No. _____

IN THE

Supreme Court of the United States

JOSEPH WILLIAM HART,

Petitioner,

v.

RONALD BROOMFIELD,

Respondent.

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

APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSEPH WILLIAM HART, *Petitioner-Appellant*, v. RONALD BROOMFIELD, Acting Warden, California State Prison at San Quentin, *Respondent-Appellee*.	No. 20-99011 D.C. No. 2:05-cv-03633-DSF OPINION

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted January 22, 2024
Pasadena, California

Filed March 28, 2024

Before: Michelle T. Friedland, Lucy H. Koh, and Holly A. Thomas, Circuit Judges.

Opinion by Judge H.A. Thomas

SUMMARY*

Habeas Corpus / Death Penalty

The panel affirmed the district court's denial of Joseph William Hart's 28 U.S.C. § 2254 habeas corpus petition in a case in which Hart was sentenced to death after a jury convicted him of the murder of Diana H. (known as Diane) and of the rape, sodomy, and forced oral copulation of Amy R.

Because the Supreme Court of California (CSC) did not offer reasoning when denying Hart's state habeas petition on the merits, Hart is required under the Antiterrorism and Effective Death Penalty Act to show there was no reasonable basis for the state court to deny relief.

Hart claimed that the prosecution suppressed, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), material impeachment evidence that could have been used to challenge the qualifications of Dr. Dewitt Hunter, a pathologist whom Riverside County contracted to perform an autopsy on Diane. The panel held that the district court appropriately rejected this claim because the CSC could have reasonably concluded that this evidence was not material.

Hart claimed that his trial counsel was ineffective for failing to challenge Dr. Hunter's qualifications and testimony. Affirming the district court's rejection of this claim, the panel wrote that Hart provided no reason to

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

conclude that a challenge to Dr. Hunter's qualifications would have resulted in the exclusion of his expert testimony or significant impeachment of his credibility; that a detective's report, even if it contradicted Dr. Hunter's testimony, did not harm Dr. Hunter's testimony; that trial counsel's decision not to investigate and impeach Dr. Hunter with Dr. Hunter's errors in previous trials did not prejudice Hart; and that Hart pointed to no evidence that trial counsel's presentation of his own expert would have contradicted Dr. Hunter's findings.

The panel addressed uncertified claims in a concurrently filed memorandum disposition.

COUNSEL

Susel Carillo-Orellana (argued) and Lauren Collins, Deputy Federal Public Defenders; Cuauhtemoc Ortega, Federal Public Defender; Federal Public Defender's Office, Los Angeles, California; for Petitioner-Appellant.

Stephanie H. Chow (argued) and Lise S. Jacobson, Deputy Attorneys General; James W. Bilderback II, Senior Assistant Attorney General; Lance E. Winters, Chief Assistant Attorney General; Rob Bonta, Attorney General of California; Office of the Attorney General, San Diego, California; for Respondent-Appellee.

OPINION

H.A. THOMAS, Circuit Judge:

In 1988, Joseph William Hart was tried and convicted of the murder of Diana H. (known as Diane), and of the rape, sodomy, and forced oral copulation of Amy R. Both Amy and Diane were 15-year-old high school students and friends whom Hart had lured to a rural area of Riverside County, California, before committing the crimes. At the sentencing phase of Hart's trial, the prosecution introduced uncontested evidence that Hart had committed several other sexual and physical assaults, as well as contested evidence that Hart murdered his 11-year-old niece, Shelah M., days before he was arrested. Hart was sentenced to death.

Hart now appeals the denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. First, Hart appeals the district court's rejection of his claim that the State suppressed evidence that could have impeached one of the prosecution's expert witnesses, Dr. Dewitt Hunter, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Second, Hart appeals the district court's rejection of his claim that his trial counsel was ineffective for failing to challenge Dr. Hunter's qualifications and testimony. The district court granted Hart a certificate of appealability with respect to both of these claims. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253. We affirm the district court's denial of Hart's petition.[1]

[1] In a concurrently filed memorandum disposition, we address six uncertified claims raised by Hart in this appeal.

I.

On May 8, 1986, five days after the death of his niece, Shelah, Joseph William Hart was arrested on suspicion of the murder of Diane and the rape, sodomy, and forced oral copulation of Amy. Hart was charged with the crimes on August 27, 1986, and his trial began on January 11, 1988.

A.

1.

Amy testified on behalf of the State, recounting the circumstances of the sexual assault and murder. Amy and Diane, then both 15 years old, were friends and classmates at La Sierra High School in Riverside, California. On March 24, 1986, Hart encountered the teens at a 7-Eleven convenience store, offering to pay one of them $1,000 to act as a lookout while he harvested marijuana from someone else's field. Although Hart wanted only one person to accompany him, at Diane's insistence, both she and Amy accompanied Hart. They got into Hart's car, and Hart drove off.

After driving for around 30 to 40 miles, Hart made a brief stop at a hardware store. Although he told Diane and Amy that he intended to purchase a hatchet, Hart ended up deciding not to buy one, claiming that the hatchet was too expensive and that he could use a screwdriver to cut the marijuana. Diane gave Hart her knife to use instead, but after Amy objected, Hart gave the knife back to Diane.

With Diane and Amy still in the car, Hart continued driving, eventually arriving at a dirt road. Hart told Amy to serve as a lookout while he and Diane went to gather marijuana. Hart and Diane went up a hill for a few minutes, came back, and then walked up another path out of Amy's

sight. Amy waited for around 15 to 20 minutes. She occasionally called out to Diane but heard no response.

Hart eventually returned without Diane. He told Amy that Diane was putting her feet in a spring, and that he needed help bringing back some bags. Amy followed Hart back up the path. While they were walking, Hart picked up a rock, claiming to have seen a snake. Amy asked Hart to give her the rock. Hart gave it to her but said that he would have to pick up another one, so Amy gave him the rock back.

It was around that time that Amy saw her friend Diane. Diane was lying face down on the ground, without any clothing on the bottom half of her body. Amy began to run away but Hart chased her and hit her on the back of the head with the rock, causing her to fall. He then started punching her, and they fell into a nearby gully. Amy asked Hart to let her talk to Diane, but Hart stated that Diane was unconscious. Amy asked Hart if he planned to kill her. Hart said he did not but warned Amy not to give him a reason to do it. As Amy continued to ask to speak to Diane, Hart told her to shut up, saying, "You're kind of funny, kid, I'm about to rape you and all you can do is think about your friend."

Hart then pulled up Amy's skirt and ripped off her panties from behind. Hart also ripped Amy's blouse open and ripped one of her bra straps. Hart told Amy not to look at him as he slapped his penis back and forth, stating, "It's hard for me to get it up after I just got it on with your friend." Hart then attempted to sodomize Amy. When that attempt failed, he instead placed his penis into her mouth. Hart eventually became erect and sodomized Amy. At one point he stated, "I've done this in people's houses and I've never killed anyone yet." Hart then grabbed Amy and took her further up the path. He picked up a jar of Vaseline and put

his penis into Amy's mouth again. Hart then applied the Vaseline to his penis and raped Amy.

After Hart raped her, Amy asked again if he was going to kill her. Hart said that he would knock her unconscious by hitting her on the back of the neck with a rock. Amy instead suggested that Hart tie her up and put her in a hole. Hart agreed and tied Amy up with her shirt and bra. Hart then walked over to Diane's body to look for Diane's knife, explaining that his fingerprints were on it. Hart lifted, then dropped Diane's arm. He returned to Amy, stating that he could not find the knife. Hart told Amy, "[L]ook, your friend was an asshole, she called me a few names, and I think she's dead."

Amy told Hart that he had no reason to kill her, and that she would never tell anyone about what happened because she would be too ashamed. Hart responded that he had to make her unconscious so he could get away. Amy then made up a story about how she used to be beaten by her father. Hart's demeanor toward her became more vulnerable and apologetic. He "changed into . . . another person."

Eventually, Hart dropped Amy off near the 7-Eleven, but warned her not to talk to the police or tell anyone where Diane was. Amy assured Hart that she would not tell anyone what had happened. Hart responded, "But that doesn't matter because by the time they pick me up, you know, I can get out before the, you know, sentencing. . . . Anyway, I've got two good friends that would do anything for me." Amy understood this as a threat.

After Hart left, Amy called her sister and told her what had occurred. The Riverside County Sheriff's Department then contacted Amy, and Amy helped Detectives Michael Lackie and Richard Moker locate Diane's body.

Hart was arrested on May 8, 1986, a few days after a detective spotted a car matching the description offered by Amy parked outside of Hart's mobile home. Evidence recovered from the crime scene linked Hart to the crimes, including a matching fingerprint obtained from a beer bottle left at the scene, and tire tracks that matched the tread pattern on Hart's car. Amy identified Hart in a lineup, dropping to the ground in fear when she saw him.

When Detective Lackie searched the area where Hart had sexually assaulted Amy and killed Diane, Lackie found no marijuana growing.

2.

The prosecution also called law enforcement witnesses to testify regarding their investigation of the crime scene. Criminalist James Hall testified that he collected loose hairs from Diane's body, including a pubic hair from Diane's thigh that was microscopically similar to Hart's, but not Diane's, hair. Hall did not find any seminal fluid on Diane's panties but found Diane's blood on her blouse. The prosecution then called Dr. Claire McArthur, who treated Amy after the sexual assault. Dr. McArthur testified that Amy had bruising on her upper back, abrasions and dirt on her knees, and injury to her perineum. Dr. McArthur also noted sand-type particles in Amy's vagina, strongly indicating penetration. On cross-examination, Dr. McArthur acknowledged that her report did not indicate evidence of sodomy, and that Amy had told her she was not sodomized when asked.

3.

The prosecution next called Dr. Dewitt Hunter, a pathologist whom Riverside County contracted to perform

an autopsy on Diane. Dr. Hunter testified that he found "major trauma" to Diane's "head and to the back," "minor trauma in various sites" over Diane's body, and "physical evidence consistent with possible sexual violation." Diane's body showed seven "impact-type lacerations," five of which were to the back of her head. These lacerations resulted in skull fractures, which Dr. Hunter explained would have required a "large amount of force" to create, and were likely created by a "rock or brick-like instrument." Dr. Hunter testified that three of the injuries could have independently resulted in death. He testified that Diane was likely unconscious from five minutes to an hour before dying, and that during this time she had inhaled vegetable material.

The prosecution asked Dr. Hunter if Diane had been sexually assaulted. Dr. Hunter testified that he saw "no physical evidence to indicate forceful entry." Nevertheless, he saw evidence of reddening around Diane's vagina, which he testified could have been caused by "forceful massage." Dr. Hunter noticed a "Vaseline-like substance" around Diane's vaginal introitus and inner thighs. He also observed abrasions and contusions on Diane's inner thighs, indicating that her legs may have been forcefully spread apart. Dr. Hunter testified that he believed Diane had been sexually assaulted, deeming his assessment "90 percent accurate."

4.

In his closing statement, the prosecutor explained that Hart could be found guilty of murder in the first degree if the jury believed that he committed the murder during a rape or attempted rape, or he committed the murder deliberately and with premeditation. But the prosecutor acknowledged that if the jury found that Hart lacked premeditation, and if he committed the murder during a sodomy or attempted

sodomy, but not a rape, then Hart would be guilty only of second-degree murder. The prosecutor argued that the jury could infer malice aforethought from the fact that Hart repeatedly struck Diane in the head with a rock, and premeditation from the fact that Hart appeared to have planned out the assault at least from the time he encountered Amy and Diane at the 7-Eleven. He also urged the jury to find that the murder was committed with a "special circumstance" of attempted or completed rape or sodomy. The prosecutor emphasized that Hart admitted to Amy that he had sexually assaulted Diane just before assaulting Amy.

In his closing argument, defense counsel conceded that Hart killed Diane during a sodomy or attempted sodomy, and that the killing was intentional. But counsel argued that the murder was not premeditated, and that Hart did not rape or attempt to rape Diane. Defense counsel emphasized that Dr. Hunter considered Diane's injuries to be "overkill." Defense counsel also noted that Hart stopped at multiple points along the drive and that he had given Diane back a knife that she had given him. The defense emphasized that the sexual assault swabs of Diane's body returned a negative result, that no semen was found on Diane's body or clothing, and that Dr. Hunter was not absolutely certain in his assessment that Diane had been sexually assaulted.

In his rebuttal, the prosecutor argued that Hart began his attempt to commit a rape as soon as he started talking to Diane and Amy at the 7-Eleven. The prosecutor argued that Hart specifically intended to commit rape, and not just sodomy. He expressed skepticism that the difference in criminal penalties between murder during the course of rape and murder during the course of sodomy would have influenced Hart's behavior. He noted that Hart ripped off Diane's bra, that he raped Amy, that petrolatum (found in

Vaseline) and pubic hair were found on Diane's body, and that abrasions and contusions on Diane's thighs indicated that Hart tried to force Diane's legs apart. Emphasizing Hart's statement that Diane was an "asshole, she called me some names and I killed her," the prosecutor urged the jury to infer that Hart killed Diane while she was resisting sexual assault. And the prosecutor argued that the murder was deliberate because Hart must have realized, between his multiple blows to Diane's back and head, that he was killing her.

After one morning of deliberations, the jury returned a verdict of guilty. The jury found Hart guilty of murdering Diane in the first degree, with the rape and sodomy special circumstances, meaning the murder was committed while Hart was engaged in the commission or attempted commission of both rape and sodomy. The jury also found Hart guilty of rape, sodomy, and forced oral copulation of Amy. The jury's special circumstances findings made Hart eligible for the death penalty.

B.

At the penalty phase of Hart's trial, the prosecution introduced evidence regarding five crimes Hart had committed against different women: two assaults in 1973, a rape in 1975, forcible oral copulation in 1975, and an attempted burglary in 1975. When Hart was arrested after the fifth incident, he admitted that he was attempting to commit sexual assault and that he had committed each of the previous offenses. As a result of these crimes, Hart was institutionalized at Patton State Hospital from 1975 until 1978.

The prosecution also introduced evidence that Hart had murdered his 11-year-old niece, Shelah, a few weeks after

he murdered Diane and sexually assaulted Amy, and a few days before he was arrested for those crimes. That evidence included testimony from Randall Gresham, Hart's former cellmate, who said that Hart had admitted that he had killed Shelah.

Hart's defense counsel introduced evidence and argument that Hart did not murder Shelah, including arguments attacking Gresham's credibility. Defense counsel also introduced mitigating evidence, including testimony about Hart's childhood and positive qualities.

After the parties gave their closing statements, the jury began its sentencing deliberations. During those deliberations, a juror requested a copy of Gresham's testimony, and the court provided a read-back of the testimony. On March 31, 1988, after two days and one morning of deliberations, the jury sentenced Hart to death.

C.

1.

Hart's conviction and sentence reached the Supreme Court of California (CSC) on automatic appeal. *People v. Hart*, 976 P.2d 683, 695 (Cal. 1999). The CSC rejected each of Hart's claims. *Id.* Hart also filed multiple petitions for habeas corpus before the California courts: one in 1998, one in 2005, and one in 2007. Each petition was denied on the merits in a largely unreasoned order, and many of Hart's claims were also denied as successive or untimely.

2.

Hart filed a federal habeas petition on May 16, 2005. Hart received a stay of the case to complete state habeas review. After exhausting his claims in California courts, Hart

filed an amended federal habeas petition. Hart then filed his operative second amended federal habeas petition on March 10, 2008. On August 5, 2020, the district court rejected Hart's second amended petition, finding two claims unripe for review and denying the remainder.

Relevant here, the district court rejected Hart's guilt-phase *Brady* claims. Hart argued that the prosecution should have turned over evidence of errors that Dr. Hunter had made in autopsies at previous trials. The district court, however, found that this evidence was not available to the prosecution until it was compiled into memos and articles after Hart's trial. The district court further held that this evidence was not material, concluding that the errors Dr. Hunter made in previous cases were not relevant to his autopsy of Diane and would not have called into question the accuracy of his findings. The district court additionally rejected Hart's claim that counsel was ineffective for failing to object to Dr. Hunter's testimony, concluding that this objection would have been futile given the court's other findings about the testimony.

The district court granted a certificate of appealability with respect to Hart's claims regarding Dr. Hunter's testimony. Hart then appealed the district court's judgment with respect to those claims as well as several additional claims that the district court did not certify for appeal.

II.

"We review *de novo* a district court's denial of a habeas corpus petition and review for clear error any factual findings made by the district court." *Jurado v. Davis*, 12 F.4th 1084, 1090 (9th Cir. 2021). "The decision by the district court to decline to order an evidentiary hearing is

reviewed for abuse of discretion." *Roy v. Lampert*, 465 F.3d 964, 968 (9th Cir. 2006).

III.

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), we may grant habeas relief under 28 U.S.C § 2254 only if state court proceedings "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). A decision is "contrary to clearly established federal law 'if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the Supreme] Court has on a set of materially indistinguishable facts.'" *Ochoa v. Davis*, 50 F.4th 865, 876 (9th Cir. 2022) (alterations in original) (quoting *Williams v. Taylor*, 529 U.S. 362, 413 (2000) (O'Connor, J., concurring)). "A state court's decision is an unreasonable application of clearly established federal law 'if the state court identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the [petitioner's] case.'" *Id.* (alterations in original) (quoting *Williams*, 529 U.S. at 413).

"When, as here, the [CSC] did not offer reasoning when denying [the petitioner's] state habeas petition on the merits, 'the habeas petitioner's burden still must be met by showing there was no reasonable basis for the state court to deny relief.'" *Bolin v. Davis*, 13 F.4th 797, 805 (9th Cir. 2021) (quoting *Harrington v. Richter*, 562 U.S. 86, 98 (2011)). "In that circumstance, we 'must determine what arguments or theories . . . could have supported[] the state court's

decision; and then [we] must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of [the Supreme] Court.'" *Id.* at 805–06 (omission and alterations in original) (quoting *Richter*, 562 U.S. at 102).[2]

IV.

Hart argues that the prosecution unconstitutionally suppressed material evidence that could have been used to challenge Dr. Hunter's qualifications. Because the CSC could have reasonably concluded that this evidence was not material, the district court appropriately rejected Hart's *Brady* claim.

A.

Hart points to several memos drafted by Riverside County deputy district attorneys in which they complained about errors that Dr. Hunter had made in previous trials. Two of the memos are undated, and one was dated after Hart's trial. One memo described a trial in which Dr. Hunter gave inconsistent testimony regarding the victim's time of death

[2] Hart argues that we must assume the truth of the factual allegations in his petition because the CSC denied his claims on the pleadings. But we have explained that even when the CSC rejects a petition for failure to state a prima facie claim, a federal court must evaluate the "full merits of [the petitioner's] claims to assess whether the [CSC] could reasonably have denied habeas relief." *Montiel v. Chappell*, 43 F.4th 942, 957 n.13 (9th Cir. 2022) (citing *Cullen v. Pinholster*, 563 U.S. 170, 189–203 (2011)). Additionally, even when considering only whether a petitioner has stated a prima facie case, California courts conduct their own review of the trial record and do not credit wholly conclusory allegations or those based on hearsay. *See Bolin*, 13 F.4th at 806 n.2; *Waidla v. Davis*, 68 F.4th 575, 589 (9th Cir. 2023) (citing *People v. Madaris*, 175 Cal. Rptr. 869, 873 (Ct. App. 1981), *overruled on other grounds by People v. Barrick*, 654 P.2d 1243, 1250 (Cal. 1982)).

and whether the victim's skull had been fractured. During another trial described in that memo, Dr. Hunter gave a "100%" wrong answer regarding the victim's time of death, later backtracking with inconsistent and confusing testimony. A second memo characterized Dr. Hunter as careless, describing the trial in *People v. Seaton* (discussed further below), in which Dr. Hunter confused lacerations and incisions, and inaccurately stated that blood flowing from a dead person will not clot. A third memo described a case in which Dr. Hunter "reversed in his mind the locations of the damage to the victim's skull," resulting in an incorrect conclusion about the cause of death. After being shown autopsy photographs, Dr. Hunter only reluctantly—and even then, inconsistently—corrected himself.

Hart also points to a letter drafted by a representative from Damon Reference Laboratories on December 15, 1988—after Hart's trial—urging Riverside County not to award a contract to Dr. Hunter. The letter described a case in which Dr. Hunter incorrectly determined a cause of death was not homicide, when a second autopsy found that it was. The pathologist who conducted that autopsy described Dr. Hunter's work as a "very sloppy job." The letter also discussed a homicide trial in which Dr. Hunter wrongly insisted that there were photos taken with probes and was highly reluctant to correct his testimony.

Hart further points to January 1989 news articles printed in the *Riverside Press Enterprise* regarding Dr. Hunter's work for the County. These articles describe an investigation into a potential capital case in which the district attorney requested that Dr. Hunter not perform the autopsy because he was not board certified in forensic pathology. One article described an instance in which Dr. Hunter did not note in an autopsy that the woman's uterus had been removed, causing

insurance officials to question whether Dr. Hunter examined the right body.

Finally, Hart points to a declaration submitted by defense counsel in the case of *People v. Seaton*, 28 P.3d 175 (Cal. 2001). In support of a motion for a new trial, Seaton's counsel submitted a declaration describing Dr. Hunter's testimony in Seaton's trial. Dr. Hunter had testified that the victim was attacked in two locations, and that one could tell from the blood clotting and blood pattern that the victim survived the first attack but not the second. None of those conclusions was found in Dr. Hunter's autopsy report. Seaton's counsel thereafter consulted with another pathologist, who reviewed Dr. Hunter's testimony and autopsy, finding that the victim had certainly died at the first location, and that it was not possible to distinguish blood from a live or dead person through blood clotting. Seaton's counsel also deposed the Riverside County Coroner, who stated that Dr. Hunter had admitted some of his mistakes in a conversation with him around December 1988 or January 1989.

B.

Under *Brady v. Maryland*, the government may not suppress evidence favorable to the accused "where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *United States v. Alahmedalabdaloklah*, 76 F.4th 1183, 1229 (9th Cir. 2023) (quoting *Brady*, 373 U.S. at 87), *opinion amended and superseded*, -- F.4th --, 2024 WL 844755 (9th Cir. Feb. 28, 2024). This principle also prohibits suppression of evidence that could impeach a government witness's credibility. *Id.* (citing *Giglio v. United States*, 405 U.S. 150, 154–55 (1972)). "To establish a *Brady/Giglio* claim, a

defendant must show that: (1) the evidence at issue would have been favorable to the accused, either because it was exculpatory or impeaching; (2) it was suppressed by the prosecution, either willfully or inadvertently; and (3) it was material." *Id.*

"Evidence is material within the meaning of *Brady* 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding *would* have been different.'" *Id.* (quoting *Ochoa*, 16 F.4th at 1327). "The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence [the defendant] received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Ochoa*, 16 F.4th at 1327 (alteration in original) (quoting *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)). If we determine that evidence is not material under *Brady*, we need not address the other elements of a *Brady* claim. *See Turner v. United States*, 582 U.S. 313, 323–24 (2017).

Hart argues that evidence impeaching Dr. Hunter is material because Dr. Hunter's testimony helped establish that Hart both raped Diane and intentionally killed her. But the CSC could reasonably have concluded that the impeachment evidence was not material because, even without Dr. Hunter's testimony, there was little likelihood the jury would not have found Hart guilty of first-degree murder with a rape or sodomy special circumstance. Hart argues that Dr. Hunter's testimony regarding the circumstances of Diane's death was "critical." But Hart also concedes that Diane's cause of death—multiple blows to the back of her head—"was not subject to serious dispute." In closing statements, the prosecution urged the jury to infer that Hart must have realized he was killing Diane while

repeatedly striking her on the back of her head. Because Hart does not dispute that Diane died from these blows, the prosecution's argument would still have been available even if Dr. Hunter's testimony had been discredited.

Nor would the exclusion of Dr. Hunter's testimony have undermined the prosecution's argument that Hart's plan to lure Amy and Diane to a remote area demonstrated premeditation. Indeed, as Hart acknowledges on appeal, some of Dr. Hunter's testimony arguably undermined the inference that Hart intended to kill Diane—including his characterization of Diane's injuries as "overkill," which could have suggested that Hart was motivated by a spontaneous impulse.

Hart also argues that Dr. Hunter's testimony that Diane had been sexually assaulted likely swayed the jury. But Dr. Hunter's testimony—in which he admitted some uncertainty—was far from the only evidence on which the jury might have relied in reaching its conclusions. The jury could have found that Hart attempted or committed sexual assault against Diane based on the facts that (1) foreign pubic hair and a "Vaseline-like substance" were found on Diane's body, (2) Diane's body was unclothed from the waist down, lying on top of her torn bra, when Amy saw it and when Diane's body was discovered by police, (3) Hart told Amy that he had "just got it on with [her] friend," and (4) Hart raped Amy and used Vaseline in doing so. When significant evidence other than a single witness's testimony supports the jury's verdict, a state court can reasonably find that evidence impeaching that witness is not material. *See Strickler v. Greene*, 527 U.S. 263, 293 (1999); *Rhoades v. Henry*, 598 F.3d 495, 504 (9th Cir. 2010) (finding no prejudice when an impeachable witness's testimony "was

not central to the prosecution's case in the same way that a key witness's testimony" could be).[3]

C.

Hart also argues that the state court erred in resolving his *Brady* claim on an incomplete record. But "[a] state court's decision not to hold an evidentiary hearing does not render its fact-finding process unreasonable so long as the state court could have reasonably concluded that the evidence already adduced was sufficient to resolve the factual question." *Hibbler v. Benedetti*, 693 F.3d 1140, 1147 (9th Cir. 2012). Here, Hart provides no argument other than a conclusory assertion that the state court record was incomplete. And although Hart notes that he requested permission from the state court to supplement the record in his state habeas proceedings, these requests do not identify what additional evidence would be material to his claims. The state court record contained all the evidence discussed above, including Dr. Hunter's testimony and the impeachment evidence that Hart believes he should have received. For the reasons discussed above, the state court could have reasonably determined from the record that this evidence was not material.

V.

A.

A defendant's right to counsel has not been effectively vindicated if he can show "(1) constitutionally deficient

[3] Hart also argues that the district court, "and presumably the state court," erred in relying on *Seaton* to determine that the prosecution was unaware of this evidence regarding Dr. Hunter at the time of Hart's trial. But as we have explained, Hart has failed to demonstrate that this evidence was material, even if the prosecution knowingly suppressed it.

performance by counsel (2) that prejudiced the defense." *Washington v. Shinn*, 46 F.4th 915, 926 (9th Cir. 2022) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "To establish deficient performance, [the petitioner] must show that 'counsel's representation fell below an objective standard of reasonableness.'" *Id.* at 927 (quoting *Strickland*, 466 U.S. at 688). "To establish prejudice, [he] must show that there is 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.* (quoting *Strickland*, 466 U.S. at 694).

This "standard, although by no means insurmountable, is highly demanding." *Id.* at 926 (quoting *Kimmelman v. Morrison*, 477 U.S. 365, 382 (1986)). "Trial counsel's strategies, including the treatment of witnesses, are entitled to deference on review." *Lopez v. Allen*, 47 F.4th 1040, 1050 (9th Cir. 2022). "And because we view the state court's resolution" of the question whether a petitioner's counsel performed deficiently "only through the lens of AEDPA, our review" of that issue "is 'doubly deferential.'" *Id.* (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)).

Hart argues that his trial counsel was ineffective for failing to investigate and criticize Dr. Hunter's lack of certification in forensic pathology or rape trauma. But Dr. Hunter had been board certified in pathologic anatomy and clinical pathology since 1957, had conducted over 5,000 autopsies by the time of Hart's trial, and had testified in over 50 trials regarding his findings. Indeed, the California Court of Appeal had previously emphasized Dr. Hunter's extensive qualifications in another case. *See People v. Roehler*, 213 Cal. Rptr. 353, 361, 382 (Ct. App. 1985) (allowing the jury to rely on Dr. Hunter's testimony). Hart therefore provides no reason to conclude that a challenge to Dr. Hunter's

qualifications would have resulted in the exclusion of his expert testimony or significant impeachment of his credibility.

Hart next argues that his counsel should have impeached Dr. Hunter with Detective Lackie's report about the crimes. He asserts that Detective Lackie's report contradicted Dr. Hunter's testimony because the report gave no indication that Diane was sexually assaulted. But even assuming that there was a contradiction, this contradiction harmed Detective Lackie's credibility, not Dr. Hunter's. Detective Lackie acknowledged in his testimony that Dr. Hunter had made findings regarding sexual assault but explained that he had simply failed to include Dr. Hunter's findings in his own report. And although Detective Lackie acknowledged that his report had incorrectly indicated no trauma to Diane's vaginal or anal area, he testified that this was because he had misunderstood Dr. Hunter's findings. Detective Lackie's testimony therefore placed the blame for any inconsistencies on himself. And because this information was already before the jury, Hart's counsel was not ineffective for failing to raise it when cross-examining Dr. Hunter. *See Lopez*, 47 F.4th at 1051 (upholding a state court's finding of no prejudice when defense counsel failed to impeach a witness with information of which the jury was already aware).

Hart also argues that trial counsel should have discovered the errors that Dr. Hunter had made in previous trials and used those to impeach Dr. Hunter. But, as explained above, the CSC could have reasonably concluded that those errors were not material under *Brady*. And because "*Brady* materiality and *Strickland* prejudice are the same," *Gentry v. Sinclair*, 705 F.3d 884, 906 (9th Cir. 2013), trial counsel's decision not to investigate and impeach Dr. Hunter with his previous mistakes did not prejudice Hart.

Some of Dr. Hunter's testimony was in fact potentially helpful to Hart. For example, in his guilt-phase closing argument, Hart's counsel referenced Dr. Hunter's uncertainty regarding whether Diane had been sexually assaulted. Hart's counsel also pointed to Dr. Hunter's testimony that the killing blows were "overkill" to argue that Hart lacked premeditation or intent to kill Diane. Hart reiterates these points on appeal. The state court could reasonably have found that trial counsel was not ineffective for failing to question the credibility of a "mixed witness, offering testimony that was both favorable and unfavorable to Petitioner." *Lopez*, 47 F.4th at 1050. Such impeachment may well have harmed Hart's case.

Finally, Hart argues that trial counsel was ineffective for failing to present his own expert to contradict Dr. Hunter's findings. Yet, Hart points to no evidence that another expert would have done this. "[S]peculative assertions that more consultation with an expert could somehow have aided [counsel] in preparing his defense or in cross-examining [an expert witness] are unpersuasive and insufficient to establish prejudice." *Gallegos v. Ryan*, 820 F.3d 1013, 1035 (9th Cir. 2016).

B.

Hart also requests an evidentiary hearing for his ineffective assistance of counsel claim but makes no argument specific to this request. He has therefore forfeited the request. *See Cui v. Garland*, 13 F.4th 991, 999 n.6 (9th Cir. 2021) (finding a claim forfeited when the party made "no substantive argument" regarding the claim).

VI.

For the reasons discussed above, the district court's denial of Hart's habeas petition is hereby **AFFIRMED**.

NOT FOR PUBLICATION

FILED

MAR 28 2024

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH WILLIAM HART, Petitioner-Appellant, v. RONALD BROOMFIELD, Acting Warden, California State Prison at San Quentin, Respondent-Appellee.	No. 20-99011 D.C. No. 2:05-cv-03633-DSF MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted January 22, 2024
Pasadena, California

Before: FRIEDLAND, KOH, and H.A. THOMAS, Circuit Judges.

Joseph William Hart appeals the denial of his 28 U.S.C. § 2254 habeas corpus petition challenging his conviction and death sentence for first-degree murder with rape and sodomy special circumstances. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253. We affirm.

Hart raises eight claims on appeal, including two claims for which the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

district court granted a certificate of appealability (COA), and six claims for which it did not.[1] We grant Hart a COA with respect to his uncertified claim that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by suppressing evidence that could have impeached a witness who testified that Hart confessed to killing his niece (Claim 12(B)). We deny a COA with respect to the remainder of Hart's uncertified claims.

1. During the penalty phase of Hart's trial, Hart's former cellmate Randall Gresham testified in exchange for a plea agreement that Hart had confessed to murdering his 11-year-old niece, Shelah M. Hart claims that the State violated its *Brady* obligations by suppressing evidence that Gresham received a more favorable plea deal than the State revealed at trial, and, further, that the State did not disclose that Gresham was planted in Hart's cell to extract a confession from him.

We may not hear an appeal of the denial of a Section 2254 petition unless the petitioner has received a COA. 28 U.S.C. § 2253(c)(1)(A). "When the district court denies a habeas petition on procedural grounds . . . a COA should issue when the prisoner shows, at least, 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

[1] Hart's certified claims are addressed in a concurrently filed opinion.

procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). This "is a threshold inquiry that 'is not coextensive with a merits analysis.'" *Martinez v. Shinn*, 33 F.4th 1254, 1261 (9th Cir. 2022) (quoting *Buck v. Davis*, 580 U.S. 100, 115 (2017)).

Although the district court did not issue a COA with respect to Claim 12(B), we construe Hart's briefing of the claim as a motion to expand the COA. *See* 9th Cir. R. 22-1(e). Because reasonable jurists might find both the merits of Claim 12(B) and the district court's procedural ruling debatable, we grant a COA with respect to that claim. We affirm the district court's dismissal of the claim, however, because it is procedurally barred.

2. In all three of his state court post-conviction proceedings, Hart raised a claim that the State unconstitutionally suppressed evidence relevant to Gresham's testimony. Each time, the Supreme Court of California (CSC) denied the claim as procedurally barred, citing its decisions in *In re Clark*, 855 P.2d 729 (Cal. 1993), and *In re Robbins*, 959 P.2d 311 (Cal. 1998). These cases, together with *In re Gallego*, 959 P.2d 290 (Cal. 1998), "describe California's timeliness requirement," under which "[a] prisoner must seek habeas relief without 'substantial delay,' as 'measured from the time the petitioner or counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim.'" *Walker v. Martin*, 562 U.S. 307, 312 (2011) (citations omitted)

(quoting *Robbins*, 959 P.2d at 317, 322).

"The procedural bar doctrine prohibits a federal court from granting relief on the merits of a state prisoner's federal claim when the state court denied the claim based on an independent and adequate state procedural rule." *Ayala v. Chappell*, 829 F.3d 1081, 1095 (9th Cir. 2016). Hart argues that California's timeliness bar is neither independent of federal law nor adequate to support the dismissal of his claim. We disagree.

Hart's argument that California's timeliness bar is not independent is foreclosed by our decision in *Bennett v. Mueller*, 322 F.3d 573, 581–83 (9th Cir. 2003). As we explained in *Bennett*, the CSC's decision in *Robbins* establishes that California courts "no longer consider federal law in denying a petition on untimeliness grounds." *Id.* at 581.[2]

Hart has also not met his burden of showing that California's timeliness rule was not adequate at the time of his default, in light of his particular circumstances. In the main, he contends that California's timeliness rule was not "firmly

[2] The CSC's decision in *In re Sanders*, 981 P.2d 1038 (Cal. 1999), does not undermine this conclusion. There, the CSC held that, as "a matter of state law, not federal constitutional law," *id.* at 1052, a habeas petitioner may be able to establish good cause for procedural default where "appointed counsel abandons his or her client during the postconviction period," *id.* at 1053. Nothing in *Sanders* suggests that California courts consider the merits of a petitioner's federal claims when determining whether counsel has abandoned those claims during post-conviction proceedings.

established or regularly followed" as of November 6, 1998 (when he filed his first state habeas petition), given that *Robbins* and *Gallego* were both decided only three months earlier, in August 1998. *See Walker*, 562 U.S. at 316 ("To qualify as an 'adequate' procedural ground, a state rule must be 'firmly established and regularly followed.'"); *Bradford v. Davis*, 923 F.3d 599, 611 (9th Cir. 2019) (adequacy of state procedural rule typically determined as of the date "when the state habeas petition is filed").

Hart does not, however, suggest that *Robbins* and *Gallego* conflicted with *Clark*, which was decided in 1993, more than five years before Hart filed his state habeas petition. As the Supreme Court has recognized, the CSC typically invokes the timeliness rule by citing *Clark* and *Robbins* together. *See, e.g.*, *Walker*, 562 U.S. at 318. Hart has not explained why *Clark* was insufficient to provide him notice of the timeliness rule or why, in the circumstances of his case, the CSC's decision in *Clark* was inadequate to bar his claim. Although the State bears the "ultimate burden of proving the adequacy" of its procedural rules, Hart bears the initial burden to "assert[] specific factual allegations that demonstrate the inadequacy of the state procedure, including citation to authority demonstrating inconsistent application of the rule." *Bennett*, 322 F.3d at 585–86. Hart has made no such allegations and provided no such authority here.

Hart nevertheless argues that California's timeliness rules may not be applied against him "in a surprising or unfair manner." *Walker*, 562 U.S. at 320. But Hart identifies nothing unusual about the way California's procedural bar was applied to his claims.[3] Hart also argues that California's timeliness rule improperly discriminated against his federal claims, because California declined to fund his post-conviction investigations, and California courts often resolve capital claims on the merits even when procedural bars may apply. Hart identifies no distinction, however, that California makes between state and federal claims. And, in any event, "a state procedural bar may count as an adequate and independent ground for denying a federal habeas petition even if the state court had discretion to reach the merits despite the default." *Id.* at 311.

Finally, Hart argues that his claim falls into one of the "rare circumstances" in which "unyielding application of [a] general rule would disserve any perceivable interest." *Lee v. Kemna*, 534 U.S. 362, 379–80 (2002). But the Supreme Court has employed this standard only to overcome meaningless formalisms that might otherwise have precluded a meritorious claim. *See id.* at 381–83 (excusing compliance with a rule requiring motions to be made in writing where the motion was made orally and the trial court's resolution of the motion had nothing to do

[3] To the extent Hart argues that the procedural bar was unfair because of delays he faced in preparing his petitions, as we explain below, these delays do not provide cause for his procedural default.

with this requirement); *Osborne v. Ohio*, 495 U.S. 103, 124 (1990) (excusing a failure to object to jury instructions after the jury was instructed when the trial court had just rejected identical motions challenging those instructions). Here, by contrast, California's rule serves significant finality and timeliness interests, because Hart's claim was filed years after he gathered evidence supporting it. *See Walker*, 562 U.S. at 317. Hart accordingly has failed to show that the CSC's decisions in *Clark* and *Robbins* are inadequate to procedurally bar his claims under these circumstances.

3. Hart argues that even if Claim 12(B) was untimely, any procedural default should be excused. "[A] petitioner can only 'obtain federal review of a defaulted claim by showing *cause* for the default and *prejudice* from a violation of federal law.'" *Leeds v. Russell*, 75 F.4th 1009, 1016 (9th Cir. 2023) (quoting *Martinez v. Ryan*, 566 U.S. 1, 10 (2012)). Hart has not met that burden here.

Hart first argues that he has cause for his procedural default on his second and third state habeas petitions because his state habeas counsel provided ineffective assistance in failing to expeditiously investigate and file his claim. But we have previously held that ineffective assistance of state habeas counsel does not provide cause for failing to timely raise a *Brady* claim. *Hunton v. Sinclair*, 732 F.3d 1124, 1126–27 (9th Cir. 2013) (citing *Martinez v. Ryan*, 566 U.S. at 16). Hart also cites the State's failure to provide funding for his counsel to investigate his

claims as cause for his default. But because Hart had no right to post-conviction representation, *see Coleman v. Thompson*, 501 U.S. 722, 753–54 (1991), much less the right to funding for that representation, the absence of such funding cannot provide cause for the default of his claim.

Hart next argues that his procedural default was caused by the State's failure to provide evidence that Gresham was a government agent and may have testified falsely. This also does not provide cause for Hart's default. Hart was on notice of the factual basis for this claim (to the extent there was a factual basis) as early as his 1995 direct appeal, which asserted that Gresham had acted as a government agent. *See People v. Hart*, 976 P.2d 683, 740 (Cal. 1999). In his 2002 declaration, Gresham also stated that before he testified at Hart's 1988 trial, he told Hart that Hart's counsel should contact him, so that Gresham could communicate "what was going on with the prosecution" (i.e., that the prosecution had placed Gresham in Hart's cell to obtain information).[4] Hart has thus not adequately explained why he was prevented from more timely developing this claim in his state habeas proceedings, nor how the State's alleged withholding of evidence prevented him from doing so. Hart could have contacted Gresham at any time after his 1988 trial

[4] In a 2003 deposition, Gresham expressed uncertainty about whether the 2002 statement was accurate, including whether he had told Federal Public Defender investigators that he had been placed in Hart's cell to extract a confession, and whether that was in fact true.

to determine whether Gresham was a government agent. Yet he did not file a claim on this theory until 1998, did not interview Gresham until 2002, and did not file an amended petition based on the interview until 2005. The State's alleged withholding of evidence does not explain this delay. *See Walker*, 562 U.S. at 317 (listing California cases finding that multi-year delays barred claims).

Finally, Hart argues that the State's suppression of the full details of Gresham's plea agreement should excuse his delay in bringing a claim regarding the agreement. But Hart cannot show that this delay prejudiced him.

The suppressed evidence regarding Gresham's plea indicates that, without a plea agreement, Gresham could have faced many more charges (and therefore a much more serious penalty) than was revealed at Hart's trial. Gresham acknowledged on cross-examination, however, that he had been facing substantial prison time, and he admitted to proposing to the prosecution that he testify in exchange for a plea agreement. Hart's counsel emphasized the plea agreement in his closing statement, urging the jury not to believe Gresham because he had a motive to fabricate testimony against Hart. The additional evidence Hart references is therefore cumulative of evidence and argument that was already before the jury and lacks materiality. *See Hooper v. Shinn*, 985 F.3d 594, 618 (9th Cir. 2021); *Barker v. Fleming*, 423 F.3d 1085, 1097–98 (9th Cir. 2005); *see also Woods v. Sinclair*, 764 F.3d 1109, 1130 (9th Cir. 2014) (holding that the requirement of

prejudice to excuse a procedural default is the same as the *Brady* requirement of materiality).

4. Hart has not shown that jurists of reason would debate the merits of his remaining uncertified claims. *Martinez v. Shinn*, 33 F.4th at 1261. We therefore decline to issue a COA regarding those claims.

AFFIRMED.

FILED

JUL 11 2024

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH WILLIAM HART, Petitioner-Appellant, v. RONALD BROOMFIELD, Acting Warden, California State Prison at San Quentin, Respondent-Appellee.	No. 20-99011 D.C. No. 2:05-cv-03633-DSF Central District of California, Los Angeles ORDER

Before: FRIEDLAND, KOH, and H.A. THOMAS, Circuit Judges.

The panel has unanimously voted to deny the petition for panel rehearing and the petition for rehearing en banc (Dkt. No. 68). The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are **DENIED**.

Death Penalty

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOSEPH WILLIAM HART, Petitioner, v. RON BROOMFIELD,[1] Acting Warden of California State Prison at San Quentin, Respondent.	CASE NO. CV 05-03633 DSF **DEATH PENALTY CASE** ORDER DENYING HABEAS RELIEF

I. INTRODUCTION

Petitioner is a death row inmate at California's San Quentin State Prison. A jury convicted him of first degree murder and sex offenses. On federal habeas review, Petitioner challenges his convictions and sentence. As the Court discusses below, aside from two claims that are unripe for review, Petitioner fails to meet the stringent standard for relief under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. §2254.

[1] Ron Broomfield is substituted for his predecessor as Acting Warden of San Quentin State Prison. Fed. R. Civ. P. 25(d).

II. PROCEDURAL HISTORY

A. State Court Proceedings[2/]

Petitioner was convicted in the Riverside County Superior Court of first degree murder (Cal. Penal Code §§ 187(a), 189), rape (Cal. Penal Code § 261(a)(2)), sodomy (Cal. Penal Code § 286(c)), and forcible oral copulation (Cal Penal Code § 288a(c)). The jury found true special circumstance allegations that Petitioner committed the murder during the commission of, attempted commission of – or immediate flight after committing or attempting to commit – rape and sodomy. (Cal. Penal Code §§ 190.2(a)(17)(C) & (D).) (Reporter's Transcript on Appeal, volume 27 ("27RT") at 3586-89.)

After a bifurcated trial before the same jury to determine the penalty, the jury returned a sentence of death. (41RT at 5285.) The trial court formally imposed that sentence on May 27, 1988. (42RT at 5312-14.)

On automatic appeal, the California Supreme Court affirmed the judgment on June 1, 1999. *See People v. Hart*, 20 Cal. 4th 546 (1999).[3/] The United States Supreme Court denied certiorari on January 10, 2000. *See Hart v. California*, 528 U.S. 1085 (2000).

On November 6, 1998, Petitioner filed a state habeas petition in the California Supreme Court. The court denied that eleven-claim petition on March 1, 2006. The court rejected the claims on the merits, as well as on multiple procedural grounds. (Dkt. 101-1–101-7, 101-13.)

[2/] The exhibits and lodgments in this action were filed out of order and are difficult to locate. For ease of reference, the Court cites to all documents – except for transcripts – using the CM-ECF "Page ID" numbers printed on the upper right corner of each page on the electronic docket.

[3/] The court subsequently made four modifications to the opinion, with no effect on the judgment. (Dkt. 97-54.)

On June 22, 2005, Petitioner filed a second habeas petition in the California Supreme Court. (Dkt. 98-1–98-5, 102-1–102-9, 103-1–103-3.) Petitioner included his prior state habeas claims and added several others. On March 28, 2007, the California Supreme Court denied the second petition, again both on the merits and various procedural grounds. (Dkt. 98-12.)

On May 22, 2007, after receiving a stay of this federal action (discussed below), Petitioner filed a third state habeas petition. (Dkt. 98-13–98-16, 99-1–99-4.) This "supplemental" exhaustion petition raised three claims. After receiving informal briefing and multiple exhibits, the California Supreme Court denied the petition on September 28, 2011. (Dkt. 99-21.)

B. Pending Proceedings

Petitioner initiated his federal habeas proceedings in a separate action. In case No. CV 00-1021 MMM, the Court appointed counsel for the limited purpose of determining whether the federal action was time-barred, or whether AEDPA's limitations period should be equitably tolled. The Court ultimately granted equitable tolling and found the action timely. The Court then dismissed that limited action and Petitioner commenced the current proceeding on May 16, 2005. (Dkt. 1.)

The original petition was "mixed," containing claims that had been raised in state court, and others that had not. Petitioner sought and received a stay of the case to complete state habeas review. (Dkt. 18, 26.) Petitioner subsequently returned to this Court and filed an amended petition. (Dkt. 38.) Soon thereafter, due to defects in the amended petition identified by Petitioner, he successfully sought leave to file the pending Second Amended Petition ("SAP"). (Dkt. 45, 51-53.) The SAP raises forty-one claims and multiple subclaims.

At the Court's direction, Respondent filed an Answer with a memorandum of points and authorities fully briefing all of the claims and subclaims in the SAP, and

discussing the applicability of 28 U.S.C. § 2254(d).[4/] (Dkt. 87, 93.) Subsequently, pursuant to this Court's Order for Briefing, Petitioner filed a "Traverse and § 2254(d) Brief" ("Traverse") responding to Respondent's arguments as to the applicability of 28 U.S.C. § 2254(d). (Dkt. 106, 130.) Thereafter, Petitioner filed a Notice of Supplemental Supreme Court Authority that directed the Court to a newly-decided Supreme Court case that ostensibly had a bearing on Claims 6 and 14 of the SAP. (Dkt. 133.)

This Court's Order for Briefing advised the parties that "there is no basis for considering a request for discovery or any other form of evidentiary development until Petitioner has established that he can satisfy the threshold showing" under AEDPA, a standard that is discussed fully below. The Briefing Order further directed that "[o]nce Petitioner's Traverse has been filed, the Court will not consider any further briefing until such time as it has made a determination of the merits of claims contained in the SAP." (Dkt. 106 at 3-4.) Based on the Court's analysis below under AEDPA, no further evidentiary development or briefing is warranted and the matter stands submitted for decision.

III. TRIAL FACTS[5/]

> The evidence at trial established that shortly before noon on March 24, 1986, the murder victim, Diana (known as Diane) Lynn Harper, and her friend, Amy R., each 15 years of age, decided to leave the Riverside

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[4/] Prior to the filing of the Answer, this action was transferred from the calender of the Honorable Margaret M. Morrow, due to her retirement, to this Court's calendar. (Dkt. 88.)

[5/] The California Supreme Court's opinion on direct appeal contains a reasonable summary of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C § 2254(d). Therefore, solely for purposes of summarizing the trial evidence, the Court quotes the state court's statement of facts here. The Court discusses trial evidence in detail below where facts are in dispute or necessary to resolve specific claims.

County high school in which they were enrolled as students, to meet Diane's boyfriend at a local 7-Eleven store. In the parking lot of the store, Diane began conversing with a stranger, who told her that he had found a marijuana patch and needed someone to watch the road while he harvested the plants. He offered the girls $1,000 to serve as lookouts. The girls entered his vehicle, and the man drove them 30 to 40 miles, stopping once to purchase beer, and again to obtain storage bags for carrying the marijuana. At trial, Amy identified the man as defendant.

The car stopped at a dirt road in a rural area. Defendant told Amy to wait by the vehicle, and he and Diane walked up the path and out of Amy's view. Shortly thereafter, defendant returned and asked Amy to help him carry the bags. Amy went with him and saw Diane's partially clothed body lying facedown on the ground. Diane appeared to be dead or unconscious. Amy tried to run away, but defendant caught her, tore her clothes, forced her to orally copulate him, and raped and sodomized her. Amy testified at trial that defendant explained to her: "I'm really sorry I had to do this, but you know, I had a shitty day. . . ."

Defendant informed Amy that "your friend was an asshole, she called me a few names, and I think she's dead." He also told Amy that he planned to hit Amy with a rock to render her unconscious. By misleading defendant into believing that she had been abused as a child, and promising that she would not contact the police, Amy persuaded defendant not to knock her out, and eventually he drove her back to a location near the 7-Eleven store. He gave her a quarter to phone home, and drove away. Amy immediately contacted her sister and, shortly thereafter, spoke with law enforcement officers. Later that evening, Amy directed the officers to the crime scene, where Diane's body was found. The cause of Diane's

death was identified as massive cerebral contusions and hemorrhage, caused by external trauma to the head.

Law enforcement investigators recovered evidence indicating that Amy and Diane each had been sexually assaulted. A fingerprint matching that of defendant was recovered from a beer bottle found close to Diane's body. Tire impressions found in the vicinity of the murder scene were consistent with those of defendant's vehicle, which Amy also identified as the one she and Diane had entered. Shoeprints were consistent with a partially burned shoe found in a 55-gallon drum outside defendant's residence. Other physical evidence also connected defendant to the crime scene. Defendant was arrested on May 8, 1986 – five days after the murder of his young niece, Shelah McMahan. In a police lineup, Amy was shown five individuals including defendant, and collapsed upon viewing him; immediately thereafter, she identified defendant as the man who had assaulted her. Defendant's time cards indicated that, on the day the crimes were committed, he worked until 11:30 a.m. on a construction job near the 7-Eleven store where the girls were picked up. A few days later, one of defendant's coworkers observed that defendant had a bandaged hand and that his right arm was in a sling; the physician who treated defendant's injury testified that it was commonly known as a "boxer's fracture," because it typically is sustained by striking a closed-fist blow against a fixed or hard object.

I. GUILT PHASE EVIDENCE

A. *The Prosecution's Case*

1. *Overview*

The prosecution's theory of the case was that defendant's effort to entice the girls into his vehicle and drive them to a remote area was part of a premeditated plan to commit rape, and that the murder of Diane was

committed in the course of perpetrating rape. To establish that theory, the prosecution presented Amy's testimony, and introduced physical and circumstantial evidence linking defendant to the crimes.

2. *The Events of March 24, 1986*

Amy testified that she and Diane left high school on March 24, 1986, stopping first at a nearby Der Wienerschnitzel restaurant for a soda, then at another restaurant, Don Jose's, where Diane submitted an application for employment. The girls thereafter crossed the street to an area adjacent to a 7-Eleven store to wait for Diane's boyfriend, David Starbuck.

A brown Toyota vehicle entered a nearby driveway, and Diane began conversing with its driver. Amy joined in the conversation. The driver informed the girls that "he had found a marijuana field and he had a lady that was going to go with him and she couldn't make it, and he couldn't take another day off work and . . . I guess [the marijuana] wasn't his, and so he needed someone to watch the road while he went and chopped down the marijuana. . . . He just wanted one of us." The man informed the girls that he would pay $1,000 for the assistance he requested, adding that "we would be back in an hour."

The girls decided that if one of them were going to accompany the man, they both would do so, and so they entered his vehicle. Amy noticed an orange towel on the dashboard. Amy told Diane: "Oh, David is going to kill you for doing this." The man responded: "Will he kill you for making a thousand dollars in an hour? Why would he kill you for making a thousand dollars in an hour?"

Amy estimated that the three of them thereafter traveled about 30 or 40 miles, stopping at a Circle-K store because the driver said he was thirsty. The man returned to the car with a six-pack of Budweiser beer in

bottles. The three drank the beer. The man informed the girls that he would need bags to put the marijuana in "[a]nd that it wouldn't be cool to put it in a white plastic bag." He sent Amy back into the store to obtain some paper bags. The trio then drove to a Thrifty store where the girls procured more bags. Next, they traveled to a hardware store, because the man said "the marijuana was thick and that he needed to get a hatchet to chop it down with." The man entered the store for the purpose of purchasing a hatchet, emerging shortly thereafter without one, however, informing the girls that the hatchet cost $15, which was too much money for him to pay. He explained, "It's okay because I have a screwdriver in the trunk."

Diane responded: "I have this knife if you want to use that," and gave the man a small buck knife that she kept in her purse. Amy expressed her displeasure with this arrangement, and the man returned the knife to Diane. The trio then drove for awhile on a freeway, exiting near a field. The man tried to drive the vehicle into the field, but was unable to do so. He told the girls, "I know another way to get in," and they kept driving.

The car proceeded onto a dirt road near a sign that read, "80 Acres for Sale," passing a Volkswagen car shell. The vehicle stopped; the occupants emerged from the car, and the man removed the bags from the trunk. He told Amy to watch the road while he and Diane harvested the marijuana. Before departing, the man relieved himself; while he was doing so, the girls agreed to call to each other to make sure everything was all right. But after a few minutes, the man and Diane returned, the man informing the girls that the marijuana patch was not there. They returned to the car, and drove to where the dirt road stopped at a dead end. The man put the cap on his beer bottle, placed the bottle in a white plastic bag,

and left the bag outside the car. The man and Diane walked up a dirt path, while Amy stayed by the vehicle. Diane had her knife with her.

Amy waited for about 15 or 20 minutes, picking at the label on her bottle of beer. She started calling Diane's name, but heard no response. She threw the bottle into a bush. She noticed a bumper sticker on the man's vehicle. It read, "Skier." She also noticed the license plate holder, which exhibited the words, "Have a Nice Day."

At some point thereafter, the man returned to the vehicle, alone. He informed Amy that Diane was cooling her feet in a spring and that he needed Amy's assistance to carry down the bags. Amy followed the man up the trail. Informing her that he saw a snake, the man picked up a rock. Amy told him to give it to her. The man did so, saying, "But I'll have to get another one, you don't want me to get killed, do you?" Amy gave the rock back to the man.

At approximately the same time, Amy saw Diane's body, partially clothed and lying facedown. Frightened, Amy started to run back down the path. The man chased her, hitting her in the back with a rock, causing her to fall down. He started punching Amy in the face, and the two fell into a gully. Amy pleaded with the man to let her hear Diane say something. The man repeatedly told her to shut up, that Diane was unconscious and unable to speak. "You're kind of funny, kid," he added, "I'm about to rape you and all you can do is think about your friend."

The man stood behind Amy, tore her blouse, pulled her skirt up, and ripped off her panties. She noticed that his trousers were down and he was holding his penis, "just slapping it back and forth." Angrily, the man kept telling her, "Don't look at me." But Amy continued to glance back at the man. "It's hard for me to get it up after I just got it on with your friend," he explained.

The man attempted to sodomize Amy. Repeatedly unable to achieve penetration, he turned Amy around, asking her, "How are you at giving head, kid?" He placed Amy on her knees, telling her, "Do it," and shoved his penis into her mouth. After the man achieved an erection, he turned Amy around, began biting her neck, and sodomized her.

Amy asked the man if he was going to kill her. He replied, "I've done this in people's houses and I've never killed anyone yet." He then dragged Amy back up the path toward Diane's body, telling her that she had better shut up or he was going to get his Vaseline. While he was dragging Amy along, he picked up a small square jar of Vaseline.

The man threw Amy down and forced her to orally copulate him again. He applied the Vaseline to himself. Then he raped her.

Amy asked the man again if he was going to kill her. He said that he was going to render her unconscious by hitting her on the back of the neck with a rock. Amy suggested that he tie her up instead, dig a hole, and place her in the hole. The man agreed that it would be a good idea to tie her up, and did so with her blouse and bra.

The man informed Amy that he had to find Diane's knife, but his efforts to locate it were unsuccessful and he returned to Amy, telling her that "your friend was an asshole, she called me a few names, and I think she's dead." Amy replied that there was no reason he also had to kill her. The man repeated his desire to render her unconscious to allow him time to get away. Amy pleaded with the man not to hit her, concocting a false story that when she was three years old, her father used to hit and beat her, and that she was afraid of being hit.

Upon hearing Amy's pleas for mercy, the man's attitude began to change. He said he understood what Amy had gone through "because I

was raped myself by three [B]lack men and I'm really sorry I had to do this, but you know, I had a shitty day. . . ."

Amy continued to promise that she would not tell anybody, so he untied her and took her back down the trail, repeatedly complaining, "You made me hurt my hand, kid." Amy noticed that his hands were "really dirty" and "permanently stained." Still fearing for her life, Amy asked the man to hold her hand. Instead, he put his arm around her and continued to express remorse. He placed Amy in his vehicle, and the pair drove away. When Amy asked whether she could disclose Diane's whereabouts, the man replied: "I wouldn't do that. . . . This is what you're going to tell them. You're going to tell them it was a [B]lack man, a [B]lack man took you – if you have to tell them anything."

He added: "I'm putting 15 years of my life in your hands, kid." Amy renewed her promise not to discuss the incident, to which the man replied, "But that doesn't matter because by the time they pick me up . . . I can get out before the . . . sentencing. . . . Anyway, I've got two good friends that would do anything for me."

The man dropped Amy off approximately one block from a 7-Eleven store. As Amy emerged from the car, the man warned her not to call the police. Then he gave her a quarter to phone home and departed. Amy called her sister, informing her of the incident. The sheriff's department was contacted, and Amy later accompanied detectives to search for Diane.

3. *The Crime Scene Investigation*

Riverside County Sheriff's Department Detective Richard Moker testified that, in the evening of March 24, 1986, he accompanied Amy in an effort to locate Diane's body. He described the manner in which he and other law enforcement officers attempted to retrace the route the girls had

taken, the officers relying upon Amy's description of the stores the trio had visited, distinctive road signs they had observed, and the crime scene terrain. At approximately 11:00 p.m., after nearly six hours of searching, the officers located the Volkswagen shell. Shortly thereafter, the officers found a white plastic sack containing a Budweiser six-pack container. Fearful that the man who assaulted her might be lurking in the area, Amy asked the officers whether they were armed and indicated that she wanted to leave as soon as possible. She also told them where Diane's body could be found. Thereafter, one of the officers transported Amy to the hospital to enable her to undergo a rape examination, while investigators searched the crime scene.

On cross-examination, Detective Moker testified that when he first encountered Amy, she informed him that Diane could be found "lying on her back" (thereby conflicting with Amy's testimony that she saw Diane lying facedown).

Riverside County Detective Michael Lackie testified regarding the investigation law enforcement officers conducted at the crime scene in the early morning hours of March 25, 1986, describing the steps he and Detective Moker took to avoid disturbing evidence found at the scene. In addition to encountering Diane's lifeless and bloodstained body (unclothed below the waist, with panties wrapped around one leg), officers located nearby a buck knife with the blade extended, a shoe impression, a Budweiser beer bottle, and paper grocery bags. Farther away from Diane's body, officers found four different tire impressions and a shoe impression at the spot where Amy said defendant had parked the vehicle, a white plastic sack containing an empty Budweiser beer bottle with a cap on it, a discarded Budweiser beer bottle with the label partially picked off, and Amy's torn undergarments. Lackie testified that the shoe impression

found near the spot where the vehicle had been parked appeared to resemble a similar impression found near Diane's body. He added that officers were unable to locate any marijuana growing in the area.

James Hall, a criminalist employed by the California Department of Justice, assisted in the investigation of the crime scene on March 25, 1986. Hall checked Diane's body for loose hairs and fibers, collecting what appeared to be a loose pubic hair from Diane's thigh.

Michael Renney, a senior evidence technician employed by the Riverside County Sheriff's Department, testified that on March 26, 1986, he tested for the presence of fingerprints several items recovered from the crime scene, obtaining a latent print from the Budweiser beer bottle found in the white plastic sack.

4. *The Victims' Injuries*

Dr. Claire McArthur, an emergency room physician employed by Riverside General Hospital, testified that in the early morning of March 25, 1986, she examined Amy, discovering a large bruise on Amy's upper back, abrasions about both knees, and a bruise to Amy's perineum (the area near the vagina and rectum). Dr. McArthur also found sand-like particles in Amy's vagina, a circumstance that Dr. McArthur testified would be "highly unlikely" in the absence of penetration. On cross-examination, Dr. McArthur acknowledged that she asked Amy whether she had been sodomized, and that Amy had responded in the negative. On redirect examination, Dr. McArthur testified that sexual assault victims Amy's age typically are "very reluctant" to discuss a sexual assault, and opined that Amy had been the victim of such an assault. Criminalist James Hall testified that Amy's slip bore a seminal fluid stain.

Dr. Dewitt Hunter, a Riverside County pathologist, testified that on March 26, 1986, he performed an autopsy on Diane's body. The autopsy revealed that the cause of Diane's death was major trauma to her head that led to massive cerebral contusion and hemorrhage; her body also exhibited minor trauma in certain other locations, and exhibited evidence indicating that Diane had been sexually assaulted. With regard to the head injuries, Dr. Hunter testified that Diane had suffered several "crush-type lacerations" and a skull fracture, most likely caused by a rock or brick-like instrument. Diane's face also had numerous contusions and abrasions, consistent with her head having been pushed into the dirt. Her larynx contained foreign vegetable material (such as a leaf or twig) indicating that it had been inhaled shortly before death. The middle of her back revealed an extensive contusion. Diane's iliac crest (the front of the pelvic bone) showed abrasions consistent with someone having kneeled or sat on her back. Diane's knees, elbows, and buttocks also showed abrasions. There was a reddening of the vaginal area consistent with the application of force, and there were abrasions and "ill-defined" contusions on her inner and upper thighs consistent with an effort to force apart Diane's legs. Although no seminal fluid was discovered on Diane's body or clothing, a Vaseline-like substance was found around her vaginal area and inner thighs.

5. *The Brown Toyota With the Message "Have a Nice Day"*

Riverside County Sheriff's Department Sergeant Ronald Wade testified that on May 4, 1986, approximately six weeks after Diane and Amy were attacked, he observed a vehicle that appeared to be similar to the description of the suspect vehicle involved in the Diane Harper homicide. The vehicle, a brown Toyota Corolla, was parked next to a

mobilehome in the Mead Valley area. Wade returned the next day and observed that the vehicle bore certain distinctive markings, including decals on the rear bumper and a license plate frame that read, "Have a Nice Day." Wade proceeded to the mobilehome on May 6 and spoke with an individual who identified himself as "Joe Hart." (At trial, Wade identified the individual with whom he spoke as defendant.) Wade asked defendant where he was working on March 24, 1986. Defendant replied that he was working in the Riverside/La Sierra area at McKinley and Magnolia Avenues; defendant checked his pocket calendar to verify his recollection. The location was not far from the spot where Diane and Amy had been picked up that day. Detective Lackie subsequently testified that the distance between the locations was 1.9 miles and required approximately four minutes of travel time by car.

Upon returning to the Riverside Sheriff's Department headquarters, Wade contacted the California Department of Justice in Sacramento for the purpose of obtaining Hart's criminal history and fingerprints. Michael Renney testified that he subsequently examined these known fingerprints of defendant and matched that of defendant's right ring finger to the latent print Renney obtained on March 26 from the Budweiser beer bottle found in the white plastic sack at the crime scene. Joe Sypnicki, a latent print examiner employed by the California Department of Justice, testified that he, too, compared the two prints, concluding "[t]here is absolutely no doubt whatsoever" that the latent impression lifted from the Budweiser beer bottle is that of defendant's right ring finger. On cross-examination, Sypnicki acknowledged that no known method exists for ascertaining the date a particular fingerprint was made, and he therefore could not render an opinion as to the age of the print found on the beer bottle.

Having been informed of Sergeant Wade's observations, Detective Michael Lackie traveled on May 7, 1986, to the Mead Valley address occupied by Hart and obtained consent from Hart's wife, Linda, to examine the brown Toyota parked in the driveway. Lackie brought photographs of the tire impressions found at the crime scene, and determined that each of the vehicle's tires had a different tread design and that each appeared to match the impressions depicted in the photographs. The license plate frame read "Have a Nice Day." The vehicle had other distinctive features similar to those Amy had described to law enforcement officers. A "fairly fresh," torn portion of a bumper sticker depicting the letters, "I E R," lay on the ground; it appeared to partially match the "SKIER" bumper sticker Amy had recalled seeing on the vehicle. Lackie also observed, strewn about in the yard adjacent to the residence, Budweiser beer bottles similar to the type that Amy described defendant as having purchased on March 24. Lackie also saw Marlboro 100 cigarette butts in the vicinity; Amy had informed officers that defendant had smoked Marlboro 100's. Similar beer bottles and cigarette butts had been recovered at the crime scene. Lackie also saw an orange towel located in a planter attached to the residence.

6. *Defendant's Arrest and the Ensuing Searches*

Detective Lackie testified that after he completed his observations of the brown Toyota and the surrounding yard area, he learned from another investigator that one of defendant's fingerprints on file appeared to match a fingerprint located on a bottle found in the plastic sack at the crime scene. Lackie thereafter obtained a search warrant, returning to the Hart residence on May 8, 1986, to execute the warrant. By the time Lackie arrived at the residence, law enforcement officers already had taken defendant into custody.

Detective Moker testified that he placed defendant under arrest on May 8, 1986. Moker recalled that at the time of defendant's arrest, defendant's hair was "fluffy or wavy or dry looking . . . [with] the part in the middle. . . ." Detective Lackie testified that at the time of the arrest, defendant wore soiled pants and had "extremely soiled hands."

Detective Lackie further testified that law enforcement officers seized the brown Toyota (and another vehicle) in order to conduct a subsequent search. In the mobilehome, officers found a jar of Vaseline in the master bedroom, another jar of petroleum jelly in the bathroom, and Marlboro 100 cigarettes. Outside the residence (crumpled up against the fence at the edge of the property), Lackie found two more pieces of a bumper sticker that appeared to have been torn from the "SKIER" bumper sticker on the brown Toyota. Lackie found a pair of matched tennis shoes, partially burnt, in a 55-gallon drum that appeared to have served as an incinerator. The tread design on the shoes appeared to match certain shoe impressions found at the crime scene. Lackie described the shoes at the time they were discovered in the drum as having been in "pretty good condition. . . . There were no obvious gouges, tears, marks, signs of destruction that I could see other than what was created by the burns – burning." Lackie also observed Circle-K plastic sacks among trash located at the side of the mobilehome.

Criminalist James Hall testified that on the day of defendant's arrest, he obtained various evidence exemplars from defendant's body, including those taken from defendant's pubic hair. Hall compared defendant's pubic hair with the specimen recovered from Diane's thigh, concluding that the hairs were "microscopically similar and, therefore, the evidence hair [found on Diane] could have come from Mr. Hart." Hall also compared the loose pubic hair with an exemplar taken from Diane's

body, noted microscopic differences, and opined that the loose hair had not come from her.

Hall testified that he examined Amy's slip and panties, identifying on the panties human bloodstains of an indeterminable ABO blood type. Hall identified ABO type B blood on Amy's blouse (Diane had ABO type B blood, Amy had type O, and defendant had type A). Hall identified a seminal fluid stain on Amy's slip; on cross-examination, he testified that ABO typing and enzyme typing of the stain were inconclusive, and he was uncertain as to the date the stain was made. On redirect examination, Hall stated that defendant is a "nonsecretor," which means that an examination of defendant's bodily fluids would not disclose his blood type. Hall acknowledged that the inconclusive nature of the tests conducted on the seminal stain could be due to the strength of the stain, the passage of time, or the nonsecretor status of the donor. Hall identified saliva on the Marlboro 100 cigarette butts collected at the crime scene, but tests as to the blood type of the donor did not yield a blood type, a result Hall testified he would expect if the donor were a nonsecretor.

Hall testified that on May 10, 1986, he examined defendant's vehicle, recovering orange cloth fibers from the dashboard area of the car's interior.

7. *Amy's Identification of Defendant*

Amy attended a law enforcement lineup on May 12, 1986, in which she observed five individuals through a one-way mirror. Upon recognizing one of the individuals, Amy fell, believing that "the floor would be safer." She noted on the sheriff's form that the individual she picked out had "different hair color, looked younger." In court, she identified that same individual as defendant, and as the man who had picked her up in the brown Toyota.

Riverside County Sheriff's Department Senior Investigator Dennis Harter testified that he was present at the police lineup in which Amy identified defendant as the suspect in her case. Harter testified that as soon as defendant (who occupied the second position in the lineup) entered the lineup room, Amy gestured in his direction and "immediately grabbed her mouth as if to keep herself from yelling, she began to cry and she ducked down to the Claim" below the one-way viewing glass. Harter described Amy's emotional state when she viewed defendant as "very distraught"; after the participants in the lineup departed from the room, Amy "began to cry uncontrollably." Harter added that after she regained some composure, Amy stated, "It's No. 2, he killed Diane, he killed Diane."

Harter recalled that at the lineup, Amy noted that defendant's hairstyle appeared different from what it had been on the day she and Diane encountered him. Detective Moker testified that at the lineup, defendant's hair "appeared to be wet or oily . . . and it was combed almost straight back. . . ." When Harter returned to the jail the next day to visit defendant, defendant's hair appeared as it did at the time of defendant's arrest. Photos depicting defendant's appearance at the lineup, and on the day thereafter, were admitted into evidence.

8. *Other Evidence*

Faye Ann Springer, a criminalist employed by the State of California Department of Justice, testified that she attended Diane's autopsy, removing some of the victim's pubic hair that appeared to have a foreign material on it, and concluding that the substance was consistent with petrolatum, found in Vaseline. Springer found a similar substance on Diane's slip. Springer also compared a fiber found in Amy's shoe with an exemplar taken from a carpet mat found in defendant's brown Toyota vehicle, concluding that the fibers appeared to be identical. She examined

photographs of the crime scene tire impressions, concluding that the tread designs for each of the four tires were similar to the exemplar tire impressions (derived from defendant's vehicle). Springer compared photographs depicting shoe impressions at the crime scene, concluding that they matched the photographs of the exemplars she received. On cross-examination, Springer acknowledged that none of the foregoing similarities was unique; petrolatum is found in several personal care products, and the carpet fiber and tire and shoe impressions were derived from mass-produced products.

Joan Baker, the office manager for defendant's employer (Joe Verska, General Engineering Contractor), testified that defendant worked for the company from February to May 1986. She recognized her own handwriting on his weekly time card filled out on March 26 or 27, 1986; she explained that defendant had been unable to fill out the time card, because "he had hurt his hand and it was bandaged and his arm was in a sling." The time card showed that on March 24, 1986, defendant worked two hours.

Dr. David Fisher, an orthopedic surgeon, testified that on March 28, 1986, he treated defendant for a hand injury sometimes referred to as a "boxer's fracture," because it is incurred by a close-fisted blow against a hard or fixed object, adding that the injury is "very common to occur within an altercation of some kind." On cross-examination, Dr. Fisher acknowledged that the injury could occur if someone were to fall with a clenched fist.

David Crocker, a field biologist employed by the Metropolitan Water District of Southern California, testified that on April 15, 1986, he was collecting water samples at Lake Mathews (located near La Sierra Boulevard, the street on which the victims' high school was situated). He

and a colleague spotted a woman's black purse near the lake; upon opening the purse, they discovered personal items and Diane's high school identification card. Crocker and his colleague gave the purse to associates, who recognized the identification as that belonging to the high school student who recently had been murdered. The purse was given to law enforcement officers.

Kenneth Widney, defendant's father-in-law, testified that defendant often wore baseball-type hats, including hats with the letters "C A T" on them. He further testified that at some point prior to defendant's arrest on May 8, 1986, he observed two pieces of plywood placed in front of defendant's vehicle and a third piece of plywood on top, leading Widney to opine that defendant was trying to hide the car. Widney also testified that a yellow sticker that read "Caution Child in Car" was placed in the rear window of the vehicle shortly before defendant was arrested.

Dr. Craig Rath, a clinical psychologist, testified that on many occasions he had studied a type of criminal who, in many ways, was "relatively socialized," but who experiences a buildup of tension preceding the commission of a rape (or series of rapes), which then dissipates the tension. Dr. Rath testified that such an individual informally is known as a "binge rapist." On cross-examination, Dr. Rath acknowledged that he did not examine defendant.

B. *The Defense Case*

The defense called Amy, the surviving victim, as its initial witness, and questioned her regarding the events of March 24, 1986, and her participation in the ensuing investigation conducted by law enforcement officials. Amy acknowledged that she willingly joined Diane and the driver of the car for the trip to locate the marijuana patch. Amy also acknowledged initially misleading officers, untruthfully informing them

that Diane might have known the perpetrator (because "I didn't want us to get in trouble"), and that the perpetrator was a Black man (because that was what her assailant had instructed her to say). On cross-examination, she confirmed that neither she nor Diane knew the man who assaulted them.

Riverside County Deputy Sheriff James Shannon testified that when he encountered Amy at the 7-Eleven in the late afternoon of March 24, 1986, she told him, "'Diane's dead, I know she is, Diane's dead.'" She also told him that she had seen Diane unclothed, and "laying on her back"; upon seeing Diane's body, Amy "started to scream and . . . the suspect hit her several times on the back with a rock." Amy described her assailant to Shannon as being a "Negro male," shortly thereafter changing her description. On cross-examination, Shannon testified that Amy explained she initially had given a false description of the suspect because she feared retaliation from the man. Amy described the man as a Caucasian male, approximately 35 years old, wearing a baseball-type cap with the letters "C A T" on it. Shannon further testified on cross-examination that Amy might have told him that she had seen Diane's back (rather than Diane lying on her back). During Shannon's questioning of Amy, she was crying, trembling, emotionally upset, and distraught.

Riverside County Detective Dennis Harter testified that during an interview he had with Amy in June 1986, Amy stated that she did not see any blood on Diane's body, or on the hands of the man who assaulted her. Harter reviewed the sequence of events of March 24, 1986, as Amy related them to him during the interview, noting that with regard to the allegation of sodomy, Amy told him that the man "stuck his penis in her butt . . . she said she could feel it moving in and out."

Riverside County Detective Richard Moker testified regarding his interview with Amy, conducted on March 26, 1986, noting that at one point Amy indicated the man who assaulted her and Diane had, as an inducement for them to join him in the search for the marijuana patch, offered each one of the girls a pound of marijuana to sell. Moker acknowledged that the report he prepared following the interview paraphrased the substance of his interview and contained certain technical terms not used by Amy to describe what occurred when she was sexually assaulted. In an interview Moker conducted on March 27, 1986, Amy told him that when the man released her following the assault, the man gave her directions to tell her sister as to how to reach the location where he had dropped Amy off, and gave her a quarter for a telephone call.

Riverside County Detective Michael Lackie testified that his report of the autopsy conducted on Diane Harper's body, indicating a lack of trauma in the vaginal and anal areas, was erroneous, "and in checking with Faye Springer and other people who were at the autopsy, they told me they clearly understood Dr. Hunter to have made some statement there was signs of sexual assault and there was quite a big to-do in the office because I had written the report and I guess I had missed it." Lackie also testified that in an interview with Amy, conducted on April 2, 1986, Amy informed him that she (Amy) had used marijuana on a daily basis, but not on March 24, 1986, the date the crimes were committed. In response to a question posed by the prosecution, Lackie testified that on March 26, 1986, he ordered blood testing of Amy and Diane's blood, and that the results indicated there was a small amount of alcohol in each girl's system, and no evidence of marijuana or any other drug.

California Department of Justice Criminalist James Hall testified regarding the analysis performed on the stain found on Amy's slip,

indicating that an electrophoresis test was inconclusive as to whether the stain was from seminal or vaginal fluid. On cross-examination, Hall testified that a different test, known as the "P-30" test, indicated the presence of a protein that is a component of semen. On redirect examination, Hall acknowledged that he was unable to determine the age of the stain.

Defendant did not testify, and the prosecution offered no rebuttal.

In his closing argument to the jury, defense counsel conceded that defendant took the girls to the remote area and assaulted them, killing Diane. He urged the jury to conclude, however, that Diane had been killed in the course of defendant's having committed, or having attempted to commit, sodomy – and not rape – and that the evidence therefore supported no more than a verdict of second degree felony murder.[2]

[2] As noted, the crimes were committed in 1986; prior to the enactment of Proposition 115. Under the law at that time, section 189 limited the types of sex offenses that would support a conviction of first degree felony murder to rape (§ 261) and lewd or lascivious acts with a child under the age of 14 years (§ 288). Although murder committed in the course of a sodomy was a special circumstance which, if found true, would support imposition of the death penalty, a jury at the time could consider the sodomy special circumstance only after finding defendant guilty of having committed first degree murder. Thus, in arguing at trial that defendant had committed sodomy, but not rape, and that defendant had not acted with deliberation or premeditation in killing Diane, defense counsel sought to persuade the jury that defendant was guilty of no more than second degree

> felony murder, in the hope of sparing defendant from a penalty phase and the possibility that the jury would render a verdict of death. (§§ 190, 190.2.)
>
> Under the current provisions of section 189 (not applicable to the present case), murder committed in the perpetration of, or attempt to perpetrate, sodomy (§ 286) is first degree murder.

At the conclusion of the guilt phase, the jury found defendant guilty of having committed first degree murder, rape, sodomy, and oral copulation, and found true the special circumstance allegations that the murder was committed during the commission of rape and sodomy.

II. PENALTY PHASE EVIDENCE

A. *The Prosecution's Case*

The prosecution introduced evidence of five prior offenses committed by defendant, in addition to evidence of the subsequent uncharged murder of defendant's eleven-year-old niece.

1. *Debra B. – February 1973 Assault*

Debra B. testified that in February 1973, when she was 26 years of age, she lived next door to the parents of defendant's first wife, Kathy, in Anaheim. While Debra was partially dressed one morning, defendant appeared without shoes in her kitchen. He said that he had locked himself out of the house next door, and asked to use the telephone. Debra repeatedly asked defendant to leave. "[T]hen just very suddenly he lunged at me and started choking me," Debra recalled. The pair fell to the floor. During the ensuing struggle, Debra bit defendant's hand, causing it to bleed. The struggle ended, and defendant informed her that he could not stop himself from entering people's homes. Debra arranged for defendant

to speak with one of the ministers at her church. The minister contacted the local police, who placed defendant under arrest.

During the ensuing search of defendant's person, officers found a knotted piece of rope, 42 inches in length, a pocket knife, a piece of electrical wire, 39.5 inches in length, and a key to Debra's residence.

2. *Priscilla N. – February 1973 Assault*

On February 22, 1973, Priscilla N., 18 years of age, was employed as the manager of an apartment complex located in Imperial Beach. At dusk, a man asked her to show him an apartment. Once inside, he grabbed her, and the two struggled to the floor. After she repeatedly screamed, the man ran out of the apartment. She reported the incident to the police, initially identifying another man as her attacker. When defendant was questioned by investigating officers with regard to the Valerie T. and Deborah T. incidents, described below, he admitted attacking Priscilla with the intent to rape her.

3. *Valerie T. – January 1975 Sexual Assault* (footnote omitted)

On January 19, 1975, at approximately 9:00 p.m., Valerie T. was walking to her residence, located in Imperial Beach, after having had dinner at a local restaurant. A man grabbed her from behind and placed one hand over her mouth, informing her not to scream. He pulled Valerie into an alley and removed his hand. She immediately screamed, and he placed the blade of a knife across her throat. He ordered her to remove her trousers; when she refused to do so, he did so himself, saying, "Don't look at me." He also ripped open her blouse and "mounted" her briefly. "[T]hen he got up and he said, 'Thank you, ma'am,' and took off down the street." Although Valerie could not recall whether the man's penis actually penetrated her, she subsequently detected wetness that "wasn't

mine," and believed he had ejaculated. A few months after the incident (approximately the time period when defendant admitted to the police that he had attacked her), Valerie identified her assailant in a police photo lineup as defendant, subsequently identifying him again at the penalty phase of the trial.

4. *Marilyn S. – February 1975 Forcible Oral Copulation*

On the evening of February 26, 1975, Marilyn S. went dancing, returning to her Imperial Beach apartment at approximately 1:00 a.m. the next morning. After falling asleep on a couch, she awakened to find a man standing next to her; his hands covered her mouth and neck area. The man wore a ski mask over his face, with holes for his eyes, nose, and mouth. In one hand, he held an open pocketknife. He told Marilyn, "No sudden moves, or you'll get hurt." He taped her mouth shut and told her not to scream. The man began caressing Marilyn's breasts and attempted to remove her pantyhose. The tape eventually became loose and, in the hope of preventing a rape, Marilyn informed him that she was menstruating and had an infectious disease. The man forced her to orally copulate him, eventually ejaculating and forcing her to swallow his semen. He thereafter asked her for money. Marilyn replied that she did not have much, and that she had a young son to raise. The man informed her that he had keys to all of the apartments in the complex, warning her not to contact the police or he would harm her and her son. Because she did not see the man's face, Marilyn was unable to identify him to the police. One week later, however, while being questioned by the police in connection with the attempted burglary of Deborah T.'s residence, described below, defendant admitted his sexual assault upon Marilyn S., explaining that he had gone

to her apartment complex for the purpose of committing a rape. (Footnote omitted.)

5. *Deborah T. – March 1975 Attempted Burglary*

Shortly after midnight on March 5, 1975, the police responded to a telephone call from Deborah T., regarding a possible prowler at the Imperial Beach apartment complex in which she resided. Police officers located defendant, barefoot, 30 to 40 feet from her residence, walking away at a fast pace, and detained him. Although Deborah was unable to identify defendant positively, fingerprints lifted from a window screen at her apartment subsequently were matched to those belonging to defendant. Defendant waived his rights under [*Miranda v. Arizona*, 384 U.S. 436 (1966)], and gave investigating officers a number of varying explanations as to what he was doing at the apartment complex at that hour, initially denying being near Deborah's window. The following day, after being reread his *Miranda* rights, defendant confessed that he had opened the window with the intent of sexually assaulting her. During this interrogation, defendant also described his involvement in certain other offenses that the prosecution offered as evidence in aggravation.

6. *Shelah McMahan – May 1986 Murder*

On May 3, 1986, the body of defendant's 11-year-old niece, Shelah McMahan, was found beneath a mattress, trash bags, and a rock overhang at a garbage dump located in Mead Valley. She had been stabbed numerous times in the neck. A thin rubber molding was wrapped loosely around her neck, and her hands had been tied tightly behind her with a plastic cable tie. Her forearms bore marks that appeared to have been made by handcuffs. Her shirt was ripped and pulled away from her chest. A semen stain was found on her pant leg. Shelah had lived next door to defendant, and had been missing since early that morning.

In the ensuing few days, defendant was seen using a tractor to grade his backyard. He told others that he was doing landscaping work.

On May 8, 1986, defendant was arrested for the crimes committed against Diane and Amy. Pursuant to a search warrant, police investigators searched his mobilehome and the surrounding yard, locating cable ties similar to the one found binding Shelah's wrists, as well as two sets of handcuffs buried under freshly turned soil within a shed located behind defendant's residence. A third set of handcuffs was recovered several weeks later.

An acquaintance of defendant's, William Parker, testified that in early 1986, he engaged in a lighthearted discussion with defendant regarding women and bondage, which led defendant to produce three sets of handcuffs from the trunk of a motor vehicle. Defendant told Parker "something to the effect of, 'this is what you need.'"

Criminalist James Hall testified that traces of blood found on one set of the handcuffs recovered from the shed matched Shelah's blood type, shared by approximately 0.8 percent of the population (i.e., approximately eight out of one thousand people). Criminalist Faye Springer testified that a fiber collected from one pair of handcuffs was similar to the fabric in a black T-shirt worn by Shelah when her body was discovered. The ligature marks on Shelah's arms resembled those made by the handcuffs. The cable tie that bound Shelah's wrists had an appearance and trademark similar to a cable tie recovered from defendant's bedroom. Springer also found a similarity between fibers recovered from Shelah's T-shirt and those collected from the carpet found in one of defendant's vehicles, a Ford Mustang.[5] Springer stated that animal hairs recovered from Shelah's body and from defendant's Mustang were similar to an exemplar taken from defendant's dog.

[5] Prosecution witness Ronald Wade testified on cross-examination that Shelah's hands were found clutching "some greenish gold type carpet fibers." Wade acknowledged that these particular fibers had not been connected to defendant or to any of his possessions. On cross-examination, Faye Springer and Detective Phillip Sanchez testified similarly.

Dr. Rene Modglin, the coroner who performed the autopsy on Shelah's body, testified that the victim had been stabbed 16 times. The cause of death was a cut to Shelah's right common carotid artery. The victim's body bore other bruises and abrasions. Modglin noted that Shelah's breasts were more fully developed than was typical for a girl of her age. On cross-examination, Modglin testified that he found no evidence of injury to Shelah's vaginal or anal areas. He found no evidence of semen in her mouth or body, noting that the absence of such evidence did not necessarily mean that Shelah had not engaged in sexual intercourse near the time of her death.

Randy Gresham shared a county jail cell with defendant and another prisoner. Gresham testified as part of an agreement specifying that, rather than face exposure to a prison sentence of 15 years for his involvement in offenses unrelated to the present case, he would be sentenced to a maximum of 10 years. Gresham testified that defendant admitted murdering his niece and leaving her body "at a dumping area." According to Gresham, defendant described her as an 11-year-old with "big breasts," and "built a lot sexier . . . than an 11-year-old was." Gresham stated that when defendant discussed killing Shelah, he demonstrated stabbing motions and laughed as he acted out the killing. Defendant informed him that he killed the girl because he was nervous after having talked to her

about his other sexual assaults, had made sexual advances toward her, and was afraid that she would inform her family. Defendant told Gresham that "he really liked Shelah, and did not want to kill her, adding, 'it['s] easier after you'd [sic] done it.'" While watching television with Gresham, defendant would compare the breasts of women on television with those of his niece. Defendant expressed concern to Gresham that sheriff's deputies were searching his backyard, "and he was worried about them searching it. . . . He didn't want them to find evidence out there."[6]

> [6] On cross-examination, Gresham acknowledged that he had used drugs heavily prior to his arrest, and suffered symptoms of withdrawal during the time that he was incarcerated with defendant. Gresham testified that he suffered seizures and "blacked out" a number of times. On one occasion, defendant administered cardiopulmonary resuscitation in order to revive Gresham.

B. *The Defense Case*

At the penalty phase, the defense presented evidence in rebuttal to the prosecution's case against defendant regarding the murder of Shelah. The defense also presented evidence in mitigation describing defendant's troubled upbringing and his personal and professional virtues.

1. *Defense Evidence Contesting the Claim That Defendant Murdered Shelah*

The defense presented evidence highlighting the large number of individuals who had access to the Widney residence (where Shelah lived), and in particular sought to cast suspicion on Bobby Asendorf, the brother of the boyfriend of Shelah's mother. Asendorf, who lived inside a bus

parked on the property, was not permitted to babysit Shelah, because Shelah had a "crush" on him.

The defense also emphasized the forensic evidence that did not link defendant to Shelah's murder. This evidence included the green and gold carpet fibers found in Shelah's hand, the lack of blood found in defendant's Ford Mustang, the absence of hair matching that of defendant, and the presence of hair that matched neither Shelah nor defendant. A cigarette butt recovered near the body was analyzed for saliva and determined to reflect type A secretor activity; defendant was a nonsecretor. Cable ties found near the body were dissimilar from those found at defendant's residence and upon Shelah's wrists. The molding found wrapped around Shelah's neck did not match moldings seized by investigators. A shoeprint found on a bedsheet with Shelah's body was dissimilar to shoes seized from defendant's residence. The bedsheet, itself, also was dissimilar to those found in the Widney residence and in defendant's residence.

To cast further doubt upon the prosecution's theory that defendant murdered Shelah, the defense presented evidence suggesting that Shelah died within 90 minutes of 10:44 a.m., May 3 – i.e., a time when it was undisputed that defendant already had returned to his residence.

The defense sought to discredit inmate Randy Gresham's testimony by introducing evidence that Gresham had daily access to newspapers while incarcerated and that Gresham's plea agreement with the prosecution depended upon his testifying against defendant.

David Montgomery testified that he worked with defendant for Joe Verska Construction on the night Shelah disappeared. The pair met shortly after midnight to move sprinklers at a jobsite, a task that required approximately 90 minutes. Thereafter, they returned to defendant's

vehicle and drank beer. Montgomery received a telephone call from defendant at approximately 8:00 a.m. that day.

Defendant's wife, Linda Hart, testified that early on the morning of Shelah's disappearance, she awoke at 2:30 a.m., to make sure that defendant had left for work; he already had left, returning shortly before 4:00 a.m. Linda Hart did not see any blood on defendant's clothing or shoes. He awakened her later in the morning, when it was light.

Linda Hart further testified that Shelah often went to church and to the grocery store with the Harts in their Ford Mustang. The Harts' dog also traveled freely between the Widney and Hart residences. Linda Hart explained that defendant had been grading the backyard on a continual basis, in an effort to produce a level yard.

On cross-examination, Linda Hart testified that although she recalled telling a detective, on May 4, 1986, that her husband was gone the previous day at 2:30 a.m., she did not remember telling the detective that the next time she heard from her husband that day was at 7:00 a.m. She did not believe that her husband had killed Shelah or Diane. (Footnote omitted.)

Shelah's mother, Paula McMahan, testified that many individuals visited – and occasionally resided at, or near – the Widney residence where Shelah lived. Because the Widneys had a washer and dryer, the McMahans and Harts often washed their clothes there, sometimes mixing the families' laundry together. Paula McMahan corroborated portions of Linda Hart's testimony, explaining that Shelah often played with defendant's daughters and dog, and frequently had been a passenger in the Harts' Ford Mustang. She added that plastic cable ties could be found in many locations on the Widney property. On cross-examination, Paula McMahan testified that Shelah was very responsible, and always asked

permission to leave the property, even with someone familiar to her such as defendant.

Shelah's uncle, Steve Widney, testified that he used cable ties in his job as an installer of rooftop solar panels, storing the ties at various locations on the Widneys' property.

2. *Defense Evidence in Mitigation*

Defendant's father, Robert Hart, testified regarding his own career in the United States Navy, and the adverse impact that his absences and alcoholism had had upon his family. He praised defendant as having been a good child, an excellent husband, and a loving father. Robert Hart forced defendant to enlist in the Navy and, upon returning, defendant discovered that his first wife, Kathy, had been unfaithful. Defendant began using drugs at this time, was committed as a mentally disordered sex offender to Patton State Hospital, and his marriage to Kathy was dissolved.

Defendant's mother, Iris Hart, corroborated and expanded upon her husband's testimony. She also described a serious traffic accident involving defendant when he was four years of age, which led to his suffering a number of chronic problems, including headaches.

Defendant's first wife, Kathy, testified that defendant had been "a very good father." Defendant had attempted to be a good husband to Kathy, and was "devastated" to learn of her extramarital affair. She also described an event, after the couple had divorced, when defendant visited her and saved the lives of some girls who had fallen into a river when their canoe capsized.

Defendant's second wife, Linda, testified regarding an incident involving a distraught neighbor who had slashed her wrists, explaining that defendant broke down a door, stopped the bleeding, and saved his

neighbor's life. She described defendant as a devoted husband and a "fantastic" father, who, while incarcerated, sought to remain as involved as possible with his family. On cross-examination, Linda acknowledged (over an objection) that nine months after defendant's arrest, she asked another man to live with her for her protection and that of her children, eventually bearing the other man's child.

Several witnesses testified in praise of defendant's talents as a poet, songwriter, musician, husband, and father. Defendant was very involved with the local church, sang in the church choir, and taught children in Bible school. He was a hard worker who sought to provide for his family. A former employer described defendant as very dependable and honest.

C. *Prosecution Evidence in Rebuttal*

Detective Sanchez testified that, during an interview with Linda Hart on May 4, 1986 (following the discovery of Shelah's body), she stated that her husband was gone at 2:30 a.m. the previous day, and the next time she heard from him was approximately four and one-half hours later, just before 7:00 a.m., when she heard defendant enter the trailer.

Linda Hart's sister-in-law, Cindy Widney, testified that on four occasions, defendant made overtures toward her, once suggesting lightheartedly that if their respective spouses returned "to mom and dad," the two of them could get married.

People v. Hart, 20 Cal. 4th at 567-88.

IV. LEGAL STANDARD

A. AEDPA Deference

AEDPA precludes federal courts from granting habeas relief to a state prisoner "with respect to any claim that was adjudicated on the merits in State court proceedings" unless that adjudication:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d); *Harrington v. Richter*, 562 U.S. 86, 97-98 (2011). The above standard "recognizes a foundational principle of our federal system: State courts are adequate forums for the vindication of federal rights." *Burt v. Titlow*, 571 U.S. 12, 19 (2013). "A proper respect for AEDPA's high bar for habeas relief avoids unnecessarily 'disturb[ing] the State's significant interest in repose for concluded litigation, den[ying] society the right to punish some admitted offenders, and intrud[ing] on state sovereignty to a degree matched by few exercises of federal judicial authority." *Virginia v. LeBlanc*, ___ U.S. ___, 137 S. Ct. 1726, 1729 (2017) (*quoting Richter*, 562 U.S. at 103) (brackets in original). Although AEDPA "stops short of imposing a complete bar on federal court relitigation of claims already rejected in state proceedings," it nevertheless "reflects the view that habeas corpus is a guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction through appeal." *Richter*, 562 U.S. at 102-03 (citation and internal quotation marks omitted).

Consequently, § 2254(d) "preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with [the Supreme Court's] precedents." *Id.* at 102. Put another way, in order to obtain federal habeas relief, "a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* at 103; *Titlow*, 571 U.S. at 19-20.

Clearly established Federal law under § 2254(d)(1) "refers to the holdings, as opposed to the dicta, of [the Supreme Court's] decisions as of the time of the relevant

state-court decision." *Carey v. Musladin*, 549 U.S. 70, 74 (2006) (*quoting Williams v. Taylor*, 529 U.S. 362, 412 (2000)). Where no decision of the Supreme Court "squarely addresses" an issue or provides a "categorical answer" to the question before the state court, § 2254 (d)(1) bars relief because the state court's adjudication of the issue cannot be contrary to, or an unreasonable application of, Supreme Court law. *Wright v. Van Patten*, 552 U.S. 120, 125-26 (2008) (per curiam); *see also Moses v. Payne*, 555 F.3d 742, 754, 758-60 (9th Cir. 2009). The Supreme Court has "emphasized, time and again, that [AEDPA] prohibits the federal courts of appeals from relying on their own precedent to conclude that a particular constitutional principle is 'clearly established.'" *Lopez v. Smith*, 574 U.S. 1, 2 (2014) (per curiam).

A state court decision is "contrary to" governing Supreme Court law if it either applies a rule that contradicts the governing Supreme Court law or "confronts a set of facts that is materially indistinguishable from a decision of [the Supreme Court] but reaches a different result." *Brown v. Payton*, 544 U.S. 133, 141 (2005). Citation to Supreme Court cases is not required so long as "neither the reasoning nor the result of the state-court decision contradicts them." *Early v. Packer*, 537 U.S. 3, 8 (2002); *Bell v. Cone*, 543 U.S. 447, 455 (2005); *Richter*, 562 U.S. at 98 ("[A]s this Court has observed, a state court need not cite or even be aware of our cases under § 2254(d).").

A state court's decision involves an "unreasonable application" of Supreme Court precedent "if the state court identifies the correct governing legal principle from [the Supreme Court's] decisions but unreasonably applies that principle to the facts of the prisoner's case." *Williams v. Taylor*, 529 U.S. at 413. An "unreasonable" application of federal law is more than an "incorrect" application of federal law. *Richter*, 562 U.S. at 101; *Wiggins v. Smith*, 539 U.S. 510, 520-21 (2003). So long as "fairminded jurists could disagree" on the correctness of the state court's decision, federal habeas relief is unavailable. *Richter*, 562 U.S. at 101; *LeBlanc*, 137 S. Ct. at 1728 ("In order for a state court's decision to be an unreasonable application of this Court's case law, the ruling

must be 'objectively unreasonable, not merely wrong; even clear error will not suffice.'") (*quoting Woods v. Donald*, 575 U.S. 312, 316 (2015) (per curiam)).

To show that a state court's adjudication of a claim resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding, the petitioner must show that the state court's decision rested on a finding of fact that is "*objectively* unreasonable." *Hibbler v. Benedetti*, 693 F.3d 1140, 1146 (9th Cir. 2012) (emphasis in original, citation omitted). Again, "[t]he question under AEDPA is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable – a substantially higher threshold." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). If a petitioner challenges the state court's factual findings, the federal court "must be convinced that an appellate panel, applying the normal standards of appellate review, could not reasonably conclude that the finding is supported by the record." *Hibbler*, 693 F.3d at 1146.

In performing its 2254(d) analysis, a federal court is limited to the record that was before the state court that adjudicated the claim on the merits. *Pinholster*, 563 U.S. at 180-81. In practical effect, this means that when the state court record precludes habeas relief, the district court is not required to hold an evidentiary hearing. *Id.* at 183 (*citing Landrigan*, 550 U.S. at 474); *Murray v. Schriro*, 882 F.3d 778, 802 (9th Cir. 2018) ("so long as we are reviewing a petitioner's claim under AEDPA, our review is limited to the facts before the state court and the petitioner is not entitled to an evidentiary hearing in federal court.").

"[T]he provisions of AEDPA apply with full force even when reviewing a conviction and sentence imposing the death penalty." *White v. Wheeler*, ___ U.S. ___, 136 S. Ct. 456, 462 (2015); *see also Herrera v. Collins*, 506 U.S. 390, 405 (1993) (the Supreme Court has "refused to hold that the fact that a death sentence has been imposed requires a different standard of review on federal habeas corpus.") (citation omitted).

B. AEDPA's Application

Here, AEDPA's deferential standard applies to all of Petitioner's pending claims. Petitioner raised the majority of those claims on direct appeal. (Dkt. 97-49.) The California Supreme Court rejected those claims and explained its decision in a reasoned opinion. *See People v. Hart*, 20 Cal. 4th at 588-658. In such a circumstance, this Court performs a "straightforward inquiry" by reviewing "the specific reasons given by the state court and defer[ring] to those reasons if they are reasonable." *Wilson v. Sellers*, ___ U.S. ___, 138 S. Ct. 1188, 1192 (2018).

Petitioner raised his remaining claims in three state habeas petitions. (Dkt. 98-13, 101-1–101-2, 102-1–102-2.) The California Supreme Court denied those claims in summary orders after receiving informal briefing. The claims were denied both "on the merits" without explanation, and for various procedural reasons.[6/] (Dkt. 98-12, 99-21, 101-13.) In the absence of a reasoned analysis, AEDPA requires this Court to "determine what arguments or theories . . . could have supported[] the state court's decision." *Richter*, 562 U.S. at 102. If "fairminded jurists could disagree" whether those arguments or theories are inconsistent with a Supreme Court's holding, "the petitioner's claim must be denied." *Sexton v. Beaudreaux*, ___ U.S. ___, 138 S. Ct. 2555, 2558 (2018); *Richter*, 562 U.S. at 98 ("Where a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing there was no reasonable basis for the state court to deny relief.").

[6/] The Court only discusses the procedural claims cited by the state court to the extent necessary and relevant to the federal action. Additionally, Petitioner raised some claims multiple times; in certain instances the California Supreme Court denied the same claim twice on the merits, once with written reasons and once without. In those instances, this Court reviews the earlier reasoned decision on direct appeal. Where the state court denied a claim "on the merits" without explanation the second time around, it suggests that the court relied on its prior reasoning. *Cf. Wilson*, 138 S. Ct. at 1192 (federal courts "look through" unexplained decisions "to the last related state-court decision that does provide a relevant rationale" and "presume[s] that the unexplained decision adopted the same reasoning.").

V. DISCUSSION

A. Juror Bias (Claim 1)

Petitioner raises multiple allegations of jury bias, addressed below. Petitioner raised some of these allegations in the California Supreme Court on direct appeal, and some on state habeas review. The Court indicates which decision it reviews for reasonableness in addressing the claims.

Petitioner makes three general arguments. First, he claims the trial court failed to adequately vet (and ultimately dismiss) four jurors who were biased and predisposed to favor guilty and death verdicts. Second, Petitioner argues that the court failed to excuse jurors whose pretrial exposure to media about the case rendered them biased. Third, Petitioner claims the trial court's failure to dismiss a juror for financial hardship caused him to place undue pressure on other jurors to quickly reach guilt and death verdicts. (SAP at 29-37; Traverse at 20-27.)

1. Failure To Root Out Biased Jurors During Voir Dire

Petitioner claims that voir dire questioning was inadequate as to four jurors whose answers suggested they held a bias in favor of the prosecution.

a. Legal Standard

"[P]art of the guarantee of a defendant's right to an impartial jury is an adequate voir dire to identify unqualified jurors." *Morgan v. Illinois*, 504 U.S. 719, 729 (1992). The Constitution "does not dictate a catechism for *voir dire*, but only that the defendant be afforded an impartial jury." *Id.*; *see also Skilling v. United States*, 561 U.S. 358, 386 (2010) ("No hard-and-fast formula dictates the necessary depth or breadth of voir dire."); *United States v. Wood*, 299 U.S. 123, 145-46 (1936) ("Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular tests and procedure is not chained to any ancient and artificial formula.").

"Supreme Court case law in the area of juror bias is sparse." Consequently, from a constitutional perspective, "we don't know precisely what it means for a juror to be

biased." *Williams v. Johnson*, 840 F.3d 1006, 1010 (9th Cir. 2016) (*citing Wood*, 299 U.S. at 146). However, "we do know that a juror is biased if he is unwilling to follow the law." *Id.* The partiality of an individual juror "is plainly [an issue] of historical fact: did a juror swear that he could set aside any opinion he might hold and decide the case on the evidence, and should the juror's protestation of impartiality have been believed." *Patton v. Yount*, 467 U.S. 1025, 1036-37 (1984). Thus, the trial court's determination that a juror was impartial is entitled to a presumption of correctness. *Id.* at 1038; 28 U.S.C. § 2254(e).

When a prospective juror expressly assures that he or she can set aside any preconceived opinions and render a verdict based on the evidence, a presumption of impartiality attaches. *Ybarra v. McDaniel*, 656 F.3d 984, 992 (9th Cir. 2011) (*citing Murphy v. Florida*, 421 U.S. 794, 800 (1974)); *Irvin v. Dowd*, 366 U.S. 717, 723 (1961). The defendant rebuts this presumption by demonstrating that the juror actually held a biased opinion. *Ybarra*, 656 F.3d at 992.

It is not unusual on voir dire examination for a juror's answers to be "ambiguous and at times contradictory." This is especially true:

> in a highly publicized criminal case. It is well to remember that the lay persons on the panel may never have been subjected to the type of leading questions and cross-examination tactics that frequently are employed, ... Jurors thus cannot be expected invariably to express themselves carefully or even consistently. Every trial judge understands this, and under our system it is that judge who is best situated to determine competency to serve impartially. The trial judge properly may choose to believe those statements that were the most fully articulated or that appeared to have been least influenced by leading.

Yount, 467 U.S. at 1038-39. Where a juror's answers are particularly ambiguous, "[i]t is here that the federal court's deference must operate, for while the cold record arouses some concern, only the trial judge could tell which of these answers was said with the

greatest comprehension and certainty." *Id.* at 1040. In light of that deference, "the State's obligation to the defendant to impanel an impartial jury generally can be satisfied by less than an inquiry into a specific prejudice feared by the defendant." *Ristaino v. Ross*, 424 U.S. 589, 595 (1976). More specifically, "to be constitutionally compelled, it is not enough that voir dire questions might have been helpful, rather the failure to ask the questions 'must render the defendant's trial fundamentally unfair.'" *Kemp v. Ryan*, 638 F.3d 1245, 1261 (9th Cir. 2011) (*quoting Mu'Min v. Virginia*, 500 U.S. 415, 425-26 (1991)); *see also Morgan*, 504 U.S. at 729-30 (the trial court's sound discretion in conducting voir dire is "subject to the essential demands of fairness."); *Murphy*, 421 U.S. at 799 (to resolve the issue of juror impartiality, "we must turn, . . . to any indications in the totality of circumstances that petitioner's trial was not fundamentally fair.").

Petitioner has not shown that empaneling any of the four jurors at issue rendered his trial fundamentally unfair. The Court discusses the particulars of each juror below.

b. Relevant Facts and Analysis

(1) Juror Deborah Wallen

Wallen was initially given several questions on voir dire by the court and both counsel. The juror stated several times that she believed she could be fair and impartial. (5RT at 637-51.) Petitioner's attorney then brought attention to an answer Wallen provided on a written juror questionnaire. Specifically, Wallen stated on the form that she "testified and was almost [a] victim. A guy raped a girl and tried to get me." (Clerk's Transcript on Appeal for Juror Questionnaires, volume one of five ("1JCT") at 229.) On voir dire, Wallen explained that several years earlier, she was pursued in a "car chase" by a man. Subsequent to that, the man was tried for raping someone else, and Wallen was called to testify about her car chase. Wallen was not herself a victim of rape, and did not know the outcome of the case in which she testified. She stated, "I thought I'd better write it down because it did happen. But, I didn't go through anything, you know." (5RT at 651-52.)

Defense counsel admonished Wallen that at Petitioner's trial "[y]ou're going to hear a girl testify that one girl was raped, and she escaped . . . . Are you going to let that bother you?" Wallen answered, "No." Counsel asked, "Are you sure?" and Wallen replied, "It was a long time ago, ..." (5RT at 652-53.)

The prosecutor asked Wallen to provide more detail about the incident. Wallen explained that she was driving with her two-year-old son in her car, and the man pulled behind her and flashed his headlights. When Wallen pulled her car over, the man threatened to shoot her if she did not open her car door. Wallen "floored" the gas pedal and fled. (5RT at 653.) Wallen told the prosecutor that "It was quite awhile ago. It is one of those things you would want to forget." (5RT at 654.)

On direct appeal, Petitioner raised a claim arguing that the trial court inadequately examined Wallen regarding the "car chase" incident. The court concluded that further

> examination was unnecessary in view of Wallen's notation of the incident on the juror questionnaire, and her responses to questions posed by the prosecutor and defense counsel. In his voir dire of Wallen, defense counsel thoroughly inquired as to this matter. During that inquiry, Wallen indicated that she knew little regarding the rape charge that had been filed against the man, that the [] incident would not bother her if she sat on the jury in the present case, and that the matter had been "a long time ago." Defense counsel refrained from challenging Wallen for cause. In light of Wallen's responses, we fail to perceive a deficiency on the part of the trial court, or defense counsel, in refraining from asking additional questions.

People v. Hart, 20 Cal. 4th at 590.

The California Supreme Court's analysis and conclusion as to Deborah Wallen were not contrary to, or unreasonable applications of, clearly established Supreme Court precedent. 28 U.S.C § 2254(d)(1). Petitioner has not convincingly argued that this juror held any bias, or that further questioning would have been useful. The record

demonstrates that the prior incident Wallen referred to was not something in the forefront of her mind, or that gave her any particular predisposition. Instead, Wallen brought up the incident merely in an attempt to be as forthcoming as possible. Beyond that, she clearly communicated that the incident was long in the past, and that she did not – and preferred not to – remember important details (like the outcome of the trial at which she testified). Petitioner has failed to rebut the presumption of correctness as to the state court's determination that Wallen was not biased. *Yount*, 467 U.S. at 1038. There is also nothing to show that, in the absence of further voir dire questioning of Wallen, Petitioner's trial was fundamentally unfair. *Kemp*, 638 F.3d at 1261; *Morgan*, 504 U.S. at 729-30; *Murphy*, 421 U.S. at 799.

(2) Jury Foreman Oran Pentz

Pentz was a fire captain who worked with law enforcement on occasion. His brother-in-law was also a police officer. (6RT at 795; 2JCT at 285-87.) When questioned on voir dire, Pentz stated that there was nothing about those relationships that caused him to lean pro-prosecution, or that would cause him to find an officer's testimony inherently more credible than the testimony of others. (6RT at 795-96.)

Pentz recalled reading a newspaper article that familiarized him with the general facts of Petitioner's case. (2JCT at 286-88.) On his juror questionnaire, Pentz stated that he could not:

> remember all of the details. But what I do . . . remember is that the girls were picked up at the school and taken out to a remote area. The person that picked them up took one of the girls away from the vehicle to a secluded area and, as stated in the newspaper, raped and killed the girl. He then came back to the vehicle and the other girl got scared when she started questioning as to the whereabouts of her friend. She then talked real nicely to the person that picked them up and he let her go at an unknown location. I cannot remember if she was sexually attacked or not. This is the bits and pieces of the incident that I can recall at this time.

(2JCT at 288.) Pentz had "not heard the whole story" and did "not know if the person in custody did this." (2JCT at 287.) When asked about the article by Petitioner's lawyer, Pentz stated that he found it "pretty much convincing," but that he would "have to hear the evidence, ..." (6RT at 774.) Pentz further explained that the facts he read in the article would be "in [his] mind," but he was suspicious of media narratives. He ultimately stated that he would base his decision solely on the evidence adduced at trial. (6RT at 774-75, 811-14.) Pentz also stated that his friend's wife had been the victim of a freeway shooting, but that did not give him stronger feelings in favor of either the prosecution or the defense. (6RT at 776; 2JCT at 287.)

Pentz confirmed that he understood the presumption of innocence and could abide by the beyond-a-reasonable-doubt standard of proof. Pentz also agreed that any prior media reports of the case should have no bearing on the jury. (6RT at 791-93, 805.) Pentz characterized himself as neutral on the death penalty; he would not automatically vote either for or against that punishment, but instead "would have to see the evidence." (6RT at 769.) Pentz stated that he could make a decision based solely on the evidence and be fair to both sides in the penalty phase. (6RT at 776, 797.)

On direct appeal, Petitioner raised a claim alleging that the trial court's voir dire questioning of Pentz was inadequate and superficial. The California Supreme Court found that Petitioner's "assertion is a misleading one, because the prosecutor and defense counsel thoroughly questioned Pentz (who eventually became the jury's foreperson) as to the matters noted." The court referenced statements Pentz made that he would evaluate a police officer's credibility the same as anyone else's, that the newspaper account did not bias him, and that he agreed he could listen to the facts and be fair to both sides. The court concluded that, "[i]n light of Pentz's responses, we fail to perceive a deficiency on the part of the trial court in refraining from asking additional questions." *People v. Hart*, 20 Cal. 4th at 591.

The California Supreme Court's analysis and conclusion as to juror Pentz were also not contrary to, or unreasonable applications of, clearly established Supreme Court

precedent. Petitioner fails to point to any actual bias on the part of Pentz, but instead only facts that could suggest bias but were otherwise ambiguous. *Yount*, 467 U.S. at 1038. The California Supreme Court reasonably found that Pentz was subjected to thorough questioning on those subjects. 28 U.S.C § 2254(d)(2). Notably, as discussed further below in addressing pretrial publicity, by Petitioner's own account the media coverage of his case was not opinion-based or pushing an agenda that he was guilty. And, the facts of the case that Pentz read and recited were mostly undisputed. Aside from that, the juror expressed skepticism toward the media account and stated that he had to hear the evidence to form an opinion. In fact, the juror repeatedly indicated he did not have an opinion without hearing the evidence, and that he could be fair and impartial. That raised a presumption of Pentz's impartiality that Petitioner has failed to rebut. *Ybarra*, 656 F.3d at 992; *Murphy*, 421 U.S. at 800; *Irvin*, 366 U.S. at 723. There is no clearly established Federal law requiring the court or defense counsel to subject a prospective juror to further questioning to root out bias that Petitioner believes still remained. *Ristaino*, 424 U.S. at 595. As was the case with Wallen, there is nothing to show that, in the absence of further voir dire questioning of Pentz, Petitioner's trial was fundamentally unfair. *Kemp*, 638 F.3d at 1261; *Morgan*, 504 U.S. at 729-30; *Murphy*, 421 U.S. at 799.

(3) Juror Michael Bantum

On the juror questionnaire, Bantum stated that he read newspaper coverage of Petitioner's case. At the time he read it, he "felt that if this person was the one who did it he should be punished to the fullest [extent] of the law." (3JCT at 596-97.) Bantum believed the death penalty was a "necessary option" for certain violent crimes "like premeditated murder, etc.," that were proven beyond a reasonable doubt. He added that imposing a death sentence would require very strong evidence because a person's life is at stake. (3JCT at 598.)

On voir dire, Bantum stated that he was neutral as to the death penalty. (13RT at 1818.) Petitioner's attorney asked Bantum whether his view of the case based on the

newspaper report would affect his decisions as a juror. Bantum answered that it would not because his initial impression of the case was only "based on what [he] had read" and not evidence. (13RT at 1821.) Petitioner's attorney also asked Bantum if he believed in "an eye for an eye and a tooth for a tooth," and Bantum replied that he did "in principle" but not as a practical matter. Bantum stated that he could follow the law and be fair. (13RT at 1822-23.) Before being empaneled, Bantum brought to the court's attention that he was familiar with a prosecution witness, David Starbuck. Bantum was a high school football coach, and he recognized Starbuck as a student or former student at his school. The court asked Bantum if he would be capable of objectively assessing Starbuck's credibility, and Bantum indicated he could. Petitioner's counsel expressly agreed that Bantum could still be a fair juror. (16RT at 2299.)

Petitioner challenged the trial court's questioning of Bantum in a state habeas petition. (Dkt. 102-1 at 119-20.) The court denied the claim "on the merits" without explanation, and on various state procedural grounds. (Dkt. 98-12 at 1 (denial of claim 1).) That conclusion was not unreasonable under AEDPA. *Richter*, 562 U.S. at 102. Much like Petitioner's contentions involving juror Pentz, Petitioner fails to point to any actual bias on the part of Bantum that would rebut the presumption of the juror's impartiality. *Ybarra*, 656 F.3d at 992; *Murphy*, 421 U.S. at 800; *Irvin*, 366 U.S. at 723. And, again, Petitioner cites no Supreme Court precedent requiring more thorough voir dire questioning of Bantum. The only opinion Bantum expressed was that the culprit should be strongly punished; an opinion likely shared by nearly *anyone* before hearing the evidence, the jury instructions, and the defense theory of the case. *See Irvin*, 366 U.S. at 722-23. Most important, Bantum agreed to base his opinion on the trial evidence. Finally, Bantum's connection to David Starbuck, a prosecution witness, proved to be tenuous. Bantum recognized the witness as someone who had attended the school where Bantum worked, nothing more. As with the two other jurors discussed above, Petitioner has failed to rebut the presumption of correctness as to the state

court's determination that Bantum was qualified as a juror and unbiased, *Yount*, 467 U.S. at 1038, and there is nothing to show that, in the absence of further voir dire questioning of Bantum, Petitioner's trial was fundamentally unfair. *Kemp*, 638 F.3d at 1261; *Morgan*, 504 U.S. at 729-30; *Murphy*, 421 U.S. at 799.

(4) Juror Leonard Maslovitz

Maslovitz indicated on his juror questionnaire that his general feelings toward the death penalty were that "[t]hey don't use it enough." He also indicated that capital punishment, in his view, was applied randomly and improperly. Where the form asked how strongly he held his views on the death penalty, Maslovitz answered, "Not really." (2JCT at 305-06.)

On voir dire, Maslovitz stated that he was neutral on the death penalty. (7RT at 889-90.) When asked about his answers on the questionnaire, Maslovitz clarified that he felt that the death penalty was applied unevenly, and he thought there should be a single, federal standard for imposing it. (7RT at 893.)

Maslovitz had a hearing problem and used a hearing aid. He stated that he was nevertheless not missing any of the words spoken in court. (7RT at 890.) At one point soon after the jury was empaneled and trial started, defense counsel expressed concern that Maslovitz was not hearing the proceedings. The trial judge questioned the juror out of the presence of the others. (17RT at 2445-50.) Maslovitz told the court that he was able to hear the proceedings "just perfect[ly]" with or without his hearing aid. (17RT at 2447-48.) Defense counsel then said that, based on his own observations, Maslovitz appeared to be reading people's lips and perhaps having a harder time following the proceedings when the lights were dimmed. Counsel told the juror that he wanted to "make sure you don't miss a single thing in this, anything that's said." Maslovitz responded that if he missed something, "you're going to know about it." Defense counsel followed that up by asking if Maslovitz would raise his hand if he failed to hear something, and Maslovitz answered, "I sure as hell will." Defense counsel responded, "I'm satisfied." (17RT at 2448-49.)

Later, during trial testimony, the court again checked to make sure all the jurors could hear the proceedings. The court specifically reminded Maslovitz, "If you have a problem hearing, just raise your hand and we'll cover that." Maslovitz responded, "I will." (18RT at 2518; *see also* 33RT at 4275 (the court directed that a microphone be adjusted at the start of a witness's testimony when Maslovitz indicated he could not hear the witness).)

Petitioner challenged the trial court's voir dire questioning of Maslovitz in a state habeas petition. (Dkt. 102-1 at 120-21.) The court denied the claim "on the merits" without explanation, and on various state procedural grounds. (Dkt. 98-12 at 1 (denial of claim 1).) The state court's decision was reasonably supported by clearly established Federal law.

First, the Court addresses Petitioner's contention that Maslovitz was inappropriately seated as a juror because of his hearing aid. Maslovitz stated that he could hear the proceedings and never indicated otherwise. The record shows nothing more than a juror with hearing problems that did not affect his ability to comprehend and consider the evidence. Nothing about Maslovitz's hearing rendered Petitioner's trial fundamentally unfair. *See Lyda v. United States*, 321 F.2d 788, 790-91 (9th Cir. 1963) (deferring to trial judge's discretion and in-court observations in denying constitutional claim based on juror's poor hearing); *see also Anderson v. Terhune*, 409 F. App'x. 175, 179 (9th Cir. 2011) (cited pursuant to 9th Cir. R. 36-3) (trial court's observations of an allegedly sleeping juror entitled to presumption of correctness absent evidence of "significant" problem).

Second, Petitioner mischaracterizes Maslovitz's statement that the death penalty was applied unevenly. The juror expressly disagreed with the notion (posed by defense counsel) that anyone who commits any murder deserves the death penalty. (7RT at 893-95.) Petitioner has made no viable argument that Maslovitz held a bias in favor of capital punishment.

Empaneling Maslovitz on Petitioner's jury did not render Petitioner's trial fundamentally unfair. *Kemp*, 638 F.3d at 1261; *Morgan*, 504 U.S. at 729-30; *Murphy*, 421 U.S. at 799.

2. Jurors Exposed to Pretrial Media

The disturbing crimes against two teenage victims in this case unquestionably received attention in the local Riverside media and community. (*See, e.g.,* Clerk's Transcript, volume one ("1CT") at 76-80.) Petitioner argues that these media stories improperly influenced four jurors.

The Sixth Amendment requires that evidence against a defendant "come from the witness stand." *Turner v. Louisiana*, 379 U.S. 466, 472-73 (1965). Extraneous influences on a jury can, under some circumstances, require the reversal of a conviction. *Tong Xiong v. Felker*, 681 F.3d 1067, 1075 (9th Cir. 2012). Improper influences on a jury can also give rise to a presumption of prejudice. *See generally Mattox v. United States*, 146 U.S. 140 (1892); *Remmer v. United States*, 347 U.S. 227 (1954). However, "[t]he Sixth Amendment entitles a defendant to an 'impartial' jury, not to an ignorant one." *Grotemeyer v. Hickman*, 393 F.3d 871, 879 (9th Cir. 2004). "It is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote." *Smith v. Phillips*, 455 U.S. 209, 217 (1982). As pretrial publicity is concerned, the Supreme Court has held that a prospective juror's preliminary knowledge of the facts of the case – and even early preconception about guilt or innocence – is insufficient, without more, to raise a constitutional concern:

> It is not required, . . . that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to

> the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

Irvin, 366 U.S. at 722-23.

Here, Seventy-nine of the 151 prospective jurors on Petitioner's venire had heard something about the case prior to being called for jury duty. However, none of those potential jurors indicated they knew more than the basic facts of what happened to the two girls, and no one stated that they were exposed to any inflammatory information about Petitioner. (1JCT at 61-62, 69-70, 85-86, 197-98, 237-38, 246-47; 2JCT at 262-63, 270-71, 278-79, 283, 286-88, 311-12, 319-20, 335-36, 344-45, 353-54, 369-70, 377-78, 385-86, 425-26, 433-34, 442-43, 450-51, 458-59, 474-75, 490-91, 514-15, 522-23, 531-32, 539-40, 547-48, 563-64; 3JCT at 596-97, 604-05, 610, 645-46, 653-54, 669-70, 677-78, 700-01, 708-09, 716-17, 724-25, 732-33, 748-49, 810-11, 818-19, 826-27, 850-51, 858-59; 4JCT at 874-75, 890-91, 906-07, 915, 917, 924-25, 932-33, 940-41, 948-49, 956-57, 964-65, 1012-13, 1020-21, 1028-29, 1060-61, 1093, 1100-01, 1116-17, 1124-25; 5JCT at 1140-41, 1148-49, 1156-57, 1164-65, 1172-73, 1188-89, 1204-05, 1212-13, 1220-21, 1244-45, 1284-85, 1300-01, 1309, 1311.)

Petitioner singles out four of those seventy-nine who were empaneled on his jury. Juror Joann Naleway stated on her juror questionnaire that she heard about the case because she "always listen[s] to tv news." She further stated that she knew nothing more about the case than the fact that the crime "did happen." She stated that the information did not make her favor the prosecution or the defense, and that she could refrain from watching tv news during the trial. (1JCT at 197-98.) Juror Martha Lee Ferguson learned about the case from television coverage. But, she also stated she had "not learned much about" anything in the case, and held no biases. (13RT at 1669-70; 2JCT at 522-23.) Juror Evelyn Yearsley learned about the case from reading the

newspaper. The only information that Yearsley offered was that she "[j]ust read newspaper articles." (2JCT at 450-51.) Finally, juror George Gardner "vaguely remember[ed] news reports" on the case, but recalled "no details," and the information did not make him biased in any direction. (2JCT at 474-75.)

This aspect of Petitioner's juror bias claim is summarily denied. Petitioner fails to establish that the jurors exposed to pretrial publicity learned anything but superficial facts about the case. There is also no evidence that these jurors were affected at all by the information, let alone biased. The Court addresses this issue further below in discussing Petitioner's change-of-venue claim, but as to the discrete issue of jury bias, he has fallen far short of rebutting the presumption of impartiality based on any juror's exposure to pretrial newspaper coverage of his case. *Grotemeyer*, 393 F.3d at 879; *Phillips*, 455 U.S. at 217; *Irvin*, 366 U.S. at 722-23.

3. Juror Mike Venable

Petitioner argues that one juror was incapable of serving fairly because of a time conflict with his job. He claims that the court should have released the juror due to financial hardship.

a. Factual Background

Mike Venable was a pilot who worked for his family's crop dusting business. On voir dire, Venable characterized his work as "seasonal" and stated that the "summer months are the busiest months." (2RT at 255-56.) On December 17, 1987, after Venable was selected as a juror on the case, his seasonal work came up during a discussion about preliminary matters and scheduling. The court told jurors that the trial would commence on January 11, 1988, and estimated that it would take approximately "two to two and a half months."[7/] (16RT at 2312, 2314.) Venable stated that "[i]f this

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[7/] Opening statements commenced on January 11, 1988. (17RT at 2350, 2378.) The jury reached its penalty phase verdict and the court discharged the jurors from service on March 31, 1988. (41RT at 5284-87.)

thing runs in the end part of March and April that would present a – especially the month of April, will present problem for me." (16RT at 2315-16.) The court responded, "I don't think that will be a problem. If it is a problem, both counsel know about it, you've told us about it ahead of time and perhaps they can stipulate to an alternate coming in rather than excusing you, undue hardship." (16RT at 2316.)

On January 6, 1988, five days prior to opening statements, Venable contacted the court again with concerns over the length of the trial. This time, Venable indicated that his busy season for crop dusting started a month earlier, the last part of February and the full month of March. The court and both counsel agreed at that point that Venable's switching of his hardship dates was "too late." The court stated, "[W]e gave him every chance, and now that he has second thoughts about it, I think it's too late." (17RT at 2346-47.)

On the morning that trial began, Venable asked to address the court. (17RT at 2353.) When Venable entered the courtroom, the court immediately told him, "Relating to crop dusting, I might indicate that since you've already been selected on this jury and we gave you the full opportunity to explain beforehand we will not be releasing you from this case." Venable explained that when he did the math and concluded he had time to sit on the jury, he started counting in December. "But now I've got a feeling this thing is going to run clear through the end of March when it really should only run through February, and that's without delays." The court corrected him: "No. We told you specifically that there would – and I told everybody that we would start evidence on January 11th and the case was estimated to take two and a half months from that date, which takes us to the end of March." The court continued: "We can't excuse you at this point in time because we only have so many jurors. We've already spent probably just on picking a jury a considerable amount of money and time. I can't do it." The court suggested that Venable schedule crop dusting jobs for the three days court was not in session (Friday through Sunday). The prosecutor then pointed out that

both counsel hoped the trial would not actually take the full two and a half months. The court stated, "Let's get going and see how it goes." (17RT at 2353-55.)

The jury reached its verdicts in the guilt phase on February 9, 1988. (27RT at 3586.) After the verdicts were read, Venable again requested to speak with the court. (27RT at 3593.) He reminded the court that he brought up his time pressure issue with his job twice before, and stated that the trial had already "kind of lingered on longer than I thought I would be here. I wondered if it would be a good time where maybe you could bring in an alternate in my place to finish this trial, so I could get back to work." With the court's agreement to consider his request, Venable agreed to report to begin the penalty phase on February 22. (27RT at 3593-94.)

After determining that the penalty phase would likely take at least five weeks, the court preliminarily encouraged the lawyers to stipulate to dismissing Venable. The court reasoned that, although there was likely not good cause to release the juror, the attorneys might prefer to let him go because he might become upset, "might not be the best of jurors," and might blame the court and the parties. (28RT at 3677-78.) The prosecutor opposed releasing Venable due to the chance of a "domino effect" from other jurors. The prosecutor also pointed out that the case was still running within the time frame originally estimated for trial. Defense counsel argued to release Venable because "it's awfully hard to hold somebody captive here whose . . . livelihood depends on his business, and that's in jeopardy [] at the most crucial time right now." (28RT at 3679-80.) The court reiterated that Venable had not shown good cause to be released, "[s]o I'll just tell him he'll have to stick it out." (28RT at 3680-81.)

The court subsequently held a conference with Venable off the record. Afterward, the court relayed to the parties that Venable "was very understanding and indicated that he's been able to work his schedule out so far and will continue to try to do so." In an effort to meet Venable halfway, the court proposed that the penalty phase be suspended during one of the scheduled weeks so that Venable could complete a crop spraying job in Mexico. The court stated that Venable "wanted me to bring that to both

your attention and if that can be worked around he said he'd be very appreciative of that fact and that other than that he thinks he can continue being a juror." (29RT at 3794.)

On a subsequent court date, Venable again asked for a week suspension of trial, and added:

> I can safely say now the whole month of April I'll be locally available, ... The schedule you guys kept here for these last five weeks hasn't been as strenuous as I thought it was going to be. . . . That's why I have been able to sit through as long as I have sat through.

(30RT at 3801.)

Ultimately, Venable was retained as a juror. The court granted his request to suspend the trial for one week, and made other efforts to accommodate Venable's local crop dusting jobs when scheduling issues arose. (30RT at 3803, 3938-39, 31RT at 4015-17; 37RT at 4733-34; 40RT at 5107; 41RT at 5160.) The court allowed Venable two additional days off during deliberations. (41RT at 5279-81.)

On direct appeal, the California Supreme Court denied Petitioner's claim concerning Venable as follows:

> The record indicates that from the time Venable was selected as a juror, he repeatedly expressed concern to the trial court regarding the possibility that his service on defendant's jury might interfere with his crop-dusting duties. Venable assured the court, however, that if a one-week recess were granted in March to accommodate his desire to fulfill a particular crop-dusting job, he could continue serving as a juror. The court granted the recess, and Venable evidently was present in court whenever his attendance as a juror was required. There is no indication that he was unable to discharge his duties as a juror. Under these circumstances, the trial court did not abuse its discretion in declining to discharge Juror Venable.

> Although it is true that Juror Venable expressed an interest that the proceedings continue apace, the record does not indicate that he lacked the "spiritual contentment and mental detachment that good jurors require," as alleged by defendant. Nor does the record demonstrate that Venable was unable "to perform the functions of a juror." Rather, Venable's comments suggest that he was concerned the trial might not conclude within the time period originally estimated by the trial court. In a lengthy capital trial, such concerns are not unusual; we perceive no abuse of discretion in the manner in which the trial court addressed those concerns. We therefore reject defendant's contention that the trial court erred in refraining from excusing juror Venable.

People v. Hart, 20 Cal. 4th at 597 (citations omitted). On state habeas review, the state court denied the same claim – with the additional supporting affidavit – without substantive comment.

b. Analysis

Based on the facts discussed above, there is no evidence supporting the assertion that Venable was incompetent to serve as a juror; it was not unreasonable for the California Supreme Court to affirm the trial court's empaneling and refusing to release him. The Court separately takes up Petitioner's claim that Venable committed juror misconduct in Claim 3. But, merely as to the juror's fitness to serve, there is no merit to Petitioner's allegations. Here, it was by far the "judge who [was] best situated to determine competency." *Yount*, 467 U.S. at 1039. Venable's state of mind about his pressing crop dusting obligations was well known to the court. The judge met privately with the juror about scheduling, and made a number of compromises designed to allow Venable to remain on the jury and temporarily satisfy his job obligations. Venable not only appeared agreeable to those compromises, but he expressed appreciation, and eventually informed the court that the trial schedule was moving fast enough for him to complete his service. (29RT at 3794; 30RT at 3801.)

The Court is not presented with a situation where a trial judge simply refused to release a juror for hardship. The judge surely refused to release Venable, but then bent over backwards to alleviate the hardship, including suspending the capital trial for a week so Venable could take a crop dusting job. The record reveals that the judge, the parties, Venable, and the other jurors actively engaged in a collective and extensive effort to make the scheduling work. It does not show a juror so caught between a rock and a hard place that he was unable to make a thoughtful decision based upon the evidence. There is no indication that Venable's presence on the jury rendered the trial fundamentally unfair, or that deference to the trial judge's decision should be disturbed here. *Morgan*, 504 U.S. at 729-30. Petitioner's related habeas claim fails under AEDPA. *Richter*, 562 U.S. at 102.

In light of the foregoing, Claim 1 is DENIED.

B. Violation of Fair Cross-Section Jury Requirement Based on Allegedly Underrepresented Hispanics in Jury Pool (Claim 2)

Petitioner argues his right to be tried by a jury drawn from a fair cross-section of the community was violated because Hispanics and "other cognizable groups" were systematically excluded from the jury pool. (SAP at 37-41; Traverse at 27-30.) Petitioner estimates the percentage of Hispanics in the population of Riverside County at the time of his 1988 trial using 1980 and 1990 census statistics – which he claims also undercounted Hispanics by an unknown quantity. He compares that percentage (25.92%) to the number of Hispanic surnames in his jury pool, which he concludes was 7.9%. He argues that his calculations show the percentage of Hispanics in his jury pool was impermissibly lower than in the surrounding community. (SAP at 38-39; *see also* Dkt. 10 at 77.)

1. Factual and Legal Background

Petitioner also refers to: (1) a 1986 study addressing problems with the Riverside County jury selection system; and (2) a 1987 order issued by a Riverside County Superior Court judge finding that those problems resulted in unconstitutional

underrepresentation in the jury pool by various groups - Hispanics included. (SAP at 39-41; *see also* dkt. 10-1 at 90-114.) The court order was issued in a different criminal case a few months before Petitioner's trial. Petitioner does not include the relevant order in his exhibits – he only proffers transcripts of a related evidentiary hearing and a separate order in that case. (Dkt. 10 at 95–144; dkt. 10-1 at 1–88, 116–65; dkt. 11 at 10–253.) However, subsequent case law adequately identifies and discusses that July 1987 order addressing underrepresentation of various groups in the Riverside County jury pool. *See People v. Jackson*, 13 Cal. 4th 1164, 1193-95 (1996) (*discussing People v. Neidiffer & Cruz*, Cal. Super. Ct. Riverside Cty., No. CR-24472 (1987)). In *Jackson*, the California Supreme Court characterized the relevant order as a finding:

> that the process of selecting jury panels in Riverside County resulted in the underselection of people 18 to 24 years old, poor people, and Hispanics. Several causes for the underrepresentation were identified: inconsistent methods for excusing prospective jurors, duplications and dated information used in forming the jury pool, and lack of follow-up with those persons not responding to the jury summons.

Id. at 1192-93 (footnote omitted).

As a result of the superior court's findings, Riverside County established a plan to reform its jury selection system. The county formed a committee, which "made several changes in the procedures for assembling jury venires, ..." *Id.* at 1193. The committee also implemented a periodic survey to monitor whether the procedural changes were successfully remedying the underrepresentation. Finally, the committee implemented interim measures while the new procedures were being developed "including allowing additional peremptory challenges, excusing panels that appeared to be imbalanced, and, if the panel appeared to be unrepresentative, permitting a defendant to contact the jury commissioner to verify the ethnic composition of the venire from which the panel was drawn." *Id.*; *see also In re Seaton*, 34 Cal. 4th 193, 205 (2004) ("[A] superior court ruled in *People v. Neidiffer & Cruz* (citation omitted)

that Riverside County's jury selection was unconstitutional because it systematically underrepresented Hispanics, young adults, and low-income residents. The court ordered substantial modifications to the county's jury selection process for that case.").

2. Relevant Federal Law and Analysis

A defendant has a constitutional right to be tried by an impartial jury selected from a fair cross section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 528-29 (1975). To establish a prima facie violation of the fair-cross-section requirement, a defendant must show:

> (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Duren v. Missouri, 439 U.S. 357, 364 (1979).

However, the fair-cross-section principle "must have much leeway in application." *Berghuis v. Smith*, 559 U.S. 314, 321 (2010). "[N]either *Duren* nor any other decision of [the Supreme Court] specifies the method or test courts must use to measure the representation of distinctive groups in jury pools." *Id.* at 329.

Further, states have "broad discretion" to "prescribe relevant qualifications for their jurors and to provide reasonable exemptions." *Id.* at 333 (citation omitted). A showing that a jury venire underrepresents an identifiable group is, without more, an insufficient showing of systematic exclusion under the third prong of the *Duren* test." *Randolph v. California*, 380 F.3d 1133, 1141 (9th Cir. 2004). There is no clearly established Supreme Court precedent establishing systematic exclusion "merely by pointing to a host of factors that, individually or in combination, *might* contribute to a group's underrepresentation." *Berghuis*, 559 U.S. at 332 (emphasis in original). The Supreme Court has also never clearly decided "whether the impact of social and economic factors can support a fair cross-section claim." *Id.* at 333 n.6.

The California Supreme Court denied Claim 2 on the merits on state habeas review without comment.[8] (Dkt. 101-13 (claim J).) As a result, under AEDPA, the Court reviews the reasonableness of that decision by determining whether any arguments or theories under *Duren* and *Berghuis* could have supported the state court's decision. *Richter*, 562 U.S. at 102. Petitioner is not entitled to habeas relief.

Petitioner satisfies the first *Duren* requirement, as Hispanics are a "distinctive" group in the community. *United States v. Hernandez-Estrada,* 749 F.3d 1154, 1159 (9th Cir. 2014); *Randolph*, 380 F.3d at 1140; *United States v. Nelson*, 137 F.3d 1094, 1101 (9th Cir. 1998) ("It is undisputed that Hispanics are a 'distinctive' group for purposes of" the *Duren* analysis).[9]

As for the second requirement, Petitioner's calculation regarding the makeup of his jury pool relies entirely on a tally of Hispanic surnames. (SAP at 39 n.19.) There is no clearly established Federal law providing that a petitioner can establish a *Duren* violation by broadly and stereotypically categorizing surnames. The state court could reasonably have found that Petitioner failed to proffer reliable statistics establishing underrepresentation. *Berghuis*, 559 U.S. at 332; *see also United States v. Gelb*, 881 F.2d 1155, 1161-62 (2d Cir. 1989) (second prong of *Duren* test failed in part because

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[8] The California Supreme Court alternatively denied this claim on procedural grounds. This Court declines to address Respondent's related procedural default arguments. (Answer Memorandum (dkt. 93-1) at 53); *cf. Franklin v. Johnson*, 290 F.3d 1223, 1232 (9th Cir. 2002) ("courts are empowered to, and in some cases should, reach the merits of habeas petitions if they are, on their face and without regard to any facts that could be developed below, clearly not meritorious despite an asserted procedural bar."); *cf. Flournoy v. Small*, 681 F.3d 1000, 1004 n.1 (9th Cir. 2012) ("While we ordinarily resolve the issue of procedural bar prior to any consideration of the merits on habeas review, we are not required to do so when a petition clearly fails on the merits.").

[9] Petitioner has not satisfied *Duren*'s first requirement concerning any "other cognizable groups."

"[s]tereotypical ethnic or religious characterizations of surnames are unreliable and only tenuous indicia of a jury's makeup.").

Petitioner's claim also falls short under *Duren*'s third prong. As discussed above, Petitioner's argument that the exclusion of Hispanics was systematic relies on a superior court order decided in another case prior to his trial, and an earlier study discussing several flaws in with Riverside County's jury selection system. The order in *Neidiffer & Cruz* – issued by a state court – is clearly not binding on this Court, let alone under AEDPA. *See* 28 U.S.C. § 2254(a) (a prisoner may seek federal habeas relief "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."); *Van Patten*, 552 U.S. at 125-26 (only Supreme Court cases constitute clearly established Federal law for relief under AEDPA). Moreover, as also discussed above, in response to *Neidiffer & Cruz*, Riverside County implemented several remedial measures. Petitioner's assertion that the conditions addressed by *Neidiffer & Cruz* "were not corrected" before his trial is not based on any evidence other than his unreliable calculations about the demographics of his jury pool. Further, assuming Petitioner's trial commenced before the corrective measures were put in place, it appears there were interim measures available that the defense did not use, such as seeking additional peremptory challenges or requesting a new panel if his appeared to be racially imbalanced. *See Jackson*, 13 Cal. 4th at 1193. The California Supreme Court could reasonably have determined that Petitioner failed to show a relationship between the allegedly low percentage of Hispanics in his venire and the juror-selection system the County used at the time of his trial. Consequently, this Court "cannot conclude that the underrepresentation of Hispanics is, as *Duren* requires, 'inherent in the particular jury-selection process.'" *Randolph*, 380 F.3d at 1141-42 (*quoting Duren*, 439 U.S. at 366); *Berghuis*, 559 U.S. at 332.

Petitioner claims that he is not required to prove his *Duren* claim at this stage of the federal habeas proceedings. Instead, to the extent his calculations or conclusions about the jury selection system at the time of his trial are speculative, he presumes the

state court's denial of his claim relied on "evidentiary findings about the statistical composition of the venire . . . without giving Hart an opportunity to subpoena and present evidence." Those hypothetical findings were ostensibly an unreasonable determination of the facts under AEDPA. (Traverse at 29-30.) Petitioner's assertion invites the Court to follow him down a dubious path at odds with AEDPA's stringent standard: he essentially argues that the Court should construe *his* failure to clear AEDPA's high hurdle as instead the state court's "unreasonable" failure to develop evidence. Sections 2254(d)(2) and (e)(1) do not provide such a convenient end-run around AEDPA's constraints on federal habeas relief. Beyond that, the state court's silent denial of Petitioner's claim about the makeup of his jury pool could have been supported by *Duren*. *Richter*, 562 U.S. at 101-02; *LeBlanc*, 137 S. Ct. at 1728. The Court's analysis ends there.[10/]

The California Supreme Court was not objectively unreasonable under *Duren* and its progeny in denying Petitioner's claim based on the demographics of Petitioner's jury pool. Claim 2 is DENIED.

C. Juror Misconduct (Claim 3)

Petitioner brings a jury misconduct claim based on comments allegedly made by juror Mike Venable during guilt-phase deliberations. He also argues that an article in the local newspaper on the second day of trial constituted an improper, external influence on the jury's verdict. (SAP at 41-43; Traverse at 30-33.)

1. Background Facts

Petitioner points to a newspaper article that appeared in the Riverside Press-Enterprise newspaper on January 12, 1988, the day after opening statements began.

[10/] Petitioner's perfunctory assertion that his *Duren* claim is bolstered by the prosecutor using peremptory challenges to dismiss four jurors with Hispanic surnames has no bearing on the Court's conclusion, and fails to articulate a separate cognizable federal claim. *See James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (conclusory allegations do not warrant federal habeas relief).

(Dkt. 12 at 299.) The article was titled "Murder Trial Begins." It showed a photograph of Petitioner in court. The article discussed the estimated trial schedule and summarized the opening statements the day prior. The article also summarized the charges, explained that Petitioner was potentially facing the death penalty, and stated that Petitioner "pleaded innocent." The piece explained that, if the jury found Petitioner guilty, there would be a separate penalty phase of the trial. The article continued as follows:

> Hart was arrested May 8 by Riverside County sheriff's detectives while they were investigating the death of Shelah McMahan, an 11-year-old Mead Valley girl found fatally stabbed in a junkyard near her home. Authorities said she is Hart's niece. [¶] Detectives discovered that Hart's car matched the vehicle description that was provided by the surviving victim in the Harper case. That led to other evidence being developed in the Harper case with charges being filed. [¶] Hart has not been charged in connection with McMahan's death. However, the district attorney's office has said that jurors in the current trial are expected to hear evidence of McMahan's slaying during the penalty phase, if one is held. [¶] According to authorities, Hart spent 33 months in Patton State Hospital in San Bernardino as a mentally disordered sex offender during the late 1970s. He went there after pleading guilty to attempted burglary with intent to commit rape in connection with alleged attacks on San Diego area women. he was released from Patton in 1978 despite doctors' warnings that he still was dangerous.

(*Id.*)

On the morning the article appeared, Petitioner's attorney requested that the jury be polled to determine whether any jurors were aware of the article. From there, counsel requested individual, closed hearings to determine whether any of those jurors actually read the article. Counsel also sought a "gag order" from the court prohibiting

law enforcement officials from providing further information to the media about the case. Petitioner's lawyer expressed particular concern and frustration about "conjecture" regarding uncharged crimes that appeared in the article. The prosecutor argued against a gag order on the ground that both the court and the parties had already thoroughly admonished jurors, even as late as the prior evening, "that once the trial got under way that there might very well be articles in the newspaper and that they were to avoid those . . . ." (17RT at 2477-80.)

The trial court agreed to question the jurors and expressed disappointment at the content of the article. The court also noted that if any juror read the article, the court would have to replace that juror or declare a mistrial. The court denied the request for a gag order on the ground that enforcement was too difficult and the court did not anticipate that law enforcement would provide new information to the media. (17RT at 2480-83.)

The court inquired with the jury, and no jurors indicated that they had read the article. (17RT at 2484.) The court then gave an extended admonishment as follows:

> Okay, I'm very grateful that you did not read it. You'll have to be alert now and sometimes you'll start looking at the paper and not even realizing it is an article about this case[. A]s soon as you do, just put it aside. If it is important to you, you can have somebody in your family cut it out and save it, but please don't read the material in the newspaper.
>
> See, you were here and you got to see it yourself, so you don't have to go to the newspaper to get this kind of material because what you're doing is you're getting it from a reporter, through the editor, through the newspaper policy, and it finally comes out as to what is going to be presented in the newspaper, and between you and me, if I have seen it myself, I don't need somebody else telling me what I've just seen. That's why we don't like you to go to the newspaper.

> Can you all – I just wanted to remind you that it's now started, the first article is there, there'll probably be other articles, and just be alert to it and not read the newspaper. As to, I mean you can read the newspaper, the sports page and everything else and have somebody look through that part of it, read the rest of it, but just avoid sections about this case, and there should be, you know, there probably won't be an article everyday and only a small column, small part of it.
>
> Everybody understand?
>
> All right, thank you very much.

(17RT at 2484-85.)

In regard to juror Venable, Petitioner proffers a July 11, 2002 declaration by one of the jurors on Petitioner's case. (Dkt. 12 at 71-73, Decl. of George Gardner.) In the declaration, Gardner states that, during guilt-phase deliberations, an unidentified juror:

> threatened to hang the jury by voting not guilty if we didn't hurry up and agree on a guilty verdict. He said he was losing money sitting there on jury duty because he flew airplanes that were contracted with the Department of Forestry/Fire Service and that they were extremely busy due to the hot weather which was causing brush fires. Therefore, he demanded that we wrap it up or he would vote not guilty.

(*Id.* at ¶5.) Petitioner argues that the juror Gardner refers to was Mike Venable. He claims Venable made the comment due to the time pressure from his crop dusting business, discussed in detail above. Petitioner reasons that Venable's alleged comments deprived him of a fair and impartial jury by forcing other jurors who might have been on the fence about a decision to quickly reach a guilty verdict.

The California Supreme Court denied this claim on state habeas review on the merits but without substantive comment.

2. Analysis

As already discussed, a defendant "is entitled to a jury that reaches a verdict on the basis of evidence produced at trial, exclusive of extrinsic evidence." *Grotemeyer*, 393 F.3d at 877 (internal quotation marks and citation omitted). When faced with an allegation that the jury was exposed to extrinsic evidence, a trial court should hold a hearing with all interested parties to determine the circumstances and impact of the material on the jury. *Remmer*, 347 U.S. at 229-30; *see also Phillips*, 455 U.S. at 215 ("This Court has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias."). "'[T]he extent, if at all, to which the jurors saw or discussed the extrinsic evidence,' is a question of historical fact as to which the state court's findings are entitled to a presumption of correctness." *Burks v. Borg*, 27 F.3d 1424, 1432 (9th Cir. 1994) (*quoting Dickson v. Sullivan*, 849 F.2d 403, 406 (9th Cir. 1988)); *see also United States v. Bagnariol*, 665 F.2d 877, 885 (9th Cir. 1981) (the trial judge is uniquely qualified to appraise what effect information has on the jury, and that judge's conclusion deserves substantial weight). Finally, a trial judge's curative admonishment is "generally deemed sufficient as curative of prejudicial impact," *United States v. Bagley*, 641 F.2d 1235, 1241 (9th Cir. 1981), and "[a] jury is presumed to follow its instructions." *Spencer v. Peters*, 857 F.3d 789, 803 (9th Cir. 2017) (*quoting Weeks v. Angelone*, 528 U.S. 225, 234 (2000)).

a. Newspaper Article

Here, on the morning that the article appeared in the newspaper, the trial judge held a hearing and heard arguments from both parties. The court granted an unopposed defense request to bring in the jurors and ask them if they had read the article. None of the jurors indicated that they read it. The trial judge accepted the jury's answer, impliedly finding that jurors were not exposed to extrinsic evidence. The court then gave an extended admonishment that the jurors were to decide the case based on the evidence presented in court, and not secondhand from the newspaper. The trial court's implied factual finding that the jury was not exposed to the article is entitled to a presumption of correctness, which Petitioner has not rebutted. *Burks*, 27 F.3d at 1432.

Petitioner has equally failed to rebut the presumption that jurors followed their repeated instructions to steer clear of newspaper accounts of the trial and consider only the trial evidence. *Spencer*, 857 F.3d at 803. Petitioner has otherwise cited no clearly established Federal law requiring the trial court here to presume jurors were untruthful in their answers and press them further. The Supreme Court requires a trial court to *hold a hearing*, as was done here. *Remmer*, 347 U.S. at 229-30; *see also Van Patten*, 552 U.S. at 125-26.

Because this Court presumes the correctness of the trial court's conclusion that "no prejudicial information was actually introduced," the Court finds "there was no constitutional error." *Burks*, 27 F.3d at 1432 n.6; *see also Bell v. Soto*, Nos. EDCV 08-1913 JLS (SS), EDCV 10-14 JLS (SS), 2015 WL 2453512, at *29 (presuming correctness of state court's finding that the jury was not exposed to extrinsic information), *report and recommendation adopted*, 2015 WL 2453518 (C.D. Cal. May 20, 2015).

b. Alleged Comments By Juror Venable

Petitioner's juror misconduct claim based on Mike Venable also fails. This subclaim relies entirely on the affidavit of a fellow juror about comments Venable allegedly made during guilt-phase deliberations.

Federal courts "flatly prohibit" the admission of juror testimony to impeach a verdict except where "an extraneous influence" affected the verdict. *Tanner v. United States*, 483 U.S. 107, 117 (1987) (citations omitted); *Estrada v. Scribner*, 512 F.3d 1227, 1237 (9th Cir. 2008) (juror's declaration that he felt pressured to vote guilty inadmissible evidence of subjective mental process); *Traver v. Meshriy*, 627 F.2d 934, 941 (9th Cir. 1980) (once the verdict has been delivered and accepted in open court, and the jury is polled and discharged, jurors may not claim that their assent was mistaken or unwilling) (citation omitted).

The Federal Rules of Evidence provide that:

> During an inquiry into the validity of a verdict or indictment, a juror may not testify about **any statement made or incident that occurred during the jury's deliberations**; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. **The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.**

Fed. R. Evid. 606(b) (emphasis added). A federal court may only receive such evidence where "extraneous prejudicial information was improperly brought to the jury's attention," an "outside influence was improperly brought to bear upon any juror," or "there was a mistake in entering the verdict on the verdict form." *Id.* Consistent with Rule 606(b), the Ninth Circuit has held that "intrinsic jury processes will not be examined on appeal and cannot support reversal." *Bagnariol*, 665 F.2d at 887.

In this case, Petitioner seeks to have the Court receive the affidavit of a juror about a "statement made . . . during the jury's deliberations," which the Court may not do. Fed. R. Evid. 606(b); *Tanner*, 483 U.S. at 117; *Estrada*, 512 F.3d at 1237.

Petitioner claims that the affidavit at issue falls into an exception to Rule 606(b). He argues that the Court may consider a juror's affidavit about deliberations where the subject concerns exposure to extrinsic evidence or juror bias. (Traverse at 32.) Even assuming that is true, neither situation is present here. Venable certainly did not expose other jurors to extraneous information influencing their verdict. As the Court's discussion above shows, the jury became very familiar with Venable's scheduling issues due to his crop dusting business. It was discussed in court with the jury present several times. There is nothing about that information which would have had any bearing on the verdict. The alleged misconduct was, by Petitioner's own account, how Venable acted on that information – pressuring other jurors to reach a verdict. In other words, the offending act was, if anything, an *internal* influence on the verdict, and the Court may not consider another juror's affidavit on such an issue. *Estrada*, 512 F.3d at 1237; *see also Vasquez v. Walker*, 359 F. App'x. 758, 760 (9th Cir. 2009) ("internal

influences" are not admissible to impeach a verdict). Petitioner's suggestion that Venable's alleged statements to the other jurors evidenced his bias is equally unavailing. Petitioner's premise is that Venable was *rushed*, not biased in favor of the prosecution or the defense. If Venable's motivation was to finish with the trial and get back to work, it follows that he would be impatient to reach any verdict, not a particular verdict.

Any other internal discussions among the jury do not warrant circumventing Rule 606(b). *See United States v. Leung*, 796 F.3d 1032, 1036 (9th Cir. 2015) ("Juror testimony cannot be used to impeach a verdict even when a feckless jury decides the parties' fates through a coin flip or roll of the dice.") (*citing Warger v. Shauers*, 574 U.S. 40, 45 (2014)); *id.* at 1038 ("[J]uror testimony that other jurors engaged in premature deliberations or made up their minds about the case before deliberations began is inadmissible [under Rule 606(b)] to demonstrate that the jury engaged in flawed processing of the evidence."); *United States v. Rutherford*, 371 F.3d 634, 640 (9th Cir. 2004) (juror statements that they improperly considered the defendant's failure to testify during deliberations was inadmissible under Rule 606(b)); *Belmontes v. Brown*, 414 F.3d 1094, 1124 (9th Cir. 2005) (jury's improper speculation during death penalty deliberations as to whether sentence rendered would really be carried out is an issue that "concerns intrinsic jury processes" and cannot lead to habeas relief), *rev'd on other grounds*, *Ayers v. Belmontes*, 549 U.S. 7 (2006); *see also Tanner*, 483 U.S. at 121-22 (juror affidavits alleging that some jurors were under the influence of drugs and alcohol were inadmissible under Rule 606(b)); *id.* at 120-21 ("[F]ull and frank discussion in the jury room, jurors' willingness to return an unpopular verdict, and the community's trust in a system that relies on the decisions of laypeople would all be undermined by a barrage of postverdict scrutiny of juror conduct.").

The California Supreme Court's denial of Petitioner's juror misconduct claims on the merits was neither contrary to nor an unreasonable application of clearly established Federal law. It also did not result in a decision that was based on an

unreasonable determination of the facts in the record. § 28 U.S.C. 2254(d). Petitioner's request for relief on Claim 3 is DENIED.

D. Denial of Change of Venue (Claim 4)

Petitioner's next claim again concerns juror bias. This time, however, he takes aim more squarely at the pretrial publicity. Petitioner contends that the nature and extent of the media coverage of his capital case rendered it impossible to fairly try the case before impartial jurors in a Riverside County courtroom. Petitioner argues that the local media coverage of his case was exceptionally heavy due to the nature of the crimes, the ages of the victims, and the capital charges. He contends that media reports included the circumstances surrounding Diane Harper's killing and details about psychological damage to Amy Ryan. The coverage also included facts about Petitioner's prior criminal record and mental history, including his treatment years earlier as a mentally disordered sexual offender. Petitioner emphasizes one article in particular that reported he was released despite doctors warning that he was dangerous. (SAP at 44-45; Traverse at 34.)

As to the effect on the jury, Petitioner points to the fact that six of the twelve jurors who heard the case had been exposed to pretrial publicity. Petitioner also largely repeats arguments he made previously about the effect that pretrial articles had on jurors Bantum and Pentz. (SAP at 46-47.) Based on all that, Petitioner concludes that the trial court violated his constitutional rights by rejecting a defense request for a change of venue. (SAP at 43-47; Traverse at 33-35.)

1. Background Facts

Prior to jury selection, Petitioner's counsel made a written motion for a change of venue and attached three newspaper articles to illustrate the content being disseminated to the public. (1CT at 72-80.) The trial court denied the motion.

The California Supreme Court denied Petitioner's constitutional challenge to the ruling on direct appeal. Specifically, the court weighed several factors: the extent of media attention the case received in Riverside County, the size of the county, the

content and timing of the coverage, and whether Petitioner or the victims were prominent members of the local community. *People v. Hart*, 20 Cal. 4th at 598-99. Based on those factors, the state high court agreed with the trial court's finding that the reporting was "'neutral,' not inflammatory, and insufficient to sway public opinion." *Id.* at 599. The court concluded that the publicity surrounding Petitioner's trial "was insignificant in comparison with other cases in which a denial of a motion to change venue was upheld." *Id.* The court further found that there were no facts brought out during voir dire to indicate any juror was biased based on pretrial publicity. The court reasoned that any prospective jurors exposed to publicity only had "a slight level of awareness" of the case, and none of them "recalled seeing or hearing any reports regarding defendant." *Id.* at 600. Based on all of its findings, the court concluded that Petitioner failed to show "error or prejudice in the denial of his motion for change of venue." *Id.*

2. Legal Standard

It is a "basic requirement of due process" that a trial court transfer a proceeding to a different venue at the defendant's request "if extraordinary local prejudice will prevent a fair trial." *Skilling v. United States*, 561 U.S. 358, 378 (2010) (*quoting In re Murchison*, 349 U.S. 133, 136 (1955)); *Murray*, 882 F.3d at 802. Consistent with that principle, the Supreme Court has presumed prejudice in and reversed state criminal trials that were "utterly corrupted by press coverage." *Skilling*, 561 U.S. at 380 (*quoting Murphy*, 421 U.S. at 798-99); *see also Sheppard v. Maxwell*, 384 U.S. 333, 353-55, 358 (1966) (although "months [of] virulent publicity" about the defendant and the crime did not alone deny due process, the added "carnival atmosphere" of media coverage of the trial, in which "bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom" warranted reversal); *Estes v. Texas*, 381 U.S. 532, 536, 538 (1965) (heavy media presence in the courtroom "led to considerable disruption" of pretrial proceedings); *Rideau v. Louisiana*, 373 U.S. 723, 725-27 (1963) (local television stations broadcasted the defendant's filmed confession before trial).

Supreme Court precedent does not "stand for the proposition that juror exposure to information about a state defendant's prior convictions or to news accounts of the crime with which he is charged alone presumptively deprives the defendant of due process." *Murphy*, 421 U.S. at 799; *see also Skilling*, 561 U.S. at 381 ("Prominence does not necessarily produce prejudice, and juror impartiality, we have reiterated, does not require ignorance."). As discussed earlier, in any notable criminal case "scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case." *Irvin*, 366 U.S. at 722-23. Therefore, it is only the "extreme case" that violates the Constitution, *Skilling*, 561 U.S. at 381; *Hayes v. Ayers*, 632 F.3d 500, 508 (9th Cir. 2011), and a federal court looks more broadly at "indications in the totality of circumstances that [the] petitioner's trial was not fundamentally fair." *Murphy*, 421 U.S. at 799; *Skilling*, 561 U.S. at 384 ("[P]retrial publicity – even pervasive, adverse publicity – does not inevitably lead to an unfair trial.") (citation omitted).

Alternatively, "a defendant may establish the existence of actual prejudice if, during voir dire, potential jurors who have been exposed to pretrial publicity express bias or hostility toward the defendant that cannot be cast aside." *Murray*, 882 F.3d at 802-03. That determination requires "deference to the trial court's assessment of the impartiality of potential jurors, since that assessment 'is ordinarily influenced by a host of facts impossible to fully capture in the record . . .'" *Id.* at 803 (*quoting Skilling*, 561 U.S. at 386); *see also Mu'Min*, 500 U.S. at 427 ("The judge of that court sits in the locale where the publicity is said to have had its effect and brings to his evaluation of any such claim his own perception of the depth and extent of news stories that might influence a juror. . . .").

3. Analysis

Based upon the legal standard articulated above, Petitioner's constitutional claim concerning pretrial publicity – and the failure to move the location of his trial – does not entitle him to federal habeas relief. The decision and reasoning of the California

Supreme Court were consistent with clearly established Federal law. Petitioner's allegations describe the type of pretrial publicity that does not lead to a presumption of prejudice requiring a change of venue: some level of understandably pervasive media attention that reported facts of the case and Petitioner's criminal history. *Murphy*, 421 U.S. at 799; *Skilling*, 561 U.S. at 381. The Court disagrees with Petitioner's assertion that the fact-based coverage Petitioner complains of "virtually assured" that he "would be found guilty and sentenced to death." Further, the fact that some of the news coverage also discussed Petitioner's mental health history, as well as trauma to the surviving victim, did not render the trial "utterly corrupted by press coverage" in the totality of the circumstances. *Skilling*, 561 U.S. at 380, 384; *see also id.* at 382 (distinguishing Supreme Court cases presuming prejudice in part because "although news stories about Skilling were not kind, they contained no confession or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight."); *Murphy*, 421 U.S. at 799.

Petitioner also argues that his trial lawyer "failed to marshal all of the evidence supporting a change of venue, ..." (SAP at 45.) Petitioner points out that his attorney characterized the number of newspaper reports as "[n]umerous" and "extensive" despite attaching only three articles to the motion for change of venue. (SAP at 45; Traverse at 34.) Petitioner has attached several additional articles to illustrate his point. Most of them appeared early in the investigation in 1986. Others reported Shelah McMahan's killing in May 1986. One article discussed a lawsuit filed by Amy Ryan's family based on her treatment by Riverside County authorities (discussed more fully in Claim 15). After Petitioner's arrest, some articles profiled him and his history, one discussing Petitioner's prior treatment in Patton State Hospital as a mentally disordered sex offender. That article stated that he had been released from the hospital despite doctors concluding that he was still dangerous. Other articles gave accounts of the pretrial and trial proceedings. (Dkt. 16 at 220-23; Dkt. 16-1 at 1-23.) It is unnecessary for this Court to determine the precise number of articles or radio broadcasts that

covered Petitioner's case prior to trial. Petitioner has not sufficiently alleged that any of the coverage – even if it was repeated – was consistent with a case of the Supreme Court finding a presumption of prejudice. *See Sheppard*, 384 U.S. at 353-55, 358; *Estes*, 381 U.S. at 536, 538; *Rideau*, 373 U.S. at 725-27. As discussed above, "even pervasive, adverse [pretrial] publicity" cannot, on its own, violate due process. *Skilling*, 561 U.S. at 384.

In Claim 1, the Court has already discussed and rejected Petitioner's assertions of "actual prejudice" exposed during voir dire. The court comes to the same conclusion as it concerns Petitioner's change-of-venue claim. The record in this proceeding, specifically the juror questionnaires and voir dire questioning, paints a picture that does not support Petitioner's claims of pervasive and prejudicial media coverage. As discussed above, none of the members of Petitioner's jury appeared biased or unable to hear the evidence based on exposure to pretrial media reports. The California Supreme Court's consistent finding was not unreasonable under AEDPA. *Richter*, 562 U.S. at 101-02.

Moreover, out of 151 potential jurors on Petitioner's panel, he points to only one who "was so prejudiced by what he heard that he had to be excused." (SAP at 46-47.) And, even that contention is a misleading interpretation of the record. The prospective juror at issue, Charles Mohn, stated that he had followed the case "closely" prior to being called as a juror. But, he never referred to any media reports. Instead, Mohn candidly stated that was a "native Riversider," an active member of the local community, and his brother-in-law was a local police officer. (11RT at 1343.) The trial judge even commented that Mohn was "familiar to me and I recognize that you are involved in a great number of civic events in this community and you are freely donating of your time and services of your agency." (11RT at 1343-44.) In light of Mohn's very close ties to people in the local community, he believed that he had already heard too much about the case to base his opinion on the evidence presented. In fact, Mohn implied that what he heard about the case prior to trial came from law

enforcement, not media reports. (11RT at 1343 ("My brother-in-law's a policeman. I just – I feel like I know too much of one side of this particular case.").) Petitioner fails to point to any potential juror who was excused or even raised a red flag during voir dire due to prejudicial media coverage. *Murray*, 882 F.3d at 802-03.

The California Supreme Court's conclusion that Petitioner failed to show "error or prejudice in the denial of his motion for change of venue" is consistent with clearly established Supreme Court precedent, and was based upon a reasonable interpretation of the facts in the record. 28 U.S.C. § 2254(d).

Petitioner's request for habeas relief on Claim 4 is DENIED.

E. Conflict of Interest Based on Defense Counsel's Fee Arrangement (Claim 5)

Petitioner next argues that the indigent representation contract signed by his guilt-phase trial attorney and lead counsel on the entire case, William Barnett, created unconstitutional conflicts of interest. (SAP at 48-55; Traverse at 35-40.)

1. Relevant Terms of the Contract

In the SAP and the Traverse, Petitioner correctly sets forth the terms of the original and renewed agreements at issue, and the Court summarizes the pertinent provisions here.[11/] Barnett and his partners contracted with the Riverside County Superior Court to provide representation for criminal cases in which the county public defender had a conflict of interest (also known as a "conflict panel"). (Dkt. 9 at 28-29.) Under the contract's terms, the county could assign Barnett up to four special circumstance/capital cases during the course of one year. In exchange, Barnett received $620,000 in twelve monthly installments. (*Id.* at 32-33, 36.) Barnett and his partners were not prohibited from taking other cases that posed no conflict. The contract

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[11/] Because the terms did not materially change from year to year, the Court cites to the contract in effect from July 1, 1987 through June 30, 1988. That period started several months before jury selection and ran approximately one month after the court imposed Petitioner's sentence.

required Barnett to bear most costs beyond that sizable sum, including any additional lawyers and professional services that were not reimbursed under California law. (*Id.* at 29-30, 32-34.) The contract allowed additional compensation in "an extreme circumstance." (*Id.* at 32-33.)

2. Legal Standard

The Sixth Amendment's right to counsel includes "a correlative right to representation that is free from conflicts of interest." *Rowland v. Chappell*, 876 F.3d 1174, 1191 (9th Cir. 2017) (*quoting Wood v. Georgia*, 450 U.S. 261, 271 (1981)). To demonstrate a Sixth Amendment violation based on a conflict of interest, "a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." *Id.* (*quoting Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980)). An "actual conflict" is a conflict that concretely and adversely makes a difference in the attorney's performance, not "a mere theoretical division of loyalties." *Id.*; *Mickens v. Taylor*, 535 U.S. 162, 171, 172 n.5 (2002). More specifically, a petitioner must show "that some plausible alternative defense strategy or tactic might have been pursued but was not and that the alternative defense was inherently in conflict with or not undertaken due to the attorney's other loyalties or interests." *United States v. Walter-Eze*, 869 F.3d 891, 901 (9th Cir. 2017) (*quoting United States v. Wells*, 394 F.3d 725, 733 (9th Cir. 2005)).

3. Analysis

Petitioner's claim fails. Most notably, he cites no clearly established Supreme Court precedent holding that a constitutional conflict-of-interest arises from an indigent fee arrangement such as Barnett's. *Van Patten*, 552 U.S. at 125-26. "That the Supreme Court has not announced such a holding is not surprising," *cf. Moses v. Payne*, 555 F.3d at 761, as rulings in this Circuit indicate a lean in the opposite direction. *See Williams v. Calderon*, 52 F.3d 1465, 1473 (9th Cir. 1995) (the "theoretical conflict that exists between an attorney's personal fisc and his client's interests in any pro bono or underfunded appointment case. . . without more, do[es] not require Sixth Amendment

scrutiny."); *see also Kaempf v. Yates*, CV 10-2633 PSG (VBK), 2013 WL 1858786, at *1 (C.D. Cal. Mar. 27, 2013), *report and recommendation accepted by* 2013 WL 185772 (C.D. Cal. Apr. 26, 2013) ("This Court is not aware of any Supreme Court case which holds that a flat-fee agreement for the services of a private criminal defense attorney, without more, represents a conflict of interest that entitles a petitioner to habeas relief. Public defenders, . . . handle enormous caseloads on fixed budgets and with limited investigative resources every day.").

There is also nothing to indicate that an actual conflict manifested in Petitioner's case. *Walter-Eze*, 869 F.3d at 901. Petitioner certainly posits *theories* as to why Barnett's fee arrangement might alter the lawyer's motivations. For example, Petitioner argues that Barnett had to share his flat fees with other lawyers brought into the case. From this, Petitioner assumes Barnett had a financial motive to preclude Steven Harmon (penalty-phase counsel) from all guilt-phase proceedings. There is nothing in the record to support that assertion. Indeed, the record supports a different conclusion. Per Harmon's own statement, Barnett kept him out of the courtroom as a matter of trial strategy. (*See* Dkt. 10 at 50 ("[Barnett] indicated that he wished to preserve [Harmon's] 'pristine credibility' before the members of the jury, thus encouraging them to approach the question of penalty as a fresh matter, unencumbered by any resentment or distrust of defense counsel which they might have built up during the guilt phase."[12/]). Petitioner also asserts that Harmon himself "was dissuaded from conducting all appropriate investigation warranted by the facts" because Barnett complained about Harmon's investigative costs. (SAP at 53.) Yet, Harmon makes no such statement in his declaration. While Harmon *mentions* in a single sentence that Barnett complained about expenses, he does not state that the complaints motivated his actions. Harmon

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[12/] The fact that Harmon appears subtly critical of Barnett's strategy in his declaration does not lend credence to the assertion that Barnett acted due to an actual conflict of interest with Petitioner.

does, however, declare that his penalty-phase investigations included looking into the Shelah McMahan homicide and investigating other possible suspects, interviewing Petitioner's family members, visiting various physical locations, and retaining a psychiatrist to examine Petitioner. As for any investigation that Harmon now claims he did not undertake, there is no indication that Barnett's fees or complaints about expenses had any bearing on that.[13/] (Dkt. 10 at 48.)

Even more generally, Petitioner contends that Barnett's guaranteed flat-fee contract encouraged Barnett to devote disproportionate attention to his paying clients and cut costs by limiting investigations in Petitioner's case. But, again, there is nothing to show that Barnett had or acted on these motivations, or that his financial interests were "squarely" opposed to Petitioner such that he could not competently represent him. *See Walter-Eze*, 869 F.3d at 902 ("As human beings, attorneys always have interests of their own independent of those of their clients. Thus, courts have held that as a general matter, there is a presumption that the lawyer will subordinate his pecuniary interests and honor his primary professional responsibility to his clients in the matter

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[13/] Petitioner suggests that his speculation gave rise to a "prima facie" case for relief in the California courts, rendering the state court's summary denial of the claim without factual development "objectively unreasonable" under AEDPA. (Traverse at 38-39.) The "prima facie" language Petitioner references is found in the California Rules of Court. *See* Cal. Ct. R. 4.551(c)(1) (providing that a state court must issue an order to show cause if a habeas petitioner makes a "prima facie showing" of entitlement to relief). The Court finds this to be an issue of state law, as the California Supreme Court is the appropriate arbiter of what a "prima facie showing" means in that state. *See Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) (the United States Supreme Court has "repeatedly held that a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus."); *see also Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions."). Further, the Court notes that a similar claim in a different action, which Petitioner references to bolster his assertion, was dismissed on summary judgment. *See Staten v. Woodford*, CV No. 01-9178 MWF (Dkt. 201); *see also Hibbler*, 693 F.3d at 1146; *Pinholster*, 563 U.S. at 180-81; *Murray*, 882 F.3d at 802.

at hand.") (citations and internal quotation marks omitted); *see also Williams v. Calderon*, 52 F.3d at 1473 ("[T]he fact that payment for any investigation or psychiatric services could have come from counsel's pocket forced counsel to choose between Williams' interests and his own" created "no conflict of constitutional dimension.").

Under AEDPA's highly deferential standard, the California Supreme Court reasonably rejected Petitioner's conflict of interest claim. Claim 5 is DENIED.

F. Shackling/Unlawful Restraint (Claim 7)[14/]

Petitioner argues that the jury's "repeated exposure" to him in shackles rendered his trial constitutionally unfair. He also argues that his restraints inhibited his "emotional and psychological abilities to aid in his own defense and function properly," and that they even "contributed to his failure to testify." Consistent with case law governing in-court shackling, Petitioner argues that he "need not demonstrate actual prejudice to make out a due process violation." (SAP at 210-14; Traverse at 129-31.)

However, Petitioner *does not allege* that he was shackled in the courtroom. Instead, he contends that he was "restrained by use of a waist chain and leg irons" as he "was transferred from the county jail to and from the courtroom by officers." (SAP at 211-12; Traverse at 129.) As discussed below, restraints imposed en route to court are governed by a different standard.

Visible shackling in court is forbidden in a capital case, even during the penalty phase (after the presumption of innocence no longer applies), unless there is a showing of a "special need." *Deck v. Missouri*, 544 U.S. 622, 626, 630 (2005). However, visible shackling *outside* the courtroom violates due process only if the criminal defendant demonstrates actual prejudice. *Wharton v. Chappell*, 765 F.3d 953, 964 (9th Cir. 2014). The reason for the distinction between shackling in open court and shackling during transportation is that "[e]ven the most unsophisticated juror knows that defendants may

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[14/] Claims 6, 13, 21, and 39 (and portions of claims 12 and 16) are addressed out of order for the sake of efficiency and to place them in the proper context.

have to post bail and that some lack the resources to do this." *Id.* at 965 (citation and internal quotation marks omitted). "Under these circumstances we cannot think that the emotional impact of seeing the defendant in custody is necessarily hostile – it may be quite the reverse." *Id.* (citation omitted). Moreover, "[i]t is a normal and regular as well as a highly desirable and necessary practice to handcuff prisoners when they are being taken from one place to another, and the jury is aware of this." *Id.* (citation omitted).

The Ninth Circuit's *Wharton* decision expressly found the distinction between in-court and out-of-court shackling to be consistent with the Supreme Court's decision in *Deck*. *Id.* at 965; *see also Maxwell v. Roe*, 606 F.3d 561, 567 (9th Cir. 2010) (under AEDPA, "clearly established federal law consists of the holdings of the Supreme Court at the time of the state court decision; however, circuit court precedent may be persuasive in determining what law is clearly established and whether a state court applied that law unreasonably.") (citation and internal quotation marks omitted); *see also Williams v. Taylor*, 529 U.S. at 381-82 (while AEDPA "limits the source of doctrine on which a federal court may rely," "[i]t does not, . . . purport to limit the federal courts' independent interpretive authority with respect to federal questions.") (citation omitted).

More specifically, in *Deck*, the Supreme Court's holding was motivated by three main factors: the presumption of innocence, the fact that being physically restrained in court diminishes a defendant's ability to participate in the case, and a "courtroom's formal dignity, which includes the respectful treatment of defendants."[15/] *Deck*, 544 U.S. at 630-32. From that, the Ninth Circuit in *Wharton* concluded:

[15/] The Supreme Court noted that the penalty phase of a capital case only implicates the latter two considerations. As to the first, "the defendant's conviction means that the presumption of innocence no longer applies." *Deck*, 544 U.S. at 632.

> Unlike shackling in the courtroom, shackling during transport does not affect the defendant's ability to assist counsel during trial." (Citation omitted.) Nor does it have any effect on the dignity of the courtroom; indeed, it could be perceived as increasing the dignity of the courtroom because a prisoner's shackles are removed for open-court proceedings." (Citation omitted.) Admittedly, visible shackling during transportation might affect the jury's perception of the presumption of innocence, (citation omitted), but that concern is mitigated greatly by the reasons discussed above – jurors know that, as a matter of routine, some defendants are in custody during trial and that security needs during transport demand restraints.

Wharton, 765 F.3d at 965.

Under the appropriate standard – requiring actual prejudice – Petitioner's claim fails. *Wharton*, 765 F.3d at 964. Petitioner's sister declares that she saw him "brought up a stairwell from the jail in shackles, both wrists and feet, and marched in front of the jury. . . . at every break." (Dkt. 10 at 14.) Petitioner claims that on numerous occasions the restraints "caused him to rattle while passing before members of the jury." He posits that "[t]his constant image . . . was embedded into the collective subconscious of the waiting jury members." (SAP at 211-12.) Yet, the juror who provided a declaration to Petitioner's habeas attorneys was apparently not so affected. He states, "During the trial, Joseph Hart always wore decent clothes and looked very proper with his hair neatly cut." At some point, the juror "observed that he was shackled," but recalls that "they did a good job in trying to cover them up." (Dkt. 12 at 71.)

Additionally, contrary to Petitioner's assertion that the trial court gave no admonition about Petitioner's restraints, the trial court said the following to the jury:

> Mr. Hart is in custody which means that he has to be transported to the court; and when anybody is transported, they are transported with certain security precautions taken including being handcuffed.

> Does everybody understand that's not evidence of guilt, that's just a requirement here and the fact that a person cannot make bail is not evidence of guilt.
>
> Do you all understand that?
>
> All right.
>
> In a case where persons are charged with this kind of offense, the law provides there's probably no bail going to be set anyway, so whether the person is guilty or not guilty, they are going to be in custody in all likelihood, so if you start inferring because a person has handcuffs on that they're guilty, basically you've abdicated your jurors' duties, you have allowed irrelevance to come into the case.
>
> Do you all understand that?

(18RT at 2483-84.)

The jury was aware that Petitioner was transported to and from court in restraints. If they were not already aware from seeing him pass by, the court informed them. And, consistent with *Wharton*, the court admonished jurors of the practical reality that, for security purposes, transporting jail detainees to court requires restraints. Also, the court stated the obvious, that anyone accused of the unusually violent crimes alleged in Petitioner's case was unlikely to be released before trial, so one would expect to see that person in restraints on his way to court. *Wharton*, 765 F.3d at 965.

There is no indication that jurors were unable to see reason here; indeed, one juror casually mentions seeing the restraints and appears more interested in how well authorities covered them up than how they affected the juror's impression of Petitioner. Petitioner points to no facts supporting his assertion that prejudicial images were "embedded into the collective subconscious" of the jurors. Further, he fails to explain how being transported to court in restraints inhibited his ability to participate in the case or testify once he arrived. The California Supreme Court's denial of Petitioner's

shackling claim was not objectively unreasonable under AEDPA. *Richter*, 562 U.S. at 101; *LeBlanc*, 137 S. Ct. at 1728. Claim 7 is DENIED.

G. Claims Based on Mental Health (Claims 8 and 9)

Petitioner argues that he was mentally incompetent to stand trial and that he was deprived of the right to a psychiatric evaluation. (SAP at 214-20; Traverse at 131-40.) The California Supreme Court denied both claims on state habeas review without substantive comment. Because neither of Petitioner's assertions involving his mental health are colorable, these claims fail.

1. Competency to Stand Trial

A defendant is mentally competent to stand trial if he "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and . . . has a rational as well as factual understanding of the proceedings against him." *Clark v. Arnold*, 769 F.3d 711, 729 (9th Cir. 2014) (*quoting Dusky v. United States*, 362 U.S. 402, 402 (1960)). A trial court has a sua sponte duty to inquire into the issue "if a reasonable judge would be expected to have a bona fide doubt as to the defendant's competence." *Id.* (citation omitted, italics in original). A bona fide doubt exists if there is substantial evidence of incompetence. *Id.*

Federal courts "have recognized a high bar for what constitutes a 'bona fide doubt' of competence." *Id.* Factors relevant to this determination include "evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial." *Drope v. Missouri*, 420 U.S. 162, 180 (1975). Other evidence includes the observations provided by trial counsel. *Medina v. California*, 505 U.S. 437, 450 (1992) ("[D]efense counsel will often have the best-informed view of the defendant's ability to participate in his defense."). A bona fide doubt "relates not to mental illness in general but to the practical aspects of the defense of the action." *Bassett v. McCarthy*, 549 F.2d 616, 619 (9th Cir. 1977).

Although the Court, in evaluating a substantive due process claim of mental incompetency, "may consider facts and evidence that were not available to the state trial

court before and during trial," courts nevertheless "disfavor retrospective determinations of incompetence, and give considerable weight to the lack of contemporaneous evidence of a petitioner's incompetence to stand trial." *Williams v. Woodford*, 384 F.3d 567, 608 (9th Cir. 2004). In *Williams*, a capital habeas proceeding, the court gave "little weight to the declarations of the mental-health experts that Williams submitted in his habeas corpus proceedings." The court found that the declarations were "not entirely credible." The court determined that these "retrospective assessments" of the petitioner's mental health failed in a number of respects. They did not adequately tie the petitioner's mental defects to the facts of the case. They failed to describe how the mental impairments interfered with the petitioner's understanding of the proceedings against him or with his ability to assist counsel in presenting a defense. They also failed to point to "any manifestation of Williams's incompetence in the trial-court record," nor did they explain portions of the record in which the petitioner appeared to act rationally. *Id.* at 609. The *Williams* court also:

> accord[ed] little weight to the competency assessments of Williams's habeas corpus experts because they are based not upon medical reports contemporaneous to the time of the preliminary hearings or trial, but upon declarations submitted by Williams's friends and family and neuropsychological testing conducted more than ten years after trial. We have previously held that retrospective competency determinations, although disfavored, are permissible when it is possible to make an accurate retrospective evaluation, for example, by consulting contemporaneous medical reports. (Citation omitted.) Without the benefit of such contemporaneous reports, the passage of time and the difficulties inherent in evaluating the defendant's competence from a written record reduce the likelihood of an accurate retrospective determination.

Id. at 609-10; *see also Pate v. Robinson*, 383 U.S. 375, 387 (1966) (refusing to order a competency proceeding "six years after the fact" because that passage of time would only aggravate "the difficulty of retrospectively determining an accused's competence to stand trial.") In light of the court's doubt about the accuracy of the retrospective reports, the court concluded that they were "not especially probative of whether Williams actually was incompetent at the time of his trial." *Williams v. Woodford*, 384 F.3d at 610.

Here, Petitioner fails to provide a persuasive reason that the trial court reasonably should have formed a bona fide doubt about his competency to stand trial. The trial transcripts do not reveal any abnormal in-court behavior by Petitioner that would have raised a red flag for the court. *Medina*, 505 U.S. at 450. Further, the mental health evidence that Petitioner asserts was available at the time of trial – his prior commitment as a sexually violent sex offender, sinus problems and severe headaches, a history of head injuries, physical and emotional abuse by his father in childhood, a learning disability, psychoactive and mood-altering drugs, a prior suicide attempt – is insufficient to counter the record of Petitioner's rational participation in his trial. (*See* Dkt. 9-1 at 101-03; dkt. 16-1 at 34-41, 43; *see also* dkt. 96-5, 96-6, 97-32 (showing Petitioner's rational conduct and concern for his case in his *Marsden* hearings).) Without minimizing the seriousness of the information Petitioner puts forth, for purposes of the Court's analysis under the difficult standard for establishing mental incompetency, Petitioner's evidence appears scattershot and indiscriminate. None of these facts rise to the level of warranting further evidentiary development, nor do they raise a red flag that Petitioner suffered from a concealed mental condition that prevented him from participating meaningfully in his trial. The trial court clearly lacked substantial evidence to raise a bona fide doubt about Petitioner's mental competency to stand trial. *Clark*, 769 F.3d at 729; *Drope*, 420 U.S. at 180; *see also Maxwell*, 606 F.3d at 569 (bona fide doubt existed where the defendant was unable to verbally or physically control himself in the courtroom; paranoid and psychotic behavior impaired

his communication with defense counsel; he attempted suicide during trial; and he spent a substantial portion of trial involuntarily committed to a psychiatric hospital).

Additionally, the evidence Petitioner proffers in support of his incompetency claim consists primarily of evaluations performed years after his trial. The Court affords this evidence little weight. *Williams v. Woodford*, 384 F.3d at 609-10; *Robinson*, 383 U.S. at 387.

Petitioner has not persuaded the Court that he had an inability to consult with his lawyers with a reasonable degree of rational understanding, or that he was unable to rationally understand his trial. *Clark*, 769 F.3d at 729; *Dusky*, 362 U.S. at 402. His claim based on mental incompetency is denied.

2. Failure to Appoint Psychiatrist

Petitioner similarly contends he was deprived of his right to meaningful psychiatric assistance under *Ake v. Oklahoma*, 470 U.S. 68 (1985).

Under *Ake*, when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense. *Ake*, 470 U.S. at 83; *McWilliams v. Dunn*, ___ U.S. ___, 137 S. Ct. 1790, 1793-94 (2017). However, "*Ake* makes clear that psychiatric assistance is a contingent, not an absolute, right: it holds that when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial the state must provide psychiatric assistance." *Gretzler v. Stewart*, 112 F.3d 992, 1001 (9th Cir. 1997).

As the Court discusses further in this Order, Petitioner's defense strategy was not consistent with a theory based on mental impairment. Petitioner's sanity was simply not a significant factor at trial. *Gretzler*, 112 F.3d at 1001. Beyond that, Petitioner's *Ake* claim fails for much the same reason that his mental incompetency claim failed. Petitioner did not make a factual showing sufficient to give the trial court any reason to doubt his sanity, either at trial or at the time of the offenses. Petitioner has not shown

he was entitled to the assistance of a psychiatrist, let alone a certain level of professional psychiatric assistance. *Ake*, 470 U.S. at 83.

The Court also notes that the present case is readily distinguishable from *Ake*. In that case, insanity was the only defense. The defendant exhibited extremely bizarre behavior at his arraignment, enough so that the court ordered a competency evaluation. A psychiatrist subsequently found the defendant to be incompetent to stand trial, and suggested that he be committed to a mental facility. When the court eventually found him competent to stand trial, it was with the caveat that he was heavily sedated. *Ake*, 470 U.S. at 86. All of those factors were absent from Petitioner's trial proceedings. There is no indication in the record that Petitioner's behavior was bizarre before or during his trial.

The evidence presented by Petitioner does not meet the showing found sufficient by the Supreme Court in *Ake*. The state court's denial of this claim was not an unreasonable application of federal law. 28 U.S.C. § 2254(d).

All of Petitioner's claims based on mental impairments and drug abuse, including Claims 8 and 9, are DENIED.

H. Failure to Preserve Evidence (Claim 10)

Petitioner argues that the government violated due process by failing to preserve blood evidence found on a pair of handcuffs and Amy Ryan's blouse. (SAP at 220-23; Traverse at 140-45.) Petitioner raised this claim in his habeas petition before the California Supreme Court. The claim was denied without substantive comment on the merits. (Dkt. 101-2 at 111–16; dkt. 101-13.) As a result, this Court must determine whether any theories under clearly established federal law could have supported the state court's denial of relief. *Richter*, 562 U.S. at 102. Specifically here, "[t]he clearly established Supreme Court precedent governing this claim is *California v. Trombetta*, 467 U.S. 479 [] (1984), and *Arizona v. Youngblood*, 488 U.S. 51 [] (1988)." *Sanders v. Cullen*, 873 F.3d 778, 811 (9th Cir. 2017).

Under *Trombetta* and *Youngblood*, the government's failure to preserve evidence violates a criminal defendant's due process rights if that evidence (1) possessed an exculpatory value that was apparent before its destruction; (2) is unattainable through comparable evidence by other reasonably available means; and (3) was destroyed by the government in bad faith. *Id.*; *see also Youngblood*, 488 U.S. at 57-58.

"The exculpatory value of an item of evidence is not 'apparent' when the evidence merely '*could have*' exculpated the defendant." *United States v. Drake*, 543 F.3d 1080, 1090 (9th Cir. 2008) (emphasis in original) (*citing Youngblood*, 488 U.S. at 56). It is not enough to point to evidence that was "simply an avenue of investigation that might have led in any number of directions." *Youngblood*, 488 U.S. at 56 n.*.

Further, the bad faith requirement is intended to limit the police's obligation to preserve evidence "to reasonable bounds." Bad faith arises only in "that class of cases where the interests of justice most clearly require it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant." *Id.* at 58. "The presence or absence of bad faith turns on the government's knowledge of the apparent exculpatory value of the evidence at the time it was lost or destroyed." *Sanders*, 873 F.3d at 811 (citation omitted); *United States v. Robertson*, 895 F.3d 1206, 1211 (9th Cir. 2018) (citation omitted).

There is no clearly established Federal law requiring the police to collect or obtain evidence. *See Youngblood*, 488 U.S. at 59 ("[T]he police do not have a constitutional duty to perform any particular tests."); *see also District Attorney's Off. for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 73-74 (2009) (dicta strongly implying that substantive due process does not currently impose a duty to gather evidence). Notably, *Trombetta* and *Youngblood* expressly impose a duty to *preserve* already-collected evidence. *Trombetta*, 467 U.S. at 481 ("[T]he question presented is whether the Due Process Clause requires law enforcement agencies to preserve breath samples of suspected drunken drivers."); *Youngblood*, 488 U.S. at 334 (due process challenge to the police's failure to preserve semen samples).

1. Failure To Preserve Blood on Handcuffs (Penalty Phase Evidence)

Petitioner alleges that the Riverside County Sheriff's Department destroyed blood flakes found on a pair of handcuffs. The handcuffs and the blood flakes were part of the prosecution's penalty-phase case, specifically, the allegations that Petitioner killed his niece days before his arrest on the capital charges. The Court delves thoroughly into that evidence in Claim 27. Here, the Court only discusses the facts relevant to Petitioner's *Trombetta/Youngblood* claim.

A detective found the handcuffs at issue buried in a shed on Petitioner's property. (33RT at 4304.) On those handcuffs, the detective found and collected minuscule flakes. (33RT at 4334, 4336-37, 4340.) The detective who discovered the flakes scraped them into a small envelope for testing. (33RT at 4337-38.) Forensic testing determined that they were dried flakes of blood. The flakes were consistent with the blood type of the victim, Shelah McMahan. (34RT at 4374.) More specifically, the flakes tested positive for a blood type characterized as "ABO type A, PGM type 2+ 1 +." This was not Petitioner's blood type, but was the same as Shelah McMahan's. (34RT at 4376; 35RT at 4506-08.) Criminalist James Hall testified that approximately eight in one thousand people (.8% of the population) shared that specific blood type. (35RT at 4512, 4515.)

The forensic examiner who tested the flakes testified that, due to their minuscule size, the samples were destroyed during the testing process, and there was nothing left over. (35RT at 4427-28, 4433, 4484-85.)

Petitioner argues that these facts show that law enforcement willingly destroyed evidence before the defense could examine it. He further claims that the exculpatory value of the blood flakes on the handcuffs was "clearly apparent" because additional testing by a defense expert might have revealed that they did not match Shelah McMahan's blood type. He also argues that, by destroying the blood samples, the

sheriff's department prevented any future DNA test that might have exonerated him. (SAP at 221-22; Traverse at 141-44.)

Petitioner cannot receive federal habeas relief on these allegations. What Petitioner alleges as "clearly apparent" exculpatory evidence is actually the opposite. The blood flakes on the handcuffs inculpated him. Any exculpatory value is based on speculation. Such speculation that further testing could have contradicted the criminalist's conclusions is squarely insufficient to qualify as "apparent" exculpatory value. *Drake*, 543 F.3d at 1090; *Youngblood*, 488 U.S. at 56.

Petitioner has also made a speculative and inadequate showing of bad faith by law enforcement. *Sanders*, 873 F.3d at 811; *Youngblood*, 488 U.S. at 57-58. He assumes something nefarious happened based on the way the detective collected the blood flakes, and the fact that the crime lab failed to preserve samples for the defense. But, the prosecution's witnesses explained at trial the specific circumstances under which the samples were destroyed, i.e., during the testing process they were used up. This may not have been the best practice, but it also does not present a case "in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant." *Youngblood*, 488 U.S. at 58. There is no evidence from which to conclude that any member of law enforcement knew of exculpatory value in this evidence at the time of its destruction. *Sanders*, 873 F.3d at 811; *Robertson*, 895 F.3d at 1211.

2. Destruction Of Blouse Blood Spatter (Guilt Phase Evidence)

Petitioner's second *Trombetta/Youngblood* subclaim alleges that the Riverside County Sheriffs failed to preserve blood spatter that was found on Amy Ryan's blouse. (SAP at 222-23; Traverse at 142-44.) This subclaimm also fails.

The sheriff's department found a smear and red spots on Amy Ryan's blouse that appeared to be blood. (20RT at 2800.) However, criminalist James Hall stated that "the amount of blood was very limited and the stain was quite light." (Dkt. 12-2 at 31.) Hall testified that he was able to determine that the smear was blood, and was the same blood

type as Diane Harper. (22RT at 3087-88; *see also* dkt. 12-1 at 35.) However, the blouse was too lightly stained from the smear to allow testing for any further conclusions. (Dkt. 12-1 at 36.) The spatter marks were too light to be confirmed as human blood. (Dkt. 12-1 at 36.) The blouse was turned over to the defense for testing, and the laboratory used by the defense reached inconclusive results. One stain was confirmed to be blood, with no further conclusions, and other marks were not confirmed to be blood. (Dkt. 9 at 183.)

The essence of Petitioner's argument is not that law enforcement failed to preserve blood evidence for defense testing. The blouse was turned over to the defense and tested. Petitioner's complaint is that the sheriff's department failed to test the blouse fast enough to get better samples. (Traverse at 143-44.) Aside from Petitioner's speculation that time was of the essence in testing the blouse for blood, his claim does not allege a violation of clearly established Supreme Court precedent. There is no clearly established Federal law requiring the police to collect evidence *at all*, let alone within a certain time frame. *See Youngblood*, 488 U.S. at 59 ("[T]he police do not have a constitutional duty to perform any particular tests."); *see also Osborne*, 557 U.S. at 73-74; *Van Patten*, 552 U.S. at 125-26; *Lopez v. Smith*, 574 U.S. at 2. Further, Petitioner again fails to point to any apparent exculpatory value in this evidence. *Drake*, 543 F.3d 1090; *Youngblood*, 488 U.S. at 56. Finally, there is nothing to suggest that any action or omission as it concerned the spatters on Amy Ryan's blouse occurred in bad faith. *Sanders*, 873 F.3d at 811; *Robertson*, 895 F.3d at 1211; *see also United States v. Barton*, 995 F.2d 931, 936 (9th Cir. 1993) ("The Supreme Court has held that the negligent destruction of evidence does not violate due process.") (*citing Youngblood*, 488 U.S. at 58).

The California Supreme Court's denial of Petitioner's due process claims based upon the destruction of evidence was reasonable under *Trombetta* and *Youngblood*. *See Richter*, 562 U.S. at 102. Claim 10 is DENIED.

I. Evidentiary Challenge to Images of Victims (Claim 11)

Petitioner complains that the trial court admitted inflammatory evidence. At the outset, Petitioner appears to challenge every photograph, slide and videotape admitted at trial without a coherent legal theory. (SAP at 224-27.) The Court need not address that. Petitioner eventually hones in on more specific photographic evidence. In the guilt phase, Petitioner takes issue with photographs of Diane Harper's body. He argues that most or all of the photos were unduly gruesome and cumulative. As to the penalty phase, Petitioner argues that the court should not have allowed multiple photos of Shelah McMahan's body because they were irrelevant, and that the court allowed an excessive number of them. Petitioner argues that all of the photographs were too inflammatory to allow the jury to fairly consider the evidence. (SAP at 223-28; Traverse at 145-49.)

On direct appeal, the California Supreme Court denied Petitioner's challenges to the photographs. The court addressed the claims under state evidentiary rules, and ultimately concluded in footnotes that there was no constitutional violation in light of the fact the photographs were properly admitted into evidence. The court thoroughly discussed all the challenged photographs and concluded that they were relevant to multiple issues in the case. As for the guilt-phase photographs of Diane Harper's body, the court found that they corroborated witness testimony about how events transpired, Petitioner's presence at the scene, whether sexual assault occurred, how the victim received various injuries to her body, and Petitioner's state of mind in committing the killing, including planning and premeditation. *People v. Hart*, 20 Cal. 4th at 616. As to the penalty-phase photographs of Shelah McMahan, the California Supreme Court found that they were relevant to corroborate witness testimony about the vicious nature of Shelah's killing, where she was killed, if her body was subsequently moved, how she was bound, whether the killing was premeditated, and whether ligature marks matched handcuffs and a cable tie found on Petitioner's property. *Id.* at 644-46.

Although Petitioner purports to raise his evidentiary claims based on his federal rights, he has not actually done so. The premise of his constitutional claim is that the

evidence at issue was unduly prejudicial, which is governed by the California Evidence Code. *See* Cal. Evid. Code § 352. A federal court may entertain a habeas petition by a state prisoner "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *McGuire*, 502 U.S. at 67-68; *see also Windham v. Merkle*, 163 F.3d 1092, 1103 (9th Cir. 1998) (a federal habeas court has "no authority to review alleged violations of a state's evidentiary rules . . . ."). Moreover, a habeas petitioner cannot "transform a state law issue into a federal one merely by asserting a violation of due process," which is what Petitioner has attempted to do here. *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1996); *see also Miller v. Stagner*, 757 F. 2d 988, 993-94 (9th Cir. 1985). Petitioner's evidentiary claim is not cognizable in this Court.

Further, even assuming Petitioner had raised a cognizable federal issue, it would fall considerably short. "Under AEDPA, even clearly erroneous admissions of evidence that render a trial fundamentally unfair may not permit the grant of federal habeas corpus relief if not forbidden by 'clearly established Federal law,' as laid out by the Supreme Court." *Holley v. Yarborough*, 568 F.3d 1091, 1101 (9th Cir. 2009) (citation omitted). And, as it concerns Petitioner's evidentiary claims:

> The Supreme Court has made very few rulings regarding the admission of evidence as a violation of due process. Although the Court has been clear that a writ should be issued when constitutional errors have rendered the trial fundamentally unfair, (citation omitted), it has not yet made a clear ruling that admission of irrelevant or overtly prejudicial evidence constitutes a due process violation sufficient to warrant issuance of the writ. Absent such "clearly established Federal law," we cannot conclude that the state court's ruling was an "unreasonable application."

Id.

Petitioner's evidentiary claims, even had they been cognizable, are without merit under AEDPA because there is no clearly established Supreme Court precedent

addressing the issue. *Id.*; *see also Walker v. Davis*, 617 F. App'x 794, 795 (9th Cir. 2015) (finding that, based on *Holley*, there was no clearly established Federal law prohibiting "potentially irrelevant and prejudicial autopsy photographs" of a minor victim) (cited pursuant to 9th Cir. R. 36-3).

Even beyond the confines of AEDPA, the evidence at issue here would not lead to relief. "The admission of evidence does not provide a basis for habeas relief unless it rendered the trial fundamentally unfair in violation of due process." *Johnson v. Sublett*, 63 F.3d 926, 930 (9th Cir.1995) (*citing McGuire*, 502 U.S. at 67-68). Such a due process violation may occur only "if there are *no* permissible inferences the jury may draw from" the evidence. *Boyde v. Brown*, 404 F.3d 1159, 1172 (9th Cir. 2005) (emphasis in original, citation and internal quotation marks omitted). As the state court thoroughly concluded, the photographs Petitioner complains of were separately relevant on multiple fronts: to show the manner of the killings, various marks on the victims, any planning involved, as well as Petitioner's connection to the crimes and crime scenes. Petitioner does not convincingly explain why this evidence was irrelevant or unfair, but instead focuses on the possibility that it had an emotional impact on the jury. The photographs were certainly unfavorable to him, but that is not sufficient to satisfy the due process standard. The evidence at issue did not render Petitioner's trial fundamentally unfair. *See Gerlaugh v. Stewart*, 129 F.3d 1027, 1032 (9th Cir. 1997) (admission of "admittedly gruesome photos of the decedent" was within the trial court's discretion and did not implicate federal due process rights); *see also Villafuerte v. Stewart*, 111 F.3d 616, 627 (9th Cir. 1997) (graphic photographs did not render trial fundamentally unfair where they were relevant to issues in the case); *Batchelor v. Cupp*, 693 F.2d 859, 865 (9th Cir. 1982) (several gruesome photographs of victim's body did not render the trial fundamentally unfair).

Petitioner's evidentiary claims in Claim 11 are DENIED.

J. Guilt Phase *Brady*[16/] Claims (Claim 12)

Petitioner argues that the government withheld several items of exculpatory evidence that were material to both phases of the trial. The Court addresses the two *Brady* subclaims concerning the guilt phase here. Petitioner raised his *Brady* claims in his habeas petition before the California Supreme Court. The claim was denied without substantive comment on the merits. This Court determines whether *Brady* could have supported the state court's denial of relief. *Richter*, 562 U.S. at 102.

1. Legal Standard

Under *Brady*, a prosecutor violates due process by suppressing evidence favorable to an accused and material to either guilt or punishment. *Sanders*, 873 F.3d at 801; *Brady*, 373 U.S. at 87. "Evidence favorable to the accused" includes evidence that would help impeach a witness. *Sanders*, 873 F.3d at 801-02 (*citing Giglio v. United States*, 405 U.S. 150, 154-55 (1972)).

"Under *Brady*'s suppression prong, if 'the defendant is aware of the essential facts enabling him to take advantage of any exculpatory evidence,' the government's failure to bring the evidence to the direct attention of the defense does not constitute 'suppression.'" *Cunningham v. Wong*, 704 F.3d 1143, 1154 (9th Cir. 2013) (*quoting Raley v. Ylst*, 470 F.3d 792, 804 (9th Cir.2006)). Put another way, if the defendant "'possessed the salient facts regarding the existence of the records he claims were withheld' such that defense counsel 'could have sought the documents through discovery,' there was no suppression under *Brady*." *Id.* (*quoting Raley*, 470 F.3d at 804). The Ninth Circuit recently explained that, for *Brady* purposes, a defendant is aware of the existence of the materials if he "either participated personally in the creation of the records or the records were disputed in the case." *Mellen v. Winn*, 900 F.3d 1085, 1100 (9th Cir. 2018).

[16/] *Brady v. Maryland*, 373 U.S. 83 (1963).

Evidence is "material" within the meaning of *Brady* "when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Turner v. United States*, ___U.S. ___, 137 S. Ct. 1885, 1893 (2017) (citations omitted). A "reasonable probability" of a different result means that suppressed evidence "undermines confidence in the outcome of the trial." *Id.* (*quoting Kyles v. Whitley*, 514 U.S. 419, 434 (1995)). In making a materiality determination, courts must evaluate the withheld evidence in the context of the entire record. *Id.* Further, "[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." *United States v. Agurs*, 427 U.S. 97, 109-10 (1976); *Barker v. Fleming*, 423 F.3d 1085, 1099 (9th Cir. 2005).

2. Analysis

a. Impeachment Evidence on Dr. DeWitt Hunter

Petitioner first argues that the prosecution withheld substantial impeachment material about a county pathologist who testified during the guilt phase of trial. (SAP at 229-31, Traverse at 150-56.)

(1) Background Facts

Jury selection in Petitioner's case commenced in November 1987, and trial proceedings were completed upon Petitioner's sentencing in May 1988. (1RT at 1; 42RT at 5290, 5312-14.) In January 1988, during the guilt phase of trial, the prosecution called Dr. Dewitt Talmage Hunter to testify in its case-in-chief. (23RT at 3142, 3189.) Dr. Hunter was a Riverside County pathologist who had performed over 5,000 autopsies. (23RT at 3190.) Dr. Hunter performed the autopsy on Diane Harper. A criminalist employed by the California Department of Justice, Faye Springer, was also present during the autopsy. (23RT at 3191-92; *see also* 21RT at 2982.)

Dr. Hunter concluded that Diane Harper died from "massive cerebral contusion and hemorrhage" caused by the blows to the head. (23RT at 3204.) The doctor testified that Diane Harper's autopsy revealed "essentially two categories of significant findings,

one was that of major trauma to the head and to the back. And, coincidentally, minor trauma in various sites over the body. There was physical evidence consistent with possible sexual violation." (23RT at 3192.)

More specifically, Dr. Hunter found seven "impact-type lacerations" on Harper's head, five on the back-right side of the head, one on the left side of the forehead, and one on the top of the head. (23RT at 3193-95.) Harper's skull also contained fractures caused by "a large amount of force." (23RT at 3195-96.) Dr. Hunter opined that "a rock or brick-like instrument" inflicted the head wounds. (23RT at 3197-98.) He characterized the injuries as "overkill." (23RT at 3211.) Dr. Hunter concluded that all five of the blows to the back of Harper's head would have knocked her unconscious, and three of the blows could have independently caused Harper's death. Dr. Hunter also saw bruises and twenty to twenty-four scratches on Harper's face and forehead. (23RT at 3199, 3201.) Dr. Hunter testified that the facial scratches could have been caused by Harper's face being driven into the dirt, which was consistent with her body being found face-down in the dirt. (23RT at 3200.) Harper also had minor injuries to her right ear, which Dr. Hunter opined could have been caused by a glancing blow while she was being struck in the back of the head. (23RT at 3200-01.)

