S211702

LIU, J.

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff & Respondent,* **v.** **REYNALDO JUNIOR EID & ALAOR DOCARMO OLIVEIRA,** *Defendants & Appellants.*	Case No. S_____

SUPREME COURT
FILED

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Frank A. McGuire Clerk

Deputy

Fourth Appellate District, Division Three, Case No. G046129
Orange County Superior Court, Case No. 05HF2101
The Honorable M. MARC KELLY, Judge

PETITION FOR REVIEW

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Petitioner, the People of the State of California, respectfully petitions this Court to grant review, pursuant to rule 8.500 of the California Rules of Court, of the above-entitled matter, following the issuance of a published opinion on May 22, 2013, by the Court of Appeal, Fourth Appellate District, Division Three, reversing the convictions of appellants Reynaldo Junior Eid and Alaor Docarmo Oliveira, Jr., for misdemeanor false imprisonment (Pen. Code,[1] §§ 236 & 237, subd. (a)), because they were also convicted of attempted extortion (§§ 664, subd. (a), & 518), arising out of a single charged offense of kidnapping for ransom (§ 209). A copy of the Court of Appeal's opinion is attached.

ISSUE PRESENTED

Under section 1159, may a jury convict a defendant of two uncharged lesser included offenses arising out of a single charged offense, where the two lesser included offenses are not necessarily included in each other?

REASONS FOR GRANTING REVIEW

Review of this case is necessary to settle an important question of law. (Cal. Rules of Court, rule 8.500, subd. (b)(1).) In a published decision, the Court of Appeal found section 1159, which authorizes a jury to convict a defendant "of any offense, the commission of which is necessarily included in that with which he is charged ...," (§ 1159), only permits a jury to find a defendant guilty of one lesser included offense, even where the evidence

[1] All subsequent statutory references are to the Penal Code unless otherwise noted.

supports convictions for multiple lesser included offenses, and the offenses are not necessarily included in each other.

Nothing in the language of section 1159 precludes a jury from finding a defendant guilty of two lesser included offenses of one charged crime. The only limitation on convictions of lesser included offenses is found in section 954, which bars multiple convictions for necessarily included offenses. However, no authority exists barring convictions of two lesser included offenses arising out of a single charged offense, where those offenses are not necessarily included in each other. As explained below, the Court of Appeal created a new limitation on section 1159, where none existed before.

Accordingly, respondent respectfully requests that this Court grant review to settle an important question of law. Granting review will provide needed guidance to lower courts interpreting section 1159, as well as needed guidance to District Attorney's offices across the state making charging decisions in these types of cases.

FACTUAL AND PROCEDURAL BACKGROUND

In 2005, Jefferson Ribeiro[2] made an arrangement to have his wife Ana and their five-year-old son Iago smuggled from Brazil to the United States. (1 RT 204, 207, 211, 216-217.) Ana and Iago were eventually smuggled across the United States border from Mexico and delivered to appellants in Orange County. (2 RT 352-353, 372-373.) They initially stayed willingly with appellants, but then appellants called Jefferson, who was in Florida, and demanded an additional $14,000 for the release of his family. Jefferson had already paid $12,000 to smuggle his family and did not have any more

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[2] For ease of reference, the Ribeiro family will be referred to by their first names only.

money. (1 RT 204, 222-223; 2 RT 230-232, 374, 384; 3 RT 454.) Ana and Jefferson discussed the possibility of escape but Ana was afraid and said there was "no way" she could leave. Appellants told Ana that if Jefferson failed to pay, they would take her to New York to work for them in order to pay for the debt. (3 RT 395.) Appellants also took Ana and Iago's passports from them. (3 RT 399-401.) After Jefferson determined the location of his family, he was able to arrange for someone in California to pick them up from appellants. (1 RT 239-241.) When appellants refused to release Ana and Iago, the police were called. (1 RT 239-241; 2 RT 402-406; 4 RT 662, 664.) Thereafter, appellants forced Ana and Iago into their van, ordered them to lie down in the backseat and attempted to flee before the police arrived; however, they were unsuccessful. (2 RT 413-414; 4 RT 664, 666-675, 763.)

Appellants were charged with two counts of kidnapping for ransom (§ 209). In the second trial,[3] before submitting the cause to the jury, appellants expressly agreed to instructions on the lesser included offenses of misdemeanor false imprisonment (§§ 236 & 237, subd. (a)) and felony attempted extortion (§§ 664, subd. (a), & 518), among others. (3 RT 608-609.) A jury acquitted appellants of kidnapping for ransom on both counts, but found appellants guilty of the lesser included offenses of felony attempted extortion and misdemeanor false imprisonment on each count. (1 CT 129-130, 265-266; 3 CT 631-642.) Thereafter, the trial court sentenced appellants to prison for an aggregate term of four years and six months based on consecutive terms of two years for attempted extortion in

[3] After the first trial, a jury found appellants guilty of two counts of kidnapping for ransom, but those convictions were reversed following a finding of instructional error on the issue of consent. (*People v. Eid* (2010) 187 Cal.App.4th 859; *People v. Oliveira* (Aug. 19, 2010, G042004) [nonpub. opn.].)

count one, six months for attempted extortion in count two, and one year for each false imprisonment count. (1 CT 132, 268.)

On appeal, appellants contended the jury was permitted under section 954 to return only one conviction per count in the pleading and that the court had to modify the judgment by striking one conviction per count. On May 22, 2013, the Fourth District Court of Appeal, Division Three, issued a published opinion agreeing with appellants and reversing their convictions for misdemeanor false imprisonment as a result.

In doing so, the Court of Appeal recognized there was no authority on this issue. (Slip Op. at pp. 9-10.) "Defendants stand convicted of *two* uncharged lesser included offenses of a greater charge, but neither lesser included offense is a lesser included offense of the other. At most, the lesser included offenses are lesser *related* offenses of each other." (*Id.* at p. 9, emphasis in original.) In other words, as observed by the lower court, "kidnapping for ransom subsumes lesser included offenses, like extortion and simple kidnapping, that 'related' to each in a non-hierarchical way." (*Id.* at p. 10.)

