

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)) No. S203744
Plaintiff and Respondent,))
v.) 2 Crim. B231338
DARLENE A. VARGAS,))
Defendant and Appellant.) Los Angeles County
) Case No. KA085541
)
)

**APPELLANT'S PARTIAL OPPOSITION TO RESPONDENT'S
MOTION FOR JUDICIAL NOTICE;
APPELLANT'S MOTION FOR JUDICIAL NOTICE**

Appeal from the Judgment of the Superior Court
of the State of California for the County of
Los Angeles

Honorable Bruce F. Marrs, Judge

**SUPREME COURT
FILED**

APR - 3 2013

Frank A. McGuire Clerk
Deputy

MELANIE K. DORIAN
California State Bar No. 197955
P.O. Box 5006
Glendale, California 91221-5006
Telephone: (818) 241-5837

Attorney for Appellant
DARLENE A. VARGAS

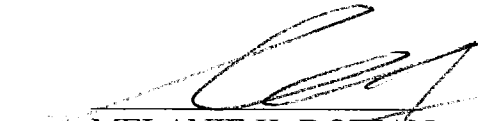
Appellant Darlene A. Vargas, through counsel, objects to respondent's request that this Court judicially notice the transcript of the plea hearing in case number KA043362, attached to its motion as Exhibit A. Pursuant to California Rules of Court, rule 8.252(a), and Evidence Code sections 452 and 459, appellant also moves this Court to take judicial notice of the following documents:

1. The preliminary hearing transcript from the Los Angeles County Superior Court, Case No. KA043362. (Exhibit A.)
2. The written "Guilty Plea Form" from the Los Angeles County Superior Court, Case No. KA043362. (Exhibit B.)

This motion and partial opposition are based upon the attached memorandum of supporting points and authorities, the attached exhibits, the supporting declaration of counsel, and the record in this matter. Appellant is filing her reply brief on the merits, concurrently with this opposition and motion, and she has incorporated and referred to the attached documents in said brief.

Dated: March 26, 2013

Respectfully submitted,



MELANIE K. DORIAN
Attorney for Appellant
DARLENE A. VARGAS

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In 1999, appellant pleaded guilty to robbery and carjacking in case number KA043362. (Prior Case.) Some ten years later, she was convicted of residential burglary, among other offenses, and sentenced to 25 years to life, plus 5 years in the new case, for her two prior strike convictions. An appeal followed. (*Vargas I.*) Appellant also instituted a habeas corpus proceeding, wherein she introduced the transcript of the preliminary hearing testimony of the victim in the prior case. (*In re Vargas.*) The Court of Appeal found that, based on the preliminary hearing transcript, appellant's convictions arose from the same act and remanded for resentencing. (*Vargas I*, Slip. Opn.)

At resentencing, the trial court imposed the same sentence, and a second appeal followed. (*Vargas II.*) The Court of Appeal affirmed the judgment, and appellant sought review in this Court. When granting review, this Court ordered briefing on the following issues: “(1) Was the trial court required to dismiss one of defendant's two prior convictions under the three strikes law, when they arose from the same prior incident and were based on the same act? (2) If dismissal of one prior conviction was not mandatory, did the trial court abuse its discretion by failing to dismiss one?”

Respondent did not object to the introduction of the preliminary hearing transcript at any time. Nor did it attempt to introduce any other record from the prior case. It never countered appellant's argument that, based on the preliminary hearing transcript, the two convictions arose from the same act, and did not seek rehearing, correction and/or modification of the Court of Appeal's conclusions concerning the single act. Respondent also never filed an answer to appellant's petition for review to expand on the issues before this Court.

ARGUMENT

Evidence Code section 459, subdivision (a) permits a reviewing court to take judicial notice of any matter specified in section 452. Under Evidence Code section 452, subdivision (d), such matters include the records of any court. In addition, California Rules of Court, rule 8.520(g) requires that a party comply with rule 8.252(a), in order to obtain judicial notice under Evidence Code section 459.

To do so, a party must file a motion which states as follows:

- (A) Why the matter to be noticed is relevant to the appeal;
- (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court;
- (C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and

(D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(Cal. Rules of Court, rule 8.252(a)(2).) If the matter to be noticed is not part of the record, the party must “explain why it is not practicable to do so.”

(Cal. Rules of Court, rule 8.252(a)(3).)

Here, respondent has filed a motion for judicial notice, requesting, in part, that this Court judicially notice the transcript of the plea hearing in the prior case. (RJN, Ex. A.) Respondent relies “extensively” on this transcript to argue that appellant’s prior strikes arose from separate criminal acts.

(RJN, Argument B; RBM, pp. 9-15.) However, this transcript was never introduced in the trial court or the Court of Appeal, at either party’s request. More importantly, at no time, did respondent challenge the appellate court’s finding that appellant’s prior convictions arose from a single criminal act.

