HE GONNA KILL  
23       BOTH OF US AND JUST LEAVE US IN THE CLOSET TO STINK UP.

24       MR. EVANS: FOR THE RECORD, AGAIN, WITH THE RIGHT HAND,  
25       HOLDING IT AS IF A FACSIMILE PISTOL, MOVING BACK AND FORTH.

26       THE COURT: WITH HIS HAND EXTENDED IN FRONT OF HIM AT  
27       ABOUT MIDCHEST LEVEL.

28       GO AHEAD.

1 Q AFTER YOU'RE TAPED THE SECOND TIME, WHAT HAPPENS?

2 A AFTER THAT, DALEY -- DALEY, HE CONTINUED TALKING  
3 LIKE -- LIKE HE GONNA -- YOU KNOW, HE GONNA KILL US. HE  
4 GONNA LEAVE US IN THE CLOSET TO STINK UP. AND THEN DALEY  
5 TELL MC DERMOTT THAT HE GONNA GO FOR -- FOR THE GIRL. AND HE  
6 DIDN'T KNOW HER NAME. HE SAID, "I'M GONNA GO FOR THE GIRL  
7 AND THE DAPA."

8 Q NOW, WHAT'S THE "DAPA"?

9 A HE TRYING TO THINK -- I GUESS THEY THOUGHT THEY  
10 WAS THE BIG MAN.

11 Q THE "DAPA" IS D-A-P-A?

12 A YES, SIR.

13 Q AND WHAT DOES THAT MEAN TO YOU?

14 A THAT MEANS LIKE -- LIKE -- LIKE THEY THOUGHT THEY  
15 WAS THE BIG MAN BEHIND IT.

16 Q THAT'S THE UNCLE THEN?

17 A YES, SIR.

18 Q WHAT DOES MR. MC DERMOTT SAY WHEN MR. DALEY SAYS  
19 THAT?

20 A WELL, MC DERMOTT -- RIGHT THEN, THAT'S WHEN DALEY  
21 PUT THE GUN HERE AND WALK THROUGH THE DOOR AND TELL DALEY,  
22 "TELL MC DERMOTT TO GET THE OTHER PISTOL," AND TO WATCH US.

23 Q NOW, WHEN YOU SAY MR. DALEY "PUT THE GUN HERE,"  
24 YOU MEAN IN HIS WAISTBAND, THE FRONT OF HIS WAISTBAND?

25 A YES, SIR.

26 Q AND MR. DALEY TOLD MC DERMOTT TO GET ANOTHER GUN?

27 A YEAH. HE TELL HIM LIKE, "GET THE OTHER GUN AND  
28 WATCH THEM."

1 Q ABOUT THREE FEET?

2 A LIKE HAND REACH.

3 Q OKAY.

4 A SO WHEN I GOT UP -- HE HAD ME TAPED LIKE THIS.  
5 I -- I MANAGED TO STRETCH THE TAPE AND PULL OUT MY HAND,  
6 BUT --

7 Q FROM BEHIND?

8 A YES, SIR, FROM BEHIND.

9 Q OKAY.

10 A BUT MY FEET WERE TAPED UP TIGHT, SO I COULDN'T  
11 GET MY FEET LOOSE. SO I PULL THE DOOR OPEN. AT THIS TIME,  
12 THAT'S WHEN DALEY TOLD MC DERMOTT TO GET THE OTHER GUN. SO  
13 HE WALK OVER BEHIND HIM. SO I DON'T THINK -- I DON'T KNOW IF  
14 THERE WAS ANOTHER GUN. I ONLY SEEN ONE GUN. SO HE --

15 Q YOU SAY HE WALKED UP BEHIND HIM. WHO WALKED UP  
16 BEHIND HIM?

17 A MC DERMOTT, HE WALK OUT BEHIND -- BEHIND DALEY.

18 Q DID I HEAR YOU SAY HE WALKED OUT BEHIND DALEY OR  
19 WALKED UP?

20 A WALK OUT.

21 Q OUT, MEANING OUT THE DOOR?

22 A YES, SIR.

23 Q WHAT HAPPENED NEXT?

24 A SO HE WALKED OUT PROBABLY TO -- TO ASK DALEY  
25 LIKE, WHAT OTHER GUN, YOU KNOW. AND THAT'S WHEN I GOT UP.  
26 AND WHEN I GOT UP, I LOOSE MY HAND. MY FEET WAS TAPED UP  
27 TIGHT. AND THEN I HOP, I MAKE ONE HOP TO THE DOOR, AND I  
28 PULL THE DOOR OPEN.

1 BY MR. MARKUS:

2 Q YOU SAY MR. MC DERMOTT WAS PUSHING AT YOU?

3 A YES, SIR.

4 Q HOW SO? DESCRIBE FOR THE JURY.

5 A HE WAS MUCH BIGGER THAN ME. I WAS MUCH SKINNER.

6 AND HE WAS TRYING TO LIKE -- HE TOLD ME LIKE, "YOU'RE NOT

7 GOING NOWHERE," LIKE, "WHERE YOU THINK YOU GOING?" AND HE

8 TRIED TO PUSH ME BACK INTO THE APARTMENT.

9 Q DID MR. MC DERMOTT HAVE AN EARRING?

10 A YES. YES, SIR.

11 Q DID YOU HAVE EARRINGS?

12 A YES, SIR. I HAD IN TWO EARRINGS.

13 Q DID YOU LOSE ANY EARRINGS?

14 A NO, SIR.

15 Q DID YOU SEE MR. MC DERMOTT LOSE AN EARRING?

16 A YES, IN THE STRUGGLE.

17 Q WHAT HAPPENED IN THE STRUGGLE? DESCRIBE FOR THE

18 JURY.

19 A WELL, HE TRIED TO -- TO HOLD ME AND PUSH ME BACK,

20 YOU KNOW. AND I'M JUST TRYING TO LIKE GET OUT, TOO, YOU

21 KNOW. AND I THINK I HAD -- I HAD SCRATCH AND STUFF FROM

22 MC DERMOTT.

23 Q DID THE WINDOW GET BROKEN?

24 A YES, SIR. IT WAS SO HARD, WE WAS PUSHING EACH

25 OTHER TILL THE WINDOW SHATTER.

26 Q WHAT BROKE THE WINDOW, IF YOU KNOW?

27 A WHAT BROKE THE WINDOW, WHEN MC DERMOTT TRY TO

28 PUSH ME BACK IN. LIKE HE SLAMMED ME, BECAUSE HE TRY TO PUT



1 ME BACK IN.

2 Q WHAT HAPPENED NEXT?

3 A AT THIS TIME THEN -- THEN I -- I -- I'M FIGHTING  
4 WITH HIM TO GET AWAY, AND THEN I MANAGE TO GET AWAY. LIKE  
5 THE FORCE THAT I'M PUSHING HIM WITH, THAT'S WHEN THE TAPE  
6 CAME LOOSE ON MY FEET, YOU KNOW. AND THAT'S WHEN I RUN  
7 THROUGH THE APARTMENT BUILDING, AND I START SCREAMING FOR  
8 HELP.

9 Q DID YOU START SCREAMING FOR HELP RIGHT OUT OF THE  
10 DOOR OR LATER?

11 A RIGHT OUT OF THE DOOR I START SCREAMING FOR HELP.  
12 IT WAS A LARGE APARTMENT BUILDING.

13 Q DID MR. --

14 THE COURT: HOLD ON. I'M SORRY. THERE'S PROBABLY NO  
15 GOOD POINT TO BREAK IN THE NEXT TEN MINUTES. WE'RE GOING TO  
16 BREAK RIGHT NOW. WE'RE GOING TO RESUME AT, LET'S SEE, 1:45.  
17 WE'LL RESUME AT 1:45.

18 REMEMBER, DON'T DISCUSS ANYTHING CONNECTED WITH  
19 THIS CASE. DON'T FORM OR EXPRESS AN OPINION ON IT UNTIL THE  
20 MATTER IS SUBMITTED TO YOU FOR YOUR DELIBERATIONS.

21 HAVE A PLEASANT LUNCH. 1:45.

22

23 (THE JURY PANEL EXITED THE COURTROOM

24 AND THE FOLLOWING PROCEEDINGS WERE

25 HELD:)

26

27 THE COURT: ALL RIGHT. THE JURORS HAVE LEFT THE  
28 COURTROOM. OKAY.

1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MC DERMOTT  
3 LOS ANGELES, CALIFORNIA THURSDAY, MARCH 9, 2006  
4 DEPARTMENT LX-F HON. JAMES R. DABNEY, JUDGE  
5 REPORTER: JOYCE K. RODELA, CSR NO. 9878  
6 TIME: A.M. SESSION

7

8

APPEARANCES: (AS HERETOFORE NOTED.)

9

10

(THE FOLLOWING PROCEEDINGS WERE

11

HELD IN OPEN COURT, OUT OF THE

12

PRESENCE OF THE JURY PANEL:)

13

14

THE COURT: ARE WE READY TO RESUME?

15

MR. EVANS: TWO THINGS.

16

17

I'VE GOT AN AUDIOTAPE, AND I BELIEVE THE PEOPLE

18

DO AS WELL, OF THE INTERVIEW WITH KARLA DEDUNN. THE ONLY  
REASON -- I WOULD LIKE THE COURT, FOR MY PURPOSES, TO LISTEN

19

TO THE BEGINNING PORTION, THE FIRST ABOUT THREE MINUTES OF

20

THE TAPE BEFORE THE INTERVIEW. THERE'S A LOT OF DISCUSSION

21

AND REASSURANCES FROM THE DETECTIVES THAT SHE WOULD NOT BE

22

PROSECUTED FOR THE MARIJUANA ISSUE OR THE MARIJUANA CASE, SHE

23

WASN'T A SUSPECT, ET CETERA. AND I'D LIKE THE COURT TO HEAR

24

IT. IT'S PROBABLY BETTER THAN I COULD EVEN STATE IT.

25

AND I THINK IT'S IMPORTANT TO UNDERSTAND THE

26

ISSUE OF JUDICIAL IMMUNITY, SO I WAS GOING TO ALLOW THE COURT

27

TO REVIEW THAT. AND I DIDN'T WANT TO DO THAT -- IT TAKES

28

ABOUT THREE MINUTES.

1 ALL RIGHT. ARE WE READY TO BRING IN THE JURY  
2 THEN?

3 MR. MARKUS: YES.

4 THE COURT: ALL RIGHT. LET'S BRING IN THE JURY.

5

6 (THE JURY ENTERED THE COURTROOM

7 AND THE FOLLOWING PROCEEDINGS

8 WERE HELD:)

9

10 THE COURT: ALL RIGHT. BACK ON THE RECORD ON PEOPLE  
11 VERSUS MC DERMOTT. BOTH COUNSEL ARE PRESENT. THE DEFENDANT  
12 IS PRESENT. WE HAVE THE JURY. AND MR. GODOY, THE WITNESS,  
13 HAS RESUMED THE STAND.

14 YOU'RE STILL UNDER OATH.

15 YOU MAY RESUME YOUR DIRECT EXAMINATION.

16 MR. MARKUS: THANK YOU, YOUR HONOR.

17

18 DWANE GODOY,  
19 CALLED AS A WITNESS BY THE PEOPLE, HAVING PREVIOUSLY BEEN  
20 SWORN, TESTIFIED FURTHER AS FOLLOWS:

21

22 DIRECT EXAMINATION (RESUMED)

23 BY MR. MARKUS:

24 Q MR. GODOY, I WANT TO ASK YOU ABOUT THIS  
25 PHOTOGRAPH AGAIN, THAT PHOTOGRAPH BEING PEOPLE'S NO. 1 FOR  
26 IDENTIFICATION.

27 DO YOU REMEMBER LOOKING AT THIS PHOTOGRAPH  
28 YESTERDAY?

1 THE RECORD.

2 THE COURT: ALL RIGHT.

3 MAY 2004, CORRECT?

4 MR. MARKUS: YES.

5 THE COURT: ALL RIGHT.

6 BY MR. MARKUS:

7 Q I MEAN, YOU REMEMBER THE TAPE-RECORDING THAT THE  
8 JURY HEARD?

9 A YES, SIR.

10 Q MAY 1ST, 2004. AND YOU WERE SITTING IN THE BACK  
11 OF THE COURTROOM WHEN THE JURY HEARD THAT, RIGHT?

12 A UH-HUH.

13 Q AND DO YOU REMEMBER WHEN THE DETECTIVE SAID,  
14 LOOK, I DON'T CARE ABOUT THE MARIJUANA CHARGES. WE'RE HERE  
15 TO INVESTIGATE -- I'M FROM HOMICIDE. WE'RE HERE TO  
16 INVESTIGATE SOMEBODY THAT WAS KILLED?

17 DO YOU REMEMBER THAT?

18 A YES, SIR.

19 MR. MARKUS: OKAY. I HAVE NOTHING FURTHER OF THIS  
20 WITNESS.

21 THE COURT: CROSS-EXAMINATION.

22 MR. EVANS: YES, YOUR HONOR. THANK YOU.

23

24

CROSS-EXAMINATION

25 BY MR. EVANS:

26 Q GOING BACK TO APRIL 30TH, 2004, AT APPROXIMATELY  
27 TWO P.M., YOU RAN OUT OF AN APARTMENT COMPLEX ON 135TH STREET  
28 NEAR -- ON YUKON, CORRECT?

1 Q AND ONE OF THE DETAILS YOU WERE -- YOU SAID, HEY,  
2 YOU KNOW, I WAS GOING OVER TO MEET ANOTHER GIRL. DID YOU  
3 TELL HER THAT, TOO?

4 A I DIDN'T TOLD HER THAT. I TOLD HER THE DETAILS,  
5 BECAUSE THAT'S MY GIRL.

6 Q WASN'T THAT PART OF YOUR STORY, THAT YOU WENT --

7 A PART OF MY STORY FIRST THAT I TOLD THE COPS, BUT  
8 I TELL MY GIRL EVERYTHING THAT HAPPEN ABOUT MC DERMOTT AND  
9 DALEY.

10 Q YOU ALSO SPOKE TO MR. LEWIS'S UNCLE, CORRECT,  
11 BEFORE YOU WENT TO THE HAWTHORNE POLICE DEPARTMENT IN THE  
12 EVENING?

13 A YES, SIR.

14 Q AND MR. LEWIS'S UNCLE TOLD YOU NOT TO TALK ABOUT  
15 THE MARIJUANA TRANSACTION; IS THAT CORRECT?

16 MR. MARKUS: THAT'S HEARSAY. OBJECTION.

17 MR. EVANS: GOES TO STATE OF MIND.

18 THE COURT: YEAH, OVERRULED.

19 DO YOU UNDERSTAND THE QUESTION?

20 THE WITNESS: YES, SIR.

21 THE COURT: OKAY. WAS THAT A CORRECT STATEMENT OR NOT?

22 THE WITNESS: YES, SIR.

23 THE COURT: OKAY.

24 BY MR. EVANS:

25 Q AND THEN WHEN YOU GO TO THE HAWTHORNE POLICE  
26 DEPARTMENT, YOU ALSO BEGIN TO TELL THE SAME STORY THAT YOU  
27 TOLD TO THE HAWTHORNE POLICE EARLIER, BETWEEN TWO AND  
28 THREE P.M., CORRECT?

1 A YES, SIR.

2 Q AND YOU WERE ABLE TO HEAR CALLS COMING FROM IT,  
3 CORRECT?

4 A YES, SIR.

5 Q ALL RIGHT. BUT ON MAY 3RD, DIDN'T YOU STATE THAT  
6 MR. LEWIS HAD TO USE YOUR PHONE BECAUSE HIS BATTERY WAS LOW  
7 BEFORE HE GOT TO THE APARTMENT?

8 A YES, SIR. HIS BATTERY WAS LOW, SO HE DIDN'T WANT  
9 TO -- THE THING -- HE WAS USING MY PHONE. HIS PHONE WAS A  
10 PREPAID PHONE.

11 Q SO WAS THERE A PROBLEM OR NOT A PROBLEM WITH THE  
12 PHONE, WITH THE BATTERY GETTING LOW?

13 A WELL, IT'S NOT A PROBLEM. THE PHONE JUST ON LOW  
14 BATTERY. IT'S STILL ON.

15 Q NOW, IT'S YOUR TESTIMONY THAT WHEN YOU LEFT 36TH  
16 AND NORMANDIE, YOU HEADED OVER TO A LOCATION NEAR MANUEL ARTS  
17 HIGH SCHOOL?

18 A YES, SIR.

19 Q AND THEN YOU -- AFTER THAT, YOU WENT TO ANOTHER  
20 LOCATION OVER ON VERMONT, CORRECT?

21 A YES, SIR.

22 Q AND THE -- YOU ARE STATING THAT AT SOME POINT  
23 DURING THIS THAT -- WELL, PRIOR TO YOU LEAVING TO GO -- TO  
24 LEAVE 36TH AND NORMANDIE, BEFORE YOU LEFT THERE, THERE WAS AN  
25 AGREEMENT AMONGST EVERYONE TO GO TO 135TH AND YUKON, CORRECT?

26 A YES, SIR.

27 Q SO -- AND YOU HAD NEVER BEEN THERE, CORRECT?

28 A NO, SIR.

1 Q ALL RIGHT. AND AS FAR AS YOU KNOW, MS. DEDUNN  
2 HAD NEVER BEEN THERE, CORRECT?

3 A MR. WHO?

4 Q MS. DEDUNN, KARLA.

5 A NO, SIR.

6 Q SO THAT'S CORRECT, AS FAR AS YOU KNOW, THAT  
7 MS. KARLA DEDUNN, TROY'S GIRLFRIEND, HAD NEVER BEEN THERE, AS  
8 FAR AS YOU KNEW, CORRECT?

9 A YES, SIR.

10 Q ALL RIGHT. BUT THEN YOU SAY THAT MR. MC DERMOTT  
11 AND MR. DALEY LEAVE SEPARATE FROM YOU AND MR. LEWIS, CORRECT?

12 A YES, SIR.

13 Q AND THEN IT'S YOUR STATEMENT THAT ALL OF A SUDDEN  
14 MR. MC DERMOTT'S CAR IS FOLLOWING KARLA'S CAR?

15 A WHEN -- WHEN WE LEAVE FROM -- FROM 36TH, YOU  
16 KNOW, THAT'S WHEN JUS HAD TOLD HIS GIRLFRIEND LIKE TO JUST GO  
17 DRIVE, YOU KNOW. AND ME AND HIM WAS SUPPOSED TO GO FOR THE  
18 SCALE, YOU KNOW.

19 AND THEN HE CALL HIS GIRL, AND HIS GIRL LIKE,  
20 "THESE GUYS FOLLOWING ME," YOU KNOW. SO THAT'S WHEN WE CALL  
21 HIM AND TELL HIM LIKE TO PULL OVER, SO THEY DON'T TRY AND  
22 FOLLOW HER.

23 Q YOU TELL THEM TO PULL OVER BY MANUEL ARTS?

24 A WELL, THEY PULL OVER BY THERE.

25 Q OKAY. NOW, PRIOR TO LEAVING 36TH AND NORMANDIE,  
26 THE BIG CONCERN WAS, WE DON'T HAVE A SCALE, WE ARE NOT DOING  
27 THE DEAL; FAIR STATEMENT?

28 A YES, SIR.

1 Q NOW, PRIOR TO HOPPING TO THE DOOR, IN YOUR MIND  
2 IT'S YOUR BELIEF THAT MR. DALEY'S LEAVING THE APARTMENT TO  
3 LOOK FOR SOMEONE, RIGHT?

4 A WELL, THAT'S WHAT HE SAID.

5 Q OKAY. BUT THAT'S WHAT YOU BELIEVE AT THIS POINT;  
6 IS THAT A FAIR STATEMENT?

7 A YES, SIR.

8 Q AND YOU KNOW HE, THAT IS MR. MC DERMOTT, DIDN'T  
9 HAVE A GUN, RIGHT?

10 A I DON'T --

11 Q IS THAT CORRECT?

12 A I DON'T KNOW. I DIDN'T SEE HIM WITH A GUN.

13 Q OKAY. SO YOU DIDN'T SEE HIM WITH A GUN, CORRECT?

14 A NO, SIR.

15 Q ALL RIGHT. NOW, SO THEN YOU -- YOU SAY YOU  
16 HOPPED TO THE DOOR, RIGHT?

17 A YES, SIR.

18 Q AND THEN IT'S -- YOU SHOWED US IN THE TAPE YOU  
19 WENT THROUGH -- YOU WENT THROUGH A WALK-THROUGH OR YOU  
20 DRAMATIZED HOW YOU HOPPED TO THE DOOR. YOU REMEMBER YOU DID  
21 THAT ON MAY 1ST, HOW YOU HOPPED OVER TO THE DOOR? YOU DID  
22 THAT IN THE INTERVIEW ROOM.

23 DO YOU REMEMBER THAT?

24 A YES, SIR.

25 Q AND THEN YOU SHOWED HOW YOU HOPPED BACK TO BE  
26 ABLE TO OPEN THE DOOR, RIGHT?

27 A YES, SIR.

28 Q ALL RIGHT. AND THEN YOU SAY YOU SAW



1 MR. MC DERMOTT COMING THROUGH THE DOOR, RIGHT?

2 A YES, SIR.

3 Q OKAY. SO YOUR FEET ARE STILL BOUND WHEN YOU  
4 CONFRONT MR. MC DERMOTT, CORRECT?

5 A YES, SIR.

6 Q BUT IT'S YOUR TESTIMONY THAT YOU'RE ABLE TO STAY  
7 ON YOUR FEET AT THIS TIME AND WRESTLE WITH MR. MC DERMOTT?

8 A YES, SIR.

9 Q A MAN WHO'S CONSIDERABLY LARGER THAN YOU, AS YOU  
10 TESTIFIED, CORRECT?

11 A YES, SIR.

12 Q HE'S PROBABLY STRONGER THAN YOU BECAUSE HE'S FIT,  
13 AS YOU DESCRIBED HIM, RIGHT?

14 A YES, SIR.

15 Q AND AT THAT TIME YOU SAY THAT YOUR FEET BREAK  
16 FREE, CORRECT?

17 A YES, SIR.

18 Q AND YOU ARE ABLE TO RUN OUT OF THE APARTMENT?

19 A YES, SIR.

20 Q AND AS YOU'RE RUNNING OUT OF THE APARTMENT,  
21 YOU'RE YELLING FOR HELP, RIGHT?

22 A YES, SIR.

23 Q AND MR. MC DERMOTT IS RUNNING BEHIND YOU,  
24 CORRECT?

25 A UH-HUH, LIKE TWO APARTMENT BUILDING. THEN HE  
26 TURN BACK.

27 Q HE TURNED BACK --

28 A YES, SIR.

1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MC DERMOTT  
3 LOS ANGELES, CALIFORNIA THURSDAY, MARCH 9, 2006  
4 DEPARTMENT LX-F HON. JAMES R. DABNEY, JUDGE  
5 REPORTER: JOYCE K. RODELA, CSR NO. 9878  
6 TIME: P.M. SESSION

7

8 APPEARANCES: (AS HERETOFORE NOTED.)

9

10 (THE JURY ENTERED THE COURTROOM  
11 AND THE FOLLOWING PROCEEDINGS  
12 WERE HELD:)

13

14 THE COURT: ALL RIGHT. BACK ON THE RECORD ON PEOPLE  
15 VERSUS MC DERMOTT. WE ARE READY TO RESUME WITH THE  
16 CROSS-EXAMINATION.

17

WHERE'S THE WITNESS?

18

MR. MARKUS: WITH THE COURT'S PERMISSION, WE'LL CALL A  
19 WITNESS OUT OF ORDER.

20

THE COURT: OKAY. EXCUSE ME, MR. GODOY.

21

YES, YOU MAY.

22

MR. MARKUS: THANK YOU.

23

PEOPLE CALL PETER KERGIL.

24

MR. EVANS: MAY WE HAVE MR. GODOY WAIT OUTSIDE?

25

THE COURT: OKAY.

26

THE CLERK: PLEASE WAIT TO BE SWORN. RAISE YOUR RIGHT

27

HAND.

28

1 PETER KERGIL,  
2 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND TESTIFIED AS  
3 FOLLOWS:

4 THE CLERK: DO YOU SOLEMNLY STATE THAT THE TESTIMONY  
5 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL  
6 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO  
7 HELP YOU GOD?

8 THE WITNESS: I DO.

9 THE CLERK: PLEASE TAKE THE WITNESS STAND, BE SEATED.  
10 PLEASE STATE YOUR NAME FOR THE RECORD, AND THEN  
11 SPELL YOUR FULL NAME.

12 THE WITNESS: PETER JAMES KERGIL; P-E-T-E-R, J-A-M-E-S;  
13 LAST NAME IS SPELLED K-E-R-G-I-L.

14 THE CLERK: THANK YOU.

15 THE COURT: YOU MAY PROCEED.

16 MR. MARKUS: MAY I PROCEED? THANK YOU.

17

18 DIRECT EXAMINATION

19 BY MR. MARKUS:

20 Q BY WHOM ARE YOU EMPLOYED?

21 A BY THE SHERIFF'S DEPARTMENT, LOS ANGELES COUNTY.

22 Q AND WHAT DO YOU DO FOR THE LOS ANGELES SHERIFF'S  
23 DEPARTMENT?

24 A I'M A SUPERVISING FORENSIC IDENTIFICATION  
25 SPECIALIST. I'M ASSIGNED TO THE SCIENTIFIC SERVICES BUREAU.

26 Q AND WHAT DO YOU DO AT THE SCIENTIFIC SERVICES  
27 BUREAU -- SCIENTIFIC SERVICES BUREAU?

28 A MY DUTIES ARE TO SUPERVISE OTHER IDENTIFICATION

1 REFERRING TO?

2 MR. MARKUS: YES.

3 MR. EVANS: YES.

4 MR. MARKUS: THANK YOU.

5 Q AND SO BUNDLES OF NEWSPAPER THAT WERE WRAPPED IN  
6 MONEY, THEN WRAPPED IN CELLOPHANE WERE SUBMITTED TO YOU FOR  
7 PURPOSES OF PRINTS IN THE "C" SERIES; IS THAT CORRECT?

8 A YES.

9 Q NOW, OFF THE NEWSPAPER ITSELF THAT WAS INSIDE THE  
10 MONEY, OKAY, WERE PRINTS LIFTED?

11 A YES.

12 Q OKAY. AND LET'S REFER TO C-3 AND C-6.

13 A YES. THEY WERE NOT ACTUALLY LIFTS. THEY WERE  
14 PHOTOGRAPHS OF LATENT PRINTS THAT WERE DEVELOPED ON THAT  
15 NEWSPAPER.

16 Q ON THE NEWSPAPER ITSELF. I APOLOGIZE.

17 A YES.

18 Q AND THERE WERE -- HOW MANY BUNDLES OF PAPER WERE  
19 SUBMITTED TO YOU, IF YOU RECALL?

20 A FROM THE DOCUMENTATION I HAVE, I BELIEVE IT WOULD  
21 BE SIX.

22 Q THANK YOU.

23 SO C-1 THROUGH 6 WERE EXAMINED. AND ON C-3 AND  
24 C-6 PRINTS WERE LIFTED -- NOT LIFTED. PRINTS WERE FOUND ON  
25 THE NEWSPAPER?

26 A YES. ON NO. C-3 WAS A PRINT THAT WAS DEVELOPED  
27 ON A SMALL PIECE OF NEWSPAPER IN BUNDLE NO. 1.

28 Q OKAY. AND WHO WAS THAT COMPARED TO AND MATCHED

1 TO?

2 A I IDENTIFIED THAT AS THE RIGHT INDEX FINGER OF  
3 MR. DALEY.

4 Q OKAY. C-6?

5 A C-6 IS FROM A SMALL PIECE OF NEWSPAPER IN BUNDLE  
6 NO. 6. I IDENTIFIED THAT AS THE LEFT PALM PRINT OF  
7 MR. DALEY.

8 Q LET'S GO TO THE "D" SERIES.

9 A I HAVE THE "D" PACKAGE IN FRONT OF ME.

10 Q WERE THERE PRINTS LIFTED FROM -- WELL, LET'S GO  
11 BACK.

12 PRINTS IN THE "D" SERIES WERE LIFTED FROM WHAT,  
13 WHAT OBJECT OR ITEM?

14 A THERE ARE THREE LIFTS THAT WERE MADE, AND ONE  
15 PHOTOGRAPH THAT WAS MADE. THEY ALL ARE FROM A ROLL OF CLEAR  
16 ULINE PACKING TAPE.

17 Q OKAY. AND THOSE LIFTS WERE COMPARED TO AND  
18 MATCHED TO WHOM?

19 A D-1 I IDENTIFIED AS THE LEFT THUMB OF  
20 MR. MC DERMOTT. D-2 I IDENTIFIED AS THE RIGHT INDEX FINGER  
21 OF MR. MC DERMOTT. D-3 I IDENTIFIED AS THE RIGHT THUMB OF  
22 MR. MC DERMOTT. AND D-4 I IDENTIFIED AS THE LEFT THUMB OF  
23 MR. MC DERMOTT.

24 Q SO ALL FOUR CAME BACK TO MR. MC DERMOTT?

25 A YES, SIR.

26 Q NOW, LET ME ASK YOU A COUPLE OF QUESTIONS ABOUT  
27 LIFTING PRINTS AND PRINTS THEMSELVES. LET'S JUST TAKE AN  
28 OBJECT LIKE NEWSPAPER. IF I WALKED UP AND TOUCHED A

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## REDIRECT EXAMINATION

BY MR. MARKUS:

Q SO THAT THE JURY UNDERSTANDS, A VARIETY OF ITEMS  
WERE SUBMITTED FOR PURPOSES OF PRINTS, CORRECT?

A YES.

Q AND ON A LOT OF ITEMS PRINTS WEREN'T OBTAINED; IS  
THAT CORRECT?

A THAT'S CORRECT.

Q SO WHAT YOU'RE DEMONSTRATING TO THE JURY HERE IS  
THE ITEMS THAT PRINTS WERE OBTAINED AND THE ONES THAT MATCH  
THE DEFENDANTS IN THIS CASE; IS THAT CORRECT?

A YES.

MR. MARKUS: THANK YOU.

I HAVE NOTHING FURTHER.

MR. EVANS: NOTHING, YOUR HONOR. THANK YOU.

THE COURT: ALL RIGHT. YOU MAY BE EXCUSED.

DO WE HAVE -- THE NEXT WITNESS IS MR. GODOY?

MR. MARKUS: YES.

THE COURT: OKAY. ALL RIGHT.

YOU MAY PROCEED.

MR. EVANS: THANK YOU.

DWANE GODOY,

CALLED AS A WITNESS BY THE PEOPLE, HAVING PREVIOUSLY BEEN  
SWORN, TESTIFIED FURTHER AS FOLLOWS:

## 1 CROSS-EXAMINATION (RESUMED)

2 BY MR. EVANS:

3 Q MR. GODOY, LET'S GO BACK TO THE TIME PERIOD WHEN  
4 YOU CLAIM THAT MR. MC DERMOTT LEFT THE APARTMENT, REFERRING  
5 TO APARTMENT 200; DO YOU REMEMBER THAT TESTIMONY?

