

From: [Chris Sansoe](#)
To: [Christopher Dugan](#)
Subject: Drafts of Vindictive Prosecution and RJ Motion
Date: Tuesday, June 29, 2021 1:17:30 PM
Attachments: [image001.jpg](#)
[vindictive_prosecution.doc](#)
[SKM_658e21062912580.pdf](#)
[745-Post_Trial_Motion.docx](#)
[SKM_658e21062913370.pdf](#)

Hey Chris,

So I came to the office and punched out what I hope are the final drafts of the vindictive prosecution motion and the racial justice motion.

For the vindicate prosecution motion I included a word document and a PDF. The PDF has the exhibits attached. Let me know what you think.

On the RJ Motion I made some changes but not all of them and here is why I am keeping certain things:

1. I am going to refer to him as Defendant Vargas and not Defendant because there were four defendants.
2. Maybe a few other things

For the RJ Motion I included a word copy with your changes and a PDF copy.

Lets take a final look and we can file next week.

Excellent work

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF CONTRA COSTA

10 THE PEOPLE OF THE STATE OF CALIFORNIA,
11 Plaintiff,
12 v.
13 AZRAEL VARGAS
14 Defendants.

DOCKET# 05-192292-1

**PEOPLE’S OPPOSITION TO
DEFENSE MOTION FOR HEARING
PURSUANT TO PENAL CODE
SECTION 745**

Date: July 23, 2021
Time: 8:00AM
Dept.: 23

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18 **SUMMARY OF PEOPLE’S POSITION**

19 Azrael Vargas (hereinafter as “Defendant Vargas”) has failed to provide sufficient evidence that
20 the People have violated Penal Code section 745. First, statistical data shows that the District Attorney’s
21 Office has charged African Americans proportionally to other races. Second, the People exercised
22 appropriate prosecutorial discretion during pre-trial negotiations. Third, the Court found that the
23 Defendant was not suitable for Mental Health Diversion. Finally, the Court found no Batson/Wheeler
24 violation during jury selection. This is the third time the Defendant has filed a motion pursuant to Penal
25 Code section 745 but now asks this Court to order voluminous discovery and grant a hearing to further
26 contest the Defendant’s conviction. The Defendant explicitly states that his claim of discriminatory
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1 treatment is not based on the conduct of any particular individual but rather he asks for this Court to find
2 that “Black Americans are disparately charged, convicted, and sentenced in Contra Costa County and to
3 remediate the systematic unfairness in his case” (Defense Motion 13: XX.) The Defendant and his counsel
4 are mistaken, and the motion should be denied.
5

6 **STATEMENT OF THE CASE¹**

7 The case of People v. Vargas proceeded to jury trial on April 19, 2021. On May 19, 2021, Ms.
8 Huang, counsel for Defendant Vargas attempted to file and litigate a third motion pursuant to Penal Code
9 section 745 – the California Racial Justice Act of 2020. The Court told Ms. Huang that she may have this
10 motion heard after the trial had concluded.
11

12 On May 7, 2021, Defendant Vargas appeared for a motion for Mental Health Diversion was heard
13 before the Honorable Judge Laurel Brady. This Motion was denied².

14 The jury trial concluded on June 1, 2021 when the jury reached verdicts on five of the seven counts.
15 Defendant Vargas was convicted of the following:

16 Count 1: PC 211/212.5/213 – Home Invasion Robbery of Francesca Bigotti committed in concert;

17 Enhancement: PC 12022.53(b): Personal Use of a Firearm;

18 Count 2: PC 211/212.5/213 – Home Invasion Robbery of Francesca Bigotti committed in concert;

19 Enhancement: PC 12022.53(b): Personal Use of a Firearm;

20 Count 3: PC 245(b): Assault with a Semiautomatic Firearm upon Francesca Bigotti;

21 Enhancement: PC 12022.5(a): Personal Use of a Firearm

22 Count 6: PC 460(a): First Degree Residential Burglary committed with non-participant present;

23 Enhancement: PC 12022.5(a): Personal Use of a Firearm;

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27 ¹ The People incorporate the prior “STATEMENT OF THE CASE” from the People’s Initial Response to Defendant’s
28 Discovery Motion pursuant to Penal Code section 745/AB 2542. The additional information provided here has developed
during the pendency and trial of this case.

² A complete transcript of this hearing is attached as Exhibit #____.

1 Count 7: PC 182: Conspiracy to Commit Home Invasion Robbery.

2 **POINTS AND AUTHORITIES**

3 Statistical evidence shows from 2018 to 2020, the District Attorney’s Office has charged African
4 Americans proportionally to other races. Pursuant to Penal Code section 745 (a), the state shall not seek
5 or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or
6 national origin. A violation is established if the defendant proves, by a preponderance of the evidence, any
7 of the following:
8

9 The defendant was charged or convicted of a more serious offense than defendants of other
10 races, ethnicities, or national origins who commit similar offenses and are similarly
11 situated, and the evidence establishes that the prosecution more frequently sought or
12 obtained convictions for more serious offenses against people who share the defendant’s
13 race, ethnicity, or national origin in the county where the convictions were sought or
14 obtained . . .

13 (Pen. Code § 745 subd. (a)(3).)

14 “More frequently sought or obtained” or “more frequently imposed” means that statistical
15 evidence or aggregate data demonstrate a significant difference in seeking or obtaining
16 convictions or in imposing sentences comparing individuals who have committed similar
17 offenses and are similarly situated, and the prosecution cannot establish race-neutral
18 reasons for the disparity.

17 (Pen. Code § 745 subd. (h)(1).)

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19 **I. STATISTICAL EVIDENCE FROM 2018 - 2020 DEMONSTRATES NO SIGNIFICANT**
20 **DIFFERENCE IN CHARGING DECISIONS BETWEEN AFRICAN AMERICANS AND**
21 **OTHER RACES.**

21 The Defendant has failed to show that the District Attorney has sought convictions against African
22 Americans more frequently in comparison to other races. From 2018 to 2020, the District Attorney’s
23 Office has filed **109 robbery cases**. (People’s Exhibit 1.) Of the 109 filed cases, **60.5%** were committed
24 by African Americans, **11.01%** were by Caucasian Americans, and **28.4%** were committed by other races.
25 (*Id.*) Of the 109 cases filed, **38 cases were later dismissed or reduced**. (*Id.*) The data shows that **65.79%**
26 of African Americans had their cases dismissed or reduced. (*Id.*) The data also shows that **7.89%** of
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1 Caucasian Americans had their cases dismissed or reduced and **26.32%** of other races had their cases
2 dismissed or reduced. (*Id.*) Of the remaining 71 cases, **57.75%** were filed against African Americans,
3 **12.68%** were filed against Caucasian Americans, and **29.58%** were filed against other races. (*Id.*)
4

5 Of the **71** cases that were filed, **16** of them were Home Invasion Robberies, similar to the
6 Defendant's conviction. Of those cases, **13** of the 71 cases were committed by African Americans and **3**
7 were committed by other races. (*Id.*) None were committed by Caucasian Americans. (*Id.*)
8

9 Furthermore, between 2018 and 2020, no filing action was taken in **74** robbery cases. (*Id.*) The
10 cases were classified as NCF, No Charges Filed, for a variety of reasons. (*Id.*) Of the 74 cases, **57%** were
11 against African Americans, **20%** were against Caucasian Americans, and **23%** were against other races.
12 (*Id.*)

13 In totality, this data confirms that from 2018 to 2020, the District Attorney's office did not seek
14 convictions for African Americans more frequently than other races. First, when comparing the number
15 of robbery offenses filed against African Americans to the number of robbery offenses presented for filing
16 against African Americans, the filing rate is almost proportional. In fact, the final filing rate is lower –
17 57.55% compared to 60.55%. Second, the data shows that African Americans are about two-in-a-half
18 times more likely to have *no filing action* taken against them compared to Caucasian Americans and other
19 races. Finally, when looking specifically at home invasions, the District Attorney's Office has again,
20 sought convictions against African Americans at a proportional rate when compared to other races.
21

22 The Court should exercise caution when relying on the statistics that the defense presents. (*Watson*
23 *v. Fort Worth Bank and Trust* (1988) 487 U.S. 977, 996 [cautioning against use of facially plausible
24 statistical evidence based on "small or incomplete data sets and inadequate statistical techniques.]) The
25 Defense claims that because more African Americans are charged with robbery, or have enhancements
26 filed for the use of firearms, that the statistics therefore support her conclusion that the People filed charges
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1 in a discriminatory manner. This is a complete misinterpretation of the data. As seen above, the data
2 actually confirms that the District Attorney's Office has charged cases proportionally based upon what
3 has been brought by law enforcement agencies for review. The People are not filing charges based upon
4 race, they are filing charges based upon the evidence presented.
5

6 The charges against the Defendant were not based on racial discrimination. Ms. Huang claims that
7 the Defendant is exposed to a 76-year prison term. Ms. Huang's claims are based upon her version of the
8 facts, her belief in the mitigating materials, and her misunderstanding of the law. However, Ms. Huang's
9 claims are factually and legally incorrect. The charges in the instant matter were supported by deductions
10 made from police reports, debriefings, and the use of evidence. Most importantly, the Defense never filed
11 a motion to dismiss any of the charges, nor were they successful in an PC 1118 Motion to Dismiss. Thus,
12 for the reasons above, the Defendant has failed to establish a prima facie showing that a violation of
13 section 745(a) has occurred, and as such, the Defendant's motion should be denied.
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16 **II. THE DEFENDANT WAS TREATED APPROPRIATELY DURING THE PRE-TRIAL**
17 **PLEA BARGAINING PHASE.**

18 **a. Negotiations**

19 The People exercised appropriate prosecutorial discretion during pre-trial negotiations. An initial
20 offer was made on December 5, 2019 to all attorneys. The Defendant was represented by Julian Ross of
21 the Public Defender's Office at the time. The offer was as follows:
22

23 **Each Defendant would plead to Count 1 of the Information PC 211/213(a)(1(A)- home**
24 **invasion robbery**
25 **Vargas – midterm of 6 yrs. Prison**
26 **Delgado/Prescott/Lloyd – low term of 3 yrs. Prison**
27 **CPO for all vicitms and residence**
28 **Firearm to be returned to be lawful owner or destroyed**
Restitution
Any other standard terms

1 This offer was the result of a meeting between all parties – the assigned prosecutor, the supervising
2 DDA, and all four defense attorneys. At this meeting, Mr. Ross provided a significant amount of mitigation
3 evidence in the form of letters, college and background information. Deputy District Attorney Kevin Bell,
4 the supervising attorney, considered all information and then asked that the initial package offer be sent
5 to all defense attorneys. After the initial offer was made, the Defendant retained a second attorney, Stuart
6 Hanlon. Mr. Hanlon sought a negotiated resolution to the case and met with the assigned prosecutor and
7 DDA Kevin Bell. At this meeting, Mr. Hanlon provided additional mitigating materials. After considering
8 these mitigating materials, the People decided that the offer previously conveyed was still appropriate
9 given the nature of the violent offense.
10

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12 The People offered to break up the package offers for those who wished to plea only if those who
13 were interested debriefed and then made themselves available to testify if the assigned prosecutor deemed
14 it necessary. The Defendant expressed a desire to plead to an unpackaged offer. However, he never
15 actually followed through. Instead the attorney who had expressed this desire, Stuart Hanlon, was replaced
16 by Ms. Huang. In addition, Co-Defendant Prescott was unwilling to resolve for the negotiated resolution.
17 However, co-Defendants Delgado, a Hispanic male, and Lloyd, an African American male, both expressed
18 a desire to break up the prior package offer and elected to debrief. As a result, offers to the Defendant and
19 co-Defendant Prescott were rescinded and preparations were made to try the case against them. These
20 preparations included the review of the charging document and correcting any filing mistakes or omissions
21 that were made. Co-Defendant Delgado was ultimately called as a witness at trial.
22

23
24 The Defendant’s Counsel claims that the Defendant was only offered six-year state prison that was
25 contingent upon him “debriefing” and testifying against the other co-defendants. Again, Ms. Huang’s
26 rendition of the facts is incorrect. More importantly, it is irrelevant what offer the People made because
27 the Defendant never accepted the offer. Counsel further contends that requiring the Defendant to “debrief”
28

1 and be willing to testing against his co-conspirators “demonstrates clear racial bias.” This statement is
2 based on the declaration of Oscar Flores, a prison reform advocate. In his declaration, Mr. Flores compared
3 a *criminal debriefing* to a person of *Muslim faith being forced to eat pork*. This is not only absurd, but it
4 demonstrates a complete ignorance of the criminal justice process. The concept of debriefing and later
5 being a potential prosecution witness serves an important governmental function. Similar to allocution it
6 allows a criminal defendant to accept responsibility for what they have done while at the same time
7 permitting the early resolution of cases. It is also intriguing that Mr. Flores contends that debriefing
8 displays clear racial bias because of the implication is African American and Hispanic communities when
9 the two suspects who chose to debrief were of Hispanic and African America descent. Clearly the
10 implications Mr. Flores asserts are fictitious. This is yet again, another example of the Defendant making
11 a meritless claim. Thus, for the reasons stated above, the evidence demonstrates that the Defendant was
12 treated appropriately during the negotiation phase.
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17 **b. The People were not required to engage in negotiations with the Defense.**

18 The People are under no obligation to make any offer to resolve a case. In fact, “there is no
19 constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial.” (*Weatherford*
20 *v. Bursey* (1977) 429 US 525, 560-561.) If the People do make an offer that is later rejected, it is not
21 vindictive to then add additional charges after the negotiations have failed. (See *People v. Bracey* (1994)
22 21 Cal.App.4th 1532, 1546; *Bordenkircher v. Hayes* (1978) 434 U.S. 357) Thus, for example, it is not
23 prosecutorial misconduct to hold new criminal charges in abeyance while attempting to obtain a negotiated
24 disposition in a pending case. A prosecutor’s offer not to file the new charges in the context of a legitimate
25 plea bargain offer does not implicate a defendant’s due process right not to be subjected to vindictive
26 prosecution. The pretrial addition of charges in the “give and take” of plea bargaining are proper. (*People*
27
28

1 v. *Twiggs* (1983) 34 Cal.3d 360, 371.) The courts have consistently refused to apply the presumption in
2 the context of failed pretrial plea bargains. [Citations.]” (*People v. Bracey* (1994) 21 Cal.App.4th 1532,
3 1546.)

4 Here, Ms. Huang claims that more efforts should have been made to resolve the instant case prior to
5 trial. Furthermore, Ms. Huang claims that “the prosecutor’s offer of six years indicates that his decision
6 to file charges potentially resulting in more than four decades of prison time was not based on public
7 safety. It is these kinds of almost totally discretionary decisions that invite implicit and explicit bias.”
8 (Defense Motion 16.) Ms. Huang’s claims are incorrect. The Court has already determined the People are
9 not required to engage in negotiations with the Defense. Despite any offers made by the People, the
10 Defense can still request a Court offer. Ms. Huang *did not* make a request until *after* trial had commenced³.
11 Thus, for the reasons stated above, again, the evidence demonstrates that the Defendant was treated
12 appropriately during the negotiation phase, and as such, the Defendant’s motion should be denied.
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17 **III. THE PEOPLE’S OBJECTIONS TO DIVERTING A VIOLENT FELONY WERE**
18 **OBJECTIVELY REASONABLE AND DEFENDANT WAS FOUND NOT SUITABLE**
19 **FOR DIVERSION**

20 **a. The Defendant was not statutorily eligible for Judicial and Veteran’s Diversion.**

21 Diversion is codified and recognized under Penal Code sections 1000 (low level misdemeanors
22 and drug offenses), 1000.36 (Mental Health Diversion), and 1000.81 (Military or Veterans Diversion).
23 Generally, felony offenses are not eligible for Diversion.

24 Here, the Defense complains about racial disparities that they perceive for inapplicable areas, such
25 as PC 1000. It is immaterial if diversion was not handled appropriately on low level drug or misdemeanor
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27
28 ³ The request for a court offer was made the day after Defendant Vargas petition for Mental Health Diversion was denied by
the Honorable Judge Brady, Department 31.

1 cases because the Defendant committed a serious and violent felony thus making him not statutorily
2 eligible for Judicial Diversion. Furthermore, discussion of Veteran’s Diversion are equally fruitless
3 because the Defendant is not a veteran. Therefore, the Defendant could only pursue Mental Health
4 Diversion.
5

6 **b. The Court found that Defendant Vargas was not suitable or eligible for Mental Health**
7 **Diversion.**

8 On May 7, 2021, the Honorable Judge Brady found the Defendant not suitable for Mental Health
9 Diversion. (People Exhibit #2, pg. 25.) After the Defendant hired Ms. Huang, he moved for Mental Health
10 Diversion. Due to the violent nature of the offense, the People opposed the motion. A significant amount
11 of litigation ensued, however, the Defendant’s motion was denied. Judge Brady specifically questioned
12 the veracity of the opposition’s hired psychologist and found them to be conclusory in nature without the
13 supporting factual basis. (People’s Exhibit #2, pg7.) In addition, Judge Brady found that the Defendant
14 played a very active role in the planning of the home invasion. (People’s Exhibit #1 , pg. 24.) Judge Brady
15 also found that the offense was “extraordinarily dangerous” and was a “trauma event for family members”
16 who were victimized. (People’s Exhibit #2, pg. 23.) Finally, Judge Brady found that there was no nexus
17 between the Defendant’s alleged PTSD and the planned home invasion robbery he committed. Ultimately,
18 Judge Brady concluded that the Defendant was not suitable for diversion. (People Exhibit #2, pg. 25.)
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21 Despite addressing Judge Brady’s ruling, the Defense calls the People’s view of the facts “inaccurate
22 and inflammatory” and that it “exemplif[ies] a reliance on racial stereotypes.” (Defense Motion pg 17.)
23 Additionally, the Defense further asserts that the People’s objection to Mental Health Diversion, on a case
24 involving a *violent and planned home invasion robbery*, is somehow evidence of racial bias. This is far-
25 fetched. The facts are that the Defendant had his diversion application heard by an objective and neutral
26 judge and his motion was denied. The Defense’s understanding of the law and their position on diversion
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1 are flawed. Counsel is simply trying to rely on racial bias as a last-ditch effort to keep her client out of
2 prison. As the evidence has clearly shown, the Defendant's motion is meritless and should be denied.
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5 **IV. THE PEOPLE'S CHALLENGE OF AN ALTERNATE JUROR WAS APROPRIATE AND
6 NOTINFLUENCED BY RACIAL BIAS OR DISCRIMINATION.**

7 The People exercised appropriate prosecutorial discretion throughout the trial phase. During jury
8 selection, the People learned several facts about Mrs. Foster, a prospective African American, alternate
9 juror: First, Mrs. Foster was related to Deputy District Attorney Nichelle Holmes; Second, Mrs. Foster
10 was married to Ms. Holmes' cousin; Third, Mrs. Foster and Deputy District Attorney Holmes were
11 Facebook friends who spoke on occasion; and finally, Mrs. Foster previously served on a jury where she
12 voted not guilty.
13

14 The Court found no *Batson/Wheeler* violation after the People removed Mrs. Foster as a juror.
15 First and foremost, the jury was selected prior to Mrs. Foster becoming eligible to serve. During the
16 selection of alternate jurors, the People elected to use a peremptory challenge to remove Mrs. Foster from
17 being an alternate and the Defense made a motion under *Batson/Wheeler*. The People provided two main
18 justifications for the removal of the juror: First, Mrs. Foster was related to, and had potential contact with,
19 DDA Nichelle Holmes. There has been personal conflict between the assigned prosecutor and DDA
20 Holmes. Based on the nature of the relationship between the assigned prosecutor and Ms. Holmes, it did
21 not appear appropriate to keep a relative of Ms. Holmes on the jury. Second, Mrs. Foster had volunteered
22 that she had previously served on a criminal jury and had voted not guilty. Based upon these facts, the
23 Court found no *Batson/Wheeler* violation.
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26 The Defense misrepresents the events of the jury selection process. Ms. Huang claims that only
27 two prospective jurors were African American. This is not accurate. There were two prospective African
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1 American jurors in the third panel and in the other two panels, there were several prospective African
2 American jurors who asked for hardship. Most importantly, the People and the Court both noted that *the*
3 *Defense* used a peremptory challenge to remove a prospective African American juror. The People cannot
4 be expected to empanel a prospective juror just because they may be African American, whereas the
5 Defense can pick and choose who they please. The Defense is using the Racial Justice Act as a scapegoat
6 to overcome the violent and dangerous home invasion that the Defendant planned and executed. These
7 facts prove that the defense's claims are completely meritless and have no evidentiary foundation. Thus,
8 for the reasons stated above, the Defense's motion should be denied.
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11
12 **CONCLUSION**

13 The defense has failed to meet its burden in proving that the Defendant has been subjected
14 to unwarranted treatment or punishment due to racial bias or discrimination. No evidence of animus or
15 good cause has been shown to warrant discovery. The Defense has attempted to establish good cause by
16 citing to generalized statistics. However, the law does not find a prima facie case based on general claims
17 about the justice system. As such, the Defense's motion should be denied.
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22 Dated:

Respectfully Submitted,

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25 Christopher Sansoe
Deputy District Attorney
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EXHIBIT #1

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EXHIBIT #2

1 DIANA BECTON
District Attorney
2 Contra Costa County
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5 Phone: (925) 957-2200
Fax: (925) 957-2240

6 Attorneys for Plaintiff

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
CONTRA COSTA COUNTY

9 THE PEOPLE OF THE STATE OF CALIFORNIA,) NO. 05-192292-1
10)
Plaintiff,) PEOPLE'S RESPONSE TO
11 vs.) DEFENDANT'S POST CONVICTION
MOTION TO DISMISS FOR VINDICTIVE
12 AZRALE VARGAS) PROSECTUION: DECLARATION OF
Defendants.) COUNSEL AND POINTS AND
13) AUTHORITIES