Dr. Hunter also found injuries consistent with a blow to Harper's lower neck/upper back area. (23RT at 3202.) Additionally, the doctor found bruises and a scratch on the front of Harper's pelvic bone, which were consistent with someone placing pressure on her back while she was face-down. (23RT at 3203-04.) Harper also had scratches on her knees, elbows, and buttocks, and bruises on her elbows. (23RT at 3204, 3225.)

Dr. Hunter examined Harper's body for evidence of sexual assault. The doctor "saw no physical evidence to indicate" forced penetration to Harper's vagina. (23RT at 3207.) However, the doctor did observe reddening in "the area surrounding the vaginal entrance," which he opined could be caused by "forceful massage." (23RT at 3207-08.) Dr. Hunter also found that "abrasions and ill-defined contusions were

present on both inner and upper thighs." Additionally, the doctor found "a Vaseline-like substance" on the area surrounding the vaginal opening and on the inner thighs. (23RT at 3209.) He opined that the injuries to the inner and upper thighs were consistent with someone trying to force Harper's legs apart. (23RT at 3210.) Dr. Hunter concluded that all of the above "changes seen in the perineal area" were "consistent with sexual violation." (23RT at 3210-11.) Dr. Hunter testified that his conclusion was uncertain, but that it was 90% accurate. (23RT at 3211.)

In his guilt-phase rebuttal closing argument, the prosecutor referred to Dr. Hunter's testimony three times. First, the prosecutor discussed Dr. Hunter's testimony that he found a Vaseline-type substance on Harper's upper, inner thigh. The prosecutor also mentioned the criminalist's corroborating testimony that water beaded up on Harper's thighs when Dr. Hunter was washing off the body. (*See* 21RT at 2984.) The prosecutor argued that the location of the petroleum substance was more consistent with rape than sodomy. (26RT at 3557.) Second, the prosecutor reminded the jury that Dr. Hunter testified about injuries to Harper's inner thighs that were consistent with someone trying to force her legs apart. (26RT at 3559.) Third, the prosecutor argued that Harper was not putting up any resistance to Petitioner after the first blow, as evidenced by Dr. Hunter's testimony that she would have been knocked unconscious. (26RT at 3564.)

Petitioner argues that "[w]hile the state presented and relied upon Dr. Hunter's testimony in Petitioner's case, the District Attorney's Office was in possession of information showing it considered Dr. Hunter incompetent, sloppy and unreliable." (SAP at 229.) In support for that proposition, Petitioner proffers the following:

- An undated internal memo drafted by Riverside Deputy District Attorney Randall White. The memo included an attached declaration dated April 26, 1989, and was directed to Chief Deputy District Attorney Donald Inskeep. White alleged that "a number of homicide cases" had been "hampered by gross errors committed by" Dr. Hunter. The deputy then

cited two examples. In one case, Dr. Hunter testified five times over the course of two separate trials. In the first trial, Dr. Hunter testified unequivocally that the decedent had no skull fractures. In the second, "the testimony changed dramatically – there were indeed several skull fractures . . . ." The deputy stated that some of the discrepancies in the doctor's testimony "could have been avoided simply by a reading of [Dr. Hunter's] own autopsy protocol." The doctor also gave "conflicting testimonies" as to the time of the decedent's death, forcing the deputy to find other witnesses and "nearly result[ing] in jury confusion to an irreparable degree." The deputy found Dr. Hunter's "attempted explanations . . . totally unacceptable and implausible." In the second example, the deputy stated that Dr. Hunter gave incorrect and equivocal opinion testimony as to the time and cause of the decedent's death. In general, the deputy reported that Dr. Hunter's testimony came off as "rather timid, unsure and unclear. It is replete with ambiguity, while at the same time bland and uninteresting. In short, it is generally dull and confusing." (Dkt. 9-1 at 27.)

- A letter dated March 10, 1989 from Deputy District Attorney Dan Lough, also to Inskeep. This deputy called Dr. Hunter to testify in a death penalty case, *People v. Seaton* (discussed in detail below). The deputy found that the doctor had a "careless approach to reports." Specifically, the deputy reported that despite performing the autopsy on the victim in that case, Dr. Hunter "failed to obtain and read his notes prior to testifying." Consequently, the doctor referred to "lacerations" as "incisions," and gave questionable testimony about blood clotting that was rebutted by the defendant's expert. The deputy concluded that Dr. Hunter was "sloppy in procedure and careless in the preparation of reports." (Dkt. 9-1 at 30.)

- An undated memo from Deputy District Attorney Wayne Astin to Inskeep. The deputy stated that, while testifying in a 1985 murder case, Dr. Hunter "reversed in his mind the location of the damage to the victim's skull," which caused the doctor to draw an erroneous conclusion as to which blow was the cause of death. The deputy was forced to correct the doctor by showing him autopsy photographs, after which the doctor corrected some of his testimony but not as to the cause of death. The deputy stated that "[f]ortunately, the cause of death was not a critical issue in the case. Although I did not interview the jurors after the verdict, I was told they more or less thought he was incompetent." (Dkt. 9-1 at 32.)
- A letter, dated December 18, 1988, drafted by a pathologist in competition with Dr. Hunter to provide the county's pathology and toxicology services (Dr. Rene Modglin). The letter contained a paragraph discussing Dr. Hunter:

> Dr. Hunter, the only other bidder, to my knowledge is not himself a Board Certified Forensic Pathologist. Additionally, I have recently heard, there have been several cases autopsied by Dr Hunter that have created some problems for the County. Apparently a woman's body had to be exhumed somewhere out of state and a second autopsy showed it was a homicide when Dr. Hunter indicated it vas not. I heard that the second pathologist noted that the first autopsy vas a "very sloppy job." Also apparently there were some tense courtroom moments in the low desert when Dr. Hunter testified that there were photos taken

> with probes on a homicide case that vas being prosecuted. He allegedly wouldn't be swayed from his original testimony and only after a lengthy, behind-closed-door session did he admit that he had been incorrect, causing somewhat of a problem for the prosecutor. These are only two known problems – but over such a short period of time and on such important matters. Credibility and reputation are so important.

(Dkt. 9-1 at 34-35.)

- Two January 1989 Riverside Press-Enterprise news articles discussing an internal dispute between Riverside authorities over who would conduct an autopsy in a murder case. The district attorney's office requested Dr. Modglin, citing the fact that Dr. Hunter was not board-certified by the American Board of Forensic Pathology. The county coroner, Raymond Carrillo, was quoted as saying that Dr. Hunter was "board qualified" and would take the examination to be certified soon. The coroner was angry about the dispute, and was also quoted as saying, "All this concern is over a couple of cases he's messed up" despite the fact that Dr. Hunter had "conducted thousands of autopsies, including those on homicide victims." Carrillo "talked to [Dr. Hunter] and was satisfied with his explanations" about the mistakes.

(Dkt. 9-1 at 37-39.)

- Another January 1989 article in the Riverside Press-Enterprise. The article discussed a decedent, Ella Payne, and her death by hanging. Dr. Hunter performed the autopsy. Dr. Hunter had ruled the woman's death a suicide, but the woman's husband was subsequently charged in a

> military tribunal with killing her. Testimony before that tribunal accused Dr. Hunter of "overlook[ing] so many details" that insurance officials questioned whether the autopsy was done on the right person. The body was exhumed for a second autopsy by a military doctor. The second autopsy "supported the theory the woman had been murdered."[17]

(Dkt. 9-1 at 41.)

(2) *People v. Seaton*

The *Brady* issue Petitioner raises concerning information on Dr. Hunter was previously litigated in another capital case. *See People v. Seaton*, 26 Cal. 4th 598, 646-50 (2001). In *Seaton*, Dr. Hunter was the pathologist who conducted the autopsy and testified at trial. Dr. Hunter's alleged mistakes and prior criticism eventually led to various claims on appeal, including a *Brady* claim nearly identical – and based on the same facts – as Petitioner's *Brady* claim.

Petitioner proffers a May 9, 1989 declaration from Stuart Sachs, the trial attorney who represented Ronald Harold Seaton. Sachs's declaration was made in support of Seaton's motion for a new trial. In the declaration, Sachs stated that Dr. Hunter testified in Seaton's case on November 9, 1988.[18] The attorney alleged that Doctor Hunter's testimony regarding the number of times the victim was attacked, whether there was

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[17] The Court takes judicial notice of subsequent news articles reporting that Payne's husband was cleared and the charge dismissed. George Frank, *Marine Cleared in Hanging Death of His Wife*, Los Angeles Times (March 29, 1989), http://articles.latimes.com/1989-03-29/local/me-682_1_marine-corps; George Frank, *Marine Once Suspect in Death Angry at Police*, Los Angeles Times (March 31, 1989), http://articles.latimes.com/1989-03-31/local/me-816_1_marine-corps. The Court may not and does not judicially notice these articles for their truth, but to more thoroughly and accurately show the information which had a bearing on Dr. Hunter's reputation. *See Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (federal courts may take judicial notice of newspaper articles and other publications to indicate what information was in the public realm at the time).

[18] As discussed above, Petitioner's trial ran from January to March 1988.

pre-mortem bleeding, and certain conclusions based on blood spatter was inconsistent with his autopsy findings. Sachs claimed that the doctor also failed to bring his notes from the autopsy to testify in court. In response to "this surprising and somewhat illogical testimony," the defense hired its own pathologist. The defense expert contradicted Dr. Hunter's conclusions. Sachs contended that the prosecution's case in both phases relied heavily on Dr. Hunter's testimony that the victim was attacked two separate times.

Sachs then referenced the three articles from January 1989 in the Riverside Press-Enterprise. According to Sachs, based on those articles county coroner Raymond Carrillo was subpoenaed, and gave testimony further clarifying his remarks to the media. Carrillo testified that there was debate about whether to have Dr. Hunter continue with county autopsies. Those conversations occurred between December 1988 and January 1989. During that time, Dr. Hunter admitted to Carrillo that he had made "some mistakes in the past concerning certain diagnoses in autopsies." Carrillo then provided Sachs with two internal memos from the district attorney's office referencing "a couple of cases." After an additional discovery request, the prosecutor in Seaton's case furnished another internal memo discussing Dr. Hunter.

Sachs drew the conclusion that:

> [I]t seems safe to say that the various memos were written in December 1988 or early January, 1989 with the expressed intent of compiling negative information about Dr. Hunter that could be forwarded by both the District Attorney's Office and Damon Reference Laboratories to Mr. Carrillo in an effort to prevent Dr. Hunter from being awarded the County contract to perform autopsies, due to his apparent reputation for incompetence.

Sachs believed that he did not have any of this new information during Seaton's trial because it "probably didn't materialize until December 1988 . . . ."

Sachs argued in his declaration that "the jury was given a false sense of credibility and competency" with respect to Dr. Hunter. The lawyer contended that the court should reopen testimony by both Dr. Hunter and his supervisor to be impeached with the additional information and to determine Dr. Hunter's reputation within the district attorney's office.

Sachs referenced the cases discussed in the Randall White memo (summarized above). Sachs stated that in one case Dr. Hunter "testified to minimal skull fractures and acknowledged that previously he had indicated no skull fractures. This is a perfect example of how Dr. Hunter pays such little attention to details." Sachs sought to cross-examine Dr. Hunter about that case. Sachs also referenced the Payne case, and sought to cross-examine Dr. Hunter about the Payne autopsy. (Dkt. 9-1 at 43-52.)

The trial court ultimately denied Seaton's new trial motion, and Seaton raised several related appellate issues. One of those claims alleged, as Petitioner does here, that the prosecution's failure to disclose evidence about Dr. Hunter's errors and reputation within the district attorney's office violated *Brady*. *Seaton*, 26 Cal. 4th at 646-50. More specifically, Seaton argued that the internal memos that came to light were *Brady* material that the prosecution had a duty to disclose during trial. *Id.* at 648.

The California Supreme Court found that two of the memos (the White and Astin memos) were not material for *Brady* purposes. The court first questioned the admissibility of the memos without reaching a decision on that issue.[19/] The court rested its holding on the reasoning that the memos "complained about discrepancies between what Dr. Hunter observed and recorded during autopsies and what he later testified to in court," and that "[t]he information in the prosecutors' memoranda would have shown Dr. Hunter to the jury as a careless and ill-prepared witness *when testifying to his*

[19/] *See Wood v. Bartholomew*, 516 U.S. 1, 5-6 (1995) (evidence that is inadmissible under state law is not material for *Brady* purposes).

recollection of factual observations he had made earlier." The court explained that Seaton did not "dispute that Dr. Hunter accurately described his observation of clotted blood around the murder victim" but that Seaton instead objected "to the conclusions Dr. Hunter drew from those facts. . . . their portrayal, although unflattering, would have done little to impeach his scientific explanation of the causes of the clotted blood." *Id.* at 648-49 (emphasis in original). In applying *Brady*, the state high court reasoned that the information contained in those memos did not give rise to a reasonable probability that the jury would have rejected Dr. Hunter's expert opinion, and would then have acquitted Seaton on that basis. *Id.* at 649.

As for the internal memo related directly to the *Seaton* case, the California Supreme Court found that the prosecutor was only "expressing his doubts" about Dr. Hunter's theory on blood clotting. The court concluded that "such doubts are not a form of impeaching evidence that must be disclosed." The material constituted an inadmissible and irrelevant lay opinion on expert testimony. Further, "every lawyer presenting a case at trial makes an internal assessment of the strengths and weaknesses of the witnesses as the trial proceeds. Such assessments need not be revealed to the opposing party." *Id.*

The court in *Seaton* also found that there was no evidence to suggest the prosecutor was aware, prior to trial, of any information casting doubt on the accuracy of Dr. Hunter's testimony. "Rather, the prosecutor's doubts about the accuracy of Dr. Hunter's testimony were apparently based on the trial testimony of a defense witness, Dr. Root. Both defendant and the jury, of course, learned of this evidence at the same time as the prosecutor, when Dr. Root testified." *Id.*

(3) Analysis

Petitioner is unable to establish that the California Supreme Court's summary denial of his *Brady* claim was objectively unreasonable under AEDPA. *Richter*, 562 U.S. at 101; *LeBlanc*, 137 S. Ct. at 1728. At the outset, none of the material supporting Petitioner's claim would constitute *Brady* evidence. All of the memos and articles he

proffers were created in December 1988 or later. His trial was over and his sentence formally imposed by May 1988. (*See* 42RT at 5290, 5312-13.) Thus, *Brady*'s suppression prong is not satisfied here. *See Strickler v. Greene*, 527 U.S. 263, 282 (1999) (under *Brady*, "evidence must have been suppressed by the State, either willfully or inadvertently."); *see also United States v. Price*, 566 F.3d 900, 910 n.11 (9th Cir. 2009) (the "government has no obligation to produce information which it does not possess or of which it is unaware.") (*quoting Sanchez v. United States*, 50 F.3d 1448, 1453 (9th Cir.1995)).

But, Petitioner is not specifically arguing that the memos and articles were *Brady* material. He instead attempts to paint a picture demonstrating that problems with Dr. Hunter were so pervasive that the Riverside County District Attorney's office must have raised questions internally about him by the time of trial. The Court is mindful of Ninth Circuit precedent holding that the suppression prong of *Brady* may be met without a conclusive record as to whether the government actually possessed *Brady* material. *Price*, 566 F.3d at 910 (*citing Carriger v. Stewart*, 132 F.3d 463, 479 (9th Cir. 1997)). Where the proponent of a *Brady* claim produces "some evidence to support an inference that the government possessed or knew about material favorable to the defense and failed to disclose it," the burden shifts to the government to show that all *Brady* material was turned over. *Id.*; *see also Kyles*, 514 U.S. at 437 ("[T]he prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of 'reasonable probability' is reached.").

However, "some evidence" does not mean a defendant shifts the burden by simply alleging that where there's smoke, there's fire, without any showing that exculpatory evidence existed. *See Price*, 566 F.3d at 902, 910-11 (prosecutor revealed that a detective may have known about undisclosed criminal history of a witness whose testimony "sealed [the defendant's] fate"); *see also Carriger*, 132 F.3d at 479-80 (prosecution failed to turn over criminal records of its "star witness"). Whereas an

inconclusive record might lead to further evidentiary development, a record based on speculation does not. *Woods v. Sinclair*, 764 F.3d 1109, 1128 n.10 (9th Cir. 2014) (federal habeas petitioner was not entitled to an evidentiary hearing to develop *Brady* claim where he alleged "no facts to support his claim beyond the suspicion that the prosecution's delay in obtaining and reporting DNA test results indicates the destruction and non-disclosure of exculpatory evidence. Bare allegations, speculation, and wishful suggestions do not entitle a petitioner to an evidentiary hearing.") (citation, internal quotation marks, and brackets omitted).

Here, the record actually supports the inference that no *Brady* material existed at the time of Petitioner's trial. As stated above, the material Petitioner proffers was dated after Petitioner's trial ended. Adding to that, though, Stuart Sachs, the attorney who represented Ronald Seaton in a capital trial that ran from approximately November 1988 to January 1989, declared that the controversy surrounding Dr. Hunter "came as a complete surprise to me." His surprise was apparently due to the fact that the memos complaining about Dr. Hunter "were written in December 1988 or early January, 1989," during Seaton's trial and several months after Petitioner's trial ended. And, Sachs stated that those memos were specifically drafted by prosecutors as part of a campaign to persuade officials to award another doctor with a county contract. That assertion is evidenced by additional documents proffered by Petitioner here. (Dkt. 9-1 at 34-35, 45, 47.) There is nothing to indicate or imply that any deputy district attorney complained about Dr. Hunter in writing prior to that campaign.

Moreover, in *Seaton*, discovery was allowed on this exact *Brady* issue. Yet, even after that discovery was conducted, the California Supreme Court still concluded that "there is nothing to suggest that, before trial [in November 1988], the prosecutor was aware of any such information." *Seaton*, 26 Cal. 4th at 649. To the extent Petitioner asserts that Dr. Hunter's reputation must have been tarnished by the time of his own trial in late 1987 and early 1988, there is nothing supporting the conclusion that there was *Brady* material to this effect. *Woods*, 764 F.3d at 1128 n.10. Petitioner fails to

convince the Court that any exculpatory evidence existed or was suppressed as it concerned Dr. Hunter during the relevant period. *Sanders*, 873 F.3d at 802; *Price*, 566 F.3d at 910 n.11.

Petitioner also fails to establish materiality. It is here where the context of Dr. Hunter's testimony is crucial. The primary focus of that testimony was to establish Diane Harper's cause of death. And, unlike allegations in another case that Dr. Hunter made errors involving critical and disputed evidence, in this case there was no serious dispute over the cause of Harper's death.[20/] The doctor's findings confirmed what was fairly obvious from other testimony and photographs, that Harper was killed by forceful blows to the head. (23RT at 3193-99, 3201, 3204, 3211.) Also, apparently quite different from Dr. Hunter's "sloppy" and ill-prepared testimony in some other cases, at Petitioner's trial he referred several times to his autopsy notes to ensure the accuracy of his testimony. (23RT at 3191, 3200-01, 3209, 3225-26.) At one point, Dr. Hunter expressly used his notes to correct an error in his testimony and commented that he should have referred to them in the first place. (23RT at 3200.)

On these facts, the reasoning of the California Supreme Court in *Seaton* applies with equal force in Petitioner's case: to the extent internal memos, had they existed yet, would have shown that Dr. Hunter could be sloppy and made errors by failing to review his notes, the sting of that impeachment evidence would have been severely curtailed by the autopsy notes in the doctor's lap at Petitioner's trial. There is little chance – let alone a reasonable probability – that the issues which eventually came to light about Dr. Hunter's mistakes would have caused the jury in Petitioner's case to reject his expert opinion and acquit Petitioner. *Seaton*, 26 Cal. 4th at 649; *Turner*, 137 S. Ct. at 1893.

[20/] The tangential nature of Dr. Hunter's testimony is also evidenced by the fact that it spans a mere thirty pages of the 5300-page Reporter's Transcript. (23RT 3189-3211, 3223-29.)

Petitioner logically hones in on a portion of Dr. Hunter's testimony in which the doctor opined that Diane Harper's body showed evidence of sexual assault or attempted sexual assault. That issue was, of course, crucial to the defense case and the special circumstance findings. But, this aspect of Dr. Hunter's testimony was corroborated by other evidence. Criminologist Faye Springer noticed Vaseline on Diane Harper's inner thighs. Springer also removed and tested one of Harper's pubic hairs and determined that a petroleum wax product like Vaseline was on it. (21RT at 2993-98.) Coupled with testimony establishing that Petitioner had Vaseline and used it to sexually assault Amy Ryan, Dr. Hunter's corroborated conclusions were only a portion of the compelling evidence that Petitioner sexually assaulted the murder victim.

Still more important, though, and as the California Supreme Court concluded in *Seaton*, there is ultimately a disconnect between the impeachment material that eventually came to light and Dr. Hunter's straightforward testimony in Petitioner's case, which was carefully moored to his autopsy notes. There is little chance that attacking the doctor's sloppy or even incompetent practices in unrelated cases would have undermined confidence in the testimony the doctor gave here, let alone the outcome of the whole trial. *Turner*, 137 S. Ct. at 1893; *Agurs*, 427 U.S. at 109-10; *Barker*, 423 F.3d at 1099.

Petitioner is not entitled to federal habeas relief for his *Brady* claim concerning issues that arose months after his trial involving Dr. Hunter. The California Supreme Court's summary denial did not amount to an erroneous application of *Brady*, let alone one so erroneous as to exceed fairminded disagreement. *Richter*, 562 U.S. at 103; *Titlow*, 571 U.S. at 19-20.

b. Evidence of Third Party Culpability

Petitioner argues that the prosecution failed to turn over evidence that Amy Ryan received threatening phone calls after the crimes occurred that were determined not to be connected to Petitioner. The Court summarily denies this claim because the evidence

was patently immaterial. *Turner*, 137 S. Ct. at 1893. Even assuming the defense was truly unaware of the police reports at issue, this evidence had no bearing on the trial.

Throughout the SAP, Petitioner makes numerous attempts to take advantage of Amy Ryan's predictably erratic behavior, her treatment by the police, and phone calls she received in the period after Petitioner – by the defense's own admission – sexually assaulted her and murdered her friend. And, Petitioner seeks to draw inconsistent conclusions from this evidence. On one hand, Petitioner posits that Amy was Petitioner's accomplice to her friend's murder. Conversely, here, Petitioner apparently assumes that the phone call evidence would have persuaded the jury to believe the perpetrator was the caller, and that Petitioner was not even present at the crime scene. When these fantastical theories start to break down or run contrary to each other, Petitioner reverts to the more general contention that the evidence would have helped undermine Amy's credibility, but never in ways that are convincingly material to the outcome. Put simply, this line of attack is unpersuasive, as Petitioner's trial lawyers skillfully understood.

The evidence that Petitioner was at the crime scene and that he committed the violence was overwhelming. Amy positively identified Petitioner and testified in detail about her own protracted sexual assault by Petitioner, and his statements to her about killing Diane. There was physical evidence of sexual assault on Diane's body. Petitioner's fingerprint was recovered from a beer bottle found near Diane's body. Tire impressions found near the crime scene were consistent with the tires on Petitioner's car. The cause of Diane's death was external head trauma, and Petitioner subsequently had hand and right arm injuries consistent with striking hard blows. That compelling evidence is precisely why the defense conceded the basic facts and argued that Petitioner was only guilty of second degree felony murder. In short, Petitioner has not demonstrated that there is a reasonable probability this evidence, if disclosed, would have undermined confidence in the outcome of his trial. *Turner*, 137 S. Ct. at 1893.

The state court's denial of Petitioner's guilt-phase *Brady* claims was reasonable under AEDPA. Claim 12 is DENIED as to those claims.

K. Breakdown of Relationship with Guilt Phase Counsel/Denial of *Marsden*[21/] Motions (Claim 14)

Petitioner contends his relationship with his guilt-phase lawyer, William Barnett, was irreparably broken, and that the trial court deprived him of his right to counsel when it rejected his attempts to remove Barnett. (SAP at 247-65; Traverse at 172-190.) The record reveals a decidedly different picture, as discussed below.

1. Legal Standard

"The Sixth Amendment guarantees criminal defendants the right to effective assistance of counsel at all critical stages of the proceeding." *Carter v. Davis*, 946 F.3d 489, 507 (9th Cir. 2019) (*quoting Coleman v. Alabama*, 399 U.S. 1, 7 (1970)). However, under clearly established Federal law, that right only guarantees "an effective advocate" and does not mean that the defendant "will inexorably be represented by the lawyer whom he prefers." *Id.* (*quoting Wheat v. United States*, 486 U.S. 153, 159 (1988)).

The Ninth Circuit has interpreted the relevant Supreme Court precedent to mean that an irreconcilable conflict only arises "where there is a complete breakdown in communication." *Id.* at 507 (citation omitted); *see also Schell v. Witek*, 218 F.3d 1017, 1026 (9th Cir. 2000) (the Sixth Amendment is violated where there is a "total lack of communication or other significant impediment" between the lawyer and client). Further, "[d]isagreements over strategical or tactical decision[s] do not rise to level of a complete breakdown in communication." *Carter*, 946 F.3d at 507-08 (citations

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[21/] Under *People v. Marsden*, 2 Cal. 3d 118, 124-25 (1970), a criminal defendant in California must be given an opportunity to explain his or her reasons for moving to substitute appointed counsel.

omitted); *see also Morris v. Slappy*, 461 U.S. 1, 13-14 (1983) (the Sixth Amendment does not guarantee a "meaningful relationship" between a defendant and counsel).

When examining whether a Sixth Amendment violation occurred, "the appropriate inquiry focuses on the adversarial process, not on the accused's relationship with his lawyer as such." *United States v. Cronic*, 466 U.S. 648, 657 n.21 (1984).

2. Background Facts

Petitioner requested – and the trial court held – three separate *Marsden* hearings before and during trial.

a. *Marsden* Hearing #1

The first hearing was held approximately two months before jury selection commenced, on September 28, 1987. At that hearing, Petitioner complained that Barnett had only met with him once despite Petitioner making multiple requests to see him. Barnett responded as follows:

> I have been on this case since before the preliminary hearing. The case was prepared to go to trial on April 24th, and I announced ready. At that time the penalty phase attorney was not ready and requested more time; and then Paul Zellerbach, the prosecutor, agreed that they needed some more time. So, it has come on that way.
>
> There is nothing more on this case that can be done. Everyone has been interviewed. The forensic evidence has all been reviewed heavily and thoroughly. [¶] Mr. Grossman and I at preliminary hearing time spent hours with Hr. Hart.
>
> We stopped trying to visit Mr. Hart. The investigators stopped trying to visit Mr. Hart when[,] every time they would go up[,] there were penalty phase investigators spending hours up there. They went over daily, I guess, over reports, et cetera, with Mr. Hart.
>
> I told Mr. Hart a long time back that I was not going to come up and babysit him, and I wasn't going to come up and visit and chat, that I was

hired and appointed to prepare his case, [and] that is what I would work on; but any time Mr. Hart had any new evidence or something to add to the case, to let me know either by collect phone call or – [but] Mr Hart would send a list of questions that all had to do with why haven't I been there.

When he says no one has been interviewed, this case has been prepared and ready for trial since April 24th – well, before that. I announced ready on the 24th.

When Mr. Hart gives me a list of questions that [do not] require my presence, the next time I see him in court I tell him the answers. He has hated the answers.

Mr. Grossman can verify how thoroughly we talked with Mr. Hart and discussed all of the evidence with Mr. Hart, and that part of the evidence that we had to overcome, or have problems with, and that part that needs explaining.

And when Mr. Hart said to me, "Listen, didn't Judy tell you I was mad at you?" I said, "Yeah, she did," but I said, "I am not here to run a popularity contest. I am here to be the best you can possibly have. That is what you have got. If you are mad at me, I am sorry; but I am busting my ass on the case. That is what I will do, and not visit."

So, there isn't anything to do on this case that hasn't been done, except possibly be at Mr. Hart's beck when he wants us to come up there. He has free and total access to the telephone for collect calls any time he wants to call, and they accept the charges and relay messages.

There isn't any new evidence on the case, there hasn't been from the very beginning. That is where we are at.

> If Mr. Hart – well, you can tell from what he said. There isn't anything I haven't done on the case for the forensic part of the case and legal part of the case. I just haven't visited him.

(Dkt. 96-5 at 4-6.)

The court asked Barnett if, in his view, the working relationship with Petitioner had materially deteriorated. Barnett answered:

> No. I just think what happened, when a second set of investigators and a second attorney entered the case, Mr. Hart began to get daily visits and all kinds of – I think Mr. Hart then wanted everybody to do this; and it isn't going to help Mr. Hart's case if I come up there and spend 24 hours a day with him. What is going to help his case is for me to get a chance to try it.
>
> I don't think, not on my end, it has deteriorated. We talk. I don't think he is angry at me. I just think he wants me to come and visit him more, and that isn't going to help anything.

(Dkt. 96-5 at 6-7.)

Petitioner subsequently confirmed that his only concern was that he felt he did not "know what is going on. I mean, I am sitting back, you know." Barnett agreed to visit Petitioner and discuss the case, adding that "the posture of the case has not changed since the day . . . of the preliminary hearing." The court denied Petitioner's request to relieve Barnett. (Dkt. 96-5 at 7-8.)

b. *Marsden* Hearing #2

About a month later, on October 30, 1987, Petitioner made a new request to relieve Barnett. This time, Petitioner stated that he was worried the defense was not ready to start trial because – again – Barnett was not keeping Petitioner apprised about the progress of the lawyer's investigations. Petitioner also claimed that Barnett was intimidating when they met, and that Petitioner was afraid to bring up questions he had

about the case. Petitioner stated that he lacked confidence in Barnett and did not want him to continue as Petitioner's attorney. (Dkt. 96-6 at 3-5.)

As in the first *Marsden* hearing, Barnett explained in detail the work that was going into the case. He first stated that the only significant witness to the guilt phase was Amy Ryan, and that she was refusing to meet with the defense. Barnett also explained that the defense case hinged on forensic evidence, and that the defense hired a forensic expert who had thoroughly reviewed the case. Barnett also stated that he had already explained to Petitioner "on every occasion that we have ever talked what the evidence is and what we have to overcome." Additionally, Barnett discussed the fact that penalty-phase defense investigators were meeting with Petitioner more frequently due to the nature of the defense's penalty-phase case. Barnett opined that those meetings were creating an unrealistic expectation on Petitioner's part that guilt-phase investigators (and Barnett) should meet more often with him. Finally, Barnett stated that he was not providing copies of police reports to Petitioner due to confidentiality issues, i.e., for fear of other inmates seeing the information. (Dkt. 96-6 at 5-8.) Barnett added the following:

> On any kind of a case such as this, it probably would behoove the attorney that's in it to welcome an opportunity to get off the case because these are very difficult, but that isn't my attitude. This Court has tried cases with me, and it makes no difference whether Mr. Hart likes me. He needs me. He needs my expertise. He needs the defense that I would give him, and I would give as vigorous a defense to people who don't like me as who do like me because it has nothing to do with my professional pride nor my professional ethics.

(Dkt. 96-6 at 6.)

Petitioner expressed concern that he was not privy to some other inmates who were potential prosecution witnesses. Barnett provided the court with the names of those possible witnesses, stated that he already told Petitioner who those witnesses

were, and explained that Petitioner said he had never met them. However, Barnett also (correctly) predicted that none of those witnesses would testify for the prosecution in the guilt phase. (Dkt. 96-6 at 9-10.)

The court told Petitioner that Barnett had "more experience in this county with capital litigation than any other attorney in the county," and that it is sometimes sound strategy in capital cases to keep a "low profile" in the guilt phase when the evidence is extremely damaging so as to retain credibility for the penalty phase. Petitioner stated that he understood. The court denied the request to relieve Barnett. (Dkt. 96-6 at 10-13, 18.)

c. *Marsden* Hearing #3

After the evidence was complete during the guilt phase of trial, on February 4, 1988, Petitioner made his last *Marsden* motion. This time he raised complaints about Barnett's performance. He argued that Barnett should have challenged a pretrial lineup based on his alleged mistreatment and compulsion to participate in it without a lawyer present. (Dkt. 97-32 at 3-4.) The court summarily rejected Petitioner's argument, finding that the only legal basis for challenging the pretrial lineup would be that it was unduly suggestive. (Dkt. 97-32 at 4-5.) The court then, having heard the trial evidence, spoke frankly to Petitioner:

> [T]he bottom line question, . . . [is] the underlying fairness of the lineup, and I would have to make those decisions based upon what I see in terms of the picture, and what I've seen from Amy Ryan[. A]nd based upon what she said in court and so forth, it strikes me that the lineup was still fair and in all likelihood allowed in[,] and that's beyond the point of saying . . . there's lots of evidence connecting you with this offense, Mr. Hart.

(Dkt. 97-32 at 6.) Petitioner responded, "Right, I understand that." (Dkt. 97-32 at 6.)

The court continued:

> The fingerprint, the four different tires on the car, at some point in time it gets to be, the lineup almost becomes icing on the cake. She came into court, she's identified you in court and I suspect if we didn't have any evidence of the lineup at all, it would make no difference in this particular case in terms of tying you to the offense. What you're guilty of is a different question, but tying you to being up there with the two girls, I would – I've tried not to form conclusions, I have tried to act like a juror, but I have heard the evidence, and I must say from my point of view the evidence against you that you were up in that area is more than overwhelming.

(Dkt. 97-32 at 6.) Petitioner responded, "Yes, I mean we're not disputing the fact that I was up there." (Dkt. 97-32 at 6.)

Petitioner also faulted Barnett for failing to impeach Amy Ryan sufficiently on various aspects of her testimony, such as which of the two girls approached his car first and whether the girls were feuding. (Dkt. 97-32 at 7-10.) The court responded that some of those issues were immaterial and others were more appropriately raised in Barnett's closing argument. (Dkt. 97-32 at 9-11.) Barnett stated that he wrote an outline of that argument for Petitioner's review, so Petitioner "knows the direction of the argument." (Dkt. 97-32 at 11.)

Petitioner more generally complained that Barnett had failed to present "any other possibilities of what else could have happened," and the court responded, "He's a lawyer[,] not a magician. I mean, seriously, what could he say?" (Dkt. 97-32 at 13.) After additional discussion about why a diminished capacity defense was not appropriate under the circumstances, Petitioner stated, "I've just been sitting here . . . you know, my life is on the line and I'm just sitting here wanting questions asked, and I don't feel they were being asked. It's . . . very possible, he is a lawyer, he knows what he's doing and he knows the strategy . . . ." (Dkt. 97-32 at 15.) Petitioner subsequently added: "I know, I did everything except leave my driver's license [at the crime scene]."

(Dkt. 97-32 at 17.) After further discussion about other concerns Petitioner had such as pretrial publicity (an issue that had already been thoroughly vetted during voir dire), Petitioner stated, "I'm just, you know, my life is on the line, I am scared to death, and I felt like I have been sitting here and not saying anything that's been on my mind and I wanted to get this off my mind, the questions that have been bothering me." (Dkt. 97-32 at 20.)

The court concluded as follows:

> I see no basis, no ruling has been asked for, we've had the talk. For the record, it strikes me [from] what I've heard here, the investigation [by defense counsel was] perhaps even more extensive than I had anticipated[,] and I anticipated even an extensive investigation, so from what I've heard here, everything brought up, you have already looked [in]to, Mr. Barnett, so I commend you on that.

(Dkt. 97-32 at 21.)

d. State Court Decision

The California Supreme Court affirmed the trial court's refusals to relieve Barnett as follows:

> The record amply supports each one of the trial court's rulings denying defendant's *Marsden* motions. At the first hearing, the trial court reasonably concluded that trial counsel was prepared for trial and therefore did not need to visit defendant on a regular basis. "[T]he number of times one sees his attorney, and the way in which one relates with his attorney, does not sufficiently establish incompetence." At the second hearing, the trial court reasonably concluded that trial counsel's decision not to provide defendant with copies of the police reports was a tactical decision made in defendant's best interests. At the third hearing, the trial court recognized the tactical bases for trial counsel to refrain from challenging the testimony of victim Amy R. regarding minor details of her testimony, and

> reiterated the view that trial counsel's investigation had been more than adequate.
>
> In sum, the record is clear that the trial court provided defendant with repeated opportunities to voice his concerns, and upon considering those concerns reasonably found them to be insufficient to warrant relieving trial counsel. We therefore find no basis for concluding that the trial court either failed to conduct a proper *Marsden* inquiry or abused its discretion in declining to substitute counsel.

People v. Hart, 20 Cal. 4th at 604 (citations omitted).

e. Petitioner's Supplemental Authority

After briefing was completed in this federal habeas action, Petitioner pointed the Court to a subsequently-decided Supreme Court case, *McCoy v. Louisiana*, ___ U.S. ___, 138 S. Ct. 1500 (2018). In that case, the Supreme Court held that "a defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty." *Id.* at1505. In *McCoy*, the High Court also held that such an error is structural, and not subject to harmless error review. *Id.* at 1511-12. If "a client declines to participate in his defense, then an attorney may permissibly guide the defense pursuant to the strategy she believes to be in the defendant's best interest. Presented with express statements of the client's will to maintain innocence, however, counsel may not steer the ship the other way." *Id.* at 1509. Notably, in *McCoy*, the defendant "vociferously insisted that he did not engage in the charged acts and adamantly objected to any admission of guilt." *Id.* at 1505. The defendant was "furious" when his counsel told him about the plan to concede guilt, and told counsel not to make the concession. *Id.* at 1506. The defendant also testified to his innocence in contradiction of his attorney's theory of the case. *Id.* at 1507. In essence, the defendant "opposed [his lawyer's] assertion of his guilt at every opportunity, before and during trial, both in conference with his lawyer and in open court." *Id.* at 1509.

The Supreme Court specifically held that, once the defendant communicated his insistence that he was innocent "to court and counsel, strenuously objecting to [the lawyer's] proposed strategy, a concession of guilt should have been off the table," and that the trial court violated the Sixth Amendment by allowing counsel to concede guilt despite the defendant's "insistent objections." *Id.* at 1512.

In Petitioner's case, the defense conceded that Petitioner was the perpetrator, but proffered that the forensic evidence only proved, at most, second-degree murder. Petitioner claims he disagreed with that approach and that his case falls within the ambit of *McCoy*. (Dkt. 133.)

3. Analysis

The conclusion of the California Supreme Court was not contrary to, or an unreasonable application of, clearly established Federal law. 28 U.S.C. § 2254(d). The trial record reveals that Petitioner received from Barnett what the Sixth Amendment guarantees: "an effective advocate." *Carter*, 946 F.3d at 507; *Wheat*, 486 U.S. at 159. Petitioner's *Marsden* hearings do not reveal a lawyer and client embroiled in any measurable conflict. Petitioner never objected to Barnett's vigorous efforts on his part. Nor did Petitioner ever articulate a legitimate basis for his dissatisfaction. Instead, the record reveals that Petitioner had anxiety about the damning evidence against him as his trial date approached. And, for his part, Barnett made his strategy and reasoning abundantly clear. He did not want to waste time meeting regularly with Petitioner to discuss the evidence, but instead focus his efforts on developing a trial strategy based on challenging the prosecution's forensic evidence.

As discussed later in this Order, there were sound strategic reasons for counsel's approach to choosing a defense theory, which included remaining circumspect about impeaching the credibility of the young, living victim. There is no indication that Petitioner failed to understand his lawyer's strategy, especially since Petitioner eventually admitted that the evidence identifying him as the perpetrator gave the attorney so little to work with. *Carter*, 946 F.3d at 507 (Sixth Amendment violation

only occurs where there is a "complete breakdown in communication"); *Schell*, 218 F.3d at 1026 (a Sixth Amendment violation means a "total lack of communication"). Moreover, even assuming Petitioner disagreed with his attorney's strategy, that alone would not constitute an irreconcilable conflict. *Carter*, 946 F.3d at 507-08 (citations omitted). Additionally, to the extent Petitioner claimed that Barnett was intimidating, there is nothing in the record to conclude that it materially affected the defense case. *Cronic*, 466 U.S. 648, 657 n.21 ("the appropriate inquiry focuses on the adversarial process, not on the accused's relationship with his lawyer as such."); *Morris*, 461 U.S. at 13-14 (the Sixth Amendment does not guarantee a "meaningful relationship" between a defendant and counsel).

Finally, as discussed above, Petitioner did not assert his innocence, let alone vociferously. His case is far and away distinguishable from *McCoy* despite his argument to the contrary. There is no reason to conclude that Barnett conceded any fact that was not abundantly clear from the evidence, or that he did so over Petitioner's objection. (*See* Dkt. 97-31 at 33-34 (Petitioner affirmatively agreeing with defense strategy).) The fact is that Petitioner's *Marsden* motions were indicative of general angst about the evidence against him in light of the stakes, not an irreconcilable conflict with his attorney, or because Petitioner was insistent about his innocence despite counsel's concessions to the contrary. *Carter*, 946 F.3d at 507; *McCoy*, 138 S. Ct. at 1512.

Claim 14 is DENIED.

L. Exclusion of Impeachment Evidence of Amy Ryan (Claim 15)

Petitioner argues that the trial court committed a number of constitutional violations by excluding evidence of a lawsuit the surviving victim filed against the Riverside County Sheriff's Department. (SAP at 265-72; Traverse at 190-95.)

On direct appeal, the California Supreme Court denied Petitioner's related claim based on the following findings of fact and legal conclusions:

Amy filed a civil suit alleging that the Riverside County Sheriff's Department mistreated her and lied to her at the time she reported the murder of her friend, Diane. Prior to commencement of the parties' opening statements (at a hearing conducted outside the jury's presence pursuant to [California] Evidence Code section 402), the trial court ruled that the allegations set forth in the civil suit would be inadmissible as character evidence against sheriff's department officials, but might be admissible as impeachment evidence if discrepancies appeared in the testimony offered at trial by Amy and the officials.

During trial, defendant's counsel requested a second hearing on this issue outside the jury's presence. At that hearing, counsel contended that evidence pertaining to Amy's civil suit was "relevant in that it might be motivation for Amy to make a stronger statement for herself, and for the officers to make a protective statement for themselves." The prosecutor contended that evidence of Amy's civil suit was irrelevant and, even if it were relevant, should be excluded pursuant to [California] Evidence Code section 352. In support of his argument, the prosecutor observed that "90 percent of the investigative reports prepared by the detectives in this case or – who are the subjects of the civil lawsuit, were prepared at sometime prior to the lawsuit even being filed."

The trial court found: "Th[is] court's confident that within the meaning of Evidence Code section 352, whatever probative value that evidence would have, and I can't think of very much, is substantially outweighed by the probability that it . . . will first of all necessitate undue consumption of time and will create a substantial danger, undue prejudice, of confusing the issues, and of misleading the jurors. [¶] I think that what goes into filing a lawsuit [–] that motivation is really impossible for us to know, and what [e]ffect that lawsuit has on people testifying, especially

when there are written police reports, especially when there are statements made before a lawsuit was even conceived as a possible way to go. [¶] It strikes me that there's just not probative value to that. So, for those reasons, the court will exclude that evidence."

On appeal, defendant contends the trial court prejudicially erred in excluding evidence of Amy's civil suit. In defendant's view, evidence of that lawsuit provided a "relevant basis upon which to attack [Amy's] credibility." ([Cal.] Evid Code[] § 780.) Defendant contends that he was entitled to expose the biases or motives to lie that may have been held by the witnesses who testified against him, and that the trial court's ruling infringed upon his rights to a fair trial, to counsel, to confront the witnesses against him, to due process of law, and to a reliable verdict under the United States and California Constitutions.

. . . .

[D]efendant's contentions do not withstand scrutiny. Assuming, without deciding, that evidence of Amy's civil suit satisfied the definition of relevancy set forth in [California] Evidence Code section 210, we conclude that the trial court did not abuse its discretion in excluding the proffered evidence pursuant to [California] Evidence Code section 352. In basing its ruling upon the principles set forth in the latter statute, the trial court accepted defendant's contention – at least, for purposes of argument – that the proffered evidence had some relevance. As noted, the trial court thereafter concluded that Amy's civil suit had only minimal probative value, and that such value was substantially outweighed by the probability that presentation of the evidence would require the undue consumption of time and would create a substantial risk of confusing the issues and misleading the jurors.

. . . .

> Here, the trial court properly could conclude the circumstance that Amy filed a civil suit against the Riverside County Sheriff's Department was of attenuated significance to the issues contested at trial, particularly inasmuch as the observations of sheriff's deputies that were material to the present case were set forth to a great extent in reports prepared well before Amy filed her civil suit, and because the deputies' observations and recollections could be tested on cross-examination on the basis of those reports. Further, the trial court properly could determine that the admission of evidence of Amy's civil suit would have permitted the focus of the testimony to shift away from the events leading to and involving the charged offenses, to the conduct of law enforcement officers after those offenses had been committed. The trial court acted within its discretion in determining that such a shift presented a substantial risk of confusing or misleading the jury.
>
> Nor do we find any constitutional infirmity in the trial court's ruling. The court merely exercised its discretionary power to preclude examination on collateral matters. (Citation omitted.)
>
> Finally, even if we were to assume that the trial court erred in excluding this evidence, reversal would not be warranted. Defendant's involvement in the murder of Diane Harper and the sexual assault of Amy was firmly established. His defense focused upon the nature of the sexual misconduct committed at the crime scene. Hence, under any prejudicial error standard, the asserted error was harmless. (Citations omitted.)

People v. Hart, 20 Cal. 4th at 604-07 (footnotes omitted); (*see also* 17RT at 2326-34.)

As is made clear by the state court's decision, the issue Petitioner raises is fundamentally an evidentiary issue governed by state law. As a result, it is not cognizable here. 28 U.S.C. § 2254(a); *McGuire*, 502 U.S. at 67-68; *Windham*, 163 F.3d

at 1103. Petitioner's attempts to shoehorn in constitutional arguments are not successful. *Langford*, 110 F.3d at 1389; *see also Miller*, 757 F. 2d at 993-94.

Further, even assuming there was a viable constitutional argument to be made here, AEDPA places too high of a hurdle. Petitioner's claim, had it implicated the Constitution, would concern his constitutional right to present a complete defense. *See Crane v. Kentucky*, 476 U.S. 683, 690 (1986) ("[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.") (internal quotation marks omitted). But, for relief under AEDPA, the governing law must be clearly established, and the Supreme Court has only set forth clearly established principles governing the right to present a defense "in cases where defendants have argued that state evidentiary rules, by their own terms, impinge upon their constitutional right to present a complete defense." *Moses*, 555 F.3d at 757. Petitioner's argument "is best interpreted as challenging the trial court's exercise of discretion" to exclude the evidence under California Evidence Code section 352, and there is no Supreme Court precedent squarely addressing that issue. *Id.* at 758. Nor has the Supreme Court clearly established "'a controlling legal standard' for evaluating discretionary decisions to exclude the kind of evidence at issue here." *Id.* at 758-59 (citation omitted); *see also Holmes v. South Carolina*, 547 U.S. 319, 326 (2006) (trial judges may exclude evidence if its probative value is outweighed by other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury). Consequently, the California Supreme Court's decision affirming the trial court's ruling in this case "cannot be contrary to or an unreasonable application of clearly established Supreme Court precedent." *Moses*, 555 F.3d at 759.

Finally, even beyond the confines of AEDPA, Petitioner has not demonstrated that the evidentiary ruling at issue implicates his constitutional rights. "[A] defendant's right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions," such as evidentiary and procedural rules. *Moses*, 555 F.3d at 757 (quoting *United States v. Scheffer*, 523 U.S. 303, 308 (1998)). The exclusion of evidence under

such well-established evidentiary rules is unconstitutional only where it "significantly undermine[s] fundamental elements of the accused's defense." *Scheffer*, 523 U.S. at 315. Generally, without "unusually compelling circumstances" the right to present a defense is not outweighed by the strong state interest in administration of its trials. *Moses*, 555 F.3d at 757; *Perry v. Rushen*, 713 F.2d 1447, 1452 (9th Cir. 1983). As discussed in other sections of this Order, Barnett reasonably focused his defense of Petitioner on forensic weaknesses in the prosecution's case in lieu of attempting to implicate Amy Ryan in the crimes. Not only would the excluded evidence have played little role in the "fundamental elements" of Petitioner's defense, it would have opened the door to an unusually risky victim-blaming strategy. *Scheffer*, 523 U.S. at 315. Petitioner's right to present a defense was not violated here.

Petitioner is not entitled to federal habeas relief for his challenge to the state court's evidentiary ruling. Claim 15 is DENIED.

M. Prosecutorial Misconduct (Claim 16)

Petitioner raises two constitutional claims aimed at the prosecutor's conduct in the penalty phase of trial. The first concerns testimony the prosecutor elicited and related comments the prosecutor made in his closing argument. The second alleges that the prosecutor knowingly presented false testimony by jailhouse informant Randall Gresham. (SAP at 272-81; Traverse at 196-202.) The Court addresses the former argument here. The latter subclaim is addressed later in this Order.

Petitioner argues that the prosecutor made several improper references to his own presence during various parts of the murder investigation. Notably, after asking several witnesses to confirm that he was present at crime scenes, autopsies, etc., the prosecutor later stated in the penalty-phase rebuttal closing argument that:

> I've been living with this case for almost two years, actually, over two years. From the date of March 24th when I was called out to the Badlands, I had the unfortunate opportunity of seeing Diane Harper's body. [¶] I also had the unfortunate opportunity of seeing Shelah McMahan's body.

> [¶] Obviously, words are insufficient by me to relate to you the feelings I experienced.

(41RT at 5240-41.)

Petitioner argues that the prosecutor's comments implied personal knowledge of the legitimacy of the investigation. (SAP at 272-79; Traverse at 196-98.)

A prosecutor has a duty to refrain from using improper methods to procure a conviction. *United States v. Hill*, 953 F.2d 452, 458 (9th Cir. 1991). However, a prosecutor must have reasonable latitude to fashion closing arguments. *United States v. Molina*, 934 F.2d 1440, 1445 (9th Cir. 1991). Thus, while inappropriate comments by the prosecutor in the presence of the jury may constitute prosecutorial misconduct, it is not enough that the prosecutor's remarks were undesirable or even universally condemned. *Darden v. Wainwright*, 477 U.S. 168, 179-81, 106 S. Ct. 2464 (1986). The determinative inquiry is whether the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Id.* at 181; *see also Duckett v. Godinez*, 67 F.3d 734, 743 (9th Cir. 1995). It is also incumbent upon Petitioner to affirmatively demonstrate he was prejudiced, *Gallego v. McDaniel*, 124 F.3d 1065, 1079 (9th Cir. 1997), and the actions of the prosecutor must be considered in the context of the entire trial. *United States v. Weitzenhoff*, 35 F.3d 1275, 1291 (9th Cir. 1993).

On direct appeal, the California Supreme Court ruled that the issue was waived because the defense made no objection at trial to the alleged misconduct. However, the court alternatively held that:

> even if defendant had preserved his claim and we were to assume that the challenged remarks of the prosecutor constituted misconduct, we would conclude that in view of the overwhelming evidence against defendant and the nature of the prosecutor's comments, there is no possibility that the jury would have reached a verdict more favorable to defendant in the absence of these comments.

People v. Hart, 20 Cal. 4th at 619-20.

Petitioner has provided the Court with no guidance to define "improper vouching" under clearly established Federal law. He cites only one Supreme Court case addressing vouching, *United States v. Young*, 470 U.S. 1 (1985), a decision in which the Federal Rules of Criminal Procedure, not the Constitution, provided the relevant legal standard. *See id.* at 15. Although not controlling here, the Ninth Circuit's definition of improper vouching provides some guidance. Circuit courts have recognized two types of improper vouching by a prosecutor: "The first type consists of placing the prestige of the government behind a witness through personal assurances of the witness's veracity. The second type consists of suggesting that information not presented to the jury supports the witness's testimony." *Draper v. Rosario*, 836 F.3d 1072, 1083 (9th Cir. 2016) (citations and internal quotation marks omitted). The prosecutor's actions here do not belong in either category.

In Petitioner's case, the prosecutor merely established through various witnesses his own presence at the scene of various portions of the investigation. Then, during argument, the prosecutor commented on his own emotional reaction to seeing the bodies of the young victims. This was hardly new information to jurors, who heard graphic testimony and were shown photographs of the victims. Petitioner has failed to establish "improper vouching" under any particular standard, let alone clearly-established Federal law. *Van Patten*, 552 U.S. at 125-26.

Petitioner also falls short of demonstrating that the prosecutor's comments, or the related testimony, was so egregious that they could have rendered his trial fundamentally unfair. *Darden*, 477 U.S. at 181. Whatever speculative inference a juror might have made about the evidence after learning the prosecutor was involved in the investigation, it would have been minuscule in the context of an entire trial in which the evidence of Petitioner's guilt was overwhelming. *See Hall v. Whitley*, 935 F.2d 164, 165-66 (9th Cir. 1991) (rejecting due process challenge to prosecutor's closing argument where "put in proper context, the comments were isolated moments in a three

day trial."); *see also Comer v. Schriro*, 463 F.3d 934, 961 (9th Cir. 2006) (comment by prosecutor could not violate due process in light of strength of evidence of petitioner's guilt).

Petitioner also complains that the state court, by concluding that there was "no possibility that the jury would have reached a verdict more favorable to defendant in the absence of these comments," employed the wrong standard for determining prosecutorial misconduct. Petitioner's argument is beside the point. Indeed, the state court's language refers to the harmless error standard for reversal on appeal under state law. *See People v. Watson*, 46 Cal. 2d 818, 836 (1956) (trial error requires reversal only where it is "reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error."). That the state court *also* found Petitioner's prosecutorial misconduct claim harmless under state law does not discount the fact that it rejected the claim on the merits for reasons entirely consistent with *Darden*. *Richter*, 562 U.S. at 98 ("[A]s this Court has observed, a state court need not cite or even be aware of our cases under § 2254(d).").

Petitioner is not entitled to federal habeas relief for his claim of prosecutorial misconduct based on improper vouching. *Darden*, 477 U.S. at 181.

The first subclaim in Ground 16 is DENIED.

N. Instructional Error: Destruction of Evidence (Claim 17)

Petitioner challenges the trial court's instruction regarding consciousness of guilt and the destruction of evidence. (SAP at 281-83; Traverse at 202-03.)

1. Factual Background

a. Relevant Trial Evidence

Amy Ryan testified that, on the day of the crimes, Petitioner drove a brown two-door Toyota. (18RT at 2526, 2529.) She saw an orange towel on the dashboard. (18RT at 2583.) The victim also testified that the back of the car had a license plate frame that read, "Have a Nice Day." The car had two rear bumper stickers; one said "Skiier" and the other said "State Farm." (18RT at 2553-55.)

Just over a month after the crimes, homicide investigators spotted Petitioner's brown Toyota Corolla parked at his residence. Believing it matched the vehicle described by Amy Ryan, those investigators contacted the detectives conducting the Diane Harper murder investigation. (20RT at 2852-55, 2859-60, 2892-93.) Those detectives went the following day to Petitioner's residence. Petitioner's wife gave them permission to inspect Petitioner's car. (20RT at 2893-95.) The detectives compared the car to photos taken at the crime scene. They found that the tires on Petitioner's car matched the tire prints at the crime scene. (20RT at 2895-96.) Amy Ryan told the detectives there were two screwdrivers in the car, and the detectives found them. (20RT at 2897.) The car also had several other features that Amy Ryan described, including a license plate frame that read, "Have a Nice Day," a State Farm bumper sticker, and another bumper sticker "that was partially removed." Detectives noticed "a couple marks from a bumper sticker that had been removed from on top of the" partially-removed sticker. (20RT at 2896-97.) On the ground in front of the car, a detective found "a torn portion of a bumper sticker which [had] the block letters I E R on it, as well as part of a mountain skiing type scene." (20RT at 2897-98.) The detective observed that the removed portion of the bumper sticker was "fairly fresh looking" and had recently been torn off. (20RT at 2900.)

While searching Petitioner's property, detectives found an orange towel. They also found several beer bottles and cigarette butts, which were the same brand and type found at the crime scene. (20RT at 2899-2900.)

After the sheriff's forensic department found a match between Petitioner's fingerprints and a fingerprint lifted from a beer bottle at the crime scene, detectives obtained a search warrant for Petitioner's residence. (20RT at 2900-02.) That search turned up additional incriminating evidence, such as jars of Vaseline – Amy Ryan testified that Petitioner used Vaseline in assaulting her, and a petroleum jelly substance was discovered on Diane Harper's inner thighs – and a brand of cigarettes that the victim described Petitioner smoking. (20RT at 2905.) A search of the outside

perimeter of the residence turned up other portions of a torn bumper sticker "that had Skiier and the skiing design on it." Those pieces were crumpled together into a ball. (20RT at 2907-08.) Detectives also found a pair of partially-burned tennis shoes in a 55-gallon drum that had been used as an incinerator. (19RT at 2764-65, 2772; 20RT at 2908.) The tread on the shoes matched shoe prints found at the crime scene. (20RT at 2909.)

Petitioner's father-in-law testified that, at some point prior to Petitioner's arrest, he noticed that Petitioner had used three pieces of plywood to conceal the brown Toyota on the property. The father-in-law assumed Petitioner was hiding the car from a bill collector. (22RT at 3037-38.) He also noticed that a yellow sticker saying "Caution Child in Car" had been put on the rear window shortly before Petitioner's arrest. (22RT at 3040.) There was also testimony that Petitioner changed his hairstyle to some degree before he was put in a lineup and positively identified by Amy Ryan, and that he changed it back the next day. (20RT at 2882-83.)

Finally, after the crimes were committed, Diane Harper's purse and belongings were found in a local reservoir. (19RT at 2707-13.)

b. Proceedings Concerning the Jury Instruction

The prosecutor requested that the court include CALJIC No. 2.06 in the jury instructions, California's standard instruction concerning a defendant's attempts to suppress evidence and the jury's option to consider those attempts as consciousness of guilt. The court inquired whether the prosecutor requested the instruction based on "the shoes among other things and bumper sticker" as well as "hiding the car with the plywood and possibly changing appearance and so forth." The prosecutor replied, "Yes, Your Honor." The defense did not object and the court agreed to give the instruction. (26RT at 3434.) Neither this instruction nor the evidence supporting it played any part in closing arguments, as the defense theory of the case conceded that Petitioner killed one victim and sexually assaulted the other.

The trial court ultimately gave the jury CALJIC No. 2.06 as follows:

> If you find that a defendant attempted to suppress evidence against him in any manner, such as by destroying evidence or by concealing evidence, such attempts may be considered by you as a circumstance tending to show a consciousness of guilt. However, such evidence is not sufficient in itself to prove guilt and [its] weight and significance, if any, are matters for your consideration.

(26RT at 3468); *see* CALJIC No. 2.06.

c. State Court Decision

On direct appeal, the California Supreme Court denied Petitioner's challenge to CALJIC No. 2.06, in pertinent part, as follows:

> In the present case, the record discloses evidence that, after Diane was murdered, defendant disposed of her purse, including her identification, at Lake Matthews, removed and replaced bumpper stickers on his car, burned a pair of tennis shoes, and used plywood to shield his car from view. Furthermore, when defendant was arrested, he wore his hair parted in. the middle, wavy and fluffy, similar to the style Amy had described, but at the in-person lineup, defendant wore his hair wet or oily, and combed straight back. The next day, defendant returned to his previously preferred "dry look."
>
> The jury reasonably could infer from the foregoing evidence that defendant attempted to suppress evidence. Actual destruction of that evidence was not required. The trial court therefore properly instructed the jury pursuant to CALJIC No. 2.06.

People v. Hart, 20 Cal. 4th at 621.

2. Legal Standard

Generally, claims regarding improper jury instructions are not cognizable on federal habeas review. *McGuire*, 502 U.S. at 71-72 ("[T]he fact that an instruction was allegedly incorrect under state law is not a basis for [federal] habeas relief"). Instead,

a petitioner must show that the challenged instruction "so infected the entire trial that the resulting conviction violates due process." *Henderson v. Kibbe*, 431 U.S. 145, 155 (1977); *see also McGuire*, 502 U.S. at 75 (noting that erroneous jury instructions may not serve as the basis for habeas relief unless they have "so infused the trial with unfairness as to deny due process of law.").

Thus, a federal court's inquiry on habeas review is not whether the challenged instruction "is undesirable, erroneous, or even 'universally condemned,' but [whether] it violated some right which was guaranteed to the defendant by the Fourteenth Amendment." *Cupp v. Naughten*, 414 U.S. 141, 146 (1973). "[N]ot every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation." *Middleton v. McNeil*, 541 U.S. 433, 437 (2004). Moreover, "a single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge." *Boyde v. California*, 494 U.S. 370, 378 (1990) (citation omitted). If a petitioner fails to demonstrate that the instructional error violated his right to due process, he fails to establish that the jury instructions were contrary to federal law and his claim must be denied. *See Henderson*, 431 U.S. at 155.

A "permissive inference" in a jury instruction "suggests to the jury a possible conclusion to be drawn if the State proves predicate facts, but does not require the jury to draw that conclusion." *Francis v. Franklin*, 471 U.S. 307, 314 (1985). "A permissive inference does not relieve the State of its burden of persuasion because it still requires the State to convince the jury that the suggested conclusion should be inferred based on the predicate facts proved." *Id.* Consequently, "[a] permissive inference violates the Due Process Clause only if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury." *Id.* at 314-15 (*citing Cty. Court of Ulster Cty. v. Allen*, 442 U.S. 140, 157-63 (1979)). "Ultimately, the seminal Supreme Court cases on this issue all say the same thing: a permissive inference violates due process when the presumed fact does not follow from the facts established." *Hall v. Haws*, 861 F.3d 977, 991 (9th Cir. 2017).

3. Analysis

The California Supreme Court's conclusion was not contrary to, or an unreasonable application of, clearly established Federal law. 28 U.S.C. § 2254(d).

Petitioner's argument is that the evidence did not support giving CALJIC No. 2.06. He claims the record is devoid of facts showing that any of the evidence at issue was actually destroyed or suppressed, let alone intentionally or due to a consciousness of guilt. (SAP at 282.) Petitioner's contention is unpersuasive. The instruction at issue concerned attempts "to suppress evidence . . . in *any* manner." (26RT at 3468 (emphasis added).) A bumper sticker was partially scraped off of Petitioner's car. A pair of shoes was partially burned. Plywood was put over Petitioner's car in a way that concealed it. A new sticker had been put on the car. The victim's purse turned up in a reservoir. Petitioner changed his hairstyle for a single day, when he was also appearing in a lineup. All of these facts patently constitute evidence of attempts to suppress evidence. Petitioner cannot plausibly claim that the instruction was unsupported by the evidence, or that the inference of evidence suppression did not follow from those facts. *Francis*, 471 U.S. at 314-15; *Hall*, 861 F.3d at 991.

Additionally, the jury was instructed that it *may* consider that evidence as consciousness of guilt. Under the circumstances, CALJIC No. 2.06 was squarely a constitutional permissive inference instruction. *Francis*, 471 U.S. at 314. That being the case, the prosecution was not required to definitively prove that the evidence at issue was suppressed, only that the suggested conclusion was "one that reason and common sense justify in light of the proven facts before the jury." *Id.* at 314-15; *Allen*, 442 U.S. at 157-63. The Court concludes that the circumstances cited by the trial court in allowing the instruction, and the California Supreme Court in upholding it, certainly led to a common-sense conclusion that Petitioner made efforts to hide evidence of his crime and identity as the perpetrator. Here, there is no due process violation. *Hall*, 861 F.3d at 991.

Petitioner has otherwise failed to show any constitutional infirmity in CALJIC No. 2.06, particularly in light of the proceedings as a whole. In the end, Petitioner's consciousness of guilt was irrelevant; the evidence implicating Petitioner as the perpetrator was overwhelming to the point that the defense reasonably chose not to dispute it.[22] Therefore, the challenged instruction could not have "so infected the entire trial that the resulting conviction violates due process." *Henderson*, 431 U.S. at 155; *Boyde v. California*, 494 U.S. at 378.

Claim 17 is DENIED.

O. Instructional Error: Failure to Clarify Elements (Claim 18)

Petitioner argues that the trial court violated various constitutional rights by failing to clearly differentiate the consequences of sodomy and rape on the murder charges and special circumstance findings. (SAP at 283-88; Traverse at 203-04.)

1. Background Facts

a. The Defense Theory

The prosecution tried Petitioner for murder under several alternate theories. Two of those were first degree murder theories. The jury could find Petitioner guilty of first degree murder in one of two ways: (1) willful, deliberate, and premeditated murder; or (2) felony murder based on the allegation that Petitioner killed Diane Harper in the commission or attempted commission of rape. (*See* 26RT at 3479-81, 3511-14.)

At the time of Petitioner's trial, California Penal Code section 189 limited the types of sex offenses that could support a conviction of first degree felony murder. Although those enumerated offenses included rape, they did not include sodomy.[23]

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[22] The record reflects that the prosecutor requested this instruction before he learned the defense's theory of the case. (26RT at 3434, 3495-96.)

[23] The California Legislature later amended the statute pursuant to a voter initiative known as the Crime Victims Justice Reform Act, approved by voters as Proposition 115, on June 5, 1990. *See Raven v. Deukmejian*, 52 Cal. 3d 336, 340, 344 (1990). State (continued...)

Hence, the prosecution's first degree felony murder allegation was limited to the commission of rape as a predicate offense.

However, once the jury found Petitioner guilty of first degree murder, the special circumstance allegations brought sodomy back into the jury's consideration – sodomy is (and was) included on the list of enumerated special circumstances which, if found true, support the imposition of the death penalty. Cal. Penal Code § 190.2(a)(17)(D). Petitioner's jury was instructed accordingly. (26RT at 3482-84.)

Additionally, Petitioner's jury was given the option of convicting Petitioner of *second* degree felony murder. A killing that occurred during the commission of sodomy *would* constitute second degree felony murder, and the jury was instructed accordingly. *See* Cal. Penal Code §§ 187(a), 189(b); (26RT at 3478, 3481-82.)

Given the overwhelming evidence that Petitioner was the perpetrator of the crimes against Amy Ryan and Diane Harper, these legal distinctions formed the basis of Petitioner's guilt-phase defense. Petitioner's lawyer argued to the jury that Petitioner had only committed sodomy, not rape, and that Petitioner had not acted with deliberation or premeditation in killing Diane Harper. In other words, defense counsel sought to persuade the jury that Petitioner was guilty of no more than second degree felony murder in the hope of sparing Petitioner from a penalty phase and possible death sentence. (26RT at 3536-45.)

b. Relevant Jury Instructions

The trial court read the murder charge and related allegations. (26RT at 3475-76.) The court then summarized the elements of murder in general, providing that:

> each of the following elements must be proved: [¶] Number One, that a human being was killed, [¶] Number Two, that the killing was unlawful,

---

[23/](...continued)
law now includes sodomy among the enumerated crimes that may support a first degree felony murder conviction. Cal. Penal Code §§ 189, 286.

> and [¶] Number Three, that the killing was done with malice aforethought, or occurred during the commission or attempt to commit rape, or occurred during the commission or attempt to commit a felony inherently dangerous to human life. Sodomy is a felony inherently dangerous to human life.

(26RT at 3478.)

Next, the court set forth the elements of each murder theory in detail. The court started by introducing and defining one theory of first degree murder: a willful, deliberate and premeditated killing. (26RT at 3479-80.) Then, the court discussed and defined felony first degree murder. Specifically, the court explained that first degree felony murder was an unlawful killing "which occurs as a result of the commission of or attempt to commit the crime of rape, ..." (26RT at 3481.) Next, the court moved to the various types of second degree murder. The court instructed the jury that second degree felony murder was an unlawful killing "which occurs as a direct causal result . . . of the commission of or attempt to commit a felony inherently dangerous to human life, namely, the crime of sodomy, ..." (26RT at 3481-82.)

After finishing the instructions addressing the murder charge, the court instructed the jury on the special circumstance allegations. Specifically, the court provided that:

> If you find the defendant in this case guilty of murder of the first degree, you must then determine . . . if the murder was committed under one or more of the following specia1circumstances: [¶] That the murder was committed while the defendant was engaged in the commission of, attempted commission of, or the immediate flight after committing or attempting to commit a *rape or sodomy*[.]

(26RT at 3482-83 (emphasis added).) The court then more fully set forth the elements required to prove the special circumstance allegations:

> To find that either of the special circumstances referred to in these instructions as murder in the commission of, attempted commission of, or

> the immediate flight after committing or attempting to commit a rape or sodomy, is true, it must be proved; [¶] Number One, that the murder was committed while the defendant was engaged in the commission or attempted commission or the immediate flight after committing or attempting to commit a rape or sodomy. [¶] Number Two, that the defendant intended to kill a human being. [¶] Number Three, that the murder was committed in order to carry out or advance the commission or attempted commission of the crime of rape or sodomy. In other words, the special circumstance referred to in these instructions is not established if the rape or sodomy or attempted rape or sodomy was merely incidental to the commission of the murder.

(26RT at 3483-84.)

The trial court also expressly instructed jurors to consider the charges and special circumstance allegations separately. (26RT at 3483, 3489-90.)

c. Prosecutor's Relevant Arguments

In his closing argument, the prosecutor read and discussed the jury's instructions. In doing so, the prosecutor further clarified (and editorialized) the distinction between the murder theories as it concerned the commission of rape or sodomy:

> We have our standard murder theory, I guess as far as criminal law is concerned, and the standard or customary murder legal theory is that there must be malice aforethought for a murder. And to raise that murder from second degree to first degree, there must be premeditation and deliberation. That's one road to travel, one legal theory, and there's a totally and separate distinct road that vou can travel that's called the Felony Murder Rule.
>
> . . .

> Now, we're going to go to the Felony Murder Rule and, again, the law is going to appear to you possibly to be a little strange in this area with respect to the crime or killing being a first degree murder[.]
>
> . . .
>
> What's interesting is that the law distinguishes a rape or attempt to commit rape from a sodomy or attempt to commit sodomy. I can't tell you why, but I think – well, that's the law. You have to live and abide by the law.
>
> If you believe, for the sake of argument, that the killing occurred during a sodomy or attempt[ed] sodomy, then it's going to be a second degree felony murder. The law distinguishes between a rape and a sodomy. If someone is killed during the course of a rape or an attempt to commit rape, the law says that's more serious than a sodomy[.] I don't know why, for the life of me, I couldn't figure that·one out, but nonetheless that's the law.
>
> If the killing occurred during a sodomy or attempt at sodomy, then it's second degree [] felony murder[.] [I]f it's a rape or attempt to commit rape, it's a first degree felony murder. As far as my thinking is concerned there shouldn't be any distinction between the two, but I don't make the laws, so that's just the situation we have.
>
> It's kind of interesting that if a criminal, any criminal, decides to kill somebody, let's say that he wants to sodomize this person rather than rape him, the law is almost going to reward him because he chose one means of sexual assault versus another. Again, that's the law.

(26RT at 3511, 3513-14.)

As for the special circumstance allegations, the prosecutor emphasized to the jury that those were distinct from the charged crimes:

> But, again, you only consider the special circumstance allegations if you have found Mr. Hart guilty of first degree murder, because that's what's going to determine whether or not we go to the second phase of the trial. [¶] If Mr. Hart is found guilty of second degree murder, that's it. You don't have to worry about the special circumstance allegations, and you don't have to worry about a second phase to this trial, we'll stop right there, as far as a presentation of evidence is concerned.

(26RT at 3496-97.)

2. California Supreme Court Decision

The state high court denied Petitioner's related instructional error claim on direct appeal as follows, in pertinent part:

> At trial, the prosecution's theory of the case was that defendant's effort to entice the girls into his vehicle and drive them to a remote area was part of a premeditated plan to commit rape, and that the murder of Diane was committed in the course of perpetrating rape. As noted, the defense did not deny that defendant was the man who took the girls to the remote area and assaulted them, killing Diane; instead, defense counsel argued to the jury that the evidence suggested Diane had been killed in the course of defendant having committed, or having attempted to commit, sodomy, and therefore supported no more than a verdict of second degree felony murder.
>
> The trial court instructed the jury on the law of murder (CALJIC No. 8.10 (1983 rev.)), further explaining the elements of first and second degree murder as well as felony murder. With respect to the latter theory, the trial court instructed the jury that under·the law applicable·at the time, a killing committed during the course of a rape or attempt to commit rape was first degree felony murder, and that a killing committed during the

> course of a sodomy, or attempt to commit sodomy, was second degree felony murder. Defendant did not object to any of these instructions.
>
> Defendant now contends that the jury instructions were impermissibly ambiguous and that the trial court failed to fulfill its sua sponte duty to offer clarifying instructions informing the jury that a first degree murder *could not* be based upon the underlying felony of sodomy or attempted sodomy, even though first degree murder committed in the commission of such crimes *could* support a special circumstance finding. . . .
>
> [The] jury instructions were not ambiguous. The jurors were instructed that if they found defendant guilty of murder in the first degree, then they were to determine whether either special circumstance was true. The jurors also were instructed to decide each special circumstance separately. These instructions correctly stated the law; if defendant wanted additional, clarifying instructions, he should have requested them. No ambiguity appearing, the trial court complied with its duty to "fully instruct the jury on the law applicable" and had no duty to further instruct the jury.

People v. Hart, 20 Cal. 4th at 621-22 (citations and footnote omitted, emphasis in original).

3. Analysis

The California Supreme Court's reasoning was not contrary to, or an unreasonable application of, clearly established Federal law. 28 U.S.C. § 2254(d). "An omission, or an incomplete instruction, is less likely to be prejudicial than a misstatement of the law." *Henderson*, 431 U.S. at 155. Petitioner fails to establish that additional clarifying instructions were constitutionally required here. He does not argue that the jury instructions misstated the law. His premise is that the *law* was confusing and that the trial court either clumsily or inadequately attempted to untie the knots for

the jury. It is certainly correct that the legal distinction between rape and sodomy required an explanation, and that it required jurors to separately consider the allegations without conflating them. It was also essential that the jury consider the special circumstance allegations separately so as not to confuse them with elements of the charged crimes. But, the jury was instructed accordingly. Petitioner's contention that the jury was still confused in the absence of more instructions "is too speculative to justify the conclusion that constitutional error was committed." *Henderson*, 431 U.S. at 157.

The Court's conclusion is bolstered when the instructions are considered in proper context. *Boyde v. California*, 494 U.S. at 378. The legal distinction between sodomy and rape as it concerned first and second degree murder was *central* to the closing arguments. The prosecutor explained it in detail, and the defense rested its entire case on it. Jurors were not left to wade through a thicket of confusing jury instructions; they were correctly instructed on the law, and then the attorneys focused them on the central issue. Petitioner is unable to rebut the presumption that the jury followed its instructions, *Spencer*, 857 F.3d at 803; *Weeks*, 528 U.S. at 234, and he has not shown that lack of further clarity "so infected the entire trial that the resulting conviction violates due process." *Cupp*, 414 U.S. at 147; *Henderson*, 431 U.S. at 154; *McGuire*, 502 U.S. at 75.

Petitioner fails to establish an extreme malfunction in California's criminal justice system based on the failure to give clarifying instructions here. *Richter*, 562 U.S. at 102. Claim 18 is DENIED.

P. Insufficient Evidence of Guilt (Claim 19)

Petitioner contends the evidence was insufficient to prove he committed any of the offenses, or to find the special circumstances true. As to Diane Harper's death, Petitioner argues that there were no eyewitnesses and there was no evidence to prove his mental state. He also contends there was no physical evidence to prove the sex crimes committed against Harper. As to Amy Ryan, Petitioner again points to a lack

of physical evidence to prove that he sexually assaulted her, and he asserts that she was not a credible witness. (SAP at 288-93; Traverse at 205-07.) None of Petitioner's arguments pass muster under the long-established constitutional standard governing insufficient evidence claims.

1. Legal Standard

The United States Supreme Court has "made clear that [insufficient evidence] claims face a high bar in federal habeas proceedings because they are subject to two layers of judicial deference." *Coleman v. Johnson* , 566 U.S. 650, 651 (2012) (per curiam).

The first layer is the standard of review for insufficient evidence claims, which has long been "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (italics in original); *Lucero v. Holland*, 902 F.3d 979, 990 (9th Cir. 2018). Under this standard, "it is the responsibility of the jury – not the court – to decide what conclusions should be drawn from evidence admitted at trial." *Cavazos v. Smith* , 565 U.S. 1, 2 (2011) (per curiam). Consequently, "[a] reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury." *Id.*; *see also Johnson*, 566 U.S. at 656 ("[T]he only question under *Jackson* is whether [the jury's] finding was so insupportable as to fall below the threshold of bare rationality.").

The *Jackson* standard "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. Consequently, a reviewing court "faced with a record of historical facts that supports conflicting inferences must presume – even if it does not affirmatively appear in the record – that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." *Id.* at 326; *McDaniel v. Brown*, 558 U.S. 120, 133

(2010). A jury's credibility determinations receive "near-total deference under *Jackson*." *Bruce v. Terhune*, 376 F.3d 950, 957 (9th Cir. 2004); *see also Schlup v. Delo*, 513 U.S. 298, 330 (1995) ("[U]nder *Jackson*, the assessment of the credibility of witnesses is generally beyond the scope of review.").

The second layer is the "additional layer of deference" under AEDPA. A petitioner must also establish that the state court unreasonably applied the *Jackson* standard to the facts of the case. *Emery v. Clark*, 604 F.3d 1102, 1111 n.7 (9th Cir. 2010); *Juan H. v. Allen*, 408 F.3d 1262, 1274-75 (9th Cir. 2005). More specifically, "a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court. The federal court instead may do so only if the state court decision was 'objectively unreasonable.'" *Cavazos v. Smith*, 565 U.S. at 2 (*quoting Renico v. Lett*, 559 U.S. 766, 773 (2010)); *Lucero*, 902 F.3d at 991.

2. Crimes Against Diane Harper

"Insufficient evidence claims are reviewed by looking at the elements of the offense under state law." *Maquiz*, 907 F.3d at 1218 (citation omitted)). In its opinion on direct appeal, the California Supreme Court set forth the relevant elements of the challenged offenses under state law. Since "a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus," *Richey*, 546 U.S. at 76, this Court defers to the state's supreme court's recitation of those elements:

> Murder is the unlawful killing of a human being with malice aforethought. As pertinent here, all murder which is perpetrated by any kind of willful, deliberate, and premeditated killing is murder of the first degree. The mental state required is, of course, a deliberate and premeditated intent to kill with malice aforethought. Similarly, all murder which is committed in the perpetration of, or attempt to perpetrate certain enumerated felonies, including rape, is murder of the first degree. The mental state required is

> simply the specific intent to commit the underlying felony; neither intent to kill, deliberation, premeditation, nor malice aforethought is needed. There is no requirement of a strict causal or temporal relationship between the felony and the murder. All that is demanded is that the two are parts of one continuous transaction. There is, however, a requirement of proof beyond a reasonable doubt of the underlying felony.

People v. Hart, 20 Cal. 4th at 608-09 (citations, brackets, and internal quotation marks omitted).)

The Court's task is not to determine whether the state court's analysis was wrong, but whether it was so lacking in justification that there is no possibility for fairminded disagreement. *Richter*, 562 U.S. at 103. Here, the state court reasonably pointed to the manifest evidence that satisfied *Jackson*: Dr. Hunter's autopsy revealed that at least five forceful blows – likely with the use of a rock or a brick – were inflicted to the back of Diane Harper's head, fracturing her skull and driving her face six inches into the ground. Petitioner's shoe print was found next to Harper's body. Amy Ryan testified that Petitioner told her that Harper called him names and, as a result, was likely dead. *People v. Hart*, 20 Cal. 4th at 609. It was objectively reasonable for the state court to conclude that this evidence was constitutionally sufficient to prove deliberate and premeditated murder. *Cavazos v. Smith*, 565 U.S. at 2; *Lucero*, 902 F.3d at 990-91.

Similarly, the state court reasonably concluded that the evidence was constitutionally sufficient to find Petitioner guilty under a felony murder theory, i.e., that Petitioner killed Diane Harper while he was engaged in raping her or attempting to rape her. Again, the state court pointed to the evidence showing guilt: Harper's body was found naked from the waist down with her underwear wrapped around one leg. Her thighs had scrapes, bruises, and the presence of a foreign pubic hair. Her vagina showed reddening, and a Vaseline-like substance – the same one used to rape Amy – was found on her upper, inner thighs. Moreover, Amy Ryan testified that, while Petitioner attempted to sodomize her, he explained that his difficulty obtaining an

erection was because he "just got it on with your friend." *People v. Hart*, 20 Cal. 4th at 609-10. Petitioner's attempts to attack the credibility of this evidence does nothing to satisfy the double deference required here. It was not objectively unreasonable for the state court to conclude that a rational jury could find Petitioner guilty of first degree murder under a felony murder theory based on this evidence. *Jackson*, 443 U.S. at 319; *Cavazos v. Smith*, 565 U.S. at 2.

The same goes for the state court's conclusion regarding the rape and sodomy special circumstances. Petitioner attempts to focus on gray areas in the evidence such as the lack of vaginal injuries to Harper and the lack of proof that she was alive when she was assaulted. These assertions again ignore the legal standard governing this Court's review. Viewing the evidence, as this Court must, in the light most favorable to the prosecution, *Jackson*, 443 U.S. at 319, a rational jury could certainly infer from the evidence – a body found naked from the waist down, underwear wrapped around one leg, scrapes, bruises, a foreign pubic hair on the thigh, vaginal reddening and the presence of a lubricant – that Petitioner killed Diane in the course of forcibly raping or trying to rape her. Adding to that, Petitioner's statements that Diane was calling him names and that he "just got it on with" her, while not conclusive proof of when he raped or attempted to rape her, certainly adds to the reasonable inference that Petitioner committed the acts while Diane was still alive. *Cavazos v. Smith*, 565 U.S. at 2; *Lucero*, 902 F.3d at 990-91. It was reasonable for the California Supreme Court to conclude that the evidence was sufficient under *Jackson* to support the jury's special circumstance findings.

3. Crimes Against Amy Ryan

Perhaps Petitioner's emptiest argument is that there was insufficient evidence that he raped or sodomized Amy despite her pointed testimony to the contrary. The California Supreme Court denied this claim as follows:

> Defendant contends that the evidence relating to the sexual offenses committed against Amy was insufficient. In fact, however, the evidence

> was abundant. Amy's own testimony, which provided graphic detail of the attack, would have been sufficient by itself. That testimony was corroborated by physical evidence: seminal fluid was found on Amy's slip, bruises and abrasions were found on her body, her perineum was injured and there was much sand in this area, and sand-type particles also were found inside her vagina. In addition to the emergency room physician's testimony voicing the opinion that Amy had been sexually assaulted, and Amy's own testimony to the same effect, the physical evidence clearly was sufficient to support defendant's conviction of the sexual offenses committed against her.

People v. Hart, 20 Cal. 4th at 611-12. It is unnecessary to retread the principles articulated above. Suffice it to say that the state court's analysis and conclusion as it concerned the crimes against Amy Ryan were not remotely contrary to, or unreasonable applications of, clearly established Federal law, and were based upon a reasonable interpretation of the trial facts. 28 U.S.C. § 2254(d). To the extent Petitioner argues that Amy was simply not to be believed, that is not for this Court to decide. *Walters v. Maass*, 45 F.3d 1355, 1358 (9th Cir. 1995) (on federal habeas review, "[t]he reviewing court must respect the province of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts by assuming that the jury resolved all conflicts in a manner that supports the verdict."); *Jackson*, 443 U.S. at 326 (" a federal habeas corpus court faced with a record of historical facts that supports conflicting inferences must presume – even if it does not affirmatively appear in the record – that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.").

The lynchpin of all of Petitioner's arguments is that various charges were not conclusively proven with direct, physical and indisputable evidence, or that alternative scenarios were possible. However, Petitioner did not dispute that he drove both teenage victims to a remote area, and that one of them was killed. Amy Ryan testified that

Petitioner and Harper walked away together, and Petitioner came back alone. Petitioner then hit Amy Ryan on the back of the head with a rock, beat her, sodomized her, forced her to orally copulate him, and raped her using a lubricant. Later, the police found Harper's body naked from the waist down, head brutally beaten into the ground, with scratches, bruises, and lubricant on her thighs. One might imagine any number of scenarios that are theoretically possible – including Petitioner's assertion that Amy Ryan participated in her friend's murder. However, it is clearly established that a jury may draw *reasonable* inferences from trial facts. *Jackson*, 443 U.S. at 319. The jury made a reasonable inference that Petitioner killed Harper, that he either did so with premeditation or during the course of rape, and that he committed the charged sexual offenses against Amy Ryan. The California Supreme Court did not offend *Jackson* by affirming the jury's patently reasonable conclusions. *Cavazos v. Smith*, 565 U.S. at 2.

4. Deference to State Law

Finally, Petitioner's assertion that the state court "articulated the wrong standard regarding felony murder" invites a federal court down a prohibited road. It is not for this Court to question the California Supreme Court's interpretation of California's felony murder principles. *Richey*, 546 U.S. at 76; *McGuire*, 502 U.S. at 67-68. Petitioner attempts to circumvent this principle by citing to *Boyer v. Belleque*, 659 F.3d 957 (9th Cir. 2011). (Traverse at 207.) Specifically, Petitioner refers to *Boyer*'s statement that, in assessing insufficient evidence claims, federal courts look to state law only to establish the elements of the crime. *See Boyer*, 659 F.3d at 965 (*quoting Juan H.*, 408 F.3d at 1278 n.14). Petitioner takes this passage out of context. *Boyer* was addressing an argument brought by the Oregon Attorney General that the *entire analysis* under *Jackson* was a state law issue. *Id.* ("The State argues that the state courts' determination that the evidence was sufficient to prove the crime of attempted aggravated murder under Oregon law is a state-law issue that is not reviewable in a federal habeas proceeding."). The court in *Boyer* was simply explaining that there is a federal component to an insufficient evidence claim; that the state court's legal

analysis under *Jackson* is not entitled to total deference. *Id.* ("To accept the State's argument that sufficiency of the evidence is entirely a state law issue would nullify the federal constitutional prohibition against convicting persons absent proof of guilt beyond a reasonable doubt, a principle firmly established by the United States Supreme Court's precedent."). *Boyer* did not hold that once a federal court extracts the substantive elements of the crimes from state law, the federal court may then question the state court on other issues of state law.

Regardless, Petitioner's argument under state law appears to be incorrect. He claims that the California Supreme Court wrongly articulated the felony murder rule because he committed his crimes during the "*Carlos* window" – the period between the California Supreme Court's decision in *Carlos v. Superior Court*, 35 Cal. 3d 131 (1983), and the court overruling that decision in *People v. Anderson*, 43 Cal. 3d 1104 (1987). (Traverse at 205-06.) During the *Carlos* window, the intent to kill was an element of felony murder special circumstance allegations. *See People v. Friend*, 47 Cal. 4th 1, 57 n.30 (2009); *see also Carlos*, 35 Cal. 3d at 153-54 ("[W]e construe the word 'intentionally' in subdivision (b) of section 190.2 to apply to all defendants – actual killers and accomplices alike – and to require an intent to kill before a defendant is subject to a special circumstance finding under paragraph 17 of that section."). In arguing that the California Supreme Court erred, Petitioner erroneously conflates the elements of the *crime* of felony murder with felony murder special circumstances. Petitioner's jury was instructed correctly, pursuant to *Carlos*, that an element of the felony murder special circumstance allegations was the intent to kill. (26RT at 3484.) But, also consistent with established California law at the time of Petitioner's trial, the trial court instructed the jury that the *crime* of felony murder only required the specific intent to commit the underlying felony. (26RT at 3480-82); *see also People v. Bryant*, 56 Cal. 4th 959, 965 (2013) ("Felony-murder liability does not require an intent to kill, or even implied malice, but merely an intent to commit the underlying felony."); *People v. Cain*, 10 Cal. 4th 1, 36 (1995) (finding that the trial court "correctly instructed the

jury that the intent necessary to find defendant guilty of first degree murder under the felony-murder theory was a specific intent to commit one or more of the felonies underlying the charge" in a case where the crimes were committed in 1986, during the *Carlos* window). The California Supreme Court's decision on direct appeal appears consistent with those instructions and the law.

Claim 19 is DENIED.

Q. Factual Innocence (Claim 20)

Petitioner raises a standalone claim of actual innocence, presumably as to all the charges. In support, he alleges various claims of ineffective assistance of counsel ("IAC"), conflict of interest, prosecutorial misconduct, and trial court error – issues that the Court separately addresses elsewhere in this Order. Petitioner appears to be arguing that the cumulative effect of all those alleged errors was compounded by the insufficiency of evidence, resulting in a miscarriage of justice. (SAP at 293-95; Traverse at 207-09.) The California Supreme Court denied Petitioner's actual innocence claim on state habeas review without substantive comment.

The United States Supreme Court has "not resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence." *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013); *see also Herrera*, 506 U.S. at 400 (actual innocence claims "have never been held to state a Claim for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding. . . . This rule is grounded in the principle that federal habeas courts sit to ensure that individuals are not imprisoned in violation of the Constitution - not to correct errors of fact."); *Gimenez v. Ochoa*, 821 F.3d 1136, 1145 (9th Cir. 2016) (the Ninth Circuit has "only assumed, but ha[s] not held, that petitioners may bring [] a freestanding innocence claim.") (citation omitted). As a result, there is no clearly established Federal law supporting Petitioner's claim; Claim 20 fails under AEDPA on that basis alone. *Van Patten*, 552 U.S. at 125-26.

In *Herrera*, the Supreme Court assumed "for the sake of argument . . . that in a capital case a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim." *Herrera*, 506 U.S. at 417. However, "the threshold showing for such an assumed right would necessarily be extraordinarily high." *Id.* The Court did not discuss the parameters of that showing.

Ensuing Ninth Circuit decisions that have "assumed" the viability of a freestanding actual innocence claim have used the "fundamental miscarriage of justice" standard, also known as the *Schlup*[24/] "gateway" showing.[25/] *Jones v. Taylor*, 763 F.3d 1242, 1246-47 (9th Cir. 2014). Under *Schlup*, a petitioner must proffer new evidence, based on which "it is more likely than not that no reasonable juror would have found [the] petitioner guilty beyond a reasonable doubt." *Id.* at 1247; *House v. Bell*, 547 U.S. 518, 537 (2006); *Schlup*, 513 U.S. at 327. The new evidence must be reliable, and a reviewing court "may consider how the timing of the submission and the likely credibility of the affiants bear on the probable reliability of that evidence." *Schlup*, 513 U.S. at 332; *Lee v. Lampert*, 653 F.3d 929, 937-38 (9th Cir. 2011) ("*Schlup* requires a petitioner 'to support his allegations of constitutional error with new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not presented at trial.'") (*quoting Schlup*, 513 U.S. at 324). "The habeas court then considers all the evidence, old and new, incriminating and exculpatory, admissible at trial or not. . . . On this complete record, the court makes

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[24/] *Schlup v. Delo*, 513 U.S. 298 (1995).

[25/] That standard is normally intended for situations where a strong showing of innocence may overcome certain procedural barriers to have a constitutional claim considered on the merits. *See McQuiggin*, 569 U.S. at 392-94; *see also Herrera*, 506 U.S. at 404 ("The fundamental miscarriage of justice exception is available only where the prisoner *supplements* his constitutional claim with a colorable showing of factual innocence.") (emphasis in original) (citation and internal quotation marks omitted).

a probabilistic determination about what reasonable, properly instructed jurors would do." *Lee*, 653 F.3d at 938 (citations, brackets, and internal quotation marks omitted).

Ultimately, the evidence of innocence must be "so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error." *Schlup*, 513 U.S. at 316. "At a minimum, the petitioner must 'go beyond demonstrating doubt about his guilt, and must affirmatively prove that he is probably innocent.'" *Jones*, 763 F.3d at 1246 (*quoting Carriger*, 132 F.3d at 476).

Petitioner does not make a proffer of new evidence in Claim 20. Instead, he refers to his *Brady* and *Youngblood/Trombetta* claims, and essentially argues that the government is holding his new, verdict-altering evidence. (Traverse at 208.) Petitioner cites no precedent providing habeas relief on a claim of actual innocence where, instead of proffering newly-discovered evidence, the petitioner merely makes reference to evidence he believes was withheld. Petitioner's claim is not in accord with the relevant legal standard. *House*, 547 U.S. at 537; *Schlup*, 513 U.S. at 327.

Furthermore, to the extent Petitioner argues that he never received the opportunity in the state courts to develop his *Brady* and *Youngblood/Trombetta* clams, that is not an issue to be taken up in the analysis of an actual innocence claim. Petitioner otherwise seems to be raising a quasi-cumulative error claim, which the Court also addresses in other sections of this Order.

Based upon the foregoing, Petitioner has fallen far short of demonstrating that "it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt." *Schlup*, 513 U.S. at 327; *House*, 547 U.S. at 537. Put another way, particularly in light of the Court's analysis under *Jackson* in Claim 19, Petitioner has not affirmatively proven that he is probably innocent. *Jones*, 763 F.3d at 1246.

The California Supreme Court's denial of Petitioner's actual innocence claim was reasonable under AEDPA, and Claim 20 is DENIED.

R. Deficient Statutory Notice of Evidence in Aggravation (Claim 22)

Petitioner claims the trial court committed constitutional error by allowing the prosecution to proceed with a statutorily-required "notice of aggravation" that lacked sufficient detail. (SAP at 296-300; Traverse at 209-11.) This claim is not cognizable on federal habeas review. Citing very general due process and right-to-confrontation principles, Petitioner takes issue with the way the California Supreme Court construed a California statute, a matter that is not for this Court to decide.

California Penal Code section 190.3 provides that:

> Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time as determined by the court, prior to trial.

Before Petitioner's trial, the prosecution provided such a notice to comply with section 190.3. That document generally reflected the prosecution's intention to present evidence at the penalty phase regarding the circumstances of crimes Petitioner committed against eight victims: (1) Diane Harper and Amy Ryan; (2) Shelah McMahan; (3) Debra B.; (4) Valerie T.; (5) Priscilla N.; (6) Marilyn S.; (7) Deborah T.; and (8) an unnamed victim whose alleged sexual assault was not ultimately presented. (SAP at 297); *People v. Hart*, 20 Cal. 4th at 638. The defense challenged the document as incomplete because it did not list all of the specific evidence the prosecutor intended to present. The trial court denied the defense motion. *People v. Hart*, 20 Cal. 4th at 638-39.

Petitioner's direct appeal included a challenge to the trial court's ruling. The California Supreme Court denied the claim. The court first noted that it had already repeatedly rejected similar arguments. The court then explained that the purpose of the notice required by section 190.3 "is to advise the accused of the evidence against him so that he may have a reasonable opportunity to prepare a defense at the penalty phase." However, the court clarified that "the prosecutor is not prevented from introducing all

the circumstances of a duly noticed incident or transaction simply because each and every circumstantial fact was not recited therein." Instead, "[t]he notice is sufficient if it gives defendant a reasonable opportunity to prepare a defense to the allegations." Turning to the notice provided by the prosecution in Petitioner's case, the court found that it:

> informed the defense of the names of each one of the women who had been victimized by defendant's sexual assaults, the specific dates on which those assaults took place, and the counties in which the crimes occurred. The notice was filed well before the commencement of the guilt phase proceedings.

The court concluded that the information provided was adequate to satisfy the notice requirement of section 190.3.

Id. at 639 (citations and internal quotation marks omitted).

Petitioner argues that the California Supreme Court's analysis was an arbitrary application of state procedure in violation of his right to due process. The basis of his claim is that *evidence* means *evidence*, and the state high court's "absurd" interpretation of the statutory language stripped away the statute's procedural protections. (Traverse at 210-11); *see also Hicks v. Oklahoma*, 447 U.S. 343, 346-47 (1980).

As the Court has already explained in detail, "a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus." *Richey*, 546 U.S. at 76; *McGuire*, 502 U.S. at 67-68 ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions."). This principle could not apply with more force than it does here; the Court is not deferring to just any state court's interpretation of state law, but the state's high court, the ultimate arbiter of what California statutory law means. *McClung v. Emp. Dev. Dep't*, 34 Cal. 4th 467, 472 (2004) (it is the duty of the California Supreme Court "to state the true meaning of [a] statute finally and

conclusively."); *see also People v. Johnson*, 53 Cal. 4th 519, 527-28 (2012) (decisions of the California Supreme Court are binding upon all California courts).

Petitioner has otherwise not alleged or shown that any decision of the United States Supreme Court confers a right to notice of evidence. *Van Patten*, 552 U.S. at 125-26; *Moses*, 555 F.3d at 754, 758-60; *Turner v. Calderon*, 281 F.3d 851, 867-68 (9th Cir. 2002) (finding no constitutional right to a list of possible prosecution witnesses in penalty phase); *Gray v. Netherland*, 518 U.S. 152, 167-68 ("A defendant's right to notice of the charges against which he must defend is well established. But a defendant's claim that he has a right to notice of the *evidence* that the state plans to use to prove the charges stands on quite a different footing. We have said that the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded.") (italics in original) (citations and internal quotation marks omitted). Petitioner's claim is not cognizable, and his references to broad constitutional principles do not change that conclusion. *Langford*, 110 F.3d at 1389. Claim 22 is DENIED.

S. Denial of Request for Limited Voir Dire (Claim 23)

Petitioner claims the trial court violated due process by denying a defense request to conduct limited voir dire before the penalty phase of trial. The defense sought to question the jury to ensure that none of the jurors had become biased. The defense's concerns focused on Petitioner's absence when the guilt-phase verdicts were read (he requested not to be present), and his having a new attorney represent him in the penalty phase. The trial court denied Petitioner's request for voir dire under state statutory law, finding that he did not show good cause to open questioning of the jurors.(Traverse at 211-14; *see also* 1CT at 167-73; 27RT at 3605-05.)

This claim is also not cognizable on federal habeas review. 28 U.S.C. § 2254(a); *McGuire*, 502 U.S. at 67-68. Petitioner's appeal to general due process principles such as the prohibition against arbitrary or fundamentally unfair proceedings is insufficient to "transform a state law issue into a federal one . . . ." *Langford*, 110 F.3d at 1389; *see also Miller*, 757 F. 2d at 993-94.

The Court otherwise finds that the state court's denial of Petitioner's related claim on direct appeal was not contrary to, or an unreasonable application of, clearly established Supreme Court precedent. 28 U.S.C. § 2254(d).

Claim 23 is DENIED.

T. Challenge to Admission of Facts and Circumstances of Prior Convictions in Penalty Phase (Claim 24)

Petitioner argues that the trial court violated several constitutional principles by allowing victim testimony during the penalty phase of his trial.

1. Background Facts

As evidence in aggravation in the penalty phase, the prosecution first presented the testimony of witnesses Debra B. and Deborah T. Debra B. testified about the details of a 1973 assault and burglary, during which Petitioner broke into her residence and choked her. (30RT at 3832-48.) Deborah T. testified about an instance in 1975 when Petitioner poked his head through a window in her apartment. After the police arrived, the victim discovered that a bedroom window had also been partially opened. (30RT at 3913-19.) Petitioner had been arrested and ultimately pleaded guilty to crimes in both instances. *People v. Hart*, 20 Cal. 4th at 641. The prosecution offered the testimony of Debra B. pursuant to California Penal Code section 190.3(b), which provides that in determining penalty, a jury may consider "[t]he presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence." Deborah T.'s testimony was offered pursuant to the subsequent section, 190.3(c), which provides that in determining penalty, the jury may consider "[t]he presence or absence of any prior felony conviction." *Id.*

2. Analysis

a. Due Process

Petitioner's principal contention is that allowing these victims to testify amounted to re-adjudicating the original cases. He argues that both women testified to facts that

were not part of his plea deals. Petitioner claims that the testimony violated due process, double jeopardy, equal protection, speedy trial rights, and state statutory law. (SAP at 303-13; Traverse at 214-17.) As with some of his previous claims, Petitioner's due process challenge hinges upon his own interpretation of the relevant state statute. Petitioner contends that the statutory aggravating factors in contention here are restricted to "*the fact of the conviction itself*." (Traverse at 215 (emphasis in original).) Therefore, he argues that presenting testimony which included details of the offenses violated the statutory language, added prejudicial and inflammatory facts precluded by the statute, and arbitrarily deprived Petitioner of important state law protections. *See Hicks*, 447 U.S. at 346 ("[A]n arbitrary disregard of the petitioner's right to liberty is a denial of due process of law."). But, the California Supreme Court construed its own statute differently.

On direct appeal, the California Supreme Court denied Petitioner's claim by referencing its prior precedent denying similar claims. *People v. Hart*, 20 Cal. 4th at 641. Although not controlling, that precedent is significant here. The state high court has held that section 190.3(b) allows "[t]he details and circumstances" of qualifying prior crimes as evidence in aggravation, not merely the fact that those convictions occurred. *People v. Cain*, 10 Cal. 4th 1, 71 (1995). That evidence is admissible "even if the defendant was previously prosecuted for the same conduct, so long as the defendant was not acquitted of the offense." *Id.* As for section 190.3(c), the California Supreme Court specifically found in Petitioner's case that the evidence of the crime against Deborah T. "fell squarely within the meaning" of that provision. *People v. Hart*, 20 Cal. 4th at 642.

As before, this Court defers to the California Supreme Court's interpretation of its own state's laws. *Richey*, 546 U.S. at 76; *McGuire*, 502 U.S. at 67-68; *McClung*, 34 Cal. 4th at 472. Further, the state court's interpretation of its statute to include the facts and circumstances of Petitioner's prior crimes in the penalty phase appears consistent with clearly established Federal law. *See Jurek v. Texas*, 428 U.S. 262, 276 (1976)

("What is essential [for a capital sentencing scheme] is that the jury have before it all possible relevant information about the individual defendant whose fate it must determine."); *California v. Ramos*, 463 U.S. 992, 1006 (1983) (holding that California's capital sentencing system "ensures that the jury will have before it information regarding the individual characteristics of the defendant and his offense, including the nature and circumstances of the crime and the defendant's character, background, history, mental condition, and physical condition.") (*citing* Cal. Penal Code § 190.3). In fact, in rejecting constitutional challenges to California's capital sentencing scheme, the United States Supreme Court has explained that section 190.3(b) "is phrased in conventional and understandable terms and rests in large part on a determination whether *certain events occurred*, thus asking the jury to consider matters of historical fact." *Tuilaepa v. California*, 512 U.S. 967, 976 (1994) (emphasis added). There was no violation of clearly established Federal law. Petitioner's due process challenge fails.

b. Double Jeopardy

Petitioner's double jeopardy claim is similarly flawed. It rests on the assumption that Petitioner's guilt of the prior offenses was re-litigated during the penalty phase of his capital trial. Notably, in denying a double jeopardy challenge like the one Petitioner makes here, the California Supreme Court made a significant distinction as it concerns evidence proffered in aggravation. "The defendant is not being tried again, or made subject to punishment or conviction, for the same offense; instead, the evidence is admitted to assist the jury in its determination of the appropriate sentence on the current charge." *Cain*, 10 Cal. 4th at 71. Petitioner fails to cite any Supreme Court cases rebutting the California Supreme Court's conclusion. Penalty phase proceedings are not a retrial on criminal charges. *See Deck*, 544 U.S. at 632 (the presumption of innocence no longer applies in the penalty phase of a bifurcated trial); *see also Betterman v. Montana*, ___ U.S. ___, 136 S. Ct. 1609, 1616 (2016) ("[F]actual disputes, if any there be, at sentencing, do not go to the question of guilt; they are geared, instead,

to ascertaining the proper sentence . . . ."). Petitioner fails to show an entitlement to relief under AEDPA based on his double jeopardy claim.

c. Equal Protection

Petitioner's equal protection claim also fails. The Equal Protection Clause of the Fourteenth Amendment commands that no "State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). However, mere allegations of different treatment do not establish an equal protection violation. *See McQueary v. Blodgett*, 924 F.2d 829, 835 (9th Cir. 1991) ("[T]he Constitution does not require *identical* treatment. There must be an allegation of invidiousness or illegitimacy in the statutory scheme before a cognizable claim arises: it is a 'settled rule that the Fourteenth Amendment guarantees equal laws, not equal results.'") (emphasis in original) (*quoting Personnel Adm'r v. Feeney*, 442 U.S. 256, 273 (1979)). Additionally, only if the statute at issue affects a "suspect class" or "burdens the exercise of a constitutional right, then courts must apply [a] strict scrutiny" analysis. *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir. 2001). Otherwise, rational basis review applies. *Id.*

> To survive rational basis review, a statute must be rationally related to a legitimate government purpose. Using such rational-basis review, a statute is presumed constitutional, and the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it. We are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends.

Dent v. Sessions, 900 F.3d 1075, 1082 (9th Cir. 2018) (citations and internal quotation marks omitted).

Petitioner argues that interpreting section 190.3 so broadly, as to include the facts and circumstances of the crimes proffered in aggravation, subjects capital defendants as a class to different treatment from non-capital defendants. He cites to *People v. Guerrero*, 44 Cal. 3d 343, 355 (1988), for the proposition that in non-capital cases, courts are confined "to the record of the conviction – but no further" in using prior convictions to enhance a sentence. (Traverse at 216.)

Petitioner has not alleged "invidiousness or illegitimacy" in the capital statutory scheme. He certainly points out a hypothetical difference: California does have recidivist provisions that allow for enhanced sentences based solely on the fact that certain qualifying prior felonies were committed or prison terms served. *See* Cal Penal Code §§ 667, 667.5, 1170.12. However, these provisions serve different purposes than California's capital sentencing scheme. For example, the purpose behind California's Three Strikes law is "to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses." Cal. Penal Code § 667(b). It is precisely the *fact* of certain prior felony offenses that the California legislature sought to trigger a harsher punishment. *See Ewing v. California*, 538 U.S. 11, 28 (2003)("[T]he State of California has a reasonable basis for believing that dramatically enhanced sentences for habitual felons advances the goals of its criminal justice system in [a] substantial way."). That legislative goal is quite different from the aim of constitutionally valid capital sentencing proceedings, for which the evidence seeks to ensure that "the jury ha[s] before it all possible relevant information about the individual defendant whose fate it must determine." *Jurek*, 428 U.S. at 276. The different treatment Petitioner points to here is not invidious or illegitimate, but rationally serves very different goals. *McQueary*, 924 F.2d at 835. Thus, Petitioner fails to set forth a cognizable equal protection claim. Further, even if he did get past that initial hurdle, Petitioner does not allege that death penalty defendants as a class are subject to a heightened level of scrutiny under equal protection principles. For the same reasons articulated above, the

Court also finds that the alleged difference in treatment between capital and noncapital defendants here – even assuming an imperfect fit between means and ends – is certainly rationally related to legitimate government purposes. *Dent*, 900 F.3d at 1082.

d. Speedy Trial Rights

Petitioner's allegation that his right to a speedy trial was violated fails for slightly different reasons. To the extent Petitioner argues that certain facts surrounding his prior crimes were being litigated for the first time during the penalty phase of his capital trial, he had no speedy trial right. *Betterman*, 136 S. Ct. at 1618 ("The Sixth Amendment speedy trial right, . . . does not extend beyond conviction, which terminates the presumption of innocence."). Moreover, to the extent he somehow traces the speedy trial issue back to the convictions in the original cases, his claim is foreclosed by *Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394 (2001). In *Coss*, the Supreme Court held that "once a state conviction is no longer open to direct or collateral attack in its own right because the defendant failed to pursue those remedies while they were available (or because the defendant did so unsuccessfully), the conviction may be regarded as conclusively valid," and that "[i]f that conviction is later used to enhance a criminal sentence, the defendant generally may not challenge the enhanced sentence through a petition under § 2254 on the ground that the prior conviction was unconstitutionally obtained." *Id.* at 403-04. Petitioner has no speedy trial right available in this proceeding as it concerns the crimes used in aggravation at the penalty phase of his capital trial.

Based upon the foregoing, Claim 24 is DENIED.

U. Improper Admission of Unadjudicated Offenses in Penalty Phase (Claim 25)

Petitioner next claims that the trial court committed constitutional error by allowing the prosecution to present four unadjudicated offenses in aggravation during the penalty phase. (SAP at 313-15; Traverse at 218.)

The Supreme Court has expressly found it constitutional when "[s]entencing courts have not only taken into consideration a defendant's prior convictions, but have also considered a defendant's past criminal behavior, even if no conviction resulted from that behavior." *Nichols v. United States*, 511 U.S. 738, 747 (1994). California's capital sentencing scheme affirmatively allows the presentation of unadjudicated prior offenses involving the use or attempted use of force or violence. *See* Cal. Penal Code § 190.3 ("As used in this section, criminal activity does not require a conviction."). Petitioner, however, argues that the unadjudicated offenses proffered in the penalty phase of his trial were allegedly committed too long ago and that the statute of limitations had run on them. He contends it is "unconstitutional for a state to use prior crimes as aggravation evidence for which the statute of limitations has passed." Petitioner relies on *Dickey v. Florida*, 398 U.S. 30 (1972), for his proposition. Petitioner also claims generally that the remoteness of the prior unadjudicated offenses rendered the evidence about them too unreliable for a capital penalty proceeding. (SAP at 313-15; Traverse at 218.)

The California Supreme Court denied Petitioner's challenge on direct appeal, citing to state law which provided that neither the expiration of the statute of limitations nor remoteness in time was a basis for excluding evidence in aggravation. *People v. Hart*, 20 Cal. 4th at 642. The state court decision does not run afoul of any clearly established Federal law.

In *Dickey*, the prosecution failed to bring a criminal defendant to trial for nearly eight years. The prosecution cited no reason for the delay aside from convenience. During the delay two witnesses died, another became unavailable, and police records were lost. The Court found a violation of the defendant's right to a speedy trial. *Dickey*, 398 U.S. at 37-38. As this Court discussed above, Petitioner's penalty phase was not a retrial on any of the circumstances in aggravation; all related evidence was admitted solely to "assist the jury in its determination of the appropriate sentence on the current charge." *Cain*, 10 Cal. 4th at 71. As the presumption of innocence had

terminated upon Petitioner's convictions in the guilt phase, Petitioner had no constitutional speedy trial right in the penalty phase. *Betterman*, 136 S. Ct. at 1618.

Petitioner has otherwise not pointed to anything in the record indicating that the passage of time rendered the evidence of his unadjudicated offenses inherently unreliable, or that the presentation of that evidence during the penalty phase rendered his sentencing proceeding fundamentally unfair. *See Ford v. Wainwright*, 477 U.S. 399, 411 (1986); *see also Betterman*, 136 S. Ct. at 1617.

Claim 25 is DENIED.

V. *Miranda* Issue in Penalty Phase (Claim 26)

Next, Petitioner argues that his confessions to four prior crimes proffered in aggravation during the penalty phase were obtained in violation of his *Miranda* rights. (SAP at 315-19; Traverse at 219-24.) The California Supreme Court denied this claim in a reasoned decision on direct review. *People v. Hart*, 20 Cal. 4th at 642-43.

As the facts giving rise to Petitioner's *Miranda* claim are not in dispute, this Court quotes the California Supreme Court's recitation of the facts as follows:

> On March 5, 1975, as part of the investigation into the incident involving Deborah T., Imperial Beach Police Officer Charles Hamilton informed defendant of his rights under *Miranda v. Arizona*, [384 U.S. 436 (1966)], and upon obtaining defendant's waiver, proceeded to ask defendant certain questions involving the matter. Defendant denied having been near the victim's window. After the interview concluded, Hamilton learned that a fingerprint expert had matched defendant's fingerprints to those found on Deborah T.'s window.
>
> The following morning, Hamilton visited defendant at Ream Field, the naval facility where defendant was stationed, and reread defendant his *Miranda* rights. Defendant said that he understood those rights, and asked: "I have the right to an attorney?" Hamilton responded affirmatively. When defendant asked, "What if I can't afford one?,"

> Hamilton replied, "Then the court will appoint you one." Defendant thereafter asked whether the legal officer of the naval base could serve as his attorney. A naval investigator informed defendant that such an officer could not represent defendant in a civilian court of law. Defendant asked Hamilton whether he was going to be arrested. Hamilton responded affirmatively, informing defendant that approximately four hours would be required to obtain an arrest warrant. Defendant responded: "Okay, I'll talk to you, what do you want to talk about?" He thereafter described his involvement in other attacks upon women.
>
> At trial, defendant objected to the introduction of evidence pertaining to his confession to the unadjudicated offenses, on the ground that the foregoing colloquy evidenced defendant's invocation of his right not to speak with Hamilton. The trial court denied the challenge.

People v. Hart, 20 Cal. 4th at 642-43; (*see also* RT at 3709-21; SAP at 316-18).

It is clearly established that, in the context of *Miranda* warnings, both the right to remain silent and to counsel must be invoked unambiguously. *Berghuis v. Thompkins*, 560 U.S. 370, 381-82 (2010) (right to silence); *Davis v. United States*, 512 U.S. 452, 459 (1994) (right to counsel). "An invocation is unambiguous if the accused 'articulate[s] his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.'" *Petrocelli v. Baker*, 869 F.3d 710, 723 (9th Cir. 2017) (quoting *Davis*, 512 U.S. at 459). An ambiguous or equivocal reference to an attorney does not invoke the right to counsel. *See Davis*, 512 U.S. at 459-62 ("Maybe I should talk to a lawyer" was not a request for counsel requiring that police questioning cease); *Petrocelli*, 869 F.3d at 723 ("I'd sort of like to know what my . . . lawyer wants me to do" was not a request for counsel requiring immediate cessation of questioning).

The lynchpin of Petitioner's *Miranda* claim – in the state courts and now here – is that his inquiry about whether a naval officer could represent him functioned to

invoke his right to an attorney. The state court concluded otherwise. *People v. Hart*, 20 Cal. 4th at 643. As this Court has made clear, its review of the state court's decision is stringently limited to determining whether that court drew an objectively unreasonable conclusion under *Miranda* and its progeny. *Richter*, 562 U.S. at 101; *LeBlanc*, 137 S. Ct. at 1728. It is clear the state court did not act so irrationally. Petitioner, of course, has his own interpretation of what his words meant, but that is not this Court's concern. It is patently reasonable to conclude that, at the time of questioning, Petitioner was merely inquiring as to whether he could be represented by a military lawyer. The police officer expressly informed Petitioner that he had the right to have a lawyer, and that an attorney would be appointed for him if he could not afford to hire one. Petitioner expressed no desire for that alternative, but instead communicated his desire to cooperate and answer questions after learning that a naval base lawyer was not available to him. On these facts, it was reasonable for the state court to conclude that there was no invocation of the right to counsel. *Davis*, 512 U.S. at 459; *Petrocelli*, 869 F.3d at 723; *see also Thompkins*, 560 U.S. at 386 (answering questions is a "course of conduct indicating waiver" of the right to remain silent).

Claim 26 is DENIED.

W. Claims Involving Shelah McMahan's Murder (Claim 27)

Petitioner makes several challenges to the penalty-phase evidence presented in aggravation involving the uncharged murder of his niece, Shelah McMahan.

1. Background Facts

At the penalty phase of Petitioner's trial, the prosecution presented several witnesses and other evidence to prove that Petitioner committed the grisly murder of his eleven-year-old niece less than a week before his arrest in the capital case. That evidence is discussed in detail below.

a. Prosecution Evidence

Petitioner's mother-in-law, Carol Widney, testified about the family's living arrangements at the time that her granddaughter, Shelah McMahan, was killed.

Specifically, Widney and her husband lived in a house. Shelah's mother, boyfriend, and younger siblings lived in a trailer located in the backyard. Shelah occupied two rooms in her grandparents' house, but she occasionally slept in her family's trailer with her siblings. Petitioner and his wife lived in a mobile home located on a property two doors down. (32RT at 4062-65.) The couple did not have a phone so it was customary for them to come over to Widney's house to make calls. (32RT at 4068.)

Carol Widney was very close with her granddaughter. (32RT at 4066, 4087-88.) Widney viewed Shelah as a responsible child who never left suddenly or without notice. (32RT at 4075, 4086.) On May 2, 1986 (a Friday), Shelah missed school due to a cold. She spent the day in and around the house, doing laundry, watching television, and occasionally checking in on her grandmother, who had minor surgery that morning. (32RT at 4072-75.) That night, Shelah went to bed on a sofa in the family room of the house, which she often did on Friday nights. After midnight, just before Carol Widney went to bed, she saw Shelah lying on the sofa watching television. (32RT at 4076-78.) Shelah was wearing a t-shirt and sweat pants. (32RT at 4078-79.)

The next morning at 7 a.m., Carol Widney found Shelah's pillow and blankets on the floor, but Shelah was gone. (32RT at 4081-82, 4086.) Carol Widney testified that the front door to the residence was locked overnight, but sliding glass doors in the back of the house were left unlocked so family members living on the property could get in and out. (32RT at 4084-85.) Carol Widney and her husband had a dog that barked only at strangers to the household. (32RT at 4091-92.) The dog was hostile enough to strangers that Kenneth Widney, Carol's husband, testified that he was "positive that no one would come in our yard with the dog there" without permission. (33RT at 4281.) There was also a shed on the property. A police officer previously lived on the property and still had police gear stored in that shed. (32RT at 4094-95.)

Debora Carco, a family friend who lived with the Widneys, testified that she also saw Shelah on the family room sofa. Carco was up very late, and saw Shelah asleep.

Carco turned off the television. Carco woke up between 6:30 and 7:00 a.m. the next morning and Shelah was gone. (32RT at 4160.)

A police report reflected that Petitioner told Carol Widney that he entered the house early in the morning on May 3, 1986, and saw Shelah sleeping on the family room sofa. (32RT at 4153.) Another family member, Roy Widney, recalled Petitioner saying that he entered the house around 4:00 a.m., and that he did not notice one way or another whether Shelah was there. (33RT at 4350.) Roy Widney also testified that, in the days following Shelah's murder, he saw Petitioner using a small tractor on his property "doing some grading." Roy asked Petitioner what he was doing, and Petitioner responded that he "was just doing some landscaping grading work." (33RT at 4351.)

Shelah's body was discovered on the late morning of May 3, 1986, approximately one to two miles away from the Widney residence. (32RT at 4173, 4176.) The body was in a vacant road area filled with trash and old mattresses. (32RT at 4177, 4189.) Shelah's body was face down under a rock, partially covered with a brown trash bag. (32RT at 4178-79, 4200.) A mattress had been wedged between the rock and the body to cover it up. (32RT at 4198.) Other trash bags full of debris and pieces of trash had been placed adjacent to the body to keep it hidden. (32RT at 4199, 4217.) Shelah's shirt was torn and pulled down below her breast area. (32RT at 4200, 4203.) Her hands were tied behind her back with a black plastic cable tie. (32RT at 4200-02; 33RT at 4258; 36RT at 4639.) A strip of grey molding from a window screen was wrapped around her neck. (35RT at 4480-81.) She was wearing grey sweat pants. (32RT at 4204.) Carpet fibers were found in one of Shelah's hands, which were never matched to any other evidence. (32RT at 4222-25; 37RT at 4698-99.) The pillow she had been sleeping on was also found with her body. (32RT at 4077-78; 33RT at 4261-62.) Shelah's autopsy revealed multiple stab wounds to her neck, one of which was fatal. (32RT at 4209-10; 36RT at 4638, 4641-43.)

In June 1986, Kenneth Widney found handcuffs in a makeshift shed on Petitioner's property. (33RT at 4262-63, 4276-77.) During an earlier search of Petitioner's property, a detective found a key to the handcuffs and a key holder near the partially-burnt shoes that were admitted during the guilt phase. (33RT at 4300-02.) The handcuffs contained small flakes of blood which were consistent with Shelah's blood type. (35RT at 4506-08.) A police officer positively identified the handcuffs as a pair he had given or sold to the officer who once lived on the Widney property and still had items stored there. (35RT at 4517.) In a corner of Petitioner's bedroom, a detective also found a plastic bag. Inside the bag they found a black plastic cable tie. (33RT at 4303, 4309.) More cable ties were found outside on Petitioner's property. (33RT at 4321-22.) A detective also found additional handcuffs buried in freshly-turned soil inside Petitioner's shed. (33RT at 4304-05, 4307-08.)

A forensic analysis concluded that two fibers found on Shelah McMahan's t-shirt were similar to rug fibers found inside Petitioner's Mustang. (34RT at 4383; 35RT at 4463-64.) Dog hair found on Shelah's clothing was similar to dog hair found in Petitioner's Mustang, as well as the hair type of Petitioner's dog. (35RT at 4488.) One pair of handcuffs found on Petitioner's property also contained a fiber that was similar to the fibers that composed Shelah's t-shirt. (34RT at 4384.) Through experimentation, a criminalist determined that indentations made by the handcuffs were similar to indentations shown on Shelah's wrist in autopsy photographs. (34RT at 4392-94.) The criminalist also compared the black cable tie found in Petitioner's bedroom with the cable ties that bound Shelah's wrists, and determined that they were the same length, same width, were made by the same manufacturer, and were the same line of cable ties made by that manufacturer. (34RT at 4397-99, 4403-04.) An unidentified seminal stain was found on the back of Shelah's sweat pants. (34RT at 4404, 4406; 35RT at 4477.)

Randall Gresham, a state prisoner, testified for the prosecution in the penalty phase of trial. (36RT at 4531-32.) In May 1986, Gresham was placed in a segregation

cell with Petitioner and one other person, Kevin Warp, in the Riverside County Jail. (36RT at 4532-33.) Gresham shared a cell with Petitioner for approximately one month. (36RT at 4533.) During that time, Gresham and Petitioner "had many conversations" about their criminal cases. (36RT at 4534-35, 4545.) Petitioner told Gresham that he killed his eleven-year-old niece. (36RT at 4535.) He claimed to have done so because he had told her about his prior crimes and had sexual conversations with her. He was afraid she would tell family members about that. He regretted killing her because he liked her. (36RT at 4546-48.) Petitioner told Gresham that killing was "easier after you'd done it." (36RT at 4549.)

Petitioner said that his niece was physically more developed than an eleven-year-old and "built a lot sexier." (36RT at 4535.) Petitioner told Gresham that he lived near his niece and had access to her house. He said that he entered the house while she was sleeping and told her he wanted to go outside to talk to her. (36RT at 4536-37.) Petitioner never told Gresham how he killed Shelah, but he did occasionally make stabbing motions acting the killing out, at times when joking about it with Warp. (36RT at 4537-39.) Petitioner told Gresham that he did not admit the murder to his family. (36RT at 4539.) When watching television in the cell, Petitioner would compare the bodies of females on the screen with his niece's body. (36RT at 4540.) Petitioner expressed concerns after getting off the phone with his wife that the police were searching his backyard. He was particularly worried that they might find a steak knife and a piece of carpet with blood on it that he left there. (36RT at 4540-41.) Petitioner told Gresham that prior to his arrest he used his father-in-law's small tractor to move soil around in his backyard. (36RT at 4541-42.) Petitioner also told Gresham that he had three sets of handcuffs and had lost a handcuff key in his back yard. (36RT at 4542.) Additionally, Petitioner told Gresham he dropped Shelah McMahan's body off "at a dumping area." (36RT at 4545.) Petitioner mulled the idea of blaming a "guy named Andy that was a speed head out there that was always going crazy" on Shelah's murder. (36RT at 4545-46.)

b. Defense Evidence

A coworker of Petitioner's testified that he worked late into the night with Petitioner at a job site on a Friday night. Petitioner also called the coworker early the next morning before 8 a.m. The coworker did not recall the date that these events occurred. (38RT at 4752-54, 4756-57, 4758-59.) However, the defense put into evidence a phone bill for the Widney residence that showed a phone call to Petitioner's coworker at approximately 6:55 a.m. on May 3, 1986. (38RT at 4762-64; 41RT at 5179, 5226.)

Although the coworker could not specifically remember during his testimony what time he and Petitioner finished and left the job site, he had previously told detectives that they finished by 1:30 a.m. (38RT at 4758.) Petitioner rejoined the coworker at the job site the next morning around 10 or 11 a.m. Petitioner was there with his wife and children, and "they were planning on going to the lake" after the men finished moving some sprinklers at the job site. (38RT at 4760.)

Carol Widney and a detective were also called by the defense. They testified that Widney was shown a photograph of a bed sheet that was bunched up over the lower portion of Shelah's body when it was found. Widney did not recognize that bed sheet as one that had come from her house. (38RT at 4766-67, 4770-73.) The detective also testified that other cable ties were found at the location where Shelah's body was discovered. He additionally testified that a search of the area where Petitioner had been turning over soil with a tractor revealed no evidence relevant to the McMahan homicide. Lastly, the detective testified that the travel time between Petitioner's residence and his job site was approximately forty to forty-seven minutes. (38RT at 4774-78.)

Petitioner's wife, Linda Hart, testified that she usually drove their brown Toyota and Petitioner drove the Mustang. But, the couple occasionally traded off, and whenever the family went somewhere together they drove the Mustang. (38RT at 4790.) Linda Hart also testified that Petitioner had a daughter from a previous

marriage, and that his daughter was close friends with Shelah and spent a lot of time with her. (38RT at 4790-92.) As a result of that friendship, Shelah accompanied the Hart family on various outings in the Mustang. (38RT at 4792-93.) Linda Hart testified that the Widney family and her family often gathered in the family room of the Widney house. Both the Harts's and Widney's dogs were often present with them. (38RT at 4793-96.)

Linda also corroborated the coworker's testimony that Petitioner went to a job site at night on Friday, May 2, 1986. (38RT at 4796-98.) Linda did not recall what time Petitioner left for work, but she remembered going to bed and waking up at 2:30 a.m. Petitioner was not home. (38RT at 4798-4800.) At approximately 4 a.m., Petitioner woke Linda up and said he was home. (38RT at 4800.) Petitioner was wearing the same clothes he wore to work, and Linda did not see anything like blood on them. (38RT at 4802-03.) After some time passed, Linda fell asleep again. At some point after it was light out, Petitioner woke her up again. He was then with her and their children the entire day, traveling to his job site and then to Lake Perris. (38RT at 4804-06.) At some point after Shelah went missing, Petitioner and Linda joined the entire Widney family at the Widney residence. Linda heard Petitioner say that he got home from work at 4 a.m., had not seen anything strange on the streets, and that he went over to the Widney house at 7 a.m. to make a phone call. (38RT at 4810.) Linda also testified that her husband had been working on a long-term grading project in their back yard. (38RT at 4811.)

The defense also called Shelah's mother (and Linda Hart's sister), Paula McMahan, to testify. Paula testified that many people came and went from the Widney property; mostly friends of her brother's and another man living there at the time, Bobby Asendorf. (39RT at 4859-60.) The Widney residence was not usually locked at night. (39RT at 4861.) Paula had seen cable ties around the Widney property. (39RT at 4861-62.) Paula testified that Shelah had a fairly normal niece-uncle relationship with Petitioner. Shelah was not extremely close to Petitioner, but mostly

liked him except when he would argue with her mother. (39RT at 4864.) Shelah did not appear fearful of Petitioner, and she spent a lot of time at the Hart residence playing with Petitioner's daughters. (39RT at 4865-67.) Petitioner's dog came over to the Widney property often, including into the trailer where Paula stayed with her boyfriend. Shelah played with the Harts' dog often. (39RT at 4867.) Paula also testified that, contrary to Carol Widney's account, on the Friday evening before Shelah went missing, Shelah was in the trailer for an extended period and only left to sleep inside the residence when it became too cold. (39RT at 4868.) Additionally, Paula testified that two days before Shelah died, Petitioner had given Shelah and a friend a ride to the store in his Mustang. (39RT at 4871.)

Lastly, the defense called Steven Widney, Paula and Linda'a brother. Steven testified that he lived on the Widney property for a period of time, worked with black cable ties, and brought many of them home. They were left around the property. (39RT at 4990-96.)

In the prosecution's rebuttal case, an officer testified that Linda told him Petitioner's primary car was the Mustang, and that she never drove the vehicle. (40RT at 5080.)

2. Claims and Analysis

a. Admissibility of McMahan Evidence

Petitioner first argues that evidence of Shelah McMahan's murder was inadmissible in the penalty phase. The prosecution offered the evidence under California Penal Code section 190.3(b), criminal activity involving the use or attempted use of force or violence. Petitioner argues that state law prohibits the admission of felony convictions in the penalty phase unless those crimes *preceded* the commission of the capital crimes. By admitting the McMahan evidence in the penalty phase without first trying Petitioner for McMahan's murder, the prosecution ostensibly made an improper end-run around California law. (SAP at 320-21; Traverse at 232-33.) Petitioner's overriding concern seems to be that the prosecutor was essentially

permitted to mount a separate murder prosecution in the penalty phase. (*See* SAP at 321 ("Here, the jury heard a murder trial within a murder trial . . . Mr. Hart was an accused standing trial for a separate murder before a jury that had already found him guilty of a first degree murder, but with none of the safeguards to which an accused is entitled.").)

The California Supreme Court had a different interpretation of state law. On direct appeal, the state high court rejected Petitioner's statutory claim by referring to its prior precedent. *People v. Hart*, 20 Cal. 4th at 648-49. In that prior precedent, the California Supreme Court found "no legislative intent to limit the penalty phase evidence to forceful or violent criminal activity which preceded the charged offense." *People v. Hovey*, 44 Cal. 3d 543, 578 (1988); *see also People v. Balderas*, 41 Cal. 3d 144, 202 (1985) ("Subdivision (b) allows in *all* evidence of *violent* criminality to show defendant's propensity for violence.") (italics in original). As with Petitioner's other non-cognizable claims, he has again taken issue with an interpretation by the state's highest court on an issue of state law. That is not for this Court to decide. *Richey*, 546 U.S. at 76; *McGuire*, 502 U.S. at 67-68.

Petitioner attempts to federalize this claim by arguing that allowing the prosecutor to subvert a subsection of the capital sentencing scheme renders the statute arbitrary. *See Gregg v. Georgia*, 428 U.S. 153, 189 (1976) ("[W]here discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action."). The Court disagrees. The state supreme court merely construed the statute's meaning differently than Petitioner did. The court did not permit the prosecutor to bypass any part of the statute. As to the "murder trial within a murder trial," Petitioner only establishes that his penalty phase was unconventional. Petitioner fails to show that the admission of the McMahan evidence rendered the capital punishment statute overly

broad or applied it arbitrarily in violation of due process. Petitioner's subclaim fails here.

b. Sufficiency of McMahan Evidence

The Court has already discussed in detail the *Jackson* standard, and AEDPA's doubly-deferential review of a state court's application of that standard. There is no need to reiterate it at length here, particularly in light of the detailed penalty-phase evidence articulated above. The prosecution presented ample evidence linking Petitioner to Shelah McMahan's murder. Petitioner was the girl's uncle, lived two lots away, and had convenient access to the girl's sleeping area. There was no evidence of a struggle and no one heard the Widney's dog bark, a persuasive indication that the perpetrator was familiar and lured Shelah out of bed. Petitioner admitted to being in the house during the early morning hours when the girl went missing.

A sheriff's detective found a cable tie identical to the ties used to bind the victim's wrists, not only on Petitioner's property, but inside a shopping bag in his bedroom. Handcuffs found on Petitioner's property matched markings on the victim's wrist, contained blood flakes consistent with the victim's blood type, and had a fiber on them that was similar to the fibers that composed the victim's t-shirt. A handcuff key and holder were also found in the area where it appeared Petitioner was trying to incinerate evidence. Fibers found on the victim's shirt were similar to fibers found in Petitioner's Mustang. A cell mate of Petitioner's testified not only that Petitioner confessed to killing Shelah, but that Petitioner also told him other facts connecting Petitioner to Shelah's murder: the victim's age and physical build; Petitioner's sexual attraction to her; Petitioner's motive for killing her; Petitioner's easy access to her sleeping area; Petitioner luring her out of bed; Petitioner stabbing her; Petitioner leaving her body "at a dumping area"; Petitioner mulling the idea of blaming a third party for the killing. Petitioner unquestionably takes issue with the value and legitimacy of much of this evidence, and his lawyer did an exceptional job of challenging it on cross-examination. But, that is not relevant to the Court's analysis

here. As to whether all of this evidence was minimally *sufficient* under the Constitution – that is, whether any rational jury could have concluded that Petitioner was the perpetrator – it is clear that it was. *Jackson*, 443 U.S. at 319; *Lucero*, 902 F.3d at 990; *Johnson*, 566 U.S. at 656 ("[T]he only question under *Jackson* is whether [the jury's] finding was so insupportable as to fall below the threshold of bare rationality.").

Petitioner also complains that "the [California Supreme Court] never mentioned any evidence establishing the requisite intent to kill." (Traverse at 231.) Petitioner's contention ignores the powerful circumstantial evidence, which certainly was discussed by the California Supreme Court, that the victim was woken up by her killer, lured to another location, and brutally and repeatedly stabbed. Petitioner also admitted to a cell mate that he killed Shelah to keep her from telling her family about his other crimes. *See People v. Stitely*, 35 Cal. 4th 514, 543 (2005) (in California, reviewing courts look to circumstantial evidence showing motive, planning activity, and manner of killing to determine the sufficiency of evidence of premeditation). Petitioner otherwise seeks to re-examine the credibility of the evidence against him and cast a different narrative as to what conclusions should be drawn from it. (SAP at 321-25.) That is not a component of the *Jackson* analysis. *Jackson*, 443 U.S. at 319, 326; *Cavazos v. Smith*, 565 U.S. at 2; *McDaniel*, 558 U.S. at 133; *Bruce*, 376 F.3d at 957; *Schlup*, 513 U.S. at 330. The California Supreme Court did not unreasonably apply *Jackson* in determining that the evidence was sufficient here. *People v. Hart*, 20 Cal. 4th at 649-50; *Johnson*, 566 U.S. at 651; *Emery*, 604 F.3d at 1111 n.7; *Juan H.*, 408 F.3d at 1274-75.

c. Admission of McMahan Evidence Without a Hearing

Petitioner argues very generally that the evidence of Shelah McMahan's murder was so unreliable that the trial court should have granted a defense motion for a pretrial hearing, either before an advisory jury or the court, before admitting it. (SAP at 325-29; Traverse at 225-28.) Petitioner does not make more than a drive-by mention of federal law. (SAP at 327-29; Traverse at 225.) While Petitioner does a thorough job

of summarizing his trial attorney's exceptional advocacy in arguing this issue, Petitioner fails to articulate a federal claim. The state court's denial of this claim under state law did not unreasonably apply any clearly-established Supreme Court precedent, as AEDPA requires. 28 U.S.C. § 2254(d)(1); *Richey*, 546 U.S. at 76; *McGuire*, 502 U.S. at 67-68.

d. Failure To Require Jury Unanimity on McMahan Evidence

Petitioner also claims his constitutional rights were violated because the trial court failed to instruct the jury that they were specifically and unanimously required to find that Petitioner was guilty of murdering Shelah McMahan before imposing the death penalty. (Traverse at 228-30.) Petitioner's claim essentially criticizes the state court's conclusion that "the jury need not have unanimously agreed that the prosecution met its burden of proof as to the 'other crimes' evidence before a single juror could consider that evidence." *People v. Hart*, 20 Cal. 4th at 649. Petitioner's argument lacks merit.

Petitioner's jury was instructed with former CALJIC No. 8.84.1 (1986 rev.) (renumbered as CALJIC No. 8.85), which provided that "[i]n determining which penalty is to be imposed on defendant, you shall consider all of the evidence which has been received during any part of the trial in this case, except as you may be hereafter instructed." The instruction then listed the enumerated aggravating and mitigating factors provided in California Penal Code section 190.3, and directed jurors to "consider, take into account and be guided by the following factors, if applicable." (41RT at 5266-68.)

The jury was also given California's then-standard concluding instruction in death penalty cases (former CALJIC No. 8.84.2 (1986 rev.)).[26] That instruction discussed the jury's weighing of aggravating and mitigating factors as follows:

> It is now your duty to determine which of the two penalties, death or confinement in the state prison for life without possibility of parole, shall be imposed on defendant.
>
> After having heard all the evidence, and after having heard and considered the arguments of counsel, you shall consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances upon which you have been instructed.
>
> The weighing of aggravating and mitigating . . . circumstances does not mean a mere mechanical counting of factors on each side of an imaginary scale, or the arbitrary assignments of weights to any of them. You are free to assign whatever moral or sympathetic value you deem appropriate to each and all of the various factors you are permitted to consider.
>
> In weighing the various circumstances you simply determine under the relevant evidence which penalty is justified and appropriate by considering the totality . . . of the aggravating circumstances with the totality of the mitigating circumstances.
>
> To return a judgment of death, each of you must be persuaded that the aggravating circumstances are so substantial in comparison with the mitigating circumstances that it warrants death instead of life without parole.

(41RT at 5269-70.)

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[26] The current version of the instruction (CALJIC No. 8.88) uses substantially similar language despite various revisions in the years since Petitioner's trial.

Additionally, Petitioner's jury was instructed as follows regarding the consideration of other criminal acts:

> Evidence has been introduced for the purpose of showing that the defendant has committed criminal acts which involved the express or implied use of force or violence or the threat of force or violence. Before you may consider any of such criminal acts as an aggravating circumstance in this case, you must first be satisfied beyond a reasonable doubt that the defendant did in fact commit such acts.

(41RT at 5268.)

Finally, Petitioner's jury was given a general unanimity instruction. (41RT at 5270) ("In order to make a determination as to penalty, all 12 jurors must agree.").

Petitioner fails to show that the instructions as given were constitutionally inadequate. *See Smith v. Spisak*, 558 U.S. 139, 148 (2010) (state court reasonably upheld under AEDPA penalty phase jury instructions that "focused only on the overall balancing question" of aggravating and mitigating factors); *see also Boyde v. California*, 494 U.S. at 386 (rejecting Eighth and Fourteenth Amendment challenges to former CALJIC Nos. 8.84.1 and 8.84.2); *Clemons v. Mississippi*, 494 U.S. 738, 746 (1990) ("[T]he Sixth Amendment does not require that a jury specify the aggravating factors that permit the imposition of capital punishment."). Petitioner has not cited any clearly established Supreme Court precedent requiring the additional instructions he sets forth here, and the Court is unaware of any. *See Van Patten*, 552 U.S. at 125-26. This subclaim also fails.

e. Failure to Grant Immunity to Testify

Petitioner challenges the trial court's denial of his motion for use immunity. The defense requested that Petitioner be permitted to testify in response to the McMahan evidence without that testimony later being used against him. (SAP at 329-30; Traverse at 233.) Petitioner reasons that he "faced a dubious choice" because he was

forced to choose between two constitutional rights: the right to testify, and the right to remain silent if he was later tried for the murder of his niece. (SAP at 329.)

The California Supreme Court denied Petitioner's claim by citing prior state and federal precedent. *People v. Hart*, 20 Cal. 4th at 650. Notably, the state court cited *McGautha v. California*, 402 U.S. 183 (1971), *vacated on other grounds*, 408 U.S. 941 (1972). In that case, the United States Supreme Court denied an identical claim as it concerned unitary capital trials. The High Court concluded that:

> [t]he criminal process, like the rest of the legal system, is replete with situations requiring the making of difficult judgments as to which course to follow. Although a defendant may have a right, even of constitutional dimensions, to follow whichever course he chooses, the Constitution does not by that token always forbid requiring him to choose.

Id. at 213 (citation and internal quotation marks omitted).

Petitioner criticizes the California Supreme Court for relying on *McGautha* because the United States Supreme Court later vacated that decision in part. However, "the Supreme Court and [the Ninth Circuit] have continued to rely on the quoted passage above." *Stuard v. Stewart*, 401 F.3d 1064, 1068 n.17 (9th Cir. 2005); *see also Bonin v. Calderon*, 59 F.3d 815, 839-40 (9th Cir. 1995).

Beyond that, Petitioner has pitted an actual constitutional right against a hypothetical one, without any legal support for doing so. Specifically, he certainly had a right to testify in his capital trial. But, Petitioner then asserts only a hypothetical right to silence in a hypothetical trial that never occurred. Petitioner cites no clearly established Supreme Court precedent that would require a trial court to grant immunity under the circumstances presented here. *See United States v. Yarbrough*, 852 F.2d 1522, 1529 (9th Cir. 1988) (no Fifth Amendment violation where defendants in a federal trial could "only speculatively point to some future state court homicide prosecution" in which their right to silence would be implicated). This subclaim also fails under AEDPA.

f. *Brady* Claims Related to Shelah McMahan Evidence

(1) Randall Gresham Impeachment Evidence

As discussed in detail above, jailhouse informant Randall Gresham testified for the prosecution in the penalty phase of trial. (36RT at 4531-32.) Gresham testified that Petitioner confessed to murdering his niece, and made several other inculpatory statements involving her homicide, during a month-long period while Gresham was housed with Petitioner in a segregation cell in the Riverside County Jail. (36RT at 4532-42.) Petitioner claims Gresham received a much more favorable sentence reduction than the prosecutor disclosed in exchange for his testimony. (Traverse at 156-64.)

(a) Background Facts

The jury heard evidence that Gresham was convicted in 1986 of two counts of robbery, and one count each of assault on a police officer, auto theft, and for being an ex-felon in possession of a firearm. (36RT at 4534.) According to the testimony, Gresham received a ten-year sentence on all of those charges in exchange for his testimony at Petitioner's trial. (36RT at 4544.) Gresham testified that, had he not made the deal, he believed he was facing fifteen years in prison if convicted of his charges. (36RT at 4582.) The jury also heard evidence that, at the time that Gresham asked his lawyer to contact the district attorney about Petitioner's case, he had been arrested for the attempted murder of a police officer. (36RT at 4561-66.)

In 2006, in preparation to file a state habeas petition, Petitioner's lawyer sought and received various documents from the Riverside District Attorney in discovery. (SAP at 235; Traverse at 165; dkt. 99-14 at 78-80.) Among those documents was evidence, ostensibly not provided to the defense at trial, that Gresham was facing significantly more prison time when he made his deal. Specifically, the transcript of Gresham's plea proceeding (which was apparently not ordered or prepared until after Petitioner's trial) reflects that "[a]ll other charges which the People presently have any information regarding will not be filed," and that a "five year prior" sentence

enhancement would also not be filed against him. (Dkt. 39 at 251; *see also* dkt. 40-1 at 51-58 (referring to "other counts" that were not yet filed to be included in Gresham's ten-year deal).) As to those "other charges," Petitioner offers criminal history documents for Gresham that appear to show the sheriff's department suspected Gresham in a multitude of other robberies. (Dkt. 55–56-6 at 34.) Gresham, in a declaration, states that his lawyer showed him:

> a computer printout which he said the cops had given him. On the printout, it had page after page of 211's – robbery charges – that I was suspected of. [] I didn't do the robberies on the sheet, there must have been over 30 of them, but I was scared that I would go away to prison for the rest of my life if I were charged and convicted of them.

(Dkt. 40-1 at 29-30.)

Based on that, Gresham "was scared as hell, and knew I needed to make a deal." Gresham states that "the decision not to investigate the other crimes was a critical part of the deal I made. I would not have made it otherwise." Gresham also declares that before he testified in Petitioner's case, his attorney and the prosecutor directed him not to offer details of his plea deal unless asked. (Dkt. 40-1 at 30-31.) During Gresham's trial testimony, Petitioner's attorney asked him whether he became "aware that other charges had been filed or pressed" against him. Gresham discussed only the charged crimes and stated, "That's all I can think of . . . ." (36RT at 4563.)

(b) Procedural Default

Before discussing the merits of this *Brady* claim, the Court addresses procedural bar. Respondent timely asserted procedural default as a defense to this subclaim in the Answer. (Dkt. 93-1 at 35-36, 147-48.) The Court subsequently ordered the parties to brief procedural default on this issue. (Dkt. 134.) After considering the parties' submissions and the governing law, the Court finds this subclaim is procedurally barred.

The procedural default doctrine bars review of a petitioner's federal habeas claim when the claim was rejected in state court based on an adequate and independent state procedural rule. *Davila v. Davis*, ___ U.S. ___, 137 S. Ct. 2058, 2064 (2017); *Coleman v. Thompson*, 501 U.S. 722, 729-30 (1991). California law provides that claims in a state habeas petition which are "substantially delayed without justification may be denied as untimely." *Walker v. Martin*, 562 U.S. 307, 310 (2011). The United States Supreme Court has conclusively held that California's timeliness rule is both an adequate and independent state rule. *Id.* at 315, 321-22; *see also Bennett v. Mueller*, 322 F.3d 573, 582-83 (9th Cir.), cert. denied, 540 U.S. 938 (2003) (holding that California's timeliness rule is independent; cited in *Martin* to show that the rule's independence was no longer in dispute).

Petitioner raised his *Brady* claim in three state habeas petitions. In all three, the California Supreme Court expressly denied the claim on the merits. However, in all three, the *Brady* claim was alternatively denied as untimely, with citations to the seminal state cases governing this issue, *In re Clark*, 5 Cal. 4th 750 (1993); and *In re Robbins*, 18 Cal. 4th 770 (1998).[27/] (Dkt. 101-2 at 126-31; dkt. 101-13; dkt. 102-2 at 115-21; dkt. 98-12 at 2; dkt. 98-13 at 18-45; dkt. 99-21.)

"California courts signal that a habeas petition is denied as untimely by citing the controlling decisions, i.e., *Clark* and *Robbins*." *Martin*, 562 U.S. at 310. Here, the state court did just that. Consequently, the state court denied Petitioner's *Brady* claim based on an adequate and independent state ground, and the claim is therefore procedurally defaulted in this Court. *Davila*, 137 S. Ct. at 2064; *Coleman*, 501 U.S. at 729-30; *Martin*, 562 U.S. 307, 315, 321-22. Nothing in Petitioner's papers persuades the Court to the contrary.

An otherwise defaulted claim may be heard on the merits where "the prisoner can demonstrate cause for the procedural default and actual prejudice, or demonstrate

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[27/] The state court also invoked other procedural bars that are not relevant here.

that the failure to consider the claim[] will result in a fundamental miscarriage of justice." *Bennett*, 322 F.3d at 580. In light of those exceptions to procedural bar, the Court specifically provided Petitioner with an opportunity to establish cause and prejudice, or a miscarriage of justice. (Dkt. 134 at 2.) However, his arguments were again not persuasive. The Court finds that Petitioner's *Brady* subclaim is procedurally barred.

(c) Merits

Even assuming Petitioner's *Brady* claim as it concerns Gresham had not been defaulted, the claim would still not entitle him to federal habeas relief. As discussed above, the state court denied this *Brady* subclaim expressly on the merits (in the alternative to procedural default), so AEDPA applies. 28 U.S.C. § 2254(d). Under that difficult standard, the claim fails. As discussed in reference to Petitioner's earlier *Brady* allegations, evidence is only "material" within the meaning of *Brady* "when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Turner*, 137 S. Ct. at 1893.

Petitioner's materiality argument focuses on the multiple ways his defense counsel might have attacked Gresham's credibility had he been properly armed with all the information about the alleged deal. Petitioner's penalty-phase attorney declares that, had he been in possession of this evidence, he would have "made every attempt" on cross-examination to uncover Gresham's desperation and fear of being imprisoned for life. (Dkt. 40-1 at 41.) However, even assuming Gresham had been *entirely discredited* by the jury, the Court cannot conclude there was a reasonable probability of a different result without ignoring the other, powerful evidence implicating Petitioner in his niece's murder. *Turner*, 137 S. Ct. at 1893.

As discussed in detail above, ample evidence connected Petitioner to his niece's killing: The Court reiterates that evidence an additional time here for emphasis. He lived on an adjacent property and had access to the room where she was sleeping. He regularly came in and made phone calls from that room. He admitted that he actually

did go into the room at some point during the time she disappeared. Shelah's grandmother testified that Shelah was a responsible child who never left suddenly or without notice. It did not appear that Shelah was forcibly taken from where she had been sleeping, leading to the inference that she was lured away by someone she trusted. That inference was further supported by the fact Shelah disappeared from the house in the middle of the night, and the Widneys had a dog on the property that barked at strangers to the household. Handcuffs were later discovered on Petitioners property containing blood flakes that were consistent with Shelah's blood type, and a fiber that was similar to the fibers that composed Shelah's t-shirt. Through experimentation, a criminalist also determined that indentations made by the handcuffs were similar to indentations shown on Shelah's wrist in autopsy photographs. When Shelah's body was discovered on a vacant lot, her hands were tied behind her back with a black plastic cable tie. Black plastic cable ties were found by the police in Petitioner's bedroom and around his property. A criminalist compared the black cable tie found in Petitioner's bedroom with the cable ties that bound Shelah's wrists, and determined that they were the same length, same width, were made by the same manufacturer, and were the same line of cable ties made by that manufacturer. Forensic analyses concluded that fibers and dog hair found on Shelah's clothing were similar to fibers found inside Petitioner's Mustang and Petitioner's dog' hair.

Based upon the foregoing, Petitioner is unable to point to material *Brady* evidence involving Gresham. The Court is mindful of the added impact Petitioner's confession to the murder of his niece might have had. However, in this case, in light of all the evidence pointing to Petitioner's guilt as the perpetrator in his niece's murder, there is not a reasonable probability of a different result. *Turner*, 137 S. Ct. at 1893; *Kyles*, 514 U.S. at 434. Notably, the evidence at issue was presented in the penalty phase, so the jury was ultimately deciding whether to impose the death penalty (not whether Petitioner was guilty of this crime). The penalty phase evidence also included Petitioner's brutal crimes against Amy Ryan and Diane Harper, as well as his history

of sexual crimes. The jury could have considered the brutal murder of an eleven-year-old to be the ugliest of Petitioner's crimes, and yet *still* have imposed the death penalty based solely on the other evidence. *See Agurs*, 427 U.S. at 109-10; *see also Barker*, 423 F.3d at 1099 (the mere possibility that undisclosed information might have helped the defense or affected the outcome of the trial does not establish materiality). Because the alleged withholding of impeachment evidence as to witness Gresham was immaterial for *Brady* purposes, the second *Brady* subclaim in Claim 12 is DENIED.

(d) Knowingly Presenting False Evidence

Finally, the Court addresses the remaining subclaim in Claim 16, in which Petitioner similarly complains that Gresham lied on the stand and prosecutors knowingly allowed that to happen. (SAP at 279-81; Traverse at 199-202.)

"The Supreme Court has long recognized that '[t]he principle that a State may not knowingly use false evidence . . . to obtain a tainted conviction [is] implicit in any concept of ordered liberty,' and a violation of due process." *Lanuza v. Love*, 899 F.3d 1019, 1025 (9th Cir. 2018) (*quoting Napue v. Illinois*, 360 U.S. 264, 269 (1959) (brackets in original)). It is therefore unconstitutional for a prosecutor to knowingly introduce, solicit, or allow false testimony. *Mendez v. Swarthout*, 734 F. App'x. 421, 424 (9th Cir. 2018) (*citing Napue*, 360 U.S. at 269) (cited pursuant to 9th Cir. R. 36-3).

To prevail on a constitutional false testimony claim, a petitioner must show "(1) the testimony . . . was actually false, (2) the prosecution knew or should have known that the testimony was actually false, and (3) the false testimony was material." *Sanders*, 873 F.3d at 794 (*quoting Reis-Campos v. Biter*, 832 F.3d 968, 976 (9th Cir. 2016)); *see also Hein v. Sullivan*, 601 F.3d 897, 908 (9th Cir. 2010) (same).

Speculation that the prosecutor knew or should have known that a witness's testimony was false is insufficient under *Napue*. *Skains v. California*, 386 F. App'x 620, 621-22 (9th Cir. 2010) (cited pursuant to 9th Cir. R. 36-3). However, materiality under *Napue* is less demanding than *Brady*. "Under *Napue*, a conviction must be set aside whenever there is *any* reasonable likelihood that the false testimony could have

affected the judgment of the jury." *Reis-Campos*, 832 F.3d at 976 (emphasis in original, citations and internal quotation marks omitted); *see also Dow v. Virga*, 729 F.3d 1041, 1048 (9th Cir. 2013) (same).

The California Supreme Court rejected Petitioner's *Napue* claim without substantive comment on state habeas review. Consequently, this Court must determine whether any arguments or theories under *Napue* could have supported the state court's decision. *Richter*, 562 U.S. at 102.

The Court has already discussed the issues surrounding Gresham's testimony in detail in addressing the related *Brady* claim. It is unnecessary to retread the same information here. Suffice it to say that, even in light of *Napue*'s lowered materiality standard, it was objectively reasonable for the California Supreme Court to reject Petitioner's claim because the testimony was not material to the outcome. *Reis-Campos*, 832 F.3d at 976; *Dow*, 729 F.3d at 1048; *Richter*, 562 U.S. at 102. As the Court explained above, Gresham's testimony was unnecessary to persuade the jury that Petitioner killed his niece, or to persuade jurors to sentence Petitioner to death. There is not a reasonable likelihood that the testimony at issue – even assuming without finding that it was false – changed the jury's decision. *Reis-Campos*, 832 F.3d at 976; *Dow*, 729 F.3d at 1048.

The second prosecutorial misconduct subclaim in Claim 16 is DENIED.

(2) Third Party Culpability Evidence

Petitioner complains that the prosecution failed to turn over several items of evidence ostensibly pointing to other suspects in his niece's murder: carpet fibers, a bus and a trailer on the Widney property, Shelah's diary, and two police reports referencing different individuals who were under investigation at some point. (Traverse at 165; dkt. 39 at 110, 113-32, 135, 138.) It is unnecessary for the Court to

delve into each of Petitioner's failed arguments.[28/] Aside from the fact that the exculpatory value in any of these items of evidence is patently unconvincing, this *Brady* claim fails for the same fundamental reason as the previous one. Whether Petitioner focuses on the government's alleged failure to turn over this evidence or his penalty-phase attorney's failure to more vigorously pursue these avenues of strategy, he reaches the same obstacle. The penalty phase evidence implicating Petitioner in his niece's murder was strong enough that efforts to deflect blame were futile at best, and would have appeared desperate and dishonest at worst. Further, the jury heard ample additional evidence even beyond Shelah's killing from which to impose the death penalty. Because the alleged withholding of this evidence was immaterial to the outcome, the state court's denial of this claim was reasonable. *Richter*, 562 U.S. at 101; *Turner*, 137 S. Ct. at 1893; *Kyles*, 514 U.S. at 434; *Agurs*, 427 U.S. at 109-10; *Barker*, 423 F.3d at 1099.

As Petitioner has not shown an entitlement to federal habeas relief on any of his penalty-phase claims involving the Shelah McMahan homicide, Claim 27 is DENIED.

X. Improper Admission of Cindy Widney's Testimony in Penalty Phase (Claim 28)

Petitioner complains that the prosecution's rebuttal evidence in the penalty phase was improperly admitted in violation of due process. (SAP at 331-35; Traverse at 234-37.) This claim is not cognizable in a federal habeas petition.

1. Background Facts

Petitioner's penalty-phase evidence was initially focused on rebutting the prosecution's evidence that he murdered his niece. (38RT at 4745-56, 4760-67, 4770-78, 4782-84, 4786-4807, 4810-11, 4839-40; 39RT at 4856-72; 4990-96.) However, the defense also presented testimony in mitigation from multiple witnesses, including

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[28/] Petitioner's tortured interpretation of the young girl's diary entries is particularly unpersuasive.

Petitioner's parents, wife, mother-in-law, sister-in-law, ex-wife, and ex-sister-in-law. The testimony painted a picture of Petitioner as a good husband, excellent father, active churchgoing citizen, hardworking employee, and an honest, reliable person. Both his wife and ex-wife testified to separate incidents in which Petitioner literally saved someone's life. Witnesses also explained that Petitioner was damaged by triggering life events such as a serious auto accident as a young child, and later, his ex-spouse's infidelity. (39RT at 4887-4906, 4916-31, 4933-42, 4946-47, 4950-61, 4964-76, 4984-86, 4998-5008; 40RT at 5019-23, 5028.)

In rebuttal, the prosecutor first proffered the testimony of Petitioner's other sister-in-law, Cindy Widney. In an admissibility hearing, the prosecutor argued that Cindy would testify about unwelcome sexual advances that Petitioner made to her. The prosecutor cntended that the testimony was relevant rebuttal evidence because "the defense has portrayed Mr. Hart as a very caring and loving husband and father to his children, and that is not quite the case." (40RT at 5038.) Defense counsel objected to the testimony on the basis that the defense was not timely notified about it, and because it did not rebut evidence that Petitioner was a good father. (40RT at 5040-41.) The court allowed the testimony. As to its relevance as rebuttal evidence, the court found:

> It strikes me that one of the strengths that I have heard or I perceived was presented to me is that he had a good family relationship and was thought of highly by [his in-laws], by his parents, by Linda Hart, and so forth. And it would strike me that him making advances to another person of this nature would be in direct contradiction to what's been presented, [and] I would think this is as direct [a] contradiction of that as I could imagine.

(40RT at 5041-42.) The court further (subsequently) found that:

> As to [California Evidence Code section] 352, as I interpret the language, evidence that is prejudicial is evidence that might be considered

> by the jury in an improper fashion, and it strikes me that that's not really the case here.
>
> If this is true, and obviously I'll have to wait and hear the witness, if it strikes me this is true, it does indicate that there was something going on with Mr. Hart and even among the relatives, it indicates that the picture of, you know, of rather pleasant, relaxed, caring family life was not completely true.

(40RT at 5043-44.)

Cindy Widney testified about four incidents. In one, Petitioner kissed her without her consent and she told him no. He answered, "You can't hurt a guy for trying." In the second, Petitioner came to Widney's residence when her husband was out and she was sunbathing in her yard. Petitioner told Widney he had been dreaming about her. When she asked him to leave, he said, "I can't help what I'm dreaming." On a third occasion, Petitioner joked that maybe he should marry Widney. On the fourth occasion, Petitioner again came to Widney's home while she was alone and she was too afraid to answer the door. Widney closed her blinds and turned on the shower so Petitioner would think she was busy and leave. Widney then called her neighbor and asked her to watch Petitioner's movements. The neighbor told Cindy that he was entering the residence through a side gate. Cindy grabbed a baseball bat and closed herself in her bedroom. Petitioner then came to the door and opened it. Widney asked, "[W]hat are you doing in my house?" Petitioner responded that he "didn't know if you were raped, hurt or what." Petitioner apparently left when Widney threatened to call the police. (40RT at 5047-58, 5073-75.)

2. Analysis

Petitioner claims Widney's testimony violated due process because it violated California law. Specifically, he argues that none of the incidents she testified to amounted to criminal activity, so the testimony was not admissible under California

Penal Code section 190.3(b). He also claims the testimony was irrelevant and not proper rebuttal evidence.

On direct appeal, the California Supreme Court again disagreed with Petitioner's interpretation of state law. The state high court found that section 190.3(b) was inapplicable, and that Widney's testimony was admissible as rebuttal to Petitioner's evidence of his character, background, and history. (*See* Cal. Penal Code § 190.3 ("In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, . . . the defendant's character, background, history, mental condition and physical condition."). The court further found that any alleged error was not prejudicial to Petitioner, as Widney's testimony stood against the backdrop of Petitioner's conviction of one brutal murder, multiple sexual assaults, and overwhelming penalty-phase evidence that Petitioner murdered his eleven-year-old niece and assaulted other women. *People v. Hart*, 20 Cal. 4th at 652-53.

As was the case with several other claims, Petitioner makes this claim solely under state law. He again only purports to make a federal argument for what is in fact a state evidentiary claim. The premise of his constitutional claim is that the evidence at issue was irrelevant and unduly prejudicial, which is governed by California law. *See* Cal. Penal Code § 190.3. This is another claim that follows squarely under *Holley*, *McGuire*, *Richey*, and *Windham* – cases holding that a federal court holds no authority to review alleged violations of a state's laws or evidentiary rules. *Holley*, 568 F.3d at 1101; *McGuire*, 502 U.S. at 67-68; *Richey*, 546 U.S. at 76; *Windham*, 163 F.3d at 1103. Also, as already stated, a habeas petitioner cannot "transform a state law issue into a federal one merely by asserting a violation of due process," which is what Petitioner has attempted to do here. *Langford*, 110 F.3d at 1389. As a federal court may entertain a habeas petition by a state prisoner "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States," 28 U.S.C. § 2254(a), Petitioner's claim is not cognizable here.

Lastly, for precisely the same reasons given by the California Supreme Court, even if Petitioner had shown that the state courts violated clearly established Federal law here, the alleged evidentiary error was harmless for the reasons articulated by the California Supreme Court. *See Brecht v. Abrahamson*, 507 U.S. 619, 623, 637 (1993) (a habeas petitioner is entitled to relief only if an alleged error had a "substantial and injurious effect or influence in determining the jury's verdict," and only if he can establish actual prejudice).

Claim 28 is DENIED.

Y. Instructional Error: Failure to Instruct on Elements of Other Criminal Acts Presented in Penalty Phase (Claim 29)

Petitioner argues that it was unconstitutional for the trial court not to instruct the jury on the elements of every crime proffered in aggravation in the penalty phase of trial. (SAP at 335-37; Traverse at 237-43.) Petitioner's argument misconstrues the jury's responsibility in weighing aggravating and mitigating evidence.

In California, a death sentence is authorized by statute when the jury finds special circumstance allegations true beyond a reasonable doubt at the guilt phase. *See* Cal. Penal Code § 190.2; *Pensinger v. Chappell*, 787 F.3d 1014, 1025 (9th Cir. 2015) ("California's death penalty statute requires the jury to find the existence of special circumstances to distinguish between defendants who are eligible for the death penalty and those who are not."). Special circumstance findings at the guilt phase alternatively give the option of imposing life in prison without the possibility of parole. *See* Cal. Penal Code § 190.2(a).

Thus, the penalty phase is not a proceeding in which a defendant's maximum punishment is determined or increased. *See Noguera v. Davis*, 290 F. Supp. 3d 974, 1092 (C.D. Cal. 2017) ("[O]nce the jury has found a special circumstances to be true, unanimously and beyond a reasonable doubt, death is an authorized punishment."). Instead, it is a sentencing proceeding in which the jury decides based upon various factors which eligible penalty to impose, life without parole or death. *See* Cal. Penal

Code §190.3. Unlike the guilt phase, the California Supreme Court describes the penalty phase in a California trial as "a moral and normative process" in which "it is not necessary to give instructions associated with the usual factfinding process." *People v. Carter*, 30 Cal. 4th 1166, 1220 (2003) (*quoting People v. Holt*, 15 Cal. 4th 619, 684 (1997)); *see also* Cal. Penal Code § 190.3(k) (the jury in the penalty phase must consider and "be guided by" the aggravating and mitigating circumstances); *California v. Ramos*, 463 U.S. at 1008 n.22 ("[T]he constitutional prohibition on arbitrary and capricious capital sentencing determinations is not violated by a capital sentencing scheme that permits the jury to exercise unbridled discretion in determining whether the death penalty should be imposed after it has found that the defendant is a member of the class made eligible for that penalty by statute.") (citation and internal quotation marks omitted).

Consistent with this principle, "a trial court has no sua sponte duty" under state law "to instruct the jury as to the elements of all of the other crimes that have been introduced at the penalty phase." *People v. Davenport*, 41 Cal. 3d 247, 281 (1985). California courts do permit such instructions where a party requests them or the trial court deems them "vital to a proper consideration of the evidence." But, the California Supreme Court also recognizes the potential prejudice to the defendant if given as a matter of course. *Id.* at 281-82 ("[A] defendant, for tactical reasons, may not want the penalty phase instructions overloaded with a series of lengthy instructions on the elements of alleged other crimes because he may fear that such instructions could lead the jury to place undue emphasis on the other crimes rather than on the central question of whether he should live or die."). Petitioner points to no clearly established Federal law invalidating the state's law or its reasoning. *Van Patten*, 552 U.S. at 126.

Petitioner's case, in fact, highlights the soundness of the state's approach. At his penalty phase, the prosecution presented evidence of five prior criminal acts and the uncharged murder of Petitioner's niece. All of the criminal acts alleged by the prosecution boiled down to what *facts* the jury believed, not whether elements of the

corresponding crimes were satisfied. Debra B. testified that Petitioner attacked and choked her in her apartment in 1973. Priscilla N. and the police testified that in 1973 she was attacked her in her apartment and Petitioner confessed that he was the perpetrator (and that his intent was to rape her). Valerie T. testified that in 1975 Petitioner grabbed her from behind, pulled her into an alley, placed a knife to her throat, pulled down her jeans, and attempted to penetrate her with his penis. Marilyn S. testified (and there was evidence of Petitioner's confession) that in 1975 Petitioner broke into her apartment and forced her to orally copulate him at knife point. Deborah T. testified that in 1975 Petitioner poked his head into her apartment window and he confessed that he was there to sexually assault her. Similarly, the jury either believed Petitioner was the perpetrator of the gruesome killing of his niece, or they did not. While the criminal nature of each of these acts might have had a bearing on their *admissibility* under state law (*see People v. Phillips*, 41 Cal. 3d 29, 72 (1985)), Petitioner fails to credibly explain how the legal implications of those acts – namely, the elements of any resulting crimes – would have any bearing on the jury's "moral and normative process" of weighing all the factors to determine Petitioner's fate. *Carter*, 30 Cal. 4th at 1220.

Further, Petitioner's case presents a strong example of why California trial courts have discretion on whether to instruct on the elements of the prior criminal acts. *Davenport*, 41 Cal. 3d at 281. For example, it was not clear from the evidence whether or how much Petitioner penetrated Valerie T. when he assaulted her. Petitioner might well have been prejudiced by the trial court instructing on the elements of rape as to Valerie T., and focusing the jury on the specifics of that violent attack to determine whether there was adequate penetration. The omission of the elements of the crimes presented in aggravation was arguably favorable to Petitioner. *Henderson*, 431 U.S. at 155 (instructional error does not rise to a constitutional level unless it "so infected the entire trial that the resulting conviction violates due process" and an omission is less likely to be prejudicial than a misstatement of the law.").

Lastly, Petitioner argues that it was particularly harmful not to provide the elements of these crimes to the jury since the trial court instructed them that "[b]efore you may consider any of such criminal acts as an aggravating circumstance in this case, you must first be satisfied beyond a reasonable doubt that the defendant did in fact commit such acts." (41RT at 5268). The Court concludes there was no reasonable likelihood that any alleged ambiguity in this instruction changed the jury's verdict or caused the jury to apply the instruction in an unconstitutional manner. *McGuire*, 502 U.S. at 72; *Boyde v. California*, 494 U.S. at 380.

In denying this instructional error claim on direct appeal, the California Supreme Court concluded that there was "convincing·evidence of criminal activity properly admitted under section 190, subdivision (b). There is no indication that an instruction on the specific crimes and elements would have changed the jury's assessment of the evidence or would have affected the outcome of the trial." *People v. Hart*, 20 Cal. 4th at 652. The state court's reasoning and conclusion were not objectively unreasonable under AEDPA.

Claim 29 is DENIED.

Z. Instructional Error: Mention of Governor's Power to Commute Sentences in Penalty Phase (Claim 30)

Petitioner takes issue with the way the trial court answered a question posed by a juror during the penalty phase. The court's answer touched on the power of California's governor to commute a death sentence. Petitioner argues that by raising the possibility of commutation, the trial court lowered the stakes in the minds of jurors, making it impermissibly easier to impose the death penalty. (SAP at 338-42; Traverse at 243-56.)

1. Factual Background

During the penalty phase of trial, a juror submitted a note to the judge. The note asked two questions, the first of which is relevant to Claim 30: "Does life in prison

without the possibility of parole mean that [Petitioner] will never get out under any circumstances?" (41RT at 5160.)

After conferring with both attorneys and considering a proposed instruction from defense counsel, the court addressed the jury as follows:

> That question causes the Court a great deal of concern and it's caused other courts a great deal of concern, and the reason why, it has an element of speculation in it, it shows that people are worrying about what's going to happen after the decision in this particular case.
>
> It really is inappropriate for the – for jurors or for me to rely or to even think about that kind of material, because I don't know what's going to happen because it's speculation, number one, and, secondly, to the extent that people are worrying about someone else doing something, they may take their present job less seriously.
>
> Let me just say, the law does have a provision in the California Constitution that the Governor does have the power to commute both sentences, both the death sentence and the life without possibility of parole sentence to something less than that, if the Governor sees fit.
>
> Now, I've been in the criminal justice system for 13 years and I've never seen the commutation power used. Given the way things are now, I can't imagine in this particular case that power applying.
>
> I think if you approach this case from any other perspective other than death means death or life without possibility of parole means exactly that, you would be deluding yourself. I think you've got to resign yourself that the two choices that you're going to make here are the two sentences that are going to be carried out in this particular case.
>
> Is everybody clear as to what my feelings are? And I think for you to speculate [on] anything else would be inappropriate.

(41RT at 5161-62.)

On direct appeal, the California Supreme Court rejected Petitioner's challenges to the instruction. The state's high court found that, in view of its prior decisions:

> we believe that once a juror inquired as to the actual meaning of a sentence of life without possibility of parole, the trial court did·not err in explaining that although the Governor has the power to commute both a sentence of death and a sentence of life without possibility of parole, it would be inappropriate for the jury to approach the case from any other perspective other than death means death and life without possibility of parole means exactly that. (Citations and quotation marks omitted.)
>
> Further, although the trial court's comments would have been more complete and fully accurate had they noted that, in the case of a "twice-convicted" felon such as defendant, (footnote omitted) the Governor may not grant clemency without the favorable recommendation of four or more justices of this court, we do not believe that this omission rendered the trial court's comments so incomplete or misleading as to be constitutionally deficient under the federal constitutional standard established in [*California v. Ramos*, 463 U.S. at 1010-12] or that the omission, even if error, was prejudicial under [*Chapman v. California*, 386 U.S. 18, 24 (1967)]. (Footnote omitted.)
>
> The crucial point and overall thrust of the trial court's comments was to inform the jurors that any speculation on the part of a juror that life without the possibility of parole meant anything other than precisely that would be inappropriate, and thus the comments properly informed the jurors that they were not to consider the commutation power at all in arriving at their sentencing determination. In light of this message, the circumstance that the trial court's comments did not explain the existence of a limitation on the Governor's commutation power is insignificant. The comments were sufficient to advise the jurors not to consider the

> speculative possibility of commutation. The specific details of the commutation process (that the jurors were not to consider) bore no relevance to the jury's task. Under these circumstances, we conclude there is no reasonable possibility that the incompleteness of the trial court's comments affected the result.

People v. Hart, 20 Cal. 4th at 656-57.

2. Analysis

"[A] capital sentencing jury's consideration of the Governor's power to commute a life sentence is not prohibited by the Federal Constitution, ..." *California v. Ramos*, 463 U.S. at 1010. Bringing to the jury's attention the possibility that someone may be returned to society allows the jury to include future dangerousness in its capital sentencing decision, a factor that the Constitution allows. *Id.* at 1001-03; *see also Jurek*, 428 U.S. at 275-76 ("[A]ny sentencing authority must predict a convicted person's probable future conduct when it engages in the process of determining what punishment to impose. . . . What is essential is that the jury have before it all possible relevant information about the individual defendant whose fate it must determine.").

Petitioner, however, does not merely take issue with the fact that the trial court mentioned the governor's commutation power. Petitioner more specifically claims the court erroneously told the jury that a life sentence may be commuted "if the Governor sees fit," leaving jurors with an inflated view of the governor's actual power. Petitioner was convicted of multiple felonies at trial, and the California Constitution provides that "[t]he Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring." Cal. Const. art. 5, § 8. In addition to the requirement that four justices concur in the decision, there are different procedural hurdles for prisoners with multiple felonies, such as a requirement that they apply for commutation directly to the governor, and that the Board of Parole Hearings investigates and makes a

recommendation to the governor. *Coleman v. Calderon*, 210 F.3d 1047, 1050 (9th Cir. 2000) (*citing* Cal. Penal Code §§ 4802, 4813). In Petitioner's view, by omitting the additional information about the commutation power, the trial court "diminished the jury's sense of responsibility for the sentencing determination" and misled them to believe that if they did not impose the death penalty, Petitioner could be released "by the singular feat of the Governor." (SAP at 340-41 (citation omitted).)

Petitioner's claim fails under AEDPA. The most analogous Supreme Court case Petitioner cites is *Caldwell v. Mississippi*, 472 U.S. 320, 329 (1985). In that case, the Supreme Court found a constitutional violation where a prosecutor led the jury to believe that the ultimate responsibility for determining the appropriateness of a death sentence rested with an appellate court's later review of the case. *Id.* at 323, 328-29. That is precisely the *opposite* of what happened here. In this case, a juror raised the issue of whether Petitioner could ever be released if the jury imposed life without parole. In response, the trial judge expressed "a great deal of concern" that the juror would be speculating about such an "inappropriate" matter. The judge then briefly acknowledged the governor's commutation power, but added that the court had "never seen the commutation power used." The court then went so far as to tell the jury he could not "imagine in this particular case that power applying," and that jurors "would be deluding" themselves if they thought their sentence would not be carried out. (41RT at 5161-62.) Contrary to the constitutional problem presented in *Caldwell*, the trial court here adamantly advised Petitioner's jury that the ultimate responsibility for determining the appropriateness of a death sentence rested with them alone – to the point of saying they were delusional if they thought otherwise. Consequently, the conclusion of the California Supreme Court was not contrary to, or an unreasonable application of, any governing clearly established Federal law. 28 U.S.C. § 2254(d).

Petitioner relies primarily on *Coleman*, the Ninth Circuit case cited above. In that case, the trial court gave California's now-defunct standard "Briggs instruction" at the close of the penalty phase. That instruction, pursuant to California law,

deliberately informed the jury of the governor's power to commute a life sentence. *See People v. Ramos*, 30 Cal. 3d 553, 590 (1982).[29] The defendant in *Coleman* had two prior felony convictions, and the court's Briggs instruction did not include the information discussed above regarding limitations on the commutation power as it concerned prisoners with multiple felonies. *Coleman*, 210 F.3d at 1050. Further, in *Coleman*, the trial court instructed the jury without further explanation that they "may not speculate as to if or when a governor would commute the sentence to a lesser one which includes the possibility of parole."[30] *Id.* The Ninth Circuit concluded, "Not only was the instruction misleading, it was constitutionally infirm because it discouraged the jury from giving due weight to Coleman's mitigating evidence." *Id.* The court also found that, as phrased, the instruction invited the jury to assume that the case would automatically be put before the governor. *Id.* Ultimately, the court found "the jury was diverted from its task by having its attention focused on the Governor's ill-defined commutation power rather than the mitigation evidence introduced during

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[29] The United States Supreme Court upheld the Briggs instruction under the federal Constitution, *California v. Ramos*, 463 U.S. at 1013, but the California Supreme Court subsequently ruled that the instruction violated the state's constitution and it was discontinued before Petitioner's trial. *See People v. Ramos*, 37 Cal. 3d 136, 159 (1984).

[30] The full text of the instruction given in *Coleman* read as follows: "You are instructed that under the State Constitution, a Governor is empowered to grant a reprieve, pardon or commutation of a sentence following conviction of the crime. [¶] Under this power, a Governor may in the future commute or modify a sentence of life imprisonment without the possibility of parole to a lesser sentence that would include the possibility of parole. [¶] So that you will have no misunderstandings relating to a sentence of life without the possibility of parole, you have been informed generally as to the Governor's commutation modification power. You are now instructed, however, that the matter of a Governor's commutation power is not to be considered by you in determining the punishment for this defendant. [¶] You may not speculate as to if or when a governor would commute the sentence to a lesser one which includes the possibility of parole." *Coleman*, 210 F.3d at 1050.

the penalty phase." *Id.* at 1050-51. The court also went on to find that the instructional error was not harmless. *Id.* at 1051.

Petitioner's reliance on *Coleman* is not successful here. First, *Coleman* is obviously not "clearly established Federal law" as determined by the Supreme Court. 28 U.S.C. § 2254(d); *Van Patten*, 552 U.S. at 126. Second, even assuming that *Coleman* controlled here, the same facts discussed above materially distinguish Petitioner's case from *Coleman*. The Briggs instruction given in *Coleman* was specifically intended to draw attention to the governor's commutation power. *See People v. Ramos*, 30 Cal. 3d at 590. The instruction was given as a matter of course, unprompted by curiosity on the part of any jurors. To the extent that instruction was incomplete as it concerned defendants with multiple felonies, the Ninth Circuit concluded on several occasions that the Briggs instruction affirmatively and inappropriately *invited* jurors to consider erroneous information. *See Coleman*, 210 F.3d at 1050-51; *McLain v. Calderon*, 134 F.3d 1383, 1386 (9th Cir. 1998); *Hamilton v. Vasquez*, 17 F.3d 1149, 1162 (9th Cir. 1994). Here, to the contrary, no Briggs instruction was given, and no instructions were intended to inform jurors about the governor's commutation power. It was a juror who raised the issue, and the trial court made efforts to provide an answer without drawing attention to the issue. The court acknowledged the governor's commutation power, but strongly advised jurors not to speculate about it, and even told them quite frankly that commutation was highly unlikely in Petitioner's case. The California Supreme Court – the same court that found the Briggs instruction misleading and unconstitutional – concluded here that, under the circumstances, the court's omission of additional information about limits on the commutation power did not "render[] the trial court's comments so incomplete or misleading as to be constitutionally deficient . . . ." In light of the stark contrast between the Briggs instruction and the trial judge's advisement here, the conclusion of the California Supreme Court was well within reason under AEDPA. *Richter*, 562 U.S. at 101; *LeBlanc*, 137 S. Ct. at 1728.

The Court also disagrees with Petitioner's argument that *accuracy* was the lynchpin of the Briggs instruction's constitutionality in *California v. Ramos*. (Traverse at 246.) The Supreme Court upheld the Briggs instruction as constitutional because it did "not preclude individualized sentencing determinations or consideration of mitigating factors, nor [did] it impermissibly inject an element too speculative for the jury's deliberation." *California v. Ramos*, 463 U.S. at 1013. The admonition at issue was valid for the same reasons. The speculative element here was raised in a juror's question. The trial court's response specifically sought to *eliminate*, not impermissibly inject, that speculative element from the jury's deliberation. *Id.*; *see also Caldwell*, 472 U.S. at 329 (the capital "sentencing process should facilitate the responsible and reliable exercise of sentencing discretion.").

The California Supreme Court's denial of Petitioner's instructional error claim involving the governor's commutation power was reasonable under AEDPA.

Claim 30 is DENIED.

AA. Trial Court's Review of Probation Report (Claim 31)

Petitioner takes issue with the fact that the trial judge reviewed his probation report before denying his motion to modify the death sentence. He claims that the California Supreme Court's denial of relief on this issue on state habeas review was unreasonable under *Booth v. Maryland*, 482 U.S. 496, 508-09 (1987). (SAP at 342-45; Traverse at 257-59.)

1. Factual and Legal Background

The Eighth Amendment prohibits a capital sentencing jury from considering "a victim's family members' characterizations and opinions about the crime, the defendant, and the appropriate sentence . . . ." *Bosse v. Oklahoma*, ___ U.S. ___, 137 S. Ct. 1, 1-2 (2016) (per curiam). Such evidence is considered "irrelevant to a capital sentencing decision," and "its admission creates a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner."

Booth v. Maryland, 482 U.S. 496, 503 (1987), *overruled in part by Payne v. Tennessee*, 501 U.S. 808, 828-30, 830 n.2 (1991).

Pursuant to California statute, Petitioner's death sentence triggered an automatic motion to modify that verdict. Cal. Penal Code § 190.4(e); *People v. Landry*, 2 Cal. 5th 52, 123 (2016) ("Every death verdict triggers an automatic application for modification of the sentence.") (citation omitted). In ruling on such a motion, the trial court "reweighs the evidence, considers the aggravating and mitigating circumstances, and determines whether, in its independent judgment, the weight of the evidence supports the jury's verdict." *People v. Mungia*, 44 Cal. 4th 1101, 1139 (2008). The court must articulate the reasons for its findings to assure meaningful appellate review. *Id.*; Cal. Penal Code § 190.4(e).

The California Supreme Court has also held that in ruling on such a motion, "the trial court may only rely on evidence that was before the jury," and therefore, "the better procedure is to rule on the application for modification before reading the probation report." *People v. Williams*, 40 Cal. 4th 287, 337 (2006) (citation omitted). However, under state law, "reading the probation report before ruling on the section 190.4 motion is not prejudicial error when nothing in the record suggests the court considered or relied on the probation report . . . when ruling on the application for modification." *Id.* (citation omitted).

Petitioner's probation report was not admitted into evidence for the jury's consideration. However, at the start of the hearing on Petitioner's automatic motion to modify his death sentence, the trial court perfunctorily stated that it reviewed Petitioner's written motion and his probation report. (42RT at 5292.) The court did not discuss the contents of the report or mention the report again until sentencing.

The probation report contained a section entitled "victim information," which included the following passage:

> William Harper, the father of the deceased victim, Diane Harper, was contacted and made the following comments concerning this matter.

> He said that he wished to compliment [] Deputy District Attorney Zellerbach and the law enforcement officers involved in the prosecution of this case. He said that they did their jobs well and justice was served by the jury's verdict, with which he totally agrees. He said that William Hart deserves to be put to death for what he did to his daughter, Amy Ryan and the other women he has victimized throughout the years. He said that the prosecution of this case has been extremely difficult for everyone concerned and that he is glad it is over. Mr. Harper commented that he was present in Court [every day] during the trial, with the exception of the days where the jury was required to view pictures of his daughter. He said that he would be present on the day of sentencing. He hopes that the judge will not commute the defendant's sentence or in any way modify the penalty fixed by the jury for the murder of his daughter.

(3CT at 659-60.)

In denying Petitioner's motion to modify the verdict, the trial court thoroughly set forth the factors forming the basis of its decision. Specifically, the court considered: (1) the evidence presented in both phases of trial; (2) the aggravating and mitigating circumstances set forth in California Penal Code section 190.3; and (3) decisional law of the California Supreme Court "expanding the types of mitigating evidence that should be considered in determining the appropriate penalty." (42RT at 5297.) The court then found that the jury's verdicts on all counts and special circumstance allegations were supported by the weight of the evidence. (42RT at 5297-99.)

Next, the court expressly denied the arguments made in Petitioner's written motion to modify the verdict, finding that the prosecution's penalty-phase evidence was properly admitted. (42RT at 5299-300.) The trial court then individually discussed each of the enumerated statutory aggravating and mitigating circumstances, and applied each to the facts of the case. (42RT at 5300-07.) In doing so, the court

recited the details of Petitioner's crimes against Diane Harper and Amy Ryan, and concluded that "most things being relative, the Court finds the circumstances of this case to be far more aggravating than would even be expected in a case as serious as a capital case." (42RT at 5301.) The court further found that all of the prior crimes presented in the penalty phase were proven beyond a reasonable doubt, and that they evidenced "a long and disturbing history of sexually assaulting defenseless women." (42RT at 5301-03.) The trial court was also "satisfied beyond a reasonable doubt" that Petitioner killed his eleven-year-old niece, Shelah McMahan, and the court discussed the evidence of guilt in detail. (42RT at 5303-05.) The court described Petitioner's conduct in the killing of his niece as "extremely aggravating" and "the stuff of which nightmares are made." (42RT at 5305.)

Ultimately, the trial court found beyond a reasonable doubt that "the aggravating circumstances were substantial in comparison with the . . . mitigating circumstances, ..." (42RT at 5307.) The court noted that it "would find this to be true even without any evidence relating to the murder of Shelah McMahan." (42RT at 5307-08.) The court denied the motion to reduce the death verdict and formally imposed sentence. (42RT at 5308-09.)

2. Analysis

The Court finds that Claim 31 is not cognizable on federal habeas review. 28 U.S.C. § 2254(a); *McGuire*, 502 U.S. at 67-68. Petitioner fails to point to clearly established Federal law prohibiting the trial court from reviewing the material at issue. Petitioner attempts to analogize the facts at issue with the Supreme Court's Eighth Amendment jurisprudence under *Booth*, which prohibits capital juries from considering various victim and family impact information. *Booth*, 482 U.S. at 503. But, there are marked, obvious differences here: this matter involves a judge's post-verdict consideration of whether to modify a sentence already decided by a jury. The objectionable statement by the victim's father was not admitted into evidence as an

aggravating factor, it simply appeared in a probation report that the judge reviewed at the post-trial hearing.

Moreover, under state law, the judge had a statutory duty to articulate the circumstances he relied on in denying Petitioner's application. As set forth above, the trial judge did just that, making a thorough record discussing the aggravating and mitigating factors that went into his denial of the motion. The court independently reviewed the evidence that was before the jury, and discussed in detail the facts of the capital crimes. Notably, in the twelve pages of the trial transcript in which the court set forth its reasoning, the probation report was never mentioned. (42RT at 5297-5308.) The court also did not discuss any of the contents of that report in making its ruling. The fact that the court made no mention of the probation report or the victim's father's statements while setting forth its findings further supports the already solid conclusion that the information played no factor.

In any event, Petitioner's task here is to articulate a violation of clearly established Federal law. He has failed to do so. *McGuire*, 502 U.S. at 67-68. Claim 31 is not cognizable and is DENIED.

BB. Death Penalty Improperly Imposed Because it Was Repealed By California's Three Strikes Statute (Claim 32)

Petitioner argues that California's death penalty statute was repealed in 1994 when California passed its "Three Strikes" law. Petitioner theorizes that the language of the Three Strikes law is all-encompassing, so it applies to Petitioner's crimes and supersedes the death penalty scheme. (SAP at 345-46 ("The [Three Strikes] statutory scheme by its own terms applies to all felony cases 'notwithstanding any other law.'"); Traverse at 259.) Petitioner asserts that the United States Constitution prohibits his sentence under a repealed statute. (*Id.*); *see also Bell v. Maryland*, 378 U.S. 226, 231 n.2 (1964).

On Petitioner's direct appeal, the California Supreme Court denied Petitioner's contention by referring to prior cases in which that court held the Three Strikes law did not repeal the death penalty. *People v. Hart*, 20 Cal. 4th at 658.

Claim 32 is also not cognizable on federal habeas review. Petitioner's constitutional claim – that his rights were violated when he was sentenced under a repealed statute – places the cart before the horse. The first determination is whether the death penalty scheme in California was, in fact, repealed by another intervening state law. That is purely an issue of statutory construction. As discussed multiple times already in this Order, the United States Supreme Court has "repeatedly held that a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus." *Richey*, 546 U.S. at 76; *McGuire*, 502 U.S. at 67-68 ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions.").

Here, the California Supreme Court clearly differs with Petitioner on this crucial point of state law. *People v. Hart*, 20 Cal. 4th at 658; *People v. Alvarez*, 14 Cal. 4th 155, 246-47 (1996); *People v. Samayoa*, 15 Cal. 4th 795, 861-62 (1997); *see also People v. Lucero*, 23 Cal. 4th 692, 738-39 (2000). This Court will not second-guess the state court's conclusion on an issue of state law. *Richey*, 546 U.S. at 76; *McGuire*, 502 U.S. at 67-68.

Claim 32 is not cognizable, and is therefore DENIED.

CC. Unconstitutional Sentencing Scheme (Claim 33)

Petitioner makes several arguments challenging the constitutionality of California's death penalty statute and jury instructions authorized by it. The California Supreme Court denied these claims on habeas review without comment. This Court touches on these patently meritless contentions only briefly, below.

1. Failure To Narrow Death-Eligible Defendants/Vagueness

Petitioner argues that California's death penalty statute violates the Eighth Amendment and due process. He claims the law is too broad and vague because it fails

to narrow the class of death-eligible defendants, and the death penalty is therefore imposed arbitrarily. In a similar argument, he claims that the statute's aggravating factors are so vague that prosecutors are essentially left with unfettered discretion to use numerous unrelated facts in aggravation. (SAP at 347-51; Traverse at 259-61.)

Petitioner is unable to show that the California Supreme Court's denial of these claims was contrary to, or an unreasonable application of, clearly established Federal law. The United States Supreme Court has held that a state's capital sentencing scheme must "genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder." *Lowenfield v. Phelps*, 484 U.S. 231, 244 (1988) (citation omitted). "This narrowing requirement is usually met when the trier of fact finds at least one statutorily defined eligibility factor at either the guilt or penalty phase." *Brown v. Sanders*, 546 U.S. 212, 216 (2006). The jury certainly did that here; Petitioner fails to show that the constitutional "narrowing requirement" was not fulfilled.

Further, Petitioner fails to cite any clearly established law that would render California's death penalty statute unconstitutional on the vagueness arguments made here. This is "not surprising" because the related Supreme Court authority that does exist runs contrary to Petitioner's assertions. *Cf. Moses*, 555 F.3d at 761; *see also Brown*, 546 U.S. at 223-24; *Belmontes*, 549 U.S. at 13; *Kansas v. Marsh*, 548 U.S. 163, 177 (2006); *Tuilaepa*, 512 U.S. at 975-80; *Boyde v. California*, 494 U.S. at 377. Notably, the Supreme Court made clear in *Tuilaepa* that "vagueness review is quite deferential," and "a factor is not unconstitutional if it has some common-sense core of meaning . . . that criminal juries should be capable of understanding." *Tuilaepa*, 512 U.S. at 973 (citation and internal quotation marks omitted). Petitioner has not pointed to any failure of "common-sense core of meaning" in the statutory scheme at issue. His constitutional challenges based on the alleged failure to narrow the class of death-eligible defendants and vagueness do not survive AEDPA review.

2. Failure to Require Written Findings

Petitioner contends that his death verdict violated the Eighth and Fourteenth Amendments because it is essentially unreviewable. He reasons that without a written statement by the jury indicating which aggravating factors informed its penalty verdict, there is no way to review that verdict meaningfully. (SAP at 351-52.)

Petitioner's claim is again not supported by any clearly established Supreme Court precedent. Further, while the Supreme Court has not squarely addressed the issue, the Ninth Circuit and the California Supreme Court have ruled contrary to Petitioner's position. *See Williams v. Calderon*, 52 F.3d at 1484-85 (California's death penalty statute "need not require written jury findings in order to be constitutional.") (citation omitted); *see also People v. Powell*, 5 Cal. 5th 921, 1003 (2018) ("The jury need not make written findings regarding the existence of aggravating factors."); *see also Clemons*, 494 U.S. at 750 ("Nor are we impressed with the claim that without written jury findings concerning mitigating circumstances, appellate courts cannot perform their proper role.").

The California Supreme Court's denial of Petitioner's claim based on the failure of the jury to provide written reasons for imposing the death penalty was not contrary to, or an unreasonable application of, clearly established Federal law. 28 U.S.C. § 2254(d); *Van Patten*, 552 U.S. at 125-26.

3. Unfettered Prosecutorial Discretion

Petitioner alleges that California's death penalty statute arms prosecutors with excessive authority for choosing which cases and crimes are death-eligible. Petitioner argus that federal law requires "principled decision-making" in prosecutions and the avoidance of "arbitrary and wanton" discretion for juries. (SAP at 352.) Petitioner makes no allegation that either of these principles are, empirically, being violated by California prosecutors. He only claims that the allegedly open-ended authority enjoyed by prosecutors creates a risk that these principles will be violated. As Petitioner has not alleged a violation of clearly established Federal law, this portion of his challenge

to California's death penalty statute summarily fails under AEDPA. 28 U.S.C. § 2254(d).

4. Failure to Require Jury to Find Aggravating Circumstances True Unanimously and Beyond a Reasonable Doubt

Petitioner argues that the penalty-phase jury instructions authorized under California's death penalty statute were inadequate in such a way that they steered the jury improperly toward choosing the penalty of death. Specifically, he complains that the instructions should have admonished the jury that they must unanimously agree on the truth of the aggravating circumstances, and that they must find those circumstances true beyond a reasonable doubt. (SAP at 353-54.)

The Court denies this claim primarily for the reasons already discussed in addressing Claim 27, above. The penalty-phase instructions clearly and adequately admonished the jury of its responsibility, and did so in accordance with the Constitution. Among those instructions, Petitioner's jury was given a unanimity instruction. (41RT at 5270 ("In order to make a determination as to penalty, all 12 jurors must agree.").) Further, "the Sixth Amendment does not require that a jury specify the aggravating factors that permit the imposition of capital punishment." *Clemons*, 494 U.S. at 746. Petitioner fails to show that the instructions as given were constitutionally inadequate. *Spisak*, 558 U.S. at 148; *Boyde v. California*, 494 U.S. at 386; *id.* at 377; *Van Patten*, 552 U.S. at 125-26.

Petitioner is also unable to establish that the instructions as given so infected the entire trial that the resulting conviction violated due process. *Cupp*, 414 U.S. at 147. In light of other material factors such as the powerful evidence of guilt, Petitioner's proposed jury instructions would not have brought about a different result or changed the proceedings. Petitioner has not established a constitutional violation. *Cupp*, 414 U.S. at 147; *McNeil*, 541 U.S. at 437; *Henderson*, 431 U.S. at 155.

Petitioner's challenge to the constitutionality of California's death penalty statute, including its application in his case, is unsupported by clearly established Supreme Court precedent. 28 U.S.C. § 2254(d). Claim 33 is DENIED.

DD. Eighth Amendment Claim Based on Disproportionality (Claim 34)

The Supreme Court has held, concerning "the imposition of capital punishment for the crime of murder," that "when a life has been taken deliberately by the offender, we cannot say that the punishment is invariably disproportionate to the crime. It is an extreme sanction, suitable to the most extreme of crimes." *Gregg*, 428 U.S. at 187 (footnote omitted).

Petitioner claims his death sentence is unconstitutionally disproportionate based upon his particular circumstances. (SAP at 354-56; Traverse at 261-62.) But, the circumstances to which he refers are merely rehashes of prior arguments. He argues that his mental deficits and Amy Ryan's alleged participation in the murder diminished his culpability and rendered his extreme punishment cruel and unusual. Petitioner is essentially basing an Eighth Amendment cruel and unusual punishment claim on the crime he feels he *should have* been convicted of, not the one he was actually convicted of. Petitioner points to no Supreme Court cases establishing that his sentence is disproportionate to the crime here. *Gregg*, 428 U.S. at 187. To the extent Petitioner's mention of mental deficits is meant to suggest that his execution would violate the Eighth Amendment, the Court directs him to its ripeness analysis of Claim 41. Any claim Petitioner wishes to raise based on his mental state or fitness at the time of execution should be brought at the appropriate time.

Petitioner has shown no violation of clearly established Federal law based on his Eighth Amendment claim. Claim 34 is DENIED.

EE. Death Sentence Is Based on Inaccurate and Unreliable Evidence (Claim 35)

In Claim 35, Petitioner largely repeats allegations already addressed in this Order. The Court will not address those individual issues again. The crux of

Petitioner's argument seems to be that his penalty was based upon "materially inaccurate" evidence that falls short of the "heightened reliability" required from capital cases. In short, he claims that the cumulative effect of several alleged errors left the jury with a skewed picture of the facts. (SAP at 356-58; Traverse at 262-63.) Petitioner fails to distinguish Claim 35 from his cumulative error claims, which the Court addresses in the appropriate section of this Order. This claim otherwise does not articulate any independent, cognizable ground for relief. Claim 35 is DENIED.

FF. Improper Use of Unitary Jury (Claim 36)

Petitioner argues that he was deprived of the right to an impartial jury and a reliable verdict because "the same jury that had only a few days earlier found him guilty of murder and rape" sentenced him to death. (SAP at 358-60; Traverse at 263.) Petitioner's claim patently fails under AEDPA. There is no clearly established Federal law prohibiting a unitary jury in death penalty cases, and the only Supreme Court cases to (generally) address the issue have ruled unfavorably to Petitioner's arguments. *See Lockhart v. McCree*, 476 U.S. 162, 175-76 (1986) (a state has a legitimate interest "in obtaining a single jury that can properly and impartially apply the law to the facts of the case at both the guilt and sentencing phases of a capital trial."); *Gregg*, 428 U.S. at 158 (opinion of Stewart, Powell, and Stevens, JJ.) (upholding Georgia capital sentencing scheme requiring unitary jury in capital cases). Petitioner has offered no legal authority explaining why *McCree* is no longer valid Supreme Court precedent. Claim 36 is DENIED.

GG. Lethal Injection Protocol Is Cruel and Unusual (Claim 37)

Petitioner alleges that California's administration of the death penalty by lethal injection violates the Eighth Amendment. (SAP at 360-64.) However, Petitioner acknowledges in the Traverse that this claim is unripe because "California presently does not have a lethal injection protocol." In lieu of immediate habeas relief, Petitioner "reserves the right to brief this claim in light of the new protocol if it goes into effect." (Traverse at 264.) The Court agrees that Claim 37 is unripe.

Courts have invalidated California's previous lethal injection protocols. *See Payton v. Cullen*, 658 F.3d 890, 893 (9th Cir. 2011); *see also Sims v. Dep't of Corrections and Rehabilitation*, 216 Cal. App. 4th 1059, 1084 (2013); *Morales v. Cal. Dep't of Corrs. & Rehab.*, 168 Cal. App. 4th 729 (2008).

California enacted a new lethal injection protocol in 2018 following California's adoption of Proposition 66, The Death Penalty Reform and Savings Act of 2016 approved by the voters on November 8, 2016. *See Lewis v. Davis*, No. CV 03-6775-LJO-SAB, 2018 WL 4024811, at *167 (E.D. Cal. Aug. 20, 2018) (*citing* Cal. Code Regs. tit. 15 § 3349.1(i) (2018)). However, the constitutionality of the new protocol "is the subject of ongoing litigation in the Northern District of California and a stay upon execution of defendants therein is in effect pending conclusion of the litigation." *Id.* (*citing Morales v. Kernan*, No. 06-CV-0219 RS, 2017 WL 8785130, at *3 (N.D. Cal. Dec. 4, 2017).

Because the method that might be used in Petitioner's case cannot presently be determined, the claim is not ripe. This claim must therefore be denied without prejudice to it being renewed at the appropriate time. *See Payton v. Cullen*, 658 F.3d at 893. Respondent may assert his arguments in response then, too.

Claim 37 is DISMISSED WITHOUT PREJUDICE.

HH. Unconstitutional Imposition of the Death Penalty without a Legitimate Governmental Purpose or Adequate Due Process Protections (Claim 38)

In Claim 38, Petitioner makes broad and conclusory constitutional allegations. His principal theme is that California's death penalty statute violates due process and the Eighth Amendment because it is arbitrarily applied, fails to adequately protect innocent people, and because the death penalty is antiquated (SAP at 364-69; Traverse at 264-65). *See Moore v. Texas*, ___ U.S. ___, 137 S. Ct. 1039, 1048 (2017) (in assessing whether a punishment is cruel and unusual under the Eighth Amendment, courts consider "the evolving standards of decency that mark the progress of a

maturing society.") (citation omitted). The California Supreme Court denied Petitioner's analogous claim on state habeas review.

Perhaps an indication of "evolving standards," capital punishment has recently been the subject of greater scrutiny nationwide, not the least of which in California. *See People v. Potts*, 6 Cal. 5th 1012, 1062-67 (2019) (Liu, J., concurring) (criticizing California's death penalty scheme and discussing California Governor Newsom's executive order placing a moratorium on capital punishment). However, Petitioner's claim is governed by clearly-established Supreme Court precedent. Petitioner has pointed to no Supreme Court case invalidating the death penalty in California on any of the constitutional bases mentioned in Claim 38. *Van Patten*, 552 U.S. at 125-26. And, as already discussed in Claim 33, above, the Supreme Court has entertained and rejected similar constitutional challenges to California's death penalty statute. Because Petitioner's allegations patently fail under AEDPA, Claim 38 is DENIED.

I I. Denial of Meaningful Appellate Review/IAC of Appellate and Habeas Counsel (Claim 40)

Claim 40 is presented in three-parts. First, Petitioner argues that delays in his appellate review process denied various constitutional rights. Second, he makes a conclusory and generalized allegation of ineffective assistance of appellate counsel. Third, he argues that the state habeas proceedings were constitutionally deficient to protect his rights. (SAP at 371-73; Traverse at 269-70.)

Petitioner's allegations were reasonably rejected by the California Supreme Court on state habeas review. It is true that the U.S. Supreme Court "has repeatedly emphasized that meaningful appellate review of death sentences promotes reliability and consistency." *Campbell v. Ohio*, ___ U.S. ___, 138 S. Ct. 1059, 1060 (2018) (Sotomayor, J., respecting the denial of certiorari) (*quoting Clemons*, 494 U.S. at 749); *see also Parker v. Dugger*, 498 U.S. 308, 321 (1991). However, Petitioner makes only general allegations here that do not adequately support his assertions. As to his first allegation, he had no clearly established constitutional right to a speedy appeal. *Hayes*

v. Ayers, 632 F.3d 500, 523 (9th Cir. 2011). As for the remaining allegations, Petitioner's conclusory statements alleging flawed post-conviction proceedings and deficient appellate counsel fail to articulate a constitutional claim for relief. *See Blackledge v. Allison*,431 U.S. 63, 74, 76 n.7 (1977) ("[C]onclusory allegations unsupported by specifics [are] subject to summary dismissal, as are contentions that in the face of the record are wholly incredible," and a federal habeas petition "is expected to state facts that point to a real possibility of constitutional error") (internal quotation marks omitted).

For the foregoing reasons, Claim 40 is DENIED.

JJ. Mental Incompetency at Time of Execution (Claim 41)

Petitioner alleges that he is mentally incompetent to be executed, a claim brought under *Ford*, 477 U.S. at 410 ("The Eighth Amendment prohibits the State from inflicting the penalty of death upon a prisoner who is insane."). (SAP at 373-74; Traverse at 271.) However, as both parties agree, with no execution date set or currently in sight, the claim is not yet ripe. *Stewart v. Martinez-Villareal*, 523 U.S. 637, 644-45 (1998); *Panetti v. Quarterman*, 551 U.S. 930, 943 (2007) ("*Ford*-based incompetency claims, as a general matter, are not ripe until after the time has run to file a first federal habeas petition."). Since Petitioner's execution is "not imminent and therefore his competency to be executed [cannot] be determined at [this] time," dismissal means that Petitioner "does not receive an adjudication of his claim." *Martinez-Villareal*, 523 U.S. at 644-45. As a result, under express Supreme Court precedent, Petitioner may raise the claim in this Court again when it is ripe. *Id.*

Further, dismissing Claim 41 as premature would appear to benefit Petitioner, or at least not be detrimental to his claim. *See Panetti*, 551 U.S. at 943 (concluding that forcing petitioners to file *Ford* claims prematurely could be detrimental to those with no early sign of mental illness, and finding that "[a]ll prisoners are at risk of deteriorations in their mental state."). For now, Petitioner's claim can only be supported with current medical records and speculation about the future. *See id.*

(characterizing premature *Ford* claims as "unripe and, often, factually unsupported.") (parenthesis omitted). Petitioner should raise this claim at the appropriate time.

On the ground of unripeness, Claim 41 is DISMISSED WITHOUT PREJUDICE.

KK. IAC Claims (Claim 6)

Petitioner raises twenty-three IAC subclaims alleging deficient performance by both his guilt-phase and penalty-phase attorneys. The Court addresses the merits of these subclaims below. As most of the subclaims fail for the same reasons, the Court finds it unnecessary to address them all separately.

1. Legal Standard

A Sixth Amendment IAC claim has two components. "First, the defendant must show that counsel's performance was deficient." This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Significantly, because "[i]t is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable," judicial scrutiny of an attorney's performance "must be highly deferential." *Id.* at 689.

> There are, . . . "countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." (Citation omitted.) Rare are the situations in which the "wide latitude counsel must have in making tactical decisions" will be limited to any one technique or approach. (Citation omitted.)

Richter, 562 U.S. at 106 (*quoting Strickland*, 466 U.S. at 689).