Consequently, the Court of Appeal looked to *People v. Navarro* (2007) 40 Cal.4th 668, 680-681 (*Navarro*), where this Court held that sections 1181, subdivision 6, and 1260 do not authorize a court to modify a judgment to reflect convictions for two lesser included offenses upon finding insufficient evidence of a single greater offense. (Slip Op. at p. 10.) Applying the reasoning in *Navarro*, the Court of Appeal held that sections 1159 and 954 likewise do not authorize a jury to convict on more than one uncharged lesser included offense upon acquitting a defendant of the greater charged offense, even though the jury found the defendants guilty beyond a reasonable doubt of both lesser included offenses, and even though those offenses were not lesser included offenses of each other. (Slip Op. at pp. 10-12.) The Court of Appeal reasoned that, "[i]t would be

anomalous to allow a jury to do what the judge may not, i.e., to conclude that the evidence does not sustain a conviction on the greater offense, but then to convict on more than one lesser included offense." (*Id.* at p. 12.)

ARGUMENT

I. THIS COURT SHOULD GRANT REVIEW TO SETTLE AN IMPORTANT QUESTION OF LAW

Relying on this Court's opinion in *People v. Navarro*, *supra*, 40 Cal.4th 668, the Court of Appeal reversed appellants' two convictions for misdemeanor false imprisonment on the ground that those convictions and the two convictions for attempted extortion, which arose out of two charges of kidnapping for ransom, were not statutorily authorized under section 1159. (Slip Op. at p. 12.) However, nothing in the language of section 1159 precludes a jury from finding a defendant guilty of two lesser included offenses where it finds the evidence was insufficient to convict him of committing the greater charged offense. Since convicting appellants of all four offenses did not violate their due process rights[4] and was commensurate with their culpability, there is no reason to believe the legislature intended to prohibit such a result when it enacted section 1159. Accordingly, the Court of Appeal's holding unreasonably intrudes upon the province of the jury and its function of determining a defendant's culpability, effectively creating a new statutory limitation. What is more, by interpreting the statute as it did, and by concluding that only one conviction per count may stand, the Court of Appeal's decision also confers a windfall on defendants – by placing arbitrary limitations on the number

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[4] Appellants had sufficient and fair notice of the charges based on the accusatory pleading and preliminary hearing. (*People v. Reed* (2006) 38 Cal.4th 1224, 1229 (*Reed*); *People v. Butte* (2004) 117 Cal.App.4th 956, 959.)

of convictions they may sustain and the extent of their punishment – solely based on whether they were separately charged with the lesser included offenses or only the greater offense. In this case, appellants not only benefitted by having two convictions stricken, but also by having their sentences shortened by two years.

A. Sections 1159 and 954 Do Not Prohibit Convictions of Two Lesser Included Offenses Arising Out of a Single Greater Charged Offense, Where Those Offenses Are Not Necessarily Included in Each Other

Section 1159 authorizes a jury to convict a defendant "of *any* offense, the commission of which is necessarily included in that with which he is charged…." (§ 1159, emphasis added.) Looking first to the plain meaning of the text, section 1159 does not prohibit multiple convictions on its face. (*People v. Wills* (2008) 160 Cal.App.4th 728, 736 (*Wills*) [In interpreting a statute, the court first examines the words themselves, giving them their ordinary and usual meaning.].) "Any" is defined as "one or some, regardless of … quantity" or "an indeterminate number."[5] If the plain, commonsense meaning of a word is unambiguous, the plain meaning

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[5] "Any" is defined as:

1. *One or some, regardless of kind, quantity, or number* (take any book you want);

2a. One or another selected at random (any child would do the same);

2b. One or another without restriction or exception (will accept any suggestion offered);

3. The whole amount of, all (will turn over any profit to charity);

4. *An indeterminate number or amount* (is there any soda).

(American Heritage Dict. (2d college ed. 1982) p. 117, emphasis added.)

controls. (*Wills, supra*, 160 Cal.App.4th at p. 736.) And, while "offense" is written in the singular, section 7 provides "the singular number includes the plural, and the plural the singular." Moreover, the word "offense" must not be viewed in isolation, but rather, in context of the statutory framework. (*People v. Murphy* (2001) 25 Cal.4th 136, 142.)

Furthermore, section 954 permits multiple convictions for different charged offenses arising from a single act, so long as the offenses are not necessarily included in each other. (§ 954; *Reed, supra*, 38 Cal.4th at pp. 1226-1227.) The purpose of that rule is to prevent a defendant from being convicted of the *same crime* twice. (*People v. Medina* (2007) 41 Cal.4th 685.) Otherwise, it is appropriate for a defendant to be held accountable for each crime he committed. (See *People v. Latimer* (1993) 5 Cal.4th 1203, 1211 [section 654 ensures defendant's punishment is *commensurate with culpability*].)

Here, attempted extortion can be committed without committing misdemeanor false imprisonment and vice versa. Thus, though these two offenses are necessarily included offenses of kidnapping for ransom, they are not necessarily included offenses of each other. And, because appellants were not convicted of the greater crime of kidnapping for ransom, the multiple convictions bar under section 954 does not apply. (*People v. Ortega* (1998) 19 Cal.4th 686, 693 [a defendant properly may be convicted of two offenses if neither offense is necessarily included in the other].) Even section 654, which bars multiple punishment, does not bar multiple convictions. (*People v. Pearson* (1986) 42 Cal.3d 351, 359.) Thus, there exists no statutory authority that expressly prohibits appellants' multiple convictions.

In finding otherwise, the Court of Appeal created a new limitation on section 1159 by wrongly extrapolating from this Court's decision in *Navarro*, which addressed a court's ability under sections 1181,

subdivision 6, and 1260 to *modify* a jury verdict found defective.

In *Navarro*, this Court reversed a judgment of a court of appeal that, after finding insufficient evidence of attempted kidnapping during the commission of a carjacking (the charged greater offense), modified the judgment to reflect convictions for attempted carjacking and attempted kidnapping (lesser included offenses of the greater charge, but not of each other) since "both offenses were supported by substantial evidence at trial." (*Id.* at p. 675.)