6 A YES, SIR.

7 Q ALL RIGHT. NOW, PRIOR TO THAT, PRIOR TO HIS  
8 LEAVING, YOU SAY THAT MR. DALEY LEFT. THAT WAS YOUR  
9 TESTIMONY ON DIRECT, CORRECT?

10 A YES, SIR.

11 Q NOW, BEFORE MR. DALEY LEFT, HE SAID SOMETHING  
12 LIKE, "I'M GOING TO GO GET THE DAPA AND THE GIRL," OR "THE  
13 BITCH," ONE OF THE TWO OR BOTH, CORRECT?

14 A YES, SIR.

15 Q NOW, JUST SO WE'RE CLEAR, "THE GIRL" REFERS TO  
16 KARLA DEDUNN, AS YOU UNDERSTAND, CORRECT?

17 A NO, SIR.

18 Q IT REFERS TO TROY'S GIRLFRIEND?

19 A HE SAY HE GONNA GO GET THE GIRL.

20 Q "THE GIRL," IS THAT MS. DEDUNN, AS FAR AS YOU  
21 UNDERSTAND?

22 A YES.

23 Q NOW, AT THAT TIME, PRIOR TO ARRIVAL AT THE -- AT  
24 THE APARTMENT, YOU DROVE SEPARATELY WITH MR. LEWIS, CORRECT?

25 A NO, SIR.

26 Q YOU DIDN'T DRIVE WITH MR. LEWIS IN THE CAR?

27 A YEAH, WE WAS TOGETHER. YOU SAID, "SEPARATELY."

28 Q OH, I'M SORRY. I MEANT YOU WERE IN A SEPARATE

1 SECONDS THAT YOU WERE IN THAT APARTMENT ALONE BEFORE  
2 MR. MC DERMOTT CAME BACK?

3 A YES, SIR.

4 Q ALL RIGHT. NOW, WHILE YOU'RE THERE ALONE, YOU'RE  
5 ON THE -- PRIOR TO GETTING UP, YOU'RE ON THE FLOOR LAYING  
6 NEXT TO MR. LEWIS, CORRECT?

7 A YES, SIR.

8 Q AND YOUR CELL PHONE IS RIGHT OVER THERE BY YOUR  
9 FEET, AS WE SAW IN THE PICTURE, RIGHT?

10 A YES, SIR.

11 Q ALL RIGHT. SO AS SOON AS MR. MC DERMOTT LEAVES  
12 AND YOU'RE ALONE WITH MR. LEWIS, YOU'RE ABLE TO GET YOUR HAND  
13 FREE, CORRECT?

14 A YES, SIR.

15 Q THEN YOU PICK UP THE PHONE AND CALL 911; IS THAT  
16 WHAT YOU DID?

17 A NO, SIR.

18 Q AND PLEASE TELL US WHAT WAS FUNNY ABOUT MY  
19 QUESTION.

20 A I SAID, NO, SIR.

21 Q OKAY. SO YOU DIDN'T USE A CELL PHONE.

22 YOU'RE LYING NEXT TO MR. LEWIS. DID YOU SAY TO  
23 MR. LEWIS, "LET'S GO"?

24 A NO, SIR.

25 Q YOU UNTIE YOUR HANDS, BUT YOU DID NOTHING TO  
26 UNTIE MR. LEWIS; IS THAT CORRECT?

27 A YES, SIR.

28 Q AND DURING THIS WHOLE TIME WHILE YOU'RE TRYING TO



1 PUSH HIM, YOU KNOW. AND THIS TIME WE STRUGGLING. I EVEN  
2 THINK IN THE STRUGGLE HIS EARRING DROP RIGHT THERE AT THE  
3 DOOR.

4 Q AT ANY TIME DURING MAY 3RD, 2004, DID YOU MENTION  
5 AN EARRING FALLING OUT OF MR. MC DERMOTT'S EAR?

6 A I'M NOT -- I'M NOT SURE.

7 Q SO YOU RUN OUT OF THE APARTMENT AND YOU YELL,  
8 "HELP," RIGHT?

9 A YES, SIR.

10 Q WHY DON'T HE DEMONSTRATE FOR ALL OF US HOW LOUD  
11 YOU ACTUALLY SAID THAT. YOU MIGHT WANT TO STEP AWAY FROM THE  
12 MICROPHONE SO WE CAN GET THE TRUE SOUND OF YOUR VOICE.

13 A OKAY. I RAN OUT, AND I WAS LIKE, "HELP, HELP."  
14 AND I'M JUST RUNNING.

15 Q HOW MANY TIMES DID YOU SAY "HELP"?

16 A I DON'T KNOW HOW MANY TIMES.

17 Q A LOT?

18 A I SAID A LOT, TILL I GOT OUT OF BUILDING, SO  
19 SOMEBODY COULD HEAR SOMETHING.

20 Q YOU WENT PAST A NUMBER OF APARTMENTS WHILE YOU'RE  
21 DOING THAT, RIGHT?

22 A WELL, I'M JUST RUNNING, YOU KNOW. I DON'T EVEN  
23 KNOW WHERE I'M RUNNING AT THIS TIME, BUT I'M RUNNING. I SEE  
24 THE EXIT, AND THAT'S WHERE I EXIT, ON YUKON.

25 Q POUNDING ON THE DOORS AS YOU'RE GOING BY?

26 A POUNDING ON -- NO, I AIN'T POUNDING ON NO DOOR.

27 Q NOW, MR. MC DERMOTT COMES OUT OF THE APARTMENT.  
28 HE GOES ABOUT TWO APARTMENTS DOWN AND THEN STOPS, RIGHT?

1 THE COURT: BINDLES?

2 BY MR. MARKUS:

3 Q OR BUNDLES.

4 THE COURT: BRICKS, BRICKS.

5 THE WITNESS: LOTS OF BINDLES. MANY, MANY BINDLES.

6 BY MR. MARKUS:

7 Q BRICKS?

8 A A LOT.

9 Q OKAY. HOW MANY IS A LOT; DO YOU KNOW?

10 A A LOT. LIKE I'M GOING TO SAY LIKE IT'S A LOT,  
11 LIKE THE BACK OF THE TRUCK WAS FILLED.

12 Q SO THE WHOLE BACK OF THE TRUCK WAS FILLED?

13 A YES, SIR.

14 MR. MARKUS: I HAVE NOTHING FURTHER.

15 THE COURT: GO AHEAD.

16

17

RECROSS-EXAMINATION

18 BY MR. EVANS:

19 Q I'LL SHOW YOU WHAT'S BEEN MARKED PEOPLE'S 1. I'M  
20 SURE YOU'VE SEEN THAT PICTURE. SEE THAT PICTURE UP THERE?

21 A YES, SIR.

22 Q JUST SO WE'RE CLEAR, DO YOU RECOGNIZE THAT  
23 PICTURE?

24 A YES, SIR.

25 Q NOW, WHEN YOU TESTIFIED PREVIOUSLY, YOU INDICATED  
26 THAT YOU EXITED THE -- THE APARTMENT COMPLEX OVER HERE ON THE  
27 LOWER LEFT CORNER, CORRECT?

28 A I DON'T REALLY -- TO TELL YOU THE TRUTH, I DON'T

1 HIM FOREVER TO COME UP.

2 Q AND THAT'S ABOUT ALL THAT HE SAID SUBSTANTIVELY  
3 TO KARLA; IS THAT CORRECT?

4 A WHAT YOU SAY?

5 Q THAT'S ABOUT ALL HE SAID TO KARLA REGARDING  
6 COUNTING THE MONEY?

7 A THAT'S WHAT I HEARD.

8 Q OKAY. ALL RIGHT. ALL RIGHT. JUST SO WE'RE  
9 CLEAR, HE DIDN'T SAY, WAIT OVER THERE AT THE 7-ELEVEN ON  
10 LEMOLI, DID HE? HE DIDN'T SAY ANYTHING LIKE THAT, DID HE?

11 A WELL, HE WAS LIKE -- I TELL YOU, HE WAS ON THE  
12 PHONE WITH HER EVERY MINUTE, LIKE JUST TO MAKE SURE SHE'S  
13 SAFE.

14 Q OKAY. HE DIDN'T TELL -- HE DIDN'T ANNOUNCE OUT  
15 LOUD HER LOCATION ON THE TELEPHONE, CORRECT?

16 A WELL, WHEN WE -- WHEN WE PULLED UP FIRST, YOU  
17 KNOW, LIKE HE TALKING TO HIS GIRL. LIKE I TELL YOU, I WAS  
18 SITTING THERE, YOU KNOW --

19 Q NO, SIR. I DON'T KNOW. I'M ASKING YOU ABOUT THE  
20 TIME --

21 THE COURT: HOLD ON.

22 MR. MARKUS: WAIT, WAIT.

23 THE COURT: DID YOU EVER MENTION -- DID YOU EVER  
24 MENTION -- DID MR. LEWIS EVER MENTION KARLA'S LOCATION ON THE  
25 PHONE, WHILE TALKING TO HER ON THE PHONE, IN THE PRESENCE OF  
26 EITHER MR. DALEY OR MR. MC DERMOTT.

27 THE WITNESS: YES.

28

1 BY MR. EVANS:

2 Q HE DID?

3 A YES.

4 Q WHEN?

5 A WELL, WHEN WE WERE -- THAT'S WHY I SAID WHEN WE  
6 WAS IN THE APARTMENT -- WHEN WE WAS IN THE APARTMENT, YOU  
7 KNOW, HE TALKING TO HIS GIRL. YOU KNOW WHAT I'M SAYING?

8 Q IS HE MENTIONING THE 7-ELEVEN WHEN HE'S TALKING  
9 TO HER?

10 A I MEAN -- I MEAN, THAT'S HOW DALEY KNEW. THAT'S  
11 WHY. DALEY WAS THE ONE LEAVING TO GO FOR THEM. THAT'S HOW  
12 HE HEARD.

13 Q ARE YOU SAYING, SIR, THAT MR. LEWIS IS SAYING THE  
14 WORDS "7-ELEVEN" ON THE TELEPHONE WHEN HE'S IN THE APARTMENT?

15 A HE'S NOT SAYING IT LIKE THAT.

16 Q OKAY. SIR, YOU TESTIFIED PREVIOUSLY THAT YOU  
17 NEVER TOLD ANY OF THE JAMAICANS WHERE MS. KARLA WAS, CORRECT?

18 A YES.

19 Q ALL RIGHT. AND LEWIS NEVER TOLD THE JAMAICANS  
20 WHERE KARLA WAS, CORRECT?

21 A NO, SIR, HE DIDN'T.

22 Q THAT MEANS I'M CORRECT?

23 A YES.

24 Q OKAY. NOW, SIR, YOU SAID THAT YOU BELIEVE THAT  
25 YOU LOST SOME OF THE DUCT TAPE, OR IT FELL OFF YOUR BODY AS  
26 YOU WERE RUNNING TO THE WOMAN'S HOUSE THAT YOU ASKED TO CALL  
27 THE POLICE. IS THAT WHAT YOUR TESTIMONY IS?

28 MR. MARKUS: OBJECTION: MISSTATES THE EVIDENCE. HE

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

**DOCKETED**  
**LOS ANGELES**

JUL 18 2006

BY M. CARTER

NO. LA200650295

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, )  
 )  
 VS. )  
 )  
 ROHAN MC DERMOTT, )  
 )  
 DEFENDANT-APPELLANT(S). )

NO. SA052445

JUL 07 2006

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY  
HONORABLE STEVEN R. VAN SICKLEN, JUDGE PRESIDING  
REPORTER'S TRANSCRIPT ON APPEAL

MARCH 10, 2006

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: BILL LOCKYER  
STATE ATTORNEY GENERAL  
300 SOUTH SPRING STREET  
NORTH TOWER, SUITE 5001  
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 4 OF 5  
PAGES 1801 THRU 1953

**COPY**

JOYCE KATHLEEN RODELA  
CSR NO. 9878  
OFFICIAL REPORTER

1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MC DERMOTT  
3 LOS ANGELES, CALIFORNIA FRIDAY, MARCH 10, 2006  
4 DEPARTMENT LX-F HON. JAMES R. DABNEY, JUDGE  
5 REPORTER: JOYCE K. RODELA, CSR NO. 9878  
6 TIME: A.M. SESSION

7

8 APPEARANCES: (AS HERETOFORE NOTED.)

9

10 (THE FOLLOWING PROCEEDINGS WERE  
11 HELD IN OPEN COURT, OUT OF THE  
12 PRESENCE OF THE JURY PANEL:)

13

14 THE COURT: BACK ON THE RECORD ON PEOPLE VERSUS  
15 MC DERMOTT. BOTH COUNSEL ARE PRESENT. THE DEFENDANT IS  
16 PRESENT. THE JURY IS NOT PRESENT.

17

18 WE'RE HERE ON THE ISSUE OF THE TESTIMONY OF  
19 MS. KARLA DEDUNN. I GUESS THE FIRST ISSUE TO BE RESOLVED IS  
20 THE QUESTION OF WHETHER OR NOT IN THE REQUEST THAT THE COURT  
GRANT IMMUNITY TO MS. DEDUNN.

21

IS THAT CORRECT, MR. EVANS?

22

MR. EVANS: THAT'S CORRECT, YOUR HONOR.

23

THE COURT: OKAY. ALL RIGHT. DO YOU WISH TO BE HEARD?

24

25

MR. EVANS: YES. IF ANY CASE SCREAMS FOR JUDICIAL  
IMMUNITY, THIS IS THE CASE, YOUR HONOR.

26

27

28

AS THE COURT NOTES IN THE *PEOPLE VS. STEWART*  
CASE, A RECENT CALIFORNIA SUPREME COURT SET FORTH THAT  
THERE'S THREE -- THREE-PART TESTS THAT MUST BE MET.

1 APPARENTLY IN AN EFFORT TO ASSUAGE HIS FEARS ABOUT GOING TO  
2 THE APARTMENT. THAT WAS HER TAKE ON THE SITUATION.

3 AND THEN -- BUT SHE ALSO CLAIMS THAT SHE HAD NO  
4 MARIJUANA IN HER CAR. BEYOND THAT -- AND I SEE THAT AS  
5 CLEARLY IT WOULD BE RELEVANT IF SHE WERE TO TESTIFY. AND I  
6 THINK, CLEARLY, IT WOULD BE BENEFICIAL TO THE DEFENSE IF SHE  
7 WERE TO TESTIFY. I DON'T DOUBT THAT.

8 I JUST DON'T SEE THAT IT'S BEING ESSENTIAL -- AS  
9 BEING ESSENTIAL TO THE DEFENSE, BECAUSE IT REALLY DOES RELATE  
10 TO -- I DON'T SEE IT AS BEING CLEARLY EXCULPATORY, BECAUSE IT  
11 DOESN'T GO TO THE HEART OF THE CASE AS TO WHAT TRANSPIRED IN  
12 APARTMENT 200.

13 SO IN LIGHT OF WHAT I THINK IS QUITE CLEAR, IT  
14 WOULD BE AN EXTRAORDINARY ACTION ON THE COURT TO GRANT  
15 IMMUNITY OUTSIDE OF THE PURVIEW OF 1324. AND BECAUSE I DON'T  
16 BELIEVE IT MEETS THAT TEST AS TO THE SECOND TEST THAT'S  
17 DISCUSSED, RELATING TO THE PROSECUTOR INTENTIONALLY REFUSING  
18 TO GRANT IMMUNITY TO ONE WITNESS AS OPPOSED TO ANOTHER  
19 WITNESS IN ORDER TO SUBVERT THE FACT-FINDING PROCESS, I THINK  
20 FOR GOOD REASON THERE'S NOTHING IN THERE TO INDICATE THAT'S  
21 WHAT'S GOING ON IN THIS PARTICULAR CASE.

22 MR. EVANS: BUT I HAVE RAISED THAT ISSUE, RAISED THAT  
23 PREVIOUSLY. AND I SAID I DON'T UNDERSTAND IF THAT IS NOT AN  
24 ISSUE IN THIS CASE, THEN WHY IS ONE BEING OFFERED IMMUNITY  
25 AND ONE NOT BEING OFFERED IMMUNITY, BECAUSE ONE HELPS THE  
26 PROSECUTION'S CASE AND ONE DOES NOT.

27 THE COURT: I CAN SEE -- FIRST OF ALL, MR. GODOY CHOSE  
28 TO TESTIFY WITHOUT A GRANT OF IMMUNITY, AND DID SO. IT WAS

1 CLEAR THAT THE PEOPLE WERE -- HAD INDICATED A WILLINGNESS TO  
2 GRANT HIM IMMUNITY; AND, IN FACT, WOULD HAVE ASKED THE COURT  
3 TO COMPEL HIM TO ANSWER SHOULD HE HAVE INVOKED UNDER 1324.  
4 BUT THIS IS NOT A SITUATION, I THINK, WHERE CLEARLY I CAN  
5 SEE -- I DON'T SEE THAT IT'S DISTORTING THE JUDICIAL  
6 FACT-FINDING PROCESS.

7 YOU HAVE MR. GODOY WHO WAS, BASED ON HIS  
8 TESTIMONY AND HIS STATEMENTS, PRESENT AT THE TIME. AND IF  
9 YOU WERE LOOKING TO WHO YOU'RE GOING TO GRANT IMMUNITY TO IN  
10 THIS PARTICULAR CASE, IT WOULD CERTAINLY BE MR. GODOY.

11 AND QUITE FRANKLY, MS. DEDUNN WOULDN'T HAVE  
12 HELPED, BECAUSE SHE WASN'T PRESENT AT THE TIME OF THE ACTUAL  
13 HOMICIDE. IT WOULD HAVE BEEN TANGENTIALLY -- JUST  
14 TANGENTIALLY INVOLVED.

15 SO I DON'T BELIEVE THAT THIS MEETS THE SECOND  
16 TEST EITHER, SO I'M GOING TO DENY THE REQUEST FOR GRANTING  
17 MS. DEDUNN IMMUNITY IN THIS PARTICULAR CASE.

18 MR. EVANS: IF I JUST MAY MAKE A RECORD.

19 THE COURT: SURE.

20 MR. EVANS: THE DISCUSSION BEFORE WITH THE COURT AS TO  
21 THE ISSUE WHERE IT DOESN'T GO TO OUR CASE, AND, YOU KNOW, THE  
22 ESSENTIAL ASPECTS OF OUR CASE, YOUR HONOR, IT'S OUR BELIEF  
23 THAT THAT MARIJUANA WAS IN MR. GODOY'S CAR. IT WASN'T IN  
24 MS. DEDUNN'S CAR. AND THAT PLAYS RIGHT INTO OUR CENTRAL  
25 POSITION THAT HE WAS PART OF THIS ROBBERY.

26 THE COURT: I UNDERSTAND. BUT MS. DEDUNN NEVER SAYS  
27 THAT THE DOPE WAS IN -- SHE JUST SAYS IT WASN'T IN HER CAR.

28 MR. EVANS: WELL, WHERE ELSE WOULD IT BE? IF THEY'RE



1           .           BUT I DON'T THINK IT REALLY HINGES ON WHETHER OR  
2 NOT THEY INTEND TO PROSECUTE HER OR NOT FOR THE -- FOR THE  
3 MARIJUANA, WHICH LEADS US TO THE SECOND ISSUE, AND THAT IS  
4 THIS: THE ISSUE OF WHETHER OR NOT, GIVEN THE FACT THAT SHE  
5 HAS INVOKED -- AND BOTH COUNSEL STIPULATED TO THE PROCEDURE  
6 OF HAVING HER INVOKE WITHOUT CALLING HER TO THE STAND AND  
7 ASKING HER SPECIFIC QUESTIONS. SHE DID INVOKE HER FIFTH  
8 AMENDMENT RIGHTS, SO SHE'S UNAVAILABLE.

9           NOW, WHETHER OR NOT THE STATEMENT SHOULD BE  
10 ADMISSIBLE IN WHOLE OR IN PART AS A STATEMENT AGAINST PENAL  
11 INTEREST...

12           AND I'LL LET YOU, MR. EVANS, EXPLAIN TO ME HOW  
13 THIS IS A STATEMENT AGAINST PENAL INTEREST WITHIN THE MEANING  
14 OF THE EVIDENCE CODE.

15           MR. EVANS: YOUR HONOR, THE PEOPLE HAVE -- I THINK THEY  
16 WOULD CONCEDE THAT SHE'S MAKING A STATEMENT THAT INCRIMINATES  
17 HER. I DON'T THINK -- MAYBE WE NEED TO HEAR THAT QUESTION  
18 BEFORE I NEED TO ARGUE THAT ISSUE. BECAUSE IF THEY'RE SAYING  
19 THAT, YOU KNOW, SHE SHOULD INVOKE HER FIFTH AMENDMENT RIGHTS,  
20 AND IT'S A PROPER APPLICATION IN TERMS OF THE INVOCATION OF  
21 THE FIFTH AMENDMENT RIGHT TO REMAIN SILENT, CAN I ASSUME IT'S  
22 AN INCRIMINATING STATEMENT?

23           THE COURT: I DON'T THINK SO.

24           MR. MARKUS: THE ANSWER IS, NO.

25           THE COURT: YEAH. I BELIEVE THE CASE LAW SEEMS TO BE  
26 PRETTY CLEAR THAT MERELY BECAUSE SOMEONE -- THAT THEY'RE NOT  
27 COEXTENSIVE; THAT THE FACT THAT AN ANSWER TO CERTAIN  
28 QUESTIONS MAY TEND TO INCRIMINATE THEM DOES NOT EQUATE TO IT

1 IS A STATEMENT MADE UNDER CIRCUMSTANCES WHICH ARE TO THEIR  
2 PENAL INTEREST, THAT THE STATEMENT ITSELF IS. SO WE'RE  
3 TALKING ABOUT TWO DIFFERENT THINGS.

4 I DON'T THINK YOU CAN ASSUME MERELY BECAUSE  
5 THE -- THE COURT HAS FOUND HER UNAVAILABLE AND WOULD HAVE  
6 FOUND THAT THE TYPES OF QUESTIONING -- WELL, QUESTIONING  
7 RELATING TO THE EVENTS THAT MS. DEDUNN WAS PRIVY TO LEADING  
8 UP TO THE HOMICIDE COULD TEND TO INCRIMINATE HER IS NOT THE  
9 SAME THING AS SAYING THEY'RE AGAINST HER PENAL INTEREST. I  
10 MEAN --

11 MR. EVANS: I MEAN, IT JUST -- AS I SIT HERE, IT JUST  
12 SEEMS ABSOLUTELY FRUSTRATING TO TRY TO BRING IN A STATEMENT  
13 THAT'S CLEARLY -- I'M GOING TO TELL THE COURT IF MS. DEDUNN  
14 GOES ON THE STAND, THIS CASE IS OVER. ONCE THAT JURY HEARS  
15 THAT GUY HAD A GUN, THIS CASE IS OVER.

16 AND I CAN'T EVEN PROTECT MY CLIENT'S RIGHTS  
17 BECAUSE THEY'RE ABLE TO USE THEIR POWERS TO CRY, WELL, WE'RE  
18 NOT GOING TO GIVE HER IMMUNITY BECAUSE SHE'S REALLY NOT  
19 SAYING ANYTHING AGAINST -- I MEAN, THIS SCREAMS OF -- YOU  
20 KNOW, IS THIS WHAT A PROSECUTOR IS SUPPOSED TO BE DOING?

21 I MEAN, I THOUGHT WE WERE SUPPOSED TO BE DEALING  
22 WITH THE TRUTH HERE. THE TRUTH IS THIS GUY HAD A GUN. THE  
23 TRUTH IS THIS MAN'S LYING. AND I'M STANDING HERE AND WE'RE  
24 CRAFTING -- WE'RE USING THE EVIDENTIARY CODE SO THAT WE CAN'T  
25 BRING IN EVIDENCE?

26 IT JUST -- IT JUST SCREAMS OF UNFAIRNESS HERE.  
27 IT'S NOT A STATEMENT AGAINST PENAL INTEREST BECAUSE SHE'S NOT  
28 SAYING IT DIRECTLY, BUT INDIRECTLY, BECAUSE THEY CAN BRING IN

1 WITNESSES THAT THEY BELIEVE INCRIMINATE HER, WHICH I BELIEVE  
2 HAS BEEN COMPLETELY OBLITERATED ON THE STAND.

3 I SUBMIT.

4 THE COURT: OKAY. I GUESS, MR. EVANS, THE PROBLEM  
5 IS -- I MEAN, I UNDERSTAND YOUR FRUSTRATION, BECAUSE I CAN  
6 SEE HOW YOU WOULD WANT TO HAVE THIS TESTIMONY BEFORE THE  
7 JURY.

8 THE ISSUE, HOWEVER, IS IF SHE'S UNAVAILABLE,  
9 WHICH I BELIEVE SHE IS, IS THE STATEMENT THAT YOU'RE SEEKING  
10 TO INTRODUCE MADE -- IS THE STATEMENT ITSELF AGAINST THE  
11 PENAL INTEREST; AND THE CIRCUMSTANCES IN WHICH THE STATEMENT  
12 IS MADE, LOOKING AT THOSE -- THOSE TWO THINGS TOGETHER, DO  
13 THEY INDICATE THAT THAT STATEMENT IS AGAINST MS. DEDUNN'S  
14 PENAL INTEREST, SO THAT THEY ARE TRUSTWORTHY ENOUGH TO  
15 QUALIFY UNDER THE EXCEPTION.

16 NOW, THE FACT THAT IT HURTS -- THAT IT WOULD HURT  
17 MR. GODOY'S CREDIBILITY IS REALLY NOT THE CENTRAL FOCUS THAT  
18 I HAVE TO MAKE THAT DETERMINATION ON. I'VE GOT TO MAKE THE  
19 DETERMINATION BASED ON HOW THAT STATEMENT REFLECTS ON  
20 MS. DEDUNN'S PENAL INTEREST.

21 AND SO, I MEAN, I DON'T KNOW WHAT TO TELL YOU. I  
22 UNDERSTAND WHY YOU'RE FRUSTRATED, AND WHY YOU'D WANT THIS IN;  
23 BUT THE PROBLEM IS THAT THE STATEMENT ITSELF, THE  
24 CIRCUMSTANCES IN WHICH THE STATEMENTS ARE MADE, BASED ON THE  
25 OPENING REMARKS OF THE INVESTIGATING OFFICER, MAKE IT CLEAR  
26 THAT HE'S NOT INTERESTED IN PROSECUTING HER OR PURSUING  
27 ANYTHING RELATING TO THE DRUG DEAL, WHICH WOULD MITIGATE  
28 AGAINST FINDING THIS TO BE A STATEMENT AGAINST PENAL INTEREST

1 (THE JURY ENTERED THE COURTROOM  
2 AND THE FOLLOWING PROCEEDINGS  
3 WERE HELD:)

4  
5 THE COURT: ALL RIGHT. BACK ON THE RECORD ON PEOPLE  
6 VERSUS MC DERMOTT. BOTH COUNSEL ARE PRESENT. THE DEFENDANT  
7 IS PRESENT. THE JURY PANEL IS PRESENT. THE WITNESS HAS  
8 RESUMED THE STAND.

9 YOU MAY CONTINUE YOUR DIRECT EXAMINATION,  
10 MR. MARKUS.

11 MR. MARKUS: THANK YOU, YOUR HONOR.

12  
13 BRIAN STEINWAND,  
14 CALLED AS A WITNESS BY THE PEOPLE, HAVING PREVIOUSLY BEEN  
15 SWORN, TESTIFIED FURTHER AS FOLLOWS:

16  
17 DIRECT EXAMINATION (RESUMED)

18 BY MR. MARKUS:

19 Q I BELIEVE WE LEFT OFF YESTERDAY WITH THE MONEY  
20 ITSELF -- THE NEWSPAPER, THE WRAPPING, AND THE MONEY.

21 YOU'VE BEEN A DEPUTY SHERIFF AND A HOMICIDE  
22 DETECTIVE FOR QUITE A PERIOD OF TIME; IS THAT CORRECT?

23 A YES.

24 Q AND HOW WOULD YOU DESCRIBE THAT MONEY? IS THERE  
25 TERMINOLOGY THAT'S USED IN THAT -- IN THE AREA OF NARCOTICS  
26 IN RELATIONSHIP TO THAT MONEY?

27 A YEAH. THAT WOULD BE COMMONLY REFERRED TO AS --  
28 AT LEAST LAW ENFORCEMENT WOULD REFER TO IT, AND I BELIEVE A

1 LOT OF PEOPLE IN THE STREET REFER TO IT THIS WAY -- AS "FLASH  
2 MONEY." MONEY IS FLASHED TO SHOW THAT YOU HAVE THE MONEY.  
3 IT LOOKS LIKE IT'S ALL MONEY. AND SOMETIMES I'VE HEARD IT  
4 CALLED ALSO A "PIMP ROLL" OF MONEY. BUT "FLASH MONEY" IS  
5 USUALLY WHAT IT'S CALLED.

6 Q NOW, AS PART OF YOUR INVESTIGATION IN THIS CASE,  
7 DID YOU HAVE OCCASION TO LOOK AT THE LOGS, THE COMPUTER INPUT  
8 LOGS, FROM THE HAWTHORNE POLICE DEPARTMENT IN RELATIONSHIP TO  
9 THE INCIDENT WITH TERESA CATALAN?

10 A YES.

11 Q OKAY. I HAVE HERE IN MY HAND, YOUR HONOR -- JUST  
12 BY REFERENCE, I'D LIKE THIS TO BE MARKED PEOPLE'S NEXT IN  
13 ORDER, WHICH WOULD BE?

14 THE COURT: 36.

15 MR. MARKUS: BY REFERENCE ONLY.

16

17 (PEOPLE'S EXHIBIT 36 WAS MARKED FOR  
18 IDENTIFICATION - COMPUTER LOG.)

19

20 MR. MARKUS: MAY I APPROACH THE WITNESS?

21 THE COURT: YES.

22 BY MR. MARKUS:

23 Q SHOWING YOU WHAT HAS BEEN MARKED AS PEOPLE'S  
24 NO. 36, DO YOU RECOGNIZE THIS?

25 A YES.

26 Q OKAY. AND COULD YOU EXPLAIN TO THE JURY, AS A  
27 PART OF YOUR INVESTIGATION, WHAT -- WHY YOU WOULD INCLUDE  
28 THAT COMPUTER LOG AS PART OF YOUR HOMICIDE BOOK OR YOUR

1 MATERIAL SUPPLIED IN THIS CASE.

2 A YES. WHAT THIS IS, IT'S -- HAWTHORNE IS VERY  
3 SIMILAR TO THE L.A. COUNTY SHERIFF'S DEPARTMENT, WHAT WE DO.  
4 WHEN CALLS ARE BEING DISPATCHED, THEY GET CALLED IN. AND  
5 THEN THEY GET DISPATCHED TO A FIELD UNIT. THEY'RE  
6 TIME-STAMPED AS TO WHAT TIME, WHAT UNIT. IT'S BASICALLY A  
7 NARRATIVE AS FAR AS WHAT THE CALL IS AND A LOT OF STUFF.

