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Attorneys for Plaintiff and Respondent

COPY

**SUPREME COURT
FILED**

DEC 13 2018

Jorge Navarrete Clerk

Deputy

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

JEREMY FOSTER,

Defendant and Appellant.

Case No. S248046

Fourth Appellate
District Division One,
Case No. D071733

San Diego County
Superior Court, Case
No. SCD204096

REQUEST FOR JUDICIAL NOTICE

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

Pursuant to California Rules of Court, rule 8.252 and Evidence Code
section 452, subdivision (c), respondent requests this Court to take judicial
notice of the Clerk's Transcripts (Exhibit A) and Reporter's Transcripts

(Exhibit B) in *People v. Jeremy Foster*, Case No. B230766, the record of appellant's initial Mentally Disordered Offender (MDO) commitment proceedings.

Under Evidence Code section 452, this Court may exercise its discretion to take judicial notice of certain matters. (Cal. Rules of Court, rule 8.252(a)(1); Evid. Code, § 459, subd. (a).) As set forth in subdivision (d) of Evidence Code section 452, this Court may take notice of "records of any court in this state[.]"

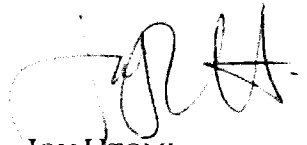
The records requested here are appropriate subjects of judicial notice because they provide relevant factual background underlying appellant's initial MDO commitment, as well as relevant details regarding the procedural background leading to his commitment. Although these records were not noticed by the Court of Appeal below, they are necessary to establish a clear and complete picture of appellant's MDO proceedings. As cited in respondent's answer brief on the merits, the records establish the trial court's factual basis in finding appellant qualified as an MDO under the statutory criteria. Finally, the materials do not relate to proceedings occurring after the order or judgment that is the subject of this appeal. (Cal. Rules of Court, rule 8.252(a)(2)(D).)

Accordingly, respondent requests that this Court take judicial notice of the aforementioned records, attached herein as Exhibits A and B.

I hereby declare, under penalty of perjury, that the copies of the appellant's records attached as Exhibits A and B are true and correct copies from our internal records department.

Dated: December 11, 2018 Respectfully submitted,

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
MICHAEL PULOS
Supervising Deputy Attorney General



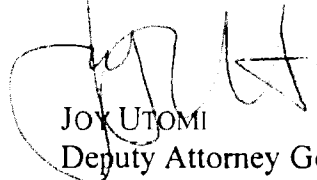
JOY UTOMI
Deputy Attorney General
Attorneys for Plaintiff and Respondent

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82088454.doc
JU: jms

CERTIFICATE OF COMPLIANCE

I certify that the attached **MOTION FOR JUDICIAL NOTICE** uses
a 13 point Times New Roman font and contains 292 words.

Dated: December 11, 2018 XAVIER BECERRA
Attorney General of California

A handwritten signature in black ink, appearing to read "Joy Utomi", is written over the printed name and title.

JOY UTOMI
Deputy Attorney General
Attorneys for Plaintiff and Respondent

EXHIBIT A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

Appeal from the Superior Court of California

County of San Luis Obispo

Before HON. JACQUELYN H. DUFFY, Judge

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Petitioner/Respondent,

VS.

JEREMY FOSTER,

Respondent/Appellant.

Second Appellate
Number B230766

Superior Court
Number F454357

Appeal Filed:
January 18, 2011

CLERK'S TRANSCRIPT ON APPEAL

APPEARANCES:

HON. KAMALA D. HARRIS
ATTORNEY GENERAL
300 SOUTH SPRING ST., SUITE 500
LOS ANGELES, CA 90013

CALIFORNIA APPELLATE PROJECT
520 SOUTH GRAND AVE., 4TH FLOOR
LOS ANGELES, CA 90017

COPY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

Before HON. JACQUELYN H. DUFFY, Judge

IN RE THE PETITION OF
JEREMY FOSTER,
Petitioner

Superior Court
Case Number F454357

CLERK'S TRANSCRIPT ON APPEAL

APPEARANCES:

DISTRICT ATTORNEY
ROOM 450, COUNTY GOVERNMENT CENTER
SAN LUIS OBISPO, CA 93408

JENNIFER L. FEHLMAN
1190 MARSH STREET, SUITE H
SAN LUIS OBISPO, CA 93401

4 9 11
ABAlvarez
LA201150184

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JOURNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Jeremy Foster in Pro Per TASCADERO STATE HOSPITAL TASCADERO, CA 93423 TELEPHONE NUMBER OF INSTITUTIONAL RECORDS OFFICE: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO STREET ADDRESS: SAN LUIS OBISPO COUNTY GOVERNMENT CENTER, Room 355 MAILING ADDRESS: CITY AND ZIP CODE: SAN LUIS OBISPO, CA 93408 PETITIONER (Name): Jeremy Foster (Image No: F 82809)		FOR COURT USE ONLY FILED NOV 18 2010 SAN LUIS OBISPO SUPERIOR COURT BY M. GOOSSENS M. Goossens, Deputy Clerk
PETITION AND ORDER FOR APPOINTMENT OF COUNSEL AND HEARING [Penal Code, 2966(b)]		

CASE NUMBER:
F454357
12810 DI 130
Felman

- Petitioner was sentenced to prison:
 - by the superior court of (name of county): **San Diego**
 - date sentenced: **08/03/07**
 - length of term: years: **1** months: **4**
- After applicable credits the petitioner is due for release on (date): **10/12/10 RKO 09/07/10 CDD 05/19/11**
- As a condition of parole, petitioner has been required to accept treatment through the State Department of Mental Health.
- The Board of Prison Terms (BPT) determined petitioner met the criteria of Penal Code section 2962 and sustained the requirement of treatment on (date): **09/02/10**
- Petitioner was represented at the hearing by
 Name of attorney: **SAM R. JUDD**
 Address of attorney: **668 ARTHUR AVENUE, CHULA VISTA, CA 91910-6211**
 Telephone number: **(619) 426-7755**
- Petitioner requests
 - a hearing before the court to determine whether petitioner meets the criteria of Penal Code section 2962.
 - Check only one box
 - appointment of attorney who represented him or her at the Board of Prison Terms hearing.
 - appointment of an attorney.
 - appearance before the court for appointment of an attorney and setting of trial.

Date: **11/12/10**

Jeremy Foster **Jeremy Felman Foster**
 (TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

The original and three copies of the petition are filed with the courts. Original-Court copy; copy 1-district attorney; copy 2-defense attorney; copy 3-retained to petitioner.

ORDER AND NOTICE OF HEARING		
7. (Name):	is appointed to represent petitioner	
(Address):		ASH PATIENT INFO.
8. Hearing in the petition shall be held as follows:		ATW: <u>XANTHUS</u>
Date:	Time:	Admitted <u>9:14 10</u>
	Place:	DOB <u>2 19 75</u>
Date:	(SIGNATURE OF)	

PETITION AND ORDER FOR APPOINTMENT OF COUNSEL AND HEARING
 [Penal Code, 2966(b)]

K-T00/TEMP JC-12/04/02 (2)

SAN LUIS OBISPO SUPERIOR COURT
COUNTY OF SAN LUIS OBISPO
1050 MONTEREY STREET, ROOM 220
SAN LUIS OBISPO, CA 93408

CASE NUMBER: F000454357

FILED

NOV 22 2010

SAN LUIS OBISPO SUPERIOR COURT
BY M. Goossens
M. Goossens, Deputy Clerk

IN THE MATTER OF:

FOSTER, JEREMY / 001

ORDER AND NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED THAT A PETITION AND ORDER FOR APPOINTMENT OF COUNSEL AND HEARING PURSUANT TO PENAL CODE 2966(B), (C) HAS BEEN FILED IN THE ABOVE ENTITLED MATTER.

INITIAL HEARING ON THE PETITION SHALL BE HELD ON: 12/08/10 IN SLD BRANCH - DEPT 1, AT 1:30 PM. THE HEARING WILL BE HELD AT THE COUNTY GOVERNMENT CENTER AT 1050 MONTEREY STREET, SAN LUIS OBISPO, CALIFORNIA.

THE ATTORNEY NAMED BELOW HAS BEEN APPOINTED TO REPRESENT PETITIONER ON THE DATE AND TIME INDICATED ABOVE.