Having had several opportunities to raise this new issue and having failed to do so, respondent is precluded from now contending that appellant’s prior strike convictions arose from multiple acts. (See *California Ins. Guar. Ass’n v. Workers’ Comp. App. Bd.* (2005) 128 Cal.App.4th 307, 316, fn. 2 [issue to which respondent’s brief contains no reply “will be deemed submitted on appellant’s brief”]; see also *People v Duvall* (1995) 9 Cal.4th 464, 481 [respondent is deemed to have admitted the material factual allegations in a petition which it fails to dispute in the return]; see also *Pratt v. Union Pacific Railroad Co.* (2008) 168 Cal.App.4th

165, 174 [“[g]enerally, a reviewing court will not consider claims raised for the first time on appeal that could have been but were not presented to the trial court... [f]ailure to raise a claim may be forfeited or waived.”].)

Review is limited to issues raised in the Court of Appeal. (Cal. Rules of Court, rule 8.500(c)(1).) Briefs on the merits are also generally limited to the issues specified by this Court’s order. (Cal. Rules of Court, rule 8.520(b)(3).) Respondent never sought rehearing in the Court of Appeal, nor did it file an answer to appellant’s petition for review, in order to address this additional issue it wishes to now litigate. (Cal. Rules of Court, rule 8.500(c)(2).) Therefore, the transcript of the plea hearing is not relevant to the issues before this Court, which necessarily presumes that appellant’s prior convictions stemmed from a single act.

Nevertheless, should this Court grant respondent’s request to judicially notice the plea hearing transcript, appellant seeks to obtain this Court’s judicial notice of two important documents that were part of the record in the prior case. The first one is the preliminary hearing transcript in its entirety. (Ex. A.) This transcript was part of the record in *In re Vargas*. However, at that time, appellant merely introduced the transcript of the testimony of the victim. Appellant requests that this Court judicially notice the remaining 5 pages that include an additional witness’s testimony and the magistrate’s findings. (Ex. A, pp. 12-16.) The second document is a

two-page written plea form that was signed by appellant and her counsel in the prior case. (Ex. B.) These documents are absolutely necessary to refute respondent's assertion that appellant's two prior convictions arose from multiple acts, not a single one.

In deciding whether a prior conviction qualifies as a strike under the Three Strikes law, courts have consistently required examining the entire record of the prior criminal proceeding, "to determine the nature or basis of the crime of which the defendant was convicted." (*People v. McGee* (2006) 38 Cal.4th 682, 691; *People v. Castellanos* (1990) 219 Cal.App.3d 1163, 1171.) In doing so, courts have held that "the trier of fact may 'look beyond the judgment to the entire record of the conviction,' ... 'but no further'." (*People v. Trujillo* (2006) 40 Cal.4th 165, 177, quoting *People v. Guerrero* (1988) 44 Cal.3d 343, 355-356, emphasis in original.) This is fair, because "it effectively bars the prosecution from relitigating the circumstances of a crime committed years ago and thereby threatening the defendant with harm akin to double jeopardy and denial of speedy trial." (*Id.* at p. 355.)

The term "record of conviction" has been interpreted as broadly as the record on appeal, or as narrow as "those record documents reliably reflecting the facts of the offense for which the defendant was convicted." (*People v. Reed* (1996) 13 Cal.4th 217, 223.) These include the transcripts of the preliminary hearing, the defendant's guilty plea, and the sentencing

hearing. (*Id.* at p. 223; *People v. Abarca* (1991) 233 Cal.App.3d 1347, 1350; *People v. Smith* (1988) 206 Cal.App.3d 340, 345.)

The preliminary hearing transcript “contains evidence that was admitted against the defendant and was available to the prosecution prior to the conviction,” and may therefore clarify the basis for the conviction. (*People v. Trujillo, supra*, 40 Cal.4th at p. 180.) It is also admissible due to the procedural safeguards afforded to the defendant at such hearing, such as the right to confront and cross-examine witnesses under oath, which “tend to ensure the reliability of such evidence.” (*People v. Reed, supra*, 13 Cal.4th at pp. 223, 230.) In contrast, statements made by a defendant following a guilty plea have been deemed not part of the record of conviction, because they were not and could not have been used to obtain the conviction. (*People v. Trujillo, supra*, 40 Cal.4th at p. 179.)

As it follows, much like the determination of a prior conviction as a strike, the question of whether appellant committed a single criminal act cannot be definitively and properly answered unless one examines the entire record of judgment, which, here, includes the preliminary hearing transcript and the guilty plea form. Therefore, appellant respectfully requests that this Court judicially notice the preliminary hearing transcript and the written plea form in the prior case.

Respondent argues that appellant stipulated to a factual basis that showed she committed separate criminal acts; that by pleading guilty to two separate offenses, she also admitted committing multiple criminal acts; that the prosecution would have been able to prove such additional acts; and more importantly, that the plea hearing transcript is the *only* document that is required to resolve the dispute concerning the “single act” in the prior case. Notwithstanding respondent’s forfeiture of these new claims for failing to pursue them in the lower and/or appellate courts, unless appellant is able to introduce the preliminary hearing transcript, in its entirety, and the written plea form, respondent will have an unfair advantage in this matter.

A review of the entire transcript leaves no doubt that the record is devoid of any indication that appellant committed any act other than the forcibly taking of the victim’s car. The transcript also shows that the charges in the information were the same as those alleged in the complaint. (Ex. A, pp. 15-16.) Therefore, this belies respondent’s assertion that the prosecution would have been able to charge appellant with an additional robbery for taking property other than the victim’s car, or that appellant also intended to steal cash from the victim and the prosecution would have been able to prove this beyond a reasonable doubt. (RBM, p. 14, fn. 9.)