8 NOW, WHEN I WAS ON PATROL, IT WAS ALL OVER THE  
9 RADIO. NOW YOU HAVE WHAT IS CALLED M.D.T., MOBILE DIGITAL  
10 TRANSMITTERS -- TERMINALS. SO IT'S -- THAT'S BASICALLY HOW  
11 EVERYTHING IS RECORDED. AND EACH TIME SOMEBODY DOES  
12 SOMETHING, IT RECORDS A TIME. IF SOMEBODY GETS THE CALL,  
13 THEY RECEIVE THE CALL OR THEY ACKNOWLEDGE THAT THEY GOT THE  
14 CALL, THEY ARRIVE AT THE SCENE, THERE'S A TIME THERE, THAT  
15 TYPE OF STUFF.

16 SO THIS IS VERY SIMILAR TO THE SHERIFF'S  
17 DEPARTMENT. AND AGAIN, THAT'S WHAT IT DOES. IT JUST  
18 DESCRIBES THE SEQUENCE OF EVENTS OF A PARTICULAR CALL, WHAT  
19 UNIT ARRIVED, WHAT THEY DID, MAYBE, AND WHAT THEY WERE BEING  
20 TOLD AS THE CALL WENT ON.

21 Q SO DIRECTING YOUR ATTENTION TO THE FIRST PAGE.  
22 IT SAYS -- THE FIRST ENTRY IS 1410 HOURS. WHAT TIME WOULD  
23 THAT BE?

24 A THAT'S 2:10 IN THE AFTERNOON.

25 Q MILITARY TIME; IS THAT CORRECT?

26 A YES.

27 Q AND IT HAS AN ENTRY FOR SOMEONE REFUSING TO LEAVE  
28 THE LOCATION; IS THAT CORRECT?

1 A YES.

2 Q SOME GUYS ARE CHASING HIM?

3 A YES.

4 Q 1411 AND 54 SECONDS INDICATES THAT THE PERSON ON  
5 THE PHONE IS BY THE NAME OF TERESA CATALAN; IS THAT CORRECT?

6 A C-O-M-P WOULD BE THE COMPLAINANT. THE  
7 COMPLAINANT IS TERESA CATALAN, YES.

8 Q 1442, 2:42, THERE'S ANOTHER INDICATION OF A PHONE  
9 NUMBER, AND AGAIN TERESA'S NAME; IS THAT CORRECT?

10 A YES.

11 Q AND THERE'S ALSO -- THERE IS SOME INDICATION IN  
12 THERE OF WHAT WAS BEING SAID TO TERESA CATALAN BY DWANE  
13 GODOY; IS THAT CORRECT?

14 A BY THE PERSON WHO WAS REFUSING TO LEAVE, YES.

15 Q 1451 OR 2:51, THERE'S AN ENTRY BY AN OFFICER  
16 KANG; IS THAT CORRECT?

17 A HOW MANY SECONDS?

18 Q I'M SORRY. 1451 AND 40 SECONDS.

19 A YES.

20 Q OKAY. THE HANDLING OFFICER THAT WENT OUT THERE  
21 TO MEET DWANE GODOY WAS OFFICER KANG; IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q OKAY. TURNING TO THE NEXT PAGE, THERE'S AN ENTRY  
24 AT 1532 OR 3:30 -- 1532 AND 49 SECONDS, INDICATING THAT  
25 OFFICER KANG IS ON SCENE OR BACK AT THE STATION; IS THAT  
26 CORRECT?

27 A THAT IS CORRECT, ON THAT, "BACK AT THE STATION,"  
28 YES.

1 ARE OFFERING A STIPULATION.

2 MR. MARKUS: YES, YOUR HONOR.

3 WOULD COUNSEL STIPULATE THAT TROY LEWIS, THE  
4 VICTIM IN COUNT 1, DIED AS A RESULT OF A SINGLE GUNSHOT WOUND  
5 TO THE HEAD?

6 MR. EVANS: SO STIPULATED.

7 MR. MARKUS: AT THIS TIME, THE PEOPLE WOULD MOVE FOR  
8 THE ADMISSION OF THE EXHIBITS.

9 THE COURT: ALL RIGHT. PEOPLE'S 1 THROUGH 39 WILL BE  
10 ADMITTED INTO EVIDENCE.

11

12 (PEOPLE'S EXHIBITS 1 THRU 39 WERE  
13 RECEIVED IN EVIDENCE.)

14

15 MR. MARKUS: THANK YOU.

16 AND THE PEOPLE WOULD REST.

17 MR. EVANS: ONE MOMENT.

18 THE COURT: I DON'T KNOW IF I MENTIONED THIS EARLIER.  
19 I THINK I DID IN THE INITIAL INSTRUCTIONS.

20

21 THERE HAVE BEEN A NUMBER OF STIPULATIONS THAT  
22 HAVE TAKEN PLACE DURING THE COURSE OF THE TRIAL. ANY TIME  
23 BOTH PARTIES AGREE TO STIPULATE TO A PARTICULAR FACT, YOU ARE  
24 TO TAKE THAT FACT AS HAVING BEEN PROVEN, OKAY? IT TAKES THE  
ISSUE OUT OF YOUR HANDS.

25

ALL RIGHT. DO YOU WANT TO APPROACH?

26

MR. EVANS: SURE.

27

THE COURT: SORRY. WE SHOULD HAVE DONE THIS BEFORE. I

28

APOLOGIZE.



1 MR. EVANS: YOU'RE VERY PERCEPTIVE, YOUR HONOR.  
2 THE COURT: THANK YOU.  
3 MR. EVANS: YES. WE CALL ROHAN MC DERMOTT.  
4 THE COURT: PLEASE STAND AND BE SWORN, MR. MC DERMOTT.  
5 THE DEFENDANT: SURE.  
6 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

7  
8 ROHAN MC DERMOTT,  
9 THE DEFENDANT HEREIN, CALLED AS A WITNESS ON HIS OWN BEHALF,  
10 WAS SWORN AND TESTIFIED AS FOLLOWS:

11 THE CLERK: DO YOU SOLEMNLY STATE THAT THE TESTIMONY  
12 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL  
13 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO  
14 HELP YOU GOD?

15 THE DEFENDANT: YES.

16 THE CLERK: PLEASE BE SEATED.

17 THE COURT: YOU MAY PROCEED.

18 THE CLERK: PLEASE STATE YOUR FULL NAME, AND THEN STATE  
19 YOUR FIRST AND LAST NAME FOR THE RECORD.

20 THE DEFENDANT: ROHAN MC DERMOTT; FIRST NAME,  
21 R-O-H-A-N; LAST NAME, M-C-D-E-R-M-O-T-T.

22 THE CLERK: THANK YOU.

23

24

DIRECT EXAMINATION

25 BY MR. EVANS:

26 Q MR. MC DERMOTT, LET'S TAKE YOU BACK TO APRIL, THE  
27 LATTER PART OF APRIL, 2004.

28 DO YOU HAVE THAT TIME PERIOD IN MIND?

1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MC DERMOTT  
3 LOS ANGELES, CALIFORNIA FRIDAY, MARCH 10, 2006  
4 DEPARTMENT LX-F HON. JAMES R. DABNEY, JUDGE  
5 REPORTER: JOYCE K. RODELA, CSR NO. 9878  
6 TIME: P.M. SESSION

7

8 APPEARANCES: (AS HERETOFORE NOTED.)

9

10 (THE JURY ENTERED THE COURTROOM  
11 AND THE FOLLOWING PROCEEDINGS  
12 WERE HELD:)

13

14 THE COURT: BACK ON THE RECORD ON PEOPLE VERSUS  
15 MC DERMOTT. BOTH COUNSEL ARE PRESENT. THE DEFENDANT IS  
16 PRESENT. THE JURY PANEL IS PRESENT.

17

READY TO RESUME WITH DIRECT EXAMINATION?

18

MR. EVANS: YES, SIR.

19

20

DIRECT EXAMINATION (RESUMED)

21

BY MR. EVANS:

22

Q MR. MC DERMOTT, WHEN WE LEFT, WE WERE TALKING

23

ABOUT YOU STOPPING PRIOR TO GOING TO YUKON.

24

YOU WENT AND GOT SOME FOOD, CORRECT?

25

A YES.

26

Q WAS THAT TO GO OR TO EAT THERE?

27

A TO GO.

28

Q BOTH OF YOU, MR. DALEY AND YOU, HAD FOOD TO GO?

1 GUN, WAVE THE GUN, AND TELL BOTH OF THEM TO GET ON THE FLOOR.  
2 AND THAT'S WHEN THEY DID. HE ORDERED ME TO TIE THEM UP.

3 I SAID, "MAN, I DON'T WANT TO GET INVOLVED IN  
4 THIS." AND WHEN I SAID THAT, I WAS ABOUT TO LEAVE. BUT THE  
5 EXPRESSION ON HIS FACE CHANGE, AND I TIED THEM UP. AND  
6 THAT'S WHAT I DID.

7 Q AND WHEN YOU SAY, "I TIED THEM UP," WHO IS THE  
8 "THEM" YOU ARE REFERRING TO?

9 A I'M REFERRING TO LEWIS AND GODOY.

10 Q ALL RIGHT. THEN WHAT HAPPENED? HOW DID YOU TIE  
11 UP MR. -- HOW DID YOU TIE THEM BOTH UP?

12 A WITH THE TAPE. HE THROW THE TAPE TO ME. THERE  
13 WAS TAPE IN THE LIVING ROOM. HE THROW THE TAPE TO ME.  
14 THAT'S WHAT I USE TO TIE THEM UP.

15 Q AND YOU TIED THEM UP, WHAT, THEIR HANDS?

16 A YES, BEHIND.

17 Q DID YOU TIE THEIR FEET?

18 A NO. I DON'T REMEMBER TYING NO FEET.

19 Q ALL RIGHT. AND AFTER YOU TIED THEM UP, WHAT  
20 HAPPENED?

21 A THE FIRST OPPORTUNITY I GET, I RUN OUT OF THE  
22 APARTMENT.

23 Q OKAY. PRIOR TO RUNNING OUT OF THE APARTMENT,  
24 WHAT IS MR. GODOY SAYING -- NOT MR. GODOY. WHAT IS  
25 MR. DALEY SAYING?

26 A ACTUALLY, WHEN I WENT OUT OF THE APARTMENT, HE  
27 TURN HIS BACK. HE TURN HIS BACK LIKE HE WAS GOING TO THE  
28 BATHROOM. THAT'S THE OPPORTUNITY I GET. I RUN OUT OF THE

1 APARTMENT.

2 Q ALL RIGHT. ARE YOU THE ONLY ONE RUNNING OUT OF  
3 THE APARTMENT?

4 A I'M THE ONLY PERSON RUNNING OUT OF THE APARTMENT.

5 Q WHAT HAPPENS NEXT?

6 A WHEN I RUN OUT OF THE APARTMENT, I RUN PAST  
7 THE -- THERE'S A LAUNDROMAT TO THE RIGHT. I HEARD A BIG  
8 NOISE, AND I CONTINUED RUNNING.

9 Q DESCRIBE THE NOISE.

10 A IT'S A BIG -- IT'S A LOUD NOISE.

11 Q DID YOU KNOW EXACTLY WHAT IT WAS?

12 A NO, I DIDN'T KNOW EXACTLY WHAT IT WAS. A BIG  
13 NOISE.

14 Q OKAY. WHAT HAPPENED AFTER YOU HEARD THE NOISE?

15 A I CONTINUED RUNNING, AND I RAN STRAIGHT TO THE  
16 FRONT, TO THE GATE. I COULDN'T FIND MY CAR KEY. SO WHAT I  
17 DID, I RUN STRAIGHT TO 135TH, MAKE A LEFT, AND RUN TO  
18 PRAIRIE, RUN ALL THE WAY TO CENTURY.

19 Q WHAT DID YOU DO THERE?

20 A I WENT UP THERE AND I CALL THE CAB, AND I WENT TO  
21 A FRIEND OF MINE JOB.

22 Q DID YOU EVER GO BACK TO THAT APARTMENT THAT DAY?

23 A NO, NOT -- I DIDN'T GO BACK TO THAT APARTMENT  
24 THAT DAY.

25 Q YOU HEARD -- AT SOME POINT YOU WERE ARRESTED IN  
26 THE STATE OF FLORIDA; IS THAT CORRECT?

27 A YES, I WAS ARRESTED IN THE STATE OF FLORIDA.

28 Q WHILE YOU WERE IN CUSTODY, DID YOU SPEAK TO A

1 SERGEANT SEYMOUR?

2 A YES, I SPOKE TO A SERGEANT SEYMOUR.

3 Q AND DID YOU TELL HIM -- YOU HEARD HIM TESTIFY  
4 HERE IN COURT, CORRECT?

5 A YES.

6 Q AND IS THAT BASICALLY WHAT YOU TOLD HIM?

7 A YES.

8 MR. EVANS: ONE MOMENT, YOUR HONOR.

9 I HAVE NOTHING FURTHER OF THIS WITNESS AT THIS  
10 TIME.

11 THE COURT: ALL RIGHT. THANK YOU.

12

13

CROSS-EXAMINATION

14

BY MR. MARKUS:

15

16

17

18

Q MR. MC DERMOTT, DID YOU GO OUTSIDE AFTER YOU  
PARKED THE CAR? AFTER YOU PULLED IN WITH MR. LEWIS AND  
MR. GODOY AND MR. DALEY, DID YOU GO OUTSIDE TO LOOK FOR  
KARLA?

19

A NO.

20

21

22

Q DO YOU REMEMBER MR. GODOY'S TESTIMONY IN  
RELATIONSHIP TO HIM SAYING THAT YOU KEPT CALLING MR. DALEY IN  
THE APARTMENT?

23

A YES.

24

25

Q OKAY. AND YOU KEPT CALLING MR. DALEY IN THE  
APARTMENT WHY?

26

27

A BECAUSE I TELL HIM TO TELL THE TWO GUYS TO LEAVE,  
BECAUSE I DIDN'T LIKE WHAT I SEE.

28

Q DO YOU REMEMBER YOUR STATEMENT TO THE DETECTIVE?

1 A NOT VERY LONG. PROBABLY TWO OR THREE MINUTES.

2 Q DID YOU SEE A CONVERSE BOX WITH SOME MONEY  
3 WRAPPED IN CELLOPHANE AT THAT TIME?

4 A NO, SIR.

5 Q IT WASN'T THERE?

6 A I DON'T REMEMBER SEEING THAT, SIR.

7 Q OKAY. YOU DRIVE OUTSIDE. AND THAT WAS WHEN YOU  
8 MAKE THE SERIES OF PHONE CALLS TO MR. DALEY, TELLING  
9 MR. DALEY TO NOT HAVE THEM IN THE APARTMENT; IS THAT CORRECT?

10 A YEAH. I MAKE THE PHONE CALL TO MR. DALEY.

11 Q WHEN DID THIS REVELATION COME TO YOU THAT THEY  
12 WERE TROUBLE?

13 A I WOULDN'T SAY THEY WAS TROUBLE. I HAVE A SIXTH  
14 SENSE ABOUT PEOPLE, A VIBE ABOUT THEM. THAT'S WHAT I CALL  
15 IT.

16 Q SO IT WAS A VIBE?

17 A YEAH.

18 Q NOW, WHEN YOU SAY "TROUBLE," WHAT DO YOU MEAN BY  
19 "TROUBLE"? WHAT DID YOU THINK THEY WERE GOING TO DO?

20 A I SAID, "VIBE." I DIDN'T SAY, "TROUBLE." I  
21 SAID, "VIBE."

22 Q WHEN YOU SAY, "VIBE," WHAT DO YOU MEAN BY,  
23 "VIBE"? WHAT DID YOU THINK THEY WERE GOING TO DO?

24 A SIR, I'M A PERSON THAT ALWAYS -- I DON'T LIKE TO  
25 BE AROUND A LOT OF PEOPLE. SO THAT'S WHY. THAT'S WHY. THE  
26 VIBES GODOY WAS GIVING AND LEWIS WAS GIVING, I DIDN'T LIKE.  
27 SO I WAS SHARING WITH HIM.

28 Q AND THE VIBE YOU SHARED WITH MR. DALEY WAS WHAT?

1 A WHAT DID YOU SAY?

2 I JUST CALL HIM TO TELL THEM TO LEAVE. BUT HE  
3 DIDN'T -- HE DIDN'T -- HE KEEP ON HANGING THE PHONE UP.

4 Q OKAY. SO THEN AFTER SEVERAL PHONE CALLS WITHIN A  
5 TEN-MINUTE PERIOD, YOU THEN PARK YOUR CAR AND GO UP TO THE  
6 APARTMENT AFTER TROY LEWIS LET YOU IN THE GATE?

7 A YES, SIR.

8 Q WHERE WAS THE CLICKER TO GET IN?

9 A DALEY HAVE THE CLICKER, IF I REMEMBER. YEAH, WE  
10 WENT UPSTAIRS.

11 Q OKAY.

12 A YEAH.

13 Q WHEN DID YOU GO UPSTAIRS?

14 A WHEN LEWIS OPEN THE GATE.

15 Q OKAY. SO YOU GO UP INTO THE APARTMENT. YOU'VE  
16 KNOWN SUGAR FOR THREE OR FOUR MONTHS. YOU WALK IN. THERE'S  
17 NO FURNITURE. WHAT HAPPENS?

18 A I WOULDN'T SAY NO FURNITURE. THERE WAS NO  
19 FURNITURE IN THE LIVING ROOM. THAT'S ABOUT IT.

20 Q OKAY. BUT WHAT HAPPENS?

21 A I WALKED IN. I WENT TO THE KITCHEN.

22 Q AND WHAT HAPPENED? DID YOU SEE A CONVERSE BOX  
23 THEN?

24 A YES.

25 Q OKAY. DID YOU LOOK IN THE CONVERSE BOX?

26 A I ALREADY KNOW WHAT'S IN THE CONVERSE BOX. I  
27 ALREADY KNOW.

28 Q WHEN DID YOU FIND THAT OUT?

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

**DOCKETED**  
**LOS ANGELES**  
 JUL 18 2006  
 BY M. CARTER  
 NO. LA 2006 502195

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, )  
 )  
 VS. )  
 )  
 ROHAN MC DERMOTT, )  
 )  
 DEFENDANT-APPELLANT(S). )

NO. SA052445  
 JUL 07 2006

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY  
 HONORABLE STEVEN R. VAN SICKLEN, JUDGE PRESIDING  
 REPORTER'S TRANSCRIPT ON APPEAL

MARCH 13, 14, 15, 2006  
 APRIL 17, 2006

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: BILL LOCKYER  
 STATE ATTORNEY GENERAL  
 300 SOUTH SPRING STREET  
 NORTH TOWER, SUITE 5001  
 LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 5 OF 5  
 PAGES 2101 THRU 3022

**COPY**

JOYCE KATHLEEN RODELA  
 CSR NO. 9878  
 OFFICIAL REPORTER



1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MC DERMOTT  
3 LOS ANGELES, CALIFORNIA MONDAY, MARCH 13, 2006  
4 DEPARTMENT LX-F HON. JAMES R. DABNEY, JUDGE  
5 REPORTER: JOYCE K. RODELA, CSR NO. 9878  
6 TIME: A.M. SESSION

7

8

APPEARANCES: (AS HERETOFORE NOTED.)

9

10

(THE JURY ENTERED THE COURTROOM

11

AND THE FOLLOWING PROCEEDINGS

12

WERE HELD:)

13

14

THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

15

WELCOME BACK. WE'RE ON THE RECORD ON PEOPLE

16

VERSUS MC DERMOTT. BOTH COUNSEL ARE PRESENT. THE DEFENDANT

17

IS PRESENT. WE'RE READY TO RESUME WITH THE

18

CROSS-EXAMINATION.

19

MR. MARKUS: THANK YOU, YOUR HONOR.

20

21

ROHAN MC DERMOTT,

22

THE DEFENDANT HEREIN, HAVING PREVIOUSLY BEEN SWORN, TESTIFIED

23

FURTHER AS FOLLOWS:

24

25

CROSS-EXAMINATION (RESUMED)

26

BY MR. MARKUS:

27

Q MR. MC DERMOTT, ON NOVEMBER 24TH, 2003,

28

NOVEMBER 24TH, 2003, WHEN THE 14-SOME-ODD-THOUSAND DOLLARS

1           EXPRESSION CHANGED?

2           A           HE ASKED ME TO DO SOMETHING.  THAT'S WHAT I DID.

3           Q           WHY?

4           A           WHY HE ASKED ME?

5           Q           NO.  WHY DID YOU DO SOMETHING THAT HE ASKED YOU  
6 TO DO?  WHY DIDN'T YOU JUST RUN OUT?

7           MR. EVANS:  ASKED AND ANSWERED, YOUR HONOR.

8           THE COURT:  OVERRULED.

9           THE WITNESS:  HE POINT THE GUN AT ME AND ORDER ME TO  
10 TIE THESE GUYS UP.  AND THAT'S WHAT I DID, SIR.

11 BY MR. MARKUS:

12           Q           OKAY.  SO NOW, CAN YOU EXPLAIN TO THE JURY HOW  
13 YOU TIED THESE GUYS UP?

14           A           OKAY.  HE ORDERED THEM ON THE FLOOR, AND HE THROW  
15 THE TAPE TO ME, AND I TIE THEM UP.  THAT'S WHAT I DID, I TIED  
16 THEM UP.

17           Q           HOW FAR ARE YOU AWAY FROM THE DOOR WHEN YOU'RE  
18 TAPING THEM UP?

19           A           SO THIS COULD BE THE DOOR RIGHT HERE.  I PROBABLY  
20 SAY RIGHT HERE (INDICATING).  I DON'T KNOW HOW FAR IS THIS.  
21 PROBABLY FOUR FEET, PROBABLY --

22           Q           FOUR FEET?

23           A           -- OR FIVE.

24           Q           FIVE FEET?

25           A           YEAH.

26           Q           OKAY.  NOW, WHEN YOU'RE TAPING MR. GODOY AND  
27 MR. LEWIS UP ON THE GROUND, HOW MANY DIFFERENT ROLLS OF TAPE  
28 ARE YOU USING?

1 MR. EVANS: OBJECTION: CALLS FOR SPECULATION.

2 THE COURT: NO. OVERRULED.

3 THE WITNESS: NO, SIR. HE JUST ASKED ME WHATEVER HE  
4 ASKED ME. THAT'S WHAT I ANSWER TO.

5 MR. MARKUS: THANK YOU.

6 I HAVE NOTHING FURTHER.

7 THE COURT: REDIRECT?

8 MR. EVANS: YES, YOUR HONOR.

9

10

REDIRECT EXAMINATION

11

BY MR. EVANS:

12

Q SHOWING YOU WHAT'S BEEN MARKED PEOPLE'S 42..

13

MR. EVANS: MAY I PUBLISH IT, PEOPLE'S 42?

14

MR. MARKUS: I'M SORRY?

15

MR. EVANS: PEOPLE'S 42, MAY I PUBLISH IT?

16

MR. MARKUS: YES.

17

MR. EVANS: OKAY.

18

Q DO YOU RECOGNIZE THIS DOCUMENT, SIR?

19

A YES. YES, SIR.

20

Q ALL RIGHT. I'M NOT GETTING A GOOD FOCUS ON THAT.

21

THIS DOCUMENT -- IS THIS THE DOCUMENT YOU

22

RECEIVED FROM THE DEPARTMENT OF -- U.S. DEPARTMENT OF JUSTICE

23

RELATING TO THE \$14,000?

24

A YES, SIR.

25

Q AND THAT DOCUMENT SAYS -- IT SHOWS UP HERE THE

26

DOCUMENT'S NOTICE OF MAILING DATE IS APRIL 2ND, 2004?

27

A YES, SIR.

28

Q IS THAT AROUND THE TIME PERIOD THAT YOU

1 REMEMBERED RECEIVING THAT DOCUMENT, SIR?

2 A YES, SIR.

3 Q ALL RIGHT. AND THEN IT SAYS THAT IF YOU WOULD  
4 LIKE TO CONTEST THE FORFEITURE, IT SAYS HERE IN THE DOCUMENT  
5 YOU MUST DO SO BY MAY 7TH, 2004; IS THAT CORRECT?

6 A YES, SIR.

7 Q IS THIS THE REASON WHY YOU MADE A TRIP TO  
8 CALIFORNIA?

9 A YES, SIR.

10 Q AND I'M REFERRING TO THE TIME PERIOD OF  
11 APRIL 2004.

12 A YES, SIR.

13 Q AND AT THAT TIME, YOU CAME TO THE LOCATION OF  
14 LONG BEACH; IS THAT CORRECT?

15 A YES, SIR.

16 Q AND YOU WENT TO SPEAK TO AN ATTORNEY REGARDING  
17 FILING A CLAIM AGAINST THE FORFEITURE?

18 A YES, SIR.

19 Q AND THAT ATTORNEY WAS WHO?

20 A MICHAEL -- MANUEL LOPEZ.

21 Q AND MR. LOPEZ, WAS HE YOUR ATTORNEY INITIALLY IN  
22 THIS CASE AS WELL?

23 A YES, SIR.

24 Q YES.

25 MR. EVANS: YOUR HONOR, I'D ASK AT THIS TIME THAT THE  
26 COURT TAKE JUDICIAL NOTICE OF THE FACT THAT MR. LOPEZ WAS THE  
27 ATTORNEY AT THE PRELIMINARY HEARING AS PART OF THE RECORD.

28 MR. MARKUS: I'D STIPULATE TO THAT.

1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MC DERMOTT  
3 LOS ANGELES, CALIFORNIA MONDAY, MARCH 13, 2006  
4 DEPARTMENT LX-F HON. JAMES R. DABNEY, JUDGE  
5 REPORTER: JOYCE K. RODELA, CSR NO. 9878  
6 TIME: P.M.SESSION  
7

8 APPEARANCES: (AS HERETOFORE NOTED.)  
9

10 (THE FOLLOWING PROCEEDINGS WERE  
11 HELD IN OPEN COURT, OUT OF THE  
12 PRESENCE OF THE JURY PANEL:)  
13

14 THE COURT: ON THE RECORD ON PEOPLE VERSUS MC DERMOTT.  
15 WE'VE HAD SOME INFORMAL DISCUSSIONS IN CHAMBERS REGARDING THE  
16 INSTRUCTIONS. I'VE GONE OVER THE NEW INSTRUCTIONS IN  
17 RELATIONSHIP TO THE INSTRUCTIONS THAT WERE OFFERED BY THE  
18 PEOPLE THAT WERE PREPARED FROM CALJIC.

19 SOME OF THOSE INSTRUCTIONS WERE WITHDRAWN  
20 BECAUSE, AFTER THE TESTIMONY, THEY WERE NOT APPROPRIATE. AND  
21 AFTER DISCUSSION, IT'S MY UNDERSTANDING THAT BOTH SIDES ARE  
22 SATISFIED WITH THE INSTRUCTIONS THAT ARE GOING TO BE GIVEN  
23 WITH THE EXCEPTION THAT THE DEFENSE OBJECTS TO 540A.

24 IS THAT CORRECT, MR. EVANS?

25 MR. EVANS: THAT'S CORRECT.

26 THE COURT: AND MR. MARKUS?

27 MR. MARKUS: IT'S JUST -- I BELIEVE THAT THERE ARE --  
28 THERE'S EVIDENCE TO INDICATE IN THIS CASE THAT THE DEFENDANT

1 (THE JURY ENTERED THE COURTROOM  
2 AND THE FOLLOWING PROCEEDINGS  
3 WERE HELD:)

4  
5 THE COURT: BACK ON THE RECORD ON PEOPLE VERSUS  
6 MC DERMOTT. BOTH COUNSEL ARE PRESENT. THE DEFENDANT IS  
7 PRESENT. THE JURY IS PRESENT.

8 ALL RIGHT. LADIES AND GENTLEMEN, YOU JUST  
9 EXPERIENCED YOUR LAST DELAY IN THIS TRIAL.

10 ALL RIGHT. WE'RE READY TO INSTRUCT, GO INTO  
11 ARGUMENT, AND THEN THE CASE WILL BE IN YOUR HANDS.

12 (READING:)

13 MEMBERS OF THE JURY, I WILL NOW INSTRUCT  
14 YOU ON THE LAW THAT APPLIES TO THIS CASE. I  
15 WILL GIVE YOU A COPY OF THE INSTRUCTIONS TO USE  
16 IN THE JURY ROOM.

17 YOU MUST DECIDE WHAT THE FACTS ARE. IT IS  
18 UP TO YOU EXCLUSIVELY TO DECIDE WHAT HAPPENED  
19 BASED ONLY ON THE EVIDENCE THAT HAS BEEN  
20 PRESENTED TO YOU IN THIS TRIAL.

21 DO NOT LET BIAS, SYMPATHY, PREJUDICE, OR  
22 PUBLIC OPINION INFLUENCE YOUR DECISION.

23 YOU MUST REACH YOUR VERDICT WITHOUT ANY  
24 CONSIDERATION OF PUNISHMENT.

25 YOU MUST FOLLOW THE LAW AS I EXPLAIN IT TO  
26 YOU EVEN IF YOU DISAGREE WITH IT. IF YOU  
27 BELIEVE THAT THE ATTORNEYS' COMMENTS ON THE LAW  
28 CONFLICT WITH MY INSTRUCTIONS, YOU MUST FOLLOW

1 ROBBERY OR KIDNAP FOR RANSOM; AND

2 3. WHILE COMMITTING OR ATTEMPTING TO  
3 COMMIT ROBBERY OR KIDNAP FOR RANSOM, THE  
4 DEFENDANT DID AN ACT THAT CAUSED THE DEATH OF  
5 ANOTHER PERSON.

6 THE DEFENDANT MAY ALSO BE GUILTY OF MURDER  
7 UNDER THE FELONY MURDER THEORY EVEN IF ANOTHER  
8 PERSON DID THE ACT THAT RESULTED IN THE DEATH.  
9 I WILL CALL THE OTHER PERSON THE PERPETRATOR.

10 TO PROVE THE DEFENDANT IS GUILTY OF FIRST  
11 DEGREE MURDER UNDER THIS THEORY, THE PEOPLE MUST  
12 PROVE THAT:

13 1. THE DEFENDANT COMMITTED OR ATTEMPTED  
14 TO COMMIT OR AIDED AND ABETTED ROBBERY OR KIDNAP  
15 FOR RANSOM;

16 2. THE DEFENDANT INTENDED TO COMMIT OR  
17 INTENDED TO AID AND ABET THE PERPETRATOR IN  
18 COMMITTING THE ROBBERY OR KIDNAP FOR RANSOM.

19 3. IF THE DEFENDANT DID SO -- EXCUSE ME.  
20 IF THE DEFENDANT DID NOT PERSONALLY COMMIT OR  
21 ATTEMPT TO COMMIT ROBBERY OR KIDNAP FOR RANSOM,  
22 THEN A PERPETRATOR, WHOM THE DEFENDANT WAS  
23 AIDING AND ABETTING, PERSONALLY COMMITTED OR  
24 ATTEMPTED TO COMMIT ROBBERY OR KIDNAP FOR  
25 RANSOM; AND

26 4. WHILE COMMITTING OR ATTEMPTING TO  
27 COMMIT ROBBERY OR KIDNAP FOR RANSOM, THE  
28 PERPETRATOR DID AN ACT THAT CAUSED THE DEATH OF

1 ANOTHER PERSON; AND FINALLY,

2 5. THERE WAS A LOGICAL CONNECTION BETWEEN  
3 THE ACT CAUSING THE DEATH AND THE ROBBERY OR  
4 KIDNAP FOR RANSOM OR ATTEMPTED ROBBERY OR KIDNAP  
5 FOR RANSOM. THE CONNECTION BETWEEN THE FATAL  
6 ACT AND THE ROBBERY OR KIDNAP FOR RANSOM OR  
7 ATTEMPTED ROBBERY OR KIDNAP FOR RANSOM MUST  
8 INVOLVE MORE THAN JUST THEIR OCCURRENCE AT THE  
9 SAME TIME AND PLACE.