FEHLMAN, JENNIFER
992 MONTEREY STREET, STE D, SAN LUIS OBISPO, CA 93401

ATASCADERO STATE HOSPITAL IS ORDERED TO PRODUCE PETITIONER AT THE ABOVE SAID HEARING

/s/ JACQUELYN H. DUFFY

DATED: 11/23/10

SUPERIOR COURT JUDGE

BY: M. GOOSSENS
DEPUTY CLERK

NOTIFIED: DISTRICT ATTORNEY,
ADAMS & LUCERO,
ATASCADERO STATE HOSPITAL (VIA INTEROFFICE)

015 LSL114-M134

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN LUIS OBISPO
PENAL CODE 2960, ET SEQ. MINUTE ORDER/SUPERIOR CASE: F000454357

THE PEOPLE OF THE STATE OF CALIFORNIA, VS
FOSTER, JEREMY / 001
ID NO: 0000305037 MNID: D000243078
CUSTODY STATUS: ASH
EVENT: 2960 1ST APPR
DEPARTMENT: SLO BRANCH - DEPT 1
DATE: 12/08/10 TIME: 1330
DA CASE NO:

001 PC2966(B)

JUDGE: J. DUFFY
PEOPLE: *Manderino*
DEFENSE COUNSEL FEHLMAN, JENNIFER
CLERK: S. CARDWELL
COURT REPORTER: *Washburn* NONE WAIVED
BAILIFF:
INTERPRETER TYPE:
INTERPRETER:
PROBATION OFFICER:
(IS) (IS NOT) PRESENT
ATTY TYPE: PC ATTORNEY
DEFENDANT (IS) (IS NOT) PRESENT
REV=STRE CASE=0607473 CT=D1

PETITIONER ADVISED OF RIGHTS COUNSEL/PETITIONER WAIVE
 RIGHT TO JURY TRIAL 12 PERSON JURY TRIAL
 RESPONDENT/PEOPLE JOIN
 PETITIONER WAIVES TIME FOR TRIAL TO
COURT APPOINTS _____ TO REPRESENT PETITIONER
MATTER CONTINUED TO _____ AT _____ DEPT _____
FOR _____
 READINESS CONFERENCE SET 1/5/11 AT 1330 DEPT 1
 JURY COURT TRIAL DATE (RE) SET CONFIRMED/VACATED/CONTINUED TO
AT 1330 DEPT 1
(COUNSEL/PETITIONER) (RESPONDENT/PEOPLE) SUBMIT MATTER ON
PETITION AND REPORTS RECEIVED INTO EVIDENCE
COURT TRIAL COMMENCES AT _____ / CONCLUDES AT _____

WITNESSES SWORN AND EXAMINED	EXHIBIT	MARKED	RECEIVED
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

___ COUNSEL ARGUE MATTER SUBMIT MATTER WITHOUT ARGUMENT
___ PETITION PURSUANT TO PENAL CODE 2966(B) 2966(C) 2970
IS GRANTED DENIED
___ COURT FINDS PETITIONER DOES (NOT) MEET THE CRITERIA REQUIRED
PURSUANT TO PENAL CODE AS STATED ON THE RECORD
___ COURT ORDERS PETITIONER COMMITTED TO CALIFORNIA DEPARTMENT OF
MENTAL HEALTH FOR TREATMENT AS PRESCRIBED BY LAW
___ COURT ORDERS PETITIONER RELEASED AS PRESCRIBED BY LAW TO
PAROLE AUTHORITIES
___ MATTER ORDERED OFF CALENDAR PETITIONER HERETOFORE RELEASED BY
HOSPITAL AUTHORITIES PETITIONER WITHDRAWS PETITION
___ RESPONDENT/PEOPLE DECIDE TO CONTEST PETITION
___ PETITION DISMISSED BY COURT
___ COUNSEL STIPULATE THAT THE EARLY PAROLE RELEASE DATE WAS
AND THAT THE PETITIONER WAS PROPERLY EVALUATED AND CERTIFIED AS
REQUIRED BY LAW.
___ COUNSEL STIPULATE TO THE QUALIFICATION OF DR. _____
AS AN EXPERT IN THE FIELD OF _____
___ COUNSEL STIPULATE BOARD OF PRISONS TERMS HEARING WAS HELD _____
OTHER _____

___ DEFENDANT ORDERED TO PROVIDE A SALIVA SAMPLE, A RIGHT THUMBPRINT,
A FULL IMPRESSION OF BOTH THE LEFT AND RIGHT PALMS AND ANY BLOOD WORK
AS REQUESTED PURSUANT TO PC296.
 PETITIONER REMANDED TO THE CUSTODY OF ATASCADERO STATE HOSPITAL
COPY TO: ATASCADERO STATE HOSPITAL
LSL142-M119 015

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN LUIS OBISPO
PENAL CODE 2960, ET SEQ. MINUTE ORDER/SUPERIOR CASE: F000454357

THE PEOPLE OF THE STATE OF CALIFORNIA, VS FOSTER, JEREMY / 001 ID NO: 0000305037 MNID: D000243078 CUSTODY STATUS: ASH	EVENT: 2960 READ DEPARTMENT: SLC BRANCH - DEPT 1 DATE: 01/05/11 TIME: 1330 DA CASE NO: 080005448B
001 PC2966(B)	
JUDGE: L. J. <i>WILSON</i> PEOPLE: <i>L. GRAN</i> DEFENSE COUNSEL FEHLMAN, JENNIER (IS) (IS NOT) PRESENT ATTY TYPE: PC ATTORNEY <i>D. Crawford</i> DEFENDANT (IS) (IS NOT) PRESENT REV-STRE CASE=0607473 CT=D1	CLERK: S. <i>Garvey</i> COURT REPORTER: <i>Reyes</i> BAILIFF: INTERPRETER TYPE: INTERPRETER: PROBATION OFFICER:

PETITIONER ADVISED OF RIGHTS COUNSEL/PETITIONER WAIVE
 RIGHT TO JURY TRIAL 12 PERSON JURY TRIAL
 RESPONDENT/PEOPLE JOIN
 PETITIONER WAIVES TIME FOR TRIAL TO
 COURT APPOINTS _____ TO REPRESENT PETITIONER
 MATTER CONTINUED TO _____ AT _____ DEPT _____
 FOR _____
 READINESS CONFERENCE SET _____ AT _____ DEPT _____
 JURY/COURT TRIAL DATE (RE)SET/CONFIRMED/VACATED/CONTINUED TO
1.10.11 AT 1:30 DEPT 1
 (COUNSEL/PETITIONER) (RESPONDENT/PEOPLE) SUBMIT MATTER ON
 PETITION AND REPORTS RECEIVED INTO EVIDENCE
 COURT TRIAL COMMENCES AT _____ / CONCLUDES AT _____

WITNESSES SWORN AND EXAMINED	EXHIBIT	MARKED	RECEIVED
_____	_____	_____	_____
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_____	_____	_____	_____

COUNSEL ARGUE MATTER SUBMIT MATTER WITHOUT ARGUMENT
 PETITION PURSUANT TO PENAL CODE 2966(B) 2966(C) 2970
 IS GRANTED DENIED
 COURT FINDS PETITIONER DOES (NOT) MEET THE CRITERIA REQUIRED
 PURSUANT TO PENAL CODE _____ AS STATED ON THE RECORD
 COURT ORDERS PETITIONER COMMITTED TO CALIFORNIA DEPARTMENT OF
 MENTAL HEALTH FOR TREATMENT _____ AS PRESCRIBED BY LAW
 COURT ORDERS PETITIONER RELEASED AS PRESCRIBED BY LAW TO
 PAROLE AUTHORITIES
 MATTER ORDERED OFF CALENDAR _____ PETITIONER HERETOFORE RELEASED BY
 HOSPITAL AUTHORITIES _____ PETITIONER WITHDRAWS PETITION
 RESPONDENT/PEOPLE DECLINE TO CONTEST PETITION
 PETITION DISMISSED BY COURT
 COUNSEL STIPULATE THAT THE EARLY PAROLE RELEASE DATE WAS _____
 AND THAT THE PETITIONER WAS PROPERLY EVALUATED AND CERTIFIED AS
 REQUIRED BY LAW.
 COUNSEL STIPULATE TO THE QUALIFICATION OF DR. _____
 AS AN EXPERT IN THE FIELD OF _____
 COUNSEL STIPULATE BOARD OF PRISONS TERMS HEARING WAS HELD _____
 OTHER _____

DEFENDANT ORDERED TO PROVIDE A SALIVA SAMPLE, A RIGHT THUMBPRINT,
 A FULL IMPRESSION OF BOTH THE LEFT AND RIGHT PALMS AND ANY BLOOD WORK
 AS REQUESTED PURSUANT TO PC296.
 PETITIONER REMANDED TO THE CUSTODY OF ATASCADERO STATE HOSPITAL
 TO: ATASCADERO STATE HOSPITAL

LSL142-M119 Q82

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN LUIS OBISPO
PENAL CODE 2950, ET SEQ. MINUTE ORDER/SUPERIOR CASE:F000454357

THE PEOPLE OF THE STATE OF CALIFORNIA, FOSTER, JEREMY VS 001 ID NO: 0000305037 MNID: D000243078 CUSTODY STATUS: ASH	EVENT: 2960-READ <i>Court trial</i> DEPARTMENT: SLO BRANCH - DEPT 1 DATE: 01/05/11 TIME: 1:33P DA CASE NO: 0800054488 <i>1/10/11</i>
001 PC2966(B)	
JUDGE: J. DUFFY PEOPLE: <i>Mandelino</i> DEFENSE COUNSEL FEHLMAN, JENNIFER (IS) (IS NOT) PRESENT ATTY TYPE: <i>PE</i> ATTORNEY DEFENDANT (IS) (IS NOT) PRESENT REV=STR CASE=0607473 CT=D1	CLERK: S. CARDWELL COURT REPORTER: <i>Low</i> NONE/WAIVED BAILIFF: INTERPRETER TYPE: INTERPRETER: PROBATION OFFICER:

PETITIONER ADVISED OF RIGHTS _____ COUNSEL/PETITIONER WAIVE
 RIGHT TO JURY TRIAL _____ 12 PERSON JURY TRIAL
 RESPONDENT/PEOPLE JOIN
 PETITIONER WAIVES TIME FOR TRIAL TO _____
 COURT APPOINTS _____ TO REPRESENT PETITIONER
 MATTER CONTINUED TO _____ AT _____ DEPT _____
 FOR _____
 READINESS CONFERENCE SET _____ AT _____ DEPT _____
 JURY/COURT TRIAL DATE (RE)SET/CONFIRMED/VACATED/CONTINUED TO _____
 AT _____ DEPT _____