This Court in *Navarro* explained that the purpose of sections 1181, subdivision 6, and 1260 was to provide courts with a mechanism for correcting the jury's error in fixing the degree of the crime – by replacing a single greater offense with a single lesser offense. (*Navarro*, *supra*, 40 Cal.4th at p. 679.) Furthermore, this Court observed that, historically, courts have uniformly interpreted and applied these corrective statutes to permit "a one-for-one modification," which merely brought the jury's verdict in line with the evidence presented at trial. (*Ibid.*) This Court also noted that the modification procedure of section 1181 "'marked a complete departure in our criminal jurisprudence,' which constituted a 'startling innovation in our procedure.'" (*Navarro*, *supra*, 40 Cal.4th at p. 680.) Thus, this Court in *Navarro* held that allowing modification of the judgment to reflect a conviction for two lesser included offenses because the reviewing court found a jury's verdict on the greater offense lacked sufficient evidence was contrary to the statutes' purpose of serving a "corrective function." (*Ibid.*) This Court found that in modifying the judgment in the manner it did, the court of appeal had further expanded the corrective statute "beyond the scope of its evident purpose." (*Ibid.*)

Necessarily underlying this Court's ruling in *Navarro* is the concern that a reviewing court may deny a defendant his constitutional right to a *trial* and intrude upon the role of the fact-finder when it modifies, or

corrects, a judgment. (See *Navarro*, *supra*, 40 Cal.4th at p. 773, citing *People v. Cowan* (1941) 44 Cal.App.2d 155, 162 [an appellate court may make a modification, "'not by finding or changing any fact, but by applying the established law to the existing facts as found by the jury.'"].) In these types of cases – where the jury never actually found the defendant guilty of the lesser included offenses, but only did so impliedly by finding all of the elements of the greater offense – courts have exercised restraint in order to maintain the integrity of the trial, the judgment, and the defendant's constitutional rights. (See *People v. Rodriguez* (1986) 42 Cal.3d 730, 766 [a defendant has a "countervailing right to independent jury determination of the facts bearing on his guilt or innocence...."].) But here, the jury actually determined appellants were guilty of the lesser included offenses beyond a reasonable doubt, so no similar concerns arise.

Ironically, by limiting appellants' verdicts to "one conviction per count," the Court of Appeal's decision effects the very intrusion it appears *Navarro* sought to prevent. It substitutes the reviewing court's determination of guilt for that of the jury, not based on any error or lack of evidence, but based on an arbitrary rule, without any legal justification.

The Court of Appeal also erroneously relied on another aspect of this Court's decision in *Navarro* – the determination that section 7[6] should not be applied to permit multiple convictions. (Slip Op. at pp. 11-12.) In *Navarro*, this Court declined to apply section 7 because it "would lead to an interpretation that runs counter to both the legislative purpose of the statutory scheme and subsequent historical practice." (*Navarro*, *supra*, 40 Cal.4th at p. 680.) But the Court of Appeal's conclusion completely overlooks this Court's basis for construing sections 1181, subdivision 6,

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[6] Section 7 provides: "the singular number includes the plural, and the plural the singular...."

and 1260 narrowly; namely, the fact that taking such corrective action was a "marked and complete departure in criminal jurisprudence." (*Navarro*, *supra*, 40 Cal.4th at p. 680.) No such considerations exist here. Not permitting the jury's verdicts to stand – when they are supported by substantial evidence and do not violate any statutory or constitutional right – presents another marked and complete departure in criminal jurisprudence.

Ultimately, the Court of Appeal's decision is arbitrary and will lead to arbitrary results. For instance, if the People separately charged attempted extortion and misdemeanor false imprisonment, there would be no bar to separate convictions for each lesser included offense. (§ 954.) But where, as here, the People reasonably relied on the well-established principles that pleading the greater offense subjects the defendant to the lesser, the People, and the jury, lose convictions that are supported by the evidence and that conform with the facts as the jury found them. Further, the defendant who is charged only with the greater offense is thereby shielded from the full extent of his criminal culpability, while the defendant whose prosecutor separately pleads the lesser included offenses does not enjoy the same benefit.

Moreover, the Court of Appeal's decision has potentially far-reaching consequences. This issue is likely to arise in cases involving crimes that encompass various other separate crimes. For instance, aggravated kidnapping (§§ 209, 209.5), carjacking (§ 215), or assault with intent to commit specified crimes (§ 220) include various other crimes that are not lesser included offenses of each other. In those instances, as previously discussed, defendants who are charged separately with the lesser included offenses would similarly face the possibility of multiple convictions, whereas those defendants like appellants, who were only charged with the greater offense, will enjoy a much more favorable outcome. As such,

the Court of Appeal's decision would allow defendants committing these serious and dangerous crimes to escape liability based solely on the charging decisions of the prosecutor. As a consequence, prosecutors would feel compelled to separately plead all conceivable lesser included offenses in order to preserve possible convictions; this in turn would require defendants to defend against, and juries to consider, lesser included offenses that may not, in the end, be supported by the evidence at trial. Thus, the Court of Appeal's decision, if it is allowed to stand, would lead to cumbersome and inefficient criminal proceedings.

B. The Court of Appeal's Holding and Remedy Also Grant Certain Defendants an Undeserved Windfall With Regard to the Punishment They Ultimately Receive

Finally, the Court of Appeal's holding and remedy result in an undeserved windfall for defendants by vacating an otherwise valid conviction based solely on its "one conviction per count" rule. Not only do defendants stand to receive a windfall in terms of the number and type of convictions they sustain, but also in terms of the actual punishment they receive. Here, for example, the trial court expressly and properly declined to apply section 654[7] because it found that misdemeanor false imprisonment and attempted extortion were independent from each other and involved separate objectives and intents. (5 RT 1191-1192.) Accordingly, the trial court imposed consecutive sentences for *each offense*, yielding an aggregate term of four years and six months for each appellant. (1 CT 132, 268.) The Court of Appeal's "one conviction per

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[7] Section 654 "precludes multiple punishment for a single act or omission, or an indivisible course of conduct." (*People v. Deloza* (1998) 18 Cal.4th 585, 591.)

count" rule reduced appellants' sentences by two years, further denying effect to the jury's determination concerning each defendant's culpability.