10 A PERSON MAY BE GUILTY OF FELONY MURDER  
11 EVEN IF THE KILLING WAS UNINTENTIONAL,  
12 ACCIDENTAL, OR NEGLIGENT.

13 TO DECIDE WHETHER THE DEFENDANT AND THE  
14 PERPETRATOR COMMITTED OR ATTEMPTED TO COMMIT  
15 ROBBERY OR KIDNAP FOR RANSOM, PLEASE REFER TO  
16 THE SEPARATE INSTRUCTIONS THAT I WILL GIVE YOU  
17 ON THOSE CRIMES.

18 TO DECIDE WHETHER THE DEFENDANT AIDED AND  
19 ABETTED A CRIME, PLEASE REFER TO THE SEPARATE  
20 INSTRUCTIONS THAT I HAVE GIVEN YOU ON AIDING AND  
21 ABETTING. YOU MUST APPLY THOSE INSTRUCTIONS  
22 WHEN YOU DECIDE WHETHER THE PEOPLE HAVE PROVED  
23 FIRST DEGREE MURDER UNDER A THEORY OF FELONY  
24 MURDER.

25 IT IS NOT REQUIRED THAT THE DEFENDANT BE  
26 PRESENT WHEN THE ACT CAUSING THE DEATH OCCURS.

27 IF YOU FIND THE DEFENDANT GUILTY OF FIRST  
28 DEGREE MURDER, YOU MUST ALSO DECIDE IF THE



1 CIRCUMSTANCES FOR A DEFENDANT WHO WAS NOT THE  
2 ACTUAL KILLER, BUT WHO IS GUILTY OF FIRST DEGREE  
3 MURDER AS AN AIDER AND ABETTOR, THE PEOPLE MUST  
4 PROVE EITHER THAT THE DEFENDANT INTENDED TO  
5 KILL, OR THE PEOPLE MUST PROVE ALL OF THE  
6 FOLLOWING:

7 1. THE DEFENDANT WAS A MAJOR PARTICIPANT  
8 IN THE CRIME; AND

9 2. WHEN THE DEFENDANT PARTICIPATED IN THE  
10 CRIME, HE ACTED WITH RECKLESS INDIFFERENCE TO  
11 HUMAN LIFE.

12 A PERSON ACTS WITH RECKLESS INDIFFERENCE  
13 TO HUMAN LIFE WHEN HE OR SHE KNOWINGLY ENGAGES  
14 IN CRIMINAL ACTIVITY THAT HE OR SHE KNOWS  
15 INVOLVES A GRAVE RISK OF DEATH.

16 THE PEOPLE DO NOT HAVE TO PROVE THAT THE  
17 ACTUAL KILLER ACTED WITH THE INTENT TO KILL OR  
18 WITH RECKLESS INDIFFERENCE TO HUMAN LIFE IN  
19 ORDER FOR THE SPECIAL CIRCUMSTANCE OF ROBBERY OR  
20 KIDNAPPING FOR RANSOM TO BE TRUE.

21 IF YOU DECIDE THE DEFENDANT IS GUILTY OF  
22 FIRST DEGREE MURDER, BUT YOU CANNOT AGREE  
23 WHETHER THE DEFENDANT WAS THE ACTUAL KILLER,  
24 THEN IN ORDER TO FIND THESE SPECIAL  
25 CIRCUMSTANCES TRUE, YOU MUST FIND EITHER THAT  
26 THE DEFENDANT ACTED WITH AN INTENT TO KILL, OR  
27 YOU MUST FIND THAT THE DEFENDANT ACTED WITH  
28 RECKLESS INDIFFERENCE TO HUMAN LIFE AND WAS A

1 FIREARM.

2 THE PEOPLE HAVE THE BURDEN OF PROVING EACH  
3 ALLEGATION BEYOND A REASONABLE DOUBT. IF THE  
4 PEOPLE HAVE NOT MET THIS BURDEN, YOU MUST FIND  
5 THAT THE ALLEGATION HAS NOT BEEN PROVED.

6 ALL RIGHT. LADIES AND GENTLEMEN, AT THIS TIME,  
7 BEFORE I GIVE YOU THE FINAL INSTRUCTIONS, WE ARE GOING TO  
8 HEAR ARGUMENT FROM COUNSEL. BECAUSE THE PEOPLE HAVE THE  
9 BURDEN OF PROOF, THEY GO FIRST. THEY'LL BE FOLLOWED BY THE  
10 DEFENSE. AND BECAUSE THEY HAVE THE BURDEN OF PROOF, THE  
11 PEOPLE WILL HAVE THE FINAL REBUTTAL ARGUMENT. THEN THE  
12 MATTER WILL BE SUBMITTED TO YOU.

13 MR. MARKUS.

14 MR. MARKUS: THANK YOU.

15

16

OPENING SUMMATION

17 BY MR. MARKUS:

18 GOOD AFTERNOON, LADIES AND GENTLEMEN.

19 THIS IS THE TIME FOR CLOSING ARGUMENT IN THE  
20 CASE. AND BEFORE I GET INTO THE DETAILS OF CLOSING ARGUMENT,  
21 THE COURT HAS READ TO YOU THE JURY INSTRUCTIONS IN  
22 RELATIONSHIP TO THE LAW. BUT IT IS IMPORTANT THAT YOU ALL  
23 UNDERSTAND THAT THOSE JURY INSTRUCTIONS WILL BE GIVEN TO YOU  
24 IN TERMS OF DELIBERATION. THEY'RE KIND OF COMPLEX. THEY'RE  
25 LONG. YOU'LL HAVE THE OPPORTUNITY TO LOOK THEM OVER.

26 THERE'S A COUPLE OF OTHER THINGS THAT I WANT TO  
27 SAY TO YOU IN TERMS OF GENERAL, WHAT I CALL, HOUSEKEEPING  
28 ISSUES.

1 DOWN OUTSIDE THE APARTMENT ON YUKON, AND HE'S IN HIS CAR, AND  
2 HE'S CALLING THAT FOUR TO FIVE TIMES, PER HIS OWN TESTIMONY,  
3 TO MR. DALEY.

4 THERE IS -- IT ABSOLUTELY LACKS TOTAL CREDIBILITY  
5 THAT THE DEFENDANT IS CALLING MR. DALEY TO TELL HIM THAT HE  
6 GOT A VIBE FROM THOSE TWO GUYS IN THE HOUSE. IT LACKS -- IN  
7 THE CONTEXT OF EVERYTHING ELSE, IT LACKS TOTAL CREDIBILITY.  
8 HE IS NOT BELIEVABLE. HE IS LYING.

9 THEY'RE LOOKING FOR KARLA, AND THAT'S WHY HE  
10 DROVE THE CAR OUT FROM UNDER THE GARAGE. THEY WANT TO FIND  
11 KARLA, BECAUSE THEY THINK SHE HAS A LOT OF MARIJUANA IN THE  
12 CAR. HE LACKS TOTAL CREDIBILITY.

13 SECONDLY, IN RELATIONSHIP -- JUST ANOTHER KEY  
14 POINT IN RELATIONSHIP TO HIS CREDIBILITY IS HE OFFERS NO  
15 EXPLANATIONS AS TO ANYTHING THAT'S BEEN DONE AFTER THE CRIME,  
16 NOTHING AT ALL, MEANING HE DOESN'T CALL THE POLICE. HE  
17 DOESN'T DO ANYTHING OF THAT NATURE.

18 AND IN FACT, HE DOESN'T EVEN PRESENT TO YOU IN  
19 COURT HERE THE PEOPLE THAT HE TALKED TO, THAT HE TOLD ABOUT  
20 IT. AND IN FACT, HE ADMITTED, I DON'T EVEN KNOW IF I TOLD  
21 THEM.

22 IS IT BELIEVABLE TO ANY OF YOU THAT HE WOULD GO  
23 THROUGH THIS EXPERIENCE, WITH A GUN POINTED AT HIM BY  
24 MR. DALEY, RUNNING OUT OF THE PLACE AFTER TAPING TWO PEOPLE  
25 UP, AND HE DOESN'T DISCUSS IT WITH ANYONE? NO ONE? IT'S  
26 JUST NOT BELIEVABLE.

27 HE'S LYING TO YOU ABOUT THE EVENTS. HE'S DOING  
28 THAT BECAUSE HE CAN'T EXPLAIN THAT HE RAN FROM A CRIME, LEFT

1 MR. MC DERMOTT IS THE ACTUAL KILLER, OKAY?

2 BUT THE SPECIAL CIRCUMSTANCE IS STILL TRUE IF  
3 THERE WAS AN INTENT TO KILL ON THE PART OF MR. MC DERMOTT;  
4 MEANING YOU DON'T HAVE TO BE THE ACTUAL KILLER, BUT IF YOU  
5 SHARED THE INTENT TO KILL, I WANT THEM DEAD, KILL THEM NOW,  
6 AND A SHOT IS FIRED, THEN THE SPECIAL CIRCUMSTANCE IS TRUE.  
7 YOU SHARED THE INTENT TO KILL.

8 ALL RIGHT. IN THIS CASE I'M GOING TO ARGUE TO  
9 YOU THAT THERE IS EVIDENCE OF THE INTENT TO KILL ON BEHALF OF  
10 MR. MC DERMOTT. AND LET ME TELL YOU WHY.

11 NUMBER ONE, THE EVIDENCE THAT THE DEFENSE -- OR  
12 THAT MR. MC DERMOTT ADMITTED TO ON THE WITNESS STAND IS THE  
13 TELEPHONE CALLS BETWEEN MR. DALEY AND MR. MC DERMOTT, OKAY?

14 WHAT'S GOING ON BETWEEN MR. DALEY AND  
15 MR. MC DERMOTT WHEN HE'S CALLING? IT'S NOT BELIEVABLE THAT  
16 WHEN HE'S CALLING OUTSIDE THE APARTMENT ON YUKON, AND  
17 MR. DALEY IS INSIDE -- IT'S NOT BELIEVABLE THAT HE'S CALLING  
18 TO SAY HE GOT A BAD VIBE. NO ONE CALLS TO SAY, I GOT A BAD  
19 VIBE, WHEN FOR TWO DAYS YOU'VE BEEN DRIVING AROUND WITH  
20 MR. DALEY TO SET THIS UP.

21 THE BAD VIBE -- THERE IS NO BAD VIBE. HE WAS  
22 PART AND PARCEL OF THE PLAN. THERE WAS A DISCUSSION ON THAT  
23 PHONE, THOSE PHONE CALLS, ABOUT WHAT THEY WERE GOING TO DO  
24 WHEN THEY GOT BACK UP TO THE APARTMENT. THAT'S WHAT THEY  
25 WERE TALKING ABOUT.

26 AND WHAT THEY WERE GOING TO DO IS THEY WERE GOING  
27 TO TIE UP TROY LEWIS, THEY WERE GOING TO TIE UP DWANE GODOY,  
28 AND THEY WOULD LOCATE KARLA WHERE SHE WAS OUTSIDE. AND THEY

1 UP, OKAY, WITH MR. DALEY HAVING A GUN IN THE CONTEXT OF THIS  
2 PLAN.

3 AND TWO, WERE A MAJOR PARTICIPANT IN THE PLAN.  
4 MR. MC DERMOTT CLEARLY WAS A MAJOR PARTICIPANT IN THIS CRIME,  
5 CLEARLY.

6 SO I BELIEVE UNDER THESE TWO THEORIES, BOTH THE  
7 SPECIAL -- BOTH SPECIAL CIRCUMSTANCES ARE TRUE. BUT IN THE  
8 CONTEXT OF THIS CASE, CLEARLY HE ACTED WITH A RECKLESS  
9 DISREGARD, TAPING SOME PEOPLE UP, PUTTING THEM ON THE FLOOR  
10 OF AN APARTMENT WITH A PERSON WAVING A GUN AT THEM.

11 HE WAS A MAJOR PARTICIPANT BECAUSE HE WAS OUT  
12 LOOKING FOR KARLA. AND THERE'S NO WAY THEY CAN GET AROUND  
13 THOSE FACTS. IT'S NOT BELIEVABLE THAT HE'S MAKING CALLS  
14 BECAUSE OF A BAD VIBE. IT AIN'T HAPPENING. THAT'S NOT WHAT  
15 WAS GOING ON.

16 OKAY. THOSE ARE THE TWO -- THAT'S THE WAY TO GET  
17 TO THE SPECIAL CIRCUMSTANCES. AND WHEN YOU READ THE JURY  
18 INSTRUCTIONS, YOU'LL SEE THAT. BUT THAT'S JUST MORE OF A  
19 SIMPLIFIED VERSION OF WHAT'S HAPPENING.

20 OKAY. THEN I TOLD YOU WE'RE GOING TO LOOK AT THE  
21 PROSECUTION'S CASE, JUST FOCUS ON THE PROSECUTION'S EVIDENCE.  
22 WE'VE GONE OVER THE CHARGES, DISCUSSED A LITTLE BIT ABOUT THE  
23 LAW. BUT LET'S JUST TALK ABOUT THE PROSECUTION'S CASE A  
24 LITTLE BIT, ON HOW IT'S BEEN PROVEN BEYOND A REASONABLE  
25 DOUBT; NOT ANYTHING IN THE CONTEXT OF MR. MC DERMOTT'S  
26 TESTIMONY, BUT JUST THE PROSECUTION'S CASE BEING PROVEN  
27 BEYOND A REASONABLE DOUBT.

28 NUMBER ONE, I WANT TO POINT OUT TO YOU THAT IN

1                   DOES THAT MAKE ANY SENSE AT ALL? THE REASON WHY  
2 HE'S DOING THAT IS TO HIDE THIS BOX AND WHAT THEY PLANNED TO  
3 DO. AND IF AND WHEN IT WENT BAD WITH MR. LEWIS AND  
4 MR. GODOY, THEY WERE GOING TO DO WHAT THEY NEEDED TO DO WITH  
5 THEM IN THE GARAGE.

6                   BUT THEY GOT THEM UP TO THE APARTMENT. THAT'S  
7 WHY THEY DROVE THEM INTO THE GARAGE. THEY WILLINGLY WENT UP  
8 TO THE APARTMENT. THEY SHOULDN'T HAVE. TROY LEWIS SHOULDN'T  
9 HAVE. BUT THEY WENT TO THE APARTMENT. SOMEONE COULD SEE  
10 THEM IN THE GARAGE. THEN HE DROVE THE CAR OUT TO LOOK FOR  
11 KARLA AND HAVE A GET-AWAY. IT MAKES NO SENSE OTHER THAN  
12 THAT. NO PARKING PLACE?

13                   THE DEFENDANT WANTS YOU TO BELIEVE, AGAIN, AS I  
14 TALKED ABOUT, THE PHONE CALLS BACK AND FORTH AND ABOUT  
15 CALLING MR. DALEY, THAT HE HAD A BAD VIBE. HE WANTS YOU TO  
16 BELIEVE THAT WITH THIS BAD VIBE HE THOUGHT THE RIGHT THING  
17 FOR HIM TO DO, EVEN THOUGH HE'S SITTING IN HIS CAR, WAS TO GO  
18 UP IN THE APARTMENT, THAT MR. DALEY TELLS HIM TO GET UP  
19 THERE. THAT'S NOT BELIEVABLE. HE WENT UP THERE TO ROB THEM  
20 AND KIDNAP THEM FOR RANSOM. THAT WAS PART OF THE PLAN.

21                   THE DEFENDANT WANTS YOU TO BELIEVE THAT WHEN HE  
22 WENT TO THE APARTMENT, MR. DALEY PULLS A GUN ON HIM. AND HIS  
23 REACTION IS, OKAY, I'LL TAPE THEM UP, INSTEAD OF, HEY, WHAT  
24 ARE YOU DOING? YOU GOT A GUN? AND THERE'S NO TESTIMONY AS  
25 TO THAT. HE DIDN'T SAY ANYTHING TO MR. DALEY.

26                   THEN HIS TESTIMONY WAS MR. DALEY, POINTING A GUN  
27 AT HIM, THREW HIM A ROLL OF TAPE, AND HE STARTED TAPING THEM.  
28 IT'S NOT BELIEVABLE. IT'S ABSOLUTELY NOT BELIEVABLE.

1 NAME. THAT'S WHO HE IS. THAT'S HOW HE GETS AROUND, ALL  
2 RIGHT? AND THAT KIND OF PERSON WHO WILL FORGE  
3 IDENTIFICATIONS WILL LIE TO YOU ON THE STAND. AND THAT'S  
4 WHAT THAT'S OFFERED FOR. NONE OF YOU WOULD DO THAT. WE  
5 WOULDN'T DO THAT. HE DID IT, BECAUSE HE'S A PERJURER.

6 THE BOTTOM LINE IN REGARDS TO THE DEFENDANT'S  
7 STATEMENT TO THE POLICE ON JUNE 2ND IS THIS: HE DOESN'T  
8 OFFER ANYTHING IN REGARDS TO THE BAD VIBE TO THE DETECTIVE.  
9 YOU WOULD THINK THAT WOULD BE REAL IMPORTANT.

10 YOU GET -- YOU'RE ARRESTED. YOU'RE IN FLORIDA,  
11 YOU GET ARRESTED, AND YOU'RE SITTING THERE AND TALKING TO THE  
12 DETECTIVE. AND ALL YOU KNOW IS YOU RAN FROM THIS PLACE. AND  
13 YOU DON'T KNOW WHAT HAPPENED, BUT YOU SURE WOULD OFFER -- IF  
14 THAT'S THE TRUTH, YOU SURE WOULD OFFER THE WHOLE BAD VIBE, I  
15 CALLED SEVERAL TIMES, I DIDN'T KNOW WHAT TROY LEWIS WAS UP  
16 TO. I DIDN'T KNOW WHAT DWANE GODOY WAS UP TO. HE DOESN'T  
17 OFFER ANY OF THAT.

18 HE SAID THE DETECTIVE DOESN'T GIVE AN OPPORTUNITY  
19 FOR HIM TO DO THAT. THAT'S A LIE. THE DETECTIVE GAVE HIM AN  
20 OPPORTUNITY TO NOT ONLY GO OVER THE STATEMENT, BUT TO INITIAL  
21 IT AND SIGN IT, OKAY? AND THIS GUY IS SO CALCULATING THAT HE  
22 WANTS TO KNOW WHETHER OR NOT THE STATEMENT IS GOING TO BE  
23 RECORDED. HE MAKES THE DETECTIVE LIFT UP HIS SHIRT BECAUSE  
24 HE DIDN'T WANT TO BE HELD TO IT LATER IN CASE HE SAYS  
25 ANYTHING THAT'S INCONSISTENT.

26 DOES THAT SOUND LIKE SOMEBODY WHO'S TELLING THE  
27 TRUTH? I MEAN, IF YOU WERE GOING TO TELL THE TRUTH, RIGHT,  
28 YOU'RE GOING TO GO OUT AND YOU'RE GOING TO SAY, THIS IS JUST

1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MC DERMOTT  
3 LOS ANGELES, CALIFORNIA TUESDAY, MARCH 14, 2006  
4 DEPARTMENT LX-F HON. JAMES R. DABNEY, JUDGE  
5 REPORTER: JOYCE K. RODELA, CSR NO. 9878  
6 TIME: A.M. SESSION  
7

8 APPEARANCES: (AS HERETOFORE NOTED.)  
9

10 (THE JURY ENTERED THE COURTROOM  
11 AND THE FOLLOWING PROCEEDINGS  
12 WERE HELD:)  
13

14 THE COURT: WELCOME, LADIES AND GENTLEMEN. BACK ON THE  
15 RECORD ON PEOPLE VERSUS MC DERMOTT. WE'RE READY TO RESUME  
16 WITH CLOSING ARGUMENTS.

17 MR. MARKUS.

18 MR. MARKUS: THANK YOU.  
19

20 CLOSING SUMMATION

21 BY MR. MARKUS:

22 GOOD MORNING, LADIES AND GENTLEMEN.

23 THE JURY PANEL: GOOD MORNING.

24 MR. MARKUS: SO THAT YOU UNDERSTAND, AND I HOPE YOU ALL  
25 UNDERSTAND THIS, BUT THE PURPOSE OF REBUTTAL ARGUMENT IS TO  
26 RESPOND TO A VARIETY OF THINGS THAT DEFENSE COUNSEL SAID IN  
27 HIS CLOSING ARGUMENT. IT'S NOT INTENDED TO BE CRITICAL, OR  
28 SNIPING, OR ANYTHING OF THAT NATURE. IT IS INTENDED TO JUST



1                   IN HIS ENTIRE CLOSING ARGUMENT, OUT OF THE 24  
2 REASONS, 24 ISSUES WITH MR. DWANE GODOY, DOES HE EVER GIVE  
3 YOU AN EXPLANATION THAT'S LOGICAL FOR THAT, THAT  
4 MR. MC DERMOTT MADE THE CALLS BECAUSE HE GOT A BAD VIBE, FIVE  
5 OF THEM?

6                   HE GOT SUCH A BAD VIBE HE DECIDED TO GO TO THE  
7 APARTMENT? AND THEN WHEN HE GOES UP TO THE APARTMENT, HE'S  
8 FORCED TO TAPE UP DWANE GODOY AND TAPE UP TROY LEWIS, AND  
9 THEN WHEN HE LEAVES, HE DOESN'T CALL THE POLICE?

10                  HE WAS AT MR. DALEY'S APARTMENT BECAUSE HE DIDN'T  
11 HAVE ANY MONEY FOR AN APARTMENT OR ANYTHING, EVEN THOUGH AT  
12 THE AIRPORT HE HAD A WAD OF MONEY IN HIS POCKET; AND  
13 AFTERWARD, HE'S USING HIS CREDIT CARD TO FLY HOME.

14                  IT'S ALL A LIE. IT IS SIMPLY A LIE, OKAY? AND  
15 THEN YOU KNOW WHAT'S WORSE ABOUT IT? WHAT'S WORSE ABOUT IT  
16 IS THE DEFENSE ATTORNEY STANDS UP BEFORE YOU AND HE TALKS  
17 ABOUT ANNA FITZGERALD NOT BEING BELIEVABLE?

18                  I MEAN, COME ON. THIS WOMAN LIVES IN THE  
19 APARTMENT COMPLEX. SHE COMES FORWARD WITH INFORMATION. I  
20 MEAN, IT'S NOT -- THE APARTMENT COMPLEX HAS TO BE A TOUGH  
21 PLACE TO LIVE ONCE THIS OCCURS, AND THE BODY IS NOT  
22 DISCOVERED UNTIL 8 O'CLOCK. SHE COMES FORWARD WITH THAT  
23 INFORMATION, OKAY, THAT IS SHOT -- BROKEN GLASS, SHOT, AND,  
24 "HEY, COME BACK HERE."

25                  ANNA FITZGERALD IS TELLING THE TRUTH.. SHE MAY BE  
26 OFF ON THE TIME, BUT SHE'S TELLING THE TRUTH. IT'S NOT FAIR  
27 SHE'S NOT BELIEVABLE. IT'S NOT FAIR.

28                  BUT, IN ADDITION TO THAT, WHAT'S EVEN MORE

1 THIRD, AND THAT IS THE DEFENDANT ACTED WITH A RECKLESS  
2 DISREGARD FOR HUMAN LIFE. YOU TAPE TWO PEOPLE DOWN IN AN  
3 APARTMENT AT GUNPOINT, YOU'RE ACTING WITH RECKLESS DISREGARD  
4 FOR HUMAN LIFE. WHEN YOU'RE WAITING OUTSIDE, CALLING,  
5 PLANNING, THEN YOU GO INTO THE APARTMENT, COME OUT WITH A  
6 GUN, OKAY, YOU'RE ACTING WITH A RECKLESS DISREGARD FOR HUMAN  
7 LIFE. YOU GIVE SOMEBODY ELSE A GUN, SAY, I'M PART OF THIS,  
8 YOU'RE ACTING WITH RECKLESS DISREGARD TOWARD ANOTHER HUMAN  
9 LIFE, OKAY?

10 AND HE WAS A MAJOR PARTICIPANT. THERE IS NO  
11 DOUBT HE WAS A MAJOR PARTICIPANT IN THE CRIME. HE, IN FACT,  
12 WAS THE ONE THAT WAS NEGOTIATING ALL THE MARIJUANA. AGAIN,  
13 THIS GUY IS THE GUY WHO FLIES IN, DOES THE DRUG DEAL, AND  
14 LEAVES, AND LEAVES CARNAGE BEHIND. THAT'S HIM.

15 I THANK YOU VERY MUCH FOR THE YOUR CAREFUL  
16 PARTICIPATION -- OR CAREFUL LISTENING TO MY CLOSING ARGUMENT.  
17 IT'S ONE OF THESE THINGS WHERE YOU GO THROUGH A TRIAL AND YOU  
18 LISTEN TO, YOU KNOW, THE CARNAGE THAT'S LEFT BEHIND, THE  
19 PEOPLE THAT ARE LEFT WITH WHAT GOES ON, AND YOU TRY TO PICK  
20 UP THE PIECES.

21 AND YOU JUST HOPE IN YOUR CLOSING ARGUMENT THAT  
22 THE JURY -- AND I KNOW YOU WILL BE HEARING IT THE RIGHT WAY  
23 AND NOT BE LED DOWN THAT BUFFET DEFENSE THAT DWANE GODOY IS  
24 ON TRIAL. ALL RIGHT?

25 SO I THANK YOU VERY MUCH FOR YOUR CAREFUL  
26 LISTENING TO THE CLOSING ARGUMENT, AND I'M SURE YOU'LL FIND  
27 MR. MC DERMOTT GUILTY.

28 THANK YOU.

# ATTORNEY GENERAL

COURT OF APPEAL  
SECOND APPELLATE DISTRICT  
STATE OF CALIFORNIA

DOCKETED  
LOS ANGELES  
JUL 18 2016  
BY M. CARTER  
NO. LA2006502195

PEOPLE OF THE STATE OF CALIFORNIA  
Plaintiff and RESPONDENT

No. SA052445-01

vs

MCDERMOTT, ROHAN -01

Volume 1 of 1 Volumes

Defendant(s) and APPELLANT

## CLERK'S TRANSCRIPT

Appearances:  
Counsel for Plaintiff:  
THE ATTORNEY GENERAL

Appeal from the Superior Court,  
County of Los Angeles

Counsel for Defendant and APPELLANT

Honorable JAMES R. DABNEY, Judge

C/O CAP

*1-CT: 249  
5-RF: 783*

Date Mailed to:  
Defendant (in pro per) \_\_\_\_\_  
Defendant's Trial Attorney \_\_\_\_\_  
Defendant's Appellate Atty \_\_\_\_\_  
District Attorney \_\_\_\_\_  
Attorney General \_\_\_\_\_

1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MCDERMOTT  
3 -AND-  
ALCLIFF DALEY  
4 LOS ANGELES, CALIFORNIA MARCH 23, 2005  
5 LAX DIVISION 142 HON. KATHERINE MADER, JUDGE  
6 REPORTER: TRACI THOMAS, CSR 9620  
7 TIME: 11:25 A.M.  
8

## 9 APPEARANCES:

10 DEFENDANT ROHAN MCDERMOTT, PRESENT WITH COUNSEL,  
11 MANUEL LOPEZ, ATTORNEY AT LAW; DEFENDANT ALCLIFF  
12 DALEY, PRESENT WITH COUNSEL, ROBERT SCHWARTZ,  
13 ATTORNEY AT LAW; CANDACE FOY-SMITH, DEPUTY DISTRICT  
14 ATTORNEY, REPRESENTING THE PEOPLE OF THE STATE OF  
15 CALIFORNIA.  
16

17 THE COURT: NUMBER SIX ON THE CALENDAR, ROHAN  
18 MCDERMOTT AND ALCLIFF DALEY, SA052445.

19 COUNSEL, STATE YOUR APPEARANCES, PLEASE.

20 MR. LOPEZ: GOOD MORNING. MANUEL LOPEZ FOR  
21 MR. MCDERMOTT WHO IS PRESENT IN CUSTODY AT COUNSEL TABLE.

22 MR. SCHWARTZ: ROBERT SCHWARTZ FOR MR. DALEY WHO IS  
23 PRESENT AND IN CUSTODY.

24 MS. FOY-SMITH: CANDACE FOY-SMITH REPRESENTING THE  
25 PEOPLE.

26 THE COURT: BOTH COUNSEL WAIVE FURTHER READING OF  
27 THE COMPLAINT AND STATEMENT OF RIGHTS?

28 MR. SCHWARTZ: SO WAIVED.

1 THE WITNESS: (NO AUDIBLE RESPONSE.)

2 THE CLERK: WOULD THAT BE YES?

3 THE WITNESS: YES.

4 THE CLERK: PLEASE BE SEATED.

5 PLEASE STATE AND SPELL YOUR NAME FOR THE  
6 RECORD.

7 THE WITNESS: MY NAME IS DWANE GODOY, D-W-A-N-E,  
8 G-O-D-O-Y.

9 THE CLERK: THANK YOU.

10 THE COURT: YOU MAY PROCEED.

11 MS. FOY-SMITH: THANK YOU.

12

13 DIRECT EXAMINATION

14 BY MS. FOY-SMITH:

15 Q GOOD MORNING, MR. GODOY.

16 A GOOD MORNING.

17 Q MR. GODOY, DID YOU KNOW TROY LEWIS?

18 A YES.

19 Q AND DID YOU HAVE ANOTHER NAME THAT YOU  
20 CALLED HIM?

21 A YEAH. I USED TO CALL HIM JUS.

22 Q I'D LIKE TO DIRECT YOUR ATTENTION TO THE  
23 DATE OF APRIL THE 30TH, 2004.

24 DID YOU SEE TROY OR JUS ON THAT DATE, THAT  
25 FRIDAY, APRIL THE 30TH?

26 A YES.

27 Q AND WHERE DID YOU -- WHERE WAS THE FIRST  
28 PLACE YOU SAW HIM ON THAT DATE?

1 A ON 36TH AND NORMANDIE.

2 Q AND WHO LIVES AT 36TH AND NORMANDIE?

3 A I BELIEVE HIS GRANDPARENTS.

4 Q AND HOW DID YOU GET TO THAT LOCATION TO SEE  
5 TROY LEWIS?

6 A OH, I DRIVE MY CAR OVER THERE.

7 Q DID HE ASK YOU TO COME TO THAT LOCATION, OR  
8 YOU JUST SHOWED UP ON YOUR OWN?

9 A HE ASKED ME TO COME MEET HIM THERE. WE  
10 WERE SUPPOSED TO MEET THERE.

11 Q AND ABOUT WHAT TIME WERE YOU SUPPOSED TO  
12 MEET HIM?

13 A A LITTLE BIT BEFORE NOON.

14 Q NOW, DID YOU SEE TROY LEWIS THE DAY BEFORE?

15 A YES.

16 Q AND WHERE DID YOU SEE HIM THE DAY BEFORE ON  
17 THE 29TH?

18 A RIGHT AT HIS GRANDMAMA'S HOUSE.

19 Q THE SAME LOCATION?

20 A YES.

21 Q WAS IT IN THE EVENING OR DURING THE DAY?

22 A IT WAS IN THE NIGHT.

23 Q AND WHAT WAS YOUR PURPOSE FOR GOING TO SEE  
24 HIM ON THURSDAY THE 29TH?

25 A WELL, THE THURSDAY WE ALL MET. IT WAS ME,  
26 JUSTICE, HIS GIRLFRIEND, HIS UNCLE, AND THE TWO GUYS.

27 Q OKAY. YOU SAID THE TWO GUYS. DO YOU SEE  
28 THE TWO GUYS IN COURT TODAY?

1 A YES.

2 Q CAN YOU PLEASE POINT TO THEM AND DESCRIBE  
3 FOR THE RECORD WHAT THEY'RE WEARING TODAY?

4 A THE ONE TO THE LEFT WEARING A BLUE JUMPSUIT  
5 AND THE ONE TO THE RIGHT WEARING THE SAME THING.

6 THE COURT: INDICATING MR. MCDERMOTT AND MR. DALEY.

7 Q BY MS. FOY-SMITH: SO YOU'RE SAYING YOU MET  
8 TROY, JUSTICE, THAT NIGHT WITH HIS GIRLFRIEND. DO YOU  
9 KNOW HER NAME?