(COUNSEL/PETITIONER) (RESPONDENT/PEOPLE) SUBMIT MATTER ON
 PETITION AND REPORTS RECEIVED INTO EVIDENCE
 COURT TRIAL COMMENCES AT *1:43 p.m.* / CONCLUDES AT *2:05 p.m.*

WITNESSES SWORN AND EXAMINED	EXHIBIT	MARKED	RECEIVED
<i>Dr. Kevin Perry</i>			

COUNSEL ARGUE MATTER _____ SUBMIT MATTER WITHOUT ARGUMENT
 PETITION PURSUANT TO PENAL CODE ~~2966(B)~~ *2966(B)* _____ 2966(C) _____ 2970
 IS GRANTED _____ DENIED _____
 COURT FINDS PETITIONER ~~DOES~~ *DOES NOT* MEET THE CRITERIA REQUIRED
 PURSUANT TO PENAL CODE _____ AS STATED ON THE RECORD
 COURT ORDERS PETITIONER COMMITTED TO CALIFORNIA DEPARTMENT OF
 MENTAL HEALTH FOR TREATMENT _____ AS PRESCRIBED BY LAW
 COURT ORDERS PETITIONER RELEASED AS PRESCRIBED BY LAW TO
 PAROLE AUTHORITIES
 MATTER ORDERED OFF CALENDAR _____ PETITIONER HERETOFORE RELEASED BY
 HOSPITAL AUTHORITIES _____ PETITIONER WITHDRAWS PETITION
 RESPONDENT/PEOPLE DECLINE TO CONTEST PETITION
 PETITION DISMISSED BY COURT
 COUNSEL STIPULATE THAT THE EARLY PAROLE RELEASE DATE WAS
 AND THAT THE PETITIONER WAS PROPERLY EVALUATED AND CERTIFIED AS
 REQUIRED BY LAW.
 COUNSEL STIPULATE TO THE QUALIFICATION OF *DR. Perry*
 AS AN EXPERT IN THE FIELD OF *2960 et seq.*
 COUNSEL STIPULATE BOARD OF PRISONS TERMS HEARING WAS HELD *1/12/10*
 OTHER _____

DEFENDANT ORDERED TO PROVIDE A SALIVA SAMPLE, A RIGHT THUMBPRINT,
 A FULL IMPRESSION OF BOTH THE LEFT AND RIGHT PALMS AND ANY BLOOD WORK
 AS REQUESTED PURSUANT TO PC296.
 PETITIONER REMANDED TO THE CUSTODY OF ATASCADERO STATE HOSPITAL
 COPY TO: ATASCADERO STATE HOSPITAL

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Gerald T. Shea
District Attorney
State Bar # 62745
County of San Luis Obispo
County Government Center, Room 450
San Luis Obispo, CA 93408
Telephone: 781-5800

SAN
BY _____

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

In Re the Petition of

NO. F454357

JUDGMENT AND ORDER
(P.C. 2962)

JEREMY FOSTER, DOB: 2/19/75

Petitioner.

[] THIS MATTER HAVING BEEN HEARD before Judge [Signature] in
Department 1 of the above-entitled Court on Feb 20 2011

Both parties having waived jury and the matter having been tried before the Court;

[] THE MATTER HAVING BEEN TRIED before a jury and a verdict rendered;

The Court ~~Jury~~ hereby finds as follows:

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Petitioner **WAS**, beyond a reasonable doubt, as of the date of the Board of Prison Terms Hearing, a person as described in Penal Code Section 2962 et. seq. and the requisite criteria were found to be true.

Petitioner **WAS NOT**, as of the date of the Board of Prison Terms Hearing, a person as described in Penal Code Section 2962 et. seq.

ORDER

Therefore, IT IS HEREBY ORDERED that:

Petitioner be committed/recommitted to the California Department of Mental Health for treatment as required by law.

Petitioner be released from the Department of Mental Health as required by law. Release is to be delayed five working days to allow for orderly release.

Dated: May 2011

Jacquelyn H. Duffy
Judge of the Superior Court

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Gerald T. Shea
District Attorney
State Bar # 62745
County of San Luis Obispo
County Government Center, Room 450
San Luis Obispo, CA 93408
Telephone: 781-5800

FILED
JAN 13 2011
SAN LUIS OBISPO SUPERIOR COURT
BY *[Signature]*
S. Gonzales, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

In Re the Petition of,) No. F454357
JEREMY FOSTER)
Petitioner.)

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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

I am and at all times herein mentioned was a citizen of the United States and a resident of the County of San Luis Obispo, over the age of 18 years and not a party to the within entitled action; that my business address is County Government Center, Room 450, San Luis Obispo, California.

That on January 13, 2011 I served the documents, to-wit:

JUDGMENT AND ORDER (P.C. 2962)

PEOPLE vs. JEREMY FOSTER (F454357)

PERSONAL SERVICE ("Will-Call" Box Located Outside of Room 385)

SERVICE BY MAIL

(by placing a true copy there of in a sealed envelope, with postage thereon fully prepaid, in the United States Mail at San Luis Obispo, California, addressed to:)

Jennifer Fehlman
Attorney at Law
1190 Marsh Street, Suite H
San Luis Obispo, CA 93401

Robert Knapp, M.D., Medical Director
Atascadero State Hospital
P.O. Box 7004
Atascadero, CA 93423-7004

Executed at San Luis Obispo, California, on January 13, 2011.

I declare under penalty of perjury that the foregoing is true and correct.


Pam Barnabei

RECEIVED
SAN LUIS OBISPO
SUPERIOR COURT

1/13/11

JAN 18 2011

F45435

BY: GG
Deputy Clerk

To clerk,
I am being housed at Atascadero state
Hospital. I was arrested for missing Appt's at
the parole office in June of 2010.
I had a Board of Prison hearings that held
me at ASH here. I lost my court hearing
for my parole at the court house My Appeal

I want to file a ReAppeal. My info. is on
the Return address and I would like a
response.

I have talk to the people here at ASH &
they have no idea how to file a ReAppeal
but I know it's possible.

FILED

JAN 18 2011

SAN LUIS OBISPO SUPERIOR COURT

K.S., Deputy Clerk

Thank you,

Jeremy John
Foster

Deemed a Notice of Appeal
by Ct of Appeal Ventura 1/27/11 IS

Terry J. Foster
Unit 30 At 060747-3
P.O. Box 7001
Mascadero, CA 93423

SANTA BARBARA
CA 931 21
San Luis Obispo
Superior Court
Received

JAN 18 PM 12:16

Courts

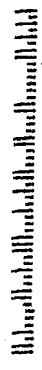
Jury Services

The Courthouse

1050 Monterey Street Room 200

San Luis Obispo, CA 93406-0001

3340810001



San Luis Obispo
Superior Court
Received

JAN 18 PM 1:15

San Luis Obispo Branch
220

CERTIFICATE OF MAILING

F454357

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO) ss.

I, SUSAN MATHERLY, COURT EXECUTIVE OFFICER of the Superior Court of California, County of San Luis Obispo, do hereby certify: I am not a party of the action:

That on February 2, 2011, I served copies of the attached NOTICE OF APPEAL (letter form) filed on January 18, 2011, by depositing them, enclosed in sealed envelopes/packages with the postage thereon fully prepaid, in the United States Post Office at San Luis Obispo, California, hand delivered, or drop box, addressed as follows:

COURT OF APPEAL
CLERK'S OFFICE
200 East Santa Clara St
Ventura, CA 93001

ATTORNEY GENERAL
HON. EDMUND G. BROWN JR.
300 S. Spring Street, Suite 500
Los Angeles, CA 90013

DISTRICT ATTORNEY (DROP BOX)
Room 450, County Government Center
San Luis Obispo, CA 93408
Attn: K. Manderino

Jeremy Foster
Unit 30, AT#060747-3
ATASCADERO STATE HOSPITAL
P.O. Box 7001
Atascadero, CA 93423-7001

and that the persons on whom service was made(reside)(have their office) at a place where there is delivery service by mail/hand delivered/drop box, and that there is a regular communication by mail/hand delivered/drop box between the place of mailing, hand delivered or drop box and the place so addressed.

Dated: February 2, 2011

SUSAN MATHERLY,
COURT EXECUTIVE OFFICER

By Kam Spook
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

IN RE JEREMY FOSTER, Petitioner	Superior Court No: F454357 NOTICE TO REPORTER(S) TO PREPARE TRANSCRIPT(S) ON APPEAL Appeal Filed: 1-18-11 <u>TRANSCRIPTS DUE: 3-14-11</u>
---	--

<u>REPORTER</u>	<u>DATE OF HEARING(S)</u>
CASSIE FRASHER(DROP BOX) Superior Court, Room 355 County Government Center San Luis Obispo, CA 93408	12-8-10
BRENDA BOWEN(DROP BOX) Superior Court, Room 355 County Government Center San Luis Obispo, CA 93408	1-10-11

FILED
 JAN 28 2011
 SAN LUIS OBISPO SUPERIOR COURT
 BY K.S., Deputy Clerk

Please check your records within "5" days of this notice and immediately contact the appeals clerk if you are not the "noticed reporter"

CERTIFICATE OF DELIVERY/SERVICE

I, SUSAN MATHERLY, COURT EXECUTIVE OFFICER of the Superior Court of California, County of San Luis Obispo, do hereby certify that on January 28, 2011, I deposited in the United States mail/hand delivered/drop box, at San Luis Obispo, California, a copy of the Notice to Reporter(s) to Prepare Transcript(s) on Appeal, with an attached copy of the filed Notice of Appeal, to the above.