A reviewing court "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant

must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Strickland*, 466 U.S. at 689 (internal quotation marks and citation omitted). Federal courts are required not merely to give trial counsel the benefit of the doubt, but to affirmatively entertain the range of possible reasons for counsel having proceeded as they did. *Pinholster*, 563 U.S. at 196. Notably, when formulating a defense strategy, "sometimes is better to try to cast pervasive suspicion of doubt than to strive to prove a certainty that exonerates." *Richter*, 562 U.S. at 109.

In the context of investigating possible defenses, a lawyer is under a duty to make reasonable investigations. *Strickland*, 466 U.S. at 691. For example, the lawyer has a duty to investigate the defendant's "most important defense." *Bragg v. Galaza*, 242 F.3d 1082, 1088 (9th Cir. 2001) (*quoting Sanders v. Ratelle*, 21 F.3d 1446, 1457 (9th Cir. 1994)). An attorney must also adequately "investigate and introduce into evidence records that demonstrate factual innocence, or that raise sufficient doubt on that question to undermine confidence in the verdict." *Id.* (*quoting Hart v. Gomez*, 174 F.3d 1067, 1070 (9th Cir. 1999)).

However, the duty to investigate and prepare a defense is not limitless. *Id.*; *Hendricks v. Calderon*, 70 F.3d 1032, 1040 (9th Cir. 1995). A lawyer must also be capable of making "a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. Thus, an attorney may avoid activities that appear "distractive from more important duties." *Richter*, 562 U.S. at 107. The lawyer is "entitled to formulate a strategy that [is] reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies." *Id.* An attorney also "need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense." *Id.* at 108 (*citing Strickland*, 466 U.S. at 691); *Bragg*, 242 F.3d at 1088 (a defense attorney is not required to interview every conceivable witness). "There is a strong presumption that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect." *Richter*, 562

U.S. at 109 (citation and internal quotation marks omitted); *see also Strickland*, 466 U.S. at 691 (to determine the reasonableness of a decision not to investigate, the court must apply "a heavy measure of deference to counsel's judgments.").

It is difficult to establish ineffective assistance based on the failure to investigate "when counsel's overall performance indicates active and capable advocacy." *Richter*, 562 U.S. at 111; *see also Bragg*, 242 F.3d at 1088 (*citing Eggleston v. United States*, 798 F.2d 374, 376 (9th Cir.1986)) ("When the record clearly shows that the lawyer was well-informed, and the defendant fails to state what additional information would be gained by the discovery she or he now claims was necessary, an ineffective assistance claim fails.").

"Second, the defendant must show that the deficient performance prejudiced the defense. This requires demonstrating that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland*, 466 U.S. at 687. Specifically, a petitioner must "affirmatively prove prejudice," and "[i]t is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693. Instead, the petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

Additionally, "[u]nless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable." *Id.* at 687. Therefore, "a court need not determine whether counsel's performance was deficient before examining the prejudice," and "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." *Id.* at 697.

Finally, while "[s]urmounting *Strickland*'s high bar" alone "is never an easy task," the additional task of "[e]stablishing that a state court's application of *Strickland*

was unreasonable under § 2254(d) is all the more difficult." *Richter*, 562 U.S. at 105 (citations omitted). Both standards are "highly deferential," so "when the two apply in tandem, review is 'doubly' so . . . ." *Id.* (*citing Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)). Specifically, "[w]hen § 2254(d) applies, the question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Id.* "The *Strickland* standard is a general one, so the range of reasonable application is substantial." *Id.* "Reliance on 'the harsh light of hindsight' to cast doubt on a trial that took place now more than 15 years ago is precisely what *Strickland* and AEDPA seek to prevent." *Id.* at 107 (citations omitted).

2. Background Facts

In denying Petitioner's IAC claims on direct appeal, the California Supreme Court made notable findings about the defense attorneys' options and possible strategies, consistent with this Court's conclusions about the strength of the prosecution's evidence. For example, as to the guilt phase, the court noted that, "in view of the physical evidence that linked defendant to the crimes, and the extended period of time during which Amy had an opportunity to observe defendant on the day the crimes were committed," defense counsel reasonably avoided challenging a pretrial lineup consistent with an "overall trial strategy not to challenge defendant's presence at the crime scene, but instead to claim that the killing of Diane did not constitute first degree murder." *People v. Hart*, 20 Cal. 4th at 625. The state court further found that:

> trial counsel was confronted with overwhelming evidence that defendant killed Diane in the course of a sexual assault, and the manner of killing (repeated powerful blows to the back of the head with a rock), combined with defendant's statement to Amy that "your friend was an asshole, she called me a few names, and I think she's dead," strongly suggested that he acted with the intent to kill. In view of these circumstances, trial counsel could have had a reasonable tactical basis for deciding to forego

> the presentation of a mental state defense in favor of a defense challenging the prosecution's forensic evidence. Counsel's strategy conceivably could have persuaded the jury to acquit defendant of the charge that he raped Diane and to convict him only of second degree murder.

Id. at 627-28.

> Subsequently, the California Supreme Court again found that:
>
> the overwhelming nature of the evidence against defendant left counsel with little opportunity to mount a persuasive summation. The surviving victim had testified in graphic detail regarding defendant's involvement in the charged offenses. Defendant's fingerprint was found on a beer bottle recovered from the remote crime scene. Other physical and circumstantial evidence linked defendant to the crimes. In view of the evidence presented against defendant, trial counsel reasonably could have concluded that challenging the evidence more vigorously in his argument risked alienating the jury and perhaps lessening his odds of success at the penalty phase. Counsel's decision to acknowledge defendant's culpability – but to a lesser extent than that urged by the prosecution, in an effort to spare his client from a penalty phase – was not a tactical choice that could not be satisfactorily explained.

Id. at 631-32 (citations omitted).

> As to Petitioner's penalty-phase lawyer, the California Supreme Court found:
>
> defense counsel at the penalty phase vigorously cross-examined key prosecution witnesses, sought to cast doubt on the case against defendant involving Shelah, and presented a thorough case in mitigation. During the penalty phase, defendant expressed his high regard for defense counsel, informing the court: "As for phase two, I am totally pleased with both my counsel."

Id. at 633-34.

The California Supreme Court additionally found that:

> although trial counsel did not present the mental health defense that defendant now contends was necessary, counsel did present considerable evidence that sought to portray defendant as a victim of numerous unfortunate circumstances. For example, the defense presented evidence of defendant's childhood head injury, his father's alcoholism and detachment from the family, and defendant's first wife's extramarital affair and his ensuing use of drugs. Although such matters did not comprise a "mental health" defense based upon the testimony of various mental health experts, they did provide the jury with the opportunity to consider certain factors in mitigation – without exposing the jury to potentially damaging rebuttal evidence regarding defendant's mental health. In view of defendant's lengthy history of behaving violently toward women, and the interest of the defense in portraying defendant as favorably as possible, we cannot say on this record that there could not be a reasonable tactical basis for trial counsel's decision to rely solely upon mitigating evidence that showed defendant to be the victim of numerous unfortunate circumstances, in an effort to generate sympathy, and perhaps leniency, from the jury at the penalty phase.

Id. at 637-38.

3. Analysis

a. Alleged Pretrial Deficiencies by Barnett

This Court's task is to determine whether any theory under *Strickland* could have supported the state court's denial of relief. *Richter*, 562 U.S. at 102. Petitioner's first IAC subclaim faults his guilt-phase trial attorney for failing to adequately prepare the case. Petitioner's primary complaints are that the lawyer failed to meet with him

often enough or investigate important leads for a complete defense. (SAP at 58-68; Traverse at 43-45, 50-53.)

The California Supreme Court denied this subclaim on direct appeal, finding it "unpersuasive, because the record before us does not disclose that trial counsel lacked a tactical basis" for his actions or inactions, and "counsel's performance was not of the sort for which there could be no satisfactory explanation." *People v. Hart*, 20 Cal. 4th at 627. After addressing a number of specific claims pertaining to counsel's trial performance, the court more generally concluded that "the record on appeal does not support defendant's claim that his counsel performed deficiently in preparing or presenting a defense." *Id.* at 628. The state court's decision was consistent with *Strickland*. 28 U.S.C. § 2254(d).

The record in this case shows that Petitioner received the representation required by the Sixth Amendment at the pretrial stage. His lawyer made competent investigations and efforts to put together a strategy for trial. *Strickland*, 466 U.S. at 691. Petitioner highlights Barnett's failure to personally meet with him often enough or devote more time to his mental state and depression. Petitioner's generalized attacks on his attorney's efforts in this regard fail to overcome the "strong presumption" that the lawyer's conduct fell within the wide range of reasonable professional assistance. *Id.* at 689. Petitioner also fails to convincingly establish how any of Barnett's alleged failings to spend more time with him affected the outcome of the trial. *Id.* at 693-94.

Petitioner also contends that Barnett failed to make key investigations. More specifically, Petitioner complains that Barnett failed to create a meaningful investigation plan, failed to hire competent investigators, and failed to interview enough witnesses. (SAP at 60-68.) Petitioner also claims the defense should have proffered other cellmates to rebut Gresham's penalty-phase testimony about his confession to killing his niece. He also theorizes that more witnesses who knew and spoke to the victims would have undermined Amy Ryan's credibility. Petitioner, in fact, places emphasis throughout his papers on his attorney's failures to attack Amy

Ryan's credibility at trial. These arguments ignore the obvious, and patently reasonable, strategy of choosing not to attack the young victim who lived to tell the horrors she endured in great detail. It was, at the very least, reasonable for the California Supreme Court to assume Barnett avoided raising conspiracy theories about Petitioner and his rape victim as a matter of sound trial strategy. *Strickland*, 466 U.S. at 687; *Richter*, 562 U.S. at 105. As to all of these complaints about the defense attorneys, they amount to quintessential examples of the "all too tempting" resort "to second-guess[ing] counsel's assistance after conviction or adverse sentence." *Strickland*, 466 U.S. at 687; *Richter*, 562 U.S. at 105. The subclaim fails.

b. IAC Subclaims Based on Rejected Arguments

Petitioner raises multiple IAC claims that hinge on the underlying merits of other claims raised in his SAP. In other words, he argues that several errors, to the extent they were not the fault of the trial court, resulted from his lawyers' failure to properly present the issue. Specifically, Petitioner contends that his attorneys: (1) failed to conduct more thorough voir dire to root out juror bias; (2) failed to fully investigate and present evidence to impeach Amy Ryan's testimony; (3) failed to make a competent motion to change venue; (4) failed to object to the expert testimony of Dr. Hunter; (5) failed to adequately investigate, rebut, and mitigate the penalty-phase testimony of jailhouse informant Randall Gresham; (6) failed to object to shackling; (7) failed to object to the alleged prosecutorial misconduct; and (8) failed to move to exclude all penalty-phase evidence of the Shelah McMahan homicide.

In light of this Court's extensive analysis above rejecting the underlying foundation of these IAC claims, the Court finds that the California Supreme Court reasonably denied these related IAC claims. Petitioner's lawyers made reasonable decisions to the extent they elected not to pursue meritless, futile issues. *Gonzalez v. Knowles*, 515 F.3d 1006, 1017 (9th Cir. 2008) (a defense attorney "cannot be deemed ineffective for failing to raise [a] meritless claim."); *Rupe v. Wood*, 93 F.3d 1434, 1445 (9th Cir. 1996) (an attorney's "failure to take a futile action can never be deficient

performance."). Moreover, for the same reasons as their counterpart claims, even assuming deficient performance, these IAC issues did not change the outcome of Petitioner's trial. *Strickland*, 466 U.S. at 693-94.

c. Failure to Challenge Prosecution's Scientific Evidence

Petitioner also complains that his lawyers performed deficiently in failing to adequately test and investigate the prosecution's scientific evidence and expert testimony during both phases of trial. He places emphasis on the electrophoresis testing done on blood and seminal fluid. The California Supreme Court denied this claim in part as follows:

> James Hall, the prosecution's criminalist, testified that a stain found on Amy's slip tested positive for both blood and seminal fluid, although neither substance could be typed using electrophoresis. Thus, the testimony did not establish whether it was defendant who deposited the stain. . . . .
>
> [The] record on appeal fails to disclose that trial counsel lacked a tactical basis for declining to challenge the electrophoresis evidence, and counsel's decision was not one for which there could be no satisfactory explanation. Although the criminalist testified that the contributor of the stain might have been a nonsecretor (as was defendant), the criminalist also testified that the inability to type the stain could have been due to the insufficient strength of the stain, or due to degradation attributable to the passage of time. Thus, as noted, the evidence did not identify defendant as the contributor. Trial counsel therefore reasonably may have concluded that the evidence was not particularly prejudicial, and on that basis reasonably could have made a tactical decision not to challenge the admissibility of this evidence, or the reliability of the electrophoresis testing. During cross-examination, trial counsel exploited the weakness of this evidence, asking questions that emphasized its inconclusive nature.

> Defendant's assertion of ineffective assistance of counsel based upon trial counsel's failure to request a *Kelly-Frye* hearing similarly is unpersuasive. Again, the record before us fails to disclose that trial counsel lacked a tactical basis for declining to request such a hearing, nor was counsel's decision to refrain from doing so one for which there could be no satisfactory explanation. At the time of defendant's trial, electrophoretic typing of dried bloodstains had gained general acceptance in the scientific community. Trial counsel was under no obligation to interpose a meritless challenge to a generally accepted scientific technique. We therefore reject defendant's contention that trial counsel performed deficiently regarding this issue, and find no basis for his related contention that counsel's performance deprived defendant of his constitutional rights.

People v. Hart, 20 Cal. 4th at 628-29 (citations omitted).

The state court also concluded:

> At the penalty phase, the prosecution introduced evidence of electrophoretic testing of dried blood that had been found on handcuffs recovered from a shed located behind defendant's residence. . . . The blood was similar in type to Shelah's. The prosecution also introduced evidence related to electrophoretic testing of a semen stain found on Shelah's sweatpants; on cross-examination, the prosecution's expert acknowledged that no conclusion could be drawn as to typing the semen donor, or as to the age of the stain.
>
> Defendant contends that, at the time of his trial, there was considerable debate regarding the admissibility of electrophoretic evidence, ... Defendant contends that trial counsel's failure to object to the admission of the electrophoretic evidence, and counsel's failure to

> request a foundational hearing pursuant to Evidence Code section 402, constituted ineffective assistance of counsel.
>
> Defendant's position is unpersuasive, because the record on appeal fails to reflect that trial counsel lacked a tactical basis for declining to challenge the electrophoresis evidence or request a foundational hearing, and counsel's decisions regarding those matters were not ones for which there could be no satisfactory explanation.
>
> [Moreover], . . . , we held that admission of electrophoresis testing was generally accepted in the scientific community in 1987 – a date prior to its introduction at the penalty phase in defendant's trial. Defense counsel was not required to mount a meritless challenge to the acceptance of such evidence.

Id. at 634-35 (citations omitted).

The state court decision was not contrary to, or an unreasonable application of, *Strickland*. Notably, Petitioner's allegations as to every scientific aspect of the prosecution's case – electrophoresis testing, the autopsy, gynecology, blood spatter evidence – only speculate as to whether his lawyers would have garnered a competent scientific rebuttal. He merely hypothesizes that more effort on the part of the lawyers would have led to favorable evidence. That does not meet the standard of demonstrating a "reasonable probability" that outcome-altering evidence would have emerged from further investigation. *Strickland*, 466 U.S. at 694; *Richter*, 562 U.S. at 111; *Bragg*, 242 F.3d at 1088. Additionally, considering how damning the evidence was implicating Petitioner in both the guilt-phase and penalty-phase crimes, there was certainly a reasonable strategy to the extent Petitioner's attorneys focused their efforts on more priority arguments. *Strickland*, 466 U.S. at 689; *Pinholster*, 563 U.S. at 196. Petitioner has not established an unreasonable application of *Strickland* here.

d. Failure to Object to Dr. Rath's Testimony

Petitioner argues that his lawyers failed to mount an admissibility challenge to "binge rapist" testimony offered by Dr. Craig Rath. The California Supreme Court denied this claim based on the following findings of fact and conclusions of law:

> The prosecution called Dr. Craig Rath, a licensed clinical psychologist at Patton State Hospital, to testify as an expert witness regarding two principal matters: (1) memory repression by someone who has experienced a traumatic event, and (2) an emotional "about-face" and showing of remorse on the part of someone who has just committed a sexual assault. Rath's testimony apparently was intended to assist the jury in understanding certain aspects of Amy's testimony. On cross-examination, Rath acknowledged that he was unfamiliar with defendant or the surviving victim, not having interviewed either individual.
>
> On appeal, defendant contends that trial counsel performed deficiently in failing to challenge Rath's qualifications or competence to testify as an expert regarding the matters about which he testified, particularly his testimony concerning the common conduct of "binge rapists." Defendant's claim cannot be sustained on appeal. The record on appeal fails to disclose that trial counsel lacked a tactical basis for declining to challenge Dr. Rath's qualifications or competence to testify as an expert, and counsel's decision to refrain from doing so was not one for which there could be no satisfactory explanation. At the time of defendant's trial, Rath had performed more than 2,000 court-directed psychological evaluations and had testified "a couple of hundred times in nine counties in California and four other states," and there is no indication in the record that he did not have expertise with regard to the matters to which he testified. Thus, on the record before us, we perceive

> no deficiency on counsel's part in failing to challenge Dr. Rath's qualifications.

People v. Hart, 20 Cal. 4th at 629-30 (citations omitted).

Again, the state court decision was not contrary to, or an unreasonable application of, *Strickland*. As above, Petitioner fails on two crucial fronts. He speculates that his lawyers could have mustered any viable argument to disqualify Dr. Rath's testimony. *Strickland*, 466 U.S. at 694. Additionally, he fails to explain how this evidence was so important or persuasive in the grand scheme of the trial that a reasonably competent attorney should have expended time and resources on it. *Id.* at 689; *Pinholster*, 563 U.S. at 196. Petitioner has again not established an unreasonable application of *Strickland*.

e. Failure to Present an Adequate Mitigating Case

Petitioner raises additional claims targeting his lawyers' performance in the penalty phase. He argues that they failed to present aspects of his social history, retain mental health experts to testify, or mount an adequate third-party culpability defense as to the murder of his niece. The California Supreme Court reasonably denied these IAC allegations.

As stated above, a defense lawyer is "entitled to formulate a strategy that [is] reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies." *Richter*, 562 U.S. at 107-08. A defense lawyer "need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense." *Id.* Moreover, Petitioner's attorneys were entitled to a strong presumption that they made rational choices based on what defense theories they decided would be most likely to persuade the jury. *Richter*, 562 U.S. at 109 (counsel is entitled to a strong presumption that his or her attention to certain issues to the exclusion of others reflects trial tactics); *Strickland*, 466 U.S. at 691 (the court must apply "a heavy measure of deference to counsel's judgments."). For reasons already discussed in detail – in particular the powerful penalty-phase evidence in aggravation

– Petitioner fails to show that his lawyers had any non-frivolous action to take that would have changed the outcome of the penalty phase of his trial. *Gonzalez*, 515 F.3d at 1017; *Rupe*, 93 F.3d at 1445 (9th Cir. 1996). Petitioner's claim is another example of the "all too tempting" resort "to second-guess[ing] counsel's assistance after conviction or adverse sentence." *Strickland*, 466 U.S. at 687; *Richter*, 562 U.S. at 105.

Petitioner's arguments are also based largely on speculation as to what evidence additional witness interviews would have garnered. *See Djerf v. Ryan*, 931 F.3d 870, 883 (9th Cir. 2019) (no *Strickland* prejudice where the prosecution's aggravating evidence was strong and it was unclear whether additional defense investigation would have led to an expert diagnosis of mental illness).

This subclaim also fails.

f. Claims That Patently Fail *Strickland* Prejudice

The remaining IAC subclaims – that Petitioner's lawyers failed to ensure his presence at all critical stages of trial, failed to move to have the prosecutor recused, failed to challenge an unfair pretrial lineup, failed to request a different jury for the penalty phase, failed to cooperate with each other, failed to adequately challenge the special circumstance allegations based on lack of intent, came to court intoxicated and completely abandoned their role as advocates – plainly fail *Strickland*'s prejudice prong. For reasons already discussed regarding the strength of the prosecution's evidence, none of these claims, even assuming deficient performance, establish a reasonable probability of a different result. *Strickland*, 466 U.S. at 694. Thus, these assertions fail to "affirmatively prove prejudice." *Id.* at 693 ("It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding.")

The California Supreme Court's denial of Petitioner's IAC claims was not contrary to, or an unreasonable application of, clearly established United States Supreme Court precedent. 28 U.S.C. § 2254(d). Claim 6 is DENIED.

LL. Defense Investigator's Conflict of Interest (Claim 13)

Petitioner's next claim is both factually and legally speculative. He raises IAC and a conflict-of-interest claim based on his concerns about the background of an investigator hired by the defense. The investigator at issue, Carl Smith, was previously employed as the chief deputy coroner in the Riverside County Coroner's Office. Petitioner points to Smith's prior convictions of perjury and conspiracy to obstruct justice based on acts that occurred while he was employed by the coroner. Petitioner argues that Smith was on probation in that case at the time of Petitioner's trial, and "needed the Riverside District Attorney's approval for dismissal of the charges against him." From that, Petitioner concludes that Smith was "beholden to the county prosecutor's office" and made sub-par investigative efforts on Petitioner's case due to the investigator's divided loyalties. Aside from generally referring to the investigative inadequacies Petitioner alleged in his related IAC claim in Claim 6, he emphasizes that Smith could not have thoroughly investigated the work and character of his former colleagues in the county coroner's office. (SAP at 240-47; Traverse at 168-71.)

The California Supreme Court's summary denial of Petitioner's claim was not objectively unreasonable under AEDPA. The Court has already addressed and rejected Petitioner's IAC claims based on allegedly inadequate investigations. Petitioner's renewed attempt to restate these claims by assigning the assumed conflicts of an investigator to the attorney who hired him is not supported by clearly established Federal law. It was the lawyer who owed Petitioner a Sixth Amendment duty to adequate and conflict-free representation. It was also the lawyer who was responsible for the mistakes of those he hired. Setting aside Petitioner's unsupported cynicism – he argues that Smith likely acted as a double agent for the district attorney's office, sabotaging defense cases and helping his former colleagues in the county coroner's office cover up their misdeeds – he fails to show that any part of this alleged conspiracy affected the performance of his trial attorney or actually inhibited the defense case in a material way. *See Rowland*, 876 F.3d at 1191 (to demonstrate a Sixth Amendment violation based on a conflict of interest, "a defendant who raised no

objection at trial must demonstrate that an actual conflict of interest adversely affected *his lawyer's* performance.") (emphasis added, citation omitted); *id.* (establishing an "actual conflict" requires more than showing "a mere theoretical division of loyalties."); *Strickland*, 466 U.S. at 693 (a petitioner must "affirmatively prove prejudice," and "[i]t is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding.").

Claim 13 is DENIED.

MM. Cumulative Error (Claims 21 and 39)

Petitioner argues that the cumulative effect of all the alleged guilt-phase (Claim 21) and penalty-phase (Claim 39) errors – including his IAC claims – violated the Constitution. (SAP at 295-96, 369-71; Traverse at 265-68.) The Supreme Court has never expressly held that either cumulative error or cumulative *Strickland* prejudice are bases on which habeas relief may be granted. Consequently, Petitioner cannot show a violation of clearly established Federal law, and these claims fail. 28 U.S.C. § 2254(d); *Van Patten*, 552 U.S. at 126.

Ninth Circuit courts have held that the "cumulative effect of multiple errors can violate due process even where no single error rises to the level of a constitutional violation or would independently warrant reversal." *Ybarra v. McDaniel*, 656 F.3d 984, 1001 (9th Cir. 2011) (*quoting Parle v. Runnels*, 505 F.3d 922, 927 (9th Cir. 2007)); *see also Harris v. Wood*, 64 F.3d 1432, 1438-39 (9th Cir. 1995) (applying the same principal to the "cumulative prejudice" of several IAC claims). Such a cumulative effect exists where there is a "unique symmetry" of otherwise harmless errors that "amplify each other in relation to a key contested issue in the case" and render the proceeding "fundamentally unfair." *Ybarra*, 656 F.3d at 1001 (citations omitted). But, when there is no single constitutional error, there is "nothing to accumulate to a level of a constitutional violation." *Mancuso v. Olivarez*, 292 F.3d 939, 957 (9th Cir. 2002). Since the Court finds that none of Petitioner's claims

amounts to constitutional error, Petitioner's cumulative error claim would fail under this Circuit's precedent, as well.

Regardless, in the absence of clearly established Federal law articulating cumulative error or cumulative *Strickland* prejudice as bases for habeas relief, both claims fail under AEDPA. See *Lopez v. Smith*, 574 U.S. at 2 (AEDPA prohibits circuit courts from relying on their own precedent to conclude that a particular constitutional principle is clearly established); *see also Dodson v. Stephens*, 611 F. App'x. 168, 179 n.3 (5th Cir. 2015) (discussing circuit split of authority as to whether *Strickland* calls for a cumulative prejudice analysis) (cited pursuant to Fed. R. App. P. 32.1(a) and 5th Cir. R. 28.7).

Claims 21 and 39 are DENIED.

VI. CONCLUSION

The Court finds that Claims 37 and 41 are not yet ripe for review. The Court dismisses those claims without prejudice so that Petitioner may raise them at the appropriate time. As to all other claims raised in the SAP, Petitioner has not cleared "AEDPA's high bar for habeas relief." *LeBlanc*, 137 S. Ct. at 1729; *see also Richter*, 562 U.S. at 102 ("It bears repeating that even a strong case for relief does not mean the state court's contrary conclusion was unreasonable. (Citation omitted.) If this standard is difficult to meet, that is because it was meant to be."). Those claims are denied and dismissed with prejudice.

IT IS SO ORDERED.

Dated: August 5, 2020

Dale S. Fischer

DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

Death Penalty

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JOSEPH WILLIAM HART,

Petitioner,

v.

RON BROOMFIELD, Acting Warden of California State Prison at San Quentin,

Respondent.

CASE NO. CV 05-03633 DSF

DEATH PENALTY CASE

JUDGMENT

Pursuant to the Order Denying Habeas Relief issued on August 5, 2020, IT IS HEREBY ADJUDGED that this action is DISMISSED with prejudice, except as to Claims 37 and 41, which are dismissed without prejudice. The Order constitutes final disposition of the Second Amended Petition by the Court.

The Clerk is directed to enter judgment.

Dated: September 1, 2020

Dale S. Fischer

DALE S. FISCHER
UNITED STATES DISTRICT JUDGE

SAN DIEGO DOCKETING
MAR 06 2006
No. D19 99XH 0004
BY JUANA MEJIA

SUPREME COURT
FILED
MAR 1 - 2006
Frederick K. Ohlrich Clerk
DEPUTY

S074569

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re JOSEPH WILLIAM HART on Habeas Corpus

The petition for a writ of habeas corpus, filed November 6, 1998, is denied, as follows.

Claims A, B, and C are denied on the merits. In addition, each of these claims is barred as untimely under *In re Robbins* (1998) 18 Cal.4th 770 (*Robbins*), and *In re Clark* (1993) 5 Cal.4th 750 (*Clark*).

Claim D is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is procedurally barred under *In re Waltreus* (1965) 62 Cal.2d 218, 225. To the extent the claim is based upon the record, it could and should have been raised on appeal and hence is barred under *In re Dixon* (1953) 41 Cal.2d 756, 759. In addition, the claim is barred as untimely under *Robbins*, *supra*, and *Clark*, *supra*.

Claim E is denied on the merits. To the extent this claim is based upon the record, it could and should have been raised on appeal and hence is barred under *Dixon*, *supra*, 41 Cal.2d 756, 759. In addition, the claim is barred as untimely under *Robbins*, *supra*, and *Clark*, *supra*.

Claims F and G are denied on the merits. In addition, each of these claims is barred as untimely under *Robbins*, *supra*, and *Clark*, *supra*.

Claims H and I are denied on the merits. To the extent these claims are based upon the record, they could and should have been raised on appeal and hence are barred under *Dixon*, *supra*, 41 Cal.2d 756, 759. In addition, each of these claims is barred as untimely under *Robbins*, *supra*, and *Clark*, *supra*.

Claim J is denied on the merits. In addition, this claim is barred because it was not presented to the trial court. (*In re Seaton* (2004) 34 Cal.4th 193, 198-201, and fn. 4.) In addition, the claim is barred as untimely under *Robbins*, *supra*, and *Clark*, *supra*.

Claim K is denied on the merits. To the extent this claim is based upon the record, it could and should have been raised on appeal and hence is barred under *Dixon*, *supra*, 41 Cal.2d 756, 759. In addition, the claim is barred as untimely under *Robbins*, *supra*, and *Clark*, *supra*.

Claims L and M are denied on the merits.

Claims N, O, P, and Q are denied on the merits. In addition, each of these claims is barred as untimely under *Robbins*, *supra*, and *Clark*, *supra*.

Werdegar, J., would not apply the *Seaton* bar to Claim J.

Kennard, J., would not deny the petition as untimely.

GEORGE
Chief Justice

MAR 30 2007
No. SD200SXH0003

S134962

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
MAR 28 2007
Frederick K. Ohlrich Clerk
DEPUTY

En Banc

In re JOSEPH WILLIAM HART on Habeas Corpus

Petitioner's second petition for a writ of habeas corpus, filed June 22, 2005, is denied, as follows.

Claim 1 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it is barred under *In re Waltreus* (1965) 62 Cal.2d 218, 225 (*Waltreus*). To the extent the claim is based upon the record and was not raised on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it could and should have been raised on appeal and hence is barred under *In re Dixon* (1953) 41 Cal.2d 756, 759 (*Dixon*). In addition, the claim is barred as successive under *In re Clark* (1993) 5 Cal.4th 750, 767-768 (*Clark*), and as untimely under *In re Robbins* (1998) 18 Cal.4th 770, 780-781 (*Robbins*).

Claim 2 is denied on the merits. To the extent this claim asserts systemic underrepresentation of Hispanics in the Riverside County jury pool, the claim is barred because evidence of such systemic underrepresentation was not presented to the trial court. (*In re Seaton* (2004) 34 Cal.4th 193, 198-201 & fn. 4 (*Seaton*).) To the extent petitioner asserts he was denied his right to a jury representing a fair cross-section of the community and his right to the effective assistance of counsel, the claim was raised and rejected on the merits in the prior petition for writ of habeas corpus (S074569, denied February 22, 2006), and hence is barred as repetitive under *In re Miller* (1941) 17 Cal.2d 734, 735 (*Miller*). In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 3 is denied on the merits. To the extent this claim asserts jurors were exposed to media reports related to petitioner or to the proceedings against him, the claim is barred as repetitive under *Miller*, *supra*. To the extent this claim is based upon the record and was not raised on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it is barred under *Dixon*, *supra*. To the extent this claim asserts subclaims not previously presented, it is barred as successive under *Clark*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 4 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it is barred under *Waltreus*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 5 is denied on the merits. The claim also is barred as repetitive under *Miller*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 6, subclaims (c) (alleged failure to adequately cross-examine the surviving witness), and (q) (alleged failure to more fully investigate and present evidence of third-party culpability in the murder of Shelah McMahan) are denied on the merits. The balance of the claim is denied on the merits and as untimely under *Robbins*, *supra*. To the extent this claim asserts subclaims presented in petitioner's prior petition for writ of habeas corpus, it is barred as repetitive under *Miller*, *supra*. To the extent this claim asserts subclaims not previously presented, it is barred as successive under *Clark*, *supra*.

Claim 7 is denied on the merits. To the extent the claim is based upon the record and was not raised on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it is barred under *Dixon*, *supra*. The claim also is barred as repetitive under *Miller*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 8 is denied on the merits. The claim also is barred as repetitive under *Miller*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 9 is denied on the merits. The claim also is barred as repetitive under *Miller*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 10 is denied on the merits. This claim is barred under *Seaton*, *supra*. To the extent the claim is based upon the record and was not raised on appeal, it is barred under *Dixon*, *supra*. The claim also is barred as repetitive under *Miller*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 11 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 12 is denied on the merits. To the extent the claim is based upon the record and was not raised on appeal, it is barred under *Dixon*, *supra*. The claim also is barred as repetitive under *Miller*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 13 is denied on the merits. The claim also is barred as repetitive under *Miller*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 14 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. The claim also is barred as repetitive under *Miller*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 15 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. To the extent the claim is based upon the record and was not raised on appeal, it is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 16 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it is barred under *Waltreus*, *supra*. To the extent the claim is based upon the record and was not raised on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, the claim is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 17 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it is barred under *Waltreus*, *supra*. To the extent the claim is based upon the record and was not raised on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, the claim is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 18 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it is barred under *Waltreus*, *supra*. To the extent the claim is based upon the record and was not raised on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, the claim is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 19 is denied on the merits. To the extent this claim asserts insufficiency of the evidence to support the guilt judgment and special circumstance findings, the claim is barred under *In re Lindley* (1947) 29 Cal.2d 709, 723 (*Lindley*). To the extent this claim reasserts issues raised and rejected on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it is barred under *Waltreus*, *supra*. To the extent the claim is based upon the record and was not raised on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, the claim is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 20 is denied on the merits, and is barred as repetitive under *Miller*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 21 is denied on the merits. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 22 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it is barred under *Waltreus*, *supra*. To the extent the claim is based upon the record and was not

raised on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, the claim is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 23 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. The claim also is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 24 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. To the extent the claim is based upon the record and was not raised on appeal, it is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 25 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. To the extent the claim is based upon the record and was not raised on appeal, it is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 26 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. To the extent the claim is based upon the record and was not raised on appeal, it is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 27 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. To the extent this claim asserts insufficiency of the evidence pertaining to the Shelah McMahon homicide, the claim is barred under *Lindley*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 28 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 29 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, and insofar as it asserts violations of petitioner's rights other than the right to the effective assistance of counsel, it is barred under *Waltreus*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 30 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 31 is denied on the merits. To the extent the claim is based upon the record and was not raised on appeal, it is barred under *Dixon*, *supra*. In addition,

the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 32 is denied on the merits. To the extent this claim reasserts issues raised and rejected on appeal, it is barred under *Waltreus*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 33 is denied on the merits.

Claim 34 is barred on the merits insofar as it constitutes a general challenge to the validity of the death penalty law. Insofar as the claim pertains to the specific facts of petitioner's case, the claim is denied on the merits and is barred as repetitive under *Miller*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 35 is denied on the merits, and is barred as repetitive under *Miller*, *supra*. In addition, the claim is barred as untimely under *Robbins*, *supra*.

Claim 36 is denied on the merits. To the extent the claim is based upon the record and was not raised on appeal, it is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 37 is denied on the merits.

Claim 38 is denied on the merits. To the extent the claim is based upon the record and was not raised on appeal, it is barred under *Dixon*, *supra*. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 39 is denied on the merits. In addition, the claim is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 40 is denied on the merits. In addition, the claim — except insofar as it alleges ineffective assistance of prior habeas corpus counsel — is barred as successive under *Clark*, *supra*, and as untimely under *Robbins*, *supra*.

Claim 41 is denied on the merits.

Werdegar, J., would not apply the *Seaton* bar to Claims 2 and 10.

GEORGE

Chief Justice

SUPREME COURT
FILED

SEP 28 2011

Frederick K. Ohlrich Clerk

Deputy

S152912

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re JOSEPH WILLIAM HART on Habeas Corpus.

The petition for a writ of habeas corpus, filed May 22, 2007, is denied.

All claims are denied on the merits and as untimely. (*In re Robbins* (1998) 18 Cal.4th 770; *In re Clark* (1993) 5 Cal.4th 750.)

Claims 1.A and 1.B are also denied as successive because they could have been, but were not, raised on habeas corpus previously. (*In re Robbins, supra,* 18 Cal.4th 770; *In re Clark, supra,* 5 Cal.4th 750.)

CANTIL-SAKAUYE

Chief Justice

S. Diego

SUPREME COURT
FILED
JUN 1 1999
Robert Wandruff Clerk
Deputy
Date Filed
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Entered by
Date Rec'd 6-4-99

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IN THE SUPREME COURT OF CALIFORNIA

SD 1988 X 5000 5

THE PEOPLE,	
Plaintiff and Respondent,	S005970
v.	Super. Ct. No. 25670
JOSEPH WILLIAM HART,	Riverside County
Defendant and Appellant.	

Following the guilt phase of the trial, a jury found defendant Joseph William Hart guilty of one count of first degree murder of Diana Lynn Harper (Pen. Code., §§ 187, 189),[1] and found true the special circumstances that the murder was committed while defendant was engaged in the commission of, attempted commission of, or immediate flight after commission of the crimes of rape and sodomy. (§ 190.2, subd. (a)(17)(C), (D).) The jury also found defendant guilty of rape, sodomy, and oral copulation of Amy R. (§§ 261, 286, 288a.) At the penalty phase, the jury fixed the penalty at death. The trial court denied the automatic motion to modify penalty. (§ 190.4, subd. (e).) Thereafter, the court imposed a sentence of death.

[1] All further statutory references are to the Penal Code unless otherwise indicated.

This case reaches us on automatic appeal. (Cal. Const., art. VI, § 11; § 1239, subd. (b).) We affirm the judgment in its entirety.

FACTS

The evidence at trial established that shortly before noon on March 24, 1986, the murder victim, Diana (known as Diane) Lynn Harper, and her friend, Amy R., each 15 years of age, decided to leave the Riverside County high school in which they were enrolled as students, to meet Diane's boyfriend at a local 7-Eleven store. In the parking lot of the store, Diane began conversing with a stranger, who told her that he had found a marijuana patch and needed someone to watch the road while he harvested the plants. He offered the girls $1,000 to serve as lookouts. The girls entered his vehicle, and the man drove them 30 to 40 miles, stopping once to purchase beer, and again to obtain storage bags for carrying the marijuana. At trial, Amy identified the man as defendant.

The car stopped at a dirt road in a rural area. Defendant told Amy to wait by the vehicle, and he and Diane walked up the path and out of Amy's view. Shortly thereafter, defendant returned and asked Amy to help him carry the bags. Amy went with him and saw Diane's partially clothed body lying facedown on the ground. Diane appeared to be dead or unconscious. Amy tried to run away, but defendant caught her, tore her clothes, forced her to orally copulate him, and raped and sodomized her. Amy testified at trial that defendant explained to her: "I'm really sorry I had to do this, but you know, I had a shitty day . . . ."

Defendant informed Amy that "your friend was an asshole, she called me a few names, and I think she's dead." He also told Amy that he planned to hit Amy with a rock to render her unconscious. By misleading defendant into believing that she had been abused as a child, and promising that she would not contact the police, Amy persuaded defendant not to knock her out, and eventually he drove her back to a location near the 7-Eleven store. He gave her a quarter to phone

home, and drove away. Amy immediately contacted her sister and, shortly thereafter, spoke with law enforcement officers. Later that evening, Amy directed the officers to the crime scene, where Diane's body was found. The cause of Diane's death was identified as massive cerebral contusions and hemorrhage, caused by external trauma to the head.

Law enforcement investigators recovered evidence indicating that Amy and Diane each had been sexually assaulted. A fingerprint matching that of defendant was recovered from a beer bottle found close to Diane's body. Tire impressions found in the vicinity of the murder scene were consistent with those of defendant's vehicle, which Amy also identified as the one she and Diane had entered. Shoe prints were consistent with a partially burned shoe found in a 55-gallon drum outside defendant's residence. Other physical evidence also connected defendant to the crime scene. Defendant was arrested on May 8, 1986 — five days after the murder of his young niece, Shelah McMahan. In a police lineup, Amy was shown five individuals including defendant, and collapsed upon viewing him; immediately thereafter, she identified defendant as the man who had assaulted her. Defendant's time cards indicated that, on the day the crimes were committed, he worked until 11:30 a.m. on a construction job near the 7-Eleven store where the girls were picked up. A few days later, one of defendant's coworkers observed that defendant had a bandaged hand, and that his right arm was in a sling; the physician who treated defendant's injury testified that it was commonly known as a "boxer's fracture," because it typically is sustained by striking a closed-fist blow against a fixed or hard object.

I. GUILT PHASE EVIDENCE

A. *The Prosecution's Case*

1. *Overview*

The prosecution's theory of the case was that defendant's effort to entice the girls into his vehicle and drive them to a remote area was part of a premeditated plan to commit rape, and that the murder of Diane was committed in the course of perpetrating rape. To establish that theory, the prosecution presented Amy's testimony, and introduced physical and circumstantial evidence linking defendant to the crimes.

2. *The Events of March 24, 1986*

Amy testified that she and Diane left high school on March 24, 1986, stopping first at a nearby Der Weinerschnitzel restaurant for a soda, then at another restaurant, Don Jose's, where Diane submitted an application for employment. The girls thereafter crossed the street to an area adjacent to a 7-Eleven store to wait for Diane's boyfriend, David Starbuck.

A brown Toyota vehicle entered a nearby driveway, and Diane began conversing with its driver. Amy joined in the conversation. The driver informed the girls that "he had found a marijuana field and he had a lady that was going to go with him and she couldn't make it, and he couldn't take another day off work and . . . I guess [the marijuana] wasn't his, and so he needed someone to watch the road while he went and chopped down the marijuana. . . . He just wanted one of us." The man informed the girls that he would pay $1,000 for the assistance he requested, adding that "we would be back in an hour."

The girls decided that if one of them were going to accompany the man, they both would do so, and so they entered his vehicle. Amy noticed an orange towel on the dashboard. Amy told Diane: "Oh, David is going to kill you for

doing this." The man responded: "Will he kill you for making a thousand dollars in an hour? Why would he kill you for making a thousand dollars in an hour?"

Amy estimated that the three of them thereafter traveled about 30 or 40 miles, stopping at a Circle K store because the driver said he was thirsty. The man returned to the car with a six-pack of Budweiser beer in bottles. The three drank the beer. The man informed the girls that he would need bags to put the marijuana in "[a]nd that it wouldn't be cool to put it in a white plastic bag." He sent Amy back into the store to obtain some paper bags. The trio then drove to a Thrifty store where the girls procured more bags. Next, they traveled to a hardware store, because the man said "the marijuana was thick and that he needed to get a hatchet to chop it down with." The man entered the store for the purpose of purchasing a hatchet, emerging shortly thereafter without one, however, informing the girls that the hatchet cost $15, which was too much money for him to pay. He explained, "It's okay because I have a screwdriver in the trunk."

Diane responded: "I have this knife if you want to use that," and gave the man a small buck knife that she kept in her purse. Amy expressed her displeasure with this arrangement, and the man returned the knife to Diane. The trio then drove for awhile on a freeway, exiting near a field. The man tried to drive the vehicle into the field, but was unable to do so. He told the girls, "I know another way to get in," and they kept driving.

The car proceeded onto a dirt road near a sign that read, "80 Acres for Sale," passing a Volkswagen car shell. The vehicle stopped; the occupants emerged from the car, and the man removed the bags from the trunk. He told Amy to watch the road while he and Diane harvested the marijuana. Before departing, the man relieved himself; while he was doing so, the girls agreed to call to each other to make sure everything was all right. But after a few minutes, the man and Diane returned, the man informing the girls that the marijuana patch was not there.

They returned to the car, and drove to where the dirt road stopped at a dead end. The man put the cap on his beer bottle, placed the bottle in a white plastic bag, and left the bag outside the car. The man and Diane walked up a dirt path, while Amy stayed by the vehicle. Diane had her knife with her.

Amy waited for about 15 or 20 minutes, picking at the label on her bottle of beer. She started calling Diane's name, but heard no response. She threw the bottle into a bush. She noticed a bumper sticker on the man's vehicle. It read, "Skier." She also noticed the license plate holder, which exhibited the words, "Have a Nice Day."

At some point thereafter, the man returned to the vehicle, alone. He informed Amy that Diane was cooling her feet in a spring and that he needed Amy's assistance to carry down the bags. Amy followed the man up the trail. Informing her that he saw a snake, the man picked up a rock. Amy told him to give it to her. The man did so, saying, "But I'll have to get another one, you don't want me to get killed, do you?" Amy gave the rock back to the man.

At approximately the same time, Amy saw Diane's body, partially clothed and lying facedown. Frightened, Amy started to run back down the path. The man chased her, hitting her in the back with a rock, causing her to fall down. He started punching Amy in the face, and the two fell into a gully. Amy pleaded with the man to let her hear Diane say something. The man repeatedly told her to shut up, that Diane was unconscious and unable to speak. "You're kind of funny, kid," he added, "I'm about to rape you and all you can do is think about your friend."

The man stood behind Amy, tore her blouse, pulled her skirt up, and ripped off her panties. She noticed that his trousers were down and he was holding his penis, "just slapping it back and forth." Angrily, the man kept telling her, "Don't look at me." But Amy continued to glance back at the man. "It's hard for me to get it up after I just got it on with your friend," he explained.

The man attempted to sodomize Amy. Repeatedly unable to achieve penetration, he turned Amy around, asking her, "How are you at giving head, kid?" He placed Amy on her knees, telling her, "Do it," and shoved his penis into her mouth. After the man achieved an erection, he turned Amy around, began biting her neck, and sodomized her.

Amy asked the man if he was going to kill her. He replied, "I've done this in people's houses and I've never killed anyone yet." He then dragged Amy back up the path toward Diane's body, telling her that she had better shut up or he was going to get his Vaseline. While he was dragging Amy along, he picked up a small square jar of Vaseline.

The man threw Amy down and forced her to orally copulate him again. He applied the Vaseline to himself. Then he raped her.

Amy asked the man again if he was going to kill her. He said that he was going to render her unconscious by hitting her on the back of the neck with a rock. Amy suggested that he tie her up instead, dig a hole, and place her in the hole. The man agreed that it would be a good idea to tie her up, and did so with her blouse and bra.

The man informed Amy that he had to find Diane's knife, but his efforts to locate it were unsuccessful and he returned to Amy, telling her that "your friend was an asshole, she called me a few names, and I think she's dead." Amy replied that there was no reason he also had to kill her. The man repeated his desire to render her unconscious to allow him time to get away. Amy pleaded with the man not to hit her, concocting a false story that when she was three years old, her father used to hit and beat her, and that she was afraid of being hit.

Upon hearing Amy's pleas for mercy, the man's attitude began to change. He said he understood what Amy had gone through "because I was raped myself

by three [B]lack men and I'm really sorry I had to do this, but you know, I had a shitty day. . . ."

Amy continued to promise that she would not tell anybody, so he untied her and took her back down the trail, repeatedly complaining, "You made me hurt my hand, kid." Amy noticed that his hands were "really dirty" and "permanently stained." Still fearing for her life, Amy asked the man to hold her hand. Instead, he put his arm around her and continued to express remorse. He placed Amy in his vehicle, and the pair drove away. When Amy asked whether she could disclose Diane's whereabouts, the man replied: "I wouldn't do that. . . . This is what you're going to tell them. You're going to tell them it was a [B]lack man, a [B]lack man took you — if you have to tell them anything."

He added: "I'm putting 15 years of my life in your hands, kid." Amy renewed her promise not to discuss the incident, to which the man replied, "But that doesn't matter because by the time they pick me up . . . I can get out before the . . . sentencing. . . . Anyway, I've got two good friends that would do anything for me."

The man dropped Amy off approximately one block from a 7-Eleven store. As Amy emerged from the car, the man warned her not to call the police. Then he gave her a quarter to phone home, and departed. Amy called her sister, informing her of the incident. The sheriff's department was contacted, and Amy later accompanied detectives to search for Diane.

3. *The Crime Scene Investigation*

Riverside County Sheriff's Department Detective Richard Moker testified that, in the evening of March 24, 1986, he accompanied Amy in an effort to locate Diane's body. He described the manner in which he and other law enforcement officers attempted to retrace the route the girls had taken, the officers relying upon Amy's description of the stores the trio had visited, distinctive road signs they had

observed, and the crime scene terrain. At approximately 11:00 p.m., after nearly six hours of searching, the officers located the Volkswagen shell. Shortly thereafter, the officers found a white plastic sack containing a Budweiser six-pack container. Fearful that the man who assaulted her might be lurking in the area, Amy asked the officers whether they were armed and indicated that she wanted to leave as soon as possible. She also told them where Diane's body could be found. Thereafter, one of the officers transported Amy to the hospital to enable her to undergo a rape examination, while investigators searched the crime scene.

On cross-examination, Detective Moker testified that when he first encountered Amy, she informed him that Diane could be found "lying on her back" (thereby conflicting with Amy's testimony that she saw Diane lying facedown).

Riverside County Detective Michael Lackie testified regarding the investigation law enforcement officers conducted at the crime scene in the early morning hours of March 25, 1986, describing the steps he and Detective Moker took to avoid disturbing evidence found at the scene. In addition to encountering Diane's lifeless and bloodstained body (unclothed below the waist, with panties wrapped around one leg), officers located nearby a buck knife with the blade extended, a shoe impression, a Budweiser beer bottle, and paper grocery bags. Farther away from Diane's body, officers found four different tire impressions and a shoe impression at the spot where Amy said defendant had parked the vehicle, a white plastic sack containing an empty Budweiser beer bottle with a cap on it, a discarded, Budweiser beer bottle with the label partially picked off, and Amy's torn undergarments. Lackie testified that the shoe impression found near the spot where the vehicle had been parked appeared to resemble a similar impression found near Diane's body. He added that officers were unable to locate any marijuana growing in the area.

James Hall, a criminalist employed by the California Department of Justice, assisted in the investigation of the crime scene on March 25, 1986. Hall checked Diane's body for loose hairs and fibers, collecting what appeared to be a loose pubic hair from Diane's thigh.

Michael Renney, a senior evidence technician employed by the Riverside County Sheriff's Department, testified that on March 26, 1986, he tested for the presence of fingerprints several items recovered from the crime scene, obtaining a latent print from the Budweiser beer bottle found in the white plastic sack.

4. *The Victims' Injuries*

Dr. Claire McArthur, an emergency room physician employed by Riverside General hospital, testified that in the early morning of March 25, 1986, she examined Amy, discovering a large bruise on Amy's upper back, abrasions about both knees, and a bruise to Amy's perineum (the area near the vagina and rectum). Dr. McArthur also found sand-like particles in Amy's vagina, a circumstance that Dr. McArthur testified would be "highly unlikely" in the absence of penetration. On cross-examination, Dr. McArthur acknowledged that she asked Amy whether she had been sodomized, and that Amy had responded in the negative. On redirect examination, Dr. McArthur testified that sexual assault victims Amy's age typically are "very reluctant" to discuss a sexual assault, and opined that Amy had been the victim of such an assault. Criminalist James Hall testified that Amy's slip bore a seminal fluid stain.

Dr. Dewitt Hunter, a Riverside County pathologist, testified that on March 26, 1986, he performed an autopsy on Diane's body. The autopsy revealed that the cause of Diane's death was major trauma to her head that led to massive cerebral contusion and hemorrhage; her body also exhibited minor trauma in certain other locations, and exhibited evidence indicating that Diane had been sexually assaulted. With regard to the head injuries, Dr. Hunter testified that

Diane had suffered several "crush-type lacerations" and a skull fracture, most likely caused by a rock or brick-like instrument. Diane's face also had numerous contusions and abrasions, consistent with her head having been pushed into the dirt. Her larynx contained foreign vegetable material (such as a leaf or twig) indicating that it had been inhaled shortly before death. The middle of her back revealed an extensive contusion. Diane's iliac crest (the front of the pelvic bone) showed abrasions consistent with someone having kneeled or sat on her back. Diane's knees, elbows, and buttocks also showed abrasions. There was a reddening of the vaginal area consistent with the application of force, and there were abrasions and "ill-defined" contusions on her inner and upper thighs consistent with an effort to force apart Diane's legs. Although no seminal fluid was discovered on Diane's body or clothing, a Vaseline-like substance was found around her vaginal area and inner thighs.

5. *The Brown Toyota With the Message "Have a Nice Day"*

Riverside County Sheriff's Department Sergeant Ronald Wade testified that on May 4, 1986, approximately six weeks after Diane and Amy were attacked, he observed a vehicle that appeared to be similar to the description of the suspect vehicle involved in the Diane Harper homicide. The vehicle, a brown Toyota Corolla, was parked next to a mobilehome in the Mead Valley area. Wade returned the next day and observed that the vehicle bore certain distinctive markings, including decals on the rear bumper and a license plate frame that read, "Have a Nice Day." Wade proceeded to the mobilehome on May 6 and spoke with an individual who identified himself as "Joe Hart." (At trial, Wade identified the individual with whom he spoke as defendant.) Wade asked defendant where he was working on March 24, 1986. Defendant replied that he was working in the Riverside/La Sierra area at McKinley and Magnolia Avenues; defendant checked his pocket calendar to verify his recollection. The location was not far from the

spot where Diane and Amy had been picked up that day. Detective Lackie subsequently testified that the distance between the locations was 1.9 miles and required approximately 4 minutes of travel time by car.

Upon returning to the Riverside Sheriff's Department headquarters, Wade contacted the California Department of Justice in Sacramento for the purpose of obtaining Hart's criminal history and fingerprints. Michael Renney testified that he subsequently examined these known fingerprints of defendant and matched that of defendant's right ring finger to the latent print Renney obtained on March 26 from the Budweiser beer bottle found in the white plastic sack at the crime scene. Joe Sypnicki, a latent print examiner employed by the California Department of Justice, testified that he, too, compared the two prints, concluding "[t]here is absolutely no doubt whatsoever" that the latent impression lifted from the Budweiser beer bottle is that of defendant's right ring finger. On cross-examination, Sypnicki acknowledged that no known method exists for ascertaining the date a particular fingerprint was made, and he therefore could not render an opinion as to the age of the print found on the beer bottle.

Having been informed of Sergeant Wade's observations, Detective Michael Lackie traveled on May 7, 1986, to the Mead Valley address occupied by Hart and obtained consent from Hart's wife, Linda, to examine the brown Toyota parked in the driveway. Lackie brought photographs of the tire impressions found at the crime scene, and determined that each of the vehicle's tires had a different tread design and that each appeared to match the impressions depicted in the photographs. The license plate frame read "Have A Nice Day." The vehicle had other distinctive features similar to those Amy had described to law enforcement officers. A "fairly fresh," torn portion of a bumper sticker depicting the letters, "I E R," lay on the ground; it appeared to partially match the "SKIER" bumper sticker Amy had recalled seeing on the vehicle. Lackie also observed, strewn

about in the yard adjacent to the residence, Budweiser beer bottles similar to the type that Amy described defendant as having purchased on March 24. Lackie also saw Marlboro 100 cigarette butts in the vicinity; Amy had informed officers that defendant had smoked Marlboro 100's. Similar beer bottles and cigarette butts had been recovered at the crime scene. Lackie also saw an orange towel located in a planter attached to the residence.

6. *Defendant's Arrest and the Ensuing Searches*

Detective Lackie testified that after he completed his observations of the brown Toyota and the surrounding yard area, he learned from another investigator that one of defendant's fingerprints on file appeared to match a fingerprint located on a bottle found in the plastic sack at the crime scene. Lackie thereafter obtained a search warrant, returning to the Hart residence on May 8, 1986, to execute the warrant. By the time Lackie arrived at the residence, law enforcement officers already had taken defendant into custody.

Detective Moker testified that he placed defendant under arrest on May 8, 1986. Moker recalled that at the time of defendant's arrest, defendant's hair was "fluffy or wavy or dry looking . . . [with] the part in the middle . . . ." Detective Lackie testified that at the time of the arrest, defendant wore soiled pants and had "extremely soiled hands."

Detective Lackie further testified that law enforcement officers seized the brown Toyota (and another vehicle) in order to conduct a subsequent search. In the mobile home, officers found a jar of Vaseline in the master bedroom, another jar of petroleum jelly in the bathroom, and Marlboro 100 cigarettes. Outside the residence (crumpled up against the fence at the edge of the property), Lackie found two more pieces of a bumper sticker that appeared to have been torn from the "SKIER" bumper sticker on the brown Toyota. Lackie found a pair of matched tennis shoes, partially burnt, in a 55-gallon drum that appeared to have served as

an incinerator. The tread design on the shoes appeared to match certain shoe impressions found at the crime scene. Lackie described the shoes at the time they were discovered in the drum as having been in "pretty good condition . . . . There were no obvious gouges, tears, marks, signs of destruction that I could see other than what was created by the burns — burning." Lackie also observed Circle-K plastic sacks among trash located at the side of the mobilehome.

Criminalist James Hall testified that on the day of defendant's arrest, he obtained various evidence exemplars from defendant's body, including those taken from defendant's pubic hair. Hall compared defendant's pubic hair with the specimen recovered from Diane's thigh, concluding that the hairs were "microscopically similar and, therefore, the evidence hair [found on Diane] could have come from Mr. Hart." Hall also compared the loose pubic hair with an exemplar taken from Diane's body, noted microscopic differences, and opined that the loose hair had not come from her.

Hall testified that he examined Amy's slip and panties, identifying on the panties human bloodstains of an indeterminable ABO blood type . Hall identified ABO type B blood on Amy's blouse (Diane had ABO type B blood, Amy had type O, and defendant had type A). Hall identified a seminal fluid stain on Amy's slip; on cross-examination, he testified that ABO typing and enzyme typing of the stain were inconclusive, and he was uncertain as to the date the stain was made. On redirect examination, Hall stated that defendant is a "nonsecretor," which means that an examination of defendant's bodily fluids would not disclose his blood type. Hall acknowledged that the inconclusive nature of the tests conducted on the seminal stain could be due to the strength of the stain, the passage of time, or the nonsecretor status of the donor. Hall identified saliva on the Marlboro 100 cigarette butts collected at the crime scene, but tests as to the blood type of the

donor did not yield a blood type, a result Hall testified he would expect if the donor were a nonsecretor.

Hall testified that on May 10, 1986, he examined defendant's vehicle, recovering orange cloth fibers from the dashboard area of the car's interior.

7. Amy's Identification of Defendant

Amy attended a law enforcement lineup on May 12, 1986, in which she observed five individuals through a one-way mirror. Upon recognizing one of the individuals, Amy fell, believing that "the floor would be safer." She noted on the Sheriff's form that the individual she picked out had "different hair color, looked younger." In court, she identified that same individual as defendant, and as the man who had picked her up in the brown Toyota.

Riverside County Sheriff's Department Senior Investigator Dennis Harter testified that he was present at the police lineup in which Amy identified defendant as the suspect in her case. Harter testified that as soon as defendant (who occupied the second position in the lineup) entered the lineup room, Amy gestured in his direction and "immediately grabbed her mouth as if to keep herself from yelling, she began to cry and she ducked down to the ground" below the one-way viewing glass. Harter described Amy's emotional state when she viewed defendant as "very distraught"; after the participants in the lineup departed from the room, Amy "began to cry uncontrollably." Harter added that after she regained some composure, Amy stated, "It's No. 2, he killed Diane, he killed Diane."

Harter recalled that at the lineup, Amy noted that defendant's hairstyle appeared different from what it had been on the day she and Diane encountered him. Detective Moker testified that at the lineup, defendant's hair "appeared to be wet or oily . . . and it was combed almost straight back. . . ." When Harter returned to the jail the next day to visit defendant, defendant's hair appeared as it did at the

time of defendant's arrest. Photos depicting defendant's appearance at the lineup, and on the day thereafter, were admitted into evidence.

8. *Other Evidence*

Faye Ann Springer, a criminalist employed by the State of California Department of Justice, testified that she attended Diane's autopsy, removing some of the victim's pubic hair that appeared to have a foreign material on it, and concluding that the substance was consistent with petrolatum, found in Vaseline. Springer found a similar substance on Diane's slip. Springer also compared a fiber found in Amy's shoe with an exemplar taken from a carpet mat found in defendant's brown Toyota vehicle, concluding that the fibers appeared to be identical. She examined photographs of the crime scene tire impressions, concluding that the tread designs for each of the four tires were similar to the exemplar tire impressions (derived from defendant's vehicle). Springer compared photographs depicting shoe impressions at the crime scene, concluding that they matched the photographs of the exemplars she received. On cross-examination, Springer acknowledged that none of the foregoing similarities was unique; petrolatum is found in several personal care products, and the carpet fiber and tire and shoe impressions were derived from mass-produced products.

Joan Baker, the office manager for defendant's employer (Joe Verska, General Engineering Contractor), testified that defendant worked for the company from February to May, 1986. She recognized her own handwriting on his weekly time card filled out on March 26 or 27, 1986; she explained that defendant had been unable to fill out the time card, because "he had hurt his hand and it was bandaged and his arm was in a sling." The time card showed that on March 24, 1986, defendant worked two hours.

Dr. David Fisher, an orthopedic surgeon, testified that on March 28, 1986, he treated defendant for a hand injury sometimes referred to as a "boxer's

fracture," because it is incurred by a close-fisted blow against a hard or fixed object, adding that the injury is "very common to occur within an altercation of some kind." On cross-examination, Dr. Fisher acknowledged that the injury could occur if someone were to fall with a clenched fist.

David Crocker, a field biologist employed by the Metropolitan Water District of Southern California, testified that on April 15, 1986, he was collecting water samples at Lake Mathews (located near La Sierra Boulevard, the street on which the victims' high school was situated). He and a colleague spotted a woman's black purse near the lake; upon opening the purse, they discovered personal items and Diane's high school identification card. Crocker and his colleague gave the purse to associates, who recognized the identification as that belonging to the high school student who recently had been murdered. The purse was given to law enforcement officers.

Kenneth Widney, defendant's father-in-law, testified that defendant often wore baseball-type hats, including hats with the letters "C A T" on them. He further testified that at some point prior to defendant's arrest on May 8, 1986, he observed two pieces of plywood placed in front of defendant's vehicle and a third piece of plywood on top, leading Widney to opine that defendant was trying to hide the car. Widney also testified that a yellow sticker that read "Caution Child in Car" was placed in the rear window of the vehicle shortly before defendant was arrested.

Dr. Craig Rath, a clinical psychologist, testified that on many occasions he had studied a type of criminal who, in many ways, was "relatively socialized," but who experiences a build-up of tension preceding the commission of a rape (or series of rapes), which then dissipates the tension. Dr. Rath testified that such an individual informally is known as a "binge rapist." On cross-examination, Dr. Rath acknowledged that he did not examine defendant.

B. *The Defense Case*

The defense called Amy, the surviving victim, as its initial witness, and questioned her regarding the events of March 24, 1986, and her participation in the ensuing investigation conducted by law enforcement officials. Amy acknowledged that she willingly joined Diane and the driver of the car for the trip to locate the marijuana patch. Amy also acknowledged initially misleading officers, untruthfully informing them that Diane might have known the perpetrator (because "I didn't want us to get in trouble"), and that the perpetrator was a Black man (because that was what her assailant had instructed her to say). On cross-examination, she confirmed that neither she nor Diane knew the man who assaulted them.

Riverside County Deputy Sheriff James Shannon testified that when he encountered Amy at the 7-Eleven in the late afternoon of March 24, 1986, she told him, "'Diane's dead, I know she is, Diane's dead.'" She also told him that she had seen Diane unclothed, and "laying on her back"; upon seeing Diane's body, Amy "started to scream and . . . the suspect hit her several times on the back with a rock." Amy described her assailant to Shannon as being a "Negro male," shortly thereafter changing her description. On cross-examination, Shannon testified that Amy explained she initially had given a false description of the suspect because she feared retaliation from the man. Amy described the man as a Caucasian male, approximately 35 years old, wearing a baseball-type cap with the letters "C A T' on it. Shannon further testified on cross-examination that Amy might have told him that she had seen Diane's back (rather than Diane lying on her back). During Shannon's questioning of Amy, she was crying, trembling, emotionally upset, and distraught.

Riverside County Detective Dennis Harter testified that during an interview he had with Amy in June 1986, Amy stated that she did not see any blood on

Diane's body, or on the hands of the man who assaulted her. Harter reviewed the sequence of events of March 24, 1986, as Amy related them to him during the interview, noting that with regard to the allegation of sodomy, Amy told him that the man "stuck his penis in her butt . . . she said she could feel it moving in and out."

Riverside County Detective Richard Moker testified regarding his interview with Amy, conducted on March 26, 1986, noting that at one point Amy indicated the man who assaulted her and Diane had, as an inducement for them to join him in the search for the marijuana patch, offered each one of the girls a pound of marijuana to sell. Moker acknowledged that the report he prepared following the interview paraphrased the substance of his interview and contained certain technical terms not used by Amy to describe what occurred when she was sexually assaulted. In an interview Moker conducted on March 27, 1986, Amy told him that when the man released her following the assault, the man gave her directions to tell her sister as to how to reach the location where he had dropped Amy off, and gave her a quarter for a telephone call.

Riverside County Detective Michael Lackie testified that his report of the autopsy conducted on Diane Harper's body, indicating a lack of trauma in the vaginal and anal areas, was erroneous, "and in checking with Faye Springer and other people who were at the autopsy, they told me they clearly understood Dr. Hunter to have made some statement there was signs of sexual assault and there was quite a big to-do in the office because I had written the report and I guess I had missed it.". Lackie also testified that in an interview with Amy, conducted on April 2, 1986, Amy informed him that she (Amy) had used marijuana on a daily basis, but not on March 24, 1986, the date the crimes were committed. In response to a question posed by the prosecution, Lackie testified that on March 26, 1986, he ordered blood testing of Amy and Diane's blood, and that the results indicated

there was a small amount of alcohol in each girl's system, and no evidence of marijuana or any other drug.

California Department of Justice Criminalist James Hall testified regarding the analysis performed on the stain found on Amy's slip, indicating that an electrophoresis test was inconclusive as to whether the stain was from seminal or vaginal fluid. On cross-examination, Hall testified that a different test, known as the "P-30" test, indicated the presence of a protein that is a component of semen. On redirect examination, Hall acknowledged that he was unable to determine the age of the stain.

Defendant did not testify, and the prosecution offered no rebuttal.

In his closing argument to the jury, defense counsel conceded that defendant took the girls to the remote area and assaulted them, killing Diane. He urged the jury to conclude, however, that Diane had been killed in the course of defendant having committed, or having attempted to commit, sodomy — and not rape — and that the evidence therefore supported no more than a verdict of second degree felony murder.[2]

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[2] As noted, the crimes were committed in 1986, prior to the enactment of Proposition 115. Under the law at that time, section 189 limited the types of sex offenses that would support a conviction of *first degree felony murder* to rape (§ 261) and lewd or lascivious acts with a child under the age of 14 years (§ 288). Although murder committed in the course of a sodomy was a special circumstance which, if found true, would support imposition of the death penalty, a jury at the time could consider the sodomy special circumstance only after finding defendant guilty of having committed first degree murder. Thus, in arguing at trial that defendant had committed sodomy, but not rape, and that defendant had not acted with deliberation or premeditation in killing Diane, defense counsel sought to persuade the jury that defendant was guilty of no more than *second degree felony murder*, in the hope of sparing defendant from a penalty phase and the possibility that the jury would render a verdict of death. (§ § 190, 190.2.)

(footnote continued on next page)

At the conclusion of the guilt phase, the jury found defendant guilty of having committed first degree murder, rape, sodomy, and oral copulation, and found true the special circumstance allegations that the murder was committed during the commission of rape and sodomy.

II. Penalty Phase Evidence

A. *The Prosecution's Case*

The prosecution introduced evidence of five prior offenses committed by defendant, in addition to evidence of the subsequent uncharged murder of defendant's 11-year-old niece.

1. *Debra B. — February 1973 Assault*

Debra B. testified that in February 1973, when she was 26 years of age, she lived next door to the parents of defendant's first wife, Kathy, in Anaheim. While Debra was partially dressed one morning, defendant appeared without shoes in her kitchen. He said that he had locked himself out of the house next door, and asked to use the telephone. Debra repeatedly asked defendant to leave. "[T]hen just very suddenly he lunged at me and started choking me," Debra recalled. The pair fell to the floor. During the ensuing struggle, Debra bit defendant's hand, causing it to bleed. The struggle ended, and defendant informed her that he could not stop himself from entering people's homes. Debra arranged for defendant to speak with one of the ministers at her church. The minister contacted the local police, who placed defendant under arrest.

(footnote continued from previous page)

Under the current provisions of section 189 (not applicable to the present case), murder committed in the perpetration of, or attempt to perpetrate, sodomy (§ 286) is first degree murder.

During the ensuing search of defendant's person, officers found a knotted piece of rope, 42 inches in length, a pocket knife, a piece of electrical wire, 39.5 inches in length, and a key to Debra's residence.

2. *Priscilla N. — February 1973 Assault*

On February 22, 1973, Priscilla N., 18 years of age, was employed as the manager of an apartment complex located in Imperial Beach. At dusk, a man asked her to show him an apartment. Once inside, he grabbed her, and the two struggled to the floor. After she repeatedly screamed, the man ran out of the apartment. She reported the incident to the police, initially identifying another man as her attacker. When defendant was questioned by investigating officers with regard to the Valerie T. and Deborah T. incidents, described below, he admitted attacking Priscilla with the intent to rape her.

3. *Valerie T. — January 1975 Sexual Assault*[3]

On January 19, 1975, at approximately 9:00 p.m., Valerie T. was walking to her residence, located in Imperial Beach, after having had dinner at a local restaurant. A man grabbed her from behind and placed one hand over her mouth, informing her not to scream. He pulled Valerie into an alley and removed his hand. She immediately screamed, and he placed the blade of a knife across her throat. He ordered her to remove her trousers; when she refused to do so, he did so himself, saying, "Don't look at me." He also ripped open her blouse and "mounted" her briefly. "[T]hen he got up and he said, 'Thank you, ma'am,' and took off down the street." Although Valerie could not recall whether the man's

[3] At the time of trial, this witness's last name began with a different letter, but to avoid confusion, we shall refer to her as Valerie T., her abbreviated name in 1975 when the relevant events occurred.

penis actually penetrated her, she subsequently detected wetness that "wasn't mine," and believed he had ejaculated. A few months after the incident (approximately the time period when defendant admitted to the police that he had attacked her), Valerie identified her assailant in a police photo lineup as defendant, subsequently identifying him again at the penalty phase of the trial.

4. *Marilyn S. — February 1975 Forcible Oral Copulation*

On the evening of February 26, 1975, Marilyn S. went dancing, returning to her Imperial Beach apartment at approximately 1:00 a.m. the next morning. After falling asleep on a couch, she awakened to find a man standing next to her; his hands covered her mouth and neck area. The man wore a ski mask over his face, with holes for his eyes, nose, and mouth. In one hand, he held an open pocketknife. He told Marilyn, "No sudden moves, or you'll get hurt." He taped her mouth shut and told her not to scream. The man began caressing Marilyn's breasts and attempted to remove her pantyhose. The tape eventually became loose and, in the hope of preventing a rape, Marilyn informed him that she was menstruating and had an infectious disease. The man forced her to orally copulate him, eventually ejaculating and forcing her to swallow his semen. He thereafter asked her for money. Marilyn replied that she did not have much, and that she had a young son to raise. The man informed her that he had keys to all of the apartments in the complex, warning her not to contact the police or he would harm her and her son. Because she did not see the man's face, Marilyn was unable to identify him to the police. One week later, however, while being questioned by the police in connection with the attempted burglary of Deborah T.'s residence, described below, defendant admitted his sexual assault upon Marilyn S:,

explaining that he had gone to her apartment complex for the purpose of committing a rape.[4]

5. *Deborah T. — March 1975 Attempted Burglary*

Shortly after midnight on March 5, 1975, the police responded to a telephone call from Deborah T., regarding a possible prowler at the Imperial Beach apartment complex in which she resided. Police officers located defendant, barefoot, 30 to 40 feet from her residence, walking away at a fast pace, and detained him. Although Deborah was unable to identify defendant positively, fingerprints lifted from a window screen at her apartment subsequently were matched to those belonging to defendant. Defendant waived his rights under *Miranda* v. *Arizona* (1966) 386 U.S. 475 and gave investigating officers a number of varying explanations as to what he was doing at the apartment complex at that hour, initially denying being near Deborah's window. The following day, after being reread his *Miranda* rights, defendant confessed that he had opened the window with the intent of sexually assaulting her. During this interrogation, defendant also described his involvement in certain other offenses that the prosecution offered as evidence in aggravation.

6. *Shelah McMahan — May 1986 Murder*

On May 3, 1986, the body of defendant's 11-year-old niece, Shelah McMahan, was found beneath a mattress, trash bags, and a rock overhang at a

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[4] Retired San Diego Police Officer Mervin Christian testified that defendant recounted in detail the incident involving Marilyn S. On cross-examination, Christian acknowledged asking defendant whether, "in comparison with other guys, do you consider your penis small?" Defendant answered this question affirmatively. Christian asked defendant whether he believed that circumstance to be the source of his problem. Defendant replied: "Yes, I have a complex about it."

garbage dump located in Mead Valley. She had been stabbed numerous times in the neck. A thin rubber molding was wrapped loosely around her neck, and her hands had been tied tightly behind her with a plastic cable tie. Her forearms bore marks that appeared to have been made by handcuffs. Her shirt was ripped and pulled away from her chest. A semen stain was found on her pant leg. Shelah had lived next door to defendant, and had been missing since early that morning.

In the ensuing few days, defendant was seen using a tractor to grade his backyard. He told others that he was doing landscaping work.

On May 8, 1986, defendant was arrested for the crimes committed against Diane and Amy. Pursuant to a search warrant, police investigators searched his mobilehome and the surrounding yard, locating cable ties similar to the one found binding Shelah's wrists, as well as two sets of handcuffs buried under freshly turned soil within a shed located behind defendant's residence. A third set of handcuffs was recovered several weeks later.

An acquaintance of defendant's, William Parker, testified that in early 1986, he engaged in a light-hearted discussion with defendant regarding women and bondage, which led defendant to produce three sets of handcuffs from the trunk of a motor vehicle. Defendant told Parker "something to the effect of, 'this is what you need.' "

Criminalist James Hall testified that traces of blood found on one set of the handcuffs recovered from the shed matched Shelah's blood type, shared by approximately .8 percent of the population (i.e., approximately 8 out of 1000 people). Criminalist Faye Springer testified that a fiber collected from one pair of handcuffs was similar to the fabric in a black T-shirt worn by Shelah when her body was discovered. The ligature marks on Shelah's arms resembled those made by the handcuffs. The cable tie that bound Shelah's wrists had an appearance and trademark similar to a cable tie recovered from defendant's bedroom. Springer

also found a similarity between fibers recovered from Shelah's T-shirt and those collected from the carpet found in one of defendant's vehicles, a Ford Mustang.[5] Springer stated that animal hairs recovered from Shelah's body and from defendant's Mustang were similar to an exemplar taken from defendant's dog.

Dr. Rene Modglin, the coroner who performed the autopsy on Shelah's body, testified that the victim had been stabbed 16 times. The cause of death was a cut to Shelah's right common carotid artery. The victim's body bore other bruises and abrasions. Modglin noted that Shelah's breasts were more fully developed than was typical for a girl of her age. On cross-examination, Modglin testified that he found no evidence of injury to Shelah's vaginal or anal areas. He found no evidence of semen in her mouth or body, noting that the absence of such evidence did not necessarily mean that Shelah had not engaged in sexual intercourse near the time of her death.

Randy Gresham shared a county jail cell with defendant and another prisoner. Gresham testified as part of an agreement specifying that, rather than face exposure to a prison sentence of 15 years for his involvement in offenses unrelated to the present case, he would be sentenced to a maximum of 10 years. Gresham testified that defendant admitted murdering his niece and leaving her body "at a dumping area." According to Gresham, defendant described her as an 11-year-old with "big breasts," and "built a lot sexier . . . than an 11-year-old was." Gresham stated that when defendant discussed killing Shelah, he demonstrated

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[5] Prosecution witness Ronald Wade testified on cross-examination that Shelah's hands were found clutching "some greenish gold type carpet fibers." Wade acknowledged that these particular fibers had not been connected to defendant or to any of his possessions. On cross-examination, Faye Springer and Detective Phillip Sanchez testified similarly.

stabbing motions and laughed as he acted out the killing. Defendant informed him that he killed the girl because he was nervous after having talked to her about his other sexual assaults, had made sexual advances toward her, and was afraid that she would inform her family. Defendant told Gresham that "he really liked Shelah, and did not want to kill her, adding, 'it['s] easier after you'd [*sic*] done it.'" While watching television with Gresham, defendant would compare the breasts of women on television with those of his niece. Defendant expressed concern to Gresham that sheriff's deputies were searching his backyard, "and he was worried about them searching it . . . . He didn't want them to find evidence out there."[6]

B. *The Defense Case*

At the penalty phase, the defense presented evidence in rebuttal to the prosecution's case against defendant regarding the murder of Shelah. The defense also presented evidence in mitigation describing defendant's troubled upbringing and his personal and professional virtues.

1. *Defense Evidence Contesting the Claim that Defendant Murdered Shelah*

The defense presented evidence highlighting the large number of individuals who had access to the Widney residence (where Shelah lived), and in particular sought to cast suspicion on Bobby Asendorf, the brother of the boyfriend of Shelah's mother. Asendorf, who lived inside a bus parked on the property, was not permitted to babysit Shelah, because Shelah had a "crush" on him.

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[6] On cross-examination, Gresham acknowledged that he had used drugs heavily prior to his arrest, and suffered symptoms of withdrawal during the time that he was incarcerated with defendant. Gresham testified that he suffered seizures and "blacked out" a number of times. On one occasion, defendant administered cardiopulmonary resuscitation in order to revive Gresham.

The defense also emphasized the forensic evidence that did not link defendant to Shelah's murder. This evidence included the green and gold carpet fibers found in Shelah's hand, the lack of blood found in defendant's Ford Mustang, the absence of hair matching that of defendant, and the presence of hair that matched neither Shelah nor defendant. A cigarette butt recovered near the body was analyzed for saliva and determined to reflect type-A secretor activity; defendant was a nonsecretor. Cable ties found near the body were dissimilar from those found at defendant's residence and upon Shelah's wrists. The molding found wrapped around Shelah's neck did not match moldings seized by investigators. A shoe print found on a bedsheet with Shelah's body was dissimilar to shoes seized from defendant's residence. The bedsheet, itself, also was dissimilar to those found in the Widney residence and in defendant's residence.

To cast further doubt upon the prosecution's theory that defendant murdered Shelah, the defense presented evidence suggesting that Shelah died within 90 minutes of 10:44 a.m., May 3 — i.e., a time when it was undisputed that defendant already had returned to his residence.

The defense sought to discredit inmate Randy Gresham's testimony by introducing evidence that Gresham had daily access to newspapers while incarcerated and that Gresham's plea agreement with the prosecution depended upon his testifying against defendant.

David Montgomery testified that he worked with defendant for Joe Verska Construction on the night Shelah disappeared. The pair met shortly after midnight to move sprinklers at a jobsite, a task that required approximately 90 minutes. Thereafter, they returned to defendant's vehicle and drank beer. Montgomery received a telephone call from defendant at approximately 8:00 a.m. that day.

Defendant's wife, Linda Hart, testified that early on the morning of Shelah's disappearance, she awoke at 2:30 a.m., to make sure that defendant had

left for work; he already had left, returning shortly before 4:00 a.m. Linda Hart did not see any blood on defendant's clothing or shoes. He awakened her later in the morning, when it was light.

Linda Hart further testified that Shelah often went to church and to the grocery store with the Harts in their Ford Mustang. The Harts' dog also traveled freely between the Widney and Hart residences. Linda Hart explained that defendant had been grading the backyard on a continual basis, in an effort to produce a level yard.

On cross-examination, Linda Hart testified that although she recalled telling a detective, on May 4, 1986, that her husband was gone the previous day at 2:30 a.m., she did not remember telling the detective that the next time she heard from her husband that day was at 7:00 a.m. She did not believe that her husband had killed Shelah or Diane.[7]

Shelah's mother, Paula McMahan, testified that many individuals visited — and occasionally resided at, or near — the Widney residence where Shelah lived. Because the Widneys had a washer and dryer, the McMahans and Harts often washed their clothes there, sometimes mixing the families' laundry together. Paula McMahan corroborated portions of Linda Hart's testimony, explaining that Shelah often played with defendant's daughters and dog, and frequently had been a passenger in the Harts' Ford Mustang. She added that plastic cable ties could be

[7] With respect to Diane's murder, Linda Hart admitted that when investigators interviewed her, she indicated that she had used the Toyota to drive to work on March 24, 1986 (the date Diane was abducted and killed), and that defendant had visited her at lunch time that day. She acknowledged that defendant could have borrowed the Toyota when he visited her that day. She denied that the Toyota ever had been hidden, adding that the orange towel had been removed from the dashboard prior to that date.

found in many locations on the Widney property. On cross-examination, Paula McMahan testified that Shelah was very responsible, and always asked permission to leave the property, even with someone familiar to her such as defendant.

Shelah's uncle, Steve Widney, testified that he used cable ties in his job as an installer of rooftop solar panels, storing the ties at various locations on the Widneys' property.

2. *Defense Evidence in Mitigation*

Defendant's father, Robert Hart, testified regarding his own career in the United States Navy, and the adverse impact that his absences and alcoholism had had upon his family. He praised defendant as having been a good child, an excellent husband, and a loving father. Robert Hart forced defendant to enlist in the Navy and, upon returning, defendant discovered that his first wife, Kathy, had been unfaithful. Defendant began using drugs at this time, was committed as a mentally disordered sex offender to Patton State Hospital, and his marriage to Kathy was dissolved.

Defendant's mother, Iris Hart, corroborated and expanded upon her husband's testimony. She also described a serious traffic accident involving defendant when he was four years of age, which led to his suffering a number of chronic problems, including headaches.

Defendant's first wife, Kathy, testified that defendant had been "a very good father." Defendant had attempted to be a good husband to Kathy, and was "devastated" to learn of her extramarital affair. She also described an event, after the couple had divorced, when defendant visited her and saved the lives of some girls who had fallen into a river when their canoe capsized.

Defendant's second wife, Linda, testified regarding an incident involving a distraught neighbor who had slashed her wrists, explaining that defendant broke down a door, stopped the bleeding, and saved his neighbor's life. She described

defendant as a devoted husband and a "fantastic" father, who, while incarcerated, sought to remain as involved as possible with his family. On cross-examination, Linda acknowledged (over an objection) that nine months after defendant's arrest, she asked another man to live with her for her protection and that of her children, eventually bearing the other man's child.

Several witnesses testified in praise of defendant's talents as a poet, songwriter, musician, husband, and father. Defendant was very involved with the local church, sang in the church choir, and taught children in Bible school. He was a hard worker who sought to provide for his family. A former employer described defendant as very dependable and honest.

C. ***Prosecution Evidence in Rebuttal***

Detective Sanchez testified that, during an interview with Linda Hart on May 4, 1986 (following the discovery of Shelah's body), she stated that her husband was gone at 2:30 a.m. the previous day, and the next time she heard from him was approximately four and one-half hours later, just before 7:00 a.m., when she heard defendant enter the trailer.

Linda Hart's sister-in-law, Cindy Widney, testified that on four occasions, defendant made overtures toward her, once suggesting lightheartedly that if their respective spouses returned "to mom and dad," the two of them could get married.

DISCUSSION

I. PRETRIAL ISSUES

A. *Whether Defendant was Denied his Right to Trial by a Fair and Impartial Jury*

Defendant contends the trial court committed several errors during the voir dire examination of potential jurors and during the trial itself, thereby depriving him of his right to trial by a fair and impartial jury. (See U.S. Const., 6th Amend; Cal. Const., art. I, § 16.) Specifically, defendant contends the trial court

inadequately examined potential jurors for bias and prejudice. He also contends the trial court erred in failing to dismiss one juror for hardship. As we shall explain, defendant's contentions lack merit.

Initially, we observe that because defendant failed to challenge the jurors for cause or through the use of the peremptory challenges available to him, he is not entitled to relief on appeal. (See *People* v. *Danielson* (1992) 3 Cal.4th 691, 713 ["[I]n light of the fact defendant failed to use his one remaining peremptory challenge . . . we need not resolve whether the court erred in failing to excuse [a particular] juror for cause."].) Upon the completion of the jury selection process, defendant had exercised only 14 of his 26 challenges against prospective jurors, and 3 of 4 challenges against prospective alternates. In fact, defendant explicitly acknowledged to the court that he was satisfied with the jury that had been selected. He therefore may not now complain that the jury was comprised of one or more persons unacceptable to him. (*People* v. *Morris* (1991) 53 Cal.3d 152, 185 ["[A] party's failure to exercise available peremptory challenges indicates relative satisfaction with the unchallenged jurors. Having so indicated in this case, defendant cannot reasonably claim error."].)[8]

In addition to this procedural flaw, defendant's contentions on appeal are unpersuasive on the merits.[9]

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[8] Defendant contends that his trial counsel was ineffective in exercising only 14 of 26 peremptory challenges available to the defense. Because the record on appeal fails to shed light on the basis for counsel's decision, and because that decision is not one for which there could be no satisfactory explanation, we reject the claim. (*People* v. *Mendoza Tello* (1997) 15 Cal.4th 264, 266.)

[9] Throughout this opinion, we shall discuss the merits of particular claims, such as this one, even though they are procedurally barred, when we conclude that such discussion may be helpful in evaluating future claims alleging ineffective

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1. Whether the Trial Court Deprived Defendant of His Right to a Fair and Impartial Jury by Failing in its Sua Sponte Duty to Examine Jurors for Bias and Prejudice

Defendant contends the trial court failed in its duty to conduct an adequate inquiry into potential jurors' biases and prejudices. (Former § 1078;[10] see also *People* v. *Crowe* (1973) 8 Cal.3d 815, 828 [the dual purpose of § 1078 conferred "not only a right of counsel to reasonable examination of prospective jurors, but also a duty upon the trial court to select an impartial jury"].) In support of his contention, he cites the trial court's failure to ask certain questions following responses given on voir dire by Deborah Wallen and Oran Pentz, each of whom ultimately sat as jurors on the jury that tried defendant's case.

a. Deborah Wallen

Juror Deborah Wallen was involved in an incident that occurred in 1978, in which Wallen — then 21 or 22 years of age — was followed by a man while she was driving with her young son. The man flashed his lights, and Wallen drove to

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assistance of counsel. (See, e.g., *People* v. *Garceau* (1993) 6 Cal.4th 140, 173, fn. 10.)

[10] At the time of defendant's trial in 1987, section 1078 provided: "It shall be the duty of the trial court to examine the prospective jurors to select a fair and impartial jury. He shall permit reasonable examination of prospective jurors by counsel for the people and for the defendant, such examination to be conducted orally and directly by counsel." (Stats. 1974, ch. 960, § 1, p. 2000, repealed by Stats. 1988, ch. 1245, § 36, p. 4155.) Section 1078 was repealed in 1988 and replaced by Code of Civil Procedure section 223. In 1990, the voters enacted Proposition 115, the "Crime Victim Reform Act," which repealed and reenacted Code of Civil Procedure section 223. (Stats. 1990, pp. A-24 - A-245, §§ 6, 7, eff. June 5, 1990.) Because jury selection in the present case occurred in 1987, former section 1078 applies.

the side of the road. There, the man told her that if she did not open her door, he would shoot her. Wallen escaped by driving away at high speed. When the man subsequently was tried for raping another woman, Wallen testified at his trial regarding the incident in which the man had pursued her.

Defendant contends the trial court inadequately examined Wallen regarding the 1978 incident. Our review of the record, however, reveals that such examination was unnecessary in view of Wallen's notation of the incident on the juror questionnaire, and her responses to questions posed by the prosecutor and defense counsel. In his voir dire of Wallen, defense counsel thoroughly inquired as to this matter. During that inquiry, Wallen indicated that she knew little regarding the rape charge that had been filed against the man, that the 1978 incident would not bother her if she sat on the jury in the present case, and that the matter had been "a long time ago." Defense counsel refrained from challenging Wallen for cause. In light of Wallen's responses, we fail to perceive a deficiency on the part of the trial court, or defense counsel, in refraining from asking additional questions.

b. Oran Pentz

Juror Oran Pentz indicated on his juror questionnaire that (1) his brother-in-law was employed as a policeman by the City of Costa Mesa, (2) he had followed media accounts of a different case involving the shooting of a woman married to one of his friends, and (3) he had read newspaper accounts of the Diane Harper killing.[11] Pentz discussed these matters during the voir dire examination, stating

[11] In response to a jury questionnaire inquiry that asked Pentz what he already knew about the present case, Pentz responded: "I cannot remember all of the details. But what I do remember is that the girls were picked up at the school and taken out to a remote area. The person that picked them up took one of the girls away from the vehicle to a secluded area and, as stated in the newspaper, raped

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that he found the newspaper account "pretty much convincing," adding that he "would hope [he] wouldn't" consider the article should evidence be introduced at trial that varied from the newspaper account.

Defendant contends that the trial court failed to inquire into these "clearly prejudicial statements." Although defendant is correct that the trial court did not make such an inquiry, defendant's assertion is a misleading one, because the prosecutor and defense counsel thoroughly questioned Pentz (who eventually became the jury's foreperson) as to the matters noted. In response to defense counsel's inquiries, Pentz stated that he would use the same standard for credibility in weighing a police officer's testimony that he would use for anyone else's testimony, and that he was neither biased nor prejudiced in evaluating testimony offered by a police officer.

In response to a jury questionnaire inquiry asking Pentz whether the newspaper account led him to favor the prosecution or the defense, Pentz stated "neither," adding, "I have not heard the whole story and I do not know if the person in custody did this." On voir dire, defense counsel asked whether Pentz "could in fact listen to the facts that are presented, the evidence that is presented in this case and make your decision solely on that evidence and be fair to both sides as concerning the penalty." Pentz responded affirmatively. Defense counsel refrained from challenging Pentz for cause.

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and killed the girl. He then came back to the vehicle and the other girl got scared when she started questioning as to the whereabouts of her friend. She then talked real nicely to the person that picked them up and he let her go at an unknown location. I cannot remember if she was sexually attacked or not. This is the bits and pieces of the incident that I can recall at this time."

In light of Pentz's responses, we fail to perceive a deficiency on the part of the trial court in refraining from asking additional questions. (Cf. *People* v. *Bittaker* (1989) 48 Cal.3d 1046, 1090 [holding that the trial court should have sustained a defense challenge for cause where a prospective juror expressed doubts regarding his own impartiality].)[12]

2. *Whether the Trial Court Deprived Defendant of His Right to a Fair and Impartial Jury by Failing to Dismiss Juror Venable for Hardship*

At the time of trial, Juror Mike Venable operated a crop-dusting business in which his income depended on seasonal work. At various points during the trial, Venable expressed to the court his concern regarding whether the proceedings would conclude in time for him to participate in the crop dusting he had planned to perform. Defendant contends that because juror Venable faced "extreme hardship," the trial court erred in failing to dismiss Venable for good cause, as permitted by section 1089, leading to an abridgment of defendant's "right to a fair trial, a fair and impartial jury, a reliable determination of guilt, due process, and fundamental fairness under the Fifth, Sixth, Eighth, and Fourteenth Amendments and their state constitutional analogues."[13] Defendant is mistaken.

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12 Defendant also contends trial counsel provided constitutionally deficient performance in failing to conduct a more thorough voir dire examination of prospective jurors and in failing to challenge Jurors Wallen and Pentz for cause. Because our review of the record reveals that trial counsel's performance did not fall "below an objective standard of reasonableness . . . under prevailing professional norms," we reject defendant's contention. (*Strickland* v. *Washington* (1984) 466 U.S. 668, 687; *People* v. *Musselwhite* (1998) 17 Cal.4th 1216, 1260.)

13 Section 1089 provides in pertinent part: "If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his

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Near the outset of voir dire, Venable stated that "I don't think a killing alone warrants the death penalty," and that he would be able to evaluate the case based upon the evidence presented. Shortly thereafter, defense counsel passed for cause. In response to the prosecutor's inquiry regarding why Venable could take the time to sit as a juror, Venable responded: "I'm seasonal work, my primary duty is I cropdust and we're pretty seasonal. And the summer months are the busiest months. I do have other duties, but they're very light." Venable did not claim that jury service would pose a financial hardship (as did several other prospective jurors).

Shortly after Venable was selected as a juror, on December 17, 1987, the following colloquy ensued:

"Venable: The question I have, you estimate approximately two and a half months?

"The Court: Right.

"Venable: If this thing runs in the end part of March and April that would present a — especially the month of April, will present a problem for me.

"The Court: What happens in April?

"Venable: That's when I make my money.

"The Court: What do you do?

"Venable: I'm a cropduster.

"The Court: Okay.

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duty, or if a juror requests a discharge and good cause appears therefor, the court may order him to be discharged and draw the name of an alternate, who shall then take his place in the jury box, and be subject to the same rules and regulations as though he had been selected as one of the original jurors."

"Venable: "I'm real seasonal.

"The Court: I don't think that will be a problem. If it is a problem, both counsel know about it, you've told us about it ahead of time and perhaps they can stipulate to an alternate coming in rather than excusing you [for] undue hardship.

"Venable: Okay."

On the following day, December 18, 1987, Venable contacted the court (apparently by telephone) to express his misgivings regarding jury service. A note from the court clerk read as follows: "Juror #3, Mike Venable, contacted the court and indicated the more he thought about the length of this trial and he thought it may interfere with his cropdusting. He indicated his busiest time is the last part of February and the full month of March. (This is when he makes his money). [¶] The clerk called him back and indicated 'it was too late.' He [Venable] just stated to me that we (the court) are aware of the problem with his job."

The jury reached its guilt phase verdict on February 9, 1988, and was ordered back to court on February 22, to begin the penalty phase. The following colloquy ensued on February 9:

"The Court: Hello, Mr. Venable. You gave me a note that you had a question?

"Venable: Yes, Your Honor. As twice before I've talked to you about, you know, the time schedule of this has kind of lingered on longer than I thought I would be here. I wondered if it would be a good time where maybe you could bring in an alternate in my place to finish this trial, so I could get back to work.

"The Court: All right. Let me discuss that with counsel and then get back to you. But in the meantime could you plan to be here on the 22nd of February?

"Venable: Uh-huh.

"The Court: We'll see you at that time, and I'll bring this to the attention of the attorneys. They've both heard your request."

On February 11, 1988, the trial court made the following observations to counsel:

"Mr. Venable obviously does not want to be here. And if he's going to be forced to be here, I don't know what [his] reaction [to] that would be. I can understand that he has already voted for guilt and heard the evidence and already been a part of the chemistry of this particular jury, and perhaps for that reason, the District Attorney would like to keep him.

"But the other thing that could enter into it is if he becomes upset and starts to blame the Court and the District Attorney and the defense, he might not be the best of jurors.

"I suspect that what he tells me is not good cause, from what I've heard, to release him. But, if counsel would stipulate to . . . release him I would obviously do that. But if counsel want to keep him I would not force a stipulation on you."

The prosecutor thereafter indicated his concern that if Juror Venable were excused, other jurors might submit similar requests. Accordingly, the prosecutor expressed a preference that Juror Venable remain on the jury. Defense counsel indicated that he was prepared to stipulate to Venable's excusal. Noting that Venable still had Friday through Sunday each week to perform his work, the trial court informed counsel that Venable would remain on the jury.

On February 23, 1988, just after the commencement of the penalty phase, the trial court informed counsel:

"Mr. Venable did come in and speak to me, he was very understanding and indicated that he's been able to work his schedule out so far and will continue to try to do so. [¶] . . . [¶] He also indicated on the week of March 19th, [Venable has] a contract . . . to go down to Guadalajara and spray down there. He wouldn't be available then the week of the 21st through 25th, and he wanted to bring that to both your attention and if that can be worked around he said he'd be very

appreciative of that fact and that other than that he thinks he can continue being a juror. [¶] My expression to him was he should show up at 9:15 tomorrow, I would bring this to both your attention, he could explain it to both of you tomorrow and you can ask him questions about that, and that in all likelihood we'll probably at least keep him here until he has to go to Guadalajara, we'd just see how the case progresses at that point."

On the following day, February 24, 1988, the trial court engaged Juror Venable in the following colloquy:

"The Court: We had a brief conference, discussion late Monday and you brought to my attention the fact that your father's business, that is who you work for, has an obligation the week of March 19 involving Guadalajara. I brought that to the attention of both attorneys, I thought you should explain this to them and they could ask you additional questions. You can go ahead and tell me what you told me in chambers.

"Venable: Basically we are getting down to short strokes of the early fire season in Mexico. We have three airplanes going to leave the 20th of March. Now I can sit through this thing until that point but at that point I am going to need at least a couple weeks' leave of absence if this thing is going through that. I have management duties, flying duties, and basic everyday duties I do now.

"The Court: You told me that if possible you could take care of your duties down there in one week as opposed to two weeks?

"Venable: I can be relieved, all I got to do is get equipment there, people come off other contracts and they will come down and take those seats.

"The Court: So, basically, if we tried to work our schedule around being in recess from the 21st to the 25th, which would then leave you the weekends of the 19th all the way through the 27th, that would give you enough time and you'd be able to resume again on the 28th if necessary?

"Venable: Yeah, as I sit here, yeah, but a day or two either way is kind of tough when you're down there.

"The Court: All right.

"Venable: I can safely say now the whole month of April I'll be locally available, you know. The schedule you guys kept here for these last five weeks hasn't been as strenuous as I thought it was going to be. You left me two or three days and I can go to work from 7:00 to 8:30 and get the guys working in he morning and I am back by 4:00. That's why I have been able to sit through as long as I have sat through. I thought it would be done by February 15th, but I can see we're probably going to be looking at April now, aren't we?

"The Court: When we actually went through the initial questioning we were pretty clear on telling everybody that this was going to be to the end of March.

" . . . . . .

"Venable: Uh, then when you specifically brought that point up that's when the first time I stood up and says, well, that is going to kind of infringe on me a little bit. You said, well, we'll work that out when we get to it.

"The Court: Okay."

Following the exchange noted above, the court asked the prosecutor and defense counsel if they had any additional questions of Juror Venable. Each replied that he did not.

Later that same day, the trial court inquired of Juror Venable whether he would be inconvenienced if the trial were conducted on Friday (normally the day in which the court addressed its other pending cases): "I know you have got a problem with your crop dusting. Do you think you can work that out, you will have two days next week to do it, otherwise — " Juror Venable replied: "At this point I'd say push it just as fast as you can get it done, for me."

On March 7, 1988, Juror Venable expressed concern to the trial court whether "it's going to be three weeks to finish this up . . . or four weeks with the week we're taking off." (The one-week recess in trial was taken in part to accommodate Juror Venable's desire to crop dust in Mexico.) The trial court replied that "[I]t may go to the week of [April] 4th, but that will be it for sure it looks like. Okay?" Juror Venable: "Okay."

"A trial court's decision whether to discharge a juror for good cause under Penal Code section 1089 is subject to review under the abuse-of-discretion standard." (*People* v. *Beeler* (1995) 9 Cal.4th 953, 989 [citing *People* v. *Ashmus* (1991) 54 Cal.3d 932, 986-987; *In re Mendes* (1979) 23 Cal.3d 847, 852].) As we shall explain, the trial court did not abuse its discretion in declining to discharge Juror Venable.

The record indicates that from the time Venable was selected as a juror, he repeatedly expressed concern to the trial court regarding the possibility that his service on defendant's jury might interfere with his crop-dusting duties. Venable assured the court, however, that if a one-week recess were granted in March to accommodate his desire to fulfill a particular crop-dusting job, he could continue serving as a juror. The court granted the recess, and Venable evidently was present in court whenever his attendance as a juror was required. There is no indication that he was unable to discharge his duties as a juror. Under these circumstances, the trial court did not abuse its discretion in declining to discharge Juror Venable.

Although it is true that Juror Venable expressed an interest that the proceedings continue apace, the record does not indicate that he lacked the "spiritual contentment and mental detachment that good jurors require," as alleged by defendant. (See *Thiel* v. *Southern Pacific Company* (1946) 328 U.S. 217, 232.) Nor does the record demonstrate that Venable was unable "to perform the

functions of a juror." (*People* v. *Compton* (1971) 6 Cal.3d 55, 60.) Rather, Venable's comments suggest that he was concerned the trial might not conclude within the time period originally estimated by the trial court. In a lengthy capital trial, such concerns are not unusual; we perceive no abuse of discretion in the manner in which the trial court addressed those concerns. (See *Thiel* v. *Southern Pacific Co.*, *supra*, 328 U.S. at p. 224 ["Jury service is a duty as well as a privilege of citizenship; it is a duty that cannot be shirked on a plea of inconvenience or decreased earning power. Only when financial discomfort is such as to impose a real burden and hardship does a valid excuse of this nature appear."].) We therefore reject defendant's contention that the trial court erred in refraining from excusing juror Venable.

B. *Motion to Change Venue*

Defendant contends that the trial court violated his federal and state constitutional rights to due process of law, a fair trial, and an impartial jury when it denied defendant's pretrial motion for change of venue. (U.S. Const., Amends. V, VI, XIV; Cal. Const., art I, §§ 1, 15, 16; see also § 1033, subd. (a).) As we shall explain, the contention was waived below, but in any event, it lacked merit.

Defendant submitted his motion for change of venue prior to the selection of the jury. The trial court rejected defendant's contention that pretrial publicity likely would sway public opinion within Riverside County toward the belief that defendant was guilty of the charged offenses. The trial court therefore denied the motion without prejudice to its renewal, stating that once jury selection commenced, the court "would entertain another motion for change of venue at that time." Defendant refrained from renewing the motion.

Under very similar circumstances, this court concluded in *People* v. *Williams* (1997) 16 Cal.4th 635, 654, that the defendant, by failing to renew his change of venue motion after voir dire, had failed to preserve the issue for appeal.

We stated in *Williams*: "As we explained in *People* v. *Howard* (1992) 1 Cal.4th 1132, 1166 [5 Cal.Rptr. 268, 824, P.2d 1315], when a trial court initially denies a change of venue motion without prejudice, a defendant must renew the motion after voir dire of the jury to preserve the issue for appeal. Here, although expressly invited by the court to renew the motion after jury selection, defendant failed to do so." (16 Cal.4th at pp. 654-655; see generally 4 Witkin & Epstein, Cal. Criminal Law (2d ed. 1989) Jurisdiction and Venue, § 1889, pp. 2226-2227 [and cases cited].) Accordingly, defendant has failed to preserve the claim for appeal.

Further, even if defendant properly had preserved the issue, his contention is without merit. The applicable law is settled. "A change in venue must be granted when the defendant shows a reasonable likelihood that a fair trial cannot otherwise be had. The trial court typically considers the nature and gravity of the offense, the size of the community, the status of the defendant and the victim, and the nature and extent of the publicity. On appeal, the defendant must show that denial of the venue motion was error (i.e., that it was reasonably likely a fair trial could not be had at the time the motion was made) and that the error was prejudicial (i.e., that it was reasonably likely a fair trial was not in fact had). We will sustain the court's determination of the relevant facts where supported by substantial evidence. We independently review the court's ultimate determination of the reasonable likelihood of an unfair trial." (*People* v. *Pride* (1992) 3 Cal.4th 195, 224; see also *People* v. *Howard* (1992) 1 Cal.4th 1132, 1166-1167; *People* v. *Edwards* (1991) 54 Cal.3d 787, 806-807; *People* v. *Bean* (1988) 46 Cal.3d 919, 941-942.)

The charged offenses were serious and had attracted the attention of the media. "However, every capital case involves a serious charge. While this factor adds weight to a motion to change venue, it does not in itself require a change." (*People* v. *Howard*, *supra*, 1 Cal.4th 1132, 1167.) Accordingly, this factor is not

dispositive. (*People* v. *Pride*, *supra*, 3 Cal.4th 195, 224; *People* v. *Edwards*, *supra*, 54 Cal.3d 787, 807.)

At the time of the guilt phase of the trial, which commenced in 1987, Riverside County had a population "approaching 900,000 people." This circumstance did not weigh in favor of a change of venue. (See *People* v. *Daniels* (1991) 52 Cal.3d 815, 852 [rejecting a motion to change venue away from Riverside County, at a time when the population was described in the trial court as "over 600,000"]; *People* v. *Anderson* (1987) 43 Cal.3d 1104, 1131 [characterizing the size of Riverside County's population as a "neutral factor"]; see also *People* v. *Pride*, *supra*, 3 Cal.4th 195, 224 [rejecting a motion to change venue away from Sacramento County, observing that "the size [population in excess of 875,800] and metropolitan nature of the county weighed heavily against a change of venue"]; *People* v. *Howard*, supra, 1 Cal.4th 1132, 1167 [rejecting a motion to change venue away from Tulare County, with a population of 253,000, and observing that "most recent successful venue motions have involved communities with substantially smaller populations"].)

Neither defendant's status, nor that of his victims, suggested a basis for a change in venue. Although these individuals were residents of Riverside County, the record is devoid of evidence suggesting that any one of them had attained a level of prominence that possibly might support a motion to change venue. As defendant himself has conceded, both the murder victim and defendant "were relatively unknown citizens in the community."

The extent of the pretrial publicity generated in the present case was not unusual or extreme. Apparently, only three articles appeared in a local newspaper. Two of the articles appeared in August 1986, well over one year prior to the commencement of trial in November 1987. Two of the three articles noted that defendant had been treated as a mentally disordered sex offender for nearly three

years in Patton State Hospital, located in San Bernardino, and had been released despite warnings from doctors that he was still dangerous to others. These articles also noted that defendant had pleaded innocent to the charges filed against him. The third article, which emphasized a lawsuit filed by the surviving victim against the Riverside County Sheriff's Department (stemming from the department's treatment of her in the immediate aftermath of her ordeal), was published in July 1987, four months prior to trial. Defendant also alleged below that an undisclosed number of radio broadcasts addressed the story.

The trial court found the reporting "neutral," not inflammatory, and insufficient to sway public opinion. Nothing contained within the record leads us to reach a different conclusion. The publicity described in the present case was insignificant in comparison with other cases in which a denial of a motion to change venue was upheld. (See, e.g., *People* v. *Bonin* (1988) 46 Cal.3d 659, 677, overruled on other grounds, *People* v. *Hill* (1998) 17 Cal.4th 800, 823, fn. 1 [media coverage noted defendant's history of mental illness, his convictions of 10 counts of murder, and death sentence]; *People* v. *Odle* (1982) 32 Cal.3d 932, 938 [more than 150 newspaper articles, 70 of which mentioned the defendant in the headlines].) The circumstance that the articles attached to defendant's motion to change venue were printed well before trial commenced also weighed against a change of venue. (See *People* v. *Edwards*, *supra*, 54 Cal.3d 787, 808; *People* v. *Sully* (1991) 53 Cal.3d 1195, 1237.) No evidence was submitted regarding the nature or length of the radio broadcasts.

Defendant contends that "six of the twelve jurors who eventually sat on [his] jury," in addition to two of the four alternates, stated during voir dire that they had heard something about the case through media reports. He asserts that the jurors' recollections demonstrate "the pervasiveness, extent, and adverse impact of the media coverage," thereby presenting "undeniable proof that the jury pool could

not be impartial." Defendant is mistaken. Six *prospective* jurors expressed knowledge of the case; of these, three were excused prior to the commencement of the trial. Our own review of the responses furnished by the three remaining prospective jurors who actually sat on defendant's jury reflects only a slight level of awareness. Although these individuals expressed a general familiarity with the crimes, none recalled seeing or hearing any reports regarding defendant. Moreover, the jurors stated that they could set aside anything they previously had heard or seen in the media in favor of the evidence presented at trial. None of the alternate jurors were empaneled as jurors, and thus they did not participate in the jury's deliberations.

In view of the foregoing, it is clear that defendant has not established error or prejudice in the denial of his motion for change of venue. (See *People* v. *Daniels*, *supra*, 52 Cal.3d 815, 853-854 [upholding denial of motion for change of venue away from Riverside County, even though eight of twelve jurors were exposed to pretrial news coverage, and where defendant had failed to exhaust his available peremptory challenges].)

II. GUILT PHASE ISSUES

A. *Alleged* Marsden *Error*

At the guilt phase of the trial, defendant made three motions to relieve his appointed counsel, pursuant to *People* v. *Marsden* (1970) 2 Cal.3d 118 (*Marsden*). These motions were heard on September 28, 1987, October 30, 1987, and February 4, 1988. At each one of these hearings (conducted outside the jury's presence), the trial court afforded defendant an opportunity to enumerate his concerns. Defendant did so, on each occasion failing to persuade the trial court that denial of his request to substitute counsel would substantially impair his constitutional right to the assistance of counsel. (See *People* v. *Ortiz* (1990) 51 Cal.3d 975, 980, fn.1.) The trial court therefore denied defendant's motions.

Defendant contends that the trial court prejudicially erred in denying his *Marsden* motions. Before examining the governing legal principles in this area, we review the factual bases for defendant's claims.

1. *The September 28, 1987, Hearing*

At the first *Marsden* hearing, defendant contended that: (1) he had not seen trial counsel for approximately seven and one-half months, despite numerous requests, and counsel had failed to keep appointments with defendant on nine occasions; (2) defense investigators had not visited him with sufficient frequency and seemed unfamiliar with certain evidence that interested defendant; (3) he gave a defense investigator questions for trial counsel three months earlier and had not received a reply; (4) he told investigators he was "mad," leading trial counsel to inform him that "he [counsel] didn't care how I felt"; (5) "No one was ever interviewed on my case"; and (6) trial counsel "hasn't discussed anything with me."

Trial counsel informed the court that he had announced his readiness to go to trial on April 24, 1987, but that the trial did not proceed on that date in deference to the request of cocounsel, who was preparing for the possibility of a penalty phase trial in this case and had requested a continuance. Trial counsel explained to the court that the necessary interviews had been conducted and the forensic evidence "has all been reviewed heavily and thoroughly." Counsel added that defendant was free to call him collect at any time. Counsel believed that, in view of the readiness of the defense case, additional visits would not have been a productive use of time, and he did not believe the attorney-client relationship with defendant had deteriorated.

After hearing defendant's concerns, the trial court found that the nature of the relationship between defendant and his trial counsel had not reduced the likelihood that defendant would receive a fair trial or the effective assistance of

counsel. The court concluded there had not been a deterioration of the attorney-client relationship sufficient to warrant granting defendant's *Marsden* motion to relieve counsel.

2. The October 30, 1987, Hearing

At the second *Marsden* hearing, defendant contended that: (1) trial counsel had performed an inadequate investigation, including a failure to interview witnesses; (2) trial counsel had not kept defendant adequately apprised of the progress of the case (for example, failing to permit defendant to read the police reports); and (3) trial counsel was "very intimidating" and had caused defendant to lose confidence in him.

Trial counsel explained to the court that the pertinent witnesses had appeared at the preliminary hearing, so the defense knew the nature of their potential testimony at trial. He noted that the key prosecution witness — the surviving victim, Amy — refused to consent to an interview. He stated the rest of the case hinged on forensic evidence, and "we have hired a forensic expert that has gone over totally and completely and very thoroughly the forensic evidence . . . to be presented against Mr. Hart." Trial counsel stated that he had reviewed with defendant the evidence noted in the police reports. Counsel made the tactical decision not to provide defendant copies of the police reports, themselves, based on a concern that if read by another inmate, the reports might lead that other inmate to testify falsely against defendant. He believed defendant's "biggest complaint was that he was lonesome . . . ."

In denying defendant's motion, the trial court informed defendant that counsel had more experience in capital cases than any other attorney in the county, adding: "I find that the attorney-client relationship has not really broken down and that if there is a problem here, that problem is really a misplaced [one] . . . ." The

court also observed: "Because it's a difficult case does not mean that your attorney is not concerned and not working for you."

3. *The February 4, 1988, Hearing*

At the third *Marsden* hearing (conducted after the parties had rested their guilt phase cases), defendant contended that: (1) trial counsel was remiss in not challenging the lineup in which the surviving victim identified him (even though defendant acknowledged "we're not disputing the fact I was up there [at the crime scene]"); and (2) trial counsel failed to impeach the victim regarding certain aspects of her testimony, or to call witnesses who would have done so.

Trial counsel explained that the issues of concern to defendant had been considered and investigated and would be noted in his closing argument to the jury, which he had discussed with defendant. Trial counsel indicated that he had rejected defendant's suggestion to present a defense based on his cocaine usage, noting that such a defense would not be applicable in this case (because the prosecution's theory of the case was that the murder was committed in the course of a rape, thereby obviating the need for the prosecution to prove premeditation or deliberation). Counsel acknowledged that defendant had expressed an interest in testifying at the guilt phase; in counsel's view, "under no circumstances could a competent attorney allow Mr. Hart to get on the stand during this phase of the trial and allow him to be cross-examined by the prosecution when . . . we are doing our best to keep from [being placed] in front of the jury the factors in aggravation which have already been filed."

The trial court denied defendant's *Marsden* motion. In so doing, the court observed: "For the record . . . the investigation is perhaps even more extensive than I had anticipated and I anticipated even an extensive investigation, so from what I've heard here, everything brought up, you have already looked to, Mr. Barnett, so I commend you on that."

4. *Analysis*

The governing legal principles are well settled. " 'When a defendant seeks to discharge his appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of the attorney's inadequate performance. [Citation.] A defendant is entitled to relief if the record clearly shows that the first appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result [citations].' (*People* v. *Crandell* (1988) 46 Cal.3d 833, 854; see also *People* v. *Marsden*, *supra*, 2 Cal.3d 118, 124-125.)" (*People* v. *Fierro* (1991) 1 Cal.4th 173, 204.) "[S]ubstitution is a matter of judicial discretion. Denial of the motion is not an abuse of discretion unless the defendant has shown that a failure to replace the appointed attorney would 'substantially impair' the defendant's right to assistance of counsel." (*People* v. *Webster* (1991) 54 Cal.3d 411, 435, citing *Marsden*, *supra*, 2 Cal.3d. 118, 123; see also *Bland* v. *Dept. of Corrections* (9th Cir. 1994) 20 F.3d 1469, 1475 [trial court's refusal to substitute counsel is reviewed for abuse of discretion; denial of a motion to substitute counsel implicates a defendant's Sixth Amendment right to counsel].)

At each one of three *Marsden* hearings conducted in the present case, the trial court provided defendant with an opportunity to set forth his complaints regarding the assistance he was receiving from appointed counsel. The trial court also invited comment from defendant's trial counsel, who indicated on each occasion that he had investigated the case thoroughly and was aware of defendant's concerns. Although counsel did not share defendant's view as to the significance of the matters that defendant cited, counsel never wavered from his belief that he believed defendant could benefit from his representation and that the

attorney-client relationship had not deteriorated to a degree that would warrant substitution of counsel. The trial court concluded that counsel's representation of defendant neither was inadequate nor marked by irreconcilable conflict.

The record amply supports each one of the trial court's rulings denying defendant's *Marsden* motions. At the first hearing, the trial court reasonably concluded that trial counsel was prepared for trial and therefore did not need to visit defendant on a regular basis. "[T]he number of times one sees his attorney, and the way in which one relates with his attorney, does not sufficiently establish incompetence." (*People* v. *Silva* (1988) 45 Cal.3d 604, 622.) At the second hearing, the trial court reasonably concluded that trial counsel's decision not to provide defendant with copies of the police reports was a tactical decision made in defendant's best interests. (See *People* v. *Crandell* (1998) 46 Cal.3d 833, 859-860 ["A disagreement concerning tactics is . . . insufficient to compel the discharge of appointed counsel, unless it signals a complete breakdown in the attorney-client relationship."].) At the third hearing, the trial court recognized the tactical bases for trial counsel to refrain from challenging the testimony of victim Amy R. regarding minor details of her testimony, and reiterated the view that trial counsel's investigation had been more than adequate.

In sum, the record is clear that the trial court provided defendant with repeated opportunities to voice his concerns, and upon considering those concerns reasonably found them to be insufficient to warrant relieving trial counsel. We therefore find no basis for concluding that the trial court either failed to conduct a proper *Marsden* inquiry or abused its discretion in declining to substitute counsel. (*People* v. *Fierro*, *supra*, 1 Cal.4th 173, 206-207; *People* v. *Silva*, *supra*, 45 Cal.3d 604, 622.)

B. *The Trial Court's Exclusion of Evidence of Amy's Civil Suit*

Amy filed a civil suit alleging that the Riverside County Sheriff's Department mistreated her and lied to her at the time she reported the murder of her friend, Diane. Prior to commencement of the parties' opening statements (at a hearing conducted outside the jury's presence pursuant to Evidence Code section 402), the trial court ruled that the allegations set forth in the civil suit would be inadmissible as character evidence against sheriff's department officials, but might be admissible as impeachment evidence if discrepancies appeared in the testimony offered at trial by Amy and the officials.

During trial, defendant's counsel requested a second hearing on this issue outside the jury's presence. At that hearing, counsel contended that evidence pertaining to Amy's civil suit was "relevant in that it might be motivation for Amy to make a stronger statement for herself, and for the officers to make a protective statement for themselves." The prosecutor contended that evidence of Amy's civil suit was irrelevant and, even if it were relevant, should be excluded pursuant to Evidence Code section 352.[14] In support of his argument, the prosecutor observed that "90 percent of the investigative reports prepared by the detectives in this case or — who are the subjects of the civil lawsuit, were prepared at sometime prior to the lawsuit even being filed."

The trial court found: "Th[is] court's confident that within the meaning of Evidence Code section 352, whatever probative value that evidence would have,

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[14] Evidence Code section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

and I can't think of very much, is substantially outweighed by the probability that it . . . will first of all necessitate undue consumption of time and will create a substantial danger, undue prejudice, of confusing the issues, and of misleading the jurors. [¶] I think that what goes into filing a lawsuit [—] that motivation is really impossible for us to know, and what [e]ffect that lawsuit has on people testifying, especially when there are written police reports, especially when there are statements made before a lawsuit was even conceived as a possible way to go. [¶] It strikes me that there's just not probative value to that. So, for those reasons, the court will exclude that evidence."

On appeal, defendant contends the trial court prejudicially erred in excluding evidence of Amy's civil suit. In defendant's view, evidence of that lawsuit provided a "relevant basis upon which to attack [Amy's] credibility." (Evid Code, § 780.[15]) Defendant contends that he was entitled to expose the biases or motives to lie that may have been held by the witnesses who testified against him, and that the trial court's ruling infringed upon his rights to a fair trial, to counsel, to confront the witnesses against him, to due process of law, and to a reliable verdict under the United States and California Constitutions.

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15 Evidence Code section 780 provides in pertinent part: "[T]he court or jury may consider in determining the credibility of a witness any matter that has any tendency to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

"

"(b) The character of his testimony.

"

"(e) His character for honesty or veracity or their opposites.

"(f) The existence or nonexistence of a bias, interest or other motive."

Defendant's position regarding the probative value of evidence concerning Amy's civil suit has evolved during this litigation. At trial, defendant sought to introduce the evidence to highlight the character of sheriff's department officers and, subsequently, to impeach their testimony and that of Amy. On appeal, however, defendant contends, among other things, that the evidence would have informed the jury that the "Sheriff's Department itself suspected [Amy] of involvement in the murder of Diane Harper." To the extent that defendant's assertion of evidentiary error rests upon a theory of admissibility not presented to the trial court, we conclude that defendant has waived this claim.

In any event, defendant's contentions do not withstand scrutiny. Assuming, without deciding, that evidence of Amy's civil suit satisfied the definition of relevancy set forth in Evidence Code section 210,[16] we conclude that the trial court did not abuse its discretion in excluding the proffered evidence pursuant to Evidence Code section 352. In basing its ruling upon the principles set forth in the latter statute, the trial court accepted defendant's contention — at least, for purposes of argument — that the proffered evidence had some relevance. As noted, the trial court thereafter concluded that Amy's civil suit had only minimal probative value, and that such value was substantially outweighed by the probability that presentation of the evidence would require the undue consumption

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16 "Relevant evidence is defined in Evidence Code section 210 as evidence 'having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.' The test of relevance is whether the evidence tends 'logically, naturally, and by reasonable inference' to establish material facts such as identity, intent, or motive. [Citations.]" (*People* v. *Garceau*, *supra*, 6 Cal.4th 140, 177.)

of time and would create a substantial risk of confusing the issues and misleading the jurors.

The trial court did not abuse its discretion. "When an objection to evidence is raised under Evidence Code section 352, the trial court is required to weigh the evidence's probative value against the dangers of prejudice, confusion, and undue time consumption. Unless these dangers 'substantially outweigh' probative value, the objection must be overruled. (See *People* v. *Babbit* (1988) 45 Cal.3d 660, 688.) On appeal, the ruling is reviewed for abuse of discretion. (*People* v. *Ashmus* (1991) 54 Cal.3d 932, 973.)" (*People* v. *Cudjo* (1993) 6 Cal.4th 585, 609.)

Here, the trial court properly could conclude the circumstance that Amy filed a civil suit against the Riverside County Sheriff's Department was of attenuated significance to the issues contested at trial, particularly inasmuch as the observations of sheriff's deputies that were material to the present case were set forth to a great extent in reports prepared well before Amy filed her civil suit, and because the deputies' observations and recollections could be tested on cross-examination on the basis of those reports. Further, the trial court properly could determine that the admission of evidence of Amy's civil suit would have permitted the focus of the testimony to shift away from the events leading to and involving the charged offenses, to the conduct of law enforcement officers *after* those offenses had been committed. The trial court acted within its discretion in determining that such a shift presented a substantial risk of confusing or misleading the jury.

Nor do we find any constitutional infirmity in the trial court's ruling. The court merely exercised its discretionary power to preclude examination on collateral matters. (See *Delaware* v. *Van Arsdell* (1986) 475 U.S. 673, 679.)

Finally, even if we were to assume that the trial court erred in excluding this evidence, reversal would not be warranted. Defendant's involvement in the

murder of Diane Harper and the sexual assault of Amy was firmly established. His defense focused upon the nature of the sexual misconduct committed at the crime scene. Hence, under any prejudicial error standard, the asserted error was harmless. (See *Chapman* v. *California* (1967) 386 U.S. 18; *People* v. *Rodrigues* (1994) 8 Cal.4th 1060, 1125; *People* v. *Watson* (1956) 46 Cal.2d 818, 836.)

C. *Sufficiency of the Evidence*

Defendant contends that "while it was clear that [he] was with the [victims on the day the crimes were committed], and had been at the murder scene," the evidence presented at his trial was insufficient to establish his guilt beyond a reasonable doubt of the first degree murder of Diane with special circumstances, and of the sexual offenses committed against Amy.

In addressing defendant's contention, we apply well-settled law. " ' "In reviewing the sufficiency of evidence for a special circumstance" — as for a conviction — "the question we ask is whether, after viewing the evidence in the light most favorable to the People, *any* rational trier of fact could have found the essential elements of the allegation beyond a reasonable doubt" ' (*People* v. *Rowland* [(1992)] 4 Cal.4th [238,] 271, quoting *People* v. *Mickey* [(1991)] 54 Cal.3d [612,] 678, italics in original.)" (*People* v. *Berryman* (1993) 6 Cal.4th 1048, 1090, fn. omitted, overruled on other grounds, *People* v. *Hill*, *supra*, 17 Cal.5th 800, 823, fn. 1.) As we shall explain, in view of the standard set forth in the decisions cited above, defendant's contention is without merit.

1. *The First Degree Murder of Diane*

The prosecution tried the case under a theory that the murder of Diane either was premeditated or was perpetrated during the commission of a rape or attempted rape. Defendant's claim of insufficiency of the evidence thus relates to the issues of intent to kill, the underlying felony of rape, and an independent felonious purpose on his part. (See *People* v. *Berryman*, *supra*, 6 Cal.4th 1048,

1090.) Defendant also challenges the sufficiency of the evidence that he committed the murderous act.

The evidence of defendant's culpability in the charged offenses, noted below, makes clear that a rational trier of fact could have found that defendant, having committed or attempted a sexual assault upon Diane, thereafter killed her, and that both the prosecution's premeditation *and* felony-murder theories were established beyond a reasonable doubt.

Our decision in *People* v. *Berryman*, *supra*, 6 Cal.4th 1048, summarized the principles that guide our analysis of defendant's contentions relating to the first degree murder of Diane: " 'Murder is the unlawful killing of a human being . . . with malice aforethought.' (. . . § 187, subd. (a).) [¶] As pertinent here, '[a]ll murder which is perpetrated . . . by any . . . kind of willful, deliberate, and premeditated killing . . . is murder of the first degree . . . .' (. . . § 189.) The mental state required is, of course, a deliberate and premeditated intent to kill with malice aforethought. (See [] §§ 187, subd. (a), 189.) [¶] Similarly, '[a]ll murder . . . which is committed in the perpetration of, or attempt to perpetrate' certain enumerated felonies, including rape, is 'murder of the first degree . . . .' (. . . § 189.) The mental state required is simply the specific intent to commit the underlying felony; neither intent to kill, deliberation, premeditation, nor malice aforethought is needed. (See . . . *People* v. *Coefield* (1951) 37 Cal.2d 865, 868-869; see, generally, 1 Witkin & Epstein, Cal. Criminal Law [(2d ed. 1988)], Crimes Against the Person, § 470, p. 528; see also *People* v. *Hernandez* (1988) 47 Cal.3d 315, 346 [stating that '[w]e have required as part of the felony-murder doctrine that the jury find the perpetrator had the specific intent to commit one of the enumerated felonies, even where that felony is a crime such as rape'].) There is no requirement of a strict 'causal' (e.g., *People* v. *Ainsworth* (1988) 45 Cal.3d 984, 1016) or 'temporal' (e.g., *People* v. *Hernandez*, *supra*, 47 Cal.3d at p. 348)

relationship between the 'felony' and the 'murder.' All that is demanded is that the two 'are parts of one continuous transaction.' (E.g., *People* v. *Ainsworth*, *supra*, 45 Cal.3d at p. 1016; see, e.g., *People* v. *Hernandez*, *supra*, 47 Cal.3d at p. 348.) There is, however, a requirement of proof beyond a reasonable doubt of the underlying felony. (See, e.g., *People* v. *Whitehorn* (1963) 60 Cal.2d 256, 264 [32 Cal.Rptr. 199, 383 P.2d 783].)" (*People* v. *Berryman*, *supra*, 6 Cal.4th at p. 1085.)

A rational trier of fact readily could have determined beyond a reasonable doubt that defendant acted with premeditation and deliberation in intentionally killing Diane. Dr. DeWitt Hunter, the Riverside County pathologist who performed the autopsy on the victim, testified that at least five distinct blows — each one of which was capable of rendering the victim unconscious — were exerted against the back of the victim's head, probably with the use of a rock or a brick-like instrument. The victim's skull was fractured, a circumstance that required "a large amount of force." Her head was driven six inches into the ground. Beside her was a shoe impression that matched one of defendant's shoes, as well as a beer bottle that matched the beer that the trio had purchased earlier that day. Amy testified that defendant declared to her: "[L]ook, you're friend was an asshole, she called me a few names, and I think she's dead." The nature and severity of Diane's wounds, together with defendant's own statements, support a finding that defendant willfully and with premeditation murdered her. (See *People* v. *Mincey* (1992) 2 Cal.4th 408, 433; *People* v. *Davenport* (1985) 41 Cal.3d 247, 270; see also *People* v. *Pride, supra,* 3 Cal.4th 195, 247 [the jury could conclude

that the defendant killed his victim "to silence her as a possible witness to her own sexual assault"].)[17]

Similarly, a rational trier of fact could have determined with the requisite degree of certainty that defendant murdered Diane while he was engaged in raping her or attempting to rape her. Her partially clothed body (naked from the waist down, with panties wrapped around one leg), the evidence of force and violence including abrasions and contusions on the victim's thighs, the presence of a foreign pubic hair on her thigh, the reddening of her vaginal area, and the discovery of a Vaseline-like substance near her vaginal entrance (the same substance defendant used in his rape of Amy), support the reasonable inference that a rape or attempted rape occurred. (*People* v. *Wright* (1990) 52 Cal.3d 367, 405; *People* v. *Morales* (1989) 48 Cal.3d 527, 553.) Amy testified that when defendant attempted to sodomize her, and had difficulty obtaining an erection, he informed her: "[I]t's hard for me to get it up after I just got it on with your friend."

In view of the evidence presented, a rational trier of fact reasonably could have found that defendant committed the first degree murder of Diane while engaged in the course of a rape or attempted rape.

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17 In his opening brief on appeal, defendant asserts: "The physical evidence showing Diane Harper's blood splattered on Amy['s] blouse suggests that Amy . . . was not an innocent bystander, and that she possibly had a part in the killing herself." To the extent that defendant seeks reversal of his first degree murder conviction based upon questions regarding Amy's credibility or questions regarding who inflicted the fatal blows upon Diane, we reject the claim. In view of the other evidence indicating that defendant acted alone in committing the crimes, his suggestion that Amy may have been a participant in the brutal murder of her friend lacks credibility, and certainly does not support a claim that the evidence at trial was insufficient to support the jury's determination that defendant killed Diane.

2. *The Rape and Sodomy Special Circumstances*

Defendant contends there was insufficient evidence in support of the special circumstances involving rape and sodomy. He specifically challenges the sufficiency of the evidence as it pertained to whether "penetration" had occurred, whether Diane was alive when the crimes of rape and sodomy allegedly were committed, and whether the rape and sodomy were part of a "continuous transaction" with the murder. None of defendant's challenges has merit.

The prosecution's pathologist testified there was no physical evidence of forcible sexual entry into Diane's vaginal or anal orifices. Defendant seizes upon the absence of physical evidence of penetration to assert the insufficiency of the evidence in support of the special circumstances of rape and sodomy. The pathologist's testimony, however, did not suggest that penetration could not have occurred, and the jury reasonably could have found from the other evidence reviewed above, including defendant's statement to Amy, that a completed rape and sodomy had occurred.

Furthermore, the prosecution was not required to establish the completion of the underlying felonies in order to establish the special circumstances. Either of the respective special circumstances at issue may be found true if the murder was committed while defendant was engaged in the commission *or attempted commission* of rape or sodomy. (§ 190.2, subd. (17)(iii), (iv); *People* v. *Wright, supra,* 52 Cal.3d 367, 405.) As noted above, there was overwhelming evidence to support a finding that defendant had sexually assaulted Diane and at least had *attempted* to rape and sodomize her, and that the murder occurred during the commission of these offenses.

Defendant contends there was insufficient evidence that the murder occurred during the commission of, or attempted commission of, or in flight immediately following the commission of, rape or sodomy. The evidence,

however, supported a finding that Diane resisted defendant's assault, called him "some names," was sexually attacked, and thereafter was killed. The prosecution's pathologist opined that there had been at least an attempt to sexually assault Diane prior to her death. According to the testimony given by Amy, defendant explained that his impotence was related to having just "got it on" with the murder victim. The evidence supports a finding that the murder occurred during, or immediately after the commission or attempted commission of, the underlying felonies of rape and sodomy of Diane.

Defendant also challenges the adequacy of the evidence in support of the special circumstances, contending that the prosecution failed to establish that Diane was alive when the crimes of rape and sodomy allegedly were committed. The evidence, however, refutes defendant's position; contusions on Diane's thighs and reddening of her vaginal area were consistent with a forcible sexual assault, and defendant's statements to Amy that Diane called him "a few names," and "I just got it on with your friend," indicate that Diane had attempted to resist defendant's attack and that defendant had committed or attempted to commit rape and sodomy while Diane still was alive. Thus, the jury reasonably could conclude that Diane was alive during defendant's sexual attack upon her.

Moreover, when an individual attempts to rape (or sodomize) a victim, reasonably or mistakenly believing that the victim is alive, the perpetrator is guilty of having attempted the underlying felony. (See *People* v. *Thompson* (1993) 12 Cal.App.4th 195, 203; see also *People* v. *Kelly* (1992) 1 Cal.4th, 495, 525 ["it . . . does not matter whether actual penetration did not occur until after death for purposes of the special circumstance"]; *People* v. *Guzman* (1988) 45 Cal.3d 915, 949-952 [explaining the scope of the rape special circumstance].)

Accordingly, we reject defendant's claim that the evidence was insufficient to support the rape and sodomy special circumstances.

3. *The Sexual Offenses Committed Against Amy*

Defendant contends that the evidence relating to the sexual offenses committed against Amy was insufficient. In fact, however, the evidence was abundant. Amy's own testimony, which provided graphic detail of the attack, would have been sufficient by itself. That testimony was corroborated by physical evidence: seminal fluid was found on Amy's slip, bruises and abrasions were found on her body, her perineum was injured and there was much sand in this area, and sand-type particles also were found inside her vagina. In addition to the emergency room physician's testimony voicing the opinion that Amy had been sexually assaulted, and Amy's own testimony to the same effect, the physical evidence clearly was sufficient to support defendant's conviction of the sexual offenses committed against her.[18]

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[18] Because we conclude that the evidence at trial was sufficient to support the jury's determination of guilt and its finding that the special circumstance allegations were true, we summarily reject defendant's contention that the insufficiency of the evidence violated his rights to a fair trial, reliable guilt and penalty phase determinations, due process of law, and fundamental fairness under the Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution. (See *People* v. *Berryman*, *supra*, 6 Cal.4th 1048, 1086 [rejecting constitutional claims on the basis that the evidence was not insufficient]; *People* v. *Rowland* (1992) 4 Cal.4th 238, 270, fn. 8 [same].)

We also reject defendant's contention that, in failing to challenge certain inconsistencies contained in the testimony of the surviving victim, the performance of his trial counsel violated his constitutional rights "to a fair trial, . . . to confront and cross-examine witnesses against him, a reliable determination of guilt, and due process, and fundamental fairness." Defense counsel's decision not to challenge the surviving victim's testimony regarding her ordeal clearly could have rested upon sound trial tactics. Our review of the record reveals no constitutional deficiency in trial counsel's performance. (*People* v. *Rowland*, *supra*, 4 Cal.4th 238, 274, fn. 15; see also part II.H, *post*.)

D. *Admission of Photographs*

1. *Overview*

Defendant contends that the admission of sixteen photographic slides, three photographs, and one videotape prepared by investigators, depicting the route to the crime scene, was unduly cumulative and prejudicial and demonstrated a clear abuse of discretion. He further alleges that the admission of this evidence violated his constitutional rights to due process of law, a fair trial, and a fair and reliable determination of guilt and penalty. (See U.S. Const., 5th, 6th, 8th, and 14th Amends.)

As we shall explain, defendant's failure at trial to interpose a timely objection to the photographic evidence constitutes a waiver of the present challenge. Further, even if defendant timely had objected, the trial court clearly would have acted within its discretion in admitting the evidence he challenges on appeal.

The 16 slides depict Diane's body as follows: Six slides show the body, partially clothed, lying facedown at the crime scene. Two other slides show the victim's feet, lying upon shopping bags, and a third slide shows the shopping bags only. Another slide shows the victim's feet, with her underwear nearby. One slide shows her hip. One slide shows the bloodied rear of her skull. One slide shows blood on debris nearby. Three slides show the body after investigators had rolled it over, including one close-up of the victim's face.

The three photographs (eight inches by ten inches in size) representing prints of photographic slides, depict the following: one photograph shows the victim's body lying facedown, partially clothed; a second shows a beer bottle and a depression in the ground, and the third photograph is an autopsy photograph depicting the victim's mouth, trachea, and larynx, showing debris.

As noted, the videotape shows the route to the crime scene. It was made by investigators on April 15, 1986, approximately three weeks after the crimes were committed. A portion of the videotape was taken from a passenger vehicle, and the balance was made while the cameraman walked along a dirt footpath, as marked by sheriff's yellow tape, to the crime scene. The tape includes minimal discernible sound, other than the cameraman's footsteps and breathing.

2. *Introduction of the Evidence*

Prior to the giving of opening statements, the following colloquy ensued between the attorneys and the court (outside the jury's presence), regarding the photographic slides.

Defense counsel: "Your Honor, the first matter I think we should cover is that [the deputy district attorney] intends to use some slides during his opening presentation Monday, his opening statement. I went to his office yesterday, and spent, I guess, an hour and a half going over the slides, et cetera, with [him] and even seeing them — I mean not just going over them. I saw them projected on the wall, et cetera, et cetera. I find there is no slide there that I could object to."

The court: "In terms of being outrageously gross?"

Defense counsel: "That's right. Under [Evidence Code section] 352, I could not say that they were more hurtful than beneficial to him or anything else. They portray factual reality. Some of them may not be what I would like to see, but I want to go on the record that I can't raise a single objection, and I would not if we were here and he was having to show them against the wall today."

The court: "I take it we don't have any autopsy picture where the body is cut open or anything like that."

Defense counsel: "No. The only picture we have — I mean — there is a picture of the body, of the deceased girl at the scene in about two or three

positions, but one is as she was found, one as she is turned over, and one a little closer. There are footprint, tire print, pathway [slides]."

The court: "Immediately near the body?"

Defense counsel: "Yes."

The court: "Okay. I agree with you then. I would in all likelihood —"

Defense counsel: "In fact, I would say having seen a ton of pictures, these are as little inflammatory as possible to get the opening statement made."

The court: "All right."

Defense counsel: "So I cannot object about those, so I want that on the record so that when we start tomorrow, we'll understand. [¶] As we proceed, there may be a time when we have to have a brief [Evidence Code section] 402 hearing on other pictures, but as of this point, that's fine."

The court: "All right. . . . [¶] I might indicate for the record that I was advised that there was the intention — it was the intention of the District Attorney to use slides, and it seems to me the law is quite clear that slides can be used as part of an opening statement to illustrate the testimony. . . . [I]t's been my experience in this county that slides have been used on numerous occasions and other counties almost without exception at this point in time."

Defense counsel: "Yes, Your Honor. These are slides — this is a portrayal that the jury would see all of that in the form of introduced evidence."

The court: "All right."

Defense counsel: "So there is no objection as to the slide show that we will be subjected to Monday morning on the 11th."

The prosecutor thereafter displayed the slides during his opening statement. The defense did not lodge an objection. During the prosecution's case-in-chief, the slides were shown in the course of the testimony given by Riverside County Detective Michael Lackie. Again, the defense did not lodge an objection. When

the prosecutor subsequently moved that the slides be introduced into evidence, defense counsel interjected: "Well, I object to all of them but I don't have any grounds for them, so let them have their slide show."

During Detective Lackie's testimony, the prosecutor offered to play the videotape, showing the route to the crime scene. The court asked defense counsel if he had any objection. Defense counsel responded in the negative, leading to the following colloquy.

The court: "Have you had a chance to review [the videotape]?"

Defense counsel: "No, but we have talked about it, [the prosecutor] and I, and it's just a — "

The court: "Demonstrative evidence?"

The prosecutor: "Yes, and the defense has been provided a copy of this video previously."

Defense counsel: "We talked about it, it's fine."

The prosecutor thereafter played the videotape for the jury, while asking Detective Lackie certain questions regarding the scenes shown on the tape. The court admonished the jury that the infrequent bits of dialogue heard on the videotape — primarily, instructions to the cameraman — were not admitted for any evidentiary purpose and should be disregarded.

3. *Analysis*

As noted, defendant challenges the trial court's rulings that permitted the introduction of the photographic evidence. Because defendant failed to interpose an objection that set forth the specific grounds for the objection, the issue may not be raised for the first time on appeal. (Evid. Code, § 353, subd. (a); *People* v. *Zapien* (1993) 4 Cal.4th 929, 979-980; see also *People* v. *Morris*, *supra*, 53 Cal.3d 152, 187-188 [explaining the purpose of the requirement]; *People* v. *Benson* (1990) 52 Cal.3d 754, 788 [rejecting the defendant's constitutional claims based

upon his failure to set forth a sufficient constitutional objection when the evidence was introduced].)

Even if defendant's challenge had been preserved, we find no error in the trial court's rulings admitting the photographic evidence. "'The admission of photographs of a victim lies within the broad discretion of the trial court when a claim is made that they are unduly gruesome or inflammatory. [Citations.] The court's exercise of that discretion will not be disturbed on appeal unless the probative value of the photographs clearly is outweighed by their prejudicial effect. [Citations.]' (*People* v. *Crittenden* [(1994)] 9 Cal.4th [83,] at pp. 133-134.)" (*People* v. *Scheid* (1997) 16 Cal.4th 1, 18.)

The photographic evidence corroborated the testimony given by prosecution witnesses regarding evidence found at the crime scene and events that transpired on the day the crimes were committed. Specifically, the challenged slides depict the remote area in which Diane's body was found and her partially clothed body (supporting the prosecution's theory that defendant sexually assaulted her), certain grievous wounds she suffered (probative of the issues of intent and malice), and evidence that linked defendant to the crime scene (corroborating Amy's testimony). The photographic evidence "clearly was probative of the planning and deliberation" with which the crimes were committed. (*People* v. *Scheid*, *supra*, 16 Cal.4th at p. 18; see also *People* v. *Crittenden* (1994) 9 Cal.4th 83, 134; *People* v. *Garceau*, *supra*, 6 Cal.4th 140, 180-182.)

Insofar as defendant is contending that the trial court was required to exclude some or all of the photographic evidence under Evidence Code section 352, because such evidence was cumulative of the testimonial evidence presented, the contention lacks merit. (See *People* v. *Scheid*, *supra*, 16 Cal.4th at p. 19, and cases cited therein.) To the extent defendant is contending that the photographic evidence was unduly cumulative to other physical evidence or cumulative in and

of itself, we reject that theory as well. (See *People* v. *Thompson* (1988) 45 Cal.3d 86, 116 ["Even somewhat cumulative photographic evidence may be admitted if relevant"].) The amount of photographic evidence admitted was not excessive, in view of the particular facts of the case. Further, the record reflects that each of the challenged slides had probative value, as did the videotape.

With regard to the issue whether the photographic evidence had a prejudicial effect, " '[w]e have described the "prejudice" referred to in Evidence Code section 352 as characterizing evidence that uniquely tends to evoke an emotional bias against a party as an individual, while having only slight probative value with regard to the issues. [Citation.] As we previously have observed, victim photographs and other graphic items of evidence in murder cases always are disturbing. [Citation.]' [Citations.]" (*People* v. *Scheid*, *supra*, 16 Cal.4th at p. 19.)

Our independent review of the photographic evidence introduced at the trial convinces us that, although a few of the slides and photographs are unpleasant, none is unduly gory or inflammatory. As aptly observed by defense counsel at the pretrial hearing, the photographic evidence "portray[s] factual reality. . . . I would say having seen a ton of pictures, these are as little inflammatory as possible to get the opening statement made. . . ." The photographic evidence clearly is not unduly gruesome relative to the evidence admitted in other cases involving murder victims. (See *People* v. *Scheid*, *supra*, 16 Cal.4th at p. 19 [upholding admission of photograph of bloodied gunshot victims, handcuffed together]; *People* v. *Garceau*, *supra*, 6 Cal.4th 140, 180-182 [upholding admission of photograph of mummified bodies following exhumation]; *People* v. *Raley* (1992) 2 Cal.4th 870, 897 [upholding admission of large photographs of murder victim and her girlfriend found in a ravine]; *People* v. *Thompson*, *supra*, 45 Cal.3d 86, 115-116 [upholding admission of photographs of victim's head and ear, through which fatal stab

wound was inflicted].) Of the sixteen slides challenged here, only one slide shows Diane's face, and two others show the front of her body. The other slides show the victim facedown, or not at all. Among the three challenged photographs is one of the victim lying facedown at the crime scene, and one autopsy photograph of her mouth, trachea, and larynx, showing debris. These photographs have probative value and are unlikely to have provoked an inflammatory response among the jurors. Nor is there anything revealed in the videotape that could be construed as unduly gruesome or inflammatory.

In sum, we find that the trial court reasonably could determine that the probative value of the photographic evidence outweighed its potentially prejudicial effect. We thus conclude that the trial court did not abuse its discretion under Evidence Code section 352 in admitting the photographic evidence. (See *People* v. *Scheid*, *supra*, 16 Cal.4th 1, 20 [and cases cited therein].)[19]

E. *Prosecutorial Misconduct*

Defendant contends that the prosecutor engaged in misconduct by informing the jury on nine occasions that he (the prosecutor) personally had been involved in critical aspects of the investigation, including visits to the crime scene and the subsequent autopsy of Diane. Defendant asserts that such references were calculated to influence the jury improperly by casting the prosecutor in the role of

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19 We reject defendant's constitutional claims based upon his failure at trial to object on the basis of any federal constitutional provision, thereby waiving such claims. (See *People* v. *Crittenden*, *supra*, 9 Cal.4th 83, 135, fn. 10 [and cases cited therein].) Even if the claims had been made in the trial court, we would find no constitutional error, in view of our determination that the photographic evidence properly was admitted into evidence. (*Ibid.*)

"unsworn witness." (See, e.g., *U.S.* v. *Edwards* (9th Cir. 1998) 154 F.3d 915, 921.)

The challenged comments were made at various stages of defendant's trial, and are set forth in the margin.[20] As defendant acknowledges, none of the

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20 1. During his opening statement, the prosecutor described the crime scene on the morning it was discovered, as follows:

"They [the investigating detectives] return[ed], and then once it's light, now it's probably 6:00 or 7:00 in the morning, and *I'm out there as well, we decide to go up the path*."

2. During his direct examination of Amy, the following colloquy ensued:

"When you participated in this physical lineup at the jail, was Detective Harter there also, from the Sheriff's Department?"

"Yes."

"*And I was there*?"

"Yes."

3. During his direct examination of Detective Lackie, the following colloquy ensued:

"When was this slide taken or this photograph taken?"

"March 25, 1986."

"Now, on March 25, 1986, when the crime scene was being processed by the sheriff's department, *was I also at that location*?"

"You were."

4. & 5. During his direct examination of Dennis Harter, an investigator employed by the Riverside County Sheriff's department, the following colloquy ensued:

"Prior to this physical lineup actually being conducted, did you read that admonition to Amy []?"

"Yes, I did."

"Who else was present during that period of time?"

"*You were there*, myself, Amy, District Attorney Investigator Bruce Rouse, and Sharon Davis, who is a counselor for Amy []."

"....."

"On May 12th, who actually was in the viewing room area with Amy[]?"

"It was the five people that I named."

"Now, were there any other witnesses who were to participate at all in this lineup, or just Amy [], herself?"

"Just Amy []."

(footnote continued on next page)

references challenged here were the subject of an objection interposed at trial. Defendant contends, however, that his failure to object should not operate as a

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(footnote continued from previous page)

"Can you tell us what occurred *after all of us were inside the viewing room*, the door was closed behind us, the light was turned off, and as the five suspects then began to enter into the viewing area, itself, can you tell us what happened?"

6. After the prosecutor recalled Detective Lackie as a witness, the following colloquy ensued:

"I'm not sure if we've covered this or not, Detective Lackie, but first of all I'd like to ask you if on March 26, 1986, did you have occasion to attend the autopsy for Diane Harper?"

"Yes."

"And *was I also present at that autopsy*?"

"Yes, you were."

Defendant includes, within his nine instances of alleged prosecutorial misconduct, certain *penalty phase* remarks, set forth below for ease of reference.

7. During the prosecutor's direct examination of Dr. F. Rene Modglin, the following colloquy ensued:

"Were there sheriff's department personnel during the course of the autopsy [of victim Shelah]?"

"Yes."

"....."

"*As well as myself?*"

"Yes."

8. During the prosecutor's recross-examination of Detective Sanchez, the following colloquy ensued:

"Detective Sanchez, *was I personally present out at the crime scene* where Shelah McMahan's body was located on May 3rd, 1986?"

"You were."

9. During his closing argument in rebuttal, the prosecutor informed the jury:

"You people have been living with me and this case for about three months now. *I've been living with this case for almost two years, actually over two years.* From the date of March 24th, *when I was called out to the Badlands, I had the unfortunate opportunity of seeing Diane Harper's body.* [¶] *I also had the unfortunate opportunity of seeing Shelah McMahan's body.* [¶] Obviously, words are insufficient by me to relate to you *the feelings I experienced.*"

waiver of the claim (see *People* v. *Hardy* (1992) 2 Cal.4th 86, 171 [failure to object to misconduct generally waives claim]; *People* v. *Price* (1991) 1 Cal.4th 324, 447 [same]), because the harm could not have been cured by a prompt objection and admonition to the jury. (See *People* v. *Benson*, *supra*, 52 Cal.3d 754, 794; *People* v. *Green* (1980) 27 Cal.3d 1, 34; *People* v. *Kirkes* (1952) 39 Cal.2d 719.) Further, defendant contends that the asserted misconduct by the prosecutor was prejudicial and requires reversal of the judgment.

We previously have rejected arguments that were virtually identical to the claimed exception to the waiver rule asserted by defendant here. (See, e.g., *People* v. *Lucas* (1995) 12 Cal.4th 415, 473; *People* v. *Gionis* (1995) 9 Cal.4th 1196, 1215.) We perceive no reason why a prompt objection and admonition could not have cured the asserted harm of the prosecutor's remarks and perhaps averted many of the references by the prosecutor. (See, e.g., *People* v. *Lucas*, *supra*, 12 Cal.4th at p. 473; *People* v. *Rowland*, *supra*, 4 Cal.4th 238, 274-275; *People* v. *Wharton* (1991) 53 Cal.3d 522, 566-567.) Therefore, we conclude that defendant did not properly preserve this claim for appeal.[21]

Moreover, even if defendant had preserved his claim and we were to assume that the challenged remarks of the prosecutor constituted misconduct, we would conclude that in view of the overwhelming evidence against defendant and the nature of the prosecutor's comments, there is no possibility that the jury would

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[21] Because the record on appeal does not definitively establish a basis for "why counsel acted or failed to act in the manner challenged," defendant's contention that trial counsel's failure to object to the prosecutor's remarks amounted to ineffective assistance of counsel is more appropriately decided in a habeas corpus proceeding. (*People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266-267.)

have reached a verdict more favorable to defendant in the absence of these comments. (*People* v. *Wash* (1993) 6 Cal.4th 215, 261.)

F. *Jury Instruction on Destruction of Evidence*

At the prosecutor's request, and without objection from the defense, the trial court instructed the jury regarding destruction of evidence, pursuant to the pattern instruction set forth in CALJIC No. 2.06.[22] Defendant contends that in so instructing the jury, the trial court committed reversible error, because the record does not demonstrate that evidence was destroyed.

We conclude this claim lacks merit. Well-settled standards apply: "It is an elementary principle of law that before a jury can be instructed that it may draw a particular inference, evidence must appear in the record which, if believed by the jury, will support the suggested inference. (*People* v. *Carmen* (1951) 36 Cal.2d 768, 773.) Whether or not any given set of facts may constitute suppression or attempted suppression of evidence from which a trier of fact can infer a consciousness of guilt on the part of a defendant is a question of law. Thus in order for a jury to be instructed that it can infer a consciousness of guilt from suppression of adverse evidence by a defendant, there must be some evidence in the record which, if believed by the jury, will sufficiently support the suggested inference." (*People* v. *Hannon* (1977) 19 Cal.3d 588, 597.)

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22 The trial court instructed as follows: "If you find that a defendant attempted to suppress evidence against him in any manner, such as by destroying evidence or by concealing evidence, such attempts may be considered by you as a circumstance tending to show a consciousness of guilt. However, such evidence is not sufficient in itself to prove guilt and its weight and significance, if any, are matters for your consideration." (CALJIC No. 2.06.)

To support an inference that the defendant attempted to suppress evidence, the record need not establish that the evidence actually was destroyed. (See, e.g., *People* v. *Rodrigues*, *supra*, 8 Cal.4th 1060, 1139-1140 [CALJIC No. 2.06 properly given where circumstantial evidence suggested that defendant threw a knife from a motor vehicle, although the knife subsequently was recovered]); *People* v. *Breaux* (1991) 1 Cal.4th 281, 304, fn. 7 [CALJIC No. 2.06 properly given, based upon evidence of defendant's post-offense substitution of the license plates on the victim's car]); *People* v. *Cooper* (1991) 53 Cal.3d 771, 797-798, 833 [rejecting the defendant's contention that the giving of CALJIC No. 2.06 was improper absent a showing that he was aware that the items he destroyed constituted evidence, where the defendant admitted throwing his prison clothes and prison-issue tennis shoes into the ocean]; see also *People* v. *Echevarria* (1992) 11 Cal.App.4th 444, 451 [CALJIC No. 2.06 properly given based upon evidence that, after the murder, defendant shaved off his beard and mustache and cut his hair]; *People* v. *Fitzpatrick* (1992) 2 Cal.App.4th 1285, 1290, 1296-1297 [CALJIC No. 2.06 properly given based upon circumstantial evidence indicating that defendant threw murder weapon into a gutter, where pieces of a rifle were located in a nearby storm drain catch basin].)

In the present case, the record discloses evidence that, after Diane was murdered, defendant disposed of her purse, including her identification, at Lake Matthews, removed and replaced bumper stickers on his car, burned a pair of tennis shoes, and used plywood to shield his car from view. Furthermore, when defendant was arrested, he wore his hair parted in the middle, wavy and fluffy, similar to the style Amy had described, but at the in-person lineup, defendant wore his hair wet or oily, and combed straight back. The next day, defendant returned to his previously preferred "dry look."

The jury reasonably could infer from the foregoing evidence that defendant *attempted* to suppress evidence. Actual destruction of that evidence was not required. The trial court therefore properly instructed the jury pursuant to CALJIC No. 2.06. (*People* v. *Rodrigues*, *supra*, 8 Cal.4th 1060, 1140.)[23]

G. *Whether the Trial Court Erred in Failing Sua Sponte to Provide Clarifying Instructions Regarding the Sodomy-Murder Special Circumstance*

At trial, the prosecution's theory of the case was that defendant's effort to entice the girls into his vehicle and drive them to a remote area was part of a premeditated plan to commit rape, and that the murder of Diane was committed in the course of perpetrating rape. As noted, the defense did not deny that defendant was the man who took the girls to the remote area and assaulted them, killing Diane; instead, defense counsel argued to the jury that the evidence suggested Diane had been killed in the course of defendant having committed, or having attempted to commit, sodomy, and therefore supported no more than a verdict of second degree felony murder. (See fn. 2, *ante*.)

The trial court instructed the jury on the law of murder (CALJIC No. 8.10 (1983 rev.)), further explaining the elements of first and second degree murder as well as felony murder. With respect to the latter theory, the trial court instructed the jury that under the law applicable at the time, a killing committed during the course of a rape or attempt to commit rape was first degree felony murder, and that

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[23] In view of our conclusion that the trial court properly instructed the jury regarding destruction of evidence, we reject defendant's related contention that, in instructing the jury pursuant to CALJIC No. 2.06, the trial court committed prejudicial error in violation of defendant's constitutional rights to a fair trial, a reliable determination of guilt and penalty, due process of law, and fundamental fairness.

a killing committed during the course of a sodomy, or attempt to commit sodomy, was second degree felony murder. Defendant did not object to any of these instructions.

Defendant now contends that the jury instructions were impermissibly ambiguous and that the trial court failed to fulfill its sua sponte duty to offer clarifying instructions informing the jury that a first degree murder *could not* be based upon the underlying felony of sodomy or attempted sodomy, even though first degree murder committed in the commission of such crimes *could* support a special circumstance finding. Defendant's failure to request such a clarifying instruction at trial, however, waives his claim on appeal. (See *People* v. *Lang* (1989) 49 Cal.3d 991, 1024, ["A party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or incomplete unless the party has requested appropriate clarifying or amplifying language."]; *People* v. *Andrews* (1989) 49 Cal.3d 200, 218 [same].)

Moreover, the jury instructions were not ambiguous. The jurors were instructed that *if* they found defendant guilty of murder in the first degree, *then* they were to determine whether either special circumstance was true. The jurors also were instructed to decide each special circumstance separately. These instructions correctly stated the law; if defendant wanted additional, clarifying instructions, he should have requested them. No ambiguity appearing, the trial court complied with its duty to "fully instruct the jury on the law applicable" (*People* v. *Wickersham* (1982) 32 Cal.3d 307, 323, overruled on other grounds,

People v. *Barton* (1995) 12 Cal.4th 186, 200) and had no duty to further instruct the jury.[24]

Relying upon *Stone* v. *Superior Court* (1982) 31 Cal.3d 503, defendant further contends that the trial court had a duty to instruct specially on partial verdicts and to provide separate verdict forms as to possible levels of murder, in order to ensure that the jury considered the rape and sodomy special circumstances separately. Defendant's reliance upon *Stone* is misplaced, however, as that case involved a jury that was unable to reach a verdict. (31 Cal.3d at p. 507-509.) In the present case, there was no indication of a deadlocked jury.

H. *Ineffective Assistance of Counsel at the Guilt Phase*

Defendant contends that he was denied effective assistance of counsel based upon certain failings of his attorney prior to and during the guilt phase of the trial. Specifically, defendant contends that trial counsel performed deficiently in failing to (1) challenge an allegedly coercive and suggestive lineup, conducted in the absence of an attorney (at a time when defendant was represented by the Office of the Riverside Public Defender), (2) seek the exclusion of physical evidence derived from statements that purportedly were obtained in violation of defendant's rights under *Miranda* v. *Arizona, supra,* 384 U.S. 436, (3) prepare and articulate a defense, (4) request a hearing pursuant to Evidence Code section 402 regarding the prosecution's electrophoresis evidence, (5) challenge the admissibility of the

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[24] In view of our conclusion that the trial court fully and accurately instructed the jury, we reject as without merit defendant's contention that the giving of those instructions denied him his Sixth Amendment right to a fair trial.

We also reject as without merit defendant's contention that the trial court failed to provide the jurors with separate forms for each special circumstance allegation. Such forms, in fact, were provided and used.

testimony of Dr. Rath, a psychologist who testified for the prosecution, and (6) present an adequate closing argument.[25]

Defendant argues that trial counsel's performance fell below the standard expected of reasonably competent counsel, thereby depriving defendant of his constitutional rights to a fair trial, effective assistance of counsel, a reliable verdict, due process of law, and fundamental fairness. After setting forth the well-settled rules that guide our inquiry, we shall address each of defendant's contentions in turn.

We recently reiterated the applicable principles: To prevail on a claim of ineffective assistance of counsel, defendant "must establish not only deficient performance, i.e., representation below an objective standard of reasonableness, but also resultant prejudice. (*People* v. *Ledesma* (1987) 43 Cal.3d 171, 216, 217 [233 Cal.Rptr.404, 729 P.2d 839].) Tactical errors are generally not deemed reversible; and counsel's decisionmaking must be evaluated in the context of the available facts. (*Strickland* v. *Washington, supra,* 466 U.S. at p. 690 [104 S.Ct. at p. 2066].) To the extent the record on appeal fails to disclose why counsel acted or failed to act in the manner challenged, we will affirm the judgment 'unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation . . . .' (*People* v. *Pope* [(1979)] 23 Cal.3d [412,] 426, fn. omitted.) Finally, prejudice must be affirmatively proved; the

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25 As described earlier in this opinion, we have considered and rejected defendant's claim of prejudicial error with regard to certain other errors purportedly committed by counsel, notably counsel's failure to (1) more thoroughly conduct the voir dire examination of potential jurors, (2) object to the prosecutor's having noted his own presence during key points in the investigation, (3) more vigorously challenge the testimony of Amy, and (4) object to the prosecutor's closing argument. Having found no constitutionally deficient performance, we perceive no reason to revisit those issues.

record must demonstrate 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' (*Strickland* v. *Washington*, *supra*, at p. 694; *People* v. *Ledesma*, *supra*, 43 Cal.3d at pp. 217-218.)" (*People* v. *Bolin* (1998) 18 Cal.4th 297, 333; see also *Strickland* v. *Washington*, *supra*, 466 U.S. 668, 689 ["A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."]; *People* v. *Mendoza Tello, supra,* 15 Cal.4th 264, 266 [" ' "[If] the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged[,] . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation," the claim on appeal must be rejected' "]; *People* v. *Fosselman* (1983) 33 Cal.3d 572, 581 [on appeal, a conviction will be reversed on the ground of ineffective assistance of counsel "only if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for his act or omission"].)

1. *The Lineup*

Shortly after defendant's arrest, the Riverside County Sheriff's Department conducted a lineup that consisted of defendant and four other participants. At the time of the arrest, defendant was represented by the Office of the Riverside Public Defender. Prior to the lineup, a deputy public defender appeared at the station. Upon seeing the composition of the lineup, the public defender objected on the basis that the lineup was unfair, and departed. Defendant was left without counsel and initially refused to participate in the lineup. According to defendant (who testified outside the jury's presence, in the context of a *Marsden* hearing discussed *ante*, at pp. 47-52), a detective informed him: "If you refuse to take this lineup, I will drag you in by your fucking neck." Defendant informed the court that he

feared for his own safety and therefore participated in the lineup, in which he was identified by the surviving victim.

On appeal, defendant contends that his trial counsel performed deficiently in failing to challenge the evidence obtained as a result of the lineup. Defendant maintains that such evidence could have been suppressed on the ground that defendant was coerced into participating in the lineup, that his counsel was not present at the lineup, and that the lineup was suggestive.

We observe initially that this ineffective-assistance claim cannot properly be raised on appeal, because the record before us does not reveal the basis for trial counsel's decision not to object to the lineup, and that decision is not of the type for which there could be no satisfactory explanation. (See *People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266; *People* v. *Wilson* (1992) 3 Cal.4th 926, 936; *People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581.) Counsel reasonably may have concluded that in view of the physical evidence that linked defendant to the crimes, and the extended period of time during which Amy had an opportunity to observe defendant on the day the crimes were committed, there was little to be gained by challenging the validity of the lineup. Such tactics would be consistent with counsel's overall trial strategy not to challenge defendant's presence at the crime scene, but instead to claim that the killing of Diane did not constitute first degree murder. Thus, regardless whether trial counsel successfully might have objected to the lineup or its fruits, counsel could have had a reasonable, tactical basis for not challenging the admission of this evidence at trial.

Furthermore, on the merits, defendant has failed to demonstrate that an objection to the evidence obtained as a result of the lineup would have been successful. Although it is true that a lineup represents a "critical stage" to which a defendant's Sixth Amendment right to counsel attaches (*United States* v. *Wade* (1967) 388 U.S. 218; *People* v. *Bustamonte* (1981) 30 Cal.3d 88; *People* v. *Fowler*

(1969) 1 Cal.3d 335), the public defender's *refusal* to attend the lineup cannot be equated with a *denial* of defendant's right to counsel, and a defendant generally has no right to refrain from participating in a lineup. (See *People* v. *Johnson* (1992) 3 Cal.4th 1183, 1221-1222.) Nor does the record on appeal suggest that the lineup, as conducted, was improperly suggestive or unfair.[26]

In sum, the record on appeal does not support defendant's claim that his trial counsel performed deficiently in failing to object to the evidence obtained as a result of the lineup.

2. Physical Evidence Derived from Defendant's Statements

On May 4 and 5, 1986, Ronald Wade, a homicide investigator for the Riverside County Sheriff's Department, observed a vehicle in defendant's driveway that was similar to the suspect vehicle description given in the investigation of Diane's homicide. On May 6, Wade and another investigator visited defendant at the mobile home on the property. Wade asked defendant to describe the nature of his employment; defendant responded that he was a construction worker who "drove big rigs to landscape development property." In response to Wade's inquiry regarding where defendant had worked in March of 1986, defendant replied that he worked in the Riverside/La Sierra area around McKinley and Magnolia. To confirm the location of his jobsite, defendant offered to retrieve his appointment book, which he used to keep track of the money owed

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[26] The record includes a photograph of the lineup that supports the following observations of the trial court regarding the fairness of the procedure: "There is a picture of that lineup there and the picture shows they tried to pick people of about generally the same coloring, same facial hair, same basic build and so forth and from looking at the picture and hearing Amy['s] testimony, it really is convincing to me that an effort was made to conduct a rather fair lineup and it was a fair lineup."

to him. Defendant opened the book for Wade, revealing the word "MAG" written on March 24, which defendant indicated meant that he had worked at McKinley and Magnolia on that day. Wade departed from defendant's residence without arresting defendant or seizing the appointment book.

Defendant contends that the investigators improperly failed to advise defendant of his rights under *Miranda* v. *Arizona*, *supra*, 384 U.S. 436, prior to questioning him. As a result, according to defendant, he "unknowingly provided the officers with evidence which later was used against him, including his statements and tangible evidence," such as the appointment book. Defendant alleges that such evidence was the "fruit of the poisonous tree," and could have formed the basis for a meritorious challenge to the legality of defendant's arrest and the admissibility of all statements and evidence obtained as a result of the interrogation. (See *Wong Sun* v. *United States* (1963) 371 U.S. 471; *People* v. *DeVaughn* (1977) 18 Cal.3d 889.) He further contends that trial counsel performed deficiently in failing to challenge the admissibility of the physical evidence derived from the statements made by defendant to the investigators.

Defendant's contentions are unavailing, because the record on appeal does not disclose the basis for trial counsel's failure to object to this evidence, and the matter is not one in which there could be no satisfactory explanation for counsel's conduct. (See *People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266; *People* v. *Wilson*, *supra*, 3 Cal.4th 926, 936; *People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581.) The evidence adduced at trial suggests that defendant's statements to the investigators were made voluntarily in a noncustodial setting, and indicates that all of the physical evidence in question, including defendant's appointment book, subsequently was seized pursuant to a valid search warrant. On the basis of the facts disclosed by the record, trial counsel reasonably could have concluded that an objection on *Miranda* grounds would lack merit (because the initial questioning of

defendant occurred in a noncustodial setting) and that the investigating officers' failure to give a *Miranda* warning during this conversation thus provided no basis for excluding the evidence seized pursuant to the search warrant. Accordingly, there is no merit in defendant's claim that trial counsel performed deficiently in this respect.[27]

3. *Failure to Prepare and Articulate a Defense*

Defendant raises a general challenge to his counsel's performance at trial, alleging that counsel's representation at the guilt phase was substandard due to counsel's lack of investigation, preparation, and inability to articulate a defense. In support of his challenge, defendant cites counsel's single visit to defendant in seven and one-half months, and counsel's failure to investigate or present any evidence of defendant's mental history (including defendant's classification as a mentally disordered sex offender) or competence to stand trial.

Defendant's contentions are unpersuasive, because the record before us does not disclose that trial counsel lacked a tactical basis for representing defendant in the manner now challenged, and counsel's performance was not of the sort for which there could be no satisfactory explanation. (See *People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266; *People* v. *Wilson*, *supra*, 3 Cal.4th

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[27] In addition to claiming that trial counsel was ineffective in failing to raise a *Miranda* objection, defendant claims on appeal that the admission of the statements and the physical evidence in question violated his constitutional rights under the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. Defendant did not object to the introduction of this evidence on such grounds at trial, and thus has not preserved the issue for appeal. In any event, as we have explained, on the basis of the evidence introduced at trial, we conclude that the investigators were not required to advise defendant pursuant to *Miranda* during their conversation with him at his residence.

926, 936; *People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581.) Defendant's position also is flawed because, in large measure, his argument merely recasts certain contentions that the trial court properly rejected in the context of the *Marsden* hearings held prior to and during defendant's trial. (See pt. II.A, *ante*.) To the extent such arguments do not reiterate those that we already have rejected, we find them to be without merit.

As noted previously, trial counsel was confronted with overwhelming evidence of defendant's guilt, with the prosecution's reliance on the felony-murder theory (which obviated the need for the prosecution to establish an intent to kill), and with the unavailability of a diminished capacity defense. In view of these circumstances, trial counsel clearly could have had a reasonable tactical basis for deciding to forego the presentation of a mental state defense in favor of a defense challenging the prosecution's forensic evidence. Counsel's strategy conceivably could have persuaded the jury to acquit defendant of the rape charges or, alternatively, find the special circumstances not true, as well as establish credibility with the jury that could prove helpful if a penalty phase were required.

Defendant's defense at the guilt and penalty phases of trial was not presented by the same attorneys. Thus, his contention that his *guilt phase* attorney failed to investigate evidence pertaining to defendant's mental history merely begs the question, as such evidence *was* investigated by defendant's *penalty phase* attorney, and the record does not suggest that the two attorneys failed to communicate with one another in their representation of defendant. Having made the tactical decision not to present a mental state defense at the guilt phase, and instead to challenge the evidence regarding certain sexual offenses defendant was alleged to have committed against Diane and Amy, defendant's guilt phase attorney did not perform deficiently by failing to *personally* investigate mental health issues further or visit defendant more frequently. (See, e.g., *People* v. *Silva*,

supra, 45 Cal.3d 604, 622 [rejecting defendant's complaint that his attorney had visited him only once, observing that "the number of times one sees his attorney, and the way in which one relates [to] his attorney, does not sufficiently establish incompetence"].) Further, because of the incriminatory nature of defendant's history of committing sex crimes, it seems clear that such evidence, had it been presented at the guilt phase, would have been unhelpful — if not highly prejudicial — to defendant's claim of innocence.

Nor did counsel render inadequate assistance in failing to raise the issue of defendant's competency to stand trial; the record is devoid of evidence suggesting any basis for such a challenge.

In sum, the record on appeal does not support defendant's claim that his counsel performed deficiently in preparing or presenting a defense.

4. ***Failure to Request a Hearing Pursuant to Evidence Code Section 402 Regarding the Prosecution's Electrophoresis Evidence***

James Hall, the prosecution's criminalist, testified that a stain found on Amy's slip tested positive for both blood and seminal fluid, although neither substance could be typed using electrophoresis. Thus, the testimony did not establish whether it was defendant who deposited the stain. Notwithstanding the inconclusive nature of Hall's testimony, defendant contends that his trial counsel performed deficiently in failing to request a hearing pursuant to Evidence Code section 402, or to seek a *Kelly-Frye* hearing, to challenge the electrophoresis evidence. (See *People* v. *Kelly* (1976) 17 Cal.3d 24, 30; *Frye* v. *United States* (D.C. Cir. 1923) 293 Fed. 1013, 1014.)

Defendant's contention is unavailing, because the record on appeal fails to disclose that trial counsel lacked a tactical basis for declining to challenge the electrophoresis evidence, and counsel's decision was not one for which there

could be no satisfactory explanation. (See *People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266; *People* v. *Wilson*, *supra*, 3 Cal.4th 926, 936; *People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581.) Although the criminalist testified that the contributor of the stain might have been a nonsecretor (as was defendant), the criminalist also testified that the inability to type the stain could have been due to the insufficient strength of the stain, or due to degradation attributable to the passage of time. Thus, as noted, the evidence did not identify defendant as the contributor. Trial counsel therefore reasonably may have concluded that the evidence was not particularly prejudicial, and on that basis reasonably could have made a tactical decision not to challenge the admissibility of this evidence, or the reliability of the electrophoresis testing. During cross-examination, trial counsel exploited the weakness of this evidence, asking questions that emphasized its inconclusive nature.

Defendant's assertion of ineffective assistance of counsel based upon trial counsel's failure to request a *Kelly-Frye* hearing similarly is unpersuasive. Again, the record before us fails to disclose that trial counsel lacked a tactical basis for declining to request such a hearing, nor was counsel's decision to refrain from doing so one for which there could be no satisfactory explanation. (See *People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266; *People* v. *Wilson*, *supra*, 3 Cal.4th 926, 936; *People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581.) At the time of defendant's trial, electrophoretic typing of dried bloodstains had gained general acceptance in the scientific community. (*People* v. *Reilly* (1987) 196 Cal.App.3d 1127, 1148-1153.) Trial counsel was under no obligation to interpose a meritless challenge to a generally accepted scientific technique. (See *In re Lower* (1979) 100 Cal.App.3d 144, 149, fn. 3 ["[T]here is no obligation on the part of any attorney to embark on a program of fruitless, time-consuming, nonproductive motions which . . . may make a dandy record but be of little or no value to his

client."].) We therefore reject defendant's contention that trial counsel performed deficiently regarding this issue, and find no basis for his related contention that counsel's performance deprived defendant of his constitutional rights.

5. *Failure to Challenge the Qualifications of Dr. Rath as an Expert*

The prosecution called Dr. Craig Rath, a licensed clinical psychologist at Patton State Hospital, to testify as an expert witness regarding two principal matters: (1) memory repression by someone who has experienced a traumatic event, and (2) an emotional "about-face" and showing of remorse on the part of someone who has just committed a sexual assault. Rath's testimony apparently was intended to assist the jury in understanding certain aspects of Amy's testimony. On cross-examination, Rath acknowledged that he was unfamiliar with defendant or the surviving victim, not having interviewed either individual.

On appeal, defendant contends that trial counsel performed deficiently in failing to challenge Rath's qualifications or competence to testify as an expert regarding the matters about which he testified, particularly his testimony concerning the common conduct of "binge rapists." Defendant's claim cannot be sustained on appeal. The record on appeal fails to disclose that trial counsel lacked a tactical basis for declining to challenge Dr. Rath's qualifications or competence to testify as an expert, and counsel's decision to refrain from doing so was not one for which there could be no satisfactory explanation. (See *People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266; *People* v. *Wilson*, *supra*, 3 Cal.4th 926, 936; *People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581; see also *People* v. *Freeman* (1994) 8 Cal.4th 450, 490-491 ["Because the decision whether to object is inherently tactical, the failure to object to evidence will seldom establish incompetence."].) At the time of defendant's trial, Rath had performed more than 2,000 court-directed psychological evaluations, and had testified "a couple of

hundred times in nine counties in California and four other states," and there is no indication in the record that he did not have expertise with regard to the matters to which he testified. Thus, on the record before us, we perceive no deficiency on counsel's part in failing to challenge Dr. Rath's qualifications.

6. *Failure to Present an Effective Closing Argument*

Defense counsel's closing argument urged the jury to reject the prosecution's theories that the murder of Diane either was premeditated or occurred during the commission of a rape. Defense counsel instead acknowledged that defendant was present at the crime scene with the victims, and that circumstantial and physical evidence linked defendant to the crimes. He further acknowledged the reasonableness of finding that defendant had committed a sodomy or attempted sodomy, but not rape or attempted rape. In so doing, counsel urged the jury to find defendant guilty of *second degree* felony murder under the law as it applied at defendant's trial — thereby precluding penalty phase proceedings. (See p. 20, fn. 2, *ante*.)

On appeal, defendant contends that trial counsel's strategy improperly led the jury to return a finding of "true" with respect to the *special circumstance* of sodomy, ensuring that the case would proceed to a penalty phase, and thereby depriving defendant of the effective assistance of counsel. We have rejected similar claims in other cases involving concessions made by defense counsel in closing argument, where the incriminating evidence was strong and counsel offered some other choice in the defendant's favor. We do so here, as well. (See, e.g., *People* v. *Bolin*, *supra*, 18 Cal.4th. 297, 334-335 [rejecting a claim of ineffective assistance of counsel related to counsel's concession of some measure of culpability, as a valid tactical choice given the overwhelming evidence of defendant's guilt]; *People* v. *McPeters* (1992) 2 Cal.4th 1148, 1186-87 [rejecting a claim of ineffective assistance of counsel related to counsel's concession in closing

argument that defendant had been present at the scene of the crime, repudiating the defendant's alibi testimony]; see also *People* v. *Wade* (1988) 44 Cal.3d 975, 988 ["In light of the overwhelming evidence of his client's guilt, trial counsel had little choice but to candidly acknowledge guilt, concede the heinous nature of the offense, and concentrate instead on convincing the jury of the legitimacy of defendant's mental defenses."]; *People* v. *Ratliff* (1986) 41 Cal.3d 675, 697 ["Counsel's tactical decision to argue a particular view of the evidence, indicating that his client may have committed only a lesser offense, is not akin to pleading guilty to that offense."]; *People* v. *Jackson* (1980) 28 Cal.3d 264, 293 [" '[G]ood trial tactics demanded complete candor' with the jury."].)

Although it is true that counsel's closing argument was not lengthy — 13 pages in the reporter's transcript — the record on appeal discloses nothing to suggest that counsel's decision to thus limit his argument was unreasonable. To the contrary, the overwhelming nature of the evidence against defendant left counsel with little opportunity to mount a persuasive summation. The surviving victim had testified in graphic detail regarding defendant's involvement in the charged offenses. Defendant's fingerprint was found on a beer bottle recovered from the remote crime scene. Other physical and circumstantial evidence linked defendant to the crimes. In view of the evidence presented against defendant, trial counsel reasonably could have concluded that challenging the evidence more vigorously in his argument risked alienating the jury and perhaps lessening his odds of success at the penalty phase. (See *People* v. *Bolin, supra*, 18 Cal.4th 297, 335 ["Since counsel could also reasonably anticipate having to conduct a penalty phase, it also allowed him to preserve his credibility in arguing mitigation."]; *People* v. *Cox* (1991) 53 Cal.3d 618, 661-662 [rejecting a claim of ineffective assistance of counsel where, for tactical reasons, defendant's attorney declined at the guilt phase to present any evidence or argument in response to the evidence

presented by the prosecutor].) Counsel's decision to acknowledge defendant's culpability — but to a lesser extent than that urged by the prosecution, in an effort to spare his client from a penalty phase — was not a tactical choice that could not be satisfactorily explained. No deficiency appears.[28]

7. *Conclusion*

The record on appeal fails to shed light on the basis for counsel's decisions in his representation of defendant at trial. For that reason, and because none of counsel's purported failings cannot be explained as part of a reasonable trial strategy, we reject defendant's contention that he was denied the effective assistance of counsel. (See *People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266; *People* v. *Wilson*, *supra*, 3 Cal.4th 926, 936; *People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581.) Moreover, based upon the record before us, none of the purported failings by counsel fall below an objective standard of reasonableness (*People* v. *Ledesma* (1987) 43 Cal.3d 171, 216, 217), and for that additional reason we reject defendant's claim that he was denied the effective assistance of counsel. Apart from these flaws in his argument on appeal, defendant fails to establish prejudice in light of the overwhelming evidence introduced against him. He fails to establish that his trial counsel's performance deprived him of any meritorious

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28 The trial court viewed defense counsel's performance in a similar fashion, observing (at the post-penalty-phase hearing on defendant's application to modify the verdict, pursuant to section 190.4, subdivision (e)): "I recall the arguments made by Mr. Barnett. I think he took the only reasonable tactic, relying — the case was so overwhelming as to evidence, and there is a gap in the law relating to felony murder as it applies to sodomy. And I think Mr. Barnett made a rather experienced and sophisticated decision which not everybody would see that this is perhaps his only chance, and took it, arguing that the sodomy murder made it second degree murder and we would not even get to the special circumstance."

defense, or to demonstrate a reasonable probability that the result would have been more favorable to him in the absence of any alleged ineffectiveness. (See *Strickland* v. *Washington*, *supra*, 466 U.S. at pp. 687-689; *People* v. *Bolin*, *supra*, 18 Cal.4th 297, 333; *People* v. *McPeters*, *supra*, 2 Cal.4th 1148, 1187.)

III. PENALTY PHASE ISSUES

A. *Denial of the Right to Counsel at the Penalty Phase*

Defendant contends he was denied his constitutional rights to counsel, a fair trial, a reliable verdict, and due process of law when, without "notice, waiver, consent or order of court," his second counsel, Steven Harmon, represented him at the penalty phase of the trial. Defendant implies that Attorney Harmon was forced upon him at the penalty phase, or was otherwise improperly substituted for lead defense counsel. This argument is without merit.

At a pretrial hearing conducted on February 19, 1987 (nearly one year prior to the commencement of the guilt phase of the trial), lead counsel for the defense, Max Barnett, moved for appointment of *second* counsel, pursuant to section 987.2. Barnett described second counsel Harmon as "eminently qualified and very experienced." Barnett thereafter informed defendant: "Mr. Hart, I just introduced you to Steve Harmon, explained to you that we were going to co-counsel and come up and talk to you; do you agree Mr. Harmon can co-counsel with me in your case?" Defendant replied: "Yes." The trial court thereafter appointed Harmon as cocounsel.

The record is devoid of any suggestion that second counsel Harmon was *substituted* for lead counsel Barnett, forced upon defendant, or revealed to defendant in an untimely fashion. Defendant's consent to Attorney Harmon's assistance in the representation of defendant was clear and unequivocal, as was the trial court's discretionary decision (*Keenan* v. *Superior Court* (1982) 31 Cal.3d

424) to permit Harmon to serve as *co*counsel. In view of the prosecution's intention to present at the penalty phase defendant's numerous prior convictions as well as the evidence linking him to the murder of Shelah McMahan, the appointment of Harmon was well within the trial court's discretion (*Keenan* v. *Superior Court*, *supra*, 31 Cal.3d 424, 430-432) and facilitated the preparation and presentation of a full and complete defense. (*People* v. *Frierson* (1979) 25 Cal.3d 142, 163.) The circumstance that defendant's two attorneys shared the representation of defendant by having lead counsel Barnett handle the guilt phase of the trial, and cocounsel Harmon the penalty phase, did not reflect a substitution of the latter attorney for the former.

Defendant raises a related contention that the "substitution of counsel" led to "a disturbing pattern of ineffective assistance of counsel." In support of this contention, defendant argues that Harmon was unfamiliar with the record, surprised by Cindy Widney's testimony, and cursory in his examination of criminalist Faye Springer. In order to establish his claim, however, defendant must point to a deficiency so egregious that his attorney's conduct fell outside the "wide range of reasonable professional assistance," and that he was prejudiced by the deficiency. (*Strickland* v. *Washington*, *supra*, 466 U.S. 668, 689; *In re Jones* (1996) 13 Cal.4th 552, 561.) He fails to do so. As noted, there was no "substitution." Nor does the record support a claim of ineffective assistance. To the contrary, defense counsel at the penalty phase vigorously cross-examined key prosecution witnesses, sought to cast doubt on the case against defendant involving Shelah, and presented a thorough case in mitigation. During the penalty phase, defendant expressed his high regard for defense counsel, informing the court: "As for phase two, I am totally pleased with both my counsel."

In view of the foregoing, we reject defendant's contention that the appointment of Attorney Harmon to the defense team denied defendant his constitutional right to counsel.[29]

B. ***Ineffective Assistance of Counsel at the Penalty Phase***

Defendant contends that his trial counsel committed three critical errors at the penalty phase, denying defendant his right to the effective assistance of counsel. Specifically, defendant asserts that counsel inappropriately failed to (1) challenge certain scientific evidence pertaining to the murder of Shelah, (2) fully impeach jailhouse informant Randy Gresham, and (3) investigate and present a mental health defense.

In reviewing defendant's claims, we apply the same standards we discussed in evaluating defendant's assertion that counsel performed deficiently at the guilt phase: defendant "must establish not only deficient performance, i.e., representation below an objective standard of reasonableness, but also resultant prejudice." (*People* v. *Bolin*, *supra*, 18 Cal.4th 297, 333; *People* v. *Ledesma*, *supra*, 43 Cal.3d 171, 216, 217.) Defendant can prevail on appeal "only if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for his act or omission." (*People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581.) The record also must demonstrate a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine

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[29] We observe that, at the hearing on defendant's application to modify the verdict (§ 190.4, subdivision (e)), defendant's guilt phase attorney affirmed that counsel at each phase of the trial "worked very closely together during the case."

confidence in the outcome." (*Strickland* v. *Washington*, *supra*, 466 U.S. at p. 694; *People* v. *Bolin*, *supra*, 18 Cal.4th 297, 333.)

1. *Failure to Challenge Scientific Evidence*

At the penalty phase, the prosecution introduced evidence of electrophoretic testing of dried blood that had been found on handcuffs recovered from a shed located behind defendant's residence. (Electrophoretic testing "allows typing of individual blood proteins and enzymes found in a blood sample by a method that separates electrically charged molecules." (*People* v. *Morris, supra,* 53 Cal.3d 152, 206.)) The blood was similar in type to Shelah's. The prosecution also introduced evidence related to electrophoretic testing of a seminal stain found on Shelah's sweatpants; on cross-examination, the prosecution's expert acknowledged that no conclusion could be drawn as to typing the semen donor, or as to the age of the stain.

Defendant contends that, at the time of his trial, there was considerable debate regarding the admissibility of electrophoretic evidence, citing *People* v. *Brown* (1985) 40 Cal.3d 512, reversed on other grounds, *California* v. *Brown* (1987) 479 U.S. 538, a decision in which we held that testimony of the same forensic expert, Faye Springer, regarding electrophoretic evidence should have been excluded from the trial. Defendant contends that trial counsel's failure to object to the admission of the electrophoretic evidence, and counsel's failure to request a foundational hearing pursuant to Evidence Code section 402, constituted ineffective assistance of counsel.

Defendant's position is unpersuasive, because the record on appeal fails to reflect that trial counsel lacked a tactical basis for declining to challenge the electrophoresis evidence or request a foundational hearing, and counsel's decisions regarding those matters were not ones for which there could be no satisfactory explanation. (See *People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266; *People* v.

Wilson, *supra*, 3 Cal.4th 926, 936; *People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581.)

Defendant's reliance upon *People* v. *Brown*, *supra*, 40 Cal.3d 512, is misplaced. In *Brown*, we held that the trial court erred in overruling an objection *on the ground of improper foundation* to admitting forensic analysis of blood and semen stains. Contrary to defendant's position, we did not reject the reliability of electrophoretic analysis generally; rather, we did so in that case based upon the inadequate trial court record. Moreover, in *People* v. *Morris, supra,* 53 Cal.3d 152, we held that admission of electrophoresis testing *was* generally accepted in the scientific community in 1987 — a date prior to its introduction at the penalty phase in defendant's trial. (*Id.*, at pp. 206-208; see also *People* v. *Reilly*, *supra*, 196 Cal.App.3d 1127.) Defense counsel was not required to mount a meritless challenge to the acceptance of such evidence.

We therefore perceive no deficiency in counsel's performance regarding the prosecution's presentation of electrophoretic evidence.

2. Failure to Seek Exclusion of the Jailhouse Informant's Testimony

As noted, Randy Gresham, a jailhouse informant, testified for the prosecution. When defendant was arrested, Gresham was a convicted felon awaiting trial in Riverside County. Shortly after defendant's arrest, Gresham was housed in the same county jail cell as defendant. During the time the two were cellmates, defendant made a number of damaging admissions to Gresham regarding the murder of Shelah. Gresham subsequently conveyed this information to law enforcement authorities, who offered Gresham a five-year reduction in his prison sentence if he testified against defendant. Gresham did so.

Defendant contends that Gresham was a government agent employed to elicit incriminating information from defendant. (See *Maine* v. *Moulton* (1985)

474 U.S. 159, 173.) He further contends that the manner in which the prosecution procured Gresham's testimony violated defendant's constitutional rights to counsel, a fair trial, due process of law, fundamental fairness, and a fair and reliable penalty determination. (See *Massiah* v. *United States* (1964) 377 U.S. 201; *Brady* v. *Maryland* (1963) 373 U.S. 83.) In view of Gresham's status, defendant contends that his trial counsel performed deficiently in failing to challenge the admission of Gresham's testimony under *Massiah* and *Brady*.

We reject defendant's contention that his trial counsel performed deficiently in not seeking to exclude Gresham's testimony, because the record before us does not reveal that counsel lacked a tactical basis for declining to contest the admission of this testimony, and counsel's decision was not one for which there could be no satisfactory explanation. (See *People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266; *People* v. *Wilson*, *supra*, 3 Cal.4th 926, 936; *People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581.) We also observe that counsel's cross-examination of Gresham was zealous and thorough. Counsel sought to undermine Gresham's credibility by focusing upon Gresham's opportunism in testifying against defendant.

Defendant's related contention that Gresham acted as a government agent similarly is unsupported by the record on appeal. Gresham testified that defendant made his admissions *before* Gresham spoke with law enforcement officers regarding the possibility of trading testimony against defendant for a reduction in Gresham's prison sentence. After disclosing his information to police investigators, Gresham immediately was moved into a protective-custody cell, and defendant no longer spoke to him regarding the case. On these facts, a reasonably competent defense attorney could have concluded that there existed no obligation to challenge Gresham's testimony on the ground that defendant's admissions had been improperly obtained.

Based upon the record before us, we conclude that defendant has failed to establish that counsel's performance in addressing the damaging nature of Gresham's testimony was constitutionally deficient.

3. *Failure to Present a Mental Health Defense*

As noted, defendant committed several sexual assaults against women prior to his arrest for the sexual assault and murder of Diane Harper. His involvement in these previous crimes led to his commitment as a mentally disordered sex offender at Patton State Hospital. At the penalty phase of defendant's trial, defense counsel did not present evidence regarding the basis for defendant's commitment to the state hospital, or otherwise attempt to offer evidence to explain why defendant behaved violently toward women.

On appeal, defendant contends that counsel performed deficiently in failing to offer evidence that would explain the basis for defendant's violent conduct. According to defendant, counsel's failure to use qualified mental health experts to place "in context" defendant's childhood head injury and adult commitment to a state hospital led to the presentation of a constitutionally inadequate defense.

We are unpersuaded by defendant's argument, because the record before us does not reveal that counsel lacked a tactical basis for refraining from presenting evidence that would seek to explain defendant's violence toward women, and counsel's decision was not one for which there could be no satisfactory explanation. (See *People* v. *Mendoza Tello*, *supra*, 15 Cal.4th 264, 266; *People* v. *Wilson*, *supra*, 3 Cal.4th 926, 936; *People* v. *Fosselman*, *supra*, 33 Cal.3d 572, 581.) Because the record on appeal contains no details of the mental health evidence that may have been available to trial counsel, and similarly contains no indication of the potentially damaging aspects of such evidence that might have been rendered admissible had defendant chosen to proffer his mental health background as a mitigating factor, we cannot conclude that there was no

conceivable, reasonable tactical basis for trial counsel's actions. (See, e.g., *People* v. *Mickle* (1990) 54 Cal.3d 140, 189-190.) Accordingly, defendant's claim that trial counsel was deficient in failing to present evidence of his mental health background cannot succeed on appeal.

We further observe that, although trial counsel did not present the mental health defense that defendant now contends was necessary, counsel did present considerable evidence that sought to portray defendant as a victim of numerous unfortunate circumstances. For example, the defense presented evidence of defendant's childhood head injury, his father's alcoholism and detachment from the family, and defendant's first wife's extramarital affair and his ensuing use of drugs. Although such matters did not comprise a "mental health" defense based upon the testimony of various mental health experts, they did provide the jury with the opportunity to consider certain factors in mitigation — without exposing the jury to potentially damaging rebuttal evidence regarding defendant's mental health. In view of defendant's lengthy history of behaving violently toward women, and the interest of the defense in portraying defendant as favorably as possible, we cannot say on this record that there could not be a reasonable tactical basis for trial counsel's decision to rely solely upon mitigating evidence that showed defendant to be the victim of numerous unfortunate circumstances, in an effort to generate sympathy, and perhaps leniency, from the jury at the penalty phase. On the record before us, no constitutionally deficient representation appears.

C. The Defense Motion to Strike the Notice of Aggravation

Prior to the commencement of trial, the prosecution filed a "Notice of Intention to Produce Evidence in Aggravation Pursuant to Section 190.3 of the Penal Code." The notice informed defendant of the prosecution's intention to

present evidence at the penalty phase regarding the circumstances of the crimes committed against (1) Diane and Amy, (2) Shelah, (3) Debra B., (4) Valerie T., (5) Priscilla N., (6) Marilyn S., and (7) Deborah T. (The notice also named an eighth victim of sexual assault, but evidence pertaining to that incident ultimately was not presented at the penalty phase.) A defense motion challenging the adequacy of the notice was denied by the trial court.

On appeal, defendant renews his challenge to the adequacy of the notice, contending that it failed to satisfy the requirements of section 190.3. In pertinent part, that statute provides: "Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time as determined by the court, prior to trial." Defendant contends that "evidence" means "testimony, writings, material objects or other things presented to the senses that are offered to prove the existence or nonexistence of a fact." (See Evid. Code, § 140.) He argues that because the notice failed to identify the specific evidence that the prosecution planned to introduce — for example, the testimony of a particular witness — the notice was deficient, requiring reversal of the penalty phase judgment.

We repeatedly have rejected arguments similar to that made by defendant here. (See, e.g., *People* v. *Pride*, *supra*, 3 Cal.4th 195, 259; *People* v. *Visciotti* (1992) 2 Cal.4th 1, 71; *People* v. *Miranda* (1987) 44 Cal.3d 57, 96-97.) The purpose of the notice required by section 190.3 is to advise the accused of the evidence against him so that he may have a reasonable opportunity to prepare a defense at the penalty phase. (*People* v. *Miranda*, *supra*, 44 Cal.3d at p. 96.) "A capital defendant is entitled to notice of other violent crimes or prior felony convictions offered in the prosecution's penalty case-in-chief before the cause is

called to trial or as soon thereafter as the prosecution learns the evidence exists. (*People* v. *Daniels* (1991) 52 Cal.3d 815, 879; *People* v. *Jennings* (1988) 46 Cal.3d 963, 987.) However, the prosecutor is not prevented from introducing all the circumstances of a duly noticed incident or transaction simply because each and every circumstantial fact was not recited therein. (See, e.g., *People* v. *Howard* (1988) 44 Cal.3d 375, 424-425.) The notice is sufficient if it gives defendant 'a reasonable opportunity' to prepare a defense to the allegations. (*Howard*, *supra*, at p. 425.)" (*People* v. *Pride*, *supra*, 3 Cal.4th at p. 258.)

We previously have held: "Notice that evidence will be presented regarding a specific prior crime or crimes should alert counsel that evidence of all crimes committed as part of the same course of conduct may be offered, and, therefore, substantially complies with the notice requirement of section 190.3." (*People* v. *Visciotti*, *supra*, 2 Cal.4th 1, 70; *People* v. *Cooper, supra,* 53 Cal.3d 771, 842; *People* v. *Walker* (1988) 47 Cal.3d 605, 637.) In the instant case, the prosecution's notice informed the defense of the names of each one of the women who had been victimized by defendant's sexual assaults, the specific dates on which those assaults took place, and the counties in which the crimes occurred. The notice was filed well before the commencement of the guilt phase proceedings. In view of these circumstances, the prosecution's notice adequately apprised defendant of the evidence in aggravation that the prosecution intended to introduce. We therefore find no abuse of discretion in the trial court's denial of defendant's motion to strike the notice of aggravation.[30]

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30 In view of our conclusion that the trial court properly refused to strike the notice of aggravation, we find no merit in defendant's contention that his attorney performed deficiently with regard to this issue. (See *People* v. *Johnson* (1993) 6 Cal.4th 1, 51.)

D. *Denial of Motion to Re-Voir Dire the Jury*

Prior to the commencement of the penalty phase, the defense submitted a motion to re-voir dire the jury, in order to establish that there was good cause for impaneling a new jury for the penalty phase. The motion was based on section 190.4, subdivision (c). In pertinent part, that statute provides: "If the trier of fact which convicted the defendant of a crime for which he may be subject to the death penalty was a jury, the same jury shall consider . . . the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn." The motion requested that the court allow defendant's trial counsel to inquire whether the sitting jurors could keep an open mind. As was the case with a motion for separate juries submitted by defendant at the pretrial stage, the trial court denied the request.

On appeal, defendant contends that the trial court erred in denying the motion, because "good cause" existed to impanel a new jury prior to commencement of the penalty phase. Specifically, defendant asserts that his decision to absent himself from the guilt phase proceedings prior to the giving of closing arguments "likely was interpreted as an admission of guilt and prejudiced him in the eyes of the jury." Defendant further alleges that "certain jurors had preconceived views" about the case, that Jurors Oran Pentz and Deborah Wallen related experiences "similar" to those described at trial, that defendant's penalty phase counsel, Steven Harmon, was absent during the guilt phase, and finally that the prosecution had elected to introduce evidence of "a totally new unrelated homicide" (Shelah McMahan) at the penalty phase. Defendant maintains that in view of these specific factors, good cause existed to grant the motion.

Defendant's argument is unavailing. Section 190.4, subdivision (c), expresses the longstanding legislative preference for a *single* jury to determine guilt as well as penalty in capital cases. (*People* v. *Taylor* (1990) 52 Cal.3d 719,

738; *People* v. *Ainsworth* (1988) 45 Cal.3d 984, 1028-1029; *People* v. *Gonzales* (1967) 66 Cal.2d 482, 499.) Although "good cause" in the context of impaneling a new penalty phase jury is an elusive concept (see *People* v. *Malone* (1988) 47 Cal.3d 1, 27-28; *People* v. *Gates* (1987) 43 Cal.3d 1168, 1199), it seems clear that, similar to the situation found in the cases cited, defendant's speculative assertions in the present case were insufficient to impose any duty of inquiry on the part of the trial court. The court explained to the jury that defendant voluntarily had requested to be absent from closing argument, and later admonished the jury prior to the giving of opening statements at the penalty phase that it was customary for one defense attorney to work on the guilt phase and the other on the penalty phase. The subject of the jurors' attitudes had been examined thoroughly during the voir dire examination conducted at the outset of the guilt phase of the trial. There was nothing unusual about the prosecution's properly noticed intention to introduce evidence, at the penalty phase, of an additional, unadjudicated murder. (See, e.g., *People* v. *Medina* (1990) 51 Cal.3d 870, 906-907.) To permit a convicted capital defendant to delay commencement of the penalty phase proceedings on such a speculative basis would contravene the purpose of section 190.4, subdivision (c). The trial court did not err in denying defendant's request to re-voir dire the jury.

E. *The Admission of Evidence Related to Defendant's Prior Convictions*

At the penalty phase of the trial, the prosecution introduced evidence of defendant's 1973 assault on Debra B. Because defendant had pleaded guilty to misdemeanor charges in that case, the prosecution introduced evidence pertaining to this allegation under section 190.3, factor (b).[31] The prosecution also

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[31] Section 190.3, factor (b), permits the trier of fact at the penalty phase to consider "[t]he presence or absence of criminal activity by the defendant which

(footnote continued on next page)

introduced evidence involving the 1975 attempted burglary with intent to commit rape, involving Deborah T. Because defendant had pleaded guilty to this felony offense, the prosecution introduced testimonial evidence pertaining to this allegation under section 190.3, factor (c).[32]

On appeal, defendant contends the trial court erred in permitting the prosecution to present evidence of the facts and circumstances of defendant's prior convictions. Specifically, he contends that the admission of this evidence over his objection (set forth in a motion to exclude) violated the constitutional proscription against double jeopardy (by impermissibly allowing the jury to hear evidence in support of defendant's conviction of an offense greater than the one of which defendant was convicted by the prior jury), resulted in the introduction of irrelevant and prejudicial evidence, and violated his rights to equal protection of the laws, to a speedy trial, and to a reliable sentencing determination. Defendant's position lacks merit.[33]

We previously have rejected arguments that double jeopardy and speedy trial principles apply to the admission of evidence in aggravation presented at the penalty phase. (See, e.g., *People* v. *Cain* (1995) 10 Cal.4th 1, 71-72 [double

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(footnote continued from previous page)

involved the use or attempted use of force or violence or the express or implied threat to use force or violence."

32 Section 190.3, factor (c) permits the trier of fact at the penalty phase to consider "[t]he presence or absence of any prior felony conviction."

33 Defendant mistakenly asserts that the prosecution introduced evidence of the incidents involving Debra B. and Deborah T. under section 190.3, factor (c). As we have noted in the text, the prosecution relied on section 190.3, factor (b), with regard to the Debra B. incident.

jeopardy]; *People* v. *Garceau*, *supra*, 6 Cal.4th 140, 199-200 [same]; *People* v. *McDowell* (1988) 46 Cal.3d 551, 568 [speedy trial].) Nor was the evidence of defendant's prior convictions irrelevant or unduly prejudicial; defendant's choking attack upon Debra B. clearly involved "force or violence" within the meaning of section 190.3, factor (b), and his conviction of attempted burglary with the intent to commit rape, stemming from the incident involving Deborah T., fell squarely within the meaning of section 190.3, factor (c), allowing consideration of any prior felony conviction. Contrary to defendant's equal protection argument, the prosecution was not limited to showing that defendant had, in fact, been convicted, but was free to elicit the testimony of witnesses for the purpose of establishing the criminal conduct underlying defendant's prior convictions. (See *People* v. *Karis* (1988) 46 Cal.3d 612, 640; *People* v. *Gates*, *supra*, 43 Cal.3d 1168, 1203.) We previously have held that the use of live testimony to establish a defendant's prior criminal conduct does not violate a defendant's right to a reliable sentencing determination. (See, e.g., *People* v. *Cummings* (1993) 4 Cal.4th 1233, 1339.)

F. *Evidence of Prior Crimes Barred by the Statute of Limitations*

As noted above, the prosecution presented evidence of unadjudicated criminal offenses committed by defendant in 1973 and 1975. On appeal, defendant contends that such offenses were "stale" at the time of defendant's trial in 1987-88, that prosecution of these offenses was barred by the applicable statute of limitations, and that the trial court therefore erred in permitting the introduction of this evidence. Defendant's position is without merit. (*People* v. *Medina*, *supra*, 11 Cal.4th ~~694~~, ~~772~~ ["neither remoteness nor the expiration of the statutory limitations period bars admission of a defendant's prior unadjudicated criminal activity for purposes of section 190.3, factor (b)"]; *People* v. *Garceau*, *supra*, 6 Cal.4th 140, 199 (and cases cited therein)].)

G. *Defendant's Confession to Unadjudicated Offenses*

On March 5, 1975, as part of the investigation into the incident involving Deborah T., Imperial Beach Police Officer Charles Hamilton informed defendant of his rights under *Miranda* v. *Arizona*, *supra*, 384 U.S. 436, and upon obtaining defendant's waiver, proceeded to ask defendant certain questions involving the matter. Defendant denied having been near the victim's window. After the interview concluded, Hamilton learned that a fingerprint expert had matched defendant's fingerprints to those found on Deborah T.'s window.

The following morning, Hamilton visited defendant at Ream Field, the naval facility where defendant was stationed, and reread defendant his *Miranda* rights. Defendant said that he understood those rights, and asked: "I have the right to an attorney?" Hamilton responded affirmatively. When defendant asked, "What if I can't afford one?," Hamilton replied, "Then the court will appoint you one." Defendant thereafter asked whether the legal officer of the naval base could serve as his attorney. A naval investigator informed defendant that such an officer could not represent defendant in a civilian court of law. Defendant asked Hamilton whether he was going to be arrested. Hamilton responded affirmatively, informing defendant that approximately four hours would be required to obtain an arrest warrant. Defendant responded: "Okay, I'll talk to you, what do you want to talk about?" He thereafter described his involvement in other attacks upon women.

At trial, defendant objected to the introduction of evidence pertaining to his confession to the unadjudicated offenses, on the ground that the foregoing colloquy evidenced defendant's invocation of his right not to speak with Hamilton. The trial court denied the challenge. On appeal, defendant contends the trial court erred in allowing the prosecution to introduce evidence of defendant's confession,

because Hamilton improperly refused to honor defendant's purported request for an attorney.

Defendant's contention is unpersuasive. His inquiries of Officer Hamilton were insufficient to invoke his "Fifth Amendment privilege" to consult with counsel. (*People* v. *Maynarich* (1978) 83 Cal.App.3d 476, 481.) Moreover, after considering Hamilton's responses to his questions, defendant said, "Okay, I'll talk to you," thereby waiving his right to speak with an attorney. (*People* v. *Whitson* (1997) 17 Cal.4th 229.) The record is devoid of evidence that coercion or deception played any role in the interrogation. On these facts, the trial court properly found that defendant had knowingly and intelligently waived his *Miranda* rights.

H. *Photographic Evidence Regarding the Murder of Shelah*

Defendant contends that the trial court committed reversible error in permitting the prosecution to introduce numerous photographs and photographic slides relating to Shelah's homicide, because such evidence was "gruesome, inflammatory and cumulative." Defendant further alleges that the admission of this evidence violated his constitutional rights to due process of law, a fair trial, a reliable verdict, and fundamental fairness. (See U.S. Const., 5th, 6th, 8th, and 14th Amends.)

We apply the same standard as that used to evaluate defendant's challenge to the photographic evidence introduced against him at the guilt phase of the trial: " 'The admission of photographs of a victim lies within the broad discretion of the trial court when a claim is made that they are unduly gruesome or inflammatory. [Citations.] The court's exercise of that discretion will not be disturbed on appeal unless the probative value of the photographs clearly is outweighed by their

prejudicial effect. [Citations.]' (*People* v. *Crittenden, supra,* 9 Cal.4th [83,] 133-134.)" (*People* v. *Scheid, supra*, 16 Cal.4th 1, 18.)