10 A I BELIEVE IT'S CARLA.

11 Q DO YOU KNOW HIS UNCLE'S NAME?

12 A DAVE.

13 Q AND THE TWO PEOPLE IDENTIFIED AS THE  
14 DEFENDANTS, THEY WERE ALSO THERE WHEN YOU -- THURSDAY  
15 NIGHT?

16 A YES. THEY MET US OVER THERE.

17 Q AND WHAT WAS THE PURPOSE OF THIS MEETING?

18 A THEY WANTED TO BUY, LIKE, A HUNDRED POUND  
19 OF WEED.

20 Q AND WHO HAD THE WEED?

21 A JUSTICE HAD THE WEED.

22 Q DID -- ON THE DATE OF THE 29TH, WERE THE  
23 DEFENDANTS MCDERMOTT AND DALEY, WERE THEY ABLE TO BUY THE  
24 WEED?

25 A NOT ACTUALLY BECAUSE THEY ONLY HAD 33 --  
26 BETWEEN 33 AND 34 POUNDS. SO THEY SAID LEAVE IT UNTIL THE  
27 NEXT DAY WHEN THEY GET THE FULL HUNDRED.

28 Q SO THEY WANTED 100 POUNDS OF WEED; IS THAT

1           A           I GOT ON THE GROUND. I DID LIKE THIS, AND  
2 I GOT ON THE GROUND. WE BOTH GOT ON THE GROUND.

3           Q           AND WHAT -- WERE YOU LAYING ON YOUR BACK OR  
4 ON YOUR STOMACH?

5           A           I WAS ON MY STOMACH.

6           Q           ONCE YOU GOT ON THE GROUND, WHAT HAPPENED?

7           A           WHEN I GOT ON THE GROUND, I WAS TALKING.  
8 AND THEN THE ONE TO THE RIGHT, HE PUT THE GUN AT MY HEAD.

9           Q           YOU'RE TALKING ABOUT DALEY?

10          A           YES. HE PUT THE GUN AT MY HEAD, AND BE  
11 LIKE IF I DON'T SHUT UP, HE GOING TO SHOT ME.

12          Q           THEN WHAT HAPPENED?

13          A           THEN AFTER THAT, HE TELL THE ONE TO THE  
14 LEFT TO GET THE TAPE, DUCT TAPE.

15          Q           THAT WAS MCDERMOTT?

16          A           YES.

17          Q           DID HE TELL HIM WHAT TO DO WITH THE TAPE?

18          A           YES. HE SAID, "TAPE UP THEM."

19          Q           WHO WAS TAPED FIRST IF YOU REMEMBER?

20          A           THE ONE TO THE LEFT, HE TAPED JUSTICE  
21 FIRST.

22          Q           OKAY. AND THEN WHAT HAPPENED?

23          A           THEN AFTER THAT, HE TAPED ME. HE TAPED MY  
24 HANDS. THEN I LOOSED IT. THEN HE TAPE ME AGAIN.

25          Q           OKAY. SO THE FIRST TIME HE TAPED YOUR  
26 HANDS AND YOU WERE ABLE TO GET YOUR HANDS LOOSE?

27          A           YES.

28          Q           WHEN YOU GOT YOUR HANDS LOOSE, DID YOU DO



1 CASE NUMBER: SA052445  
2 CASE NAME: PEOPLE VS. ROHAN MCDERMOTT  
3 -AND-  
ALCLIFF DALEY  
4 LOS ANGELES, CALIFORNIA MARCH 23, 2005  
5 LAX DIVISION 142 HON. KATHERINE MADER, JUDGE  
6 APPEARANCES: (AS HERETOFORE NOTED.)  
7 REPORTER: TRACI THOMAS, CSR NO. 9620  
8 TIME: 1:45 P.M.  
9

10 THE COURT: OKAY. WE'RE BACK ON THE RECORD IN  
11 PEOPLE VS. MCDERMOTT AND DALEY. ALL PARTIES ARE PRESENT.  
12 AND MR. GODOY IS BACK ON THE WITNESS STAND.

13 MR. GODOY, YOU'RE STILL UNDER OATH.

14 AND WHICH ATTORNEY IS GOING TO  
15 CROSS-EXAMINE?  
16

17 CROSS-EXAMINATION

18 BY MR. SCHWARTZ:

19 Q GOOD AFTERNOON, MR. GODOY.

20 A GOOD AFTERNOON.

21 Q MR. GODOY, YOU AND MR. LEWIS WERE GOING TO  
22 SELL 100 POUNDS OF MARIJUANA TO MR. MCDERMOTT AND  
23 MR. DALEY; IS THAT RIGHT?

24 A YES.

25 Q AND WHAT WAS YOUR ROLE SUPPOSED TO BE IN  
26 THIS TRANSACTION?

27 A OH, I WAS JUST THE MAN -- I WAS THE MIDDLE  
28 MAN, YOU KNOW.

1 Q AND OF THAT MONEY, HOW MUCH WERE YOU  
2 SUPPOSED TO GET?

3 A LIKE -- LIKE, 3,000.

4 Q ONLY 3,000 OF THE 32,000?

5 A YES.

6 Q AND THAT'S THE ARRANGEMENT THAT YOU HAD  
7 WITH MR. LEWIS?

8 A YES.

9 Q SO YOU AND MR. LEWIS WERE -- ON APRIL 30TH  
10 WERE EXPECTING MR. MCDERMOTT AND MR. DALEY TO HAVE 32 TO  
11 \$34,000 WITH THEM IN CASH?

12 A YES.

13 Q THE FOUR OF YOU WENT TO THE APARTMENT ON  
14 YUKON. BY THE FOUR OF YOU, I MEAN YOU, MR. LEWIS,  
15 MR. MCDERMOTT, AND MR. DALEY; IS THAT RIGHT?

16 A YES.

17 Q AND WHEN -- WHEN YOU GOT THERE, WHEN YOU  
18 ARRIVED AT THE APARTMENT ON YUKON, WHERE WAS THE MARIJUANA  
19 THAT YOU WERE GOING TO BE SELLING TO THEM?

20 A IT WAS IN HIS GIRLFRIEND'S TRUCK.

21 Q AND WHERE WAS THAT TRUCK IN RELATION TO THE  
22 APARTMENT BUILDING?

23 A THAT WAS PARKED AT LEMOLI AT THE 7-ELEVEN.

24 Q AND HOW MANY BLOCKS AWAY FROM THE APARTMENT  
25 BUILDING ON YUKON WAS THAT?

26 A LIKE, ONE BLOCK.

27 Q NOW, YOU KNEW THAT, AND MR. -- YOU  
28 DISCUSSED THAT WITH MR. LEWIS; CORRECT?

1           A           IT WAS PARKED, LIKE, TO THE SOUTH, YOU  
2           KNOW.

3           Q           IT WAS ON THE STREET?

4           A           YES.

5           Q           IT WAS -- BUT IT WAS CLOSE TO THE EXIT  
6           DOOR, WASN'T IT?

7           A           NO. IT WASN'T CLOSE.

8           Q           DID YOU WALK OR RUN PAST YOUR CAR AFTER YOU  
9           LEFT THE APARTMENT BUILDING?

10          A           I RUN -- MY CAR WAS TO THE LEFT. I RUN TO  
11          THE RIGHT.

12          Q           BUT YOU KNEW WHERE YOUR CAR WAS?

13          A           YES.

14          Q           SO THERE IS -- THE ONLY REASON YOU DIDN'T  
15          GO TO YOUR CAR IS BECAUSE YOU WERE AFRAID OF SOMEBODY FROM  
16          THE APARTMENT BUILDING COMING AFTER YOU; IS THAT RIGHT?

17          A           NO. I WAS SCARED THEY WOULD HAVE CHASED  
18          ME, YOU KNOW.

19          Q           BUT AT THAT PARTICULAR TIME, TELL ME IF I'M  
20          WRONG, YOU COULDN'T SEE WHERE EITHER ONE WAS?

21          A           NO.

22          Q           YOU WENT TO A NEIGHBOR'S HOUSE OR APARTMENT  
23          BUILDING; IS THAT CORRECT?

24          A           YES.

25          Q           AND YOU ASKED THE PERSON WHO LIVED THERE TO  
26          CALL THE POLICE?

27          A           YES.

28          Q           NOW, WHEN YOU -- WHEN YOU LEFT APARTMENT

1 NUMBER 200, WERE YOU CONCERNED FOR THE SAFETY OF TROY?

2 A YES.

3 Q SO WHEN YOU ASKED THE NEIGHBOR TO CALL THE  
4 POLICE, THE POLICE CAME TO THE SCENE; IS THAT RIGHT?

5 A YES.

6 Q THE HAWTHORNE POLICE; IS THAT RIGHT?

7 A YES.

8 Q AND DID YOU TELL THE HAWTHORNE POLICE THAT  
9 YOU HAD A FRIEND THAT WAS BEING TIED UP IN AN APARTMENT  
10 UNIT ON YUKON?

11 A NO.

12 Q WHY NOT?

13 A BECAUSE I DIDN'T TELL THE POLICE BECAUSE IT  
14 WAS A DRUG DEAL.

15 THE COURT: EXCUSE ME, BUT I'M HEARING SOME  
16 MURMURINGS FROM THE AUDIENCE AND LAUGHING FROM THE  
17 AUDIENCE. YOU ARE NOT TO MAKE ANY SORT OF AUDIBLE SOUNDS  
18 AGAIN. AND WHOEVER DOES IS GOING TO HAVE TO LEAVE THE  
19 COURTROOM.

20 OKAY.

21 Q BY MR. SCHWARTZ: SO MR. GODOY, TELL ME IF  
22 I'M WRONG, THAT IT WAS MORE IMPORTANT TO YOU THAT THE  
23 POLICE DIDN'T -- AT THAT POINT DIDN'T KNOW THAT YOU WERE  
24 GOING TO BE INVOLVED IN A DRUG TRANSACTION THAN YOUR  
25 CONCERN FOR THE SAFETY OF TROY?

26 A YES. THAT'S WHY I EXPLAINED TO THEM THAT  
27 THEY KIDNAPPED MY HOMEBOY, YOU KNOW. THAT'S WHAT I TOLD  
28 THEM, YOU KNOW.

1 Q NOW, LET ME ASK YOU ABOUT THAT.

2 THERE WAS NO -- THE MARIJUANA THAT WAS  
3 SUPPOSED TO BE SOLD TO MR. DALEY AND MR. MCDERMOTT WAS NOT  
4 IN APARTMENT 200; RIGHT?

5 A NO.

6 Q SO IF THE POLICE HAD GONE TO APARTMENT 200,  
7 THEY WOULD NOT HAVE FOUND THAT MARIJUANA?

8 A BUT -- BUT THE MONEY AND THE SCALE AND  
9 EVERYTHING ELSE WAS THERE.

10 Q BUT NO MARIJUANA?

11 A NO. THE MARIJUANA WAS AT THE OTHER BLOCK,  
12 LIKE I TELL YOU BEFORE.

13 Q SO WHEN THE POLICE CAME, THEY ASKED YOU --  
14 AND WHEN I SAY THE POLICE, THE HAWTHORNE POLICE INITIALLY  
15 CAME, AND THEY ASKED YOU ABOUT WHAT HAD HAPPENED; IS THAT  
16 RIGHT?

17 A YES.

18 Q AND YOU DIDN'T, OF COURSE, TELL THEM THAT  
19 THERE WAS A MARIJUANA TRANSACTION; RIGHT?

20 A NO.

21 Q IS THAT THE ONLY THING THAT YOU TOLD THEM  
22 AT THAT POINT THAT WASN'T TRUE?

23 A I TOLD THEM THE WHOLE WE HAD JUST GOT  
24 KIDNAPPED, YOU KNOW.

25 Q IN FACT, YOU TOLD THE HAWTHORNE POLICE WHEN  
26 YOU WERE FIRST CONTACTED THAT YOU AND TROY WERE WALKING  
27 DOWN THE STREET ON YUKON AND THAT TWO GUYS CAME UP TO YOU  
28 AND BOTH POINTED GUNS AND ORDERED YOU TO GET INTO THEIR

1 Q OKAY. WHAT DID YOU MEAN BY THAT?

2 A THAT'S WHEN I SAID WE GOT KIDNAPPED, YOU  
3 KNOW, AND WHEN I GOT AWAY, YOU KNOW.

4 Q OKAY. SO YOU TOLD THE DETECTIVES ON MAY  
5 3RD THAT WHEN YOU SPOKE TO THE HAWTHORNE POLICE INITIALLY  
6 ON APRIL 30TH THAT YOU DID SAY THAT TROY WAS BEING HELD  
7 HOSTAGE; RIGHT?

8 A ON THE 3RD?

9 Q YES, WHEN YOU FINALLY ADMITTED THAT YOU  
10 WERE IN APARTMENT 200.

11 A I DON'T -- I DON'T REMEMBER IF I TELL THEM  
12 HE WAS HELD HOSTAGE, YOU KNOW.

13 Q ISN'T THAT WHAT YOU TOLD THE DETECTIVES  
14 DURING THAT INTERVIEW ON MAY 3RD, THAT YOU TOLD THE  
15 HAWTHORNE POLICE THAT TROY WAS BEING HELD HOSTAGE?

16 A YES. YES. THAT'S WHEN THEY HAD BOTH OF  
17 US.

18 Q OKAY. NOW, WAS THAT TRUE? DID YOU TELL  
19 THE HAWTHORNE POLICE INITIALLY THAT TROY WAS BEING HELD  
20 HOSTAGE?

21 A YES.

22 Q AND WHEN YOU TOLD THEM THAT, DID YOU TELL  
23 THE HAWTHORNE POLICE WHERE TROY WAS BEING HELD HOSTAGE?

24 A I TELL THEM IN THE BACK BECAUSE FIRST I  
25 WASN'T TELLING THEM THE RIGHT STORY. I TELL HE WAS IN THE  
26 BACK.

27 Q AND, AGAIN, YOUR REASON THAT YOU DIDN'T  
28 TELL THE HAWTHORNE POLICE INITIALLY WHERE TROY WAS BEING

1 HELD HOSTAGE IS THAT YOU WERE CONCERNED OR WORRIED THAT  
2 YOU'D BE IN TROUBLE FOR SELLING MARIJUANA?

3 A YES.

4 Q THAT'S THE REASON?

5 A YES.

6 Q YOU WERE ASKED DURING THAT INTERVIEW BY THE  
7 SHERIFF'S DEPARTMENT ON MAY 3RD WHETHER ANYONE IN TROY'S  
8 FAMILY TOLD YOU NOT TO TELL THE TRUTH ABOUT THE MARIJUANA  
9 TRANSACTION OR WHAT WAS SUPPOSED TO HAPPEN THAT DATE.

10 DO YOU REMEMBER BEING ASKED ABOUT THAT?

11 A YES.

12 Q DO YOU REMEMBER WHAT YOU SAID?

13 A YES.

14 Q YOU SAID YES, DIDN'T YOU?

15 A YES.

16 Q OKAY. DID, IN FACT, SOMEONE IN TROY'S  
17 FAMILY TELL YOU NOT TO TELL THE POLICE ABOUT WHAT REALLY  
18 HAPPENED THAT DAY?

19 A YES.

20 Q BY THE WAY --

21 AND DO YOU REMEMBER WHO THAT WAS?

22 A I THINK HIS UNCLE.

23 Q AND DID HIS UNCLE GIVE YOU A REASON?

24 A BECAUSE HE THE ONE THAT TOOK ME TO THE  
25 POLICE STATION.

26 Q WHEN YOU FIRST CAME IN CONTACT WITH A  
27 NEIGHBOR NEAR THE APARTMENT BUILDING, THE ONE THAT YOU  
28 ASKED TO CALL THE POLICE, YOU STILL HAD SOME DUCT TAPE ON

1 YOU; IS THAT RIGHT?

2 A YES.

3 Q WHERE WAS THAT DUCT TAPE ON YOUR BODY?

4 A IT'S THE ONE THAT I BUST OFF MY FEET.

5 Q IT WAS ON YOUR FEET?

6 A YEAH, BECAUSE IT STICK ON MY JEANS, YOU  
7 KNOW. HOW THEY HAD ME TIED UP, MY FOOT, IT WAS RIGHT ON  
8 MY JEANS.

9 Q ALL RIGHT. DID YOU -- DID YOU EVER  
10 ACTUALLY SEE THE MARIJUANA ON APRIL 30TH, THE 100 POUNDS  
11 THAT WAS SUPPOSED TO BE SOLD TO MR. DALEY AND  
12 MR. MCDERMOTT?

13 A YES.

14 Q AND WHERE DID YOU SEE THE 100 POUNDS OF  
15 MARIJUANA?

16 A IT WAS IN THE TRUCK.

17 Q NOW, ON THAT PARTICULAR DAY THERE WERE A  
18 COUPLE INSTANCES WHERE THERE WAS GOING TO BE AN EXCHANGE  
19 OF THE MARIJUANA FOR THE MONEY BEFORE YOU GOT TO THE YUKON  
20 APARTMENT; RIGHT?

21 A YES.

22 Q OKAY. SO THE FIRST PLACE WOULD HAVE BEEN  
23 IN THE DRIVEWAY AT TROY'S GRANDMOTHER'S HOUSE; RIGHT?

24 A YES.

25 Q AND THERE WAS A DISCUSSION THERE ABOUT  
26 COUNTING THE MONEY AND EXCHANGING THE MARIJUANA; RIGHT?

27 A YES.

28 Q AND THAT DIDN'T HAPPEN?



1 THE APARTMENT?

2 A WELL, IT'S LESS THAN TWO MINUTES AFTER I  
3 GOT AWAY. I GOT UP AND RUN, YOU KNOW.

4 Q RIGHT. AND WHEN YOU GOT UP AND RAN AND YOU  
5 GOT OUTSIDE THE BUILDING, DID YOU EVER SEE MR. DALEY AGAIN  
6 THAT DAY?

7 A NOPE. I JUST RUN.

8 Q NOW, AT SOME POINT YOU MET UP WITH TROY'S  
9 UNCLE AT THAT 7-ELEVEN, DIDN'T YOU?

10 A NOPE.

11 Q YOU DID NOT?

12 A NOPE.

13 Q WHAT ABOUT CARLA?

14 A NOPE.

15 Q WEREN'T YOU CONCERNED ABOUT WHERE THE  
16 MARIJUANA WAS?

17 A AT THAT POINT, NOPE. I RAN STRAIGHT THERE,  
18 AND I TELL THE LADY TO CALL THE COPS.

19 Q MR. GODOY, LET ME ASK YOU THIS.  
20 YOU'VE TOLD US THAT YOU DIDN'T TELL THE  
21 HAWTHORNE POLICE ABOUT TROY BEING HELD IN APARTMENT 200  
22 BECAUSE YOU WERE CONCERNED YOU WERE GOING TO GET IN  
23 TROUBLE FOR THE MARIJUANA; RIGHT?

24 A YES.

25 Q DIDN'T YOU AT SOME POINT TRY TO TRACK DOWN  
26 CARLA, THE GIRLFRIEND, SINCE SHE WAS NEARBY TO MAKE SURE  
27 THAT SHE DIDN'T HAVE THE MARIJUANA IF POLICE EVER CAME TO  
28 THE SCENE?

1           A           WELL, AT THAT POINT I DIDN'T HAVE ANY CELL  
2 PHONE BECAUSE THEY TOOK AWAY BOTH OF OUR CELL PHONES.

3           Q           WELL, YOU KNEW WHERE SHE WAS, DIDN'T YOU?

4           A           YES. YES.

5           Q           OKAY. YOU KNEW SHE WAS NEARBY. WHY DIDN'T  
6 YOU GO TO HER AFTER YOU LEFT THE BUILDING?

7           A           BECAUSE I WAS RUNNING, AND I WAS WEAK, YOU  
8 KNOW. I COULDN'T MAKE IT ALL THE WAY THERE.

9           Q           WELL, SHE WAS A BLOCK AWAY, WASN'T SHE?

10          A           YES. BUT IT'S A BIG BLOCK.

11          Q           WELL, THE NEIGHBOR THAT YOU CONTACTED ABOUT  
12 SUMMONING THE HAWTHORNE POLICE, THEY WERE ABOUT A BLOCK  
13 AWAY FROM THE APARTMENT BUILDING, WEREN'T THEY?

14          A           NO. LIKE, THREE HOUSES.

15          MR. SCHWARTZ: I HAVE NOTHING FURTHER.

16

17

CROSS-EXAMINATION

18 BY MR. LOPEZ:

19          Q           GOOD AFTERNOON, MR. GODOY.

20                       SIR, DID YOU KNOW MR. DALEY FROM BEFORE --

21          A           YES.

22          Q           -- THIS INCIDENT?

23          A           YES.

24          Q           AND HAD YOU AND MR. DALEY HAD ANY KIND OF  
25 DRUG TRANSACTION BEFORE THIS INCIDENT?

26          A           NEVER.

27          Q           YOU JUST KNEW HIM; IS THAT CORRECT?

28          A           YES.

1 Q WERE YOU -- YOU WEREN'T JUST SITTING DOWN  
2 ON THE CARPET WITH MR. DALEY?

3 A OH, YES. YES.

4 Q WHEN MR. MCDERMOTT GOT INTO THE APARTMENT,  
5 YOU AND MR. DALEY WERE ACTUALLY SEATED ON THE CARPET; IS  
6 THAT RIGHT?

7 A WHEN WHAT?

8 Q WHEN MR. MCDERMOTT CAME BACK TO THE  
9 APARTMENT --

10 A YES.

11 Q -- YOU AND MR. DALEY WERE SEATED ON THE  
12 CARPET?

13 A YES.

14 Q AND WAS MR. LEWIS IN THE KITCHEN AT THAT  
15 TIME?

16 A NO. HE WAS STANDING RIGHT HERE. IT'S A  
17 SMALL APARTMENT, YOU KNOW. YOU DON'T GOT NO -- A LOT OF  
18 ROOM, YOU KNOW.

19 Q ALL RIGHT. NOW, WHEN MR. MCDERMOTT GOT  
20 BACK INTO THE APARTMENT, DID YOU SEE WHERE MR. MCDERMOTT  
21 WENT, WHAT PART OF THE APARTMENT?

22 A WENT STRAIGHT TO THE KITCHEN. HE TOOK THE  
23 BOX AND WENT STRAIGHT TO THE KITCHEN.

24 Q AND YOU'RE TALKING ABOUT A SHOE BOX; IS  
25 THAT CORRECT?

26 A YES.

27 Q AND FROM YOUR VANTAGE POINT IN THE LIVING  
28 ROOM, CAN YOU SEE INTO THE KITCHEN?

1 Q HOW LONG WERE YOU AND MR. LEWIS ALONE IN  
2 THAT APARTMENT WHEN YOU UNTIED YOURSELF?

3 A LIKE, LESS THAN TWO MINUTES BECAUSE AS THEY  
4 STEPPED OUT, I STEPPED OUT, YOU KNOW. I GOT UP, YOU KNOW.

5 Q AND DID YOU HAVE A GUN THERE IN THE  
6 APARTMENT YOURSELF?

7 A IF WHAT?

8 Q DID YOU HAVE A GUN AT THE APARTMENT?

9 A NO, BECAUSE WHEN HE PUT ME ON THE GROUND,  
10 FIRST THING HE DID WHEN HE TAPED ME UP, HE SEARCHED ME.  
11 YOU KNOW, HE SEARCHED ME.

12 Q DID YOU DISPLAY A GUN BEFORE YOU WERE TIED  
13 UP INSIDE THE APARTMENT?

14 A NO. NO, I DIDN'T DISPLAY NO GUN.

15 Q AND YOU HAD YOUR CELL PHONE WITH YOU; IS  
16 THAT CORRECT?

17 A YES.

18 Q AND YOU ONLY SAW ONE GUN IN THAT APARTMENT  
19 AT THAT TIME; IS THAT CORRECT?

20 A YES.

21 Q THAT'S THE ONE YOU SAY MR. DALEY HAD?

22 A YES.

23 Q ISN'T IT TRUE THAT MR. MCDERMOTT RAN OUT OF  
24 THE APARTMENT BEFORE MR. DALEY RAN OUT OF THE APARTMENT?

25 A YES.

26 Q AND WAS MR. MCDERMOTT -- DID HE RUN OUT --  
27 HOW MUCH BEFORE MR. DALEY RAN OUT?

28 A LIKE, LIKE -- BETWEEN FIVE AND TEN SECONDS.

1 SOMETHING IN MY CHAMBERS.

2

3

(A PAUSE IN THE PROCEEDINGS.)

4

5

THE COURT: OKAY.

6

MS. FOY-SMITH: COUNSEL, DO YOU STIPULATE THAT  
7 DR. JEFFREY GUTSDADT, G-U-T-S-D-A-D-T, BEING DULY  
8 QUALIFIED AS A DEPUTY MEDICAL EXAMINER FOR THE COUNTY OF  
9 LOS ANGELES, ON THE DATE OF MAY 3RD, 2004, CONDUCTED AN  
10 AUTOPSY AND AUTOPSY REPORT 2004-03377 ON A PERSON BY THE  
11 NAME OF TROY LEWIS AND MADE A DETERMINATION THAT THE CAUSE  
12 OF DEATH WAS A GUNSHOT WOUND TO THE HEAD AND THAT THE  
13 MANNER OF DEATH WAS A HOMICIDE?

14

MR. SCHWARTZ: SO STIPULATED FOR THE PURPOSES OF  
15 THE PRELIMINARY HEARING.

16

MR. LOPEZ: SO STIPULATED FOR MR. MCDERMOTT FOR THE  
17 PRELIMINARY HEARING ONLY.

18

THE COURT: STIPULATION ACCEPTED FOR THE  
19 PRELIMINARY HEARING.

20

MS. FOY-SMITH: AND THE PEOPLE WOULD LIKE TO MOVE  
21 PEOPLE'S 1 INTO EVIDENCE BY REFERENCE ONLY.

22

THE COURT: WERE THERE NOT TWO PICTURES?

23

MS. FOY-SMITH: THERE WAS ONE PICTURE.

24

THE COURT: ANY OBJECTION?

25

MR. LOPEZ: NO OBJECTION.

26

MR. SCHWARTZ: NO, YOUR HONOR.

27

THE COURT: IT WILL BE ADMITTED INTO EVIDENCE BY

28

REFERENCE ONLY AND RETURNED BACK TO THE PEOPLE.

1 (RECEIVED INTO EVIDENCE PEOPLE'S EXHIBIT 1,  
2 BY REFERENCE.)  
3

4 MS. FOY-SMITH: THANK YOU, YOUR HONOR. PEOPLE  
5 REST.

6 THE COURT: ACTUALLY, IS THERE NOT A FURTHER  
7 STIPULATION THAT THE PERSON WHO WAS BEING REFERRED TO BY  
8 MR. GODOY IS THE SAME VICTIM, TROY LEWIS, THAT THE AUTOPSY  
9 WAS CONDUCTED UPON?

10 MS. FOY-SMITH: COUNSEL, DO YOU STIPULATE TO THAT?

11 MR. SCHWARTZ: YES, FOR PURPOSES OF THE PRELIMINARY  
12 HEARING ONLY.

13 MR. LOPEZ: YES.

14 THE COURT: STIPULATION IS ACCEPTED.

15 OKAY. IS THERE ANY AFFIRMATIVE DEFENSE?

16 MR. LOPEZ: NO AFFIRMATIVE DEFENSE, YOUR HONOR.  
17 AND I WOULD LIKE TO BE HEARD ON VARIOUS COUNTS.

18 THE COURT: SURE.

19 MR. SCHWARTZ: LET ME START IN, YOUR HONOR.

20 THE COURT ACTUALLY MADE REFERENCE TO THE  
21 KIDNAPPING COUNTS. I THINK THAT'S COUNT 3 AND COUNT 4.

22 I THINK THERE IS ANOTHER ISSUE THAT'S WORTH  
23 LOOKING AT ON COUNTS 3 AND 4, AND THAT IS THE -- WHETHER  
24 THIS TRULY FITS THE DEFINITION OF KIDNAPPING FOR RANSOM.

25 SPECIFICALLY, THE TESTIMONY IS THAT  
26 MR. GODOY AND DECEDENT TROY LEWIS WERE IN THE APARTMENT  
27 NUMBER 200 AND AT SOME POINT WERE CONFRONTED AT GUNPOINT,  
28 ORDERED TO LAY DOWN ON THE GROUND AND WERE TIED UP.

1 AND, OF COURSE, WE KNOW FROM THE TESTIMONY  
2 OF GODOY HE SAYS THAT HE FREED HIMSELF AND ESCAPED.

3 THE COURT: LET ME JUST ASK, LOOKING AT CALJIC  
4 9.53, KIDNAPPING FOR RANSOM, REWARD OR EXTORTION. EVERY  
5 PERSON WHO CONFINES ANOTHER PERSON WITH THE SPECIFIC  
6 INTENT TO OBTAIN SOMETHING OF VALUE FROM ANOTHER.

7 WOULD THAT NOT BE TO -- WHEN ONE OF THEM  
8 LEFT TO GET THE UNCLE, TO GO TO CARLA KNOWING THAT THE  
9 MARIJUANA OBVIOUSLY WASN'T WITH THE TWO VICTIMS?

10 MR. SCHWARTZ: THE POINT THAT I WAS GOING TO MAKE  
11 THOUGH, YOUR HONOR, IS THAT ONE OF THE ASPECTS OF  
12 KIDNAPPING IS THAT THERE HAS TO BE MOVEMENT, AND THE  
13 MOVEMENT MUST NOT BE INCIDENTAL TO THE UNDERLYING CRIME.