More importantly, however, the written plea form and the transcript of the preliminary hearing contradict respondent's position that appellant agreed and/or admitted that she committed separate criminal acts. Respondent refers to the stipulation to the factual basis at the plea hearing. (RJN, Ex. A, p. 7.) However, the written plea form shows that the factual basis included the preliminary hearing transcript, which, again, did not support a finding of separate criminal acts. (Ex. B, p. 2, § 18.) The written plea form also shows that appellant did not agree that she would receive an indeterminate life sentence should she commit a new felony, and that she was still entitled to a request for dismissal of one of her prior convictions in a new case. (Ex. B.)

Furthermore, the written plea form includes a general stipulation to the preliminary hearing transcript and only facts that supported the bases of her robbery and carjacking convictions. (Ex. B, p. 2, § 18.) In *People v. Thoma* (2007) 150 Cal.App.4th 1096, 1104, the prosecution contended that by stipulating to the preliminary hearing transcript as the factual basis of the plea, the defendant had admitted the truth of the victim's injuries.

The court disagreed and held as follows:

"No evidence suggests that in his plea [appellant] was asked to, or did, admit any particular facts stated in the preliminary hearing [transcript] ..., other than those facts necessary to the ... charge itself.... '[Appellant] pled guilty to an information, not to a preliminary hearing transcript.' The present case, therefore, is not comparable to one in which a *charging*

instrument is introduced to show the allegations that the defendant, by plea, subsequently admitted. [Citations.]”

(*Id.* at p. 1104, quoting *People v. Reed, supra*, 13 Cal.4th at p. 224, fn. omitted, emphasis in original.)

The court also distinguished *People v. Sohal* (1997) 53 Cal.App.4th 911, as follows:

In *Sohal* the prosecutor specified particular facts that he “could produce ... at trial” as the factual basis for the defendant’s plea. (*Id.*, at p. 914, [.]) The defendant’s counsel agreed that the prosecutor could produce evidence establishing these facts. The appellate court held that, when defendant pleaded guilty, he “made an adoptive admission of the truth of the facts” specified by the prosecutor. (*Id.*, at p. 916, [.]) Unlike *Sohal*, here neither the prosecutor nor defense counsel specified particular facts as the factual basis of appellant’s plea. Instead, there was a general stipulation “to a factual basis based upon the police reports and preliminary hearing transcript.”

(*People v. Thoma, supra*, 150 Cal.App.4th at p. 1104.) As such, the court reversed the finding of the prior strike and remanded for resentencing and retrial of the strike allegation. (*Id.* at pp. 1104-1105, citing generally *People v. Barragan* (2004) 32 Cal.4th 236.)

Here, given the absence of any discussion concerning the factual basis, appellant’s general stipulation to the preliminary hearing transcript was limited to those facts that supported the robbery and carjacking for taking the victim’s car. (*People v. Thoma, supra*, 150 Cal.App.4th at p. 1104; see also *People v. Bueno* (2006) 143 Cal.App.4th 1503, 1505, 1509-

1510 [the court dismissed the prior strike allegation for insufficiency of the evidence, because, while the defendant pleaded to the violation of section 243, subdivision (d) in the prior case, he never admitted that this was a serious felony, as alleged in the charging document].)

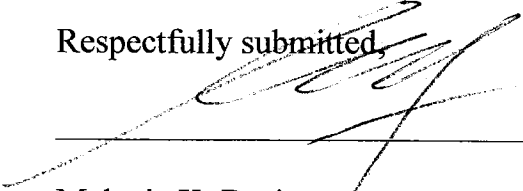
In sum, the plea form, its reference to the preliminary hearing, and the transcript of the hearing in its entirety, are all necessary to show, *as appellant successfully litigated in the Court of Appeal*, that appellant's prior strike convictions stemmed from a single criminal act, and, therefore, the trial court's failure to dismiss one such prior was an abuse of discretion. (*People v. Benson* (1998) 18 Cal.4th 24, 36, fn. 8; see also *People v. Sanchez* (2001) 24 Cal.4th 983, 993.)

CONCLUSION

For the foregoing reasons, appellant respectfully requests that this Court deny respondent's motion for judicial notice of the plea hearing in the prior case, and, in the alternative, grant appellant's motion for judicial notice of the documents referenced herein.

Dated: March 26, 2013

Respectfully submitted,



Melanie K. Dorian
Attorney for Appellant
DARLENE A. VARGAS

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,))
) No. S203744
Plaintiff and Respondent,))
) 2 Crim. B231338
v.))
))
DARLENE A. VARGAS,) Los Angeles County
) Case No. KA085541
Defendant and Appellant.))
))
_____)

**DECLARATION OF MELANIE K. DORIAN IN SUPPORT OF
APPELLANT'S PARTIAL OPPOSITION TO RESPONDENT'S
MOTION FOR JUDICIAL NOTICE,
AND APPELLANT'S MOTION FOR JUDICIAL NOTICE**

I, MELANIE K. DORIAN, declare under penalty of perjury:

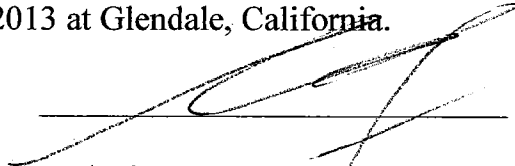
I am appointed counsel for appellant, Darlene A. Vargas, in the above-entitled matter.