As we shall explain, the trial court clearly acted within its discretion in admitting the challenged items. The photographic evidence served to illustrate and corroborate the testimony given by prosecution witnesses regarding Shelah's death and the ensuing investigation.

1. ***Exhibits Nos. 80:1-18, 80:26-28, 83:1-14, and 84:1-10 — Aerial and General Crime Scene Views, Close-up Photographic Slides of the Victim's Foot, and Views of the Widney Property***

Exhibits Nos. 80:1-18 and 80:28 are aerial views of the area in which the body of Shelah McMahan was found, as well as ground-level shots showing portions of the same general area. Exhibits Nos. 80:26 and 80:27 depict the bottom of Shelah's feet. Exhibits Nos. 83:1-14 and 84:1-10 depict the Widney property. At a hearing held outside the jury's presence to consider the admissibility of this photographic evidence, defense counsel specifically indicated that he had no objection to these slides. To the extent that his present appeal challenges any one of these slides, we conclude that the failure to interpose a timely objection has waived the claim. (Evid. Code, § 353, subd. (a); *People* v. *Zapien, supra*, 4 Cal.4th 929, 979-980.)

Even if defendant properly had preserved the issue, our review of the evidence leads us to conclude that the trial court acted well within its discretion in allowing these slides to be introduced. They depict nothing that even remotely could be considered unduly gruesome in nature.

2. ***Exhibits No. 80:19-25 — Crime Scene Slides***

Exhibit No. 80:19 depicts Shelah's blood-spattered body at the location where she was discovered, wedged beneath a large rock ledge, her shirt pulled down. Exhibit No. 80:20 shows the body from a different angle, revealing her

bound forearms. Exhibit No. 80:21 shows a close-up view of the rear portion of Shelah's head, revealing a cord draped around her neck. Exhibit No. 80:22 reveals one of Shelah's bare feet. Exhibit No. 80:23 depicts Shelah's swollen, bloodstained forearms, a cable tie binding her wrists. Exhibit No. 80:24 is a closer shot of Shelah's forearms, more clearly revealing the bloodstains and ligature marks. Exhibit No. 80:25 shows Shelah's body from behind, lying on a red law enforcement "body bag" and revealing her torn T-shirt, pulled down.

Defendant objected to the introduction of each one of the foregoing seven slides, requesting that the trial court exclude them pursuant to Evidence Code section 352. After reviewing each slide and considering the parties' arguments, the trial court overruled the objections. The court did exercise its discretion to exclude an eighth slide, which it found to be cumulative, as well as a photograph — exhibit No. 82 — that shows Shelah when she was alive, which the trial court excluded on the basis that it could have been construed as a then-impermissible form of victim impact statement.[34]

Our own review of the slides that were admitted leads us to conclude that they were highly probative in illustrating the vicious nature of the killing. The unusually small amount of blood depicted in the slides supported the prosecution's theory that Shelah probably was killed elsewhere, then transported to the dump. None of the slides is unduly gruesome or likely to inflame the passion of a jury. Nor are the slides improperly cumulative; each has distinct probative value and, contrary to defendant's contention, the prosecution was not compelled to rely upon

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[34] See *Booth* v. *Maryland* (1987) 482 U.S. 496 [107 S.Ct. 2529, 96 L.Ed.2d 440], overruled in *Payne* v. *Tennessee* (1991) 501 U.S. 808 [112 S.Ct. 28, 115 L.Ed.2d 720].

only one slide to depict the condition of Shelah's body. (See, e.g., *People* v. *Price*, *supra*, 1 Cal.4th 324, 440-441.)

3. Exhibits Nos. 81:1-9 — Autopsy Slides

Exhibit No. 81:1 is an autopsy slide that shows one of Shelah's forearms, revealing ligature marks. Exhibit No. 81:2 shows the same forearm from a different angle, revealing a more deeply colored ligature mark. Exhibit No. 81:3 shows the discolored, underside of one of Shelah's wrists. Exhibit 81:4 is a different view of one of Shelah's wrists, showing ligature marks. Exhibit No. 81:5 reveals a closer view of the wrist depicted in exhibit No. 81:4. Exhibit No. 81:6 reveals an abrasion and ligature mark on one of Shelah's wrists. Exhibit No. 81:7 is a close-up view that shows primarily the front and right side of Shelah's neck, revealing numerous abrasions. Exhibit No. 81:8 is a close-up view of the front and left portions of Shelah's neck, showing abrasions. Exhibit No. 81:9 is a closer view of the abrasions on the right side of Shelah's neck; some of the abrasions appear to correlate to the outline of a hand.[35]

Defendant objected to the introduction of each one of the foregoing nine slides, requesting that the trial court exclude them pursuant to Evidence Code section 352. After reviewing each slide, and considering the parties' arguments, the trial court overruled the objections.

The trial court's rulings were correct. The autopsy slides provided a vivid illustration of the bondage endured by Shelah. This evidence supported the prosecution's theory that the killing was premeditated. (See *People* v. *Scheid*,

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[35] The prosecution also introduced 11"x 14" photographic enlargements of exhibits Nos. 81:1, 81:2, 81:3, and 81:5. (Exhibits Nos. 106, 109, 108, 107, respectively.)

supra, 16 Cal.4th at p. 18; see also *People* v. *Crittenden*, *supra*, 9 Cal.4th at p. 134; *People* v. *Garceau*, *supra*, 6 Cal.4th 140 at pp. 180-182.) The evidence also links defendant — a man known to favor handcuffs and to have access to cable ties — to the killing. The slides that show Shelah's neck wounds suggest the savage nature of the killing. This photographic evidence is highly probative and neither unduly gruesome nor inflammatory. Nor is the evidence cumulative; because several of the slides show the ligature marks from different angles, they aided the prosecution in establishing that Shelah had been bound by the handcuffs and the type of cable tie that officers recovered in or around defendant's residence.

4. *Exhibits Nos. 90-94 — Photographs of Other Evidence*

Exhibit No. 90 is a color photograph that shows a cable tie recovered from defendant's residence. Exhibit No. 91 is a photograph that shows a case for a set of handcuffs. Exhibits Nos. 92 and 93 show the handcuffs partially buried in the shed behind defendant's residence. Exhibit No. 94 shows the disturbed dirt floor area of the shed.

These photographs illustrate the testimony of law enforcement officers who searched defendant's residence and the surrounding area shortly after his arrest. The images further link defendant to the killing. The trial court properly found that these photographs are probative and neither inflammatory nor unduly gruesome.

5. *Exhibits Nos. 101-104 — Springer Comparison Photographs*

As noted earlier, criminalist Faye Springer testified regarding the handcuff marks found on Shelah's forearms. As part of her testimony, she explained that she had applied the handcuffs, recovered by the police during their search of defendant's residence and the surrounding area, to her husband's wrist in an effort to create marks on his skin that could be compared with those found on Shelah's

wrists. Exhibit No. 101 shows the handcuffs on her husband's wrist, and exhibits Nos. 102-104 show the marks left by the handcuffs.

This photographic evidence is probative insofar as it helped the prosecution establish that the handcuffs located by the police in their search were capable of making the marks found on Shelah. The evidence therefore was probative. It was neither unduly gruesome nor inflammatory.[36]

6. *Exhibits Nos. 111, 113-115 — Crime Scene Photographs*

Exhibit No. 111 shows Shelah's body lying facedown on the body bag, similar to the view depicted in exhibit No. 80:25, but also depicting a police evidentiary ruler, which provided a sense of scale to the image. Exhibit No. 113 is a small photograph showing the dump area and a portion of a law enforcement vehicle. Exhibit No. 114 is identical to exhibit No. 80-18, showing Shelah's body nestled beneath the rock ledge and partially obscured by weeds and bags. Exhibit No. 115 also depicts the partially obscured body, from an angle that shows the body wedged beneath the rock ledge.

This photographic evidence aided the jury in visualizing the rural setting where the body was found, the body's remote resting place, and the obviously criminal nature of the victim's death. The evidence is probative and not unduly gruesome or inflammatory.

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[36] Defendant contends that "in addition to the excessive number of slides described, thirteen more photographs of the handcuff marks on Ms. McMahan's wrists were shown to the jury," citing exhibits Nos. 90-94, 101-104, and 106-109. Defendant overstates his argument; as we have seen, exhibits Nos. 90-94 and 101-104, did not depict Shelah's wrists, and exhibits Nos. 106-109 were the photographic prints shown in the slides labeled exhibits Nos. 81:1, 81:2, 81:3, and 81:5.

7. Summary

Insofar as defendant contends that the trial court was required to exclude some or all of the prosecution's photographic evidence under Evidence Code section 352 because such evidence was cumulative of the testimonial evidence presented, the trial court correctly overruled his objection. (See *People* v. *Scheid*, *supra*, 16 Cal.4th at p. 19, and cases cited therein.) To the extent defendant contends that the photographic evidence was unduly cumulative to other physical evidence or cumulative in and of itself, we reject that theory as well. (See *People* v. *Thompson*, *supra*, 45 Cal.3d 86, 115-116.) The prosecution was entitled to rely upon photographic evidence to help establish the vicious, premeditated nature of the killing, as well as the connection to defendant.

Crime scene and autopsy photographs that graphically depict the circumstances of the crime are plainly relevant to a jury's determination as to whether the death penalty is appropriate. (*People* v. *Wash*, *supra*, 6 Cal.4th 215, 266; *People* v. *Raley*, *supra*, 2 Cal.4th 870, 914.) The trial court reasonably could find that the probative value of the photographic evidence outweighs its potentially prejudicial effect. We therefore conclude that the trial court did not abuse its discretion under Evidence Code section 352 in admitting the photographic evidence. (See *People* v. *Scheid*, *supra*, 16 Cal.4th 1, 20 and cases cited therein.)[37]

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[37] We reject defendant's constitutional claims, because counsel failed at trial to object based on any such grounds, thereby waiving these claims. (See *People* v. *Crittenden*, *supra*, 9 Cal.4th 83, 135, fn. 10, and cases cited therein.) Even if the claims had been raised in the trial court, we would find no constitutional error, in view of our determination that the photographic evidence properly was admitted. (*Ibid.*)

Moreover, a great deal of other evidence linked defendant to Shelah's murder, including his confession to Randy Gresham, physical evidence (handcuffs, cable ties), and defendant's interest in the bondage of women. Thus, even if we were to agree with defendant that the photographic evidence was unduly cumulative in nature, any error in admitting a few too many images clearly would be harmless.

I. *Section 190.3, subdivision (b): Evidence Pertaining to the Murder of Shelah*

As discussed above, as part of its case-in-aggravation the prosecution introduced evidence involving the murder of defendant's niece and next-door neighbor, Shelah, pursuant to section 190.3, subdivision (b). Defendant contends the trial court committed reversible error in admitting such evidence. Specifically, he asserts: (1) the court should have excluded evidence of uncharged criminal activity that occurred subsequent to the charged capital offense in this case, (2) the court erred in denying his request for an advisory jury or, in the alternative, for a hearing pursuant to Evidence Code section 402, (3) the evidence pertaining to Shelah's murder was insufficient to allow a rational trier of fact to determine beyond a reasonable doubt that defendant committed the murder, and (4) the court erred in denying defendant use immunity to enable him to testify on his own behalf. As we shall explain, none of defendant's assertions has merit.

1. *Subsequent Criminal Activity*

We repeatedly have rejected claims, identical to that made by defendant, that criminal activity occurring subsequent to the commission of the charged offense is inadmissible under section 190.3, subdivision (b). (See, e.g., *People* v. *Balderas* (1985) 41 Cal.3d 144, 201-204; see also *People* v. *Hovey* (1988) 44 Cal.3d 543, 577-579.) Defendant urges this court to reconsider that line of case

authority, but fails to provide us with a persuasive basis for reconsidering our prior holdings. We therefore decline to do so.

2. ***Motion for an Advisory Jury or, Alternatively, a Hearing Pursuant to Evidence Code Section 402***

Prior to the commencement of trial, defendant moved to impanel an advisory jury or, alternatively, to conduct a hearing pursuant to Evidence Code section 402 for the purpose of determining whether the penalty phase jury should consider evidence of unadjudicated criminal activity, most notably the evidence linking defendant to Shelah's murder. The trial court denied defendant's request, instead requiring the prosecution to make a foundational offer of proof. The prosecution made its offer to the satisfaction of the trial court.

On appeal, defendant contends the trial court erred in denying his motion. His position is unpersuasive. The trial court was not required to engage either in the time-consuming process of impaneling an advisory jury, or conducting an evidentiary hearing that might have required witnesses to testify once at the hearing and again at the penalty phase. The trial court correctly determined that a juror at the penalty phase was entitled to consider "other crimes" evidence in aggravation that he or she found to be proved beyond a reasonable doubt. (*People* v. *Miranda*, *supra*, 44 Cal.3d 57, 97-98.) Contrary to the implication inherent in defendant's contention, the jury need not have unanimously agreed that the prosecution met its burden of proof as to the "other crimes" evidence before a single juror could consider that evidence. (See *People* v. *Stankewitz* (1990) 51 Cal.3d 72, 106; *People* v. *Miranda*, *supra,* 44 Cal.3d at p. 99.) Unanimity was mandated only with regard to the final determination as to penalty. (*People* v. *Ghent* (1987) 43 Cal.3d 739, 773-774.) The jury was so instructed.

3. *Sufficiency of the Evidence*

Defendant contends that the evidence pertaining to Shelah's murder was insufficient to permit a reasonable trier of fact to determine, beyond a reasonable doubt, that he committed the murder. We disagree.

The evidence established that defendant was the last person to see Shelah alive. He had ready access to the residence where she slept. His whereabouts during the early morning period when the murder occurred were inconsistently explained to investigators. The evidence presented to the jury indicated that Shelah was not the sort of child to leave the residence with a stranger; defendant, however, was her uncle. There were no signs of a struggle in the area where she slept.

When Shelah's body was recovered, her forearms and wrists bore ligature marks suggesting that she had been handcuffed. Defendant owned handcuffs and had expressed an affinity for sexual bondage. In a shed near defendant's residence, investigators recovered buried handcuffs stained with blood of a type consistent with Shelah's. Only eight out of one thousand individuals share this blood type. The handcuffs also bore fiber evidence similar to the fibers from the T-shirt Shelah was wearing when her body was discovered. Shelah's wrists were bound with a black cable tie that was identical to one found in defendant's residence. Shortly after Shelah's murder, defendant was seen grading his yard.

Defendant's cellmate, Randy Gresham, testified that defendant admitted killing Shelah and demonstrated how he had stabbed her. Defendant also expressed concern that investigators might uncover evidence in his yard.

The foregoing evidence was sufficient to allow a rational trier of fact to determine beyond a reasonable doubt that defendant murdered Shelah.

4. *Defendant's Request for Use Immunity*

Defendant contends that the trial court erred in denying his motion that he be granted use immunity to enable him to testify in his own behalf regarding the murder of Shelah. He asserts that his inability to testify without relinquishing fundamental rights, such as the privilege against self-incrimination, "reinforced the inference of guilt and hence, the jury's prejudice against him." Both the United States Supreme Court and this court have considered and rejected similar arguments. (See *McGautha* v. *California* (1971) 402 U.S. 183, 213-220, vacated on other grounds, *Crampton* v. *Ohio* (1972) 408 U.S. 941; *People* v. *Bonin, supra,* 47 Cal.3d 808, 852.) Defendant fails to persuade us to reexamine the merits of these prior decisions.

J. *Other Crimes Instruction*

The trial court gave the standard instruction prohibiting the jury from considering other violent crimes admitted in aggravation under section 190.3, factor (b), unless these crimes had been proved beyond a reasonable doubt. The instruction did not describe or otherwise identify any of the acts to which it might apply. The prosecutor and defense counsel approved the instruction as given; defense counsel in fact requested that the trial court not delineate the specific criminal acts that the jury would be permitted to consider.[38]

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[38] The instruction stated: "Evidence has been introduced for the purpose of showing that the defendant has committed criminal acts which involved the express or implied use of force or violence or the threat of force or violence. Before you may consider any of such criminal acts as an aggravating circumstance in this case, you must first be satisfied beyond a reasonable doubt that the defendant did in fact commit such acts. You may not consider any evidence of any other criminal acts as an aggravating circumstance." (See CALJIC No. 8.84.1.2 (1983 new).)

Defendant contends that the trial court's failure to instruct, sua sponte, on the elements of the crimes proved under section 190.3, factor (b), rendered unreliable the jury's penalty determination. We repeatedly have rejected the identical contention in other cases, observing that there is no duty, absent a request, to so instruct. (See, e.g., *People* v. *Barnett* (1998) 17 Cal.4th 1044, 1175; *People* v. *Osband* (1996) 13 Cal.4th 622, 704.) The rule "is based in part on a recognition that, as [a] tactical matter, the defendant 'may not want the penalty phase instructions overloaded with a series of lengthy instructions on the elements of alleged other crimes because he may fear that such instructions could lead the jury to place undue emphasis on the crimes rather than on the central question of whether he should live or die.' [Citations.] We have also noted a trial court is not *prohibited* from giving such instructions on its own motion when they are 'vital to a proper consideration of the evidence.' [Citation.]" (*People* v. *Cain*, *supra*, 10 Cal.4th 1, 72 original italics].) Defendant does not provide us with a principled basis for reconsidering these decisions, and we decline to do so.

Defense counsel's explicit approval of the instruction indicated a clear preference for the standard, general language, rather than a recitation of the litany of defendant's uncharged criminal activity. Defendant now contends that trial counsel's failure to request such a more detailed instruction amounted to ineffective assistance. In view of the nature of defendant's prior criminal conduct, however, counsel's decision obviously was a reasoned, tactical one. (See, e.g., *People* v. *Tuilaepa* (1992) 4 Cal.4th 569, 592; see also *People* v. *Pope* (1979) 23 Cal.3d 412, 426, fn. 16.) The trial court was under no duty to "override" defense counsel on this point and instruct the jury as to the individual elements of the crimes proved. No error or constitutionally deficient assistance appears.

In any event, we reject defendant's contention that the absence of such an instruction tainted his trial. Our review of the record discloses convincing

evidence of criminal activity properly admitted under section 190, subdivision (b). There is no indication that an instruction on the specific crimes and elements would have changed the jury's assessment of the evidence or would have affected the outcome of the trial.

K. *The Testimony of Cindy Widney*

The defense presented evidence in mitigation to the effect that defendant was a loving and devoted husband. Several witnesses testified to his good character in this regard.

The prosecution thereafter sought to rebut this "good-character" evidence by offering the testimony of defendant's sister-in-law, Cindy Widney, who was prepared to describe unwelcome overtures that defendant had made to her.

The defense sought exclusion of the proffered evidence on the grounds of lack of relevance and undue prejudice. (See Evid. Code, §§ 210, 352.) After considering the parties' arguments at a hearing held outside the jury's presence, the trial court concluded that because the defense had portrayed defendant as a loving husband, the proffered evidence properly could be admitted in rebuttal, and on that basis denied defendant's request.

Widney thereafter testified during the prosecution's case-in-rebuttal that defendant once attempted to kiss her and on another occasion said to her, "I've been dreaming of you." On a third occasion, defendant mentioned to her in a joking manner that "maybe they [i.e., their respective spouses] should go back to mom and dad and we should get married." On a fourth occasion, defendant appeared at the front door of Widney's residence; frightened by his presence, she telephoned a neighbor, who observed defendant enter Widney's home through a side entrance. Widney retrieved a baseball bat and confronted defendant, who was standing inside her home. Defendant explained that his presence emanated from a concern for her. "I didn't know if you were raped, hurt or what," he told her.

On appeal, defendant contends that because the testimony of Cindy Widney did not involve the commission of an actual crime, admission of the evidence was improper under section 190.3, factor (b). Defendant mischaracterizes the basis upon which the trial court admitted this evidence. As noted, it was not offered as criminal activity pursuant to section 190.3, factor (b), but as relevant evidence to rebut the portrayal of defendant as a loving and caring husband. (§ 190.3.)[39]

Defendant further contends that this evidence constituted improper rebuttal. The admission of evidence in rebuttal is a matter left to the sound discretion of the trial court. (*People* v. *Raley*, *supra*, 2 Cal.4th 870, 912.) The court's decision in this regard will not be disturbed on appeal in the absence of "palpable abuse." (*People* v. *Kelly* (1990) 51 Cal.3d 931, 965; see also *People* v. *Bacigalupo* (1993) 1 Cal.4th 103, 142, vacated on other grounds, 506 U.S. 802 [113 S.Ct. 32, 121 L.Ed.2d 5], judg. affd. on remand, 6 Cal.4th 457 [defendant's presentation of evidence in mitigation as to his good character "open[s] the door to prosecution evidence tending to rebut" that specific aspect of defendant's personality].) In the present case, the trial court did not abuse its discretion in concluding that

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[39] Section 190.3 provides in pertinent part: "In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the express or implied threat to use force or violence, *and the defendant's character, background, history*, mental condition and physical condition." (Italics added.)

defendant, by introducing character evidence suggesting that he was a good and loving husband, "opened the door" to the prosecution's evidence in rebuttal.[40]

Moreover, even if we were to assume that the admission of Cindy Widney's testimony was improper, such error would not have been prejudicial. Defendant stood convicted of having committed one brutal murder, in addition to multiple sexual assaults. The prosecution's penalty phase evidence also overwhelmingly established defendant's culpability for the murder of his 11-year-old niece and assaults upon other women. Against this backdrop of violent crime, no reasonable possibility exists that the jury would have rendered a different penalty phase verdict had Cindy Widney's testimony been excluded. (See *People* v. *Brown* (1988) 46 Cal.3d 432, 449.)

L. ***Governor's Commutation Power***

Prior to the prosecution's opening statement at the penalty phase, the court received a note from one of the jurors. The note read: "Does life in prison without the possibility of parole mean he will never get out under any circumstances?" Outside the jury's presence, the court discussed the matter with counsel. Defense counsel expressed reservations about the jury's being informed of the Governor's power to commute a sentence of death or a sentence of life in prison without the

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[40] In view of our conclusion that the testimony of Cindy Widney constituted proper rebuttal, and in view of defendant's failure to request a limiting instruction, we reject defendant's contention that the trial court's failure to instruct the jury "about the limited purpose for which [the jury] could consider such rebuttal evidence" violated defendant's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments. Moreover, there is no indication that the jury may have considered this rebuttal evidence for an improper purpose.

possibility of parole.[41] The prosecutor urged the court to follow this court's decision in *People* v. *Ramos* (1984) 37 Cal.3d 136, wherein we held: "When the jury raises the commutation issue itself — either during voir dire or in a question posed to the court during deliberations — the matter obviously cannot be avoided and is probably best handled by a short statement indicating that the Governor's commutation power applies to both sentences but emphasizing that it would be a violation of the juror's duty to consider the possibility of such commutation in determining the appropriate sentence. [Citation.]" (37 Cal.3d at p. 159, fn. 12.) In response to the juror's inquiry, the trial court expressed the views set forth in the margin.[42]

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41 Defense counsel favored responding to the juror's inquiry as follows: "[T]he jury will be instructed and you will be instructed that the sentencing means what they say, that you will have two choices, he will either get death or he will be in prison without the possibility of parole, life without possibility of parole."

42 The trial court informed the jury: " 'Does life in prison without the possibility of parole mean he will never get out under any circumstances?' That question causes the Court a great deal of concern and it's caused other courts a great deal of concern, and the reason why, it has an element of speculation in it, it shows that people are worrying about what's going to happen after the decision in this particular case.

"It really is inappropriate for the — for jurors or for me to rely or even to think about that kind of material, because I don't know what's going to happen because it's speculation, number one, and, secondly, to the extent that people are worrying about someone else doing something, they may take their present job less seriously.

"Let me just say, the law does have a provision in the California Constitution that the Governor does have the power to commute both sentences, both the death sentences and the life without possibility of parole sentence to something less than that, if the Governor sees fit.

"Now, I've been in the criminal justice system for 13 years and I've never seen the commutation power used. Given the way things are now, I can't imagine in this particular case that power applying.

(footnote continued on next page)

On appeal, defendant contends the trial court's comments were misleading in failing to indicate that four members of this court would be required to concur in the exercise of the Governor's commutation power. (Cal. Const., art. V, § 8, subd. (a) ["The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring."].) Defendant also alleges error on the basis that the instruction, by implying that the ultimate sentencing responsibility resided in someone other than the jury, inappropriately diminished the jury's sense of responsibility for its sentencing decision. Defendant further contends that the instruction failed to admonish jurors sufficiently regarding their duty to disregard information pertaining to the commutation power. Defendant contends that in view of these alleged flaws, his rights to a fair trial, reliable determination of penalty, due process of law, and fundamental fairness were violated, necessitating reversal of the sentence.

In supplemental briefing filed with this court, defendant contends that several recent federal court decisions support his position that the trial court's response to the jury's inquiry was fatally defective. (See *Coleman* v. *Calderon* (9th Cir. 1998) 150 F.3d 1105 [trial court's erroneous instruction on commutation power warranted habeas corpus relief], revd. *sub nom. Calderon* v. *Coleman*

(footnote continued from previous page)

"I think if you approach this case from any other perspective other than death means death or life without possibility of parole means exactly that, you would be deluding yourself. I think you've got to resign yourself that the two choices that you're going to make here are the two sentences that are going to be carried out in this particular case.

"Is everybody clear as to what my feelings are? And I think for you to speculate anything else would be inappropriate."

(Dec. 14, 1998) ____ U.S. ____ [119 S.Ct. 500, 502-504] [federal circuit court of appeals erroneously granted habeas corpus relief based on trial court's allegedly inaccurate instruction on commutation power without first applying harmless error standard]; *McLain* v. *Calderon* (9th Cir. 1998) 134 F.3d 1383, 1384-1386 [trial court's erroneous instruction on commutation power warranted habeas corpus relief]; *Hamilton* v. *Vasquez* (9th Cir. 1994) 17 F.3d 1149 [same].) He further contends that the trial court's response constituted "structural" error (see *Arizona* v. *Fulminante* (1991) 499 U.S. 279, 306-310) reversible without regard to an examination of prejudice (*ibid.*; see also *People* v. *Flood* (1998) 18 Cal.4th 470, 493), and even if deemed to be nonstructural, the response was prejudicial under the standard set forth in *Chapman* v. *California, supra,* 386 U.S. 18, 24.

The prosecution contends that defendant's argument was waived for want of a timely objection and that defense counsel in fact "accepted" the response as proposed by the trial court before the court addressed the jury. The record is ambiguous as to whether defense counsel in fact acquiesced in the trial court's response as actually given.[43] It is clear, however, that defense counsel never suggested that the trial court's reference to the Governor's commutation power was misleading because of the absence of a reference to this court's role in clemency decisions involving twice-convicted felons.

Assuming that the issue properly may be raised on appeal, we reject defendant's contention that the trial court's comments to the jury on this point constitute reversible error. In view of this court's prior decisions, we believe that once a juror inquired as to the actual meaning of a sentence of life without

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[43] Defense counsel informed the trial court: "Your honor, not backing off of my argument, but under the circumstances, I would be willing to accept it."

possibility of parole, the trial court did not err in explaining that although the Governor has the power to commute both a sentence of death and a sentence of life without possibility of parole, it would be inappropriate for the jury to approach the case "from any other perspective other than death means death and life without possibility of parole means exactly that . . . ." (See, e.g., *People* v. *Hunter* (1989) 49 Cal.3d 957, 983-984; *People* v. *Hovey*, *supra*, 44 Cal.3d 543, 583-584 [approving similar responses to such inquiries].) Further, although the trial court's comments would have been more complete and fully accurate had they noted that, in the case of a "twice-convicted" felon such as defendant,[44] the Governor may not grant clemency without the favorable recommendation of four or more justices of this court, we do not believe that this omission rendered the trial court's comments so incomplete or misleading as to be constitutionally deficient under the federal constitutional standard established in *California* v. *Ramos, supra,* 463 U.S. 992, 1010-1012, or that the omission, even if error, was prejudicial under the *Chapman* standard. (*Chapman* v. *California, supra,* 386 U.S. 18, 24.)[45]

The crucial point and overall thrust of the trial court's comments was to inform the jurors that *any speculation* on the part of a juror that life without the possibility of parole meant anything other than precisely that *would be*

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[44] Contrary to the People's argument, the phrase "twice convicted" in article V, section 8, subdivision (a), of the California Constitution does not apply only to defendants who have two *prior* felony convictions in addition to their current felony offense, but also applies to a defendant whose current offense is a felony and who has one prior felony conviction. (See *Green* v. *Superior Court* (1934) 2 Cal.2d 1, 3.)

[45] Although defendant contends the trial court's comments, if erroneous, constituted "structural error," we believe it is clear that this type of error is "trial error" of a nature that its harmfulness must be evaluated under the *Chapman* standard. (See, e.g., *People* v. *Flood*, *supra*, 18 Cal.4th 470, 492-504.)

inappropriate, and thus the comments properly informed the jurors that they were not to consider the commutation power at all in arriving at their sentencing determination. In light of this message, the circumstance that the trial court's comments did not explain the existence of a limitation on the Governor's commutation power is insignificant. The comments were sufficient to advise the jurors not to consider the speculative possibility of commutation. The specific details of the commutation process (that the jurors were not to consider) bore no relevance to the jury's task. Under these circumstances, we conclude there is no reasonable possibility that the incompleteness of the trial court's comments affected the result.

M. ***Constitutionality of California's Death Penalty Law***

Defendant contends that California's death penalty law is overly broad, impermissibly vague and excessive, and constitutes cruel and unusual punishment prohibited by the federal and California Constitutions. In upholding the constitutionality of California's death penalty law, we previously have rejected arguments similar to that raised by defendant, and he fails to provide a persuasive basis for this court to reconsider our earlier decisions. (See, e.g. *People* v. *Garceau*, *supra*, 6 Cal.4th 140, 207; *People* v. *Alcala* (1992) 4 Cal.4th 742, 809; *People* v. *Rodriguez* (1986) 42 Cal.3d 730, 777-779.). We therefore reject his claim.

N. ***Defendant's Application to Modify the Verdict***

The trial court denied defendant's automatic application for modification of the jury's verdict (§ 190.4, subd. (e)).

On appeal, defendant contends the trial court relied on evidence in aggravation that was improperly admitted or not supported by the evidence,

"including the McMahan murder, the San Diego priors, the Cindy Widney evidence, and the Gresham evidence."

The record does not support defendant's position. The evidence of Shelah's murder, the San Diego priors, and the testimony of Randy Gresham properly were admitted for the reasons previously stated, and the trial court was authorized to rely upon such evidence in considering defendant's application for modification of the death verdict. (§ 190.4, subdivision (e).) Contrary to defendant's assertion, nothing in the record suggests that the trial court relied on the testimony of Cindy Widney in denying defendant's application.

The trial court was required to reweigh independently the aggravating and mitigating circumstances, and determine whether, in its independent judgment, the weight of the evidence supported the jury's verdict. (*People* v. *Mickey* (1991) 54 Cal.3d 612, 705.) We are convinced the court fulfilled its duty. The court reviewed in detail the aggravating and mitigating circumstances and explained the basis for its denial of defendant's application. The court's reasoning was well-supported by the evidence, and its conclusion was apt: "[T]he Court finds the circumstances of this case to be far more aggravating than would even be expected in a case as serious as a capital case. . . . [¶] . . . [¶] The nature of these crimes can only be characterized as the stuff of which nightmares are made."

O. *Whether the Three Strikes Law Repealed the Death Penalty*

Defendant contends the judgment of death should be reversed because the Three Strikes law (§§ 667, subs. (b)-(i), 1170.12) repealed the death penalty in California. We previously have rejected similar claims. (See *People* v. *Samayoa* (1997) 15 Cal.4th 795, 861-862; *People* v. *Alvarez* (1996) 14 Cal.4th 155; see also

People v. *Williams* (1995) 40 Cal.App.4th 446, 457-458.) Defendant presents no persuasive reason for this court to reconsider its previous holdings. We therefore reject his claim.

III. DISPOSITION

The judgment is affirmed in its entirety.

GEORGE, C.J.

WE CONCUR:

MOSK, J.
KENNARD, J.
BAXTER, J.
WERDEGAR, J.
CHIN, J.
BROWN, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Unpublished Opinion
Original Appeal XXX
Original Proceeding
Review Granted
Rehearing Granted

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(415) 585-7431

Pamela A. Ratner
Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101
(619) 645-2273

RECEIVED
ATTORNEY GENERAL
1999 JUN -2 A 10:01
CA. DEPT. OF JUSTICE
SAN FRANCISCO
DOCKET UNIT

SUPREME COURT
FILED
JUL 21 1999
Robert Wandruff Clerk

COPY

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. JOSEPH WILLIAM HART, Defendant and Appellant.	S005970 Super. Ct. No. 25670 Riverside County

BY THE COURT:

MODIFICATION OF OPINION

The opinion herein, filed on June 1, 1999, appearing at 20 Cal.4th 546, is modified as follows:

1. The paragraph at pp. 627-628 is revised to read as follows:

As noted previously, trial counsel was confronted with overwhelming evidence that defendant killed Diane in the course of a sexual assault, and the manner of killing (repeated powerful blows to the back of the head with a rock), combined with defendant's statement to Amy that "your friend was an asshole, she called me a few names, and I think she's dead," strongly suggested that he acted with the intent to kill. In view of these circumstances, trial counsel could have had a reasonable tactical basis for deciding to forego the presentation of a mental state defense in favor of a defense challenging the prosecution's forensic evidence. Counsel's strategy conceivably

could have persuaded the jury to acquit defendant of the charge that he raped Diane and to convict him only of second degree murder.

2. The following sentence is added immediately following the first sentence of the second full paragraph on page 632:

Defendant also asserts that Harmon could not adequately assist him at the penalty phase because Harmon was not present at either the jury selection or the guilt phase of trial and lead attorney Barnett was not present to assist Harmon at the penalty phase.

3. The following two sentences are added at the beginning of footnote 29, p. 634:

We also reject defendant's contention that reversal was required without a showing of prejudice under *United States* v. *Cronic* (1984) 466 U.S. 648, which states that a defendant need not show prejudice "when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding." (*Id.* at p. 659, fn. 25.) One or the other of defendant's attorneys was present at all critical stages of the proceedings.

4. Line 3, page 633 is modified to delete the word "Max" and to replace it with the word "William."

These modifications do not affect the judgment.

99 JUL 26 AM 9:33

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: JUNE 8, 1986

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Day
P386042237		294	G-05					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			ARR	SUS		

17. Address of Occurrence (Street No. - Name - City): 6661 INDIANA, RIVERSIDE

18. Type of Place: BUSINESS

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V1	TACO BELL		

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	6661 INDIANA, RIVERSIDE		781-7833

27. ID	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB
W1	TOURIGNY, PATRICIA ANNETTE	W F	[redacted]-62

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone
[redacted] PRESCOTT WAY, #B, RIVERSIDE	6661 INDIANA, RIVERSIDE	784-7256	781-7833

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes / No
GRESHAM, RANDALL DALE 48091	W M	21	511	180	Bln	Blu	[redacted]59	( ) ( )

44. Address - Clothing - Other Marks or Identifying Characteristics: [redacted] ORANGE, RIVERSIDE

45. Juv: Other Disp: Juris. ( ) 2 | Juv Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes / No
WALTERS, WADE ALAN 10/15/65	W M	22	506	144	Brn	Blu	[redacted]64	( ) ( )

55. Address - Clothing - Other Marks or Identifying Characteristics: LKA: [redacted] OVERLAND, RIVERSIDE

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC (ROBBERY/ARMED)	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2 $

Reporting Off: Tortes

Reviewed By

COPIES TO

VCLO ( )

ACTIONS
APB Sent
APB Cancld.
APR Sent
APR Cncld
DOJ-NCIC Entered
Cancld.
ENTERED STATS | ARBK | ANI

62. Narrative of Supplemental Report

WITNESS #2: SCARPINO, PAUL DAVID WM, DOB: [redacted]-65

[redacted] EDITH AVE., RVSD. 686-8670

WITNESS #3 BUSICK, MITCHELL ALAN WM, DOB: [redacted]-65

LACKLAND AFB TEXAS

WITNESS #4 NIX, CARL STEPHEN WM, DOB: [redacted]-64

[redacted] TANGERINE WY., RVSD. WK: 887-4716

WITNESS #5 NIX, CHRISTINE RENE WF, DOB: [redacted]-63

[redacted] TANGERINE WY., RVSD. WK: 887-4716

RIVERSIDE COUNTY – LAW ENFORCEMENT AGENCIES

200-52-2(RI/78)

DA 00002697

EX 158 - 1

RIVERSIDE POLICE DEPT.

CONTINUATION SHEET

PAGE NO. 2 FILE NO. P386042237

	TYPE OF REPORT	INVESTIGATING OFFICER
	211 PC ROBBERY (ARMED)	A. TORTES #294

CONTACT #1: DET. IVAN COLLINS
PRESCOTT ARIZONA POLICE DEPT. (602) 778-1444

EVIDENCE: TWO EA. PHOTOGRAPHIC LINEUPS.

MENTIONED #1: DET. MARK MCFALL, RIVERSIDE POLICE DEPT.

NARRATIVE:

ON 5-16-86 I WAS CONTACTED VIA PHONE AT THE RIVERSIDE POLICE DEPT. BY C-1 (COLLINS) WHO ADVISED ME THAT HE HAD TWO SUBJECTS IN CUSTODY IN ARIZONA FOR ARMED ROBBERY AND KIDNAPPING. C-1 WENT ON TO ADVISE THAT ONE OF THE SUSPECTS IN CUSTODY TOLD HIM THAT HE HAD SOME INFORMATION ABOUT SEVERAL ROBBERIES THAT OCCURRED IN RIVERSIDE LAST YEAR AND THIS YEAR.

C-1 (COLLINS) SAID THAT THE SUSPECT WHO WAS PROVIDING THE INFORMATION WAS NOT AN ACTUAL PARTICIPANT IN THE ROBBERIES BUT HIS PARTNER IN CRIME WAS ONE OF THE PERPETRATORS ALONG WITH SUSPECT GRESHAM.

THE SUSPECT TOLD C-1 THAT HIS CRIME PARTNER (WALTERS) TOLD HIM ABOUT SOME ROBBERIES HE AND GRESHAM HAD COMMITTED IN RIVERSIDE. THE SUSPECT TOLD C-1 THAT S-2 (WALTERS) TOLD HIM THAT S-1 AND S-2 SPECIALIZED IN TACO BELL RESTAURANTS TO ROB. HE SAID THAT S-2 TOLD HIM THAT HE WAS TAUGHT HOW TO ROB THE TACO BELL'S AND 7-11 STORES BY S-1 (GRESHAM). S-2 TOLD THE SUSPECT THAT DURING ONE OF THE ROBBERIES THEY EVEN SHOT SOMEONE.

C-2 (COLLINS) ATTEMPTED TO OBTAIN MORE SPECIFIC LOCATIONS AND DATES WHEN THESE ROBBERIES WERE SUPPOSEDTO HAVE OCCURRED, BUT THE SUSPECT COULD NOT PROVIDE ANY SPECIFIC INFORMATION, ONLY GENERALITIES AND METHOD USED. THE SUSPECT DID TELL C-1 THAT S-1 AND S-2 USUALLY CASED THE LOCATION THEY WERE GOING TO ROB FIRST THEN WOULD WAIT UNTIL OPENING TIME THEN TAKE THE MANAGER AND AN EMPLOYEE HOSTAGE, AFTERWHICH THEY WOULD FORCE THEM TO OPEN THE SAFE. DURING THE ROBBERY THE SUSPECTS WOULD USUALLY THREATEN THE HOSTAGES WITH GREAT BODILY HARM IF THEY DIDN'T DO WHAT THEY WERE TOLD.

AT THIS POINT I TOLD C-1 (COLLINS) THAT WE IN FACT HAD SEVERAL TACO BELL ROBBERIES THAT WERE UNSOLVED AND THE M.O. USED WAS THE SAME AS DESCRIBED BY THE SUSPECT. I ASKED C-1 TO PROVIDE ME WITH S-2'S DESCRIPTION AND PERSONAL INFORMATION AND I WOULD BEGIN OBTAINING

FORM NO. 200-12-1

DA 00002698

EX 158 - 2

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

PAGE NO. 3 FILE NO. P386042237

	TYPE OF REPORT	INVESTIGATING OFFICER
	211 PC ROBBERY (ARMED)	A. TORTES #294

INFORMATION REFERENCE SUSPECT #2 (GRESHAM) AND ATTEMPT TO VERIFY THE INFORMATION C-1 WAS PROVIDED WITH.

DURING MY FOLLOW-UP INVESTIGATION, I DISCOVERED THAT A ROBBERY HAD BEEN COMMITTED WHERE SHOTS HAD BEEN FIRED, BUT NO ONE WAS HIT (REFER TO RPD FILE #P385336044). IT WAS DURING THE FOLLOW-UP INVESTIGATION THAT M-1 AND MYSELF FOUND SEVERAL INCIDENTS OF TACO BELL AND FAST FOOD TYPE RESTAURANTS THAT WERE ROBBED. IT WAS ALSO DURING THE FOLLOW-UP INVESTIGATION THAT WE DISCOVERED THAT S-1 (GRESHAM) HAD BEEN TAKEN INTO CUSTODY FOR ATTEMPTED MURDER OF A POLICE OFFICER ON 5-19-86 (RPD FILE #P386138217).

ON 5-29-86 M-1 (MCFALL) AND I CONDUCTED AN IN-PERSON LINEUP WHICH WAS TO BE HELD AT THE RIVERSIDE COUNTY SHERIFF'S DEPARTMENT, BUT PRIOR TO CONDUCTING THE IN-PERSON LINEUP WE HAD THE PARTICIPANTS GATHER AT THE RIVERSIDE POLICE DEPARTMENT SO THEY COULD BE PROPERLY ADMONISHED PER IN-PERSON LINEUP FORM AND SHOWN A PHOTOGRAPHIC LINEUP WHICH CONTAINED A PHOTOGRAPH OF S-2 (WALTERS) AFTER ALSO BEING ADMONISHED.

AFTER ADMONISHMENTS AND FORMS WERE COMPLETED, ALL THE PARTICIPANTS OF THE LINEUP WERE ESCORTED TO THE COUNTY JAIL. THERE W-1 (TOURNIGY) AND W-2 (SCARPINO) VIEWED THE IN-PERSON LINE WHICH HAD S-1 (GRESHAM) IN THE #1 POSITION. W-1 (TOURNIGY) VIEWED THE LINEUP AND SELECTED SUBJECT #1 (GRESHAM) AS THE SUBJECT WHO ROBBED THE TACO BELL ON 2-11-86.

W-2 (SCARPINO) VIEWED THE SAME LINEUP AND SELECTED SUBJECT #3 INDICATING ON HIS ADMONITION FORM HIS REASONS FOR SELECTING #3.

ON 6-6-86 AT APPROXIMATELY 1430 HOURS, I CONTACTED W-4 AND W-5 (NIX, CARL AND CHRISTINE) AT THEIR TANGERINE WAY RESIDENCE FOR THE PURPOSE OF SHOWING THEM A PHOTOGRAPHIC LINEUP WHICH CONTAINED A PHOTOGRAPH OF S-1 (GRESHAM). PRIOR TO HAVING THE TWO WITNESSES VIEW THE PHOTOGRAPHIC LINEUP EACH WAS GIVEN A RIVERSIDE POLICE DEPARTMENT PHOTOGRAPHIC ADMONITION TO READ, AFTERWHICH THEY WERE TO FILL IN THE INFORMATION ON THE REVERSE SIDE AND SIGN THEIR SIGNATURES TO THIS FORM.

AFTER READING AND SIGNING THE ADMONITION FORM EACH WITNESS WAS HANDED THE PHOTOGRAPHIC LINEUP TO VIEW SEPARATELY. W-5 (CHRISTINE) VIEWED THE PHOTOGRAPHIC LINEUP FIRST AND SELECTED

FORM NO. 200-12-1

DA 00002699

EX 158 - 3

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

PAGE NO. 4 FILE NO. P386042237

	TYPE OF REPORT	INVESTIGATING OFFICER
	211 PC ROBBERY (ARMED)	A. TORTES #294

PHOTOGRAPH #6, THEN INDICATED IN HER COMMENTS, "I'M NOT POSITIVE, IF I HEARD HIS VOICE I'D KNOW FOR SURE."

I THEN HANDED THE PHOTOGRAPHIC LINEUP TO W-4 (CARL) FOR HIM TO VIEW AND UPON VIEWING THE PHOTOGRAPHIC LINEUP HE INDICATED ON HIS ADMONITION FORM THAT HE COULD NOT IDENTIFY ANYONE AND IN HIS COMMENTS HE SELECTED #2 AND #5 AND STATED, "TWO AND FIVE LOOK SOMEWHAT LIKE THE SUSPECT, BUT TO BE SURE I WOULD HAVE TO HEAR AN ORAL STATEMENT OR COMMENT."

AFTER BOTH WITNESSES HAD VIEWED AND COMPLETED THE ADMONITION FORMS, I ADMONISHED BOTH NOT TO DISCUSS THEIR SELECTIONS OR ANY PORTIONS OF THIS INVESTIGATION WITH ONE ANOTHER.

IT SHOULD BE NOTED THAT W-3 WAS UNABLE TO BE CONTACTED DUE TO THE FACT HE IS STATIONED AT LACKLAND AIR FORCE BASE IN TEXAS.

BASED ON W-1'S (TOURIGNY) IDENTIFICATION OF S-1 (GRESHAM) AND THE INABILITY OF THE OTHER WITNESSES TO MAKE A POSITIVE IDENTIFICATION, BUT INDICATED THAT IF THEY HEARD THE SUBJECT'S VOICE THEY WOULD BE ABLE TO MAKE A POSITIVE IDENTIFICATION, THIS CASE WILL BE REFERRED TO THE RIVERSIDE COUNTY DISTRICT ATTORNEY'S OFFICE REQUESTING REVIEW AND A SUBSEQUENT COMPLAINT FOR 211 PC.

DISPOSITION: ARREST/SUSPENDED

FORM NO. 200-12-1

DA 00002700

EX 158 - 4

DECLARATION OF RANDALL DALE GRESHAM

I, RANDALL DALE GRESHAM, declare the following:

1. I have personal knowledge of the following facts and if called to testify, I would do so as follows.

2. In 1986, I was arrested for attempted murder on a police officer. While incarcerated in Riverside County Jail, I was housed in protective custody (PC) because of my association with the Mexican Mafia.

3. During the time I was housed in the PC unit, I met Joseph William Hart who was accused of murder.

4. Initially, the police charged me with attempted murder of a police officer as well as numerous robberies which I did not commit. I was told by detective Moker that I was in "deep shit" and would never get out of jail. At that point, I was willing to do just about anything to get out of jail or reduce my sentence.

5. The prosecution approached me and asked if I would help in their case against Joseph Hart. I agreed to do so because I was in a very desperate situation and I felt railroaded and pressured by the prosecution. That is why I was placed with Joseph Hart.

6. My plea bargain with the prosecution relating to my case was contingent upon Joseph Hart being convicted.

7. From there on, I made it a point to listen to Joseph Hart's telephone conversations with his family and I also asked him specific questions about his case. Some of the information given to me by Joseph Hart was obtained while he (Hart) read the police reports out loud. I took that information and turned it around and implicated Joseph Hart as though he was admitting to the crime. I told the prosecution exactly what they wanted to hear, however, Joseph Hart never admitted to killing anyone.

8. Before testifying against Joseph Hart, the prosecution and police "coached" me and told me exactly what to say and what not to say. In fact, we went over my previous statements numerous times and they would highlight and emphasize exactly what my answers to their questions should be.

9. The day before I was going to testify, Joseph Hart asked me why I was doing this to him and I responded that he should have his lawyer call me out that night to talk to me. I was very scared and confused about what I was about to do. Had his lawyer contacted me, I would have told him what was going on with the prosecution and also about my rights if I told the truth. More importantly, I wanted to know what repercussions the prosection would have against me. Unfortunately, Joseph Hart's attorney never contacted me. Therefore, I proceeded to falsely testify against

Initials

EX 66 - 92

Joseph Hart.

10. During the period of time I cooperated with the prosecution, I was very well taken care of. Specifically, I was always provided cigarettes, coffee, or whatever I wanted. Additionally, when I testified, my hair was neatly cut and I was given a very nice suit and tie to wear to court in an effort to make me look good.

11. Furthermore, while on the stand, when I was asked the reason why I was in jail, I responded that I was accused of attempted murder on a police officer. The prosection immediately objected indicating that my charges were for assault and nothing more.

12. After my testimony, the prosection were extremely mad at me because of what I said on the stand regarding my charges.

13. Although I never told anyone about my cooperation with the prosecution regarding the Hart case, this has always bothered me. I believe my testimony was crucial to obtaining the death sentence in this case and I know feel very remorseful about what I did.

14. The contents of this declaration is the truth regarding what transpired during my cooperation with the prosecution and I now want to set the record straight and clear my conscience.

15. On September 18, 2002, Investigators Rick Gentillalli and Ana Hernandez of the Office of the Federal Public Defender came to interview me at the Ellsworth Correctional Facility located in Ellsworth, Kansas. Investigator Gentillalli explained that the Federal Public Defender's office has been appointed to represent Joseph William Hart in challenging his conviction and death sentence. I told Investigators Rick Gentillalli and Ana Hernandez as much as I could recall at this time.

I declare under the penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

EXECUTED this 19th day of September, 2002.

Randall Dale Gresham

RANDALL DALE GRESHAM

BRIDGES AND HARMON
ATTORNEYS AT LAW
MISSION SQUARE PLAZA
3750 UNIVERSITY AVENUE, SUITE 240
RIVERSIDE, CALIFORNIA 92501
(714) 682-2760

to testify at the trial of this case. P. 128

AUTHORITY

People v. Alexander (1983) 140 Cal.App.3d 647,659.

SO ORDERED _____

DENIED _____

ORDERED AS MODIFIED: _____

12. The date, place, and nature of all prior felony convictions of (1) the defendant, and (2) all witnesses who may be called to testify at the trial of the case.

AUTHORITY

Hill v. Superior Court (1974) 10 Cal.3d 812; In re Ferguson (1971) 5 Cal.3d 525; Engstrom v. Superior Court Cal.App.3d 240; Evidence Code Section 788.

SO ORDERED _____

DENIED _____

ORDERED AS MODIFIED: _____

13. Disclosure of any and all promises, representations, or agreements of leniency, and/or grants of immunity made by the District Attorney, his agents and employees, or made by any law enforcement personnel, as an inducement or in exchange for the testimony of any person(s) whom the People intend to subpoena or call as a witness in the trial of this matter.

AUTHORITY

People v. Ruthford (1975) 14 Cal.3d 399.

BRIDGES AND HARMON
ATTORNEYS AT LAW
MISSION SQUARE PLAZA
3750 UNIVERSITY AVENUE, SUITE 240
RIVERSIDE, CALIFORNIA 92501
(714) 682-2760

SO ORDERED _____

DENIED _____

ORDERED AS MODIFIED: _____

F 129

14. As to the defendant and all witnesses who may be called to testify at the trial of this case, all pending criminal charges against such persons anywhere, all information regarding the current parole and/or probation status of such persons, and all arrests, criminal charges, ongoing criminal investigations, or actions pending anywhere.

AUTHORITY

Hill v. Superior Court (1974) 10 Cal.3d 812; Joe Z. v. Superior Court (1970) 3 Cal.3d 797; In re Ferguson (1971) 5 Cal.3d 525; People v. Coyer (1983) 142 Cal.App.3d 839, 843; People v. Campbell (1972) 27 Cal.App.3d 49; Engstrom v. Superior Court (1971) 20 Cal.App.3d 240; People v. Garner (1961) 57 Cal.2d 135; Norton v. Superior Court (1959) 173 Cal.App.133.

SO ORDERED _____

DENIED _____

ORDERED AS MODIFIED: _____

15. All information pertaining to alleged criminal activity not charged in this case, but which the prosecution seeks to introduce at the guilt phase or penalty phase of the case against the defendant, including but not limited to, the date, time, and specific location of such activity, together with the

Arrest Time: 2105
Arrest Date: 5-19-96
Report Number: P36033217

RECEIVING SHEET
Riverside County Sheriff 03300
0980814

RCJ BOOKING TIME: 2311
RCJ BOOKING DATE: 5-19-96
BOOKING # 647207

LAST NAME, FIRST NAME, MIDDLE (JR. SR., III, etc.): GRESHAM, RANDALL DALE
AKA - NICKNAMES - MONIKERS: RANDY GRESHAM-RANDALL GRESHAM

SEX	RACE	HAIR	EYES	HEIGHT	WEIGHT	SCARS - MARKS - TATTOOS (Describe designs & Locations)
M	W	BLN	BLU	5'9	170	RT CENT L FOREARM USO LEFT FOREARM

DOB [redacted]59 PLACE OF BIRTH (City/State): RICHFIELD KANSAS

SOCIAL SECURITY # [redacted]35 20 | DRIVER'S LIC # & STATE: X [redacted] | OTHER ID #s | HOME PHONE # ( ) N-T

LAST KNOWN ADDRESS [redacted] | CITY & STATE ZIP CODE: ORANGE CA | TIME LIVED AT THAT ADDRESS: 16 MONTHS

TYPE OF ARREST: ON SIGHT ( ) WARRANT ( ) CITIZEN ( ) OTHER ( )

	CHARGES			CHARGE NARRATIVE	COURT	WARRANT#	BAIL AMOUNT
(A)	664/187(A) INCH	M	F	ATTEMPT MURDER-RAPE			
(B)		M	F				
(C)		M	F				
(D)		M	F				
(E)		M	F				

NOTE: ARRESTING AGENCY FILES EITHER MISDEMEANOR (M) OR FELONY (F) ON CHARGES AT TIME OF BOOKING.

LOCATION OF ARREST: 1771 ORANGE #13 | ARRESTING AGENCY: RPD | ARRESTING OFFICER'S NAME AND ID #: BARTRAM 4114
DISPOSITION OF VEHICLE: NA | TRANSPORTING OFFICER'S NAME AND ID #: BARTRAM / SOTO
EMERGENCY NOTIFICATION: MARTHA GRESHAM | RELATIONSHIP: WIFE | ADDRESS & PHONE #: [redacted]

MISCELLANEOUS INFORMATION TO BE RECORDED BY ARRESTING AGENCY

MEDICAL PROBLEMS: NONE

WAS YOUR ARRESTEE INVOLVED IN: VEHICLE ACCIDENT YES NO (CIRCLE CORRECT ONE)
WAS YOUR ARRESTEE INVOLVED IN: PHYSICAL FIGHT WITH OTHER THAN LAW ENFORCEMENT YES NO
WAS YOUR ARRESTEE INVOLVED IN: PHYSICAL FIGHT WITH LAW ENFORCEMENT YES NO
DID YOUR ARRESTEE EVER LOSE CONSCIOUSNESS: YES NO COMPLAIN OF PAIN: YES NO
GANG RELATED INFORMATION: N/A
HOMOSEXUAL YES NO ANY OTHER PROBLEMS ARRESTING AGENCY IS AWARE OF (FOR HOUSING ARRESTEE)

RECOMMEND FOR O.R. RELEASE: YES NO (REASON DENIED) NOT BY PEACE OFFICER

ELIGIBLE FOR 853.6 PC RELEASE: YES NO (CHECK REASONS BELOW)

( ) SAFETY OF ARRESTEE OR OTHERS MAY BE JEOPARDIZED BY RELEASE ( ) UNABLE TO CARE FOR SELF
( ) WARRANTS ( ) PROSECUTION JEOPARDIZED BY RELEASE ( ) NO I.D. ( ) OFFENSE MAY CONTINUE
( ) ARRESTEE DEMANDS TO BE TAKEN BEFORE JUDGE OR REFUSED TO SIGN CITATION ( ) OTHER ATTEMPTED

SIGNATURE OF ARRESTING OFFICER: BARTRAM 4114 BOOKING OFFICER: [signature] 1317

RSD Form 500 (Rev. 10/83) Fossedman

EX 148 - 378

CASH BOND
RECOMMENDED $ 25,000.00
GROVER C. TRASK II
DISTRICT ATTORNEY

USA, PS-015217

IN THE MUNICIPAL COURT, RIVERSIDE JUDICIAL DISTRICT
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, } D.A. #30101
v. } CASE NO. 007105
} FELONY COMPLAINT
RANDALL DALE GRESHAM
DOB: 9-23-54

FILED
JUL 23 1986
WILLIAM E. CONERLY, Clerk
By L. Velasquez, Deputy

825562

COUNT I

The undersigned, under penalty of perjury upon information and belief, declares that the above named defendant committed a violation of Section 245, Subdivision (a) of the Penal Code, a felony, in that on or about May 19, 1986, in the County of Riverside, State of California, he did wilfully and unlawfully commit an assault with a deadly weapon other than a firearm, to wit, HANDGUN, and by means of force likely to produce great bodily injury upon the person of RIVERSIDE POLICE DEPARTMENT OFFICER ALLEN, a peace officer then and there engaged in the performance of his duties, the said defendant then and there knowing and reasonably should have known that the said peace officer was then and there engaged in the performance of his duties.

It is further alleged that in the commission and attempted commission of the above offense the said defendant(s), RANDALL DALE GRESHAM, personally used a firearm, to wit, a HANDGUN, within the meaning of Penal Code section 12022.5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 20, 1986

Complainant

COURT ORIGINAL

EX 149 - 379

CASH BOND
RECOMMENDED $ 550,000.00
GROVER C. TRASK II
DISTRICT ATTORNEY

OBTS#: P385231179

FILED
Riverside County
SEP 5 1986
WILLIAM E. CONERLY, Clerk
By [signature] Deputy
D. Lautz

IN THE MUNICIPAL COURT, RIVERSIDE JUDICIAL DISTRICT
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
v.
RANDALL DALE GRESHAM
DOB: 9-23-59
Defendant.

D.A. #30938
CASE NO. CM25719
FELONY COMPLAINT

COUNT I

The undersigned, under penalty of perjury upon information and belief, declares: That the above named defendant committed a violation of Section 211 of the Penal Code, a felony, in that on or about October 6, 1985, in the County of Riverside, State of California, he did wilfully and unlawfully and by means of force and fear take personal property from the person, possession, and immediate presence of NANDU PATEL.

It is further alleged that in the commission and attempted commission of the above offense the said defendant, RANDALL DALE GRESHAM, personally used a firearm, to wit, a HANDGUN, within the meaning of Penal Code Sections 12022.5 and 1192.7(c)(8).

COUNT II

That the above named defendant committed a violation of Section 10851 of the Vehicle Code, a felony, in that on or about October 6, 1985, in the County of Riverside, State of California, he did wilfully and unlawfully drive and take a certain vehicle, to wit, a 1966 FORD MUSTANG, CALIFORNIA LICENSE #722EPC, the property of another, without the consent of and with intent to deprive the owner of title to and possession of said vehicle.

COUNT III

That the above named defendant committed a violation of Section 12021 of the Penal Code, a felony, in that on or about December 12, 1985, in the County of Riverside, State of California, he did wilfully and unlawfully own and have in his possession and under his custody and control a certain firearm, to wit, a .22 CALIBER REVOLVER, capable of being concealed upon the person, said defendant having been previously

COURT ORIGINAL

EX 150 - 380

CASH BOND
RECOMMENDED $_____
GROVER C. TRASK II
DISTRICT ATTORNEY

convicted of a felony, to wit, the crime of BURGLARY on September 11, 1978, in the Superior Court of the State of Kansas, in and for the County of Reno in violation of Section 21-3715 K.S.A.

COUNT IV

That the above named defendant committed a violation of Section 211 of the Penal Code, a felony, in that on or about September 29, 1985, in the County of Riverside, State of California, he did wilfully and unlawfully and by means of force and fear take personal property from the person, possession, and immediate presence of MUHAMMED CHISHTY.

It is further alleged that in the commission and attempted commission of the above offense the said defendant, RANDALL DALE GRESHAM, personally used a firearm, to wit, a HANDGUN, within the meaning of Penal Code Sections 12022.5 and 1192.7(c)(8).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 18, 1986

Complainant

COURT ORIGINAL

EX 150 - 381

SUPERIOR COURT OF CALIFORNIA, COU / OF RIVERSIDE — CRIMINAL (1)

TITLE: PEOPLE -vs-	DATE ~~XXXX~~ OF HEARING	NUMBER
RANDALL DALE GRESHAM	9-19-86	CR- 25719
COUNSEL: FOR PLAINTIFF / DEPUTY DISTRICT ATTORNEY	FOR DEFENDANT	DEPUTY PUBLIC DEFENDER
K. Ruddy,	None	
[X] ARRAIGNMENT [ ] CERTIFIED UNDER 859a P.C. [ ] FURTHER PROCEEDINGS RE	Violation of Section(s), (Counts & Degree) 211PC(12022.5PC)(1192.7(c)(8)PC) (Cts I,II); 10851VC(Ct III) 12021PC(Ct IV)	Reporter D. Middaugh CUSTODY STATUS [ ] NOT IN CUSTODY [X] JAIL [ ] BAIL [ ] O/R

(As to each Defendant/Case, items checked indicate proceedings had and the Orders made by the Court)

[X] People represented as above and defendant _____ present [ ] with [X] without counsel.
[ ] Defendant states his true name is (as shown) _____.
[ ] Court [ ] advises defendant [ ] is informed that defendant has been advised of his legal rights.
[ ] Rights waived.
[X] Court appoints [ ] Public Defender [X] CONFLICT PANEL(R. Martin) to represent the defendant;
[ ] defendant advised re costs.
[ ] _____ appears to represent the defendant. [ ] Public Defender relieved.
[ ] Copy of the [ ] Information [ ] Indictment is provided to the defendant.
[ ] Copy of the Memorandum Re Violation of Probation is provided to the defendant. [ ] Reading waived.
[ ] Defendant arraigned.
[ ] Motion to [ ] Set Aside the Information/Indictment [ ] Return Property / Suppress Evidence [ ] _____ is set for hearing on _____.
[ ] granted [ ] denied.
[ ] Defendant withdraws plea of [ ] NOT GUILTY [ ] NOT GUILTY BY REASON OF INSANITY as to Count(s).
[ ] Defendant pleads [ ] Guilty [ ] Nolo Contendere as to Count(s)
[ ] Specification below
[ ] Not Guilty [ ] Not Guilty by Reason of Insanity as to Count(s)
[ ] Court [ ] accepts plea [ ] finds defendant Guilty [ ] finds factual basis exists for entry of plea.
[ ] Case/Count(s) _____ dismissed.
[ ] Court [ ] fixes degree of offense as _____ degree.
[ ] declares offense a misdemeanor.
[ ] strikes prior(s).
[ ] strikes allegation(s) of [ ] being armed with a _____ [ ] having used a firearm.
[ ] Defendant [ ] admits [ ] denies [ ] prior conviction(s) of a felony [ ] being armed with a _____
[ ] having used a firearm [ ] being in violation of probation [ ] special allegation(s).
[ ] Court finds defendant [ ] in [ ] not in violation of probation.
[ ] Proceedings are suspended for the purpose of determining whether or not defendant is
[ ] a mentally disordered sex offender. [ ] Preparation and delivery of Certification waived.
[ ] a narcotic addict or in imminent danger of addiction.
[ ] presently mentally competent.
[ ] District Attorney ordered to prepare and file requisite documents.
[ ] Doctors _____ and _____ appointed to examine the defendant and to report their findings not later than _____.
[ ] Hearing thereon set for _____.
[ ] Stipulated that the Court may make its findings based upon [ ] Doctors' [ ] Probation Officer's Report.
[ ] Referred to the Probation Officer for [ ] presentence [ ] supplemental investigation and report, returnable _____ to which time pronouncement of judgment is continued.
[ ] Referral waived; immediate pronouncement of judgment having been requested.
[ ] Defendant waives statutory time for [ ] trial [ ] pronouncement of judgment [ ] _____.
[ ] Trial date of _____ [ ] vacated [ ] confirmed. [ ] Rule re disposition at time of trial waived.
[ ] Trial Readiness date of _____ [ ] vacated [ ] confirmed.
[ ] Case set for _____ days [ ] jury trial [ ] court trial (jury waived) on _____ at _____ and for Trial Readiness on _____ at _____.
[ ] Case assigned to Department _____ for all further proceedings.
[ ] Bail [ ] set at [ ] increased to [ ] reduced to $ _____ [ ] remains as fixed.
[ ] exonerated [ ] exonerated pursuant to 1303 PC [ ] forfeited [ ] forfeiture discharged.
[ ] Petition/Motion for Release on Own Recognizance/Bail Reduction is [ ] granted [ ] denied [ ] referred to Release Clerk
[ ] set for hearing on _____. [ ] Counsel stipulate to ex-parte order.
[ ] Defendant [ ] remanded to [ ] ordered released from the custody of the Sheriff.
[ ] Sheriff ordered to deliver defendant to Riverside County Jail, Riverside, for purpose of examination by medical examiners.
[ ] Bench Warrant [ ] ordered to issue [ ] and issuance stayed until _____ [ ] recalled and
[ ] quashed [ ] ordered executed; bail fixed in the sum of $ _____.
[ ] Defendant ordered to report to [ ] Probation Officer [ ] Public Defender's office forthwith.
[ ] No Information filed; to be refiled as a misdemeanor at Municipal Court, _____ Judicial District; hearing thereat set for _____.
[ ] Specification(s) of plea:

(x) Motion to consolidate with CR-25562 GRANTED.

[ ] Continued to _____ at _____ M. in Dept. HOLLENHORST, Judge

RA CAL | JAIL & PO MUNI CT | BAIL FORF DISCH FORF | ORS ACCT | REL CLK WAR BUR

/CR-25562 Miller Clerk

EX 151 - 382

FILED
RIVERSIDE COUNTY
JUN 30 1989
WILLIAM E. CONERLY, Clerk
By L.R. Velasquez Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

RANDALL DALE GRESHAM,

Defendant.

Case No. CR-25562

REPORTER'S TRANSCRIPT

Proceedings had before the Honorable THOMAS E. HOLLENHORST, Judge of the Superior Court of the State of California, County of Riverside, Department 7, on September 19, 1986

APPEARANCES:

For the Plaintiff: GROVER C. TRASK, II
District Attorney
By: KEVIN RUDDY
Deputy District Attorney
4080 Lemon Street
Riverside, California 92501

For the Defendant: ROGER MARTIN
Attorney at Law

ORIGINAL

Reported by:
Deborah M. Middaugh
C.S.R. No. 4995
Official Court Reporter
Riverside Superior Court

EX 152 - 383

PROCEEDINGS OF SEPTEMBER 19, 1986

--oOo--

THE COURT: At this time, the Court will call the matter of Randall Dale Gresham, CR-25562. Mr. Gresham, we're present here in chambers in lieu of being present in open court.

At this time, sir, do you waive your right to have this matter called and heard in open court and agree, sir, that the plea of guilty will take place here in chambers, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And do you concur, Mr. Martin?

MR. MARTIN: Yes, Your Honor, I do.

THE COURT: People concur?

MR. RUDDY: Yes.

THE COURT: At this time, the Court will proceed. For the record, apparently as to case number CR-25719, an Information was filed. However, as I understand it, the facts which led to the filing of the charge in case number 25719 have now been incorporated into the Amended Information in case number CR-25562; is that correct?

MR. RUDDY: That's correct.

MR. MARTIN: That's correct.

THE COURT: Very well. Now, counsel, as I understand it further, we will treat CR-25562 as the

master file and order the contents of case number 25719 consolidated into 25562.

MR. RUDDY: Yes.

THE COURT: Very well. At this time, Mr. Gresham, as I understand it, sir, we are going to enter pleas of guilty this morning. And in doing so, I want you to understand that you're charged under Count I with a violation of Section 245(b), that is, assault with a deadly weapon upon a peace officer.

The punishment for that offense, counsel, is three, four, five years?

MR. RUDDY: Yes, Your Honor.

THE COURT: All right. You further understand, sir, that the use of the handgun will add an additional two-year term consecutive to the five-year term.

Do you understand that?

You have to answer out loud, sir.

THE DEFENDANT: Yes, sir.

THE COURT: All right. Under Count II and III, you were charged with violations of Section 211, robbery, each count a felony. The punishment for that offense, sir, is two years, three years, or five years in State Prison.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You also understand, sir, that the admitted use allegation, use of a firearm, will carry

an additional two-year term to be served consecutively to any time imposed in Counts II and III. Do you understand that, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Finally, sir, under Count V -- strike that -- under Count IV, you are charged with a violation of Section 10851 of the California Vehicle Code, that is, auto theft, a felony, which carries a penalty of sixteen months, two, or three years in the State Prison.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Under Count V, that charges a violation of Section 12021. That offense, sir, carries a penalty of sixteen months, two, or three years in State Prison.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Mr. Gresham, as I understand this disposition in this matter, it is agreed, sir, that upon the date of sentencing in this matter, you will be sentenced to serve a period in State Prison of ten years.

Do you understand that?

THE DEFENDANT: Yes, sir, I do.

THE COURT: That ten-year prison term, as I understand it, is predicated upon your cooperation and truthful testimony in the matter of People vs. Hart,

EX 152 - 386

which is a case which is pending here in Riverside Superior Court.

Do you understand that, sir?

THE DEFENDANT: Yes, sir, I do.

THE COURT: And is that agreeable with you?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Mr. Gresham, have any other promises or representations been made to you today to get you to change your plea to guilty?

THE DEFENDANT: No, sir.

MR. MARTIN: Excuse me, Your Honor. There were other representations that were made at the hearing in Department 1 on August the 14th, which I think we can either incorporate by reference or --

THE COURT: I think we need to recite them for the record.

MR. MARTIN: I think we do, too.

THE COURT: All right.

MR. MARTIN: Those were, Your Honor, outside of the agreed-upon sentence should Mr. Gresham testify appropriately, it's further agreed that Mr. Gresham would have included in his package to the State Prison a recommendation that he be placed in the protective custody immediately upon his arrival at the reception facility at Chino.

Secondly, he'll remain in local custody until such time as he testifies and will be kept in the Riverside jail as opposed to being sent to the Indio

EX 152 - 387

jail. All other charges which the People presently have any information regarding will not be filed, and there's a possibility of a five-year prior, which will also not be filed.

THE COURT: All right. Anything else been promised to you, sir --

THE DEFENDANT: No, sir.

THE COURT: -- other than what's been stated here?

THE DEFENDANT: No, sir.

THE COURT: Mr. Ruddy?

MR. RUDDY: Your Honor, the -- these other conditions that Mr. Martin has raised, it's my understanding that they will be that they will take effect if the defendant testifies truthfully.

MR. MARTIN: That's correct.

MR. RUDDY: And not "appropriately."

THE COURT: I have indicated that earlier. That's the words I believe I used.

Mr. Gresham, do you understand also, sir, you'll have to pay a restitution fine of not less than $100, nor more than $10,000?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand, sir, if you're not a citizen of the United States, that if you are an alien, a plea of guilty to these offenses could cause your exclusion or deportation from this country? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You also understand, sir, that you'll be subject to a parole period of up to four years, and if you violate your parole, sir, you could serve all four of those years in State Prison? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, sir, has anyone put any pressure upon you or anybody close to you today to get you to change your plea to guilty?

THE DEFENDANT: No, sir.

THE COURT: You have a lawyer in this matter, Mr. Roger Martin. Have you discussed the matter quite thoroughly with him?

THE DEFENDANT: Yes, sir, I have.

THE COURT: Has he explained to you the consequences of pleading guilty to these felony charges?

THE DEFENDANT: Yes, sir, he has.

THE COURT: Have you discussed with him the facts and circumstances surrounding these events, including the defenses that you might have to them, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Anything more you want to discuss with Mr. Martin before we go any further here?

THE DEFENDANT: No, sir.

THE COURT: At this time, sir, do you understand that you have the following legal and constitutional rights? That is, you have a right to a

speedy and public trial by a jury. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You have a right to see, hear, and question all the witnesses against you. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You have a right to have a judge order into court all of the evidence and to order any witnesses to attend the trial without any cost to you, sir. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You have a right to be present at that trial and present any evidence in your own favor.

THE DEFENDANT: Yes, sir.

THE COURT: You have a right to remain silent or, if you wish to, sir, you may testify in your own behalf. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You also have a right to be represented by counsel at all stages of the proceedings. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: At this time, sir, having these rights in mind, do you wish to waive, that is, give up these rights and plead guilty today?

THE DEFENDANT: Yes, sir.

THE COURT: At this time, to a violation

under Count I, a violation of Section 245(b), that's assault on a Riverside police officer, Officer Hecht, a felony, assault with a deadly weapon, how do you wish to plead, sir?

THE DEFENDANT: Guilty.

THE COURT: And during the commission of that offense, sir, do you admit that you personally used a handgun within the meaning of Section 12022.5?

THE DEFENDANT: Yes, sir.

THE COURT: All right. As to Count II, sir, a violation of Section 211, robbery, a felony, the victim being Muhammed Chishty, a felony alleged to have been committed on September 29, 1985, to that charge, sir, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: You also wish to admit to the Court that during the commission of that offense, sir, that you personally used a handgun, within the meaning of Section 12022.5 and 1192.7(c)(8)?

THE DEFENDANT: Yes, sir.

THE COURT: All right. As to Count III, violation of section 211, robbery, a felony, the victim being Nandu Patel, the offense allegedly to have been committed on October 8, 1985, how do you wish to plead?

THE DEFENDANT: Guilty.

THE COURT: Do you wish to admit to the Court that during the commission of that offense, sir, that you personally used a handgun within the meaning of

Section 12022.5 and 1192.7(c)(8)?

THE DEFENDANT: Yes, sir, I do.

THE COURT: All right. Under Count IV, sir, to a charge of violation of Section 10851, that is, auto theft, a felony, 10851 of the Vehicle Code, allegedly to have been committed on October 6, 1985, to that charge, sir, how do you wish to plead?

THE DEFENDANT: Guilty.

THE COURT: And finally, sir, to a violation of Section 12021, that is, ex-felon in possession of a .22 caliber revolver, you having been convicted of the crime of burglary in the State of Kansas, that crime being a felony, to that charge, sir, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: And do you specifically admit, sir, that you have previously been convicted of a felony, burglary, in the State of Kansas?

THE DEFENDANT: Yes, sir, I do.

THE COURT: All right. To those offenses mentioned in Counts I through V, pleas of guilty are ordered entered.

Additionally, the Court will also order that the admission and special allegations likewise be entered, as well.

Is this matter to be referred to the probation department?

MR. MARTIN: I don't really see that we need to go through the expense of that, Your Honor.

THE COURT: Well --

MR. RUDDY: Your Honor --

THE COURT: We need a post anyway. I wonder if it wouldn't be profitable to refer the issue for a post-style sentencing report.

MR. MARTIN: That's fine.

THE COURT: And counsel, what date did you have in mind for pronouncement of judgment?

MR. RUDDY: Sometime in December.

MR. MARTIN: Any convenient date in December, Your Honor?

MR. RUDDY: Your Honor, my only concern about referring to the probation department at that time is the contents of what's occurred here and the nature of that, it might be memorialized somewhere. What I prefer is that we set it for --

THE COURT: Further proceedings date --

MR. MARTIN: That's fine.

THE COURT: Further proceedings date on December 8, and R and S date on December 16 agreeable?

MR. MARTIN: That's fine.

THE COURT: Sir, do you give up your right to be sentenced within 28 days?

THE DEFENDANT: Yes, sir.

THE COURT: You agree the sentencing will go over until the date of September 16?

THE DEFENDANT: Yes, sir, I do.

THE COURT: On the date of December 8 we'll

refer it for a post-sentence.

All right. Counsel, do you stipulate the Court may take a factual finding based upon the probation officer's statements and/or the contents of the Preliminary Hearing?

MR. MARTIN: That's fine, Your Honor.

THE COURT: Very well.

MR. MARTIN: That's basically -- the counts that were added today, in fact, there was no Preliminary Hearing.

THE COURT: I can take it off the police report, if that's agreeable.

MR. MARTIN: That's fine.

THE COURT: That will be the order at this time. And any hearing dates are now ordered vacated.

MR. RUDDY: Thank you, Your Honor.

(No omissions.)

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I, Deborah M. Middaugh, a certified shorthand court reporter, do hereby certify:

That on September 19, 1986, I took on my stenotype machine a true and correct report of the testimony given and proceedings had in the above-entitled cause, pages 1 through 11, at the time of the oral proceedings;

That the foregoing is a true and correct transcription of my notes, taken as aforesaid, and is the whole thereof.

DATED: June 28, 1989, at Riverside, California.

Deborah M Middaugh
Deborah M. Middaugh, CSR No. 4995

EX 152 - 395

§ 3095-052 95-346-009 86-117-843

11414872

STATE OF CALIFORNIA DEPARTMENT OF JUSTICE

DISPOSITION OF ARREST AND COURT ACTION

A. LAW ENFORCEMENT INFORMATION
ARRESTING/BOOKING AGENCY: Riverside PD / Riverside SO
BOOKING NO.: PNB6167043 | LOCAL NO. (OCA): G-47226 | POB:
NAME (LAST, FIRST, MIDDLE): GRESHAM, Randall Dale
SEX: M | DESCENT: W | HGT: 509 | WGT: 180 | EYES: blu | HAIR: bn | DATE OF BIRTH: [redacted]59
ARREST DATE: 061686 | WARRANT NO.: RMC#165742 | CHARGE 1 (SEC., CODE): 12025 pc | CHARGE 2 (SEC., CODE): 12031a pc
CHARGE 3 (SEC., CODE): 148 pc | CHARGE 4 (SEC., CODE): | REMARKS:

REASON FOR RELEASE: ○ 849B (2) PC ○ 849B (1) PC
If 849B (1) PC, please check one of the following:
○ COMPL. REFUSES TO PROS. ○ ADMISS. EVID. INSUFF.
○ ARRESTEE EXON. ○ ASCERT. EVID. INSUFF.
○ FURTHER INVEST.
○ RELEASED TO OTHER AGENCY
○ OTHER

RELEASE DATE:

I.D. NUMBERS: CII NO.: A07067963 | FBI NO.: 339121T7 | S.S. NO.: [redacted]3520 | D.L. NO.: [redacted]

B. PROSECUTION DATE: ○ 849.(b) PC
REASON FOR REJECTION: CHARGE 1 | CHARGE 2 | CHARGE 3 | CHARGE 4

C. COURT INFORMATION
DATE FILED: 3-17-86 | FILE NO.: 165742 | CONSOLIDATED FILE NO.: | L.A. JUD. DIST. NO.: 3548O
TYPE OF FILING: ○ INFORMATION ○ CERTIFICATION ○ INDICTMENT | S.C. JUD. DIST. NO.:

	TYPE FILING F	TYPE FILING M	FIRST PLEA NG	FIRST PLEA NG-I	FINAL PLEA G	FINAL PLEA NOLO	FINAL PLEA ACQ	DISPOSITION DIS	DISPOSITION CRT JUV	DISPOSITION HTA	DISPOSITION CRT SC	DISPOSITION CONV	DATE	TYPE DISPO F	TYPE DISPO M	CHARGES AT DISPOSITION: SECTION AND CODE	DEG	PRIOR
1.	X		X					11					4-22-86					
2.	X		X					9					4-22-86					
3.	X		X					11					4-22-86					
4.																		

DATE OF SENTENCE | TRUE NAME | TYPE OF TRIAL: ○ JURY ○ COURT ○ TRANSCRIPT ○ FINDING/VERDICT OF NOT GUILTY-INSANE

SENTENCE	CHARGE 1	SUS	CHARGE 2	SUS	CHARGE 3	SUS	CHARGE 4	SUS
CYA								
JAIL								
FINE								
RESTITUTION								
OTHER								
PROBATION	17 PC		17 PC		17 PC		17 PC	
PRISON	SUS							
NOTES:								

REMARKS:

D. PROCEEDINGS SUSPENDED DATE
○ BW ○ APPEAL ○ 1000 PC ○ CRC 3060 WIC ○ CRC 3051 WIC ○ NON-STAT DIVERSION ○ 1203.03 PC ○ MISTRIAL ○ OTHER ○ 1370 PC ○ 1026 PC ○ MDSO ○ ST. HOSP. ○ CO. MENTAL

E. REOPEN OR RETRIAL AFTER DATE
○ BW ○ APPEAL ○ 1000 PC ○ CRC ○ 1370 PC ○ NON-STAT DIVERSION ○ 1203.03 PC ○ MISTRIAL ○ HUNG JURY ○ 1370 PC ○ 1026 PC ○ MDSO ○ CYA ○ JUV CRT ○ LOWER CRT ○ OTHER

F. SUBSEQUENT ACTION
DATE — PROBATION: ○ VIOLATED ○ REVOKED ○ REINSTATED ○ 1203.3 PC ○ 1203.3 PC ○ EXPIRED
DATE — MODIFIED TO: ____ MOS ____ DS JAIL ____ FINE
DATE — CONVICTION SET ASIDE/REDUCED/DISMISSED: ○ 1203.4 PC ○ 1203.4a PC ○ 1772 WIC ○ 1203.4 WIC ○ REDUCED 17 PC ○ OTHER
DATE — RECORD SEALED: ○ 851.7 PC ○ 851.8 PC ○ 1203.45 PC

EX 153 - 396

ABSTRACT OF JUDGMENT – COMMITMENT

FORM DSL 29

FILED
RIVERSIDE COUNTY
FEB 17 1987
WILLIAM E. CONERLY, Clerk
By A. Miller Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
COURT I.D. 33
BRANCH

PEOPLE OF THE STATE OF CALIFORNIA versus
DEFENDANT: RANDALL DALE GRESHAM
AKA:
[X] PRESENT [ ] NOT PRESENT

CASE NUMBER(S): CR-25562 -A -B -C -D -E

COMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT [ ] AMENDED ABSTRACT

DATE OF HEARING (MO) (DAY) (YR)	DEPT. NO.	JUDGE	CLERK
02 17 87	7	THOMAS E. HOLLENHORST	A. Miller

REPORTER	COUNSEL FOR PEOPLE	COUNSEL FOR DEFENDANT	PROBATION NO. OR PROBATION OFFICER
B. Hoffman	D. Tuszynska	D. Gunn	M. Koleada

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES:

A. [ ] ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION MO	DAY	YEAR	CONVICTION BY JURY TRIAL	COURT TRIAL	PLEA	TERM (L,M,U)	SENTENCE RELATION CONCURRENT	CONSECUTIVE 1/3 VIOLENT	CONSECUTIVE 1/3 NONVIOL	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE(S) CONSECUTIVE	654 STAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED YEARS	MONTHS
1	PC	245(b)PC	ADW/GBI/POL.OFFIC	86	09	19	86			X	M	PRINCIPAL						4	0
2	PC	211	ROBBERY	86	09	19	86			X	M		X					1	0
3	PC	211	ROBBERY	86	09	19	86			X	M		X					1	0
4	VC	10851	VEHICLE THEFT	86	09	19	86			X	M		X						8
5	PC	12021	FELON W/FIREARM	86	09	19	86			X	M	X						(2)	0

2. ENHANCEMENTS (CHARGED AND FOUND, STRICKEN, TIME IMPOSED):

COUNT	12022(a) C/F	S	I	12022(b) C/F	S	I	12022.3(a) C/F	S	I	12022.3(b) C/F	S	I	12022.5 C/F	S	I	12022.6(a) C/F	S	I	12022.6(b) C/F	S	I	12022.7 C/F	S	I	12022.8 C/F	S	I	C/F	S	I		
																															2	0
																																8
																																8

3. INCOMPLETED SENTENCE(S) CONSECUTIVE:

COUNTY	CASE NUMBER	CREDIT FOR TIME SERVED

4. OTHER ORDERS:

5. A. NUMBER OF PRIOR PRISON TERMS:

§	C/F	S	I		
667.5(a)	0	0	0	0	0
667.5(b)	0	0	0	0	0
667.6(b)	0	0	0	0	0

B. NUMBER OF PRIOR FELONY CONVICTIONS:

§	C/F	S	I		
667.6(a)	0	0	0	0	0

6. TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DSL 290-A):

7. TIME STAYED § 1170.1(a) [5-YEAR LIMIT] AND/OR § 1170.1(f) [DOUBLE BASE LIMIT]:

8. TOTAL TERM IMPOSED: 10 0

9. EXECUTION OF SENTENCE IMPOSED:
A. [X] AT INITIAL SENTENCING HEARING XX
B. [ ] AT RESENTENCING PURSUANT TO DECISION ON APPEAL
C. [ ] AFTER REVOCATION OF PROBATION
D. [ ] AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT [PC§1170(d)]

10. DATE SENTENCE PRONOUNCED: MO 02 DAY 17 YEAR 87
CREDIT FOR TIME SPENT IN CUSTODY: TOTAL DAYS 414 INCLUDING: ACTUAL LOCAL TIME 276 LOCAL CONDUCT CREDITS 138
STATE INSTITUTIONS [ ] DMH [ ] CDC

11. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:
[X] FORTHWITH [ ] AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS
INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT:
[ ] CALIF. INSTITUTION FOR WOMEN — FRONTERA [ ] CALIF. MEDICAL FACILITY — VACAVILLE [X] CALIF. INSTITUTION FOR MEN — CHINO
[ ] OTHER (SPECIFY):

CLERK OF SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE A. Miller DATE 2-17-87

This form is prescribed pursuant to Penal Code §1213.5 to satisfy the requirements of Penal Code §1213 (Abstract of Judgment and Commitment) for determinate sentences under Penal Code §1170. A copy of probation report shall accompany the Department of Corrections' copy of this form pursuant to Penal Code §1203c. A copy of the sentencing proceedings and any supplementary probation report shall be transmitted to the Department of Corrections pursuant to Penal Code §1203.01. Attachments may be used but must be incorporated by reference.

Form Adopted by the Judicial Council of California
Effective July 1, 1981

ABSTRACT OF JUDGMENT — COMMITMENT
FORM DSL 290

Pen.C. 1213.5.

DISTRIBUTION: PINK COPY — COURT FILE, YELLOW COPY — DEPARTMENT OF CORRECTIONS, WHITE COPY — ADMINISTRATIVE OFFICE OF THE COURTS.
CRC

EX 154 - 397

Office Of The California Attorney General
110 West A. Street
Suite 1100
San Diego, Ca. 92101

ATTORNEY GENERAL SAN DIEGO DEC 20 AM 8:44

Dear Sirs; Nov 14, 02

As you are aware, I was a witness many years ago in the trial of Joseph Hart in Riverside California. Now, the Federal Public Defender has come to talk to me about that trial.

And I also signed a release for your office today 11-14-02.

First I would like to say to you that I truly want to just be honest. I have lived as a drug addict and thief and convict most of my life. I have become a Christian and have tried to turn my life around.

I am dieing from HIV/AIDS plus I have health problems, I am doing a 122 month sentence for robbery in Kansas. I really don't believe that I will live long enough to ever make-

it out of prison alive. But, I'm really praying that I do, as I have a wife and children that mean alot to me.

When I testified in 1986 about Joseph Hart, I was strung out. I had on all kinds of drugs. I had been threatened with being charged with like, 100 armed robberys. I hadn't done but one or two robberys but they said they could convict me if I didn't help.

Like I said, my desire is to help you find the truth. But I do not want to seal my fate, so to speak, by saying something that will make me guilty of a crime.

So please tell me if you plan to charge me with perjury if my testimony now doesn't match that of 1986. Do I need a attorney to represent me?

I would like to hear from you directly please.

Truly

Randall Thresher

CA0331300

RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

1. Dist. 6-05 | 2. Type Cit. OFP | 3. Type Cont. Rem | 4. File Number P530423257

5. Code Section/Classification: 211 PC / Robbery | 6. Add Charges? NO ☒ YES ☐ | 7. Location of Occurrence: 66661 INDIANA AVE RIV TACO BELL

8. Julian date and time of occurrence: 042 – 2155 | – | 9. day: 3 | 10. Date/Time Reported: 042 2154 | 11. Date of Report: 2-11-86 | 12. Type of Premises: FAST FOODS

13. Victim Name or Firm Name: TACO BELL | 14. Residence Address | 15. Res. Phone (Circle One) day / night

16. Sex/Race | 17. D.O.B. | 18. Occupation: 498995 | 19. Business Address: 66661 INDIANA | 20. Bus. Phone (Circle One) day night 781-7833

21. WAS VICTIM A MINOR OR DEPENDENT ADULT?

22. If treated for injuries, by whom? | 23. If hospitalized, where? | 24. Date/Time | 25. Nature of injuries

26. VICTIM'S STATEMENT (SUMMARY) (Victim W - Witness DC - Discovered Crime RP - Reporting Party P - Parent O - Other)

27. WITNESSES (LISTED BELOW OR ON SUPPLEMENT)

28. Code: W1	29. Name: TOURIGNY PATRICIA ANNETTE	30. Residence Address: [redacted]	31. Res. Phone (Circle One) day night: 784-7256
32. Sex/Race: FW	33. D.O.B.: 12-26-62	34. Occupation: SHIFT MANAGER	35. Business Address: 66661 INDIANA	36. Bus. Phone (Circle One) day night: 781-7833
37. Code: W2	38. Name: SCARPINO PAUL DAVID	39. Residence Address: [redacted]	40. Res. Phone (Circle One) day night: 686-8670
41. Sex/Race: MW	42. D.O.B.: [redacted]-65	43. Occupation: SHIFT MANAGER	44. Business Address: 66661 INDIANA	45. Bus. Phone (Circle One) day night: 781-7833

46. CAN A SUSPECT BE NAMED OR IDENTIFIED? BY WHOM? W1 W2

47. Name (Suspect #1)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
THICK MUSTACH	MW	507	175	BLK	BRN OR		NO ☒ YES ☐	NO ☒ YES ☐

Address and/or additional information: BLU JEANS, DENIM JACKET, WHT SHIRT, NYLON OVER HEAD — CARRYING BLUE BAG MARKED STEAKS | DL. Bkg., or cite number:

48. Name (Suspect #2)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
							NO ☐ YES ☐	NO ☐ YES ☐

Address and/or additional information | DL. Bkg., or cite number:

49. CAN A SUSPECT VEHICLE BE IDENTIFIED? BY WHOM?

50 Suspect Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	Identifying Characteristics	Veh. Stored?
								NO ☐ YES ☐

51. IS ANY OF THE STOLEN PROPERTY TRACEABLE?

53	Currency	Jewelry	Clothing	Off. Equip.	TV - Radio Camera - Etc	Firearms	Household	Consumable Goods	Livestock	Misc.	TOTAL	Vehicle
PS	$ 80000	$	$	$	$	$	$	$	$	$	$ 80000	$
PR	$	$	$	$	$	$	$	$	$	$	$	$

54. IS THERE ANY SIGNIFICANT PHYSICAL EVIDENCE?

55 Physical Evidence Present?	56. Physical Evidence Seized?	57. Photographs taken?	58. Are there supplemental or related reports?
NO ☒ YES ☐	NO ☒ YES ☐	NO ☒ YES ☐	NO ☐ YES ☒
59 Fingerprint Search Made?	60. Fingerprints Obtained?	61. Area checked for witnesses?	62. Name of I.D. Tech (if used)
NO ☒ YES ☐	NO ☒ YES ☐	NO ☐ YES ☒	N/A

63. DESCRIBE SUSPECT VEHICLE

64 Victim's Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	How was the vehicle involved?	Veh. Stored?
								NO ☒ YES ☐

65 Type of Weapon, Force, or Device Used	66. Motive	67 Member Neighborhood Watch?
SAWED OFF SHOT GUN	SELF GAIN	NO ☒ YES ☐

68. Describe briefly how the offense occurred.

SUSPECT ENTERED RESTAURANT JUMPED OVER COUTER WITH SHOT GUN, DEMANDED ALL THE MONEY, SHUT EMPLOYEES IN CLOSET LEFT THE RESTAURANT WITH BAG OF MONEY.

52. US CURRENCY

69 Reporting Officer	I.D. #	70. Supervisor Approving	I.D. #	71. Date Reviewed	72 Send copies of this report to:
FDY	374	[illegible]	255	2/12/86	

RESTRICTED INFORMATION
Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.
DATE: 9-11-07

COPIES TO	INV	FBI	ENTERED	ACTIONS	PAGE 1 OF 6 PAGES
	RMC	DOJ	STAT	ARR/APB	Mod. / Canceled
	DPS	DA	APBK	DOJ/NCIC	Sent / Canceled
	COR	PROB	ANI		

JJH 01414 TO: DA

BY: RIVERSIDE POLICE DEPT

EX 159 - 406

RIVERSIDE POLICE DEPARTMENT

CONTINUATION PAGE

Reporting Officer: F84 ID: 377

Crime Code/Classification: 211 PC ROBBERY

Location of Occurrence: 6361 TYLER, RIVA.

BLOCK #

37A W/3 BUSICK MITCHELL ALAN
[redacted] BLOOMINGTON 877-5440
DOB- [redacted] 65

37B W/4 NIX CARI STEPHEN
[redacted] WK PH - 887-4716
DOB [redacted] 64

37C W/5 NIX CHRISTINE RENE
[redacted] WK 887-4716
DOB [redacted] 63

58 PREVIOUS 211 PC REPORT TAKEN 10-8-85 FILE #
P385282 001

53 SEE STOLEN PROPERTY REPORT

DETAILS:

28 OFFICER START AND I RESPONDED TO TACO BELL. I SPOKE TO W1/TOURIGNY. SHE TOLD ME SHE WAS PREPARING FOOD WHEN A MALE SUSPECT JUMPED THE FRONT COUNTER AND SAID "... GIVE ME ALL YOUR MONEY..." SHE SAW THE SUSPECT HOLDING A SAWED OFF SHOT GUN. THE GUN HAD ONE BARREL, BROWN BUTT AND THE END OF THE BARREL WAS JAGGED WHERE IT HAD BEEN CUT. THE SUSPECT PUSHED THE [illegible]

EX 159 - 407

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer FOY I.D.# 219
Crime Code/Classification 211pc Robbery
Location of Occurrence 6060 INDIANA
File Number P3806042237
PAGE NUMBER 5 OF 6

BLOCK # COUNT

GETTING ALL THE MONEY FROM THE REGISTERS THE SUSPECT PUT EVERYONE IN THE CLOSET. THE SUSPECT DID NOT LOCK THE DOOR JUST PUT A TRASH CAN IN FRONT OF THE DOOR. HE SAID THEY COULD COME OUT IN 5 MIN.

37C W/F. /HM SAID SHE HAD CASHED HER CHECK OF $1000.00. SHE WAS WORRIED ABOUT THE SUSPECT TAKING HER PURSE. SHE SAID THE SAME THING AS HER HUSBAND. WHEN SHE CAME FROM THE CLOSET SHE WENT TO THE FRONT COUNTER AND FOUND HER PURSE, HER HUSBAND LEFT UNDER THE COUNTER THE MONEY WAS ALL THERE.

THE SUSPECT KNEW EXACTLY WHERE THE SAFE WAS IN THE OFFICE. THE FLOOR SAFE WAS IN THE FRONT AND THAT EACH REGISTER HAD A CASH BAG. HE MADE SEVERAL STATEMENTS REFERING HE HAD BEEN AT THE TACO BELL BEFORE.

THE SUSPECT WAS WEARING GLOVES SO PRINTS WERE NOT AVAILABLE. THERE WERE SEVERAL FOOTPRINTS ON THE FLOOR. IT WAS A TENNIS SHOE PRINT WITH A CHECKERED SOLE PATTERN.

Dictated with

209-12-2 (R7/04)

EX 159 - 408

RIVERSIDE POLICE DEPARTMENT

STOLEN PROPERTY REPORT

Investigating Officer	I.D.#	TYPE CRIME	File Number
KUY	217	211 PC Robbery	P3860422 37
Victim's Name (Last name first)	**Victim's Address**		**Telephone Number**
TACO Bell	6[illegible] Indiana		781-7833
Person Reporting Loss	**Residence Address**		**Telephone Number**

INSTRUCTIONS

Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½" x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in "Miscellaneous Description" column. Fill in as much information as possible. Upon completion, please mail or bring into the Riverside Police Department; 4102 Orange St., Riverside, California 92501. If mailed, mark "Attention Records, Additional Loss".

QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C-150	Walnut plastic frame, chrome knobs, 19" color. With Driver's License #D4453422 on back.	$380
1	CASH				UNDETERMINED AMOUNT	50000

Date Received	Person receiving list	Copies sent to:	PAGE NO 4	4 PAGES

200-9-2 (R7/84)

EX 159 - 409

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 6/4/86

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime Ct.	6. Crime Ct.	7. Crime Ct.	8. Date/Time Occurred	9. Day
R3-86-042-237		309						

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Arrest Av.	16. Additional Juv. Arrest
			OPN	PCP		

17. Address of Occurrence (Street No. - Name - City)

18. Type of Place

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes ( ) No ( )
GRESHAM, Randy								

44. Address - Clothing - Other Marks or Identifying Characteristics

45. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC (Armed Robbery)	(1)
(2)	(2)

58. Stolen Auto Value ASP $

59. Recovered Auto Value A2 $

Reporting Off. McFall M.M

Reviewed By

COPIES TO

62. Narrative of Supplemental Report

Assisting Personnel:

1. Det. Alex Tortes — RPD/Robbery Detail
2. Det. Pat Spellman — RPD/Crimes Against Persons Detail
3. Deputy Muratet — RSO/Jail
4. Deputy Public Def. James Ashworth (Representing Suspect)
5. Tom Thornsley — RPD/Photo Technician

VCLG ( )

ACTIONS

APB Sent
APB Cancld.
APB Sent
APB Cancld.
DOJ-NCIC Entered
Cancld.

STATE | ANI | ANI

Evidence:

1. Photographs of lineup taken by Mr. Thornsley
2. Witness Admonition and Selection Forms (filed with respective crime reports).

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

167 R

200-52-2(R1/78)

EX 160 - 410

CONTINUATION SHEET

PAGE NO. 2 | FILE NO. 86-02232

6/4/86	211 PC	Homicide
	TYPE OF REPORT	

Refer To:

1. RSO Lineup Warning and Waiver Form.

2. RSO Lineup Composition Form.

Narrative:

On Thursday, 5/29/86, at 1330 hours, various witnesses were assembled at the Riverside Police Department for the purpose of viewing a photographic lineup containing a photograph of S-Wade and for viewing a live lineup containing S-Gresham. Det. Tortes conducted photographic lineup admonitions with the witnesses and had them view the photographic lineup containing S-Wade's photograph; the witnesses viewed the photographic lineup on an individual basis.

Det. Tortes and I read the in-person lineup admonition to the witnesses in two groups. The witnesses indicated that they understood the admonition and had no questions regarding same.

At approximately 1420 hours Det. Tortes and I escorted the witnesses to the county jail where they waited in the lobby area. Contact was made with Deputy Muratet who stated that he had pulled ten fillin subjects from the tanks for use in this lineup. Mr. Ashworth arrived and requested to see a report which Det. Tortes provided him. This was a reported robbery which is being investigated in connection with this robbery series. Mr. Ashworth read this report then conferred with his client, S-Gresham. After this conference, Mr. Ashworth said that he wanted to make a record that he did not wish to go ahead with the lineup at this time without all of the crime reports available to him, however, his client, (Gresham), did want to proceed.

At this point, investigating officers and Mr. Ashworth entered the holding tank and composed the lineup. Mr. Ashworth participated in the selection process by selecting and arranging fill-in subjects. When the lineup was composed to the satisfaction of both sides, investigating officers were satisfied with its composition, and Mr. Ashworth stated, "Fine by me" in regards to the composition of the line.

Mr. Thornsley then photographed the line and has retained the photographs and negatives in his office.

Det. Tortes then conducted the lineup in Mr. Ashworth's presence. The witnesses were escorted into the viewing room in groups and were instructed to write the number of their group on their Witness Form. I gave directions to the line from the prisoner side of the facility. The witnesses viewed the subjects from all four sides. The subjects were then instructed to step to the front and center of the room and make the following statements:

"Get in the closet. Don't come out for five minutes, I've got a gun. Give me

FORM NO. 200-12-1

EX 160 - 411

PAGE NO. 3

6/4/86	TYPE OF REPORT: 211 PC	

five thousand dollars, I don't want to hurt anybody, just do what I say."

After viewing the line the witnesses were escorted from the witness room and marked their Witness Forms in the presence of Det. Tortes and Mr. Ashworth without benefit of consulting with one another.

For further details refer to Witness Forms.

Status:

Investigation continuing.

FORM NO. 3

EX 160 - 412

PHOTOGRAPHY REPORT
RIVERSIDE POLICE DEPARTMENT

DATE & TIME	FILE NUMBER
29 May '86	86-042-237
CRIME	LOCATION
DIVISION Services	ALL EXPOSURES ON SAME ROLL OF FILM ✓
PHOTOGRAPHER Thomsley	ALL EXPOSURES ON MORE THAN ONE ROLL ___

FILM TYPE: COLOR SLIDES ___ B & W ___ COLOR NEGATIVE ✓

FILM SIZE: 35mm ✓ 126 ROLL ___ 120 ROLL ___

LIGHTING CONDITIONS: FLASH OR STROBE ✓ DAYLIGHT ___ COMBINATION ___

TOTAL EXPOSURES TAKEN ON THIS INCIDENT: 5

FIRST PHOTO TAKEN INCLUDES:
Photo line up WMAs

LAST PHOTO TAKEN INCLUDES:

REMARKS / SPECIAL INSTRUCTIONS:
Photos To Go RCJ

RIVERSIDE POLICE DEPT. JUN PHOTO LAB

200-27-3 (R 3/77)

EX 160 - 413

Riverside P.D.
CA0331300

1. Master File No.	2.	3. Off. ID	4. Dist.	5. Crime Cl.	6. Crime Cl.	7. Crime Cl.	8. Beat
P3-86-042-237		304					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Cl.	14. Type Cont.	15. Additional Adults Arr.	16.
			ARR			

17. Address of Occurrence (Street No. - Name - City): 6661 Indiana Avenue, Riverside

18. Type of Place: Taco Bell

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes / No
GRESHAM, Randy 980814								

44. Address - Clothing - Other Marks or Identifying Characteristics

45. Juv: Disp: Other Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 3

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes / No

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Disp: Other Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 3

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC Armed Robbery	(1)
(2)	(2)

58. Stolen Auto Value: AUT $
59. Recovered Auto Value: AUT $
Reporting Officer: MC FALL #1711
Reviewed By:
COPIES TO

62. Narrative of Supplemental Report

ASSISTING PERSONNEL:

1.	DET. A. TORTES	RPD Robbery Detail
2.	DEPUTY LAWLER #1403	RSO Jail
3.	DEPUTY COLYER #1328	RSO Jail
4.	JAMES LUJAN	RPD Photo Technician
5.	JAMES ASHWORTH	Deputy Public Defender (Representing suspect)

EVIDENCE:

1. Photographs of line-up taken by Mr. Lujan.
2. Witness admonition and collection form (filed with respective crime reports).

VCLO ( )
ARRAIGNS
APR Sent
APR Cancel
APR Sent
APR Cancel
BOJ NCIC
Entered
Cancel

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

120

EX 161 - 414

RIVERSIDE POLICE DEPARTMENT
CONTINUATION SHEET

PAGE NO. 2

DATE	TYPE OF REPORT	INCIDENT NUMBER
6/16/86	211 PC	[illegible]

REFER TO:

1. RSO line-up warning and waiver form
2. RSO line-up composition form
3. RPD Investigation #P3-85-282-001 (211 PC)
4. RPD Investigation #P3-85-299-238 (211 PC)

NARRATIVE:

On Wednesday, 6/4/86 at 1330 hours, various witnesses were assembled at the Riverside Police Department for the purpose of viewing a photographic line-up containing a photograph of S-Wade Walters and for viewing a live line-up containing S-Geresham. Det. Tortes conducted photographic line-up admonitions with the witneses and had them view the photographic line-up containing S-Wade Walters' photograph; the witnesses viewed the photographic line-up on an individual basis.

At 1345 hours I read the in-person line-up admonition to the witnesses. The witnesses indicated that they understood the admonition and had no questions regarding same.

Det. Tortes and I escorted the witnesses to the county jail where they waited in the lobby area. Contact was made with Deputies Lawler and Colyer who advised that they had pulled eleven fill-in subjects from the tank for use in this line-up. Det. Tortes composed the line-up with the assistance and participation of Mr. Ashworth. In regards to the composition of the line-up Mr. Ashworth stated "I think thats as good as we're going to get". Mr. Ashworth inquired of his client as to his satisfaction concerning the composition of the line; Randy Gresham responded "Yeah fine".

Mr. Lujan then photographed the line and has retained the photographs and negatives in his office.

I then conducted the line-up in Mr. Ashworth's presence. The witnesses were escorted into the viewing room in groups and were instructed to write the number of their group on their witness form. Det. Tortes gave directions to the line from the prison side of the facility. Witnesses viewed the subjects from all four sides. The subjects were then instructed to step to the front and make the following statements: "Ladies, this is a hold up. Give me all the money in your register."

After viewing the line-up the witnesses were escorted from the witness room and marked their witness forms in my presence and Mr. Ashworth's presence without benefit of consulting with one another.

For further details refer to witness forms.

STATUS:

Investigation will be cleared by the arrest of S-Geresham. Investigation will be submitted to the District Attorney's Office for review with a request for complaints as appropriate. Investigation will remain open pending that review.

FORM NO. 200-12-1

EX 161 - 415

P386-042-237

ON THE ABOVE DATE, I PREPARED A LINE-UP. THE FOLLOWING IS DETAILED INFORMATION ABOUT THE LINE-UP:

1. REQUESTED BY: R.P.D
2. WAS SUSPECT(S) IDENTIFIED
3. TOTAL TIME LINE-UP TOOK
4. NUMBER OF INMATES WHO PARTICIPATED AND THEIR NAMES AND POSITION:

	NAME	BOOKING #	POSITION
1.	MILLER, RUSSELL	G15542	#1
2.	GRESHAM, RANDALL	G47227	#2
3.	MOORE, JOSEPH	G50035	#3
4.	DeGUIRE, Gerard	G35757	#4
5.	HAMILTON, Jerry	G4037	#5
6.			

5. SUSPECT(S) NAME AND NUMBER
6. SUSPECT(S) CHARGE(S)
7. NUMBER AND NAMES OF PEOPLE WHO VIEWED THE LINE-UP.

EX 161 - 41

FILE
F86-0242-237

1st FILE COPY
2nd DA

COUNTY OF RIVERSIDE SHERIFF'S DEPARTMENT

FILE NO. G47226

LINEUP

1. You are being asked to participate in a lineup.
2. You have the right to have an attorney present at this lineup to observe the proceedings. If you do not have an attorney or cannot afford one, an attorney will be obtained at no cost to you, prior to the lineup.
3. You do not have the right to refuse to participate in the lineup. If you do, this refusal can and will be used as evidence against you.
4. You have the right to remain silent and need not answer any questions. The right to remain silent does not include repeating specific words that you are requested to say during the lineup. Your refusal to repeat words as requested can and will be used as evidence against you in court.

WAIVER

5. Do you understand these rights as explained? (Yes) No
6. With these rights in mind, do you wish an attorney present to observe the lineup proceedings? (Yes) No

THE FOREGOING WAS READ AND FULLY EXPLAINED TO RANDALL D GRESHAM
(Print name of person warned)

AT 1410 (Time) ON 6-4-86 (Date)

BY [signature] Franklin 1403
(Signature of Officer - I.D. Number)

[signature] Colyer 1328
(Witness)

THE ABOVE IS TRUE
Randall D Gresham
(Signature of Person)

RIVERSIDE SHERIFF'S DEPARTMENT FORM NO. 79 WARNING AND WAIVER ON LINEUP

EX 162 - 417

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 7/15/86

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Day
P3-86-042-237		304	G05				2/11/86	

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			ARR	SUS		

17. Address of Occurrence (Street No. - Name - City): 6661 Indiana Ave., Riverside

18. Type of Place:

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V	TACO BELL		

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race	Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes	No
GRESHAM, Randall 4/30/56	W	M		511	180	Brn	Blu	[redacted]59	( )	( )

44. Address - Clothing - Other Marks or Identifying Characteristics: CII A07067963 SID 0980816 FBI 339121T7

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race	Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes	No
WALTERS, Wade	W	M		507	145	Bln	Blu	[redacted]/64	( )	( )

55. Address - Clothing - Other Marks or Identifying Characteristics: CII A07736267 FBI 134813DA2 SID 1015815 / 1292608 SS [redacted]3770

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC (Armed Robbery)	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2 $

Reporting Offipr McFALL MM

Reviewed By

COPIES TO

DA

VCLO ( )

ACTIONS

APB Sent
APB Cancld.
APR Sent
APR Cncld

DOJ-NCIC Entered
Cancld.

ENTERED STATS ARBK ANI

62. Narrative of Supplemental Report

EVIDENCE:

Three (3) tape cassette recordings of interviews with suspect Wade Walters. Placed into evidence at RPD.

REFER TO:

Attached copies of transcript of interview with suspect Wade Walters.

NARRATIVE:

On June 17 and 18, 1986, Det. Tortes and I interviewed suspect Wade Walters. For details of the interview refer to the attached transcript and tape

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

200-52-2(RI/78)

EX 163 - 418

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

PAGE NO. 2 FILE NO. P3-86-042-237

7/15/86	TYPE OF REPORT 211 PC	INVESTIGATING OFFICER McFALL #304

recordings.

STATUS:

Investigation will remain cleared by arrest. These reports will be forwarded to the District Attorney's Office.

FORM NO. 200-12-1

EX 163 - 419

Declaration of Randall Dale Gresham

1, RANDALL DALE GRESHAM, declare the following:

1. I have personal knowledge of the following facts and, if called to testify, I would do so as follows:

2. In 1986, I was arrested for attempted murder of a police officer and incarcerated in the Riverside County jail. At that jail, I was placed in the same cell as Joe Hart.

3. Soon after I was arrested, I was interviewed by a number of law enforcement officers in connection with numerous robberies. I was also placed in a number of line-ups.

4. During one of those line-ups, my attorney informed me that Wade Walters had told the authorities

RDG
Initials

EX 165 - 532

that I had committed lots and lots of robberies. I knew Wade, and we had done a few robberies together.

5. In a later interview, Detective Moker talked about all the robberies I was suspected of doing. He said that he had friends in the robbery division and that they knew all about me.

6. My attorney showed me a computer printout which he said the cops had given him. On the printout, it had page after page of 211's - robbery charges - that I was suspected of.

7. I didn't do the robberies on the sheet, there must have been over 30 of them, but I was scared that I would go away to prison for the rest

Initials

EX 165 - 533

of my life if I were charged and convicted of them. Like I said, I was scared as hell, and knew that I needed to make a deal.

8. I eventually pleaded guilty to two of the robberies along with some other charges in exchange for testifying against Joe Hart.

9. It was my understanding at the time I entered the plea that law enforcement authorities would not investigate further other charges and crimes that they suspected me of. I was specifically told this by my attorney.

10. The decision not to investigate the other crimes was a critical part of the deal I made. I would not have made it otherwise.

Initials

EX 165 - 534

11. Before I testified, both the prosecutor and my attorney told me to not offer any additional information about [redacted] my charges and my deal unless specifically asked.

I declare under penalty of perjury under the laws of the United States of America and the state of California that the foregoing is true and correct.

Executed, this, the 27 day of March, 2007

Randall Dale Gresham

Randall Dale Gresham 33873

RICHARD D. IVES
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp.

Ellsworth Co. Kansas

March 27th 2007

RDG
Initials

EX 165 - 535

DECLARATION OF STEVEN L. HARMON, ESQ.

I, Steven L. Harmon, Esq., do hereby state and declare as follows:

1. I represented Joseph William Hart in connection with his capital case, *People v. Hart*, Riverside County Superior Court Case No. CR 25670. I was appointed as second counsel in 1986, and represented Mr. Hart through his capital sentencing. I was primarily responsible for representing Mr. Hart at the penalty phase of his trial.

2. William Barnett had already been appointed to represent Mr. Hart when I was appointed as second counsel. Mr. Barnett was primarily responsible for representing Mr. Hart at the guilt phase of his trial.

3. After Mr. Hart's conviction, I released my entire trial file to Mr. Hart's post-conviction counsel. I did not retain any materials relating to Mr. Hart's case.

4. In February and April of 2007, I was contacted by Mr. Hart's federal and state habeas counsel, Amanda R. Touchton of the Federal Public Defender's Office. Ms. Touchton informed me that she had recently received materials produced in response to a post-conviction discovery order.

5. Ms. Touchton provided me with Exhibits 138, 139, 140, 141, 142 and 143 to Mr. Hart's Supplemental Informal Reply, filed January 31, 2007. I have reviewed Exhibits 138, 140, 141, 142, and 143 to the Supplemental Informal Reply. I do not recall seeing or receiving these materials during the time I represented Mr. Hart. If I had received material of this nature during my representation of Mr. Hart, I would have kept it in my trial file.

6. Exhibit 141 appears to be victim Shelah McMahon's diary. A diary or journal prepared by the victim of a crime is a significant piece of evidence. I believe I would recall receiving Shelah McMahon's diary. If I had received the diary before Mr. Hart's trial, I would likely have conducted additional investigation on the persons discussed therein to determine whether they were viable suspects to the McMahon homicide or had information relating to the crime.

7. Ms. Touchton also provided me with Exhibits 144 - 165 to Mr. Hart's Supplemental Petition for Writ of Habeas Corpus. The documents relate to Randall Gresham, an informant who testified at Mr. Hart's penalty phase in March of 1988. I do not recall seeing or receiving Exhibits 152, 153, 155, 157-164, or the information contained therein, at any point during my representation of Mr. Hart. If I had received such material, I would have kept it in my trial file.

8. During the pre-trial period of Mr. Hart's case, Mr. Hart and Randall Gresham were housed in the same cell at the Riverside County Jail. At the penalty phase of Mr. Hart's trial, Mr. Gresham testified that Mr. Hart had confessed to the murder of Mr. Hart's niece, Shelah McMahon. Ms. McMahon's murder was the centerpiece of the prosecution's case in aggravation against Mr. Hart.

9. I have reviewed Exhibit 152, which is a transcript of Mr. Gresham's September 19, 1986 plea to various charges. In the transcript, Mr. Gresham's lawyer delineates the agreement Mr. Gresham reached with the prosecution in exchange for his testimony against Mr. Hart. I did not have this plea transcript during the course of my representation of Mr. Hart. In my experience, plea hearings are not normally transcribed and, thus, are not readily available. I did not request a transcript of Mr. Gresham's plea prior to Mr. Hart's trial.

10. Mr. Gresham's attorney also indicated that there was the possibility of a "five-year prior" that would not be filed against Mr. Gresham if he testified against Mr. Hart. In my experience as a criminal defense attorney, the term "five-year prior" refers to a sentencing enhancement of five-years imposed when the defendant has prior criminal conduct.

11. When I represented Mr. Hart, I was not aware that the prosecution agreed not to charge Mr. Gresham with a sentencing enhancement in exchange for his testimony against Mr. Hart.

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12. According to Mr. Gresham's plea transcript, the District Attorney also agreed that "all other charges which the People presently have any information regarding will not be filed . . . ." In my experience as a criminal defense attorney, this type of language is not often found in a plea transcript.

13. I was not aware at the time of Mr. Hart's trial or thereafter that the Riverside County District Attorney's Office suspected Mr. Gresham of additional criminal activity. Nor was I aware that the District Attorney agreed not to file additional charges against Mr. Gresham in exchange for his testimony against Mr. Hart. If I had been provided with Mr. Gresham's plea transcript, I would have investigated the matter further.

14. I have also reviewed Exhibit 155, Mr. Gresham's Riverside County Post Sentence Report, filed March 4, 1987. In my experience, Post Sentence Reports are not readily accessible to the public and are usually sealed. I did not have Mr. Gresham's Post Sentence Report at any time during the course of my representation of Mr. Hart.

15. Attached to Mr. Gresham's Post Sentence Report is a three page print-out entitled "Name Index Print." The print-out appears to be a police document indicating Mr. Gresham's suspected criminal activity. The print-out connects 58 separate "RPD" (Riverside Police Department) numbers to Randall Gresham. To my knowledge, each of the RPD numbers indicates a separate police investigation. From this print-out, therefore, it appears that Mr. Gresham was a suspect in 58 separate crimes. The majority of the crimes are noted as "211 PC," which I understand to be the Penal Code statute for armed robberies. All of these reports, according to their corresponding dates, preceded Mr. Gresham's 1998 testimony in Mr. Hart's case.

16. When I represented Mr. Hart, I did not have the Riverside Police Department "Name Index" print-out. If I had been provided with this print-out, I definitely would have investigated the matter further. I also would have suspected that Mr. Gresham was receiving a considerable amount more from the District Attorney in exchange for his testimony than was disclosed to the jury at trial.

17. I have reviewed Exhibit 163, a transcription of Riverside Police Department interviews with Wade Walters on June 17 and 18, 1986. In the interview, Mr. Walters connected Mr. Gresham to numerous armed robberies and burglaries in Riverside County. When I represented Mr. Hart, I was not aware that Wade Walters, or anyone else, had provided information linking Mr. Gresham to numerous armed robberies and burglaries.

18. I have reviewed Exhibits 158 - 162, which are various Riverside Police Department reports relating to the armed robbery of a Taco Bell restaurant on February 11, 1986. When I represented Mr. Hart, I was not aware that Mr. Gresham was a suspect in this armed robbery or that an eyewitness had picked him out of a line-up, as the reports reveal.

19. I have reviewed Exhibit 157, an extract of Mr. Gresham's criminal history. I have also reviewed Exhibit 153, a "Disposition of Arrest and Court Action." Exhibits 153 and 157 indicate that Mr. Gresham was charged with violating California Penal Code sections 12025, 12031(a), 148.9, and 148. These violations pertain to the carrying of a concealed weapon, a loaded firearm, and misrepresentation of one's identity to law enforcement.

20. I do not recall being provided with any information regarding pending criminal charges additional to those Mr. Gresham pled guilty to on September 19, 1986. If I had been aware of the fact that additional charges were pending and were dismissed, I would have suspected that the dismissal of those charges was part of the consideration that Mr. Gresham received in exchange for his testimony against Mr. Hart.

21. At Mr. Hart's trial, as is my practice when cross-examining informants, I endeavored to challenge Mr. Gresham's credibility by exposing his state-of-mind at the time he decided to cooperate against Mr. Hart. The deal Mr. Gresham struck with the prosecution in exchange for his testimony is the most basic and fundamental evidence of his state-of-mind.

22. I have reviewed Exhibit 165, the March 27, 2007, declaration of Randall Gresham. When I represented Mr. Hart I did not know that,

before Mr. Gresham offered Mr. Hart's alleged confession to the prosecution, he was threatened with over thirty armed robbery charges. I did not know that Mr. Gresham was aware that Wade Walters, an admitted crime partner, had cooperated against him. I did not know that Mr. Gresham was "scared as hell" of spending the rest of his life in jail and knew that he "needed to make a deal."

23. The intensity of the pressure that Mr. Gresham felt to reach an agreement with the prosecution was directly proportional to his credibility. In short, the more concessions Mr. Gresham received in exchange for testifying against Joe Hart the greater his incentive to lie. If I had been aware that Mr. Gresham was a suspect in over fifty separate crimes, I would have made every attempt to elicit Mr. Gresham's fear of spending the rest of his life in prison and the level of his desperation to "make a deal."

24. Mr. Gresham's testimony regarding Mr. Hart's alleged confession to the brutal murder of his niece was very damning evidence and very difficult to overcome. Attacking Mr. Gresham's credibility was one of my paramount concerns.

I declare under penalty of perjury under the law of the United States and California that the foregoing is true and correct to the best of my knowledge.

Dated: 5-15-07

Steven L. Harmon

Steven L. Harmon, Esq.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. RANDALL DALE GRESHAM, Defendant.	CR-25562

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Proceedings had before the Honorable WILLIAM R. BAILEY
Judge of the Superior Court in and for the County of Riverside
Department 1, August 14, 1986

APPEARANCES:

For the People: OFFICE OF THE DISTRICT ATTORNEY
BY: **DANUTA TUSZYNSKA**, Deputy
4075 Main Street, First Floor
Riverside, California 92501

For the Defendant: OFFICE OF THE PUBLIC DEFENDER
BY: **ROGER MARTIN**, Deputy
4200 Orange Street
Riverside, California 92501

ORIGINAL

Reported by:

TERESA L. CASAL, CSR 7134
Official Court Reporter
Riverside Superior Court

EX 171 - 548

RIVERSIDE, CALIFORNIA, THURSDAY, AUGUST 14, 1986

WILLIAM R. BAILEY, JUDGE PRESIDING, DEPARTMENT 1

--oOo--

THE COURT: This is People of the State of California versus Randall Dale Gresham, Number CR-25562.

MS. TUSZYNSKA: Danuta Tuszynska on behalf of the People, Your Honor.

MR. MARTIN: Roger Martin appearing on behalf of Mr. Gresham.

THE COURT: Thank you.

MR. MARTIN: This matter is here today, Your Honor, on an arraignment in that case continued until today.

There's a disposition in the case which is going to be rather lengthy.

Basically, Mr. Gresham has agreed to testify on behalf of the People in the case of People versus Joseph Hart.

MS. TUSZYNSKA: I don't remember what his first name is.

THE DEFENDANT: Joseph William Hart.

MR. MARTIN: Joseph William Hart, which is presently in preliminary examination in the Municipal Court before Judge Taylor sitting as a magistrate.

Mr. Gresham has several cases which as yet are unfiled. What we would propose to do this morning, Your Honor, is to inform the Court that we have a disposition as it relates to the case; that the present allegation in the information, that we're going to ask the Court to continue the arraignment on this matter for a period of one month.

The People will be filing in that time other counts against Mr. Gresham, they will then be included in the amendment to the information presently filed before the Court.

At the time when Mr. Gresham is then arraigned on the amended information, it is our agreement that Mr. Gresham would be entering a plea of guilty to the count alleged within the present information and admitting the special allegation pursuant to 12022.5, with an agreement that the second sentence in the matter would be a period -- a total of six years. That will be four years for the 245 (b), plus two years for the special allegation pursuant to 12022.5.

It is our belief that at that time, the information will also be amended to allege four additional charges. Those being Counts 2 and 3, a violation of section 211 of the Penal Code with a special allegation as to each one of those two counts pursuant again to section 12022.5 of the Penal Code.

It is also understood that there would be a Count 4 violation of section 12021 of the Penal Code, and a Count 5, a violation of section 10851 of the Vehicle Code.

Mr. Gresham will enter pleas of guilty at that time to all of those counts and admit the special allegations.

The sentence is also to be set in the matter, Your Honor, to be a total of ten years. Six years as I noted in proposed Count 1; Counts 2 and 3, one year eight months; Count 4, eight months; and Count 5 concurrent to the other sentences.

It would be further agreed, Your Honor, with the Court's permission, that at the time of sentencing, that Mr. Gresham would have included in his package to the state

prison a recommendation that Mr. Gresham be placed into protective custody immediately upon his entrance to the Reception facility at Chino.

Secondly, Mr. Gresham will remain in local custody until such time as he testifies, and will be kept in the Riverside jail rather than being sent to the Indio jail.

All other charges which the People presently have, any kind of information regarding it is agreed will not be filed, Your Honor.

I think that covers all of it.

MS. TUSZYNSKA: There's just one additional area, and that's that the People also will not be filing a five-year prior.

MR. MARTIN: That is correct, Your Honor.

MS. TUSZYNSKA: Which could possibly be filed, but we will not be doing that.

MR. MARTIN: That is correct.

Given all of those agreements, Mr. Gresham further agrees, Your Honor, to testify truthfully in the matter of People versus Joseph Hart, both at the preliminary hearing examination and at the trial in the above matter.

MS. TUSZYNSKA: And I would indicate to the Court that this disposition is contingent upon the truthful testimony of Mr. Hart at the preliminary hearing and at the trial -- excuse me -- on Mr. Gresham at the trial of Mr. Hart.

MR. MARTIN: That is correct, Your Honor.

THE COURT: Okay.

Well, it's my understanding the preliminary hearing in

People versus Hart is going to be proceeding in the next several days. If this arraignment is continued for 30 days, then that will be until after the preliminary hearing, which means that the defendant, Mr. Gresham, would, in the interim, testify at the preliminary hearing and then come back here for sentencing in accordance, apparently, with a plea in the information as it's to be amended.

MR. MARTIN: That is correct, Your Honor. Sentencing would then be continued until such time as he has testified in the Superior Court.

MS. TUSZYNSKA: And he can just remain at Riverside County jail until he does testify.

THE COURT: Well, that was my concern. If you proceed with sentencing, then he would no longer be here.

MR. MARTIN: Correct.

It was my belief that we would continue the sentencing until such time as it would be after he has testified.

MS. TUSZYNSKA: That would be fine.

THE COURT: That could be a fairly substantial period of time before the Hart case comes to trial.

MR. MARTIN: We all understand and recognize that, Your Honor.

THE COURT: So you propose to keep him here --

MR. MARTIN: Mr. Gresham --

THE COURT: -- in local custody, then, pending the trial in the Hart case; is that correct?

MR. MARTIN: Yes, Your Honor.

We think that if Mr. Gresham is sent to state prison

prior to his testifying in Superior Court that he would be in substantial physical danger in the state prison.

MS. TUSZYNSKA: I'm sure that that is true also, Your Honor.

Mr. Gresham is not sentenced until that time because his sentence is contingent upon his truthful testimony both here and in trial, should something go awry.

MR. MARTIN: That's correct.

THE COURT: Mr. Gresham, you understand you're here today charged in violation of section 245 subdivision (b) of the Penal Code, a felony, and additional allegation of use of a handgun?

THE DEFENDANT: Yes, sir, I do.

THE COURT: Based on what you've heard this morning stated by your counsel, he has requested that your arraignment be continued for approximately 30 days which would be, I believe, on a Friday morning September 19, 1986?

THE DEFENDANT: Yes, sir.

THE COURT: Are you agreeable to continuing your arraignment to that date, which means you would not enter a plea this morning to the present information or additional allegations?

THE DEFENDANT: Yes, sir, I understand.

THE COURT: And you understand you have a right formally to be arraigned and enter a plea --

What is the time limitation, Mr. Martin?

MS. TUSZYNSKA: Fifteen days.

MR. MARTIN: Fifteen days from the date of the --

THE COURT: The information must be filed within 15 days.

MR. MARTIN: I think it's 30 days.

THE COURT: He was held in the municipal court.

MR. MARTIN: I'm not even going to tell the Court, I'm still not sure.

THE COURT: And I think it has been filed within the statutory time.

Do you consent to the continuance of the arraignment as suggested, and if necessary, do you waive statutory time, any time limitation that may be involved?

THE DEFENDANT: Yes, sir, I do. I waive the time.

THE COURT: All right.

And you understand in the interim you are going to be called as a witness in the case which is entitled People versus Hart?

THE DEFENDANT: Yes, Your Honor, I understand that.

THE COURT: All right.

So that between now and the continued date of arraignment, you would be called as a witness in that case, and that apparently you're going to have agreed to testify as a witness for the People, and of course you would have an obligation to truthfully and honestly testify in any proceeding which you're called, including that preliminary hearing?

THE DEFENDANT: Yes, Your Honor, I understand that.

THE COURT: All right.

You agree to the --

~~You're requesting the continuance of the arraignment,~~

Mr. Martin; is that right?

MR. MARTIN: Yes, Your Honor.

THE COURT: And People have any objection?

MS. TUSZYNSKA: No, sir.

THE COURT: All right.

Then on request of the Defense counsel with consent of the defendant waiving any statutory time limitation, the arraignment in this Case 25562, on the single count and special allegation, will be continued from today's date, August 14th, to Friday, September 19th, at 8:30 a.m., Department 1 in the Superior Court, and bail will remain as presently set.

What is the amount of bail?

MS. TUSZYNSKA: I believe it's $25,000.

THE COURT: At 25,000?

MS. TUSZYNSKA: Yes.

THE COURT: The defendant had previously waived statutory time for arraignment to 60 days after August 14th, 1986. And that new date will be within that date.

But you confirm your previous waiver; is that correct --

THE DEFENDANT: Yes, I do, sir.

THE COURT: -- Mr. Gresham?

All right. And bail will remain as previously set and I believe it is 25,000, so he'll be remanded to the Sheriff in lieu of posted bail in that amount.

MR. MARTIN: If I may request of the Court, Your Honor, that a transcript of the hearing this morning be prepared immediately?

THE COURT: All right.

MR. MARTIN: Thank you.

Sorry. Thank you, Your Honor.

MS. TUSZYNSKA: Thank you, Your Honor.

(Conclusion of proceedings.)

EX 171 - 556

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I, TERESA L. CASAL, Certified Shorthand Reporter for the Superior Court of the State of California, County of Riverside, do hereby certify that:

I reported the proceedings in the above-entitled action heard on August 14, 1986, and Pages 1 through 8, inclusive, constitute a complete and accurate transcription of my shorthand notes.

DATED: Riverside, California, April 19, 2007

Teresa L. Casal

TERESA L. CASAL, CSR 7134

EX 171 - 557

05/18/2007 11:59 9287713575 DIV 4 PAGE 03

HOWARD HINSON, JR.
ATTORNEY AT LAW
101 E. GURLEY, SUITE 214
PRESCOTT, ARIZONA 86301
TELEPHONE (602) 778-4500

October 14, 1986

Hand Delivered

The Honorable Richard Anderson
Judge of the Superior Court
Division One
Yavapai County Courthouse
Prescott, Arizona 86301

Re: State v. Walters
Cause No. 11838

Dear Judge Anderson:

I enclose herewith a letter from Detectives A. Tortes and Mark McFall of the Riverside Department of Police for your consideration in the above-referenced matter. Thank you.

Sincerely,

LAW OFFICES OF HOWARD HINSON, JR.

Howard Hinson, Jr.

HH/cg
Enclosure

EX 172 - 558

05/18/2007 11:59 9287713575 DIV 4 PAGE 04

CITY OF Riverside DEPARTMENT OF POLICE

4102 Orange St. · Riverside, California 92502 · 714/787-7314

October 8, 1986

To Whom It May Concern:

This letter is written in reference to the assistance that was given to this agency by Wade Walters, wherein of the ten to eleven felony investigations that we cleared due to the assistance of Wade Walters.

Partner Det. McFall and I have made a determination that of the several robberies we successfully investigated we drew the conclusion that the main suspect and perpetrator of those robberies was Randal Gresham and, although Wade Walters was a participant, we determined that he was not the main aggressor in these robberies.

Upon review of several of the robberies we investigated, the reports reflected that the larger suspect, that being Randal Gresham, directed the smaller suspect, Wade Walters, to either be a lookout, pat-down the victims or hold the victims at bay while he completed the acts of robbery.

During our interview with Wade Walters, he did admit his participation in these crimes but advised us that he was acting at the direction of Randal Gresham.

Respectfully submitted,

A. Tortes M. McFall

Detectives A. Tortes/Mark McFall
Riverside Police Department
Robbery Detail

City of Riverside Police Department

787-7231 INVESTIGATIONS | 787-7911 EMERGENCY

ALEX TORTES
DETECTIVE
(714) 787-7238

4102 ORANGE STREET
RIVERSIDE, CA 92501

EX 172 - 559

HOWARD D. HINSON, JR.
JUDGE
DIVISION 4

TELEPHONE
(928) 771-3395
FAX (928) 771-3575

Arizona Superior Court
YAVAPAI COUNTY COURTHOUSE
120 SOUTH CORTEZ STREET, #101
PRESCOTT, ARIZONA 86301

May 18, 2007

Amanda Touchton, Esq.
FEDERAL PUBLIC DEFENDER
321 East 2nd Street
Los Angeles, California 90012-4202

Sent by mail and telefax

RE: State of California v Joseph Hart

This will confirm our telephone conversation this morning. Prior to assuming my present position, as an attorney in private practice I was appointed in May 1986, to represent Wade Alan Walters on charges of Kidnaping and Armed Robbery, in Yavapai County Superior Court Cause # 11838.

I am in receipt of a document entitled "Release of Confidential/Privileged Attorney-Client, Work-Product Information", signed by Mr. Walters, which you provided to me April 27, 2007.

My law office records of my representation of Mr. Walters have been destroyed. In order to recall this case I have consulted the Court file which is stored in the County Archives. The originals of the copied documents attached to this letter, are located in the Court file, and were submitted to the sentencing Judge as attachments to the Pre-Sentence Report.

If you require further information concerning this matter, please contact me.

Sincerely,

Howard Hinson, Jr.

EX 172 - 560

PROOF OF SERVICE

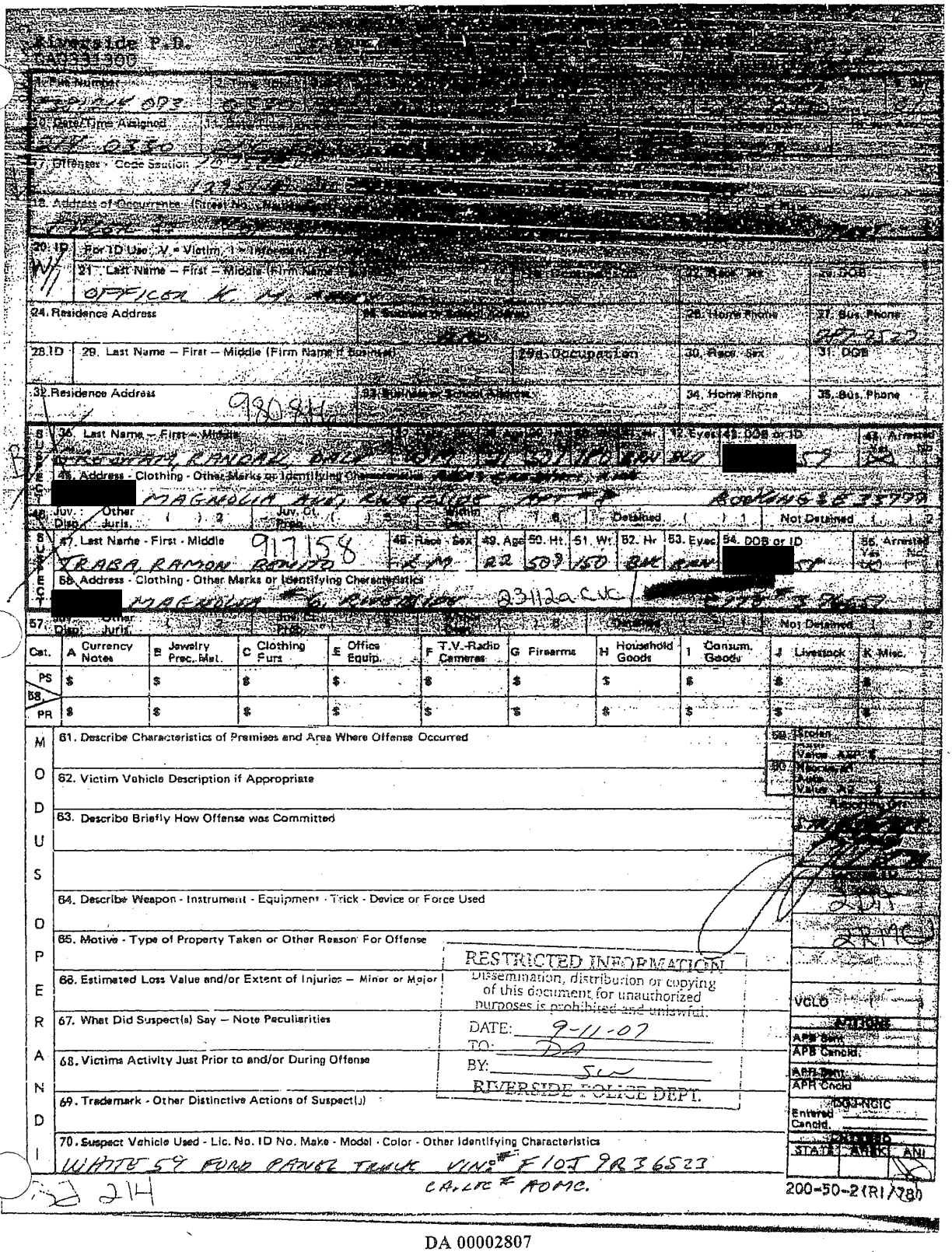
I, Nicole Arias, declare that I am a resident or employed in Los Angeles County, California; that my business address is the Federal Public Defender's Office, 321 East 2nd Street, Los Angeles, California 90012-4206, Telephone No. (213) 894-2854; that I am over the age of eighteen years; that I am not a party to the action entitled below; that I am employed by the Federal Public Defender for the Central District of California, who is a member of the State Bar of California, and at whose direction I served a copy of the attached **EXHIBITS IN SUPPORT OF SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS- VOLUME 2,** on the following individual(s), as follows, by placing same in a sealed envelope for collection and mailing via the United States

Pamela Ratner
Deputy Attorney General for
the State of California
Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

Joseph W. Hart
CDC # 87401
San Quentin State Prison
San Quentin, CA 94974

This proof of service is executed at Los Angeles, California, on May 22 2007. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

NICOLE ARIAS



Riverside P.D.

RESTRICTED INFORMATION
Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.
DATE: 9-11-07
TO: DA
BY: SW
RIVERSIDE POLICE DEPT.

200-50-2(RI/78)

DA 00002807

EX 173 - 000001

PAGE NO. 2.

DATE 8-2-01 [redacted]

OFFENSE CONTINUED:

31 CVC [redacted]

23112(A) CVC [redacted]

EVIDENCE: A. LOCATED FROM [redacted]:

1. ONE BIRTH CERTIFICATE TO "RICHARD DALE GROSSMAN"

[redacted].

B. FROM WALLET:

1. ONE KANSAS DRIVER'S LICENSE #P3K9K4

C. FROM VEHICLE:

[redacted]

2. ONE CALIF. REGISTRATION CARD.

3. ONE KANSAS LICENSE PLATE # RNS 2733

RECEIVED 8-2-01 AT APPROX. 0330 HRS WHILE ON PATROL S/B TYLER ST N/O CAMPBELL; OFFICER MCANALLY AND I SAW THE LISTED VEHICLE IN FRONT OF 4611 S/B TYLER ST. IT MADE A RIGHT TURN INTO THE 7-11 STORE WITHOUT SIGNALING IN VIOLATION OF 22107 CVC. DURING THE TRAFFIC STOP WE SAW D/S TRADE THROW OUT A [redacted] CIGARETTE BACK IN VIOLATION OF 23123(A) CVC. D/S ALSO MADE A "U" CONTROLLING THE OCCUPANTS OF THE INTOX CONTACT.

RIVERSIDE POLICE DEPARTMENT

DA 00002808

EX 173 - 000002

PAGE NO. 3

DATE 8-2-81 | 1225 hrs | INCIDENT

S/1 GRESHAM was [redacted] for no License and registration. He did not have his License because it [redacted]. Violation of 12951(a) CVC. He presented F.I. A birth certificate in the name of Richard Gresham DOB: 6-2-58, stating it was all the I.D. he had. He looked into the glove box for the registration but stated he did not have it with him, stating it was a Kansas title paper and his wife had it, making violations of 4462(a)/4454(a) CVC. The vehicle had only one license plate on the rear; Kansas #R No 2233.

S/1 Gresham voluntarily exited the vehicle without being asked at which time I saw an open Budweiser beer can on the floor board, [redacted] violation of 23122/23123 CVC. As I retrieved the beer; [redacted]

In checking for a VIN number for the vehicle my cue book showed the VIN for this year [redacted] to be on the inside of the glove box cover. Upon opening the glove box I saw in plain view registration papers ("California papers") that matched VIN numbers to the car indicating violations of 4462(a)/[redacted] CVC.

S/1 Also had a wallet under the seat with a Kansas license w/ picture. I placed him at the right rear of the vehicle. He placed his wife at

200-12-2-10-1-64 RIVERSIDE POLICE DEPARTMENT

DA 00002809

EX 173 - 000003

PAGE NO. 4

DATE 8-2-87

PROBATION IN [redacted] KANSAS WOULD [redacted] DUE TO HE LIED TO ME AS TO [redacted] AND REFUSED TO PRESENT HIS REAL DRIVERS LICENSE IN VIOLATION OF 12951(B) CVC, 3V CVC,

S/I GRESHAM THEREIN RELATED HE BOUGHT THE VEHICLE AND WAS WAITING FOR PAPERS FROM THE OWNER BUT SINCE IT DID NOT HAVE ANY LICENSE PLATES CURRENT, AND HAS 82 GMC CHEVY MALIBU HAD BLOWN AN ENGINE, HE PUT THE KANSAS PLATES ON THE VEHICLE TAKING OFF THE CALIFORNIA PLATES.

PRIOR TO S/I GRESHAM BEING PLACED INTO THE UNIT THE REAR SEAT HAD BEEN CHECKED [redacted]

[redacted]

S/I, GRESHAM WAS BOOKED FOR 10251(A) CVC, 12851(B) CVC; 31 CVC, [redacted]

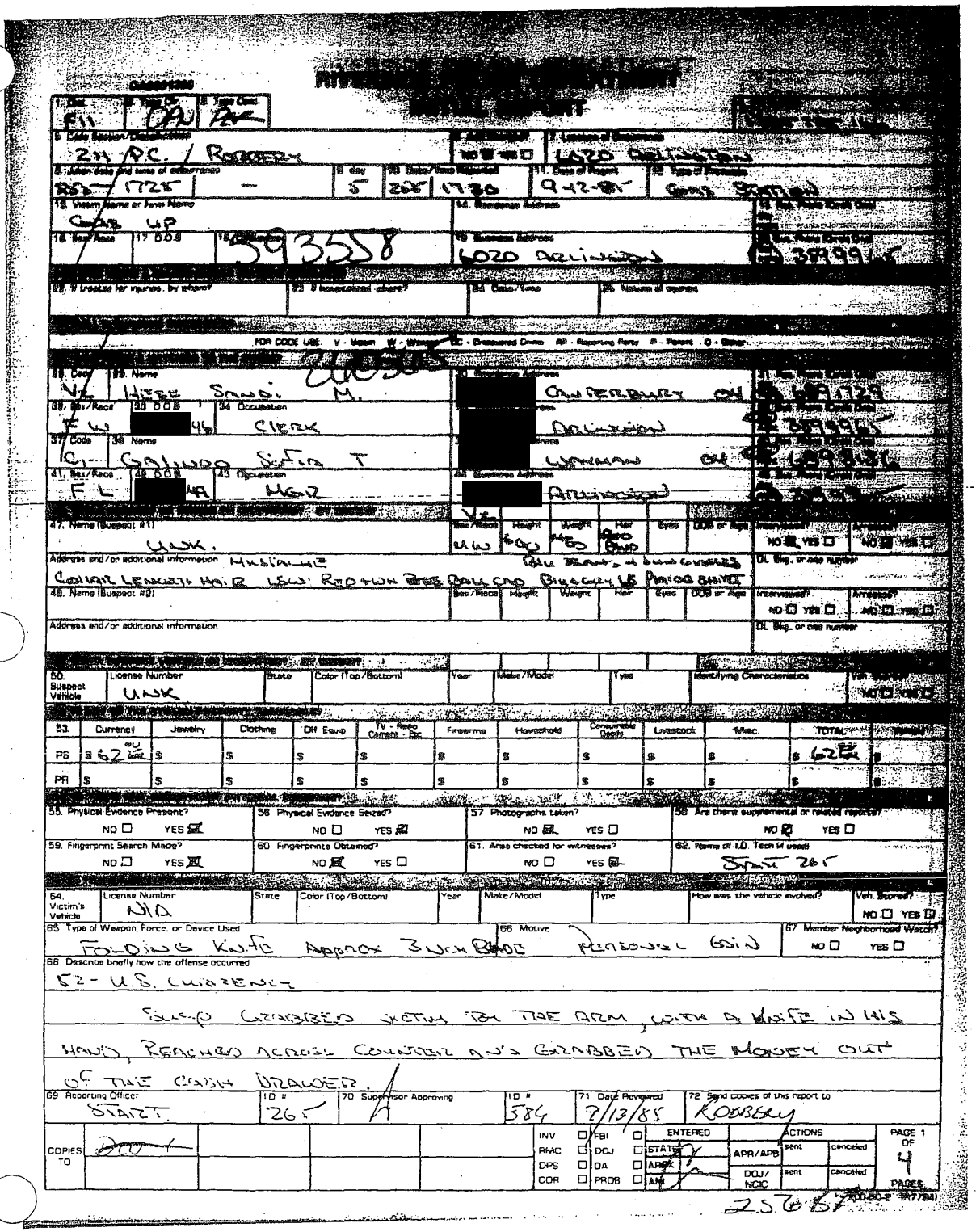
S/I, TRABA WAS CITE RELEASED FOR 23152(A) CVC [redacted]

ALL ITEMS IN EVIDENCE. VEHICLE STORED AT INLAND TOWING. TELETYPE NOTIFIED.

200-12-2 (10-1-64) RIVERSIDE POLICE DEPARTMENT

DA 00002810

EX 173 - 000004



211 P.C. / ROBBERY

LAZO Drive-In

9-12-85

593558

LAZO Drive-In

CLERK

LAZO Drive-In

UNK.

UNK

NIA

FOLDING KNIFE Approx 3 Inch Blade

52 - U.S. CURRENCY

SUSP GRABBED VICTIM BY THE ARM, WITH A KNIFE IN HIS HAND, REACHED ACROSS COUNTER AND GRABBED THE MONEY OUT OF THE CASH DRAWER.

START 265

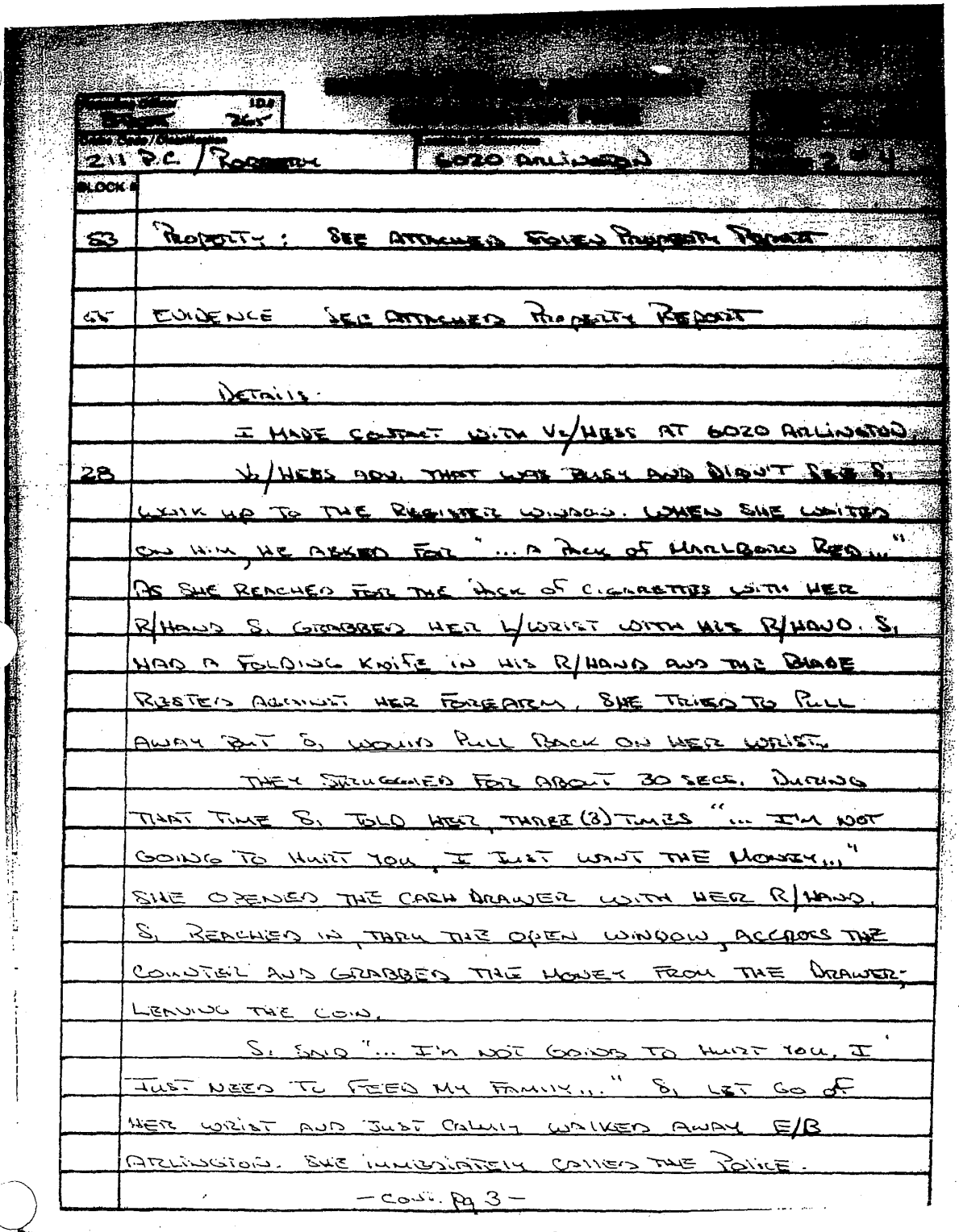
9/13/85

ROBBERY

4

DA 00002648

EX 174 - 000005



211 P.C. / ROBBERY — 6020 ARLINGTON

BLOCK

53 PROPERTY: SEE ATTACHED FOUND PROPERTY REPORT

54 EVIDENCE: SEE ATTACHED PROPERTY REPORT

Details:

I MADE CONTACT WITH V#/MRS AT 6020 ARLINGTON.

28 V#/MRS SAW THAT WAS BUSY AND DIDN'T SEE S. WALK UP TO THE REGISTER WINDOW. WHEN SHE WAITED ON HIM, HE ASKED FOR "... A PACK OF MARLBORO RED..." AS SHE REACHED FOR THE PACK OF CIGARETTES WITH HER R/HAND S. GRABBED HER L/WRIST WITH HIS R/HAND. S. HAD A FOLDING KNIFE IN HIS R/HAND AND THE BLADE RESTED AGAINST HER FOREARM. SHE TRIED TO PULL AWAY BUT S. WOULD PULL BACK ON HER WRIST.

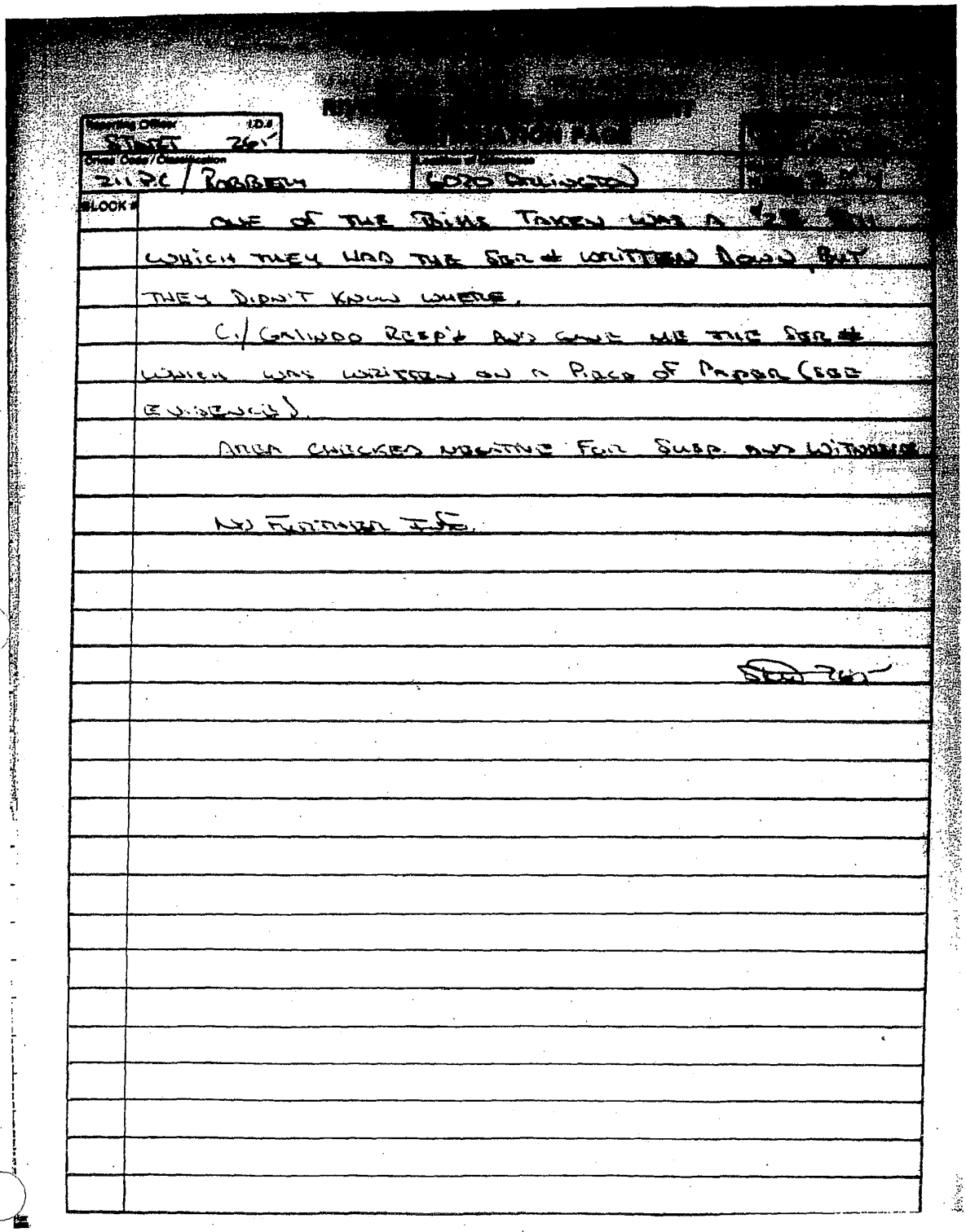
THEY STRUGGLED FOR ABOUT 30 SECS. DURING THAT TIME S. TOLD HER, THREE (3) TIMES "... I'M NOT GOING TO HURT YOU. I JUST WANT THE MONEY..." SHE OPENED THE CASH DRAWER WITH HER R/HAND. S. REACHED IN, THRU THE OPEN WINDOW, ACCROSS THE COUNTER AND GRABBED THE MONEY FROM THE DRAWER, LEAVING THE COIN.

S. SAID "... I'M NOT GOING TO HURT YOU, I JUST NEED TO FEED MY FAMILY..." S. LET GO OF HER WRIST AND JUST CALMLY WALKED AWAY E/B ARLINGTON. SHE IMMEDIATELY CALLED THE POLICE.

— Cont. Pg 3 —

DA 00002649

EX 174 - 000006

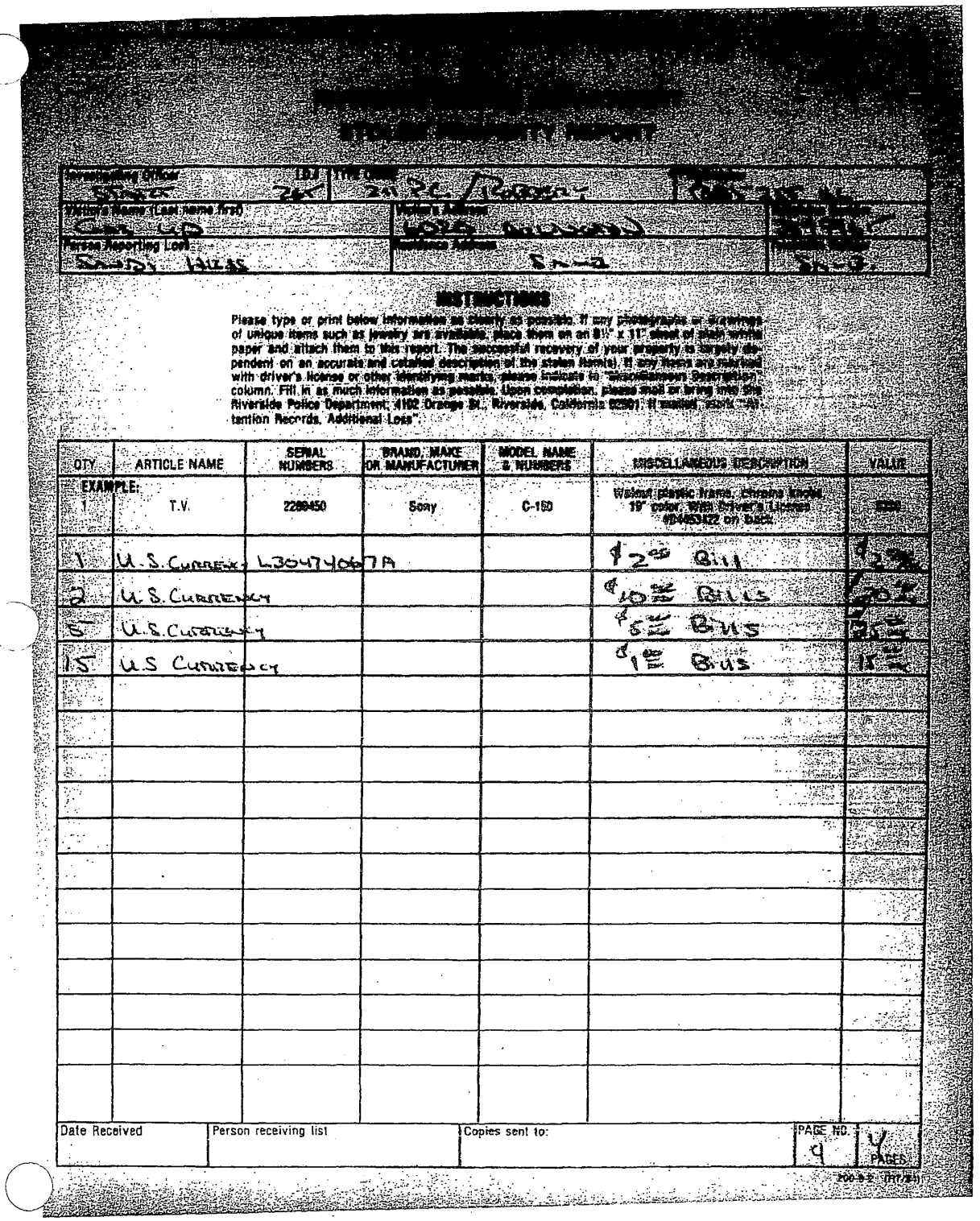


Reporting Officer I.D.#
STREET 2617
Crime Code/Classification
211 PC / ROBBERY
Location Occurred
BLOCK #

ONE OF THE ITEMS TAKEN WAS A [illegible]
WHICH THEY HAD THE SER # WRITTEN DOWN, BUT
THEY DIDN'T KNOW WHERE.
C./ GALINDO REEP'S ADV GAVE ME THE SER #
WHICH WAS WRITTEN ON A PIECE OF PAPER (SEE
EVIDENCE).
ANGEL CHECKED NEGATIVE FOR SUSP. ADV WITHOUT
NO FURTHER INFO.

DA 00002650

EX 174 - 000007



Investigating Officer | ID# | Time Date | Case #

Victim's Name (Last name first) | Victim's Address | Victim's Phone

Person Reporting Loss | Business Address | Business Phone

INSTRUCTIONS

Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½" x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in "Miscellaneous Description" column. Fill in as much information as possible. Upon completion, please mail or bring into the Riverside Police Department, 4102 Orange St., Riverside, California 92501. If mailed, mark "Attention Records, Additional Loss".

QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C-150	Walnut plastic frame, Chrome knobs, 19" color, With Driver's License #D4563122 on Back.	$250
1	U.S. Currency	L30474067A			1 2nd Bill	$1
2	U.S. Currency				$10 Bills	$20
5	U.S. Currency				$5 Bills	$25
15	U.S Currency				$1 Bills	$15

Date Received | Person receiving list | Copies sent to: | PAGE NO. 9 | 4 PAGES

DA 00002651

EX 174 - 000008

17. Address of Occurrence (Street No. - Name - City)
6020 Arlington Avenue, Riverside,CA

VICTIM
20. Last Name - First - Middle (Firm Name if Business)
GAS UP

24. Business or School Address
6020 Arlington Ave.,Riv.,CA

27. Last Name - First - Middle (Firm Name if Business)
V2 HESS, Sandi

23. Residence Address
Canterbury Rd.,Riverside,CA

32. Business or School Address
6020 Arlington Ave.,Riv.,CA

SUSPECT
36. Last Name - First - Middle
GRESHAM, Randall Dale 840816

28. Race - Sex W-M | 37. Age 26 | 38. Ht. 511 | 39. Wt. 160 | 40. Hair Brn | 41. Eyes Blu

44. Address - Clothing - Other Marks or Identifying Characteristics
SID: 0980816 FBI: 348121R7
CII: A07067983

46. Juv: Other Disp. Juris. ( ) 2 | Juv. Ct. Prob. ( ) 9 | Status Date ( ) 0 | Disclosed ( ) 9 | Not Disclosed ( ) 2

SUSPECT
46. Last Name - First - Middle

47. Race - Sex | 48. Age | 49. Ht. | 50. Wt. | 51. Hair | 52. Eyes | 53. DOB or Age

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp. Juris. ( ) 2 | Juv. Ct. Prob. ( ) 9 | Status Date ( ) 0 | Disclosed ( ) 9 | Not Disclosed ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PR	$	$	$	$	$	$	$	$	$	$
57										
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)
(1) 211 P.C. (Armed Robbery)
(2)

61. Original Offenses Changed to (Code-Crime)
(1)
(2)

58. Stolen Auto Value ASF: $
59. Recovered Auto Value AS: $

62. Narrative of Supplemental Report

Refer To: RPD P3-86-042-237 (211 P.C.)

Narrative:

In regards to the above referenced investigation, Randall Dale Gresham fell under suspicion as the possible suspect in this case based upon similarities in type of business, method of operation, physical description and clothing description.

On 07-08-86 I had contact with victim Sandi Hess. She stated that she felt she could identify the suspect if she saw him

Reporting Officer M. McPall 871 07
Reviewed By
Checked By

VCLO ( )
ACTIONS
APB Sent
APB Cncld.
APR Sent
APR Cncld
DOJ/NCIC Entered
Cncld
STATS

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002652

EX 174 - 000009

07-29-86 | 211 P.C. (Armed Robbery)

again although it would be difficult due to the lapse in time since she last saw him. I presented a photo line up to Sandi Mess containing photographs of six (6) similarly described subjects, including a photograph of Randall Gresham. Sandi Mess selected a photograph of a fill-in subject stating that he looked similar. She did not make a positive identification, however. Sandi Mess eliminated all the other photographs including the photograph of Gresham. Sandi Mess recalled that the suspect was wearing sunglasses and a cap during the crime.

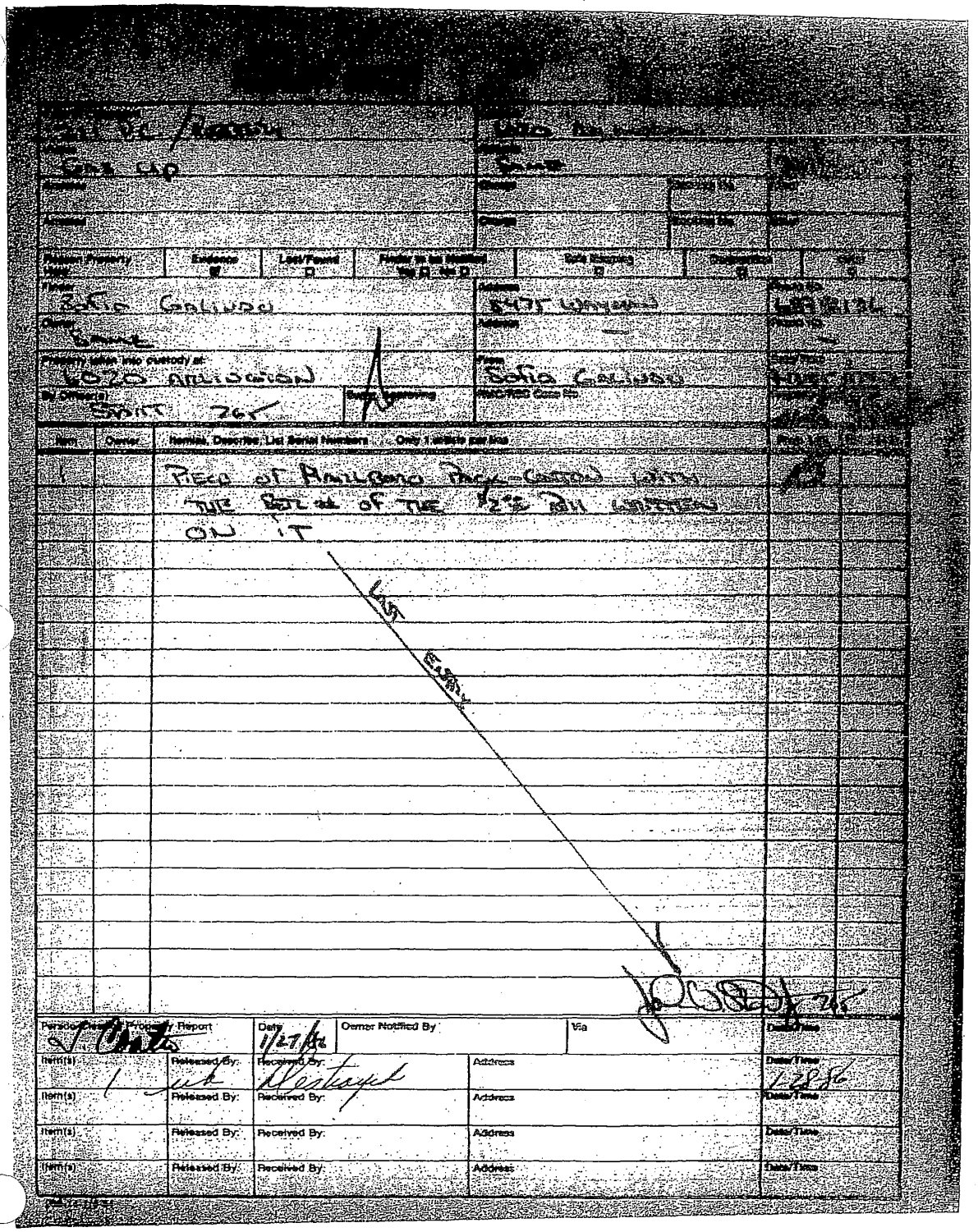
I showed Sandi Mess a photographic line up containing a photograph of Mark Walters. She selected a photograph of a fill-in subject stating that he looked the closest. She then eliminated all of the other photographs.

Status: This investigation is not presentable based upon lack of an identification and further evidence. Based upon similarities and type of business, method of operation, physical and clothing description, this investigation will be exceptionally cleared with Randall Gresham listed as the primary suspect.

FORM NO.

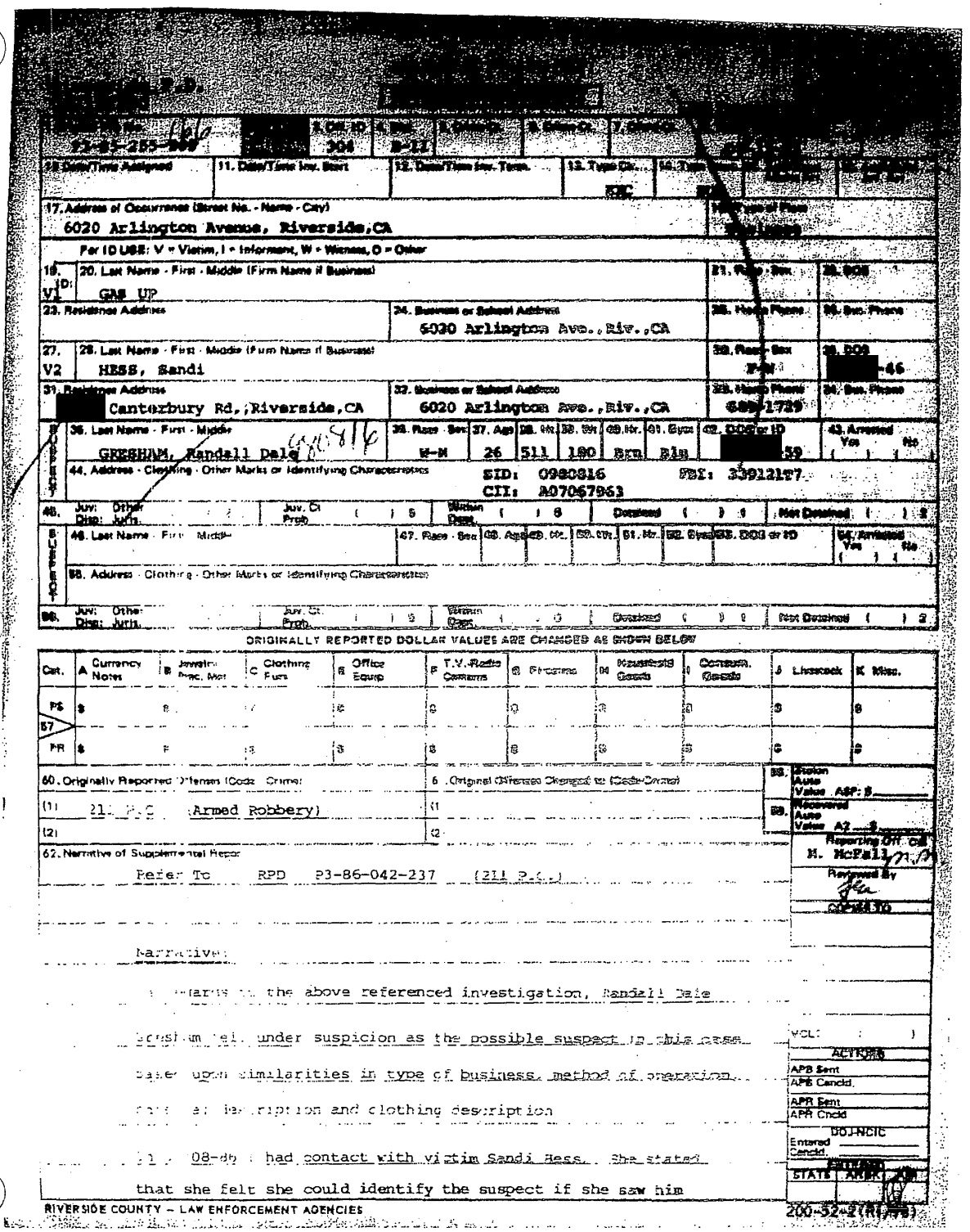
DA 00002653

EX 174 - 000010



DA 00002654

EX 174 - 000011



17. Address of Occurrence (Street No. - Name - City): 6020 Arlington Avenue, Riverside,CA

19. V1 — 20. Last Name - First - Middle (Firm Name if Business): GAS UP

23. Residence Address — 24. Business or School Address: 6030 Arlington Ave.,Riv.,CA

27. V2 — 28. Last Name - First - Middle (Firm Name if Business): HESS, Sandi

31. Residence Address: [redacted] Canterbury Rd.,Riverside,CA — 32. Business or School Address: 6020 Arlington Ave.,Riv.,CA

SUSPECT — 36. Last Name - First - Middle: GRESHAM, Randall Dale — 38. Race - Sex: W-M — 37. Age: 26 — 39. Ht.: 511 — 40. Wt.: 180 — 41. Hair: Brn — 42. Eyes: Blu — 43. Arrested: Yes / No

44. Address - Clothing - Other Marks or Identifying Characteristics — SID: 0980816 — FBI: 33912197 — CII: A07067963

48. Juv: Other Disp: Juris. — Juv. Ct Prob. — Within Days — Detained — Not Detained

SUSPECT — 46. Last Name - First - Middle — 47. Race - Sex — 48. Age — 49. Ht. — 50. Wt. — 51. Hair — 52. Eyes — 53. DOB or ID — 54. Arrested: Yes / No

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. — Juv. Ct Prob. — Within Days — Detained — Not Detained

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	D Office Equip.	E T.V.-Radio Cameras	F Firearms	G Household Goods	H Consum. Goods	J Livestock	K Misc.
PS 57	$									
PR	$									

60. Originally Reported Offenses (Code Crime):
(1) 211 P.C. (Armed Robbery)
(2)

61. Changed To (Code Crime):
(1)
(2)

63. Stolen Auto Value ASF: $
64. Recovered Auto Value AS: $

Reporting Off. Cd: M. McFall 7/1/94
Reviewed By
Copies To

62. Narrative of Supplemental Report

Refer To RPD P3-86-042-237 (211 P.C.)

Narrative:

Re: Harris vs. the above referenced investigation, Randall Dale Gresham [illegible] under suspicion as the possible suspect in this case based upon similarities in type of business, method of operation, [illegible] description and clothing description.

On 08-dd had contact with victim Sandi Hess. She stated that she felt she could identify the suspect if she saw him

VCL:
ACTIONS
APB Sent
APB Cancld.
APR Sent
APR Cncld
DOJ-NCIC
Entered
Cancld.
STATE | AMER | FBI

RIVERSIDE COUNTY – LAW ENFORCEMENT AGENCIES — 200-52-2(R)(7/93)

DA 00002607

EX 174 - 000012

07-29-86 | 211 P.C. (Armed Robbery)

again although it would be difficult due to the lapse in time since she last saw him. I presented a photo line up to Sandi Hess containing photographs of six (6) similarly described subjects, including a photograph of Randall Gresham. Sandi Hess selected a photograph of a fill-in subject stating that he looked similar. She did not make a positive identification, however. Sandi Hess eliminated all the other photographs including the photograph of Gresham. Sandi Hess recalled that the suspect was wearing sunglasses and a cap during the crime.

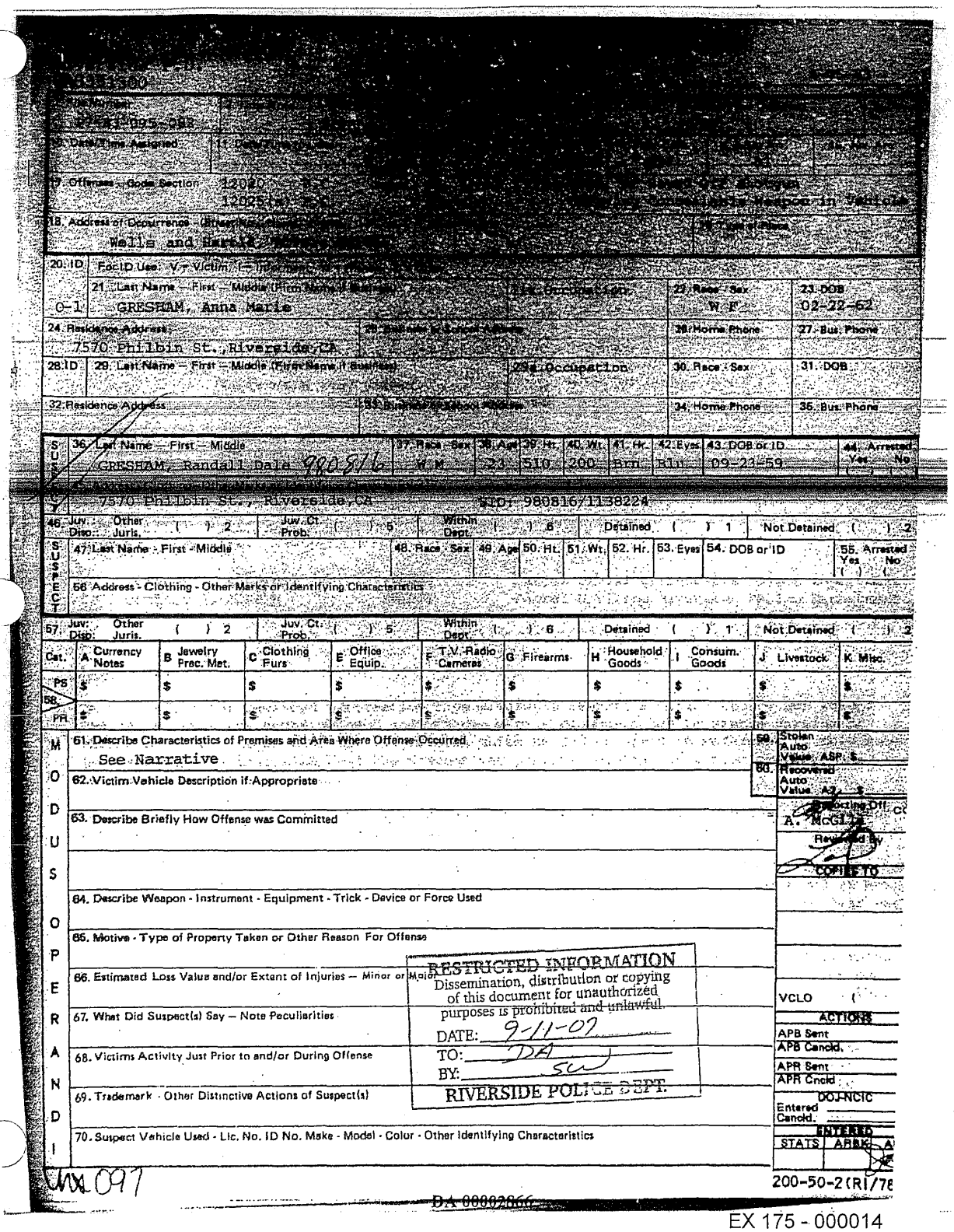
I showed Sandi Hess a photographic line up containing a photograph of Wade Walters. She selected a photograph of a fill-in subject stating that he looked the closest. She then eliminated all of the other photographs.

Status: This investigation is not prosecutable based upon lack of an identification and further evidence. Based upon similarities and type of business, method of operation, physical and clothing description, this investigation will be exceptionally cleared with Randall Gresham listed as the primary suspect.

FORM NO.

DA 00002608

EX 174 - 000013



9 Offenses - Code Section: 12020 PC
12025(a) PC

18. Address of Occurrence (Street/Highway, City): Wells and Harris, Riverside

20. ID: C-1 | 21. Last Name - First - Middle (Maiden Name, if Applicable): GRESHAM, Anna Marie | 22. Race: W | Sex: F | 23. DOB: 02-22-62

24. Residence Address: 7570 Philbin St., Riverside, CA | 26. Home Phone | 27. Bus. Phone

28. ID | 29. Last Name - First - Middle (Maiden Name, if Applicable) | 29a. Occupation | 30. Race | Sex | 31. DOB

32. Residence Address | 33. Business or School Address | 34. Home Phone | 35. Bus. Phone

SUSPECT

36. Last Name - First - Middle: GRESHAM, Randall Dale 980816 | 37. Race: W | Sex: M | 38. Age: 24 | 39. Ht.: 510 | 40. Wt.: 200 | 41. Hr.: Brn | 42. Eyes: Blu | 43. DOB or ID: 09-23-59 | 44. Arrested Yes ( ) No ( )

45. Address - Number, Street, City, State, Zip Code: 7570 Philbin St., Riverside, CA 5101 980816/1138224

46. Juv. Disp.: Other Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

47. Last Name - First - Middle | 48. Race | Sex | 49. Age | 50. Ht. | 51. Wt. | 52. Hr. | 53. Eyes | 54. DOB or ID | 55. Arrested Yes ( ) No ( )

56. Address - Clothing - Other Marks or Identifying Characteristics

57. Juv. Disp.: Other Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V. Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS	$	$	$	$	$	$	$	$	$	$
58 PR	$	$	$	$	$	$	$	$	$	$

MODUS OPERANDI

61. Describe Characteristics of Premises and Area Where Offense Occurred: See Narrative

62. Victim Vehicle Description if Appropriate

63. Describe Briefly How Offense was Committed

64. Describe Weapon - Instrument - Equipment - Trick - Device or Force Used

65. Motive - Type of Property Taken or Other Reason For Offense

66. Estimated Loss Value and/or Extent of Injuries — Minor or Major

67. What Did Suspect(s) Say — Note Peculiarities

68. Victims Activity Just Prior to and/or During Offense

69. Trademark - Other Distinctive Actions of Suspect(s)

70. Suspect Vehicle Used - Lic. No. ID No. Make - Model - Color - Other Identifying Characteristics

RESTRICTED INFORMATION
Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.
DATE: 9-11-07
TO: DA
BY: SW
RIVERSIDE POLICE DEPT.

59. Stolen Auto Value ASP $
60. Recovered Auto Value ASP $
Reporting Off: C A. McGill
Reviewed by
COPIES TO

VCLO ( )
ACTIONS
APB Sent
APB Cancld.
APR Sent
APR Cncld.
DOJ-NCIC Entered
Cancld.
ENTERED STATS ARRK A

WM 097

D.A. 00002066

200-50-2 (RI/78

EX 175 - 000014

Evidence:

Suspect Vehicle:

1959 FORD Panel Truck

Assisting Officers:

1. Officer A. MARTINEZ (#464) Patrol Division/Riverside Police Department
2. Officer J. JOSEPH (#122) Patrol Division/Riverside Police Department

Narrative:

On 4-01-83 writer received information from Riverside Sheriff's Office Deputy Don Walker indicating that the above suspect and vehicle were frequenting the La Sierra [illegible] or Riverside. He advised that the information which he had received in reference to this subject and vehicle indicated that the suspect was possibly dealing in stolen property and selling it out of his vehicle.

On 4-02-83 further information was received from Deputy Walker indicating that the suspect was possibly in possession of a sawed off shotgun.

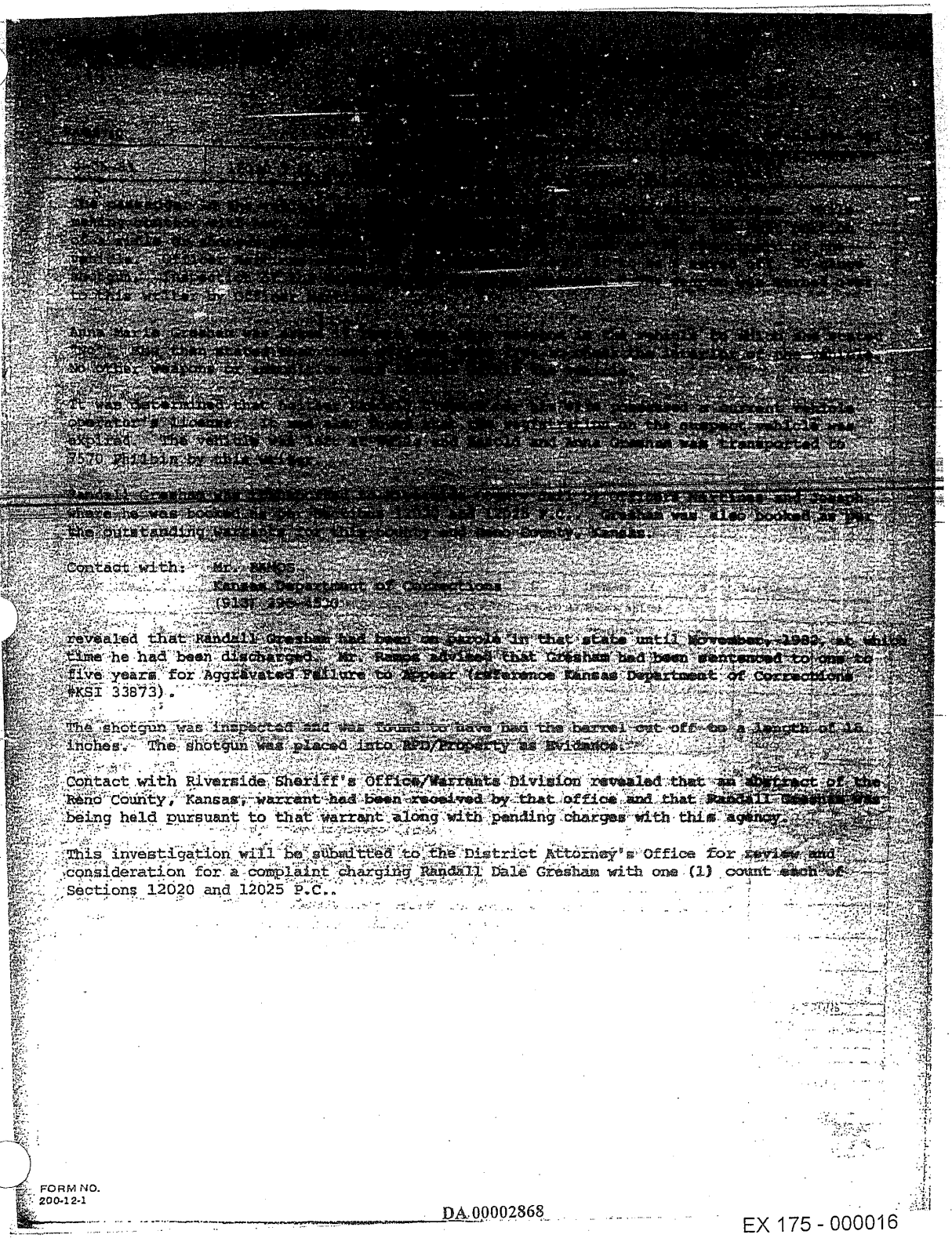
On 4-05-83 writer observed the suspect vehicle parked in a driveway at 10746 Wells. At that time the vehicle was unoccupied. A short time later the vehicle was again observed at Wells and Hole. At that time writer recognized the driver as Randall Gresham, being familiar with him from a photograph obtained from Riverside Police Department Records.

Writer also had knowledge of outstanding warrants for Randall Gresham, both from Riverside County for failure to appear and from Reno County, Kansas, for theft. RPD/Communications telephoned Reno County, Kansas, confirming the warrant for theft and the intention of that agency to extradite Randall Gresham should he be taken into custody.

While awaiting the arrival of a marked Patrol Unit to assist with a traffic stop, writer followed the suspect vehicle to 7570 Philbin. At that location the vehicle pulled into the driveway and stopped. Shortly after the arrival of the Patrol Unit, the vehicle again left the driveway travelling south on Harold to Wells. The vehicle was stopped by the Patrol Unit at Harold and Wells at which time Randall Gresham exited the vehicle and was taken into custody without incident.

DA 00002867

EX 175 - 000015



Contact with: Mr. [redacted]
Kansas Department of Corrections
(913) [redacted]

revealed that Randall Gresham had been on parole in that state until November, 1989, at which time he had been discharged. Mr. Ramos advised that Gresham had been sentenced to one to five years for Aggravated Failure to Appear (reference Kansas Department of Corrections #KSI 33873).

The shotgun was inspected and was found to have had the barrel cut off to a length of 16 inches. The shotgun was placed into RPD/Property as Evidence.

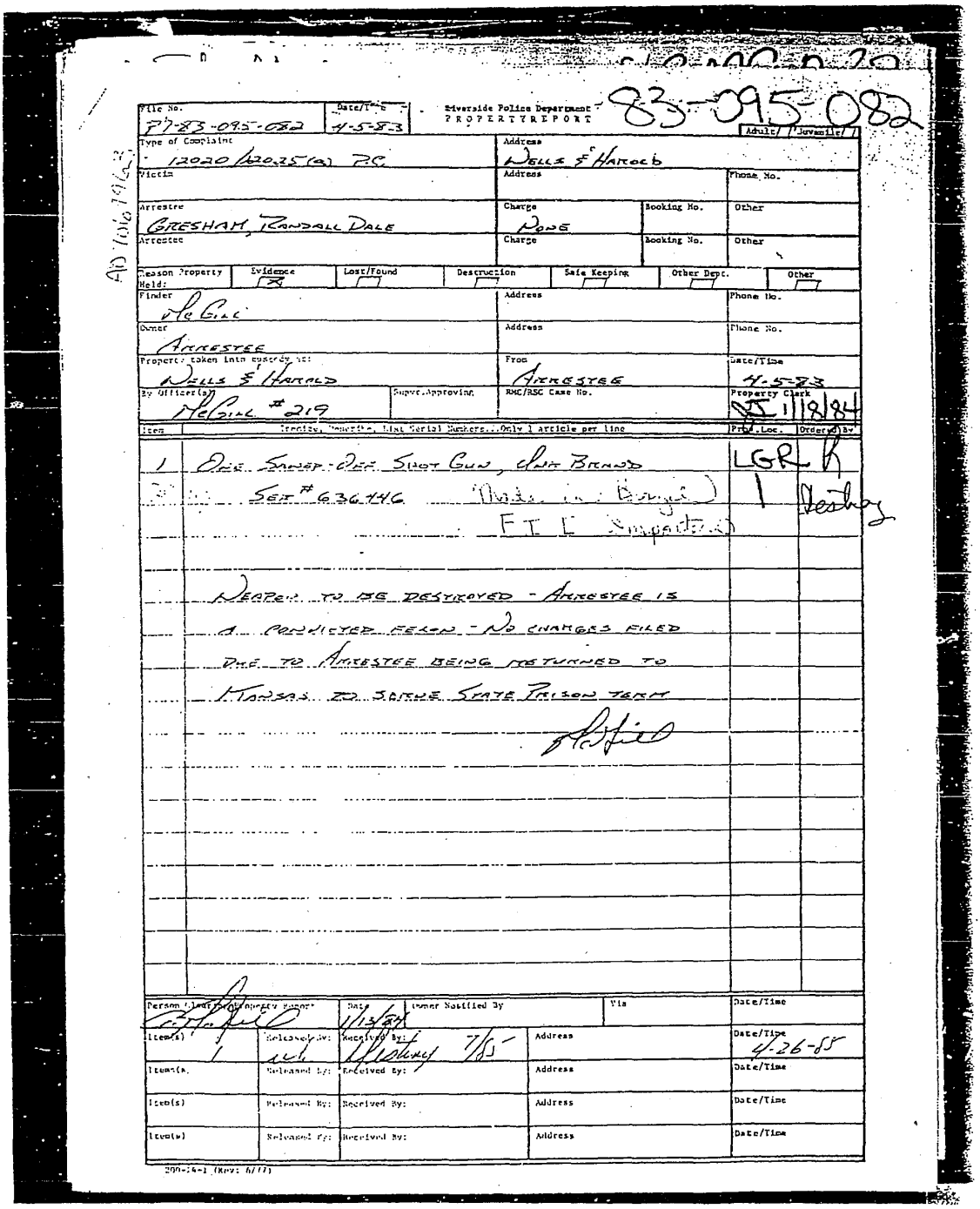
Contact with Riverside Sheriff's Office/Warrants Division revealed that an abstract of the Reno County, Kansas, warrant had been received by that office and that Randall Gresham was being held pursuant to that warrant along with pending charges with this agency.

This investigation will be submitted to the District Attorney's Office for review and consideration for a complaint charging Randall Dale Gresham with one (1) count each of Sections 12020 and 12025 P.C..

FORM NO.
200-12-1

DA 00002868

EX 175 - 000016



Riverside Police Department
PROPERTY REPORT

83-095-082

File No. F7-83-095-082 | Date/Time 4-5-83 | Adult/Juvenile

Type of Complaint: 12020 (a) 25 PC | Address: Wells & Harrod

Victim | Address | Phone No.

Arrestee: GRESHAM, RANDALL DALE | Charge: NONE | Booking No. | Other

Arrestee | Charge | Booking No. | Other

Reason Property Held: Evidence [X] | Lost/Found | Destruction | Safe Keeping | Other Dept. | Other

Finder: McGill | Address | Phone No.

Owner: ARRESTEE | Address | Phone No.

Property taken into custody at: Wells & Harrod | From: ARRESTEE | Date/Time: 4-5-83

By Officer(s): McGill #219 | Supvr. Approving | RMC/RSC Case No. | Property Clerk: 1/18/84

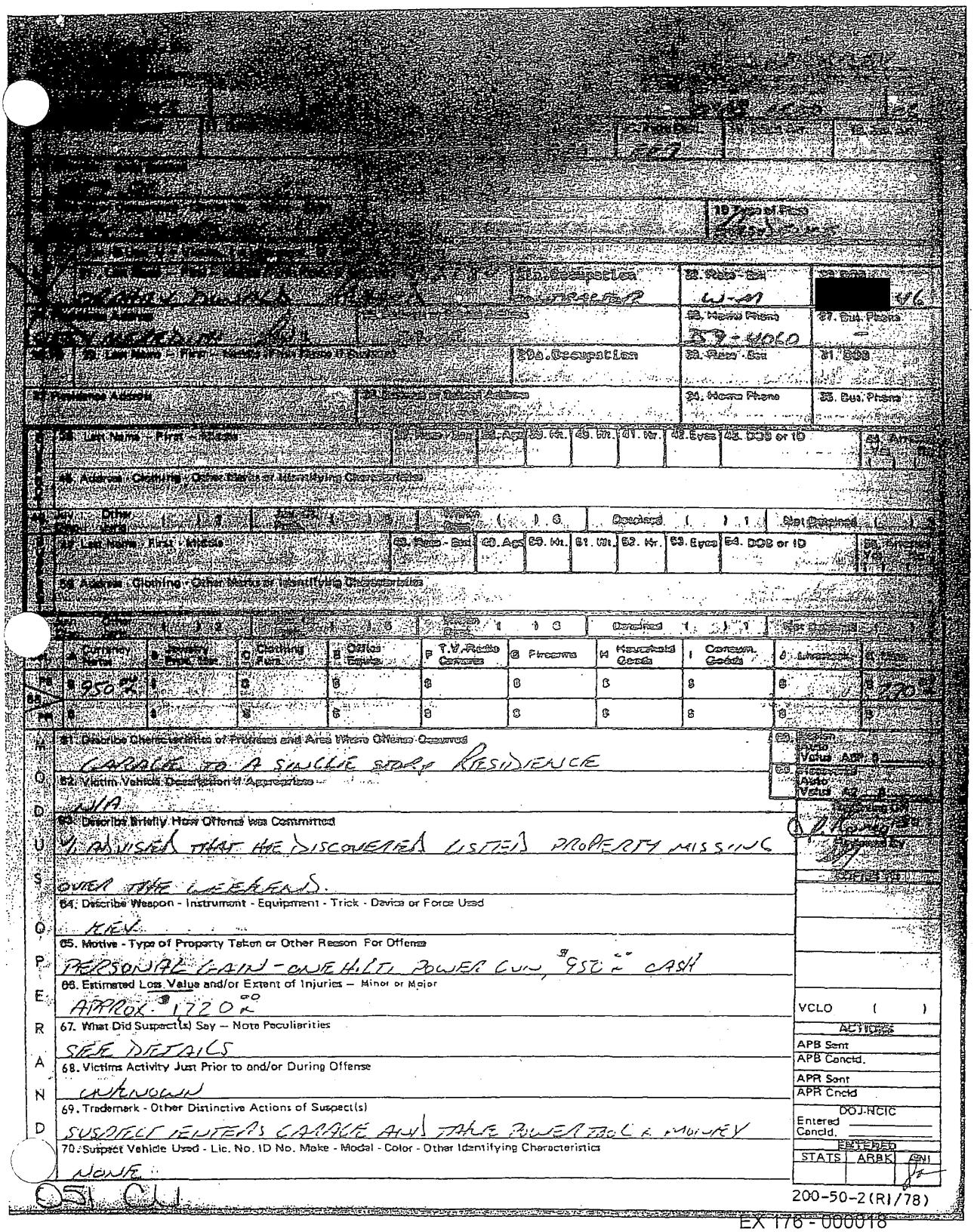
Item	Itemize, Describe, List Serial Numbers...Only 1 article per line	Prop. Loc.	Order of Disp.
1	Ediz. Savage - Def. Shot Gun, Unk Brand	LGR	
	Ser # 636446 Wood Stock & Barrel	1	Destroy
	F T L Supports		
	WEAPON TO BE DESTROYED - ARRESTEE IS		
	A CONVICTED FELON - NO CHARGES FILED		
	DUE TO ARRESTEE BEING RETURNED TO		
	KANSAS TO SERVE STATE PRISON TERM		
	McGill		

Person Releasing Property: | Date: 1/13/84 | Owner Notified By | Via | Date/Time

	Released By:	Received By:	Address	Date/Time
Item(s) 1	[illegible]	[illegible] 7/85		4-26-85
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time

200-14-1 (Rev: 6/77)

EX 175 - 000017



61. Describe Characteristics of Premises and Area Where Offense Occurred
GARAGE TO A SINGLE STORY RESIDENCE

62. Victim Vehicle Description if Appropriate
N/A

63. Describe Briefly How Offense was Committed
V. ADVISED THAT HE DISCOVERED LISTED PROPERTY MISSING OVER THE WEEKEND.

64. Describe Weapon - Instrument - Equipment - Trick - Device or Force Used
KEY

65. Motive - Type of Property Taken or Other Reason For Offense
PERSONAL GAIN - ONE HILTI POWER GUN, $950.00 CASH

66. Estimated Loss Value and/or Extent of Injuries – Minor or Major
APPROX. $1720.00

67. What Did Suspect(s) Say – Note Peculiarities
SEE DETAILS

68. Victims Activity Just Prior to and/or During Offense
UNKNOWN

69. Trademark - Other Distinctive Actions of Suspect(s)
SUSPECT ENTERS GARAGE AND TAKE POWER TOOL & MONEY

70. Suspect Vehicle Used - Lic. No. ID No. Make - Model - Color - Other Identifying Characteristics
NONE

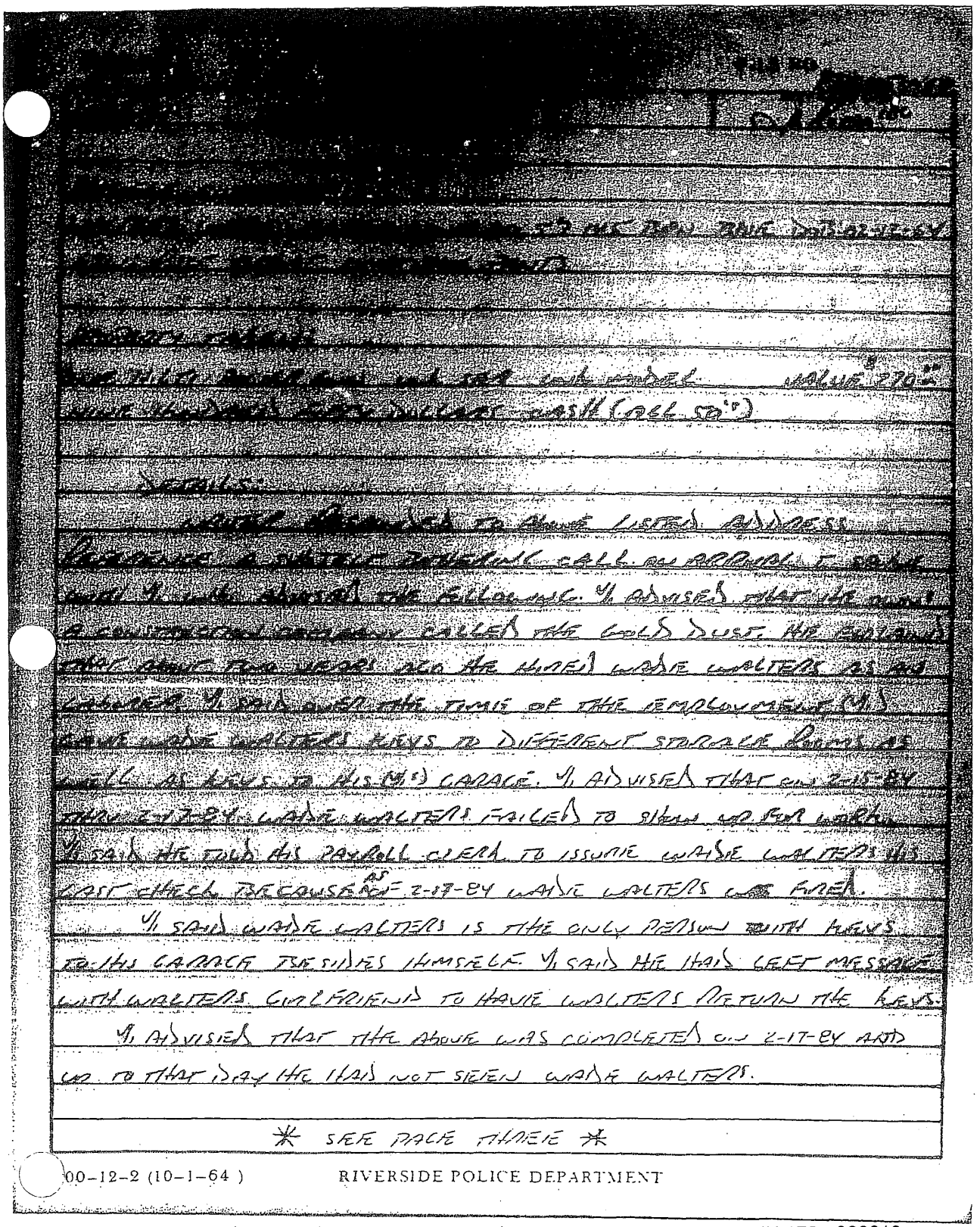
051 CLI

VCLO ( )
APB Sent
APB Cancld.
APR Sent
APR Cncld
DOJ-NCIC Entered
Cancld.
ENTERED
STATS ARBK

200-50-2 (RI/78)

EX 176 - 000018

DA 00002562



FILE NO.

SUBJECT:

DATE:

LOCATION:

REPORTED BY:

ON THE ABOVE DATE AT APPROX. 1700 HRS. I WAS CONTACTED BY [redacted] AT HIS RESIDENCE [redacted] REGARDING A CRIME REPORT I HAD TAKEN ON 2-17-84 AT 1700 HRS. [redacted] STATED THAT HE HAD BEEN EMPLOYED AS A CONSTRUCTION LABORER BY A COMPANY CALLED THE GOLD DUST. HE EXPLAINED THAT ABOUT TEN YEARS AGO HE HAD MADE WAXIE WALTERS AS AN ENEMY. [redacted] SAID AT THE TIME OF THE TERMINATION (?) HE HAD WAXIE WALTERS KEYS TO DIFFERENT STORAGE ROOMS AS WELL AS KEYS TO HIS (WALTERS) GARAGE. [redacted] ADVISED THAT ON 2-15-84 AT APPROX 2117 HRS. WAXIE WALTERS FAILED TO SHOW UP FOR WORK. [redacted] SAID HE TOLD HIS PAYROLL CLERK TO ISSUE WAXIE WALTERS HIS LAST CHECK BECAUSE AS OF 2-17-84 WAXIE WALTERS WAS FIRED.

[redacted] SAID WAXIE WALTERS IS THE ONLY PERSON WITH KEYS TO HIS GARAGE BESIDES HIMSELF. [redacted] SAID HE HAS LEFT MESSAGES WITH WALTERS GIRLFRIEND TO HAVE WALTERS RETURN THE KEYS.

[redacted] ADVISED THAT THE ABOVE WAS COMPLETED ON 2-17-84 AND AS OF THAT DAY HE HAS NOT SEEN WAXIE WALTERS.

* SEE PAGE THREE *

00-12-2 (10-1-64) RIVERSIDE POLICE DEPARTMENT

EX 176 - 000019

DA 00002563

[illegible] FROM HIS GARAGE. HE SAW [illegible] WEDNESDAY. THE SAW AND [illegible] GARAGE WAS MISSING. [illegible] SAW [illegible] WHITE WORKERS THEN. THE CASH RECEIPTS [illegible] SAW 2 WHITE WORKERS HAS ARMS FOR [illegible] SAW THE WHITE WORKERS TO STEAL IN A SMALL SHED [illegible] CONSTRUCTION SITE ON WELLS. HE ADVISED HE ALSO CHANGED THE LOCKS ON THE SHED SINCE WORKERS WAS NO LONGER EMPLOYED.

I ADVISED THAT THIS MORNING WALTERS CAME TO HIS RESIDENCE, HOWEVER I DIDN'T WANT TO TALK TO HIM WITHOUT THE BOSS. I EXPLAINED THAT WALTERS FLED PRIOR TO MY ARRIVAL.

JUST AFTER DETERMINING I, WALTERS CALLED HIM AND TOLD HIM HE WOULD LIKE TO MEET HIM AT THE JOB SITE.

