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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LX - DEPARTMENT A HON. CYNTHIA RAYVIS, JUDGE

DEC 24 2009

PEOPLE OF THE STATE OF CALIFORNIA,)
)
)
Plaintiff,)
)
vs.)
)
ROBERT ISAAC POURAT,)
)
Defendant.)

No. SA066244

VIOLATION OF:
245 (a) (2)
12022.1
12022.5 (a) - (d)
136.1 (a) (1)

**CERTIFIED
COPY**

REPORTER'S TRANSCRIPT OF PROCEEDINGS
PRELIMINARY HEARING
TUESDAY, DECEMBER 15, 2009

APPEARANCES:

FOR THE PEOPLE: STEVE COOLEY, DISTRICT ATTORNEY
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FOR THE DEFENDANT RONALD N. RICHARDS, PRIVATE COUNSEL

HTA: 12-29-2009 Barbara Strickland, CSR #7009
Department LX-B Official Reporter

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I N D E X

PEOPLE'S
WITNESSES

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E X H I B I T S

(None offered)

1 CASE NUMBER: SA066244
2 CASE NAME: PEOPLE VS. ROBERT POURAT
3 LOS ANGELES, CALIFORNIA TUESDAY, DECEMBER 15, 2009
4 DEPARTMENT LX-A HON. CYNTHIA RAYVIS, JUDGE
5 REPORTER: BARBARA STRICKLAND, CSR #7009
6 TIME: A.M. SESSION

7 APPEARANCES:

8 The Defendant, ROBERT POURAT, being present
9 in court and represented by counsel,
10 RONALD RICHARDS, Private Counsel; STEFANA
11 ANTONESCU, Deputy District Attorney of
12 Los Angeles County, representing the People
13 of the State of California.

14
15
16 THE COURT: People vs. Robert Pourat. SA066244.
17 We're on the record.

18 MR. RICHARDS: Ronald Richards, appearing for
19 Mr. Pourat, who is being brought out by the bailiff.

20 Defense motion to exclude all witnesses.

21 THE COURT: Motion is granted as to all
22 witnesses, defense or prosecution.

23 MR. RICHARDS: I'm appearing for preliminary
24 hearing purposes only.

25 THE COURT: All right.

26 For the People?

27 MS. ANTONESCU: Stefana Antonescu for the
28 People.

1 THE COURT: Thank you.

2 The defendant is present.

3 Both sides having announced ready, the
4 People may call their first witness.

5 MS. ANTONESCU: Thank you, Your Honor.

6 People call Sasha Medic to the stand.

7 I do have seated next to me at counsel
8 table Detective Warren Porche. If I may designate him
9 as investigating officer.

10 THE COURT: All right. If you would spell his
11 last name.

12 MS. ANTONESCU: P-o-r-c-h-e.

13

14 **SASHA MEDIC,**

15 called as a witness by the People, was sworn and
16 testified as follows:

17

18 THE CLERK: You do solemnly state the testimony
19 you are about to give in the cause now pending before
20 this court shall be the truth, the whole truth, and
21 nothing but the truth, so help you God.

22 THE WITNESS: Yes.

23 The CLERK: Please be seated on the witness
24 stand.

25 Please state your name, spelling your
26 first name and your last name for the record.

27 THE WITNESS: Sasha Medic, S-a-s-h-a M-e-d-i-c.

28 THE COURT: Ms. Medic, if you'd move a little

1 closer to the microphone, that way you wouldn't have to
2 lean over.

3 You may proceed.

4 MS. ANTONESCU: Thank you.

5

6

DIRECT EXAMINATION

7 **BY MS. ANTONESCU:**

8 Q Good afternoon.

9 A Good afternoon.

10 Q Drawing your attention back to
11 November 30th of 2007, going into the early morning
12 hours of December 1st of that year, were you at
13 10599 Wilshire Boulevard in the city and county of
14 Los Angeles?

15 A Yes.

16 Q And why did you go there?

17 A I was invited by Robbie.

18 Q For what purpose were you invited to go
19 there?

20 A I was supposed to meet him at a club, but
21 I didn't have my keys. So I took a taxi and he told me
22 that he would be going home and to meet him on Wilshire
23 and Beverly Glen.

24 Q Did you meet him on Wilshire and Beverly
25 Glen?

26 A Yes.

27 Q Approximately what time was that, if you
28 can recall?

1 A I don't remember.

2 Q Do you see Robbie here in court today?

3 A Yes.

4 Q Could you let the court know where he's
5 seated by describing an article of clothing that he's
6 wearing.

7 A He's wearing a yellow shirt.

8 THE COURT: Identifying the defendant, Robert
9 Pourat.

10 Q BY MS. ANTONESCU: Now, when you met him
11 there at that location, what happened next?

12 A I got into the car that he was driving and
13 we went to the building on Wilshire and Westholme.

14 Q Was that the building at 10599 Wilshire?

15 A Yes.

16 Q Did you go into an apartment in that
17 building?

18 A Yes, I did.

19 THE COURT: Before we go on, I just want to let
20 counsel know I'm looking at the complaint and I did
21 sign the probable cause arrest warrant on this
22 complaint. So I obviously read the police report on
23 December 11th, 2007. I don't recall it, but I want
24 both counsel to know that.

25 Any problem with that, Ms. Antonescu?

26 MS. ANTONESCU: No, Your Honor.

27 THE COURT: Mr. Richards?

28 MR. RICHARDS: No, Your Honor.

1 THE COURT: Thank you.

2 Go ahead.

3 Q BY MS. ANTONESCU: Now, you went to an
4 apartment in that building; is that correct?

5 A Yes.

6 Q Do you know whose apartment it was?

7 A No.

8 Q Did you know any of the people inside that
9 apartment?

10 A No.

11 Q How many people were there inside that
12 apartment?

13 A I don't know. Maybe five to ten people.

14 Q Did you go there with Robbie?

15 A Yes, I did.

16 Q And was Robbie with you the whole time you
17 were there in that apartment?

18 A No.

19 Q Did you at some point that night leave
20 that apartment?

21 A Yes, I did.

22 Q Why did you leave that apartment?

23 A I left because Carley O'Neill was there
24 and I didn't want to see her. So I called my then-
25 boyfriend at the time to come pick me up. So when he
26 told me he was outside is when I was leaving.

27 Q And then you went outside to meet your
28 boyfriend?

1 A Uh-huh.

2 Q Is that a yes?

3 A Yes. Sorry.

4 Q Did anything happen outside?

5 A Yes. Robbie followed me outside. And
6 then Justy -- my ex-boyfriend's name is Justice or
7 Justy -- and he started talking to Robbie. And Robbie
8 was accusing us of having something to do with Grant
9 Zimmerman's shooting. And then Carley walked out and
10 did the same.

11 Q And she confronted you about Grant
12 Zimmerman's shooting?

13 A Yes.

14 Q What happened next?

15 A All of us argued over, you know, what
16 happened to Grant. And Carley threw a glass -- her
17 drink at me. And then Justy and Robbie were speaking
18 with one another. And then I spoke with Carley and I
19 explained to her that I had nothing to do with Grant's
20 shooting. And she told me that she believed that and
21 then tried to tell Robbie the same thing and --

22 Q Let me stop you there.

23 A Okay.

24 Q When Carley threw the drink at you, did it
25 hit you at all?

26 A No.

27 Q When Robbie was talking to Justy, was that
28 in your immediate presence or was it close by but a

1 little further away?

2 A It was close by, but I couldn't hear what
3 they were saying.

4 Q All right. You indicated that at some
5 point Carley told you that she believed you about Grant
6 Zimmerman's shooting. What happened next?

7 A Justy -- I remember Justy got scared of
8 Robbie and thought that he'd had a gun. And Robbie
9 lifted up his shirt to show that he wasn't armed and
10 Justy was backing off scared. And then Justy ran off
11 to his car and left.

12 Q So that left you there in the front of the
13 building with Robbie and Carley; is that correct?

14 A Yes. And then --

15 MR. RICHARDS: Yes. There's no question
16 pending.

17 THE COURT: The answer "yes" may remain.

18 Q BY MS. ANTONESCU: What happened next?

19 A I was going -- or Carley asked me to come
20 upstairs to the apartment with her. So I agreed. And
21 I agreed, and I was going to call my mom to come pick
22 me up then. Robbie came into the elevator with us on
23 our way upstairs, but he didn't come into the apartment
24 with us.

25 Q All right. Was this the same apartment
26 that you had been in earlier that night?

27 A No. A different one.

28 Q Had you been in this apartment before?

1 A Yes, I had.

2 Q So now when you went to this apartment, it
3 was just you and Carley in the apartment; is that
4 correct?

5 A Yes.

6 Q What happened next?

7 A Robbie -- Carley was making us drinks, and
8 Robbie had walked in holding a gun. And he pointed it
9 at my head, standing several feet away, and told me to
10 tell him what I knew about Grant and Angel.

11 Q When Robbie walked in, you said he was
12 holding a gun or he had a gun in his possession?

13 A He had a gun in his hand and, like, held
14 it. And he pulled three bullets out of his pocket and
15 loaded the gun in the revolver.

16 Q You said he had it up. Was he pointing
17 the gun at you?

18 A He pointed it at first, yes. And then out
19 of his pocket he pulled out the bullets and loaded it
20 in front of me.