In sum, the Court of Appeal created a new statutory limitation that: (1) intrudes on a defendant's right to jury trial and usurps the jury's ultimate fact-finding power; (2) shields certain defendants from the full extent of their criminal culpability; (3) compels prosecutors to separately plead, defendants to defend against, and juries to consider, all conceivable lesser included offenses unnecessarily; and (4) provides certain defendants with an unwarranted reduction in the length of their prison terms. This case presents an opportunity for this Court to clarify the scope and application of section 1159 with respect to jury findings of guilt for lesser included offenses, and to settle this important question of law.

CONCLUSION

The petition for review should be granted.

Dated: July 1, 2013

Respectfully submitted,

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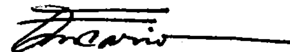

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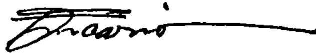
CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR REVIEW uses a 13-point Times New Roman font and contains 3,169 words.

Dated: July 1, 2013

KAMALA D. HARRIS
Attorney General of California



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APPENDIX

Filed 6/12/13 (unmodified opinion attached)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. REYNALDO JUNIOR EID et al., Defendants and Appellants.	G046129 (Super. Ct. No. 05HF2101) ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING; NO CHANGE IN JUDGMENT

It is ordered that the opinion filed herein on May 22, 2013, be modified as follows: At the end of the last paragraph on page 12, delete the following:

(See *People v. Powell* (2013) 214 Cal.App.4th 106, 109 ["error was prejudicial because it allowed the jury to convict Powell of an offense of which he had no reasonable notice"].)

There is no change in the judgment.

The petition for rehearing is DENIED.

Filed 5/22/13 (unmodified version)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. REYNALDO JUNIOR EID et al., Defendants and Appellants.	G046129 (Super. Ct. No. 05HF2101) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, M. Marc Kelly, Judge. Reversed in part and affirmed in part with modifications.

Richard J. Moller, under appointment by the Court of Appeal, for Defendant and Appellant Reynaldo Junior Eid.

Siri Shetty, under appointment by the Court of Appeal, for Defendant and Appellant Alaor Docarmo Oliveira, Jr.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Melissa Mandel, Deputy Attorney General, for Plaintiff and Respondent.

In two prior opinions (*People v. Eid* (2010) 187 Cal.App.4th 859; *People v. Oliveira, Jr.* (Aug. 19, 2010, G042004) [nonpub. opn.]), we reversed the kidnapping for ransom convictions of defendants Reynaldo Junior Eid and Alaor Docarmo Oliveira, Jr., respectively, for instructional error. Defendants' convictions arose from their joint role in handling two undocumented immigrants smuggled into the United States (the U.S.).

On retrial, the People again charged defendants with two counts each of kidnapping for ransom. (Pen. Code, § 209, subd. (a).)[1] The jury acquitted each defendant of kidnapping for ransom, but convicted each of them, as to each count in the information, of the *two* lesser included offenses of felony attempted extortion (§§ 664, subd. (a), 518) and misdemeanor false imprisonment (§§ 236, 237, subd. (a)). The court sentenced each defendant on count 1 to two years for attempted extortion and a consecutive one-year term for false imprisonment, and on count 2 to a consecutive six months for attempted extortion and a consecutive one-year term for false imprisonment, resulting in a total term of four years and six months for each defendant.

On appeal, defendants contend the jury improperly convicted them of *two* uncharged lesser included offenses for each charge of kidnapping for ransom. We agree and therefore strike defendants' convictions for misdemeanor false imprisonment. We reject defendants' contentions of evidentiary error. Accordingly, we affirm the judgment as modified by the striking of the misdemeanor false imprisonment convictions.

FACTS

In November 2004, Jefferson Ribeiro moved to Florida from Brazil. He had a six-month tourist visa, but planned to stay illegally in the U.S. after his visa

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

expired.[2] Jefferson worked at a car wash for four months for very little money and then in construction for a few months. Meanwhile, his wife, Ana, and their young son lived in Brazil.

Sometime in 2005, Jefferson decided to try to bring Ana and their son to the U.S., but realized he could not do so legally. He became acquainted with a Dunkin' Donuts employee named Mauricio Freitas. In mid-2005, Jefferson agreed to pay Freitas $18,000 in exchange for Freitas arranging to have Ana and their son brought into the U.S. Jefferson paid Freitas a down payment of $4,000 and agreed to pay the balance in installments of $1,000 per month. Jefferson told Ana of his arrangement with Freitas. Ana agreed that she and their son would come illegally to the U.S. according to the plan.

On October 16, 2005, Ana and their son flew from Brazil to Mexico City. In Mexico City, a Mexican man picked them up at the airport and took them to a hotel where they stayed for three or four days.

Another Mexican man moved them to a house where about 40 Brazilians waited to be crossed into the U.S. Ana stayed there for seven to 10 days. She stayed inside the house and felt safe. Ana did not feel threatened, even though she was told that her son would not be fed until Jefferson sent more money. Based on warnings Ana received at the house, she believed that if the police saw her, they would separate her from her son. Although she was locked in the house, she stayed there willingly and relied on Joao (the person in charge of the house) to help her stay free from the police.

Meanwhile, in Florida, Freitas kept asking Jefferson for more money because there were "problems with the trip" and things were not going "according to the plan." Jefferson paid Freitas a total of around $13,000 in cash from his work earnings and money he borrowed from friends. Jefferson paid the money because, if he did not,

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[2] For convenience and to avoid confusion, we refer to Jefferson Ribeiro and his wife by their first names and to their son variously as "their" son or "her" son. We mean no disrespect.

Ana and their son would remain "where they were." At some point Jefferson lost contact with Freitas, who could not be reached at his home or by phone.

Joao (the proprietor of the house in Mexico) phoned Jefferson and said that Freitas had not paid the agreed amount (not enough "to cross them over") and this was why Ana was still at Joao's house. Joao told Jefferson that he (Joao) was probably going to send Ana and her son back to Brazil. In a subsequent phone call, Jefferson told Joao to put Ana and her son on a flight to Brazil because Ana had roundtrip tickets. Joao said he would do so. But when Jefferson phoned Joao a few days later, Joao said Ana was already coming to the U.S.

Several days later, a man phoned Jefferson and told him in Spanish that Ana was already in the U.S. and that a person named "Junior" would phone Jefferson.

In the meantime, Ana and her son had been taken to another house in Mexico and then smuggled across the border hidden under a truck's seat. After arriving in the U.S., Ana and her son were brought to yet another house (transported in a truck driven by an American man) and then taken by another person to a gas station.