Date: January 28, 2011

SUSAN MATHERLY,
COURT EXECUTIVE OFFICER

By: [Signature]
 Deputy Clerk

cc: A. Hernandez

copies: Original and 2 copies

CERTIFICATE OF MAILING

CASE NO. F454357

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO) ss.

I, SUSAN MATHERLY, COURT EXECUTIVE OFFICER of the Superior Court of California, County of San Luis Obispo, do hereby certify: I am not a party of the action:

That on February 2, 2011, I served copies of the attached NOTICE TO REPORTER TO PREPARE TRANSCRIPT(S) ON APPEAL filed January 28, 2011, by depositing them, enclosed in sealed envelopes/packages with the postage thereon fully prepaid, in the United States Post Office at San Luis Obispo, California, addressed as follows:

COURT OF APPEAL
CLERK'S OFFICE
200 East Santa Clara St
Ventura, CA 93001

and that the persons on whom service was made(reside)(have their office) at a place where there is delivery service by mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

Dated: February 2, 2011

SUSAN MATHERLY,
COURT EXECUTIVE OFFICER

By 
Deputy Clerk

CLERK'S CERTIFICATE

Case No. F454357

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)

I, SUSAN MATHERLY, COURT EXECUTIVE OFFICER of the Superior Court of California, County of San Luis Obispo, pursuant to California Rules of Court, Rule 8.336(c)(5), HEREBY CERTIFY that the foregoing Clerk's Transcript on Appeal is a true and correct Transcript;

And that, pursuant to California Rules of Court, Rule 8.336(f), on MAR 15 2011, I served the original/copies of the Clerk's and Reporter's Transcripts via United Parcel Service/hand delivered as follows:

ORIGINAL

COURT OF APPEAL
CLERK'S OFFICE
200 East Santa Clara St
Ventura, CA 93001
(VIA UPS)

COPIES

ATTORNEY GENERAL
HON. EDMUND G. BROWN, JR.
300 So Spring St, Suite 500
Los Angeles, CA 90013
(VIA UPS)

CALIFORNIA APPELLATE PROJECT
520 South Grand Ave., 4th Floor
Los Angeles, CA 90017
(VIA UPS)

Dated: MAR 15 2011

SUSAN MATHERLY,
COURT EXECUTIVE OFFICER

By [Signature]
Deputy Clerk

EXHIBIT B

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

FROM THE SUPERIOR COURT OF THE COUNTY OF SAN LUIS OBISPO
BEFORE THE HONORABLE MICHAEL L. DUFFY, JUDGE

IN RE THE MATTER OF:)	
)	APPELLATE COURT
JEREMY FCSTER,)	NO.
)	
)	SUPERIOR COURT
PETITIONER AND APPELLANT.)	NO. F454357

REPORTER'S TRANSCRIPT ON APPEAL

VOLUME I OF II
PAGES 1 THROUGH 300, INCLUSIVE
DECEMBER 8, 2010

APPEARANCES OF COUNSEL:

FOR THE PETITIONER
AND APPELLANT:

FOR THE RESPONDENT:

HONORABLE KAMALA D. HARRIS
ATTORNEY GENERAL
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO
BEFORE THE HONORABLE MICHAEL L. DUFFY, JUDGE
DEPARTMENT FIVE

IN RE)
JEREMY FOSTER,) CASE NO. F454357
PETITIONER.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
DECEMBER 8, 2010

APPEARANCES OF COUNSEL:

FOR THE RESPONDENT:

GERALD T. SHEA
DISTRICT ATTORNEY
BY: KELLY A. MANDERINO
DEPUTY DISTRICT ATTORNEY
COUNTY GOVERNMENT CENTER
1050 MONTEREY STREET, ROOM 450
SAN LUIS OBISPO, CA 93408

FOR THE PETITIONER:

JENNIFER L. FEHLMAN
ATTORNEY AT LAW
1160 MARSH STREET, #219
SAN LUIS OBISPO, CA 93401

REPORTED BY: CASSIE R. FRASHER, CSR NO. 12305

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SAN LUIS OBISPO, CALIFORNIA; DECEMBER 8, 2010

-000-

THE COURT: THIS IS THE MATTER OF JEREMY FOSTER,
F454357.

GOOD AFTERNOON, MR. FOSTER.

THE PETITIONER: GOOD AFTERNOON, MA'AM.

THE COURT: MR. FOSTER IS PRESENT IN CUSTODY.

MS. FEHLMAN, CAN YOUR OFFICE ACCEPT THE
APPOINTMENT?

MS. FEHLMAN: I CAN.

THE COURT: MS. MANDERINO APPEARING ON BEHALF OF THE
PEOPLE.

THE MATTER IS ON THEN TODAY FOR AN INITIAL
APPEARANCE ON A 2966(B) PETITION.

WHAT WAS YOUR REQUEST, MS. FEHLMAN?

MS. FEHLMAN: WE'D LIKE TO SET THIS FOR A COURT TRIAL,
PLEASE, AND MY CLIENT WOULD JOIN.

THE COURT: MR. FOSTER, YOUR ATTORNEY ADVISED ME YOU'D
LIKE TO HAVE THE MATTER DECIDED BY A JUDGE.

IS THAT CORRECT?

THE DEFENDANT: YES, MA'AM.

THE COURT: PEOPLE WAIVE?

MS. MANDERINO: YES.

THE COURT: AND WHAT'S THE DATE THAT YOU ARE
REQUESTING? THE PETITION WAS FILED NOVEMBER 18TH.

MS. FEHLMAN: HOW ABOUT JANUARY 6TH FOR READINESS, ON
THE 11TH FOR A COURT TRIAL.

THE COURT: WE WOULD NEED TO SET THIS ON A

1 MONDAY/WEDNESDAY SETTING, ON EITHER THE 5TH OR 10TH.

2 ALL RIGHT. THEN THE MATTER WILL BE SET FOR COURT
3 TRIAL JANUARY 10TH AT 1:30 P.M. IN THIS DEPARTMENT, WITH A
4 READINESS JANUARY 5TH ALSO AT 1:30 P.M. IN THIS DEPARTMENT.

5 MS. FEHLMAN, MS. MANDERINO, FOR YOUR INFORMATION
6 IT DOES APPEAR FROM THE DOCKET, THAT AS TO TWO PRIOR PROCEEDINGS
7 ONE ON AUGUST 28TH, 2008, AND A SECOND ON SEPTEMBER 11TH, 2009 --
8 THE PETITION HAD PREVIOUSLY BEEN GRANTED.

9 BUT IT DOES APPEAR THAT AS TO THE SECOND OF THOSE
10 TWO PROCEEDINGS, THE ONE HELD ON SEPTEMBER 11, 2009, JUDGE HURST
11 SPECIFICALLY HAD PLACED ON THE MINUTE ORDER THAT THE CRITERIA WAS
12 NOT MET AS TO CRITERIA NUMBER IV AND NUMBER VI.

13 I'M SIMPLY BRINGING THAT TO YOUR ATTENTION,
14 MS. FEHLMAN, BECAUSE IT DOES NOT APPEAR THAT YOU WERE THE ATTORNEY
15 OF THOSE TWO PRIOR HEARINGS.

16 MS. FEHLMAN: THANK YOU, YOUR HONOR.

17 THE COURT: MR. FOSTER, WE'LL SEE YOU BACK IN COURT ON
18 THE 5TH OF JANUARY.

19 THE PETITIONER: THANK YOU, MA'AM.

20 (PROCEEDINGS ADJOURNED.)

21 (VOLUME I CONSISTS OF PAGES 1 THROUGH 5.)

22 (THERE ARE NO PAGES 6 THROUGH 300.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN LUIS OBISPO) SS.
3

4 I, CASSIE R. FRASHER, CSR NO. 12305, OFFICIAL
5 REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
6 COUNTY OF SAN LUIS OBISPO, DO HEREBY CERTIFY THAT THE FOREGOING
7 PAGES 1 - 5 COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THAT
8 PORTION OF THE PROCEEDINGS HAD IN THE WITHIN-ENTITLED MATTER
9 REPORTED BY ME BY STENOGRAPHY ON THE DATE AND AT THE HOUR HEREIN
10 WRITTEN AND THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO
11 TYPEWRITING.

12 AND IN COMPLIANCE WITH SECTION 8106 OF THE
13 BUSINESS AND PROFESSIONS CODE, I CERTIFY UNDER PENALTY OF PERJURY
14 THAT I AM A CERTIFIED SHORTHAND REPORTER WITH LICENSE NO. 12305 IN
15 FULL FORCE AND EFFECT.