I have personally obtained true and correct copies of the attached preliminary hearing transcript (Ex. A) and the written plea form (Ex. B) in case number KA043362, from the superior court clerk in Pomona, California.

All of the factual statements made in the partial opposition to respondent's motion for judicial notice and appellant's motion for judicial notice are true and correct to the best of my knowledge. Appellant requests judicial notice of said materials, as they are relevant to the determination of

the issues raised by respondent in its brief, and appellant has incorporated and referenced said materials in her reply brief on the merits.

Executed on March 26, 2013 at Glendale, California.

A handwritten signature in black ink, appearing to read 'Melanie K. Dorian', is written over a horizontal line. The signature is stylized and somewhat cursive.

Melanie K. Dorian
Attorney for Appellant
DARLENE A. VARGAS

EXHIBIT A

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IN THE MUNICIPAL COURT OF POMONA JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

S. CLARK MOORE, JUDGE
DIVISION VII

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	CASE KA043362
)	
)	<u>VIO. SECTIONS:</u>
VS.)	COUNT 1:
)	PC215(A)
01 DARLENE ANGELA VARGAS,)	COUNT 2:
)	PC211
)	COUNT 3:
)	VC10851(A)
)	
DEFENDANT(S).)	

REPORTER'S TRANSCRIPT
PRELIMINARY HEARING
FEBRUARY 5, 1999

FILED
LOS ANGELES SUPERIOR COURT

FEB 16 1999

APPEARANCES:

JOHN A. CLARKE, CLERK
BY *[Signature]*
DEPUTY

FOR THE PEOPLE:

JAMES WEYANT
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT:

FEDERICO DE LA PENA
ATTORNEY AT LAW

REPORTED BY:

KIM K. CADDICK, CSR 7639
OFFICIAL REPORTER

HTA: DEPARTMENT H
FEBRUARY 19, 1999

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I N D E X

PEOPLE'S WITNESSES:

DIRECT CROSS REDIRECT RECROSS

BRANDON ROBERTS

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ROCHELLE MORENO

12 14

DEFENDANT'S WITNESSES:

DIRECT CROSS REDIRECT RECROSS

(NONE)

EXHIBITS

PEOPLE'S

FOR I.D. IN EVIDENCE

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DEFENDANT'S

FOR I.D. IN EVIDENCE

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POMONA, CALIFORNIA; FRIDAY, FEBRUARY 5, 1999

--oOo--

THE COURT: This is the case of People versus Darlene Angela Vargas.

Waive formal reading of the Complaint, Statement of Constitutional Rights and enter a plea of not guilty, counsel?

MR. DE LA PENA: I do, your Honor. Yes, sir.

THE COURT: Fine. Proceed.

MR. WEYANT: Thank you, your Honor. The People call Brandon Roberts.

MR. DE LA PENA: There is a motion to exclude witnesses please.

THE COURT: Motion granted.

THE COURT: Fine. You wish to retain an investigator?

MR. WEYANT: No need, your Honor.

THE COURT: Fine. Motion granted.

BRANDON CHARLES ROBERTS,
called as a witness by the People, was sworn and testified as follows:

THE CLERK: You do solemnly swear that the testimony you shall give in the cause now pending before this Court shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Be seated. State your name in full

1 and spell your last.

2 THE WITNESS: Brandon Charles Robert,
3 R-O-B-E-R-T-S.

4 THE COURT: Proceed.

5

6 DIRECT EXAMINATION

7 BY MR. WEYANT:

8 Q. Good morning, Mr. Roberts. Mr. Roberts,
9 do you own a 1988 Honda Accord, 4-door maroon?

10 A. Yes, sir.

11 Q. Is the license number 2JAH916?

12 A. Yes, sir.

13 Q. And did you own that car on January 22nd,
14 1999?

15 A. Yes, sir.

16 Q. On that date at approximately just shortly
17 before 11:30 p.m. were you in the 1700 block of Garey?

18 A. Yes sir.

19 Q. Were you in your car at that time?

20 A. Yes, sir.

21 Q. At that time and location did you have an
22 encounter with someone that you see in the courtroom
23 today?

24 A. Yes sir.

25 Q. Would you point that person out for the
26 Court and describe what the person is wearing today?

27 A. Sitting right there handcuffed in the L.A.
28 County woman's shirt.

1 THE COURT: Indicating defendant.

2 BY MR. WEYANT:

3 Q. Thank you, your Honor. Now, where were
4 you when you first saw the defendant at that time?

5 A. Sitting in my car.

6 Q. Were you behind the driver's wheel?

7 A. Yes, sir.

8 Q. Was there anybody else in the car with
9 you?

10 A. No, sir.

11 Q. And where was the defendant when you first
12 saw her?

13 A. In a maroon truck. She pulled up next to
14 me.

15 Q. Was there anybody else in the truck with
16 her?

17 A. There was a male.

18 Q. And what happened after they pulled up?

19 A. She got out of the car, asked me if the
20 store was open, walked in, walked right back out, and at
21 that time she asked me a few questions. And the male she
22 was with hopped in the backseat of the car and put a
23 knife to my back.