21 Q How many bullets were there?

22 A Three.

23 Q Do you know what type of gun that was?

24 A Yes. A revolver.

25 Q Do you remember what color it was?

26 A It was black. I remember it had wooden
27 handles.

28 Q Do you remember how big the gun was?

1 A Not -- not really, no. I mean maybe,
2 like, that big, the entire gun, from what I remember.

3 THE COURT: You want to estimate what that was?

4 THE WITNESS: I don't know. Maybe, like, eight,
5 nine -- seven or eight inches maybe.

6 Q BY MS. ANTONESCU: Seven or eight inches?
7 Okay.

8 Where did he take the bullets from?

9 A His pocket.

10 Q And how far away were you from him when he
11 was essentially loading the gun?

12 A I would say maybe three to six feet.

13 Q Was he saying anything to you at this
14 point?

15 A I don't remember.

16 Q Once he placed the bullets into the
17 cylinder, what happened next?

18 A He -- I remember he spun the cylinder and
19 then he slammed it shut and he pointed it at my head
20 and pulled the trigger. And that hole of that -- I
21 don't even know what it's called. The bullet wasn't in
22 there and it was empty. So it didn't fire. And he
23 started laughing and told me I was a lucky bitch.

24 Q At this point are you alone in the
25 apartment with him or is Carley still there in the
26 apartment with you?

27 A Carley is still sitting next to me.

28 Q After he says you're a lucky bitch, what

1 happens next?

2 A He opens the cylinder and spins it again
3 and does the same thing.

4 Q Does he say anything this time?

5 A He's telling me to tell him what
6 information I have on Alex and Grant getting shot.

7 Q Who is Grant?

8 A Grant, from how I met him, was one of
9 Robbie's best friends.

10 THE COURT: Who's Alex?

11 THE WITNESS: Alex is a friend that I met
12 through a friend. His name is Alex Holguin or Olguin.

13 THE COURT: Who is Angel?

14 THE WITNESS: That's the same person. That's,
15 like, what he was called or that's, like, his nickname.

16 THE COURT: Angel and Alex are the same?

17 THE WITNESS: Uh-huh.

18 THE COURT: Yes?

19 THE WITNESS: Yes.

20 Q BY MS. ANTONESCU: Were you giving him any
21 information at this point?

22 A No.

23 Q What happened next?

24 A From what I remember, Scott and Justin
25 Candullo walked into the apartment and watched Robbie
26 as he continued to spin the cylinder and slam it shut
27 and pull the trigger. Every time he said I was lucky
28 because the gun didn't fire.

1 Q How many times did Robbie spin the
2 cylinder and pull the trigger?

3 A From what I can remember, I don't know,
4 maybe four to five times.

5 Q To your recollection, he had gone through
6 the series of events by spinning the cylinder and
7 slamming it shut and pulling the trigger, he had done
8 that twice while you're sitting on the couch with
9 Carley?

10 A Carley was there the entire time he did
11 it. And Justice and Scott were there for, I don't
12 know, maybe one or two times of it.

13 Q Where did he point the gun when he was
14 doing this?

15 A To my head.

16 Q Did he point the gun to your head every
17 single time he did this, he went through that series of
18 actions?

19 A Yes.

20 Q How far away from your head?

21 A At times maybe with his arm extended out,
22 he may have been three feet away. And I think at one
23 point he had the gun to the back of my head because I
24 remember I was crying and had my head in my hands. And
25 Carley was begging Robbie to stop.

26 Q And what happened next?

27 A They took me into the back room.

28 Q Who took you into the back room?

1 A Robbie, Scott, and Justin.

2 Q Did Robbie say something as you were going
3 into the back room?

4 MR. RICHARDS: Leading.

5 THE COURT: Overruled.

6 You can answer.

7 THE WITNESS: He was just asking me if I had
8 information on Angel, where he lived, and to call
9 Chelsea to find out, you know, where he lived because I
10 wasn't giving him that information.

11 Q BY MS. ANTONESCU: So what was your
12 demeanor at this point?

13 A I was scared for my life and I thought
14 that I was going to die. And I also feared for Alex's
15 life, as well.

16 Q This back room that you were brought to,
17 can you describe it?

18 A You could tell that they were trying to
19 move out. The room was almost empty. It had -- I
20 think it maybe even had a TV on the floor. There was a
21 mattress and a box spring on the floor and I think that
22 was it.

23 Q What happened once you got to that room?

24 A I don't remember in what exact order, but
25 at one -- I was never left alone and I remember Robbie
26 was in the room and he began smoking meth and put a gun
27 to my head and told me that I would have to smoke it or
28 die. And I told him die and I ran out.

1 And there was another room where Carley
2 used to sleep and I ran into that room and began crying
3 to Carley.

4 Q When you were in the room and Robbie told
5 you to smoke the meth or die, were you alone in the
6 room with him at that point?

7 A Yes, I was. And I think --

8 MR. RICHARDS: Objection. After "yes," it would
9 be nonresponsive.

10 THE COURT: Sustained.

11 Next question.

12 Q BY MS. ANTONESCU: Then you ran into
13 Carley's old room; correct?

14 A Yes.

15 Q And Carley was there by herself?

16 A I think Justin and Scott were in the room
17 because I remember Justin closed the curtains and was
18 telling me to shut up so that the neighbors couldn't
19 hear me crying.

20 Q What happened next?

21 A Robbie grabbed my hair and then he grabbed
22 a, like, electric razor and tried to shave the back of
23 my head while Scott took a black bandana and wrapped it
24 around my mouth.

25 I remember I grabbed my hands to move the
26 bandana from me, and when they were dragging me back to
27 the back room, the bandana fell around my neck and I
28 held onto it so it wouldn't strangle me.

1 Q So at some point Robbie follows you or
2 goes after you into Carley's old room; is that correct?

3 A Yes.

4 Q That when he grabbed you by the hair?

5 A Yes.

6 Q Did he have this electric shaver with him
7 at that point?

8 A I noticed it because I was crying in
9 Carley's lap when she was sitting on the mattress.

10 MR. RICHARDS: Strike as nonresponsive.

11 THE COURT: Sustained. The answer is stricken.

12 Q BY MS. ANTONESCU: What happened while you
13 were crying to Carley?

14 A Robbie walked up into the room and then he
15 had a shaver in his hand. I don't know when he got it.
16 He tried to shave the back of my head as he was pulling
17 on my hair.

18 Q Now, was he pulling on your hair in an
19 attempt to try to shave your head at the same time you
20 were being moved back into that back bedroom?

21 MR. RICHARDS: Speculation.

22 THE COURT: Overruled.

23 You can answer if you understand the
24 question.

25 THE WITNESS: No. I felt that --

26 MR. RICHARDS: Move to strike after "no."

27 THE COURT: Sustained.

28 Q BY MS. ANTONESCU: So did Robbie grab your

1 hair and then try to shave it and then you were moved
2 back into the room?

3 MR. RICHARDS: Objection. Compound.

4 THE COURT: Sustained.

5 Q BY MS. ANTONESCU: Okay. Robbie tried to
6 grab your hair. He grabbed your hair and he tried to
7 shave it; is that correct?

8 A Yes.

9 Q What happened next?

10 A He grabbed me by the hair and dragged me
11 into the room while Scott also dragged me with the
12 bandana around my mouth and my neck.

13 Q And the bandana, initially was it tied on
14 your mouth or was it being held?

15 A It was being held.

16 Q At some point the bandana slipped; is that
17 correct?

18 A Yes.

19 Q What did you do at that point?

20 A I grabbed it with my hands to keep it from
21 strangling me.

22 Q What happened next?

23 A I was back in the room and, I believe, I
24 was then with Justin Candullo while he told me that
25 they were crazy and that they had spies on --

26 MR. RICHARDS: I'm going to move to strike.
27 This is all hearsay.

28 THE COURT: All right. Everything after "I was

1 back in the room and I believe I was then with Justin
2 Candullo" is stricken.

3 MR. RICHARDS: I've been easy-going on the
4 hearsay, but could I request an instruction for her not
5 repeating what other people are saying.

6 THE COURT: Well, I think a lot of it is not
7 offered for the truth, but you can make your
8 objections --

9 MR. RICHARDS: Thank you.

10 THE COURT: -- as they go along.

11 Q BY MS. ANTONESCU: At any point when you
12 were in this back room, were you ever left alone?

13 A No.

14 Q When Justin Candullo was in the room with
15 you, was Robbie in that room as well?

16 A He was at some point.

17 Q Now, are they still trying to get
18 information from you at this point?

19 MR. RICHARDS: Leading. Speculation. Vague.

20 THE COURT: Sustained.

21 Q BY MS. ANTONESCU: How long would you
22 estimate that you were in that back room?

23 THE COURT: With Justin?

24 THE WITNESS: In total or...? Maybe four hours.

25 Q BY MS. ANTONESCU: During the course of
26 the night, four hours?

27 A Four to five hours. I don't remember
28 actually.

1 Q Did Robbie ever -- I'll withdraw that.
2 Ultimately, were you able to leave that
3 back room?

4 A In the end, yes.

5 Q What happened in the end that you were
6 able to leave that room?

7 A Robbie had fallen asleep with Carley. And
8 when Chelsea had arrived -- because Robbie called
9 Chelsea and asked her to come because she was supposed
10 to show him where Angel lived.