I RESPONDED TO THE SITE AND OBSERVED WALTERS STAND NEAR THE SHED. WHEN WALTER SAW MY MARKED BLUE UNIT HE (WALTERS) FLED ON FOOT. AN AREA CHECK WAS MADE WITH NEGATIVE RESULTS.

FOR ENFORMATION NO FORCE ENTRY WAS MADE INTO THE GARAGE

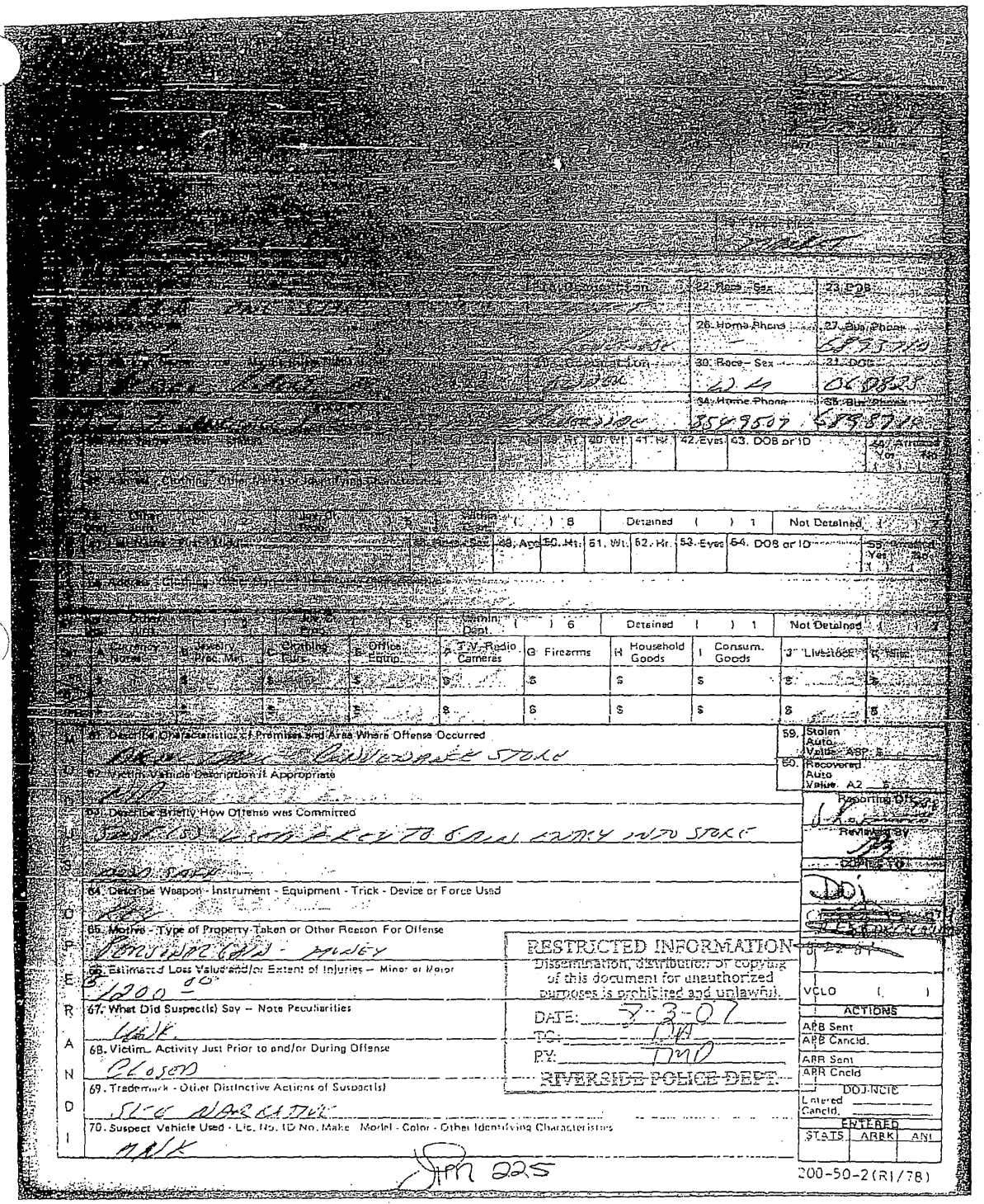
NO FURTHER

J. Romo 190 L-2

200-12-2 (10-1-64) RIVERSIDE POLICE DEPARTMENT

EX 176 - 000020

DA 00002564



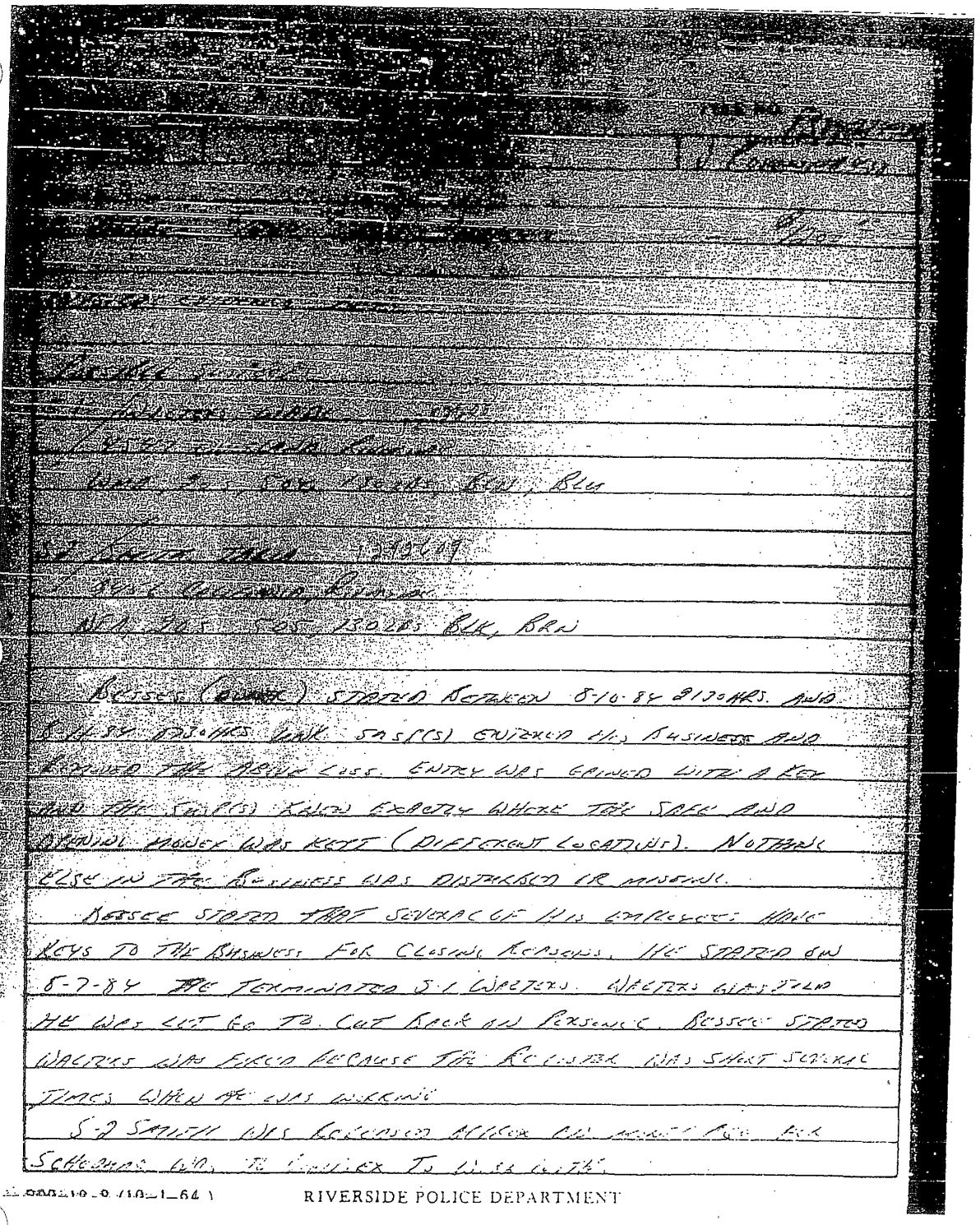
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TC:
P.V.:
RIVERSIDE POLICE DEPT.

200-50-2(RI/78)

DA 00002519

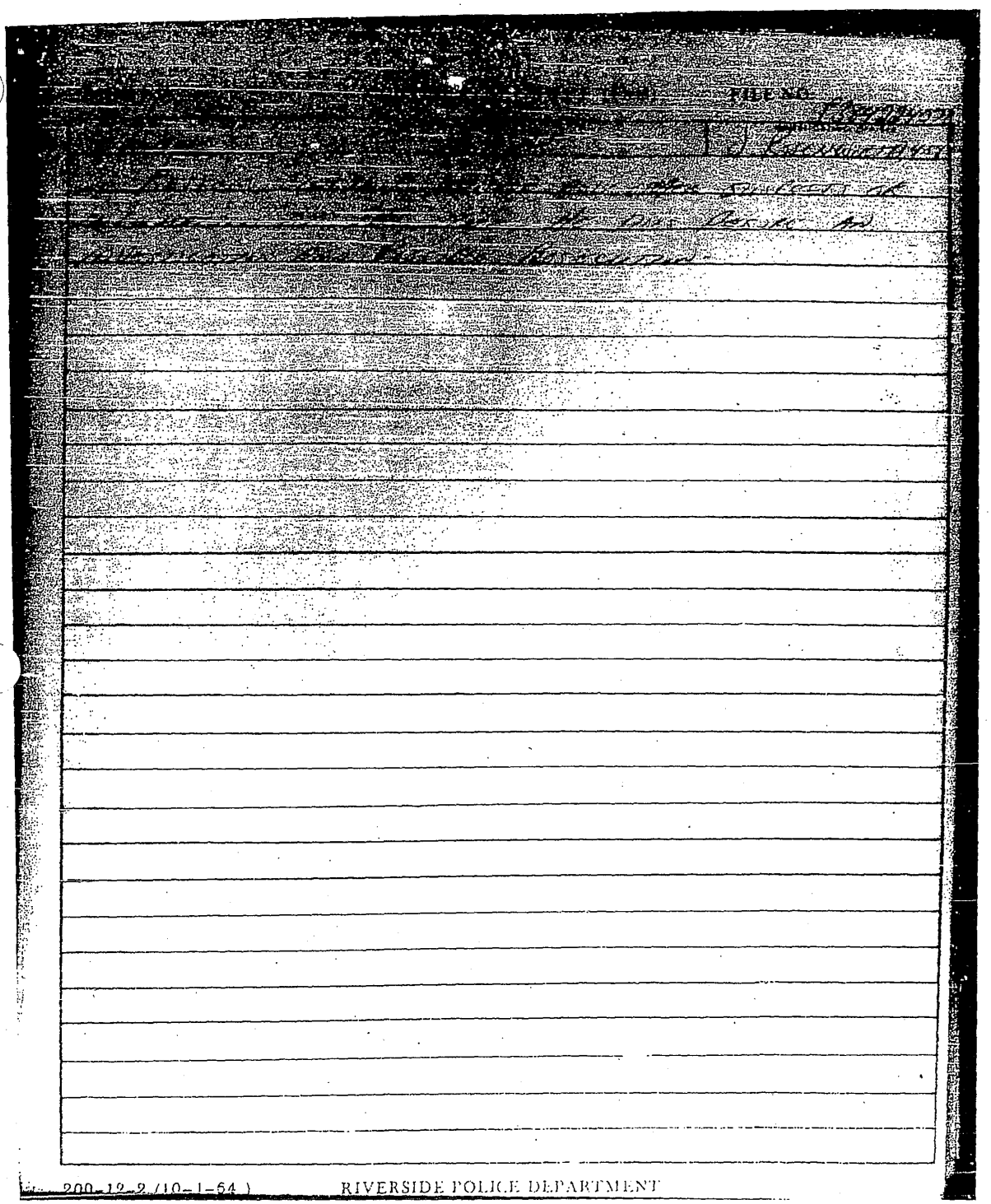
EX 177 - 000021



RIVERSIDE POLICE DEPARTMENT

DA 00002520

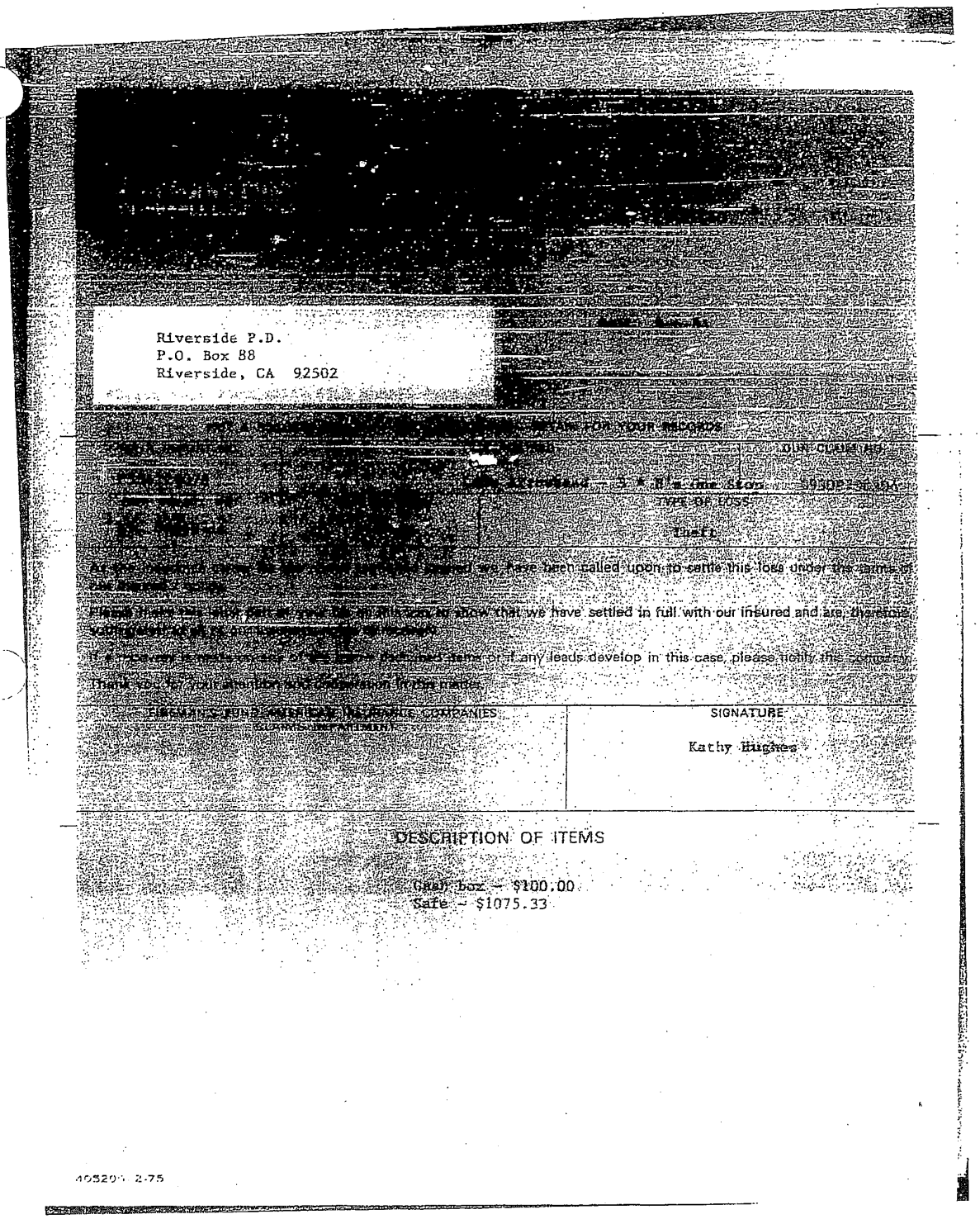
EX 177 - 000022



200-12-2 (10-1-54) RIVERSIDE POLICE DEPARTMENT

DA 00002521

EX 177 - 000023



Riverside P.D.
P.O. Box 88
Riverside, CA 92502

TYPE OF LOSS

Theft

DESCRIPTION OF ITEMS

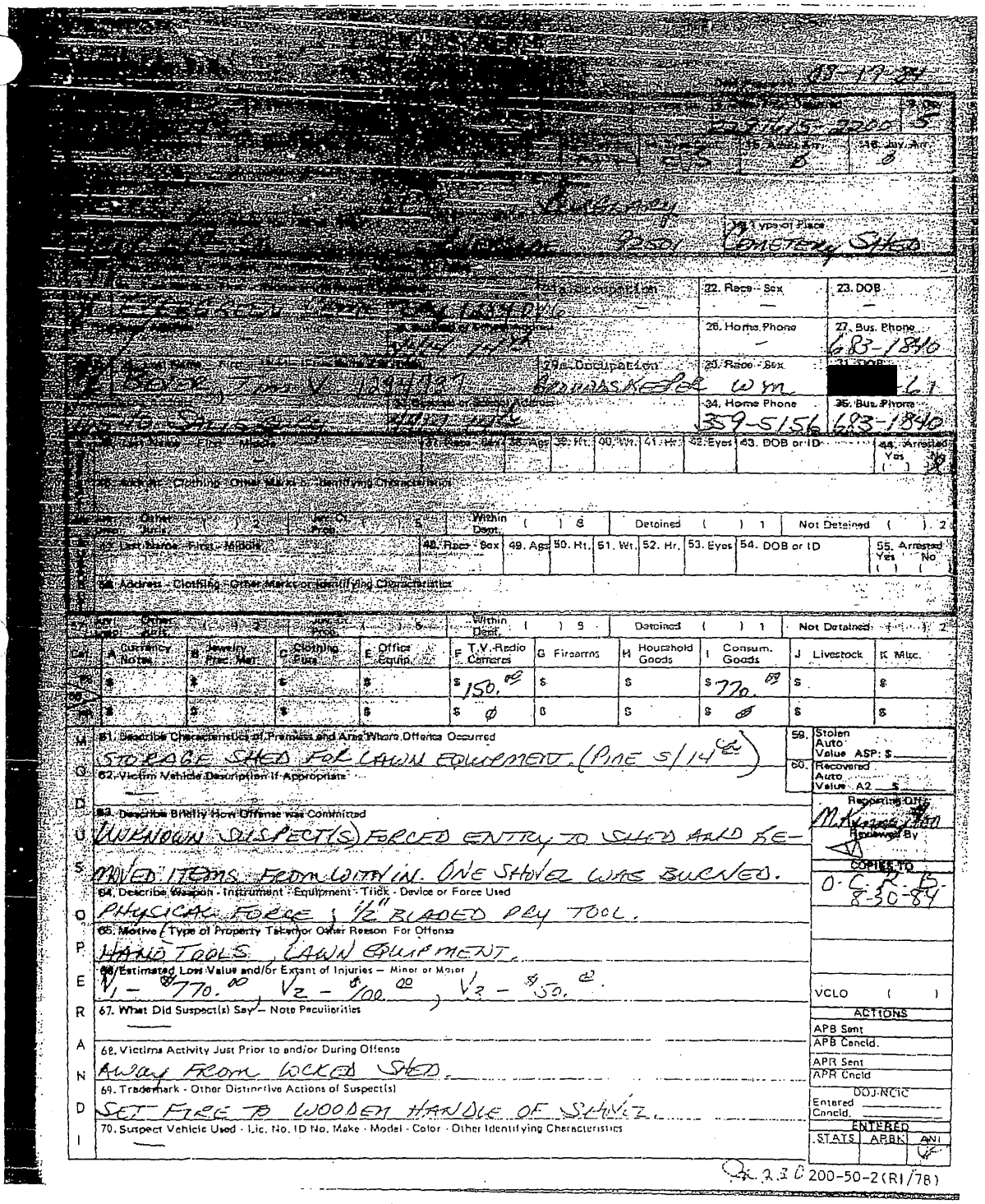
Gray box - $100.00
Safe - $1075.33

SIGNATURE

Kathy Hughes

DA 00002522

EX 177 - 000024



83-17-24

Type of Place: CEMETERY SHED

22. Race - Sex | 23. DOB

26. Home Phone | 27. Bus. Phone: 683-1840

27a. Occupation: GROUNDSKEEPER | 28. Race - Sex: WM | 29. DOB: [redacted] 61

34. Home Phone: 359-5156 | 35. Bus. Phone: 683-1840

36. Sex | 37. Race | 38. Age | 39. Ht. | 40. Wt. | 41. Hr. | 42. Eyes | 43. DOB or ID | 44. Arrested Yes ( ) No ( )

45. Address - Clothing - Other Marks or Identifying Characteristics

Juv. Dispo: Adult ( ) 3 | Juv. Det. Pris. ( ) 5 | Within Dept. ( ) 8 | Detained ( ) 1 | Not Detained ( ) 2

47. Last Name - First - Middle | 48. Race | Sex | 49. Age | 50. Ht. | 51. Wt. | 52. Hr. | 53. Eyes | 54. DOB or ID | 55. Arrested Yes ( ) No ( )

56. Address - Clothing - Other Marks or Identifying Characteristics

Juv. Dispo: Adult ( ) 2 | Juv. Det. Pris. ( ) 6 | Within Dept. ( ) 9 | Detained ( ) 1 | Not Detained ( ) 2

	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V. Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
59	$	$	$	$	$ 150.00	$	$	$ 770.00	$	$
60	$	$	$	$	$ 0	$	$	$ 0	$	$

61. Describe Characteristics of Premises and Area Where Offense Occurred
STORAGE SHED FOR LAWN EQUIPMENT. (PINE 5/14)

62. Victim Vehicle Description If Appropriate

63. Describe Briefly How Offense was Committed
UNKNOWN SUSPECT(S) FORCED ENTRY TO SHED AND RE-MOVED ITEMS FROM WITHIN. ONE SHOVEL WAS BURNED.

64. Describe Weapon - Instrument - Equipment - Tool - Device or Force Used
PHYSICAL FORCE; 1/2" BLADED PRY TOOL.

65. Motive / Type of Property Taken or Other Reason For Offense
HAND TOOLS, LAWN EQUIPMENT.

66. Estimated Loss Value and/or Extent of Injuries — Minor or Major
V1 - $770.00 V2 - $100.00, V3 - $50.00.

67. What Did Suspect(s) Say — Note Peculiarities

68. Victims Activity Just Prior to and/or During Offense
AWAY FROM LOCKED SHED.

69. Trademark - Other Distinctive Actions of Suspect(s)
SET FREE TO WOODEN HANDLE OF SHOVEL.

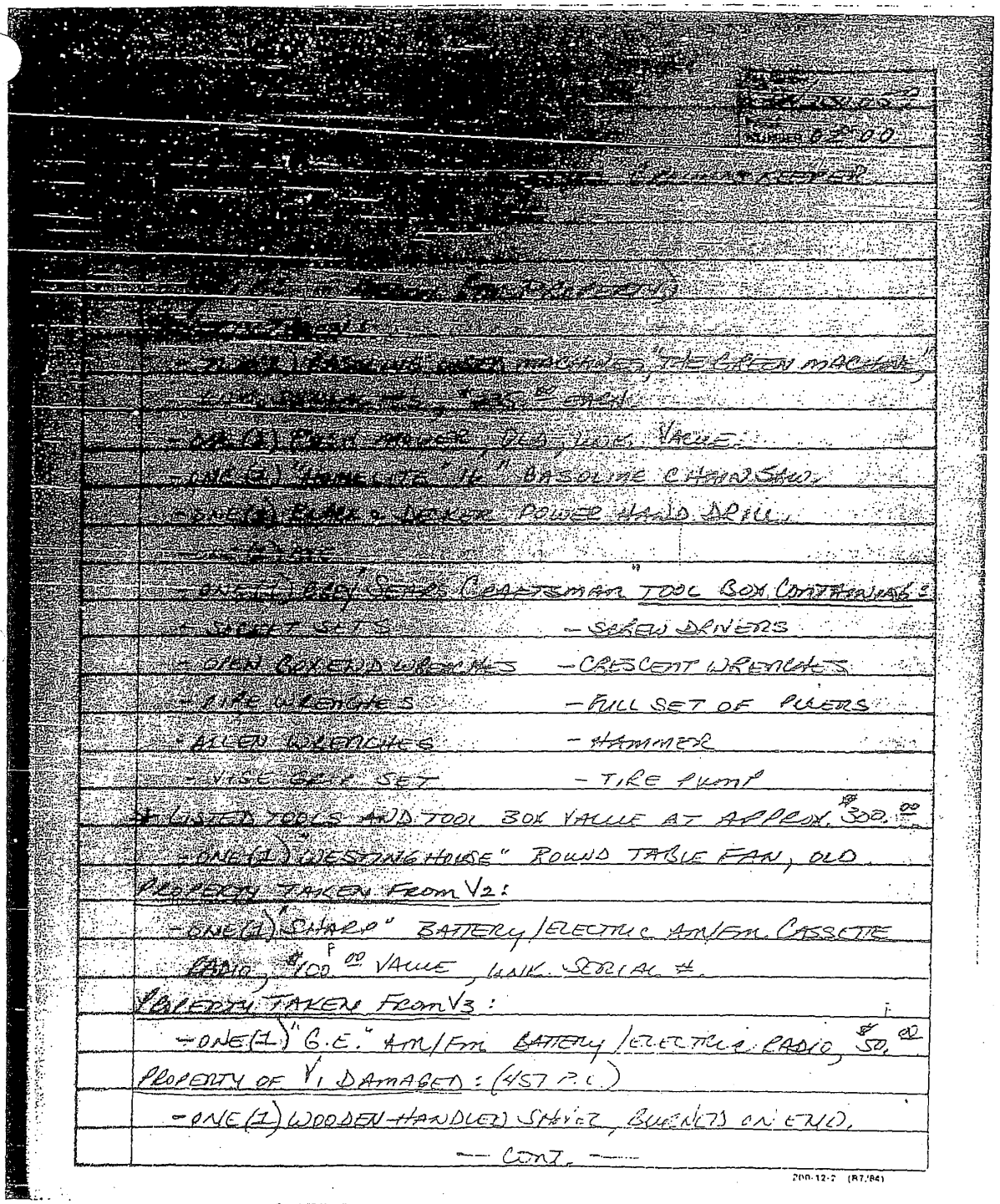
70. Suspect Vehicle Used - Lic. No. ID No. Make - Model - Color - Other Identifying Characteristics

59. Stolen Auto Value ASP: $
60. Recovered Auto Value A2 $
Reporting Off.
Reviewed By
COPIES TO
O.C.R.B. 8-30-84

VCLO ( )

ACTIONS
APB Sent
APB Cancld.
APR Sent
APR Cncld
DOJ-NCIC Entered Cancld.
ENTERED STATS APBN ANI

200-50-2(RI/78)



- ONE (1) CRAFTSMAN TOOL BOX CONTAINING:
- SOCKET SETS
- SCREW DRIVERS
- OPEN BOX END WRENCHES
- CRESCENT WRENCHES
- PIPE WRENCHES
- FULL SET OF PLIERS
- ALLEN WRENCHES
- HAMMER
- VISE GRIP SET
- TIRE PUMP

* LISTED TOOLS AND TOOL BOX VALUE AT APPROX. $300.00

- ONE (1) "WESTINGHOUSE" ROUND TABLE FAN, OLD

PROPERTY TAKEN FROM V2:

- ONE (1) "SHARP" BATTERY/ELECTRIC AM/FM CASSETTE RADIO, $100.00 VALUE, UNK. SERIAL #.

PROPERTY TAKEN FROM V3:

- ONE (1) "G.E." AM/FM BATTERY/ELECTRIC RADIO, $50.00

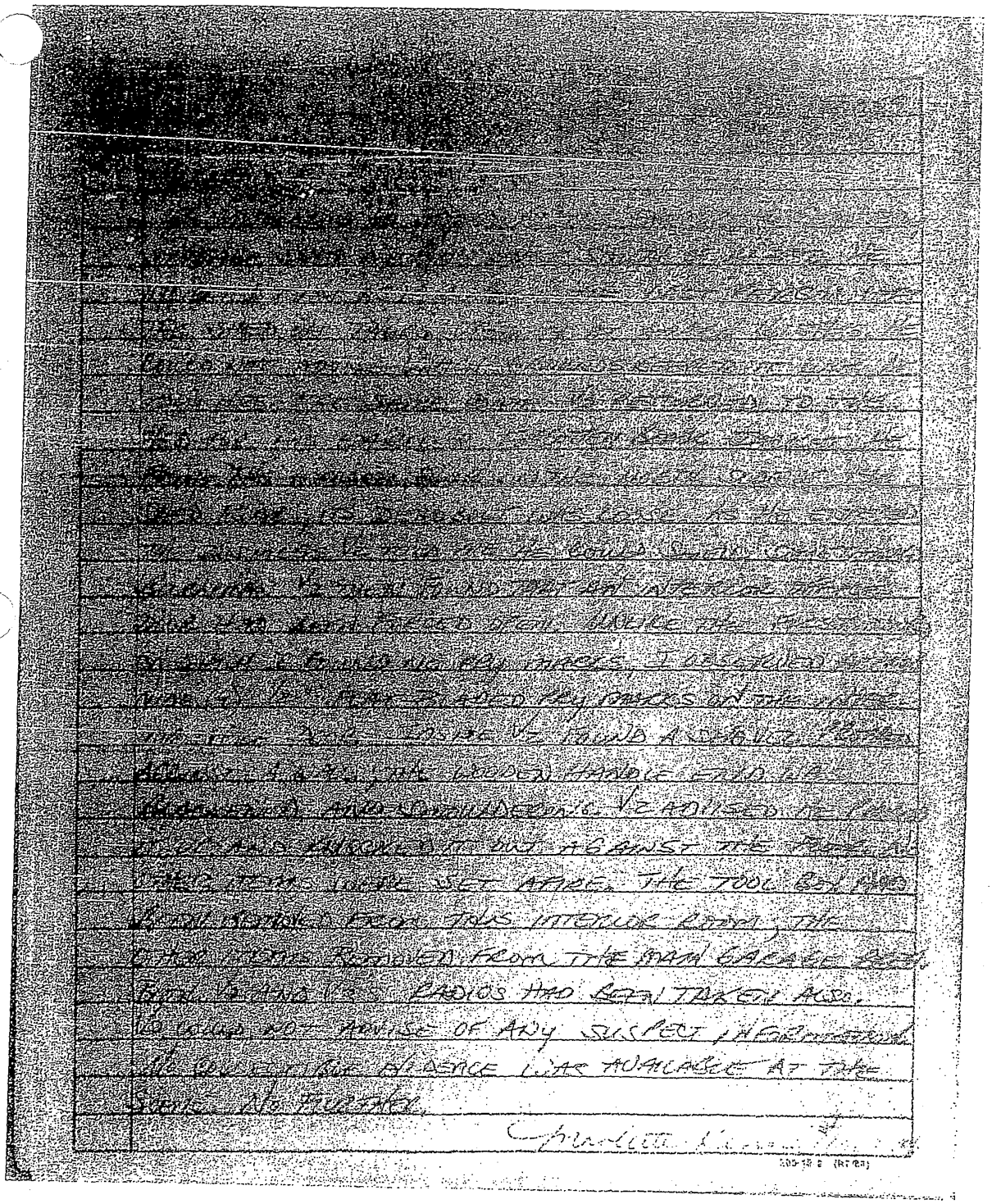
PROPERTY OF V1 DAMAGED: (UST P.C.)

- ONE (1) WOODEN-HANDLED SHOVEL, BURNED ON END.

— CONT. —

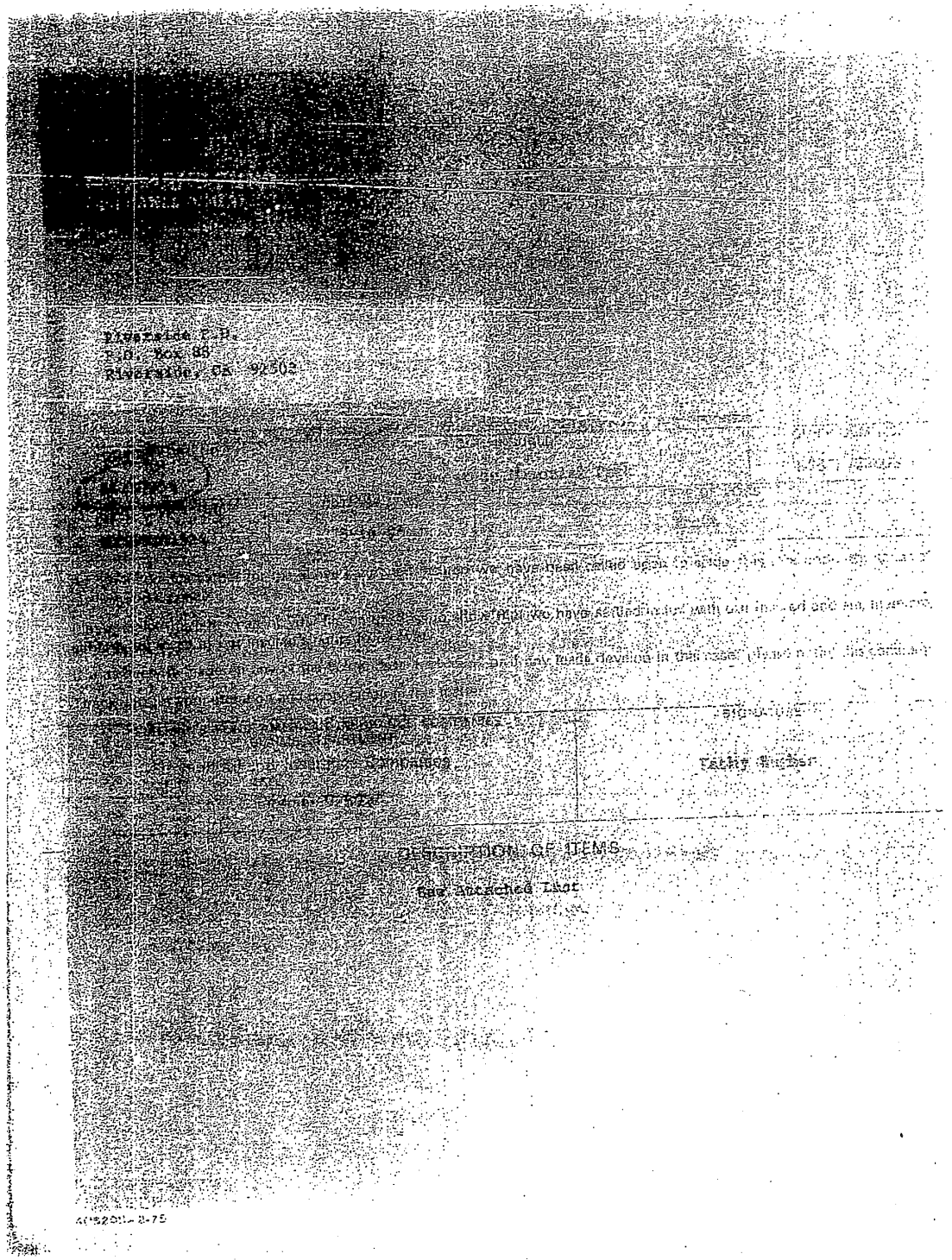
DA 00002524

EX 178 - 000026



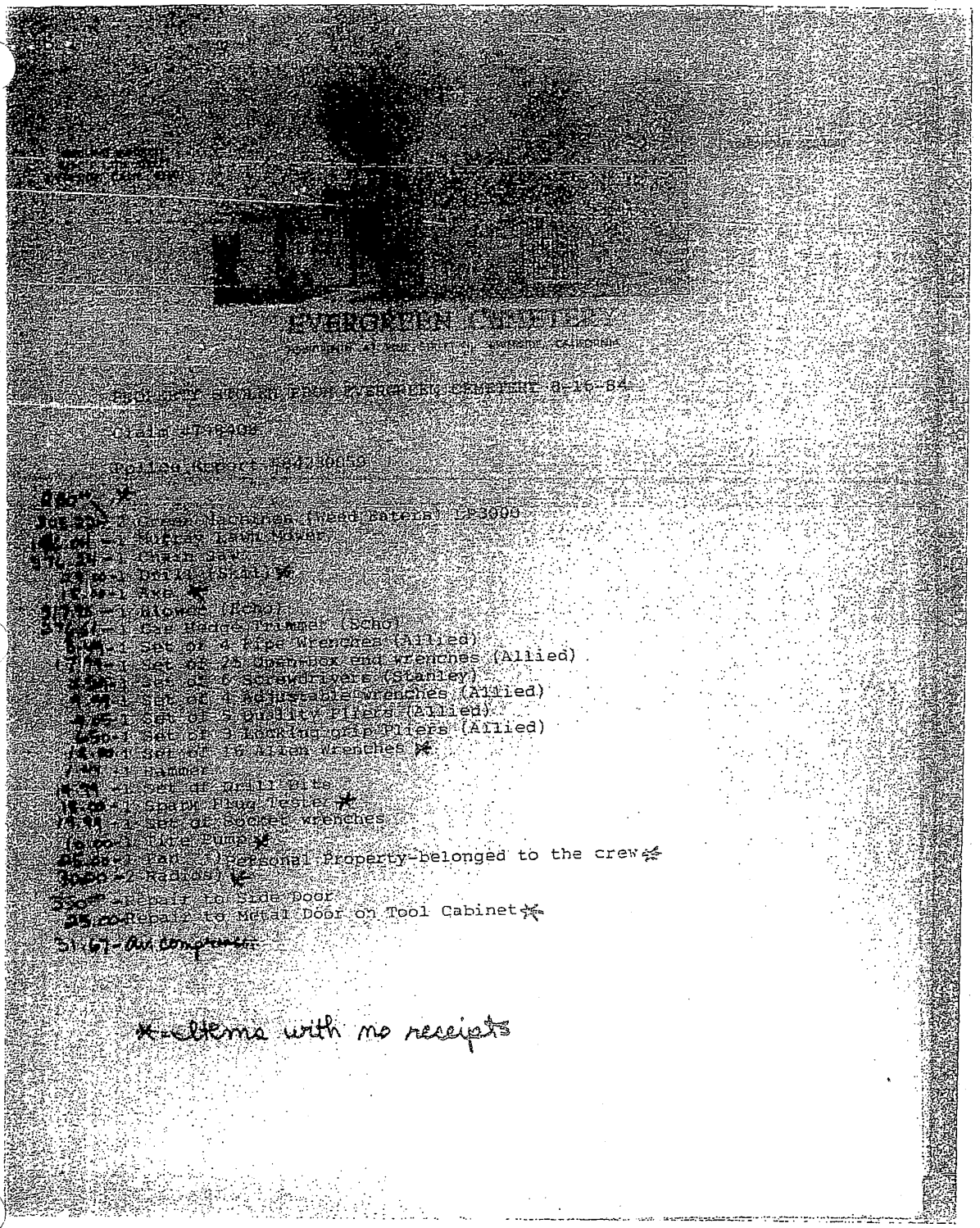
DA 00002525

EX 178 - 000027



DA 00002526

EX 178 - 000028



EVERGREEN

Body [illegible] Broken from Wrecking Chainsaw 8-16-84

Cyclo 7496409

Opilco (Repair) 5042300-8

1 Chain saw

1 Drill (Makita)*

1 Axe*

1 Blower (Echo)

1 Set Hedge Trimmer (Echo)

1 Set of 2 Pipe Wrenches (Allied)

1 Set of 25 Openmnex end wrenches (Allied)

1 Set of 6 Screwdrivers (Stanley)

1 Set of 4 Adjustable Wrenches (Allied)

1 Set of 3 Utility Pliers (Allied)

1 Set of 3 Locking Grip Pliers (Allied)

1 Set of 10 Allen Wrenches*

1 Hammer

1 Set of drill bits

1 Spark Plug Tester*

1 Set of Socket wrenches

1 Tire Pump*

1 Can - Personal Property-belonged to the crew*

1 Radios)*

Repair to Side Door

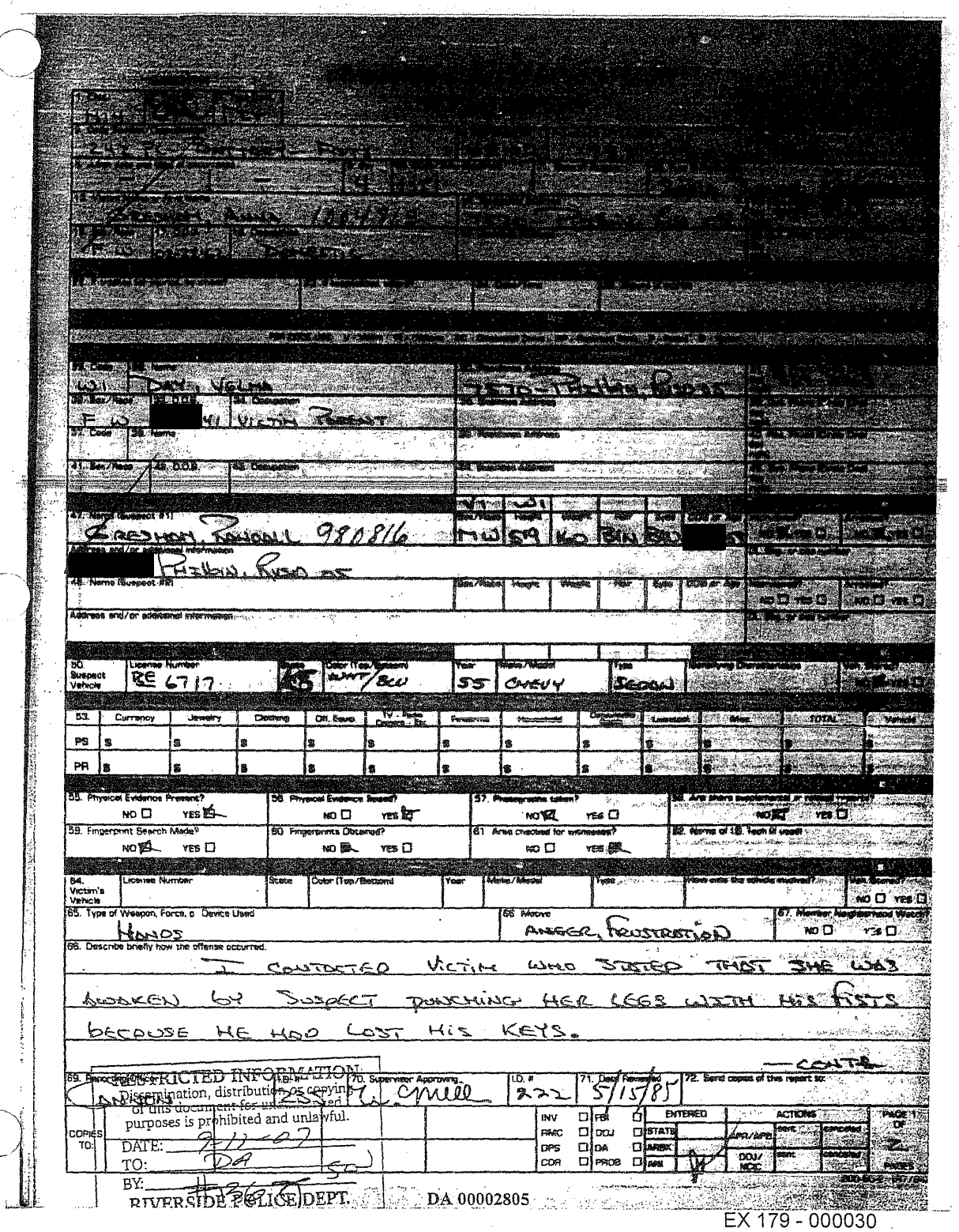
Repair to Metal Door on Tool Cabinet*

51-67-Air compressor

*-items with no receipts

DA 00002527

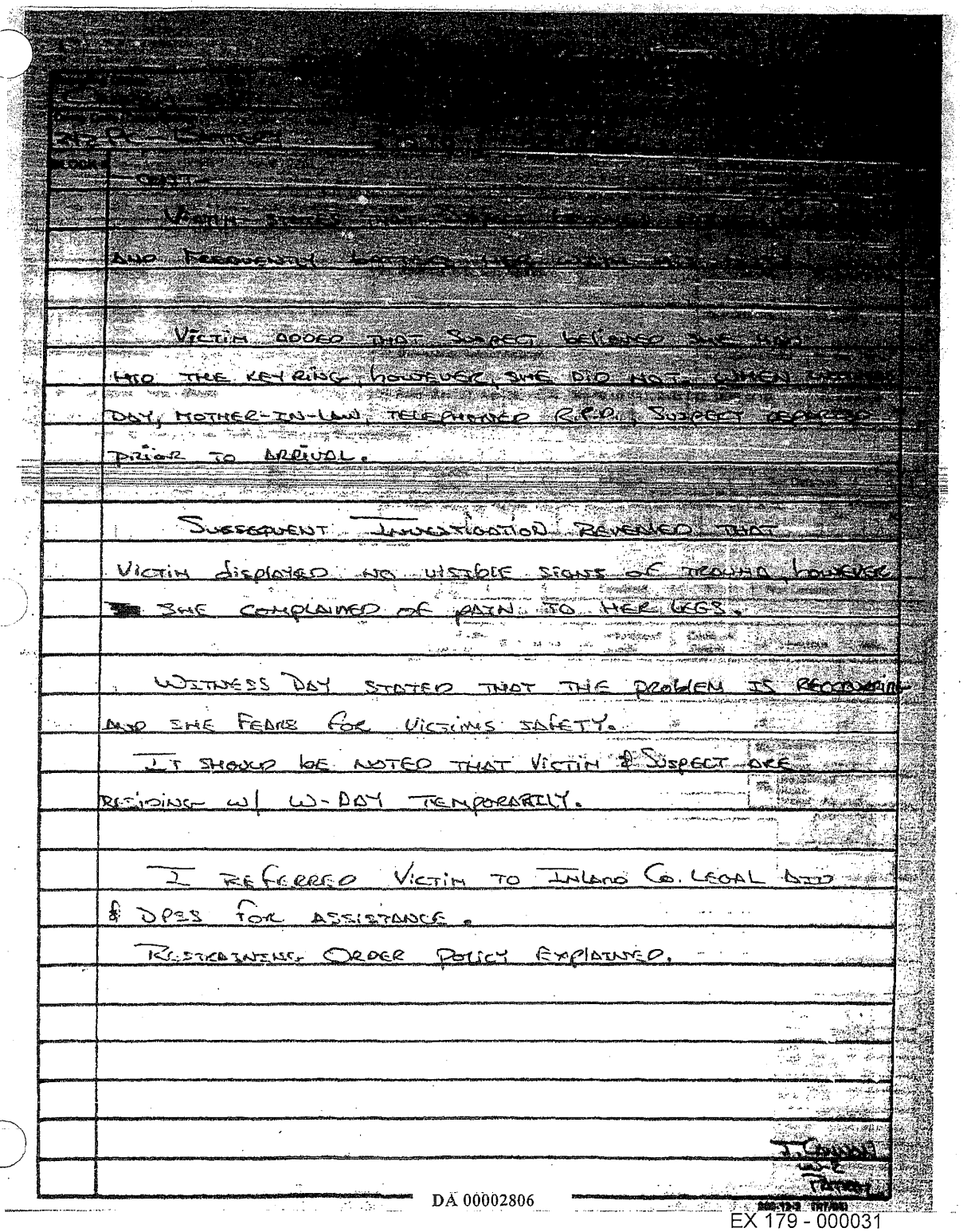
EX 178 - 000029



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DA 00002805

EX 179 - 000030



VICTIM ADVISED THAT SUSPECT BELIEVES SHE HAS HID THE KEY RING. HOWEVER, SHE DID NOT. WHEN SUSPECT LEFT DAY, MOTHER-IN-LAW, TELEPHONED R.P.D., SUSPECT RETURNED PRIOR TO ARRIVAL.

SUBSEQUENT INVESTIGATION REVEALED THAT VICTIM displayed NO VISIBLE SIGNS OF TRAUMA, however SHE COMPLAINED OF PAIN TO HER LEGS.

WITNESS DAY STATED THAT THE PROBLEM IS RECURRING AND SHE FEARS FOR VICTIMS SAFETY.

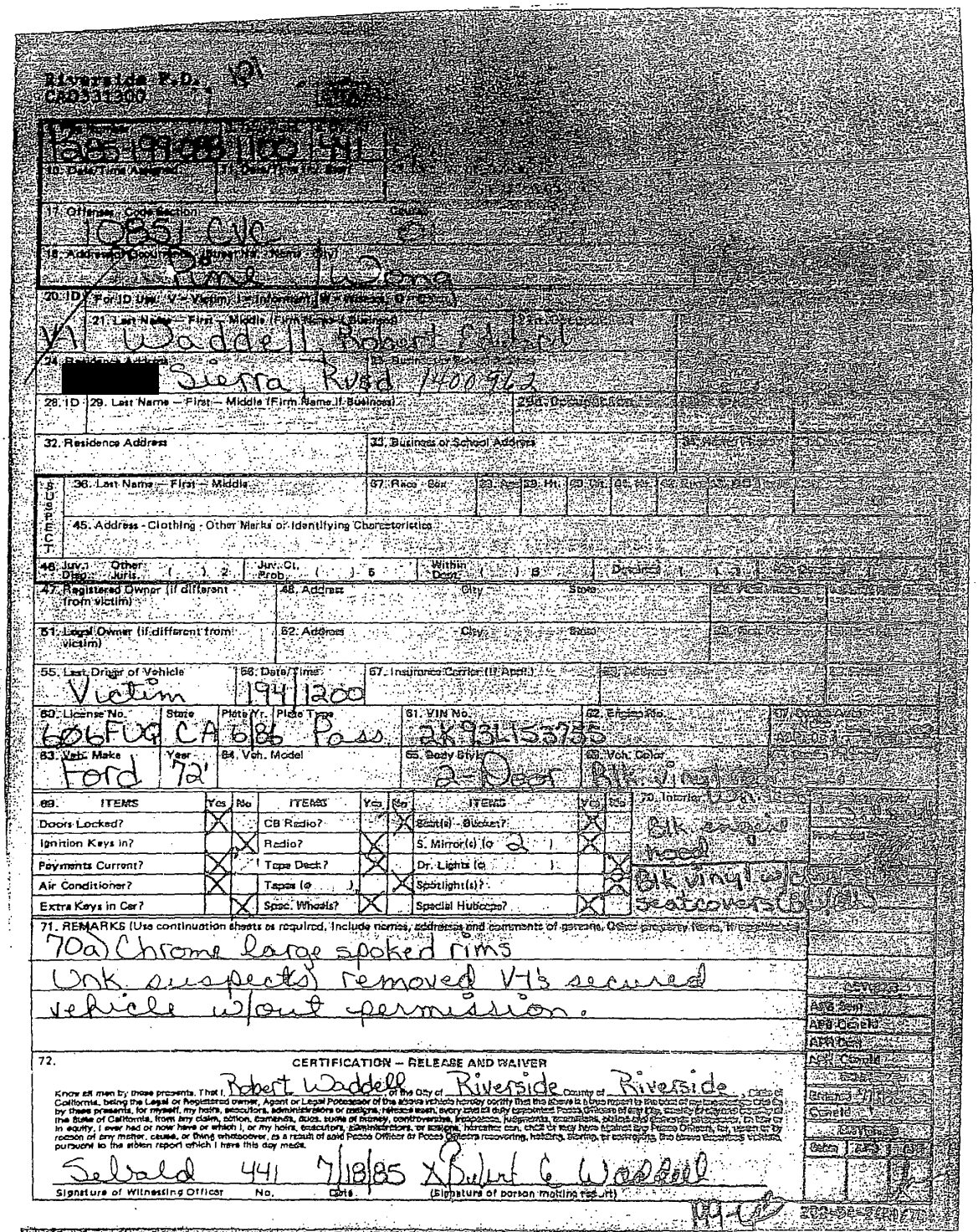
IT SHOULD BE NOTED THAT VICTIM & SUSPECT ARE RESIDING W/ W-DAY TEMPORARILY.

I REFERRED VICTIM TO INLAND CO. LEGAL AID & DPSS FOR ASSISTANCE.

RESTRAINING ORDER POLICY EXPLAINED.

DA 00002806

EX 179 - 000031



Riverside P.D.
CA0331300

17. Offense Code Section: 10851 CVC
Count: 01
18. Address of Occurrence: Dale / Lorna
20. ID: Y
21. Last Name – First – Middle (Firm Name if Business): Waddell, Robert Edward
24. Residence Address: [redacted] Sierra Road 1400 92
28. ID
29. Last Name – First – Middle (Firm Name if Business)
29a. Driver's License
32. Residence Address
33. Business or School Address
SUSPECT
36. Last Name – First – Middle
37. Race - Sex
38. Age
39. Ht.
40. Wt.
41. Hair
42. Eyes
43. DOB
45. Address - Clothing - Other Marks or Identifying Characteristics
46. Juv. Disp. / Other Juris. / Juv. Ct. Prob. / Within Down / Divorce
47. Registered Owner (if different from victim)
48. Address
City
State
51. Legal Owner (if different from victim)
52. Address
City
State
55. Last Driver of Vehicle: Victim
56. Date/Time: 1941200
57. Insurance Carrier (If Applic.)
Address
60. License No.: 606FUG
State: CA
Plate Yr.: 86
Plate Type: Pass.
61. VIN No.: 2X93L153755
62. Engine No.
63. Veh. Make: Ford
Year: '72
64. Veh. Model
65. Body Style: 2 Door
66. Veh. Color: Blk. V (vinyl)
70. Interior: Blk. vinyl

69. ITEMS	Yes	No	ITEMS	Yes	No	ITEMS	Yes	No
Doors Locked?	X		CB Radio?		X	Seat(s) - Bucket?	X	
Ignition Keys in?		X	Radio?	X		S. Mirror(s) (c 2)	X	
Payments Current?	X		Tape Deck?	X		Dr. Lights (c)		X
Air Conditioner?	X		Tapes (c)		X	Spotlight(s)?		X
Extra Keys in Car?		X	Spec. Wheels?	X		Special Hubcaps?	X	

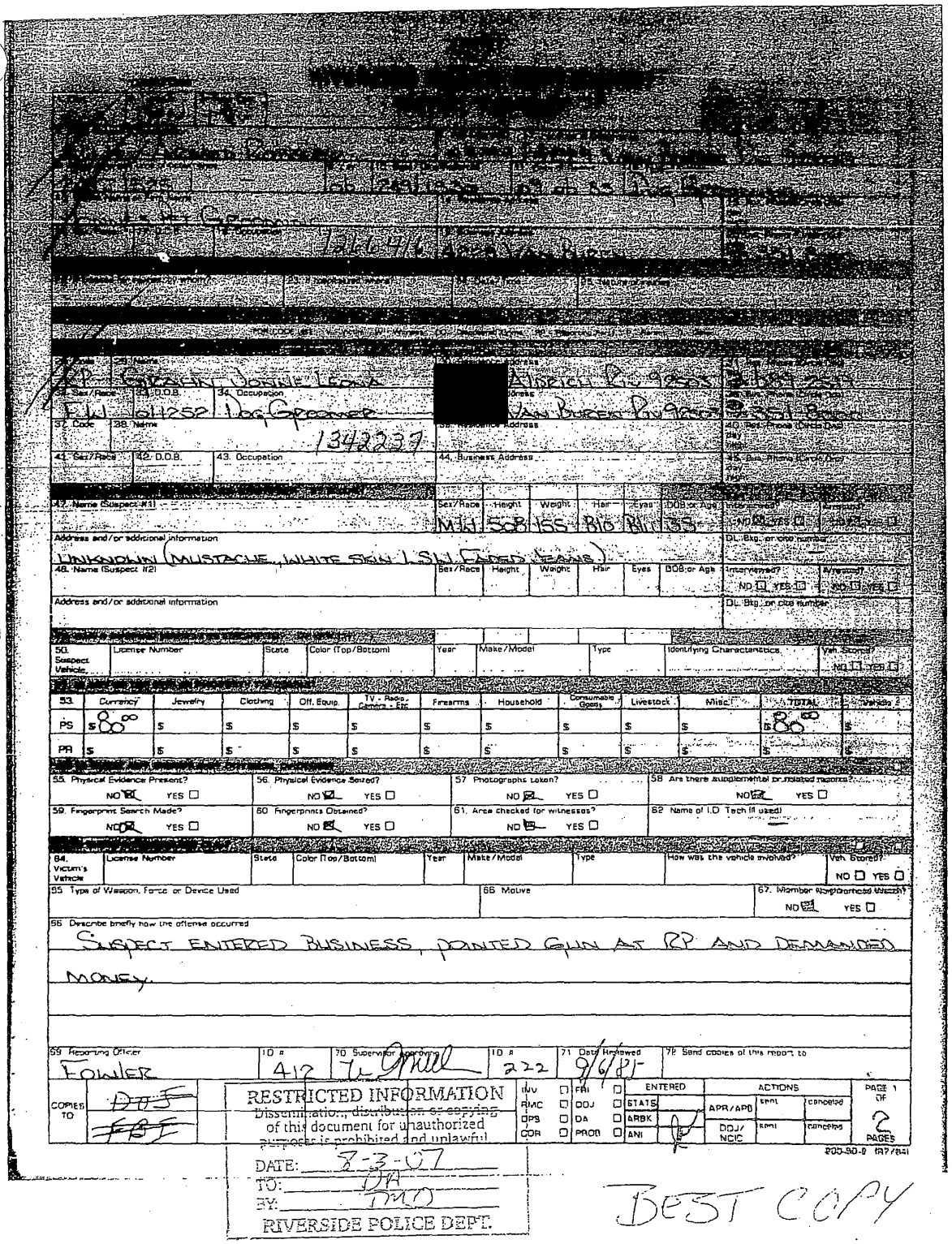
71. REMARKS (Use continuation sheets as required. Include names, addresses and comments of persons. Describe property items, if necessary.)
70a) Chrome large spoked rims
Unk. suspect(s) removed V-13 secured vehicle w/out permission.

72. CERTIFICATION – RELEASE AND WAIVER
Know all men by these presents, That I, Robert Waddell of the City of Riverside County of Riverside State of California, being the Legal or Registered owner, Agent or Legal Possessor of the above vehicle hereby certify that the above is a true report to the best of my knowledge and by these presents, for myself, my heirs, executors, administrators or assigns, release each, every and all duly appointed Peace Officers of any City, County or County of the State of California, from any claim, action, demands, cause, cause of remedy, controversies, trespasses, judgments, executions, actions and demands whatsoever, in law or in equity, I ever had or now have or which I, or my heirs, executors, administrators, or assigns, hereafter can, shall or may have against any Peace Officers, for, upon or by reason of any matter, cause, or thing whatsoever, as a result of said Peace Officer or Peace Officers recovering, holding, storing, or conveying the above described vehicle, pursuant to the stolen report which I have this day made.

Selrald 441 7/18/85 X Robert C Waddell
Signature of Witnessing Officer / No. / Date / (Signature of person making report)

Area Sent
Area Cancld
APB Sent
APB Cancld
Broadcast
Cancld
Complete
Entered
Ver
Ver

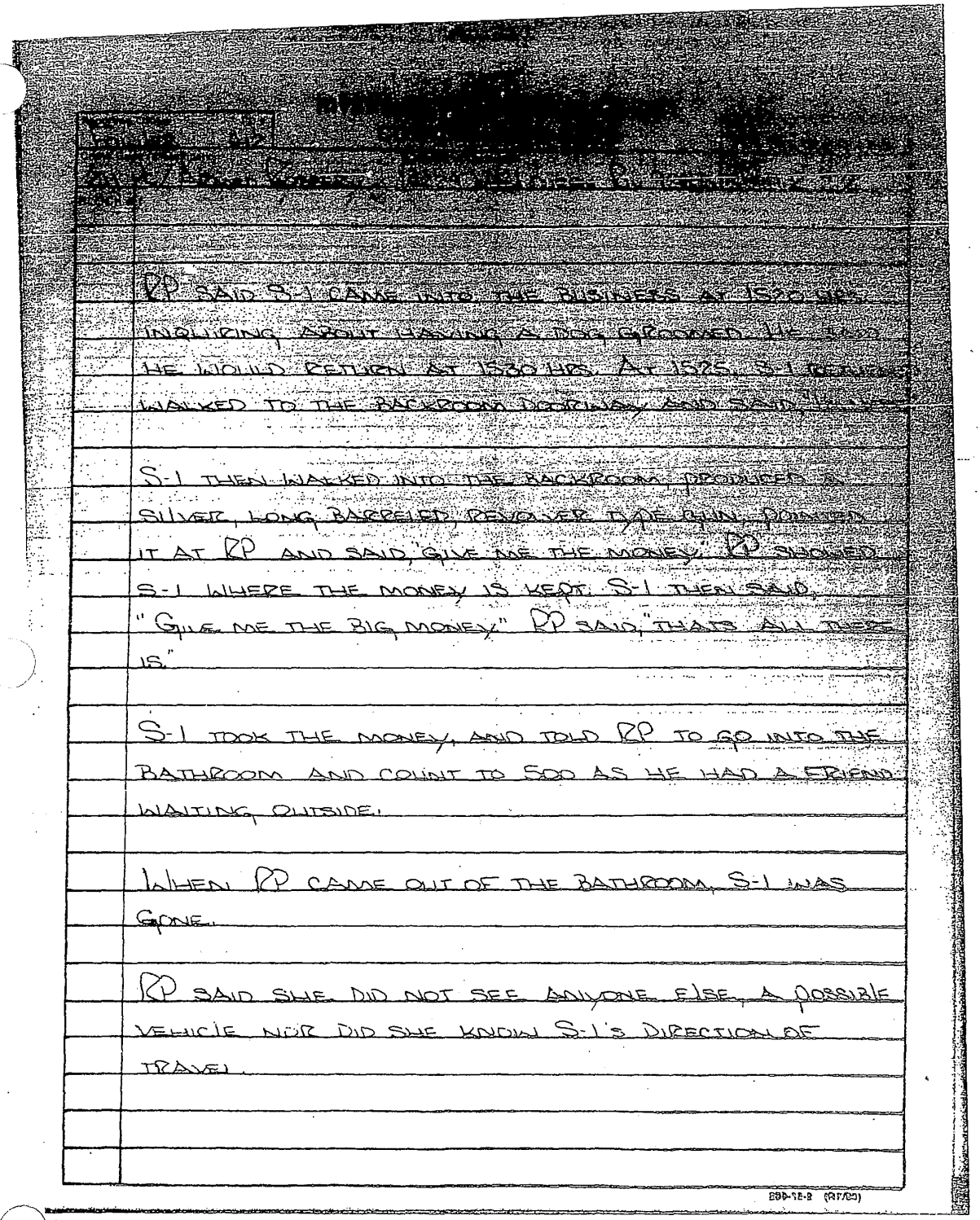
BEST COPY



37. Name: [redacted] Address: ARDEN Dr 92503
38. Sex/Race: F/W 39. D.O.B.: 101252 40. Occupation: Dog Groomer
42. Name (Suspect #1): Sex/Race: M/H Height: 508 Weight: 155 Hair: BLK Eyes: BLU DOB or Age: 35
Address and/or additional information: UNKNOWN (MUSTACHE, WHITE SKIN, SLIM, FADED JEANS)
43. Name (Suspect #2): Sex/Race: Height: Weight: Hair: Eyes: DOB or Age:
Address and/or additional information:
50. Suspect Vehicle: License Number: State: Color (Top/Bottom): Year: Make/Model: Type: Identifying Characteristics:
53. Currency: PS $80.00; PR $
55. Physical Evidence Present? NO YES
56. Physical Evidence Seized? NO YES
57. Photographs Taken? NO YES
58. Are there supplemental or related reports? NO YES
59. Fingerprint Search Made? NO YES
60. Fingerprints Obtained? NO YES
61. Area checked for witnesses? NO YES
62. Name of I.D. Tech (if used):
64. Victim's Vehicle: License Number: State: Color (Top/Bottom): Year: Make/Model: Type: How was the vehicle involved?: Veh. Stored? NO YES
65. Type of Weapon, Force or Device Used:
66. Motive:
67. Member Apprehended Weapon? NO YES
68. Describe briefly how the offense occurred: SUSPECT ENTERED BUSINESS, POINTED GUN AT RP AND DEMANDED MONEY.
69. Reporting Officer: FOWLER ID #: 412 70. Supervisor Approving: ID #: 222 71. Date Reviewed: 9/6/87 72. Send copies of this report to:
COPIES TO: DOJ FBI
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INV RMC OPS CDR FBI DOJ DA PROB
ENTERED: STATS ARBK ANI
ACTIONS: APR/APD DOJ/NCIC
PAGE 1 OF 2 PAGES
DATE: 8-3-07
TO: DA
BY: DMO
RIVERSIDE POLICE DEPT.
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DA 00002534

EX 181 - 000033



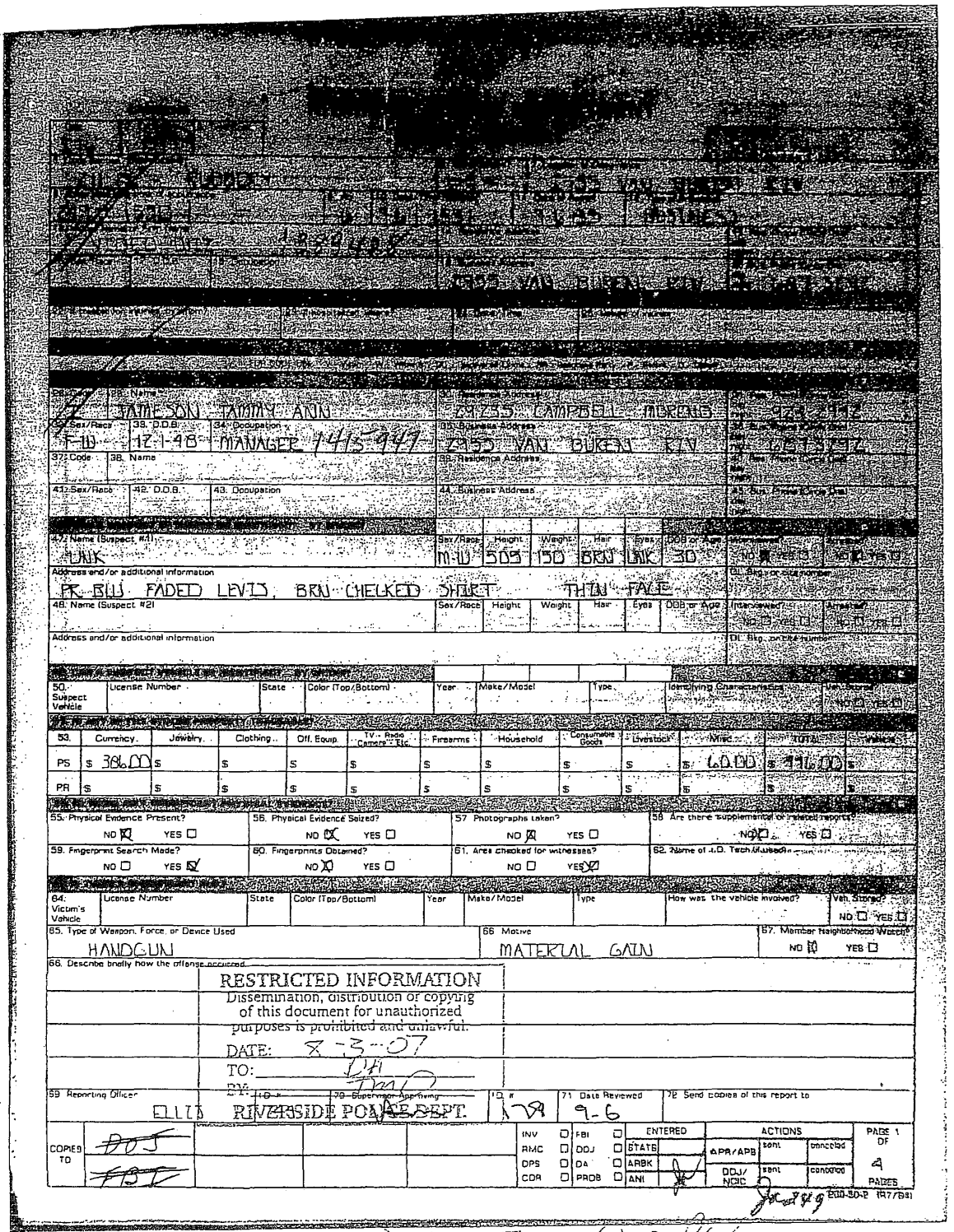
RP SAID S-1 CAME INTO THE BUSINESS AT 1520 HRS. INQUIRING ABOUT HAVING A DOG GROOMED. HE SAID HE WOULD RETURN AT 1530 HRS. AT 1525, S-1 RETURNED WALKED TO THE BACKROOM DOORWAY AND SAID, "HEY

S-1 THEN WALKED INTO THE BACKROOM, PRODUCED A SILVER, LONG BARRELED, REVOLVER TYPE GUN, POINTED IT AT RP AND SAID, "GIVE ME THE MONEY." RP SHOWED S-1 WHERE THE MONEY IS KEPT. S-1 THEN SAID, "GIVE ME THE BIG MONEY." RP SAID, "THAT'S ALL THERE IS."

S-1 TOOK THE MONEY, AND TOLD RP TO GO INTO THE BATHROOM AND COUNT TO 500 AS HE HAD A FRIEND WAITING OUTSIDE.

WHEN RP CAME OUT OF THE BATHROOM, S-1 WAS GONE.

RP SAID SHE DID NOT SEE ANYONE ELSE, A POSSIBLE VEHICLE NOR DID SHE KNOW S-1's DIRECTION OF TRAVEL.

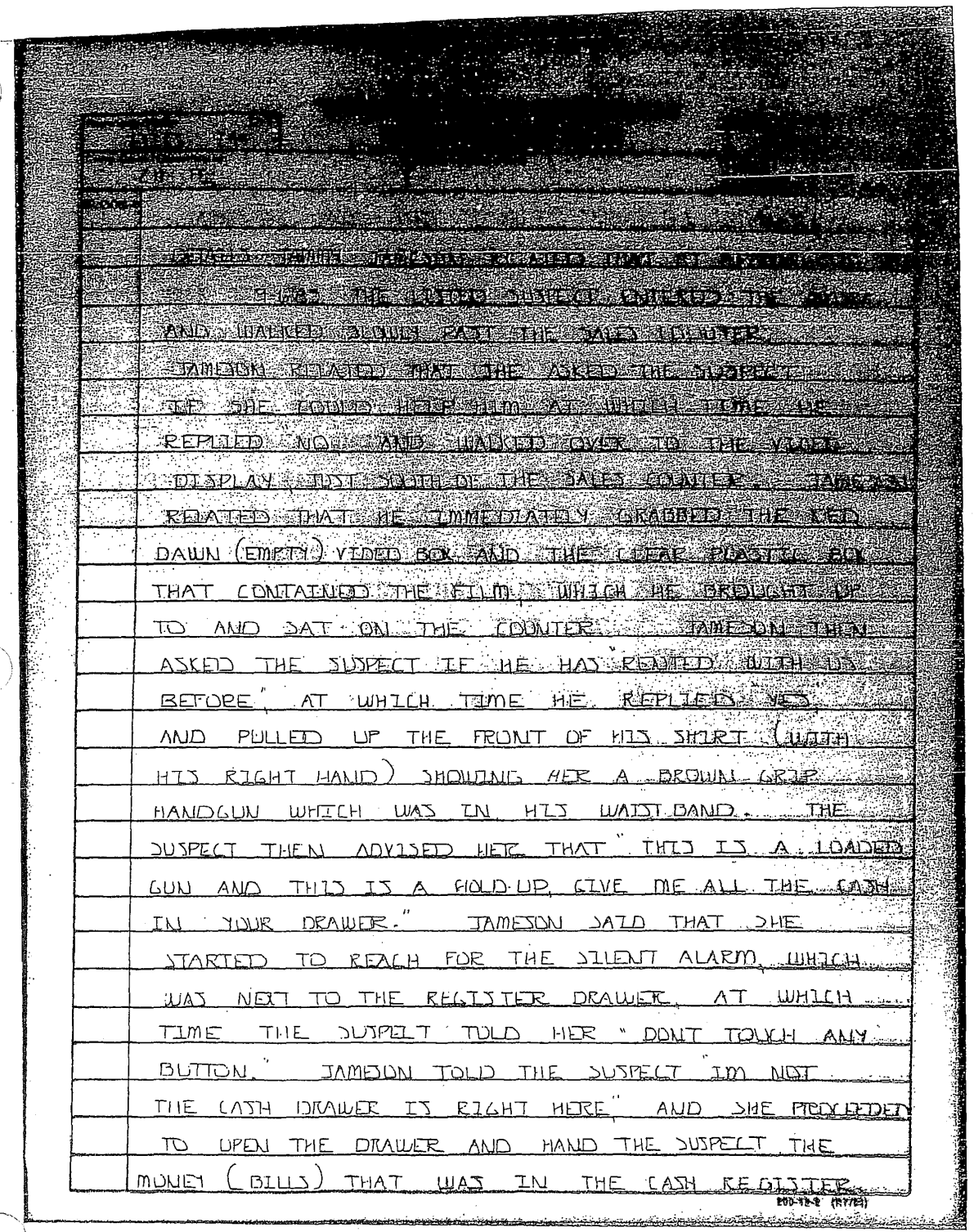


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DA 00002536

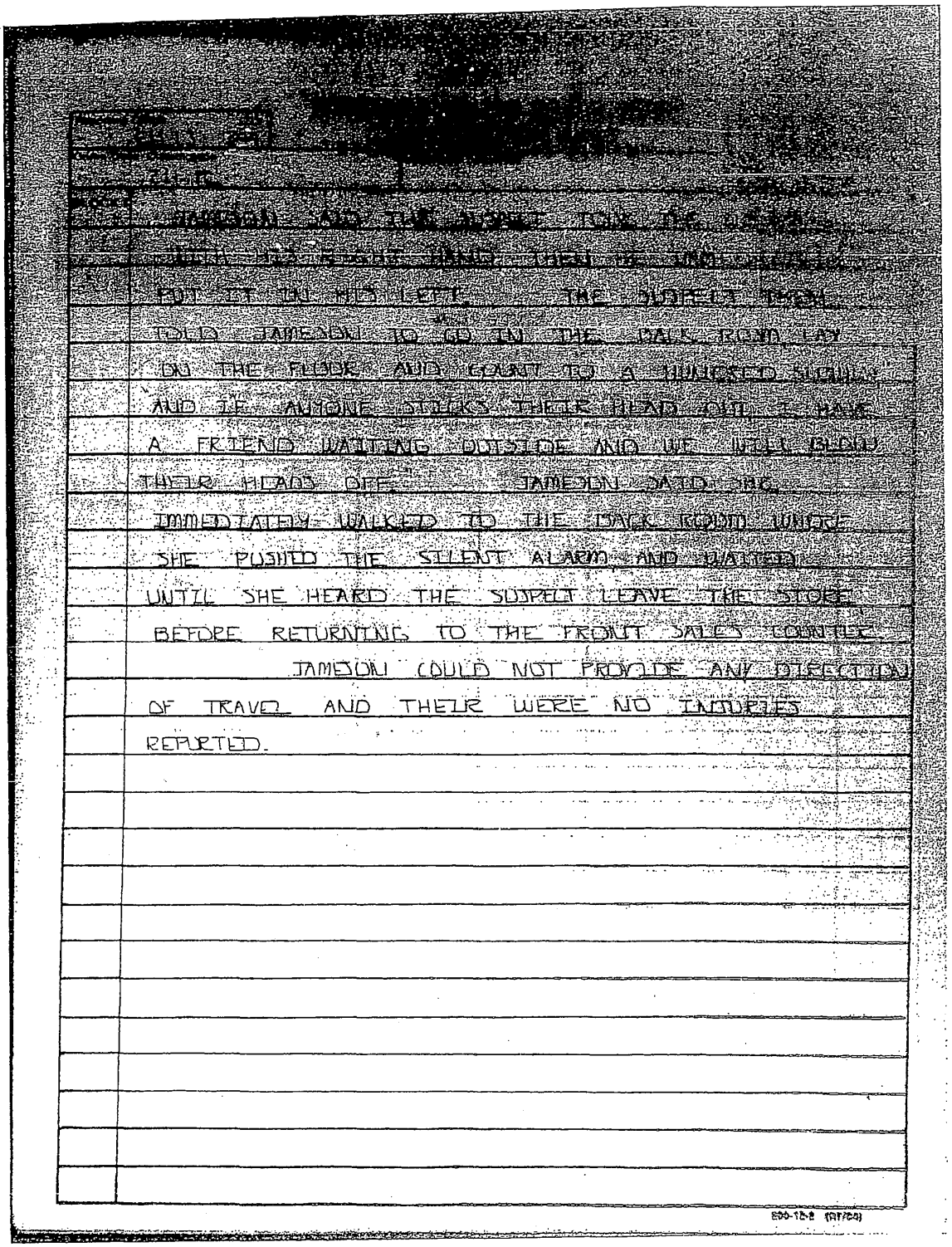
EX 182 - 000035



AND WALKED BEHIND PAST THE SALES COUNTER. JAMESON RELATED THAT SHE ASKED THE SUSPECT IF SHE KNEW HIM AT WHICH TIME HE REPLIED NO AND WALKED OVER TO THE VIDEO DISPLAY JUST SOUTH OF THE SALES COUNTER. JAMESON RELATED THAT HE IMMEDIATELY GRABBED THE USED DAWN (EMPTY) VIDEO BOX AND THE CLEAR PLASTIC BOX THAT CONTAINED THE FILM, WHICH HE BROUGHT UP TO AND SAT ON THE COUNTER. JAMESON THEN ASKED THE SUSPECT IF HE HAS RENTED WITH US BEFORE, AT WHICH TIME HE REPLIED YES AND PULLED UP THE FRONT OF HIS SHIRT (WITH HIS RIGHT HAND) SHOWING HER A BROWN GRIP HANDGUN WHICH WAS IN HIS WAIST BAND. THE SUSPECT THEN ADVISED HER THAT "THIS IS A LOADED GUN AND THIS IS A HOLD-UP, GIVE ME ALL THE CASH IN YOUR DRAWER." JAMESON SAID THAT SHE STARTED TO REACH FOR THE SILENT ALARM, WHICH WAS NEXT TO THE REGISTER DRAWER, AT WHICH TIME THE SUSPECT TOLD HER "DONT TOUCH ANY BUTTON." JAMESON TOLD THE SUSPECT IM NOT THE CASH DRAWER IS RIGHT HERE" AND SHE PROCEEDED TO OPEN THE DRAWER AND HAND THE SUSPECT THE MONEY (BILLS) THAT WAS IN THE CASH REGISTER.

DA 00002537

EX 182 - 000036

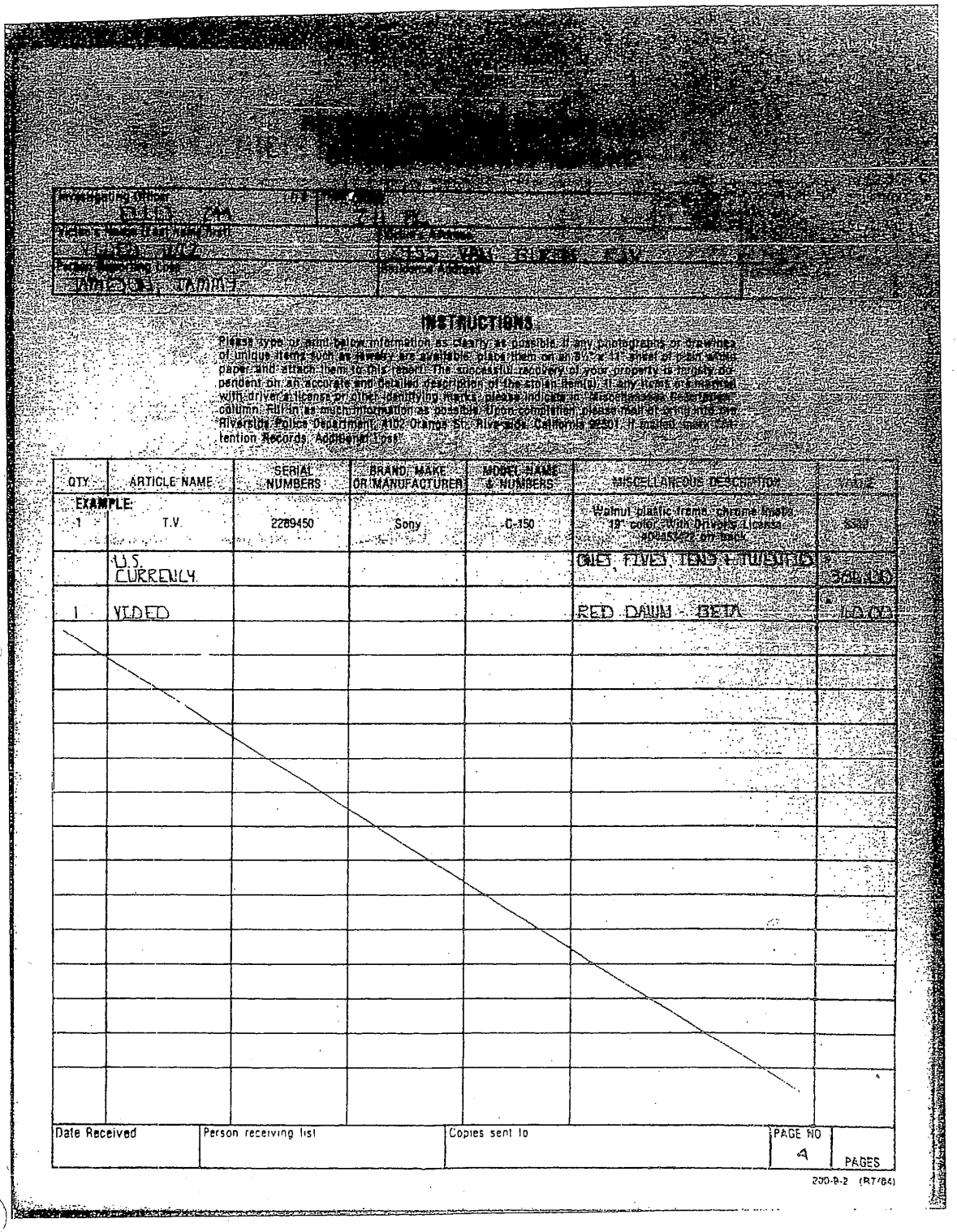


[redacted]

[redacted] BUT IT DO HAS LEFT. THE SUSPECT TOOK
TOLD JAMESON TO GO IN THE BACK ROOM LAY
ON THE FLOOR AND COUNT TO A HUNDRED SLOWLY
AND IF ANYONE STICKS THEIR HEAD OUT I HAVE
A FRIEND WAITING OUTSIDE AND WE WILL BLOW
THEIR HEAD OFF. JAMESON DID SO.
IMMEDIATELY WALKED TO THE BACK ROOM WHERE
SHE PUSHED THE SILENT ALARM AND WAITED
UNTIL SHE HEARD THE SUSPECT LEAVE THE STORE
BEFORE RETURNING TO THE FRONT SALES COUNTER.
JAMESON COULD NOT PROVIDE ANY DIRECTION
OF TRAVEL AND THERE WERE NO INJURIES
REPORTED.

DA 00002538

EX 182 - 000037



[redacted]

INSTRUCTIONS

Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½" x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items contained with driver's license or other identifying marks, please indicate in the Miscellaneous Description column. Fill in as much information as possible. Upon completion please mail or print and the Riverside Police Department, 4102 Orange St. Riverside, California 92501. If mailed, mark to the attention Records, Additional pages

QTY.	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C-150	Walnut plastic frame, chrome knobs, 19" color, with Drivers License and Social Security on back	$350
	U.S. CURRENCY				ONES, FIVES, TENS & TWENTIES	350.00
1	VIDEO				RED DAWN - BETA	[illegible]

Date Received	Person receiving list	Copies sent to	PAGE NO. 4	PAGES

200-B-2 (R7/84)

DA 00002539

EX 182 - 000038

[redacted]

Date 1-29-86

Felix Cept
402 Cubit
Irvine CA 92501

The Vedic Way — 9-6-85 — 92-1402
Our Insured — Date of Loss — Our Policy Number

2955 Van Buren #3 Riverside — 92503 — Your File Number
Our Insured's Address

Dana
Location of Theft

Description of Property Stolen: see attached list

This is to advise that this Company has issued their draft in the sum of $ 343 00 covering the cost of repair or replacement of damaged or stolen property described above as a result of the above mentioned loss.

Pursuant to our right of subrogation, we are requesting that this office be notified as to the apprehension of the person responsible for said damage or theft and/or of the recovery of the property so taken.

Thank you for your cooperation in this matter.

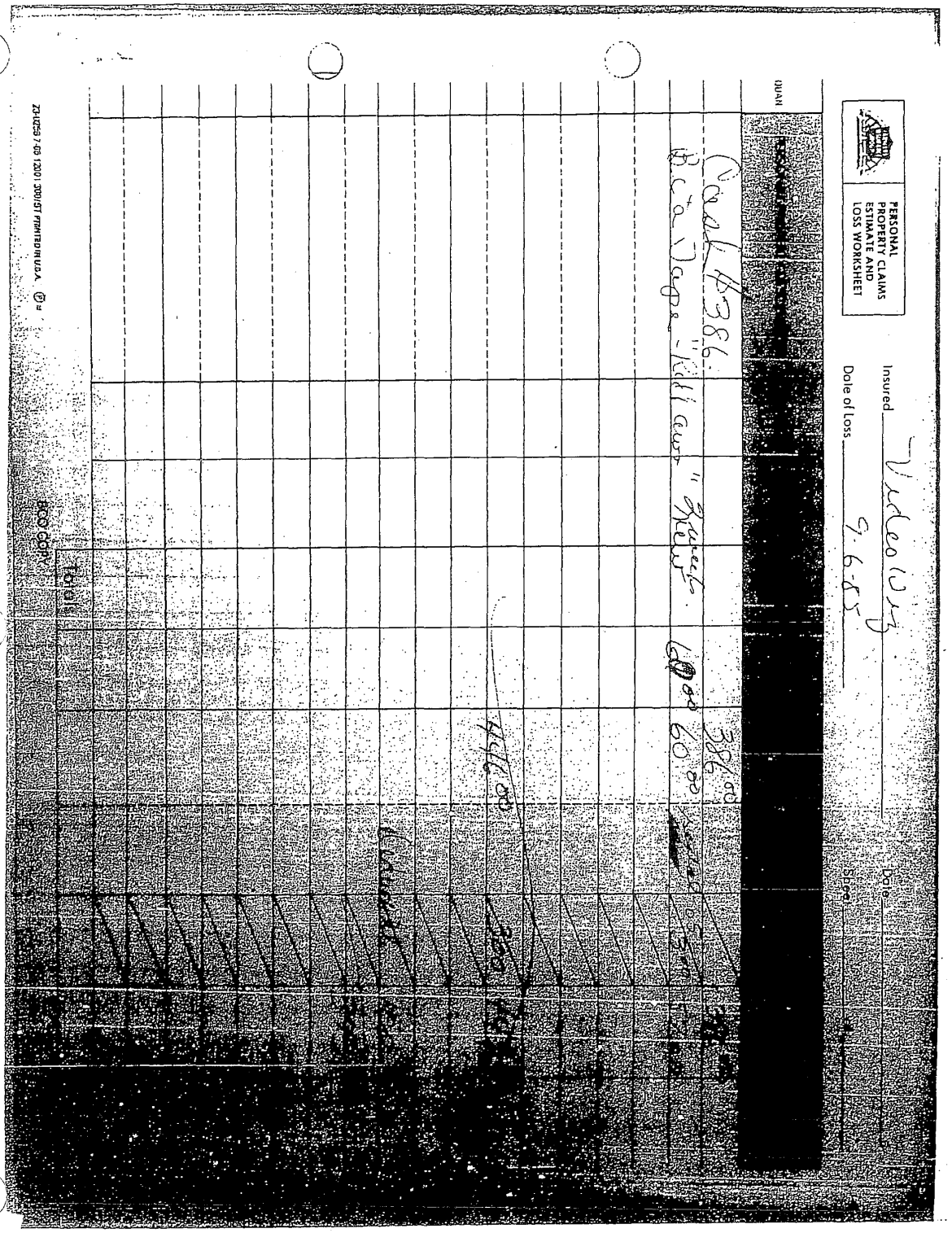
Very truly yours,

Claims Department

23-0258 8-84 1301 200/ST PRINTED IN U.S.A.

DA 00002540

EX 182 - 000039



DA 00002541

EX 182 - 000040

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 07-28-

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime Ct.	6. Crime Ct.	7. Crime Ct.	8. Date/Time Occurred	9. Day
P3-85-249-166		294	I-16					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			EXC			

17. Address of Occurrence (Street No. - Name - City): 2955 Van Buren Blvd., Riverside, CA

18. Type of Place: Business

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V	VIDEO WIZ III		

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	2955 Van Buren Blvd.,Riv.,CA		

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT	35. Last Name - First - Middle	36. Race	Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes	No
	GRESHAM, Randall Dale	W	M	27	511	180	Brn	Blu	[redacted]59	( )	( )

44. Address - Clothing - Other Marks or Identifying Characteristics: CII: A07067963 SID: 0980816 FBI: 339121T7

45. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

SUSPECT	46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes	No
									( )	( )

55. Address - Clothing - Other Marks or Identifying Characteristics:

56. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 P.C. (Robbery/Armed)	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2 $

Reporting Off. cd: A. Tortes

Reviewed By:

COPIES TO

VCLO ( )

ACTIONS

APB Sent

APB Cancld.

APR Sent

APR Cncld

DOJ/NCIC Entered Cancld.

62. Narrative of Supplemental Report

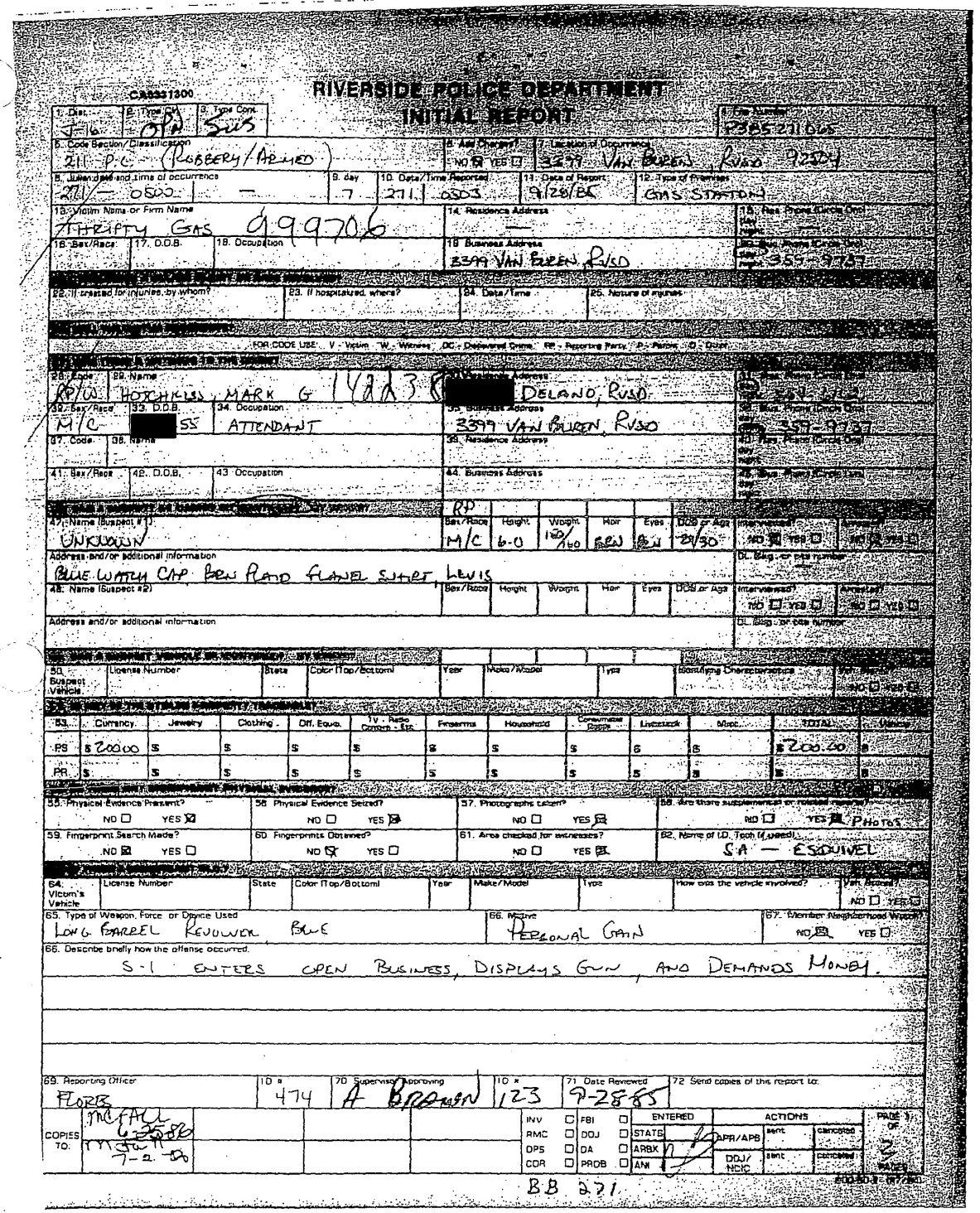
Based on similar physical characteristics and MO as previously listed robberies. RPD/P3-85-249-164, RPD/P3-85-249-140, and information received from a Reliable Confidential Informant, this case will be exceptionally cleared naming S-1 Gresham as the perpetrator of this offense.

Disposition: Exceptionally clear.

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002542

EX 182 - 000041



RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

CA9331300

P385 211 065

211 P.C. (ROBBERY/ARMED)

3399 VAN BUREN, RIVSD 92504

211/— 0500 — 7 271 0503 9/28/85 GAS STATION

19. Victim Name or Firm Name: THRIFTY GAS 999706

14. Residence Address: —

18. Business Address: 3399 VAN BUREN, RIVSD

28. Name: RP/W HOTCHKISS, MARK G 14223 [redacted] DELANO, RIVSD.

32. Sex/Race: M/C 33. D.O.B.: [redacted] 55 34. Occupation: ATTENDANT

35. Business Address: 3399 VAN BUREN, RIVSD

47. Name (Suspect #1): UNKNOWN — RP — Sex/Race: M/C — Height: 6-0 — Weight: 180/MD — Hair: BRN — Eyes: BRN — DOB or Age: 25/30

Address and/or additional information: BLUE WATCH CAP BRN RAND FLANEL SHIRT, LEVIS

53. Currency: PS $200.00 — TOTAL: $200.00

55. Physical Evidence Present? NO ☐ YES ☒

56. Physical Evidence Seized? NO ☐ YES ☒

57. Photographs Taken? NO ☐ YES ☒

58. Are there supplemental or related reports? NO ☐ YES ☒ PHOTOS

59. Fingerprint Search Made? NO ☒ YES ☐

60. Fingerprints Obtained? NO ☒ YES ☐

61. Area checked for witnesses? NO ☐ YES ☒

62. Name of I.D. Tech (if used): SA — ESQUIVEL

65. Type of Weapon, Force or Device Used: LONG BARREL REVOLVER BLUE

66. Motive: PERSONAL GAIN

67. Member Neighborhood Watch? NO ☒ YES ☐

66. Describe briefly how the offense occurred.

S-1 ENTERS OPEN BUSINESS, DISPLAYS GUN, AND DEMANDS MONEY.

69. Reporting Officer: FLORES — ID #: 474 — 70. Supervisor Approving: A BRANNON — ID #: 123 — 71. Date Reviewed: 9-28-85 — 72. Send copies of this report to:

COPIES TO: MCFALL 9-28-85; 7-2-86

INV ☐ FBI ☐ RMC ☐ DOJ ☐ DPS ☐ DA ☐ CDR ☐ PROB ☐

ENTERED: STATS ✓ ARBK ✓ AM ✓

ACTIONS: APB/APB sent ✓ cancelled ✓; DOJ/NCIC sent ✓ cancelled ✓

PAGE 1 OF 2 PAGES

BB 271

DA 00002528

EX 183 - 000042

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: FLORES I.D.# 474
File Number: P385271065
Crime Code / Classification: 211 P.C.
Location of Occurrence: 3379 VAN BUREN
PAGE NUMBER 2 OF 2

BLOCK # 28

NARRATIVE:

RP- HOTCHKISS STATED HE WAS BEHIND THE CASH REGISTER IN THE STORE PORTION OF THE GAS STATION WHEN THE SUSPECT ENTERED. THE SUSPECT REMOVED A GUN FROM HIS WAISTBAND, POINTED IT AT THE RP AND SAID " GIVE ME ALL YOUR MONEY, IM OUT OF WORK, I NEED MONEY TO FEED MY FAMILY." THE RP GAVE THE SUSPECT ALL OF THE MONEY FROM THE REGISTER. THE SUSPECT TOOK THE MONEY AND WALKED OUT OF THE STORE AREA E/B - AROUND THE BLDG, OUT OF SIGHT.

INVESTIGATION REVEALED A TENNIS SHOE PRINT/S LEADING FROM A FIELD (BEHIND THE GAS STATION) TO THE STORE AREA AND BACK TO THE FIELD. THIS IS THE POSSIBLE ESCAPE ROUTE TAKEN BY THE SUSPECT (SEE PHOTOS BY SA ESQUIVEL).

RPD-TA-2 (7/94)

DA 00002529

EX 183 - 000043

RIVERSIDE POLICE DEPARTMENT
STOLEN PROPERTY REPORT

Investigating Officer	I.D.#	TYPE CRIME	File Number
FLORES	474	211 P.C. ROBBERY	P385271 DLS
Victim's Name (Last name first)	**Victim's Address**		**Telephone Number**
THRIFTY GAS	[redacted] VAN BUREN		353-3737
Person Reporting Loss	**Residence Address**		**Telephone Number**
HOTCHKISS, MARK G.	[redacted] DELAND		354-6162

INSTRUCTIONS

Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½" x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in "Miscellaneous Description" column. Fill in as much information as possible. Upon completion, please mail or bring into the Riverside Police Department: 4102 Orange St., Riverside, California 92501. If mailed, mark "Attention Records, Additional Loss"

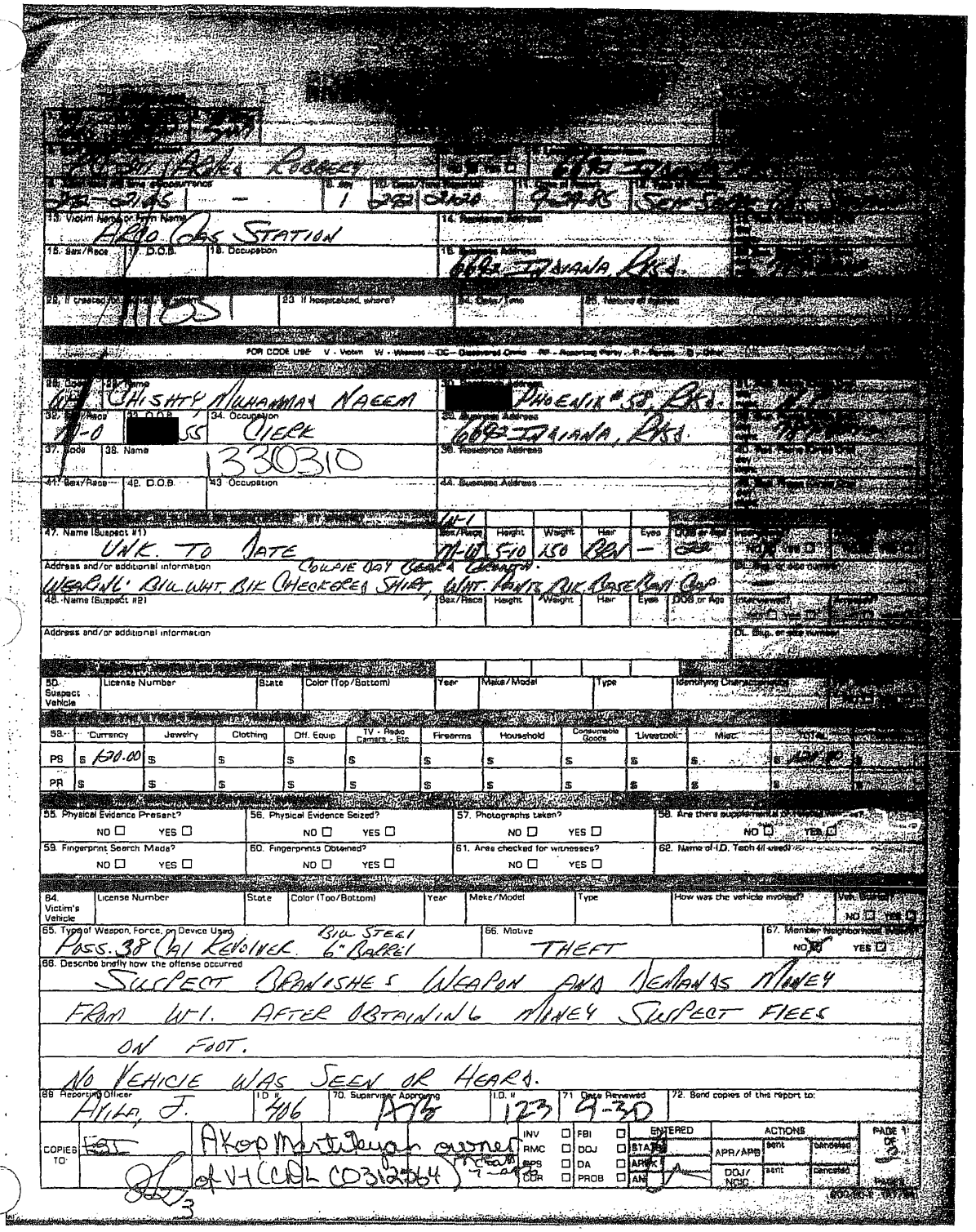
QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C-150	Walnut plastic frame, chrome knobs, 19" color. With Driver's License #D4453422 on back.	$360
UNK	U.S. CURRENCY				APPROX. MISC DENOMINATIONS	200.00
		LAST ITEM				

Date Received	Person receiving list	Copies sent to	PAGE NO. 3	3 PAGES

200-9-2 (R7/84)

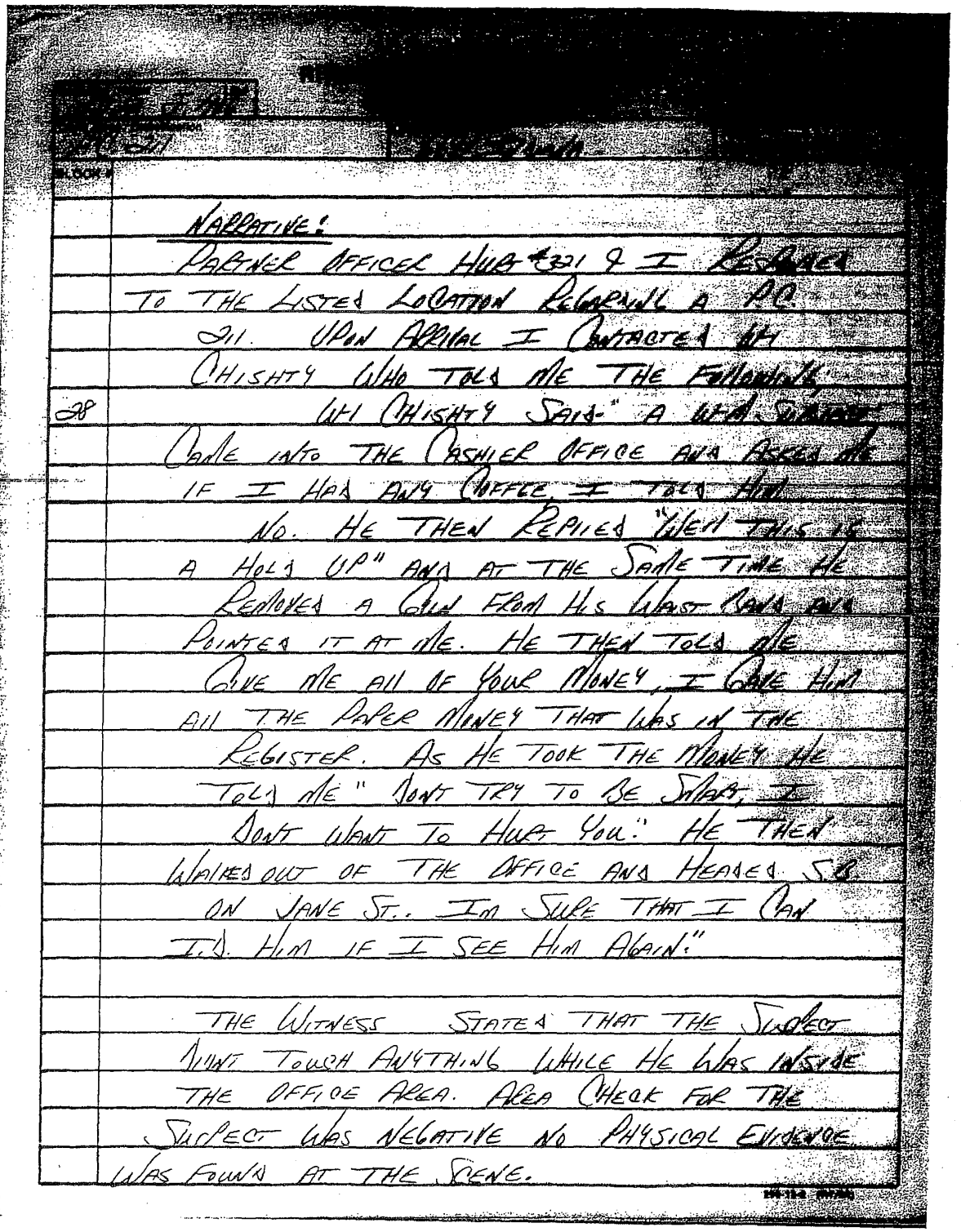
DA 00002530

EX 183 - 000044



DA 00002687

EX 184 - 000045



NARRATIVE:

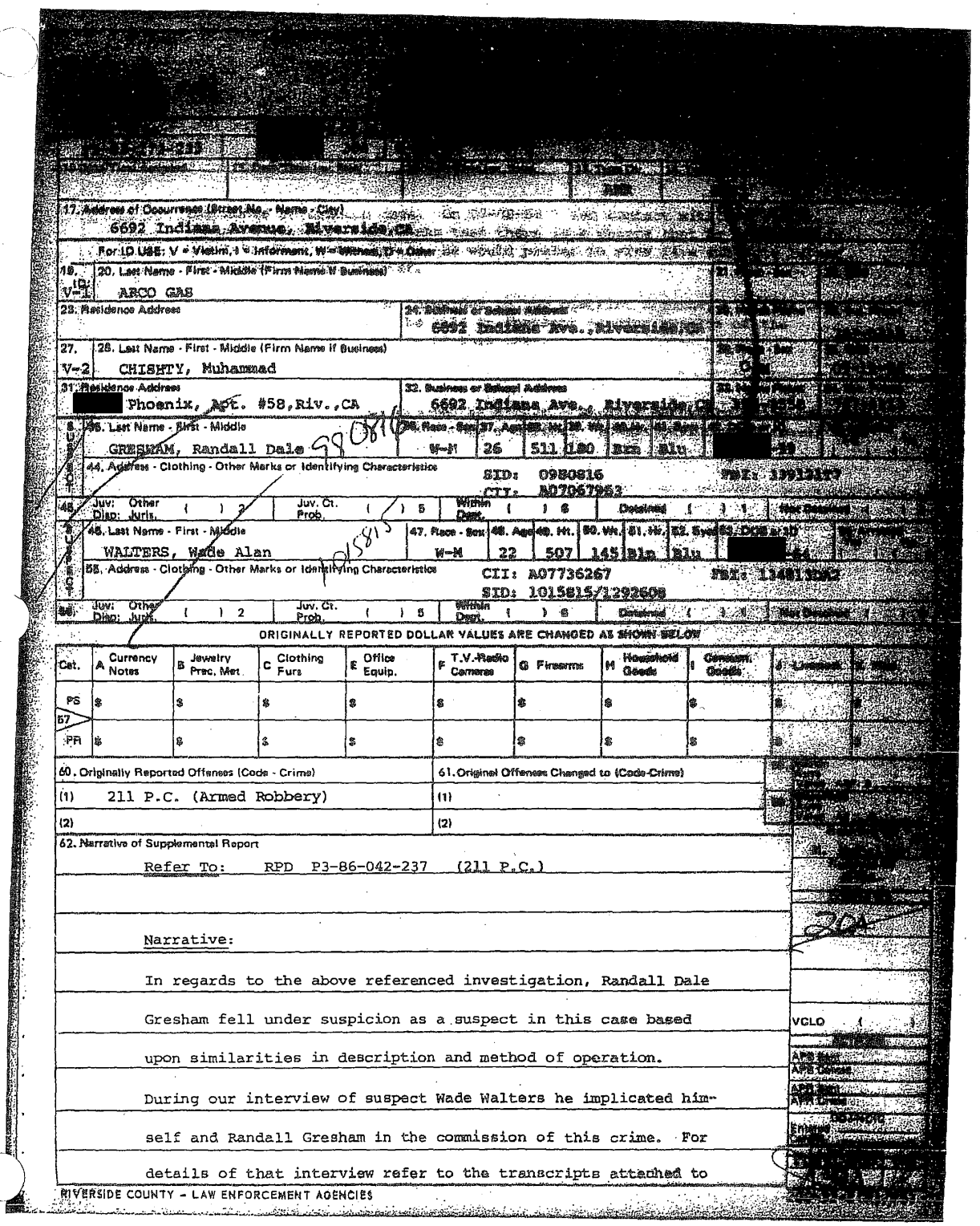
PARTNER OFFICER HUB #331 & I RESPONDED TO THE LISTED LOCATION REGARDING A 211. UPON ARRIVAL I CONTACTED MR CHISHTY WHO TOLD ME THE FOLLOWING:

MR CHISHTY SAID- "A MALE SUBJECT CAME INTO THE CASHIER OFFICE AND ASKED ME IF I HAD ANY COFFEE. I TOLD HIM NO. HE THEN REPLIED "WELL THIS IS A HOLD UP" AND AT THE SAME TIME HE REMOVED A GUN FROM HIS WAIST AREA AND POINTED IT AT ME. HE THEN TOLD ME GIVE ME ALL OF YOUR MONEY, I GAVE HIM ALL THE PAPER MONEY THAT WAS IN THE REGISTER. AS HE TOOK THE MONEY HE TOLD ME " DONT TRY TO BE SMART, I DONT WANT TO HURT YOU." HE THEN WALKED OUT OF THE OFFICE AND HEADED SB ON JANE ST.. I'M SURE THAT I CAN I.D. HIM IF I SEE HIM AGAIN."

THE WITNESS STATED THAT THE SUSPECT DIDNT TOUCH ANYTHING WHILE HE WAS INSIDE THE OFFICE AREA. AREA CHECK FOR THE SUSPECT WAS NEGATIVE NO PHYSICAL EVIDENCE WAS FOUND AT THE SCENE.

DA 00002688

EX 184 - 000046



17. Address of Occurrence (Street No. - Name - City)
6692 Indiana Avenue, Riverside, CA

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID: V-1 — 20. Last Name - First - Middle (Firm Name if Business): ARCO GAS

23. Residence Address — 24. Business or School Address: 6692 Indiana Ave., Riverside, CA

27. ID: V-2 — 28. Last Name - First - Middle (Firm Name if Business): CHISHTY, Muhammad

31. Residence Address: [redacted] Phoenix, Apt. #58, Riv., CA — 32. Business or School Address: 6692 Indiana Ave., Riverside, CA

SUSPECT — 35. Last Name - First - Middle: GRESHAM, Randall Dale — 36. Race - Sex: W-M — 37. Age: 26 — 38. Ht.: 511 — 39. Wt.: 180 — 40. Hair: brn — 41. Eyes: blu — 42. DOB: [redacted] — 43. [redacted]
44. Address - Clothing - Other Marks or Identifying Characteristics — SID: 0980816 — CII: A07067953 — FBI: 190121T7
45. Juv: Other Disp: Juris. ( ) 3 — Juv. Ct. Prob. ( ) 5 — Within Dept. ( ) 6 — Detained ( ) 1 — Not Detained ( )

SUSPECT — 46. Last Name - First - Middle: WALTERS, Wade Alan — 47. Race - Sex: W-M — 48. Age: 22 — 49. Ht.: 507 — 50. Wt.: 145 — 51. Hair: blu — 52. Eyes: blu — 53. DOB: [redacted] — 54. [redacted]
55. Address - Clothing - Other Marks or Identifying Characteristics — CII: A07736267 — FBI: 134813DB2 — SID: 1015815/1292608
56. Juv: Other Disp: Juris. ( ) 2 — Juv. Ct. Prob. ( ) 5 — Within Dept. ( ) 6 — Detained ( ) 1 — Not Detained ( )

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consumable Goods	J Livestock	K Misc.
PS 67	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)
(1) 211 P.C. (Armed Robbery)
(2)

61. Original Offenses Changed to (Code-Crime)
(1)
(2)

62. Narrative of Supplemental Report

Refer To: RPD P3-86-042-237 (211 P.C.)

Narrative:

In regards to the above referenced investigation, Randall Dale Gresham fell under suspicion as a suspect in this case based upon similarities in description and method of operation.

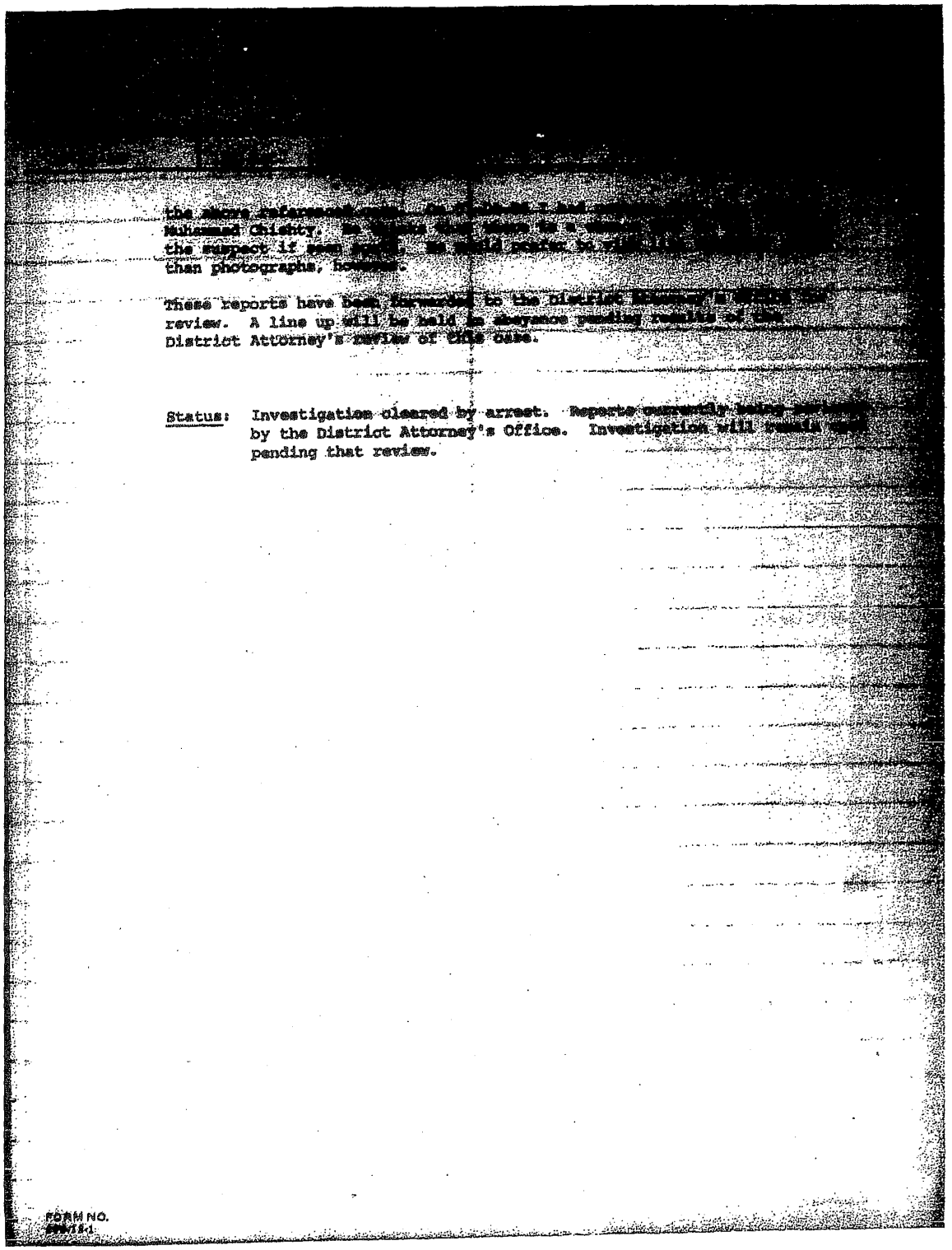
During our interview of suspect Wade Walters he implicated himself and Randall Gresham in the commission of this crime. For details of that interview refer to the transcripts attached to

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

VCLO

DA 00002689

EX 184 - 000047



[redacted] Mohammed Chishty, [redacted] the suspect if seen again. [redacted] than photographs, however.

These reports have been forwarded to the District Attorney's Office for review. A line up will be held in abeyance pending results of the District Attorney's review of this case.

Status: Investigation cleared by arrest. Reports currently being reviewed by the District Attorney's Office. Investigation will remain open pending that review.

FORM NO. [redacted]

DA 00002690

EX 184 - 000048

CA0331300

RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

1. Dist. E-02 | 2. Type Cir. BJN | 3. Type Cont. Person | 4. File Number P05-274-276

5. Code Section/Classification 211 PC / ROBBERY | 6. Add Charges? NO ☒ YES ☐ | 7. Location of Occurrence 5894 GRAND RIV. 92506

8. Date and time of occurrence 2/4 – 2000 | – | 9. day 03 | 10. Date/Time Reported 2/4 2000 | 11. Basis of Report 10-1-85 | 12. Type of Premises RESIDENCE

13. Victim Name or Firm Name JENSEN, MICHAEL ALIEN | 14. [redacted] Address FRESNO CA. 93304 | Phone (Circle One) day 487-2750 night

15. Sex/Race MW [redacted] 64 | 16. Occupation SUP-ENGINEER/PEST CONTROL | 17. Business Address SAME AS ABOVE | Phone (Circle One) day 687-7250 night

22. If treated for injuries, by whom? PARAMED 94 | 23. If hospitalized, where? | 24. Date/Time | 25. Nature of injuries

FOR CODE USE V - Victim W - Witness DC - Discovered Crime RP - Reporting Party P - Parent O - Other

27. WAS THERE A WITNESS TO THE CRIME?

28. Code	29. Name	30. Residence Address	31. Res. Phone (Circle One) day night
32. Sex/Race	**33. DOB**	**34. Occupation**	**35. Business Address** / **36. Bus. Phone (Circle One) day night**
37. Code	**38. Name**	**39. Residence Address**	**40. Res. Phone (Circle One) day night**
41. Sex/Race	**42. DOB**	**43. Occupation**	**44. Business Address** / **45. Bus. Phone (Circle One) day night**

46. CAN A SUSPECT BE NAMED OR IDENTIFIED? BY WHOM?

47. Name (Suspect #1)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
UNKNOWN	MW	508	150	—	—	20's	NO ☒ YES ☐	NO ☒ YES ☐

Address and/or additional information: LSW DARK TRENCHCOAT AND STOCKING OVER FACE — DL. Bkg., or cite number

48. Name (Suspect #2)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
UNKNOWN	MW	601	210	—	—	20's	NO ☒ YES ☐	NO ☒ YES ☐

Address and/or additional information: LSW GREY OVERALLS AND UNKNOWN TYPE COVERT T-SHIRT — DL. Bkg., or cite number

49. CAN A SUSPECT VEHICLE BE IDENTIFIED? BY WHOM?

50 Suspect Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	Identifying Characteristics	Veh. Stored?
								NO ☐ YES ☐

51. IS ANY OF THE STOLEN PROPERTY TRACEABLE?

53.	Currency	Jewelry	Clothing	Off. Equip.	TV - Radio Camera - Etc	Firearms	Household	Consumable Goods	Livestock	Misc.	TOTAL	Vehicle
PS	$700.00	$30.00	$	$	$	$	$	$	$	$	$ 730.00	$
PR	$	$	$	$	$	$	$	$	$	$	$	$

52. ARE THERE ANY SIGNIFICANT PHYSICAL EVIDENCE?

55. Physical Evidence Present?	56. Physical Evidence Seized?	57. Photographs taken?	58. Are there supplemental or related reports?
NO ☒ YES ☐	NO ☒ YES ☐	NO ☒ YES ☐	NO ☒ YES ☐
59. Fingerprint Search Made?	**60. Fingerprints Obtained?**	**61. Area checked for witnesses?**	**62. Name of I.D. Tech (if used)**
NO ☒ YES ☐	NO ☒ YES ☐	NO ☐ YES ☒	

63. ANY OTHER SIGNIFICANT INFO?

64. Victim's Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	How was the vehicle involved?	Veh. Stored?
								NO ☐ YES ☐

65. Type of Weapon, Force or Device Used: REVOLVERS / HANDS | 66. Motive: PERSONAL GAIN | 67. Member Neighborhood Watch? NO ☒ YES ☐

66. Describe briefly how the offense occurred

AS V-1 WAS ENTERING RESIDENCE, SUSPECTS POINTED REVOLVERS AT HIM, AND MADE HIM GO IN HOUSE AND SIT DOWN. SUSPECTS TOOK V-1'S WALLET + WATCH + WENT THROUGH DRAWERS IN BEDROOM. SUSPECTS PISTOL WHIPPED V-1 AND FLED ON FOOT.

69 Reporting Officer	ID #	70 Supervisor Approving	ID #	71 Date Reviewed	72 Send copies of this report to:
WILKINSON	226	J Rog	357	10-9-85	

COPIES TO

								ENTERED	ACTIONS			
INV ☐	PMC ☐	DPS ☐	COR ☐	FBI ☒	DOJ ☒	DA ☐	PROB ☐	STATS	APR/APB	sent	canceled	PAGE 1 OF 4 PAGES
								ARBK	DOJ/NCIC	sent	canceled	
								ANI				

200-80-2 (R7/84)

DA 00002661

EX 185 - 000049

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: WILKINSON I.D.# 326 | File Number: P385-17216
Crime Code / Classification: 211 PC / ROBBERY | Location of Occurrence: 5694 GRAND RIV 92506 | PAGE NUMBER 2 OF 4
BLOCK #

PROPERTY STOLEN: SEE ATTACHED SPR

DETAILS: I CONTACTED V-1 JENSEN AT 5694 GRAND IN RESPONSE TO A RADIO CALL OF A ROBBERY AT THAT LOCATION.

V-1 JENSEN TOLD ME HE WAS HOUSE-SITTING AT 5694 GRAND, BUT DIDN'T KNOW THE NAME OF THE RESIDENT.

V-1 JENSEN SAID HE HAD LEFT THE HOUSE IN HIS TRUCK AT ABOUT 1930 HOURS. HE SAID HE DROVE TO "MC DONALDS" ON ARLINGTON AND GOT SOMETHING TO EAT. HE THEN DROVE BACK TO THE HOUSE, ARRIVING AT ABOUT 2000 HOURS, AND PARKED IN THE DRIVEWAY SOUTH OF THE RESIDENCE. HE THEN WALKED UP TO THE FRONT DOOR. V-1 JENSEN SAID THE TWO SUSPECTS THEN APPROACHED HIM FROM BEHIND, POINTED REVOLVERS AT HIM, AND ONE OF THEM SAID, "GET IN THE HOUSE."

V-1 JENSEN THEN OPENED THE DOOR AS ONE OF THE SUSPECTS SAID, "DON'T TRY TO PULL ANYTHING!" ALL THREE ENTERED THE HOUSE, AND ONE OF THE SUSPECTS SAID, "SIT DOWN."

S-2 THEN WENT INTO BEDROOM AS S-1 ASKED V-1 JENSEN IF HE HAD ANY MONEY. V-1 REPLIED "NO", AND S-1 PUNCHED HIM IN THE STOMACH. V-1 JENSEN THEN SURRENDERED HIS WALLET TO S-1, AS WELL AS HIS WRISTWATCH.

S-2 THEN RETURNED TO LOCATION OF S-1 AND V-1 AND MADE V-1 JENSEN STAND UP. S-2 THEN PUNCHED V-1 JENSEN IN THE STOMACH ABOUT 3 TIMES AND THREW HIM FACE-DOWN ON THE FLOOR. ONE SUSPECT THEN SAID, "DON'T MOVE, OR ELSE."

(CONTINUED)

200-18-2 (R7/84)

DA 00002662

EX 185 - 000050

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: WILKINSON I.D.#: 226
File Number: F385-04216
Crime Code/Classification: 211 PC / ROBBERY
Location of Occurrence: 5894 GLENN RIV.
PAGE NUMBER 3 OF 4
BLOCK #

V-1 JENSEN BOTH SUSPECTS RAN OUT THE DOOR. WHEN HE HEARD THE DOOR SLAM, V-1 JENSEN GOT UP AND WALKED OUT THE DOOR AND SAW BOTH SUSPECTS RUNNING W/B BEHIND IN THE STREET. V-1 JENSEN THEN CALLED POLICE.

V-1 JENSEN DESCRIBED THE SUSPECTS AS:

S-1: WM, 20'S, 508-150; WEARING A DARK TRENCH-COAT ABOUT MID-CALF LENGTH; ALSO WEARING NYLON STOCKING OVER HIS HEAD AND BLACK LEATHER GLOVES.

S-2: WM 20'S, 601-210; WEARING GREY CORDEROY PANTS AND A LIGHT-COLORED CONCERT-TYPE T-SHIRT; ALSO WEARING NYLON STOCKING OVER HIS HEAD AND BLACK LEATHER GLOVES.

V-1 JENSEN SAID BOTH SUSPECTS HAD DEEP VOICES.

I CHECKED INSIDE THE ROOMS OF THE HOUSE. IN ONE BEDROOM I FOUND OPENED DRESSER DRAWERS WITH JEWELRY STRAND OUT ON THE FLOOR. THE JEWELRY APPEARED INEXPENSIVE AND V-1 JENSEN DOES NOT BELIEVE ANY OF IT WAS TAKEN.

AN AREA CHECK YIELDED NO SUSPECTS OR EVIDENCE.

DA 00002663

EX 185 - 000051

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: WILKINSON I.D.#: 226
File Number: R050216
Crime Code/Classification: 211 PC / ROBBERY
Location of Occurrence: 5694 GRAND RIV.
PAGE NUMBER: 3 OF 4

BLOCK #

V-1 JENSEN BOTH SUSPECTS RAN OUT THE DOOR. WHEN HE HEARD THE DOOR SLAM, V-1 JENSEN GOT UP AND LOOKED OUT THE DOOR AND SAW BOTH SUSPECTS RUNNING W/B ACROSS IN THE STREET. V-1 JENSEN THEN CALLED POLICE.

V-1 JENSEN DESCRIBED THE SUSPECTS AS:

S-1: WM, 20'S, 608-150; WEARING A DARK TRENCH-COAT ABOUT MID-CALF LENGTH; ALSO WEARING NYLON STOCKING OVER HIS HEAD AND BLACK LEATHER GLOVES.

S-2: WM 20'S, 601-210; WEARING GREY CORDEROY PANTS AND A LIGHT-COLORED CONCERT-TYPE T-SHIRT; ALSO WEARING NYLON STOCKING OVER HIS HEAD AND BLACK LEATHER GLOVES.

V-1 JENSEN SAID BOTH SUSPECTS HAD DEEP VOICES.

I CHECKED INSIDE THE ROOMS OF THE HOUSE. IN ONE BEDROOM I FOUND OPENED DRESSER DRAWERS WITH JEWELRY STRAWN OUT ON THE FLOOR. THE JEWELRY APPEARED INEXPENSIVE AND V-1 JENSEN DOES NOT BELIEVE ANY OF IT WAS TAKEN.

AN AREA CHECK YIELDED NO SUSPECTS OR EVIDENCE.

DA 00002664

EX 185 - 000052

RIVERSIDE POLICE DEPARTMENT
STOLEN PROPERTY REPORT

Investigating Officer	I.D.#	TYPE CRIME
WILKINSON	226	211 PC / ROBBERY

Victim's Name (Last name first)	Victim's Address
JENSEN, MICHAEL ALLEN	[redacted] FIESTA DR. 92504
Person Reporting Loss	**Residence Address**
SAME	

INSTRUCTIONS

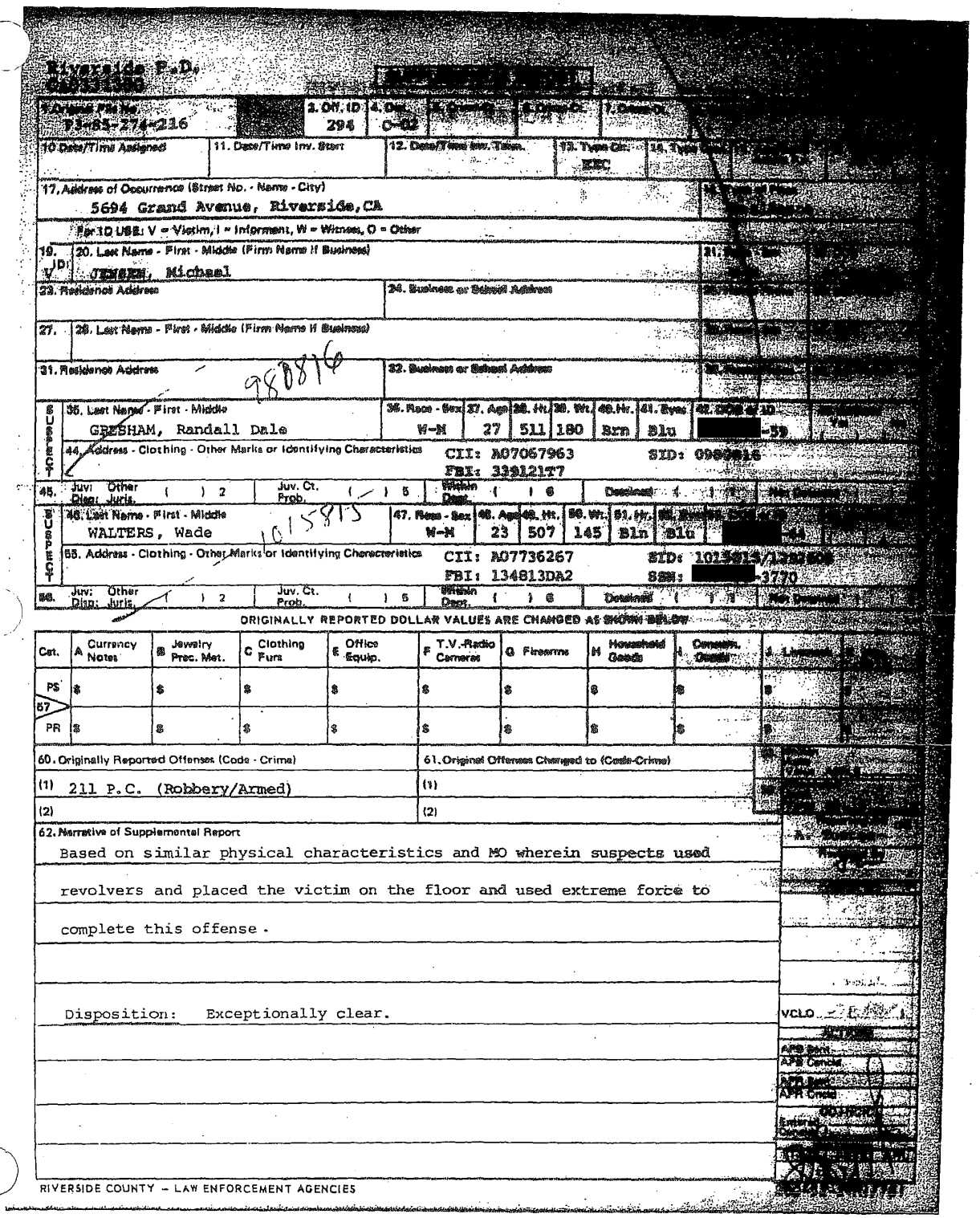
Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½" x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in "Miscellaneous Description" column. Fill in as much information as possible. Upon completion, please mail or bring into the Riverside Police Department; 4102 Orange St., Riverside, California 92501. If mailed, mark "Attention Records, Additional Loss".

QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T V.	2289450	Sony	C-150	Walnut plastic frame, picture tube 19" color. With Driver's License #04453402 on back	$300
1	WRISTWATCH	–	–	–	WHITE METAL & DIGITAL	$ 40.00
1	WALLET	–	–	–	BLACK LEATHER BIFOLD	–
35	CURRENCY	–	–	–	25 $20.00 BILLS/US CURRENCY	$500.00

Date Received	Person receiving list	Copies sent to	PAGE NO. 4 / 4 PAGES

DA 00002665

EX 185 - 000053



Riverside P.D.

1. Agency File No. 93-05-274-216		2. Off. ID 294	4. Dis. C-02				
10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Taken		13. Type Dis. EXC	14. Type		

17. Address of Occurrence (Street No. - Name - City): 5694 Grand Avenue, Riverside, CA

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. VICT	20. Last Name - First - Middle (Firm Name if Business): JENSEN, Michael								
23. Residence Address		24. Business or School Address							
27.	28. Last Name - First - Middle (Firm Name if Business)								
31. Residence Address		32. Business or School Address							

SUSPECT	35. Last Name - First - Middle: GRESHAM, Randall Dale	36. Race - Sex: W-M	37. Age: 27	38. Ht.: 511	39. Wt.: 180	40. Hr.: Brn	41. Eyes: Blu	42. DOB / ID: [redacted]-59	
	44. Address - Clothing - Other Marks or Identifying Characteristics	CII: A07067963			SID: 09				
		FBI: 339121T7							
45.	Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Destined ( ) 7					

SUSPECT	46. Last Name - First - Middle: WALTERS, Wade	47. Race - Sex: W-M	48. Age: 23	49. Ht.: 507	50. Wt.: 145	51. Hr.: Bln	52. Eyes: Blu	[redacted]-71	
	55. Address - Clothing - Other Marks or Identifying Characteristics	CII: A07736267			SIDs: 10				
		FBI: 134813DA2			SSN: [redacted]-3770				
56.	Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Destined ( ) 7					

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J
PS 57	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 P.C. (Robbery/Armed)	(1)
(2)	(2)

62. Narrative of Supplemental Report

Based on similar physical characteristics and MO wherein suspects used revolvers and placed the victim on the floor and used extreme force to complete this offense.

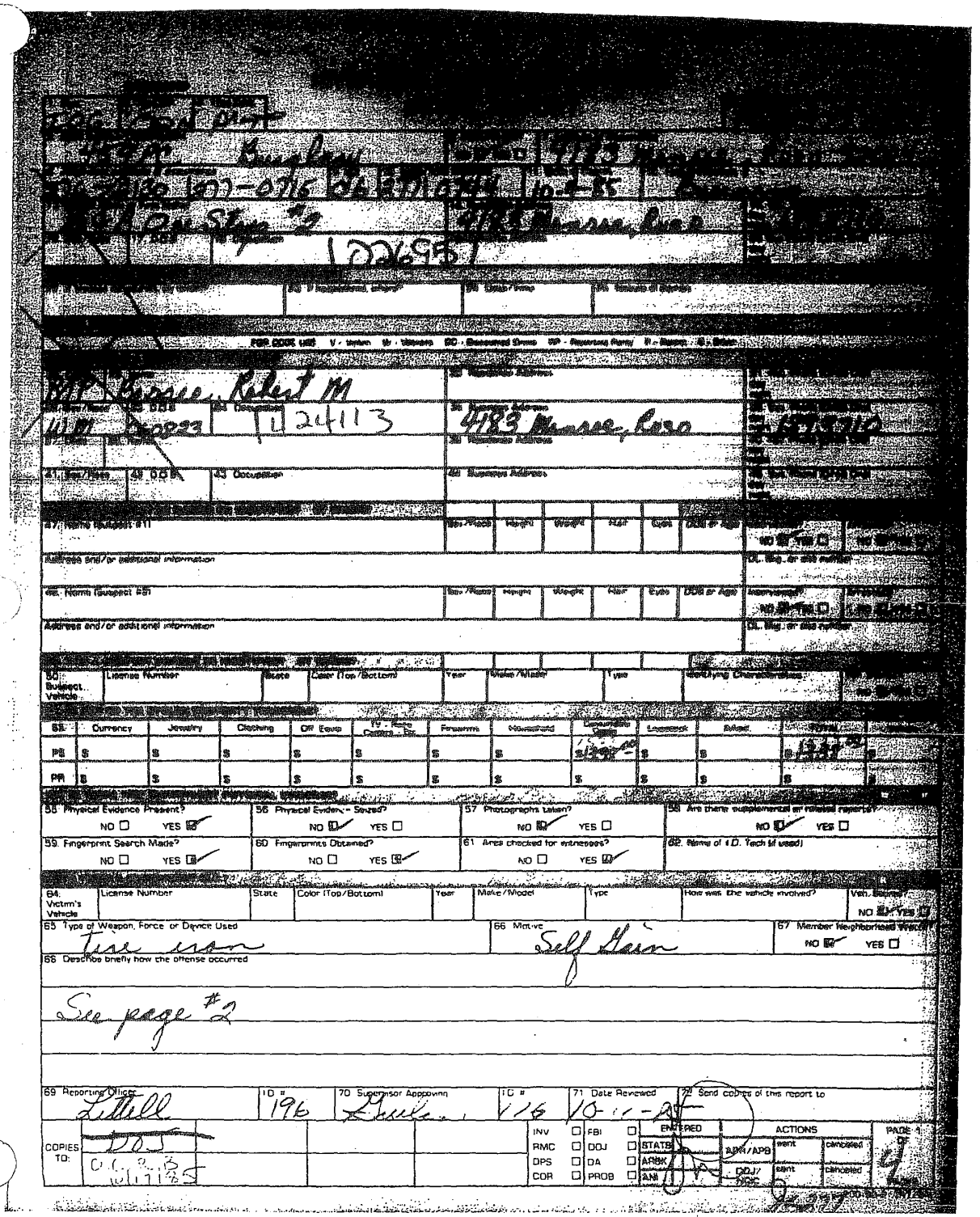
Disposition: Exceptionally clear.

VCLO

RIVERSIDE COUNTY – LAW ENFORCEMENT AGENCIES

DA 00002666

EX 185 - 000054



DA 00002667

EX 186 - 000055

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Tidwell 196 | Crime Code / Classification: 459PC | Location of Occurrence: 4183 Monroe | Page Number: 2 of 4

BLOCK #	
53	Refer to Stolen Property Sheet - Partial list of items Taken - A complete list will be supplied later by R/P Besse.
60	Refer to the Property Sheet - Point of Entry: One of 2 main entrances that faced California.
68	Narrative
R/P	Besse said when he arrived this morning about 0715 hrs he found the door into the business had been pried open, but the dead bolt lock was still in the lock position. The inside of the store had been ransacked. His main supply of cigarette mostly Marlboro was gone along with gum, candy, cough drops, Cetis and beer.
	The suspects had used a tire iron to pry the heavy aluminum frame away from the door dead bolt to slip the lock out and open the door facing California Ave. After entering the business the suspects pried open the cash register, breaking the drawer off not knowing all that had to be done to open it was turn

RDS-1E-2 (R7/84)

DA 00002668

EX 186 - 000056

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: Littell 196 | Case No.: R0362728-0
Crime Code / Classification: 459PC | Location of Occurrence: 4183 Monroe | Page Number: 3 of 4

BLOCK #

68 Cont'd

The key. The suspects also took down a card regarding steroid on a top shelf to the rear of the business, and removed the flavor.

Cartons of cigarettes were taken from the shelves. Boxes were knocked down and items left strewn the floor.

Gum, Candy etc were emptied from display boxes and taken off by unknown means. Possibly in card board boxes that held some items that had been dumped on the floor.

The suspect(s) took the property out of the store through the walk-in refridgerator that had a door opening to the outside of the store.

Several cartons of cigarettes had been dropped inside the refridgerator on the way out.

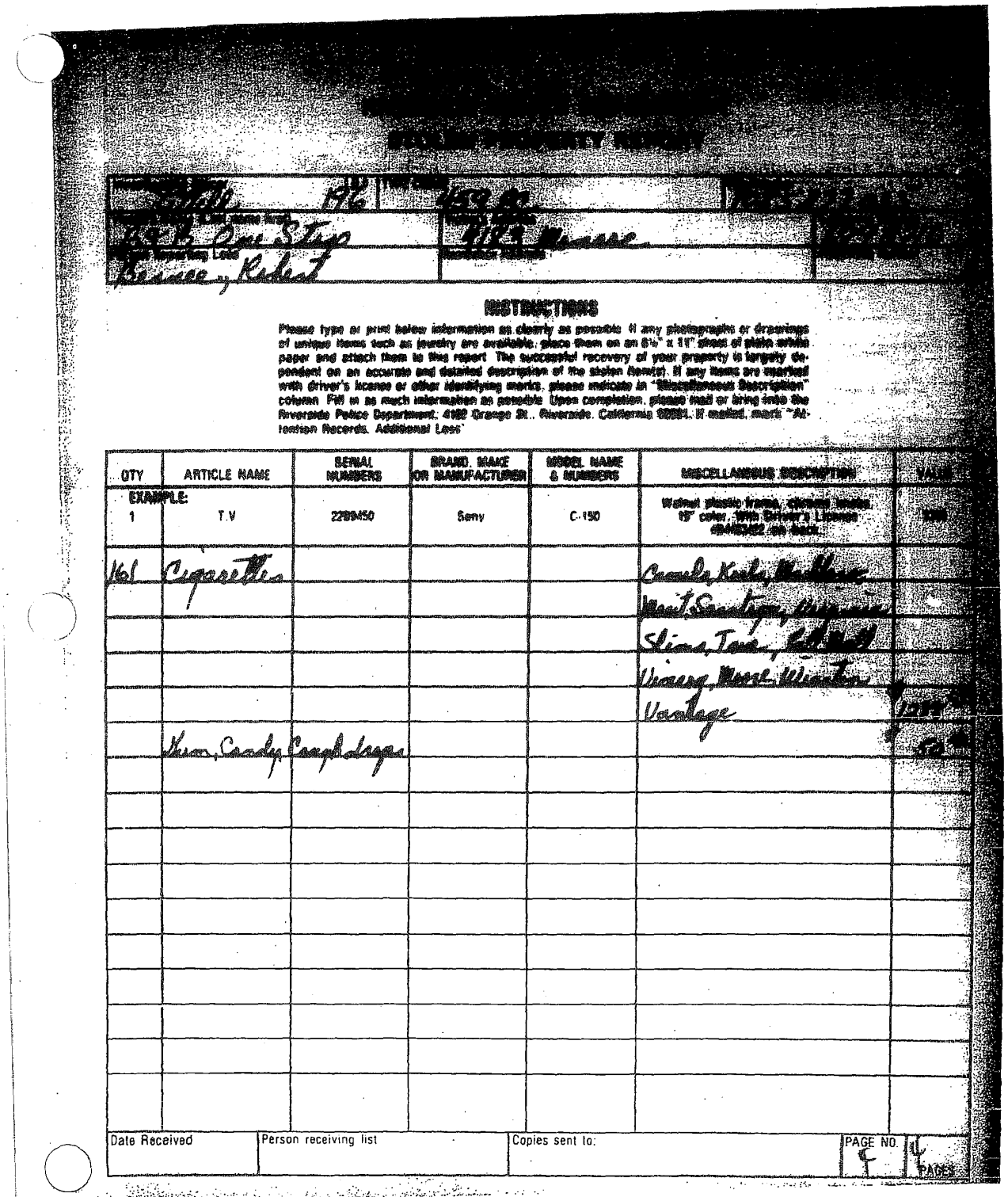
No further at this time.

PSR Littell #196

200-12-2 (R7/84)

DA 00002669

EX 186 - 000057



PROPERTY REPORT

Date: 8/12 | Time: 1530 hrs | Case No.:

Location of Incident: 1st & Orange Show | Officer Name: Hernandez | Badge No.:

Victim's Name: Lewis, Robert

INSTRUCTIONS

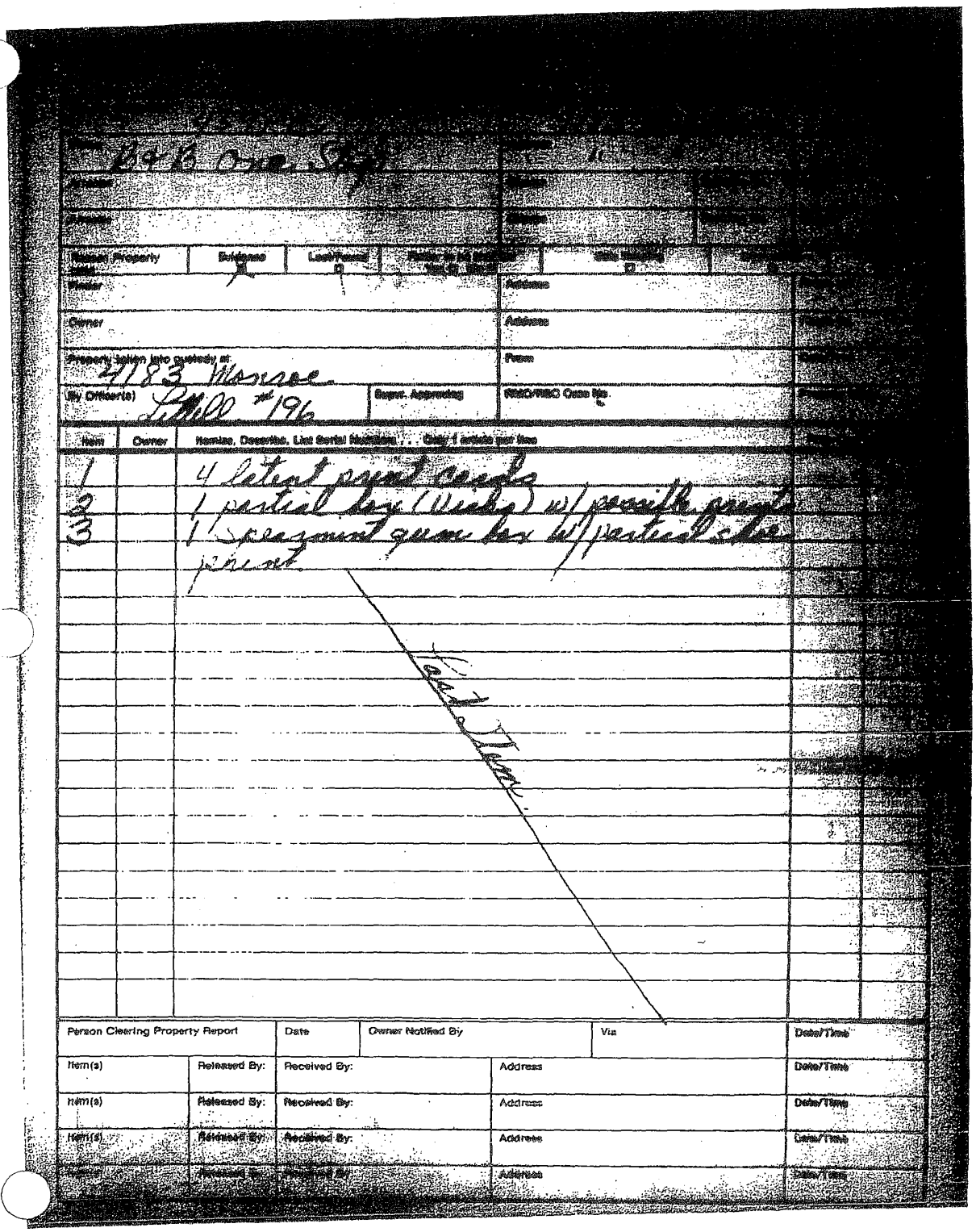
Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½" x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in "Miscellaneous Description" column. Fill in as much information as possible. Upon completion, please mail or bring into the Riverside Police Department, 4102 Orange St., Riverside, California 92501. If mailing, mark "Attention Records. Additional Lists"

QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V	2289450	Sony	C-150	Walnut plastic frame, chipped screen 15" color, With Driver's License [illegible]	[illegible]
Pkt	Cigarettes				Crumbs, Kools, Marlboro, Newport, Camel, Winston, Virginia, Marlboro, Winston, Vantage	
	Keys, Candy, Comp Lapel					

Date Received	Person receiving list	Copies sent to:	PAGE NO. 1	1 PAGES

DA 00002670

EX 186 - 000058



Property taken into custody at: 2183 Monroe

By Officer(s): [illegible] #196

Item	Owner	Itemize, Describe, List Serial Numbers . . . Only 1 article per line
1		4 latent print cards
2		1 partial boy (Wesley) w/ specific print
3		1 fingernail queen box w/ partial shoe print

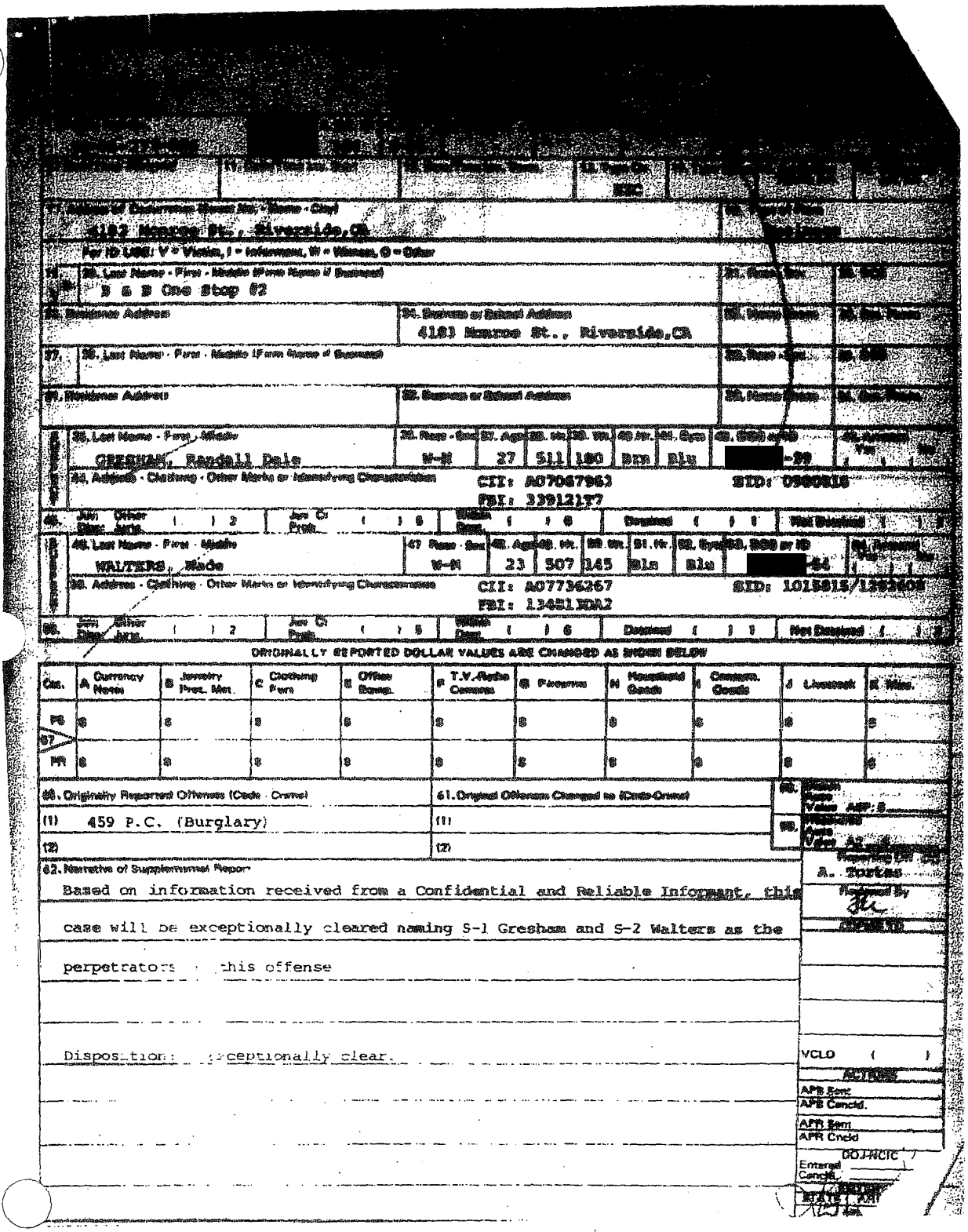
Void Line

Person Clearing Property Report	Date	Owner Notified By	Via	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
	Released By:	Received By:	Address	Date/Time

DA 00002671

EX 186 - 000059

Case: 20-99011, 09/10/2021, ID: 12225986, DktEntry: 12-9, Page 32 of 243
Case 2:05-cv-03633-DSF Document 99-12 Filed 03/18/16 Page 2 of 59 Page ID #:13636



4182 Monroe St., Riverside,CA

B & B One Stop #2

4183 Monroe St., Riverside,CA

GRESHAM, Randall Dale — W-M — 27 — 511 — 180 — Brn — Blu — -99

CII: A07067963 FBI: 339121F7

WALTERS, Wade — W-M — 23 — 507 — 145 — Bln — Blu — -44

CII: A07736267 FBI: 13481RDA2 SID: 1015915/1363408

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	D Office Equip.	E T.V./Radio Cameras	F Firearms	G Household Goods	H Consum. Goods	I Livestock	J Misc.
PR	$	$	$	$	$	$	$	$	$	$
87										
FR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)
(1) 459 P.C. (Burglary)
(2)

61. Original Offenses Changed to (Code-Crime)
(1)
(2)

62. Narrative of Supplemental Report

Based on information received from a Confidential and Reliable Informant, this case will be exceptionally cleared naming S-1 Gresham and S-2 Walters as the perpetrators of this offense

Disposition: Exceptionally clear.

A. Torres

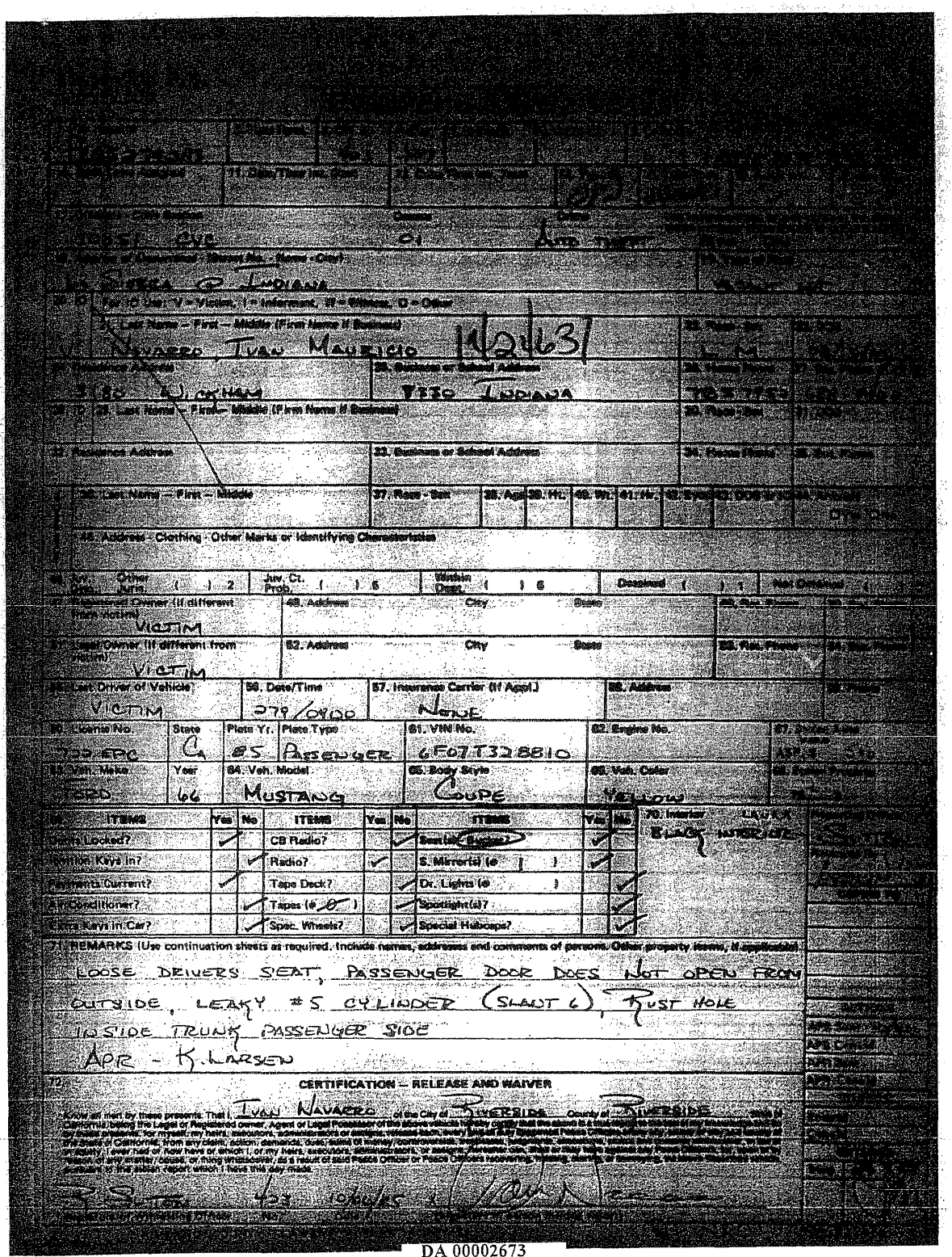
VCLD ( )

ACTIONS
APB Sent
APB Cancld.
APR Sent
APR Cncld

DOJ/NCIC
Entered
Cancld.

DA 00002672

EX 186 - 000060



NAVARRO, IVAN MAURICIO 1/2/63

VICTIM

VICTIM

VICTIM

NONE

79/09/00

6F07T328810

MUSTANG

COUPE

YELLOW

ITEMS	Yes	No	ITEMS	Yes	No	ITEMS	Yes	No
Doors Locked?	✓		CB Radio?		✓	Seat(s) Bucket?	✓	
Ignition Keys In?		✓	Radio?	✓		S. Mirror(s) (e)	✓	
Payments Current?	✓		Tape Deck?		✓	Dr. Lights (e)		✓
Air Conditioner?		✓	Tapes (# 0)		✓	Spotlight(s)?		✓
Extra Keys in Car?		✓	Spec. Wheels?		✓	Special Hubcaps?		✓

70. Interior: BLACK

REMARKS (Use continuation sheets as required. Include names, addresses and comments of persons. Other property items, if applicable)

LOOSE DRIVERS SEAT, PASSENGER DOOR DOES NOT OPEN FROM OUTSIDE, LEAKY #5 CYLINDER (SHOT 6), RUST HOLE TO SIDE TRUNK PASSENGER SIDE

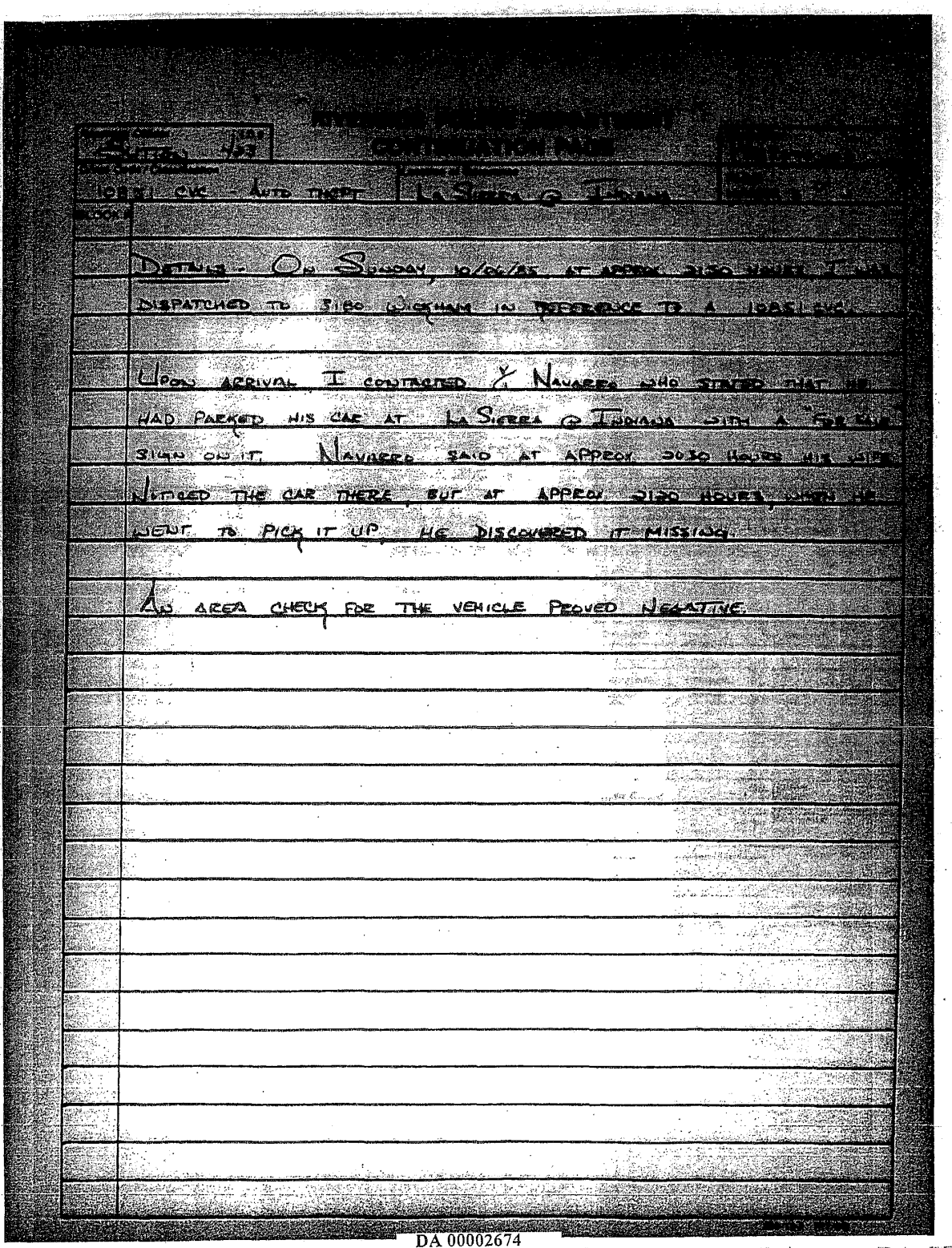
APR - K. LARSEN

CERTIFICATION – RELEASE AND WAIVER

Know all men by these presents, That I, IVAN NAVARRO of the City of RIVERSIDE County of RIVERSIDE State of California, being the Legal or Registered owner, Agent or Legal Possessor of the above vehicle hereby certify that the above is a true report to the best of my knowledge and belief, and I do hereby release, for myself, my heirs, executors, administrators or assigns, released from, every [illegible] and all [illegible] whatsoever, which I have or may hereafter have against the State of California, from any claim, action, demands, duties, cause of action, controversies, expenses, costs, [illegible] or agency, I ever had or now have or which I, or my heirs, executors, administrators, or assigns hereafter can, shall or may have against said agency, officer, or [illegible] as a result of said Police Officer or Police Officers recovering, towing, storing, or processing the vehicle described in the above report, which I have this day made.

DA 00002673

EX 187 - 000061



CONTINUATION

10851 CVC - AUTO THEFT — LA SIERRA @ TIBBANA

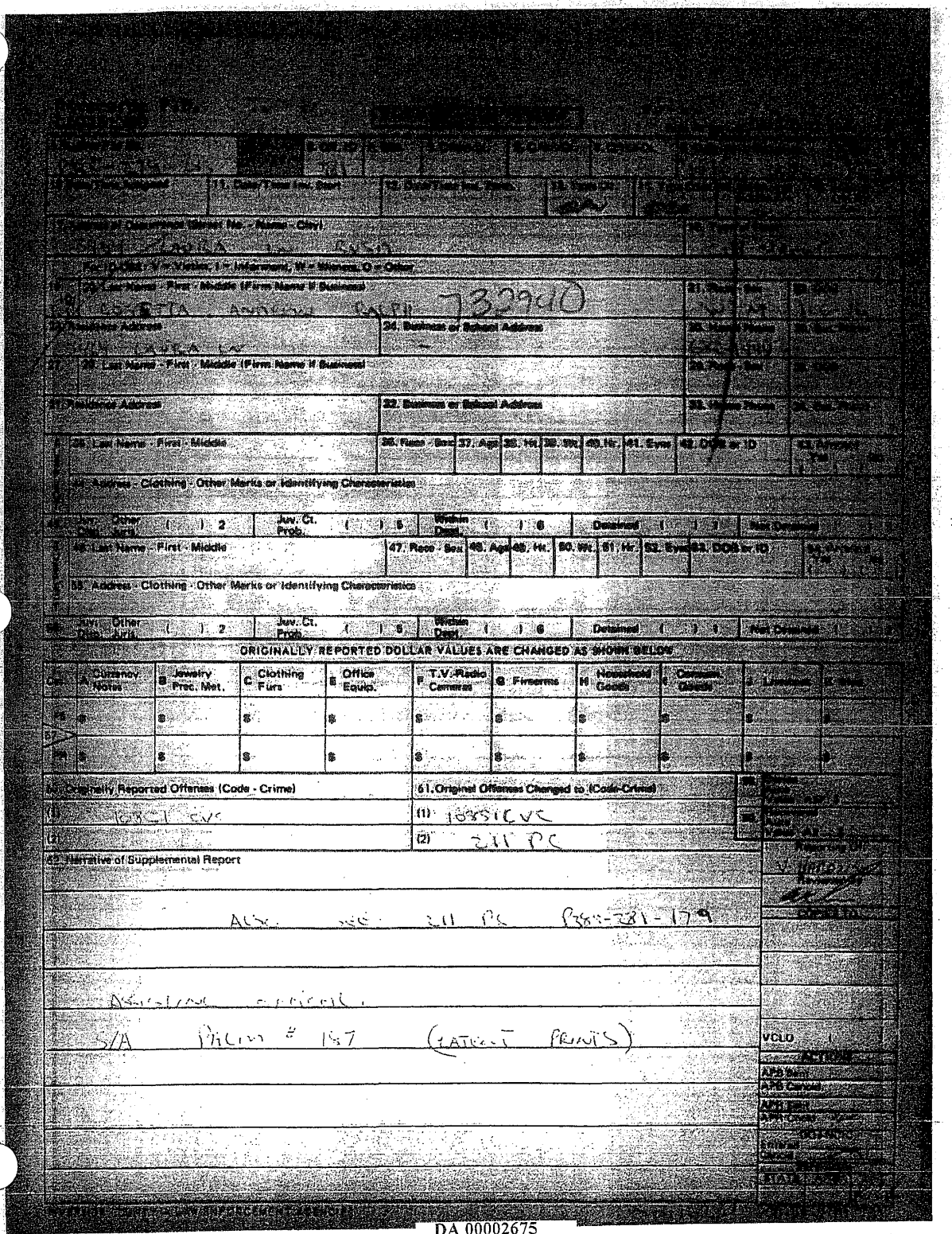
DETAILS - ON SUNDAY, 10/06/85 AT APPROX. 2150 HOURS, I WAS DISPATCHED TO 3150 CHISHOLM IN REFERENCE TO A 10851 CVC.

UPON ARRIVAL I CONTACTED V. NAVARRO WHO STATED THAT HE HAD PARKED HIS CAR AT LA SIERRA @ TIBBANA WITH A "FOR SALE" SIGN ON IT. NAVARRO SAID AT APPROX. 2030 HOURS HIS WIFE WITNESSED THE CAR THERE, BUT AT APPROX. 2130 HOURS, WHEN HE WENT TO PICK IT UP, HE DISCOVERED IT MISSING.

AN AREA CHECK FOR THE VEHICLE PROVED NEGATIVE.

DA 00002674

EX 187 - 000062



ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

60. Originally Reported Offenses (Code - Crime)

(1) 187(a) PC

(2)

61. Original Offenses Changed to (Code-Crime)

(1) 187(a) PC

(2) 211 PC

42. Narrative of Supplemental Report

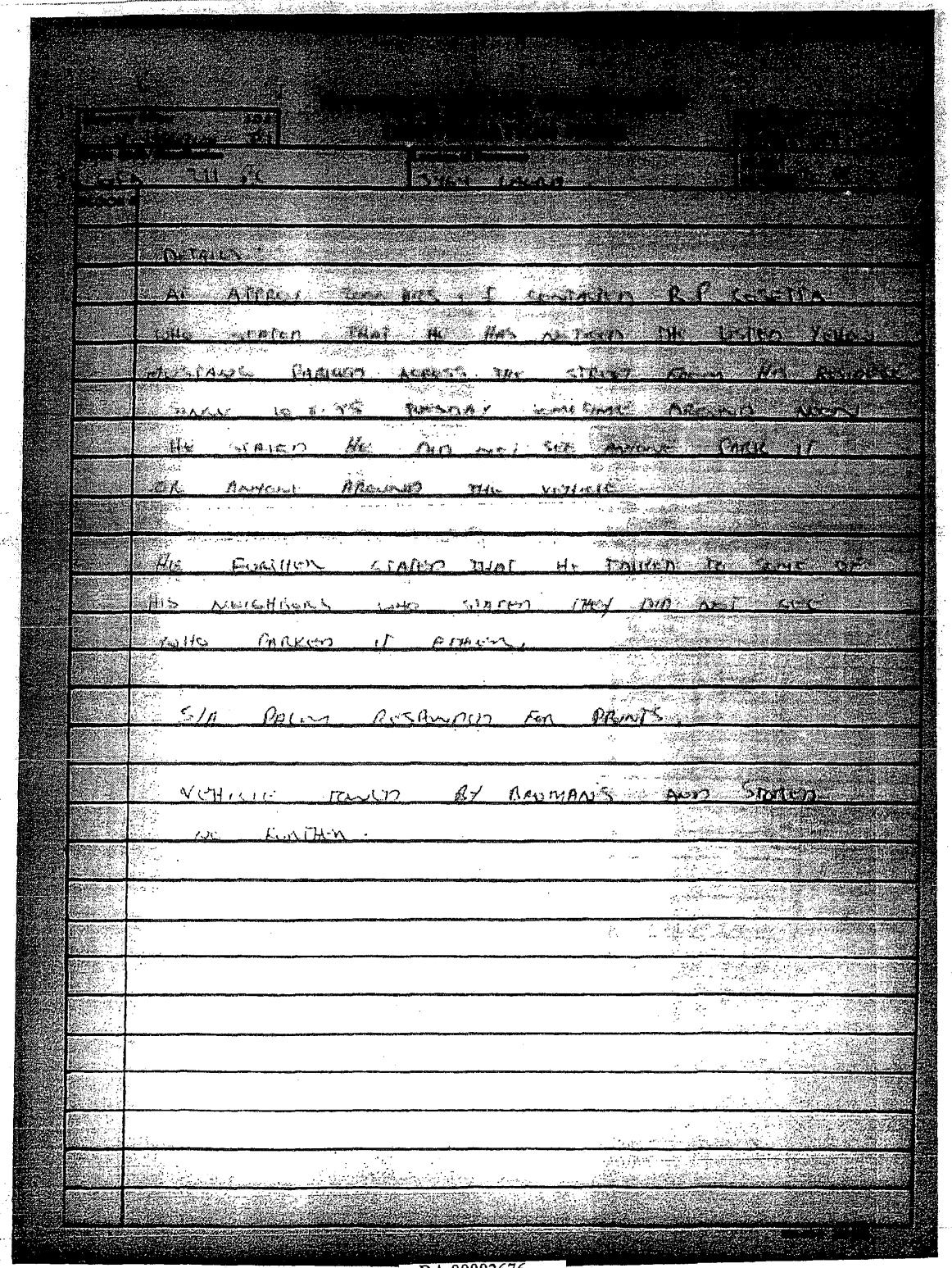
ADW w/GBI 211 PC Case-231-179

Assisting officer:

S/A Palm # 187 (LATENT PRINTS)

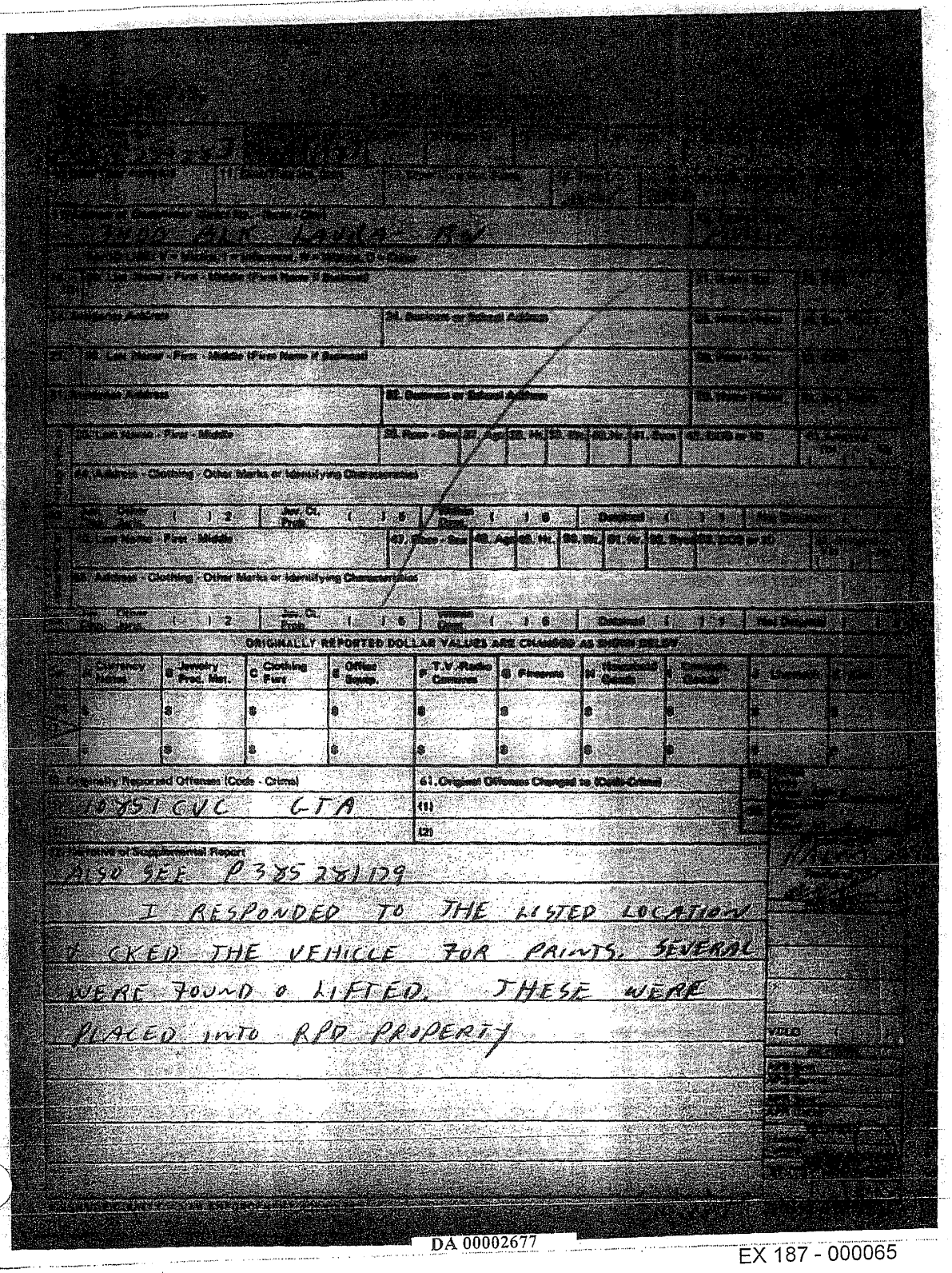
DA 00002675

EX 187 - 000063



DA 00002676

EX 187 - 000064



ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

60. Originally Reported Offenses (Code - Crime)

10851 CVC GTA

61. Original Offenses Changed to (Code-Crime)

(1)

(2)

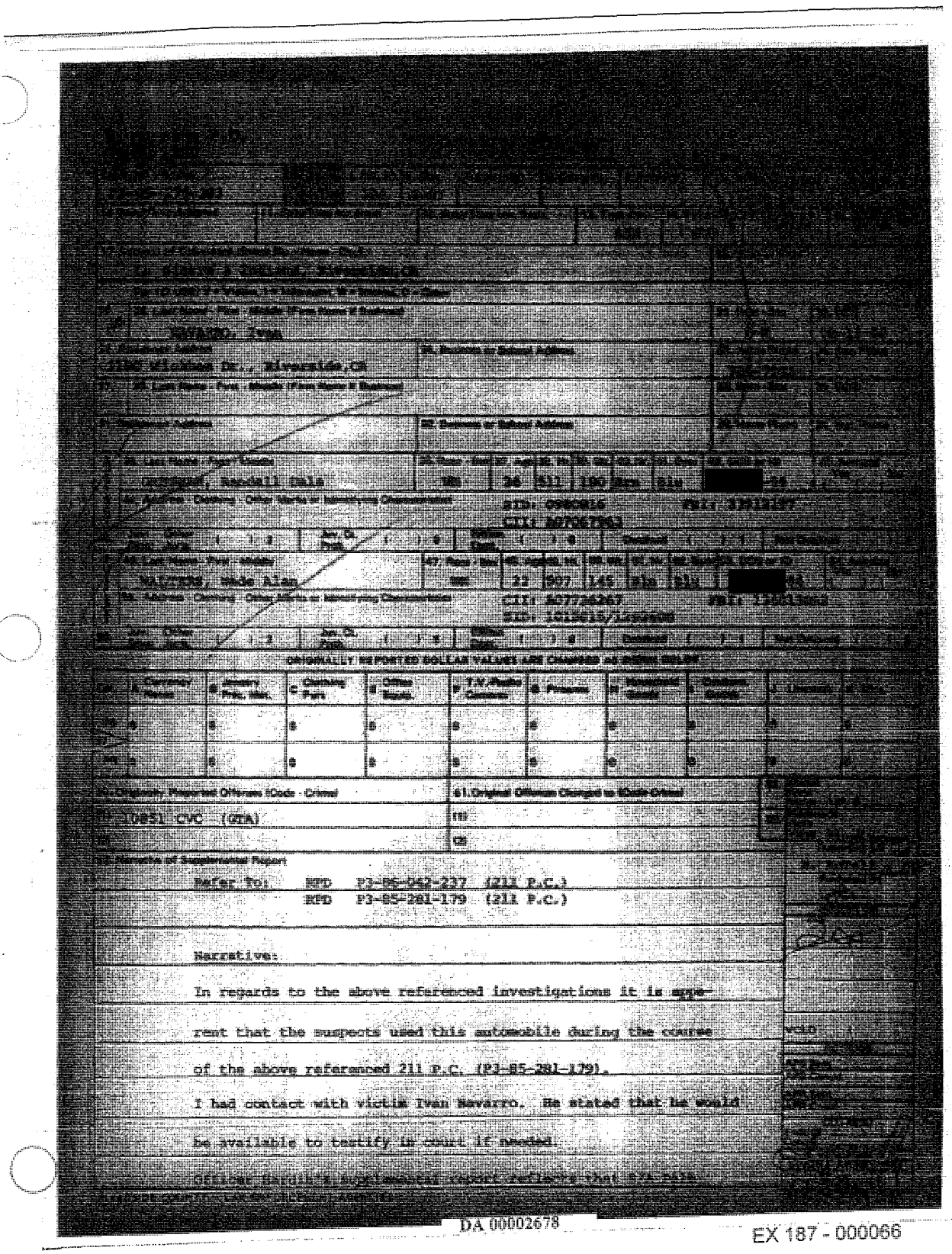
70. Narrative of Supplemental Report

ALSO SEE P385 281129

I RESPONDED TO THE LISTED LOCATION & CKED THE VEHICLE FOR PRINTS. SEVERAL WERE FOUND & LIFTED. THESE WERE PLACED INTO RPD PROPERTY

DA 00002677

EX 187 - 000065



10851 CVC (OTA)

Refer To: RPD P3-85-042-237 (211 P.C.)
RPD P3-85-281-179 (211 P.C.)

Narrative:

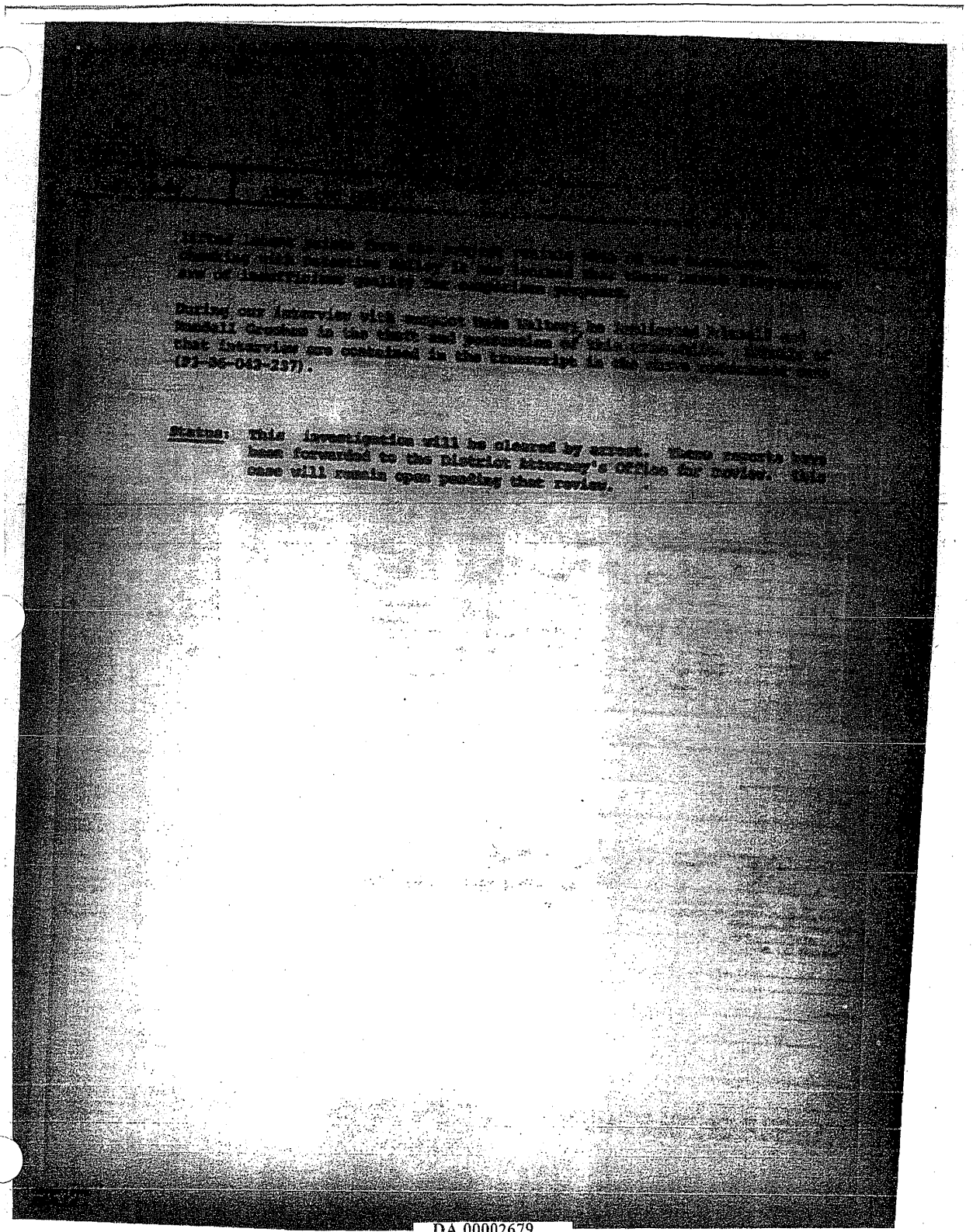
In regards to the above referenced investigations it is apparent that the suspects used this automobile during the course of the above referenced 211 P.C. (P3-85-281-179).

I had contact with victim Ivan Navarro. He stated that he would be available to testify in court if needed.

Officer Hawkins supplemental report outlines that [illegible]

DA 00002678

EX 187 - 000066

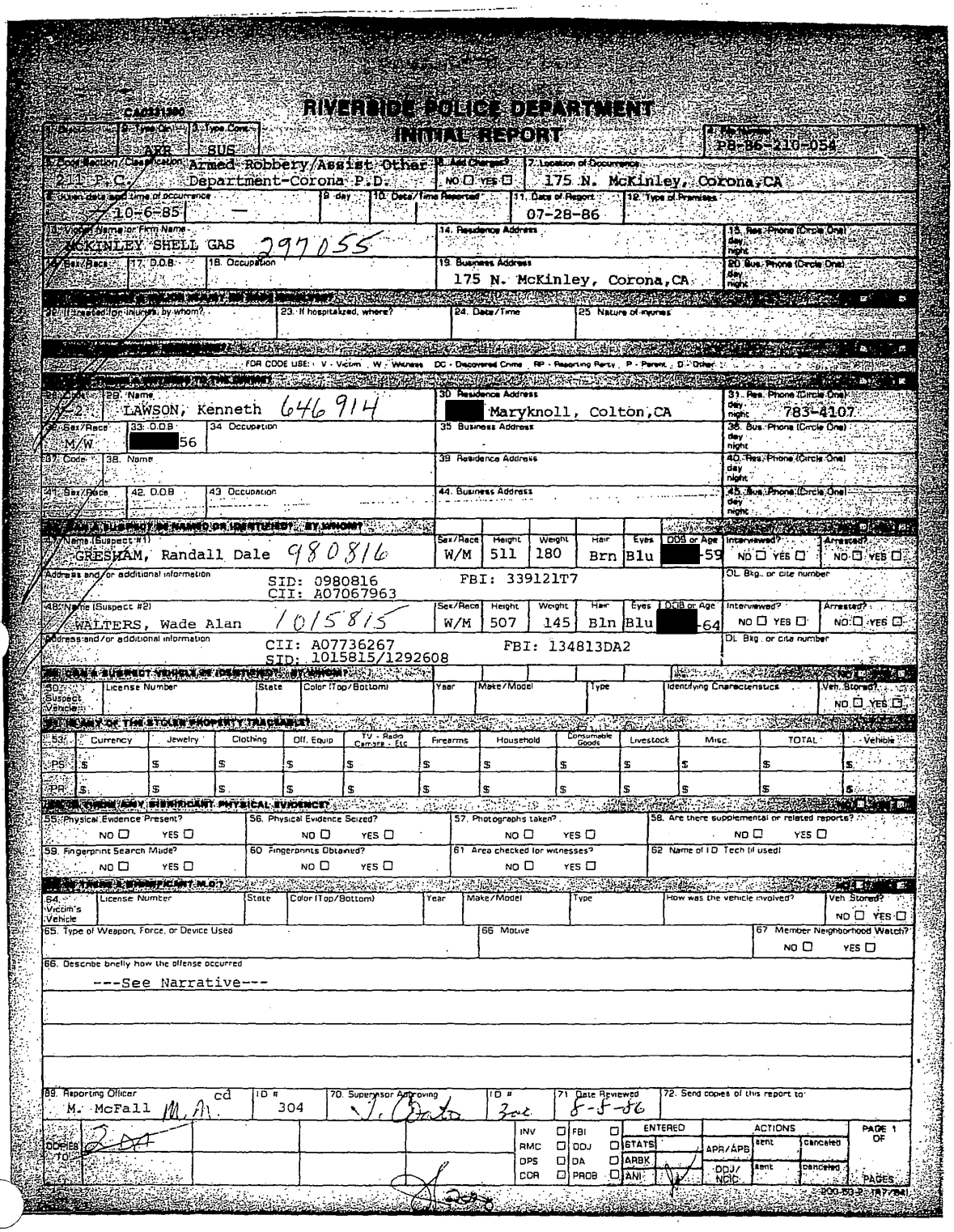


During our interview with [redacted] Wade Walker he indicated [redacted] Randall Graham in [redacted] and possession of this [redacted] that interview are contained in the transcript in the [redacted] (P3-96-043-237).

Status: This investigation will be cleared by arrest. Some records have been forwarded to the District Attorney's Office for review. This case will remain open pending that review.

DA 00002679

EX 187 - 000067



CA0331300

RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

1. Basis: APR | 2. Type Occ: | 3. Type Conv: SUS | 4. File Number: PB-86-210-054

5. Penal Section/Classification: 211 P.C. Armed Robbery/Assist Other Department-Corona P.D. | 6. Add Charges? NO ☐ YES ☐ | 7. Location of Occurrence: 175 N. McKinley, Corona,CA

8. Given date and time of occurrence: 10-6-85 | 9. day: — | 10. Date/Time Reported: | 11. Date of Report: 07-28-86 | 12. Type of Premises:

13. Victim Name or Firm Name: MCKINLEY SHELL GAS 297055 | 14. Residence Address: | 15. Res. Phone (Circle One) day night

16. Sex/Race: | 17. D.O.B: | 18. Occupation: | 19. Business Address: 175 N. McKinley, Corona,CA | 20. Bus. Phone (Circle One) day night

21. If treated for injuries, by whom? | 23. If hospitalized, where? | 24. Date/Time | 25. Nature of injuries

FOR CODE USE: V - Victim W - Witness DC - Discovered Crime RP - Reporting Party P - Parent O - Other

26. DA: 2 | 28. Name: LAWSON, Kenneth 646914 | 30. Residence Address: [redacted] Maryknoll, Colton,CA | 31. Res. Phone (Circle One) day night 783-4107

32. Sex/Race: M/W | 33. D.O.B: [redacted]56 | 34. Occupation | 35. Business Address | 36. Bus. Phone (Circle One) day night

37. Code | 38. Name | 39. Residence Address | 40. Res. Phone (Circle One) day night

41. Sex/Race | 42. D.O.B | 43. Occupation | 44. Business Address | 45. Bus. Phone (Circle One) day night

46. Name (Suspect #1): GRESHAM, Randall Dale 980816 | Sex/Race: W/M | Height: 511 | Weight: 180 | Hair: Brn | Eyes: Blu | DOB or Age: [redacted]-59 | Interviewed? NO ☐ YES ☐ | Arrested? NO ☐ YES ☐

Address and/or additional information: SID: 0980816 FBI: 339121T7 CII: A07067963 | DL Bkg. or cite number

48. Name (Suspect #2): WALTERS, Wade Alan 101581S | Sex/Race: W/M | Height: 507 | Weight: 145 | Hair: Bln | Eyes: Blu | DOB or Age: [redacted]-64 | Interviewed? NO ☐ YES ☐ | Arrested? NO ☐ YES ☐

Address and/or additional information: CII: A07736267 FBI: 134813DA2 SID: 1015815/1292608 | DL Bkg. or cite number

50. Suspect Vehicle: | License Number | State | Color (Top/Bottom) | Year | Make/Model | Type | Identifying Characteristics | Veh. Stored? NO ☐ YES ☐

53. | Currency | Jewelry | Clothing | Off. Equip | TV - Radio Camera - Etc | Firearms | Household | Consumable Goods | Livestock | Misc. | TOTAL | Vehicle

PS | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ | $

PR | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ | $

55. Physical Evidence Present? NO ☐ YES ☐ | 56. Physical Evidence Seized? NO ☐ YES ☐ | 57. Photographs taken? NO ☐ YES ☐ | 58. Are there supplemental or related reports? NO ☐ YES ☐

59. Fingerprint Search Made? NO ☐ YES ☐ | 60. Fingerprints Obtained? NO ☐ YES ☐ | 61. Area checked for witnesses? NO ☐ YES ☐ | 62. Name of ID Tech (if used)

64. Victim's Vehicle: | License Number | State | Color (Top/Bottom) | Year | Make/Model | Type | How was the vehicle involved? | Veh. Stored? NO ☐ YES ☐

65. Type of Weapon, Force, or Device Used | 66. Motive | 67. Member Neighborhood Watch? NO ☐ YES ☐

66. Describe briefly how the offense occurred

---See Narrative---

69. Reporting Officer: M. McFall cd | ID #: 304 | 70. Supervisor Approving: J. Coats | ID #: 306 | 71. Date Reviewed: 8-5-86 | 72. Send copies of this report to:

COPIES TO: | INV ☐ RMC ☐ DPS ☐ CDR ☐ | FBI ☐ DOJ ☐ DA ☐ PROB ☐ | ENTERED STATS ARBK ANI | ACTIONS APR/APB sent canceled DOJ/NCIC sent canceled | PAGE 1 OF PAGES

DA 00002532

EX 188 - 000068

[redacted] POLICE DEPT.
CONTINUATION REPORT

PAGE NO. 2 FILE NO. P3-86-211-054

07-28-86	211 P.C. (Armed Robbery/Assist Other Dept.-Corona P.D.)	M. Nevall #304

Refer To: Riverside Police Department P3-86-042-237 (211 P.C.)

Corona Police Department K1-85-278-091/Initial Crime Report

Narrative:

In regards to the above referenced RPD investigation, during our interview with suspect Wade Alan Walters he provided information which implicated himself and Randall Dale Gresham as the perpetrators of this robbery. That interview is documented in tape recordings and transcripts which are on file under the above referenced case number.

On 07-08-86 I had contact with the victim, Kenneth Lawson. He stated that he will be maintaining the same residence and will appear in court to testify if needed. Mr. Lawson stated that he cannot recall much about the suspect's voice except that it sounded like a "Southern" accent. Further, the suspect said that he was desperate and needed to feed his family. The suspect was wearing a black ski mask at the time of the crime, therefore, Mr. Lawson said that he would not be able to identify the suspect.

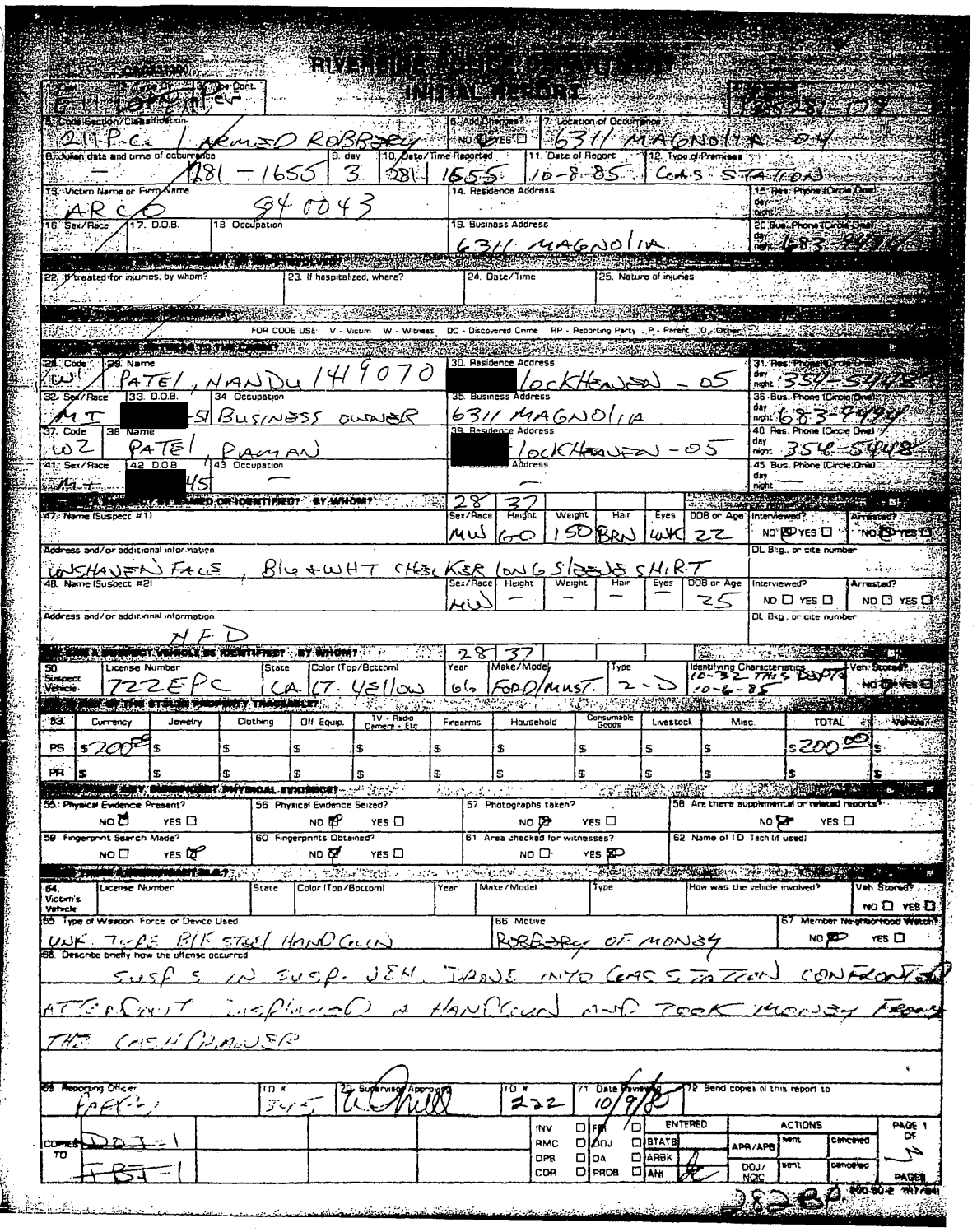
Further, Mr. Lawson stated that he did not see anyone else.

Status: Investigation will be cleared by arrest, based upon the information contained in the interview with suspect Wade Walters. These reports have been forwarded to the District Attorney's Office for review. Investigation will remain open pending that review.

FORM NO. [redacted]

DA 00002533

EX 188 - 000069



RIVERSIDE POLICE DEPARTMENT

INITIAL REPORT

1. Case Number: 85-231-07

2. Code Section/Classification: 211 P.C. / ARMED ROBBERY

6. Arrest Charges? NO ☒ YES ☐

7. Location of Occurrence: 6311 MAGNOLIA - 04

8. Julian date and time of occurrence: 281 - 1655

9. day: 3.

10. Date/Time Reported: 281 1655

11. Date of Report: 10-8-85

12. Type of Premises: CONS STATION

13. Victim Name or Firm Name: ARCO 94 0043

14. Residence Address

15. Res. Phone (Circle One) day night

16. Sex/Race

17. D.O.B.

18. Occupation

19. Business Address: 6311 MAGNOLIA

20. Bus. Phone (Circle One) day night 683-2431

22. If treated for injuries, by whom?

23. If hospitalized, where?

24. Date/Time

25. Nature of injuries

FOR CODE USE: V - Victim W - Witness DC - Discovered Crime RP - Reporting Party P - Parent O - Other

24. Code: WI

29. Name: PATEL, NANDU 149070

30. Residence Address: [redacted] LOCKHAVEN - 05

31. Res. Phone (Circle One) day night 359-5448

32. Sex/Race: MI

33. D.O.B.: [redacted]-51

34. Occupation: BUSINESS OWNER

35. Business Address: 6311 MAGNOLIA

36. Bus. Phone (Circle One) day night 683-2494

37. Code: W2

38. Name: PATEL, PRAMAN

39. Residence Address: [redacted] LOCKHAVEN - 05

40. Res. Phone (Circle One) day night 359-5448

41. Sex/Race: MI

42. D.O.B.: [redacted]45

43. Occupation: —

45. Bus. Phone (Circle One) day night —

PERSON(S) RELATED OR IDENTIFIED BY WHOM?

47. Name (Suspect #1)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
	MW	60	150	BRN	WHK	22	NO ☒ YES ☐	NO ☐ YES ☐

Address and/or additional information: LOCKHAVEN FACE, BLK & WHT CHECKER LONG SLEEVE SHIRT

DL Bkg., or cite number

48. Name (Suspect #2)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
	MW	—	—	—	—	25	NO ☐ YES ☐	NO ☐ YES ☐

Address and/or additional information: N.F.D

DL Bkg., or cite number

PROPERTY/VEHICLE(S) IDENTIFIED BY WHOM?

50. Suspect Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	Identifying Characteristics	Veh. Stored?
	722EPC	CA	LT. YELLOW	66	FORD/MUST.	2-D	10-32 TAKEN BY PATEL 10-6-85	NO ☐ YES ☐

OF THE STOLEN PROPERTY TRANSFERRED?

53.	Currency	Jewelry	Clothing	Off Equip.	TV - Radio Camera - Etc	Firearms	Household	Consumable Goods	Livestock	Misc.	TOTAL	Vehicle
PS	$200.00	$	$	$	$	$	$	$	$	$	$200.00	$
PR	$	$	$	$	$	$	$	$	$	$	$	$

ANY SCIENTIFIC PHYSICAL EVIDENCE?