14 Date: 7/23/2021
15 Time: 8:00 AM
Department: 23

16
17 **DECLARATION OF DDA CHRIS SANSOE**

- 18 1. I am an attorney in good standing with the State Bar of California;
- 19 2. I am currently employed as a Deputy District Attorney with the Contra Costa County District
20 Attorney's Office (CCCDAO). I have been employed in this capacity since January 1, 2013. I am
21 currently assigned to the Sexual Assault Unit. Prior to this assignment I was assigned to the
22 Victims of Violent Crime Unit.
- 23 3. In my time as a Deputy District Attorney, I have tried multiple Home Invasion Robberies where
24 the target of the robbery was marijuana (more commonly referred to as a "Dope Rip".) As a
25 result of these prior trials, I am aware of the challenges presented in trying this type of case.
- 26 4. I am personally assigned to case # 05-192292-1. This case has been vertically assigned to me
27 since the first arraignment of all defendants on November 7, 2019.
- 28

- 1 5. I personally conducted the preliminary hearing in this case on November 26 and 27, 2020.
- 2 6. I have been present during multiple attempts to negotiate this case between Supervising District
3 Attorney Kevin Bell, and attorneys for the Defendants.
- 4 7. On December 5, 2019 I personally sent the People's offer to resolve this case to opposing
5 counsel. The offer required all Defendants to plead to a Home Invasion Robbery (PC 213).
6 Defendant Vargas would be sentenced to the mid-term sentence of 6 years state prison.
7 Defendants Delgado, Prescott and Lloyd would be sentenced to a term of 3 years state prison.
8 (See Attachment #1.)
- 9 8. After this initial offer was made Defendant Vargas retained attorney Stuart Hanlon to represent
10 him in this case. Mr. Hanlon contacted the People and arranged further in person meetings to
11 discuss potential resolution.
- 12 9. During the negotiation process it became clear that Defendant Prescott was unwilling to resolve
13 his case.
- 14 10. On July 28, 2020, Assistant District Attorney Dan Cabral emailed counsel for Defendants
15 Vargas, Delgado and Lloyd. In this email ADA Cabral addressed whether the People would
16 unpackage their offer considering that Defendant Prescott was unwilling to resolve his case.
17 ADA Cabral made clear that the cases could be unpackaged upon debriefing with law
18 enforcement and if necessary, testifying at trial. (See Attachment #2.)
- 19 11. I spoke with Mr. Hanlon several times about Defendant Vargas debriefing and taking advantage
20 of the People's Offer in this case. Mr. Hanlon expressed a desire to have Mr. Vargas, who was
21 out of custody, debrief. On August 14, 2020 Mr. Hanlon emailed ADA Dan Cabral and myself
22 and stated that Defendant Vargas would accept the resolution. Mr. Hanlon expressed hesitation
23 with his client going to prison as a "snitch". He also asked for more time to work on a global
24 resolution for all four defendants. (See Attachment #2.)
- 25 12. Despite this email of acceptance, no debriefing was ever set up nor was any agreement ever
26 formalized.
- 27
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- 1 13. On or about September 9, 2020, attorney Stuart Hanlon moved to withdraw from this case.
2 Defendant Vargas substituted Ms. Yolanda Huang as his attorney in this case. I personally made
3 Ms. Huang aware of the opportunity to debrief and to take advantage of the People's offer. Ms.
4 Huang never asked to set up a debriefing.
- 5 14. On September 15, 2020, Defendant Domenico Delgado-Caramagno agreed to debrief. On this
6 date he met with Detective Kevin Mooney and myself. Defendant Delgado-Caramagno provided
7 a statement explaining in detail ho this conspiracy was carried out and how the crimes were
8 committed.
- 9 15. On September 25, 2020, Defendant Thomas Lloyd agreed to debrief. On this date he met with
10 Detective Kevin Mooney and me. Defendant Lloyd provided a statement explaining in detail
11 how the conspiracy was carried and out and the crimes were committed.
- 12 16. As a result of the debriefing of Defendants Lloyd and Delgado-Carmagno, I prepared this case
13 for trial. Preparation for trial in this matter has included review of all available charges and an
14 evaluation of how to proceed with potential charges at trial.
- 15 17. During the preparation of this case for trial I realized that there was an oversight in the
16 Information that was generated after preliminary hearing. Due to this oversight not all of the
17 charges I sought to add were in fact added to the Information. My intention was to split the
18 existing charge of Home Invasion Robbery into two separate robbery charges. This would be
19 done to avoid any later unanimity concerns at the time of trial. I also sought to add a First-
20 Degree Residential Burglary charge. Finally, each should have had a separate firearm or weapon
21 enhancement for each Defendant. The purpose of charging the case in this fashion was to
22 conform to the evidence presented at preliminary hearing and therefore give the People the
23 greatest chance at success at trial.
- 24 18. Upon realizing this oversight, I drafter a new 1st Amended Information which had the
25 appropriate charges.
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1 19. On November 12, 2020, I personally emailed counsel for all Defendants. In this email I discuss a
2 prior request made by the defense for certain items of evidence. In addition, I explained in the
3 final paragraph that due to an oversight by my office certain charges were not added to the
4 Information after the preliminary hearing was conducted. Specifically, Count 1 needed to be
5 separated into two separate robberies, a charge of residential burglary needed to be added, and
6 the appropriate firearm enhancements needed to be added to charges where they were missing. I
7 provided all counsel with a PDF copy of the proposed 1st Amended Information that I was going
8 to file with the Court. (See Attachment #3)
9

10 20. The 1st Amended Information contained charged for Defendant Vargas that would lead to a
11 maximum exposure of 41 years 8 months prison¹. This does not take into account the application
12 of Penal Code section 654.

13 21. On December 24, 2020 Ms. Huang filed her Motion for Discovery pursuant to AB 2542/Penal
14 Code section 745. In this motion Ms. Huang directly accused the Contra Costa County District
15 Attorney's Office, and me, of discriminatory treatment in this case. The People vehemently deny
16 that the Defendants race or ethnicity has played any role in the decisions made in this case.
17

18 22. On January 22, 2021, I was emailed by Ms. Huang regarding this case. In her email, Ms. Huang
19 attempted to re-negotiate the case and contended that the offer of 6 years state prison was too
20 high. Ms. Huang also asked why the District Attorney's Office was "going to bat" for the victims
21 in the case. (See Attachment #4.)

22 23. On January 23, 2021, I responded to Ms. Huang's email. In my email I explained that based
23 upon her allegations of discriminatory treatment that my preference was to only communicate
24 with her through email. This decision was made to protect the District Attorney's Office from
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27 ¹ In her brief, Ms. Huang states in her declaration that the 1st Amended Information added " an extraordinary 68 years of
28 additional prison exposure". It is unclear how she is reaching this number.

1 spurious and unfunded allegations. In my response I explained in detail the basis for the
2 People's prior offer. I also clearly stated that the People would not engage in additional
3 negotiations and that if Defendant Vargas was interested in resolving the case that he should
4 solicit a court offer. (See Attachment #4.)

5 24. On April 19, 2021, this case proceeded to jury trial.

6 25. On June 1, 2021, the jury returned verdicts for both Defendant Vargas and Defendant Prescott.
7

8 I make this declaration under penalty of perjury under the laws of the State of California, executed
9 June 29, 2021, in Martinez, California.
10

11
12 DATED:



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14 Chris Sansoe
15 Deputy District Attorney
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1 STATEMENT OF THE CASE

2 On November 6, 2019, the case against Defendants Vargas and his co-conspirators was
3 submitted to the Contra Costa County District Attorney's Office. DDA Mary Knox reviewed the case
4 and filed an initial complaint.

5 On November 8, 2019, Defendants were arraigned in Docket #01-192019-8. Defendants were
6 initially charged with a single count of Home Invasion Robbery, with enhancements for use of a firearm.
7 The case proceeded to Preliminary Hearing on **November 25, 2019**, before the Honorable Judge
8 Theresa Canepa. At this time Defendant Vargas was represented by Public Defender Julian Ross. On
9 **November 26, 2019**, Judge Theresa Canepa held Defendants to answer on the filed complaint.
10

11 On **December 3, 2019**, the People filed the Felony Information in the above-entitled docket.
12 The initial Information contained 5 counts, the initial home invasion robbery (PC 211/213), three counts
13 of assault with a semi-automatic firearm (PC 245(b)), and a count of conspiracy (PC 182).

14 On or about **December 5, 2019**, the People met with counsel for all Defendants at the Contra
15 Costa County DA's Office. Mr. Ross was present on behalf of Defendant Vargas. The parties provided
16 mitigation materials for the Defendants. Based on these mitigating materials the People elected to make
17 a significantly mitigated offer to resolve the case. After this meeting an offer was made to all defense
18 attorneys in this case. The offer was a package deal and required all of the Defendants to plead. The
19 offer was 6 years state prison for Defendant Vargas for a plea to PC 213, and 3-years state prison for the
20 remaining three Defendants for pleas to PC 213. This offer was emailed to the parties by DDA Chris
21 Sansoe at the request of supervising DDA Kevin Bell and ADA Dan Cabral. (See Attachment #)
22

23 On **December 16, 2019**, the Defendants were arraigned on the filed information, Docket #05-
24 192292-1. Defendants pled not guilty and the case was set for jury trial on February 3, 2020. (1st trial
25 setting). Before this jury trial date Defendant Vargas retained private counsel, **Stuart Hanlon**. On
26 January 9, 2020, Mr. Hanlon filed a Motion to Continue. This Motion was opposed by Defendant
27 Prescott. This Motion was based on Mr. Hanlon's need for time prepare for jury trial.
28

1 On **January 21, 2020**, the Motion to Continue was granted and the case was reset for trial on
2 March 16, 2020. Defendant Lloyd, Vargas, and Delgado-Carmagno all gave limited time waivers for
3 trial to begin on March 16, 2020, or within 10 days thereof.

4 On **March 9, 2020**, counsel for all Defendants met with Supervising DDA Kevin Bell and DDA
5 Chris Sansoe at the Contra Costa District Attorney's Office. Counsel for Defendants expressed their
6 desire to negotiate the case and resolve the case. The People were provided with mitigation materials.
7 Based on the discussion with Mr. Hanlon, and the materials provided, it was abundantly clear that he did
8 not desire to try this case and he wanted to reach a negotiated disposition.
9

10 On **March 16, 2020**, the trial did not go forward due to COVID -19 closure of the courthouse.
11 The People were again ready to proceed to trial. (2nd trial setting).

12 On **June 1, 2020**, the case was set for trial. The People were prepared for trial and called ready.
13 On this date Mr. Hanlon moved to continue the case due to his health concerns in relation to trying the
14 case during COVID. In his motion to continue Mr. Hanlon makes clear that the trial is going forward
15 because Defendant Prescott was unwilling to accept the People's prior offer. This case was trailed one
16 week to **June 8, 2020**. (3rd trial setting).

17 On **June 8, 2020**, this case was set in Department 35 for Master Trial Calendar. The People
18 announced ready for trial. Counsel for Defendant Vargas declared that they were not ready and had filed
19 a Motion to Continue Pursuant to Penal Code section 1050. The Court found good cause for the
20 continuance, continued the case over Defendant Prescott's objection, and date for trial was reset for
21 **August 17, 2020**. (4th trial setting).
22

23 On **July 22, 2020**, Mr. Hanlon spoke with ADA Dan Cabral in an attempt to resolve the case
24 and/or to break up the package offer that existed. At this time, it was clear that Defendant Prescott was
25 refusing all offers made by the People and that his co-defendant wanted to resolve their cases for the
26 People's prior offers.
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1 On **July 28, 2020**, Mr. Cabral emailed Counsel for all Defendants, except Defendant Prescott. In
2 his email ADA Cabral explains that to break up the package deal that has been offered the Defendants
3 would have to debrief and agree to testify against Defendant Prescott. (See Attachment #).

4 On **August 6, 2020**, Mr. Hanlon filed a Motion to Continue the jury trial that was set for August
5 17, 2020. The basis for the continuance was COVID and Mr. Hanlon's health concerns.

6 On **August 14, 2020**, Mr. Hanlon emailed ADA Cabral and DDA Sansoe to alert the People that
7 Defendant Vargas would accept the People's offer to debrief and to testify against Defendant Prescott in
8 exchange for the 6-year state prison offer previously conveyed. He expressed discomfort with Vargas
9 being labeled a snitch and asked for more time to discuss the matter with us.
10

11 On **August 17, 2020**, the case was on for jury trial assignment. The People were ready, and the
12 case was continued to September 21, 2020, for trial. (5th trial setting).

13 On **September 9, 2020**, Mr. Hanlon moved to withdraw from the case. **Ms. Yolanda Huang**
14 took over the case and the trial was continued to October 5, 2020.

15 On September 15, 2020, Defendant Domenico Delgado debriefed.

16 On **September 21, 2020**, the case was on for trial assignment. The case was continued over the
17 objections of the People and Defendant Prescott. The case was reset for trial on October 5, 2020. (6th
18 trial setting).

19 On **September 25, 2020**, Defendant Thomas Lloyd debriefed. On _____ Thomas Lloyd
20 debriefed. Both debriefs were recorded and later transcribed. This documentation and the fact the
21 debriefs had occurred was provided to counsel for Defendant Vargas and Prescott.
22

23 On October 5, 2020, Ms. Huang appeared for Defendant Vargas and the case was continued to October
24 19, 2020, for a status conference to determine when Ms. Huang would be ready for jury trial. (7th trial
25 setting). Ms. Huang never confirmed that Defendant Vargas would be willing to resolve the case for the
26 negotiated resolution that Mr. Hanlon had reached.
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1 On **October 19, 2020**, Ms. Huang requested a continuance of the jury trial for 60 days so she
2 could be prepared to proceed. The People, and Defendant Prescott objected to further continuances. Jury
3 trial was subsequently set for December 14, 2020.

4 On **November 10, 2020**, Ms. Huang filed a Pitchess Motion. In this Motion she alleged that the
5 officers involved in this case may have stolen marijuana during the investigation of this offense. This
6 belief was based upon a discrepancy between what the victim said was stolen and what was recovered.
7 This Motion was ultimately denied.

8
9 On **November 17, 2020**, the People brought a Motion to Amend the Information and a Motion to
10 file a 1st Amended Information. This Amended Information added a second Robbery count (PC
11 211/213), splitting the previous Count 1 into two counts. This effectively charged a robbery of both
12 Francesca Bigotti and Domenico Biggoti. The new Information also added a count of First-Degree
13 Residential Burglary (PC 460(a)). This amended information also added the appropriate enhancements
14 to the assault charges, PC 12022.5(a). This Amended Information sought to clarify, or clean up the
15 Information in preparation for jury trial, and was filed to conform the expected evidence at trial with the
16 charges that were appropriate. At the time of this motion being served on the Court and parties
17 Defendant Vargas was out of custody and Ms. Huang appeared for him. At the time of the filing of this
18 information Ms. Huang raised no objections to the charges or made any claims that they were based on
19 vindictive prosecution.
20

21 On **December 11, 2020**, Ms. Huang emailed an Informal Discovery Request for “Murgia
22 Discovery”, AB 2542/PC 745- Racial Justice Act Discovery”, and additional discovery pursuant to PC
23 1054.

24 On **December 14, 2020**, DDA Sansoe informed Ms. Huang by email that the People had
25 previously provided all required discovery in this case and that the People were not going to provide
26 discovery pursuant to “Murgia” or “PC 745”.
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1 On **December 14, 2020**, the case was again on for jury trial. The People were prepared for trial
2 and called ready. (8th trial setting). The case was continued.

3 On **December 24, 2020**, Ms. Huang emailed the People a Motion to Compel Discovery that was
4 set for January 4, 2021. The Motion was filed pursuant to Penal Code section 745 which had not yet
5 gone into effect.

6 On **January 4, 2021**, the case was set for trial before the Honorable Judge Burch for jury trial
7 and hearing on Ms. Huang's Motion to Compel Discovery and for a Pitchess Motion that she had filed
8 against the City of Moraga, and all officers involved in this case. The Pitchess was denied. Judge Burch
9 heard arguments regarding the Motion to Compel Discovery. Ms. Huang was not able to articulate a
10 theory of discriminatory act by the People. Judge Burch found that no discrimination (implied or
11 explicit) appeared on the record and denied the Motion to Compel Discovery without prejudice. Judge
12 Burch suggested the People file declarations regarding the District Attorney's Office and policies
13 regarding data/crime statistic retention. The jury trial was continued to **February 8, 2021**. (9th trial
14 setting).
15

16 On **January 8, 2021**, the People provided the Court and Counsel with declarations from ADA
17 Dan Cabral and from Office Manager Nanette Wellman.

18 On **January 22, 2021**, Ms. Huang emailed DDA Sansoe regarding this case. In her email Ms.
19 Huang attempted to negotiate for a lower state prison sentence than had been previously offered. She
20 asked for the basis for the offer and asked why the People were "going to bat" for the Bigotti family.
21 DDA Sansoe responded on January 23, 2021 and provided the basis for the offer. DDA Sansoe also
22 made clear that the prior 6-year offer had never been accepted and was revoked.(See Attachment #)
23

24 On **February 4, 2021**, Ms. Huang emailed the People a Motion to Continue the jury trial set for
25 February 8 and another Motion to Compel Discovery pursuant to Penal Code section 745. The basis for
26 the Motion to Continue the jury trial was Ms. Huang's health and her inability to get a COVID vaccine.
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1 On **February 8, 2021**, the case was on for jury trial and hearing on Ms. Huang's Motion for
2 Discovery. Judge Burch continued the hearing for both the Motion to Continue and the Motion for
3 Discovery to February 11, 2021. (10th trial setting).

4 On **February 11, 2021**, Judge Burch granted the People's Motion to Amend the Information and
5 permitted the filing of the 1st Amended Information and traileed the jury trial to March 29, 2021. At the
6 time of the filing of this Amended Information Defendant Vargas was out of custody and Ms. Huang
7 appeared for him. At the time of the filing of this information Ms. Huang raised no objections to the
8 charges or made any claims that they were based on vindictive prosecution.

9 Judge Burch also heard the renewed argument for Discovery. Ms. Huang argued that there was
10 explicit bias exhibited by the People that had existed since the filing of charges. Ms. Huang argued that
11 the People's choice of charging, the charges filed, and the enhancements chosen, displayed explicit bias.
12 Ms. Huang argued that the charges filed in the Information, and the subsequent 1st Amended
13 Information, were further proof of explicit bias. Judge Burch rejected this argument and the Motion was
14 denied.

15 On **March 15, 2021**, Ms. Huang filed, for the first time, a request for Mental Health Diversion.
16 This request was scheduled to be heard on March 22, 2021. Ms. Huang's request was based upon a
17 single page letter from Defendant Vargas therapist. The therapist (James Nofle) did not review any of
18 the evidence in the case. Instead, he based his opinion on his therapy sessions with Defendant Vargas.
19 The People filed an objection to Mental Health Diversion.

20 On **March 29, 2021**, the case was set for jury trial. The case was continued/trailed to April 5,
21 2021. (11th trial setting)

22 On **April 5, 2021**, the Honorable Judge Brady (Dept. 31) heard the request for Mental Health
23 Diversion. She indicated that even if eligible Defendant may not be suitable based on the type of case.
24 Ultimately Judge Brady found that the Defense had not submitted sufficient information to satisfy their
25 requirements for the Mental Health Diversion request. Ms. Huang informed the Court that she was going
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1 to have Defendant Vargas examined by a forensic psychologist from Berkeley. The psychologist is
2 named Daniella Kantarova. Upon request from the Defense the Court reset the Mental Health Diversion
3 request for May 17, 2021.

4 On **April 5, 2021**, the case was set for jury trial. The case was trailed/continued one week. (12th
5 trial setting) This case was set for jury trial on April 12, 2019. The Court trailed the case to April 19,
6 2021 for jury trial. (13th trial setting).

7 On **April 19, 2021**, this case was set for jury trial in Department 23. The trial commenced on this
8 date.

9 On **May 7, 2021**, the Honorable Judge Brady denied, with prejudice, the Defendant's Motion for
10 Mental Health Diversion. The motion was denied for two reasons. First, there was no nexus between the
11 offenses Defendant Vargas committed and his mental health disorder. Second, based on the violent
12 nature of the crimes he committed Judge Brady found he was not suitable for a grant of diversion.
13

14 On **June 1, 2021**, Defendant Vargas was convicted by jury of five violent felonies. Defendant
15 Vargas was convicted of two counts of home invasion robbery in concert (PC 213), assault with a semi-
16 automatic weapon on Francesca Bigotti, burglary of an occupied dwelling, and conspiracy to commit
17 home invasion robbery. The jury also found true the personal use of a firearm enhancements for each
18 charge.
19

20 ARGUMENT

21 **I. COUNSEL HAS WAIVED A VINDICTIVE PROSECTUION ARGUMENT** 22 **BY NOT MAKING THIS MOTION AT AN APPROPIRATE TIME.**

23 A motion for vindictive prosecution should be made pre-trial. The case of *People v. Edwards*
24 (1991) 54 Cal.3d 787, is illustrative of this point. On Saturday, September 19, 1981, Edwards, shot 12-
25 year-old Vanessa between the eyes and her 12-year-old friend, Kelly, in the head with a .22-caliber
26 pistol while the girls were walking to a picnic lunch from a campsite in the Blue Jay campground in
27 Orange County. Vanessa died of her wound; Kelly survived.
28

1 On September 22, 1981, three days after the shooting, and before defendant's arrest, a complaint
2 was filed and a warrant for defendant's arrest was obtained. The complaint charged first degree murder
3 but no special circumstance. Defendant was arrested in Maryland on September 28. Twelve days later,
4 on October 10, 1981, an amended complaint was filed charging the lying-in- wait special circumstance.

5 On appeal, and for the first time, Edwards claimed the amendment was unlawful because it was
6 discriminatory, capricious, and a vindictive retaliation for his assertion of the right to counsel, his
7 temporary refusal to waive extradition, and his eventual refusal to talk to the police. (*Id.* at 827.)