11 MR. RICHARDS: I'm just going to -- this is
12 nonresponsive. It's hearsay.

13 THE COURT: Sustained.

14 MR. RICHARDS: Move to strike.

15 THE COURT: Stricken.

16 Q BY MS. ANTONESCU: Did Robbie have a
17 conversation with Carley in your presence that night?

18 A I don't remember.

19 Q Did you ever call Carley in order to get
20 her to come to that location?

21 A To which location?

22 Q To the location where you were, to that
23 apartment.

24 I mean Chelsea. Did you ever call
25 Chelsea?

26 A Yes, I called Chelsea.

27 Q You called Chelsea. Did you call Chelsea
28 at Robbie's direction?

1 MR. RICHARDS: Objection. Leading.

2 THE COURT: Sustained.

3 Q BY MS. ANTONESCU: Why did you call
4 Chelsea?

5 A I called Chelsea because I wanted her to
6 come and pick me up and tell her that Robbie was
7 holding me hostage.

8 Q You said that ultimately Robbie had fallen
9 asleep and that Carley was also in the room and that
10 she was sort of passed out as well. What did you do
11 next?

12 A I climbed onto the bed and touched Robbie
13 and Carley to see if they were asleep. And they were.
14 So I ran back into the room that I was originally in,
15 grabbed my belongings and left.

16 Q Now, did you exit out of the main exit of
17 the building?

18 A No. I exited through the emergency
19 staircase because I knew it was faster than waiting for
20 the elevator.

21 Q Was there any other reason that you didn't
22 go out the front entrance or exit of the building?

23 A Yes. Because earlier they had told me
24 that they had spies on every corner and that the
25 security guard who --

26 MR. RICHARDS: I'm going to move to strike as
27 nonresponsive and hearsay. Vague.

28 THE COURT: Overruled. She's explaining why she

1 left the security exit. So it's not offered for the
2 truth. It's offered to show her state of mind why she
3 did what she did. So the answer may remain. You
4 said --

5 MR. RICHARDS: Is her state of mind relevant at
6 this point?

7 THE COURT: It's relevant as to why she left by
8 the security exit as opposed to any other. She said
9 they told her they had spies on every corner and the
10 security --

11 THE WITNESS: And the main security who
12 monitored the building worked for them and they paid
13 him and he would just bring me back up to them if he
14 had seen me trying to leave.

15 Q BY MS. ANTONESCU: Do you recall who it
16 was who told you that?

17 A I believe it was Justin and Robbie.

18 Q That the point did Chelsea pick you up?

19 A Yes, she did.

20 Q Where did you go after Chelsea picked you
21 up?

22 MR. RICHARDS: Relevance.

23 THE COURT: Sustained.

24 Q BY MS. ANTONESCU: You contacted the
25 police on, was it, December 1st of 2007? Later that
26 same day?

27 MR. RICHARDS: Relevance.

28 THE COURT: Overruled.

1 THE WITNESS: It was on November 30th, the same
2 morning. I got home maybe around 8:30 in the morning.

3 And my friend came and she was the one
4 who --

5 MR. RICHARDS: I object. This is nonresponsive.

6 Q BY MS. ANTONESCU: Yes or no. Did you
7 contact the police?

8 A Yes, I did.

9 THE COURT: Hold on. Everything after
10 "November 30th, the same morning" is stricken.

11 Q BY MS. ANTONESCU: Did you receive any
12 phone calls from Robbie on that day or in the days
13 following?

14 A Yes.

15 MR. RICHARDS: I'm going to object as to why are
16 the phone calls subsequent relevant to the crime
17 charged?

18 THE COURT: Sustained.

19 MS. ANTONESCU: Your Honor, I direct the court's
20 attention to Count Nine of the complaint.

21 THE COURT: All right. Go ahead.

22 Q BY MS. ANTONESCU: Did Robbie ever talk to
23 you about what had happened in that apartment that
24 night?

25 A Yes, he did.

26 Q What did he tell you about that?

27 A He would tell me to change my story, to
28 tell them I was on drugs or that I was drunk and that I

1 had confused it and hallucinated it. And in response
2 to that, he told me that he would give me Justin
3 Candullo's Porsche and \$200.

4 THE COURT: When did he say that?

5 THE WITNESS: Over the phone.

6 THE COURT: When?

7 THE WITNESS: After the incident.

8 THE COURT: How long after?

9 THE WITNESS: A couple days. The day. The same
10 day. And then he would repeat the same over and over
11 every other time that he called me.

12 MS. ANTONESCU: Nothing further, Your Honor.

13 THE COURT: Cross-examination.

14

15

CROSS-EXAMINATION

16 BY MR. RICHARDS:

17 Q When you went to the apartment that
18 evening with Mr. Pourat, you guys were friend at that
19 point; correct?

20 A Yes.

21 Q And when you arrived at the apartment, had
22 you consumed any alcohol prior to that night?

23 A No.

24 Q Did you consume any alcohol at the
25 apartment?

26 A Carley made a glass of alcohol and Robbie
27 had walked in before I even had a chance to drink it.

28 Q Did you take any other drugs that may have

1 impaired your judgment that night?

2 A No.

3 Q What about with respect to having a
4 personal relationship with him, for example, did you
5 have sexual intercourse with him that night?

6 A Yes, I did.

7 Q Was that right after you arrived at the
8 apartment?

9 A Yes, it was.

10 Q Were you guys sort of dating on the side?

11 A Yes, we were, I guess.

12 Q And was that the first time that you were
13 involved with him that way?

14 A No.

15 Q How many times would you estimate prior to
16 that did you have sexual intercourse with him?

17 MS. ANTONESCU: Objection. Relevance.

18 THE COURT: Overruled.

19 You can answer.

20 THE WITNESS: I don't remember. Several times.

21 Q BY MR. RICHARDS: Over ten times?

22 A I don't know.

23 Q Do you know how long, over what course a
24 period of time?

25 MS. ANTONESCU: Objection. Relevance.

26 THE COURT: Overruled.

27 You can answer.

28 THE WITNESS: I don't know. Maybe a year.

1 Q BY MR. RICHARDS: So off and on for a year
2 you would get together with him in a sexual way?

3 A Maybe no, it wasn't a year.

4 Q How long would you estimate?

5 A Maybe three months, I think.

6 Q Did you ever go out with him to various
7 parties or nightclubs?

8 A Yes.

9 Q You mentioned that you were concerned that
10 Carley -- you didn't want to see Carley at the building
11 that night. Remember that testimony?

12 A Yes.

13 Q Why was it what you didn't want to see
14 Carley?

15 MS. ANTONESCU: Objection. Relevance.

16 THE COURT: Overruled.

17 THE WITNESS: Carley and I had an argument a
18 couple days before. So I didn't want to see Carley.

19 Q BY MR. RICHARDS: Now, you're someone that
20 when provoked becomes violent yourself; is that true?

21 MS. ANTONESCU: Objection.

22 THE COURT: Sustained.

23 MR. RICHARDS: 1103 of the Evidence Code.

24 THE COURT: Well, can you be more specific?

25 Q BY MR. RICHARDS: Isn't it true that on
26 November 29th, 2008, you struck a waitress with your
27 shoe?

28 THE COURT: 2008? A year after this crime?

1 MR. RICHARDS: Yeah.

2 THE WITNESS: Yes.

3 THE COURT: It's not relevant. The answer is
4 stricken.

5 Q BY MR. RICHARDS: Well, did you plead
6 guilty with assault with a deadly weapon?

7 MS. ANTONESCU: Same objection, Your Honor.

8 THE COURT: Sustained.

9 MR. RICHARDS: Your Honor, if the witness is
10 testifying with a felony conviction, that's -- the
11 conviction doesn't have to occur before the crime.

12 THE COURT: That's true.

13 MR. RICHARDS: Under 1103(b), if there's a
14 character trait for violence, it's relevant --

15 THE COURT: 1103(b) is defendant's character.

16 MR. RICHARDS: I'm sorry.

17 THE COURT: 1103(a) is the victim's character.

18 MR. RICHARDS: Right. I meant 1103(a). But
19 under 777 and 776 of the Evidence Code, felony
20 conviction is relevant. Also if the witness is on
21 probation.

22 THE COURT: All right. The court will allow it.

23 Q BY MR. RICHARDS: Okay. So on
24 November 29, 2008, you were in Cabo Cantina in Santa
25 Monica and you struck the waitress with the sharp heel
26 of your shoe; correct?

27 A Yes.

28 Q You pled guilty to assault with a deadly

1 weapon, a felony?

2 A Yes.

3 Q You're currently on probation for that
4 offense?

5 A Yes.

6 Q Now, directing your -- earlier that night,
7 did you do any cocaine with Robbie?

8 A No.

9 Q Are you saying you've never done cocaine
10 with Robbie?

11 MS. ANTONESCU: Objection, Your Honor.

12 THE COURT: Sustained.

13 Q BY MR. RICHARDS: Have you ever done
14 cocaine with Robbie?

15 MS. ANTONESCU: Same objection.

16 THE COURT: Sustained.

17 Q BY MR. RICHARDS: Prior to that evening,
18 had you ever --

19 Your Honor, can I be heard at side bar on
20 that last round of questions, please?

21 *(The following proceedings*
22 *were held at side bar:)*

23 THE COURT: Okay. We're at side bar.

24 MR. RICHARDS: I think that it's fair for cross-
25 examination purposes that I can attack her statements
26 that she never did any drugs with him by at least
27 allowing me to explore if they used drugs together
28 before and what kind of drugs.