55. Physical Evidence Present?	56 Physical Evidence Seized?	57 Photographs taken?	58 Are there supplemental or related reports?
NO ☐ YES ☐	NO ☒ YES ☐	NO ☒ YES ☐	NO ☒ YES ☐

59 Fingerprint Search Made?	60 Fingerprints Obtained?	61 Area checked for witnesses?	62. Name of I.D. Tech (if used)
NO ☐ YES ☒	NO ☐ YES ☐	NO ☐ YES ☒	

64. Victim's Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	How was the vehicle involved?	Veh Stored?
								NO ☐ YES ☐

65 Type of Weapon Force or Device Used: UNK. TYPE BLK STEEL HANDCUFFS

66 Motive: ROBBERY OF MONEY

67 Member Neighborhood Watch? NO ☒ YES ☐

68. Describe briefly how the offense occurred

SUSP'S IN SUSP. JEW. DRIVE INTO CONS STATION CONFRONTED ATTENDANT DISPLAYED A HANDGUN AND TOOK MONEY FROM THE CASH REGISTER

69. Reporting Officer: PARKS ID # 322

70. Supervisor Approving: ID #

71. Date Entered: 10/9/85

72. Send copies of this report to

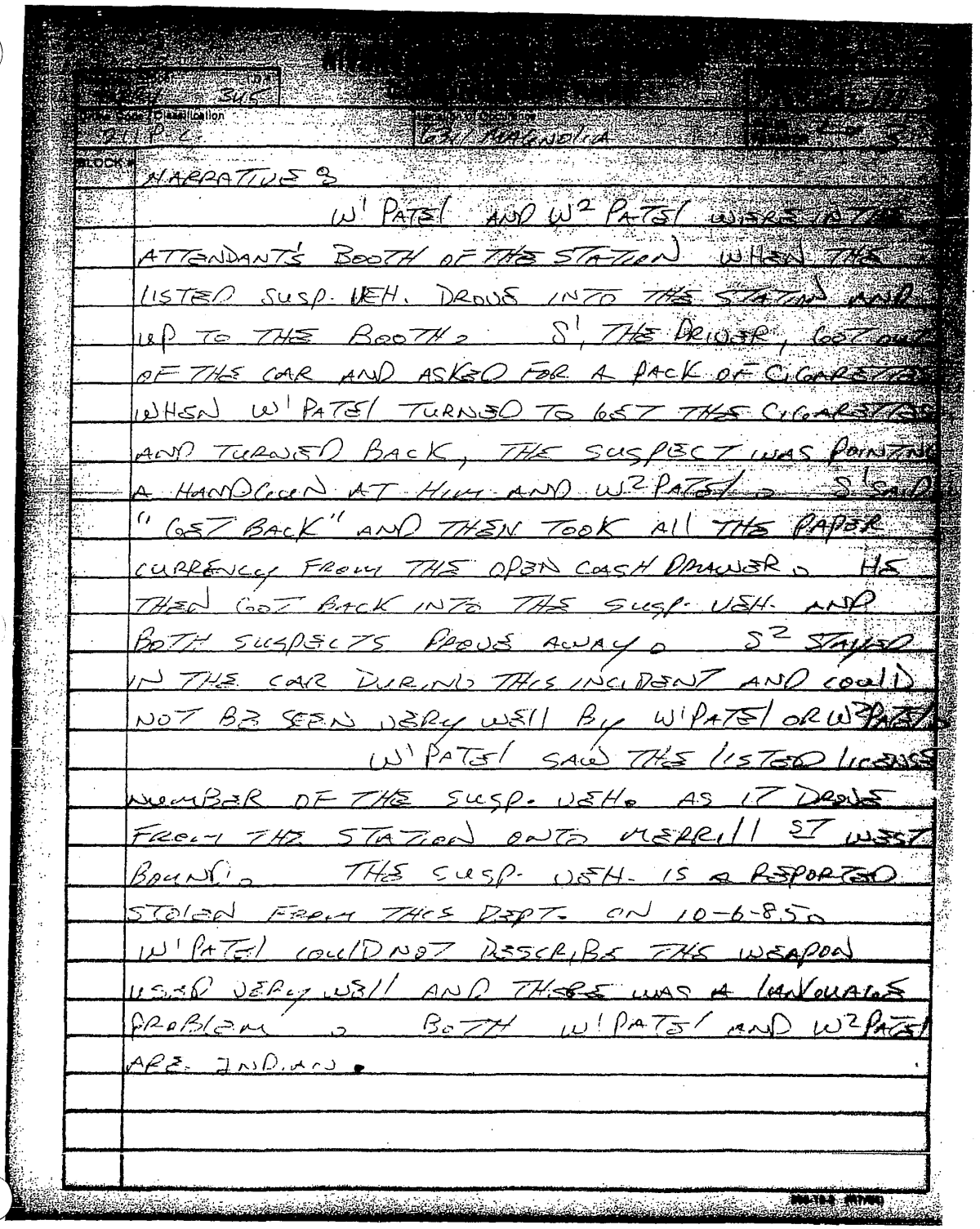
COPIES TO: DOJ-1 FBI-1

INV ☐	FP ☐	ENTERED	ACTIONS				PAGE 1 OF 4 PAGES
RMC ☐	ANJ ☐	STATS	APB/APB	sent	canceled		
DPB ☐	DA ☐	ARBK	DOJ/NCIC	sent	canceled		
CDR ☐	PROB ☐	ANI					

282BP 800-80-2 INITIAL

DA 00002641

EX 189 - 000070



NARRATIVE:

W1 PATEL AND W2 PATEL WERE IN THE ATTENDANT'S BOOTH OF THE STATION WHEN THE LISTED SUSP. VEH. DROVE INTO THE STATION AND UP TO THE BOOTH. S1, THE DRIVER, GOT OUT OF THE CAR AND ASKED FOR A PACK OF CIGARETTES WHEN W1 PATEL TURNED TO GET THE CIGARETTES AND TURNED BACK, THE SUSPECT WAS POINTING A HANDGUN AT HIM AND W2 PATEL. S1 SAID "GET BACK" AND THEN TOOK ALL THE PAPER CURRENCY FROM THE OPEN CASH DRAWER. HE THEN GOT BACK INTO THE SUSP. VEH. AND BOTH SUSPECTS DROVE AWAY. S2 STAYED IN THE CAR DURING THE INCIDENT AND COULD NOT BE SEEN VERY WELL BY W1 PATEL OR W2 PATEL. W1 PATEL SAW THE LISTED LICENSE NUMBER OF THE SUSP. VEH. AS IT DROVE FROM THE STATION ONTO MERRILL ST WEST BOUND. THE SUSP. VEH. IS A REPORTED STOLEN FROM THIS DEPT. ON 10-6-85. W1 PATEL COULD NOT DESCRIBE THE WEAPON USED VERY WELL AND THERE WAS A LANGUAGE PROBLEM. BOTH W1 PATEL AND W2 PATEL ARE INDIAN.

DA 00002642

EX 189 - 000071

Investigating Officer	I.D.#	TYPE CRIME	
[illegible], J	345	211 P.C.	
Victim's Name (Last name first)		Victim's Address	
ARCO		636 MAGNOLIA	
Person Reporting Loss		Residence Address	
PATEL, JANDU		4153 BOCKHAVEN DR	

INSTRUCTIONS

Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½" x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in "Miscellaneous Description" column. Fill in as much information as possible. Upon completion, please mail or bring into the Riverside Police Department; 4102 Orange St., Riverside, California 92501. If mailed, mark "Attention Records, Additional Loss".

QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C-150	Walnut plastic frame, chrome knobs; 19" color. With Driver's License #D4453422 on back	$300
1	MEMORY				MISC - BITS	200

Date Received	Person receiving list	Copies sent to:	PAGE NO.
			3

200-9-2 (R7/84)

DA 00002643

EX 189 - 000072

10. Date/Time Assigned | 11. Date/Time Inv. Start | 12. Date/Time Inv. Term. | 13. Type of Case: EXC

17. Address of Occurrence (Street No. - Name - City): 6311 Magnolia Ave., Riverside | 18. Type of Occ.: Gas station

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID: V | 20. Last Name - First - Middle (Firm Name if Business): ARCO GAS STATION | 21. Race - Sex | 22. DOB

23. Residence Address | 24. Business or School Address: 6311 Magnolia | 25. Home Phone | 26. Bus. Phone: 683-9491

27. W1 | 28. Last Name - First - Middle (Firm Name if Business): PATEL, Nandu | 29. Race - Sex | 30. DOB

31. Residence Address | 32. Business or School Address | 33. Home Phone | 34. Bus. Phone

980816

SUSPECT

35. Last Name - First - Middle: GRESHAM, RAndall Dale | 36. Race - Sex: W M | 37. Age | 38. Ht.: 511 | 39. Wt.: 180 | 40. Hr.: Brn | 41. Eyes: Blu | 42. DOB or ID: [redacted]59 | 43. Arrested: Yes ( ) No ( )

44. Address - Clothing - Other Marks or Identifying Characteristics: CII A07067963 SID 0980816 FBI 339121T7

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle: WALTERS, Wade 1015815 | 47. Race - Sex: W M | 48. Age | 49. Ht.: 507 | 50. Wt.: 145 | 51. Hr.: Brn | 52. Eyes: Blu | 53. DOB or ID: [redacted]60 | 54. Arrested: Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics: CII A07736267 FBI 134813DA2 SID 1015815 / 1292608 SS [redacted]3770

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)
(1) 211 PC (Armed Robbery)
(2)

61. Original Offenses Changed to (Code-Crime)
(1)
(2)

58. Stolen Auto Value ASP: $
59. Recovered Auto Value A2: $

Reporting Off: McFALL
Reviewed By:
COPIES TO:

62. Narrative of Supplemental Report

WITNESSES (con't):

W2 PATEL, Raman

REFER TO:

RPD investigation #P3-86-042-237; 211 PC

EVIDENCE:

1. Photographic lineups of each suspect. Retained at Riverside Police Department by investigating officers.
2. Witness admonition and identification form.

VCLO ( )

ACTIONS
APB Sent
APB Cancld.
APR Sent
APR Cncld
DOJ-NCIC Entered
Cancld.
STAT

RIVERSIDE COUNTY – LAW ENFORCEMENT AGENCIES

200-52-2(RIV 78)

DA 00002644

EX 189 - 000073

[redacted] 211 PC

NARRATIVE:

In regards to the interview conducted with suspect Wade Walters on June 17 and [illegible] 1986, it is apparent that he and suspect Randall Gresham were the perpetrators of this crime.

On 7/9/86 at 1445 hours, I had contact with victim Nandu Patel. He stated that he felt that he would be able to make an identification of the gunman if seen again. He stated that he did not get a look at the suspect who remained in the car.

Nandu Patel read and understood the attached witness identification/admonition form. I presented the photographic lineup containing a photograph of suspect Randall Gresham in position #4. Nandu Patel pointed to photograph #4 and stated, "it was this one". He indicated that he was fairly sure of his identification, however, was not absolutely sure.

Nandu Patel stated that he felt he would be able to better identify the perpetrator of the crime if he had the opportunity to view him again in person.

On 7/10/86, I had contact with Raman Patel. He stated that he was present during the crime but did not view the face of either suspect and, therefore, would be unable to make an identification.

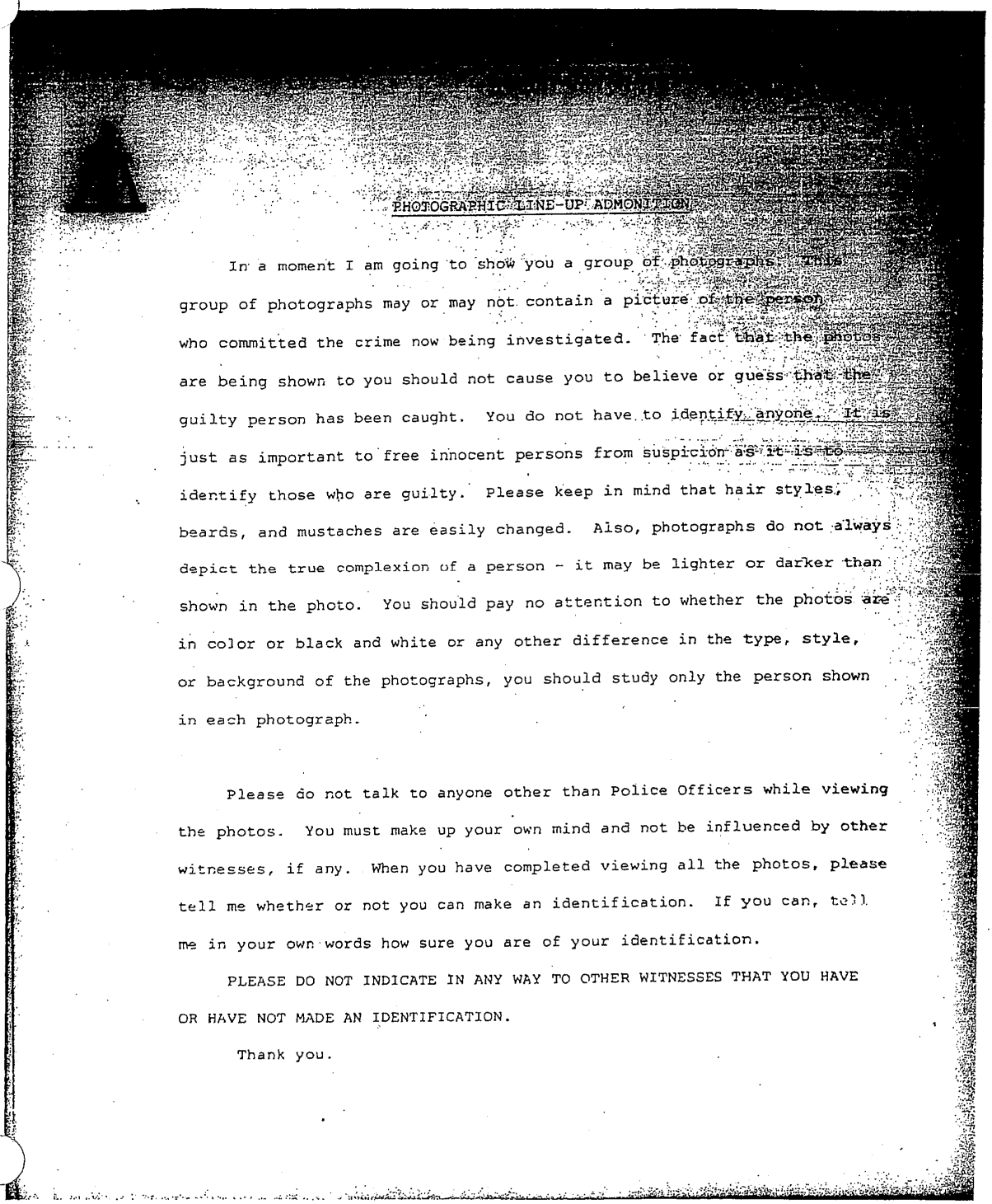
STATUS:

Investigation exceptionally cleared with the identification of the perpetrators. These reports will be forwarded to the District Attorney's Office for review. The case will remain open pending that review.

FORM NO. [illegible]

DA 00002645

EX 189 - 000074



PHOTOGRAPHIC LINE-UP ADMONITION

In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to whether the photos are in color or black and white or any other difference in the type, style, or background of the photographs, you should study only the person shown in each photograph.

Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification.

PLEASE DO NOT INDICATE IN ANY WAY TO OTHER WITNESSES THAT YOU HAVE OR HAVE NOT MADE AN IDENTIFICATION.

Thank you.

DA 00002646

EX 189 - 000075

WITNESS INFORMATION:

NAME: NANDUBHAI B. PATEL

ADDRESS: 4135 Lockhaven Ln PHONE #: 684-0217
Riverside Ca 92505 683-7444

ACKNOWLEDGEMENT: I have read and understand the attached admonition.

Signature 7-9-86
Date

LINE UP #1:

I identify # 4.

I do not identify anyone ____.

Comments: I identify but not sure absolutely

LINE UP #2:

I identify #_____.

I do not identify anyone ____.

Comments:_____

LINE UP #3:

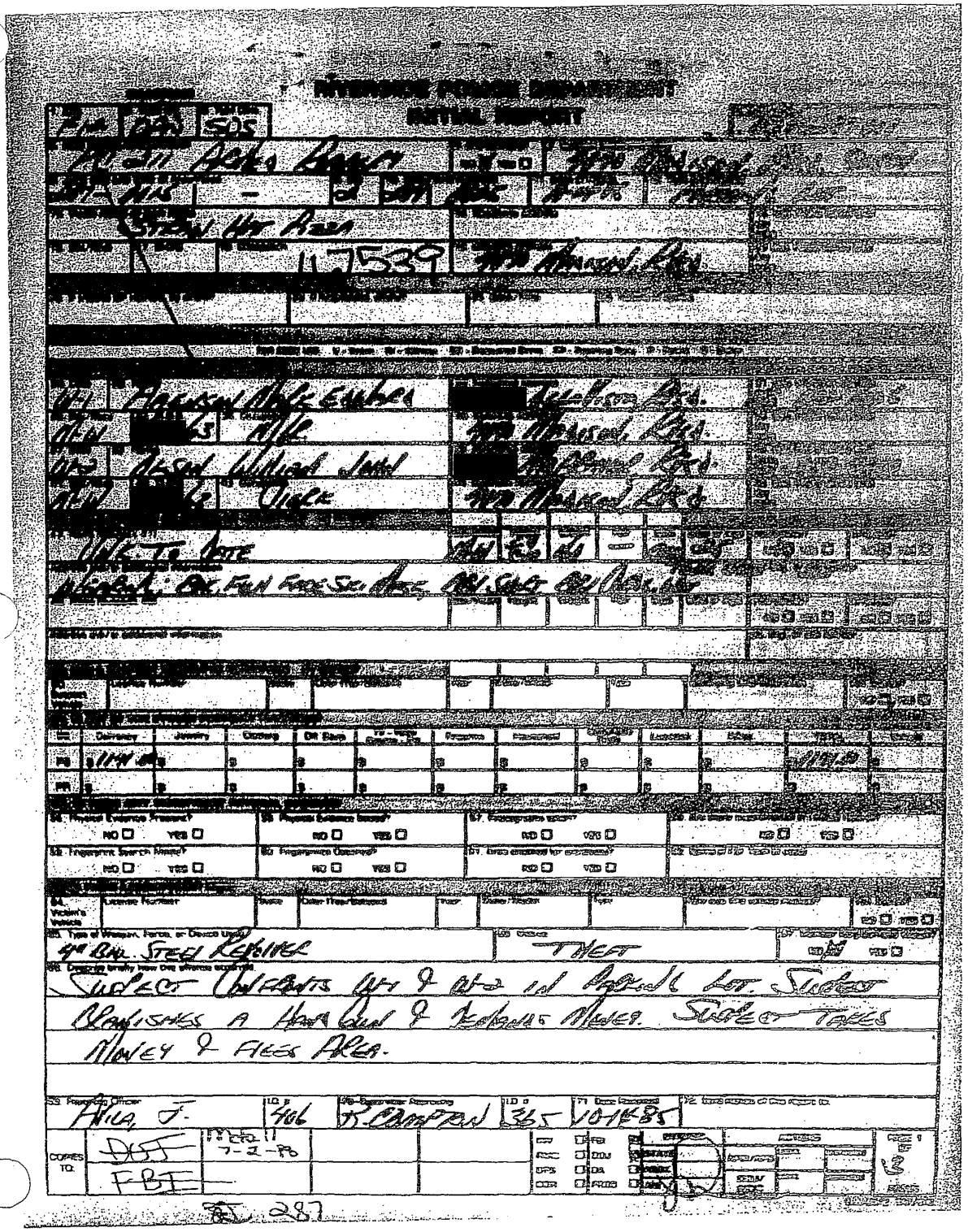
I identify #_____.

I do not identify anyone_____.

Comments:_____

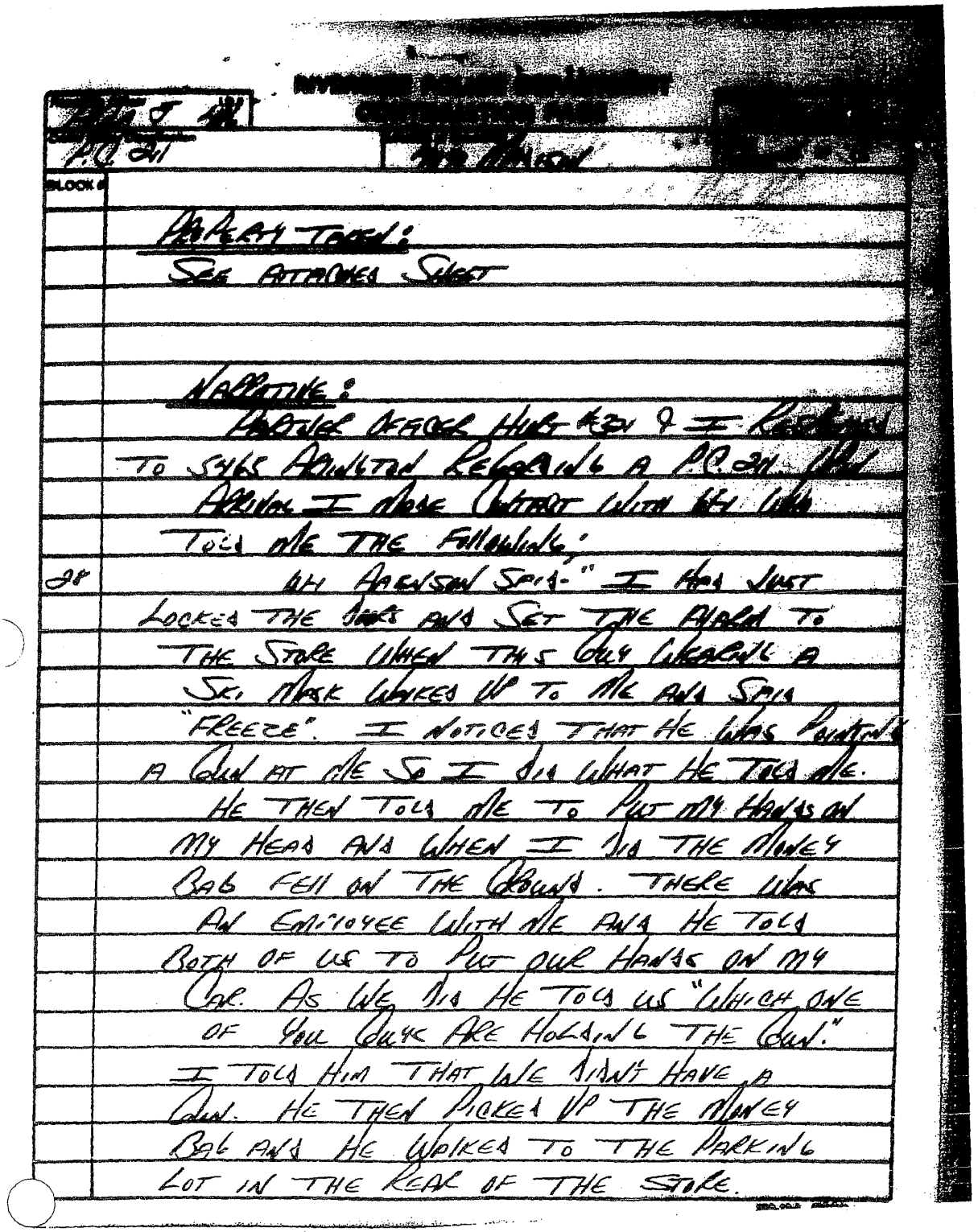
DA 00002647

EX 189 - 000076



DA 00002682

EX 190 -000077



P.C. 211

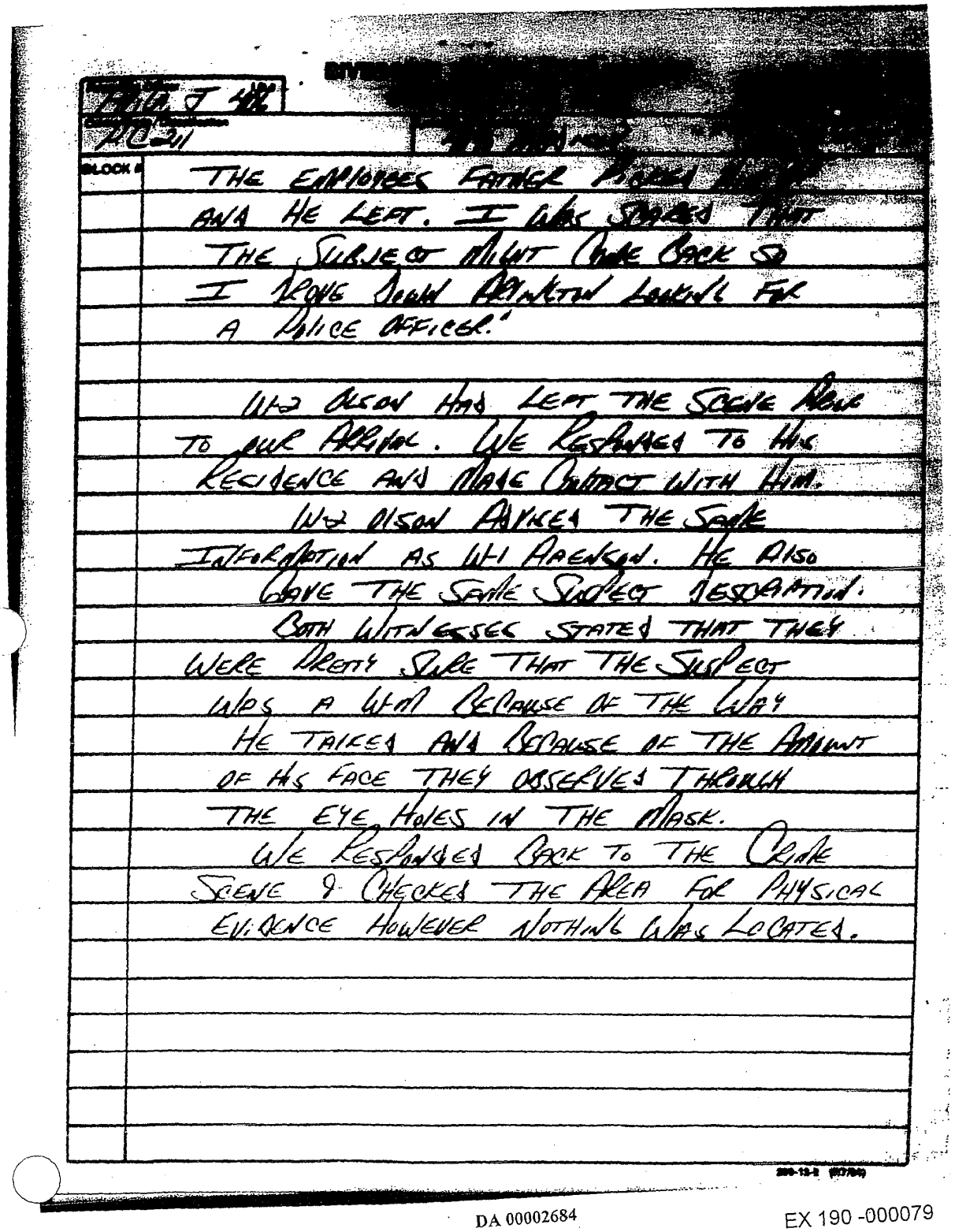
BLOCK

ARREST TOOLS:
SEE ATTACHED SHEET

NARRATIVE:
[illegible] I Received
TO SAID ARMED ROBBERY A P.C. 211.
ARRIVED I MADE CONTACT WITH MR [illegible]
TOLD ME THE FOLLOWING:
98 MR ANDERSON SAID: "I HAD JUST
LOCKED THE DOORS AND SET THE ALARM TO
THE STORE WHEN THIS GUY APPROACHED A
SKI MASK WALKED UP TO ME AND SAID
"FREEZE". I NOTICED THAT HE WAS POINTING
A GUN AT ME SO I DID WHAT HE TOLD ME.
HE THEN TOLD ME TO PUT MY HANDS ON
MY HEAD AND WHEN I DID THE MONEY
BAG FELL ON THE GROUND. THERE WAS
AN EMPLOYEE WITH ME AND HE TOLD
BOTH OF US TO PUT OUR HANDS ON MY
CAR. AS WE DID HE TOLD US "WHICH ONE
OF YOU GUYS ARE HOLDING THE GUN."
I TOLD HIM THAT WE DIDN'T HAVE A
GUN. HE THEN PICKED UP THE MONEY
BAG AND HE WALKED TO THE PARKING
LOT IN THE REAR OF THE STORE.

DA 00002683

EX 190 -000078

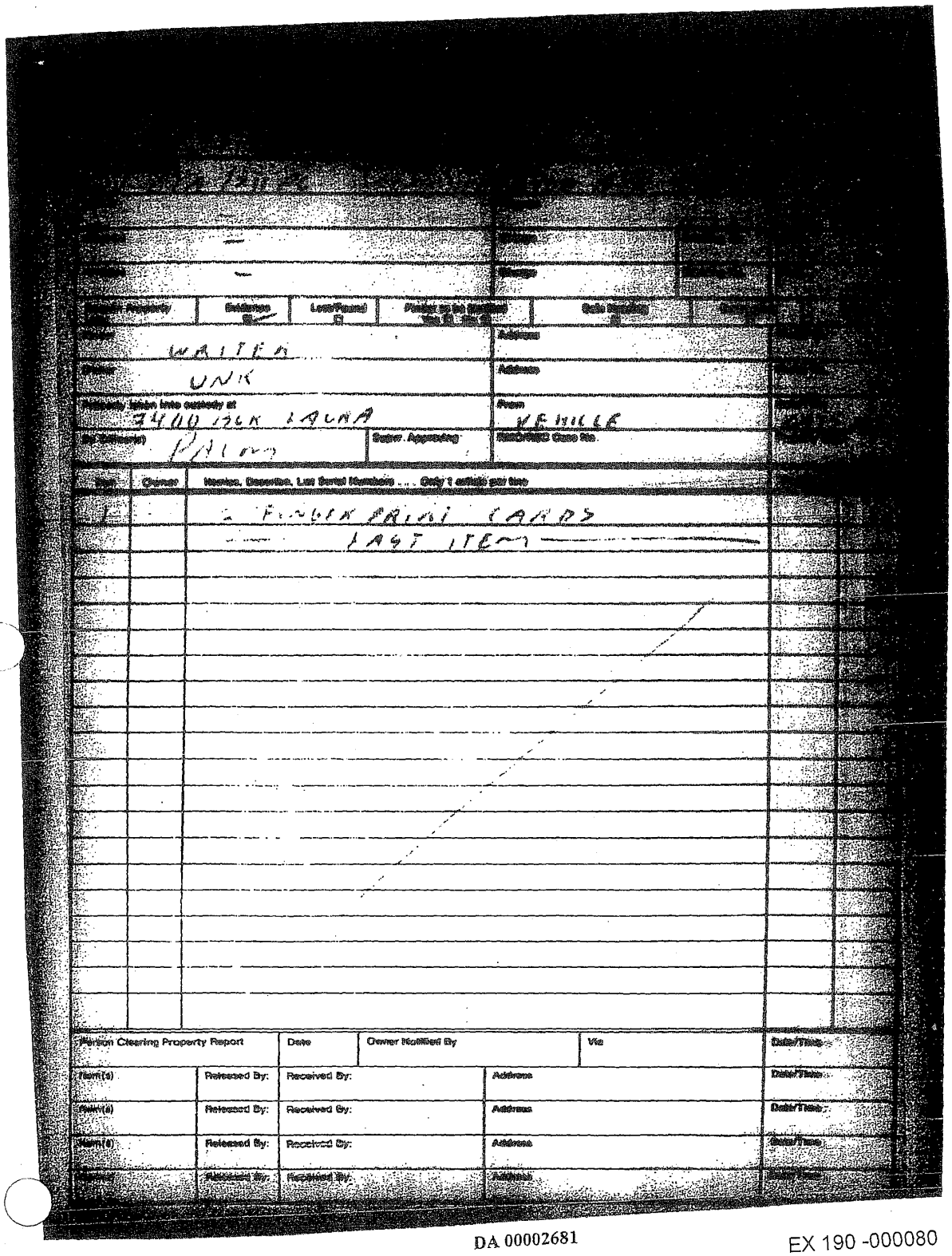


THE EMPLOYEES FATHER [illegible]
AND HE LEFT. I WAS STATED THAT
THE SUBJECT MIGHT COME BACK SO
I HAVE SOME ADDITIONAL UNITS FOR
A POLICE OFFICER.

WO OLSON HAS LEFT THE SCENE PRIOR
TO OUR ARRIVAL. WE RESPONDED TO HIS
RESIDENCE AND MADE CONTACT WITH HIM.
WO OLSON ADVISED THE SAME
INFORMATION AS WE HAD RECEIVED. HE ALSO
GAVE THE SAME SUSPECT DESCRIPTION.
BOTH WITNESSES STATED THAT THEY
WERE PRETTY SURE THAT THE SUSPECT
WAS A MAN BECAUSE OF THE WAY
HE TALKED AND BECAUSE OF THE AMOUNT
OF HIS FACE THEY OBSERVED THROUGH
THE EYE HOLES IN THE MASK.
WE RESPONDED BACK TO THE CRIME
SCENE & CHECKED THE AREA FOR PHYSICAL
EVIDENCE HOWEVER NOTHING WAS LOCATED.

DA 00002684

EX 190 -000079



Property taken into custody at: 3400 BLK LAGUNA

From: VEHICLE

Name: WAITER

Race: UNK

Item | Quantity | Description, Make, Model, Serial Number . . . Only 1 article per line

1 | | 2 FINGER PRINT CARDS

LAST ITEM

Person Clearing Property Report | Date | Owner Notified By | Via | Date/Time

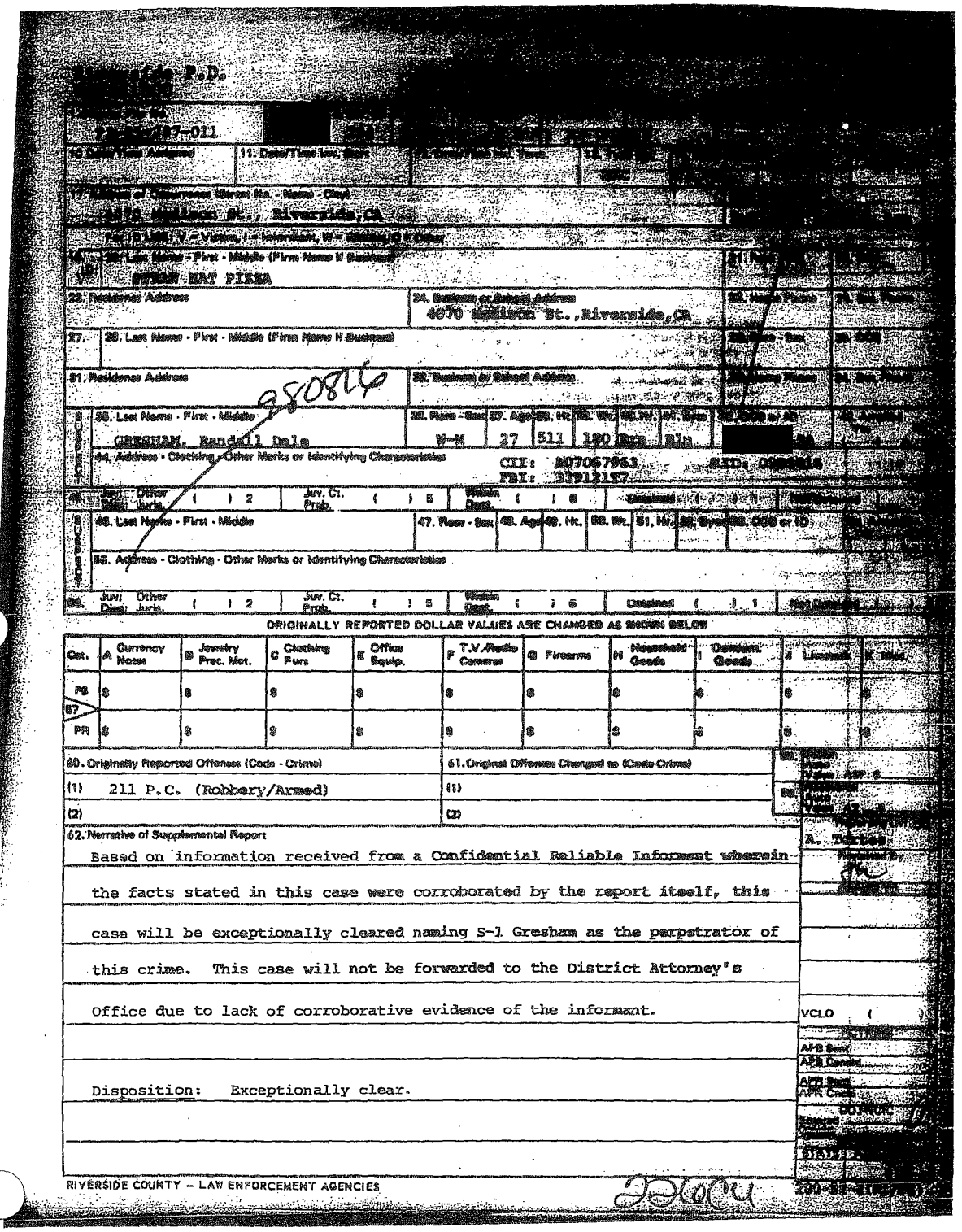
Item(s) | Released By: | Received By: | Address | Date/Time

Item(s) | Released By: | Received By: | Address | Date/Time

Item(s) | Released By: | Received By: | Address | Date/Time

DA 00002681

EX 190 -000080



R.P.D.

980816

GRESHAM, Randall Dale — W-M — 27 — 511 — 180 — Brn — Blu

CII: A07067963 FBI: 339131E7

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V./Radio Cameras	G Firearms	H Household Goods	I Consumable Goods	J	K
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)
(1) 211 P.C. (Robbery/Armed)
(2)

61. Original Offenses Changed to (Code-Crime)
(1)
(2)

62. Narrative of Supplemental Report

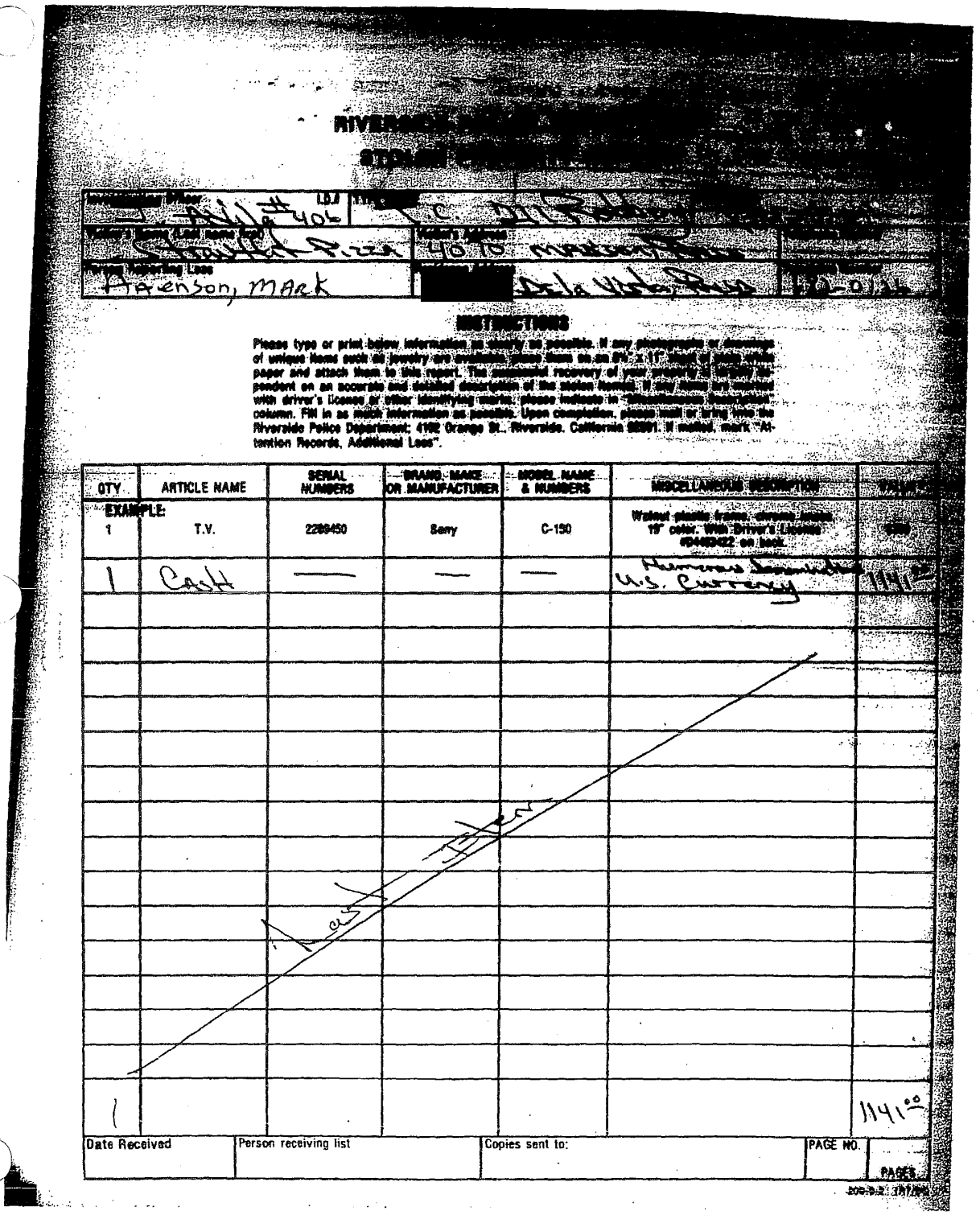
Based on information received from a Confidential Reliable Informant wherein the facts stated in this case were corroborated by the report itself, this case will be exceptionally cleared naming S-1 Gresham as the perpetrator of this crime. This case will not be forwarded to the District Attorney's Office due to lack of corroborative evidence of the informant.

Disposition: Exceptionally clear.

RIVERSIDE COUNTY – LAW ENFORCEMENT AGENCIES

DA 00002685

EX 190 -000081



RIVERSIDE [illegible]

I.D.#

Arenson, Mark

[redacted]

INSTRUCTIONS

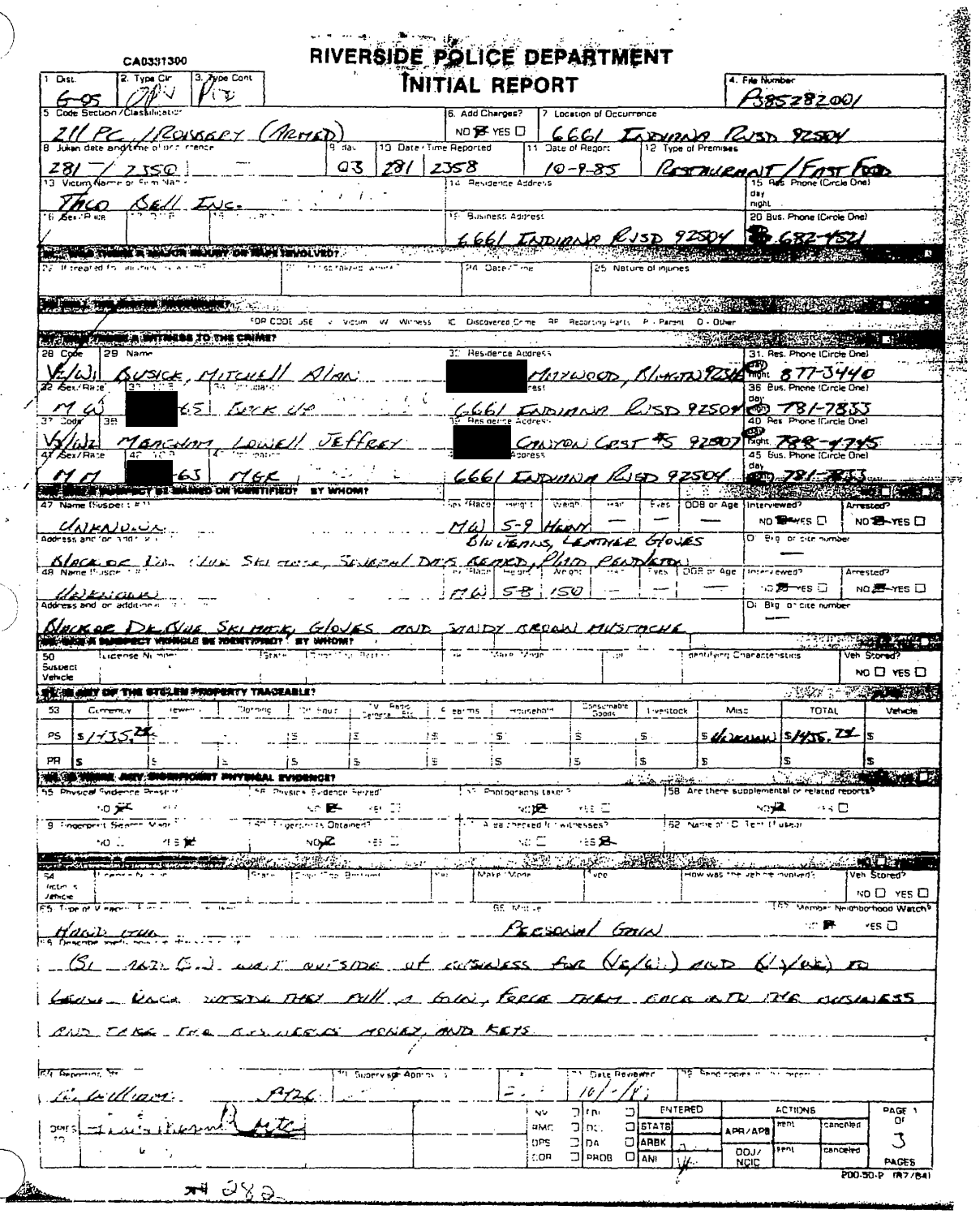
Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on the 8½" x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is dependent on an accurate and detailed description of the stolen items. If any items are marked with driver's license or other identifying marks, please indicate in the "Miscellaneous Description" column. Fill in as much information as possible. Upon completion, please mail or bring to the Riverside Police Department; 4102 Orange St., Riverside, California 92501. If mailed, mark "Attention Records, Additional Loss".

QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL, NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C-150	Walnut plastic frame, chrome knobs, 19" color. With Driver's License #D4483422 on back.	$350
1	Cash	——	——	——	Numerous Denominations U.S. Currency	1112
1						1141.00

Date Received	Person receiving list	Copies sent to:	PAGE NO.	PAGES

DA 00002686

EX 190 -000082



CA03311300

RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

1. Dist. 6-05 | 2. Type Cir. 211 | 3. Type Cont. P12 | 4. File Number B85282001

5. Code Section/Classification: 211 PC / ROBBERY (ARMED)

6. Add Charges? NO ☒ YES ☐

7. Location of Occurrence: 6661 INDIANA RIVSD 92504

8. Julian date and time of occurrence: 281 / 2350

9. Day: 03

10. Date/Time Reported: 281 2358

11. Date of Report: 10-9-85

12. Type of Premises: RESTAURANT / FAST FOOD

13. Victim Name or Firm Name: TACO BELL INC.

14. Residence Address:

15. Res. Phone (Circle One) day night

16. Sex/Race:

17. DOB:

18. Age:

19. Business Address: 6661 INDIANA RIVSD 92504

20. Bus. Phone (Circle One) day night 682-4524

21. If treated by [illegible]

22. Treated At:

24. Date/Time:

25. Nature of Injuries

FOR CODE USE: V - Victim W - Witness IC - Discovered Crime RP - Reporting Party P - Parent O - Other

WITNESS TO THE CRIME?

28. Code: V/W1

29. Name: BUSICK, MITCHELL ALAN

32. Residence Address: [redacted] MAYWOOD, BLVD 92570

31. Res. Phone (Circle One) day night 877-3440

22. Sex/Race: M W

33. DOB: [redacted] 65

34. Age:

35. Business Address: 6661 INDIANA RIVSD 92504

36. Bus. Phone (Circle One) day night 781-7855

37. Code: V/W2

38. Name: MARCHAM, LOWELL JEFFREY

39. Res. Address: [redacted] CANYON CREST #5 92507

40. Res. Phone (Circle One) day night 788-4745

41. Sex/Race: M M

42. DOB: [redacted] 43

43. Age: MGR

44. Business Address: 6661 INDIANA RIVSD 92504

45. Bus. Phone (Circle One) day night 781-7855

SUSPECT(S) IDENTIFIED OR ARRESTED? BY WHOM?

47. Name (Suspect #1)	Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
UNKNOWN	M/J	5-9	HVY	—	—	—	NO ☒ YES ☐	NO ☒ YES ☐

Address and/or additional info: BLK OR DK SKI MASK, SEVERAL DAYS BEARD, PLAID SHIRT

Dr. Orig. or cite number: —

BLUE JEANS, LEATHER GLOVES

48. Name (Suspect #2)	Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
UNKNOWN	M/J	5-8	150	—	—	—	NO ☒ YES ☐	NO ☒ YES ☐

Address and/or additional info: BLK OR DK BLUE SKI MASK, GLOVES AND SHADY GROVE MUSTACHE

Dr. Orig. or cite number: —

WAS A SUSPECT VEHICLE IDENTIFIED? BY WHOM?

50. Suspect Vehicle — License No. / State / Type / Year / Make / Model / Identifying Characteristics / Veh. Stored? NO ☐ YES ☐

WAS ANY OF THE STOLEN PROPERTY TRACEABLE?

53	Currency	Jewelry	Clothing	TV, Radio, Cameras, Etc.	Firearms	Household	Consumable Goods	Livestock	Misc.	TOTAL	Vehicle
PS	$1435.00	$	$	$	$	$	$	$	$ UNKNOWN	$1435.00	$
PR	$	$	$	$	$	$	$	$	$	$	$

WERE THERE ANY SUSPICIOUS PHYSICAL EVIDENCE?

55. Physical Evidence Present? NO ☒ YES ☐

56. Physical Evidence Seized? NO ☒ YES ☐

57. Photographs Taken? NO ☒ YES ☐

58. Are there supplemental or related reports? NO ☒ YES ☐

59. Fingerprint Search Made? NO ☐ YES ☒

60. Fingerprints Obtained? NO ☒ YES ☐

61. Witnesses? NO ☐ YES ☒

62. Name of IC Team Leader:

64. Item # / Vehicle	License No.	State	Type/Year Business	Year	Make / Model	Color	How was the vehicle involved?	Veh. Stored?
								NO ☐ YES ☐

65. Type of Weapon: HAND GUN

66. Make: PERSONAL GUN

68. Describe suspect's actions: (S) WALK OUTSIDE OF BUSINESS FOR (V/W1) AND (V/W2) TO LEAVE. WHEN THEY PULL A GUN, FORCE THEM BACK INTO THE BUSINESS AND TAKE THE BUSINESS MONEY AND KEYS

69. Reporting Officer: L. WILLIAMS 826

70. Supervising Approving: [illegible]

71. Date Reviewed: 10/-/85

72. Other Copies To:

DISTRIBUTION: NV ☐ FBI ☐ BMC ☐ DC ☐ DPS ☐ DA ☐ COR ☐ PROB ☐

ENTERED: STATS ☐ ARBK ☐ ANI ☐

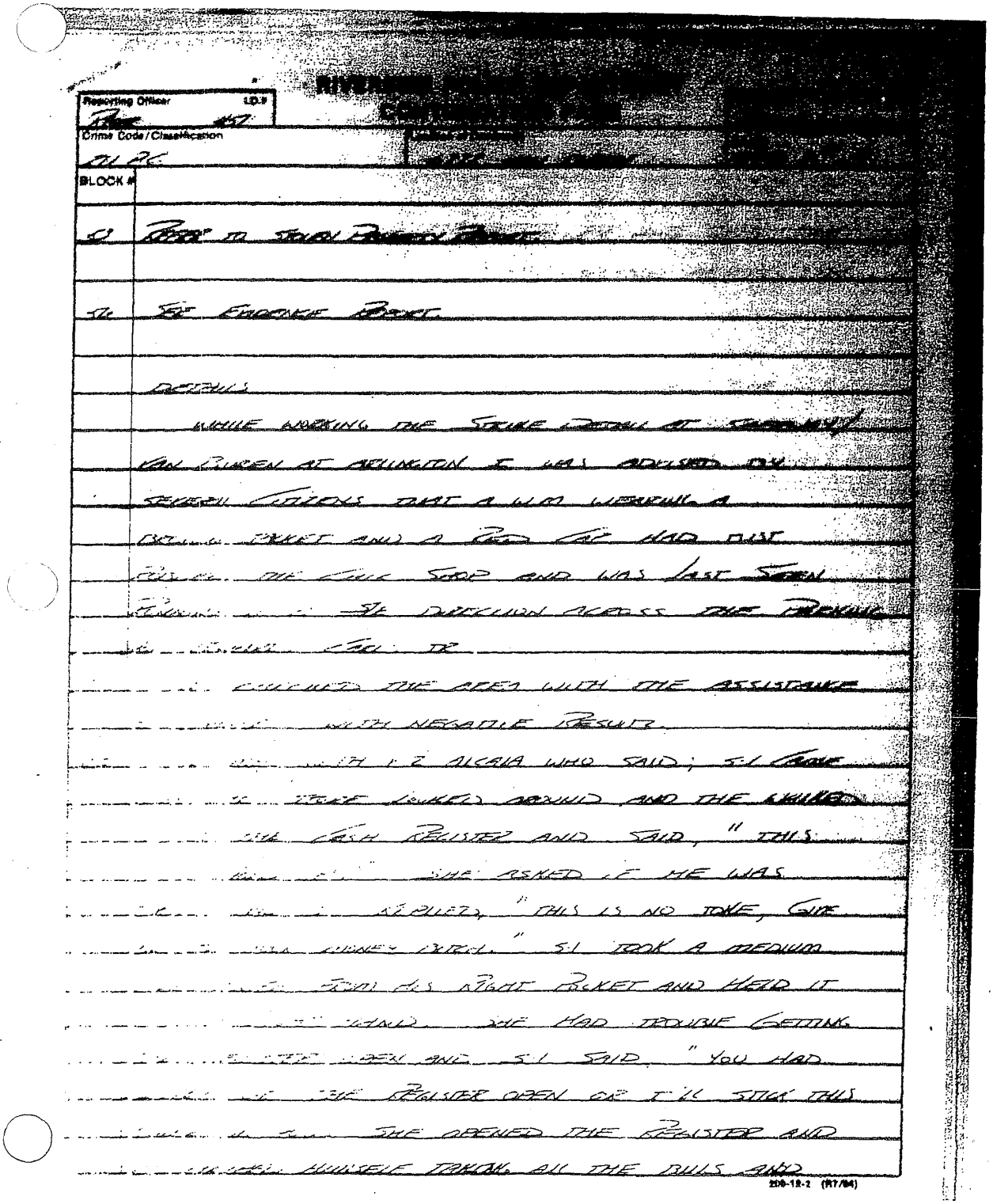
ACTIONS: APR/APB sent ☐ canceled ☐ DOJ/NCIC sent ☐ canceled ☐

PAGE 1 OF 3 PAGES

P00-50-P (R7/84)

DA 00002609

EX 191 - 000083



Reporting Officer I.D.#

Crime Code / Classification

BLOCK #

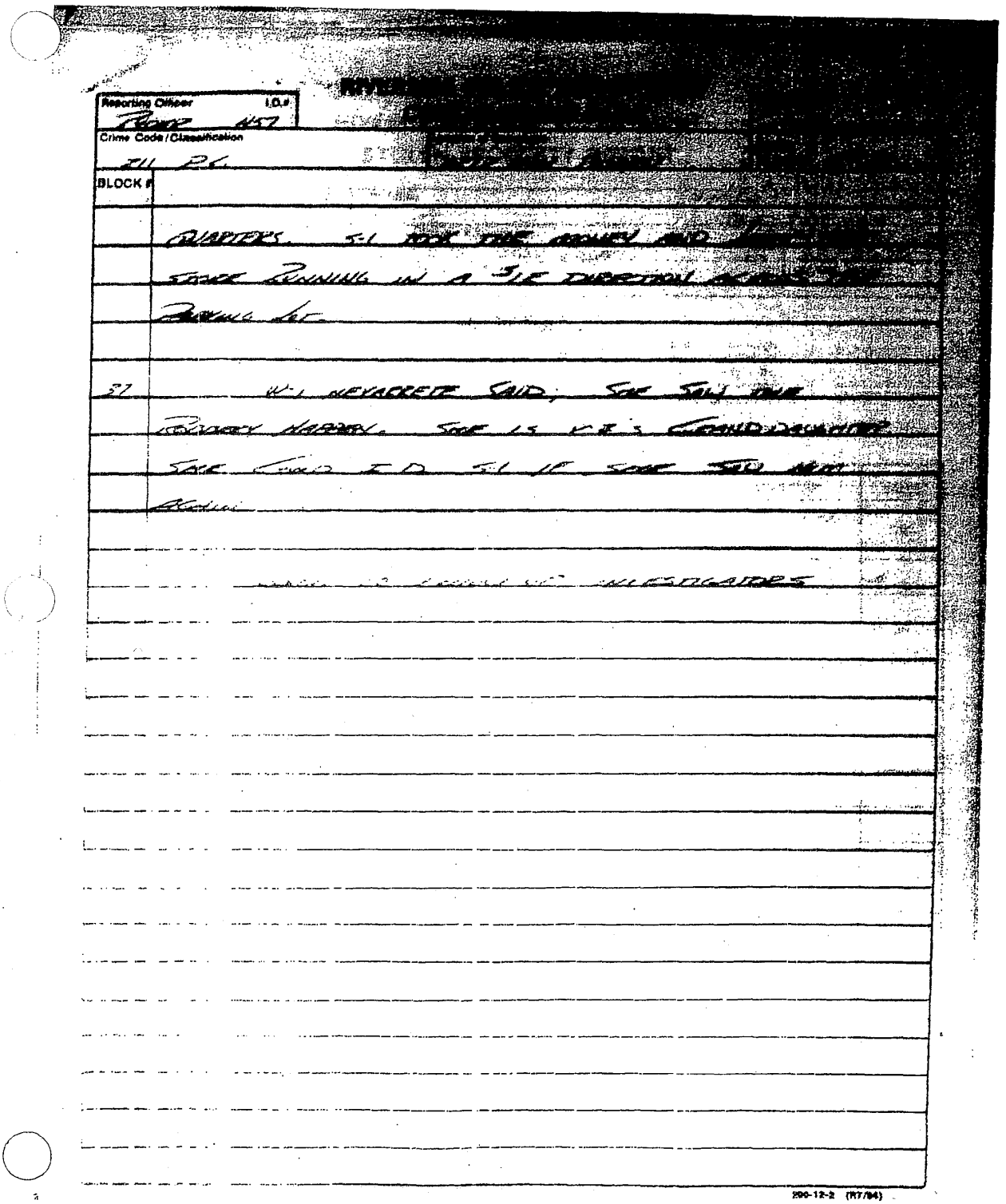
DETAILS:

WHILE WORKING THE SOUTH DOOR AT SECURITY
CHECKPOINT AT ARLINGTON I WAS ADVISED BY
SECURITY OFFICERS THAT A MAN WEARING A
BLACK JACKET AND A RED HAT HAD JUST
EXITED THE COIN SHOP AND WAS LAST SEEN
FLEEING IN THE DIRECTION ACROSS THE PARKING
LOT. I
CHECKED THE AREA WITH THE ASSISTANCE
WITH NEGATIVE RESULTS.
I WAS ALERTED BY WHO SAID; S.I.
THAT LOOKED AROUND AND THE WOMAN
AT CASH REGISTER AND SAID, " THIS
SHE ASKED IF HE WAS
ROBBED, " THIS IS NO JOKE, GIVE
ME THE MONEY NOW. " S.I. TOOK A MEDIUM
FROM HIS RIGHT POCKET AND HELD IT
AND SHE HAD TROUBLE GETTING
IT OPEN AND S.I. SAID " YOU HAD
THE REGISTER OPEN OR I'LL STAB THIS
SHE OPENED THE REGISTER AND
HERSELF TAKING ALL THE BILLS AND

290-18-2 (R7/84)

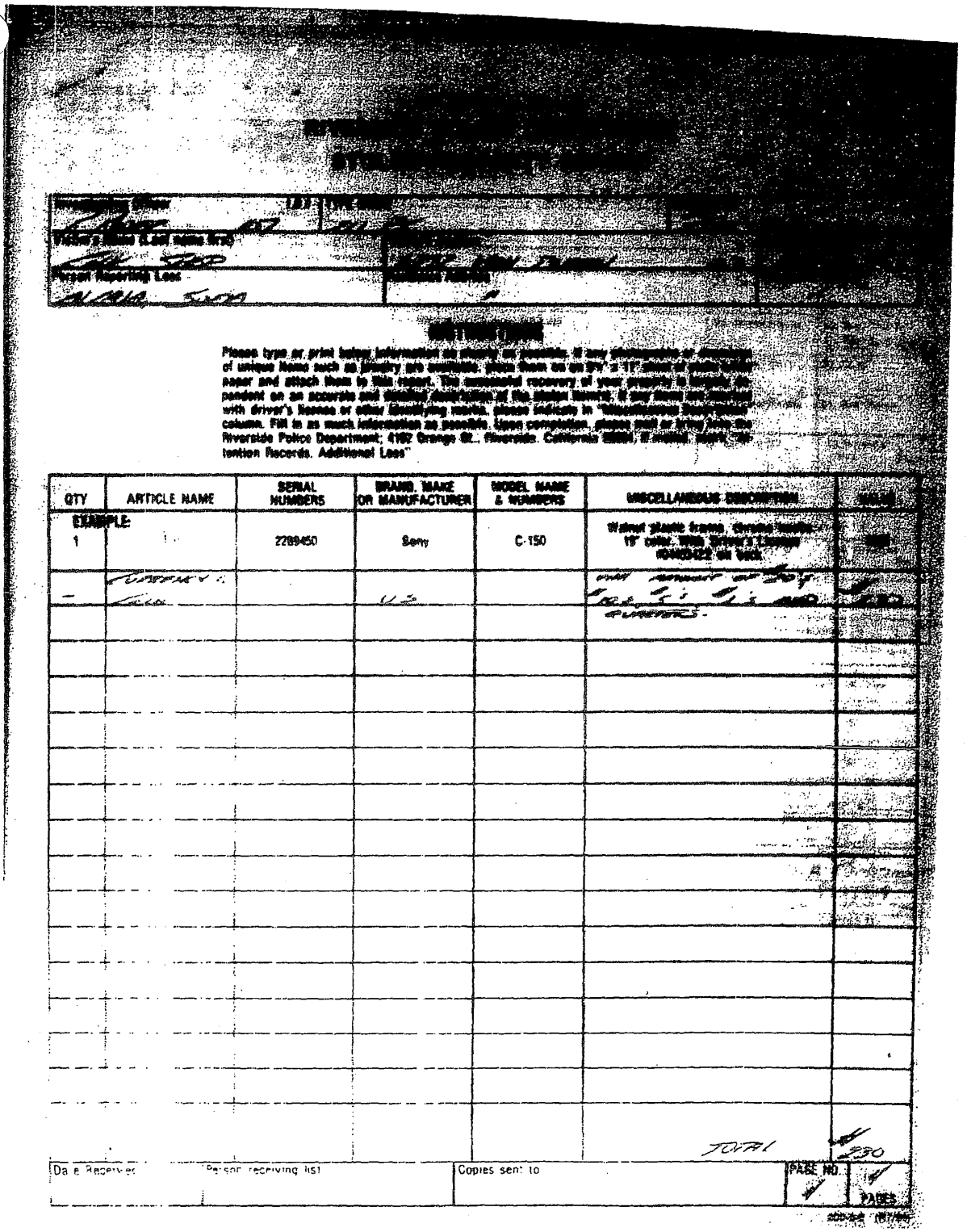
DA 00002610

EX 191 - 000084



DA 00002611

EX 191 - 000085



QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1		2289450	Sony	C-150	Walnut plastic frame, Olympic lenses, 15" color, With Serial # 1 orange HOMEDEC on back.	
					TOTAL	250

Date Received | Person receiving list | Copies sent to | PAGE NO. | PAGES

DA 00002612

EX 191 - 000086

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer I.D.# R. Williams P426
File Number 85152680
Crime Code/Classification 211PC
Location of Occurence 6661 INDIANA RD
PAGE NUMBER 2 OF 3
BLOCK #

NARRATIVE:

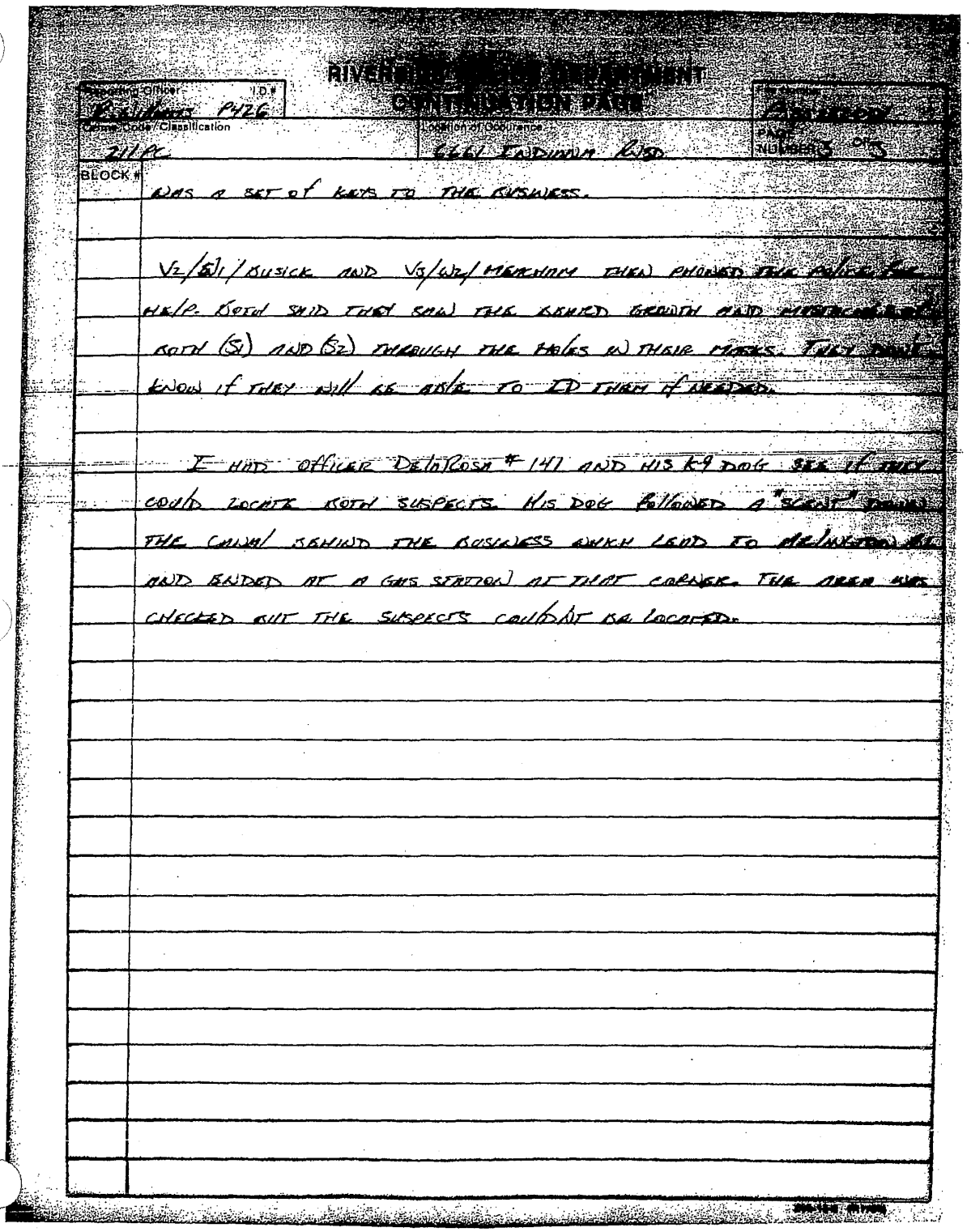
(A) WEDNESDAY 10-9-85 AT APPROX. 2001 HOURS, PATROL OFFICER M. QUESADA #426 AND I WERE DISPATCHED TO TACO BELL AT 6661 INDIANA REFERENCE A 211PC.

UPON ARRIVAL, I TALKED TO V2/(W)/ BUSICK WHO SAID THAT V3/(W2/ MERCHAM AND HIM HAD JUST CLOSED AND WERE GOING TO THEIR CARS IN THE PARKING LOT. AS THEY WERE PREPARING TO LEAVE, (S1) AND (S2) CAME OUT OF THE BUSHES LOCATED JUST E/OF THE BLDG. NEXT TO THE CANAL. THEY RAN UP TO V2/(W)/ BUSICK AND V3/(W2/ MERCHAM AND (S2) PULLED A GUN OUT AND SAID, "OK, FREEZE. YOU GUYS PUT YOUR HANDS UP BEHIND YOUR HEADS, WE'RE PROFESSIONALS." THEY THEN LEAD THEM TO THE REAR OF THE BLDG. WHERE THEY MADE THEM "SPREAD EAGLE" AGAINST A WALL WHILE (S1) AND (S2) SEARCHED THEM FOR WEAPONS SAYING, "IF EITHER OF YOU GUYS ARE PACKING A GUN YOU GOT MAJOR PROBLEMS." (S1) KEPT HOLDING THEM AT GUN POINT AND HAD THEM UNLOCK THE W/DOOR AND THEY ALL WENT INTO THE BLDG.

(S1) HAD V3/(W2/ MERCHAM WALK WITH HIM INTO THE OFFICE WHERE HE HAD HIM OPEN THE SAFE AND TAKE $139.00 IN CASH & CHANGE INTO A WHITE CLOTH BAG. HE PLACED THIS ALONG WITH $200.00 IN CASH AND $844.74 IN MISC. CASH & CHANGE (IN A RED BANK DEPOSIT BAG WITH TACO BELL #637) INTO A LARGE WHITE PAPER BAG. HE THEN HAD THE TWO EMPLOYEES WALK INTO THE OFFICE, THEN BOTH (S1) AND (S2) LEFT ON FOOT THROUGH THE W/DOOR. THEY

DA 00002636

EX 191 - 000087



RIVERSIDE [redacted] DEPARTMENT
CONTINUATION PAGE

Reporting Officer: [illegible] ID #: P426
Crime Code/Classification: 211 PC
Location of Occurrence: 6664 FAIRMAN RD.
Page Number: 3 of 5
BLOCK #

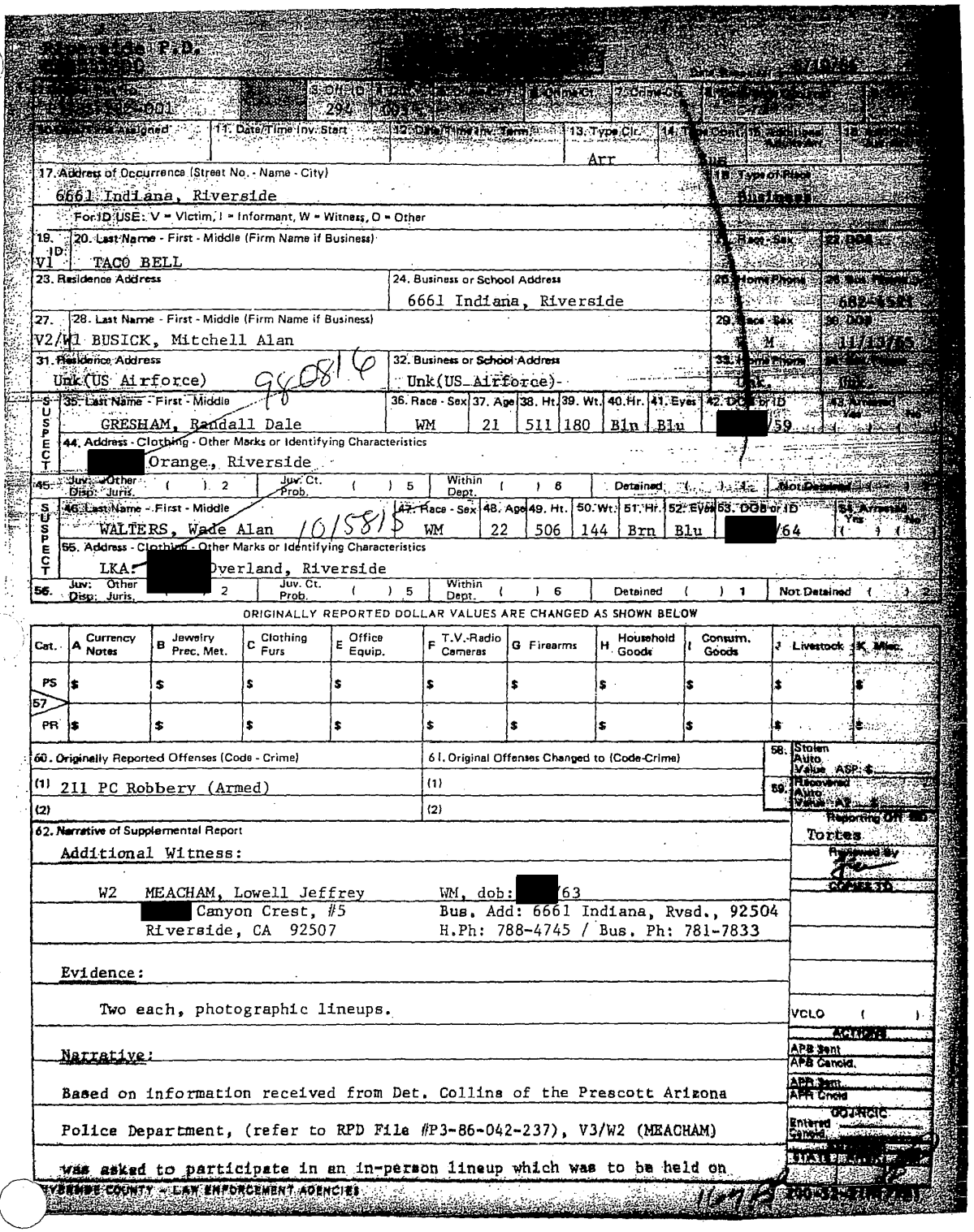
WAS A SET OF KEYS TO THE BUSINESS.

V2 (S1) / BUSICK AND V3 (W2) / MERRIMAN THEN PHONED THE POLICE FOR HELP. BOTH SAID THEY SAW THE ARMED SUSPECTS AND DESCRIBED BOTH (S1) AND (S2) THROUGH THE HOLES IN THEIR MASKS. THEY DON'T KNOW IF THEY WILL BE ABLE TO ID THEM IF NEEDED.

I HAD OFFICER DeLaROSA # 1411 AND HIS K9 DOG SEE IF THEY COULD LOCATE BOTH SUSPECTS. HIS DOG FOLLOWED A "SCENT" FROM THE CANAL BEHIND THE BUSINESS WHICH LEAD TO ARLINGTON AVE AND ENDED AT A GAS STATION AT THAT CORNER. THE AREA WAS CHECKED BUT THE SUSPECTS COULD NOT BE LOCATED.

DA 00002637

EX 191 - 000088



Riverside P.D.

		3. Off ID			6. Date/Cl.	7. Time/Cl.		
		294						
10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Actions Taken	16. Number of Pages		
			Arr					

17. Address of Occurrence (Street No. - Name - City)
6661 Indiana, Riverside

18. Type of Place
Business

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V1	TACO BELL		

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	6661 Indiana, Riverside		682-1561

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB
V2/W1	BUSICK, Mitchell Alan	M	11/13/63

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone
Unk(US Airforce) 960816	Unk(US Airforce)-	Unk.	Unk.

SUSPECT	35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes / No
	GRESHAM, Randall Dale	WM	21	511	180	Bln	Blu	[redacted]59	

44. Address - Clothing - Other Marks or Identifying Characteristics
[redacted] Orange, Riverside

45. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

SUSPECT	46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes / No
	WALTERS, Wade Alan 10/5815	WM	22	506	144	Brn	Blu	[redacted]64	

55. Address - Clothing - Other Marks or Identifying Characteristics
LKA: [redacted] Overland, Riverside

56. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC Robbery (Armed)	(1)
(2)	(2)

58. Stolen Auto. Value ASP: $

59. Recovered Auto. Value ASP: $

Reporting Off: Tortes

Reviewed By

62. Narrative of Supplemental Report

Additional Witness:

W2 MEACHAM, Lowell Jeffrey WM, dob: [redacted]63
[redacted] Canyon Crest, #5 Bus. Add: 6661 Indiana, Rvsd., 92504
Riverside, CA 92507 H.Ph: 788-4745 / Bus. Ph: 781-7833

Evidence:

Two each, photographic lineups.

Narrative:

Based on information received from Det. Collins of the Prescott Arizona Police Department, (refer to RPD File #P3-86-042-237), V3/W2 (MEACHAM) was asked to participate in an in-person lineup which was to be held on

VCLO ( )

ACTIVITY

APB Sent
APB Cancld.
APR Sent
APR Cncld
OOJ NCIC
Entered
Cancld

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002638

EX 191 - 000089

PAGE NO. 2

6/10/86	211 PC Robbery (Armed)	

On 5/29/86, V3/W2 (MEACHAM) contacted us at the Riverside Police Department. Prior to having (MEACHAM) participate in the in-person lineup he, along with several other participants of the in-person lineup, were sequestered in the Riverside Police Department [illegible] each was handed a photographic admonition form to read and sign and they were also given an in-person lineup admonition form to read and sign. After all the forms were completed, each participant of the in-person lineup was asked to come forward and view a photographic [illegible] afterwhich they were to return to their individual chairs and indicate their selections on the photographic admonition form.

When all the participants of the in-person lineup had completed viewing the photographic lineup they were escorted to the Riverside County Jail where the in-person lineup was to be conducted. When all the participants of the in-person lineup had been gathered at the Sheriff's Department, each was escorted into the viewing area afterwhich they were escorted to a location within the jail where they indicated their selection on the in-person admonition forms.

V3/W2 (MEACHAM) indicated on his witness admonition form that he had made two selections, the first being #5 with a side comment of "My pick" and #1, indicated on his comments, "He seemed a little too chubby."

On 5/30/86 at approximately 1645 hours, I was recontacted by (MEACHAM) who told me that after thinking through the night about the in-person lineup that he was positive that subject #1 was the subject who robbed the Taco Bell on 10/9/85.

It should be noted that V3/W2 (MEACHAM) failed to make a positive identification of anyone in the photographic lineup. This indicated by the fact that he identified first, #3 with the following comment, "He looked very close, however, I couldn't tell without a mustache. Also his face seemed to have too many pimples."

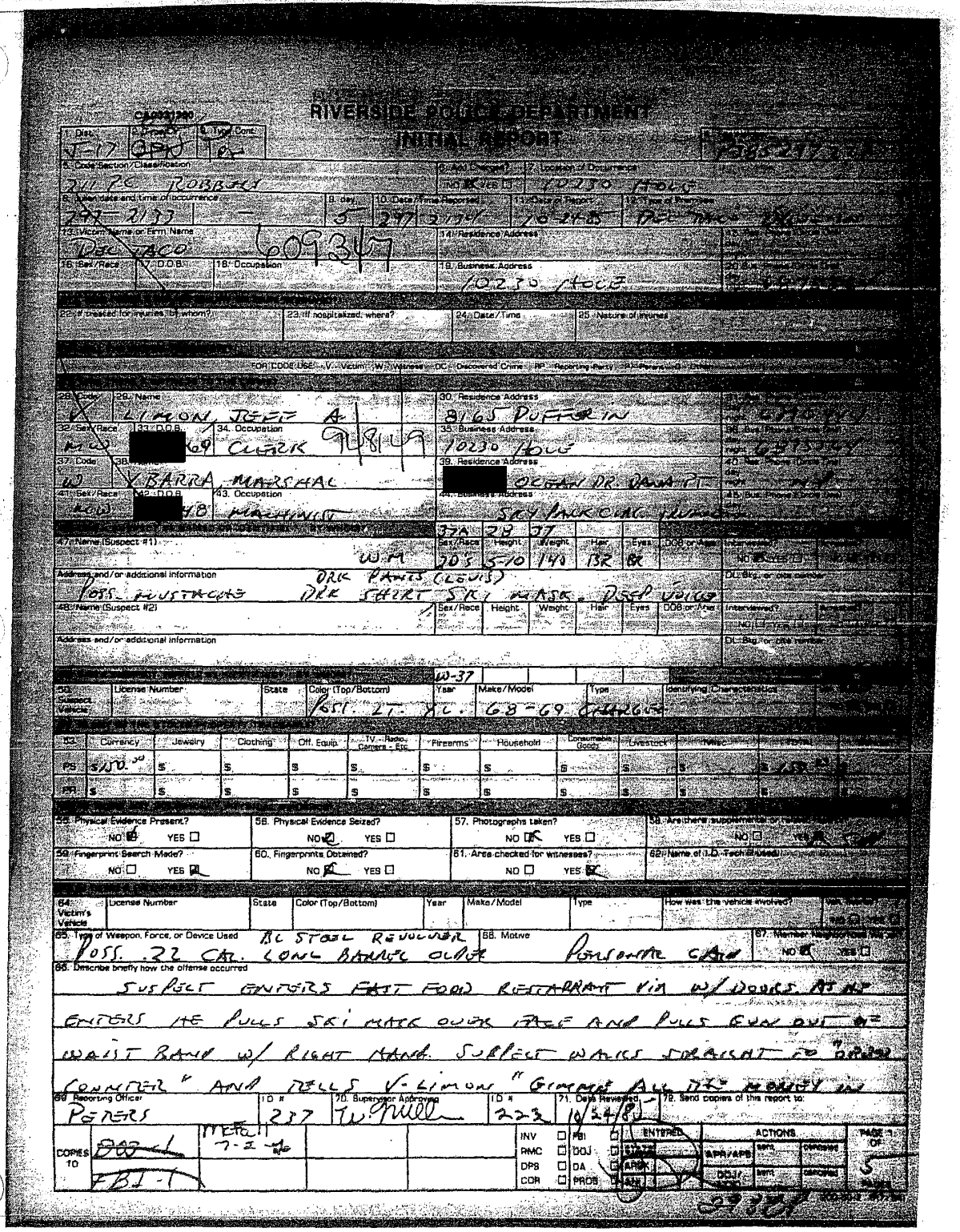
He then selected photograph #6 and indicated the following comment, "He would be the most likely one I would choose because of his facial features."

Based on V3/W2 (MEACHAM) positive identification of S1 (GRESHAM), this case will be forwarded to the District Attorney's Office for review and a subsequent request for a complaint of 211 PC Robbery (Armed).

Disposition: Arrest/Suspended

DA 00002639

EX 191 - 000090

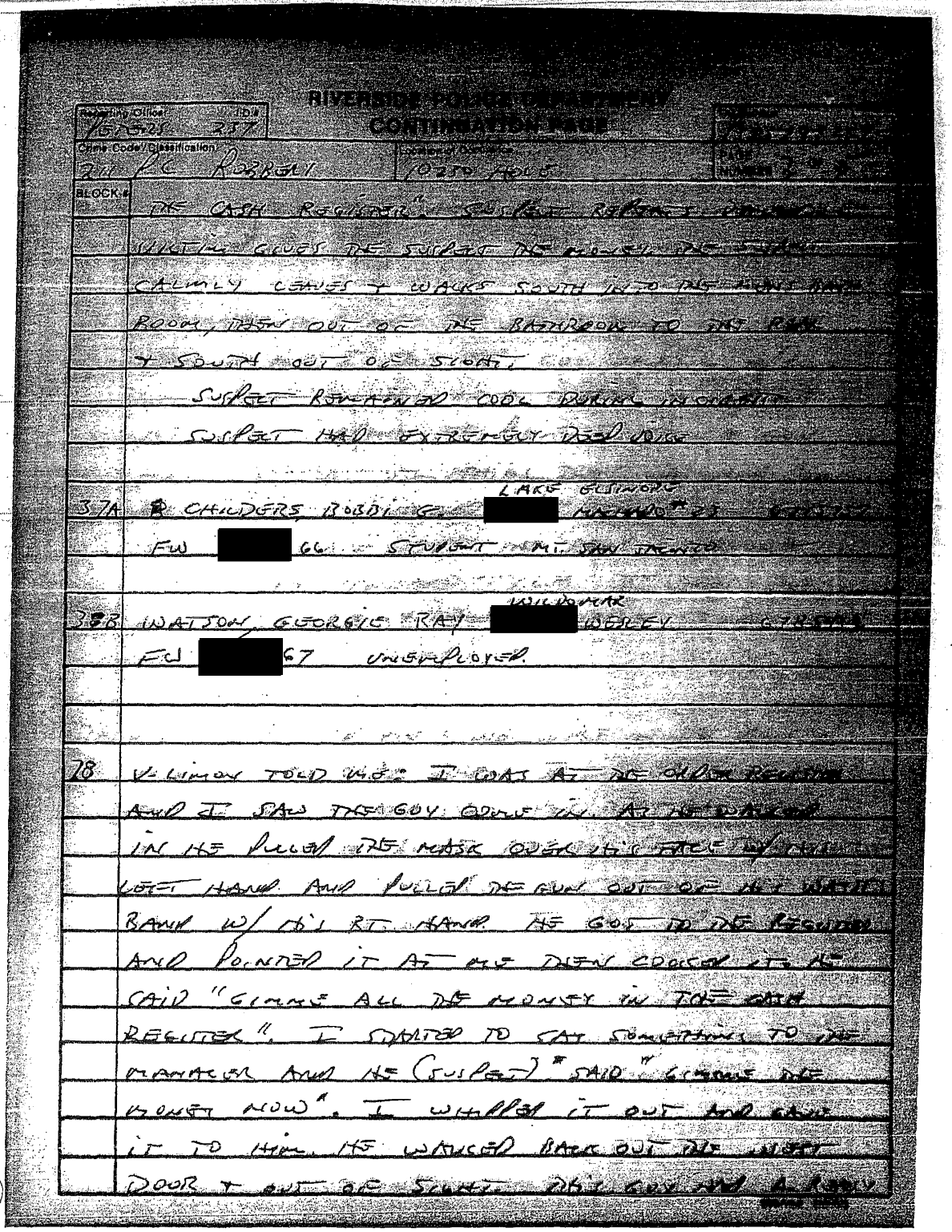


RIVERSIDE POLICE DEPARTMENT

INITIAL REPORT

DA 00002589

EX 192 - 000091



RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer / ID# 75525 257
Crime Code/Classification 211 PC ROBBERY
Date of Occurrence 10/20/05

BLOCK #

DE CASH REGISTER. SUSPECT REACH [illegible]
SUSPECT GIVES DE SUSPECT DE MONEY. DE SUSPECT
CALMLY LEAVES T WALKS SOUTH INTO DE MEN'S RM
ROOM, WALK OUT OF DE BATHROOM TO DE REAR
T SOUTH OUT OF STORE.
SUSPECT REMAINED COOL DURING INCIDENT.
SUSPECT HAD EXTREMELY BAD BREATH.

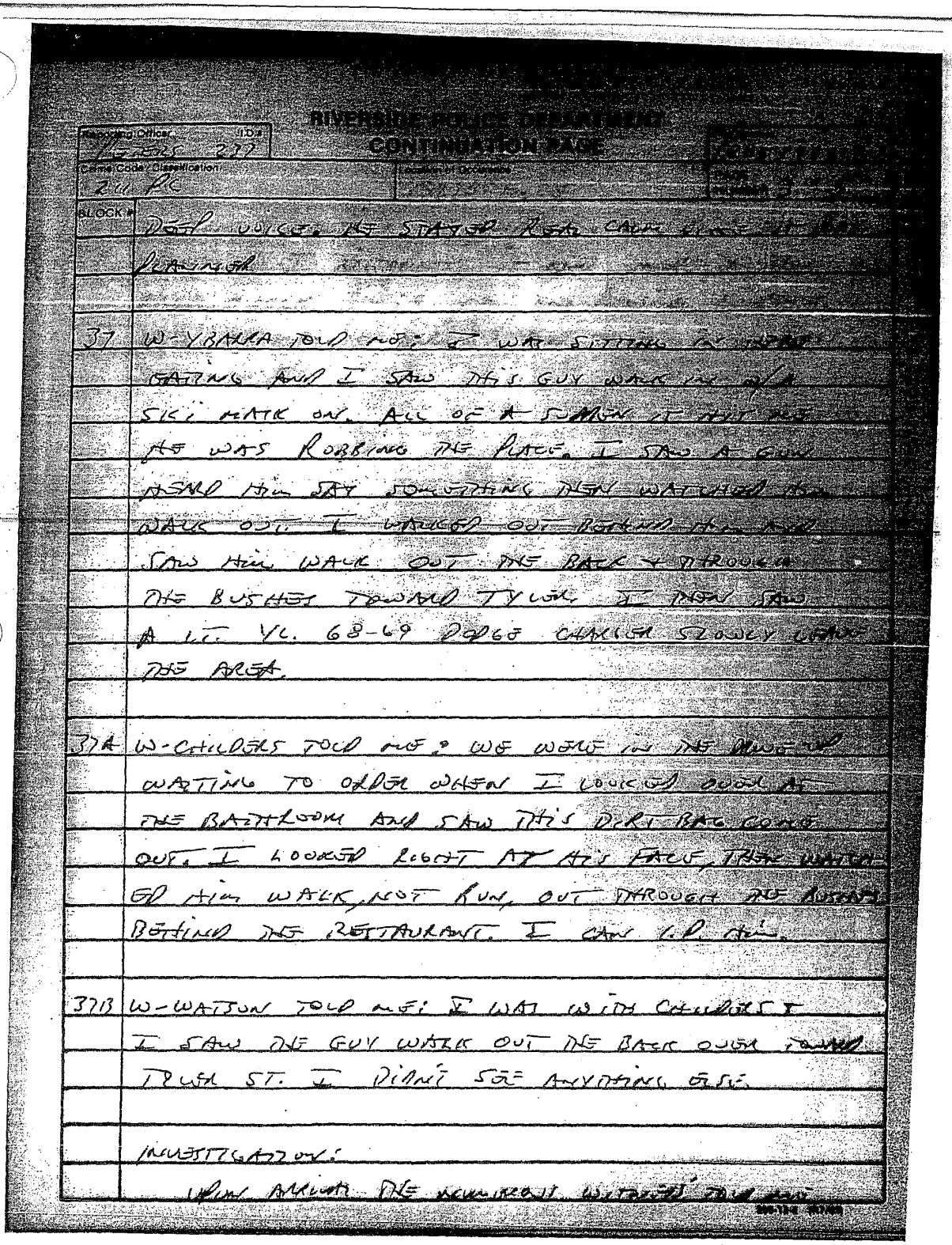
37A R CHILDERS, ROBBI G. [redacted] LAKE ELSINORE
FW [redacted] 66 STUDENT MT. SAN JACINTO

38B WATSON, GEORGIE RAY [redacted] WILDOMAR
FW [redacted] 67 UNEMPLOYED

78 V. LIMON TOLD ME I WAS AT DE CLERK REGISTER
AND I SAW THE GUY COME IN. AT DE DOOR
IN DE PULLED DE MASK OVER HIS FACE W/ HIS
LEFT HAND AND PULLED DE GUN OUT OF HIS WAISTBAND
W/ HIS RT HAND. HE GOT TO DE REGISTER
AND POINTED IT AT DE DEN CLERK. HE
SAID "GIMME ALL DE MONEY IN DE CASH
REGISTER". I STARTED TO SAY SOMETHING TO DE
MANAGER AND HE (SUSPECT) SAID "GIMME DE
MONEY NOW". I WHISPER IT OUT AND GAVE
IT TO HIM. HE WALKED BACK OUT DE WEST
DOOR T OUT OF SIGHT. DIS GUY AND A BODY

DA 00002590

EX 192 - 000092



RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: LEWIS I.D.#: 227
Crime/Code Classification: 211 PC

BLOCK #

DISP. VOICE: 1ST STATOR RSA CALL [illegible] LEAVING

37 W-YBARRA TOLD ME: I WAS SITTING IN [illegible] EATING AND I SAW THIS GUY WALK IN W/A SKI MASK ON. ALL OF A SUDDEN HE PUT ME HE WAS ROBBING THE PLACE. I SAW A GUN. ASKED HIM SAY SOMETHING THEN WATCHED HIM WALK OUT. I WALKED OUT BEHIND HIM AND SAW HIM WALK OUT THE BACK THROUGH THE BUSHES TOWARD TYLER. I THEN SAW A LT. VL. 68-69 DODGE CHARGER SLOWLY LEAVE THE AREA.

37A W-CHILDERS TOLD ME: WE WERE IN THE [illegible] WAITING TO ORDER WHEN I LOOKED OVER AT THE BATHROOM AND SAW THIS DIRTBAG COME OUT. I LOOKED RIGHT AT HIS FACE, THEN WATCHED HIM WALK, NOT RUN, OUT THROUGH THE AWNING BEHIND THE RESTAURANT. I CAN I.D. HIM.

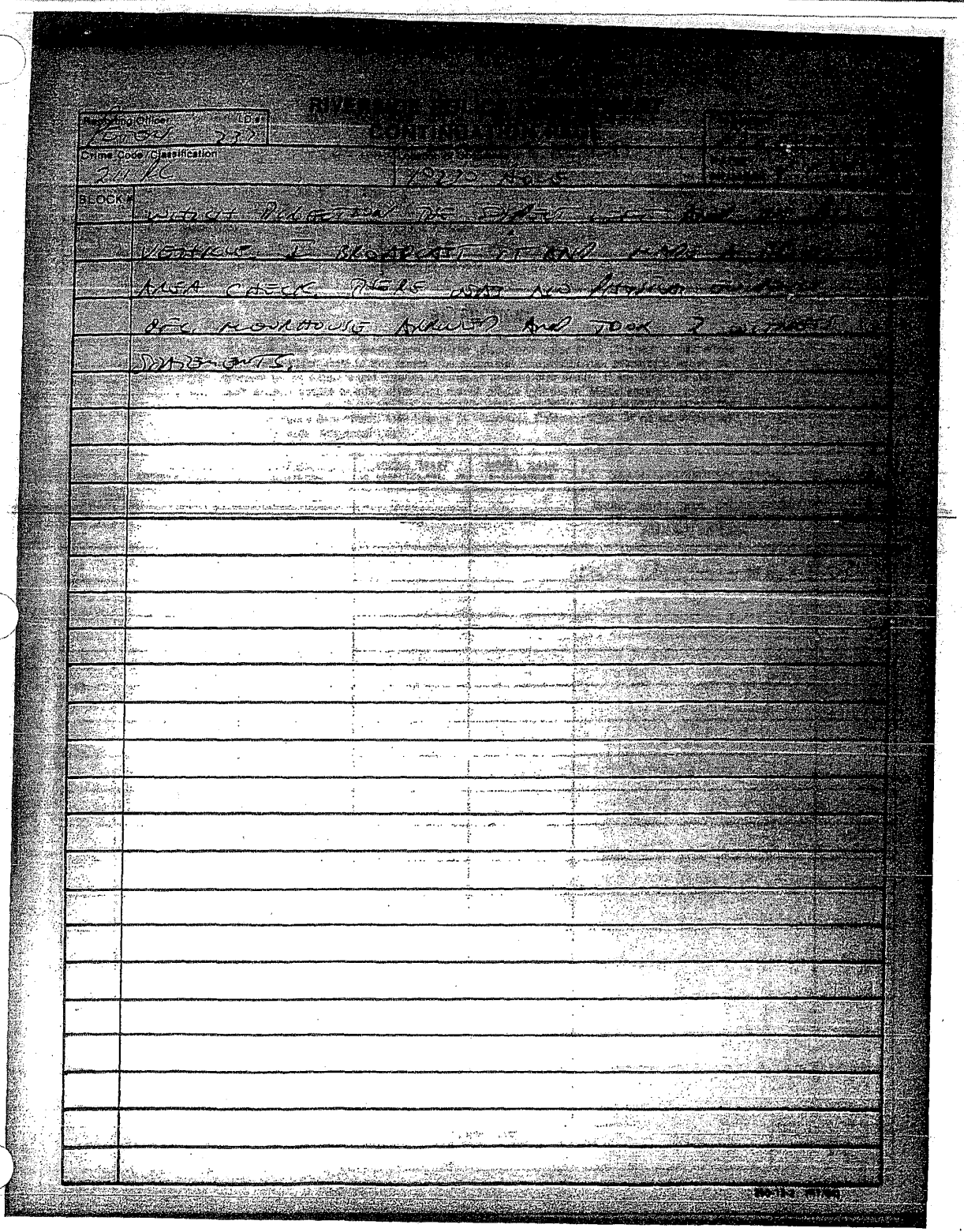
37B W-WATSON TOLD ME: I WAS WITH CHILDERS I SAW THE GUY WALK OUT THE BACK OVER TO TYLER ST. I DIDN'T SEE ANYTHING ELSE.

INVESTIGATION:

UPON ARRIVAL THE SUSPECT W/ITNESS TOLD ME

DA 00002591

EX 192 - 000093



DA 00002592

EX 192 - 000094

STOLEN PROPERTY REPORT

Investigating Officer	DR #	TYPE CRIME	DATE & TIME
	277		
Victim's Name (Last name first)		Victim's Address	Victim's Phone
Person Reporting Loss		Residence Address	Business Address

INSTRUCTIONS

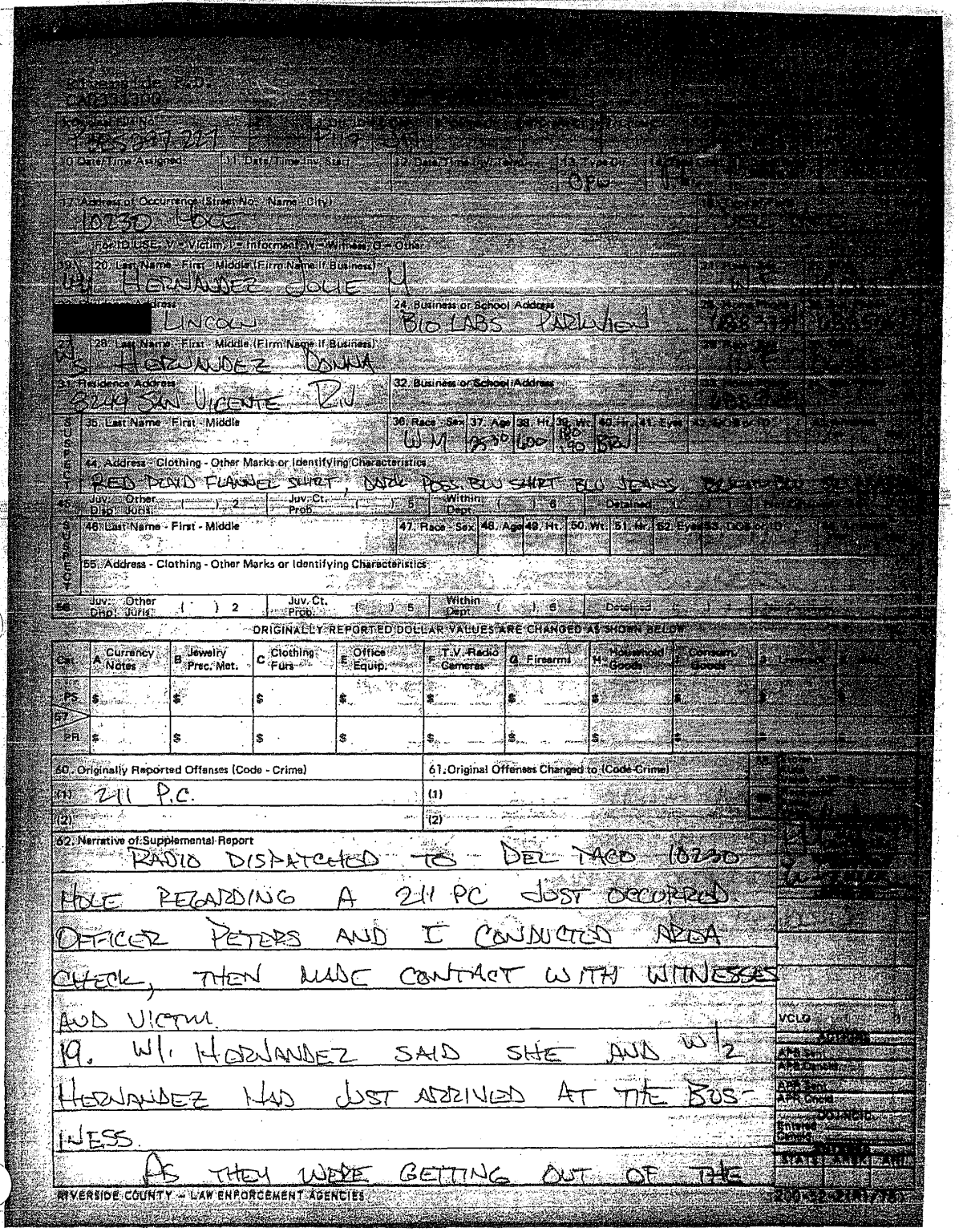
Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½ x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in "Miscellaneous Description" column. Fill in as much information as possible. Upon completion, please mail or walk to the Riverside Police Department, 4102 Orange St., Riverside, California 92501 to the attention of Records, Additional Loss

QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND NAME OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C-150	Walnut plastic frame, 25" screen, 19" color, with remote control 10485472 on back	
1	US currency				Cash. Department [illegible]	

Date Received	Person receiving list	Copies sent to:	PAGE NO.	OF PAGES
			2	2

DA 00002593

EX 192 - 000095



10 Date/Time Assigned | 11 Date/Time Inv. Start | 12 Date/Time Inv. End | 13 Type Of: OFF

17 Address of Occurrence (Street No. - Name - City): 10230 LOMA

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19 V | 20 Last Name - First - Middle (Firm Name if Business): HERNANDEZ JOLIE M

[redacted] Address: LINCOLN | 24 Business or School Address: BIO LABS RIALTO

23 W | 28 Last Name - First - Middle (Firm Name if Business): HERNANDEZ DONNA

31 Residence Address: 8249 SAN VICENTE RIV | 32 Business or School Address

SUSPECTS | 35 Last Name - First - Middle | 36 Race | Sex | 37 Age | 38 Ht. | 39 Wt. | 40 | 41 Eyes

44 Address - Clothing - Other Marks or Identifying Characteristics: RED PLAID FLANNEL SHIRT, WHT POLO BLU SHIRT BLU JEANS

45 Juv.: Other Disp. Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained

VICTIMS | 46 Last Name - First - Middle | 47 Race | Sex | 48 Age | 49 Ht. | 50 Wt. | 51 Hr. | 52 Eyes | 53 Occ. Of

55 Address - Clothing - Other Marks or Identifying Characteristics

56 Juv.: Other Disp. Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V. Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS	$	$	$	$	$	$	$	$		
57										
PR	$	$	$	$	$	$	$	$		

60. Originally Reported Offenses (Code - Crime) | 61. Original Offenses Changed to (Code-Crime)

(1) 211 P.C. | (1)

(2) | (2)

62. Narrative of Supplemental Report

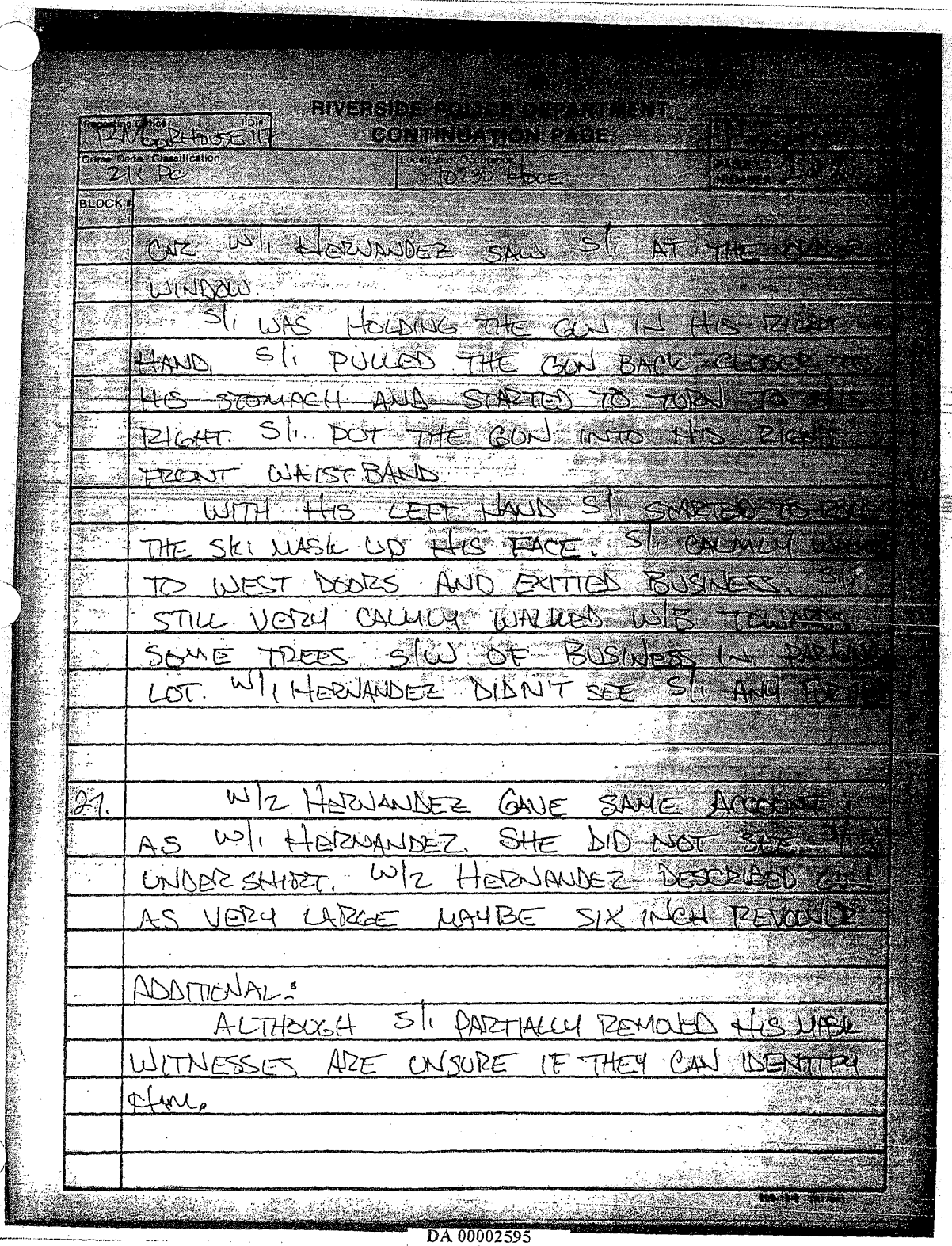
RADIO DISPATCHED TO DEL TACO 10230 HOLE REGARDING A 211 PC JUST OCCURRED. OFFICER PETERS AND I CONDUCTED AREA CHECK, THEN MADE CONTACT WITH WITNESSES AND VICTIM. 19. W/1 HERNANDEZ SAID SHE AND W/2 HERNANDEZ HAD JUST ARRIVED AT THE BUSINESS. AS THEY WERE GETTING OUT OF THE

VCLO | Arrest | APB Sent | APB Cancel | Arrest | APB Sent | APB Cancel | Document | Entered | Cleared

RIVERSIDE COUNTY – LAW ENFORCEMENT AGENCIES

DA 00002594

EX 192 - 000096



RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: T.M. GOLDHOUSE ID#: 117
Crime Code/Classification: 211 PC
Location of Occurrence: 10230 HOLE
Page: 2 of 2
Report Number:

BLOCK #

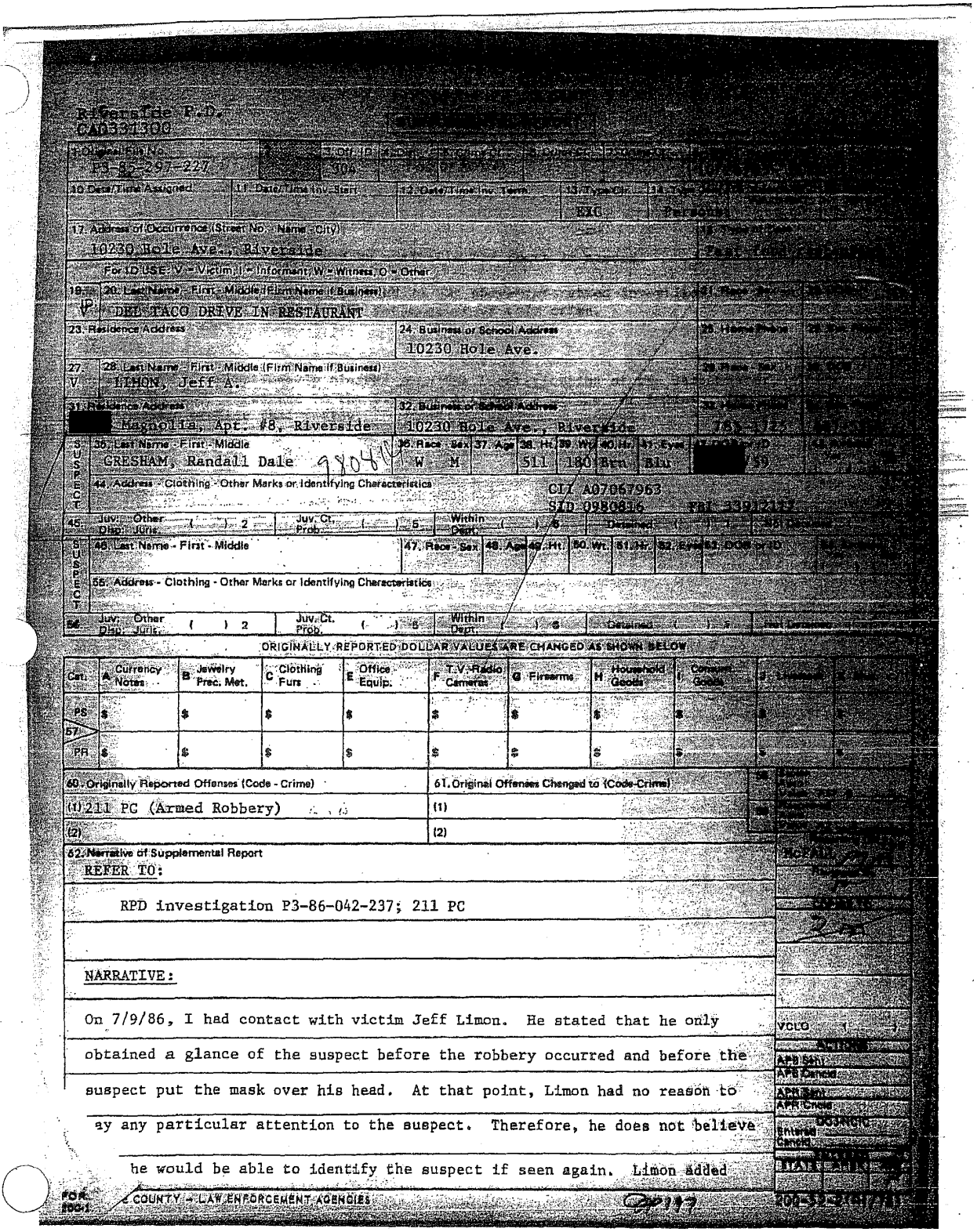
CAR W/1 HERNANDEZ SAW S/1 AT THE CLERKS WINDOW.
S/1 WAS HOLDING THE GUN IN HIS RIGHT HAND. S/1 PULLED THE GUN BACK ACROSS HIS STOMACH AND STARTED TO TURN TO HIS RIGHT. S/1 PUT THE GUN INTO HIS RIGHT FRONT WAISTBAND.
WITH HIS LEFT HAND S/1 STARTED TO PULL THE SKI MASK UP HIS FACE. S/1 CALMLY WALKED TO WEST DOORS AND EXITED BUSINESS. S/1 STILL VERY CALMLY WALKED W/B TOWARDS SOME TREES S/W OF BUSINESS IN PARKING LOT. W/1 HERNANDEZ DIDNT SEE S/1 AND HE

27. W/2 HERNANDEZ GAVE SAME ACCOUNT AS W/1 HERNANDEZ. SHE DID NOT SEE S/1 UNDER SHIRT. W/2 HERNANDEZ DESCRIBED GUN AS VERY LARGE MAYBE SIX INCH REVOLVER

ADDITIONAL:
ALTHOUGH S/1 PARTIALLY REMOVED HIS MASK WITNESSES ARE UNSURE IF THEY CAN IDENTIFY S/1.

DA 00002595

EX 192 - 000097



Riverside P.D.
CA0331300

1 Originating No.: P3-86-297-227 | 2 Sup. or IP: 304 | 3 Agency: | 4 Charge: | 5 Other Case Numbers: | 6 Report No.:

10 Date/Time Assigned | 11 Date/Time Inv. Start | 12 Date/Time Inv. Term | 13 Type Of: EXC | 14 Case Status: Persons

17 Address of Occurrence (Street No. - Name - City): 10230 Hole Ave., Riverside | 18 Area: East Side Riverside

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19 IP | 20 Last Name - First - Middle (Firm Name if Business): DEL TACO DRIVE IN RESTAURANT | 21 Race | Sex | DOB

23 Residence Address | 24 Business or School Address: 10230 Hole Ave. | 25 Home Phone | 26 Bus. Phone

27 V | 28 Last Name - First - Middle (Firm Name if Business): LIMON, Jeff A. | 29 Race | Sex | DOB

31 Residence Address: [redacted] Magnolia, Apt. #8, Riverside | 32 Business or School Address: 10230 Hole Ave., Riverside | 33 Home Phone: 785-[illegible] | 34 Bus. Phone

SUSPECT | 35 Last Name - First - Middle: GRESHAM, Randall Dale 9/04/[illegible] | 36 Race: W | Sex: M | 37 Age | 38 Ht: 511 | 39 Wt: 180 | 40 Hair: Brn | 41 Eyes: Blu | 42 CII No. / DL No.: [redacted] 59 | 43 Photo

44 Address - Clothing - Other Marks or Identifying Characteristics: CII A07067963 SID 0980816 FBI 339127LA3

45 Juv: Other Disp: | Juris: ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 7 | Bail Recommended

SUSPECT | 46 Last Name - First - Middle | 47 Race | Sex | 48 Age | 49 Ht. | 50 Wt. | 51 Hair | 52 Eyes | 53 DOB / ID | 54 Photo

55 Address - Clothing - Other Marks or Identifying Characteristics

56 Juv: Other Disp: | Juris: ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 7 | Bail Recommended

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V. Radio Cameras	G Firearms	H Household Goods	I Consumer Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60 Originally Reported Offenses (Code - Crime)
(1) 211 PC (Armed Robbery)
(2)

61 Original Offenses Changed to (Code-Crime)
(1)
(2)

62 Narrative of Supplemental Report

REFER TO:

RPD investigation P3-86-042-237; 211 PC

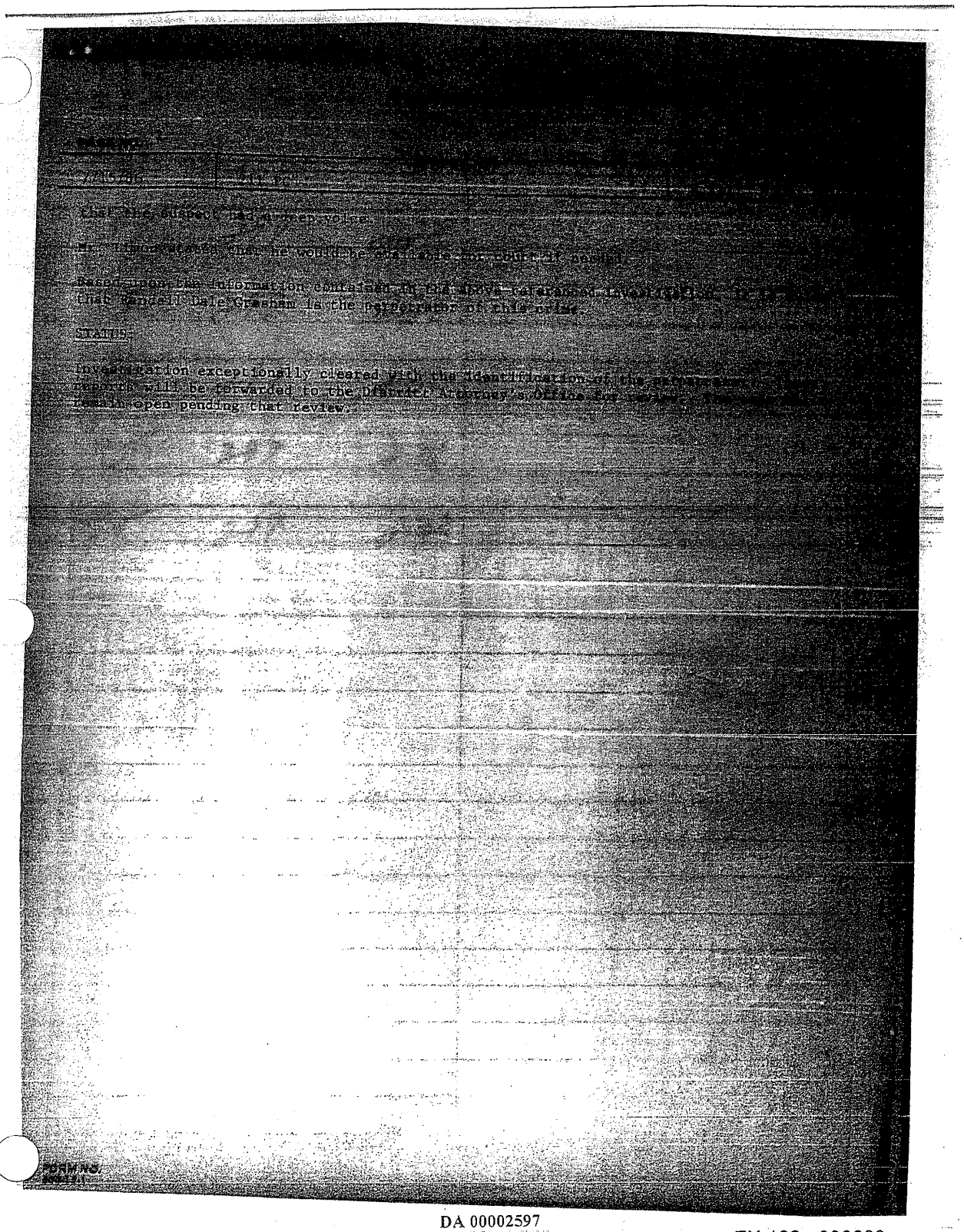
NARRATIVE:

On 7/9/86, I had contact with victim Jeff Limon. He stated that he only obtained a glance of the suspect before the robbery occurred and before the suspect put the mask over his head. At that point, Limon had no reason to pay any particular attention to the suspect. Therefore, he does not believe he would be able to identify the suspect if seen again. Limon added

FOR DOJ | COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002596

EX 192 - 000098



that the suspect has a deep voice.

Mr. Tippett stated that he would be available for court if needed.

Based upon the information contained in the above referenced investigation, it is the opinion of Detective Dale Graham is the perpetrator of this crime.

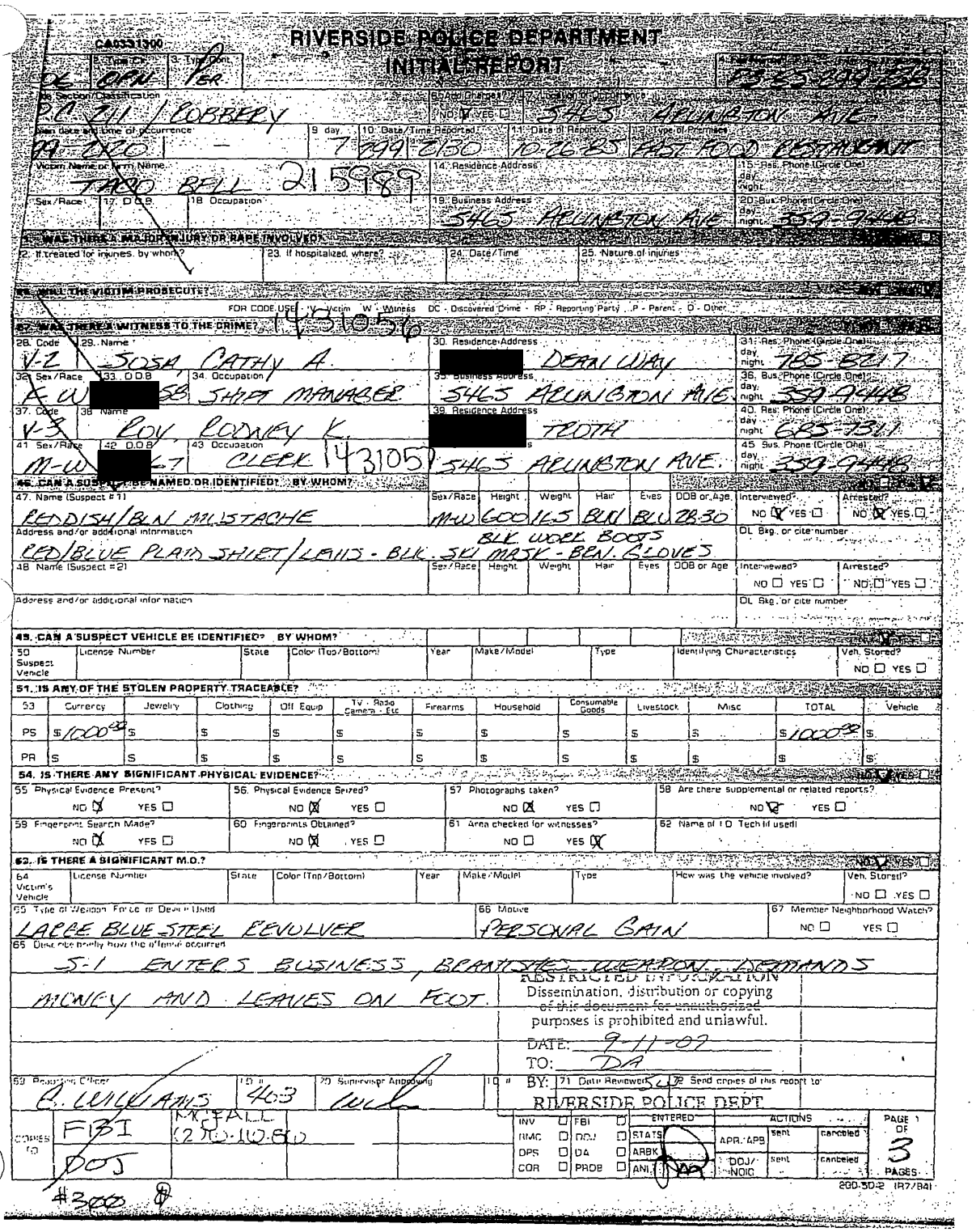
STATUS:

Investigation exceptionally cleared with the identification of the perpetrator. This report will be forwarded to the District Attorney's Office for review. The case will remain open pending that review.

FORM NO.

DA 00002597

EX 192 - 000099



RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

CA0331300

OK ORN PER

23-53-239-23

P.C. 211 / ROBBERY

5465 ARLINGTON AVE

99-0XO — 7 1999-2130 10-26-99 FAST FOOD RESTAURANT

TACO BELL 215989

5465 ARLINGTON AVE 359-9448

WAS THERE A MAJOR INJURY OR RAPE INVOLVED?

WILL THE VICTIM PROSECUTE?

FOR CODE USE: V - Victim W - Witness DC - Discovered Crime RP - Reporting Party P - Parent O - Other

WAS THERE A WITNESS TO THE CRIME? 143105

V-2 SOSA, CATHY A. [redacted] DEAN WAY 785-8217

A W [redacted] SHIFT MANAGER 5465 ARLINGTON AVE 359-9448

V-3 ROY, RODNEY K. [redacted] TROTH 685-7311

M-W [redacted] CLERK 143105 5465 ARLINGTON AVE. 359-9448

CAN A SUSPECT BE NAMED OR IDENTIFIED? BY WHOM?

47. Name (Suspect #1): REDDISH/BRN MUSTACHE — Sex/Race: MW — Height: 600 — Weight: 165 — Hair: BLK — Eyes: BLU — DOB or Age: 28-30 — Interviewed? NO X YES ☐ — Arrested? NO X YES ☐

Address and/or additional information: RED/BLUE PLAID SHIRT/LEVIS - BLK. SKI MASK - BRN. GLOVES — BLK. WORK BOOTS

48. Name (Suspect #2) — Sex/Race — Height — Weight — Hair — Eyes — DOB or Age — Interviewed? NO ☐ YES ☐ — Arrested? NO ☐ YES ☐

Address and/or additional information — DL Reg. or cite number

CAN A SUSPECT VEHICLE BE IDENTIFIED? BY WHOM?

50 Suspect Vehicle — License Number — State — Color (Top/Bottom) — Year — Make/Model — Type — Identifying Characteristics — Veh. Stored? NO ☐ YES ☐

IS ANY OF THE STOLEN PROPERTY TRACEABLE?

53	Currency	Jewelry	Clothing	Off. Equip.	TV - Radio - Camera - Etc.	Firearms	Household	Consumable Goods	Livestock	Misc.	TOTAL	Vehicle
PS	$1000.00	$	$	$	$	$	$	$	$	$	$1000.00	$
PR	$	$	$	$	$	$	$	$	$	$	$	$

IS THERE ANY SIGNIFICANT PHYSICAL EVIDENCE?

55 Physical Evidence Present? NO X YES ☐ — 56 Physical Evidence Seized? NO X YES ☐ — 57 Photographs taken? NO X YES ☐ — 58 Are there supplemental or related reports? NO X YES ☐

59 Fingerprint Search Made? NO X YES ☐ — 60 Fingerprints Obtained? NO X YES ☐ — 61 Area checked for witnesses? NO ☐ YES X — 62 Name of I.D. Tech (if used)

IS THERE A SIGNIFICANT M.O.?

64 Victim's Vehicle — License Number — State — Color (Top/Bottom) — Year — Make/Model — Type — How was the vehicle involved? — Veh. Stored? NO ☐ YES ☐

65 Type of Weapon, Force or Device Used: LARGE BLUE STEEL REVOLVER — 66 Motive: PERSONAL GAIN — 67 Member Neighborhood Watch? NO ☐ YES ☐

68 Describe briefly how the offense occurred: S-1 ENTERS BUSINESS, BRANDISHES WEAPON, DEMANDS MONEY AND LEAVES ON FOOT.

RESTRICTED INFORMATION
Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.
DATE: 9-11-02
TO: DA
BY: 71 Date Reviewed 72 Send copies of this report to: RIVERSIDE POLICE DEPT

69 Reporting Officer: C. WILLIAMS — ID # 403 — 70 Supervisor Approving — ID #

COPIES TO: FBI (2 TO 10 BD) — DOJ — #300 8

INV ☐ FBI ☐ — RMC ☐ DOJ ☐ — DPS ☐ DA ☐ — COR ☐ PROB ☐ — ENTERED: STATS ☐ ARBK ☐ ANI ☐ — ACTIONS: APR./APB sent cancelled — DOJ/NCIC sent cancelled

PAGE 1 OF 3 PAGES

200-30-2 (R7/84)

DA 00002392

EX 193 - 000100

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer and I.D. # 403 | Case Number 2[illegible]
Case Type / Classification PC 211 | Location of Occurrence 5365 ARLINGTON | Page Number 2 of 3
BLOCK #

37A ADDITIONAL VICTIMS

V-4 AGUILAR, DEVON K.
[redacted] KEERI PL
RVSD. 685-7153
[redacted]-68
TACO BELL CLERK

V-5 DONOVAN, RONDI M
[redacted] PHOENIX #2
RVSD. 687-9688
[redacted]-68
TACO BELL CLERK

PROPERTY TAKEN

APPROX. $1000.00 IN U.S. CURRENCY
MISC. ONES, FIVES, TENS, TWENTIES AND
ROLLED COINS.
MONEY WAS IN A WHITE "BANK OF AMERICA"
BANK BAG.

ARRIVAL

PARTNER OFFICER BUHRMESTER AND I RESPONDED TO
THE ABOVE ADDRESS IN REFERENCE TO A ROBBERY.
UPON ARRIVAL, I CONTACTED THE VICTIMS, BUHRMESTER
CONTACTED THE WITNESSES AND WE OBTAINED THEIR
STATEMENT. BUHRMESTER AND I DID AN AREA CHECK AT THIS

DA 00002393

EX 193 - 000101

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: WILLIAMS I.D. #: 403
File Number: 13B5-28738
Crime Code / Classification: PC 211
Location of Occurrence: 3465 ARLINGTON AVE
PAGE NUMBER 3 OF 3

BLOCK #

TIME.

STATEMENTS

V-2 STATED THAT SHE WAS STANDING IN THE DINING ROOM SECTION OF THE RESTAURANT WHEN S-1 ENTERED. HE WALKED IN, POINTED THE LOADED WEAPON AT HER AND SAID "GIVE ME ALL YOUR MONEY." HE THEN SAID GET BACK IN THERE, RIGHT NOW REFERRING TO BEHIND THE COUNTER.

WITHOUT DELAY, V-2 WENT BEHIND THE COUNTER WHERE THE OTHER VICTIMS WERE STANDING. S-1 ORDERED THE OTHER VICTIMS TO SIT ON THE FLOOR, WHILE V-2 TOOK THE MONEY FROM THE THREE REGISTERS. S-1 WAS CROUCHED DOWN BEHIND THE COUNTER. S-1 THEN TOLD V-2 TO GET THE REST OF THE MONEY FROM THE BACK. SHE SAID THAT THERE WAS NO MONEY IN THE BACK. S-1 THEN GRABBED V-4 BY THE ARM, POINTED THE GUN AT HER AND SAID "GET THE REST OF THE MONEY." V-2 THEN WENT IN THE OFFICE, GATHERED MORE CASH, PLACED ALL THE CASH IN THE BANK BAG AND GAVE IT TO S-1.

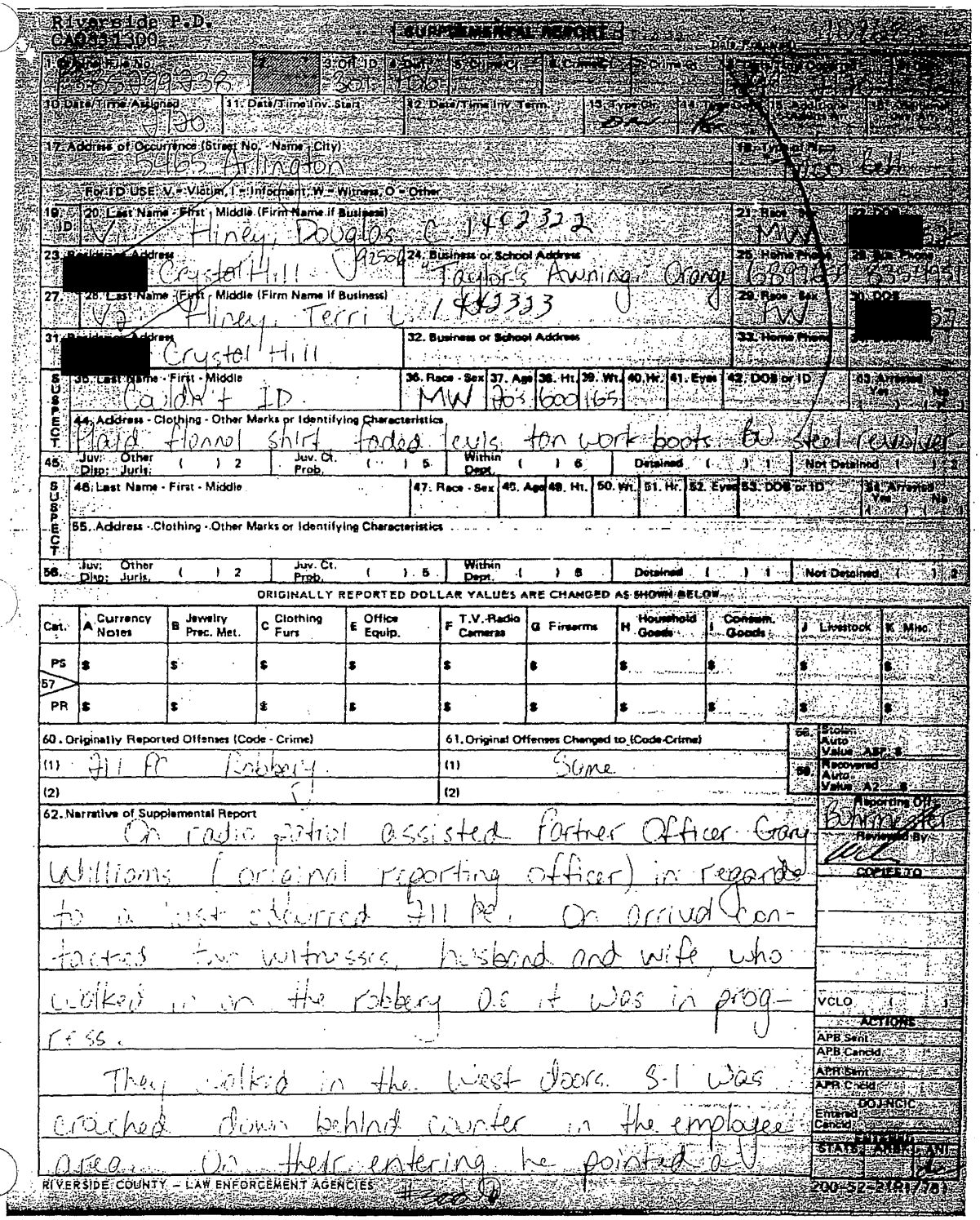
S-1 THEN WALKED OUT THE WEST DOORS AND RAN W/B ARLINGTON AVE.

AN AREA CHECK WAS MADE WITH NO RESULTS.

200-12-2 (R7/84)

DA 00002394

EX 193 - 000102



Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Typed: 1/22/02

1. Case No. 020319738 | 2. | 3. Off. ID 3011 | 4. Sect. 1000 | 5. Beat | 6. Crime | 7. Crime Code | 8. Weapon Code | 9. Premise Code

10. Date/Time Assigned 1/20 | 11. Date/Time Inv. Start | 12. Date/Time Inv. Term | 13. Type Occ. Bus | 14. Type Loc. Res | 15. Solvability Factor | 16. Solvability Factor

17. Address of Occurrence (Street No. - Name - City) 5465 Arlington | 18. Type of Place Liq. Store

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID: V | 20. Last Name - First - Middle (Firm Name if Business): Hiney, Douglas C. 142322 | 21. Race: W | 22. DOB: [redacted]

23. Residence Address: [redacted] Crystal Hill Dr. | 24. Business or School Address: Taylor's Awning, Orang | 25. Home Phone: 689-[illegible] | 26. Bus. Phone: 633-[illegible]

27. | 28. Last Name - First - Middle (Firm Name if Business): Hiney, Terri L. 142333 | 29. Race: W | 30. DOB: [redacted]

31. Residence Address: [redacted] Crystal Hill | 32. Business or School Address | 33. Home Phone

SUSPECT: 34. Last Name - First - Middle: Caldwell ID. | 36. Race - Sex: MW | 37. Age: 40s | 38. Ht.: 600 | 39. Wt.: 165 | 40. Hr. | 41. Eyes | 42. DOB or ID | 43. Arrested Yes / No

SUSPECT: 44. Address - Clothing - Other Marks or Identifying Characteristics: Plaid flannel shirt, faded levis, tan work boots, 6" steel revolver

45. Juv: Other Disp: Juris: ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 3

SUSPECT: 46. Last Name - First - Middle | 47. Race - Sex | 48. Age | 49. Ht. | 50. Wt. | 51. Hr. | 52. Eyes | 53. DOB or ID | 54. Arrested Yes / No

SUSPECT: 55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 3

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)
(1) 211 PC Robbery
(2)

61. Original Offenses Changed to (Code-Crime)
(1) Same
(2)

62. Narrative of Supplemental Report

On radio patrol assisted former Officer Gary Williams (original reporting officer) in regards to a just occurred 211 PC. On arrival contacted two witnesses, husband and wife who walked in on the robbery as it was in progress.

They walked in the west doors. S-1 was crouched down behind counter in the employee area. On their entering he pointed a

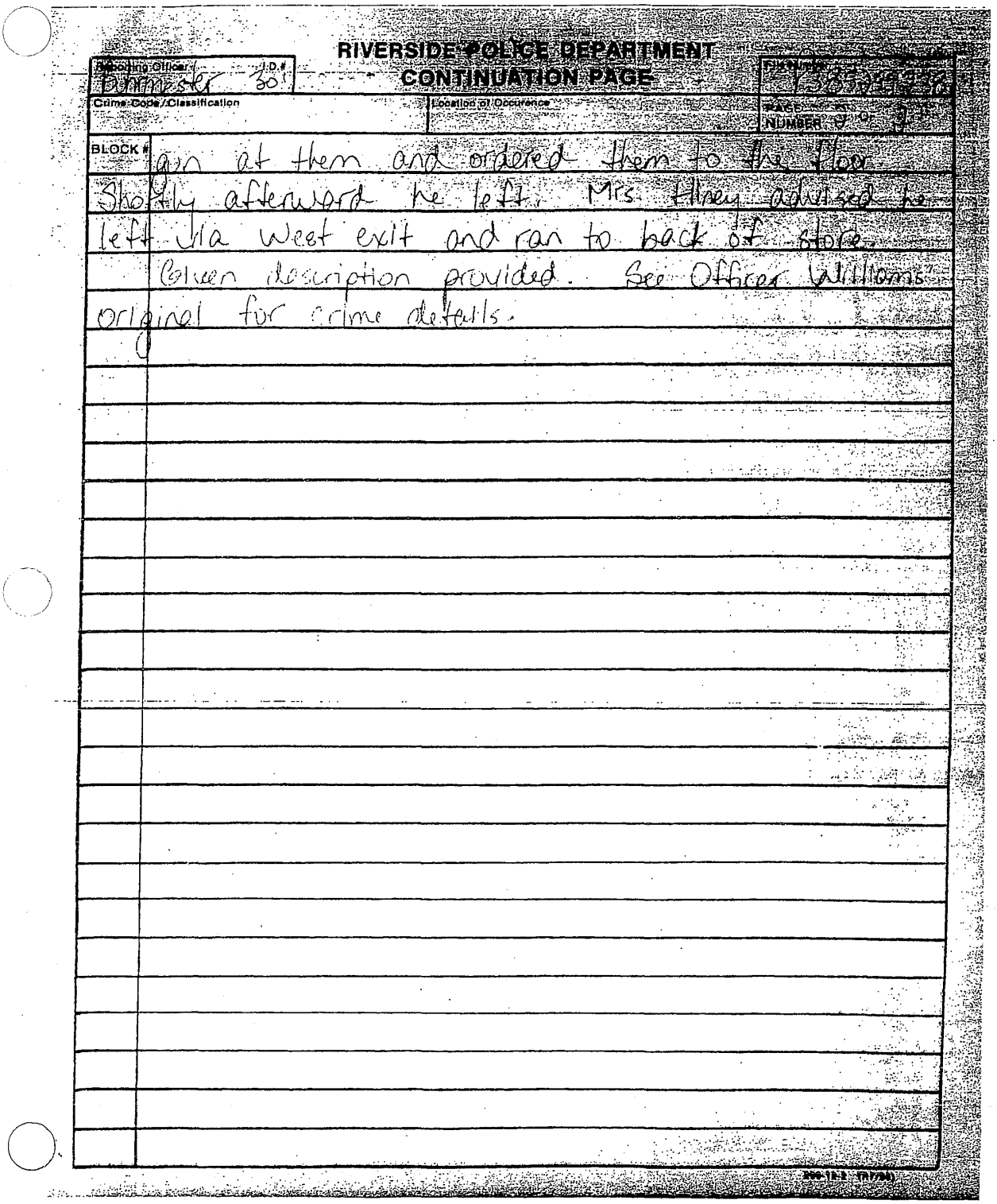
66. Stolen Auto Value ABP: $
68. Recovered Auto Value A2: $
Reporting Off: Bohmrichter
Reviewed By:
COPIES TO

VCLO ( )
ACTIONS
APB Sent
APB Cancld
APR Sent
APR Cancld
DOJ/NCIC Entered
DOJ/NCIC Cancld
STATS: FAIL/EXC/UNF

RIVERSIDE COUNTY – LAW ENFORCEMENT AGENCIES #-00 (R) 200-52-21(1/78)

DA 00002395

EX 193 - 000103



RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

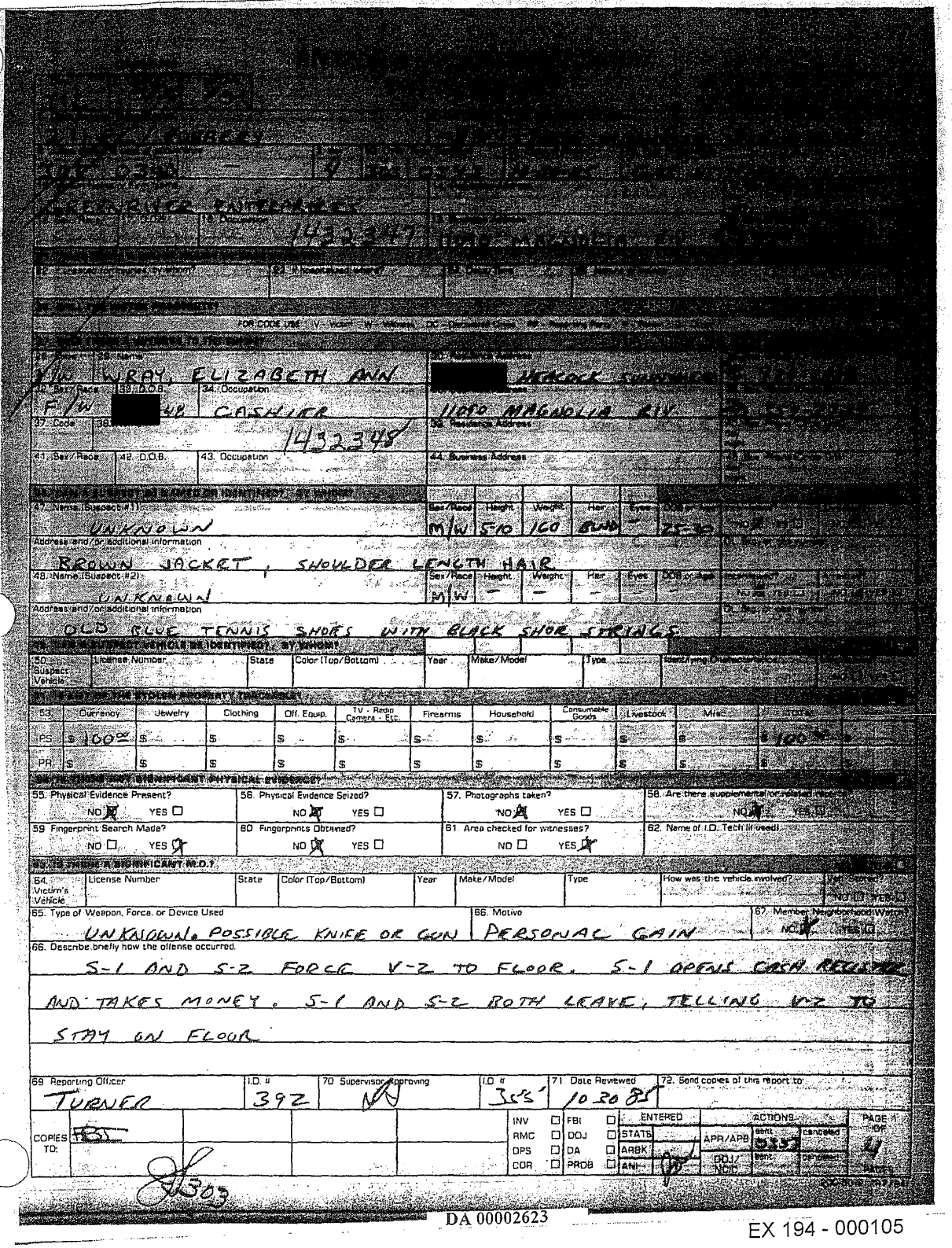
Reporting Officer: Bannister I.D.# 305
Crime Code/Classification:
Location of Occurrence:
PAGE NUMBER 2 OF 3

BLOCK #

gun at them and ordered them to the floor. Shortly afterward he left. Mrs. Hines advised he left via West exit and ran to back of store. Given description provided. See Officer Williams' original for crime details.

DA 00002396

EX 193 - 000104



WRAY, ELIZABETH ANN

[redacted] HITCHCOCK SUNSHINE

F/W [redacted]48 CASHIER 143248

11010 MAGNOLIA AVE.

UNKNOWN — M/W 510 160 BLND — 25-30

BROWN JACKET, SHOULDER LENGTH HAIR

UNKNOWN — M/W

OLD BLUE TENNIS SHOES WITH BLACK SHOE STRINGS

Currency: PS $100.00

69. Reporting Officer: TURNER — I.D. # 392 — 70. Supervisor Approving — I.D. # 355 — 71. Date Reviewed 10 20 85

DA 00002623

EX 194 - 000105

RIVERSIDE COUNTY SHERIFF'S DEPARTMENT

Property Crime

Page 2 of 2

Z-1 RC 1488664

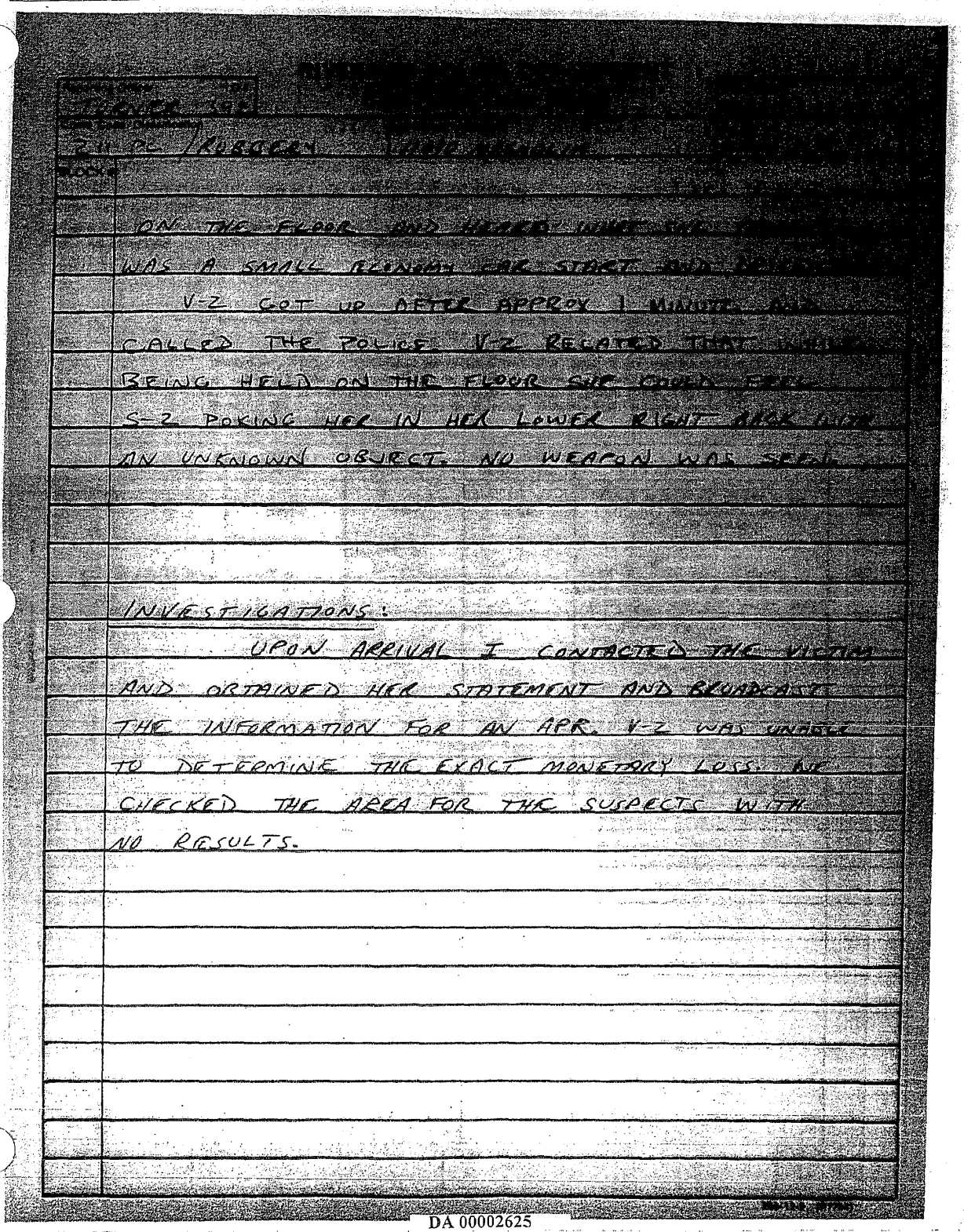
NARRATIVE

27. STATEMENTS: V-2 SAID THAT SHE WAS STANDING DOWN IN FRONT OF THE BEVERAGE REFRIGERATOR. THE REFRIGERATOR IS LOCATED OUTSIDE THE MAIN OFFICE WHERE CUSTOMERS PAY FOR GAS. AS SHE WAS RESTOCKING THE REFRIGERATOR, S-2 GRABBED HER BY THE BACK OF THE NECK AND PUSHED HER HEAD IN THE REFRIGERATOR. S-2 SAID "DONT MOVE AND DONT TURN AROUND." S-2 HELD HER HEAD WHILE S-1 WALKED IN THE MAIN OFFICE AND STOOD BY THE CASH REGISTER. V-2 COULD ONLY SEE THAT S-1 HAD SHOULDER LENGTH BLOND HAIR AND WAS WEARING A BROWN JACKET. S-1 WAS APPROX 5-10/160. V-2 DID NOT SEE S-1's OR S-2's FACE. V-2 ONLY DESCRIBED S-2 AS WEARING DIRTY, OLD, TENNIS SHOES, BLUE IN COLOR WITH BLACK LACES. S-2 SAID "HOW DO YOU OPEN THE GOD DAMN REGISTER?" V-2 SAID TO PUSH THE "N/S" BUTTON. V-2 HEARD THE DRAWER OPEN AND S-1 TOOK THE MONEY OUT.

S-1 SAID "YOU FUCKING CUNT, THERE'S GOT TO BE MORE MONEY THAN THIS!" V-2 SAID THERE WAS NO MORE MONEY AND TURNED HER HEAD TO SEE IF SHE COULD SEE S-1. S-2 PUSHED HARDER ON HER HEAD AND GRABBED HER RIGHT BREAST WITH HIS RIGHT HAND. S-2 SAID "I'VE ONLY COME TO ROB YOU." S-2 SAID "STAY HERE FOR A FEW MINUTES." S-1 AND S-2 THEN LEFT TOWARDS LA SIERRA AVE. V-2 STAYED

DA 00002624

EX 194 - 000106



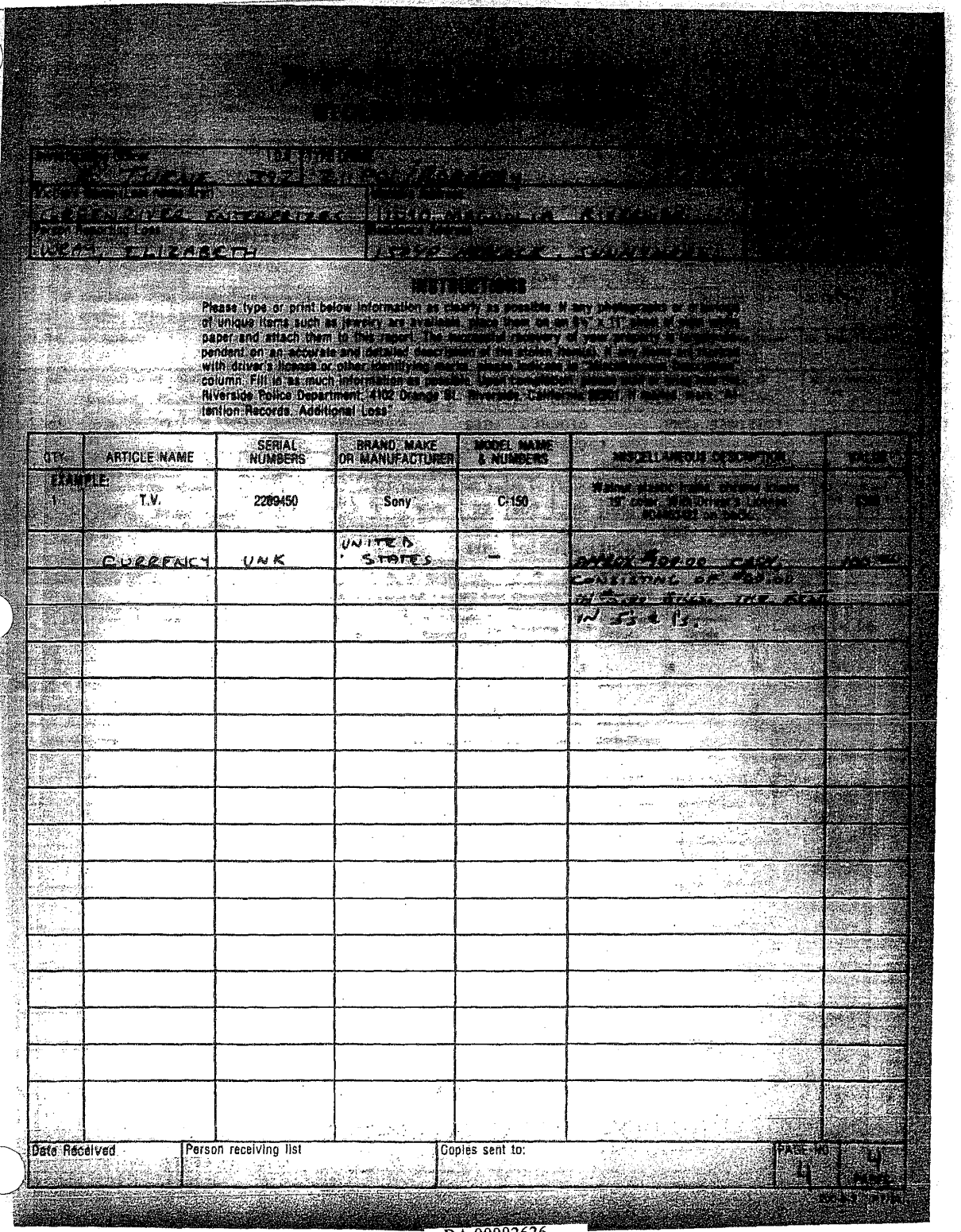
ON THE FLOOR AND HELPED [illegible]
WAS A SMALL [illegible] START [illegible]
V-2 GOT UP AFTER APPROX 1 MINUTE [illegible]
CALLED THE POLICE. V-2 RELATED THAT [illegible]
BEING HELD ON THE FLOOR SHE COULD FEEL
S-2 POKING HER IN HER LOWER RIGHT BACK WITH
AN UNKNOWN OBJECT. NO WEAPON WAS SEEN.

INVESTIGATIONS:

UPON ARRIVAL I CONTACTED THE VICTIM
AND OBTAINED HER STATEMENT AND BROADCAST
THE INFORMATION FOR AN APB. V-2 WAS UNABLE
TO DETERMINE THE EXACT MONETARY LOSS. WE
CHECKED THE AREA FOR THE SUSPECTS WITH
NO RESULTS.

DA 00002625

EX 194 - 000107



INSTRUCTIONS

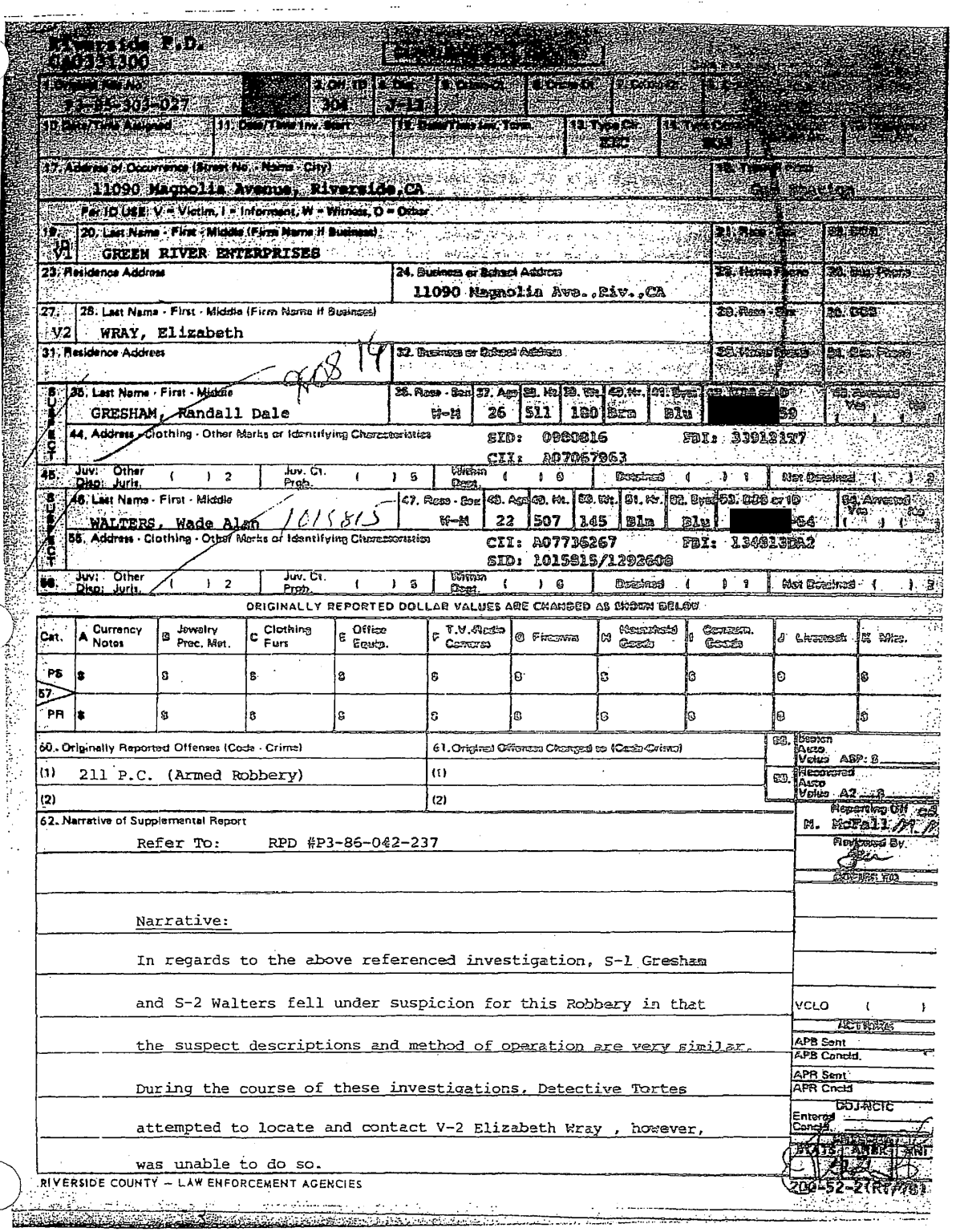
Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½ x 11" sheet of white paper and attach them to this report. The successful recovery of your property is dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in the appropriate description column. Fill in as much information as possible. Upon completion, please return to: Riverside Police Department, 4102 Orange St., Riverside, California 92501. If space runs out, attention Records, Additional Loss"

QTY.	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C-150	Walnut plastic inlaid, stained glass 19" color, with owner's name engraved on back.	$ 250
	CURRENCY	UNK	UNITED STATES	-	DOLLAR BILLS OF CASH, CONSISTING OF 53 - 20'S 1 - 10 DOLLAR BILL IN 53 & 13.	1060.00

Date Received	Person receiving list	Copies sent to:	PAGE NO. 4	OF 4 PAGE

DA 00002626

EX 194 - 000108



Riverside P.D.
0403100

1. Original File No.: 7-85-303-027
2. CH. ID: 304
3. Dist.: J-13
4. Date Occ.:
5. Date Rpt.:
6. Date Occ.:
7. Time Occ.:
10. Date/Time Assigned:
11. Date/Time Inv. Start:
12. Date/Time Inv. Term.:
13. Type Of: RBC
14. Type Code: 304
15. Type Code:
16. Type Code:
17. Address of Occurrence (Street No. - Name - City): 11090 Magnolia Avenue, Riverside,CA
18. Time Occ.: 0945 hours
For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. V1 — 20. Last Name - First - Middle (Firm Name if Business): GREEN RIVER ENTERPRISES
21. Race - Sex:
22. DOB:
23. Residence Address:
24. Business or School Address: 11090 Magnolia Ave.,Riv.,CA
25. Home Phone:
26. Bus. Phone:

27. V2 — 28. Last Name - First - Middle (Firm Name if Business): WRAY, Elizabeth
29. Race - Sex:
30. DOB:
31. Residence Address:
32. Business or School Address:
33. Home Phone:
34. Bus. Phone:

SUSPECT — 35. Last Name - First - Middle: GRESHAM, Randall Dale
36. Race - Sex: W-M
37. Age: 26
38. Ht.: 511
39. Wt.: 180
40. Hr.: Brn
41. Eyes: Blu
42. Date of Birth: [redacted]59
43. Arrested: Yes
44. Address - Clothing - Other Marks or Identifying Characteristics: SID: 0980816 FBI: 33913177 CII: A07067963
45. Juv: Other Disp: Juris. ( ) 2 — Juv. Ct. Prob. ( ) 5 — Within Dept. ( ) 6 — Declined ( ) 7 — Not Declined ( ) 8

SUSPECT — 46. Last Name - First - Middle: WALTERS, Wade Alan 1015815
47. Race - Sex: W-M
48. Age: 22
49. Ht.: 507
50. Wt.: 145
51. Hr.: Blm
52. Eyes: Blu
53. DOB or ID: [redacted]64
54. Arrested: Yes
55. Address - Clothing - Other Marks or Identifying Characteristics: CII: A07736267 FBI: 134813DA2 SID: 1015815/1292608
56. Juv: Other Disp: Juris. ( ) 2 — Juv. Ct. Prob. ( ) 5 — Within Dept. ( ) 6 — Declined ( ) 7 — Not Declined ( ) 8

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V. Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)
(1) 211 P.C. (Armed Robbery)
(2)

61. Original Offenses Changed to (Code-Crime)
(1)
(2)

63. Recovered Autos Value ASP: $
64. Recovered Autos Value AZ: $

62. Narrative of Supplemental Report

Refer To: RPD #P3-86-042-237

Narrative:

In regards to the above referenced investigation, S-1 Gresham and S-2 Walters fell under suspicion for this Robbery in that the suspect descriptions and method of operation are very similar. During the course of these investigations, Detective Tortes attempted to locate and contact V-2 Elizabeth Wray , however, was unable to do so.

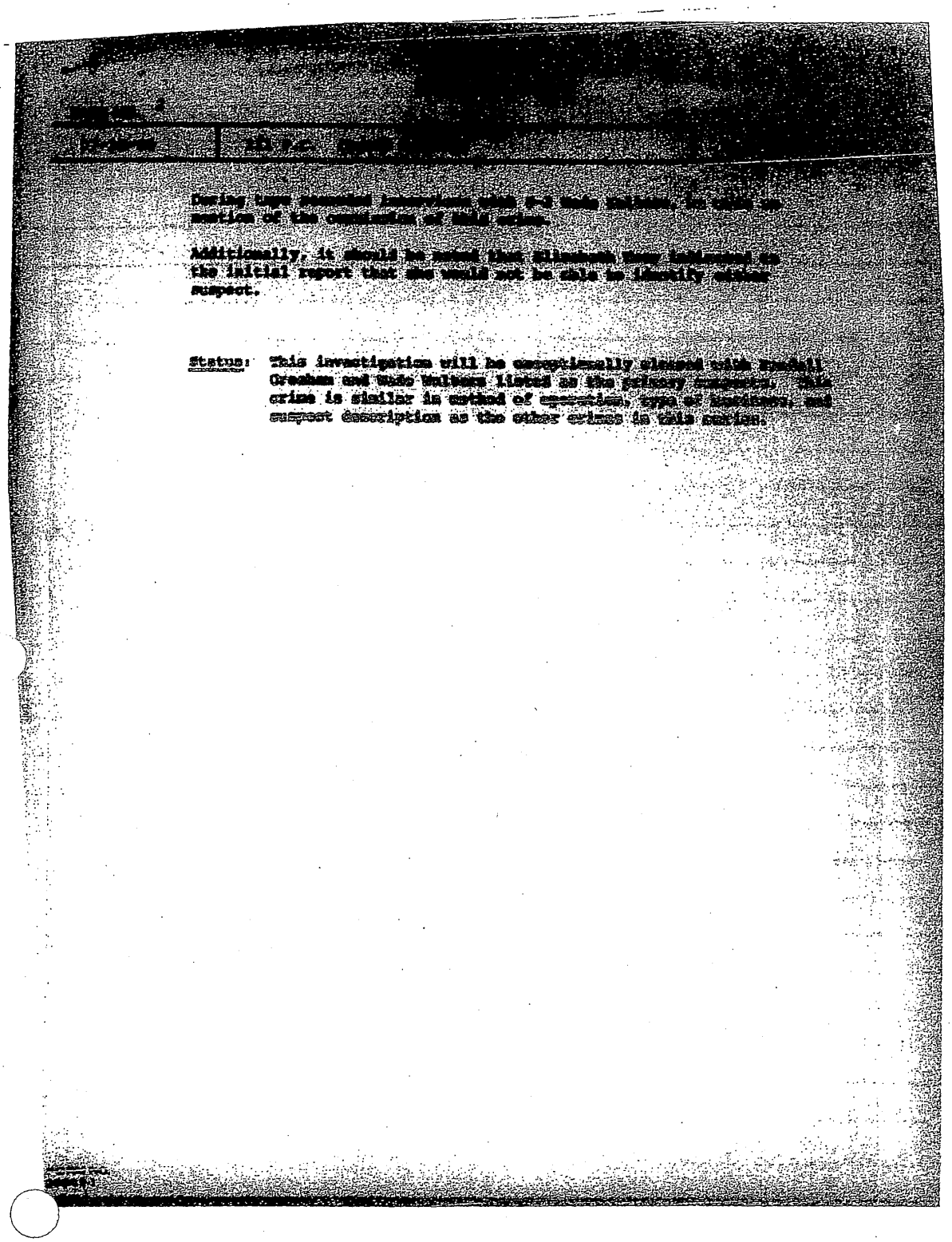
Reporting Off: M. McFall #
Reviewed By:
Typed By: VO3

VCLO ( )
Actions
APB Sent
APB Cncld.
APR Sent
APR Cncld
DOJ/ACIC
Entered
Cncld
STATS ANER ANI
20-52-27R(7/86)

RIVERSIDE COUNTY — LAW ENFORCEMENT AGENCIES

DA 00002659

EX 194 - 000109



During [illegible] interview with [illegible], he was unaware of the commission of this crime.

Additionally, it should be noted that Gilchrist was interviewed on the initial report that she would not be able to identify either suspect.

Status: This investigation will be exceptionally cleared with Kendall Graham and Wade Williams listed as the primary suspects. This crime is similar in method of operation, type of victimology, and suspect description as the other crimes in this series.

DA 00002660

EX 194 - 000110

RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

CA#211[illegible]

1. Det. [illegible] 2. Sup. [illegible] 3. Type Cont. SUS

5. Code Section/Classification: 211 P.C. ARMED ROBBERY — 6. Add Charges? NO ☑ YES ☐ — 7. Location of Occurrence: 6273 MAGNOLIA Rvs.

8. Julian date and time of occurrence: 313 — 0130 — 9. Day — 10. Date/Time Reported: 0145 — 11. Date of Report: 110985 — 12. Type of Premises: PARKING LOT

13. Victim Name or Firm Name: GHAREAGHADJE, CINDY LEA — 14. Residence Address: [redacted] #1604 W. Chestnut, San Bern. — 15. Res. Phone (Circle One): day 882-7367

16. Sex/Race: F W — 17. D.O.B.: [redacted]60 — 18. Occupation: FOOD SERVICE — 19. Business Address: 6273 MAGNOLIA Rvs. — 20. Bus. Phone (Circle One): day 682-7125

21. WAS THERE A WEAPON, INJURY OR DEATH INVOLVED?

22. If treated for injuries, by whom? 1435360 — 23. If hospitalized, where? — 24. Date/Time — 25. Nature of injuries

26. TYPE VICTIM ASSOCIATE(S)?

FOR CODE USE: V - Victim W - Witness DC - Discovered Crime RP - Reporting Party P - Parent O - Other

27. WAS THERE A WITNESS TO THE CRIME?

28. Code	29. Name	30. Residence Address	31. Res. Phone (Circle One)
V2	KURZROCK, Jill Lynn	[redacted] Eucalyptus Rvs. 07	night 788-1275
32. Sex/Race: F W	33. D.O.B.: [redacted]64	34. Occupation: FOOD SERVICE	35. Bus. Phone (Circle One): day 682-7125
37. Code	38. Name: 435561	39. Residence Address	40. Res. Phone (Circle One): day / night
41. Sex/Race	42. D.O.B	43. Occupation	44. Business Address / 45. Bus. Phone (Circle One): day / night

46. CAN A SUSPECT BE NAMED OR IDENTIFIED? BY WHOM?

47. Name (Suspect #1)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
	M W						NO ☑ YES ☐	NO ☑ YES ☐

Address and/or additional information: LSW. DK BLUE SKI MASK, BLUE OR BLACK Flannel shirt — DL. Bkg., or cite number

48. Name (Suspect #2)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
							NO ☐ YES ☐	NO ☐ YES ☐

Address and/or additional information — DL. Bkg., or cite number

49. CAN A SUSPECT VEHICLE BE IDENTIFIED? BY WHOM?

50 Suspect Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	Identifying Characteristics	Veh. Stored?
								NO ☑ YES ☐

51. IS ANY OF THE STOLEN PROPERTY TRACEABLE?

53	Currency	Jewelry	Clothing	Off. Equip	TV - Radio Camera - Etc	Firearms	Household	Consumable Goods	Livestock	Misc.	TOTAL	Vehicle
PS	$	$	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$	$	$

54. IS THERE ANY SIGNIFICANT PHYSICAL EVIDENCE?

55 Physical Evidence Present?	56 Physical Evidence Seized?	57 Photographs taken?	58. Are there supplemental or related reports?
NO ☑ YES ☐	NO ☑ YES ☐	NO ☑ YES ☐	NO ☑ YES ☐

59 Fingerprint Search Made?	60 Fingerprints Obtained?	61 Area checked for witnesses?	62 Name of I.D. Tech (if used)
NO ☐ YES ☑	NO ☑ YES ☐	NO ☐ YES ☑	

63. IS THERE A SUSPECT VEHICLE?

64 Victim's Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	How was the vehicle involved?	Veh. Stored?
								NO ☐ YES ☑

65. Type of Weapon, Force or Device Used: 6" BARREL Gun metal GRY Handgun — 66. Motive: THEFT — 67. Member Neighborhood Watch? NO ☐ YES ☐

68. Describe briefly how the offense occurred

VICTIMS ARE CONFRONTED AFTER closing A RESTAURANT in RESTAURANT parking lot. SUS WANTS VIC to Re-open RESTAURANT. SUS Flees on taking keys AT Gunpoint.

69. Reporting Officer	I.D. #	70. Supervisor Approving	I.D. #	71. Date Reviewed	72. Send copies of this report to
CRAWFORD	346	A Brown	123	11-9-85	

COPIES TO: [illegible]

INV ☐ RMC ☐ DPS ☐ COR ☐ FBI ☐ DOJ ☐ DA ☐ PROB ☐

ENTERED: STATB ☐ ARBK ☐ ANI ☐ DOJ/NCIC ☐ — ACTIONS: APR/APB sent ☐ canceled ☐ — DOJ/NCIC sent ☐ canceled ☐

PAGE 1 OF 4 PAGES

313 KLK

800-80-2 (R7/84)

DA 00002583

EX 195 - 000111

Reporting Officer: CRAWFORD ID#: 340

Crime Code/Classification: 211 PC / ROBBERY

Location of Occurrence: 6273 MAGNOLIA

BLOCK #

Loss — 8-9 Keys on circular white metal Keychain. Belongs to victim Cindy GHARGABHADJE AND they fit her home, Auto etc. None fit Pizza Hut.

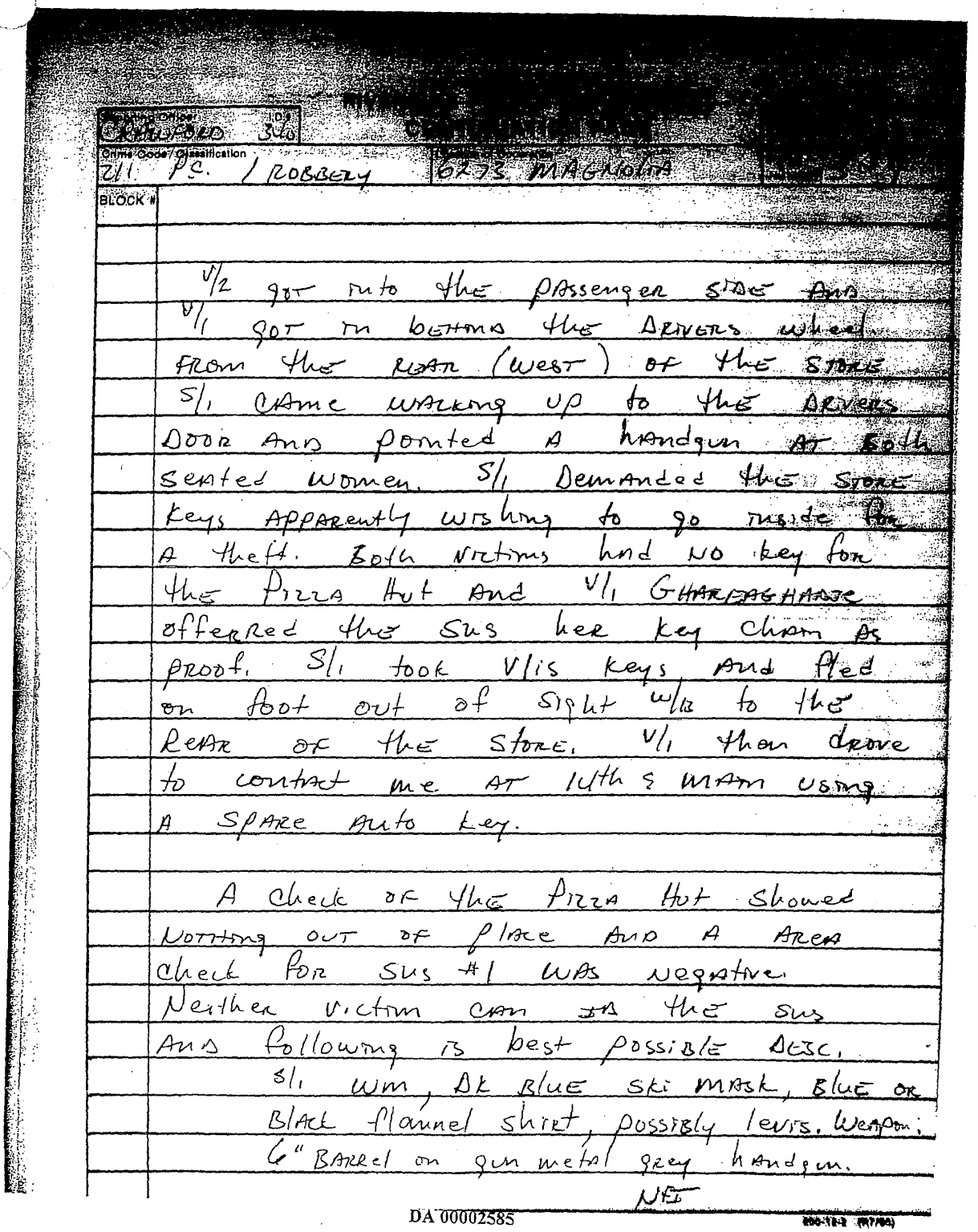
DETAILS—

DATE/TIME I WAS CONTACTED AT 14th AND MAIN by victims Cindy GHARGABHADJE AND Jill KURZBOCK. Both victims had JUST been robbed AT Gunpoint IN the Pizza Hut lot AT 6273 MAGNOLIA. A BRIEF APB WAS put OUT on the Suspect AS I Returned to the Scene with the victims. Following information obtained.

Both victims WORK AT the ABOVE Pizza Hut AND were closing up the STORE AT APPROX 0130 HRS TODAY. THERE WERE NO CUSTOMERS NOR PEDESTRIANS IN the AREA AS BOTH VICTIMS exited the STORES SOUTH ENTRANCE into the PARKING lot. BOTH VICTIMS entered V/I's PARKED AUTO which WAS PARKED JUST WEST OF THE SOUTH EXIT DOOR.

DA 00002584

EX 195 - 000112



Arresting Officer: CRAWFORD ID: 3540

Crime Code/Classification: 211 PC / ROBBERY

6273 MAGNOLIA

BLOCK #

V/2 got into the passenger side and V/1 got in behind the drivers wheel. From the rear (west) of the store S/1 came walking up to the drivers door and pointed a handgun at both seated women. S/1 demanded the store keys apparently wishing to go inside for a theft. Both victims had NO key for the Pizza Hut and V/1 ~~CHARLES HAMZE~~ offered the sus her key chain as proof. S/1 took V/1s keys and fled on foot out of sight w/r to the rear of the store. V/1 then drove to contact me at 10th & Main using a spare auto key.

A check of the Pizza Hut showed nothing out of place and a area check for sus #1 was negative. Neither victim can ID the sus and following is best possible desc.

S/1 wm, dk blue ski mask, blue or black flannel shirt, possibly levis. Weapon: 6" barrel on gun metal grey handgun.

NFI

DA 00002585

EX 195 - 000113

STOLEN [illegible] REPORT

Investigating Officer	I.D.#	TYPE CRIME	File #
CRAWFORD	340	211 PC	[illegible]
Victim's Name (Last name first)	**Victim's Address**		
SHAREGHADJE, Cindy	[redacted] W. Chestnut San Bern		
Person Reporting Loss	**Residence Address**		

INSTRUCTIONS

Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½" x 11"-sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in "Miscellaneous Description" column. Fill in as much information as possible. Upon completion, please mail or bring into the Riverside Police Department; 4102 Orange St., Riverside, California 92501. If mailed, mark "Attention Records, Additional Loss".

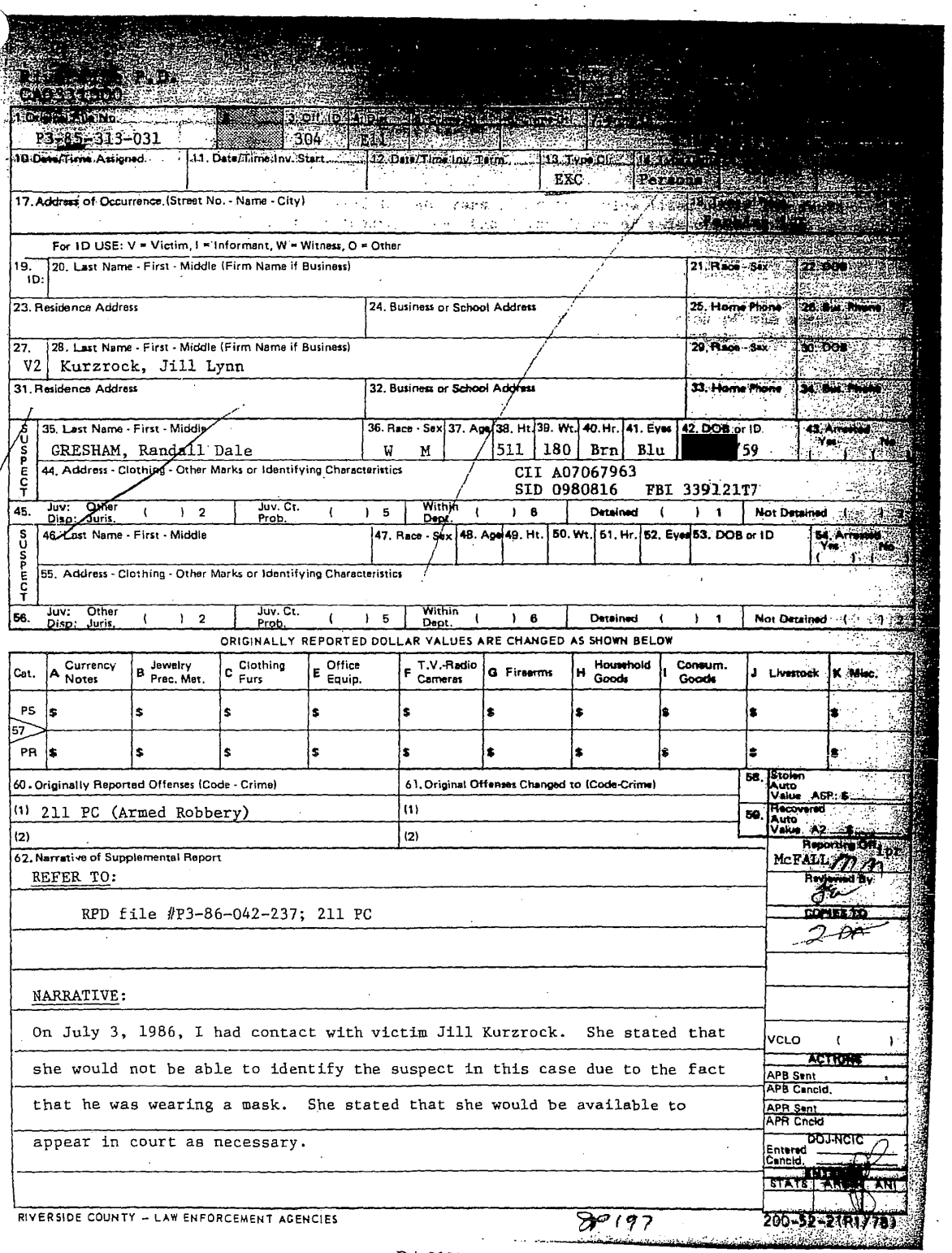
QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C-150	Walnut plastic frame, chrome knobs, 19" color. With Driver's License #04453422 on back.	$380
8-9	Keys				various Home, car etc. on plain metal (white metal) Key Chain.	

Date Received	Person receiving list	Copies sent to:	PAGE NO. 4	4 PAGES

200-9-2 (R7/84)

DA 00002586

EX 195 - 000114



R.I. [illegible] P.D.
CAD [illegible]

1. Original File No.	3. Off. ID	4. Type
P3-85-313-031	304	EXC

10. Date/Time Assigned | 11. Date/Time Inv. Start | 12. Date/Time Inv. Term. | 13. Type Of | 14. [illegible]
EXC Persons

17. Address of Occurrence (Street No. - Name - City) | 18. [illegible]

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB
V2	Kurzrock, Jill Lynn		

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes / No
GRESHAM, Randall Dale	W M		511	180	Brn	Blu	[redacted] 59	

44. Address - Clothing - Other Marks or Identifying Characteristics
CII A07067963
SID 0980816 FBI 339121T7

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 7

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes / No

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 7

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC (Armed Robbery)	(1)
(2)	(2)

58. Stolen Auto Value ASR: $
59. Recovered Auto Value A2 $

62. Narrative of Supplemental Report

REFER TO:

RPD file #P3-86-042-237; 211 PC

NARRATIVE:

On July 3, 1986, I had contact with victim Jill Kurzrock. She stated that she would not be able to identify the suspect in this case due to the fact that he was wearing a mask. She stated that she would be available to appear in court as necessary.

Reporting Officer
McFALL
Reviewed By
COPIES TO
2 DA

VCLO ( )

ACTIONS
APB Sent
APB Cancld.
APR Sent
APR Cncld
DOJ-NCIC Entered
Cancld.
STATS

RIVERSIDE COUNTY – LAW ENFORCEMENT AGENCIES

197

200-52-2(R1/78)

DA 00002587

EX 195 - 000115

[redacted] 2

[redacted] 7/15/86 211 PC [redacted]

Based upon the information revealed in the transcribed interview of the referenced investigation, it is apparent that the perpetrator of this [redacted] suspect Randall Dale Gresham.

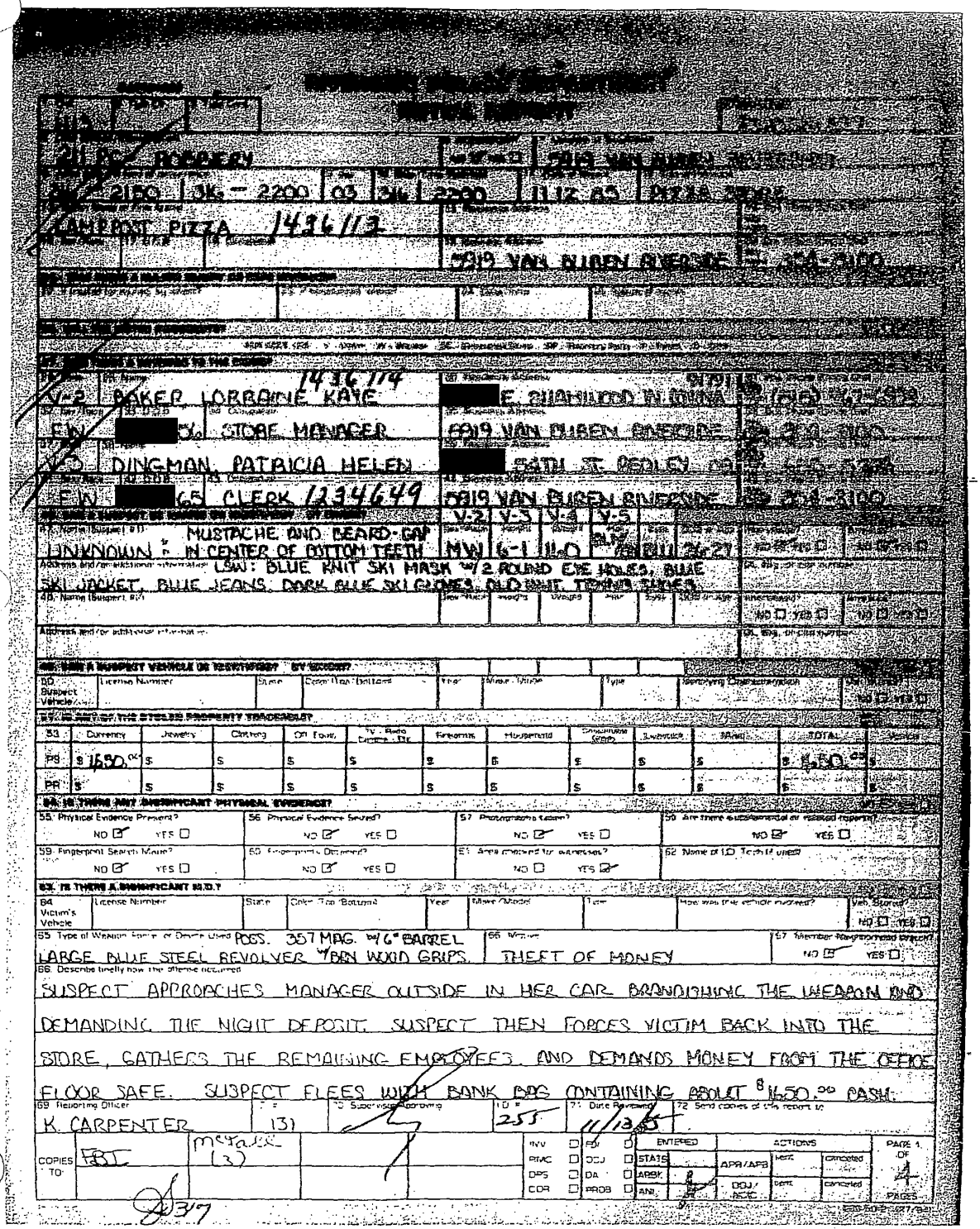
STATUS:

This investigation will be exceptionally cleared with the identification of the suspect. The reports will be forwarded to the District Attorney's Office for review. The case will remain open pending that review.

FORM NO.

DA 00002588

EX 195 - 000116



ROBBERY

CURRENT PIZZA 1436113

6919 VAN BUREN RIVERSIDE

1436114

V-2 BAKER LORRAINE KAYE [redacted] E. SUNNYWOOD IN NORCO

EW [redacted] STORE MANAGER 6919 VAN BUREN RIVERSIDE

W-2 DINGMAN PATRICIA HELEN [redacted] BATH ST PERRIS

EW [redacted] CLERK 1234649 6919 VAN BUREN RIVERSIDE

V-2 V-3 V-4 V-5

UNKNOWN MUSTACHE AND BEARD-GAP IN CENTER OF BOTTOM TEETH MW 6-1 180

LSW: BLUE KNIT SKI MASK W/2 ROUND EYE HOLES, BLUE SKI JACKET, BLUE JEANS, DARK BLUE SKI GLOVES, OLD WHT. TENNIS SHOES

	Currency	Jewelry	Clothing	Off Town	TV, Radio, Camera, Etc.	Firearms	Household	Consumer Goods	Livestock	Misc.	TOTAL
PS	$ 1650.00	$	$	$	$	$	$	$	$	$	$ 1650.00
PR	$	$	$	$	$	$	$	$	$	$	$

55. Physical Evidence Present? NO ☑ YES ☐

56. Physical Evidence Seized? NO ☑ YES ☐

57. Photographs Taken? NO ☑ YES ☐

59. Fingerprint Search Made? NO ☑ YES ☐

60. Fingerprints Developed? NO ☑ YES ☐

61. Area checked for witnesses? NO ☐ YES ☑

65. Type of Weapon Used: POSS. 357 MAG. W/6" BARREL LARGE BLUE STEEL REVOLVER W/BN WOOD GRIPS

66. Motive: THEFT OF MONEY

66. Describe briefly how the offense occurred:

SUSPECT APPROACHES MANAGER OUTSIDE IN HER CAR BRANDISHING THE WEAPON AND DEMANDING THE NIGHT DEPOSIT. SUSPECT THEN FORCES VICTIM BACK INTO THE STORE, GATHERS THE REMAINING EMPLOYEES AND DEMANDS MONEY FROM THE OFFICE FLOOR SAFE. SUSPECT FLEES WITH BANK BAG CONTAINING ABOUT $1650.00 CASH.

69. Reporting Officer: K. CARPENTER 131

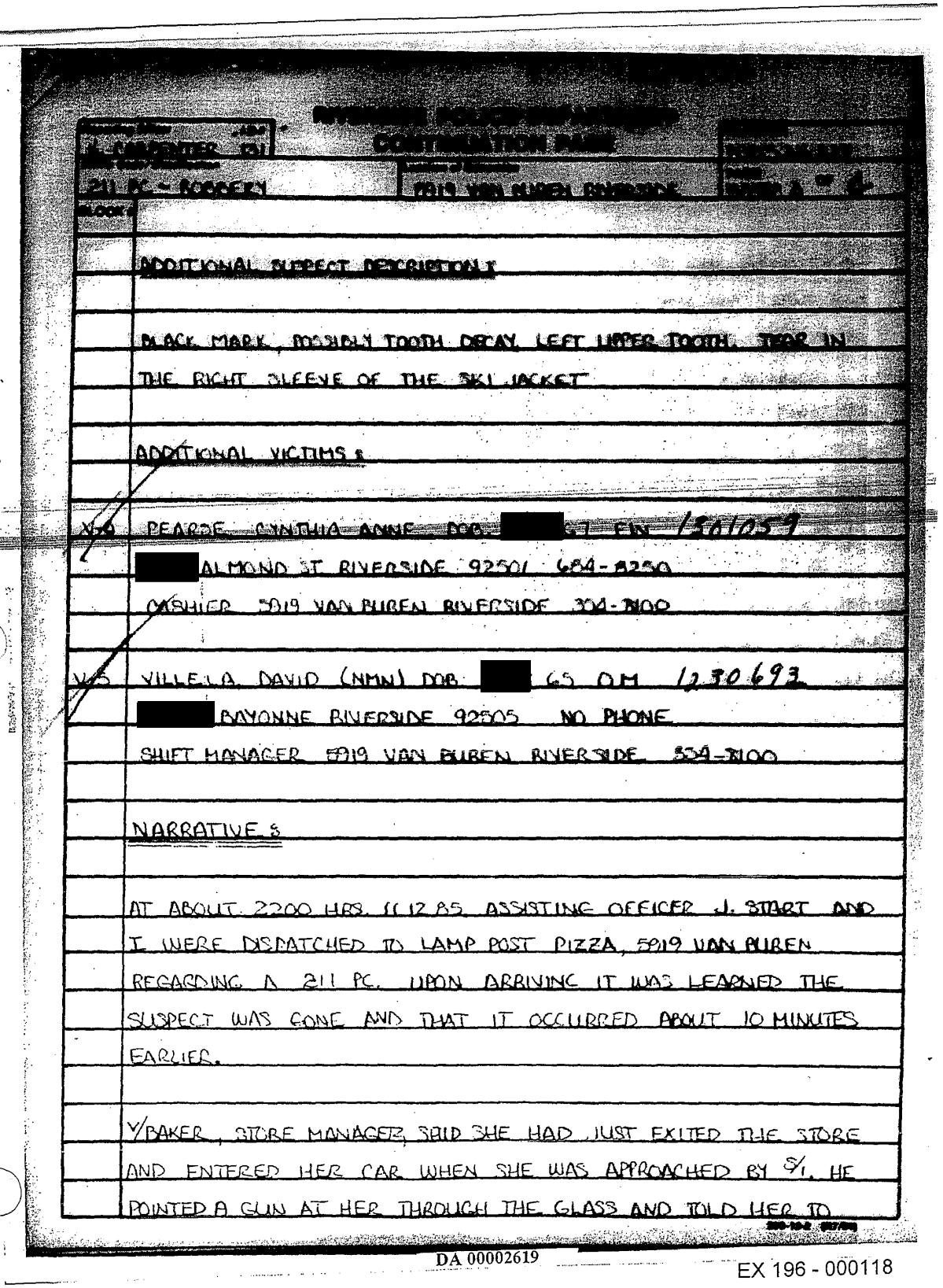
71. Date Reviewed: 11/13/85

72. Send copies of this report to: FBI; McAfee (3)

PAGE 1. OF 4 PAGES

DA 00002629

EX 196 - 000117



CONTINUATION PAGE

211 PC - ROBBERY

5019 VAN BUREN RIVERSIDE

ADDITIONAL SUSPECT DESCRIPTION:

BLACK MARK, POSSIBLY TOOTH DECAY, LEFT UPPER TOOTH. TEAR IN THE RIGHT SLEEVE OF THE SKI JACKET

ADDITIONAL VICTIMS:

V4 PEARCE, CYNTHIA ANNE DOB [redacted] FIN 1301059
[redacted] ALMOND ST RIVERSIDE 92501 684-8250
CASHIER 5019 VAN BUREN RIVERSIDE 354-3100

V5 VILLELA, DAVID (NMN) DOB [redacted] 65 O/M 1230693
[redacted] BAYONNE RIVERSIDE 92505 NO PHONE
SHIFT MANAGER 5019 VAN BUREN RIVERSIDE 354-3100

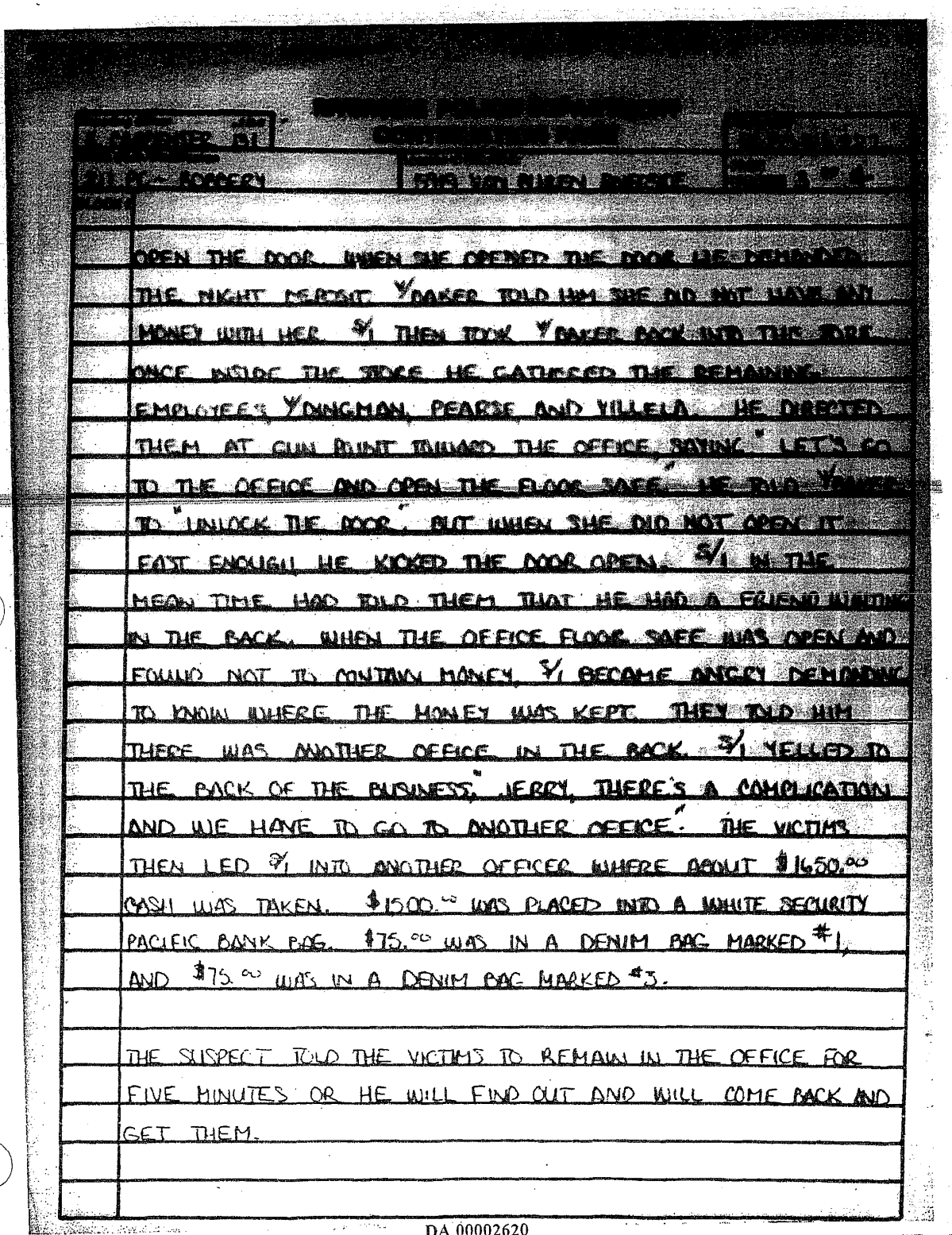
NARRATIVE:

AT ABOUT 2200 HRS. 11-12-85, ASSISTING OFFICER J. START AND I WERE DISPATCHED TO LAMP POST PIZZA, 5019 VAN BUREN REGARDING A 211 PC. UPON ARRIVING IT WAS LEARNED THE SUSPECT WAS GONE AND THAT IT OCCURRED ABOUT 10 MINUTES EARLIER.

V/BAKER, STORE MANAGER, SAID SHE HAD JUST EXITED THE STORE AND ENTERED HER CAR WHEN SHE WAS APPROACHED BY S/1. HE POINTED A GUN AT HER THROUGH THE GLASS AND TOLD HER TO

DA 00002619

EX 196 - 000118

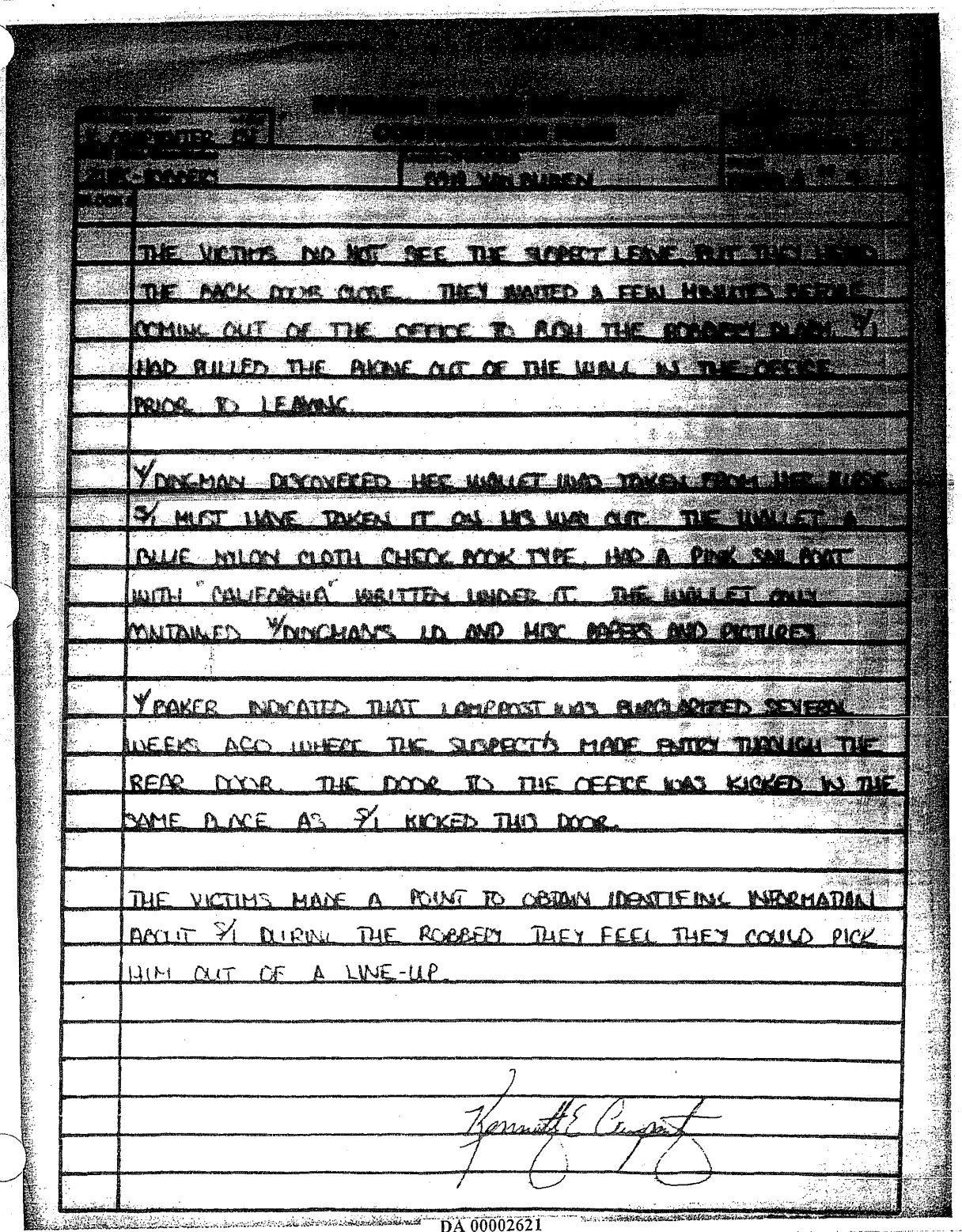


OPEN THE DOOR. WHEN SHE OPENED THE DOOR HE DEMANDED THE NIGHT DEPOSIT. V/BAKER TOLD HIM SHE DID NOT HAVE ANY MONEY WITH HER. S/1 THEN TOOK V/BAKER BACK INTO THE STORE. ONCE INSIDE THE STORE HE GATHERED THE REMAINING EMPLOYEES, V/DINGMAN, PEARCE AND VILLELA. HE DIRECTED THEM AT GUN POINT TOWARD THE OFFICE SAYING "LET'S GO TO THE OFFICE AND OPEN THE FLOOR SAFE." HE TOLD V/BAKER TO "UNLOCK THE DOOR." BUT WHEN SHE DID NOT OPEN IT FAST ENOUGH, HE KICKED THE DOOR OPEN. S/1 IN THE MEAN TIME HAD TOLD THEM THAT HE HAD A FRIEND WAITING IN THE BACK. WHEN THE OFFICE FLOOR SAFE WAS OPEN AND FOUND NOT TO CONTAIN MONEY, S/1 BECAME ANGRY DEMANDING TO KNOW WHERE THE MONEY WAS KEPT. THEY TOLD HIM THERE WAS ANOTHER OFFICE IN THE BACK. S/1 YELLED TO THE BACK OF THE BUSINESS, "JERRY, THERE'S A COMPLICATION AND WE HAVE TO GO TO ANOTHER OFFICE." THE VICTIMS THEN LED S/1 INTO ANOTHER OFFICE WHERE ABOUT $1650.00 CASH WAS TAKEN. $1500.00 WAS PLACED INTO A WHITE SECURITY PACIFIC BANK BAG. $75.00 WAS IN A DENIM BAG MARKED #1, AND $75.00 WAS IN A DENIM BAG MARKED #3.

THE SUSPECT TOLD THE VICTIMS TO REMAIN IN THE OFFICE FOR FIVE MINUTES OR HE WILL FIND OUT AND WILL COME BACK AND GET THEM.

DA 00002620

EX 196 - 000119



THE VICTIMS DID NOT SEE THE SUSPECT LEAVE BUT THEY HEARD THE BACK DOOR CLOSE. THEY WAITED A FEW MINUTES BEFORE COMING OUT OF THE OFFICE TO FIND THE ROBBERY PLACE. V1 HAD PULLED THE PHONE OUT OF THE WALL IN THE OFFICE PRIOR TO LEAVING.