8 The Attorney General argued that the issue is not properly before the Court because Edwards
9 neither moved to dismiss the amended complaint nor otherwise objected on this basis. The Court agreed.
10 “[B]ecause a claim of discriminatory prosecution generally rests upon evidence completely extraneous
11 to the specific facts of the charged offense, we believe the issue should not be resolved upon evidence
12 submitted at trial, but instead should be raised ... **through a pretrial motion to dismiss.**” (*Murgia v.*
13 *Municipal Court* (1975) 15 Cal.3d 286, 293–294, fn. 4.) This rationale applies to claims of vindictive
14 prosecution. (See also *People v. Toro* (1989) 47 Cal.3d 966, 976) [defendant must object to amendment
15 of information at trial to preserve a lack-of-notice objection]; *People v. Sperl* (1976) 54 Cal.App.3d 640,
16 656–657) (*Id.* at 828.)

17
18 In this case, on November 12, 2020 the People gave the Defense notice that an Amended
19 Information would be filed in preparation for trial. The People made clear that they had anticipated that
20 the case would have resolved and therefore amending the case had not been a priority. (See Attachment
21 #4.) Ms. Huang did not object over email. On November 17, 2020, in Court the Defense was again made
22 aware that the 1st Amended Information had been submitted to the Court and that the People were
23 requesting that the Information be amended. Ms. Huang was asked whether she objected. She did not.
24 Due to Defendant Vargas being out of custody he was not arraigned on this 1st Amended Information
25 until April 20, 2021, the second day of trial. At this time, Ms. Huang objected for the first time.
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1 However, her objection was not based on vindictive prosecution, rather it was based on her desire that a
2 continuance would be granted pursuant to Penal Code section 1049.

3 After the People completed their case in chief Ms. Huang made a Motion to Dismiss pursuant to
4 Penal Code section 1118 and because the charges were, in her opinion, vindictive. This Court held a
5 hearing. It denied the Motion to Dismiss under Penal Code section 1118. The Court questioned the
6 timing of the vindictive prosecution motion. The Court denied his Motion as well.

7 The Defense had nearly 6 months before trial to bring a Motion to Dismiss for Vindictive
8 Prosecution. The Defense elected not to. It is only after the People had completed their case and proven
9 Defendant guilty that this Motion was brought. The People submit that this motion has not been properly
10 made and is not properly before the court.

12 **II. NO PRESUMPTION OF VINDICTIVENESS HAS ARISEN.**

13 Counsel for Defendant states that the decision to amend a Felony Information, when the decision
14 is made pre-trial and after failed negotiations, to add additional related and alternative charges, rises to
15 the level of presumed vindictiveness. Counsel makes this claim months after the Amended Information
16 was filed and after Defendant Vargas has been convicted by jury. The Defense makes this meritless
17 motion without any of case law to support her argument.

18 Counsel specifically argues that the decision to Amend the Information must be viewed as
19 vindictive because the Information was filed after the Defense filed a *Pitchess Motion*. In this case a
20 Pitchess Motion was filed on November 10, 2020. This motion was ultimately meritless and was denied
21 by the Court. The People are not party to a *Pitchess Motion*. However, in this case the People were not
22 troubled by the filing of this motion as it appeared absurd and meritless to begin with as it accused
23 officers of theft of marijuana. The filing of this meritless motion clearly had no effect on the decision to
24 amend the information.

25 Counsel cannot cite to a single case that is factually or legally analogous to the current case.
26 Counsel is unable to cite to any law because none exists. In fact, the opposite is true. The law allows for
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1 the prosecution to amend an information at “any stage of the proceedings”. (See *Penal Code section*
2 *1009*.) Counsel has cited to the *Twiggs* case for her failed attempt to argue vindictiveness. However,
3 *Twiggs*, and a multitude of other cases, have held that the addition of charges pretrial and in the “give
4 and take” of plea bargaining are proper. (*People v. Twiggs* (1983) 34 Cal.3d 360, 371.) Finally, it is
5 abundantly clear that the prosecution may add charges after a failed plea-bargain. “The courts have
6 consistently refused to apply the presumption in the context of failed pretrial plea bargains. [Citations.]”
7 (*People v. Bracey* (1994) 21 Cal.App.4th 1532, 1546.)

8
9 Absent a presumption, a denial of due process on grounds of prosecutorial vindictiveness
10 requires **objective evidence “that the prosecutor’s charging decision was motivated by a desire to**
11 **punish [the defendant] for doing something that the law plainly allowed him to do.”** [Citation.]
12 “The charge of vindictive prosecution is not a substitute for evidence.” [Citations.] (*People v. Bracey*
13 (1994) 21 Cal.App.4th 1532, 1549.)

14 Here, Counsel has filed a meritless motion without a scintilla of actual law to support her
15 argument. Contrary to the Defense contention the People may move to amend a filing document when
16 necessary to charge alternative theories of prosecution and when appropriate to secure a conviction.
17

18 **III. THERE IS NO VINDICTIVENESS IN AMENDING AN INFORMATION**
19 **IN A PRE-TRIAL SETTING.**

20 The presumption of vindictiveness does not apply in a pretrial setting. In *Twiggs v. Superior Court*
21 (1983) 34 Cal.3d 360, 371 (*Twiggs*), where charges were increased after a mistrial, the California
22 Supreme Court distinguished cases in which more serious charges were added *pretrial* and in the “give
23 and take” of plea bargaining, all of which were found to be proper. (*Id.* at p. 371, citing *Bordenkircher v.*
24 *Hayes* (1978) 434 U.S. 357 and *United States v. Goodwin* (1982) 457 U.S. 368.) More specifically,
25 *Twiggs* discussed and distinguished *People v. Farrow* (1982) 133 Cal.App.3d 147 (*Farrow*). (*Twiggs,*
26 *supra*, 34 Cal.3d at pp. 372-373.) In *Farrow*, the appellate court held:

27 Unless the [presumption] rule is limited to the postconviction appeal context, it becomes totally
28 unworkable. Prosecutorial discretion in determining the charges to be filed is basic to the

1 framework of our criminal justice system. [Citations.] Up to the time of verdict, the prosecution
2 may amend the information to include additional offenses shown by the evidence at the
3 preliminary hearing. To extend [the presumption] to the pretrial and trial context would unduly
4 hamper the legitimate exercise of this prosecutorial discretion.

5 (*Id.* 133 Cal.App.3d at p. 152.) “In the pretrial situation, no presumption of vindictiveness arises. A
6 presumption of vindictiveness arises only if the prosecutor ‘ups the ante’ after exercise of a
7 postconviction right.” (*People v. Puentes* (2010) 190 Cal.App.4th 1480, 1484.)

8 **Thus, for example, no presumption of prosecutorial vindictiveness arises from the addition**
9 **of charges in a pretrial setting.** (*People v. Johnson* (1991) 233 Cal.App.3d 425, 447-449; *People v.*
10 *Matthews* (1986) 183 Cal.App.3d 458, 465-466; *People v. Rivera* (1981) 127 Cal.App.3d 136, 141-
11 148)(Emphasis added.) Nor does it arise if charges are refiled after being previously dismissed in lieu of
12 probation revocation proceedings. (*People v. Bracey* (1999) 21 Cal.App.4th 1532, 1546-1549.) And no
13 presumption of vindictive prosecution was applied where the **increased charges were the product of a**
14 **reevaluation of the evidence by a different prosecutor** after the defendant successfully made a motion
15 to withdraw her guilty plea. (*People v. Hudson* (1989) 210 Cal.App.3d 784, 788 [original plea not part
16 of negotiated agreement with prosecution])(Emphasis added.)

17 Here, the claims of vindictiveness arise in a pre-trial, setting after the negotiations had failed, and
18 after the case was re-evaluated by a prosecutor who had not filed the initial complaint. The Defense
19 claims that the new charges were brought to punish Defendant Vargas for exerting his right to trial.
20 However, this narrow view ignores the fact that the People have a right to amend the Information prior
21 to trial to charge crimes that the prosecution believes are based on the evidence, and to ensure that at
22 trial the People are successful. The claim of vindictiveness thus fails and is without any potential merit.

23 24 **IV. THERE IS NO VINDICTIVENESS IN AMENDING AN INFORMATION** 25 **AFTER A FAILED PLEA BARGAIN.**

26 “The courts have consistently refused to apply the presumption in the context of failed pretrial
27 plea bargains. [Citations.]” (*People v. Bracey* (1994) 21 Cal.App.4th 1532, 1546.) Thus, for example, it
28 is not prosecutorial misconduct to hold new criminal charges in abeyance while attempting to obtain a

1 negotiated disposition in a pending case. A prosecutor's offer not to file the new charges in the context
2 of a legitimate plea bargain offer does not implicate a defendant's due process right not to be subjected
3 to vindictive prosecution.

4 The United States Supreme Court confronted the question of prosecutorial vindictiveness in the
5 context of plea negotiations in *Bordenkircher v. Hayes* (1978) 434 U.S. 357 . In that case the defendant
6 was charged with uttering a forged instrument, an offense punishable by a term of two to ten years.
7 During plea negotiations with defense counsel present, the prosecution offered to recommend a sentence
8 of five years in exchange for a plea of guilty. At the same meeting, the prosecutor said that if the
9 defendant did not plead guilty, and "save the court the inconvenience and necessity of a trial" (*id.*, at p.
10 358 ...), he would seek an indictment under the Kentucky Habitual Criminal Act, which would subject
11 the defendant to a mandatory sentence of life imprisonment because of defendant's two prior felony
12 convictions. Defendant chose not to plead guilty, and he was subsequently indicted on the more serious
13 charge. The court held that "the course of conduct engaged in by the prosecutor in this case, which no
14 more than openly presented the defendant with the unpleasant alternatives of forgoing trial or facing
15 charges on which he was plainly subject to prosecution, did not violate the Due Process Clause of the
16 Fourteenth Amendment." (*Id.*, at p. 365 ...) (*Twiggs v. Superior Court* (1983) 34 Cal.4th 360, 370
17 (*Twiggs*).

18
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20 This reasoning was expanded by the United States Supreme Court in *United States v. Goodwin*
21 (1982) 457 U.S. 368, quoting extensively from *Bordenkircher v. Hayes, supra*, 434 U.S. 357
22 (*Bordenkircher*):

23 ... [*Bordenkircher, supra*] 434 U.S. at 364-365 ... ("To hold that the prosecutor's desire
24 to induce a guilty plea ... may play no part in his charging decision, would contradict the
25 very premises that underlie the concept of plea bargaining itself"). If a prosecutor could
26 not threaten to bring additional charges during plea negotiation, and then obtain those
27 charges when plea negotiation failed, an equally compelling argument could be made that
28 a prosecutor's initial charging decision could never be influenced by what he hoped to
gain in the course of plea negotiation. Whether "additional" charges were brought
originally and dismissed, or merely threatened during plea negotiations, the prosecutor
could be accused of using those charges to induce a defendant to forgo his right to stand
trial. If such use of "additional" charges were presumptively invalid, the institution of

1 plea negotiation could not survive. *Thus, to preserve the plea negotiation process, with its*
2 *correspondent advantages for both the defendant and the State, the Court in*
3 *Bordenkircher held that “additional” charges may be used to induce a defendant to*
4 *plead guilty.* Once that conclusion was accepted, it necessarily followed that it did not
5 matter whether the “additional” charges were obtained in the original indictment or
6 merely threatened in plea negotiations and obtained once those negotiations broke down.
7 In the former situation, the prosecutor could be said simply to have “anticipated” that the
8 defendant might refuse to plead guilty and, as a result, to have placed his “threat” in the
9 original indictment. Cf. *id.*, at 360-361 ... (“As a practical matter, in short, this case
10 would be no different if the grand jury had indicted Hayes as a recidivist from the outset,
11 and the prosecutor had offered to drop that charge as part of the plea bargain”).

12 (*United States v. Goodwin, supra*, 457 U.S. at p. 378, fn. 10, italics added; see also *People v. Matthews*
13 (1986) 183 Cal.App.3d 458, 463-467 [court held adding a prior felony enhancement that were not in the
14 original complaint did not give rise to a presumption of prosecutorial vindictiveness where the counts
15 were added in the normal course of pretrial proceedings after a failed plea bargaining and after a
16 preliminary examination].)

17 *People v. Barajas* (1983) 149 Cal.App.3d 30 is distinguishable. The defendant in *Barajas* was
18 facing misdemeanor driving under the influence charges when, on the morning of trial, one deputy city
19 attorney realized the injuries resulting from defendant’s conduct justified upgrading the case to a felony.
20 This deputy city attorney “threatened” the case would be filed as a felony unless the defendant pled
21 guilty. The defendant declined and another deputy city attorney took over the case for trial. That deputy
22 city attorney caused a mistrial by asking a question that elicited inadmissible evidence despite a prior
23 warning by defense counsel not to elicit such evidence. Although the case was not dismissed on double
24 jeopardy grounds because of this prosecutorial misconduct, the appellate court held the subsequent
25 upgrading of the case to a felony for retrial would violate due process. Recognizing the unique
26 procedural posture of the case the appellate court reasoned:

27 Unlike *Twiggs*, where the mistrial was caused by the jury’s inability to agree *after* trial,
28 *Barajas* did not have a complete error free trial. The prosecutor *during* trial caused the
mistrial. To require *Barajas* to now face a felony charge would in effect reward the
prosecutor for his prejudicial conduct. Moreover, faced with prosecutorial misconduct,
defense counsel should not be required to remain mute in order to avoid the risk that his
client might later be prosecuted for an offense with the potential of increased penalties.
To so hold has the effect of denying the defendant his right to the effective assistance of
counsel while concurrently sanctioning prejudicial error.

1 (*Id.* at p. 34, italics in original.)

2 Here, no threat has ever been conveyed. Rather, Defendant elected not to accept the early
3 resolution offer that was tendered. The Defense likes to claim that the offer was racially discriminatory
4 because it required Defendant Vargas to debrief, and potentially to testify if the prosecution so desired.

5 However, no attempts were made by Ms. Huang to negotiate an alternative sentence. Instead,
6 counsel for the Defense pushed forward filing baseless motions and disparaging the victims. No effort
7 was made to attempt to resolve this case until mid-trial when the Defendant's Motion for Mental Health
8 Diversion was denied. It was at this time that the Defense attempted to solicit an offer from the People
9 and the Court. Of course at this late stage of the proceedings it should have come as no surmise that the
10 People and the Court refused to engage in mid trial negotiations with Ms. Huang.

12 Therefore, we are not in similar situation to *Barajas*. The Defendant has elected not to take
13 advantage of the plea-bargaining process. Now Defendant complains that the People have exercised
14 their right to appropriately charge and try the offense. Again, there is no basis for a finding of vindictive
15 prosecution.

16 **V. NO ACTUAL VINDICTEVNESS HAS OCCURRED.**

17 The Defense's final argument is that even if they cannot meet the presumption of vindictiveness
18 standard that this Court should nevertheless dismiss the charges because actual vindictiveness is present.
19 The basis for this allegation of vindictiveness is threefold: 1) That cooperating co-defendant sreceived
20 lighter sentences, 2) that the maximum exposure increased tremendously, and 3) that the prosecutor was
21 offended by the claims of racism.

23 Domenico Delgado- Carmagno, a Hispanic Male, and Thomas Lloyd, an African American
24 male, both wanted to resolve their cases. As a result, they debriefed, and complied with all requests
25 made of them. The act of debriefing serves an important governmental function, similar to allocution for
26 a crime. It allows the accused the opportunity to admit their crimes, and it allows for the resolution of
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1 cases at an early stage. The People gave Defendant Vargas the same ability to resolve. Defendant Vargas
2 elected not to.

3 Counsel additionally alleges that the increase in exposure also makes this vindictive. Counsel's
4 assertion that this 1st Amended Information added 68 years of exposure is wrong. The exposure from the
5 1st Amended Information was 41 years 8 months. It is unclear how she Ms. Huang came to the
6 determination that this amendment added 68 years of exposure. It is also clear from reading the email
7 sent to Counsel at the time of filing this 1st Amended Information that it was always the intent of the
8 People to have these charges and that but for an error in the process the charges would have been filed.
9

10 Finally, Counsel contends that because the assigned attorney was offended when she made a
11 claim of racism that this also proves vindictiveness. Despite Ms. Huang's contention the false allegation
12 of racism is offensive. It is uncommon for practicing criminal attorneys in Contra Costa County to
13 accuse prosecutors of racism spuriously and falsely. Ms. Huang's claims are meritless. There is no
14 evidence of vindictive prosecution.

15 CONCLUSION

16 Based on the Points and Authorities the People contend that the Defendants Motion to Dismiss
17 without any merit. The People ask the Court to deny the Motion given the clear law that is directly on
18 point and contrary to the Defense's arguments. Any objective viewing of the facts in this case indicate
19 that the People made a mitigated offer to resolve this case. One Defendant (Prescott) chose not to accept
20 the People's offer. Because this was a package offer the three defendants who wanted to resolve their
21 case were required to debrief in order to un-package the offer. Defendant Vargas made the decision not
22 to debrief and to face the criminal charges with Defendant Prescott. The People, in preparation for trial,
23 filed an amended information so that they could be in the best position to succeed at trial. The Defense
24 had months to argue that the amended information was not appropriate. Rather than act in a timely
25 fashion the Defense has waited until after Defendant Vargas has been convicted. The Defense cannot
26 now argue in good faith that the prosecution of Defendant Vargas has been vindictive.
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DATED: 6/29/21

Respectfully Submitted,

DIANA BECTON
District Attorney
Contra Costa County



Chris Sansoe
Deputy District Attorney

ATTACHEMENT #1

Chris Sansoe

From: Chris Sansoe
Sent: Thursday, December 5, 2019 11:49 AM
To: Julian Ross (Julian.Ross@pd.cccounty.us); tony@brasslawoffice.com; Chris Martin; Evan Kuluk
Cc: Kevin M Bell; Dan Cabral
Subject: P v. Vargas, Prescott, Delgado and Lloyd DKT#05-192292-1

Hello again,

I have spoken with Supervising DDA's Dan Cabral and Kevin Bell regarding this case. Based on the facts of the case, the overall lack of criminal history for the defendants, and potential mitigation which we are assuming would be provided, our office is making the following early resolution offer:

Each Defendant would plead to Count 1 of the information - PC 211/ 213(a)(1)(A) - home invasion robbery (3/6/9)

Vargas - midterm of 6 yrs. prison

Delgado/Prescott/Lloyd - low term of 3 yrs. prison

CPO for all victims and residence

Firearm to be returned to lawful owner or destroyed

Restitution for victims

Any other standard terms

Let me know if you have any questions regarding this offer.

Thank you,

Chris Sansoe
Deputy District Attorney
Contra Costa County

ATTACHEMENT #2

Chris Sansoe

From: Stuart Hanlon <stuart@stuarthanlonlaw.com>
Sent: Friday, August 14, 2020 10:33 AM
To: Dan Cabral
Cc: Chris Sansoe
Subject: Re: P vs Vargas, Delgado-Caramagno and Lloyd Cr 5-1922921

Dan and Chris

Wanted to get back to you on this

My client will accept this resolution but is very scared of going into prison on the 6 year sentence as a snitch So since we are continuing I will appreciate more time to continue my work on a global plea agreement for all four defendants

Tony will appear for me on Monday

Hope you are both well

stuart

STUART HANLON
LAW OFFICE OF HANLON AND RIEF
stuart@stuarthanlonlaw.com
work: 4158645600
1663 Mission St Suite 200
SF CA 94103

On 7/28/20, 3:55 PM, "Dan Cabral" <DCabral@contracostada.org> wrote:

Mr. Hanlon, Mr. Brass and Mr. Kuluk

I spoke with Mr. Hanlon on July 22 and he expressed his interest in resolving your cases. As you all are aware, the point of a package offer in a multi defendant case is to resolve all defendants cases so that there is finality in the case. If a severance were to occur then the People would lose the benefit of the bargain as a severance would result in a trial being held against one defendant.

Our office has made the following offer to resolve this case:

- D- Vargas – would plead to a PC 213 – Mid term of 6 yr. state prison
- D – Delgado and Prescott – Plead to PC 211/212 – Mid term of 3 yrs.
- D – Lloyd – Plead to PC 211/212- low term of 2 yrs.

If defendants Vargas, Delgado, and Lloyd would like to resolve their cases for the indicated pre-trial offer my proposal is as follows:

1. All three defendants would meet with Det. Kevin Mooney, or an investigator from the CCCDAO. All 3 defendants would be permitted to have their attorneys present. DDA Chris Sansoe would also be present. All defendants would engage in a debriefing where they fully discuss the charged offenses and the events leading up to them. All defendants would be expected to discuss the facts in their entirety and would be expected to discuss the involvement of their co-conspirators. Each defendants interview would be recorded in some fashion.

2. The People would provide these recorded statements to Attorney Chris Martin, attorney for the fourth defendant Emarieay Prescott. The People would also express their intent to call the co-defendants as witnesses and would explain to Mr. Martin that this testimony would be in exchange for the original negotiated disposition.
3. All three defendants would then agree to waive time at the next trial setting – currently set for August 17.
4. All three defendants would then agree to testify against their former co-defendant, Emarieay Prescott. They would do so with the understanding that honesty is expected and that if they lie the negotiated disposition will not be honored. They also will acknowledge that they may be subject to perjury in the event that they deviate from their prior statements that they may be charged with perjury.
5. On August 17, 2019, the People would not oppose a severance of the cases. This would result in the case splitting with Defendant Prescott proceeding to trial and Defendants Vargas, Delgado and Lloyd continuing their case to a separate setting/change of plea date.
6. Assuming that the three defendants testify truthfully during the trial for Defendant Prescott then at the next set court date they would be permitted to plea to the package offer that had been previously conveyed.

As this would ultimately result in overwhelming evidence that Defendant Prescott was an active participant in this home invasion robbery, I strongly suspect that if this procedure were followed Defendant Prescott would resolve his case as well.