24 Q. When you say the male she was with, the
25 male that was in the truck when they first pulled up?

26 A. Right, correct.

27 Q. Was in the backseat of your car?

28 A. Correct.

1 Q. Were you still seated behind the wheel?

2 A. Yes, sir.

3 Q. What happened next?

4 A. Then she came up. She was still at the
5 driver's window, right where I was sitting, and she said
6 she had a gun too. And she took the keys out of my car.
7 And he -- they checked to see if I had any money. They
8 opened the door and pulled me out.

9 MR. DE LA PENA: Objection to the use of the word
10 "they." I think it could be more specific to the
11 individual doing specific things.

12 THE COURT: You can on cross-examination
13 straighten that out. But counsel would you --

14 MR. WEYANT: Yes, your Honor.

15 BY MR. WEYANT:

16 Q Mr. Roberts, you might slow down just a
17 tad. This young lady has to take all your words down.
18 We have time.

19 At this point you say the male had gotten
20 in the backseat of your car?

21 A. Correct.

22 Q. Was he sitting directly behind you on --

23 A. On the passenger side.

24 Q. And what if anything did he do while he
25 was sitting in your car?

26 A. He pulled a knife out right away and put
27 it to the back of my neck and he was holding it there.

28 Q. Did you see the knife?

1 A. Yeah.

2 Q. And was it a -- can you tell what kind of
3 knife it was?

4 A. It was about a butterfly knife large. He
5 flipped it open.

6 Q. Did you see him flip it open?

7 A. Yes.

8 Q. Did you feel it on the back of your neck?

9 A. Yes.

10 Q. Now, you said that after that happened
11 this defendant then came around to the driver's side?

12 A. She was standing there the entire time.

13 Q. And when you said she took the keys out of
14 your car, did she have to reach in to take them out of
15 ignition?

16 A. Correct, yes.

17 Q. Then what did she do?

18 A. She opened the driver's side door where I
19 was sitting and kind of pulled me out, while he pushed me
20 out with the knife.

21 Q. Then what happened?

22 A. She got in the car and started it. And
23 the male got out of the backseat, walked around, got in
24 his truck, and she pulled out of the parking lot, and he
25 followed her out.

26 Q. Now, at the time that the defendant
27 indicated that she had a gun, you said she had said then
28 she had a gun. Did you ever see a gun?

- 1 A. I never saw one. She said she did.
- 2 Q. Were you afraid she might have a gun?
- 3 A. Yeah. I believed her.
- 4 Q. Were you afraid that you might get stabbed
5 with the knife at the same time?
- 6 A. Yeah. And --
- 7 Q. Have you ever seen this defendant before
8 that?
- 9 A. Never in my life.
- 10 Q. Did you ever give her permission to take
11 your car at all?
- 12 A. No, sir.
- 13 Q. Did you see your car again after that?
- 14 A. Have I seen my car?
- 15 Q. Have you seen your car since that
16 incident?
- 17 A. Yes.
- 18 Q. When was the next time you saw it?
- 19 A. The next day.
- 20 Q. And where was that?
- 21 A. On Toby and Commercial in Pomona.
- 22 Q. Toby and Commercial?
- 23 A. Yeah.
- 24 Q. And what were the circumstances of you
25 seeing the car at that time?
- 26 A. It was -- it had been rammed into a chain
27 link fence. It was kind of hooked up; the front was
28 hooked up on the fence and just the police officers had

1 the situation contained.

2 MR. DE LA PENA: Objection, your Honor, to
3 anything to the police say as hearsay.

4 THE COURT: Sustained. The answer as to what the
5 police officer said is stricken.

6 MR. DE LA PENA: Thank you, your Honor.

7 BY MR. WEYANT:

8 Q. On the next day on, the 23rd of January,
9 did you receive a phone call from the police department?

10 A. Yes sir.

11 Q. As a result of that phone call, did you
12 respond to Toby and Commercial?

13 A. Yes, sir.

14 Q. Did you find your car at that location?

15 A. Yes, sir.

16 Q. Did you recover your car at that time?

17 A. Yes, sir.

18 MR. WEYANT: Thank you. I have nothing further.

19 THE COURT: Counsel?
20

21 CROSS-EXAMINATION

22 BY MR. DE LA PENA:

23 Q. Mr. Roberts, you described that you went
24 into a store; what kind of a store was it?

25 A. It was a doughnut shop. I have never gone
26 inside the store.

27 Q. So you were in the parking area of the
28 doughnut shop?

1 A. Right.

2 Q. Would that be correct, sir? Thank you.
3 Was the store opened or closed?

4 A. It was open.

5 Q. And how long had you been there before you
6 were approached by the female that you have described?

7 A. Maybe two to three minutes.

8 Q. What were you doing there, sir?

9 A. My dad was coming down. I was there to
10 meet my dad.

11 Q. Okay. Was he an employee of that store;
12 is that the reason or just --

13 A. My father?

14 Q. Just a meeting place?

15 A. No. Just a meeting place. He arrived
16 there maybe 5 minutes after it happened.

17 Q. When he arrived, did he arrive by car?

18 MR. WEYANT: Objection. Relevance.

19 THE COURT: Sustained.

20 MR. DE LA PENA: That's probably right, your
21 Honor. Thank you.

22 BY MR. DE LA PENA:

23 Q. Other than waiting, were you doing
24 anything specific?

25 A. No.

26 Q. Okay. Now, let me direct your attention
27 to the night itself; after the time you arrived, how long
28 a period elapsed to the point where you were confronted

1 by the knife?