1 It also goes to show that she had a close
2 relationship, that they did drugs together. And to
3 develop his defense on whether or not she exaggerated
4 or fabricated some of these claims is fair game.

5 I mean, this is someone that she's engaged
6 in, you know, admitted relationship with, and I think
7 it's probative if she's normally smokes meth or does
8 ingest cocaine with him that that could affect her
9 judgment and also goes to her credibility. I'm not
10 going to spend a year on it, but I think it's fair to
11 give me some latitude on cross-examination.

12 THE COURT: Well, you've already established
13 that they had sex together over a period of a year.
14 She has testified that she did not ingest any cocaine
15 on that date.

16 MR. RICHARDS: I know. But you're also not
17 allowing me to say she ever has that. Could be
18 probative that she's lying about it that night to cover
19 her story so her judgment is not attacked by the
20 defense. To a trier of fact, it would be very relevant
21 to see if she used drugs with him. The fact that she
22 omits the one night that she's accusing someone of a
23 assault --

24 THE COURT: What are you going to ask?

25 MR. RICHARDS: How many times has she done any.

26 THE COURT: Only that one question?

27 MR. RICHARDS: Yes.

28 THE COURT: You want to be heard?

1 MS. ANTONESCU: I don't think it's relevant. I
2 think she testified that she hadn't. I think this is
3 nothing more than an attempt to dirty her up. I don't
4 think it's relevant. We know the nature of her
5 relationship. Anything beyond that at this point would
6 be used in order to dirty her up.

7 MR. RICHARDS: Any time you accuse someone of a
8 crime, you're cross-examined, and theoretically any
9 uncomfortable question could, quote, dirty a witness
10 up. But to test the veracity of the statement, if I
11 can't even ask her if she's done drugs in the past with
12 him and how many times with my client, I'd be
13 reasonably allowed to argue that she's lied about it on
14 this night. If she testified and said, yeah, we smoked
15 meth together, I should be allowed to test her
16 statement that she's never done it before.

17 I mean this is an unusual case where she
18 comes into the apartment, she has sex with the alleged
19 assailant five minutes -- within five minutes.

20 THE COURT: I will allow you to ask her if she
21 had drug with the defendant before, how many times. If
22 she says yes, you can ask how many times.

23 MR. RICHARDS: Okay.

24 THE COURT: I'll allow you to ask a third
25 question, which is when was the last time before
26 November of '07 did you have drugs together.

27 MR. RICHARDS: I'll keep it to those.

28 THE COURT: All right.

1 MR. RICHARDS: Thank you.

2 THE COURT: Thank you.

3 (The following proceedings
4 were held in open court:)

5 Q BY MR. RICHARDS: Ms. Medic, have you ever
6 had any sort of -- have you ever ingested or smoked any
7 type of illegal drug with Mr. Pourat prior to that
8 evening at any time?

9 A Yes.

10 Q What drugs were those?

11 A Cocaine.

12 Q How many times did you ingest cocaine with
13 Mr. Pourat?

14 THE COURT: You know, now that I'm thinking
15 about this, if you're going to proceed with this line
16 of questioning, I think it's only fair that the witness
17 have an attorney.

18 MR. RICHARDS: It's not illegal to -- can I tell
19 you there's no crime whatsoever to say I did a crime.
20 That is absolutely not a crime. And I can give you
21 authority. So I'm not going to ask her anything that
22 would incriminate her whatsoever. Just saying I did
23 drugs is not a crime.

24 THE COURT: All right.

25 Q BY MR. RICHARDS: When was the last time
26 you ingested cocaine with Mr. Pourat prior to that
27 evening?

28 A I don't know. A month or two before.

1 Q Okay. I don't have -- can you just
2 estimate how many times during the course of your
3 relationship you ingested cocaine with him?

4 MS. ANTONESCU: Objection, Your Honor.
5 Relevance.

6 THE COURT: I'm going to sustain the objection.

7 MR. RICHARDS: Just one last question.

8 Q Was this powder cocaine or --

9 MS. ANTONESCU: Objection. Relevance.

10 THE COURT: The objection is sustained.

11 You don't have to answer.

12 MR. RICHARDS: I'll move on, Your Honor.

13 Q Do you have any prior experience with
14 firearms?

15 A No.

16 Q Have you ever shot a firearm?

17 A No.

18 Q Have you ever purchased ammunition before?

19 A No.

20 MR. RICHARDS: One second.

21 I have nothing further, Your Honor.

22 THE COURT: Any redirect?

23 MS. ANTONESCU: Yes.

24
25 **REDIRECT EXAMINATION**

26 **BY MS. ANTONESCU:**

27 Q Did you know about the shooting involving
28 Grant Zimmerman before that night of November 30th of

1 '07?

2 MR. RICHARDS: Objection. Relevance and outside
3 the scope.

4 THE COURT: Sustained.

5 Q Did you ever give Robbie any information
6 regarding Alex or Angel?

7 MR. RICHARDS: Objection. Outside the scope.

8 THE COURT: Sustained.

9 MS. ANTONESCU: Okay. I have nothing further.

10 THE COURT: Thank you.

11 Anything further?

12 MR. RICHARDS: No.

13 THE COURT: You are excused. Thank you.

14 You may call your next witness.

15 MR. RICHARDS: Can I indulge the People under
16 352. We really have enough here. Can I have an offer
17 of proof as to what more we need?

18 THE COURT: My understanding based upon --

19 MR. RICHARDS: I want to let the witness leave
20 the room first.

21 THE COURT: An after of proof, Ms. Antonescu?

22 MS. ANTONESCU: I intend to call Ms. Medic's
23 friend.

24 THE COURT: I can't hear you.

25 MS. ANTONESCU: I intend to call Ms. Medic's
26 friend, Chelsea Kubek, (phonetic) to the stand. She is
27 the individual who called her and she spoke with her
28 that day. She's the one who picked her up when she

1 left the location.

2 THE COURT: What is your offer of proof?

3 MS. ANTONESCU: That she's going to testify as
4 to Ms. Medic's demeanor when she left the location
5 and --

6 THE COURT: That would be fine for a trial, but
7 I don't see why it's necessary for the preliminary
8 hearing.

9 MS. ANTONESCU: Okay. In that case, Your Honor,
10 I would ask to call Carley O'Neill-Sardella to the
11 stand.

12 MR. RICHARDS: Offer of proof?

13 MS. ANTONESCU: She was present there in the
14 room when Mr. Pourat loaded the gun, you know, turned
15 the chamber and essentially pulled the trigger.

16 THE COURT: What is she going to add that
17 Ms. Medic has not testified to?

18 MS. ANTONESCU: Well, she's a percipient
19 witness.

20 THE COURT: I understand that. But it appears
21 to be cumulative. Again, at trial I would certainly,
22 if I were trying to case, would certainly allow you to
23 call those witnesses. But for the preliminary hearing,
24 it's just whether or not I have a strong suspicion that
25 these events occurred as you've laid them out.

26 I also note that Ms. Carley O'Neill-
27 Sardella was or is a defendant?

28 MR. RICHARDS: Was a defendant, yeah.

1 MS. ANTONESCU: That's correct.

2 THE COURT: What happened?

3 MR. RICHARDS: She pled guilty.

4 THE COURT: So she would need an attorney if she
5 were to testify.

6 MS. ANTONESCU: Her attorney is present here, as
7 well.

8 MR. RICHARDS: It would be cumulative, Your
9 Honor.

10 THE COURT: I see it as being cumulative. If
11 that's all you have, I just don't see that --

12 MS. ANTONESCU: In that case, Your Honor, if I
13 may ask the court's indulgence. I would like to call
14 Detective Porche. He is going to testify as to the
15 recovery of the firearm that was used.

16 MR. RICHARDS: Judge, is that an issue?

17 THE COURT: Hold on. Again, we've had Ms. Medic
18 testify to the firearm. I don't see why it's necessary
19 for the hearing.

20 MS. ANTONESCU: It's because I tried to or
21 inquired as to her expertise and her knowledge of
22 firearms of whether she knew what type of gun it is. I
23 have someone here who is able to testify to the actual
24 firearm that was recovered.

25 THE COURT: Right. At trial, I could see where
26 you would want to do that. But the testimony is, as it
27 stands, it was a revolver. She explained how many
28 bullets were placed in the cylinder, how he spun the

1 cylinder, and pointed it at her head. It's clear to
2 me, if I accept her testimony as truthful, it's a
3 revolver.

4 MR. RICHARDS: I would agree.

5 MS. ANTONESCU: Okay. In that case, the People
6 have no further witnesses.

7 THE COURT: All right. People rest.

8 Any affirmative defense?

9 MR. RICHARDS: No, Your Honor. I'll just make a
10 general motion to dismiss on Count Two through Nine.
11 But I have Count One as completely wrongly charged and
12 I have authority for the court.

13 There's two separate grounds of authority.
14 You can't hold someone -- you can't kidnap for
15 extortion simply by holding someone in an apartment
16 asking for information. It has to be a property that
17 you're soliciting from the victim. And I can give
18 the print-out of the case of People vs. Kozlowski,
19 96 Cal.App.4th., 853.

20 THE COURT: You need to spell that.

21 MR. RICHARDS: K-o-z-l-o-w-s-k-i.

22 The only thing she testified to here was
23 false imprisonment. To simply charge him with an LWOP
24 count is outrageous and overcharged. There is
25 absolutely no evidence whatsoever that there was any
26 attempt, even on the face of the complaint, information
27 on the location of Alex Holguin. That's not a property
28 interest or even an intangible property interest.