Daniel J. Cabral
Assistant District Attorney
Contra Costa County
(925) 957-2236 FAX: (925) 957-2240

-----Original Message-----

From: Stuart Hanlon <stuart@stuarthanlonlaw.com>
Sent: Tuesday, July 21, 2020 7:27 AM
To: Venus D. Johnson <Venus.Johnson@contracostada.org>
Cc: Evan Kuluk <Evan.Kuluk@pd.cccounty.us>; Tony Brass <tony@brasslawoffice.com>; Chris Sansoe <CSansoe@contracostada.org>; Dan Cabral <DCabral@contracostada.org>
Subject: Re: P vs Vargas, Delgado-Caramagno and Lloyd Cr 5-1922921

Mr. Cabral
We all look forward to discussing and resolving this case with you

stuart

STUART HANLON
LAW OFFICE OF HANLON AND RIEF
stuart@stuarthanlonlaw.com
work: 4158645600
1663 Mission St Suite 200
SF CA 94103

On 7/20/20, 11:08 PM, "Venus D. Johnson" <Venus.Johnson@contracostada.org> wrote:

Good evening -

Assistant District Attorney Dan Cabral oversees the felony trial team and supervises Kevin Bell. I have cc'd him here as he is the appropriate person to speak with about this case.

ATTACHEMENT #3

Chris Sansoe

From: Chris Sansoe
Sent: Thursday, November 12, 2020 2:36 PM
To: Yolanda Huang; Tony Brass; Evan Kuluk; Chris Martin
Subject: P v. Vargas et. al. DKT#05-192292-1
Attachments: Information Thursday Nov 12 2020 at 020600_8862443 PM.docx; Motion to Amend Thursday Nov 12 2020 at 020850_0123329 PM.docx

Hello,

I am writing to address Ms. Huang's discovery request I received. I have reached out Det. Mooney regarding your request. I believe you are asking for what is typically called MDC Data/communications. Det. Mooney reached out to dispatch who maintains the MDC system. He has not gotten any information back regarding your request. He believes, and it is my experience as well, that MDC data is usually purged every 6 months to 1 year. It is highly unlikely that there will be MDC Data in this case. I will keep you posted in the event new evidence becomes available.

You also asked for all recordings for the CAD audio. I have provided that in the past. I also sent you a digital copy via email. If for any reason those don't work there is another copy now sitting at the front desk of my office at 900 Ward Street.

Finally, you asked about the research or documents regarding the Prius driven by Delgado that night. The registration for the vehicle was pulled that night. I will direct you back to the initial discovery PDF that I sent you. Page 60 is the printout from the evening/morning of the crimes. It is a CLETS document containing information from the DMV showing the suspended vehicle registration. This information was also documented in the CAD. There is nothing else to provide.

I am also writing to everyone as I realized there was an error with the filed information. Evan and Tony – this wont really affect you two but you should be made aware. I had elected to add certain enhancements AND charges to the information after PX. Apparently only ½ of the enhancements and charges were actually added to the information. I had anticipated potential resolution therefore it was not a priority. I will therefore have to amend. I am attaching a copy of the motion to amend and the amended information.

Let me know if there are any questions,

Chris Sansoe
Deputy District Attorney
Contra Costa County



ATTACHEMENT #4

Chris Sansoe

From: Chris Sansoe
Sent: Saturday, January 23, 2021 12:16 PM
To: Yolanda Huang; Kevin M Bell
Subject: Re: Peo v. Vargas

Counsel,

Due to a change of plans I will not be returning full time next week. I will be working from home and appearing via Zoom for the majority of my appearances. Additionally, due to the recent allegations of discriminatory practice made against myself and my office in this matter I would prefer to communicate via email.

With regard to exploring settlement I can discuss with you the previous 6 year offer and how we got there. That offer was made nearly a year ago to the first attorney on the case- Public Defender Julian Ross. This offer was reached after an extensive discussion with him and other counsel. The following information/ factors led us to this position:

- Defendant Vargas' lack of criminal history and college standing / also considering the wide range of mitigation provided
- His role in this current offense/ culpability in the current offense
- His personal use of a firearm
- The dangerous nature of the offense and the number of victims
- Stage of the proceedings/ work put into case
- Likely outcome of trial and sentencing

This offer was made after the preliminary hearing was conducted and after the victims testified. This is important in our determination because the offer was not for an early acceptance of responsibility.

After Mr. Hanlon took over the case I agreed to keep the offer open to him. Mr. Hanlon made it clear that he never wanted to try the case and that he wanted to seek resolution. He also put together mitigation and met with my supervisor and myself. We considered his mitigation. Our position did not change. Mr. Hanlon had expressed interest in resolving the case for the offered 6 years state prison. Within a month of that indication he withdrew from the case. Since that time the People have expended considerable time and resources into this case.

You have asked why our office is "going to bat" for the Bigotti's. Our office does not have the luxury of choosing who is a victim of crime. Regardless of the Bigotti families issues they are still members of this community who are entitled to the protection of our laws. In this case there criminal history or issues have been considered by myself and my supervisor prior to the extension the 6 year offer

The prior 6 year offer was revoked when it was not accepted. I, and my supervisors, have reviewed the mitigation package that you have sent to our office. While I can appreciate the effort that went into making the packet it does not change the position of our office.

At this time there are no offers extended to Defendant Vargas. Our office is not willing to re-extend the prior 6 year offer or to engage in negotiations for any time less than what was previously offered. Should Defendant Vargas wish to solicit an offer from the Court he is more than welcome to seek a plead as charged offer.

With regard to continuances, I maintain my readiness for trial. This case has been floating around for far longer than it should have been. I will respond to any continuance motion after it is brought and after reviewing the basis for the request.

If you have any questions or wish to discuss this further please respond via email.

Thank you,

Chris Sansoe

From: Yolanda Huang <yhuang.law@gmail.com>
Sent: Friday, January 22, 2021 11:39 PM
To: Chris Sansoe <CSansoe@contracostada.org>
Subject: Peo v. Vargas

Mr. Sansoe,

If my memory serves me, you had stated that you would be back in the office on Monday. I'm wondering if we can schedule a time to discuss the case, maybe explore settlement...the prior 6 year offer is high...and I would appreciate hearing from you, the reasoning for that offer...and why your office is so keen on going to bat for the Bigottis...quite some family.

Just to let you know, given the state of covid and the unavailability of the vaccine...and some concerns...my legal assistant's grandmother was vaccinated and died within 24 hours of her first vaccination...an autopsy is being conducted...I would probably ask the court to consider another continuance.

But I also understand that you and Mr. Martin have also been discussing this case' landscape, so perhaps we can enlarge the conversation.

Hope everything is well with you and your family.

--

Yolanda Huang, Esq.

528 Grand Avenue • Oakland • CA • 94610 • Phone 510-329-2140 • Fax:510-580-9410

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1 DIANA BECTON
District Attorney
2 CHRIS SANSONE
Deputy District Attorney, SBN 287076
3 CHRISTOPHER DUGAN
Certified Law Clerk
4 900 Ward Street
5 Martinez, CA, 94553
Tel. (925) 957-2200
6
7 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF CONTRA COSTA

10 THE PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 v.

13 AZRAEL VARGAS

14 Defendants.

DOCKET# 05-192292-1

**PEOPLE'S OPPOSITION TO
DEFENSE MOTION FOR HEARING
PURSUANT TO PENAL CODE
SECTION 745**

Date:
Time:
Dept.:

17
18 **SUMMARY OF PEOPLE'S POSITION**

19 Azrael Vargas (hereinafter as "Defendant Vargas") has failed to provide sufficient evidence that
20 the People have violated Penal Code section 745. First, statistical data shows that the District Attorney's
21 Office has charged African Americans proportionally to other races. Second, the People exercised
22 appropriate prosecutorial discretion during pre-trial negotiations. Third, the Court found that the
23 Defendant was not suitable for Mental Health Diversion. Finally, the Court found no Batson/Wheeler
24 violation during jury selection. This is the third time the Defendant has filed a motion pursuant to Penal
25 Code section 745 but now asks this Court to order voluminous discovery and grant a hearing to further
26 contest the Defendant's conviction. The Defendant explicitly states that his claim of discriminatory
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1 treatment is not based on the conduct of any particular individual but rather he asks for this Court to find
2 that “Black Americans are disparately charged, convicted, and sentenced in Contra Costa County and to
3 remediate the systematic unfairness in his case” (Defense Motion 13: XX.) The Defendant and his counsel
4 are mistaken, and the motion should be denied.
5

6 **STATEMENT OF THE CASE¹**

7 The case of People v. Vargas proceeded to jury trial on April 19, 2021. On May 19, 2021, Ms.
8 Huang, counsel for Defendant Vargas attempted to file and litigate a third motion pursuant to Penal Code
9 section 745 – the California Racial Justice Act of 2020. The Court told Ms. Huang that she may have this
10 motion heard after the trial had concluded.
11

12 On May 7, 2021, Defendant Vargas appeared for a motion for Mental Health Diversion was heard
13 before the Honorable Judge Laurel Brady. This Motion was denied².

14 The jury trial concluded on June 1, 2021 when the jury reached verdicts on five of the seven counts.
15 Defendant Vargas was convicted of the following:

16 Count 1: PC 211/212.5/213 – Home Invasion Robbery of Francesca Bigotti committed in concert;

17 Enhancement: PC 12022.53(b): Personal Use of a Firearm;

18 Count 2: PC 211/212.5/213 – Home Invasion Robbery of Francesca Bigotti committed in concert;

19 Enhancement: PC 12022.53(b): Personal Use of a Firearm;

20 Count 3: PC 245(b): Assault with a Semiautomatic Firearm upon Francesca Bigotti;

21 Enhancement: PC 12022.5(a): Personal Use of a Firearm
22

23 Count 6: PC 460(a): First Degree Residential Burglary committed with non-participant present;

24 Enhancement: PC 12022.5(a): Personal Use of a Firearm;
25
26

27 ¹ The People incorporate the prior “STATEMENT OF THE CASE” from the People’s Initial Response to Defendant’s
28 Discovery Motion pursuant to Penal Code section 745/AB 2542. The additional information provided here has developed
during the pendency and trial of this case.

² A complete transcript of this hearing is attached as Exhibit # ____.

1 Count 7: PC 182: Conspiracy to Commit Home Invasion Robbery.

2 **POINTS AND AUTHORITIES**

3 Statistical evidence shows from 2018 to 2020, the District Attorney’s Office has charged African
4 Americans proportionally to other races. Pursuant to Penal Code section 745 (a), the state shall not seek
5 or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or
6 national origin. A violation is established if the defendant proves, by a preponderance of the evidence, any
7 of the following:
8

9 The defendant was charged or convicted of a more serious offense than defendants of other
10 races, ethnicities, or national origins who commit similar offenses and are similarly
11 situated, and the evidence establishes that the prosecution more frequently sought or
12 obtained convictions for more serious offenses against people who share the defendant’s
13 race, ethnicity, or national origin in the county where the convictions were sought or
14 obtained . . .

13 (Pen. Code § 745 subd. (a)(3).)

14 “More frequently sought or obtained” or “more frequently imposed” means that statistical
15 evidence or aggregate data demonstrate a significant difference in seeking or obtaining
16 convictions or in imposing sentences comparing individuals who have committed similar
17 offenses and are similarly situated, and the prosecution cannot establish race-neutral
18 reasons for the disparity.

17 (Pen. Code § 745 subd. (h)(1).)

19 **I. STATISTICAL EVIDENCE FROM 2018 - 2020 DEMONSTRATES NO SIGNIFICANT
20 DIFFERENCE IN CHARGING DECISIONS BETWEEN AFRICAN AMERICANS AND
21 OTHER RACES.**

21 The Defendant has failed to show that the District Attorney has sought convictions against African
22 Americans more frequently in comparison to other races. From 2018 to 2020, the District Attorney’s
23 Office has filed **109 robbery cases**. (People’s Exhibit 1.) Of the 109 filed cases, **60.5%** were committed
24 by African Americans, **11.01%** were by Caucasian Americans, and **28.4%** were committed by other races.
25 (*Id.*) Of the 109 cases filed, **38 cases were later dismissed or reduced**. (*Id.*) The data shows that **65.79%**
26 of African Americans had their cases dismissed or reduced. (*Id.*) The data also shows that **7.89%** of
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1 Caucasian Americans had their cases dismissed or reduced and **26.32%** of other races had their cases
2 dismissed or reduced. (*Id.*) Of the remaining 71 cases, **57.75%** were filed against African Americans,
3 **12.68%** were filed against Caucasian Americans, and **29.58%** were filed against other races. (*Id.*)

4
5 Of the **71** cases that were filed, **16** of them were Home Invasion Robberies, similar to the
6 Defendant’s conviction. Of those cases, **13** of the 71 cases were committed by African Americans and **3**
7 were committed by other races. (*Id.*) None were committed by Caucasian Americans. (*Id.*)

8
9 Furthermore, between 2018 and 2020, no filing action was taken in **74** robbery cases. (*Id.*) The
10 cases were classified as NCF, No Charges Filed, for a variety of reasons. (*Id.*) Of the 74 cases, **57%** were
11 against African Americans, **20%** were against Caucasian Americans, and **23%** were against other races.
12 (*Id.*)

13 In totality, this data confirms that from 2018 to 2020, the District Attorney’s office did not seek
14 convictions for African Americans more frequently than other races. First, when comparing the number
15 of robbery offenses filed against African Americans to the number of robbery offenses presented for filing
16 against African Americans, the filing rate is almost proportional. In fact, the final filing rate is lower –
17 57.55% compared to 60.55%. Second, the data shows that African Americans are about two-in-a-half
18 times more likely to have *no filing action* taken against them compared to Caucasian Americans and other
19 races. Finally, when looking specifically at home invasions, the District Attorney’s Office has again,
20 sought convictions against African Americans at a proportional rate when compared to other races.
21

22
23 The Court should exercise caution when relying on the statistics that the defense presents. (*Watson*
24 *v. Fort Worth Bank and Trust* (1988) 487 U.S. 977, 996 [cautioning against use of facially plausible
25 statistical evidence based on “small or incomplete data sets and inadequate statistical techniques.]) The
26 Defense claims that because more African Americans are charged with robbery, or have enhancements
27 filed for the use of firearms, that the statistics therefore support her conclusion that the People filed charges
28

1 in a discriminatory manner. This is a complete misinterpretation of the data. As seen above, the data
2 actually confirms that the District Attorney's Office has charged cases proportionally based upon what
3 has been brought by law enforcement agencies for review. The People are not filing charges based upon
4 race, they are filing charges based upon the evidence presented.

5
6 The charges against the Defendant were not based on racial discrimination. Ms. Huang claims that
7 the Defendant is exposed to a 76-year prison term. Ms. Huang's claims are based upon her version of the
8 facts, her belief in the mitigating materials, and her misunderstanding of the law. However, Ms. Huang's
9 claims are factually and legally incorrect. The charges in the instant matter were supported by deductions
10 made from police reports, debriefings, and the use of evidence. Most importantly, the Defense never filed
11 a motion to dismiss any of the charges, nor were they successful in an PC 1118 Motion to Dismiss. Thus,
12 for the reasons above, the Defendant has failed to establish a prima facie showing that a violation of
13 section 745(a) has occurred, and as such, the Defendant's motion should be denied.
14

15
16 **II. THE DEFENDANT WAS TREATED APPROPRIATELY DURING THE PRE-TRIAL**
17 **PLEA BARGAINING PHASE.**

18 **a. Negotiations**

19 The People exercised appropriate prosecutorial discretion during pre-trial negotiations. An initial
20 offer was made on December 5, 2019 to all attorneys. The Defendant was represented by Julian Ross of
21 the Public Defender's Office at the time. The offer was as follows:
22

23 **Each Defendant would plead to Count 1 of the Information PC 211/213(a)(1(A)- home**
24 **invasion robbery**
25 **Vargas – midterm of 6 yrs. Prison**
26 **Delgado/Prescott/Lloyd – low term of 3 yrs. Prison**
27 **CPO for all victims and residence**
28 **Firearm to be returned to be lawful owner or destroyed**
Restitution
Any other standard terms

1 This offer was the result of a meeting between all parties – the assigned prosecutor, the supervising
2 DDA, and all four defense attorneys. At this meeting, Mr. Ross provided a significant amount of mitigation
3 evidence in the form of letters, college and background information. Deputy District Attorney Kevin Bell,
4 the supervising attorney, considered all information and then asked that the initial package offer be sent
5 to all defense attorneys. After the initial offer was made, the Defendant retained a second attorney, Stuart
6 Hanlon. Mr. Hanlon sought a negotiated resolution to the case and met with the assigned prosecutor and
7 DDA Kevin Bell. At this meeting, Mr. Hanlon provided additional mitigating materials. After considering
8 these mitigating materials, the People decided that the offer previously conveyed was still appropriate
9 given the nature of the violent offense.
10

11
12 The People offered to break up the package offers for those who wished to plea only if those who
13 were interested debriefed and then made themselves available to testify if the assigned prosecutor deemed
14 it necessary. The Defendant expressed a desire to plead to an unpackaged offer. However, he never
15 actually followed through. Instead the attorney who had expressed this desire, Stuart Hanlon, was replaced
16 by Ms. Huang. In addition, Co-Defendant Prescott was unwilling to resolve for the negotiated resolution.
17 However, co-Defendants Delgado, a Hispanic male, and Lloyd, an African American male, both expressed
18 a desire to break up the prior package offer and elected to debrief. As a result, offers to the Defendant and
19 co-Defendant Prescott were rescinded and preparations were made to try the case against them. These
20 preparations included the review of the charging document and correcting any filing mistakes or omissions
21 that were made. Co-Defendant Delgado was ultimately called as a witness at trial.
22

23
24 The Defendant’s Counsel claims that the Defendant was only offered six-year state prison that was
25 contingent upon him “debriefing” and testifying against the other co-defendants. Again, Ms. Huang’s
26 rendition of the facts is incorrect. More importantly, it is irrelevant what offer the People made because
27 the Defendant never accepted the offer. Counsel further contends that requiring the Defendant to “debrief”
28

1 and be willing to testing against his co-conspirators “demonstrates clear racial bias.” This statement is
2 based on the declaration of Oscar Flores, a prison reform advocate. In his declaration, Mr. Flores compared
3 a *criminal debriefing* to a person of *Muslim faith being forced to eat pork*. This is not only absurd, but it
4 demonstrates a complete ignorance of the criminal justice process. The concept of debriefing and later
5 being a potential prosecution witness serves an important governmental function. Similar to allocution it
6 allows a criminal defendant to accept responsibility for what they have done while at the same time
7 permitting the early resolution of cases. It is also intriguing that Mr. Flores contends that debriefing
8 displays clear racial bias because of the implication is African American and Hispanic communities when
9 the two suspects who chose to debrief were of Hispanic and African America descent. Clearly the
10 implications Mr. Flores asserts are fictitious. This is yet again, another example of the Defendant making
11 a meritless claim. Thus, for the reasons stated above, the evidence demonstrates that the Defendant was
12 treated appropriately during the negotiation phase.
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17 **b. The People were not required to engage in negotiations with the Defense.**

18 The People are under no obligation to make any offer to resolve a case. In fact, “there is no
19 constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial.” (*Weatherford*
20 *v. Bursey* (1977) 429 US 525, 560-561.) If the People do make an offer that is later rejected, it is not
21 vindictive to then add additional charges after the negotiations have failed. (See *People v. Bracey* (1994)
22 21 Cal.App.4th 1532, 1546; *Bordenkircher v. Hayes* (1978) 434 U.S. 357) Thus, for example, it is not
23 prosecutorial misconduct to hold new criminal charges in abeyance while attempting to obtain a negotiated
24 disposition in a pending case. A prosecutor’s offer not to file the new charges in the context of a legitimate
25 plea bargain offer does not implicate a defendant’s due process right not to be subjected to vindictive
26 prosecution. The pretrial addition of charges in the “give and take” of plea bargaining are proper. (*People*
27
28

1 v. *Twiggs* (1983) 34 Cal.3d 360, 371.) The courts have consistently refused to apply the presumption in
2 the context of failed pretrial plea bargains. [Citations.]” (*People v. Bracey* (1994) 21 Cal.App.4th 1532,
3 1546.)

4 Here, Ms. Huang claims that more efforts should have been made to resolve the instant case prior to
5 trial. Furthermore, Ms. Huang claims that “the prosecutor’s offer of six years indicates that his decision
6 to file charges potentially resulting in more than four decades of prison time was not based on public
7 safety. It is these kinds of almost totally discretionary decisions that invite implicit and explicit bias.”
8 (Defense Motion 16.) Ms. Huang’s claims are incorrect. The Court has already determined the People are
9 not required to engage in negotiations with the Defense. Despite any offers made by the People, the
10 Defense can still request a Court offer. Ms. Huang *did not* make a request until *after* trial had commenced³.
11 Thus, for the reasons stated above, again, the evidence demonstrates that the Defendant was treated
12 appropriately during the negotiation phase, and as such, the Defendant’s motion should be denied.
13
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17 **III. THE PEOPLE’S OBJECTIONS TO DIVERTING A VIOLENT FELONY WERE** 18 **OBJECTIVELY REASONABLE AND DEFENDANT WAS FOUND NOT SUITABLE** 19 **FOR DIVERSION**

20 **a. The Defendant was not statutorily eligible for Judicial and Veteran’s Diversion.**

21 Diversion is codified and recognized under Penal Code sections 1000 (low level misdemeanors
22 and drug offenses), 1000.36 (Mental Health Diversion), and 1000.81 (Military or Veterans Diversion).
23 Generally, felony offenses are not eligible for Diversion.

24 Here, the Defense complains about racial disparities that they perceive for inapplicable areas, such
25 as PC 1000. It is immaterial if diversion was not handled appropriately on low level drug or misdemeanor
26

27
28 ³ The request for a court offer was made the day after Defendant Vargas petition for Mental Health Diversion was denied by
the Honorable Judge Brady, Department 31.

1 cases because the Defendant committed a serious and violent felony thus making him not statutorily
2 eligible for Judicial Diversion. Furthermore, discussion of Veteran’s Diversion are equally fruitless
3 because the Defendant is not a veteran. Therefore, the Defendant could only pursue Mental Health
4 Diversion.