At the gas station, they were picked up by defendants in a van driven by Eid. Ana knew Eid as "Junior." Defendants took Ana and her son to a restaurant to eat, then to the Costa Mesa Travelodge, where the four of them initially stayed in one motel room. By then, Ana's journey had taken about 35 days.

Defendants treated Ana well at first. They let her use the motel Laundromat and talk with Jefferson on Eid's cell phone. They took her son to get a haircut. Once, Ana went with Oliveira to a computer store and then to get some food. Oliveira bought a computer and let Ana use it once. Defendants paid for food, laundry, and the motel room.

Defendants said they were waiting for more people to arrive from Mexico. After the second day at the motel, another woman (Monica Lino) arrived. The group then moved into two rooms with an adjoining door. Ana, her son, and Lino stayed in one

room, and defendants in the other. Defendants ordered Ana to never close the door between the two rooms.

One or two days later (which was a few days before Thanksgiving), Jefferson received a phone call from "Junior." Junior said he was with Ana and her son and that Jefferson should pay $14,000 for their release. Jefferson offered to pay $1,000 a month. Junior rejected the proposal, but offered to accept title to real property in Brazil instead. Jefferson's father owned property in Brazil, but was unwilling to help Jefferson. Junior, who had given Jefferson his cell phone number and also the motel's phone number, then agreed to accept half the money up front and the balance in installments. Jefferson did not agree because he did not have the money.

Sometime after Ana and her son moved into the room with Lino (on either Wednesday or Thursday), Jefferson and Ana spoke to each other by phone. Jefferson told Ana that defendants had asked for $14,000 in order to send Ana and their son to Florida. Ana felt afraid because she knew that she and Jefferson had no more money. Jefferson asked Ana if she could escape, but she said, "No way." Ana no longer wanted to stay with defendants, but instead wanted to go to Florida. She felt she could not contact the police "because it could be dangerous." She felt it would be hard for her to go "someplace" because she had no money, did not speak English, and did not know where she was.

On Thursday, defendants told Ana that if Jefferson failed to pay by Friday, they would take her to New York to work for them to pay off the debt. Eid grabbed her purse and removed the passports of Ana and her son. Eid said he needed the passports to buy their plane tickets to Florida. Eid returned the purse to Ana immediately.

Jefferson called Ana on the telephone in Ana's motel room. She told him that defendants had taken the passports.

On Thanksgiving Day, Jefferson phoned the motel's phone number and pressed the numbered option to learn the motel's address. At a Thanksgiving party in

Florida, Jefferson told his English-speaking neighbor, Ricardo, the motel's address. Ricardo said he had friends in California named Vanessa Silva and Rudson. Ricardo phoned Silva and learned that she and Rudson lived near the motel. Ricardo (or Jefferson) asked Silva and Rudson to go to the motel to see if Ana and her son were there.

Jefferson phoned Ana and told her that Silva and Rudson were coming to the motel and that Ana should leave with them if she could. Jefferson never told Ana to phone the police. Silva also called Ana's motel room phone and told Ana they would "pick her up at the hotel so she could be taken to the airport."

That night, Ana heard a knock on the door and got up to open it, but Oliveira did so first. A man and a woman stood outside. The woman said she was there to pick up Ana and Ana's son. Eid came from the other room and asked what they were doing there. Eid argued in a loud voice with the woman, saying "he was owed money and nobody was leaving until he got paid."

Oliveira told Ana to sit down and stay quiet. Ana's son started crying. The yelling outside went on for five minutes. Ana heard Eid ask Silva if she had the money and heard him say he would only release Ana when paid. Ana felt very afraid and wanted to go with Silva. Eid told Silva and Rudson to leave and stop bothering them or he would call the police. Silva replied she wasn't going anywhere and she was going to call the police.

Eid came in the room, shut the door, yelled at them to gather their stuff, and said they were leaving. He told Ana "they" should have never done that and they were in hot water. Ana gathered her belongings. Eid went down to the motel lobby to check out.

Meanwhile, Silva phoned 911 and reported that two men would not let Silva's friend and the friend's child leave a Travelodge room because the men were demanding payment.

In the motel room, Oliveira forcefully grabbed Ana's upper arm and Eid did the same with Lino. Defendants pushed them toward the van. Ana did not call out for help. She never saw any weapons during the time she was with defendants. (Ana later told the police that Oliveira tried to calm down her son in a "real sweet" way.) Defendants pushed them into the van and told them to lay down on the seat and to say they were on vacation if the police asked.

A police car dispatched to the scene blocked the motel's driveway. The police detained defendants. A Spanish-speaking police officer spoke briefly with Ana. Ana said in Brazilian Portuguese that she was being held against her will. Behind a seat in the van, the police found a knife that was inaccessible to the driver.

In April 2006, the federal government gave Ana and Jefferson immunity from prosecution for illegal entry into the U.S. in exchange for their testimony in interviews and in court. In 2008, Jefferson learned from an immigration attorney that victims of crime can obtain U-visas to stay in the U.S. Persons with U-visas can stay in the U.S. for "three years with the right to work and a social security number." Ana and Jefferson obtained U-visas in May 2010.

Defense

Three witnesses for Eid testified he was honest and hardworking and had his own transportation business in New York. Two witnesses for Oliveira testified he was an honest and hard-working handyman.

An officer who interpreted Brazilian Portuguese for Jefferson testified it was difficult to translate for Jefferson. The officer was not confident the translation was 100 percent accurate.

An immigration attorney testified that a U-visa allows victims of certain enumerated crimes that occur in the U.S. to remain temporarily in the U.S. After three years, a holder of a U-visa may then apply for permanent residency. On the application

form for a U-visa, a law enforcement agency must certify that the applicant has or will help in prosecuting a crime. On Ana and Jefferson's applications, they answered "no" to the question, "Did you aid, induce, abet, [or] assist another individual entering the country illegally?"

