

KAMALA D. HARRIS  
Attorney General of California  
JULIE L. GARLAND  
Senior Assistant Attorney General  
STEVE OETTING  
Deputy Solicitor General  
MICHAEL PULOS  
Deputy Attorney General  
WARREN J. WILLIAMS  
Deputy Attorney General  
State Bar No. 270622  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 738-9059  
Fax: (619) 645-2012  
E-mail: Warren.Williams@doj.ca.gov  
*Attorneys for Respondent*

**SUPREME COURT  
FILED**

SEP - 6 2016

Frank A. McGuire Clerk

Deputy

**In the Supreme Court of the State of California**

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

Plaintiff and Respondent,

v.

**MARIO MARTINEZ,**

Defendant and Appellant.

Supreme Court No. S231826

Court of Appeal No. E063107

Riverside County Superior Court  
No. RIF 136990

**REQUEST FOR JUDICIAL  
NOTICE**

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

Please take notice that respondent The People of the State of California hereby  
moves this Court, pursuant to rules 8.252 and 8.520 of the California Rules of Court, and

Evidence Code sections 452, subdivision (d), and 459, to take judicial notice of the clerk's transcript and the two reporter's transcripts from appellant's prior appeal, *People v. Martinez*, No. E046651. These documents are appended to this motion as "Exhibit A," "Exhibit B," and "Exhibit C."

The attached exhibits are the proper subject of judicial notice under Evidence Code section 452, subdivision (d), which permits this court to take judicial notice of "Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States."

Specifically, it is appropriate to take judicial notice of the records of a prior proceeding that is related to a defendant's current claim. (See *People v. McKinzie* (2012) 54 Cal.4th 1302, 1350, fn. 1 [granting judicial notice of the files and records from a prior related proceeding].)

Appellant's prior appellate record is relevant to this appeal because it provides context for his 2007 conviction for felony transportation of methamphetamine, which is the subject of his current appeal. In this appeal, the Court of Appeal took judicial notice of its unpublished opinion in case number E046651 on May 19, 2015, but it did not take judicial notice of the entire appellate record. The appellate record to be noticed does not relate to any proceedings occurring after the judgment that is the subject of this appeal.

For the reasons stated above, respondent respectfully requests that this court take judicial notice of the clerk's transcript and two reporter's transcripts from appellant's prior appeal, Case No. E046651, attached as Exhibit A, Exhibit B, and Exhibit C, respectively.

Dated: September 2, 2016

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JULIE L. GARLAND  
Senior Assistant Attorney General  
STEVE OETTING  
Deputy Solicitor General  
MICHAEL PULOS  
Deputy Attorney General



WARREN J. WILLIAMS  
Deputy Attorney General  
*Attorneys for Respondent*

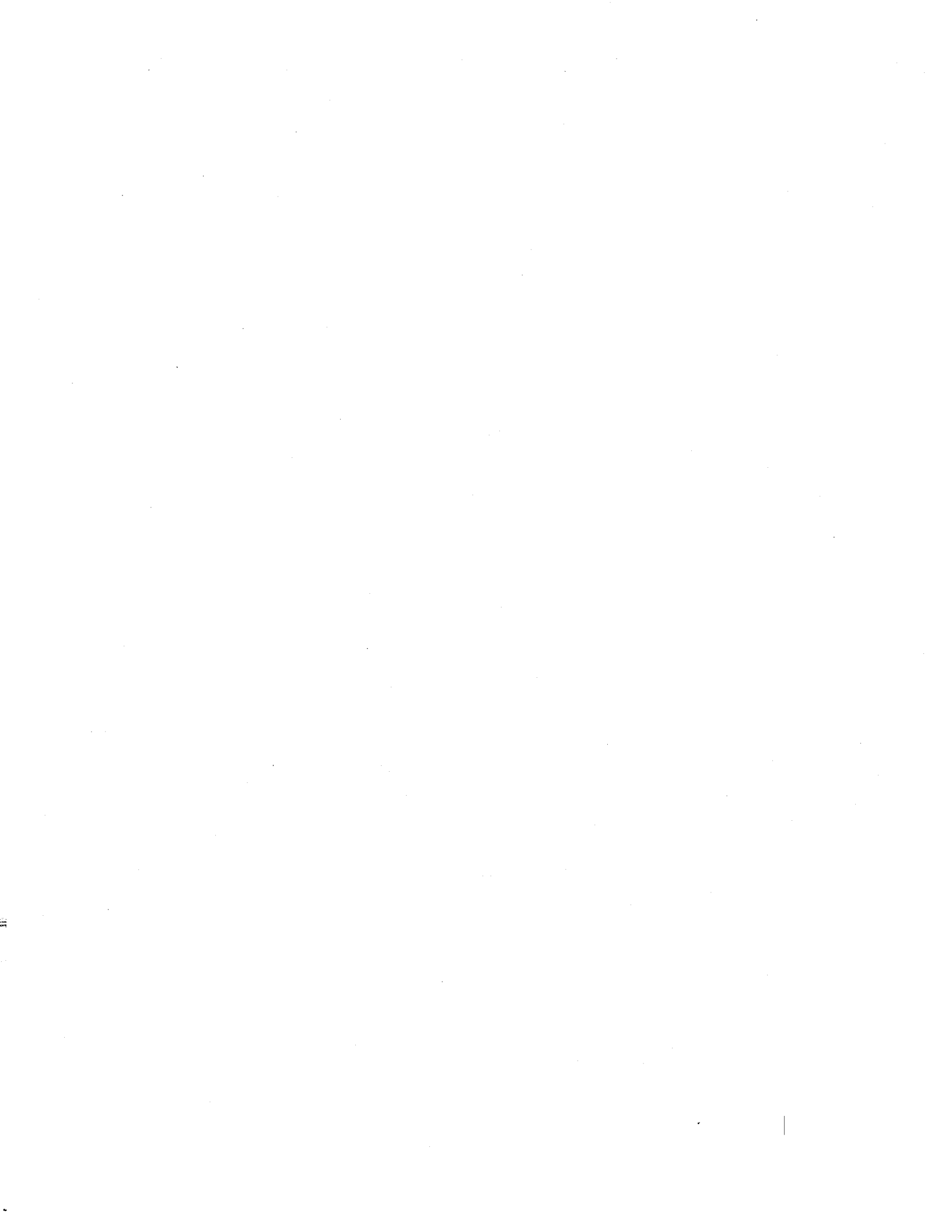
WJW/lh  
SD2016800536  
71231628.docx





**EXHIBIT**

**A**



Case No. RIF136990  
Volume 1 of 1  
Pages 001-200

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

DIVISION II

PEOPLE OF THE STATE OF CALIFORNIA  
Plaintiff & Respondent

vs

MARIO MARTINEZ  
Defendant & Appellant

DCA No. E046651

CLERK'S TRANSCRIPT ON APPEAL

Appeal from the Superior Court of California, County of Riverside

HON. PAUL E. ZELLERBACH, JUDGE

.....

APPEARANCES:

For Plaintiff & Respondent:

Office of the Attorney General  
110 W "A" Street, Suite 1100  
San Diego, CA 92101

For Defendant & Appellant:

Appellate Defenders, Inc.  
555 West Beech Street, Suite 300  
San Diego, CA 92101



CASE NO. RIF136990

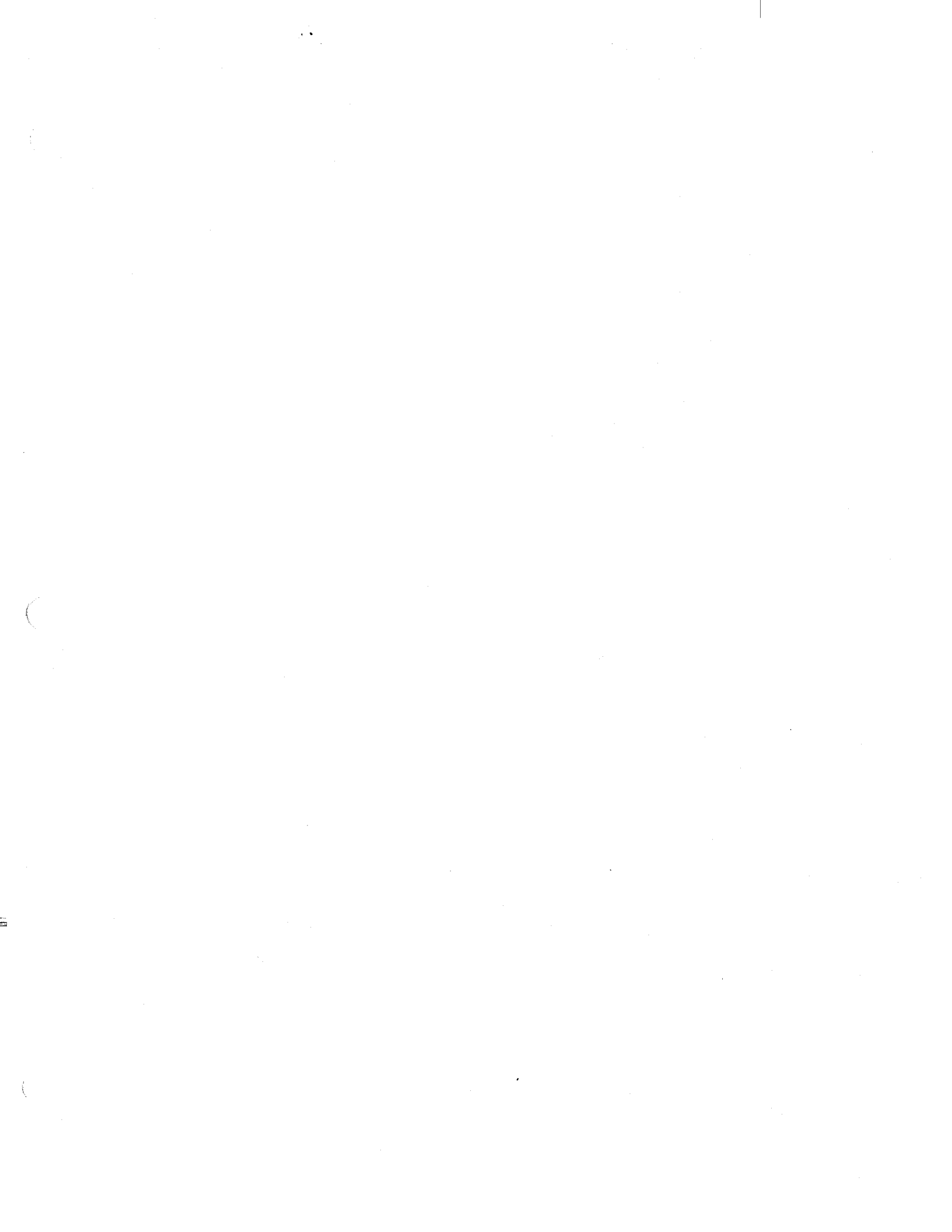
(CHRONOLOGICAL INDEX)

DATE	DOCUMENTS	VOL.	PAGE NO.
05/31/07	FELONY COMPLAINT	1	1
05/31/07	MINUTE ORDER	1	3
06/07/07	MINUTE ORDER	1	4
06/14/07	MINUTE ORDER	1	5
06/28/07	MINUTE ORDER	1	6
07/18/07	MINUTE ORDER	1	7
07/27/07	MINUTE ORDER	1	8
07/31/07	MINUTE ORDER	1	9
08/09/07	INFORMATION	1	10
08/09/07	REQUEST/MOTION FOR PROSECUTION DISCOVERY	1	13
08/10/07	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING	1	15
08/13/07	MINUTE ORDER	1	34
08/23/07	MINUTE ORDER	1	35
09/11/07	MINUTE ORDER	1	36
10/30/07	DEFENDANT'S REQUEST FOR CONTINUANCE	1	37
10/30/07	MINUTE ORDER	1	39
11/07/07	MINUTE ORDER	1	40
11/13/07	MINUTE ORDER	1	41
11/13/07	DEFENDANT'S REQUEST FOR CONTINUANCE	1	42
11/14/07	MINUTE ORDER	1	44
11/19/07	MINUTE ORDER	1	45
11/26/07	MINUTE ORDER	1	46
11/26/07	MINUTE ORDER	1	47
11/27/07	MINUTE ORDER	1	48
11/27/07	PEOPLE'S LIST OF POTENTIAL WITNESSES	1	50
11/28/07	MINUTE ORDER	1	52
11/29/07	MINUTE ORDER	1	53
11/29/07	WAIVER OF ISSUANCE OF ORDER TO SHOW CAUSE AND HEARING	1	55
11/29/07	PETITION AND REQUEST FOR ORDER REQUIRING WITNESS TO ANSWER QUESTIONS AND PRODUCE	1	57

DATE	DOCUMENTS	VOL.	PAGE NO.
	EVIDENCE		
11/29/07	ORDER REQUIRING WITNESS TO ANSWER QUESTIONS	1	59
12/03/07	MINUTE ORDER	1	61
12/04/07	MINUTE ORDER	1	63
12/04/07	REQUEST FOR JURY INSTRUCTIONS BY DEFENSE	1	65
12/04/07	STIPULATION RE: JURY ADMONITION	1	66
12/04/07	REQUEST FOR JURY INSTRUCTIONS BY THE PEOPLE	1	67
12/04/07	LIST OF EXHIBITS	1	68
12/04/07	JURY INSTRUCTIONS	1	69
12/04/07	VERDICTS (SIGNED)	1	110
12/14/07	MINUTE ORDER	1	112
12/14/07	LIST OF EXHIBITS	1	114
12/14/07	LIST OF EXHIBITS (AMENDED)	1	115
12/14/07	PEOPLE'S EXHIBIT 6 (969B PACKET)	1	116
12/14/07	PEOPLE'S EXHIBIT 5 (969B PACKET)	1	123
12/14/07	PEOPLE'S EXHIBIT 7 (969B PACKER)	1	132
01/11/08	MINUTE ORDER	1	143
01/11/08	PROBATION OFFICER'S REPORT (CONFIDENTIAL ENVELOPE)		144
03/06/08	INVITATION TO THE COURT TO DISMISS (ROMERO MOTION)	1	158
03/14/08	MINUTE ORDER	1	173
03/14/08	MINUTE ORDER	1	174
03/14/08	PEOPLE'S OPPOSITION TO DEFENDANT'S ROMERO MOTION	1	175
03/21/08	MINUTE ORDER	1	181
03/21/08	MINUTE ORDER	1	182
03/28/08	MINUTE ORDER	1	183
03/28/08	MINUTE ORDER	1	184
04/08/08	CORRESPONDENCE FROM ROBERT PRESLEY DETENTION CENTER	1	185
05/09/08	MINUTE ORDER	1	187
05/09/08	MINUTE ORDER	1	188
06/20/08	MINUTE ORDER	1	189
06/20/08	MINUTE ORDER	1	190

---

DATE	DOCUMENTS	VOL.	PAGE NO.
07/11/08	MINUTE ORDER	1	191
07/11/08	MINUTE ORDER	1	192
07/15/08	ABSTRACT OF JUDGMENT	1	194
09/15/08	NOTICE OF APPEAL	1	198





CASE NO. RIF136990

(ALPHABETICAL INDEX)

DATE	DOCUMENTS	VOL.	PAGE NO.
07/15/08	ABSTRACT OF JUDGMENT	1	194
04/08/08	CORRESPONDENCE FROM ROBERT PRESLEY DETENTION CENTER	1	185
10/30/07	DEFENDANT'S REQUEST FOR CONTINUANCE	1	37
11/13/07	DEFENDANT'S REQUEST FOR CONTINUANCE	1	42
05/31/07	FELONY COMPLAINT	1	1
08/09/07	INFORMATION	1	10
03/06/08	INVITATION TO THE COURT TO DISMISS (ROMERO MOTION)	1	158
12/04/07	JURY INSTRUCTIONS	1	69
12/04/07	LIST OF EXHIBITS	1	68
12/14/07	LIST OF EXHIBITS	1	114
12/14/07	LIST OF EXHIBITS (AMENDED)	1	115
05/31/07	MINUTE ORDER	1	3
06/07/07	MINUTE ORDER	1	4
06/14/07	MINUTE ORDER	1	5
06/28/07	MINUTE ORDER	1	6
07/18/07	MINUTE ORDER	1	7
07/27/07	MINUTE ORDER	1	8
07/31/07	MINUTE ORDER	1	9
08/13/07	MINUTE ORDER	1	34
08/23/07	MINUTE ORDER	1	35
09/11/07	MINUTE ORDER	1	36
10/30/07	MINUTE ORDER	1	39
11/07/07	MINUTE ORDER	1	40
11/13/07	MINUTE ORDER	1	41
11/14/07	MINUTE ORDER	1	44
11/19/07	MINUTE ORDER	1	45
11/26/07	MINUTE ORDER	1	46
11/26/07	MINUTE ORDER	1	47
11/27/07	MINUTE ORDER	1	48
11/28/07	MINUTE ORDER	1	52
11/29/07	MINUTE ORDER	1	53

DATE	DOCUMENTS	VOL.	PAGE NO.
12/03/07	MINUTE ORDER	1	61
12/04/07	MINUTE ORDER	1	63
12/14/07	MINUTE ORDER	1	112
01/11/08	MINUTE ORDER	1	143
03/14/08	MINUTE ORDER	1	173
03/14/08	MINUTE ORDER	1	174
03/21/08	MINUTE ORDER	1	181
03/21/08	MINUTE ORDER	1	182
03/28/08	MINUTE ORDER	1	183
03/28/08	MINUTE ORDER	1	184
05/09/08	MINUTE ORDER	1	187
05/09/08	MINUTE ORDER	1	188
06/20/08	MINUTE ORDER	1	189
06/20/08	MINUTE ORDER	1	190
07/11/08	MINUTE ORDER	1	191
07/11/08	MINUTE ORDER	1	192
09/15/08	NOTICE OF APPEAL	1	198
11/29/07	ORDER REQUIRING WITNESS TO ANSWER QUESTIONS	1	59
12/14/07	PEOPLE'S EXHIBIT 5 (969B PACKET)	1	123
12/14/07	PEOPLE'S EXHIBIT 6 (969B PACKET)	1	116
12/14/07	PEOPLE'S EXHIBIT 7 (969B PACKER)	1	132
11/27/07	PEOPLE'S LIST OF POTENTIAL WITNESSES	1	50
03/14/08	PEOPLE'S OPPOSITION TO DEFENDANT'S ROMERO MOTION	1	175
11/29/07	PETITION AND REQUEST FOR ORDER REQUIRING WITNESS TO ANSWER QUESTIONS AND PRODUCE EVIDENCE	1	57
01/11/08	PROBATION OFFICER'S REPORT (CONFIDENTIAL ENVELOPE)		144
08/10/07	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING	1	15
12/04/07	REQUEST FOR JURY INSTRUCTIONS BY DEFENSE	1	65
12/04/07	REQUEST FOR JURY INSTRUCTIONS BY THE PEOPLE	1	67
08/09/07	REQUEST/MOTION FOR PROSECUTION DISCOVERY	1	13

---

DATE	DOCUMENTS	VOL.	PAGE NO.
12/04/07	STIPULATION RE: JURY ADMONITION	1	66
12/04/07	VERDICTS (SIGNED)	1	110
11/29/07	WAIVER OF ISSUANCE OF ORDER TO SHOW CAUSE AND HEARING	1	55



**CASH BOND**  
RECOMMENDED \$ \$1,000,000.00  
ROD PACHECO  
DISTRICT ATTORNEY

AGENCY#: E07149070/RSDE

000001

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
(Riverside)

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

MARIO MARTINEZ  
DOB:08/04/1959  
AKA:MARCO MARTINEZ  
BOOKING# 200725999

Defendant.

DA # 22277  
FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
MAY 29 2007  
AMS  
MAY 31 2007  
R  
FELONY COMPLAINT  
By \_\_\_\_\_ Deputy  
DRUG CALENDAR  
PC 1000 DIVERSION PC 1210.1 REFERRED  
Eligible \_\_\_\_\_ YES \_\_\_\_\_  
Not Eligible X NO X  
Unknown if Eligible \_\_\_\_\_

COUNT 1

The undersigned, under penalty of perjury upon information and belief, declares: That the above named defendant MARIO MARTINEZ committed a violation of Health and Safety Code section 11379, subdivision (a), a felony, in that on or about May 29, 2007, in the County of Riverside, State of California, he did wilfully and unlawfully sell, transport, furnish, administer, import, and give away, and offer to sell, transport, furnish, administer, and give away a controlled substance, to wit, METHAMPHETAMINE.

COUNT 2

That the above named defendant(s) MARIO MARTINEZ committed a violation of Health and Safety Code section 11377, subdivision (a), a felony, in that on or about May 29, 2007 in the County of Riverside, State of California, he did wilfully and unlawfully have in his possession a controlled substance, to wit, METHAMPHETAMINE.

PRIOR OFFENSE NO. 1

It is further alleged that said defendant, MARIO MARTINEZ, was on or about October 6, 1989, in the Superior Court of the State of California for the County of Riverside, convicted of the crime of BURGLARY, a felony, in violation of section 459 of the Penal Code, and that he then served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

PRIOR OFFENSE NO. 2

It is further alleged that said defendant, MARIO MARTINEZ, was on or about March 10, 1994, in the Superior Court of the State of California for the County of Riverside, convicted of the crime of BURGLARY, a felony, in violation of section 459 of the Penal Code, and that he then served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

COURT ORIGINAL

**CASH BOND**  
RECOMMENDED \$ \_\_\_\_\_  
ROD PACHECO  
DISTRICT ATTORNEY

**PRIOR OFFENSE NO. 3**

It is further alleged that said defendant, MARIO MARTINEZ, was on or about February 10, 1995, in the Superior Court of the State of California for the County of Riverside, convicted of the crime of VEHICLE THEFT, a felony, in violation of section 10851 of the Vehicle Code, and that he then served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

**PRIOR OFFENSE NO. 4**

It is further alleged that said defendant, MARIO MARTINEZ, was on or about July 1, 2001, in the Superior Court of the State of California for the County of Riverside, convicted of the crime of POSSESS CONTROLLED SUBSTANCE, a felony, in violation of section 11377 of the Health and Safety Code, and that he then served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

**PRIOR OFFENSE NO. 5**

It is further alleged that said defendant, MARIO MARTINEZ, was on or about December 30, 2003, in the Superior Court of the State of California for the County of Riverside, convicted of the crime of FIRST DEGREE BURGLARY, a felony, in violation of section 459 of the Penal Code, and that he then served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

**SPECIAL ALLEGATION - 667(c) & (e)(2)(A) and 1170.12(c)(2)(a)**

It is further alleged that prior to the commission of the offense(s) charged herein the defendant, MARIO MARTINEZ, was convicted of two or more serious and violent felonies, within the meaning of Penal Code sections 667, subdivisions (c) and (e)(2)(A), and 1170.12, subdivision (c), subsection (2)(a), to wit

FIRST PRIOR, a conviction on or about December 30, 2002 in the Superior Court of the State of California, for the County of Riverside, for the crime of, FIRST DEGREE BURGLARY, in violation of Penal Code section 459, and

SECOND PRIOR, a conviction on or about October 14, 1988 in the Superior Court of the State of California, for the County of Los Angeles, for the crime of, ROBBERY, in violation of Penal Code section 211.

I declare under penalty of perjury upon information and belief under the laws of the State of California that the foregoing is true and correct.

Dated: May 31, 2007

BCH:rc

  
Complainant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 MAIN STREET  
RIVERSIDE, CA 92501

000003

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Felony Incustody Arraignment  
Date: 05/31/07 Time: 1:30 pm Dept/Div: 34I  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Gordon R. Burkhardt Presiding.  
Courtroom Assistant: Theresa A. Collins  
Court Reporter: H. Lee.  
Defendant Represented By DPD Rownaghi.  
Defendant Present.  
Arraignment set for 06/07/2007 at 8:30 in Dept 34  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Remains remanded to custody of Riverside Sheriff.  
Bail Set in Amount of \$1000000.00.  
Minute order printed to Smith Correctional Facility.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000004

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Arraignment  
Date: .06/07/07      Time: 8:30 am      Dept/Div: 34  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
=====

Honorable Judge Gordon R. Burkhart Presiding.  
Courtroom Assistant: Theresa A. Collins  
Court Reporter: N. Canales.  
People Represented By Deputy District Attorney Bentley.  
Public Defender Declares Conflict.  
Conflict Defense Lawyers appointed.  
Defendant Present.  
Hearing Continued at the request of Defense. Matter continued to  
06/14/2007 at 8:30 in Department 34.  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Remains remanded to custody of Riverside Sheriff.  
Bail To Remain as fixed.  
Minute order printed to Smith Correctional Facility.

Dispo



SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000005

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Arraignment  
Date: 06/14/07      Time: 8:30 am      Dept/Div: 34  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Gordon R. Burkhart Presiding.  
Courtroom Assistant: K. Lopez  
Court Reporter: M. Lane.  
People Represented By Deputy District Attorney SUSSMAN.  
Defendant Represented By CDL R.RENNER.  
Defendant Present.  
Arraignment set for 06/28/2007 at 8:30 in Dept 34  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute order printed to Smith Correctional Facility.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000006

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Arraignment

Date: .06/28/07      Time: 8:30 am      Dept/Div: 34

=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Gordon R. Burkhart Presiding.  
Courtroom Assistant: M. Acuna  
Court Reporter: J. Schlax.  
People Represented By Deputy District Attorney Bentely.  
Defendant Represented By CDL R. Renner by Baptie.  
Defendant Present.  
Hearing Continued at the request of Defense. Matter continued to  
07/18/2007 at 8:30 in Department 34.  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Remains remanded to custody of Riverside Sheriff.  
Bail To Remain as fixed.  
Minute order printed to Smith Correctional Facility.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000007

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Arraignment  
Date: .07/18/07      Time: 8:30 am      Dept/Div: 34  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Gordon R. Burkhart Presiding.  
Courtroom Assistant: Sandra Sanchez  
Court Reporter: H. Lee.  
Defendant Represented By CDL-R.Renner.  
Defendant Present.  
Defendant acknowledges the complaint reflects his/her true name  
and date of birth.  
Defendant Arraigned  
Defendant Advised of Constitutional Rights.  
Defendant advised of right to trial by jury.  
Defendant advised of right to confront and cross examine  
witnesses; right to present evidence on own behalf.  
Defendant advised of privilege against self incrimination.  
Defendant advised of charges and consequences of his/her plea  
and statutory sentencing.  
Pleads Not Guilty to all charges.  
Defendant Denies Prior(s).  
Felony Settlement Conference set on 07/27/2007 at 8:30 in Dept.  
34  
Preliminary Hearing set for 07/31/2007 @ 8:30 in Dept. 34.  
Copy of COMPLAINT/REPORT(S) furnished to District Attorney,  
Defense Counsel/Defendant.  
All parties notified.  
Defendant ordered to return on any and all future hearing dates.  
Remains remanded to custody of Riverside Sheriff.  
Bail To Remain as fixed.  
Minute order printed to Smith Correctional Facility.  
\*\*MINUTE ORDER OF COURT PROCEEDING\*\*

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000008

People of the State of California

Vs.

MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Felony Settlement Conference

Date: 07/27/07 Time: 8:30 am Dept/Div: 34

=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Commissioner Bambi Moyer Presiding.

Courtroom Assistant: M. Acuna

Court Reporter: H. Lee.

People Represented By Deputy District Attorney Kiel.

Defendant Represented By CDL-Renner.

Defendant Present.

Hearing on 07/31/2007 at 8:30 for PH in Dept. 34 is Confirmed.

Defendant ordered to return on any and all future hearing dates.

Remains remanded to custody of Riverside Sheriff.

Bail To Remain as fixed.

Minute order printed to Smith Correctional Facility.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000009

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Preliminary Hearing  
Date:.07/31/07 Time: 8:30 am Dept/Div: 51  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge J. Thompson Hanks Presiding.  
Courtroom Assistant: D. Leutz  
Court Reporter: G. Soria.  
People Represented By Deputy District Attorney Nasif.  
Defendant Represented By CDL-Renner.  
Defendant Present.  
All parties announce ready for preliminary hearing.  
People's Witness, Deputy Josh Hireoka is Sworn and testifies.  
Witness Deputy Josh Hirioka excused.  
people rest.  
No defense at this time.  
Court finds sufficient cause to hold the defendant to answer on  
all charges.  
Information arraignment set for 08/13/2007 at 13:30 in  
Department 63.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute order printed to Smith Correctional Facility.

Dispo

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

ROD PACHECO  
District Attorney  
County of Riverside  
4075 Main Street, First Floor  
Riverside, California 92501  
Telephone: (951) 955-5400  
Brian J. Sussman  
Supervising Deputy District Attorney  
State Bar No. 116283

RECEIVED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
2007 AUG -9 AM 9:00 Arraign: 8-13-07

000010 <sup>UB</sup>

ORIGINAL

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
AUG 09 2007  
DP

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
(Riverside)

DMD  
AUG 09 2007

THE PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff,  
  
v.  
  
MARIO MARTINEZ,  
AKA: MARCO MARTINEZ,  
  
Defendant.

NO. RIF136990  
  
INFORMATION  
  
AGENCY#: E07149070/RSDE

IMAGED

COUNT 1

The District Attorney of the County of Riverside hereby accuses MARIO MARTINEZ of a violation of Health and Safety Code section 11379, subdivision (a), a felony, in that on or about May 29, 2007, in the County of Riverside, State of California, he did wilfully and unlawfully sell, transport, furnish, administer, import, and give away, and offer to sell, transport, furnish, administer, and give away a controlled substance, to wit, METHAMPHETAMINE.

COUNT 2

For a further and separate cause of action, being a different offense from but connected in its commission with the charge set forth in count 1 hereof, the District Attorney of the County of Riverside hereby accuses MARIO MARTINEZ of a violation of Health and Safety

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

Code section 11377, subdivision (a), a felony, in that on or about May 29, 2007 in the County of Riverside, State of California, he did wilfully and unlawfully have in his possession a controlled substance, to wit, METHAMPHETAMINE.

**FIRST PRIOR OFFENSE:**

The District Attorney of the County of Riverside further charges that the defendant, MARIO MARTINEZ, was on or about October 6, 1989, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of BURGLARY, a felony, in violation of Penal Code section 459, and thereafter served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

**SECOND PRIOR OFFENSE:**

The District Attorney of the County of Riverside further charges that the defendant, MARIO MARTINEZ, was on or about <sup>May 13</sup> March 10, 1994, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of BURGLARY, a felony, in violation of Penal Code section 459, and thereafter served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

**THIRD PRIOR OFFENSE:**

The District Attorney of the County of Riverside further charges that the defendant, MARIO MARTINEZ, was on or about February 10, 1995, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of VEHICLE THEFT, a felony, in violation of Vehicle Code section 10851, and thereafter served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

**FOURTH PRIOR OFFENSE:**

The District Attorney of the County of Riverside further charges that the defendant, MARIO MARTINEZ, was on or about July 19, 2001, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of POSSESS CONTROLLED SUBSTANCE, a felony, in violation of Health and Safety Code section 11377, and thereafter served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

Dismissed  
by D.A.  
on 12/14/07

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

**FIFTH PRIOR OFFENSE:**

The District Attorney of the County of Riverside further charges that the defendant, MARIO MARTINEZ, was on or about December 30, 2003, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of FIRST DEGREE BURGLARY, a felony, in violation of Penal Code section 459, and thereafter served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

**FIRST SPECIAL PRIOR OFFENSE [PC 667(c)&(e)(2)(A) and 1170.12(c)(2)(A)]:**

The District Attorney of the County of Riverside further charges that the defendant, MARIO MARTINEZ, was on or about December 30, 2003, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of FIRST DEGREE BURGLARY, a serious and violent felony, in violation of Penal Code section 459, within the meaning of Penal Code sections 667, subdivisions (c) and (e)(2)(A), and 1170.12, subdivision (c)(2)(A).

**SECOND SPECIAL PRIOR OFFENSE [PC 667(c)&(e)(2)(A) and 1170.12(c)(2)(A)]:**

The District Attorney of the County of Riverside further charges that the defendant, MARIO MARTINEZ, was on or about October 14, 1988, in the Superior Court of the State of California, for the County of Los Angeles, convicted of the crime of <sup>attempted</sup> ROBBERY, a serious and violent felony, in violation of Penal Code section <sup>664</sup> 211, within the meaning of Penal Code sections 667, subdivisions (c) and (e)(2)(A), and 1170.12, subdivision (c)(2)(A).

ROD PACHECO  
District Attorney

*Brian J. Sussman*  
BRIAN J. SUSSMAN  
Supervising Deputy District Attorney

BJS:skh



000013

RECEIVED  
SUPERIOR COURT OF CALIF  
COUNTY OF RIVERSIDE

2007 AUG -9 AM 9:00

1 ROD PACHECO  
2 District Attorney  
3 County of Riverside  
4 4075 Main Street, First Floor  
5 Riverside, California 92501  
6 Telephone: (951) 955-5400  
7 Brian J. Sussman  
8 Supervising Deputy District Attorney  
9 State Bar No. 116283

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

AUG 09 2007

PP

DMD  
AUG 09 2007

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
(Riverside)

16 THE PEOPLE OF THE STATE OF CALIFORNIA,

17 Plaintiff,

18 v.

21 MARIO MARTINEZ,  
22 AKA: MARCO MARTINEZ,

23 Defendant.

Case No. RIF136990  
REQUEST/MOTION FOR  
PROSECUTION DISCOVERY  
(Pen. Code, §§ 1054.3,  
1054.5(a) & (b).)  
(Estimated Time: 10 mins.)

25 TO: THE HONORABLE JUDGE OF THE SUPERIOR COURT, Riverside Branch, AND  
26 TO COUNSEL FOR ABOVE-NAMED DEFENDANT:

27 PLEASE BE INFORMED that the Office of the District Attorney of Riverside County,  
28 acting on behalf of the Plaintiff, the People of the State of California, hereby requests/moves for  
29 discovery/disclosure of the following items from the defendant and counsel in this case, pursuant  
30 to Penal Code section 1054.3(a) and (b):

- 31 1. The names and addresses of persons, other than the defendant, counsel or defendant
- 32 intend to call as witnesses at trial;
- 33 2. Any relevant written or recorded statements of the persons in No. 1 above and/or
- 34 reports of the statement of such persons;
- 35 3. Any reports or statement of experts made in connection with this case, including, but
- 36 not limited to, the results of physical or mental examinations, scientific tests, experiments, or

1 comparisons which the defendant or counsel intend to offer as evidence at the trial of this case;  
2 and

3 4. Any "real," i.e., tangible or physical evidence which the defendant or counsel intends to  
4 offer in evidence at the trial.

5 PLEASE TAKE NOTE that pursuant to the provisions of Penal Code section 1054.5(b) if  
6 the above material and information requested is not provided to counsel for the plaintiff within 15  
7 days of this request a court order will be sought to promptly enforce the provisions of Penal Code  
8 section 1054.3.

9 Dated: August 8, 2007

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

Respectfully submitted,

ROD PACHECO  
District Attorney

*Brian J. Sussman for BS*  
BRIAN J. SUSSMAN  
Supervising Deputy District Attorney

BJS:skh

8.13 63 000015

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

AUG 10 2007

SD

PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 MARIO MARTINEZ, )  
 )  
 DEFENDANT. )

RIF 136990

REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

Before The Honorable J. Thompson Hanks  
Department 51  
July 31, 2007

APPEARANCES:

FOR THE PEOPLE:

OFFICE OF THE DISTRICT ATTORNEY  
BY: TOREY NASIF, DEPUTY  
4075 Main Street, 1st Floor  
Riverside, California 92501

FOR THE DEFENDANT:

ATTORNEY AT LAW  
BY: RICHARD RENNER, ATTORNEY  
3891 TENTH STREET  
RIVERSIDE, CALIFORNIA 92501

**ORIGINAL**

REPORTED BY:

GISELE D. SORIA, CSR 13130  
CERTIFIED SHORTHAND REPORTER  
RIVERSIDE COUNTY SUPERIOR COURT

1 RIVERSIDE, CALIFORNIA - JULY 31, 2007.

2 (BEFORE THE HONORABLE J. THOMPSON HANKS - DEPT. 51)

3 THE BAILIFF: Remain seated, come to order. This  
4 court is now in session.

5 THE COURT: All right. This is People versus  
6 Martinez. Mr. Renner here on his behalf, and who is --

7 MS. NASIF: Torey Nasif for the People.

8 THE COURT: Okay. We got two counts. And some  
9 prison priors. How many witnesses?

10 MS. NASIF: Just one, your Honor.

11 THE COURT: One. Anything else we need to do before  
12 we start.

13 MS. NASIF: May I please designate Deputy Mario  
14 Martinez as my investigate officer?

15 THE COURT: Both investigator and your witness.

16 MS. NASIF: Yes, your Honor.

17 THE COURT: Make him run back and forth. Okay. Are  
18 you sure he's familiar with the courtroom.

19 MS. NASIF: My bad, your Honor, I'd actually like --  
20 I'll just have him as my witness.

21 THE COURT: Okay. Call your witness.

22 MS. NASIF: Call Deputy Mario Martinez to the stand,  
23 please.

24 THE COURT: Interesting, same name as the Defendant.

25 MS. NASIF: I'm sorry. I had it written down in my  
26 notes. I'm so sorry about that. Deputy Joshua with a  
27 Hiraoka. It's been one of those days.

28 THE CLERK: You do solemnly state to tell the truth,

1 the whole truth, and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please state and spell our name.

4 THE WITNESS: Deputy Josh Hiraoka, H-i-r-a-o-k-a.

5 MS. NASIF: Good afternoon, Deputy Hiraoka, what is  
6 your occupation?

7 A I'm a deputy sheriff with the Riverside County  
8 Sheriff's Department.

9 Q And how long have you been a sworn peace officer for  
10 the State of California?

11 A It'll be five years September 28th, I believe.

12 Q How long -- prior to attending the -- prior to becoming  
13 a peace officer, did you attend a training course certified  
14 by the commission on peace officer's standards and training?

15 A Yes, I did.

16 Q And during that academy, did you receive training in  
17 investigation and reporting of cases and testifying at  
18 preliminary hearings?

19 A Yes.

20 Q And did you successfully complete this course?

21 A Yes.

22 Q Did you get a certificate from this course?

23 A Yes, I did.

24 Q Have you previously testified pursuant to Proposition  
25 115?

26 A Yes.

27 Q Approximately how many times?

28 A Approximately once.

1 Q Were you on duty on May 29th, 2007 at approximately  
2 12:35 p.m.?

3 A Yes, I was.

4 Q And what did you observe at this time?

5 A At that time I was traveling southbound on Hunter  
6 Street, when I saw the defendant in the vehicle with the --  
7 he was in the passenger's seat, heading southbound on Hunter.  
8 He was pulled over to the side of the road. He was in the  
9 front right passenger seat, along with the driver, Ms. Eves.

10 MR. RENNER: Your Honor, narrative, objection.

11 THE COURT: Yeah, ask another question.

12 MS. NASIF: When you have first observed the  
13 vehicle, did you do notice anything unusual about the victim?

14 A It was missing the tags on the license plate, regarding  
15 the month of the registration.

16 Q And at this point did you conduct a traffic stop?

17 A I followed the vehicle to Campbell and Mission. At  
18 this point is when I made the traffic stop.

19 Q I'm sorry. You said where was the traffic stop? What  
20 location?

21 A It was at Mission across of Campbell.

22 Q Is this in the County of Riverside?

23 A Yes, it is.

24 Q Going back to observing the vehicle, did you notice --  
25 you had said something about the defendant, what was he doing  
26 at this point?

27 A As I followed the vehicle southbound on Hunter Street,  
28 the subject was -- kept leaning forward in the passenger seat

1 towards the dashboard, in a forward motion.

2 Q As you approached the vehicle, did you go initially to  
3 the passenger's side or driver's side?

4 A Initially to the driver's side.

5 Q And where was the defendant sitting at that time?

6 A The defendant was sitting in the passenger seat.

7 Q Do you see him today here in court?

8 A Yes, I do.

9 Q Will you describe what he is wearing and where he is  
10 sitting?

11 A Wearing an orange jumpsuit, to my far right at the  
12 counsel table.

13 MS. NASIF: Your Honor, may the record reflect the  
14 witness has identified the defendant?

15 THE COURT: So reflect.

16 MS. NASIF: Did you ask for identification for the  
17 driver?

18 A Yes, I did.

19 Q Did you also ask for identification for the passenger?

20 A Yes, did I.

21 Q Did he make any statements that at that time with  
22 regards to the identification?

23 A Yes. He stated he did not have any identification on  
24 him but that he was on parole for burglary.

25 Q And did you do a -- any point did you do a dispatch  
26 check to confirm it?

27 A Yes. I obtained his name and date of birth from him  
28 and performed a computer inquiry with dispatch.

1 Q And after doing so -- while doing, after doing a  
2 records check, did you step away from the vehicle?

3 A Yes, I did.

4 Q And at this point did you keep an eye on both the  
5 driver and the passenger?

6 A Yes, I did.

7 Q At any point did you see the driver move toward the  
8 passenger seat?

9 A No, I did not.

10 Q Make any movement to the right-hand side of the  
11 passenger seat?

12 A No, I did not.

13 Q After doing a record check, what did you do next?

14 A The record check indicated the driver had a felony  
15 warrant for possession of stolen property, and the suspect --  
16 subject here in court had a -- correction -- was on parole.

17 Q And did you detain the driver?

18 A Yes, I did.

19 Q After detaining the driver, what did you do next?

20 A I asked the driver if I could search her vehicle.

21 Q And did you conduct a search of the vehicle?

22 A Yes, I did. I went to the passenger's -- front  
23 passenger's side of the vehicle to have Mr. Martinez step out  
24 of the vehicle.

25 Q And did you observe anything as the Mr. -- as the  
26 defendant stepped out of the vehicle?

27 A Right when the front door was opened I immediately  
28 noticed a plastic bag containing a white crystal substance in



1 between his two feet.

2 Q What is your training and recognition of controlled  
3 substances, include methamphetamine?

4 A Yes, it does.

5 Q What does your training consist of?

6 A Training within the academy for post certificate.

7 Q Approximately how many hours of training have you had  
8 in the academy?

9 A Prior to the academy, in addition to that, I received a  
10 drug use recognition course, which was four hours. I don't  
11 no exactly how many hours I received during the academy  
12 itself.

13 Q Approximately?

14 A I can't give an honest answer on that.

15 Q How many case have investigated involving  
16 methamphetamine, approximately?

17 A Approximately 125.

18 Q And how many of those resulted in arrests?

19 A Approximately 15.

20 Q Based on your training and experience as to what the  
21 substance was that you recovered on the floorboard of the  
22 passenger's seat?

23 MR. RENNER: Objection. Foundation.

24 THE COURT: No, it goes to weight. Admissible. You  
25 you can answer.

26 THE WITNESS: Methamphetamine.

27 MS. NASIF: Did you eventually get a chance to test  
28 the substance?

1 A Yes, I did.

2 Q And how did you test it?

3 A With a departmental issued Narco pouch. It's a drug  
4 test, and it was specifically for methamphetamines.

5 Q Had you used this test before.

6 A Yes, I have.

7 Q Approximately how many times?

8 A Approximately eight times.

9 Q And have you received training on how to use this test?

10 A Yes.

11 Q And on this occasion did you perform the test in  
12 accordance with the training that you received?

13 A Yes, I did in addition to following the directions that  
14 were directly specified on the box.

15 Q And did your result your opinion as to what the  
16 substance was?

17 A Yes, it did.

18 Q And what was that result?

19 A That was positive for methamphetamine.

20 Q Did you have eventually get a chance to weigh the  
21 substance?

22 A Yes, I did -- prior to testing it.

23 Q How much did it weigh?

24 A Including packaging, one gram.

25 Q In your opinion, what is a usable quantity?

26 A Any amount that can be manipulated -- physically  
27 manipulated.

28 Q In your opinion, was one gram a usable quantity?

1 A Yes, it was.

2 Q Going back to the search of the vehicle, did you locate  
3 anything else that was in vehicle -- I'm sorry. Strike that.

4 When you searched the vehicle, did you find anything  
5 else --

6 A No.

7 Q -- besides what was found? Did you at some point  
8 release the vehicle to someone other than the defendant or  
9 the driver?

10 A The defendant stated the vehicle belonged to his  
11 mother. When I checked the registration, it confirmed the  
12 defendant's story and he stated he would like it -- I give  
13 him the option of releasing it to his mother.

14 Q And so you did release it?

15 A Yes.

16 THE COURT: Does this have something to do with  
17 charges here?

18 MS. NASIF: I guess I'm just anticipating a possible  
19 defense. I just want to make sure I covered it.

20 MS. NASIF: I have no further questions, your Honor.

21 THE COURT: Mr. Renner?

22 MR. RENNER: Thank you, your Honor. Deputy, my  
23 understanding is you're like southbound on Hunter when you  
24 see the vehicle in front of you?

25 A Yes.

26 Q Okay. And this is some little red Toyota?

27 A Yes, it was.

28 Q Were the windows tinted at all?

1 A No.

2 Q Okay. So you can see fairly well what's going on  
3 inside that vehicle as you were --

4 A Yes, I could.

5 Q Okay. And apparently you decided you're going to  
6 perform a traffic stop on this vehicle?

7 A Yes.

8 Q And how far did this vehicle travel on Hunter before  
9 you determined you were going to make a traffic stop?

10 A Approximately 25 feet.

11 Q 25 feet. That's not very far.

12 A No.

13 Q So it turned off I take it?

14 A Yes. After I decided to make the stop, I decided what  
15 I was going to put out on the radio. And then prior to  
16 turning on the overhead lights.

17 Q Okay. So before you make this traffic stop, you're  
18 calling in for assistance?

19 A No. I let dispatch know my location and the license of  
20 the vehicle?

21 Q Okay. So this is before you actually turn on your  
22 overheads --

23 A Yes, it is.

24 Q -- to stop the car. So how far on Hunter do you  
25 actually follow this vehicle? 25 feet or much longer?

26 A Approximately that would probably be about another  
27 50 feet before it turned on to mission.

28 Q Okay. So you're following it on Hunter. It then turns

1 on Mission?

2 A Yes.

3 Q You continue to follow it on Mission. How far do you  
4 think you're going to Mission? Generally?

5 A On Mission I'd say maybe 50 yards.

6 Q 50 yards. And it's at this period of time that you  
7 observed the movement of the defendant inside the vehicle?

8 A That was on Hunter Street.

9 Q In that 25 feet?

10 A No. After the 50 feet -- between -- because there was  
11 25 feet from when I initially saw them that I decided to make  
12 the stop, and then there was another 50 feet -- approximately  
13 50 feet before he turned on to Mission Boulevard.

14 Q Okay. So you've got 75 feet that they're traveling on  
15 Hunter; is that right?

16 A Approximately.

17 Q And how fast was the vehicle traveling?

18 A Approximately 20 miles an hour.

19 Q Okay. So at 20 miles an hour how long is it taking him  
20 to drive at 75 feet?

21 A I was not timing him at the time.

22 Q You weren't timing --

23 A No.

24 Q -- but obviously it was a couple seconds at most?

25 A I don't have a calculator to --

26 Q But you think that's generally right?

27 A Five to ten seconds.

28 Q Five or ten seconds in your opinion. And during that

1 five or ten seconds, you observe some sort of movement inside  
2 the vehicle?

3 A Yes.

4 Q And what was the driver doing during this period of  
5 time?

6 A Driving with her hands on the -- I couldn't -- she was  
7 maintaining a drive position and not leaning either way.

8 Q She wasn't looking in her rearview mirror to see who  
9 was behind her or worried about some police officer behind  
10 her?

11 A I couldn't see what her eyes were doing at the time.

12 Q Her head didn't move?

13 A No.

14 Q But apparently the defendant made some movement that  
15 made you suspicious?

16 A Yes.

17 Q And this was -- I believe you described it as leaning  
18 forward?

19 A Yes.

20 Q Okay. Did he look back over his shoulders to see what  
21 was behind him?

22 A I don't recall.

23 Q Okay. So as far as you know he never saw a police  
24 officer behind him?

25 A I can't tell you what he did or did not see.

26 Q Well you said he was moving forward and backward?

27 A Yes.

28 Q And so if you were watching him, you didn't see him

1 turn around in the seat to look back?

2 A I don't recall.

3 Q Okay. You couldn't see what he was doing except  
4 leaning forward and black.

5 A Yes.

6 Q Did you look to the side to see if there was a rearview  
7 mirror on the driver's side?

8 MS. NASIF: Objection. Relevance. Sorry, I --

9 MR. RENNER: Is there an objection pending?

10 MS. NASIF: Yes. Objection. Relevance.

11 THE COURT: Overruled.

12 MR. RENNER: Okay. After the vehicle turns on  
13 Mission, and you make a decision to turn on your overheads  
14 and pull it over to the side, approximately how long did it  
15 travel? How far?

16 A I believe it was about 50 yards.

17 Q 50 yards. Okay. And again it's slowing down from  
18 about 25?

19 A Approximately.

20 Q During this period of time, did you see the defendant  
21 make the same movements forward and backwards in the seat?

22 A No.

23 Q Okay. So all that ceased by the time the car had made  
24 the turn?

25 A At that time.

26 Q Was the driver of the vehicle looking back or deciding  
27 -- seeing who was behind her?

28 A She was looking over the rearview mirror to make the

1 stop.

2 Q So now you can actually see her moving her head to --  
3 at least looking at the rearview mirror?

4 A Yes.

5 Q So the vehicle pulls over, it yields; is that correct?

6 A That's correct.

7 Q And you approach on the driver's side and ask the  
8 driver for her identification -- driver's license and  
9 registration, I take it?

10 A Yes.

11 Q And at some point in time, you come back to your own  
12 vehicle and run a records check on her?

13 A Both her and the defendant.

14 Q The defendant. And that's because you leaned over and  
15 asked him for his identification as well?

16 A Yes.

17 Q He advised you that he was a parolee?

18 A Yes, he did.

19 Q So when you go back to your vehicle and you run the  
20 names, apparently this is when you find out that she has a  
21 felony warrant for her?

22 A Yes.

23 Q Did at that point in time this become a felony stop?

24 A No, it did not.

25 Q Okay. Will you have any backup with you at that  
26 particular point in time?

27 A I called for backup.

28 Q At that point in time?



1       A Yes.

2       Q Okay. Did you take the driver out of the vehicle at  
3 that point in time?

4       A Yes, I did.

5       Q Did you physically restrain her?

6       A Yes, I did.

7       Q Now the defendant was still inside the vehicle?

8       A At that point he was.

9       Q Now you asked him to exit the vehicle?

10      A I approached the vehicle and asked him to exit the  
11 vehicle.

12      Q Now when you were back in your vehicle, running these  
13 two names, how long do you think it was before you had  
14 learned what the names were and their status?

15      A Approximately two to three minutes.

16      Q So you're back in your vehicle for two to three  
17 minutes. And during this period of time, the driver and the  
18 defendant are sitting together in the vehicle?

19      A Yes.

20      Q And you're keeping an eye on them?

21      A Yes. I'm standing outside of my vehicle.

22      Q Okay. How far away from that is the little vehicle?

23      A Approximately 15 to 20 feet.

24      Q 15 to 20 feet away?

25      A Yes.

26      Q And you're looking through the back window of their  
27 vehicle?

28      A Of theirs, yes.

1 Q Okay. Now when you open the door apparently you see  
2 something that catches your eye on the floorboard of the  
3 passenger's side?

4 A Yes.

5 Q And where was that exactly?

6 A Approximately the center of the floor mat area.

7 Q Right smack dab in the center of the floorboard area?

8 A Right next to his feet, yes. That's where his feet  
9 were placed.

10 Q Could you describe it a little more carefully?

11 A It was in a small plastic baggy that was twisted -- the  
12 end was twisted closed.

13 Q So it's one of those little clear plastic Baggies so  
14 you can see the white powder inside of it?

15 A Yes.

16 Q And the top is kind of twisted together?

17 A Yes.

18 Q Was it just kind of laying there?

19 A Uh-huh. That is correct.

20 Q And the whole thing weighs about a gram when you  
21 finally weigh it back at the station?

22 A Yes.

23 Q Did you conduct any kind of examination of either the  
24 drive or the defendant to see whether they were under the  
25 instance of anything at the time you made your stop?

26 A Not at the time no.

27 Q And during the course of your investigation and having  
28 various discussions with them, did you notice of being under

1 the influence?

2 MS. NASIF: Objection. Relevance.

3 THE COURT: Overruled.

4 THE WITNESS: No.

5 MR. RENNER: Okay. I know you weren't asked this,  
6 but I'm assuming that nobody claimed the little package that  
7 was laying there?

8 A Nobody specifically claimed it, no.

9 Q Okay. Both denied it was theirs, right?

10 THE COURT: If they did that, it would be hearsay,  
11 wouldn't it.

12 MR. RENNER: Kind of assuming something. You  
13 indicated the vehicle was released to Mr. Martinez's mother?

14 A Yes.

15 Q Was she -- did she respond to the scene?

16 A Yes, she did.

17 Q Was this somebody's phone call -- somebody call her?

18 A Yes. I obtained the telephone number from the  
19 defendant, and I telephoned the -- his mother.

20 Q And so she responded to the scene and took custody of  
21 the vehicle?

22 A Yes, she did.

23 Q You didn't ask her about the little package, did you?

24 A No, I did not.

25 MR. RENNER: Okay. I have further questions, your  
26 Honor.

27 THE COURT: Anything else?

28 MS. NASIF: Nothing further.

1 THE COURT: Thank you, Officer. You may step down.  
2 That concludes People's case?

3 MS. NASIF: We have no further witness, your Honor.

4 THE COURT: Affirmative evidence?

5 MR. RENNER: No affirmative defense, your Honor.

6 THE COURT: Either side wish to argue the matter?  
7 I'm assuming that transportation is what Count I is. Either  
8 side want to argue?

9 MS. NASIF: People submit, your Honor.

10 MR. RENNER: Submit.

11 THE COURT: Appearing to me the offenses mentioned  
12 in Count I a violation of 11379 of the Health and Safety Code  
13 and Count II a violation of 11377 of the Health and Safety  
14 Code have been committed, and there's sufficient cause to  
15 believe the defendant named Mario Martinez guilty thereof,  
16 ordered to be held to answer the same. Let's see, two  
17 weeks -- so the 13th at --

18 MS. NASIF: At 1:30.

19 THE COURT: Keep changes these things on me.

20 MR. RENNER: Thank you, your Honor.

21 THE COURT: Thank you.

22 MS. NASIF: Thank you, your Honor.

23

24 (ADJOURNMENT)

25

26

27

28

1 REPORTER'S CERTIFICATE

2

3

4

5 PEOPLE OF THE STATE OF CALIFORNIA, )

6 PLAINTIFF, )

7 VS. ) RIF 136990

8 MARIO MARTINEZ, )

9 DEFENDANT. )

10

11

12 I, GISELE D. SORIA, Certified Shorthand Reporter, No.

13 13130, do hereby certify:

14 That on JULY 31, 2007, in the County of Riverside, State

15 of California, I took in stenotype a true and correct report

16 of the testimony given and proceedings had in the

17 above-entitled case, Pages 1 through 17, and that the

18 foregoing is a true and accurate transcription of my stenotype

19 notes, taken as aforesaid, and is the whole thereof.

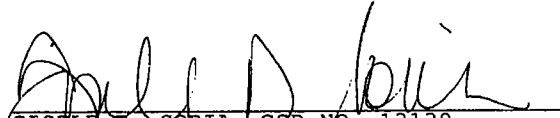
20

21

22 DATED: Riverside, California, August 8, 2007

23

24

25 

26 GISELE D. SORIA, CSR NO. 13130

27 Certified Shorthand Reporter

28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000034

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Information Arraignment  
Date: 08/13/07 Time: 1:30 pm Dept/Div: 63  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Helios J. Hernandez Presiding.  
Courtroom Assistant: C. Yorba  
Court Reporter: M. Lane.  
People Represented By Deputy District Attorney Catlett.  
Defendant Represented By CDL-Oliver.  
Defendant Present.  
Hearing Continued at the request of Defense. Matter continued to  
08/23/2007 at 13:30 in Department 63.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute order printed to Smith Correctional Facility.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000035

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Information Arraignment

Date: .08/23/07      Time: 1:30 pm      Dept/Div: 63

=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
=====

Honorable Judge Helios J. Hernandez Presiding.  
Courtroom Assistant: C. Yorba  
Court Reporter: M. Lane.  
People Represented By Deputy District Attorney M. Carney.  
Defendant Represented By CDL-Oliver.  
Defendant Present.  
Hearing Continued at the request of Defense. Matter continued to  
09/11/2007 at 13:30 in Department 63.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute order printed to Smith Correctional Facility.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000036

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Information Arraignment  
Date: .09/11/07 Time: 1:30 pm Dept/Div: 63  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Helios J. Hernandez Presiding.  
Courtroom Assistant: C. Yorba  
Court Reporter: M. Lane.  
People Represented By Deputy District Attorney Shah.  
Public Defender Appointed.  
Defendant Represented By CDL-Oliver.  
Defendant Present.  
Defendant acknowledges the complaint reflects his/her true name  
and date of birth.  
Defendant Waives Formal Arraignment.  
Defendant Advised of Constitutional Rights.  
Defendant advised of right to trial by jury.  
Defendant advised of right to confront and cross examine  
witnesses; right to present evidence on own behalf.  
Defendant advised of privilege against self incrimination.  
Defendant advised of charges and consequences of his/her plea  
and statutory sentencing.  
Court finds based on inquiry and examination of deft, that deft  
has the ability to understand and does understand his/her  
constitutional rights.  
Pleads Not Guilty to all charges.  
Defendant Denies Prior(s).  
Defendant Denies Prior/Strike(s).  
Case Assigned To Department 63, to Judge Helios J. Hernandez for  
all further proceedings.  
Jury Trial set for 10/30/2007 at 10:30 in Department 63.  
Estimated 0 days.  
LAST DAY FOR TRIAL to commence is 11/13/2007  
Department 52 is the designated department for all pretrial  
motions on this case.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute order printed to Smith Correctional Facility.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

CHARLES KENYON  
Conflicts Defense Lawyers  
4129 Main St. Ste #305  
Riverside, CA 92501  
Telephone: 951.784.4800  
State Bar No. 235642

FILED 000037  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
OCT 30 2007  
By J. MARTIN Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA,	<b>CASE NO: RIF 136990</b>
Plaintiff,	DEFENDANT'S REQUEST FOR CONTINUANCE PURSUANT TO § 1050
v.	DATE: October 30, 2007 TIME: 10:30 a.m. DEPT: 63
MARIO MARTINEZ,	
Defendant.	

TO: THE HONORABLE JUDGE HERNANDEZ AND THE CLERK OF THE SUPERIOR COURT; ROD PACHECO, DISTRICT ATTORNEY OF THE COUNTY OF RIVERSIDE:

PLEASE TAKE NOTICE that on October 30, 2007, or as soon thereafter as the matter may be heard, in Department 63 of the above-entitled court, the Defendant herein, through his counsel, will and hereby does move the Court to continue the case to November 6, 2007.

The motion will be made on the pursuant to Penal Code Section 1050 and is based on the attached Declaration and any evidence and argument that may be presented at the hearing.

Respectfully submitted,

By: Charles Kenyon  
CHARLES KENYON  
Attorney for Defendant



**DECLARATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36


I, Charles Kenyon, hereby declare:

- 1. That I am an attorney licensed to practice law in the State of California;
- 2. That I represent the Defendant in this action;
- 3. That I believe good cause exists to continue this matter based upon the following:
  - a. *I have just been assigned this case from CDL and I will need additional time to review the discovery and to prepare a defense.*

FOR THE ABOVE STATED REASONS, the Defense respectfully requests the continuance.

DATED: October 30, 2007

Respectfully submitted,

By:   
 CHARLES KENYON  
 Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000039

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Jury Trial  
Date: 10/30/07 Time: 10:30 am Dept/Div: 63  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Helios J. Hernandez Presiding.  
Courtroom Assistant: C. Yorba  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney by Baranski.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
Motion By Defense Regarding 1050 pc is called for hearing.  
Motion Granted  
Hearing Continued at the request of Defense. Matter continued to  
11/07/2007 at 10:30 in Department 63.  
LAST DAY FOR TRIAL to commence is 11/17/2007  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute order printed to Smith Correctional Facility.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000040

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Jury Trial  
Date: 11/07/07      Time: 10:30 am      Dept/Div: 63  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Helios J. Hernandez Presiding.  
Courtroom Assistant: C. Yorba  
Court Reporter: G. Brewer.  
People Represented By Deputy District Attorney D. Steward by  
Baranski.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
Defense ANNOUNCES READY for trial  
Jury Trial Trails to 11/13/2007 at 8:30 in Dept 63.  
Counsel Stipulate the LAST DAY for Trial is 11/13/2007  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute order printed to Smith Correctional Facility.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000041

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Jury Trial Trailing  
Date: 11/13/07 Time: 8:30 am Dept/Div: 63  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Helios J. Hernandez Presiding.  
Courtroom Assistant: C. Yorba  
Court Reporter: M. Cassle.  
People Represented By Deputy District Attorney D. Steward by  
Baranski.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
Defense unavailable for trial.  
Jury Trial set for 11/14/2007 at 10:30 in Department 63.  
Estimated 0 days.  
LAST DAY FOR TRIAL to commence is 11/26/2007  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute order printed to Smith Correctional Facility.

Dispo

FILED 000042  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

NOV 13 2007

By J. MARTIN Deputy

1 CHARLES KENYON  
2 Conflicts Defense Lawyers  
3 4129 Main St. Ste #305  
4 Riverside, CA 92501  
5 Telephone: 951.784.4800  
6 State Bar No. 235642

7 SUPERIOR COURT OF CALIFORNIA  
8 COUNTY OF RIVERSIDE

9  
10 THE PEOPLE OF THE STATE OF CALIFORNIA,

11  
12 Plaintiff,

13 v.

14  
15 MARIO MARTINEZ,

16  
17 Defendant.

CASE NO: RIF136990

DEFENDANT'S REQUEST  
FOR CONTINUANCE  
PURSUANT TO § 1050

DATE: November 13, 2007

TIME: 10:30 a.m.

DEPT: 63

18  
19 TO: THE HONORABLE JUDGE HERNANDEZ AND THE CLERK OF THE SUPERIOR  
20 COURT; ROD PACHECO, DISTRICT ATTORNEY OF THE COUNTY OF RIVERSIDE:

21 PLEASE TAKE NOTICE that on November 12, 2007, or as soon thereafter as the matter  
22 may be heard, in Department 63 of the above-entitled court, the Defendant herein, through his  
23 counsel, will and hereby does move the Court to continue the case to November 9, 2007. (Nov 19<sup>th</sup>)

24 The motion will be made on the pursuant to Penal Code Section 1050 and is based on the  
25 attached Declaration and any evidence and argument that may be presented at the hearing.  
26  
27  
28

29 Respectfully submitted,

30  
31 By: CC

32 CHARLES KENYON

33 Attorney for Defendant  
34  
35  
36

IMAGED

DECLARATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

I, Charles Kenyon, hereby declare:

- 1. That I am an attorney licensed to practice law in the State of California;
- 2. That I represent the Defendant in this action;
- 3. That I believe good cause exists to continue this matter based upon the following:
  - a. *I learned last week that I have been summoned as a juror for the week of November 12-16. I have deferred my jury service over from October 12, 2007.*
  - b. *I am otherwise ready for jury trial.*

FOR THE ABOVE STATED REASONS, the Defense respectfully requests the continuance.

DATED: November 13, 2007

Respectfully submitted,



By: \_\_\_\_\_  
CHARLES KENYON  
Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000044

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Jury Trial  
Date: 11/14/07      Time: 10:30 am      Dept/Div: 63  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Helios J. Hernandez Presiding.  
Courtroom Assistant: R. Pemble  
Court Reporter: N. Bounds.  
People Represented By Deputy District Attorney D. Steward by  
Baranski.  
Defendant Represented By CDL-C. Kenyon by Corcoran.  
Defendant Present.  
Jury Trial set for 11/19/2007 at 10:30 in Department 63.  
Estimated 0 days.  
Counsel Stipulate the LAST DAY for Trial is 11/26/2007  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute order printed to Smith Correctional Facility.

Dispo



SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000045

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====

Jury Trial

Date: 11/19/07 Time: 10:30 am Dept/Div: 63

=====

Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T

-----

Honorable Judge Helios J. Hernandez Presiding.  
Courtroom Assistant: C. Yorba  
Court Reporter: A. Herlihy.  
People Represented By Deputy District Attorney D. Steward.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.

All parties ANNOUNCE READY for Trial.  
Jury Trial Trails to 11/26/2007 at 8:30 in Dept 63.  
Counsel Stipulate the LAST DAY for Trial is 11/26/2007  
The Following Persons are ordered to return on 11/26/2007 at  
8:30 Dept 63: CANDICE EVES & JULIA MARTINEZ

Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute order printed to Smith Correctional Facility.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000046

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====

Jury Trial Trailing  
Date: 11/26/07 Time: 8:30 am Dept/Div: 63

=====

Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T

-----

Honorable Judge Helios J. Hernandez Presiding.  
Courtroom Assistant: C. Yorba  
Court Reporter: T. Aragon.  
People Represented By Deputy District Attorney D. Steward.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 10:00, the following proceedings were held:  
All parties announce ready for trial.  
Case Assigned To Department 44, to Judge Paul E. Zellerbach for  
all further proceedings.  
Jury Trial Trails to 11/26/2007 at 10:30 in Dept 44.  
Defendant ordered to return on any and all future hearing dates.  
Defendant to be dressed out for trial.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
DEFENDANT HOUSED IN SCF.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000047

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====

Jury Trial Trailing  
Date: 11/26/07 Time: 10:30 am Dept/Div: 44

=====

Charges: 1) 11379(A) HS-F A, 2) 11377(A) HS-F A, 999) 667.5(B) PC-F A  
999) 667.5(B) PC-F A, 999) 667.5(B) PC-F A, 999) 667.5(B) PC-F A  
999) 667.5(B) PC-F A

-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: S.Sanchez  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney D. Steward.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
1st DAY OF TRIAL  
At 11:40, the following proceedings were held:  
D.A. not present for Marsden hearing.  
Oral Motion By defendant regarding Marsden hearing is called for hearing.  
Motion Denied.  
Transcripts of this proceeding ordered sealed.  
Defendant waives one day.  
D.A. present in court.  
Counsel Stipulate: jury selection to commence on 11/27/07..  
Hearing Continued To 11/27/2007 at 9:00 in Department 44 pursuant to Stipulation of counsel.  
Court orders copy of transcript on RIF097808 to be given to counsel.  
The Following Persons are ordered to return on 11/28/2007 at 9:00 Dept 44: Julia Martinez.  
The Following Persons are ordered to return on 11/28/2007 at 9:00 Dept 44: Candace Eves.  
Defendant ordered to return on any and all future hearing dates.  
Remains remanded to custody of Riverside Sheriff.  
Bail To Remain as fixed.  
Sheriff to house defendant at Robert Presley until trial.  
Minute Order printed to Southwest Detention Center  
Minute Order printed to Robert Presley Detention Center.  
\*\*MINUTE ORDER OF COURT PROCEEDING\*\*

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000048

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====

Jury Trial Trailing  
Date: 11/27/07 Time: 9:00 am Dept/Div: 44

=====

Charges: 1) 11379(A) HS-F A, 2) 11377(A) HS-F A, 999) 667.5(B) PC-F A  
999) 667.5(B) PC-F A, 999) 667.5(B) PC-F A, 999) 667.5(B) PC-F A  
999) 667.5(B) PC-F A

-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: S.Sanchez  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney D. Steward.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 9:20, the following proceedings were held:  
Court and Counsel Confer regarding: 402 motions argument by  
counsel is made to  
the court. Various motions in-limine ruled  
upon by the court as stated on the record.  
CDL-Lory Meyers appointed to witness Candace  
Eves for advisement. Copy of reports/phone  
numbers given to CDL. CDL ordered to appear  
in court on 11/28/07 at 9:00 a.m.  
Oral Motion By defendant regarding Marsden hearing is called  
for hearing.  
Motion Denied.  
Transcripts of this proceeding ordered sealed.  
D.A. not present for Marsden hearing.  
Prospective Jury Panel having been summoned, is sworn regarding  
their qualifications to act as trial jurors.  
Jury Voir Dire (10:45) commences.  
Jurors Are Admonished and directed to return on 11/28/2007 at  
9:00.  
Jury TRIAL IN-PROGRESS is adjourned to 11/28/2007 at 9:00 in  
Department 44.  
Defendant ordered to return on any and all future hearing dates.  
Defendant to be dressed out for trial.  
Sheriff to house defendant at Robert Presley until conclusion of  
trial.  
Remains remanded to custody of Riverside Sheriff.  
Bail To Remain as fixed.  
Minute order printed to Smith Correctional Facility.

000049

11/27/07

Page: 2

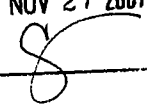
-----  
Case Number : RIF136990                      People vs. MARIO MARTINEZ  
=====

Minute Order printed to Robert Presley Detention Center.  
\*\*MINUTE ORDER OF COURT PROCEEDING\*\*

Dispo

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

ROD PACHECO  
District Attorney  
County of Riverside  
4075 Main Street, First Floor  
Riverside, California 92501  
Telephone: (951) 955-5400  
State Bar No. 156944

000050  
**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
NOV 27 2007  


SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
(Riverside)

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

MARIO MARTINEZ,

Defendant.

CASE NO. RIF136990

PEOPLE'S LIST OF  
POTENTIAL WITNESSES

Witnesses

1. Deputy Joshua Hiraoka
2. Kristen Rager, DOJ
3. Candace Eves
4. Julia Martinez

Dated: November 27, 2007

**IMAGED**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

Respectfully submitted,

ROD PACHECO  
District Attorney



DAVID STEWARD  
Deputy District Attorney

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000052

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====

Jury Trial In-Progress  
Date: 11/28/07 Time: 9:00 am Dept/Div: 44

=====

Charges: 1) 11379(A) HS-F A, 2) 11377(A) HS-F A, 999) 667.5(B) PC-F A  
999) 667.5(B) PC-F A, 999) 667.5(B) PC-F A, 999) 667.5(B) PC-F A  
999) 667.5(B) PC-F A

=====

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: S. Sanchez  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney D. Steward.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
3rd DAY OF TRIAL  
At 9:45, the following proceedings were held:  
Jury Voir Dire continues.  
First panel of jurors ordered to return to court  
at 9:00 a.m. Second panel ordered to be here  
at 2:00.  
Additional Prospective Jurors having been summoned are sworn  
regarding their qualifications to act as trial jurors.  
Jury Voir Dire commences.  
Jurors Are Admonished and directed to return on 11/29/2007 at  
9:00.  
Jury TRIAL IN-PROGRESS is adjourned to 11/29/2007 at 9:00 in  
Department 44.  
Bench Warrant issued as to Witness Candace Darlene Eves. Bail  
Set at 0.00 (Hand Warrant must be completed)  
Witness Candace Darlene Eves ordered to appear  
on 11/29/07 at 8:30 a.m.  
Defendant ordered to return on any and all future hearing dates.  
Defendant to be dressed out for trial.  
Sheriff to house defendant at Robert Presley until conclusion of  
trial.  
Remains remanded to custody of Riverside Sheriff.  
Bail To Remain as fixed.  
Minute Order printed to Robert Presley Detention Center.  
Minute order printed to Smith Correctional Facility.  
\*\*MINUTE ORDER OF COURT PROCEEDING\*\*

Dispo



SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000053

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====

Jury Trial In-Progress  
Date: 11/29/07 Time: 9:00 am Dept/Div: 44  
=====

Charges: 1) 11379(A) HS-F A, 2) 11377(A) HS-F A, 999) 667.5(B) PC-F A  
999) 667.5(B) PC-F A, 999) 667.5(B) PC-F A, 999) 667.5(B) PC-F A  
999) 667.5(B) PC-F A  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: S. Sanchez  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney D. Steward.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
4th DAY OF TRIAL  
At 9:20, the following proceedings were held:  
CDL-Lori Meyers present in Court.  
Candace Eves present in Court.  
CDL appointed to witness Candace Eves on  
advisement of rights.  
Witness Candace Eves invokes her 5th amendment  
rights.  
People's Witness, (9:30) Candace Eves is Sworn and testifies.  
Witness Candace Eves Excused; Subject to recall.  
Court and Counsel Confer regarding: testimony of the witnesses.  
Motion to Exclude all Witnesses is granted.  
Joshua Hiraoka Designated as Investigating Officer.  
Bench warrant recalled as to witness Candace Eves (Hand warrant  
recall must be completed.  
Court's Exhibit 1 (Copy of Investigator's report) Marked for  
Identification.  
People's Exhibit 1 (Drawn diagram by Josh Hiraoka of incident)  
is/are Marked for identification only.  
People's Exhibit 2 (Stipulation 1) is/are Marked for  
identification only.  
At 10:15, the following proceedings were held:  
Jury Voir Dire commences.  
Jury Panel Sworn to try the cause.  
Court Instructs the Jury.  
Out of the Presence Of the Jury, the following proceedings were  
held: (10:50)  
Counsel Stipulate: to read to jurors the drug quantity.

11/29/07

Page: 2

-----  
Case Number : RIF136990 People vs. MARIO MARTINEZ  
-----

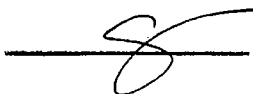
Members of the Jury and Alternate(s) are present  
Opening Statement (11:20) made By the People.  
Opening Statement (11:25) made By the Defense.  
People's Witness, (11:31) Josh Hiraoka is Sworn and testifies.  
Witness Josh Hiraoka Excused; Subject to recall.  
Out of the Presence Of the Jury, the following proceedings were held: (3:40)  
CDL-Lori Meyers present in Court.  
Candace Eves present in Court.  
People request that the witness be granted use immunity. Witness Candace Eves has signed the waiver pursuant to 1324 PC. Court signs order and grants use immunity to Candace Eves.  
Court directs witness Candace Eves to answer questions pursuant to 1324 PC.  
People's Exhibit 3 (Envelope with drugs) is/are Marked for identification only.  
Members of the Jury and Alternate(s) (3:55) are present  
People's witness (3:55) Candace Eves, previously sworn, resumes the witness stand.  
Jurors Are Admonished and directed to return on 12/03/2007 at 9:30.  
Witness Candace Eves (Incustody) ordered to return on 12/03/2007 at 9:30 in Dept 44.  
The Following Persons are ordered to return on 12/03/2007 at 9:30 Dept 44: Julia Martinez.  
The Following Persons are ordered to return on 12/03/2007 at 9:30 Dept 44: Josh Hiraoka.  
Jury TRIAL IN-PROGRESS is adjourned to 12/03/2007 at 9:30 in Department 44.  
Defendant ordered to return on any and all future hearing dates.  
Defendant to be dressed out for trial.  
Sheriff to house defendant at Robert Presley until conclusion of trial.  
Remains remanded to custody of Riverside Sheriff.  
Bail To Remain as fixed.  
Minute Order printed to Robert Presley Detention Center.  
\*\*MINUTE ORDER OF COURT PROCEEDING\*\*

Dispo

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

ROD PACHECO  
District Attorney  
County of Riverside  
4075 Main Street, First Floor  
Riverside, California 92501  
Telephone (951) 955-5400  
State Bar No. 156944

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
NOV 29 2007



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
(Riverside)

THE PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff,  
  
v.  
  
MARIO MARTINEZ,  
  
Defendant.

CASE NO. RIF136990  
  
WAIVER OF ISSUANCE OF  
ORDER TO SHOW CAUSE AND  
HEARING UNDER SECTION  
1324 OF THE PENAL CODE

COMES NOW, CANDACE EVES, a witness before the court in the above-entitled case, who states as follows:

That the refusal of the undersigned to testify as a witness in the above-entitled case is based upon the grounds of self-incrimination.

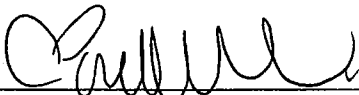
That it is fully understood that in accordance with section 1324 of the Penal Code of the State of California, the undersigned is entitled to a hearing in the superior court with an opportunity to show cause for the court's consideration in determining whether or not to issue an order compelling the giving of testimony or offering of evidence which may be incriminating, and to have a finding made as to whether or not in this case it would be clearly contrary to the public interest by compelling the giving of testimony containing incriminating matters.

That the undersigned waives the issuance of an order to show cause why the giving of testimony and production of evidence should not be compelled, and to a hearing thereon.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

WHEREFORE, CANDACE EVES hereby consents to the issuance of an order by the court forthwith compelling the undersigned to answer such questions and produce such evidence in the above-entitled matter as may be material, competent and relevant to the case, and an order by this court that upon compliance therewith no testimony or other information compelled under the order, or any information directly or indirectly derived from the testimony or other information compelled under the order, may be used against the above-named witness in any criminal case. But she may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order.

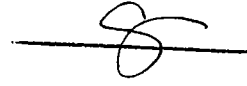
Dated: 11/29/07

  
\_\_\_\_\_  
CANDACE EVES

000057

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

NOV 29 2007



1 ROD PACHECO  
2 District Attorney  
3 County of Riverside  
4 4075 Main Street, First Floor  
5 Riverside, California 92501  
6 Telephone (951) 955-5400  
7 State Bar No. 156944

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF RIVERSIDE  
11 (Riverside)

13 THE PEOPLE OF THE STATE OF CALIFORNIA,

CASE NO. RIF136990

15 Plaintiff,

16 v.

PETITION AND REQUEST FOR  
ORDER REQUIRING WITNESS  
TO ANSWER QUESTIONS AND  
PRODUCE EVIDENCE UNDER  
PENAL CODE SECTION 1324

18 MARIO MARTINEZ,

20 Defendant.

22 COMES NOW the District Attorney of the County of Riverside, State of California,  
23 pursuant to section 1324 of the Penal Code of the State of California and alleges:

24 That there is now pending before the Riverside Superior Court, Department 44, a felony  
25 prosecution entitled *People v. Mario Martinez*, case number RIF136990. The defendant, Mario  
26 Martinez, is charged with simple possession and transportation of methamphetamine.

27 That CANDACE EVES is a necessary witness in the above-entitled case and the  
28 testimony of this witness is material, competent, and relevant. The petitioner believes this witness  
29 will testify in substance as follows:

30  
31 On May 29, 2007 she purchased the methamphetamine in issue from a house in Rubidoux.  
32 Mario Martinez drove her to the location in his mother's car and they discussed the fact she  
33 would be buying methamphetamine prior to the purchase. She and Martinez planned to use  
34 the methamphetamine together later that day. When they were being pulled over by the  
35 police, she took the baggie of methamphetamine from her bra and attempted to throw it into a  
36 vent in the dashboard of the car. The baggie fell to the passenger side near Martinez.

That petitioner believes Candace Eves was therefore a witness to the above crimes.

ROD PACHECO  
DISTRICT ATTORNEY  
County of Riverside  
4075 Main Street  
Riverside, California

IMAGED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

That said person, upon being questioned, refuses to answer questions and produce evidence on the grounds that said person might be incriminated thereby; that the use of the above-named person as a witness is not contrary to the public interest.

That there is attached hereto a waiver by said person of the right to show cause why questions should not be answered or evidence produced.

WHEREFORE, the District Attorney of the County of Riverside, State of California, respectfully requests, pursuant to the provisions of section 1324 of the Penal Code of the State of California, an order be issued, forthwith, by this court requiring said person to answer such questions and produce such evidence which, but for section 1324 of the Penal Code, this person would be privileged to withhold on the grounds that such testimony might be self-incriminating.

Dated: 11.29.07

Respectfully submitted,

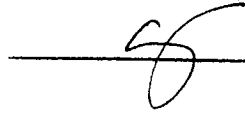
ROD PACHECO  
District Attorney



DAVID STEWARD  
Deputy District Attorney

FILED 000059  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

NOV 29 2007



1 ROD PACHECO  
2 District Attorney  
3 County of Riverside  
4 4075 Main Street, First Floor  
5 Riverside, California 92501  
6 Telephone (951) 955-5400  
7 State Bar No. 156944  
8  
9

10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF RIVERSIDE  
12 (Riverside)  
13

14 THE PEOPLE OF THE STATE OF CALIFORNIA,

NO. RIF136990

16 Plaintiff,

ORDER REQUIRING  
WITNESS TO ANSWER  
QUESTIONS UNDER  
PENAL CODE SECTION 1324

18 v.

19 MARIO MARTINEZ,

21 Defendant.

22  
23 A petition having been filed by the District Attorney of the County of Riverside, State of  
24 California, under section 1324 of the Penal Code of the State of California, requesting that  
25 CANDACE EVES, a necessary witness, be required to answer questions and produce evidence as  
26 a witness in the above-entitled action (RIF136990), now pending in the Riverside Superior Court,  
27 and said person, as a witness, having duly filed a waiver of the right to a hearing upon and the  
28 issuance of an order to show cause why such an order should not issue; the court believing that  
29 all of the allegations of the petitioner are true; and the court finding that there is no good cause  
30 why this order should not be made and that this order is not contrary to the public interest;


31 IT IS HEREBY ORDERED that CANDACE EVES shall answer such questions and  
32 produce such evidence in the above entitled case as may be material, competent and relevant to  
33 that case.

34 After complying with this order, no testimony or other information compelled under the  
35 order, or any information directly or indirectly derived from the testimony or other information  
36 compelled under the order, may be used against the above-named witness in any criminal case.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

But she may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order.

Dated: Nov. 29, 2007

  
The Honorable Paul E. Zellerbach  
JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000061

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====

Jury Trial In-Progress  
Date: .12/03/07 Time: 9:30 am Dept/Div: 44

=====

Charges: 1) 11379(A) HS-F A, 2) 11377(A) HS-F A, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F T, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T

-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: S. Lewis.  
People Represented By Deputy District Attorney D. Steward.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
5TH DAY OF TRIAL  
At 9:42, the following proceedings were held:  
Members of the Jury and Alternate(s) are all present  
Attorney Lori Myers present in Court.  
Attorney Myers previously appointed to advise  
the witness Candace Eves.  
People's witness Candace Eves, previously sworn, resumes the  
witness stand.  
Witness Candace Eves (Incustody) excused, subject to recall.  
People's Witness, Julia Martienz (11:00) is Sworn and testifies.  
Witness Julia Martines excused.  
People's witness Joshua Hiraoka (11:19), previously sworn,  
resumes the witness stand.  
Witness Joshua Hiraoka (11:26) Excused; Subject to recall.  
People rest.  
@ 11:29 am Jurors Are Directed to return at 1:30 pm.  
Out of the Presence Of the Jury, the following proceedings were  
held: @ 11:46 pm  
Court and Counsel Confer regarding: Exhibits/Jury instructions  
People's Exhibit(s) 1 2 3 is/are Admitted in evidence.  
@ 12:03 pm - Court in recess  
At 1:41, the following proceedings were held:  
Out of the Presence Of the Jury, the following proceedings were  
held: People's special instruction  
Defense counsel has no objection to the special  
instruction.  
In the Presence Of the Jury, the following proceedings were  
held: @ 1:43 pm - Trial resumes

12/03/07

Page: 2

-----  
Case Number : RIF136990                      People vs. MARIO MARTINEZ  
-----

## DEFENSE EVIDENCE

People's witness Julia Martines, previously sworn, resumes the witness stand.

Witness Julia Martinez (1:48) excused.

Witness Julia Martinez is permitted to remain in the courtroom after her testimony.

Defense Counsel (1:48) rest.

At 0:14, the following proceedings were held:

Court Instructs the Jury.

Closing Argument presented By the People (2:22).

Closing Argument presented By the Defense.

Change in courtroom assistant:

Courtroom Assistant: K. Wise

@3:15 pm - Court in recess.

At 3:35, the following proceedings were held:

Members of the Jury and Alternate(s) are present

Closing Argument Rebuttal By the People (3:38).

Court Instructs the Jury.

Bailiff Is Sworn to take charge of the jury and alternate(s).

Jury retires at 3:56 to commence deliberations.

Alternate jurors are admonished and excused subject to recall.

Out of the Presence Of the Jury, the following proceedings were held: (4:01)

Court and Counsel Confer regarding: Priors

Oral Motion By Defense regarding waive jury trial and court trial on priors

Motion Granted

Defendant Admits Prior(s) 1 2 3 4 5.

Defendant admits prior strike pursuant to Sections 667(c)PC and 667(e) (2) (a)PC.

Jurors Are Admonished and directed to return on 12/04/2007 at 9:00.

Jury Trial (Jury Deliberating) is adjourned to 12/04/2007 at 9:00 in Dept. 44.

Defendant ordered to return on any and all future hearing dates.

Defendant to be dressed out for trial.

Bail To Remain as fixed.

Remains remanded to custody of Riverside Sheriff.

Minute Order printed to Robert Presley Detention Center.

Minute order printed to Smith Correctional Facility.

\*\*MINUTE ORDER OF COURT PROCEEDING\*\*

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000063

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====

Jury Trial (Jury Deliberating)

Date: 12/04/07 Time: 9:00 am Dept/Div: 44

=====

Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F A  
999) 667.5(B) PC-F A, 999) 667.5(B) PC-F A, 999) 667.5(B) PC-F A  
999) 667.5(B) PC-F A

-----

At 9:00, the following proceedings were held:  
Jury retires at 9:00 to resume deliberations.  
Out of the Presence Of the Jury, the following proceedings were held: @ 10:17 am - Off the record  
Court received Jury note #1. Clerk contacted both counsel by phone concerning the note and both agreed that the court report may readback the the testimony of Deputy Hiraoka.  
@ 11:45 am - Court received a note that they reached verdict.  
Both counsel notified to appear in Court at 1:30 pm.  
Court's Exhibit 2 - Jury note #1 Marked for Identification.  
Court's Exhibit 3 - Jury note #2 (verdict reached) Marked for Identification.  
At 1:35, the following proceedings were held:  
Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: S. Lewis.  
People Represented By Deputy District Attorney D. Steward.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
Court and Counsel Confer regarding: Defendant's priors in chambers informally.  
Oral Motion By Defendant regarding Withdraw the admission of priors is called for hearing.  
Defendant previously admitted priors on 12-3-07.  
Court hears oral arguments.  
Motion Granted  
Admission of priors withdrawn by the Court.  
Defendant Withdraws Admission to Prior(s) 1-5.  
Defendant Waives Jury trial on Prior(s).  
Defendant request bench trial on priors.  
Counsel Stipulate: Bench trial as to priors..

000064

12/04/07

Page: 2

-----  
Case Number : RIF136990                      People vs. MARIO MARTINEZ  
-----

Court and Counsel Confer regarding: Verdict forms

All verdicts forms were mistakenly signed.

Foreperson was advised by the Court to correct  
it and initial the verdict forms.

At 2:02, the following proceedings were held:

Jury present in Court.

Jury returns with verdicts.

We the Jury in the above entitled action, find the Deft. Mario  
Martinez, GUILTY, in count 1 of a violation of Section 11379(A)  
HS.

We the Jury in the above entitled action, find the Deft. Mario  
Martinez, GUILTY, in count 2 of a violation of Section 11377(A)  
HS.

Dated: 12/04/2007, and Signed by: # 4 Jury Foreperson.

Re-Reading of the Verdict(s) as recorded is Waived

Jurors are thanked and excused.

Two alternate jurors notified by phone and excused

Court Trial set for 12/14/2007 at 8:30 in Dept. 44. Estimated  
at 1 days.

Defendant ordered to return on any and all future hearing dates.

Defendant need not dress out for court trial.

Bail To Remain as fixed.

Remains remanded to custody of Riverside Sheriff.

Minute Order printed to Robert Presley Detention Center.

At 2:08, proceedings adjourned.

\*\*MINUTE ORDER OF COURT PROCEEDING\*\*

Dispo

Superior Court of California  
County of Riverside

Case No. 08110665  
Requested Jury Instructions  
CALCRIM

People v. Mario Martinez

Charles Kenyon - CDL

**Pre-trial Instructions**

- 100 trial process
- 101 jury conduct
- 102 note-taking
- 103 reasonable doubt
- 104 evidence
- 105 witnesses
- 106 jurors asking questions
- 120 service provider for juror w/disability
- 121 duty to abide by in-court translation
- 122 corporation is a person
- 123 wit. ID'd as John or Jane Doe
- 124 separation admonition

**Post-trial Instructions**

- 200 duties of judge and jury
- 201 do not investigate
- 202 note-taking
- 203 multiple defendants
- 204 defendant physically restrained
- 205 charge removed from consideration
- 206 def. removed from case
- 207 proof need not show actual date
- 220 reasonable doubt
- 221 reasonable doubt - bifurcated trial
- 222 evidence
- 223 direct/circumstantial evid. defined
- 224 circum. evid.—sufficiency
- 225 circumstantial evid.—Intent ?
- 228 witnesses
- 240 causation
- 250 general intent ?
- 251 specific intent ?
- 252 general/specific intent together
- 253 criminal negligence
- 254 strict liability crime
- 300 all available evidence
- 301 single witness's testimony
- 302 evaluating conflicting evidence
- 303 limited purpose evidence w/ ID

- 304 mult. defs: ltd. admiss. of evid.
- 305 mult. defs: ltd. admiss. of def's stmt.
- 306 untimely disclosure of evid.
- 315 eyewitness i.d.
- 316 witness credibility - other conduct
- 317 former testimony ? w/ ID
- 318 prior statements as evidence
- 319 prior statements of unavail. wit. ? w/ ID
- 320 exercise of privilege by wit.
- 331 test. of person w/mental disability
- 332 expert witness testimony
- 333 lay opinion testimony
- 334 accomplice test. - disputed
- 335 accomplice test.—undisputed
- 336 in-custody informant
- 337 witness in-custody or restrained
- 350 character of defendant
- 351 cross-ex of character wit.
- 355 def.'s rt. not to testify
- 356 Miranda-defective stmts.
- 357 adoptive admissions
- 358 evid. of def.'s stmt.
- 359 corpus delicti
- 360 statements to expert
- 361 failure to explain adverse test.
- 371 consciousness of guilt
- 372 flight
- 373 other perpetrator
- 374 dog-tracking evid.
- 375 1101(b) evid.
- 376 poss. of recently stolen prop.
- 400 aiding and abetting - general
- 401 aiding/abetting - intended crimes
- 402 natural/probable consequences
- 403 nat./prob. conseq. (non-target)
- 404 intoxication
- 415 conspiracy
- 416 evid. of uncharged conspiracy
- 417 co-conspirator's acts—liability
- 418 co-conspirator's statements

- 419 acts/stmts. prior to conspiracy
- 420 withdrawal from conspiracy
- 440 accessories
- 441 solicitation: elements
- 442 solicitation of a minor
- 443 compelling another to commit
- 460 attempt other than attempt murder
- 3400 alibi
- 3402 duress/threats
- 3403 necessity
- 3404 accident
- 3405 general intent to punish child
- 3407 mistake of fact
- 3408 entrapment
- 3410 statute of limitations
- 4.21.2 vol intox-aider/abettor
- 3425 unconsciousness
- 3428 voluntary intoxication
- 3427 involuntary intoxication
- 3428 mental impairment: defense to
- 3429 reasonable person - phys. ? w/ ID
- 3470 self defense/defense other ? w/ ID
- 3472 rt. to self-defense
- 3474 danger gone/attacker disabled
- 3475 rt. to eject trespasser
- 3476 rt. to defend property
- 3477 presum.—afraid of death/GBI
- 3500 unanimity
- 3501 unanimity - generic testimony
- 3502 unanimity—prosecution election
- 3515 mult. counts - separate offenses
- 3516 mult. Counts—alt. counts/1event
- 3517 delib./verdict forms - w/o Stone
- 3518 delib./verdict forms—w/Stone
- 3530 judge's comment on evidence
- 3550 pre-deliberation instructions
- 3575 subst. of alt. juror—deliberations
- 3576 subst. of alt. juror—capital case
- 3577 instruct. to alt. juror—case to jury
- 3590 final instruct. on discharge of jury

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
DEC 04 2007

**REQUESTED CALCRIMS REGARDING PARTICULAR CRIMES AND/OR ENHANCEMENTS**

Crime: 11379 H&S	Crime: 11377(a)H&S	Crime: _____	Crime: _____
Counts: 1	Counts: 2	Counts: _____	Counts: _____
CALCRIM: 2300	CALCRIM: 2304	CALCRIM: _____	CALCRIM: _____
_____	_____	_____	_____
_____	_____	_____	_____

IMAGED

IN THE SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF RIVERSIDE

000066

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

Mario Martinez

Defendant

Case No. RIF130990

STIPULATION RE JURY ADMONITION,  
PRESENCE OF JURY AND THE DEFENDANT(S),  
REQUIREMENT OF BAILIFF VERDICT AND  
JURORS

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

DEC 04 2007



IT IS HEREBY STIPULATED by the Defendant(s) and counsel that:

1. The Court's admonition to the jury, after once having been given, shall be deemed to have been given just prior to every recess, adjournment, or continuance of the trial;
2. All jurors and the alternate(s), if any, are present at all necessary times, unless their absence is expressly brought to the attention of the Court and stated on the record;
3. The defendant(s) is (are) present at all phases, stages, and sessions of the trial unless his (her)(their) absence is expressly brought to the attention of the court and such fact is entered in the minutes of the Court;
4. The Clerk of this Court may administer the oath to any Deputy Sheriff outside the presence of the Court, counsel, and the defendant(s), if the requirement should arise;
5. In the absence of the trial Judge, any Judge of this Court may respond to the written inquires of members of the jury; may have the Court Reporter read portions of the testimony to the jury upon its request; and/or may receive the verdict(s) of the jury and make such orders as the verdict(s) warrant;
6. At the time the case is given to the jury for its deliberations, the Court may permit the alternate juror(s) to leave for home, work, etc., and to remain on call provided that the juror(s) informs the Clerk of the Court of his/her telephone number in the event that a member of the jury should require a replacement and the alternate juror(s) seated as a member of the jury;
7. After the jury deliberations, the Court may permit the jurors (without having them return into the Courtroom) to:
  - a. Leave the jury deliberation room for the purpose of going to lunch, at their expense, and not in the custody of the Bailiff;
  - b. Report to the Deputy outside the jury deliberation room at the end of the lunch period;
  - c. Leave the jury deliberation room for their homes, etc., at the end of the jury deliberation day; and
  - d. Report back to the Deputy outside the jury deliberation room at a specified time during the next deliberation day.
8. Upon final determination of this action, the Clerk may, without further order of the Court, return any and all exhibits, identifications, depositions, interrogatories and requests for admissions with answers thereto, and/or other stored materials to the party or person(s) entitled thereto; and
9. After the jury has begun deliberations, upon receiving a request from the jury for read back of testimony, any Judge of this Court may direct the Court Reporter who reported the relevant proceedings to enter the jury deliberation room and read back the requested testimony (or portion thereof approved by the Court) outside the presence of the parties or their counsel. In such instances, the Court Reporter will be deemed to have been instructed to read back the entire portion of testimony approved by the Judge and not to respond directly to any questions or statements from the jury; and such instructions be deemed entered in the minutes of the Court.