16
17 DATED THIS 7TH DAY OF MARCH, 2011.
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22 _____
23 CASSIE R. FRASHER
24 OFFICIAL REPORTER, CSR NO. 12305
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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

- - - - -

FROM THE SUPERIOR COURT OF THE COUNTY OF SAN LUIS OBISPO
BEFORE THE HONORABLE JACQUELYN DUFFY, JUDGE

IN RE THE MATTER OF:) SECOND APPELLATE
JEREMY FOSTER) NO.
PETITIONER AND APPELLANT.) SUPERIOR COURT
) NO. F454357
)

REPORTER'S TRANSCRIPT ON APPEAL

VOLUME II OF II
PAGES 301 THROUGH 600
MONDAY, JANUARY 10, 2011

APPEARANCES OF COUNSEL:

FOR THE PETITIONER
AND APPELLANT:

FOR THE RESPONDENT
AND RESPONDENT:

HONORABLE EDMUND G. BROWN
ATTORNEY GENERAL
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

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I N D E X

<u>RESPONDENT'S</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
KEVIN PERRY, PH.D.	303	312		

EXHIBITS

(NONE MARKED)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO
BEFORE THE HONORABLE JACQUELYN DUFFY, JUDGE

IN RE THE MATTER OF:) SUPERIOR COURT
JEREMY FOSTER,) NO. F454357
)
)
PETITIONER.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SAN LUIS OBISPO, CALIFORNIA
MONDAY, JANUARY 10, 2011

APPEARANCES OF COUNSEL:

FOR THE RESPONDENT: GERALD T. SHEA
DISTRICT ATTORNEY
BY: KELLY MANDERINO
DEPUTY DISTRICT ATTORNEY
COUNTY GOVERNMENT CENTER
1050 MONTEREY STREET, ROOM 450
SAN LUIS OBISPO, CA 93408

FOR THE PETITIONER: JENNIFER L. FEHLMAN
ATTORNEY AT LAW
1160 MARSH STREET, #219
SAN LUIS OBISPO, CA 93401

REPORTED BY: BRENDA E. BOWEN, CSR NO. 7476
OFFICIAL REPORTER

1 SAN LUIS OBISPO, CALIFORNIA; MONDAY, JANUARY 10, 2011

2
3 THE COURT: THIS IS THE MATTER OF JEREMY
4 FOSTER.

5 GOOD AFTERNOON, MR. FOSTER.

6 THE PETITIONER: GOOD AFTERNOON, MA'AM.

7 THE COURT: CASE NUMBER F454357. MR. FOSTER
8 IS PRESENT IN CUSTODY. MS. FEHLMAN IS APPEARING ON HIS
9 BEHALF, MS. MANDERINO FOR THE PEOPLE. THE MATTER HAS BEEN
10 SET TODAY FOR COURT TRIAL.

11 ON A 2960 B PETITION, COUNSEL?

12 MS. FEHLMAN: YES.

13 THE COURT: ARE BOTH SIDES READY TO PROCEED?

14 MS. MANDERINO: YES.

15 MS. FEHLMAN: YES.

16 THE COURT: ARE THERE ANY PRELIMINARY MATTERS
17 BEFORE WE BEGIN?

18 MS. MANDERINO: YES. WE WOULD ASK FOR A
19 STIPULATION AS TO THE BPH DATE OF NOVEMBER 12, 2010.

20 MS. FEHLMAN: AGREED.

21 THE COURT: ALL RIGHT.

22 MS. MANDERINO: WE WOULD ASK FOR A
23 STIPULATION AS TO THE QUALIFICATIONS OF DR. PERRY.

24 MS. FEHLMAN: AGREED.

25 THE COURT: WAIVE OPENING, MS. MANDERINO?

26 MS. MANDERINO: YES.

27 THE COURT: CALL YOUR FIRST WITNESS, PLEASE.

28 MS. MANDERINO: DR. PERRY.

1 THE COURT: DR. PERRY, IF YOU COULD PLEASE
2 COME FORWARD TO THE WITNESS STAND.

3 KEVIN PERRY, PH.D.,

4 CALLED AS A WITNESS HEREIN, HAVING
5 BEEN FIRST DULY SWORN, WAS EXAMINED
6 AND TESTIFIED AS FOLLOWS:

7 THE CLERK: PLEASE BE SEATED. STATE YOUR
8 FULL NAME AND SPELL YOUR LAST NAME.

9 THE WITNESS: KEVIN PERRY, P-E-R-R-Y.

10 THE COURT: YOU MAY INQUIRE, MS. MANDERINO.

11 MS. MANDERINO: THANK YOU, YOUR HONOR.

12 DIRECT EXAMINATION

13 Q. BY MS. MANDERINO: DR. PERRY, HAVE YOU HAD
14 OCCASION TO MEET MR. JEREMY FOSTER?

15 A. YES.

16 Q. DO YOU SEE HIM IN COURT TODAY?

17 A. YES, I DO.

18 Q. COULD YOU POINT HIM OUT?

19 A. YES. WEARING THE YELLOW JUMPSUIT, SEATED
20 NEXT TO MS. FEHLMAN.

21 THE COURT: THE RECORD WILL REFLECT HE HAS
22 POSITIVELY IDENTIFIED MR. FOSTER.

23 Q. BY MS. MANDERINO: WHEN DID YOU MEET
24 MR. FOSTER?

25 A. I MET WITH HIM ON DECEMBER 21ST, 2010.

26 Q. WHY DID YOU DO THAT?

27 A. I MET WITH HIM TO PREPARE A REPORT AND OFFER
28 AN OPINION ABOUT WHETHER HE MEETS THE MENTALLY DISORDERED

1 OFFENDER CRITERIA FOR TODAY'S HEARING.

2 Q. IN ADDITION TO MEETING HIM, DID YOU REVIEW
3 ANY MEDICAL OR LEGAL DOCUMENTATION TO FIND OUT HIS
4 HISTORY?

5 A. YES, I DID.

6 Q. WHAT DOCUMENTS DID YOU REVIEW?

7 A. I REVIEWED PREVIOUS PC 2962 EVALUATIONS BY
8 DOCTORS SIMONET AND SELVIN. I REVIEWED HIS MEDICAL
9 RECORDS AT ATASCADERO STATE HOSPITAL. I ALSO SPOKE WITH
10 HIS TREATMENT TEAM MEMBERS.

11 Q. IF YOU COULD PLEASE ASSUME THAT THE FOLLOWING
12 QUESTIONS PERTAIN TO MR. FOSTER'S STATUS AS OF HIS BPH
13 DATE OF NOVEMBER 12, 2010.

14 DO YOU HAVE AN OPINION AS TO MR. FOSTER'S
15 MENTAL CONDITION?

16 A. YES.

17 Q. WHAT IS THAT OPINION?

18 A. MY OPINION IS THAT MR. FOSTER HAS A SEVERE
19 MENTAL DISORDER AS DEFINED IN THE STATUTE.

20 Q. WHAT IS HIS DIAGNOSIS?

21 A. SCHIZOPHRENIA, UNDIFFERENTIATED TYPE.

22 Q. UPON WHAT DO YOU BASE YOUR OPINION WITH
23 REGARDS TO HIS MENTAL CONDITION?

24 A. MR. FOSTER HAS A HISTORY OF AUDITORY
25 HALLUCINATIONS, HEARING VOICES, BY HIS REPORT; PERSECUTORY
26 DELUSIONS, SUCH AS THE IDEA HE IS BEING TARGETED BY PEOPLE
27 ASSOCIATED WITH THE FEDERAL BUREAU OF INVESTIGATION;
28 GRANDIOSE DELUSIONS, SUCH AS THE BELIEF THAT HE IS A

1 GOVERNMENT OFFICIAL, OR A LAW ENFORCEMENT OFFICER. HE HAS
2 A HISTORY OF THOUGHT DISORGANIZATION, CHARACTERIZED BY
3 INCOHERENT, DISJOINTED, ILLOGICAL SPEECH; FLAT AFFECT, A
4 LACK OF EMOTIONAL DISPLAY; IMPULSIVITY, PSYCHOMOTOR
5 AGITATION, POOR HYGIENE AND SELF-CARE, AND THESE SYMPTOMS
6 ARE CONSISTENT WITH THE UNDIFFERENTIATED TYPE OF
7 SCHIZOPHRENIA.

8 Q. CAN YOU GO INTO A LITTLE BIT OF HIS HISTORY
9 OF THESE KIND OF SYMPTOMS AND YOUR DIAGNOSIS?

10 A. YES. MR. FOSTER FIRST RECEIVED TREATMENT FOR
11 A SEVERE MENTAL DISORDER IN 1998; THIS WAS THROUGH THE
12 COUNTY MENTAL HEALTH PROGRAM IN KERN. HE HAS HAD FIVE
13 PRIOR ADMISSIONS. TWO WERE DEPARTMENT OF MENTAL HEALTH
14 FOR TREATMENT FOR PSYCHIATRIC DISORDER. THE FIRST WAS IN
15 JANUARY OF 2001. THAT WAS UNDER PENAL CODE 2684. MOST
16 RECENTLY, HE WAS ADMITTED TO ATASCADERO UNDER PENAL
17 CODE 2962 FROM JUNE THROUGH SEPTEMBER OF 2009.

18 SO BASED ON THE DURATION OF THESE SYMPTOMS,
19 MULTIPLE TIMES REQUIRING HOSPITALIZATION FOR TREATMENT, I
20 THINK HIS MENTAL DISORDER IS SEVERE, AS REQUIRED BY THE
21 STATUTE.