V1 DAG-MAN DISCOVERED HER WALLET HAD BEEN TAKEN FROM HER PURSE. S1 MUST HAVE TAKEN IT ON HIS WAY OUT. THE WALLET A BLUE NYLON CLOTH CHECK BOOK TYPE, HAD A PINK SAILBOAT WITH "CALIFORNIA" WRITTEN UNDER IT. THE WALLET ONLY CONTAINED V1 DAG-MAN'S ID AND HER PAPERS AND PICTURES.

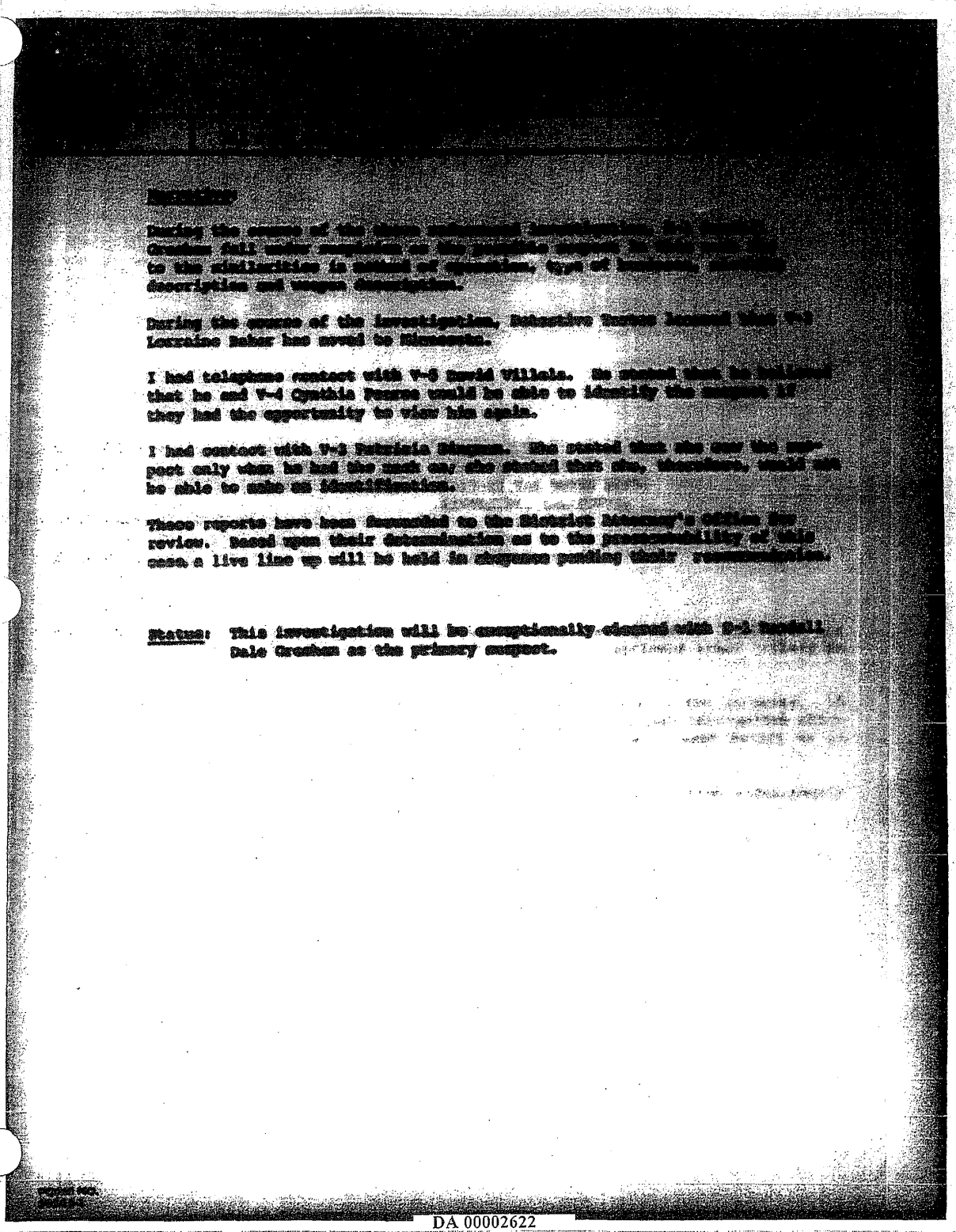
V1 BAKER INDICATED THAT LAMPOST WAS BURGLARIZED SEVERAL WEEKS AGO WHERE THE SUSPECTS MADE ENTRY THROUGH THE REAR DOOR. THE DOOR TO THE OFFICE WAS KICKED IN THE SAME PLACE AS S1 KICKED THIS DOOR.

THE VICTIMS MADE A POINT TO OBTAIN IDENTIFING INFORMATION ABOUT S1 DURING THE ROBBERY THEY FEEL THEY COULD PICK HIM OUT OF A LINE-UP.

Kenneth E Crapo

DA 00002621

EX 196 - 000120



DA 00002622

EX 196 - 000121

CA0331300

RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

1 Dist: E15 | 2 Type Cir: ORI | 3 Type Cont: | 4 File Number: P385326030

5 Code Section/Classification: 211 PC & 459 P.C | 6 Add Charges? NO ☑ YES ☐ | 7 Location of Occurrence: 5465 ARLINGTON AVE

8 Julian date and time of occurrence: — — | 9 Day: 6 | 10 Date/Time Reported: 326 0730 | 11 Date of Report: 112285 | 12 Type of Premises: BUSINESS

13 Victim Name or Firm Name: TACO BELL | 14 Residence Address: | 15 Res. Phone (Circle One) day night:

16 Sex/Race: | 17 DOB: | 18 Occupation: BUSINESS | 19 Business Address: 5465 ARL. AVE | 20 Bus. Phone (Circle One) day night: 684-5560

21. WAS THERE A MAJOR INJURY OR RAPE INVOLVED? NO ☑ YES ☐

22 If treated for injuries, by whom? | 23 If hospitalized, where? | 24 Date/Time | 25 Nature of injuries

26. WILL THE VICTIM PROSECUTE? NO ☐ YES ☑

FOR CODE USE: V Victim W Witness OC Discovered Crime RP Reporting Party P Parent O Other

27. WAS THERE A WITNESS TO THE CRIME? NO ☐ YES ☐

28 Code	29 Name	30 Residence Address	31 Res. Phone (Circle One)
X 2	HOLMES, LYNETTE	[redacted] BRITTANY	day night 684-55[illegible]
32 Sex/Race: WF	33 DOB: [redacted]64	34 Occupation: CLERK	35 Business Address: 5465 ARL AVE	36 Bus. Phone (Circle One) day night 687-15[illegible]
37 Code: X 3	38 Name: LENNERT, RICHARD	39 Residence Address: [redacted] GLORIA SUNNYMEAD	40 Res. Phone (Circle One) day night UNK
41 Sex/Race: WM	42 DOB: [redacted]57	43 Occupation: CLERK 1430443	44 Business Address: 5465 ARL. AVE.	45 Bus. Phone (Circle One) day night 687-1507

48. CAN A SUSPECT BE NAMED OR IDENTIFIED? BY WHOM? NO ☑ YES ☐

47 Name (Suspect #1)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
UNKNOWN	WM	5'7	140	RED BLND		30	NO ☑ YES ☐	NO ☑ YES ☐

Address and/or additional information: BLUE WORK PANTS, BLU SKI MASK, GREEN BASEBALL CAP, MUSTACHIE | DL Reg. or cite number:

48 Name (Suspect #2)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
							NO ☐ YES ☐	NO ☐ YES ☐

Address and/or additional information: | DL Reg. or cite number:

42. CAN A SUSPECT VEHICLE BE IDENTIFIED? BY WHOM? NO ☑ YES ☐

50 Suspect Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	Identifying Characteristics	Veh. Stored?
								NO ☐ YES ☐

51. IS ANY OF THE STOLEN PROPERTY TRACEABLE?

53	Currency	Jewelry	Clothing	Off. Equip.	TV, Radio, Camera, Etc.	Firearms	Household	Consumable Goods	Livestock	Misc.	TOTAL	Vehicle
PS	$2270.9[illegible]	$	$	$	$	$	$	$	$	$	$2270.9[illegible]	$
PR	$	$	$	$	$	$	$	$	$	$	$	$

54. IS THERE ANY SIGNIFICANT PHYSICAL EVIDENCE? NO ☐ YES ☑

55 Physical Evidence Present?	56 Physical Evidence Seized?	57 Photographs taken?	58 Are there supplemental or related reports?
NO ☐ YES ☑	NO ☐ YES ☑	NO ☐ YES ☑	NO ☑ YES ☐

59 Fingerprint Search Made?	60 Fingerprints Obtained?	61 Area checked for witnesses?	62 Name of ID Tech. (if used)
NO ☐ YES ☑	NO ☐ YES ☑	NO ☐ YES ☑	D. WILSON

63. IS THERE A SIGNIFICANT M.O.? NO ☐ YES ☐

64 Victim's Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	How was the vehicle involved?	Veh. Stored?
								NO ☐ YES ☐

65 Type of Weapon, Force or Device Used: HANDS & FEET & FIREARM | 66 Motive: PERSONEL GAIN | 67 Member Neighborhood Watch? NO ☑ YES ☐

68 Describe briefly how the offense occurred:

POINT OF ENTRY:
ROOF, ROOF GRILL REMOVED (12X16)
AND CLIMBED INSIDE

69 Supervising Officer: [illegible] | 70 ID #: 377 | 70 Supervising Approving: | 71 Date Reviewed: 11-22 | 72 Send copies of this to (List ID)

RESTRICTED INFORMATION
Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.
DATE: 8-3-07
TO: DA
BY: [illegible]
RIVERSIDE POLICE DEPT.

ENTERED: INV ☐ CHK ☐ RMS ☐ DOJ ☐ CRS ☐ DA ☐ CHRI ☐ ANI ☐ STATS ☐ ATRK ☐
ACTIONS: APP. ADD ☐ DEL NOC ☐ SENT ☐ COMPLETED ☐
PART 1 OF 5 PAGES

DA 00002543

EX 197 - 000122

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: APENNO LD #: 327
File Number: R385326030
Crime Code/Classification: 211 PC + 459 PC
Location of Occurence: 5465 ARL AVE
PAGE NUMBER 2 OF 5

BLOCK #

POINT OF EXIT:
REAR DOOR OF THE BUSINESS

PHYSICAL EVIDENCE:
S/A WILSON FOUND SOME FOOT PRINTS ON TOP OF METAL COUNTER

WEAPON: BLUE STEEL REVOLVER, 4IN BARREL, BROWN WOOD GRIPS, CAL. IS UNKNOWN

OFFICE PHONE ALARM TURNED OFF BY S.I.

DETAILS:
V.2 SAID THAT SHE ARRIVED AT WORK AT APPROX 0700 AND SHE IMMEDIATELY NOTICED THE REAR DOOR DEAD BOLT WAS OPEN. V.2 OPENED THE REAR DOOR AND UPON WALKING IN WAS CONFRONTED BY S.I WHO WAS WEARING A SKI-MASK AND WAS ARMED WITH A HANDGUN. S.I. THEN ORDERED V.2 TO OPEN THE FLOOR SAFE AND HE WOULD NOT HURT HER. V.2 SAID THAT SHE IMMEDIATELY OPENED THE FLOOR

200-12-2 (R7/84)

DA 00002544

EX 197 - 000123

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: ARELLANO I.D.#: 327
File Number: 85326-08
Crime Code Classification: 211 PC + 459 PC
Location of Occurence: 5465 ARL. AVE
PAGE NUMBER 3 OF 5

BLOCK #

SAFE AND S.I. TOOK ALL OF THE MONEY AND USED A WHT" RIV NAT. BANK CANVAS BAG TO PUT THE MONEY IN. S.I. THEN SEARCHED V.2 PURSE JUST IN CASE SHE WAS CARRYING A GUN. V.2. SAID THAT SHE HAD $100.00 CASH IN HER PURSE AND S.I SAID THAT HE ONLY WANTED "TACO BELL" MONEY. S.I. TOLD V.2 THAT HE HAD A DRUG HABIT AND NEEDED THE MONEY. S.I THEN LOCKED V.2 IN A CLOSET AND USED A TACO BELL WOOD SIGN TO KEEP THE CLOSET DOOR CLOSED. V.3 SAID THAT AS HE ENTERED THE BUSINESS THE SUSPECT GRABBED HIM AND HE TRIED TO SLAM THE DOOR ON S.I. V.3 SAID THAT S.I. COVERED HIS FACE WITH HIS BROWN GLOVES AND THEN FORCED HIM AT GUN POINT INTO THE CLOSET WITH V.2. AFTER A FEW MINUTE V.2 & V.3 MANAGED TO PUSH THE CLOSET DOOR OPEN AND NOTIFY THIS DEA

CONT PAGE 4

200-12-2 (R7/84)

DA 00002545

EX 197 - 000124

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: ARELLANO ID #: 327
File Number: P38532 08
Crime Code Classification: 211 PC & 459 PC
Location of Occurence: 5465 ARL. AVE
PAGE NUMBER 4 OF 5

BLOCK #

S.I. RANSACKED THE OFFICE OF THE BUSINESS AND DAMAGED THE PAY PHONE LOCATED NEAR THE REAR DOOR.

IN THE OFFICE THERE IS A PHONE ALARM MACHINE THAT RINGS AT THE MGR RESIDENCE, WHEN THE REAR DOOR IS OPENED. S.I. TURNED THE ALARM MACHINE OFF AND APPARENT KNEW ABOUT THIS ALARM.

S.I. APPARENTLY KNOWS THE ENTIRE OPERATION OF TACO BELL, OR IS A FORMER EMPLOYEE.

200 12-2 (R7/84)

DA 00002546

EX 197 - 000125

RIVERSIDE POLICE DEPARTMENT
STOLEN PROPERTY REPORT

Investigating Officer	I.D.#	TYPE CRIME	File Number
APELLANO	327	211 PC & 459 PC	P05326030
Victim's Name (Last name first)	**Victim's Address**		**Telephone Number**
TACO BELL	5465 ARL. AVE		684-5560
Person Reporting Loss	**Residence Address**		**Telephone Number**

INSTRUCTIONS

Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available place them on an 8½" x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in "Miscellaneous Description" column. Fill in as much information as possible. Upon completion please mail or bring into the Riverside Police Department; 4102 Orange St., Riverside, California 92501. If mailed, mark "Attention Records, Additional Loss".

QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C 150	Walnut plastic frame, chrome knobs, 19" color. With Driver's License #D4453422 on back	5380
1	U.S CURRENCY				CURRENCY	$270.00
						$270.00

Date Received	Person receiving it	Copies sent to	PAGE NO	
			5	5 PAGES

200-9-2 (R7'84)

DA 00002547

EX 197 - 000126

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT Date Prepared: 07-28-85

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Day
P3-85-326-030		294	E-15					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			EXC			

17. Address of Occurrence (Street No. - Name - City): 5465 Arlington Avenue, Riverside, CA

18. Type of Place: Business

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V	TACO BELL		

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	5465 Arlington Ave., Riv., CA		

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT	35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes	No
	GRESHAM, Randall Dale	W-M	27	511	180	Brn	Blu	[redacted]-59	( )	( )

44. Address - Clothing - Other Marks or Identifying Characteristics: CII: A07067963 SID: 0980816 FBI: 339121T7

45. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

SUSPECT	46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes	No
									( )	( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 P.C. (Robbery/Armed)	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2 $

Reporting Off cd: A. Tortes

Reviewed By:

COPIES TO

VCLO ( )

ACTIONS
APB Sent
APB Cancld.
APR Sent
APR Cncld
DOJ-NCIC Entered
Cancld.
ENTERED
STATS ARBK ANI

62. Narrative of Supplemental Report

Based on information received from a reliable confidential informant, wherein he/she related certain details of this investigation which were known only to investigating law enforcement and were contained in the original Police Report this case will be exceptionally cleared naming S-1 Gresham as the perpetrator of this offense. This case will not be forwarded to the District Attorney's Office requesting a complaint for 211 P.C. due to the lack of corroborative or physical evidence.

Disposition: Exceptionally clear.

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

200-52-2(REV.78)

DA 00002548

EX 197 - 000127

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: August 26, 1996

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Day
P385326030,96		294						

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			ARR	SUS		

17. Address of Occurrence (Street No. - Name - City)

18. Type of Place

For ID USE: V = Victim, I = Informant, W = Witness, O = Other (19)(27)

19.	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes ( ) No ( )

44. Address - Clothing - Other Marks or Identifying Characteristics

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC	(1)
(2) 10851 CVC 459 PC	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value AZ $

Reporting Off: TORRES

Reviewed By: JH

COPIES TO

( ) Case filed for lack of investigative leads.
( ) Victim contacted but wishes no further action. ( ) Restitution.
( ) Made several attempts to contact victim but unable to locate.
( ) Property serial numbers entered into computer on _____.
( ) Case transfefred to _____.
( ) Other _____.
( ) Deputy District Attorney _____ refused complaint on _____.
(X) Deputy District Attorney TUSZYNSKA approved complaint on 211 459 PC 10851 CVC.
( ) Suspects charged as follows:

GRESHAM, RANDALL Charge 211, 459 PC RMC Case # 007703.
_____ Charge 10851 CVC RMC Case # _____.
_____ Charge _____ RMC Case # _____.
_____ Charge _____ RMC Case # _____.

VCLO ( )

ACTIONS
APB Sent
APB Cancld.
APR Sent
APR Cncld

DOJ-NCIC
Entered
Cancld.

ENTERED
STATS | ARMK | ANI

459CU

200-61-2

DA 00002549

EX 197 - 000128

DATE: _____ D.A. REQUEST #: _____

DISTRICT ATTORNEY COMPLAINT ASSIGNMENT FORM

AGENCY: _____ AGENCY REPORT #: _____

OFFICER: _____ PHONE #: _____ DAYS/HOURS: _____

	SUBJECT NAME: (and # in report)	CHARGES REQUESTED Per Each Subject:	Fel/17b/ Misd	Parole Custody?	Parole Hold?	PC 825 Release Date	Court Arraign. Date
( )				YES/NO	YES/NO		
( )				YES/NO	YES/NO		
( )				YES/NO	YES/NO		
( )				YES/NO	YES/NO		

CASE PREVIOUSLY SUBMITTED? YES/NO WHEN? _____ D.A. REQUEST #: _____ BY WHOM: _____

TO WHICH D.A.?(Name) _____ _____ OFFICER

****

ASSIGNED TO: _____ D.A. PHONE #: _____

CHARGES APPROVED: FELONY _____ 17b _____ MISD _____

V.P. Case #: _____, _____, _____ Court #/Name: _____

NO COMPLAINT

REASON: _____

1. Lack of corpus.
2. Lack of probable cause; lack of evidence.
3. Illegal search and seizure.
4. Victim(s) unavailable; decline to prosecute.
5. Witness(es) unavailable.
6. Combined with other counts.
7. Interest of justice.
8. Other. (State reason in "Remarks".)
9. Referred to City Attorney.
10. Referred to Attorney General. (See "Remarks".)
11. Prosecutor deferral program.

Non-ADR Reasons:

12. Return for further investigation. (See "Remarks".)
13: _____

REMARKS:

Appearance Type:

BAIL	1	2	3	4	AMT: _____
O.R.	1	2	3	4	
CITE	1	2	3	4	
WARRANT	1	2	3	4	AMT: _____
PAROLE HOLD	1	2	3	4	
LETTER	1	2	3	4	

Dep.D.A. Initials _____
Date Reviewed/
Approved _____

D.A. 228-4 (Rev. 1/84)

DA 00002551

EX 197 - 000129

PHOTOGRAPHY REPORT
RIVERSIDE POLICE DEPARTMENT

DATE & TIME: NOV 22, 1985 0800	FILE NUMBER: P3 85-326-030
CRIME: 459 PC	LOCATION: 5465 Arlington
DIVISION: P	ALL EXPOSURES ON SAME ROLL OF FILM: X
PHOTOGRAPHER: D Wilson	ALL EXPOSURES ON MORE THAN ONE ROLL:

FILM TYPE: COLOR SLIDES ___ B & W ___ COLOR NEGATIVE ___

FILM SIZE: 35mm ___ 126 ROLL ___ 120 ROLL ___

LIGHTING CONDITIONS: FLASH OR STROBE X DAYLIGHT ___ COMBINATION ___

TOTAL EXPOSURES TAKEN ON THIS INCIDENT: 6

FIRST PHOTO TAKEN INCLUDES:
#1 of 9 PHOTO SHEET.

LAST PHOTO TAKEN INCLUDES:
#14 PHOTO SHEET

REMARKS / SPECIAL INSTRUCTIONS:

RIVERSIDE POLICE DEPT. NOV LAB

200-27-3 (R 3/77)

DA 00002552

EX 197 - 000130

PROPERTY RECORD

Type of Complaint: 459 211 PC			Address: 5465 Arlington		
Victim: TACO Bell			Address: "		
Arrestee			Charge	Booking No.	Other
Arrestee			Charge	Booking No.	Other
Reason Property Held:	Evidence ☒	Lost/Found ☐	Finder to be Notified Yes ☐ No ☐	Safe Keeping ☐	Destruction ☐ Other ☐
Finder: L Wilson			Address		Phone No.
Owner: Suspect			Address		Phone No.
Property taken into custody at: 5465 Arlington			From		Date/Time
By Officer(s): D Wilson		Supvr. Approving: DW.	RMC/RSC Case No.		Property Class

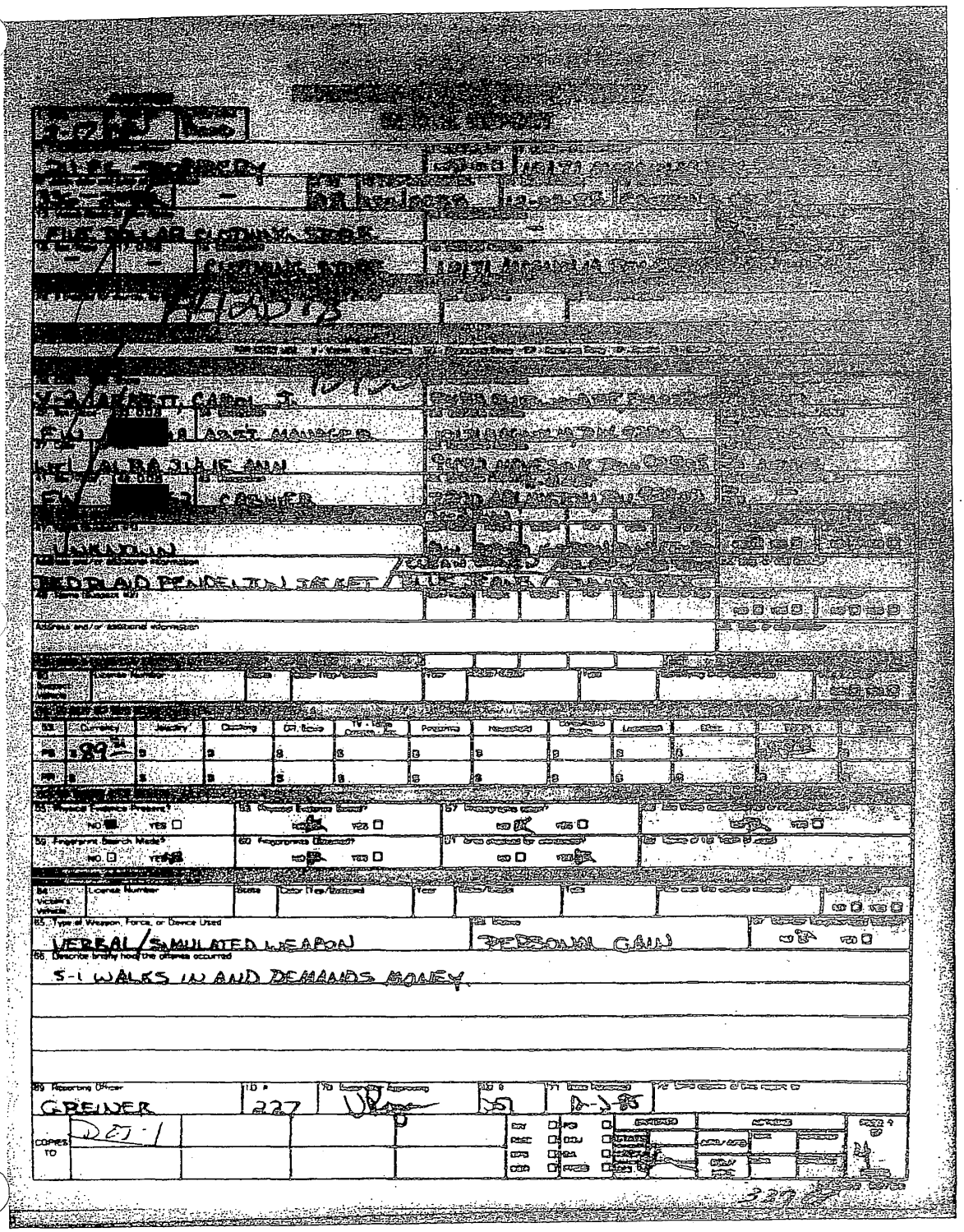
Item	Owner	Itemize, Describe, List Serial Numbers . . . Only 1 article per line	Prop. Loc.	Bar Code
1		Two print cards taped together showing a footprint.		

Person Clearing Property: Tenor	Date	Owner Notified By	Via	Date/Time
Item(s)	Released By	Received By	Address	Date/Time
Item(s)	Released By	Received By	Address	Date/Time
Item(s)	Released By	Received By	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time

200-14-1/8-84

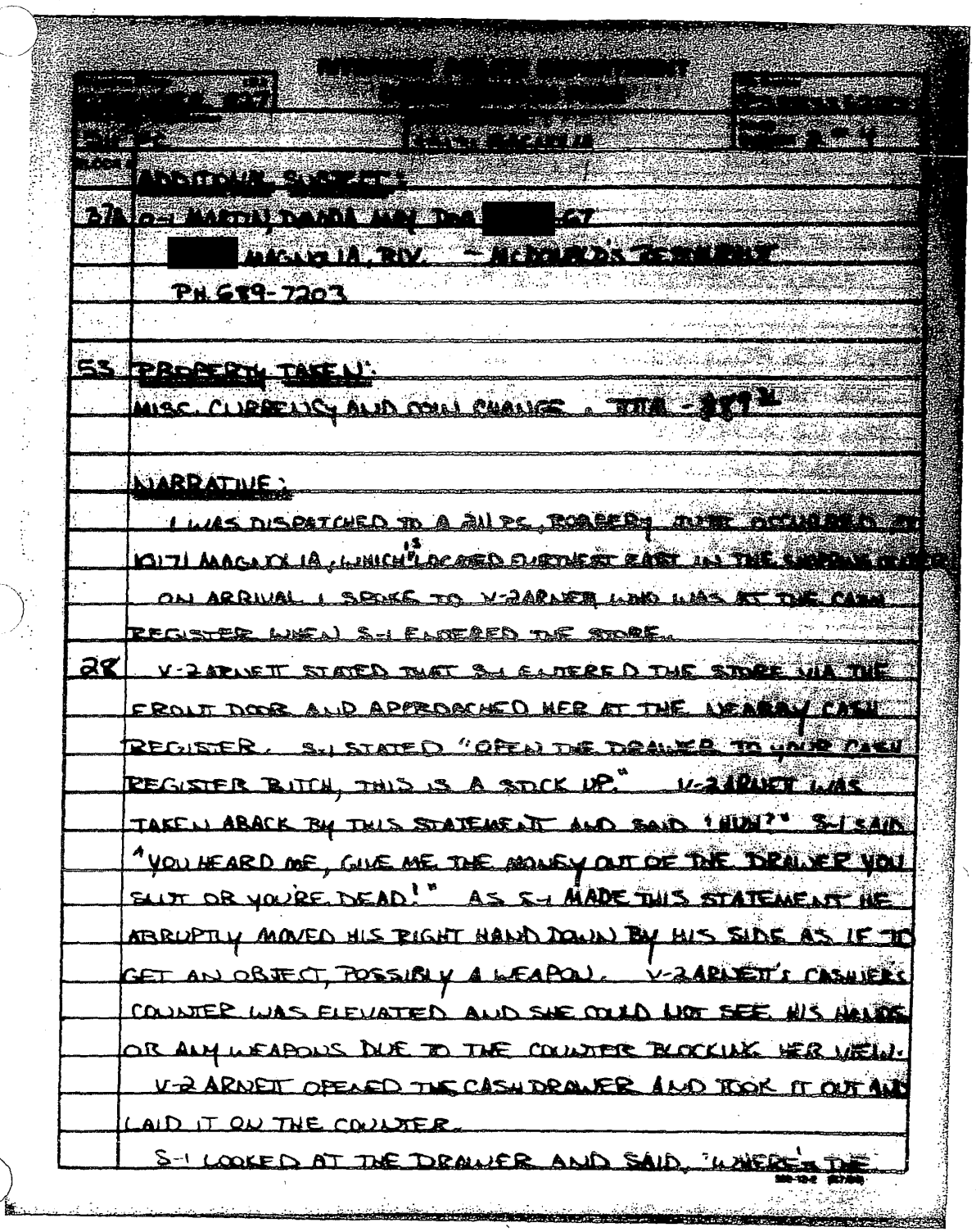
DA 00002605

EX 197 - 000131



DA 00002556

EX 198 - 000132



ADDITIONAL SUSPECT:

[redacted] MAGNOLIA BLVD. – MCDONALD'S RESTAURANT

PH. 589-7203

55 PROPERTY TAKEN:

MISC. CURRENCY AND COIN CHANGE – TOTAL – $67.32

NARRATIVE:

I WAS DISPATCHED TO A 211 PC, ROBBERY THAT OCCURRED AT 10711 MAGNOLIA BLVD., WHICH IS LOCATED SOUTHWEST BASE IN THE SUNLAND AREA.

ON ARRIVAL I SPOKE TO V-2 ARNETT AND WAS AT THE CASH REGISTER WHEN S-1 ENTERED THE STORE.

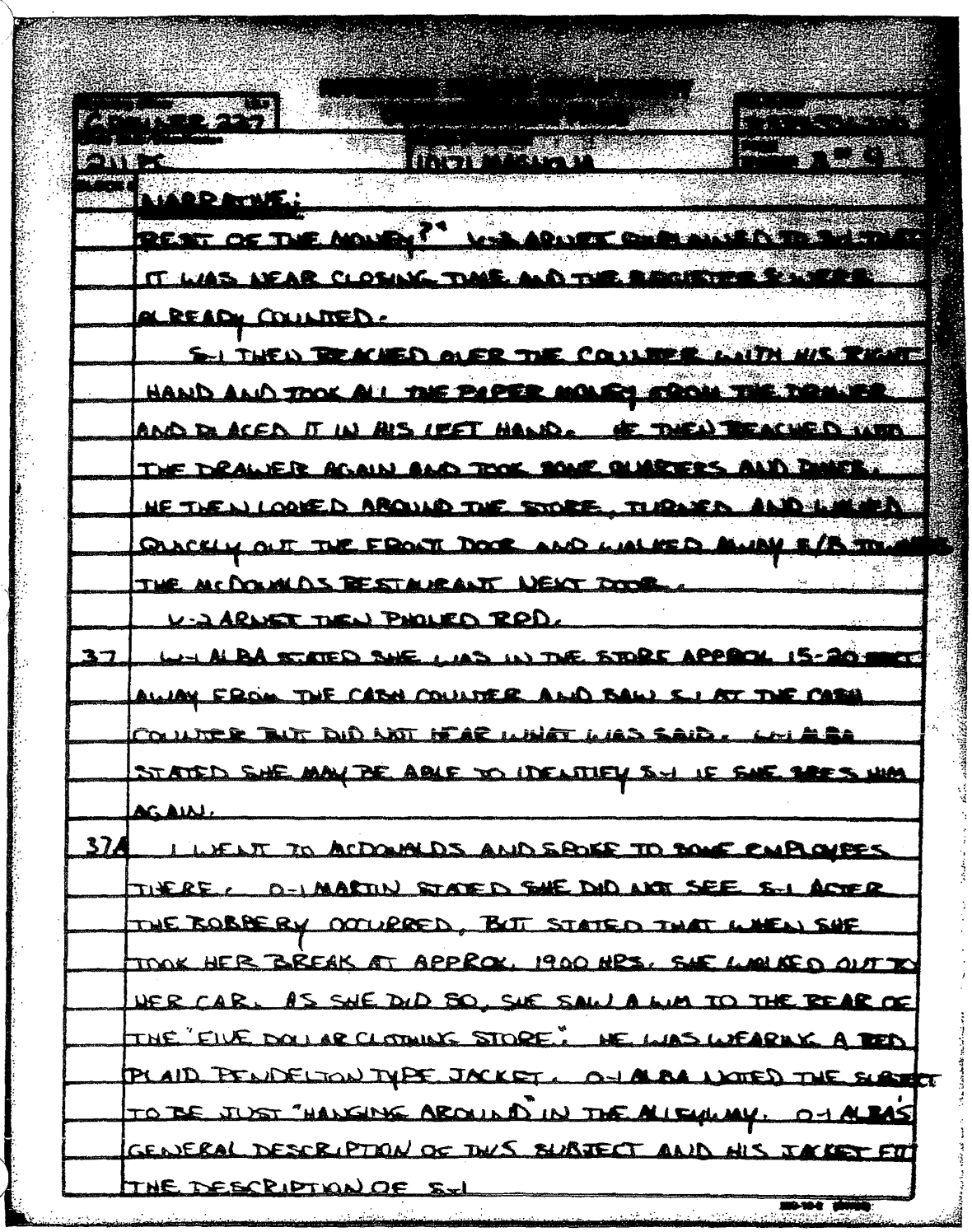
28 V-2 ARNETT STATED THAT S-1 ENTERED THE STORE VIA THE FRONT DOOR AND APPROACHED HER AT THE NEARBY CASH REGISTER. S-1 STATED "OPEN THE DRAWER TO YOUR CASH REGISTER RIGHT, THIS IS A STICK UP." V-2 ARNETT WAS TAKEN ABACK BY THIS STATEMENT AND SAID "HUH?" S-1 SAID "YOU HEARD ME, GIVE ME THE MONEY OUT OF THE DRAWER YOU SLUT OR YOU'RE DEAD!" AS S-1 MADE THIS STATEMENT HE ABRUPTLY MOVED HIS RIGHT HAND DOWN BY HIS SIDE AS IF TO GET AN OBJECT, POSSIBLY A WEAPON. V-2 ARNETT'S CASHIERS COUNTER WAS ELEVATED AND SHE COULD NOT SEE HIS HANDS OR ANY WEAPONS DUE TO THE COUNTER BLOCKING HER VIEW.

V-2 ARNETT OPENED THE CASH DRAWER AND TOOK IT OUT AND LAID IT ON THE COUNTER.

S-1 LOOKED AT THE DRAWER AND SAID, "WHERE'S THE

DA 00002557

EX 198 - 000133



NARRATIVE:

REST OF THE MONEY?" V-2 ARNET [illegible] IT WAS NEAR CLOSING TIME AND THE REGISTER [illegible] ALREADY COUNTED.

S-1 THEN REACHED OVER THE COUNTER WITH HIS RIGHT HAND AND TOOK ALL THE PAPER MONEY FROM THE DRAWER AND PLACED IT IN HIS LEFT HAND. HE THEN REACHED INTO THE DRAWER AGAIN AND TOOK SOME QUARTERS AND DIMES. HE THEN LOOKED AROUND THE STORE, TURNED AND WALKED QUICKLY OUT THE FRONT DOOR AND WALKED AWAY E/B IN THE McDONALDS RESTAURANT NEXT DOOR.

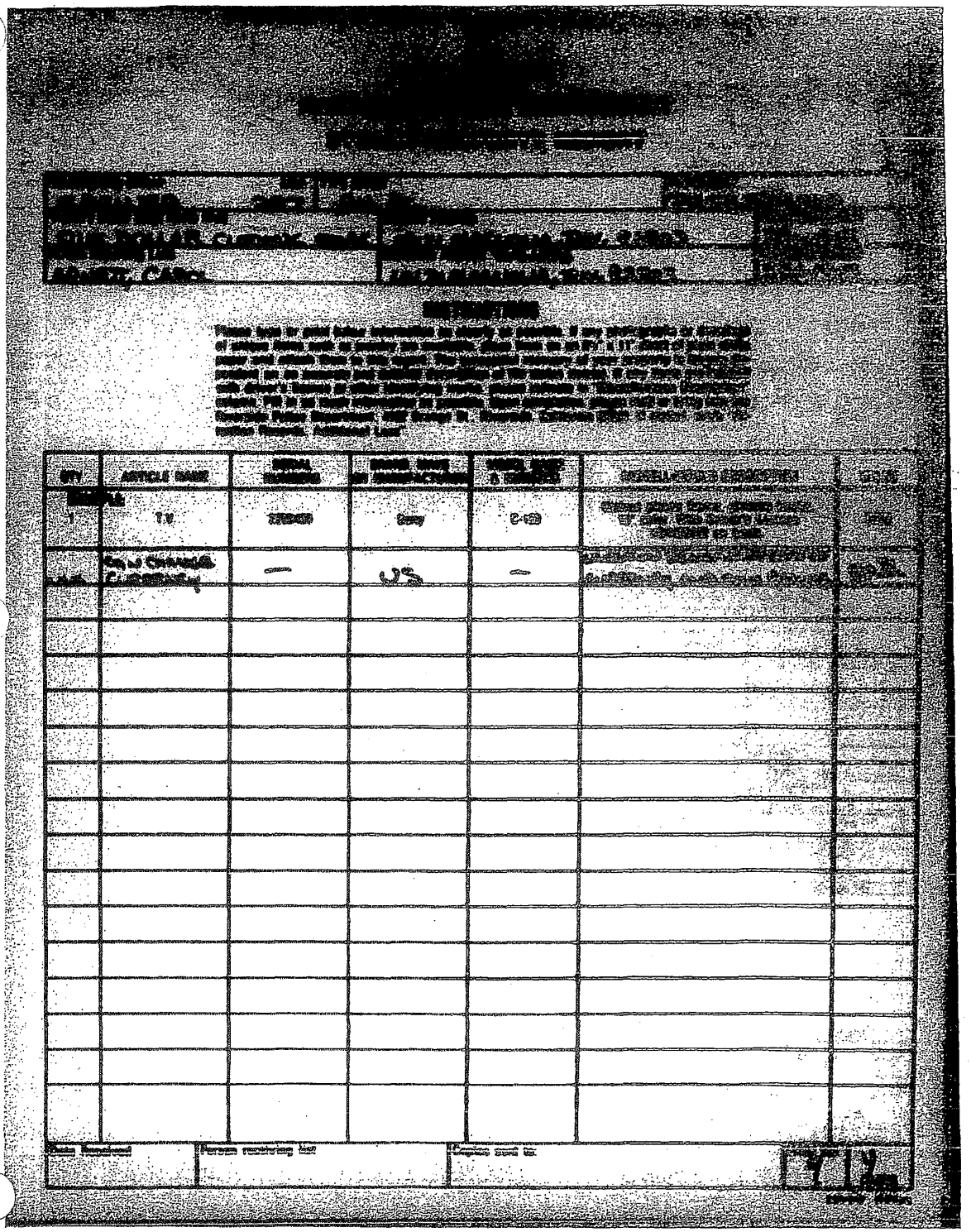
V-2 ARNET THEN PHONED RPD.

37 W-1 ALBA STATED SHE WAS IN THE STORE APPROX. 15-20 FEET AWAY FROM THE CASH COUNTER AND SAW S-1 AT THE CASH COUNTER BUT DID NOT HEAR WHAT WAS SAID. W-1 ALBA STATED SHE MAY BE ABLE TO IDENTIFY S-1 IF SHE SEES HIM AGAIN.

37A I WENT TO McDONALDS AND SPOKE TO SOME EMPLOYEES THERE. O-1 MARTIN STATED SHE DID NOT SEE S-1 AFTER THE ROBBERY OCCURRED, BUT STATED THAT WHEN SHE TOOK HER BREAK AT APPROX. 1900 HRS. SHE WALKED OUT TO HER CAR. AS SHE DID SO, SHE SAW A M/M TO THE REAR OF THE "FIVE DOLLAR CLOTHING STORE". HE WAS WEARING A RED PLAID PENDELTON TYPE JACKET. O-1 ALBA NOTED THE SUBJECT TO BE JUST "HANGING AROUND" IN THE ALLEYWAY. O-1 ALBA'S GENERAL DESCRIPTION OF THIS SUBJECT AND HIS JACKET FIT THE DESCRIPTION OF S-1

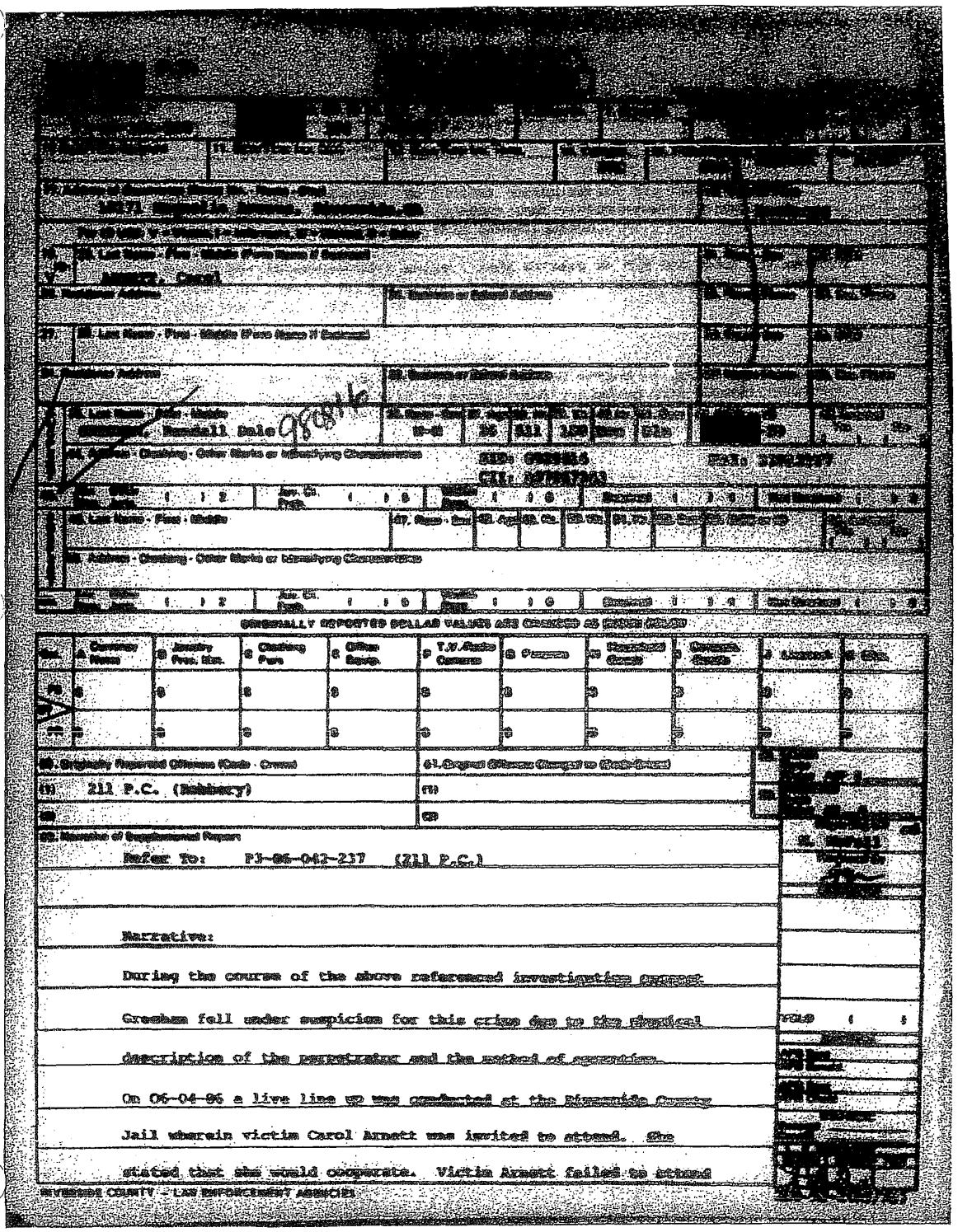
DA 00002558

EX 198 - 000134



DA 00002559

EX 198 - 000135



211 P.C. (Robbery)

Refer To: PJ-96-042-237 (211 P.C.)

Narrative:

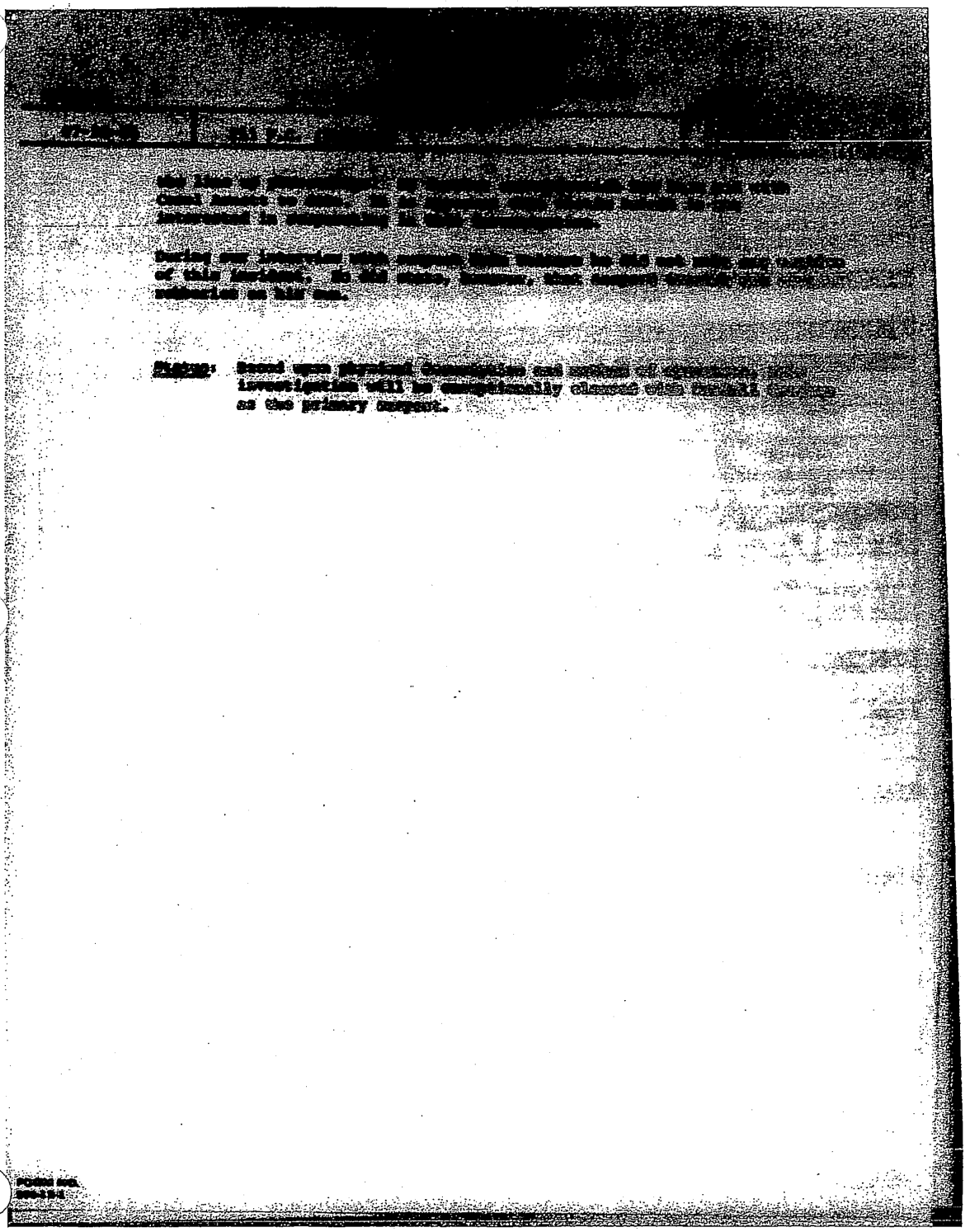
During the course of the above referenced investigation Arnett Gresham fell under suspicion for this crime due to the physical description of the perpetrator and the method of operation.

On 06-04-96 a live line up was conducted at the Riverside County Jail wherein victim Carol Arnett was invited to attend. She stated that she would cooperate. Victim Arnett failed to attend

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

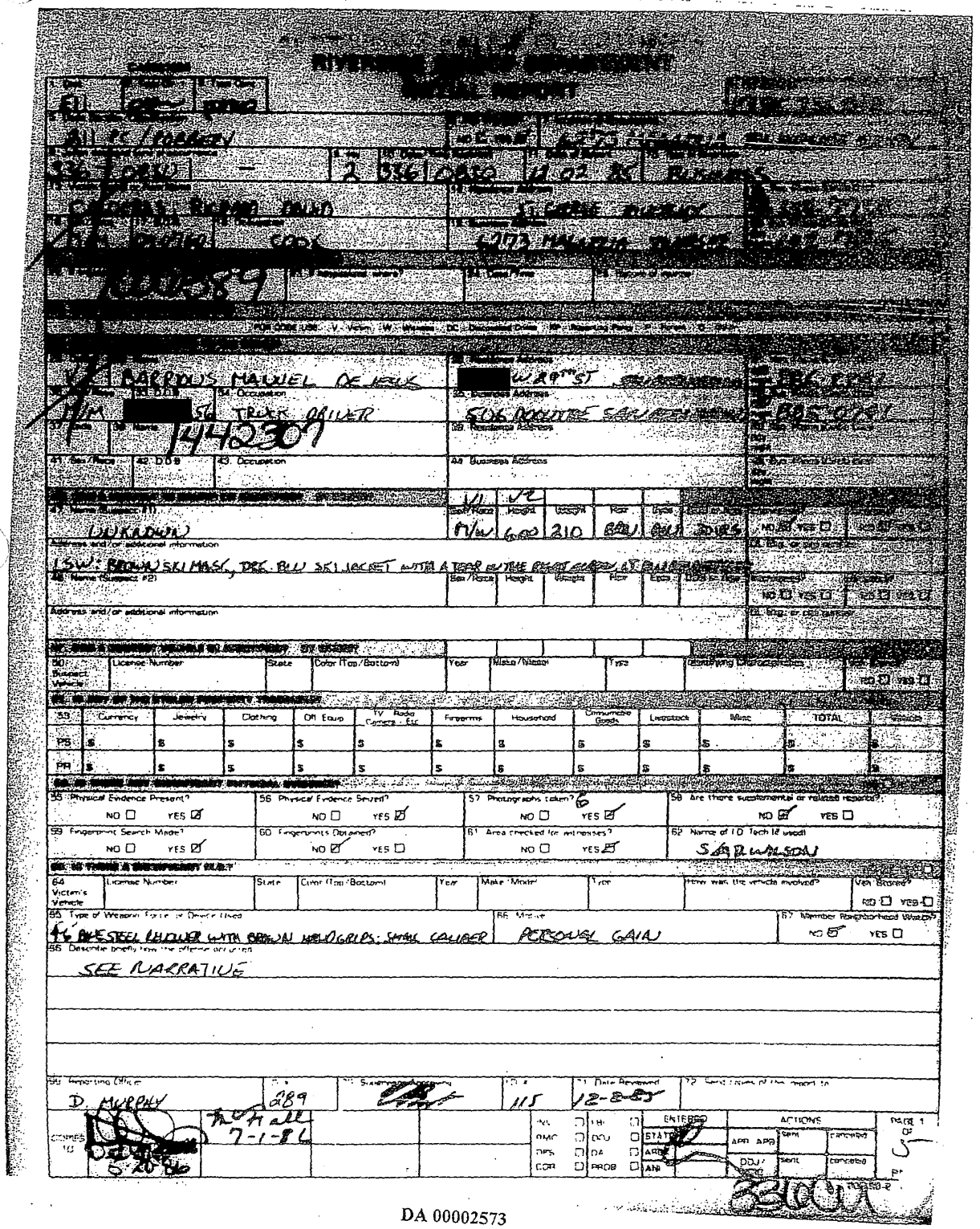
DA 00002560

EX 198 - 000136



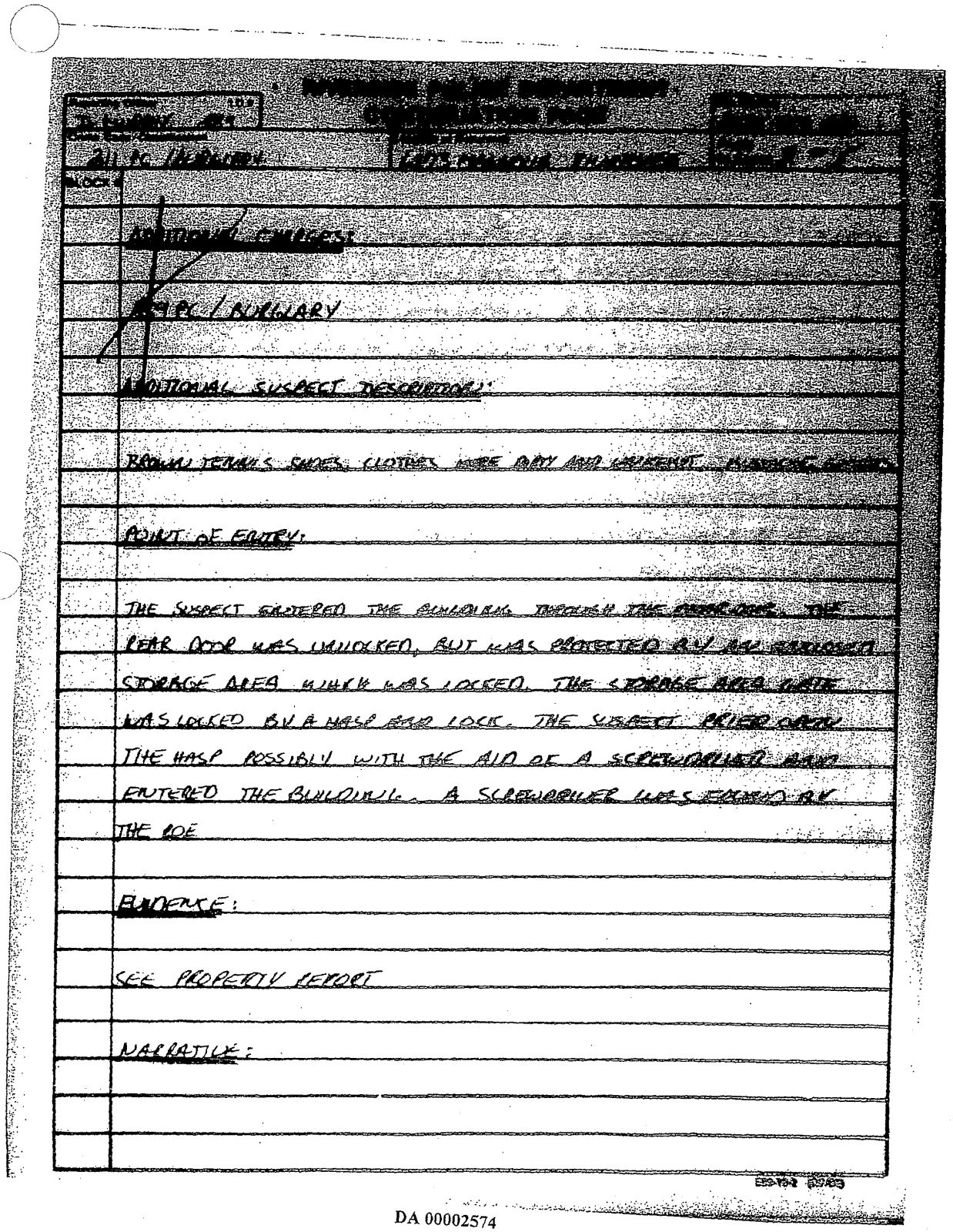
DA 00002561

EX 198 - 000137



DA 00002573

EX 199 - 000138



ADDITIONAL OFFICERS:

BURG / BURGLARY

ADDITIONAL SUSPECT DESCRIPTION:

BROWN JEANS, SHOES, CLOTHES WERE DIRTY AND UNKEMPT.

POINT OF ENTRY:

THE SUSPECT ENTERED THE BUILDING THROUGH THE REAR DOOR. THE REAR DOOR WAS UNLOCKED, BUT WAS PROTECTED BY AN EXTERIOR STORAGE AREA WHICH WAS LOCKED. THE STORAGE AREA GATE WAS LOCKED BY A HASP AND LOCK. THE SUSPECT PRIED OPEN THE HASP POSSIBLY WITH THE AID OF A SCREWDRIVER AND ENTERED THE BUILDING. A SCREWDRIVER WAS FOUND BY THE DOE

EVIDENCE:

SEE PROPERTY REPORT

NARRATIVE:

DA 00002574

EX 199 - 000139

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

211 R / ROBBERY

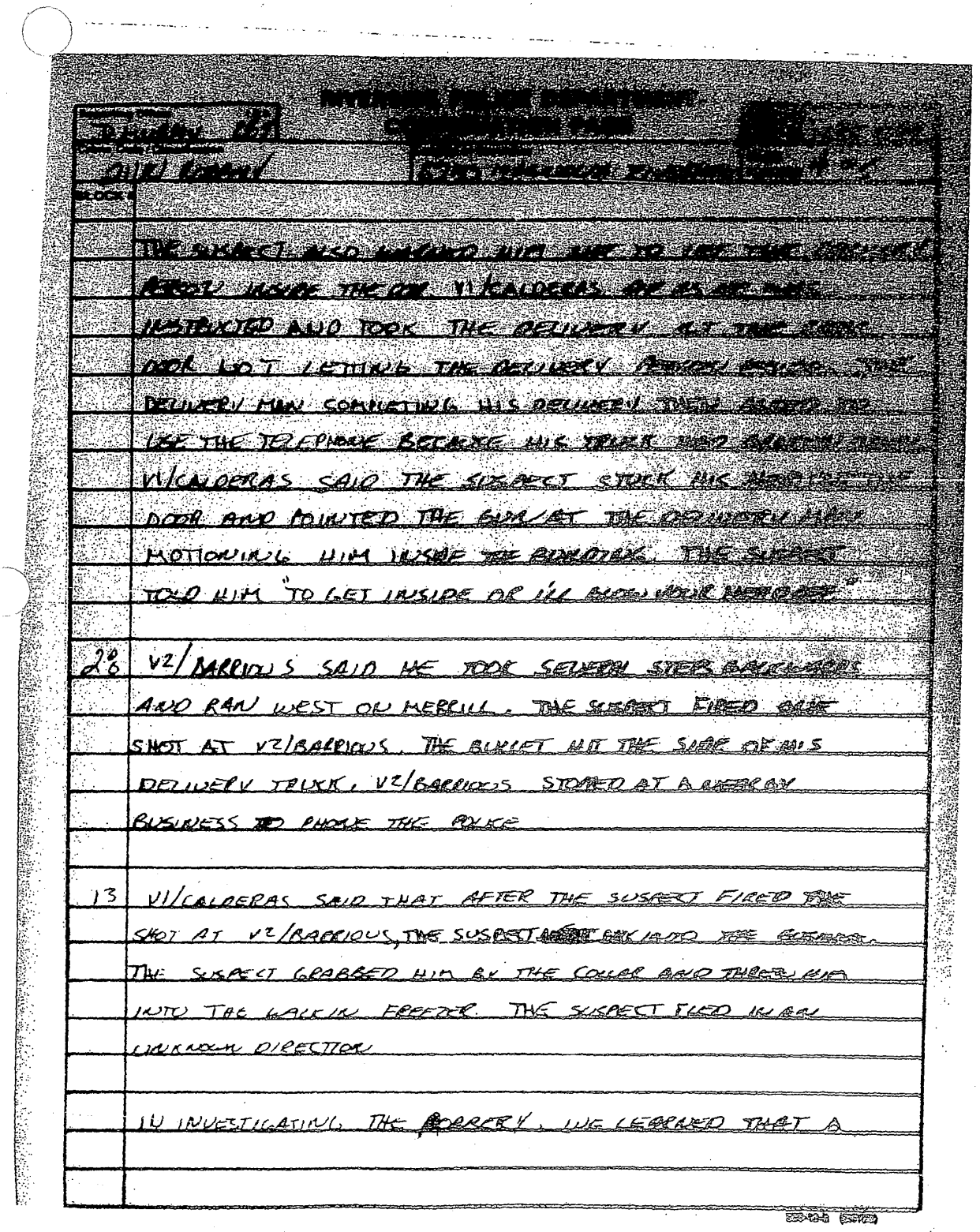
BLOCK 9

PROBATION OFFICER [illegible] 372 AND I TALKED TO HIM. HE TOLD US THAT IT WAS HIS JOB TO CHECK THE ADDRESS PIZZA HUT AT 6173 MAGNOLIA. AS HE ENTERED THE KITCHEN, HE SAID HE WAS CONFRONTED BY A [illegible] A GUN AT HIM.

13 V1/CALDERAS SAID THE SUSPECT "TOLD ME TO [illegible] DON'T MAKE ANY MOVES." V1/CALDERAS SAID THE SUSPECT SPOKE WITH A DEEP VOICE. THE SUSPECT ASKED IF HE HAD THE KEYS AND COMBINATION TO THE SAFE AND CASH REGISTER. V1/CALDERAS SAID HE DIDN'T HAVE THEM. THE SUSPECT TOLD HIM THAT HE HAD BEEN WATCHING SINCE 0300HRS AND THAT HE HAD BEEN STAKING OUT THE PLACE FOR A WHILE. THE SUSPECT SHOWED V1/CALDERAS A SET OF KEYS STOLEN FROM A VEHICLE AT PIZZA HUT STOLEN THE PREVIOUS WEEK TO PROVE HIS POINT. V2/BARRIOS KNOCKED ON THE FRONT DOOR [illegible] THE SUSPECT AND V1/CALDERAS. THE SUSPECT TOLD V1/CALDERAS NOT TO ANSWER. V2/BARRIOS KNOCKED AGAIN ON THE FRONT DOOR AND LOOKED INSIDE THE DOOR WINDOW. V2/BARRIOS SAW V1/CALDERAS AND MOTIONED HIM TO OPEN THE REAR DOOR FOR A DELIVERY. THE SUSPECT HID IN AN OFFICE BY THE REAR DOOR AND TOLD V1/CALDERAS TO TAKE THE DELIVERY AT THE DOOR.

DA 00002575

EX 199 - 000140



THE SUSPECT HAD ORDERED HIM NOT TO LOOK THE DOOR
AND INSIDE THE BOX. V1/CALDERAS DID AS HE WAS
INSTRUCTED AND TOOK THE DELIVERY AT THE DOOR
BUT NOT LETTING THE DELIVERY PERSON ENTER. THE
DELIVERY MAN CONTINUING HIS DELIVERY DREW ATTENTION
USE THE TELEPHONE BECAUSE HIS TRUCK HAD BROKEN DOWN.
V1/CALDERAS SAID THE SUSPECT STUCK HIS HAND INTO THE
DOOR AND POINTED THE GUN AT THE DELIVERY MAN
MOTIONING HIM INSIDE THE BUILDING. THE SUSPECT
TOLD HIM "TO GET INSIDE OR I'LL BLOW YOUR BRAINS OUT."

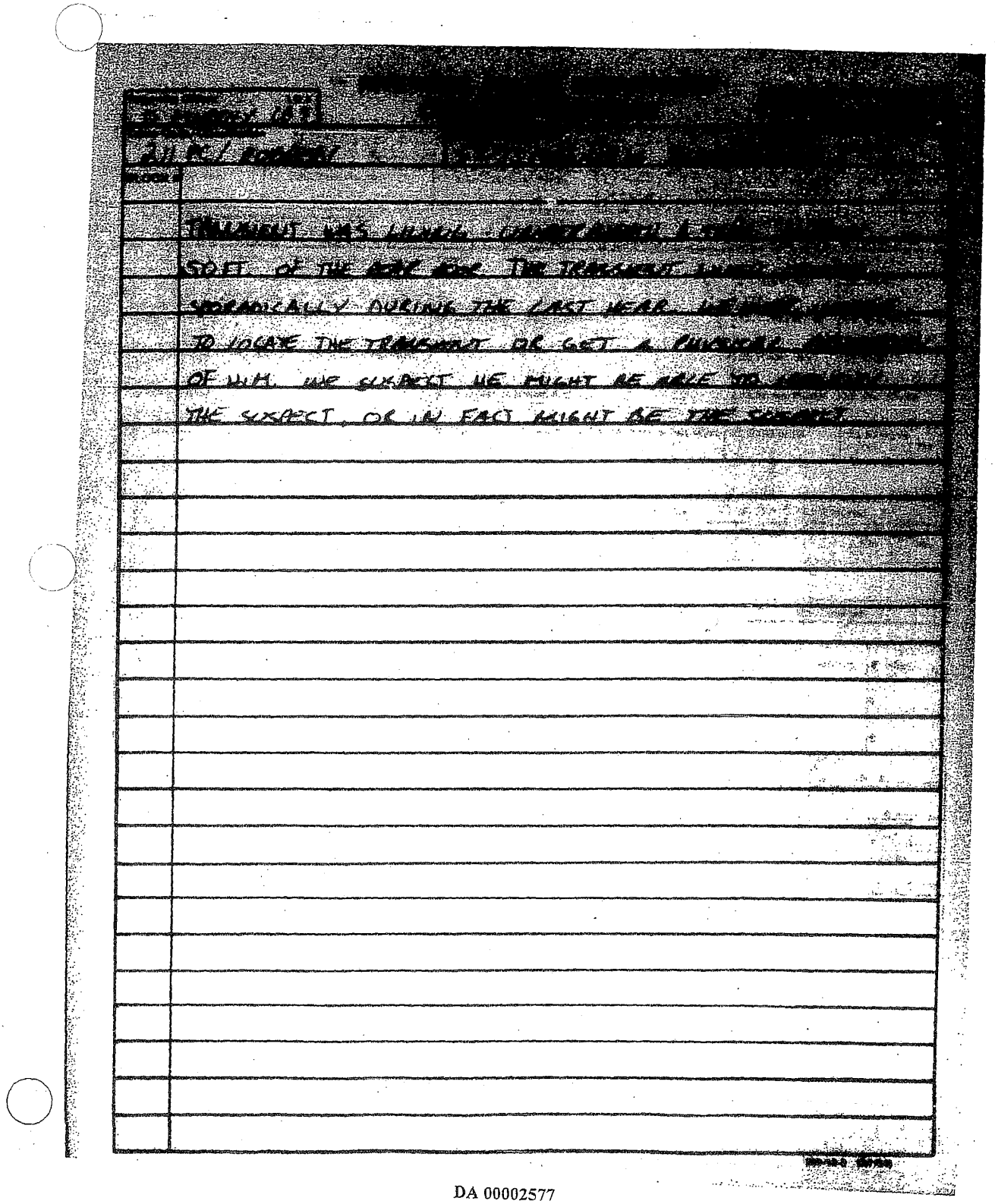
28 V2/BARRIOS SAID HE TOOK SEVERAL STEPS BACKWARDS
AND RAN WEST ON MERRILL. THE SUSPECT FIRED ONE
SHOT AT V2/BARRIOS. THE BULLET HIT THE SIDE OF HIS
DELIVERY TRUCK. V2/BARRIOS STOPPED AT A NEARBY
BUSINESS TO PHONE THE POLICE.

13 V1/CALDERAS SAID THAT AFTER THE SUSPECT FIRED THE
SHOT AT V2/BARRIOS, THE SUSPECT [illegible] AND THE SUSPECT
THE SUSPECT GRABBED HIM BY THE COLLAR AND THREW HIM
INTO THE WALK-IN FREEZER. THE SUSPECT FLED IN AN
UNKNOWN DIRECTION.

IN INVESTIGATING THE ROBBERY, WE LEARNED THAT A

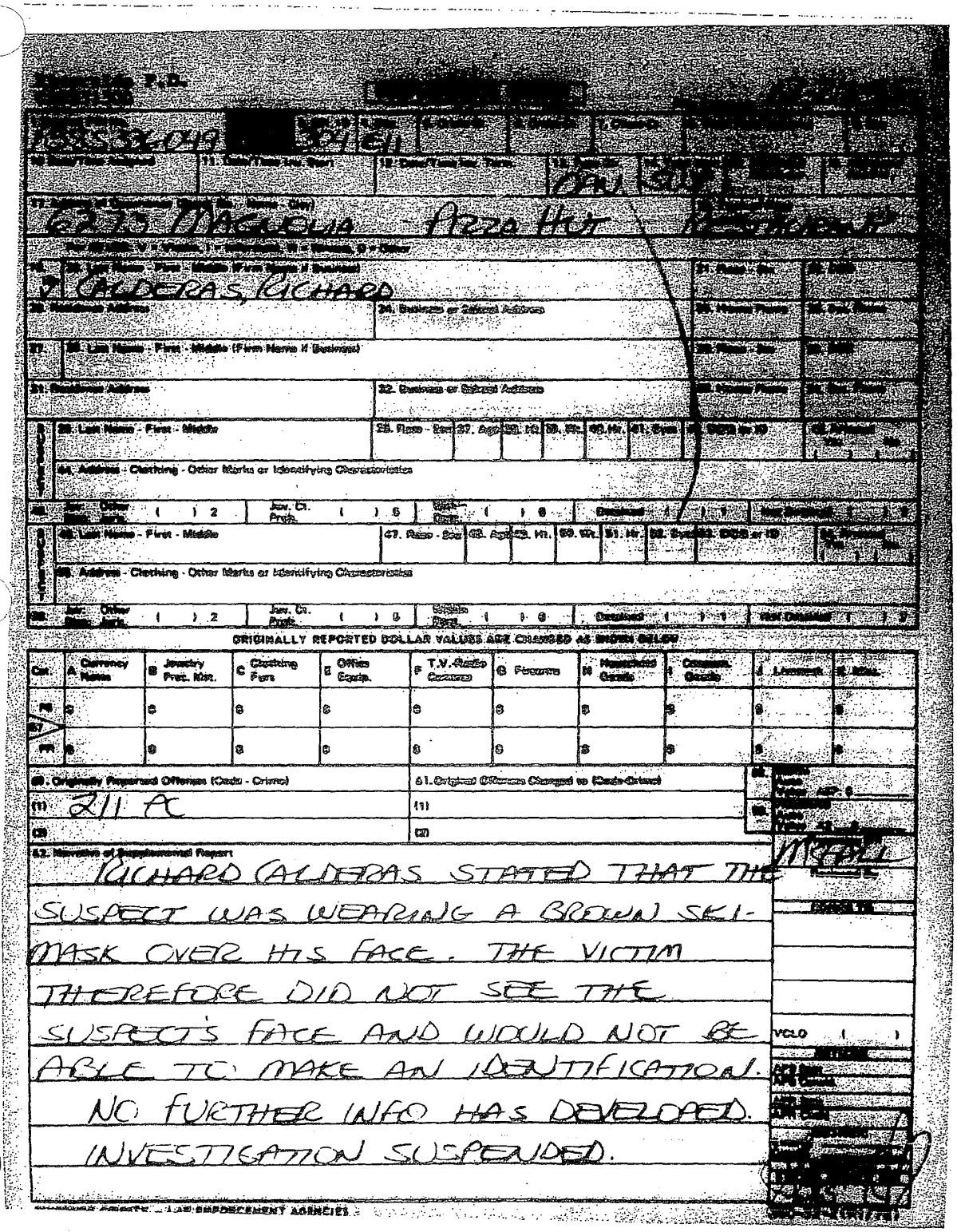
DA 00002576

EX 199 - 000141



DA 00002577

EX 199 - 000142



6275 MAGNOLIA PIZZA HUT

CALDERAS, RICHARD

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

(1) 211 AC

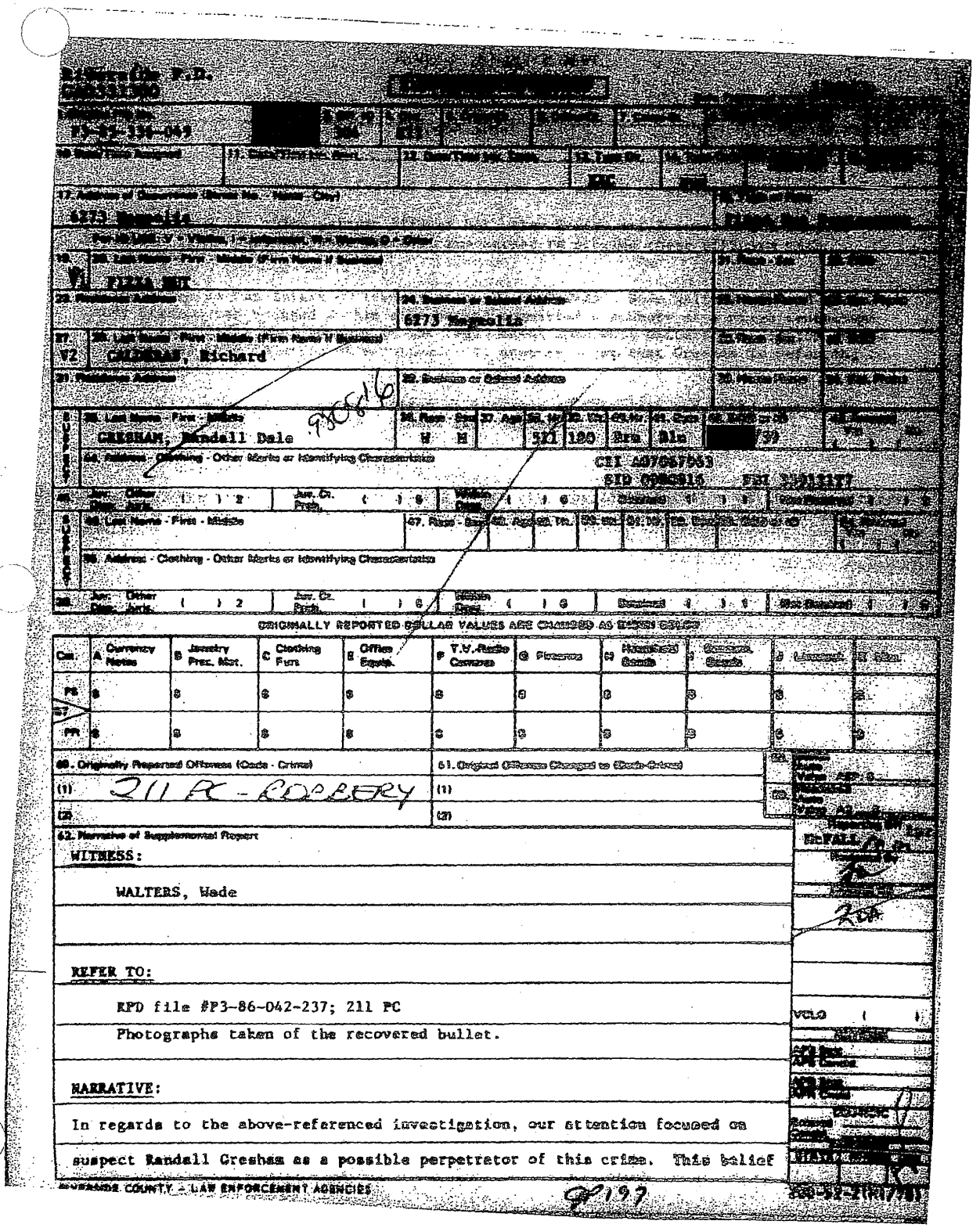
RICHARD CALDERAS STATED THAT THE SUSPECT WAS WEARING A BROWN SKI-MASK OVER HIS FACE. THE VICTIM THEREFORE DID NOT SEE THE SUSPECT'S FACE AND WOULD NOT BE ABLE TO MAKE AN IDENTIFICATION.

NO FURTHER INFO HAS DEVELOPED.

INVESTIGATION SUSPENDED.

DA 00002578

EX 199 - 000143



CRESHAM, Randall Dale

6273 Magnolia

CRENSHAW, Richard

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

(1) 211 A - ROBBERY

WITNESS:

WALTERS, Wade

REFER TO:

RPD file #P3-86-042-237; 211 PC

Photographs taken of the recovered bullet.

NARRATIVE:

In regards to the above-referenced investigation, our attention focused on suspect Randall Cresham as a possible perpetrator of this crime. This belief

DA 00002579

EX 199 - 000144

is based upon the suspect's physical description and method of operation.

On June 17 and 18, 1986, partner officer Det. Alan Torian and I interviewed suspect Graeham's crime partner, Wade Walters, who agreed to provide these officers with information.

As indicated in the interview transcript on FI-86-042-237, Wade Walters advised that Randy Graeham had bragged to him that he had committed a robbery at a [redacted] and had supposedly shot someone in the leg. Based upon Wade Walters description of the incident and it's location of occurrence, it appears clear that Graeham is referring to this incident.

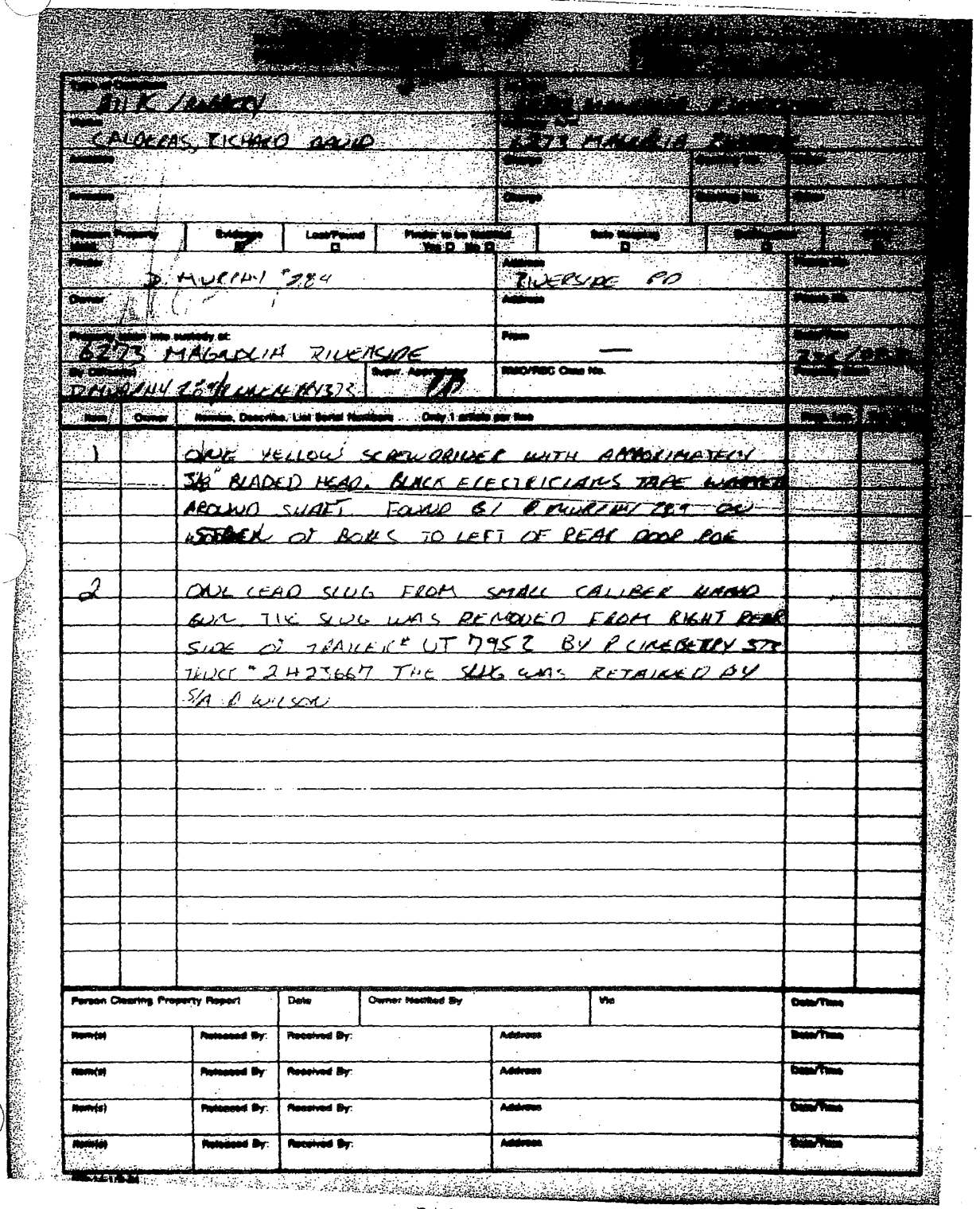
I examined the bullet which was seized as evidence on this case and noted that it is extremely distorted and is not of comparison quality.

STATUS:

This investigation will be exceptionally clear with the identification of the perpetrator Randall Graeham. These reports will be forwarded to the District Attorney's Office for review.

DA 00002580

EX 199 - 000145

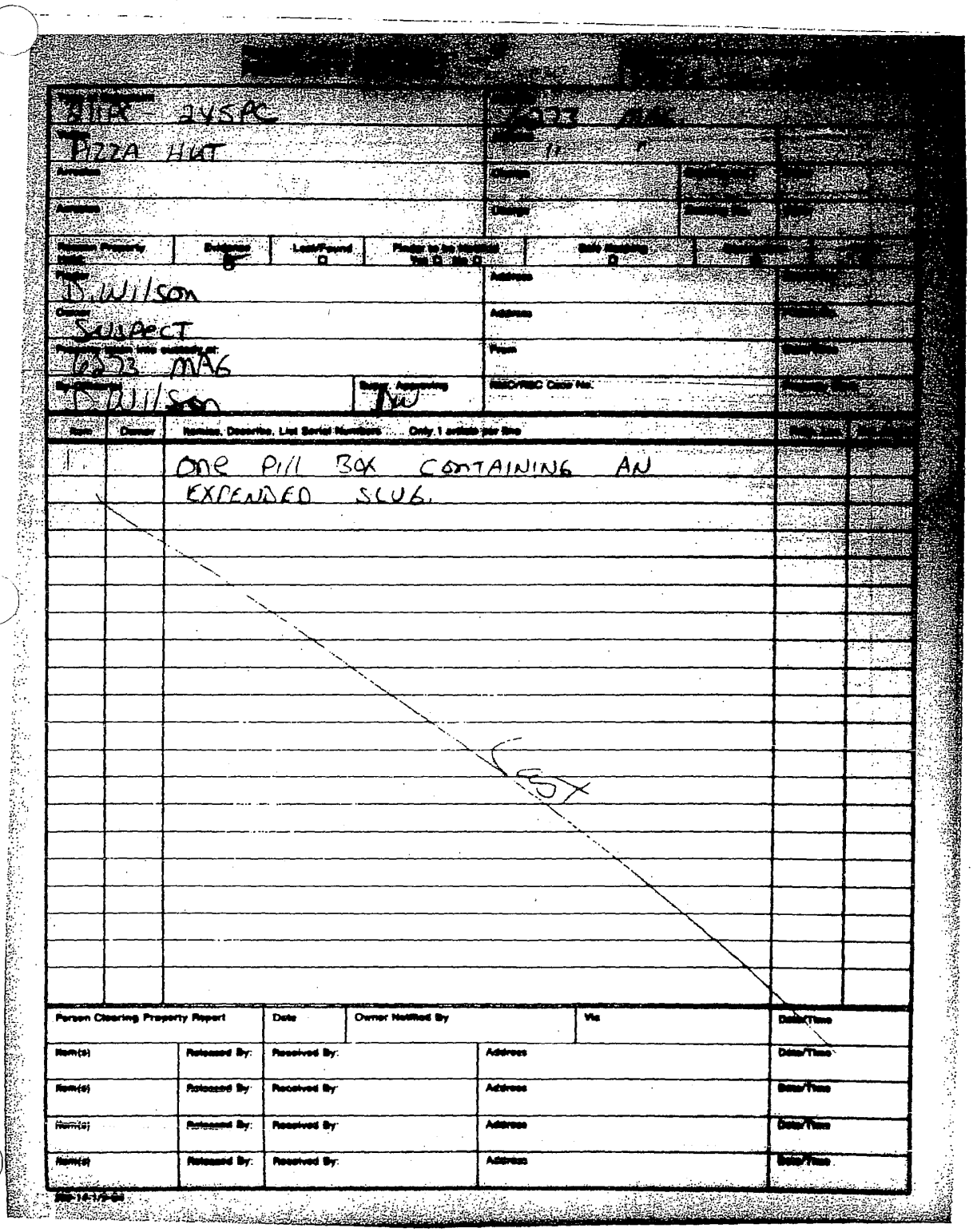


Item	Owner	Remarks, Description, List Serial Numbers ... Only 1 article per line		
1		ONE YELLOW SCREWDRIVER WITH APPROXIMATELY 3/8" BLADED HEAD. BLACK ELECTRICIANS TAPE WRAPPED AROUND SHAFT. FOUND BY R. MURPHY 784 ON STACK OF BOXES TO LEFT OF REAR DOOR DOE		
2		ONE LEAD SLUG FROM SMALL CALIBER HAND GUN. THE SLUG WAS REMOVED FROM RIGHT REAR SIDE OF TRAILER AT 7952 BY R. MURPHY 784 THIS # 2H23667 THE SLUG WAS RETAINED BY S/A D. WILSON		

Person Clearing Property Report	Date	Owner Notified By	Via	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time

DA 00002581

EX 199 - 000146



ITEM 2 VSPC

PIZZA HUT

WILSON

SUSPECT

1993 MAG

WILSON

Item	Owner	Remarks, Describe, List Serial Numbers ... Only 1 article per line		
1		ONE PILL BOX CONTAINING AN EXPENDED SLUG.		

Person Clearing Property Report	Date	Owner Notified By	Via	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time

DA 00002582

EX 199 - 000147

CA0331300

RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

1. Day: S-10 | 2. Type Clr.: ARR | 3. Type Cont.: INC | 4. File Number: P3-85-346009

5. Code Section/Classification: 12025 P.C. CARRYING A CONCEALED WEAPON | 6. Add Charges? NO ☐ YES ☒ | 7. Location of Occurrence: TYLER ST. & HOLE AVE, RIV.

8. Date and time of occurrence: 341 0020 | 9. day: 5 | 10. Date/Time Reported: 345 0020 | 11. Date of Report: 12-12-85 | 12. Type of Premises: OLE'S PARKING LOT

13. Victim Name or Firm Name | 14. Residence Address | 15. Res. Phone (Circle One) day night

16. Sex/Race | 17. DOB | 18. Occupation | 19. Business Address | 20. Bus. Phone (Circle One) day night

21. WAS THERE A MAJOR INJURY OR RAPE INVOLVED? NO ☒ YES ☐

22. If treated for injuries, by whom? | 23. If hospitalized, where? | 24. Date/Time | 25. Nature of injuries

26. WILL THE VICTIM PROSECUTE? NO ☐ YES ☒

FOR CODE USE: V - Victim W - Witness DC - Discovered Crime RP - Reporting Party P - Parent O - Other

27. WAS THERE A WITNESS TO THE CRIME? 218 NO ☐ YES ☒

28. Code | 29. Name | 30. Residence Address | 31. Res. Phone (Circle One) day night

32. Sex/Race | 33. DOB | 34. Occupation | 35. Business Address | 36. Bus. Phone (Circle One) day night

37. Code | 38. Name | 39. Residence Address | 40. Res. Phone (Circle One) day night

41. Sex/Race | 42. DOB | 43. Occupation | 44. Business Address | 45. Bus. Phone (Circle One) day night

46. CAN SUSPECT BE NAMED OR IDENTIFIED? BY WHOM? 218 NO ☐ YES ☒

47. Name (Suspect #1): GRESHAM, RANDALL DALE | Sex/Race: M/W | Height: 509 | Weight: 170 | Hair: BRN | Eyes: BLU | [redacted] | DOB or Age: 59 | Interviewed? NO ☒ YES ☐ | Arrested? NO ☐ YES ☒

Address and/or additional information: [redacted] ORANGE ST., RIVERSIDE 92501 | DL Nbr. or ID number: G-18463

48. Name (Suspect #2) | Sex/Race | Height | Weight | Hair | Eyes | DOB or Age | Interviewed? NO ☐ YES ☐ | Arrested? NO ☐ YES ☐

Address and/or additional information | DL Nbr. or ID number

980816

49. CAN A SUSPECT VEHICLE BE IDENTIFIED? BY WHOM? 218 NO ☐ YES ☒

50. Suspect Vehicle: License Number: 1S12366 | State: CA. | Color (Top/Bottom): BLUE | Year: 1970 | Make/Model: FORD RANCHERO | Type: PLU | Identifying Characteristics: POOR CONDITION | Vin Stored? NO ☒ YES ☐

51. IS ANY OF THE STOLEN PROPERTY TRACEABLE?

	Currency	Autos	Clothing	Office Equip.	TV - Radio - Camera - Etc.	Firearms	Household	Personal Items	Livestock	Misc.	TOTAL	Values
PD	$	$	$	$	$	$	$	$	$	$	$	$
RD	$	$	$	$	$	$	$	$	$	$	$	$

54. IS THERE ANY SIGNIFICANT PHYSICAL EVIDENCE? NO ☐ YES ☒

55. Physical Evidence Present? NO ☐ YES ☒ | 56. Physical Evidence Seized? NO ☐ YES ☒ | 57. Photographs Taken? NO ☒ YES ☐ | 58. Any other supplemental or related reports? NO ☐ YES ☐

59. Property Booked? NO ☒ YES ☐ | 60. Property Booked? NO ☐ YES ☒ | 61. Any evidence booked for comparison? NO ☒ YES ☐ | 62. Name of person booking evidence

63. IS THERE A SIGNIFICANT M.O.? NO ☒ YES ☐

Code | Location of Occurrence | Code | Other Beat Numbers | Year | Make/Model | Type | Identifying Characteristics | Vin Stored? NO ☐ YES ☐

Type of Property Taken | Point of Entry | Method of Attack

REFER TO NARRATIVE

RESTRICTED INFORMATION
Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.
DATE: 9-11-07
TO: DA
BY: [signature]
RIVERSIDE POLICE DEPT.

J. WHITTON | 218 | [signature] | 115 | 12-12-85

2DA | 05-19-86 | Verified | 10-25-86 | [signature]

UNITS: STARS ☐ ARRX ☐ ANI ☐ | ACTIONS: ARR-APP sent ☐ completed ☐ | DNA NCIC sent ☐ completed ☐ | PAGE 1 OF PAGES

PD0150-B (R2/84)

DA 00002811

EX 200 - 000148

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer I.D.#	File Number
J. WHITTON 218	R3-05-346009
Crime Code/Classification: 12025, 12031a P.C./148, 148.9 P.C.	Location of Occurence: TYLER ST. & HOLE AVE., RIV.
BLOCK #	PAGE NUMBER 2 OF 7

ADDITIONAL CHARGES:

12031a P.C. – POSSESSION OF A LOADED FIREARM
148 P.C. – RESISTING, OBSTRUCTING A PEACE OFFICER
148.9 P.C. – SUPPLYING FALSE IDENTIFICATION TO A POLICE OFFICER.
[redacted]

ASSISTING OFFICER:
D. FLORES #474 – UNIT 1R20

WHILE STOPPED AT A RED SIGNAL LIGHT S/B TYLER ST. AT HOLE AVE. I SAW THE INDICATED BLUE FORD RANCHERO SPEED W/B ON HOLE AVE AS THE LIGHT CHANGED TO GREEN.

THE RANCHERO BEGAN A SLOW ANGLING TURN AND DROVE ACROSS BOTH E/B LANES OF HOLE AVE WHILE STILL TRAVELING W/B (VIOLATION OF 21650 CVC). THE VEHICLE ULTIMATELY TURNED LEFT INTO A DRIVEWAY AT THE U-S-A GASOLINE STATION/OLE'S HARDWARE PARKING LOT.

UPON OBSERVING THE ABOVE VEHICLE CODE

DA 00002812

EX 200 - 000149

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer I.D. # S. WHITTAL #218 | File Number P3-85-346009
Crime Code/Classification 12025, 12031a, 148, 148A P.C. | Location of Occurence TYLER ST & HOLE AVE, RIV | PAGE NUMBER 3 OF 7
BLOCK #

VIOLATION I TURNED MY MARK POLICE UNIT RIGHT AND FOLLOWED THE RANCHERO INTO THE INDICATED PARKING LOT.

THE RANCHERO DROVE A SHORT DISTANCE INTO THE PARKING LOT AND CAME TO A STOP. AT THIS POINT I STOPPED MY UNIT BEHIND THE RANCHERO AND DIRECTED MY LEFT SPOT LIGHT AT THE VEHICLES INTERIOR. AS I DID SO THE DRIVER AND SOLE OCCUPANT (LATER IDENTIFIED AS SUSPECT GRESHAM) EXITED VIA THE DRIVER'S DOOR.

I APPROACHED THE SUSPECT WHO PRESENTED THE INDICATED CALIFORNIA INSTRUCTION PERMIT #1290092 IN THE NAME "WADE ALAN WALTERS" AND STATED HE HAD NOT RECEIVED HIS PERMANENT CALIFORNIA DRIVER'S LICENSE YET.

I THEN INQUIRED AS TO THE OWNERSHIP OF THE RANCHERO AND THE SUSPECT REPLIED THAT HE HAD RECENTLY PURCHASED THE VEHICLE BUT DID NOT HAVE

DA 00002813

EX 200 - 000150

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer ID # J. WHITTED #218 | File Number P3-05-346009
Crime Code / Classification 12025, 12031a, 148, 1485 P.C. | Location of Occurence TYLER ST + HOLE AVE, RIV | PAGE NUMBER 4 OF 7
BLOCK #

ANY FORM OF REGISTRATION.

AT THIS POINT, AS A MATTER OF ROUTINE IN SITUATIONS WHERE NO FORM OF REGISTRATION IS PRESENTED I LOOK IN THE VEHICLE TO CHECK THAT THE IGNITION IS IN TACT AND MAKE SURE BOTH FRONT AND REAR LICENSE PLATES MATCH.

WHILE ILLUMINATING THE INTERIOR OF THE RANCHERO THROUGH THE RIGHT FRONT PASSENGERS WINDOW GLASS I SAW THE REAR APPROX 2" OF A HAND-GUN GRIP. I THEN WENT TO THE FRONT WINDSHIELD AND BY BENDING OVER COULD VIEW A COUPLE OF MORE INCHES OF THE FIREARM (THE AREA NEAR THE HAMMER).

AT THIS POINT I STEPPED TOWARDS SUBJECT GRESHAM AND SIMULTANEOUSLY REQUESTED THAT HE PLACE HIS HANDS ON THE REAR OF THE RANCHERO SO A PAT DOWN SEARCH FOR POSSIBLE ADDITIONAL OFFENSIVE WEAPONS COULD BE CONDUCTED

DA 00002814

EX 200 - 000151

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer ID # J-WHITTEN #218 | File Number B3-85-346009

Crime Code/Classification 12025, 12031 P.C., 148 & 148.9 P.C. | Location of Occurence TYLER ST. & HOLE AVE., RIV. | PAGE NUMBER 5 OF 7

BLOCK #

AS I GRASPED SUSP. GRESHAM'S LEFT WRIST HE PULLED HIS HAND AWAY AND SPUN AWAY. HE THEN BROKE INTO A RUN E/B ACROSS THE OLE'S PARKING LOT TOWARDS TYLER ST.

AS THE SUSPECT BROKE FREE FROM MY GRASP MY HIGH-POWER FLASHLIGHT (STREAMLIGHT) WAS KNOCKED FROM MY HAND AND DAMAGED.

I THEN BEGAN CHASING THE SUSPECT ACCROSS THE OLE'S PARKING LOT AND ATTEMPTED TO DISPATCH MY FOOT PURSUIT. I ADVISED THE SUSP. WAS A MALE WHITE WEARING A BLUE "T" SHIRT AND LEVIS AND I SUPPLIED HIS DIRECTION OF TRAVEL. A NUMBER OF ASSISTING UNITS RESPONDED AND OFFICER D. FLORES #74 LOCATED THE SUSPECT HIDING BEHIND PLANTS IN FRONT OF VISTA PAINTS 3939 TYLER ST, RIVERSIDE.

DA 00002815

EX 200 - 000152

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer / ID #	File Number
J. WHITTEN #210	P3-85-346005
Crime Code / Classification	Location of Occurrence
12025, 12031a, 148, 148.9 P.C.	Tyler ST. & Hole Ave., Riv.
BLOCK #	PAGE NUMBER 6 OF 7

I SUBSEQUENTLY RETRIEVED THE HANDGUN FROM BENEATH THE DRIVER'S SEAT AND UPON EXAMINATION DISCOVERED IT CONTAINED SIX (6) UNEXPENDED 22 LG. CALIBER CARTRIDGES. (VIOLATION OF BOTH 12025 P.C. AND 12031a P.C.).

A FURTHER CHECK OF THE RANGERO'S INTERIOR REVEALED A SMALL PIECE OF CLEAR CELLOPHANE WHICH CONTAINED A SMALL AMOUNT OF A GRN. PLANT LIKE MATERIAL RESEMBLING MARIJUANA. THE ABOVE WAS FOUND IN THE OPEN DASH ASH-TRAY, [redacted]

DUE TO SUSP. GRESHAM'S ATTEMPT TO ELUDE ARREST (BY RUNNING) THE ADDITIONAL CHARGE OF DELAYING, RESISTING, OBSTRUCTING A PEACE OFFICER 148 P.C. WAS ADDED.

ADDITIONALLY THE CHARGE OF SUPPLYING A FALSE IDENTITY TO A PEACE OFFICER WAS ADDED (VIOLATION OF 148.9 P.C.).

DA 00002816

EX 200 - 000153

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer I.D.# J-WHITMAN #218 | File Number P3-05-346009
Crime Code / Classification 12025, 12031a, 148, 148.9 P.C. | Location of Occurrence TYLER ST & HOLE AVE. RIV | PAGE NUMBER 7 OF 7
BLOCK #

AFTER SUSP GRESHAM'S RETURN TO MY UNIT HE STATED "I'LL TELL YOU THE TRUTH THE DRIVER'S LICENSE I GAVE YOU BELONGS TO MY FRIEND I GOT SOME WARRANTS AND I DIDN'T WANT TO GET ARRESTED RIGHT NOW."

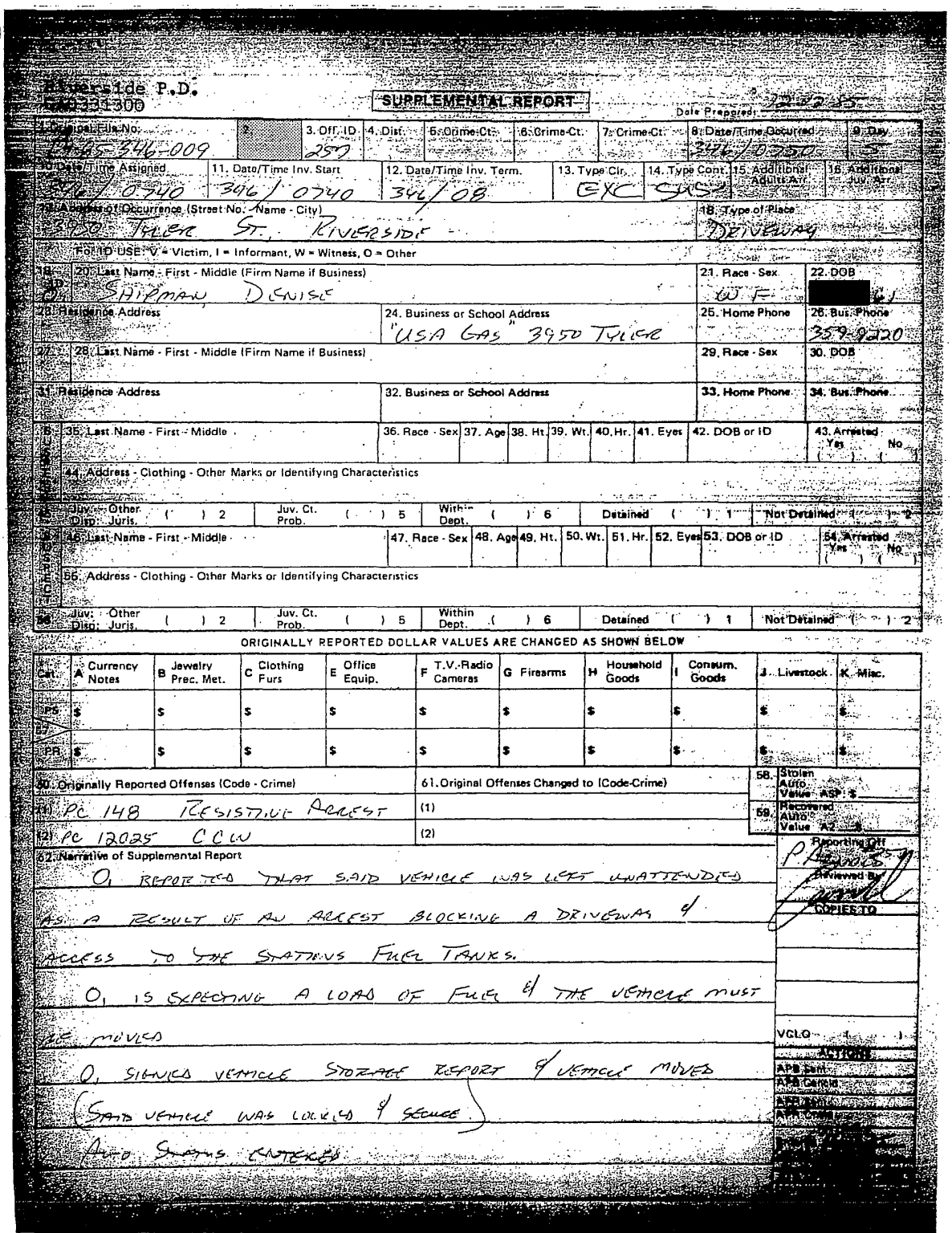
WHEN SUSP. GRESHAM WAS ADVISED OF THE GUN RELATED CHARGES HE SAID, "THAT GUN BELONGS TO A FRIEND I FORGOT HE LEFT IT IN MY CAR UNTIL YOU STOPPED ME."

IT WAS SUBSEQUENTLY CONFIRMED THAT SUSP. GRESHAM DID IN FACT HAVE TWO (2) OUTSTANDING TRAFFIC WARRANTS AT R.M.C. IN HIS REAL NAME.

SUSP. GRESHAM WAS THEN TRANSPORTED TO RIVERSIDE COUNTY JAIL AND BOOKED ON THE INDICATED CHARGES.
THE SUSP'S VEH. WAS LOCKED AND LEFT AT THE LOC.

DA 00002817

EX 200 - 000154



Riverside P.D.
CR231300

SUPPLEMENTAL REPORT

Date Prepared: 7-2-05

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime Ct.	6. Crime Ct.	7. Crime Ct.	8. Date/Time Occurred	9. Day
05-346-009		259					3/6/0550	S

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Cir.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
3/6/0540	3/6/0740	3/6/08	EXC	SYS		

17. Address of Occurrence (Street No. - Name - City): 3950 TYLER ST., RIVERSIDE — 18. Type of Place: DRIVEWAY

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

ID	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
O1	SHIPMAN, DENISE	W F	[redacted]

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	"USA GAS" 3950 TYLER		359-9220

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

	35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes ( ) No ( )

44. Address - Clothing - Other Marks or Identifying Characteristics

Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

	45. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) PC 148 RESISTING ARREST	(1)
(2) PC 12025 CCW	(2)

58. Stolen Auto Value ASP $

59. Recovered Auto Value A2 $

62. Narrative of Supplemental Report

O1 REPORTED THAT SAID VEHICLE WAS LEFT UNATTENDED AS A RESULT OF AN ARREST BLOCKING A DRIVEWAY & ACCESS TO THE STATIONS FUEL TANKS.

O1 IS EXPECTING A LOAD OF FUEL & THE VEHICLE MUST BE MOVED

O1 SIGNED VEHICLE STORAGE REPORT & VEHICLE MOVED

(SAID VEHICLE WAS LOCKED & SECURE.)

AUTO STATUS ENTERED

Reporting Off: P. Brooks #5 11

Reviewed By:

COPIES TO:

VCLO

ACTION

APB Lett

APB Cancld

APB Lett

APB Cancld

DA 00002818

EX 200 - 000155

Riverside Police Department
PROPERTY REPORT

File No	Date/Time

Type of Complaint	Address		
Victim	Address		
Arrestee	Charge	Booking No.	Other
Arrestee	Charge	Booking No	Other

Reason Property Held:	Evidence	Lost/Found	Finder to be Notified	Safe Keeping	Destruction	Other
	☒	☐	Yes ☐ No ☐	☐	☐	☐

Finder	Address		Phone No
Owner	Address		Phone No
Property taken into custody at	From		Date/Time
By Officer(s)	Supvr Approving	RMC/RSC Case No	Property Clerk

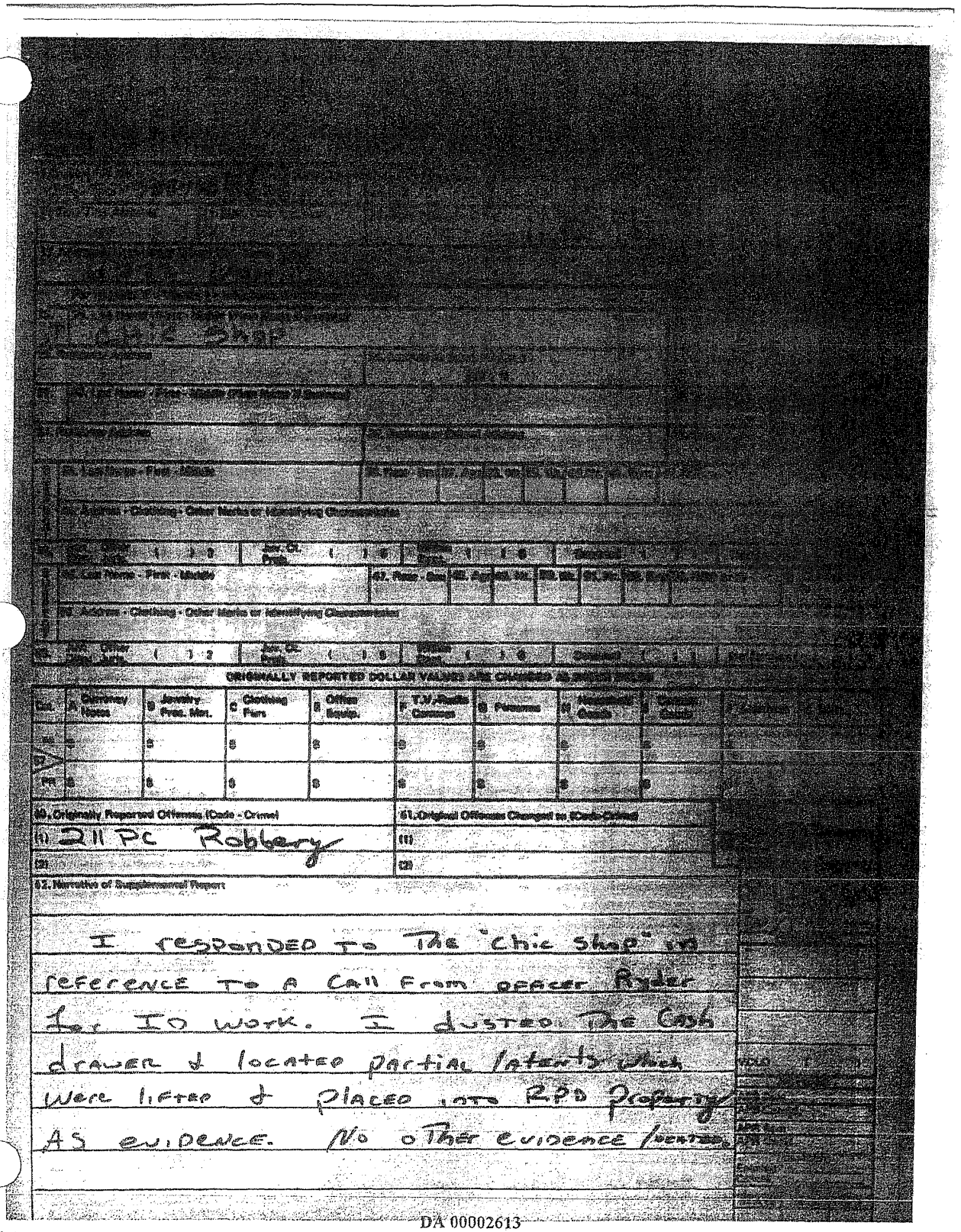
Item	Owner	Itemize, Describe, List Serial Numbers Only 1 article per line	Prop Loc.	Rel. Disp.
1		ONE FLOWER [illegible] SPEAR		
		4' ARROW with Bow Wood Cuts,		
		Model "[illegible], 22 with SEE I.C.S. #537-		
		SEVERAL unfinished 22 child Arrows		
		[illegible]		
		[illegible] FISHING PERMIT #		
		12W92 IN THE NAME WADE AIR		
		WALTERS		
		[redacted]		

Person Clearing Property Report	Date	Owner Notified By	Via	Date/Time
Item(s)	Released By	Received By	Address	Date/Time
Item(s)	Released By	Received By	Address	Date/Time
Item(s)	Released By	Received By	Address	Date/Time
Item(s)	Released By	Received By	Address	Date/Time

200-14-1/9-84

DA 00002819

EX 200 - 000156



ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED TO PRESENT PRICES

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	D Office Equip.	F T.V./Radio Cameras	G Firearms	H Household Goods	I Consumer Goods	J Livestock	K Motor Vehicles
(1)	$	$	$	$	$	$	$	$		
(2)										
TOT	$	$	$	$	$	$	$	$		

60. Originally Reported Offenses (Code - Crime)
(1) 211 PC Robbery
(2)

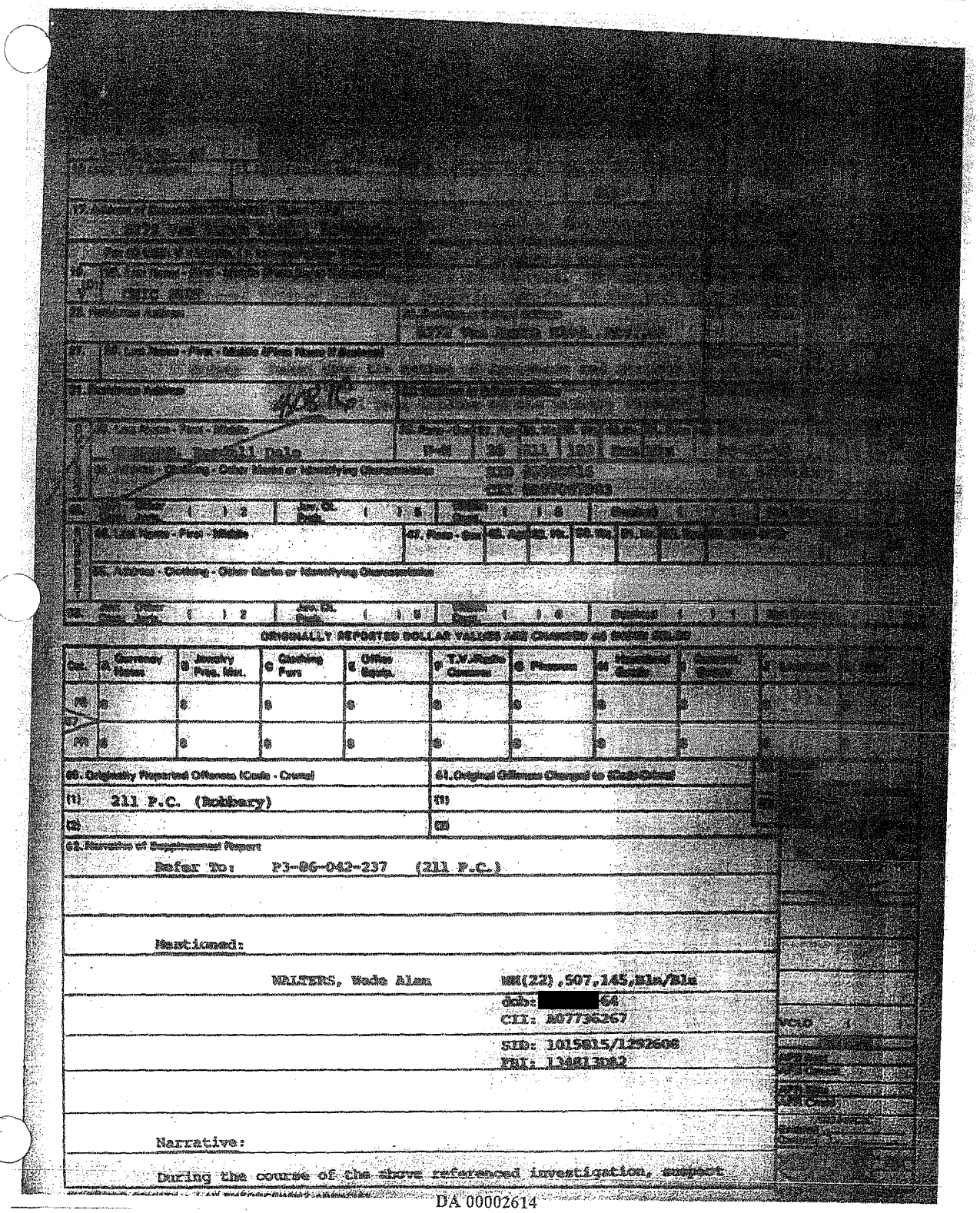
61. Original Offenses Changed to (Code-Crime)
(1)
(2)

62. Narrative of Supplemental Report:

I responded to the "Chic Shop" in reference to a call from officer Ryder for IO work. I dusted the cash drawer & located partial latents which were lifted & placed into RPD property as evidence. No other evidence found.

DA 00002613

EX 201 - 000157



ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	D Office Equip.	E T.V./Radio Cameras	F Firearms	G Household Goods	H Consumable Goods	I Livestock	J Misc.
PR	$	$	$	$	$	$	$	$	$	$
RV										
PP	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime) | 61. Original Offenses Charged on (Code Crime)

(1) 211 P.C. (Robbery) | (1)

(2) | (2)

63. Narrative of Supplemental Report

Refer To: P3-06-042-237 (211 P.C.)

Mentioned:

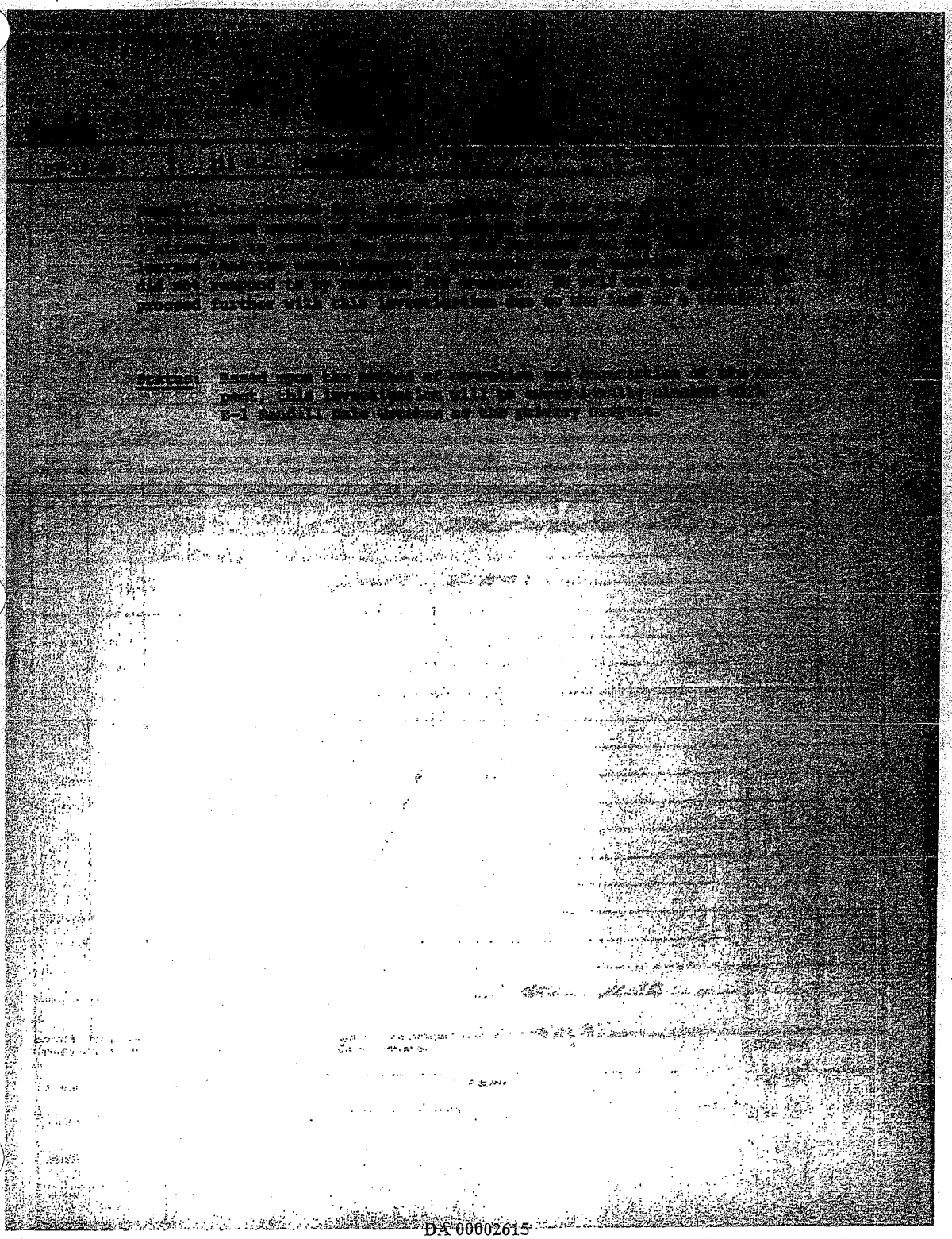
WALTERS, Wade Alan M(22),507,145,Bla/Bla
dob: [redacted]64
CII: A07736267
SID: 1015815/1232608
FBI: 134813DB2

Narrative:

During the course of the above referenced investigation, suspect

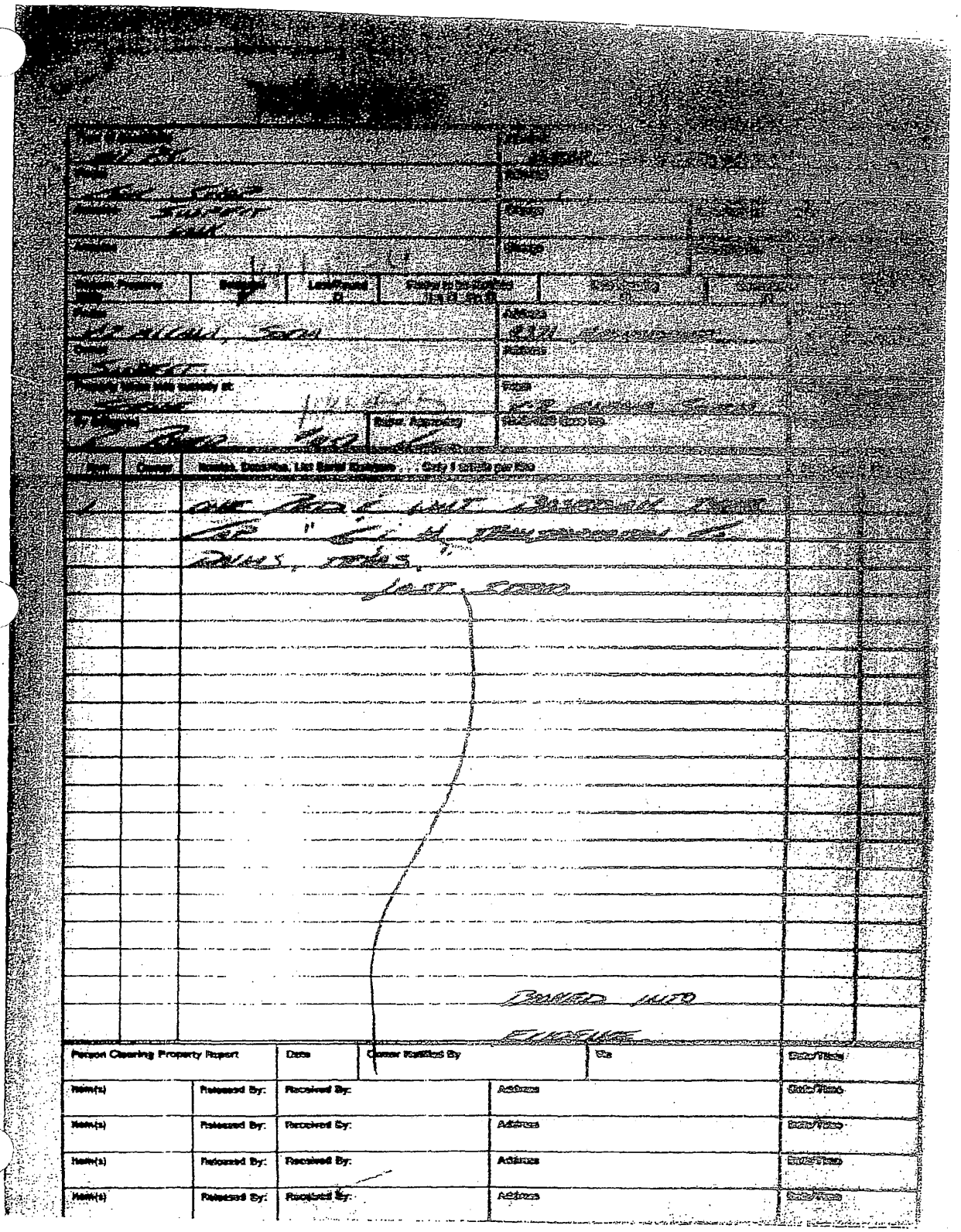
DA 00002614

EX 201 - 000158



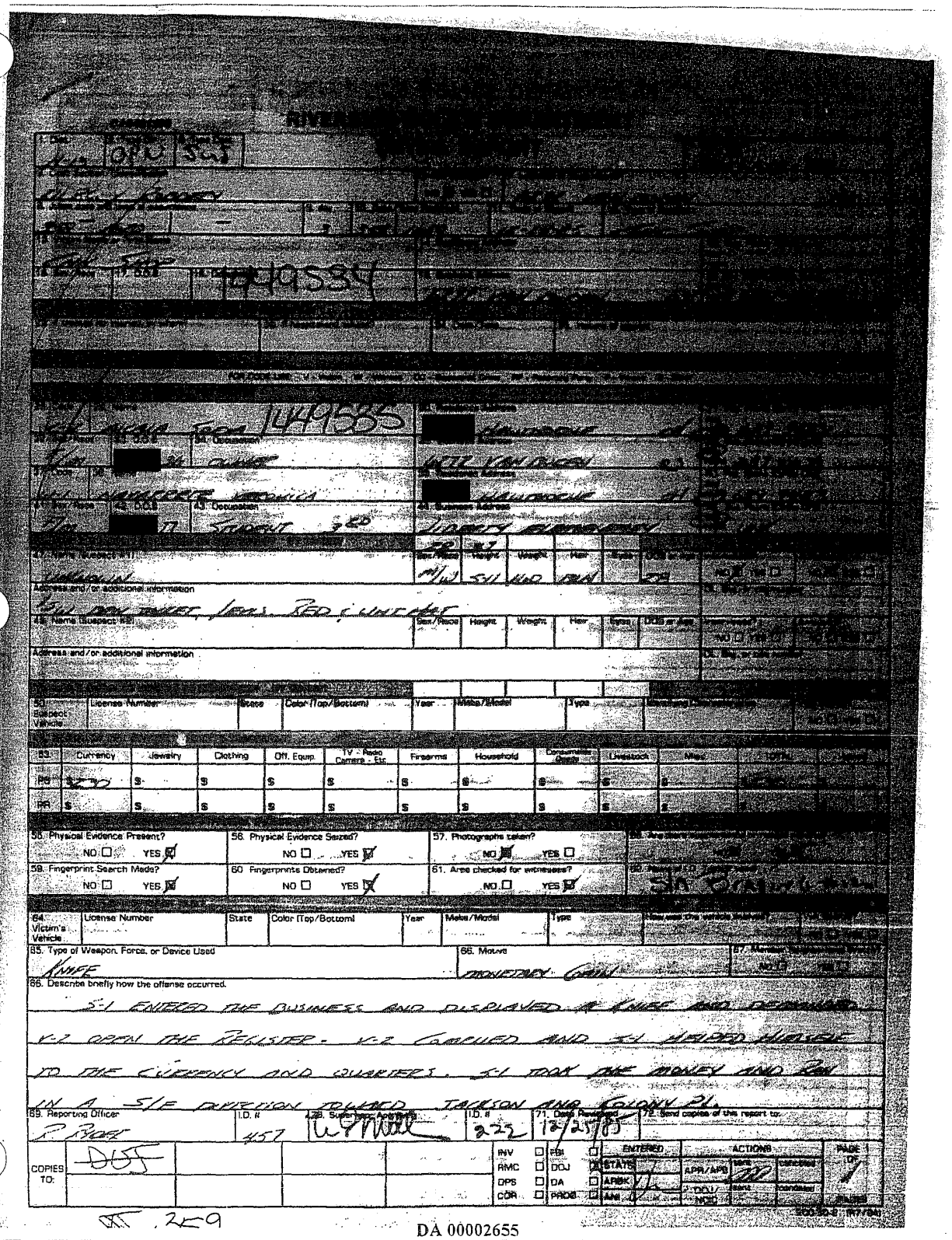
DA 00002615

EX 201 - 000159



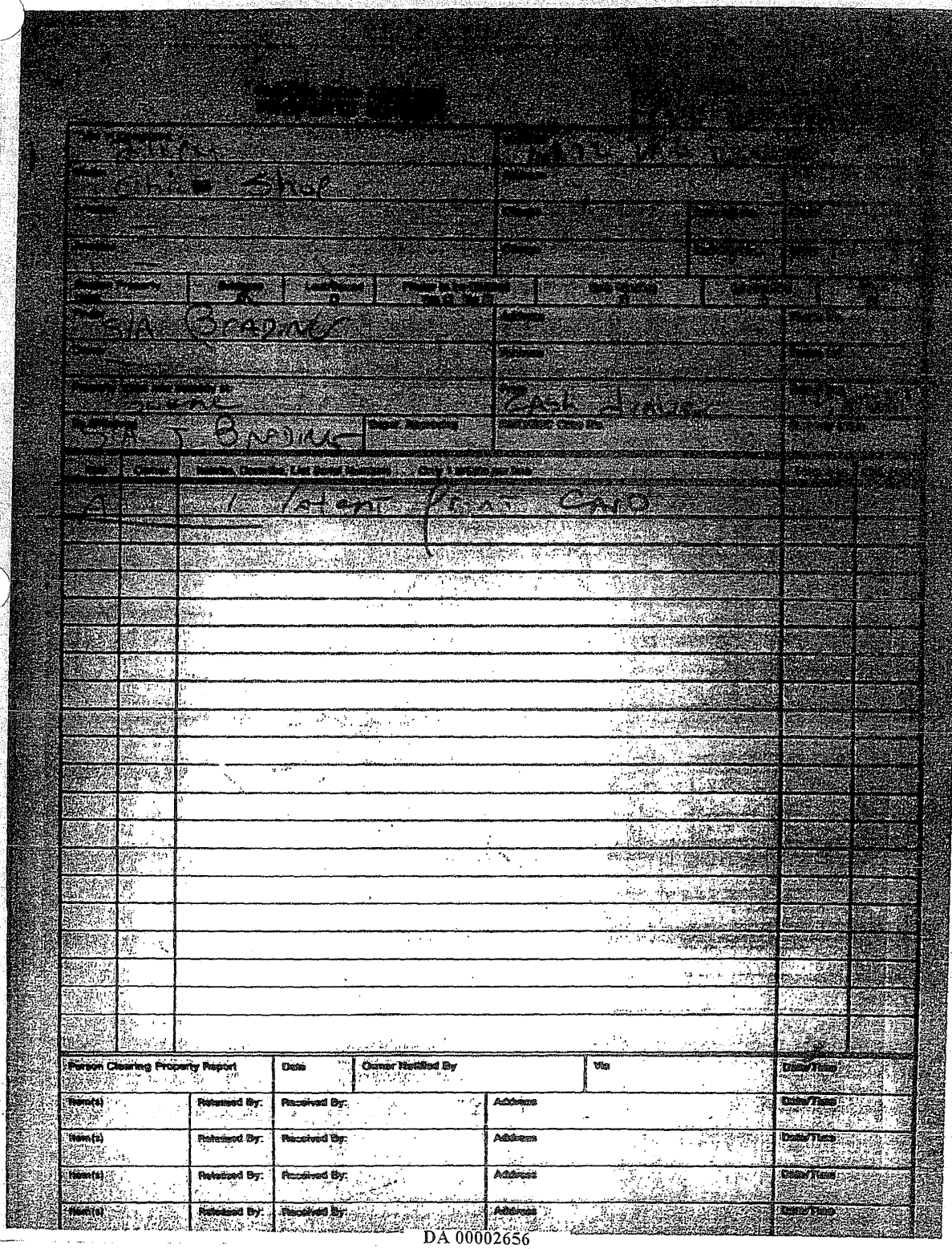
DA 00002616

EX 201 - 000160



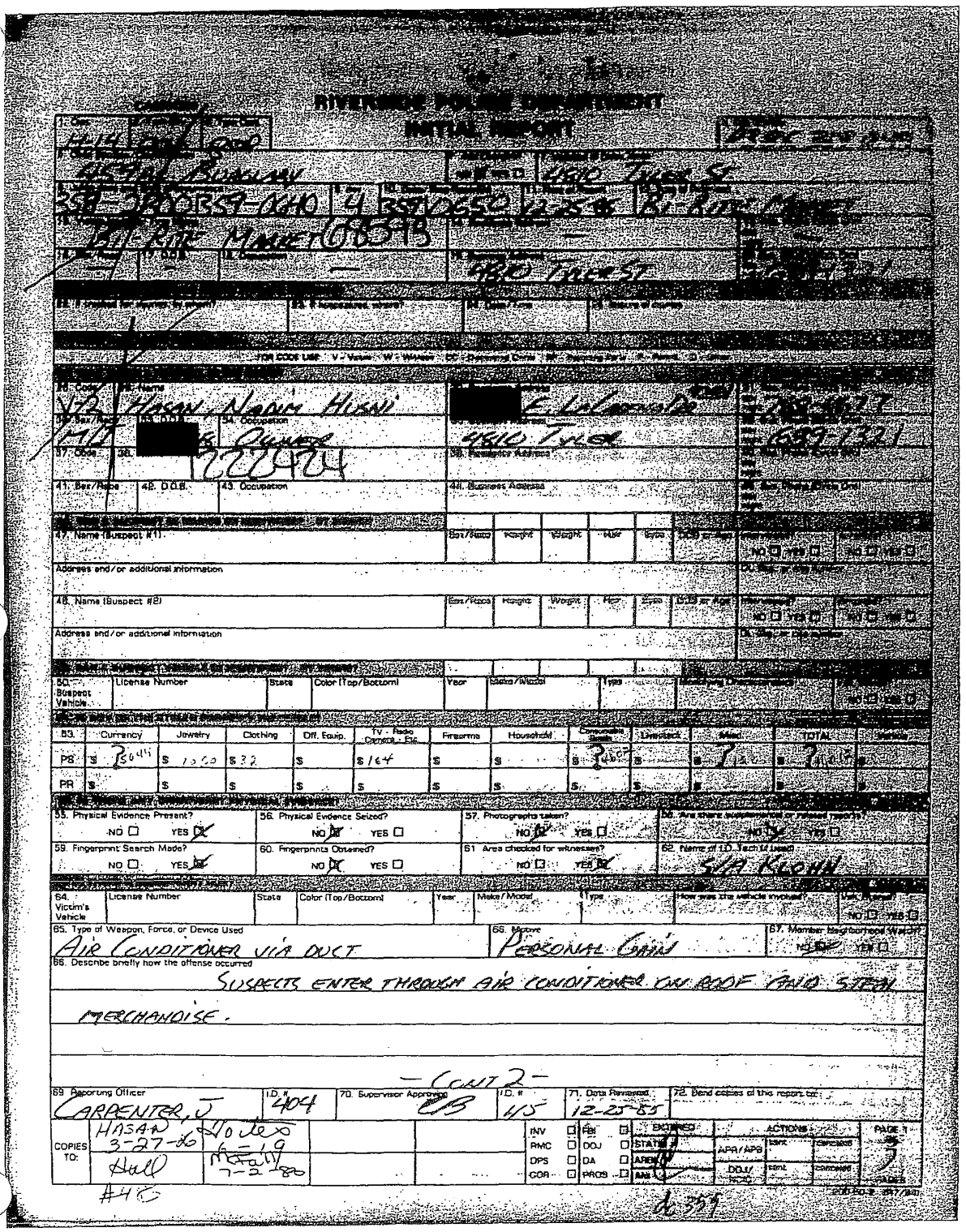
DA 00002655

EX 201 - 000161



DA 00002656

EX 201 - 000162

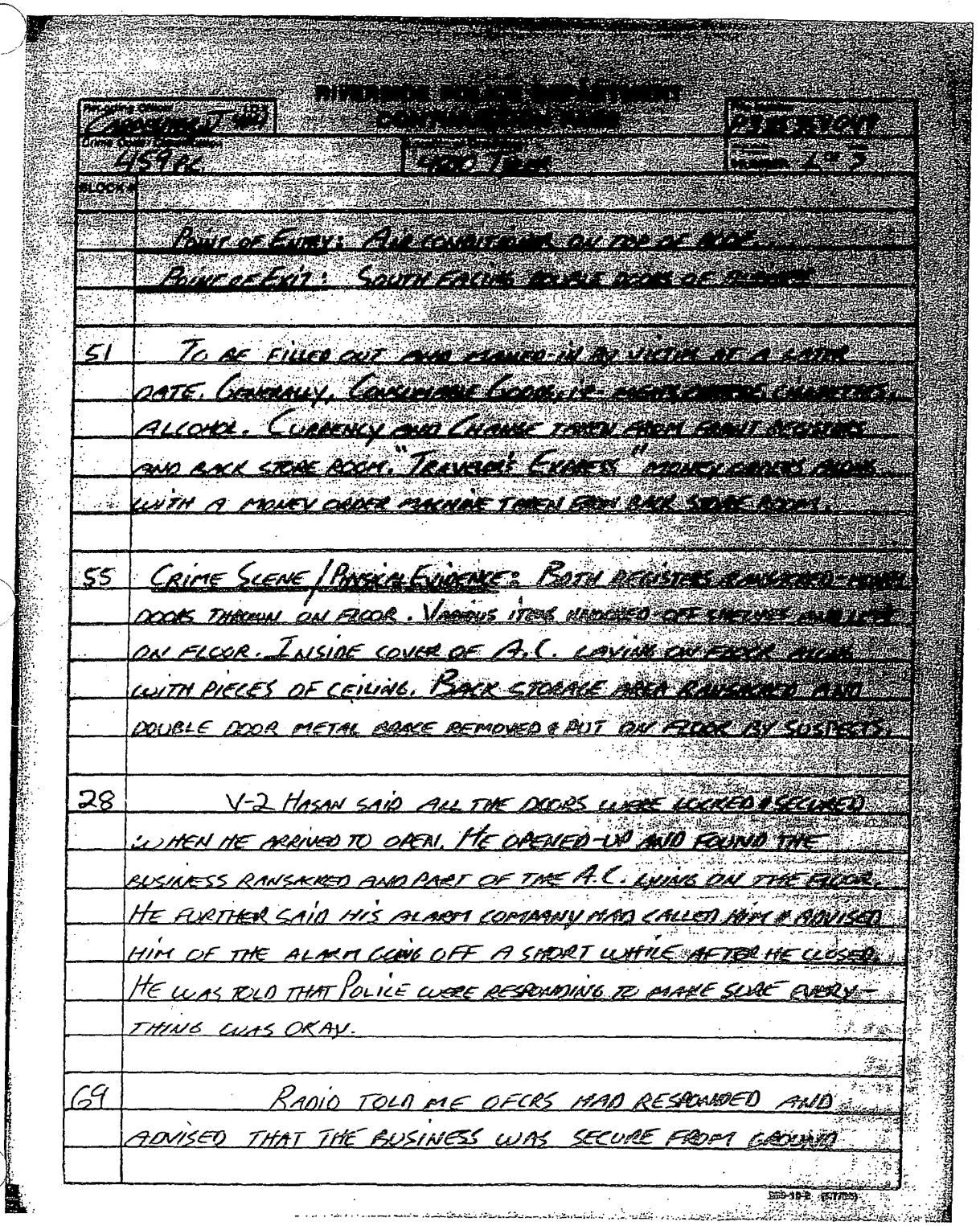


RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

#14 Bank Robbery
Bank of America
4500 Tyler St
Riverside
Lt. Pic Make 068913
4810 Tyler
Hasan, Nasir Hisni
Owner
Occupation
Business Address
Name (Suspect #1)
Name (Suspect #2)
Address and/or additional information
License Number
State
Color (Top/Bottom)
Year
Make/Model
Type
Currency
Jewelry
Clothing
Off. Equip.
TV - Radio - Camera - Etc.
Firearms
Household
Consumable Goods
Livestock
Misc.
TOTAL
PR
Physical Evidence Present? NO ☐ YES ☒
Physical Evidence Seized? NO ☒ YES ☐
Photographs taken? NO ☒ YES ☐
Fingerprint Search Made? NO ☐ YES ☒
Fingerprints Obtained? NO ☒ YES ☐
Area checked for witnesses? NO ☐ YES ☒
Name of I.D. Tech. Used: SGT KLOHN
Victim's Vehicle
How was the vehicle involved?
Type of Weapon, Force, or Device Used: AIR CONDITIONER VIA DUCT
Motive: PERSONAL GAIN
Member Neighborhood Watch?
Describe briefly how the offense occurred:
SUSPECTS ENTER THROUGH AIR CONDITIONER ON ROOF AND STEAL MERCHANDISE.
- COUNT 2 -
Reporting Officer: CARPENTER, J. I.D. # 404
Supervisor Approving: CB I.D. # 415
Date Reviewed: 12-25-85
Send copies of this report to:
COPIES TO: HASAN 3-27-86 Notified A-19
Hall 7-2-86
#415
INV ☐ FBI ☐ RMC ☐ DOJ ☐ DPS ☐ DA ☐ CDR ☐ PROS ☐
ACTIONS: APPR/APB ☐ DOJ/NCIC ☐
PAGE 1 OF 2 PAGES

DA 00002565

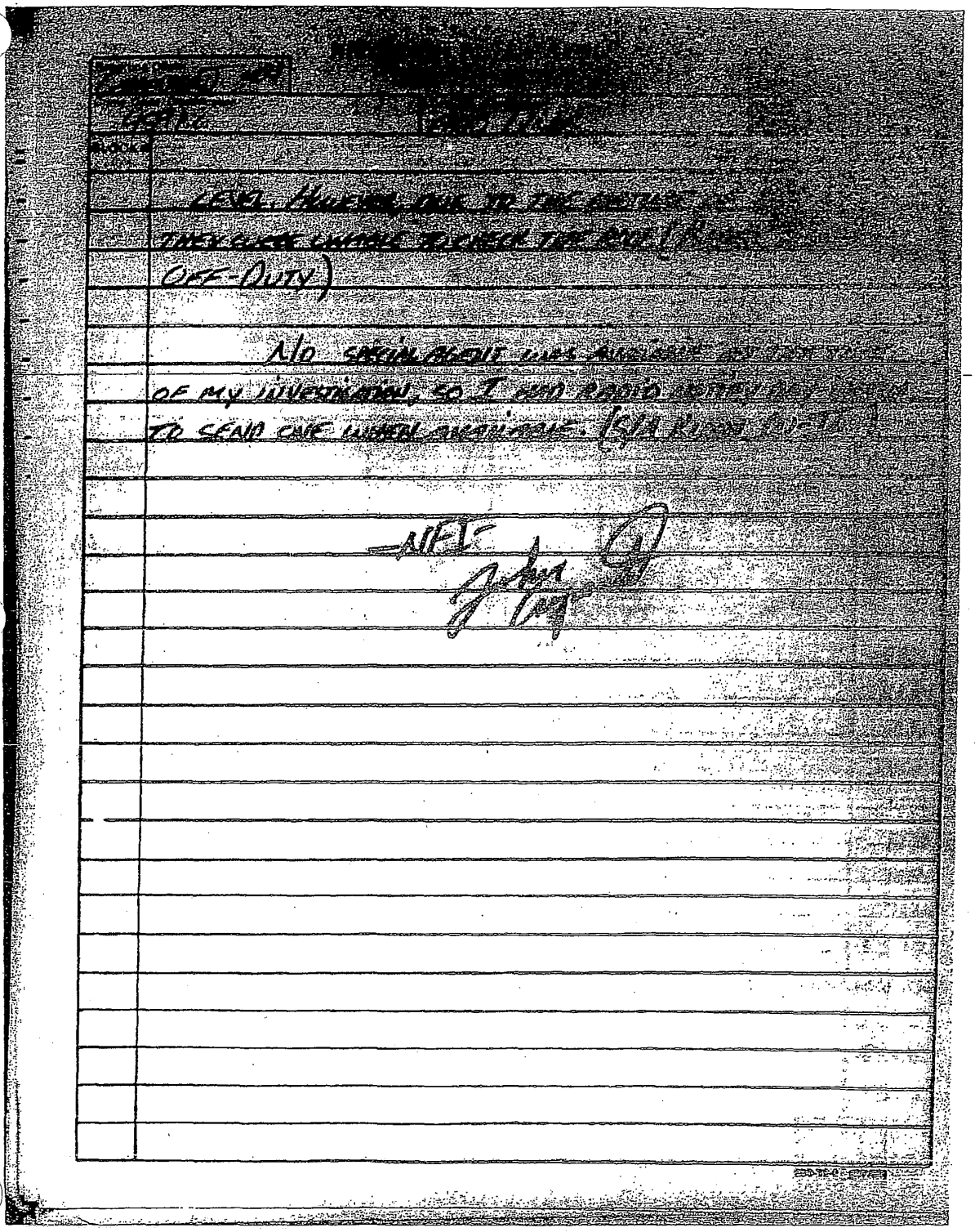
EX 202 - 000163



BLOCK #	
	POINT OF ENTRY: AIR CONDITIONER ON REAR OF BLDG.
	POINT OF EXIT: SOUTH CAL[illegible] DOUBLE DOORS OF BLDG.
51	TO BE FILLED OUT AND SIGNED BY VICTIM OF A SIMILAR DATE. GENERALLY, CONSUMABLE GOODS, I.E. CIGARETTES, CIGARETTES, ALCOHOL, CURRENCY AND CHANGE TAKEN FROM CASH REGISTERS AND BACK STORE ROOM. "TRAVELERS EXPRESS" MONEY ORDERS TAKEN WITH A MONEY ORDER MACHINE TAKEN FROM BACK STORE ROOM.
55	CRIME SCENE / PHYSICAL EVIDENCE: BOTH REGISTERS RANSACKED, [illegible] DOORS THROWN ON FLOOR. VARIOUS ITEMS KNOCKED OFF SHELVES AND LAID ON FLOOR. INSIDE COVER OF A.C. LAYING ON FLOOR ALONG WITH PIECES OF CEILING. BACK STORAGE AREA RANSACKED AND DOUBLE DOOR METAL BRACE REMOVED & PUT ON FLOOR BY SUSPECTS.
28	V-2 HASAN SAID ALL THE DOORS WERE LOCKED & SECURED WHEN HE ARRIVED TO OPEN. HE OPENED-UP AND FOUND THE BUSINESS RANSACKED AND PART OF THE A.C. LYING ON THE FLOOR. HE FURTHER SAID HIS ALARM COMPANY HAD CALLED HIM & ADVISED HIM OF THE ALARM GOING OFF A SHORT WHILE AFTER HE CLOSED. HE WAS TOLD THAT POLICE WERE RESPONDING TO MAKE SURE EVERY-THING WAS OKAY.
69	RADIO TOLD ME OFCRS HAD RESPONDED AND ADVISED THAT THE BUSINESS WAS SECURE FROM [illegible]

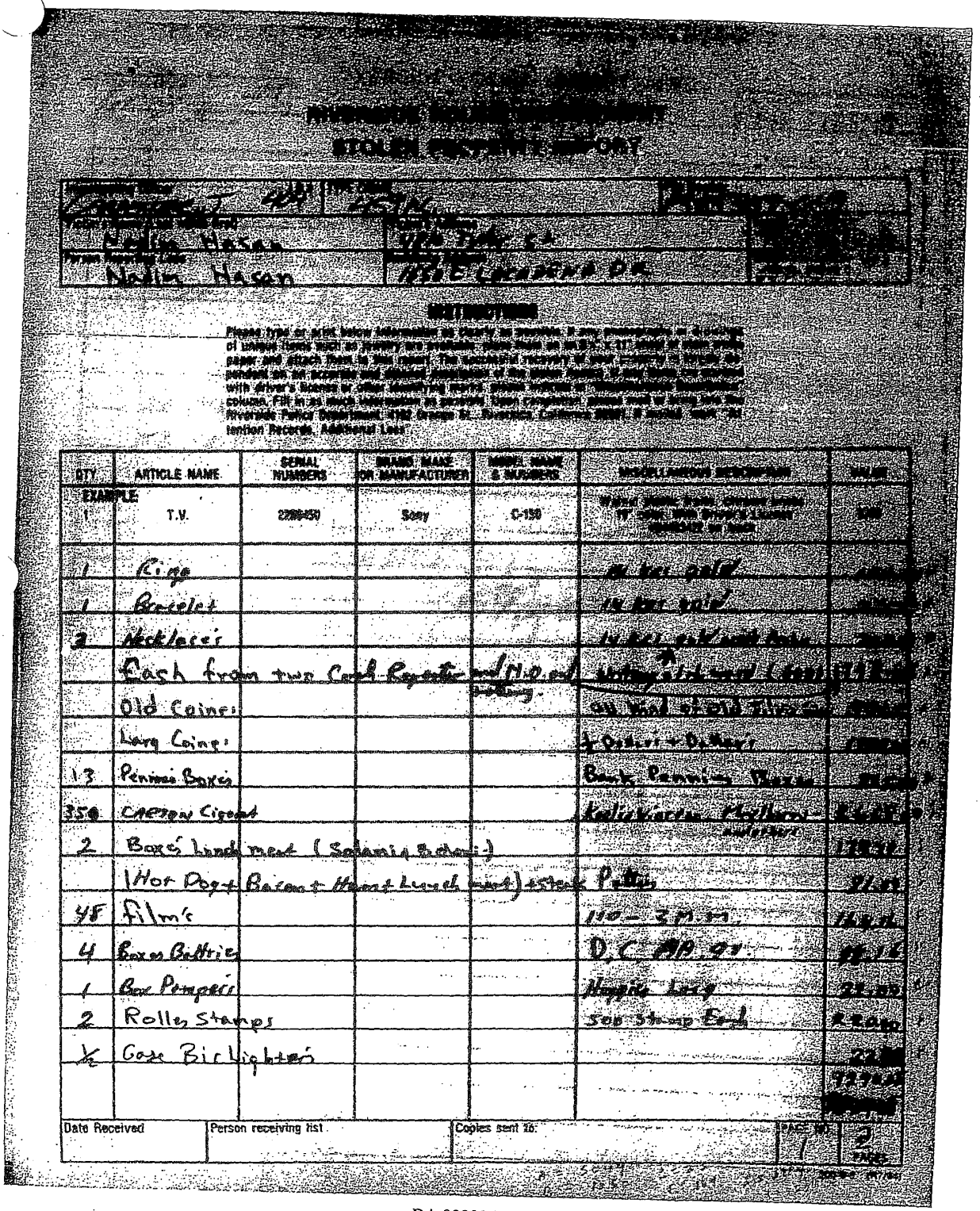
DA 00002566

EX 202 - 000164



DA 00002567

EX 202 - 000165



STOLEN PROPERTY REPORT

Nadim Hasan

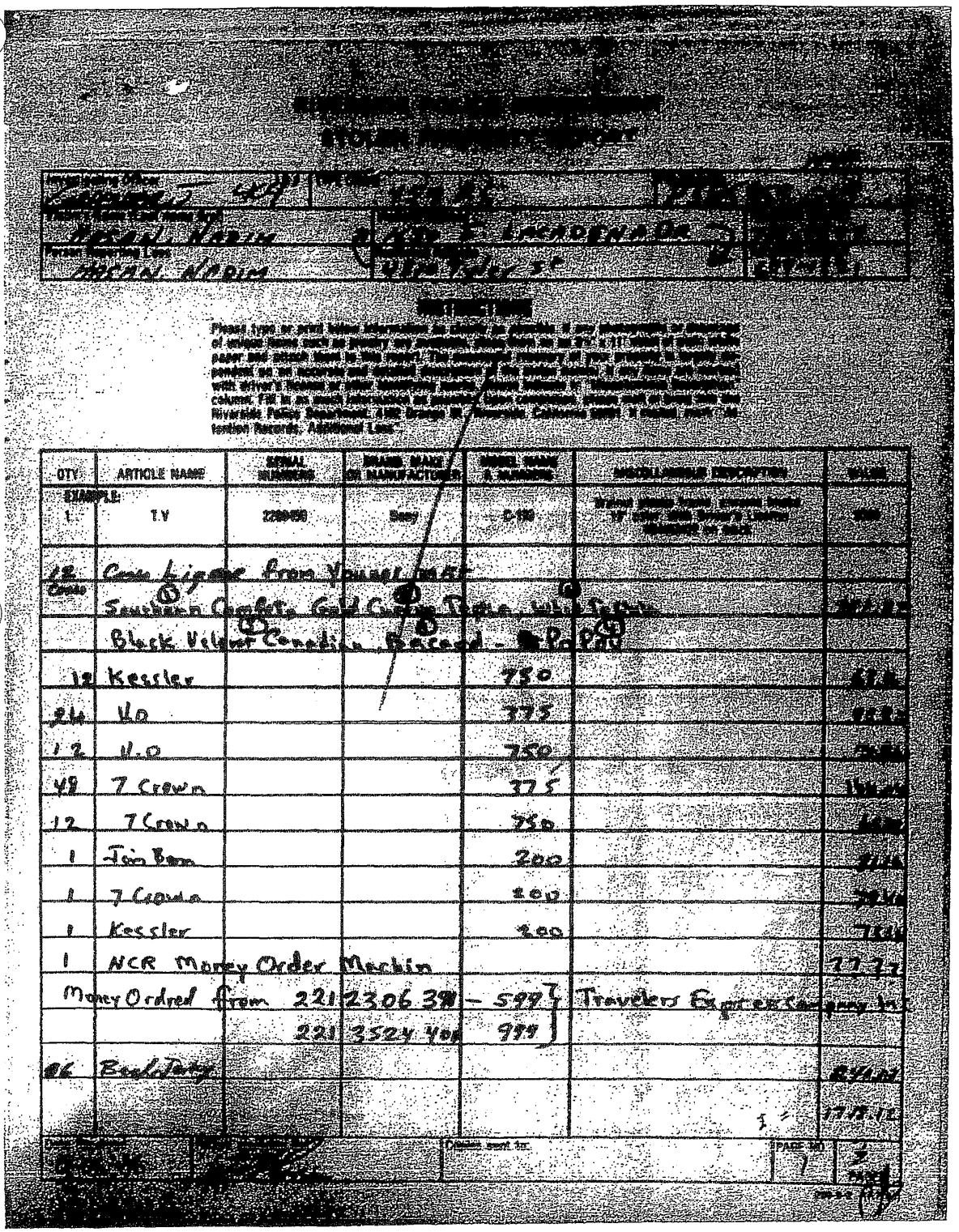
Please type or print below information as clearly as possible. If more space is required, list additional items on plain paper and attach them to this report. Be sure to describe each item completely, including any serial numbers, owner applied numbers, or other identifying marks. If any items are recovered, you will be notified and must appear in person at the station listed above to claim your property. Bring with you any receipts you have for the items listed. Fill in all blank spaces. If you have no information for a particular column, write "NONE". Return completed report to Riverside Police Department, 4102 Orange St., Riverside, California 92501, Attention: Records, Additional Lists:

QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND NAME OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2288450	Sony	C-150	Wood cabinet, 25" screen, Sony Trinitron, remote control	$200
1	Ring				14 kt. gold	
1	Bracelet				14 kt. gold	
2	Necklaces				14 kt. gold w/ pendant	
	Cash from two Cash Registers and P.O.				Missing $ from cash drawer	
	Old Coins				all kind sheets filled	
	Long Coins				2 Rolls + 2 Rolls	
13	Pennies Boxes				Bank Pennies Boxes	
350	Cartons Cigarettes				Marlboro Menthol	
2	Boxes Lunchmeat (Salami & Bologna)					
	Hot Dogs + Bacon + Meat Lunch meat				Pattie	
48	Film's				110 - 24 exp.	
4	Boxes Bottles				D.C AP 91	
1	Box Pampers				Huggies Long	
2	Rolls Stamps				500 Stamp Each	
½	Case Bic Lighters					

Date Received | Person receiving list | Copies sent to: | PAGE NO. 1 | 2 PAGES

DA 00002568

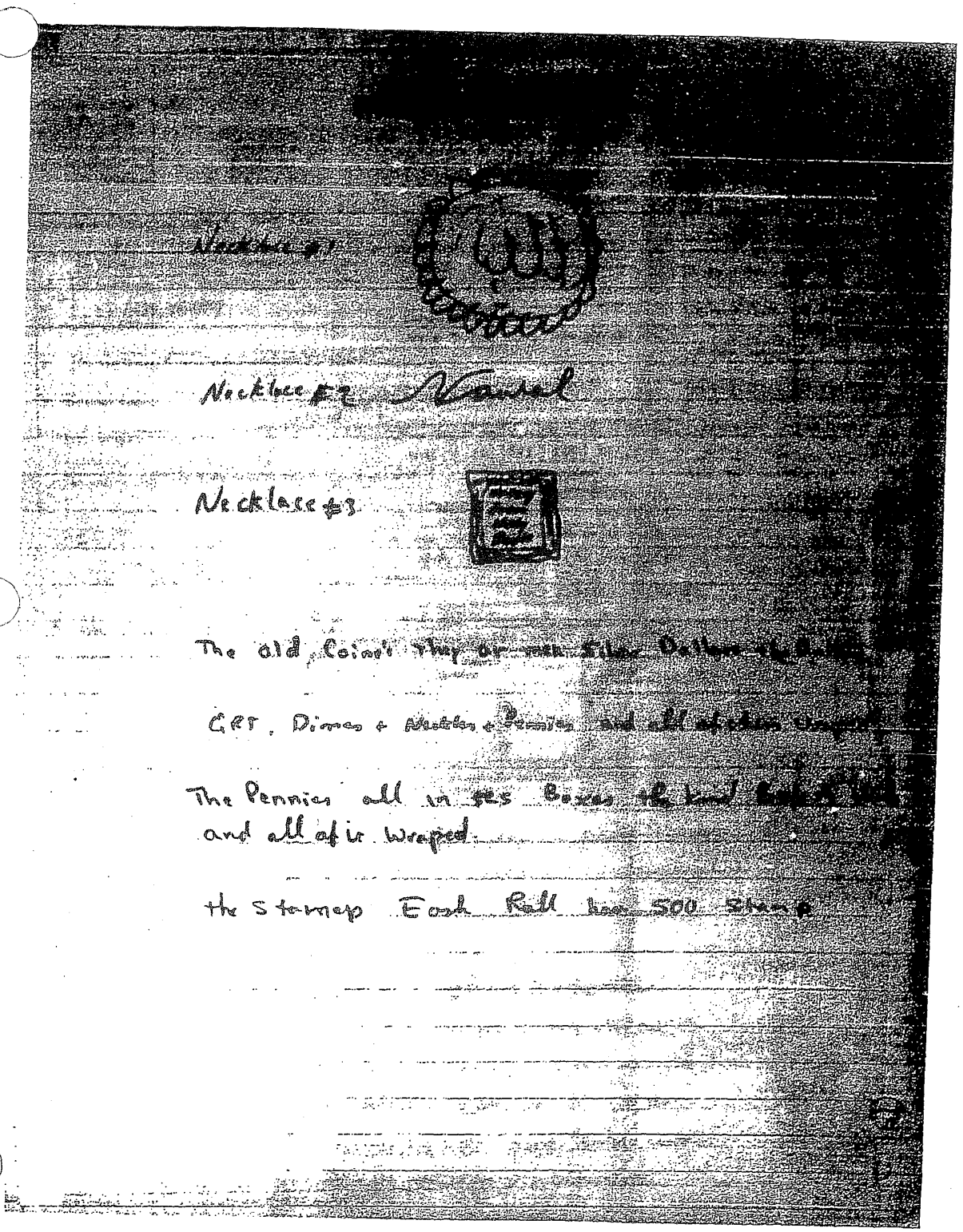
EX 202 - 000166



QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND NAME OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V	2289456	Sony	C-190		190
12 Cases	Crown Liquor from Young Mart					
	Southern Comfort Gold Cream Liquor with Tequila					
	Black Velvet Canadian Blended Whiskey					
12	Kessler			750		
24	V.O			375		
12	V.O			750		
48	7 Crown			375		
12	7 Crown			750		
1	Jim Beam			200		
1	7 Crown			100		
1	Kessler			200		
1	NCR Money Order Machine					
	Money Ordred from	221 2306 38		599	Travelers Express Company Inc	
		221 3524 40		999		
86	Beer Tax					

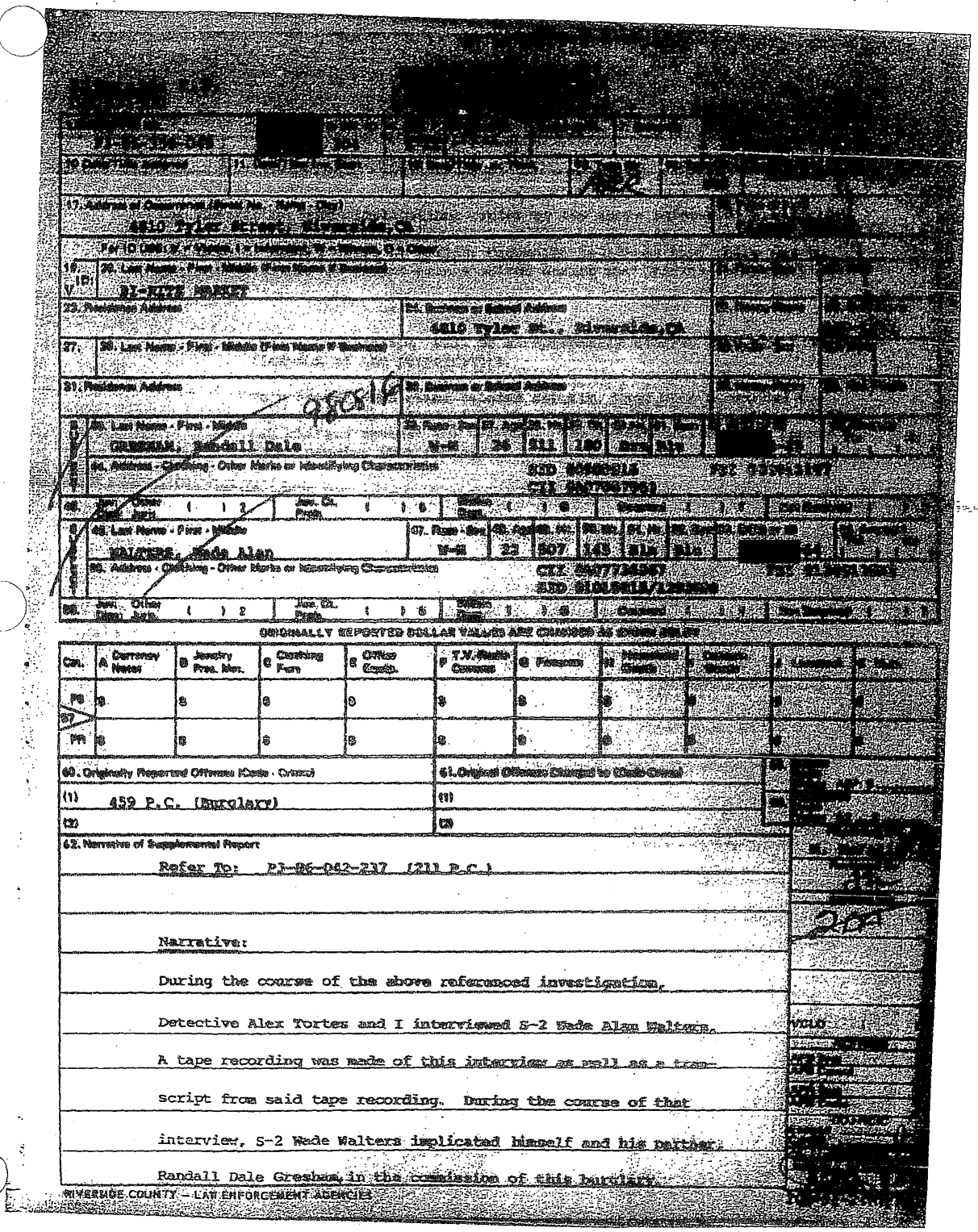
DA 00002569

EX 202 - 000167



DA 00002570

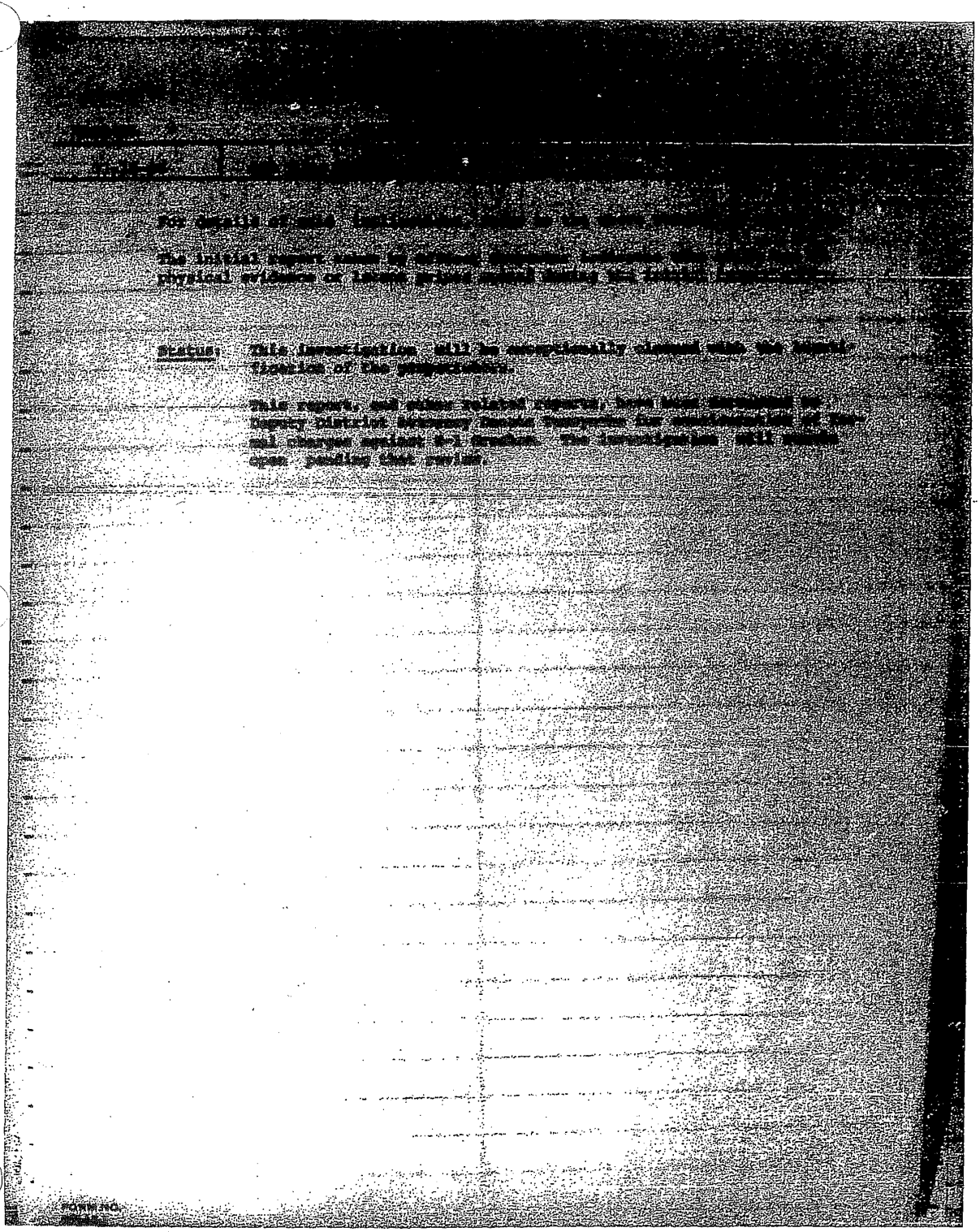
EX 202 - 000168



RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002571

EX 202 - 000169



DA 00002572

EX 202 - 000170

CA0331300

RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

1 Dist: 605 | 2 Type Cir: 11 | 3 Type Cont: 1 | 4 File Number: P3804223 7

5 Code Section/Classification: 211 PC ROBBERY | 6 Add Charges? NO ☒ YES ☐ | 7 Location of Occurrence: 66661 INDIANA RIV

8 Julian date and time of occurrence: 042 – 0155 | 9 day: 3 | 10 Date/Time Reported: 042 2154 | 11 Date of Report: 2-11-86 | 12 Type of Premises: FAST FOODS TACO BELL

13 Victim Name or Firm Name: TACO BELL | 14 Residence Address | 15 Res. Phone (Circle One) day night

16 Sex-Race | 17 DOB | 18 Occupation: [redacted] | 19 Business Address: 66661 INDIANA | 20 Bus. Phone (Circle One) day night 781-7833

21. WAS THERE A MAJOR INJURY OR RAPE INVOLVED?

22 If treated for injuries, by whom? | 23 If hospitalized, where? | 24 Date/Time | 25 Nature of Injuries

26. WILL THE VICTIM PROSECUTE?

27. WAS THERE A WITNESS TO THE CRIME? YES (For Code Use: V - Victim, W - Witness, DC - Discovered Crime, RP - Reporting Party, P - Parent, O - Other)

28 Code	29 Name	30 Residence Address	31 Res. Phone (Circle One)
W1	TOURIGNY PATRICIA ANNETTE	[redacted] PRESCOTT WY #B	day night 784-7256
32 Sex-Race: FW	33 DOB: [redacted]62	34 Occupation: SHIFT MANAGER	35 Business Address: 66661 INDIANA	36 Bus. Phone (Circle One) day night 781-7833
37 Code: W2	38 Name: SCARPINO PAUL DAVID	39 Residence Address: [redacted] EDITH AVE	40 Res. Phone (Circle One) day night 686-8670
41 Sex-Race: MW	42 DOB: [redacted]65	43 Occupation: SHIFT MANAGER	44 Business Address: 66661 INDIANA	45 Bus. Phone (Circle One) day night 781-7833

46. CAN A SUSPECT BE NAMED OR IDENTIFIED? BY WHOM? W1 W2

47 Name (Subject #1)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
THICK MUSTACH	MW	507	175	BLK	BRN		NO ☒ YES ☐	NO ☒ YES ☐

Address and other identifying information: CARRYING DL Brg or cite number

BLU JEANS, DEM JACKET, WHT SHIRT, NYLON OVER HEAD, BLUE BAG MARKED STAMPS

48 Name (Subject #2)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
							NO ☐ YES ☐	NO ☐ YES ☐

Address and other identifying information: DL Brg or cite number

49. CAN A SUSPECT VEHICLE BE IDENTIFIED? BY WHOM? NO ☒ YES ☐

License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	Identifying Characteristics	Veh. Stored?
							NO ☐ YES ☐

51. IS ANY OF THE STOLEN PROPERTY TRACEABLE?

	Currency	Jewelry	Clothing	Off. Equip.	TV, Radio, Camera, Etc.	Firearms	Household	Consumable Goods	Livestock	Misc.	TOTAL	Vehicle
PS	$500.00	$	$	$	$	$	$	$	$	$	$500.00	$
PP	$	$	$	$	$	$	$	$	$	$	$	$

54. IS THERE ANY SIGNIFICANT PHYSICAL EVIDENCE? NO ☐ YES ☐

54. Physical Evidence Recovered?	56. Physical Evidence Seized?	57. Photographs Taken?	58. Are there supplemental or related reports?
NO ☒ YES ☐	NO ☒ YES ☐	NO ☒ YES ☐	NO ☐ YES ☒
59. Fingerprints Obtained?	**60. Fingerprints Obtained?**	**61. Area checked for witnesses?**	**62. Name of I.D. Tech (if used)**
NO ☒ YES ☐	NO ☒ YES ☐	NO ☐ YES ☒	N/A

63. IS THERE A SIGNIFICANT M.O.? NO ☐ YES ☐

64	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	How was the vehicle involved?	Veh. Stored?
								NO ☒ YES ☐

65. Describe how crime occurred: SAWED OFF SHOT GUN | 66. Motive: SELF GAIN | 67. Member Neighborhood Watch? NO ☒ YES ☐

SUSPECT ENTERED RESTAURANT JUMPED OVER COUTER WITH SHOT GUN DEMANDED ALL THE MONEY. SHUT EMPLAYEES IN CLOSET LEFT T/O RESTAURANT WITH BAG OF MONEY.

52 615 CURRENCY

FU

917

RESTRICTED INFORMATION
Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.

DATE: 2-3-87
TO: DAO
BY:
RIVERSIDE POLICE DEPT.

ENTERED: STATE, ARRB, DOJ NCIC | ACTIONS: APPEARED YES, arrested, cleared, arrested | PAGE 1 OF 6 PAGES

DA 00002691

EX 203 - 000171

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer FOY I.D.# 317 | File Number P385042 287
Crime Code / Classification 211 pc Robbery | Location of Occurence 10606 INDIANA | PAGE NUMBER 2 OF 10

BLOCK #

37A W/3 BUSICK MITCHELL AIAN
[redacted] MAYWOOD BLOOMINGTON 877-3440
DOB- [redacted]-65

37B W/4 MIX CARL STEPHEN
[redacted] TANGERINE LN RIV WK PH - 887-4716
DOB [redacted]-64

37C W/5 MIX CHRISTINE RENE
[redacted] TANGERINE LN RIV WK 887-4716
DOB [redacted]-63

58 PREVIOUS 211 pc REPORT TAKEN 10-8-85 FILE # P385282 001

53 SEE STOLEN PROPERTY REPORT

DETAILS:

28 OFFICER START AND I RESPONDED TO TACO BELL. I SPOKE TO W1/TOURIGNY. SHE TOLD ME SHE WAS PREPARING FOOD WHEN A MALE SUSPECT JUMPED THE FRONT COUNTER AND SAID "... GIVE ME ALL YOUR MONEY..." SHE SAW THE SUSPECT HOLDING A SAWED OFF SHOT GUN. THE GUN HAD ONE BARREL, BROWN BUTT AND THE END OF THE BARREL WAS JAGGED WHERE IT HAD BEEN CUT. THE SUSPECT PUSHED THE EMPLOYEES

200-12-8 (R1/84)

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer FUY ID# 217 | File Number P 384042 037

Crime Code Classification 211 PC Robbery | Location of Occurence Colonel INDIANA | PAGE NUMBER 3 OF 6

BLOCK # | COURT:

TO THE BACK. HE HAD THE TWO CUSTOMERS IN FRONT COME TO THE BACK. THE SUSPECT HAD W1/TOURIGNY OPEN THE OFFICE DOOR, GET HER KEYS AND THE CASH BOX. HE TOLD EVERYONE NOT TO MOVE, NOT TO TOUCH ANYTHING OR ELSE "... I'LL SHOOT..." HE SAID "... I KNOW YOU HAVE REGISTER BAGS, WHERE ARE THEY ..." W1/TOURIGNY GOT THE BAGS FROM THE OFFICE AND HANDED THEM TO HIM. HE SAID "... I DO THIS FOR A LIVING, YOU DO THE WORK, PUT THEM IN THE BAG..." SHE PUT THE MONEY IN HIS BLUE AND MARROON BAG. HE TOLD EVERYONE TO GET INTO THE CLOSET. HE CLOSED THE DOOR AND PUT A TRASH CAN IN FRONT OF DOOR. HE TOLD THEM NOT TO CALL THE POLICE FOR 5 MIN. SHE HEARD THE SUSPECT GO INTO THE OFFICE AND MAKE A PHONE CALL. HE SAID "... JERRY I'VE GOT THE MONEY I'M ON MY WAY OUT..." SHE HEARD THE DOOR CLOSE AND FIGURED HE LEFT.

37 W2/SCARPINO TOLD ME HE WAS AT THE REGISTER TAKING A FOOD ORDER. HE SAW THE SUSPECT COME ACROSS THE COUNTER AND YELLING "GIVE ME ALL THE MONEY..." (S1) HE TOLD W2/SCARPINO TO GET THE MONEY FROM THE FLOOR SAFE LOCATED UNDER THE COUNTER UP FRONT. HE TOLD HIM, "IF THERE IS AN ALARM IN THE

200-12-2 (R7/84)

DA 00002693

EX 203 - 000173

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer FOY I.D.# 217 | File Number P38L0042337
Crime Code / Classification 211pc. ROBBERY | Location of Occurence 16161 INDIANA | PAGE NUMBER 4 OF 6

BLOCK #

CONT

SAFE YOU BETTER NOT TOUCH IT." WHILE WALKING TO THE BACK OF THE RESTAURANT THE SUSPECT PUSHED THE GUN INTO HIS BACK TELLING HIM TO HURRY UP HE ONLY HAD 25 SECONDS. WHILE LOCKED IN THE CLOSET HE HEARD THE SUSPECT SAY "... OH THEY FIXED THE BACK DOOR SINCE I WAS HERE LAST..."

37A W-3/BUSICK TOLD ME HE RECOGNIZED THE SUSPECT FROM THE LAST ROBBERY. HE SAID THE SUSPECT POINTED THE GUN AT HIM AND TOLD HIM HE BETTER WAIT 5 MIN. THIS TIME LAST TIME YOU DID NOT WAIT. THE REST OF W37A/BUSICK'S STATEMENT WAS THE SAME AS W-1, W-2 STATEMENTS.

37b W4/HIX TOLD ME HE AND HIS WIFE, (W5/NIX) WERE ORDERING FOOD WHEN THE SUSPECT CAME THROUGH THE DOOR AND SHOUTED "... DON'T ANYBODY MOVE THIS IS A ROBBERY..." THE SUSPECT JUMPED UP ON THE COUNTER, W4/HIX WENT TOWARDS THE DOOR. THE SUSPECT SAID "... GET BACK HERE OR I'LL SHOOT YOU..." HE (W4/HIX) TOOK HIS WIFES PURSE AND PUT IT UNDER THE COUNTER. THE SUSPECT TOLD HIM TO WATCH THE DOOR SO NO ONE ELSE WOULD COME IN OR HE WOULD HAVE TO "... BLOW THEM AWAY..." AFTER

200-12-2 (R7/84)

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer FOY I.D.# 219 | File Number P3860432 37
Crime Code · Classification 211 PC ROBBERY | Location of Occurence 6061 INDIANA | PAGE NUMBER 5 OF 6

BLOCK # COUNT

GETTING ALL THE MONEY FROM THE REGISTERS THE SUSPECT PUT EVERYONE IN THE CLOSET. THE SUSPECT DID NOT LOCK THE DOOR JUST PUT A TRASH CAN IN FRONT OF THE DOOR. HE SAID THEY COULD COME OUT IN 5 MIN.

37C WS 1/14 SAID SHE HAD CASHED HER CHECK OF $1000.00. SHE WAS WORRIED ABOUT THE SUSPECT TAKING HER PURSE. SHE SAID THE SAME THING AS HER HUSBAND. WHEN SHE CAME FROM THE CLOSET SHE WENT TO THE FRONT COUNTER AND FOUND HER PURSE, HER HUSBAND LEFT UNDER THE COUNTER THE MONEY WAS ALL THERE.

THE SUSPECT KNEW EXACTLY WHERE THE SAFE WAS IN THE OFFICE. THE FLOOR SAFE WAS ON THE FRONT AND THAT EACH REGISTER HAD A CASH BAG. HE MADE SEVERAL STATEMENTS REFERING HE HAD BEEN AT THE TACO BELL BEFORE.

THE SUSPECT WAS WEARING GLOVES SO PRINTS WERE NOT AVAILABLE. THERE WERE SEVERAL FOOTPRINTS ON THE FLOOR. IT WAS A TENNIS SHOE PRINT WITH A CHECKERED SOLE PATTERN.

DFoy wtc

200-12-2 (R7/84)

DA 00002695

EX 203 - 000175

RIVERSIDE POLICE DEPARTMENT
STOLEN PROPERTY REPORT

Investigating Officer	I.D.#	TYPE CRIME	File Number
KU4	217	211 pc Robbery	P3860422237
Victim's Name (Last name first)	**Victim's Address**		**Telephone Number**
TACO BELL	16161 INDIANA		781-7833
Person Reporting Loss	**Residence Address**		**Telephone Number**

INSTRUCTIONS

Please type or print below information as clearly as possible. If any photographs or drawings of unique items such as jewelry are available, place them on an 8½" x 11" sheet of plain white paper and attach them to this report. The successful recovery of your property is largely dependent on an accurate and detailed description of the stolen item(s). If any items are marked with driver's license or other identifying marks, please indicate in "Miscellaneous Description" column. Fill in as much information as possible. Upon completion, please mail or bring into the Riverside Police Department: 4102 Orange St., Riverside, California 92501. If mailed, mark "Attention Records, Additional Loss".

QTY	ARTICLE NAME	SERIAL NUMBERS	BRAND, MAKE OR MANUFACTURER	MODEL NAME & NUMBERS	MISCELLANEOUS DESCRIPTION	VALUE
EXAMPLE: 1	T.V.	2289450	Sony	C-150	Walnut plastic frame chrome knobs. 19" color. With Driver's License #D4453422 on back.	$380
1	CASH				UNDETERMINED AMOUNT	50000

Date Received	Person receiving list	Copies sent to	PAGE NO 16	16 PAGES

200-9-2 (R7-84)

DA 00002696

EX 203 - 000176

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 6/4/86

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Day
R3-86-042-237		304						

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			QPN	PER		

17. Address of Occurrence (Street No. - Name - City)

18. Type of Place

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes ( ) No ( )
GRESHAM, Randy								

44. Address - Clothing - Other Marks or Identifying Characteristics

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC (Armed Robbery)	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2 $

Reporting Off mb
McFall M.M

Reviewed By

COPIES TO
2 DA

VCLO ( )

ACTIONS
APR Sent
APB Cancld.
APR Sent
APR Cncld
DOJ-NCIC
Entered
Cancld.
ENTERED
STATS | ARBK | ANI

62. Narrative of Supplemental Report

Assisting Personnel:

1. Det. Alex Tortes — RPD/Robbery Detail
2. Det. Pat Spellman — RPD/Crimes Against Persons Detail
3. Deputy Muratet — RSO/Jail
4. Deputy Public Def. James Ashworth (Representing Suspect)
5. Tom Thornsley — RPD/Photo Technician

Evidence:

1. Photographs of lineup taken by Mr. Thornsley
2. Witness Admonition and Selection Forms (filed with respective crime reports).

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

1677 P2

200-52-2(RI/78)

DA 00002701

EX 203 - 000177

RIVERSIDE POLICE DEPT.

CONTINUATION SHEET

PAGE NO. 2 FILE NO. 86-042-237

6/4/86	TYPE OF REPORT 211 PC	INVESTIGATING OFFICER McFall

Refer To:

1. RSO Lineup Warning and Waiver Form.

2. RSO Lineup Composition Form.

Narrative:

On Thursday, 5/29/86, at 1330 hours, various witnesses were assembled at the Riverside Police Department for the purpose of viewing a photographic lineup containing a photograph of S-Wade and for viewing a live lineup containing S-Gresham. Det. Tortes conducted photographic lineup admonitions with the witnesses and had them view the photographic lineup containing S-Wade's photograph; the witnesses viewed the photographic lineup on an individual basis.

Det. Tortes and I read the in-person lineup admonition to the witnesses in two groups. The witnesses indicated that they understood the admonition and had no questions regarding same.

At approximately 1420 hours Det. Tortes and I escorted the witnesses to the county jail where they waited in the lobby area. Contact was made with Deputy Muratet who stated that he had pulled ten fill-in subjects from the tanks for use in this lineup. Mr. Ashworth arrived and requested to see a report which Det. Tortes provided him. This was a reported robbery which is being investigated in connection with this robbery series. Mr. Ashworth read this report then conferred with his client, S-Gresham. After this conference, Mr. Ashworth said that he wanted to make a record that he did not wish to go ahead with the lineup at this time without all of the crime reports available to him, however, his client, (Gresham), did want to proceed.

At this point, investigating officers and Mr. Ashworth entered the holding tank and composed the lineup. Mr. Ashworth participated in the selection process by selecting and arranging fill-in subjects. When the lineup was composed to the satisfaction of both sides, investigating officers were satisfied with its composition, and Mr. Ashworth stated, "Fine by me" in regards to the composition of the line.

Mr. Thornsley then photographed the line and has retained the photographs and negatives in his office.

Det. Tortes then conducted the lineup in Mr. Ashworth's presence. The witnesses were escorted into the viewing room in groups and were instructed to write the number of their group on their Witness Form. I gave directions to the line from the prisoner side of the facility. The witnesses viewed the subjects from all four sides. The subjects were then instructed to step to the front and center of the room and make the following statements:

"Get in the closet. Don't come out for five minutes, I've got a gun. Give me

FORM NO. 200-12-1

DA 00002702

EX 203 - 000178

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

PAGE NO. 3 FILE NO. P86-042-237

6/4/86	TYPE OF REPORT 211 PC	INVESTIGATING OFFICER McFall M. M.

five thousand dollars, I don't want to hurt anybody, just do what I say."

After viewing the line the witnesses were escorted from the witness room and marked their Witness Forms in the presence of Det. Tortes and Mr. Ashworth without benefit of consulting with one another.

For further details refer to Witness Forms.

Status:

Investigation continuing.

FORM NO. 200-12-1

DA 00002703

EX 203 - 000179

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 6/16/86

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Day
P3-86-042-237		304						

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			APR			

17. Address of Occurrence (Street No. - Name - City)	18. Type of Place
6661 Indiana Avenue, Riverside.	Taco Bell

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes ( ) No ( )
GRESHAM, Randy								

44. Address - Clothing - Other Marks or Identifying Characteristics

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC Armed Robbery	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2 $

Reporting Off pd MC FALL M.M.

Reviewed By

COPIES TO

VCLO ( )

ACTIONS

APB Sent
APB Cancld.
APR Sent
APR Cncld
DOJ-NCIC Entered
Cancld.
ENTERED
STATS ARBK MANI

62. Narrative of Supplemental Report

ASSISTING PERSONNEL:

1.	DET. A. TORTES	RPD Robbery Detail
2.	DEPUTY LAWLER #1403	RSO Jail
3.	DEPUTY COLYER #1328	RSO Jail
4.	JAMES LUJAN	RPD Photo Technician
5.	JAMES ASHWORTH	Deputy Public Defender (Representing suspect)

EVIDENCE:

1. Photographs of line-up taken by Mr. Lujan.
2. Witness admonition and collection form (filed with respective crime reports).

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

171 CP

200-52-2(R1/78)

DA 00002704

EX 203 - 000180

RIVERSIDE POLICE DEPT.

CONTINUATION SHEET

PAGE NO. 2 FILE NO. P3-86-042-237

6/16/86	TYPE OF REPORT 211 PC	INVESTIGATING OFFICER MC FALL #304 pd

REFER TO:

1. RSO line-up warning and waiver form
2. RSO line-up composition form
3. RPD Investigation #P3-85-282-001 (211 PC)
4. RPD Investigation #P3-85-299-238 (211 PC)

NARRATIVE:

On Wednesday, 6/4/86 at 1330 hours, various witnesses were assembled at the Riverside Police Department for the purpose of viewing a photographic line-up containing a photograph of S-Wade Walters and for viewing a live line-up containing S-Geresham. Det. Tortes conducted photographic line-up admonitions with the witneses and had them view the photographic line-up containing S-Wade Walters' photograph; the witnesses viewed the photographic line-up on an individual basis.

At 1345 hours I read the in-person line-up admonition to the witnesses. The witnesses indicated that they understood the admonition and had no questions regarding same.

Det. Tortes and I escorted the witnesses to the county jail where they waited in the lobby area. Contact was made with Deputies Lawler and Colyer who advised that they had pulled eleven fill-in subjects from the tank for use in this line-up. Det. Tortes composed the line-up with the assistance and participation of Mr. Ashworth. In regards to the composition of the line-up Mr. Ashworth stated "I think thats as good as we're going to get". Mr. Ashworth inquired of his client as to his satisfaction concerning the composition of the line; Randy Gresham responded "Yeah fine".

Mr. Lujan then photographed the line and has retained the photographs and negatives in his office.

I then conducted the line-up in Mr. Ashworth's presence. The witnesses were escorted into the viewing room in groups and were instructed to write the number of their group on their witness form. Det. Tortes gave directions to the line from the prison side of the facility. Witnesses viewed the subjects from all four sides. The subjects were then instructed to step to the front and make the following statements: "Ladies, this is a hold up. Give me all the money in your register."

After viewing the line-up the witnesses were escorted from the witness room and marked their witness forms in my presence and Mr. Ashworth's presence without benefit of consulting with one another.

For further details refer to witness forms.

STATUS:

Investigation will be cleared by the arrest of S-Geresham. Investigation will be submitted to the District Attorney's Office for review with a request for complaints as appropriate. Investigation will remain open pending that review.

FORM NO. 200-12-1

DA 00002705

EX 203 - 000181

1st FILE COPY
2nd DA

COUNTY OF RIVERSIDE SHERIFF'S DEPARTMENT

FILE NO. G47226

LINEUP

1. You are being asked to participate in a lineup.
2. You have the right to have an attorney present at this lineup to observe the proceedings. If you do not have an attorney or cannot afford one, an attorney will be obtained at no cost to you, prior to the lineup.
3. You do not have the right to refuse to participate in the lineup. If you do, this refusal can and will be used as evidence against you.
4. You have the right to remain silent and need not answer any questions. The right to remain silent does not include repeating specific words that you are requested to say during the lineup. Your refusal to repeat words as requested can and will be used as evidence against you in court.

WAIVER

5. Do you understand these rights as explained? (Yes) No
6. With these rights in mind, do you wish an attorney present to observe the lineup proceedings? (Yes) No

THE FOREGOING WAS READ AND FULLY EXPLAINED TO RANDALL D. GRESHAM
(Print name of person warned)

AT 1410 (Time) ON 6-4-86 (Date)

BY Ronald St. Laurent 1403
(Signature of Officer - I.D. Number)

Greg Calvyn 1328
(Witness)

THE ABOVE IS TRUE
Randall D. Gresham
(Signature of Person)

RIVERSIDE SHERIFF'S DEPARTMENT FORM NO. 79 WARNING AND WAIVER ON LINEUP

DA 00002801

EX 203 - 000182

P386-042-237

ON THE ABOVE DATE, I PREPARED A LINE-UP. THE FOLLOWING IS DETAILED INFORMATION ABOUT THE LINE-UP:

1. REQUESTED BY: R.P.D
2. WAS SUSPECT(S) IDENTIFIED
3. TOTAL TIME LINE-UP TOOK
4. NUMBER OF INMATES WHO PARTICIPATED AND THEIR NAMES AND POSITION:

	NAME	BOOKING #	POSITION
1.	MILLER, RUSSELL	G15542	#1
2.	GRESHAM, RANDALL	G47227	#2
3.	MOORE, JOSEPH	G50035	#3
4.	DeGUIRE, Gerard	G38757	#4
5.	HAMILTON, Jerry	G4037	#5
6.			

5. SUSPECT(S) NAME AND NUMBER
6. SUSPECT(S) CHARGE(S)
7. NUMBER AND NAMES OF PEOPLE WHO VIEWED THE LINE-UP.

DA 00002802

EX 203 - 000183

PHOTOGRAPHY REPORT
RIVERSIDE POLICE DEPARTMENT

DATE & TIME: 4 June 86 1430 hrs	FILE NUMBER: 86-042237
CRIME: 211 PC	LOCATION: Riv. Co. Jail
DIVISION: Services	ALL EXPOSURES ON SAME ROLL OF FILM:
PHOTOGRAPHER: Lyon	ALL EXPOSURES ON MORE THAN ONE ROLL:

FILM TYPE: COLOR SLIDES ___ B & W ___ COLOR NEGATIVE ✓

FILM SIZE: 35mm ___ 126 ROLL ___ 120 ROLL ___

LIGHTING CONDITIONS: FLASH OR STROBE ___ DAYLIGHT ___ COMBINATION ___

TOTAL EXPOSURES TAKEN ON THIS INCIDENT: 5

FIRST PHOTO TAKEN INCLUDES:
Overall view of Photo Line-up (WMA)

LAST PHOTO TAKEN INCLUDES:
2 of WMA's

REMARKS / SPECIAL INSTRUCTIONS:
Photos Taken at Riv. Co. Jail

200-27-3 (R 3/77)

DA 00002515

EX 203 - 000184

PHOTOGRAPHY REPORT
RIVERSIDE POLICE DEPARTMENT

DATE & TIME	FILE NUMBER
29 May '86	86-042-237
CRIME	LOCATION
DIVISION Services	ALL EXPOSURES ON SAME ROLL OF FILM ✓
PHOTOGRAPHER Thomsley	ALL EXPOSURES ON MORE THAN ONE ROLL ___

FILM TYPE: COLOR SLIDES ___ B & W ___ COLOR NEGATIVE ✓

FILM SIZE: 35mm ✓ 126 ROLL ___ 120 ROLL ___

LIGHTING CONDITIONS: FLASH OR STROBE ✓ DAYLIGHT ___ COMBINATION ___

TOTAL EXPOSURES TAKEN ON THIS INCIDENT: 5

FIRST PHOTO TAKEN INCLUDES:

Photo line up WMAs

LAST PHOTO TAKEN INCLUDES:

REMARKS / SPECIAL INSTRUCTIONS:

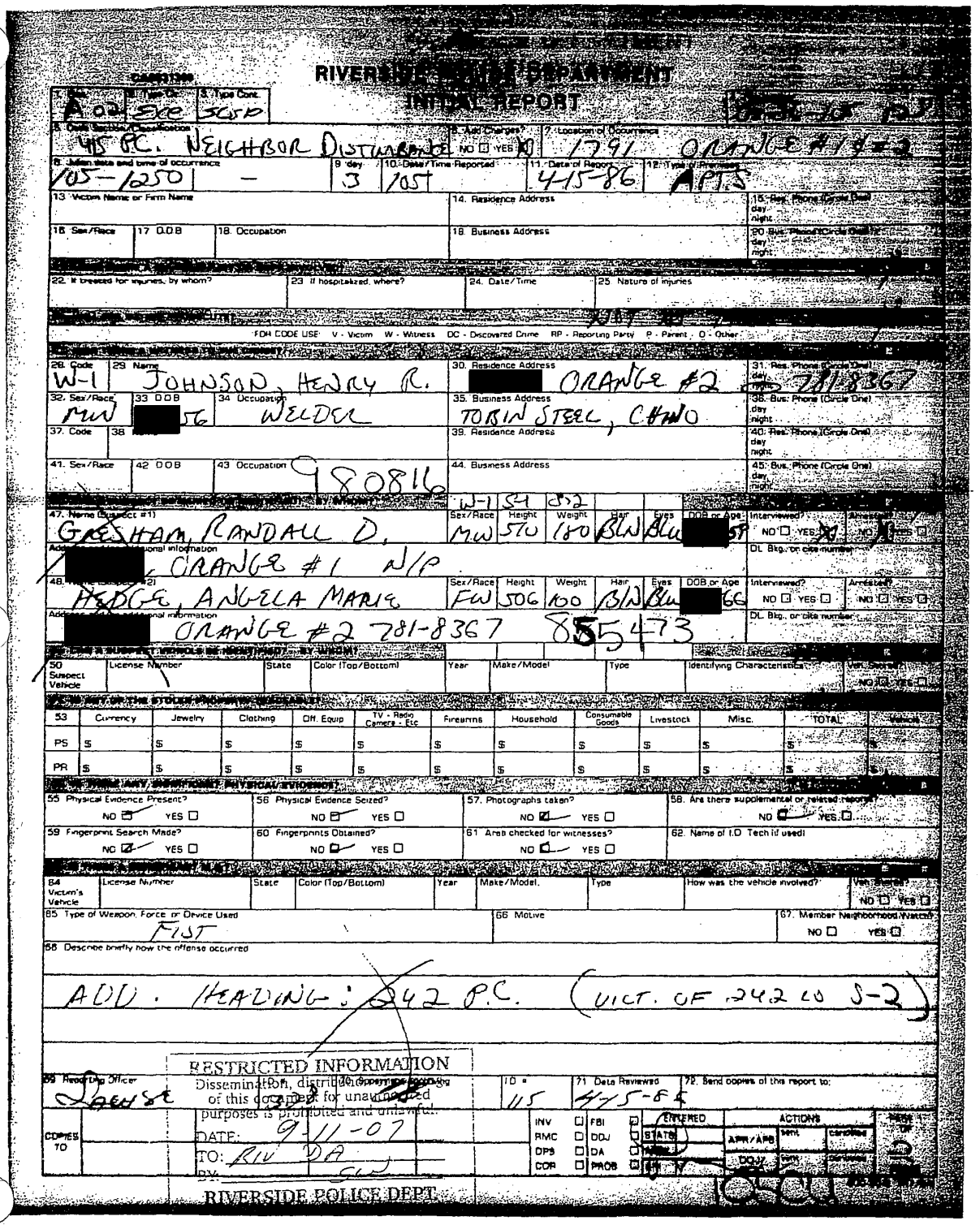
Photos Taken RCT

RIVERSIDE POLICE DEPT. JUN PHOTO LAB

200-27-3 (R 3/77)

DA 00002516

EX 203 - 000185



RIVERSIDE POLICE DEPARTMENT
INITIAL REPORT

1. Case No. A02 2. Type Occ. EXC 3. Type Cont. 3054D
4. Occ. Section / Classification 415 PC. NEIGHBOR DISTURBANCE
5. Add Charges? NO ☐ YES ☒
6. Location of Occurrence 1791 ORANGE #1 & #2
7. Julian date and time of occurrence 105-1250
8. day 3
9. Date/Time Reported 105T
10. Date of Report 4-15-86
11. Type of Premises APTS
12. Victim Name or Firm Name
13. Residence Address
14. Res. Phone (Circle One) day night
15. Sex/Race
16. DOB
17. Occupation
18. Business Address
19. Bus. Phone (Circle One) day night
20. If treated for injuries, by whom?
21. If hospitalized, where?
22. Date/Time
23. Nature of injuries

FOH CODE USE V - Victim W - Witness DC - Discovered Crime RP - Reporting Party P - Parent O - Other

24. Code W-1
25. Name JOHNSON, HENRY R.
26. Residence Address [redacted] ORANGE #2 781-8367
27. Res. Phone (Circle One) day night
28. Sex/Race MW
29. DOB [redacted]56
30. Occupation WELDER
31. Business Address TOBIN STEEL, CHINO
32. Bus. Phone (Circle One) day night
33. Code
34. DOB
35. Residence Address
36. Res. Phone (Circle One) day night
37. Sex/Race
38. DOB
39. Occupation 980816
40. Business Address
41. Bus. Phone (Circle One) day night

Witnesses Interviewed by Officer

42. Name (Subject #1) GRESHAM, RANDALL D.
Sex/Race MW Height 510 Weight 180 Hair BLN Eyes Blu DOB or Age [redacted]58
Interviewed? NO ☐ YES ☒ Arrested? NO ☐ YES ☐
Address [redacted] ORANGE #1 N/P
DL. Bkg. or cite number

43. Name (Subject #2) HEDGE, ANGELA MARIE
Sex/Race FW Height 506 Weight 100 Hair BLN Eyes Blu DOB or Age [redacted]66
Interviewed? NO ☐ YES ☐ Arrested? NO ☐ YES ☐
Address [redacted] ORANGE #2 781-8367
DL. Bkg. or cite number 8554?3

Suspect's Vehicle(s) Identified by Witness?

44. Suspect Vehicle
License Number
State
Color (Top/Bottom)
Year
Make/Model
Type
Identifying Characteristics
Veh. Stored? NO ☐ YES ☐

Property Stolen, Damaged, Recovered, Booked or Impounded

45	Currency	Jewelry	Clothing	Off. Equip	TV - Radio Camera - Etc	Firearms	Household	Consumable Goods	Livestock	Misc.	TOTAL	Recov.
PS	$	$	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$	$	$

Any Significant Physical Evidence?

46. Physical Evidence Present? NO ☒ YES ☐
47. Physical Evidence Seized? NO ☒ YES ☐
48. Photographs taken? NO ☒ YES ☐
49. Are there supplemental or related reports? NO ☒ YES ☐
50. Fingerprint Search Made? NO ☒ YES ☐
51. Fingerprints Obtained? NO ☒ YES ☐
52. Area checked for witnesses? NO ☐ YES ☐
53. Name of I.D. Tech if used

Victim's Vehicle

54. Victim's Vehicle
License Number
State
Color (Top/Bottom)
Year
Make/Model
Type
How was the vehicle involved?
Veh. Stored? NO ☐ YES ☐

55. Type of Weapon, Force or Device Used FIST
56. Motive
57. Member Neighborhood Watch? NO ☐ YES ☐
58. Describe briefly how the offense occurred

ADV. HEARING: 242 P.C. (VICT. OF 242 TO S-2)

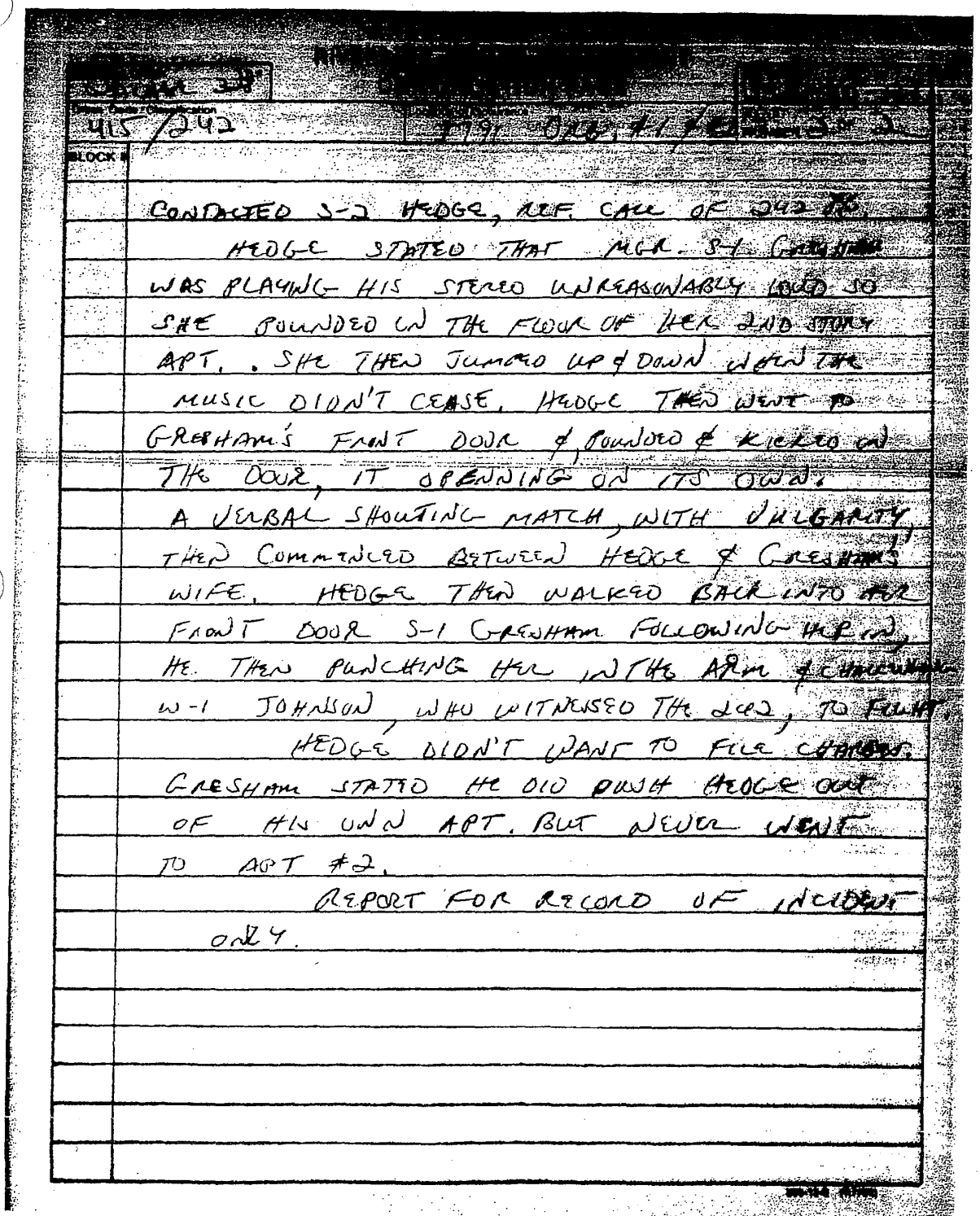
RESTRICTED INFORMATION
Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.

59. Reporting Officer
60. Approved by
61. ID #
62. Date Reviewed 4-15-86
63. Send copies of this report to:

COPIES TO
DATE: 9-11-07
TO: RIV DA
BY:
INV ☐ FBI ☐
RMC ☐ DOJ ☐
DPS ☐ DA ☐
COR ☐ PROB ☐
ENTERED STATE
ACTIONS APP/ARR sent cancelled DOJ sent cancelled
RIVERSIDE POLICE DEPT.

DA 00002803

EX 204 - 000186



415/242

BLOCK #

CONDUCTED S-2 HEDGE, REF. CALL OF 242 RE. HEDGE STATED THAT MGR. S-1 GRESHAM WAS PLAYING HIS STEREO UNREASONABLY LOUD SO SHE POUNDED ON THE FLOOR OF HER 2ND STORY APT. . SHE THEN JUMPED UP & DOWN WHEN THE MUSIC DIDN'T CEASE. HEDGE THEN WENT TO GRESHAM'S FRONT DOOR & POUNDED & KICKED ON THE DOOR, IT OPENING ON ITS OWN. A VERBAL SHOUTING MATCH, WITH VULGARITY, THEN COMMENCED BETWEEN HEDGE & GRESHAM'S WIFE. HEDGE THEN WALKED BACK INTO HER FRONT DOOR S-1 GRESHAM FOLLOWING HER IN, HE THEN PUNCHING HER IN THE ARM & CHASING W-1 JOHNSON, WHO WITNESSED THE ACT, TO FLEE. HEDGE DIDN'T WANT TO FILE CHARGES. GRESHAM STATED HE DID PUSH HEDGE OUT OF HIS OWN APT. BUT NEVER WENT TO APT #2.

REPORT FOR RECORD OF INCIDENT ONLY.