Date: Nov. 27, 2007

APPROVED AND SO ORDERED:

Paul E. Zell  
Judge of the Superior Court

[Signature]  
Deputy District Attorney

[Signature]  
Attorney for Defendant(s)

[Signature]  
Defendant

Defendant #2 or Interpreter

IMAGED

People v. Mario Martinez

By: Plaintiff

- Pre-trial Instructions**
- 100 trial process
  - 101 jury conduct
  - 102 note-taking
  - 103 reasonable doubt
  - 104 evidence
  - 105 witnesses
  - 106 jurors asking questions
  - 120 service provider for juror w/disability
  - 121 duty to abide by in-court translation
  - 122 corporation is a person
  - 123 wit. ID'd as John or Jane Doe
  - 124 separation admonition

- Post-trial Instructions**
- 200 duties of judge and jury
  - 201 do not investigate
  - 202 note-taking
  - 203 multiple defendants
  - 204 defendant physically restrained
  - 205 charge removed from consideration
  - 206 def. removed from case
  - 207 proof need not show actual date
  - 220 reasonable doubt
  - 221 reasonable doubt - bifurcated trial
  - 222 evidence
  - 223 direct/circumstantial evid. defined
  - 224 circum. evid.—sufficiency
  - 225 circumstantial evid.—Intent
  - 226 witnesses
  - 240 causation
  - 250 general intent
  - 251 specific intent
  - 252 general/specific intent together
  - 253 criminal negligence

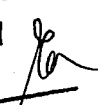
- 334 accomplice test. - disputed
- 335 accomplice test.—undisputed
- 336 in-custody informant
- 337 witness in-custody or restrained
- 350 character of defendant
- 351 cross-ex of character wit.
- 355 def.'s rt. not to testify
- 358 Miranda-defective stmts.
- 357 adoptive admissions
- 358 evid. of def.'s stmt.
- 359 corpus delicti
- 360 statements to expert
- 361 failure to explain adverse test.

- 370 motive
- 371 consciousness of guilt
- 372 flight
- 373 other perpetrator
- 374 dog-tracking evid.
- 375 1101(b) evid. **WD**
- 376 poss. of recently stolen prep.
- 400 aiding and abetting - general
- 401 aiding/abetting - intended crimes
- 402 natural/probable consequences
- 403 nat./prob. conseq. (non-target)
- 404 intoxication
- 415 conspiracy
- 416 evid. of uncharged conspiracy
- 417 co-conspirator's acts—liability
- 418 co-conspirator's statements
- 419 acts/stmts. prior to conspiracy
- 420 withdrawal from conspiracy
- 440 accessories
- 441 solicitation: elements
- 442 solicitation of a minor

- 3471 mut. combat/initial aggressor
- 3472 rt. to self-defense
- 3474 danger gone/attacker disabled
- 3475 rt. to eject trespasser
- 3476 rt. to defend property
- 3477 presum.—afraid of death/GBI
- 3500 unanimity
- 3501 unanimity - generic testimony
- 3502 unanimity—prosecution election
- 3515 mult. counts - separate offenses
- 3516 mult. counts—alt. counts/1event
- 3517 delib./verdict forms - w/o Stone
- 3518 delib./verdict forms—w/Stone
- 3530 judge's comment on evidence
- 3531 serv. prov. for juror w/disability
- 3550 pre-deliberation instructions
- 3575 subst. of alt. juror—deliberations
- 3576 subst. of alt. juror—capital case
- 3577 instruc. to alt. juror—case to jury
- 3590 final instruct. on discharge of jury

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

DEC 04 2007



000068

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF RIVERSIDE

**LIST OF EXHIBITS**

Case No. RIF136990

People vs. Mario Martinez

**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF RIVERSIDE

DEC 04 2007

PLAINTIFF'S			DEFENDANT'S		
EXH	IDENT	DESCRIPTION	EXH	IDENT	DESCRIPTION
1	1	Drawn diagram by Josh Hiraoka of incident			
2	2	Stipulation 1			
3	3	Envelope with drugs			
					<b>**COURT EXHIBIT**</b>
				1	Copy of Investigator's report
				2	Jury note #1
				3	Jury note (verdict reached)

**IMAGED**



000069

## Jury Instruction Cover Sheet

**CASE Number: RIF136990**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
DEC 04 2007

**People vs Mario Martinez**

**Number of Requests: 3 (People/Defense/Court)**

**Number of Instructions:**

Given 35

Modified:

Refused:

Withdrawn:

**IMAGED**

**TRIAL PROCESS (BEFORE OR AFTER VOIR DIRE)**

100

100

Page 1 of 1

Jury service is very important and I would like to welcome you and thank you for your service. Before we begin, I am going to describe for you how the trial will be conducted, and explain what you and the lawyers and I will be doing. When I refer to "the People," I mean the attorneys from the district attorney's office who is trying this case on behalf of the People of the State of California. When I refer to defense counsel, I mean the attorney who is representing the defendant.

The first step in this trial is jury selection. During jury selection, the attorneys and I will ask you questions. These questions are not meant to embarrass you, but rather to determine whether you would be suitable to sit as a juror in this case.

The trial will now proceed as follows: The People may present an opening statement. The defense is not required to present an opening statement, but if it chooses to do so, it may give it either after the People's opening statement or at the beginning of the defense case. The purpose of an opening statement is to give you an overview of what the attorneys expect the evidence will show.

Next, the People will offer their evidence. Evidence usually includes witness testimony and exhibits. After the People present their evidence, the defense may also present evidence but is not required to do so. Because he is presumed innocent, the defendant does not have to prove that he is not guilty.

After you have heard all the evidence and before the attorneys give their final arguments, I will instruct you on the law that applies to the case.

After you have heard the arguments and instructions, you will go to the jury room to deliberate.

**CAUTIONARY ADMONITIONS: JURY CONDUCT (BEFORE OR AFTER JURY IS  
SELECTED)**

101

101

Page 1 of 2

I will now explain some basic rules of law and procedure. These rules ensure that both sides receive a fair trial.

During the trial, do not talk about the case or about any of the people or any subject involved in the case with anyone, not even your family, friends, spiritual advisors, or therapists. You must not talk about these things with the other jurors either, until the time comes for you to begin your deliberations.

As jurors, you may discuss the case together only after all of the evidence has been presented, the attorneys have completed their arguments, and I have instructed you on the law. After I tell you to begin your deliberations, you may discuss the case only in the jury room, and only when all jurors are present.

You must not allow anything that happens outside of the courtroom to affect your decision unless I tell you otherwise. During the trial, do not read, listen to, or watch any news report or commentary about the case.

Do not do any research on your own or as a group. Do not use a dictionary, the Internet, or other reference materials. Do not investigate the facts or law. Do not conduct any tests or experiments, or visit the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate.

During the trial, do not speak to any party, witness, or lawyer involved in the trial. Do not listen to anyone who tries to talk to you about the case or about any of the people or subjects involved in it. If someone asks you about the case, tell him or her that you cannot discuss it. If that person keeps talking to you about the case, you must end the conversation.

When the trial has ended and you have been released as jurors, you may discuss the case with anyone. But under California law, you must wait at least 90 days before negotiating or agreeing to accept any payment for information about the case.

If you receive any information about this case from any source outside of the trial, even unintentionally, do not share that information with any other juror. If you do receive such information, or if anyone tries to influence you or any juror, you must immediately tell the bailiff.

000072

**CAUTIONARY ADMONITIONS: JURY CONDUCT (BEFORE OR AFTER JURY IS  
SELECTED)**

101

101

Page 2 of 2

Some words or phrases that may be used during this trial have legal meanings that are different from their meanings in everyday use. These words and phrases will be specifically defined in the instructions. Please be sure to listen carefully and follow the definitions that I give you. Words and phrases not specifically defined in the instructions are to be applied using their ordinary, everyday meanings.

Keep an open mind throughout the trial. Do not make up your mind about the verdict or any issue until after you have discussed the case with the other jurors during deliberations. Do not take anything I say or do during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be.

Do not let bias, sympathy, prejudice, or public opinion influence your decision.

000073

**NOTE-TAKING**

102

102

Page 1 of 1

You have been given notebooks and may take notes during the trial. Do not remove them from the courtroom. You may take your notes into the jury room during deliberations. I do not mean to discourage you from taking notes, but here are some points to consider if you take notes:

1. Note-taking may tend to distract you. It may affect your ability to listen carefully to all the testimony and to watch the witnesses as they testify;

AND

2. The notes are for your own individual use to help you remember what happened during the trial. Please keep in mind that your notes may be inaccurate or incomplete.

**REASONABLE DOUBT**

103

103

Page 1 of 1

I will now explain the presumption of innocence and the People's burden of proof. The defendant has pleaded not guilty to the charges. The fact that a criminal charge has been filed against the defendant is not evidence that the charge is true. You must not be biased against the defendant just because he has been arrested, charged with a crime, or brought to trial.

A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt unless I specifically tell you otherwise.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendants guilty beyond a reasonable doubt, he is entitled to an acquittal and you must find him not guilty.

**EVIDENCE**

104

104

Page 1 of 1

You must decide what the facts are in this case. You must use only the evidence that is presented in the courtroom or during a jury view. "Evidence" is the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else I tell you to consider as evidence.

Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys will discuss the case, but their remarks are not evidence. Their questions are not evidence. Only the witnesses' answers are evidence. The attorneys' questions are significant only if they help you understand the witnesses' answers. Do not assume that something is true just because one of the attorneys asks a question that suggests it is true.

During the trial, the attorneys may object to questions asked of a witness. I will rule on the objections according to the law. If I sustain an objection, the witness will not be permitted to answer, and you must ignore the question. If the witness does not answer, do not guess what the answer might have been or why I ruled as I did. If I order testimony stricken from the record, you must disregard it and must not consider that testimony for any purpose.

You must disregard anything you see or hear when the court is not in session, even if it is done or said by one of the parties or witnesses.

The court reporter has made a record of everything that was said during the trial. If you decide that it is necessary, you may ask that the court reporter's notes be read to you. You must accept the court reporter's notes as accurate.

**WITNESSES**

105

105

Page 1 of 2

You alone must judge the credibility or believability of the witnesses. In deciding whether testimony is true and accurate, use your common sense and experience. The testimony of each witness must be judged by the same standard. You must set aside any bias or prejudice you may have, including any based on the witness's disability, gender, race, religion, ethnicity, sexual orientation, gender identity, age, national origin, or socioeconomic status. You may believe all, part, or none of any witness's testimony. Consider the testimony of each witness and decide how much of it you believe.

In evaluating a witness's testimony, you may consider anything that reasonably tends to prove or disprove the truth or accuracy of that testimony. Among the factors that you may consider are:

- > How well could the witness see, hear, or otherwise perceive the things about which the witness testified?
- > How well was the witness able to remember and describe what happened?
- > What was the witness's behavior while testifying?
- > Did the witness understand the questions and answer them directly?
- > Was the witness's testimony influenced by a factor such as bias or prejudice, a personal relationship with someone involved in the case, or a personal interest in how the case is decided?
- > What was the witness's attitude about the case or about testifying?
- > Did the witness make a statement in the past that is consistent or inconsistent with his or her testimony?
- > How reasonable is the testimony when you consider all the other evidence in the case?
- > Did other evidence prove or disprove any fact about which the witness testified?
- > Did the witness admit to being untruthful?
- > Has the witness engaged in other conduct that reflects on his or her believability?
- > Was the witness promised immunity or leniency in exchange for his or her testimony?

Do not automatically reject testimony just because of inconsistencies or conflicts.

Consider whether the differences are important or not. People sometimes honestly forget things or



**WITNESSES**

105

105

Page 2 of 2

make mistakes about what they remember. Also, two people may witness the same event yet see or hear it differently.

If you do not believe a witness's testimony that he or she no longer remembers something, that testimony is inconsistent with the witness's earlier statement on that subject.

If you decide that a witness deliberately lied about something significant in this case, you should consider not believing anything that witness says. Or, if you think the witness lied about some things, but told the truth about others, you may simply accept the part that you think is true and ignore the rest.

000078

**JURORS ASKING QUESTIONS**

106

106

Page 1 of 1

If, during the trial, you have a question that you believe should be asked of a witness, you may write out the question and send it to me through the bailiff. I will discuss the question with the attorneys and decide whether it may be asked. Do not feel slighted or disappointed if your question is not asked. Your question may not be asked for a variety of reasons, including the reason that the question may call for an answer that is inadmissible for legal reasons. Also, do not guess the reason your question was not asked or speculate about what the answer might have been. Always remember that you are not advocates for one side or the other in this case. You are impartial judges of the facts.

000079

**SEPARATION ADMONITION**

124

124

Page 1 of 1

You may be permitted to separate during recesses and at the end of the day. I will tell you when to return. Please remember, we cannot begin the trial until all of you are in place, so it is important to be on time.

Remember, do not talk about the case or about any of the people or any subject involved in it with anyone, including the other jurors. Do not make up your mind about the verdict or any issue until after you have discussed the case with the other jurors during deliberations.

**DUTIES OF JUDGE AND JURY**

200

200

Page 1 of 1

Members of the jury, I will now instruct you on the law that applies to this case. I will give you a copy of the instructions to use in the jury room.

You must decide what the facts are. It is up to all of you, and you alone to decide what happened, based only on the evidence that has been presented to you in this trial.

Do not let bias, sympathy, prejudice, or public opinion influence your decision.

You must reach your verdict without any consideration of punishment.

You must follow the law as I explain it to you, even if you disagree with it. If you believe that the attorneys' comments on the law conflict with my instructions, you must follow my instructions.

Pay careful attention to all of these instructions and consider them together. If I repeat any instruction or idea, do not conclude that it is more important than any other instruction or idea just because I repeated it.

Some words or phrases used during this trial have legal meanings that are different from their meanings in everyday use. These words and phrases will be specifically defined in these instructions. Please be sure to listen carefully and follow the definitions that I give you. Words and phrases not specifically defined in these instructions are to be applied using their ordinary, everyday meanings.

Some of these instructions may not apply, depending on your findings about the facts of the case. Do not assume just because I give a particular instruction that I am suggesting anything about the facts. After you have decided what the facts are, follow the instructions that do apply to the facts as you find them.

000081

**DO NOT INVESTIGATE**

201

201

Page 1 of 1

Do not do any research on your own or as a group. Do not use a dictionary, the Internet, or other reference materials. Do not investigate the facts or law. Do not conduct any experiments, or visit the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate.

000082

**NOTE-TAKING**

202

202

Page 1 of 1

You have been given notebooks and may have taken notes during the trial. You may use your notes during deliberations. The notes are for your own individual use to help you remember what happened during the trial. Please keep in mind that your notes may be inaccurate or incomplete. If there is a disagreement about the testimony, you may ask that the court reporter's record be read to you. It is the record that must guide your deliberations, not your notes.

Please do not remove your notes from the jury room.

W

**REASONABLE DOUBT**

220

220

Page 1 of 1

The fact that a criminal charge has been filed against the defendant is not evidence that the charge is true. You must not be biased against the defendants just because he has been arrested, charged with a crime, or brought to trial.

A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendants guilty beyond a reasonable doubt, he is entitled to an acquittal and you must find him not guilty.

**EVIDENCE**

222

222

Page 1 of 1

You must decide what the facts are in this case. You must use only the evidence that was presented in this courtroom. "Evidence" is the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else I told you to consider as evidence.

Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys discuss the case, but their remarks are not evidence. Their questions are not evidence. Only the witnesses' answers are evidence. The attorneys' questions are significant only if they helped you to understand the witnesses' answers. Do not assume that something is true just because one of the attorneys asked a question that suggested it was true.

During the trial, the attorneys may have objected to questions or moved to strike answers given by the witnesses. I ruled on the objections according to the law. If I sustained an objection, you must ignore the question. If the witness was not permitted to answer, do not guess what the answer might have been or why I ruled as I did. If I ordered testimony stricken from the record you must disregard it and must not consider that testimony for any purpose.

You must disregard anything you saw or heard when the court was not in session, even if it was done or said by one of the parties or witnesses.

This means that they both accept those facts as true. you must also accept them as true.

The court reporter has made a record of everything that was said during the trial. If you decide that it is necessary, you may ask that the court reporter's notes be read to you. You must accept the court reporter's notes as accurate.



**DIRECT AND CIRCUMSTANTIAL EVIDENCE: DEFINED**

223

223

Page 1 of 1

Facts may be proved by direct or circumstantial evidence or by a combination of both. Direct evidence can prove a fact by itself. For example, if a witness testifies he saw it raining outside before he came into the courthouse, that testimony is direct evidence that it was raining. Circumstantial evidence also may be called indirect evidence. Circumstantial evidence does not directly prove the fact to be decided, but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question. For example, if a witness testifies that he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it may support a conclusion that it was raining outside.

Both direct and circumstantial evidence are acceptable types of evidence to prove or disprove the elements of a charge, including intent and mental state and acts necessary to a conviction, and neither is necessarily more reliable than the other. Neither is entitled to any greater weight than the other. You must decide whether a fact in issue has been proved based on all the evidence.

**CIRCUMSTANTIAL EVIDENCE: SUFFICIENCY OF EVIDENCE**

224

224

Page 1 of 1

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the People have proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

**WITNESSES**

226

226

Page 1 of 2

You alone, must judge the credibility or believability of the witnesses. In deciding whether testimony is true and accurate, use your common sense and experience. The testimony of each witness must be judged by the same standard. You must set aside any bias or prejudice you may have, including any based on the witness's disability, gender, race, religion, ethnicity or sexual orientation. You may believe all, part, or none of any witness's testimony. Consider the testimony of each witness and decide how much of it you believe.

In evaluating a witness's testimony, you may consider anything that reasonably tends to prove or disprove the truth or accuracy of that testimony. Among the factors that you may consider are:

- > How well could the witness see, hear, or otherwise perceive the things about which the witness testified?
- > How well was the witness able to remember and describe what happened?
- > What was the witness's behavior while testifying?
- > Did the witness understand the questions and answer them directly?
- > Was the witness's testimony influenced by a factor such as bias or prejudice, a personal relationship with someone involved in the case, or a personal interest in how the case is decided?
- > What was the witness's attitude about the case or about testifying?
- > Did the witness make a statement in the past that is consistent or inconsistent with his or her testimony?
- > How reasonable is the testimony when you consider all the other evidence in the case?
- > Did other evidence prove or disprove any fact about which the witness testified?
- > Did the witness admit to being untruthful?
- > Has the witness engaged in other conduct that reflects on his or her believability?
- > Was the witness promised immunity or leniency in exchange for his or her testimony?

Do not automatically reject testimony just because of inconsistencies or conflicts.

Consider whether the differences are important or not. People sometimes honestly forget things or make mistakes about what they remember. Also, two people may witness the same event yet see or

000088

**WITNESSES**

226

226

Page 2 of 2

hear it differently.

If you do not believe a witness's testimony that he or she no longer remembers something, that testimony is inconsistent with the witness's earlier statement on that subject.

If you decide that a witness deliberately lied about something significant in this case, you should consider not believing anything that witness says. Or, if you think the witness lied about some things, but told the truth about others, you may simply accept the part that you think is true and ignore the rest.

000089

**ALL AVAILABLE EVIDENCE**

300

300

Page 1 of 1

Neither side is required to call all witnesses who may have information about the case or to produce all physical evidence that might be relevant.

000090

**SINGLE WITNESS'S TESTIMONY**

301

301

Page 1 of 1

Except for the testimony of Candace Eves, which requires supporting evidence, the testimony of only one witness can prove any fact. Before you conclude that the testimony of one witness proves a fact, you should carefully review all the evidence.

**ACCOMPLICE TESTIMONY MUST BE CORROBORATED: DISPUTE WHETHER  
WITNESS IS ACCOMPLICE**

334

334

Page 1 of 2

Before you may consider the testimony of Candace Eves as evidence against the defendant you must decide whether Candace Eves was an accomplice to those crimes. A person is an accomplice if she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if she personally committed the crime or if:

1. She knew of the criminal purpose of the person who committed the crime;

AND

2. She intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime..

The burden is on the defendant to prove that it is more likely than not that Candace Eves was an accomplice.

An accomplice does not need to be present when the crime is committed. On the other hand, a person is not an accomplice just because he or she is present at the scene of a crime, even if he or she knows that a crime will be committed or is being committed and does nothing to stop it.

A person may be an accomplice even if she is not actually prosecuted for the crime.

If you decide that a witness was not an accomplice, then supporting evidence is not required and you should evaluate her testimony as you would that of any other witness.

If you decide that a witness was an accomplice, then you may not convict the defendant of the crimes charged in counts 1 and 2 based her testimony alone. You may use the (statement/ or testimony) of an accomplice to convict the defendant only if:

1. The accomplice's testimony is supported by other evidence that you believe;

2. That supporting evidence is independent of the accomplice's testimony;

AND

3. That supporting evidence tends to connect the defendant to the commission of the crimes.

Supporting evidence, however, may be slight. It does not need to be enough, by itself, to prove that the defendant is guilty of the charged crimes, and it does not need to support every fact

000092

**ACCOMPLICE TESTIMONY MUST BE CORROBORATED: DISPUTE WHETHER  
WITNESS IS ACCOMPLICE**

334

334

Page 2 of 2

about which the accomplice testified). On the other hand, it is not enough if the supporting evidence merely shows that a crime was committed or the circumstances of its commission. The supporting evidence must tend to connect the defendant to the commission of the crime.

Any testimony of an accomplice that tends to incriminate the defendant should be viewed with caution. You may not, however, arbitrarily disregard it. You should give that testimony the weight you think it deserves after examining it with care and caution and in the light of all the other evidence.

19



000093

**MOTIVE**

370

370

Page 1 of 1

The People are not required to prove that the defendant had a motive to commit any of the crimes charged. In reaching your verdict you may, however, consider whether the defendant had a motive.

Having a motive may be a factor tending to show that the defendant is guilty. Not having a motive may be a factor tending to show the defendant is not guilty.

000094

**EVALUATING CONFLICTING EVIDENCE**

302

302

Page 1 of 1

If you determine there is a conflict in the evidence, you must decide what evidence, if any, to believe. Do not simply count the number of witnesses who agree or disagree on a point and accept the testimony of the greater number of witnesses. On the other hand, do not disregard the testimony of any witness without a reason or because of prejudice or a desire to favor one side or the other. What is important is whether the testimony or any other evidence convinces you, not just the number of witnesses who testify about a certain point.

000095

**ADDITIONAL INSTRUCTIONS ON WITNESS CREDIBILITY--OTHER CONDUCT**

316

316

Page 1 of 1

If you find that a witness has committed a crime or other misconduct, you may consider that fact only in evaluating the credibility of the witness's testimony. The fact that a witness may have committed a crime or other misconduct does not necessarily destroy or impair a witness's credibility. It is up to you to decide the weight of that fact and whether that fact makes the witness less believable.

000096

**PRIOR STATEMENTS AS EVIDENCE**

318

318

Page 1 of 1

You have heard evidence of a statements that a witness made before the trial. If you decide that the witness made those statements, you may use those statements in two ways:

1. To evaluate whether the witness's testimony in court is believable;

AND

2. As evidence that the information in earlier statements is true.

23

000097

**DEFENDANT'S RIGHT NOT TO TESTIFY**

355

355

Page 1 of 1

A defendant has an absolute constitutional right not to testify. He may rely on the state of the evidence and argue that the People have failed to prove the charges beyond a reasonable doubt. Do not consider, for any reason at all, the fact that the defendant did not testify. Do not discuss that fact during your deliberations or let it influence your decision in any way.

000098

**EVIDENCE OF DEFENDANT'S STATEMENTS**

358

358

Page 1 of 1

You have heard evidence that the defendant made an oral n statements before the trial. You must decide whether or not the defendant made any of these statements, in whole or in part. If you decide that the defendant made such a statements, consider the statements, along with all the other evidence, in reaching your verdict. It is up to you to decide how much importance to give to such statements.

You must consider with caution evidence of a defendant's oral statement unless it was written or otherwise recorded.

25

000099

**CORPUS DELICTI: INDEPENDENT EVIDENCE OF A CHARGED CRIME**

359

359

Page 1 of 1

The defendant may not be convicted of any crime based on his out-of-court statements alone. You may only rely on the defendant's out-of-court statements to convict him if you conclude that other evidence shows that the charged crime was committed.

That other evidence may be slight and need only be enough to support a reasonable inference that a crime was committed.

The identity of the person who committed the crime and the degree of the crime may be proved by the defendant's statements alone.

You may not convict the defendant unless the People have proved his guilt beyond a reasonable doubt.

000100

**AIDING AND ABETTING: GENERAL PRINCIPLES**

400

400

Page 1 of 1

A person may be guilty of a crime in two ways. One, he or she may have directly committed the crime. I will call that person the perpetrator. Two, he or she may have aided and abetted a perpetrator, who directly committed the crime. A person is equally guilty of the crime whether he or she committed it personally or aided and abetted the perpetrator who committed it.



**AIDING AND ABETTING: INTENDED CRIMES**

401

401

Page 1 of 1

To prove that the defendant is guilty of a crime based on aiding and abetting that crime, the People must prove that:

1. The perpetrator committed the crime;
2. The defendant knew that the perpetrator intended to commit the crime;
3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime;

AND

4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime.

Someone aids and abets a crime if he knows of the perpetrator's unlawful purpose and he specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime.

If all of these requirements are proved, the defendant does not need to actually have been present when the crime was committed to be guilty as an aider and abettor.

If you conclude that defendant was present at the scene of the crime or failed to prevent the crime, you may consider that fact in determining whether the defendant was an aider and abettor. However, the fact that a person is present at the scene of a crime or fails to prevent the crime does not, by itself, make him an aider and abettor.

000102

**Special Jury Instruction: *People v. Mario Martinez*, RIF136990**

You have heard evidence that law enforcement searched a car in this case. The legal justification for the search is not in issue in this trial.

000103

**UNION OF ACT AND INTENT: GENERAL INTENT**

250

250

Page 1 of 1

The crimes charged in this case requires proof of the union, or joint operation, of act and wrongful intent.

For you to find a person guilty of the crimes charged in counts 1 and 2, that person must not only commit the prohibited act, but must do so with wrongful intent. A person acts with wrongful intent when he intentionally does a prohibited act, however, it is not required that he or she intend to break the law. The act required is explained in the instruction for that crime.

**SALE, TRANSPORTATION, ETC., OF CONTROLLED SUBSTANCE (HEALTH &  
SAF. CODE, §§ 11352, 11379)**

2300

2300

Page 1 of 1

The defendant is charged in count 1 with transporting methamphetamine.

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant transported a controlled substance;
  2. The defendant knew of its presence;
  3. The defendant knew of the substance's nature or character as a controlled substance;
- AND
4. The controlled substance was methamphetamine.
- AND
5. The controlled substance was in a usable amount.

A person transports something if he carries or moves it from one location to another, even if the distance is short.

A usable amount is a quantity that is enough to be used by someone as a controlled substance. Useless traces or debris are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.

The People do not need to prove that the defendant knew which specific controlled substance he transported only that he was aware of the substance's presence and that it was a controlled substance.

A person does not have to actually hold or touch something to transport it. It is enough if the person has (control over it/ or the right to control it), either personally or through another person.

**SIMPLE POSSESSION OF CONTROLLED SUBSTANCE (HEALTH & SAF. CODE, §§  
11350, 11377)**

2304

2304

Page 1 of 1

The defendant is charged in count 2 with possessing methamphetamine, a controlled substance

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant possessed a controlled substance;
2. The defendant knew of its presence;
3. The defendant knew of the substance's nature or character as a controlled substance;
4. The controlled substance was methamphetamine.

AND

5. The controlled substance was in a usable amount.

A usable amount is a quantity that is enough to be used by someone as a controlled substance. Useless traces or debris are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.

The People do not need to prove that the defendant knew which specific controlled substance he possessed, only that he was aware of the substance's presence and that it was a controlled substance.

Two or more people may possess something at the same time.

A person does not have to actually hold or touch something, to possess it. It is enough if the person has (control over it/ or the right to control it), either personally or through another person.

Agreeing to buy a controlled substance does not, by itself, mean that a person has control over that substance.

000106

**MULTIPLE COUNTS: SEPARATE OFFENSES (PEN. CODE, § 954)**

3515

3515

Page 1 of 1

Each of the counts charged in this case is a separate crime. You must consider each count separately and return a separate verdict for each one

70

**PRE-DELIBERATION INSTRUCTIONS**

3550

3550

Page 1 of 2

When you go to the jury room, the first thing you should do is choose a foreperson. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard.

It is your duty to talk with one another and to deliberate in the jury room. You should try to agree on a verdict if you can. Each of you must decide the case for yourself, but only after you have discussed the evidence with the other jurors. Do not hesitate to change your mind if you become convinced that you are wrong. But do not change your mind just because other jurors disagree with you.

Keep an open mind and openly exchange your thoughts and ideas about this case. Stating your opinions too strongly at the beginning or immediately announcing how you plan to vote may interfere with an open discussion. Please treat one another courteously. Your role is to be an impartial judge of the facts, not to act as an advocate for one side or the other.

As I told you at the beginning of the trial, do not talk about the case or about any of the people or any subject involved in it with anyone, including, but not limited to, your spouse or other family, or friends, spiritual leaders or advisors, or therapists. You must discuss the case only in the jury room and only when all jurors are present. Do not discuss your deliberations with anyone.

During the trial, several items were received into evidence as exhibits. You may examine whatever exhibits you think will help you in your deliberations. These exhibits will be sent into the jury room with you when you begin to deliberate.

If you need to communicate with me while you are deliberating, send a note through the bailiff, signed by the foreperson or by one or more members of the jury. To have a complete record of this trial, it is important that you not communicate with me except by a written note. If you have questions, I will talk with the attorneys before I answer so it may take some time. You should continue your deliberations while you wait for my answer. I will answer any questions in writing or orally here in open court.

Do not reveal to me or anyone else how the vote stands on the question of guilt unless I ask you to do so.

000108

**PRE-DELIBERATION INSTRUCTIONS**

3550

3550

Page 2 of 2

Your verdict on each count must be unanimous. This means that, to return a verdict, all of you must agree to it.

It is not my role to tell you what your verdict should be. Do not take anything I said or did during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be.

You will be given a verdict forms. As soon as all jurors have agreed on a verdict, the foreperson must date and sign the appropriate verdict forms and notify the bailiff. If you are able to reach a unanimous decision on only one or only some of the charges, fill in those verdict forms only, and notify the bailiff. Return any unsigned verdict form.

34



000109

**INSTRUCTIONS TO ALTERNATE ON SUBMISSION OF CASE TO JURY**

3577

3577

Page 1 of 1

To the alternate jurors: The jury is now deliberating, but you are still an alternate jurors and are bound by my earlier instructions about your conduct.

Do not talk about the case or about any of the people or any subject involved in it with anyone, not even your family or friends, and not even with each other. Do not have any contact with the deliberating jurors. Do not decide how you would vote if you were deliberating. Do not form or express an opinion about the issues in this case, unless you are substituted for one of the deliberating jurors.

26

.000110

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

DEC 04 2007



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
(Riverside)

THE PEOPLE OF THE STATE OF CALIFORNIA,

NO. RIF136990

Plaintiff,

v.

VERDICT

MARIO MARTINEZ,


*GUILTY*

Defendant.

We, the jury in the above-entitled action, find the defendant, MARIO MARTINEZ, guilty of a violation of section 11379, subdivision (a) of the Health and Safety Code, TRANSPORTATION OF METHAMPHETAMINE, as charged under count 1 of the information.

Dated: DEC 4, 2007

*Juror # 4*

Foreperson 

IMAGED

000111

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
(Riverside)

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
DEC 04 2007

THE PEOPLE OF THE STATE OF CALIFORNIA,

NO. RIF136990

Plaintiff,

v.

VERDICT

MARIO MARTINEZ,

*GUILTY*

Defendant.

We, the jury in the above-entitled action, find the defendant, MARIO MARTINEZ, guilty of a violation of section 11377, subdivision (a) of the Health and Safety Code, SIMPLE POSSESSION OF METHAMPHETAMINE, as charged under count 2 of the information.

Dated: DEC 4, 2007

*Juror # 4*

Foreperson

IMAGED

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000112

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Court Trial  
Date: 12/14/07 Time: 8:30 am Dept/Div: 44  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
=====

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney D. Steward.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 10:41, the following proceedings were held:  
Court Trial In session.  
AS TO DEFENDANT'S PRIORS  
Oral Motion By People regarding Amend information by  
interlineation is called for hearing.  
Motion Granted  
The following are ordered amended by  
interlineations:  
1. Prior one amended as attempted burglary 664/459  
2. Prior two amended to 5-13-94  
3. Prior four amended to 7-10-01  
4. First special prior offense amended to  
12-30-03  
Oral Motion By People regarding Dismiss defendant's third prior  
is called for hearing.  
Motion Granted  
Court Orders Prior(s) 3 Stricken.  
Witness(es) sworn. Yolanda Perez  
Witness Yolanda Perez excused.  
Counsel Stipulate: People's exhibit #3 - drugs  
substituted with a photo in lieu of the actual  
drug.  
People's Exhibit 3A - Photo of drugs (substituted) is/are Marked  
for identification only.  
People's Exhibit(s) 3 is/are Admitted in evidence.  
Counsel Stipulate: People's exhibit #3 returned  
to Yolanda Perez-DA forensic tech supervisor.  
People's Exhibit 4 - Fingerprint card is/are Marked for

000113

12/14/07

Page: 2

-----  
Case Number : RIF136990                      People vs. MARIO MARTINEZ  
-----

identification only.  
People's Exhibit 5 6 7 - 969(b) packets is/are Marked for  
identification only.  
People's Exhibit(s) 4 5 6 7 is/are Admitted in evidence.  
Court takes judicial notice of cases RIF097808  
CR54363 and CR56479.  
People rest.  
Court hears arguments of counsel.  
Court Finds Prior(s) 1 2 4 5 True.  
Court Finds Prior/Strike(s) True.  
Report and Sentence Hearing set on 01/11/2008 at 8:30 in Dept.  
44.  
Referred to Probation Department for pre-sentence report.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute Order printed to Robert Presley Detention Center.  
At 11:17, proceedings adjourned.  
\*\*MINUTE ORDER OF COURT PROCEEDING\*\*

Dispo

000114

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

**LIST OF EXHIBITS**

Case No. RIF136990

People vs. Mario Martinez

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
DEC 14 2007

*[Handwritten signature]*

PLAINTIFF'S			DEFENDANT'S		
EXH	IDENT	DESCRIPTION	EXH	IDENT	DESCRIPTION
1	1	Drawn diagram by Josh Hiraoka of incident			
2	2	Stipulation 1			
3	3	Envelope with drugs ( On 12-14-07 DRUGS were released to Yolanda Perez-DA Forensic Tech supervisor)			
3A	3A	Photo of drugs (Exhibit 3 - substituted with photo)			
4	4	Fingerprint card			<b>**COURT EXHIBIT**</b>
5	5	969(b) packet		1	Copy of Investigator's report
6	6	969(b) packet		2	Jury note #1
7	7	969(b) packet		3	Jury note (verdict reached)

**IMAGED**

000115

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

LIST OF EXHIBITS (AMENDED ON 12-14-07)

Case No. RIF136990

People vs. Mario Martinez

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
DEC 14 2007

JAN 07 2008

PLAINTIFF'S			DEFENDANT'S		
EXH	IDENT	DESCRIPTION	EXH	IDENT	DESCRIPTION
1	1	Drawn diagram by Josh Hiraoka of incident			
2	2	Stipulation 1			
3	3	Envelope with drugs ( On 12-14-07 DRUGS were released to Yolanda Perez-DA Forensic Tech supervisor)			
3A	3A	Photo of drugs (Exhibit 3 - substituted with photo)			
4	4	Fingerprint card			**COURT EXHIBIT**
5	5	969(b) packet		1	Copy of Investigator's report
6	6	969(b) packet		2	Jury note #1
7	7	969(b) packet		3	Jury note (verdict reached)

IMAGED

## DEPARTMENT OF CORRECTIONS

Departmental Archives  
2015 Aerojet Road, Suite D  
(916) 358-1550



08/10/2007

County of Riverside - Main  
Office of the District Attorney  
4075 Main Street  
Riverside, CA 92501

Attention: Patty Cachu

Re: MARTINEZ, MARIO  
CDC No.: E36285  
Discharge Date: 06/25/1991

Dear Sir/Madam:

This is to certify that the Director of the Department of Corrections, is the official legal custodian of the records of prisoners committed to the California State Prisons and that the said Director has authorized the undersigned to certify on his behalf the criminal records of persons who have served sentences in California State Prisons.

I further certify that the attached is/are a true and correct copy of the original(s) in my custody as required by law.

A handwritten signature in cursive script that reads "Anna Garcia-Plascencia".

**Anna Garcia-Plascencia**  
Correctional Case Records Analyst

cc: Central File

Attachments:  Chronological History/Movement History  
 Abstract of Judgment/Minute Order(s)  
 Fingerprint Card(s)  
 Photograph

Document(s) not available: Photograph







**ROD PACHECO**  
DISTRICT ATTORNEY

OFFICE OF  
THE DISTRICT ATTORNEY  
COUNTY OF RIVERSIDE

August 8, 2007

**TO: CALIFORNIA DEPARTMENT OF CORRECTIONS**  
**DEPARTMENTAL ARCHIVES UNIT**  
Aerojet Road, 2015 Aerojet Campus, Rancho Cordova, CA 95742  
PHONE: (916) 358-1521  
FAX: (916) 358-1554 or 1553      **ATTN: 969b PRIOR UNIT**

PLEASE SEND THE FOLLOWING CERTIFIED 969B PRIOR PACKAGE(S)  
(PLEASE TYPE INFO)

<u>NAME</u>	<u>CDC#</u>	<u>DISCHARGE DATE</u>
1. MARIO MARTINEZ	E-36285	6-25-91
	J-49770	6-22-00

DDA: Info

Strike Case: YES

Please refer to our DA Number: 222276

969b packet needed by: 8-22-07

PLEASE INCLUDE ALL ABSTRACTS FOR EACH CDC NUMBER. THANK YOU.

PLEASE RETURN PACKAGE TO: Riverside County District Attorney's Office  
Attn: Patty Cachu  
4075 Main St.  
Riverside, CA 92501

FAX NO. 951-955-5682

skh  
forms-969b archives

CHRONOLOGICAL HISTORY

Number	Chronological History	Initials	Dead Time	Release Date
NOV 4 1989	RCC-01M			
12-11-89	Intake Audit	Km		
12-26-89	Rec'D Ctg	VA		
1-20-90	Intake Audit. H-L eff 12-31-89. Applied 25 credits W&E thru 12-31-89.			
2-22-90	60 Day Audit. W&E thru 1-31-90 @ H-L. Received for Discharge Review. 4M		1/2 hr	5-25-90
5-10-90	Quoted for parole. 169 days applied.		Review	5-25-90
5-25-90	EPAD parole Reg. w/ Parole #2, Riverside County	L7		5-25-90 5/25/91
6-16-90	File pursuant			
5-29-91	DISCHARGED		DD	6-25-91

Number

P-36285

Name

MARTINEZ MARIO

Page

BEST COPY AVAILABLE

000119

ABSTRACT OF JUDGMENT - COMMITMENT  
SINGLE OR CONCURRENT COUNT FORM  
(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

FORM DSL 290.1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside  
COURT I.D. 330001 BRANCH Indio

PEOPLE OF THE STATE OF CALIFORNIA  
DEFENDANT: MARIO MARTINEZ  
AKA:

V. VS  
 PRESENT  NOT PRESENT

COMMITMENT TO STATE PRISON  
ABSTRACT OF JUDGMENT

AMENDED ABSTRACT ICR-12679

DATE OF HEARING (MO) (DAY) (YR) 10 5 89

DEPT. NO. B

JUDGE R.E. BISHOP

CASE NUMBER ICR-12679

CLEAR

REPORTER D. Niskie

COUNSEL FOR PEOPLE R. K. Brown

COUNSEL FOR DEFENDANT R. Hurley

PROBATION NO. OR PROBATION OFFICER C.A. Montoya

N.S. Langford

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONY:

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTION BY	TRIAL COURT FILE #	TRIAL (L/M/U)	TIME IMPOSED	
					MO	DAY	YEAR				YEARS	MONTHS
1	PC	666	Petty Theft w/Prior	89	09	26	89				1	4

2. ENHANCEMENTS (CHARGED AND FOUND, STRICKEN, TIME IMPOSED):

COUNT	12022(a)			12022(b)			12022.3(a)			12022.3(b)			12022.5			12022.6(a)			12022.6(b)			12022.7			12022.8			TIME IMPOSED	
	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I		
																												0	0

3. OTHER ORDERS:

4. A. NUMBER OF PRIOR PRISON TERMS:

	C/P	S	I	TIME
667(a)				0 0
667(b)				0 0
667(c)				0 0

B. NUMBER OF PRIOR FELONY CONVICTIONS:

	C/P	S	I	TIME
667(a)				0 0

5. TIME STAYED § 1170.1(i) (DOUBLE BASE LIMIT):

6. TOTAL TERM IMPOSED: 1 4

7.  THIS SENTENCE IS TO RUN CONCURRENT WITH ANY PRIOR UNCOMPLETED SENTENCE(S) with CR-32018.

8. EXECUTION OF SENTENCE IMPOSED:

A.  AT INITIAL SENTENCING HEARING B.  AT RESENTENCING PURSUANT TO DECISION ON APPEAL C.  AFTER REVOCATION OF PROBATION D.  AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT (PC 8117.1)(1)

9. DATE SENTENCE PRONOUNCED: 10 05 89 CREDIT FOR TIME SPENT IN CUSTODY: 66 INCLUDING: 46 LOCAL CONDUCT CREDITS: 22 STATE INSTITUTIONS:  DMH  CDC

10. DEFENDANT IS REMOVED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:  WITHIN 48 HOURS EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT:  CALIF. INSTITUTION FOR WOMEN - FRONTIERA  CALIF. MEDICAL FACILITY - VACAVILLE  CALIF. INSTITUTION FOR MEN - CHINO  OTHER (SPECIFY):

CLERK OF SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action

DEPUTY'S SIGNATURE [Signature] DATE: 10-5-89

This form is prescribed pursuant to Penal Code § 1212.5 to satisfy the requirements of Penal Code § 1213 (Abstract of Judgment and Commitment) for determining sentences under Penal Code § 1170. A copy of probation report shall accompany the Department of Corrections' copy of this form pursuant to Penal Code § 1170.14. Attachments may be used but must be incorporated by reference.

Form Adopted by the Judicial Council of California effective July 1, 1981

ABSTRACT OF JUDGMENT - COMMITMENT  
SINGLE OR CONCURRENT COUNT FORM  
(Not to be used for Multiple Count Convictions nor Consecutive Sentences)  
FORM DSL 290.1

BEST COPY AVAILABLE

ABSTRACT OF JUDGMENT - COMMITMENT  
SINGLE OR CONCURRENT COUNT FORM  
(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

FORM DSL 790

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **Riverside**

COURT NO. **33**

BRANCH

PEOPLE OF THE STATE OF CALIFORNIA  
DEFENDANT: **Mario Martinez**

versus

PRESENT

AKA:  
COMMITMENT TO STATE PRISON  
ABSTRACT OF JUDGMENT

AMENDED  
ABSTRACT

CASE NUMBER  
**CR-32018**

DATE OF HEARING  
(MO) (DAY) (YR)  
**10 06 89**

JUDGE  
**08**

REPORTER  
**Richard Van Frank**

PROSECUTOR  
**J. Tolber**

REPORTER  
**T. Avery**

REPORTER  
**J. Chessell**

REPORTER  
**J. Weinell**

PROBATION NO. OR PROBATION OFFICER  
**A-194249**

1. DEFENDANT WAS CONVICTED BY THE COMMISSION OF THE FOLLOWING CRIME(S)

COUNT	SECTION NUMBER	CRIME	DATE OF CONVICTION	CONVICTION BY	TIME IMPOSED
			MO DAY YEAR	JURY TRIAL	YEARS MONTHS
<b>1</b>	<b>PC 664/459 **</b>	<b>Attempt 2nd degree burglary</b>	<b>89 09 18 89</b>	<b>X</b>	<b>1 0</b>

2. ENHANCEMENTS (CHARGED AND FOUND, STATE PENAL CODE SECTION 1170.2)

CHARGE	CP 1	CP 2	CP 3	CP 4	CP 5	CP 6	CP 7	CP 8	CP 9	CP 10

3. OTHER ORDERS

4. NUMBER OF PRIOR PRISON TERMS

	C/P	S	J
457.5(a)			
457.5(b)			
457.5(c)			

5. NUMBER OF PRIOR FELONY CONVICTIONS

	C/P	S	J
457.5(a)			

6. TIME STAYED 1170.1(f) (DOUBLE BASE LIMIT)

7. TOTAL TERM IMPOSED: **1 0**

8.  THIS SENTENCE IS TO RUN CONCURRENT WITH ANY PRIOR UNCOMPLETED SENTENCE(S)

9. EXECUTION OF SENTENCE IMPOSED:

A.  AT INITIAL SENTENCING HEARING

B.  AT RESENTENCING PURSUANT TO DECISION ON APPEAL

C.  AFTER REVOCATION OF PROBATION

D.  AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT [PC 8113(d)]

10. DATE SENTENCE PRONOUNCED: **10 06 89**

CREDIT FOR TIME SPENT IN CUSTODY: **12** INCLUDING: **8**

LOCAL CONDUCT CREDITS: **4** STATE INSTITUTIONS: **0** DMH: **0** CDC: **0**

10. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF TO BE DELIVERED:

FORTHWITH

INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT:

CALIF. INSTITUTION FOR WOMEN - PRONTERA

CALIF. MEDICAL FACILITY - VACAVILLE

CALIF. INSTITUTION FOR MEN - CHINO

OTHER (SPECIFY):

CLERK OF SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action

11-2-89

This form is prescribed pursuant to Penal Code 81213.5 to satisfy the requirements of Penal Code 81213 (Abstract of Judgment and Commitment) for multiple count sentences under Penal Code 81170. A copy of probation report shall accompany the Department of Corrections copy of this form. Pursuant to Penal Code 81213.5, a copy of the sentencing proceedings and any supplementary probation report shall be transmitted to the Department of Corrections pursuant to Penal Code 81213.5. Attachments may be used but must be incorporated by reference.

Form Adopted by the  
Judicial Council of California  
Effective July 1, 1981

ABSTRACT OF JUDGMENT - COMMITMENT  
SINGLE OR CONCURRENT COUNT FORM  
(Not to be used for Multiple Count Convictions nor Consecutive Sentences)  
FORM DSL 790 1

BEST COPY AVAILABLE

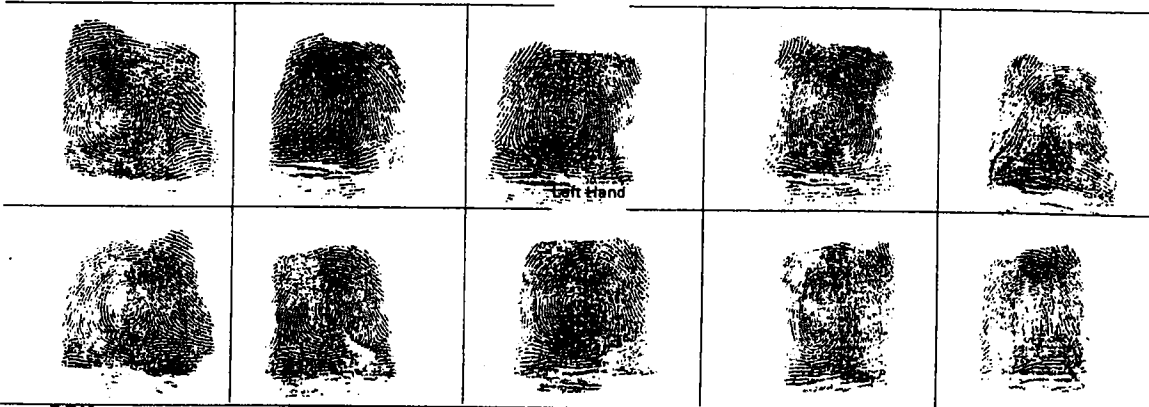
STATE OF CALIFORNIA  
FINGERPRINT CARD

DEPARTMENT OF CORRECTIONS  
000121

NO. E-36285

NAME MARTINEZ, MARIO CLASS \_\_\_\_\_  
ALIAS \_\_\_\_\_ REF. \_\_\_\_\_

Right Hand



Hair <u>BRN</u>	Eyes <u>BRN</u>	Complexion <u>OLIVE</u>	Height <u>63"</u>
Weight <u>145</u>	Age <u>30</u>	Build <u>MED</u>	Occupation <u>LABORER</u>
Rec'd at <u>RCC/CTM</u>	Date <u>11-14-89</u>	County <u>RIV.</u>	Nativity <u>CA.</u>
Offense <u>RIV. ICR12679A CR32018B 1A.ct,</u>	Term <u>1YEAR 4MONTHS</u>	Race <u>M</u>	

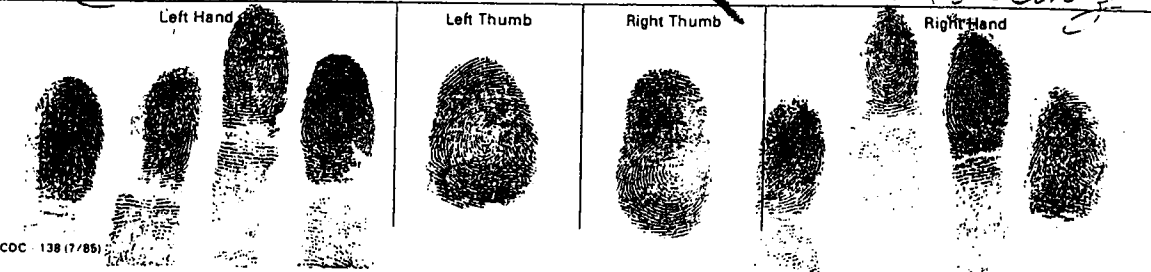
Marks, Scars, Tattoos (Location & Brief Description — Scar Right Eye. Tattoo Eagle Right Forearm. NOTE: If numerous list those most prominent).

TATTOOS—BOTH ARMS

PETTY THEFT W/PRIOR(666 PC) 1B.ct, ATT(664) PC  
BURG 2nd(459) PC


Taken by [Signature]

Signature Mario Martinez



Q00122

Case No: RF 136990  
Date: 12-14-07  
People/Plaintiff Exhibit No.: 6  
 Marked for Identification  
 Admitted  
JOSE GUTIERREZ, EXECUTIVE OFFICER  
By J. Anderson, Deputy

  
I certify that this is a true and correct copy  
of the original documents contained within  
our records.  
Anna Garcia Placencia  
This date AUG 10 2007

DEPARTMENT OF CORRECTIONS AND REHABILITATION  
Departmental Archives  
2015 Aerojet Road, Suite D  
Rancho Cordova, CA 95742  
(916) 358-1521



12/06/2007

County of Riverside - Main  
Office of the District Attorney  
4075 Main Street  
Riverside, CA 92501

Attention: Norise Winski

Re: **MARTINEZ, MARIO**  
CDC No.: **J49770**  
Discharge Date: **06/22/2000**

Dear Sir/Madam:

This is to certify that the Director of the Department of Corrections, is the official legal custodian of the records of prisoners committed to the California State Prisons and that the said Director has authorized the undersigned to certify on his behalf the criminal records of persons who have served sentences in California State Prisons.

I further certify that the attached is/are a true and correct copy of the original(s) in my custody as required by law.

*Anna Garcia Plascencia*  
**Anna Garcia-Plascencia**  
Correctional Case Records Analyst



cc: Central File  
AG/em

- Attachments:
- Chronological History/Movement History
  - Abstract of Judgment/Minute Order(s)
  - Fingerprint Card(s)
  - Photograph

Document(s) not available: Chronological history, providing movement history printout; Commitment fingerprint card, providing parole violation card



ROD PACHECO  
DISTRICT ATTORNEY

OFFICE OF  
THE DISTRICT ATTORNEY  
COUNTY OF RIVERSIDE

DECEMBER 5, 2007  
SECOND REQUEST - RUSH  
Original Request sent 8/07

TO: CALIFORNIA DEPARTMENT OF CORRECTIONS  
DEPARTMENTAL ARCHIVES UNIT  
Aerojet Road, 2015 Aerojet Campus, Rancho Cordova, CA 95742  
PHONE: (916) 358-1521  
FAX: (916) 358-1554 or 1553      **ATTN: 969b PRIOR UNIT**

PLEASE SEND THE FOLLOWING CERTIFIED 969B PRIOR PACKAGE(S)  
(PLEASE TYPE INFO)

<u>NAME</u>	<u>CDC#</u>	<u>DISCHARGE DATE</u>
1. MARIO MARTINEZ	J-49770	6-22-00

DDA: Dave Stewart

Strike Case: YES

Please refer to our DA Number: 222276

969b packet needed by: 12/13/07 (PLEASE RUSH - OVERNIGHT PACKET,  
FED EX # 1118-3546-2)

PLEASE INCLUDE ALL ABSTRACTS FOR EACH CDC NUMBER. THANK YOU.

PLEASE RETURN PACKAGE TO: Riverside County District Attorney's Office  
Attn: Norise Winski  
4075 Main St.  
Riverside, CA 92501

FAX NO. 951-955-5682

nw  
forms-969b archives



CMHQ J49770

MARTINEZ, MARIO

PAGE 01

\*\*\* MOVEMENT HISTORY - MOST RECENT MOVEMENT FIRST \*\*\* RPT DATE: 08/01/2000

06/22/2000 DISCHARGED FROM REG4 DCH TYPE: SB1057  
ACTUAL DCH DATE 2-16-1999 BOX 25526

06/22/2000 PAR TRANSFER TO REG4 RIV3 CO: RIV

05/31/2000 PAR TRANSFER TO REG4 RIV1 CO: RIV

05/26/2000 STATUS CHANGED TO RETPAR FROM PRTC REL TO REG3 HPRK2  
CO: LA

03/23/2000 STATUS CHANGED TO TEMPREM FROM TEMP

03/23/2000 TRANSFERRED TO CCF DESRTV-M FROM RCW

03/14/2000 STATUS CHANGED TO PRTC FROM PENDREV  
ASSIGN TO RCW

02/17/2000 TRANSFERRED TO RCW FROM CIM-E

02/16/2000 TRANSFERRED TO CIM-E FROM RCC TEMPORARILY  
P/N PRESS ENTER FOR NEXT PAGE

CMHQ J49770

MARTINEZ, MARIO

PAGE 02

02/14/2000 RETURNED TO RCC  
RET FROM PAROLE RET STATUS PENDREV

06/13/1998 PAR TRANSFER TO REG3 HPRK2 CO: LA

06/12/1998 STATUS CHANGED TO RETPAR FROM PENDREV REL TO REG4 RIV1  
CO: RIV  
SATCU

06/01/1998 TRANSFERRED TO CIM SATCU FROM RCW

05/19/1998 TRANSFERRED TO RCW FROM CIM-E

05/18/1998 TRANSFERRED TO CIM-E FROM RCC TEMPORARILY

05/14/1998 RETURNED TO RCC  
RET FROM PAROLE RET STATUS PENDREV

01/17/1998 PAROLED TO REG4 RIV1 FROM SCC  
TENT DCH DATE: 09/12/2000 CO: RIV  
REL.WITH 127 DAYS KEMPER CREDIT

P/N PRESS ENTER FOR NEXT PAGE

CMHQ J49770

MARTINEZ, MARIO

PAGE 03

05/29/1997 TRANSFERRED TO SCC CC#4 FROM RCW

05/21/1997 TRANSFERRED TO RCW FROM RCC TEMPORARILY

04/18/1997 TRANSFERRED TO RCC FROM SCC TEMPORARILY  
H/C

12/05/1996 TEMP RELEASE TO TCR FROM SCC CUSTODY: MONTBEL RET SAME DAY  
FUNERAL/BROTHER/MONTEBELLO CA

05/29/1996 CHANGED UNIT NEW UNIT: CC#28 OLD UNIT: CC#19

06/14/1995 CHANGED UNIT NEW UNIT: CC#19 OLD UNIT: I

04/05/1995 TRANSFERRED TO SCC I FROM CCI3

02/15/1995 ADMITTED TO CCI3 FROM SC/RIV AS A DSL  
CII A06315999  
CS CR54363/CR56479

P/01 NO ADDITIONAL PAGE FOLLOWS

J49770

000128

### ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF <u>Riverside</u>		CASE NUMBER (S)	
COURT ID <u>749770</u>	BRANCH <u>Superior</u>	<u>RS4363</u>	
PEOPLE OF THE STATE OF CALIFORNIA versus		<input type="checkbox"/> PRESENT	
DEFENDANT: <u>MARIO MARTINEZ</u>		<input type="checkbox"/> NOT PRESENT	
AKA:			
COMMITMENT TO STATE PRISON	AMENDED ABSTRACT	<input type="checkbox"/>	
ABSTRACT OF JUDGMENT			
DATE OF HEARING AND JURY <u>CS 13/94</u>	DEPT. NO. <u>53</u>	JUDGE <u>ROBERT D. MACOMBER</u>	CLERK <u>G. DIAZ</u>
REPORTER <u>G. Brewer</u>	COUNSEL FOR PEOPLE <u>E. HUNT</u>	COUNSEL FOR DEFENDANT <u>CDP- S. SCHAAF</u>	PROBATION NO OR PROBATION OFFICER

UNIT III R & R  
CCI ICHACHAPI  
95 FEB 15 AM 9:12

COUNT	CODE	SECTION NUMBER	CRIME	DATE OF CONVICTION	CONVICTED BY		SENTENCE RELATION																			
					IN	OUT	ADJUDICATED	IN	OUT	ADJUDICATED	IN	OUT	ADJUDICATED	IN	OUT	ADJUDICATED	IN	OUT	ADJUDICATED							
1	27	19000	2nd Burglary	04 05 13 94																						

2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022 series) including WEAPONS, BATTERY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BARR STATUS, ETC. For each count list enhancements horizontally. Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time for enhancements on each line and enter line total in right-hand column.

Count	Enhancement	Yrs or S'	Enhancement	Yrs or S'	Enhancement	Yrs or S'	Enhancement	Yrs or S'	Enhancement	Yrs or S'	Total

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series and OTHER. List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(b) list § 667.5(b) 2 times). Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time to these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yrs or S'	Enhancement	Yrs or S'	Enhancement	Yrs or S'	Enhancement	Yrs or S'	Enhancement	Yrs or S'	Enhancement	Yrs or S'	Total

4. INCOMPLETE SENTENCE(S) CONSECUTIVE:

COUNTY	CASE NUMBER	CREDIT FOR TIME SERVED

5. OTHER ORDERS  
**ALLEGED PRIOR/STRIKE**

6. TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DSL 290-A)

7. TIME STAYED TO COMPLY WITH 5-YEAR OR 10-YEAR LIMIT ON SUBORDINATE TERMS, DOUBLE-BASED-TERM LIMIT, ETC. (Do not include § 654 stays or discretionary stays of term for enhancements.)

8. TOTAL TERM IMPOSED

9. EXECUTION OF SENTENCE IMPOSED:

A  AT INITIAL SENTENCING HEARING    B  AT RESENTENCING PURSUANT TO DECISION ON APPEAL    C  AFTER REVOCATION OF PROBATION    D  AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT (PC 111706)    EX  OTHER \_\_\_\_\_

10. DATE OF SENTENCE PRONOUNCED (MO) (DAY) (YR)    CREDIT FOR TIME SPENT IN CUSTODY    TOTAL DAYS INCLUDING    ACTUAL LOCAL TAKE    LOCAL CONDUCT CREDITS    STATE INSTITUTIONS    DMH    COC

11. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

FORTHWITH    INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION/ORDNANCE CENTER LOCATED AT \_\_\_\_\_

AFTER 48 HOURS EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS

CALIF. INSTITUTION FOR WOMEN - FRONTIERA     CALIF. MEDICAL FACILITY - VACAVILLE     CALIF. INSTITUTION FOR MEN - CHICO     DEUEL VOC INST

SAN QUENTIN     OTHER (SPECIFY) \_\_\_\_\_

I hereby certify that this is a correct abstract of the judgment made in this action.

*A. Frontuto*    DATE: 02/13/94

**CLERK OF THE SUPERIOR COURT**

ABSTRACT OF JUDGMENT - PRISON COMMITMENT  
FORM DSL 290

OSTRIBED    PINK COPY COURT FILE    YELLOW COPY-DEPARTMENT OF CORRECTIONS    WHITE COPY-ADMINISTRATIVE OFFICE OF THE COURT



STATE OF CALIFORNIA  
**FINGERPRINT CARD**  
 CDC-138 (7/85)

DEPARTMENT OF CORRECTIONS **000129**

NO. J-49770

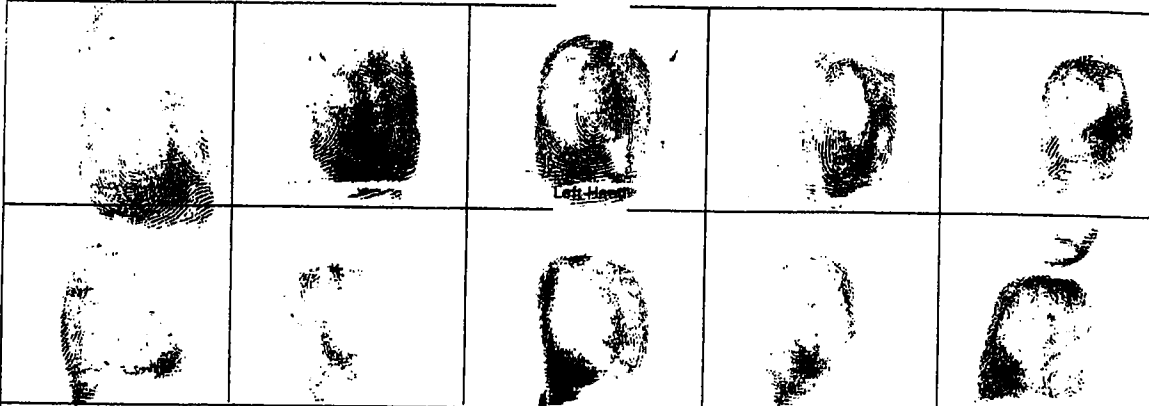
NAME MARTINEZ, MARIO

CLASS \_\_\_\_\_

ALIAS \_\_\_\_\_

REF. \_\_\_\_\_

Right Hand

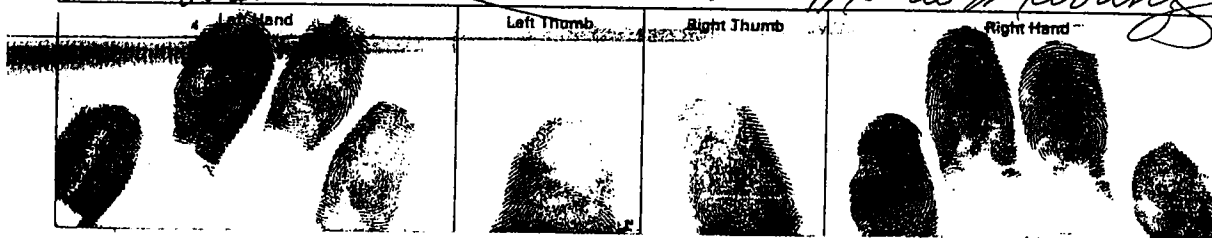


Hair <u>BRN</u>	Eyes <u>BRN</u>	Complexion <u>OLIVE</u>	Height <u>64</u>
Weight <u>130</u>	Age <u>37</u>	Build <u>MED</u>	Occupation <u>LABOR</u>
Rec'd at <u>RCC-CIM</u>	Date <u>5/14/98</u>	County <u>RLYCO</u>	Nativity <u>CA</u>
Offense <u>PAROLE VIOL</u>		Term <u>PVRTC</u>	Race <u>HSP</u>

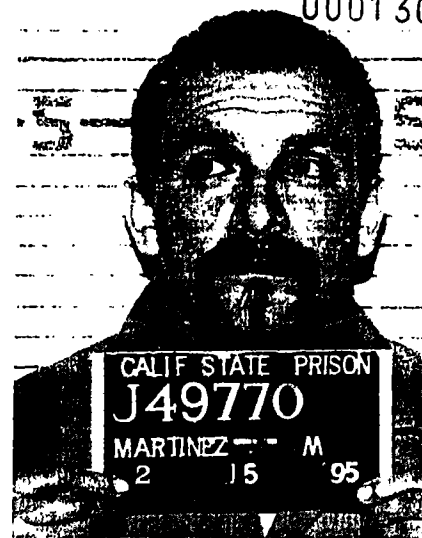
Marks, Scars, Tattoos (Location & Brief Description — Scar Right Eye, Tattoo Eagle Right Forearm. NOTE: If numerous list those most prominent).

Taken by [Signature]

Signature \*Mario Martinez




000130



BEST COPY AVAILABLE

000131

Case No: RIF 136990  
Date: 12-14-07  
People/Plaintiff Exhibit No.: 5  
 Marked for Identification  
 Admitted  
JOSE GUILLEN, EXECUTIVE OFFICER  
By J. Anderson, Deputy



I certify that this is a true and correct copy of the original documents contained within our records.  
[Signature]  
This date DEC 06 2007

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**

Case Records South  
9160 Cleveland Avenue, Suite 101  
Rancho Cucamonga, Ca 91730  
(909) 484-3700



Date: AUGUST 10, 2007

NAME: MARTINEZ, MARIO

CDC: T24140

To Whom It May Concern:

This is to certify that the Secretary of Corrections and Rehabilitation is the official legal custodian of the prisoners committed to California state prisons, and has authorized the undersigned as Records Analyst of the Parole and Community Services Division to certify on his behalf of the criminal records of person(s) who have served sentences in the California state prisons, including the certifications required under Section 969B of the California Penal Code.

I further certify that the copies of the Abstract of Judgment(s), Fingerprint card(s), Chronological Movement History, and Photograph attached are true and correct copies of those in my custody as required by law.

Sincerely,

A handwritten signature in black ink, appearing to read "Madge Bush".

Correctional Case Records Analyst  
DAPO  
Cc: Parole agent  
Central File/ HPRK 2





CHRONOLOGICAL HISTORY

Date	Chronological Listings	Initials	Dead Time	Release Date
12/24/04	PCR of 90 days, #0403114, dtd 12/24/04.	DJS	790 Epad	2-22-07
12-18-06	10 Day Audit	DJS	'A' CDD	2-22-10
2-13-07	10 Day Audit	K.H.	DR	2-22-08
RELEASED ON PAROLE, REGION III				
DISTRICT: HPRK2 COUNTY: LA				
PAROLE PERIOD: 3yr DISCHARGE DATE: 2-22-10				
5/24/07	Hold Placed	K.H.	1/3 PLEA	2/22/07
6/11/07	Pitt, parole revoked, PTC 6 months	K.H.	PARL	9-26-07
	(E) optional waiver signed 6/11/07	K.H.	MPLD	11-25-07
			CJ) 6-22-2010	
			DR 9-26-08	

CHRONOLOGICAL HISTORY

Date	Chronological Listings	Initials	Dead Time	Release Date
7-13-01	REC'D NKSP-RC	N/C	RC	
1-25-01	INTAKE AUDIT			
	RIV RIF097808, Restitution Fine, \$200 County Cas# Amount	LA	EPRD	8-4-03
NOV 01 2001!	REC'D NKSP		CDD	8-4-06
2-11-01	Intake Audit	OT	DR	8-4-04
8-14-02	Reviewed for Compliance with PC 296 AB673			
	credit code received	KP		
6-10-03	INTAKE AUDIT 60 Day	BS		
7-27-03	10 DAY PAROLE AUDIT	Rm/KP		
8/4/03	Paroled to Reg 4, Riverside #4	MA		
AN 02 2004	REC'D NKSP-RC	PULWNT	AL	
12-14-03	ARREST / Hold Date		PRRD	8-13-04
12-29-03	REV SCREENING: PAROLE REVOKED		MRRD	12-13-04
	RTC 12 MOS UNC. WAIVER signed 1-12-04		CDD	4-4-07
	SR16 Eligible		DR	8-13-05
2/9/04	INTAKE AUDIT RIV RIF113903, Restitution Fine, \$200.00 County Cas# Amount			
	"PC 296 DNA REQUIRED"	VC		
	RIV RIF097808, Restitution Fine, \$200.00 to 1202.45 County Cas# Amount	VC		
	Reviewed for Compliance with PC 296/AB 673			
	Qual case, Eprd controls.	VC	Eprd	2-22-07
3/2/04	PC 296 DNA Complete	VC		
3-23-04	RCVD CCC	MDR		
4-22-04	Intake Audit	M	PRRD	8-30-04
			MRRD	12-13-04
5-4-04	BC of 90 days, Log #0403114, dtd 3-25-03; Wcg thru 4-22-04 on PRAD. Qual case Eprd controls		-90 CDD	4-21-07
			DR	8-30-05
			Eprd	5-23-07
9-1-04	Discharged case # RIF097808, remain on Case # RIF113903.	qfs	Eprd	5-23-07
Number	Name			Page
T24140	MARTINEZ, MARTO			1

724140

31

8-4-59  
HISPANIC

000135

ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside  
COURT ID: 33100 BRANCH RIVERSIDE

**FILED**  
FOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
DEC 31 2003

PEOPLE OF THE STATE OF CALIFORNIA versus MARIO MARTINEZ  
DEFENDANT AKAMARCO MARTINEZ  
 PRESENT  
 NOT PRESENT

CASE NUMBER IS  
RIF113903 - A  
- B  
- C  
- D  
- E

COMMITMENT TO STATE PRISON  
ABSTRACT OF JUDGMENT  
AMENDED ABSTRACT   
DATE OF HEARING 123003 DEPT. NO. 64 JUDGE F PAUL DICKERSON CLERK DSANCHEZ

REPORTER H HINDS COUNSEL FOR PEOPLE R BENTLY COUNSEL FOR DEFENDANT DPD S KIRKENHDAL PROBATION NO. OR PROBATION OFFICER

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY / MISDEMEANOR):

COUNT	CODE	SECTION NUMBER	CRIME	DATE OF CONVICTION	CONVICTED BY		SENTENCE RELATION	PRINCIPAL OR CONSECUTIVE TIME IMPOSED
					NO	DAY		
1	PC 499*		1st Burglary	03 12 30 03			x 1 Principal	4

2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, GAIL STATUS, ETC. For each count list enhancements hierarchically. Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1205. Add up time for enhancements on each line and enter line total in right-hand column.

Count	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Total

ENTERED INTO OBIS

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 807-series) and OTHER. List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 807.5(b) list § 807.5(b) 2 times). Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1205. Add time to these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Total

4. UNCOMPLETED SENTENCE(S) CONSECUTIVE:  
5. OTHER ORDER: DEFT IS SENTENCED PURST TO 667(E)(1)PC. DEPT ADVISED OF PAROLE RIGHTS. Pay Restitution Fine pursuant to 1202.41 Pursuant to section 2085.5 PC, Department Additional Parole Restitution Fine imposed. Use additional sheets of plain paper if necessary.

6. TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DSL 290-A):  
7. TIME STAYED TO COMPLY WITH 5-YEAR OR 10-YEAR LIMIT ON SUBORDINATE TERMS, DOUBLE-BASED-TERM LIMIT, ETC. (Do not include § 854 stays or discretionary stays of term for enhancements)  
8. TOTAL TERM IMPOSED: 4

9. EXECUTION OF SENTENCE IMPOSED:  
A.  AT INITIAL SENTENCING HEARING  
B.  AT RESENTENCING PURSUANT TO DECISION ON APPEAL  
C.  AFTER REVOCATION OF PROBATION  
D.  AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT (PC § 11704)  
E.  OTHER

10. DATE OF SENTENCE PRONOUNCED (MO) (DAY) (YR) 12 30 03 CREDIT FOR TIME SPENT IN CUSTODY 25 INCLUDING: ACTUAL LOCAL TIME 17 LOCAL CONDUCT CREDITS R STATE INSTITUTIONS  DMH  CDC

11. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED TO:  
 FORTHWITH  
 AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS  
INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUARDANCE CENTER LOCATED AT:  
 CALIF. INSTITUTION FOR WOMEN - FORTYFIVE  
 CALIF. MEDICAL FACILITY - VACAVILLE  
 SAN QUENTIN  
 CALIF. INSTITUTION FOR MEN - CHICO  
 DEVEL VOC INST.  
 OTHER (SPECIFY):

I hereby certify the foregoing to be a correct abstract of the proceedings in this action.  
DEPUTY CLERK SIGNATURE: [Signature] DATE: 12/31/03  
This form is prescribed under Penal Code § 12195.32. Specify the requirements of the attachments may be used but must be referred to in this document.



124140

8-4-59  
RISP

000136

ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside BRANCH RIVERSIDE

COURT ID: 33100

PEOPLE OF THE STATE OF CALIFORNIA versus  
 DEFENDANT: MARIO MARTINEZ  PRESENT  
 AKA:  NOT PRESENT

COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT  AMENDED ABSTRACT

DATE OF HEARING AND DATE OF: 071001 DEPT. NO. 34 JUDGE RICHARD T. FIELDS CLERK S. DE HARO

REPORTER T. CASAL COUNSEL FOR PEOPLE JOHN AKI COUNSEL FOR DEFENDANT DPD-N. CDC IS PROBATION NO. OR PROBATION OFFICER

**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF RIVERSIDE  
 JUL 11 2001

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY / MISDEMEANOR):

ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT (NUMBER OF PAGES) \_\_\_\_\_

COUNT	CODE	SECTION NUMBER	CRIME	DATE OF CONVICTION	CONVICTED BY				SENTENCE RELATION				PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
					NO	DAY	YEAR	RECEIVED	ADDED	EXPIRED	ADDED	EXPIRED		ADDED
1	HS	11377(A)	Possess Control	07 10 01	X	L	Principal						2	8

2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (nearly in the § 11023 series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.

For each count list enhancements horizontally. Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add up time for enhancements on each line and enter line total in right-hand column.

Count	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Total

INPUT ODIS

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (nearly § 887-series) and OTHER

List all enhancements based on prior convictions or prior prison terms, charged and found true, if 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 887.5(a) list § 887.5(a) 2 times). Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time to these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in § 887.5(a).

Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Enhancement	Yes or 'S'	Total

4. INCOMPLETED SENTENCE(S) CONSECUTIVE:

COUNTY	CASE NUMBER	CREDIT FOR TIME SERVED

5. OTHER ORDERS DEPT SENTENCED PURSUANT TO 667(B)(1) PC  
 Pay Restitution Fine pursuant to 1202.4  
 Pursuant to section 2085.5 PC, Department  
 SHERIFF DEPARTMENT

Use additional sheets of plain paper if necessary.

6. TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DSL 290-A):

7. TIME STAYED TO COMPLY WITH 5-YEAR OR 10-YEAR LIMIT ON SUBORDINATE TERMS, DOUBLE-BASE-TERM LIMIT, ETC. (Do not include § 854 stays or discretionary stays of term for enhancements.)

8. TOTAL TERM IMPOSED: 2 8

9. EXECUTION OF SENTENCE IMPOSED:

A.  AT INITIAL SENTENCING HEARING B.  AT RESSENTENCING PURSUANT TO DECISION ON APPEAL C.  AFTER REVOCATION OF PROBATION D.  AT RESSENTENCING PURSUANT TO RECALL OF COMMITMENT (PC § 1170(g)) E.  OTHER \_\_\_\_\_

10. DATE OF SENTENCE PRONOUNCED (MO) (DAY) (YR) 07 10 01 CREDIT FOR TIME SPENT IN CUSTODY 31 INCLUDING: ACTUAL LOCAL TIME 21 LOCAL CONDUCT CREDITS 10 STATE INSTITUTIONS  DMH  CDC

11. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

FORTHWITH  AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS

INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION/GUIDANCE CENTER LOCATED AT:

CALIF. INSTITUTION FOR WOMEN - FORTYTERA  CALIF. MEDICAL FACILITY - VACAVILLE  CALIF. INSTITUTION FOR MEN - CHINO  DEVEL VOC. INST.  OTHER (SPECIFY) CDC SOUTHERN RECEPTION

CLERK OF THE SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this hearing.

DEPUTY'S SIGNATURE: [Signature] DATE: 07/11/01

This form is prescribed under Penal Code § 1213.5 to satisfy the requirements of § 1213.5 for determining sentencing enhancements payable and must be referred to in this document.

Form Adopted by the Judicial Council of California (Effective January 1, 1990)

ABSTRACT OF JUDGMENT - PRISON COMMITMENT

P&C 12

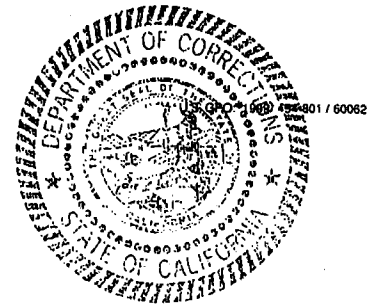
FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE  
 WASHINGTON, D.C. 20537

000138

PRIVACY ACT OF 1974 (P.L. 93-579) REQUIRES THAT FEDERAL, STATE, OR LOCAL AGENCIES INFORM INDIVIDUALS WHOSE SOCIAL SECURITY NUMBER IS REQUESTED WHETHER SUCH DISCLOSURE IS MANDATORY OR VOLUNTARY, BASIS OF AUTHORITY FOR SUCH SOLICITATION, AND USES WHICH WILL BE MADE OF IT.

JUVENILE FINGERPRINT SUBMISSION YES <input type="checkbox"/> TREAT AS ADULT YES <input type="checkbox"/>		DATE OF ARREST MM DD YY SSD: 07-13-2001	ORI CONTRIBUTOR CA015045C ADDRESS SD CORR DELANO COPY DESIRED? YES <input type="checkbox"/>
SEND COPY TO: (ENTER ORI)	DATE OF OFFENSE MM DD YY	PLACE OF BIRTH (STATE OR COUNTRY) CALIFORNIA (CA)	COUNTRY OF CITIZENSHIP UNITED STATES (US) Y
MISCELLANEOUS NUMBERS		SCARS, MARKS, TATTOOS, AND AMPUTATIONS TAT CHEST (JULIANA)	
OFFICIAL TAKING FINGERPRINTS (NAME OR NUMBER) WILLIAMS - NKSPCEW 07-16-2001		LOCAL IDENTIFICATION/REFERENCE T24140	PHOTO AVAILABLE? YES <input type="checkbox"/> PALM PRINTS TAKEN? YES <input type="checkbox"/>
EMPLOYER: IF U.S. GOVERNMENT, INDICATE SPECIFIC AGENCY. IF MILITARY, LIST BRANCH OF SERVICE AND SERIAL NO.		OCCUPATION	
CHARGE/CITATION 1. CMT#1: CDC (#1) X001 11377(A) HS (F) SENT: 032 MONTHS PRISN		DISPOSITION FROM: 33-RIVERSIDE CO CRT/RIF097808 POSS CONTROLLED SUBSTANCE	
2.		2.	
3.		3.	
ADDITIONAL		ADDITIONAL	
ADDITIONAL INFORMATION/BASIS FOR CAUTION		STATE BUREAU STAMP	

FD-249 (Rev. 12-1-94)



I certify that this is a true and correct copy of the original documents contained within our records.

*Mudge*  
 This date: 5/10/07

LEAVE BLANK

CRIMINAL

(STAPLE HERE)

LEAVE BLANK

000137

STATE USAGE

NFF BECOND

SUBMISSION

APPROXIMATE CLASS

AMPUTATION

SCAR

STATE USAGE

LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX

MARTINEZ, MARIO

SIGNATURE OF PERSON FINGERPRINTED

SOCIAL SECURITY NO.

LEAVE BLANK

ALIASES/MAIDEN

LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX

FBI NO.

STATE IDENTIFICATION NO.

DATE OF BIRTH MM DD YY

SEX

RACE

HEIGHT

WEIGHT

EYES

HAIR

06315999

08-04-1969

M

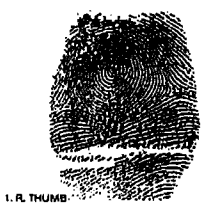
H

504

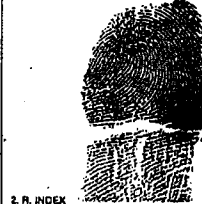
160

BRO

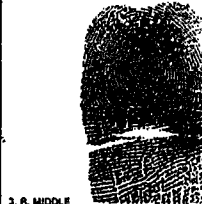
BRO



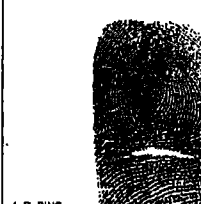
1. R. THUMB



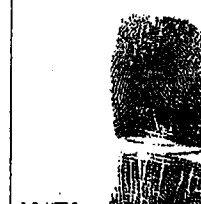
2. R. INDEX



3. R. MIDDLE



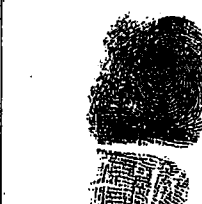
4. R. RING



5. R. LITTLE



6. L. THUMB



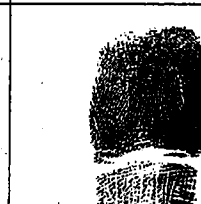
7. L. INDEX



8. L. MIDDLE

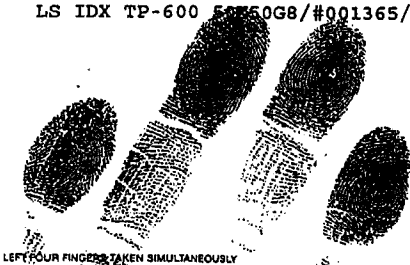


9. L. RING



10. L. LITTLE

LS IDX TP-600 5750G8/#001365/101751



LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY



L. THUMB R. THUMB

LX OPT/# WOX /111503-010504



RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

LEAVE BLANK

CRIMINAL

(STAPLE HERE)

LEAVE BLANK

000139

STATE USAGE

OFF SECOND

SUBMISSION

APPROXIMATE CLASS

AMPUTATION

SCAR

STATE USAGE

LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX

MARTINEZ, MARIO

SIGNATURE OF PERSON FINGERPRINTED

SOCIAL SECURITY NO.

LEAVE BLANK

ALIASES/MAIDEN

LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX

FBI NO.

STATE IDENTIFICATION NO.

DATE OF BIRTH MM DD YY

SEX

RACE

HEIGHT

WEIGHT

EYES

HAIR

06315999

08-04-1959

M

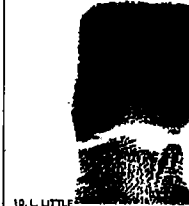
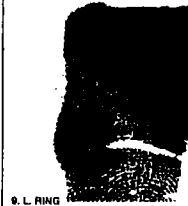
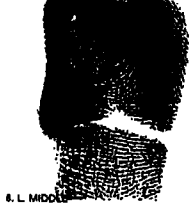
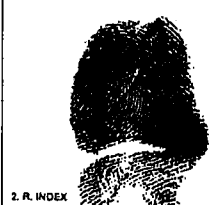
H

503

160

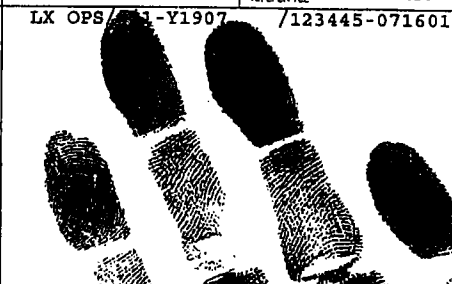
BRO

BLK



LS IDX TP-600 50 #000000000000/095853

LX OPS/001-Y1907 /123445-071601



LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY

L. THUMB

R. THUMB

RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE  
 CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, CLARKSBURG, WV 26306

000140

PRIVACY ACT OF 1974 (PL. 93-576) REQUIRES THAT FEDERAL, STATE, OR LOCAL AGENCIES INFORM INDIVIDUALS WHOSE SOCIAL SECURITY NUMBER IS REQUESTED WHETHER SUCH DISCLOSURE IS MANDATORY OR VOLUNTARY, BASIS OF AUTHORITY FOR SUCH SOLICITATION, AND USES WHICH WILL BE MADE OF IT.

JUVENILE FINGERPRINT MISSION YES <input type="checkbox"/> TREAT AS ADULT YES <input type="checkbox"/>		DATE OF ARREST MM DD YY SSD: 01-02-2004	ORI CONTRIBUTOR CA015045C ADDRESS SD CORR DELANO FBI REPLY DESIRED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
SEND COPY TO: (ENTER ORI)	DATE OF OFFENSE MM DD YY	PLACE OF BIRTH (STATE OR COUNTRY) CALIFORNIA (CA)	COUNTRY OF CITIZENSHIP UNITED STATES (US) Y
MISCELLANEOUS NUMBERS		SCARS, MARKS, TATTOOS, AND AMPUTATIONS TAT CHEST (JULIANA) TAT BACK (FLORENCIA)	
OFFICIAL TAKING FINGERPRINTS (NAME OR NUMBER) BERNAL - NKSPALB 01-05-2004		LOCAL IDENTIFICATION/REFERENCE T24140	PHOTO AVAILABLE? YES <input type="checkbox"/> PALM PRINTS TAKEN? YES <input type="checkbox"/>
EMPLOYER: IF U.S. GOVERNMENT, INDICATE SPECIFIC AGENCY. IF MILITARY, LIST BRANCH OF SERVICE AND SERIAL NO.		OCCUPATION	
CHARGE/CITATION 1. CMT#1: PAROLE VIOLATOR CMT#2: CDC FROM: 33-RIVERSIDE CO CRT/RIF113903 (#2) X001 459 PC (F) DEG: 1 BURGLARY-FIRST DEGREE SENT: 004 YEARS PRISN		DISPOSITION 1.	
ADDITIONAL		ADDITIONAL	
ADDITIONAL INFORMATION/BASIS FOR CAUTION		STATE BUREAU STAMP	

FD-240 (REV. 6-11-00)

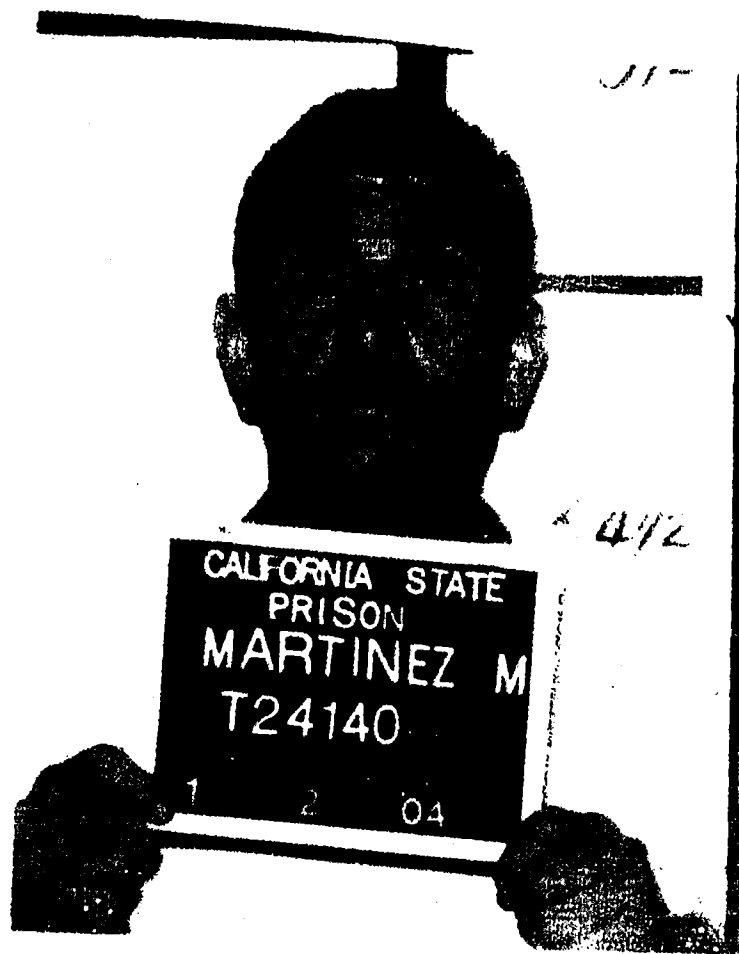


I certify that this is a true and correct copy of the original documents contained within our records.

*[Signature]*  
 This date: 4/10/07



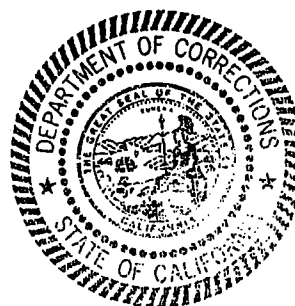
000141



BEST COPY AVAILABLE

000142

Case No:	<u>RIF 136990</u>
Date:	<u>12-14-07</u>
People/Plaintiff Exhibit No.:	<u>1</u>
<input checked="" type="checkbox"/> Marked for Identification	
<input type="checkbox"/> Admitted	
JOSE GUTIERREZ, EXECUTIVE OFFICER	
By	<u>[Signature]</u> Deputy



I certify that this is a true and correct copy of the original documents contained within our records.

[Signature]  
This date: 5/10/07

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000143

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Report and Sentencing

Date: 01/11/08 Time: 8:30 am Dept/Div: 44

=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney D. Steward by A.  
Yum.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 12:00, the following proceedings were held:  
Hearing Continued To 03/14/2008 at 8:30 in Department 44  
pursuant to Stipulation of counsel.  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute Order printed to Robert Presley Detention Center.

Dispo

**PROBATION OFFICER'S REPORT  
REMOVED AND SEALED**

**Pgs 144-157**

000158

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

MAR 06 2008

MAR 07 2008

**IMAGED**

1 CHARLES KENYON, CDL  
2 State Bar Number 235642  
3 4129 Main St. #305  
4 Riverside, California 92501  
5 Telephone: (951) 784-4800  
6 Attorney for Defendant

7 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 IN AND FOR THE COUNTY OF RIVERSIDE

9 PEOPLE OF THE STATE OF  
10 CALIFORNIA,  
11 Plaintiff,  
12 vs.  
13 MARIO MARTINEZ  
14 Defendant.

Case No.: RIF136990  
INVITATION TO THE COURT TO  
DISMISS PER PENAL CODE § 1385  
AND SUPPORTING POINTS AND  
AUTHORITIES (ROMERO MOTION)..  
DATE: March 14, 2008  
TIME: 8:30 a.m.  
DEPT: 44, Judge Paul Zellerbach

16 TO: ROD PACHECHO, DISTRICT ATTORNEY OF THE COUNTY OF RIVERSIDE;  
17 DEPUTY DISTRICT ATTORNEY ELLA FERNANDEZ; AND THE CLERK OF THE  
18 SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE:

19 NOTICE IS HEREBY GIVEN that on March 14<sup>th</sup>, 2008, at 8:30 a.m., or as soon  
20 thereafter as the matter may be heard, in Department 44 of the Riverside Superior Court, the  
21 defendant, Mario Martinez, through his attorney, Charles Kenyon, will invite the court to strike  
22 Mr. Gonzales' strike priors pursuant to Penal Code § 1385.

23 DATED: February 28, 2008

24  
25  
26 

27 Charles Kenyon, CDL – Attorney for Mr. Martinez  
28

## I.

1  
2 **THE TRIAL COURT HAS DISCRETION TO DISMISS ONE OR**  
3 **MORE STRIKES ON ITS OWN MOTION PURSUANT TO PENAL**  
4 **CODE, SECTION 1385.**  
5

6 People v. Superior Court (Romero) (1996) 13 Cal.4th 497, established an important  
7 precedent. The Supreme Court held that a trial court may on its own "motion in furtherance  
8 of justice" pursuant to Penal Code, section 1385(a) strike an allegation or vacate a finding  
9 under the Three Strikes law. Prior to Romero it was generally accepted that this could only  
10 be done on the prosecutor's motion or with the prosecutor's approval. (Id. at p. 507.)