5
6 **b. The Court found that Defendant Vargas was not suitable or eligible for Mental Health**
7 **Diversion.**

8 On May 7, 2021, the Honorable Judge Brady found the Defendant not suitable for Mental Health
9 Diversion. (People Exhibit #2, pg. 25.) After the Defendant hired Ms. Huang, he moved for Mental Health
10 Diversion. Due to the violent nature of the offense, the People opposed the motion. A significant amount
11 of litigation ensued, however, the Defendant’s motion was denied. Judge Brady specifically questioned
12 the veracity of the opposition’s hired psychologist and found them to be conclusory in nature without the
13 supporting factual basis. (People’s Exhibit #2, pg7.) In addition, Judge Brady found that the Defendant
14 played a very active role in the planning of the home invasion. (People’s Exhibit #1 , pg. 24.) Judge Brady
15 also found that the offense was “extraordinarily dangerous” and was a “trauma event for family members”
16 who were victimized. (People’s Exhibit #2, pg. 23.) Finally, Judge Brady found that there was no nexus
17 between the Defendant’s alleged PTSD and the planned home invasion robbery he committed. Ultimately,
18 Judge Brady concluded that the Defendant was not suitable for diversion. (People Exhibit #2, pg. 25.)

19
20
21 Despite addressing Judge Brady’s ruling, the Defense calls the People’s view of the facts “inaccurate
22 and inflammatory” and that it “exemplif[ies] a reliance on racial stereotypes.” (Defense Motion pg 17.)
23 Additionally, the Defense further asserts that the People’s objection to Mental Health Diversion, on a case
24 involving a *violent and planned home invasion robbery*, is somehow evidence of racial bias. This is far-
25 fetched. The facts are that the Defendant had his diversion application heard by an objective and neutral
26 judge and his motion was denied. The Defense’s understanding of the law and their position on diversion
27
28

1 are flawed. Counsel is simply trying to rely on racial bias as a last-ditch effort to keep her client out of
2 prison. As the evidence has clearly shown, the Defendant's motion is meritless and should be denied.

3
4 **IV. THE PEOPLE'S CHALLENGE OF AN ALTERNATE JUROR WAS APROPRIATE AND**
5 **NOTINFLUENCED BY RACIAL BIAS OR DISCRIMINATION.**

6 The People exercised appropriate prosecutorial discretion throughout the trial phase. During jury
7 selection, the People learned several facts about Mrs. Foster, a prospective African American, alternate
8 juror: First, Mrs. Foster was related to Deputy District Attorney Nichelle Holmes; Second, Mrs. Foster
9 was married to Ms. Holmes' cousin; Third, Mrs. Foster and Deputy District Attorney Holmes were
10 Facebook friends who spoke on occasion; and finally, Mrs. Foster previously served on a jury where she
11 voted not guilty.
12

13
14 The Court found no *Batson/Wheeler* violation after the People removed Mrs. Foster as a juror.
15 First and foremost, the jury was selected prior to Mrs. Foster becoming eligible to serve. During the
16 selection of alternate jurors, the People elected to use a peremptory challenge to remove Mrs. Foster from
17 being an alternate and the Defense made a motion under *Batson/Wheeler*. The People provided two main
18 justifications for the removal of the juror: First, Mrs. Foster was related to, and had potential contact with,
19 DDA Nichelle Holmes. There has been personal conflict between the assigned prosecutor and DDA
20 Holmes. Based on the nature of the relationship between the assigned prosecutor and Ms. Holmes, it did
21 not appear appropriate to keep a relative of Ms. Holmes on the jury. Second, Mrs. Foster had volunteered
22 that she had previously served on a criminal jury and had voted not guilty. Based upon these facts, the
23 Court found no *Batson/Wheeler* violation.
24

25
26 The Defense misrepresents the events of the jury selection process. Ms. Huang claims that only
27 two prospective jurors were African American. This is not accurate. There were two prospective African
28

1 American jurors in the third panel and in the other two panels, there were several prospective African
2 American jurors who asked for hardship. Most importantly, the People and the Court both noted that *the*
3 *Defense* used a peremptory challenge to remove a prospective African American juror. The People cannot
4 be expected to empanel a prospective juror just because they may be African American, whereas the
5 Defense can pick and choose who they please. The Defense is using the Racial Justice Act as a scapegoat
6 to overcome the violent and dangerous home invasion that the Defendant planned and executed. These
7 facts prove that the defense's claims are completely meritless and have no evidentiary foundation. Thus,
8 for the reasons stated above, the Defense's motion should be denied.
9

10 11 12 **CONCLUSION**

13 The defense has failed to meet its burden in proving that the Defendant has been subjected
14 to unwarranted treatment or punishment due to racial bias or discrimination. No evidence of animus or
15 good cause has been shown to warrant discovery. The Defense has attempted to establish good cause by
16 citing to generalized statistics. However, the law does not find a prima facie case based on general claims
17 about the justice system. As such, the Defense's motion should be denied.
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22 Dated:

Respectfully Submitted,

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25 Christopher Sansoe
26 Deputy District Attorney
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EXHIBIT #1

2018-2020 (Filed) Results			
Total # of 211's Filed**	109		
	Black	White	Other
	66	12	31
Total # of 211 Dropped after Filing	38		
	Black	White	Other
	25	3	10
Total # of 211 Remaining	71		
	Black	White	Other
	41	9	21
Breakdown of Remaining 71 by Form			
Form 3	51		
	Black	White	Other
	24	9	18
Form 6	3		
	Black	White	Other
	3	0	0
Form 7	16		
	Black	White	Other
	13	0	3
Form 2	1		
	Black	White	Other
	1	0	0
Final Percentages			
Charging Percentages by Race	Black	White	Other
	0.58	0.13	0.30
	Black	Other Races	
	0.58	0.42	
Percentages of Cases dropped after filing by Race	Black	White	Other
	0.66	0.08	0.26
	Black	Other Races	
	0.66	0.34	

2018- 2020 (Not Filed)	
Total # of 211 Not Filed	Black
Breakdown by Race	42
	Black
Final Percentages	
(Not) Charging Percentages by Race	Black
	0.57
Charging Percentages by Race	Black
	0.57

**of the 109, 2 cases are not include because they d

2018 (Filed) Results

Total # of 211 Filed	35		
	Black	White	Other
	21	5	9
Total # of 211's Dropped after Filing	17		
	Black	White	Other
	11	1	5
Total # of 211 Remaining	18		
	Black	White	Other
	10	4	4
Breakdown by Form			
Form 3	12		
	Black	White	Other
	5	4	3
Form 6	2		
	Black	White	Other
	2	0	0
Form 7	4		
	Black	White	Other
	3	0	1
Final Percentages			
	Black	White	Other
	0.56	0.22	0.22
Charging Percentages by Race	Black		Other Races
	0.56		0.44
	Black	White	Other
	0.65	0.06	0.29
Percentages of Cases dropped after filing by Race	Black		Other Races
	0.65		0.35

2019 (Filed) Results

2018 (Not Filed) Res

Total # of 211 Not Filed (All Form 3)	
Breakdown by Race	Black 9
Final Percentages	
(Not) Charging Percentages by Race	Black 0.60
Charging Percentages by Race	Black 0.60

2019 (Not Filed) Res

Total # of 211 Filed	36		
	Black	White	Other
	25	4	7
Total # of 211's Dropped after Filing	14		
	Black	White	Other
	11	2	1
Total # of 211 Remaining	22		
Breakdown of 211 by Race	Black	White	Other
	14	2	6
Breakdown by Form			
Form 3	12		
	Black	White	Other
	6	2	4
Form 6	1		
	Black	White	Other
	1	0	0
Form 7	9		
	Black	White	Other
	7	0	2
Final Percentages			
Charging Percentages by Race	Black	White	Other
	0.64	0.09	0.27
	Black	Other Races	
	0.64	0.36	
Percentages of Cases dropped after filing by Race	Black	White	Other
	0.79	0.14	0.07
	Black	Other Races	
	0.79	0.21	

Total # of 211 Not Filed (13 are Form 3; 3 are Form 6)		
Breakdown by Race	Black	9
Final Percentages		
(Not) Charging Percentages by Race	Black	0.56
Charging Percentages by Race	Black	0.56

2020 (Filed) Results

2020 (Not Filed) Res

Total # of 211 Filed	38		
	Black	White	Other
	20	3	15
Total # of 211's Dropped after Filing	7		
	Black	White	Other
	3	0	4
Total # of 211 Remaining	31		
Breakdown of 211 by Race	Black	White	Other
	17	3	11
Breakdown by Form			
Form 3	27		
	Black	White	Other
	13	3	11
Form 6	0		
	Black	White	Other
	0	0	0
Form 7	3		
	Black	White	Other
	3	0	0
Form 2	1		
	Black	White	Other
	1	0	0
Final Percentages			
Charging Percentages by Race	Black	White	Other
	0.55	0.10	0.35
	Black	Other Races	
	0.55	0.42	
Percentages of Cases Dropped after filing by Race	Black	White	Other
	0.43	0.00	0.57
	Black	Other Races	
	0.43	0.57	

Total # of 211 Not Filed (13 are Form 3; 3 are Form 6)	Black
Breakdown by Race	24
Final Percentages	
(Not) Charging Percentages by Race	Black
	0.56
Charging Percentages by Race	Black
	0.56

Results	
74	
White	Other
15	17
White	
0.20	0.23
Other Races	
0.43	

o not have data, see line number 115 and 116 on first tab

Results

15

White	Other
2	4
White	
0.13	0.27
Other Races	
0.40	

Results

16

White	Other
4	3
White	Other
0.25	0.19
Other Races	
0.44	

ults

43

White	Other
9	10
White	Other
0.21	0.23
Other Races	
0.44	

NO CHARGES FILED	B	M	1/18/2018	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	2/1/2018	2	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	3/28/2018	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	5/8/2018	2	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	8/23/2018	1	PC211	First Degree Residential Robbery (Form 3)	NCFAB
NO CHARGES FILED	B	M	9/16/2018	1	PC211	First Degree Residential Robbery (Form 3)	PROBV
NO CHARGES FILED	B	M	10/20/2018	4	PC211	First Degree Residential Robbery (Form 3)	NCFAB
NO CHARGES FILED	B	M	11/21/2018	1	PC 664/PC211	Attempted First Degree Residential Robbery (Form 3)	NCFAB
NO CHARGES FILED	B	M	11/21/2018	1	PC 664/PC211	Attempted First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	W	M	1/7/2018	1	PC211	First Degree Residential Robbery (Form 3)	NCFAB
NO CHARGES FILED	W	M	8/18/2018	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	H	M	1/5/2018	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	H	M	8/18/2018	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	H	M	11/14/2018	1	PC211	First Degree Residential Robbery (Form 3)	NCFAB
NO CHARGES FILED	H	F	8/19/2018	1	PC211	First Degree Residential Robbery (Form 3)	NCFB

Total # of 211 Not Filed in 2018		15					
	Black	White	Other				
			H	P	A	X	
Total	9	2	4	0	0	0	
Men	9	2	3	0	0	0	
Women	0	0	1	0	0	0	

NO CHARGES FILED	B	M	1/14/2019	1	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	B	M	3/24/2019	4	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	B	M	6/14/2019	2	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	B	M	6/19/2019	1	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	B	M	7/18/2019	2	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	B	M	8/13/2019	1	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	B	F	8/27/2019	1	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	B	M	12/23/2019	1	PC211	First Degree Automated Teller Machine Robbery (Form 6)
NO CHARGES FILED	B	M	12/23/2019	1	PC211	First Degree Automated Teller Machine Robbery (Form 6)
NO CHARGES FILED	W	M	5/21/2019	1	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	W	M	12/27/2019	1	PC211	First Degree Automated Teller Machine Robbery (Form 6)
NO CHARGES FILED	W	M	12/28/2019	1	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	W	M	12/29/2019	1	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	H	F	1/14/2019	1	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	H	M	6/16/2019	3	PC211	First Degree Residential Robbery (Form 3)
NO CHARGES FILED	O	F	8/21/2019	2	PC211	First Degree Residential Robbery (Form 3)

Total # of 211 Not Filed in 2019		16				
	Black	White	Other			
			H	P	A	X/O
Total	9	4	2	0	0	1
Men	8	4	1	0	0	0
Women	1	0	1	0	0	1

NO CHARGES FILED	B	M	1/4/2020	1	PC211	First Degree Robbery, Inhabited Vessel/Floating Home (Form 5)	NCFB
NO CHARGES FILED	B	M	3/18/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	4/30/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	4/30/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	5/2/2020	4	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	5/2/2020	2	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	5/26/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	6/24/2020	1	PC 664/PC:	Attempted First Degree Residential Robbery (Form 3)	NCFE
NO CHARGES FILED	B	M	7/15/2020	3	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	7/25/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	8/28/2020	3	PC211	First Degree Residential Robbery (Form 3)	NCFH
NO CHARGES FILED	B	M	10/11/2020	2	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	10/26/2020	2	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	11/18/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	12/2/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	M	12/28/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	F	1/5/2020	1	PC211	First Degree Residential Robbery (Form 3)	PROBV
NO CHARGES FILED	B	F	5/19/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	F	6/3/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	F	6/20/2020	2	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	F	6/27/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	F	8/24/2020	4	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	F	9/15/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	B	F	12/2/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	W	M	2/12/2020	3	PC211	First Degree Residential Robbery (Form 3)	NCFK
NO CHARGES FILED	W	M	7/20/2020	2	PC211	First Degree Residential Robbery (Form 3)	NCFK
NO CHARGES FILED	W	M	7/20/2020	2	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	W	M	8/1/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	W	M	8/12/2020	1	PC 664/PC:	Attempted First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	W	M	8/21/2020	1	PC 664/PC:	Attempted First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	W	M	8/23/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	W	M	12/15/2020	1	PC 664/PC:	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	W	F	7/31/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	F	M	10/25/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	H	M	5/25/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFG
NO CHARGES FILED	H	M	6/14/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	H	M	7/3/2020	2	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	H	M	4/17/2020	2	PC 664/PC:	First Degree Residential Robbery (Form 3)	NCFK
NO CHARGES FILED	H	M	7/14/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	H	M	7/24/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	H	M	9/2/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	H	M	12/6/2020	2	PC211	First Degree Residential Robbery (Form 3)	NCFB
NO CHARGES FILED	O	M	3/28/2020	1	PC211	First Degree Residential Robbery (Form 3)	NCFJ

Total # of 211 Not Filed in 2020		43			
	Black	White	Other		
	H	P	A	X/O/F	
Total	24	9	0	0	2
Men	16	8	0	0	2
Women	8	1	0	0	0

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EXHIBIT #2

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IN THE SUPERIOR COURT IN THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA
HONORABLE LAUREL S. BRADY, JUDGE PRESIDING
DEPARTMENT 31

---oOo---

PEOPLE OF THE STATE)
OF CALIFORNIA)
)
Plaintiff,)
)
vs.)
)
AZRAEL VARGAS,)
)
Defendant.)
_____)



No. 05-192292-1
Mental Health
Diversion Hearing

REPORTER'S TRANSCRIPT OF THE PROCEEDINGS
MAY 7, 2021

A.F. Bray Courthouse, Martinez, California

A P P E A R A N C E S

FOR THE PEOPLE:

OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY
BY: CHRIS SANSONE,
Deputy District Attorney

FOR THE DEFENDANT:

LAW OFFICES OF YOLANDA HUANG
P.O. BOX 5475
Berkeley, CA 94705
BY: YOLANDA HUANG,
Attorney at Law

REPORTED BY: Laura K. Espinosa, C.S.R. No. 11400

1 MAY 7, 2021 AFTERNOON SESSION

2 P R O C E E D I N G S

3 ---oOo---

4

5 THE COURT: Good afternoon, ladies and
6 gentlemen.

7 Calling the matter of the People of the
8 State of California v. Azrael Vargas.

9 If I could get appearances, please.

10 MR. SANSOE: Good afternoon. Chris Sansoe
11 appearing on behalf of the People.

12 MS. HUANG: Good afternoon, Your Honor.
13 Yolanda Huang appearing on behalf of Mr. Azrael
14 Vargas, who is present out of custody in the
15 courtroom.

16 THE COURT: Ms. Huang, could you make sure
17 your microphone is on?

18 Thank you.

19 And I will note that, even though we have
20 not filled up all the chairs in the courtroom, I am
21 allowing for live stream for those who have been
22 following remotely.

23 I will remind everyone, especially those
24 on live stream, it's as if you are here in the
25 courtroom, and there is no recording allowed of the
26 court proceedings. If you need a record of today's
27 proceedings, you need to contact the court reporter,
28 who can provide you with a transcript.

1 All right. So I have now had the
2 opportunity to read and consider all the pleadings,
3 all the letters of support, Mr. Vargas' declaration
4 and the exhibits attached, Dr. Kantorova,
5 K-a-n-t-o-r-o-v-a -- I'm sure I mispronounced
6 that -- her report unredacted, and the prior
7 comments of counsel.

8 So I'm going to open it up for any
9 additional comments that you have now that we've all
10 had a chance to review all the materials.

11 And we'll start with the Petitioner.

12 MS. HUANG: Your Honor, thank you for
13 taking the time and the patience with this matter.

14 I hope that you've also had the
15 opportunity to read the declaration that we
16 submitted by Dane Cutting, who is actually present
17 in the courtroom. He is a childhood friend.

18 This has been factually a very complicated
19 case. It took me quite a while to understand what
20 the background was that led to PTSD. And part of
21 this is Mr. Vargas is only beginning to recognize
22 the trauma that he's undergone and the effect that
23 it's had on him.

24 And he would present this information in
25 isolated incidences without being able to draw any
26 overall picture. And it's only been speaking to Mr.
27 Nofle, his counselor for over 17 months, reading
28 Dr. Kantorova's report, and then also talking to

1 Dane Cutting that I was able to understand that his
2 experience was a traumatic experience over a period
3 of his entire high school where every day that he
4 went to school he was going into a battlefield where
5 he was subjected to violence, and that it was the
6 cumulative violence, plus the deaths that happened
7 in 2019 that pushed him over the edge.

8 As I was doing this investigation, it drew
9 a parallel for me to the memoir of Ta-Nehisi Coates,
10 The Beautiful Struggle. When I read it, I didn't
11 totally appreciate it. He describes his own high
12 school experience where every day that he went to
13 high school -- and he's obviously a very bright,
14 very articulate, sensitive man. He had to plan his
15 route. He had to plan who he was going to walk with
16 because he had to made sure that he had to survive
17 between his home and school and back again.

18 And this was the battlefield that
19 Mr. Vargas grew up in.

20 During that time, he did not retaliate.
21 He did not fight. He was not that kind of young
22 man. But the deaths in 2019 pushed him over the
23 edge. And I think what we have is the -- both
24 opinions from Mr. Noftle independently arrived and
25 Dr. Kantorova independently arrived, which come to
26 the same conclusion that he is suffering from PTSD,
27 which Dr. Kantorova verified through multiple
28 written and clinical assessments. And that this

1 PTSD with the event that happened in his adolescence
2 and particularly in 2019 is -- are the significant
3 reasons that drove him to do the act that he did.

4 I don't think anyone in the courtroom, I
5 don't think Mr. Vargas downplays the seriousness of
6 his actions on November 3rd. But I think the
7 letters -- the multiple letters that you've received
8 talk about very sensitive young man who has always
9 tried to be kind and tried to be sensitive to other
10 people and that this act in which he did what he did
11 was an aberrational act.

12 I think that it's important to note that
13 no one was killed. I don't even want to say that.
14 There weren't any shots fired. Mr. Vargas is not
15 described as having touched anyone. He didn't hurt
16 anyone. And that the object that he was trying to
17 rob was marijuana rather than individual personal
18 property.

19 So I think that even though -- and I think
20 also something that the Court should consider is
21 that, even though it was a home invasion robbery,
22 the home that was being used was being used for
23 large commercial distribution. So it wasn't a
24 random home that they went into, but it was someone
25 who was using his home as a shield in order to do
26 large scale marijuana distribution, illegal
27 marijuana distribution.

28 I think that Mr. Vargas' conduct and the

1 way he's comported himself since his release on bail
2 speaks well for him. Mr. Cutting -- and I hadn't
3 realized this until I spoke to him -- describes the
4 fact that when he was released from bail, many of
5 his friends and his mother did an intervention.
6 They surrounded him. They confronted him about his
7 conduct. They confronted him about his drug use.
8 They explained to him that they would support him,
9 but they demanded that he change.

10 What is wonderful is that he did change.
11 He has stopped using benzos. He has gotten into
12 counseling for the first time in his life. He has
13 acknowledged the impact of many of the issues,
14 although I think it's going to take quite some time
15 for him to unravel the full impact of the traumas on
16 him. And I think it's an on-going exploration that
17 he needs to do. It's still very difficult for him
18 to talk about the violence that he has personally
19 experienced.

20 But I think the fact that he's tried to
21 stay in school, that he is in school. He's doing
22 volunteering. He's done NA. And in the 17 months
23 he's been out on bail, he's not had any further --
24 he's not had any violations. He's not had to come
25 back to court. There have been no reports about his
26 conduct. I think this speaks well for the fact that
27 he is not presenting a danger to society. And that
28 you have so many people who say they are willing to

1 take an affirmative positive role in his life to
2 make sure that he has safe havens to deal with the
3 stress and trauma that he's facing and to take
4 further steps to deal with his PTSD.

5 Thank you very much, Your Honor.

6 THE COURT: Thank you. For the People?

7 MR. SANSOE: Yes. And I'm going to do
8 this in a much more structured manner than counsel
9 did. And I want to discuss a few different point.

10 The first one being this PTSD diagnosis or
11 the idea that he has PTSD. If he does, it's clearly
12 something newly developed.

13 I spoke to the jail and had them send me
14 his intake information in which the defendant
15 reported having no medical, psychological or
16 physical illness or disabilities.

17 If the Court would like a copy of that, I
18 can provide it.

19 THE COURT: Have you provided this to
20 counsel?

21 MR. SANSOE: I have.

22 May I approach?

23 THE COURT: Yes.

24 MR. SANSOE: So, Your Honor, to be clear,
25 if you look to second page there's a standard
26 checklist that our deputies go through at the jail.
27 This is part of a much bigger report, but I think
28 Your Honor is aware of it, where they ask inmates

1 when coming in from a crime, do you suffer from any
2 of these ailments. And it's for their own safety.

3 The defendant signed this form saying "no."

4 And it's important to note that. So if
5 there is a PTSD diagnosis, there's no evidence of it
6 before he committed a home invasion robbery in
7 concert with three other defendants while armed.