22 Q. DID YOU REVIEW THE RECORDS OF MR. FOSTER TO
23 INFORM YOU ABOUT HIS COMMITMENT CRIME?

24 A. YES.

25 Q. WHAT WAS HIS COMMITMENT CRIME?

26 A. HE WAS CONVICTED OF GRAND THEFT FROM PERSON.

27 Q. COULD YOU TELL US A LITTLE BIT ABOUT THE
28 FACTS OF THAT CASE?

1 A. YES. MR. FOSTER ENTERED A CONVENIENCE STORE.
2 HE WENT BEHIND THE COUNTER, GRABBED SEVERAL ITEMS WITHOUT
3 PAYING. WHEN HE WAS CONFRONTED BY A CLERK IN THE STORE,
4 HE PUSHED THE CLERK, GRABBED SOME MORE ITEMS, AND
5 ATTEMPTED TO LEAVE THE SCENE.

6 Q. DID THAT CRIME APPEAR TO HAVE AN ELEMENT OF
7 FORCE OR VIOLENCE?

8 A. YES, IT DID.

9 Q. WITH REGARDS TO THE THIRD CRITERIA, DO YOU
10 HAVE AN OPINION AS TO WHETHER OR NOT MR. FOSTER'S SEVERE
11 MENTAL DISORDER WAS EITHER A CAUSE OF, OR AT LEAST AN
12 AGGRAVATING FACTOR IN, THAT 487?

13 A. YES.

14 Q. WHAT IS YOUR OPINION?

15 A. MY OPINION IS THAT HIS SEVERE MENTAL DISORDER
16 WAS AT LEAST AN AGGRAVATING FACTOR.

17 Q. ON WHAT DO YOU BASE THAT OPINION?

18 A. WELL, THE CIRCUMSTANCES OF THE OFFENSE, AS
19 DESCRIBED IN THE POLICE REPORT, GIVE EVIDENCE OF ACTIVE
20 PSYCHIATRIC SYMPTOMS. FOR EXAMPLE, THE VICTIM NOTED THAT
21 MR. FOSTER WAS DRESSED IN A BIZARRE MANNER. HE WAS
22 DISHEVELED. HE APPEARED TO HAVE A WHITE T-SHIRT ON HIS
23 SHOES. HE ALSO MADE STATEMENTS CONSISTENT WITH GRANDIOSE
24 DELUSIONS AT THE TIME.

25 WHEN HE WENT BEHIND THE COUNTER, THE CLERK
26 TOLD HIM HE WASN'T ALLOWED TO DO SO, AND HE SAID -- HE
27 STATED, QUOTE, "I AM THE POLICE. I CAN GO ANYWHERE I
28 WANT," END QUOTE. AGAIN, THAT IS CONSISTENT WITH HIS

1 HISTORY OF DELUSIONS ABOUT BEING A LAW ENFORCEMENT
2 OFFICER.

3 HE WAS SUBSEQUENTLY FOUND INCOMPETENT TO
4 STAND TRIAL FOR THIS OFFENSE. HE WAS EVALUATED BY A
5 PSYCHIATRIST ABOUT THREE WEEKS AFTER THE CRIME AND
6 EXHIBITED THOUGHT DISORGANIZATION, SO INDICATING THAT HIS
7 SEVERE MENTAL DISORDER REMAINED ACTIVE A FEW WEEKS AFTER.

8 WHEN I SPOKE WITH HIM, HE INDICATED THAT HE
9 WAS NOT IN PSYCHIATRIC TREATMENT, HE WASN'T TAKING ANY
10 PRESCRIBED MEDICATIONS. HE ALSO INDICATED THAT HE WAS NOT
11 UNDER THE INFLUENCE OF DRUGS OR ALCOHOL.

12 SO TAKEN TOGETHER, IN MY OPINION,
13 MR. FOSTER'S PSYCHIATRIC SYMPTOMS DID CONTRIBUTE TO THAT
14 EVENT.

15 Q. THANK YOU. ARE YOU FAMILIAR WITH THE TERM
16 "REMISSION" AS IT IS DEFINED IN PENAL CODE SECTION 2962?

17 A. YES.

18 Q. IN YOUR OPINION, WAS MR. FOSTER'S SEVERE
19 MENTAL DISORDER IN REMISSION AS OF THE BPH DATE?

20 A. NO, IT WAS NOT.

21 Q. WHY NOT?

22 A. WELL, THE REVIEW OF HOSPITAL PROGRESS NOTES
23 PROVIDE OTHER RECENT EVIDENCE OF ACTIVE PSYCHIATRIC
24 SYMPTOMS. FOR EXAMPLE, A PSYCHIATRIC PROGRESS NOTE FROM
25 NOVEMBER 10TH, JUST TWO DAYS BEFORE THE BPH, INDICATED
26 THAT MR. FOSTER HAD REPORTED HEARING VOICES. HE WAS ALSO
27 NOTED TO EXPERIENCE AUDITORY HALLUCINATIONS ON
28 NOVEMBER 3RD, A LITTLE OVER A WEEK BEFORE THE BPH. ON

1 OCTOBER 4TH, HE WAS NOTED TO BE ACTIVELY PSYCHOTIC, WITH
2 DISORGANIZED THINKING, DELUSIONAL IDEATION, AN EXPLOSIVE
3 EMOTIONAL STATE. ON SEPTEMBER 26TH, MR. FOSTER MADE
4 STATEMENTS INDICATING HE BELIEVED THAT HE IS THE
5 PRESIDENT, AGAIN CONSISTENT WITH THESE GRANDIOSE
6 DELUSIONS.

7 SO BECAUSE ACTIVE SYMPTOMS WERE DOCUMENTED IN
8 CLOSE PROXIMITY TO THE BPH, HIS SEVERE MENTAL DISORDER WAS
9 NOT IN REMISSION AT THAT TIME.

10 Q. ARE YOU FAMILIAR WITH THE PHRASE "CAN'T BE
11 KEPT IN REMISSION WITHOUT TREATMENT" AS IT IS DEFINED IN
12 PENAL CODE SECTION 2962?

13 A. YES.

14 Q. IN YOUR OPINION, DOES MR. FOSTER'S CONDITION
15 FIT THAT DEFINITION?

16 A. YES, IT DID.

17 Q. WHY IS THAT?

18 A. MR. FOSTER DID COMMIT A VIOLENT ACT WITHIN
19 THE YEAR PRIOR TO THE BPH. HE RECEIVED A RULES VIOLATION
20 REPORT IN PRISON FOR FIGHTING ON JULY 4TH OF 2010.

21 IN ADDITION, HE HAS NOT BEEN VOLUNTARILY
22 COMPLIANT WITH THE TREATMENT PLAN AS A REASONABLE PERSON
23 WOULD BE. HE WAS CAUGHT CHEEKING HIS MEDICATIONS AT
24 ATASCADERO STATE HOSPITAL ON SEPTEMBER 26TH, 2010,
25 ACCORDING TO HIS PSYCHIATRIC PROGRESS NOTE. HE'S ATTENDED
26 ONLY HALF OF HIS ASSIGNED THERAPY GROUPS WHILE HE HAS BEEN
27 HERE AT ATASCADERO STATE HOSPITAL.

28 HE HAD NOT COMPLIED WITH TREATMENT, ALSO, IN

1 THE COMMUNITY AND IN PRISON DURING THE PAST YEAR. HE WAS
2 ARRESTED FOR FAILING TO ATTEND THE PAROLE OUTPATIENT
3 CLINIC ON JUNE 9TH OF 2010. HE ALSO REFUSED PSYCHOTROPIC
4 MEDICATIONS IN JUNE, JULY AND AUGUST WHILE IN PRISON.

5 SO HE MEETS THE STATUTORY DEFINITION OF
6 CANNOT BE KEPT IN REMISSION.

7 Q. WAS MR. FOSTER IN TREATMENT FOR HIS SEVERE
8 MENTAL DISORDER FOR 90 DAYS OR MORE DURING THE YEAR PRIOR
9 TO HIS BPH DATE?

10 A. YES.

11 Q. HOW DID YOU CALCULATE THAT?

12 A. MR. FOSTER PAROLED SEPTEMBER 14TH OF 2010.
13 SO WE ARE LOOKING AT THE YEAR PRIOR TO THAT DATE. ON THE
14 14TH OF SEPTEMBER OF 2009, HE WAS ALREADY IN TREATMENT AT
15 ATASCADERO STATE HOSPITAL UNDER PENAL CODE SECTION 2962.
16 HE WAS THEN RELEASED FROM THE HOSPITAL ON SEPTEMBER 17TH,
17 2009. SO IT IS FOUR DAYS OF TREATMENT AT ATASCADERO.

18 HE WAS IN THE COMMUNITY, VIOLATED PAROLE,
19 REENTERED THE MENTAL HEALTH SERVICES DELIVERY SYSTEM ON
20 JUNE 15TH OF 2010, REMAINED IN TREATMENT FROM THAT DATE
21 UNTIL SEPTEMBER 14TH, 2010, WHEN HE PAROLED AND WAS
22 READMITTED TO ATASCADERO.

23 SO I CAME UP WITH 95 DAYS OF INPATIENT
24 TREATMENT FOR HIS SEVERE MENTAL DISORDER.

25 Q. THANK YOU. WITH REGARDS TO THE LAST
26 CRITERIA, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT
27 MR. FOSTER REPRESENTS A SUBSTANTIAL DANGER OF PHYSICAL
28 HARM TO OTHERS BY REASON OF HIS SEVERE MENTAL DISORDER?