11 The defendant in Romero pleaded guilty to possession of 0.13 grams of cocaine base,  
12 in violation of Health and Safety Code, section 11350(a). The information also alleged five  
13 prior felony convictions, two of which – attempted burglary and first degree burglary of an  
14 inhabited dwelling – qualified as strikes. The trial court struck the prior conviction allegations  
15 and imposed a sentence of six years in state prison. This sentence represented three years  
16 (the upper term) for possession of a controlled substance, plus three consecutive one year  
17 enhancements for prior prison terms. The District Attorney objected to the sentence and  
18 petitioned for a writ of mandate, which the Court of Appeal granted, concluding that the trial  
19 court had no power to dismiss the prior allegations. The Supreme Court disagreed, and also  
20 found that the trial court order was ineffective because it did not set forth its reasons for the  
21 dismissal in the minutes (Ibid.) The Supreme Court reversed and remanded.

22 Romero recognized that the concept of "in furtherance of justice" within the meaning of  
23 Penal Code Section 1385(a) is "amorphous." People v. Superior Court (Romero) (supra) 13  
24 Cal.4th at p. 530. The Supreme Court acknowledged that the Legislature has provided no  
25 statutory definition of this expression, and appellate courts have been faced with the task of  
26 establishing boundaries of the judicial power conferred by the statute as cases have arisen  
27 challenging its exercise. (Id. at p. 530.) "From the case law, several general principles  
28 emerge. Paramount among them is the rule 'that the language of [section 1385], 'in

1 furtherance of justice,' requires consideration both of the constitutional rights of the  
2 defendant, and the interests of society represented by the People, in determining whether  
3 there should be a dismissal. At the very least, the reason for dismissal must be 'that which  
4 would motivate a reasonable judge.' 'Courts have recognized that society, represented by  
5 the People, has a legitimate interest in 'the fair prosecution of crimes properly alleged.' "[A]  
6 dismissal which arbitrarily cuts those rights without a showing of detriment to the defendant is  
7 an abuse of discretion." People v. Superior Court (Romero) (supra) 13 Cal.4th at p. 531.

8 In its Romero opinion, the Supreme Court provided little guidance to trial courts as to  
9 what factors will not justify the exercise of Penal Code section 1385 discretion. The Court  
10 said only that:

11 [A] court abuses its discretion if it dismisses a case, or strikes a  
12 sentencing allegation, solely "to accommodate judicial convenience or  
13 because of court congestion." A court also abuses its discretion by  
14 dismissing a case, or a sentencing allegation, simply because a defendant  
15 pleads guilty. Nor would a court act properly if "guided solely by a  
16 personal antipathy for the effect that the three strikes law would have on  
17 [a] defendant," while ignoring "defendant's background, the nature of his  
18 present offenses," and other "individualized considerations." (Id. at p. 531.)

19 The trial court must set forth the reasons for the dismissal in the minutes, otherwise the  
20 order dismissing may not be considered a dismissal under section 1385, and the dismissal  
21 will be ineffective. (13 Cal.4th at p. 531, 532.)

22 In People v. Bishop (1997) 56 Cal.App.4th 1245, the Court of Appeal (Second Dist.,  
23 Div. One) was only slightly more helpful. In Bishop the defendant was charged with a  
24 violation of Penal Code Section 666. He had six prior convictions for which he had served  
25 prison terms and three of those convictions constituted "strikes." The three strikes were:  
26 robbery, robbery with use of a firearm, and assault with a deadly weapon. The trial court  
27 determined to dismiss two of the three strikes, giving the following reasons: "Strikes are  
28 remote (17 to 20 years old) and the nature of the current crime is nonviolent. Penalty of 12

1 years seems appropriate." (Id. at p. 1248.) The prosecution appealed, claiming that the trial  
2 court's reasons for dismissing the strikes "[did] not outweigh the aggravating factors." (Id. at  
3 p. 1250.)

4 In upholding the trial court's ruling, the Court of Appeal stated:

5 As in the trial court, the People assert that the key to the  
6 sentencing calculus is that Bishop's lengthy record renders him "the very  
7 type of recidivist offender that the Three Strikes Law intended to punish."  
8 While this is unquestionably true, it merely begs the question. Every  
9 defendant who appears for sentencing with two strikes against him is  
10 deserving of a prison sentence of at least twenty-five years to life. But  
11 some of those defendants may also be deserving of a lesser punishment.  
12 This is precisely what section 1385 and Romero are all about.

13  
14 To be sure, once a defendant has qualified for three strikes  
15 sentencing, the number of his prior convictions operates as a factor in  
16 aggravation, as may the nature of his prior and present crimes and the  
17 timing with which they were committed. However, the nature and timing of  
18 a defendant's crimes may also operate as mitigation, such as in this case  
19 where the present crime is a petty theft and the prior violent offenses are  
20 remote. The length of sentence to be imposed also presents an open-  
21 ended inquiry because, when considered in conjunction with the  
22 defendant's age, it presents the trial court with an opportunity to evaluate  
23 factors such as how long the state maintains an interest in keeping the  
24 defendant as a public charge and after what period of incarceration he is  
25 no longer likely to offend again. Id. at pp. 1250-1251.)

26  
27 The cases considered thus far provide that the following factors are important in  
28 determining whether a trial court should exercise its section 1385(a) discretion to dismiss one



1 or more strikes: (1) the nature of the current offense, (2) the nature and number of the  
2 defendant's prior convictions, (3) whether the current offense or prior offenses involved  
3 violence, (4) whether the prior offenses are recent or remote, (5) whether, if the defendant is  
4 given a determinate prison term, he will likely constitute a danger to society when that  
5 sentence has expired.

6

7

ii.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**PEOPLE V. WILLIAMS PROVIDES THAT THE TRIAL COURT  
MUST CONSIDER WHETHER IN LIGHT OF THE NATURE AND  
CIRCUMSTANCES OF DEFENDANT'S PRESENT FELONIES  
AND PRIOR SERIOUS AND/OR VIOLENT FELONY  
CONVICTIONS, AND THE PARTICULARS OF HIS  
BACKGROUND, CHARACTER, AND PROSPECTS, THE  
DEFENDANT MAY BE DEEMED OUTSIDE THE SCHEME'S  
SPIRIT, IN WHOLE OR IN PART.**

People v. Williams (1998) 17 Cal.4th 148, provides additional criteria to guide the court  
in exercising its discretion to dismiss one or more strikes pursuant to section 1385(a). The  
defendant in that case was charged with felony driving under the influence of PCP (Vehicle  
Code, sections 23152(a), 23175), and two prior serious felony convictions under the three  
strikes law. The strikes were attempted robbery and rape. Attempted robbery was at least a  
serious offense, and rape was both serious and violent. (17 Cal.4th at p. 153.)

He changed his plea to guilty when the trial court indicated that it might be inclined to  
dismiss one of the strikes, and sentence him as a second strike offender. The trial court  
sentenced defendant to nine years in prison as a second strike offender. However, the trial  
court failed to enter an order in the minutes setting forth its reasons for dismissing the strike.  
(Ibid.) The Supreme Court held that the trial court's ruling striking one of defendant's two  
prior serious felony convictions was ineffective, since the trial court did not accompany its

1 ruling with reasons set forth in an order on the minutes. (Id. at p. 162.)

2 The Supreme Court further held that the trial court's ruling was unsound, since the  
3 record of defendant's present offense and prior criminal record was devoid of mitigation. The  
4 court said that although his strikes were 12 years old, defendant had not refrained from  
5 criminal activity during that span of time, was often in prison or jail, had violated parole and  
6 probation, and three months before he committed the charged offense, had committed the  
7 misdemeanor of spousal battery, a crime involving actual violence. (Id. at p. 162.)

8 The opinion in Williams would seem to indicate that a trial court should not dismiss  
9 strikes when the defendant's criminal record together with the seriousness of the current  
10 offense and the lack of any mitigation are equal to or worse than that of the defendant in  
11 Williams.

12 This does not give the trial court a formula with parameters that can be determined  
13 predictably. Nevertheless it is clear that the defendant's criminal record constitutes one of  
14 the parameters. Let us consider the record of the defendant in Williams.

15 The Supreme Court set out Williams' 19-year criminal record as follows:

16 As to Williams' juvenile history, so far as it was available, the  
17 probation officer's report may be read to reflect the following: (1) a 1976  
18 arrest for burglary (Penal Code, § 459) with a request for the filing of a  
19 petition for an adjudication of wardship (Welf. & Inst. Code, § 602) based  
20 on attempted burglary (Penal Code §§ 459, 664); (2) another 1976 arrest  
21 for burglary with another request for the filing of a wardship petition, this  
22 one apparently based on burglary; (3) yet another 1976 arrest for burglary  
23 with yet another request for the filing of a wardship petition, this one based  
24 on theft (id., § 484); and (4) a 1979 arrest for burglary with a request for a  
25 wardship petition apparently based on burglary. It appears that there was  
26 at least one adjudication of wardship for an unidentified offense with a  
27 commitment to a juvenile camp.

28

1                    People v. Williams (Supra) 17 Cal.4th at pp. 153, 154.)

2                    As to Williams' adult history, the probation officer's report may be  
3 read to reflect the following: (1) a 1981 conviction for the misdemeanor of  
4 burglary with probation along with commitment to jail; (2) a 1982 conviction  
5 for the felony of attempted robbery-as alleged in the information-with  
6 probation along with commitment to jail; (3) a 1982 conviction for the  
7 felony of rape with commitment to prison-as also alleged in the  
8 information-and parole in 1986; (4) a 1987 violation of parole as to the  
9 1982 rape conviction with commitment to prison; (5) a 1988 conviction for  
10 the felony of possession of a firearm by a convicted felon with commitment  
11 to prison -as alleged in the information; (6) a 1988 violation of parole  
12 based on the 1988 firearm-possession conviction with commitment to  
13 prison and parole in 1989; (7) a 1989 conviction for the felony of  
14 possession of a firearm by a convicted felon with commitment to prison-  
15 as alleged in the information; (8) a 1989 violation of parole based on the  
16 1989 firearm-possession conviction with commitment to prison and parole  
17 in 1990; (9) a 1990 violation of parole apparently as to the 1989 firearm-  
18 possession conviction with commitment to prison and parole in 1991; (10)  
19 a 1991 conviction for the misdemeanor of driving under the influence-as  
20 alleged in the information- with probation; (11) another 1991 conviction for  
21 the misdemeanor of driving under the influence -as also alleged in the  
22 information- this one with suspension of driver's license; (12) a 1991  
23 conviction for the misdemeanor of driving with driver's license suspended  
24 (Vehicle Code § 14601.1) with probation; (13) a 1992 conviction for the  
25 misdemeanor of driving under the influence -as alleged in the information-  
26 with commitment to jail and/or imposition of a fine; (14) a 1992 arrest for  
27 assault with a deadly weapon (Penal Code § 245, subdivision (a)(1))  
28 leading, apparently, to revocation of parole as to the 1989 firearm-

1 possession conviction with commitment to prison; (15) a 1995 conviction  
2 for the misdemeanor of driving without a driver's license (Vehicle Code, §  
3 12500, subdivision (a)) with imposition of a fine; (16) a 1995 conviction for  
4 the misdemeanor of possession of a controlled substance (Health & Safety  
5 Code § 11377) with probation along with commitment to jail; and (17) a  
6 1995 conviction for the misdemeanor of willful infliction of corporal injury  
7 on a spouse or cohabitant resulting in a traumatic condition (Penal Code,  
8 § 273.5) —so-called "spousal battery"— with commitment to jail.

9  
10 People v. Williams (Supra) 17 Cal.4th at p. 154.)

11  
12 The Supreme Court said, "There is little about Williams' present felony, or his prior  
13 serious and/or violent felony convictions, that is favorable to his position. Indeed, there is  
14 nothing." (17 Cal.4th at p. 163.) "Similarly, there is little favorable about Williams'  
15 background, character, or prospects." (Ibid.)

16 The Supreme Court in Williams points out that in Romero it had to acknowledge that  
17 what is "just" is formless, and that to attempt to give content to the concept of "in furtherance  
18 of justice" in section 1385(a) by searching outside the scheme in question runs the risk of  
19 failure. People v. Williams (Supra) 17 Cal.4th at p. 160.) The Supreme Court does not  
20 resolve this dilemma, but instead refers us to Plato. (Ibid.)

21 The Supreme Court suggests that the trial court should balance the defendant's  
22 constitutional rights, which include the guarantees against disproportionate punishment of  
23 the Eight Amendment to the United States Constitution and Article I, section 17 of the  
24 California Constitution, with society's legitimate interests, which embrace the fair prosecution  
25 of properly charged crimes. (17 Ca.4th at p. 160.)

26 The court in Williams provides the following guidance;

27 We therefore believe that, in ruling whether to strike or vacate a  
28 prior serious and/or violent felony conviction allegation or finding under

1 the Three Strikes Law, on its own motion, "in furtherance of justice"  
2 pursuant to Penal Code section 1385(a), or in reviewing such a ruling, the  
3 court in question must consider whether, in light of the nature and  
4 circumstances of his present felonies and prior serious and/or violent  
5 felony convictions, and the particulars of his background, character, and  
6 prospects, the defendant may be deemed *outside the scheme's spirit*, in  
7 whole or in part, and hence should be treated as though he had not  
8 previously been convicted of one or more serious and/or violent felonies.  
9 If it is striking or vacating an allegation or finding; it must set forth its  
10 reasons in an order entered on the minutes, and if it is reviewing the  
11 striking or vacating of such allegation or finding, it must pass on the  
12 reasons so set forth.

13 (People v. Williams (Supra) 17 Cal.4th at p. 161.)

14 The Supreme Court has now replaced the amorphous concept of "in furtherance  
15 of justice", with the, not very precise concept of "outside the scheme's spirit, in whole or in  
16 part."

17  
18 **III.**

19 **SOCIAL HISTORY OF MARIO MARTINEZ**

20  
21 Mario Martinez grew up in the Los Angeles area in a family of five children. He  
22 attended school through the 11<sup>th</sup> grade, but had difficulty reading and writing, and has  
23 remained functionally illiterate during his entire adult life. He moved to Riverside  
24 approximately fifteen years ago and has remained in there since. At the time of the present  
25 offenses, he was living with and assisting his parents, Julia and Armando Martinez, in West  
26 Riverside. He is 48 years old and has three adult children.

27  
28 Although he has been incarcerated during several stretches of his adult life, he has

1 generally maintained employment when he was free from the penal system. He has worked  
2 as a roofer, an automotive repair assistant, and a Heating and Air-Conditioning installation  
3 technician over the years. During his early adult life he installed and serviced railroad tracks  
4 for Santa Fe Railroads for a continuous nine year stretch. When he was arrested in May of  
5 2007 he was working part-time as a roofer and was spending most of his days assisting his  
6 parents by doing housework to prepare the home for a wedding they were host that summer.

7  
8 In addition to his struggles with school, Mr. Martinez has had a substance abuse  
9 problem for much of his adult life. He began drinking at about age 21 and has bordered on  
10 alcoholism throughout the years. He began smoking methamphetamine about 15-20 years  
11 ago, not surprisingly giving rise to his criminal conduct. Initially he engaged in petty theft, but  
12 that changed when committed a strong-arm robbery in Los Angeles in 1988. Shortly  
13 thereafter he lost his job with the Railroad and began a downward spiral into criminal conduct.  
14 His addiction took hold of his life and he spent almost half of the next two decades in state  
15 prison.

16  
17 In state prison he has repeatedly gone to fire camp, and Mr. Martinez is proud of the  
18 productive contributions he was able to make there. He maintains he has beaten his  
19 methamphetamine addiction and has been clean from the drug since 2002.

20  
21 His family support support is also remarkable given what they have been through.  
22 Numerous members of his family have written letters professing his good character and good  
23 hearted nature. Although they are acutely aware of his drug addiction and criminal past, many  
24 maintain their love and trust for him. This is evidenced by not only letters written on his  
25 behalf, but also by their acceptance of him as a member of the family and providing him a  
26 place to live right up to the day he was arrested on the present matter.

27  
28

## IV.

1  
2 **THE DEFENDANT SHOULD BE DEEMED OUTSIDE THE SPIRIT**  
3 **OF THE THREE STRIKES LAW BECAUSE HIS CURRENT**  
4 **OFFENSE IS MINIMAL AND HIS RECORD IS RELATIVELY NON-**  
5 **VIOLENT IN NATURE.**  
6

7 When considering whether to strike a prior conviction pursuant to Penal Code §1385  
8 and the holding in Romero, 13 Cal.4th 497, "[. . .] the proper exercise of a trial court's  
9 discretion under section 1385 necessarily relates to the circumstances of a particular  
10 defendant's current and past criminal conduct [. . .] People v. Benson, 18 Cal.4th 24, at 36 fn.  
11 8." The framework of things to consider when deciding whether to strike a strike include: (1)  
12 the nature of the current offense, (2) the nature and number of the defendant's prior  
13 convictions, (3) whether the current offense or prior offenses involved violence, (4) whether  
14 the prior offenses are recent or remote, (5) whether, if the defendant is given a determinate  
15 prison term, he will likely constitute a danger to society when that sentence has expired.

16  
17 *A. The nature of the current offense is far less serious than most felonies.*  
18

19 The evidence at trial suggested that Mr. Martinez was guilty of aiding and abetting in  
20 the possession of a small quantity of methamphetamine. No evidence suggested that Mr.  
21 Martinez was ever in actual possession of the drugs, but was actually responsible for merely  
22 driving Ms. Eves to buy a small amount of drugs. There was no evidence that Mr. Martinez  
23 had used the drugs and likely may have intended only to do a favor for Ms. Eves who did not  
24 have a car. At trial Ms. Eves referred to the drugs and money involved as "hers." While this  
25 is adequate under the definition of the law to constitute a felony, it does indicate that Ms. Eves  
26 was primarily responsible for the illegal activity.

27  
28 It should be noted that at the time of the offense Mr. Martinez was on parole, and was

1 drug testing regularly as part of his parole conditions. He had tested negative for all illegal  
2 drugs up to the day he was arrested.

3

4 *B. Although the defendant has many prior prison commitments, only the robbery was*  
5 *violent in nature.*

6

7 The defendant has seven prior felony convictions, four of which resulted in prison  
8 commitments. But apart from the 1988 strong arm robbery all were merely theft or drug  
9 related. The first degree burglary, from 2003, appears to have been a simple theft crime,  
10 where Mr. Martinez entered a motel room and stole a backpack and cell phone during daytime  
11 hours. This was a crime of opportunity and theft, the trademark crimes for people who have  
12 led lives of drug addiction.

13

14 Mr. Martinez's other crimes were all theft related or drug related. PC §666 and PC §459  
15 (2<sup>nd</sup> degree) in 1989, PC §459 (2<sup>nd</sup> degree) and a VC §10851 in 1994, and H&S §11377 in  
16 2001. It should be noted that Mr. Martinez pled guilty to each offense, thereby accepting  
17 responsibility and punishment for his crimes.

18

19 *C. The defendant's lone violent offense was extremely remote and none of his other*  
20 *crimes have ever been violent in nature.*

21

22 Although very little is known about the 1988 robbery conviction out of Los Angeles, we  
23 know that no weapons nor "Great bodily injury" enhancements were alleged in the complaint.  
24 Mr. Martinez describes the occurrence as a time when he just "was stupid and took two dollars  
25 from somebody." Furthermore the offense is twenty years old, leaving us two decades since  
26 his last violent offense. Despite being committed to prison numerous times, where Mr.  
27 Martinez has been exposed to thousands of violent people, this remains his lone act of  
28 violence.



1 The People will likely argue that the 2003 first degree burglary is a recent strike, but the  
2 facts do not support this crime as dangerous or violent act. Martinez was unarmed and simply  
3 stole a backpack from a motel room in the middle of the afternoon. When confronted by the  
4 victim, he neither argued nor fought with the man, and simply returned the property.

5  
6 **V.**

7 **DEFENDANT HEREIN SHOULD BE DEEMED OUTSIDE THE**  
8 **SPIRIT OF THE THREE STRIKES LAW.**

9  
10 Mr. Martinez has played a minor role in the current offense and has an extensive but  
11 relatively harmless criminal past. The court should state on the record the following reasons  
12 for dismissing the strikes pursuant to Penal Code §1385(a):

13 The nature of the current offense

14 The current offense was essentially a minor felony offense. It was a victimless crime  
15 and likely caused by addiction more than criminal intent.

16 Determinate sentence – danger to society

17 The court is well aware of the facts in the instant case and of the history of the  
18 defendant. Neither the present offense nor any of the previous offenses have involved  
19 violence or injury to any person. None of the offenses involved the use of a weapon.  
20 Additionally, Mr. Martinez's actions have not shown any criminal sophistication or complex  
21 planning. What the offenses do show is an individual struggling to support a narcotic  
22 addiction of the past two decades. Mr. Martinez has little formal education but has previously  
23 been able to function as a productive member of society and of his family. It is doubtful that  
24 upon release from custody, Mr. Gonzales would pose a threat to society.

25 ////

26 ////

27  
28 **VI.**

**CONCLUSION**

It is respectfully requested the court should exercise its discretion to dismiss the strike pursuant to section 1385(a) and sentence Mr. Gonzales to a sentence more appropriate and in the interests of justice.

Dated: March 5, 2008

Respectfully submitted,



Charles Kenyon, CDL Attorney

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DECLARATION OF SERVICE

I the undersigned, declare:

I am a citizen of the United States and a resident or an employee of the County of Riverside; I am over the age of eighteen years and not a party to the within-entitled action.

That on December 29, 2004 I caused a copy of the within:


INVITATION TO THE COURT TO DISMISS PER PENAL CODE § 1385 AND SUPPORTING POINTS AND AUTHORITIES (ROMERO MOTION).

to be served on the following:

Executive Officer/Clerk	Rod Pacheco
Riverside Superior Court Dept. 44	District Attorney
4100 Main Street	4075 Main Street
Riverside, CA. 92501	Riverside, CA. 92501

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

Executed on *5 May, 2008* at Riverside, California.

  
\_\_\_\_\_

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000173

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Hearing on Motion Re: INVITATION TO THE COURT TO DISMISS  
Date: 03/14/08 Time: 8:30 am Dept/Div: 44  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Patrick F. Magers Presiding.  
Clerk: S Simons  
Court Reporter: D. O'Leary.  
People Represented By Deputy District Attorney Ella Fernandez.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
Hearing Continued To 03/21/2008 at 8:30 in Department 44  
pursuant to Stipulation of counsel.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000174

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Report and Sentencing

Date: .03/14/08 Time: 8:30 am Dept/Div: 44

=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Patrick F. Magers Presiding.

Clerk: Shelley Simons

Court Reporter: D. O'Leary.

People Represented By Deputy District Attorney Ella Fernandez.

Defendant Represented By CDL-C. Kenyon.

Defendant Present.

Hearing Continued To 03/21/2008 at 8:30 in Department 44

pursuant to Stipulation of counsel.

Defendant Waives Time.

Defendant ordered to return on any and all future hearing dates.

Remains remanded to custody of Riverside Sheriff.

Bail To Remain as fixed.

Minute Order printed to Robert Presley Detention Center.

Dispo

000 175 78

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

GROVER TRASK  
District Attorney  
County of Riverside  
4075 Main Street, First Floor  
Riverside, California 92501  
Telephone: (951) 955-5400  
Ella Fernandez, Deputy District Attorney  
State Bar No. 210663

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

MAR 14 2008

SIMONS

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
(Riverside)

THE PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff,  
  
v.  
  
Mario Martinez,  
  
Defendant.

NO. RIF136990

PEOPLE'S OPPOSITION TO  
DEFENDANT'S ROMERO  
MOTION PURSUANT TO  
PENAL CODE SECTION 1385

(Hg: 3/14/08, D44, 8:30 a.m.)

**STATEMENT OF THE CASE**

On December 4, 2007, the Defendant was found guilty, in a jury trial, of violations of Health and Safety Code 11379 and 11377. On December 14, 2007, in a bench trial, the defendant's two strike priors and four prison priors were found true by the Honorable Judge Zellerbach.

Defendant has filed a motion based on *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, requesting the court strike one of his strike priors pursuant to the authority of Penal Code section 1385, subdivision (a). The people oppose this request.

**IMAGED**

1 **STATEMENT OF FACTS**

2 On May 29, 2007 Officer Hiraoka saw a 1987 Toyota that had expired registration. He  
3 followed the vehicle and noticed that the right front passenger, the defendant, kept leaning forward  
4 in his seat. Officer Hiraoka conducted a traffic stop and learned that the defendant was on parole  
5 for Burglary.

6 The driver, Candace Eves, was placed under arrest for a felony warrant; she gave consent to  
7 search the car. As Officer Hiraoka had the defendant step out of the car he noticed a small clear  
8 plastic baggie that was twisted and closed at one end. The baggie was located on the floorboard,  
9 next to the defendant's feet. The substance tested positive for methamphetamine and weighed 1  
10 gram, including packaging. The defendant denied that the package was his and also stated that the  
11 package was "definitely not Eves".

12 **LAW AND ARGUMENT**

13 **I**

14 **THE DEFENDANT'S CRIMINAL HISTORY**

15 **CRIMINAL RECORD:**

16 CII: A06315999 FBI: 587687T1 CDC: E036285, J0497770, T024140

17 **Source: CII, FBI, DMV, State and local records**

18	09/04/87	459 PC (M)	36 months probation, 30 days jail
19	09/14/87	166.4 PC (M)	24 months probation, 30 days jail
20	08/24/88	484(a) PC (M)	2 years probation, 15 days jail
21	10/14/88	211 PC, 2 <sup>nd</sup> Degree (F)	3 years probation, 270 days jail
22	10/05/89	666 PC (F)	16 months prison
23	10/06/89	459 PC, 2 <sup>nd</sup> Degree (F)	1 year prison
24	02/07/91	647(b) PC (M)	24 months probation, fine
25	05/13/94	459 PC (F)	4 years prison
26	02/10/95	10851 VC (F)	2 years prison
27	05/14/98	Violation of Parole	To finish term
28	02/15/00	Violation of Parole	To finish term
29	07/10/01	11377 HS (F), 23152(a)/(b)	32 months prison
30		VC (M), 20002(a) VC (M)	
31	12/30/03	459 PC, 1 <sup>st</sup> Degree (F)	48 months prison

## II

**STRIKING THE TWO PRIOR CONVICTION  
ALLEGATIONS WOULD BE AN ABUSE OF DISCRETION**

**A. The Trial Court's Discretion To Strike Is Limited**

In the case of *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th 497, the question was raised whether a court may, on its own motion, strike prior felony conviction allegations in cases arising under the law known as the "Three Strikes and You're Out." The Supreme Court held that while a court does have the power to strike a prior felony conviction, this power is limited. (*Id.* at pp. 529-530.)

In that regard, the Supreme Court stated the following:

To guide the lower courts in the exercise of their discretion under section 1385(a), whether acting on their own motion or on motion of the prosecuting attorney, we emphasize the following: A court's discretion to strike prior felony conviction allegations in furtherance of justice is limited. Its exercise must proceed in strict compliance with section 1385(a), and is subject to review for abuse. (*Id.* at p. 530.)

In demonstrating the type of abuse to be avoided by trial courts, the *Romero* court cited with approval language from the case of *People v. Orin* (1975) 13 Cal.3d 937.

From the case law, several general principles emerge. Paramount among them is the rule that the language of [section 1385], "furtherance of justice," requires consideration both of the constitutional rights of the defendant, and *the interests of society represented by the People*, in determining whether there should be a dismissal. [Citations.] (*Id.* at p. 947, 120 Cal.Rptr. 65, 533 P.2d 193.) (*Id.* at pp. 530-531.)

A determination whether to dismiss in the interests of justice involves a balancing of many factors. And while there will sometimes be certain factors that weigh in the defendant's favor, a trial court must always be mindful that society, represented by the People, has a legitimate interest in "the fair prosecution of crimes properly alleged." (*People v. Davis* (1971) 20 Cal.App.3d 890.) In commenting on these principles, the *Romero* court stated:

From these general principles it follows that a court abuses its discretion if it dismisses a case, or strikes a sentencing allegation, solely "to accommodate judicial convenience or because of court congestion." (*People v. Kessel* (1976) 61 Cal.App.3d 322, 326, 132 Cal.Rptr. 126.) A court also abuses its discretion by dismissing a case, or a sentencing allegation, simply because a defendant pleads guilty. (*People v. Orin, supra*, 13 Cal.3d at p.



1 949, 120 Cal.Rptr. 65, 533 P.2d 193.) Nor would a court act  
 2 properly if "guided solely by a personal antipathy for the effect  
 3 that the three strikes law would have on [a] defendant, while  
 4 ignoring "defendant's background," "the nature of his present  
 5 offenses," and other "individualized considerations." (*People v.*  
 6 *Dent* (1995) 38 Cal.App.4th 1726, 1731, 45 Cal.Rptr.2d 746.) (*Id.*  
 7 at p. 531.)

8 Thus, although the court's discretion to dismiss in furtherance of justice is broad, a court  
 9 must consider the interests of the People as equal in importance to the rights of the accused.  
 10 (*People v. Andrade* (1978) 86 Cal.App.3d 963, 976.)

11 **B. Strike Priors Should Rarely Be Stricken**

12 The Supreme Court elaborated upon its decision in *Romero*, in *People v. Reginald Williams*  
 13 (1998) 17 Cal.4th 148. In this case, the Supreme Court held that a trial court had abused its  
 14 discretion in striking a prior under section 1385. In Williams' underlying case, he was charged in  
 15 1995 with a felony driving under the influence based upon his three prior convictions. He was  
 16 charged with three prison priors and two strike priors. The strike priors were both for offenses  
 17 committed in 1982 (attempted robbery and rape). Since 1982, the defendant had a more or less  
 18 continuous history of non-violent crimes, with the exception of a 1995 conviction for  
 19 misdemeanor spousal battery under Penal Code section 273.5. The trial court struck the prior  
 20 allegations based upon their age (13 years) and his lack of violent felonies. The Supreme Court  
 21 upheld the Court of Appeal's reversal of the Superior Court's judgment to strike the prior as an  
 22 abuse of discretion.

23 The Supreme Court stated that a trial court may only strike a prior in rare instances where it  
 24 would be in the "furtherance of justice." The court noted that "justice" was to be construed under  
 25 the framework of the statutory scheme. Specifically, this means that the court must look to the  
 26 "Three Strikes law" to determine a just sentence under that law. (*Id.* at p. 161.) The Court wrote:

27  
 28 We therefore believe that, in ruling whether to strike or vacate a  
 29 prior serious and/or violent felony conviction or allegation or  
 30 finding under the Three Strikes law, on its own motion, "in  
 31 furtherance of justice" pursuant to Penal Code section 1385(a) . . .  
 32 the court in question must consider whether, in light of the nature  
 33 and circumstances of his present felonies and prior serious and/or  
 34 violent felony convictions, and the particulars of his background,  
 35 character, and prospects, the defendant may be deemed outside the  
 36 scheme's spirit, in whole or in part, and hence should be treated as  
 though he had presently not committed one or more felonies and/or  
 had not previously been convicted of one or more serious and/or  
 violent felonies. (*Id.* at p. 161.)

1  
2 In other words, a defendant who has committed, been charged with, and pleaded to a serious or  
3 violent felony is presumptively fit to be sentenced under the Three Strikes law. As such, it is only  
4 if the trial court can articulate reasons as to why a particular defendant falls outside the spirit of  
5 the Three Strikes law that this presumption should be disturbed.

6 Moreover, since the granting of a "dismissal" pursuant to section 1385 is such a powerful  
7 tool in the hands of the trial court, such power is subject to meticulous review by the courts of  
8 appeal. In pointing out that the trial court's discretionary power to dismiss or to strike a  
9 sentencing allegation under the section 1385 is reviewable, the *Romero* court stated:

10 Section 1385 anticipates, and facilitates, appellate review with the  
11 requirement that "[t]he reasons for the dismissal must be set forth  
12 in an order entered upon the minutes." (Pen. Code, §1385, subd.  
13 (a).) "The statement of reasons is not merely directory, and neither  
14 trial nor appellate courts have authority to disregard the  
15 requirement. It is not enough that on review the reporter's  
16 transcript may show the trial court's motivation; the minutes must  
17 reflect the reason 'so that all may know why this great power was  
18 exercised.'" (*People v. Beasley* (1970) 5 Cal.App.3d 617, 637, 85  
19 Cal.Rptr. 501; see also *People v. Orin, supra*, 13 Cal.3d at pp. 943-  
20 944, 120 Cal.Rptr. 65, 533 P.2d 193 ["It is settled law that this  
21 provision is mandatory and not merely directory."].) (*Id.* at 531.)

22 **III**  
23 **THE DEFENDANT IS WITHIN THE SPIRIT**  
24 **OF THE THREE STRIKES LAW**

25 The defense has not shown that the defendant falls outside of the spirit of the Three Strikes  
26 Law. The defendant has a criminal history dating back to 1987. The defendant cannot successfully  
27 complete parole as he continues to commit new crimes; there is no substantial amount of time  
28 between his release from prison and the commission of another crime. The defendant's subsequent  
29 convictions include Theft, Second Degree Burglary, Vehicle Theft, Possession of a Controlled  
30 Substance and First Degree Burglary. The people respectfully request that the court deny the  
31 defendant's request to strike a strike.

32  
33 **A. The Defendant's Present Strike Should Not Be Considered Remote.**

34 The defense argues that the defendant's strike is remote and therefore the court should  
35 strike it. The people, however, disagree and argue that although the strike occurred in 1988, the  
36 defendant almost immediately reoffended and was convicted of Penal Code Section 666 less than a

1 year later, in October of 1989. Less than four years after his release from prison in that case the  
 2 defendant committed a Burglary and was sentenced to prison for four more years. Less than one  
 3 year from the Burglary conviction the defendant was convicted of Vehicle Theft and was again  
 4 sent to prison. The defendant suffered two Violations of Parole and was sent back to prison in  
 5 1998 and 2000. In 2001 the defendant committed several new crimes, violations of Health and  
 6 Safety Code Section 11377 and violations of Vehicle Code Sections 23152(a)/(b) and 20002(a); the  
 7 defendant was sentenced to 32 months in prison. Prior to the defendant completing parole he again  
 8 violated the law and was convicted in 2003; he was sentenced to prison for 48 months for Burglary  
 9 in the first degree, a serious felony. Less than two years after he was paroled he committed the  
 10 crime he was recently found guilty of. The strike should not be considered remote in light of the  
 11 defendant's continuous criminal conduct which spans two decades.

CONCLUSION

12  
 13  
 14 On November 9, 2004, the voters of California affirmed the Three Strikes law, and we  
 15 should sentence the defendant according to that law. There is nothing about the defendant or his  
 16 criminal history that places him outside the spirit of the Three Strikes law. There are no  
 17 legitimate grounds for granting his motion. Accordingly, the People respectfully oppose the  
 18 defendant's motion, and urge the court to deny the request.

19  
 20 Dated: March 13, 2008

21 Respectfully submitted,

22  
 23 GROVER TRASK

24 District Attorney

*E. Fernandez*

25 ELLA FERNANDEZ

26 Deputy District Attorney  
 27  
 28  
 29  
 30  
 31  
 32  
 33  
 34  
 35  
 36

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000181

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Hearing on Motion Re: INVITATION TO THE COURT TO DISMISS  
Date: 03/21/08 Time: 8:30 am Dept/Div: 44  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: O. Hutcheson.  
People Represented By Deputy District Attorney Ella Fernandez.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 11:55, the following proceedings were held:  
Defense counsel unavailable this afternoon.  
Stipulated motion to continue pursuant to 1050 PC is granted.  
Hearing continued to 03/28/2008 at 8:30, Dept. 44  
Pursuant to 1050(d) PC, the court finds good cause has been  
shown to grant the continuance.  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Defendant housed at RPDC

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000182

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Report and Sentencing

Date: .03/21/08 Time: 8:30 am Dept/Div: 44

=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: O. Hutcheson.  
People Represented By Deputy District Attorney Ella Fernandez.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 11:55, the following proceedings were held:  
Defense counsel unavailable this afternoon.  
Stipulated motion to continue pursuant to 1050 PC is granted.  
Hearing continued to 03/28/2008 at 8:30, Dept. 44  
Pursuant to 1050(d) PC, the court finds good cause has been  
shown to grant the continuance.  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Defendant ordered to be examined by a dentist before 3-29-08.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute Order printed to Robert Presley Detention Center.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000183

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Hearing on Motion Re: INVITATION TO THE COURT TO DISMISS  
Date: 03/28/08 Time: 8:30 am Dept/Div: 44  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: K. Cavin.  
People Represented By Deputy District Attorney Ella Fernandez.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 4:14, the following proceedings were held:  
Counsel to provide additional information to the  
Court regarding defendant's priors.  
Stipulated motion to continue pursuant to 1050 PC is granted.  
Hearing continued to 05/09/2008 at 8:30, Dept. 44  
Pursuant to 1050(d) PC, the court finds good cause has been  
shown to grant the continuance.  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
DEFENDANT HOUSED AT RPDC

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000184

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Report and Sentencing

Date: .03/28/08 Time: 8:30 am Dept/Div: 44

=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: K. Cavin.  
People Represented By Deputy District Attorney Ella Fernandez.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.

At 4:30, the following proceedings were held:  
Stipulated motion to continue pursuant to 1050 PC is granted.  
Hearing continued to 05/09/2008 at 8:30, Dept. 44  
Pursuant to 1050(d) PC, the court finds good cause has been  
shown to grant the continuance.

\*\*\*\*\*ATTENTION SHERIFF\*\*\*\*\*

\*\*\*\*\*SECOND REQUEST\*\*\*\*\*

Defendant ordered to be examined by A DENTIST BY 4-4-08.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute Order printed to Robert Presley Detention Center.

Dispo

59  
000185

RECEIVED  
APR 08 2008 9:44 AM

**ROBERT PRESLEY DETENTION CENTER**

**DETENTION HEALTH SERVICES**

**4000 ORANGE STREET**

**RIVERSIDE, CA 92501**

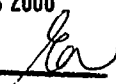
**(951) 955-4494**

**MEMO**

**DATE:** April 1, 2008  
**TO:** Honorable Judge Paul Zellerbach  
**FROM:** Jeff Loh, D.D.S.  
Detention Health Services  
**RE:** Mario Martinez Booking#200725849 Case#RIF136990

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

APR 08 2008



Per court order, Mario Martinez was seen on Tuesday, April 1, 2008 and treatment was rendered. If you have any questions or concerns, do not hesitate to call me at (951) 955-4466.

JL:sc

**IMAGED**



000186

TO JUDGE PAUL ZELLERBACH

FROM JEFFREY LOH DDS

RE INMATE MARIO MARTINEZ  
BK# 200725849

INMATE WAS SEEN APRIL 1 2008. AND  
TREATMENT WAS ~~GIVEN~~ RENDERED.  
IF YOU HAVE ANY QUESTIONS PLEASE  
CALL 909-951-955-4466.

*J Loh DDS*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000187

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Hearing on Motion Re: INVITATION TO THE COURT TO DISMISS  
Date: 05/09/08 Time: 8:30 am Dept/Div: 44  
=====

Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney Ella Fernandez.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 9:28, the following proceedings were held:  
Court and Counsel Confer regarding: Defendant's priors  
Stipulated motion to continue pursuant to 1050 PC is granted.  
Hearing continued to 06/20/2008 at 8:30, Dept. 44  
Pursuant to 1050(d) PC, the court finds good cause has been  
shown to grant the continuance.  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute Order printed to Robert Presley Detention Center.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000188

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Report and Sentencing

Date: .05/09/08 Time: 8:30 am Dept/Div: 44

=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney Ella Fernandez.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 9:28, the following proceedings were held:  
Court and Counsel Confer regarding: Defendant's priors  
Stipulated motion to continue pursuant to 1050 PC is granted.  
Hearing continued to 06/20/2008 at 8:30, Dept. 44  
Pursuant to 1050(d) PC, the court finds good cause has been  
shown to grant the continuance.  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute Order printed to Robert Presley Detention Center.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000189

People of the State of California  
Vs.

CASE NO. RIF136990

MARIO MARTINEZ

MINUTE ORDER

=====  
Hearing on Motion Re: INVITATION TO THE COURT TO DISMISS  
Date: 06/20/08 Time: 8:30 am Dept/Div: 44  
=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney Ella Fernandez by  
D. Kolacia.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 9:33, the following proceedings were held:  
Stipulated motion to continue pursuant to 1050 PC is granted.  
Hearing continued to 07/11/2008 at 8:30, Dept. 44  
Pursuant to 1050(d) PC, the court finds good cause has been  
shown to grant the continuance.  
Defendant Waives Time.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Minute Order printed to Robert Presley Detention Center.

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000190

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Report and Sentencing

Date: 06/20/08 Time: 8:30 am Dept/Div: 44

=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: T. Webster.  
People Represented By Deputy District Attorney Ella Fernandez by  
D. Kolacia.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 9:33, the following proceedings were held:  
Stipulated motion to continue pursuant to 1050 PC is granted.  
Hearing continued to 07/11/2008 at 8:30, Dept. 44  
Pursuant to 1050(d) PC, the court finds good cause has been  
shown to grant the continuance.  
Defendant Waives Time.  
Defendant ordered to return on any and all future hearing dates.  
Bail To Remain as fixed.  
Remains remanded to custody of Riverside Sheriff.  
Defendant housed at RPDC

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000191

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Hearing on Motion Re: INVITATION TO THE COURT TO DISMISS  
Date: .07/11/08 Time: 8:30 am Dept/Div: 44  
=====

Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
-----

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: D. Fringer.  
People Represented By Deputy District Attorney Ella Fernandez.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.  
At 3:25, the following proceedings were held:  
Motion By Defense Regarding Romero Motion is called for hearing.  
Court Has Read and considered the probation officer's report.  
Court has read and considered correspondence from family and  
friends.  
Arguments presented by both counsel Re: Romero  
motion.  
The following persons permitted to address the  
Court: Adrian Carrillo; John and Lorraine Martinez  
Court orders Prior Strike(s) stricken. Reason: \*\*\*  
In granting the defendant's ROMERO motion to  
strike a prior strike conviction; the Court makes  
the following findings:  
(1) The nature of the controlled substance  
involved in this case was quite small.  
(2) That the co-defendant was the one who  
actually purchased the controlled substance and  
therefore; that this defendant played a rather  
minor role in the commission of this offense;  
(3) The defendant has an overwhelming support  
system in place in light of the many family  
members and friends who continually come to Court  
and who have sent letters in support of the  
defendant. It appears that the defendant's  
character and prospects indicate that he would  
not be a danger to society when released;  
(4) The present felony conviction is not a violent  
offense and even though the defendant has a

7/17/08

000191-A  
Page: 2

-----  
Case Number : RIF136990                      People vs. MARIO MARTINEZ  
-----

rather lengthy 20 year criminal history; he has only one prior conviction for violence. That being an attempted robbery conviction in 1988 which is 20 years old and extremely remote;

(5) The nature and circumstances of the defendant's other prior strike conviction; a first degree burglary from December 2007 are somewhat minimal for a crime of this nature. The defendant stole a back-pack out of a motel room when the occupant wasn't present and ultimately returned the property to the victim later that same day.

(6) By the time the defendant complete's serving the 12 year determinate sentence imposed; the defendant will be almost 60 years of age and the Court feels that the defendant will not likely constitute a danger to society when released;

(7) In this Court's opinion; a 25 year to life sentence did not seem appropriate; nor in the furtherance of justice and thus concluded that a 12 year determinate sentence was more appropriate considering all of the relevant factors.

Bail To Remain as fixed.

Remains remanded to custody of Riverside Sheriff.

Jail commitment issued. (hand processed)

\*\*MINUTE ORDER OF COURT PROCEEDING\*\*

Active

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4100 Main St.  
Riverside, CA 92501

000192

People of the State of California  
Vs.  
MARIO MARTINEZ

CASE NO. RIF136990

MINUTE ORDER

=====  
Report and Sentencing

Date: .07/11/08 Time: 8:30 am Dept/Div: 44

=====  
Charges: 1) 11379(A) HS-F C, 2) 11377(A) HS-F C, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T, 999) 667.5(B) PC-F K, 999) 667.5(B) PC-F T  
999) 667.5(B) PC-F T  
=====

Honorable Judge Paul E. Zellerbach Presiding.  
Courtroom Assistant: E. Anderson  
Court Reporter: D. Fringer.  
People Represented By Deputy District Attorney Ella Fernandez.  
Defendant Represented By CDL-C. Kenyon.  
Defendant Present.

At 3:25, the following proceedings were held:  
Court Has Read and considered the probation officer's report.  
Court has read and considered correspondence from friends and  
family..

The following persons permitted to address the  
Court: Adrian Carillo; John and Lorraine Martinez  
Arguments presented by both counsel Re: Sentencing  
Oral Motion By People regarding Amend second special prior  
offense is called for hearing.

Motion Granted

Information amended by Interlineation to reflect attempted  
robbery 664/211 PC

Probation Is Denied and sentence is imposed as follows: (SENT)  
Defendant is sentenced pursuant to 667(e)(1) PC.

As to Count(s) 1, the Court imposes the UPPER term of 8 year 0  
months.

Principal Count Deemed to be Count 1.

As to Count(s) 2, the Court imposes the MID term of 4 year 0  
months.

654 Penal Code stay granted on Count(s) 2.

As To the Prior 1, the Court imposes 1 years.

Prior 1 to run consecutive to sentence imposed in Count 1.

As To the Prior 2, the Court imposes 1 years.

Prior 2 to run consecutive to sentence imposed in Count 1.

As To the Prior 4, the Court imposes 1 years.

Prior 4 to run consecutive to sentence imposed in Count 1.

As To the Prior 5, the Court imposes 1 years.

Prior 5 to run consecutive to sentence imposed in Count 1.



7/14/08

Page: 2

-----  
Case Number : RIF136990                      People vs. MARIO MARTINEZ  
-----

Sentenced to State Prison for a total term of 12 years and 0 months.

Credit for Time Served of 410 actual days plus 204 days pursuant to 4019 PC for a total of 614 days.

Submit necessary Thumb & Palm prints, specimens of blood & saliva to CDC for DNA tests purs. 296 PC Results to be forward to Court for distribution.

Pay Restitution Fine in the amount of \$400.00 pursuant to 1202.4(B) PC (Prison)

Pursuant to section 2085.5 PC, Division of Adult Institutions is authorized to collect restitution Obligations.

Additional Parole Revocation fine imposed in the amount of \$400.00 pursuant to 1202.45(B) PC and suspended, unless parole is revoked (Prison)

Pay the cost of pre-sentence report purs. to 1203.1b PC in amount and manner determined by Financial Services; not to exceed \$318.00

Pay a total of \$110.00 for booking fee, pursuant to 29550 GC, to the Court as directed by Financial Services.

Defendant to participate in counseling/educational program having a substance abuse component, while imprisoned, pursuant to 1203.096 PC.

Pay \$20.00 for Court Security Fee pursuant to 1465.8(a)(1) PC. Div. of Adult Inst. to collect/transmit said fee to the Trial Court Trust Fund (State).

Defendant advised of appeal rights.

Sheriff to Deliver Defendant to Division of Adult Institutions at DELANO.

Remains remanded to custody of Riverside Sheriff.

Jail commitment issued. (hand processed)

\*\*MINUTE ORDER OF COURT PROCEEDING\*\*

Dispo

**ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE**  
 [NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED]

CR-290  
 000194

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: Riverside		<b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: <b>MARIO MARTINEZ</b> AKA: <b>MARCO MARTINEZ</b> CII#: _____	DOB: 08/04/1959	RIF136990	-A -B -C -D
BOOKING #: 200725849	<input type="checkbox"/> NOT PRESENT	JUL 15 2008 AUG 18 2008 WMO [Signature]	
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT	<input type="checkbox"/> AMENDED ABSTRACT		
DATE OF HEARING 07/11/2008	DEPT. NO. 44	JUDGE Paul E. Zellerbach	
CLERK	REPORTER	PROBATION NO. OR PROBATION OFFICER	
COUNSEL FOR PEOPLE Ella Fernandez	COUNSEL FOR DEFENDANT CDL-C. Kenyon		<input type="checkbox"/> APPTD

1. Defendant was convicted of the commission of the following felonies: (number of pages attached)

Additional counts are listed on attachment \_\_\_\_\_ (number of pages attached)

CNT	CODE	SECTION NO	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MM/DD/YYYY)	CONVICTED BY		TERM (M+D)	CONCURRENT	CONSECUTIVE TO VIOLENT	CONSECUTIVE TO NON-VIOLENT	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (per PC 1170.2)	844 STAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
						JURY	PLEA								YRS	MOS
1	HS	11379(A)	Import/sale/dist	07	12/04/07	X		U								8
2	HS	11377(A)	Possess Controll	07	12/04/07	X		M						X		

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
667.5(B)	01	667.5(B)	01	667.5(B)	01	667.5(B)	01	4

4.  Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

5. INCOMPLETED SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

6. TOTAL TIME ON ATTACHED PAGES: \_\_\_\_\_

7.  Additional indeterminate term (see CR-292).

8. TOTAL TIME EXCLUDING COUNTY JAIL TERM: 12

This form is prescribed under PC 1213.5 to satisfy the requirements of PC1213 for determinate sentences. Attachments may be used but must be referred to in this document.

**IMAGED**

PEOPLE OF THE STATE OF CALIFORNIA vs. MARIO MARTINEZ		DEFENDANT:	
RIF136990	-A	-B	-C
			000195

9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

a. Restitution Fines(s):

Case A: \$400.00 per PC 1202.4(b) forthwith per PC 2085.5; \$400.00 per PC 1202.45(b) suspended unless parole is revoked  
 Case B: \_\_\_\_\_ per PC 1202.4(b) forthwith per PC 2085.5; \_\_\_\_\_ per PC 1202.45(b) suspended unless parole is revoked  
 Case C: \_\_\_\_\_ per PC 1202.4(b) forthwith per PC 2085.5; \_\_\_\_\_ per PC 1202.45(b) suspended unless parole is revoked  
 Case D: \_\_\_\_\_ per PC 1202.4(b) forthwith per PC 2085.5; \_\_\_\_\_ per PC 1202.45(b) suspended unless parole is revoked

b. Restitution per PC 1202.4(f):

Case A: \_\_\_\_\_  Amount to be determined to  victim(s)\*  Restitution Fund  
 Case B: \_\_\_\_\_  Amount to be determined to  victim(s)\*  Restitution Fund  
 Case C: \_\_\_\_\_  Amount to be determined to  victim(s)\*  Restitution Fund  
 Case D: \_\_\_\_\_  Amount to be determined to  victim(s)\*  Restitution Fund

\*List victim name(s) if known and amount breakdown in item 11, below.)

c. Fines(s):

Case A: \_\_\_\_\_ per PC 1202.5 \_\_\_\_\_ per VC 23550 or \_\_\_\_\_ days  county jail  prison in lieu of fine  CC  CS  
 Case B: \_\_\_\_\_ per PC 1202.5 \_\_\_\_\_ per VC 23550 or \_\_\_\_\_ days  county jail  prison in lieu of fine  CC  CS  
 Case C: \_\_\_\_\_ per PC 1202.5 \_\_\_\_\_ per VC 23550 or \_\_\_\_\_ days  county jail  prison in lieu of fine  CC  CS  
 Case D: \_\_\_\_\_ per PC 1202.5 \_\_\_\_\_ per VC 23550 or \_\_\_\_\_ days  county jail  prison in lieu of fine  CC  CS

d. Lab Fee and Drug Program Fee:

Case A. Lab Fee: \_\_\_\_\_ per HS 11372.5(a) for counts \_\_\_\_\_  Drug Program Fee of \$150 per HS 11372.7(a).  
 Case B. Lab Fee: \_\_\_\_\_ per HS 11372.5(a) for counts \_\_\_\_\_  Drug Program Fee of \$150 per HS 11372.7(a).  
 Case C. Lab Fee: \_\_\_\_\_ per HS 11372.5(a) for counts \_\_\_\_\_  Drug Program Fee of \$150 per HS 11372.7(a).  
 Case D. Lab Fee: \_\_\_\_\_ per HS 11372.5(a) for counts \_\_\_\_\_  Drug Program Fee of \$150 per HS 11372.7(a).

10. TESTING

a.  AIDS pursuant to PC 1202.1 b.  DNA Pursuant to PC 298 c.  other (specify):

11. Other orders (specify):

Pay \$20.00 for Court Security Fee pursuant to 1465.8(a)(1) PC. Div. of Adult Inst. to collect/transmit it said fee to the Trial Court Trust Fund (State).

12. EXECUTION OF SENTENCE IMPOSED

- a.  at initial sentencing hearing.
- b.  at resentencing per decision on appeal
- c.  after revocation of probation
- d.  at resentencing per recall of commitment (PC 1170(d))
- e.  other (specify)

13. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	614	410	<input checked="" type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
B			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
C			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
D			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
Date Sentenced Pronounced:		Time Served in State Institution:	
07/11/08		<input type="checkbox"/> DMH <input type="checkbox"/> CDC <input type="checkbox"/> CRC	

14. The defendant is remanded to the custody of the sheriff  forthwith  after 48 hours excluding Saturdays, Sundays, and holidays.

To be delivered to  the reception center designated by the director of the California Department of Corrections.  
 other (specify):

I hereby certify the foregoing to be a correct abstract of the judgment made on this action.  
 DEPUTY'S SIGNATURE \_\_\_\_\_



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

000196

Abstract of Judgment - Prison Commitment  
Attachment Page - Further Orders

Case Number: RIF136990

Defendant: MARIO MARTINEZ

RESTITUTION:

Pay Restitution Fine in the amount of \$400.00 pursuant to  
1202.4(B) PC (Prison)

Additional Parole Revocation fine, imposed in the amount of  
\$400.00 pursuant to 1202.45(B) PC and suspended, unless parole  
is revoked (Prison)

Pursuant to section 2085.5 PC, Division of Adult Institutions is  
authorized to collect restitution Obligations.

CONCURRENT/CONSECUTIVE ORDERS:

PRIOR STRIKE INFORMATION:

Defendant is sentenced pursuant to 667(e)(1) PC.

REGISTRATION REQUIREMENTS:

FINES/FEES:

Pay \$20.00 for Court Security Fee pursuant to 1465.8(a)(1) PC.  
Div. of Adult Inst. to collect/transmit said fee to the Trial  
Court Trust Fund (State).

Pay a total of \$110.00 for booking fee, pursuant to 29550 GC, to 000197  
the Court as directed by Financial Services.

OTHER:

This Notice of Appeal must be filed within 60 days of the decision being appealed, in the county superior court where the decision was made. Instructions for filling out the notice of appeal are on page 2. File the background information form (p. 3) along with it.

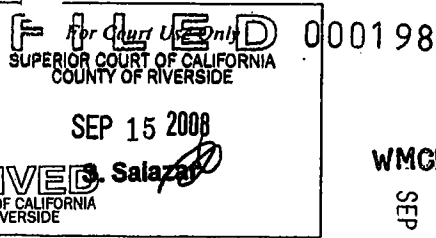
(1) Name of appellant: MARIO M. RTINEZ A3-241

Address (include I.D. No. if in custody): N.K.S.P C-02T24140

P.O. Box 5000

City Delano State CA Zip 93216

Phone (if applicable): \_\_\_\_\_ Date of birth: 8-4-5008



WMC  
SEP 16 2008

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF (2) Riverside

AUG 21 2008

PEOPLE v. \_\_\_\_\_ )

(3) Superior Court No. or Nos. RIF 136990

**NOTICE OF APPEAL**  
(Criminal case)

(4) MARIO MARTINEZ  
Appellant's full name

From the decision of this court entered  
(5) About July 11-2008  
(Date of sentencing or appealable order after judgment)

(6) TYPE OF PROCEEDING - check one of these boxes:

- Jury or court trial.
- Contested probation violation.
- Order after judgment affecting substantial rights of appellant or other order (describe):
- Plea of guilty or nolo contendere, or admission of probation violation. If you check this box, you must also check one or more boxes in part (7), next.

(7) If Plea of Guilty or Nolo Contendere or Admitted Violation of Probation, check one or more of these boxes:

- This appeal is based on the sentence or other matters that occurred after the plea and do not affect its validity.
- This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5 (illegal search and seizure).
- This appeal challenges the validity of the plea or admission of probation violation. If this box is checked, you must file with this notice a request for certificate of probable cause, signed under penalty of perjury. (See page 3 of this form.) It must state why the plea is invalid.

(8) Signature (required): Mario Martinez Aug 12-2008  
Signature of Defendant or Trial Counsel (with State Bar no.) Date of Signature

The filing of a notice of appeal by counsel is not an undertaking to handle the appeal. (Pen. Code, § 1240.1, subd. (b))

(9) MOTION FOR APPOINTMENT OF COUNSEL

Defendant requests the Court of Appeal appoint an attorney for appeal. Defendant does not have sufficient means to hire an attorney. Defendant's spouse (if applicable) and defendant have the following combined income and property:

Take-home pay from job (monthly):	\$ <u>N/A</u>	Trial attorney was: (Check one.)
Other income (monthly):	\$ <u>N/A</u>	<input checked="" type="checkbox"/> A public defender or court-appointed attorney.
Money in bank at this time:	\$ <u>N/A</u>	<input type="checkbox"/> An attorney paid for by defendant.
Home ownership? (Check one.)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Other: _____

I declare under penalty of perjury under the laws of the State of California that this information is true and correct:

Aug 12-2008 Mario Martinez  
Date Signature of Defendant (preferred) or Trial Counsel



BACKGROUND INFORMATION  
filed along with Notice of Appeal (page 1)

000199

THE INFORMATION ON THIS FORM WILL BE A PART OF THE PUBLIC RECORD AND IS NOT CONFIDENTIAL.

Name: MARIO MARTINEZ Date of birth: 8-4-59 Superior court no. RIF136990

Current address: 2847 DONNER WAY

City Riverside State CA Zip 92509

If applicable: Booking or inmate no.: T241140 Phone: 951-685-1278 A.K.A.:

\* IMPORTANT: YOU MUST TELL APPELLATE DEFENDERS, INC., THE COURT OF APPEAL, OR YOUR APPELLATE ATTORNEY WHENEVER YOUR ADDRESS CHANGES. IF YOU FAIL TO DO THIS, YOUR CASE MAY BE DELAYED OR LOST. CHANGE OF ADDRESS FORMS ARE ATTACHED.

Family member or friend who will always know your address:

Name and relationship: Julia MARTINEZ Phone: 915-685-1278

Address: 2847 DONNER WAY City Riverside State CA Zip 92509

Trial attorney:

Name: Charles Kenyon Phone: N/A

Address: 3891 TENTH STREET City Riverside State CA Zip 92501

Proceeding:

Jury trial  Court trial  Guilty plea  Other (describe):

Crime(s) convicted of: 11379(A) Hs Transportation OF methamphetamine II(1377(a))

Sentence: 12 yrs. 85%

Did you need an interpreter in court?  Yes  No. If yes, in what language?

Do you have now, or have you ever had, any related appeals, writs, or other proceedings before this or any other California appellate court?  Yes  No. If yes, give case title, number, and dates, and describe proceedings:

Names of co-defendants and their counsel (whether joint or separate proceedings):

Eves, Candace Darlene, Attorney: Linda Meyers

Possible issues on appeal (These are only suggestions. The attorney on appeal will make the final decision on which issues to raise.):

Misrepresentation Violation of Constitutional Rights Denial of two MORRISSEY Motion Hearings. Judge admitted (on the Record) that I should File For appeal INSUFFICIENT EVIDENCE

Arrangements for counsel on appeal: Have you hired an attorney for your appeal?  Yes  No. If yes:

Name: Address and phone:

If you cannot afford to hire an attorney, you have the right to have the court appoint one for you. Please fill out and sign the request for counsel on the bottom of the notice of appeal (page 1).

REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

000200

This request must be completed, signed, and filed with the notice of appeal if you checked box number 3 in section (7). It applies when:

- You pled guilty or nolo contendere, or if your probation was revoked on the basis of an admitted probation violation.
- AND
- You intend to challenge the validity of the plea or admission on appeal.

I request a certificate of probable cause. The plea of guilty or nolo contendere, or the admission of a probation violation, was unlawful because:

Due to the fact that my Attorney didn't mis Represented ME, AND ALSO due the fact that I AM illeterate. I felt as if My Lawyer was violating my CONSTITUTIONAL RIGHTS. I had Two Morrissey Motion hearings Ags Against him and the jude denied. Also the jude Had admitted after my sentencing (on the Record) that the girl Had Admitted that the Drugs were he's, and that I should Put in For an Appeal, there was no sign of any drug trafficking OR transporting as well as Fingerprints ON the bag (inefficient evidence.

I declare under penalty of perjury under the laws of the State of California that this statement is true.

Signature: Maria Martinez  
 Defendant or Trial Counsel

Date: Aug 12 2008

POINTS AND AUTHORITIES

A certificate of probable cause is required in an appeal after a plea of guilty or nolo contendere or an admission of a probation violation, in order to raise an issue challenging the validity of the plea. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).) A common example of a challenge to the plea is a contention that the trial court improperly denied the defendant's motion to withdraw the plea.

A certificate of probable cause should be issued unless a challenge to the plea on appeal would be "clearly frivolous and vexalious." (People v. Ribero (1971) 4 Cal.3d 55, 63, fn. 4.) Signing the certificate does not mean the trial court believes the contention is "probably" meritorious or will result in reversal; it merely means there can be an honest difference of opinion about the issue. (Ibid.)

The request for certificate of probable cause is (check one)  granted.  denied.

Paul E. Zilleh  
 Honorable \_\_\_\_\_, Judge of the Superior Court

Sept. 15, 2008  
 Date





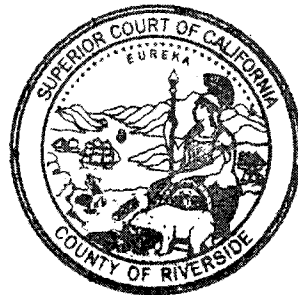
CASE NO. RIF136990

CLERK'S CERTIFICATION OF RECORD

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE: ss

I, Clerk of the Superior Court of California, County of Riverside, custodian of the records of said Court, do hereby certify the forgoing to be a full, true and correct CLERK'S TRANSCRIPT ON APPEAL, as specifically identified on the Index Pages, of the official record on the above numbered action.

IN WITNESS WHEREOF, I hereunto set my hand and affixed the seal of said court this 3<sup>rd</sup> day of December 2008.



*[Handwritten Signature]*  
Deputy Clerk





**E X H I B I T**

**B**



COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION II

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	E No. E046651
	)	
Plaintiff/Respondent,	)	Riverside County
	)	Case No. RIF136990
vs.	)	
	)	Volume 1 of 2
MARIO MARTINEZ,	)	
	)	Pages 1 - 203
Defendant/Appellant.	)	(Pgs 6-14 and 37-43
	)	Ordered Sealed)

REPORTER'S TRANSCRIPT ON APPEAL

Before the Honorable Paul E. Zellerbach, Judge, Dept. 44  
November 26, 27, and 29, 2007

APPEARANCES:

For Plaintiff/Respondent: OFFICE OF THE ATTORNEY GENERAL  
110 West "A" Street, Suite 1100  
San Diego, California 92101

For Defendant/Appellant: APPELLATE DEFENDERS  
555 W. Beech Street, Ste. 300  
San Diego, California 92101

Reported by: THERESE A. WEBSTER, C.S.R. No. 6257

COPY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. RIF136990  
 )  
 MARIO MARTINEZ, )  
 )  
 Defendant. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
Before the Honorable Paul E. Zellerbach, Judge, Dept. 44  
November 26, 27, and 29, 2007

APPEARANCES:

For the Plaintiff: OFFICE OF THE DISTRICT ATTORNEY  
County of Riverside  
BY: MR. DAVID STEWARD, Deputy  
4075 Main Street, First Floor  
Riverside, California 92501

For the Defendant: MR. CHARLES KENYON, ESQ.  
4129 Main Street, Suite 305  
Riverside, California 92501

Reported by: THERESE A. WEBSTER, C.S.R. No. 6257



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

APPEARANCE INDEX

VOLUME NO.

DATE

PAGES

1

11-26-07

1 - 17

11-27-07

18 - 44

11-29-07

45 - 203

2

12-03-07

204 - 338-<sup>9</sup>

12-04-07

338-~~6~~ - 338-17

12-14-07

339 - 360

05-09-08

361 - 364

07-11-08

365 - 396

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CHRONOLOGICAL INDEX

Volume 1 - Pages 1 - 203

November 26, 2007	1
Pages 6-14 Sealed Marsden Motion	
November 27, 2007	18
Pages 37-43 Sealed Marsden Motion	
November 29, 2007	45

PEOPLE'S WITNESSES

<u>Examinations</u>	<u>Page</u>
<u>JOSH HIRAOKA</u>	
Direct Examination By Mr. Steward	92
Cross-Examination By Mr. Kenyon	121
Redirect Examination By Mr. Steward	157
Recross-Examination By Mr. Kenyon	159
<u>CANDACE DARLENE EVES</u>	
Direct Examination By Mr. Steward	169

Volume 2 - Pages 204 - 396

December 3, 2007	204
<u>CANDACE DARLENE EVES</u>	
Direct Examination Resumed by Mr. Steward	204
Cross-Examination by Mr. Kenyon	210
Redirect Examination by Mr. Steward	242
Recross-Examination by Mr. Kenyon	248
<u>JULIA MARTINEZ</u>	
Direct Examination by Mr. Steward	251
Cross-Examination by Mr. Kenyon	253
Redirect Examination by Mr. Steward	260
<u>JOSH HIRAOKA</u>	
Direct Examination Reopened by Mr. Steward	263
Cross-Examination by Mr. Kenyon	267

DEFENSE WITNESS

<u>JULIA MARTINEZ</u>	
Direct Examination by Mr. Kenyon	279
December 4, 2007	338-10
Jury Question and Verdict	

1	December 14, 2007	339
2	<u>YOLANDA P. PEREZ</u>	
	Direct Examination by Mr. Steward	342
3	Cross-Examination by Mr. Kenyon	345
	Redirect Examination by Mr. Steward	352
4		
5	May 9, 2008	361
	Discussion Re: Romero Motion	
6	July 11, 2008	365
	Romero Motion and Sentencing	
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ALPHABETICAL INDEX OF WITNESSES

	<u>PAGE</u>	<u>VOLUME</u>
EVES, CANDACE DARLENE		
Direct Examination by Mr. Steward	169	1
Direct Examination Resumed by Mr. Steward	204	2
Cross-Examination by Mr. Kenyon	210	2
Redirect Examination by Mr. Steward	242	2
Recross-Examination by Mr. Kenyon	248	2
HIRAOKA, JOSH		
Direct Examination by Mr. Steward	92	1
Cross-Examination by Mr. Kenyon	121	1
Redirect Examination by Mr. Steward	157	1
Recross-Examination by Mr. Kenyon	159	1
Direct Examination Reopened by Mr. Steward	263	2
Cross-Examination by Mr. Kenyon	267	2
MARTINEZ, JULIA		
Direct Examination by Mr. Steward	251	2
Cross-Examination by Mr. Kenyon	253	2
Redirect Examination by Mr. Steward	260	2
Direct Examination by Mr. Kenyon	279	2
PEREZ, YOLANDA P.		
Direct Examination by Mr. Steward	342	2
Cross-Examination by Mr. Kenyon	345	2
Redirect Examination by Mr. Steward	352	2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT INDEX

		ID		EVID	
		PG	VOL	PG	VOL
<u>PEOPLE'S EXHIBITS</u>					
1	Diagram Drawn by Deputy Hiraoka	95	1	271	1
2	Stipulation	115	1	271	1
3	Envelope with Drugs	271	1	N/A	
3-A	Photo of Drugs	353	2	354	2
4	Fingerprint Card of Defendant	344	2	355	2
5	969b Packet	344	2	355	2
6	969b Packet CR32018	344	2	355	2
7	969b Packet RIF097808	344	2	355	2
<u>COURT EXHIBITS</u>					
1	Copy of Investigator's Report	53	1	N/A	

1                                    PROCEEDINGS OF MONDAY, NOVEMBER 26, 2007

2                                    BEFORE THE HONORABLE PAUL E. ZELLERBACH, DEPARTMENT 44

3                                    THE COURT: All right. Let me now call the case of the  
4 People versus Mario Martinez. This is Case No. RIF136990.

5                                    If counsel could state their appearances, please.

6                                    MR. KENYON: Thank you. Charles Kenyon for CDL on  
7 behalf of Mr. Martinez, who is present in custody.

8                                    MR. STEWARD: Dave Steward on behalf of the People.

9                                    THE COURT: All right. This matter was assigned here  
10 this morning for purposes of conducting a trial. And I did meet  
11 briefly with both counsel in chambers to discuss some of the  
12 pretrial issues in this matter, along with scheduling.

13                                    And Mr. Kenyon, have you had a chance to talk to  
14 Mr. Martinez about possibly waiving one day so that we can begin  
15 jury selection tomorrow rather than today?

16                                    MR. KENYON: Yes, Your Honor. I have had an  
17 opportunity to speak with him. He has declined and is reluctant  
18 to do so.

19                                    He has also expressed an interest in relieving his  
20 counsel. It's a Marsden motion is what he wants now.

21                                    THE COURT: Okay. All right. Then what we will do is  
22 we will reserve a panel of jurors for 1:30 today, unless --  
23 let's ask for --

24                                    How many do we seat in here, Eric?

25                                    THE DEPUTY: 75, I think.

26                                    THE COURT: Let's ask for a panel of 70 for 1:30,  
27 please.

28                                    All right. Then there was also an issue regarding one

1 of the possible or potential witnesses in this case, as well.

2           And Mr. Steward, have you been able to make any headway  
3 in that regard?

4           MR. STEWARD: Yes, Your Honor. I have someone prepared  
5 to meet with us as soon as we are done here and talk to her.

6           THE COURT: Then I guess -- what time is the interview  
7 going to be conducted, do you know?

8           MR. STEWARD: What time?

9           THE COURT: Yeah.

10          MR. STEWARD: As soon as we walk over across the  
11 street.

12          THE COURT: Why don't you give me five minutes or so to  
13 conduct the Marsden hearing with Mr. Martinez and Mr. Kenyon.  
14 And then I will see you back here at 1:30.

15          MR. STEWARD: All right. Do you want us to take up the  
16 issue on the prior later? I just was requesting if I needed  
17 anything released that might contain the factual --

18          THE COURT: All right. Mr. Martinez --

19          THE DEFENDANT: Yes, sir.

20          THE COURT: -- he does have a prior conviction for a  
21 violation of Health and Safety Code Section 11377,  
22 Subdivision (a). And that is in Riverside Superior Court Case  
23 No. RIF097808.

24          And I have had my clerk pull that court file. And one  
25 of the things in the court file is a transcript of  
26 Mr. Martinez's plea before Judge Richard Fields on July 10th,  
27 2001.

28          There is no probation report. It was a plea agreement,

1 a stipulated sentence. But I do have a copy of, again, the  
2 transcript that was made of his plea. So what I am going to do  
3 is I will have my clerk make a copy of his transcript for both  
4 counsel at this point in time.

5 And really, that's the only thing in here that relates  
6 to the facts and circumstances of the prior -- no probation  
7 report.

8 MR. STEWARD: Two envelopes. Do those not contain any  
9 factual --

10 THE COURT: One relates to victim restitution.

11 MR. STEWARD: Right.

12 THE COURT: And then the other one relates to  
13 information that was provided to the Court regarding his  
14 possible OR release.

15 MR. STEWARD: Don't they sometimes have a factual  
16 summary of those?

17 THE COURT: Most often they do not. And in looking at  
18 this one, it does not.

19 MR. STEWARD: All right.

20 It was a victim -- there must have been other charges  
21 besides 11277 if there was a victim restitution issue.

22 THE COURT: There was. There was a DUI and a  
23 misdemeanor hit and run, 20002 of the Vehicle Code.

24 MR. STEWARD: All right. All right. So do you want me  
25 to step in the hallway, then?

26 THE COURT: Yes.

27 MR. STEWARD: Then come back at 1:30?

28 THE COURT: Yes.



1 THE CLERK: Your Honor, the jury room only has 25  
2 jurors at 1:30.

3 THE COURT: Okay. Then we will start with them.

4 MR. STEWARD: I would like to have two witnesses  
5 ordered back, then, for tomorrow.

6 THE COURT: All right.

7 MR. STEWARD: So do you want me to do that after the  
8 Marsden?

9 THE COURT: No. Let's do it now.

10 MR. STEWARD: All right.

11 THE COURT: All right. The names of your witnesses,  
12 Mr. Steward?

13 MR. STEWARD: One just went downstairs, Miss Eves. But  
14 the one that's still here is Julia Martinez, Your Honor.  
15 This -- this is Julia Martinez right here.

16 THE COURT: Miss Martinez, good morning.

17 MS. MARTINEZ: Good morning.

18 THE COURT: We are going to start jury selection in  
19 this case today, but we won't probably start testimony until  
20 sometime tomorrow. So I am going to order you back to court  
21 tomorrow to testify.

22 And what time would you like her back?

23 MR. STEWARD: Probably 1:30 tomorrow.

24 THE COURT: All right. I think that's probably  
25 appropriate.

26 All right. I am sorry, it's Julia Martinez?

27 MS. MARTINEZ: Yes, it is.

28 THE COURT: All right. Miss Martinez, then, you are

1 ordered to appear back here in this courtroom tomorrow at 1:30.  
2 All right. And hopefully, we will get you on the stand in the  
3 afternoon to testify.

4 Do you have any questions about that at all?

5 MS. MARTINEZ: No, I don't. I don't know what I will  
6 be testifying about.

7 THE COURT: Well, that's something you need to talk to  
8 the DA, Mr. Steward, about. All I am doing is ordering that you  
9 return back here tomorrow at 1:30. Okay.

10 MS. MARTINEZ: Yes.

11 THE COURT: All right. Thank you. We will see you  
12 then.

13 MR. STEWARD: Do you want the courtroom cleared now?

14 THE COURT: Yes, please.

15 (Pages 6 through 14 ordered sealed.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: We are back on the record in the case of  
2 the People versus Mario Martinez. Mr. Martinez is present with  
3 his counsel, Mr. Kenyon. Mr. Steward is present on behalf of  
4 the People.

5 And Mr. Steward, you have another witness you would  
6 like to have ordered back?

7 MR. STEWARD: Yes, I would. But I was trying to figure  
8 out the timing. When are we actually going to start jury  
9 selection? Today or tomorrow?

10 THE COURT: Well, Mr. Kenyon had indicated that he had  
11 the opportunity to further talk to Mr. Martinez, and that  
12 Mr. Martinez was now willing to put the case over until  
13 tomorrow.

14 Is that true, Mr. Martinez?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. You understand that today at  
17 this point in time is your last day to start trial. And I am  
18 willing to do that. And we do have 25 prospective jurors who  
19 are available at 1:30. So we could start your trial at 1:30  
20 this afternoon. But you would prefer to put it over until  
21 tomorrow so that Mr. Kenyon can talk to the witness and then  
22 talk to you some more, as well?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. So then you agree to waive one  
25 more day?

26 THE DEFENDANT: Yes, one day.

27 THE COURT: Exactly. We will start jury selection  
28 tomorrow. So you agree to waive that one more day?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. Then what we will do is we will  
3 put the matter over until 9:00 tomorrow morning. All right.  
4 Actually -- yeah, 9:00.

5 So let's have counsel here with Mr. Martinez tomorrow  
6 at 9:00. I am also going to order that Mr. Martinez be  
7 transported and be housed at R.P.D.C. starting tomorrow  
8 throughout the trial.

9 MR. KENYON: Excuse me, Your Honor.

10 THE COURT: Yes.

11 MR. KENYON: I don't mean to interrupt you, but I think  
12 Mr. Singerton was going to ask to have his prelim at 9:00  
13 tomorrow because I think one of their witnesses --

14 THE COURT: Right, but it's not going to be here.

15 MR. KENYON: All right, then.

16 THE COURT: So again, on this matter, we will order  
17 Mr. Martinez to be back at 9:00 tomorrow morning. We will see  
18 counsel then.

19 MR. STEWARD: I would probably request both witnesses  
20 be ordered back for Wednesday at 9:00 then.

21 THE COURT: Okay. Well, all right. That being  
22 Miss Martinez, as well as Miss Eves?

23 MR. STEWARD: Yes.

24 THE COURT: All right.

25 Candace Eves? Good morning.

26 MS. EVES: Good morning.

27 THE COURT: We are going to be selecting a jury in this  
28 case tomorrow. And so, I am going to order you and

1 Miss Martinez, who is also present here now --

2 Miss Martinez, I am not going to have you come back  
3 tomorrow at 1:30, I am going to have you come back Wednesday,  
4 both of you, Wednesday of this week, which is the 28th of  
5 November. Come back here at 9:00 Wednesday morning.

6 Miss Eves, do you understand?

7 MS. EVES: On the 28th?

8 THE COURT: Yeah, on the 28th, Wednesday morning at  
9 9:00. You are ordered to be back here for trial.

10 MS. EVES: Okay.

11 THE COURT: And Miss Martinez, again, do you understand  
12 not to be here tomorrow, but the day after tomorrow, Wednesday  
13 the 28th, at 9:00 a.m.?

14 MS. MARTINEZ: Here?

15 THE COURT: Here.

16 MS. MARTINEZ: Okay. Yes.

17 THE COURT: All right. Thank you all very much.

18 MR. STEWARD: Thank you, Your Honor. See you tomorrow  
19 at 9:00.

20 THE COURT: Okay.

21 (Proceedings concluded.)

22

23

24

25

26

27

28

1                   PROCEEDINGS OF TUESDAY, NOVEMBER 27, 2007

2                   BEFORE THE HONORABLE PAUL E. ZELLERBACH, DEPARTMENT 44

3                   THE COURT: All right. We are on the record in the  
4 case of the People versus Mario Martinez. Mr. Martinez is  
5 present. Both counsel are present.

6                   And what I would like to do before we bring our jury  
7 panel in this morning is put on the record some of the issues  
8 that we have discussed in chambers regarding some of the  
9 pretrial matters yesterday.

10                  And then also, I want to put on the record the  
11 situation of Miss Candace Eves, who is one of the prosecution  
12 witnesses who was interviewed by both counsel with a DA  
13 investigator yesterday afternoon.

14                  First of all, with respect to the prior offenses that  
15 are alleged in the Information, Mr. Kenyon, what is your request  
16 in that regard?

17                  MR. KENYON: Your Honor, my request is to bifurcate the  
18 trial so that, if there is a conviction, we will do a later  
19 trial on those.

20                  THE COURT: All right. Mr. Steward, what's the  
21 People's position regarding the defense request to bifurcate the  
22 priors?

23                  MR. STEWARD: I will submit on the issue, Your Honor.

24                  THE COURT: All right. At this point in time, I think  
25 it is appropriate. So I will order that the prior offenses,  
26 both the prison priors that are alleged, as well as the strike  
27 priors, be bifurcated. And that neither counsel should make any  
28 reference or mention of them either during voir dire or opening

1 statement. And certainly no witnesses should make reference of  
2 them during their testimony, as well.

3 Which I think brings up the second issue we discussed  
4 in chambers, and that is there was a request to -- by the  
5 defense that when the police officers testify on behalf of the  
6 prosecution, that there is no mention be made of Mr. Martinez's  
7 parole status at the time. Because I believe, as indicated by  
8 counsel, he was on active parole at the time that he was stopped  
9 and arrested in this case; is that correct?

10 MR. KENYON: Yes, Your Honor.

11 THE COURT: All right. And Mr. Steward, what's the  
12 People's position regarding that defense request?

13 MR. STEWARD: Submit it.

14 THE COURT: All right. Again, I don't see -- at least  
15 at this point in time, that it's relevant to any of the issues  
16 in this case. There are no search issues.

17 And so I am going to prohibit the prosecution in their  
18 case in chief from making any mention of the fact that  
19 Mr. Martinez was on parole at the time this incident occurred.

20 And again, make sure, Mr. Steward, please, to mention  
21 that back to your witnesses so they don't inadvertently or  
22 mistakenly comment or make reference to the fact that  
23 Mr. Martinez was on parole. Sometimes that does occur if the  
24 witnesses aren't aware of the Court's order. Okay?

25 MR. STEWARD: Yes, Your Honor.

26 THE COURT: All right. Thank you.

27 MR. STEWARD: The only way I could see that the defense  
28 priors could be relevant is the fact that now Miss Eves has

1 changed her story, because she knows he is a three-striker. And  
2 so now she is willing to take the fall on the dope. I am not  
3 quite sure how to handle that. But I think the fact that she  
4 knows he is a striker has some relevance. I have to decide  
5 whether I want to get that in. But that's one area where it  
6 could potentially be relevant, although it might be outweighed  
7 by the prejudicial effect.

8 THE COURT: I think you hit the nail on the head right  
9 there. And also, it's a double-edged sword in this day and  
10 age --

11 MR. STEWARD: I agree.

12 THE COURT: -- with respect to the jury.

13 We have a small amount of dope, and if they hear it's a  
14 three-strikes case, there is an argument that could be made that  
15 some jurors have sympathy towards a defendant that's facing  
16 25 years to life for an offense such as this. So it goes both  
17 ways sometimes.

18 But of course, that then brings us up to the next  
19 issue, which deals with Miss Eves. She was the driver of the  
20 vehicle at the time the stop was made, and Mr. Martinez was the  
21 right front passenger, at least that's what counsel indicated to  
22 me; is that correct?

23 MR. KENYON: Yes, Your Honor.

24 THE COURT: All right. And as I understand it, the  
25 methamphetamine was found on the right front passenger  
26 floorboard of the vehicle?

27 MR. KENYON: Yes, Your Honor.

28 THE COURT: Okay. And at the time -- well,



1 Mr. Steward, what was Miss Eves' original statement to law  
2 enforcement at the time that she was stopped back on May 29th of  
3 this year?

4 MR. STEWARD: She stated that she did not know -- I am  
5 sorry, she stated that the methamphetamine found on the  
6 passenger floorboard of the car was not hers.

7 THE COURT: Who did the vehicle belong to?

8 MR. STEWARD: It belonged to the defendant's mother.

9 THE COURT: All right. And based upon your and  
10 Mr. Kenyon's interview of Miss Eves yesterday at your office,  
11 what did she inform both of you at that point in time?

12 MR. STEWARD: She stated that the methamphetamine was  
13 hers, that she paid \$20 for it, that she was with the defendant  
14 when he drove her to the location to purchase the  
15 methamphetamine, that they had discussed the fact she would be  
16 buying methamphetamine, and that later in the day they intended  
17 to use the methamphetamine together.

18 THE COURT: Did she give any statement as to how the  
19 methamphetamine -- I am presuming it was in some sort of  
20 packaging or baggie when it was found on the floorboard of the  
21 vehicle?

22 MR. STEWARD: Yes. It was found in a piece of a  
23 baggie, like the corner of a bag.

24 THE COURT: And did she indicate how it got on the  
25 floorboard?

26 MR. STEWARD: She said that she threw it. When she saw  
27 the officers behind them, she threw it, trying to throw it into  
28 a vent in the car, but it fell into the passenger area of the

1 car.

2 THE COURT: All right.

3 Mr. Kenyon, is that pretty much your recollection of  
4 your interview with her yesterday?

5 MR. KENYON: Yes, Your Honor.

6 THE COURT: Well, certainly I believe that Miss Eves at  
7 this point in time needs an attorney to represent her. I can  
8 think of at least two reasons. First of all, she is now  
9 claiming that the methamphetamine is hers and that she made the  
10 purchase of it; and secondly, I would imagine the People are  
11 going to argue that she is now lying -- changing her story, and  
12 that brings up the issue of possible perjury.

13 So I have contacted the -- or had my clerk contact the  
14 conflicts panel of attorneys this morning and ask that one of  
15 their attorneys come over to court, so that I can officially  
16 appoint that individual to represent Miss Eves regarding her  
17 testimony in this case, because I think she certainly needs to  
18 have counsel representing her and advising her.

19 And what I am going to ask, Mr. Steward, is that you at  
20 some point prepare a copy of the investigative reports in this  
21 case, as well as I believe Investigator Spidle was the DA  
22 investigator who assisted both of you in interviewing Miss Eves  
23 yesterday afternoon?

24 MR. STEWARD: Yes, Your Honor.

25 THE COURT: Is he preparing a report today?

26 MR. STEWARD: We already have it.

27 THE COURT: That doesn't surprise me with Mr. Spidle, I  
28 guess.

1           But that you also provide Miss Eves' attorney a copy of  
2 Investigator Spidle's report regarding her statement that she  
3 made to both of you yesterday, as well.

4           And I think what I am going to do is tomorrow before  
5 she actually testifies on the witness stand, I am going to  
6 conduct I guess an evidentiary hearing prior to having her  
7 testify with her counsel present, to make sure she is fully  
8 aware of and informed of her rights and ramifications of her  
9 possible testimony, and that I would like to hear from her  
10 attorney, as well, at that point in time regarding any opinions  
11 or thoughts they might have regarding her testifying as a  
12 witness in this case.

13           And then I believe the final issue that was raised in  
14 chambers at some point in time yesterday was the fact that  
15 Mr. Martinez has a prior conviction for a violation of Health  
16 and Safety Code Section 11377, Subdivision (a), from Riverside  
17 County that occurred on July 1st of 2001. And that is in  
18 Riverside Case No. RIF097808.

19           And I did have my clerk yesterday pull that court file  
20 in that case. And in that case, Mr. Martinez entered into a  
21 plea agreement with the prosecution and pled guilty to a  
22 violation of Health and Safety Code Section 11377,  
23 Subdivision (a), as a felony, and pursuant to the terms of the  
24 plea agreement, was sentenced to two years and eight months in  
25 prison.

26           And in the Court's file was a transcript of  
27 Mr. Martinez's actual plea in front of Judge Richard Fields that  
28 occurred on July 10th, 2001. So I think that would be the

1 actual conviction date, not July 1st.

2 But I think, Mr. Steward, you indicated that the People  
3 would be seeking to introduce that prior conviction under the  
4 premise of Evidence Code Section 1101(b); is that correct?

5 MR. STEWARD: Yes, Your Honor.

6 THE COURT: All right. And I will hear from you in  
7 that regard at this point in time.

8 MR. STEWARD: All right, Your Honor.

9 One of the elements I have to prove is that the  
10 defendant had knowledge that the substance that we are charging  
11 him with possessing was a controlled substance. And I would be  
12 seeking to introduce his admission on page 6 of the transcript  
13 where he is asked, "Mr. Martinez, is it true that on June 19th,  
14 2001, in the County of Riverside, you did have in your  
15 possession a usable quantity of a controlled substance you knew  
16 to be methamphetamine?"

17 His answer was, "Yes."

18 And I would be seeking to admit that admission to help  
19 prove that he has the knowledge of the nature of methamphetamine  
20 as a controlled substance, what it looks like, and whatnot.

21 THE COURT: Let me ask you this: At the time that  
22 Mr. Martinez was arrested in this case on May 29th of 2007, was  
23 he asked anything about the methamphetamine that was found on  
24 the floorboard of the vehicle?

25 MR. STEWARD: Yes, he was.

26 THE COURT: And what were his statements in that regard  
27 at that time?

28 MR. STEWARD: He denied that the methamphetamine was

1 his. And he also denied that it belonged to Candace Eves. He  
2 told the police that, "I guarantee you, the methamphetamine is  
3 definitely not Eves'. She never sat in the passenger seat and  
4 does not do drugs." He did not say where it came from or who it  
5 belonged to. And he denied that it belonged to him.

6 THE COURT: All right.

7 Mr. Kenyon?

8 MR. KENYON: Well, I think I would have an objection to  
9 the admission of the prior conviction under 1101(b).

10 We really don't know anything about the facts  
11 surrounding the conviction. We know it was a negotiated plea  
12 bargain, as the Court is aware. Very often we -- a plea bargain  
13 can even arise from a factual scenario, which is far from -- far  
14 from the truth. That happens routinely.

15 Methamphetamine can come in different forms. It can be  
16 in liquid form or in a crystal form. We don't know if  
17 methamphetamine involved -- if there was methamphetamine --  
18 presumably, there was -- but the methamphetamine involved in the  
19 prior was in any way similar. We just don't know any  
20 circumstances surrounding the plea.

21 Further, I haven't had a chance to go through it too  
22 closely yet, but I don't -- I haven't actually seen a -- well,  
23 let's see here. Okay, I guess, there is a factual basis set  
24 forth. But we simply don't know enough about it that it bears  
25 any similarity to the offense at hand, the alleged offense at  
26 hand, that it would be appropriate under 1101(b).

27 Furthermore, from what we see in the police report, it  
28 appears he was questioned by the officer and, in fact, the

1 officer may have said to him, "Is this methamphetamine yours?"

2           So we don't know that Mr. Martinez spontaneously said,  
3 "Oh, that -- that stuff there is methamphetamine, but I don't  
4 know where it came from."

5           So we have no knowledge as to whether or not he  
6 actually was able to identify it, he knew what it was, and was  
7 able to, you know, recognize it.

8           And at this point, we don't have any information, other  
9 than from Miss Eves, about whether he had any true intent to  
10 possess it or any knowledge of the nature of it.

11           Her statements actually with the investigator present  
12 yesterday were kind of vague. She sort of said she was going to  
13 meet her connection, and there was some innuendoes that it  
14 was -- it was drug-related, maybe even meth-related. But we  
15 don't know with certainty that Mr. Martinez ever saw the drugs,  
16 other than when it was presented to him by the officer.

17           And in fact, the deputy, I guess -- the deputy may have  
18 actually questioned him and said, "Is this your  
19 methamphetamine?" So we don't really know what Mr. Martinez  
20 truly admitted to, because it's out of context in the police  
21 report.

22           So based upon that, I don't see enough similarities  
23 that this would be appropriate to introduce under 1101(b).

24           THE COURT: All right. Well, it certainly, arguably,  
25 is relevant to that issue of knowledge of its nature, that being  
26 that it was methamphetamine. But obviously, on the other hand,  
27 one can certainly argue it's also prejudicial to the defendant.

28           I guess I have a couple of concerns. First of all,

1 from what you have indicated to me, Mr. Steward, it doesn't  
2 appear that the defendant is claiming that he didn't know what  
3 it was, that being that it was methamphetamine, simply that it  
4 wasn't his, or that it wasn't Miss Eves.

5           As a matter of fact, based upon your statements to the  
6 Court this morning, it appears that he did know what it was,  
7 because he specifically alluded to the fact that not only was it  
8 not his, but that Miss Eves had not used methamphetamine, that  
9 it wasn't hers, as well -- which to me indicates certainly that  
10 he knew what the item was, that being that it was a controlled  
11 substance, and specifically methamphetamine. So I think  
12 knowledge really is not an issue that I am aware of at this  
13 point in time.

14           Then secondly, and actually more importantly,  
15 Mr. Kenyon hits on a very cogent point, and that being that I  
16 don't know the facts and circumstances of this prior conviction.  
17 Even though it may, arguably, be relevant or admissible under  
18 Evidence Code Section 1101(b) as it relates to the knowledge on  
19 the part of Mr. Martinez, the Court is still required to undergo  
20 a weighing and balancing test under Evidence Code Section 352  
21 with respect to the probative value versus its prejudicial  
22 effect.

23           And it's extremely difficult to do that when the Court  
24 has no knowledge of the specific facts and circumstances of the  
25 underlying conduct. Yes, he did plead guilty to it. There was  
26 a factual basis taken.

27           I guess one could arguably assume that Mr. Martinez was  
28 also in a vehicle on this prior occasion, because he also pled

1 guilty to a DUI charge, as well as a hit-and-run charge that  
2 occurred on the same date as the drug charge.

3           So I guess one could reasonably infer that the drugs  
4 were in the vehicle. But I don't know if they were in the  
5 vehicle itself or on his person, how they were packaged, what  
6 the quantity was. And so, I don't think the Court is able to  
7 effectively conduct that weighing and balancing under Evidence  
8 Code Section 352, especially in light of the fact that it  
9 doesn't even seem to me that knowledge is an issue at this point  
10 in time.

11           Now, should things change during the course of the  
12 trial, or should Mr. Martinez choose to testify, depending upon  
13 what he testifies to, it may then become more relevant. But at  
14 this point in time, without further information or evidence, I  
15 think it's somewhat speculative, first of all; and secondly, I  
16 think the prejudicial effect does outweigh any probative value  
17 that it may have at this point in time.

18           So I am not going to allow it to be admitted in the  
19 People's case in chief. But again, as the trial progresses,  
20 things may change. Trials are very fluid in nature.

21           And should you at some later point in time,  
22 Mr. Steward, believe that it has become more probative or more  
23 relevant, you can at that point in time renew your request to  
24 introduce evidence of this conviction at that point in time and  
25 I will reconsider my ruling.

26           All right. Anything else?

27           MR. KENYON: Your Honor, Miss Lori Myers from the panel  
28 is here.



1 THE COURT: Okay. Good.

2 MS. MYERS: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. MYERS: I understand I am going to be called in on  
5 the witness advisement for Miss Eves?

6 THE COURT: Yes. And at least you have been here for a  
7 little bit of our conversation this morning, Miss Myers. And I  
8 appreciate you being here.

9 As I understand the situation, Miss Myers [sic] is --  
10 she was the driver of the vehicle wherein Mr. Martinez, the  
11 defendant was stopped. I believe there was a warrant  
12 outstanding for her arrest at that point in time. And  
13 Mr. Martinez was on parole at that point in time.

14 A search of the vehicle found a small baggie of I  
15 believe two or three -- .2 or .3 grams?

16 MR. KENYON: .3 -- .38 is what it turned out to be. I  
17 was wrong.

18 THE COURT: Grams of methamphetamine on the right front  
19 passenger floorboard. And that's what this case is all about.  
20 And at that point in time, neither Miss Eves nor Mr. Martinez  
21 claimed ownership of the narcotics. As a matter of fact, both  
22 of them denied even knowing that it was there.