2 A. Matter of seconds.

3 Q. Okay. So everything was pretty
4 instantaneous in terms of time?

5 A. Correct.

6 Q. And was the knife brought to your neck
7 before any contact was made with this young lady to my
8 right?

9 A. She was standing at the window of my door
10 the entire time. From the time he got into my car to the
11 time I got out and she left, she was there the entire
12 time.

13 Q. How long would you say that entire
14 evolution took?

15 A. Probably about 10 seconds, 15 seconds.

16 Q. And you said that you saw the knife and
17 you described it. Can you be a little more specific?
18 You said it was a folding knife?

19 A. It was a silver butterfly knife.

20 Q. You said it was a large knife. How large
21 was that knife?

22 A. Probably about 8 inches.

23 Q. In its totality or 8-inch blade?

24 A. It was about -- the blade was probably
25 about 7 inches long.

26 Q. Okay. And when you described the knife,
27 you say it was like a folding knife.

28 A. The handle folds in half and flips over

1 the blade.

2 Q. Okay. And may I now direct your attention
3 to the lady herself. You recall what was she wearing
4 that day?

5 A. She was wearing Levi's and like a black
6 and a white button-up shirt; like the bottom was black I
7 think and there was like white diamonds in the middle of
8 it. I'm not for sure.

9 Q. Do you recall if she was wearing a coat
10 that would cover her waist?

11 A. No, I don't remember.

12 Q. Could you see her waist area; that is her
13 belt area?

14 A. I didn't really focus on that area.

15 Q. Okay. So when she said she had a gun, you
16 believed it, but you never saw the gun; is that correct,
17 sir?

18 A. Right.

19 Q. To be just a little more specific with
20 respect to time, from the time you made contact with the
21 young lady to the time that the young lady drove away
22 with your car, how much time are we talking about?

23 A. Oh, that, maybe about 45 seconds to a
24 minute.

25 Q. Had you had any conversation with this
26 young lady prior to the time that she said I have a gun?

27 A. Very -- she asked me if the store was
28 open.

1 Q. Would that be the extent of your
2 discussions with her?

3 A. And she said a few other -- I don't --
4 there wasn't much more. Just, is the store open? And
5 that was about it.

6 Q. Okay. So you don't recall any other
7 conversation, but inquiry into the store whether it was
8 open or not?

9 A. She was -- she asked me if I wanted to buy
10 some crystal and she -- but I think she said -- I said
11 no. And she started saying, come on, come on, buy it,
12 buy it, I think. When she started yelling that, that's
13 when the male got out of the car and ran in, so she
14 was --

15 Q. I'm sorry. Are you finished?

16 A. Yeah. Yeah, that was just signaling the
17 male into my car I believe.

18 Q. Is this something you assume or something
19 that you actually can place some validity on?

20 A. Yeah, I know that for a fact because she
21 was yelling it, and I was just looking at her like, why
22 are you -- why are you yelling this? And all of a sudden
23 this male gets in my car and I was like, you know --

24 Q. How far was the truck that you have
25 described from your car?

26 A. About a half a parking slot. I was parked
27 in one slot and they pulled, you know, in between the
28 line on the next slot over, so a half a car length.

1 MR. DE LA PENA: Okay. Thank you. I don't have
2 any further questions. Thank you, sir.

3 THE COURT: Anything further?

4 MR. WEYANT: Nothing further.

5 THE COURT: You may step down and thank you.

6 THE WITNESS: Thank you.

7 MR. WEYANT: People call Rochelle Moreno.
8

9 ROCHELLE MORENO,

10 called as a witness by the People, was sworn and
11 testified as follows:

12 THE CLERK: You do solemnly swear that the
13 testimony you shall give in the cause now pending before
14 this Court shall be the truth, the whole truth, and
15 nothing but the truth, so help you God?

16 THE WITNESS: Yes, I do.

17 THE CLERK: Be seated. State your name in full
18 and spell your last.

19 THE WITNESS: Rochelle Charlene Vanessa Moreno,
20 M-O-R-E-N-O.
21

22 DIRECT EXAMINATION

23 BY MR. WEYANT:

24 Q. Good morning, Ms. Moreno.

25 A. Hi.

26 Q. Ms. Moreno, do you know the defendant in
27 this case Diane Vargas?

28 A. Darlene.

1 Q. Darlene Vargas?

2 A. Yes, I do.

3 Q. Did you see Ms. Vargas on January 23rd,
4 1999?

5 A. I don't know what the date was when we had
6 got in trouble by the police. That's the day when I seen
7 her.

8 Q. Some time in January, did you see her
9 driving a vehicle?

10 A. No, I didn't. Just that day.

11 Q. Well, that's on a particular day in
12 January. Did you see her driving the vehicle?

13 A. Yes.

14 Q. Can you describe the vehicle?

15 A. It was like a burgundy Honda. I don't
16 know what kind of Honda, Civic or Accord. I'm not sure.

17 Q. Okay. Where did you see her driving that
18 car?

19 A. I was on Alvarado and Towne.

20 Q. And did she ask you to get in the car with
21 her?

22 A. No. She had seen me walking. So she
23 stopped, and I was talking to her. So I just went with
24 her for a ride.

25 MR. DE LA PENA: Excuse me, your Honor. May the
26 witness be directed to speak a little bit louder because
27 she's fading.