1 Especially under the circumstances of this case where
2 they had sexual intercourse five minutes before or
3 after she arrived at the apartment. It would be
4 horrible to have Mr. Pourat held to answer on the
5 kidnapping charge.

6 In addition, on May 27, 2009, In re Nunez,
7 N-u-n-e-z, the court of appeal struck down the statute
8 as applied holding that it violates cruel and unusual
9 punishment on a non-injury kidnapping to give someone a
10 life sentence without parole. And I have both cases
11 here for the court.

12 Count One is simply not proved in any
13 manner whatsoever. And there was no evidence presented
14 there was even a secondary victim, which would be the
15 only other theory they could go on, which would be the
16 fourth element of the kidnapping for ransom. So the
17 only thing they have is kidnapping for extortion and
18 there was nothing to extort except for information.

19 THE COURT: What are you referring to when you
20 say the fourth element? Kidnapping has three elements.

21 MR. RICHARDS: Well, not according to the case.
22 The case says there's four types of kidnapping. Let me
23 pull it out here.

24 THE COURT: First of all, have you given -- have
25 you let Ms. Antonescu have a chance to look at these
26 cases or is this the first time she's hearing about it?

27 MR. RICHARDS: Due to the fact it could have
28 affected my client's position at the prelim, I could

1 not show it to her. But on the case it says there's
2 four types of aggravated kidnapping: for ransom, for
3 reward, to commit extortion, and to exact money.

4 So the fourth requires two victims: the
5 person you're giving the money to and then the victim.
6 In this case we only have a one victim kidnapping, but
7 it's for extortion.

8 But in order to have that, you have to
9 have a property interest or a tangible item. Like even
10 in the Kozlowski case, it was a PIN number they were
11 trying to get in conjunction with the ATM card.

12 But the theory is flawed on just simply
13 saying I'm going to hold you here until you tell me
14 where this person is located. That's not a property
15 interest.

16 THE COURT: Let me ask Ms. Antonescu. The third
17 element of kidnapping for ransom as enumerated in
18 CALCRIM 1202 is that the defendant held or detained the
19 person for ransom or reward or to commit extortion or
20 to get money or something valuable.

21 Is the theory that you are basing the
22 charge on committing extortion?

23 MS. ANTONESCU: Right. And the theory is that
24 ostensibly Sasha Medic was held there because she
25 possessed the information to get to this Alex Holguin,
26 or Angel.

27 THE COURT: The question is, is possessing that
28 information the same as possessing property?

1 MS. ANTONESCU: It's the information was of such
2 value that they were trying to extract it from her by
3 means of threats and violence.

4 THE COURT: Right. But I'm looking at the
5 instruction which states: "Someone intends to commit
6 extortion if he or she intends to, one, obtain a
7 person's property with the person's consent and, two,
8 obtain the person's consent through the use of force or
9 fear."

10 You've established the second element. My
11 question is, have you established that the defendant
12 was trying to obtain a person's property with the
13 person's consent? I mean, what is the property other
14 than --

15 MS. ANTONESCU: The property is --

16 MR. RICHARDS: I researched this till the cows
17 came home. I saw the problem on the complaint when I
18 first took over the file and I knew she'd be able to
19 prove up the other aspects of the complaint for
20 purposes of prelim, but I saw this flaw for about a
21 month now.

22 So there's no property. It's just not a
23 crime to hold someone on an aggravated kidnapping.
24 It's a different crime, of course. It's false
25 imprisonment.

26 But the reason why there's the extortion
27 component is because you have to give up property or
28 money or something that has value. You can't make

1 information about someone's whereabouts. It's not
2 property. It just isn't. So there's a reason why we
3 have limitations on what property is. Otherwise,
4 theoretically every time you didn't let someone leave,
5 it would be kidnapping.

6 THE COURT: Ms. Antonescu.

7 MS. ANTONESCU: And that's the thing. It was
8 that item of value, the information that she possessed
9 that they were trying to get out of her. That is
10 what -- I mean, it's what she had that they were trying
11 to get and that's what they were trying to get out of
12 her by holding her there and not letting her leave.

13 So to the extent that they were trying to
14 get money from her, what they were trying to do is get
15 something of value from her and that was the
16 information on the location of Alex Holguin.

17 MR. RICHARDS: Respectfully, she's misusing the
18 word "value."

19 THE COURT: Let me look at the two cases. It's
20 already noon. Let me look at the two cases you have
21 and make sure that Ms. Antonescu has the cites and/or
22 the copies.

23 Ms. Antonescu, if you can find me
24 something with regard to defining property as it's used
25 in Penal Code section 209(a), and I'll do the same and
26 I'll see you back here at 1:30.

27 MR. RICHARDS: No problem, Your Honor.

28 MS. ANTONESCU: Your Honor, can the witnesses be

1 excused?

2 THE COURT: Yes. I don't have to do that.

3 MR. RICHARDS: Your Honor, the other issue is
4 it's my argument that the court should also strike the
5 charge on the ground set forth in the Nunez case
6 because it would be absolutely cruel and unusual
7 punishment to have him subjected to an LWOP case on the
8 facts of this case. But I would encourage counsel to
9 try to delineate the difference between a false
10 imprisonment versus a kidnapping. If you took the
11 complaint as charged, there would be no delineation.

12 This is actually something when I taught
13 criminal law two years ago --

14 THE COURT: It's noon. Let's wind it up. We
15 don't need to know about that. Thank you.

16 MR. RICHARDS: Can I appear telephonically at
17 1:30 or do you want me to come back?

18 THE COURT: I think it would be helpful for you
19 to be here.

20 MR. RICHARDS: No problem. I just didn't
21 know -- you'll allow more argument, you mean, if I find
22 something?

23 THE COURT: If you find something.

24 MS. ANTONESCU: Your Honor, can I get those
25 cites?

26 MR. RICHARDS: I'll give them to you right now,
27 Counsel.

28 ///

1 (AT the hour of 12:00 p.m.,
2 the proceedings were adjourned
3 until 1:30 of the same day.)

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1 CASE NUMBER: SA066244
2 CASE NAME: PEOPLE VS. ROBERT POURAT
3 LOS ANGELES, CALIFORNIA TUESDAY, DECEMBER 15, 2009
4 DEPARTMENT LX-A HON. CYNTHIA RAYVIS, JUDGE
5 REPORTER: BARBARA STRICKLAND, CSR #7009
6 TIME: P.M. SESSION
7 APPEARANCES: (As heretofore noted.)
8

9 THE COURT: Back on the record.

10 Mr. Pourat is present.

11 Mr. Richards, do you want to be heard
12 further before I hear from the People?

13 MR. RICHARDS: Yes, Your Honor. This issue has
14 actually been pretty well fleshed out.

15 There's another case, Scheidler vs.
16 National Organization for Woman. That's a United
17 States Supreme Court case 537 U.S. 393, holding that
18 the property element of extortion would not satisfy by
19 the shutting down abortion clinics.

20 In California we have, first, of People
21 vs. Robertson, that's 130 Cal.App. 664. In that case
22 the judge was threatening to expose them to disgrace if
23 they didn't appoint a receiver, appointing a specific
24 person a receiver in a pending action and the court
25 held that was not extortion.

26 Then there's the case of People vs. Kohn,
27 which is another case where in that case they dismissed
28 the 522 count where they were forcing the victim in

1 that case to sign a letter and the letter didn't cause
2 anything to go in action and it didn't create a debt,
3 and so in that case --

4 THE COURT: Did they discuss it as property?

5 MR. RICHARDS: Yeah.

6 THE COURT: I'm interested in the cases that
7 discuss property.

8 MR. RICHARDS: These cases all discuss the
9 property issue.

10 THE COURT: All right. Now in discussing the
11 property issue, you're talking about extortion;
12 correct?

13 MR. RICHARDS: Yeah. Property has
14 characteristics, something you can take away.

15 THE COURT: Right.

16 MR. RICHARDS: Something you can exclude.

17 THE COURT: Right.

18 MR. RICHARDS: Our statute has its common law
19 basis in larceny. And so the property has to be
20 something that you can carry. There's another --

21 THE COURT: Right. But what I'm saying, the
22 property issue has to do with the term "extortion."

23 MR. RICHARDS: Correct. That's kidnapping by
24 extortion.

25 THE COURT: So putting aside extortion for a
26 moment, if we look at the jury instruction, it states
27 that "the defendant kidnapped" -- the applicable
28 language is "the defendant kidnapped or confined

1 someone, number two, defendant held or obtained that
2 person, and, number three, the defendant did so for
3 ransom or for reward or to commit extortion or to get
4 money or something valuable."

5 MR. RICHARDS: But valuable, this is not
6 kidnapping for ransom though. The theory is extortion.
7 So that is inapplicable to this case. That's why I
8 cited for you in the Kozlowski case, if you had
9 something for money, if you're holding someone for
10 money, there has to be two victims: the victim you're
11 holding, that's the primary victim, and the secondary
12 victim is the person who is going to pay the money.

13 THE COURT: Right. But the People have alleged
14 the charge, Penal Code 209(a), in the conjunctive. We
15 know it's filed in the disjunctive and they've used all
16 the language of the statute. So couldn't they proceed
17 as stating that the defendant is trying to get
18 something valuable from the alleged victim? Wouldn't
19 the name of this person or what this person did or the
20 information he's trying to extract be something
21 valuable?