23 But apparently Miss Eves came to court yesterday and  
24 was interviewed by both Mr. Kenyon and Mr. Steward, along with  
25 DA Investigator Eric Spidle. And apparently at that point in  
26 time yesterday she somewhat altered or changed her story and is  
27 now saying that --

28 Well, Mr. Steward, what was her statement again to you

1 yesterday?

2 MR. STEWARD: Well, essentially that the defendant  
3 drove her to a house where she purchased the methamphetamine for  
4 \$20. And that eventually they were going to use it together.  
5 And that when the police were behind her, that she took the  
6 methamphetamine she had in her brassiere, and tried to throw it  
7 into a vent in the car, but it fell in the passenger area near  
8 the defendant.

9 THE COURT: And so, based upon that new or additional  
10 statement that Miss Eves gave to both counsel yesterday, as well  
11 as issues relating to potential perjury charges, I thought it  
12 would be best to appoint an attorney to represent her.

13 So I have instructed Mr. Steward to provide you,  
14 Miss Myers, with copies of the investigative reports in this  
15 case, along with Investigator Spidle's report relating to the  
16 statement that she gave to both counsel yesterday.

17 MS. MYERS: I believe that's what I have just received  
18 today, Your Honor.

19 THE COURT: Okay. Great.

20 And then Mr. Steward also has, I believe, phone numbers  
21 where Miss Eves can be reached.

22 MR. STEWARD: I already gave them.

23 MS. MYERS: He gave that to me, as well.

24 THE COURT: Okay. And then she was ordered to return  
25 back here tomorrow morning I think at 9:00?

26 MR. STEWARD: Yes.

27 THE COURT: And so I would appreciate if you could  
28 review the reports and possibly get ahold of her today and talk

1 to her.

2 MS. MYERS: Okay.

3 THE COURT: Then I am going to ask you to be present  
4 tomorrow morning at 9:00 when she appears. And then you can  
5 talk to her in person if you feel it necessary or appropriate at  
6 that point in time.

7 Because what I want to do, before I have her testify, I  
8 want to have a little evidentiary hearing, out of the presence  
9 of the jury, as far as after you have had a chance to talk to  
10 her, what she is going to testify to, and any thoughts or  
11 opinions that you might have with respect to that issue.

12 MS. MYERS: I will let the Court know now, based on the  
13 factual representation, I would be advising my client to invoke  
14 the Fifth. I don't know if she will be following my advice.  
15 Then my next question would be: Are the People going to be  
16 offering any sort of immunity?

17 MR. STEWARD: We are not planning to, Your Honor.

18 THE COURT: All right. So you are aware of the  
19 People's position in that regard, that they have no intention,  
20 at least at this point, of granting her any type of immunity.

21 MS. MYERS: That at least helps with my discussion if I  
22 am able to get ahold of her today.

23 THE COURT: Certainly. All right.

24 MS. MYERS: Okay, then.

25 THE COURT: Do you need anything more from us,  
26 Miss Myers?

27 MS. MYERS: I don't believe so.

28 THE COURT: Mr. Kenyon?

1 MS. MYERS: I will come back tomorrow at 9:00 a.m.?

2 THE COURT: Right.

3 MR. KENYON: Before Miss Myers leaves, one thing that I  
4 sort of thought of that maybe we should have discussed more  
5 fully with Miss Eves yesterday, is she has pending criminal  
6 matters in Riverside. I don't know if any of them are  
7 drug-related. I don't know if that's going to be relevant to  
8 her discussion -- Miss Myers' discussion with her, and whether  
9 or not it may be relevant to have some bearing on her decision  
10 to testify, if at all.

11 THE COURT: You know, I was going to do that yesterday.  
12 I forgot. I appreciate you bringing it back to my attention.

13 If -- I am going to have my clerk run Miss Eves, at  
14 least through our system, because there -- she was arrested for  
15 a warrant back on May 29th, 2007 when this traffic stop  
16 occurred. I don't know if that case is still pending, or if  
17 it's been resolved. But I am going to have my clerk run her.

18 THE CLERK: I just did.

19 THE COURT: And?

20 THE CLERK: She does have an active warrant.

21 THE COURT: She has an active warrant?

22 THE CLERK: Uh-huh.

23 MS. MYERS: Could I get a copy of the case print for  
24 that?

25 THE COURT: Yeah. I would like a copy of the case  
26 print, as well.

27 THE CLERK: It is Candace Darlene Eves?

28 MR. KENYON: Candace -- I don't know the middle name.

1 MR. STEWARD: Darlene?

2 THE CLERK: Candace Darlene Eves.

3 MR. KENYON: She has probably got a public defender or  
4 other CDL attorney on that.

5 THE COURT: Not necessarily, if it's still out to  
6 warrant. But I don't understand, she was --

7 MR. KENYON: She was arrested. So I don't know what  
8 the status is.

9 THE COURT: Unless she was released and failed to  
10 appear again. I don't know. We will have to determine that by  
11 looking at the case print.

12 MR. KENYON: And, one other issue raised by this is,  
13 assuming she does invoke, which is very likely --

14 THE COURT: I don't know about that.

15 MR. KENYON: Excuse me?

16 THE COURT: I don't know about that.

17 MR. KENYON: Right. Well, I don't know what she is  
18 going to do. But if she does invoke, as she is now being  
19 represented by counsel, Mr. Spidle would then become an  
20 important witness in our defense. And it's been brought to my  
21 attention that Mr. Spidle is leaving for Mexico or something  
22 tomorrow, which is a problem.

23 THE COURT: Is it Mexico or Costa Rica?

24 MR. STEWARD: Mexico.

25 THE COURT: Really?

26 MR. STEWARD: That's what he told me.

27 THE COURT: Okay.

28 MR. KENYON: I hate to interfere with Mr. Spidle's

1 plans --

2 THE COURT: I would love to interfere with Mr. Spidle's  
3 plans.

4 MR. KENYON: The beauty is I can get the judge to do  
5 it.

6 MR. STEWARD: Can I just have a moment?

7 THE COURT: Yeah.

8 MR. KENYON: Possibility of stipulating.

9 (Off-the-record discussion.)

10 THE COURT: All right. We are back on the record. And  
11 we have located Miss Eves' case. And I have had my clerk  
12 copy -- make a copy of the case print for both the Court and  
13 counsel. And her case is Case No. RIF135967.

14 And in that case, she was originally charged with auto  
15 theft, in violation of Vehicle Code Section 10851, as well as  
16 being in receipt of a stolen vehicle, in violation of Penal Code  
17 Section 496(b). And it appears that she did plead guilty to  
18 both of those charges as misdemeanors. They were reduced to a  
19 misdemeanor, and she pled guilty to both Counts 1 and 2 back on  
20 June 11th, 2007, before Judge McIntyre -- Jan McIntyre.

21 And she was placed on summary probation for three  
22 years, one of the terms which was that she would serve 180 days  
23 in custody. And she was to surrender on July 6th, 2007. When  
24 she failed to appear on her surrender date, a warrant was issued  
25 for her arrest at that time.

26 She was represented by the public defender's office  
27 specifically Miss Juneau, J-U-N-E-A-U, from that office. And  
28 Miss Myers has informed me this morning that Miss Juneau is on

1 maternity leave and unavailable.

2           And you are right, Miss Myers, she was represented by  
3 the public defender's office, and I guess --

4           MS. MYERS: If she were to come back to court on a VOP,  
5 the public defender would be appointed counsel on that.

6           THE COURT: Correct. They certainly would.

7           I guess the problem I have at this point is that you  
8 are now very familiar with the situation. If Miss Juneau were  
9 actually still with the public defender's office, or not on  
10 maternity leave, I would seriously consider having her come  
11 over. But I would have to have someone who knows nothing about  
12 Miss Eves or this situation come over from the public defender's  
13 office to represent her as a witness in this case.

14           And I am looking at the most expeditious way to handle  
15 this. And I hate to start over from scratch again with a new  
16 public defender.

17           So I think as far as representing her as a witness, I  
18 would still appreciate if you would continue to represent her in  
19 that regard.

20           MS. MYERS: Absolutely. I will accept appointment,  
21 Your Honor.

22           THE COURT: Thank you. I appreciate it.

23           MS. MYERS: May I be excused and return tomorrow at  
24 9:00 a.m.?

25           THE COURT: Absolutely. Thank you again, Miss Myers.

26           MS. MYERS: Okay.

27           THE COURT: All right. Then again tomorrow morning at  
28 9:00, that is another issue we are going to have to take up with

1 Miss Eves is her warrant status.

2 MR. STEWARD: Yes. That's true.

3 Your Honor, the Court is not planning on doing that in  
4 front of the jury is it?

5 THE COURT: No.

6 MR. STEWARD: I have had that happen before. That's  
7 why I asked -- believe it or not.

8 THE COURT: Well --

9 MR. STEWARD: It was not pretty.

10 THE COURT: That's unfortunate --

11 MR. STEWARD: Yes.

12 THE COURT: -- that that occurred that way.

13 MR. STEWARD: It was.

14 THE COURT: But no, we don't do that in this courtroom,  
15 at least.

16 All right. Any other issues that we need to discuss or  
17 put on the record before we bring our panel up this morning?

18 MR. STEWARD: No, Your Honor.

19 MR. KENYON: I don't believe so.

20 MR. STEWARD: Isn't that enough?

21 THE COURT: It is enough.

22 All right. Let's call our panel up, please, then.

23 (Recess.)

24 (Pages 37 through 43 ordered sealed.)

25

26

27

28



1 THE COURT: All right. Mr. Steward has now joined us.  
2 And Mr. Steward, we are actually going to call the  
3 panel in at this point in time. I think they are out in the  
4 hallway.

5 MR. STEWARD: Thank you, Your Honor.

6 (Jury voir dire reported, not transcribed.)

7 (Proceedings concluded.)

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROCEEDINGS OF NOVEMBER 29, 2007

BEFORE THE HONORABLE PAUL E. ZELLERBACH, DEPARTMENT 44

(Out of the presence of the prospective jurors.)

THE COURT: All right. We are on the record in the case of the People versus Mario Martinez. Mr. Martinez is present. Both counsel are present. We are out of the presence of the prospective jurors.

And in court this morning is the witness Candace Eves and her counsel who the Court appointed, Miss Myers.

And Miss Eves, you were arrested yesterday afternoon, or evening, basically for two reasons. First of all, in your own case, which is Case No. RIF135967, in that case, you had entered into a plea agreement back on June 11th of this year when you pled guilty, I believe, to two misdemeanor charges and agreed to serve 180 days in custody.

And you were to surrender to the Court to begin serving 180 days on July 6th of this year. And you failed to appear on that date and a bench warrant was issued by Judge Janice McIntyre for your failure to appear to surrender to start serving that sentence.

And then this Court had ordered you to appear here yesterday. And based upon Miss Myers' representations yesterday morning, she had informed the Court that you were feeling ill and could not come to court in the morning. So I agreed to let you show up at 1:30. And then you didn't show up at 1:30 yesterday.

And then apparently you communicated -- I am not sure if it was to Miss Myers or Mr. Steward, the DA, that you had no

1 transportation to come to court. So it seemed like it was just  
2 one thing after another. So then, I issued -- I think it was  
3 becoming late in the day -- and so, I then issued a warrant for  
4 your arrest for your failure to appear pursuant to my Court  
5 order. That's why you are in custody right now.

6           The issue at this point in time is whether or not,  
7 Miss Eves, you are going to testify as a witness in this case.  
8 Whether it be for the prosecution or the defense, it makes no  
9 difference. But I think Miss Myers has talked to you about  
10 that, has she not?

11           MS. EVES: Yes, Your Honor.

12           THE COURT: All right. And I guess both the attorneys  
13 had interviewed you at the DA's office with an investigator  
14 Tuesday of this week, I think it was. And you had given them a  
15 statement that was somewhat different from the statement that  
16 you gave to the deputy at the time that you were originally  
17 stopped and arrested in this case.

18           And there was an issue as to whether or not you would  
19 have a Fifth Amendment right to not testify in that your  
20 testimony may tend to incriminate you, both with respect to the  
21 possession of the drugs that were found in the vehicle when you  
22 were stopped; and there is also an issue as to whether or not  
23 you might be subjecting yourself to perjury charges for,  
24 arguably, lying under oath when you are testifying during the  
25 course of this trial.

26           So for both of those reasons, I felt it necessary to  
27 appoint an attorney to represent you as a witness in this case.

28           Now, in your own case, you still have the public

1 defender that is your attorney of record. But this is a  
2 different issue as to whether or not you are going to be  
3 testifying in this case, and also, whether or not you are going  
4 to be asserting your Fifth Amendment privilege to not testify,  
5 if called as a witness. So that's why I appointed Miss Myers to  
6 represent you in that matter, and also to advise you about your  
7 rights and about what she feels you should do in that regard.

8           And so, Miss Myers, do you think you have had an  
9 opportunity -- a sufficient opportunity to speak to Miss Eves  
10 about those issues?

11           MS. MYERS: Yes, Your Honor, I do.

12           And as I represented yesterday, I have advised my  
13 client to invoke her Fifth Amendment right. And I do believe  
14 that that's what she will be doing today.

15           THE COURT: All right.

16           Then, Miss Eves, what I am going to do is I am going  
17 to -- gentlemen, I am going to ask Miss Eves to come take the  
18 witness stand and be sworn as a witness, please.

19           MS. MYERS: Your Honor, am I permitted to approach?

20           THE COURT: Absolutely. You can stand next to her in  
21 the witness stand.

22           THE CLERK: You do solemnly state that the evidence you  
23 shall give in this matter shall be the truth, the whole truth,  
24 and nothing but the truth, so help you God?

25           THE WITNESS: Yes.

26           THE COURT: You may have a seat.

27           Can you state your full name, then spell it for the  
28 record, please.

1 THE WITNESS: Candace Darlene Eves.

2 THE COURT: Could you spell your first and last name  
3 for us, please.

4 THE WITNESS: C-A-N-D-A-C-E. And my last name is  
5 E-V-E-S.

6 THE COURT REPORTER: And your middle name again,  
7 please.

8 THE WITNESS: Darlene, D-A-R-L-E-N-E.

9 THE COURT: All right. Miss Eves, if you were asked  
10 any questions about the incident that occurred on May 29th,  
11 2007, when you were in the vehicle with Mr. Martinez, would you  
12 answer any of the questions that were asked of you with respect  
13 to that incident?

14 THE WITNESS: No. I would be invoking my Fifth  
15 Amendment right.

16 THE COURT: All right. So you believe that by  
17 answering any questions that relate to that incident when you  
18 and Mr. Martinez were arrested on May 29th of this year, that  
19 those questions -- or answers to any of those questions might  
20 tend to incriminate you?

21 THE WITNESS: I believe it's in my best interests to  
22 invoke my Fifth Amendment right.

23 THE COURT: All right. So you would not answer any  
24 questions that were asked of you, then; is that correct?

25 THE WITNESS: That's correct.

26 THE COURT: Okay. Counsel, do either of you have any  
27 questions for Miss Eves at this point?

28 MR. STEWARD: No.

1 MR. KENYON: No, Your Honor.

2 THE COURT: All right. Then I believe that Miss Eves  
3 has asserted her Fifth Amendment privilege with respect to  
4 testifying in this case. And I believe it's an appropriate  
5 invocation on her part.

6 So what I am going to do is I am going to recall the  
7 warrant that I issued in this case for her nonappearance as a  
8 witness yesterday. But, Miss Eves, you still have the 180 days  
9 to serve on your other case. And that's up to the jail to  
10 decide what they are going to do with you in that regard. They  
11 may kick you out because of the federal court order regarding  
12 overcrowding in the jail, or you might have to serve it out. I  
13 don't know.

14 MS. MYERS: Your Honor, I did review the minutes and  
15 calculated her CTS as of today, if I could represent that to the  
16 Court.

17 THE COURT: Sure. Okay.

18 MS. MYERS: That is 17 actual, plus 8 4019, for a total  
19 of 25 CTS.

20 THE COURT: It would be -- yes, she is entitled to 17  
21 actual days credit, plus 8 days' good time credits, pursuant to  
22 Penal Code Section 4019, for total credits of 25 days.

23 MS. MYERS: Yes, Your Honor.

24 THE COURT: All right. I will have the minutes reflect  
25 that today.

26 Then I will also recall the warrant that was previously  
27 issued by Judge McIntyre in Miss Eves' case, which is RIF135967,  
28 since she is now in custody and will begin serving the remaining

1 portion of her 180-day sentence.

2 Anything further, gentlemen?

3 MR. STEWARD: Yes. Could we just have the witness  
4 remain there, because I need to -- there is a possibility we may  
5 reconsider the issue about immunity on having her testify.

6 THE COURT: Well, what we will do is we will send her  
7 back downstairs, but we will keep her there the remainder of the  
8 day.

9 MR. STEWARD: All right.

10 THE COURT: All right.

11 MR. STEWARD: Yes.

12 MS. MYERS: Your Honor, may I also get an order for my  
13 client to see the jail doctor? She is very ill.

14 THE COURT: All right.

15 I will make an order that Miss Eves be seen by the jail  
16 physician for her illness.

17 MS. MYERS: Thank you, Your Honor.

18 THE COURT: All right. Thank you.

19 So let's send her back downstairs, but tell them to  
20 keep her down there.

21 MS. MYERS: Your Honor, am I dismissed to go, then if  
22 the issue comes up again, I will be called?

23 THE COURT: Yes, Miss Myers. If the issue comes up  
24 regarding immunity, I am sure Mr. Steward will call you and  
25 advise you of that.

26 MS. MYERS: Great.

27 THE COURT: Thank you, Miss Myers.

28 Okay. Gentlemen, are we ready for our jurors?

1 MR. STEWARD: Yes.

2 MR. KENYON: Well, we should take up the 402 issues  
3 related to the statements, then, now that we have a clear  
4 indication.

5 THE COURT: Let's do that then.

6 Obviously, Miss Eves has asserted her Fifth Amendment  
7 privilege against self-incrimination. And as I indicated, I  
8 think it's a -- she did it appropriately.

9 So I guess let's take this procedurally in the manner  
10 that we should. What's the People's position now that she has  
11 asserted her Fifth Amendment privilege, Mr. Steward?

12 MR. STEWARD: Well, I would still be seeking to admit  
13 her statements as a declaration against penal interest.

14 THE COURT: Which statements are we talking about  
15 specifically?

16 MR. STEWARD: Well, all her statements -- I am sorry,  
17 her statement on November 26th, 2007, as a statement against  
18 penal interest.

19 THE COURT: That was a statement that she gave to both  
20 counsel and Detective Spidle -- or Investigator Spidle?

21 MR. STEWARD: Yes, Your Honor.

22 And then her previous statement as a prior inconsistent  
23 statement of the statement she gave as a declaration against  
24 penal interest.

25 THE COURT: All right.

26 And Mr. Kenyon, what's your position with respect to  
27 the People seeking to introduce basically both of Miss Eves'  
28 statements, both the statement she initially gave to the deputy



1 at the time of her arrest on May 27th -- I am sorry, May 29th of  
2 this year, and then her subsequent statement that she gave to  
3 both counsel a few days ago?

4 MR. KENYON: Your Honor, we would be seeking to exclude  
5 both of those statements. With regards to the statement made to  
6 the deputy on May 29th, we believe that's self-serving and just  
7 purely hearsay. If she is declared unavailable, we would have  
8 no ability to cross-examine.

9 As to the statement given to us just a few days ago, we  
10 would be seeking to exclude that under Sixth Amendment grounds,  
11 and the Crawford decision, because although it is a statement  
12 against interest and otherwise does appear -- would fall within  
13 a hearsay exception, I think the Crawford decision would make  
14 that statement inadmissible, namely, it is certainly a  
15 testimonial statement and we would not have the ability to  
16 cross-examine the witness on it.

17 THE COURT: What about the Crawford issue, Mr. Steward?

18 MR. STEWARD: Well, it's still under a deep -- it's  
19 still under a -- what we would call a deeply rooted hearsay  
20 exception declaration against penal interest.

21 THE COURT: Well, it wouldn't be admissible otherwise.  
22 Crawford deals with otherwise admissible statements; correct? I  
23 mean if it doesn't fall within a hearsay exception, we wouldn't  
24 even deal with the Crawford issue or concern, because it  
25 wouldn't be admissible in the first place. So I think Crawford  
26 kind of presupposes that the out-of-court statements are  
27 admissible for some purpose, legitimate purpose. But then there  
28 is the additional concern that the Crawford decision raises with

1 respect to the defendant's Sixth Amendment rights being able to  
2 effectively cross-examine or question the declarant of that  
3 statement.

4 Right?

5 MR. STEWARD: Correct.

6 THE COURT: Because if there wasn't a hearsay  
7 exception, the statement wouldn't be coming in in the first  
8 place, so Crawford wouldn't even be applicable.

9 So I agree -- well, I think what we ought to do, for  
10 posterity sake, if nothing else, is have a copy of Detective  
11 Spidle's report regarding her statement she gave to both of you  
12 a few days ago marked as a Court's exhibit, so for appellate  
13 purposes any reviewing court is going to exactly know what the  
14 nature and content of that statement was.

15 And as I understand it, basically, at the time of her  
16 arrest, she denied any knowledge of the drugs to Deputy Hiraoka;  
17 is that correct?

18 MR. STEWARD: Yes.

19 THE COURT: Okay. So that statement, other than  
20 arguably being a prior inconsistent statement, would not fall  
21 within a hearsay exception.

22 Would you agree with that, Mr. Steward?

23 MR. STEWARD: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. STEWARD: Do you want me to make a -- provide to  
26 your clerk my copy?

27 THE COURT: Yes. Then she can make a copy of that and  
28 mark it as Court's Exhibit No. 1 for purposes of this hearing on

1 this evidentiary issue.

2 MR. STEWARD: Perhaps we could revisit it. Because I  
3 know there is case law that talks about declaration against  
4 penal interest, even in light of the Crawford decision. But I  
5 don't have that on me right now.

6 THE COURT: You know, and I agree with you. I think  
7 there is. And for the life of me, you know, I have dealt with  
8 this issue in the past. But I have no specific recollection at  
9 this point in time of any specific case that deals with that  
10 issue. But I agree with you, I think there are cases that talk  
11 about those concerns.

12 Well, Evidence Code Section 1230 deals with the hearsay  
13 exception regarding declaration against interest. And I believe  
14 certainly one could make a legitimate argument that her  
15 statements to Investigator Spidle were declarations against  
16 penal interest in that she was claiming the drugs were hers and  
17 she had actual possession of the drugs at the time the deputy  
18 initiated the traffic stop on the vehicle that she was driving  
19 at the time.

20 But the underlying premise of all -- or most of the  
21 hearsay exceptions is that these statements are admissible  
22 because of their inherent reliability, due to whatever exception  
23 we are talking about. And here specifically we are talking  
24 about a declaration against penal interest.

25 And at this point in time, I have significant concerns  
26 about the veracity or believability of her statement that she  
27 gave to Investigator Spidle. At the time of the initial stop  
28 back on May 29th, she denied any knowledge of the drugs, which

1 isn't surprising. But it's not until she is actually subpoenaed  
2 as a witness and brought to court some six months later that she  
3 now changes her story and claims that the drugs, to a certain  
4 extent, were hers.

5           And I think it's also been indicated by counsel that  
6 Miss Eves also apologized to the defendant's mother during one  
7 of the days when they were both here at court when this trial  
8 was first beginning, and indicated to her, as well, to a certain  
9 extent or in some respect, that the drugs were hers, as well.

10           And now, also, she is aware that Mr. Martinez is facing  
11 a possible sentence of 25 years to life if he should be  
12 convicted in this case as a three-striker. So again, I have  
13 significant concerns and reservations about the veracity of the  
14 statement in its entirety. And that concerns me, as well.

15           So based upon the Court's concerns with respect to the  
16 believability or veracity of her statement that she gave to  
17 Investigator Spidle, as well as having concerns about the  
18 Crawford issues at this point, I am not going to allow the  
19 People to introduce her statement.

20           And Mr. Steward, if you can come up with some  
21 additional cases that deal with that issue or that subject, I  
22 will be more than happy to look at them and reconsider my  
23 ruling.

24           MR. STEWARD: All right.

25           MR. KENYON: Your Honor, if I may be heard on it.

26           THE COURT: Go ahead.

27           MR. KENYON: There is a couple things. And that is I  
28 also still want to approach that second statement -- I guess

1 it's now the third statement -- the statement given to the  
2 mother, because I think there is actually a different analysis  
3 that has to take place.

4           And while I do agree with the Court's ruling, in that  
5 it is correct, I believe the grounds that the statement to  
6 Detective Spidle should be excluded are strictly Crawford  
7 related. I do not believe there is any problem with the truth  
8 or veracity, because the circumstances surrounding it simply go  
9 to the weight of the evidence and what the fact-finder, how  
10 much -- how much weight they want to give it.

11           In fact, by definition, anything which would be  
12 admissible under 1230, that is a statement against interest, is  
13 a deeply rooted hearsay exception because it is inherently  
14 reliable.

15           That is a person would not ordinarily claim drugs  
16 unless -- unless there was some truth behind it -- even partial  
17 involvement. The courts have held that even a person who -- for  
18 example, there is a case where a person claims -- somebody's  
19 uncle claims to have attended to one of the suspects and given  
20 him medical attention, which makes him, essentially, an  
21 accessory after the fact. That, in and of itself, that  
22 statement was found to be a statement against penal interest  
23 when the statement was given to an officer.

24           And even though that was a far less serious crime --  
25 here we have got somebody who is actually claiming  
26 responsibility for a felony offense. So -- and that falls very  
27 firmly as a statement against interest.

28           And there is no additional element of 1230 that

1 requires extraordinary reliability. It simply is the ordinary  
2 test under -- I guess it would be sort of a 352 analysis as to  
3 whether or not it is a reliable statement. And because this  
4 hearsay exception exists, anything that falls within it should  
5 be considered an inherently reliable statement. That's why the  
6 exception exists. People don't simply claim responsibility for  
7 criminal acts.

8           Which brings me to my --

9           THE COURT: Well, sure they do. There are many types  
10 of situations wherein one codefendant may claim responsibility  
11 to help out another codefendant, or a spouse may claim some  
12 responsibility for a criminal act to help out their spouse.  
13 There is a lot of situations that one can envision that I have  
14 seen over the years wherein individuals claim criminal  
15 responsibility to help out someone else.

16           MR. KENYON: And I would agree with the Court. But in  
17 those cases, they are admissible. Where the courts have found  
18 them to be --

19           THE COURT: Not necessarily. Just because someone  
20 makes a statement against penal interest, in and of itself,  
21 doesn't mean it's admissible. It has to be inherently reliable.  
22 Isn't that the basic premise of all of these hearsay exceptions  
23 is their inherent reliability?

24           A dying declaration. Whatever hearsay exception you  
25 deal with, the underpinning theory is that, under the  
26 circumstances or spontaneous statement, the theory behind all of  
27 those hearsay exceptions is one of inherent reliability, because  
28 under those situations, one would expect or believe that someone

1 would be telling the truth. But I think it's still incumbent  
2 upon the Court, in dealing with any hearsay exception, to make  
3 an independent determination as to whether or not the statement  
4 is inherently believable or reliable.

5           And I guess that's one of my problems or concerns with  
6 the statement that Miss Eves recently gave to Detective Spidle.

7           MR. KENYON: Now, and I would certainly agree with the  
8 Court -- the Court always does have a duty to determine whether  
9 or not something is sufficiently reliable, no matter what the  
10 hearsay exception applied is. However, in this case, I think  
11 it's both sides' position that it's an inherently reliable  
12 statement, because it is a very true declaration against  
13 interest.

14           Now, this sort of brings me to my second point, which  
15 is it is the defense's position and it is our intent to offer  
16 the statement given by the witness Miss Eves to the defendant's  
17 mother, and that she apologizes to the mother and says she is  
18 sorry, it was actually -- they were actually her drugs.

19           Now, this is a statement which, again, is against penal  
20 interest, because she is taking responsibility for her criminal  
21 act, a felony act. In fact, she at that time appears to be  
22 possibly claiming full responsibility for it. You know,  
23 actually, it just dawned on me, she is in the back of the  
24 courtroom, Your Honor. I think perhaps we should exclude her  
25 for this portion of the hearing.

26           THE COURT: All right.

27           MR. STEWARD: Yes.

28           MR. KENYON: Would you mind stepping outside.

1 MR. STEWARD: Yes. I would request a witness exclusion  
2 order, Your Honor.

3 THE COURT: All right. And that -- I will issue, then,  
4 that order as to both prosecution and defense witnesses.

5 MR. STEWARD: I would request that Deputy Josh Hiraoka  
6 would be designated our investigating officer.

7 THE COURT: All right. And he is present this morning  
8 and has been present during this proceeding this morning. And I  
9 will designate him as the prosecution's investigating officer  
10 for trial purposes.

11 MR. KENYON: Now, further, Your Honor, as an offer of  
12 proof, I would submit to the Court that when she is questioned  
13 on the stand, Mrs. --

14 THE COURT: "She" the mother?

15 MR. KENYON: The mother, excuse me.

16 THE COURT: All right.

17 MR. KENYON: Mrs. Martinez will indicate that she has  
18 really no prior relationship whatsoever with the witness,  
19 Miss Eves. So there has been no contact with Miss Eves by her  
20 or anyone from her family. She basically doesn't know this  
21 person at all.

22 And it would seem extremely odd that without any sort  
23 of external pressures, that a person would come up and confess  
24 to the mother of the crime -- excuse me, the mother of the  
25 accused that, in fact, she is the person responsible --

26 THE COURT: Well, the reasoning --

27 MR. KENYON: -- for such predicament.

28 THE COURT: Well, the reasoning and rationale would be



1 the same as her giving the statement to Investigator Spidle,  
2 arguably.

3 All right. And let's assume I allow that statement to  
4 come in, a statement to the mother -- maybe I am getting ahead  
5 of myself -- I would presume that Mr. Steward would want to  
6 introduce her other statements, both to Deputy Hiraoka at the  
7 time of her arrest and to Investigator Spidle as inconsistent  
8 statements.

9 MR. KENYON: Now, I would concede that the statement  
10 given to -- well, actually, I guess I -- I think the problem  
11 with it is, though, although they are inconsistent statements,  
12 they -- they, in essence, still face a confrontation clause  
13 issue.

14 THE COURT: But they are not being offered by the  
15 People in their case in chief. So I don't think Crawford even  
16 applies. They are offered to impeach the credibility of your  
17 witness, in essence.

18 MR. KENYON: Well, but --

19 THE COURT: You are saying Crawford doesn't apply when  
20 you introduce the statement but -- so then you are going to use  
21 Crawford as a sword to prohibit the People from introducing the  
22 statement to Investigator Spidle in their case in chief, but  
23 then you want to introduce a portion of the statement that she  
24 gave to the mother. But then in rebuttal, you don't want to  
25 allow the People to introduce her prior inconsistent statements  
26 to Deputy Hiraoka and/or to Investigator Spidle. Do you see a  
27 problem there?

28 MR. KENYON: I do. And I am about to address it.

1 Actually, I was incorrect. I do believe that the statement made  
2 to the deputy -- the deputy was inconsistent. When she said,  
3 "No, I did not have the dope. I know nothing about the drugs,"  
4 that is a true inconsistent statement.

5 On the other hand, the statement given to Detective  
6 Spidle is not an inconsistent statement. There is nothing in  
7 there which is inconsistent with what I believe the mother will  
8 testify to. Because I don't believe she said -- sorry to  
9 interrupt.

10 THE COURT: Go ahead.

11 MR. KENYON: I don't believe she ever said, "Your son  
12 had nothing to do with it." So I know it's sort of -- we sort  
13 of get away from perhaps what the truth and the essence for a  
14 statement is, and the DA is, of course, free to cross-examine on  
15 that issue.

16 THE COURT: But they can't cross-examine the declarant.

17 MR. KENYON: No, they can't cross-examine the  
18 declarant, but they can cross-examine as -- the listener, and  
19 they will learn that it was an incomplete statement. So in  
20 fact, there may well have been -- and there may more -- there  
21 may well have been more information that would have come out of  
22 it.

23 Therefore, the DA can certainly argue that, you know,  
24 he -- that statement, in and of itself, may not be the whole  
25 truth. That doesn't necessarily exclude Mr. Martinez from any  
26 culpability.

27 And with regards to using it as I guess a -- using a  
28 confrontation clause as a shield for him, and precluding the DA

1 from doing it, I understand, it's a strange predicament that we  
2 end up with something that is less than a complete story. But  
3 we all know that sometimes the Evidence Code causes that.

4           And the statement given to Detective Spidle is not  
5 inconsistent with the statement that I believe Miss Martinez  
6 would testify to.

7           THE COURT: Well, but wouldn't you argue to the jury,  
8 assuming Miss Eves' statements to your client's mother comes  
9 into evidence, wouldn't you then argue to the jury that,  
10 "Miss Eves admitted that the dope was hers. It's not my  
11 client's. He had nothing to do with it. He is not responsible  
12 for it." Right? Wouldn't you argue that to the jury?

13           MR. KENYON: I would be careful in argument. I would  
14 certainly not say there is no evidence -- I might say, "You  
15 haven't heard any evidence that he had any -- any involvement  
16 with it." But I certainly wouldn't say, "There is no evidence  
17 that exists."

18           THE COURT: Well, there obviously is evidence that  
19 exists, because the dope was found by his feet at the floorboard  
20 of the passenger side of the vehicle. Certainly there is  
21 evidence that it exists.

22           MR. KENYON: Excuse me, then I wouldn't say there are  
23 no statements that exist, because that would be untrue.

24           Now, the irony of the whole thing here is the DA  
25 actually has the ability to prevent this whole thing by simply  
26 granting her immunity. And that's up to them as to how they  
27 want to play it.

28           But I believe although it appears the Evidence Code is

1 being manipulated, to some degree, to hide the full story from  
2 coming out, the reality is sometimes that's what happens. And  
3 it's not an accurate and true representation of what happened.  
4 I completely agree. But he is protected under Crawford from  
5 that statement given to Detective Spidle. He would be protected  
6 by hearsay rules, the statement given to the deputy.

7           However, it is because of our seeking to introduce the  
8 statement given to the mother, which I believe is a proper  
9 declaration against interest, but I do believe the statement  
10 given to the deputy becomes an inconsistent statement and should  
11 be permitted in the DA's rebuttal.

12           THE COURT: Well, I agree with you that I don't think  
13 any Crawford issues or concerns apply if it's the defense that  
14 is seeking to introduce Miss Eves' statements to the defendant's  
15 mother.

16           Obviously, I still have some concerns about the  
17 inherent reliability of those statements. But I think that --  
18           Well, Mr. Steward, what would be the People's intention  
19 if the Court allows Mr. Kenyon to introduce into evidence  
20 Miss Eves' statements to the defendant's mother?

21           MR. STEWARD: I would seek to introduce her other  
22 statements that I would consider prior inconsistent statements.  
23 Because I think when you look at the entirety of the statement  
24 to Detective Spidle, and the Court has that as an exhibit now,  
25 maybe it could review it over the next break or something --

26           THE COURT: I basically know what --

27           MR. STEWARD: What's that?

28           THE COURT: -- its contents are.

1 MR. STEWARD: Well, I think that in its totality, it  
2 would be considered a prior inconsistent statement in a way.  
3 Because in the way that she elaborates on the defendant's  
4 involvement with the methamphetamine, I think, in a way, it  
5 does -- it is somewhat inconsistent with the statement to the  
6 mother that the dope was hers.

7 THE COURT: Well, I think it's significantly  
8 inconsistent.

9 MR. STEWARD: So, if the Court allows the statement to  
10 the mother to come in, I would be seeking to introduce the other  
11 two statements.

12 Quite frankly, I have no objection to all the  
13 statements coming in. But I think to allow some in and not  
14 others is just -- it doesn't allow me to use the prior  
15 inconsistent statement exception to the hearsay code -- or the  
16 Evidence Code.

17 THE COURT: Well, I think Mr. Kenyon is right when he  
18 said that sometimes when applying certain evidentiary rules,  
19 that it does, arguably, lead to an inequitable or untenable  
20 result.

21 Oftentimes, when we introduce statements from  
22 defendants, we will introduce a portion of the statement that  
23 they may have made, and then there is an issue as to whether or  
24 not there is invocation of the Miranda rights. So further  
25 statements by the defendant may not be admissible, even though  
26 it further explains what occurred or what that person did. And  
27 that's just an example that came to mind.

28 But I think here -- two things. First of all -- well,

1 if the defense, first of all, wants to seek to introduce  
2 Miss Eves' statements to the defendant's mother, I don't think  
3 any Crawford issue applies. You know, to coin a phrase that's  
4 oftentimes used in our business by judges -- and I hated the use  
5 of that phrase when I was an attorney, but admittedly, I use it  
6 now as a judge -- you are opening the door, Mr. Kenyon, when you  
7 seek to introduce a portion of the statement, in essence, that  
8 Miss Eves gave to the mother.

9           And if I were to allow that, at the same time I think  
10 the People have the right to introduce Miss Eves' prior  
11 inconsistent statements to both Deputy Hiraoka at the time of  
12 her initial arrest, as well as her complete statements that she  
13 gave to Investigator Spidle.

14           I don't think Crawford applies in that situation,  
15 because you are the one that offered the evidence in the first  
16 place. And they are just responding in rebuttal to your offer  
17 of proof or your presentation of evidence on behalf of the  
18 defendant.

19           And secondly, as I indicated to both counsel, and just  
20 mulling this issue over yesterday when we were discussing it  
21 informally, is that I am not sure if Evidence Code Section 356  
22 applies when the statement is given by the same declarant to two  
23 different individuals at two different points in time. But the  
24 theory is still the same of Evidence Code Section 356, that if  
25 inclusion of the entire statement would assist the trier of fact  
26 in further understanding the statement, that it is admissible.  
27 And I think that certainly applies here, as well.

28           Again, I am not saying that Evidence Code 356 applies,

1 because I am not sure that it does because the statement was  
2 made to two different individuals.

3           And then, also, you know, the Penal Code provides that  
4 a trial is a search for the truth. And I understand that there  
5 are certain evidentiary and legal prescriptions and limitations  
6 on that search for the truth. But I think that that's really  
7 what trials should be all about within the bounds of the law.

8           And so, I will allow you to introduce the statement to  
9 the mother. But at the same time, you have to know that the  
10 downside, or potential downside, to that decision in that I am  
11 also going to allow, then, the People in rebuttal to introduce  
12 Miss Eves' statement to Deputy Hiraoka at the time of her  
13 arrest, as well as her complete statement that she gave to both  
14 counsel and Investigator Spidle a few days ago.

15           So that's my ruling.

16           MR. KENYON: Okay. Now, I understand the Court has  
17 made its ruling. I just wanted to make the record clear -- and  
18 I think Mr. Steward will agree with me -- in the interview, at  
19 no time does she ever refer to the methamphetamine as theirs.  
20 It's always referred to as hers. She did say that, "We may use  
21 it. We may smoke it. We were going to smoke it together." But  
22 she always referred to it as her methamphetamine, which I think  
23 is an important distinction.

24           Because should there be a stipulated statement that  
25 goes in before the jury, that's basically why I don't think it's  
26 an inconsistent statement, because she calls it her  
27 methamphetamine, or her drugs to the mother, and she calls it  
28 her methamphetamine or her drugs when referring to it in the

1 interview with Mr. Steward and me.

2 THE COURT: Correct. But at the same time, doesn't she  
3 not indicate in her statement to Investigator Spidle that it was  
4 the defendant that took her over to purchase the drugs, and that  
5 their mutual intent or plan in -- in her purchasing the drugs  
6 was for them to mutually use those drugs?

7 MR. KENYON: I agree. And I completely agree with the  
8 Court's idea that, yes, it gives context, it gives a fuller  
9 understanding. It really gives much more meaning to things.

10 THE COURT: Right.

11 MR. KENYON: But I don't see how that necessarily makes  
12 it inconsistent. It doesn't make it inconsistent.

13 THE COURT: Well, certainly it does, especially if you  
14 are going to argue to the jury that the drugs were just hers,  
15 and that the defendant has no culpability or responsibility.  
16 That's not what she is saying.

17 If she, now, had given the statement to Detective  
18 Spidle that, "Well, yes, I purchased the drugs. They were my  
19 drugs. I was going to use the drugs. The defendant had nothing  
20 to do with it whatsoever," then I think your point is  
21 well-taken. But that's not her statement.

22 Her statement is it was a mutual situation. "He took  
23 me over there to buy the drugs. I bought them, therefore, they  
24 are my drugs. But we went over there and I purchased them with  
25 the intent that we both use them."

26 And with respect to the jury instructions that talk  
27 about, you know, possession and ownership and control, I think  
28 that's a significant issue --



1 MR. KENYON: But she also --

2 THE COURT: -- or distinction or difference. I am  
3 sorry.

4 MR. KENYON: Pardon me, Your Honor. But she also  
5 indicated again, they were her -- she considered them to be her  
6 drugs. She held them. He never touched them. He never -- he  
7 may not have ever even seen them until they were thrown at his  
8 feet by her.

9 THE COURT: Well, and that would come out in testimony,  
10 would it not, in evidence?

11 MR. KENYON: And -- well, yes. And while I would agree  
12 that from a legal perspective, her statement is enough to  
13 incriminate -- her statement to the detective is enough to  
14 incriminate Mr. Martinez, her statement as to her state of mind  
15 is not inconsistent.

16 What I mean by that is when she says, "They were my  
17 drugs," she said, "They were my drugs" all along. So the  
18 statement is not inconsistent. The way she describes the  
19 circumstances are different, yes. But the circumstances do not  
20 make it an inconsistent statement.

21 THE COURT: No. First of all, her state of mind is  
22 totally irrelevant. And secondly, it is inconsistent for the  
23 jury to hear testimony that they were solely her drugs and then  
24 not hear -- and then have you argue that they were solely her  
25 drugs, and that your client had no involvement, no possession,  
26 no interest in those drugs, which you would be obligated to do,  
27 certainly -- and not allow at the same time the People to  
28 introduce the inconsistent portions to that position of her

1 saying, "Well, they were going to be mutually consumed by us.  
2 He took me over there to buy them." What about aiding and  
3 abetting a principal in the commission?

4 MR. KENYON: And I completely agree with the Court.  
5 That's the -- you know, that's the reality of it. That's the  
6 truth of what happened. But simply because it's rebuttal  
7 evidence doesn't simply make it admissible.

8 And just because it -- again, this is a very odd thing  
9 that I fully recognize that what the Evidence Code does is, I  
10 believe, you know, I believe if 1230 is followed, and prior  
11 inconsistent statement -- the Evidence Code regarding prior  
12 inconsistent statements is followed closely, it does distort the  
13 truth, but --

14 THE COURT: Well, I am not so much concerned with that.  
15 I have acknowledged that that happens sometimes.

16 But I am not accepting your argument, Mr. Kenyon, that  
17 her statement to the mother versus her statement to Investigator  
18 Spidle are not inconsistent with one another. I don't accept  
19 that argument. I think they are sufficiently inconsistent to  
20 allow the People to introduce her statement to Investigator  
21 Spidle, if you were to introduce her statement to the mother. I  
22 think they are sufficiently inconsistent to allow the People to  
23 introduce her statements to Investigator Spidle.

24 So that's the choice you are going to have to make.

25 MR. KENYON: Very well.

26 All right. I would just like to lodge an objection for  
27 the record, and that is all, leave the issue. Thank you, Your  
28 Honor.

1 THE COURT: All right. Thank you.

2 Any other issues or questions that we need to address  
3 before we bring our panel in?

4 MR. STEWARD: I don't believe so.

5 THE COURT: All right. Let's bring our jurors in,  
6 then, please.

7 (Jury voir dire resumed, reported, not transcribed.)

8 THE COURT: Okay. There are a few things that I want  
9 to go over with you folks at this point in time.

10 First of all, my deputy is going to hand out to each  
11 one of you a notebook. It will have your juror number on it,  
12 meaning jurors numbers 1 through 12 respectively, and alternates  
13 1 and 2. Those notebooks are yours throughout the entire trial.  
14 Feel free to take as many or as few notes as you are personally  
15 comfortable with. That's an individual decision that you can  
16 make.

17 I am going to ask, though, that you not remove your  
18 notes or your notebooks from the courtroom. Please leave them  
19 here at every break and recess. And at the end of the day, my  
20 deputy collects them all up, locks them away in the cupboard.  
21 No one has access to them. No one looks at them. Then when you  
22 return the next morning, he will redistribute them on your  
23 chair. When you come in, you will find your notebook there the  
24 next morning. And then at the end of the trial, when you begin  
25 your deliberations, you can take them with you into the  
26 deliberation room.

27 Also, he is going to pass around a yellow highlighter.  
28 And I see a lot of you aren't wearing your juror badges, but I

1 am going to recommend that you do wear your juror badges while  
2 you are in this building, for a couple of reasons. First of  
3 all, we are going to ask you to highlight your juror badge in  
4 yellow. And what purpose that serves -- let me go back. For  
5 those of you that don't have a juror badge, or misplaced it or  
6 lost it, we are going to take a recess here in a little bit and  
7 you can go back down to the jury assembly room and get another  
8 juror badge. They will make one for you, then they will know  
9 that you are, in fact, seated jurors in this case.

10 By highlighting your juror badge in yellow, what that  
11 does is it tells the security people downstairs on the first  
12 floor who are manning the entry doors that you are, in fact, a  
13 sworn juror, and that they have been instructed to give you  
14 priority in processing you into this building. Because  
15 sometimes when you come here, especially in the morning, you may  
16 see long lines of people out there waiting to get in.

17 And please keep in mind that we can't start until all  
18 14 of you are here. So it is important that you all try and be  
19 on time in the morning and after each break and recess. And if  
20 you should find yourself in a situation where you are way at the  
21 back of the line, you are looking at your watch and going, "Oh,  
22 gosh, I am not going to make it," go to the front of the line.  
23 The security personnel know that those people that have  
24 highlighted juror badges are to be given priority and they will  
25 take you right on through. Okay.

26 Also, I have good news for you, and that is that your  
27 parking status has improved. Now that you are sworn jurors, we  
28 have two surface parking lots that are reserved specifically for

1 sworn jurors. So you will definitely have a space to park in in  
2 either of those two lots every day.

3           One of the lots is right out across the street from the  
4 back door of the courthouse at the corner of 12th and Main.  
5 It's right at that corner right out there. Oftentimes, you will  
6 see an attendant there in the morning, or at least a placard  
7 that says "Sworn Jurors Only." You can feel free to park there  
8 every morning. Or the second reserved lot is two blocks up at  
9 14th and Main. Again, it's a surface parking lot that's behind  
10 the First American Title building. Those -- both of those lots  
11 are reserved specifically for sworn jurors and you will always  
12 find a space in one of those two lots every day for you.

13           Now, we reserve I think it's 250 spaces every day in  
14 the parking structure next to the courthouse. And you can try  
15 and still park there if you want to, but those go very early in  
16 the morning. And we are not going to be starting trial until  
17 9:00 or 9:30 every morning. And more than likely, they will be  
18 gone by that point. But you can try and park there. And if  
19 they are full, you know that you can still park at either one of  
20 those two surface lots. So that's up to you.

21           I am going to ask, though, that if you decide to park  
22 in either of those two surface lots, that when you got your  
23 juror summons in the mail, it included a parking pass or  
24 sticker. And when you park in those two lots that are reserved  
25 for sworn jurors, you need to visibly display that parking pass  
26 in your windshield, because the parking patrol people go through  
27 those lots to make sure that only sworn jurors are parked there.  
28 And if you don't have that parking pass in your window, they are

1 going to assume that you are parked there unlawfully and they  
2 are going to ticket you. And then it's an expensive ticket.  
3 You don't want that type of Christmas gift.

4           So again, if you don't have that juror pass with you,  
5 or you have lost it, go back down to the second floor jury  
6 assembly room today, get one from them. Again, they will be  
7 more than happy to provide you with one, because they will know  
8 that you are a sworn juror.

9           Also, I am going to admonish you at every break and  
10 every recess not to do several things. First of all, I am going  
11 to tell you not to discuss the case with anyone -- not your  
12 fellow jurors, not your spouses, not your family, not your  
13 friends, no one. You can't discuss it with anyone at any point  
14 in time during the trial, until the case is finally submitted to  
15 the jury, and you are back there all together in the jury  
16 deliberation room.

17           I am also going to ask you not to form or express any  
18 final opinions or conclusions about the case. Again, you are  
19 not to do that until the end of the trial when you are all back  
20 deliberating.

21           Further, I am going to tell you not to do any  
22 investigation or research on your own. That's not your job or  
23 function. You are not Quincy. You are not an investigator.  
24 You are an independent judge of the facts. Let the attorneys do  
25 the work. You just sit back and pay attention. Don't go online  
26 looking up things. Don't go get a legal dictionary looking up  
27 terms. Don't do anything but show up on time and pay attention.  
28 Okay. Because once jurors start doing things on their own, it

1 creates nothing but problems. So please don't do that.

2           What else? Just so that you understand how we are  
3 going to proceed, the way a jury trial progresses is I am going  
4 to read to you very shortly here some preliminary jury  
5 instructions. And I do want to let you know that all of the  
6 jury instructions that I read to you throughout the trial -- and  
7 I will read to you a few at the beginning and many more at the  
8 end -- and possibly some during the trial. But in any event,  
9 all the instructions that I read to you throughout the trial you  
10 will have in written form in a packet that will go back with you  
11 into the jury deliberation room. So you can refer back to those  
12 instructions during deliberations.

13           But I am going to read to you those initial  
14 instructions first this morning. Then the attorneys will have  
15 the opportunity to present their opening statements to you.

16           And one of the most important jury instructions I am  
17 going to tell you about, both now and later on, is that whatever  
18 the attorneys say, it's not evidence. They would like it to be  
19 evidence, but it's not. They are not up here on the witness  
20 stand under oath testifying.

21           Now, they do have the opportunity to provide you with  
22 an opening statement, which is basically an overview of what  
23 they believe or expect the evidence will show during the course  
24 of the trial. Then at the end of the trial, they will have an  
25 opportunity to address you again by way of closing arguments.

26           But all the evidence comes from the witness stand,  
27 either by way of testimony or physical evidence, such as  
28 documents, photographs, whatever, exhibits, things of that

1 nature.

2           And since the People bear the burden of proof in a  
3 criminal case, they give their opening statements first.

4           And the defense has an option. They can give their  
5 opening statement after the DA gives his opening statement, or  
6 they can do what they call reserve their opening statement,  
7 which means they don't give their opening statement after the DA  
8 gives their opening statement, they reserve it. So the DA,  
9 after his opening statement, then presents his case and calls  
10 his witnesses. And then once the prosecution rests their case,  
11 if the defense has reserved their opening statement, they then  
12 give their opening statement after the prosecution has rested  
13 their case and before the defense begins their case. So the  
14 defense can do it either way. They can either give their  
15 opening statement after the DA does at the initial stage of the  
16 trial, or they can reserve it and give it after the DA has  
17 rested his case and before the defense begins their case, they  
18 can give their opening statement at that point in time.

19           Once we have heard opening statements, at least from  
20 the prosecution, then they are going to present witnesses and  
21 evidence. And the attorneys will question all the witnesses.

22           The prosecution at some point then rests their case.  
23 The defense then, if they reserve their opening statement, they  
24 will give you an opening statement at that point. And they may  
25 or may not call witnesses. They are not obligated to. But they  
26 have the opportunity to at that point if they feel it  
27 appropriate or necessary.

28           And then once all the witnesses have testified and



1 evidence is closed, then I am going to read you many more  
2 instructions that relate to this trial. And then the attorneys  
3 will present their closing arguments to you. And then  
4 thereafter you begin to deliberate.

5 I think this trial is going to go pretty quickly. And  
6 again, keep in mind you are not going to be here tomorrow.  
7 Tomorrow you have off, at least from this trial. Whatever you  
8 tell your employers, that's up to you. But you don't need to be  
9 here tomorrow.

10 We are hoping or expecting that we will complete  
11 evidence within the next day or two. The attorneys will then  
12 argue the case to you. So you should be deliberating by Tuesday  
13 or Wednesday of next week at the latest. Okay.

14 And once the case is basically handed over to you and  
15 you begin your deliberations, then the ball is in your court and  
16 you can deliberate as long or as short as you folks think is  
17 necessary. You know, juries can deliberate 10 minutes,  
18 10 hours, 10 days. It's up to you.

19 So that's pretty much how we will proceed.

20 I do want to make sure you understand that the  
21 attorneys can no longer talk to you at all about anything. They  
22 can't even tell you where the bathrooms are located. They are  
23 prohibited from engaging you in conversation any further until  
24 the trial is over.

25 If you should have any questions or concerns during the  
26 course of the trial, talk to my staff. That's why they are  
27 here. They will be more than happy to answer any questions you  
28 might have in that regard.

1           Also, we are sending around a sign-up sheet, because we  
2 need numbers where we can reach you folks during the day. For  
3 instance, let's say someone is sick one morning. If we find out  
4 early enough, we will call you up and say, "Hey, we are not  
5 going to be in session today. You don't need to come in." We  
6 will save you the trip.

7           So please, fill that out. Also understand that  
8 information is confidential to the Court. The attorneys don't  
9 have access to it. It's just for our benefit or use.

10           Also, we are going to pass out to you a card that has  
11 our numbers on it directly into this courtroom so that if for  
12 some unforeseen reason you might be delayed in the morning,  
13 whether it be stuck in traffic, which sometimes happens, or a  
14 flat tire, or a family emergency, whatever the case might be, if  
15 you are going to be delayed, please call us as soon as you can  
16 and let us know what your situation is and when you think you  
17 might be here. Because again, we can't start until everyone is  
18 here.

19           So at least if we know that someone is going to be late  
20 or delayed, we can share that information with the rest of our  
21 jurors and you can go get a cup of coffee or take a longer  
22 recess or break or whatever the case might be. But again,  
23 please call us and let us know what your situation is in that  
24 regard.

25           Also, during the trial, if you should have any  
26 questions, you know, feel free to talk to my staff, or write  
27 them out on a piece of paper from your notepad and hand them to  
28 my deputy. And he will share it with me. And we will get back

1 to you or respond to any questions or concerns that you might  
2 have.

3           As the trial progresses and as the witnesses testify,  
4 if you should have any questions that you would like the  
5 attorneys to ask the witnesses, again, please feel free to write  
6 out that question on a piece of paper in your notepad, fold it,  
7 hold it up. My deputy is very well-trained, he knows to come  
8 fetch that note from you -- we play this game all the time --  
9 and then he will give me the note. I will take a look at it. I  
10 will share it with the attorneys.

11           And your question may or may not be asked of the  
12 witness. Because again, we, meaning the attorneys and myself,  
13 have to abide by the rules of the game. We have certain  
14 evidentiary legal rules that we are required to follow. So your  
15 question may or may not be asked depending upon whether it's  
16 relevant or admissible.

17           But again, I do ask that, please, if you have a  
18 question, write it out while that witness is still here.  
19 Because I have had occasions where, you know, the jury comes the  
20 next day and gives us a question, and says, "Boy, you know, I  
21 really would have liked you to ask the question of this witness  
22 who testified yesterday." Well, the witness is gone. They are  
23 not here anymore. Not to say we can't bring them back. But  
24 that's obviously more problematic and time-consuming.

25           So if at all possible, and you have any questions,  
26 write it out while the witness is still here, while we can deal  
27 with it right then and there, which will help us all out. And  
28 again, if you should have any questions or concerns or issues,

1 please feel free to let us know one way or another.

2 Do any of you have any questions for me at this point?

3 Again, we are going to go from 9:00 or 9:30 -- usually  
4 9:00 in the morning we will start. I have another calendar that  
5 I call at 8:30 every morning, and depending upon how many cases  
6 I have on that calendar kind of dictates what time we start  
7 every morning, but usually it will be 9:00.

8 We will go from 9:00 to noon. We will take a 10- or  
9 15-minute midmorning break or recess. We take an hour and a  
10 half break for lunch. Don't ask me why. I have no clue. It's  
11 just been that way forever. Then we come back at 1:30 and go  
12 from 1:30 to 4:30 in the afternoon, again with a 10- or  
13 15-minute break in midafternoon. We should finish up by 4:30  
14 every day. And we shouldn't go any later than that.

15 That pretty much covers everything, I think, unless any  
16 of you folks have any questions for me. Okay.

17 If the clerk would swear the jurors then, please.

18 THE CLERK: Can I have everyone please stand and raise  
19 your right hand.

20 You and each of you understand and agree that you will  
21 well and truly try the case now pending before this Court, and  
22 render a true verdict according only to the evidence presented  
23 to you and to the instructions of the Court. If so, please say,  
24 "I do."

25 THE JURORS: (Collectively.) I do.

26 THE CLERK: You may be seated.

27 THE COURT: All right. Why don't we take about a  
28 10-minute break at this point to let us set up for the trial.

1 And then when we come back, I will read to you a few of the jury  
2 instructions. Then we will hear the opening statements from  
3 counsel. So let's come back at ten minutes to 11:00.

4 All right. Thank you all very much.

5 (Recess.)

6 (Out of the presence of the jury.)

7 THE COURT: We are back on the record in the case of  
8 the People versus Mario Martinez. Mr. Martinez is present.  
9 Both counsel are present.

10 And apparently there are some additional issues that we  
11 need to address before we bring our jury back in this morning?

12 MR. STEWARD: Yes, Your Honor.

13 THE COURT: All right.

14 MR. STEWARD: The first issue is that the defense and  
15 the prosecution have reached a stipulation. And I would like to  
16 be able to read it to the jury at the appropriate time. I have  
17 written it out.

18 THE COURT: What stipulation is that?

19 MR. STEWARD: "The white substance collected by Deputy  
20 Hiraoka was tested by the Department of Justice laboratory. The  
21 substance tested positive as methamphetamine in the amount of  
22 .38 grams."

23 THE COURT: Okay. And again, what I require is that  
24 all stipulations be typed up so that it's legible and readable.  
25 And then we will mark that as an exhibit to be entered into  
26 evidence so the jury can take that stipulation back with them  
27 when they need to deliberate.

28 MR. STEWARD: I will have that at 1:30, then, typed up.

1 THE COURT: Then at the appropriate time, I will ask  
2 you to read it to the jury. Okay.

3 MR. STEWARD: All right.

4 Secondly, I am having trouble getting the actual  
5 narcotics released. I am having trouble with the sheriff's  
6 department with them having personnel that are there to unlock  
7 and get the item to us. So hopefully by early afternoon, they  
8 will have that for us. But that's a problem I am having. I am  
9 not sure when we will finish the evidence in this case.

10 THE COURT: I don't know what to tell you about that.

11 MR. STEWARD: I am doing my best.

12 THE COURT: You have 100 some-odd investigators over  
13 there.

14 MR. STEWARD: Yeah. But one has already been there and  
15 they said, "We don't have anybody here that can release it. She  
16 is on -- she is getting -- she is having a physical in Indio."  
17 The sergeant says, "I don't know how to work the system. My  
18 other people are out."

19 THE COURT: Well, hopefully you can work it out.

20 MR. KENYON: No other trials today in Riverside that  
21 involve contraband? Geez. One person is the gatekeeper for the  
22 entire county. It's remarkable.

23 MR. STEWARD: Then the other issue is I was going to be  
24 requesting the Court to instruct the jury that the -- the  
25 legality of the vehicle stop in this case is not an issue for  
26 them to be concerned about.

27 THE COURT: Well, at this point, I don't even see a  
28 reason to raise that red flag. It's like telling them not to

1 consider something. I mean, don't consider the elephant that's  
2 in front of you. Unless it becomes an issue, then I will  
3 address it. But at this point, I don't think I need to advise  
4 them of that.

5 MR. STEWARD: My experience, Your Honor, none of us may  
6 make it an issue, but I have had trials where jurors create  
7 issues in deliberation --

8 THE COURT: Well --

9 MR. STEWARD: -- Miranda issues, search issues. And  
10 they take it upon themselves to think, "Well, it's our job to  
11 determine whether it's legal or not and that will affect our  
12 verdict." And I just wanted to short-circuit that problem. We  
13 may never hear or know about it, but that doesn't mean it won't  
14 go on. And I want to be preventive.

15 THE COURT: Well, both the People and the defense are  
16 entitled to submit any pinpoint jury instructions that you might  
17 feel are appropriate. And I will consider them at the  
18 appropriate time. All right.

19 Anything else? Okay. Let's bring our jury in, then,  
20 please.

21 (In the presence of the jury.)

22 THE COURT: All right. All the members of the jury  
23 have now joined us.

24 You should all have your notepads with you at this  
25 point in time. And what I am going to do is read to you, again,  
26 some of the preliminary jury instructions that relate to your  
27 duties and responsibilities as jurors, as well as the  
28 definitions of the two crimes that are charged in this case.

1           I will now explain some basic rules of law and  
2 procedure. These rules ensure that both sides receive a fair  
3 trial.

4           During the trial, do not talk about the case or about  
5 any of the people or any subject involved in this case with  
6 anyone, not even your family, friends, spiritual advisors, or  
7 therapists. You must not talk about these things with the other  
8 jurors either until the time comes for you to begin your  
9 deliberations.

10           As jurors, you may discuss the case together only after  
11 all of the evidence has been presented, the attorneys have  
12 completed making their final arguments, and I have instructed  
13 you on the law. After I tell you to begin your deliberations,  
14 you may discuss the case only in the jury room and only when all  
15 12 jurors are present.

16           You must not allow anything that happens outside of the  
17 courtroom to affect your decision in this case. During the  
18 trial, do not read, listen to, or watch any news reports or  
19 commentary about the case.

20           Do not do any research on your own or as a group. Do  
21 not use a dictionary or any other reference materials,  
22 investigate the facts or the law, conduct any tests or  
23 experiments, or visit the scene of any event involved in this  
24 case. If you happen to pass by the scene, do not stop or  
25 investigate.

26           During the trial, do not speak to any party, witness,  
27 or lawyer involved in the trial. Do not listen to anyone who  
28 tries to talk to you about the case or about any of the people



1 or subjects involved in it. If someone asks you about the case,  
2 tell him or her that you cannot discuss it. If that person  
3 keeps talking to you about the case, you must end the  
4 conversation.

5           When the trial has ended and you have been released as  
6 jurors, you may discuss the case with anyone at that point in  
7 time.

8           If you received any information about this case from  
9 any source outside of the trial, even unintentionally, do not  
10 share that information with any of your fellow jurors. If you  
11 do receive such information, or if anyone tries to influence  
12 you, or any other juror, you must immediately inform the  
13 bailiff.

14           Some words or phrases that may be used during the trial  
15 have legal meanings that are different from their meanings in  
16 everyday use. These words and phrases will be specifically  
17 defined for you in these instructions. Please be sure to listen  
18 carefully and follow the definitions that I give you. Words and  
19 phrases not specifically defined in the instructions are to be  
20 applied using their ordinary, everyday meanings.

21           Please keep an open mind throughout the trial. Do not  
22 make up your mind about the verdict or any issue until after you  
23 have discussed the case with your other jurors during  
24 deliberations. Do not take anything that I say or do during the  
25 trial as an indication of what I think about the facts, the  
26 witnesses, or what your verdict should be.

27           Do not let bias, sympathy, prejudice, or public opinion  
28 influence your decisions in any way.

1           You have been given notebooks and may take notes during  
2 the trial. Please do not remove them from the courtroom. You  
3 may take your notes into the jury room during deliberations.

4 Here are some points to consider if you decide to take notes:

5           Note-taking may tend to distract you. It may affect  
6 your ability to listen carefully to all the testimony and to  
7 watch and observe the witnesses as they testify. And, you may  
8 use your notes only to remind yourself of what happened during  
9 the trial. But remember, your notes may be inaccurate or  
10 incomplete.

11           I do not mean to discourage you from taking notes. In  
12 fact, I believe you may find it helpful.

13           I will now explain the presumption of innocence and the  
14 People's burden of proof. The defendant has pled not guilty to  
15 the charges alleged in this case. The fact that a criminal  
16 charge has been filed against the defendant is not evidence that  
17 the charge is true. You must not be biased against the  
18 defendant just because he has been arrested, charged with a  
19 crime, or brought to trial.

20           A defendant in a criminal case is presumed to be  
21 innocent. This presumption then requires that the People prove  
22 each element of a crime beyond a reasonable doubt. Whenever I  
23 tell you that the People must prove something, I mean that they  
24 must prove it beyond a reasonable doubt.

25           Proof beyond a reasonable doubt is proof that leaves  
26 you with an abiding conviction of the truth of the charge. The  
27 evidence need not eliminate all possible doubt, because  
28 everything in life is open to some possible or imaginary doubt.

1           In deciding whether the People have proved their case  
2 beyond a reasonable doubt, you must impartially compare and  
3 consider all the evidence that was received throughout the  
4 entire trial. Unless the evidence proves the defendant guilty  
5 beyond a reasonable doubt, he is entitled to an acquittal and  
6 you must find him not guilty.

7           As trial jurors, you must decide what the facts are in  
8 this case. You must use only the evidence that is presented in  
9 the courtroom. Evidence is the sworn testimony of witnesses,  
10 the exhibits admitted into evidence, and anything else that I  
11 tell you to consider as evidence.

12           Nothing that the attorneys say is evidence. In their  
13 opening statements and closing arguments, the attorneys will  
14 discuss the case, but their remarks are not to be considered  
15 evidence. Their questions asked of witnesses are not evidence.  
16 Only the witness's answers are evidence. The attorney's  
17 questions are significant only if they help you to understand  
18 the witness's answers. Do not assume that something is true  
19 just because one of the attorneys asks a question that suggests  
20 that it is true.

21           During the trial, the attorneys may object to questions  
22 asked of a witness. I will rule on the objections according to  
23 the law. If I sustain an objection, the witness will not be  
24 permitted to answer. And you must ignore the question. If the  
25 witness does not answer, do not guess what the answer might have  
26 been or why I ruled as I did. If I order testimony stricken  
27 from the record, you must disregard it and must not consider  
28 that testimony for any purpose.

1           You must disregard anything you see or hear when the  
2 Court is not in session, even if it is done or said by one of  
3 the parties or witnesses in this case.

4           The court reporter is making a record of everything  
5 that is said during the trial. If you decide that it is  
6 necessary, you may ask that the court reporter's notes be read  
7 back to you. You must accept the court reporter's notes as  
8 accurate.

9           You alone must judge the credibility or believability  
10 of the witnesses who testify during the trial. In deciding  
11 whether testimony is true and accurate, use your common sense  
12 and life's experience.

13           The testimony of each witness must be judged by the  
14 same standard. You must set aside any bias or prejudice that  
15 you may have, including any based on the witness's gender, race,  
16 religion, or national origin. You may believe all, part, or  
17 none of any witness's testimony. Consider the testimony of each  
18 witness and decide how much of it you believe.

19           In evaluating a witness's testimony, you may consider  
20 anything that reasonably tends to prove or disprove the truth or  
21 accuracy of that testimony. Among the factors that you may  
22 consider are:

23           How well could the witness see, hear, or otherwise  
24 perceive the things about which the witness testified?

25           How well was the witness able to remember and describe  
26 what happened?

27           What was the witness's behavior while testifying?

28           Did the witness understand the questions and answer

1 them directly?

2           Was the witness's testimony influenced by a factor,  
3 such as bias or prejudice, a personal relationship with someone  
4 involved in the case, or a personal interest in how the case is  
5 decided?

6           What was the witness's attitude about the case or about  
7 testifying?

8           Did the witness make a statement in the past that is  
9 consistent or inconsistent with his or her testimony at trial?

10          How reasonable is the testimony when you consider all  
11 the other evidence presented in the case?

12          Did other evidence prove or disprove any fact about  
13 which the witness testified?

14          Do not automatically reject testimony just because of  
15 inconsistencies or conflicts. Consider whether the differences  
16 are important or not. People sometimes honestly forget things  
17 or make mistakes about what they remember. Also, two people may  
18 witness the same event yet see or hear it differently.

19          If during the trial you have a question that you  
20 believe should be asked of a witness, you may write out the  
21 question and send it to me through the bailiff. I will discuss  
22 the question with the attorneys and decide whether it may be  
23 asked.

24          Your question may not be asked for a variety of  
25 reasons, including the reason that the question may call for an  
26 answer that is inadmissible for legal reasons. Do not feel  
27 slighted or disappointed if your question is not asked. Also,  
28 do not guess what the -- do not guess the reason your question

1 was not asked or speculate about what the answer might have  
2 been. Always remember that, as jurors, you are not advocates  
3 for one side or the other in this case. You are impartial  
4 judges of the facts.

5           You will be permitted to separate during recesses and  
6 at the end of the day. I will tell you when to return. Please  
7 remember that we cannot begin the trial until all of you are in  
8 place, so it is important to be on time.

9           Also, remember that you are not to talk about the case  
10 or about any of the people or any subject involved in this case  
11 with anyone, including your fellow jurors. Do not make up your  
12 mind about the verdict, or any issue, until after you have  
13 discussed the case with your fellow jurors during deliberations.

14           And as I have previously informed you, this case is  
15 entitled the People of the State of California, Plaintiff,  
16 versus Mario Martinez, Defendant.

17           And in Count 1, Mr. Martinez is accused of having  
18 committed a violation of Health and Safety Code Section 11379,  
19 Subdivision (a), a felony, in that on or about May 29th, 2007,  
20 he did willfully and unlawfully transport a controlled  
21 substance, that being methamphetamine.

22           To prove that the defendant is guilty of this crime,  
23 the People must prove that:

24           One, the defendant transported a controlled substance;

25           Two, the defendant knew of its presence;

26           Three, the defendant knew of the substance's nature or  
27 character as a controlled substance;

28           Four, the controlled substance was methamphetamine;

1 and,

2           Five, the controlled substance was in a usable amount.

3           A person transports something if he carries or moves it  
4 from one location to another, even if the distance is short. A  
5 usable amount is a quantity that is enough to be used by someone  
6 as a controlled substance. Useless traces or debris are not  
7 usable amounts.

8           On the other hand, a usable amount does not have to be  
9 enough in either amount or strength to have an effect upon the  
10 user.

11           The People do not need to prove that the defendant knew  
12 which specific controlled substance he transported, only that he  
13 was aware of the substance's presence, and that it was a  
14 controlled substance.

15           A person does not actually have to hold or touch  
16 something to transport it. It is enough if the person has  
17 control over it, or the right to control it, either personally  
18 or through another person.

19           In Count 2, Mr. Martinez is accused of having committed  
20 a violation of Health and Safety Code Section 11377,  
21 Subdivision (a), a felony. Again, in that on May 29th, 2007, he  
22 did willfully have in his possession a controlled substance,  
23 that being methamphetamine.

24           And to prove that the defendant is guilty of this crime  
25 the People must prove that:

26           One, the defendant possessed a controlled substance;

27           Two, the defendant knew of its presence;

28           Three, the defendant knew of the substance's nature or

1 character as a controlled substance;

2 Four, the controlled substance was methamphetamine;  
3 and,

4 Five, the controlled substance was in a usable amount.

5 A usable amount is a quantity that is enough to be used  
6 by someone as a controlled substance. Useless traces or debris  
7 are not usable amounts. On the other hand, a usable amount does  
8 not have to be enough in either amount or strength to have an  
9 effect upon the user.

10 The People do not need to prove that the defendant knew  
11 which specific controlled substance he possessed, only that he  
12 was aware of the substance's presence and that it was a  
13 controlled substance.

14 Two or more people may possess something at the same  
15 time. A person does not actually have to hold or touch  
16 something to possess it. It is enough if that person has  
17 control over it, or the right to control it, either personally  
18 or through another person.

19 Agreeing to buy a controlled substance does not, by  
20 itself, mean that a person has control over that substance.

21 All right. That's all the jury instructions that I am  
22 going to read to you at this point in time. And again, you will  
23 have a copy of all these instructions to take back with you into  
24 the jury room at the end of the trial during deliberations.

25 And with that, that brings us to opening statements.

26 And Mr. Steward, are you prepared to present the  
27 opening statement on behalf of the People?

28 MR. STEWARD: Yes, Your Honor. Thank you.



1 THE COURT: All right. You may proceed.

2 MR. STEWARD: May I approach the well area?

3 THE COURT: Yes.

4 MR. STEWARD: Thank you.

5 (Opening statements reported, not transcribed.)

6 THE COURT: All right. Thank you, Mr. Kenyon.

7 All right. Now, we will begin with the presentation of  
8 evidence.

9 And Mr. Steward, if you would like to call your first  
10 witness.

11 MR. STEWARD: The People call Deputy Joshua Hiraoka.

12 THE COURT: All right.

13 THE CLERK: You do solemnly state that the evidence you  
14 shall give in this matter shall be the truth, the whole truth,  
15 and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: State your name and spell it for the  
18 record, please.

19 THE WITNESS: Deputy Josh Hiraoka, J-O-S-H,  
20 H-I-R-A-O-K-A.

21 THE COURT: All right. Mr. Steward, you may inquire of  
22 the witness.

23 MR. STEWARD: Thank you.

24 JOSH HIRAOKA,

25 called as a witness by and on behalf of the People, having been  
26 first duly sworn, was examined and testified as follows:

27 Direct Examination By Mr. Steward

28 Q. Good morning, Deputy Hiraoka.

1 A. Good morning.

2 Q. Would you please tell the jury what your current  
3 occupation is.

4 A. I am a deputy sheriff with the Riverside County  
5 Sheriff's Department.

6 Q. How long have you been a deputy sheriff?

7 A. Approximately five and a half years.

8 Q. All right. Did you receive training that qualified you  
9 to start working as a sworn peace officer for the --  
10 specifically for the Riverside County Sheriff's Department?

11 A. Yes, I did.

12 Q. Can you describe that training, please.

13 A. I went through approximately five and a half months  
14 of -- which is the academy, in which I received training in the  
15 drug area. In addition to a separate course after I exited the  
16 academy, which is approximately four hours long, it was drug use  
17 recognition.

18 Q. All right. Do you have experience with regard to  
19 investigations involving the possession of methamphetamine?

20 A. Yes.

21 Q. Do you have any idea how many times you have seen  
22 methamphetamine in the course of your duties as a deputy  
23 sheriff?

24 A. Approximately 25 times.

25 Q. All right. And did some of those investigations  
26 involve arrests for methamphetamine?

27 A. Yes.

28 Q. Any idea how many?

1 A. Approximately 15.

2 Q. All right. Have you been trained on what a usable  
3 quantity of methamphetamine is?

4 A. Yes.

5 Q. All right. What have you been trained on in that  
6 regard?

7 A. Any amount that can be used -- any malleable amount  
8 that can be used by an individual.

9 Q. Okay. And have you received instruction from  
10 experienced drug experts in law enforcement --

11 A. Yes.

12 Q. -- on what typical dosage amounts look like?

13 A. Yes.

14 Q. And what "usable quantity" really means?

15 A. Yes.

16 Q. Were you working on May 29, 2007?

17 A. Yes, I was.

18 Q. In what capacity?

19 A. As a sworn deputy in a marked patrol car on patrol.

20 Q. All right. And what area were you patrolling?

21 A. The Glen Avon area.

22 Q. What were your duties as a patrol officer?

23 A. To -- in addition to answering any calls that might  
24 come up throughout the day, patrol the various streets within my  
25 area, and perform any traffic stops that were necessary.

26 Q. All right. For those jurors that may not know, where  
27 is Glen Avon?

28 A. It is near -- I would say just south of the 60 freeway

1 near Mission -- where Mission and the 60 -- or -- I am sorry,  
2 it's -- I am not sure how to explain this -- but if you know  
3 where Mira Loma is, it's approximately a mile or two northeast  
4 of the Mira Loma area and Van Buren.

5 Q. All right. Did you work that area very long?

6 A. Yes, I had.

7 Q. All right. Well, do you recall where you were at  
8 approximately 12:35 in the afternoon on May 29, 2007?

9 A. I was in the area near Hastings and Hunter. I was  
10 heading east on Hastings and turning southbound. It was a  
11 right-hand turn onto Hunter Street.

12 Q. All right. Let me show you a diagram that's been  
13 marked People's Exhibit 1 for identification. (Indicating.) Do  
14 you recognize this diagram?

15 A. Yes, I do.

16 Q. And did you draw it?

17 A. Yes, I did.

18 Q. And when was that?

19 A. This morning at -- approximately 20 minutes ago.

20 Q. At my request?

21 A. Yes.

22 Q. All right.

23 THE COURT: Has this been marked as an exhibit?

24 MR. STEWARD: Yes. People's 1 for identification.

25 THE COURT: All right.

26 Q. (BY MR. STEWARD) Now, this exhibit is not drawn to  
27 scale, is it?

28 A. No, it isn't.

1 Q. But does it accurately reflect the layout of the  
2 different streets that are in issue in this case?

3 A. Yes.

4 Q. All right. So the street on the right-hand side is  
5 Hastings?

6 A. Yes, it is.

7 Q. And you said that about 12:35, you were actually on  
8 Hastings Street?

9 A. Yes, I was.

10 Q. And when you turned right onto Hunter Street -- and you  
11 have indicated the turn that you made with the little arrow; is  
12 that right, at that intersection?

13 A. That is correct.

14 Q. When you turned right onto Hunter, did you see any  
15 vehicles that caught your attention?

16 A. Yes. There was a red -- what was later determined to  
17 be a 1987 Toyota. And it was partially -- it was stopped  
18 partially in the street and partially pulled on to the dirt  
19 pull-off area in front of the residence.

20 Q. Okay. And can you describe the area in terms of was  
21 this a residential area, or --

22 A. It was a residential area.

23 Q. All right. Lots of homes around the area?

24 A. Yes.

25 Q. All right. When you first saw the car, was it parked  
26 or moving?

27 A. It was parked.

28 Q. All right. Then what happened next?

1 A. As I pulled up behind it, there was an individual -- an  
2 unidentified male individual speaking -- leaning over the  
3 passenger window speaking with the passenger.

4 And as I pulled up, the individual who was outside the  
5 vehicle stepped away and began walking northbound, the opposite  
6 direction I was facing on Hunter. And the vehicle pulled out  
7 into the -- completely into the street and began continuing  
8 southbound on Hunter Street.

9 Q. All right. Now, when you say "southbound," which  
10 direction would that be on the diagram, left or right?

11 A. That would be to my left towards Mission.

12 Q. All right. You have designated Mission as "M-I-S-S"  
13 over here; is that correct? (Indicating.)

14 A. That is correct.

15 Q. All right. Where did the person go that you saw near  
16 the passenger side of the car?

17 A. Once he began walking northbound, I didn't keep an eye  
18 on as to where his final location was. That was when I began --  
19 I noticed the month sticker on the license plate was  
20 unidentifiable. I couldn't see it at the time and --

21 Q. This is a vehicle that's 20 years old?

22 A. Yes.

23 Q. So on the license plate, the month sticker that stays  
24 the same, as opposed to the year sticker that changes every  
25 year?

26 A. Yes.

27 Q. It's the month sticker you couldn't read?

28 A. That is correct.

1 Q. All right. What exactly did you see the person doing  
2 that you saw near the passenger side of the car?

3 A. As I continued to follow the vehicle --

4 Q. No. Let me -- let me be more clear, maybe, in my  
5 question. Not the persons in the car, but the person outside  
6 the car, what exactly did you see that person doing when the car  
7 was actually parked on Hunter?

8 A. Oh, when he was parked, he was leaning with his head  
9 slightly inside the front passenger's window, and appeared to be  
10 speaking with the front passenger.

11 Q. Then when your marked patrol car rounds the corner, how  
12 much -- how long -- how much time passed after you rounded the  
13 corner and saw that person standing near the car before you saw  
14 that person then walk away from the car? Do you understand my  
15 question?

16 A. Yes.

17 Q. It wasn't very clear.

18 A. It was approximately five seconds. I was able to pull  
19 up to the -- right behind the vehicle. And I stopped for a  
20 moment. And as I did that, the subject outside the vehicle  
21 stepped away from the red Toyota and began walking northbound.

22 Q. All right. Did you actually park behind the car?

23 A. I came to a stop, yes.

24 Q. And how far were you from the car when you parked?

25 A. At the time, approximately 15 feet.

26 Q. Then how much time went by between the time you parked  
27 your car and the time the red car took off?

28 A. Maybe a second or two.

1 Q. Can you describe Hunter Street, the area where they  
2 were parked.

3 A. It was towards Hastings, a little more towards Hastings  
4 as opposed to Mission. And it was on the -- if you are facing  
5 southbound on Hunter, it would be on the right-hand side of the  
6 street.

7 Q. Okay. And does that street have curbs or a dirt  
8 shoulder?

9 A. It has a dirt shoulder that you can pull up onto.

10 Q. How many lanes in each direction?

11 A. One lane going either direction.

12 Q. So was the red car -- was it -- was any of the -- when  
13 the car was parked, was any of the car on the asphalt or was it  
14 all on the dirt shoulder --

15 A. It was partially on --

16 Q. -- or on the driveway of the residence?

17 A. It was partially on the -- inside the street and  
18 partially on the dirt shoulder.

19 Q. All right. Any idea what percentage of the car was  
20 parked on the asphalt of the street?

21 A. I would say approximately 30 percent on the street and  
22 70 percent on the shoulder.

23 Q. All right. So after you were parked behind the car for  
24 a matter of seconds, you saw the car take off southbound on  
25 Hunter?

26 A. Yes.

27 Q. So then what happened?

28 A. As I continued to follow the vehicle, I noticed that



1 the month tag was missing -- or could not be seen. And as I  
2 continued to follow him, the front passenger kept leaning  
3 forward, approximately three or four times, towards what  
4 appeared to be the dash. His head was leaned down. And I  
5 couldn't see --

6 Q. What was the last part?

7 A. His head was leaned down towards the ground like facing  
8 towards the ground. He was leaning forward.

9 Q. All right. Now, when you said he kept leaning forward,  
10 would he lean forward and then sit back normally?

11 A. Yeah. There really wasn't a pause in between. It was  
12 kind of a constant motion.

13 Q. Back and forth?

14 A. Yes.

15 Q. All right. Could you see his hands at that time?

16 A. I could not.

17 Q. Do you recall anything else about his movement in the  
18 car, other than him leaning forward and backward with his head  
19 leaning down?

20 A. No.

21 Q. All right. Could you tell whether or not he was  
22 looking back at you through a mirror or not?

23 A. I don't remember seeing him looking back.

24 Q. Were you able to see the driver or the passenger  
25 through any of their mirrors to see whether they were looking at  
26 you through the mirrors or not?

27 A. Not at the time.

28 Q. Okay. Once the car got to Hunter and Mission, where

1 did it go?

2 A. Once the car came to the intersection of Mission and  
3 Hunter, it made a right-hand turn and proceeded to head  
4 westbound on Mission.

5 Q. All right. Now, I have noticed you have drawn kind of  
6 a -- it looks like an X, maybe with a little more to it, but an  
7 X here on Hunter? (Indicating.)

8 A. Yes.

9 Q. Like you said, closer to Hastings than Mission?

10 A. Yes.

11 Q. Does that represent the spot where you first saw the  
12 red car?

13 A. Yes, it does.

14 Q. Then it looks like you have drawn an X on Mission --  
15 close to Mission and Campbell?

16 A. That is correct.

17 Q. What does that X represent?

18 A. That indicates the area where the final stop was made,  
19 just east of Campbell on Mission Boulevard.

20 Q. Okay. Now, when you say "final stop," did the car make  
21 any stops in between the two Xs?

22 A. When it came to a -- the stop sign on Hunter and  
23 Mission, it came to a complete stop.

24 Q. All right. Then after that stop, the car turned right,  
25 then eventually made a stop on Mission?

26 A. That is correct.

27 Q. So you saw the car stop three times?

28 A. Yes.

1 Q. Initially at the stop sign, and then ultimately on  
2 Mission as it approached Campbell?

3 A. Yes.

4 Q. Any idea what the distance is between those two Xs?

5 A. Between the two Xs, I would say approximately 125,  
6 150 yards.

7 Q. Okay. So in feet, that would be between 300 and  
8 500 feet?

9 A. I am not sure of the exact translation between feet and  
10 yards, but --

11 Q. If we accept three feet equals a yard --

12 A. Yeah, then.

13 Q. -- you said it's about a --

14 A. About 150, 125 -- about 125 yards.

15 Q. All right. Any idea how long it took for the car to go  
16 from the first X to the second X?

17 A. Approximately ten seconds.

18 Q. So it was during that ten-second period that you saw  
19 the passenger continually leaning forward?

20 A. Yeah, between the initial stop on Hunter and when it  
21 reached the intersection of Mission and Hunter.

22 Q. Now, any idea how many different traffic stops you have  
23 done in your career in a little over five years?

24 A. Probably around 100.

25 Q. Are you trained to closely look at the occupants of a  
26 car when you drive behind them and then when you actually  
27 initiate a traffic stop?

28 A. Yes. For officer safety purposes, I tend to look at

1 all passengers and the movements they are making within the  
2 vehicle.

3 Q. Why can movements -- furtive movements or movements of  
4 the occupants, why can that be significant to you?

5 A. In case they are reaching for a weapon or trying to  
6 hide a weapon, anything along those lines.

7 Q. All right. What, if anything, did you do to initiate  
8 the traffic stop?

9 A. I called in on the radio, notifying my -- that I was  
10 making a traffic stop. And I notified the dispatch of my  
11 position -- my final position, and the license plate of the  
12 vehicle.

13 Q. All right. What did you do to convey to the driver of  
14 the car that you wanted it to pull over?

15 A. I turned on my overhead lights.

16 Q. Does that include red lights?

17 A. That includes the red and blue lights.

18 Q. Do you have any idea where you were at at the time that  
19 you turned on your lights?

20 A. Probably halfway between the -- the X and the  
21 intersection of Mission and Hunter.

22 Q. So you were on Hunter when you turned on -- activated  
23 your overhead lights?

24 A. No. I had turned onto Mission at the time.

25 Q. Okay. So it was shortly after you turned onto Mission  
26 off of Hunter that you activated your overhead lights?

27 A. Yes.

28 Q. Then, did the car, the red Toyota, respond quickly?

1 A. Yes, it did.

2 Q. Or I should say the driver of the red Toyota responded  
3 quickly by pulling it over?

4 A. Yes, it did.

5 Q. Okay. Then once the red Toyota parked at the X that  
6 you have indicated on Mission, did you pull behind that vehicle?

7 A. Yes, I did.

8 Q. Then what happened?

9 A. Then I exited my vehicle and I walked up to the  
10 driver's side, front driver's side door of the vehicle. And I  
11 let the driver know the reason I had stopped him. And I asked  
12 both --

13 Q. Him? The driver --

14 A. It was a female was driving.

15 Q. Okay. Because you said "him."

16 A. I apologize. It was a female.

17 Q. All right. So you told her the reason you had stopped  
18 her?

19 A. Yes. I told her the reason I had stopped her.

20 Q. What did you tell her?

21 A. That I could not see the month sticker on the license  
22 plate, and that I was stopping her to check to make sure the  
23 license was valid and up-to-date.

24 Q. The registration of the vehicle?

25 A. The registration of the vehicle, yes.

26 Q. All right. After you indicated why you had pulled the  
27 car over, what did you do next?

28 A. I asked the driver for her license, and in addition,

1 the registration. And I asked the passenger, as well, if he had  
2 any identification on him.

3 Q. All right. Did you get identification from both of  
4 them?

5 A. No. The passenger --

6 Q. He didn't give you anything.

7 A. -- he didn't have identification on him at the time.

8 Q. But he gave you his name and date of birth?

9 A. Yes, he did.

10 Q. Then with the driver, did you take her license and  
11 check to see if she had any warrants?

12 A. Yes, I did.

13 Q. And did you find out what -- were you able to determine  
14 if there were, in fact, any warrants on her?

15 A. Yeah -- yes. A computer inquiry indicated she had a  
16 felony warrant for possession of stolen property.

17 Q. All right. Once you learned that she had a warrant for  
18 possession of stolen property, what did you do?

19 A. I informed her of the warrant, and I had her step out  
20 of the vehicle. At which time I arrested the driver and placed  
21 her in the backseat of my vehicle.

22 Q. All right. Now, when you originally pulled the car  
23 over, did you immediately walk up and talk to the driver?

24 A. Yes, I did.

25 Q. Was she still seated in the driver's seat when you  
26 spoke to her through the window?

27 A. Yes, she was.

28 Q. And then, when you checked to see if she had any

1 warrants, did you actually go back to your car to do that?

2 A. Yes, I did.

3 Q. And that took a little time; right?

4 A. Yes.

5 Q. You checked to see if she had a warrant, confirmed she  
6 did have a warrant?

7 A. Yes, I did.

8 Q. And then you walked back to the car to arrest her?

9 A. Yes.

10 Q. Any idea how much time elapsed between the time you  
11 left the driver's side area of the car to go check on the  
12 warrant and the time you came back to arrest her?

13 A. Approximately five minutes.

14 Q. All right. Were you watching the occupants of the car  
15 during that time?

16 A. Yes, I was.

17 Q. Did you see anything unusual or any kind of movements  
18 at that time?

19 A. No, I did not.

20 Q. All right. Now, at the time you took her license, did  
21 you say anything to her about, "I am going to go check and see  
22 if you have a warrant for your arrest"?

23 A. No, I did not.

24 Q. Did you say anything other than ask her for her license  
25 then take it to go check on her?

26 A. No, not at the time.

27 Q. Is it -- is it your normal practice to not say, "I am  
28 going to go check to see if you have any warrants," when you

1 talk to occupants of a car?

2 A. Well, when I received her -- the registration and her  
3 license, I told her I would return within a few moments. I  
4 didn't explain my intentions.

5 Q. So she was able to produce for you the registration to  
6 the car?

7 A. Yes.

8 Q. And who was the car registered to?

9 A. Both on the registration and the computer inquiry of  
10 the vehicle's license indicated it came back to a Julia  
11 Martinez.

12 Q. All right. Now, when you first contacted the driver  
13 and spoke briefly to the passenger, at that time did you search  
14 the car with your eyes to see if you could see anything unusual  
15 in there?

16 A. Yeah. I -- I attempt to -- when I approach a vehicle,  
17 I attempt to look in the backseat in addition to the front seat,  
18 as well.

19 Q. And were you looking for weapons?

20 A. Yes.

21 Q. For your safety?

22 A. For my personal safety, yes.

23 Q. Did you look at the feet or floorboards of the car?

24 A. Yes.

25 Q. Did you have a good enough view where you were able to  
26 see the feet of the occupants and any items that might be on the  
27 floorboards at that time?

28 A. At the time?



1 Q. When you first contacted the occupants?  
2 A. Yes.  
3 Q. Okay. Did you closely examine every area of the floor  
4 mats of both --  
5 A. Not at the time.  
6 Q. -- the driver and passenger?  
7 A. Not at that time.  
8 Q. Was your focus on their feet?  
9 A. No, not directly. For the most part, I tended to focus  
10 on their hands.  
11 Q. And why do you focus on their hands?  
12 A. Because, for my personal safety, it's with their hands  
13 that could produce the most danger to myself in case they  
14 grabbed a weapon or a gun of any kind.  
15 Q. Are you trained to be cautious on every traffic stop?  
16 A. Yes.  
17 Q. Are you trained there is potential for danger on any  
18 traffic stop, no matter what the occupants look like, or their  
19 age or gender or anything like that?  
20 A. Yes, on every traffic stop.  
21 Q. All right. What is the name of the passenger?  
22 A. The passenger's name was --  
23 Q. Go ahead.  
24 A. -- Mario Martinez.  
25 Q. Do you see him in court today?  
26 A. Yes, I do.  
27 Q. Would you please point him out and describe what he is  
28 wearing.

1 A. He is sitting at my far left at the counsel table,  
2 wearing a white long-sleeved dress shirt.

3 MR. STEWARD: May the record reflect he has identified  
4 the defendant, Your Honor?

5 THE COURT: Yes. The record may so reflect.

6 MR. STEWARD: Thank you.

7 Q. (BY MR. STEWARD) And then what was the name of the  
8 driver?

9 A. Her name was Candace Eves.

10 Q. Did you confirm the date of birth for both the driver  
11 and the passenger?

12 A. Yes, I did.

13 Q. What was the age of Miss Eves at that time?

14 A. At the time, 23.

15 Q. And what was the age of the defendant, Mario Martinez,  
16 at that time?

17 THE WITNESS: May I refer to my report, Your Honor?

18 THE COURT: Would that refresh your recollection?

19 THE WITNESS: Yes, it would.

20 THE COURT: Go right ahead.

21 THE WITNESS: He was 47 years old.

22 MR. STEWARD: All right.

23 THE COURT: Why don't we break at this point in time,  
24 then, for the noon hour.

25 MR. STEWARD: That's fine, Your Honor.

26 THE COURT: We will break until 1:30. Again, leave  
27 your notepads on your chairs. Remember the admonitions not to  
28 discuss the case with anyone. Don't form or express any final

1 opinions or conclusions about the case. And we will see you all  
2 back here at 1:30.

3 All right. Thank you.

4 (Lunch Recess.)

5 THE COURT: All right. We are back on the record in  
6 the case of the People versus Mario Martinez. Mr. Martinez is  
7 present.

8 MR. STEWARD: Mr. Kenyon just had to go check on an  
9 issue in the hallway.

10 THE COURT: All right. All members of our jury are  
11 present. And Deputy Hiraoka has resumed his seat on the witness  
12 stand and now both counsel are also present.

13 MR. KENYON: Just one moment, Your Honor.

14 THE COURT: All right.

15 All right. Mr. Steward, if you would like to continue  
16 with your direct examination, then.

17 MR. STEWARD: Yes.

18 Q. (BY MR. STEWARD) Good afternoon, Deputy.

19 A. Good afternoon.

20 Q. The person that was leaning on the passenger window  
21 or -- I guess it was an open window of the car?

22 A. Yes.

23 Q. What did -- did that person see you coming, from what  
24 you could tell?

25 A. When I pulled up behind the Toyota, red Toyota, the  
26 subject who was leaning in the window looked back and saw me.