DISCUSSION

The Jury Improperly Convicted Defendants of Two Lesser Included Offenses for Each Count in the Information

The jury convicted defendants of two uncharged lesser included offenses (attempted extortion and misdemeanor false imprisonment) for each charge of kidnapping for ransom in the information. On appeal defendants contend the jury was permitted under section 954 to return only one conviction per count in the pleading. They conclude this court must modify the judgment by striking one conviction per count. The Attorney General counters that because attempted extortion and misdemeanor false imprisonment are not lesser included offenses of each other, the jury properly convicted defendants of both crimes for each count. An appellate court independently determines whether multiple convictions are proper under section 954. (*People v. Villegas* (2012) 205 Cal.App.4th 642, 646.)

Under sections 954 and 654, "[i]n general, a person may be *convicted* of, although not *punished* for, more than one crime arising out of the same act or course of conduct." (*People v. Reed* (2006) 38 Cal.4th 1224, 1226-1227 (*Reed*).) By its terms, section 954 permits the People to "charge two or more different offenses connected together in their commission . . . *under separate counts*," and specifies "the defendant may be convicted of any number of the offenses *charged*." (*Ibid.*, italics added.)

In contrast to section 954's general rule permitting multiple convictions of *charged* crimes, a defendant may be convicted of an *uncharged* crime only if it is a lesser

included offense of a charged crime. (*Reed*, *supra*, 38 Cal.4th at p. 1227; see § 1159.) A "lesser offense is necessarily included in a greater offense if either the statutory elements of the greater offense, or the facts actually alleged in the accusatory pleading, include all the elements of the lesser offense, such that the greater cannot be committed without also committing the lesser." (*People v. Birks* (1998) 19 Cal.4th 108, 117.) The rule limiting convictions of *uncharged* crimes to lesser included offenses of charged crimes satisfies the due process requirement that an accused be given adequate notice of the charges so as to have a reasonable opportunity to prepare and present a defense. (*Reed*, at p. 1227.) The "'specific language of the accusatory pleading adequately warns the defendant that the People will seek to prove the elements of the lesser offense'" (*id.* at p. 1229), even though the lesser offense has not been separately charged.

Under another well-established rule, "a defendant may not be convicted of *both* a greater and lesser included offense." (*People v. Pearson* (1986) 42 Cal.3d 351, 355, italics added.) In *Reed*, our Supreme Court held that, for purposes of determining whether a *charged* crime is a lesser included offense of a *separately charged* greater offense, only the statutory elements test for a lesser included offense applies. (*Reed*, *supra*, 38 Cal.4th at p. 1229.) This is because the accusatory pleading test for a lesser included offense "ensure[s] that defendants receive notice before they can be convicted of an *uncharged* crime" and "has no relevance to deciding whether a defendant may be convicted of multiple *charged* offenses." (*Ibid.*, italics added.)

The issue before us does not fit precisely into any of the foregoing rules. Defendants stand convicted of *two* uncharged lesser included offenses of a greater charge, but neither lesser included offense is a lesser included offense of the other. At most, the lesser included offenses are lesser *related* offenses of each other. A lesser *related* offense is *not* "necessarily included in the stated charge, but merely bear[s] some conceptual and evidentiary 'relationship' thereto." (*People v. Birks*, *supra*, 19 Cal.4th at p. 112.)

We have not found, nor have the parties pointed us to, any published authority on this issue. Presumably the issue does not arise very often. It arises here because the charged greater crime — kidnapping for ransom — involves a primary victim (who is kidnapped) and "a secondary victim (who 'is subjected to a ransom or extortion demand')." (*People v. Eid, supra,* 187 Cal.App.4th at p. 868.) In effect, the offense of kidnapping for ransom, like other forms of aggravated kidnapping, combines two non-overlaying crimes. Thus, kidnapping for ransom subsumes lesser included offenses, like extortion and simple kidnapping, that are "related" to each other in a non-hierarchical way.

In *People v. Navarro,* our Supreme Court addressed a different issue of first impression concerning two lesser included offenses of an aggravated kidnapping charge. (*People v. Navarro* (2007) 40 Cal.4th 668, 674-675 (*Navarro*).) In doing so, *Navarro* interpreted two statutes: (1) section 1260, which empowers an appellate court to modify a judgment or reduce the degree of an offense; and (2) section 1181, subdivision (6), which permits a court (including appellate courts) to modify a judgment (in lieu of ordering a new trial) when a defendant has been convicted of a crime but the evidence supports guilt of only a lesser degree of the crime or a lesser included offense. (*Navarro,* at p. 671). *Navarro* reversed the Court of Appeal's modification of judgment pursuant to the foregoing statutes, which modification had replaced the defendant's *single* conviction for attempted kidnapping during carjacking with *two* lesser included offense convictions for attempted carjacking and attempted simple kidnapping. (*Id.* at p. 674.) Our Supreme Court explained that sections 1181 and 1260 "do *not* authorize an appellate court to modify a judgment to reflect convictions for *two* lesser included offenses upon finding insufficient evidence of a *single* greater offense, and the Court of Appeal's two-for-one modification of the judgment . . . was improper." (*Navarro,* at pp. 680-681, italics added.)

Navarro observed that, historically, courts have uniformly interpreted and applied sections 1181 and 1260 to permit replacement of "a *single* greater offense with a *single* lesser offense," or, in other words, "a one-for-one modification." (*Navarro, supra*, 40 Cal.4th at p. 679, italics added.) In this respect, our Supreme Court noted that "both statutes repeatedly refer to 'the crime' or 'the offense' in the singular." (*Id.* at p. 680.) Although the Court of Appeal had relied on the Penal Code's general provision (§ 7) that "'the singular number includes the plural, and the plural the singular,'" our Supreme Court considered section 7 "to be a slim reed upon which to support the Court of Appeal's *unprecedented action*." (*Navarro*, at p. 680, italics added.) *Navarro* noted that, when section 1181, subdivision 6 was enacted to permit one-for-one modification (*Navarro*, at p. 676), the statute was considered to be "'a complete departure in our criminal jurisprudence'" and "a 'startling innovation'" (*id.* at p. 680). *Navarro* continued: "There is little doubt that modifying one greater offense to reflect convictions for *two* lesser offenses would have been an even greater 'departure in our criminal jurisprudence' and an even more 'startling innovation.' [Citation.] As we have stated, 'it should not "be presumed that the Legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication."'" (*Ibid.*)