22 MR. RICHARDS: Only valuable to him. It's
23 not -- but, Your Honor, the critical thing is the
24 value. Let's just walk that through. The value of the
25 information. The only prong the People can go on is
26 extortion.

27 THE COURT: You're saying it has to be valuable
28 to anyone who has that information?

1 MR. RICHARDS: No. I don't think the court is
2 understanding what I'm saying.

3 If we're going to use the value, in the
4 case they break up the four different ways you can
5 charge extortion, kidnapping in the disjunctive, in the
6 case I gave you, Kozlowski.

7 THE COURT: Also in the jury instruction.

8 MR. RICHARDS: The fourth way is, as a matter of
9 fact, it requires two victims, the people. If the
10 victim is the person that's giving something of value,
11 let's say you're extorting one person, say I'm not
12 going to let you leave until you pay me, then you have
13 to apply the property value of extortion. That's what
14 I'm trying to tell you.

15 THE COURT: Okay.

16 MR. RICHARDS: The way -- the theory in the case
17 to extortion.

18 THE COURT: Let's talk about property.

19 MR. RICHARDS: Okay.

20 THE COURT: In the Kozlowski case, which you
21 cited before the break, at 96 Cal.App.4th. at 853, that
22 had to do with PIN numbers.

23 MR. RICHARDS: That's right.

24 THE COURT: PIN numbers would be valuable to the
25 people who were trying to extort them, not necessarily
26 valuable to anyone else.

27 MR. RICHARDS: Well, they explain in that case
28 that the PIN number combined with the ATM card that

1 they had would lead them to property. A PIN number is
2 specifically issued to a person in connection with the
3 card. So it was a conduit to obtaining the property.

4 The only thing he was asking for was the
5 location, according to the testimony, of a individual.
6 That is not property where he's located. And it
7 doesn't meet the definition anywhere close.

8 I have another case, People vs. Learman,
9 28 N.Y.S.2d.,360.

10 THE COURT: New York Supplement?

11 MR. RICHARDS: Our statute -- our statute is
12 mirrored based on New York statute where they said a
13 driver's license was not property for purposes of
14 extortion because it is a privilege, not a transferable
15 property right.

16 In all the cases that you read, I'm
17 telling you I have at least 30 cases all saying what is
18 not property. Just information, someone's whereabouts
19 is not something that was owned by the alleged victim
20 in this case. It's just knowledge of where somebody
21 is. It can't be sold. It can't be sued upon. All the
22 cases where you have property is where someone is
23 forcing someone to give up a claim which is a statutory
24 right. All of them delineate a piece of property or
25 some right and action.

26 This is merely a false imprisonment
27 because that's what it was. The only prong they're
28 stuck with is extortion. You cannot extort somebody

1 simply to say give me the information. That's why the
2 first two cases I cited for the court are directly on
3 point.

4 In People vs. Robinson, they told the
5 judge if you don't appoint me as a receiver, I'm going
6 to embarrass you. Well, that embarrassment doesn't
7 fall within that prong.

8 THE COURT: You do agree though that the
9 Kozlowski court stated that the term "property"
10 specifically includes intangible property?

11 MR. RICHARDS: That's correct. But it's not
12 unlimited. It still has to be property that -- it
13 still has to be something that fits the characteristic
14 of a property, something you can take away, something
15 that you can own.

16 A PIN number is specifically something
17 that's issued to the owner. It has title. It's
18 something that that person -- in that case, they --
19 that was narrowed by the facts and that is the person
20 had the ATM card with them and so they were using it in
21 conjunction to take the property of the defendant.

22 THE COURT: Let me hear from the People.

23 MS. ANTONESCU: I would point to the Kozlowski
24 case in that where the court defines property. What is
25 property? It's something that someone possesses at the
26 exclusion of others.

27 In fact, in that court, property, however,
28 the term property in the Penal Code includes within its

1 definition intangible property. The court in Kozlowski
2 essentially had to make a decision between a narrow
3 interpretation of what the definition of the word
4 "property" was and a more broad one.

5 I think the court here clearly comes down
6 in favor of a more broad interpretation of the word
7 "property," in finding that a PIN number which
8 constitutes property for the purposes of kidnapping for
9 extortion. So I think that here, very clearly under
10 the court's definition of a more broad viewing of what
11 property is, clearly what we have here in that the
12 information was so valuable satisfies that prong.

13 MR. RICHARDS: Your Honor, if you read People
14 vs. Kohn, K-o-h-n, 258 Cal.App.2d., 368, at page 374,
15 the court reversed the count dealing with the property
16 issue. I agree intangible property could satisfy the
17 element, but information is not intangible property.
18 Intangible property is still property. It doesn't
19 always have to be something that has a title to it.

20 THE COURT: A PIN number is information.

21 MR. RICHARDS: No. It's not. A PIN number is
22 issued by a bank to use with an ATM card and it's
23 issued to the victim. So this victim's personal
24 knowledge or street knowledge of where someone may be
25 located is not something anybody issued to her.

26 THE COURT: It has to be issued?

27 MR. RICHARDS: No. I'm just trying to show the
28 court why they distinguish in that case a PIN number.

1 Because it was her PIN number, the victim's PIN number
2 to be used with the card that the defendant had. So
3 the PIN number was just an extension of the ATM card.
4 It was using it to get her property. That's why she
5 was the victim.

6 The alleged victim in this case is not a
7 victim of kidnapping for extortion. No one was
8 extorting her. There wasn't any property of hers they
9 were trying to part with. What's why your mind is
10 not -- the property of the PIN is actually the property
11 of the bank. When the bank issues the PIN number to
12 you, that's for you to use with the bank's card.

13 The victim's knowledge of a murder suspect
14 is not her property. She can't sell it. She can't
15 exclude it. A PIN number by it's very definition is
16 secret only to you. And there is no facts laid that
17 somehow she had some sort of special attorney-client
18 relationship or some sort of other relationship with
19 this individual.

20 Again, they chose the theory of how they
21 want to proceed. They can't rewrite the law of
22 extortion simply to satisfy the charge. They're
23 limited -- that's why the case I cited dealing with the
24 abortion clinics threatening to shut down a business
25 is, again, not extortion. That's why the Supreme Court
26 limited the word "property." Intangible property is
27 still definable. It has property characteristics that
28 you can use and take away. I mean all these cases all

1 have the same characteristics as the other ones and
2 those characteristics are all what we commonly know by
3 property the right to exclude indirectly. It goes to
4 the property for bank accounts.

5 I mean the fact that that case says you
6 take a broad view doesn't mean you take an
7 uncontrollable view. In that case, here we have no
8 ransom. We simply just have what it was. So that's
9 why it's false imprisonment. It's not an aggravated
10 kidnapping. It's a non-injury confinement.

11 That's why under Penal Code 236 there's a
12 separate charging mechanism. It's not like the
13 defendant is getting off scot-free. It's just to hold
14 the defendant to answer on a life without parole charge
15 on an extortion theory when there was no money
16 requested from a secondary victim is improper.

17 The only way they can proceed, as the case
18 shows, is on the third prong and that's by extortion.
19 I mean that's like you sitting -- that's like calling
20 up TMZ and telling the reporter we want to know where
21 the celebrity is located and if you don't tell us,
22 we're going to not let you leave the business.
23 That can't be extortion. Holding someone to sweat out
24 information just by itself without any other connection
25 is not extortion. It's false imprisonment. That's why
26 false imprisonment is a different element offense.

27 I mean I provided the case that actually
28 was the most accurate case and that showed that we take

1 a broad view. But even in that case it's not an
2 unlimited view.

3 THE COURT: No, it's not unlimited, but it does
4 say it's broad when construing property for purposes of
5 extortion.

6 MR. RICHARDS: You have to identify what the
7 property is. You can't say someone's thoughts is
8 property. Penal Code 7 lists all things that are
9 property. That code cites Penal Code 7 and you don't
10 see anywhere the whereabouts of an individual. That
11 flies in the face of reality.

12 THE COURT: In the Kozlowski opinion, the court
13 said the right to file a protest with the Alcohol
14 Beverage Control Board is considered property within
15 the extortion law.

16 MR. RICHARDS: Correct. Because that's a
17 statutorily created right.

18 THE COURT: To take a, appeal which is taken in
19 the statutory --

20 MR. RICHARDS: Absolutely. Statutorily created
21 right. You have the right to appeal an ABC claim by
22 statute. So if someone tries to prevent you from doing
23 that, they're interfering with you doing something in
24 action.

25 That's why in the Kohn case when they had
26 him sign the bogus document, they reversed Count Two
27 saying that document had no meaning. It could be the
28 same thing if they said we're not letting you leave

1 here, to the alleged victim in this case, until you
2 write out a promissory note. The promissory note would
3 be in evidence and it would be extortion.

4 To write out a bogus instrument as it's
5 showed in that case that I cited for you has no
6 applicability for extortion. Again, it's other crimes,
7 but not extortion. The Robertson case is right on
8 point. It goes through a detailed analysis of what
9 property is and what it isn't.

10 THE COURT: What about the situation where
11 someone, a defendant, copies a telephone company's
12 confidential news subscriber list. Would that be
13 property?