27 Q. What did he do after he saw you?

28 A. He stood up -- completely up out of the window, and

1 began walking northbound.

2 Q. All right. Away from the car?

3 A. Yes.

4 Q. All right. Now, getting back to the actual vehicle  
5 stop, you at some point arrested the driver, Candace Eves; is  
6 that right?

7 A. That's correct.

8 Q. Have you seen her today, by the way?

9 A. Yes, I have.

10 Q. You have seen her?

11 A. Yes.

12 Q. All right. In court?

13 A. Yes.

14 Q. After you arrested her, did you ask her whether or not  
15 she was going to give you permission to search the car?

16 A. Yes. I asked her if I had permission to search the  
17 vehicle.

18 Q. What did she say?

19 A. She said, "Yes."

20 Q. Now, did you really need to even ask her that to have  
21 grounds to search a car?

22 A. No.

23 Q. When you arrest someone, does that give you grounds to  
24 search their vehicle?

25 A. Yes.

26 Q. So that would be a search incident to arrest?

27 A. That is correct.

28 Q. After you arrested her, what did you do with her?

1 A. I placed her in the backseat of my patrol unit. And  
2 then I approached the defendant in the front passenger seat and  
3 asked him if he could step out of the vehicle while I -- stand  
4 off to the side while I searched inside.

5 Q. Is that standard procedure to have all the occupants  
6 exit the vehicle when you are going to do a search?

7 A. Yes, it is.

8 Q. Now, during the time you were arresting Miss Eves, were  
9 you keeping an eye on the defendant, as well?

10 A. Yes.

11 Q. And what was the purpose of keeping an eye on him?

12 A. It's standard procedure to maintain as much visual  
13 contact of any individuals within the vehicle, to ensure that  
14 they are not grabbing for a weapon or attempting to hide  
15 anything. So it -- it's basically for officer safety.

16 Q. All right. So after you arrested Miss Eves, put her in  
17 the car, she gave you permission to search the car, you then  
18 approached the passenger side?

19 A. Yes, I did.

20 Q. You had the defendant exit the vehicle?

21 A. Yes.

22 Q. And he did so?

23 A. Yes, he did.

24 Q. As he was exiting out of the car, did you see anything  
25 unusual in the car?

26 A. Yeah. When he moved his right foot to step outside,  
27 and the door was open at the time, I noticed a small plastic bag  
28 which had been in between his two feet.

1 Q. What was he doing with his feet when you first saw the  
2 baggie?

3 A. They were just placed on the floorboard.

4 Q. Where was the baggie in relation to his feet?

5 A. In between them.

6 Q. Were his feet separated, from what you can remember?

7 A. Not that I can remember.

8 Q. Was it on top of his feet?

9 A. No. It was on the actual floor mat of the vehicle.

10 Q. So was it in front of his feet or between the feet?

11 A. Between the feet.

12 Q. So the feet had to have been separated somewhat; right?

13 A. That is correct.

14 Q. For it to be on the floorboard and in between his feet?

15 A. Yes.

16 Q. You just don't remember how far apart they were?

17 A. That is correct.

18 Q. And you saw this before he actually exited the vehicle?

19 A. It was as he was -- began to exit the vehicle.

20 Q. Okay. So did he step outside the car after you saw the  
21 baggie?

22 A. I had him continue to exit the vehicle.

23 Q. All right. Then what did you do?

24 A. Then I detained him on the side of the vehicle, and  
25 called for a backup unit to arrive.

26 Q. All right. At some point in time, did you actually  
27 examine the baggie closer?

28 A. Yes, I did.

1 Q. After backup arrived?  
2 A. Yes.  
3 Q. And you searched the car?  
4 A. Yes.  
5 Q. Did you find any other contraband in the car besides  
6 the baggie?  
7 A. No, I did not.  
8 Q. Can you describe the baggie for us, please.  
9 A. It was a small clear plastic bag, twisted at one end,  
10 and it contained a white crystal-like substance.  
11 Q. Was the item you saw in the bag consistent with what  
12 you had seen before in terms of methamphetamine?  
13 A. Yes, it was.  
14 Q. Then you collected that item?  
15 A. Yes, I did.  
16 Q. Booked it into evidence?  
17 A. Yes.  
18 Q. Have you seen it since?  
19 A. No, I have not.  
20 Q. Did you bring it to court today with you?  
21 A. No, I did not.  
22 Q. All right. Did you follow the standard procedures on  
23 booking evidence?  
24 A. Yes, I did.  
25 Q. Making sure it's sealed?  
26 A. That is correct.  
27 Q. And well marked?  
28 A. Yes.

1 Q. With the case number on it?

2 A. Yes, it was.

3 MR. STEWARD: Your Honor, I believe at this time we  
4 have a stipulation. If I could read that.

5 THE COURT: All right. That stipulation, I believe,  
6 has been marked as People's Exhibit No. 2; is that correct?

7 MR. STEWARD: Yes, Your Honor.

8 THE COURT: All right. And basically, a stipulation,  
9 folks, is an agreement between the parties as to the facts that  
10 are set forth in the stipulation. And the jury is required to  
11 accept those facts or that stipulation as proven. It's no  
12 longer contested or an issue.

13 And again, the stipulation is in typewritten form.  
14 It's been marked as a Court -- as a People's exhibit. And it  
15 will go back with you into the jury deliberation room. All  
16 right.

17 Mr. Steward, if you would like to read the stipulation  
18 at this point in time.

19 MR. STEWARD: Yes.

20 "Both parties in this trial agree and stipulate that  
21 the white substance collected by Deputy Hiraoka in this case was  
22 tested by the Department of Justice laboratory. The substance  
23 tested positive for methamphetamine in the amount of .38 grams."

24 THE COURT: All right. Thank you.

25 Q. (BY MR. STEWARD) Now, did you at some point in time  
26 talk to the defendant about the baggie of methamphetamine you  
27 found?

28 A. Yes. Once we returned to the station.



1 Q. All right. Prior to questioning him, did you advise  
2 him of his Miranda rights?

3 A. Yes, I did.

4 Q. What rights did you advise him of?

5 A. It was from a department-issued Miranda warning card.

6 Q. Do you have a --

7 A. Yes, I do.

8 Q. -- one of those cards with you today?

9 A. It states: "You have the right to remain silent.  
10 Anything you say can and will be used against you in a court of  
11 law. You have the right to talk to a lawyer and have him  
12 present with you while you are being questioned. If you cannot  
13 afford to hire a lawyer, one will be appointed to represent you  
14 before any questioning, if you wish. Having these rights in  
15 mind, do you wish to speak to me now?"

16 Q. What did he say?

17 A. He said, "Yes."

18 Q. Did you ask him if he understood the rights?

19 A. Yes, I did.

20 Q. What did he say?

21 A. He said, "Yes."

22 Q. Then did you ask him if he was willing to waive those  
23 rights and speak to you?

24 A. Yes.

25 Q. And what did he say?

26 A. He said "Yes" to that, as well.

27 Q. All right. So did you ask him about the  
28 methamphetamine found in the car?

1 A. Yes, I did.

2 Q. What did he say about it?

3 A. When I initially questioned him, he stated that the  
4 methamphetamine did not belong to him, and that he did not know  
5 whose it was.

6 Q. All right. Did he tell you who the car belonged to?

7 A. He said it was his mother's.

8 Q. Did he tell you where he had been that day?

9 A. He said he initially drove from his mother's residence  
10 on I believe it was Donner in the area of Sunnyslope and drove  
11 to where Miss Eves was on Dell Street and picked her up.

12 He stated she got into the passenger vehicle -- or  
13 passenger side vehicle, front passenger seat. And from there,  
14 they drove directly to the residence on Hastings -- correction,  
15 on Hunter, near the intersection of Hastings and Hunter, which  
16 is where I first noticed them.

17 Q. Now, were there any other passengers in this car when  
18 you made the vehicle stop besides Mario Martinez and Candace  
19 Eves?

20 A. No, there was not.

21 Q. Did Mr. Martinez tell you what happened at the  
22 residence on Hunter Street?

23 A. No, he didn't.

24 Q. Did he tell what he was doing with the person that was  
25 there at his window while the car was parked partly on the  
26 street and partly on the dirt?

27 A. No, he did not.

28 Q. Did he tell you how it happened that he was now in the

1 passenger seat, even though he admitted that he was the driver  
2 when they went to that address?

3 A. Yes. He stated that once they arrived at the address  
4 on Hunter Street prior to my arrival both he and Miss Eves  
5 switched spots. Miss Eves exited the passenger side seat and  
6 entered the driver's side seat. And he took position in the  
7 front passenger side seat.

8 Q. Did he tell you why they switched?

9 A. No, he did not.

10 Q. At some point in time, did he make any statements about  
11 whether the methamphetamine belonged to the driver?

12 A. Yes. After I spoke with him the first time, I began  
13 filling out the necessary paperwork. And he called my attention  
14 to come over and speak with him. And he stated that -- he  
15 guaranteed me that the methamphetamine did not belong to  
16 Miss Eves, and that she did not use drugs and was never in the  
17 passenger side seat.

18 Q. Was the part about her never being in the passenger  
19 side seat, was that directly inconsistent with what he had  
20 previously said to you?

21 A. Yes, it was.

22 Q. When you said he got your attention, were you already  
23 done questioning him?

24 A. Initially, yes.

25 Q. Then you were doing booking paperwork?

26 A. Paperwork that was necessary for my report and booking.

27 Q. All right. Did he know her by name?

28 A. Yes, he did.

1 Q. And the statement that he made to you that he  
2 guaranteed you that the methamphetamine definitely did not  
3 belong to Miss Eves, and that she never sat in the passenger  
4 seat, and did not do drugs, did you put those statements in  
5 quotes?

6 A. Yes, I did.

7 Q. And what was the significance of putting those in  
8 quotes?

9 A. It was the -- what the defendant told me verbatim.

10 Q. All right. Did you take notes when he was telling you  
11 these things?

12 A. Yes, I did.

13 Q. Did he tell you who the methamphetamine belonged to?

14 A. He stated that -- other than stating that it did not  
15 belong to Miss Eves, he did not tell me whose it was.

16 Q. Did he tell you how it got there at his feet?

17 A. No, he did not.

18 Q. Have you seen people under the influence of  
19 methamphetamine before?

20 A. Yes, I have.

21 Q. Any idea on how many occasions?

22 A. Probably about ten times.

23 Q. What are the typical symptoms of someone that's under  
24 the influence of methamphetamine?

25 A. They appear to be nervous. A lot of times they are  
26 sweaty. They -- lack of concentration. And you notice their  
27 pupils and different physical characteristics.

28 Q. What about their pupils?

1 A. Typically dilated -- I am sorry, not dilated -- they  
2 are -- pardon me --

3 Q. Do they get bigger or smaller?

4 A. They get smaller. I am sorry.

5 Q. You just don't remember the word?

6 A. Yes.

7 Q. Constricted?

8 A. What was that?

9 Q. Constricted?

10 A. Constricted. Yes.

11 Q. They tend to be smaller than normal?

12 A. Yes.

13 Q. Did Miss Eves appear to be under the influence of  
14 methamphetamine?

15 A. No. I could not tell.

16 Q. Did she appear fidgety?

17 A. No.

18 Q. What about the defendant? Did he appear to be under  
19 the influence of methamphetamine?

20 A. No, he did not.

21 Q. Neither one did?

22 A. Neither one.

23 Q. Did you cite or arrest either one of them for being  
24 under the influence?

25 A. No, I did not.

26 Q. Did the defendant make any statements to you when you  
27 questioned him about why he had been constantly leaning forward  
28 when you were behind their vehicle?

1 A. No.

2 Q. Other than him telling you that the methamphetamine did  
3 not belong to him and definitely did not belong to Candace Eves,  
4 did he give you any other explanation for why there was  
5 methamphetamine at his feet in that car?

6 A. No, he did not.

7 MR. STEWARD: I have no further questions.

8 THE COURT: All right. Thank you.

9 Mr. Kenyon, cross-examination?

10 MR. KENYON: Yes. Thank you.

11 Cross-Examination By Mr. Kenyon

12 Q. Hello, Deputy.

13 A. How you doing?

14 Q. Deputy, you said you are trained and you received  
15 training at the academy, as well as a second class after you  
16 graduated from the academy regarding recognition of drugs; is  
17 that right?

18 A. That is correct.

19 Q. And that includes methamphetamine?

20 A. Yes, it does.

21 Q. Sir, you are also trained to recognize the  
22 characteristics of somebody under the influence; is that  
23 correct?

24 A. That is correct.

25 Q. So if somebody had consumed methamphetamine, do you  
26 know how long it takes typically for that to hit their system so  
27 that there will be objective symptoms you can recognize?

28 A. I do not know the exact time, no.

1 Q. Did you ever in your training learn an approximate  
2 time? For example, is it approximately two minutes,  
3 approximately an hour, ten hours?

4 A. I believe I did. I don't recall at this time.

5 Q. Okay. Now, you stated there are objective symptoms,  
6 such as nervousness, they may sweat profusely, their pupils may  
7 dilate, they may appear fidgety, I think those were the things  
8 you gave?

9 A. Yes.

10 Q. You stated pretty clearly that Mr. Martinez did not  
11 appear to have any of those symptoms; is that correct?

12 A. That is correct.

13 Q. As far as you know, he never -- there was no reason for  
14 you to believe he had used any methamphetamine; is that right?

15 A. That is right.

16 Q. All right. And furthermore -- you did arrest him;  
17 right?

18 A. Yes.

19 Q. And you transported him to a jail facility?

20 A. I transported him back to the Jurupa station  
21 initially --

22 Q. Jurupa station --

23 A. -- prior to booking him.

24 Q. Excuse me, I didn't mean to talk over you.

25 You transported him to the Jurupa station where you  
26 have a holding area for suspects?

27 A. Yes, we do.

28 Q. At that location, if you suspect somebody to be under

1 the influence, you have the ability to order blood nurses to  
2 take a sample; is that right?

3 A. That is correct.

4 Q. Okay. And you didn't do that in this case?

5 A. No.

6 Q. Now, what about with regards to Miss Eves, you said --  
7 did you, first of all, perform a full drug evaluation on her?

8 A. No, I did not.

9 Q. Okay. What would a full drug evaluation entail?

10 A. Marking down their physical appearances, taking their  
11 heart rate, checking for nystagmus, which is the movement of the  
12 eyes.

13 Q. In fact, actually, there is a department-issued card or  
14 form that you could fill out as you do this?

15 A. Yes, there is.

16 Q. And none of these procedures or tests are particularly  
17 invasive; right?

18 A. No.

19 Q. So in other words, you can do them with somebody  
20 standing right in front of you, you don't have to remove any of  
21 their clothes or anything like that; right?

22 A. No, you don't, yes.

23 Q. So nystagmus is simply performed by holding a pen or an  
24 object in front of their eyes and shifting it to the side to  
25 observe their eyes; right?

26 A. That is correct.

27 Q. You didn't perform this on Miss Eves, did you?

28 A. No, I did not.



1 Q. You also, of course, didn't perform any of the other  
2 tests, which included a simple pulse check. And what about --  
3 do you perform a test where you ask them to stand still or  
4 remain still, and --

5 A. Yes. And it's -- during that time, you also have them  
6 tell you -- close their eyes and tell you when they believe  
7 30 seconds is up.

8 Q. It's called a Romberg test; right?

9 A. Yes.

10 Q. Why is that important?

11 A. Because, typically, if somebody is under the influence  
12 of methamphetamine, their internal clock is moving faster than a  
13 regular clock, so they would estimate a 30-second interval to be  
14 much shorter than it actually is.

15 Q. Okay. And in this case, you didn't -- you didn't  
16 perform this on Miss Eves?

17 A. No.

18 Q. And did you take Miss Eves -- or was she transported to  
19 the same booking facility at Jurupa?

20 A. Yes, she was.

21 Q. And I assume no blood tests were done there?

22 A. No, they weren't.

23 Q. Now, how many times have you performed drug evaluations  
24 on suspects?

25 A. I would say approximately ten times.

26 Q. Ten times?

27 A. Yes.

28 Q. Now, prior to going on patrol, you also worked as a

1 sheriff's deputy in the courthouse; right?

2 A. That is correct.

3 Q. In fact, we sort of recognize each other from seeing  
4 each other around here; right?

5 A. Yes, we do.

6 Q. How long had you actually been out on a patrol  
7 assignment at the time you made this arrest?

8 A. A little over a year and a half.

9 Q. About a year and a half? Okay.

10 I would like to back you up now and talk to you a  
11 little bit about the initial contact and stop. What time did  
12 you come on duty that day, do you recall?

13 A. 7:00.

14 Q. 7:00?

15 A. A.m.

16 Q. So you were approximately halfway through your shift,  
17 five to six hours into the shift?

18 A. Yes.

19 Q. Do you know if you had worked the shift before -- or  
20 the day before on a shift?

21 A. I think that was what's considered your Monday -- my  
22 Monday, the first day for that shift, that week's shift.

23 Q. So you were likely coming off the day off?

24 A. Yes.

25 Q. Now, in -- you say you made contact initially with the  
26 vehicle around 12:30, 12:35?

27 A. Yes.

28 Q. And you characterized the area as what you call Glen

1 Avon; right?

2 A. That is correct.

3 Q. How would you sort of generally characterize Glen Avon?  
4 We know it's a residential area. Is there any particular reason  
5 you patrol that area?

6 A. Well, it's a portion of the unincorporated area of  
7 Riverside, which the Jurupa Valley Station is -- oversees and  
8 patrols.

9 Q. So you were within your ordinary patrolling area  
10 inbounds?

11 A. Yes.

12 Q. All right. And you said you -- the vehicle you spotted  
13 in this case, where my client was eventually found in, was a red  
14 Toyota; correct?

15 A. That is correct.

16 Q. And do you recall the precise make of it? You may have  
17 said this, I may have missed it.

18 A. No. Not offhand.

19 Q. Do you remember was it a two-door or four-door?

20 A. I believe it was a two-door.

21 Q. Two-door.

22 And a little bit of an older car; is that right, '87?

23 A. Yes, an '87.

24 Q. And how would you describe the overall condition of the  
25 vehicle in terms of -- first let's start with the exterior. Was  
26 there anything noticeable about the exterior of the car?

27 A. Not that I can recall.

28 Q. Okay. Do you recall what the windows looked like, for

1 example? Were there any cracks in the windows, any tinting?

2 Anything unusual?

3 A. Not that I noticed, no.

4 Q. Okay. So there was no tinting that you recall?

5 A. No.

6 Q. And my understanding, based on your diagram -- can you  
7 still see it there on your screen?

8 A. Yes.

9 Q. Referring, then, to People's 1, I believe. You were  
10 coming -- what would have been I guess -- if I recall, this is  
11 southbound; right? (Indicating.)

12 A. Yes, it is.

13 Q. So you were headed eastbound on Hastings; right?

14 A. Yes.

15 Q. In other words, down the page. And you turned right  
16 onto Hunter Avenue; correct?

17 A. That's correct.

18 Q. That was when you first noticed the vehicle?

19 A. Yes.

20 Q. At that time the vehicle was stopped?

21 A. Yes, it was.

22 Q. And it was stopped along the side of the road, you said  
23 I think 30 percent on the pavement, 70 percent off?

24 A. Yes, it did.

25 Q. All right. And is there anything unusual about having  
26 a vehicle parked in that fashion?

27 A. At the time, yeah, I thought there was, because of the  
28 fact that the dirt shoulder was approximately eight feet wide,

1 and they could have pulled completely off to the shoulder  
2 without blocking any traffic within the street.

3 Q. But the vehicle was already stopped when you got there;  
4 right?

5 A. Yes, it was.

6 Q. And the person was already -- you said there was a male  
7 that was sort of leaning up against the car at that time?

8 A. Yes, I did.

9 Q. And so in other words, the vehicle was stopped and the  
10 person was already leaning when you first saw the vehicle. You  
11 never saw the vehicle and the individual sort of start their  
12 encounter, if you will?

13 A. No, I did not.

14 Q. So they already appeared like they were conversing at  
15 the time you pulled up?

16 A. Yes.

17 Q. And I think you testified the window was open on that  
18 side?

19 A. Yes, it was.

20 Q. And that would have been the right -- I guess there is  
21 only a front door -- the right window -- the right passenger  
22 door window?

23 A. Yes.

24 Q. And how far down was it, if you recall?

25 A. I believe it was all the way down.

26 Q. All the way down? Okay.

27 Now, I think you indicated that the -- the unknown  
28 individual, the male, was kind of leaning up against the car,

1 and appeared like they were talking?

2 A. Yes.

3 Q. What was the total length of time you observed him at  
4 the window of the car?

5 A. Maybe about four, five seconds from the time I drove  
6 from the intersection of Hastings and Hunter to the time I  
7 pulled up directly behind the vehicle.

8 Q. Approximately how far would you say that drive was in  
9 terms of yards or feet, or however you want to describe it, the  
10 corner of Hastings from where the vehicle is positioned?

11 A. I would say approximately 25 yards.

12 Q. 25 yards.

13 Was it during this time, which you believe you observed  
14 the passenger, whom you later learned to be Mr. Martinez,  
15 leaning forward?

16 A. No. That occurred after the vehicle had already began  
17 moving.

18 Q. Okay. So in other words, you pulled up behind the --  
19 if I have the chronology right -- the vehicle stopped, the  
20 person was talking, you pull up behind it, there is a pause for  
21 about a second; right?

22 A. Yes.

23 Q. And then the vehicle begins to pull away?

24 A. Yes, it does.

25 Q. Incidentally, there isn't anything illegal about  
26 stopping in the position the vehicle was stopped; right?

27 A. Well, if it's impeding the flow of traffic, it can be.

28 Q. Sure. Are you allowed to park along that side of the

1 road, though?

2 A. On the shoulder, yes.

3 Q. And similarly -- well, would you say it was impeding  
4 vehicles such that they couldn't get by on the main part of the  
5 road?

6 A. No.

7 Q. Okay. So the lane is plenty wide, but they weren't  
8 impeding traffic?

9 A. No. You could -- you could go around possibly into the  
10 opposing lane.

11 Q. Okay. Is it fair to say there was nothing overtly  
12 criminal about -- or what appeared to be criminal to you about  
13 the -- I guess it looked like a conversation between the car and  
14 that -- that person standing outside; right?

15 A. No, not at all.

16 Q. All right. And you never saw anybody -- any hands go  
17 in or out of the vehicle; correct?

18 A. No.

19 Q. Something that would have maybe been an exchange one  
20 way or the other?

21 A. Yes.

22 Q. "Yes" meaning --

23 A. "Yes" meaning that's -- what could have been, but I did  
24 not see that.

25 Q. You saw nothing like that. All right.

26 Now, as the vehicle pulls away, it was your testimony  
27 that you saw Mr. Martinez -- it looked like he leaned forward a  
28 couple of times?

1 A. Yes.

2 Q. Three or four times, you said?

3 A. Approximately four times, yes.

4 Q. Approximately four times.

5 All right. And was -- did you ever see him turn around  
6 as such that he would have seen you or faced you?

7 A. No, I did not.

8 Q. Put it this way: Did you ever see his face prior to --  
9 prior to when you had actually gotten out of your vehicle, did  
10 you ever actually see his face such that he looked one way, out  
11 the window, or he turned around and looked back at you over his  
12 left shoulder?

13 A. No, I did not.

14 Q. So you had no obvious indicators that he had ever seen  
15 the police vehicle; is that correct?

16 A. That is correct.

17 Q. I should say the sheriff's vehicle.

18 And it was -- you were alone in your patrol vehicle; is  
19 that correct?

20 A. Yes, I was.

21 Q. Now, the vehicle traveled some distance down Hunter,  
22 about maybe two-thirds of the rest of the block; right?

23 A. Yes.

24 Q. Then it turned right onto the next street, was it -- is  
25 it Mississippi Street?

26 A. Mission Street.

27 Q. Mission Street. I see M-I-S-S --

28 A. I am sorry.



1 Q. -- I think -- no, that's -- that's me remembering my  
2 fourth grade abbreviations, or something. Of course now they  
3 are all shortened to two letters.

4 And as it turned -- it had already turned right onto  
5 Mission when you activated your lights; correct?

6 A. Yes, it had.

7 Q. So in other words, you hadn't lit up your lights until  
8 your vehicle was also behind it and positioned on Mission?

9 A. That's correct.

10 Q. All right. And at that time, from the moment your  
11 lights turned on, did you ever again see Mr. Martinez appear to  
12 lean forward once your lights were on?

13 A. No, I did not.

14 Q. So in other words -- okay. I think you may have  
15 answered the question.

16 Now, once the -- you had activated your lights, did you  
17 also activate your sirens?

18 A. No.

19 Q. So just your lights?

20 A. Just the lights.

21 Q. What's the difference? Why do you sometimes activate  
22 lights and sirens versus just lights?

23 A. Sometimes -- excuse me -- sometimes, if an individual  
24 that you are attempting to pull over doesn't see the lights on  
25 your -- on the roof of the patrol unit, you can turn on the --  
26 the sirens to gain their attention.

27 Q. Okay. You didn't need to do that in this case?

28 A. No, I didn't.

1 Q. The vehicle was just pulled over right away?

2 A. Yes.

3 Q. You didn't see anything -- you know at least one window

4 was down, right, the --

5 A. Yes.

6 Q. Was the driver's side window up or down at this time?

7 A. Offhand, I can't recall.

8 Q. Okay. You didn't see anything thrown from the vehicle,

9 I presume?

10 A. No.

11 Q. Because, obviously, you would have gone back and

12 collected that as potential evidence?

13 A. Yes.

14 Q. And you had sight line of the vehicle the entire way as

15 it turned the corner and stopped?

16 A. Yes, I did.

17 Q. How close were you to the vehicle during that time?

18 Within five car lengths? Ten car lengths?

19 A. After the stop or as I was following?

20 Q. Excuse me, it was kind of a vague question.

21 Let's start from the time you pull up behind it. How

22 far behind the vehicle were you?

23 A. I was about -- I am sorry. I was about 15 feet behind

24 it.

25 Q. So maybe one car length, one and a half car lengths?

26 A. Approximately about a car length, one and a half.

27 Q. So you obviously had a pretty good view. From that

28 point, you could see through the windows; right?

1 A. Yes.

2 Q. And you could see both the driver and the passenger?

3 A. Yes.

4 Q. Okay. And do you know if the -- did you ever see  
5 whether the driver of the vehicle, while you were parked behind  
6 it the first time, ever looked back in the mirror or turned  
7 around and saw you?

8 A. I didn't see her. As far as looking back, I didn't see  
9 her turn her head and look back. I couldn't see her facial  
10 features in the mirror, so I couldn't tell if she was directly  
11 looking at me from the rearview mirror.

12 Q. Were you wearing sunglasses?

13 A. I don't recall.

14 Q. Do you typically wear sunglasses on patrol?

15 A. On sunny days, yes, I do.

16 Q. Was it sunny this day?

17 A. Yes.

18 Q. Okay. Now, let's fast-forward again, and go to the  
19 point where you are making the stop.

20 During that stretch, as the vehicle pulls out -- the  
21 suspect vehicle pulls out and you pull out behind it, what was  
22 the maximum distance it sort of pulled away from you?

23 A. I would say approximately 20 feet. I maintained close  
24 distance with it. Our speed of travel wasn't very fast, though.  
25 I didn't have to worry about rear-ending the vehicle.

26 Q. So, it -- it didn't do anything erratic as far as  
27 strange driving --

28 A. No.

1 Q. -- weaving or anything like that?

2 And then you activated your lights and the vehicle  
3 immediately pulled over?

4 A. Yes.

5 Q. I think you testified previously the length of time you  
6 were behind the vehicle was maybe ten seconds. Did I understand  
7 that correctly?

8 A. Approximately, yes.

9 Q. I would like to now talk about the moment as you are  
10 walking up to the vehicle. What do you do in preparation when  
11 you are about to approach a suspect vehicle?

12 A. I -- I typically approach the driver's side, if I have  
13 enough shoulder room to approach the vehicle without worrying  
14 about -- or having to worry about being struck by another  
15 vehicle. And I approached the vehicle maintaining visual  
16 contact of both the defendant and the driver.

17 And as I approached the side of the vehicle, I looked  
18 in the backseat, and then was -- as I approached further, I  
19 attempted to do a quick area check with my eyes of the front  
20 seat and both passengers' hands.

21 Q. Again, I think you explained to Mr. Steward, you are  
22 doing this to look for weapons or anything incriminating at all?

23 A. Yes.

24 Q. And you are, obviously, very cautious and alert at this  
25 time?

26 A. Yes.

27 Q. Now, describe the interior of the vehicle. Was it  
28 clean? Cluttered?

1 A. I believe there was some items within the vehicle. I  
2 don't recall exactly how it was maintained inside, off the top  
3 of my head.

4 Q. Do you remember at all what types of items were they?  
5 Clothing? Jack In the Box cups? Receipts?

6 A. No, I don't.

7 Q. Now, when you say "some items," how many are we talking  
8 here? Can you give us any ballpark idea.

9 A. Maybe three or four. Nothing that cluttered the  
10 vehicle.

11 Q. Okay. Now, were most of these items in the backseat?  
12 Is there a backseat, first of all?

13 A. Yes, there was.

14 Q. Okay. So there is a backseat. There is nothing that  
15 caught your eye in the backseat?

16 A. No.

17 Q. Maybe a little bit of clutter?

18 A. Yes.

19 Q. Then as far as the front area goes, as you looked in  
20 the vehicle, was it a stick or automatic transmission?

21 A. I don't recall.

22 Q. Okay. Do you recall if there was any sort of a  
23 gear-shifting mechanism that would have been between the driver  
24 and the passenger, or was it up on the stem of the steering  
25 wheel?

26 A. I believe it was in between the front and driver's side  
27 on the console of the vehicle.

28 Q. Okay. So kind of between the two?

1 A. Yes.

2 Q. Up by I guess the driver's front leg or the passenger's  
3 left leg?

4 A. Yes.

5 Q. Now, how about the actual shape of the console, is it  
6 one that sticks up, like sometimes in SUVs you get these larger  
7 consoles, as opposed to a lot of regular cars, there is almost  
8 none at all, it is almost level to the floorboard?

9 A. I don't recall.

10 Q. You don't recall?

11 A. No.

12 Q. How about is there an open up -- was there a glove  
13 compartment in the vehicle?

14 A. Yes, there was.

15 Q. That was in front of the --

16 A. Passenger.

17 Q. -- passenger?

18 And at any point, did anyone go into that?

19 A. After I requested the driver's license and the  
20 registration of the vehicle.

21 Q. Okay. And you -- so, did Miss Eves open it up then, or  
22 do you recall?

23 A. At the time, I don't recall.

24 Q. Is there also a compartment -- any other compartments  
25 in the car, such as a little spot kind of in the dash area  
26 underneath where the air-conditioning vents would be, the radio?

27 A. I don't recall.

28 Q. Do you recall if there was a little bin or container

1 you would open where the driver would access right on his or her  
2 right side?

3 A. I don't recall.

4 Q. In other words, between the seats? You don't recall?

5 A. No.

6 Q. How about spaces? I assume it wasn't one of these sort  
7 of old-fashioned bench seats in a vehicle?

8 A. No. They were bucket seats.

9 Q. Two individual bucket seats.

10 So there would be spaces between the bucket seats and  
11 the door, space between the bucket seats and, whatever, center  
12 console --

13 A. Yes.

14 Q. -- was there?

15 Were there seat covers on the car?

16 A. Not that I recall.

17 Q. Now, how about the positions of the two seats? Did  
18 anything strike you as unusual about the way the two were seated  
19 in their seats?

20 A. No.

21 Q. Okay. So neither of the seats was, you know, reclined  
22 a great distance or was pushed all the way up front or all the  
23 way to the back in any weird way?

24 A. No.

25 Q. Everything seemed pretty normal about the car?

26 A. Yes.

27 Q. And during the time you -- back up just a second -- as  
28 you are approaching the vehicle, you are, of course, approaching

1 it from behind, do you position your patrol vehicle directly  
2 behind the car, maybe slightly to the left, or slightly to the  
3 right?

4 A. Offset towards the driver's side.

5 Q. Okay. So you were just a little to the left --

6 A. Yes.

7 Q. -- right?

8 And why do you do that?

9 A. So I am not directly behind -- myself being the driver,  
10 I am not directly behind the vehicle, and so I can get a better  
11 view when I come in -- approach the vehicle, which has been  
12 pulled over, and the passengers.

13 Q. So you have a -- basically, you have a better vantage  
14 point if you are slightly off-center versus in the middle?

15 A. Yes.

16 Q. You said you were observing both of the individuals in  
17 the car at that time; right?

18 A. Yes.

19 Q. Did you notice Mr. Martinez lean forward or move his  
20 hands in any fashion?

21 A. No.

22 Q. Do you know if he was wearing his seat belt?

23 A. I don't recall.

24 Q. Do you know if the driver was wearing her seat belt?

25 A. I don't recall at this time.

26 Q. Now, as you approached the vehicle, I presume there is  
27 a certain level below which you cannot see from the -- from the  
28 passenger's and driver's perspective; right?



1 A. Yes.

2 Q. In other words, as you are getting out of your patrol  
3 vehicle and you see the car in front of you, you can't see  
4 what's going on down by their legs or feet?

5 A. No, I can't.

6 Q. You probably can't see really much of what's going on  
7 kind of below their shoulder area; right?

8 A. About midchest area, yes.

9 Q. Midchest.

10 Of course anything that's covered by the bucket seat?

11 A. That's correct.

12 Q. All right. So it would be possible for people to move  
13 their hands to some degree without you noticing it, so long as  
14 they kept them low enough; right?

15 A. Yeah. Low enough and their shoulders -- their hand  
16 movements didn't result in any form of body movement, upper body  
17 movement, or shoulder movement.

18 Q. Of course. Now, you approached the vehicle, then, from  
19 the left side, in other words the driver's side. And as you  
20 approached, what do you do as you get closest to the -- closer  
21 to the driver and then eventually contact the driver?

22 A. On a -- on all the traffic stops, I approach -- when I  
23 approach from the driver's side, I walk up and I observe the  
24 rear seat, look for anything incriminating, or any weapons.

25 And then I continue and usually stand in between the  
26 rear -- the opening of the door on -- right behind the  
27 passenger -- or right behind the driver's seat. So that way  
28 they have to look backwards. I am almost standing over their

1 shoulder.

2 Q. Why do you do that?

3 A. For a vantage point to myself. That way if there are  
4 any weapons, it's harder for them to maneuver and basically use  
5 them against me.

6 Q. Okay. So I am going to position the chairs here. If I  
7 understand correctly, you basically stand about here, if this  
8 were the driver, maybe a few inches behind? (Indicating.)

9 A. A little bit further up.

10 Q. About here maybe? (Indicating.)

11 A. Yes.

12 Q. So they have to, again, crane to look over their  
13 shoulder?

14 A. Yes.

15 Q. This also gives you a pretty good view, I would  
16 imagine, of the floor area; right?

17 A. Yes.

18 Q. You can see the floor area of the driver's side, as  
19 well as the passenger's side?

20 A. Yes, I can.

21 Q. All right. At that time, did you -- you had a view, I  
22 presume, of the area where Mr. Martinez was seated; right?

23 A. That's correct.

24 Q. You could see his hands?

25 A. I could.

26 Q. He obviously had nothing in them?

27 A. No.

28 Q. And you could see his feet?

1 A. Yes.

2 Q. And you didn't notice or see anything on the ground  
3 next to him?

4 A. No. Not at the time.

5 Q. All right. When you first approached and spoke with  
6 them, whom did you speak to first?

7 A. I spoke with Miss Eves, who was the driver of the  
8 vehicle.

9 Q. What was her demeanor?

10 A. Outgoing. She answered all my questions, provided me  
11 with her identification, driver's license.

12 Q. Okay. And did she appear nervous?

13 A. No.

14 Q. Based on the fact that she didn't appear nervous, were  
15 you surprised to later learn that she had warrants?

16 A. At the time, yeah.

17 Q. And how about Mr. Martinez, what was his demeanor?

18 A. Laid back, similar to Miss Eves. Answered all the  
19 questions that I had for him.

20 Q. He was cooperative?

21 A. Very cooperative.

22 Q. And he provided full and complete answers?

23 A. Yes.

24 Q. Including name, date of birth, any -- to any other  
25 questions you may have asked him?

26 A. Yes.

27 Q. Did Miss Eves appear to be speaking quickly to you? In  
28 other words, was she talking rapidly?

1 A. No, not out of the ordinary, no.

2 Q. Now, at some point, you took a driver's license from  
3 her as well as a registration; right?

4 A. Yes, I did.

5 Q. And this was -- then you went back to run them, so to  
6 speak; right?

7 A. Yes.

8 Q. In order to do that, you basically turned, walked back  
9 to your patrol vehicle. And do you do it -- do you enter on a  
10 computer or do you call dispatch for that information?

11 A. The majority of the time, I do it on the -- over the  
12 radio on a separate channel other than the main channel, which  
13 is used for performing computer inquiries. And at this time, I  
14 did --

15 Q. Okay.

16 A. -- it over the radio.

17 Q. You switched over to channel B we will call it, and you  
18 call in their name, date of birth, et cetera?

19 A. Yes.

20 Q. How long does it take for them to get back to you with  
21 the information?

22 A. It takes approximately three minutes. Depending on the  
23 traffic that -- that's backed up and how many other deputies are  
24 performing inquiries at the time.

25 Q. Okay. And was it -- based on your recollection, was  
26 it -- what was the time length this time?

27 A. It took approximately three minutes.

28 Q. Approximately three minutes.

1           During this three-minute time, do you walk back up to  
2 the vehicle and kind of keep an eye on it, or do you stand back  
3 by your vehicle?

4           A.    I stand back towards the side of my patrol vehicle and  
5 maintain eye contact with the passengers, or attempt to keep a  
6 visual contact of them.

7           Q.    Okay.  So maybe three minutes -- somewhere between two  
8 to four -- two to five minutes is the length of time you are  
9 away from the suspect vehicle?

10          A.    Yes.

11          Q.    And that's what it was in this case?

12          A.    Yes, it was.

13          Q.    During that time, you -- like you said, you continued  
14 to observe the vehicle, did Mr. Martinez appear to do anything  
15 unusual during that time?

16          A.    No.

17          Q.    Did you ever see him shift or fidget in any way?

18          A.    No.

19          Q.    When you returned to the vehicle, what did you learn  
20 about Miss Eves?

21          A.    That she had a felony warrant for possession of stolen  
22 property.

23          Q.    Did this concern you?

24          A.    What do you consider "concern"?  As far as -- go ahead.

25          Q.    Let me put it to you this way:  Had you made up your  
26 mind at that time you were going to arrest her or --

27          A.    Yes.

28          Q.    Okay.  What did you do?  You approached the vehicle,

1 and you told her you had a -- you had run her, and there was an  
2 outstanding warrant for her; correct?

3 A. Yes.

4 Q. Do you know if there were one or two warrants for her?

5 A. At the time, I believe I only saw -- noticed one.

6 Q. Okay. Did you later learn of a second warrant, second  
7 active warrant?

8 A. No, not at the time.

9 Q. So, did you approach the vehicle, then tell her she had  
10 warrants for her?

11 A. Yes.

12 Q. Did she appear surprised?

13 A. No.

14 Q. Did she appear concerned?

15 A. I don't believe she wanted to be arrested.

16 Q. I don't know many people that do.

17 But did she cry or anything like that?

18 A. No.

19 Q. So she sort of took it in stride?

20 A. Yes.

21 Q. As much as you can take getting hauled up in handcuffs  
22 in stride.

23 Again, she didn't sound surprised?

24 A. No.

25 Q. So basically, it appeared to you she knew she was going  
26 to be arrested already?

27 A. Yeah. From her behavior, I believe she knew.

28 Q. All right. So you had her step out of the vehicle?

1 A. Yes.

2 Q. And you then -- did you handcuff her right there at the  
3 scene or did you -- I say "scene," I mean by the side of her  
4 vehicle, or did you then walk back to her vehicle and handcuff  
5 her?

6 A. I walked back towards the passenger side of my vehicle  
7 and handcuffed her there, and then placed her in the back of --  
8 backseat of my unit.

9 Q. So if I understand you correctly, two vehicles are  
10 positioned, one in front of another, did you walk between the  
11 two vehicles to cross over the passenger side? (Indicating.)

12 A. Yes, I did.

13 Q. I don't know why I held up two pieces of paper, somehow  
14 I thought that would be helpful.

15 Then you placed her in the rear from the passenger  
16 side -- in other words, the right side of your vehicle?

17 A. Yes.

18 Q. And during that time, were you also keeping an eye on  
19 Mr. Martinez?

20 A. Yes, I was.

21 Q. And how long did that process take from when you took  
22 her out of the vehicle, walked her back and cuffed her, and  
23 throw her in the back of the car?

24 A. About five minutes.

25 Q. About five minutes total?

26 A. Yes.

27 Q. Did you also perform a pat-down search?

28 A. Yes, I did.

1 Q. And you do that, I presume, for officer safety?  
2 A. Yes.  
3 Q. And to prevent her from disposing of any further  
4 evidence?  
5 A. That's correct.  
6 Q. Now -- and I may have already asked you this. During  
7 that time, you watched Mr. Martinez and he didn't do anything  
8 unusual; right?  
9 A. No, he did not.  
10 Q. He didn't throw anything out the window?  
11 A. No.  
12 Q. You didn't see him shifting in his seat?  
13 A. No.  
14 Q. You then approached the vehicle from which side, sir?  
15 A. I then approached the vehicle from the passenger side.  
16 Q. You know, I forgot to ask you one more question. I  
17 think Mr. Steward may have inquired about it, but I wanted to  
18 confirm. When you first contacted Miss Eves, and when you spoke  
19 with her throughout the time, her driver's side window, was it  
20 down?  
21 A. I believe at the time. Because I didn't have to open  
22 up the driver's side door to speak with her.  
23 Q. Okay. So as far as you remember, the window was down  
24 all the way?  
25 A. Yes.  
26 Q. It appeared to be fine and in normal working order?  
27 A. Yes.  
28 Q. Sorry. Moving forward again. You move up to the



1 passenger side of the vehicle and you speak with Mr. Martinez?

2 A. Yes.

3 Q. And this is after you have gotten permission to search  
4 the vehicle?

5 A. Yes, it was.

6 Q. You got it from Miss Eves?

7 A. Yes, I did.

8 Q. Okay. And you told Mr. Martinez to step out of the  
9 vehicle; right?

10 A. Yes.

11 Q. And he cooperated?

12 A. Yes.

13 Q. By the way, at the time you saw him -- as he was  
14 sitting in the vehicle, did his legs appear positioned in any  
15 strange way? In other words, were they artificially close  
16 together? Why they put up against the -- I guess the -- sort of  
17 the front angled part of the seat or the floorboard? Do you  
18 remember anything unusual about the way his feet were  
19 positioned?

20 A. No. Just a natural bending position next to one  
21 another.

22 Q. So just a normal position?

23 A. Yes.

24 Q. The way anyone would sit in a car?

25 A. Yes.

26 Q. And he appeared that way when you first saw him in the  
27 vehicle?

28 A. Yes.

1 Q. And he again appeared that way when you contacted him  
2 the second or maybe sort of the third time as you approached the  
3 vehicle after you had arrested Miss Eves?

4 A. Yes.

5 Q. And you asked him to step out of the car?

6 A. Yes.

7 Q. And he did so?

8 A. Yes.

9 Q. Did you tell him you were going to search the vehicle?

10 A. That's when I initially approached him and confronted  
11 him the third time that I explained to him that I was going to  
12 search the vehicle, and asked if he would step outside while I  
13 did so.

14 Q. Okay. He didn't protest in any way?

15 A. No.

16 Q. He didn't appear concerned in any way?

17 A. No.

18 Q. He appeared totally normal and natural?

19 A. Yes.

20 Q. Just like he does here?

21 A. Yes.

22 Q. Maybe he looks more nervous, I don't know.

23 As he stepped out of the vehicle, where did you have  
24 him stand?

25 A. Well, at the time, I noticed that the bag which had  
26 been between his feet, I noticed it at the time as he was  
27 stepping out. So then I -- I had him step to the side of the --  
28 passenger side of their vehicle. And it was -- I had him face

1 the vehicle, and at that time I called a backup unit.

2 Q. Okay. So you called from your hand radio, then?

3 A. Yes.

4 Q. Okay. And where was Mr. Martinez standing at that  
5 time?

6 A. Near the rear passenger side of the vehicle.

7 Q. Okay. Did you handcuff him right away?

8 A. After -- when I called for backup, I did.

9 Q. Okay. And you then searched the vehicle; correct?

10 A. After --

11 Q. After --

12 A. -- backup arrived and Mr. Martinez was placed in the  
13 rear of the unit.

14 Q. And you searched the vehicle, you found one bag of  
15 contraband, right, it was the methamphetamine in the front  
16 passenger seat?

17 A. That's correct.

18 Q. And I think you described it as a clear plastic bag.  
19 Was it -- how many times have you seen methamphetamine, or a  
20 similar -- I won't say similar looking -- but another crystal or  
21 powder-type drug packaged? In other words, cocaine, powdered  
22 heroin?

23 A. Around 30 times.

24 Q. 30 times?

25 A. That's including various types of drugs, powdered  
26 drugs.

27 Q. In this case, it was packaged in a pretty typical  
28 fashion?

1 A. Yes.

2 Q. And you were trained, of course, on the way drugs are  
3 packaged and how to recognize them; right?

4 A. Yes.

5 Q. And in this case -- well, generally speaking, it's fair  
6 to say that drugs are packaged pretty small; right?

7 A. That's correct.

8 Q. They want to keep -- the drug dealers or drug addicts  
9 want to keep the packaging to be as small and inconspicuous as  
10 possible; right?

11 A. That's correct.

12 Q. Now, in this case, it was not a full baggie; is that  
13 right, or do you recall?

14 A. No. It was -- because it was tied at one end, so it  
15 didn't occupy the entire bag space.

16 Q. When you say "tied," what do you mean? Somebody had  
17 knotted it?

18 A. Yeah. It was twisted, twisted closed.

19 Q. Was it twisted off or was it tied off, do you recall?

20 A. I don't recall it being tied off. I remember it being  
21 twisted closed, but at this time I don't remember if it was  
22 knotted.

23 Q. Explain what you mean for the jury by "twisted off." I  
24 think people that don't ordinarily package drugs may not know  
25 exactly why that's important or what that means.

26 A. So the drugs don't fall out of the packaging.

27 Q. Okay. And do you know how that's -- how that's done?

28 A. Basically, placing the -- to my knowledge, basically,

1 placing the drugs within the bag, and then twisting it tight so  
2 that it closes the entire bag and prevents anything from  
3 escaping.

4 Q. Actually, they try and twist it so tight that it  
5 actually kind of almost becomes airtight. And then they will  
6 typically tear it off. And you actually have a sort of a sealed  
7 little package; right?

8 A. Where it's an attempt to pinch it off while they are  
9 twisting it.

10 Q. Okay. Now, based on your training and experience, when  
11 it's packaged that way, it cannot be opened and then resealed as  
12 well; correct?

13 A. Not if it's sealed.

14 Q. Right. So -- so if you have got a very small piece, a  
15 small amount of dope is placed in the corner of a larger bag,  
16 it's twisted up tightly, and then I think you said pinched off.  
17 Once it's pinched off and you have got that very small -- they  
18 call that a tadpole; right?

19 A. Yes.

20 Q. Once you have got that small tadpole, a user or another  
21 dealer cannot open it and then reseal it as well, correct,  
22 because --

23 A. Correct.

24 Q. Right. Because you can't -- it just doesn't form the  
25 seal the same way; right?

26 A. Yes.

27 Q. And in this case, did it appear to be correctly sealed  
28 off, or did it appear as though it had been opened or tampered

1 with?

2 A. I believe it was sealed off.

3 Q. Sealed off.

4 So there was no evidence that it had ever been opened  
5 by anyone?

6 A. No.

7 Q. All right. Now, at no point -- so we are clear, at no  
8 point did you ever see Mr. Martinez handle that little tadpole  
9 or little baggie --

10 A. No.

11 Q. -- of meth; right?

12 A. That's correct.

13 Q. You never saw him gesture towards it in any fashion;  
14 correct?

15 A. Other than when we were in the vehicle and he was  
16 leaning forward, no.

17 Q. Okay. When you were in the -- rather, when you first  
18 initially spotted him and he appeared to be leaning forward;  
19 right?

20 A. Yes.

21 Q. But at this time, to your knowledge, he had no idea you  
22 were there in the car --

23 A. No.

24 Q. -- correct?

25 And also, you had no idea as to why he might have been  
26 leaning forward; right?

27 A. Not at the time, no.

28 Q. It could have been to adjust the radio, pick up a CD

1 off the ground, anything?

2 MR. STEWARD: Objection. Calls for speculation.

3 THE COURT: Sustained.

4 Q. (BY MR. KENYON) Now, with regards to -- by the way,  
5 there was also no -- how is methamphetamine typically ingested?

6 A. It can be ingested orally, or it can be smoked, or  
7 injected.

8 Q. Okay. And most commonly, it's -- it's actually snorted  
9 or smoked; right?

10 A. Yes.

11 Q. Smoked, most commonly?

12 A. Yes. Most commonly.

13 Q. And a typical dose is in the ballpark of, say, .10 --  
14 excuse me, yeah, .10, a tenth of a gram to .15 grams; correct?

15 A. I don't know the exact weight which is given to a  
16 typical dosage or usage.

17 Q. This certainly wasn't an extraordinarily large amount  
18 of drugs; right?

19 A. Not extraordinarily large.

20 Q. Do you have an idea if this was sort of a personal --  
21 what we call a "personal use" amount?

22 A. Yeah. For a -- one's own use, personal use, yes.

23 Q. So basically, the amount of drugs that it would take to  
24 get one person high; right?

25 A. Yes.

26 Q. Now, you indicated that you later -- after Mr. Martinez  
27 was transported down to the station, that was where you  
28 interrogated him; correct?

1 A. That's correct.

2 Q. During that interrogation, he was still cooperative;  
3 correct?

4 A. Yes. During that interview, yes.

5 Q. And he heard his rights and he waived them and agreed  
6 to speak with you; correct?

7 A. That's correct.

8 Q. So we are clear, he never actually -- he at no time  
9 said the drugs were his; right?

10 A. No.

11 Q. But he also said he didn't really know where they came  
12 from; right?

13 A. During -- yeah, that's correct.

14 Q. At no time did he express any awareness that the drugs  
15 were present in the car?

16 A. No.

17 Q. It seemed like you kind of paused.

18 A. I just had to go through the interview process with  
19 him, just making sure.

20 Q. Fair enough.

21 And when you -- the vehicle was also later towed and  
22 searched; correct?

23 A. No, it was not.

24 Q. It was not --

25 A. Not towed.

26 Q. Did you conduct a further search of the vehicle?

27 A. Yes, I did.

28 Q. Did you reveal anything that would indicate use of



1 methamphetamine, such as straws to use to snort it, pipes,  
2 anything like that?

3 A. No.

4 Q. Methamphetamine is commonly smoked in, like, a small  
5 glass pipe; right?

6 A. That's correct.

7 Q. You found nothing like that in the vehicle anywhere?

8 A. I did not.

9 Q. And you searched the glove box, under the seats, every  
10 place things like that could be hidden?

11 A. Yes.

12 Q. Did you also search the trunk?

13 A. Yes, I did.

14 Q. Okay. And didn't find anything there?

15 A. Didn't find anything.

16 Q. And Mr. Martinez was also searched, I presume?

17 A. You say Miss --

18 Q. Mr. Martinez.

19 A. Mister, yes.

20 Q. You patted him down when you first handcuffed him and  
21 placed him in the back of your car?

22 A. Yes, I did.

23 Q. Did you find any contraband on him?

24 A. No, I did not.

25 Q. That includes anything used to smoke or snort  
26 methamphetamine; right?

27 A. That's correct.

28 Q. Did you find any lighters on him?

1 A. Not that I recall, no.

2 MR. KENYON: No other questions.

3 THE COURT: All right.

4 Redirect examination?

5 MR. STEWARD: Yes. Just a few questions.

6 Redirect Examination By Mr. Steward

7 Q. You were asked if .10 or .15 grams could be a usable  
8 quantity or a dose, I guess?

9 A. It could be.

10 Q. If that's the case, wouldn't .38 grams be enough to get  
11 two or three people high?

12 A. Yes. It could be used to get multiple people high.

13 Q. In your opinion, was the .38 grams that you found a  
14 usable quantity?

15 A. From what I observed, yes.

16 Q. Have you seen others possess a similar amount for  
17 personal use?

18 A. Yes, I have.

19 Q. Now, Mr. Kenyon kept saying "warrants" plural. Was  
20 there more than one warrant for Miss Eves, or just one warrant  
21 that you knew of?

22 A. One warrant that I knew of.

23 Q. That was for receiving stolen property?

24 A. Yes.

25 Q. It wasn't for drugs?

26 A. No, it wasn't.

27 Q. What became of the Toyota?

28 A. Mr. Martinez stated that the vehicle belonged to his

1 mom, and asked if I could release the vehicle to her. And so I  
2 got -- obtained her phone number and called her. And she came  
3 and picked the vehicle up.

4 Q. You could have just had it towed; right?

5 A. I could have.

6 Q. And then they would have had to pay impound fees to get  
7 it out?

8 A. Yes, they would have.

9 Q. So as a favor, you called the mother and had her come  
10 get the car?

11 A. Yes.

12 Q. Have you seen her today? Do you remember what she  
13 looks like?

14 A. Yes, I saw her.

15 Q. Now, you were asked if the defendant gave full and  
16 complete answers. Did he ever give you an explanation for how  
17 the methamphetamine got there?

18 A. No, he didn't.

19 Q. Did he ever express surprise like, "I don't know how  
20 this got here"?

21 A. No.

22 Q. Did he ever act surprised that it was there?

23 A. No.

24 Q. Try to give you some kind of explanation for how it got  
25 there and him not know about it or control it?

26 A. No. He didn't give me any explanation.

27 MR. STEWARD: No further questions.

28 THE COURT: All right.

1 Further cross-examination?

2 MR. KENYON: Very briefly.

3 Recross-Examination By Mr. Kenyon

4 Q. In fact, Mr. Martinez did state that he didn't know  
5 where the methamphetamine came from; right?

6 A. Mr. Martinez stated that, yes.

7 Q. I am sorry, I sort of talked over you. He said he  
8 didn't know where it came from; right?

9 A. That's correct.

10 Q. So, in other words, he was surprised that it was there,  
11 right, or he appeared to be?

12 MR. STEWARD: Objection. Speculation.

13 THE COURT: Sustained.

14 Q. (BY MR. KENYON) Well, he certainly didn't indicate  
15 anything that led you to believe he had any knowledge this was  
16 there; right?

17 A. No, he didn't tell me.

18 Q. Then, again, he unequivocally said it did not belong to  
19 him; right?

20 A. Yes.

21 MR. KENYON: Thank you. No other questions.

22 THE COURT: All right.

23 Further redirect examination?

24 MR. STEWARD: Not at this time, Your Honor.

25 THE COURT: All right. Deputy Hiraoka, you are  
26 excused, and if you would return back to counsel table.

27 THE WITNESS: Thank you.

28 THE COURT: All right. Mr. Steward, your next witness.

1 MR. STEWARD: Yes, Your Honor. Would this be a  
2 convenient time for the afternoon recess? We do need to take up  
3 an issue.

4 THE COURT: All right. Then let's take our afternoon  
5 recess at this point in time. We will break until ten minutes  
6 after 3:00. We will break for about 15 minutes. So please  
7 remember the admonitions not to discuss the case with anyone.  
8 Don't form or express any opinions about the case. And leave  
9 your notepads on your chairs. We will see you all back here at  
10 3:10. Thank you.

11 (Out of the presence of the jury.)

12 THE COURT: All right. All the jurors have now left  
13 the courtroom.

14 Mr. Steward?

15 MR. STEWARD: Yes, Your Honor, the People at this time  
16 would like to give Miss Eves immunity -- use immunity, and would  
17 like to call her to the stand.

18 THE COURT: Do you have the documents prepared?

19 MR. STEWARD: Yes.

20 THE COURT: Okay. If I can review them, please.

21 MR. STEWARD: Yes. Maybe I could call Miss Myers.

22 THE COURT: That's a good idea.

23 MR. STEWARD: I told her at lunchtime what we were  
24 planning on doing.

25 MR. KENYON: I will call her now.

26 MR. STEWARD: She should be available now.

27 THE COURT: Let's have Miss Eves brought up, please.

28 THE DEPUTY: She is up.

1 THE COURT: Okay.

2 MR. KENYON: I assume you want me to call, Your Honor?

3 THE COURT: I am sorry?

4 MR. KENYON: You want me to call right now?

5 THE COURT: Sure. Yeah. Please.

6 (Recess.)

7 THE COURT: All right. We are back on the record in  
8 the case of the People versus Mario Martinez. Mr. Martinez is  
9 present. Both counsel are present. Also present this afternoon  
10 is the witness, Candace Eves, who is present with her attorney,  
11 Miss Myers.

12 And the Court is now in receipt of a petition and  
13 request to grant Miss Eves what we commonly refer to as "use  
14 immunity," pursuant to the provisions of Penal Code Section  
15 1324.

16 And specifically, the Court has received three  
17 documents this afternoon: The petition request for the order  
18 requiring the witness to answer questions pursuant to that Penal  
19 Code provision; the second document is entitled Waiver of  
20 Issuance of Order to Show Cause and Hearing under Penal Code  
21 Section 1324. And that document has, in fact, been signed by  
22 Miss Eves. And then the third and final document is the actual  
23 order requiring the witness to answer questions under Penal Code  
24 1324, that is for the Court's signature.

25 And Miss Myers, have you had an opportunity to  
26 review -- go over these three documents with Miss Eves?

27 MS. MYERS: I have, Your Honor.

28 THE COURT: She did, in fact, sign the petition or the

1 waiver -- the issuance of the order to show cause, as well?

2 MS. MYERS: She did, Your Honor.

3 THE COURT: Okay. Anything you would like to add or  
4 state for the record with respect to this grant of immunity?

5 MS. MYERS: It has been explained to my client that she  
6 is being given immunity so she can freely get up on the stand  
7 and speak about this incident, and not face any repercussions or  
8 charges as a result of it.

9 However, I have also explained that it does not  
10 encompass any matters not related to this incident. However, I  
11 didn't anticipate any other questions being asked, because it  
12 most likely wouldn't be relevant.

13 THE COURT: All right. I believe Mr. Steward wants to  
14 call her as a witness as soon as we complete this matter; is  
15 that correct?

16 MR. STEWARD: Yes. Except we do now have the  
17 narcotics -- I wanted to just briefly recall Deputy Hiraoka very  
18 briefly to establish that this is the --

19 THE COURT: We are not going to do that. Because it's  
20 problematic with respect to putting her on the witness stand and  
21 taking her off, because she is in custody. And if I have Deputy  
22 Hiraoka recalled and testify, then I am not going to parade  
23 Miss Eves in front of the jury in shackles and cuffs. I am  
24 going to already have her seated on the witness stand, then  
25 bring the jury in. Then at the end of the day, we will excuse  
26 the jury and she will remain seated in the witness stand and  
27 then we will take her back to custody.

28 Deputy Hiraoka can come back on Monday and complete the

1 testimony with respect to the drugs.

2 MS. MYERS: Your Honor.

3 THE COURT: Yes.

4 MS. MYERS: I am sorry, one last thing. My client has  
5 requested my presence during her testimony.

6 THE COURT: And I think that's appropriate, as well.

7 But a couple things I want to go over with you,  
8 Miss Eves. And that is, first of all, we call this kind of  
9 immunity "use immunity," which means, basically, the prosecution  
10 is prohibited from using your testimony here that you give  
11 during the course of this trial against you in any subsequent  
12 criminal proceeding.

13 That doesn't mean that they cannot prosecute you for  
14 possession of the narcotics, because they possibly can, based  
15 upon other evidence or other statements that you have provided  
16 prior to your testimony today. All this immunity means is they  
17 cannot use whatever you testify to today against you at a later  
18 prosecution, if, in fact, they decide to pursue a prosecution.  
19 I don't know if they will or not. I don't have control over  
20 that.

21 MS. MYERS: Your Honor, I am so sorry to interrupt you.  
22 But that was not my understanding of this immunity agreement.  
23 So that is not what I have represented to the client.

24 THE COURT: It's use immunity, is it not?

25 Isn't that what you said, Mr. Steward?

26 MR. STEWARD: Yes. That means --

27 MS. MYERS: I am so sorry. Can I just have one moment  
28 to discuss with her?



1 THE COURT: Okay.

2 (Pause in the proceedings.)

3 MS. MYERS: Thank you, Your Honor we are ready to  
4 proceed.

5 THE COURT: All right. You know, and just so that you  
6 are aware of the situation, Miss Eves, the DA can prosecute you  
7 whether you testify or not, whether they grant you immunity or  
8 not. And again, I don't know that they are; I don't know that  
9 they are not. But I want to make sure that you understand what  
10 this immunity basically does and does not do.

11 Also, this grant of immunity does not protect you from  
12 any subsequent prosecution for any possible perjury that you may  
13 commit when you testify, meaning, basically, if you lie under  
14 oath when you testify, the DA's office, theoretically, could  
15 prosecute you for committing perjury. And even this use  
16 immunity that they are granting you does not cover perjury. So  
17 you have to make sure that you are aware of that, as well.

18 And then, finally, I am presuming, Mr. Steward, that  
19 you have gotten approval from a higher authority, having been  
20 familiar with the DA's office's procedures and policies  
21 regarding grants of immunity, I am presuming that you have run  
22 this by the powers that be over there at the DA's office?

23 MR. STEWARD: That's correct.

24 THE COURT: All right. And who would be the supervisor  
25 that approved this?

26 MR. STEWARD: Brian Sussman.

27 THE COURT: All right. Okay.

28 MS. MYERS: Thank you, Your Honor.

1 THE COURT: All right.

2 MR. KENYON: Your Honor, I am sorry to interrupt.

3 As a matter of my ability to cross-examine her, what is  
4 the Court going to -- my limitations, in other words?

5 THE COURT: The Evidence Code.

6 MR. KENYON: The Evidence Code. But my question is in  
7 cross-examining her, obviously, I will go into the fact that she  
8 has been granted immunity on this. Would the Court deem it  
9 inappropriate for me to actually, you know, show the jury the  
10 order from the Court and things like that, or --

11 THE COURT: Well --

12 MR. KENYON: I am not going to grandstand or make too  
13 big a production.

14 THE COURT: You could show it to her. I am not going  
15 to have it admitted into evidence and go back to the jury room,  
16 because they are not legal scholars, and you know, there is  
17 transactional immunity versus use immunity. And we are just not  
18 going to get involved in that.

19 I think you can certainly make your point in  
20 cross-examination. And if you want to display the immunity  
21 agreement to the jury and show it to the witness, and do those  
22 kinds of things, that's perfectly fine. And again, it becomes a  
23 part of the court file. It's a court order. But I am not going  
24 to allow it to be introduced as an exhibit to go back into the  
25 jury room with the jury while they deliberate.

26 MR. KENYON: I had no intent of that. I was just -- I  
27 just wanted to see what the Court's bounds were. Different  
28 courts may vary.

1 THE COURT: All right.

2 MR. KENYON: Thank you.

3 THE COURT: All right. Then I do find that there is  
4 sufficient justification or reason on behalf of the prosecution  
5 to grant Miss Eves use immunity in this case, pursuant to the  
6 provisions of Penal Code Section 1324. And I do not believe  
7 that the grant of immunity in this case with respect to  
8 Miss Eves is against the public policy.

9 So I will sign the order at this point in time granting  
10 Miss Eves use immunity for her testimony in this case.

11 MS. MYERS: Your Honor, I did inform my client that if  
12 at any time during her testimony she needed to speak with me,  
13 she just needed to inform the Court. And I wanted to inquire  
14 did you want me to go ahead and continue to remain in the  
15 gallery?

16 THE COURT: Yeah. I think -- I would prefer you to  
17 remain in the audience section of the courtroom.

18 And Miss Eves, at some point in time, if you are asked  
19 a question where you think it's necessary for you to talk to  
20 Miss Myers, just let us know that, just say, you know, "Your  
21 Honor, I would like to talk to my attorney first before I answer  
22 that question." And we will take a break and I will allow you  
23 to speak to Miss Myers about that.

24 Do you have any questions about that procedure at all?

25 MS. EVES: No. I understand it.

26 THE COURT: Okay. So that's how we will proceed.

27 MS. MYERS: Thank you, Your Honor.

28 THE COURT: Let's have Miss Myers come to the witness

1 stand -- I mean, Miss Eves come to the witness stand, please --  
2 Freudian slip.

3 MR. STEWARD: I would be requesting that the Court,  
4 since we are not allowed to talk to Miss Eves, she is  
5 represented by an attorney, I would request --

6 THE COURT: She is represented by two attorneys, the  
7 public defender on her underlying case, and Miss Myers as a  
8 witness in this case.

9 MR. STEWARD: Even more so. I would request that --

10 THE COURT: Double your pleasure.

11 MR. STEWARD: I would ask that the Court admonish her  
12 regarding the Court's 402 rulings about the defendant being a  
13 three-striker, or having a prior record, or being on parole,  
14 because she is aware of those things.

15 THE COURT: Right. That's a good point.

16 MR. STEWARD: We need to admonish her of those things,  
17 I think.

18 THE COURT: All right.

19 Before this trial began, Miss Eves, I made some orders  
20 to the witnesses and to the attorneys that they are not to  
21 mention certain things in front of the jury.

22 First of all, you are not to mention that Mr. Martinez  
23 was on parole at the time that this incident occurred, or that  
24 he has ever been to prison before. You are not to mention the  
25 fact that this is a three-strikes case or that Mr. Martinez is  
26 facing a possible sentence of 25 years to life. That's not  
27 relevant at all to any decision the jury has to make in this  
28 case.

1           You are, obviously, going to be asked about the fact  
2 that there was a -- an arrest warrant out for you at the time  
3 that you were stopped on May 29th of 2007. Do you have any  
4 questions about that at all?

5           MS. EVES: Huh-uh. Why can't it be used in the -- I  
6 don't understand why it can't be used.

7           THE COURT: Why what can't be used?

8           THE WITNESS: His past.

9           THE COURT: Well, because it would prejudice the jury.  
10 It's not relevant to whether or not he possessed these drugs on  
11 this specific date.

12           I mean, if someone comes before a jury and the jury is  
13 told about the fact that the defendant has all these prior  
14 convictions, that person may not get a fair trial. Because if  
15 the jury knows about all the person's prior convictions, they  
16 may be overly influenced by that fact, which is irrelevant to  
17 whether the person committed the crime on this specific date.  
18 So that's why we don't allow that. All right?

19           MS. EVES: Okay.

20           THE COURT: Do you have any further questions about  
21 those orders?

22           MS. EVES: No.

23           THE COURT: Okay.

24           Let's bring our jury in, please.

25                           (In the presence of the jury.)

26           THE COURT: All right. All members of the jury have  
27 now joined us. Again, folks, I apologize for the rather lengthy  
28 delay this afternoon. But again, there were some issues that I

1 needed to address with the attorneys out of your presence.

2 And the next witness that the prosecution is calling to  
3 testify is Miss Candace Eves, who has taken the witness stand.

4 Miss Eves, you have already been sworn to testify to  
5 the truth. Do you understand that?

6 THE WITNESS: Yes.

7 THE COURT: All right.

8 Mr. Steward, if you would like to inquire of the  
9 witness, then.

10 MR. STEWARD: Thank you.

11 **CANDACE DARLENE EVES,**

12 called as a witness by and on behalf of the People, having been  
13 previously duly sworn, was examined and testified as follows:

14 **Direct Examination By Mr. Steward**

15 Q. Good afternoon, Miss Eves.

16 A. Hello.

17 Q. Miss Eves, I notice you are in a blue jumpsuit. Are  
18 you currently in custody?

19 A. Yes, I am.

20 Q. And when were you arrested?

21 A. Yesterday.

22 Q. All right. And what were you arrested for, do you  
23 know?

24 A. For not coming to court.

25 Q. All right. You were ordered by the judge to show up  
26 yesterday?

27 A. Yeah.

28 Q. All right. Were you also arrested for a warrant that

1 you had regarding --

2 A. Oh, yeah.

3 Q. -- another case?

4 A. Yeah.

5 Q. And what was that case about, do you know? I mean,  
6 just the charge.

7 A. Receiving stolen property and taking an owner's car  
8 without consent.

9 Q. All right. And were those misdemeanors or felonies?

10 A. They were felonies, but they were dropped down to  
11 misdemeanors.

12 Q. You pled guilty to those offenses?

13 A. Yes, sir.

14 Q. And when was that, do you remember?

15 A. Sometime in July --

16 Q. All right.

17 A. -- or June.

18 Q. And were you released from custody after you pled  
19 guilty to those misdemeanor theft offenses?

20 A. Yes.

21 Q. Yes?

22 A. (Nods head.)

23 Q. You have to answer out loud.

24 A. I said, "Yeah."

25 Q. She has to take down what you say.

26 And were you supposed to return and do --

27 A. Uh-huh.

28 Q. -- more custody time on those cases?

1 A. Yeah. I was supposed to turn myself in.  
2 Q. To do weekends?  
3 A. No. They wanted to give me weekends, but I told them  
4 that I would rather just do a straight six months.  
5 Q. You were supposed to surrender to do your six months in  
6 jail?  
7 A. Yeah, in July.  
8 Q. Did you surrender?  
9 A. No.  
10 Q. So you had an active warrant for your arrest --  
11 A. Yeah.  
12 Q. -- after you pled guilty in July?  
13 A. Yeah.  
14 Q. Now, do you recall this deputy here, Deputy Hiraoka?  
15 A. Yeah. Uh-huh.  
16 Q. Yes?  
17 A. Yes, I do.  
18 Q. Do you recall seeing him on May 29, 2007 --  
19 A. Yes, I do.  
20 Q. -- when you were in a red Toyota car?  
21 A. Yes, I do.  
22 Q. Did he arrest you for -- on a warrant on that same  
23 case?  
24 A. On two felony warrants? Yeah.  
25 Q. There was two felony warrants?  
26 A. Uh-huh.  
27 Q. Yes?  
28 A. Uh-huh. Yes, there was.



1 Q. Okay. It's easier if you say "yes" or "no," rather  
2 than "uh-huh" or "huh-uh," all right?

3 A. Okay.

4 Q. Because the court reporter has to take down what you  
5 say.

6 What were the two felony warrants for when this deputy  
7 arrested you?

8 A. Receiving stolen property and taking an owner's car  
9 without consent.

10 Q. Those were two separate cases?

11 A. No, the same case.

12 Q. All right. When he arrested you on those warrants, the  
13 cases -- you had not yet pled guilty; is that right?

14 A. I don't think I did yet.

15 Q. All right. So then you went to court later, pled  
16 guilty. Then on another date, you were supposed to surrender to  
17 do time?

18 A. Yeah -- yes.

19 Q. When you didn't surrender to do time, you had another  
20 warrant for your arrest on that case?

21 A. Yes.

22 Q. All right. I want to talk to you about the day that  
23 you met Deputy Hiraoka. All right. Who were you with at the  
24 time that you got pulled over in the car?

25 A. Mario.

26 Q. Do you see him in court today?

27 A. Yes.

28 Q. Would you please point him out and describe what he is

1 wearing so we know who you are talking about when you say  
2 "Mario."

3 A. A white T-shirt, and he is wearing glasses.

4 Q. All right.

5 MR. STEWARD: Indicating the defendant, Your Honor?

6 THE COURT: Yes. The record so reflect.

7 Q. (BY MR. STEWARD) When did you first meet Mario?

8 A. The day before.

9 Q. That's the first time you had ever met him?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes.

13 Q. Where did you meet him?

14 A. At the motel with my friend Jessica.

15 Q. Who was staying at the motel?

16 A. Him and Jessica.

17 Q. He and Jessica were?

18 A. Uh-huh.

19 Q. Yes?

20 A. Yes.

21 Q. When you say "he," you are talking about the defendant?

22 A. Yes, Mario.

23 Q. They were spending the night there?

24 A. Yeah.

25 Q. And what did you do at Jessica's, at the motel?

26 A. It was her birthday. We were just -- just partying, I  
27 guess.

28 Q. Partying. Okay. What type of partying was going on?

1 A. Just drinking.

2 Q. Just drinking.

3 Was the defendant drinking?

4 A. I don't really recall.

5 Q. All right. Were you drinking?

6 A. No, I don't think I was.

7 Q. Did you use any narcotics that night?

8 A. No.

9 Q. Did you smoke marijuana?

10 A. No, I don't think I did.

11 Q. All right. Do you recall being interviewed Monday of

12 this week?

13 A. Yeah.

14 Q. By myself?

15 A. Yes, I do.

16 Q. The defense attorney was there, Mr. Kenyon; right?

17 A. Yes.

18 Q. And then a DA investigator named Eric Spidle?

19 A. Yes.

20 Q. Do you recall telling the three of us that you actually

21 smoked marijuana that night?

22 A. Okay. Then I did -- well, I just -- I didn't recall --

23 really remember that night, but if I told you, yeah, then I did.

24 Q. All right. Did you see -- did you see others with weed

25 that night?

26 A. Yes.

27 Q. How much?

28 A. Well, the people next door had like -- it wasn't in our

1 motel room, but like next door, in the next room, they had a  
2 lot.

3 Q. Like a pound?

4 A. Yeah.

5 Q. That's what you said before --

6 A. Uh-huh.

7 Q. -- right, a pound?

8 All right. Were you a methamphetamine user at that  
9 time --

10 A. Yeah.

11 Q. -- in your life?

12 A. Yes, I was.

13 Q. A heavy user?

14 A. No. Not heavy, but out of control.

15 Q. Pardon?

16 A. It was out of control.

17 Q. Right. Is it fair to say that any time people are  
18 using methamphetamine, it probably shows a lack of judgment and  
19 control?

20 A. Yes.

21 Q. How often were you using that back in May of 2007?

22 A. A lot.

23 Q. What's "a lot"?

24 A. Oh, I don't know. I know a lot. Just a little bit is  
25 enough, you know, that's a lot.

26 Q. Well, maybe how often?

27 A. Like five times a day.

28 Q. Every day?

1 A. Yeah.

2 Q. And how would you afford this drug habit?

3 A. I couldn't.

4 Q. So how would you get your drugs, then?

5 A. Other people.

6 Q. Other people?

7 A. (Nods head.)

8 Q. Usually men?

9 A. Not usually men.

10 Q. Sometimes women?

11 A. Yeah.

12 Q. Sometimes men?

13 A. Sometimes men.

14 Q. All right. Would you ever use your looks --

15 A. No.

16 Q. -- or your charm with men to be able to get drugs?

17 A. Well, no, not really.

18 Q. Do you sometimes use your looks to get what you want?

19 A. Sometimes, if it -- if it works at the time. I don't

20 know who doesn't do that.

21 Q. All right. So were you -- were you employed back in

22 May?

23 A. No. I don't think I was.

24 Q. When was the last time you had a -- held a steady job?

25 A. In 2006.

26 Q. All right. So in 2007, what were you -- how would you

27 afford to be able to use drugs? Because somebody has to pay for

28 them along the line; right? So how would you continually be

1 able to get drugs to pay for your habit?

2 A. Usually my friends.

3 Q. How would they afford it?

4 A. I don't know.

5 Q. How was it that they were such good friends they would  
6 continually supply you for your habit?

7 A. That was a while ago. I don't know, it just happened  
8 like that.

9 Q. All right. How long have you known Jessica?

10 A. For a while, like a year, maybe. I don't even really  
11 know -- like six months.

12 Q. And she is a good friend of yours?

13 A. She was like a hi/bye friend.

14 Q. A hi/bye friend?

15 A. Like, "Hello. How are you?" But it was her birthday  
16 that day.

17 Q. Okay. Can you give us an idea of what hours you were  
18 there at the motel when the defendant and Jessica were also  
19 there?

20 A. What hours?

21 Q. Yeah. What hours in the night? I mean, were you there  
22 a while?

23 A. Yeah. We were there for a good while.

24 Q. Do you have any idea over what period of time you were  
25 there? Like, was this an all-night thing?

26 A. Yeah.

27 Q. It pretty much was all night?

28 A. (Nods head.)

1 Q. Yes?

2 A. Yes.

3 Q. And was the defendant and Jessica and you pretty much  
4 up all night?

5 A. No. I went to sleep.

6 Q. Around what time, would you say?

7 A. I don't recall. I don't remember what time it was.

8 Q. Was it late?

9 A. It was late.

10 Q. Early in the morning maybe?

11 A. It was late.

12 Q. Okay. And was the defendant still up when you went to  
13 bed? You don't remember?

14 A. I don't remember, really.

15 Q. All right. When did you leave the motel?

16 A. That morning.

17 Q. And how did you leave the motel?

18 A. Mario.

19 Q. Mario?

20 A. Uh-huh.

21 Q. He gave you a ride?

22 A. Uh-huh.

23 Q. Yes?

24 A. Yes.

25 Q. After the two of you have been at the motel all night?

26 A. Yes.

27 Q. All right. What type of car did he have?

28 A. A red car.

1 Q. Do you recall the make and model?  
2 A. No, not really.  
3 Q. Was it a newer car?  
4 A. It was an older car.  
5 Q. Older?  
6 A. Uh-huh.  
7 Q. Yes?  
8 A. Yes.  
9 Q. How big?  
10 A. It wasn't very roomy.  
11 Q. How many doors, do you remember?  
12 A. Two.  
13 Q. Okay. Was it a medium-sized car, compact, or small  
14 car?  
15 A. It was a compact car.  
16 Q. Is it the same car that you were in when Deputy Hiraoka  
17 pulled you over?  
18 A. Yes.  
19 Q. All right. Now, do you have any idea what time you  
20 left the motel with the defendant that morning, which would be  
21 the morning of May 29, 2007?  
22 A. Well, I know we got pulled over around -- you said  
23 12:00 in the afternoon?  
24 Q. 12:30.  
25 A. 12:30. So maybe, yeah, like 11:00.  
26 Q. 11:00?  
27 A. 11:30.  
28 Q. All right. So you slept in until 11:00, 11:30?



1 A. Yeah. I stayed up late.

2 Q. So then when you got up and you left the motel with the  
3 defendant, where did the two of you go?

4 A. To Rubidoux.

5 Q. Pardon?

6 A. Rubidoux.

7 Q. Rubidoux?

8 A. Uh-huh.

9 Q. Was it just the two of you in the car?

10 A. Yes.

11 Q. Where did you go in Rubidoux?

12 A. To, like, I don't really recall what part of Rubidoux,  
13 but we went to Rubidoux.

14 Q. Is that the same town that you spent the night in a  
15 motel at?

16 A. Yeah. Same town, yeah.

17 Q. Which motel was it in Rubidoux where you spent the  
18 night?

19 A. The Palmview.

20 Q. The Palmview Motel?

21 A. (Nods head.)

22 Q. Yes?

23 A. Yes.

24 Q. All right. And so, where in Rubidoux -- well, what  
25 type of place did the defendant take you in Rubidoux? I mean,  
26 even if you don't know the exact address, did he drive you  
27 somewhere?

28 A. He drove me somewhere.

1 Q. Where did he take you?  
2 A. Down some street in Rubidoux.  
3 Q. Pardon?  
4 A. I don't really recall where it was at.  
5 Q. Well, did you -- did the two of you eventually arrive  
6 at some type of destination?  
7 A. Yes.  
8 Q. What was that?  
9 A. A house.  
10 Q. All right. Whose house was that?  
11 A. Some guy's house.  
12 Q. What's his name, do you know?  
13 A. No, I don't remember.  
14 Q. Okay. And how did you know about the house?  
15 A. From past friends.  
16 Q. All right. Who was driving?  
17 A. Mario was driving at the time.  
18 Q. All right. Did you tell him where to go?  
19 A. Yeah.  
20 Q. Or did he know where to go?  
21 A. I told him where to go.  
22 Q. Okay. So he drove and you gave him directions?  
23 A. Yes.  
24 Q. All right. And what did you do once you got to the  
25 house?  
26 A. I got out and I met my friend.  
27 Q. All right. And was this friend a man or a woman?  
28 A. A male.

1 Q. A male?

2 A. Uh-huh.

3 Q. Yes?

4 A. Yes.

5 Q. Do you know his name?

6 A. No. I don't recall his name.

7 Q. If you knew his name, would you prefer not to tell us?

8 A. Yeah. Well, I really don't remember it, though.

9 Q. But you wouldn't want to get him involved in this;

10 right?

11 A. Yes.

12 Q. Prefer him to keep out of it, if he could?

13 A. Yes.

14 Q. All right. So you go up to this man's house, do you

15 get out of the car?

16 A. Yes.

17 Q. What did you do?

18 A. Huh?

19 Q. What did you do?

20 A. I got methamphetamine from him.

21 Q. All right. Where was the defendant Mr. Martinez at the

22 time that you got the methamphetamine from the other male?

23 A. In the car.

24 Q. He stayed in the car?

25 A. Yes.

26 Q. Where did you go after you got out of the car to get

27 the methamphetamine?

28 A. To the fence.

1 Q. And did you do the transaction right there at the  
2 fence?

3 A. Yes.

4 Q. Did the other person, was he on the other side of the  
5 fence from you?

6 A. Yes.

7 Q. About how tall was the fence?

8 A. Like going up to my waist.

9 Q. All right. So you were able to reach over and talk  
10 to --

11 A. Yes.

12 Q. -- him and be able to exchange things over the fence;  
13 is that right?

14 A. Yes.

15 Q. Did you provide any money to him for the  
16 methamphetamine?

17 A. Yes.

18 Q. How much?

19 A. \$20.

20 Q. Did you give him a \$20 bill?

21 A. Yes.

22 Q. And where did you get the money?

23 A. From my friend.

24 Q. Which friend?

25 A. My friend at Jimmy's house.

26 Q. All right. And when were you at Jimmy's house?

27 A. I had -- well, from the night before, that's where I  
28 had came from was over there.

1 Q. You mean before you went --

2 A. I had had the money already.

3 Q. Before you went to the motel to celebrate Jessica's

4 birthday --

5 A. I had the money in my pocket.

6 Q. -- you already had the money from Jimmy's house; is

7 that right?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes.

11 Q. Okay. So you were at Jimmy's house before you went to

12 the motel?

13 A. Yeah. But -- yes, I was.

14 Q. Okay. And a friend of yours gave you \$20?

15 A. Yes.

16 Q. Which friend?

17 A. Crystal.

18 Q. Crystal?

19 All right. And was this a loan or a gift?

20 A. It was -- I think she owed it to me.

21 Q. For what?

22 A. I don't know. I can't really remember.

23 Q. Okay. Any idea what you might have done for Crystal or

24 provided to her where you owed her \$20 -- I am sorry, where she

25 owed you \$20? Did you do some work for her?

26 A. Huh?

27 Q. Did you do some kind of work for her?

28 A. No. I think I had lent it to her a while back.

1 Q. Okay. So you had loaned her the money?  
2 A. Yeah.  
3 Q. All right. Anyway, going back to this drug  
4 transaction -- so you paid \$20. And in exchange, the male on  
5 the other side of the fence provided methamphetamine to you?  
6 A. Yes.  
7 Q. Was he a regular supplier for you?  
8 A. He was just a random person, random.  
9 Q. Had you gotten narcotics from him before?  
10 A. Yes.  
11 Q. All right. Did you tell him what you wanted to buy?  
12 A. Who?  
13 Q. This person?  
14 A. Oh, yeah.  
15 Q. And what did you say?  
16 A. I just told him, "Could I get \$20?"  
17 Q. Did you say \$20 of something?  
18 A. Yeah.  
19 Q. What did you say?  
20 A. Of methamphetamines.  
21 Q. Do you use those words "methamphetamines," or do you  
22 have some other --  
23 A. I don't recall what I told him that day. I am just --  
24 Q. What do you usually say when you want to buy  
25 methamphetamine? Do you actually say "methamphetamine" or do  
26 you call it by another name?  
27 A. We call it that. It doesn't matter. I don't know.  
28 Q. No other names that you know it by?

1 A. Yeah.

2 Q. What else do you call it?

3 A. "Dope."

4 Q. What else?

5 A. I don't know. I usually say that word.

6 Q. Do you sometimes call it "shit"?

7 A. Yeah.

8 Q. In fact, when you spoke to -- on Monday when we

9 interviewed you, that's -- you referred to it as that at one

10 point, didn't you --

11 A. Yeah.

12 Q. -- during the interview?

13 A. Probably a couple times, yeah.

14 Q. And is that -- is it pretty common knowledge when you

15 are talking about people that routinely use methamphetamine,

16 what that means when you say, "Can I get some shit?"

17 A. Yeah.

18 Q. All right. How far were you when you -- when you were

19 standing there at the fence and buying the methamphetamine, how

20 far were you away from the car, that being Mario's car?

21 A. Like from that table to right here. (Indicating.)

22 Q. The table in front of the court reporter in the

23 red dress?

24 A. No. At the end of your table right there.

25 Q. This table? (Indicating.)

26 A. The end of it.

27 Q. This end or that end? (Indicating.)

28 A. Yeah.

1 Q. This one? (Indicating.)  
2 A. Yeah.  
3 Q. All right. So from where you are sitting to here?  
4 A. Yeah.  
5 Q. That looks like it's about maybe 12 feet --  
6 THE COURT: 11 feet, actually.  
7 MR. STEWARD: All right.  
8 Q. (BY MR. STEWARD) You said it was around what time that  
9 that happened? If the stop was at 12:30 --  
10 A. Somewhere between 11:00 and 12:00.  
11 Q. All right. Was it light outside?  
12 A. Yeah.  
13 Q. Clear weather?  
14 A. Yeah. It was a hot day.  
15 Q. All right. And did you tell the defendant what you  
16 were going to be doing, and did you tell him why you were going  
17 to that location?  
18 A. I had told him, but I don't know if he understood.  
19 Q. What did you tell him?  
20 A. I told him we were going to go to my friend's house to  
21 get dope. But I don't know if he -- if he understood exactly  
22 what we were doing, but we went there.  
23 Q. Okay. But you had a discussion with the defendant  
24 before you got to the house that you were going there to buy  
25 dope?  
26 A. Yes.  
27 Q. Okay. So then -- now, did he object to that at all or  
28 say, "I am not going to do that for you"?



1 A. No. He gave me a ride.

2 Q. Right. And he didn't seem bothered or concerned about  
3 the fact you were going to go to the house to buy dope?

4 A. Not at that time, no.

5 Q. Okay. So then you bought the dope from this male who  
6 you don't remember his name?

7 A. Uh-huh.

8 Q. Right?

9 A. Yes.

10 Q. If you did know his name, you really wouldn't want to  
11 tell us?

12 A. Yes.

13 Q. Because that would implicate him in doing -- in  
14 criminal enterprise in selling methamphetamine; is that right?

15 A. Yes. Yes.

16 Q. And in the dope world, it's not cool to snitch on  
17 others, is it?

18 A. No, it's not.

19 Q. And in fact, you get a label if you do that; is that  
20 right?

21 A. Yes.

22 Q. What kind of label do you get?

23 A. Well, like a rat, tattletale.

24 Q. And can that endanger your safety if you are known as a  
25 rat?

26 A. Yeah, if you -- yeah.

27 Q. And how --

28 A. That's not just in the drug world, it's in every part

1 of it, you know.

2 Q. Right. Besides that, can people stop being your friend  
3 if they know you are a rat?

4 A. Oh, yeah -- well, yeah.

5 Q. Because they don't -- they are afraid that you might  
6 tell on them?

7 A. Yes.

8 Q. Right?

9 A. Yeah.

10 Q. So you could lose friends, contacts?

11 A. Yes.

12 Q. It's just not a good situation all the way around;  
13 right?

14 A. Right.

15 Q. So then after you bought the methamphetamine -- by the  
16 way, how was it packaged?

17 A. In a wrapper.

18 Q. Do you remember what the wrapper looked like?

19 A. I am not really clear on how the wrapper looked like,  
20 but I know it was a wrapper.

21 Q. All right. What color was the wrapper?

22 A. I am thinking it was clear -- that was seven months  
23 ago, I really don't remember how it came.

24 Q. Okay. And did it look -- did you look at the item to  
25 see if it looked like it was about \$20 worth that you were  
26 buying?

27 A. I felt it. Yeah, I felt it.

28 Q. And do you remember approximately how much it was --

1 A. Like --

2 Q. -- in terms of grams?

3 A. In terms of grams? It wasn't a gram.

4 Q. Well, in terms of grams, like part of a gram, or --

5 A. It was like .2 --

6 Q. Okay. Is that typical --

7 A. -- .3.

8 Q. Was that the typical going rate for 20 bucks of crystal

9 or meth, back then was -- you get about .2 grams?

10 A. Well, usually it's .3 or almost .4 but, yeah.

11 Q. How much would you typically use in one sitting?

12 A. About that.

13 Q. About that?

14 A. Uh-huh, .3.

15 Q. All right. But in this case, you only got .2?

16 A. Yeah. About that, yeah.

17 Q. But it was still going to be enough to use?

18 A. Yeah.

19 Q. And how were you planning on using it?

20 A. Smoking it.

21 Q. Smoking it with a pipe?

22 A. Yes.

23 Q. Did you have a pipe at that time?

24 A. No.

25 Q. How were you planning on getting a pipe?

26 A. I don't know. I probably would have bought one.

27 Q. Well, you said you were using about five times a day

28 back then?

1 A. Uh-huh.

2 Q. Yes?

3 A. Yes.

4 Q. So didn't you normally carry a pipe on you?

5 A. No, not normally.

6 Q. Well, then how would you typically smoke it five times

7 a day if you didn't have a pipe?

8 A. It would probably be at my house or at home.

9 Q. That's kind of like asking -- that's kind of like being

10 a cigarette smoker and not having a lighter; isn't it?

11 A. Yeah, pretty much.

12 Q. Usually cigarette -- people that smoke cigarettes,

13 habitually they carry a lighter with them; right?

14 A. Yeah. But it's not illegal to carry a lighter.

15 Q. That's not the point.

16 All right. So you get back in the car, you have got

17 your .2 grams, or whatever?

18 A. Yes.

19 Q. And it looked like meth to you; right?

20 A. Yes.

21 Q. What did you do with the dope at that time?

22 A. I stuck it in my bra.

23 Q. All right. Is that somewhere where you commonly keep

24 it?

25 A. Yes.

26 Q. Why would you keep it in that area? And I am sorry to

27 get personal.

28 A. Because I know that no one is going to be right there,

1 that it's my area, you know.

2 Q. Your personal private area?

3 A. Yeah.

4 Q. All right. Why do you want to put it in a private  
5 area?

6 A. Because it's private -- because I don't want no one  
7 else to see it.

8 Q. Why?

9 A. Because you can get in trouble for it.

10 Q. Are you concerned about the police?

11 A. Yeah.

12 Q. Are you concerned about someone that might steal it  
13 from you, as well?

14 A. Sure. Yeah.

15 Q. Okay. Were you carrying a purse at that time?

16 A. No.

17 Q. So did you get back into the passenger side of the car?

18 A. When?

19 Q. After you bought it --

20 A. Oh, yeah.

21 Q. -- the methamphetamine that day?

22 A. Yes.

23 Q. So you got back in the car; right?

24 A. Yeah.

25 Q. How long would you say you were there at that address?

26 A. More than a few minutes.

27 Q. Just to buy the dope and leave?

28 A. Uh-huh.

1 Q. Yes?

2 A. Yes.

3 Q. All right. And then what did you and Mario do at that  
4 point?

5 A. He dropped me back off at my friend Jimmy's house.

6 Q. To whose house?

7 A. Jimmy's house.

8 Q. Jimmy's house.

9 Was that also in Rubidoux?

10 A. No, it was in Riverside.

11 Q. Okay. So the defendant drove you to Jimmy's?

12 A. Uh-huh.

13 Q. Yes?

14 A. Yes.

15 Q. Then what did you do at Jimmy's?

16 A. He dropped me off there, and I --

17 Q. Mario dropped you off at Jimmy's?

18 A. Uh-huh.

19 Q. What did you do at Jimmy's?

20 A. I took a shower.

21 Q. All right. Did you see whether or not the defendant  
22 drove away after dropping you off?

23 A. Yeah, he left.

24 Q. All right. And then what was the plan after that?

25 A. He was going to come pick me up later after --

26 Q. What were the two of you going to do?

27 A. We hadn't planned on what we were going to do yet.

28 Q. Had you talked about anything that you might do later

1 that day?

2 A. We were going to go just hang out.

3 Q. Right. And what else?

4 A. Whatever we wanted to do.

5 Q. Right. Do you remember telling Detective Spidle,  
6 Mr. Kenyon, and I other things that you were planning on doing  
7 with Mario Martinez that day?

8 A. Which would be what? What did I tell you guys?

9 Q. Well, I am asking you. Do you remember anything else  
10 that you told us that the two of you were planning on doing that  
11 day together?

12 A. Yeah.

13 Q. What was that?

14 A. The methamphetamine.

15 Q. And can you elaborate on that for us, please?

16 A. We --

17 MR. KENYON: Objection. Vague.

18 THE COURT: Overruled. If she understands, she can  
19 answer.

20 THE WITNESS: We might have -- we were going to, but we  
21 never got a chance to do it.

22 Q. (BY MR. STEWARD) Right. But what were you going to do  
23 with him?

24 A. Smoke it.

25 Q. The two of you were going to smoke it together?

26 A. Well, that's what my understanding was.

27 Q. Right. And you and him had talked about that?

28 A. No. We didn't talk about it. We just assumed, you

1 know.