14 HERE IT'S ALLEGED THERE'S A ROBBERY OR  
15 ATTEMPTED ROBBERY. ACTUALLY, THE ROBBERY WAS NEVER  
16 ACCOMPLISHED. IT WAS AN ATTEMPTED ROBBERY. AND THAT WHAT  
17 IS BEING -- THE CONDUCT THAT IS BEING ALLEGED TO  
18 CONSTITUTE THE KIDNAPPING HERE WAS -- INVOLVED MOVEMENT,  
19 IF ANY, THAT WAS INCIDENTAL TO THE ROBBERY.

20 I MEAN, THIS IS BASICALLY A ROBBERY OR  
21 ATTEMPTED ROBBERY. THAT'S WHAT THIS -- THIS INCIDENT IS  
22 ALL ABOUT.

23 THE COURT: LET ME ASK YOU THIS. I HAVE NOT READ  
24 THE CASE, BUT PEOPLE VS. MACINNES, M-A-C-I-N-N-E-S, AT 30  
25 CAL.APP.3RD, 838; ACCORDING TO THE NOTES ATTACHED TO THE  
26 CALJIC 9.53, INDICATES THAT THE SEIZING OF A PERSON FOR  
27 RANSOM, REWARD OR EXTORTION DOES NOT REQUIRE ANY  
28 ASPORTATION OF THE VICTIM UNDER PENAL CODE SECTION 209.



1 MAY 3, 2004

2 -oo0oo-

3 INTERVIEW OF DUANE GODOY

P112 A

4 taken at Homicide Bureau in the presence of Detectives **BRIAN STEINWAND** and  
5 Sergeant **RANDY SEYMOUR**, Los Angeles County Sheriff's Department, Homicide  
6 Bureau. Case under File #004-00044-3199-011. Transcribed by Rosemary Quintero, Law  
7 Enforcement Technician. 148

8 -oo0oo-

9 STEINWAND: Okay. Today's date is May 3, 2004. I'm Detective Brian Steinwand,  
10 Sheriff's Homicide. Uh, here investigating a case under Hawthorne P.D. file number of 04-  
11 5980. The Sheriff's file number for this case is 004-00044-3199-011. This incident  
12 occurred on April 30, 2004, in the city of Hawthorne at 13518 South Yukon Avenue,  
13 Apartment number 200, city of Hawthorne, 90815. Sitting before us, uh, on, uh, camera,  
14 and also on an audio. We're doing two types of recording here. There's a gentleman by  
15 the name of, uh, Duane Godoy. Uh, Duane, is Anthony your middle name?

16 GODOY: Yes, Anthony.

17 STEINWAND: Anthony. Okay. Duane is a, uh -- a victim in this case, uh, reported  
18 victim in this case and, uh, he was interviewed, uh, on a previous -- at a previous time on  
19 May 1, 2004, the day after the incident, uh, by homicide investigators myself and Detective  
20 Seymour. And, uh, we're talkin' to him again, uh, because it was a long interview, he  
21 hadn't relayed everything about the incident and today he's agreed to sit down with us and  
22 -- and relay the incident again. Correct me if I'm wrong, uh, Duane, but relay it again, uhm,  
23 with all the information as to what led up to this incident, what happened during this  
24 incident and what happened after the incident. So that's why we're here today. Duane,  
25 how do you spell your first name by the way?



GODOY: D-W-A-N-E.

STEINWAND: Okay. No Y, huh? Just D-W-A-N-E?

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GODOY: Yes, that is what is on my ID.

STEINWAND: Okay. I'm gonna have to get -- ask -- maybe slide the chair and then speak up just a little bit. Uhm, so Dwane Anthony Godoy, date of birth again is 08-04-82. Is that correct?

GODOY: Yes, sir.

STEINWAND: Okay. Alright, Dwane. Just relax. I know we got the camera right in your face and stuff. This will make it easier because you do have a -- a -- an accent from you -- from Belize. And the reason we're doin' it on the camera, I think it'll be easier for a secretary to transcribe this later, uhm, if they can see you like we can when we talk to you 'cause I listen to, uh, the tape we did the other day and it was -- it was awful hard for me to understand some things. So, with that said, Dewane, on, uh, Friday night, uh, an incident occurred where your friend, uh, was shot and killed. There's -- what you told us off tape before this was that a couple days prior to that was basically what's led up to the incident. Now there was some narcotics, uh, uh, or d -- d -- marijuana are gonna be sold and what have you. There's some meetings prior to that day. Could you start with how this whole incident came about? And then we'll get into what happened. Could you te -- could you tell us that, please?

GODOY: Well, I, uh, I think it was on the 29<sup>th</sup>, which was Wednesday. Uhm, that's when I got a call and, you know, Troy asked me if I'm willing like ride with them and stuff like that.

STEINWAND: Okay. When you say Troy, just so we're clear for the rest of the tape, Troy would be -- for the purposes of the tape. I know who Troy is, but so the

1 STEINWAND: For the purpose of the tape, I have a Beretta, uh, pistol, s o -- okay. 143  
2 So, then what happened when he came back again?

3 GODOY: Then he -- he -- at this time I'm right there, you know. When he came  
4 back I -- I seen him and he just like, "Get on the ground," you know? He hold the pistol like  
5 this. Then w -- he walk up so -- so Just could see too, you know? He tell both of us to get  
6 on the ground, you know? And that's when we get on the ground.

7 STEINWAND: Where at did you get on the ground at?

8 GODOY: I get at the ground right there.

9 STEINWAND: Were you in the kitchen or in the living room or in the bedroom?

0 GODOY: No. I'm right -- right -- right there. I think it's the living room. Right there.

1 STEINWAND: Right inside the front door or --

2 GODOY: Yeah. Right there by the front door.

3 STEINWAND: Okay. Go ahead.

4 GODOY: Not -- and we got down and he like, "Put the -- put -- both of you guys put  
5 your -- your hands behind your back," you know? Or else he was gonna kill us, you know?  
6 So I -- I did and then he -- he -- he throw the, uhm, tape -- tape to the -- the older Jamaican  
7 dude. And then he start taping up me first. He taped my hands, he didn't tape my feet.  
8 And then I loose my hands. That's when he tell him to tape me good, you know. At this  
9 time when I loose, he put the gun at my ear right here --

0 STEINWAND: Who did?

1 GODOY: You know? The skinny guy, he like, "I'm gonna kill you," you know?  
2 "Don't play with me," you know? And I like, "Alright." And I see the gun the -- the hammer  
3 was already back, you know? So I just stay right there. And then he tape up my hand  
4 again, the older Jamaican dude. And then the skinny one tell him to -- to tape my feet, too,

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1 GODOY: Yes. Later -- later on -- that evening -- I went back to the station and  
2 that's when I gave them the -- the license plate number.

3 STEINWAND: Okay. Uhm, we, uh -- like -- like I mentioned starting this tape, my  
4 partner, here and I, Randy Seymour, we eventually talked to you. You gave us a story  
5 about what happened, a little bit different version than this. You were a little bit more  
6 descriptive here. Uhm, before I ask you this question though, were you told by anybody,  
7 prior to that interview we had with you, did you -- were you told by anybody in Just's family  
8 -- Just -- in -- in Troy's family or anybody else, uh, not to be completely honest with us?

9 GODOY: Well, at first, you know, people try to tell me to say different stuff, but I  
0 realize that, you know, he already dead. No, you know -- I don't have no reason to lie, you  
1 know. 'Cause if I lie, you know what I'm saying, the police can't do nothing. The cops can't  
2 do nothing. They can't help us, you know?

3 STEINWAND: So did -- did -- knowing that Justice had been killed, did that  
4 persuade you somewhat to start tellin' at least more of the truth?

5 GODOY: Yeah. And I'm telling -- I'm telling the truth. I'm not holding back nothing  
6 at this point. That's everything how it happened.

7 STEINWAND: Okay. As I mentioned in a previous interview, we showed you some  
8 photographs, correct?

9 GODOY: Yes, you did.

0 STEINWAND: Okay. And prior to showing you those photographs, did we  
1 admonish you of somethin'? In other words, did we tell you that you're about to look at  
2 some photographs and --

3 GODOY: Yes, you did. You read it out for me like --

4 STEINWAND: Okay.

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1 STEINWAND: Is there any doubt whatsoever in your mind that that's the guy -- the  
2 bigger, older Jamaican?

3 GODOY: Yeah. I know that's him, you know? I'm --

4 STEINWAND: Okay. Okay. And then earlier today, did I phone you and ask you  
5 if you would, uh, come to, uh, Lennox Sheriff's Station to meet with us and the, uh, graphic  
6 artist, to see if you could, uh, maybe, uh, help us with a, uh -- a composite sketch of an  
7 individual?

8 GODOY: Uhm, yes, you did, you know?

9 STEINWAND: Okay. And did you come down and do that earlier today?

10 GODOY: Yes. You tell me to meet you at 3:00 and I was here from 2:30.

11 STEINWAND: Okay. You got there a little early.

12 GODOY: Yeah.

13 STEINWAND: Uhm, okay. And actually after the graphic artist met with you, she  
14 had told you she had already, uh -- had got some information about what this guy looked  
15 like from some other people and then after you gave a similar description, she -- I -- I  
16 wasn't in the room, but did she then show you a picture she had drawn?

17 GODOY: Uh, yes. Yes, sir. She did.

18 STEINWAND: Okay. I'm gonna hold that picture up. Is this a copy of that picture  
19 that she had drawn?

20 GODOY: Uh, yes. Yes.

21 STEINWAND: Is that the one you looked at and said looked pretty famil-- similar  
22 to the younger, skinnier of the suspects?

23 GODOY: Yes, sir.

24 STEINWAND: Okay. When -- when this composite was shown to you, uh, down

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phone number if it's in there.

GODOY: Yes.

STEINWAND: Okay. Okay. Uh, Randy, do you have anything?

SEYMOUR: Oh, came in late so -- you may have already covered this, but why not tell us about your car in the first place?

GODOY: Hmm?

SEYMOUR: Why didn't you tell us about your car in the first place?

GODOY: What you mean, uhm, not telling you about my car?

SEYMOUR: We didn't know anything about your car from you. You told us you got there, you know, in a cab.

GODOY: Yeah. That's when, uh, I didn't -- I wasn't telling you like the full story, you know. So today I came and I tell you guys everything. I'm not missing nothing, you know.

STEINWAND: I think what he's askin' why -- why -- what was the reason you didn't tell us your car was there. Was your car --

GODOY: Probably --

STEINWAND: Was your car involved in this any other way than drivin' it? Was there narcotics in your car? Was there anything in your car?

GODOY: Uhm, no, narcotics -- wasn't in my car. Nothing was in my car, you know. I just -- I was -- I thought I was gonna get in trouble, you know? I never been in this situation before, you know?

SEYMOUR: When you -- when you ran out of the apartment building when you broke free, why didn't you just run to your car?

GODOY: Because -- because I run -- I run to the right because I figure the dudes they run through the bottom and the only way they could get out is through -- through the

GODOY: But --

STEINWAND: Did you ever see the drugs in the back of -- the marijuana in the back of the Expedition? (178)

GODOY: Actually, I seen -- I seen -- I seen some -- some -- some box, you know? And the dude keep -- the skinny Jamaican dude, he telling me why they count the money to -- to come and open it. I like, "That's not my stuff. I can't touch nobody's stuff."

STEINWAND: Was that at grandma's house?

GODOY: Yeah.

STEINWAND: Okay. Was there any marijuana in your car? And you need to be completely honest. Did you have any of the marijuana in your car?

GODOY: No marijuana in my car. I could tell this in front of Justice family, his girlfriend, everybody. Nothing.

STEINWAND: Did you see the marijuana in the Expedition?

GODOY: I se -- I didn't see the marijuana, marijuana. I seen box. Boxes. I didn't see with my eyes. I don't know what's in the box. You know?

STEINWAND: And originally I think you told me that -- that the deal was set up to be -- take place there or the day before for 30 some pounds or something like that?

GODOY: Actually, I think it was for like 100 pounds, but Just only bring 33 or 34, you know? And that's when they was talking, you know?

STEINWAND: Okay. And then they basically agreed to again, uh, to make the transaction the following morning?

GODOY: Yes. Like I explained everything on this same tape earlier --

STEINWAND: Okay.

GODOY: To you what -- what happened.

1           GODOY: Well, like I'm the, you know -- I be at my spot slingin' t-shirts and stuff like  
2 I was telling your partner. The skinny dude, he used to come to parties, you know what I'm  
3 saying? And they came up and they asked like, "Who --" you know what I'm saying? Like  
4 if I knew anybody that got it. And I like, "I could -- I could make a few calls," you know?

5           SEYMOUR: But you had to call -- had -- you had to call somebody up that you get  
6 in touch with 'em.

7           GODOY: Uhm, yeah.

8           SEYMOUR: Did he leave you a number? Did he give you his number? Did he --  
9 how -- how are you supposed to get a hold of him?

10          GODOY: Uhm, that's why when he gave me a number to give the dude if I get in  
11 touch with them, you know, to let -- they give him a call.

12          SEYMOUR: What -- where's that number at?

13          GODOY: The number is in -- in the phone.

14          STEINWAND: Okay. We were probably getting low on tape here.

15          SEYMOUR: We gotta go to the bathroom. We're gonna turn the tape off for a  
16 minute and --

17          STEINWAND: Did you turn the tape off already?

18          SEYMOUR: No.

19          STEINWAND: This probably will just take a second.

20          SEYMOUR: Okay.

21          STEINWAND: I want you -- I wanna keep this -- let me put this stuff away from him  
22 a little bit 'cause I'm savin' it for chemical reasons but, uhm --

23          SEYMOUR: He described it as a Vandutch hat.

24          STEINWAND: A Vandutch hat? Okay. Does this hat look familiar?

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Both Theresa Catalin & Godoy stated that the type of tape was "duct tape". Peter Kergil stated that it was clear packing tape. Are we to assume that two types of tape were used or is duct tape clear instead of silver in this case?

FILED

MAR 15 2006

John A. [unclear]  
[unclear]



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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

LYF

No. SA052445  
(Space below for filing  
Stamp only)

INSTRUCTIONS { GIVEN  
~~REFUSED~~  
WITHDRAWN

PEOPLE OF THE STATE OF CALIFORNIA

vs.

MCDERMOTT ROHAN

FILED  
Los Angeles Superior Court

Consisting of

MAR 15 2006

Defendant.

John A. ... Clerk

pages herein

JAMES DABNEY

By ... Deputy

Judge Presiding.

To prove that this special circumstance is true, the People must prove that:

1. The defendant committed or attempted to commit or aided and abetted Robbery or Kidnap for Ransom;
2. The defendant intended to commit or intended to aid and abet the perpetrator in committing Robbery or Kidnap for Ransom;
3. The defendant or the perpetrator did an act that caused the death of another person;
4. The act causing the death and the Robbery or Kidnap for Ransom or attempted Robbery or Kidnap for Ransom were part of one continuous transaction;

AND

5. There was a logical connection between the act causing the death and the Robbery or Kidnap for Ransom or attempted Robbery or Kidnap for Ransom. The connection between the fatal act and the Robbery or Kidnap for Ransom or attempted Robbery or Kidnap for Ransom must involve more than just their occurrence at the same time and place.

To decide whether the defendant and the perpetrator committed or attempted to commit Robbery or Kidnap for Ransom, please refer to the separate instructions that I will give you on those crimes. To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I have given you on aiding and abetting. You must apply those instructions when you decide whether the People have proved first degree murder under a theory of felony murder.

---

**703. Special Circumstances: Intent Requirement for Accomplice  
After June 5, 1990-Felony Murder, Pen. Code, § 190.2(a)(17)**

If you decide that the defendant is guilty of first degree murder but was not the actual killer, then, when you consider the special circumstances of Robbery or Kidnapping for Ransom, you must also decide whether the defendant acted either with intent to kill or with reckless indifference to human life.

In order to prove these special circumstances for a defendant who is not the actual killer but who is guilty of first degree murder as an aider and abettor, the People must prove either that the defendant intended to kill, or the People must prove all of the following:

1. The defendant was a major participant in the crime;

AND

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2. When the defendant participated in the crime, he acted with reckless indifference to human life.

A person *acts with reckless indifference to human life* when he or she knowingly engages in criminal activity that he or she knows involves a grave risk of death.

The People do not have to prove that the actual killer acted with intent to kill or with reckless indifference to human life in order for the special circumstances of Robbery or Kidnapping for Ransom to be true.

If you decide that the defendant is guilty of first degree murder, but you cannot agree whether the defendant was the actual killer, then, in order to find these special circumstances true, you must find either that the defendant acted with intent to kill or you must find that the defendant acted with reckless indifference to human life and was a major participant in the crime.

If the defendant was not the actual killer, then the People have the burden of proving beyond a reasonable doubt that he acted with either the intent to kill or with reckless indifference to human life and was a major participant in the crime for the special circumstances of Robbery or Kidnapping for Ransom to be true. If the People have not met this burden, you must find these special circumstances have not been proved true.

---

#### **706. Special Circumstances: Jury May Not Consider Punishment**

In your deliberations, you may not consider or discuss penalty or punishment in any way when deciding whether a special circumstance, or any other charge, has been proved.

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#### **460. Attempt Other Than Attempted Murder**

The murder is alleged to have been committed during an attempted Robbery and or an attempted Kidnapping for Ransom.

To prove that the defendant is guilty of attempted Robbery and or attempted Kidnapping for Ransom, the People must prove that:

1. The defendant took a direct but ineffective step toward committing Robbery and or Kidnapping for Ransom:
- AND
2. The defendant intended to commit Robbery and or Kidnapping for Ransom.

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UPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA VS.  ROHAN MCDERMOTT	DEPT: LX-F CASE NUMBER: SA052445  <b>VERDICT (GUILTY)</b> <b>COUNT 1</b> (Victim: Troy Lewis)
---	--

We the jury in the above entitled action find the defendant, ROHAN MCDERMOTT, **GUILTY** of the crime of FIRST DEGREE MURDER, on or about April 30, 2004, in violation of PENAL CODE SECTION 187(a), a Felony, as charged in Count 1 of the Information.

MAR 15 2006

We further find the allegation that the murder of Troy Lewis was committed by defendant, ROHAN MCDERMOTT, while the said defendant was engaged in the attempted commission of the crime of Robbery, within the meaning of Penal code section 190.2(a)(17), to be True.

(True or Not True)

We further find the allegation that the murder of Troy Lewis was committed by defendant, ROHAN MCDERMOTT, while said defendant was engaged in the attempted commission of the crime of Kidnapping for Ransom, within the meaning of Penal code section 190.2(a)(17), to be True.

(True or Not True)

We further find the allegation that in the commission and attempted commission of the above offense, a principal in said offense was armed with a firearm, to wit, handgun, within the meaning of Penal Code section 12022(a)(1), to be True.

(True or Not True)

THIS 15 DAY OF March 2006,

[Signature]  
(FOREPERSON)

JUROR SEAT # 11

**VERDICT (Guilty)**

# ATTORNEY GENERAL

RECEIVED  
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NO. LA 20060502195

COURT OF APPEAL  
SECOND APPELLATE DISTRICT  
STATE OF CALIFORNIA

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

**SUPPLEMENTAL**  
Superior Court No. SA052445 - 01  
2d Criminal No. B190721

vs

**MCDERMOTT, ROHAN - 01**  
Defendant(s) and **APPELLANT**

Notice of Appeal File Date: 05-17-06

---

**CLERK'S TRANSCRIPT**

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**Appearances:**

Appeal from the Superior Court,  
County of Los Angeles

Counsel for Plaintiff:

THE ATTORNEY GENERAL

Honorable:

James R. Dabney, Judge

Counsel for Defendant:

**ROBERT D. BACON**  
484 Lake Prk Avenue, PMB 110  
Oakland, Ca 94610

Date Mailed to:  
Defendant (in pro per)  
Defendant's Trial Attorney  
Defendant's Appellate Attorney **SEP 2 6 2006**  
District Attorney  
Attorney General **SEP 2 6 2006**

1 CT-206  
OPT

1 MAY 1, 2004

2 -oo0oo-

3 INTERVIEW OF DUANE GODOY #1

4 Taken at Hawthorne Police Department in the presence of Investigator **BRIAN**  
5 **STEINWAND** and Sergeant **RANDY SEYMOUR**, Los Angeles County Sheriff's  
6 Department, Homicide Bureau. Case under File #004-00044-3199-011. Transcribed by  
7 Alexis Esparza, Intermediate Typist Clerk.

8 -oo0oo-

9  
10 *(Background noise)*

11 UNKNOWN: *(Sighing)*

12 *(Unknown background voices)*

13 UNKNOWN: *(Sighing)*

14 STEINWAND: Hey?

15 SEYMOUR: Hi. How you doing brother?

16 GODOY: Alright

17 STEINWAND: Oh, at least you're gettin' some sleep.

18 GODOY: Yeah. I didn't get to go to sleep, man.

19 STEINWAND: I'm Brian Stenwand. This is my --

20 *(Background noise)*

21 STEINWAND: -- partner, Randy Seymour. Did we just get locked in here?

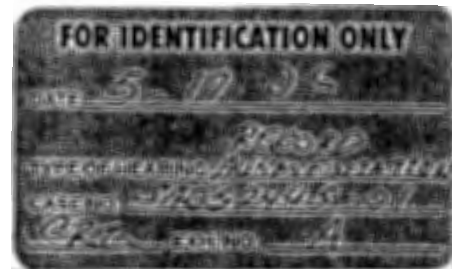
22 UNKNOWN: Hmm --

23 GODOY: He said lock it cause it's pretty cold.

24 STEINWAND: Okay.

25 GODOY: Uhm-hmm.

26 STEINWAND: You doing okay?



1 they like, "Get on the fuckin' floor." You know? They like, "Get on the floor," and then we  
2 get on the floor, right? I had in two earring. I took them out, 'cause he had the gun right  
3 here and the whole earring bent in my -- bent in my ear, you know? I still got it the same  
4 way, so -- so now they got us like this. They got us just like this, right, and then he like,  
5 "Put your hands behind your back," but they talkin' Jamaicans, you know, and I'm -- I'm like  
6 this. You know what I'm saying? And I'm like, "Man," you know what I'm saying, and then  
7 they got just like from here to there, you know? And then he start taping, right? Not the --  
8 the one -- the driver -- the one who was driving, he the one start taping. When he start  
9 taping, I loose my hand like this and then that's when dude rush me with the gun, and be  
10 like, "I'm gonna kill you if you move your hands again." So he start wrapping my hands  
11 again. When he start wrapping it the opposite way like this. You know what I'm saying?  
12 That's the way he start wrapping. Then the other one tell him to wrap my feet too. You  
13 know what I'm saying? Then when they finished with me, they wrap up Justice too.

14 STEINWAND: Okay. And where did all this take place at?

15 GODOY: Right there as we drove up, and then when they turn they back that's  
16 when I got up and I pulled my hand like this, and I jump and I started to run and I holler,  
17 "Help! Help!" Right? And I'm hollering, "Help," and I'm running, I'm running, and I run  
18 through the building hollering for help. You know?--

19 STEINWAND: How do you run outta there?

20 GODOY: Huh?

21 STEINWAND: What path do you take to run outta there?

22 GODOY: I run through the (unintel), 'cause we was down there and I was running  
23 through the building, you know? 'Cause they got like a lot of sticks, you know? And I run  
24 out and I'm hollering "help" high, and when I got on the street, which is Yukon --

1 GODOY: You know? Has, you know what I'm saying? The up there, you know?

2 STEINWAND: Did he tell you where you were gonna go that day then?

3 GODOY: When?

4 STEINWAND: When you went there yesterday? Did he tell --

5 GODOY: They don't tell me nothing.

6 STEINWAND: How do you get there?

7 GODOY: Huh?

8 STEINWAND: How do you get there?

9 GODOY: He got dropped off over there.

10 STEINWAND: By his girlfriend or --

11 GODOY: Nah-uh. By a cab.

12 STEINWAND: By what?

13 GODOY: A cab.

14 STEINWAND: A cab?

15 GODOY: Yeah.

16 STEINWAND: You took a cab all the way over there?

17 GODOY: Yeah. I was like --

18 STEINWAND: But what about his girlfriend waitin' around the corner, you said.

19 GODOY: Yeah. She was around the corner.

20 STEINWAND: Did she take the cab with you?

21 GODOY: No. She was driving.

22 STEINWAND: And you took the cab.

23 GODOY: Me and Justice, you know?

24 STEINWAND: Why didn't you just ride with her?



1           GODOY: 'Cause he didn't wanna drive her.

2           STEINWAND: You tellin' the truth now?

3           GODOY: Positive telling the truth. He don't wanna drive with her. I don't know why

4 he don't wanna drive with her 'cause I think, I don't know. I think the car had some weed.

5           STEINWAND: Okay. What kind of car is that? That she drives.

6           GODOY: I don't even see the car.

7           STEINWAND: You don't know what kind of car she drives? Okay. So, you and --

8 you and Justice take a cab over to this -- where this happened at. Okay. Does he -- has

9 he told you yet what -- what's gonna go on or does he -- has he -- has he filled you in a little

10 bit so that you at least know that, you know, I'm just gonna score a little weed and re-sell.

11 What, I mean, what does he tell you about what's goin' on?

12           GODOY: I think like the dude they -- they -- they -- they tell him that they wanted

13 to buy some weed.

14           STEINWAND: What -- who does?

15           GODOY: The dudes. The --

16           STEINWAND: What --

17           GODOY: Jamaicans.

18           STEINWAND: The two guys?

19           GODOY: Yeah. And -- and --

20           STEINWAND: They wanna buy weed from --

21           GODOY: From Just.

22           STEINWAND: Okay.

23           SEYMOUR: Just is gonna sell weed?

24           GODOY: Hmm?

1 you if you do that again." And he doing (Unintel) -- he was asking Justice something like,  
2 "Where's your girlfriend at?" You know? Something. And then he like, "I'm -- I'm gonna  
3 go for her. I'm gonna go for her now." And that's when he stepped out the house, you  
4 know what I'm saying? The other dude went right out and as he went out, that's when I got  
5 up and I'm like this.

6 STEINWAND: Both -- both of them went out?

7 GODOY: The first one went first. He said he going for Just's girlfriend.

8 STEINWAND: Okay.

9 GODOY: That time he saying, "I'm gonna kill her pussy whore and leave her and  
10 leave her to stink up, you know? That's why he saying -- like he said, "I'm gonna kill both  
11 of you guys when I come back. And leave 'em to stink up," you know? And throw me in  
12 closet, right? So I'm thinking and then the other dude looked like he went to tell him  
13 something. But by the time I -- I -- I -- I bust my stuff and I jumped to door like this, and  
14 when I did that I pull the door open. And I pulled the door open, he grabbed me like -- he  
15 grabbed me like you ain't going nowhere, you know? And that's when I just got strength  
16 and I run. And I just holler "Help. Help" And I just started to run.

17 STEINWAND: Where'd you run to?

18 GODOY: I run straight -- straight out to the street. Run around the corner, run to  
19 the back of this lady house.

20 STEINWAND: You didn't run over and go downstairs to the parking area when you  
21 came from?

22 GODOY: Run straight out. When I run, I just run and holler "Help". The building is  
23 a big building. I just holler "Help". And I just running.

24 STEINWAND: How you running? You had duct tape on you still? You feet?

1 tell them like, "I don't wanna do it," you know. I tell them --

2 STEINWAND: So someone was telling you to be dishonest?

3 GODOY: Hmm, just to say -- just them to say like that, you know, and I tell them like  
4 man -- you know what I'm saying?

5 SEYMOUR: Yeah. Who -- who was it that told you that?

6 STEINWAND: Was that the girlfriend? The girlfriend told you don't -- just don't talk,  
7 tell 'em the truth? Well it's a -- we're not that -- you -- you know what, everybody's scared  
8 right now. We understand. We've done this for a long time like I told you. Okay. So we  
9 just wanna -- you know, who so when we talk to 'em we can tell them to trust us. We're  
10 doing the right thing here.

11 SEYMOUR: They -- they might know more information about this than you know.  
12 They might know who these people are.

13 STEINWAND: They might help us get the next guy.

14 SEYMOUR: Yeah. So that's why -- who told you not to say that?

15 STEINWAND: We gotta convince them to tell the truth too. We're not gonna tell 'em  
16 that you did. We're not gonna tell 'em anything you said, but we're gonna do the same  
17 thing with them. Listen, we know what's going on. So we know -- we need to know who  
18 we're gonna have to soften up.

19 GODOY: Uhm-hmm.

20 STEINWAND: And you could help us out a little bit with that. Was that the girlfriend  
21 or was it somebody else? Was it the uncle?

22 GODOY: Nah, the -- the girlfriend.

23 STEINWAND: Okay.

24 GODOY: They was like -- like -- like don't go and tell 'em like, you know --

1 STEINWAND: Uhm-hmm.

2 GODOY: -- when I got on Yukon and this lady was in a green -- a green, like, Jeep  
3 and I -- I -- I grabbed her door and I open it, and I got in there and she got scared. She  
4 like, "Get out! Get out," and everybody watching me. I'm running to the street. I fell down  
5 -- I fell down like -- like five times 'cause I was weak. My whole knees bruise up. Both of  
6 them. So this what I did, I run, run, run, run and I weak and I'm across the street, and then  
7 I see this yard and I run behind it 'cause I think they was chasing me, you know? And  
8 when I run behind this lady yard, I -- I dropped just like this. Just like this, right? And this  
9 time I can't move no more. I can't move no more. My whole body is weak. If I do like this,  
10 like, blood rushing in my head, you know, 'cause I'm -- I'm, like, scared, you know? And  
11 I'm like this then the dude came to the -- the dude that I went in his yard, he came to the  
12 door with a shotgun and he like, "This is private property. You gotta get out." I said, "No,  
13 I'm not getting out. Call the police for me." I had 65 bucks in my pocket, the same 65  
14 bucks. The lady, she stay right over there too. The same lady. I'm like, "Man, I'll give you  
15 65 bucks to call the police for me and give me some water." And she the one who call the  
16 police. At that time, my sneakers still had on tape -- The duct tape. Even when the-- even  
17 when the--then I, then she-- I told her to call the police, and when the police came, I tell the  
18 police -- she was telling the police what happened, and she tell the police like tape in the  
19 yard, you know what I'm saying? I think it's still there. You know? And then the officer,  
20 they came and they took me.

21 UNKNOWN: *(Sighing)*

22 STEINWAND: Okay. How did you, uh -- have you ever been to this place before  
23 they took you?

24 GODOY: Never.

1 STEINWAND: Never?

2 GODOY: Never.

3 STEINWAND: Okay. You ran outta there, how did you run out now? As far--did  
4 you run all the way down the driveways --

5 GODOY: I couldn't -- I couldn't go to the driveway because it's a remote gate. It's  
6 a big remote gate that just goes up, so I run, and I run through the building and I run up the  
7 stairs.

8 STEINWAND: Which stairs, the first ones you saw?

9 GODOY: The first one I saw 'cause (unintel) 'cause I don't even know the building,  
10 you know, but I'm just trying to get out through the exit, you know?