14 MR. RICHARDS: Well, I --

15 THE COURT: Let me put it this way. It has been
16 found to be property.

17 MR. RICHARDS: Okay.

18 THE COURT: This is People vs. Dolbeer,
19 D-o-l-b-e-e-r, 214 Cal.App.2d., 619.

20 MR. RICHARDS: Well, that's a list that's
21 compiled by the phone company where they have special
22 access to the personal information of a lot of people.
23 It would be the same as a defendant stealing the credit
24 card or ATM numbers like we see in the news on a weekly
25 basis. That's the property of the bank. That's the
26 property of the phone company.

27 But knowledge of where a person is, is not
28 property. There's no trade secret affiliated with it.

1 You can't sue on it. It's not actionable. So I don't
2 know why there's a resistance to put a circle into a
3 square. This just isn't a --

4 THE COURT: Are you referring to me?

5 MR. RICHARDS: I'm referring to the People.
6 This is not a -- it's not like there's eight other
7 charges still in this case, but you can't charge
8 someone with extortion and then be upset if the
9 defendant holds you to what you charged them with.

10 It still is conceivably a myriad of other
11 conceivable offenses, but to hold him to answer on this
12 offense at least you have to get the elements correctly
13 on how would anybody be on notice that simply holding
14 someone in a room for four hours would subject them to
15 a life without parole sentence because they're not
16 telling you where their friend is. That would be
17 vague. You couldn't ever have anybody in the public on
18 notice if somehow withholding the whereabouts of your
19 friends is now a property interest under the extortion
20 statute, which is directly tied into the kidnapping in
21 this case which has its roots in larceny.

22 You can't take away or exclude your
23 knowledge of a third person. All these characteristics
24 are consistent throughout all the cases. They all
25 relate back to a logical approach of various
26 characteristics that all are consistent with some type
27 of property that can be attributed to a unique,
28 intangible or tangible piece of evidence that is then

1 translated into the element of the offense.

2 But we don't see any of that here. Again,
3 I think, yeah, I think if someone told -- if someone
4 forced you to give over private information like
5 customer credit cards, that's different. That's
6 property you compiled as a business and it's owned by
7 the bank. But that could be action where you can file
8 a lawsuit as a result of that property.

9 And I think that, I mean, in this
10 particular case, it's just not there anyway you cut it.
11 I mean there's case after case which cites what is not
12 property under the New York, California or Hobbs Act,
13 which are all very similar for definition purposes for
14 what constitutes extortion. I mean the People are
15 cabined by the approach they took in this case.

16 THE COURT: Anything further by the People?

17 MS. ANTONESCU: Simply to say that the value
18 lies in the information and that that really underlies
19 what is going on here.

20 THE COURT: Do you have any case law to support
21 that?

22 MS. ANTONESCU: Well, I began with Kozlowski
23 here and the court's interpretation of property in that
24 case law. And given what the court said in its broad
25 interpretation, that includes things that are
26 intangible. And because their value lies in the
27 information, that is the valuable thing here. And it
28 is information that Ms. Medic possessed to the

1 exclusion of others and it is that information that
2 they were trying to get from her. So therein lies the
3 value of that information. The courts have said we're
4 not limited to a narrow interpretation of what property
5 is. And it's proper that the defendant be held to
6 answer under that statute.

7 MR. RICHARDS: Your Honor, I get nervous when I
8 hear the word "value." The value could only be in the
9 kidnapping for money or ransom case and that requires
10 two victims.

11 This is only an extortion case and counsel
12 is not offering any authority that would suggest we can
13 go outside what the limitations are of property by
14 extortion. And that's the charge you're limited --
15 that's the only -- that's the one thing that allows
16 only one victim in an alleged kidnapping.

17 So in this case the only thing we're
18 dealing with is property and valuable information to
19 Mr. Pourat means nothing. He can't be found guilty
20 because he has a subjective belief that this
21 information may be valuable. That's not -- his state
22 of mind is not relevant. What's relevant is what is he
23 trying to obtain through extortion? What property,
24 intangible or intangible? We have no property here.

25 THE COURT: Don't we have to look at who is
26 receiving this information? If someone is giving me a
27 telephone subscriber list that is not valuable to me or
28 someone giving a list of PIN numbers, that is not

1 valuable to me.

2 MR. RICHARDS: Your Honor, respectfully, you got
3 it backwards. The telephone subscriber list would be
4 valuable to the victim in the extortion case because
5 it's valuable to the phone company not to release the
6 subscriber list. You look to the victim. Is that a
7 property interest they're parting with? That's why
8 they're the victim. It doesn't matter if the phone
9 list isn't valuable to you. We look at is that a
10 proprietary list by the phone company.

11 So in this case the victim's knowledge of
12 a suspect is not valuable. That's something she can't
13 sell. She's not in the business. She's not a private
14 investigator. She's not in the business of -- there's
15 no evidence of this information was somehow secret or
16 came from some issue that would be tangible, that could
17 be sold by her. But it certainly is not Mr. Pourat's
18 belief. That would be error to focus on whether he
19 thought it was valuable because that's not relevant.
20 What we need to focus on, if we use kidnapping by
21 extortion, is what property was the victim forced by
22 violence to part with?

23 THE COURT: Let's go back to getting money or
24 something valuable. What authority do you have to show
25 me that something valuable is valuable to the victim as
26 opposed to the defendant?

27 MR. RICHARDS: But, Your Honor, you're reading
28 the wrong instruction. That's for ransom. That's not

1 what we're dealing with.

2 THE COURT: No, I'm not. I'm looking at the
3 third prong of CALCRIM 1202. "The defendant acted for
4 ransom or for reward or to commit extortion or to get
5 money or something valuable."

6 MR. RICHARDS: Okay. Your Honor, respectfully,
7 in this case we only have for extortion.

8 THE COURT: Why? I'm just asking. Why do you
9 say that? Why couldn't the People say the defendant is
10 trying to get something valuable?

11 MR. RICHARDS: Well, first of all, the People
12 did say they are proceeding on the extortion prong.

13 THE COURT: They didn't say that. They may have
14 said it to you, but the way the complaint is alleged,
15 they've alleged all of the possible choices.

16 MR. RICHARDS: I can respond to that. If you're
17 going on the value element, you need two victims that's
18 in the case. We only have one victim. That's why you
19 cannot use money or value. If we want to go
20 alternative theories, no problem. Let's analyze each
21 theory. If we're going for money or value, you need
22 two victims.

23 THE COURT: Which case is that?

24 MR. RICHARDS: The case I gave you, Kozlowski.
25 It's in the case.

26 THE COURT: Show me what page.

27 MR. RICHARDS: All right.

28 MS. ANTONESCU: I would direct the court to page

1 871 of that opinion. Further down: "One may lawfully
2 be convicted of kidnapping for extortion even if the
3 kidnap victim and the extortion victim are the same
4 person."

5 MR. RICHARDS: I agree. We're not talking about
6 the extortion. We're talking about the court wanted to
7 go for money or value, you need two victims. It's
8 right in the case where they outline --

9 THE COURT: Just show me where.

10 MR. RICHARDS: All right. Let me just pull it
11 up. Do you have my copy with you?

12 THE COURT: I see what you're looking at.

13 MR. RICHARDS: Yeah.

14 THE COURT: It's actually on the same page.

15 MR. RICHARDS: All right.

16 THE COURT: Well, here's what it says. Quote:
17 "In two other decisions courts have suggested in dicta
18 that even aggravated kidnapping for extortion is a two
19 victim crime involving a primary and secondary
20 extortion victim." Skipping the cites, citing these
21 cases as Kozlowski and Gatson, G-a-t-s-o-n, reasoned
22 that there are two conflicting lines of case law.

23 MR. RICHARDS: You're reading for extortion,
24 Your Honor.

25 THE COURT: You're right.

26 MR. RICHARDS: I'm not arguing to the court in
27 any way that for extortion you need two victims.

28 THE COURT: Let's go back to something of value.

1 MR. RICHARDS: You need two victims.

2 THE COURT: Just show me where.

3 MR. RICHARDS: All right. If the court wants, I
4 could approach and point. I made a note on the side.
5 Rather than waiting for my thing. I think I got it up
6 now. It's toward the back of that, but I'm just
7 loading up the case here.

8 Can I just approach and grab it for court?
9 Thanks.

10 For the record, it's on page 853. I put a
11 star by it.

12 THE COURT: All right. It's quoting People vs.
13 Ibrihim, I-b-r-i-h-i-m, 19 Cal 4th, 1692. Quote: "One
14 court explained that because the statute is phrased in
15 the disjunctive, it listed four different types: one,
16 for ransom; two, for reward; three, to commit
17 extortion; and, four, to exact money or other valuables
18 from another. Construing the statute's language, the
19 court concluded that only in the last of these four
20 types of aggravated kidnapping does the law require
21 both a primary and secondary victim."

22 That's what you're referring to?

23 MR. RICHARDS: Yes, Your Honor. That's where we
24 now go back to --

25 THE COURT: To extortion?

26 MR. RICHARDS: -- to extortion.

27 THE COURT: Well, Ms. Antonescu, what I'm
28 concerned with that all of these cases that are cited

1 have to do with information that, even though
2 intangible, consists of something that's been written
3 down somewhere and not just written down, but
4 memorialized in some way. Whether it's phone company
5 records, PIN numbers. I don't see any cases that have
6 to do just with information that a victim may have
7 about someone's whereabouts. I think that's what I'm
8 concerned with.