2 Q. Do you recall telling Detective Spidle, Mr. Kenyon, and  
3 I that you and him had talked about the fact that you were going  
4 to go party with the methamphetamine you had bought later that  
5 day?

6 A. I said what? What did you say right now?

7 Q. Do you remember telling us on Monday that you and Mario  
8 had talked about the fact you were going to party later that day  
9 with the methamphetamine?

10 A. Yeah. He was going to come pick me back up.

11 Q. Right. That was the plan?

12 A. Yes.

13 Q. Was for him to come back, pick you up at Jimmy's, and  
14 the two of you would go party?

15 A. Well, there wasn't really no party or anything to go  
16 to. We were just going to hang out.

17 Q. Right. And that when I say "party," that's kind of a  
18 term for going to smoke out with the methamphetamine?

19 A. Okay.

20 Q. So -- but I can rephrase it and use whatever more  
21 accurately describes what happened.

22 So he was going to come pick you up at Jimmy's?

23 A. Uh-huh.

24 Q. Right?

25 A. Yes.

26 Q. And the two of you were going to at some point go smoke  
27 the methamphetamine you had bought?

28 A. Yes.



1 Q. All right. And did he help pay for the  
2 methamphetamine --

3 A. No.

4 Q. -- that you were going to smoke?

5 A. No.

6 Q. Did he do anything in terms of payment to you --

7 A. No.

8 Q. -- for his share of the dope?

9 A. No.

10 Q. All right. Did he do anything to assist you so that  
11 you were willing to let him share your methamphetamine with you?

12 A. No.

13 Q. Well, did he drive you around?

14 A. He drove us to the one house.

15 Q. Then he drove you to Jimmy's?

16 A. Dropped me off there.

17 Q. Then he was going to pick you up from Jimmy's and take  
18 you somewhere else to party; right?

19 A. Well, yeah -- well, if he wanted to party, we would  
20 have. But I don't even know what we were going to do after  
21 that, I really don't know, because I wasn't even ready when he  
22 came back.

23 Q. So he came back earlier than you had expected?

24 A. Well, I probably just took longer than what I was  
25 supposed to, like I usually do.

26 Q. All right. But would it be fair to say he picked you  
27 up before you had expected him to be there -- I am sorry, he  
28 showed up before you expected him to come back?

1 A. No. Well, he came back around the right time. I just  
2 wasn't ready.

3 Q. All right. So did he have to wait for you a while,  
4 then?

5 A. No. I saw him outside, and they told me he was  
6 outside. I went outside, and I had had no cigarettes, so I  
7 said, "Take me to the store." And I drove to the store.

8 Q. Now, this Jimmy's house that you were at, this is a  
9 place that gets raided a lot?

10 A. No. It hadn't gotten raided then yet.

11 Q. It had never been raided?

12 A. Not then it hadn't been, but recently it has been.

13 Q. Okay. So you just -- you had just gotten out of the  
14 shower, you see the defendant outside. It's a little before you  
15 are ready, you left with him anyway; right?

16 A. Uh-huh.

17 Q. Yes?

18 A. Yeah, yes. I didn't have my purse on me or nothing.

19 Q. And so he took you to the store?

20 A. Yes. But we didn't make it to the store.

21 Q. How were you planning on paying for cigarettes if you  
22 didn't have your purse with you?

23 A. I think Mario had money.

24 Q. He was going to pay for you?

25 A. For cigarettes -- I don't remember who had -- I don't  
26 remember that day.

27 Q. Now, this is a person that -- that you are testifying  
28 you had only met that night -- the night before?

1 A. Uh-huh.

2 Q. Right?

3 A. (Nods head.)

4 Q. That's correct?

5 A. Yes, that's correct.

6 Q. But you already considered yourself friends enough with

7 him to be riding around with just the two of you; right?

8 MR. KENYON: Objection. Leading.

9 THE COURT: Sustained.

10 Q. (BY MR. STEWARD) Did you feel comfortable with riding

11 around just with Mr. Martinez?

12 A. Yes. He was always very respectable to me.

13 Q. So what happened on your way to the store?

14 A. I saw my friends on the side of the street, and I

15 pulled over to talk to them, and a cop got behind me.

16 Q. All right. Do you remember what street that was on?

17 A. Hunter.

18 Q. Hunter?

19 A. Uh-huh.

20 Q. Yes?

21 A. Yes.

22 Q. Do you remember what the nearest cross streets were?

23 A. Like the main cross streets?

24 Q. Yeah. On Hunter -- the cross streets that connected

25 with Hunter.

26 A. Hastings.

27 Q. Hastings.

28 All right. Who was driving at that time?

1 A. I was.

2 Q. Was that the first time you had driven Mr. Martinez's  
3 car after you left Jimmy's to go to the store?

4 A. Yes.

5 Q. Why was it you were driving at that time versus him  
6 driving the times before?

7 A. Well, I had a license.

8 Q. All right.

9 A. And there was a lot of cops outside, because I guess  
10 something had just happened down the street.

11 Q. You mean when you left Jimmy's?

12 A. Yeah.

13 Q. You saw a lot of cops?

14 A. Yeah. I saw a lot of cops outside.

15 Q. Like cop cars going by?

16 A. Well, a helicopter.

17 Q. All right. So you were -- the two of you were  
18 concerned about whether -- someone driving that had a license?

19 A. Yeah, because he said he didn't have one.

20 Q. All right. So you ended up driving?

21 A. Yes.

22 Q. And then you pulled over. And what was the purpose of  
23 pulling over on Hunter?

24 A. I saw my friends outside.

25 Q. All right. Which friends?

26 A. Some old neighborhood friends.

27 Q. You don't remember their names?

28 A. No.

1 Q. So you just wanted to say "hi"?

2 A. Well, something had happened to the boy that lived  
3 there at the store the other day. I guess someone had hit him  
4 in the head with a bat, or something like that. And I just  
5 stopped to see if he was okay.

6 Q. All right. And did you get out of the car to talk to  
7 him?

8 A. No.

9 Q. Did he come up to the car?

10 A. Yeah.

11 Q. Where?

12 A. To the driver's door.

13 Q. He came to the driver's door?

14 A. Yeah.

15 Q. You are positive about that?

16 A. Pretty sure. Well, there was two people 'outside.

17 Q. Oh, two people. Two people came up to the car?

18 A. I think they come up to the car -- one came to the  
19 passenger, one came to the driver, maybe.

20 Q. All right. And then what happened?

21 A. Then I saw the cop behind me, and I -- and I went  
22 back -- was on my way back to the store. And he followed me for  
23 a while, and then he red-lighted us and we pulled over.

24 Q. All right. Were you concerned about him being behind  
25 you?

26 A. Yeah.

27 Q. Why?

28 A. Because I had the drugs.

1 Q. All right. Where were they at that time?

2 A. In my bra.

3 Q. In your bra?

4 A. (Nods head.)

5 Q. Okay. So what did you do as the -- while the cop

6 was -- while the officer was following you?

7 A. I went to get it out of my bra and put it in the vent

8 of the car.

9 Q. The vent of the car?

10 A. Uh-huh.

11 Q. Can you describe what you mean by the "vent of the

12 car"?

13 A. Like where the air conditioner vent is at.

14 Q. Right. Which particular vent?

15 A. I don't remember. I was in such a -- it was scary that

16 day.

17 Q. Well, sometimes there is vents left of the driver's --

18 the steering wheel --

19 A. It was to the right.

20 Q. -- sometimes it's to the right of the steering wheel?

21 A. To the right.

22 Q. There is vents clear on the other side of the car near

23 the passenger window. Do you remember where the vents -- just

24 generally where the vent was located that you were trying to put

25 the dope into?

26 A. To the right of me.

27 Q. Okay. Did you -- can you describe what you did with

28 the -- with the item?

1 A. I can't really, but I just went to go throw it into the  
2 vent, but I missed.

3 Q. Did you put it right up to the vent?

4 A. No.

5 Q. How close did your hand get to the vent as you were  
6 trying to put the drugs in it?

7 A. Pretty close but not close enough. Like I could have  
8 made it, but I was just too scared.

9 Q. All right. So you tried to put it in the vent, then  
10 what happened?

11 A. And it fell on the floor.

12 Q. All right. And where on the floor did it fall?

13 A. By Mario.

14 Q. By Mario?

15 A. (Nods head.)

16 Q. Is that correct?

17 A. Yes.

18 Q. And what part -- what part of Mario?

19 A. Huh?

20 Q. Which part of his body did it fall near?

21 A. By his feet.

22 Q. By his feet? All right.

23 THE COURT: All right. On that note, why don't we call  
24 it a day at this point in time. It's almost 4:30.

25 And remember we are not going to be here tomorrow,  
26 folks. So we will come back Monday morning. And I am going to  
27 have you come back Monday morning at 9:30 -- not 9:00 but 9:30.  
28 So you can sleep in a little bit longer.

1           And leave your notepads on your chairs. Over the  
2 weekend, please don't do any research or investigation on your  
3 own. Just enjoy the weekend. And we will see you all back here  
4 Monday morning at 9:30.

5           Thank you all very much.

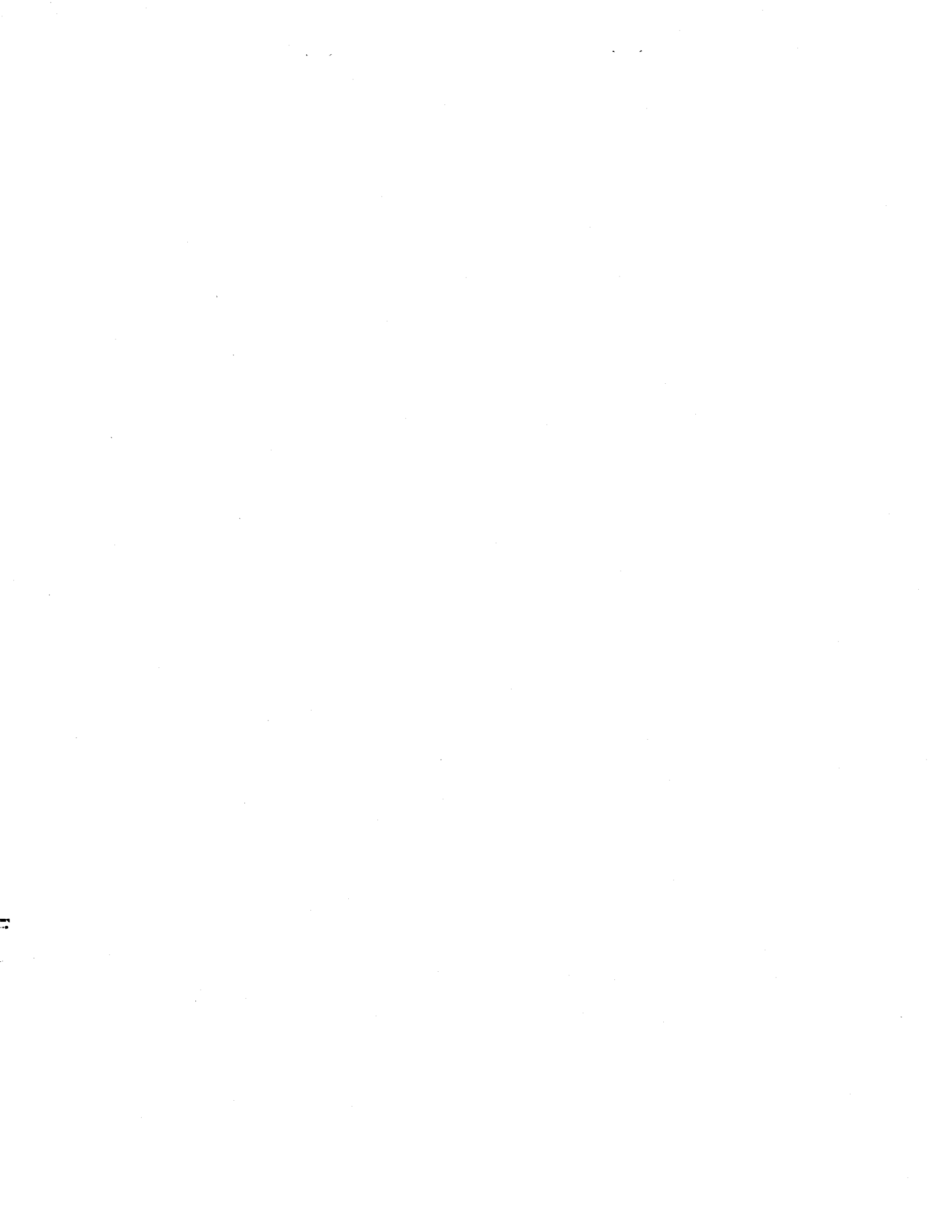
6                           (Proceedings concluded.)

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**E X H I B I T**

**C**



COURT OF APPEAL - STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION II

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	E No. E046651
	)	
Plaintiff/Respondent,	)	Riverside County
	)	Case No. RIF136990
vs.	)	
	)	Volume 2 of 2
MARIO MARTINEZ,	)	
	)	Pages 204 - 396
Defendant/Appellant.	)	
	)	

REPORTERS' TRANSCRIPT ON APPEAL  
Before the Honorable Paul E. Zellerbach, Judge, Dept. 44  
December 3, 4, 14, 2007, May 9, and July 11, 2008

APPEARANCES:

For Plaintiff/Respondent: OFFICE OF THE ATTORNEY GENERAL  
110 West "A" Street, Suite 1100  
San Diego, California 92101

For Defendant/Appellant: APPELLATE DEFENDERS  
555 W. Beech Street, Ste. 300  
San Diego, California 92101

Reported by: THERESE A. WEBSTER, C.S.R. No. 6257  
STEPHANIE LEWIS, C.S.R. No. 12746  
DENISE K. FRINGER, C.S.R. No. 10283

COPY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. RIF136990  
 )  
 MARIO MARTINEZ, )  
 )  
 Defendant. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
Before the Honorable Paul E. Zellerbach, Judge, Dept. 44  
December 3, 4, 14, 2007, May 9, and July 11, 2008

APPEARANCES:

For the Plaintiff: OFFICE OF THE DISTRICT ATTORNEY  
County of Riverside  
BY: MR. DAVID STEWARD, Deputy  
MS. ELLA FERNANDEZ, Deputy  
4075 Main Street, First Floor  
Riverside, California 92501

For the Defendant: MR. CHARLES KENYON, ESQ.  
4129 Main Street, Suite 305  
Riverside, California 92501

Reported by: THERESE A. WEBSTER, C.S.R. No. 6257  
STEPHANIE LEWIS, C.S.R. No. 12746  
DENISE K. FRINGER, C.S.R. No. 10283

1	December 14, 2007	339
2	<u>YOLANDA P. PEREZ</u>	
	Direct Examination by Mr. Steward	342
3	Cross-Examination by Mr. Kenyon	345
	Redirect Examination by Mr. Steward	352
4		
	May 9, 2008	361
5	Discussion Re: Romero Motion	
6	July 11, 2008	365
	Romero Motion and Sentencing	
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RIVERSIDE, CALIFORNIA, DECEMBER 3, 2007

(BEFORE THE HONORABLE PAUL E. ZELLERBACH - DEPARTMENT 44)

THE COURT: We're back on the record in the case of The People versus Mario Martinez. Mr. Martinez is present. Both counsel are present. All members of our jury are present.

And Ms. Eves is back on the witness stand. And I believe we were still going through direct examination. Mr. Steward, if you would like to continue that.

CANDANCE EVES,  
called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows.

MR. STEWARD: Thank you.

RESUME DIRECT EXAMINATION

BY MR. STEWARD:

Q. Good morning, Ms. Eves.

A. Good morning.

Q. Ms. Eves, you described a birthday party for your friend Jessica the night before, where you were hanging out with the defendant, Jessica, and yourself?

A. Yeah.

Q. Was anybody else in the motel beside the three of you?

A. The people next door.

Q. Would they sometimes come and hang out with you guys in the motel room?

A. Sometimes. Well, only one time.

Q. One time. How many of them were there?

A. Just two, I think.

Q. Two. What did they do in the motel?

1           A.    I don't recall.  I know we were having a little  
2 birthday party.

3           Q.    Did you have cake and --

4           A.    No.

5           Q.    Candles?

6           A.    No.

7           Q.    All right.  So what were you folks doing then?

8           A.    Some people were drinking beer.

9           Q.    Okay.  And how old is your friend, Jessica?

10          A.    Like 26.

11          Q.    Just a little older than you?

12          A.    Yeah.

13          Q.    All right.  But the majority of the evening, the  
14 majority of the night, it was you and Jessica and Mr. Martinez?

15          A.    Yes.

16          Q.    Going back to the date of May 29th, 2007, when you saw  
17 the police car behind you, did you and Mario talk about that at  
18 all?

19          A.    What do you mean?

20          Q.    Well, when Deputy Haroika was behind you, all right?  
21 You were a little nervous?

22          A.    Yes.

23          Q.    Did you and Mario talk about that?

24          A.    No, 'cause it was already there, you know, the  
25 situation was there.  And there's nothing you could do about  
26 it.

27          Q.    The two of you just said nothing?

28          A.    No, not really.  I -- well, I told him to stop moving

1 around.

2 Q. He was moving around?

3 A. Yeah.

4 Q. Can you describe his movement for us, please.

5 A. He was just bent over the seat a little bit  
6 (indicating).

7 Q. Okay. And he did that after the officer was behind  
8 you?

9 A. Yeah.

10 Q. Okay. When you say he was bent over the seat, which  
11 part of his body was bent over the seat, his upper body?

12 A. His -- yeah, his upper body.

13 Q. Upper body, including his arm?

14 A. Yes.

15 Q. What was he doing with his hands?

16 A. I don't know. I was busy myself.

17 Q. Did you know what he was doing and why he was leaning  
18 over with his hands?

19 A. I don't even know what he was doing, 'cause I threw  
20 the dope right there into the vent.

21 Q. Did the dope go inside the vent --

22 A. No.

23 Q. -- that you had?

24 A. No.

25 Q. How do you know?

26 A. 'Cause I seen it on the floor.

27 Q. Okay. What did you tell the defendant about moving  
28 around?



1 A. That it was going to look obvious.

2 Q. Obvious, like what?

3 A. Like if we had dope.

4 Q. All right. What did you tell him to do then?

5 A. Just calm down.

6 Q. What, if anything, did he say when the dope landed at  
7 his feet?

8 A. What did you say?

9 Q. What, if anything, did Mr. Martinez say when the dope  
10 landed on his feet?

11 A. I don't recall.

12 Q. Did it look like he was trying to do something with it  
13 at that point?

14 A. Well, yeah, we were both trying to get rid of it.

15 Q. What did he do to try to get rid of it?

16 A. He didn't do nothing, 'cause it was still there on the  
17 floor.

18 Q. Right. But you said "We were both trying to get rid  
19 of it," so that applies to both of you were trying --

20 A. No -- well, I -- he was bending over, but nothing  
21 happened to the dope. It was still there.

22 Q. So what did you mean, when you said, "We were trying  
23 to get rid of it"?

24 A. I didn't mean to say "we."

25 Q. You meant to say "you?"

26 A. Yeah.

27 Q. All right. Do you recall this deputy talking to you  
28 after you were arrested on your warrant?

1 A. Yes.

2 Q. At that time, did you describe the fact that Mario  
3 kept moving around in his seat?

4 A. Yes.

5 Q. Do you recall what you told the officer about what you  
6 told Mr. Martinez?

7 A. To stop moving around.

8 Q. Did you follow that up by saying "Or else we'll get  
9 into trouble"?

10 A. Yes, probably, yeah.

11 Q. All right. Now, when the officer interviewed you, the  
12 deputy, did you tell him whether or not the methamphetamine  
13 belonged to you?

14 A. No, I didn't.

15 Q. Well, what did you say about the methamphetamine?

16 A. I didn't say anything.

17 Q. Well, he asked you about the methamphetamine and your  
18 knowledge of it, correct?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Yes.

22 Q. All right. What did you say about the  
23 methamphetamine?

24 A. I said that it wasn't mine.

25 Q. That it was not yours?

26 A. Yeah.

27 Q. So you were denying responsibility for the  
28 methamphetamine at that time?

1 A. Yes, I was.

2 Q. Did you tell him who you thought it belonged to?

3 A. No.

4 Q. At this time in your life, you were hanging around  
5 with various drug users; is that fair to say?

6 A. Yes.

7 Q. And that some of the men that were using speed, were  
8 sometimes trying to sleep with you?

9 A. Well, any man would try, you know, like he's a guy. A  
10 guy's a guy, you know.

11 Q. But isn't that a frequent occurrence with guys that  
12 are using speed?

13 A. Yeah.

14 MR. STEWARD: Could I just have a moment, Your Honor,  
15 I'm almost done.

16 THE COURT: Yes. All right.

17 Q. (BY MR. STEWARD) Now, Ms. Eves, when you were called  
18 into court on this case, did you assert any rights to try not  
19 to testify?

20 A. What do you mean?

21 Q. Well, do you know what the 5th Amendment is about the  
22 right not to incriminate yourself?

23 A. Yeah.

24 Q. You have the right to remain silent, correct?

25 A. Correct.

26 Q. And you do have a lawyer to represent you?

27 A. Yes.

28 Q. Ms. Myers that's sitting up here in the front of the

1 audience. Actually, Lori Myers, correct?

2 A. Yes.

3 Q. All right. Originally when you were brought in and  
4 asked if you would answer questions in this case, did you  
5 assert your 5th Amendment right to remain silent?

6 A. Just the other day?

7 Q. Yes.

8 A. Yes.

9 Q. All right. And based on that, did the District  
10 Attorney's office extend you an offer of immunity so that  
11 whatever you said during your testimony cannot be used against  
12 you in terms of the drug possession charges?

13 A. Yes.

14 Q. And you accepted that offer of immunity?

15 A. Yeah.

16 Q. So right now, you're testifying under a grant of  
17 immunity?

18 A. Yes.

19 Q. Your understanding is that you could still be liable  
20 for prosecution for possession of the drugs, it's just what you  
21 say in court could not be used against you in any such  
22 proceedings; is that your understanding?

23 A. Yes.

24 MR. STEWARD: I have no further questions.

25 THE COURT: All right. Mr. Kenyon.

26 MR. KENYON: I will. Thank you, Your Honor.

27 CROSS-EXAMINATION

28 BY MR. KENYON:

1 Q. Good morning, Ms. Eves.

2 A. Good morning.

3 Q. Ms. Eves, I'd like to actually begin by talking a  
4 little bit about that grant of immunity that you were just  
5 speaking about with the District Attorney. Okay?

6 A. Okay.

7 Q. Now, originally you came to court in this matter  
8 because you were subpoenaed by the District Attorney; is that  
9 correct?

10 A. Yes.

11 Q. So you're going to testify as the witness for the  
12 District Attorney, right?

13 A. Yeah, I think so.

14 Q. Well, they were the ones that subpoenaed you?

15 A. Okay. Yeah.

16 Q. But, in fact, you came originally without an attorney;  
17 is that right?

18 A. Yes.

19 Q. And you came in, originally you were going to kind of  
20 give the story you gave last week, which was that the drugs  
21 were, in fact, yours; is that correct?

22 A. Yes.

23 Q. Now, do you consider those drugs to be yours?

24 A. Yes.

25 Q. And again, talking a little bit about the immunity you  
26 were given, you spoke about that with your attorney, correct?

27 A. Yes.

28 Q. And she explained to you that by simply admitting to

1 the drugs, you won't get prosecuted for it, right?

2 A. Yes.

3 Q. Those are the only ways you would testify, correct?

4 A. Well, I knew that I could be charged with the drugs

5 too.

6 Q. Okay. You could be charged with the drugs, but not

7 because of anything you say on the stand?

8 A. Yes.

9 Q. That's what you understand?

10 A. Yeah.

11 Q. But, in fact, you're also required to testify

12 correctly, right?

13 A. Yes.

14 Q. And if you do lie about anything, you could still get

15 prosecuted for perjury, right?

16 A. Right.

17 Q. You understand that's very serious?

18 A. Yes, I do.

19 Q. Okay. As you stand here today, whom do you consider

20 the owner of the drugs?

21 A. Me.

22 Q. Okay. And why do you say that?

23 A. Because I bought them.

24 Q. You bought them, and you paid for them with your

25 money, correct?

26 A. Yes.

27 Q. And it wasn't money you got from Mr. Martinez?

28 A. No.

1 Q. It wasn't money at any point he had promised to pay  
2 you back, correct?

3 A. Correct.

4 Q. And he wasn't -- there was at no point any agreement  
5 that you would do anything or he do anything in exchange for  
6 the drugs?

7 A. Correct.

8 Q. So you considered them to be solely your drugs?

9 A. Yes.

10 Q. You also testified Friday the amount of drugs you  
11 thought you bought was around .2 grams?

12 A. Yes.

13 Q. Typically, that's what you said you get for about \$20?

14 A. Yes.

15 Q. And you got the \$20 from someone else, right?

16 A. Yes.

17 Q. Now, I think you also testified -- excuse me -- when  
18 you met with Mr. Steward and I, you also testified -- excuse  
19 me -- you also told us that you worked part time back then?

20 A. Yes.

21 Q. Is that right? Was that a yes?

22 A. Yes.

23 Q. You were working part time for Molly Maid; is that  
24 right?

25 A. A company like that, yeah.

26 Q. Okay. So you actually had some money of your own?

27 A. Yeah, but not -- yeah. Yeah.

28 Q. And you also understood that Mr. Martinez did have

1 some money with him, right? Because he promised to buy you  
2 cigarettes or said at some point he was going to buy cigarettes  
3 or something?

4 A. Yeah.

5 Q. But again, he never promised to give you any money in  
6 exchange for the drugs?

7 A. No.

8 Q. Now let's talk about the transaction involving the  
9 drugs. You know Mr. Steward talked on Friday about some of the  
10 ways you refer to drugs, right? Do you remember that?

11 A. Yes.

12 Q. He said you refer to them in our interview several  
13 times as "shit," right?

14 A. Yes.

15 Q. Is that a common way for you to refer to drugs?

16 A. Yes.

17 Q. Specifically, when you say that, sometimes you mean  
18 methamphetamine?

19 A. Yes.

20 Q. Do you sometimes use the word "shit" to mean other  
21 things? In other words, like you forgot something at the  
22 house, "I got to go back and get my shit"?

23 A. Yeah.

24 Q. And in that scenario, would you necessarily be talking  
25 about drugs?

26 A. We could be talking about anything.

27 Q. You could be talking about anything?

28 A. Yeah.



1 Q. So do you sometimes use the word "shit" to just  
2 describe general things, anything?

3 A. Yes.

4 Q. So just miscellaneous stuff?

5 A. Yeah.

6 Q. But then sometimes in the drug culture, the word  
7 "shit" means drugs?

8 A. Right.

9 Q. Now, Mr. Steward asked you on Friday if you told  
10 Mr. Martinez you wanted to go buy dope, right? Do you remember  
11 that question?

12 A. Yes. Vaguely.

13 Q. I think you may have asked Mr. Martinez if he could  
14 take you to buy dope, right?

15 A. Right.

16 Q. Is it possible that you told him you wanted to go pick  
17 up some shit?

18 A. Yes.

19 Q. You might have told him you wanted to go get some  
20 shit?

21 A. Yes.

22 Q. You might have told him, "Can you drive me to get some  
23 shit"?

24 A. Yes.

25 Q. Okay. Do you know for sure whether or not  
26 Mr. Martinez understood that by "shit," you meant  
27 methamphetamine? Do you know for certain if he knew you were  
28 referencing methamphetamine?

1 A. Yes.

2 Q. Do you know for sure he meant methamphetamine?

3 A. Yeah.

4 Q. How do you know that for sure?

5 A. 'Cause that's what I'm talking about. Well, well,  
6 yeah, true. I'm not positive.

7 Q. Okay. So you might have said, "Can you take me to get  
8 some shit," right?

9 A. Yeah.

10 Q. Okay. And you might not have specified you meant  
11 methamphetamine, right?

12 A. Yes.

13 Q. You might not have used the word dope, right?

14 A. Yes.

15 Q. You might not have used the word drugs, right?

16 A. Right.

17 Q. Okay. Now, in the interview with Detective Spydell, I  
18 don't believe you ever used the word dope, did you?

19 A. No. I probably didn't.

20 Q. You referred to it as either meth or as shit, right?

21 A. Right.

22 Q. And both times you might have meant the same thing,  
23 right?

24 A. Right.

25 Q. And most commonly, in fact, did you use the word shit  
26 when words were coming from your mouth?

27 A. Yeah, I did.

28 Q. Now, you also talked to us about the fact that at one

1 point you forgot your purse, right?

2 A. Yes.

3 Q. And you left that at Jimmy's house?

4 A. Yes.

5 Q. If you had been referring to your purse, might you  
6 have said, "I forgot my shit at Jimmy's house"?

7 A. Yeah.

8 Q. In that case, you wouldn't be referring to drugs,  
9 right?

10 A. Right.

11 Q. Because you didn't leave any drugs behind at Jimmy's  
12 house?

13 A. Just my purse.

14 Q. All right. Now, when did you meet Mr. Martinez?

15 A. That night at the motel.

16 Q. So prior to that, you had no relationship with  
17 Mr. Martinez, correct?

18 A. Correct.

19 Q. And is it also fair to say that since he was arrested  
20 on this matter, you've had basically no contact with  
21 Mr. Martinez?

22 A. Correct.

23 Q. Do you consider Mr. Martinez to be a close friend?

24 A. He's a good friend.

25 Q. He's a friend, but you haven't known him very long,  
26 right?

27 A. Right.

28 Q. And in fact, that night before and that day when he

1 was arrested. Were the only times you really spent time with  
2 him, right?

3 A. Right.

4 Q. You haven't been contacted by anyone from his family,  
5 have you?

6 A. No, I haven't.

7 Q. Okay. In fact, the only time you met his mother or  
8 any other family members is when you came to court, right?

9 A. Yes.

10 Q. So you don't exactly have a long-standing relationship  
11 with the Martinez family?

12 A. No.

13 Q. Other than the fact that you believe them to be your  
14 drugs and it is your fault, maybe, that he is in trouble, do  
15 you have any reason to come and testify on Mr. Martinez's  
16 behalf?

17 A. No, the only reason why I'm supposed to be here.

18 Q. In fact, you learned from your lawyer that, when you  
19 came in and spoke with the District Attorney investigator,  
20 you're actually potentially putting yourself in trouble, right?

21 A. Yes.

22 Q. That was one of the reasons she advised you not to  
23 testify without immunity?

24 So you were basically going to put yourself in trouble  
25 for somebody you hardly know?

26 A. Right.

27 Q. Now, the night before, when you were hanging out at  
28 the hotel with Jessica and Mr. Martinez, you said there were

1 other people present?

2 A. Yeah, I just said people that were staying next door.

3 Q. I think you testified you think Mr. Martinez may have

4 had some beer or possibly had something to drink?

5 A. Yeah, I don't really recall, though.

6 Q. okay. And I think you indicated there was marijuana

7 there, right?

8 A. Yeah.

9 Q. And you smoked some?

10 A. I think so. I don't really remember.

11 Q. Okay. You never saw Mr. Martinez smoke any, did you?

12 A. No.

13 Q. I think when you -- are you pretty certain about that?

14 A. I'm pretty sure, yeah.

15 Q. He never accepted any from you, right?

16 A. (No response.)

17 Q. And you never saw him smoking any marijuana that

18 night, right?

19 Q. Could we get some sort of audible response.

20 A. Oh, I'm sorry.

21 A. Now, you indicated back then you were using quite a

22 bit of meth, right?

23 A. Yes.

24 Q. And sometimes you were using it five times a day?

25 A. Yes.

26 Q. And how long would those stretches go on for that you

27 would be using it? How many days in a row might you use it?

28 A. Like five days in a row.

1 Q. Five days in a row.  
2 What happens after five days of meth use in a row?  
3 A. Go to sleep.  
4 Q. Why is that?  
5 A. 'Cause you're tired.  
6 Q. When you use meth, do you stay up all night?  
7 A. Yeah. Usually.  
8 Q. Usually. It's a stimulant, right?  
9 A. Yeah.  
10 Q. In gives you energy?  
11 A. Yes.  
12 Q. You can stay up for days in a row?  
13 A. Right.  
14 Q. Without sleep?  
15 A. Yes.  
16 Q. Do you lose track of time?  
17 A. Yeah.  
18 Q. If you are indoors, you do not even know if it's  
19 daytime or nighttime?  
20 A. No, I know when it's daytime or nighttime.  
21 Q. You tend to forget things that happened while you're  
22 on these drug binges?  
23 A. Yes.  
24 Q. How reasonable would you say your memory is when you  
25 have been using drugs?  
26 A. Not good at all.  
27 Q. Not good. Okay.  
28 Do you have trouble keeping track of time periods, for

1 example --

2 A. Now or when I was on it?

3 Q. When you were on the drugs?

4 A. Did I have trouble -- what did you say?

5 Q. Keeping track of time periods?

6 A. Yes.

7 Q. Would you forget if something happened before or after

8 an event?

9 A. Sometimes I would, yeah.

10 Q. Now, you've gotten off the drugs, has your memory

11 improved?

12 A. Yeah.

13 Q. Do you remember things more clearly?

14 A. Yes.

15 Q. But it didn't really improve your memory of certain

16 things that happened while you were on drugs, right?

17 A. Correct.

18 Q. That's correct?

19 A. Correct.

20 Q. Now, back when you were using drugs, was it common for

21 men you hung around with to try and have sexual relations with

22 you?

23 A. Yes.

24 Q. Okay. And do you know if they were all meth addicts?

25 A. Yeah, some were.

26 Q. Some of them were, but you don't know that all of them

27 were?

28 A. No, I don't know if all of them were.

1 Q. Some of them may have been clean and sober people?

2 A. Yeah.

3 Q. By the way, do you know for certain whether or not  
4 Mr. Martinez slept at the motel?

5 A. Yeah, he did.

6 Q. He did.

7 Now, you stayed there the night, then the next  
8 morning, I think you explained that Mr. Martinez drove, right?

9 What do you call him, Mario?

10 A. Mario.

11 Q. So you understood that rather -- the next morning  
12 Mario drove?

13 A. Yes.

14 Q. And he had that red Toyota you described?

15 A. Yes.

16 Q. You think you left the motel around 11:00 a.m.?

17 A. Yeah, 11:30.

18 Q. 11:30 maybe?

19 A. Yeah.

20 Q. So it was approximately an hour to an hour and a half  
21 maybe, between when you left the motel and when you were  
22 eventually arrested?

23 A. Yes.

24 Q. Does that sound right?

25 A. Yes.

26 Q. Do you now remember that, or are you just saying that  
27 because I'm telling you that's what it was?

28 A. I remember.



1 Q. You remember. Okay.  
2 When you left, do you remember the first place you  
3 went?  
4 A. We went to the house in Rubidoux.  
5 Q. Are you sure that's the first place you went?  
6 A. I'm not really sure, but I'm pretty positive.  
7 Q. It is possible you may have gone somewhere else?  
8 A. No, I don't think we did, though.  
9 Q. Okay. So you went to a house in Rubidoux, right; is  
10 that correct?  
11 A. Yes.  
12 Q. Sorry. I'm going to ask you again to answer out loud.  
13 I know it's tough because I sort of ask you yes, no questions  
14 and it's easy to nod. If you can, please remember to answer  
15 out loud.  
16 Mario was driving, but you told him where to go,  
17 right?  
18 A. Correct.  
19 Q. Because the place you went was to a friend of yours or  
20 a hookup of yours?  
21 A. Yes.  
22 Q. And you told Mario -- you might have told Mario, "Hey,  
23 I need to go get some shit"?  
24 A. Yes.  
25 Q. So you went to -- do you call him a connection or a  
26 connect?  
27 A. Yes.  
28 Q. To you, what does a connect or connection mean?

1 A. Someone you buy dope from.

2 Q. Okay. But you didn't tell Mr. Martinez that you were  
3 going to a connection's house, did you?

4 A. No. Well, no.

5 Q. You just told him you needed to go somewhere and you  
6 asked him to drive you?

7 A. Yeah.

8 Q. This person, did you go to their house?

9 A. Yes.

10 Q. Was it a man or a woman?

11 A. A man.

12 Q. I think you described to Mr. Steward a little bit of  
13 the mechanics of how the drug transaction took place; is that  
14 right?

15 A. Yes.

16 Q. And you explained that the distance was about 11 feet  
17 from where you are to the front of the attorney's table?

18 A. Yes.

19 Q. All right. And you got out of the car, I presume,  
20 right?

21 A. Yes.

22 Q. And you walked towards this person, who was behind a  
23 fence; is that right?

24 A. Yes.

25 Q. And was your back turned to the car?

26 A. Yes.

27 Q. So in other words, you were -- if you'd been seated in  
28 the car, was your back turned the entire time?

1           A.    Yeah.

2           Q.    And you were doing whatever you were doing, the  
3 exchange, right?

4           A.    Right.

5           Q.    And typically speaking, when you are buying drugs, you  
6 try and conceal things a little bit, right?

7           A.    Yeah.

8           Q.    You don't want to make it obvious you're handing money  
9 over?

10          A.    Correct.

11          Q.    And that you are taking drugs, right?

12          A.    Correct.

13          Q.    In this case, do you remember a little bit about the  
14 drug transaction?

15          A.    It was quick.

16          Q.    It was quick?

17          A.    Uh-huh.

18          Q.    And you just slide him some money?

19          A.    Yep.

20          Q.    And he slid you some drugs?

21          A.    Yes.

22          Q.    What did you do with them right away?

23          A.    Put them in my bra.

24          Q.    Put them straight into your bra?

25          A.    Yeah.

26          Q.    So you did that before you even turned back around  
27 towards the car, I presume?

28          A.    Yes.

1 Q. Why did you do it that way?

2 A. 'Cause it's supposed to be like that. I don't want  
3 nothing to happen to him.

4 Q. You don't want anyone around to see you?

5 A. Yeah.

6 Q. I think Krystal was the name of the person that gave  
7 you the drugs, right -- excuse me -- that gave you the money  
8 for the drugs?

9 A. Yeah.

10 Q. Okay. Krystal, to your knowledge, is not a friend of  
11 Mario's, right?

12 A. No, she's not.

13 Q. She's a friend of yours?

14 A. Yes.

15 Q. How long would you say you spent at -- during the  
16 entire transaction where you bought the drugs with your  
17 connect?

18 A. How long what?

19 Q. How long would you say the whole thing took place,  
20 when you got out of the car, bought the drugs, put the drugs  
21 back in your purse and got back in the car?

22 A. Like half a minute.

23 Q. 30 seconds?

24 A. Yeah.

25 Q. So pretty short. You bought from this person before?

26 A. A couple of times before, I think. I'm not sure.

27 Q. So did it appear he knew -- what did you tell him?

28 You walk up and tell him "I want \$20 worth"?

1 A. Yes.

2 Q. And typically, you thought you'd get about .2 grams?

3 A. Yes.

4 Q. You think that was enough for you to use by yourself?

5 A. Yes.

6 Q. Now, when you got back to the car, you never told

7 Mr. Martinez that "I just bought some meth," did you?

8 A. He just basically already knew.

9 Q. You think he knew, right?

10 A. I thought he knew.

11 Q. You don't know for sure because you never told him, "I

12 just bought some meth," right?

13 A. No.

14 Q. You didn't talk about it, did you?

15 A. No. Not really.

16 Q. Okay. And after that, you went directly to Jimmy's

17 house?

18 A. Yes.

19 Q. Was that a yes?

20 A. Yes.

21 Q. Did you tell him why you needed to go there?

22 A. I had to take a shower.

23 Q. Did you specifically tell him you needed to take a

24 shower?

25 A. Yeah.

26 Q. Did you use those words, or did you maybe say, "I've

27 got to go do some shit"?

28 A. No, I said I needed to go take a shower.

1 Q. So it was clear what you were talking about?

2 A. Yes.

3 Q. You don't remember for certain whether you ever used  
4 the word dope around Mr. Martinez, do you?

5 A. I'm sure I did.

6 Q. You think you did, or are you sure you did?

7 A. Ever, like the whole time I ever talked?

8 Q. Okay. I'm talking about relating to the drug buy, the  
9 stuff you bought, the methamphetamine you bought. You don't  
10 remember whether you specifically used the word dope, do you?

11 A. No, I don't remember. Well, yeah, I did.

12 Q. You think you did use the word dope?

13 A. Yes, I did.

14 Q. When did you use the word dope for sure?

15 A. When he was going to take me to get it.

16 Q. Okay. So you do believe you used the word dope? But  
17 a moment ago, you said you might have used the word shit?

18 A. I could have used either one. I don't know. I know I  
19 used one of them.

20 Q. I'm trying to -- the reason I'm trying to make this  
21 distinction is we're trying to figure out whether or not you  
22 actually knew what was on Mr. Martinez's mind; do you  
23 understand that?

24 A. Okay, yeah.

25 Q. Okay. So you're kind of using the words dope and shit  
26 interchangeably; is it fair to say?

27 A. Yeah.

28 Q. You might have said shit?

1           A.    I might have.  More likely, I probably said shit than  
2   dope.

3           Q.    Why do you say that?

4           A.    Because shit is just a better word, it's more easier  
5   to describe things.

6           Q.    You use that more commonly?

7           A.    Yeah.

8           Q.    You used it more commonly in the interview with  
9   Mr. Spydell, the detective --

10          A.    Yeah, I did.

11          Q.    And me.

12                 Now, previously you described the package you bought  
13   the methamphetamine, right?

14          A.    Correct.

15          Q.    You described it as clear plastic?

16          A.    Yeah.

17          Q.    Do you remember how big it was?

18          A.    No, I don't recall.  I just stuck it in my bra.

19          Q.    Was it small?  Obviously, you could conceal it in your  
20   bra?

21          A.    Right.

22          Q.    You handled it yourself?

23          A.    Yes.

24          Q.    You weren't wearing gloves or anything?

25          A.    No.

26          Q.    And was it -- sometimes it comes packaged in different  
27   sizes, right?

28          A.    All the time.

1 Q. Do you remember if this was abnormally small or  
2 abnormally larger than the bags you usually buy?

3 A. It was a weird-shaped bag.

4 Q. Weird shaped, why?

5 A. It wasn't your normal ziploc baggy.

6 Q. Okay. It was -- what kind of bag was it?

7 A. I don't really remember what kind of bag it was. I  
8 just stuck it in my bra.

9 Q. Did it seem like an ordinary plastic bag?

10 A. It didn't seem like it, no.

11 Q. How was it unusual? I'm trying to get at that.

12 A. The texture.

13 Q. Why was the texture unusual?

14 A. It felt -- it didn't feel like a regular plastic bag.

15 Q. Did it feel thinner, thicker?

16 A. Thinner.

17 Q. Thinner. It was a cheap, lighter plastic bag?

18 A. Yes, I think so.

19 Q. Do you remember if it was tied off at the top, or if  
20 it was --

21 A. I don't remember.

22 Q. Was it sealed somehow?

23 A. Yeah.

24 Q. And once you were back in the car, you never pulled  
25 out the drugs and showed them to Mario, did you?

26 A. No.

27 Q. And so you didn't get back in the car and say "look  
28 what I've got," right?



1 A. No, I didn't.

2 Q. You just asked him to take you straight over to  
3 Jimmy's house?

4 A. Yeah.

5 Q. .2 grams, that's about the amount you use, I think, in  
6 one sitting, is it what you told the District Attorney?

7 A. Yes.

8 Q. You didn't have a pipe on you, did you?

9 A. No.

10 Q. You didn't leave one anywhere in the car, right?

11 A. No.

12 Q. But at no point, did you ever have a pipe between the  
13 night before and the time you were arrested?

14 A. No, I didn't.

15 Q. To your knowledge, Mr. Martinez didn't have one,  
16 correct?

17 A. No, he didn't.

18 Q. He didn't say "There's one in my car" or anything like  
19 that?

20 A. No.

21 Q. And did Mr. Martinez take you over to Jimmy's house?

22 A. Yes.

23 Q. How long were you at Jimmy's house?

24 A. For about an hour and a half.

25 Q. Hour and a half. And at Jimmy's house you took a  
26 shower?

27 A. Yes.

28 Q. Describe the bathroom you took a shower in?

1 A. A shower, sink and a toilet, tile floor.

2 Q. A typical --

3 A. Regular bathroom.

4 Q. Regular bathroom.

5 Is Jimmy's place a house or an apartment?

6 A. A house.

7 Q. Do you remember, if you know, how many bathrooms there

8 were in the place?

9 A. Two bathrooms.

10 Q. Is one sort of in a hallway and another attached to a

11 bedroom or a master bedroom?

12 A. They're both in the bedroom.

13 Q. Okay. So is it a two-bedroom place then?

14 A. Four.

15 Q. Four bedrooms?

16 A. Uh-huh.

17 Q. You know sometimes in houses there's one bathroom

18 might be more --

19 A. There's one with two doors and one door.

20 Q. Is this more of a guest-type bathroom or one that's

21 associated closely with --

22 A. Yeah. This one was like one that only the family

23 uses.

24 Q. Okay. So maybe towards the back of the house more?

25 A. Yes.

26 Q. And is there any reason you choose that shower?

27 A. 'Cause that's Jimmy's bathroom.

28 Q. Because you know Jimmy specifically?

1 A. Yes.

2 Q. And he lets you use his shower?

3 A. Yes.

4 Q. And it's kind of a private shower?

5 A. Yes.

6 Q. When you were in there, I assumed you didn't take the  
7 drugs in the shower, right?

8 A. No. I set them on the counter next to my bra.

9 Q. But you kept them close to you, right?

10 A. Yes.

11 Q. And you didn't want anybody else, obviously, to  
12 probably see you undress for the shower, but also you didn't  
13 want anyone to see those drugs, right?

14 A. Correct.

15 Q. Why is that?

16 A. 'Cause they would probably take them.

17 Q. So some of the people over at Jimmy's house were also  
18 meth users?

19 A. Yes.

20 Q. Do you remember how many people were at Jimmy's house?

21 A. I don't recall. Maybe like three people.

22 Q. How many?

23 A. Three.

24 Q. Three people.

25 You indicated you also used some drugs over at Jimmy's  
26 house?

27 A. Probably, yeah, I did.

28 Q. Probably, yeah?

1 A. Yeah, I think I did.

2 Q. You think you did?

3 A. Yeah, I did.

4 Q. You did. You're sure now?

5 A. Uh-huh.

6 Q. Had you smoked some meth over there?

7 A. Yeah.

8 Q. How much?

9 A. Probably a bowl.

10 Q. How much is a bowl?

11 A. You could put however much you want in there.

12 Q. Okay. How much do you think you put in there?

13 A. I didn't put it in there.

14 Q. Somebody else put it in for you?

15 A. Yeah.

16 Q. So when you say a "bowl," then, does that mean you

17 finished up what was in the pipe?

18 A. Yeah.

19 Q. Does that mean you finished up what was in the pipe,

20 or does that mean that you took one hit off it?

21 A. We finished up what was in the pipe.

22 Q. You personally, do you remember how much you smoked,

23 though?

24 A. Like a couple of hits.

25 Q. Like a couple of hits.

26 Now, is a couple of hits typically enough to make you

27 feel it, get a little high?

28 A. Yeah.

1 Q. It this case, was it?  
2 A. Yeah.  
3 Q. You got a little high?  
4 A. Yeah, just a little bit, not really, though.  
5 Q. When was the last time you had smoked meth prior to  
6 that?  
7 A. Before I went to go back with Jessica.  
8 Q. Before?  
9 A. Right.  
10 Q. So before you went to the motel then?  
11 A. Yes.  
12 Q. Now, I think you told Mr. Steward that there might  
13 have been an understanding that you and Mario were going to use  
14 the meth you bought together; is that right?  
15 A. Right.  
16 Q. But then you clarified, then you said that was an  
17 assumption on your part?  
18 A. Yeah.  
19 Q. Is that a yes?  
20 A. Yes.  
21 Q. So again, you never expressly said the words "We're  
22 going to go smoke together," right?  
23 A. No, I didn't.  
24 Q. And, in fact, you never said the words "We're going to  
25 smoke some dope together," right?  
26 A. Correct.  
27 Q. You never even maybe said, "We're going to smoke some  
28 shit together," right?

1 A. Correct.

2 Q. A lot of it was an assumption on your part that  
3 Mr. Martinez understood what was going on, right?

4 A. Correct.

5 Q. After you left Jimmy's place, Mr. Martinez picked you  
6 up, right?

7 A. Yes.

8 Q. Again, he was alone in the car?

9 A. Yes.

10 Q. He didn't offer to pay you for any --

11 A. No.

12 Q. No. For anything, right?

13 A. For nothing.

14 Q. You discussed maybe buying some cigarettes with him?

15 A. Yeah.

16 Q. But at that point, you were concerned about police  
17 around, right?

18 A. Yeah.

19 Q. So you switched and you became the driver?

20 A. Correct.

21 Q. All right. You told him to take you to the store?

22 A. Yes.

23 Q. And I guess then you were intending to drive to the  
24 store, right? You started pulling away, right?

25 A. Yes.

26 Q. And then you ran into a friend nearby?

27 A. Yes.

28 Q. And you stopped and talked to that friend for a few

1 minutes?

2 A. Yes.

3 Q. Do you remember how long you talked to him?

4 A. For a few seconds. Until I noticed a cop was behind

5 me.

6 Q. Okay. A few seconds meaning what?

7 A. Like maybe a minute.

8 Q. Maybe a minute. Are you sure it was a minute?

9 A. It was real brief. It was real brief.

10 Q. And then the deputy pulled behind you in his patrol

11 car?

12 A. Yeah.

13 Q. Okay. I presume, by the way, this all happened before

14 you ever made it to the store?

15 A. Yes.

16 Q. Were you intending on buying cigarettes at the store?

17 A. Yes.

18 Q. I think you said Mario had some money. Maybe he was

19 going to buy the cigarettes?

20 A. Yeah, because I didn't have the money.

21 Q. Up to this point, Mario had been -- I think you said

22 respectful or respectable?

23 A. Yes.

24 Q. And at some point, you noticed a police car behind you

25 as you were talking to your friend?

26 A. Yeah.

27 Q. Who was the friend again?

28 A. Tommy.

1 Q. Tommy?

2 A. Uh-huh.

3 Q. And you didn't buy any drugs from Tommy, I presume?

4 A. No.

5 Q. You didn't ever talk about drugs with Tommy?

6 A. Nope.

7 Q. I think you told us on Friday you talked to him about

8 making sure he was okay because he got hit on the head?

9 A. Yeah, at the store.

10 Q. And you were a little nervous about the fact that

11 there was a police car behind you?

12 A. Yes.

13 Q. But you decided to drive away anyway?

14 A. Yeah.

15 Q. And then you saw the red lights for the car, right?

16 A. Yeah.

17 Q. And it was at that point that you decided to throw the

18 dope in the vent, right?

19 A. Yes.

20 Q. It was after the red light?

21 A. Yeah, after the red light.

22 Q. Are you sure about that?

23 A. As soon as I saw they were getting pulled over, I

24 threw the stuff.

25 Q. You knew you were getting pulled over because of the

26 red lights?

27 A. Right.

28 Q. But you were certain it was after the red lights that



1 you threw the drugs?

2 A. Yeah, I'm sure.

3 Q. Okay. Now, when you threw the drugs, I presume, you  
4 could vent the vent with your arm?

5 A. Not without making it look obvious.

6 Q. Excuse me?

7 A. Not without making it look obvious.

8 Q. But you could have physically, if you wanted to, reach  
9 in, grab the stuff, reach over and place it in the vent, right?

10 A. No, I don't think I would reach.

11 Q. Okay. Well, one of the things you chose to throw them  
12 or to toss them, because you didn't want to look obvious?

13 A. Yeah.

14 Q. So you tried to keep your hands low while you did it?

15 A. Yeah?

16 Q. So a police officer or a deputy wouldn't see you?

17 A. Yes.

18 Q. When you threw the drugs, where did they hit?

19 A. The little plastic part of the vent and then they fell  
20 right between Mario's feet?

21 A. Yeah, on Mario's side.

22 Q. You don't know for certain whether Mario saw the  
23 drugs; is that right?

24 A. No, I don't know for certain.

25 Q. Okay. At this point, you told him there's cops behind  
26 us, right?

27 A. Yeah.

28 Q. So. He might have been looking for the police?

1 A. Yeah, but yeah --

2 Q. But you'd previously been telling him don't move  
3 around, right?

4 A. Yeah.

5 Q. That was before you even saw the police lights?

6 A. When I knew the cops were behind us, I told him to  
7 stop moving, yeah.

8 Q. But I presume you saw the police before he did?

9 A. Yeah.

10 Q. You weren't -- well, once you were pulled over, do you  
11 remember being spoken to by the deputy?

12 A. Yes.

13 Q. Did he ever ask you if you had been using meth?

14 A. Yes, I think so.

15 Q. And what did you tell him?

16 A. I told him, yeah.

17 Q. You said you had been using meth that day?

18 A. I think -- I don't really recall what my answer was.  
19 It's been seven months ago.

20 Q. Okay. It's a pretty important question if you are  
21 asked by a police officer if you've been using drugs, don't you  
22 think?

23 A. Yeah.

24 Q. Okay. You don't remember what you said?

25 A. I think I said -- I don't honestly remember what I  
26 told him.

27 Q. You might have told him yes?

28 A. Might have, maybe, yeah.

1 Q. Were you a little -- what do you call it when you can  
2 feel the meth? Were you high or buzzed, what do you call it?

3 A. No, I wasn't high.

4 Q. You weren't high?

5 Did you feel it a little bit?

6 A. I felt it a little bit, but I wasn't like how I  
7 usually was.

8 Q. But the deputy did ask you if the drugs were yours,  
9 right?

10 A. Yeah.

11 Q. And you do remember lying about that?

12 A. Yes, I do.

13 Q. You told him they weren't yours?

14 A. (No response.)

15 Q. When you came to court you ran into Mrs. Martinez, in  
16 other words, Mario's mom, right?

17 A. Yes.

18 Q. Do you remember telling her you're sorry about what  
19 happened?

20 A. I think I told her sorry, that was it. We didn't talk  
21 that much about it.

22 Q. Did you ever tell her that you're sorry, it's your  
23 fault that your son is in trouble?

24 A. No, I didn't.

25 Q. Okay. Did you ever tell her anything about the drugs  
26 being yours?

27 A. No, I just told her that I'm sorry about what  
28 happened.

1 Q. Okay. Did she tell you she didn't want to talk to you  
2 about it?

3 A. We didn't want to talk about it, none of us did.

4 Q. Did Mrs. Martinez or anyone from his family ever  
5 pressure you or ask you to come to court to give a story about  
6 today?

7 A. No.

8 Q. Have you ever had any contact with anyone from his  
9 family?

10 A. No.

11 MR. KENYON: Thank you. No other questions.

12 THE COURT: All right. Further redirect examination?

13 MR. STEWARD: Yes, Your Honor. Thank you.

14 REDIRECT EXAMINATION

15 Q. (BY MR. STEWARD) Ms. Eves, I noticed that you agreed  
16 with almost every question he asked?

17 A. Yeah.

18 Q. And who does he represent?

19 A. Mario.

20 Q. And you know that, right?

21 A. Yes.

22 Q. There were even times when you would say something and  
23 then when he asked you a question, you would change your  
24 answer, right?

25 A. Yeah. It's easier to think about it. It happened a  
26 long time ago.

27 Q. When you were on direct examination and you were asked  
28 what you told Mario when you were going to buy the dope, you

1 actually used the word dope when you described what you told  
2 him, right? That you were going over there to buy dope?

3 A. Yes. I'm pretty sure I said the word dope. I use the  
4 word shit a lot, but I'm pretty sure I said dope that day.

5 Q. But you actually -- the words you use most often when  
6 you talk about meth is actually dope; is that right?

7 A. No, usually shit. I don't really remember what I said  
8 that day.

9 Q. Was it pretty clear in your mind that he knew you were  
10 going to buy dope?

11 A. Yes. Like we were both on the same page. We knew  
12 what was going on.

13 Q. Okay. How do you know that?

14 A. Because I just knew.

15 Q. Can you tell the jury how you knew?

16 A. 'Cause I had him take me there.

17 Q. Right. And how did you know he knew what you were up  
18 to?

19 A. What did you say again?

20 Q. You knew, he knew, you were going to buy  
21 methamphetamine?

22 A. Yes.

23 Q. How did you know that?

24 A. 'Cause he asked where we were going when we first got  
25 in the car.

26 Q. Right. And?

27 A. And I told him where we were going.

28 Q. And you don't remember the exact words?

1 A. No, I don't remember the exact words I used.

2 Q. But you made it very clear you wanted to buy some  
3 dope?

4 A. Yes.

5 Q. Even if you used the word shit, it is pretty common in  
6 the dope world what that means when you say, "I want to go buy  
7 some shit"?

8 A. Yes.

9 Q. Do you think he thought, well, maybe you were just  
10 going over there to pick up a suitcase or stuff that belonged  
11 to you?

12 A. No, because I didn't come out with a suitcase.

13 Q. In fact, you testified that it was your understanding  
14 the two of you were planning to go smoke that dope together  
15 later that day; is that right?

16 A. Yeah.

17 Q. And the two you had even talked about doing that?

18 A. Earlier that day, yeah.

19 Q. At what point in time did you talk about the fact that  
20 the two of you would later go use methamphetamine together?

21 A. Earlier in the day.

22 Q. Before or after you bought the dope?

23 A. Before. Before.

24 Q. Before. You had the told the defendant you would buy  
25 dope that the two of you could go use later together that day?

26 A. Yeah, but things had changed that day.

27 Q. Oh, really. What had changed?

28 A. We had got pulled over.

1 Q. Right. So that interrupted your plan to smoke dope  
2 with the defendant; is that right?

3 A. Well, I can't really say if he was going to smoke it,  
4 you know himself, but those were my plans.

5 Q. Pardon?

6 A. Those were my plans.

7 Q. And the two of you had talked about those plans,  
8 correct?

9 A. Earlier, yeah.

10 Q. All right. Now, the methamphetamine that you actually  
11 used at Jimmy's house, were those -- was that the  
12 methamphetamine you had purchased from your connection that  
13 day?

14 A. No.

15 Q. It was methamphetamine that someone else produced --

16 A. Yeah.

17 Q. -- is that right?

18 A. Yes.

19 Q. Where was the defendant at while you were using the  
20 methamphetamine at Jimmy's house?

21 A. Mario?

22 Q. Yes.

23 A. He had just dropped me off at Jimmy's house.

24 Q. So he wasn't there when you were smoking the  
25 methamphetamine at Jimmy's house?

26 A. No.

27 Q. He just left?

28 A. Yeah.

1 Q. How long was he gone?  
2 A. About an hour and a half. About a hour.  
3 Q. Was he not welcome at Jimmy's house?  
4 A. Well, I just can't bring just anybody to Jimmy's  
5 house.  
6 Q. What's your relationship with Jimmy?  
7 A. He's -- we're really close. He's my best friend.  
8 Q. Were you and him dating?  
9 A. No.  
10 Q. Had you dated before?  
11 A. No.  
12 Q. Was Jimmy there that day?  
13 A. Yes.  
14 Q. How many people were smoking meth?  
15 A. About three of us.  
16 Q. When you say "about," it could have been more?  
17 A. No, it was three people.  
18 Q. Three people. Does Jimmy use methamphetamine?  
19 A. Yeah.  
20 Q. Is she -- was she a frequent users as you were?  
21 A. Yes.  
22 Q. Okay. Was she using methamphetamine the night of her  
23 birthday?  
24 A. No. No one was.  
25 Q. How come?  
26 A. There was none there.  
27 Q. With it being her birthday, why didn't you guys go get  
28 methamphetamine?



1           A.    I don't really recall.  I don't think I had any, or I  
2 don't know.

3           Q.    Why couldn't you just go get some, especially since  
4 this was a special day for her?

5           A.    I don't think anybody had any that day.

6           Q.    You were working at the time, right?

7           A.    Yeah, part time.

8           Q.    All right.  Did you have money?

9           A.    Not that day, not that night.

10          Q.    In fact, when you bought the dope from this connection  
11 the next day, you said you had to get the money from Krystal?

12          A.    Yeah, but I think that might that no other connections  
13 had anything that night.

14          Q.    How sure are you that you're the one that actually  
15 purchased the methamphetamine found in the car on May 29?

16          A.    I'm pretty sure.

17          Q.    Pretty sure?

18          A.    I'm positive.

19          Q.    You are positive, 100 percent?

20          A.    Yes.

21          Q.    In spite of the fact you said your memory wasn't that  
22 reliable back then?

23          A.    No, I purchased it.

24          Q.    In spite of your memory not being that reliable, you  
25 know you bought it?

26          A.    Yes.

27          Q.    Did you throw the dope toward the vent before or after  
28 you were lit up by the officer?

1 A. I think after.

2 Q. Are you sure?

3 A. I'm not positive, no.

4 Q. Was the defendant moving around before you were lit  
5 up?

6 A. Yes, I believe so.

7 Q. Do you why he was moving around?

8 A. I don't really remember when he started moving around,  
9 if it was before or after the light.

10 Q. Did you talk to the defendant about the  
11 methamphetamine after you bought it?

12 A. No.

13 Q. Now, when you first came to court on this case within  
14 the last two weeks, why did you come to court?

15 A. Because you guys subpoenaed me.

16 Q. Was that the only reason, you came because you had a  
17 subpoena?

18 A. Well, yeah.

19 Q. And why did you come based on the subpoena?

20 A. Because you guys would arrest me if I didn't.

21 Q. All right. That's why you cooperated and came in?

22 A. Yes.

23 Q. Otherwise, you really wouldn't want to be here, right?

24 A. No.

25 Q. Why is that?

26 A. 'Cause -- well, it wouldn't be that important if you  
27 didn't want to be here, you guys would have arrested him.

28 MR. STEWARD: No further questions.

1 THE COURT: All right. Further cross-examination?

2 MR. KENYON: Very briefly, Your Honor.

3 FURTHER CROSS-EXAMINATION

4 Q. (BY MR. KENYON) Before the first time you came to  
5 court or between your first and your second trip to court, you  
6 and Mr. Steward talked about the fact you had outstanding  
7 warrants, right?

8 A. Yep.

9 Q. And Mr. Steward agreed with you that he wasn't going  
10 to do anything about your warrants, right?

11 A. Right.

12 Q. As long as you kept coming to court to testify for  
13 him?

14 A. Right.

15 Q. Again, you never smoked methamphetamine in front of  
16 Mario, right?

17 A. No, I didn't.

18 Q. Okay. You never showed him any of the methamphetamine  
19 you had in your hands?

20 A. No, I didn't.

21 Q. You never showed him the stuff --

22 A. No.

23 Q. -- that you had in your bra, right?

24 A. No.

25 Q. In fact, to your knowledge, the only thing you ever  
26 did illegal in front of Mr. Martinez was smoke marijuana,  
27 right?

28 A. Yeah.

1 Q. And you said he didn't even -- you don't even remember  
2 him doing that with you?

3 A. Uh-huh.

4 MR. KENYON: No other questions.

5 THE COURT: Mr. Steward, anything further?

6 MR. STEWARD: No, Your Honor.

7 THE COURT: All right. Then let's take our  
8 mid-morning break at this particular time. We'll break for 15  
9 minutes until five to 11:00.

10 Please remember the admonitions. Do not discuss  
11 the case with anyone. Do not form or express any opinions  
12 about the case. And we'll see you all back here in 15 minutes.

13 (Recess taken.)

14 THE COURT: Ms. Eves, you are subject to recall.

15 THE WITNESS: What's that?

16 THE COURT: Should you be needed again any further  
17 during the trial as a witness, you can be called back.

18 THE WITNESS: Today?

19 THE COURT: Well, today or tomorrow. We're going to  
20 probably finish the case tomorrow at some point. So either  
21 today or tomorrow. All right. Thank you.

22 We're back on the record of the People versus Mario  
23 Martinez. Mr. Martinez is present. Both counsel are present.  
24 All members of our jury are present. Mr. Steward If you would  
25 like to call your next witness, please.

26 MR. STEWARD: Yes. The people call Julia Martinez.

27 THE CLERK: Do you solemnly state the testimony you  
28 shall give in the matter now pending before this court shall be

1 the truth, the whole truth, and nothing but the truth, so help  
2 you God?

3 THE WITNESS: Yes.

4 THE CLERK: Please be seated.

5 Please state and spell your first and last name for  
6 the record.

7 THE WITNESS: Julia Martinez, J-u-l-i-a,  
8 M-a-r-t-i-n-e-z.

9 THE CLERK: Thank you.

10 THE COURT: All right. Mr. Steward, you may inquire.

11 JULIA MARTINEZ,  
12 called as a witness on behalf of the People, having been first  
13 duly sworn, was examined and testified as follows.

14 DIRECT EXAMINATION

15 Q. (BY MR. STEWARD) Good morning, Mrs. Martinez.

16 A. Good morning.

17 Q. Mrs. Martinez, what's your relationship with the man  
18 that's at the end of counsel table?

19 A. My son.

20 Q. Mario Martinez?

21 A. Yes.

22 Q. Back on May 29th, 2007, did you own a red Toyota 1987,  
23 license plate 2FBN637?

24 A. Yes.

25 Q. How many years had you owned that car?

26 A. It's been a while, maybe like 12 or 13 years.

27 Q. All right. Was that your primary vehicle back in  
28 May of this year?

1 A. No.

2 Q. And did anybody have access to that car back in May of  
3 this year?

4 A. Yes.

5 Q. Who was that?

6 A. It's a second car that everybody has access to.  
7 Everybody can use that car 'cause it's a car that everybody  
8 uses.

9 Q. When you say everybody, who are you talking about?

10 A. Anybody in my family. If a car breaks down, they come  
11 and borrow that one. There's an extra car.

12 Q. Who was in possession of it on May 29th, 2007?

13 A. Mario.

14 Q. Did he have free access to the car?

15 A. Well, the keys are hanging there for anyone who wants  
16 to use it.

17 Q. Including him?

18 A. Including him.

19 Q. Was he living with you at the time?

20 A. Yes.

21 Q. All right. Did you, at some point, get a call from  
22 the police on May 29, that they had the car and your son was  
23 being arrested?

24 A. Yes.

25 Q. Then did you go and take possession of the car from  
26 the police so it didn't have to be towed?

27 A. Yes.

28 Q. Now, were you using methamphetamine back in May of

1 '07?

2 A. No.

3 Q. Have you ever?

4 A. No.

5 Q. Or your husband?

6 A. No.

7 MR. STEWARD: I have no further questions.

8 Thank you.

9 THE COURT: Cross-examination?

10 MR. KENYON: Yes, thank you, Your Honor.

11 CROSS-EXAMINATION

12 Q. (BY MR. KENYON) Hello, Mrs. Martinez.

13 A. Hello.

14 Q. You said Mario was living with you back in May of  
15 2007?

16 A. Yes.

17 Q. Is it true that he had been living with you since  
18 about February of that year?

19 A. Yes.

20 Q. And when he was living with you, was he working at the  
21 time?

22 A. No, he wasn't.

23 Q. Was he living with you at that time?

24 A. Yes, he was.

25 Q. What sort of things was he doing?

26 A. Mario was working on the yard because we were having a  
27 wedding reception there. And he was getting the yard ready for  
28 the reception. Mario is a hardworking man. He was restoring a

1 car for his brother too and --

2 THE COURT: Just answer the question.

3 Q. (BY MR. KENYON) If you can, this isn't like a normal  
4 conversation. I'll ask a question. You give me the answer  
5 just to the question.

6 A. I'm sorry.

7 Q. That's okay. People do it all the time. I do it too.  
8 Mrs. Martinez, how big is the property you live on?

9 A. It's like a half acre.

10 Q. Half an area. So pretty good size place?

11 A. Yes.

12 Q. Specifically, what type of work was he doing on the  
13 property?

14 A. He was planting trees, flowers, getting the yard  
15 ready. Like I say, for the -- just maintaining the yard.

16 Q. Okay. You said you were having a wedding reception?

17 A. Reception, yes.

18 Q. Who's that for?

19 A. It was my granddaughter that was marrying a peace  
20 officer from Riverside.

21 Q. Is she a peace officer?

22 A. No. He is.

23 Q. He is. And what's his name?

24 A. It's Fred Martinez.

25 Q. Fred Martinez.

26 Now, you said the reception was going to be at the  
27 house?

28 A. Yes.



1 Q. What was the date the reception was planned for?

2 A. The day was on -- since all this, I even forgot. It  
3 was like in June.

4 Q. June. So shortly after Mario was arrested?

5 A. Yes.

6 Q. And how many days a week would you say Mario was doing  
7 work in the yard or outside relating to the reception?

8 A. Every day.

9 Q. Seven days a week?

10 A. Well, not Saturday and Sunday, but mostly every day.

11 Q. Okay. He might do occasional work on Saturday and  
12 Sunday, just one little small task or something?

13 A. Yes.

14 Q. Was it several hours a day, or was it just one little  
15 job here and there?

16 A. It was several hours. The yard was pretty bad.

17 Q. Okay. And you said planting trees, what other things  
18 was he doing?

19 A. Just moving plants around. He did a little fence for  
20 the roses out of brick. Well, everything our yard needs, you  
21 know, I had him cut the grass all the time, and water. We have  
22 like about seven trees out there. There was a lot of leaves.

23 Q. I think you indicated he was also doing some repairs  
24 or work on a car?

25 A. Yes.

26 Q. And what car was this?

27 A. On the '87. Oh, the one he was restoring?

28 Q. Yes.

1           A.    My son.  It was an old car that he was restoring.

2           Q.    Do you know -- whose car is it?

3           A.    My son's, my other son.

4           Q.    Your other son?

5           A.    Yes.

6           Q.    What sort of work was Mario doing on it, do you know?

7           A.    Sanding it down, trying to take it apart, took the

8 whole car apart.  Sanding it down, working on it.  The days he

9 didn't work on the yard, he would work on the car.

10          Q.    Okay.  When you say "sanding down," you mean removing

11 the paint?

12          A.    Yes.

13          Q.    And he completely disassembled most of the car, the

14 engine?

15          A.    No, it doesn't have an engine.

16          Q.    But the interior and exterior?

17          A.    Yes.

18          Q.    And do you know when -- I forgot to ask you about the

19 yardwork, when did he start working on the yard?

20          A.    He started on the car first.  And then he had to stop

21 the car to start working on the yard.

22          Q.    When did he start on the car?

23          A.    The car, I can't really remember the dates.

24          Q.    Had he been working on it more than one or two months?

25          A.    Yes, about -- off and on.

26          Q.    Off and on for how long did you say?

27          A.    Maybe two months.

28          Q.    Maybe two months.

1           And how about the yard? How long had he been working  
2 on the yard regularly?

3           A. Well, I said he jumped from the car to the yard. And  
4 finally he had to let the car go to finish the yard.

5           Q. Because it was coming up against this deadline for the  
6 wedding?

7           A. Yes. Uh-huh.

8           Q. So is a month fair to say for the yardwork?

9           A. I'd say more.

10          Q. More than a month, two months?

11          A. I couldn't say. I don't want to say.

12          Q. Fair enough. But you are sure it's more than a month?

13          A. Yes.

14          Q. What sort of hours was he typically working on it,  
15 normal, sunup to sunset?

16          A. He gets up pretty early and works on it.

17          Q. What time does he get up?

18          A. He gets up -- like I said, it's early in the morning,  
19 like 7:00, 8:00.

20          Q. 7:00, 8:00. All right.

21                 And does he tend to keep pretty normal hours, would  
22 you say?

23          A. Yes, he tends to -- I have to tell him to take a break  
24 'cause especially when it was really hot, I would tell him you  
25 shouldn't be out there too long.

26          Q. How about at nights? What does he do most evenings?  
27 Does he spend it there at the house with the family?

28          A. Well, yes.

1 Q. Sometimes, most of the time?

2 A. Most of the time.

3 Q. All right. So would you say he keeps -- he tends to  
4 keep fairly normal, regular hours?

5 A. Yes.

6 Q. I want to talk to you a little bit about -- well,  
7 actually, you mentioned a guy named Freddy?

8 A. Freddy.

9 Q. Was Freddy the one that's getting married?

10 A. Freddy.

11 Q. Pardon me. Mario?

12 A. Freddy is the baby. Okay.

13 Q. Well, Freddy then, you said -- what does he do? He's  
14 a police officer?

15 A. Yes.

16 Q. Who does he work for?

17 A. Riverside Sheriff's. He works in Banning or Indio or  
18 someplace over there.

19 Q. Is he over at the house fairly often?

20 A. He doesn't come too often.

21 Q. But he's there sometimes?

22 A. Yes.

23 Q. And it was his car that Mario was working on?

24 A. No, it's my son's car.

25 Q. Your son's car. I'm sorry. Freddy was the one  
26 getting married?

27 A. Right.

28 Q. I had it backwards.

1 Does Freddy come over to the house, though, sometimes?

2 A. Yes.

3 Q. Do you have another relation named Steve?

4 A. Yes, I do.

5 Q. Who is Steve?

6 A. Steve is my granddaughter's husband. He's a sheriff  
7 for L.A.

8 Q. A sheriff for L.A. And is he ever over at the house?

9 A. Yes.

10 Q. Do you know if Mario has ever done any work for him?

11 A. For Steve?

12 Q. Yes.

13 A. I think once he went and tried to straighten out his  
14 yard. I don't know what else he could have done for him.

15 Q. I want to talk to you a little bit about the car  
16 itself, the Toyota. Do other family members sometimes use and  
17 take the car?

18 A. Yes.

19 Q. Who else does?

20 A. My husband. My daughter has borrowed it a couple of  
21 times to go to work. My son John has took it to his house one  
22 time to get to work. But most of time, the car is there at my  
23 house.

24 Q. Now, you and I have talked about the car a little bit  
25 before, right?

26 A. Yes.

27 Q. Describe the condition of the car, overall.

28 A. It's maroon. It has tinted windows. It has a little

1 dent on the passenger's side on the light, the window on the  
2 passenger side doesn't go down.

3 Q. Okay. We talked about a couple of things.

4 First, you said it was tinted?

5 A. Yes.

6 Q. What do you mean by "it was tinted," which windows?

7 A. All the windows except for the front

8 Q. All the windows except for the front.

9 How dark would you say it is?

10 A. It's pretty dark.

11 Q. Okay. And then you said one of the windows is broken,  
12 the passenger's side?

13 A. It doesn't go up and down.

14 Q. It's stuck up or stuck down?

15 A. It's up (indicating).

16 Q. It's up and it's fixed stuck up?

17 A. It's just stuck. It doesn't go down.

18 Q. How long has it been like that?

19 A. Since the last time I had my mechanic come and work on  
20 it, way before the beginning of the year or last year some  
21 time.

22 Q. And on the date of May 29th, the windows, I presume,  
23 were still tinted then?

24 A. Yeah, they were.

25 Q. And likewise the window was still broken then?

26 A. Yes.

27 MR. KENYON: No other questions. Thank you.

28 THE COURT: Redirect examination, Mr. Steward.

REDIRECT-EXAMINATION

1  
2 Q. (BY MR. STEWARD) Which window did you say was broken,  
3 Mrs. Martinez?

4 A. The passenger's side.

5 Q. The one on the passenger door?

6 A. Yes.

7 Q. Is that a two-door or a four-door car?

8 A. It's a two-door.

9 Q. So the window was completely broken out?

10 A. No, it just doesn't go down.

11 Q. It just doesn't go down. I see. So you're saying  
12 it's stuck in place up?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes.

16 Q. And has it been fixed yet?

17 A. No, not that I know of.

18 Q. Okay. Is it one of those that you roll down manually,  
19 or does it have an electric switch on it?

20 A. Electric switch.

21 Q. Electric switch, and it's broken or something?

22 A. Yes, uh-huh.

23 Q. You don't know how long it's been broken?

24 A. It's been broken for a long time. The driver's side  
25 goes down, but not that one.

26 Q. Were you paying your son for working in the yard or  
27 was that kind of his way of him helping out since he was living  
28 there at your house and probably eating your food?

1           A.    Yes, I would give him a little spending money, yeah, I  
2 would give him something, but I couldn't afford to give him a  
3 full-time day job, you know.

4           Q.    You were also supplying a place for him to live?

5           A.    Yes.

6           Q.    How often would you give him money?

7           A.    Not too often.

8           Q.    Do you have any idea when the last time was that you  
9 gave him money prior to him being arrested May 29th?

10          A.    No, I don't.

11          Q.    On the night of May 28th, the night before he got  
12 arrested, do you know where he spent the night?

13          A.    No, I don't.

14          Q.    Did you see him leave some time the day before with  
15 your car?

16          A.    I can't -- no.

17          Q.    You didn't. Well, let me ask you this.

18                When is the last time you remember seeing your red  
19 Toyota, prior to you learning your son had been arrested?

20          A.    I couldn't really say. The car is parked in the back  
21 on the side. I couldn't say if it was there or not. I have no  
22 reason to keep an eye on him. He wasn't doing anything bad. I  
23 mean, I just can't -- he is a grown man.

24          Q.    Would he sometimes go out at night?

25          A.    No. I imagine he would. I don't know. I couldn't  
26 say.

27          Q.    You weren't really babysitting him?

28          A.    No, I can't say. He is a grown man.



1 MR. STEWARD: Okay. I have nothing further.  
2 Thank you.  
3 THE COURT: Further cross-examination?  
4 MR. KENYON: None, Your Honor.  
5 THE COURT: All right. Thank you, Mrs. Martinez,  
6 you're excused.  
7 THE WITNESS: Can I just say one thing?  
8 THE COURT: No. Thank you.  
9 MR. STEWARD: We would like to briefly recall Deputy  
10 Hiraoka, Your Honor.  
11 THE COURT: All right. For the benefit of our new  
12 court reporter, Deputy, could you spell your first and last  
13 name, please.  
14 THE WITNESS: First name is Josh, J-o-s-h, last name  
15 is Hiraoka, H-i-r-a-o-k-a.  
16 THE COURT: All right. You've been previously sworn  
17 as a witness in this case. You're under the same oath to  
18 testify to the truth; do you understand?  
19 THE WITNESS: Yes.  
20 THE COURT: All right. Thank you.  
21 JOSH HIRAOKA,  
22 called as a witness on behalf of the People, having been first  
23 duly sworn, was examined and testified as follows.  
24 DIRECT EXAMINATION.  
25 Q. (BY MR. STEWARD) Good morning, Deputy Hiraoka.  
26 A. Good morning.  
27 Q. I want to show you an exhibit, marked People's  
28 Exhibit 3 for identification. Here's the exhibit tag.

1 Do you recognize this item?

2 A. Yes, I do.

3 Q. Do you recognize this envelope?

4 A. Yes, I do.

5 Q. All right. Do you recognize the writing at the top?

6 A. Yes.

7 Q. And whose writing is that?

8 A. I believe at the time it is another deputy who was at  
9 the station and I had placed this into evidence.

10 Q. All right. Do you recognize what's -- well, let me  
11 ask you this. Do you see on the back it says Riverside  
12 evidence with the tape seal over the opening of the envelope?

13 A. Yes.

14 Q. Do you recognize these initials, JH?

15 A. Yes.

16 Q. And whose initials are those?

17 A. Those are my initials.

18 Q. And can you tell us how -- well, can you tell us the  
19 procedure that took place when you booked the item into  
20 evidence?

21 A. The form on the opposite side is filled out to have  
22 the items, the drugs sent to the Department of Justice so they  
23 can be examined, and in the process the drugs are sealed and  
24 placed in this envelope here. And tape is placed on the  
25 opening, on the flap, and then I initial the tape.

26 Q. All right. Are you the one that put the item in the  
27 envelope?

28 A. Yes, I was.

1 Q. But someone else actually filled out the envelope on  
2 the front?

3 A. Yes, they filled the form out.

4 Q. Including your name?

5 A. Yes, they did.

6 Q. Is that your ID number there --

7 A. Yes, it is.

8 Q. -- 3667?

9 A. I'm sorry. Yes, it is.

10 Q. All right. And it's from May 29th, 2007?

11 A. Yes.

12 Q. And is this accurate in terms of the name of the  
13 suspect, Mario Martinez?

14 A. That's correct.

15 Q. With the date of birth, 8/4/59?

16 A. Yes.

17 Q. Who is that referring to?

18 A. That is referring to the defendant here today.

19 Q. All right. Let me show you what I took out of the  
20 yellow envelope. Do you recognize this item?

21 A. Yes, I do.

22 Q. What is it?

23 A. It is the drugs and the packaging of methamphetamine,  
24 which I found in the vehicle next to the defendant's feet.

25 Q. All right. Does this appear to be what it looked like  
26 when you took it out of the car?

27 A. Yes, it did.

28 Q. All right. Now, do you recognize the blue writing on

1 the -- what would you call this plastic that's around the -- it  
2 looks like there's -- the drugs are in the little plastic  
3 baggie, but then it's inside some kind of plastic pack?

4 A. Yes, it's a sealed plastic package, which is performed  
5 prior to placing it in the envelope.

6 Q. All right. Do you recognize the blue writing on  
7 there, or was that added later when it was tested by the  
8 laboratory?

9 A. That was added afterwards when it had been sent to  
10 DOJ.

11 Q. All right. So this is the item you saw near the  
12 defendant's feet in the car?

13 A. Yes, it is.

14 Q. Is the only evidence that was booked into evidence  
15 in this case?

16 A. Yes.

17 Q. Now, this yellow envelope looks like it's been cut  
18 open, do you know who did that?

19 A. I did. It was on this past Thursday.

20 Q. After it was brought to court?

21 A. After it was brought to court.

22 Q. And when you opened the envelope, was it sealed at the  
23 time?

24 A. Yes, it was.

25 Q. Both with the seal that you had signed originally when  
26 it was booked into evidence, as well as the seal on the other  
27 side of the envelope that says the Department of Justice for  
28 the laboratory where they opened it and resealed it?

1 A. Yes.

2 All right. I have no further questions.

3 THE COURT: All right. Cross-examination.

4 MR. KENYON: Yes. Thank you.

5 CROSS-EXAMINATION

6 Q. (BY MR. KENYON) Deputy, so we're clear of this  
7 package, only the part inside the little smaller baggie was  
8 what was in the pipe found on the floor, correct?

9 A. That's correct.

10 Q. All right. And was it approximately -- did it look  
11 approximately like this when you found it, or was it bundled up  
12 more or --

13 A. It was -- actually, it looked similar to that. I  
14 don't believe it had been like wrapped up or had been placed in  
15 a ball or any other shape.

16 Q. I think you testified that you thought it might have  
17 been tied off, right, previously?

18 A. That's correct.

19 Q. Okay. And by tied off, you meant what, knotted up?

20 A. Twisted. Twisted closed.

21 Q. Twisted closed and also tied into a knot?

22 A. No, I don't believe that I said it was tied in a knot,  
23 no.

24 Q. Okay. I just wasn't sure.

25 Do you recall, now that you've see it, any more  
26 specifics about how it was packaged, or rather, how it was tied  
27 off or --

28 A. It appears to be twisted, twisted closed. I can't

1 really see anything specific on it.

2 Your Honor, may I approach the witness?

3 THE COURT: Yes.

4 Q. (BY MR. KENYON) The jury is going to have this for  
5 their inspection so they'll be able to see how it appears now.  
6 But I guess my question is, upon seeing it, does it refresh  
7 your recollection at all, as to whether or not you remember it  
8 being tied off or sealed in any different way? Was it twisted  
9 over itself?

10 A. It was twisted. I don't believe this plastic or --  
11 I'm sorry -- not plastic, the tape, which is wrapped around it  
12 was on it at the time.

13 Q. So you think maybe the tape was added by the  
14 Department of Justice or by someone who tested it?

15 A. Yes.

16 Q. To reseal it?

17 A. Yes.

18 Q. All right. Thank you. How about the rest of this, it  
19 looks like excess baggage or excess baggy part back here. Was  
20 that -- did it kind of look like that? Or was that maybe  
21 wrapped over the rest of the drugs, do you remember?

22 A. It looks similar to that, yes.

23 Q. So just kind of dangling lose?

24 A. Yes.

25 Q. Upon seeing it, it's not actually a very small piece,  
26 but it looks like it's three inches long maybe?

27 A. Yes.

28 Q. In your patrol vehicle, you're equipped to fingerprint

1 items, correct?

2 A. Yes, we can.

3 Q. And I don't see any black fingerprint powder. I  
4 presume you never took any fingerprint test on this?

5 A. No, I did not.

6 Q. Likewise, did you attempt to collect any DNA from the  
7 sample, do you know?

8 A. No.

9 Q. You sent this over to the Department of Justice for  
10 testing; is that right?

11 A. That's correct.

12 Q. And at the Department of Justice they're also capable  
13 of testing for both fingerprints and DNA there, correct?

14 A. I don't know.

15 Q. Okay. Fair enough. Well, you didn't request any DNA  
16 or fingerprint testing, I presume?

17 A. No, I did not.

18 MR. KENYON: No other questions. Thank you.

19 THE COURT: Any redirect examination?

20 MR. STEWARD: No, Your Honor.

21 Deputy Hiraoka, you can resume your seat at counsel  
22 table, please.

23 Mr. Steward, your next witness, please.

24 MR. STEWARD: Your Honor, the People rest in terms of  
25 witnesses. We rest subject to the admission of exhibits.

26 THE COURT: All right. Let me see counsel at sidebar,  
27 please.

28 (The following proceedings were held at

1 sidebar without the court reporter.)

2 THE COURT: All right. After talking with counsel,  
3 there are some things I need to go over with them, like the  
4 jury instructions. So I'm going to have you folks break a  
5 little bit early for lunch. We'll see you all back here at  
6 1:30. We'll see where we are at at that time. But the People,  
7 the prosecution has rested their case at this point in time.

8 And so the admission still applies. Don't discuss the  
9 case with anyone. Don't form or express any opinions about the  
10 case. We'll see you all back here at 1:30.

11 THE COURT: The jury have left the courtroom. What we  
12 discussed just recently at sidebar was scheduling issues, and I  
13 believe at this point Mr. Kenyon is going to speak to  
14 Mr. Martinez about whether or not he's going to testify; is  
15 that right?

16 MR. KENYON: Yes, Your Honor.

17 THE COURT: All right. Speak to him again about that  
18 subject. And then there was also one or two stipulations that  
19 the People and the defense were still working on. So let's  
20 take about a five-minute break at this point and that will give  
21 you another opportunity to speak to Mr. Martinez about possibly  
22 testifying, and we'll come back and deal with the People's  
23 exhibits, I believe there are three of them that have been  
24 marked. And then we'll go over jury instructions. All right.  
25 Thank you.

26 (Recess taken.)

27 THE COURT: All right. We're back on the record in  
28 the case People versus Mario Martinez. Mr. Martinez is



1 present. Both counsel are present. We're out of the presence  
2 of the jury.

3 And let's first deal with the People's exhibits, and I  
4 believe there are 3 exhibits that have been previously marked.

5 And Mr. Kenyon, any objection to any of those three  
6 exhibits -- well, first of all, Mr. Steward, I presume you're  
7 offering all three exhibits into evidence?

8 MR. STEWARD: Yes, Your Honor.

9 THE COURT: All right. Mr. Kenyon, any objection?

10 MR. KENYON: No objection.

11 THE COURT: All right. Then all three of the People's  
12 exhibits will come into evidence at this time.

13 And then, as far as the defense case is concerned,  
14 what is the position of Mr. Martinez as far as whether or not  
15 he's going to testify?

16 MR. KENYON: He is likely not to testify. So he will  
17 not testify.

18 THE COURT: All right. And then I believe there were  
19 one or two stipulations that the attorneys were still working  
20 on?

21 MR. KENYON: Your Honor, we have discussed it and the  
22 defense decided we're not going to attempt to proffer any of  
23 that evidence in by stipulation or any other way. So  
24 essentially, we'll be resting our evidence as well.

25 THE COURT: All right. And this was relating to  
26 possible testimony by Mr. Martinez's -- by his parole agent  
27 regarding his drug testing?

28 MR. KENYON: That's correct, Your Honor.

1 THE COURT: And what we also discussed, the DOJ report  
2 or a stipulation in that regard or not?

3 MR. STEWARD: No. I think our Stipulation No. 1  
4 covers all that.

5 THE COURT: All right. Great. Then as soon as the  
6 jury comes back at 1:30 then Mr. Kenyon, I'll ask the defense  
7 if they intend on presenting any evidence and you can indicate  
8 that defense --

9 MR. KENYON: You know, actually I just realized  
10 something, there was one question I needed to ask Ms. Martinez  
11 and I did not ask her when she was on the stand. It would have  
12 been beyond the scope anyway. It's just whether or not she was  
13 told by Candance Eves about she came to court and apologized.  
14 So I do need to call her for just three or four questions. I'm  
15 sorry about that.

16 THE COURT: I'm intending she's coming back at 1:30.

17 MR. KENYON: Well, yeah, I'm sure she'll be here.

18 THE COURT: All right. You can call her for that  
19 purpose at 1:30 then. And then we'll instruct the jury and  
20 then argue the case at that point in time.

21 All right. Let's go over jury instructions, if we  
22 might. I don't think it will take that long.

23 Well, what I'm going to do is I'm going to go through  
24 the jury instruction requests chronologically. I have received  
25 request sheets from both the People and the Defense. And as I  
26 go through these I'll indicate for the record which side has  
27 requested them. If either counsel will want to be heard,  
28 please feel free to speak up. As I go through them, I'll also

1 indicate, of course, if I'm inclined to give them or not.

2 Both the People and the Defense have requested Calcrim  
3 instructions Nos. 100, 101, 102, 104, and 105. I will give  
4 those instructions.

5 The People have also requested 106. I've already  
6 given that instruction as well.

7 And both sides have requested 124.

8 All of these pretrial instructions, I'm not going to  
9 read them again. I've already read them when we began the  
10 trial. But I will include them in the packet of instructions  
11 that goes back into the jury room when they begin their  
12 deliberations. And again, some of them are repetitive of the  
13 200 series instructions.

14 And in that regard, both the People and the Defense  
15 have requested 200, 201 and 202. I'll give those.

16 Both sides have requested 220, 222, 223. And I will  
17 give those.

18 The People have requested 224, and the Defense has  
19 requested 225.

20 MR. KENYON: Your Honor, the Defense is going to  
21 change our request to 224 as well.

22 THE COURT: I think that's more appropriate, actually,  
23 given the state of the evidence in this case, and the fact that  
24 the crime was a general intent crime. So all right, I will  
25 give them 224 and not 225.

26 Both sides have requested 226. And I will give it.

27 The People have requested 250, and the Defense has  
28 requested 251. I believe the charge is, in fact, the general

1 intent crime. So 250 would be applicable

2 MR. KENYON: For the record, the defense agrees and  
3 we're modifying a request there accordingly.

4 THE COURT: All right. Thank you.

5 Then the People have requested 300. I will give it.  
6 Both sides have requested 301 and 302. I will give  
7 them.

8 The Defense has requested 303.

9 MR. KENYON: We're withdrawing that. I don't believe  
10 there's any evidence along those lines.

11 THE COURT: I don't think so either.

12 All right. Thank you.

13 The People have requested 316. I'm not sure what that  
14 relates to.

15 MR. STEWARD: Actually, I think both sides have  
16 requested 316. I think it would pertain to Candance Eves'  
17 testimony, because there was evidence that she was convicted of  
18 a car theft, well vehicle taking and receiving stolen property.

19 THE COURT: Well, those ultimately ended up being  
20 misdemeanor offenses. So I think prior criminal conduct  
21 alternative b will be appropriate in that instruction. I'll  
22 give that. You're right, both sides did request that.

23 The Defense is requesting 317, and I'm not sure what  
24 former testimony was?

25 MR. KENYON: I'm going to withdraw it. I wasn't sure  
26 what preliminary hearing testimony would come in.

27 THE COURT: All right. Thank you.

28 Both sides have requested 318. I will give it.

1           And then the Defense is requesting 319.

2           MR. KENYON:    Withdrawn.

3           THE COURT:   All right.  Thank you.

4           Both sides have requested 355.  I will give it.

5           MR. STEWARD:  Does the court have 332 as well, expert  
6 witness testimony?

7           THE COURT:  Oh, I do.  What would that relate to?

8           MR. STEWARD:  The deputy's opinion that it was a  
9 usable quantity.

10          THE COURT:  I don't think that instruction relates to  
11 that.  Then every deputy or every police officer would be an  
12 expert.  I don't think he qualifies as an expert in that  
13 regard.  I think he's qualified to express an opinion based  
14 upon his experience and training, but I don't think he  
15 qualifies as an expert witness.

16          MR. STEWARD:  Well, I disagree.  I thought the law is  
17 pretty broad on what an expert is, someone who can assist the  
18 trier of fact because of their training and experience.  He has  
19 more training and experience presumably than the jurors so --

20          THE COURT:  He does.  And I allowed him to express an  
21 opinion in that regard, but I distinguish an everyday street  
22 cop versus someone who like for instance, Mark Bender from the  
23 Sheriff's Department, who's been a drug investigator for over  
24 20 years, who specializes in narcotics.  And I think that's the  
25 same as, to a certain extent, talking about a gang investigator  
26 who's going to express an opinion in that regard.  Every cop  
27 cannot express an opinion regarding gang involvement,  
28 necessarily.  Or a drug recognition expert, whether someone is

1 under the influence pursuant to Health and Safety Code Section  
2 11550. Again, I just don't think Deputy Hiraoka rose to that  
3 level. So I'm not going to give 332.

4 MR. STEWARD: All right. Could I just put something  
5 on the record that the defense did not request nor do they  
6 appear to be requesting that instruction at this time?