8 So really quickly the two points that
9 counsel made that are completely incorrect.

10 First, during this robbery, more than
11 marijuana was taken. Francesca Bigotti was zip-tied
12 and put on the ground and her wallet was taken while
13 the defendant pointed a gun her. So the idea that
14 personal property wasn't taken is not true.

15 So there's a comment that this is a large
16 scale commercial drug distribution.

17 The home where this happened is a
18 residential home in the city of Moraga on a
19 residential street. The victims are a family. And
20 one of the members of that family, one of the
21 children, who is now an adult, sells marijuana. But
22 if you look at the photos of the home, if you walk
23 through the home, as I have, I can tell you it looks
24 like a normal home.

25 There aren't labs set up anywhere. In
26 fact, I don't think there's any evidence that
27 anybody could say that police were even aware drugs
28 were being sold there. So the idea this is some

1 large scale distribution is factually wrong.

2 I've already noted the other factual
3 inaccuracies from counsel's brief, so I don't want
4 to go through that into too much detail.

5 I think the biggest hurdle counsel has to
6 get over is suitability. Because that is clear in
7 the law that a defendant must be suitable for mental
8 health diversion, and in this case, he's clearly
9 not.

10 This is a home invasion robbery where the
11 defendant personally acquired a firearm the day
12 before the crime or, at the latest, the morning of
13 the crime and used it 12 hours later. He personally
14 went out and found himself a handgun, a loaded
15 handgun.

16 He then conspired with three other people.
17 They armed themselves with baseball bats, masks,
18 gloves, zip-ties, bags, and they drove from Oakland
19 to Moraga to commit a planned robbery of a home at
20 night. And anybody who would've pulled up to this
21 home, Your Honor, would have known it was occupied
22 because there's at least three cars in the driveway
23 and the lights are on. It's also approximately 9:20
24 at night.

25 So to put it bluntly -- and this is just
26 something as a prosecutor I can say -- there are
27 very few crimes that are as dangerous as what this
28 man did. Aside from pulling the trigger on the gun,

1 there are very few crimes that could result in death
2 to himself, his co-conspirators or family members.
3 So I clearly -- I'd make the point that he's not
4 suitable.

5 With regards to Dr. Kantorova's report and
6 the second issue or second point I want to bring up,
7 not only does he have to be suitable, but also PTSD
8 he experiences must have been a significant factor
9 or a substantial cause in committing this offense.

10 And Dr. Kantorova -- I'll say this: I
11 don't put her as a doctor. I put her as a professor
12 and advocate. She is a teacher who teaches on mass
13 incarceration, leads independent study groups on
14 mass incarceration and trauma of incarceration. The
15 Court has her CV. The defense went out and hired an
16 expert to write a report, and it shows when you read
17 the report. Because in reading this report, what
18 you see are conclusions, what you see our statements
19 that he has PTSD; therefore, this crime was caused
20 by it.

21 But there's no connection. The big thing
22 missing from her report, in fact, a growing thing
23 that just is in there that has not been discussed,
24 is how PTSD can cause a 19-year-old man to spend two
25 days conspiring with his counterparts. They can go
26 and plan this out, get the firearm, get the weapons,
27 obtain transportation, and then go commit this
28 crime. And the reason Ms. Kantorova can't describe

1 that or explain that is because there is no efforts
2 to or there's no literature on it. Quite frankly,
3 there's no studies on this type of behavior because
4 it doesn't exist.

5 When we look at PTSD -- as Your Honor is
6 aware, we have lots of people who have it who come
7 through military court, veteran's treatment, and
8 drug diversion -- what we see are bursts of anger,
9 dangerous behavior, yes, but not concerted efforts
10 like this. We see people getting bar fights or who
11 assault other people. Quite frankly, this behavior
12 is so out of the norm for someone claiming he has
13 PTSD that it's impossible to draw a causal
14 connection. I don't think Dr. Kantorova's report is
15 satisfactory.

16 I'd also note that her opinion is only as
17 good as the information that went into it. Counsel
18 chose not to provide Ms. Kantorova with two items --
19 or sorry -- three items. One would be the jail
20 calls from the defendant to people after the crime.
21 The other two I have in my hand, the debriefings of
22 his codefendants.

23 His codefendants told a very different
24 story about what led up to this crime.
25 Specifically, that greed and money is what led up to
26 it. Specifically, Thomas Lloyd described that they
27 did this for the money. They did it because they
28 got greedy.

1 His friend Domenico Delgado, who he lived
2 with in Long Beach, said that they did it because
3 they got shorted when the defendant went and bought
4 the marijuana to begin with.

5 The day before the crime, Defendant Vargas
6 bought two pounds of marijuana. He then went home
7 or then went back to Delgado's house and discussed
8 it with his other three counter parts, and they
9 decided they got shorted on what he bought, that he
10 should have gotten more marijuana for the money he
11 put forward. That is the true basis for this crime.
12 That is why this happened.

13 PTSD, this explanation, these are all
14 things contrived after the fact by someone who is
15 caught. So I have a very hard time grasping the
16 concept that how PTSD can lead us here. I think
17 Court should have the same concerns as I do.

18 With that, I submit absent any questions
19 from the Court.

20 THE COURT: Is the matter submitted?

21 MS. HUANG: May I respond, Your Honor?

22 THE COURT: Go ahead.

23 MS. HUANG: The jail intake form. And
24 I've seen very many of these jail intake forms.
25 They're done very briefly. They're done in a state
26 where we're asserting that Mr. Vargas is under a
27 relapse, an inflamed PTSD, and that he doesn't
28 recognize that he has a mental condition or a

1 disability, and so he checks on that form that he
2 doesn't have any of this. And he doesn't admit to
3 drug use. So the form itself, if you want to
4 consider it an admission, is basically a denial of
5 the state of his mental health.

6 If you look at the statement from Dane
7 Cutting, he says that during the fall when he was in
8 contact with Mr. Vargas, he noted that Mr. Vargas
9 was -- had significantly increased abuse of
10 pharmaceuticals and that he seemed to have had an
11 altered state of reality, an altered interpretation
12 of reality, that he was -- Mr. Cutting was extremely
13 concerned about the condition that Mr. Vargas was
14 in.

15 And I think this is what both Mr. Noftle
16 and Dr. Kantorova had come to, that it wasn't there
17 was a trigger and there was an immediate action, but
18 it was the entire fall in which he was disconnected
19 from reality, both because of the violence he had
20 suffered and because of the continued deaths that
21 had happened in 2019, and that that pushed him over
22 to the edge to where he wasn't thinking rationally.

23 I think it's also important to note that
24 the three codefendants, all three codefendants were
25 new acquaintances to Mr. Vargas. What Dr. Kantorova
26 is saying is that part of the trauma that he
27 underwent was loss after loss after loss of close
28 friends. First with Rashawn Williams, and then with

1 Ava Villanueva, who died in a car crash with two
2 siblings in the spring of 2019, with the death of
3 his Malik Bernstein who died of an asthma attack.
4 And that the grief put him into this deep, dark hole
5 that he could not climb out of and that he was
6 assuaging himself with drugs. And so it really
7 fogged up his mind, and he wasn't thinking clearly.

8 Now, he was struggling to go to school at
9 CalState Long Beach, and his roommate was one of his
10 codefendants, whose name I can't pronounce. But
11 these were new people he had met. And the two
12 codefendants -- the other two codefendants, Tommy
13 Lloyd and Emarieay Prescott, were childhood friends
14 of this roommate. They were all new people that he
15 had just met.

16 And so it was in this condition where
17 they -- and one of them has had several felony
18 convictions for armed robbery. So he gets put into
19 this situation, and he gets talked into it, and he's
20 just not thinking clearly. His mind is just warped
21 and bent. And that's what both Mr. Noftle and
22 Daniela Kantorova has tried to describe to you,
23 which I think also the declaration from Dane Cutting
24 really alludes to.

25 I think it's rare that you're going to
26 have a young man, who does a crime that we all admit
27 is terrible, to have as much community and family
28 support that has been demonstrated. People have

1 come time and time again to the courthouse in hope,
2 by their presence, to show you that they are here in
3 support of Mr. Vargas.

4 Now, in terms of the crime that night,
5 yes, it was a residential house in Moraga. Now
6 Mr. Sansoe and I disagree on the facts. But when I
7 think -- if you look at the fact -- and I'm happy to
8 supplement this -- since 2014, that young man who
9 lived in that house had been actively involved in
10 large scale drug dealing. We have photos from his
11 Instagram page from 2014 to today where he is
12 actively promoting and selling large scale sales of
13 marijuana and marijuana paraphernalia illegally.

14 It may be the home that they live in, but
15 it's also the business that they run. And if the
16 police choose to turn a blind eye to it -- I think
17 it's a mischaracterization to say this is a
18 residence and this is just a residential home
19 invasion robbery.

20 The wallet was not taken by Mr. Vargas.
21 He did not zip-tie anyone.

22 And I think, as a small detail on the zip
23 ties, the 50 pounds of marijuana that were in the
24 boxes were very loosely secured. They were in
25 turkey basting bags that you use at Thanksgiving in
26 which they just tied the top to a knot. And they
27 had gone the night before. He had gone there the
28 night before to purchase for a sale he had planned.

1 And we have witnesses to that effect.

2 When he saw the way the bags were done he
3 bought zip ties, tiny little zip ties, because he
4 wanted to secure the top. He did not use the zip
5 ties to tie anyone up. He wasn't thinking of using
6 those zip ties to tie anyone up. He was just in a
7 zone where he wasn't thinking clearly, and he did go
8 after the marijuana. But I think to characterize it
9 as a brazen, callous, home invasion robbery is a
10 misstatement of what happened in that situation.

11 So I think that suitability -- the way I
12 understand the People arguing suitability is that
13 the nature of the crime in and of itself makes
14 Mr. Vargas unsuitable. And I don't believe that
15 that is what the statute says. When they amended
16 the statute, they could have included these crimes
17 in crimes that are not covered by it, but the
18 legislature personally went through and selected
19 eight criminal acts that are not covered by mental
20 health diversion, and they do not include these
21 kinds of robberies.

22 So the suitability, I think, is not about
23 the act in and of itself. The suitability is really
24 about, Does Mr. Vargas pose a community danger? And
25 I think the ample community support, letters after
26 letters, the fact that Dane Cutting would submit
27 such a lengthy declaration in his own words tells
28 you about the support and the fact that he has the

1 support to never offend again. And I think that
2 that is the basis of suitability rather than what
3 Mr. Sansoe is arguing.

4 Thank you.

5 THE COURT: Counsel, last words.

6 MR. SANSOE: Last words.

7 I would really like it if we could keep
8 the facts the facts and keep them accurate.

9 For starters, I do want to point this out.
10 The defendant didn't buy the zip ties. Mr. Delgado
11 had them in his car.

12 And with regard to why they were used in
13 this crime, in this case Mr. Delgado told us: You
14 know, If somebody tried, you know, to come out of
15 the room or something, we had to pin them down.

16 So the question was, What are the zip ties
17 for? Is that in case anybody comes at you? Is that
18 what the plan was? Yeah, if anybody saw us.

19 Mr. Delgado described using the zip ties
20 to actually detain the members of the Bigotti family
21 in their home, which is exactly what happened.

22 Counsel also leaves out the fact that the zip ties
23 were made into handcuffs before the crime, actually
24 looped together to give them strength.

25 So I'd like to keep the facts accurate.

26 Other than that, the suitability isn't
27 just the crime itself. It's the fact that this
28 defendant has been carrying handguns since he was

1 14. I don't think that's very safe for our
2 community or the People in the State of California.
3 This crime speaks volumes.

4 So with that, I would submit.

5 THE COURT: All right. Matter submitted?

6 MS. HUANG: Yes, Your Honor.

7 MR. SANSONE: Yes.

8 THE COURT: So a couple of preliminary
9 things, and I'll walk through this.

10 This hearing is to determine whether or
11 not Mr. Vargas is both eligible and suitable for
12 mental health diversion.

13 The statute requires that there be a nexus
14 between the mental health condition and the crime
15 that is charged. Nexus is not a technicality. It
16 is a fundamental statutory requirement. And it is
17 described in different ways as a significant factor,
18 but what it is is a nexus, a connection, between the
19 mental health condition and the crime that is
20 charged.

21 It is similar, if not the same, to the
22 criteria for military diversion or veteran's
23 treatment court where there has to be a connection
24 between these two. These diversion programs were
25 created for those situations where the mental health
26 condition contributed to and there was a nexus, a
27 connection, to the actual crime that was committed.

28 I would also note that this is not a

1 sentencing hearing here. That is not what I'm here
2 to do. This is a petition for mental health
3 diversion. It is not a sentencing hearing where
4 evidence is presented in mitigation after a
5 conviction is had. So I want to make sure that
6 everybody is clear about what this proceeding is and
7 what it is not.

8 Initially, I will commend Mr. Vargas on
9 his efforts in recovery and going to school and his
10 volunteer work. That's impressive. He is very
11 fortunate to have very strong support from friends,
12 family and community members. I would agree with
13 counsel that we don't see that often, but it's not
14 the first time that I have seen that.

15 It also is clear to me, from everything
16 that I have reviewed, that Mr. Vargas had a
17 traumatic experience growing up in the area that he
18 grew up in. And I think there's ample evidence of
19 depression and drug use and Post Traumatic Stress
20 Disorder.

21 I would note that we unfortunately, very
22 unfortunately, see this all too often in young
23 people who grow up in neighborhoods where the level
24 of violence is high, and they experience violence in
25 their community at a very young age and often
26 repeatedly, and they lose friends and family members
27 to that street violence. It's something that we
28 here, unfortunately, see on a regular basis. And

1 I've been doing this for a very long time, and I've
2 seen it over and over again and also the effect it
3 has on both those young people growing up as well as
4 in the community. So this is -- the situation is
5 unfortunately not an outlier. We see this
6 regularly.

7 With regard to the doctor's report, I had
8 some concerns about Dr. Kantorova -- I'm
9 mispronouncing it, I'm sure -- about her report.
10 Normally what I see in these reports is the tests
11 that are given, as well as the test results, or at
12 least a summary of the test results. And I did not
13 see that in her report. What I did see was broad
14 conclusions, and sometimes it's difficult to get to
15 the broad conclusion if you don't know what the
16 basis of that is.

17 I'm not going to dispute today that
18 Mr. Vargas suffers from Post Traumatic Stress
19 Disorder. I think there's sufficient evidence of
20 that and the reasons for it, along with depression
21 and his drug use.

22 What occurred to me in reviewing all of
23 these materials is that the doctor's reports and the
24 letters of support are definitely evidence in
25 mitigation for sentencing purposes. And I was a
26 little uncomfortable that a number of the letters
27 were actually even addressed in that way, talking
28 about the difference between probation and prison.

1 That's not what this hearing is about.

2 This is an eligibility and suitability
3 hearing for mental health diversion, not a
4 sentencing hearing after a trial has been held. And
5 I want to make sure that everybody is clear that
6 those are two very different things.

7 In the doctor's report, there is one
8 conclusionary paragraph regarding the connection or
9 nexus, and unfortunately in the report there is no
10 support for that connection. And I'll find it here.

11 And, actually, before I even get there --
12 I'm looking on page 8 -- there is -- apparently, the
13 doctor reviewed a videotape of the interview and
14 made some conclusions that I found a little
15 troubling and speculative.

16 The doctor, without any further
17 information, made conclusions about whether or not
18 he was under the influence, whether or not he was
19 tired, whether or not he was confused and whether
20 his judgment was impaired.

21 It also made some assumptions that he was
22 under the influence of Xanax, Percocet, cannabis and
23 Adderall. There's no evidence in front of me that
24 he was, in fact, under the influence that day and
25 whether -- if he was under the influence, what
26 affect it had on him.

27 So I'm troubled with that conclusion in
28 the doctor's report.

1 With regard to nexus, the doctor on page
2 12 is describing the months leading up to the
3 offense and describing Mr. Vargas' psychological
4 state. And then she adds, it says, This compounded
5 with intoxication, pressure from new acquaintances,
6 and fear of abandonment were likely significant
7 factors in his decision to participate in the Moraga
8 robbery.

9 There's no support for that nexus. There
10 is -- there are conclusions there that aren't
11 supported by the other information. It may or may
12 not be the case that he was under the influence or
13 that he was pressured, but there is no evidence of
14 that here. And the nexus here is not supported.
15 The nexus between -- the nexus has to be between his
16 mental health condition and the crime that was
17 actually committed.

18 In reviewing the information from both of
19 you, this was a drug ripoff. It was not retaliation
20 for his friend's murder or preemptive strike against
21 somebody who was threatening him or an out-of-bounds
22 reaction to somebody approaching him where his
23 reaction was inappropriate in scale to what had
24 occurred, or anything that was tied to the actual
25 traumatic events in his life that have been
26 described.

27 This was, from all accounts, a preplanned,
28 armed drug ripoff of a marijuana dealer at a house

1 where other family members were present, including a
2 child. And from everything I've heard, there was
3 planning involved in that masks, gloves, baseball
4 bats, a gun that Mr. Vargas had, and zip ties that
5 have just been described as already prepared to be
6 used as handcuffs were brought to the scene.

7 This is not something that's spontaneously
8 happened. There was planning involved in this, and
9 there were people present who -- in addition to the
10 person who, I'll talk you at your word, has been
11 dealing marijuana for years, we unfortunately also
12 see a lot of marijuana drug rip cases in this
13 courthouse. And when it involves the entry -- the
14 forced entry into a home where other people are
15 present, it makes it an extremely dangerous
16 situation that could have easily gone south
17 resulting in injury or death of the people there,
18 when planned or unplanned. And, unfortunately, we
19 have seen that as well.

20 It is an extraordinarily dangerous
21 situation when you enter a residence armed and
22 prepared to tie up or restrain the people who are in
23 the house. And apparently one of the residents of
24 the house -- not the alleged drug dealer, his
25 mother -- was zip tied and her wallet was taken
26 while Mr. Vargas was pointing a gun at her.

27 I also have to note that this, I'm sure,
28 was a trauma event for the family members that were

1 in the house. And I don't think we can dismiss or
2 minimize the effect of those on the receiving end of
3 a home invasion robbery. I think you have to look
4 at the effect it's had on everyone involved here.

5 But primarily my concern is the statutory
6 requirement of nexus. There has to be evidence that
7 the mental health condition was a significant factor
8 in the commission of this offense. And -- I'm
9 sorry -- with everything that I've reviewed, I don't
10 believe that's there.

11 We see nexus in many cases where someone
12 has gone after the person that they believed has
13 wronged them or unfortunately targeted somebody else
14 because they were perceived wrong. We have cases in
15 which the mental health condition has interfered
16 with judgment. And these cases often involve not
17 planned behavior, but spontaneous behavior and/or
18 behavior that is impulsive.

19 From everything I've heard, this was a
20 planned event. Although I have no idea how long
21 Mr. Vargas knew these individuals, he knew them well
22 enough to plan a home invasion robbery and take the
23 accouterments with him. It is not a case where he
24 was the driver of the car outside the home taking
25 them away from the scene. He played a very active
26 role here with a gun in his hand that he brought
27 with him.

28 So I don't think that this qualifies for

1 the suitability aspect of this. He's clearly
2 eligible. The statute makes clear that except for
3 the excluded crimes, other crimes are eligible, but
4 that's only the first piece of the analysis. It's
5 the suitability.

6 So my finding is that we don't have a
7 nexus -- we really don't -- between the mental
8 health condition, which I'm accepting as true, and
9 this particular crime and the severity of it.

10 And in going further to the suitability,
11 this was an extraordinarily dangerous activity,
12 which could have ended much worse than it already
13 did. And I think there is a public safety aspect to
14 that.

15 But the primary thing is the nexus. It's
16 just not there in my opinion. There are cases
17 involving serious charges that I have accepted into
18 military diversion over objection of the People
19 because there is a strong nexus that is shown and
20 because there's a determination of suitability. I
21 am not finding that in this case.

22 All the materials that you have provided
23 to me are clearly evidence in mitigation that you
24 can present if and when the case gets to that point,
25 but it's not appropriate for mental health
26 diversion. So I'm going to deny the petition.

27 I'm going to -- I'm going to return the
28 unredacted -- well, actually, I'd like to keep it in

1 the file as part of the record unless you request
2 its return. It will be in a sealed condition
3 because there's a sealing order. But it's your
4 choice. I understand your reasons for having some
5 concern.

6 MS. HUANG: Your Honor, may I ask a
7 question of clarification?

8 THE COURT: Okay.

9 MS. HUANG: I wanted to just be clear --

10 THE COURT: We're not arguing again, so
11 make sure it's a clarification of what I said.

12 MS. HUANG: Yes.

13 On the issue of suitability, I understand
14 the more common events where someone spontaneously
15 erupts and acts impulsively, but is Your Honor
16 saying that in every situation where there's a
17 planned event that is not a suitable event?

18 THE COURT: No. Because part of
19 suitability is the public safety issue and whether
20 or not I think there is a significant public safety
21 issue. That's part of the analysis of suitability,
22 so it's not a blanket exclusion.

23 MS. HUANG: And so Your Honor is saying
24 that the nature of the action that was taken by --
25 in and of itself creates the unsuitability in this
26 case?

27 THE COURT: That's one factor, yes.

28 MR. SANSONE: One thing. I understand the

1 Court's ruling. I would just ask that it be with
2 prejudice at this point.

3 I spoke with Ms. Lyddan. For
4 recordkeeping and keeping our office squared away on
5 this, that's my request.

6 MS. HUANG: I didn't totally understand
7 the request.

8 THE COURT: The request is that the denial
9 of the petition be with prejudice.

10 MS. HUANG: And that means we cannot renew
11 it?

12 THE COURT: That's what he's asking for,
13 yes.

14 MS. HUANG: Well, Your Honor, on the issue
15 of suitability, I would like to request that it be
16 without prejudice.

17 I understand the comments you've made with
18 regard to Dr. Kantorova's report. And if there's a
19 possibility of amending it, I would like to leave
20 that open if Your Honor would be open to that.