DA 00002804

EX 204 - 000187

CA0331300

RIVERSIDE POLICE DEPARTMENT

INITIAL REPORT

1. Dist.: A02 | 2. Type Clr.: ARR | 3. Type Cont.: PCA | 4. File Number: P38613337

5. Code Section/Classification: 664/187 PC - ATTEMPT MURDER OF A POLICE OFFICER | 6. Add Charges? NO ☐ YES ☒ | 7. Location of Occurrence: 1791 ORANGE RIVERSIDE APT #2

8. Julian date and time of occurrence: 139 - 2051 | 9. day: 1 | 10. Date/Time Reported: 138 2045 | 11. Date of Report: 5-19-86 | 12. Type of Premises: APARTMENT

13. Victim Name or Firm Name: HECHT, RANDAL LEE | 14. Residence Address: — | 15. Res. Phone (Circle One) day / night: —

16. Sex/Race: MW [redacted]56 | 18. Occupation: POLICE OFFICER | 19. Business Address: RIVERSIDE PD | 20. Bus. Phone (Circle One) day / night: 782-7221

21. WAS THERE A DEATH, INJURY OR RAPE INVOLVED?

22. If treated for injuries, by whom? | 23. If hospitalized, where? 180748 | 24. Date/Time | 25. Nature of injuries

26. WILL THE VICTIM PROSECUTE?

FOR CODE USE: V - Victim W - Witness DC - Discovered Crime RP - Reporting Party P - Parent O - Other

27. WAS THERE A WITNESS TO THE CRIME?

28. Code: V | 29. Name: WORLEY, DAVID LEE | 30. Residence Address: [redacted] EDGEWOOD RD | 31. Res. Phone (Circle One) day / night: 683-7889

32. Sex/Race: MW [redacted]48 | 34. Occupation: — | 35. Business Address: — | 36. Bus. Phone (Circle One) day / night: —

37. Code | 38. Name: 738290 | 39. Residence Address | 40. Res. Phone (Circle One) day / night

41. Sex/Race | 42. DOB | 43. Occupation | 44. Business Address | 45. Bus. Phone (Circle One) day / night

46. CAN A SUSPECT BE NAMED OR IDENTIFIED? BY WHOM? V OFF

47. Name (Suspect #1)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
GRESHAM, RANDALL DALE	MW	511	180	BLN	BLU	[redacted]59	NO ☐ YES ☒	NO ☐ YES ☒

Address and/or additional information: [redacted] ORANGE #1 RIVERSIDE | DL Bkg. or cite number:

48. Name (Suspect #2)	Sex/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed?	Arrested?
980816							NO ☐ YES ☐	NO ☐ YES ☐

Address and/or additional information | DL Bkg. or cite number

45. CAN A SUSPECT VEHICLE BE IDENTIFIED? BY WHOM?

50 Suspect Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	Identifying Characteristics	Veh. Stored?
								NO ☐ YES ☐

51. IS ANY OF THE STOLEN PROPERTY TRACEABLE?

53	Currency	Jewelry	Clothing	Off. Equip.	TV - Radio Camera - Etc.	Firearms	Household	Consumable Goods	Livestock	Misc.	TOTAL	Vehicle
PS	$	$	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$	$	$

54. IS THERE ANY SIGNIFICANT PHYSICAL EVIDENCE?

55 Physical Evidence Present?	56 Physical Evidence Seized?	57 Photographs taken?	58 Are there supplemental or related reports?
NO ☐ YES ☒	NO ☐ YES ☒	NO ☐ YES ☒	NO ☐ YES ☒

59 Fingerprint Search Made?	60 Fingerprints Obtained?	61. Area checked for witnesses?	62 Name of I.D. Tech (if used)
NO ☐ YES ☒	NO ☐ YES ☒	NO ☐ YES ☒	S/A COLLOPY

63. IS THERE A SIGNIFICANT M.O.?

64 Victim's Vehicle	License Number	State	Color (Top/Bottom)	Year	Make/Model	Type	How was the vehicle involved?	Veh Stored?
								NO ☐ YES ☐

65. Type of Weapon, Force, or Device Used: CHROME HANDGUNS | 66. Motive: ATTEMPT MURDER | 67. Member Neighborhood Watch? NO ☒ YES ☐

66. Describe briefly how the offense occurred:

6/ 417(A)(2) PC - BRANDISH A FIREARM (SI)

242 PC - BATTERY (SI)

RESTRICTED INFORMATION
Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.
DATE: 9-11-07
TO: DA

69. Reporting Officer: HECHT | ID #: 211 | 70. Supervisor Approving | ID #: 355 | 71. Date Reviewed: 5-19-86 | 72. Send copies of this report to: RIVERSIDE POLICE DEPT.

COPIES TO: M.T.

				ENTERED	ACTIONS		PAGE
INV ☐	FBI ☐				sent	cancelled	
RMC ☐	DOJ ☐	STATS			APR/APB		6
DPS ☐	DA ☐	ARREST			DOJ/NCIC		
COR ☐	PROB ☐	AN					

DA 00002820

EX 205 - 000188

RIVERSIDE POLICE DEPARTMENT

CONTINUATION PAGE

Reporting Officer: SGT 211 I.D.#:

File Number: 86-13829

Crime Code/Classification: 664/189 PC

Location of Occurrence: 1791 ORANGE RW

PAGE NUMBER: 2 OF 6

BLOCK #	
37A	FOR ADDITIONAL WITNESS NAMES AND STATEMENTS REFER TO SUPPLEMENTAL REPORTS AND ALSO DETECTIVES REPORTS.
56	FOR EVIDENCE REFER TO SUPPLEMENTAL REPORTS
58	LT LUCAS SGT ROPAC SGT REEVES OFFICER HOLMES - SUPPLEMENTAL OFFICER BARTRAM - SUPPLEMENTAL OFFICER SOTO OFFICER HART OFFICER SUTTON OFFICER COOK S/A COLLOPY - SUPPLEMENTAL OFFICER FOWLER - SUPPLEMENTAL
68	AT ABOUT 2098, 5-18-86 I HEARD DISPATCH ADVISE S/A COLLOPY TO RESPOND TO A BRANDISHING OF A WEAPON WITH THE SUSPECT STILL ON SCENE AT 1791 ORANGE. S/A COLLOPY ACKNOWLEDGED THE CALL AND ADVISED HIS LOCATION WAS MAC CENTER. I HAD JUST CLEARED AN

DA 00002821

EX 205 - 000189

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: RECHT 211 I.D.#
Crime Code/Classification: 664/187 PC
Location of Occurrence: 1791 ORANGE
PAGE NUMBER 3 OF 6

BLOCK #

68 ASSIST ON A TRAFFIC STOP WITH SGT TORAC ON LINDEN AT ANDERSON. SINCE I WAS MUCH CLOSER THAN S/A GOLLOPY I ADVISED I WOULD BE ENROUTE. AS I ARRIVED ON SCENE I SAW V2/WORLEY STANDING ON THE FRONT PORCH ALONG WITH ANOTHER WM AND A WF. THEY CONTACTED ME AT THE CURBLINE. V2/WORLEY TOLD ME THE FOLLOWING:

HE WAS SITTING INSIDE APT #2 WITH THE OTHER TWO PEOPLE WHO WERE STANDING NEXT TO HIM. THEY WERE TALKING WHEN SI CAME INTO THE APARTMENT. SI WAS ARMED WITH A HANDGUN. HE POINTED IT AT V2/WORLEY AND ALSO AT THE OTHER PEOPLE IN THE APARTMENT. SI WANTED V2/WORLEY TO GET OUT OF THE APARTMENT. SI ALSO KICKED V2/WORLEY BEFORE HE WAS ABLE TO FLEE THE APARTMENT.

V2/WORLEY EXPRESSED CONCERN THAT SI MAY TRY TO FLEE THE AREA PRIOR TO POLICE CONTACTING HIM. HE ALSO SAID THAT HE HAD SEEN SI ABOUT 5 MINUTES EARLIER AT THE REAR OF THE APARTMENTS. HE DESIRED TO PRESS CHARGES AGAINST SI AND WANTED HIM ARRESTED. V2/WORLEY ACCOMPANIED ME TO THE REAR OF THE APARTMENTS IN ORDER TO IDENTIFY SI TO ME. AS WE ARRIVED AT THE REAR I SAW TWO MW'S AND A NM SITTING ON THE REAR PORCH.

DA 00002822

EX 205 - 000190

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: VECAT 211 I.D.#
Crime Code/Classification: 664/187 PC
Location of Occurence: 1791 ORANGE
File Number: P3361332217
PAGE NUMBER 4 OF 6

BLOCK #

68 ABOUT 10-15 FEET SOUTH OF THEM A W/M, SI, AND ANOTHER W/M WERE STANDING. THERE WERE TWO VERY BRIGHT FLOOD LIGHTS ATTACHED TO THE REAR OF THE BUILDING AND THE AREA WAS WELL LIT.

V2 POINTED OUT SI TO ME. I WALKED OVER AND CONTACTED SI. HE WAS TALKING TO THE MALE SUBJECT. WHEN SI SAW ME I HEARD HIM ASK THE SUBJECT IF HE HAD CALLED THE POLICE. I TOLD SI THAT I WANTED TO TALK TO HIM ABOUT THE INCIDENT THAT HAD OCCURED WITH V2/WORLEY. I MOTIONED IN V2/WORLEYS DIRECTION. I ASKED SI IF HE HAD ANY WEAPONS WITH HIM AND MOVED TOWARD HIM TO CONDUCT A PAT DOWN SEARCH. SI SEEMED VERY ANGRY AND MOVED AWAY FROM ME. HE SAID HE HAD DONE NOTHING WRONG AND THAT I HAD NO REASON TO TALK TO HIM. SI RAN E/B ALONG THE SOUTH-SIDE OF THE HOUSE.

I ADVISED OVER THE RADIO THAT I WAS IN FOOT PURSUIT OF SI. HE TURNED N/B AT THE CORNER THEN AGAIN W/B AT THE NEXT CORNER. AS WE RAN TO THE REAR OF THE APARTMENTS I SAW SI TRYING TO REMOVE AN OBJECT FROM HIS PANTS FRONT WAISTBAND. JUST AS SI RAN AROUND THE EDGE OF A BUILDING TO THE REAR OF THE APARTMENTS I SAW SI STOP. I STARTED DRAWING MY PISTOL WHEN SI WHEELED AROUND AND FACED ME. I SAW

DA 00002823

EX 205 - 000191

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: Ryan 211 I.D.#
Crime Code/Classification: 664/187 PC
Location of Occurrence: 1791 ORANGE
PAGE NUMBER 5 OF 6

BLOCK #

69 A CHROME PISTOL IN SIS HANDS. WE WERE ABOUT 5 FEET APART WHEN SI RAISED THE GUN AND POINTED IT AT ME. I YELLED "DROP IT" AS I CLICKED MY SAFETY OFF. I FELT IN FEAR OF MY LIFE SO I SQUEEZED THE TRIGGER OF MY PISTOL. IT DIDNOT FIRE. I SQUEEZED THE TRIGGER ABOUT FOUR MORE TIMES AND AGAIN IT DIDNOT FIRE. BY NOW SI HAD BEGAN TO YELL AT ME THAT HE WAS GOING TO SHOOT ME. HE YELLED THIS SEVERAL TIMES. SI ALSO THREATENED TO KILL ME.

A CAR WAS PARKED ABOUT 5-10 FEET WEST OF WHERE WE WERE STANDING. I WENT TO THE SIDE AWAY FROM SI TO SEEK COVER. HE KEPT YELLING THAT HE WAS GOING TO SHOOT AND KILL ME. HE FOLLOWED ME TO THE FRONT OF THE CAR WHERE HE AGAIN TOOK AIM ON ME. I MOVED TO MY LEFT (W/B). I PUT MY GUNS SAFETY TO THE ON POSITION AND OFF AGAIN YET IT STILL WOULD NOT FIRE.

DURING THIS TIME SI IS STILL TRACKING ME WITH HIS GUN TELLING ME HE WAS GOING TO KILL ME. I COULD HEAR A FEMALE VOICE BEHIND ME YELLING "NO, RANDY, NO." I TRACKED A ROUND OUT OF THE PISTOLS CHAMBER IN AN ATTEMPT TO CLEAR THE MALFUNCTION. SINCE SI WAS STILL AIMED IN AT ME I POINTED MY PISTOL IN HIS DIRECTION AND AGAIN PULLED THE TRIGGER. THE GUN FIRED. SI TURNED AND RAN W/B AND DISAPPEARED OUT OF

DA 00002824

EX 205 - 000192

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: Recht 24 I.D.#
Crime Code/Classification: 664/187 PC
Location of Occurrence: 1791 ORANGE
Page Number: 6 of 6

BLOCK #

68 MY SIGHT TO THE REAR OF A BUILDING THAT WAS BEHIND WHERE THE CAR WAS PARKED. I RETRIEVED MY MT FROM THE GROUND WHERE THE CONFRONTATION FIRST BEGAN AND ADVISED THAT SHOTS WERE FIRED AND THAT THE SUSPECT WAS ARMED AND HAD FLED W/B FROM THE REAR OF THE APARTMENTS. I ALSO BROADCASTED A DESCRIPTION OF SI.

OFFICER FLORES CAME TO MY POSITION AND WE RETAINED THE SCENE UNTIL SGT ROPAC ADVISED THEY HAD A POSSIBLE SUSPECT IN CUSTODY AT 1771 ORANGE. I RESPONDED TO THAT LOCATION AND RECOGNIZED SI AS THE ONE WHO HAD POINTED A GUN AT ME.

AFTER THE SCENE I WAS RELIEVED BY SGT ROPAC AND I RETURNED TO THE STATION FOR FOLLOW UP INVESTIGATIONS. FOR ADDITIONAL REFER TO SUPPLEMENTAL REPORTS.

DA 00002825

EX 205 - 000193

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 051385

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Dev.
P386138217		378	J03				138 2048	01

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
138 2048	138 2055		ARR	PCL		

17. Address of Occurrence (Street No. - Name - City): 1791 Orange

18. Type of Place: Apartment

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
W1	Gresham, Anna Marie	W F	[redacted]62

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
[redacted] Orange #1	Housewife	unk	n/a

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes / No
Gresham, Randy	W M						[redacted]57	

44. Address - Clothing - Other Marks or Identifying Characteristics: [redacted] Orange

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes / No

55. Address - Clothing - Other Marks or Identifying Characteristics:

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) A/H 187 P.C.	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2: $

Reporting Off: Collyer

Reviewed By:

COPIES TO:

VCLO ( )

ACTIONS

APB Sent

APB Cancld

APR Sent

APR Cncld

DISPATCH

Entered Comp.

62. Narrative of Supplemental Report

Responded to radio call of a 417 PC at above location. I arrived in the area at 2055 hours immediately after Off. Hecht advised that shots had been fired and that the suspect was fleeing towards Main Street.

Sgt. Off. Flores was also at the scene I drove around the block and took up a location on Main Street for perimeter control. I remained

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002826

EX 205 - 000194

RIVERSIDE POLICE DEPARTMENT

CONTINUATION PAGE

Reporting Officer: Collom 378 ID #:

Crime Code / Classification: A# 187

Location of Occurrence: 1791 Orange

Page Number: 2 of 4

BLOCK #

in that position until the suspect was located and arrested.

I then proceeded to the scene for ID work and to assist in the investigation.

At approx. 2120 hours I interviewed W-1 Anna Graham who is the suspect's wife. Anna said that Randy is the manager of the apartments where they live. He came home from his roofing job today at approx. 2045 hours. Randy was sitting on the rear porch with friends from work when another resident, (Carl MNV NFI), started yelling from within the apartments for everybody to bring him receipts for work done on the apartments. Anna said that same work was being on the apartments and Carl had appointed himself the new manager.

The yelling lasted for approx. 2 minutes with Randy telling Carl to calm down. Carl however kept it up so Randy got up and ran into Carl's apartment. Anna said she could hear them yelling at each other, but could not say what was being said.

The owner of the apartments, (Cecil), then arrived and Randy and Carl went outside to talk to him. Anna said the three stood in the driveway on the south side of the apartment. Carl then walked back into the apartment via the back door. As he passed Anna who was by the door Carl pointed his fingers at her and threatened her, but she couldn't recall what. She then went to the side of the apartments where Cecil and Randy was. As they [illegible]

DA 00002827

EX 205 - 000195

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: Colleges I.D.# 378
Crime Code/Classification: Att 187
Location of Occurrence: 1791 Orange
PAGE NUMBER 3 OF 4
BLOCK #

a police officer approached them on foot. Anna said the officer walked up to them and spoke to Randy.

As the officer started to pat-down Randy he bolted and ran towards Orange Street. Anna said a few seconds later she saw Randy running W/B in the backyard. She assumed that he had merely run around the front of the house. Anna said that as Randy was running he slipped and fell on his own with the officer chasing from a short distance.

As she watched a friend of theirs named Danny, (lives across the street), came up to her and said "He's got a gun." Anna said she took that to mean her husband had one. Anna said that as Randy stood up he pulled something from his front waistband which she felt was a gun. Anna said she then ran into the apartment because she was frightened.

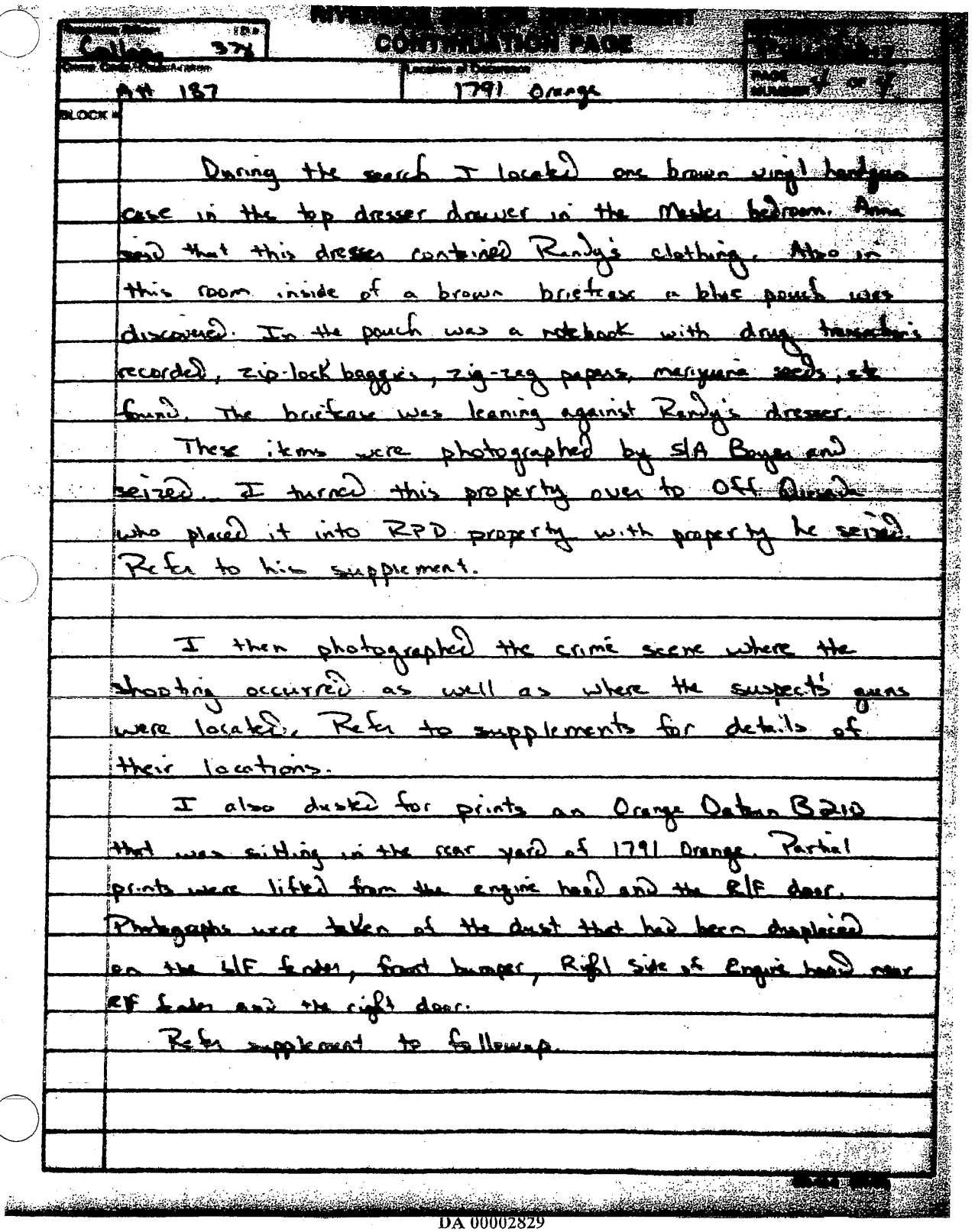
Anna said she did not actually see the gun, but from his actions it appeared to be. She also said she did not hear Randy or the Officer conversing prior to running into the apartment. Once in the apartment she heard 1 or 2 shots.

Anna said that her husband is on Probation & Parole from Kansas City for Grand theft. She also said that he did not own any guns & ammunition to her knowledge. Anna consented to her apartment being searched.

Off. Rivera and myself then searched her apartment.

DA 00002828

EX 205 - 000196



CONTINUATION PAGE

Att 187 | 1791 Orange | PAGE NUMBER 4 OF 7

BLOCK #

During the search I located one brown vinyl handgun case in the top dresser drawer in the Master bedroom. Anna said that this dresser contained Randy's clothing. Also in this room inside of a brown briefcase a blue pouch was discovered. In the pouch was a notebook with drug transactions recorded, zip-lock baggies, zig-zag papers, marijuana seeds, etc found. The briefcase was leaning against Randy's dresser.

These items were photographed by SA Boyer and seized. I turned this property over to Off. Arnold who placed it into RPD property with property he seized. Refer to his supplement.

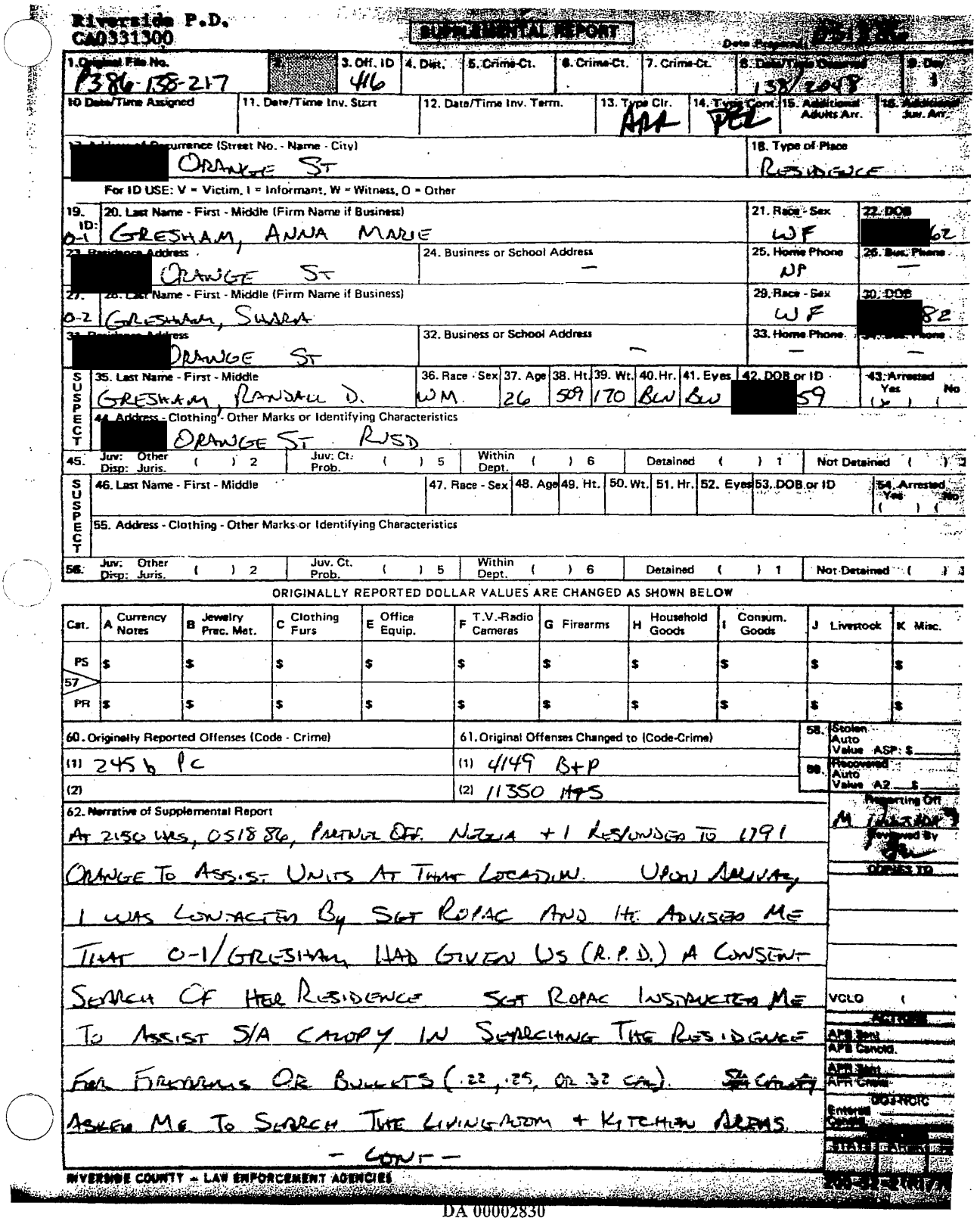
I then photographed the crime scene where the shooting occurred as well as where the suspect's guns were located. Refer to supplements for details of their locations.

I also dusted for prints on Orange Datsun B210 that was sitting in the rear yard of 1791 Orange. Partial prints were lifted from the engine hood and the R/F door. Photographs were taken of the dust that had been displaced on the L/F fender, front bumper, Right side of Engine hood rear of fender and the right door.

Refer supplement to followup.

DA 00002829

EX 205 - 000197



Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 05/18/86

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime Ct.	6. Crime Ct.	7. Crime Ct.	8. Date/Time Occurred	9. Day
386-158-217		416					1530/2048	3

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			ADA	PCL		

17. Address of Occurrence (Street No. - Name - City): [redacted] ORANGE ST

18. Type of Place: RESIDENCE

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
O-1	GRESHAM, ANNA MARIE	WF	[redacted]62

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
[redacted] ORANGE ST	—	NP	—

27. ID:	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB
O-2	GRESHAM, SUSAN	WF	[redacted]82

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone
[redacted] ORANGE ST	—	—	—

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes	43. Arrested No
GRESHAM, RANDALL D.	WM	26	509	170	BRN	BLU	[redacted]59	(X)	( )

44. Address - Clothing - Other Marks or Identifying Characteristics: [redacted] ORANGE ST. RSD

45. Juv: Other Disp: Juris.	Juv: Ct: Prob.	Within Dept.	Detained	Not Detained
( ) 2	( ) 5	( ) 6	( ) 1	( ) 3

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes	54. Arrested No
								( )	( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris.	Juv. Ct. Prob.	Within Dept.	Detained	Not Detained
( ) 2	( ) 5	( ) 6	( ) 1	( ) 3

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 245 b PC	(1) 4149 B+P
(2)	(2) 11350 HS

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2 $

Reporting Off: M [illegible]

Reviewed By

ORDERS TO

62. Narrative of Supplemental Report

AT 2150 HRS, 051886, PATROL OFF. NOZIA + I RESPONDED TO 1791 ORANGE TO ASSIST UNITS AT THAT LOCATION. UPON ARRIVAL, I WAS CONTACTED BY SGT ROPAC AND HE ADVISED ME THAT O-1/GRESHAM HAD GIVEN US (R.P.D.) A CONSENT SEARCH OF HER RESIDENCE. SGT ROPAC INSTRUCTED ME TO ASSIST S/A CANOPY IN SEARCHING THE RESIDENCE FOR FIREARMS OR BULLETS (.22, .25, OR .32 CAL). S/A CANOPY ASKED ME TO SEARCH THE LIVINGROOM + KITCHEN AREAS.

- CONT -

VCLO

ACTION

APB Sent

APB Cancld.

APB Sent

APB Cancl.

DOJ-ROC

Entered Comp.

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002830

EX 205 - 000198

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: M QUESADA I.D.# 916
Case Number: 10-[illegible]-247
Crime Code/Classification: Supplemental Report 245b PC
Location of Occurrence: 1791 ORANGE ST.
PAGE NUMBER 2 OF 2

BLOCK #

NARRATIVE CONT:

WHILE SEARCHING THE LIVINGROOM AREA, I FOUND ITEM #6 ALUMINUM FOIL CONTAINING POSS. HEROIN LAYING ON THE TOP SHELF OF A 6' TALL BOOKCASE JUST INSIDE THE FRONT DOOR. I FOUND TWO .38 CAL "CCI" BULLETS IN THE BOTTOM OF A NEWSPAPER RACK LOCATED BEHIND THE COUCH (S/A BOYER PHOTOGRAPHED THESE).

NOTHING WAS FOUND IN THE KITCHEN AREA.

IN A SMALL BEDROOM LOCATED ON THE SOUTH SIDE OF THE LIVINGROOM, O-2/GRESHAM (DAUGHTER OF O-1 + S-1) I FOUND ITEM #3 LAYING ON O-2's BED. I TURNED THE HAT OVER AND SAW ITEM #4, THE SYRINGE WITH ATTACHED NEEDLE, TUCKED INTO THE FOLD OF THE HAT (S/A BOYER PHOTOGRAPHED BOTH ITEM #3 + #4). O-2/GRESHAM STATED IT WAS HER DADS HAT (S-1/GRESHAM).

I TOOK CUSTODY OF THE ABOVE LISTED ITEMS. S/A CRUPY FOUND ITEMS #1 (GUN CASE) + #2 (BANK BAG) IN S-1's BEDROOM (SEE HIS SUPPLEMENTAL REPORT). S/A CRUPY GAVE THESE ITEMS TO ME, WE TRANSPORTED + PLACED IN PROPERTY ALL LISTED ITEMS. WE ALSO TRANSPORTED O-1/GRESHAM TO R.P.D. TO TALK TO DETECTIVES.

N.F.I.

DA 00002831

EX 205 - 000199

Riverside P.D.
CA0331300

1. Police File No. P96135217 | 3. OH. ID 474 | 4. Dist. | 5. Crime Ct. | 6. Crime Ct. | 7. Crime Ct. | 8. Date Reported 12/30/96 | 9. Bias 0

10. Date/Time Assigned | 11. Date/Time Inv. Start | 12. Date/Time Inv. Term. | 13. Type Clr. ATT | 14. Type Cont. PERSONS | 15. Additional Adults Arr. | 16. Additional Juv. Arr.

17. Address of Occurrence (Street No. - Name - City) [redacted] ORANGE, RVSD | 18. Type of Place RESIDENCE

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID: V | 20. Last Name - First - Middle (Firm Name if Business) HEOT, RANDALL #211 | 21. Race - Sex M/C | 22. DOB —

23. Residence Address — | 24. Business or School Address RPD | 25. Home Phone — | 26. Bus. Phone —

27. I | 28. Last Name - First - Middle (Firm Name if Business) RIVIS, GHEORGHE | 29. Race - Sex M/C | 30. DOB [redacted] 57

31. Residence Address [redacted] ORANGE, CA | 32. Business or School Address CENTRAL ELECTRIC, RVSD | 33. Home Phone 784-6309 | 34. Bus. Phone 688-[redacted]

SUSPECT

35. Last Name - First - Middle GRESHAMAN, RANDALL DALE | 36. Race - Sex M/C | 37. Age 26 | 38. Ht. 509 | 39. Wt. 170 | 40. Hr. BLN | 41. Eyes BLU | 42. DOB or ID [redacted] 59 | 43. Arrested Yes (X) No ( )

44. Address - Clothing - Other Marks or Identifying Characteristics [redacted] ORANGE, RVSD

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( )

SUSPECT

46. Last Name - First - Middle | 47. Race - Sex | 48. Age | 49. Ht. | 50. Wt. | 51. Hr. | 52. Eyes | 53. DOB or ID | 54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( )

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)
(1) 664/187 P.C.
(2)

61. Original Offenses Changed to (Code-Crime)
(1) SAME
(2)

58. Stolen Auto Value ASP: $
59. Recovered Auto Value AP: $

62. Narrative of Supplemental Report

O-1 COSTEA, VASILE [redacted] ORANGE #B, RVSD [redacted] 34
684-3280

O-2 COSTEA, GHEORGHE D. [redacted] LANE, RVSD [redacted] 67

03 COSTEA, PAULETTE [redacted] 32 (SPOUSE OF O-1)

O-4 COSTEA, SAVASTITA [redacted] 61 (SPOUSE OF O-2)

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002832

EX 205 - 000200

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer	I.D.#	File Number
FLORES	474	P1613021?
Crime Code/Classification	Location of Occurence	PAGE NUMBER 2 OF 3
ATT (187)	1791 ORANGE	

BLOCK #

I RESPONDED TO 1791 ORANGE TO ASSIST OFCR HEWITT #241 ON A 417 P.C. RADIO CALL. I ARRIVED AT THE SCENE AND PARKED (2) HOUSES NORTH OF THE RESIDENCE. AS I WAS EXITING MY CAR, I HEARD OFCR HEWITT, VIA RADIO, ADVISE HE WAS IN FOOT PURSUIT (OF THE SUSPECT) I STARTED RUNNING TO ASSIST HIM W/B FROM THE RESIDENCE IN THE REAR YARD. A FEW SECONDS LATER (5-10) I HEARD A GUN SHOT. I CONTINUED RUNNING TOWARDS THE REAR YARD AND I HEARD OFCR HEWITT ADVISE VIA RADIO "SHOTS FIRED". I LOCATED OFCR HEWITT, NEXT TO A BLDG. HE TOLD ME THE SUSPECT WAS POSSIBLY STILL IN THE YARD. HE TOLD ME THE SUSPECT POINTED A GUN AT HIM AND SAID HE WAS GOING TO KILL HIM. OFCR HEWITT FIRED (1) SHOT AT THE SUSPECT AND HE BELIEVED HE MISSED HIM. OFCR HEWITT AND I CONTAINED THE REAR YARD WHILE ADDITIONAL UNITS SECURED THE PERIMETER. A FEW MINUTES LATER, OFCRS LOCATED THE SUSPECT IN A BEDROOM AT 1771 ORANGE #B. THEY WERE ADVISED BY RP RIVIS, THE SUSPECT HAD ENTERED THE APARTMENT. HE WAS TOLD THIS BY THE OCCUPANTS.

I TALKED WITH THE OCCUPANTS WHO SPOKE LITTLE ENGLISH. RP RIVIS WAS ABLE TO TRANSLATE (ROMANIAN) FOR ME. O-1, O-2, AND O-4 SAID THEY WERE IN THEIR LIVING ROOM WHEN O-4 (LISTEN) CAME IN FROM HER REAR PORCH. WHILE OUTSIDE ON HER REAR PORCH, SHE HEARD SOMEONE STARTING TO CLIMB THE YARD FENCE FROM THE S/EAST CORNER OF THE YARD. SHE HEARD A GUN SHOT A FEW SECONDS BEFORE THAT AND DECIDED (CONT.)

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: FLORES I.D.#: 434
File Number: P96/38217
Crime Code/Classification: 664/187 P.C.
Location of Occurence: 1791 ORANGE
PAGE NUMBER 3 OF 3
BLOCK #

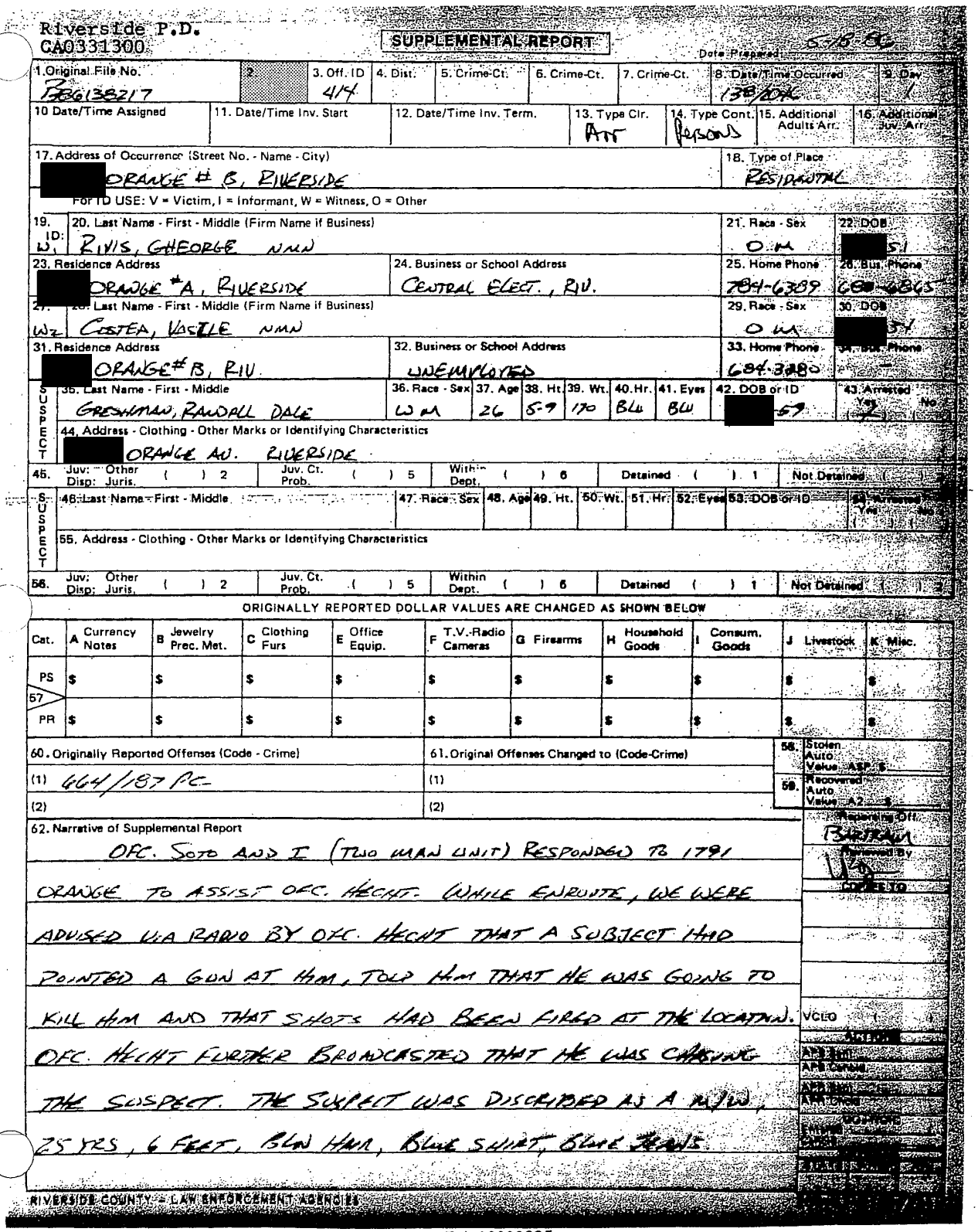
TO GO INSIDE AND LOCK HER DOORS. SHE TOLD HER FAMILY, IN THE LIVING, AND O-1 CUSTER, V. WENT TO CLOSE THE OPEN FRONT DOOR. AS HE DID THIS, S-GRESHAM RAN INSIDE WITH HIS HANDS UP IN THE AIR. HE SAID "HELP ME, SOMEBODY SHOT AT ME, HIDE ME." ALL OF THE FAMILY MEMBERS RAN OUTSIDE, LEAVING THE SUSPECT ALONE IN THE RESIDENCE. OUTSIDE, THEY MET RP RIVIS WHO WAS ALSO OUTSIDE. THEY TOLD HIM ABOUT THE SUSPECT, WHO THEY RECOGNIZED AS THEIR NEIGHBOR, HE THEN CALLED RPD. A FEW SECONDS LATER, HE SAW SGT ROPAC IN FRONT OF HIS RESIDENCE AND HE TOLD HIM THE SUSPECT WAS ASSIBLY IN UNIT #B. SGT ROPAC AND OFCR BARTRAM CONDUCTED A SEARCH OF THE RESIDENCE AND LOCATED THE SUSPECT IN A REAR BEDROOM.

OFCR NEGLIA, MYSELF AND RP RIVIS CONDUCTED A SEARCH FOR THE SUSPECTS GUN IN THE REAR YARD OF 1771 "B". RP RIVIS LOCATED TWO WEAPONS APPROX 6' APART FROM EACH OTHER, IN THE REAR YARD. DETECTIVES AT THE SCENE, ALONG WITH SA COLLOPY, TOOK PHOTOS AND RETRIEVED THE WEAPONS.

200-12-2 (R7/84)

DA 00002834

EX 205 - 000202



Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared 5-18-84

1. Original File No.	2	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Day
R84138217		414					1330 5/4	1

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			ATT	persons		

17. Address of Occurrence (Street No. - Name - City): [redacted] ORANGE # B, RIVERSIDE — 18. Type of Place: RESIDENTIAL

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
W1	RIVIS, GHEORGE NMN	O M	[redacted] 51

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
[redacted] ORANGE #A, RIVERSIDE	CENTRAL ELECT., RIV.	784-6389	689-6865

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB
W2	COSTEA, VASILE NMN	O M	[redacted] 54

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone
[redacted] ORANGE #B, RIV.	UNEMPLOYED	684-3280	—

SUSPECT	35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested
	GRESHMAN, RANDALL DALE	W M	26	5-9	170	BLK	BLU	[redacted] 57	Yes (Z) No

44. Address - Clothing - Other Marks or Identifying Characteristics: [redacted] ORANGE AV. RIVERSIDE

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 3

SUSPECT	46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes No

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 3

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 664/187 PC	(1)
(2)	(2)

58. Stolen Auto Value A1 $
59. Recovered Auto Value A2 $

Reporting Off. BURRAM
Reviewed By
Copies To

62. Narrative of Supplemental Report

OFC. SOTO AND I (TWO MAN UNIT) RESPONDED TO 1791 ORANGE TO ASSIST OFC. HECHT. WHILE ENROUTE, WE WERE ADVISED VIA RADIO BY OFC. HECHT THAT A SUBJECT HAD POINTED A GUN AT HIM, TOLD HIM THAT HE WAS GOING TO KILL HIM AND THAT SHOTS HAD BEEN FIRED AT THE LOCATION. OFC. HECHT FURTHER BROADCASTED THAT HE WAS CHASING THE SUSPECT. THE SUSPECT WAS DISCRIBED AS A M/W, 25 YRS, 6 FEET, BLK HAIR, BLUE SHIRT, BLUE JEANS

VCLEO

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002835

EX 205 - 000203

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: BACCHUS I.D.# 414
File Number: 96-282417
Crime Code/Classification: 664/187 PC
Location of Occurence: 1771 ORANGE #B, RIVERSIDE
PAGE NUMBER 2 OF
BLOCK #

WHEN OFC. SOTO AND I ARRIVED, SGT. ROPAC TOLD US THAT W1/RIVIS TOLD HIM THE SUSPECT MAY BE HIDING IN APARTMENT #B AT 1771 ORANGE. (THIS DUPLEX IS LOCATED TO THE REAR AND THE NORTH OF WHERE SUSPECT GRESHMAN LIVED). W2/COSTEA LIVES IN APT. #B AND THROUGH TRANSLATION BY W1/RIVIS, W2/COSTEA BELIEVED THAT THE SUSPECT OFC. HECHT WAS CHASING WAS HIDING IN HIS RESIDENCE. W2/COSTEA TOLD US THAT ALL OF HIS FAMILY WAS OUT OF THE RESIDENCE AND THAT IT WAS ALRIGHT FOR US TO GO IN A SEARCH THE HOUSE.

OFC. SOTO WENT TO THE REAR YARD, WHILE SGT. ROPAC AND I SEARCHED THE RESIDENCE ROOM BY ROOM. AS WE WALKED IN A NORTHERLY DIRECTION THROUGH THE RESIDENCE TO THE NORTHER MOST BEDROOM. I LOOKED INTO THE DARK ROOM FROM THE DOORWAY. WITH MY FLASHLIGHT, I SCANNED THE ROOM. WHEN I SHINNED MY FLASHLIGHT THROUGH THE HINGED PART OF THE BEDROOM DOOR TO LOOK BEHIND THE DOOR, I SAW A SUBJECT STANDING BEHIND THE DOOR.

I BACKED AWAY AND SIGNALED TO SGT. ROPAC THAT THE SUBJECT WAS THERE. BELIEVING THAT THE SUBJECT MAY HAVE BEEN THE SUSPECT THAT OFC. HECHT HAD BEEN CHASING, THE SUBJECT HIDING WAS REMOVED FROM THE BEDROOM AT GUN POINT.

I ORDERED THE SUBJECT OUT OF THE BEDROOM. WHEN HE STEPPED OUT, I COULD SEE THAT HE MATCHED THE DISCRIPTION OF THE SUSPECT OFC. HECHT CHASED. SGT. ROPAC AND I TOOK THE SUSPECT INTO CUSTODY WITHOUT INCIDENT. I NOTICED THAT THE SUSPECT WAS DRIPPING WET WITH SWEAT AND BUT HE WAS

DA 00002836

EX 205 - 000204

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: Bachman I.D.#: 414
File Number: P96-38217
Crime Code/Classification: 664/187 PC
Location of Occurrence: 1771 ORANGE "B", RIVERSIDE
PAGE NUMBER 3 OF

BLOCK #

BREATHING HARD AS IF HE HAD BEEN RUNNING.

OFC. HECHT MET WITH ME AND THE SUSPECT OUTSIDE OF THE RESIDENCE. OFC. HECHT IDENTIFIED THE SUSPECT I HAD DETAINED AS THE SAME PERSON THAT POINTED THE GUN AT HIM.

OFC. SOTO AND I TRANSPORTED THE SUSPECT TO THE STATION. AT THE STATION, THE SUSPECT WAS IDENTIFIED AS S/I/ GLEESEMAN.

AT 2220 HRS, BIO MED TECH MICHELL REMOVED A VIA OF BLOOD FROM THE LEFT ARM, THEN REMOVED A VIA OF BLOOD FROM THE RIGHT ARM, IN A MEDICALLY ACCEPTED MANNER. THE BLOOD SAMPLE REMOVAL WAS WITNESSED BY SGT. CRIGHTON, OFC. SOTO AND MYSELF.

DA 00002837

EX 205 - 000205

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Printed: 5/28/13

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime Cl.	6. Crime Ct.	7. Crime Ct.	8. Date/Time Occurred	9. Det.
138 138 217		159	A02				138 2046	01

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
138 2055	138 2059	138 2145	ATT	Persons		

17. Address of Occurrence (Street No. - Name - City): [redacted] ORANGE

18. Type of Place: APT. BLG.

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V	R. HECHT		

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	RPD		

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	[redacted]
V	WORLEY, DAVID LEE	WM	-48

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone
[redacted] EDGEWOOD		683-7889	

SUSPECT	35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB - ID	43. Arrested Yes ( ) No ( )
	GRESHAM, RANDALL DALE	WM	26	5'9	170	BLN	BLU	[redacted] 59	

44. Address - Clothing - Other Marks or Identifying Characteristics: [redacted] ORANGE

45.	Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

SUSPECT	46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56.	Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 6A/181 PC	(1)
(2)	(2)

58. Stolen Auto. Value ASP: $

59. Recovered Auto Value AZ: $

Reporting Off: [redacted]

Reviewed By: [redacted]

COPIES TO:

62. Narrative of Supplemental Report

THIS REPORT SUPPLEMENTS THE ORIGINAL UNDER THIS FILE NUMBER AND DETAILS WRITER'S INTERVIEW WITH VICTIM WORLEY.

WORLEY ADVISED THAT HE HAD BEEN HIRED TO PAINT THE BUILDING AT 1791 ORANGE. THIS EVENING HE WENT TO THE ADDRESS TO DISCUSS THE JOB WITH THE MANAGER, A MAN WHO

VCLO ( )

ACTIONS

APB Issd

APB Cancld

APB Mod

APB Chng

DOJ-NCIC

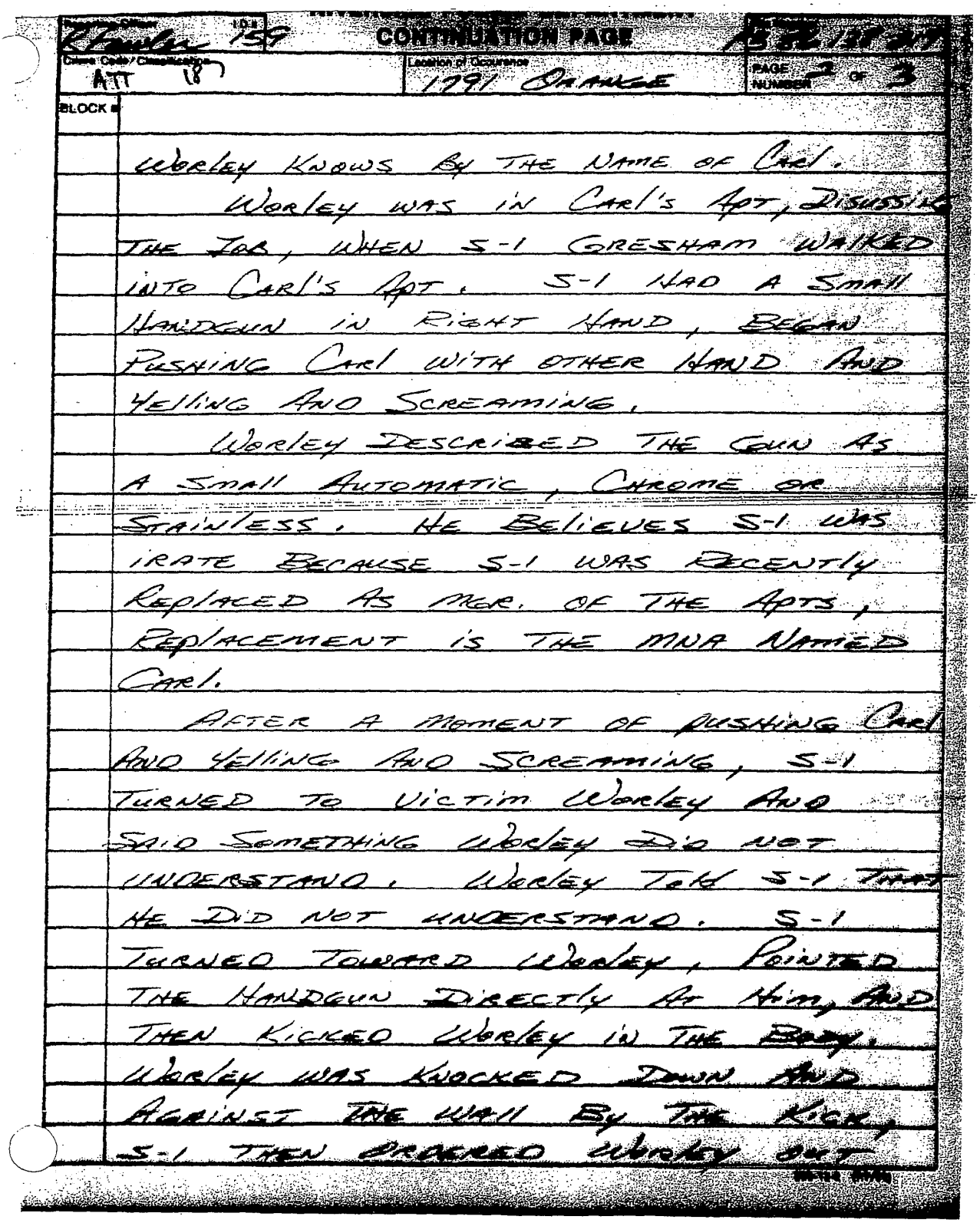
Entered

Other

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002838

EX 205 - 000206



CONTINUATION PAGE

Crime Code / Classification: ATT 187

Location of Occurrence: 1791 ORANGE

PAGE NUMBER 2 OF 3

BLOCK #

WORLEY KNOWS BY THE NAME OF CARL.

WORLEY WAS IN CARL'S APT, DISCUSSING THE JOB, WHEN S-1 GRESHAM WALKED INTO CARL'S APT. S-1 HAD A SMALL HANDGUN IN RIGHT HAND, BEGAN PUSHING CARL WITH OTHER HAND AND YELLING AND SCREAMING.

WORLEY DESCRIBED THE GUN AS A SMALL AUTOMATIC, CHROME OR STAINLESS. HE BELIEVES S-1 WAS IRATE BECAUSE S-1 WAS RECENTLY REPLACED AS MGR. OF THE APTS, REPLACEMENT IS THE MAN NAMED CARL.

AFTER A MOMENT OF PUSHING CARL AND YELLING AND SCREAMING, S-1 TURNED TO VICTIM WORLEY AND SAID SOMETHING WORLEY DID NOT UNDERSTAND. WORLEY TOLD S-1 THAT HE DID NOT UNDERSTAND. S-1 TURNED TOWARD WORLEY, POINTED THE HANDGUN DIRECTLY AT HIM, AND THEN KICKED WORLEY IN THE BODY. WORLEY WAS KNOCKED DOWN AND AGAINST THE WALL BY THE KICK. S-1 THEN DRAGGED WORLEY OUT

DA 00002839

EX 205 - 000207

Officer Rowley ID# 139 — CONTINUATION PAGE — DATE 8-2-87

Crime Code/Classification: ATT 187 — Location of Occurrence: 1791 ORANGE — PAGE NUMBER 3 OF 3

BLOCK #

OF THE APT. WORLEY LEFT QUICKLY.
A FEW MINUTES LATER WORLEY WENT TO A NEIGHBORING APT. AND CALLED RPD.
WHEN THE POLICE ARRIVED WORLEY WAS ASKED TO I/D S-1. WORLEY WENT TO THE SIDE OF THE HOUSE AND I/D'd S-1 FOR THE POLICE OFFICER.
AT THAT POINT THE OFFICER TOLD S-1 HE WAS GOING TO SEARCH HIM FOR WEAPONS. S-1 BACKED AWAY AND THEN TURNED AND RAN, THE OFFICER RAN AFTER S-1.
WORLEY RAN TOWARD ORANGE ST, FEARING FOR HIS OWN SAFETY, A MOMENT LATER HE HEARD A GUNSHOT
MOMENTS LATER MORE OFFICERS ARRIVED AND WORLEY MADE HIMSELF KNOWN TO WRITER.
WORLEY HAD NO FURTHER INFO.

DA 00002840

EX 205 - 000208

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 5/19/86

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime Ct.	6. Crime Ct.	7. Crime Ct.	8. Date/Time Occurred	9. Day
P3-86-138-217		330	A02					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			ARR	PCR		

17. Address of Occurrence (Street No. - Name - City): [redacted] Orange St., Riverside — 18. Type of Place: Apartment Complex

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V1	HECHT, Randal Lee (Police Officer)		[redacted]56

23. Residence Address	24. Business or School Address	25. Home Phone
	Riverside Police Department	

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB
V2	WORLEY, David Lee	W M	[redacted]48

31. Residence Address	32. Business or School Address	33. Home Phone
[redacted] Edgewood, Riverside		683-7889

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes / No
GRESHAM, Randal Dale	WMA		511	180	Brn	Blu	[redacted]59	( ) / ( )

44. Address - Clothing - Other Marks or Identifying Characteristics: [redacted] Orange St., Apt. #1, Riverside

45. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 7

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes / No
								( ) / ( )

55. Address - Clothing - Other Marks or Identifying Characteristics:

56. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 7

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 664/187 PC (Att. Homicide on PO)	(1)
(2) 417a2 PC (Brandishing Firearm)	(2)

58. Stolen Auto Value ASP $

59. Recovered Auto Value A2 $

Reporting Off: MACKEY

Reviewed By:

COPIES TO:

62. Narrative of Supplemental Report

3) 242 PC (Battery)

Additional Victim:

V3 COLLINS, Carl A. NMA, dob: [redacted]51
[redacted] Orange St., Apt. #3 no phone
Riverside, CA

Evidence:

MACKEY 1. One (1) 9MM semi-automatic Smith and Wesson handgun, serial #A852425; (1 round chambered, 12 rounds in the magazine; owner, Randal Hecht, Riverside Police Officer). Collected at 0140 hours on 5/19/86. This item received from Officer Hecht at the Riverside Police Department.

VCLO

APB Sent

APB Cancel

DOJ Hold

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002841

EX 205 - 000209

RIVERSIDE P.D. CRIMES AGAINST PERSONS UNIT
CONTINUATION SHEET

PAGE NO. 2 FILE NO. P3-86-138-217

5/19/86	TYPE OF REPORT 664/187 PC / 417a2 PC / 242 PC	INVESTIGATING OFFICER MACKEY

(Evidence cont'd.)

MACKEY 2. Five (5) cassette tapes of interviews with Officer Hecht, S-Randal Gresham, and V-Carl Collins.

Narrative:

On 5/18/86 at approximately 2200 hours I was contacted at home by Sgt. Contri of the Riverside Police Department/Crimes Against Persons Unit. Sgt. Contri advised me that we had an officer involved shooting in the 1700 block of Orange in the City of Riverside. Sgt. Contri further advised that Officer Hecht was apparently involved and that no one was injured. I asked Sgt. Contri the circumstances surrounding the shooting and he advised that Hecht had apparently received a report of a man with a gun and that upon responding to that call he was able to make contact with the suspect and that the suspect apparently reached in the waistband area of his trousers and Officer Hecht had observed the suspect in possession of a chrome type object. Sgt. Contri further advised that Officer Hecht fired one round at the suspect and that the suspect fled. Sgt. Contri also advised that the suspect was currently in custody and that the weapon used by the suspect was currently outstanding. Sgt. Contri requested that I respond to the Riverside Police Department to participate in followup investigation.

I arrived at the Riverside Police Department at approximately 2220 hours. I was contacted by Officer Dave Lopez of the Riverside Police Department, who advised me that a possible witness by the name of Carl Collins was at the front counter with his two children. Officer Lopez advised me that Mr. Collins wanted to leave and take his children home and I advised Officer Lopez to have Mr. Collins to remain in the lobby area of the police department and I would interview him prior to his leaving the police department.

While at the Riverside Police Department S/A McBride and S/A Hern arrived to assist in the followup investigation in the 1700 block of Orange. I directed S/A McBride and S/A Hern to proceed to the scene to begin followup with crime scene evidence collection and preservation.

Sgt. Contri arrived from the scene and monitored a interview with Mr. Collins and it should be noted that that interview was tape recorded.

I interviewed the following individual on the second floor of the Riverside Police Department.

COLLINS, Carl A. NMA, 35 yrs., dob: [redacted]/51
[redacted] Orange St., Apt. #3 / no phone
Riverside, CA Retired

I asked Mr. Collins to relate to me what had occurred on this date and he stated that he resides at the apartment complex on Orange and that the manager there is a Randy Gresham. Mr. Collins further informed me that a subject by the name of Dave had come to his apartment and that Dave had apparently had been the person who had called the police. Mr. Collins advised me further that Dave and the suspect, Randy, had scuffled and that the original altercation started in Carl's apartment. Mr. Collins further advised me that Dave made a statement that he had a gun and Mr. Collins advised me that he assumed that it was Randy who had the gun and that Randy did put the gun to Carl's face.

I asked Mr. Collins who was in his apartment prior to the altercation taking place and he stated he was there with Dave and the two boys that he had with him. I asked him if they were his boys and he stated that they were not his natural children, but they were his boys. Mr. Collins informed me that Dave had made the statement that everyone was trying to use him

DA 00002842

EX 205 - 000210

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

PAGE NO. 3 FILE NO. P3-86-138-217

5/19/86	TYPE OF REPORT 664/187 PC / 417a2 PC / 242 PC	INVESTIGATING OFFICER MACKEY

and that Carl had become upset and asked for all of the receipts for work that had been done around the apartment area. Mr. Collins continued that Randy was also there at that time and that Randy had got up and told Carl that he was "disrespecting him". Collins amended this to mean that the statement about disrespecting was while they were outside that as he turned around to walk away and walked into his apartment, that he turned around in his kitchen area and that the suspect was behind him. He stated that he observed the suspect to have a small 22 or 25 caliber nickel plated or silver in color weapon in his hand. Mr. Collins continued that the suspect cocked the gun and put it in Carl's face and the suspect apparently again made the statement about Carl disrespecting him.

Carl advised me that he tried to explain to the suspect that he was trying to collect the receipts to pass them on to Cecil Rigney, the owner or care taker of the property. Carl advised me that Randy felt that he (Carl) was trying to undermine him. He stated further that the suspect, Randy, had made statements that there were people out there who were after him over money, that he apparently owed them. I asked Mr. Collins which hand the suspect had the gun in and he stated it was in his left hand. I asked him where Dave was at this time and he stated that Dave was sitting and that Dave said something to the suspect and that the suspect then pointed the handgun at him. Mr. Collins advised me that he observed Dave to begin to get up from the seated position when he was kicked by the suspect, Randy, in the side or stomach area. Mr. Collins advised me that he got Dave out of the apartment and that he was trying to talk with the suspect. He stated that the suspect, Randy, had told him that there were people trying to kill him and that they will kill him and his kids. Mr. Collins continued that he advised Randy to put the gun away and he did and that Mr. Rigney had arrived and asked what was going on.

Mr. Collins advised that everything calmed down and that he, Randy, and Cecil were sitting down, trying to calm Randy down. However, as the conversation progressed Cecil did not want to talk to Randy any more.

I asked Mr. Collins if he observed the police to arrive and he stated that he did and as the police officer walked up to Randy, after Randy was apparently pointed out to the officer, that Randy appeared to be getting crazy. I asked Mr. Collins what he saw happen then. He stated that Randy broke and ran out to the back. He stated that he observed Randy to slip to his knee, however, he was able to continue running. At this time, in the interview with Mr. Collins he advised that he observed the suspect to point at the officer who was pursuing him and while he was making this statement to me he was holding his left hand out in front of him, cradling his right hand. Mr. Collins advised me that he observed a shinny object in Randy's hand. I questioned Mr. Collins regarding the way he was holding his hands and whether or not he could describe the type of stance that the suspect had gone into and he described it as being a combat stance. Mr. Collins advised me that he observed a shinny object fall to the ground and the other shinny object was in the suspect, Randy's, hand.

Mr. Collins advised me that he observed the police officer to reach for his weapon and then to hop over the hood of a vehicle parked in the area. Mr. Collins advised me that he heard a shot fired and indicated to me that he did not observe any fire come from the police officer's weapon. I asked Mr. Collins what happened to the suspect, Randy, and he stated that he ran right after the shot was fired.

I asked Mr. Collins if he could hear any statements being made by the suspect, Randy, as he came around and faced the police officer. He stated that he said something, however, he could not hear exactly what it was. I asked him to tell me what the weapon sounded like when it went off and he indicated that it was louder than a 22. I asked him if it was louder than a magnum and he stated that it was not as loud as a magnum. I asked Mr. Collins whether or not Randy had a habit of carrying a gun and he stated that he did. I asked him whether or not

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

PAGE NO. 4 FILE NO. P3-86-138-217

5/19/86	TYPE OF REPORT 664/187 PC / 417a2 PC / 242 PC	INVESTIGATING OFFICER MACKEY

Randy was into drugs; he advised me that he believed that Randy was into Speed and perhaps a little Marijuana.

I asked Mr. Collins who may have witnessed the incident and he advised me that Anna, the suspect's wife, witnessed it as well as Cecil Rigney, the subject Dave, and a subject by the name of Steve whose last name he does not know. Mr. Collins advised me that Rigney, Dave and Steve did not live in the area. At this time the interview with Mr. Collins was concluded and due to the fact that he had two young children with him and he advised me that he needed to get them home. I provided Mr. Collins with a business card and advised him that I may be in touch at a later time.

I then conducted an interview with Officer Randal Hecht on the second floor of the Riverside Police Department with the interview commencing at approximately 2342 hours on 5/18/86.

I asked Officer Hecht to advise me what occurred at 1791 Orange in the City and County of Riverside. Officer Hecht advised me that he was working Beat 3 / F-1, a-one man car in the downtown area and that he monitored a radio call of a 417 with the man still there. Officer Hecht also advised me that the victim was apparently in apartment #2 and that the suspect was in apartment #1. Officer Hecht advised that the call was given to S/A Collopy and that he responded that he was in the Magnolia Center area. Officer Hecht advised me that he told dispatch that he would be enroute to assist. Officer Hecht checked the radio log and noted that his time 10-97 or arrival at the location was approximately 2051 hours. Officer Hecht advised me that when he arrived in the area he saw three people who had waved to him as if to flag him down. Officer Hecht continued that he made contact with these individuals and that they walked out to the sidewalk to meet him.

Officer Hecht advised that a Mr. Worley had told him that he was visiting these other people that were with him and that while they were inside talking in apartment #2 that the suspect, Randy, came into the apartment. Officer Hecht advised me that Worley told him that the suspect was or is the manager of the apartments at that location. Officer Hecht continued that he was told by Worley that the suspect was armed with a handgun and that no other discription was given at this time. Worley related to Officer Hecht that he was ordered by the suspect to leave and that the suspect had pointed a gun at everyone inside of the apartment. Worley also advised Officer Hecht that he was kicked by the suspect in the left arm or side area. V2 Worley advised Officer Hecht that he then left and called the police department.

Officer Hecht advised me that he was told by the individuals that had met him on the sidewalk that the suspect had been there in the area within the last five minutes. Officer Hecht advised me that Worley told him that the suspect was on parole and thought he was armed. Officer Hecht advised me that he questioned Worley as to whether or not he was interested in a criminal complaint and he was advised by Worley that he was interested in a criminal complaint and wants the suspect arrested.

Officer Hecht advised that he asked Worley to point out the area where the suspect was and that Worley then walked him around to the back of the residence and pointed the suspect out to him. Officer Hecht advised me that they had walked to the north side of 1791 Orange and to the rear where he observed two white male adults and one black male sitting on the rear porch. Officer Hecht continued that approximately 10 to 15 feet to the south of them he observed a white female, the suspect and another white male talking. Officer Hecht advised that Worley was with him at this point and that Worley pointed to the group and told him that the person standing in the middle with the blonde hair was the suspect. Officer Hecht advised me that he then walked in the direction of the suspect, whose back was to him at this time, and that he heard the suspect and the other man talking. Officer Hecht advised me that he identified himself and that the suspect turned around and stated words to the effect, "Who

FORM NO.

DA 00002844

EX 205 - 000212

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

PAGE NO. 5 FILE NO. P3-86-138-217

5/19/86	TYPE OF REPORT 664/187 PC / 417a2 PC / 242 PC	INVESTIGATING OFFICER MACKEY

called the police?" Officer Hecht continued that the suspect asked the man, who he was with, whether or not he called the police and the man stated that he didn't. Officer Hecht advised me that he told the suspect that he wanted to talk to him about the incident that occurred.

Officer Hecht advised me that the suspect appeared very excited and that he noted the suspect's eyes to be dilated as well as the white female's eyes. Officer Hecht advised me that the suspect was approximately 5 feet away from him and that the suspect's hands were in plain view. Officer Hecht advised me that as he moved closer to the suspect that he asked the suspect if he was carrying any weapons and it was at this point that the suspect started to move away and made a statement, words to the effect, "that he hadn't done anything wrong and he had no reason to talk to him." Officer Hecht advised that the suspect started to back away and that as he (Hecht) tried to move closer that Officer Hecht felt that he was going to run.

I asked Officer Hecht as to whether or not he informed the suspect that he was going to arrest him; he stated that he did not. Officer Hecht advised me that his intention was to pat the subject down for his safety prior to talking with him. Officer Hecht advised that as he moved closer to the suspect that the suspect ran eastbound towards Orange Street and that the suspect upon reaching the front portion of the house, turned northbound and continued to run with Officer Hecht in foot pursuit. Officer Hecht advised me that he notified the radio room that he was in pursuit on foot and that the suspect then turned westbound at the corner of the house and continued to run. Officer Hecht advised me that he had the police radio in his left hand and his baton in his right hand and that as he was pursuing the suspect that he got within 5 feet of the suspect when the suspect stopped. Officer Hecht advised me that while he was pursuing the suspect that he observed the suspect to be reaching to his waistband area in the front as Officer Hecht was pursuing him from the rear. Officer Hecht advised me that he dropped his baton as he observed the suspect to reach the front area of his waistband with his hands out of sight of the officer, and that he (Hecht) started to draw his weapon. Officer Hecht advised me that the suspect started to turn. I asked Officer Hecht if he had seen anything as he was running and whether or not the suspect would look back in his direction. Officer Hecht advised me that he didn't see anything as the suspect was running away, however, the suspect did look back at him. I asked Officer Hecht whether or not he ordered the suspect to stop; he stated that he yelled for him to stop a couple of times.

Officer Hecht advised me that he observed the suspect to pull something from his waistband area using his right hand. I asked Officer Hecht what the lighting conditions were in the area and he stated that there was a porch light on 50 to 60 feet behind him. I asked Officer Hecht to continue and he stated that he observed the suspect to turn and raise the object eye level and point it at him. I asked Officer Hecht whether or not it was a gun and Officer Hecht responded, "I felt it was a gun." I asked Officer Hecht what fashion the suspect held the gun in and he stated that he held the gun in two hands while he was pointing the gun at him. I asked him whether or not the subject's arms were extended and in a locked position and he stated, "Yes." I asked him the type of stance that the suspect went into and he stated, "the combat stance."

I questioned Officer Hecht as to whether or not the suspect said anything as he was pulling the weapon and pointing it at him. He stated that the suspect did not say anything at that instant, but that the gun was pointed directly at his upper torso area, (Hecht's). Officer Hecht advised me that when the suspect did this that he now had his weapon out and pointed at the suspect and that he ordered the suspect to drop it. Officer Hecht, when asked whether or not he felt the suspect was going to shoot him, Officer Hecht responded that he believed that the suspect had every intention of shooting him. Officer Hecht advised me that he tried to shoot the suspect, however, his gun did not go off when he pulled the trigger. I asked him how many times he pulled the trigger; he stated approximately five times.

DA 00002845

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RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

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5/19/86	TYPE OF REPORT 664/187 PC / 417a2 PC / 242 PC	INVESTIGATING OFFICER MACKEY

I asked Officer Hecht while this scene was going on, whether or not the suspect made any statements; he stated the suspect stated repeatedly words to the effect, "I'll shoot you, I'll shoot you." I asked Officer Hecht whether or not he observed the suspect to pull the trigger of his weapon specifically whether or not he could see the suspect's fingers moving. Officer Hecht advised me that he did not see the suspect's fingers moving nor did he observe the suspect to try and pull the trigger of the weapon.

Officer Hecht advised me that when his weapon did not fire that he looked around for cover and that he finally observed a vehicle parked in the area that was approximately 5 to 10 feet west of them. Officer Hecht advised me that the suspect tracked him wherever he went for cover and that the suspect continued to state words to the effect, "I'll shoot you, I'll kill you." Officer Hecht advised me that he heard a female voice state, "No Randy, no." Officer Hecht advised me that he heard the click of the safety on his weapon, however, he felt that the safety did not disengage itself initially and that he was attempting to put his safety on and off to clear the weapon and while doing so the suspect followed him to the front of the vehicle that he used for cover and that the suspect continued to point the weapon at him, making those same previously reported statements.

Officer Hecht advised me that when his weapon would not work and that the suspect was tracking with the gun and pointing it at him while he was near the vehicle, that he moved to his right near a poultry fence. Officer Hecht advised that the suspect moved to the right front of the vehicle that Officer Hecht had abandoned. Officer Hecht advised me that as he was moving from the vehicle that he had used for cover that he had racked his weapon to clear the weapon of the one round that had been chambered and to chamber an additional round. Officer Hecht advised me that the suspect was still tracking him with the gun pointed at him when Officer Hecht had moved to the small poultry fence. Officer Hecht advised me that he was approximately 20 feet from the suspect when he fired at the suspect who was standing off to the left front of the vehicle. Officer Hecht advised me that after he fired at the suspect that the suspect ran in a westerly direction through a gate and into the darkness.

It should be noted that neither the suspect nor Officer Hecht were injured and that the suspect had been taken into custody and was at the Riverside Police Department at this time.

At the conclusion of the interview with Officer Hecht, myself, Officer Hecht and Officer Ray Soto left the Riverside Police Department and returned to the scene of the shooting.

Officer Hecht walked me through the scene and pointed out areas where the suspect had been standing when he pulled the weapon on him as well as where Officer Hecht had sought cover by the parked vehicle. It should be noted that while examining the parked vehicle that there were some smudge marks noted on the hood of the vehicle, specifically three, where it appears from casual observance that it was possible that the suspect leaned across the hood of the vehicle with both forearms and perhaps his hand touching the vehicle disturbing the dust that was there. It should further be noted that the area just below the hood where these marks were noted, that there was a brushed area clearing away the dust and dirt in the area where Officer Hecht indicated that the suspect had been. It should further be noted that there was a disturbed area on the right passenger door of the vehicle where Officer Hecht had hidden and perhaps this area of disturbed dust and dirt was when he may have leaned up against the vehicle while trying to hide. After making these observations, S/A Collopy was requested to return to the scene for photographs to note these areas on film.

While at the scene I noted that there were two flood lights to the southwest of the residence. Further that while standing in the rear yard with the flood lights to your back and looking in a westerly direction, that the area where the altercation between Officer Hecht and the suspect took place, is very well lite. It should further be noted that there was about a half

DA 00002846

EX 205 - 000214

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

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5/19/86	TYPE OF REPORT 664/187 PC / 417a2 PC / 242 PC	INVESTIGATING OFFICER MACKEY

moon and that visibility was extremely good considering the time of night.

It should be noted that a crime scene search was conducted by S/A Hern and S/A McBride, (refer to their supplemental reports for locations of evidence seized).

For additional information regarding evidence items seized refer to the supplemental reports prepared by the uniformed officers at the scene that are contained in this case file.

After being walked through the crime scene by Officer Hecht I then returned to the Riverside Police Department where I collected Officer's Hecht's weapon for examination by the Riverside Police Department Range Master, Hershal Howard, to determine why the weapon malfunctioned.

At this time contact was made with the suspect who was currently on the first floor in a holding cell. I made contact with him and escorted him to the Riverside Police Department Detective Bureau for interview regarding what occurred on Orange Street, should he agree to discuss this investigation. The suspect was placed in the interrogation room and I advised him that I wished to discuss and to question him regarding his activities in the area of this apartment on 5/18/86 in the early evening hours. Prior to any questioning of the suspect it was my intention to advise him of his legal and constitutional rights, however, prior to being able to do so the suspect began to talk. I made no attempt at this time to interrupt the suspect while he was talking, however, in listening to him that he would ramble on, his statements were unclear, he alleges that the officer who approached him attempted to kill him without provocation and pursued him on foot. He also talked of a sawed off shotgun being possessed by individuals in the apartment complex prior to the officer arriving at the location and that the shotgun went from one individual to another. The suspect did not, in his statement to me, mention that he had any weapons whatsoever. The suspect was allowed to continue his statement, although the statements were difficult to understand, but the general content was that a subject the suspect called Dave or Junky Dave, was going to paint the apartments where the suspect resided. He also mentioned that Carl, a black subject who resides at that location, (Collins) wanted receipts for work that had been done by individuals working there. The suspect stated that Carl wanted "all the God damn receipts to him." The suspect advised that he asked Carl what receipts and he stated that Carl was ranting and raving and that Dave (Junky Dave) pulled a sawed off shotgun on him. He stated that Junky Dave made a statement similar to, "I'm going to blow your fucking kids away." The suspect continued that a realestate guy came to the apartments and he identified that person as Cecil Rigney and that when Mr. Rigney arrived that Carl was now in possession of the shotgun. The suspect continued that Dave was sitting there and that he asked Dave to leave so that they could have some privacy and discuss the problems of the apartment complex with Mr. Rigney, however, Dave would not leave. He stated that Carl asked Dave to leave and Dave did so and that the suspect, Carl and Mr. Rigney talked about the receipts. The suspect advised me that he had to see everything, that he wasn't going to sign anything without seeing it. I asked him where they were talking and he stated that they were talking inside of the house. He stated that he had also discussed the porch structure and that when doing so Carl became upset and went inside. They had apparently been outside while talking about the porch. The suspect advised that he, Rigney and his wife were outside talking when the police officer approached him. He stated that he observed Dave pointing at him while the police officer was present and that the police officer came up and said something. He stated that he observed the police officer to pull his gun or start to. The suspect advised that he raised his hands and that Cecil was there and that the suspect then fled around the house and that the officer was pursuing him. The suspect advised me that he tried to talk to the police officer, however, the police officer said nothing.

The suspect continued to make his statement and I was finally able to interrupt him to advise him of his legal and constitutional rights. I did advise him from the Riverside Police Department Statement of Rights form and that the suspect, after hearing the rights, agreed that he understood his rights and agreed to discuss this investigation with writer. The suspect

RIVERSIDE POLICE DEPARTMENT
CONTINUATION SHEET

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5/19/86	TYPE OF REPORT 664/187 PC / 417a2 PC / 242 PC	INVESTIGATING OFFICER MACKEY

eventually signed the Riverside Police Department Statement of Rights form and that form will be included in the case file.

After the suspect waived his rights he again went on to tell me what occurred, however, his statements were again difficult to understand and I was unable to interrupt him long enough to ask him a question and get a response without him interrupting me and continuing on with the statements that did not follow a pattern or seem to make sense.

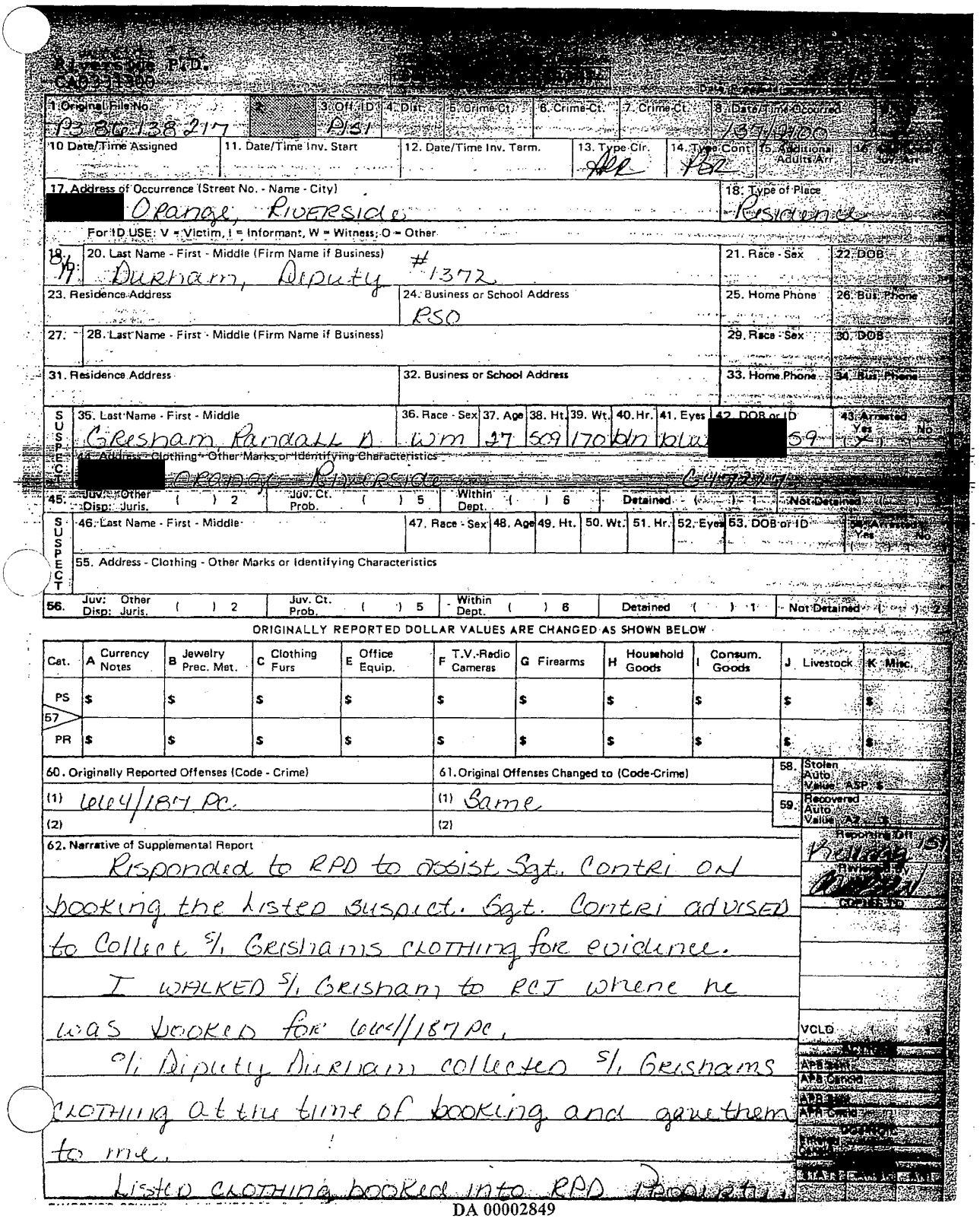
During the course of the statements being made by the suspect, I mentioned to him that we had his fingerprints on file and that we had located weapons that had his fingerprints on them. It was at this point that the suspect made reference to the fact that Junk Yard Charlie had given him two handguns earlier in the evening. It should be noted that the suspect made no reference to these handguns prior to me bringing them up, that he stated that he was an innocent victim of a police officer pursuing him trying to kill him. The suspect was unable to give me anything, other than Junk Yard Charlie as being the subject he received the guns from and it was only because someone had pulled a sawed off shotgun on him earlier in the evening.

It should be noted that the interview was tape recorded with the suspect, however, it will be impossible for me to relate accurately what the suspect has said. It is my suggestion for the District Attorney, that he obtain the tape for review with regard to this matter.

At the conclusion of the interview with the suspect, he was subsequently lodged in the Riverside County Jail for the appropriate charges.

DA 00002848

EX 205 - 000216



RIVERSIDE P.D.
CAD # 1-1300

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime Ct.	6. Crime Ct.	7. Crime Ct.	8. Date/Time Occurred
03 80 138217		D51					1/31/1100

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Cir.	14. Type Cont.	15. Additional Adults Arr.	16.
			HR	PBZ		

17. Address of Occurrence (Street No. - Name - City): [redacted] Orange, Riverside — 18. Type of Place: Residence

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19.	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
W	Durham, Deputy # 1372		

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	RSO		

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT	35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes / No
	Gresham, Randall D	wm	37	509	170	bn	blu	[redacted] 59	X

45. Juv: Disp: Other Juris. ( ) 2 — Juv. Ct. Prob. ( ) 5 — Within Dept. ( ) 6 — Detained ( ) 1 — Not Detained ( ) 2

SUSPECT	46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes / No

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Disp: Other Juris. ( ) 2 — Juv. Ct. Prob. ( ) 5 — Within Dept. ( ) 6 — Detained ( ) 1 — Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 664/187 PC.	(1) Same
(2)	(2)

58. Stolen Auto: Value: ASP: $

59. Recovered Auto: Value: ASP: $

Reporting Off.

Reviewed By

Copies To

62. Narrative of Supplemental Report

Responded to RPD to assist Sgt. Contri on booking the listed suspect. Sgt. Contri advised to collect S/I Greshams clothing for evidence. I walked S/I Gresham to RCJ where he was booked for 664/187 PC. S/I Deputy Durham collected S/I Greshams clothing at the time of booking and gave them to me.

Listed clothing booked into RPD Property.

VCLD

APB Sent

APB Cancld

DA 00002849

EX 205 - 000217

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

1. General File No.	2.	3. Off. ID	4. Dist.	5. Crime Ct.	6. Crime Ct.	7. Crime Ct.	8. Date/Time Occ.	9.
P3-86-138-217		330	A02					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			ARR			

17. Address of Occurrence (Street No. - Name - City): 1791 Orange, Riverside

18. Type of Place: Apartment complex area

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V	HECHT, Randal Lee - Police Officer		

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	RPD		

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes / No
GREASHAM, Randall Dale							[redacted]59	( ) / (X)

44. Address - Clothing - Other Marks or Identifying Characteristics: [redacted]Orange, Apt. #1, Riverside

45. Juv. Disp: Other Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes / No

55. Address - Clothing - Other Marks or Identifying Characteristics:

56. Juv. Disp: Other Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 664/187 PC	(1) 245b PC (ADW on a Police Officer)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2: $

Reporting Off: MACKEY 3pr.

Reviewed By:

DR NO.

VCLO

APB Sent

APB Cancld

APB Dscrd

COURIER

62. Narrative of Supplemental Report

On 5/19/86, I received a telephone call from a subject who identified himself as Eddy Fink. Fink advised me that he was currently in the Riverside County Jail dispensary and that he had some information regarding the officer-involved shooting on Orange Street in the City of Riverside. After receiving a phone call from Mr. Fink, I did make contact with him on the same date at approximately 1525 hours and interviewed him with regard to the information that he had received regarding the officer-involved shooting.

Fink advised me that he was in the blue room adjacent to the booking desk at

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002850

EX 205 - 000218

RIVERSIDE POLICE DEPT
CONTINUATION SHEET

PAGE NO. 2 FILE NO. P3-86-134-217

5/21/86	TYPE OF REPORT 245b PC	INVESTIGATING OFFICER MACKEY #930

the Riverside County Jail when the suspect by the name of Randy was booked into the County Jail. Fink advised me that Randy was "wired". He related that Randy told him that someone had threw down on him with a shotgun and that he (Randy) had pulled a "piece" on them. Fink went on to state that the subject Randy also mentioned that he had stayed at his residence and was talking to a real estate man who had come by. Fink advised that Randy had told him that he had mentioned to the police officer "don't make me kill you". He also advised that the subject Randy told him that he had thrown both guns over a fence and also jumped a fence. Fink advised that Randy told him that he had in his possession a 22 and a 25 caliber weapon and stated that they were "little ones".

Fink advised that Randy told him that he was talking to the real estate guy and his children were apparently in the area and, further, that it was one of his children's birthday. As the police officer approached him, the police officer made a statement something like "I understand you have a gun, put your hands behind your back". Randy advised Fink that he ran around the house and that the police officer was chasing him. He indicated further that the police officer was afraid to come around the corner because he (Randy) had pulled a gun. Fink advised, again, that the subject Randy had made a statement similar to "don't make me kill you, man". Fink advised that Randy told him that during the course of the altercation that somehow a vehicle had separated him (Randy) and the cop and that the cop had dropped down on one side of the car. Fink continued that he was advised by Randy that the cop and himself (Randy) were standing when he made the following statement "don't make me kill you, man". Randy related to Fink that the police officer went down and Randy told him that he heard a shotgun loading and that's when he decided to leave. Randy went on to advise Fink that he went over a fence into a school yard, however, prior to doing so he threw his guns into a yard. He stated that after he went into the school yard, that he climbed back over another fence into the same yard where he had thrown the guns.

Fink advised me that Randy told him further that after he had jumped over the fence and into a yard, that he went into a Puerto Rican's or a wetback's house, where he was ultimately arrested by the police. Randy advised that he was hiding behind the door when he was ordered out of the room and arrested. He advised Fink that there was no place for him to go, that he was caught.

Fink advised me that Randy told him that had the police officer raised up above the car after he had ducked down, that he would have "blowed his head off", this statement being made by Randy to Fink in the blue room at the Riverside County Jail. Fink, while advising me as to the story that was related to him by Randy, held his hands in a fashion that his left arm would be extended with his right hand being cradled in his left hand. I asked Fink whether or not this hand movement that he was showing me, whether or not that hand movement was made by the suspect Randy; and Fink advised me that it was just as he had been shown by Randy.

Fink advised me that Randy had told him his defense was going to be that he was loaded on speed and that he didn't know what he was doing. He further advised Fink that the reason he had a gun was because a shotgun had been pulled on his kids. At this time the interview was concluded with Mr. Fink.

On 5/20/86, Det. Spellman and I went by the residence of the suspect Greasham and made contact with his wife there at that location. I questioned Anna Greasham briefly regarding the incident that occurred at her residence and asked her where her children were when the police officer came to contact her husband. Anna Greasham advised me that none of her children were there, that one child was in the house and that the other was standing near a group of individuals that were outside on their porch. I asked Anna who was

FORM NO. [illegible]

DA 00002851

EX 205 - 000219

CONTINUATION SHEET

PAGE NO. 3

5/21/86	245b P C	MACKEY #310

standing in the group when the police officer arrived. She stated that she was there as well as Mr. Rigney and her husband.

I questioned Anna as to whether or not she knew that Randy had a gun. She stated that she knew he had had a gun. I asked her whether or not she saw him reaching for the gun and she advised me that she saw her husband reaching near his waistband when the police man had chased him at the area where Randy slipped and fell. I asked her whether or not she observed Randy to pull the weapon on the police officer; she stated that when she observed him reaching for his waistband that she became afraid and took her daughter Sarah into the house. At this time, my interview with Anna was concluded and I made contact with Dave Worley, the painter in the area, and left him a business card to be given to Carl Collins for Mr. Collins to call me.

While at the Riverside Police Department on 5/20/86, I was contacted by Officer Chris Sachse of the Riverside Police Department who advised me of specific circumstances involving a female subject going by the Rivas' residence and picking up some property that apparently had been left behind by the suspect at the time he was arrested. Officer Sachse advised me of the circumstances and also prepared a supplementary report regarding the statements made by the Rivas family and in that supplemental report it gave a general physical description of a white female subject who was involved. For information regarding the circumstances, refer to Chris Sachse's supplemental report that is included with this investigation.

As a result of my conversation with Officer Sachse, Det. Spellman and I returned to the Orange Street address and made contact with Anna Greasham.

On making contact with Anna Greasham, she was located inside of her apartment as well as two other male individuals who left upon our arrival. There was also a female subject at that location who matched the physical description provided by Officer Sachse. It should be noted that Det. Spellman and I saw this very same female individual when we had previously talked with Anna on 5/20/86. At that time, it was our understanding that Anna was en route to the Riverside County Jail to attempt to see her husband, the suspect Randy, and that she was going to be taken there by this same female individual. From the description provided by Officer Sachse, I felt that this female subject was, in fact, the female subject who had entered the Rivas residence and obtained an item left by the suspect.

I confronted this female individual with the fact that I would like to have the item she had picked up from the people's residence next door. The female subject advised me that she did not have it. I asked her where it was. She stated that it was outside in her car and advised me that I could go get it. I informed her that I was not going to go get it, that she could go get it. At this time, I walked outside with this female subject while Det. Spellman remained with Anna Greasham.

After arriving at the female subject's car, she provided me with a black in color cloth change purse and, upon opening it and examining it, I noted the following items inside:

one 38 caliber Federal wad cutter;
one 38 caliber Remington Peters + P bullet, attached a snorting spoon;
two small what appears to be switchblade knives and when the buttons are depressed one has a snorting device attached as part of the blade and the other has an alligator type clip attached where the blade would be;
one package of zigzag papers;
one metal box containing two glass vials, a funnel, a straw, as well as a razor blade, with a phone number inside of this metal box for a subject by the name of

FORM NO. 200-11.1

DA 00002852

EX 205 - 000220

CONTINUATION SHEET

PAGE NO. 4

5/21/86	TYPE OF REPORT 245b PC	MACKEY #330

Mike at 689-4164. (There appears to be a white residue in both of the glass vials as well as a white residue in the funnel.)

one black pouch containing four small plastic bags, each containing a quantity of a white powdery substance, and one larger ziploc type bag containing a quantity of a white powdery substance.

These items were secured from the female subject who was identified as follows:

SHELTON, Loa Kathleen — WFA [redacted]63 5'3" 130# Brn/Brn
[redacted] S. Rancho Avenue — SS [redacted]6989
San Bernardino — vehicle: 1976 Dodge stationwagon, beige in color, Washington license XZY442

I interviewed Shelton with regard to how she came in possession of these items and she stated that she had picked them up from the people's residence next door, and she wanted to know who the informant was. At this time, I declined to answer. I asked her what she was going to do with these items and she stated that she was going to trade them to a subject she knows to get work done on Anna Greasham's vehicle so that she would have transportation. I asked her how she knew that these items were present in the house and she stated that she was told by Anna. At this time, Shelton was allowed to leave and I recontacted Anna Greasham.

While making contact with Anna Greasham, I questioned her regarding the contraband that had been held by Shelton. I asked her how she knew that those items were at the people's residence and she stated that Randy had called and told her to go get it. She advised me that Randy told her that there was a little black purse in their closet. I asked her whether or not Randy told her what was in it. She stated that he didn't say but she figured out what it was. I questioned Anna Greasham what she was going to do with these items, she stated that Loa Shelton had told her that she could trade the contraband for work on Anna's vehicle. She stated that Loa told her that she could trade it to her brother for work on the car. Anna advised me that she told Loa that she just wanted it to be gone, to get rid of it. Anna advised me again, as she had previously, that she was not involved in the use of contolled substances and that she didn't want it in her residence. At this time, Det. Spellman and I departed the Greasham residence and returned to the Riverside Police Department.

I made contact with Special Agent Mark Stevens of the Riverside Police Department Narcotics Unit and requested that he screen the contents of the baggies to determine what type of controlled substance was contained within. Det. Stevens Valtoxed the items and received a positive reaction to amphetamine and informed me that it was his expert opinion that the amount that I had currently in my possession is, in fact, enough to charge the individual with possession for sale. These items will be submitted to the Riverside Police Department Property room as evidence in this investigation and they will carry the evidence item number of RM1.

On 5/21/86, I received a telephone call from the following individual in response to my inquiries about him:

RIGNEY, Cecil — bus. add.: 1735 Spruce, Ste #C
bus. ph: 788-9273

Mr. Rigney called me in response to my message left for him to call regarding this investigation.

FORM NO.

DA 00002853

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PAGE NO. 5

5/21/86	245b PC	MARKEY 7330

I questioned Mr. Rigney as to what he observed on the night of the shooting on Orange and he advised me that when the police officer arrived that he was standing at the corner of the building talking with Randy. Mr. Rigney advised me that Carl (Collins) had just left and that Anna, who's Randy Greasham's wife, was in the back area but he does not know the particular location. I asked Mr. Rigney why he was at that location. He stated he was there checking on the property. He advised me that he does not own the property, he basically manages it for the owner who lives out of town.

Mr. Rigney advised me that when he arrived in the area, that he was inside of Carl's apartment along with Randy and that there was a conversation taking place. I asked him what the substance of the conversation was and he advised me that there was a lot of yelling back and forth about receipts and that there was very little intelligent conversation. Mr. Rigney advised me that Randy Greasham looked after the place and collected rents, in consideration for part of his rent.

Mr. Rigney advised me that he and Randy were talking outside and that Carl had gone back inside of the residence prior to the police officer coming. Mr. Rigney advised me that he observed the painter (David Worley) with a police officer and they were [illegible] in their direction. He advised that the police officer approached and that the officer made a statement and that the suspect Randy had stated, "talk to them Cecil, talk to them Cecil". He stated that the police officer responded "I'm a cop and you're going to talk to me". Mr. Rigney advised that the officer asked about a weapon and whether or not he had one. Mr. Rigney advised me that he believes the officer asked Randy to turn around and when Randy turned around he ran around the house with the officer in foot pursuit. Mr. Rigney advised me that after a short foot pursuit that he did hear a shot and it was at this time that he left the area. I asked Mr. Rigney if he saw where they ran. He stated they ran to the back of the property and that was the location that he heard the shot. I asked him whether or not he ever saw the officer with a gun in his hand. He stated that he did see the officer with a gun in his hand. I asked him when the officer pulled the gun; he stated that he did not know when he pulled it out. Mr. Rigney did advise me that it was in the back area where he saw the officer with the gun in his hand.

I questioned Mr. Rigney as to whether or not he ever saw Randy in possession of a gun on that evening. He stated that he did see him with a gun. I asked him where he saw the gun. He stated that it was under Randy's shirt. I asked Mr. Rigney if it was under his shirt how he had seen the weapon. He stated that Randy had told him that he had had a gun pulled on him earlier and that he had one too. He stated it was at this time that Randy pulled up his shirt and showed the weapon to him (Rigney). I asked Mr. Rigney to describe the weapon to me, he stated that it was small and silver in color. I asked Mr. Rigney whether or not he saw a holster with that weapon. He stated that he did not see one. I asked Mr. Rigney where he observed the weapon and he stated it was in the front waistband area of Randy's pants. At this time the interview was concluded with Mr. Rigney.

It should be noted that I have left business cards for subjects to call me with regard to this investigation. As of 5/21/86, I have not received any phone calls with regard to any witness information.

This supplemental report will be included with the supplemental report I have received by Officer Sachse as well as Officer Kellogg with regard to the booking of the suspect and will be submitted to the District Attorney's Office for the case file.

FORM NO. 100-1.1

DA 00002854

EX 205 - 000222

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Printed: 5/29/86

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Day
P3-86-138-217		272	A02					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Cl.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			ADW			

17. Address of Occurrence (Street No. - Name - City): 1791 Orange Street, Riverside

18. Type of Place: Apartment Complex

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
W	MONTANO, Daniel Edward	M M	[redacted]70

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
[redacted] Orange St., Riverside	North High	788-6207	

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes ( ) No ( )
GRESHAM, Randall Dale								

44. Address - Clothing - Other Marks or Identifying Characteristics

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 245b PC ADW on Police Officer	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2 $

Reporting Off: pd SPELLMAN

Reviewed By:

COPIES TO

VCLO ( )

ACTIONS

APB Sent

APB Cancld.

APB Sent

APB Cancld.

DOJ NCIC Entered

Cancld.

62. Narrative of Supplemental Report

On 5/18/86 an ADW on a police officer involving Officer Randal Hecht of the Riverside Police Department occurred at 1791 Orange Street, Riverside. One of the people present and who witnessed part of the incident and not previously interviewed is the above listed Montano. On 5/27/86 I had a phone conversation with Montano and made an appointment to see him at North High School, where he attends as a freshman, on the following day. On 5/28/86 I proceeded to North High School and at approximately 0950 hours proceeded to interview Montano in regards to what he observed.

Montano lives with his aunt across the street from the apartments where the ADW occurred. On the day of the ADW just prior to the occurrence, he was visiting his friend at 1791 Orange by the name of Carl Collins. He was inside Collins' apartment and also present was a fellow whom Montano knows as Dave the painter. They were sitting around talking when suspect Randy Gresham entered the apartment. Montano stated that Collins and Gresham immediately started to argue over some type of receipts which Collins wanted Randy to give him.

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002855

EX 205 - 000223

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

PAGE NO. 2 FILE NO. P3-86-138-217

5/29/86	245b PC	SPELLMAN #272
	TYPE OF REPORT	INVESTIGATING OFFICER

apparently to justify some type of reimbursement for work done on the apartments. Montano stated he and Dave were not involved in the argument and that when the argument started that he (Montano) went into the living room of Collins' apartment. He stated that the argument had originated in the kitchen and that the other parties mentioned were still in the kitchen. Gresham allegedly made comments to the effect, "get the hell out of here" and "can we have some privacy". He was apparently addressing these comments to both him (Montano) and Dave the painter. Montano stated that he then left the apartment via the living room door. He did not see Dave the painter leave the apartment and presumed him to have exit the apartment from the kitchen door. While inside the apartment, Montano stated that he never saw any weapons, either in the possession of Collins or Gresham, and that he did not see Gresham kick Dave the painter.

Montano stated that now he was outside of the apartment building when a Riverside police officer arrived. The officer was directed to the rear of the apartments where Gresham was located. According to Montano, the policeman walked up to Gresham and tried to talk with him, at which time Gresham ran off and the policeman chased him on foot. Montano witnessed part of this chase and, in the rear yard area, saw Gresham slip and fall to the ground while running. He stated that when Gresham got up, he saw a small silver object which looked to him to be a gun in one of his hands, unknown which hand. Montano went on to state that the policeman, apparently seeing the gun, ducked down behind a car which is located in the rear yard. He saw the policeman behind the car, squatting down and pointing the gun, however, from his (Montano's) vantage point, he was unable to see what the policeman was pointing the gun at. Montano said that he never saw Gresham point a gun at the police officer. At this time, Montano grabbed one of the small children in the rear yard and went into one of the apartments and was not witness to any more of the incident. Montano was unable to provide any more information in regards to this matter and at this point in time my interview with him was concluded.

This supplement concluded at this time. RS

FORM NO DA 00002856

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 5/20/86

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Beat
P3-86-138-217		313	A02					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			Arr	Sus		

17. Address of Occurrence (Street No. - Name - City): [redacted]range Street, Apt. #2, Riverside — 18. Type of Place: Apartment

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
19. VP:	HECHT, Randal Lee (Police Officer)	W M	[redacted]/56

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	Riverside Police Department		787-7221

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested
GRESHAM, Randall Dale	WM		511	180	Bln	Blu	[redacted]59	Yes X / No

44. Address - Clothing - Other Marks or Identifying Characteristics: [redacted] Orange St., Apt. #1, Riverside

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( )

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( )

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 417a PC (Brandishing)	(1)
(2) 242 PC (Battery)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2: $

Reporting Off: MCBRIDE

Reviewed By:

COPIES TO:

VCLO ( )

ACTIONS:
APB Sent
APB Cancld.
APR Sent
APR Cancld.
DOJ-NCIC Entered
Cleared

62. Narrative of Supplemental Report

3)664/187 PC (Attempt Murder)

Narrative:

On 5/19/86 at approximately 2205 hours, writer received a telephone call at home from Sgt. Contri of the Riverside Police Department, advising that an officer involved shooting had occurred and requested that writer respond to the police department to assist in the investigation. Upon arrival at the police department at approximately 2230 hours, writer met with Sgt. Contri, S/A Ron Mackey, and S/A Hern. At that time writer was advised that no one

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002857

EX 205 - 000225

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

PAGE NO. 2 FILE NO. P3-86-138-217

6/2/86	TYPE OF REPORT 417a PC / 242 PC / 664/187 PC	INVESTIGATING OFFICER McBride

had been injured in the shooting and that a suspect had been taken into custody. Writer was advised that there was a crime scene located in the area of 1791 Orange Street and that there was physical evidence at that location to be collected. Writer and Det. Hern were assigned to do the crime scene while Det. Mackey was assigned to act as case agent. Writer was advised that S/A Collopy was already at the scene with a camera to photograph the physical evidence and to record the scene.

Writer and Det. Hern arrived at the crime scene at approximately 2250 hours. Sgt. Ropac was at the scene along with S/A Collopy and other assisting officers who were protecting the scene. Sgt. Mario Canale of the Riverside Police Department was also present at the scene, however, he was conducting his own independent criminal investigation. Sgt. Ropac briefed writer and assisting officers on the sequence of events while pointing out locations where the activity occurred and significant pieces of physical evidence. S/A Collopy advised that he had already taken overall photographs of the scene. Writer noted that the weather conditions at the time were clear, no precipitation had fallen, and the scene had apparently not been contaminated by sprinklers or persons being allowed to walk through the area prior to writer's arrival.

Writer and Det. Hern were directed to the rear of a large older two story residence located at 1791 Orange Street which is divided into several apartments. To the rear of this residence is three other separate detached single level apartments. Parked in front of one of these apartments was an orange colored Datsun B210.

Writer noted that there was a chain link fence which ran from the sidewalk on the north side of the large house in front and continued in a westerly and then southerly direction behind the three apartments to the rear of the large house. This fence then was joined by a wooden fence which led in an easterly direction back out to Orange Street and completed an encirclement around the entire apartment complex.

Sgt. Ropac led writer and assisting officers to another group of apartments located north of and next to 1791 Orange. These apartments, located at 1771 Orange, is where the suspect was located and placed under arrest. Sgt. Ropac indicated that the suspect had been located inside apartment #3 at this address. He further stated that after the suspect had been arrested and taken away a cursory search was made of the yard in back of this residence and two handguns were located. He then took writer and assisting officers to the rear of apartment #3 and pointed to two small automatic weapons on the ground.

Writer noted that in both of the areas where the activity had occurred between the suspect and where the suspect was ultimately located and arrested, there was no street lighting or other types of illumination. Writer found it necessary to use flashlights in checking both of these areas for further signs of physical evidence.

After Sgt. Ropac had explained the crime scene and pointed out where officers had already located certain items of physical evidence, writer and Det. Hern began a more thorough crime scene search. The following items of evidence were located and collected for possible evidentiary value:

MH01. "Jennings" model J, 22 long rifle automatic, serial #104820.
Located 272' 1" west of the west curb of Orange and 236' 11" south of the south curb of Strong.

MH02. "Raven" model P25, 25 automatic, serial #281329.
Located 279' west of the west curb of Orange and 230' 2" south of the south curb of Strong.

CONTINUATION SHEET

PAGE NO. 3

DATE	TYPE OF REPORT	REPORTING OFFICER
6/2/86	417a PC / 242 PC / 664/187 PC	McBride

MH03. One (1) black leather holster.
Located 138' 5" west of the west curb of Orange and 302' 3" south of the south curb of Strong.

MH04. One (1) 9 MM bullet
Located 180' 8" west of the west curb of Orange and 320' 9" south of the south curb of Strong.

MH05. Expended 9 MM shell casing.
Located 153' 8" west of the west curb of Orange and 346' 6" south of the south curb of Strong.

After these items of evidence were collected, writer and assisting officers returned to the Riverside Police Department. While at that location writer had occasion to interview Anna Gresham, the wife of S1 Randall Gresham. That interview was tape recorded; the following represents a synopsis of that conversation between writer, Anna Gresham, and Det. Mike Hern:

Stated that her husband, Randy, was manager of the apartments located at 790 Orange Street. Cecil Rigney is the owner of the apartments. She and her husband, Randy, had been married for seven (7) years and they have two small children. Her husband works as a self-employed roofer. Carl Collins is their next door neighbor in the apartments. He is a painter and he has done some painting work at the apartments while her husband, Randy, has done some of the roofing work. The cost of their labor and supplies was to be deducted from the rent being charged by Rigney for their apartments. On 5/19/86 her husband arrived home at approximately 2030 hours. Shortly after he arrived at the residence he was sitting out on the front porch with some friends when Carl Collins began yelling at him. Collins was apparently upset because he felt that the receipts for the supplies that he had bought for the painting job on the apartment should have come to him. Her husband tried to calm him down and told him that he was the manager of the apartment and not Collins and he should keep the receipts. Collins refused to settle down and continued yelling at her husband. Her husband has a short temper and when he gets mad he "loses his mind". When he gets to a point where he loses his temper "You never know what he'll do". Carl Collins just drove him and drove him and embarrassed him in front of his friends until he (referring to Randy Gresham) pulled a gun on him. She didn't actually see this, because her husband had, by this time, run into Collins' apartment. Another subject named Dave ran over to her and told her that Collins had a sawed off shotgun on Randy. Dave said he wanted to help defend him (Randy). She told Dave that she didn't have any guns so Dave ran back to where Gresham and Collins were arguing. Cecil Rigney showed up in the middle of all this. He got the whole thing calmed down. Everyone was outside talking when the police showed up; one of the guys who had been present when Randy pulled a gun had gone to a phone booth and had called them. The police officer walked up to Randy, pushed him, and said, "I want to talk to you right now, don't move". Randy told the officer that he wanted to finish his conversation and then he would talk to him, (referring to the policeman). The policeman replied, "No, right now" and pushed Randy. The policeman told Randy that he was going to search him. All of a sudden Randy took off running. She saw Randy run down to the lower part of the yard (in back). She saw him slip. A guy named Danny, who lives across the street, told her that Randy had a gun. She got"hysterical" and ran into the house. She then heard possibly two (2) shots fired. She stayed in the house for awhile and when she went out they (the police) had already caught him (Randy) and took him away.

Anna Gresham estimated that this whole incident occurred between 2030 hours and 2100 hours. She told writer that she freely allowed the police to enter her apartment and search for any weapons. She said that she knew that her husband had weapons in the past which she described

RIVERSIDE POLICE DEPT.
CONTINUATION SHEET

PAGE NO. 4 FILE NO. 85-06-1[illegible]-217

6/2/86	TYPE OF REPORT 417a PC / 242 PC / 664/187 PC	INVESTIGATING OFFICER McBride

as long barrel revolvers, however, she did not know about any current weapons that he may have had. She said that her husband did not discuss this kind of thing with her. She said that she had no idea that he was armed on this date. She said that she knows that he generally carries a gun in his briefcase, however, she did not recall having the briefcase with him on this date. She said that when he came home he was with another subject named "Bill". She did not know this subject's last name or where he lived. She described him as a white male with long dark brown hair. She said that this subject helps her husband on roofing jobs. In addition she said that a neighbor from across the street, identified as "Victor Rodella" had come over to her apartment and was taping a program on their VCR when this incident occurred. In addition to Victor Rodella, she said that there were two other subjects present when the incident occurred. She described these people as a person named "John Paul" and another person named "Dale" whom she described as a white male, 23 years, 5'5" to 5'6", curly brown hair, possibly lives in Las Vegas. This last subject, known to her only as "Dale" came to her apartment with Victor Rodella when he wanted to use her VCR. She said that all of these subjec were present when the incident occurred.

[illegible] along with the other items of evidence that were seized.

This supplemental report will be referred to Det. Mackey.

FORM NO.

DA 00002860

EX 205 - 000228

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 5/23/86

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Day
P3-86-138-217		330	A02					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			ARR			

17. Address of Occurrence (Street No. - Name - City): [redacted] Orange Street, Riverside

18. Type of Place: Apartment Complex

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V	HECHT, Randal Lee (Police Officer)		[redacted]/56

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	Riverside Police Department		

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes / No
GRESHAM, Randall Dale	W M		511	180	Bln	Blu	[redacted]/59	(X) ( )

44. Address - Clothing - Other Marks or Identifying Characteristics: [redacted] Orange, #1, Riverside

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes / No
								( ) ( )

55. Address - Clothing - Other Marks or Identifying Characteristics:

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS	$	$	$	$	$	$	$	$	$	$
57										
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 245b PC (ADW on Police Officer)	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2 $

Reporting Off. MACKEY

Reviewed By

COPIES TO
1. CANAPE
2 DAS

VCLO ( )

ACTIONS
APB Sent
APB Cancld.
APR Sent
APR Cncld
DOJ-NCIC
Entered
Cancld.
STATS ARBK ARL

62. Narrative of Supplemental Report

On 5/23/86, at approximately 1300 hours, I had contact with Mr. Carl Collins, who is listed in the supplemental report prepared by me, with regard to this investigation. In contacting Mr. Collins, my intention was to question him regarding the allegations of a shotgun reportedly in his possession prior to the 245b PC on a police officer occurring.

I asked Mr. Collins whether or not he was in possession of a shotgun on the evening of the occurrence at the apartment complex area, wherein Randy Gresham had assaulted a Riverside police officer. I was advised by Mr. Collins

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002861

EX 205 - 000229

PAGE NO. 2

5/23/86	245b PC	MACKEY 7490

that he was in possession of a shotgun and I asked him to describe the shotgun for me:

gauge 410, single barrel, silver in color with a black plastic stock

Mr. Collins informed me that the shotgun belonged to a friend of his and that he had it at his residence for protection. I advised Mr. Collins that in my conversations with the suspect in this investigation, as well as reports that I had received from informants, that there was a shotgun somehow involved in the altercation prior to the Riverside Police Department responding for a man with a gun. Mr. Collins advised me that he did have a shotgun in his home when he was approached by Randy Gresham, the suspect in this investigation. Mr. Collins advised me that everything he had told me on the previous interview was correct. However, he did leave out the shotgun portion. He advised me that when Randy Gresham walked through his door and that Dave the painter was in his apartment, as well as his two boys, that Randy had pointed a gun at him and Dave.

Mr. Collins advised me that the shotgun came out only after the gun that was seen by Dave. Mr. Collins advised me that Randy was talking about him coming around "disrespecting" him in front of his friends. Collins advised me that he was talking with Randy and that Dave, who was seated in the apartment, stated that he had to leave and it was at this point that Randy attacked him as previously reported. Mr. Collins continued that while Randy was attacking Dave that he obtained the shotgun and got between Dave and Randy. He advised me that Dave left at that time and that he then pointed the shotgun at Randy and stated, "you want to play guns, we'll play guns". He stated it was at this point that Randy stopped and that he (Collins) began to talk with him and that while they talked that Randy talked about the problems that he had had and it was at this point that he raised his weapon. Mr. Collins advised me that his initial thought was to shoot Randy, however, as they were talking, Randy slowly raised the handgun up and ultimately ended up putting it away when the apartment was entered by Mr. Rigney.

I questioned Mr. Collins as to who may have seen him with the shotgun and he stated that Mr. Rigney may have seen it although he is not certain. He stated further that Dave may also have seen it (it should be noted that Worley nor Rigney apparently observed the shotgun). Collins also advised me that a young boy across the street by the name of Danny was also at the apartment at that time and that he may have also seen the shotgun. I asked Mr. Collins where the shotgun was presently located. He stated that it had been returned to a friend of his that owned it. Mr. Collins informed me that his initial statement to me was accurate, although he did state that he left out the shotgun portion.

KM

PAGE NO.

DA 00002862

EX 205 - 000230

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

1. Original File No.	2	3. Off. ID	4. Dist.	5. Crime Ct.	6. Crime Ct.	7. Crime Ct.	8. Date/Time Occurred	9. Day
03-138-217		328	A12				140 0310	3

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
140 1334	140 1339	140 1452	OPN	PC		

17. Address of Occurrence (Street No. - Name - City): [redacted] ORANGE #B — 18. Type of Place: APT

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
RP	RIVIS, MIOARA A.	W F	[redacted]

23. Residence Address	24. Business or School Address	25. Home Phone
[redacted] ORANGE #B		784-6389

27.	- First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes
(R-P COULD RECOGNIZE)	F W	23-25	504	150	BRN			

44. Address - Clothing - Other Marks or Identifying Characteristics

45. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) ATT. 187 P.C.	(1)
(2)	(2)

58. Stolen Auto/ Value ASP $

59. Recovered Auto Value A2 $

62. Narrative of Supplemental Report

ADDITIONAL HEADING; GRD. 5 RE. ENTRY W/S CONT'D

I RECEIVED A CALL OF SUSPICIOUS CIRC'S, CONTACT ABOVE FOR FURTHER INFO. UPON ARRIVAL R-P RIVIS & HER HUSBAND, WHO ARE ROMANIAN, & HAVE SOME DIFFICULTY WITH ENGLISH, EXPLAINED THE FOLLOWING:

(CONT'D) PAGE 1/3

Reporting Officer

COPIES TO

VCLO ( )

ACTIONS

APB Sent

APB Cancld

APB Sent

APB Cancld

CLEARANCE

Entered Cancld

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCY

DA 00002863

EX 205 - 000231

RIVERSIDE COUNTY SHERIFF'S DEPARTMENT

CONTINUATION PAGE

Prepared by (Name/ID#): Sadler 338

Crime Code / Classification: ASLT 187 P.C.

Location of Occurrence: 1771 ORANGE

Page Number: 2 of 2

BLOCK #

R-P MIDARA RUIZ WAS AT HER MAIL BOX & SAW THE LISTED S-1 FEMALE AT 1781 ORANGE. A SHORT TIME LATER, THE FEMALE WALKED INTO THE 1771 #B ORANGE APT. WITHOUT ANNOUNCING HERSELF. SHE TOLD REP RUIZ THAT THE MAN WHO WAS ARRESTED BY POLICE THE OTHER NIGHT (unintelligible) HAD LEFT A WALLET BEHIND IN THE NORTH BEDROOM, IN A CORNER.

THE WOMAN THEN WENT TO THE NORTH BEDROOM & BEGAN RUMMAGING THROUGH SOME CLOTHES. IN THE S/W CORNER OF THIS NORTH BEDROOM THE WOMAN THEN FOUND A BROWN SMALL COIN PURSE WITH A CLASP TYPE LATCH ON TOP. SHE OPENED THE COIN PURSE WHICH CONTAINED (2) SMALL GLASS "BOTTLES" & A STRAW. A SMALL CLOTH "SOCK" WAS ALSO INSIDE & THIS CONTAINED SOME 6 SMALL PLASTIC CLEAR ENVELOPES WITH "WHITE STUFF" INSIDE.

THE WOMAN THEN WALKED OUT WITH THE COIN PURSE & WALKED AWAY (UNK. WHICH DIRECTION), BUT SHE DID

(CONT'D)

DA 00002864

EX 205 - 000232

RIVERSIDE POLICE DEPARTMENT
CONTINUATION PAGE

Reporting Officer: Le Ivie I.D.# 328 | File Number: 83-R-138-317

Crime Code / Classification: ATT 187 O.D. | Location of Occurence: 1771 ORANGE | PAGE NUMBER 3 OF 3

BLOCK #

NOT HAVE A CAR.

R-P'S HUSBAND WHO SPEAKS ENGLISH FAIRLY WELL, TRANSLATED FOR HIS WIFE & I. HE EXPLAINED THAT R-P DID NOT REALLY PROTEST THE 602.5 P.C., SHE NOT BEING ABLE TO SPEAK MUCH ENGLISH.

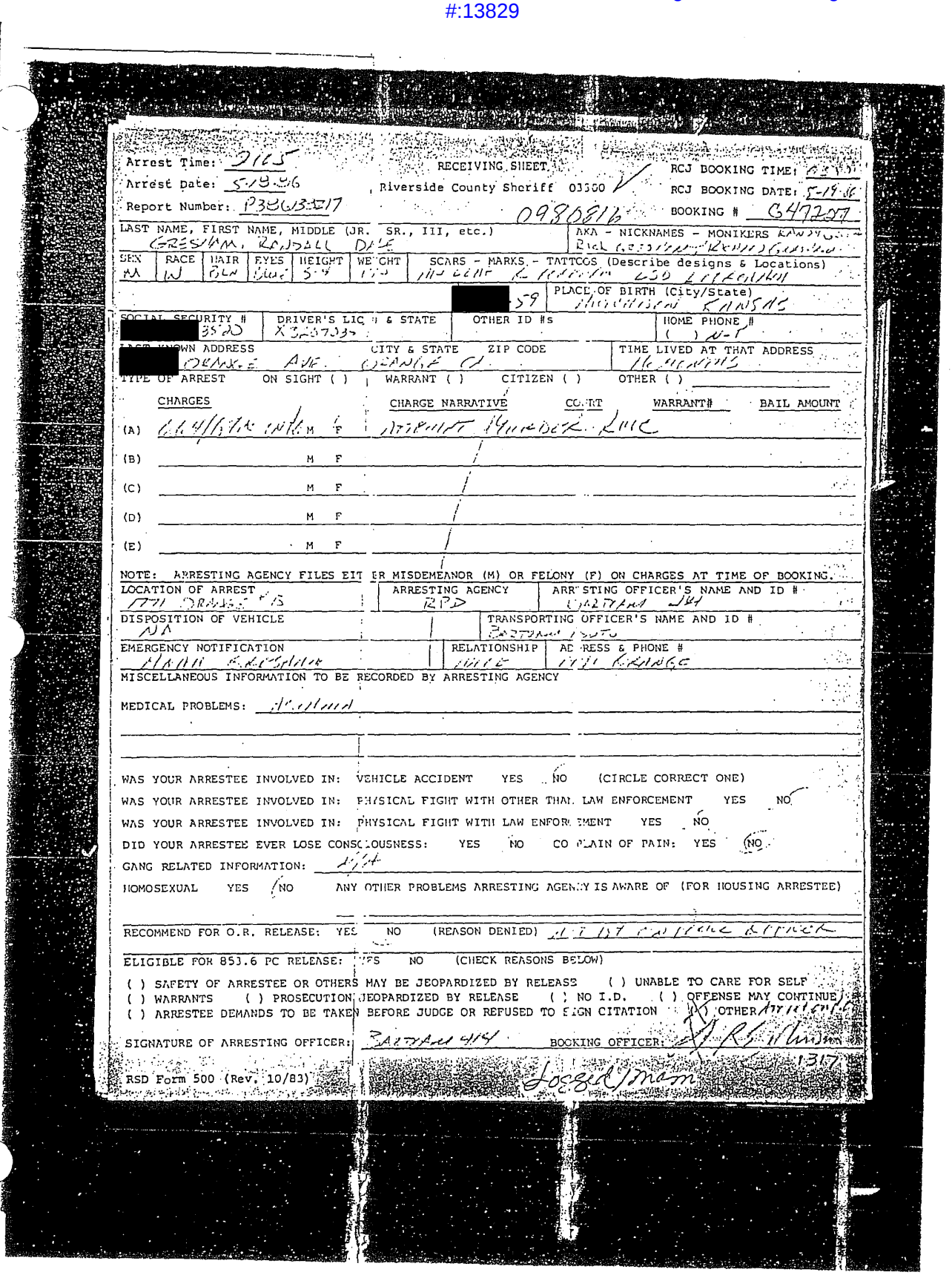
R-P MIGARA RUIS COULD I.D.

I CLEARED THE SCENE & CAME TO R.P.D. TO GET INFO. ON THE ORIGINAL CIRCS, & BEING UNAWARE OF SAME,

800-12-2 (R7/84)

DA 00002865

EX 205 - 000233



RECEIVING SHEET

Riverside County Sheriff 03500

Arrest Time: 2105
Arrest Date: 5-19-96
Report Number: P38633017

RCJ BOOKING TIME: 0221
RCJ BOOKING DATE: 5-19-96
BOOKING # 647207

0980816

LAST NAME, FIRST NAME, MIDDLE (JR. SR., III, etc.): GRESHAM, RANDALL DALE

AKA - NICKNAMES - MONIKERS: RANDY G... Rick G...

SEX	RACE	HAIR	EYES	HEIGHT	WEIGHT	SCARS - MARKS - TATTOOS (Describe designs & Locations)
M	W	BLN	BLU	5-9	170	[illegible]

[redacted]-59 PLACE OF BIRTH (City/State): [illegible] KANSAS

SOCIAL SECURITY #: [redacted]3520 DRIVER'S LIC # & STATE: X3257338 OTHER ID #s: HOME PHONE #: ( ) N-T

LAST KNOWN ADDRESS: [redacted] ORANGE AVE CITY & STATE: CORONA CA ZIP CODE: TIME LIVED AT THAT ADDRESS: 16 MONTHS

TYPE OF ARREST: ON SIGHT ( ) WARRANT ( ) CITIZEN ( ) OTHER ( )

	CHARGES		CHARGE NARRATIVE	COURT	WARRANT #	BAIL AMOUNT
(A)	664/187 PC	M F	ATTEMPT MURDER			
(B)		M F				
(C)		M F				
(D)		M F				
(E)		M F				

NOTE: ARRESTING AGENCY FILES EITHER MISDEMEANOR (M) OR FELONY (F) ON CHARGES AT TIME OF BOOKING.

LOCATION OF ARREST	ARRESTING AGENCY	ARRESTING OFFICER'S NAME AND ID #
7771 ORANGE AVE	RPD	GARTMAN 414

DISPOSITION OF VEHICLE: N/A

TRANSPORTING OFFICER'S NAME AND ID #: GARTMAN 414

EMERGENCY NOTIFICATION	RELATIONSHIP	ADDRESS & PHONE #
MARIA GRESHAM	WIFE	7771 ORANGE

MISCELLANEOUS INFORMATION TO BE RECORDED BY ARRESTING AGENCY

MEDICAL PROBLEMS: NONE

WAS YOUR ARRESTEE INVOLVED IN: VEHICLE ACCIDENT YES NO (CIRCLE CORRECT ONE)
WAS YOUR ARRESTEE INVOLVED IN: PHYSICAL FIGHT WITH OTHER THAN LAW ENFORCEMENT YES NO
WAS YOUR ARRESTEE INVOLVED IN: PHYSICAL FIGHT WITH LAW ENFORCEMENT YES NO
DID YOUR ARRESTEE EVER LOSE CONSCIOUSNESS: YES NO COMPLAIN OF PAIN: YES NO
GANG RELATED INFORMATION: N/A
HOMOSEXUAL YES NO ANY OTHER PROBLEMS ARRESTING AGENCY IS AWARE OF (FOR HOUSING ARRESTEE)

RECOMMEND FOR O.R. RELEASE: YES NO (REASON DENIED) NOT WITHIN GUIDELINES

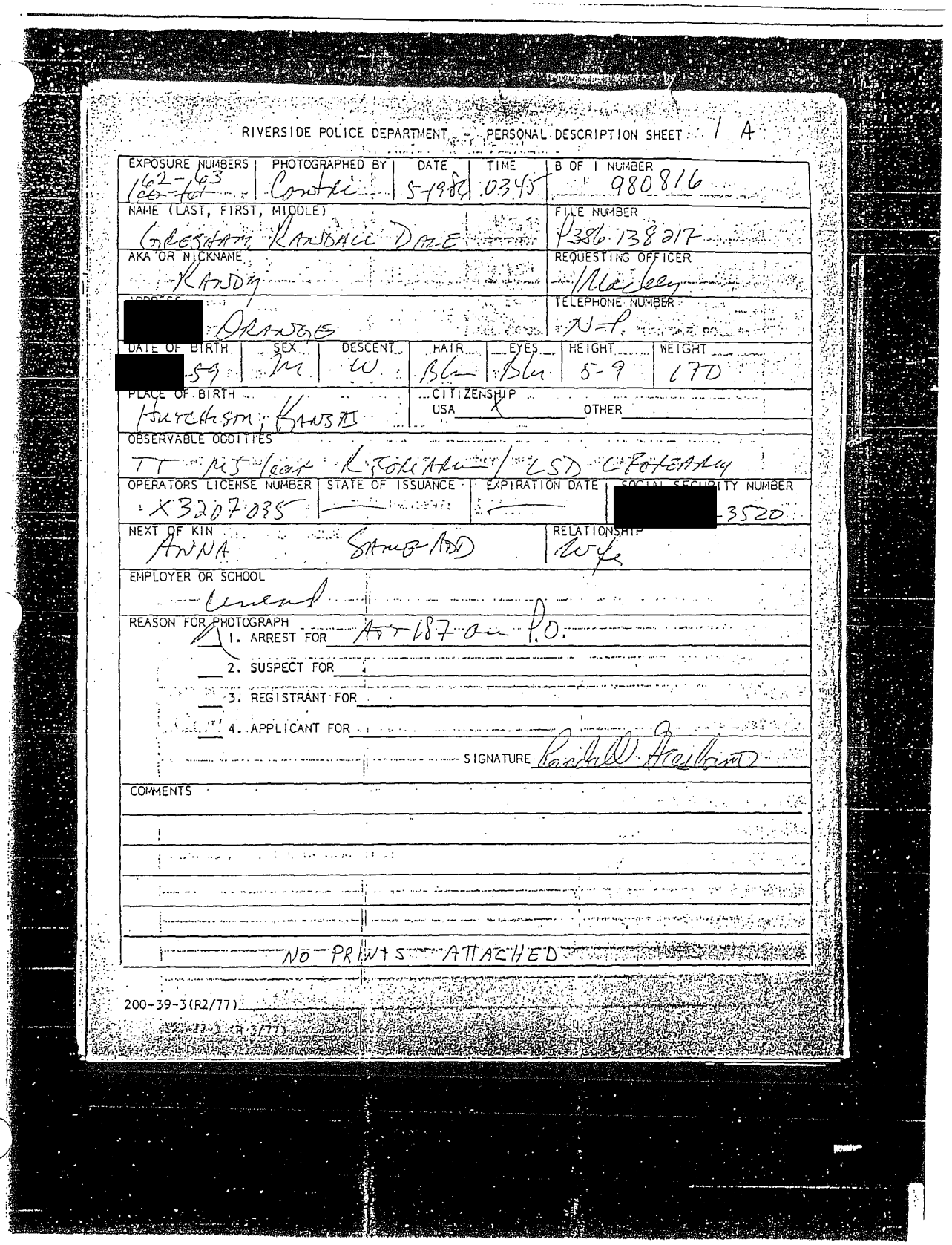
ELIGIBLE FOR 853.6 PC RELEASE: YES NO (CHECK REASONS BELOW)

( ) SAFETY OF ARRESTEE OR OTHERS MAY BE JEOPARDIZED BY RELEASE ( ) UNABLE TO CARE FOR SELF
( ) WARRANTS ( ) PROSECUTION JEOPARDIZED BY RELEASE ( ) NO I.D. ( ) OFFENSE MAY CONTINUE
( ) ARRESTEE DEMANDS TO BE TAKEN BEFORE JUDGE OR REFUSED TO SIGN CITATION (X) OTHER Attempt PC

SIGNATURE OF ARRESTING OFFICER: GARTMAN 414 BOOKING OFFICER: [illegible] 1317

RSD Form 500 (Rev. 10/83) Log #[illegible]

EX 205 - 000234



RIVERSIDE POLICE DEPARTMENT — PERSONAL DESCRIPTION SHEET 1 A

EXPOSURE NUMBERS	PHOTOGRAPHED BY	DATE	TIME	B OF I NUMBER
162-163	Contri	5-1984	0345	980816

NAME (LAST, FIRST, MIDDLE): GRESHAM, RANDALL DALE — FILE NUMBER: P386 138217

AKA OR NICKNAME: RANDY — REQUESTING OFFICER: M. Lacey

ADDRESS: [redacted] ORANGE — TELEPHONE NUMBER: N-P

DATE OF BIRTH	SEX	DESCENT	HAIR	EYES	HEIGHT	WEIGHT
[redacted]-54	M	W	Bln	Blu	5-9	170

PLACE OF BIRTH: HUTCHISON, KANSAS — CITIZENSHIP: USA X — OTHER

OBSERVABLE ODDITIES: TT M5 (ear) K FOREARM / LSD C FOREARM

OPERATORS LICENSE NUMBER	STATE OF ISSUANCE	EXPIRATION DATE	SOCIAL SECURITY NUMBER
X3207035			[redacted]-3520

NEXT OF KIN: ANNA GRESHAM — RELATIONSHIP: Wife

EMPLOYER OR SCHOOL: Unemp

REASON FOR PHOTOGRAPH
1. ARREST FOR 647 f PC
2. SUSPECT FOR
3. REGISTRANT FOR
4. APPLICANT FOR

SIGNATURE: Randall Gresham

COMMENTS

NO PRINTS ATTACHED

200-39-3(R2/77)

EX 205 - 000235

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: 5-21-84

1. Offense File No. P84-135.217 | 2. | 3. Div. ID 330 | 4. Dist. | 5. Crime-Ct. | 6. Crime-Ct. | 7. Crime-Ct. | 8. Date/Time Occurred | 9. Day

10. Date/Time Assigned | 11. Date/Time Inv. Start | 12. Date/Time Inv. Term. | 13. Type Clr. APPL | 14. Type Cont. 820 | 15. Additional Adults Arr. | 16. Additional Juv. Arr.

17. Address of Occurrence (Street No. - Name - City) | 18. Type of Place

For ID USE: V = Victim, I = Informant, W = Witness, O = Other (19)(27)

19. | 20. Last Name - First - Middle (Firm Name if Business) | 21. Race - Sex | 22. DOB

23. Residence Address | 24. Business or School Address | 25. Home Phone | 26. Bus. Phone

27. | 28. Last Name - First - Middle (Firm Name if Business) | 29. Race - Sex | 30. DOB

31. Residence Address | 32. Business or School Address | 33. Home Phone | 34. Bus. Phone

SUSPECT 35. Last Name - First - Middle 940816 | 36. Race - Sex | 37. Age | 38. Ht. | 39. Wt. | 40. Hr. | 41. Eyes | 42. DOB or ID | 43. Arrested Yes ( ) No ( )

SUSPECT 44. Address - Clothing - Other Marks or Identifying Characteristics

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT 46. Last Name - First - Middle | 47. Race - Sex | 48. Age | 49. Ht. | 50. Wt. | 51. Hr. | 52. Eyes | 53. DOB or ID | 54. Arrested Yes ( ) No ( )

SUSPECT 55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	D Office Equip.	E T.V.-Radio Cameras	F Firearms	G Household Goods	H Commun. Goods	I Livestock	J Misc.	K
PS 57	$	$	$	$	$	$	$	$	$	$	
PR	$	$	$	$	$	$	$	$	$	$	

60. Originally Reported Offenses (Code - Crime) | 61. Original Offenses Changed to (Code-Crime)

(1) | (1)

(2) | (2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value AZ $

Reporting Off. MAC PC-7

Approved By

COPIES TO

( ) Case filed for lack of investigative leads.
( ) Victim contacted but wishes no further action. ( ) Restitution.
( ) Made several attempts to contact victim but unable to locate.
( ) Property serial numbers entered into computer on _____.
( ) Case transfefred to _____.
( ) Other _____.
( ) Deputy District Attorney _____ refused complaint on _____.
(X) Deputy District Attorney Delacey approved complaint on 5-22-84.
( ) Suspects charged as follows:

Jackson, Kendall Dale Charge 245b/12022.5 RMC Case # 007105

_____ Charge _____ RMC Case # _____

_____ Charge _____ RMC Case # _____

_____ Charge _____ RMC Case # _____

VCLO ( )

ACTIONS

APB Sent
APB Cancld.
APR Sent
APR Cnsld

DOJ/NCIC
Entered
Cancld.

ENTERED
STATS | AHIN | ANI

142CU

200-61-2

EX 205 - 000236

Riverside Police Department
PROPERTY REPORT

File No. RB 8610138217 | Date/Time 1/30/1400

Type of Complaint: 10851/187PC - Attempt murder | Address: 1791 Orange RVSD

Victim: Hecht, Randy | Address: RPD

Arrestee: GRISHAM, Randall Dale | Charge: 10851/187PC | Booking No.: 647727 | Other:

Arrestee: | Charge: | Booking No.: | Other:

Reason Property Held: Evidence [X] | Lost/Found [ ] | Finder to be Notified Yes [ ] No [ ] | Safe Keeping [ ] | Destruction [ ] | Other [ ]

Finder: Kellogg, T. 151 | Address: | Phone No.:

Owner: Suspect | Address: | Phone No.:

Property taken into custody at: RCT | From: Suspect | Date/Time: 1/30/0355

By Officer(s): Killogg, T. 151 | Supvr. Approving: | RMC/RSC Case No.: | Property Clerk: [illegible] 5-19-86

Item	Owner	Itemize, Describe, List Serial Numbers . . . Only 1 article per line	Prop. Loc.	Ref. Disp.
#A [X]		one pair tan tennis shoes "TRAX" Size 12	B	
[X]		one blue T-shirt short sleeve. Size L wht. lettering on front which reads "Smile if your not wearing panties"		
[X]		one pair levis Size 30 x 34		

Last Item

Person Cleaning Property [illegible] | Date 1-17-86 | Owner Notified By | Via | Date/Time

Item(s)	Released By:	Received By:	Address	Date/Time
#A	[illegible]	[illegible]		5/27/86
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time
Item(s)	Released By:	Received By:	Address	Date/Time

200-14-1/79-84

EX 205 - 000237

Riverside Police Department
PROPERTY REPORT

File No. P386138217 | Date/Time 5/19/86 0145

Type of Complaint: AH 187 on PD			Address: 1791 Orange		
Victim: Hecht, Randy			Address: RPD		
Arrestee: Gresham, Randall			Charge: AH 187	Booking No.: RCJ	Other:
Arrestee:			Charge:	Booking No.:	Other:

Reason Property Held:	Evidence	Lost/Found	Finder to be Notified Yes ☐ No ☐	Safe Keeping	Destruction	Other
	X	☐		☐	☐	☐

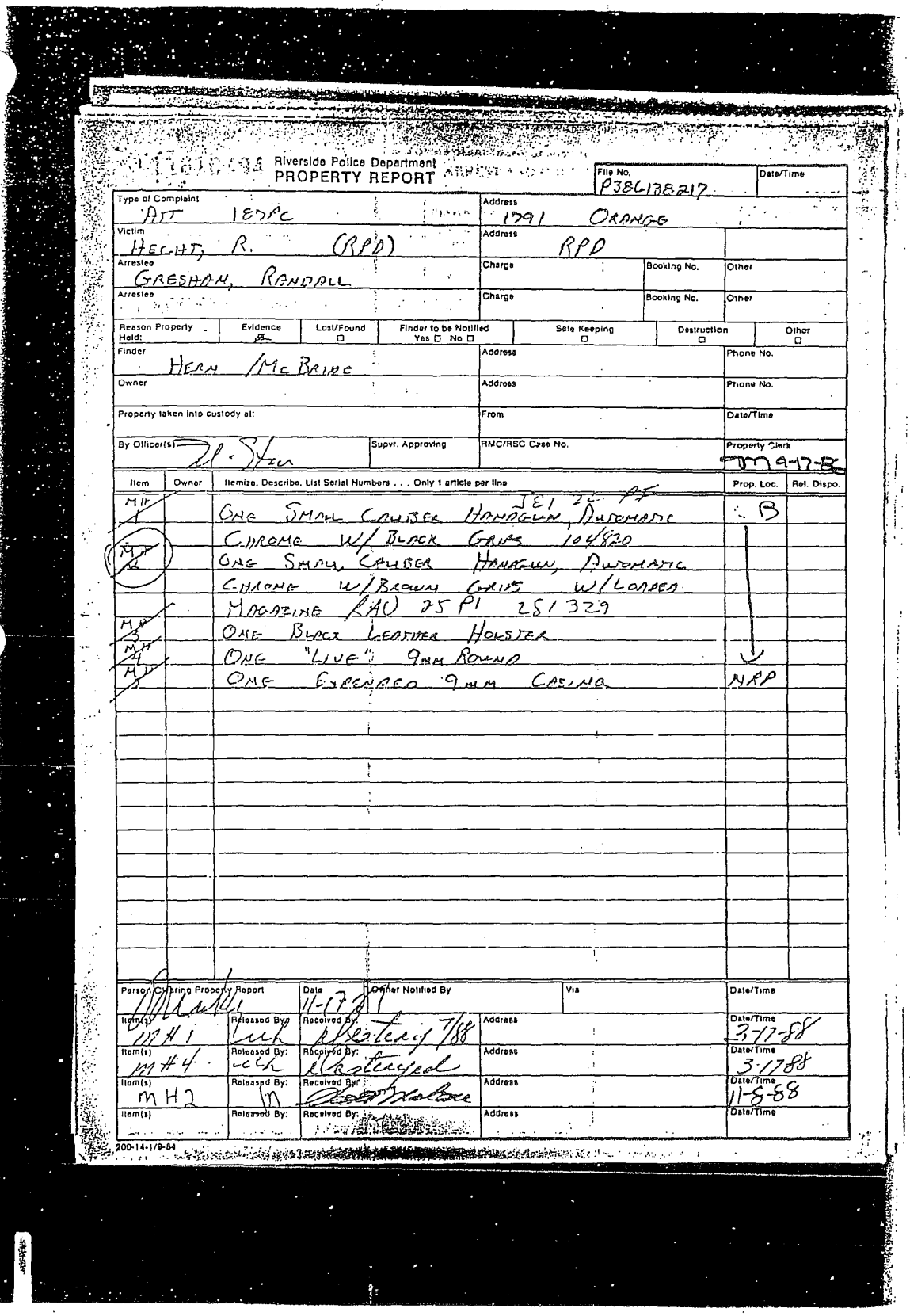
Finder: Collopy # 378	Address: RPD	Phone No.
Owner:	Address:	Phone No.
Property taken into custody at: 1791 Orange	From: vehicle	Date/Time: 5/19/86 0145
By Officer(s): Collopy # 378 / Supvr. Approving	RMC/RSC Case No.	Property Clerk: 5-19-86

Item	Owner	Itemize, Describe, List Serial Numbers . . . Only 1 article per line	Prop. Loc.	Rel. Dispo.
A		(2) Print Cards	Kelly B	
		378		

Person Clearing Property Report: D Mathes	Date: 11-17-87	Owner Notified By:	Via:	Date/Time:
Item(s): A	Released By: Sick	Received By: M Restrepo	Address:	Date/Time: 3-17-88
Item(s):	Released By:	Received By:	Address:	Date/Time:
Item(s):	Released By:	Received By:	Address:	Date/Time:
Item(s):	Released By:	Received By:	Address:	Date/Time:

200-14-1/9-84

EX 205 - 000238



Riverside Police Department
PROPERTY REPORT

File No. P38L138217 | Date/Time

Type of Complaint: ADT 187PC | Address: 1791 ORANGE

Victim: HECHT, R. (RPD) | Address: RPD

Arrestee: GRESHAM, RANDALL | Charge | Booking No. | Other

Arrestee | Charge | Booking No. | Other

Reason Property Held: Evidence ☒ | Lost/Found ☐ | Finder to be Notified Yes ☐ No ☐ | Safe Keeping ☐ | Destruction ☐ | Other ☐

Finder: HERN / MCBRIDE | Address | Phone No.

Owner | Address | Phone No.

Property taken into custody at: | From | Date/Time

By Officer(s): M. Stein | Supvr. Approving | RMC/RSC Case No. | Property Clerk: TM 9-17-88

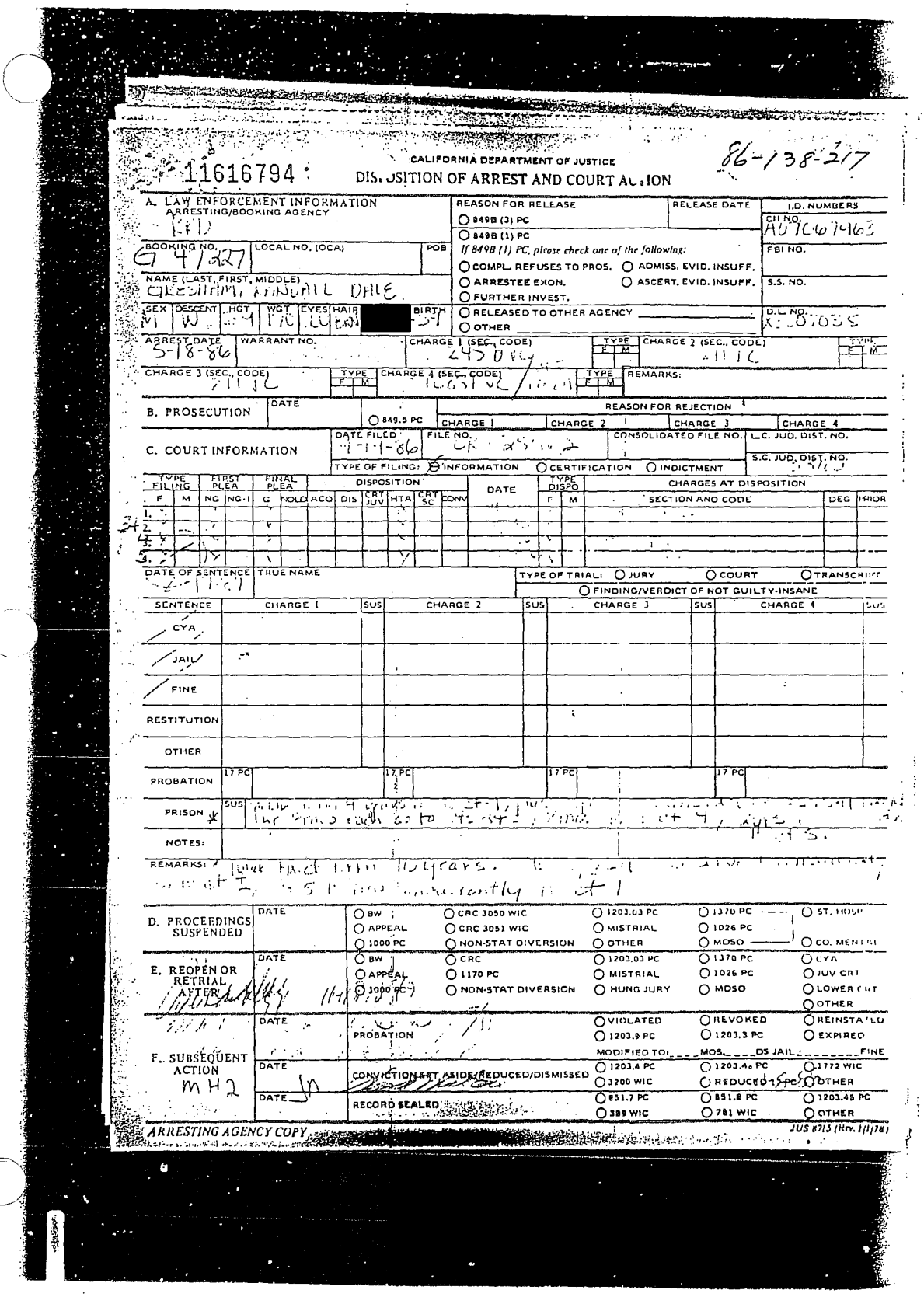
Item	Owner	Itemize, Describe, List Serial Numbers . . . Only 1 article per line	Prop. Loc.	Rel. Dispo.
MH 1		ONE SMALL CALIBER HANDGUN, AUTOMATIC JEI 25 AF	B	
MH 2		CHROME W/ BLACK GRIPS 104820		
		ONE SMALL CALIBER HANDGUN, AUTOMATIC		
		CHROME W/ BROWN GRIPS W/ LOADED		
MH 3		MAGAZINE RAD 25 PI 251329		
MH 4		ONE BLACK LEATHER HOLSTER		
MH 5		ONE "LIVE" 9MM ROUND		
		ONE EXPENDED 9MM CASING	NRP	

Person Clearing Property Report	Date	Owner Notified By	Via	Date/Time
	11-17-88			

Item(s): MH 1	Released By: [illegible]	Received By: R Westergaal 7/88	Address	Date/Time: 3-17-88
Item(s): MH 4	Released By: [illegible]	Received By: R Westergaal	Address	Date/Time: 3-17-88
Item(s): MH 2	Released By: [illegible]	Received By: [illegible]	Address	Date/Time: 11-8-88
Item(s):	Released By:	Received By:	Address	Date/Time

200-14-1/9-84

EX 205 - 000239



86-138-217

11616794

CALIFORNIA DEPARTMENT OF JUSTICE

DISPOSITION OF ARREST AND COURT ACTION

A. LAW ENFORCEMENT INFORMATION
ARRESTING/BOOKING AGENCY: LPD

BOOKING NO.: G 41227 | LOCAL NO. (OCA): | POB:

NAME (LAST, FIRST, MIDDLE): GREENHAM, KENDALL DALE

SEX: M | DESCENT: W | HGT: 5-4 | WGT: 120 | EYES: BLU | HAIR: BRN | BIRTH: [redacted]-57

REASON FOR RELEASE:
- ○ 849B (3) PC
- ○ 849B (1) PC
- If 849B (1) PC, please check one of the following:
- ○ COMPL. REFUSES TO PROS. ○ ADMISS. EVID. INSUFF.
- ○ ARRESTEE EXON. ○ ASCERT. EVID. INSUFF.
- ○ FURTHER INVEST.
- ○ RELEASED TO OTHER AGENCY
- ○ OTHER

RELEASE DATE:

I.D. NUMBERS: CII NO. A07040463 | FBI NO. | S.S. NO. | D.L. NO. X1587055

ARREST DATE: 5-18-86 | WARRANT NO. | CHARGE 1 (SEC., CODE): 245 (b) PC | TYPE F M | CHARGE 2 (SEC., CODE): 211 PC | TYPE F M

CHARGE 3 (SEC., CODE): 211 PC | TYPE F M | CHARGE 4 (SEC., CODE): 10851 VC | TYPE F M | REMARKS:

B. PROSECUTION | DATE | ○ 849.5 PC | REASON FOR REJECTION: CHARGE 1 | CHARGE 2 | CHARGE 3 | CHARGE 4

C. COURT INFORMATION | DATE FILED: 1-14-86 | FILE NO. CR [illegible] | CONSOLIDATED FILE NO. | L.C. JUD. DIST. NO. | S.C. JUD. DIST. NO.

TYPE OF FILING: ⊖ INFORMATION ○ CERTIFICATION ○ INDICTMENT

	TYPE FILING F	M	FIRST PLEA NG	NG-I	FINAL PLEA G	NOLO	ACO	DISPOSITION DIS	CRT JUV	HTA	CRT SC	CONV	DATE	TYPE DISPO F	M	CHARGES AT DISPOSITION SECTION AND CODE	DEG	HHOR
1.																		
2.																		
3.																		
4.																		

DATE OF SENTENCE: 2-11-87 | TRUE NAME | TYPE OF TRIAL: ○ JURY ○ COURT ○ TRANSCRIPT | ○ FINDING/VERDICT OF NOT GUILTY-INSANE

SENTENCE	CHARGE 1	SUS	CHARGE 2	SUS	CHARGE 3	SUS	CHARGE 4	SUS
CYA								
JAIL								
FINE								
RESTITUTION								
OTHER								
PROBATION	17 PC		17 PC		17 PC		17 PC	
PRISON *	SUS							
NOTES:								

REMARKS: [illegible] 10 years. [illegible] concurrently [illegible]

D. PROCEEDINGS SUSPENDED | DATE | ○ BW ○ APPEAL ○ 1000 PC | ○ CRC 3050 WIC ○ CRC 3051 WIC ○ NON-STAT DIVERSION | ○ 1203.03 PC ○ MISTRIAL ○ OTHER | ○ 1370 PC ○ 1026 PC ○ MDSO | ○ ST. HOSP ○ CO. MENTAL

E. REOPEN OR RETRIAL AFTER | DATE | ○ BW ○ APPEAL ⊖ 1000 PC | ○ CRC ○ 1170 PC ○ NON-STAT DIVERSION | ○ 1203.03 PC ○ MISTRIAL ○ HUNG JURY | ○ 1370 PC ○ 1026 PC ○ MDSO | ○ CYA ○ JUV CRT ○ LOWER CRT ○ OTHER

F. SUBSEQUENT ACTION MH2 | DATE | PROBATION | ○ VIOLATED ○ REVOKED ○ REINSTATED ○ 1203.9 PC ○ 1203.3 PC ○ EXPIRED MODIFIED TO: ___ MOS. ___ DS JAIL ___ FINE

DATE | CONVICTION SET ASIDE/REDUCED/DISMISSED | ○ 1203.4 PC ○ 1203.4a PC ○ 1772 WIC ○ 3200 WIC ○ REDUCED TO ___ ○ OTHER

DATE | RECORD SEALED | ○ 851.7 PC ○ 851.8 PC ○ 1203.45 PC ○ 389 WIC ○ 781 WIC ○ OTHER

ARRESTING AGENCY COPY

JUS 8715 (Rev. 1/1/74)

EX 205 - 000240

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT Date Prepared 6/10/86

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime Cl.	6. Crime Cl.	7. Crime Cl.	8. Date/Time Occurred	9. Day
P3-85-299-238		294	RO6					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Off. ID	15. Additional Juv. ID
			Arr	Sus		

17. Address of Occurrence (Street No. - Name - City): 5465 Arlington Ave., Riverside

18. Type of Place: Fast Food Restaurant

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V1	TACO BELL		

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
	5465 Arlington Ave., Riverside		359-9448

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB
V2	SOSA, Cathy A.	W F	[redacted]58

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone
[redacted] Dean Way, Riverside	5465 Arlington Ave., Riverside	785-8217	359-9448

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	53. Arrested Yes	No
GRESHAM, Randall Dale	WM	21	511	180	Bln	Blu	[redacted]59	X	

44. Address - Clothing - Other Marks or Identifying Characteristics: LKA: [redacted] Orange, Riverside

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes	No

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Mat.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC Robbery (Armed)	(1)
(2)	(2)

58. Stolen Auto Value ASP $

59. Recovered Auto Value A2 $

Reporting Off: mb Torres

Reviewed By

COPIES TO

62. Narrative of Supplemental Report

Additional Victim:

V3 ROY, Rodney K. WM, dob: [redacted]67
[redacted] Troth
Riverside, CA
Bus. Add: 5465 Arlington Ave., Rvsd.
H. Ph: 685-7311 / Bus. Ph: 359-9448

Evidence:

One each photographic lineup.

Narrative:

Based on information received from Det. Collins of the Prescott Arizona Police Department (refer to RPD File #P3-86-042-237) V2 (SOSA) was asked to participate in an in-person lineup to be conducted on 5/29/86. V2 (SOSA) advised me that

VCLO ( )

ACTIONS
APB Sent
APB Cancld
APB Sent
APB Cancld
DOJ NCIC Entered
Cancld
STATE A.C.I.C. Entered
Cancld

RIVERSIDE COUNTY - LAW ENFORCEMENT AGENCIES

DA 00002398

EX 206 - 000241

RIVERSIDE POLICE DEPT.

CONTINUATION SHEET

PAGE NO. 2 FILE NO. P3-85-299-238

6/10/86	TYPE OF REPORT 211 PC Robbery (Armed)	INVESTIGATING OFFICER Tortes

she would be able to attend the in-person lineup.

On 5/29/86, I was contacted at the Riverside Police Department by V2 (SOSA) for the purpose of having her participate in an in-person lineup. Prior to having her participate in that lineup she, along with several other witnesses and victims, were gathered at the Riverside Police Department Auditorium for the purpose of having them read and complete both a photographic admonition form and an in-person lineup admonition form. After both forms had been read and completed each individual was asked to view a photographic lineup which contained a photograph of S2 (WALTERS). V2 (SOSA) indicated on her photographic admonition form that, "Not sure, look like it might be #1."

After all participants of the in-person line had completed viewing the photographic lineup they were escorted to the Riverside County Sheriff's Department Jail for the purpose of having them participate in the in-person lineup. V2 (SOSA) was escorted into the viewing facility and after she had viewed the subjects in the in-person line, she was escorted out of the viewing area and to a location where she could indicate her selection on the in-person admonition form. V2 (SOSA) indicated on her admonition form that she had selected subject #1 (GRESHAM) as the suspect who robbed the Taco Bell located at 5465 Arlington Avenue on 10/26/85

After completion of the first in-person lineup, M1 (MCFALL) and I made contact with several other victims and witnesses of other related crimes and it was during that contact with additional victims and witnesses, contact was made with V3 (ROY) and he was requested to participate in an in-person lineup to be held on 6/4/86. V3 (ROY) advised that he would be a participant of the in-person lineup.

On 6/4/86, V3 (ROY) contacted me at the Riverside Police Department for the purpose of participating in the in-person lineup. Prior to having him view the subjects in the in-person lineup, all victims and witnesses were gathered at the Riverside Police Department Auditorium for the purpose of having them read and sign a photographic lineup admonition and an in-person lineup admonition.

After each participant had read and signed both the in-person and photographic admonition each participant was asked to view a photographic lineup which contained a photograph of S2 (WALTERS). V3 (ROY) viewed the photographic lineup and selected photograph #5, (WALTERS), and made the following comment, "The slight red color of his mustache seems familiar."

After each participant had viewed the photographic lineup and completed the admonition forms by indicating their selection or non-selection of a suspect, they were escorted to the Riverside County Jail where each participant was escorted into the viewing facility where they were again advised not to discuss their individual cases with anyone else.

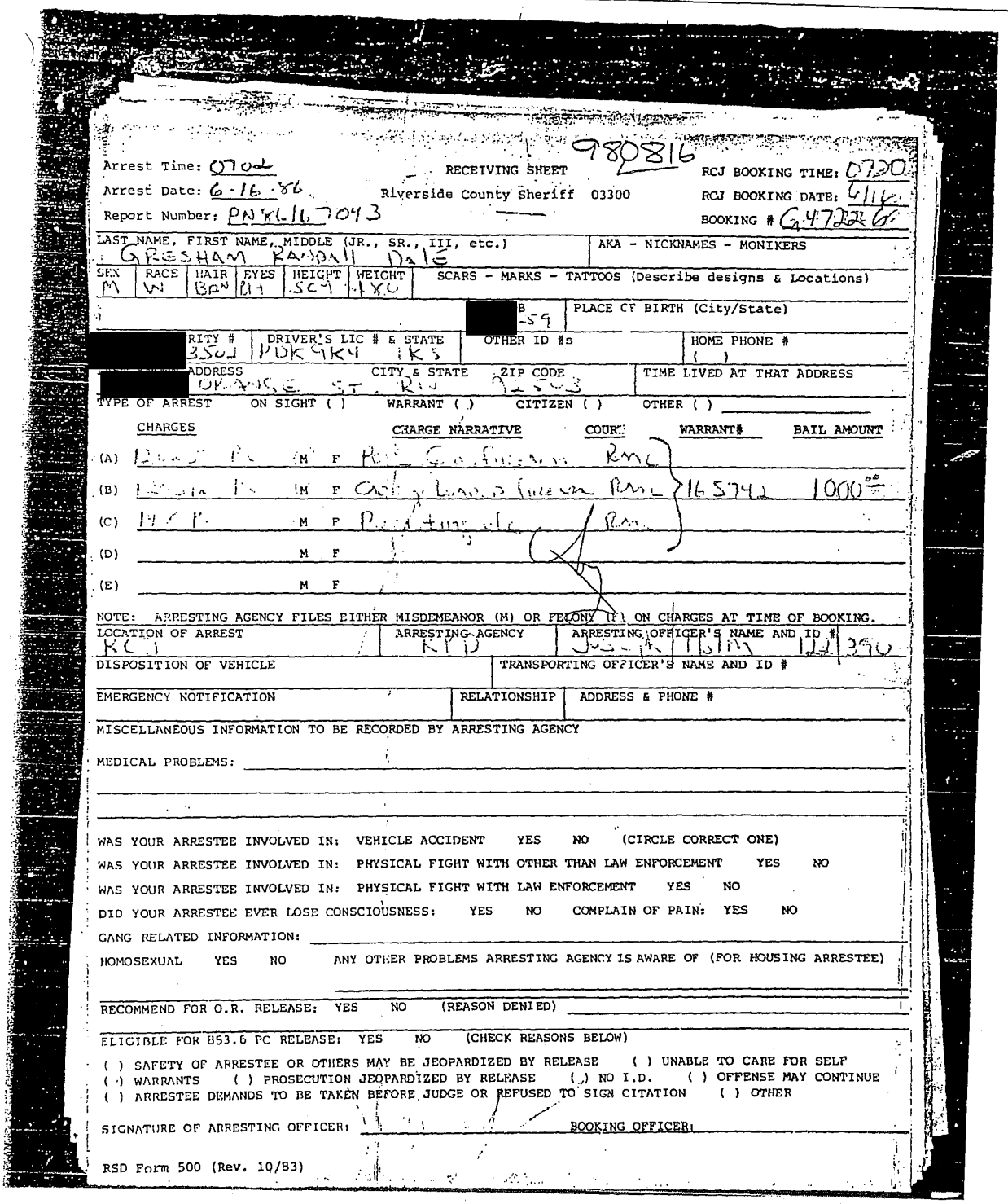
V3 (ROY) was escorted, along with other victims/witnesses, into the viewing facility after-which he was escorted out and escorted to an area where he was to indicate his selection on the back of the in-person lineup admonition form. V3 (ROY) indicated that he did not identify anyone, but in the comment section indicated the following, "#1 looks the closes."

Based on V2 (SOSA) and V3 (ROY) identification of S1 (GRESHAM) this case will be forwarded to the District Attorney's Office for review and a subsequent request for a complaint for 211 PC Robbery (Armed).

Disposition: Arrest/Suspended.

DA 00002399

EX 206 - 000242



980816

RECEIVING SHEET

Riverside County Sheriff 03300

Arrest Time: 0702 | Arrest Date: 6-16-86 | Report Number: PNR6167043

RCJ BOOKING TIME: 0720 | RCJ BOOKING DATE: 6/16 | BOOKING # G47226

LAST NAME, FIRST NAME, MIDDLE (JR., SR., III, etc.): GRESHAM RANDALL DALE

AKA - NICKNAMES - MONIKERS

SEX	RACE	HAIR	EYES	HEIGHT	WEIGHT
M	W	BRN	BLU	5'9"	140

SCARS - MARKS - TATTOOS (Describe designs & Locations)

[redacted] B -59 | PLACE OF BIRTH (City/State)

[redacted] RITY # 350J | DRIVER'S LIC # & STATE P0K5KY KS | OTHER ID #s | HOME PHONE # ( )

[redacted] ADDRESS UP[illegible]E ST. RIV | CITY & STATE | ZIP CODE 9250[illegible] | TIME LIVED AT THAT ADDRESS

TYPE OF ARREST ON SIGHT ( ) WARRANT ( ) CITIZEN ( ) OTHER ( )

	CHARGES			CHARGE NARRATIVE	COURT	WARRANT#	BAIL AMOUNT
(A)	[illegible]	M	F	[illegible]	RMC	16574	1000.00
(B)	[illegible]	M	F	[illegible]	RMC		
(C)	[illegible]	M	F	[illegible]	RMC		
(D)		M	F				
(E)		M	F				

NOTE: ARRESTING AGENCY FILES EITHER MISDEMEANOR (M) OR FELONY (F) ON CHARGES AT TIME OF BOOKING.

LOCATION OF ARREST	ARRESTING AGENCY	ARRESTING OFFICER'S NAME AND ID #
RCJ	RPD	[illegible] 1390

DISPOSITION OF VEHICLE | TRANSPORTING OFFICER'S NAME AND ID #

EMERGENCY NOTIFICATION | RELATIONSHIP | ADDRESS & PHONE #

MISCELLANEOUS INFORMATION TO BE RECORDED BY ARRESTING AGENCY

MEDICAL PROBLEMS:

WAS YOUR ARRESTEE INVOLVED IN: VEHICLE ACCIDENT YES NO (CIRCLE CORRECT ONE)

WAS YOUR ARRESTEE INVOLVED IN: PHYSICAL FIGHT WITH OTHER THAN LAW ENFORCEMENT YES NO

WAS YOUR ARRESTEE INVOLVED IN: PHYSICAL FIGHT WITH LAW ENFORCEMENT YES NO

DID YOUR ARRESTEE EVER LOSE CONSCIOUSNESS: YES NO COMPLAIN OF PAIN: YES NO

GANG RELATED INFORMATION:

HOMOSEXUAL YES NO ANY OTHER PROBLEMS ARRESTING AGENCY IS AWARE OF (FOR HOUSING ARRESTEE)

RECOMMEND FOR O.R. RELEASE: YES NO (REASON DENIED)

ELIGIBLE FOR 853.6 PC RELEASE: YES NO (CHECK REASONS BELOW)

( ) SAFETY OF ARRESTEE OR OTHERS MAY BE JEOPARDIZED BY RELEASE ( ) UNABLE TO CARE FOR SELF
( ) WARRANTS ( ) PROSECUTION JEOPARDIZED BY RELEASE ( ) NO I.D. ( ) OFFENSE MAY CONTINUE
( ) ARRESTEE DEMANDS TO BE TAKEN BEFORE JUDGE OR REFUSED TO SIGN CITATION ( ) OTHER

SIGNATURE OF ARRESTING OFFICER: BOOKING OFFICER:

RSD Form 500 (Rev. 10/83)

EX 207 - 000243

DATE: JUNE 16, 1986 D.A. REQUEST #: R6-5232

DISTRICT ATTORNEY COMPLAINT ASSIGNMENT FORM

AGENCY: [illegible] AGENCY REPORT #: 238528200 IP38604223

OFFICER: J TOLTES PHONE #: 777-2334 DAYS/HOURS: MON-FRI 8-5

SUBJECT NAME: (and # in report)	CHARGES REQUESTED Per Each Subject:	Fel/17b/ Misd	Parole Custody?	Hold?	PC 825 Release Date	Court Arraign. Date
( ) [illegible]	211 PC	FEL	(YES)/NO	YES/(NO)		
( )	211 PC	FEL	YES/NO	YES/NO		
( )			YES/NO	YES/NO		
( )			YES/NO	YES/NO		

CASE PREVIOUSLY SUBMITTED? YES/(NO) WHEN? _____ D.A. REQUEST #: _____ BY WHOM: _____

TO WHICH D.A.?(Name) _____ J TOLTES OFFICER

ASSIGNED TO: _____ D.A. PHONE #: _____

CHARGES APPROVED: FELONY _____ 17b _____ MISD _____

V.P. Case #: _____, _____, _____ Court #/Name: _____

NO COMPLAINT

REASON: _____

1. Lack of corpus.
2. Lack of probable cause; lack of evidence.
3. Illegal search and seizure.
4. Victim(s) unavailable; decline to prosecute.
5. Witness(es) unavailable.
6. Combined with other counts.
7. Interest of justice.
8. Other. (State reason in "Remarks".)
9. Referred to City Attorney.
10. Referred to Attorney General. (See "Remarks".)
11. Prosecutor deferral program.

Non-ADR Reasons:

12. Return for further investigation. (See "Remarks".)
13: _____

REMARKS:

[illegible]

Appearance Type:

BAIL	1	2	3	4	AMT: _____
O.R.	1	2	3	4	
CITE	1	2	3	4	
WARRANT	1	2	3	4	AMT: _____
PAROLE HOLD	1	2	3	4	
LETTER	1	2	3	4	

Dep.D.A. Initials _____

Date Reviewed/ Approved _____

D.A. 228-4 (Rev. 1/84)

DA 00002517

EX 208 - 000244

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Prepared: AUGUST 19, 1986

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime-Ct.	6. Crime-Ct.	7. Crime-Ct.	8. Date/Time Occurred	9. Day
P86-08220 / 1804223		394						

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			Exc			

17. Address of Occurrence (Street No. - Name - City)

18. Type of Place

For ID USE: V = Victim, I = Informant, W = Witness, O = Other (19) (27)

19.	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	33. Home Phone	34. Bus. Phone

SUSPECT

35. Last Name - First - Middle	0. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes ( ) No ( )

44. Address - Clothing - Other Marks or Identifying Cha

45. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. (| Detained ( ) 1 | Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	48. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2 $

Reporting Off: TORRES

Reviewed By: JH

COPIES TO

( ) Case filed for lack of investigative leads.
( ) Victim contacted but wishes no further action. ( ) Restitution.
( ) Made several attempts to contact victim but unable to locate.
( ) Property serial numbers entered into computer on _____.
( ) Case transfefred to _____.
( ) Other _____.
( ) Deputy District Attorney _____ refused complaint on _____.
( ) Deputy District Attorney _____ approved complaint on _____.
( ) Suspects charged as follows:

_____ Charge _____ RMC Case # _____.
_____ Charge _____ RMC Case # _____.
_____ Charge _____ RMC Case # _____.
_____ Charge _____ RMC Case # _____.

VCLO ( )

ACTIONS
APS Sent
APS Cancld.
APR Sent
APR Cncld

DOJ-NCIC
Entered
Cancld.

ENTERED
STATS | ARRN | ANI

JH5CA

200-61-2

DA 00002514

EX 208 - 000245

Riverside P.D.
CA0331300

SUPPLEMENTAL REPORT

Date Typed 5/7/96

1. Original File No.	2.	3. Off. ID	4. Dist.	5. Crime Ct.	6. Crime Ct.	7. Crime Ct.	8. Date/Time Discovered	9. Day
FS95071065		294	1-16					

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term.	13. Type Clr.	14. Type Cont.	15. Additional Adults Arr.	16. Additional Juv. Arr.
			EXC			

17. Address of Occurrence (Street No. - Name - City): 3399 VAN BUREN BLVD. RIVERSIDE, CA.

18. Type of Place: BUSINESS

For ID USE: V = Victim, I = Informant, W = Witness, O = Other

19. ID:	20. Last Name - First - Middle (Firm Name if Business)	21. Race - Sex	22. DOB
V	THRIFTY GAS		

23. Residence Address	24. Business or School Address	25. Home Phone	26. Bus. Phone
/	3399 VAN BUREN BLVD. RIV. CA		359-9797

27.	28. Last Name - First - Middle (Firm Name if Business)	29. Race - Sex	30. DOB

31. Residence Address	32. Business or School Address	33. Home Phone	34. Bus. Phone
988816			

SUSPECT

35. Last Name - First - Middle	36. Race - Sex	37. Age	38. Ht.	39. Wt.	40. Hr.	41. Eyes	42. DOB or ID	43. Arrested Yes ( ) No ( )
GRESHAM, RANDALL DALE	W M	27	511	180	BRN	BLU	[redacted]59	

44. Address - Clothing - Other Marks or Identifying Characteristics: CII: A07067963 SID: 0980816 FBI: 339121T7

45. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

SUSPECT

46. Last Name - First - Middle	47. Race - Sex	48. Age	49. Ht.	50. Wt.	51. Hr.	52. Eyes	53. DOB or ID	54. Arrested Yes ( ) No ( )

55. Address - Clothing - Other Marks or Identifying Characteristics

56. Juv: Other Disp: Juris. ( ) 2	Juv. Ct. Prob. ( ) 5	Within Dept. ( ) 6	Detained ( ) 1	Not Detained ( ) 2

ORIGINALLY REPORTED DOLLAR VALUES ARE CHANGED AS SHOWN BELOW

Cat.	A Currency Notes	B Jewelry Prec. Met.	C Clothing Furs	E Office Equip.	F T.V.-Radio Cameras	G Firearms	H Household Goods	I Consum. Goods	J Livestock	K Misc.
PS 57	$	$	$	$	$	$	$	$	$	$
PR	$	$	$	$	$	$	$	$	$	$

60. Originally Reported Offenses (Code - Crime)	61. Original Offenses Changed to (Code-Crime)
(1) 211 PC (ROBBERY/ARMED)	(1)
(2)	(2)

58. Stolen Auto Value ASP: $

59. Recovered Auto Value A2: $

62. Narrative of Supplemental Report

BASED ON INFORMATION RECIEVED FROM A CONFIDENTIAL RELIABLE INFORMANT, THIS CASE WILL BE EXCEPTIONALLY CLEARED NAMING S-1 (GRESHAM) AS THE PERPETRATOR OF THIS OFFENSE.

THIS CASE WILL BE FORWARDED TO THE DISTRICT ATTORNEY'S OFFICE FOR REVIEW AND A COMPLAINT FOR 211 PC.

DISPOSITION: EXCEPTIONALLY CLEAR

Reporting Off. TORRES

Reviewed By

COPIES TO

VCLO ( )

ACTIONS

APB Sent
APB Cancld.
APR Sent
APR Cncld
Entered Cshld/

DO NOT CIRCULATE

STATE PAROLE AGENT

200-52-21R(1/95)

RIVERSIDE COUNTY – LAW ENFORCEMENT AGENCIES

DA 00002531

EX 209 - 000246

Riverside P.D.
CA0331300

STOLEN/EMBEZZLED VEHICLES REPORT

Date Reported: 8-3-87

1. RB Number	2. Time Rptd.	3. Off. ID	4. Dist.	5. Crime Ct.	6. Crime Ct.	7. Crime Ct.	8. Time of Crime
RB8622008		327	5-11				2330 1600

10. Date/Time Assigned	11. Date/Time Inv. Start	12. Date/Time Inv. Term	13. Type Clr.	14. Type Cont.	15. Adult Arr.	16. Juv. Arr.
			CLR	PER		

17. Offenses - Code Section: 10851 VC | Counts: 01 | Crime: AUTO THEFT | Was neighborhood or area checked for abandoned stolen vehicle? (Give details in remarks section) ☐Yes ☒No

18. Address of Occurrence - (Street No. - Name - City): 7339 EVANS. RIVERSIDE | 19. Type of Place: RESIDENCE

20. ID: V (For ID Use: V = Victim, I = Informant, W = Witness, O = Other)

21. Last Name – First – Middle (Firm Name if Business)	22. Race - Sex	23. DOB
GUERRERO. RAUL	WM	[redacted]73

24. Residence Address	25. Business or School Address	26. Home Phone	27. Bus. Phone
[redacted] EVANS. RIV	SIERRA MIDDLE	685-9350	

29. Last Name – First – Middle (Firm Name if Business)	30. Race - Sex	31. DOB
1 [redacted]1609		

32. Residence Address	33. Business or School Address	34. Home Phone	35. Bus. Phone

SUSPECT

36. Last Name – First – Middle	37. Race - Sex	38. Age	39. Ht.	40. Wt.	41. Hr.	42. Eyes	43. DOB or ID	44. Arrested ☐Yes ☐No

45. Address - Clothing - Other Marks or Identifying Characteristics

RESTRICTED INFORMATION
Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.

46. Juv.: Other Disp.: Juris. ( ) 2 | Juv. Ct. Prob. ( ) 5 | Within Dept. ( ) 6 | Detained ( ) 1 | Not Detained ( ) 2

DATE: 8-3-87
TO:
BY: DMG

47. Registered Owner (if different from victim)	48. Address	City	State	49. Res. Phone	50. Bus. Phone
			CA		

51. Legal Owner (if different from victim)	52. Address	City	State	53. Res. Phone	54. Bus. Phone
		RIVERSIDE POLICE DEPT.			

55. Last Driver of Vehicle	56. Date/Time	57. Insurance Carrier (If Appl.)	58. Address	59. Phone

60. License No.	State	Plate Yr.	Plate Type	61. VIN No.	62. Engine No.	67. Stolen Auto Value ASP. $
3JA8960	CAL	87	NEW	JH2AF0607G8214[illegible]9		5.50.00

63. Veh. Make	Year	64. Veh. Model	65. Body Style	66. Veh. Color	68. Stolen Property PS ___ $ [redacted]
HONDA	86	SPREE	MC	LAVENDER BLK	

ITEMS	Yes	No	ITEMS	Yes	No	ITEMS	Yes	No
Doors Locked?			CB Radio?		✓	Seat(s) - Bucket?	✓	
Ignition Keys in?			Radio?		✓	S. Mirror(s) (#)	✓	
Payments Current?			Tape Deck?		✓	Dr. Lights (#)		✓
Air Conditioner?			Tapes (#)		✓	Spotlight(s)?		✓
Extra Keys in Car?			Spec. Wheels?		✓	Special Hubcaps?		✓

69. Interior: BLK STRIPING, BLACK SEAT

Reporting Officer: ARELLANO
Reviewed By: CB
COPIES TO

71. REMARKS (Use continuation sheets as required. Include names, addresses and comments of persons. Other property items, if applicable)
ABOVE MIC DISAPPEARED FROM THE FRONT YARD THIS POST WILLARD (8-9-86-8-10-86). MIC WAS REMOVED VIA THE REAR YARD AND CHAIN LINK FENCE WAS CUT & THE MIC WAS REMOVED.

ACTIONS
APB Sent 8-3-87
APB Cancld
APR Sent
APR Cancld
DOJ/NCIC
Entered 8-12-87
Cancld
ENTERED
State | APB | ANI

72. CERTIFICATION – RELEASE AND WAIVER

Know all men by these presents: That RAUL GUERRERO of the City of RIV County of RIVERSIDE, State of California, being the Legal or Registered Owner, Agent or Legal Possessor of the above vehicle hereby certify that the above is a true report to the best of my knowledge and do by these presents, for myself, my heirs, executors, administrators or assigns, release each, every and all duly appointed Peace Officers of any city, county or city and county of the State of California, from any claim, action, demands, dues, sums of money, controversies, trespasses, judgments, executions, claims and demands whatsoever, in law or in equity, I ever had or now have or which I, or my heirs, executors, administrators, or assigns, hereafter can, shall or may have against any Peace Officers, for, upon or by reason of any matter, cause, or thing whatsoever, as a result of said Peace Officer or Peace Officers recovering, holding, storing, or conveying the above described vehicle, pursuant to the stolen report which I have this day made.

[illegible] 329 8-12-87 Raul Guerrero
Signature of Witnessing Officer No. Date (Signature of person making report)

RIVERSIDE COUNTY – LAW ENFORCEMENT AGENCIES

DA 00002553

EX 210 - 000247

15:17 AUG 01, 2007 TEL NO: 955-5671 #13590 PAGE: 2/2

RIVERSIDE POLICE DEPARTMENT

Records Report Information Request

Unable to locate rpt

Report # P386249140

Requestor's Name Cathie Sanchez Business Phone # 955-0708

Information Desired By: Date: 8-15-07 Time: am

I certify that I am: (Check All Applicable Boxes)

☐ Government Agency Riverside Co. District Attorney's Office

☐ Involved & Named in the Report

☐ Insurance Company (Name & Address)

☐ Authorized by Insurance Company or Involved Party, and that I represent: named in the report.

SIGNED DATE 8-1-07

Right to know / Need to know

Reason for request for this report or information:
Ref Homicide case 25562. Suspect is Randall Gresham. Unknow who is involved in above request. this is for 1101 purposes. thanks Cathie

Records Bureau Information

Report furnished by: ID# Date of Release

Number of copies Made:

Initial Report Supplemental Reports Amount Paid $

EX 211 - 000248

DA 00002518

DECLARATION OF AMANDA R. TOUCHTON

I, Amanda R. Touchton, hereby state and declare as follows:

1. I am a Deputy Federal Public Defender in the Central District of California appointed to represent Joseph Hart in the above-entitled action.

2. In April of 2006, I sent a letter to every trial and post-conviction attorney and investigator that worked on Mr. Hart's trial, appeal and habeas cases asking them to confirm that the Federal Public Defender's Office was in possession of all materials related to Mr. Hart's case. (Ex. 146.)

3. The majority of the letters to counsel and investigators were returned indicating that all relevant materials had been provided either to post-conviction counsel or directly to the Federal Public Defender's Office. Any outstanding materials were copied. Thus, the Federal Public Defender's Office now has the files from all prior counsel in Mr. Hart's case.

4. After throughly reviewing our files, my office determined that certain items were missing from the files, either because they had been lost or because they had never been produced by the State.

5. I first sent a request for the outstanding documents to the Riverside County District Attorney's Office on June 2, 2006. Initially, the District Attorney agreed to provide responsive materials. However, when the agreed upon date for production arrived, but the documents were not produced. I left numerous messages for the Deputy District Attorney with whom I had been discussing the matter. When he eventually returned my calls, he informed me that the matter was being transferred to another Deputy and it would be some time before any materials were produced. Because the informal reply deadline was approaching in the California Supreme Court, I filed a motion for post-conviction discovery pursuant to California Penal Code § 1054.9.

6. The Riverside Superior Court heard Mr. Hart's discovery motion on October 13, 2006. The District Attorney argued that the motion was untimely. The

court disagreed and ordered the District Attorney to produce responsive materials to most of the requests within 30 days.

7. On November 9, 2006, I received materials gathered from the Riverside County District Attorney's Office in response to this Court's October 13, 2006 order. On or about November 8, 2006, I spoke with Alan Tate of the Riverside District Attorney's Office. He informed me that the Riverside Sheriff would need additional time to compile responsive materials. We agreed on an extension of the production deadline until December 4, 2006. I received more responsive materials on December 4, 2006. The Riverside County Sheriff submitted a declaration in connection with the December 4, 2006 production that indicated that additional attempts to locate materials were still being made. I received the final production of responsive materials on January 8, 2007.

8. My office reviewed the materials and compared them to the materials we had from trial and post-conviction counsel and discovered that certain items indicated that the District Attorney committed various violations of *Brady v. Maryland*, 373 U.S. 83 (1963) in connection with its prosecution of Mr. Hart's capital case.

9. The first *Brady* violation relates to the District Attorney's failure to disclose the full extent of its agreement with jailhouse informant Randall Gresham. In response to the Superior Court's order, the District Attorney produced a letter from Mr. Gresham to the Office of the California Attorney General dated November 14, 2002. Mr. Gresham wrote, "I had been threatened with being charged with like 100 armed robberys (sic). I hadn't done but one or two robberys (sic) but they said they could convict me if I didn't help." This letter had never before been provided to our office.

10. The District Attorney also produced, for the first time, a summary of Mr. Gresham's criminal record. The summary provided evidence of never-before-disclosed charges against Mr. Gresham.

//

11. Other materials, including Shelah McMahan's diary and various police "identification reports" evidenced the State had further violated *Brady* by failing to disclose information relating to possible alternative suspects to the Shelah McMahon homicide.

12. On May 22, 2007, after reviewing the materials I received from the District Attorney pursuant to the Superior Court's order, conducting further investigation and interviewing trial counsel, my office filed a supplemental habeas petition alleging the violations of *Brady* (the "*Brady* Petition) in the California Supreme Court, Case No. S152912.

13. Based on my review of the materials, I further concluded that numerous other documents related to the *Brady* violations had not yet been produced. On May 17, 2007, I sent a letter to the District Attorney requesting discovery relating to the claims alleged in the *Brady* Petition.

14. After fruitless negotiations with the District Attorney, I filed a second motion for post-conviction discovery in the Riverside Superior Court on September 24, 2007.

15. On October 18, 2007, the District Attorney produced another 637 pages of discovery. I am in continuing negotiations with the District Attorney for a limited amount of remaining discovery.

I declare under the penalty of perjury under the law of the State of California and the United States of America that the foregoing is true and correct. Signed this 19th day of December, 2007 in Los Angeles, California.

Amanda R. Touchton
Habeas Counsel for Petitioner/Defendant
Joseph Hart

talked off and on about it. I don't know a number. More than ten.

Q All right. During those conversations, did Mr. Hart ever admit to killing his niece?

A Yes, sir.

Q Did he ever talk about his niece or how old she was?

A Yeah.

Q Can you tell me about that, please?

A 11, 11 years old.

Q How did he describe his niece to you?

A Not like most 11 years old.

Q Well, what do you mean by that?

A Well, he'd say things like that she had big breasts, you know, things like that, describe her like an older than 11.

Q When you were listening to that, what were you thinking at that time?

MR. HARMON: Objection irrelevant, Your Honor.

THE COURT: Sustained.

Q (By Mr. Zellerbach) Would Mr. Hart say anything else about the maturity of his 11-year-old niece?

A He would just say that she wasn't like most 11 years old, she was many much older looking and built a lot sexier and things than an 11-year-old was.

Q You've told us, Mr. Gresham, that Mr. Hart admitted to you that he killed his 11-year-old niece. Did Mr. Hart tell you how that occurred or what he did, how he

A No, sir.

Q You've told us, Mr. Gresham, that Mr. Hart didn't specifically tell you how he killed her. Did he at any point in time make any motions or show you how he killed her?

A Yeah, he made motions.

Q What I'd like you to do is stand up, please, and show us the motions that Mr. Hart demonstrated to you as to how he killed his 11-year-old niece.

A Do you want me to stand up?

Q Please.

A Made motions like this. (Indicating.) Was going like this. (Indicating.) Then throwed over to the side like that, and just looked. (Indicating.) It wasn't one time, different incidents.

Q How many times did Mr. Hart make those types of motions?

A It was different times when he'd do it. Sometimes when he was being teased about it or something he'd do it.

Q What do you mean when he was being teased about it?

A Another guy that was in our cell was haggling him about it and stuff and he'd get up and do it, you know, the guy would like ask him, like how did you do it, like that, and he would do it and start laughing.

Q The other guy is Kevin Warp, right?

A Yeah, Kevin.

Q And Mr. Warp at that point in time was in custody for murdering his mother and father?

A Yes, sir.

Q So, Mr. Warp would be teasing Mr. Hart?

A Yes, sir.

Q And would that be when Mr. Hart would demonstrate this stabbing motion?

A Yeah.

Q When you first were arrested and put in the cell with Mr. Hart, did he initially come right out and tell you that he had murdered his niece?

A No.

Q Did Mr. Hart say anything about whether or not he was telling his family or admitting to his family about killing his niece?

A No, he wasn't telling them.

Q What did Mr. Hart say to you about that?

A He said he couldn't -- he couldn't tell his wife and stuff about that.

Q Did he give you his wife's name?

A Yeah, Linda.

Q Did Mr. Hart relate to you about whether he had any sexual problems with his wife Linda?

A Yes, sir.

Q What did he tell you about that?

A She's a -- I don't remember what religion she is, she's a Christian girl, she don't believe in doing some things, you know, any type of things besides just

Q (By Mr. Zellerbach) After you were first interviewed in July of 1986, was it approximately two months later that the detectives came back and again spoke to you with your attorney's permission?

A Yes, sir.

Q And at that point in time, did they tape-record the interview with you?

A At the later -- yeah, they taped it then.

Q And were you aware at that time that they were tape-recording the conversation?

A Yeah, it was right in front of me.

Q Now, you and the District Attorney who was handling your case -- well, I should say more appropriately, your attorney and the District Attorney who was handling your case, entered into an agreement with respect to your testifying in this case, is that true?

A Yes, sir.

Q Can you tell me what your understanding of that agreement is?

A I wouldn't get any more than ten years in prison for the charges that I was going to court on.

Q What -- how much time were you sentenced to?

A Ten years.

Q And you're serving that right now?

A Yes, sir.

Q Was I the D.A. on your case?

A No, it's a lady.

Q I won't ask you to pronounce her name, it's a

objection.

Mr. Gresham, you can answer the question.

THE WITNESS: You're asking me if he said something about killing before? You mean, about killing Diane or what?

Q (By Mr. Zellerbach) Well, when he talked to you about killing his niece, in that same light, did he ever say anything about having killed before?

A Yes, sir.

Q What did he say in that regard?

A About it being easy to kill again? That's what he told me, it was easier after you'd done it.

MR. ZELLERBACH: Thank you, Mr. Gresham.

I don't have anything further, Your Honor.

THE COURT: Cross-examination?

MR. HARMON: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. HARMON:

Q Mr. Gresham, as I understand it, at the time that you were in the cell with Mr. Hart, you had been arrested and you were awaiting trial or final outcome of your case; is that correct?

A Yes, sir.

Q And by that time you had been in jail -- strike that. Before that time, you had been previously convicted of a felony back in Kansas in 1978; is that correct?

guilty to them.

Q. Did you make a deal with the District Attorney?

A. Yeah, my plea bargain was no more than ten years for --

Q. Did you plead to all of the counts charged against you?

A. Yes, sir.

Q. Okay.

And the deal that you made for your testimony was that you would get no more than ten years; is that correct?

A. No more than ten years.

Q. Okay.

Were you satisfied with that deal?

A. Yeah.

Q. Okay.

Did you think in your mind that you would get more than that in jail or in prison if you did not make the deal?

A. Yeah --

Q. What?

A. -- if I went to trial.

Q. What did you think that you would get if you did not make the deal?

A. If I went to trial I could have got 15 years.

Q. So the information that you traded about Mr. Hart saved you five years; is that right?

A. Yeah, if I would have went to trial it would cost me.

Q. Now, at the time that you entered the segregation

PROCEEDINGS OF WEDNESDAY, MARCH 30

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(The following proceedings were held outside the presence of the jurors.)

THE COURT: All right. This is People versus Joseph Hart, CR-25670. Present are both counsel, the defendant, Mr. Hart. No jurors are present.

The first thing and the easiest thing is, we got a message from Mr. O[redacted] P[redacted] Mr. P[redacted] was the foreman at the guilt phase, so I would assume that he is the foreman again. His request is, "Could we please have a copy of Gresham's testimony?" And I would propose that the court reporter go up there and read that testimony, rather than give them a transcript.

Is that agreeable with both parties?

MR. ZELLERBACH: Yes, Your Honor. As a matter of fact, that would be preferable.

MR. HARMON: Yes, it is, Your Honor.

THE COURT: All right. Mr. Hart, is that agreeable?

THE DEFENDANT: Yes.

THE COURT: Okay. Then what I propose is just send the court reporter up, then we won't be there. Then when we finishes she'll come back down and let me know when she's finished.

Also, she will not answer any questions or allow anyone to ask her any questions. If they do try to

THE COURT: You said a type of airplane real quickly. An M-18?

JUROR MR. V[redacted]: Yes.

THE COURT: Okay, that's fine. So, basically that's fine. If we give you Thursday and Friday off is that enough to take care of the problem?

JUROR MR. V[redacted]: I hope so. I can see for Monday if for some reason Burnam can't get down here with contracts by Friday it would probably run into Monday. It takes a signature before we can go out and put this thing under public aircraft.

THE COURT: Let's try for Thursday and Friday.

JUROR MR. V[redacted]: Yeah, that will be it.

THE COURT: Mr. P[redacted], is that all right with you?

JUROR MR. P[redacted]: Yes, it is.

THE COURT: I take it you're the foreman?

JUROR MR. P[redacted]: Yes, I am.

THE COURT: We brought you in rather than bring everybody else down here. And we're using you as a spokesman. Do you think there would be a major revolt among the jurors?

JUROR MR. P[redacted]: No. We brought it up, so it should be fine.

THE COURT: The understanding is once you finished today you'll reconvene on Monday at 9:30.

MR. ZELLERBACH: Your Honor, also would the Court want to discuss with Mr. P[redacted] how we're going to

handle the request regarding the testimony of Mr. Gresham?

THE COURT: Yes. The court reporter is going to go up and reread to you that testimony. Please don't ask her any questions, or don't deliberate with her being present. She's just there as a conduit to provide you with the information. And she'll do that at 1:30 when you reconvene.

JUROR MR. P[redacted]: We can't have a hard copy to kind of keep going over it?

THE COURT: The reason why you don't get that is you only have one person who has a hard copy and nobody else and it's thought to be inappropriate to do it that way. Now you can take notes and you can pay careful attention, but to sit there and give you one witness in written form and not give everybody else witnesses, is --

JUROR MR. P[redacted]: Okay.

THE COURT: Do you understand what the reason is?

JUROR MR. P[redacted]: Yeah, okay.

THE COURT: Then we'll stand in recess. And you'll have my court reporter, and I hate to lose her.

JUROR MR. P[redacted]: I bet.

MR. ZELLERBACH: Thank you, Your Honor.

(The following proceedings were held outside the presence of all jurors.)

THE COURT: The record should reflect the jurors are not present.

She will read direct and cross and then

PROCEEDINGS OF MARCH 31, 1988

--oOo--

THE COURT: This is Hart. Good morning.

THE JURORS: (Collectively.) Good morning.

THE COURT: The record should reflect that this is CR-25670, People versus Joseph Hart.

Both counsel are present. The defendant is present. And all 12 jurors are present.

Mr. P[redacted], you are the foreman; is that correct?

JUROR MR. P[redacted]: Yes.

THE COURT: And the jury has reached a verdict in this case?

JUROR MR. P[redacted]: Yes, we have.

THE COURT: I also got a note from you asking that we contact L[redacted] J[redacted] who is one of the alternates. She did not participate in the deliberations, though, did she?

JUROR MR. P[redacted]: No, sir, she did not.

THE COURT: I think she's here. Is she here?

(Indication by Alternate Juror J[redacted].)

THE COURT: All right. I guess if you spent three months, you would have an interest in what happens.

Would you please hand the verdict forms to the bailiff?

(Pause in the proceedings.)

THE COURT: I'll direct that the clerk read

the verdict.

THE CLERK: In the Superior Court of the State of California, in and for the County of Riverside. The People of the State of California, Plaintiff, versus Joseph William Hart, defendant, CR-25670.

Verdict: We, the jury in the above-entitled action, fix the penalty under Count One of the Information as death for the murder of Diane Lynn Harper. Dated March 31st, 1988. O[redacted] P[redacted], foreman.

Ladies and gentlemen of the jury, is this your verdict?

THE JURORS: (Collectively.) Yes, it is.

THE COURT: All right. I'll direct that the clerk poll the jurors on the verdict.

THE CLERK: Mr. P[redacted], is this your verdict?

JUROR MR. P[redacted] Yes.

THE CLERK: Mr. S[redacted], is this your verdict?

JUROR MR. S[redacted]: Yes.

THE CLERK: Mr. V[redacted], is this your verdict?

JUROR MR. V[redacted]: Yes.

THE CLERK: Mr. D[redacted], is this your verdict?

JUROR MR. D[redacted]: Yes.

THE CLERK: Mrs. W[redacted], is this your verdict?

JUROR MRS. W[redacted]: Yes.

THE CLERK: Mr. G[redacted], is this your verdict?

JUROR MR. G[redacted]: Yes.

THE CLERK: Mr. M[redacted], is this your

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REGISTER OF ACTIONS

PEOPLE V. HART, JOSEPH, WILLIAM — DEFN #: 01/01
DEFN-ID: 0094483 — CUST STATUS: OUT
DEFN ATTY: BARNETT
DIST ATTY:

MC CRT #: RVMC 005964 SC CRT #: OBTS CASE#:
CHARGE: CT 01: 187 PC F CT 02: 207(A) PC F
CT 03: 261.2 PC F CT 04: 286(B)(2) PC F
CT 05: 288A(B)(2) PC F

DATE	PROCEEDING
	BAIL FIXED AT $0.00 REMANDED TO CUSTODY
08/12/86	RONALD TAYLOR, JUDGE COURT REPORTER: C. LEWIS WAIVES TIME FOR PRELIMINARY HEARING PREL HRG CONT TO 08/14/86 AT 0900 AM IN DIV 20 DEFT AND COUNSEL WAIVE RIGHT TO A CONTINUANCE PREL BAIL FIXED AT $0.00 REMANDED TO CUSTODY VICTIM/WITNESS ATTY JOSEPH MEYERS PRESS ENTERPRISE ATTY SHARON WATERS MOTION PURSUANT TO 868 PC DEFENSE REQUESTS HEARING IN CAMERA, COURT DENIES IN CAMERA 868 PC HRG ARGUMENTS DEFTS EXHIBITS NOS A ENTERED IN EVIDENCE COURT RULES ATTY MEYERS HAS NO STANDING IN THIS HRG EXCEPT FOR 5TH AMENDMENT RIGHTS OF VICTIM 868 PC MOTION DENIED COURT GRANTS PRESS ENTERPRISE MOTION TO CONDUCT FILM AND ELECTRONIC COVERAGE MOTION PURSUANT TO 868.7(A)(1) PC AND 868.7(A)(2) PC FOLLOWING WITNESS SWORN AND EXAMINED FOR PLAINTIFF SUSAN DAVIS ARGUMENTS 868.7(A)(1) PC MOTION DENIED 868.7(A)(2) PC MOTION DENIED COURT ORDERS THAT NO PICTURES OF VICTIM BE TAKEN PURSUANT TO 980.B PC
08/14/86	RONALD TAYLOR, JUDGE COURT REPORTER: C. LEWIS ALL PARTIES ANNOUNCE READY, PRELIM. HRNG. CALLED. ON DEFTS. MOTION. COURT ORDERS ALL WITNESSES EXC. AMYLOU RYAN; MICHAEL LACKIE; DR. DEWITT HUNTER JR DEFENSE MOTION PURSUANT TO 170.1 A (1) RCP AND 170.1 A (B) CCP PROB REVOKED IT APPEARING TO THE COURT THAT THE OFFENSE OF

EX 50

REGISTER OF ACTIONS

PEOPLE V. HART, JOSEPH, WILLIAM DEFN #: 01/01
DEFN-ID: 0094483 CUST STATUS: OUT
DEFN ATTY: BARNETT
DIST ATTY:

MC CRT #: RVMC 005964 SC CRT #: OBTS CASE#:
CHARGE: CT 01: 187 PC F CT 02: 207(A) PC F
CT 03: 261.2 PC F CT 04: 286(B)(2) PC F
CT 05: 288A(B)(2) PC F

DATE	PROCEEDING
	187 PC, 261.2 PC, 286(B)(2) PC, 288A (B)(2) PC.
	ARR SET FOR 08/28/86 AT 0800 AM IN DIV 00
	COUNT SPECIAL CIRCUMSTANCES DISMISSED. CT. 01
	190.2(A)(17)(II) PC, CT. 02, SPECIAL ALLEGATION
	667.8 PC. INSUFFICIENT EVIDENCE 1385 PC
	DA MOTION.
	BAIL FIXED IN THE SUM OF NO BAIL
	REMANDED TO CUSTODY
08/20/86	DEFT HTA IN SUPERIOR COURT, DOCUMENTS FORWARDED.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

TITLE:	DATE & DEPT.	NUMBER:
PEOPLE VS JOSEPH WILLIAM HART	2-24-88 6	Cr-25670
COUNSEL: District Atty: P. Zellerbach, Deputy; Defense Atty: S. Harmon	REPORTER: K. Gunn & T. Sheehan	
PROCEEDING: 37th DAY JURY TRIAL 187PC(190.2(a)(17)(iii)(190.2(a)(17)(iv)(Ct I); 261(2)PC(Ct II); 286(c)PC(Ct III); 288a(c)PC(Ct IV)		
PENALTY PHASE		

(9:30 a.m.)

People represented as indicated above, Defendant (custody) present with counsel.

OUTSIDE THE PRESENCE OF THE JURY:
Juror #3, M[redacted] V[redacted] addresses the court regarding a time problem.

Juror's and Alternate's are present and seated in their respective places.

Opening Statement by the People.

Opening statement by Defense.

Detective Sanchez is designated investigating officer for the People.

Motion to exclude witnesses is granted.

Debbie Bourne sworn and examined.

Evidence sheet marked People's #79 for Identification.

Carlos Sanchez sworn and examined.
Richard Acero sworn and examined.
Robert Morse sworn and examined.
Deborah Tedrow sworn and examined.
Prisilla Needham sworn and examined.

Adjourned to 2-25-88, 9:30 a.m. in D_6.

(3:00 p.m.)

	R/A		CAL.		ATTY(S).		

WEBSTER , Judge

Leutz , Clerk

FORM NO. 171, 2/64 MINUTES OF SUPERIOR COURT

590

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

TITLE:	DATE & DEPT.	NUMBER:
PEOPLE VS JOSEPH WILLIAM HART	3-31-88 6	Cr-25670

COUNSEL:		REPORTER:
District Atty: P. Zellerbach, Deputy	Defense Atty: S. Harmon	T. Sheehan

PROCEEDING: 54th DAY JURY TRIAL 187PC(190.2(a)(17)(iii)(190.2(a)(17)(iv)(Ct I); 261(2OPC(Ct II): 286(c)PC(Ct III); 288a(c)PC(Ct IV)

PENALTY PHASE

(9:00 a.m.)

Jurors arrive to resume their deliberations

(10:00 a.m.)

Jury returns to the courtroom with a verdict.

Foreman, Oren Pentz presents the verdict to the court.

Clerk reads the verdict to the jury and inquires if this is their verdict to which an affirmative response is had.

TITLE OMITTED:
We the jury in the above entitled action, fix the penalty under Ct I of the Information, as death, for the murder of Diana Lynn Harper.

Upon order of the court, the clerk records the verdict attached hereto and incorporated herein for reference.

Upon order of the court, the clerk polls the jury.

Matter is referred to the Probation Department for a Pre-Sentence Investigation report returnable on 5-27-88,8:30 a.m. in D-6.

Exhibits are lodged with the exhibits clerk.

(10:30 a.m.)

	R/A		CAL.		ATTY(S).		

WEBSTER , Judge

Leutz , Clerk

FORM NO. 171, 2/64 MINUTES OF SUPERIOR COURT

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FILED
Riverside County
MAR 31 1988
By [illegible] Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA,	†	NO. CR. 25670
Plaintiff,	†	VERDICT
v.	†	
JOSEPH WILLIAM HART,	†	
Defendant.	†	

We, the jury in the above-entitled action, fix the penalty under Count I of the Information, as death, for the murder of Diana Lynn Harper.

Dated: 3-31-88
43,1;77, p. 2

Foreman

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In Re:	No. S074569
JOSEPH WILLIAM HART,	Riverside Superior Court No. CR 25670
On Habeas Corpus.	**INFORMAL REPLY TO INFORMAL RESPONSE**

JURISDICTION

TIMELINESS OF THE PETITION IS PROPER

Respondent, after a repetition of the statement of facts from its brief on appeal, begins its discussion of the question of timeliness with a statement the obvious: The instant petition for habeas corpus, having been filed more than 90 days after the final due date for the filing of the reply brief on appeal, is not entitled to a presumption of timeliness. (Standards 1.1, 1-1.1.) This established, Respondent turns to the question of lack of substantial delay (Standard 1-1.2). Its comments on this subject sacrifice a clear view of the specific facts of this case on the altar of empty rhetoric. The Court should decline to countenance this approach.

Respondent's basic claim is that the facts upon which Petitioner relies (principally regarding the recent discovery that Petitioner suffers and has long suffered from substantial brain damage) should, with the exercise of due diligence, have been discovered long ago. In attempting to sustain this thesis, Respondent stretches the

concept of "due diligence" beyond the breaking point, substituting its own concept of eternal vigilance in an idealized world. In Respondent's apparent view, the word "due" in "due diligence" should be read as "perfect."[1]

The relevant facts of this case, set out at length in our petition, may be briefly summarized. In spite of counsel's general knowledge, through anecdotal accounts of family members, of childhood incidents involving head injury as well as a history of cocaine use prior to the subject murder, none of the medical reports to which we were afforded or obtained access indicated or suggested the existence of brain damage.[2] It was not until counsel received the results of a preliminary psychological assessment by Dr. Gretchen White (Pet., Ex. 24), followed the report of a complete neuropsychological examination by Dr. Natasha Khazanov (Pet., Ex. 25), that counsel became possessed of

[1] The tenor of Respondent's position on timeliness is summarized by its observation, at page 59 of its response to our petition, that "Nothing in the declarations and documents in support of the Petitioner established that it was absolutely necessary to take over eight years to formulate and present Hart's pending habeas claims." (Emphasis added.)

[2] Respondent states, on page 62 of its response, that the subject of brain damage "was explored, and indeed presented by, trial counsel during the penalty phase of Hart's trial." The trial material to which Respondent presumably refers consists of the testimony of Iris Hart, Petitioner's mother, which simply related the facts of a childhood automobile accident and expressed the opinion that "to this day Joe has had problems with that, . . . headaches and a lot of problems with his head." (RT 4922.) No further details were given. Clearly this does not amount to the kind of "triggering facts" which might justify further investigation, and none of the medical reports which we were later able to examine indicated or suggested the existence of brain damage. As indicated above, it was not until counsel received the results of a preliminary psychological assessment by Dr. Gretchen White (Pet., Ex. 24), followed the report of a complete neuropsychological examination by Dr. Natasha Khazanov (Pet., Ex. 25), that counsel became possessed of the kind of "triggering facts" warranting further investigation of the claim.

the kind of "triggering facts" warranting further investigation of the claim. Immediately after being notified of Dr. Khazanov's findings -- but before her declaration had been prepared and executed -- Petitioner through counsel addressed a letter to the Court requesting reconsideration of his two previous requests for expenses in light of the provisions of Senate Bill 513, which was to become effective on January 1, 1998. This letter advised of the Court of the ongoing investigation of brain damage and related the findings of Dr. Khazanov. Less than two weeks later Dr. Khazanov executed the declaration setting forth her final findings. Counsel, having been advised by Dr. Khazanov that a full interpretation of her findings would require the services of a qualified psychiatrist, promptly set about arranging for the services of Dr. David V. Foster, a man with special expertise in the areas of brain damage and polysubstance abuse. Counsel, who had already exceeded the then-applicable expense cap of $3,000 when they hired Dr. Khazanov (and who expected, in light of the Court's previous responses to their requests for additional funds, to pay for her services themselves), were reluctant to engage Dr. Foster, whose fee was projected to be in the neighborhood of $10,000. Although the Court had not yet responded to our letter requesting reconsideration of previous funds requests, we then undertook to file an additional request focusing on the necessity of funds for evaluation by Dr. Foster. When four months later counsel still had not received a response from the Court to this request (or to the previous letter requesting reconsideration), they determined that the only reasonable alternative in light of the Court's silence was to file the petition without the benefit of further investigation of the brain-damage claim. A month later, when the petition was

essentially completed, this Court filed its Robbins and Gallego opinions, dealing at length with the timeliness of claims, and a period of further revision in light of their teaching ensued. Finally, exactly six months after the filing of our last request for funding -- and over eight months after our letter requesting reconsideration of previous denials -- this Court filed its order denying both requests. Two months later the petition for habeas corpus was filed.

These facts, we insist, amply meet the measure of Standard 1-1.2, which straightforwardly declares that a petition filed after the presumptive due date may nevertheless establish the absence of substantial delay "if it alleges with specificity facts showing the petition was filed within a reasonable time after Petitioner or counsel (a) knew, or should have known, of facts supporting a claim *and* (b) became aware, or should have become aware, of the legal basis for the claim..." (Emphasis added, original italics.) Thus, Respondent's flights of hyperbole aside, the question is simply whether the petition was filed within a time which, in light of all of the circumstances of the case, was no greater than was reasonable.

One of the principal factors bearing on the question of what is and what is not a reasonable time for filing in this case is doubtless the effect of this Court's extended delay in ruling on our ultimate requests for funding. Respondent's arguments on this subject -- which largely treat this question as if it concerned an attempt to buy time by filing a continuing series of unjustified requests for funds[3] -- are sadly disingenuous and

[3] See, e.g., pages 61 and 67 of the informal response.