Returning to the case at hand, we focus on the two statutes that might permit the multiple convictions here. Applying *Navarro's* reasoning, we note that section 1159, which authorizes conviction of a lesser included crime, permits a fact finder to find a defendant guilty of "any offense . . . necessarily included" in a charged crime, using the word "offense" in the singular. (*Ibid.*)

Section 954 specifies that a "defendant may be convicted of any number of the offenses *charged*." (*Ibid.*, italics added.) Taken literally, this language permits one conviction per charge. The purpose of section 954 is to govern "the form of the information" (*People v. Brooks* (1985) 166 Cal.App.3d 24, 29) and to permit joinder of

different offenses so as to prevent "repetition of evidence and save[] time and expense to the state as well as to the defendant" (*People v. Scott* (1944) 24 Cal.2d 774, 779). "'[A]n information plays a limited but important role: It tells a defendant what *kinds* of offenses he is charged with (usually by reference to a statute violated), and it states the *number* of offenses (convictions) that can result from the prosecution.'" (*People v. Butte* (2004) 117 Cal.App.4th 956, 959, quoting from Justice Sims's concurring opinion in *People v. Gordon* (1985) 165 Cal.App.3d 839, 870, parts of which were quoted with approval by our Supreme Court in *People v. Jones* (1990) 51 Cal.3d 294, 317.) Section 954 is not a blanket authorization allowing the number of convictions to exceed the number of charges.

We have not found, nor have the parties directed us to, any legal authority stating that a jury may convict a defendant of *two* uncharged lesser included offenses of *one* charged crime. Like the *Navarro* court, we decline to interpret sections 954 and 1159 so broadly as to establish an arguably unexpected innovation in criminal jurisprudence.

Under *Navarro*, *supra*, 40 Cal.4th 668, if the court, in ruling on a new trial motion, concludes the evidence is insufficient to sustain the jury's conviction on the greater charged offense, it may *not* impose a conviction on more than one lesser included offense. It would be anomalous to allow a jury to do what the judge may not, i.e., to conclude that the evidence does not sustain a conviction on the greater offense, but then to convict on more than one lesser included offense.

We conclude the jury's conviction, of defendants, for two uncharged lesser included offenses of a single charged crime was *not* statutorily authorized. Under any standard, the error was prejudicial because each defendant suffered four convictions based on an information containing only two counts. (See *People v. Powell* (2013) 214 Cal.App.4th 106, 109 ["error was prejudicial because it allowed the jury to convict Powell of an offense of which he had no reasonable notice"].)

But we must still determine the proper remedy for this prejudicial error. In *Navarro*, our Supreme Court instructed the Court of Appeal to strike the attempted kidnapping conviction, explaining: "[W]here there are multiple lesser included offenses supported by the evidence at trial, a court exercising its discretion to modify the judgment pursuant to these provisions should choose the offense with the longest prescribed prison term so as to effectuate the fact finder's apparent intent to convict the defendant of the most serious offense possible." (*Navarro, supra*, 40 Cal.4th at p. 681.) This remedy makes equal sense here. (See also *People v. Medina* (2007) 41 Cal.4th 685, 701-702 [rejecting People's request that "the rule against multiple convictions based on necessarily included offenses" be modified "to permit courts to stay, instead of strike, convictions for lesser included offenses"].) Since attempted extortion carries a longer prison term than misdemeanor false imprisonment, we will strike defendants' misdemeanor false imprisonment convictions.[3] Because the trial court sentenced defendants to the high term for attempted extortion, we will not remand the case to the trial court for resentencing.

Because we have determined defendants' convictions for misdemeanor false imprisonment must be stricken, we do not address defendants' contention the court violated section 654 by failing to stay execution of sentence on the false imprisonment convictions.

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[3] Defendants argue the attempted extortion conviction should be stricken because the information did not name Jefferson as the victim. Their contention is meritless since an accusatory pleading is not required to specify such details. (§ 952.) The amended information sufficiently identified the kidnapping victims as Ana and her son and the extortion victim as "another person."

The Court Did Not Err by Admitting into Evidence the Officer's Testimony About Ana's Statements

Defendants contend the court improperly allowed a Spanish-speaking officer to testify about statements Ana made in Brazilian Portuguese. The People offered the evidence of Ana's prior consistent statement to rebut the defense argument that Ana, due to her U-visa, might have lied at trial about being held by defendants against her will. The court ruled the evidence was admissible and its admission did not violate defendants' due process rights, despite the alleged language barrier, because (1) the evidence was consistent with Ana's testimony at trial, (2) any language problems went to the weight of the evidence, (3) there had been testimony (such as Jefferson's) that although differences exist between Spanish and Brazilian Portuguese, it was possible to communicate using both languages, and (4) both Ana and the officer were subject to cross-examination.

The officer testified as follows. He spoke to Ana briefly in the Travelodge parking lot and she told him that she, her son, and Lino were "being held against their will" because defendants wanted more money. The officer spoke in Spanish, while Ana replied in Portuguese. The officer had no training in or experience with the Portuguese language, having never spoken to a Portuguese speaker before. But despite the language difference, he and Ana "were able to communicate just fine with each other." He was generally able to understand her, although at times he could not understand exactly what she was saying. In these latter instances, he would ask her to clarify what a word meant. The officer did not record the interview. He spoke just briefly to Ana "to ascertain what was occurring and if there was a crime . . . happening."

Ana testified she found it difficult to communicate with the officer and understood about 70 percent of the conversation.

A witness's prior statement consistent with his or her trial testimony is admissible if "'an express or implied charge is made that the testimony is recently fabricated or influenced by bias or other improper motive, and the consistent statement

was made before the bias, motive for fabrication, or other improper motive is alleged to have arisen.'" (*People v. Ervine* (2009) 47 Cal.4th 745, 780; Evid. Code, §§ 791, 1236.) Defendants, by challenging the reliability of the evidence, effectively contend its foundation was inadequate to permit the jury to find the officer correctly understood Ana's statements. (Evid. Code, § 403, subd. (a)(4).) A "court should exclude the proffered evidence only if the 'showing of preliminary facts is too weak to support a favorable determination by the jury.'" (*People v. Lucas* (1995) 12 Cal.4th 415, 466.) Under Evidence Code section 403, subdivision (a)(4), the trial court must make a preliminary determination whether the foundational evidence is sufficiently substantial, but the jury has the final "authority to determine the question of the existence of the preliminary fact." (*Lucas*, at p. 466.) The decision whether the foundational evidence is sufficiently substantial is a matter within the court's discretion. (*Id.* at p. 467.)