21 THE COURT: Well, the problem with that is
22 that's not what the purpose of this hearing is. You
23 lay out your best case for the petition and all the
24 evidence that you have. It's not an invitation to
25 come back and fill in any gaps that I've identified,
26 which is really what you're talking about.

27 We don't get past nexus. I went through
28 my analysis of suitability, but to be honest with

1 you, we don't get past nexus. And that's a
2 statutory requirement for entry into mental health
3 diversion. And I went to the next step to talk
4 about suitability, but frankly, we just don't get
5 past that first step.

6 I don't think that this is -- it's not
7 appropriate, then, that we get a second go-around
8 based on the comments the Court has made to fill in
9 whatever gaps that I've identified. You provided me
10 with quite a bit of material, and it was very
11 thorough. It just doesn't fit the statute. So I'm
12 not envisioning a situation where we would revisit
13 this and add additional material. Unless there is
14 something fundamental that you were not aware of or
15 should not have been aware of to present to me at
16 the first go-around. Otherwise, we'd have renewed
17 petitions on virtually on every case.

18 My inclination is to deny it with
19 prejudice unless you can convince me that there's
20 something that you didn't know and there's no way
21 you could have anticipated and that would be
22 something that you would want part of your
23 presentation.

24 MS. HUANG: Well, Your Honor, I think part
25 of the difficulty in this situation is that there
26 has been a debrief. And the two statements by the
27 codefendants was to get a more favorable statement,
28 and in and of itself, I think there are biases built

1 into the debrief.

2 THE COURT: Oh, no doubt, no doubt.

3 MS. HUANG: The second issue is it's -- if
4 we did not present it clearly that Mr. Vargas was
5 heavily under the influence of pharmaceuticals, then
6 we -- and then it's my fault for not doing it. So
7 he was completely clouded in that sense.

8 And the third aspect, which I see we have
9 fallen down on in the nexus, is the fact that with
10 all the deaths that have happened with him, there
11 was with an incredible emotional need not to be
12 abandoned. And he had these new friends --

13 THE COURT: Counsel, we're now rearguing.

14 MS. HUANG: Well, that's why I'd like to
15 be able to ask that it be without prejudice for us
16 to amend on those issues which Your Honor raised in
17 terms of nexus.

18 THE COURT: All of those things that you
19 just laid out are things that clearly could have
20 been and frankly you did argue them in your comments
21 before as well as in the materials.

22 We cannot have a process in which, after a
23 full hearing and full consideration of all the
24 materials and plenty of time to put that together,
25 that I identify the things that I think are wanting
26 and then we come back for a second round. We would
27 perpetually on every single petition have multiple
28 hearings over and over again, which is not to

1 anyone's benefit.

2 So I'm not hearing -- and the types of
3 things that you are identifying are things that,
4 frankly, I think you covered and you were very
5 thorough and things that, knowing what the statute
6 says, are things that should have and could have
7 been brought forward.

8 At this point, I'm going to deny it with
9 prejudice.

10 How would you like me to handle the
11 doctor's report?

12 MS. HUANG: Why don't you keep it in the
13 file, Your Honor, under seal.

14 THE COURT: Will do. Thank you very much.

15 Do you have a future date? We're not
16 showing future dates.

17 MR. SANSONE: Because we're in trial
18 upstairs.

19 THE COURT: You are today?

20 MR. SANSONE: We have resume on Monday.
21 Monday should be starting week --

22 THE COURT: That's fine. As long as you
23 have a future date in another court.

24 MR. SANSONE: No, we're fine. Thank you.

25 (Proceedings were recessed.)

26 ---oOo---

27

28

1 STATE OF CALIFORNIA)
2) ss.
3 CONTRA COSTA COUNTY)
4

5 I, Laura Espinosa, Official Court Reporter
6 of the Superior Court of the State of California,
7 County of Contra Costa, do hereby certify that the
8 foregoing pages contain to the best of my ability a
9 full, true and correct transcription of my stenotype
10 notes of the proceedings had within the proceedings
11 of said Court of the cause in the files of the
12 action of said court; and that said transcript
13 includes all rulings, acts or statements of the
14 Court, also all motions, objections or exceptions of
15 counsel that the reporter could audibly discern, and
16 all matters to which the same relate.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 18th day of May, 2021.
19
20
21



Laura K. Espinosa,
C.S.R. No. 11400

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25
26
27
28

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6 Attorneys for Plaintiff

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
CONTRA COSTA COUNTY

9 THE PEOPLE OF THE STATE OF CALIFORNIA,) NO. 05-192292-1
10)
Plaintiff,) PEOPLE'S RESPONSE TO
11 vs.) DEFENDANT'S POST CONVICTION
MOTION TO DISMISS FOR VINDICTIVE
12 AZRALE VARGAS) PROSECTUION: DECLARATION OF
Defendants.) COUNSEL AND POINTS AND
13) AUTHORITIES

14 Date: 7/23/2021
15 Time: 8:00 AM
Department: 23

16 **DECLARATION OF DDA CHRIS SANSOE**

- 17
- 18 1. I am an attorney in good standing with the State Bar of California;
 - 19 2. I am currently employed as a Deputy District Attorney with the Contra Costa County District
20 Attorney's Office (CCCDAO). I have been employed in this capacity since January 1, 2013. I am
21 currently assigned to the Sexual Assault Unit. Prior to this assignment I was assigned to the
22 Victims of Violent Crime Unit.
 - 23 3. In my time as a Deputy District Attorney, I have tried multiple Home Invasion Robberies where
24 the target of the robbery was marijuana (more commonly referred to as a "Dope Rip".) As a
25 result of these prior trials, I am aware of the challenges presented in trying this type of case.
 - 26 4. I am personally assigned to case # 05-192292-1. This case has been vertically assigned to me
27 since the first arraignment of all defendants on November 7, 2019.
- 28

- 1 5. I personally conducted the preliminary hearing in this case on November 26 and 27, 2020.
- 2 6. I have been present during multiple attempts to negotiate this case between Supervising District
3 Attorney Kevin Bell, and attorneys for the Defendants.
- 4 7. On December 5, 2019 I personally sent the People's offer to resolve this case to opposing
5 counsel. The offer required all Defendants to plead to a Home Invasion Robbery (PC 213).
6 Defendant Vargas would be sentenced to the mid-term sentence of 6 years state prison.
7 Defendants Delgado, Prescott and Lloyd would be sentenced to a term of 3 years state prison.
8 (See Attachment #1.)
- 9 8. After this initial offer was made Defendant Vargas retained attorney Stuart Hanlon to represent
10 him in this case. Mr. Hanlon contacted the People and arranged further in person meetings to
11 discuss potential resolution.
- 12 9. During the negotiation process it became clear that Defendant Prescott was unwilling to resolve
13 his case.
- 14 10. On July 28, 2020, Assistant District Attorney Dan Cabral emailed counsel for Defendants
15 Vargas, Delgado and Lloyd. In this email ADA Cabral addressed whether the People would
16 unpackage their offer considering that Defendant Prescott was unwilling to resolve his case.
17 ADA Cabral made clear that the cases could be unpackaged upon debriefing with law
18 enforcement and if necessary, testifying at trial. (See Attachment #2.)
- 19 11. I spoke with Mr. Hanlon several times about Defendant Vargas debriefing and taking advantage
20 of the People's Offer in this case. Mr. Hanlon expressed a desire to have Mr. Vargas, who was
21 out of custody, debrief. On August 14, 2020 Mr. Hanlon emailed ADA Dan Cabral and myself
22 and stated that Defendant Vargas would accept the resolution. Mr. Hanlon expressed hesitation
23 with his client going to prison as a "snitch". He also asked for more time to work on a global
24 resolution for all four defendants. (See Attachment #2.)
- 25 12. Despite this email of acceptance, no debriefing was ever set up nor was any agreement ever
26 formalized.
- 27
- 28

- 1 13. On or about September 9, 2020, attorney Stuart Hanlon moved to withdraw from this case.
2 Defendant Vargas substituted Ms. Yolanda Huang as his attorney in this case. I personally made
3 Ms. Huang aware of the opportunity to debrief and to take advantage of the People's offer. Ms.
4 Huang never asked to set up a debriefing.
- 5 14. On September 15, 2020, Defendant Domenico Delgado-Caramagno agreed to debrief. On this
6 date he met with Detective Kevin Mooney and myself. Defendant Delgado-Caramagno provided
7 a statement explaining in detail how this conspiracy was carried out and how the crimes were
8 committed.
- 9 15. On September 25, 2020, Defendant Thomas Lloyd agreed to debrief. On this date he met with
10 Detective Kevin Mooney and me. Defendant Lloyd provided a statement explaining in detail
11 how the conspiracy was carried and out and the crimes were committed.
- 12 16. As a result of the debriefing of Defendants Lloyd and Delgado-Carmagno, I prepared this case
13 for trial. Preparation for trial in this matter has included review of all available charges and an
14 evaluation of how to proceed with potential charges at trial.
- 15 17. During the preparation of this case for trial I realized that there was an oversight in the
16 Information that was generated after preliminary hearing. Due to this oversight not all of the
17 charges I sought to add were in fact added to the Information. My intention was to split the
18 existing charge of Home Invasion Robbery into two separate robbery charges. This would be
19 done to avoid any later unanimity concerns at the time of trial. I also sought to add a First-
20 Degree Residential Burglary charge. Finally, each should have had a separate firearm or weapon
21 enhancement for each Defendant. The purpose of charging the case in this fashion was to
22 conform to the evidence presented at preliminary hearing and therefore give the People the
23 greatest chance at success at trial.
- 24 18. Upon realizing this oversight, I drafted a new 1st Amended Information which had the
25 appropriate charges.
26
27
28

1 19. On November 12, 2020, I personally emailed counsel for all Defendants. In this email I discuss a
2 prior request made by the defense for certain items of evidence. In addition, I explained in the
3 final paragraph that due to an oversight by my office certain charges were not added to the
4 Information after the preliminary hearing was conducted. Specifically, Count 1 needed to be
5 separated into two separate robberies, a charge of residential burglary needed to be added, and
6 the appropriate firearm enhancements needed to be added to charges where they were missing. I
7 provided all counsel with a PDF copy of the proposed 1st Amended Information that I was going
8 to file with the Court. (See Attachment #3)
9

10 20. The 1st Amended Information contained charged for Defendant Vargas that would lead to a
11 maximum exposure of 41 years 8 months prison¹. This does not take into account the application
12 of Penal Code section 654.

13 21. On December 24, 2020 Ms. Huang filed her Motion for Discovery pursuant to AB 2542/Penal
14 Code section 745. In this motion Ms. Huang directly accused the Contra Costa County District
15 Attorney's Office, and me, of discriminatory treatment in this case. The People vehemently deny
16 that the Defendants race or ethnicity has played any role in the decisions made in this case.
17

18 22. On January 22, 2021, I was emailed by Ms. Huang regarding this case. In her email, Ms. Huang
19 attempted to re-negotiate the case and contended that the offer of 6 years state prison was too
20 high. Ms. Huang also asked why the District Attorney's Office was "going to bat" for the victims
21 in the case. (See Attachment #4.)

22 23. On January 23, 2021, I responded to Ms. Huang's email. In my email I explained that based
23 upon her allegations of discriminatory treatment that my preference was to only communicate
24 with her through email. This decision was made to protect the District Attorney's Office from
25

26 ¹ In her brief, Ms. Huang states in her declaration that the 1st Amended Information added " an extraordinary 68 years of
27 additional prison exposure". It is unclear how she is reaching this number.
28

1 spurious and unfunded allegations. In my response I explained in detail the basis for the
2 People's prior offer. I also clearly stated that the People would not engage in additional
3 negotiations and that if Defendant Vargas was interested in resolving the case that he should
4 solicit a court offer. (See Attachment #4.)

5 24. On April 19, 2021, this case proceeded to jury trial.

6 25. On June 1, 2021, the jury returned verdicts for both Defendant Vargas and Defendant Prescott.
7

8
9 I make this declaration under penalty of perjury under the laws of the State of California, executed
10 _____, 2021, in Martinez, California.

11
12 DATED:

13
14 Chris Sansoe
15 Deputy District Attorney
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1 **STATEMENT OF THE CASE**

2 On November 6, 2019, the case against Defendants Vargas and his co-conspirators was
3 submitted to the Contra Costa County District Attorney's Office. DDA Mary Knox reviewed the case
4 and filed an initial complaint.

5 On November 8, 2019, Defendants were arraigned in Docket #01-192019-8. Defendants were
6 initially charged with a single count of Home Invasion Robbery, with enhancements for use of a firearm.
7 The case proceeded to Preliminary Hearing on **November 25, 2019**, before the Honorable Judge
8 Theresa Canepa. At this time Defendant Vargas was represented by Public Defender Julian Ross. On
9 **November 26, 2019**, Judge Theresa Canepa held Defendants to answer on the filed complaint.

10 On **December 3, 2019**, the People filed the Felony Information in the above-entitled docket.
11 The initial Information contained 5 counts, the initial home invasion robbery (PC 211/213), three counts
12 of assault with a semi-automatic firearm (PC 245(b)), and a count of conspiracy (PC 182).

13 On or about **December 5, 2019**, the People met with counsel for all Defendants at the Contra
14 Costa County DA's Office. Mr. Ross was present on behalf of Defendant Vargas. The parties provided
15 mitigation materials for the Defendants. Based on these mitigating materials the People elected to make
16 a significantly mitigated offer to resolve the case. After this meeting an offer was made to all defense
17 attorneys in this case. The offer was a package deal and required all of the Defendants to plead. The
18 offer was 6 years state prison for Defendant Vargas for a plea to PC 213, and 3-years state prison for the
19 remaining three Defendants for pleas to PC 213. This offer was emailed to the parties by DDA Chris
20 Sansoe at the request of supervising DDA Kevin Bell and ADA Dan Cabral. (See Attachment #)

21 On **December 16, 2019**, the Defendants were arraigned on the filed information, Docket #05-
22 192292-1. Defendants pled not guilty and the case was set for jury trial on February 3, 2020. (1st trial
23 setting). Before this jury trial date Defendant Vargas retained private counsel, **Stuart Hanlon**. On
24 January 9, 2020, Mr. Hanlon filed a Motion to Continue. This Motion was opposed by Defendant
25 Prescott. This Motion was based on Mr. Hanlon's need for time prepare for jury trial.

1 On **January 21, 2020**, the Motion to Continue was granted and the case was reset for trial on
2 March 16, 2020. Defendant Lloyd, Vargas, and Delgado-Carmagno all gave limited time waivers for
3 trial to begin on March 16, 2020, or within 10 days thereof.

4 On **March 9, 2020**, counsel for all Defendants met with Supervising DDA Kevin Bell and DDA
5 Chris Sansoe at the Contra Costa District Attorney's Office. Counsel for Defendants expressed their
6 desire to negotiate the case and resolve the case. The People were provided with mitigation materials.
7 Based on the discussion with Mr. Hanlon, and the materials provided, it was abundantly clear that he did
8 not desire to try this case and he wanted to reach a negotiated disposition.

9 On **March 16, 2020**, the trial did not go forward due to COVID -19 closure of the courthouse.
10 The People were again ready to proceed to trial. (2nd trial setting).

11 On **June 1, 2020**, the case was set for trial. The People were prepared for trial and called ready.
12 On this date Mr. Hanlon moved to continue the case due to his health concerns in relation to trying the
13 case during COVID. In his motion to continue Mr. Hanlon makes clear that the trial is going forward
14 because Defendant Prescott was unwilling to accept the People's prior offer. This case was trailed one
15 week to **June 8, 2020**. (3rd trial setting).

16 On **June 8, 2020**, this case was set in Department 35 for Master Trial Calendar. The People
17 announced ready for trial. Counsel for Defendant Vargas declared that they were not ready and had filed
18 a Motion to Continue Pursuant to Penal Code section 1050. The Court found good cause for the
19 continuance, continued the case over Defendant Prescott's objection, and date for trial was reset for
20 **August 17, 2020**. (4th trial setting).

21 On **July 22, 2020**, Mr. Hanlon spoke with ADA Dan Cabral in an attempt to resolve the case
22 and/or to break up the package offer that existed. At this time, it was clear that Defendant Prescott was
23 refusing all offers made by the People and that his co-defendant wanted to resolve their cases for the
24 People's prior offers.
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1 On **July 28, 2020**, Mr. Cabral emailed Counsel for all Defendants, except Defendant Prescott. In
2 his email ADA Cabral explains that to break up the package deal that has been offered the Defendants
3 would have to debrief and agree to testify against Defendant Prescott. (See Attachment #).

4 On **August 6, 2020**, Mr. Hanlon filed a Motion to Continue the jury trial that was set for August
5 17, 2020. The basis for the continuance was COVID and Mr. Hanlon's health concerns.

6 On **August 14, 2020**, Mr. Hanlon emailed ADA Cabral and DDA Sansoe to alert the People that
7 Defendant Vargas would accept the People's offer to debrief and to testify against Defendant Prescott in
8 exchange for the 6-year state prison offer previously conveyed. He expressed discomfort with Vargas
9 being labeled a snitch and asked for more time to discuss the matter with us.
10

11 On **August 17, 2020**, the case was on for jury trial assignment. The People were ready, and the
12 case was continued to September 21, 2020, for trial. (5th trial setting).

13 On **September 9, 2020**, Mr. Hanlon moved to withdraw from the case. **Ms. Yolanda Huang**
14 took over the case and the trial was continued to October 5, 2020.

15 On September 15, 2020, Defendant Domenico Delgado debriefed.

16 On **September 21, 2020**, the case was on for trial assignment. The case was continued over the
17 objections of the People and Defendant Prescott. The case was reset for trial on October 5, 2020. (6th
18 trial setting).

19 On **September 25, 2020**, Defendant Thomas Lloyd debriefed. On _____ Thomas Lloyd
20 debriefed. Both debriefs were recorded and later transcribed. This documentation and the fact the
21 debriefs had occurred was provided to counsel for Defendant Vargas and Prescott.

22 On October 5, 2020, Ms. Huang appeared for Defendant Vargas and the case was continued to October
23 19, 2020, for a status conference to determine when Ms. Huang would be ready for jury trial. (7th trial
24 setting). Ms. Huang never confirmed that Defendant Vargas would be willing to resolve the case for the
25 negotiated resolution that Mr. Hanlon had reached.
26
27
28

1 On **October 19, 2020**, Ms. Huang requested a continuance of the jury trial for 60 days so she
2 could be prepared to proceed. The People, and Defendant Prescott objected to further continuances. Jury
3 trial was subsequently set for December 14, 2020.

4 On **November 10, 2020**, Ms. Huang filed a Pitchess Motion. In this Motion she alleged that the
5 officers involved in this case may have stolen marijuana during the investigation of this offense. This
6 belief was based upon a discrepancy between what the victim said was stolen and what was recovered.
7 This Motion was ultimately denied.

8
9 On **November 17, 2020**, the People brought a Motion to Amend the Information and a Motion to
10 file a 1st Amended Information. This Amended Information added a second Robbery count (PC
11 211/213), splitting the previous Count 1 into two counts. This effectively charged a robbery of both
12 Francesca Bigotti and Domenico Biggoti. The new Information also added a count of First-Degree
13 Residential Burglary (PC 460(a)). This amended information also added the appropriate enhancements
14 to the assault charges, PC 12022.5(a). This Amended Information sought to clarify, or clean up the
15 Information in preparation for jury trial, and was filed to conform the expected evidence at trial with the
16 charges that were appropriate. At the time of this motion being served on the Court and parties
17 Defendant Vargas was out of custody and Ms. Huang appeared for him. At the time of the filing of this
18 information Ms. Huang raised no objections to the charges or made any claims that they were based on
19 vindictive prosecution.

20
21 On **December 11, 2020**, Ms. Huang emailed an Informal Discovery Request for “Murgia
22 Discovery”, AB 2542/PC 745- Racial Justice Act Discovery”, and additional discovery pursuant to PC
23 1054.

24 On **December 14, 2020**, DDA Sansoe informed Ms. Huang by email that the People had
25 previously provided all required discovery in this case and that the People were not going to provide
26 discovery pursuant to “Murgia” or “PC 745”.

1 On **December 14, 2020**, the case was again on for jury trial. The People were prepared for trial
2 and called ready. (8th trial setting). The case was continued.

3 On **December 24, 2020**, Ms. Huang emailed the People a Motion to Compel Discovery that was
4 set for January 4, 2021. The Motion was filed pursuant to Penal Code section 745 which had not yet
5 gone into effect.

6 On **January 4, 2021**, the case was set for trial before the Honorable Judge Burch for jury trial
7 and hearing on Ms. Huang's Motion to Compel Discovery and for a Pitchess Motion that she had filed
8 against the City of Moraga, and all officers involved in this case. The Pitchess was denied. Judge Burch
9 heard arguments regarding the Motion to Compel Discovery. Ms. Huang was not able to articulate a
10 theory of discriminatory act by the People. Judge Burch found that no discrimination (implied or
11 explicit) appeared on the record and denied the Motion to Compel Discovery without prejudice. Judge
12 Burch suggested the People file declarations regarding the District Attorney's Office and policies
13 regarding data/crime statistic retention. The jury trial was continued to **February 8, 2021**. (9th trial
14 setting).
15

16 On **January 8, 2021**, the People provided the Court and Counsel with declarations from ADA
17 Dan Cabral and from Office Manager Nanette Wellman.

18 On **January 22, 2021**, Ms. Huang emailed DDA Sansoe regarding this case. In her email Ms.
19 Huang attempted to negotiate for a lower state prison sentence than had been previously offered. She
20 asked for the basis for the offer and asked why the People were "going to bat" for the Bigotti family.
21 DDA Sansoe responded on January 23, 2021 and provided the basis for the offer. DDA Sansoe also
22 made clear that the prior 6-year offer had never been accepted and was revoked.(See Attachment #)
23

24 On **February 4, 2021**, Ms. Huang emailed the People a Motion to Continue the jury trial set for
25 February 8 and another Motion to Compel Discovery pursuant to Penal Code section 745. The basis for
26 the Motion to Continue the jury trial was Ms. Huang's health and her inability to get a COVID vaccine.
27
28

1 On **February 8, 2021**, the case was on for jury trial and hearing on Ms. Huang's Motion for
2 Discovery. Judge Burch continued the hearing for both the Motion to Continue and the Motion for
3 Discovery to February 11, 2021. (10th trial setting).