1 A. YES.

2 Q. WHAT IS YOUR OPINION?

3 A. MY OPINION IS THAT HE DID REPRESENT A
4 SUBSTANTIAL DANGER OF PHYSICAL HARM TO OTHERS.

5 Q. WHY IS THAT?

6 A. WELL, MR. FOSTER DOES HAVE A HISTORY OF
7 VIOLENT BEHAVIOR THAT IS RELATED TO HIS SEVERE MENTAL
8 DISORDER. DURING THE MDO-QUALIFYING OFFENSE, HE PUSHED A
9 CLERK WHILE EXHIBITING ACTIVE DELUSIONS, MAKING DELUSIONAL
10 STATEMENTS ABOUT BEING A LAW ENFORCEMENT OFFICER.

11 WHEN PREVIOUSLY IN THE COMMUNITY ON PAROLE,
12 HE WAS ARRESTED FEBRUARY 11TH, 2008, FOR BATTERY AND
13 ABSCONDING. ACCORDING TO THE CDC CHARGE-VERIFICATION
14 SHEET, HE WAS FOUND TO BE THE AGGRESSOR IN AN ALTERCATION
15 AT A CONVENIENCE STORE. HE PRESENTED WITH INCOHERENT
16 SPEECH WHEN THE OFFICERS ARRESTED HIM, INDICATING, TO ME,
17 THOUGHT DISORGANIZATION AND ACTIVE SYMPTOMS OF HIS MENTAL
18 ILLNESS.

19 WHEN HE WAS LAST IN THE COMMUNITY, HE WAS
20 ARRESTED FEBRUARY 9TH, 2009, AGAIN ON A PAROLE VIOLATION,
21 THIS TIME FOR CRIMINAL THREATS, AS WELL AS VANDALISM.
22 ACCORDING TO THE CHARGE SHEET FROM THAT DATE, MR. FOSTER
23 THREATENED TO KILL A RESIDENT AT, LIKE, A BOARD-AND CARE
24 HOME. HE ALSO DENTED THE VICTIM'S CAR WITH HIS KNEE,
25 DAMAGING PROPERTY. WHEN HE WAS ARRESTED, HE TOLD POLICE
26 THAT HE IS A POLICE OFFICER, THAT HE WAS INVESTIGATING THE
27 O.J. SIMPSON CASE, THAT HE WORKS FOR INTERNAL AFFAIRS,
28 AGAIN INDICATING VIOLENT BEHAVIOR THAT IS RELATED TO HIS

1 THOUGHT DISORDER.

2 SO BECAUSE HE HAS THESE THREE INCIDENTS OF
3 VIOLENCE OR THREATS RELATED TO HIS MENTAL ILLNESS, THE
4 SAME KIND OF PSYCHIATRIC SYMPTOMS WERE ACTIVE IN CLOSE
5 PROXIMITY TO THE BPH, IT IS MY OPINION, IF RELEASED, HE
6 WOULD CONTINUE TO BE A DANGER TO OTHERS BY REASON OF HIS
7 SEVERE MENTAL DISORDER.

8 Q. ANY OTHER REASONS?

9 A. YES. MR. FOSTER DOES HAVE A HISTORY OF POOR
10 TREATMENT COMPLIANCE, AS I MENTIONED. HE WAS ARRESTED IN
11 THE PAST FOR NOT ATTENDING PAROLE OUTPATIENT CLINIC. HE
12 ALSO HAS POOR INSIGHT INTO HIS MENTAL ILLNESS. WHEN I
13 INTERVIEWED HIM, HE TOLD ME HE DOESN'T THINK HE HAS A
14 MENTAL ILLNESS, HE DOESN'T NEED THE MEDICATIONS THAT THE
15 DOCTORS PRESCRIBED FOR HIM.

16 SO BASED ON THIS HISTORY OF POOR COMPLIANCE,
17 COMBINED WITH POOR INSIGHT, IN MY OPINION, MR. FOSTER IS
18 UNLIKELY TO COMPLY WITH TREATMENT IN A LESS STRUCTURED
19 SETTING THAN THE ONE IS CURRENTLY IN.

20 Q. DOES HE HAVE ANY PLANS, IF HE WERE TO BE
21 DISCHARGED?

22 A. IN MY OPINION, HIS DISCHARGE PLANS ARE
23 INADEQUATE AT THIS TIME. SPECIFICALLY, HE DID NOT MENTION
24 SEEKING PSYCHIATRIC TREATMENT OR TAKING MEDICATIONS AS
25 PART OF HIS DISCHARGE PLANS.

26 Q. AND DOES HE HAVE ANY SUBSTANCE ABUSE HISTORY?

27 A. HE DOES. MR. FOSTER DOES HAVE A HISTORY OF
28 ABUSING METHAMPHETAMINE, COCAINE, CANNABIS. HE'S ALSO

1 USED HEROIN IN THE PAST. HE'S STILL IN THE FIRST PHASE OF
2 SUBSTANCE-ABUSE TREATMENT AT THE HOSPITAL. CONTINUED
3 SUBSTANCE ABUSE IS LIKELY TO MAKE HIS SYMPTOMS WORSE, SO
4 HE WOULD BENEFIT FROM COMPLETING A SUBSTANCE-ABUSE
5 TREATMENT PROGRAM, IN MY OPINION, BEFORE HE WOULD BE SAFE
6 IN THE COMMUNITY.

7 MS. MANDERINO: THANK YOU.

8 NOTHING FURTHER AT THIS TIME, YOUR HONOR.

9 THE COURT: CROSS-EXAMINATION, MS. FEHLMAN?

10 MS. FEHLMAN: THANK YOU.

11 CROSS-EXAMINATION

12 Q. BY MS. FEHLMAN: DR. PERRY, SPECIFICALLY AS
13 TO THE FIFTH CRITERION, WERE YOU AWARE THAT THE SAN LUIS
14 SUPERIOR COURT HAD ORDERED ON SEPTEMBER 11TH, '09, THAT
15 MR. FOSTER DID NOT MEET THE CRITERIA?

16 A. YES.

17 Q. AND THEY ORDERED THAT HIS PAROLE CONDITION OF
18 TREATMENT BE REMOVED AT THAT TIME?

19 A. YES.

20 Q. SO WOULD YOU AGREE THAT HE, IN FACT, WAS NOT
21 REQUIRED TO RECEIVE ANY TREATMENT AT THE HOSPITAL BETWEEN
22 THE 11TH AND 14TH?

23 A. HE WAS NOT REQUIRED -- IF THE MDO CRITERION
24 WAS REMOVED, THEN THAT SOUNDS LIKE IT WAS CORRECT, BUT,
25 NONETHELESS, HE WAS OFFERED TREATMENT UNTIL HE WAS
26 DISCHARGED.

27 Q. BUT HE WAS NOT REQUIRED TO RECEIVE ANY
28 TREATMENT?

1 A. THAT SOUNDS CORRECT.

2 Q. DO YOU KNOW IF HE WAS ACTUALLY INVOLVED IN
3 ANY GROUPS OR RECEIVING MEDICATIONS BETWEEN THE 11TH
4 AND 14TH?

5 A. I KNOW THAT HE WAS OFFERED GROUPS, IN THAT
6 ALL OF THE PATIENTS AT THE HOSPITAL ARE OFFERED GROUP
7 THERAPY WHILE THEY ARE THERE.

8 Q. ARE THEY OFFERED GROUP THERAPY AFTER THEY ARE
9 OFFERED RELEASED?

10 A. I BELIEVE SO, YES.

11 Q. ARE YOU CERTAIN OF THAT, SIR?

12 A. I CAN'T SAY THAT I AM CERTAIN OF THAT IN THIS
13 CASE.

14 Q. THANK YOU. SO YOU HAVE TO AGREE THAT YOU ARE
15 NOT CERTAIN, THEN, HE RECEIVED THOSE FOUR DAYS OF
16 TREATMENT; CORRECT?

17 A. WELL, WE JUST TALKED ABOUT THE 9TH. THE 11TH
18 THROUGH THE 14TH?

19 Q. YES. THAT WOULD BE THE 11TH, 12TH, 13TH AND
20 14TH.

21 A. I SUPPOSE I COULD AGREE TO THAT.

22 Q. THANK YOU. NOW, DR. PERRY, AS TO THE SECOND
23 91 DAYS OF TREATMENT THAT YOU HAVE OPINED THAT MR. FOSTER
24 RECEIVED, WERE YOU BASING THAT ON YOUR REVIEW OF
25 DR. SIMONET'S REPORT?

26 A. YES.

27 Q. AND WERE YOU BASING THAT ON THE STATEMENT IN
28 THAT REPORT SAYING, "THE INMATE RETURNED TO CDCR ON

1 6-15-10"?

2 A. I BELIEVE THERE WAS MORE IN THE REPORT THAN
3 THAT HE HAD MERELY RETURNED TO PRISON.

4 Q. BUT HE DIDN'T GET BACK TO PRISON UNTIL THAT
5 DATE; CORRECT?

6 A. ACCORDING TO DR. SIMONET'S REPORT, THAT
7 SOUNDS CORRECT.

8 Q. DO YOU KNOW SPECIFICALLY WHETHER HE WAS IN
9 GENERAL POPULATION WHEN HE WAS FIRST RETURNED TO THE
10 PRISON?

11 A. I WOULD HAVE TO REVIEW DR. SIMONET'S REPORT
12 TO SAY FOR CERTAIN.

13 Q. DO YOU KNOW THE FIRST DAY AFTER HE WAS
14 RETURNED TO PRISON THAT HE HAD ACTUALLY RECEIVED SERVICES
15 IN THE MENTAL HEALTH CARE SYSTEM?