28 THE COURT: Anything you don't hear, I will be

1 glad to have the reporter read them back.

2 Try to raise your voice, ma'am. Lean
3 closer.

4 BY MR. WEYANT:

5 Q. While you were in the car with Ms. Vargas,
6 did the police stop the vehicle?

7 A. Yes, they did.

8 Q. And did the vehicle end up at Toby and
9 Commercial in Pomona?

10 A. Yes, it did.

11 MR. WEYANT: Thank you. Nothing further, your
12 Honor.

13 MR. DE LA PENA: May I inquire?

14 THE COURT: Yes.

15

16 CROSS-EXAMINATION

17 BY MR. DE LA PENA:

18 Q. Ms. Moreno, how far is the distance
19 between where you were picked up by Ms. Vargas to the
20 point where you were stopped by the police?

21 A. I would say about -- I don't know. Like
22 maybe, maybe like 5 blocks or something. I don't know.

23 Q. So it was some distance? At least a
24 couple of blocks; would that be correct?

25 A. Yeah.

26 Q. Okay. Now, you had a discussion before
27 you got into the car with Ms. Vargas?

28 A. Not, no before. When I had got -- well, I

1 had a discussion. I just told her hi. I hadn't seen
2 her. I seen her on the street, and I just told her hi
3 and asked her how she was doing. Then I got in the car.

4 Q. Did she ask you to step in the car or did
5 you just get in the car?

6 A. We were just talking and she goes hi,
7 what's up, or whatever. And I just went for a ride with
8 her.

9 Q. Okay. Thank you. I don't have any
10 further questions.

11 THE COURT: Anything further?

12 MR. WEYANT: Nothing further.

13 THE COURT: You may step down and thank you,
14 ma'am.

15 MR. WEYANT: People rest at this time.

16 THE COURT: Fine. Counsel?

17 MR. DE LA PENA: Your Honor, there's no
18 affirmative defense at this time. There are no motions
19 at this time. We submit it to the Court.

20 THE COURT: Fine. After having heard and
21 considered the evidence and arguments of counsel, the
22 Court finds the following public offenses to have been
23 committed, to wit, carjacking in violation of 215(a) of
24 the Penal Code as charged in Count 1; second degree
25 robbery in violation of 211 of the Penal Code as charged
26 in Count 2; and unlawful driving or taking of a vehicle
27 in violation of 10851(a) of the Vehicle Code as charged
28 in Count 3; and there is sufficient cause to believe the

1 defendant committed the same, and I order that she be
2 held to answer for that offense in East H on 2/19/99 and
3 bail shall remain at \$100,000.

4 Anything further?

5 MR. DE LA PENA: No, sir. Thank you.

6 (End of proceedings.)

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EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE

CASE NUMBER

vs.

DARLENE ANGELO VARGAS *KA043362*

GUILTY PLEA IN THE SUPERIOR COURT

- My full name is *DARLENE ANGELO VARGAS*, I am represented by *FA DE LA PENA*, who is my attorney.
- I understand that I am pleading guilty and admitting the following offenses, prior convictions and special punishment allegations, carrying possible penalties as follows:

COUNT	CHARGE	MAXIMUM TERM	YEARS	ENHANCEMENTS	YEARS	TERM FOR PRIORS	YEARS	TOTAL PENALTY YEARS
<i>1</i>	<i>215A PC.</i>	<i>9</i>	<i>YES</i>					<i>9</i>
<i>11</i>	<i>211 PC</i>	<i>5</i>	<i>YES</i>					<i>5</i>
<i>12</i>	<i>10827 PC</i>	<i>3</i>						<i>3</i>