7 THE COURT: They're not requesting 332.

8 MR. STEWARD: I just want the record to be clear of  
9 that.

10 THE COURT: What about lay opinion testimony, 333?

11 MR. STEWARD: I'm not requesting that.

12 THE COURT: No sides have requested it.

13 MR. KENYON: I guess --

14 THE COURT: I'm just bringing it up. I don't know if  
15 necessarily if it's appropriate or warranted.

16 MR. KENYON: I think we both agree that it's not  
17 really necessary.

18 THE COURT: All right.

19 MR. KENYON: The Court did skip over 334, which the  
20 prosecutor requested. I'm actually now requesting.

21 THE COURT: I did. I'm sorry. And I didn't have that  
22 one pulled for some reason. That relates to Ms. Eves, correct?

23 MR. STEWARD: Yes

24 THE COURT: All right.

25 MR. STEWARD: I think we need it

26 THE COURT: Yes, I'll give it. All right.

27 And then we indicate 335. I'll give it.

28 Both sides requested 358 and 359. I will give them.

1           The People have requested 370. Mr. Kenyon, any  
2 objection?

3           MR. KENYON: No objection.

4           THE COURT: All right. I'll give it then.

5           The People have requested 400 and 401. The People  
6 have requested 400, and I already had pulled 401.

7           MR. STEWARD: Yes, I absolutely told your clerk I was  
8 meaning to add 401.

9           THE COURT: Right. She gave it to me just now. If  
10 you give 400, you need to give 401. So I'll give both of  
11 those.

12          MR. STEWARD: I'm also withdrawing 3735, since we  
13 never brought in 1101 (b) evidence.

14          THE COURT: All right. Thank you.

15          That brings us to the instruction relating to the  
16 crimes themselves. And for Count 1, that being a violation of  
17 Section 11379, both sides have requested 2300. I will give it.

18          And for Count 2, which alleges a violation of Health  
19 and Safety Code Section 11377 Subdivision (a), both sides have  
20 requested 2304. I will give that one as well.

21          And that then brings us to the conclusion  
22 instructions. And neither side requested it. Well, the  
23 defense requested 3470, self-defense.

24          MR. KENYON: I'll withdraw that one.

25          THE COURT: Thank you. I thought maybe I missed that  
26 trial.

27          And then neither side requested it, but I'm going to  
28 give 3515, that deals with multiple counts being separate

1 offenses. Then both sides have requested 3550, 3577. I'll  
2 give both of those.

3 And then both sides have requested 3590, the  
4 concluding instruction. I do not give that one. I have my own  
5 version. I also pass out to the jurors a piece of paper that  
6 sets forth their rights as trial jurors in the State of  
7 California. I will not give 3590 then.

8 And I think that pretty much covers it. So everyone  
9 be back here at 1:30.

10 (Lunch recess.)

11 THE COURT: We're back on the record of the case  
12 People versus Mario Martinez. Mr. Martinez is present. Both  
13 counsel are present. We are out of presence of the jury.

14 And I forgot to go over one jury instruction before we  
15 broke for lunch today and that was the special jury  
16 instructions submitted by the People.

17 Mr. Kenyon, have you see that instruction?

18 MR. KENYON: I apologize, Your Honor.

19 THE COURT: All right. The one prosecution special  
20 jury instructions that they submitted basically states as  
21 follows:

22 "You have heard that law enforcement searched a car in  
23 this case. The legal justification for the search is not an  
24 issue in this trial."

25 MR. KENYON: Your Honor, Mr. Steward presented that to  
26 me and I have no problem with that going before the jury. I  
27 don't know that it's necessary, but at the same time it  
28 certainly is accurate.



1 THE COURT: It is accurate. Again, I think I  
2 indicated previously as well that I don't think or feel that  
3 it's necessary, but unless the jury indicated that had they had  
4 some question or concern with that issue, but I'll give it. It  
5 is an accurate statement. So I will give it.

6 Anything else before we bring our jury in?

7 MR. KENYON: Your Honor, could I have another brief  
8 moment. I think -- may be able to get this issue of the priors  
9 resolved with Mr. Martinez. On the other hand, maybe it's  
10 going to be a more involved discussion.

11 THE COURT: All right. And your sole witness is here?

12 MR. KENYON: Yes, she is. And Mr. Steward and I have  
13 agreed that once she testifies it will be all right if she  
14 stays for opening, if that's okay.

15 THE COURT: I don't have a problem with that all.  
16 Once the evidence is closed.

17 MR. STEWARD: That's fine.

18 THE COURT: All right. Let's bring our jury in,  
19 please.

20 All members of the jury are now present. And the  
21 People have rested their case right before the noon hour. And  
22 Mr. Kenyon, on behalf of the defense, would you like to present  
23 your opening statement?

24 MR. KENYON: I did give an opening statement.

25 THE COURT: Thank you. All right. Call your first  
26 witness.

27 MR. KENYON: Thank you, Your Honor. We're going to  
28 recall Mrs. Martinez.

1 THE COURT: All right. Mrs. Martinez, you were  
2 previously sworn as a witness in this case. I just want to  
3 remind you that you're under the same oath to testify to the  
4 truth; do you understand?

5 THE WITNESS: Yes.

6 THE COURT: All right. Thank you. Mr. Kenyon.

7 MR. KENYON: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 Q. (BY MR. KENYON) Hello again, Mrs. Martinez.

10 A. Hello.

11 Q. You spoke previously with the District Attorney and  
12 with me in this courtroom earlier today. I wanted to ask you  
13 about one another matter, and that is do you know who Candance  
14 Eves is?

15 A. Yes.

16 Q. When did you first meet or get to know Candance Eves?

17 A. The day I got subpoenaed outside. When we came in.

18 Q. Was that about a week or so ago?

19 A. Yes.

20 Q. Where did you encounter her?

21 A. We were sitting outside. And she came up to me and  
22 she asked if I was Mario's mother and I told her yes. And she  
23 says --

24 Q. Hang on. Sorry about that. I don't mean to cut you  
25 off.

26 Was that the first time you ever met her?

27 A. Yes.

28 Q. Okay. And had you ever previously gotten a phone call

1 or had any other communication with her?

2 A. No.

3 Q. Had you ever heard her name before?

4 A. Never.

5 Q. Now, you said you ran into her where?

6 A. Outside here in the courtroom.

7 Q. All right. And she approached you?

8 A. Yes.

9 Q. And what, if anything, did she tell you?

10 A. She just came up to me and she told me, "I'm sorry.

11 The stuff was mine." I just looked at her, and I said, "I'm

12 being subpoenaed."

13 Q. Okay. I'm going to pause right there.

14 You said she told you, "I'm sorry." And "The stuff

15 was mine"?

16 A. Yeah.

17 Q. Were those her exact words?

18 A. I'm pretty sure those were her exact words she told

19 me.

20 Q. What, if anything, did you do?

21 A. I didn't do nothing. I just sat there with my

22 daughter and I told her I didn't want to talk to her because --

23 that's all she said. And she stood there next to me and she

24 was just sitting -- we were just waiting to talk to the D.A.

25 Q. First of all, why did you stop her?

26 A. Because I was being subpoenaed.

27 Q. What does that mean to you, or why is that important

28 to you?

1           A.    Because I don't know anything about it.  I don't want  
2  them to know -- not to know, but I didn't want to discuss  
3  anything with her.  I didn't know anything.  So I didn't know  
4  why she just came up to me.

5           Q.    When you came to court that first day, with whom did  
6  you come?

7           A.    With my daughter.

8           Q.    Was she the only other person?

9           A.    Yes.

10          Q.    And were you with your daughter the entire time?

11          A.    Yes, she was.

12          Q.    Before Ms. Eves approached you and spoke to you, do  
13  you know if your daughter ever spoke with her?

14          A.    No.  We barely met her that day.

15          Q.    So that was also the first time your daughter met her?

16          A.    Yes.  Uh-huh.

17               MR. KENYON:  Very well.  Thank you.  No other  
18  questions.

19               THE COURT:  All right.  Cross-examination?

20               MR. STEWARD:  No.  No questions.

21               THE COURT:  Ms. Martinez, you're excused again.

22               THE WITNESS:  Thank you.

23               THE COURT:  Mr. Kenyon, any further witnesses on  
24  evidence on behalf of the defense?

25               MR. KENYON:  No, Your Honor.  The Defense rests.

26               THE COURT:  All right.  Then this trial is now closed  
27  to evidence.  You've heard all the evidence you're going to  
28  hear during the course of this trial.

1           And so what I'm going to do at this point in time is  
2 read to you several of the jury instructions that relate to  
3 this case, and then once I complete reading the instructions,  
4 the attorneys will then argue the case to you. And depending  
5 upon what time we get done with argument this afternoon, you  
6 may begin to deliberate this afternoon or certainly begin to  
7 deliberate tomorrow morning at the latest.

8           Again, I want to remind you that you're going to have  
9 a copy of all these instructions to take back with you into the  
10 jury deliberation room when you begin to deliberate. It will  
11 probably take about 20 or 30 minutes to read these instructions  
12 to you. So just sit back and relax.

13           All right. Members of the jury, I will now instruct  
14 you on the law that applies to this case. I will give you a  
15 copy of the instructions to use in the jury room. You must  
16 decide what the facts are in this case. It is up to all of you  
17 and you alone to decide what happened based solely on the  
18 evidence that has been presented during the course of this  
19 trial.

20           Do not let bias, sympathy, prejudice, or public  
21 opinion influence your decision in any way. You must reach  
22 your verdict without any consideration of penalty or  
23 punishment.

24           You must follow the law as I explain it to you, even  
25 if you disagree with it. If you believe that the attorneys'  
26 comments on the law conflict with my instructions, you must  
27 follow my instructions.

28           Please pay careful attention to all of these

1 instructions and consider them together. If I repeat any  
2 instruction or idea, do not conclude that it is more important  
3 than any other instruction or idea just because I have repeated  
4 it.

5 Some words or phrases used during this trial all have  
6 legal meanings that are different from their meanings in  
7 everyday use. Please be sure to listen carefully and follow  
8 the definitions that I give you. Words and phrases not  
9 specifically defined in these instructions are to be applied  
10 using their every day meanings.

11 Some of these instructions may not apply, depending  
12 upon your findings about the facts of this case. Do not assume  
13 that just because I give a particular instruction, that I am  
14 suggesting anything about the facts. After you have decided  
15 what the facts are, follow the instructions that do apply to  
16 the facts as you have found them.

17 Do not do any research on your own or as a group. Do  
18 not use a dictionary, the Internet, or any other reference  
19 materials. Do not investigate the facts or the law. Do not  
20 conduct any experiments or visit the scene of any event  
21 involved in this case. If you happen to pass by the scene, do  
22 not stop or investigate.

23 You have been given notebooks and may have taken notes  
24 during the trial. You may use your notes during deliberations.  
25 The notes are for your own individual use to help you remember  
26 what happened during the trial. Please keep in mind that your  
27 notes may be inaccurate or incomplete. If there is  
28 disagreement about the testimony, then you may ask that the

1 court reporter's notes be read back to you. It is the record  
2 that must guide your deliberations and not your notes. Please  
3 do not remove your notes from the jury deliberation room.

4 The fact that a criminal charge has been filed against  
5 the defendant is not evidence that the charge is true. You  
6 must not be biased against the defendant just because he has  
7 been arrested, charged with the crime, or brought to trial.

8 A defendant in a criminal case is presumed innocent.  
9 This presumption requires that the People prove a defendant  
10 guilty beyond a reasonable doubt. Whenever I tell you that the  
11 People must prove something, I mean they must prove it beyond a  
12 reasonable doubt.

13 Proof beyond a reasonable doubt is proof that leaves  
14 you with an abiding conviction that the charge is true. The  
15 evidence need not eliminate all possible doubt because  
16 everything in life is open to some possible or imaginary doubt.

17 In deciding whether the People have proven their case  
18 beyond a reasonable doubt, you must impartially compare and  
19 consider all the evidence that was received throughout the  
20 entire trial. Unless the evidence proves the defendant guilty  
21 beyond a reasonable doubt, he is entitled to an acquittal, and  
22 you must find him not guilty.

23 As trial jurors you must decide what the facts are  
24 in this case. You must use only the evidence that was  
25 presented in this courtroom. Evidence is the sworn testimony  
26 of witnesses and the exhibits admitted into evidence and  
27 anything else I told you to consider as evidence.

28 Nothing that the attorneys say is evidence in their

1 opening statements and closing arguments, the attorneys  
2 discussed the case, but their remarks are not to be considered  
3 as evidence. Their questions asked of witnesses are not  
4 evidence. Only the witnesses' answers are evidence. The  
5 attorneys' questions are significant only if they helped you to  
6 understand the witnesses' answers. Do not assume that  
7 something is true just because one of the attorneys asked a  
8 question that suggested that it was true.

9           During the trial, the attorneys may have objected to  
10 questions or moved to strike answers given by the witnesses. I  
11 ruled on the objections according to the law. If I sustained  
12 an objection, you must ignore the question. If the witness was  
13 not permitted to answer, do not guess what the answer might  
14 have been or why I ruled as I did. If I ordered testimony  
15 stricken from the record, you must disregard it and must not  
16 consider that testimony for any purpose.

17           During the trial, you were told that the People and  
18 the defense agreed or stipulated to certain facts. And that  
19 stipulation was introduced; that's one of the exhibits. This  
20 means that they both accept those facts as proven because  
21 there's no dispute with respect to those facts. The jury must  
22 also accept them as true or proven.

23           The court reporter has made a record of everything  
24 that was said during the trial. If you decide that it is  
25 necessary, you may ask that the court reporter's notes be read  
26 back to you. You must accept the court reporter's notes as  
27 accurate.

28           Facts may be proven by direct or circumstantial



1 evidence or by a combination of both. Direct evidence can  
2 prove a fact by itself. For example, if a witness testifies he  
3 saw it raining outside, before he came into the courthouse,  
4 then that testimony is direct evidence that was it raining.

5 Circumstantial evidence might also be called indirect  
6 evidence. Circumstantial evidence does not directly prove the  
7 fact to be decided, but is evidence of another fact or group of  
8 facts from which you may logically and reasonably conclude the  
9 truth of the facts in question.

10 For example, if a witness testifies that he saw  
11 someone come inside wearing a raincoat with drops of water,  
12 that testimony is circumstantial evidence because it may  
13 support a conclusion that it was raining outside.

14 Both direct and circumstantial evidence are acceptable  
15 types of evidence to prove or disprove the elements of a charge  
16 including intent and mental state and any acts necessary to a  
17 conviction. And neither is necessarily more reliable than the  
18 other. Neither is entitled to any greater weight than the  
19 other. You must decide whether a fact or issue has been proven  
20 based upon all of the evidence presented during the course of  
21 this trial.

22 Before you may rely on circumstantial evidence to  
23 conclude that a fact necessary to find the defendant guilty has  
24 been proved, you must be convinced that the People have proved  
25 each fact essential to that conclusion beyond a reasonable  
26 doubt.

27 Also, before you may rely on circumstantial evidence  
28 to find the defendant guilty, you must be convinced that the

1 only reasonable conclusion supported by the circumstantial  
2 evidence is that the defendant is guilty. If you can draw two  
3 or more reasonable conclusions from the circumstantial  
4 evidence, and one of those reasonable conclusions points to the  
5 defendant's innocence and another to his guilt, you must accept  
6 that reasonable interpretation that points to his innocence.

7           However, when considering circumstantial evidence, you  
8 must accept only reasonable conclusions and reject any  
9 conclusions that you find to be unreasonable.

10           As trial jurors, you alone must judge the credibility  
11 or believability of the witnesses who have testified. In  
12 deciding whether testimony is true and accurate, use your  
13 common sense and life experience. The testimony of each  
14 witness must be judged by the same standard. You must set  
15 aside any bias or prejudice, you may have, including any based  
16 on the witnesses' disability, gender, race, religion,  
17 ethnicity, or sexual orientation.

18           You may believe all, part, or none of any witness's  
19 testimony. Consider the testimony of each witness, and decide  
20 how much of it you will believe. In evaluating a witness's  
21 testimony, you may consider anything that reasonably tends to  
22 prove or disprove the truth or accuracy of that testimony.  
23 Among the factors that you may consider are how well could the  
24 witness see, hear, or otherwise perceive the things about which  
25 the witness testified? How well was the witness able to  
26 remember and describe what happened? What was the witness's  
27 behavior while testifying? Did the witness understand the  
28 questions and answer them directly? Was the witness's

1 testimony influenced by a factor such as bias or prejudice, a  
2 personal relationship with somebody involved in the case, or a  
3 personal interest in how the case is decided? What was the  
4 witness's attitude about the case or about testifying? Did the  
5 witness make a statement in the past that is consistent or  
6 inconsistent with his or her testimony at trial? How  
7 reasonable is the testimony when you consider all of the  
8 evidence in the case? Did other evidence proven or disprove  
9 any fact about which the witness testified? Did the witness  
10 admit to being untruthful? Was the witness engaged in other  
11 conduct that reflects on his or her believability? Was the  
12 witness promised immunity or leniency in exchange for his or  
13 her testimony?

14 Do not automatically reject testimony just because of  
15 inconsistencies or conflicts. Consider whether the differences  
16 are important or not. People sometimes honestly forget things  
17 or make mistakes about what they remember. Also, two people  
18 may witness the same event, yet see or hear it differently.

19 If you do not believe a witness's testimony that he or  
20 she no longer remembers something, then that testimony is  
21 inconsistent with the witness's earlier statements on that  
22 subject.

23 If you decide that a witness deliberately lied about  
24 something significant in this case, you should consider not  
25 believing anything that witness has to say, or if you think the  
26 witness lied about some things, but told the truth about  
27 others, you may simply accept the part of the testimony that  
28 you think is true, and ignore the rest.

1           Neither side is required to call all witnesses who may  
2 have information about the case or to produce all the physical  
3 evidence that might be relevant, except for the testimony of  
4 Candance Eves, which requires supporting evidence, the  
5 testimony of only witness can prove any fact. Before you  
6 conclude that the testimony of one witness proves a fact, you  
7 must carefully review all of the evidence. Before you may  
8 consider the testimony of Candance Eves as evidence against the  
9 defendant, you must decide whether Candance Eves was an  
10 accomplice to those crimes that have been charged in this case.

11           A person is an accomplice if she is subject to  
12 prosecution for the identical crime charged against the  
13 defendant. Someone is subject to prosecution if she personally  
14 committed the crime or if she knew of the criminal purpose of  
15 the person who committed the crime and she intended to and did,  
16 in fact, aid, facilitate, promote, encourage, or instigate the  
17 commission of that crime.

18           The burden is on the defendant to prove that it is  
19 more likely than not that Candance Eves was an accomplice. An  
20 accomplice does not need to be present when the crime is  
21 committed. On the other hand, a person is not an accomplice  
22 just because she is present at the scene of a crime, even if  
23 she knows that a crime will be committed or is being committed  
24 and does nothing to stop it. A person may be an accomplice  
25 even if she is not actually prosecuted for the same crimes.

26           If you decide that a witness was not an accomplice,  
27 then supporting evidence is not required, and you evaluate your  
28 testimony as you would that of any other witness. If you

1 decide that a witness was an accomplice, then you may not  
2 convict the defendant of the crimes charged in Counts 1 and 2  
3 based on her testimony alone. You may use the testimony of an  
4 accomplice to convict the defendant only if:

5 1, the accomplice's testimony is supported by other  
6 evidence that you believe;

7 2, the supporting evidence is independent of the  
8 accomplice's testimony;

9 And 3, that supporting evidence tends to connect the  
10 defendant to the commission of the crimes.

11 If you determine there's a conflict in the evidence,  
12 you must decide what evidence, if any, to believe. Do not  
13 simply count the number of witnesses who agree or disagree on a  
14 point and accept the testimony of the greater number of  
15 witnesses.

16 On the other hand, do not disregard the testimony of  
17 any witnesses without a reason or because of a prejudice or a  
18 desire to favor one side or the other. What is important is  
19 whether the testimony or any other evidence convinces you, not  
20 just the number of witnesses who testify about a certain point.

21 If you find that the witness has committed a crime or  
22 other misconduct, you may consider that fact only in evaluating  
23 the credibility of the witness's testimony. The fact that a  
24 witness may have committed a crime or other misconduct does not  
25 necessarily destroy or impair a witness's credibility. It is  
26 up to you to decide the weight of that fact and whether that  
27 fact makes the witness less believable.

28 You have heard evidence of statements that a witness

1 made before the trial. If you decide that the witness made  
2 those statements, you may use those statements in two different  
3 ways:

4 1, to evaluate whether the witness's testimony in  
5 court is believable;

6 And 2, as the evidence that the information in those  
7 earlier statements is true.

8 A defendant has an absolute Constitutional right not  
9 to testify. He may rely on the state of the evidence and argue  
10 that the People have failed to prove the charges beyond a  
11 reasonable doubt. Do not consider for any reason at all the  
12 fact that the defendant did not testify. Do not discuss that  
13 fact during your deliberation or let it influence your decision  
14 in any way.

15 You have heard evidence that the defendant made an  
16 oral or written statement before the trial. You must decide  
17 whether or not the defendant made any of those statements in  
18 whole or in part. If you decide that the defendant made such a  
19 statement, consider the statement along with all the other  
20 evidence in reaching your verdict. It is up to you to decide  
21 how much importance to give to such statements.

22 You must consider with caution evidence of a  
23 defendant's oral statement unless it was written or otherwise  
24 recorded. The defendant may not be convicted of any crime  
25 based on his out-of-court statements alone. You may only rely  
26 on the defendant's out-of-court statements to convict him if  
27 you conclude that other evidence shows that the charged crime  
28 was committed. That other evidence may be slight, and need

1 only be enough to support a reasonable inference that the crime  
2 was committed. The identity of the person who committed the  
3 crime and the degree of the crime may be proven by the  
4 defendant's statements alone.

5           You may not convict the defendant unless the People  
6 have proven his guilt beyond a reasonable doubt. The People  
7 are not required to prove that the defendant had a motive to  
8 commit the crimes charged.

9           In reaching your verdict, you may however, consider  
10 whether the defendant had a motive. Having a motive may be a  
11 factor tending to show that the defendant is guilty; not having  
12 any motive may be a factor tending to show that the defendant  
13 is not guilty.

14           All right. I'm going to go back and read to you the  
15 previous instructions that I read a portion to you and that  
16 related to the testimony of Candance Eves. In determining  
17 whether or not she is an accomplice in the commission of the  
18 crimes charged against Mr. Martinez. Before you may consider  
19 the testimony of Candance Eves as evidence against the  
20 defendant, you must decide whether Candance Eves was an  
21 accomplice to the commission of those crimes.

22           A person is an accomplice if she is subject to  
23 prosecution for the identical crime charged against the  
24 defendant. Somebody is subject to prosecution if she  
25 personally committed the crime or if she knew of the criminal  
26 purpose of the person who committed the crime and she intended  
27 to and did, in fact, aid, facility, promote, encourage, or  
28 instigate the commission of those crimes.

1           The burden is on the defendant to prove that it is  
2 more likely than not that she was Candance Eves, was an  
3 accomplice. An accomplice does not need to be present when the  
4 crime is committed. On the other hand, a person is not an  
5 accomplice just because she is present at the scene of a crime,  
6 even if she knows a crime will be committed or is being  
7 committed and does nothing to stop it. A person maybe an  
8 accomplice even if she is not actually prosecuted for the  
9 crime. If you decide that the witness was not an accomplice  
10 then supporting evidence is not required, and you should  
11 evaluate her testimony as you would any other witness. If you  
12 decide that a witness was an accomplice, then you may not  
13 convict the defendant for the crimes charged in Counts 1, and 2  
14 based on her testimony alone. You may use the testimony of an  
15 accomplice to convict the defendant only if;

16           1, the accomplice's testimony is supported by other  
17 evidence that you believe;

18           2, the supporting evidence is independent of the  
19 accomplice's testimony;

20           And 3, the supporting evidence tends to connect the  
21 defendant to the commission of the crimes;

22           Supporting evidence, however, may be slight. It does  
23 not need to be enough by itself to prove that the defendant is  
24 guilty of the charged crimes, and it does not need to support  
25 every fact about which the accomplice testified.

26           On the other hand, it is not enough if the supporting  
27 evidence merely shows a crime was committed or the  
28 circumstances of its commission. The supporting evidence must



1 tend to connect the defendant to the commission of the crime.

2 Any testimony of an accomplice that tends to  
3 incriminate the defendant should be viewed with caution. You  
4 may not, however, arbitrarily disregard it. You should give  
5 that testimony the weight you think it deserves after examining  
6 it with care and caution and in light of all the other evidence  
7 presented. If you determine there's a conflict in the  
8 evidence, you must decide what evidence, if any, to believe.

9 Do not simply count the number of witnesses who agree  
10 or disagree on a point and accept the testimony of the greater  
11 number of witnesses.

12 On the other hand, do not disregard the testimony of  
13 any witness without a reason or because of prejudice or a  
14 desire to favor one side or the other. What is important is  
15 whether the testimony or any other evidence convinces you, and  
16 not just the number of witnesses who testify about a certain  
17 point.

18 If you find that the witness has committed a crime or  
19 other misconduct, you may consider that fact only in evaluating  
20 the credibility of the witness's testimony. The fact that a  
21 witness may have committed a crime or their misconduct does not  
22 necessarily destroy or impair a witness's credibility. It is  
23 up to you to decide the weight of that fact and whether that  
24 fact makes the witness less believable. I think I read that  
25 one too before. Okay.

26 A person may be guilty of a crime in two separate  
27 ways:

28 1, he or she may have directly committed the crime,

1 and I will call that person the perpetrator;

2 Or 2, he or she may have aided and abetted the  
3 perpetrator who directly committed the crime.

4 A person is equally guilty of the crime whether he or  
5 she committed it personally, or aided and abetted the  
6 perpetrator who committed it. Under some specific  
7 circumstances, if the evidence establishes -- no, that doesn't  
8 apply either.

9 To prove that the defendant is guilty of a crime based  
10 on the theory of aiding and abetting that crime, the People  
11 must prove that:

12 1, the perpetrator committed the crime;

13 2, that the defendant knew that the perpetrator  
14 intended to commit the crime;

15 3, before or during the commission of the crime, the  
16 defendant intended to aid and abet the perpetrator in  
17 committing the crime;

18 And 4, the defendant's words or conduct did, in fact,  
19 aid and abet the perpetrator's commission of the crime.

20 Someone aids and abets a crime if he knows of the  
21 perpetrator's unlawful purpose and he specifically intends to  
22 and does, in fact, aid, facilitate, promote, encourage, or  
23 instigate the perpetrator's commission of that crime. If all  
24 those requirements are proved, the defendant does not need to  
25 actually have been present when the crime was committed to be  
26 guilty as an aider and abettor. If you conclude that the  
27 defendant was present at the scene of the crime, or failed to  
28 prevent the crime, you must consider that fact in determining

1 whether or not the defendant was an aider and abettor.

2           However, the fact that a person is present at the  
3 scene of a crime or fails to prevent the crime, does not by  
4 itself make him an aider or abettor.

5           You have heard evidence that law enforcement searched  
6 a car in this case. The legal justification for the search of  
7 that vehicle is not an issue in this trial.

8           The crimes charged in this case requires proof of the  
9 union or joint operation of an act and wrongfull intent. For  
10 you to find a person guilty of the crimes charged in Counts 1  
11 and 2, that person must not only commit the prohibited act, but  
12 must do so with wrongful intent. A person acts with wrongful  
13 intent when he intentionally does a prohibited act. However,  
14 it is not required that he intend to break the law. The act  
15 required is explained in the instruction for each crime.

16           The defendant is charged in Count 1 with a violation  
17 of Health and Safety Code Section 11379, subdivision (a), that  
18 being transporting methamphetamine, a controlled substance. To  
19 prove that the defendant is guilty of this crime, the People  
20 must prove that:

- 21           1, the defendant transported the controlled substance;
- 22           2, the defendant knew of its presence;
- 23           3, the defendant knew of the substances, nature or  
24 character as a controlled substance;
- 25           4, the controlled substance was methamphetamine;
- 26           And 5, the controlled substance was in a usable  
27 amount.

28           A person transports something if he carries or moves

1 it from one location to another even if the distance is short.  
2 A usable amount is a quantity that is enough to be used by  
3 someone as a controlled substance. Useless traces or debris  
4 are not usable amounts. On the other hand, a usable amount  
5 does not have to be enough, in either amount or strength, to  
6 effect the user.

7 The People do not need to prove that the defendant  
8 knew which specific controlled substance he transported, only  
9 that he was aware of the substance's presence, and that it was  
10 a controlled substance.

11 A person does not have to actually hold or touch  
12 something to transport it. It is enough if the person has  
13 control over it, or the right to control it either personally  
14 or through another person.

15 The defendant is charged in Count 2 with violating  
16 Health and Safety Code Section 11377, Subdivision (a), that  
17 being possessing methamphetamine, a controlled substance. To  
18 prove that the defendant is guilty of this crime, the People  
19 must prove that:

- 20 1, the defendant possessed a controlled substance;
- 21 2, the defendant knew of its presence;
- 22 3, the defendant knew of the substance's nature or  
23 character as a controlled substance;
- 24 4, the controlled substance was methamphetamine;
- 25 And 5, the controlled substance was in a usable  
26 amount.

27 Again, a usable amount is a quantity that is enough to  
28 be used by someone as a controlled substance. Useless traces

1 or debris are not usable amounts. On the other hand, a usable  
2 amount does not have to be enough, in either amount or  
3 strength, to effect the user.

4 The People do not need to prove that the defendant  
5 knew which specific substance he possessed, only that he was  
6 aware of the substance's presence and that was it a controlled  
7 substance.

8 Two or more people may possess something at the same  
9 time. A person does not have to actually hold or touch  
10 something to possess it. It is enough if that person has  
11 control over it or the right to control it, either personally  
12 or through another person. Agreeing to buy a controlled  
13 substance does not, by itself, mean that a person has control  
14 over that substance.

15 Each of the counts charged in this case is a separate  
16 crime. You must consider each count separately, and return a  
17 separate verdict for each one.

18 All right. That completes all the instructions that  
19 I'm going to read to you at this point in time. And we'll now  
20 proceed to counsel's closing arguments.

21 And the way this works is since the prosecution bears  
22 the burden of proof. They'll argue the case first to you.  
23 Then we'll hear from Mr. Kenyon on behalf of the defense by way  
24 of closing argument. And then the prosecution gets a second or  
25 what we call a rebuttal argument to make to you. It may seem  
26 at first blush that it's somewhat unfair because the  
27 prosecution gets two bites of the apple and the defense only  
28 one. But simply a recognition in the law that the prosecution

1 bears the burden of proof in every criminal case.

2 And with that, Mr. Steward, are you prepared to  
3 present the People's closing argument?

4 MR. STEWARD: Yes, Your Honor.

5 THE COURT: Thank you.

6 MR. STEWARD: Good afternoon, ladies and gentlemen.

7 I want to thank you for your services in this case  
8 and all the times you've waited in the hallway for us. The  
9 case is now over. In terms of the evidence, now we'll get to  
10 argue the case and then you'll go in the back and deliberate.  
11 And all we ask you to do is to follow the law. Base the  
12 decision you make strictly on the evidence you will receive,  
13 along with the law you're given, and then reach a fair  
14 decision. And we picked you as jurors because we knew that you  
15 could do that.

16 I want to begin by saying that this is a very  
17 straightforward case, make no mistake about it. The defendant  
18 is, in fact, guilty of both possessing methamphetamine and  
19 transporting it. If you did not already think this case is  
20 straightforward, after we go over the law that applies, I think  
21 you will agree that the case is very straightforward.

22 Let's go ahead and talk about the elements of the  
23 crime. Elements of a crime are kind of like ingredients in  
24 something you bake. You need all the elements. Let's use the  
25 example of a cake. If you're going to bake a cake, you need  
26 flour. You need sugar. You need some kind of ingredient to  
27 make it rise. All right. If you're missing even one  
28 ingredient, you don't really have a cake. Okay?

1           The law requires that I prove each of the elements of  
2 the crimes charged beyond a reasonable doubt. If even one the  
3 element is missing, then you're to find the defendant not  
4 guilty.

5           On the other hand, sometimes jurors like to add  
6 elements that aren't there. They want frosting on the cake, or  
7 they want cherries on top. And while those might be nice, the  
8 law doesn't require that. So I ask you, when you go  
9 deliberate, to hold me to the elements that are required, but  
10 nothing more.

11           So let's go ahead and take a look at the elements of  
12 both possession and transportation. I'd like to begin with  
13 possession. You'll see that the elements are very similar for  
14 both. Of course, the court already read those, but sometimes  
15 it's helpful to go over them again and see them in print. It  
16 makes it easier.

17           So Count 2 is the simple possession of  
18 methamphetamine. Now, in this case, you as a jury are going to  
19 need to reach two decisions. And they are separate decisions  
20 even though the evidence is very similar for both counts. Your  
21 decisions are guilty or not guilty on Count 1 and Count 2. So  
22 what are the elements on Count 2? The first element is the  
23 defendant possessed a controlled substance. We'll talk about  
24 the evidence in a minute.

25           No. 2, the defendant knew of its presence. He knew it  
26 was there.

27           No. 3, he knew of its nature or character as a  
28 controlled substance. In other words, he didn't think he had

1 sugar. I mean if he possessed the sugar or the  
2 methamphetamine, he though it was there, but just thought it  
3 was sugar or something, then he wouldn't be guilty of the  
4 crime. We only want to punish people for actually being in  
5 knowing possession of an actual controlled substances.

6 The fourth element is that the controlled substance  
7 was in fact, methamphetamine. And we have a stipulation, it's  
8 marked as People's Exhibit 2, that says -- I'll put it up on  
9 the screen, but it will be hard to see -- both parties in this  
10 trial agree and stipulate that the white substance collected by  
11 Deputy Hiraoka in this case was tested by the Department of  
12 Justice laboratory. The substance tested positive for  
13 methamphetamine in the amount of .38 grams. The defense is not  
14 disputing that the item that's been marked as People's  
15 Exhibit 3, in this envelope, that it is, in fact,  
16 methamphetamine. The laboratory tested it. It's not an issue  
17 in this case. That element has definitely been proven.

18 Number 5, it was a usable amount. What is a usable  
19 amount? Usable amount is simply enough to be used as a  
20 controlled substance. It does not have to be enough, in  
21 strength or amount to affect the user.

22 In other words, I don't have to prove that .38 grams  
23 was enough to get somebody high. Although, even the testimony  
24 of Candance Eves, it would be enough to make her high. In  
25 fact, she said that usually she buys .2 grams, and thought this  
26 .2 grams. It was almost actually twice that amount. Almost .4  
27 grams. That would be an example, by the way, of the frosting  
28 or the cherry on top, of me having to prove an element that



1 would actually get one or two persons high. It's not required,  
2 just that it's enough to be used. So in total those are the  
3 five elements. Pretty straightforward.

4 Now, Count 2 -- or actually, before I get to Count 2,  
5 I want to comment on some very important additional  
6 instructions on both Count 1 and Count 2.

7 For Count 2 -- actually the judge, he read you the  
8 instruction about joint possession. He told you that two or  
9 people may possess something at the same time, that's very  
10 important, because some of you may have been thinking, well, am  
11 I going to have to decide whether or not that dope belonged to  
12 Candance Eves or the defendant and if I have difficulty  
13 deciding one or the other, am I going to have to throw up my  
14 hands and say well, there's reasonable doubt. Not necessarily.  
15 Two or more people may possess something at the same time.

16 Another instruction for both Count 1 and Count 2 --  
17 well, let me just show you the title first. Let's look at the  
18 concept of actually possess versus constructive possession.

19 Let me give you an example. Right now, I am in actual  
20 possession of my car keys. I've got them in my hands. I'm  
21 holding them. I just took them out of my pocket. I have  
22 actual possession of them.

23 On the other hand, right now I do not have  
24 constructive possession of my car, it's not here. It could  
25 have been stolen over the lunch hour, and I wouldn't even know  
26 where it is right now. I'm in constructive possession. It's  
27 in a parking structure. I hope it's there when I finish work  
28 today and go to the garage and then use my keys to open the car

1 and drive away. I have the right to control where that car is.  
2 I'm in control of it even though I'm not there. The judge told  
3 you the terms of the methamphetamine, in this case. A person  
4 does not have to actually hold or touch something to possess  
5 it. If they were holding it or touching it, that would be an  
6 example of actual possession.

7           Constructive possession is the second paragraph. It  
8 is enough if a person has control over it, or the right to  
9 control, either personally or through another person. What's  
10 an example of that? We talked about this a little bit during  
11 jury selection, but if you're driving your car, and let's say  
12 your daughter has a doll in the back, you know it's there.  
13 Maybe you even bought it for her, maybe not, but in any event  
14 she has a doll in the back, it's your daughter's doll; even if  
15 you don't touch or hold it or have anything do with it, other  
16 than the fact that you allow your daughter to ride in your car  
17 knowing she has that doll, you have the right to control that  
18 item. You have a right to say what is in your car and what  
19 isn't. I hope that makes sense.

20           Let's look at Count 1. Count 1 is transportation of  
21 methamphetamine. Some of you may have thought before the trial  
22 that transportation meant you are, like, bringing in kilos from  
23 south of the border. Okay? That may be what came to mind when  
24 we mentioned transportation. Well, in fact, the law does not  
25 require it be kilos or large amounts.

26           Let's take a look at what the law does require.  
27 There's five elements for Count 1, transportation of  
28 methamphetamine. These elements are actually identical to the

1 elements for Count 2, simple possession, with one exception,  
2 and that is one particular word that is different in the  
3 instruction, and that's in the first element. The first  
4 element is did the defendant transport a controlled substance,  
5 as opposed to possess a controlled substance. Of course, to  
6 transport something, normally you do need to be in possession  
7 of it. The other four elements are identical. They're exactly  
8 the same.

9 Let's take a look at a further definition of what  
10 transportation means. Transportation is carrying or moving the  
11 item, the methamphetamine, from one location to another, even  
12 if the distance is short. And, of course, here if you believe  
13 that the defendant possessed in any way, shape, or form the  
14 methamphetamine, obviously, there was transportation going on,  
15 at least during the time that the officer followed that car.  
16 The judge also told you on this instruction he repeated the  
17 same language about actual versus constructive possession. A  
18 person does not actually have to hold or touch something to  
19 possess it. It's enough if the person has control over it, or  
20 the right to control it, either personally or through another  
21 person.

22 Let me talk about one other very important legal  
23 principle in this case. And that is the principle of aiding or  
24 abetting, which is a legal way of saying assisting somebody in  
25 a crime. The judge told you the person may be guilty of a  
26 crime in two ways. They may be the direct perpetrator of a  
27 crime, or secondly, they may be an aider or abettor of the  
28 perpetrator. We talked about an example of this during jury

1 selection, if three people were going to rob a bank together,  
2 and only one person is the actually the direct perpetrator of  
3 the robbery inside of the bank. But the second and the third  
4 person who act as a lookout and the driver of the get-away car,  
5 they are both assisting or aiding and abetting in the crime.

6 The judge told you that those that aid and abet are  
7 equally guilty along with the direct perpetrators. Yes, some  
8 may have more culpability. They may, in your mind, be more  
9 guilty and that's something the judge can consider later on in  
10 the trial on sentencing, but in terms of your job on deciding  
11 whether the defendant is guilty or not, direct perpetrators, as  
12 well as aider and abettors, are equally guilty of the crime.

13 So let's look at the elements that are required for  
14 abiding and betting. There are actually four elements.

15 1, the perpetrator committed the crime that  
16 in this case could be considered to be Candance Eves, depending  
17 on how you look at the evidence;

18 No. 2, the defendant knew Candance Eves, the  
19 perpetrator, intended to commit the crime;

20 No. 3, before or during the commission of the crime,  
21 the defendant intended to aid and abet the perpetrator,  
22 Candance Eves, in committing the crime;

23 And No. 4, the defendant's words or conduct did, in  
24 fact, aid and abet the perpetrator's commission of the crime.

25 And really, what this allows you to do is it allows  
26 you to go back to the elements of the crimes like Count 2. It  
27 allows you to go to those five elements and substitute in the  
28 other person where it says defendant. So in other words,

1 Candance Eves possessed a controlled substance. She knew of  
2 its presence, and all the other elements. If you believe  
3 Candance Eves is guilty of the crime, and then on top of that,  
4 that the defendant, these four elements of aiding and abetting  
5 are true on the defendant's part, then he would be equally  
6 guilty of those crimes.

7 Of course, an important element is No. 2, he had  
8 knowledge, that the other perpetrator was intending to commit  
9 the crime.

10 No. 3, he did, in fact, himself intend to assist in  
11 some way.

12 And No. 4, he did, in fact, by doing something assist  
13 in the crime. Aiding and abetting does require more than just  
14 you know something is going on and you do nothing to stop it.  
15 You actually have to do something to help.

16 So now I want to talk about the evidence, now that we  
17 have taken a closer look at the law. There are basically two  
18 main theories in this case of how the dope or the  
19 methamphetamine got between the defendant's feet. The first  
20 theory in the case is that the dope is really Mr. Martinez's.  
21 It's his methamphetamine. And Candance Eves came in and lied  
22 to you to take the rap for the methamphetamine. Let's look at  
23 evidence to support that theory, and then we'll talk about the  
24 other theory.

25 What evidence do we have to support the theory it's  
26 the defendant's dope? Well, first of all, let's look at the  
27 first thing that the deputy saw, when he saw this car, the red  
28 Toyota, alongside the road. He testified that the car was

1 parked partly on the road and partly on the dirt shoulder, not  
2 exactly a very permanent parking job. It's obvious that their  
3 car was pulled over very briefly, that's consistent with drug  
4 sales. He also saw a person there at the window right next to  
5 where the defendant was, that would be consistent with drug  
6 sales. That person could have been a seller and then when the  
7 officer came up to the car, that person wisely and quickly  
8 walked away from that area. Is that enough to prove the case?  
9 No, it's just one factor to consider.

10 What's the other evidence? Well, the most obvious  
11 evidence is where is the dope found? It's found right there at  
12 the defendant's feet on his side of the car.

13 Another thing to consider is what the deputy and  
14 Candance Eves told you before the officer actually pulled the  
15 care over, what was the defendant doing? He was leaning back  
16 and forth constantly moving and had his arms down by the bottom  
17 of the seat, as if he was twiddling with something; it could  
18 have been the methamphetamine. What else was he doing? Why  
19 was he leaning forward and leaning back.

20 Another factor to consider is even though the  
21 defendant did not admit the methamphetamine was his, he did  
22 tell the deputy, "I guarantee you the methamphetamine is  
23 definitely not Eves'. It definitely does not belong to her."  
24 Ms. Eves herself denied at that time that the methamphetamine  
25 belonged to her. Should we take that statement with a grain of  
26 salt? Sure we should, because meth users, they frequently will  
27 tell the officer, "It's not mine." Okay. So we obviously take  
28 these statements with a grain of salt.

1           Let's not forget also what the defendant was doing the  
2 night before, if you believe Candance Eves. He's hanging out  
3 all night long with girls that are half his age that are speed  
4 freaks. Is that consistent with him possessing  
5 methamphetamine? So that's essentially the summary of the  
6 evidence to support the dope really belonged to him and not  
7 her. What's the other theory in the case? The other theory is  
8 Candance Eves is actually telling the truth, and that the dope  
9 really did belong to her. What is the evidence that points to  
10 this theory? Well, this theory depends completely on her  
11 statement. There's really no other evidence to backup that  
12 theory of the case, other than what she actually testified and  
13 told you in court. You have to believe her. Of course, she's  
14 a meth user. And she's an admitted thief. Those are things  
15 you can consider in judging her credibility.

16           What makes your job so easy in this case, ladies and  
17 gentlemen, is that either theory you believe, the defendant is  
18 still guilty. You don't have to say -- you don't to choose, to  
19 make a hard choice between Theory 1 or Theory 2. Obviously, if  
20 you believe Theory 1, the dope is his, end of story, beyond a  
21 reasonable doubt, very simple. But even if you believe what  
22 Candance Eves told you, that the dope was primarily hers, the  
23 defendant is still guilty under the law.

24           For two reasons, he's guilty even if you believe  
25 Candance Eves. He's guilty because he constructively possessed  
26 that methamphetamine in his car. Did he have control over it?  
27 Or the right to control it, either personally or through  
28 another person? Absolutely. How do we know that? Well, they

1 talked, according to her, they talked about her buying dope  
2 before she did it. He drove her to the location where she  
3 bought the dope. And according to her, they talked about it.  
4 Yeah, we can split hairs over "shit" or dope or whatever she  
5 used to refer to it. But keep in mind, at this point in her  
6 life, she is hanging out with dope users. She's hanging out  
7 with people that know the lingo. I mean, she just spent the  
8 night at the motel with another friend about her age with the  
9 defendant, who's twice their age.

10 And you know when she testified before Mr. Kenyon on  
11 cross-examination basically led her to try to back away from  
12 all these very incriminating statements. Because, you see,  
13 it's one thing to know the law as us lawyers do, and now the  
14 judge has explained it to you, and as a jury, you're becoming  
15 educated on the elements, but do you think Ms. Eves knows about  
16 joint possession or constructive possession or aiding or  
17 abetting? No. it's clear she doesn't, because it was obvious  
18 when she testified that she was trying to help the defendant  
19 out as best she could. She came in and took the rap even  
20 though she originally told the officer "It was my dope, not  
21 his." She originally told the officer "It was not my dope,"  
22 and now she's coming in to say, "It's mine." She thinks it's  
23 really a simple fact for you and me to conclude it is her dope  
24 or his. Nothing in between. But the law tells us otherwise,  
25 doesn't it?

26 So they talked about her going to buy the dope. In  
27 fact, last Thursday when she was asked these questions, I asked  
28 her: "What did you tell him?" referring to the defendant.



1                   "Answer: I told him we were going to go to my  
2 friend's house to go get dope. But I don't know if he  
3 understood exactly what we were doing, but we went there.

4                   "Question: Okay. But you had a discussion with  
5 the defendant before you got to the house that you were going  
6 there to buy dope?

7                   "Answer: Yes."

8                   Pretty clear. And if it wasn't clear when they drove over  
9 there, it should have been pretty clear when they got there,  
10 because he pulls over, by her statement, he's the one driving.  
11 She says it took a very short time. She originally said a few  
12 minutes on direct examination, but on cross-examination she  
13 said it took about half a minute. She goes up to the fence and  
14 she gets the dope from this man, her connection she calls it.  
15 And they're not that far away from the defendant. And then she  
16 comes back to the car. She also testified that they had an  
17 understanding they were going to use the methamphetamine she  
18 bought later that day. In fact, she admitted she had actually  
19 talked to the defendant about the fact that they were going to  
20 use the methamphetamine together.

21                   In fact, I asked, do you recall telling us on Monday  
22 that you and Mario -- when I say Monday, I'm talking about the  
23 about the conversation that she had with myself and Mr. Kenyon  
24 and the investigator before she actually came in and testified  
25 with you folks.

26                   "Do you remember telling us on Monday that you  
27 and Mario had talked about the fact that you were going to  
28 party later that day with the methamphetamine?

1           She answered, "Yeah. He was going to come pick me  
2 back up."

3           Why was he going to pick her back up? Well, they were  
4 going to use the methamphetamine at some point.

5           Why else is he hanging out with a girl half his age,  
6 who he barely knows? According to her, that day, if they're  
7 not going to go party together?

8           So in light of all that went on, the defendant drove  
9 her to the house. He knows she's buying it. And she's in the  
10 car with the dope, in his car. He willing let her possess it  
11 in his car. This is his car. It's not her car. It is clear  
12 even under this theory of the case, that Mr. Martinez himself  
13 had control over the item or at least the right to control it,  
14 either himself or through another person, Candance Eves.

15           Even if that is not enough, ladies and gentlemen,  
16 certainly the liability for being an aider and abettor is  
17 certainly present. If you believe what Ms. Eves said, "It was  
18 my dope, but Mario took me to go get it and we were going to  
19 party with it later."

20           Even if you believe it was her dope, she committed the  
21 crime. The defendant knew she had intended to commit the  
22 crime. He continued to assist her and then his conduct did, in  
23 fact, assist her in the commission of the crime.

24           How did his conduct assist her in the commission of  
25 the crime? He was the wheels or the transportation that  
26 allowed her to go get the dope. That is assisting someone in  
27 the commission of a crime. If all you believe that he did,  
28 even if you don't believe he was going to party with her later

1 that the day with the meth, if all you believe he did was drive  
2 her over there so she could buy dope and possess it, and  
3 obviously, after she buys it she's going to be in his car,  
4 riding in his car. If you believe that's all he did, he is  
5 still guilty of both possession of methamphetamine and  
6 transportation, because he assisted her in possessing it. And  
7 under the law as an aider and abettor, he's guilty for that.

8 The bottom line is, no matter how you slice it in this  
9 case, the defendant is guilty as charged. I'm going to ask you  
10 to vote guilty on the verdict forms for both Count 1 and  
11 Count 2.

12 Thank you.

13 THE COURT: All right. Thank you, Mr. Steward.

14 Mr. Kenyon, we'll hear from the defense.

15 MR. KENYON: Your Honor, may I use the well?

16 THE COURT: Yes. Certainly.

17 MR. KENYON: If you can't believe the messenger, you  
18 can't believe the message. That's kind of the bottom line  
19 in this case. The messenger, the one that brings you the  
20 message, is, of course, Candance Eves. The bottom line is, I  
21 think we all saw how unreliable she is as a person. We all saw  
22 how little, how easily she's influenced by my questions, the  
23 D.A.'s questions. How little she remembers. Did she call it  
24 dope? Did she call it shit? Those are the only ways which the  
25 D.A. can prove that Mr. Martinez understood and actually  
26 intended for drugs to be in his car. You have to truly believe  
27 beyond a reasonable doubt that the words she used were dope or  
28 shit in a way that Mr. Martinez meant it. The facts that came

1 out during the trial simply don't support that.

2 Now, the D.A. has done a very good job, I think, of  
3 simplifying certain things in the law, such as constructive  
4 possession. And I think as lawyers, we oftentimes use  
5 analogies to convey ideas. And I think sometimes they are very  
6 valuable. I use them myself. And I'll probably use one here  
7 in a minute. But sometimes those analogies can also be  
8 misleading.

9 Mr. Steward provides the idea of constructive  
10 possession as simply an example of the doll. If your daughter  
11 has a doll in the backseat, it is also constructive possession  
12 by you, because you have the right to take the doll from her.  
13 You have the right to possess the doll. You know it is there.  
14 You gave her the doll. You know it's there. And you have the  
15 right to it. But change the analogy slightly. You've got a  
16 son and a daughter in the backseat. And the daughter has the  
17 doll. The son has no right to it. Even if the son is told he  
18 can later play with it, then and there he has no right to it.  
19 He does not constructively possess it. He may be sitting right  
20 next to it. It may be on the console between them in the  
21 backseat. It is not his doll. He does not possess it. Even  
22 if she, the daughter, says you can play with it later, he has  
23 no right to possess it.

24 Ladies and gentlemen, the evidence we heard from her,  
25 the clear things she stated over and over again, when asked by  
26 me or asked by the District Attorney, was that it was her dope.  
27 She bought it with her money, or at least money she got from  
28 somebody. \$20 that she paid for it. She physically walked up

1 and was the only person present when the dope was purchased.  
2 She had her back turned, in fact, to the defendant, to  
3 Mr. Martinez, when it was purchased. She put it immediately  
4 into her bra. He never touched it. Nowhere did the D.A.  
5 present anywhere that Mr. Martinez touched it, or, in fact,  
6 that he even knew it was there.

7 Now, there were suggestions that, in fact, he may have  
8 known what was going on. Namely, there was some discussion  
9 about whether or not Mr. Martinez was told that they were going  
10 to go buy dope or methamphetamine or drugs or shit. The  
11 problem with it is, these are simply suggestions. And we know,  
12 based on the way she testified, based on what she told you,  
13 based on what she told Mr. Steward, me, in the presence of the  
14 investigation that to her the lingo is important.

15 Now, Mr. Steward sort of talked about it like  
16 splitting hairs. It's not a big deal. Well, the reality is --  
17 we all -- well, maybe not all -- but many people use that  
18 phrase shit to mean different things. And it is important. We  
19 submit to you that it is important to what she said. And the  
20 reality is we simply don't know.

21 Now, on Friday when Mr. Steward was asking her  
22 questions, he actually asked her: "Do you use the word  
23 methamphetamine, or do you have some other? To which she  
24 replied: "I don't recall, is what I told him that day."

25 All right. And now, in fairness, this was the  
26 discussion regarding the buy, when she went to actually  
27 purchase it, but I think the next few statements are very  
28 telling, as to what her attitude about it is, what she calls

1 it, and how she refers to it.

2 "What do you usually say when you want to buy  
3 meth? Do you say methamphetamine, or do you call it by another  
4 name?

5 "We call it that. It doesn't matter. I don't  
6 know.

7 "No other names you know it by?|

8 "Yeah.

9 "What else do you call it?

10 "Dope.

11 "What else?

12 "I don't know. I usually say that word.

13 "Do you sometimes call it shit?

14 "Yeah.

15 "In fact, when you spoke to -- on Monday, when we  
16 interviewed you, that's how you referred to it at one point,  
17 later on. Is it pretty common --"

18 All right. At any rate, in fact, when I spoke to her,  
19 when I cross-examined her, was, of course, she's susceptible to  
20 my questions, yes. Was I, to some extent, using leading  
21 questions? Yes. Reality is, whether I'm asking the questions  
22 or the D.A. is asking the questions, her memory of things is  
23 foggy at best. She might have said shit. She probably said  
24 shit. She did tell us that's the word she most commonly used  
25 to describe it out on the street. It's shit to her. The  
26 reality is, many of us, some of us anyway, myself included,  
27 sometimes use that word to mean other things. Even at the golf  
28 course, I'll tell my buddy, "Hey, I left my shit in the golf

1 cart," it doesn't mean drugs. It means my cell phone or my  
2 wallet or my golf keys or something in there. And if she did,  
3 in fact, discuss it with Mr. Martinez, she might very well have  
4 said, "Hey, drop me off. I want to get some shit from this  
5 guy." What does that mean? Does it mean her purse? Does it  
6 mean anything? Does it mean money she owes me? We don't know  
7 because if she used that very ambiguous word, that very  
8 ambiguous phrase, it is unclear what Mr. Martinez knew.

9 Now, it's very easy for us to look at things and go  
10 where there's smoke, there's fire. And I'll be honest with  
11 you, to some extent, am I concerned about that? Of course, I  
12 am. It doesn't look good for Mr. Martinez. The fact he's with  
13 a girl half his age, who we know uses drugs. And they were at  
14 a motel the night before. And I asked you about it during jury  
15 selection, whether or not you could distinguish between simply  
16 throwing everyone in the mix and doing that guilt by  
17 association that I've cautioned against, or whether you can  
18 distinguish the facts and actions from the expectations of  
19 well, they're in a group, therefore, everybody knows what's  
20 going on because guilt by association is not the standard.

21 I ask you, when you go back to deliberate, please be  
22 cautious to make sure you consider the actual testimony and the  
23 actual words of the witnesses and the acts by Mr. Martinez.  
24 Before you simply lump him in, well, he was hanging out  
25 with a couple of drug addicts or a drug addict, so he must be  
26 guilty, because there's no place in the law that allows for  
27 that.

28 Now, what we do know about the night before? We

1 certainly know that they were together, it appears, if you  
2 believe some of Ms. Eves' testimony. But we also know  
3 something else. When offered even marijuana, or when it was  
4 present, we have no evidence that he even touched it. He may  
5 have been drinking, she says. The reality is, Ms. Eves either  
6 doesn't recall or never saw. Certainly, there's no evidence to  
7 indicate that Mr. Martinez would even use marijuana, let alone  
8 methamphetamine, a far harder drug.

9 Now, the D.A. has presented two theories to you. One  
10 is that it's Mr. Martinez's dope. In fact, he was responsible  
11 for it. And that somehow the deputy, when he pulled up to him,  
12 was witnessing some sort of a hand-to-hand buy transaction,  
13 through the window. Well, is that even a plausible scenario?

14 First of all, we know from Ms. Martinez, the window of  
15 that car didn't even go down. That he would have been the one  
16 that somehow could have conducted this transaction. So I think  
17 right there, I think calls into doubt that possibility.

18 Secondly, even the deputy himself told you there was  
19 nothing that indicated it might have been a drug transaction.  
20 Like a good deputy, did he put up behind them, yes, he did.  
21 And it was in that time, when he first pulled up, is when he  
22 saw Mr. Martinez leaning forward. Reality is, No. 1, we don't  
23 know whether or not Mr. Martinez saw them. The deputy  
24 indicated he had no idea whether or not Mr. Martinez could have  
25 seen him or would have been hiding and disposing of some dope,  
26 and if so, it sounds like he had several seconds. Why would  
27 the dope end up, in all places, right between his feet, if, in  
28 fact, Mr. Martinez had the drugs the entire time? At that



1 point, he's got several seconds, and if he's leaning down, he  
2 can certainly stuff it under the seat. I asked the question,  
3 "We're there seat covers?" For a reason. He could have simply  
4 slipped it inside the seat. He could have stuffed it in there.  
5 But the reality is, there's no way to characterize his action  
6 of leaning forward, before he even knows the police are  
7 present, as anything other than a guy leaning forward in his  
8 car, not knowing that there are police present. Not knowing or  
9 suspecting that there are drugs in the car, because all the  
10 evidence we have is, in fact, that it came from Ms. Eves.

11 Now, the other theory is that it's Candance's dope.  
12 It's her drugs. And yet the D.A. is still going to ask you to  
13 find Mr. Martinez guilty under some sort of an aiding and  
14 abetting theory. Well, the D.A. describes as it was primarily  
15 hers. It was hers. She purchased it. And she possessed it,  
16 but, in fact, he possessed it too. Even though it was  
17 primarily hers. Again, Ms. Eves' testimony was very clear.  
18 She never described it as primary hers. She never described  
19 it as mostly hers. She described it one way. Hers. Her meth.  
20 Her drugs. Her shit. There's no evidence to suggest that  
21 Mr. Martinez had any right to possess it or control it. And  
22 again, I'm going to draw you back to the jury instructions that  
23 Mr. Steward referenced previously, and that is the idea of  
24 constructive possession.

25 In order for you to find Mr. Martinez guilty under  
26 this theory, he'd have to have the right to control it. There  
27 simply is no evidence of that. It was in somebody else's  
28 hands. Even if, in theory, he knew, Mr. Martinez knew about

1 it. He would actually have to physically control it. She told  
2 you that she bought, she believed, .2 grams that she intended  
3 to smoke herself. She told you that's the amount she would  
4 smoke in one sitting. She told that she would sometimes smoke  
5 five times a day. She already smoked earlier that day.  
6 There's no evidence that suggests that Mr. Martinez had any  
7 right to possess it.

8 Now, Ms. Eves also talked about this assumption, and  
9 this idea that well, I thought we smoked it together. Well,  
10 maybe to Ms. Eves it is sort of understood that with her  
11 regular friends that yes, they're all going to smoke dope, but  
12 the bottom line is, in this case, she's with somebody she  
13 hardly knows, and she made an assumption that Mr. Martinez  
14 knew. How do we know that? The D.A.'s very own questions when  
15 asked about it:

16 "The two of you were going to smoke together?

17 "Well, that was my understanding.

18 "Right. And you and him talked about that?

19 "No. We didn't talk about it. We just assumed,  
20 you know."

21 She, in fact, was making assumptions herself. She  
22 assumed that Mr. Martinez knew what was going on, knew take me  
23 to so-and-so's place or take me over there to get some shit.  
24 She assumes that to everyone in her troop or group of friends  
25 means, I need to go score some drugs. Take me over there, so  
26 we can smoke it together. The reality is, No. 1, we don't know  
27 exactly what she says, because frankly, she doesn't remember.

28 And No. 2, she made assumptions about what

1 Mr. Martinez knew. How he interpreted things. And what he,  
2 and his expectations were. And even in that, there's nowhere  
3 that suggests that Mr. Martinez had the ability to control it.

4 Just freeze things for a moment, assume everything the  
5 D.A. set up was accurate. And that somehow if we change things  
6 a little bit Mr. Martinez did know. Was there any evidence to  
7 suggest that Mr. Martinez could have said, "Give me the drugs,"  
8 and she would have turned them over to him?

9 In fact, the way she talked about these drugs, they  
10 were very clearly hers. She was never going to give up control  
11 of those drugs. Now, we don't really need to get into that  
12 because I think the evidence showed pretty clearly that  
13 Mr. Martinez simply did not know, that's an important part of  
14 it.

15 Now the aiding and abetting idea is again drawn by a  
16 very simple analogy. Okay. You have a bank robbery. During  
17 jury selection and again now, Mr. Steward puts forth a very  
18 clean simple analogy, a bank robbery. He describes three  
19 people know what's going on. They go. They agree to it. One  
20 of them is the driver. One is the lookout. And one goes in  
21 with the gun. The perpetrator is the guy with the gun, but  
22 everybody is on the hook, and that's actually true, under those  
23 facts.

24 But if you change the facts a little bit, where three  
25 people are in a car or maybe two people are in a car and one of  
26 says, "Hey, drop me off at the bank. I've got some shit to  
27 do." He goes in, robs the bank. And at that time and then and  
28 there does not know what's going on, even if that guy comes

1 back with a bag of money, the driver is not on the hook for the  
2 robbery because at the time the crime was committed, he simply  
3 did not know what was going on. Guess what? Even if the guy  
4 gets back in the car and says, "You've got to get me out of  
5 here," and he drives him away. He's an accessory after the  
6 fact, but he has not committed the robbery. He has not robbed  
7 that bank under the law.

8 So even if you determine back there, that maybe you do  
9 choose, you collectively agree that we believe that at some  
10 point he knew they were going to smoke the drugs, that in and  
11 of itself isn't enough, because he would still have to have  
12 control over it. And until he holds on to that pipe with her  
13 drugs, until he is permitted to control it, even if you buy  
14 everything else about what she says, he is still not guilty  
15 under the law. He's not an aider and abettor because you as a  
16 jury would have to determine that he knew what was going on  
17 before it happened. He drove her over there understanding it  
18 would happen. He drove her over there, understanding that they  
19 were going to use the drugs. And he would have the right to  
20 control it. And we simply don't have evidence of that.

21 Now, in the beginning of this trial, during my opening  
22 statement, I explained to you as much as what the trial is  
23 about -- excuse me -- what evidence you won't see, compared to  
24 what evidence you do see. And there are some things that point  
25 to Mr. Martinez knowing what was going on. There were drugs at  
26 his feet. It looks bad. He's with a user, an admitted user,  
27 somebody who smoked earlier that day, who's half his age. It  
28 looks bad. He makes a statement to the police to Deputy

1 Hiraoka that it's not her drugs, that looks bad. But the  
2 reality is, ladies and gentlemen, in order for you to find him  
3 guilty, you have to rule out every possible explanation. Every  
4 reasonable doubt. The law makes that clear. The burden on the  
5 People is beyond a reasonable doubt. And as the judge  
6 instructs you, proof beyond a reasonable doubt leaves you with  
7 an abiding conviction that the charge is true. The evidence  
8 need not eliminate all possible doubt, but all reasonable doubt  
9 must be eliminated. Unless the evidence proves the defendant  
10 guilty beyond a reasonable doubt, he is entitled to an  
11 acquittal.

12 In a case like this, you've been instructed by the  
13 judge the difference between direct and circumstantial  
14 evidence. The D.A. is relying heavily on circumstantial  
15 evidence, almost exclusively on circumstantial evidence for you  
16 to get inside of Mr. Martinez's head and for you to decide  
17 whether or not he knew at the time and place before those drugs  
18 were purchased. And the law gives you some guide as to how to  
19 treat that. It states that if there two more reasonable  
20 conclusions from the circumstantial evidence, and one of those  
21 reasonable conclusions points to innocence and another to  
22 guilt, you must accept the one that points to innocence,  
23 because the law recognizes there can be different explanations  
24 for things.

25 So when Mr. Martinez explains to the deputy, albert  
26 untruthfully that, "No, they weren't her drugs, I guarantee  
27 they're not hers," if you believe that he was maybe trying to  
28 cover up for her, because he felt bad that she got caught or he

1 thought she got caught with drugs, if you find that to be a  
2 reasonable explanation to why he would distance her from  
3 things, and you, in fact, find that she was the one that had  
4 the drugs, she was the one that bought the drugs. She was the  
5 one that had them in her bra, and tossed them only at the last  
6 second, then you must accept the interpretation that says he's  
7 not guilty. The law requires that, and that's why it's placed  
8 such a high burden on the prosecution.

9 Now, as far as the mechanics of what actually  
10 happened, ask yourself whether or not the description Ms. Eves  
11 gave of things is fair and accurate? They were her drugs. She  
12 kept them tucked away because she intended to smoke them. When  
13 the police came, she tried to get rid of them. Is it possible  
14 that Mr. Martinez didn't know about it? Is it possible that  
15 they landed between his feet while he was maybe trying to  
16 glance a look back at the police.

17 The deputy testified that from the time when he  
18 started his red lights throughout the initial stop and the  
19 arrest, when they were questioned, before the arrest when he  
20 was questioning them, getting identification registration, he  
21 kept an eye on them. At any point, he would have seen had  
22 Mr. Martinez tried to kick things under the seat or reach down.  
23 And he said that Mr. Martinez remained still, sitting with  
24 drugs between his feet. Either he didn't know, or he's the  
25 dumbest criminal ever. Because anybody who knew drugs --  
26 anybody who thought he would have been in trouble, would have  
27 kicked them underneath his feet or reached down and swept them  
28 under. But the deputy testified that he sat there and did

1 nothing.

2           Additionally, when questioned, he cooperated. He gave  
3 his name. He did everything he thought the officer wanted.  
4 Only when he was asked to step out of the car does he see the  
5 drugs for the first time. And at that point, does he do  
6 something stupid? Yes. But what he does is make a  
7 misstatement to the officer. That's, in essence, the story  
8 Ms. Eves gave. How much credibility you want to give it, is up  
9 to you. The D.A. needs her as a witness. The D.A. gave her  
10 immunity because he recognizes that the only person that can  
11 put intent and understanding, knowledge, into Mr. Martinez's  
12 head is her.

13           The judge gave you that instruction about an  
14 accomplice liability for a reason. It recognizes the  
15 accomplice in this case as a principal, as Ms. Eves is, her  
16 testimony needs to be corroborated. Simply put, she's presumed  
17 to be unreliable. She's presumed to have a reason to lie or  
18 reasons to do many things. And the laws says that there must  
19 be other evidence. You can't simply take something an  
20 accomplice says or in this case a principle, she's pinning  
21 blame on someone else. The law says there must be independent  
22 proof and evidence.

23           I ask you to hold the D.A. to that. I think it  
24 clearly defines her as an accomplice. If there is any doubt,  
25 please go through those jury instructions. And I ask you to  
26 follow these instruction. If you decide that the witness was  
27 an accomplice, then you may not convict the defendant of the  
28 charges based upon her statement alone. You may use the

1 testimony of an accomplice to convict the defendant, only if 1,  
2 the accomplice's statement is supported by other evidence that  
3 you believe. Ask yourself is there other evidence that  
4 Mr. Martinez knew of the drugs?

5 Secondly, and in addition, that supporting evidence is  
6 independent of the accomplice's testimony. Is there anything  
7 independent, apart from what she said, as an accomplice to the  
8 crime, that gives you reason to believe that Mr. Martinez knew?

9 And finally, all three of these must be met. The  
10 supporting evidence tends to connect the defendant to the  
11 commission of the crime. What evidence do you have, apart from  
12 her testimony under a grant of immunity, this is the case.

13 Now, it occurred to me the fact that there's immunity  
14 granted, may lead you to believe that she's no longer an  
15 accomplice, that's not the case. She was granted immunity only  
16 as to what she says on the stand. The D.A. can still prosecute  
17 her. So she's still is regarded as an accomplice. But even if  
18 you believe everything the D.A. has tried to give you here  
19 today, you still must find independent for her. The reality  
20 is, there's simply nothing other than her assumptions, her  
21 statements, the way she interacts with her friends. The way  
22 she's not too sure if she said dope or shit or what she said.  
23 There must be something else.

24 Right now the D.A. stands on only her words and her  
25 assumptions. A person that doesn't remember things well. A  
26 person who is using five days a week. A person that is  
27 convicted of two felonies warrants and was two misdemeanor,  
28 thief crimes, that's the evidence the D.A. is asking you to



1 rely upon. We submit to you, this is not enough beyond a  
2 reasonable doubt.

3 Ladies and gentlemen, where there is smoke, there's  
4 usually fire. That's true. And often times people in groups  
5 are guilty by association, but that's not the legal standard.  
6 Don't assume that Mr. Martinez knew what she was talking about.  
7 Don't assume that she did. That he knew there was drugs being  
8 bought. Don't assume he knew that she had the drugs on her.  
9 Thank you.

10 THE COURT: All right. Thank you, Mr. Kenyon.

11 Let's take our mid-afternoon break until 3:30. So all  
12 the admonitions still apply. And then we'll come back at 3:30.  
13 We'll hear the People's rebuttal argument. All right. So  
14 let's break until 3:30. Thank you.

15 (Recess taken.)

16 THE COURT: We're back on the record in the People  
17 versus Martinez. Mr. Martinez is present. Both counsel are  
18 present. All members of our jury are present.

19 And Mr. Steward, if you'd like to give the People's  
20 rebuttal argument.

21 MR. STEWARD: Thank you.

22 During my first argument, I presented two different  
23 plausible explanations or theories of what really happened.  
24 Either that he -- it was his dope or it was her dope, but he  
25 assisted her and helped her to get the dope, and then was going  
26 to smoke it with her. The defense is now giving you a third  
27 explanation, basically. They have basically said it was her  
28 dope, and he didn't even know she had it until it was too late.

1 And then the defense gave you one of the instructions, and it's  
2 on the screen right now, about circumstantial evidence.

3 Because here you have circumstantial evidence that the dope is  
4 there right next to him, which is some evidence of his guilt.

5 If you can draw two or more reasonable conclusions  
6 from the circumstantial evidence, and one of those reasonable  
7 conclusions points to innocence and another to guilt, you must  
8 accept the one that points to innocent. However, you will  
9 notice on that instruction, there's four documents at the end,  
10 there's actually another sentence that's part of that  
11 instruction, it's not on the screen. Let me give that to you.  
12 You should have all the instructions.

13 "However, when considering circumstantial evidence,  
14 you must accept only reasonable conclusions, and reject any  
15 that are unreasonable."

16 I would submit to you, that the defense theory that  
17 the defendant, Mario Martinez, had no idea that dope was there,  
18 he was clueless about what was going on, that is unreasonable.  
19 Why is it unreasonable? Well, first of all, who are the type  
20 of people Candance Eves was hanging out with? People that are  
21 part of her drug culture. Do you really think Candance Eves  
22 would take a guy who she hardly knows, who's not in on this at  
23 all, who's not part of what going on with the dope? Do you  
24 really think he would be the guy that drives her to go get  
25 dope, and totally leave him in the dark, and he is totally  
26 clueless about what's going on. Why would she trust a guy that  
27 much? Because remember, the drug business is dangerous  
28 business. It can be dangerous in terms of someone snitching

1 you off to the police. It could be dangerous for other  
2 reasons. She had enough trust in the defendant to choose him  
3 to be the one to drive her over to get the dope, if you believe  
4 her theory that it's not his dope, it's hers.

5 Have you ever heard the expression birds of a feather  
6 flock together? How could that not be applicable here? The  
7 defense says, "Well, since she's an accomplice, she's presumed  
8 unreliable." Well, the law doesn't actually say that. The law  
9 does say with an accomplice who might have a -- see, the  
10 problems with an accomplice is they might have a tendency to  
11 blame someone else to take the heat off themselves. Like let's  
12 say she had actually come into court and said, "It wasn't my  
13 dope. It was his. Even though I was there with him" and all  
14 this. "Maybe I knew what was up, but it was really his dope.  
15 It wasn't mine." Then yeah, she would be a lot more  
16 untrustworthy as a witness, because she's obviously trying to  
17 take the heat off herself. And yes, that instruction does  
18 require corroboration, also known as supporting evidence, with  
19 an accomplice there has to be some supporting evidence. But  
20 let's look a little closer at the instruction.

21 "The supporting evidence, however, may be slight. It  
22 does not need to be enough by itself to prove that the  
23 defendant is guilty of the charged crimes. And it does not  
24 need to support every fact mentioned by the accomplice in her  
25 statement. The supporting evidence must tend to connect the  
26 defendant to the commission of the crime."

27 Do we have some supporting evidence in this case?  
28 Absolutely. Do you have to just take the word of Candance Eves

1 to believe the defendant was in on this whole possession, that  
2 he played some role? No. The best supporting evidence is what  
3 the officer observed. Deputy Hiraoka saw the meth right near  
4 the defendant's feet. If all we had was Candance Eves coming  
5 in and saying that man was, you know, part of -- or he assisted  
6 me in buying dope, but we never had the dope, yeah, it would be  
7 a lot harder to take her word for it. But the deputy saw the  
8 dope with his own eyes. You had a chance to see the dope with  
9 your own eyes. You know, obviously, you'll get a better chance  
10 to look at it closer in the jury room than you have so far.

11 But the fact that the defendant's got the dope right there at  
12 his feet is supporting evidence that what Candance Eves is  
13 saying is true. And there is evidence that tends to connects  
14 him to the crime because the dope is right there at his feet.

15 We don't have to corroborate every fact she testified  
16 to. There just has to be slight evidence to back up what she  
17 said. Mr. Kenyon said, "Well, if you can't believe the  
18 messenger, you can't believe the message." And yes, Candance  
19 Eves has her issues. She's a thief. Or at least she has  
20 stolen before, or at least, been found guilty of her being  
21 involved in a theft crime. She's an admitted habitual user of  
22 methamphetamine, which lessens her credibility. But you know  
23 people don't lie just to lie. People, when they lie, tend to  
24 do it for a reason. Think back in your own life on people that  
25 have lied to you. Isn't there usually a reason why they do it?  
26 People have motivations that explain the why behind the what?  
27 The what is what they are saying. We have to get behind the  
28 what to explain why are they saying what they are saying?

1           If you were going to buy a business, what would be  
2 the -- and let's say the business owner wanted to convince you  
3 that this is a valuable business, you should pay top dollar for  
4 it. It's a very successful business, profitable business.  
5 What would be -- I don't know about you, if I was going to buy  
6 such a business, one of the things and the types of evidence I  
7 would be the most interested in examining would be the tax  
8 returns of that seller for the last three years or the last  
9 five years. Why would that be? Well, if you think about it,  
10 the motivation that the owner had with the IRS is exactly  
11 opposite of the motivation that seller has with you. With the  
12 IRS, the motivation is to make the company look unprofitable as  
13 possible so you don't have to pay a lot of taxes, right? With  
14 you, motivation is, let's make it look as good as possible so  
15 we're going to make it look very profitable. That's an example  
16 of how people have motivations that helps to explain what  
17 they're telling us.

18           With Candance Eves, what was her main motivation here?  
19 How would you characterize her testimony? I would submit to  
20 you that if you had to summarize her testimony, it was mainly  
21 to try to take the heat off the defendant. I mean, the bottom  
22 line is, she's trying to say the dope is hers. She's trying to  
23 describe it as hers and hers alone. Even though she doesn't  
24 understand the law on constructive possession or aiding and  
25 abetting.

26           In light of the fact she's trying to protect the  
27 defendant, doesn't it make sense that whatever information she  
28 tells you that hurts him actually has some ring of truth or

1 credibility to it? I mean, if she really wants to take the  
2 blame for the dope, why would she on the other hand make up the  
3 fact that they talked about going to get the dope? Why would  
4 you make up the fact that the defendant actually drove her to  
5 go buy the dope? Why would she make that up? It doesn't make  
6 any sense. What would her motivation be to make up those lies  
7 that incriminate the defendant? At the end of the day, that  
8 really do incriminate him. What little she is willing to say  
9 that incriminate the defendant is believable because of the  
10 fact she has the motivation to try to make the case look better  
11 for him.

12 Now, I talked about two different important theories,  
13 constructive possession, and aiding and abetting. Either one  
14 will prove the defendant guilty. You don't have to have both.  
15 It's not like the two go hand in hand, necessarily. Because,  
16 you know what, you can aid and abet someone and never even  
17 constructively possess the dope. Okay? If you believe the  
18 defendant never actually possessed the dope, that he wasn't  
19 really in constructive possession, but he, in fact, did assist  
20 her by driving her over there to get the dope, that's enough  
21 under the law. He's guilty of an aider or abettor.

22 I will submit to you that it's very unreasonable to  
23 argue that the defendant had no right to control the dope that  
24 was in his car. Would you allow someone you knew was going to  
25 buy dope to get into your car after doing a transaction? No.  
26 If you are going to allow people in your car that are buying  
27 dope, shouldn't you be held responsible since you have a right  
28 to control what's in your automobile? You know, the defense

1 used an analogy of a brother and sister in a car. It's not  
2 just a brother in the car or a sibling in the car. It's his  
3 car. It's his mother's car, but he's using it. He has a right  
4 to say what goes in there and what doesn't. Under the bank  
5 robbery analogy he said let's change the facts, let's say the  
6 driver doesn't really know what's going on. Well, that's a big  
7 assumption in this case. And Candance Eves told you  
8 point-blank, "We discussed the fact I was going to go buy dope.  
9 She said that point-blank.

10 "What do you usually say when you want to buy  
11 methamphetamine? "Do you actually say methamphetamine or do  
12 you call it by another name?

13 "We call it that. It doesn't matter. I don't  
14 know.

15 "Question: No other names you know it by?

16 "Answer: Yeah.

17 "Question: What else also do you call it?

18 "Answer: Dope

19 "What else?

20 "Answer: I don't know. I usually say that word.

21 "Do you sometimes call it shit?

22 "Yeah."

23 Then on the next page.

24 "What did you tell him, the defendant?

25 "I told him we were going to buy my friends's  
26 house to get the dope."

27 Members of the jury, the defendant is attempting to  
28 escape responsibility. Even though the dope is found in his

1 car, at his feet. She says he knew they were going to go buy  
2 it. And even though the defendant told the police, I guarantee  
3 you, the meth is definitely not Eves, even though he was  
4 willing to tell the police that, he now wants to escape  
5 responsibility and make you think, in fact, it was Candance  
6 Eves' and not his. And I'm simply asking you to hold him  
7 accountable for what a reasonable interpretation of the  
8 evidence shows it to be and that is, he was guilty of both  
9 Count 1 and Count 2. Thank you.

10 THE COURT: All right. Thank you, Mr. Steward.

11 I have one more concluding instruction to read to you  
12 and then I'm going to have you follow the deputy into the  
13 deliberation room and, at least, you can pick a foreperson to  
14 begin your deliberations this afternoon.

15 When you go to the jury room, the first thing you  
16 should do is choose a foreperson. The foreperson should see to  
17 it that your discussions are carried on in an organized way and  
18 that everyone has a fair chance to be heard. It is your duty  
19 to talk with one another and to deliberate in the jury room.

20 You should try to agree on a verdict if you could do  
21 so. Each of you must decide the case for yourself, but only  
22 after you have discussed the evidence with your fellow jurors.  
23 Do not hesitate to change your mind if you become convinced  
24 that you are wrong. But do not change your mind just because  
25 other jurors disagree with you. Please keep an open mind and  
26 openly exchange your thoughts and ideas about this case.  
27 Stating your opinions too strongly at the beginning or  
28 immediately announcing how you plan to vote may interfere with



1 an open discussion. Please treat one another courteously.  
2 Your role is to be an impartial judges of the facts, not to act  
3 as an advocate for one side or the other.

4 As I told you at the beginning of the trial, do not  
5 talk about the case or about any of the people or any subject  
6 involved in it with anyone, including, but not limited to, your  
7 spouse or any family, friends, spiritual leaders or advisors or  
8 therapists. You must discuss the case only in the jury room  
9 and only when all 12 jurors are present. Do not discuss your  
10 deliberations with anyone else.

11 During the trial, several items were received into  
12 evidence as exhibits. You may examine whatever exhibits you  
13 think will help you in your deliberations. These exhibits will  
14 be sent into the jury room when you begin to deliberate, except  
15 for the envelope with the dope in it, or the shit in it,  
16 whatever you want to characterize it as. If you want to see  
17 that, that's fine. Excuse my French, as my mother used to say.  
18 If you want to look at it, that's fine, but what I'm going to  
19 do is send my deputy in with it, and he's going it remain in  
20 the jury room with you while you look at it, touch it, feel it,  
21 whatever. The one thing I need to admonish you about, though,  
22 when you are looking at it, with my deputy there, you can't  
23 deliberate or discuss the case, because he's there at that  
24 point in time. Then once you are through looking at and  
25 observing it and touching or whatever you want to do with it,  
26 he'll take it back, leave, and then you can continue your  
27 deliberations at that point in time. Okay? So that's how  
28 we're going to handle that.

1           If you need to communicate with me during your  
2 deliberations, please send a note through the bailiff, signed  
3 by the foreperson or by one or more members of the jury, and  
4 we'll give you a form that you can fill out in that regard.

5           To have a complete record of this trial, it is  
6 important that you not communicate with me except by way of  
7 written note. If you have any questions, I will talk to the  
8 attorneys before I answer. So it may take some time to get  
9 back to you. Please continue your deliberations while you wait  
10 for my answer. I will answer any questions either in writing  
11 or orally here in open court. Do not reveal to me or anyone  
12 else how your vote stands on the question of guilt, unless I  
13 specifically direct you to do so.

14           Your verdict on each count must be unanimous. This  
15 means that to return a verdict, all 12 of you must agree to it.

16           It is not my role to tell you what your verdict should  
17 be. Do not take anything that I have said or done during the  
18 trial as an indication of what I think about the facts, the  
19 witnesses, or what your verdict should be.

20           You will be given verdict forms. As soon as all the  
21 jurors have agreed on a verdict, the foreperson must date and  
22 sign the appropriate verdict forms and then please notify the  
23 bailiff. If you're able to reach a unanimous decision on only  
24 one or only some of the charges, fill in those verdict forms  
25 only, and notify the bailiff. Please return any unsigned  
26 verdict forms.

27           All right. If the clerk would swear the deputy,  
28 please

1 THE CLERK: Do you solemnly state that you will take  
2 charge of the jury, and keep them together, that you will not  
3 speak to them yourself, or anyone else to speak to them upon  
4 any subject connected with this case, except by order of the  
5 Court, and when they have agreed upon a verdict, you will  
6 return them to this court, so help you God?

7 THE BAILIFF: I do.

8 THE COURT: All right. If the 12 jurors will collect  
9 all your personal belongings, your notepads, and my deputy then  
10 will take you to your jury deliberation room. If our two  
11 alternate jurors can just remain for one more minute, please.  
12 Thank you.

13 For alternate jurors, the jury is obviously going to  
14 begin deliberating on the case, but you are still alternate  
15 jurors. And you are still bound by all my earlier instructions  
16 and admonitions. About your conduct, you're not to talk about  
17 the case or about any of the people or any subject involved in  
18 this trial with anyone else, not even with your family,  
19 friends, not even with one another or with the deliberating  
20 jurors. As a matter of fact, I'm going to ask you to not have  
21 any contact with the deliberating jurors at this point in time.

22 You're not to decide how you would vote if you were  
23 deliberating. Also, do not form or express any opinions about  
24 the issues in this case, unless you're actually substituted in  
25 for one of the jurors now deliberating on the case. I have had  
26 occasions where I've had to substitute in an alternate even  
27 while the jurors are deliberating. So basically, you're kind  
28 of on-call status.

1 I'm going to release you at this point in time. I'm  
2 going to have the jury deliberate this afternoon until 4:30,  
3 and then come back in tomorrow morning at 9:00. And then  
4 continue to deliberate all day, every day from 9:00 until 4:30,  
5 until they arrive at verdicts in this case. And until they  
6 arrive at verdicts, you're on call, you're kind of on standby.  
7 If we do need to substitute in an alternate, we'll contact you  
8 and ask you to come in. So I want to make sure you're  
9 available to us, and that we have numbers where we can reach  
10 you during the day. And I want to make sure when we do contact  
11 you, that you respond back to the court within half an hour, 45  
12 minutes. Because if we do need to substitute in an alternate,  
13 that means that the jury cannot continue to deliberate until  
14 you get here, so they're waiting for you. I don't want you  
15 somewhere in West L.A. where it takes you two or three hours,  
16 depending on the traffic, to get here.

17 And then once the jury does arrive at a verdict, I'll  
18 have my clerk call you up, let you know what the verdicts are,  
19 and at that point, you're no longer on this jury. All my  
20 admonitions will no longer apply. And you're free to talk to  
21 whomever you want to. At that point in time, it's your option  
22 to decide who you want to talk to and what you want to tell  
23 them.

24 Okay. If I don't see you again, I do want to thank  
25 you for your service in this case. I think being an alternate  
26 juror is probably the most difficult thing we ask people to do,  
27 because you have to sit here and pay attention throughout the  
28 entire trial, but you don't get to go back and deliberate with

1 your fellow jurors. But it is an important function that  
2 you've provided for us, and we do appreciate it. I do want to  
3 thank you. So at this point in time then, you are excused.

4 All right. Thank you.

5 Do we want to take up the issues of priors at this  
6 point?

7 MR. KENYON: Yes, Your Honor. I've had a discussion  
8 with Mr. Martinez, and I explained to him the way  
9 procedurally -- first of all, he has a right to a jury trial  
10 with respect to the priors. He also has a right to waive that  
11 for a bench trial with respect to priors. And he also has the  
12 right to admit his priors should he be convicted. So I've  
13 explained those things to him. And now he is expressing some  
14 concern about some of the things factually which took place in  
15 the priors. And I explained to him that this is not a forum,  
16 an opportunity for us to contest the merits of each those  
17 cases. And I think he understands that. And I've also  
18 explained to him that this has no impact upon -- well, little  
19 impact, really, on his possible Romero motion, that should he  
20 be convicted and the priors either be admitted or found true,  
21 that we still have the right on his behalf to submit a Romero  
22 motion to ask the Court to exercise its discretion to strike  
23 one or two of those priors. I think he understands that the  
24 admission of the priors has no impact on that.

25 Based upon that, I think he is prepared and willing to  
26 waive jury, as well as bench, and will admit his priors should  
27 the Court -- sorry, should the jury return a guilty verdict.  
28 And we would take up the Romero Motion at the time of

1 sentencing.

2 THE COURT: All right. Mr. Martinez, Mr. Kenyon is  
3 correct when he stated that, you don't have the right to  
4 relitigate those prior offenses; that should have happened way  
5 back whenever you were convicted. What we're doing now is  
6 determining whether or not, first of all, you were convicted of  
7 each of these crimes as they have been alleged in the felony  
8 information. And you do have the right to have this same jury  
9 make that decision. You have the right to make me make that  
10 decision as a court trial, or you could admit them. And of  
11 course, we're presuming, that's all we're doing at this point,  
12 that the jury is going to convict you of one or two of the  
13 felony counts. If they don't convict you, it makes no  
14 difference, then you're a free man, with respect -- I won't  
15 say, yeah, you're a free man. And the priors don't come into  
16 play, unless, as I have indicated, the jury convicts you of one  
17 or both of the felony charges. And Mr. Kenyon has indicated  
18 that it is your desire, at this point, to waive or give up your  
19 right to have the jury make that decision or to have a court  
20 trial; is that correct?

21 THE DEFENDANT: Your Honor, I'm just kind of confused  
22 because on one of my second strikes, it was -- remember I told  
23 you I had misrepresentation with my public defender, and so I  
24 don't know if that will interfere with anything I'm doing right  
25 now or would it?

26 THE COURT: No. The only thing that makes a  
27 difference is were you convicted and are you the person --

28 THE DEFENDANT: Oh, okay.

1 THE COURT: -- named?

2 THE DEFENDANT: Yeah.

3 (Mr. Kenyon and the defendant are conversing.)

4 THE COURT: Yes. Mr. Martinez, Mr. Kenyon is also  
5 correct whether we have the jury determine -- whether these  
6 priors are true or not, whether I determine whether they or  
7 true or not, by way of court trial, or whether you admit them,  
8 it doesn't make any difference as far as the Romero motion is  
9 concerned. Mr. Kenyon still has a right to make that motion or  
10 make that request on your behalf regardless of whether the jury  
11 finds them true, or I find them true or you admit them. Okay?

12 THE DEFENDANT: I'll just admit.

13 THE COURT: What I have to do is go through them each  
14 one individually and ask you whether or not the priors are  
15 true. And there are five what we call prison priors. And then  
16 there are two strike priors. And again, I'll go through them  
17 individually. And all the five prison priors are alleged  
18 pursuant to the provisions of Penal Code Section 6667.5,  
19 Subdivision (b).

20 The first prison prior alleges that back on October  
21 6th, 1989, in the Superior Court for the County of Riverside,  
22 you were convicted of a burglary in violation of Penal Code  
23 Section 459, and did serve a prison term for that conviction?

24 And Mr. Martinez, do you admit or deny that prior  
25 conviction?

26 THE DEFENDANT: Admit.

27 THE COURT: The second prison prior alleges that on or  
28 about March 10th, 1994, again, in the Superior Court in the

1 County of Riverside, you were convicted of a burglary charge in  
2 violation of Penal Code Section 459, and did serve a separate  
3 prison term for that conviction; do you admit or deny that  
4 conviction?

5 THE DEFENDANT: Admit.

6 MR. KENYON: Your Honor, he's requesting that the  
7 people in the back of the courtroom, which he doesn't know,  
8 leave the courtroom. I don't obviously know if this an open or  
9 closed part of the proceeding so --

10 THE COURT: Well, it's a continuing part of the trial.

11 MR. KENYON: So I guess that makes it a public matter.

12 THE COURT: Right. It's an open courtroom. They  
13 could sit here during the trial itself.

14 Again, were you on or about March 10th, 1994, in  
15 Riverside County, convicted of a burglary in violation of Penal  
16 Code Section 459, did you serve a separate prison term for that  
17 conviction?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. The third prison prior alleges  
20 that on or about February 10th, 1995, you were convicted of a  
21 crime of vehicle theft in Riverside County, that being a  
22 violation of Vehicle Code Section 10851, and did serve a  
23 separate prison term for that crime; do you admit or deny that  
24 prior offense?

25 THE DEFENDANT: Yes.

26 THE COURT: And then the fourth prison prior alleges  
27 that on or about July 1, 2001, in the County of Riverside, you  
28 were convicted of possession of a control substance in



1 Riverside County as a felony in violation of Health and Safety  
2 Code Section 11377, and did serve a separate prison term for  
3 that offense; and do you admit or deny that prior conviction?

4 THE DEFENDANT: Yes.

5 THE COURT: Then the 5th and final prison prior,  
6 alleges that on or about December 30th, 2003, in the County of  
7 Riverside you were convicted of a first degree burglary in  
8 violation of Penal Code Section 459, and did serve a separate  
9 prison term for that offense; and again, do you admit or deny  
10 that prior conviction?

11 THE DEFENDANT: Admit.

12 THE COURT: All right. And then there are two strike  
13 priors that are alleged pursuant to the provisions of Penal  
14 Code Sections 667, Subdivision (c) and (e) and 1170.12  
15 Subdivision (c), and the first strike prior --

16 MR. STEWARD: Your Honor, if I may be heard?

17 THE COURT: Yes.

18 Mr. STEWARD: I think there's an error on the date.  
19 It should be 2003 as opposed to 2002. I would move to amend it  
20 at this time.

21 THE COURT: Yes, I'm assuming that the fifth prison  
22 prior, which is a first degree burglary, which alleges a  
23 conviction date of December 30th, 2003, is the same conviction  
24 as the first strike prior?

25 MR. STEWARD: Yes, it is. And I have the prison  
26 packet. So I'm confident it should be 2003.

27 THE COURT: All right. Then as far as the first  
28 strike prior, I'll amend that by way of interlineation to

1 allege a conviction date of December 30th, 2003.

2 And again, Mr. Martinez, the first strike prior  
3 alleges that you were, in fact, convicted of a first degree  
4 burglary in violation of Penal Code Section 459, in Riverside  
5 County on or about December 30th, 2003; and do you admit or  
6 deny that prior conviction, sir?

7 THE DEFENDANT: Admit.

8 THE COURT: In the second and final strike prior,  
9 alleges that on or about October 14th, 1988, in Superior Court  
10 of Los Angeles, you were convicted of a crime of robbery in  
11 violation of Penal Code Section 211; and do you admit or deny  
12 that prior conviction?

13 THE DEFENDANT: I admit it.

14 THE COURT: Mr. Kenyon, do you join in the admissions?

15 MR. KENYON: I can't at this time, Your Honor. I  
16 think it will here -- I just need to clear somebody with the  
17 D.A. I'm actually seem to be short on some of the prison  
18 packets. I've seen the rap sheet, but I don't know that I've  
19 got abstracts on all of these.

20 THE COURT: All right. Why don't you take a look at  
21 it then.

22 MR. KENYON: At this time, the D.A. and I are actually  
23 missing the prison packet 969 (b). So I see a third CDC number  
24 on his rap sheet, but we only have two prison packets. So at  
25 this time I can't --

26 THE COURT: Well, the 969 (b) packet should have all  
27 the prison priors in it.

28 MR. STEWARD: Well, he has three different CDC

1 numbers.

2 THE COURT: He should only have one CDC number.

3 MR. STEWARD: Well, no. When you parole, and then you  
4 get picked up subsequently, they give you a new CDC number.

5 THE COURT: No, they don't.

6 MR. STEWARD: I have seen it happen many times.

7 THE DEFENDANT: I discharged with two numbers, Your  
8 Honor.

9 THE COURT: Well, that may well be. It's my  
10 understanding -- I've never worked for the California of  
11 Department of Corrections, but it's my understanding once you  
12 get a CDC number that stays with you for the rest of your life.