11 STEINWAND: Yeah. Okay, so you ran -- you ran up there and where did you go  
12 after you ran up there?

13 GODOY: When I run up there I'm -- I'm looking for the exit and when I got the exit,  
14 I run -- run in the middle of the streets and I'm hollering, "Help! Help," and I just keep on  
15 running and I'm falling down -- I'm falling down, and I get up and I run. (*Sighing*)

16 STEINWAND: Okay, and (*sighing*) -- well, you were never in that apartment  
17 complex before, right?

18 GODOY: No, no.

19 STEINWAND: How did you find out how to get there or how did you know where  
20 to go back to (unintel) officers?

21 GODOY: How do I know?

22 STEINWAND: Yeah.

23 GODOY: 'Cause I know the area that it happened, you know what I'm saying,  
24 'cause when I run out it was Yukon, and I know where the lady house too. Right there off

1 135<sup>th</sup>, that I run in her yard. I -- I remember that.

2 STEINWAND: Oh. Okay. Uhm, two guys they're tying you up, right?

3 GODOY: One was tying.

4 STEINWAND: One was trying.

5 GODOY: Yeah. The driver was tying.

6 STEINWAND: And you escaped from downstairs?

7 GODOY: Yeah.

8 STEINWAND: And they had two guns, right?

9 GODOY: Yeah, but --only one of them was taping.

10 STEINWAND: Did they try to shoot ya?

11 GODOY: They had the gun here. 'Cause the first time, like I said, when I had my  
12 hand in the back I pull out my hands, you know? And when I pull it out, that's when he  
13 come with the gun and be like, "I kill you," and he had the gun -- it's a long gun. Black and  
14 (unintel) handle, and he had the -- the hammer in back, you know? And I -- I was crying,  
15 right? I was like, "Man," you know what I'm saying? I'm like -- I'm like, "I'm gonna die." I  
16 see death, you know what I'm saying? So I'm like, "Man," so when I loose my hand, he tied  
17 up my hand again. And then like this -- he start wrap it like this, and then he start do it this  
18 way. My hands like (unintel) start going between here, here and here, you know? That's  
19 how he start doing it and I was like this. Then at this time he put like three -- three roll of  
20 thing around my feet. Three roll of tape, right? And I was like this and I got up, you know  
21 and when I did like this my foot was still taped up and that's when I started to run.

22 STEINWAND: (*Sighing*) Okay. Where you--how did you run with your feet taped  
23 together?

24 GODOY: They had three layer of tape. Like they did it like three time. That's what

1 I'm saying. When I did like this, I pull out my hand, I got up and I did it like this. And that's  
2 when it break loose and that's when I started to run. The -- the dude that tape didn't even  
3 know how to tape.

4 SEYMOUR: Why do you think, uh, they didn't follow you?

5 GODOY: Huh?

6 SEYMOUR: Why do you think they didn't follow --

7 GODOY: One of them was chasing me, but I'm holler -- I'm -- I'm yelling for "Help!  
8 Help!" You know what I'm saying? One of them was following me and I was like, "Help!  
9 Help!" I'm screaming, "Help!" I'm -- I'm running all the way. You know what I'm saying?  
10 That's why when I got to the lady house I was like, "Call the police, please, please, please,"  
11 you know? And she call the police like forty- five minutes after the police came -- the cops  
12 came. *(Sighing)*

13 SEYMOUR: When they -- when they put you in the car and they drove you back  
14 there and then they're taping you, what are they telling you? I mean, there's gotta be a  
15 reason that they did this.

16 GODOY: Th -- they just cursing up. They just cursing up in Jamaican. You know  
17 what I'm saying? They're not -- they -- all they doing is cursing up and talk 'bout tape them  
18 up and stuff like that, you know? And they said they're gonna kill us. You know?

19 SEYMOUR: There's gotta be a reason why they're gonna kill you. They didn't just  
20 pick you for no reason at all.

21 GODOY: Well that's what I'm saying. I don't know. You know what I'm saying?  
22 I was walking down the street. I don't know what was it, like -- like, what was the reason  
23 for. I don't know if they wanted to jack us, 'cause I had on this chain right here and I had  
24 on some diamonds earring, too.

1 STEINWAND: How many earrings did you have in?

2 GODOY: I had in two --

3 STEINWAND: Alright.

4 GODOY: -- to go with my chain.

5 STEINWAND: One in each ear?

6 GODOY: Huh?

7 STEINWAND: One --

8 GODOY: And I had on a diamond ring to go with this. You know?

9 STEINWAND: So you think that's all it was, just to get to your jewelry?

10 GODOY: That's what I'm -- I don't -- I don't know. I was trying to ask Jus, like, you  
11 know what I'm saying -- like if you have any problems with anybody, you know? 'Cause  
12 I don't have no problem. You know what I'm saying? Never been arrested, none of that.  
13 You know? I won't -- I go to church every Sunday. I don't make problem. You know what  
14 I'm saying? When they even had me (unintel), I was like, "God, how am I get out this,"  
15 right, 'cause I always carry a bible. I'm being honest, and I hold my bible and I was like --  
16 like, "Jesus." You know what I'm saying? And that's what I did.

17 UNKNOWN: *(Sighing)*

18 SEYMOUR: Where did -- where did you and, uh, Justice meet up today?

19 GODOY: Where we meet up? We meet up at -- at, uhm -- at Jus' grandmother  
20 house.

21 SEYMOUR: Where is that?

22 GODOY: Where he stay at. At the address on 36<sup>th</sup>.

23 SEYMOUR: And why did you go over there this morning?

24 GODOY: Huh?



1 GODOY: How was I tied up? I was tied up like this. They had me on the ground.  
2 I was tied up like this. You know? The first time they did it I loose my hand. That's when  
3 he come with the gun, and then they tape me again and they tape me different way. You  
4 know? And then they tape my feet.

5 UNKNOWN: *(Sighing)*

6 STEINWAND: And then when you were running away after you broke free the final  
7 time when you run away, they didn't -- did they try to shoot you or anything?

8 GODOY: I'm just -- I'm just trying to get away. I'm just running. One of them, the  
9 driver, he tried to grab me. I think I got a scratch somewhere here. That's what my  
10 girlfriend tell me. You know?

11 UNKNOWN: *(Coughing)*

12 GODOY: He tried to grab me like, "You ain't goin' nowhere." You know? And I just  
13 get strength and I just run, and when I'm running I holler "Help," hard. You know what I'm  
14 saying? "Help!" Like the dude trying to chase and they hearing me holler, "Help!" You  
15 know what I'm saying? And they had the pistol too.

16 STEINWAND: Okay. At some point you said they put the -- put --

17 GODOY: They put the gun when I loose the tape.

18 STEINWAND: Okay. And where -- where were you at when they did that? They  
19 put the gun -- didn't they -- didn't you -- they do something to your earring?

20 GODOY: He pressed the gun down like this.

21 STEINWAND: Where were you at when that happened?

22 GODOY: Right there.

23 STEINWAND: Downstairs in the parking--

24 GODOY: Yeah--

1 STEINWAND: -- thing?

2 GODOY: He pressed-- I--, I'm like this, right? And he pressed the gun right here,  
3 I was like, "Ow, ow, don't kill me." He like, "I'm gonna kill you." You know what I'm saying?

4 *(Background noise)*

5 GODOY: I was like, "Don't kill me." Then the whole earring stuff is bent from the  
6 gun that he -- the pressure --

7 STEINWAND: Okay. Where's your earring now?

8 GODOY: I got it at the house. I took it out 'cause it's bent.

9 STEINWAND: What kinda earring? What did it look like?

10 GODOY: It's like -- it's --

11 STEINWAND: (unintelo--

12 GODOY: It's a pear. It's like this. Then it got nine little diamonds in it. That's it right  
13 there.

14 STEINWAND: And where is it at?

15 GODOY: At my house.

16 STEINWAND: You sure?

17 GODOY: Positive.

18 STEINWAND: How many did you have?

19 GODOY: Two. Both. This one that was in the right ears, this the one that bend.

20 STEINWAND: Okay.

21 GODOY: It's still the same way, 'cause when I reach home I took it out. You know  
22 what I'm saying? I took it out and I leave it right there. Before Jus' uncle came and pick  
23 me up, to let us bring the picture, I took it out and put it right there, and then that's when we  
24 come with his wife and his uncle.

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2 I was tied up like this. You know? The first time they did it I loose my hand. That's when  
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19 put the gun -- didn't they -- didn't you -- they do something to your earring?

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22 GODOY: Right there.

23 STEINWAND: Downstairs in the parking--

24 GODOY: Yeah--

1 STEINWAND: -- thing?

2 GODOY: He pressed-- I--, I'm like this, right? And he pressed the gun right here,  
3 I was like, "Ow, ow, don't kill me." He like, "I'm gonna kill you." You know what I'm saying?

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22 what I'm saying? I took it out and I leave it right there. Before Jus' uncle came and pick  
23 me up, to let us bring the picture, I took it out and put it right there, and then that's when we  
24 come with his wife and his uncle.

1 STEINWAND: *(Sighing)* So *(making tapping sound)* let's see, are you clear on the  
2 earring thing?

3 SEYMOUR: For now. W -- where do --

4 STEINWAND: Okay.

5 SEYMOUR: -- you live now?

6 GODOY: Where I live now? I live at 1260 -- the same address on my I.D. That's  
7 where I live right now. 1260 West 39<sup>th</sup> Place. Uhm, by the way, the other officer took my  
8 driver's license too. The other one that was (unintel).

9 STEINWAND: Go ahead, Randy.

10 SEYMOUR: So w -- what time was it you went to went to, uh -- uh, Justice's house  
11 yesterday?

12 GODOY: It was like, psh, a little bit over 11:00.

13 SEYMOUR: Okay. And then how did you get to Yukon?

14 GODOY: Huh?

15 SEYMOUR: How did you get to Yukon?

16 GODOY: We took the bus.

17 SEYMOUR: Which bus?

18 GODOY: We took the bus -- we took the Normandie bus, and then we got off and  
19 took the Crenshaw bus. And we -- when we get off the Crenshaw bus, it was right there  
20 like 135<sup>th</sup>, right there.

21 SEYMOUR: And you say you were going to see this girl and you called her. How  
22 did -- how did you remember her number from two weeks ago?

23 GODOY: Actually I-- I-- actually I had the number on something, 'cause I don't keep  
24 females' numbers 'cause my girl be going through my stuff, you know? You know what I'm

1 STEINWAND: (*Sighing*) So (*making tapping sound*) let's see, are you clear on the  
2 earring thing?

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4 STEINWAND: Okay.

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11 yesterday?

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22 did -- how did you remember her number from two weeks ago?

23 GODOY: Actually I-- I-- actually I had the number on something, 'cause I don't keep  
24 females' numbers 'cause my girl be going through my stuff, you know? You know what I'm

1 SEYMOUR: And we showed 'em your picture --

2 GODOY: Uh-hum.

3 SEYMOUR: He said he seen you before.

4 GODOY: (Unintel) seen me before?

5 SEYMOUR: Yeah.

6 GODOY: I never been over there. You can take me over there.

7 SEYMOUR: It's okay. I'm -- you know, just I'm -- I'm just telling you what he told us.

8 GODOY: Uh-hum.

9 SEYMOUR: Remember we weren't there. We're just trying to figure this whole thing  
10 out.

11 GODOY: Yeah.

12 SEYMOUR: It's odd though for me -- that you guys -- you meet a girl a couple weeks  
13 ago --

14 GODOY: Two weeks ago.

15 SEYMOUR: Okay. You get her phone number and you have it on a piece of paper,  
16 only now you don't have that piece of paper.

17 GODOY: I probably lost it in --

18 SEYMOUR: Okay.

19 GODOY: in the --

20 SEYMOUR: So you don't have that piece of paper --

21 GODOY: Uh-uh.

22 SEYMOUR: Just bad luck you don't have the piece of paper now.

23 GODOY: Nah. Not bad luck.

24 SEYMOUR: But you dial -- but you dial her number. Okay?

1           GODOY: Uhm-hmm.

2           SEYMOUR: And you money didn't get lost, your other pieces of paper didn't get  
3 lost, but everything pertaining to this girl got lost.

4           GODOY: Nah, not everything lost. So --

5           SEYMOUR: Well, everything (Unintel) --

6           GODOY: You know what I'm saying?

7           SEYMOUR: We don't -- we don't know anything about her. We got no way of  
8 figuring out who she is now.

9           GODOY: That's what I'm trying to tell you who -- who she is, you know?

10          SEYMOUR: Well, but you, your not. I mean, we don't have a number for her, the number's  
11 not in your phone, and the girl, she disappears the same time you got picked up, okay?  
12 And these Jamaican guys now, you know, for no reason at all, they gaffle you guys up.

13          GODOY: Uhm-hmm.

14          SEYMOUR: You ain't high rollers.

15          GODOY: Uhm-hmm.

16          SEYMOUR: You know, it ain't like, uh, you're a high roller so they're gaffing you --  
17 I mean, you know, and they didn't say nothing to you. Didn't say, hey --

18          GODOY: All they doin' --

19          SEYMOUR: Give me your money.

20          GODOY: All they doin' --

21          SEYMOUR: They didn't take your money.

22          GODOY: All they doin' is cursin' up. And, you know what I'm saying?

23          SEYMOUR: Now this -- this -- this earring you talked about.

24          GODOY: Uhm-hmm.



1 SEYMOUR: That got bent.

2 GODOY: Uhm-hmm. That's when he put the gun here.

3 SEYMOUR: Right. Well --

4 GODOY: Yup.

5 SEYMOUR: How did it stay in your ear till you got home?

6 GODOY: It got, both of them was in the ears, cause it got bent.

7 SEYMOUR: Okay.

8 GODOY: The earring come with a metal piece --

9 SEYMOUR: Right.

10 GODOY: That you shoot through the hole.

11 SEYMOUR: Right.

12 GODOY: And then you clip it with a plastic stuff. And when he put the gun here, the

13 earring bent, same way I got it.

14 STEINWAND: What about -- what about the other earring? Did it bend?

15 GODOY: Only one bend. Cause I was like this. And he put it on this side and

16 pressed it on --.

17 STEINWAND: Okay. So which one when you got home took off -- did you take off?

18 GODOY: The right one. I took off both of them. The right one bent.

19 STEINWAND: The right one bent?

20 GODOY: Yup, 'cause this did -- on this side he put the gun.

21 STEINWAND: Okay. So you have both earrings at home.

22 GODOY: I got both of my earrings at home.

23 STEINWAND: And -- and they look like this?

24 GODOY: Exactly the same thing.

1 STEINWAND: Exactly the same thing.

2 GODOY: Yup.

3 STEINWAND: Okay.

4 GODOY: Yup. And I know where I put it before I left, too, with my diamond ring.

5 STEINWAND: Who -- who, uh, all that other evidence we talked about? Who took  
6 that? Did we have that or does --

7 SEYMOUR: No. I think, uh, Gil took that. Okay. Let's -- so all this happens. All  
8 this is going on, you don't know what happened to Justice.

9 GODOY: They got us on the ground.

10 SEYMOUR: Okay. I'm just saying when you left and you don't know what  
11 happened to Justice. You run --

12 GODOY: I run.

13 SEYMOUR: You -- you run --

14 GODOY: Now --

15 SEYMOUR: You brought the police back --

16 GODOY: I run and I asked for help.

17 SEYMOUR: Okay.

18 GODOY: Run behind this lady house and asked her to please call the police.

19 SEYMOUR: Okay. I --

20 GODOY: She --

21 SEYMOUR: I believe you ran. I do believe you ran.

22 GODOY: Yeah. She took long before she called. I said to her, "Ma'am, I'm not  
23 lying to you," you know? "I need the police here right now."

24 STEINWAND: May I?

1 SEYMOUR: Dude, you -- you didn't come over here to see some girl from a phone  
2 number that you had for two weeks and you just happened to lose it today, from a phone  
3 number you supposedly dialed on your phone --

4 GODOY: Yup.

5 SEYMOUR: But it ain't on your phone and from a girl you supposedly met, who was  
6 with you when these guys gaffled you up and they didn't want nothing to do with her and  
7 she ran off. Come on. You're -- you're insulting our intelligence.

8 STEINWAND: And your phone's in the apartment.

9 GODOY: Yeah. That's my --

10 STEINWAND: Your phone's in the apartment --

11 GODOY: Phone.

12 STEINWAND: Where -- where --

13 GODOY: My (Unintel).

14 STEINWAND: Your friend got killed. I don't think both your earrings are home  
15 either. I may be wrong with that, but I don't think both your earrings are home because  
16 there's an earring there that --

17 GODOY: No. Both of my earrings are --

18 STEINWAND: Are they?

19 GODOY: -- at home.

20 STEINWAND: Okay. Well that may be.

21 GODOY: I will could them to you. Both of them and the right one bend. I could  
22 bring them for you. I have no reason to --

23 STEINWAND: Oh, okay.

24 GODOY: Not bring them. And both of them the same --

1 STEINWAND: Did they pull up in it downstairs or out in the street?

2 GODOY: They pull out -- they -- they pull in, they pull out. They pull in, they pull  
3 out. 4-door Chevy. And that was the license plate.

4 STEINWAND: Okay.

5 SEYMOUR: Okay, you saw them pullin' in and pullin' out and pullin' in and pullin'  
6 out?

7 GODOY: Yeah. That's when I --

8 SEYMOUR: All today or you been there before?

9 GODOY: I never been there before.

10 SEYMOUR: Okay. So, you see them -- when -- when you guys go there, what, I  
11 mean, how --

12 GODOY: I never been there.

13 SEYMOUR: Yeah. Well, today, when you went there with Justice, or yesterday,  
14 when you went there with Justice. Did -- did you go right downstairs to begin with?

15 GODOY: Yeah.

16 SEYMOUR: Justice just went straight downstairs.

17 GODOY: Nah. We all was downstairs.

18 SEYMOUR: How'd you get there though?

19 GODOY: Uh?

20 SEYMOUR: How did you get downstairs?

21 GODOY: 'Cause they drove us in.

22 SEYMOUR: So did they pick you up and drive you in?

23 GODOY: From in front of the building.

24 SEYMOUR: Okay. So you guys were walking in front of the building and they just

1 GODOY: Yeah. With some texture.

2 STEINWAND: Oh, okay.

3 GODOY: He got -- he got a -- a -- a gap tooth.

4 STEINWAND: A gap between his teeth?

5 GODOY: Hmm. Yeah. In the front here. Open. Open.

6 STEINWAND: Up -- upper front teeth?

7 GODOY: Uhm-hmm.

8 STEINWAND: How big is the gap? Pretty noticeable?

9 GODOY: Like notice -- yeah. Noticeable.

10 STEINWAND: Okay. And, uh, glasses? Or anything like that?

11 GODOY: Uhm-uhm.

12 STEINWAND: Okay. What about mustache, uh, beard, goatee. Anything like that?

13 Do you remember? If you remember. Maybe something like you got or no or --

14 GODOY: I can't remember everything, you know?

15 STEINWAND: Okay. That's fine. Did he have any earrings on or --

16 GODOY: Uhm.

17 STEINWAND: If you remember.

18 GODOY: I can't remember that, you know?

19 STEINWAND: Okay. How, uh, what was he wearing?

20 GODOY: He had on a -- a shirt like -- like the color of my ID like this. This color.

21 It's like this color.

22 STEINWAND: Okay. A light -- kind of a light bluish or --

23 GODOY: Darker.

24 STEINWAND: Turquoise?

1 GODOY: Cause like he don't have a lot of hair.

2 SEYMOUR: Right.

3 STEINWAND: Okay. Any facial hair? Any mustache or beard or anything? If -- if  
4 you remember.

5 GODOY: I think he -- I don't wanna give you --

6 STEINWAND: Oh, yeah. No, no. If you don't know -- if you don't know. I gotta ask  
7 these questions though. That's what we do.

8 GODOY: I understand you. But I just, you know what I'm saying?

9 STEINWAND: You may have had --

10 GODOY: I'm still like hype up, too.

11 STEINWAND: Sure. Sure.

12 GODOY: And I don't wanna tell something else, you know?

13 STEINWAND: And we appreciate that. We don't want --

14 GODOY: You know what I'm saying?

15 STEINWAND: You to tell us something that's misleading and not true.

16 GODOY: Yeah. Makes you go lead to it, you know?

17 STEINWAND: Yeah.

18 GODOY: To somebody else.

19 STEINWAND: Yeah.

20 GODOY: With mustache and you know?

21 STEINWAND: Good. No problem. Okay. Did you rec -- did you notice if he had  
22 any earrings or anything like that.

23 GODOY: I think he had on some -- I think. I'm not sure. See, I'm not sure. 'Cause  
24 I was --

1 outside?

2 GODOY: I -- the other one he already -- he already-- it's -- alright. When they step  
3 out it was like three minutes after I got up. The other one was just coming back, so like we  
4 meet each other just like this 'cause I was trying to get out here, that double door.

5 SEYMOUR: Right.

6 GODOY: And did like this. And then he like (Unintel). Like, "Where you going?"  
7 And he grabbed me and then I just got strength and then that's when, the shit on my -- my  
8 feet was still tied. That's when it bust, with the force where we pushing. And that's how  
9 I got -- I -- (Unintel) I run and I start hollering for help, you know? Never ever been to that  
10 building in my whole life.

11 STEINWAND: Did -- did they chase you?

12 GODOY: He start running after me and then after that he just stop 'cause I'm yelling  
13 hard "Help. Help."

14 STEINWAND: Okay. You never heard any gunshot or anything like that?

15 GODOY: I didn't hear nothing. I run.

16 STEINWAND: Okay.

17 GODOY: Run.

18 SEYMOUR: When -- you saw some of Justice's family here tonight. Last night, ...  
19 right?

20 GODOY: Uhm-hmm.

21 SEYMOUR: His uncle was here and --

22 GODOY: Yeah. His uncle came to pick me up 'cause me and his uncle is real tight,  
23 you know?

24 SEYMOUR: Okay.

1 UNKNOWN VOICE: You're welcome. Bye.

2 GODOY: (Unintel), I'm telling you, man. I -- I'm telling you the truth. Honest to --

3 STEINWAND: You got both of your earrings?

4 GODOY: I got both earrings.

5 STEINWAND: 'Cause we found one out there that matches that one to a tee.

6 SEYMOUR: And it's bent all the way around.

7 STEINWAND: It's bent and it's got nine diamonds in it.

8 GODOY: Nah. I got both of my earrings. Both of them.

9 STEINWAND: I mean --

10 GODOY: (Unintel) --

11 STEINWAND: It's important that we know that because you know --

12 GODOY: Positive. Telling you.

13 STEINWAND: Okay. 'Cause --

14 GODOY: I ain't lying to you.

15 STEINWAND: 'Cause --

16 GODOY: I don't wanna lie to you.

17 STEINWAND: I'm not arguing with you.

18 GODOY: Right.

19 STEINWAND: I'm just saying, you know, that CSI shit, you know, we can just

20 imagine what that -- if it's yours --

21 GODOY: It's not.

22 STEINWAND: Okay. Cool.

23 GODOY: It's not.

24 SEYMOUR: Then someone else got one just like yours that was right outside the



1 STEINWAND: It's easier than dealing with the phone company (Unintel).

2 GODOY: But see this -- like -- like my phone bill due on the -- on the 16<sup>th</sup>.

3 STEINWAND: Okay.

4 GODOY: Nah, nah, nah. My phone --

5 STEINWAND: (Unintel) --

6 GODOY: -- (Unintel) --

7 STEINWAND: -- get back to ya.

8 GODOY: My -- my -- I know. I don't have a problem. I got a copy here at my house  
9 too, but I'm gonna bring it for you.

10 STEINWAND: Okay.

11 GODOY: I'm gonna bring everything how it come.

12 STEINWAND: Charge card, and I'd like to see your earrings to see if they match,  
13 uh --

14 GODOY: Alright. I could -- I could bring it for you today.

15 SEYMOUR: Yeah, okay, 'cause -- 'cause we found -- I'm -- I'm not kidding you, right  
16 outside the door, and m -- maybe this guy was wearing a matching earring.

17 GODOY: Uhm-hmm.

18 STEINWAND: Maybe he had one just like you.

19 GODOY: Alright. And then listen.

20 SEYMOUR: Well look. Yo look like you have one on there. Look.

21 GODOY: Yup. Yup. And I think he had a earring just like mine too. Both of them.

22 STEINWAND: Okay.

23 GODOY: But mine's is much bigger.

24 STEINWAND: Okay.

1 STEINWAND: Yeah, 'cause --

2 GODOY: I like --

3 STEINWAND: -- she's afraid 'cause they were in the middle of a drug deal and --

4 GODOY: I was like it's their shit, man. I'm like, you know, my brother tellin' me to  
5 be honest with you. My brother like -- my brother -- my brother like, "Duane, I tell you," you  
6 know, "I tell you" -- 'cause my brother, he -- he does different from me. He like, "I tell  
7 (noise) you my brother. You could've got killed (noise)!" He like, "What is 28,000," you  
8 know what I'm saying like -- like that and I was (Unintel). That's when he picked me up,  
9 you know. Cause that my older brother, you know what I'm saying? And I like, "Yeah,  
10 brother, I understand." You know what I'm saying? And I like -- I --

11 STEINWAND: That was a lesson. You've learned a hell of a lesson.

12 GODOY: Yeah, I'm -- I'm -- I'm -- I'm -- I'm -- I'm -- I'm -- I don't wanna associate  
13 to nobody.

14 STEINWAND: Yeah.

15 GODOY: You know? I -- I'm just like, you know -- I seen death. I was laying on the  
16 ground and I -- I'll -- I'm -- I'm thinking the gun right there, you know what I'm saying, and  
17 I -- he like -- I'm like, he was gonna kill me if I didn't get away.

18 STEINWAND: No -- yeah, you're lucky.

19 GODOY: It was gonna be both of us and nobody wouldn't come talk.

20 STEINWAND: Right.

21 GODOY: You know? Like I was telling the officer too, his earring -- he had in -- he  
22 had in like two earrings just like mines, but mines much bigger.

23 STEINWAND: Oh, okay.

24 GODOY: But I got both of mines and the one bent where he put the gun.

1 my feet was tape, and I jump. One jump to the door.

2 SEYMOUR: But when this guy -- when this guy followed the other guy out --

3 GODOY: He follow, but listen.

4 SEYMOUR: Okay.

5 GODOY: He probably asking him cause the other one said, "Get the other gun and  
6 hold them."

7 SEYMOUR: Yeah. That's what you heard.

8 GODOY: Yeah.

9 SEYMOUR: The -- the skinny guy told the big guy, "Get the other gun --"

10 GODOY: "Get the other gun and hold him." But --

11 SEYMOUR: But he didn't do it.

12 GODOY: He -- no. It look like he didn't know where the gun was at. It look like he  
13 walk over to like, "Where there gun at?" You know what I'm saying? Like which part of the  
14 house, you know? And that's when me and him started rumbling, you know? That's why  
15 I know -- I know (Unintel) 'cause my earring is similar, but my earring was much bigger then  
16 his.

17 SEYMOUR: Right.

18 GODOY: His earring -- I could tell you his earrings he had in. His earring like this.

19 Small. Diamond. Got in nine. His shit is shinier then mine. Watch when I bring it.

20 STEINWAND: Okay.

21 GODOY: White gold.

22 STEINWAND: So you actually never saw this guy you've identified here, a -- as  
23 havin' a gun. You never saw him with a gun.

24 GODOY: He was -- he was -- he was, uh, he was coming back in the house for the

1 DET. STEINWAND: Let's just talk, so we get on the right  
2 track; okay?

3 MS. GARCIA: I don't want you to get me involved or  
4 nothing, you know? Because I'm scared. I see so many people.  
5 I haven't even met all his family. He has so much family.

6 DET. STEINWAND: Yes.

7 MS. GARCIA: Let me tell you that I think he's the one who  
8 set up Jess because he only want Jess to come with him, you  
9 know? To support him. You know? So when Jess went over  
10 there, Jess didn't have no gun. The one who have the gun was  
11 the little man.

12 DET. STEINWAND: How do you know that?

13 MS. GARCIA: Because I saw the gun. He had the gun.

14 DET. STEINWAND: What kind of gun did he have?

15 MS. GARCIA: I don't know the names, but it was like -- if  
16 you give me a piece of paper, I can draw it.

17 DET. STEINWAND: Okay. Do you know the difference between  
18 a revolver and a pistol?

19 MS. GARCIA: No.

20 DET. STEINWAND: Okay. Let me just draw something, and if  
21 you -- okay. A revolver has a round thingy there, and then it  
22 comes down, you know, and then it has the trigger, you know,  
23 down here. A pistol, and I don't have mine on me right now.  
24 It's more of a straight, you know, thing like this, and it has  
25 (inaudible) go into the bottom here.



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1 MS. GARCIA: Outside in the street.

2 DET. STEINWAND: He's outside straightening. Where was  
3 little man, Dwayne at?

4 MS. GARCIA: He was in the driveway.

5 DET. STEINWAND: Okay. And that's when those guys showed  
6 up in the other car?

7 MS. GARCIA: Yeah. When he -- when he, the little man, I  
8 call him little man because that was the first time I seen him.  
9 When the little man came and pull up to the driveway, the other  
10 guys pulled up to the driveway, so Justice told me block the  
11 driveway, too, so I pulled up to the driveway. I was driving.

12 DET. STEINWAND: Okay.

13 MS. GARCIA: So I keep it -- I keep this skinny one, the  
14 skinny one, the top one, he will just walk. He didn't want  
15 to -- he didn't want to give me his face because every time I  
16 keep looking back, he just keep, like, run around, like, a  
17 wall, so he always keep backing up in the wall, you know, so  
18 the little one, this skinny one, not the little one, the skinny  
19 one, when I see him, he was like -- like this. He had his hand  
20 all the time like this, and he was going like this. You know  
21 how they walk and do like this?

22 DET. STEINWAND: Standing behind his back?

23 MS. GARCIA: Yeah.

24 DET. STEINWAND: Are you talking about, when you're  
25 talking about the little one and the big one, are you talking



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1 DET. STEINWAND: (Inaudible). #981

000155

2 MS. GARCIA: Okay. See? Okay. Right here is the gas  
3 station. I make a left in the gas station. On Vermont, I make  
4 a right and I went all the way down to 51st.

5 DET. STEINWAND: Okay.

6 MS. GARCIA: He waves his hand on me, and I was like what  
7 happened? And he was like man, they didn't want to do it right  
8 here, you know? And we late, and he was like let's go, and I  
9 was okay, let's go, but the little man told him, man, we can do  
10 this, you know? We can do this. We can make this happen. And  
11 I remember him, that's when I remember so good saying  
12 (inaudible) because he was path and we were leaving already.

13 DET. STEINWAND: So Jess was already in the passenger side  
14 of the Expedition, you're getting ready to leave, and then --  
15 and then the little Belizian says --

16 MS. GARCIA: He came to the window and he was like, man,  
17 let's do this, man, we got this, man. These mother fuckers  
18 make me waste my time. I'm not wasting my time. (Inaudible).