NOTE: 9 YRS + MID TERMS 1 YR = 10 YRS TOTAL PUNISHMENT: 10

- If I am convicted of first or second degree murder, the period of parole is life. (3000.1 P.C.)
- If I receive a life sentence, not due to a conviction of first or second degree murder, the period of parole is 5 years. (3000(b) P.C.)
- A sentence to state prison other than the two mentioned above may result in parole for up to 3 years. (3000(a) P.C.)
- It is also my understanding that each violation during the parole period may result in re-commitment for up to one year.
- I understand that the courts and the Legislature have approved plea bargaining. That it is absolutely necessary all plea agreements, promises of particular sentences or sentence recommendations be completely disclosed to the court on this form.
- I understand that I have the right to be represented by an attorney at all stages of the proceedings until the case is terminated and that if I cannot afford an attorney, one will be appointed free of charge.
- I understand that I have a right to a trial by jury, which means that 12 citizens selected by my lawyer and the prosecutor would hear all the facts in this case and decide whether or not I am guilty of the crime charged against me. All 12 citizens would have to agree that I am guilty in order for me to be convicted of any crime charged against me or all 12 citizens would have to agree that I am not guilty in order to acquit me. I hereby waive and give up this right.
- I understand that I have the right to be confronted by witness(es) against me; in other words, that they testify under oath in my presence, and to cross-examine them through my attorney. I hereby waive and give up this right.
- I understand that I have the right to testify on my own behalf, but that I cannot be compelled to be a witness against myself, and may remain silent if I so choose. I hereby give up these rights.
- I understand that I have the right to call witnesses to testify in my behalf and to use the assistance and processes of the court to subpoena those witnesses and to compel them to come to court to testify. I hereby waive and give up these rights.
- I understand that if I am not a citizen of the United States, the conviction for the offense charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- I understand that I may be required to register as a sex offender to section 290 of the Penal Code.
- I understand that I may be required to register as a narcotic offender pursuant to section 11590 of the Health and Safety Code.

13. I understand that a conviction in this case would constitute a violation of any probation or parole that I may have at this time; that the court or authority that has me on probation or parole can take me back on a violation and impose a separate sentence for the violation.

14. My lawyer has told me that if I plead guilty to the above charge(s), enhancement(s) and prior conviction(s), the court will sentence me as follows:

State prison for the term prescribed by law, which term is a maximum of 3 years imprisonment in the penitentiary. I waive my right to make application for probation and request immediate sentence.

That I make an application for probation which will be considered by the court before sentence is pronounced. I understand the court may send me to state prison for a maximum of _____ years.

Probation under the conditions to be set by the court. I understand that a violation of probation may cause the court to send me to the penitentiary for a maximum of _____ years on this case.

Commitment to CYA.

Institution of MDSO.

1293.03 P.C. Commitment

CRC Proceedings.

Other: PEOPLE WILL ALLOW ME TO PLEA TO CIT MIDTERM AND CIT II MIDTERM TO AVOID CONCURRENTLY (CREDIT 24 DAYS ACTUAL) 3 YRS ST. PRISON

5. I understand that the court may make me pay a sum of money to the State Indemnity Fund, as part of my sentence (Section 13967 of the Government Code).

6. I have discussed the charge(s), the facts and the possible defenses with my attorney.

7. I offer my plea of "Guilty" freely and voluntarily and with full understanding of all the matters set forth in the pleading and in this form. No one has made any threats, used any force against myself, family or loved ones, or made any promises to me except as set out in this form, in order to convince me to plead guilty.

18. I offer to the court the following as the basis for my plea of guilty:

Factual basis: WSP REPORT AND ASSISTANTS CHARGES

I am pleading guilty to take advantage of a plea bargain.

My attorney will stipulate to a factual basis for my plea.

Other: _____

19. I have personally initialed each of the above boxes and discussed them with my attorney. I understand each and every one of the rights outlined above and I hereby waive and give up each of them in order to enter my plea to the above charges.

Dated: April 15, 1999

Signed: Darlene Varga
DEFENDANT

20. DEFENDANT'S ATTORNEY ONLY—I am attorney of record and I have explained each of the above rights to the defendant, and having explored the facts with him/her and studied his/her possible defenses to the charge(s), I concur in his/her decision to waive the above rights and to enter a plea of guilty. I further stipulate this document may be received by the court as evidence of defendant's intelligent waiver of these rights, and that it should be filed by the clerk as a permanent record of that waiver. No promises of a particular sentence or sentence recommendation have been made by myself or to my knowledge by the prosecuting attorney or the court which have not been fully disclosed in this form.

Dated: April 15, 1999

Signed: [Signature]
ATTORNEY
FADETA ROSA

21. FOR THE PEOPLE:

Dated: _____

Signed: _____
DEPUTY DISTRICT ATTORNEY

DECLARATION OF SERVICE

Re: *People v. Darlene A. Vargas*
No. S203744

I, Melanie K. Dorian, declare that I am over 18 years old; my business address is P.O. Box 5006, Glendale, California 91221-5006.

On March 27, 2013, I served a true copy of APPELLANT'S PARTIAL OPPOSITION TO RESPONDENT'S MOTION FOR JUDICIAL NOTICE; APPELLANT'S MOTION FOR JUDICIAL NOTICE, by first class mail, on the following parties:

California Court of Appeal
Second District, Division Eight
300 S. Spring Street, Room 2217
Los Angeles, California 90013

Darlene A. Vargas X37014
CCWF
P.O. Box 1508
Chowchilla, California 93610

Kim Aarons
Office of the Attorney General
300 S. Spring Street, Room 1702
Los Angeles, California 90013

Lisa Washington
Office of the Public Defender
100 W. Second Street, Suite 200
Pomona, California 91766

Gerald E. Ferris
District Attorney's Office
400 Civic Center Plaza, Room 201
Pomona, California 91766

California Appellate Project
520 South Grand Ave, 4th Floor
Los Angeles, California 90071

Pomona Courthouse
400 Civic Center Plaza, Dept L
Pomona, California 91766
FOR DELIVERY TO:
Hon. Bruce F. Marrs, Judge

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

Executed on March 27, 2013, at Glendale, California.



MELANIE K. DORIAN