13 MR. STEWARD: Many times we'll see defendants with  
14 multiple numbers discharge, and it's like a clear slate almost.

15 THE COURT: Okay.

16 MR. KENYON: I've seen it both ways. Sometimes  
17 they'll have eight prison priors under one CDC number. Other  
18 times, if there's a long enough lapse between them, they will  
19 discharge and get a whole new CDC number.

20 THE COURT: So what do you gentlemen suggest we do at  
21 this point in time then?

22 MR. KENYON: At this time, I can't join in them. I  
23 have every reason to believe that eventually the People are  
24 going to produce this other CDC packet, because I believe the  
25 rap sheet reflects the information that's in the information.  
26 But at this time, I don't want to join in something without  
27 having seen the evidence that the D.A. would be presenting. In  
28 other words -- well, you understand what I mean?

1 THE COURT: Right. So his CII rap sheet, though, does  
2 indicate each of the five prison priors and the two strike  
3 priors?

4 MR. KENYON: Correct. It indicates them. I've seen  
5 it previously. I didn't review it so closely as to the  
6 specific dates, but I do recall seeing these various  
7 convictions. Well, at the same time I might -- I still don't  
8 think I could join in the --

9 THE COURT: All right.

10 MR. KENYON: -- plea, absent a 969 (b) packet. I  
11 think we'd be required from a proof perspective, should we have  
12 a jury trial or a court trial.

13 THE COURT: Well --

14 MR. KENYON: I don't mind putting this over until  
15 tomorrow to give Mr. Steward time and opportunity --

16 THE COURT: He's not going to get the packet by  
17 tomorrow.

18 MR. KENYON: They're either at the office or they're  
19 somewhere else. It is possible that the package got separated.

20 THE COURT: Well, all of them -- you guys are making  
21 this more difficult than it really needs to be. All of these  
22 convictions except for the first one, the robbery conviction  
23 from L.A. County in 1988, were out of Riverside County.

24 MR. STEWARD: Right.

25 THE COURT: So either the Court or the D.A.'s office  
26 will have records of each of those convictions and what his  
27 sentence was.

28 MR. KENYON: I understand that. My thing is at this

1 point, I don't have those.

2 THE COURT: I understand. I'm just saying there's  
3 another way or a means to obtain that information other than  
4 trying to get it from the Department of Corrections through his  
5 969 (b) packet through different CDC numbers. You can get the  
6 RIF numbers. Go online, or have the D.A.'s office pull their  
7 own case files.

8 MR. KENYON: And Your Honor, I myself could go back  
9 and review those files as the Court suggested, and as long as I  
10 can find those convictions, I would have no trouble in joining  
11 with them tomorrow.

12 THE COURT: I understand.

13 MR. KENYON: But at this time, I just can't safely do  
14 it.

15 THE COURT: Right. I'll accept his admissions at this  
16 point in time. And then I'll allow counsel further to look  
17 into his priors. If there's a concern or an issue, we can  
18 revisit this. All right.

19 Anything further?

20 MR. STEWARD: No, Your Honor.

21 MR. KENYON: Not at this time, Your Honor.

22 THE COURT. All right. Again, I want to make sure  
23 counsel is available to the court as well. So make sure my  
24 clerk has cell phone numbers or pager numbers or whatever where  
25 we can reach you, should the jury have any questions or issues  
26 come up.

27 MR. KENYON: All right. Thank you.

28 (ADJOURNMENT)

1 RIVERSIDE, CALIFORNIA, DECEMBER 4, 2007

2 (BEFORE THE HONORABLE PAUL E. ZELLERBACH - DEPARTMENT 44)

3 THE COURT: We're back on the case of the People  
4 versus Mario Martinez. Mr. Martinez is present. Both counsel  
5 are present. We are out of the presence of the jury.

6 And I received word from my bailiff just before the  
7 noonhour that the jury had arrived at verdicts, and knowing  
8 that we couldn't get everyone here to take the verdicts before  
9 noon, I told the jury to go to lunch and that we would take  
10 the verdicts after lunch. But before we call the jury in this  
11 afternoon, I want to go over just a couple of things.

12 First of all, yesterday, Mr. Martinez, when we went  
13 over all your priors, and I asked you whether or not you  
14 admitted or denied them, you indicated yes by way of response  
15 to my question. And I want to make sure the record is clear  
16 that when you said, "yes," you were, in fact, admitting each  
17 of the priors; is that correct?

18 THE DEFENDANT: Your Honor, yesterday I didn't  
19 understand what I was going through because of the court thing  
20 and stuff like that, and I wanted to withdraw my plea on that.  
21 And I talked to my public defender about that. I wasn't in  
22 the right state of mind. I really didn't understand

23 THE COURT: All right.

24 Mr. Kenyon?

25 MR. KENYON: Yes, Your Honor. I've just discussed it  
26 with him, and as the Court remembers, there were two of the  
27 priors, which I was holding out because I wanted to see either  
28 abstracts or something with regards to proof that the D.A.

1 would be presenting. I've now seen those and would be willing  
2 to join in the admissions by Mr. Martinez.

3           However, he's now expressed that he is interested in  
4 a bench trial as to those. I've discussed that with the  
5 Deputy D.A., and we decided that should the jury come back  
6 with guilty verdicts on one or both counts that if it's  
7 convenient with the Court we would request a bench trial on  
8 these on December 14th, a week from Friday, excuse me.

9           THE COURT: All right. So let me go over that then  
10 again with you, Mr. Martinez.

11           You did admit your prior offenses yesterday. And I  
12 believe that that admission was knowing and voluntary on your  
13 part, but given the status of this case, and the significance  
14 of the priors, I will allow you at this point in time to  
15 withdraw those admissions that you made to the Court  
16 previously.

17           So what that leaves us with is, assuming the jury,  
18 again, hypothetically speaking, convicts you of one or both  
19 counts, then you would have a right to have that same jury  
20 determine the truth of each of those priors. But what  
21 Mr. Kenyon has now indicated to me is that you would agree to  
22 waive or give up your right to have this jury or make that  
23 decision and allow me to make that decision during a court  
24 trial; is that correct?

25           THE DEFENDANT: Yes, sir.

26           THE COURT: All right.

27           And Mr. Steward, are the People also agreeing to  
28 waive their right to a jury trial on the priors?

1 MR. STEWARD: Yes, Your Honor.

2 THE COURT: All right. Then we'll have the minutes  
3 reflect that both the People and the defendant and  
4 Mr. Martinez have waived their right to a jury trial in the  
5 priors and we'll have a court trial should that become  
6 necessary and we can do it on December 13th. But I want to do  
7 it right at 8:30, so plan on making this courtroom your first  
8 appearance that morning so that we can get it done, because I  
9 have a rather lengthy calendar on Friday. Usually by the time  
10 attorneys get here, I'm on other matters until 9:00 or 9:30.  
11 So if we could start promptly at 8:30 and get done that would  
12 be great. All right.

13 Anything else before we bring our jury in?

14 MR. STEWARD: No, Your Honor.

15 MR. KENYON: No, Your Honor.

16 THE COURT: I was informed by my deputy just when I  
17 came back from lunch, that apparently the foreperson had  
18 indicated to him that they had inappropriately signed one of  
19 the forms and I've had this happen recently in another case  
20 that I presided over. And again, I instructed my deputy just  
21 to tell the foreperson to line through or strike through that  
22 improper or inappropriate verdict form and initial it. And  
23 I'm assuming that's what he has done.

24 Our foreperson is Juror No. 4.

25 So I'll take a look at the verdict forms first once  
26 the jury comes in, but I wanted to make counsel aware of that  
27 issue.

28 All right. Let's bring our jury in, please.



1 (The following proceedings were held in the  
2 presence of the jury.)

3 THE COURT: All right. All members of our jury have  
4 now joined us.

5 I've been informed, sir, you are the foreperson of  
6 this jury; is that correct?

7 THE FOREPERSON: Yes, Your Honor.

8 THE COURT: All right. I've also been informed that  
9 the jury has arrived at verdicts on both counts; is that  
10 also correct?

11 THE FOREPERSON: Yes, Your Honor.

12 THE COURT: And then finally, I was informed by my  
13 deputy that apparently you mistakenly or incorrectly marked  
14 one of the verdict forms?

15 THE FOREPERSON: There's correct.

16 THE COURT: I instructed my deputy to tell you  
17 basically to line it out, put an x through it and initial it,  
18 and you've done that?

19 THE FOREPERSON: Yes, Your Honor.

20 THE COURT: All right. If you could hand the verdict  
21 forms to my deputy, please.

22 Basically, all four verdict forms were signed and  
23 initialed originally, but you have drawn an x through the two  
24 that I'm assuming were not applicable, and also sign them and  
25 date them, correct?

26 THE FOREPERSON: That's correct.

27 THE COURT: All right. Thank you. Then if the clerk  
28 would please read the verdicts.

1           Is it agreeable that the clerk only read the full  
2 caption when she reads the first count, but not on the second  
3 count?

4           MR. STEWARD:    Yes, Your Honor.

5           MR. KENYON:    Yes, Your Honor.

6           THE COURT:    All right.  Thank you.

7           THE CLERK:    Superior Court, County of Riverside, the  
8 People of the State of California, Plaintiff versus Mario  
9 Martinez, Defendant, Case No. RIF136990, verdict:  We the jury  
10 in the above entitled action find the defendant, Mario  
11 Martinez, guilty of a violation of Section 11379 Subdivision  
12 (a) of the Health and Safety Code, transportation of  
13 methamphetamine as charged under Count 1 of the Information,  
14 dated December, 4th 2007 signed by the foreperson Juror No. 4.

15           Ladies and gentleman of the jury, is this your  
16 verdict?

17           THE JURORS:    Yes.

18           THE CLERK:    We the jury in the before entitled  
19 action, find the defendant, Mario Martinez, guilty of a  
20 violation of Section 11377 Subdivision (a) of the Health and  
21 Safety Code, simple possession of methamphetamine as charged  
22 under Count 2 of the Information, dated December 4, 2007  
23 signed by the foreperson, Juror No. 4.

24           Ladies and gentleman of the jury, is this your  
25 verdict?

26           THE JURORS:    Yes.

27           THE CLERK:    Thank you.

28           THE COURT:    All right.  Would either counsel like the

1 jury poled?

2 MR. STEWARD: No, Your Honor.

3 MR. KENYON: No, Your Honor.

4 THE COURT: All right. Then I will order the  
5 verdicts be recorded as read.

6 Ladies and Gentlemen, that does, in fact, conclude  
7 your jury service in this case. All of the admonitions that  
8 I've given to you throughout the trial no longer apply. At  
9 this point in time, you're free to talk to whomever you want  
10 to, now it's your decision to make. Having been a trial  
11 attorney myself for many years, I always enjoyed talking to my  
12 juries after my trial. I learned about the case as well as my  
13 own personal skills and abilities as a litigator or a trial  
14 attorney. I also felt that made me a better attorney, because  
15 we all have things we can always learn in life as we get older  
16 and more experienced.

17 If you'd like to talk to the attorneys, they will be  
18 outside in the hallway momentarily. And again, if you'd like  
19 to talk to them, you can go out and wait for them. They'll be  
20 out there in just a minute. If you've got more Christmas  
21 shopping to do, or you don't care to talk to them, then that's  
22 fine, too. I only ask that before you leave the courthouse  
23 building today, make sure to go back down to the jury assembly  
24 room on the second floor and check out, let them know you've  
25 completed your service in this case.

26 On behalf of the judges of Riverside County and  
27 myself personally, I want to thank you for your services  
28 in this case. If nothing else, I hope that by going through

1 this process as a trial jury, you have a better appreciation  
2 and understanding for our justice system and how important a  
3 role each of you has played in this system.

4 As I told you at the very onset of these proceedings,  
5 we can't conduct business without people willing to sit as  
6 trial jurors. And I know it's certainly inconvenient and a  
7 pain sometimes, especially this time of year, but our business  
8 never stops, that train just keeps on rolling, unfortunately.

9 But again, I do appreciate it and I want to thank  
10 you. And maybe when you get that summons next year, I'll see  
11 you again. And with that, you're excused.

12 My deputy is also going to hand out a form that I  
13 give to all jurors that basically sets forth what your rights  
14 are as trial jurors in the State of California. And believe  
15 it or not, you do have rights. I think it's important that  
16 all my jurors be made aware of that. And so I'll pass out  
17 this form to you as you leave the courtroom this afternoon.

18 And again, I do want to thank you and I wish you all  
19 a happy holiday. And if you just follow my deputy now. Thank  
20 you all very much. You are excused.

21 ( The following proceeding were held outside the presence  
22 of the jury.)

23 THE COURT: All right. All members of the jury have  
24 now left the courtroom. And obviously, based upon the juries  
25 verdicts, the priors now become an issue. And I believe you  
26 indicated, Mr. Kenyon, that you and Mr. Steward were  
27 requesting the date of December 14th to have the court trial  
28 and the priors; is that correct?

1 MR. KENYON: Yes, Your Honor.

2 THE COURT: All right.

3 Mr. Martinez, do you also agree to have the court  
4 trial and the priors on that same date, that being Friday the  
5 December 14th?

6 THE DEFENDANT: Yes.

7 Your Honor, how would I apply for a mistrial?

8 THE COURT: Well, you need to talk to Mr. Kenyon  
9 about that.

10 THE DEFENDANT: That's the reason why I wanted --

11 THE COURT: Again, he is your attorney, Mr. Martinez,  
12 so you need to discuss any motions or issues in that regard  
13 with him.

14 All right. And we'll set the court trial on the  
15 priors for Friday, December 14th at 8:30. I will order that  
16 Mr. Martinez be here on that date at that time, but he need  
17 not be dressed out. All right. We are in adjournment.

18 (Adjournment.)

19

20

21

22

23

24

25

26

27

28

1                                PROCEEDINGS OF FRIDAY, DECEMBER 14, 2007

2                                BEFORE THE HONORABLE PAUL E. ZELLERBACH, DEPARTMENT 44

3                                THE COURT:    Calling the matter of the People versus  
4 Mario Martinez.    Again, this is Case No. RIF136990.    Both  
5 counsel are present.    Mr. Martinez is present in custody.

6                                In this matter, the defendant was found guilty of -- by  
7 a jury back on December 4th of this year.    And both counsel  
8 agreed and stipulated to put the court trial over with respect  
9 to the prior convictions that are alleged until today's date.  
10 And that's the purpose as to why we are here this morning.

11                                And with respect to the court trial on the priors,  
12 Mr. Steward, are the People ready to proceed?

13                                MR. STEWARD:    Yes, Your Honor.

14                                THE COURT:    All right.    If you would like to call your  
15 first witness.

16                                MR. STEWARD:    Yes.    Your Honor, there are some errors  
17 on the Information on dates and whatnot.

18                                THE COURT:    All right.

19                                MR. STEWARD:    Also, in looking at -- we did receive the  
20 third and outstanding 969b prison packet on Mr. Martinez since  
21 we last met.

22                                In looking over the paperwork, the People move to  
23 dismiss the third listed prison prior, the February 10, 1995,  
24 10851 prior, because from the paperwork, it appears apparent to  
25 me that he served that sentence concurrently with the sentence  
26 listed as Prison Prior No. 2, the 1994, 459.

27                                THE COURT:    I am presuming, Mr. Kenyon, you have no  
28 objection.

1 MR. KENYON: None, Your Honor. Thank you.

2 THE COURT: All right. Then the third prison prior  
3 offense alleged, pursuant to Penal Code Section 667.5,  
4 Subdivision (b), will be dismissed on the People's motion at  
5 this time.

6 MR. STEWARD: Yes, Your Honor. I would -- if the Court  
7 is agreeable, I would like to make an oral motion to correct a  
8 few minor errors.

9 THE COURT: All right. Go ahead.

10 MR. STEWARD: Count -- the first prison prior is  
11 actually an attempted burglary rather than a completed burglary.  
12 So it should be a 664/459, the one that's dated October 6, 1989.

13 THE COURT: All right.

14 MR. STEWARD: Then on the fourth prison prior, dated  
15 July 1, 2001, it should actually be July 10, 2001. So we are  
16 missing a zero.

17 THE COURT: All right.

18 MR. STEWARD: Then, finally, the first strike prior,  
19 which is the same as the fifth prison prior, it should actually  
20 be 2003 rather than 2002.

21 THE COURT: I think I had previously brought that to  
22 your attention. All right.

23 Then by way of interlineation, the Court will on  
24 People's motion amend the first prison prior offense to allege  
25 an attempted burglary, in violation of Penal Code Section 664  
26 slash 459.

27 With respect to the fourth prison prior offense that's  
28 alleged, again, the Court will by way of interlineation allege a

1 conviction date of July 10th, rather than July 1st, 2001.

2           And then, with respect to the first strike prior that's  
3 alleged in the Information, again, by way of interlineation, the  
4 Court will change the conviction date from December 30th, 2002,  
5 to the date of December 30th, 2003, which would be the same  
6 conviction date as the fifth prison prior that's also alleged.

7           MR. STEWARD: I forgot to mention one more error.

8           THE COURT: All right.

9           MR. STEWARD: The second prison prior should be dated  
10 May 13, 1994, as opposed to March 10, 1994.

11           THE COURT: May 13th?

12           MR. STEWARD: Yes, Your Honor.

13           THE COURT: All right. Then, again, by way of  
14 interlineation, the Court will amend the Information to allege a  
15 conviction date of May 13th, 1994, rather than March 10th, 1994,  
16 with respect to the second prison prior that's alleged, as well.

17           All right. Now, are we ready to proceed?

18           MR. STEWARD: Yes, Your Honor. The People call Yolanda  
19 Perez.

20           THE CLERK: You do solemnly state that the evidence you  
21 shall give in this matter shall be the truth, the whole truth,  
22 and nothing but the truth, so help you God?

23           THE WITNESS: Yes.

24           THE CLERK: Thank you. Please be seated.

25           Please state your name and spell your first and last  
26 name for the record.

27           THE WITNESS: Yolanda, middle initial P., last name of  
28 Perez, Y-O-L-A-N-D-A, P-E-R-E-Z.



1 THE CLERK: Thank you.

2 THE COURT: All right.

3 Mr. Steward?

4 MR. STEWARD: Yes.

5 YOLANDA P. PEREZ,

6 called as a witness by and on behalf of the People, having been  
7 first duly sworn, was examined and testified as follows:

8 Direct Examination By Mr. Steward

9 Q. Good morning, Miss Perez.

10 A. Good morning.

11 Q. What is your current occupation?

12 A. I am a supervising forensic technician with the  
13 district attorney's office.

14 Q. What are your duties as a forensic technician?

15 A. My duties are to supervise the Riverside office, the  
16 Indio office, and Southwest. And also I am a working  
17 supervisor, so in addition to doing that, I prepare court  
18 exhibits, I also do fingerprint comparisons, photography, crime  
19 scene sketches. I respond to officer-involved shootings.

20 Q. All right. And could you please tell the Court your  
21 training and experience regarding -- regarding comparing latent  
22 fingerprints to known fingerprints.

23 A. As far as formal training, I have got over --  
24 approximately over 1200 hours of formal training with Department  
25 of Justice; FBI; other local law enforcement agencies;  
26 Department of Public Safety, Mississippi; the Royal Canadian  
27 Mounted Police. And I attend seminars on a yearly basis for two  
28 other associations that I belong to, the International

1 Association For Identification and Southern California  
2 Association of Fingerprint Officers.

3           And I have interned with several latent print examiners  
4 from Riverside County, Michael Bretty, Peter Williams, Fred  
5 Lincoln, who is now retired. Also in Orange County Becky Daher,  
6 Maggie Black.

7           Q.    The name before Miss Black?

8           A.    Maggie.

9           Q.    The name before that?

10          A.    Becky Daher.

11          Q.    Can you spell that, please.

12          A.    Yes.  D-A-H-E-R.

13          Q.    Thank you.

14          A.    And informal, or experience-wise, I have been comparing  
15 fingerprints for over 27 years.

16          Q.    All right.  So that includes both latents to known  
17 prints, as well as fingerprint cards among each other?

18          A.    Yes.

19          Q.    All right.  Have you testified in court as an expert  
20 regarding comparison of fingerprints before?

21          A.    Yes, sir.

22          Q.    Any idea how many times?

23          A.    I have testified now 386 times.

24          Q.    All right.  Did you do a comparison of fingerprints  
25 today in this courtroom?

26          A.    Yes, sir, I did.

27          Q.    Did you roll a person's prints and then compare them to  
28 three 969b or prison packets?

1 A. Yes.

2 Q. Let me show you what's been marked People's Exhibit 4  
3 for identification in RIF136990. (Indicating.)

4 MR. STEWARD: May I approach, Your Honor?

5 THE COURT: Yes.

6 Q. (BY MR. STEWARD) Do you recognize this document?  
7 (Indicating.)

8 A. Yes.

9 Q. What is it?

10 A. It's a fingerprint card bearing 20 inked impressions.  
11 And the name on the card reads Mario Martinez, today's date, and  
12 my signature.

13 Q. All right. And did you personally roll those prints?

14 A. Yes.

15 Q. Do you see the person from whom you obtained those  
16 fingerprints today in court?

17 A. Yes, I do.

18 Q. Would you please point him out and describe what he is  
19 wearing.

20 A. He is wearing an orange jumpsuit. And he is sitting to  
21 the right of defense counsel.

22 MR. STEWARD: Indicating the defendant Mario Martinez,  
23 Your Honor?

24 THE COURT: Yes. The record will so reflect.

25 Q. (BY MR. STEWARD) Did you compare those prints you  
26 obtained from Mr. Martinez, the defendant, to these exhibits  
27 marked as People's Exhibits 5, 6, and 7 which are three prison  
28 packets?

1 A. Yes, I did.

2 Q. All right. And what were your findings?

3 A. My findings were that the fingerprints that I took of  
4 Mr. Martinez matched the fingerprints contained in Exhibits  
5 No. 7, No. 6, and No. 5.

6 Q. In your opinion, the fingerprints that were obtained in  
7 those prison packets, were those obtained from Mr. Martinez?

8 A. Yes.

9 MR. STEWARD: No further questions.

10 THE COURT: All right.

11 Mr. Kenyon, cross-examination?

12 Cross-Examination By Mr. Kenyon

13 Q. Miss Perez --

14 MR. KENYON: May I actually approach, Your Honor, to  
15 grab those exhibits?

16 THE COURT: Certainly.

17 Q. (BY MR. KENYON) The various exhibits -- these 969b  
18 packets you examined, the fingerprints are of varying quality,  
19 is that fair to say?

20 A. Yes.

21 Q. Were there any of the fingerprints which you found to  
22 be unusable? In other words, any of the -- in the 969b packet,  
23 were any of the sets of fingerprints below the standard you  
24 would need in order to properly identify anyone?

25 A. Yes. There were fingerprint impressions on some of  
26 those packages that were poor quality. But there is 20  
27 impressions, so there was ample fingerprints for comparison.

28 MR. KENYON: Can I approach again, Your Honor?

1 THE COURT: Yes.

2 Q. (BY MR. KENYON) Just so the record is clear, would you  
3 mind explaining which ones you found to be inadequate.

4 (Indicating.)

5 A. If you look at this impression here, the Number 9  
6 finger on the rolled portion of this card was poor. And --

7 THE COURT: We need to know which exhibit that is.

8 THE WITNESS: Exhibit No. 5, Your Honor.

9 THE COURT: Which specific print?

10 THE WITNESS: It's finger Number 9, which is the left  
11 ring finger --

12 THE COURT: Thank you.

13 THE WITNESS: -- was poor; also, the left middle; and  
14 the left index; and the Number 6 finger, which is the left  
15 thumb.

16 But if you look over here, they are of comparable  
17 quality. On some of these rolled impressions on this exhibit,  
18 you will see that they are poor, but if you look below, they are  
19 comparable.

20 Q. (BY MR. KENYON) Okay. So in your evaluation, then,  
21 did you rely on the second set of prints which are down below  
22 the full, I guess, four-finger prints off each hand? Were those  
23 the ones you relied on?

24 A. Yes.

25 Q. So based on the ones above alone, you were unable to  
26 make a determination?

27 A. Yes.

28 Q. Now, in these exhibits, specifically Exhibit No. 7, it

1 appears that the -- the two fingerprint pages are located back  
2 to back; is that right?

3 A. Yes.

4 Q. And the abstract of judgment pages are the two pages  
5 prior to that; correct?

6 A. Correct.

7 Q. Now, do you have -- you obviously weren't present when  
8 those fingerprint impressions were taken or when the abstracts  
9 of judgment were created; correct?

10 A. Correct.

11 Q. And, likewise, in this packet, can you tell which set  
12 of fingerprints would -- corresponded to which of the abstract  
13 of judgments?

14 A. Yes.

15 Q. How do you do that?

16 A. Okay. If you look at Exhibit No. 7, and you looked at  
17 the first abstract of judgment, if you look under "Case Number,"  
18 there is a Case No. RIF113903. And if you look at the first  
19 fingerprint card, and look at behind that card, the first one  
20 that appears, you will notice there is an RIF number where the  
21 charge and citation number is and it matches that abstract of  
22 judgment, RIF113903.

23 Q. For the record, though, that is located on the flip  
24 side of what appears to be a photocopy of that fingerprint card;  
25 right?

26 A. Yes.

27 Q. So it's not -- there is nothing on the fingerprint card  
28 itself, the face of the fingerprint card, that necessarily

1 corresponds to the case number. You previously referenced that  
2 RIF number; right?

3 A. Right.

4 Q. Okay.

5 A. And then you go to the second page and, again, you have  
6 the same situation. If you go to the second abstract of  
7 judgment, you will read that the number on this particular case  
8 is RIF097808.

9 THE COURT: Which exhibit number is that?

10 THE WITNESS: Again 7, Your Honor.

11 THE COURT: All right.

12 THE WITNESS: And then you go to the second fingerprint  
13 card. And you will notice that on the back side of that also,  
14 it has the same corresponding RIF number, 097808.

15 Q. (BY MR. KENYON) Okay. But again, just like the last  
16 one you described, this case reference number is located on the  
17 back side of what appears to be only a photocopy of the actual  
18 fingerprint card; correct?

19 A. Correct.

20 Q. On those two forms, the certification stamp from the  
21 Department of Corrections indicating it's a certified record, I  
22 guess, is located only on one side; correct?

23 A. Correct.

24 Q. So there is nothing on the fingerprint card side that  
25 indicates it's a certified copy; correct?

26 A. No. Nothing on the other side.

27 Q. Okay. Let's see here. Now, giving you now Exhibit 6.  
28 Turning your attention, again, to that fingerprint card page.

1 There is nothing on the face of that fingerprint card page which  
2 references the abstract of judgment page again; right?

3 A. No. On this one, there is.

4 Q. There is. What is that?

5 A. If you look at the first abstract and the second  
6 abstract of judgment on Exhibit No. 6, the first court number is  
7 ICR12679. And the second abstract reads CR32018. And if you  
8 look at the face of the fingerprint card, and look here where it  
9 says "Offense," again, it referenced those two same court  
10 numbers.

11 Q. Okay. You are right. My mistake.

12 There is nothing on that face of that fingerprint card,  
13 however, which -- any sort of stamp or seal on the face of it  
14 which indicates it is a certified record; correct?

15 A. Correct.

16 Q. Then directing your attention to People's Exhibit No. 5  
17 again on the fingerprint card page, I think this is the -- this  
18 is the page I think you previously referenced. It had the --  
19 some of the prints were poor quality; right?

20 A. Correct.

21 Q. On this page, do you see anything which specifically  
22 references the case number referenced in the abstract of  
23 judgment page?

24 A. No, sir.

25 Q. Okay. And likewise, there is no stamp on the face of  
26 the fingerprint card page; right?

27 A. Right.

28 Q. And all of these that we have looked at so far appear



1 to be merely photocopies of whether -- presumably wherever the  
2 originals are?

3 A. Correct.

4 Q. As far as the art of science of fingerprinting, there  
5 is no standardized number of points of comparison, is that  
6 correct, in terms of like an industry standard?

7 A. No, there is no set standard. Each department has  
8 their own.

9 Q. In this case, how many points of comparison did you  
10 actually use for each of the various fingerprints?

11 A. May I refer to my notes?

12 Q. Yes. If that would refresh your recollection.

13 A. Yes.

14 Q. Thank you.

15 MR. KENYON: With the Court's permission.

16 THE COURT: Go ahead.

17 THE WITNESS: Thank you, Your Honor.

18 Which case?

19 Q. (BY MR. KENYON) I guess why don't we take them in  
20 order. The first prison prior referenced was an attempt 459, a  
21 664/459 from 1989.

22 How many points of comparison do you use?

23 THE COURT: Which prison packet number or exhibit  
24 number is that?

25 MR. KENYON: Excuse me. That's in -- that would be in  
26 packet number -- Packet Number 6.

27 THE COURT: All right. Thank you.

28 Q. (BY MR. KENYON) Do you need the packets, would that

1 be --

2 A. Yes, please. Because I have got court numbers on my  
3 notes.

4 On this particular one, I have 22 points on the right  
5 thumb. And on the left thumb, I have 16 points.

6 Q. Okay. And moving on to the next packet with the next  
7 two sets of convictions.

8 A. On Exhibit No. 5, under Number 1, I have 12 points.  
9 Then the Number 6, which is the left thumb, I have 15 points.

10 Q. Okay.

11 A. On Exhibit No. 7, I have six -- excuse me, the Number  
12 6, which is the left thumb, I have 20 points; and on Number 1, I  
13 have 15.

14 And there is a second card in this package. And on  
15 number -- which is the right thumb, 20 points, and on the left  
16 thumb, 15.

17 Q. Thank you.

18 In each of these cases, did you only compare one of the  
19 prints of Mr. Martinez?

20 A. No. Two impressions on each card.

21 Q. Two on each card. All right.

22 And you were able to find two usable impressions on  
23 each of the cards?

24 A. Oh, yes.

25 MR. KENYON: No other questions at this time.

26 THE COURT: All right.

27 Any further redirect examination?

28 MR. STEWARD: Briefly.

1 Redirect Examination By Mr. Steward

2 Q. Miss Perez, on Exhibit 7 on the fingerprint card, on  
3 the back of the card, did it list the case number that  
4 corresponds to the conviction for first-degree burglary on  
5 December 30, 2003, out of Riverside?

6 A. Yes, sir.

7 Q. And then on People's Exhibit -- People's Exhibit 6, you  
8 were asked about the fingerprint card for the attempted burglary  
9 from 1989 on Mr. Martinez. And you stated that the front of the  
10 fingerprint card did not have a certification stamp. Did the  
11 back of that same document have a certification stamp from the  
12 Department of Corrections?

13 A. Yes, sir.

14 Q. Were your fingerprint findings verified by another  
15 fingerprint expert?

16 A. Yes, sir.

17 Q. Who was that?

18 A. That was Forensic Technician Jennifer Sniff.

19 MR. KENYON: Actually, Your Honor, I am going to object  
20 to the last two questions as hearsay and lack of foundation.

21 THE COURT: Well, she is testifying as an expert  
22 witness. And expert witnesses are allowed to testify to  
23 reliable hearsay or base their opinions on hearsay. So I am  
24 going to overrule the objection.

25 MR. STEWARD: No further questions.

26 THE COURT: All right.

27 Further cross-examination?

28 MR. KENYON: None, Your Honor.

1 THE COURT: All right.

2 Miss Perez, thank you.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: You are excused.

5 MR. STEWARD: Your Honor, if I may, Miss Perez has been  
6 here since about 8:20, I think, this morning. She took a  
7 photograph of the methamphetamine that we had admitted in  
8 People's Exhibit 3. She is prepared now to take that property  
9 and make sure it gets back to the agency.

10 In lieu of the actual exhibit, she has taken a  
11 photograph which has now been marked People's Exhibit 3-A. I  
12 believe we have a stipulation that this exhibit can be  
13 substituted in lieu of People's Exhibit 3.

14 THE COURT: All right.

15 MR. STEWARD: So the Court does not have to store  
16 controlled substances.

17 THE COURT: Right. That's the problem that I have  
18 recently become aware of that the Court does not have the  
19 capacity or capability of storing drugs or narcotics. So I  
20 suggested that -- to my clerk, at least, that we take a  
21 photograph of the exhibit and return the exhibit back to the  
22 People for returning it back to the agency, ultimately, that I  
23 imagine would destroy the drugs in question once these  
24 proceedings have been concluded and the appellate period has  
25 run.

26 And Mr. Kenyon, are you agreeable to that stipulation?

27 MR. KENYON: Yes, Your Honor.

28 THE COURT: All right. Then what we will do is we will

1 substitute the photograph of the drugs that has now been marked  
2 as People's Exhibit 3-A and that will be admitted into evidence  
3 in lieu of the actual narcotics themselves, which I believe are  
4 People's Exhibit 3. We will return People's 3 back to the  
5 prosecution. All right.

6 Anything further, Mr. Steward?

7 MR. STEWARD: Yes. I would like the Court to also take  
8 judicial notice of a couple of its court files, including  
9 CR54363.

10 THE COURT: Hold on a second. Wait a minute. Wait a  
11 minute. All right. What were the numbers again?

12 MR. STEWARD: Just a moment.

13 CR54363.

14 THE COURT: 543 --

15 MR. STEWARD: -- 63.

16 THE COURT: All right.

17 MR. STEWARD: And I need to find the relevant page I  
18 want to take a look at. Also RIF097808.

19 THE COURT: 097 -- I am sorry, repeat that please.

20 MR. STEWARD: Yes. RIF097808.

21 THE COURT: All right.

22 MR. STEWARD: And then, also, here is -- we would like  
23 People's Exhibits 4 through -- 4 through 7 to be admitted into  
24 evidence.

25 Would you like to take a look at those?

26 THE COURT: Hold on a second.

27 With respect to People's Exhibit 4 through 7,  
28 Mr. Kenyon, does the defense have any objection?

1 MR. KENYON: I am going to object based on foundation.

2 THE COURT: Well, People's 4 is your client's rolled  
3 print card that Miss Perez rolled this morning.

4 MR. KENYON: Excuse me, not as to 4; but as to 5, 6,  
5 and 7.

6 THE COURT: I think the Penal Code specifically  
7 provides for the introduction into evidence of prison packets  
8 pursuant to that Penal Code Section. So I am going to allow the  
9 People to introduce both People's 4 and People's 5, 6, and 7  
10 into evidence.

11 All right. Anything further on behalf of the  
12 prosecution?

13 MR. STEWARD: Well, just to pinpoint what I have -- the  
14 reason I asked for the judicial notice on the court files. On  
15 RIF097808 --

16 THE COURT: Yes.

17 MR. STEWARD: -- on page 6 and 7 of the transcript of  
18 the plea, Mr. Martinez in court admitted the truth of the  
19 October 14, 1988, L.A. robbery conviction. So I will be relying  
20 on that admission --

21 THE COURT: All right.

22 MR. STEWARD: -- to prove up the strike prior, or the  
23 robbery. And then --

24 THE COURT: I am sorry, what page, again, was that?

25 MR. STEWARD: Page 6, the bottom of page 6, starting  
26 with line 23, to the top of page 7.

27 THE COURT: All right. And that's the transcript of  
28 the plea that's contained in the Court's file in Case No.

1 RIF0970 -- I am sorry, 097808. And it was filed on  
2 September 4th, 2003. The transcript was filed on that date.  
3 The plea was actually taken on July 10th, 2001, before Judge  
4 Richard Fields. All right.

5 MR. STEWARD: Yes, Your Honor. And then in case there  
6 is any doubt that in CR54363, which was the -- the burglary  
7 conviction for May 13, 1994, in case there is any question on  
8 whether that involves the same Mario Martinez, I would like the  
9 Court to take judicial notice that the date of birth matches  
10 Mr. Martinez's date of birth of August 4, 1959, as reflected in  
11 CR54363.

12 The Court can also see that in that prison packet,  
13 there is a photograph -- actually two of the three prison  
14 packets, including that one, have a photograph that appears to  
15 match Mr. Martinez.

16 THE COURT: I do see a photograph in the prison packet  
17 that's dated August 10th, 2007, with a CDC number of T24140.

18 And then there, also, is a photograph in the prison  
19 packet dated December 6th, 2007, that is relating to CDC number  
20 J49770. All right.

21 MR. STEWARD: I will submit on those, Your Honor.

22 THE COURT: All right. The People rest?

23 MR. STEWARD: Yes, we rest.

24 THE COURT: All right. Mr. Kenyon, any defense  
25 evidence?

26 MR. KENYON: No, Your Honor.

27 THE COURT: All right. Then hearing -- this Court  
28 trial is closed to evidence.

1 I will hear argument.

2 Mr. Steward?

3 MR. STEWARD: I will submit on it, Your Honor.

4 THE COURT: All right. Mr. Kenyon?

5 MR. KENYON: Your Honor, with regards to the 211 prior  
6 which is alleged, the only proof they have provided is in fact  
7 the -- is an admission by Mr. Martinez at a subsequent plea.  
8 They have provided no other substantive evidence as to it. And  
9 therefore, it's our position that's inadequate to sustain a true  
10 finding as to the existence of that prior.

11 Essentially, this is tantamount to a corpus problem.  
12 They have an admission by Mr. Martinez but nothing else in  
13 support of it. There is -- well, leave it at that as to that  
14 issue.

15 With regards to the evidence presented, there do appear  
16 to be problems with the 969b packets, namely some of the  
17 abstract of judgment cards do not specifically relate to any of  
18 the fingerprint cards.

19 I know there is reference on the other side of the  
20 pages. There is -- because these are merely photocopies, we  
21 don't really know that they are placed in the correct order,  
22 whether or not those fingerprint cards actually correspond to  
23 those abstract of judgments, and therefore those convictions.  
24 So we don't really know when those fingerprints were taken.  
25 Actually, some of those fingerprint cards aren't actually dated  
26 in any way that would give the Court any frame of reference as  
27 to when they were -- when they were taken, and that they do in  
28 fact correspond to the prison commitments they are supposed



1 to -- the DA is claiming they reference.

2 So I will submit on that.

3 THE COURT: Mr. Steward, why is there not any 969b  
4 packet or actual court records relating to Mr. Martinez's  
5 alleged conviction of a violation of Penal Code Section 211 on  
6 October 14, 1988?

7 MR. STEWARD: Well, there is no prison packet because  
8 he got probation on that charge. And from what I can tell, he  
9 was never violated to the point where he went to prison on it.  
10 There would be no prison packet.

11 THE COURT: He went to prison in Riverside County in  
12 1989 on another matter.

13 MR. STEWARD: Well, for whatever reason, he got  
14 probation on that case. Apparently he was never violated on it.  
15 According to the prison packet, he never got violated on it.  
16 According to his rap seat, he never got violated on it.

17 As far as getting the prior, I have been trying for  
18 some time, but L.A. is backlogged so we have tried to get that  
19 prior without success.

20 But we do have his admission. We also have the fact  
21 that he -- we also have the fact that after his admission, the  
22 Court sentenced him with that strike in mind. And that's why he  
23 got 32 months prison low term doubled on RIF097808.

24 THE COURT: Well, the only prior that I do have some  
25 concerns about is the one that, you know, Mr. Kenyon referred  
26 to, that being the 211 prior out of the L.A. County from 1988,  
27 which is alleged as a second strike prior.

28 I am not sure, Mr. Kenyon, that the corpus rule applies

1 to a prior. I know certainly it applies to the commission of a  
2 crime. That's an act. But I don't believe necessarily that it  
3 applies to a prior conviction.

4 And I am taking judicial notice of both court files in  
5 case numbers RIF097808, as well as CR56479.

6 And in RIF097808, I do see in the felony complaint that  
7 was alleged or charged against Mr. Martinez that there was a  
8 strike prior alleged in that complaint for a previous conviction  
9 occurring on October 14, 1988, in the county of Los Angeles for  
10 a violation of Penal Code Section 211, robbery. And then as the  
11 People appropriately point out, we have a transcript of a plea  
12 by Mr. Martinez in that case wherein he specifically admitted  
13 that prior conviction.

14 And the Court made a factual finding, obviously, that  
15 that was a true conviction, and sentenced him -- and enhanced  
16 his sentence pursuant to the appropriate Penal Code provisions  
17 for that prior strike provision.

18 So I do believe that all of the prison priors, the four  
19 prison priors, the first, second, fourth, and fifth prison  
20 prior, as well as the two strike priors, have been proven beyond  
21 a reasonable doubt. And I find them all to be true.

22 All right. Then, what we will do is we will refer this  
23 matter to probation for them to prepare a report and  
24 recommendation regarding sentencing. And that report would be  
25 returnable four weeks from today. Today being the 14th of  
26 December. That would be January 11th. So we will set  
27 sentencing in this matter for Friday, January 11th, at 8:30 in  
28 this department. And I will order that Mr. Martinez be here on

1 that date at that time.

2 MR. STEWARD: Your Honor, there was another drug case  
3 that Miss Burck requested that I take photographs of the  
4 narcotics. We did that, but I assume you want to take care of  
5 that when all counsel are back.

6 THE COURT: Exactly, and on the record.

7 MR. STEWARD: All right.

8 THE COURT: Let's go back on the record in the Martinez  
9 matter. I think I missed -- or I forgot to mention one  
10 additional case the Court took judicial notice of, and that's  
11 CR54363. So again, the three cases that the Court is taking  
12 judicial notice of are RIF097808, CR56479, and CR54363.

13 All right. Thank you.

14 MR. STEWARD: Thank you, Your Honor.

15 MR. KENYON: Thank you.

16 (Proceedings concluded.)  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 PROCEEDINGS OF FRIDAY, MAY 9, 2008

2 BEFORE THE HONORABLE PAUL E. ZELLERBACH, DEPARTMENT 44

3 THE COURT: Let me now call the case of the People  
4 versus Mario Martinez. This is Case No. RIF136990.

5 If counsel could state their appearances, please.

6 MS. FERNANDEZ: Good morning, Your Honor. Ella  
7 Fernandez for the People.

8 MR. KENYON: Good morning, Your Honor. Charles Kenyon  
9 on behalf of Mr. Martinez, who is present.

10 THE COURT: All right. This matter is set for  
11 sentencing today.

12 I have also received a -- what we commonly refer to as  
13 a Romero motion that Mr. Kenyon filed on behalf of Mr. Martinez.  
14 I have also received a probation report and recommendation  
15 regarding sentencing. And then I have received numerous letters  
16 from Mr. Martinez's family and friends.

17 MS. FERNANDEZ: You should also have an opposition from  
18 the People.

19 THE COURT: Let me see if I do.

20 I do, yes.

21 MS. FERNANDEZ: You won't need it today, since it is a  
22 continuance.

23 The Court asked me last time we were here to request  
24 probation records from L.A. County for the first strike that is  
25 alleged. I have ordered that information. I still don't know  
26 whether it actually exists or not; however, they are telling me  
27 that it takes eight weeks from the time that I ordered it. And  
28 I ordered it the day we were here last time.

1 THE COURT: All right.

2 MS. FERNANDEZ: So we will need another four weeks.

3 THE COURT: Just so the record is clear, I had -- the  
4 last time we were here -- asked both counsel the nature of that  
5 particular strike conviction that Mr. Martinez suffered, because  
6 I felt that in ruling on a Romero motion, it's kind of important  
7 that the Court be made aware of the facts and circumstances  
8 underlying the prior strike conviction. And neither counsel had  
9 any information in that regard.

10 And I suggested to both counsel, actually, that either  
11 or both of you might want to try and obtain any type of  
12 documentation out of Los Angeles County to tell us anything  
13 about the nature of that robbery conviction that he suffered in  
14 1988.

15 And that's kind of where we left it, with both counsel  
16 kind of agreeing that that might be helpful for all of us. So  
17 that brings us here today.

18 They couldn't even tell you if it was in existence?

19 MS. FERNANDEZ: No.

20 THE COURT: All right.

21 MR. KENYON: As the Court may recall, we did already  
22 confirm with L.A. sheriff's and police department that they have  
23 purged their records of it. So, that is the dead end -- that  
24 is -- excuse me, a dead end. The only -- I think the last  
25 resort is these probation records, if they exist.

26 THE COURT: Well, all right. But, there is two  
27 possible means to obtain those records. One would be through  
28 the courts and the other would be directly from probation.

1 MS. FERNANDEZ: We have also asked the courts. And my  
2 understanding is both of those agencies require eight weeks.

3 THE COURT: Okay. All right. Well, you know, I think  
4 it -- if the records exist, I think it will be worthwhile for  
5 everyone to put over these issues until that date when we  
6 hopefully obtain that information and know exactly what the  
7 nature and circumstances of the robbery are.

8 So, do counsel have another date in mind?

9 MS. FERNANDEZ: Yes, the 20th, Your Honor, of June.

10 THE COURT: 20th of June?

11 MS. FERNANDEZ: 20th.

12 THE COURT: Okay.

13 Mr. Kenyon?

14 MR. KENYON: That's a joint request, Your Honor.

15 THE COURT: All right. Then we will put sentencing  
16 over, and the motion, over to Friday, June 20th, at 8:30. And I  
17 will order that Mr. Martinez be back here on that date at that  
18 time.

19 MS. FERNANDEZ: Thank you.

20 THE COURT: And what I would suggest also, if -- when  
21 and if counsel gets a copy of those reports, or that  
22 information, if you could provide a copy to my clerk so that I  
23 don't show up the 20th, and all of a sudden I get it then. I  
24 would like to have it beforehand, if possible.

25 MS. FERNANDEZ: Absolutely.

26 MR. KENYON: We have been in contact with one another  
27 to kind of check status on things. So we are trying our best.

28 THE COURT: I appreciate that.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MS. FERNANDEZ: Thank you.

MR. KENYON: Thank you, Your Honor.

THE COURT: Thank you.

(Proceedings concluded.)

1                   RIVERSIDE, CALIFORNIA; FRIDAY, JULY 11, 2008

2           DEPARTMENT 44

                                  HON. PAUL E. ZELLERBACH, JUDGE

3           THE COURT: All right. Let me now call the case of the  
4           People versus Mario Martinez. This is case number RIF-136990.

5           If counsel would state their appearances, please.

6           MS. FERNANDEZ: Good afternoon, Your Honor. Ella  
7           Fernandez for the People.

8           MR. KENYON: Good afternoon, Your Honor. Charles  
9           Kenyon for Mr. Martinez, who is present in custody.

10          THE COURT: All right. This matter is set for  
11          sentencing today, and I have previously received and read many  
12          times the probation officer's report and recommendation. I read  
13          it again today.

14          Also, Mr. Kenyon filed an invitation to the Court to  
15          dismiss one or more of Mr. Martinez's prior strike convictions  
16          pursuant to the provisions of Penal Code Section 1385 or what we  
17          commonly refer to as a Romero motion, and I have read that  
18          motion as well. I have also reviewed the People's opposition to  
19          the Defense's Romero motion.

20          And then I have also been provided with a copy of a  
21          Felony Information and a probation officer's report from  
22          Los Angeles County in case number A-479663, which is one of  
23          Mr. Martinez's prior strike convictions. It's actually an  
24          attempted robbery conviction, that being a violation of Penal  
25          Code Section 664/211, that occurred on or about August 22nd,  
26          1988.

27          And I believe, Ms. Fernandez, that would be the second  
28          strike offense that's alleged in the Information.



1 MS. FERNANDEZ: Yes, Your Honor. I noticed that it was  
2 alleged as a robbery instead of an attempted robbery. I wasn't  
3 here for the trial. It was a different deputy district  
4 attorney. So I'm not sure if he made that adjustment after the  
5 trial or not when the priors were found true.

6 THE COURT: You know, it's been so long, I'm not sure  
7 myself.

8 MS. FERNANDEZ: All right. If the judgment hasn't been  
9 made, People would request to correct that through  
10 interlineation. I don't think it changes anything. The robbery  
11 is still a strike.

12 THE COURT: Right. That's correct.

13 Mr. Kenyon?

14 MR. KENYON: My recollection is that it was charged,  
15 and during the trial as to the priors it was discussed as a 211  
16 instead of an attempt 211. Based on that, I don't think it  
17 changes anything, of course, other than some of my argument with  
18 regards to things, naturally.

19 THE COURT: Correct.

20 All right. You know, this trial was conducted quite a  
21 while ago, and honestly I don't recall when we dealt with the  
22 priors whether that issue was addressed or not. I don't recall  
23 it being addressed, so just to be on the safe side, I will then  
24 amend the second special prior offense that's alleged in the  
25 Information pursuant to Penal Code Section 667 subdivisions (c)  
26 and (e), and 1170.12 subdivision (c), based upon the People's  
27 motion to properly reflect his conviction for an attempted  
28 robbery. So I will, by interlineation, change that to read

1 convicted of the crime of attempted robbery in violation of  
2 Penal Code Section 664/211. Because that's certainly what the  
3 documents from Los Angeles County Superior Court indicate he was  
4 convicted of.

5 MS. FERNANDEZ: Thank you, Your Honor.

6 Also, I didn't have those documents when I wrote my  
7 opposition. So when I do list his criminal history, I list it  
8 as a 211. If the Court will allow me to correct that also in my  
9 opposition.

10 THE COURT: Well, sure.

11 MS. FERNANDEZ: Thank you.

12 THE COURT: I think we all understand that at this  
13 point.

14 All right. And you were not the trial attorney,  
15 Ms. Fernandez. I understand that.

16 MR. KENYON: That's correct.

17 THE COURT: And I believe it's your motion, Mr. Kenyon.  
18 I will hear from you.

19 MR. KENYON: Thank you, Your Honor.

20 For the most part, Your Honor, I am going to submit on  
21 my written motion. The Court certainly has had adequate time to  
22 consider it, and I think I have laid out quite a bit as to his  
23 history. In light of the new information, I did want to comment  
24 on that just briefly.

25 First is, of course, the fact that this is an attempt  
26 robbery as opposed to a robbery. And while that certainly does  
27 not make it a victimless crime, I think based on what the  
28 legislature has laid out in the sentencing does indicate that to

1 some degree it is a slightly lesser offense. Of course, it  
2 changes nothing with regards to the three strikes.

3 I think what is important in reviewing the facts that  
4 came from the probation report is, number one, it indicates that  
5 Mr. Martinez had been using drugs for about three years at that  
6 time. By that time, I should say. And when you read the facts  
7 of it, it appears as though his actions are nothing more than a  
8 desperate person with a drug problem that was seeking money. He  
9 asked for money first. When he couldn't get money, he did what  
10 a desperate person would do and pulled out a wrench covered by a  
11 rag of some sort to try and simulate a gun to scare somebody,  
12 which of course is more than enough for a robbery.

13 But what's most important, I think, as far as it  
14 reflects Mr. Martinez's character is that when the victim turned  
15 and ran, so did Mr. Martinez. He is not a person that -- while  
16 he wants to get his way in that case, he is not a person that  
17 ran the person down and attempted to physically injure them.  
18 And that is I think one of the points I tried to make during my  
19 written motion.

20 Additionally, I would also draw the Court's attention  
21 to something from the facts of the residential burglary which he  
22 was convicted of. I pointed out in my motion that, in fact, it  
23 was an uninhabited motel room. Or I shouldn't say uninhabited,  
24 but nobody was present in the hotel room. He simply walked in  
25 and stole a backpack. And when confronted in this case, he  
26 simply said to the person, quote, "I'm sorry for taking your  
27 stuff. Here are your books back." And Mr. Martinez also then  
28 led the would-be victim to the backpack as well and turned it

1 over, and he apologized. And I guess in cowardly fashion, he  
2 then -- he basically surrendered, which was the right thing to  
3 do.

4 The three strikes law, as the Court is no doubt aware,  
5 is about protecting society against people that show a  
6 propensity for dangerousness, violence. We codify dangerous but  
7 nonviolent offenses to also fall within the spirit of three  
8 strikes, but I think when you consider the facts of this case,  
9 as well as the relatively minimal nature of the 211, if such a  
10 thing can exist, I think it shows that this is a person that is  
11 not inclined to actually hurt someone. He is a person that  
12 while he is a victim of his drug addition and his bad influences  
13 that have surrounded his life for many years, while it has led  
14 him to do some very dishonorable and unfortunate things that  
15 have resulted in some victims in the past, he has never injured  
16 anyone and has never meant to harm anyone.

17 I think what's also important and what I'd like to  
18 point out for the record, which the Court has of course seen but  
19 I think bears some importance, is that his family has  
20 consistently been here throughout this. I mention that in my  
21 motion, but I think, as the Court will recall, almost every time  
22 this motion has been set and reset and reset, he has had six,  
23 eight, 10, 12 family members present. And I think it speaks  
24 volumes about Mr. Martinez and what he means to them and how  
25 they still believe -- the people that know him best still  
26 believe that there is a possibility for salvation for him and  
27 that they treat him as a family member. They have not turned  
28 their back on him because to them he is an important person. He

1 is a person that contributes to the family and means very much  
2 to very many people. Certainly the Court would recall that they  
3 have been present on numerous settings of this hearing.

4 Based upon that, I will submit to the Court subject to  
5 a few comments from them, if the Court would invite it.

6 THE COURT: All right. Yeah. I almost forgot to  
7 indicate that I have received and read it's probably 15 to 20  
8 different letters from friends and family of Mr. Martinez that  
9 the Court has received, including a letter from Mr. Martinez  
10 himself that I've reviewed as well.

11 All right. Then I will hear from the family at this  
12 point.

13 ADRIAN CARRILLO: Good afternoon.

14 THE COURT: Good afternoon. I need to know your name  
15 first, please, sir.

16 ADRIAN CARRILLO: I'm a little nervous.

17 THE COURT: That's okay. Just relax.

18 ADRIAN CARRILLO: My name is Adrian Carrillo.

19 THE COURT: Could you spell your first and last name  
20 for us, please.

21 ADRIAN CARRILLO: First name is A-d-r-i-a-n. Last name  
22 is Carrillo, C-a-r-r-i-l-l-o.

23 THE COURT: All right. Go ahead, Mr. Carrillo.

24 ADRIAN CARRILLO: I'm Mario's brother-in-law. I've  
25 known him for 35 years. I met him when he was a young man  
26 trying to get himself established. Like, he got a good job. He  
27 worked for Santa Fe Railroad.

28 THE COURT: How long?

1           ADRIAN CARRILLO: Um, I think three years --  
2 eight years. I'm sorry.

3           THE DEFENDANT: Eight years.

4           MR. CARRILLO: Time flies.

5           THE COURT: That's all right.

6           ADRIAN CARRILLO: But as you well know, and this is  
7 what I know of him, at that time -- people with good jobs,  
8 sometimes they're not able to land in good company, and I think  
9 that's what happened with him. He landed with the wrong  
10 friends. And of course, him being one of the minority, you  
11 know, people con him and stuff like that.

12           After he lost his job, he had a hard time landing jobs  
13 because -- I don't know if you're aware of his reading  
14 disability, but he always tried. He is not a lazy person. He  
15 is a hard worker. When he is among us with family projects, he  
16 always is a hard worker. As a matter of fact, he is probably  
17 one of the best at his job.

18           From what I know of him personally for all these years,  
19 he is a good person. He is not a person that should be left  
20 out.

21           THE COURT: Do you live locally, Mr. Carrillo?

22           ADRIAN CARRILLO: I live in West Covina, sir.

23           THE COURT: Okay. Not too far away.

24           ADRIAN CARRILLO: No.

25           THE COURT: All right.

26           ADRIAN CARRILLO: And just I would like to say that,  
27 you know, we really care for him, and we wish that he would have  
28 another chance at it. Because every time when he is with us,

1 you can really see that he is trying, and we see that in him.  
2 We really do.

3 THE COURT: All right. Thank you, Mr. Carrillo.

4 ADRIAN CARRILLO: Can I add one more thing?

5 THE COURT: Oh, sure.

6 ADRIAN CARRILLO: The family recognizes your patience,  
7 and we're grateful for you allowing the time for them to see  
8 everything and give him a fair sentencing.

9 THE COURT: Well, you know, as I've said before, this  
10 is an important decision obviously for Mr. Martinez, but I think  
11 for everyone. And since I have to make it, I'm a firm believer  
12 that the more information that I can receive, hopefully the  
13 better decision I can make, whatever that decision may be.

14 ADRIAN CARRILLO: We appreciate that, Your Honor.

15 THE COURT: I appreciate that, Mr. Carrillo. Thank  
16 you.

17 Good afternoon.

18 JOHN MARTINEZ: How you doing?

19 THE COURT: I'm doing pretty good. I'm tired, but I'm  
20 hanging in there.

21 JOHN MARTINEZ: Me too.

22 My name is John Martinez.

23 THE COURT: All right, Mr. Martinez.

24 JOHN MARTINEZ: J-o-h-n M-a-r-t-i-n-e-z.

25 THE COURT: Okay.

26 JOHN MARTINEZ: I'm Mario Martinez's brother.

27 THE COURT: How old are you?

28 JOHN MARTINEZ: 37.

1 THE COURT: So you're about 11 years younger.

2 JOHN MARTINEZ: Pretty much, yeah.

3 THE COURT: I think he is 48.

4 JOHN MARTINEZ: Yeah.

5 THE COURT: All right.

6 JOHN MARTINEZ: Despite all my brother's problems  
7 encountered in his life, he's helped me continue going forward  
8 in mine. Throughout his incarcerations, he's always gotten  
9 time, but he's never gotten rehabilitated for his problem. My  
10 brother has a disease and needs help with his drug problem, you  
11 know, not going to jail and just doing time. I don't think it's  
12 helping him more than the things that -- you know, that -- I  
13 mean, there's things out there that can help people like him.  
14 Because he is not a violent person. I know from what we tell  
15 you and the things that are on his -- you know, his criminal  
16 record are two different things, but my brother needs help with  
17 his disease. He doesn't need to be put away for life. You  
18 know, he's helped me continue in my life, you know, by the  
19 examples of mistakes that he's made, you know. So I would like  
20 to be here for him today.

21 THE COURT: Let me ask you this, Mr. Martinez, if I  
22 could.

23 JOHN MARTINEZ: Sure.

24 THE COURT: First of all, do you live locally?

25 JOHN MARTINEZ: I lived with him for quite a few years,  
26 and now I live in downtown LA.

27 THE COURT: Downtown LA?

28 JOHN MARTINEZ: Yes.



1 THE COURT: Okay. Your brother has been in and out of  
2 prison four or five times now.

3 JOHN MARTINEZ: Yes.

4 THE COURT: Over the past -- well, I guess the first  
5 prison was back in 1989. So for almost 20 years he's been in  
6 and out of prison.

7 JOHN MARTINEZ: Yes.

8 THE COURT: And you're right, he's had a drug problem,  
9 as is evidenced, as Mr. Kenyon pointed out, in the first LA  
10 probation officer's report that we just talked about, and that's  
11 dating back to 1988. And you know, I'm continually confronted  
12 with situations where people have drug problems, which  
13 unfortunately causes them to commit crimes of one sort or  
14 another. And I hear what you're saying, that he needs help and  
15 he needs rehabilitation, but, you know, it's kind of like the  
16 old saying goes: You can lead a horse to water, but you can't  
17 make him drink. And it's got to be Mr. Martinez himself who  
18 decides, hey, I need help, I need to do something about my drug  
19 addiction or problem. And they do have programs in the prison  
20 system. They do have programs once you're on parole, you know,  
21 that will help and assist you kick the habit, and it just seems  
22 like for all these years he hasn't taken advantage of it.

23 I mean, you know, you're right, Mr. Kenyon. The family  
24 has been here all the time and they're very supportive, and I  
25 understand that they care and love Mr. Martinez very much.  
26 That's obvious. But gee whiz, when a family member has  
27 continually had drug problems for all these years, you would  
28 think some family member would try and help him. Again, I

1 understand also that you can only do so much as a family, you  
2 know, and ultimately the individual himself or herself has to  
3 take it upon themselves to follow through with seeking help and  
4 remedying their drug addiction. But, geez, Mr. Martinez had  
5 this problem for a whole long time.

6 Mr. Kenyon, go ahead.

7 MR. KENYON: If I may respond to that very briefly,  
8 Your Honor.

9 It was talked about at the trial about the possibility  
10 of introducing evidence regarding Mr. Martinez's progress. He  
11 was on parole at the time of the offense, and his parole  
12 officer, who was drug testing him regularly, indicated I believe  
13 there were about five drug tests since his release over  
14 approximately a six-month period, all of which came back clean,  
15 though we did not attempt to call him as a witness for any  
16 purpose. I think it would have been somewhat irrelevant given  
17 that he was not charged with being under the influence. I think  
18 that does, to some extent, speak a little bit about the fact  
19 that he was making some progress.

20 Certainly the Court is aware and I am aware of many  
21 cases where a person is released from prison or county jail, and  
22 it's not a week before they relapse. You take somebody with a  
23 20-year history that has certainly struggled with it and has  
24 finally done a fairly significant stint in prison, the  
25 temptation must be incredible to lapse back into that.

26 But for what it's worth, although he was ultimately  
27 convicted of a drug-related offense, of course the Court  
28 remembers the drugs weren't truly in his possession.

1 THE COURT: They were on the floor of the car.

2 MR. KENYON: Yes. Yes. Well, it was largely at the  
3 urging of and I guess temptation of a younger woman. And it  
4 doesn't excuse the conduct, and I'm not pretending to do that.  
5 If anything, actually, it's very sad that to some extent he was  
6 allowing someone young to be tied up in that same culture that  
7 meant his demise. But for what it's worth, to his credit he  
8 himself had not lapsed into drug usage again.

9 THE COURT: Well, I think to a certain extent it goes  
10 back to what Mr. Carrillo was saying, that unfortunately on this  
11 occasion Mr. Martinez chose to be with the wrong people or wrong  
12 friends. When you're on parole or you have the criminal history  
13 that Mr. Martinez has, boy, you've really got to walk a fine  
14 line. You've got to be on the straight and narrow. You can't  
15 hang out with people who do drugs because this is what happens.

16 Now, Mr. Martinez, I will hear from you in a moment.  
17 You know, because you're putting yourself in a situation wherein  
18 you're subjecting yourself to possible arrest or prosecution,  
19 whether you're using or not, and you're around people that are.

20 All right. Mr. Martinez, anything else, sir?

21 JOHN MARTINEZ: I understand what you're saying in  
22 regards to my brother's criminal record and his lapse and  
23 everything, but we're his family.

24 THE COURT: Right.

25 JOHN MARTINEZ: We're not going to give up.

26 THE COURT: Well, and you're going to be there  
27 regardless.

28 JOHN MARTINEZ: No. I'm saying that's why we're here,

1 you know.

2 THE COURT: But, you know, it's a little late. Where  
3 were you 5, 10, 15 years ago?

4 JOHN MARTINEZ: Growing up.

5 THE COURT: Well, okay. And we're still growing up,  
6 aren't we?

7 JOHN MARTINEZ: Yes.

8 THE COURT: We learn every day no matter how old we  
9 are.

10 JOHN MARTINEZ: We have had many talks. This is not  
11 the last try to try to save him.

12 THE COURT: I understand. Believe me, I totally accept  
13 what you are saying.

14 Let me ask you this: Back when this crime occurred,  
15 and it was awhile ago, a little over a year ago, Mr. Martinez  
16 was living with your parents?

17 JOHN MARTINEZ: Excuse me?

18 THE COURT: Was Mr. Martinez, your brother, living with  
19 your parents when this crime occurred?

20 JOHN MARTINEZ: Yes.

21 THE COURT: And they were somewhat elderly at that  
22 time?

23 JOHN MARTINEZ: Yes.

24 MR. KENYON: Yes, Your Honor. I think some of the  
25 facts actually came out during the trial through Mrs. Martinez  
26 that in fact he was living at home. He was, for the most part,  
27 kind of a handyman around the house.

28 THE COURT: Right.

1 MR. KENYON: His parents are, of course, older, and  
2 they were preparing for the wedding of one of the grandchildren,  
3 I believe, and he was assisting around the house.

4 THE COURT: Cleaning up the yard and those types of  
5 things.

6 MR. KENYON: Exactly, Your Honor. Prepping things.  
7 And he was very helpful to them. They were trying to do what  
8 they could to try to isolate or insulate him from the negative  
9 elements. Obviously he is a grown man, and they cannot watch  
10 him like a hawk at all times, and no one would expect them to.  
11 He took the car -- you know, not without permission, but he took  
12 the car and threw himself back into that bad mix, a lapse of  
13 judgment. He should have known better, and he did not.

14 I'm not saying the Court is doing this, but I think it  
15 wouldn't -- it, of course, would not be fair to characterize the  
16 family or the parents as not having been involved in these  
17 attempts to rehabilitate him and to prevent this from happening  
18 again. It simply did not work in this case.

19 THE COURT: Right.

20 MR. KENYON: And I'm not saying the Court is accusing  
21 them of that.

22 THE COURT: No, not at all. Right. I understand.

23 Mr. Martinez, anything further, sir?

24 JOHN MARTINEZ: No, sir.

25 THE COURT: All right. Thank you very much.

26 JOHN MARTINEZ: All right.

27 THE COURT: We're not going to hear from everyone, are  
28 we?

1 MR. KENYON: I don't think so.

2 THE COURT: Okay.

3 LORRAINE MARTINEZ: I think I'm the last one. My name  
4 is Lorraine Martinez. I'm Mario Martinez's niece.  
5 L-o-r-r-a-i-n-e.

6 THE COURT: Thank you.

7 LORRAINE MARTINEZ: You're welcome.

8 THE COURT: Go ahead, Ms. Martinez.

9 LORRAINE MARTINEZ: I just want to say the same thing  
10 kind of my other uncle said. My uncle I don't think is a bad  
11 person. He is not trying to hurt people. He has a problem and  
12 he needs help. I feel like another problem with not only the  
13 drug addiction is also educational level. It's hard for him  
14 when he gets out of prison, jail, trying to find a job, and he  
15 can't. Different people will try to get him a job, and it's  
16 just hard. The kind of work he can do is probably construction,  
17 and it's on and off and he has a lot of free time. He needs to  
18 get some help with that to help him so he can get -- so he can  
19 be able to get a job when he is out of jail.

20 Because he is in and out of jail so much, it's hard  
21 when he comes out. And we're all there for him, and we all try  
22 to be around him and just trying to help him out. You know, he  
23 was helping out my grandparents when he was there doing work  
24 around the house, but he needs a real job to keep him busy, to  
25 give him money too, so he can feel like a person in society that  
26 is involved.

27 THE COURT: It's kind of like you're between a rock and  
28 a hard place. I'm sure it's difficult for him to find a job,

1 but it's also difficult to keep a job when you keep going back  
2 to prison. Right?

3 LORRAINE MARTINEZ: Right.

4 THE COURT: I mean, he's been in and out of prison,  
5 like you said, four or five times over the past 20 years. I  
6 mean, you're right.

7 LORRAINE MARTINEZ: That's what I wanted to add. I  
8 mean, I know that our end is probably biased because he is our  
9 family and we love him so much. It's just that we do feel that  
10 he needs help, and we definitely will try to help him if he --  
11 if he is out.

12 THE COURT: What area do you live in?

13 LORRAINE MARTINEZ: I live in Temple City.

14 THE COURT: Okay. So he has a lot of family in  
15 Southern California.

16 LORRAINE MARTINEZ: Yes.

17 THE COURT: All right.

18 LORRAINE MARTINEZ: Thank you.

19 THE COURT: Thank you.

20 MR. KENYON: On that, I'm going to submit, Your Honor.

21 Thank you.

22 THE COURT: All right, Mr. Kenyon.

23 Ms. Martinez -- Fernandez. I'm sorry.

24 MS. FERNANDEZ: That's okay. Thank you, Your Honor.

25 As the Court has already been made aware of, the  
26 defendant has a lengthy criminal history dating back to 1987.  
27 He has been in prison, or in and out of prison I should say,  
28 over the last two decades of his life. He has six felony

1 convictions that I can count, at least five misdemeanor  
2 convictions, and so it begs the question, is this someone who  
3 falls outside of the three strikes scheme. I believe that using  
4 the events and factors that the Defense has provided in his  
5 motion, I don't think he does.

6 This is someone who, if we look at factor two, which is  
7 the nature and number of the defendant's prior convictions, has  
8 numerous convictions. There is not a significant amount of time  
9 in between each offense or between the last release for a  
10 first-degree burglary in 2003, which he was still on parole for,  
11 and the new offense, which the Court heard at trial.

12 Also, that also goes to factor number four, whether the  
13 prior offenses are recent or not, and they are not. His prior  
14 offense was a 459 in 2003, and before that the offense was in  
15 2001 for 11377.

16 I don't think we can attribute the 1988 attempted 211  
17 necessarily all to drugs. The probation officer's report on  
18 page 5 does state that he used marijuana for quite some time;  
19 however, it states the defendant only tried cocaine once. I  
20 don't know the motivation for that offense. The defendant  
21 stated that the motivation for that offense was that he needed  
22 money to buy gasoline, I believe, and that he requested a  
23 dollar, but the victim didn't understand him. I don't think  
24 that's credible.

25 However, I don't think we can say everything in his  
26 history was related to drugs. Because as I look at his criminal  
27 history, at least as I have outlined it, it seems that they are  
28 all theft related. I don't see a drug offense until 2001.



1 THE COURT: Well, right. But come on, why do -- how do  
2 a lot of drug users support their habit?

3 MS. FERNANDEZ: I agree. I'm just saying --

4 THE COURT: They commit theft-related offenses, don't  
5 they?

6 MS. FERNANDEZ: Yes. And sometimes people just commit  
7 theft-related offenses.

8 THE COURT: I understand. You're right.

9 MS. FERNANDEZ: So when looking at those two factors, I  
10 believe that this is someone who falls within the three strikes  
11 scheme because of the numerous offenses in his criminal history  
12 and the lack of time in between them, his inability to  
13 successfully complete probation or parole.

14 And there is also a factor that's not mentioned, which  
15 is mentioned in the Williams case, which are his prospects.  
16 Which may go to factor five in the Benson case, the prospects.

17 Now, I don't know what his prospects are if he is to be  
18 given a determinate term. However, I haven't heard anything  
19 about that necessarily. It seems, though, from what I have  
20 heard from the family, that I don't know what his prospects are,  
21 I guess. I don't know if he can hold down any job for a very  
22 lengthy amount of time. It doesn't appear to me that he can  
23 successfully do that.

24 With that, I would submit on my written motion, Your  
25 Honor.

26 MR. KENYON: Your Honor?

27 THE COURT: Yes.

28 MR. KENYON: Mr. Martinez just has a brief statement

1 he'd like to make.

2 THE COURT: All right.

3 Mr. Martinez, go ahead, sir.

4 THE DEFENDANT: Your Honor, first of all, I'd like to  
5 thank you for all the time you have put into my case. And I  
6 would like to apologize for my drug addiction in my life.

7 THE COURT: Apologize to them, not to me. They're the  
8 ones that you have disappointed for the last 20 years.

9 THE DEFENDANT: Well, yeah. I'd like to thank my  
10 family for their support and being here for me. I know that  
11 they love me.

12 You know, Your Honor, but I worked at a young age, and  
13 I got used to a lot of money working at the railroad. Money  
14 was -- it was a good check for nine years. When I got used to  
15 my drug addiction, I -- I started stealing to do that. I lied  
16 to buy drugs. So I started doing crime for drugs. It still is  
17 no excuse for my lifestyle out there, but during my  
18 incarceration, Your Honor, all my incarcerations I did fire  
19 fighting for four years, and then I went back to the firehouse  
20 for five years, and I went back to fire camp again for another  
21 four years. So I see life a lot different now.

22 THE COURT: You're 48 years old. Doesn't it get old  
23 after a while?

24 THE DEFENDANT: Yes. And I had no intention of using  
25 that day at all. I just had really bad judgment in giving  
26 somebody a ride. And I realize that, hey, I shouldn't have been  
27 out there. I was already going home, Your Honor. That was my  
28 fault for being out there. But when I finally realized when I

1 went out in the street again, I said, man, this ain't for me no  
2 more, and I never got a chance to make it home.

3 But I have tried changing my drug addiction. For  
4 years, Your Honor, I've been praying and asking God to help me,  
5 and I do my part to try to stay clean. I haven't tested dirty.  
6 I went always to my probation officer, you know, and I tried to  
7 stay home as much as I can.

8 My reading ability, there's no excuse for not getting a  
9 job. Because I get jobs, you know. I can work and I know how  
10 to act to get a job, and I have landed jobs. And I failed, Your  
11 Honor, by drugs. But these last two times of my thing, I gave  
12 the people back their stuff because I was wrong. I know  
13 stealing is wrong so I gave them back their stuff. This time,  
14 Your Honor, it was just bad judgment of giving somebody a ride.

15 But I have worked on my drug addiction, you know, and  
16 I've tried my best. I feel that I'm a whole different person  
17 just to the places that I have done my time, and I see life  
18 really different. And I just ask for mercy on the Court if you  
19 can really, you know, please help me and give me a chance to  
20 prove to myself and to my family that I can make it in society,  
21 you know, and I'm just asking for mercy on the Court to see if  
22 you can do something for me. I appreciate it.

23 THE COURT: All right. Thank you, Mr. Martinez.

24 Ms. Fernandez, anything else?

25 MS. FERNANDEZ: No. Thank you, Your Honor.

26 THE COURT: Well, these are probably some of the most  
27 difficult decisions that I feel a judge has to make. You know,  
28 I'm from the old school. I've been in this business almost

1 30 years now, in the criminal law business, and it used to be  
2 that to get a sentence of 25 to life you had to murder somebody,  
3 but obviously that's changed significantly over the years. But  
4 it's still a significant sentence, and I think it's incumbent  
5 upon any judge or court to honestly give these types of  
6 decisions as much attention and thought as is humanly possible,  
7 and I certainly have done that in this case. I have thought  
8 about this case and Mr. Martinez's situation a lot.

9           And I do understand and appreciate that he's been  
10 involved in the criminal justice system for approximately  
11 20 years, but it's been predominantly theft-related and/or  
12 drug-related offenses. The only crime of violence whatsoever is  
13 the attempt robbery conviction that's 20 years old. That's the  
14 only violent act, and on that occasion Mr. Martinez was granted  
15 probation and received 270 days in county jail out of  
16 Los Angeles County.

17           But he has been to prison, like I said, four or five  
18 times. Sometimes when he's been released on parole he  
19 successfully completed his parole. Sometimes when he's been  
20 released on parole he hasn't successfully completed his parole.  
21 And he was on parole at the time that this crime was committed.

22           As both counsel have pointed out, the test, I guess,  
23 that the Court is to utilize in ruling on this type of motion  
24 was enunciated in the case of People versus Williams at  
25 17 Cal.4th 148. That case is now 10 years old, and  
26 unfortunately in the past 10 years trial courts haven't been  
27 given a whole lot more guidance as to how we are to determine  
28 whether or not an individual is deemed outside the three strikes

1 scheme spirit or not, either in whole or in part, as enunciated  
2 by the Williams decision.

3 And I think the case that both counsel have referred  
4 to, that being People versus Benson, B-e-n-s-o-n, 18 Cal.4th 24,  
5 gives us a little more guidance or sets forth certain factors or  
6 criteria that the court is to consider and utilize in  
7 determining whether or not the court should exercise its  
8 discretion pursuant to Penal Code Section 1385 and strike a  
9 strike.

10 The first factor that the bench or court talks about or  
11 refers to is the nature of the current offense, and -- again, I  
12 understand, Ms. Fernandez, you were not the trial attorney in  
13 this case, but I did hear the trial in this case, and I think  
14 the primary offender was the co-defendant in this case or the  
15 initial co-defendant, not in the trial but in the original  
16 Complaint, and that's Ms. Eves. And her last name is spelled  
17 E-v-e-s. I think it was pretty clear from the evidence  
18 presented during the course of the trial that she was the one  
19 that bought or purchased the narcotics in this case, not to say  
20 that Mr. Martinez didn't help or assist her in that regard.

21 Then we, of course, have the issue of dominion and  
22 control or joint dominion and control, which I believe I  
23 instructed the jury on based upon the evidence presented during  
24 the course of the trial. But again, I don't think he was the  
25 primary instigator or offender with respect to the possession or  
26 purchase of the methamphetamine in this case.

27 And as Mr. Kenyon has pointed out, there was no  
28 indication by the arresting officer that Mr. Martinez was under

1 the influence or had been using drugs at all on that occasion.  
2 And then we had the information from parole that he had been  
3 testing clean during the six months or so after he had been  
4 released from prison until this incident occurred. And then  
5 also, the amount of the drugs involved. Off the top of my head,  
6 it's been so long I don't recall the actual weight, but I think  
7 it was one gram including the packaging, which is certainly an  
8 insubstantial amount of methamphetamine.

9 So in evaluating the nature of the current offense, I  
10 don't think he played a major or principal role in the  
11 commission of this offense. I think he was more of an aider and  
12 abettor or assisting Ms. Eves in committing this offense.

13 The second factor that the Court is to consider is the  
14 nature and number of the defendant's prior convictions. I think  
15 this factor arguably works against Mr. Martinez. You know, he's  
16 been in and out of prison for the past 20 years. He has four or  
17 five separate prison convictions and other felony convictions in  
18 addition to that. But that just deals with the number. I think  
19 you have to go further and look deeper, and the courts talk  
20 about that, and consider the nature of the defendant's prior  
21 convictions. And especially when you're talking about a three  
22 strikes case, I think it's incumbent upon the Court to look into  
23 the strike offenses.

24 I think to me that's probably the most significant  
25 factor or one of the more significant factors if not the most  
26 significant factor, in my mind in determining whether or not  
27 someone should receive a sentence of 25 years to life. And here  
28 the two strikes, the first one is an attempt robbery dating back

1 some 20 years, and in that case, as Mr. Kenyon pointed out, now  
2 that we have the documents from Los Angeles County, show that  
3 Mr. Martinez approached an individual and had a screwdriver  
4 wrapped up in a rag of some sort and tried to obtain money from  
5 the individual, and the individual said no and fled or whatever.  
6 Mr. Martinez did the same thing.

7 And then the second prior strike offense is the  
8 first-degree burglary conviction, and that conviction dates back  
9 to 2003, and that's the situation where he goes into the motel  
10 room when it's vacant, steals a backpack, and shortly thereafter  
11 ends up returning it to the owner with the property and  
12 apologizes for taking it in the first place. And that begs the  
13 question: Is this the type of person or individual that  
14 deserves a sentence of 25 years to life?

15 But again, in evaluating the nature, not just the  
16 number but the nature of the prior convictions, especially the  
17 two strike offenses, I think the attempted robbery and the  
18 first-degree burglary, especially the first-degree burglary, are  
19 not as significant or compelling types of factual situations as  
20 we oftentimes see when these types of crimes are committed.

21 The third factor is whether the current offense or  
22 prior offenses involved violence, and certainly the current  
23 offense involved no violence. And in all of the previous  
24 convictions that Mr. Martinez has suffered over the 20-plus  
25 years, there is only one, only one in 20 some odd years involved  
26 violence, and that was the attempted robbery conviction that I  
27 have previously alluded to. And all the rest are either drug-  
28 or theft-related offenses.

1           And then the next factor is whether the prior offenses  
2 are recent or remote. And, you know, there's a continual  
3 history or track record, I guess, of Mr. Martinez's convictions  
4 over the past 20 years. But certainly I think the one violent  
5 crime that he committed, that being the attempted robbery, is  
6 remote. It's 20 years ago. And then over the past 20 years we  
7 haven't seen any violence whatsoever. So I think that's also an  
8 important factor for the Court to consider in ruling on this  
9 type of motion.

10           And then the fifth factor is whether if the defendant  
11 is given a determinate prison term he will likely present a  
12 danger to society when that sentence has expired. I think also,  
13 as you pointed out, Ms. Fernandez, incorporated in that is what  
14 are his prospects once he gets out. With respect to that issue,  
15 I think Mr. Martinez's prospects are quite good. And I'm  
16 impressed by the fact that, as Mr. Kenyon pointed out, on each  
17 and every appearance, and this case has been going on for a  
18 while now, he has had multiple family members and friends  
19 present here in court to support him and to show their love and  
20 affection for him. And there's 10 people here today, and  
21 there's been that many on almost every occasion we've been in  
22 court. So I do think that his prospects are good if he is to  
23 receive a determinate sentence once he gets back out in society.

24           Whether he will constitute a danger to society, he is a  
25 danger to himself, you know. He screws up. He makes bad  
26 decisions. He hangs out with the wrong people. But I don't  
27 think he is going to hurt anybody other than his family, maybe,  
28 emotionally or psychologically. And with the sentence that I



1 intend on imposing, he is going to be close to 60 years old by  
2 the time he gets out.

3 So again, given his age at the time that he would get  
4 out of prison and, again, taking into consideration his lack of  
5 really any violence or very little violence in his criminal  
6 history, I don't believe that he would constitute a danger to  
7 society when this sentence has expired.

8 So then for all of those reasons that I have just  
9 indicated, I am going to exercise my discretion pursuant to  
10 Penal Code Section 1385, and I am going to strike the attempted  
11 robbery prior from the year 1988 for those reasons. And I will  
12 order that my reasons as enunciated on the record be placed in  
13 the court's minutes as required by law as well.

14 I'm not inclined to strike both strikes.

15 MR. KENYON: Actually, Your Honor, I didn't even ask  
16 for the Court to strike the strikes.

17 THE COURT: All right. Then I need not address that  
18 issue.

19 All right. Then that brings us to sentencing, and,  
20 Ms. Fernandez, I will hear from you first.

21 MS. FERNANDEZ: Thank you, Your Honor. Thank you for  
22 your careful consideration of that motion. I appreciate that.

23 As far as sentencing is concerned, I do believe that  
24 upper term is appropriate for all of the same reasons that I  
25 just talked about in the opposition to the Romero motion. Which  
26 means that it would be the upper term on the 11379 for four  
27 years, doubled for the strike listed, which is eight, plus a  
28 year for each prison prior, which brings us to 12. Because I do

1 believe the 11377 would constitute 654.

2 I would ask that the Court impose the maximum given the  
3 defendant's lengthy criminal history and lack of successfully  
4 completing parole when this offense was committed. We do  
5 believe that it is warranted. He has spent lengthy amounts of  
6 time in prison. His last offense he was sentenced to 48 months.  
7 And so I would ask the Court to give 12 years.

8 THE COURT: All right.

9 Mr. Kenyon.

10 MR. KENYON: You know, it's difficult to say and ask on  
11 somebody's behalf that they get what they don't deserve. I  
12 think the Court has given as thorough analysis as I have heard  
13 on a Romero motion before, and I thank the Court personally and  
14 on Mr. Martinez's behalf for your careful consideration on that.

15 I, of course, also hate to see a man who is going to be  
16 60 years old when he gets released. But at the same time, given  
17 all the factors that the Court also considered, I can't even say  
18 that that's inappropriate either. So I will submit to the  
19 Court.

20 THE COURT: All right. Thank you.

21 Do you waive formal arraignment?

22 MR. KENYON: Yes, Your Honor.

23 THE COURT: No legal cause why judgment should not now  
24 be pronounced?

25 MR. KENYON: No, Your Honor.

26 THE COURT: All right.

27 Mr. Martinez is not statutorily eligible for probation.  
28 Even if he was, I wouldn't consider it, obviously, based upon

1 his criminal history. So I am going to deny probation.

2 And I am, as to Count 1, that being a violation of  
3 Health and Safety Code Section 11379, going to select the upper  
4 term of four years. I believe that the upper term is  
5 appropriate for many reasons. First of all, based upon  
6 Mr. Martinez's lengthy criminal history, the fact that he was on  
7 probation or actually parole at the time that this offense was  
8 committed. So I do feel that or believe that the upper term is  
9 justified, and I will impose the upper term of four years.

10 That four-year prison term then would be doubled due to  
11 the remaining prior strike conviction that was found true, that  
12 being the conviction for the first-degree burglary from December  
13 30th, 2003. So the total term of imprisonment as to Count 1  
14 would then be eight years.

15 As to Count 2, I do believe that that falls within the  
16 provisions of Penal Code Section 654, as the People have  
17 indicated and agreed with. But in that regard I will impose the  
18 mid term of two years as to Count 2, that being a violation of  
19 Health and Safety Code Section 11377 subdivision (a). That  
20 two-year prison term again would be doubled based upon the prior  
21 strike conviction, for a total term of imprisonment in Count 2  
22 of four years. That four-year prison term in Count 2 would then  
23 be stayed pursuant to the provisions of Penal Code Section 654.

24 We then have I believe four prison priors that were  
25 found true pursuant to the provisions of Penal Code Section  
26 667.5 subdivision (b), and I am going to sentence Mr. Martinez  
27 consecutively for an additional year as to each of those four  
28 prison priors and order that each of the four prison priors run

1 consecutively to one another as well as consecutively to the  
2 eight years imposed in Count 1, for a total term of imprisonment  
3 of 12 years.

4 And again, I am ordering the prison priors to run  
5 consecutively because, again, the nature of his long criminal  
6 history. There were multiple occasions when he did not  
7 successfully complete his probation or parole. He was on parole  
8 at the time he committed this offense. So again, I think each  
9 of those prison priors should be run separately and  
10 consecutively, and I will make that order.

11 With respect to the total 12-year prison term, I have  
12 calculated up to today's date his custody credits, and according  
13 to my numbers he should receive 410 days actual time spent in  
14 custody, plus an additional 205 days good time credit pursuant  
15 to the provisions of Penal Code Section 4019, for total credits  
16 of 615 days.

17 MR. KENYON: Actually, Your Honor, it would be 614 days  
18 because they won't do odd number credits for some reason.

19 THE COURT: You're right. I'm sorry. Thank you for  
20 reminding me.

21 It's 410 actual time, 204 4019 time for good time  
22 credits, and then 614 total. Thank you. I'd get that letter  
23 back from the Department of Corrections for one day.

24 All right. I'm also going to order that Mr. Martinez  
25 submit to the necessary DNA tests pursuant to the provisions of  
26 Penal Code Section 296 to be conducted by the California  
27 Department of Corrections with the results forwarded to this  
28 court for proper distribution.

1 I'm also going to order that Mr. Martinez pay the cost  
2 of the presentence probation report pursuant to Penal Code  
3 Section 1203.1(b) in an amount and manner to be determined by  
4 Financial Services, not to exceed \$318.

5 He is also ordered to pay a booking fee in the amount  
6 of \$110 pursuant to Government Code Section 29550 as directed by  
7 Financial Services.

8 Further, the Court is going to impose a \$20 court  
9 security fee pursuant to Penal Code Section 1465.8 subdivision  
10 (a) subsection (1), and the Department of Corrections is  
11 authorized to collect and transmit said fee to the Trial Court  
12 Trust Fund.

13 I am also going to order that Mr. Martinez participate  
14 in any counseling or education program having a substance abuse  
15 component while in prison pursuant to Penal Code Section  
16 1203.096.

17 Finally, I'm going to order that he pay a restitution  
18 fine in the amount of \$400 to the clerk of the court pursuant to  
19 Penal Code Section 1202.4 as directed by Financial Services.

20 I am also going to impose an additional parole  
21 restitution fine pursuant to Penal Code Section 1202.45 in the  
22 amount of \$400, and that amount will be suspended unless his  
23 parole is revoked.

24 Mr. Martinez, it is my responsibility, sir, to advise  
25 you of your appellate rights. You do have a right to file an  
26 appeal with respect to the jury's findings regarding their  
27 convictions. You also have a right to appeal the sentence that  
28 I have imposed upon you today, and it's your responsibility to

1 file the Notice of Appeal directly with this court, not with the  
2 appellate court, and that Notice of Appeal must be filed within  
3 60 days from today's date.

4 Do you have any questions about that, sir?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. And I sentence you, Mr. Martinez, to  
7 12 years. You know, you have over a year's credit, or actually,  
8 almost two years' credit, so you will be getting out in actually  
9 probably around eight years or so. I know it seems like a long  
10 time, but in that regard all I can say is it's a heck of a lot  
11 less than 25 years to life.

12 You know, basically it's a matter of your past catching  
13 up to you. You know, when we make mistakes in life, we always  
14 have to pay one way or another. Unfortunately, you know, you're  
15 going to pay with having to serve several years in prison. But  
16 even then, once you get out, I guarantee you those people in the  
17 audience are still going to be there waiting for you, and  
18 they're still going to love you and they're still going to  
19 support you. And I hope by the time you get out, you know,  
20 you're going to be, you know, 57, 58 years old, I hope by that  
21 point in time you will have become older and wiser and realize  
22 that you've got to change your lifestyle.

23 I also want to thank the family for being here. You  
24 have made a significant difference. You're the folks that, you  
25 know, helped me in making this difficult decision today. Again,  
26 I know it seems like a long time, but there's only so much that  
27 I think I can do legally.

28 And, Mr. Martinez, I wish you the best, sir, and I hope

1 you make the best of it while you're in prison.

2 All right. We're adjourned.

3 MS. FERNANDEZ: Thank you, Your Honor.

4 *(Proceedings concluded.)*

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 REPORTER'S CERTIFICATE

2  
3  
4 THE PEOPLE OF THE STATE OF CALIFORNIA, )  
5 Plaintiff, )  
6 vs. ) Case No. RIF136990  
7 MARIO MARTINEZ, )  
8 Defendant, )  
9

10 I, THERESE A. WEBSTER, Certified Shorthand  
11 Reporter No. 6257, do hereby certify:

12 That on November 26, 27, 29, December 14, 2007,  
13 and May 9, 2008, in the County of Riverside, State of  
14 California, I took in stenotype a true and correct report of the  
15 testimony given and proceedings had in the above-entitled case,  
16 pages 1 through 203, and 339 through 364, inclusive, and that  
17 the foregoing is a true and accurate transcription of my  
18 stenotype notes, as taken aforesaid, and is the whole thereof.

19  
20 DATED: Riverside, California, November 26, 2008.  
21  
22  
23  
24  
25

26   
27 THERESE A. WEBSTER, C.S.R. No. 6257  
28



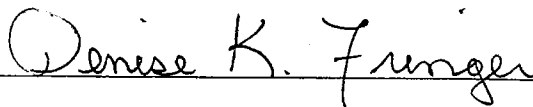
**REPORTER'S CERTIFICATE**

PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
Plaintiff/Respondent, ) DCA NO. E-046651  
 )  
vs. ) CASE NO. RIF-136990  
 )  
MARIO MARTINEZ, )  
 )  
Defendant/Appellant. )  
\_\_\_\_\_ )

I, DENISE K. FRINGER, Certified Shorthand Reporter,  
No. 10283, do hereby certify:

That on 7/11/08, in the County of Riverside, State of  
California, I took in stenotype a true and correct report of  
the proceedings had in the above-entitled case, pages 365-396,  
and that the foregoing is a true and accurate transcription of  
my stenotype notes, taken as aforesaid, and is the whole  
thereof.

DATED: Riverside, California, November 20, 2008.



DENISE K. FRINGER, CSR NO. 10283  
Official Court Reporter  
Riverside County Superior Courts

1 REPORTER'S CERTIFICATE

2 ---oOo---

3

4 PEOPLE OF THE STATE OF CALIFORNIA, )  
5 PLAINTIFF, )  
6 VS. ) CASE NO: RIF136990  
7 MARIO MARTINEZ, )  
8 DEFENDANT. )

---

9

10


11 I, STEPHANIE R. LEWIS, a Certified Shorthand Reporter  
12 and Official Court Reporter for the Riverside County Superior  
13 Court, do hereby certify:

14 On DECEMBER 3rd, 4th, 2007, in the above-entitled  
15 case, I took in Stenotype a true and accurate record of the  
16 proceedings had in said case.

17 I further certify that the foregoing transcript,  
18 Pages 204 through 388-17, is a true and accurate record of my  
19 Stenotype notes thereof, as taken by me in Stenotype.

20

21 DATED: RIVERSIDE, CALIFORNIA, DECEMBER 3, 2008

22   
23 STEPHANIE R. LEWIS, CSR NO. 12746

24  
25  
26  
27  
28

**DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE**

Case Name: **People v. Mario Martinez**

Case No.: **S231826**

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 that same day in the ordinary course of business.

On September 2, 2016, I served the attached **Request for Judicial Notice**, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Sylvia W. Beckham  
Attorney at Law  
226 West Ojai Avenue, Suite 101 PMB 529  
Ojai, CA 93023  
Counsel for Appellant

The Honorable Becky Dugan, Judge  
c/o W. Samuel Hamrick, Jr.  
Court Executive Officer  
Riverside County Superior Court  
4100 Main Street  
Riverside, CA 92501

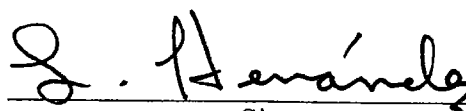
Cindi B. Mishkin  
Staff Attorney  
Appellate Defenders, Inc.  
555 West Beech St., Ste. 300  
San Diego, CA 92101  
Counsel for Appellant

The Honorable Michael Hestrin  
District Attorney  
Riverside County District Attorney's Office  
3960 Orange Street  
Riverside, CA 92501

and, furthermore I declare, in compliance with California Rules of Court, rules 2.251(i)(1)(A)-(D) and 8.71 (f)(1)(A)-(D), I electronically served a copy of the above document on September 2, 2016, to Appellate Defenders, Inc.'s electronic service address [eservice-criminal@adi-sandiego.com](mailto:eservice-criminal@adi-sandiego.com); to Sylvia W. Beckham, Appellant's attorney's electronic service address by 5:00 p.m. on the close of business day at [beckham\\_law@cox.net](mailto:beckham_law@cox.net) and to Kevin J. Lane, Court Administrator, Fourth Appellate District, Division Two via TrueFiling electronic filing system.

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 September 2, 2016, at San Diego, California.

\_\_\_\_\_  
L. Hernández  
Declarant

\_\_\_\_\_  
  
Signature