4 On **February 11, 2021**, Judge Burch granted the People's Motion to Amend the Information and
5 permitted the filing of the 1st Amended Information and trailed the jury trial to March 29, 2021. At the
6 time of the filing of this Amended Information Defendant Vargas was out of custody and Ms. Huang
7 appeared for him. At the time of the filing of this information Ms. Huang raised no objections to the
8 charges or made any claims that they were based on vindictive prosecution.

9 Judge Burch also heard the renewed argument for Discovery. Ms. Huang argued that there was
10 explicit bias exhibited by the People that had existed since the filing of charges. Ms. Huang argued that
11 the People's choice of charging, the charges filed, and the enhancements chosen, displayed explicit bias.
12 Ms. Huang argued that the charges filed in the Information, and the subsequent 1st Amended
13 Information, were further proof of explicit bias. Judge Burch rejected this argument and the Motion was
14 denied.
15

16 On **March 15, 2021**, Ms. Huang filed, for the first time, a request for Mental Health Diversion.
17 This request was scheduled to be heard on March 22, 2021. Ms. Huang's request was based upon a
18 single page letter from Defendant Vargas therapist. The therapist (James Nofle) did not review any of
19 the evidence in the case. Instead, he based his opinion on his therapy sessions with Defendant Vargas.
20 The People filed an objection to Mental Health Diversion.
21

22 On **March 29, 2021**, the case was set for jury trial. The case was continued/trailed to April 5,
23 2021. (11th trial setting)

24 On **April 5, 2021**, the Honorable Judge Brady (Dept. 31) heard the request for Mental Health
25 Diversion. She indicated that even if eligible Defendant may not be suitable based on the type of case.
26 Ultimately Judge Brady found that the Defense had not submitted sufficient information to satisfy their
27 requirements for the Mental Health Diversion request. Ms. Huang informed the Court that she was going
28

1 to have Defendant Vargas examined by a forensic psychologist from Berkeley. The psychologist is
2 named Daniella Kantarova. Upon request from the Defense the Court reset the Mental Health Diversion
3 request for May 17, 2021.

4 On **April 5, 2021**, the case was set for jury trial. The case was trailed/continued one week. (12th
5 trial setting) This case was set for jury trial on April 12, 2019. The Court trailed the case to April 19,
6 2021 for jury trial. (13th trial setting).

7 On **April 19, 2021**, this case was set for jury trial in Department 23. The trial commenced on this
8 date.

9 On **May 7, 2021**, the Honorable Judge Brady denied, with prejudice, the Defendant's Motion for
10 Mental Health Diversion. The motion was denied for two reasons. First, there was no nexus between the
11 offenses Defendant Vargas committed and his mental health disorder. Second, based on the violent
12 nature of the crimes he committed Judge Brady found he was not suitable for a grant of diversion.
13

14 On **June 1, 2021**, Defendant Vargas was convicted by jury of five violent felonies. Defendant
15 Vargas was convicted of two counts of home invasion robbery in concert (PC 213), assault with a semi-
16 automatic weapon on Francesca Bigotti, burglary of an occupied dwelling, and conspiracy to commit
17 home invasion robbery. The jury also found true the personal use of a firearm enhancements for each
18 charge.
19

20 ARGUMENT

21 **I. COUNSEL HAS WAIVED A VINDICTIVE PROSECTUION ARGUMENT** 22 **BY NOT MAKING THIS MOTION AT AN APPROPRIATE TIME.**

23 A motion for vindictive prosecution should be made pre-trial. The case of *People v. Edwards*
24 (1991) 54 Cal.3d 787, is illustrative of this point. On Saturday, September 19, 1981, Edwards, shot 12-
25 year-old Vanessa between the eyes and her 12-year-old friend, Kelly, in the head with a .22-caliber
26 pistol while the girls were walking to a picnic lunch from a campsite in the Blue Jay campground in
27 Orange County. Vanessa died of her wound; Kelly survived.
28

1 On September 22, 1981, three days after the shooting, and before defendant’s arrest, a complaint
2 was filed and a warrant for defendant’s arrest was obtained. The complaint charged first degree murder
3 but no special circumstance. Defendant was arrested in Maryland on September 28. Twelve days later,
4 on October 10, 1981, an amended complaint was filed charging the lying-in- wait special circumstance.

5 On appeal, and for the first time, Edwards claimed the amendment was unlawful because it was
6 discriminatory, capricious, and a vindictive retaliation for his assertion of the right to counsel, his
7 temporary refusal to waive extradition, and his eventual refusal to talk to the police. (*Id.* at 827.)

8 The Attorney General argued that the issue is not properly before the Court because Edwards
9 neither moved to dismiss the amended complaint nor otherwise objected on this basis. The Court agreed.
10 “[B]ecause a claim of discriminatory prosecution generally rests upon evidence completely extraneous
11 to the specific facts of the charged offense, we believe the issue should not be resolved upon evidence
12 submitted at trial, but instead should be raised ... **through a pretrial motion to dismiss.**” (*Murgia v.*
13 *Municipal Court* (1975) 15 Cal.3d 286, 293–294, fn. 4.) This rationale applies to claims of vindictive
14 prosecution. (See also *People v. Toro* (1989) 47 Cal.3d 966, 976) [defendant must object to amendment
15 of information at trial to preserve a lack-of-notice objection]; *People v. Sperl* (1976) 54 Cal.App.3d 640,
16 656–657) (*Id.* at 828.)

17
18 In this case, on November 12, 2020 the People gave the Defense notice that an Amended
19 Information would be filed in preparation for trial. The People made clear that they had anticipated that
20 the case would have resolved and therefore amending the case had not been a priority. (See Attachment
21 #4.) Ms. Huang did not object over email. On November 17, 2020, in Court the Defense was again made
22 aware that the 1st Amended Information had been submitted to the Court and that the People were
23 requesting that the Information be amended. Ms. Huang was asked whether she objected. She did not.
24 Due to Defendant Vargas being out of custody he was not arraigned on this 1st Amended Information
25 until April 20, 2021, the second day of trial. At this time, Ms. Huang objected for the first time.
26
27
28

1 However, her objection was not based on vindictive prosecution, rather it was based on her desire that a
2 continuance would be granted pursuant to Penal Code section 1049.

3 After the People completed their case in chief Ms. Huang made a Motion to Dismiss pursuant to
4 Penal Code section 1118 and because the charges were, in her opinion, vindictive. This Court held a
5 hearing. It denied the Motion to Dismiss under Penal Code section 1118. The Court questioned the
6 timing of the vindictive prosecution motion. The Court denied his Motion as well.

7 The Defense had nearly 6 months before trial to bring a Motion to Dismiss for Vindictive
8 Prosecution. The Defense elected not to. It is only after the People had completed their case and proven
9 Defendant guilty that this Motion was brought. The People submit that this motion has not been properly
10 made and is not properly before the court.
11

12 **II. NO PRESUMPTION OF VINDICTIVENESS HAS ARISEN.**

13 Counsel for Defendant states that the decision to amend a Felony Information, when the decision
14 is made pre-trial and after failed negotiations, to add additional related and alternative charges, rises to
15 the level of presumed vindictiveness. Counsel makes this claim months after the Amended Information
16 was filed and after Defendant Vargas has been convicted by jury. The Defense makes this meritless
17 motion without any of case law to support her argument.
18

19 Counsel specifically argues that the decision to Amend the Information must be viewed as
20 vindictive because the Information was filed after the Defense filed a *Pitchess Motion*. In this case a
21 *Pitchess Motion* was filed on November 10, 2020. This motion was ultimately meritless and was denied
22 by the Court. The People are not party to a *Pitchess Motion*. However, in this case the People were not
23 troubled by the filing of this motion as it appeared absurd and meritless to begin with as it accused
24 officers of theft of marijuana. The filing of this meritless motion clearly had no effect on the decision to
25 amend the information.
26

27 Counsel cannot cite to a single case that is factually or legally analogous to the current case.
28 Counsel is unable to cite to any law because none exists. In fact, the opposite is true. The law allows for

1 the prosecution to amend an information at “any stage of the proceedings”. (See *Penal Code section*
2 *1009*.) Counsel has cited to the *Twiggs* case for her failed attempt to argue vindictiveness. However,
3 *Twiggs*, and a multitude of other cases, have held that the addition of charges pretrial and in the “give
4 and take” of plea bargaining are proper. (*People v. Twiggs* (1983) 34 Cal.3d 360, 371.) Finally, it is
5 abundantly clear that the prosecution may add charges after a failed plea-bargain. “The courts have
6 consistently refused to apply the presumption in the context of failed pretrial plea bargains. [Citations.]”
7 (*People v. Bracey* (1994) 21 Cal.App.4th 1532, 1546.)

8
9 Absent a presumption, a denial of due process on grounds of prosecutorial vindictiveness
10 requires **objective evidence “that the prosecutor’s charging decision was motivated by a desire to**
11 **punish [the defendant] for doing something that the law plainly allowed him to do.”** [Citation.]
12 “The charge of vindictive prosecution is not a substitute for evidence.” [Citations.] (*People v. Bracey*
13 (1994) 21 Cal.App.4th 1532, 1549.)

14 Here, Counsel has filed a meritless motion without a scintilla of actual law to support her
15 argument. Contrary to the Defense contention the People may move to amend a filing document when
16 necessary to charge alternative theories of prosecution and when appropriate to secure a conviction.
17

18 **III. THERE IS NO VINDICTIVENESS IN AMENDING AN INFORMATION**
19 **IN A PRE-TRIAL SETTING.**

20 The presumption of vindictiveness does not apply in a pretrial setting. In *Twiggs v. Superior Court*
21 (1983) 34 Cal.3d 360, 371 (*Twiggs*), where charges were increased after a mistrial, the California
22 Supreme Court distinguished cases in which more serious charges were added *pretrial* and in the “give
23 and take” of plea bargaining, all of which were found to be proper. (*Id.* at p. 371, citing *Bordenkircher v.*
24 *Hayes* (1978) 434 U.S. 357 and *United States v. Goodwin* (1982) 457 U.S. 368.) More specifically,
25 *Twiggs* discussed and distinguished *People v. Farrow* (1982) 133 Cal.App.3d 147 (*Farrow*). (*Twiggs*,
26 *supra*, 34 Cal.3d at pp. 372-373.) In *Farrow*, the appellate court held:

27 Unless the [presumption] rule is limited to the postconviction appeal context, it becomes totally
28 unworkable. Prosecutorial discretion in determining the charges to be filed is basic to the

1 framework of our criminal justice system. [Citations.] Up to the time of verdict, the prosecution
2 may amend the information to include additional offenses shown by the evidence at the
3 preliminary hearing. To extend [the presumption] to the pretrial and trial context would unduly
4 hamper the legitimate exercise of this prosecutorial discretion.

5 (*Id.* 133 Cal.App.3d at p. 152.) “In the pretrial situation, no presumption of vindictiveness arises. A
6 presumption of vindictiveness arises only if the prosecutor ‘ups the ante’ after exercise of a
7 postconviction right.” (*People v. Puentes* (2010) 190 Cal.App.4th 1480, 1484.)

8 **Thus, for example, no presumption of prosecutorial vindictiveness arises from the addition**
9 **of charges in a pretrial setting.** (*People v. Johnson* (1991) 233 Cal.App.3d 425, 447-449; *People v.*
10 *Matthews* (1986) 183 Cal.App.3d 458, 465-466; *People v. Rivera* (1981) 127 Cal.App.3d 136, 141-
11 148)(Emphasis added.) Nor does it arise if charges are refiled after being previously dismissed in lieu of
12 probation revocation proceedings. (*People v. Bracey* (1999) 21 Cal.App.4th 1532, 1546-1549.) And no
13 presumption of vindictive prosecution was applied where the **increased charges were the product of a**
14 **reevaluation of the evidence by a different prosecutor** after the defendant successfully made a motion
15 to withdraw her guilty plea. (*People v. Hudson* (1989) 210 Cal.App.3d 784, 788 [original plea not part
16 of negotiated agreement with prosecution])(Emphasis added.)

17 Here, the claims of vindictiveness arise in a pre-trial, setting after the negotiations had failed, and
18 after the case was re-evaluated by a prosecutor who had not filed the initial complaint. The Defense
19 claims that the new charges were brought to punish Defendant Vargas for exerting his right to trial.
20 However, this narrow view ignores the fact that the People have a right to amend the Information prior
21 to trial to charge crimes that the prosecution believes are based on the evidence, and to ensure that at
22 trial the People are successful. The claim of vindictiveness thus fails and is without any potential merit.

23
24 **IV. THERE IS NO VINDICTIVENESS IN AMENDING AN INFORMATION**
25 **AFTER A FAILED PLEA BARGAIN.**

26 “The courts have consistently refused to apply the presumption in the context of failed pretrial
27 plea bargains. [Citations.]” (*People v. Bracey* (1994) 21 Cal.App.4th 1532, 1546.) Thus, for example, it
28 is not prosecutorial misconduct to hold new criminal charges in abeyance while attempting to obtain a

1 negotiated disposition in a pending case. A prosecutor’s offer not to file the new charges in the context
2 of a legitimate plea bargain offer does not implicate a defendant’s due process right not to be subjected
3 to vindictive prosecution.

4 The United States Supreme Court confronted the question of prosecutorial vindictiveness in the
5 context of plea negotiations in *Bordenkircher v. Hayes* (1978) 434 U.S. 357 . In that case the defendant
6 was charged with uttering a forged instrument, an offense punishable by a term of two to ten years.
7 During plea negotiations with defense counsel present, the prosecution offered to recommend a sentence
8 of five years in exchange for a plea of guilty. At the same meeting, the prosecutor said that if the
9 defendant did not plead guilty, and “save the court the inconvenience and necessity of a trial” (*id.*, at p.
10 358 ...), he would seek an indictment under the Kentucky Habitual Criminal Act, which would subject
11 the defendant to a mandatory sentence of life imprisonment because of defendant’s two prior felony
12 convictions. Defendant chose not to plead guilty, and he was subsequently indicted on the more serious
13 charge. The court held that “the course of conduct engaged in by the prosecutor in this case, which no
14 more than openly presented the defendant with the unpleasant alternatives of forgoing trial or facing
15 charges on which he was plainly subject to prosecution, did not violate the Due Process Clause of the
16 Fourteenth Amendment.” (*Id.*, at p. 365) (*Twiggs v. Superior Court* (1983) 34 Cal.4th 360, 370
17 (*Twiggs*).

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19
20 This reasoning was expanded by the United States Supreme Court in *United States v. Goodwin*
21 (1982) 457 U.S. 368, quoting extensively from *Bordenkircher v. Hayes, supra*, 434 U.S. 357
22 (*Bordenkircher*):

23 ... [*Bordenkircher, supra*] 434 U.S. at 364-365 ... (“To hold that the prosecutor’s desire
24 to induce a guilty plea ... may play no part in his charging decision, would contradict the
25 very premises that underlie the concept of plea bargaining itself”). If a prosecutor could
26 not threaten to bring additional charges during plea negotiation, and then obtain those
27 charges when plea negotiation failed, an equally compelling argument could be made that
28 a prosecutor’s initial charging decision could never be influenced by what he hoped to
gain in the course of plea negotiation. Whether “additional” charges were brought
originally and dismissed, or merely threatened during plea negotiations, the prosecutor
could be accused of using those charges to induce a defendant to forgo his right to stand
trial. If such use of “additional” charges were presumptively invalid, the institution of

1 plea negotiation could not survive. *Thus, to preserve the plea negotiation process, with its*
2 *correspondent advantages for both the defendant and the State, the Court in*
3 *Bordenkircher held that “additional” charges may be used to induce a defendant to*
4 *plead guilty.* Once that conclusion was accepted, it necessarily followed that it did not
5 matter whether the “additional” charges were obtained in the original indictment or
6 merely threatened in plea negotiations and obtained once those negotiations broke down.
7 In the former situation, the prosecutor could be said simply to have “anticipated” that the
8 defendant might refuse to plead guilty and, as a result, to have placed his “threat” in the
9 original indictment. Cf. *id.*, at 360-361 ... (“As a practical matter, in short, this case
10 would be no different if the grand jury had indicted Hayes as a recidivist from the outset,
11 and the prosecutor had offered to drop that charge as part of the plea bargain”).

12 (*United States v. Goodwin, supra*, 457 U.S. at p. 378, fn. 10, italics added; see also *People v. Matthews*
13 (1986) 183 Cal.App.3d 458, 463-467 [court held adding a prior felony enhancement that were not in the
14 original complaint did not give rise to a presumption of prosecutorial vindictiveness where the counts
15 were added in the normal course of pretrial proceedings after a failed plea bargaining and after a
16 preliminary examination].)

17 *People v. Barajas* (1983) 149 Cal.App.3d 30 is distinguishable. The defendant in *Barajas* was
18 facing misdemeanor driving under the influence charges when, on the morning of trial, one deputy city
19 attorney realized the injuries resulting from defendant’s conduct justified upgrading the case to a felony.
20 This deputy city attorney “threatened” the case would be filed as a felony unless the defendant pled
21 guilty. The defendant declined and another deputy city attorney took over the case for trial. That deputy
22 city attorney caused a mistrial by asking a question that elicited inadmissible evidence despite a prior
23 warning by defense counsel not to elicit such evidence. Although the case was not dismissed on double
24 jeopardy grounds because of this prosecutorial misconduct, the appellate court held the subsequent
25 upgrading of the case to a felony for retrial would violate due process. Recognizing the unique
26 procedural posture of the case the appellate court reasoned:

27 Unlike *Twiggs*, where the mistrial was caused by the jury’s inability to agree *after* trial,
28 *Barajas* did not have a complete error free trial. The prosecutor *during* trial caused the
mistrial. To require *Barajas* to now face a felony charge would in effect reward the
prosecutor for his prejudicial conduct. Moreover, faced with prosecutorial misconduct,
defense counsel should not be required to remain mute in order to avoid the risk that his
client might later be prosecuted for an offense with the potential of increased penalties.
To so hold has the effect of denying the defendant his right to the effective assistance of
counsel while concurrently sanctioning prejudicial error.

1 (*Id.* at p. 34, italics in original.)

2 Here, no threat has ever been conveyed. Rather, Defendant elected not to accept the early
3 resolution offer that was tendered. The Defense likes to claim that the offer was racially discriminatory
4 because it required Defendant Vargas to debrief, and potentially to testify if the prosecution so desired.

5 However, no attempts were made by Ms. Huang to negotiate an alternative sentence. Instead,
6 counsel for the Defense pushed forward filing baseless motions and disparaging the victims. No effort
7 was made to attempt to resolve this case until mid-trial when the Defendant's Motion for Mental Health
8 Diversion was denied. It was at this time that the Defense attempted to solicit an offer from the People
9 and the Court. Of course at this late stage of the proceedings it should have come as no surmise that the
10 People and the Court refused to engage in mid trial negotiations with Ms. Huang.

12 Therefore, we are not in similar situation to *Barajas*. The Defendant has elected not to take
13 advantage of the plea-bargaining process. Now Defendant complains that the People have exercised
14 their right to appropriately charge and try the offense. Again, there is no basis for a finding of vindictive
15 prosecution.

16 **V. NO ACTUAL VINDICTEVNESS HAS OCCURRED.**

17 The Defense's final argument is that even if they cannot meet the presumption of vindictiveness
18 standard that this Court should nevertheless dismiss the charges because actual vindictiveness is present.
19 The basis for this allegation of vindictiveness is threefold: 1) That cooperating co-defendant sreceived
20 lighter sentences, 2) that the maximum exposure increased tremendously, and 3) that the prosecutor was
21 offended by the claims of racism.

23 Domenico Delgado- Carmagno, a Hispanic Male, and Thomas Lloyd, an African American
24 male, both wanted to resolve their cases. As a result, they debriefed, and complied with all requests
25 made of them. The act of debriefing serves an important governmental function, similar to allocution for
26 a crime. It allows the accused the opportunity to admit their crimes, and it allows for the resolution of
27

1 cases at an early stage. The People gave Defendant Vargas the same ability to resolve. Defendant Vargas
2 elected not to.

3 Counsel additionally alleges that the increase in exposure also makes this vindictive. Counsel's
4 assertion that this 1st Amended Information added 68 years of exposure is wrong. The exposure from the
5 1st Amended Information was 41 years 8 months. It is unclear how she Ms. Huang came to the
6 determination that this amendment added 68 years of exposure. It is also clear from reading the email
7 sent to Counsel at the time of filing this 1st Amended Information that it was always the intent of the
8 People to have these charges and that but for an error in the process the charges would have been filed.
9

10 Finally, Counsel contends that because the assigned attorney was offended when she made a
11 claim of racism that this also proves vindictiveness. Despite Ms. Huang's contention the false allegation
12 of racism is offensive. It is uncommon for practicing criminal attorneys in Contra Costa County to
13 accuse prosecutors of racism spuriously and falsely. Ms. Huang's claims are meritless. There is no
14 evidence of vindictive prosecution.

15 CONCLUSION

16 Based on the Points and Authorities the People contend that the Defendants Motion to Dismiss
17 without any merit. The People ask the Court to deny the Motion given the clear law that is directly on
18 point and contrary to the Defense's arguments. Any objective viewing of the facts in this case indicate
19 that the People made a mitigated offer to resolve this case. One Defendant (Prescott) chose not to accept
20 the People's offer. Because this was a package offer the three defendants who wanted to resolve their
21 case were required to debrief in order to un-package the offer. Defendant Vargas made the decision not
22 to debrief and to face the criminal charges with Defendant Prescott. The People, in preparation for trial,
23 filed an amended information so that they could be in the best position to succeed at trial. The Defense
24 had months to argue that the amended information was not appropriate. Rather than act in a timely
25 fashion the Defense has waited until after Defendant Vargas has been convicted. The Defense cannot
26 now argue in good faith that the prosecution of Defendant Vargas has been vindictive.
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DATED:

Respectfully Submitted,

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