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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  
BY: STEFANA ANTONESCU, DEPUTY  
11701 South La Cienega Boulevard  
Sixth Floor  
Los Angeles, CA 90045

FOR THE DEFENDANT RONALD N. RICHARDS, PRIVATE COUNSEL

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

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.

27 -oOo-

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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