Defendants rely on *Correa v. Superior Court* (2002) 27 Cal.4th 444, but that case is factually inapposite, as it involved officers' testimony on extrajudicial statements made by Spanish-speaking persons, which statements were translated for the non-Spanish-speaking officers by apparently unbiased bystanders. (*Id.* at p. 448.) The issue was whether the translations made by the bystanders constituted a separate level of hearsay. (*Id.* at p. 453.)

Here, there was no intermediate translator. To the extent the officer acted as a translator, the "language-conduit theory calls for a case-by-case determination whether, under the particular circumstances of the case, the translated statement fairly may be considered to be that of the original speaker." (*Correa v. Superior Court, supra*, 27 Cal.4th at p. 457.) "The court should consider 'a number of factors which may be relevant in determining whether the interpreter's statements should be attributed to the [declarant] . . . , such as which party supplied the interpreter, whether the interpreter had any motive to mislead or distort, the interpreter's qualifications and language skill, and whether actions taken subsequent to the conversation were consistent with the statements

as translated.'" (*Id.* at p. 458.) "'[W]here the particular facts of a case cast significant doubt upon the accuracy of a translated [statement], the translator . . . must be available for testimony and cross-examination at the . . . hearing before the [statement] can be admitted.'" (*Id.* at p. 459.) Here, the police officer (acting effectively as an interpreter) tried to find out what was happening and had no motive at that time to mislead or distort Ana's statements. And although the officer's language skills in Brazilian Portuguese were certainly less than optimal, his understanding of Ana's statements was consistent with her trial testimony. The court's finding that a sufficient foundation had been laid to allow the jury to consider the testimony was not an abuse of discretion.

In any case, defendants were not prejudiced by the admission of Ana's prior consistent statement because overwhelming evidence showed that, after the arrival of Silva, defendants held Ana and her son against their will.

The Court Properly Admitted into Evidence Silva's 911 Phone Call

In a 911 phone call, Silva reported that two men would not let her "friend" and the friend's child leave a Travelodge room because the men were demanding payment. Defendants contend Silva's statements in the phone call constituted hearsay and were inadmissible under the spontaneous declaration exception because Silva's falsehoods (about Ana being her friend and about Jefferson telling her Ana was being held against her will) showed Silva spoke with deliberation and reflection.

Evidence Code section 1240 provides: "Evidence of a statement is not made inadmissible by the hearsay rule if the statement: [¶] (a) Purports to narrate, describe, or explain an act, condition, or event perceived by the declarant; and [¶] (b) Was made spontaneously while the declarant was under the stress of excitement caused by such perception." "'To render [statements] admissible [under the spontaneous declaration exception] it is required that (1) there must be some occurrence startling enough to produce this nervous excitement and render the utterance spontaneous and

unreflecting; (2) the utterance must have been before there has been time to contrive and misrepresent, i.e., while the nervous excitement may be supposed still to dominate and the reflective powers to be yet in abeyance; and (3) the utterance must relate to the circumstance of the occurrence preceding it.'" (*People v. Poggi* (1988) 45 Cal.3d 306, 318 (*Poggi*).) A "statement may qualify as spontaneous if it is undertaken without deliberation or reflection." (*People v. Morrison* (2004) 34 Cal.4th 698, 718.)

"Whether the requirements of the spontaneous statement exception are satisfied in any given case is, in general, largely a question of fact. [Citation.] The determination of the question is vested in the court, not the jury.'" (*People v. Poggi, supra*, 45 Cal.3d at p. 318.) "The trial court must consider each fact pattern on its own merits and is vested with reasonable discretion in the matter." (*People v. Morrison, supra*, 34 Cal.4th at p. 719.) "The crucial element in determining whether an out-of-court statement is admissible as a spontaneous declaration is the mental state of the speaker." (*People v. Gutierrez* (2009) 45 Cal.4th 789, 811.) Because this element strongly "relates to the peculiar facts of the individual case . . . [citations], the discretion of the trial court is at its broadest when it determines whether this requirement is met [citation]. Indeed, Dean Wigmore goes so far as to urge that the issue should be left 'absolutely to the determination of the trial court.'" (*Poggi*, at pp. 318-319; see 6 Wigmore, Evidence (Chadbourn rev. ed. 1976) § 1750, pp. 202-222.)

Here, the court did not abuse its discretion by admitting the 911 call into evidence. Silva testified she phoned 911 immediately after the door to the motel room closed and that she felt "startled, confused, [and] a little scared." While Silva was on the phone with the 911 operator, she watched the quickly unfolding events — Eid checking out of the motel and defendants rushing Ana, Ana's son, and Lino to the van. As to the "friend" falsehood, Silva testified that in Brazil, once a person meets somebody, the person is a friend, and also that she referred to Ana as a "friend" in order to elicit a quick response. When Silva was asked by defense counsel why she inaccurately told the 911

operator that Jefferson told her Ana was being held against her will, Silva replied "it was [an] in the moment situation" and she "probably blurt[ed] it out" and "it came out that way" because "Ana was being held at the time." These untruths do not evidence such a level of deliberation as to render Silva's statements nonspontaneous.

In any case, defendants were not prejudiced by the challenged evidentiary ruling because overwhelming evidence showed that, after Silva's arrival, defendants held Ana and her son against their will.

DISPOSITION

We reverse the convictions on the misdemeanor false imprisonment counts and modify the judgment by striking defendants' convictions for misdemeanor false imprisonment, resulting in a total sentence of two years and six months for each defendant. In all other respects, the judgment is affirmed.

IKOLA, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***People v. Reynaldo Junio Eid et al.***
No.: **G046129**

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 1, 2013, I served the attached **PETITION FOR REVIEW**, by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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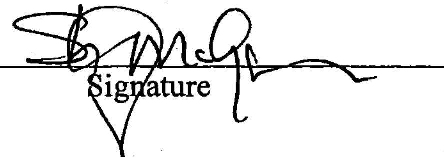
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 1, 2013, at San Diego, California.

STEPHEN MCGEE
Declarant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