19 DET. STEINWAND: Did you see the gun in his waistband?

20 MS. GARCIA: Yeah. I did. Oh, it was -- I can't really  
21 describe it.

22 DET. STEINWAND: That's okay. You saw a gun in the little  
23 Belizian's waistband?

24 MS. GARCIA: Yeah. I got this for me. We go up there,  
25 man, I have this for us, so he get out of the fucking car.



1 DET. STEINWAND: Gold.

2 MS. GARCIA: Uh-huh. Like gold or beige.

3 DET. STEINWAND: Gold?

4 MS. GARCIA: Yeah. Yeah.

5 DET. STEINWAND: Four door or two door?

6 MS. GARCIA: Four doors.

7 DET. STEINWAND: Four door Intrepid?

8 MS. GARCIA: Intrepid.

9 DET. STEINWAND: Anything distinct about it that stands  
10 out?

11 MS. GARCIA: I don't remember. He have a big sound to  
12 listen to music, but what I remember if it has rims on it or it  
13 didn't have.

14 DET. STEINWAND: That's okay. Do you -- you made a  
15 statement, I believe, to my partner about how they looked in  
16 his trunk at one time?

17 MS. GARCIA: Yeah, he did, when we were in the -- in  
18 grandma house.

19 DET. STEINWAND: Grandma's house the day before or the day  
20 of?

21 MS. GARCIA: The same day.

22 DET. STEINWAND: That morning?

23 MS. GARCIA: Yeah.

24 DET. STEINWAND: Okay.

25 MS. GARCIA: And they were talking about how do you call



1 those things? When you can go and see how much you weigh?

2 DET. STEINWAND: The scale?

3 MS. GARCIA: Uh-huh. That thing.

4 DET. STEINWAND: They were talking about a scale?

5 MS. GARCIA: They were talking about the scale.

6 DET. STEINWAND: Who was?

7 MS. GARCIA: The little dude to the Jamaicans.

8 DET. STEINWAND: Okay. And what does that have to do with  
9 him looking in his trunk?

10 MS. GARCIA: I don't know.

11 DET. STEINWAND: Did they go look in the trunk after that,  
12 or were they looking in the trunk while they were talking about  
13 it? When did they look in the trunk --

14 MS. GARCIA: I don't know when they were talking. When  
15 they were talking.

16 DET. STEINWAND: That morning they looked -- they walked  
17 over and looked in the trunk of the little Belizian's car?

18 MS. GARCIA: The little one. That's even before the way  
19 in talking about this scale.

20 DET. STEINWAND: Before they were talking about the scale?

21 MS. GARCIA: Yeah. And then after that they talk about  
22 the scale.

23 DET. STEINWAND: And then afterwards they talked about the  
24 scale.

25 MS. GARCIA: You know I keep look at the skinny one, he





1 was the noisy one though because he keep looking at the  
2 Car but he was like in the wall.

3 DET. STEINWAND: Skinny Jamaican?

4 MS. GARCIA: Yeah. Because I have the car seat in the  
5 back, and you can see like -- if you see from my side, you  
6 probably think there was a person in there, so he probably was  
7 scared there was somebody else in the car or something.

8 DET. STEINWAND: Okay. Did you tell my partner that's  
9 when they looked in the trunk of his car? While it was at  
10 grandma's house that morning? Or did you --

11 MS. GARCIA: In grandma house.

12 DET. STEINWAND: You didn't tell him that it was down  
13 while it was on Yukon?

14 MS. GARCIA: No, No. It was at grandma's (Inaudible)  
15 Yukon or 7-Eleven.

16 DET. STEINWAND: Okay. All right. I just wanted to  
17 clarify that because my partner shared -- I only heard parts of  
18 that interview, and I wanted to -- I wanted to clarify that.  
19 Anything else you can think of? Okay. Here's the bottom line.  
20 Is -- first of all, let me give you that picture back that you  
21 came for.

22 MS. GARCIA: This is the only one I have of him.

23 DET. STEINWAND: Here's the bottom line, is it is very  
24 important. We may want to -- we may want to do a lie detector  
25 to make sure you're telling the truth, because we're getting a



1 MS. GARCIA: Because he did have a gun.

2 DET. STEINWAND: Okay. But why didn't you tell my partner  
3 that day?

4 MS. GARCIA: Because he knows me. He knows me that good,  
5 you know? He seen me face-to-face. I'm scared.

6 DET. STEINWAND: Did it have something to do -- I'm just  
7 saying, he was there. When you were getting interviewed by my  
8 partner, he was there in the other room with me and the family;  
9 right?

10 MS. GARCIA: Uh-huh.

11 DET. STEINWAND: Did that concern you at all or no?

12 MS. GARCIA: Well, shit, he was in the next room right  
13 here because I'm by myself.

14 DET. STEINWAND: Okay.

15 MS. GARCIA: (Inaudible) he was listening to me. He can  
16 hear me, or if I go outside he probably sock me, or I don't  
17 know. I was just thinking so much stuff right now, because I'm  
18 by myself right here, and I'm trusting you. I don't think  
19 you're going to go out there and say oh, --

20 DET. STEINWAND: No. I'm not going to tell him that.  
21 That's not the problem, so -- okay. But you're willing --  
22 everything you told me today is the truth?

23 MS. GARCIA: Yeah.

24 DET. STEINWAND: Is that correct?

25 MS. GARCIA: Whatever happened, that's nothing -- I don't



1 think I'm missing something.

2 DET. STEINWAND: Okay. If you are, you'll call me and  
3 tell me, though?

4 MS. GARCIA: Yeah.

5 DET. STEINWAND: Okay. And then something important  
6 you'll call and tell me?

7 MS. GARCIA: Yeah.

8 DET. STEINWAND: Okay.

9 MS. GARCIA: Because I remember that that's what I wanted  
10 to tell you, too, man, and I forgot.

11 DET. STEINWAND: Remembered what?

12 MS. GARCIA: The license plate. That he didn't give you  
13 the license plate until 2:30.

14 DET. STEINWAND: Oh, okay. But you don't know the license  
15 plate, you just lied to him?

16 MS. GARCIA: No. I just lied to him.

17 DET. STEINWAND: Okay. You're willing to take a lie  
18 detector test?

19 MS. GARCIA: Yeah.

20 DET. STEINWAND: For the statement you gave me today?

21 MS. GARCIA: Okay.

22 DET. STEINWAND: You are?

23 MS. GARCIA: Uh-huh.

24 DET. STEINWAND: Okay. All right. Let me arrange that,  
25 then.



1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES

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

4 **AUG 27 2014**

5 IN RE PETITION OF ROHAN McDERMOTT )

6 )  
7 ) Sherri R. Carter, Executive Officer/Clerk  
8 ) By *M. Pleasant* Deputy  
9 ) CASE: SA052445  
10 ) Mélanie Pleasant

11 ) ORDER DENYING WRIT OF HABEAS  
12 ) CORPUS  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )

23 Petitioner has two petitions for writ of habeas corpus. The first was filed in the  
24 trial court, the second was filed in the Central District. The latter petition was  
25 transferred to the trial. Court having read and considered both petitions now rules as  
follows: First, both petitions raise identical grounds, that newly discovered evidence  
warrants vacating defendant's conviction for first degree murder. The newly  
discovered evidence consists of a declaration from an inmate by the name of Leonard  
Dove. Dove's declaration relay statements made to Dove by petitioner's co-  
defendant, Alcliff Daley in 2008 regarding petitioner's involvement in the offense for  
which they were both convicted. There is no explanation of when petitioner learned  
of the new evidence, and assuming it was only recently, why it took Mr. Dove six  
years to provide this information to petitioner.

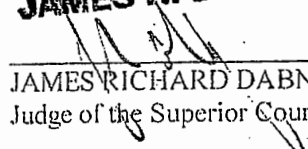
Be that as it may, the new evidence, even if believed does not warrant habeas  
corpus relief. The statement itself is inadmissible hearsay. Even assuming that the  
statements could be admitted, they do not "undermine the prosecutions entire case"

1 and therefore do not warrant relief. *In re Clark* 5 Cal.4th 750 at 766. The petitioner  
2 was convicted as an aider and abettor in a robbery/kidnapping for robbery that  
3 resulted in the death of the victim. The evidence that petitioner was involved in the  
4 plot to steal one hundred pounds of marijuana by posing as buyers was  
5 overwhelming.

6           Petition for writ of habeas corpus is DENIED.

7  
8 DATED: August 27, 2014

9  
10 **JAMES R. DABNEY**

11   
12 JAMES RICHARD DABNEY  
13 Judge of the Superior Court  
14  
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25

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
 SECOND APPELLATE DISTRICT  
 DIVISION THREE

In re

ROHAN McDERMOTT,

on

Habeas Corpus.

B259062

(Super. Ct. No. SA052445)

ORDER

COURT OF APPEAL - SECOND DIST.

FILED

OCT 1 - 2014

JOSEPH A. LANE

Clerk

V. GRAY

Deputy Clerk

BY THE COURT:

The petition for writ of habeas corpus, filed September 25, 2014, has been read and considered together with the appeal (B193585). The “new evidence” is inadmissible hearsay and, even if both admissible and true, is not sufficient to establish petitioner’s reduced culpability. (*In re Lawley* (2008) 42 Cal.4th 1231, 1239.) Accordingly, the petition is denied. (*In re Alvernaz* (1992) 2 Cal.4th 924, 944-945.) (*People v. Duvall* (1995) 9 Cal.4th 464, 474.)

Appellate Courts Case Information CALIFORNIA COURTS  
THE JUDICIAL BRANCH OF CALIFORNIA

Supreme Court

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Court data last updated: 06/08/2016 01:22 PM

Docket (Register of Actions)

**McDERMOTT (ROHAN) ON H.C.**  
**Case Number S223362**

Date	Description	Notes
12/22/2014	Petition for writ of habeas corpus filed	Petitioner: Rohan McDermott Pro Per Exhibits attached with petition.
03/18/2015	Petition for writ of habeas corpus denied	

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

Rohan McDermott  
 NAME  
F-25647  
 PRISON IDENTIFICATION / BOOKING NUMBER  
H.D.S.P. C3-105 P.O. Box 3030  
Susanville, CA 96127  
 ADDRESS OR PLACE OF CONFINEMENT

"EVIDENTIARY HEARING REQUESTED"

FILED Fee Due

2008 OCT 28 PM 12:27

CLERK, U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY ag

530

NOTE: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address and telephone number.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ROHAN MCDERMOTT  
 FULL NAME  
 (Include name under which you were convicted)

CASE NUMBER:  
CV- 0708-7099 GW (AGR)  
 To be supplied by the Clerk of the United States District Court.

Petitioner,

v.

**PETITION FOR WRIT OF HABEAS CORPUS  
BY A PERSON IN STATE CUSTODY  
28 U.S.C. § 2254**

TOM FELKER, Warden,  
 NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED  
 PERSON HAVING CUSTODY OF PETITIONER

PLACE/COUNTY OF CONVICTION Los Angeles  
 PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT  
 (List by case number)

Respondent.

CV- \_\_\_\_\_  
 CV- \_\_\_\_\_  
 CV- \_\_\_\_\_

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

**INSTRUCTIONS - READ CAREFULLY**

This petition shall be legibly handwritten or typewritten, and signed by the petitioner, under penalty of perjury. You must set forth CONCISELY the answer to each question in the proper space on the form. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.

You must not attach separate pages to this petition, except that ONE separate additional page is permitted in answering Question No. 10.

Upon receipt of a fee of \$5.00 your petition will be filed if it is in proper order.

If you are seeking leave to proceed in forma pauperis (without paying the \$5.00 filing fee and other court costs), then you must also complete and execute the declaration on the last two pages, setting forth information which establishes your inability to pay the fees and costs of the proceedings or to give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds \$25.00, you must pay the filing fee as required by the rule of the district court.

When the petition is completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Central District of California, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012, ATTN: Intake/Docket Section.

A single petition should be used to challenge a particular State Court judgment of conviction and/or sentence.

Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

CLERK, U.S. DISTRICT COURT  
 OCT 24 2008  
 PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY  
 28 U.S.C. § 2254  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY ws DEPUTY



PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

- 1.  A conviction.
- 2.  A sentence.
- 3.  Prison discipline.
- 4.  A parole problem.
- 5.  Other.

**PETITION**

1. Venue

- (a) Place of detention High Desert State Prison
- (b) Place of conviction Los Angeles County Superior Court
- (c) Place sentenced Same as above mentioned

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

- (a) Nature of offenses involved (include all counts): Alleged special circumstances first degree murder (during attempted commision of kidnapping and robbery with a firearm use enhancement

- (b) Penal or other code section or sections: 187, 190.2(a)(17) 12022.53 D.

- (c) Case number: SA052445

- (d) Date of conviction: March 15, 2006

- (e) Date of sentence: April 17, 2006

- (f) Length of sentence on each count: life without the possibility of parole plus one year.

(g) Plea (check one)

- Not guilty
- Guilty
- Nolo Contendere

(h) Kind of trial: (check one)

- Jury
- Judge only
- Judge alone on transcript

(i) Did you testify at the trial?

- Yes  No

3. Did you appeal from the conviction of sentence?

Yes  No

4. If you did appeal, give the following information for each appeal:

(a) (1) Name of court: Court of Appeal Second Appellate District

(2) Result: Affirmed

(3) Date of result: June 27, 2007

(4) Citation or number of opinion: B193583

(5) Grounds raised (list each):

(a) Petitioner's rights to due process and compulsory process were violated when trial court refused to grant immunity to def. wit

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(d) \_\_\_\_\_

(e) \_\_\_\_\_

(f) \_\_\_\_\_

(g) \_\_\_\_\_

(b) (1) Name of court: Supreme Court of California

(2) Result: affirmed

(3) Date of result: Sept. 12, 2007

(4) Citation or number of opinion: S154917

(5) Grounds raised (list each):

(a) Denial of petitioner's request for immunity for Karla DeDunn

(b) illustrates the need for the court to revisit the issue of

(c) judicially-conferred immunity.

(d) \_\_\_\_\_

(e) \_\_\_\_\_

(f) \_\_\_\_\_

(g) \_\_\_\_\_

5. If you did not appeal:

(a) State your reasons N/A

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) Did you seek permission to file a late appeal?

Yes  No

6. Other than a direct appeal, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal?

Yes  No

7. If you answer to 6 was "Yes", give the following information:

(a) (1) Name of court: Court of Appeal Second Appellate District

(2) Nature of proceeding: Petition for writ of habeas corpus

(3) Grounds raised: SEE PAGE 6A of 9 and after

(4) Result: affirmed

(5) Date of result: Agust 18, 2008

(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.  
B209477

(b) (1) Name of court: Supreme Court of California

(2) Nature of proceeding: Petition for writ of habeas corpus

(3) Grounds raised: SEE PAGE 6A OF 9 AND AFTER

(4) Result: affirmed

(5) Date of result: August 20, 2008

(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.  
S162027

(c) (1) Name of court: Supreme Court of California

(2) Nature of proceeding: Petition for review

(3) Grounds raised: SEE PAGE 6A OF 9 AND AFTER

(4) Result: affirmed

(5) Date of result: \_\_\_\_\_

(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.  
\_\_\_\_\_

8. Was an evidentiary hearing held?

Yes  No

If so, state the name of the court, and the result:

\_\_\_\_\_  
\_\_\_\_\_

9. If your answer to 6 was "No", explain briefly why you did not seek post-conviction relief in the state courts.

N/A

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CAUTION: Exhaustion Requirement:** In order to proceed in federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted as to some grounds, you must first present all other grounds to the state court.

10. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, attach a **SINGLE** page only behind this page.

**CAUTION:** If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date. You must state facts, not conclusions, in support of your grounds. (e.g., if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do). A rule of thumb is - who did exactly what to violate your rights at what time or place.

(a) Ground one: SEE GROUND ONE ON PAGE 6A OF 9

Supporting FACTS (tell your story BRIEFLY without citing cases or law):  
SEE SUPPORTING FACTS ON PAGES 6A TO 6D

\_\_\_\_\_  
\_\_\_\_\_  
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(b) Ground two: SEE SUBISSUE A ON PAGE 6E

Supporting FACTS (tell your story BRIEFLY without citing cases or law):  
SEE SUPPORTING FACTS ON PAGES 6E TO 6K

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(c) Ground three: SEE SUBISSUE B ON PAGE 6L OF 9

Supporting FACTS (tell your story BRIEFLY without citing cases or law): SEE SUPPORTING FACTS OF PAGE 6L OF 9 TO PAGE 6Q OF 9.

(d) Ground four: SEE SUBISSUE ON PAGE 6R OF 9

Supporting FACTS (tell your story BRIEFLY without citing cases or law): SEE SUPPORTING FACTS ON PAGE 6R OF 9

11. If any of the grounds listed in 10 were not previously presented to this court or any other court, state briefly which grounds were not presented, and give your reasons: All the present had been presented in the State Courts

12. Do you have any petition, appeal or parole matter pending in any court, either state or federal as to the judgment of conviction under attack?

Yes  No

13. Are you presently represented by counsel?

Yes  No

If so, provide name, address and telephone number: \_\_\_\_\_

Case name and court: \_\_\_\_\_

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I.

PETITIONER'S CONVICTION OF FIRST DEGREE FELONY MURDER  
CANNOT STAND BECAUSE IT VIOLATED THE FEDERAL DUE  
PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE  
UNITED STATES CONSTITUTION, IN THAT, THERE IS NO  
EVIDENCE TO SUPPORT THE CONVICTION.

On April 30, 2004, petitioner gave a ride to Mr. Daley to the house of Mr. Troy Lewis's grandmother. Mr. Daley got out the car, and went to talk to somebody once we arrived at the Troy Lewis's grandmother's house. Mr. Daley returned to the car and told petitioner that the deal of the hundred pounds of marijuana was not going to take place because Dwane Godoy and Troy Lewis were unable to find the 100 pounds of marijuana. However, Mr. Daley said, that Mr. Godoy and Mr. Lewis will come to the apartment to party with drugs. Mr. Daley said that he and Mr. Godoy had doing parties with drugs at the apartment and he knew where the apartment is located.

Petitioner told Mr. Daley that he was hungry and needed to buy some food. Thus, both men went to get the food to go to a Jamaican Restaurant called Danna's. (RT 1870, 1872, 1944.)

Petitioner and Mr. Daley left the Danna's Restaurant, and proceeded to Mr. Daley's apartment. When petitioner arrived at the apartment complex, Mr. Godoy and Mr. Lewis were in front of the building on Yukon. (RT 1870, 1873, 1944-1945.)

Mr. Godoy and Mr. Lewis entered the petitioner's car. And petitioner entered the building when Mr. Daley opened the gate with the remote control. (RT 1873, 1944-1945.)

When Mr. Godoy and Mr. Lewis were in the car, that was when Mr. Godoy and Mr. Lewis showed to Mr. Daley a bag of cocaine, the

1        B.    The Special Circumstances Finding Were Based On  
2            Insufficient Evidence.

3            The allegation that petitioner committed first degree murder  
4 during the attempted commission of robbery and kidnapping for  
5 ransom was based on insufficient evidence. The special circumstan-  
6 ces finding in this case is outrageous.

7            Attorney Michael S. Evans was the attorney for petitioner.  
8 During a proceeding, he stated: In addition to that, I just  
9 remind the court, just for the record, for duress of the motion,  
10 it appear that the issue in this case in duress under taping, the  
11 taping itself and pointing the gun. That's the issue in the case.  
12 And I would submit it on that. (RT 1814.)

13            Petitioner put tape on Mr. Lewis's hands and Mr. Godoy's  
14 hands because petitioner was afraid of been shot by Mr. Daley if  
15 he refused to follow the orders of Mr. Daley to tape Mr. Godoy  
16 and Mr. Lewis. (RT 1876, 2105-2106.)

17            Like indicated previously, Mr. Godoy, Mr. Lewis, and Mr. Daley  
18 went into the apartment to do a party with cocaine, PCP, and  
19 marijuana. That was the reason the Detective Steinward found a  
20 bag of marijuana in the apartment in question. People's Exhibit  
21 Number 9 is the bag of marijuana that Mr. Steinward found in the  
22 apartment. (RT 1630.)

23            On April 29, 2004, petitioner gave a ride to Mr. Daley to the  
24 house of Mr. Lewis's grandmother. Also on April 30, 2004, again  
25 petitioner gave a ride to Mr. Daley to the Lewis's grandmother's  
26 house. When Mr. Daley returned to the car, he told petitioner  
27 that the deal of the marijuana was no going to take place because  
28 Mr. Lewis and Mr. Godoy were unable to find the 100 pounds of

1 marijuana. However, Mr. Daley told petitioner that Mr. Godoy and  
2 Mr. Lewis were going to go to the apartment to do a party with  
3 cocaine, PCP, and marijuana. Mr. Daley told petitioner that Mr.  
4 Godoy had done drugs in the apartment before, and Mr. Godoy knew  
5 where the apartment is at.

6 Petitioner drove his car to the Donna's, bought his food to go.  
7 When petitioner arrived to the building. Mr. Godoy and Mr. Lewis  
8 were already there waiting for Mr. Daley and petitioner. Thus,  
9 Mr. Daley told them to get in the car. Once in the car, Mr. Godoy  
10 showed a bottle with liquid, which petitioner thinks it was PCP.  
11 Mr. Godoy also showed the cocaine and marijuana to Mr. Daley.  
12 After that, Mr. Daley opened the gate with the remote control.  
13 Petitioner drove to the garage, sat to eat his food, Mr. Daley  
14 got the converse shoe box, and told Mr. Godoy and Mr. Lewis to  
15 follow him to the apartment.

16 Petitioner made numerous phone calls, he told Mr. Daley that  
17 he did not want to go inside because they were doing drugs, and  
18 he doesn't like to be around people that are doing drugs. Mr.  
19 Daley hung some of the phone calls. On the last phone call that  
20 petitioner made to Mr. Daley, petitioner told Mr. Daley that he  
21 only want to go in the apartment to pick up his things, and that  
22 he was going to leave immediately. Mr. Daley said that petitioner  
23 can do that.

24 Mr. Lewis opened the gate, and then he and petitioner went  
25 into the apartment. Petitioner went directly to the fridge to get  
26 something to drink. (RT 1875.) Petitioner saw some powder on  
27 top of the sink that looked like cocaine residues. While petiti-  
28 ner was in the kitchen, Mr. Daley called him. Petitioner went to see



1 what he wanted, that was when he saw that Mr. Daley had the gun  
2 in his hand, and ordered Mr. Godoy and Mr. Lewis to go down to  
3 the floor, and ordered petitioner to tape them up. Petitioner  
4 obeyed Mr. Daley's orders because he was afraid to be shot if he  
5 refused to tape Mr. Godoy and Mr. Lewis up. (RT 1876, 2105, 2106,  
6 2107.)

7 Detective Brian Steinward testified that the hands of Mr.  
8 Lewis had two kinds of tape. One was clear packaging tape, and  
9 the other was gray duct tape. (RT 1635.)

10 Mr. Daley told or ordered petitioner to tape Mr. Lewis until  
11 he told him to stop. Meaning that petitioner pass the tape over  
12 and over again to the hand of Mr. Lewis. Mr. Daley told  
13 petitioner to pass one time the tape on the hand of Mr. Godoy,  
14 to petitioner that did not make sense, but was Mr. Daley's orders,  
15 and he must comply, otherwise he was going to get shot. Petitioner  
16 only put tape to the hands of Mr. Lewis and Mr. Godoy. Ms. Edna  
17 Martinez testified that the feet of Mr. Lewis were not taped up.  
18 (2 of 5, RT 919, 924.) Mr. Godoy testified that his feet were  
19 taped up. (RT 1554.) That was not true.

20 Mr. Godoy testified that Mr. Daley and Petitioner left the  
21 apartment. He was left alone with Mr. Lewis in the apartment.  
22 Mr. Godoy testified that while he was left alone with Mr. Lewis  
23 laying on the floor, the cell phone was by his feet. (RT 1584-1585)  
24 However, Mr. Godoy failed to pick up the phone and call 911.

25 Mr. Godoy was lying next to Mr. Lewis. However, he did not  
26 tell Mr. Lewis let's go. (RT 1585) Mr. Godoy was trying to get  
27 his hands loose for three minutes period, he said that he did not  
28 know what Mr. Lewis was doing. Mr. Godoy said that he was thin-

1 king for himself. (RT 1586). Mr. Godoy said that Mr. Lewis  
2 just was lying on the floor. Lewis's feet were not taped up, a  
3 picture shows that. (RT 1586.) The reason Mr. Lewis was not  
4 trying to escape was because he was under the influence of PCP or  
5 cocaine. The drug made him sleep.

6 Mr. Godoy testified that during the struggle with petitioner,  
7 petitioner dropped an earring. (RT 1591.) However, Detective  
8 Brian Steinward ordered the testing of the earring for D.N.A.  
9 No petitioner's D.N.A. was found on the earring. (RT 1852.)

10 Mr Peter Kergil is a Los Angeles Police Department Forensic  
11 Identification Specialist. He is an expert on latent finger-  
12 prints. (RT 1569-1570.) Mr. Kergil testified that "C" series  
13 relates to the bundles of paper and currency along the cellophane.  
14 Mr. Kergil indicated that he found two latent prints of Mr. Daley  
15 on the bundles of newspaper. (RT 1580.) There were six bundles  
16 of paper. (Ibid.) No petitioner's fingerprints were found on  
17 any of the bundles of newspaper. During the preliminary hearing,  
18 Mr. Godoy testified that he saw petitioner pulling out bundles  
19 of money from the converse shoe box. (CT 16-17.) However, no  
20 petitioner's fingerprints were found on any bundles that according  
21 to Mr. Godoy petitioner touched.

22 On April 30, 2004, Mr. Daley and Petitioner went to the house  
23 of Mr. Lewis. When Mr. Daley returned to the car, he told  
24 petitioner that the deal was not going to take place. However,  
25 Mr. Daley said that Mr. Godoy and Mr. Lewis were going to have  
26 a drug party in the apartment, and that they will come to the  
27 apartment. People's Exhibit Number nine corroborated the party  
28 of drugs. (RT 1630.) People's Exhibit Number 9 is a bag of

1 marijuana that was in the apartment in question. (Ibid.)

2 During the cross-examination of petitioner, the prosecution  
3 asked: Q. Now you have told this jury that you were uncomfor-  
4 table with the fact there was a conversation between Lewis, Godoy,  
5 and Daley. they're in the apartment doing drugs, and that is  
6 why you're uncomfortable. That's why he keeps hanging up on you,  
7 right? Yes, sir. (RT 1907.) This is another evidence that  
8 Mr. Godoy, Mr. Lewis, and Mr. Daley were in the apartment for the  
9 whole purpose of consumming the drugs. Also, Mr. Godoy testified  
10 that Mr. Lewis just lie on the floor, and did not try to escape.  
11 He also testified that Lewis's feet were not taped up. (RT 1586.)

12 Defense Counsel indicated during his Summation: Ladies and  
13 gentlemen, the evidence in this case showed that Mr. McDermott  
14 was involved with a marijuana transanction. The evidence was  
15 clear, ladies and gentlemen, that he was not involved with any  
16 kind of robbery any kidnapping for murder. (RT 2227.)

17 Mr. Justice HARLAN, concurring. He indicated: I view the  
18 requirement of proof beyond a reasonable doubt in a criminal  
19 case as bottomed on a fundamental value determination of our  
20 society that it is far worse to convict an innocent man than to  
21 let a guilty man go free. It is only because the nearly complete  
22 and long-standing acceptance of the reasonable-doubt standard  
23 by the States in criminal trials that the Court has not before  
24 today had to hold explicitly that due process, as an expression  
25 of fundamental procedural fairness, requires a more stringer  
26 standard for criminal trials than for ordinary civil litigation.  
27 In re Winship. supra, 90 S.CT. at 1077.

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1           The Court indicated that Ms. Dedunn told police that she did  
2 not have marijuana in her car. (RT 1805.)

3           Mr. Godoy testified that he and Lewis were waiting outside the  
4 building complex for Mr. Daley and Mr. McDermott. (CT 58.) Mr.  
5 Godoy testified that he and Lewis arrived at the Yokon Ave.  
6 apartment before Mr. Daley and McDermott. (CT 59.) Mr. Godoy and  
7 Mr. Lewis went into McDermott's car in order to enter the building,  
8 because the gate needs to be opened with a control remote. (CT 60.)

9           In this case, there was no kidnapping. Also there was no  
10 robbery because there was no marijuana said the court. Therefore,  
11 the attempted kidnapping and robbery do not exist. About the  
12 kidnapping, there was no kidnapping because Mr. Godoy and Mr.  
13 Lewis were waiting for Mr. Daley and McDermott outside the gate  
14 of the building, and when Mr. Daley and McDermott arrived, Mr.  
15 Lewis and Mr. Godoy voluntarily went into apartment 200. (CT 62.)

16           Petitioner's conviction of the two special circumstances  
17 allegations of attempted robbery and kidnapping for ransom should  
18 be reversed because the evidence was insufficient to prove them.  
19 Petitioner's rights under the Due Process Clause of the Fourteenth  
20 Amendment to the United States Constitution had been violated.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ALCLIFF DALEY,  
Petitioner,  
v.  
KELLY HARRINGTON, Warden,  
Respondent.

NO. CV 09-2660-RGK (AGR)  
  
REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE

The court submits this Report and Recommendation to the Honorable R. Gary Klausner, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order No. 05-07 of the United States District Court for the Central District of California. For the reasons set forth below, the magistrate judge recommends the Petition for Writ of Habeas Corpus be denied.

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1 I.

2 **SUMMARY OF PROCEEDINGS**

3 On March 30, 2006, a Los Angeles County Superior Court jury convicted  
4 Petitioner of first degree murder during the commission of attempted robbery and  
5 attempted kidnaping with a firearm enhancement. (Petition at 2; Answer at 1.)

6 On April 26, 2006, the court sentenced Petitioner to life without the possibility of  
7 parole plus 10 years. (*Id.*) On October 18, 2007, the California Court of Appeal  
8 affirmed the conviction in a written decision. (Lodged Document ("LD") 4.) On  
9 January 30, 2008, the California Supreme Court denied review without  
10 explanation. (LD 6.)

11 On April 16, 2009, Petitioner, who is represented by counsel, filed a  
12 Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28  
13 U.S.C. § 2254 in this court in which he raised four grounds: (1) refusal to grant  
14 immunity to defense witness; (2) erroneous exclusion of testimony; (3) ineffective  
15 assistance of counsel; and (4) cumulative error. (Petition Memorandum ("Memo")  
16 at i-ii.) On August 7, 2009, Respondent filed an answer admitting timeliness and  
17 exhaustion. On September 4, 2009, Petitioner filed a reply.

18 This matter was taken under submission and is now ready for decision.

19 II.

20 **STATEMENT OF FACTS**

21 Below are the facts set forth in the California Court of Appeal decision on  
22 direct review. To the extent an evaluation of Petitioner's claims for relief depends  
23 on an examination of the record, the court has made an independent evaluation  
24 of the record specific to Petitioner's claims for relief.

25 1. *Prosecution evidence.*

26 On April 29, 2004, FN2 Dwane Godoy was selling DVDs from a parking lot at  
27 Slauson and Vermont, when Rohan McDermott and defendant Daley came by.  
28 Daley was one of Godoy's regular customers. When Daley introduced