16 A. YES, MY UNDERSTANDING IS THAT HE RETURNED TO
17 THE MENTAL HEALTH SERVICES DELIVERY SYSTEM ON JUNE 15TH OF
18 2010.

19 Q. SO THE SECOND HE GOT BACK TO PRISON, HE WAS
20 IMMEDIATELY IN THAT PROGRAM; IS THAT YOUR UNDERSTANDING?

21 A. MY UNDERSTANDING IS, YES, THAT WHEN HE WAS
22 REVOKED, HE WAS RETURNED IMMEDIATELY TO THE MENTAL HEALTH
23 PROGRAM.

24 Q. CAN YOU TELL ME UPON WHAT SPECIFICALLY YOU
25 RELIED TO COME TO THAT OPINION?

26 A. THAT WAS FROM DR. SIMONET'S REPORT. I
27 BELIEVE IT INDICATED THAT HE ENTERED THE MENTAL HEALTH
28 SERVICES DELIVERY SYSTEM ON THAT DATE, JUNE 15TH.

1 Q. BUT YOU DIDN'T REVIEW ANYTHING OTHER THAN
2 ANOTHER DOCTOR'S OPINION THAT SUPPORTED THAT; CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND DO YOU HAVE ENOUGH INFORMATION TO KNOW
5 WHETHER, WHEN SOMEONE IS RETURNED TO PRISON, HOW QUICKLY
6 THEY ARE PLACED WITHIN A PARTICULAR DESIGNATION, SUCH AS
7 GENERAL HOUSING OR MENTAL HEALTH TREATMENT?

8 A. IN A GENERAL SENSE, HOW QUICKLY A PRISONER
9 CAN BE PUT IN A PROGRAM? I MEAN, IN MR. FOSTER'S CASE,
10 THE DATA I LOOKED AT SAID HE ENTERED JUNE 15TH, 2010. AS
11 TO WHEN A PRISONER MIGHT OR MIGHT NOT ENTER THE MENTAL
12 HEALTH PROGRAM, YOU KNOW, I CAN'T REALLY COMMENT ON THAT.

13 Q. ARE YOU CERTAIN THAT YOU WERE JUST, PERHAPS,
14 MISUNDERSTANDING THE STATEMENT SAYING THAT HE RETURNED TO
15 CDCR ON THE 16TH -- I AM SORRY -- ON THE 15TH?

16 A. I WOULD BE HAPPY TO LOOK AT THE REPORT AGAIN.

17 Q. IF YOU COULD, PLEASE.

18 A. SURE. ACCORDING TO DR. SIMONET'S REPORT
19 UNDER CRITERION FIVE, HE INDICATES THAT MR. FOSTER
20 RECEIVED TREATMENT WITHIN CDCR FROM JUNE 15TH, 2010,
21 THROUGH THE TIME OF MY EVALUATION, AUGUST 23RD.

22 Q. DOES IT SAY ONLY THAT HE WAS IN CDCR?

23 A. NO, IT STATES SPECIFICALLY HE RECEIVED
24 TREATMENT WITHIN CDCR FROM JUNE 15TH, 2010.

25 Q. AND IN HIS REPORT, HE SAYS THAT WAS THROUGH
26 EVALUATION ON THE 23RD OF AUGUST; IS THAT CORRECT?

27 A. THAT'S CORRECT.

28 Q. DOES HE STATE WITHIN THE REPORT, ANYWHERE,

1 HOW LONG IT WAS AFTER HIS RETURN TO CDCR THAT HE WAS
2 SPECIFICALLY ENROLLED IN MENTAL HEALTH TREATMENT?

3 A. AGAIN, IT SAYS HE RECEIVED TREATMENT FROM
4 THAT DATE, JUNE 15TH, 2010.

5 Q. FOR A PERIOD OF 60 OR 70 DAYS; CORRECT?

6 A. UP UNTIL DR. SIMONET'S EVALUATION ON
7 AUGUST 23RD.

8 MS. FEHLMAN: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: DOCTOR, PERHAPS I MISSED THIS.
10 WHAT WAS HIS EARLIEST POSSIBLE RELEASE DATE?

11 THE WITNESS: SEPTEMBER 14, 2010, WAS HIS
12 PAROLE DATE.

13 THE COURT: ALL RIGHT. SO YOU ARE
14 CALCULATING 91 DAYS BETWEEN JUNE 15TH, 2010, AND
15 SEPTEMBER 14TH, 2010?

16 THE WITNESS: THAT'S CORRECT.

17 THE COURT: MS. MANDERINO?

18 MS. MANDERINO: NOTHING FURTHER.

19 THE COURT: MS. FEHLMAN, DID YOU HAVE ANY
20 ADDITIONAL QUESTIONS BASED ON THE COURT'S LINE OF INQUIRY?

21 MS. FEHLMAN: NO, YOUR HONOR.

22 THE COURT: MAY THIS WITNESS BE EXCUSED?

23 MS. MANDERINO: YES.

24 THE COURT: THANK YOU, DR. PERRY. YOU MAY
25 STEP DOWN.

26 ANYTHING FURTHER, MS. MANDERINO?

27 MS. MANDERINO: SUBMITTED, YOUR HONOR.

28 THE COURT: ANY EVIDENCE, MS. FEHLMAN?

1 MS. FEHLMAN: NO, YOUR HONOR.

2 THE COURT: ARGUMENT, MS. MANDERINO?

3 MS. MANDERINO: I JUST POINT OUT THAT THE
4 DOCTOR'S CALCULATION OF 91 DAYS WAS FROM THAT JUNE 15 DATE
5 THAT DR. SIMONET SAID HE BEGAN TREATMENT, AND THAT THE
6 PETITIONER, HAVING REMAINED IN TREATMENT UNTIL HIS PAROLE
7 DATE ON SEPTEMBER 14TH, 2010, FOR AN ADDITIONAL 91 DAYS OF
8 TREATMENT, IN ADDITION TO THE OTHER DAYS THAT HE
9 CALCULATED, THE FOUR EXTRA DAYS, I BELIEVE, HE CALCULATED,
10 AND WITH THAT, THAT CLEARLY MEETS CRITERION NUMBER FIVE.

11 THE COURT: MS. FEHLMAN?

12 MS. FEHLMAN: YOUR HONOR, I WOULD SIMPLY
13 ARGUE THAT CRITERION FIVE HAS NOT BEEN MET.

14 THE COURT: THANK YOU, MS. FEHLMAN.

15 I AM RELYING ON THE TESTIMONY OF DR. PERRY TO
16 FIND THAT MR. FOSTER DOES MEET AS TO ALL SIX CRITERIA, AND
17 SPECIFICALLY HIS TESTIMONY THAT AS TO CRITERIA NUMBER
18 FIVE, MR. FOSTER WAS IN TREATMENT AT CDCR FROM JUNE 15TH,
19 2010, TO SEPTEMBER 14TH OF 2010, WHICH WOULD HAVE BEEN A
20 TOTAL OF 91 DAYS. I AM NOT CONSIDERING SPECIFICALLY FOR
21 THAT 90 DAYS OR MORE OF TREATMENT THE PERIOD OF TIME THAT
22 HE WAS AT ATASCADERO AFTER HIS PETITION WAS GRANTED ON
23 SEPTEMBER 11, 2009.

24 I AM GOING TO DENY THE PETITION, AND I WILL
25 MAKE THOSE FINDINGS BEYOND A REASONABLE DOUBT.

26 MS. MANDERINO, DO YOU HAVE AN ORDER?

27 MS. MANDERINO: I DO.

28 (PROCEEDINGS ADJOURNED.)

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(VOLUME II CONSISTS OF PAGES 301 THROUGH 318.
THERE ARE NO PAGES 319 THROUGH 600. THERE
ARE NO FURTHER VOLUMES.)

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN LUIS OBISPO) SS.

3
4 I, BRENDA E. BOWEN, CSR, OFFICIAL COURT
5 REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
6 COUNTY OF SAN LUIS OBISPO, CALIFORNIA, DO HEREBY CERTIFY
7 THAT PAGES 301 THROUGH 318 COMPRISE A FULL, TRUE AND
8 CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE
9 WITHIN-ENTITLED MATTER, RECORDED BY ME BY STENOTYPE ON THE
10 DAY AND AT THE HOUR HEREIN WRITTEN, AND THEREAFTER
11 TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING.

12 IN COMPLIANCE WITH SECTION 8016 OF THE
13 BUSINESS AND PROFESSIONAL CODE, I CERTIFY UNDER PENALTY OF
14 PERJURY THAT I AM A CERTIFIED SHORTHAND REPORTER WITH
15 LICENSE NUMBER 7476 IN FULL FORCE AND EFFECT.

16 WITNESS MY HAND THIS 8TH DAY OF MARCH, 2011.

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Brenda E. Bowen
BRENDA E. BOWEN, CSR NO. 7476
OFFICIAL COURT REPORTER

DECLARATION OF SERVICE BY E-MAIL

Case Name: **People v. Foster**
No.: **S248046**

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 December 11, 2018, I served the attached **REQUEST FOR JUDICIAL NOTICE** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Appellate Defenders, Inc.
Eservice-court@adi-sandiego.com

San Diego District Attorney's Office
da.appellate@sdcda.org

San Diego Superior Court
appeals.central@SDCourt.ca.gov

Michelle D. Pena
mdplaw@outlook.com
Counsel for Appellant

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 December 11, 2018, at San Diego, California.

J. Simmons
Declarant



Signature