9 MS. ANTONESCU: Well, I think even in the case
10 of a PIN number, I mean it's something that the person
11 himself would set up. So it's not that it's issued by
12 the bank so much as it is the information that the
13 person has set up in order to be able to access that
14 kind of money.

15 Even in that phone list, what was so
16 valuable about that phone list wasn't the
17 memorialized -- what was written down on paper, but it
18 was the information that it was contained therein.

19 Information has value. Information can
20 be, according to a broad interpretation of what
21 property is, can be property.

22 Information in this case was so valuable
23 that the defendant held the victim for hours upon
24 hours, that he uploaded -- he put three bullets into a
25 chamber that he spun and then pulled the trigger four
26 or five or six times, as far as the victim recalled.
27 That's how valuable that information was to the
28 defendant.

1 So here, to hold that because the --
2 because it's not money, because it's not property,
3 because it's not real property in the traditional
4 sense, I think it --

5 THE COURT: It doesn't have to be real property.
6 We've established that. But do you see a difference
7 between this information that he's trying to get from
8 the victim and all the case law? I just don't see any
9 cases that extend the definition of property to this
10 extent. That's my concern.

11 MS. ANTONESCU: Well, in Kozlowski it was the
12 PIN number that was the issue. The PIN number wasn't
13 memorialized. The PIN number is something that is
14 personal to the victim. And then in that case the
15 court said that it was property in that it had value to
16 the victim when it was complying. I don't quite
17 understand the distinction maybe because property
18 doesn't have to be tangible and here it was intangible.
19 It was valuable, the information itself.

20 THE COURT: So your argument is anyone who
21 kidnaps someone and states you must give me this
22 information is by definition kidnapping for extortion?
23 Is that correct?

24 MS. ANTONESCU: Because it's for that tit for
25 tat. She has something of value that the defendant
26 wants.

27 THE COURT: No matter what it is?

28 MS. ANTONESCU: If that information provides him

1 access to someone who he believes harmed someone that
2 he's close to, if that is what that information, that
3 key, that unlocks where that person's whereabouts, it's
4 like it would be a PIN number. The PIN number in
5 effect unlocks that access to that bank account. A key
6 to a safety deposit box unlocks the contents of what's
7 inside. Here simply information that it had as to the
8 whereabouts of Alex Holguin, that unlocks for the
9 defendant his ability to be able to go and do whatever
10 it is to harm Alex Holguin. So I think it's the
11 information that provides access to something more.
12 That's what he wanted in this case. It's not the
13 information.

14 MR. RICHARDS: PIN numbers are protected by
15 statute, Penal Code 484.

16 THE COURT: Right. But that doesn't mean that
17 it's -- that this wouldn't be proper just because a PIN
18 number is protected by statute.

19 MR. RICHARDS: No, but the PIN number with the
20 ATM card is the conduit to getting property. That's
21 the point of the extortion.

22 I agree with her. If he was trying to get
23 a key to open her safe, he would be using threats of
24 violence to take her property. Even if you take her
25 argument to the most illogical conclusion, the only
26 thing he's getting from this information is the
27 whereabouts of somebody else. It's not the victim's
28 property. And his subjective state of mind is

1 irrelevant for this crime of the victim lost nothing
2 even if she imparted with the property or the
3 information. She doesn't lose anything of value.
4 There's no value she gave up.

5 THE COURT: We're not talking about value.

6 MR. RICHARDS: I know. But extortion, she has
7 to have some property she's giving up. What's in your
8 mind about the location of someone is not an
9 identifiable property. You're absolutely right in your
10 analysis. All the cases that are cited, the property
11 that is being extorted is unique to the victim. The
12 PIN number. That's according to counsel, you make your
13 own PIN number. That wasn't in the record, but I'm
14 just saying either you make it or the bank assigns it.
15 It's yours. It's attached to your card. It's like
16 taking the key to get to your safe. I wouldn't be
17 arguing this. If we took your definition, we would
18 have unlimited kidnapping for extortion. We would have
19 no delineation for that. If you held her there for
20 four hours, it wouldn't be kidnapping by extortion
21 simply because he asked her about the whereabouts.

22 The comment about the revolver is a plea
23 for pathos. The odds would be one in a hundred if that
24 was really true. If you do the math and you have a
25 six-round revolver, you put three live bullets and you
26 spin it three times without going over, it would be one
27 in a hundred to survive that mathematical odds.

28 THE COURT: That's not evidence before me.

1 MR. RICHARDS: It's to throw it out there, of
2 course. His method in this case, if it was true, is
3 horrific. That's not the issue though. The reason why
4 we don't allow the law, according to the People, is
5 because they have a motive and a bias in this outcome.
6 There is no case that says kidnapping by extortion that
7 mere information constitutes property just in someone's
8 head.

9 THE COURT: So if someone kidnaps someone else
10 and says give me this information or I'll kill you.

11 MR. RICHARDS: Right. Well, you've got a lot of
12 different crimes through there, but you don't have
13 kidnapping with extortion. I'm only dealing with the
14 crime you're charged with. You didn't hear me argue
15 about the other offenses. This case, the way she pled
16 the complaint when I first saw the complaint when I
17 took over this file, I said this can't be kidnapping --

18 THE COURT: I don't need to know all your
19 thought processes.

20 MR. RICHARDS: I'm saying it wasn't there on
21 this charge. She wants to rewrite the statute and
22 expand extortion beyond anything it's ever been
23 expanded to. It's a crime to hold him to ask where
24 your boyfriend is. That's a crime, but it's not
25 kidnapping by extortion. We reserve those aggravated
26 offenses for very serious offenses and he would be held
27 to answer on other very serious offenses. It's not the
28 only charge. The charge is overcharged. It doesn't

1 meet the element. It's just not there.

2 THE COURT: Submit?

3 MR. RICHARDS: Yeah.

4 THE COURT: Submit?

5 MS. ANTONESCU: Yes.

6 THE COURT: The court is going to dismiss Count
7 One and the allegation.

8 As to Count Two, Three, Four, Five, Six,
9 Seven and Nine, it appearing to me from the evidence
10 presented that the following offenses have been
11 committed and there is sufficient cause to find the
12 defendant guilty thereof, to wit, Count Two, Three,
13 Four, Five, Six, Six and Seven, violation of Penal Code
14 245(a)(2), as well as Penal Code Section 12022.1 and
15 12022.5(a) through (d).

16 Count Eight, a violation of Penal Code
17 236, as well as allegations under 12022.5.

18 Count Nine, violation of Penal Code
19 Section 136.1(a)(1). I'm sorry. The 12022.1
20 allegation doesn't have to be proven up at the
21 preliminary hearing.

22 MS. ANTONESCU: Your Honor, I just wanted to
23 make a record that it's the People's intent to file in
24 the information -- and I don't know the court's
25 procedure, if the court would be willing to conform to
26 proof, but I would ask that the court add an attempted
27 murder, five counts of attempted murder in that when we
28 look at the defendant's actions and what he did in

1 loading the gun, spinning the cylinder and pulling the
2 trigger, when he did that, I believe the victim
3 testified he did that four or five times, she wasn't
4 exactly sure, that that action that we can infer from
5 that action the defendant's intent to kill in that
6 there was such a substantial likelihood that death
7 would result from that action, that, therefore, we
8 could infer that intent.

9 I don't know if the court would be willing
10 to amend the complaint to -- for proof, but I would
11 like to put counsel on notice that we would be filing
12 this in the information.

13 THE COURT: I think it would be more appropriate
14 if you added those charges on the information if you
15 choose to.

16 I also would have all of you note that the
17 defendant having been held to answer is going to be
18 arraigned in Department B on December 29th. However,
19 on December 29th, Department B will be closed and you
20 will be here. So if you have any 995 motions or
21 anything like that, don't file them -- I'm not going to
22 hear them obviously, so...

23 MR. RICHARDS: Do you want us to waive time?

24 THE COURT: Can't do it. I can't do it.

25 Department B, December 29th. Defendant is
26 ordered back, ordered out on that date.

27 Bail, I believe, is currently set at no
28 bail. Is that correct?

1 MR. RICHARDS: Correct. There's a probation
2 violation.

3 THE CLERK: \$2 million on this case.

4 MR. RICHARDS: It should be reduced to schedule
5 on the other charge.

6 THE COURT: Right. He still got no bail on the
7 violation.

8 MR. RICHARDS: Right.

9 Just for the record, Your Honor, that's
10 probably one of the best examples of vindictive
11 prosecution we've ever seen.

12 THE COURT: We don't need this, Mr. Richards.
13 We just don't need this. It's just not necessary.

14 MR. RICHARDS: This case has been going on for
15 years.

16 THE COURT: We don't need it. Please stop.

17 We should also order the strike file.

18 SA052027.

19 MR. RICHARDS: I think it's here.

20 THE COURT: I mean in this courthouse. We
21 already have it. Thank you.

22 THE CLERK: Yes, Your Honor.

23 THE COURT: The court is going to set bail at
24 \$1 million on the new case. No bail on the other case.

25 Anything further?

26 MS. ANTONESCU: No.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LX - DEPARTMENT A

HON. CYNTHIA RAYVIS, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff,)
)
vs.)
)
ROBERT ISAAC POURAT,)
)
Defendant.)

No. SA066244

REPORTER'S

CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, Barbara Strickland, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 through 65, comprise a full, true, and correct transcript of the proceedings held in Department A on December 15, 2009, in the above-entitled matter.

Dated this 24th day of December, 2009.


_____, CSR #7009
Official Reporter